|  |  |  |
| --- | --- | --- |
| LAND COURT | REGULAR SYSTEM | |
| AFTER RECORDATION RETURN BY MAIL 🞎 PICK-UP 🞎 RS | | |
| IBNet Co., Ltd.  88 PIIKOI ST., #301  HONOLULU, HI 96814 | | Total No. of Pages: \_\_\_\_\_\_ |
| TMK: (\_\_) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | |
|  | | |

**REAL PROPERTY MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT**

THIS REAL PROPERTY MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (this “Mortgage”) is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by [**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, a Japan corporation]/[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, {husband/wife of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_}/{unmarried}], whose mailing address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Japan (hereinafter called the “Mortgagor”), to IBNet Co., Ltd., a Japan corporation, whose mailing address 5-14-5 Nishinakajima, Yodogawa-ku Osaka, Osaka, Japan, Japan (hereinafter called the “Mortgagee”).

**\* \* \***

**SPECIFIC PROVISIONS:**

I. The “Note(s)” referred to in this Mortgage means the following:

(A) that certain Promissory Note dated effective as of \_\_\_\_\_\_\_\_, 20\_\_ (“Note 1”), entered into by and between the Mortgagee, as lender, and the Mortgagor, as borrower, pursuant to which the Mortgagee makes a loan to the Mortgagor in the principal sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Japanese Yen (¥\_\_\_\_\_\_\_\_\_\_), the provisions of such Promissory Note and any renewals, extensions or modifications thereof being incorporated herein by reference; and

(B) that certain Promissory Note dated effective as of \_\_\_\_\_\_\_\_, 20\_\_ (“Note 2”), entered into by and between the Mortgagee, as lender, and the Mortgagor, as borrower, pursuant to which the Mortgagee makes a loan to the Mortgagor in the principal sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Japanese Yen (¥\_\_\_\_\_\_\_\_\_\_), the provisions of such Promissory Note and any renewals, extensions or modifications thereof being incorporated herein by reference

The loans documented and evidenced by Note 1 and Note 2 are herein individually and collectively referred to as the “Loan(s).”

II. The “Maximum Secured Amount” referred to in Section B.28 of this Mortgage is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Japanese Yen (¥\_\_\_\_\_\_\_\_\_\_\_\_).

III. (A) With respect to Note 1: On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Japan Standard Time), the number of units of United States currency quoted by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in \_\_\_\_\_\_\_\_\_, Japan as being necessary to purchase the sum of JPY \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was US$\_\_\_\_\_\_\_\_\_\_\_\_\_\_(1 USD=JPY \_\_\_\_\_\_\_), such sum being inclusive of all exchange fees and similar expenses.

(B) With respect to Note 2: On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Japan Standard Time), the number of units of United States currency quoted by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in \_\_\_\_\_\_\_\_\_, Japan as being necessary to purchase the sum of JPY \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was US$\_\_\_\_\_\_\_\_\_\_\_\_\_\_(1 USD=JPY \_\_\_\_\_\_\_), such sum being inclusive of all exchange fees and similar expenses.

IV. The “Apartment” that serves as collateral for the Loans is that certain condominium apartment and other appurtenant property described in Exhibit A attached hereto and made a part hereof in the “**\_\_\_\_\_\_\_\_\_\_\_\_\_**” condominium project (hereinafter the “Project”).

**STANDARD PROVISIONS:**

In order to secure the Mortgagor’s repayment of the Loans 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 the Notes and 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 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, all of the Mortgagor’s right, title and interest in and to the Apartment, including the undivided percentage interest in that certain parcel of land (hereinafter the “Land”) more particularly described in said Exhibit A attached hereto and made a part hereof;

TOGETHER WITH 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 contractual rights (but not the obligations) and deposits and reserves of the Mortgagor related to and in connection with the Apartment, including, but not limited to, any general operating reserves, capital improvement reserves, and working capital reserves.

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 Apartment or any part thereof (hereinafter called “Equipment”) and now owned or hereafter acquired by the Mortgagor, including all of the proceeds deriving therefrom and 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 Apartment 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 Apartment, 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 any and all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Apartment 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 Apartment 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; SUBJECT, HOWEVER, to the encumbrances (the “Encumbrances”), if any, described in Exhibit A;

TO HAVE AND TO HOLD all of the above-described Apartment, Equipment, insurance binders, policies and proceeds, awards, payments, deposits, reserves, contractual rights 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, absolutely and 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 Loans, 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 the Notes and this Mortgage, 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 under either of the Notes; 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, 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 insolvent or become voluntarily or involuntarily dissolved, or 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 Land 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 herewith 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 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

(i) 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;

THEN, AND IN ANY SUCH EVENT:

(A) The Mortgagee may, without notice, presentment or demand, declare the unpaid principal amounts of the Loans or either of them and any interest thereon accrued and unpaid, and all fees, charges and other sums due under the Notes and this Mortgage, 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 Notes to be paid in the event of a default (if any);

(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 Loans;

(C) The Mortgagee may exercise any rights and remedies provided for in Hawaii Revised Statutes Chapter 667, including foreclosure by way of power of sale. For example, the Mortgagee may, by way of a power of sale under Hawaii Revised Statutes Chapter 667 and to the extent permitted by law, with or without first taking possession, foreclose and 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 deed 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 Loans 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 Notes and this Mortgage, 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 Loans, 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 Notes and this Mortgage, 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; (ii) to the payment of any unreimbursed disbursements made by the Mortgagee for taxes or assessments 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; and (iv) to the payment of the unpaid principal sum of and interest on the Loans 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 Notes and this Mortgage, 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 appraisement, 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 or the Notes shall affect or impair the right, which is unconditional and absolute, of the lender under the Notes to enforce payment of the principal of, and interest and other charges on, the Loans 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.

1. Title to Apartment. The Mortgagor further warrants and represents that the Mortgagor is the owner in fee simple of the Apartment hereby mortgaged and has good right to grant and convey the same as security under this Mortgage, subject to the Encumbrances; such property is 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 the Mortgagor shall WARRANT AND DEFEND such property unto the lender under the Notes, and the successors and assigns of such lender, according to the provisions thereof, against the claims and demands of all persons whomsoever, except for the Encumbrances.

2. Title to Equipment. The Mortgagor further warrants and represents that 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. Hazardous Materials. The Mortgagor further warrants and represents that 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.

4. Not Principal Dwelling. The Mortgaged Property is not the principal dwelling of the Mortgagor, and is owned strictly for investment purposes. The Mortgagor does not reside in the State of Hawaii and currently does not have any plans to do so.

B. Mortgagor’s Covenants. The Mortgagor hereby covenants and agrees with the Mortgagee as follows (provided that, with respect to any covenant set forth below that pertains to the Project as a whole, such that compliance with such covenant is within the control of the Association of Unit Owners of the Project (the “Association”), and not within the control of the Mortgagor, the Mortgagor shall be deemed to have complied with such covenant if and to the extent the Mortgagor has voted in favor of the action which would cause the Association to comply with such covenant):

1. Payment of Secured Obligations. The Mortgagor shall pay to the lender under the Notes the principal and interest due thereunder, and all fees, charges and other sums payable under the Notes and this Mortgage, 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 Notes and this Mortgage 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. 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 Loans 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 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 Loans 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. The Mortgagor shall keep and maintain 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.

6. Waste, Unlawful Use, etc. 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.

7. Sale, Transfer, Lease, etc. The Mortgagor shall not, voluntarily or by operation of law, sell, convey, assign, transfer or lease the Mortgaged Property or any portion thereof or interest therein, without first obtaining the prior written consent of the Mortgagee, which consent may be withheld by the Mortgagee in its sole and absolute discretion. If the Mortgagee shall consent to any lease of any of the Apartment, the Mortgagor shall furnish to the Mortgagee, promptly upon execution thereof, a true and correct executed copy of such lease. If applicable, any sale or transfer of a membership interest in the Mortgagor whereby the present members of the Mortgagor shall fail to own or control all of the membership interests in the Mortgagor, in the respective proportions now held by them, shall be deemed to be a conveyance or assignment of the Mortgagor’s interest in the Mortgaged Property for the purposes of this paragraph 7.

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:

(i) Keep, or cause to be kept, the Apartment and all Equipment constituting a part of the Mortgaged Property, and the interests and liabilities incident to the ownership thereof, insured, by blanket coverage against causes of loss in Special Form, which the Mortgagee may reasonably require from time to time during the existence of this Mortgage, in such amount as the Mortgagee may reasonably require and, if requested by the Mortgagee, with Building Ordinance, Earth Movement, Difference in Conditions with Broad Collapse, Flood, Windstorm and Hurricane coverages; and

(ii) Maintain, or cause to be maintained, general liability insurance against claims for personal injury or death or property damage suffered by others occurring upon, in or about any of the Mortgaged Property, or any escalator, elevator or hoist therein, or upon, in or about the adjoining streets and passageways thereof, which the Mortgagee may reasonably require from time to time during the existence of this Mortgage, in such amount as the Mortgagee may reasonably require.

(b) All insurance required under the preceding subparagraphs 11(a)(i) and (ii) shall be effected under valid and enforceable policies issued by insurance companies lawfully authorized and admitted to do business in the State of Hawaii. This Mortgage constitutes, and the Mortgagor hereby acknowledges written notice from the Mortgagee that THE MORTGAGEE MAY NOT MAKE THE GRANTING OF THE LOANS EVIDENCED BY THE NOTES CONTINGENT ON THE MORTGAGOR PROCURING ANY REQUIRED INSURANCE WITH AN INSURANCE COMPANY DESIGNATED BY THE MORTGAGEE.

(c) If required by the Mortgagee, all policies of insurance of the character described in subparagraph 11(a)(i) shall contain a standard mortgagee clause (without contribution), naming the Mortgagee as the “mortgagee” thereunder, except that the insurer shall agree that the policy or other contract for such insurance shall not be cancelled or materially changed, or any notice of nonrenewal given, without at least thirty (30) days’ prior written notice to the Mortgagee. If required by the Mortgagee, all policies of insurance of the character described in subparagraph 11(a)(ii) shall contain an endorsement naming the Mortgagee as an additional insured.

(d) Subject to any rights granted to the Mortgagor by law if the Mortgaged Property is residential property, or by the Declaration of Condominium Property Regime of the Project (“Condominium Declaration”), 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. Subject to any rights granted to the Mortgagor by law if the Mortgaged Property is residential property, or by the Condominium Declaration, to use insurance proceeds for rebuilding, repairing or otherwise reinstating damaged or destroyed buildings, 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 the Notes and this Mortgage, including payment of the principal, interest, fees and charges due thereunder. 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.

(e) 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.

(f) 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 or neglect of 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.

(g) Upon the execution of this Mortgage and thereafter not less than ten (10) days prior to the expiration date of the expiring policies or contracts, the originals or certified copies of all policies or contracts for insurance or certificates therefor (or, if requested by the Mortgagee, evidence thereof as provided in ACORD Form 27) of the character described in subparagraph (a) above shall be deposited with the Mortgagee.

(h) 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.

(i) 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.

(j) If the Mortgagor fails to obtain any of the insurance required by this paragraph 11, including, without limitation, any flood insurance required by the Flood Disaster Protection Act of 1973, as amended, the Mortgagee shall have the right, upon forty-five (45) days’ notice to the Mortgagor, to purchase such required insurance on behalf of the Mortgagor, 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 rate(s) specified in the Notes to be paid in the event of default.

(k) Notwithstanding any provisions herein to the contrary, if the Mortgaged Property is residential real property, the Mortgagor may carry and maintain homeowner’s insurance in lieu of any commercial policies that may be required herein, which insurance shall be acceptable to the Mortgagee in its sole discretion.

(l) Notwithstanding any provisions herein to the contrary, if the Mortgaged Property is residential real property and is damaged or destroyed by fire, earthquake, tidal wave or any natural disaster, the proceeds of any insurance insuring against such damage or destruction shall be applied, at the option of the Mortgagor, to reduce the indebtedness due under the Notes or to repair, restore or rebuild the Mortgaged Property.

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 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 Notes, unless such monthly payments are of interest only. Subject to any rights granted to the Association, or other owners of apartments in the condominium project, by the Condominium Declaration, to use such award or payment by any such public or quasi-public authority or corporation for the altering, restoring or rebuilding any part of the project which may have been altered, damaged or destroyed as a result of any such taking, alteration of grade or other injury, any such award or payment 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 Loans, 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. 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, subject, however, to any rights granted to the Association, or other owners of apartments in the condominium project, by the Condominium Declaration, to use such award or payment by any such public or quasi-public authority or corporation for the altering, restoring or rebuilding any part of the project which may have been altered, damaged or destroyed as a result of any such taking, alteration of grade or other injury. 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.

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. 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, and under all agreements for rental services in connection with, the Mortgaged Property or any part thereof, with the right and authority to receive and apply the same to the Loans 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 Mortgagee of any specific leases or subleases. Notwithstanding the above, the provisions of this paragraph B.14 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 B.7 above.

15. Condominium. The Mortgagor shall keep and perform each and every covenant, agreement and provision, in the case of a condominium apartment, in the Condominium Declaration, the Association’s by‑laws or any house rules and regulations, or any agreement with the Association related to the Apartment (collectively, the “Condo-related Agreements”) and any resolution adopted pursuant to the Condominium Declaration or the Association’s by‑laws, on the part of the Mortgagor to be kept or performed, and in the event of failure of the Mortgagor so to do, the Mortgagee may (but shall not be obligated to) cure or remedy any such default (Mortgagor hereby authorizing the Mortgagee to enter the Mortgaged Property as may be necessary for such purposes), and may recover from the Mortgagor upon demand all sums and expenses paid or incurred, including attorneys’ fees, in so doing, together with interest thereon from the date of payment at the rate of twelve percent (12%) per annum and the same shall be secured hereby. Without limiting the generality of the foregoing provisions of this paragraph, the Mortgagor shall pay and discharge as they become due and payable all sums and charges assessed by the Association for the share of the common expenses, both general and special, against or chargeable to the Mortgaged Property and all other sums assessed to the Mortgagor in accordance with the Condominium Declaration, the Association’s by‑laws or applicable statutory provisions, any Condo-related Agreement or any resolution adopted pursuant to any thereof and shall, upon request of the Mortgagee, exhibit to the Mortgagee receipts for the payment of all sums specified herein within thirty (30) days from the date the same are first due and payable. The Mortgagor shall, within three (3) days upon receipt thereof, deliver to the Mortgagee a true and full copy of each and every notice of default or of noncompliance received by the Mortgagor with respect to any obligation of the Mortgagor under the Condominium Declaration, the Association’s by‑laws or the house rules and regulations, any Condo-related Agreement or any resolution adopted by the Association pursuant to the Condominium Declaration or the Association’s by‑laws. The Mortgagor pledges to the Mortgagee, the Mortgagor’s vote in, and constitutes the Mortgagee as the Mortgagor’s proxy with sole right to vote upon, the following matters upon which the Mortgagor, as an “owner” under the provisions of the Condominium Declaration, the Association’s by‑laws, would or might be authorized to vote: any partition of all or any part of the property subject to the Condominium Property Regime, the nature and amount of any insurance covering all or a part of the Mortgaged Property and the disposition of any proceeds thereof, the manner in which any condemnation or threat of condemnation of all or a part of such property shall be defended or settled and the disposition of any award or settlement in connection therewith, the construction of any additions or improvements, and any repair, reinstatement, rebuilding or restoration of all or a portion of any improvements to the Mortgaged Property, the payment of any amount in excess of insurance or condemnation proceeds available in connection therewith, the assessment of any expenses, the acquisition of any interest pursuant to any option in the Association’s by-laws, any amendment to the Condominium Declaration, the Association’s by‑laws and any removal of the Mortgaged Property from the provisions of Chapters 514A or 514B of the Hawaii Revised Statutes, as amended, if the Mortgaged Property is a condominium project, and, if the Mortgaged Property is a leasehold, any modification, amendment, extension, renewal or cancellation of said lease and on all questions relating to the amount or payment of rent thereunder. The Mortgagor hereby constitutes and appoints the Mortgagee as the Mortgagor’s duly authorized representative for the inspection of records as provided in the Condominium Declaration and the Association’s by‑laws, such appointment, being coupled with an interest, to be irrevocable until such time as this Mortgage is released of record as herein provided. If requested by the Mortgagee, the Mortgagor will take all action open to the Mortgagor to obtain as promptly as possible, and forthwith upon receipt furnish to the Mortgagee, a true and correct copy of: (1) each notice of any meeting of the Association; (2) the minutes of any such meeting; (3) any statement of financial condition of the Association, audited or otherwise, furnished to or available to an owner; (4) any statement showing the allocation of proportional occupancy expenses and any other assessments against the owners; (5) any statements issued to the Mortgagor calling for payments of expenses; and (6) any notice of default in the observance of the Condominium Declaration, the Association’s by‑laws, lease (if leasehold), Condo-related Agreements, rules and regulations, or any of them, issued to the Mortgagor.

16. 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.

17. 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 be in default hereunder at the time, the Mortgagee may, but shall not be required to, set off any indebtedness owing by the Mortgagee to the Mortgagor 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.

18. 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.

19. 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.

20. 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.

21. 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 the Notes and this Mortgage, 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.

22. 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 security of this Mortgage, including, without limitation, any proceedings under the federal bankruptcy laws by or against the Mortgagor or any other person or entity, and in such event (except where the purported defect affecting 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.

23. 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(s) 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.

24. Mortgagee’s Expenses for Protection of Security. All advances, costs, expenses 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 lender under the Notes may become involved by reason of or arising out of the Notes or this Mortgage, shall be paid by the Mortgagor to the Mortgagee, upon demand, and shall bear interest until paid at the rate specified in the Notes to be paid in the event of default (if any), 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.

25. 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.

26. 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.

27. Reserve Fund. If requested by the Mortgagee after the occurrence of an Event of Default, the Mortgagor will pay to the Mortgagee, on the same days as the monthly payments are due under the Notes, until all obligations secured hereby are fully paid, a sum equal to the real property taxes, assessments 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 and insurance premiums will become due and payable. Such sums shall be held by the Mortgagee, without interest, to pay such taxes, assessments 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 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 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 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 the Notes or this Mortgage, 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 Notes and this Mortgage. 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 whoever is represented to be the owner of the Mortgaged Property at that time.

28. Secured Obligations. With respect to the Mortgaged Property, the obligations secured by this Mortgage shall include all amounts payable under this Mortgage and the Notes, including, without limitation, the repayment of all future advances or costs in an amount not to exceed the Maximum Secured Amount (which future advances shall include, without limitation, advances to pay for such items as real property taxes, insurance premiums, association maintenance charges, assessments, attorneys’ fees, or any other sums) which the Mortgagee may, but is not obligated to, make or incur in accordance with the terms of this Mortgage or the Notes.

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

30. 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 lender under the Notes, and if the Mortgagor in fact pays such tax prior to the date upon which payment is required by such notice.

31. 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.

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 and operate as a security agreement and financing statement under the Uniform Commercial Code, as enacted in Hawaii, and the Mortgagor, as “Debtor,” hereby grants to the Mortgagee, as Secured Party, a security interest in any or all of the Equipment (including fixtures), rights and interests in connection with the Apartment and other Mortgaged Property (including contractual rights), in addition to a mortgage lien upon the same as part of the realty. The Mortgagor hereby authorizes Mortgagee to file, and 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, rights and interests in connection with the Apartment and other Mortgaged Property (including contractual rights), 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. If this Mortgage is signed by two or more parties, the obligations and undertakings under this Mortgage shall be that of all and any two or more jointly and also of each severally.

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 the addresses set forth in the first paragraph of this Mortgage. 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. Judgment.

(a) If for the purposes of obtaining a judgment in any court it is necessary to convert a sum due hereunder or under the Notes in any currency (the “Original Currency”) into another currency (the “Other Currency”), the parties hereto agree, to the fullest extent that they may effectively and lawfully do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Mortgagee could purchase the Original Currency with the Other Currency at the Mortgagee’s headquarters in Tokyo, Japan, on the Japanese business day preceding that on which final judgment is given.

(b) To the fullest extent permitted by law, the obligation of the Borrower and/or the Mortgagor in respect of any sum due in the Original Currency by it/them to the Mortgagee hereunder or under the Notes shall, notwithstanding any judgment in Other Currency, be discharged only to the extent that, on the Japanese business day following receipt by the Mortgagee of any sum adjudged to be so due in such Other Currency, the Mortgagee may in accordance with normal banking procedures purchase the Original Currency with such Other Currency, in each case irrespective of whether such sum received by the Mortgagee is received from the proceeds of collateral granted under the Mortgage or from any other source. If the amount of the Original Currency so purchased is less than the sum originally due to the Mortgagee in the Original Currency, the Mortgagor agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Mortgagee against such loss, and if the amount of the Original Currency so purchased exceeds the sum originally due to the Mortgagee in the Original Currency, the Mortgagee agrees to remit to the Mortgagor such excess.

*[No further text on this page – Signature page follows]*

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

Mortgagor: {[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_}

/

{\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_}