

American Savings & Loan Association

DOB: 03/28/1955

10:00 PM

MAY 4 1998
 LOCATION
 2
 11 P.M.
 765532

Barry W. Waterhouse

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RECORDATION REQUESTED BY:

AFTER RECORDATION, RETURN TO:

RETURN BY: MAIL () PICKUP ()

SPACE ABOVE THIS LINE FOR REGISTRAR'S USE

THIS INDENTURE OF LEASE, made this 1th day of April,
 1966, by and between LANIAKEA, INC., a Hawaii corporation, of
 Honolulu, City and County of Honolulu, State of Hawaii, hereinafter
 called the "Lessor", and HELENE VIKTORA VANDERWATER AND HER HUSBAND
SHIZUKO VANDERWATER HUSBAND FOR WIFE AS PARTIES OF THE ENTIRETY,
 whose residence and post office address is 2552 ALLEHUA
OVERSEAS HONOLULU HAWAII,
 hereinafter called the "Lessee".

W I T N E S S E T H :

That the Lessor, in consideration of the rent hereinafter reserved and of the covenants herein contained and on the part of the Lessee to be observed and performed, does hereby demise and lease unto Lessee and Lessee does hereby accept and rent:

ALL of the premises comprising the LANIAKEA APARTMENTS condominium project, hereinafter called the "project", which project consists of all of that certain parcel of land and the improvements thereon situate at Kalia, Waikiki, Honolulu aforesaid, being Lot 118, as shown on Map 49 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 852 of Bishop Trust Company, Limited, Trustee, and being all of the land described in Transfer Certificate of Title No. 76,522 issued to the Lessor herein, as established by Declaration of Horizontal Property Regime, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 380423 and noted on Transfer Certificate of Title No. 76,522, hereinafter called the "Declaration", described as follows:

FIRST: Apartment No. 8 consisting of approximately 470 square feet, on the 5th floor of the apartment building of the project, together with a lanai appurtenant to, and located to the rear of said apartment, containing an area of approximately 45 square feet, as shown on the plans thereof filed in said Office of the Assistant Registrar as Condominium Map No. 21.

TOGETHER with appurtenant easements as follows:

(a) Non-exclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for, and support, maintenance and repair of said apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided in the Declaration; and in all other apartments and limited common elements of said building for support;

SUBJECT to easements for the encroachment by any part of the common elements of the project now or hereafter existing thereon and for entry as may be necessary for operation of the project or for making repairs therein as provided in the Declaration.

SECOND: An undivided ONE TWENTY-SIXTH interest in all common elements of the project as established for said apartment by the Declaration, or such other fractional interest hereafter established for said apartment by any amendment of the Declaration, as tenant in common with the other owners and tenants thereof, subject to all exclusive and non-exclusive easements appurtenant to the other apartments respectively of the project and reserving and subject to all easements required for drainage, sewers and any utilities serving the project.

TO HAVE AND TO HOLD the same for the term commencing on the 1st day of APRIL, 19 66, and ending on the 31st day of MARCH, 20 21, Lessee YIELDING AND PAYING therefor unto Lessor in equal monthly installments, each in advance on the first day of each and every month during said term, net over and above all taxes, assessments, and other charges hereunder payable by Lessee, rent as follows:

(a) During the period commencing on the date hereof and ending on March 31, 1991 the sum of TWENTY-FIVE AND NO/100 DOLLARS (\$25.00) per month, payable in advance on the first day of each month of said term; provided that if this document is effective on a day other than on the first day of the month, then the rent shall be prorated as of such date.

(b) For and during the next ten (10) years of said term, from APRIL 1, 1991 to and including APRIL 30, 2001 the sum of FIFTY AND NO/100 DOLLARS (\$50.00) per month, in advance as aforesaid.

(c) For and during the following two successive ten (10) year periods, commencing on APRIL 1, 2001 and APRIL 1, 2011 respectively, the Lessee agrees to pay as and for such rental his proportionate share (as established for said apartment by the Declaration) of the total rental value of said land comprising the whole site of the project as shall be determined by mutual agreement between the Lessor and the Association acting by its Board of Directors, but such total rental value shall not be less than the total annual rental payable for said land for any preceding rental period. In the event Lessor and the Association are unable to agree upon the annual rental to be paid during any of said periods, ninety (90) days prior to the commencement of any of said periods, then the rental shall be determined by three impartial real estate appraisers, one each to be appointed by the Lessor and the Association not later than seventy-five (75) days prior to

the commencement of said period, and in case either party shall fail to appoint such appraiser, the party who has named an appraiser may apply to the Judge of the Circuit Court of the First Circuit of the State of Hawaii, requesting him to appoint a second appraiser, and the two appraisers thus appointed, in either manner, shall appoint the third appraiser, and in case the two appraisers so appointed shall fail to agree within ten (10) days on the appointment of a third appraiser, either party may apply to such Judge to appoint a third appraiser, and the three appraisers so appointed shall thereupon proceed to determine the rental, and the decision of said appraisers or a majority of them shall be final, conclusive and binding upon the parties; PROVIDED, HOWEVER, that if two of said appraisers shall fail within a reasonable time to reach an agreement on the matter in question, said matter shall be determined by three new appraisers appointed in the same manner as aforesaid, and this process shall be repeated until a decision is finally reached by two of the appraisers; PROVIDED, FURTHER, that the costs of the arbitration shall be divided as follows:

The Lessor shall pay for his appointee and one-half of all other legitimate costs of said appraisal, and the Lessee shall pay his proportionate share of the cost of his appointee and of all other legitimate costs of said appraisal; PROVIDED, ALSO, that all attorneys' fees and witness' fees shall be borne by the respective parties incurring them.

If and whenever the fixing of such fair market value is under arbitration, the Association, as agent for all the Lessees, pending the determination thereof, shall continue to pay the same rental which it had been paying during the last preceding rental period and shall promptly pay the deficiency, if any, upon the conclusions of the arbitration proceedings.

The Lessee hereby authorizes the Association from time to time to represent the Lessee in dealings with the Lessor, including but not limited to the right to renegotiate the annual rental and to negotiate any other matters that may arise.

AND Lessor hereby covenants with Lessee that upon payment of the rent as aforesaid and upon observance and performance of the covenants by Lessee hereinafter contained, Lessee shall peaceably hold and enjoy said premises for the term hereby demised without hindrance or interruption by Lessor or any other person or persons claiming by, through, or under Lessor except as herein expressly provided.

AND Lessee hereby covenants with Lessor as follows:

1. **PAYMENT OF RENT.** Lessee will pay or cause to be paid to Lessor said rent in lawful money of the United States of America at the times and in the manner aforesaid, without any deduction and without any notice or demand.

2. **TAXES AND ASSESSMENTS.** Lessee will pay or cause to be paid to Lessor as additional rent, at least twenty days before the same become delinquent, all real property taxes and assessments of every description to which

said premises, or Lessor or Lessee in respect thereof, are now or may during said term be assessed or become liable, whether assessed to or payable by Lessor or Lessee, except that such taxes shall be prorated as of the dates of commencement and expiration respectively of said term; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments together with interest as shall become due and payable during said term.

3. RATES AND OTHER CHARGES. Lessee will pay before the same become delinquent all assessments for his proportionate share of the common expenses of the project and all charges, duties, rates and other outgoings of every description to which said apartment or Lessor or Lessee in respect thereof may during said term be assessed or become liable, whether made by governmental authority or any public or community service company or by the Association pursuant to the Declaration and whether assessed to or payable by Lessor or Lessee.

4. IMPROVEMENTS REQUIRED BY LAW. Lessee will during the whole of said term at his proportionate share of the expense by the Association make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the project.

5. OBSERVANCE OF LAWS. Lessee will at all times during said term keep said apartment and by the Association keep all common elements of the project in a strictly clean and sanitary condition, and will observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority and all by-laws, rules, regulations, agreements, decisions and determinations duly made by the Association for the time being applicable to the project or the use thereof and all restrictions, covenants, conditions and provisions of the Declaration and amendments thereof duly made affecting the project, and will indemnify Lessor against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance thereof by Lessee or any person under him.

6. REPAIR AND MAINTENANCE. Lessee will from time to time and at all times during said term at his own expense well and substantially repair, maintain, amend and keep said apartment, and at his proportionate share of the expense by the Association well and substantially repair, maintain, amend and keep all common elements of the project including without limitation the buildings thereof, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided herein, and at his proportionate share of the expense by the Association maintain all landscaping of the project together with all adjacent land between any street boundary thereof and the established curb line in a neat and attractive condition and all trees, shrubs and grass thereon in good cultivation and replant the same as may be necessary.

7. INSPECTION. Lessee will permit Lessor and its agents at all reasonable times during said term to enter said apartment and the project and examine the state of repair and condition thereof, and will at his own expense repair and make good all defects in said apartment and at his proportionate share of the expense by the Association repair and make good all defects in the common elements of the project herein required to be repaired, of which notice shall be given by Lessor or its agents, within 30 days after the giving of such notice.

8. APARTMENT USE. Lessee will use and allow the use of said apartment for residential apartment purposes only, unless other uses are allowed by the Association, and will not at any time during said term keep or allow to be kept within said apartment or the project any livestock, poultry or rabbits.

9. BOND. Lessee will before commencing construction of any improvement on the project individually or by the Association deposit with Lessor a bond or certificate thereof naming Lessor as obligee, in a penal sum equal to one-half of the estimated cost of such construction with a corporate surety authorized to do business in Hawaii, guaranteeing the completion of such construction free and clear of all mechanics' and materialmen's liens.

10. FIRE INSURANCE. Lessee will at his proportionate share of the expense by the Association at all times during said term keep all buildings of the project insured against loss or damage by fire with extended coverage in an insurance

company authorized to do business in Hawaii in an amount as near as practicable to the full replacement cost thereof without deduction for depreciation, by blanket policy or policies in the name of and payable in case of loss to the Board of Directors of the Association as trustee for all apartment owners and mortgagees according to the loss or damage to their respective apartments and appurtenant common interests, and from time to time upon receipt thereof cause to be deposited promptly with Lessor true copies of such insurance policies or current certificates thereof, without prejudice to the right of Lessee to insure said apartment for his own benefit. In every case of such loss or damage all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing or otherwise reinstating said buildings in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect as shall be first approved as provided in this lease and the Declaration, and Lessee will at his proportionate share of the expense by the Association make up any deficiency in such insurance proceeds.

11. LESSOR'S COSTS AND EXPENSES. Lessee will pay to Lessor on demand all costs and expenses including reasonable attorneys' fees incurred by Lessor in enforcing any of the covenants herein contained, in remedying any breach by Lessee of said covenants, in recovering possession of said apartment, in collecting any delinquent rent, taxes or other charges hereunder payable by Lessee, or in connection with any litigation (other than condemnation proceedings) commenced by or against Lessee to which Lessor without any fault on their part shall be made parties.

12. INDEMNITY. Lessee will indemnify and hold Lessor harmless against all claims and demands for loss or damage, including property damage, personal injury and wrongful death, arising out of or in connection with the use or occupancy of said apartment or the project by Lessee or any person claiming by, through or under Lessee, or any accident or fire in said apartment or any nuisance made or suffered therein, or any failure by Lessee to keep said apartment in a safe condition, or any other liability whatsoever on account of said apartment or appurtenant common interest for such loss or damage arising out of or in connection with any common elements of the project, and will reimburse Lessor for its costs and expenses including reasonable attorneys' fees incurred in connection with the defense of any such claims. Lessee will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever within said apartment or project at the sole risk of Lessee and hold Lessor harmless for any loss or damage thereto by any cause whatsoever.

13. LIABILITY INSURANCE. Lessee will at his proportionate share of the expense by the Association effect and maintain during the whole of said term comprehensive general liability insurance covering all the apartment owners with respect to the common elements of the project in a responsible insurance company with minimum limits of not less than \$100,000 for injury to one person and \$300,000 for

injury to more than one person in any one accident or occurrence and \$20,000 for property damage, and from time to time upon receipt thereof cause to be deposited promptly with Lessor current certificates of such insurance, without prejudice to the right of Lessee to maintain additional liability insurance for said apartment.

14. CONSTRUCTION OF IMPROVEMENTS. Lessee will not individually or by the Association erect or place on the project any building or structure including fences and walls, nor make or suffer any additions or structural alterations to or exterior changes of any building or any common elements of the project, nor place or maintain any signs or bills thereon, except in accordance with plans and specifications therefor including detailed plot plan, first approved in writing by Lessor and the Board of Directors of the Association and also approved by a majority of apartment owners (or such larger percentage required by law or the Declaration) including all owners of apartments thereby directly affected.

15. WASTE AND UNLAWFUL USE. Lessee will not make or suffer individually or by the Association any strip or waste or unlawful, improper or offensive use of said apartment or project, or use said apartment or project for or in connection with the manufacture, sale, storage or keeping for sale or barter of any narcotics or alcoholic beverages or liquors.

16. LIENS. Lessee will not individually or by the Association commit or suffer any act or neglect whereby said

premises or the estate of Lessee therein shall at any time during said term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, other than any authorized mortgages, and will indemnify and hold Lessor harmless from all loss, cost and expense with respect thereto including attorneys' fees.

17. **MANAGING AGENT.** In the event a Managing Agent is appointed to manage and operate the project, the Lessee will bear his proportionate share of the expenses attributable to such Managing Agent. Such Managing Agent shall be responsible for the collection, custody and payment to Lessor when due of all rent, taxes, and other charges hereunder payable to Lessor and also such assessments and other charges payable by Lessee in accordance with the Declaration and the by-laws of the Association, provided that notwithstanding such agency, Lessee shall at all times remain liable directly to Lessor for the performance of all his obligations hereunder.

18. **SURRENDER.** At the end of said term or other sooner determination of this lease Lessee will peaceably deliver up to Lessor possession of said premises, together with all improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition except for reasonable wear and tear and as otherwise expressly provided herein; provided, however, if not then in default hereunder the Lessee, acting by and through the Association, may thereupon remove any trade fixtures installed on the project during said term but shall promptly repair to Lessor's satisfaction all damage caused by such removal.

AND IT IS HEREBY MUTUALLY AGREED by and between the parties hereto as follows:

A. CONDEMNATION. In case at any time or times during said term said apartment or project or any part thereof shall be taken or condemned by any authority having the power of eminent domain, then and in every such case the estate and interest of Lessee in all land and improvements so taken or condemned shall at once cease and determine, and Lessee shall not by reason of such taking or condemnation be entitled to any claim against Lessor or others for compensation or indemnity for leasehold interest, and all compensation and damages for or on account of any land shall be payable to and be the sole property of Lessor except for any unamortized development costs with respect to such land payable to others and such development costs and all compensation and damages for or on account of any improvements of the project shall be payable to the Board of Directors of the Association as trustee for all apartment owners and mortgagees according to the loss or damage to their respective apartments and appurtenant common interests and shall be used promptly by the Association to the extent necessary for restoring or replacing such improvements on the remaining land according to plans therefor first approved as provided in this lease and the Declaration unless such restoration or replacement is impractical in the circumstances; provided, however, that in case (1) only part of the project shall be so taken or condemned thereby rendering the remaining land and improvements unsuitable for the multi-family residential

purposes of the project, and the Association shall remove all remains of buildings and restore said land to good *orderly condition and even grade* and cause all subsisting leases of other apartments of the project to be surrendered to Lessor, or (2) all or only part of said apartment shall be so taken or condemned thereby rendering any remaining part thereof unsuitable for residential purposes, and the Association shall remove all remains of such apartment and restore the remaining common elements of the project to good orderly condition and by amendment of the Declaration cause the remaining part of the project to be reconstituted as a new horizontal property regime without said apartment, Lessee in either case may surrender this lease and thereby be relieved of any further obligations hereunder subject to the payment to Lessor of all rent then accrued hereunder and taxes hereunder payable for the full current year, and upon such surrender Lessee and any mortgagee of this lease shall be entitled to all remaining compensation and damages payable for or on account of said apartment and appurtenant common interest in any improvements of the project together with any other funds payable on account of said apartment pursuant to the Declaration. Condemnation of any leasehold interest in the project shall not terminate this lease nor excuse Lessee from full performance of Lessee's covenants hereunder for the payment of money or other obligations hereunder capable of performance by Lessee, but in such case Lessee may claim and

recover from the condemning authority all compensation and damages payable on account of Lessee's leasehold interest.

B. UNINSURED CASUALTY. In case at any time during said term the apartment building of the project shall be substantially damaged or destroyed by any casualty not herein required to be insured against, and the Association shall remove all remains of buildings and restore said land to good orderly condition and even grade and cause all subsisting leases of other apartments of the project to be surrendered to Lessor, Lessee may surrender this lease and thereby be relieved of any further obligations hereunder subject to the payment to Lessor of all rent then accrued hereunder and taxes hereunder payable for the full current year.

C. CONSENT TO ASSIGNMENT. Lessee may from time to time without further consent assign or mortgage this lease, and any mortgagee may enforce such mortgage and acquire title to the leasehold estate in any lawful way, and pending foreclosure of such mortgage may take possession of and rent said premises, and upon foreclosure thereof may sell and assign the leasehold estate; provided, however, that every assignment of this lease other than a mortgage shall contain the written undertaking of the assignee to perform all obligations of Lessee hereunder, and that upon execution of any assignment or mortgage a true copy thereof shall be delivered promptly to Lessor. Any person acquiring the leasehold estate in consideration of the extinguishment of the debt secured by such mortgage or through

foreclosure sale, judicial or otherwise, shall be liable to perform the obligations imposed on Lessee by this lease only during the period such person has possession or ownership of the leasehold estate.

D. PROTECTION OF MORTGAGE. During the existence of any authorized mortgage of this lease Lessor will not terminate this lease because of any default by Lessee hereunder or other cause whatsoever if, within a period of 120 days after Lessor has mailed written notice of intention to terminate this lease for such cause to the mortgagee at its last known address, the mortgagee shall either cure such default or other cause or, if the same cannot be cured by the payment of money, shall undertake in writing to perform all the covenants of this lease capable of performance by it until such time as this lease shall be sold upon foreclosure pursuant to such mortgage, and in case of such undertaking Lessor will not terminate this lease within such further time as may be required by the mortgagee to complete foreclosure of such mortgage or other remedy thereunder provided (a) that such remedy is pursued promptly and completed with due diligence, and (b) that Lessor is paid all rent and other charges accruing hereunder as the same become due, and upon foreclosure sale of this lease the time for performance of any obligation of Lessee then in default hereunder other than payment of money shall be extended by the time reasonably necessary to complete such performance with due diligence. Ownership by or for the same person of both the fee and leasehold estates in said apartment shall not effect the merger thereof without the prior written consent of any mortgage to such merger.

E. DEFEASANCE. This demise is upon this condition, that if Lessee shall fail to pay said rent or any part thereof within 30 days after the same becomes due, whether the same shall or shall not have been legally demanded, or shall fail to observe or perform faithfully any of the other covenants or agreements herein contained and on the part of Lessee to be observed and performed and such default shall continue for 30 days after written notice thereof given to Lessee or mailed to his last known address, or if Lessee then owning this lease or shall become bankrupt and fail to perform any of the covenants of Lessee hereunder or shall abandon said premises, or if this lease or any estate or interest of Lessee hereunder shall be sold under any attachment or execution, Lessor may at once re-enter said premises or any part thereof in the name of the whole and, upon or without such entry, at his option terminate this lease, without service of notice or legal process and without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract, and in case of such termination Lessee's interest in said premises shall become and remain the property of Lessor; provided, however, that no failure of the Association to perform any covenant of Lessee herein provided to be performed by the Association shall constitute a default by Lessee hereunder so long as Lessee shall use his best efforts to cause such covenant to be performed by the Association and shall pay his proportionate share of all expense thereof within 30 days after the charges

assessed by the Association in respect of said premises become due and payable by Lessee. If this lease is recorded or filed of record in Hawaii, such termination may be made effective by recording or filing in the same records an affidavit thereof by Lessor.

F. INCIDENTS OF APARTMENT OWNERSHIP. Except as otherwise provided herein Lessee shall at all times during said term be deemed to be the owner of said apartment for all purposes of the Declaration and by-laws of the Association and shall have all the rights, privileges, duties and obligations of such owner including without limitation membership and vote in the Association; provided, however, that any vote or other action of Lessee with respect to (1) construction plans, partition of the project, amendment of the Declaration or by-laws or appointment of the Managing Agent shall be effective only upon the approval or consent in writing of the Lessor, and (2) any matter as to which this lease requires the approval or consent of Lessor, shall be effective only upon such approval or consent in writing.

G. NONWAIVER. Acceptance of rent by Lessor or its agents shall not be deemed to be a waiver by it of any breach by Lessee of any covenant herein contained or of Lessor's right to reenter for breach of condition. Waiver by Lessor of any breach by Lessee shall not operate to extinguish the term, covenant or condition the breach whereof has been waived nor be deemed to be a waiver of Lessor's right to declare a forfeiture for any other breach thereof.

H. NOTICES. Any notice or demand to Lessor or Lessee provided for or permitted by this lease may be given sufficiently for all purposes in writing mailed as registered or certified mail, addressed to such party at its post office address herein specified or the last such address designated by such party in writing to the other, or delivered personally within the State of Hawaii to Lessor or Lessee as the case may be, and shall be deemed conclusively to have been given on the date of such mailing or personal delivery.

I. GENERAL. No approval or consent of Lessor required by any provision hereof shall be capriciously or unreasonably withheld, and Lessor will not require the payment of any moneys therefor other than its reasonable expenses incurred in connection with such approval or consent. The term "Lessor" herein shall mean and include Lessor, its successors and assigns, and the term "Lessee" herein or any pronoun used in place thereof shall mean and include the masculine or feminine, the singular or plural number, and jointly and severally individuals, firms or corporations, and their and each of their respective successors, executors, administrators and permitted assigns, according to the context hereof. The headings of paragraphs herein are inserted only for convenience and reference and shall in no way define or limit the scope or intent of any provision of this lease.

IN WITNESS WHEREOF, the Lessor and Lessee have executed these presents the day and year first above written.

LANIAKEA INC.

By *[Signature]*
Its *President*

By *[Signature]*
Its *Treasurer*

Lessor

Harry Yukaka Yamanoto
Constance Shizuko Yamanoto

Lessee

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this 13th day of April, 19 66, before
me personally appeared Harry Yukaka Yamanoto and Constance Shizuko

Yamanoto, to me known to be the person s
described in and who executed the foregoing instrument and
acknowledged that they executed the same as their free act
and deed.

Janet Koehi
Notary Public, First Judicial
Circuit, State of Hawaii.

My commission expires 2/27/67

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this 6th day of April, 19 66, before
me personally appeared Ross P. Kanaepua and George L.K.

Kalaauokalani, to me personally known, who, being by me duly
sworn, did say that they are President and

Treasurer, respectively of LANIAKEA, INC. the
corporation named in the foregoing instrument, and that the seal
affixed to said instrument is the corporate seal of said corpo-
ration, and that said instrument was signed and sealed in behalf
of said corporation by authority of its Board of Directors; and

said Ross P. Kanaepua and George L.K. Kalaauokalani
severally acknowledged the instrument to be the free act and
deed of said corporation.

Janet Koehi
Notary Public, First Judicial
Circuit, State of Hawaii.

My commission expires 2/27/67