

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 10, 2021

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

OAHU

Consent to Mortgage and Request to Issue Estoppel Certificate, General Lease No. S-5954, Diamond Head Theatre, Lessee, Kaimuki, Honolulu, Oahu, TMK (1) 3-2-030:001.

APPLICANT AND REQUEST:

Diamond Head Theatre, a Hawaii nonprofit corporation. ("DHT") requesting consent to mortgage from First Hawaiian Bank, Mortgagee, in an amount not to exceed \$2,000,000.

LEGAL REFERENCE:

Sections 171-6 and 22, Hawaii Revised Statutes, as amended. ("HRS")

LOCATION:

Portion of Government lands situated at Kaimuki, Honolulu, Oahu, identified by Tax Map Key: (1) 3-2-030:001, as shown on the map attached as **Exhibit A**.

AREA:

2.735 acres, more or less.

ZONING:

State Land Use District: Urban
City and County of Honolulu LUO: Residential(R-5)/theater (Non-conforming)

TRUST LAND STATUS:

Section 5(e) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CHARACTER OF USE:

For production of live theater and allied purposes, including education in the theater arts, cultural community and educational purposes.

TERM OF LEASE:

Sixty-five (65) years commencing on August 18, 2008 and expiring on August 17, 2073.
No rental reopening during the term of the lease.

ANNUAL RENTAL:

\$480.00 to be paid semi-annually and 10% of the gross rental receipts received by the Lessee when it rents out the facility to third parties.

USE OF LOAN PROCEEDS:

Construction of the new theater building.

REMARKS:

The subject property, including the improvements, was acquired by the federal government in 1923 and used as an army theater. It was leased in 1961 to DHT, who was then called the Honolulu Community Theatre. In 1964, the property was conveyed to the State as federal surplus. A 50-year lease was issued to DHT pursuant to an auction in 1966.

At its meeting of July 28, 2006, under agenda item D-3, the Board authorized the mutual cancellation of the 50-year lease and issued a 65-year lease to DHT. The new lease ("GL 5954") was intended to facilitate DHT's ongoing fund-raising campaign for the refurbishment of the improvements.

On December 7, 2017, the Department of Planning and Permitting ("DPP") issued a Finding of No Significant Impact for the redevelopment of the theater. On December 23, 2017, the Final Environmental Assessment was published in The Environmental Notice. Zoning Variance was granted by DPP for the redevelopment of the theatre on June 29, 2018.

At its prior meeting of October 25, 2019, under agenda item D-6, the Board authorized the amendment of the subject lease by allowing the Lessee to mortgage the subject leasehold interest subject to prior written approval.

The lease was issued to DHT pursuant to Section 171-43.1, HRS, at nominal rent. Staff recommends the Board include a condition in the consent that if the lease is sold in foreclosure, the Board reserves the right to evaluate whether the purchaser is qualified for nominal rent in accordance with Section 171-43.1, HRS. If the purchaser is not determined

to be so qualified, rent under the lease shall immediately be re-opened to determine fair market rent with the purchaser responsible for the cost of the appraisal procured by the State.

DHT is requesting the Board consent to the mortgage in an amount not to exceed \$2,000,000 from First Hawaiian Bank (**Exhibit B**) for the construction of the new theater building. In addition, the lender also asked for issuance of an estoppel certificate (**Exhibit C**). Staff notes that the estoppel certificate may contain some provisions that are objectionable to the State, and therefore recommends that the Chairperson be delegated authority to negotiate the terms of the estoppel certificate based on the advice of the Department of the Attorney General.

Applicant is compliant with the terms and conditions of the subject lease and there are no other pertinent issues or concerns.

RECOMMENDATION: That the Board:

1. Consent to the mortgage between Diamond Head Theatre, Mortgagor, and First Hawaiian Bank, Mortgagee, subject to the following:
 - A. The loan proceeds shall be used for the purposes as stated in "Use of Loan Proceeds" above. The Lessee shall maintain records of loan expenditures which may be inspected by the Department;
 - B. The standard terms and conditions of the most current consent to mortgage form, as may be amended from time to time;
 - C. If the lease is sold in foreclosure, the Board reserves the right to evaluate whether the purchaser is qualified for nominal rent in accordance with Section 171-43.1, HRS. If the purchaser is not determined to be so qualified, rent under the lease shall immediately be re-opened to determine fair market rent with the purchaser responsible for the cost of the appraisal procured by the State;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Issue Estoppel Certificate relating to the mortgage under General Lease No. S-5954, Diamond Head Theatre, Mortgagor, and First Hawaiian Bank, Mortgagee, in the form of Exhibit B, subject to the following:
 - A. The Chairperson is hereby delegated authority to negotiate the terms of the Estoppel certificate based on the advice of the Department of the Attorney

General;

- B. Review and approval by the Department of the Attorney General; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D. Case

RT

Suzanne D. Case, Chairperson

EXHIBIT A



TMK (1) 3-2-030:001

EXHIBIT A

EXHIBIT B

LAND COURT SYSTEM	REGULAR SYSTEM
AFTER RECORDATION RETURN:	BY MAIL <input type="checkbox"/> PICK UP <input type="checkbox"/>
FIRST HAWAIIAN BANK 999 Bishop Street, 11 th Floor Honolulu, Hawaii 96813 (Commercial Real Estate Division/ K. Maeda)	
Pages _____	1787073.1
Tax Map Key: (1) 3-2-030-001	

REAL PROPERTY MORTGAGE AND FINANCING STATEMENT

THIS MORTGAGE made as of _____, by DIAMOND HEAD THEATRE, a Hawaii nonprofit corporation, whose address is 520 Makapuu Avenue, Honolulu, Hawaii 96816 (hereinafter called the "Mortgagor"), to FIRST HAWAIIAN BANK, a Hawaii corporation, whose Main Banking Center address is 999 Bishop Street, Honolulu, Hawaii 96813 (hereinafter called the "Mortgagee"),

WITNESSETH THAT

To secure the repayment of a loan made by the Mortgagee to the Mortgagor in the principal sum of TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00), which loan is evidenced by that certain promissory note in that amount executed by the Mortgagor, as maker, and made payable to the Mortgagee, the provisions of such note and any renewals, extensions or modifications thereof being incorporated herein by reference, being secured hereby and being hereinafter referred to as the "Note";

AND ALSO to secure the observance and performance by the Mortgagor of all covenants, agreements, obligations and conditions required to be observed and performed by the Mortgagor

under this Mortgage, including, but not limited to, the payment by the Mortgagor to the Mortgagee of all sums expended or advanced by the Mortgagee pursuant to the provisions of this Mortgage;

AND ALSO to secure the observance and performance by the Mortgagor of all covenants, agreements, obligations and conditions required to be observed and performed by the Mortgagor under that certain Loan Agreement executed by the Mortgagor and the Mortgagee (the "Loan Agreement") and under all of the other "Loan Documents", as defined therein;

AND ALSO to secure the payment by the Mortgagor to the Mortgagee of all other sums now or hereafter loaned or advanced by the Mortgagee to the Mortgagor, expended by the Mortgagee for the account of the Mortgagor, or otherwise owing by the Mortgagor to the Mortgagee on any and every account whatsoever;

THE MORTGAGOR DOES HEREBY grant, bargain, sell, assign and convey unto the Mortgagee, its successors and assigns, all and singular:

That certain Lease or Sublease (hereinafter called the "Lease") described in Exhibit "A" attached hereto and made a part hereof, together with the estate created thereby;

TOGETHER WITH all buildings and improvements now located on the demised premises (the "Premises") described above and any and all buildings, improvements and building materials that may be placed thereon during the existence of this Mortgage and all rents, royalties, profits, revenues, income and other benefits arising from the use or enjoyment of all or any portion of such property or any contract pertaining to the use or enjoyment thereof;

ALSO TOGETHER with all furniture, furnishings, machinery, appliances, apparatus, equipment, fittings, fixtures and articles of personal property of every kind and nature whatsoever, other than consumable goods, now or hereafter located in or upon the Premises or any part thereof (hereinafter called "Equipment") and now owned or hereafter acquired by the Mortgagor, including all of the right, title and interest of the Mortgagor in and to any Equipment which may be subject to any retail installment contract, conditional sale contract or security agreement superior in lien and security interest to the lien and security interest of this Mortgage, it being understood and agreed that all of the Equipment is part and parcel of the improvements on such premises and appropriated to the use thereof and whether affixed or annexed or not, shall for the purpose of this Mortgage be deemed conclusively to be real estate and conveyed hereby, the Mortgagor agreeing to execute and deliver, from time to time, such further instruments as may be requested by the Mortgagee to confirm the lien and security interest of this Mortgage on the Equipment;

ALSO TOGETHER with all right, title and interest of the Mortgagor in and to any and all binders or policies of insurance of any kind covering all or any portion of the buildings and improvements now or hereafter located on the Premises, or all or any portion of the Equipment,

and any and all riders, amendments, extensions, renewals, supplements, or revisions thereof, and all of the Mortgagor's rights and remedies thereunder, and the benefit of all covenants therein and all proceeds therefrom;

ALSO TOGETHER with all of the estate, right, title and interest of the Mortgagor in and to any and all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Premises and improvements as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of any street, or (c) any other injury to or decrease in the value of the Premises and improvements to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by the Mortgagee, and of the reasonable counsel fees, costs and disbursements incurred by the Mortgagee in connection with the collection of such award or payment, the Mortgagor agreeing to execute and deliver, from time to time, such further instruments as may be required by the Mortgagee to confirm such assignment to the Mortgagee of any such award or payment;

ALSO TOGETHER with all of the estate, right, title and interest of the Mortgagor, both at law and in equity, in and to any deposit of cash, securities or other property which may be held at any time and from time to time by the lessor under the Lease to secure the performance by the Mortgagor of the covenants, conditions and agreements to be performed by the Mortgagor thereunder, and any option to purchase the fee simple title to the Premises, or any greater interest therein than the Mortgagor now owns; and any and all other, further or additional title, estate, interest or right which may at any time be acquired by the Mortgagor in or to the Premises, the Mortgagor hereby agreeing that if the Mortgagor shall, at any time prior to payment in full of all indebtedness secured hereby, acquire the fee simple title or any other or greater estate than the Mortgagor now owns in the Premises, then, and in that event, the lien of this Mortgage shall attach, extend to, cover and be a lien upon such fee simple title or other greater estate, and that the Mortgagor will execute, acknowledge and deliver such instruments as the Mortgagee may require to accomplish such result;

ALSO TOGETHER with all rights of the Mortgagor and the Mortgagor's bankruptcy trustee to deal with the Lease, which rights may arise as a result of the commencement of a proceeding under the federal bankruptcy laws by or against (i) the Mortgagor or (ii) the lessor under the Lease, including, without limitation, the right to assume or reject, or compel the assumption or rejection of the Lease pursuant to 11 U.S.C. § 365(a) or any successor law, the right to seek and obtain extensions of time to assume or reject the Lease, and the right to elect whether to treat the Lease as terminated by the lessor's rejection of the Lease or to remain in possession of the Mortgaged Property and offset damages pursuant to 11 U.S.C. § 365(h)(1) or any successor law;

SUBJECT, HOWEVER, to the encumbrances (the "Encumbrances"), if any, described in Exhibit "A";

TO HAVE AND TO HOLD all of the above-described property, Equipment, insurance binders, policies and proceeds, awards, payments and other property together with all rights, privileges and appurtenances thereto belonging (all of such property being hereinafter referred to as the "Mortgaged Property") unto the Mortgagee, for the unexpired term or extended term of the Lease (or if the Mortgagor shall acquire fee simple title, then, forever); SUBJECT, HOWEVER, to the Encumbrances.

UPON CONDITION that if the Mortgagor shall well and truly pay to the Mortgagee the principal amount of the Note, with interest, fees, charges and premium, if any, according to its provisions and effect, and if the Mortgagor shall discharge any and all obligations that now or hereafter may be or become owing, directly or contingently, by the Mortgagor to the Mortgagee on any and every account, whether or not the same are mature, of which obligations the books of the Mortgagee shall be prima facie evidence, and if the Mortgagor shall observe and perform all of the covenants, agreements, obligations and conditions to be observed and performed by the Mortgagor under this Mortgage and under the other Loan Documents, and if the Mortgagor shall pay the costs of release, then these presents shall be void, and that, subject to the terms hereof, until the happening of an Event of Default (as hereinafter defined), the Mortgagor shall be permitted to use and possess the Mortgaged Property and to use and receive the rents, issues, profits, revenues and other income thereof;

BUT, if any one or more of the following events ("Events of Default") shall occur:

(a) Default shall be made by the Mortgagor in the payment of principal, interest, fees or charges when due on the Note; or

(b) Default shall be made by the Mortgagor in the due and punctual observance or performance of any other covenant, agreement, obligation or condition required to be observed or performed by the Mortgagor under this Mortgage, or any of the other Loan Documents, and such default shall not have been remedied within twenty (20) days after the date the Mortgagee notifies the Mortgagor of such default; or

(c) The Mortgagor shall become voluntarily or involuntarily dissolved or become insolvent, or the Mortgagor shall admit in writing the Mortgagor's inability to meet the Mortgagor's debts as they become due, or shall file a voluntary petition in bankruptcy, or make an assignment for the benefit of creditors, or consent to the appointment of a receiver or trustee for all or a substantial part of the Mortgagor's properties, or file a petition, answer or other instrument seeking or acquiescing in the arrangement of the Mortgagor's debts, or other relief under the federal bankruptcy laws or any other applicable law of the United States of America or any state or territory thereof for the relief of debtors; or

(d) A decree or order of a court having jurisdiction in the Premises shall be entered (i) adjudging the Mortgagor to be bankrupt or insolvent, or (ii) appointing a receiver or trustee or

assignee in bankruptcy or insolvency of the Mortgagor or the Mortgagor's properties, or (iii) directing the winding up or liquidation of the Mortgagor's affairs; or

(e) Any representation or warranty made by the Mortgagor herein or otherwise in connection with the Loan Documents shall be untrue in any material respect; or

(f) There shall be a sale, transfer, assignment or conveyance of the Mortgaged Property, or any portion thereof or interest therein, by the Mortgagor without the Mortgagee's prior written consent, which consent may be withheld in the Mortgagee's sole and absolute discretion; or

(g) There shall exist any mortgage lien or security interest on, or pledge of, the Mortgaged Property or any portion thereof, without the Mortgagee's prior written consent, which consent may be withheld in the Mortgagee's sole and absolute discretion; or

(h) There shall exist any default under any mortgage described in Exhibit "A" attached hereto, or any other document or instrument relating to the Mortgaged Property, which shall not have been remedied within the applicable grace period, if any; or

(i) All or a material part of the Mortgaged Property shall substantially decrease in value and, after demand by the Mortgagee, the Mortgagor shall fail to furnish additional security satisfactory to the Mortgagee, in the Mortgagee's sole and absolute discretion; or

(j) There shall be any attachment, execution, forfeiture or other seizure of or affecting the Mortgaged Property, or any part thereof, unless the Mortgagor posts a bond or bonds or deposits money in escrow against or otherwise eliminates such attachment, execution, forfeiture or seizure within thirty (30) days of its occurrence; or

(k) There shall be entered against the Mortgagor a final judgment which alone or with other outstanding final judgments against the Mortgagor exceeds in the aggregate \$100,000.00, and within thirty (30) days after entry thereof such judgment or judgments shall not have been discharged or execution thereof stayed pending appeal, or within thirty (30) days after the expiration of any such stay, such judgment or judgments shall not have been discharged; or

(l) There shall exist any default under the Loan Agreement or any other Loan Document, which shall not have been remedied within the applicable grace period, if any;

THEN, AND IN ANY SUCH EVENT:

(A) The Mortgagee may, without notice, presentment or demand, declare the unpaid principal amount of the Note and any interest thereon accrued and unpaid, and all fees, charges and other sums due under the Loan Documents, to be immediately due and payable, whereupon such principal amount and interest, and all such fees, charges and other sums, shall become and

be immediately due and payable, and shall thereafter bear interest until fully paid at the rate specified in the Note to be paid in the event of a default;

(B) The Mortgagor, upon demand of the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession of the Mortgaged Property and, to the extent permitted by law, the Mortgagee itself or such officers or agents as it may appoint: (i) may enter and take possession of the Mortgaged Property, together with the books, papers and accounts of the Mortgagor relating thereto (and as part of such right of entry and possession, may conduct soils and groundwater tests, make borings, and remove soil and groundwater samples for environmental assessment studies); (ii) may exclude the Mortgagor, and the Mortgagor's agents and servants therefrom; (iii) may hold, operate and manage the same and from time to time make all needful repairs and such alterations, additions, advances and improvements as the Mortgagee shall deem appropriate; and (iv) may receive tolls, rents, revenues, issues, income, product and profits thereof and out of the same may pay all proper costs and expenses of so taking, holding and managing the same, including reasonable compensation to the Mortgagee's agents, attorneys and counsel, and any taxes and assessments and other charges affecting the Mortgaged Property, whether prior to, on a parity with, or junior to the lien and security interest of this Mortgage, which the Mortgagee shall deem necessary or desirable to pay, and all expenses of such repairs, alterations, additions and improvements, and other disbursements made by the Mortgagee pursuant to the terms hereof, and may apply the remainder of the monies so received by the Mortgagee to the payment of any sums secured hereby, including, but not limited to, the unpaid principal of, and interest on, the Note;

(C) The Mortgagee may, to the extent permitted by law, with or without first taking possession, sell the Mortgaged Property, in whole or, to the extent permitted by law, in part, at public auction in the State of Hawaii, or at such place as may be required by law, having first given notice of such sale by publication as may be required by law, and may adjourn such sale from time to time by announcement at the time and place appointed for such sale or adjourned sale, and upon such sale, the Mortgagee may make and deliver to any purchaser a good and sufficient assignment or bill of sale, and good and sufficient receipts for the purchase money, and do and perform all other acts as may be necessary fully to carry into effect this power of sale;

(D) The Mortgagee may, either with or without first taking possession, proceed by action or actions at law or in equity, or by any other appropriate remedy, to enforce payment of the Note or performance of any other covenant, agreement, obligation or condition secured hereby, and to foreclose this Mortgage, and to sell, in whole, or to the extent permitted by law, in part, the Mortgaged Property under the judgment or decree of a court or courts of competent jurisdiction; provided, however, that neither the Mortgagee nor any commissioner appointed in any action to foreclose this Mortgage shall be obligated to sell the Mortgaged Property other than in whole;

(E) Upon the institution of judicial proceedings to enforce its rights hereunder, the Mortgagee, to the extent permitted by law, shall be entitled as a matter of right to the ex parte appointment (without bond) of a receiver or receivers of the Mortgaged Property and of the tolls,

rents, revenues, issues, income, product and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer; and

(F) The Mortgagee shall have the right to enforce one or more remedies hereunder, or any other remedy the Mortgagee may have under the other Loan Documents, successively or concurrently, including, but not limited to, the right to foreclose this Mortgage with respect to any portion of the Mortgaged Property, if the operation of the remaining portion thereof is not thereby rendered unlawful under the then applicable laws, rules and regulations of the governmental authorities having jurisdiction in the premises, without thereby impairing the lien or security interest of this Mortgage on the remainder of the Mortgaged Property or affecting the remedies of the Mortgagee available with respect thereto.

Upon any sale, either under the power of sale hereby given or under judgment or decree in any judicial proceedings for foreclosure, or otherwise for enforcement of this Mortgage, the unpaid principal amount of the Note, the unpaid interest thereon, and all other obligations hereby secured, if not previously due, shall at once become and be immediately due and payable.

Upon any such sale, the Mortgagee may bid for and purchase the Mortgaged Property or any part thereof, and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its absolute right without further accountability, and in paying purchase money at any such sale, if permitted by law, after allowing for the proportion of the total purchase price required to be paid in cash for the costs and expenses of the sale, commissioner's compensation and other charges, the Mortgagee shall be entitled to apply as a credit against the purchase price, in lieu of cash, all amounts owing by the Mortgagor under the Note and the other Loan Documents, to the extent required. The Mortgagee shall be permitted to bid at any public auction held to sell the Mortgaged Property without payment of a deposit or down payment of any kind. The Mortgagee shall not be required at confirmation of any public auction sale to extend credit or financing of any kind to the Mortgagor or any other party that may acquire the Mortgaged Property.

The Mortgagee may apply the proceeds of any such sale, in such order as the Mortgagee shall choose, (i) to the costs and expenses of such sale and all proceedings in connection therewith, including, but not limited to, counsel fees (it being expressly agreed by the Mortgagor that the so-called "merger doctrine", following entry of judgment, shall have no effect on the Mortgagee's right to recover any such costs, expenses and counsel fees); (ii) to the payment of any unreimbursed disbursements made by the Mortgagee for taxes or assessments, rents or other payments under the Lease, or other charges affecting the Mortgaged Property; (iii) to the payment of all other unreimbursed disbursements and expenses and unpaid charges and fees due and owing to the Mortgagee under the provisions of this Mortgage or any of the other Loan Documents; and (iv) to the payment of the unpaid principal sum of and interest on the Note and all other obligations of the Mortgagor to the Mortgagee; and the remainder, if any, shall be paid over to the Mortgagor. If such proceeds shall be insufficient to discharge the entire indebtedness

under the Loan Documents, the Mortgagee may have any other legal recourse against the Mortgagor for the deficiency.

Any such sale shall, to the extent permitted by law, be a perpetual bar, both at law and in equity, against the Mortgagor and all persons and corporations claiming by or through or under the Mortgagor; and the Mortgagee is hereby irrevocably appointed the true and lawful attorney of the Mortgagor, in the Mortgagor's name and stead, for the purpose of effectuating any such sale, to execute and deliver all necessary deeds, conveyances, assignments, bills of sale and other instruments with power to substitute one or more persons or corporations with like power; provided, that the Mortgagor shall ratify and confirm any such sale or transfer if required by the Mortgagee by delivering all proper conveyances or other instruments to such persons or corporations as may be designated in any such request.

In case of any Event of Default, neither the Mortgagor nor anyone claiming by, through or under the Mortgagor, to the extent the Mortgagor may lawfully so agree, shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force in any locality where any of the Mortgaged Property is situated, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof; and the Mortgagor, for the Mortgagor and all who may claim under the Mortgagor, hereby waives, to the full extent that the Mortgagor may lawfully so do, the benefit of all such laws, and any and all right to have the estate comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien and security interest hereof, and agrees that the Mortgagee or any court having jurisdiction to foreclose such lien and security interest may sell the Mortgaged Property as an entirety.

In case the Mortgagee shall have proceeded to enforce any right hereunder and such proceedings shall have been discontinued or abandoned for any reason, then in every such case, the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder with respect to the Mortgaged Property, and all rights, remedies and powers of the Mortgagee shall continue as if no such proceedings had been taken. No remedy herein reserved to the Mortgagee is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity, or by statute.

Nothing in this Mortgage, the Note or any of the other Loan Documents shall affect or impair the right, which is unconditional and absolute, of the holder of the Note to enforce payment of the principal of, and interest and other charges on, the Note at or after the date therein expressed as the date when the same shall become due, or the obligation of the Mortgagor, which is likewise unconditional and absolute, to pay such amounts at the respective times and places therein expressed.

A. Mortgagor's Warranties. The Mortgagor hereby warrants and represents as follows:

1. Title to Leasehold Premises. The Mortgagor hereby warrants and represents that: (1) the Mortgagor is the lawful owner of the lessee's interest under the Lease and holder of the leasehold Premises and estate thereunder, and the lawful owner of the buildings and improvements hereby mortgaged, and has good right to assign the same as security under this Mortgage, subject to the Encumbrances; (2) the rentals now accrued and due under the Lease are fully paid and the same is on the date hereof in all respects in good standing under the terms thereof and valid and in full force and effect; (3) the Lease and the leasehold estate, Premises, buildings and improvements thereon are free and clear of any lien or security interest prior to, on a parity with or junior to, the lien and security interest of this Mortgage, except for the Encumbrances; and (4) the Mortgagor shall WARRANT AND DEFEND such property unto the holder of the Note, and the successors and assigns of such holder, according to the provisions thereof, against the claims and demands of all persons whomsoever, except for the Encumbrances.

2. Title to Equipment. The Mortgagor is the lawful and absolute owner of the Equipment and has good right to transfer the same as security under this Mortgage, subject to the Encumbrances; the Equipment is free and clear of all defects of title, security interests, liens and encumbrances, except for the Encumbrances; and the Mortgagor shall WARRANT AND DEFEND the same against the claims and demands of all persons, whomsoever, except for the Encumbrances.

3. Organization, Standing, etc. of Mortgagor. The Mortgagor is a nonprofit corporation duly organized and validly existing and in good standing under the laws of the State of Hawaii and has all requisite corporate power and authority to carry on the business and own the property that it now carries on and owns.

4. Authority to Execute and Deliver Loan Documents. The Mortgagor has all requisite power and authority to execute the Loan Documents, to secure the payment of the Note by the execution of this Mortgage and to carry out the provisions of the Note, this Mortgage and the other Loan Documents. The execution and delivery of the Loan Documents have been duly authorized by the Board of Directors of the Mortgagor, and no other corporate action of the Mortgagor is requisite to the execution and delivery of the Loan Documents.

5. Tax Returns and Payments. All tax returns and reports of the Mortgagor required by law to be filed have been duly filed, and all taxes, assessments, contributions, fees and other governmental charges (other than those currently payable without penalty or interest and those currently being contested in good faith) upon the Mortgagor or upon the Mortgagor's properties, assets or income which are due and payable have been paid.

6. Litigation. There are no actions, suits or proceedings pending or, to the knowledge of the Mortgagor, threatened against or affecting the Mortgagor or the Mortgaged Property in any court at law or in equity, or before or by any governmental department, commission, board,

bureau, agency or instrumentality, an adverse decision in which might materially affect the Mortgagor's ability to perform the Mortgagor's obligations under the Loan Documents.

7. Compliance with Other Instruments; None Burdensome. The Mortgagor is not in violation of or in default with respect to any provision of its articles of incorporation or bylaws or any mortgage, indenture, contract, agreement or instrument applicable to the Mortgagor, or by which the Mortgagor is bound, and the execution, delivery, performance of and compliance with the Loan Documents will not result in any such violation or be in conflict with or constitute a default under any such provision, or result in the creation of any mortgage, lien, security interest or charge on any of the properties or assets of the Mortgagor not contemplated by this Mortgage; and there is no provision of its articles of incorporation or bylaws or any mortgage, indenture, contract, agreement or instrument applicable to the Mortgagor or by which the Mortgagor is bound which materially adversely affects, or in the future (so far as the Mortgagor can now foresee) will materially adversely affect, the business or prospects or condition (financial or other) of the Mortgagor or of any of its properties or assets.

8. Compliance with Law. The consummation of the transactions contemplated by the Loan Documents will not conflict with or result in a breach of any law or any regulations, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign.

9. Governmental Authorization. No consent, approval or authorization of or registration, declaration or filing with any governmental or public body or authority is required in connection with the execution or delivery of the Loan Documents, or, if required, such consent, approval, order or authorization has been obtained.

10. Financial Statements. Any financial statements heretofore delivered to the Mortgagee by the Mortgagor are true and correct in all respects, have been prepared in accordance with generally accepted accounting principles, and fairly represent the respective financial conditions of the subjects thereof as of the respective dates thereof; no materially adverse change has occurred in the financial conditions reflected therein since the respective dates thereof; and no additional borrowings have been made by the Mortgagor since the date thereof other than the Note.

11. No Violation of Restrictions. The Mortgagor is not in violation of any zoning ordinances, building codes, regulations, restrictive covenants or other restrictions to which the Mortgaged Property is subject.

12. Hazardous Materials. The Mortgaged Property is free of any flammable explosives, radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" (collectively, "Hazardous Materials") under any

federal, state or local laws, ordinances or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene or Hazardous Materials on, under or about the Mortgaged Property, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j, and any similar state and local laws and ordinances and the regulations now or hereafter adopted, published and/or promulgated pursuant thereto (collectively, the "Hazardous Materials Laws.") The Mortgaged Property is not currently used in a manner, and no prior use (by Mortgagor, prior owners or any tenant) has occurred, which violates any Hazardous Materials Laws. Neither the Mortgagor nor any tenant has received any notice from a governmental agency for violation of Hazardous Materials Laws.

B. Mortgagor's Covenants. The Mortgagor hereby covenants and agrees with the Mortgagee as follows:

1. Payment of Secured Obligations. The Mortgagor shall pay to the holder of the Note the principal and interest due thereunder, and all fees, charges and other sums payable under the Loan Documents, all according to the provisions thereof, and will also pay and discharge any and all obligations that are now or hereafter may be or become owing to the Mortgagee under the Loan Documents and on any and every other account, together with interest, fees, charges and other sums payable thereon as may be specified with respect thereto.

2. Payment of Real Property Taxes, Assessments, etc. The Mortgagor shall punctually pay and discharge, or cause to be paid and discharged, from time to time as the same become due, all real property taxes, rates, assessments, impositions, duties, water rates, sewer rates and other charges of every description to which the Mortgaged Property, or any part thereof, or any improvements thereon, may during the term of this Mortgage become liable by authority of law, the payment of which shall be secured by this Mortgage; PROVIDED, HOWEVER, that real property taxes may be paid in semiannual installments and improvement or betterment assessments may be paid in annual installments, upon condition that, in each case, the same are not allowed to become delinquent, and that the Mortgagor shall, upon request, deposit a copy of the receipts therefor with the Mortgagee not later than five (5) days prior to the final date such taxes, assessments and charges may be paid without penalty.

3. Observance of Laws. The Mortgagor shall duly observe and conform to all current and future laws, rules and regulations made by any governmental authority, and all valid requirements of any regulatory body which may have or acquire jurisdiction (collectively, "Laws"), which apply or relate to any of the Mortgaged Property, or the Mortgagor's activities at the Mortgaged Property, including, but not limited to, (a) the construction and maintenance of such facilities for parking of vehicles as may from time to time be required in order to comply

with any applicable Laws and (b) all Laws which now or hereafter require retrofitting or alterations or additions to the Mortgaged Property. The Mortgagor shall indemnify the Mortgagee, its directors, officers, employees, agents, successors and assigns from and against any loss damage, cost, expense or liability directly or indirectly arising out of or attributable to the Mortgagor's failure to comply with the provisions of this paragraph or any other provision of this Mortgage concerning compliance with Laws, including, without limitation: (i) all foreseeable and unforeseeable consequential damages; (ii) the costs of any required or necessary remediation or compliance; and (iii) all reasonable costs and expenses incurred by the Mortgagee in connection with clauses (i) and (ii) including, without limitation, reasonable attorneys' fees. The indemnification provision of this paragraph shall survive (A) the repayment of the Note secured by this Mortgage, (B) any foreclosure of this Mortgage, and (C) any deed or assignment of the Mortgaged Property in lieu of foreclosure.

4. Hazardous Materials. The Mortgagor shall keep and maintain the Mortgaged Property, including, without limitation, the groundwater on or under the Mortgaged Property, in compliance with, and shall not cause or permit the Mortgaged Property to be in violation of, any Hazardous Materials Laws. The Mortgagor shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or allow to exist on, under or above the Mortgaged Property, any Hazardous Materials. The Mortgagor shall immediately advise the Mortgagee in writing of (a) any and all enforcement, clean up, removal, mitigation or other governmental or regulatory action instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Mortgaged Property, (b) all claims made or threatened by any third party against Mortgagor or the Mortgaged Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials and (c) the Mortgagor's discovery of any occurrence or condition on the Mortgaged Property or any real property adjoining or in the vicinity of the Mortgaged Property which could subject the Mortgagor or the Mortgaged Property to any restrictions on ownership, occupancy, transferability or use of the Mortgaged Property under any Hazardous Materials Laws. The Mortgagor shall indemnify the Mortgagee, its directors, officers, employees, agents, successors and assigns from and against, any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials on, under or about the Mortgaged Property, including, without limitation: (i) all foreseeable and unforeseeable consequential damages; (ii) the costs of any required or necessary repair, clean up or detoxification of the Mortgaged Property, and the preparation and implementation of any closure, remedial or other required plans; and (iii) all reasonable costs and expenses incurred by the Mortgagee in connection with clauses (i) and (ii), including, without limitation, reasonable attorneys' fees. The indemnification provision of this paragraph 4 shall survive (a) the repayment of the Note secured by this Mortgage, (b) any foreclosure of this Mortgage, and (c) any deed or assignment of the Mortgaged Property in lieu of foreclosure.

5. Maintenance and Inspection; Waste, Unlawful Use, etc. The Mortgagor shall keep and maintain all buildings, structures and improvements now located or hereafter constructed on the

Mortgaged Property in good repair, working order and condition, and shall permit the Mortgagee and any persons authorized by the Mortgagee to enter and inspect the Mortgaged Property at all reasonable times. The Mortgagor shall not commit or suffer any strip or waste, or unlawful, improper or offensive use of the Mortgaged Property, or any act or negligence whereby such property or any interest therein shall become liable to forfeiture, seizure or attachment, or mesne or final process of law or whereby the lien provided hereby shall be impaired.

6. Sale, Transfer, Sublease, etc. The Mortgagor shall not, voluntarily or by operation of law, sell, convey, assign, transfer or sublease the Mortgaged Property or any interest therein, except for subleases of space in any building comprising a portion of the Mortgaged Property to tenants in the ordinary course of the Mortgagor's business, without first obtaining the prior written consent of the Mortgagee, which consent may be withheld by the Mortgagee in its sole and absolute discretion. The Mortgagor shall furnish to the Mortgagee, promptly upon execution thereof, copies of all subleases executed by the Mortgagor as sublessor covering any portion or portions of the Mortgaged Property.

7. Compliance with and Preservation of Lease. (a) The Mortgagor will:

(i) Pay the rent reserved by the Lease as the same becomes due and payable;

(ii) Promptly perform and observe all of the covenants, agreements, obligations and conditions required to be performed and observed by the lessee under the Lease, and do all things necessary to preserve and keep unimpaired its rights thereunder;

(iii) Promptly notify the Mortgagee in writing of any default by the Mortgagor in the performance or observance of any of the covenants, agreements, obligations or conditions on the part of the lessee to be performed or observed under the Lease or of the occurrence of any event which, regardless of the lapse of time, would constitute a default thereunder;

(iv) Promptly notify the Mortgagee in writing of the giving of any notice by the lessor under the Lease of the default of the lessee thereunder in the performance or observance of any of the covenants, agreements, obligations or conditions on the part of the lessee to be performed or observed under the Lease and promptly cause a copy of each such notice given by the lessor to the lessee to be delivered to the Mortgagee;

(v) Promptly notify the Mortgagee in writing of the commencement of a proceeding under the federal bankruptcy laws by or against the Mortgagor or the lessor under the Lease, and provide the Mortgagee with copies of all pleadings, notices, schedules and similar documents pertaining to such proceeding;

(vi) If any of the indebtedness secured hereby remains unpaid at the time when notice may be given by the lessee under the Lease of the exercise of any right to renew or extend the term of the same, give notice to the lessor under the Lease of the exercise of such right of

extension or renewal no later than ninety (90) days prior to the last day that such notice may be given, and promptly thereafter deliver a copy of such notice to the Mortgagee;

(vii) In case any proceeds of insurance upon the Mortgaged Property or any part thereof are deposited with any person other than the Mortgagee pursuant to the requirements of the Lease, promptly notify the Mortgagee in writing of the name and address of the person with whom such proceeds have been deposited and the amount so deposited;

(viii) Promptly after the execution and delivery of this Mortgage, notify the lessor under the Lease in writing of the execution and delivery hereof and of the name and address of the Mortgagee and deliver a copy of this Mortgage to the lessor; and

(ix) Promptly notify the Mortgagee in writing of any request made by either party to the Lease to the other party thereto for arbitration or appraisal proceedings pursuant to the Lease, and of the institution of any arbitration or appraisal proceedings and promptly deliver to the Mortgagee a copy of the determination of the arbitrators or appraisers in each such proceeding.

(b) The Mortgagor will not surrender the Lease or the Mortgagor's leasehold estate and interest therein, nor terminate or cancel the Lease, and will not, without the prior written consent of the Mortgagee, modify, change, supplement, alter or amend the Lease, either orally or in writing, and as further security for the repayment of the indebtedness secured hereby and for the performance of the covenants, agreements, obligations and conditions herein and in the Lease contained, the Mortgagor hereby assigns to the Mortgagee all of its rights, privileges and prerogatives as lessee under the Lease to terminate, cancel, modify, change, supplement, alter or amend the Lease and any such termination, cancellation, modification, change, supplement, alteration or amendment of the Lease, without the prior written consent thereto by the Mortgagee, shall be void and of no force and effect. Without limiting the generality of the foregoing, (i) the Mortgagor will not reject the Lease pursuant to 11 U.S.C. § 365(a) or any successor law, or allow the Lease to be deemed rejected by inaction and lapse of time, (ii) the Mortgagor will not elect to treat the Lease as terminated by the lessor's rejection of the Lease pursuant to 11 U.S.C. § 365(h)(1) or any successor law, and (iii) the Mortgagor will object to any attempt by the lessor under the Lease to sell the Premises free and clear of the Lease pursuant to 11 U.S.C. § 363(f) or any successor law, and will at the request of the Mortgagee affirmatively assert and pursue its right to adequate protection under 11 U.S.C. § 363(e) or any successor law; and as further security for the repayment of the indebtedness secured hereby and for the performance of the covenants, agreements, obligations and conditions herein and in the Lease contained, the Mortgagor hereby assigns to the Mortgagee all of the rights, privileges and prerogatives of the Mortgagor and the Mortgagor's bankruptcy trustee to deal with the Lease, which rights may arise as a result of the commencement of a proceeding under the federal bankruptcy laws by or against the Mortgagor or the lessor under the Lease, and any exercise of such rights, privileges or prerogatives by the Mortgagor or the Mortgagor's bankruptcy trustee without the prior written consent thereto by the Mortgagee shall be void and of no force and effect. So long as there is no

breach of or default under any of the covenants, agreements, obligations or conditions herein contained to be performed by the Mortgagor, or in the performance by the Mortgagor of any of the covenants, agreements, obligations and conditions in the Lease to be performed by the lessee thereunder, the Mortgagee shall have no right to terminate, cancel, modify, change, supplement, alter or amend the Lease. No release or forbearance of any of the Mortgagor's obligations as lessee under the Lease, whether pursuant to the Lease or otherwise, shall release the Mortgagor from any of its obligations under this Mortgage, including, but not limited to, the Mortgagor's obligations with respect to the payment of rent as provided for in the Lease and the observance and performance of all of the covenants, agreements, obligations and conditions contained in the Lease to be observed and performed by the lessee thereunder. Unless the Mortgagee shall otherwise expressly consent in writing, the fee title to the Premises demised by the Lease and the leasehold estate thereunder shall not merge, but shall always remain separate and distinct, notwithstanding the union of such estates either in the Mortgagor or in a third party by purchase or otherwise.

8. Restoration of Improvements. The Mortgagor shall promptly restore, replace, rebuild or reinstall any part of the buildings, structures, improvements, and Equipment now or hereafter constructed, placed or installed on the Mortgaged Property, which may be damaged or destroyed by any casualty whatsoever.

9. Liens; Future Mortgages. The Mortgagor shall not, without the prior written consent of the Mortgagee, which consent may be withheld by the Mortgagee in its sole and absolute discretion, create, suffer to be created or permit to remain upon the Mortgaged Property or any part thereof, or the income therefrom, any mortgage, security interest, charge or any mechanics', materialmen's, laborers', tax, statutory or other lien or charge, which shall be prior to, on a parity with or junior to, the lien and security interest of this Mortgage, except liens for taxes and assessments not yet payable or payable without penalty so long as payable; provided, that nothing contained in this paragraph shall be deemed to require the Mortgagor to pay or cause to be paid, any tax, assessment or charge, or to satisfy any involuntary lien, so long as the Mortgagor in good faith by appropriate action diligently pursued shall contest, or cause to be contested, the validity thereof (provided the security afforded by this Mortgage shall not thereby be subjected to any sale, forfeiture or loss, or reasonable probability thereof).

10. No Impairment of Value of Mortgaged Property. No building, improvements, Equipment, or other property now or hereafter covered by the lien of this Mortgage shall be removed, demolished or altered in such manner as to diminish materially the value of the Mortgaged Property, without the prior written consent of the Mortgagee. The Mortgagor shall not initiate, join in or consent to any change in any private restrictive covenant, land use classification, zoning ordinance or other public or private restrictions limiting or defining the use which may be made of the Mortgaged Property or any part thereof.

11. Insurance.

(a) The Mortgagor will, during the term of this Mortgage, at its sole cost and expense and for the mutual benefit of the Mortgagor and the Mortgagee, observe and obtain all of the "Insurance Requirements" set forth in Schedule "1" attached hereto and made a part hereof.

(b) Subject to any rights granted to the Mortgagor by law if the Mortgaged Property is residential property, or to the extent required by the Lease, to use insurance proceeds for rebuilding, repairing or otherwise reinstating damaged or destroyed buildings, all proceeds recovered under any policies of insurance described in this paragraph 11, or any part thereof, shall be payable to the Mortgagee pursuant to a standard mortgagee clause and shall be applied by the Mortgagee upon any indebtedness secured hereby, in such order as the Mortgagee may determine, or, at the option of the Mortgagee, all such proceeds, or any part thereof, may be applied to the cost of repairing, restoring or rebuilding any portion of the Mortgaged Property so damaged or destroyed, or all such proceeds, or any part thereof, may be released to the Mortgagor without being deemed a payment on any of the indebtedness secured hereby. Notwithstanding the above, the Mortgagee shall have the right to apply, at any time, the whole or any part of such proceeds to the remedying of any default under any of the Loan Documents, including payment of the principal, interest, fees and charges due thereunder after acceleration thereof. The application of such proceeds by the Mortgagee pursuant to the foregoing provisions shall not remedy or waive any default or notice of default hereunder, or invalidate any action taken pursuant to such notice.

(c) The Mortgagee shall not be responsible for any such insurance or for the collection of any insurance proceeds, or for the insolvency of any insurer or insurance underwriter.

(d) In the event of loss or physical damage to the Mortgaged Property, the Mortgagor shall give immediate notice thereof to the Mortgagee, and the Mortgagee may make proof of loss if the same is not made promptly by the Mortgagor. In the event of foreclosure of this Mortgage, or other transfer of title to the Mortgaged Property in lieu of foreclosure, all right, title and interest of the Mortgagor in and to any insurance policies then in force shall pass to the purchaser or transferee.

12. Condemnation. If the Mortgaged Property or any part thereof shall be condemned, the Mortgagee may appear and defend any such suit and is hereby irrevocably authorized, subject to the rights of the lessor under the Lease, to collect all of the proceeds and apply the same upon any covenant, agreement, obligation or condition secured hereby. All costs, expenses and attorneys' fees paid or incurred by the Mortgagee in the course of such proceedings shall constitute an advance hereunder. Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Mortgaged Property by any public or quasi-public authority or corporation, the Mortgagor shall continue to pay interest on the entire principal sum hereby secured until an award or payment from such authority or corporation shall have been actually received by the Mortgagee, and any reduction in the principal sum resulting from the application by the Mortgagee of such award or payment as

hereinafter set forth shall be deemed to take effect only on the date of such receipt and shall not reduce the amount of the monthly payments under the Note, unless such monthly payments are of interest only. Subject to the rights of the lessor under the Lease to receive or direct the disposition of condemnation proceeds, any such award or payment by any such public or quasi-public authority or corporation shall be applied in such proportions and priority as the Mortgagee, in the Mortgagee's sole discretion, may elect, to the payment of principal and interest on the Note, whether or not then due and payable, or any sums secured by this Mortgage, or to fulfill any of the covenants, agreements, obligations and conditions secured hereby or to the payment to the Mortgagor, on such terms as the Mortgagee may specify, to be used for the sole purpose of altering, restoring or rebuilding any part of the Mortgaged Property which may have been altered, damaged or destroyed as a result of any such taking, alteration of grade or other injury to the Mortgaged Property. If, prior to the receipt by the Mortgagee of such award or payment, the Mortgaged Property shall have been sold on foreclosure of this Mortgage, the Mortgagee shall have the right to receive such award or payment to the extent of the mortgage debt remaining unsatisfied after such sale of the Mortgaged Property, with legal interest thereon and reasonable attorneys' fees, costs and disbursements incurred by the Mortgagee in connection with the collection of such award or payment. Should all or any part of the Mortgaged Property be taken by eminent domain, the Mortgagor hereby assigns to the Mortgagee, and forthwith upon payment thereof shall cause to be deposited with the Mortgagee, the award for any Mortgaged Property so taken, excluding, however, any portion of any award to which the lessor under the Lease may be entitled. The Mortgagor hereby covenants and agrees to and with the Mortgagee, upon request by the Mortgagee, to make, execute and deliver any and all assignments or other instruments sufficient for the purpose of assigning all such awards or payments to the Mortgagee, free, clear and discharged of any and all encumbrances of any kind or nature whatsoever, except for the rights of the lessor under the Lease.

13. Notice of Deposit of Insurance or Condemnation Proceeds. The Mortgagor shall, in case any proceeds of insurance upon the Mortgaged Property or any part thereof, or the proceeds of any award for the taking in eminent domain of the Mortgaged Property or any part thereof, are deposited with any person other than the Mortgagee, promptly notify the Mortgagee in writing of the name and address of the person with whom such proceeds have been deposited and the amount so deposited.

14. Application of Payments. The Mortgagee shall have the right and is hereby expressly authorized to apply any payments received and any sums, rents, issues and profits collected pursuant to the provisions of this Mortgage to the payment of any indebtedness of the Mortgagor to the Mortgagee hereby secured, in any order which the Mortgagee may determine, and any such application shall in all respects be binding upon the Mortgagor.

15. Mortgagee's Right of Set-Off. Upon the happening of any event entitling the Mortgagee to foreclose this Mortgage, or if the Mortgagee shall be served with garnishee process in which the Mortgagor shall be named as defendant, whether or not the Mortgagor shall, at the time, be in default hereunder or under any of the other Loan Documents, the Mortgagee may, but

shall not be required to, set off any indebtedness owing by the Mortgagee to the Mortgagor (including, without limitation, monies, instruments and deposit accounts maintained with the Mortgagee) against any indebtedness secured hereby, without first resorting to the Mortgaged Property and without prejudice to any other rights or remedies of the Mortgagee or the lien or security interest of the Mortgagee on the Mortgaged Property.

16. Possession by Mortgagor after Sale. In the event of a sale of the Mortgaged Property, or any part or parts thereof, under and by virtue of the provisions of this Mortgage, the purchaser or purchasers thereof shall have immediate and peaceable possession of the same, and if the Mortgagor shall remain in possession after the effective date of such sale, such possession shall be construed as a tenancy at sufferance only, giving unto the purchaser all remedies, by way of summary possession or otherwise, conferred by law in such case.

17. Acknowledgment of Mortgage Debt. Within five (5) days after request by the Mortgagee in writing, the Mortgagor shall furnish to the Mortgagee or to any proposed assignee of this Mortgage a written statement, duly acknowledged, of the amount due on this Mortgage and whether any offsets, counterclaims or defenses exist against the mortgaged debt.

18. Further Instruments. The Mortgagor, upon request of the Mortgagee, shall execute and deliver such further instruments and do such further acts as may be necessary or proper to carry out more effectively the purpose of this Mortgage and to subject the Mortgaged Property to the lien and security interest hereof, and any renewals, additions, substitutions, replacements or betterments thereto.

19. Right of Mortgagee to Prevent or Remedy Default. If the Mortgagor shall fail to observe or perform any of the covenants, agreements, obligations or conditions required to be observed and performed by the Mortgagor under this Mortgage, or under any of the other Loan Documents, unless the Mortgagor shall be engaged in good faith by appropriate action diligently pursued in contesting or causing to be contested the existence of such default, and the security afforded by this Mortgage shall not thereby be subjected to any sale, forfeiture or loss, or reasonable probability thereof, the Mortgagee may (but shall not be obligated to) (i) take any action the Mortgagee deems necessary or desirable to prevent or remedy any such default by the Mortgagor, or to otherwise protect the security of this Mortgage, and (ii) enter in and upon the Mortgaged Property or any part thereof to such extent and as often as the Mortgagee, in its sole discretion, deems necessary or desirable in order to prevent or to remedy any such default by the Mortgagor (including, without limitation, any default in maintenance and repair) or otherwise to protect the security of this Mortgage, and the Mortgagee may pay and advance for the account of the Mortgagor such sums of money as the Mortgagee, in its sole discretion, deems necessary for any such purpose.

20. Right of Mortgagee to Participate in Action Affecting Security. The Mortgagee, in its own name or in the name of the Mortgagor, may appear and participate in and may assert and prosecute any claims or defenses of the Mortgagee or the Mortgagor in any action or proceeding

at law or in equity affecting the Lease or the security of this Mortgage, including, without limitation, any proceedings under the federal bankruptcy laws by or against the Mortgagor, the lessor under the Lease, or any other person or entity, and in such event (except where the purported defect affecting the Lease or the security hereof arises or results from any act or omission of the Mortgagee), the Mortgagee shall be allowed and paid, and the Mortgagor hereby agrees to pay, all of the Mortgagee's costs, charges and expenses, including cost of evidence of title and reasonable attorneys' fees, incurred in such action or proceeding in which the Mortgagee may appear.

21. Right of Mortgagee to Extend Time of Payment, Substitute, Release Security, etc.. Without affecting the liability of any person, including the Mortgagor, for the payment of any indebtedness secured hereby, or the lien or security interest of this Mortgage on the Mortgaged Property (or the remainder thereof), for the full amount of any indebtedness unpaid, the Mortgagee may from time to time, without notice and without affecting or impairing any of its rights under this Mortgage: (a) release any person liable for the payment of any of the indebtedness; (b) extend the time or otherwise alter the terms of payment of any of the indebtedness or accept a renewal note or notes to evidence such an extension or alteration; (c) accept payments or prepayments of principal without reducing the aggregate amount secured by this Mortgage, and make subsequent advances to the Mortgagor up to the amount described herein; (d) accept additional security therefor of any kind, including (but not limited to) deeds of trust, mortgages and security agreements; (e) alter, substitute or release any property securing the indebtedness; (f) resort for the payment of the indebtedness secured hereby to any securities therefor in such order and manner as it may see fit; (g) join in granting any easement or creating any restriction thereon; and (h) join in any extension or subordination or other agreement affecting this Mortgage or the lien or charge thereof.

22. Mortgagee's Expenses for Protection of Security. All advances, costs, expenses (including, without limitation, rents and other payments under the Lease) and attorneys' fees which the Mortgagee may make, pay or incur under any provision of this Mortgage for the protection of the security of the Mortgagee, or any of the rights of the Mortgagee in connection with the Mortgaged Property, or in foreclosure proceedings commenced and subsequently abandoned, or in any dispute or litigation in which the Mortgagee or the holder of the Note may become involved by reason of or arising out of this Mortgage or any of the other Loan Documents, shall be paid by the Mortgagor to the Mortgagee, upon demand, and shall bear interest until paid at the rate specified in the Note to be paid in the event of default, all of which obligations shall be additional charges upon the Mortgaged Property and be equally secured hereby and shall be a lien on the Mortgaged Property prior to any rights or claims upon the Mortgaged Property subordinate to the lien of this Mortgage.

23. Partial Releases. The Mortgagee may release, for such consideration or none, as it may require, any portion of the Mortgaged Property without, as to the remainder of the Mortgaged Property, in any way impairing or affecting the lien, security interest and priorities herein provided for the Mortgagee compared to any subordinate lien holder or secured party.

24. Governmental Approvals. The Mortgagor shall at all times during the continuance of this Mortgage maintain in full force and effect all governmental and municipal approvals and permits which are required to comply with all environmental, ecological and other governmental requirements relating to the Mortgaged Property or to the occupancy thereof.

25. Reserve Fund. If requested by the Mortgagee, the Mortgagor will pay to the Mortgagee, on the same days as the monthly payments are due under the Note, until all obligations secured hereby are fully paid, a sum equal to the real property taxes, assessments, rentals and insurance premiums (including, without limitation, flood insurance premiums, if required) next due on the Mortgaged Property (all as estimated by the Mortgagee), less all sums already paid therefor, divided by the number of months to elapse before one month prior to the date when such taxes, assessments, rentals and insurance premiums will become due and payable. Such sums shall be held by the Mortgagee, without interest, to pay such taxes, assessments, rentals and insurance premiums as and when the same shall become due and payable. If the total of such payments shall exceed the amount necessary to pay such taxes, assessments, rentals and insurance premiums, such excess may, at the Mortgagee's option, be released to the Mortgagor or applied on any indebtedness secured hereby or be credited by the Mortgagee on subsequent payments to be made by the Mortgagor. If, however, the total of such payments shall not be sufficient to pay such taxes, assessments, rentals and insurance premiums when the same shall become due and payable, then the Mortgagor shall pay to the Mortgagee any amount necessary to make up the deficiency on or before the date when payment of such taxes, assessments, rentals and insurance premiums shall be due. If at any time the Mortgagor shall tender to the Mortgagee, in accordance with the provisions hereof, full payment of the entire indebtedness secured hereby, the Mortgagee shall, in computing the amount of indebtedness, credit to the account of the Mortgagor any balance remaining in the funds accumulated under the provisions of this paragraph. If there be a default under the provisions of this Mortgage or any of the other Loan Documents, and thereafter a sale of the Mortgaged Property in accordance with the provisions hereof, or if the Mortgagee acquires the property otherwise after default, the Mortgagee, at the Mortgagee's option, and at the time of the commencement of such proceeding, or at the time the property is otherwise acquired, may apply the balance then remaining in the funds accumulated under the provisions of this paragraph as a credit against any sums or charges secured hereby, including but not limited to, the amount of principal, interest, fees and charges then remaining unpaid under the Loan Documents. Payments from such reserve fund for the purpose for which it is established may be made by the Mortgagee at its discretion even though subsequent owners of the Mortgaged Property may benefit thereby. In refunding any part of such reserve fund, the Mortgagee may deal with whomever is represented to be the owner of the Mortgaged Property at that time.

26. Loss, Destruction, etc. of the Note. The Mortgagor will, in the event the Note shall be mutilated, destroyed, lost or stolen, deliver to the Mortgagee, in substitution therefor, a new Note containing the same terms and conditions as the mutilated, destroyed, lost or stolen Note with a notation thereon of the unpaid principal and accrued unpaid interest. The Mortgagor shall be furnished with satisfactory evidence of the mutilation, destruction, loss or theft of the Note

and also such security or indemnity as may be reasonably requested by the Mortgagor; PROVIDED, HOWEVER, that if the original Mortgagee named herein is then the Mortgagee under this Mortgage, an unqualified indemnity from the original Mortgagee named herein shall be deemed to be satisfactory security for indemnification.

27. Accounts and Records. The Mortgagor will maintain a standard modern system of accounting administered in accordance with generally accepted accounting principles. The Mortgagee shall have the right to examine the books of account of the Mortgagor to the extent that they pertain to this Mortgage and the Mortgaged Property, and to discuss the affairs, finances and accounts of the Mortgagor to such extent, all at such reasonable times and intervals as the Mortgagee may desire.

28. Documentary Stamps. If at any time any governmental authority shall require revenue or other documentary stamps to be affixed to the Note or this Mortgage, the Mortgagor will pay for the same with any interest or penalties imposed in connection therewith.

29. Tax on Mortgage or Debt. In the event of the adoption or amendment of any law of the State of Hawaii after the date of this instrument, other than a law providing for the imposition of a tax on, according to, or measured by income, which shall in any way change the manner of taxation or of the collection of taxes on mortgages or debts secured by mortgages, to the end that, directly or indirectly, the Mortgagee shall be required to pay on account of this Mortgage or the indebtedness secured hereby, any tax other than taxes of the kind or character now imposed thereon by the laws of the State of Hawaii, and other than a tax on, according to or measured by income, the holder of this Mortgage, at any time after such adoption or amendment of such law, may give written notice to the Mortgagor that such holder elects to have the indebtedness secured by this Mortgage become due and payable. If such notice be given, the said indebtedness shall become due, payable and collectible at the expiration of thirty (30) days; PROVIDED, HOWEVER, that such requirement of payment shall be ineffective if the Mortgagor is permitted by law to pay the whole of such tax in addition to all other payments required hereunder, without any penalty accruing to the holder of the Note, and if the Mortgagor in fact pays such tax prior to the date upon which payment is required by such notice.

30. Mortgagee Not Obligated to Perform. Neither the acceptance of this Mortgage by the Mortgagee, nor the exercise of any rights hereunder by the Mortgagee, shall be construed in any way as an assumption by the Mortgagee of any obligations, responsibilities or duties of the Mortgagor arising from the Mortgaged Property assigned hereunder or otherwise bind the Mortgagee to the performance of any obligations respecting the Equipment, it being expressly understood that the Mortgagee shall not be obligated to perform, observe or discharge any obligation, responsibility, duty, or liability of the Mortgagor under any of the Mortgaged Property, including, but not limited to, appearing in or defending any action, expending any money or incurring any expenses in connection therewith.

31. ADA/FHAA Compliance. So long as this Mortgage remains outstanding, the Mortgagor will, at its own cost and expense, in respect of the Mortgaged Property and in respect of the Mortgagor's business activities at or within the Mortgaged Property: (a) comply with all requirements of the federal Americans with Disabilities Act (the "ADA") and the federal Fair Housing Amendments Act of 1988 (the "FHAA") and the rules and regulations promulgated thereunder (the "Rules"), to the extent applicable to the Mortgagor's ownership, management, operation, leasing, use, construction, reconstruction, repair, remodeling, rehabilitation or alteration of the Mortgaged Property or any part thereof; (b) immediately provide to the Mortgagee written notice (and copies of) any and all notices of actual, potential or alleged violations of the ADA, the FHAA or the Rules and any and all governmental investigations or regulatory actions instituted or threatened against the Mortgagor or the Mortgaged Property or the Mortgagor's business activities at or within the Mortgaged Property regarding the ADA, the FHAA or the Rules; and (c) furnish to the Mortgagee, from time to time whenever reasonably requested by the Mortgagee, a Compliance Assessment, in form and substance reasonably satisfactory to the Mortgagee, prepared by an architect or engineer with skill, experience and reputation acceptable to the Mortgagee, in the field of compliance with the ADA or the FHAA, as applicable.

32. Reappraisals. The Mortgagee shall have the right to obtain at the Mortgagor's cost and expense reappraisals of the Mortgaged Property from any licensed or certified appraiser designated by the Mortgagee, from time to time (a) whenever such reappraisal may be required by any law, rule or regulation applicable to the conduct of the Mortgagee's business, or may be requested or directed by any governmental authority charged with the administration of such law, rule or regulation or the Mortgagee's compliance therewith, whether or not such request or direction has the force of law, or (b) whenever the Mortgagee has reasonable cause to believe that the then-current loan-to-value ratio applicable to the loan or loans secured by the Mortgaged Property exceed the original loan-to-value ratio approved by the Mortgagee with respect to such loan or loans, or (c) whenever reasonably deemed appropriate by the Mortgagee following the occurrence or during the continuation of an Event of Default. The Mortgagee may use the results of such reappraisal to evaluate and restructure such loan or loans if necessary in the Mortgagee's reasonable discretion.

33. Loan For Construction of Improvements. This construction money mortgage is intended to secure the repayment of moneys advanced in whole or in part for the construction of improvements on the Mortgaged Property.

34. Absolute Assignment of Rentals. The Mortgagor hereby absolutely assigns to the Mortgagee all rents, revenues, rights and benefits accruing to the Mortgagor under all present and future leases and subleases of the Mortgaged Property or any part thereof, with the right and authority to receive and apply the same to the Note or other indebtedness secured hereby, after default in the conditions thereof, anything to the contrary herein notwithstanding. The Mortgagee is further authorized, at its option, to notify particular lessees or sublessees of such assignment, to execute and deliver binding receipts for any payments made under the terms of

any such leases or subleases, and to demand, sue for and recover any such payments when due. The Mortgagor shall perform every obligation of the lessor or sublessor and shall enforce every material obligation of the lessee or sublessee in every such lease or sublease, and shall not modify, alter, waive or cancel any lease or sublease or any part thereof, nor anticipate for more than one month any rents that may be collectible under such lease or sublease, and shall not further assign any such lease or sublease or any such rents. This assignment shall terminate and become null and void upon release of this Mortgage. Immediately upon the Mortgagee's delivering to the Mortgagor, or serving upon the Mortgagor, written notice of any alleged default, the Mortgagee may at any time, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured hereby, enter upon and take possession of the Mortgaged Property or any part thereof in its own name, sue for or otherwise collect such rents, revenues, rights and benefits, including those past due and unpaid, and apply the same (less costs and expenses of operation and collection, including brokers' fees and attorneys' fees) upon any indebtedness secured hereby, and in such order as the Mortgagee may determine. Upon the delivery or service of such notice of default, the Mortgagee shall have the absolute right to receive and collect all such rents, revenues, rights and benefits whether or not it takes physical possession as hereinabove provided; and the act of delivery or service of such notice of default shall be deemed to constitute the taking of possession by the Mortgagee; PROVIDED, that such possession by the Mortgagee shall not impose upon the Mortgagee any duties or obligations as lessor or sublessor under such leases and subleases or otherwise impose upon the Mortgagee any duties or obligations associated with the possession of property. The Mortgagor agrees to surrender physical possession of the Mortgaged Property upon written demand when the Mortgagee becomes entitled thereto by reason of the default of the Mortgagor as hereinabove provided. The entering upon and taking possession of the Mortgaged Property, the collection of such rents, revenues, rights and benefits, and the application thereof as aforesaid shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice, and shall be without prejudice to any other rights of the Mortgagee herein contained. So long as no Event of Default shall have occurred, the Mortgagor shall have the privilege, under a license hereby granted by the Mortgagee to the Mortgagor, to collect when due, but not more than one (1) month in advance, all rents, issues and profits from the Mortgaged Property and to retain, use and enjoy the same. Upon request of the Mortgagee, the Mortgagor will duly execute, acknowledge and deliver to the Mortgagee any instrument or instruments, in form satisfactory to the Mortgagee, confirming the assignment to the Mortgagee of any specific leases or subleases. Notwithstanding the above, the provisions of this paragraph shall not be deemed to authorize any lease or other conveyance of the Mortgaged Property without the consent of the Mortgagee as provided in paragraph 7 above.

C. MISCELLANEOUS PROVISIONS.

1. No Waiver. Any failure by the Mortgagee to insist upon the strict performance by the Mortgagor of any of the covenants, agreements, obligations or conditions hereof shall not be deemed to be a waiver of any of such covenants, agreements, obligations or conditions, and the Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the

strict performance by the Mortgagor of any and all of such covenants, agreements, obligations and conditions.

2. Security Agreement and Financing Statement Under Uniform Commercial Code. This Mortgage shall constitute a security agreement and financing statement under the Uniform Commercial Code, as enacted in Hawaii, and the Mortgagor hereby grants to the Mortgagee, as secured party, a security interest in any or all of the Equipment, in addition to a mortgage lien upon the same as part of the realty, and all insurance binders and policies, and all proceeds therefrom, as described above. The Mortgagor shall assist in the preparation of and execute from time to time, alone or with the Mortgagee, and deliver, file and record any financing or continuation statements, mortgages or other instruments, and do such further acts as the Mortgagee may request to establish, maintain and perfect the security interest of the Mortgagee in the Mortgaged Property, including (but not limited to) the Equipment, and all renewals, additions, substitutions and improvements to the same and the proceeds thereof, and otherwise to protect the same against the rights and interests of third parties. The terms of this Mortgage shall be deemed commercially reasonable within the meaning of the Uniform Commercial Code.

3. Definitions. The terms "advances," "costs" and "expenses" shall include, but shall not be limited to, reasonable attorneys' fees whenever incurred. The terms "indebtedness" and "obligations" shall mean and include, but shall not be limited to, all claims, demands, obligations and liabilities whatsoever, however arising, whether owing by the Mortgagor individually or as a partner, or jointly or in common with any others, and whether absolute or contingent, and whether owing by the Mortgagor as principal debtor or as accommodation maker or as indorser, liquidated or unliquidated, and whenever contracted, accrued or payable.

4. Paragraph Headings. The headings of paragraphs herein are inserted only for convenience and shall in no way define, describe or limit the scope or intent of any provisions of this Mortgage.

5. Parties in Interest. As and when used herein, the term "Mortgagor" shall mean and include the Mortgagor hereinabove named and the Mortgagor's heirs, personal representatives, successors, successors in trust and permitted assigns; the term "Mortgagee" shall mean and include the Mortgagee hereinabove named and its successors and assigns; and the use of any gender shall include all genders.

6. Applicable Laws. This Mortgage shall be governed by and shall be construed and interpreted under and pursuant to the laws of the State of Hawaii. If any provision of this Mortgage is held to be invalid or unenforceable, such will not affect the validity or enforceability of the other provisions of this Mortgage.

7. Notices. All notices, demands or documents which are required or permitted to be given or served hereunder shall be in writing and sent by registered or certified mail addressed as follows:

To the Mortgagor at: 520 Makapuu Avenue
Honolulu, Hawaii 96816

To the Mortgagee at: Main Banking Center
999 Bishop Street
Honolulu, Hawaii 96813
Attention: Branch Manager

The addresses may be changed from time to time by any party by serving notice as heretofore provided. Service of such notice or demand shall be deemed complete on the date of actual delivery as shown by the addressee's registry or certification receipt or at the expiration of the second day after the date of mailing, whichever is earlier in time.

8. Mortgagee's Right to Sell Participations in the Loan. The Mortgagee may at any time sell, assign, transfer, negotiate, grant participations in, or otherwise dispose of, to any one or more other lenders (hereinafter called "Participants") all or any part of the indebtedness of the Mortgagor at any time outstanding under any of the Loan Documents. The Mortgagor acknowledges and agrees that any such disposition will give rise to an obligation of the Mortgagor to each Participant and that, in such event, each Participant shall, for all purposes hereof, be entitled to the benefits of the Loan Documents and all other documents, instruments and agreements therein described, as its interest may appear. The Mortgagor shall, from time to time at the request of the Mortgagee, execute and deliver, or cause to be executed and delivered, to the Mortgagee or to such party or parties (including any Participant) as the Mortgagee may designate, any and all such further instruments as may in the opinion of the Mortgagee be necessary or desirable to give full force and effect to such disposition, including, but not limited to, a new note or new notes to be issued in exchange for the Note and such estoppel certificates or other instruments as may be requested from the Mortgagor to evidence the continuing validity of the Loan Documents and the absence of any default by the Mortgagee thereunder. Notwithstanding the foregoing, the Mortgagor acknowledges that no Participant shall be deemed a direct lender or co-lender with the Mortgagee.

9. Counterparts. This Mortgage may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, and in making proof of this Mortgage, it shall not be necessary to produce or account for more than one such counterpart.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Mortgagor has caused these presents to be executed as of the day and year first above written.

DIAMOND HEAD THEATRE, a Hawaii nonprofit corporation

By _____

Its

By _____

Its

“Mortgagor”

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On _____, before me personally appeared _____,
to me personally known, who, being by me duly sworn or affirmed, did say that such person
executed the foregoing instrument as the free act and deed of such person, and if applicable in the
capacity shown, having been duly authorized to execute such instrument in such capacity.

Printed Name: _____
Notary Public, State of Hawaii
My Commission Expires: _____

NOTARY CERTIFICATION
(Hawaii Administrative Rule § 5-11-8)

Document Identification or Description: REAL PROPERTY MORTGAGE AND FINANCING
STATEMENT

Date of Document: _____

No. of Pages: _____

FIRST Circuit
(Jurisdiction of notary act)

Signature of Notary

Type or Print Name of Notary

Date of Notary Certificate

(Official Stamp or Seal)

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On _____, before me personally appeared _____,
to me personally known, who, being by me duly sworn or affirmed, did say that such person
executed the foregoing instrument as the free act and deed of such person, and if applicable in the
capacity shown, having been duly authorized to execute such instrument in such capacity.

Printed Name: _____
Notary Public, State of Hawaii
My Commission Expires: _____

NOTARY CERTIFICATION
(Hawaii Administrative Rule § 5-11-8)

Document Identification or Description: REAL PROPERTY MORTGAGE AND FINANCING
STATEMENT

Date of Document: _____

No. of Pages: _____

FIRST Circuit
(Jurisdiction of notary act)

Signature of Notary

Type or Print Name of Notary

Date of Notary Certificate

(Official Stamp or Seal)

EXHIBIT "A"

TMK No. (1) 3-2-030-001

That certain indenture of GENERAL LEASE NO. S-5954 by and between STATE OF HAWAII, by its Board of Land and Natural Resources, as Lessor, and DIAMOND HEAD THEATRE, a Hawaii nonprofit corporation, as Lessee, dated September 10, 2008 for a term of sixty-five years, commencing on the 18th day of August, 2008, up to and including the 17th day of August, 2073, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-77750257.

Said above General Lease was amended by instrument dated December 20, 2019, recorded as Document No. A-77810322.

Said GENERAL LEASE demising the following described premises:

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent No. 8165, Part B, Land Commission Award Number 8559-B, Apana 32 to W. C. Lunalilo) situate, lying and being at Kapahulu, Honolulu, City and County of Honolulu, State of Hawaii, being a Portion of Block 56, "KAIMUKI TRACT", and thus bounded and described:

Beginning at the south corner of this parcel of land and on the north corner of Alohea and Makapuu Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LEAHI" being 3892.91 feet north and 2905.73 feet east, as shown on Government Survey Registered Map H.S.S. Plat 2145-J, thence running by azimuths measured clockwise from true South:

- | | | | | | |
|----|------|-----|-----|--------|--|
| 1. | 136° | 40' | 30" | 341.04 | feet along the northeasterly side of Alohea Avenue; |
| 2. | 208° | 31' | 30" | 279.15 | feet along the southeasterly side of Pokole Street; |
| 3. | 298° | 31' | 30" | 383.56 | feet along Leahi Hospital; |
| 4. | 37° | 18' | | 389.96 | feet along the northwesterly side of Makapuu Avenue to the point of beginning and containing an area of 2.735 acres, more or less. |

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature.
2. (A) The terms and provisions contained in the Lease referred to hereinabove.

Exhibit "A"

Page 1

The following includes, but is not limited to, the following:

- i. Reservation of minerals and water rights.
 - ii. Ownership of improvements.
 - iii. Rights of native tenants.
 - iv. Prehistoric and historic remains.
 - v. Consent requirements for improvements, assignments and subletting.
- (B) Any facts, rights, interests or claims which are not shown by the public records, but which could be ascertained by making inquiry of the lessors in the lease or leases described or referred to hereinabove.

GENERAL NOTES

1. The fee simple title to the lands described herein is presently vested in the STATE OF HAWAII, by DEED dated May 18, 1964, recorded in Liber 4759 at Page 205.

SCHEDULE "1"

(Insurance Requirements for Real Estate Secured Construction Loans)

(A) General Requirements.

(1) **Maintain Insurance.** Unless otherwise agreed by Mortgagee in writing, the Mortgagor will, during the term of this Mortgage (and for such longer periods of time as may be specified below), at Mortgagor's sole cost and expense and for the mutual benefit of the Mortgagor and the Mortgagee, maintain policies of insurance in form and substance satisfactory to the Mortgagee, and as further specified in this Schedule.

(2) **Qualifications of Insurers.** All insurance required under this Schedule shall be effected under valid and enforceable policies issued by insurance companies qualified to do business in the State of Hawaii and having a minimum A.M. Best rating of A-, VII or better or a minimum S&P rating of BBB+ or better, and, except as provided in the last sentence of this Section (A)(2), shall be otherwise satisfactory to the Mortgagee. If flood insurance is required by law and, in its sole discretion, Mortgagee agrees to accept flood coverage from a private insurer rather than through the National Flood Protection Program ("NFIP") direct program, such private insurers must comply with all existing and future laws, rules, regulations and guidelines having jurisdiction over the issuance of flood insurance, including without limitation the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994, the Flood Insurance Reform Act of 2004, the Mandatory Purchase of Flood Insurance Guidelines, and any amendments thereto (collectively the "**Flood Insurance Laws**"). This Mortgage constitutes, and the Mortgagor hereby acknowledges, written notice from the Mortgagee that THE MORTGAGEE MAY NOT MAKE THE GRANTING OF THE LOAN EVIDENCED BY THE NOTE CONTINGENT ON THE MORTGAGOR PROCURING ANY REQUIRED INSURANCE WITH AN INSURANCE COMPANY DESIGNATED BY THE MORTGAGEE.

(3) **Coverage.** Such policies shall cover (a) casualties, risks, perils, liabilities and other hazards as may currently be required by the Mortgagee, and (b) such casualties, risks, perils, liabilities and other hazards which may, after the date of this Mortgage, be required by institutional lenders to be insured against with respect to properties similar to the improvements constructed and/or to be constructed on the Mortgaged Property, and all such policies shall expressly protect the Mortgagee's interest, as required by the Mortgagee. The Mortgagee makes no representation that the coverages or limits of liability specified hereinbelow to be carried or caused to be carried by the Mortgagor or Mortgagor's agents pursuant to this Schedule are adequate to protect the Mortgagor or the Mortgaged Property, and the Mortgagor agrees that Mortgagor is not relying upon the Mortgagee in deciding upon the scope and amounts of insurance coverage which the Mortgagor will obtain. The Mortgagor will consult with Mortgagor's own experts and consultants (including Mortgagor's own insurance broker) as to insurance coverage to protect the Mortgagor and the

Mortgaged Property and will obtain such additional insurance coverages as the Mortgagor deems adequate and appropriate, all at the Mortgagor's sole expense.

(4) **Excess Insurance.** If the Mortgagor shall insure any of the Mortgaged Property against any other risks or causes of loss, or for amounts in excess of those required hereunder, all policies of such insurance shall similarly be made payable to and be claimable by the Mortgagee, and, whether made so payable or not, the proceeds of such insurance may be recovered by the Mortgagee by any appropriate proceeding.

(5) **Notice to Mortgagee Etc..** All required policies shall contain a clause or provision or be specially endorsed to provide that the carrier shall give the Mortgagee, Loss Payee and Additional Insureds not less than (a) as to the Builder's Risk policy described in Section (B)(1) below, sixty (60) days prior written notice of nonrenewal or cancellation of the policy (except as to cancellation for nonpayment of premium, in which case at least thirty (30) days' prior written notice shall be required) and (b) as to each hazard insurance policy described in Section (B)(2) below, thirty (30) days' prior written notice of nonrenewal or cancellation of the policy (except as to cancellation for nonpayment of premium, in which case at least ten (10) days' prior written notice shall be required), and (c) as to each liability policy described in Section (B)(3) below, thirty (30) days' prior written notice of nonrenewal or cancellation of the policy (including any cancellation for nonpayment of premium, provided that once construction has been completed, the notice may be limited to ten (10) days' prior written notice for any cancellation for nonpayment of premium).

(6) **Evidence of Insurance.** No later than ten (10) days prior to the closing date for the Loan and ten (10) days prior to each renewal date of an existing policy during the term of the Loan, Mortgagor must deliver to Mortgagee a detailed Evidence of Commercial Property Insurance on the ACORD 28 form, a Certificate of Liability Insurance on the ACORD 25 form and, if applicable, evidence of flood insurance as required by the Flood Insurance Laws, which currently require that a copy of the flood insurance application and premium payment or a copy of the declarations page be provided (collectively, referred to herein as "**Evidence of Insurance**"), all evidencing in detail all required coverages, extensions of coverage and special provisions specified in this Schedule and properly executed by an authorized representative of the insurer. Each Evidence of Insurance shall specifically state in the "Remarks Section" that each required policy has been endorsed or contains a clause or provision obligating the insurer to mail prior written notice of nonrenewal or cancellation within the periods specified in Section (B)(5) above to the Mortgagee at the address shown on the Evidence of Insurance. Unless otherwise agreed by Mortgagee, copies of all required policies with appropriate endorsements and certified by Mortgagor's insurance broker as being true and correct copies thereof shall be delivered to Mortgagee no later than ten (10) days prior to the closing date for the Loan and ten (10) days prior to each renewal date of an existing policy during the term of the Loan. If requested by Mortgagee, such policies and/or Evidence of Insurance must be accompanied by a letter, in form and substance satisfactory to the Mortgagee, from the Mortgagor's insurance broker, stating that the insurance policies obtained by the Mortgagor satisfy the requirements contained in this Schedule. Notwithstanding the foregoing, Mortgagee shall not be deemed by

reason of the custody of such insurance policies or Evidence of Insurance to have knowledge of the contents thereof.

(7) **Force Placement of Insurance.** If the Mortgagor fails to obtain any of the insurance required by this Schedule (including, without limitation, any flood insurance now or hereafter required by the Flood Insurance Laws), the Mortgagee shall have the right, but (except as otherwise required by law) not the obligation, to purchase (i.e. force place) such required insurance without prior written notice (except as to flood insurance only in which case forty-five (45) days' notice to the Mortgagor shall first be given if and as required by law), and the Mortgagor shall pay to the Mortgagee, upon demand, the premiums paid by the Mortgagee for such insurance and all of the Mortgagee's fees, costs and expenses incurred in connection therewith, together with interest at the Default Rate set forth in the Loan Agreement. The Mortgagee shall not be responsible for any such insurance or for the collection of any insurance proceeds or for the insolvency of any insurer or insurance underwriter. Any insurance force placed by Mortgagee may be for the Mortgagee's benefit only and may not provide protection or coverage for the Mortgagor, even though the Mortgagor is required to reimburse the cost of the insurance to the Mortgagee. Notwithstanding anything to the contrary in the Loan Documents, no additional advance, extension, renewal or other modification prohibited under the Flood Insurance Laws shall be granted to Mortgagor during any such time that flood insurance has been force placed by Mortgagee pursuant to this provision.

(8) **Mortgagee Protection.** All such policies or other contracts for such insurance shall provide that the insurance shall not be invalidated as to the interest of the Mortgagee by any act, failure to act, or neglect of or violation of warranties, declarations or conditions contained in such policies by any person owning the property insured, or by any foreclosure or other proceedings, or notice of sale, or by any change in the title or ownership of the insured properties, or by occupation of any insured structures for purposes more hazardous than permitted by such policy or contract.

(9) **Blanket Insurance Policies.** Any insurance maintained on the Mortgaged Property may be evidenced by blanket insurance policies covering the premises and other properties or assets of Mortgagor or Mortgagor's affiliates provided that such policies shall in all other respects comply with the requirements of this Schedule and also provided that the Mortgagee determines, in its reasonable discretion, that such blanket policies are otherwise satisfactory to Mortgagee.

(10) **Mortgagee Consent for Settlement of Claims.** The Mortgagor shall not settle any claim or accept any proceeds in satisfaction of any claim involving damage to the improvements or liability of the Mortgagee, without the Mortgagee's express prior written consent.

(B) **Coverages.** Without limiting the generality of Section (A) above, the Mortgagor shall maintain or cause to be maintained the following insurance coverages, unless otherwise agreed by Mortgagee in writing:

(1) **Builder's Risk Insurance/Flood Insurance.** During the period of construction: (a) a Builder's Risk insurance policy written on a "completed value" form on a non-reporting basis, in an amount equal to the full contract amount to construct and install the Insured Property (as hereinafter defined) covering the structures to be constructed and, if requested by Mortgagee, the business/personal property to be acquired and placed or installed in the structures, endorsed to include coverage for outdoor properties consisting of fences, retaining walls, paved surfaces and the like and, if required by Mortgagee, coverage at a sublimit acceptable to Mortgagee for landscaping to include trees, shrubs and plants (the structures, business/personal property, outdoor properties and landscaping being collectively referred to in this Section (B) as the "**Insured Property**"); provided that the amount of coverage for earthquake and flood may be for such sublimits as may be approved by Mortgagee, and (b) if the flood insurance is required under the Flood Insurance Laws, then, in addition to the flood coverage under the Builder's Risk insurance policy, NFIP Insurance (as hereinafter defined) in the minimum amount required by the Flood Insurance Laws with coverage effectuated no later than closing of the Loan (if there is an existing building on the Mortgaged Property which will not be demolished) and (if there is no existing building or only buildings that will be demolished) then no later than the point in time when materials are stored within an enclosed building on site or on an adjacent parcel or when the preliminary site work has been completed and construction of the slab has commenced. The Builder's Risk insurance policy shall meet all of the following requirements with respect to all direct damage coverages provided thereunder:

(a) **Risks Covered.** Such policy shall be written on a broad "all risk" form and be acceptable to the Mortgagee. Such "all risk" form must, at a minimum and without limitation, include coverage for direct damage arising from or causes of loss such as fire, lightning, explosion, smoke, vehicles, falling aircraft, hail, riot, civil commotion, vandalism, malicious mischief, theft, collapse, resultant damages arising from faulty design, workmanship or materials, wind, "named storms", hurricane, wind-driven rain (if required by Mortgagee), rainfall, flood, tsunami, earthquake, earthquake sprinkler leakage, volcanic eruption, volcanic action, foreign and domestic acts of terrorism. Such policy shall provide for debris removal with a coverage limit equal to not less than twenty-five percent (25%) of the value of the buildings.

(b) **Agreed Value.** Such policy shall be written on an Agreed Value basis and any co-insurance clause contained in the policy shall be deleted.

(c) **Ordinance Coverage.** Such policy shall provide Building Ordinance coverage to include Coverage for Loss to Undamaged Portion of the Building, Demolition Cost Coverage, and Increased Cost of Construction Coverage. If only a portion of a building included within the Insured Property is damaged, such coverage shall pay for the loss in value of the undamaged portion of such building as a consequence of enforcement of an ordinance or law that requires demolition of the undamaged parts of such building, the cost to demolish and clear the site of undamaged parts of such building as a consequence of enforcement of an ordinance or law that requires demolition of such undamaged property, and any increased cost of repair or reconstruction as a consequence of enforcement of the minimum requirements of the ordinance or law. The limit

for the Coverage for Loss to Undamaged Portion of the Building shall be equal to the full limit of insurance provided for all buildings covered on the policy. Demolition Cost Coverage and Increased Cost of Construction Coverage may be purchased at a lesser amount, provided that such lesser amount is acceptable to the Mortgagee and is, at a minimum, equal to 25% of the full replacement cost for all buildings covered by the policy.

(d) **Preservation of Property.** Such policy shall contain a clause which provides coverage for the expenses incurred by the Mortgagor or contractor in taking reasonable and necessary actions for the temporary protection and preservation of property in case of actual or imminent physical loss or damage to property from the perils required to be insured against.

(e) **Delayed Completion/Soft Costs.** Such policy shall contain, by separate grant or endorsement, delay in completion coverage both for loss of income (revenue or rents) and for soft costs, including at a minimum additional interest expense, additional advertising and promotional expense, additional real estate taxes and insurance premiums, and additional design fees, for a period of not less than twelve (12) months. The policy must contain an Agreed Value clause applicable to this coverage and shall also contain a provision or be endorsed to include an ISO Lender's Loss Payable Provision form (CP 1218) or the equivalent, marked to provide Lender's Loss Payable coverage in favor of Mortgagee.

(f) **Contractors.** Such policy must include as named insureds the Mortgagor, the general contractor (by name), the subcontractors and sub-subcontractors, as additional named insureds.

(g) **Materials and Equipment.** Such policy shall cover materials and equipment that are not yet installed and, whether located at the construction site, or at other on or off site storage facilities, or in transit.

(h) **Permission to Occupy.** Such policy shall contain an endorsement allowing the Mortgagor or Mortgagor's assigns to occupy the improvements prior to final completion of the improvements.

(i) **Boiler and Machinery/Equipment Breakdown.** Such policy shall include coverage commonly known as Boiler and Machinery Insurance or Equipment Breakdown covering all mechanical and electrical apparatus, pressure vessels, and equipment which are part of the improvements on a "comprehensive" basis, at the full replacement cost and including, without limitation, system breakdown, testing and startup.

(j) **Waiver of Rights of Recovery.** Such policy shall contain a clause which allows the various insureds to waive their right of recovery against others prior to a loss.

(k) **Standard Mortgagee Clause/Lender's Loss Payable.** Such policy shall contain a standard mortgagee clause in favor of the Mortgagee providing that any loss payable thereunder shall be payable to the Mortgagee and shall also contain a provision or be endorsed to include an ISO Lender's Loss Payable Provision form (CP 1218) or the equivalent, marked to provide Lender's Loss Payable coverage in favor of Mortgagee.

(l) **Deductibles.** Deductibles for such policy shall not exceed the following amounts:

All perils except named storms, hurricanes, flood and earthquake	\$10,000 if the initial loan amount is \$1 million or less and \$25,000 if the initial loan amount is more than \$1 million
Named storms/hurricanes	5% of values at risk
Flood (NFIP)	Such limit as may be permitted by Mortgagee but not in excess of that permitted by the Flood Insurance Laws
Flood (Other/Excess)	The amount of NFIP insurance coverage
Earthquake	5% of values at risk

(2) **Completed Building Property Insurance.** At such time as the improvements are completed and the Builder's Risk policy can no longer be kept in force, but the Loan has not yet been paid in full, Mortgagor shall, unless otherwise agreed by Mortgagee, maintain policies covering the following causes of loss and providing the following coverages:

(a) **Commercial Property Insurance Policy.** A policy or policies of commercial property insurance covering the Mortgaged Property which provides coverage, at a minimum, equivalent to that provided under an Insurance Service Office ("ISO") Commercial Property policy containing the Building and Personal Property coverage form (CP0010) together with a Special Causes of Loss form (CP1030) and which have been endorsed to include coverage for outdoor properties consisting of, but not limited to, fences, retaining walls, paved surfaces and the like, and, if required by Mortgagee, landscaping to include trees, shrubs and plants (the buildings, business/personal property, outdoor properties and landscaping being collectively referred to in this Section (B)(2) as the "**Insured Property**") in amounts not less than the full replacement cost of all Insured Property. The term "full replacement cost" shall mean the actual cost to replace the Insured Property without deduction for depreciation, and inclusive of architectural, design and engineering fees necessary to rebuild, replace or repair damage to the Insured Property and including debris

removal of such damaged Insured Property. Each policy shall provide Replacement Cost coverage and have the Agreed Value Clause activated, contain an Agreed Value endorsement or otherwise have any co-insurance clause deleted. Further, each such policy shall contain a Joint or Disputed Loss Agreement endorsement.

(b) **Windstorm Policy.** A Windstorm policy including wind, hurricane and named storms insurance and (if required by Mortgagee) coverage for loss caused by wind-driven rain which meets all the requirements contained in Section (B)(2)(a) above, if the Special Causes of Loss form was endorsed to delete or restrict such peril as a covered peril.

(c) **Boiler and Machinery/Equipment Breakdown Policy.** An Equipment Breakdown (Boiler and Machinery) insurance policy covering all mechanical and electrical apparatus, pressure vessels, and equipment which are part of the Mortgaged Property on a "comprehensive" form for the full replacement cost and including, without limitation, system breakdown, testing and startup. Such policy shall contain a Joint or Disputed Loss Agreement endorsement and any co-insurance clause shall be deleted.

(d) **Flood Insurance--NFIP.** If the Mortgaged Property is located in an area currently identified (or which at any time in the future becomes identified) by Federal Emergency Management Agency ("FEMA") as an area having "special flood hazards" and in which flood insurance has been made available under the Flood Insurance Laws ("**NFIP Insurance**"), an NFIP Insurance policy in an amount at least equal to the lesser of (i) the full replacement cost of the buildings and, if required by Mortgagee, full replacement cost of personal/business property included within the Mortgaged Property or (ii) the maximum limit of coverage available under the Flood Insurance Laws.

(e) **Flood Insurance other than NFIP.** If required by Mortgagee, a flood insurance policy other than NFIP Insurance which may be excess of NFIP Insurance or otherwise in an amount equal to the full replacement cost of the Insured Property or a limit or sublimit acceptable to Mortgagee.

(f) **Earthquake Policy.** If required by Mortgagee, an earthquake and earthquake sprinkler leakage insurance policy for the full replacement cost of the Insured Property or a limit or sublimit acceptable to Mortgagee.

(g) **Policy Requirements.** Each policy except the NFIP Insurance described above shall include:

(i) Building Ordinance or Law coverage to include: Coverage for Loss to Undamaged Portion of the Building, Demolition Cost Coverage, and Increased Cost of Construction Coverage. If only a portion of a building included within the Insured Property is damaged, such coverage shall pay for the loss in value of the undamaged portion of such building as a consequence

of enforcement of an ordinance or law that requires demolition of the undamaged parts of such building, the cost to demolish and clear the site of undamaged parts of such building as a consequence of enforcement of an ordinance or law that requires demolition of such undamaged property, and any increased cost of repair or reconstruction as a consequence of enforcement of the minimum requirements of the ordinance or law. The limit for the Coverage for Loss to Undamaged Portion of the Building shall be equal to the full limit of insurance provided for all buildings covered on the policy. Demolition Cost Coverage and Increased Cost of Construction Coverage may be purchased at a lesser amount, provided that such lesser amount is acceptable to the Mortgagee and is, at a minimum, equal to 25% of the full replacement cost for all buildings covered by the policy.

(ii) Debris removal coverage equal to 25% of the amount of direct physical loss to Insured Property all subject to the limit of liability for Insured Property plus, if required by Mortgagee, "Additional Debris Removal" coverage (equivalent to ISO form CP0415) in an amount which would provide additional funds for debris removal of damaged Insured Property in the event there is a total loss of Insured Property and the limit of liability for damage to Insured Property and Debris Removal combined is insufficient.

(iii) Business Income including Extra Expense and Rental Income Insurance in an amount sufficient to insure payment of rent, loss of business income, and other fixed costs for a period of not less than twelve (12) months and, in addition, Extended Period of Indemnity coverage providing for loss of Business Income, Extra Expense or Rental Income occurring after Mortgagor's business is reopened and until such business is restored to the level existing immediately prior to the loss or six (6) months, whichever occurs first. Each policy required to provide this coverage must contain an Agreed Value clause applicable to this coverage and shall also contain a provision or be endorsed to include an ISO Lender's Loss Payable Provision form (CP 1218) or the equivalent, marked to provide Lender's Loss Payable coverage in favor of Mortgagee.

(iv) If not otherwise described, an Agreed Value clause or deletion of any co-insurance clause.

(v) If any required policy contains a clause known in the property insurance market as the "Occurrence Clause", then such policy must contain a "margin" clause as approved or required by Mortgagee, but in any event for at least 10%.

(h) **Standard Mortgagee Clause/Lender's Loss Payable.** Each policy shall contain a standard Mortgagee Clause in favor of the Mortgagee providing that any loss payable thereunder shall be payable to the Mortgagee and shall also contain a provision or be endorsed to include an ISO Lender's Loss Payable Provision form (CP 1218) or the equivalent, marked to provide Lender's Loss Payable coverage in favor of Mortgagee.

(i) **Waiver of Rights of Recovery.** Each policy shall contain a clause which allows the various insureds to waive their right of recovery against others prior to a loss.

(j) **Deductibles.** Deductibles for each policy shall not exceed the following amounts, as applicable:

All perils except named storms, hurricanes, flood and earthquake	\$10,000 if the initial loan amount is \$1 million or less and \$25,000 if the initial loan amount is more than \$1 million
Named storms/hurricanes	5% of values at risk
Flood (NFIP)	Such limit as may be permitted by Mortgagee but not in excess of that permitted by the Flood Insurance Laws
Flood (Other/Excess)	The amount of NFIP insurance coverage
Earthquake	5% of values at risk

(3) **Liability Insurance.** The Mortgagor shall purchase and maintain, and shall cause the design team, the general contractor and the all subcontractors to maintain insurance which will protect them all and the Mortgagee from claims which may arise out of or result from the construction contemplated by the Loan Agreement. At a minimum, such insurance shall include but not be limited to:

(a) **Commercial General Liability.** Commercial General Liability Insurance written on an ISO "occurrence" form (or a policy at least equivalent to the foregoing), to include coverage for: (i) Premises and Operations, (ii) Independent Contractors working for or on behalf of the insured, (iii) Products and Completed Operations, (iv) Contractual Liability, (v) Personal and Advertising Injury, (vi) Employees as Insureds, (vii) Severability of Interest, and (viii) if applicable after construction is completed and the improvements are occupied, Liquor Liability and/or Garage Liability. At a minimum, limits for such coverage shall be:

Bodily Injury and Property Damage	\$1,000,000 Each Occurrence
Personal and Advertising Liability	\$1,000,000 Each Incident
General Aggregate	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000

Liquor Liability (if required)	\$1,000,000 each person \$1,000,000 each common cause
--------------------------------	--

Any deductible contained in the policy must be declared and must be approved by the Mortgagee, but in no event may such deductible exceed \$10,000 unless specifically agreed by Mortgagee. No self-insured retention will be permitted unless approved by Mortgagee in its sole discretion. The policy shall contain clauses, provisions and/or endorsements which: (i) provide that the General Aggregate Limit applies exclusively to the Mortgaged Property; (ii) names the Mortgagee, its directors, officers, employees, successors and assigns as additional insureds (collectively, the "**Additional Insureds**"); (iii) requires that the Additional Insureds be given thirty (30) days' written notice prior to nonrenewal or cancellation (including any cancellation for nonpayment of premium, provided that once construction has been completed, the notice may be limited to ten (10) days' prior written notice for any cancellation for nonpayment of premium); (iv) provide that the insurance afforded to the Additional Insureds under this policy is primary insurance to any insurance the Additional Insureds may have in force which would also apply to a loss covered by this insurance, and that the insurer will not seek contribution from any other insurance available to the Additional Insureds; and (v) provide that the insurer waives any right of recovery the insurer may have against such Additional Insureds for loss payments made under this policy (ISO Waiver of Transfer of Rights of Recovery Against Others To Us CG 2404 (10/93) is acceptable). The Mortgagor shall cause the general contractor to carry Products and Completed Operations coverage protecting the Mortgagor, the general contractor and the Additional Insureds and including all of the provisions required above, for the entire period of construction of the improvements and for not less than two (2) years after the Notice of Substantial Completion is issued. The Mortgagor shall cause the general contractor to keep the Additional Insureds named as additional insureds on the Commercial General Liability policy providing the required Products and Completed Operations coverage for the entire two (2) year period post substantial completion of the improvements and provide evidence of such coverage on an annual basis. This requirement shall survive: (i) the repayment of the Note secured by this Mortgage, (ii) any foreclosure of this Mortgage, and (iii) any deed or assignment of the Mortgaged Property in lieu of foreclosure.

(b) **Automobile Policy.** Commercial Automobile policy providing liability coverage for all owned, non-owned, hired autos and automobile contractual liability with limits of \$500,000 per Person/\$500,000 per Accident - Bodily Injury, \$500,000 per Accident - Property Damage, and Basic No-Fault coverage as required by Hawaii law. Such coverage shall be maintained by Mortgagor covering all owned, non-owned and hire autos for which Mortgagor may be responsible and by the general contractor and subcontractors covering all owned, non-owned and hire autos for which the general contractor and subcontractors, respectively, may be responsible.

(c) **Workers' Compensation and Employers' Liability.** Workers' Compensation coverage as required by Hawaii law, including State of Hawaii Workers' Compensation Act coverage, Voluntary Compensation coverage, and United States Longshore &

Harbor Workers' Compensation coverage, if applicable, with statutory limits for Workers' Compensation and limit for Employers' Liability of \$500,000 each accident; \$500,000 disease - policy limit; and \$500,000 disease - each employee. The policy shall further contain an endorsement providing a waiver of subrogation in favor of the Mortgagee (NCCI Waiver of Our Right of Recovery From Others endorsement WC 000313 (4/84) is acceptable).

(d) **Umbrella or Excess Liability.** An Umbrella or Excess Liability Policy which shall be excess over the Commercial General Liability, Employers' Liability and Automobile Liability policies. The Excess Liability Policy shall be written on an "occurrence" form with a limit of liability not less than \$5,000,000 per occurrence and aggregate and contain a Self-Insured Retention no greater than \$25,000. Further, such policy shall contain clauses, provisions or endorsements which: (i) cause it to be "following form" the coverage provided by the underlying Commercial General Liability, Employer's Liability and Automobile Liability policies; (ii) name the Additional Insureds as additional insureds, following the form of the underlying Commercial General Liability and Automobile Liability policies; (iii) specifically require that the Additional Insureds be given thirty (30) days' written notice prior to nonrenewal or cancellation (including any cancellation for nonpayment of premium, provided that once construction has been completed, the notice may be limited to ten (10) days' prior written notice for any cancellation for nonpayment of premium); (iv) cause the policy with respect to any contractual obligation of the Mortgagor to provide liability insurance for the Additional Insureds by means of adding them as an additional insured to the Mortgagor's Umbrella or Excess Liability policy to be considered to be primary and excess liability insurance which shall apply to any loss or claim not otherwise excluded before any contribution by any insurance which the Additional Insureds may have in effect; and (v) provide that the insurer waives any right of recovery the insurer may have against such Additional Insureds because of payments made under this policy. Additionally, the policy: must include a severability of interest provision; may not specifically exclude punitive damages; and must provide for defense expense in addition to the limit of liability stated in the policy. Mortgagor shall cause the general contractor to carry an Excess Liability policy which contains coverage for Products and Completed Operations, as described above and including all of the provisions required above, for the entire period of construction of the improvements and not less than two (2) years after the Notice of Substantial Completion is issued. The Mortgagor shall cause the general contractor to continue to keep the Additional Insureds named as additional insureds for the entire period of time and provide evidence of such coverage on an annual basis. This requirement shall survive: (i) the repayment of the Note secured by this Mortgage, (ii) any foreclosure of this Mortgage, and (iii) any deed or assignment of the Mortgaged Property in lieu of foreclosure.

(e) **Project Design Professional Liability.** Professional Liability insurance to be maintained by all members of the design and engineering team, including but not limited to the primary architect, the structural engineer, the mechanical engineer, the electrical engineer, the soils engineer and their consultants and agents throughout the entire design phase, the construction period, and the life of the Loan. Such insurance shall cover claims for bodily injury and property damage including damage to the improvements arising out of the performance of all professional services

performed by them or on their behalf and caused by negligent acts, errors or omissions. Further, each policy shall be written for an amount no less than \$1,000,000 per claim and annual aggregate with a self-insured retention no greater than \$10,000. Each policy shall be specifically endorsed to provide thirty (30) days' written notice of cancellation or nonrenewal on the same terms to the Mortgagor and the Mortgagee. The Mortgagor will require each member of the design and engineering team to provide proof of such insurance in the form of an Evidence of Insurance which satisfies the requirements of Section (A)(6) above.

(f) **Project Specific Contractors Pollution Liability.** If required by Mortgagee, a Project Specific Contractors Pollution Liability policy which covers all operations of the Mortgagor, the design team, the general contractor, and all subcontractors at any tier of the construction of the improvements described in the Loan Agreement and shall include coverage for bodily injury and property damage defined to include loss of use of undamaged property and clean-up costs. The policy shall also provide contractual liability coverage. Further, the policy shall not contain an exclusion for microbial matter (mold, fungi, etc.). Limits for such coverage shall be \$1,000,000 each loss, and \$1,000,000 aggregate. Any self-insured retention on this policy shall not exceed \$10,000. The policy shall be written on an occurrence form and maintained for the entire duration of the construction of the improvements. If the coverage cannot be obtained on an occurrence form, it may be written on a claims-made form, in which case, the policy shall be written to cover the entire construction period and contain a three-year extended reporting period clause after completion of construction. The policy shall contain the following endorsements: (i) an endorsement which specifically names the Additional Insureds as additional insureds; (ii) an endorsement stating: "The insurance afforded to Lender, its directors, officers and employees under this policy shall be considered to be primary to any insurance they may have in force which also applies to a loss covered hereunder, and, further, the Insurer will not seek contribution from any other insurance available to the Lender, its directors, officers, employees, successors and assigns"; and (iii) a waiver of subrogation endorsement which specifically states: "The Insurer waives any right of recovery it may have against Lender, its directors, officers and employees because of payments made under this policy."

(g) **Reinstatement of Limits.** If the limits of available coverage required in this Section (B)(3) become substantially reduced as a result of claim payments, the Mortgagor shall immediately at Mortgagor's own expense purchase insurance to reinstate the aggregate limits of liability coverage required herein.

(h) **Wrap-Up Insurance.** Permission is granted for Mortgagor to secure insurance as required under this section under an insurance program commonly referred to as a "Wrap-Up" policy. Such insurance may be secured under an Owner Controlled Insurance Program (OCIP) or a Contractor Controlled Insurance Program (CCIP) as long as the coverages and limits are substantially the same as what is required above. However, Mortgagee retains the right to reject such OCIP or CCIP if Mortgagee believes, in its sole discretion, that the terms of the OCIP or CCIP do not meet the terms of this Schedule.

EXHIBIT C

LAND COURT SYSTEM
AFTER RECORDATION RETURN:

REGULAR SYSTEM
BY MAIL ☐ PICK UP ☐

FIRST HAWAIIAN BANK
999 Bishop Street, 11th Floor
Honolulu, Hawaii 96813
(Commercial Real Estate Division/ K. Maeda)

Pages _____
Tax Map Key: (1) 3-2-030-001

1784172.1

**CONSENT TO MORTGAGE OF GENERAL LEASE NO. S-5954 AND
ESTOPPEL CERTIFICATE**

CONSENT is hereby given by the STATE OF HAWAII, by the Chairperson of the Board of Land and Natural Resources, acting pursuant to Section 171-22, Hawaii Revised Statutes, as amended, Lessor (the "Lessor") under that certain **General Lease No. S-5954** dated September 10, 2008, leased to DIAMOND HEAD THEATRE, a Hawaii nonprofit corporation, whose address is 520 Makapuu Avenue, Honolulu, Hawaii 96816 ("Lessee"), as "Lessee," filed in the Department of Land and Natural Resources (the "General Lease"), to the Real Property Mortgage and Financing Statement (the "Mortgage") dated _____, recorded in said Bureau as Document No. _____, by and between the Lessee, as "Mortgagor", and FIRST HAWAIIAN BANK, a Hawaii corporation, as "Mortgagee", and to any foreclosure and sale thereunder of the Lessee's interest, the Lessee's successors and assigns, in and to the General Lease; SUBJECT, HOWEVER, to the provisions of Section 171-21, Hawaii Revised Statutes, as amended, relating to rights of holder of security interest. The foregoing CONSENT is given notwithstanding the provision set forth in Paragraph 20 of the General Lease.

To the best of Lessor's knowledge:

(1) The Lessor has leased to Lessee the premises described in General Lease No. S-5954 dated September 10, 2008, on file in the Land Division, Department of Land and Natural Resources of the State of Hawaii;

(2) As far as Lessor is aware, the Lessee is not in default in any respect as of this date nor has any event occurred which with the passage of time or the giving of notice would constitute a default;

(3) General Lease No. S-5954 is in full force and effect and has not been modified, supplemented, extended or amended as of this date, except as noted below:

☐ Agreement dated _____

☐ None

IT IS UNDERSTOOD that, except as provided herein, should there be any conflict between the terms of General Lease and the terms of the Mortgage, the former shall control; and, FURTHER, that except as provided herein, this Consent shall not waive any of the terms, covenants and conditions of the General Lease and, also, that no further mortgage of the General Lease shall be made without the written consent of the Chairperson of the Board of Land and Natural Resources being first obtained and endorsed thereon.

IN WITNESS WHEREOF, the STATE OF HAWAII, by the Chairperson of the Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed this _____ day of _____, 20____.

STATE OF HAWAII

Approved by the Chairperson
of the Board of Land and
Natural Resources on
_____.

By _____
Chairperson
Board of Land and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General

Dated: _____

STATE OF HAWAII)
) SS:
 CITY AND COUNTY OF HONOLULU)

On _____, before me appeared _____,
 to me known to be the person who, being by me duly sworn or affirmed, did say that such person
 executed the foregoing instrument as the free act and deed of such person, and if applicable, in the
 capacity shown, having been duly authorized to execute such instrument in such capacity.

Print Name: _____
 Notary Public, State of Hawai'i
 My commission expires: _____

Date of Document:		# Pages:	
Name of Notary Public:		Circuit	
Document Description: CONSENT TO MORTGAGE OF GENERAL LEASE NO. S-5954 AND ESTOPPEL CERTIFICATE		(Stamp or Seal)	
Notary Signature NOTARY CERTIFICATION			

STATE OF HAWAII)
) SS:
 CITY AND COUNTY OF HONOLULU)

On _____, before me appeared _____,
 to me known to be the person who, being by me duly sworn or affirmed, did say that such person
 executed the foregoing instrument as the free act and deed of such person, and if applicable, in the
 capacity shown, having been duly authorized to execute such instrument in such capacity.

Print Name: _____
 Notary Public, State of Hawai'i
 My commission expires: _____

Date of Document:		# Pages:
Name of Notary Public:		Circuit
Document Description: CONSENT TO MORTGAGE OF GENERAL LEASE NO. S-5954 AND ESTOPPEL CERTIFICATE		(Stamp or Seal)
Notary Signature NOTARY CERTIFICATION		