- ------

UNITED STATES SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D. C. 20549

FORM 10-K

(Mark One)

[x] ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 [FEE REQUIRED] For the fiscal year ended December 31, 1993 OR

Commission file number 0-7949

FIRST HAWAIIAN, INC.

(Exact name of registrant as specified in its charter)

DELAWARE (State of incorporation) 99-0156159 (I.R.S. Employer Identification No.) 96813 (Zip Code)

1132 BISHOP STREET, HONOLULU, HAWAII (Address of principal executive offices)

REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE: (808) 525-7000

SECURITIES REGISTERED PURSUANT TO SECTION 12(B) OF THE ACT:

Name of each exchange on
Title of each class which registered
None Not Applicable

SECURITIES REGISTERED PURSUANT TO SECTION 12(G) OF THE ACT:
Common Stock, \$5.00 Par Value
(Title of class)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes [X]No ____

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. []

The aggregate market value of the voting stock held by nonaffiliates of the registrant as of February 22, 1994 was \$486,635,000.

The number of shares outstanding of each of the registrant's classes of common stock as of February 22, 1994 was:

Title of Class Number of Shares Outstanding
Common Stock, \$5.00 Par Value 32,411,797 Shares

DOCUMENTS INCORPORATED BY REFERENCE
Portions of the following documents are incorporated
by reference in this Form 10-K:

DOCUMENTS
First Hawaiian, Inc. Annual Report 1993
First Hawaiian, Inc. Proxy Statement dated
March 1, 1994 for the Annual Meeting
of Stockholders

FORM 10-K REFERENCE Parts I and II

Part III

INDEX

PART I

Item 1.	Business	1
Item 2.	Properties	14
Item 3.	Legal Proceedings	15
Item 4.	Submission of Matters to a Vote of Security Holders	15
	PART II	
Item 5.	Market for Registrant's Common Equity and Related Stockholder Matters	16
Item 6.	Selected Financial Data	16
Item 7.	Management's Discussion and Analysis of Financial Condition and Results of Operations	16
Item 8.	Financial Statements and Supplementary Data	16
Item 9.	Changes in and Disagreements with Accountants on Accounting and Financial Disclosure	16
	PART III	
Item 10.	Directors and Executive Officers of the Registrant	17
Item 11.	Executive Compensation	18
Item 12.	Security Ownership of Certain Beneficial Owners and Management	18
Item 13.	Certain Relationships and Related Transactions	18
	PART IV	
Item 14.	Exhibits, Financial Statement Schedules and Reports on Form 8-K	19
Signatures		22
Evhibit Indo	N. Carlotte and Ca	24

PART I

TTEM 1. BUSTNESS

FIRST HAWAIIAN, INC. -

First Hawaiian, Inc. (the "Corporation"), a Delaware corporation, is a registered bank holding company under the Bank Holding Company Act of 1956, as amended, and a registered savings and loan holding company under section 10 of the Homeowner's Loan Act, as amended. The Corporation, through its subsidiaries, operates a general commercial banking business and other businesses related to banking. Its principal assets are its investments in First Hawaiian Bank (the "Bank"), a State of Hawaii chartered bank; First Hawaiian Creditcorp, Inc. ("Creditcorp") and First Hawaiian Leasing, Inc. ("FHL"), each a financial services loan company; and Pioneer Federal Savings Bank ("Pioneer"), a federally chartered savings bank. The Bank, Creditcorp, FHL and Pioneer are wholly-owned subsidiaries of the Corporation. At December 31, 1993, the Corporation had consolidated total assets of \$7.3 billion, total deposits of \$5.2 billion and total stockholders' equity of \$608.4 million.

Based on assets as of June 30, 1993, the Corporation was the 76th largest bank holding company in the United States as reported in the American Banker.

FIRST HAWAIIAN BANK -

The Bank, the oldest financial institution in Hawaii, was established as Bishop & Co. in 1858 in Honolulu. After several corporate mergers and other changes, the Bank is now a state-chartered bank. The Bank is not a member of the Federal Reserve System. The deposits of the Bank are insured by the Federal Deposit Insurance Corporation (the "FDIC") to the extent and subject to the limitations set forth in the Federal Deposit Insurance Act, as amended.

The Bank is a full-service bank conducting a general commercial and consumer banking business and offering trust services. Its banking activities include receiving transaction, savings and time deposits for personal and commercial accounts; making commercial, agricultural, real estate and consumer loans; acting as a United States tax depository facility; providing money transfer and cash management services; selling traveler's checks, bank money orders, mutual funds and annuities; issuing letters of credit; handling domestic and foreign collections; providing safe deposit and night depository facilities; lease financing; and investing in U.S. Treasury securities and securities of other U.S. government agencies and corporations and state and municipal securities.

As of December 31, 1993, the Bank had total deposits of \$4.5 billion and total assets of \$6.1 billion, making it the second largest bank in Hawaii.

Domestic Services -

The domestic operations of the Bank are carried out through its main banking office located in Honolulu, Hawaii and 58 other banking offices located throughout the State of Hawaii. Fifty-one of the offices are equipped with automatic teller machines which provide 24-hour service to customers wishing to make withdrawals from and deposits to their personal checking accounts, to transfer funds between checking and savings accounts, to make balance inquiries, to obtain interim bank statements, and to make utility and loan payments. Ten nonbranch locations provide balance inquiry and withdrawal transaction services only. The Bank is a member of the CIRRUS(R)/MasterCard(R) and Plus(R)/VISA(R) automatic teller machine networks, providing its customers with access to their funds nationwide and in selected foreign countries.

4

Lending Activities -

The Bank engages in a broad range of lending activities, including making real estate, commercial and consumer loans and leases. At December 31, 1993, the Bank's loans totalled \$4.0 billion, representing 66.2% of total assets. At that date, 53.0% of the loans were residential and commercial real estate loans, 31.1% were commercial loans, 12.2% were consumer loans and 3.7% were leases.

Real Estate Lending--Residential. The Bank makes residential real estate loans, including home equity loans, to enable borrowers to purchase, refinance or improve residential real property. The loans are secured by mortgage liens on the related property substantially all of which is located in Hawaii. At December 31, 1993, approximately 56% of the Bank's total real estate loans were collateralized by single-family and multi-family residences.

Real Estate Lending--Commercial. In the commercial real estate area, the Bank provides construction and permanent financing for a variety of commercial developments, such as hotels, warehouses and small retail centers. In order to diversify its portfolio, the Bank also selectively participates as a lender in developments on the mainland United States, primarily on the west coast. At December 31, 1993, approximately 44% of the Bank's total real estate loans were collateralized by construction and commercial properties.

Commercial Lending. The Bank is a major lender to primarily small- and medium-sized businesses (including local subsidiaries and operations of foreign companies) in Hawaii and Hawaii companies doing business overseas with particular emphasis on those companies in the Asia-Pacific region.

Consumer Lending. The Bank offers many types of loans and credits to consumers. The Bank provides lines of credit, uncollateralized or collateralized, and provides various types of personal and automobile loans. The Bank also provides indirect consumer automobile financing on new and used autos by purchasing finance contracts from dealers. The Bank's Dealer Center is the largest commercial bank automobile lender in the State of Hawaii. The Bank is the largest issuer of MasterCard(R) credit cards and the second largest issuer of VISA(R) credit cards in Hawaii.

International Banking Services -

The Bank maintains an International Banking Division which provides international banking products and services through the Bank's branch system, international banking headquarters in Honolulu, a Grand Cayman branch, two Guam branches and a representative office in Tokyo, Japan. The Bank maintains a network of correspondent banking relationships throughout the world.

The Bank's international banking activities are primarily trade-related and are concentrated in the Asia-Pacific area. The Bank has no loans to lesser developed countries.

Trust Services -

The Bank's Asset Management Division offers a full range of trust and investment management services. The Division provides asset management, advisory and administrative services for estates, trusts and individuals. It also acts as trustee and custodian of pension and profit sharing plans. As of December 31, 1993, the Asset Management Division had 5,913 accounts with a market value of \$7.1 billion. Of this total, \$4.8 billion represented assets in non-managed accounts and \$2.3 billion were managed trust assets.

The Asset Management Division maintains custodial accounts under which it acts as agent for customers in rendering a variety of services, including dividend and interest collection, collection under installment obligations, rent collection and property management.

The Asset Management Division also acts as corporate trustee or co-trustee for bond issues totaling \$2.2 billion in principal amount.

Creditcorp is a financial services loan company with 11 branch offices located throughout the four major islands of the State (Oahu, Hawaii, Maui and Kauai) and a branch office in Guam. Creditcorp also has a commercial loan production office in Honolulu.

The lending activities of Creditcorp are concentrated in consumer and commercial financing which are primarily collateralized by real estate.

Creditcorp's primary source of funds is time and savings deposits which are insured by the FDIC to the extent and subject to the limitations set forth in the Federal Deposit Insurance Act, as amended.

Creditcorp also utilizes borrowings as an additional source of funding for its loan portfolio. In that regard, Creditcorp is a member of the Federal Home Loan Bank of Seattle (the "FHLB of Seattle") which provides a central credit facility for member institutions. As of December 31, 1993, Creditcorp was required, in accordance with the rules and regulations of the FHLB of Seattle, to maintain a minimum level of capital stock ownership of \$3.5 million in this regional facility. As of December 31, 1993, Creditcorp's investment in the capital stock of FHLB of Seattle totalled \$6.4 million and advances from the FHLB of Seattle aggregated \$35.7 million.

At December 31, 1993, Creditcorp had total deposits of \$350.0 million, total loans and leases of \$415.0 million and total assets of \$433.0 million.

FIRST HAWAIIAN LEASING, INC. -

FHL, a financial services loan company, finances and leases personal property and equipment and acts as an agent, broker or advisor in the leasing or financing of such property for affiliates as well as third parties.

As of December 31, 1993, FHL's net investment in leases amounted to \$49.3 million and total assets were \$51.5 million. FHL's primary source of funds is borrowings from the Corporation and the Bank.

PIONEER FEDERAL SAVINGS BANK -

On August 6, 1993, the Corporation acquired for cash all of the outstanding stock of Pioneer Fed BanCorp, Inc. ("Pioneer Holdings") at a purchase price of \$87 million through the merger of Pioneer Holdings with and into the Corporation ("Merger"). As a result of the Merger, Pioneer became a wholly-owned subsidiary of the Corporation (see "Note 1. Business Combinations" (page 41) in the Financial Review section of the Corporation's Annual Report 1993, which is incorporated herein by reference thereto).

Pioneer is a federally chartered savings bank operating in the state of Hawaii. Pioneer, the oldest savings bank in Hawaii, was chartered in 1890 by King David Kalakaua. Presently, Pioneer maintains 19 branch offices located on the four major islands of Hawaii. At December 31, 1993, Pioneer had total assets of \$650.3 million. Based on total assets at December 31, 1993, Pioneer was the fourth largest of six Savings Association Insurance Fund (the "SAIF") - insured institutions operating in Hawaii.

Pioneer is primarily engaged in attracting deposits from the general public through a variety of deposit products. Together with borrowings, principally from the FHLB of Seattle, and funds from ongoing operations, these resources are invested in the origination of conventional adjustable and fixed rate, one-to-four family residential mortgages. Pioneer is also engaged in other types of mortgage lending, including home equity loans, loans on smaller multi-family projects and, to a lesser extent, in other consumer lending activities. Mortgage lending activity, both origination and purchases, has been limited to loans secured by property in the State of Hawaii. As

of December 31, 1993, Pioneer was required, in accordance with the rules and regulations of the FHLB of Seattle, to maintain a minimum level of capital stock ownership of \$7.2 million in this regional facility. As of December 31, 1993, Pioneer's investment in the capital stock of the FHLB of Seattle totalled \$25.2 million and advances from the FHLB of Seattle aggregated \$143.0 million.

At December 31, 1993, Pioneer had total deposits of \$399.4 million, total loans of \$544.0 million and total assets of \$650.3 million.

HAWAII COMMUNITY REINVESTMENT CORPORATION -

In an effort to support affordable housing and as part of the Bank's, Creditcorp's and Pioneer's community reinvestment program, the Bank, Creditcorp and Pioneer are members of the Hawaii Community Reinvestment Corporation (the "HCRC"). The HCRC is a consortium of local financial institutions and provides \$50 million in permanent long-term financing for affordable housing projects throughout Hawaii for low and moderate income residents.

The \$50 million loan pool is funded by the member financial institutions who also participate pro rata in each HCRC loan. The Bank's, Creditcorp's and Pioneer's participations in these HCRC loans are included in each of these companies' loan portfolio.

HURRICANE INIKI -

On September 11, 1992, Hurricane Iniki struck the Island of Kauai and, to a lesser extent, the west side of the Island of Oahu, causing extensive property damage. At December 31, 1993, the Bank, Creditcorp and Pioneer held mortgages collateralizing loans of \$92.2 million, \$11.8 million and \$37.9 million, respectively, on commercial and residential properties on Kauai that were damaged by the hurricane. All of the properties were covered by casualty insurance policies which covered not only the owner of the property, but also the lender. The Corporation does not anticipate material losses resulting from damage caused by Hurricane Iniki.

As a result of Hurricane Iniki, several casualty insurers failed or refused to renew and write new homeowners' casualty insurance in Hawaii. The Bank, Creditcorp and Pioneer all require and rely upon the existence of adequate homeowners' casualty insurance on all residential properties which serve as primary collateral for loans. If homeowners' casualty insurance became generally unavailable in Hawaii, the subsidiaries of the Corporation would either be required to discontinue residential real property lending or be exposed to risk of loss if uninsured collateral were destroyed in the event of fire or other casualties. In addition, such loans would not be salable in the secondary market.

However, at this time alternate homeowners' casualty insurance is available to homeowners in Hawaii, but at greater costs than before the hurricane. The Legislature of the State of Hawaii has created the Hawaii Hurricane Relief Fund to offer homeowners' insurance coverage in order to stabilize the casualty insurance market in Hawaii and to increase the availability of reasonably priced homeowners' casualty insurance.

As an alternative to customer-provided insurance, the Bank, Creditcorp and Pioneer have been able to obtain "forced place" homeowners' casualty coverage through insurance policies obtained by the Bank, Creditcorp or Pioneer at the borrower's expense to cover the uninsured mortgage loan.

EMPLOYEES -

As of December 31, 1993, the Corporation had 3,116 full-time equivalent employees. The Bank employed 2,766 persons and nonbank subsidiaries employed 350 persons. None are represented by any collective bargaining agents

and relations with employees are considered excellent.

MONETARY POLICY AND ECONOMIC CONDITIONS -

The earnings and growth of the Corporation are affected not only by general economic conditions, but also by the monetary policies of various governmental regulatory authorities, particularly the Board of Governors of the Federal Reserve System (the "Federal Reserve Board"). The Federal Reserve Board implements national monetary policy by its open market operations in United States Government securities, control of the discount rate, and establishment of reserve requirements against both member and nonmember financial institutions' deposits. These actions have a significant effect on the overall growth and distribution of loans, investments and deposits as well as the rates earned on loans, or paid on deposits.

It is not possible to predict the effect of future changes in monetary policies upon the operating results of the Corporation.

COMPETITION -

Although the laws of Hawaii generally prohibit interstate banking, competition in the financial services industry is intense. Hawaii-based commercial banks, savings institutions, financial services loan companies and credit unions compete against one another. Based upon the latest available figures, total deposits of all financial institutions in Hawaii as of June 30, 1993 amounted to approximately \$21 billion. The two largest bank holding companies, Bancorp Hawaii, Inc. and the Corporation accounted for 26% and 23% of total deposits, respectively. The Corporation's share of deposits includes Pioneer which was acquired on August 6, 1993. The next largest competitors were Bank of America, F.S.B. and American Savings Bank, F.S.B., with 10% and 7%, respectively, of total deposits. In addition, out-of-state mutual funds, insurance companies, brokerage firms and other financial services providers also compete for consumer and commercial business in Hawaii.

Foreign (non-Hawaii) banks and other financial institutions are able to make loans in Hawaii through Edge Act facilities, finance and mortgage company subsidiaries and by loan participations with local banks. United States domestic banks and other financial institutions may make loans directly in Hawaii by qualifying as "foreign lenders" in Hawaii. Foreign banks currently conduct various banking activities in Hawaii, except for retail deposit-taking. Banks and bank holding companies organized under the laws of Pacific Ocean jurisdictions with United States dollar-based economies may acquire Hawaii banks or establish branches in Hawaii, although none has done so to date. Banks and similar financial institutions of countries other than the United States may and do have representative offices or agencies in Hawaii. Under the rules of the Office of Thrift Supervision ("OTS"), federally-chartered savings associations may open branches in, or merge with another savings association located in, any state (including Hawaii), subject to certain conditions.

Hawaii has no law permitting interstate bank acquisitions or branching in Hawaii by foreign (non-Hawaii) banks. The Hawaii Legislature has previously considered and rejected broad interstate banking legislation. However, legislation has been enacted which permits the acquisition of failing state-chartered financial institutions by out-of-state financial institutions in certain limited circumstances. A bill is presently under consideration in the 1994 Hawaii State Legislature which would allow out-of-state bank holding companies to acquire Hawaii banks. Further, both the United States Senate and House of Representatives are considering proposed legislation which, if enacted, could permit non-Hawaii bank holding companies to acquire Hawaii banks or bank holding companies and, if Hawaii law permitted, to operate branches of a non-Hawaii bank in Hawaii. Whether any of the proposed state or federal legislation will be enacted, the form which such legislation may take, and its effect on the Corporation cannot be predicted at this time.

As a bank holding company, the Corporation is subject to the Bank Holding Company Act of 1956 and is subject to supervision by the Federal Reserve Board. In general, the Bank Holding Company Act of 1956 limits the business of bank holding companies to owning or controlling banks and engaging in such other activities as the Federal Reserve Board may determine to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. The Corporation is also regulated and supervised by the OTS as a savings and loan holding company by virtue of its ownership of Pioneer. The various subsidiaries of the Corporation are subject to regulation and supervision by the state banking authorities of Hawaii, the Federal Reserve Board, the FDIC, the OTS and various other regulatory agencies.

Holding Company Structure. The Corporation must obtain the prior approval of the Federal Reserve Board before acquiring direct or indirect ownership or control of any voting shares of any bank if after such acquisition it would own or control, directly or indirectly, more than 5% of the voting shares of such bank; before merging or consolidating with another bank holding company; and before acquiring substantially all of the assets of any additional bank. The Bank Holding Company Act of 1956 also prohibits the acquisition by the Corporation of any such interest in any bank or bank holding company located in a state other than Hawaii unless the laws of the state in which such bank is located expressly authorize such acquisition. With certain exceptions, the Bank Holding Company Act of 1956 prohibits bank holding companies from acquiring direct or indirect ownership or control of more than 5% of any class of voting shares in any company which is not a bank or a bank holding company, unless the Federal Reserve Board determines that the activities of such company are so closely related to banking or managing or controlling banks as to be a proper incident thereto. In making such determinations, the Federal Reserve Board considers, among other things, whether the performance of such activities by a bank holding company would offer benefits to the public that outweigh possible adverse effects. In addition, all acquisitions are reviewed by the Department of Justice for antitrust considerations.

The Corporation is required by the Bank Holding Company Act of 1956 to file annual reports and such other reports as may be required from time to time with the Federal Reserve Board. In addition, the Federal Reserve Board performs periodic examinations of the Corporation and certain of its subsidiaries.

The principal source of the Corporation's cash revenue has been dividends and interest received from the Bank and other subsidiaries of the Corporation. The Bank, Pioneer and Creditcorp are subject to regulatory limitations on the amount of dividends they may declare or pay. In addition, the payment of dividends by the Corporation is limited to an amount not greater than 50% of its consolidated net income as stipulated in the debt covenants of a certain line of credit. There are also statutory limits on the transfer of funds to the Corporation and certain of its nonbanking subsidiaries by the Bank, whether in the form of loans or other extensions of credit, investments or asset purchases. Such transfers by the Bank to the Corporation or any such nonbanking subsidiary are limited in amount to 10% of the Bank's capital and surplus, or 20% in the aggregate. Furthermore, such loans and extensions of credit are required to be collateralized in specified amounts.

If, in the opinion of the applicable regulatory authority, a bank under its jurisdiction is engaged in or is about to engage in an unsafe or unsound practice (which, depending on the financial condition of the bank, could include the payment of dividends), such authority may require, after notice and hearing, that such bank cease and desist from such practice. The Federal Reserve Board and the FDIC have issued policy statements which provide that, as a general matter, insured banks and bank holding companies may only pay dividends out of current operating earnings. Under Hawaii law, the Bank is prohibited from declaring or paying any dividends in excess of its retained earnings.

Under Federal Reserve Board policy, a bank holding company is expected to act as a source of financial strength

to each subsidiary bank and to make capital injections into a troubled subsidiary bank, and the Federal Reserve Board may charge the bank holding company with engaging in unsafe and unsound practices for failure to commit resources to a subsidiary bank. This capital injection may be required at times when the Corporation may not have the resources to provide it. Any capital loans by the Corporation to its subsidiary bank would be subordinate in right of payment to deposits and to certain other indebtedness of such subsidiary bank. In connection with its application to the Federal Reserve Board for authority to acquire Pioneer, the Corporation committed that Pioneer will meet all present and future minimum capital ratios adopted for savings associations by OTS or the FDIC. In the event of the bankruptcy of the Corporation, this commitment would be assumed by the bankruptcy trustee and be entitled to a priority of payment.

In addition, depository institutions insured by the FDIC can be held liable for any losses incurred by, or reasonably expected to be incurred by, the FDIC after August 9, 1989 in connection with (i) the default of a commonly controlled FDIC-insured depository institution or (ii) any assistance provided by the FDIC to a commonly controlled FDIC-insured depository institution in danger of default. "Default" is defined generally as the appointment of a conservator or receiver and "in danger of default" is defined generally as the existence of certain conditions indicating that a "default" is likely to occur in the absence of regulatory assistance. Accordingly, in the event that any insured subsidiary of the Corporation causes a loss to the FDIC, other insured subsidiaries of the Corporation could be required to compensate the FDIC by reimbursing it for the amount of such loss. Any such obligation by the Corporation's insured subsidiaries to reimburse the FDIC would stand senior to their obligations, if any, to the Corporation.

Federal Deposit Insurance Corporation Improvement Act of 1991. In December, 1991, Congress enacted the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA"), which substantially revises the bank regulatory and funding provisions of the Federal Deposit Insurance Act and makes revisions to several other federal banking statutes. FDICIA provides for, among other things, (i) a recapitalization of the Bank Insurance Fund by increasing the FDIC's borrowing authority; (ii) annual on-site examinations of federally-insured depository institutions by banking regulators; (iii) publicly available annual financial condition and management reports for financial institutions, including audits by independent accountants; (iv) the establishment of uniform accounting standards by federal banking agencies; (v) the establishment of "prompt corrective action" standards for depository institutions based on five levels of capitalization, with more scrutiny and restrictions placed on institutions with lower levels of capital; (vi) additional grounds for the appointment of a conservator or receiver for a failed or failing depository institution; (vii) a requirement that the FDIC use the least-cost method of resolving cases of troubled institutions in order to keep the costs to insurance funds at a minimum; (viii) more comprehensive regulation and examination of foreign banks; (ix) consumer protection provisions including a Truth-in-Savings Act; (x) a requirement that the FDIC establish a risk-based deposit insurance assessment system to be in effect no later than January 1, 1994; (xi) restrictions or prohibitions on accepting brokered deposits except for institutions which significantly exceed minimum capital requirements; (xii) general restrictions on the activities as principal and equity investments of state-chartered banks to those permissible for national banks unless approved by the FDIC; and (xiii) certain limits on deposit insurance coverage.

A central feature of FDICIA is the requirement that the federal banking agencies take "prompt corrective action" with respect to insured depository institutions that do not meet minimum capital requirements. FDICIA establishes five capital levels applicable to such institutions (including the Bank): "well capitalized," "adequately capitalized," "undercapitalized," "significantly undercapitalized" and "critically undercapitalized." Under the regulations adopted by the federal banking agencies to implement these provisions of FDICIA, a depository institution is "well capitalized" if it has (i) a total risk-based capital ratio of 10% or greater, (ii) a Tier 1 risk-based capital ratio of 6% or greater, (iii) a leverage ratio of 5% or greater and (iv) is not subject to any order or written directive to meet and maintain a specific capital level for any capital measure. An "adequately capitalized" institution is defined as one that has (i) a total risk-based capital ratio of 8% or greater, (ii) a Tier 1 risk-based capital ratio of 4% or greater and (iii) a leverage ratio of 4% or greater (or 3% or greater in the case of a bank with a composite CAMEL rating

of 1). A depository institution is considered (i) "undercapitalized" if it has (A) a total risk-based capital ratio of less than 8%, (B) a Tier 1 risk-based capital ratio of less than 4% or (C) a leverage ratio of less than 4% (or 3% in the case of an institution with a CAMEL rating of 1), (ii) "significantly undercapitalized" if it has (A) a total risk-based capital ratio of less than (A) a total risk-based capital ratio of less than of tangible equity to total assets equal to or less than 3% or (C) a leverage ratio of less than 3% and (iii) "critically undercapitalized" if it has a ratio of tangible equity to total assets equal to or less than 2%. An institution may be deemed by the regulators to be in a capitalization category that is lower than is indicated by its actual capital position if, among other things, it receives an unsatisfactory examination rating.

FDICIA generally prohibits a depository institution from making any capital distribution (including payment of a cash dividend) or paying any management fees to its holding company if the depository institution is, or would thereafter be, undercapitalized. Undercapitalized depository institutions are subject to growth limitations and are required to submit a capital restoration The federal banking agencies may not accept a capital plan without determining, among other things, that the plan is based on realistic assumptions and is likely to succeed in restoring the depository institution's capital. In addition, for a capital restoration plan to be acceptable, the depository institution's parent holding company must guarantee that the institution will comply with such capital restoration plan. The aggregate liability of the parent holding company under such guarantee is limited to the lesser of (i) an amount equal to 5% of the depository institution's total assets at the time it became undercapitalized, or (ii) the amount which is necessary (or would have been necessary) to bring the institution into compliance with all capital standards applicable to such institution as of the time it fails to comply with the plan. If a depository institution fails to submit an acceptable plan, it is treated as if it is significantly undercapitalized.

Significantly undercapitalized depository institutions may be subject to a number of other requirements and restrictions, including orders to sell sufficient voting stock to become adequately capitalized, requirements to reduce total assets and cessation of receipt of deposits from correspondent banks. Critically undercapitalized institutions are subject to the appointment of a receiver or conservator, generally within 90 days of the date such institution becomes critically undercapitalized.

FDICIA also provides for increased funding of the FDIC insurance funds. In addition, the FDIC has implemented a risk-based deposit insurance assessment system under which the assessment rate for an insured institution may vary according to the regulatory capital levels of the institution and other factors (including supervisory evaluations). There is an eight basis point spread between the highest and lowest assessment rates, so that banks classified as strongest by the FDIC are subject to a rate of .23%, and banks classified as weakest by the FDIC are subject to a rate of .31%.

FDICIA also requires the federal banking agencies to prescribe standards for depository institutions and their holding companies relating to internal controls, information systems, internal audit systems, loan documentation, credit underwriting, interest rate exposure, asset growth, executive compensation, a maximum ratio of classified assets to capital, minimum earnings sufficient to absorb losses, a minimum ratio of market value to book value for publicly traded shares and such other standards as the agencies deem appropriate. In November, 1993 the federal banking agencies published proposed regulations to implement these provisions of FDICIA. The proposed rules set forth general standards to be observed but for the most part do not mandate specific operating standards to be followed. At this time the Corporation believes that such rules, if adopted in their proposed form, will not have a material effect on the Corporation's operations or financial results.

Capital Requirements. The Corporation and certain of its subsidiaries are subject to regulatory capital guidelines issued by the federal banking agencies. Information with respect to the applicable capital requirements is included in "Management's Discussion and Analysis of Financial Condition and Results of Operations" (Page 32) in the Financial Review section of the Corporation's Annual Report 1993, and is incorporated herein by reference thereto.

FDICIA requires each federal banking agency to revise its risk-based capital standards to ensure that those standards take adequate account of interest rate risk, concentration of credit risk and the risk of nontraditional activities, as well as reflect the actual performance and expected risk of loss on multi-family mortgages. In September, 1993 the federal banking agencies issued notices of proposed rulemaking soliciting comment on proposed revisions to the risk-based capital rules to take account of interest rate risk. The notice proposes alternative approaches for determining the additional amount of capital, if any, that may be required to compensate for interest rate risk. The first approach would reduce an institution's risk-based capital ratios by an amount based on its measured exposure to interest rate risk in excess of a specified threshold. The second approach would assess the need for additional capital on a case-by-case basis, considering both the level of measured exposure and qualitative risk factors. The Corporation cannot assess at this point the impact that such proposals would have on its capital ratios.

In February, 1994 the federal banking agencies issued proposed rules to revise the risk-based capital standards to take account of concentration of credit risk and the risks of nontraditional activities. The proposed rules specify that concentrations of credit risk will be considered as important factors in assessing an institution's overall capital adequacy, but did not provide for any specific adjustments to the risk-based capital standards for such risks or for the risks of nontraditional activities.

12 STATISTICAL DISCLOSURES -

Guide 3 of the "Guides for the Preparation and Filing of Reports and Registration Statements" under the Securities Act of 1933 sets forth certain statistical disclosures in the "Description of Business" section of bank holding company filings with the Securities and Exchange Commission. The statistical information requested is presented in the following tables and also in the tables shown below in the Corporation's Annual Report 1993, which tables are incorporated herein by reference thereto. The tables and information contained therein have been prepared by the Corporation and have not been audited or reported upon by the Corporation's independent accountants.

Information in response to the following sections of Guide 3 is included in the Financial Review section of the Corporation's Annual Report 1993, and is incorporated herein by reference thereto:

	DISCLOSURE REQUIREMENTS	FIRST HAWAIIAN, INC. ANNUAL REPORT 1993 (EXHIBIT 13)
I.	Distribution of Assets, Liabilities and Stockholders' Equity; Interest Rates and Interest Differential - A. Average balance sheets B. Analysis of net interest earnings C. Dollar amount of change in interest income and interest expense	20 - 21 20 - 21 22
II.	Investment Portfolio - C. Investment securities in excess of 10% of stockholders' equity	43
III.	Loan and Lease Portfolio - A. Types of loans and leases C. Risk elements 1. Nonaccrual, past due and restructured loans and leases 4. Loan concentrations	27 28 27
IV.	Summary of Loan and Lease Loss Experience A. Analysis of loss experience B. Breakdown of the allowance for loan and lease losses	24 25
٧.	Deposits A. Average amount and average rate paid on deposits D. Maturity distribution of domestic time certificates of deposits of \$100,000 or more E. Time certificates of deposit in denominations of \$100,000 or more issued by foreign offices	29 29 44
VI.	Return on Equity and Assets	16
VII.	Short-Term Borrowings	44

PAGE NUMBERS IN

13 I. Distribution of Assets, Liabilities and Stockholders' Equity; Interest Rates and Interest Differential

Table I-C presents the percentages of total assets and total liabilities attributable to foreign operations. For this purpose, assets attributable to foreign operations are defined as assets in foreign offices and loans and leases to and investments in customers domiciled outside the United States. Deposits received and other liabilities are classified on the basis of domicile of the creditor of the creditor.

FIRST HAWAIIAN, INC. AND SUBSIDIARIES TABLE I-C PERCENTAGE OF TOTAL ASSETS AND TOTAL LIABILITIES ATTRIBUTABLE TO FOREIGN OPERATIONS

	YEAR ENDED DECEMBER 31,		
	1993	1992	1991
Average foreign assets to average total assets	6.19%	6.51%	7.78%
Average foreign liabilities to average total liabilities	2.07%	2.68%	4.47%

II. INVESTMENT SECURITIES PORTFOLIO

Table II-A presents the book value of investment securities by the following major categories at year-end for the years indicated.

FIRST HAWAIIAN, INC. AND SUBSIDIARIES TABLE II-A SCHEDULE OF INVESTMENT SECURITIES BY BOOK VALUE

	DECEMBER 31,		
	1993	1992	1991
		(in millions)	
U.S. Treasury and other U.S. Government agencies and corporations	\$ 918	\$ 685	\$ 789
States and political subdivisions	204	196	197
Other	108	70	239
Total	\$1,230 =====	\$ 951 =====	\$1,225 =====

Table II-B presents the maturities of investment securities, excluding securities which have no stated maturity at December 31, 1993, and the weighted average yields (for obligations exempt from Federal income taxes on a taxable equivalent basis assuming a 35% tax rate) of such securities. The tax equivalent adjustment is made for items exempt from Federal income taxes to make them comparable with taxable items before any income taxes are applied.

FIRST HAWAIIAN, INC. AND SUBSIDIARIES
TABLE II-B
SCHEDULE OF INVESTMENT SECURITIES BY MATURITIES AND AVERAGE YIELDS
DECEMBER 31, 1993

		THIN YEAR	BUT V	ER ONE √ITHIN YEARS	AFTER BUT W TEN Y	ITHIN
	AMOUNT	YIELD	AMOUNT	YIELD	AMOUNT	YIELD
			(dollars	in millions)		
U.S. Treasury and other U.S. Government agencies and corporations	\$340	3.86%	\$351	4.08%	\$ 83	4.59%
States and political subdivisions	17	9.49	154	7.98	6	5.55
Other	3	3.35	12	3.82	17 	3.54
Total	\$360 ====	4.13%	\$517 ====	5.24%	\$106 ====	4.48%

	MAIL	DKIII		
	AFTER TEN YEARS		TOTAL	
	AMOUNT	YIELD	AMOUNT	YIELD
		(dollars in	millions)	
U.S. Treasury and other U.S. Government agencies and corporations	\$144	5.18%	\$918	4.22%
States and political subdivisions	26	7.21	203	7.56
Other	42 	3.53	74	3.57
Total	\$212	5.14%	\$1,195	4.76%

- (1) The weighted average yields were calculated on the basis of the cost and effective yields weighted for the scheduled maturity of each security.
- (2) Includes \$98 million of securities in the following maturity categories with optional tender dates (\$10 million within 1 to 5 years; \$20 million within 5 to 10 years; and \$68 million after 10 years).

Table III-B presents maturity and interest rate sensitivity data for all loans and leases except real estate - residential, real estate - commercial, consumer, credit cards and lease financing at December 31, 1993.

FIRST HAWAIIAN, INC. AND SUBSIDIARIES TABLE III-B LOAN AND LEASE MATURITY AND INTEREST RATE SENSITIVITY DATA DECEMBER 31, 1993

	ONE YEAR OR LESS	AFTER ONE YEAR TO FIVE YEARS	OVER FIVE YEARS	TOTAL
		(in mil		
Commercial, financial and agricultural	\$1,118	\$ 79	\$ 12	\$ 1,209
Real estate - construction	287	28	2	317
Foreign	116	81	14	211
	\$1,521 =====	\$ 188 =====	\$ 28 =====	1,737
Real estate:				
Residential				1,786
Commercial				883
Consumer				312
Credit cards				148
Lease financing				201
Total loans and leases				\$ 5,067 ======
Loans with fixed or predetermined interest rates	\$ 108	\$ 96	\$ 13	\$ 217
Loans with floating or adjustable interest rates	1,413	92	15 	1,520
	\$1,521 =====	\$ 188 =====	\$ 28 =====	\$ 1,737 ======

Table III-C (3) presents a summary of the Corporation's foreign outstandings to each country which exceeded 1% of total assets for the years indicated. Foreign outstandings are defined as the balances outstanding of cross-border loans, acceptances, interest-bearing deposits with other banks, other interest-bearing investments and any other monetary assets. At December 31, 1993, the Corporation's total foreign outstandings amounted to \$256 million.

FIRST HAWAIIAN, INC. AND SUBSIDIARIES TABLE III-C (3) FOREIGN OUTSTANDINGS TO EACH COUNTRY WHICH EXCEEDS 1% OF TOTAL ASSETS

	BANKS AND OTHER FINANCIAL INSTITUTIONS	COMMERCIAL AND INDUSTRIAL	OTHER	TOTAL
		(in thous	ands)	
AT DECEMBER 31, 1993	\$ -	\$ -	\$ -	\$ -
	======	=======	=======	=======
At December 31, 1992	\$ -	\$ -	\$ -	\$ -
	=======	=======	======	======
At December 31, 1991 -	\$ 121,621	\$ -	\$ -	\$ 121,621
Japan	=======	======	======	=======

ITEM 2. **PROPERTIES**

A subsidiary of the Bank is the sole general partner in a Hawaii limited partnership which owns all of a city block in downtown Honolulu containing . 55,775 square feet. The Bank's interest in the limited partnership is 99.25%. The administrative headquarters of the Corporation and the main branch of the Bank were formerly located on a portion of the city block. The buildings were demolished and the Bank has begun construction of a modern banking center on this city block. The new headquarters building will include 418,000 square feet of gross office space, including the Bank's main branch and administrative headquarters of the Corporation and the Bank. The new building is anticipated to be completed in 1996. Commencing in March 1993, the Bank leased approximately 119,000 square feet in another office building for use as an interim administrative headquarters and main branch until completion of the new The interim office building is approximately a block and a half structure. from the old administrative headquarters and main branch.

Seventeen of the Bank's offices in Hawaii are located on land owned in fee simple by the Bank. The other branches of the Bank, Pioneer and Creditcorp are situated in leasehold premises or in buildings constructed by the Bank or Creditcorp on leased land (see "Note 16. Lease Commitments" (page 50) in the Financial Review section of the Corporation's Annual Report 1993, which is incorporated herein by reference thereto).

In early 1993, the Bank completed construction of an operations center located on 125,919 square feet of land owned in fee simple by the Bank in an industrial area near downtown Honolulu. The Bank occupies all of the four-story building which is anticipated to enable the Bank to meet its projected technological requirements into the twenty-first century.

The Bank is also constructing a new five-story, 75,000 square foot office building, including a branch, on property owned in fee simple in Maite, Guam to replace its Agana, Guam Branch. Completion of the building is anticipated for late 1994.

ITEM 3. LEGAL PROCEEDINGS

The legal proceeding brought by MasterCard International, Inc. in the United States District Court for the Southern District of New York against Dean Witter, Discover & Co. and others, in which the Bank and others were named as counterclaim defendants, which was described in the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1992, was settled and dismissed without the Corporation or the Bank making any payment or assuming any other obligation. The date of the dismissal of claims against the Bank was January 21, 1994.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of security holders during the fourth quarter of the fiscal year ended December 31, 1993.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

Required information is included in "Common Stock Information" (Page 15) in the Financial Review section of the Corporation's Annual Report 1993, and is incorporated herein by reference thereto.

ITEM 6. SELECTED FINANCIAL DATA

Required information is included in "Summary of Selected Consolidated Financial Data" (Page 16) in the Financial Review section of the Corporation's Annual Report 1993, and is incorporated herein by reference thereto.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Required information is included in "Management's Discussion and Analysis of Financial Condition and Results of Operations" (Pages 17 through 32) in the Financial Review section of the Corporation's Annual Report 1993, and is incorporated herein by reference thereto.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The following information is included in the Financial Review section of the Corporation's Annual Report 1993, which is incorporated herein by reference thereto as follows:

	PAGE NUMBER
Report of Independent Accountants First Hawaiian, Inc. and Subsidiaries:	34
Consolidated Balance Sheets at December 31, 1993 and 1992 Consolidated Statements of Income for the years ended	35
December 31, 1993, 1992 and 1991	36
Consolidated Statements of Changes in Stockholders' Equity for the years ended December 31, 1993, 1992 and 1991	37
Consolidated Statements of Cash Flows for the years ended December 31, 1993, 1992 and 1991	38
First Hawaiian, Inc. (Parent Company): Balance Sheets at December 31, 1993 and 1992	49
Statements of Income for the years ended December 31, 1993, 1992 and 1991	49
Statements of Cash Flows for the years ended December 31, 1993, 1992 and 1991	50
Notes to Financial Statements Summary of Quarterly Financial Data (Unaudited)	39 - 51 33

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

19

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

Required information relating to directors is included in "Election of Directors" and "Directors Continuing in Office and Executive Officers" (Pages 3 through 9) of the Corporation's Proxy Statement, and is incorporated herein by reference thereto.

EXECUTIVE OFFICERS OF THE REGISTRANT

Listed below are the executive officers of the Corporation with their positions, age and business experience during the past five years:

OFFICER	AGE	BUSINESS EXPERIENCE DURING LAST 5 YEARS (ALL WITH THE CORPORATION AND THE BANK EXCEPT AS OTHERWISE INDICATED)
Walter A. Dods, Jr. Chairman, Chief Executive Officer and Director	52	Chairman of the Board and Chief Executive Officer of the Corporation since 1989; President of the Corporation from 1989 -1991; Executive Vice President of the Corporation from 1982 -1989; Director of the Corporation since 1983; Chairman of the Board and Chief Executive Officer of the Bank since 1989; President of the Bank from 1984 - 1989; Director of the Bank since 1979. Mr. Dods has been with the Bank since 1968.
John A. Hoag President and Director	61	President and Director of the Corporation since 1991; Executive Vice President of the Corporation from 1982 - 1991; Director and President of the Bank since 1989; Executive Vice President of the Bank from 1979 - 1989. Mr. Hoag has been with the Bank since 1960.
Philip H. Ching Executive Vice President	63	Executive Vice President of the Corporation since 1989; Vice President of the Corporation from 1974 - 1989; Vice Chairman of the Bank since 1991; Executive Vice President of the Bank from 1989 - 1991; Senior Vice President and Administrative Assistant to the Chairman and Chief Executive Officer of the Bank from 1979 - 1989. Mr. Ching has been with the Bank and a trust company acquired by the Bank since 1957.
Donald G. Horner Executive Vice President	43	Executive Vice President of the Corporation since 1989; Vice President of the Corporation from 1987 - 1989; Chairman and Chief Executive Officer of Creditcorp since 1992; President of Creditcorp from 1985 - 1992; Executive Vice President of the Bank since 1992; President of FHL since 1985. Mr. Horner has been with the Bank since 1978.

(ALL WITH THE CORPORATION AND THE BANK EXCEPT AS OTHERWISE INDICATED) OFFICER AGE Howard H. Karr 51 Executive Vice President and Treasurer of the Corporation Executive Vice President and since 1989; Vice President and Treasurer of the Corporation from 1978 - 1989; Vice Chairman and Chief Financial Officer of Treasurer the Bank since 1991; Executive Vice President and Chief Financial Officer of the Bank from 1989 - 1991; Senior Vice President and Controller of the Bank from 1979 - 1989. Mr. Karr has been with the Bank since 1973. Herbert E. Wolff 68 Senior Vice President and Secretary of the Corporation since 1993; Vice President and Secretary of the Corporation from 1982 - 1993; Senior Vice President and Secretary of the Bank Senior Vice President and Secretary

BUSINESS EXPERIENCE DURING LAST 5 YEARS

since 1986. Mr. Wolff joined the Bank in 1981.

There are no family relationships among any of the executive officers of the Corporation. There is no arrangement or understanding between any such executive officer and another person pursuant to which he was elected as an officer. The term of office of each officer is at the pleasure of the Board of Directors of the Corporation.

ITEM 11. EXECUTIVE COMPENSATION

Required information is included in "Remuneration of Directors" and "Executive Compensation" (Pages 9 through 20) of the Corporation's Proxy Statement, and is incorporated herein by reference thereto.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

Required information is included in "Outstanding Shares; Voting Rights," "Election of Directors" and "Directors Continuing in Office and Executive Officers" (Pages 2 through 8) of the Corporation's Proxy Statement, and is incorporated herein by reference thereto.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Required information is included in "Certain Transactions" (Pages 20 and 21) of the Corporation's Proxy Statement, and is incorporated herein by reference thereto.

PART IV

ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

PAGE NUMBER IN
FIRST HAWAIIAN,
INC. ANNUAL
REPORT 1993
(EXHIBIT 13)

(a) 1. Financial Statements

The following financial statements are incorporated by reference in Part II (Item 8) of this Form 10-K:

Report of Independent Accountants	34
First Hawaiian, Inc. and Subsidiaries: Consolidated Balance Sheets at December 31, 1993 and 1992	35
Consolidated Statements of Income for the	
years ended December 31, 1993, 1992 and 1991 Consolidated Statements of Changes in Stockholders' Equity	36
for the years ended December 31, 1993, 1992 and 1991	37
Consolidated Statements of Cash Flows for the	
years ended December 31, 1993, 1992 and 1991 First Hawaiian, Inc. (Parent Company):	38
Balance Sheets at December 31, 1993 and 1992	49
Statements of Income for the years ended	
December 31, 1993, 1992 and 1991 Statements of Cash Flows for the years ended	49
December 31, 1993, 1992 and 1991	50
Notes to Financial Statements	39 - 51

2. Financial Statement Schedules

Schedules to the consolidated financial statements required by Article 9 of Regulation S-X are not required under the related instructions, or the information is included in the consolidated financial statements, or are inapplicable, and therefore have been omitted.

3. Exhibits

- Exhibit 3 (i) Certificate of Incorporation Incorporated by reference to Exhibit 3 to the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1990 as filed with the Securities and Exchange Commission.
 - (ii) Bylaws Incorporated by reference to Exhibit 3 to the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1987 as filed with the Securities and Exchange Commission.

- (i) Equity Incorporated by reference to Exhibit 3(i) hereto.
- (ii) Debt Indenture, dated as of August 9, 1993 between First Hawaiian, Inc. and The First National Bank of Chicago, Trustee.

Exhibit 10 Material contracts

- (i) Lease dated September 13, 1967, as amended April 21, 1987, between the Trustees under the Will and of the Estate of Samuel M. Damon, Deceased, and First National Bank of Hawaii (predecessor of the Bank) is incorporated by reference to Exhibit 10 to the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1987 as filed with the Securities and Exchange Commission.
- (ii) Lease dated May 20, 1982, as amended April 23, 1987, between the Trustees under the Will and of the Estate of Samuel M. Damon, Deceased, and First Hawaiian Bank is incorporated by reference to Exhibit 10 to the Corporation's Annual Report on Forms 10-K for the fiscal years ended December 31, 1987, 1985 and 1980 as filed with the Securities and Exchange Commission.
- (iii) Lease Agreement dated as of December 1, 1993 between REFIRST, Inc. and First Hawaiian Bank.
- (iv) Construction Management, Escrow and Development Agreement dated as of December 1, 1993 among REFIRST, Inc., First Hawaiian Bank and First Fidelity Bank, N.A., Pennsylvania.
- (v) Ground Lease dated as of December 1, 1993 among First Hawaiian Center Limited Partnership, FH Center, Inc. and REFIRST, Inc.
- (vi) Stock Incentive Plan of First Hawaiian, Inc. dated November 22, 1991 is incorporated by reference to Exhibit 10 to the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1991 as filed with the Securities and Exchange Commission.
- (vii) Long-Term Incentive Plan of First Hawaiian, Inc. effective January 1, 1992 is incorporated by reference to Exhibit 10 to the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1991 as filed with the Securities and Exchange Commission.

- (viii) First Hawaiian, Inc. Supplemental Executive Retirement Plan, as amended August 18, 1988 is incorporated by reference to Exhibit 10 to the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1992 as filed with the Securities and Exchange Commission.
 - (ix) Amendment One to First Hawaiian, Inc. Supplemental Executive Retirement Plan, effective January 1, 1992 is incorporated by reference to Exhibit 10 to the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1992 as filed with the Securities and Exchange Commission.
 - (x) First Hawaiian, Inc. Incentive Plan for Key Executives, as amended through December 13, 1989 is incorporated by reference to Exhibit 10 to the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1992 as filed with the Securities and Exchange Commission.
 - (xi) Directors' Retirement Plan, effective as of January 1, 1992 is incorporated by reference to Exhibit 10 to the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1992 as filed with the Securities and Exchange Commission.
- Exhibit 12 Statement re: computation of ratios.
- Exhibit 13 Annual report to security holders Corporation's Annual Report 1993.
- Exhibit 22 Subsidiaries of the registrant.
- Exhibit 23 Consent of independent accountants.
- (b) Reports on Form 8-K No reports on Form 8-K were filed during the last quarter of the fiscal year ended December 31, 1993.
- (c) Response to this item is the same as Item 14(a)3.
- (d) Response to this item is the same as Item 14(a)2.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

FIRST HAWAIIAN, INC. (Registrant)

By /s/ HOWARD H. KARR

HOWARD H. KARR
EXECUTIVE VICE PRESIDENT AND TREASURER

Date: March 17, 1994

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the date indicated.

/s/ WALTER A. DODS, JR. Walter A. Dods, Jr.	Chairman, Chief Executive Officer & Director	March 17, 1994 Date
/s/ JOHN C. COUCH	Director	March 17, 1994
John C. Couch		Date
/s/ JULIA ANN FROHLICH	Director	March 17, 1994
Julia Ann Frohlich		Date
/s/ PAUL MULLIN GANLEY	Director	March 17, 1994
Paul Mullin Ganley		Date
/s/ DAVID M. HAIG	Director	March 17, 1994
David M. Haig		Date
/s/ JOHN A. HOAG	President	March 17, 1994
John A. Hoag	& Director	Date
/s/ BERT T. KOBAYASHI, JR.	Director	March 17, 1994
Bert T. Kobayashi, Jr.		Date
/s/ RICHARD T. MAMIYA	Director	March 17, 1994
Richard T. Mamiya		Date
/s/ FUJIO MATSUDA	Director	March 17, 1994
Fujio Matsuda		Date
/s/ RODERICK F. McPHEE	Director	March 17, 1994
Roderick F. McPhee		Date
/s/ ROBERT J. PFEIFFER	Director	March 17, 1994
Robert J. Pfeiffer		Date
/s/ GEORGE P. SHEA, JR.	Director	March 17, 1994
George P. Shea, Jr.		Date
/s/ FRED C. WEYAND	Director	March 17, 1994
Fred C. Weyand		Date
/s/ ROBERT C. WO	Director	March 17, 1994
Robert C. Wo		Date
/s/ HOWARD H. KARR	Executive Vice President	March 17, 1994
Howard H. Karr	& Treasurer (Principal financial and accounting officer)	Date

EXHIBIT NUMBER			DESCRIPTION	SEQUENTIALLY NUMBERED PAGE
	3	(i)	Certificate of Incorporation - Incorporated by reference to Exhibit 3 to the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1990 as filed with the Securities and Exchange Commission.	-
		(ii)	Bylaws - Incorporated by reference to Exhibit 3 to the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1987 as filed with the Securities and Exchange Commission.	-
	4		Instruments defining rights of security holders, including indentures.	
		(i)	Equity - Incorporated by reference to Exhibit 3(i) hereto.	-
		(ii)	Debt - Indenture, dated as of August 9, 1993 between First Hawaiian, Inc. and The First National Bank of Chicago, Trustee.	
	10		Material contracts	
		(i)	Lease dated September 13, 1967, as amended April 21, 1987, between the Trustees under the Will and of the Estate of Samuel M. Damon, Deceased, and First National Bank of Hawaii (predecessor of the Bank) is incorporated by reference to Exhibit 10 to the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1987 as filed with the Securities and Exchange Commission.	-
		(ii)	Lease dated May 20, 1982, as amended April 23, 1987, between the Trustees under the Will and of the Estate of Samuel M. Damon, Deceased, and First Hawaiian Bank is incorporated by reference to Exhibit 10 to the Corporation's Annual Report on Forms 10-K for the fiscal years ended December 31, 1987, 1985 and 1980 as filed with the Securities and Exchange Commission.	-
		(iii)	Lease Agreement dated as of December 1, 1993 between REFIRST, Inc. and First Hawaiian Bank.	
		(iv)	Construction Management, Escrow and Development Agreement dated as of December 1, 1993 among REFIRST, Inc., First Hawaiian Bank and First Fidelity Bank, N.A., Pennsylvania.	
		(v)	Ground Lease dated as of December 1, 1993 among First Hawaiian Center Limited Partnership, FH Center, Inc. and REFIRST, Inc.	

12

13

- (vi) Stock Incentive Plan of First Hawaiian, Inc. dated November 22, 1991 is incorporated by reference to Exhibit 10 to the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1991 as filed with the Securities and Exchange Commission.
- (vii) Long-Term Incentive Plan of First Hawaiian, Inc. effective January 1, 1992 is incorporated by reference to Exhibit 10 to the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1991 as filed with the Securities and Exchange Commission.
- (viii) First Hawaiian, Inc. Supplemental Executive Retirement Plan, as amended August 18, 1988 is incorporated by reference to Exhibit 10 to the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1992 as filed with the Securities and Exchange Commission.
 - (ix) Amendment One to First Hawaiian, Inc. Supplemental Executive Retirement Plan, effective January 1, 1992 is incorporated by reference to Exhibit 10 to the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1992 as filed with the Securities and Exchange Commission.
 - (x) First Hawaiian, Inc. Incentive Plan for Key Executives, as amended through December 13, 1989 is incorporated by reference to Exhibit 10 to the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1992 as filed with the Securities and Exchange Commission.
 - (xi) Directors' Retirement Plan, effective as of January 1, 1992 is incorporated by reference to Exhibit 10 to the Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1992 as filed with the Securities and Exchange Commission.
- Statement re: computation of ratios.
 - Annual report to security holders Corporation's Annual Report 1993.
- 22 Subsidiaries of the registrant.
- 23 Consent of independent accountants.

EXHIBIT 4(ii)

DEBT - INDENTURE, DATED AS OF AUGUST 9, 1993 BETWEEN FIRST HAWAIIAN, INC. AND THE FIRST NATIONAL BANK OF CHICAGO

FIRST HAWAIIAN, INC.

THE FIRST NATIONAL BANK OF CHICAGO,

Trustee

SUBORDINATED DEBT SECURITIES

INDENTURE

Dated as of August 9, 1993

		Page
	RECITALS OF THE COMPANY	1
	ARTICLE I	
	Definitions and Other Provisions	
	of General Application	1
Section 1.1	Definitions	1
Section 1.2	Compliance Certificates and Opinions	9
Section 1.3	Form of Documents Delivered to Trustee	9
Section 1.4	Acts of Holders; Record Dates	10
Section 1.5	Notices, Etc., to Trustee and Company	11
Section 1.6	Notice to Holders; Waiver	12
Section 1.7	Conflict with Trust Indenture Act	12
Section 1.8	Effect of Headings and Table of Contents	13
Section 1.9	Successors and Assigns	13
Section 1.10	Separability Clause	13
Section 1.11	Benefits of Indenture	13
Section 1.12	Governing Law	13
Section 1.13	Legal Holidays	13
	ADTTOLE IT	
	ARTICLE II	
	Security Forms	14
Section 2.1	Forms Generally	14
Section 2.2	Form of Face of Security	14
Section 2.3	Form of Reverse of Security	16
Section 2.4	Form of Legend for Global Securities	21
Section 2.5	Form of Trustee's Certificate of	
	Authentication	21
	ADTTOLE TIT	
	ARTICLE III	
	The Securities	21
Section 3.1	Amount Unlimited; Issuable in Series	21
Section 3.2	Denominations	25
Section 3.3	Execution, Authentication, Delivery	
	and Dating	25
Section 3.4	Temporary Securities	26
Section 3.5	Registration, Registration of	
	Transfer and Exchange	27
Section 3.6	Mutilated, Destroyed, Lost and	
	Stolen Securities	29
Section 3.7	Payment of Interest; Interest	
	Rights Preserved	30

- ------

NOTE: This table of contents shall not, for any purpose, be deemed to be a part of the Indenture.

			Page
Section		Persons Deemed Owners	31
Section Section		Cancellation	32 32
		ARTICLE IV	
		Satisfaction and Discharge	32
Section	4.1	Satisfaction and Discharge of Indenture	32
Section	4.2	Application of Trust Money	34
		ARTICLE V	
		Remedies	34
Section		Events of Default	34
Section	5.2	Acceleration of Maturity; Rescission and Annulment	36
Section	5.3	Collection of Indebtedness and Suits	
Cootion	- 4	for Enforcement by Trustee	37
Section Section		Trustee May File Proofs of Claim	37
		Possession of Securities	38
Section		Application of Money Collected	38
Section Section		Limitation on Suits	39
Section	5.0	Receive Principal, Premium and Interest	39
Section		Restoration of Rights and Remedies	40
Section		Rights and Remedies Cumulative	40
Section Section		Delay or Omission Not Waiver	40 40
Section		Control by Holders	40
Section		Undertaking for Costs	41
Section		Waiver of Usury, Stay or Extension Laws	42
		ARTICLE VI	
		The Trustee	42
Section	6.1	Certain Duties and Responsibilities	42
Section		Notice of Defaults	42
Section		Certain Rights of Trustee	43
Section	6.4	Not Responsible for Recitals or Issuance of Securities	44
Section	6 5	May Hold Securities	44
Section		Money Held in Trust	44
Section		Compensation and Reimbursement	44
Section		Disqualification; Conflicting Interests	45
Section	6.9	Corporate Trustee Required; Eligibility	45
Section	6.10	Resignation and Removal;	45

- ------

			Page
		Appointment of Successor	. 46
Section		Acceptance of Appointment by Successor	. 47
Section	6.12	Merger, Conversion, Consolidation or Succession to Business	. 48
Section	6.13	Preferential Collection of Claims	
		Against Company	
Section	6.14	Appointment of Authenticating Agent	. 49
		ARTICLE VII	
		Holders' Lists and Reports by Trustee and Company	. 51
Section	7.1	Company to Furnish Trustee Names	
Section	7 2	and Addresses of Holders	. 51
36011011	1.2	Communications to Holders	. 51
Section		Reports by Trustee	. 52
Section	7.4	Reports by Company	. 52
		ARTICLE VIII	
		Consolidation, Merger, Conveyance, Transfer or Lease	52
Section	8.1	Company May Consolidate, Etc.,	
Section	0 2	Only on Certain Terms	
36011011	0.2	Successor Substituted	55
		ARTICLE IX	
		Supplemental Indentures	54
Section	9.1	Supplemental Indentures Without	- 4
Section	9.2	Consent of Holders	54
		Consent of Holders	
Section		Execution of Supplemental Indentures	
Section Section		Effect of Supplemental Indentures	
Section		Reference in Securities to	
		Supplemental Indentures	57
		ARTICLE X	
		Covenants	58
Section	10.1	Payment of Principal, Premium	50
		and Interest	
Section		Maintenance of Office or Agency	58
Section	10.3	Money for Securities Payments to Be Held in Trust	58
Section	10.4	Statement by Officers as to Default	
Section	10.5	Existence	60

_ ____

NOTE: This table of contents shall not, for any purpose, be deemed to be a part of the Indenture.

			Page
Section	10.6	Maintenance of Properties	. 60
Section		Payment of Taxes and Other Claims	
Section		Waiver of Certain Covenants	
		ARTICLE XI	
		Redemption of Securities	. 61
Section	11.1	Applicability of Article	. 61
Section	11.2	Election to Redeem; Notice to Trustee	. 61
Section	11.3	Selection by Trustee of Securities	
		to Be Redeemed	. 62
Section	11.4	Notice of Redemption	. 62
Section		Deposit of Redemption Price	
Section		Securities Payable on Redemption Date	
Section	11.7	Securities Redeemed in Part	. 64
		ARTICLE XII	
		Sinking Funds	. 64
Section	12 1	Applicability of Article	
Section		Satisfaction of Sinking Fund	. 04
Section	12.2	Payments with Securities	. 64
Section	12 3	Redemption of Securities for	. 04
OCCULON	12.0	Sinking Fund	. 65
		ARTICLE XIII	
		Subordination of Securities	. 65
Section	13.1	Securities Subordinate to	
		Senior Indebtedness	. 65
Section	13.2	Payment Over of Proceeds Upon	
		Dissolution, Etc	. 66
Section	13.3	Prior Payment to Senior Indebtedness	
		Upon Acceleration of Securities	. 67
Section	13.4	No Payment When Senior Indebtedness	
		Default	
Section		Payment Permitted If No Default	. 68
Section	13.6	Subrogation to Rights of Holders	
Cootion	40.7	of Senior Indebtedness	. 68
Section	13.7	Provisions Solely to Define	
Contina	10 0	Relative Rights	. 69
Section Section		No Waiver of Subordination Provisions	
Section		Notice to Trustee	
Section		Reliance on Judicial Order or	. 70
SCCTION	13.11	Certificate of Liquidating Agent	. 71
Section	13 12	Trustee Not Fiduciary for Holders	. /1
20001011		of Senior Indebtedness or	

- ------

Entitled Persons
Section 13.14 Article Applicable to Paying Agents
Section 13.14 Article Applicable to Paying Agents
Section 13.15 Payment of Proceeds in Certain Cases
ARTICLE XIV
Defeasance and Covenant Defeasance
Section 14.1 Applicability of Article; Company's Option to Effect
Defeasance or Covenant Defeasance
Section 14.2 Defeasance and Discharge
Section 14.4 Conditions to Defeasance or
Covenant Defeasance
Section 14.5 Deposited Money and U.S. Government
Obligations to be Held in Trust; Other Miscellaneous Provisions
Section 14.6 Reinstatement
RECITALS OF THE COMPANY
ARTICLE I
Definitions and Other Provisions of General Application
Section 1.1 Definitions
Section 1.2 Compliance Certificates and Opinions
Section 1.3 Form of Documents Delivered to Trustee
Section 1.4 Acts of Holders; Record Dates
Section 1.5 Notices, Etc., to Trustee and Company
Section 1.6 Notice to Holders; Waiver
Section 1.7 Conflict with Trust Indenture Act
Section 1.8 Effect of Headings and Table of Contents
Section 1.9 Successors and Assigns
Section 1.10 Separability Clause
Section 1.12 Governing Law
Section 1.13 Legal Holidays
ARTICLE II
Security Forms
Section 2.1 Forms Generally
Section 2.2 Form of Face of Security

- ------

		Page
Section 2.3 Section 2.4 Section 2.5	Form of Reverse of Security	16 21
00001011 2.0	Authentication	21
	ARTICLE III	
	The Securities	21
Section 3.1	Amount Unlimited; Issuable in Series	21
Section 3.2 Section 3.3	Denominations	25
Section 3.4	and Dating	25 26
Section 3.5	Registration, Registration of Transfer and Exchange	27
Section 3.6	Mutilated, Destroyed, Lost and Stolen Securities	29
Section 3.7	Payment of Interest Rights Preserved	
Section 3.8	Persons Deemed Owners	30 31
Section 3.9	Cancellation	32
Section 3.10	Computation of Interest	32
	ARTICLE IV	
	Satisfaction and Discharge	32
Section 4.1	Satisfaction and Discharge of Indenture	32
Section 4.2	Application of Trust Money	34
	ARTICLE V	
	Remedies	34
Section 5.1 Section 5.2	Events of Default	34
Section 5.3	Rescission and Annulment	36
Section 5.3	Collection of Indebtedness and Suits for Enforcement by Trustee	37
Section 5.4	Trustee May File Proofs of Claim	38
Section 5.5	Trustee May Enforce Claims Without Possession of Securities	38
Section 5.6	Application of Money Collected	39
Section 5.7	Limitation on Suits	39
Section 5.8	Unconditional Right of Holders to Receive Principal, Premium and Interest	40
Section 5.9	Restoration of Rights and Remedies	40
Section 5.10	Rights and Remedies Cumulative	40
Section 5.11	Delay or Omission Not Waiver	40
Section 5.12	Control by Holders	41

Section 5.13			Page
Section 5.14	Section 5.13	Waiver of Past Defaults	41
ARTICLE VI	Section 5.14		42
ARTICLE VI The Trustee 42 Section 6.1 Certain Duties and Responsibilities 42 Section 6.2 Notice of Defaults 43 Section 6.3 Certain Rights of Trustee 43 Section 6.4 Not Responsible for Recitals	Section 5.15	Waiver of Usury, Stay or Extension Laws	42
The Trustee			
Section 6.1 Certain Duties and Responsibilities 42 Section 6.2 Notice of Defaults 43 Section 6.3 Certain Rights of Trustee 43 Section 6.4 Not Responsible for Recitals		ARTICLE VI	
Section 6.2 Notice of Defaults		The Trustee	42
Section 6.3 Certain Rights of Trustee 43 Section 6.4 Not Responsible for Recitals 07 Issuance of Securities 44 Section 6.5 May Hold Securities 44 Section 6.6 Money Held in Trust 44 Section 6.6 Money Held in Trust 44 Section 6.7 Compensation and Reimbursement 45 Section 6.8 Disqualification; Conflicting Interests 45 Section 6.9 Corporate Trustee Required; Eligibility 46 Section 6.10 Resignation and Removal; 46 Section 6.11 Acceptance of Appointment by Successor 46 Section 6.12 Merger, Conversion, Consolidation 7 Succession to Business 49 Section 6.13 Preferential Collection of Claims 49 Appointment of Authenticating Agent 49 Section 6.14 Appointment of Authenticating Agent 49 ARTICLE VII	Section 6.1		42
Section 6.4 Not Responsible for Recitals or Issuance of Securities	Section 6.2		43
Or Issuance of Securities	Section 6.3	Certain Rights of Trustee	43
Section 6.5 May Hold Securities 44 Section 6.6 Money Held in Trust 44 Section 6.7 Compensation and Reimbursement 45 Section 6.8 Disqualification; Conflicting Interests 45 Section 6.9 Corporate Trustee Required;	Section 6.4		
Section 6.6 Money Held in Trust 44 Section 6.7 Compensation and Reimbursement 45 Section 6.8 Disqualification; Conflicting Interests 45 Section 6.9 Corporate Trustee Required;	0		
Section 6.7 Compensation and Reimbursement 45 Section 6.8 Disqualification; Conflicting Interests 45 Section 6.9 Resignation and Removal; 46 Section 6.10 Resignation and Removal; 48 Section 6.11 Acceptance of Appointment by Successor 46 Section 6.12 Acceptance of Appointment by Successor 48 Section 6.13 Merger, Conversion, Consolidation 70		May Hold Securities	
Section 6.8 Disqualification; Conflicting Interests Section 6.9 Corporate Trustee Required; Eligibility		Money Held in Trust	
Section 6.9 Corporate Trustee Required; Eligibility			
Eligibility 46			45
Section 6.10 Resignation and Removal;	Section 6.9		46
Section 6.11 Acceptance of Appointment by Successor 48 Section 6.12 Merger, Conversion, Consolidation or Succession to Business 49 Section 6.13 Preferential Collection of Claims Against Company 49 Section 6.14 Appointment of Authenticating Agent 49 ARTICLE VII Company to Furnish Trustee Names and Addresses of Holders 51 Section 7.1 Company to Furnish Trustee Names and Addresses of Holders 51 Section 7.2 Preservation of Information; Communications to Holders 52 Section 7.3 Reports by Trustee 52 Section 7.4 Reports by Company 52 ARTICLE VIII Consolidation, Merger, Conveyance, Transfer or Lease 53 Section 8.1 Company May Consolidate, Etc., Only on Certain Terms 53 Section 8.2 Successor Substituted ARTICLE IX ARTICLE IX Supplemental Indentures 54	Section 6.10	Resignation and Removal;	
Section 6.12 Merger, Conversion, Consolidation or Succession to Business. 49 Section 6.13 Preferential Collection of Claims Against Company 49 ARTICLE VII ARTICLE VII Holders' Lists and Reports by Trustee and Company 51 Section 7.1 Company to Furnish Trustee Names and Addresses of Holders 51 Section 7.2 Preservation of Information; Communications to Holders 52 Section 7.3 Reports by Trustee 52 Section 7.4 Reports by Company 52 ARTICLE VIII Consolidation, Merger, Conveyance, Transfer or Lease 53 Section 8.1 Company May Consolidate, Etc., Only on Certain Terms 53 Section 8.2 Successor Substituted ARTICLE IX ARTICLE IX Supplemental Indentures 54			46
Or Succession to Business	Section 6.11	Acceptance of Appointment by Successor	48
Section 6.13 Preferential Collection of Claims	Section 6.12		40
Section 6.14 Appointment of Authenticating Agent 49 ARTICLE VII Section 7.1 Company to Furnish Trustee Names and Addresses of Holders 51 Section 7.2 Preservation of Information; Communications to Holders 52 Section 7.3 Reports by Trustee 52 Section 7.4 Reports by Company 52 ARTICLE VIII Consolidation, Merger, Conveyance, Transfer or Lease 53 Section 8.1 Company May Consolidate, Etc., Only on Certain Terms 53 Section 8.2 Successor Substituted ARTICLE IX ARTICLE IX Supplemental Indentures 54	Section 6.13	Preferential Collection of Claims	49
Section 6.14 Appointment of Authenticating Agent 49 ARTICLE VII Bection 7.1 Company to Furnish Trustee Names and Addresses of Holders 51 Section 7.2 Preservation of Information; Communications to Holders 52 Section 7.3 Reports by Trustee 52 Section 7.4 Reports by Company ARTICLE VIII Consolidation, Merger, Conveyance, Transfer or Lease 53 Section 8.1 Company May Consolidate, Etc., Only on Certain Terms 53 Section 8.2 Successor Substituted ARTICLE IX ARTICLE IX Supplemental Indentures 54		Against Company	49
Holders' Lists and Reports by Trustee and Company	Section 6.14	Appointment of Authenticating Agent	49
Section 7.1 Company to Furnish Trustee Names and Addresses of Holders 51 Section 7.2 Preservation of Information; Communications to Holders 52 Section 7.3 Reports by Trustee 52 Section 7.4 Reports by Company 52 ARTICLE VIII Consolidation, Merger, Conveyance, Transfer or Lease 53 Section 8.1 Company May Consolidate, Etc., Only on Certain Terms 53 Section 8.2 Successor Substituted 54 ARTICLE IX Supplemental Indentures 54		ARTICLE VII	
Section 7.1 Company to Furnish Trustee Names and Addresses of Holders 51 Section 7.2 Preservation of Information; Communications to Holders 52 Section 7.3 Reports by Trustee 52 Section 7.4 Reports by Company 52 ARTICLE VIII Consolidation, Merger, Conveyance, Transfer or Lease 53 Section 8.1 Company May Consolidate, Etc., Only on Certain Terms 53 Section 8.2 Successor Substituted 54 ARTICLE IX Supplemental Indentures 54		Holders' Lists and Reports by Trustee and Company	51
and Addresses of Holders	Section 7 1		31
Section 7.2 Preservation of Information; 52 Section 7.3 Reports by Trustee 52 Section 7.4 Reports by Company 52 ARTICLE VIII Consolidation, Merger, Conveyance, Transfer or Lease 53 Section 8.1 Company May Consolidate, Etc., Only on Certain Terms 53 Section 8.2 Successor Substituted 54 ARTICLE IX Supplemental Indentures 54	00001011 771		51
Communications to Holders	Section 7 2		31
Section 7.3 Reports by Trustee 52 Section 7.4 Reports by Company 52 ARTICLE VIII Consolidation, Merger, Conveyance, Transfer or Lease 53 Section 8.1 Company May Consolidate, Etc., Only on Certain Terms 53 Section 8.2 Successor Substituted 53 ARTICLE IX Supplemental Indentures 54	OCOCION 712		52
Section 7.4 Reports by Company	Section 7 3		
ARTICLE VIII Consolidation, Merger, Conveyance, Transfer or Lease			
Consolidation, Merger, Conveyance, Transfer or Lease	00001011 714	Reported by company	02
Section 8.1 Company May Consolidate, Etc., Only on Certain Terms		ARTICLE VIII	
Only on Certain Terms		Consolidation, Merger, Conveyance, Transfer or Lease	53
Section 8.2 Successor Substituted	Section 8.1	Company May Consolidate, Etc.,	
Section 8.2 Successor Substituted		Only on Certain Terms	53
Supplemental Indentures	Section 8.2		54
		ARTICLE IX	
		Supplemental Indentures	54
	Section 9.1	!!	

- ------

NOTE: This table of contents shall not, for any purpose, be deemed to be a part of the Indenture.

		Page
	Consent of Holders	. 54
Section 9.2	Supplemental Indentures with Consent of Holders	. 56
Section 9.3	Consent of Holders	
Section 9.4	Effect of Supplemental Indentures	
Section 9.5	Conformity with Trust Indenture Act	
Section 9.6	Reference in Securities to Supplemental Indentures	. 58
	Supplemental indentures	. 50
	ARTICLE X	
	Covenants	. 58
Section 10.1	Payment of Principal, Premium	
Section 10.2	and Interest	
Section 10.2	Money for Securities Payments	. 50
36001011 10.3	to Be Held in Trust	. 59
Section 10.4	Statement by Officers as to Default	. 60
Section 10.5	Existence	
Section 10.6	Maintenance of Properties	
Section 10.7	Payment of Taxes and Other Claims	. 61
Section 10.8	Waiver of Certain Covenants	. 61
	ARTICLE XI	
	Redemption of Securities	
Section 11.1	Applicability of Article	
Section 11.2 Section 11.3	Election to Redeem; Notice to Trustee	
	to Be Redeemed	
Section 11.4	Notice of Redemption	
Section 11.5	Deposit of Redemption Price	
Section 11.6	Securities Payable on Redemption Date	
Section 11.7	Securities Redeemed in Part	. 64
	ARTICLE XII	
	Sinking Funds	
Section 12.1	Applicability of Article	. 64
Section 12.2	Satisfaction of Sinking Fund Payments with Securities	. 65
Section 12.3	Redemption of Securities for	
	Sinking Fund	. 65
	ARTICLE XIII	
	Subordination of Securities	. 65
Section 13.1	Securities Subordinate to	

- -----

 $\ensuremath{\mathsf{NOTE}}\xspace$ This table of contents shall not, for any purpose, be deemed to be a part of the Indenture.

			Page
		Senior Indebtedness	65
Section	13.2	Payment Over of Proceeds Upon	
Section	13 3	Dissolution, Etc	66
00001011	10.0	Upon Acceleration of Securities	67
Section	13.4	No Payment When Senior Indebtedness	
Section	12 5	Default	67 68
Section		Subrogation to Rights of Holders	00
		of Senior Indebtedness	68
Section	13.7	Provisions Solely to Define Relative Rights	69
Section	13.8	Trustee to Effectuate Subordination	69
Section		No Waiver of Subordination Provisions	70
Section		Notice to Trustee	70
Section	13.11	Reliance on Judicial Order or Certificate of Liquidating Agent	74
Section	13 12	Trustee Not Fiduciary for Holders	71
000010		of Senior Indebtedness or	
		Entitled Persons	72
Section	13.13	Rights of Trustee as Holder of	70
Section	12 11	Senior Indebtedness or Entitled Person; Preservation of Trustee's Rights	72
Section	13.14	Paying Agents	72
Section	13.15	Payment of Proceeds in Certain Cases	72
		ADTTOLE VIV	
		ARTICLE XIV	
		Defeasance and Covenant Defeasance	74
Section	14.1	Applicability of Article;	
		Company's Option to Effect	
Section	11 2	Defeasance or Covenant Defeasance	74 74
Section		Covenant Defeasance	75
Section		Conditions to Defeasance or	75
Secrion	14.4	Covenant Defeasance	75
Section	1/1 5	Deposited Money and U.S. Government	75
Section	14.5	Obligations to be Held in Trust;	
		Other Miscellaneous Provisions	78
Section	14.6	Reinstatement	

NOTE: This table of contents shall not, for any purpose, be deemed to be a part of the Indenture.

First Hawaiian, Inc. Certain Sections of this Indenture relating to Sections 310 through 318, inclusive, of the Trust Indenture Act of 1939:

Trust Indentu Act Sectio		Indenture Section
Section 310	(a)(1)	6.9 6.9 Not Applicable Not Applicable 6.8 6.10 6.13
Section 311	(a)	6.13 6.13 6.13
Section 312	(a)	7.1 7.2(a)
Section 313	(c) (a) (b) (c)	7.2(b) 7.3(a) 7.3(a) 7.3(a)
Section 314	(d)	7.3(b) 7.4 1.2
Section 315 Section 316	(b) (c)(1) (c)(2) (c)(3) (d) (e) (a) (b) (c) (d) (d) (d) (d) (d) (d) (d) (d)(1) (d)(2) (d)(3) (e) (a)(1)(A)	10.4 Not Applicable 1.2 1.2 Not Applicable Not Applicable 1.2 6.1 6.2 6.1 6.1 6.1 6.1 5.14 5.2 5.12
Section 317	(a)(1)(B)	5.13 Not Applicable 5.8 1.4(c) 5.3
Section 318	(a)(2)	5.4 10.3 1.7

- ------

NOTE: This table of contents shall not, for any purpose, be deemed to be a part of the Indenture.

INDENTURE, dated as of August 9, 1993, between FIRST HAWAIIAN, INC., a corporation duly organized and existing under the laws of the State of Delaware (herein called the "Company"), having its principal office at 1132 Bishop Street, Honolulu, Hawaii 96813 and THE FIRST NATIONAL BANK OF CHICAGO, a national banking association, as Trustee (herein called the "Trustee").

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its unsecured subordinated debentures, notes or other evidences of indebtedness (herein called the "Securities"), to be issued in one or more series as in this Indenture provided.

All things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually agreed, for the equal and proportionate benefit of all Holders of the Securities or of series thereof, as follows:

ARTICLE I

Definitions and Other Provisions of General Application

Section 1.1 Definitions.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;
- (2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
- (3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and, except as otherwise herein expressly provided, the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted at the date of such computation; and

(4) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

"Act", when used with respect to any Holder, has the meaning specified in Section 1.4. $\,$

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Authenticating Agent" means any Person authorized by the Trustee pursuant to Section 6.14 to act on behalf of the Trustee to authenticate Securities of one or more series.

"Authorized Officer" means any officer of the Company designated by a resolution of the Board of Directors to take certain actions as specified in this Indenture.

"Board of Directors" means either the board of directors of the Company or any duly authorized committee of that board.

"Board Resolution" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors, or by action of an Authorized Officer designated as such pursuant to a resolution of the Board of Directors, and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"Business Day", when used with respect to any Place of Payment, means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in that Place of Payment are authorized or obligated by law or executive order to close.

"Commission" means the Securities and Exchange Commission, as from time to time constituted, created under the Securities Exchange Act of 1934, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"Company" means the Person named as the "Company" in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor Person.

"Company Request" or "Company Order" means a written request or order signed in the name of the Company by its Chairman of the Board, its Vice Chairman of the Board, its President, its Chief Financial Officer or a Vice President, and by its Controller, an Assistant Controller, its Secretary or an Assistant Secretary, and delivered to the Trustee.

"Corporate Trust Office" means the office of the Trustee at which at any particular time its corporate trust business shall be principally administered, which office as of the date hereof is located at One First National Plaza, Suite 0126, Chicago, Illinois, 60670-0126, Attention Corporate Trust Services Division.

"Corporation" means a corporation, association, company, joint-stock company or business trust.

"Defaulted Interest" has the meaning specified in Section 3.7.

"Depositary" means, with respect to the Securities of any series issuable or issued in whole or in part in the form of one or more Global Securities, the Person designated as Depositary for such series by the Company pursuant to Section 3.1, which Person shall be a clearing agency registered under the Securities Exchange Act of 1934, as amended.

"Entitled Person" means any person entitled to payment pursuant to the terms of Other Financial Obligations.

"Event of Default" has the meaning specified in Section 5.1.

"Excess Proceeds" has the meaning specified in Section 13.15.

"Exchange Act" means the Securities Exchange Act of 1934 as it may be amended and any successor act thereto. $\,$

"Global Security" means a Security bearing the legend prescribed in Section 2.4 evidencing all or part of a series of Securities, authenticated and delivered to the Depositary for such series or its nominee, and registered in the name of such Depositary or nominee.

"Holder" means a Person in whose name a Security is registered in the Security Register. $\,$

"Indenture" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument, and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this instrument and any such supplemental indenture, respectively. The term "Indenture" shall also include the terms of particular series of Securities established as contemplated by Section 3.1.

"Interest", when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

"Interest Payment Date", when used with respect to any Security, means the Stated Maturity of an instalment of interest on such Security.

"Maturity", when used with respect to any Security, means the date on which the principal of such Security or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemotion or otherwise.

"Officers' Certificate" means a certificate signed by the Chairman of the Board, a Vice Chairman of the Board, the President, the Chief Financial Officer or a Vice President, and by the Treasurer, an Assistant Treasurer, the Controller, an Assistant Controller, the Secretary or an Assistant Secretary, of the Company, and delivered to the Trustee. One of the officers signing an Officers' Certificate given pursuant to Section 10.4 shall be the principal executive, financial or accounting officer of the Company.

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for the Company and who shall be acceptable to the Trustee.

"Original Issue Discount Security" means any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.2.

"Other Financial Obligations" means, unless otherwise determined with respect to any series of Securities pursuant to Section 3.1, all obligations of the Company to make payment pursuant to the terms of financial instruments, such

as (i) securities contracts and currency and foreign exchange contracts and (ii) derivative instruments, such as swap agreements (including interest rate and currency and foreign exchange rate swap agreements), cap agreements, floor agreements, collar agreements, interest rate agreements, foreign exchange agreements, options, commodity future contracts and commodity options contracts, other than (x) obligations on account of Senior Indebtedness and (y) obligations on account of indebtedness for money borrowed ranking pari passu with or subordinate to the Securities.

"Outstanding", when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

- (i) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;
- (ii) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities; provided that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;
- (iii) Securities which have been paid pursuant to Section 3.6 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands such Securities are valid obligations of the Company; and
- (iv) Securities which have been defeased pursuant to Section $14.2\ hereof;$

provided, however, that in determining whether the Holders of the requisite principal amount of the Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, (i) the principal amount of an Original Issue Discount Security that shall be deemed to be Outstanding shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon acceleration of the Maturity thereof pursuant to Section 5.2, (ii) the principal amount of a Security denominated in one or more foreign currencies or currency units shall be the U.S. dollar equivalent.

determined in the manner provided as contemplated by Section 3.1 on the date of original issuance of such Security, of the principal amount (or, in the case of an Original Issue Discount Security, the U.S. dollar equivalent on the date of original issuance of such Security of the amount determined as provided in (i) above) of such Security, and (iii) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which the Trustee knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor.

"Paying Agent" means any Person authorized by the Company to pay the principal of or any premium or interest on any Securities on behalf of the Company.

"Person" means any individual, corporation, partnership, joint venture, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Place of Payment", when used with respect to the Securities of any series, means the place or places where the principal of and any premium and interest on the Securities of that series are payable as specified as contemplated by Section 3.1.

"Predecessor Security" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 3.6 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

"Redemption Date", when used with respect to any Security to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

"Redemption Price", when used with respect to any Security to be redeemed, means the price at which it is to be redeemed pursuant to this

"Regular Record Date" for the interest payable on any Interest Payment Date on the Securities of any series means the date specified for that purpose as contemplated by Section 3.1.

"Responsible Officer", when used with respect to the Trustee, means the chairman or any vice-chairman of the board of directors, the chairman or any vice-chairman of the executive committee of the board of directors, the chairman of the trust committee, the president, any vice president, any assistant vice president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the cashier, any assistant cashier, any senior trust officer, trust officer or assistant trust officer, the controller or any assistant controller or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"Securities" has the meaning stated in the first recital of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

"Security Register" and "Security Registrar" have the respective meanings specified in Section 3.5. $\,$

"Senior Indebtedness" means, unless otherwise determined with respect to any series of Securities pursuant to Section 3.1, the principal of (and premium, if any) and interest on (a) all indebtedness of the Company for money borrowed or purchased (including indebtedness of others for money borrowed or purchased guaranteed by the Company), whether outstanding on the date of execution of this Indenture or thereafter created, assumed or incurred other than (i) the Securities, whether outstanding on the date of this Indenture or thereafter issued, (ii) the Company's existing subordinated indebtedness, if any, and (iii) such other indebtedness of the Company as by its terms is expressly stated to be not superior in right of payment to the Securities or to rank pari passu in right of payment with the Securities and (b) amendments, renewals, extensions, modifications and refundings of any such Senior Indebtedness. For the purposes of this definition, "indebtedness for money borrowed" when used with respect to the Company means (i) any obligation of, or any obligation guaranteed by, the Company for the repayment of borrowed or purchased money, whether or not evidenced by bonds, debentures, notes or other written instruments, and direct credit substitutes (ii) any deferred payment obligation of, or any such obligation guaranteed by, the Company for the payment of the purchase price of property or assets evidenced by a note or similar instrument, and (iii) any

obligation of, or any such obligation guaranteed by, the Company for the payment of rent or other amounts under a lease of property or assets which obligation is required to be classified and accounted for as a capitalized lease on the balance sheet of the Company under generally accepted accounting principles.

"Special Record Date" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.7. $\,$

"Stated Maturity", when used with respect to any Security or any instalment of principal thereof or interest thereon, means the date specified in such Security as the fixed date on which the principal of such Security or such instalment of principal or interest is due and payable.

"Subsidiary" means a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For the purposes of this definition, "voting stock" means stock which ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

"Trustee" means the Person named as the "Trustee" in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, "Trustee" as used with respect to the Securities of any series shall mean the Trustee with respect to Securities of that series.

"Trust Indenture Act" means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed; provided, however, that in the event the Trust Indenture Act of 1939 is amended after such date, "Trust Indenture Act" means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

"Vice President", when used with respect to the Company or the Trustee, means any vice president (but shall not include any assistant vice president), whether or not designated by a number or a word or words added before or after the title "vice president".

"Wholly-owned Subsidiary" means any Subsidiary all of whose outstanding voting stock (other than directors' qualifying shares) shall at the time be owned by the Company or one or more of its Wholly-owned Subsidiaries.

Section 1.2 Compliance Certificates and Opinions.

Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee such certificates and opinions as may be required under the Trust Indenture Act. Each such certificate or opinion shall be given in the form of an Officers' Certificate, if to be given by an officer of the Company, or an Opinion of Counsel, if to be given by counsel, and shall comply with the requirements of the Trust Indenture Act and any other requirements set forth in this Indenture.

Every certificate or opinion (other than the Officers' Certificate delivered under Section 10.4 hereof) with respect to compliance with a condition or covenant provided for in this Indenture shall include

- (1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 1.3 Form of Documents Delivered to Trustee.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is

based are erroneous. Any such certificate or opinion of counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Section 1.4 Acts of Holders; Record Dates.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 6.1) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

Without limiting the generality of the foregoing, a Holder, including a Depositary that is a Holder of a Global Security, may make, give or take, by a proxy, or proxies, duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted in this Indenture to be made, given or taken by Holders, and a Depositary that is a Holder of a Global Security may provide its proxy or proxies to the beneficial owners of interest in any such Global Security.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the

authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

- (c) The Company may, in the circumstances permitted by the Trust Indenture Act, fix any day as the record date for the purpose of determining the Holders of Securities of any series entitled to give or take any request, demand, authorization, direction, notice, consent, waiver or other action, or to vote on any action, authorized or permitted to be given or taken by Holders of Securities of such series. If not set by the Company prior to the first solicitation of a Holder of Securities of such series made by any Person in respect of any such action, or, in the case of any such vote, prior to such vote, the record date for any such action or vote shall be the 30th day (or, if later, the date of the most recent list of Holders required to be provided pursuant to Section 7.1) prior to such first solicitation or vote, as the case may be. With regard to any record date for action to be taken by the Holders of one or more series of Securities, only the Holders of Securities of such series on such date (or their duly designated proxies) shall be entitled to give or take, or vote on, the relevant action.
- $\mbox{\ensuremath{\mbox{\sc d}}}\mbox{\ensuremath{\mbox{\sc d}}}\mbox{\ensuremath{\mbox{\sc$
- (e) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.
- (f) Without limiting the foregoing, a Holder entitled hereunder to give or take any action hereunder with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any different part of such principal amount.

Section 1.5 Notices, Etc., to Trustee and Company.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at its Corporate Trust Office,

Attention: Corporate Trustee Administration Department, or

(2) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Company addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee by the Company, Attention: Chief Financial Officer.

Section 1.6 Notice to Holders; Waiver.

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at his address as it appears in the Security Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 1.7 Conflict with Trust Indenture Act.

If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required under such Act to be a part of and govern this Indenture, the latter provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

Section 1.8 Effect of Headings and Table of Contents.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.9 Successors and Assigns.

All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

Section 1.10 Separability Clause.

In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 1.11 Benefits of Indenture.

Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than (a) the parties hereto and their successors hereunder, (b) the holders of Senior Indebtedness (c) the Holders, and (d) subject to Section 13.15, Entitled Persons in respect of Other Financial Obligations, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 1.12 Governing Law.

THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICTS OF LAW RULES OF SUCH STATE.

Section 1.13 Legal Holidays.

In any case where any Interest Payment Date, Redemption Date or Stated Maturity of any Security shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or of the Securities (other than a provision of the Securities of any series which specifically states that such provision shall apply in lieu of this Section)) payment of interest or principal (and premium, if any) need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Stated Maturity, provided that no interest shall accrue for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be.

ARTICLE II

Security Forms

Section 2.1 Forms Generally.

The Securities of each series shall be in substantially the form set forth in this Article, or in such other form as shall be established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution of the Securities. If the form of Securities of any series is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 3.3 for the authentication and delivery of such Securities.

The definitive Securities shall be printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

Section 2.2 Form of Face of Security.

THIS SECURITY IS NOT A DEPOSIT AND IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY FEDERAL OR OTHER GOVERNMENTAL AGENCY.

[Insert any legend required by the Internal Revenue Code of 1986, as amended, and the regulations thereunder.]

FIRST HAWAIIAN, INC.		
No	\$	
First Hawaiian, Inc. a corporation dulunder the laws of the State of Delaware (herein call term includes any successor Person under the Indentito), for value received, hereby promises to pay to or registered assigns, the principal sum of	Led the "Company", which ure hereinafter referred,	

[If the Security is not to bear interest prior to Maturity, insert -- The principal of this Security shall not bear interest except in the case of a default in payment of principal upon acceleration, upon redemption or at Stated Maturity and in such case the overdue principal of this Security shall bear interest at the rate of% per annum (to the extent that the payment of such interest shall be legally enforceable), which shall accrue from the date of such default in payment to the date payment of such principal has been made or duly provided for. Interest on any overdue principal shall be payable on demand. Any interest on any overdue principal shall bear interest at the rate of% per annum (to the extent that the payment of such interest shall be legally enforceable), which shall accrue from the date of such default in payment to the date payment of such interest has been made or duly provided for, and such interest shall also be payable on demand.]

Payment of the principal of (and premium, if any) and [if applicable, insert -- any such] interest on this Security will be made at the office or agency of the Company maintained for that purpose in [the Borough of Manhattan, the City of New York], in such coin or currency of [the United States of America] [insert other currency, if applicable] as at the time of payment is legal tender for payment of public and private debts [if applicable, insert -- ; provided, however, that at the option of

the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register].

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated:

	FIRST HAWAIIAN,	INC.
	Ву	
Attest:		

Section 2.3 Form of Reverse of Security.

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under an Indenture, dated as of August 9, 1993 (herein called the "Indenture"), between the Company and The First National Bank of Chicago, as Trustee (herein called the "Trustee", which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, the holders of Senior Indebtedness, Entitled Persons and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof[, limited in aggregate principal amount to \$].

[If applicable, insert -- The Securities of this series are subject to redemption upon not less than 30 days' notice by mail, [if applicable, insert -- (1) on in any year commencing with the year and ending with the year

Year

through operation of the sinking fund for this series at a Redemption Price equal to 100% of the principal amount, and (2)] at any time [on or after 19..], as a whole or in part, at the election of the Company, at the following Redemption Prices (expressed as percentages of the principal amount): If redeemed [on or before, ____%, and if redeemed] during the 12-month period beginning of the years indicated,

Redemption Redemption
Year Price Year Price

and thereafter at a Redemption Price equal to% of the principal amount, together in the case of any such redemption [if applicable, insert -- (whether through operation of the sinking fund or otherwise)] with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]

> Redemption Price For Redemption Through Operation of the Sinking Fund

Redemption Price For Redemption Otherwise Than Through Operation of the Sinking Fund

and thereafter at a Redemption Price equal to% of the principal amount, together in the case of any such redemption (whether through operation of the sinking fund or otherwise) with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at

the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]

[Notwithstanding the foregoing, the Company may not, prior to, redeem any Securities of this series as contemplated by [Clause (2) of] the preceding paragraph as a part of, or in anticipation of, any refunding operation by the application, directly or indirectly, of moneys borrowed having an interest cost to the Company (calculated in accordance with generally accepted financial practice) of less than% per annum.]

[The sinking fund for this series provides for the redemption on in each year beginning with the year and ending with the year of [not less than \$........ ("mandatory sinking fund") and not more than] \$........ aggregate principal amount of Securities of this series. Securities of this series acquired or redeemed by the Company otherwise than through [mandatory] sinking fund payments may be credited against subsequent [mandatory] sinking fund payments otherwise required to be made [in the inverse order in which they become due].]

[If the Security is subject to redemption, insert -- In the event of redemption of this Security in part only, a new Security or Securities of this series and of like tenor for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.]

[If applicable, insert -- The Indenture contains provisions for defeasance at any time of [(a)] [the entire indebtedness evidenced by this Security] [and (b)] [certain restrictive covenants,] [in each case] upon compliance by the Company with certain conditions set forth therein, which provisions apply to this Security.]

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and subject in right of payment to the prior payment in full of all Senior Indebtedness, and this Security is issued subject to the provisions of the Indenture with respect thereto. This Security is also issued subordinate and subject to the provisions of the Indenture regarding prior payment in full to Entitled Persons in respect of Other Financial Obligations. The Indenture also provides that if, upon the occurrence of certain events of bankruptcy or insolvency relating to the Company, there remains, after giving effect to such subordination provisions, any amount of cash, property or securities available for payment or distribution in respect of Securities of this series (as defined in the Indenture, "Excess Proceeds"), and if, at such time, any Entitled Person (as defined in the Indenture) has not received payment in full of all amounts due or to become due on or in respect of Other Financial Obligations (as defined in the Indenture), then such Excess Proceeds shall first be applied to

pay or provide for the payment in full of such Other Financial Obligations before any payment or distribution may be made in respect of Securities of this series. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination and payment of Excess Proceeds as provided in the Indenture and (c) appoints the Trustee his attorney-in-fact for any and all such purposes.

[If the Security is not an Original Issue Discount Security, insert -- The principal of this Security may not be declared due and payable upon the occurrence of an Event of Default, except an Event of Default relating to certain events involving the bankruptcy, insolvency or reorganization of the Company. If an Event of Default with respect to Securities of this series relating to certain events involving the bankruptcy, insolvency or reorganization of the Company shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.]

[If the Security is an Original Issue Discount Security, insert
- -- The principal of this Security may not be declared due and payable upon the occurrence of an Event of Default, except an Event of Default relating to certain events involving the bankruptcy, insolvency or reorganization of the Company. If an Event of Default with respect to Securities of this series relating to certain events involving the bankruptcy, insolvency or reorganization of the Company shall occur and be continuing, an amount of principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture. Such amount shall be equal to -- insert formula for determining the amount. Upon payment [if applicable, insert -- (i)] of the amount of principal so declared due and payable [if applicable, insert -- and (ii) of interest on any overdue principal and overdue interest (in each case to the extent that the payment of such interest shall be legally enforceable)], all of the Company's obligations in respect of the payment of the principal of and interest, if any, on the Securities of this series shall terminate.]

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities of each series to be affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in principal amount of the Securities at the time Outstanding of each series to be affected. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities of each series at the time Outstanding, on behalf of the Holders of all Securities of such series, to waive certain past defaults under the Indenture and their consequences. Any such consent or

waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registerable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in any place where the principal of and any premium and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities of this series and of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities of this series are issuable only in registered form without coupons in denominations of \$...... and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

Section 2.4 Form of Legend for Global Securities.

Any Global Security authenticated and delivered hereunder shall bear a legend in substantially the following form:

"This Security is a Global Security within the meaning of the Indenture hereinafter referred to and is registered in the name of a Depositary or a nominee thereof. This Security may not be transferred to, or registered or exchanged for Securities registered in the name of, any Person other than the Depositary or a nominee thereof or a successor of such Depositary or a nominee of such successor and no such transfer may be registered, except in the limited circumstances described in the Indenture. Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, this Security shall be a Global Security subject to the foregoing, except in such limited circumstances."

Section 2.5 Form of Trustee's Certificate of Authentication.

 $$\operatorname{\textsc{The}}$ The Trustee's certificates of authentication shall be in substantially the following form:

 $\,$ This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

THE FIRST NATIONAL BANK OF CHICAGO,
As Trustee

By..... Authorized Officer

ARTICLE III

The Securities

Section 3.1 Amount Unlimited; Issuable in Series.

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in or pursuant to a Board Resolution and, subject to Section 3.3, set forth, or determined in the manner provided, in an Officers' Certificate, or established in

one or more indentures supplemental hereto, prior to the issuance of Securities of any series,

- (1) the title of the Securities of the series (which shall distinguish the Securities of the series from Securities of any other series);
- (2) any limit upon the aggregate principal amount of the Securities of the series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 3.4, 3.5, 3,6, 9.6 or 11.7 and except for any Securities which, pursuant to Section 3.3, are deemed never to have been authenticated and delivered hereunder);
- (3) the Person to whom any interest on a Security of the series shall be payable, if other than the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest;
- (4) the date or dates on which the principal of the Securities of the series is payable;
- (5) the rate or rates at which the Securities of the series shall bear interest, if any, the date or dates from which such interest shall accrue, the Interest Payment Dates on which any such interest shall be payable and the Regular Record Date for any interest payable on any Interest Payment Date;
- (6) the place or places in addition to the Borough of Manhattan, the City of New York, where the principal of and any premium and interest on Securities of the series shall be payable;
- (7) the period or periods within which, the price or prices at which and the terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Company;
- (8) the obligation, if any, of the Company to redeem or purchase Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices at which and the terms and conditions upon which Securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;
- (9) if other than denominations of \$1,000\$ and any integral multiple thereof, the denominations in which Securities of the series shall be issuable;

- (10) the currency, currencies or currency units in which payment of the principal of and any premium and interest on any Securities of the series shall be payable if other than the currency of the United States of America and the manner of determining the equivalent thereof in the currency of the United States of America for purposes of the definition of "Outstanding" in Section 1.1;
- (11) if the amount of payments of principal of or any premium or interest on any Securities of the series may be determined with reference to an index or formula, the manner in which such amounts shall be determined:
- (12) if the principal of or any premium or interest on any Securities of the series is to be payable, at the election of the Company or a Holder thereof, in one or more currencies or currency units other than that or those in which the Securities are stated to be payable, the currency, currencies or currency units in which payment of the principal of and any premium and interest on Securities of such series as to which such election is made shall be payable, and the periods within which and the terms and conditions upon which such election is to be made:
- (13) if other than the principal amount thereof, the portion of the principal amount of Securities of the series which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 5.2;
- (14) the application, if any, of either or both of Section 14.2 and Section 14.3 to the Securities of the series;
- (15) whether the Securities of the series shall be issuable in whole or in part in the form of one or more Global Securities and, in such case, the Depositary or Depositaries for such Global Security or Global Securities and any circumstances other than those set forth in Section 3.5 in which any such Global Security may be transferred to, and registered and exchanged for Securities registered in the name of, a Person other than the Depositary for such Global Security or a nominee thereof and in which any such transfer may be registered;
- (16) if other than as specified in Section 5.1, the Events of Default applicable with respect to the Securities of the series;
- (17) the Events of Default set forth in Section 5.1 applicable with respect to the Securities of the series, if fewer than all of the Events of Default set forth in Section 5.1;

- (18) if other than as specified in Section 5.2, the Events of Default the occurrence of which would permit the declaration of the acceleration of Maturity pursuant to Section 5.2;
- (19) the Events of Default the occurrence of which would permit the declaration of Maturity pursuant to Section 5.2, if fewer than all of the Events of Default set forth in Section 5.2;
- (20) any other covenant or warranty included for the benefit of Securities of the series in addition to (and not inconsistent with) those included in this Indenture for the benefit of Securities of all series, or any other covenant or warranty included for the benefit of Securities of the series in lieu of any covenant or warranty included in this Indenture for the benefit of Securities of all series, or any provision that any covenant or warranty included in this Indenture for the benefit of Securities of all series shall not be for the benefit of Securities of such series, or any combination of such covenants, warranties or provisions;
- (21) if other than as specified on Article XIII, the subordination provisions applicable with respect to the Securities of the series, including a different definition of the terms "Senior Indebtedness," "Entitled Persons" or "Other Financial Obligations"; and
- (22) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture, except as permitted by Section 9.1(5)).

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to the Board Resolution referred to above and (subject to Section 3.3) set forth, or determined in the manner provided, in the Officers' Certificate referred to above or in any such indenture supplemental hereto.

Unless otherwise provided with respect to the Securities of any series, at the option of the Company, interest on the Securities of any series that bears interest may be paid by mailing a check to the address of the person entitled thereto as such address shall appear in the Security Register.

If any of the terms of the series are established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of the series.

Section 3.2 Denominations.

The Securities of each series shall be issuable in registered form without coupons in such denominations as shall be specified as contemplated by Section 3.1. In the absence of any such provisions with respect to the Securities of any series, the Securities of such series shall be issuable in denominations of \$1,000 and any integral multiple thereof.

Section 3.3 Execution, Authentication, Delivery and Dating.

The Securities shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chairman of the Board, its President or one of its Vice Presidents, under its corporate seal reproduced thereon attested by its Secretary or one of its Assistant Secretaries. The signature of any of these officers on the Securities may be manual or facsimile.

Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities. If the form or terms of the Securities of the series have been established in or pursuant to one or more Board Resolutions as permitted by Sections 2.1 and 3.1, in authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and (subject to Section 6.1) shall be fully protected in relying upon, an Opinion of Counsel stating,

- (a) if the form of such Securities has been established by or pursuant to Board Resolution as permitted by Section 2.1, that such form has been established in conformity with the provisions of this Indenture;
- (b) if the terms of such Securities (or the manner of determining such terms) have been established by or pursuant to Board Resolution as permitted by Section 3.1, that such terms (or the manner of determining such terms) have been established in conformity with the provisions of this Indenture; and

(c) that such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding obligations of the Company enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

If such form or terms have been so established, the Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

Notwithstanding the provisions of Section 3.1 and of the preceding paragraph, if all Securities of a series are not to be originally issued at one time, it shall not be necessary to deliver the Officers' Certificate otherwise required pursuant to Section 3.1 or the Company Order and Opinion of Counsel otherwise required pursuant to such preceding paragraph at or prior to the time of authentication of each Security of such series if such documents are delivered at or prior to the authentication upon original issuance of the first Security of such series to be issued.

Each Security shall be dated the date of its authentication.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature of an Authorized Officer, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 3.9, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

Section 3.4 Temporary Securities.

Pending the preparation of definitive Securities of any series, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or

otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

If temporary Securities of any series are issued, the Company will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor one or more definitive Securities of the same series, of any authorized denominations and of a like aggregate principal amount and tenor. Until so exchanged the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series and tenor.

Section 3.5 Registration, Registration of Transfer and Exchange.

The Company shall cause to be kept at the Corporate Trust Office of the Trustee a register (the register maintained in such office being herein sometimes collectively referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Trustee is hereby appointed "Security Registrar" for the purpose of registering Securities and transfers of Securities as herein provided.

Upon surrender for registration of transfer of any Security of any series at the office or agency in a Place of Payment for that series, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of the same series, of any authorized denominations and of a like aggregate principal amount and tenor.

At the option of the Holder, Securities of any series may be exchanged for other Securities of the same series, of any authorized denominations and of a like aggregate principal amount and tenor, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such registration of transfer or exchange.

Every Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 3.4, 9.6 or 11.7 not involving any transfer.

The Company shall not be required (i) to issue, register the transfer of or exchange Securities of any series during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Securities of that series selected for redemption under Section 11.3 and ending at the close of business on the day of such mailing, or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

Notwithstanding the foregoing and except as otherwise specified or contemplated by Section 3.1, if at any time the Depositary for the Securities of a series notifies the Company that it is unwilling or unable to continue as a Depositary for the Securities of such series or if at any time the Depositary for Securities of a series shall no longer be registered or in good standing under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation, the Company shall appoint a successor Depositary with respect to the Securities of such series. If a successor Depositary for the Securities of such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such condition, the Company will execute, and the Trustee, upon Company Request, will authenticate and deliver Securities of such series in definitive form in an aggregate principal amount equal to the principal amount of the Global Security or Global Securities representing Securities of such series in exchange for such Global Security or Global Securities.

In the event that (i) the Company at any time and in its sole discretion determines that the Securities of any series issued in the form of one or more Global Securities shall no longer be represented by such Global Security or Global

Securities or (ii) there shall have occurred and be continuing an Event of Default or an event which, with the giving of notice or lapse of time or both, would constitute an Event of Default with respect to the Securities of any series, the Company will execute, and the Trustee, upon Company Request, will authenticate and deliver Securities of such series in definitive form and in an aggregate principal amount equal to the principal amount of the Global Security or Global Securities representing such series in exchange for such Global Security or Global Securities.

Upon the occurrence in respect of any Global Security of any series of any one or more of the conditions specified in the preceding two paragraphs or such other conditions as may be specified as contemplated by Section 3.1 for such series, such Global Security may be exchanged for Securities registered in the names of, and the transfer of such Global Security may be registered to, such Persons (including Persons other than the Depositary with respect to such series and its nominees) as such Depositary shall direct. Notwithstanding any other provision of this Indenture, any Security authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, any Global Security shall also be a Global Security and shall bear the legend specified in Section 2.4 except for any Security authenticated and delivered in exchange for, or upon registration of transfer of, a Global Security pursuant to the preceding sentence.

Section 3.6 Mutilated, Destroyed, Lost and Stolen Securities.

If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

Upon the issuance of any new Security under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security of any series issued pursuant to this Section in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that series duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

Section 3.7 Payment of Interest; Interest Rights Preserved.

Except as otherwise provided as contemplated by Section 3.1 with respect to any series of Securities, interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

Any interest on any Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security of such series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such

money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of Securities of such series at his address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following Clause (2).

(2) The Company may make payment of any Defaulted Interest on the Securities of any series in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this Clause, such manner of payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Section 3.8 Persons Deemed Owners.

Prior to due presentment of a Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of and any premium and (subject to Section 3.7) any interest on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

No holder of any beneficial interest in any Global Security held on its behalf by a Depositary shall have any rights under this Indenture with respect to such Global Security, and such Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by a Depositary or impair, as between a Depositary and such holders of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depositary (or its nominee) as Holder of any Security.

Section 3.9 Cancellation.

All Securities surrendered for payment, redemption, registration of transfer or exchange or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold, and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Securities held by the Trustee shall be disposed of as directed by a Company Order.

Section 3.10 Computation of Interest.

Except as otherwise specified as contemplated by Section 3.1 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

ARTICLE IV

Satisfaction and Discharge

Section 4.1 Satisfaction and Discharge of Indenture.

This Indenture shall upon Company Request cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Securities herein expressly provided for), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

- (1) either
- (A) all Securities theretofore authenticated and delivered (other than (i) Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.6 and (ii) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 10.3) have been delivered to the Trustee for cancellation; or
- (B) all such Securities not theretofore delivered to the Trustee for cancellation $% \left(1\right) =\left(1\right) \left(1\right)$
 - (i) have become due and payable, or
 - (ii) will become due and payable at their Stated Maturity within one year, or $% \left(1\right) =\left(1\right) \left(1\right) +\left(1\right) \left(1\right) \left(1\right) +\left(1\right) \left(1\right) \left$
 - (iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and the Company, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose an amount sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and any premium and interest to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

- (2) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and $\,$
- (3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.7, the obligations (if any) of the Trustee to any Authenticating Agent under Section 6.14 and, if money shall have been deposited with the Trustee pursuant to subclause (B) of Clause (1) of this Section, the obligations of the Trustee under Section 4.2 and the last paragraph of Section 10.3 shall survive.

In the event there are Securities of two or more series hereunder, the Trustee shall be required to execute an instrument acknowledging satisfaction and discharge of this Indenture only if requested to do so with respect to Securities of all series as to which it is Trustee and if the other conditions thereto are met. In the event there are two or more Trustees hereunder, then the effectiveness of any such instrument shall be conditioned upon receipt of such instruments from all Trustees hereunder.

Section 4.2 Application of Trust Money.

Subject to the provisions of the last paragraph of Section 10.3, all money deposited with the Trustee pursuant to Section 4.1 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal and any premium and interest for whose payment such money has been deposited with the Trustee. Money deposited and held in trust pursuant to this Section shall not be subject to claims of the holders of Senior Indebtedness or of Entitled Persons under Article XIII.

ARTICLE V

Remedies

Section 5.1 Events of Default.

"Event of Default", wherever used herein with respect to Securities of any series, means any one of the following events (whatever the reason for such Event of Default, whether it shall be occasioned by the provisions of Article XIII and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

- (1) default in the payment of any interest upon any Security of that series when it becomes due and payable, and continuance of such default for a period of 30 days; or
- (2) default in the payment of the principal of (or premium, if any, on) any Security of that series at its Maturity; or
- (3) default in the deposit of any sinking fund payment, when and as due by the terms of a Security of that series; or

- (4) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section specifically dealt with or which has expressly been included in this Indenture solely for the benefit of series of Securities other than that series), and continuance of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of that series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or
- (5) the entry by a court or a governmental authority having jurisdiction in the premises of (A) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (B) a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or State law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or substantially all of its assets or ordering the winding up or liquidation of the affairs of the Company, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days; or
- (6) the commencement by the Company of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or substantially all of its assets; or

 $\mbox{(7)}$ any other Event of Default provided with respect to Securities of that series.

Section 5.2 Acceleration of Maturity; Rescission and Annulment.

If an Event of Default specified in Sections 5.1(6) or 5.1(7) with respect to Securities of any series at the time Outstanding occurs and is continuing, then in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series may declare the principal amount (or, if any of the Securities of that series are Original Issue Discount Securities, such portion of the principal amount of such Securities as may be specified in the terms thereof) of all of the Securities of that series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such principal amount (or specified amount) shall become immediately due and payable.

At any time after such a declaration of acceleration with respect to Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in principal amount of the Outstanding Securities of that series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

- (1) the Company has paid or deposited with the Trustee a sum sufficient to pay $% \left(1\right) =\left(1\right) +\left(1\right) +\left($
 - (A) all overdue interest on all Securities of that series,
 - (B) the principal of (and premium, if any, on) any Securities of that series which have become due otherwise than by such declaration of acceleration and any interest thereon at the rate or rates prescribed therefor in such Securities,
 - (C) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate or rates prescribed therefor in such Securities, and $\frac{1}{2} \int_{-\infty}^{\infty} \frac{1}{2} \left(\frac{1}{2} \int_{-\infty}^{\infty} \frac{1}{2} \left$
 - (D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel;

and

(2) all Events of Default with respect to Securities of that series, other than the non-payment of the principal of Securities of that series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.13.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 5.3 Collection of Indebtedness and Suits for Enforcement by Trustee.

The Company covenants that if

- (1) default is made in the payment of any interest on any Security when such interest becomes due and payable and such default continues for a period of 30 days, or $\frac{1}{2} \left(\frac{1}{2} \right) = \frac{1}{2} \left(\frac{1}{2} \right) \left(\frac{1}{2} \right)$
- (2) default is made in the payment of the principal of (or premium, if any, on) any Security at the Maturity thereof, or
- (3) default is made in the making or satisfaction of any sinking fund payment or analogous obligation when the same becomes due pursuant to the terms of any Security, $\frac{1}{2} \int_{-\infty}^{\infty} \frac{1}{2} \left(\frac{1}{2} \int_{-\infty}^{$

the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and any premium and interest and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal and premium and on any overdue interest, at the rate or rates prescribed therefor in such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

Section 5.4 Trustee May File Proofs of Claim.

In case of any judicial proceeding relative to the Company (or any other obligor upon the Securities), its property or its creditors, the Trustee shall be entitled and empowered, by

intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Act in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.7.

No provision of this Indenture shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding; provided, however, the Trustee may vote on behalf of the Holders for the election of a trustee in bankruptcy or similar official and may be a member of a creditors' or other similar committee.

Section 5.5 Trustee May Enforce Claims Without Possession of Securities.

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

Section 5.6 Application of Money Collected.

Subject to Article XIII, any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or any premium or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 6.7; and

SECOND: To the payment of the amounts then due and unpaid for principal of and any premium and interest on the Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal and any premium and interest, respectively.

Section 5.7 Limitation on Suits.

No Holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

- (1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of that series;
- (2) the Holders of not less than 25% in principal amount of the Outstanding Securities of that series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (3) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;
- (4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and
- (5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of that series:

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all of such Holders.

Section 5.8 Unconditional Right of Holders to Receive Principal, Premium and Interest.

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal

of and any premium and (subject to Section 3.7) any interest on such Security on the Stated Maturity or Maturities expressed in such Security (or, in the case of redemption, on the Redemption Date), and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

Section 5.9 Restoration of Rights and Remedies.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

Section 5.10 Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 3.6, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.11 Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Securities to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 5.12 Control by Holders.

The Holders of a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities of such series, provided that

- (1) such direction shall not be in conflict with any rule of law or with this Indenture, $\,$
- (2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and
- (3) subject to the provisions of Section 6.1, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a Responsible Officer or Officers of the Trustee, determine that the proceeding so directed would involve the Trustee in personal liability.

Section 5.13 Waiver of Past Defaults.

The Holders of not less than a majority in principal amount of the Outstanding Securities of any series may on behalf of the Holders of all the Securities of such series waive any past default hereunder with respect to such series and its consequences, except a default

- (1) in the payment of the principal of or any premium or interest on any Security of such series, or $\frac{1}{2}$
- (2) in respect of a covenant or provision hereof which under Article IX cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 5.14 Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Securities by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.14 shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Outstanding Securities of any series, or to any suit instituted

by any Holder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Securities on or after the Stated Maturity or Maturities expressed in such Securities (or, in the case of redemption, on or after the Redemption Date).

Section 5.15 Waiver of Usury, Stay or Extension Laws.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE VI

The Trustee

Section 6.1 Certain Duties and Responsibilities.

The duties and responsibilities of the Trustee shall be as provided by the Trust Indenture Act. Notwithstanding the foregoing, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

Section 6.2 Notice of Defaults.

If a default occurs hereunder with respect to Securities of any series, the Trustee shall give the Holders of Securities of such series notice of such default as and to the extent provided by the Trust Indenture Act; provided, however, that in the case of any default of the character specified in Section 5.1(4) with respect to Securities of such series, no such notice to Holders shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

Section 6.3 Certain Rights of Trustee.

Subject to the provisions of Section 6.1:

- (a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;
- (b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;
- (c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;
- (d) the Trustee may consult with counsel and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;
- (e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;
- (f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney; and

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

Section 6.4 Not Responsible for Recitals or Issuance of Securities.

The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee or any Authenticating Agent assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee or any Authenticating Agent shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

Section 6.5 May Hold Securities.

The Trustee, any Authenticating Agent, any Paying Agent, any Security Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 6.8 and 6.13, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Security Registrar or such other agent.

Section 6.6 Money Held in Trust.

Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

Section 6.7 Compensation and Reimbursement.

The Company agrees

- (1) to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);
- (2) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its

agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith;

- (3) to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the reasonable costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder;
- (4) to secure the Company's obligations under this Section, the Trustee shall have a lien prior to the Securities upon all money or property held or collected by the Trustee in its capacity as Trustee, except for such money and property which is held in trust to pay principal (and premium, if any) or interest on particular Securities; and
- (5) when the Trustee incurs any expenses or renders any services after the occurrence of an Event of Default specified in Section 5.1(6) or (7), such expenses and the compensation for such services are intended to constitute expenses of administration under the United States Bankruptcy Code (Title 11 of the United States Code) or any similar federal or state law for the relief of debtors.

Section 6.8 Disqualification; Conflicting Interests.

If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

Section 6.9 Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$50,000,000. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 6.10 Resignation and Removal; Appointment of Successor.

- (a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 6.11.
- (b) The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 6.11 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.
- (c) The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to the Trustee and to the Company.
 - (d) If at any time:
 - (1) the Trustee shall fail to comply with Section 6.8 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six months, or
 - (2) the Trustee shall cease to be eligible under Section 6.9 and shall fail to resign after written request therefor by the Company or by any such Holder, or
 - (3) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) the Company by a Board Resolution may remove the Trustee with respect to all securities, or (ii) subject to Section 5.14, any Holder who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities and the appointment of a successor Trustee or Trustees.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Securities of one or

more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series) and shall comply with the applicable requirements of Section 6.11. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any Series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 6.11, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Securities of any Series shall have been so appointed by the Company or the Holders and accepted appointment in the manner required by Section 6.11, any Holder who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such

(f) The Company shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series to all Holders of Securities of such series in the manner provided in Section 1.6. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

Section 6.11 Acceptance of Appointment by Successor.

(a) In case of the appointment hereunder of a successor Trustee with respect to all Securities, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

- (b) In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees cotrustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.
- (c) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in paragraph (a) and (b) of this Section, as the case may be.
- (d) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article.

Section 6.12 Merger, Conversion, Consolidation or Succession to Business.

 $\,$ Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any

corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 6.13 Preferential Collection of Claims Against Company.

If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

Section 6.14 Appointment of Authenticating Agent.

The Trustee may appoint an Authenticating Agent or Agents (which may be an affiliate of the Company) with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon original issue and upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.6, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and subject to supervision or examination by Federal or State If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent

shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall mail written notice of such appointment by first-class mail, postage prepaid, to all Holders of Securities of the series with respect to which such Authenticating Agent will serve, as their names and addresses appear in the Security Register. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

Unless the Authenticating Agent has been appointed by the Trustee at the request of the Company, the Trustee agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section, and the Trustee shall be entitled to be reimbursed for such payments, subject to the provisions of Section 6.7.

If an appointment with respect to one or more series is made pursuant to this Section, the Securities of such series may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

 $$\operatorname{\textsc{This}}$ is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

THE FIRST NATIONAL BANK OF CHICAGO,
As Trustee

As Authenticating Agent

By -----Authorized Officer

ARTICLE VII

Holders' Lists and Reports by Trustee and Company

Section 7.1 Company to Furnish Trustee Names and Addresses of Holders.

The Company will furnish or cause to be furnished to the Trustee:

- (a) semi-annually, not later than June 30 and December 31 in each year, a list for each series, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Securities of such series as of the preceding June 15 or December 15, as the case may be, and
- (b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

excluding from any such list names and addresses received by the Trustee in its capacity as Security Registrar.

Section 7.2 Preservation of Information; Communications to Holders.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.1 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.1 upon receipt of a new list so furnished.

- (b) The rights of the Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and privileges of the Trustee, shall be as provided by the Trust Indenture Act.
- (c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act.

Section 7.3 Reports by Trustee.

- (a) The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. To the extent that any such report is required by the Trust Indenture Act with respect to any 12-month period, such report shall cover the 12-month period ending March 15 and shall be transmitted by the next succeeding March 15.
- (b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which any Securities are listed, with the Commission and with the Company. The Company will notify the Trustee when any Securities are listed on any stock exchange.

Section 7.4 Reports by Company.

The Company shall file with the Trustee and the Commission, and transmit to Holders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant to such Act; provided that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 shall be filed with the Trustee within 15 days after the same is so required to be filed with the Commission.

ARTICLE VIII

Consolidation, Merger, Conveyance, Transfer or Lease

Section 8.1 Company May Consolidate, Etc., Only on Certain Terms.

The Company shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and the

Company shall not permit any Person to consolidate with or merge into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless:

- (1) in case the Company shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety shall be a corporation, shall be organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of and any premium and interest on all the Securities and the performance or observance of every covenant of this Indenture on the part of the Company to be performed or observed;
- (2) immediately after giving effect to such transaction and treating any indebtedness which becomes an obligation of the Company or a Subsidiary as a result of such transaction as having been incurred by the Company or such Subsidiary at the time of such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and
- (3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with;

provided, however, the Company may, without the consent of the Holder or Holders of any series of Securities, convey or transfer its assets substantially as an entirety to any Person in connection with a transfer that is assisted or sponsored by a Federal bank regulatory authority, and in such case the Company's obligations under the Indenture need not be assumed by the entity acquiring such assets.

Section 8.2 Successor Substituted.

Upon any consolidation of the Company with, or merger of the Company into, any other Person or any conveyance, transfer or lease of the properties and assets of the Company

substantially as an entirety in accordance with Section 8.1, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities.

ARTICLE IX

Supplemental Indentures

Section 9.1 Supplemental Indentures Without Consent of Holders.

Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

- (1) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants of the Company herein and in the Securities; or
- (2) to add to the covenants of the Company for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such series) or to surrender any right or power herein conferred upon the Company; or
 - (3) to add any additional Events of Default; or
- (4) to add to or change any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the issuance of Securities in bearer form, registrable or not registrable as to principal, and with or without interest coupons, or to permit or facilitate the issuance of Securities in uncertificated form; or
- (5) to add to, change or eliminate any of the provisions of this Indenture in respect of one or more series of Securities, provided that any such addition, change or elimination (i) shall neither (A) apply to any Security of any series created prior to the execution of such supplemental indenture and entitled to the benefit of such provision nor (B) modify the

rights of the Holder of any such Security with respect to such provision or (ii) shall become effective only when there is no such Security Outstanding; or

- (6) to secure the Securities; or
- (7) to establish the form or terms of Securities of any series as permitted by Sections 2.1 and 3.1; or
- (8) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 6.11(b); or
- (9) to add to, change or eliminate any of the provisions of Article XIII in respect of any series of Securities, including Outstanding Securities, provided that any such action pursuant to this clause (9) shall not adversely affect the interests of the Holders of Securities of any series in any material respect; or
- (10) to provide that Securities of any Series may be convertible into other securities or other property and to set forth the terms and conditions of conversion of any such convertible Securities;
- (11) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture, provided that such action pursuant to this clause (11) shall not adversely affect the interests of the Holders of Securities of any series in any material respect.

Notwithstanding any provision in this Indenture or otherwise, the rights of creditors in respect of Other Financial Obligations under this Indenture and otherwise in respect of the Securities may, at any time and from time to time, be reduced or eliminated by a supplemental indenture entered into by the Company and the Trustee, which supplemental indenture will not require the consent of Holders of Securities or any creditor in respect of Other Financial Obligations.

Section 9.2 Supplemental Indentures with Consent of Holders.

With the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities of each series affected by such supplemental indenture, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities of such series under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby,

- (1) change the Stated Maturity of the principal of, or any instalment of principal of or interest on, any Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.2, or adversely affect any right of repayment at the option of the Holder of any Security, or reduce the amount of, or postpone the date fixed for, the payment of any sinking fund payment or analogous obligation, or change the coin or currency in which, any Security or any premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date) or modify the provisions of this Indenture with respect to the subordination of the Securities of any series in a manner adverse to the Holders.
- (2) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver of certain defaults hereunder and their consequences provided for in this Indenture, or
- (3) modify any of the provisions of this Section, Section 5.13 or Section 10.8, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby, provided, however, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to "the Trustee" and

concomitant changes in this Section, or the deletion of this proviso, in accordance with the requirements of Sections 6.11(b) and 9.1(8).

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

It shall not be necessary for any Act of Holders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Section 9.3 Execution of Supplemental Indentures.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 6.1) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 9.4 Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 9.5 Conformity with Trust Indenture Act.

 $\hbox{ Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act. }$

Section 9.6 Reference in Securities to Supplemental Indentures.

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company

shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

ARTICLE X

Covenants

Section 10.1 Payment of Principal, Premium and Interest.

The Company covenants and agrees for the benefit of each series of Securities that it will duly and punctually pay the principal of and any premium and interest on the Securities of that series in accordance with the terms of the Securities and this Indenture.

Section 10.2 Maintenance of Office or Agency.

The Company will maintain in each Place of Payment for any series of Securities an office or agency where Securities of that series may be presented or surrendered for payment, where Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

Section 10.3 Money for Securities Payments to Be Held in Trust.

If the Company shall at any time act as its own Paying Agent with respect to any series of Securities, it will, on or

before each due date of the principal of or any premium or interest on any of the Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal and any premium and interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure to act.

Whenever the Company shall have one or more Paying Agents for any series of Securities, it will, prior to each due date of the principal of or any premium or interest on any Securities of that series, deposit with a Paying Agent a sum sufficient to pay such amount, such sum to be held as provided by the Trust Indenture Act, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure to act.

The Company will cause each Paying Agent for any series of Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will (i) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent and (ii) during the continuance of any default by the Company (or any other obligor upon the Securities of that series) in the making of any payment in respect of the Securities of that series, and upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Securities of that series.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of or any premium or interest on any Security of any series and remaining unclaimed for two years after such principal, premium or interest has become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be

published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, the City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 10.4 Statement by Officers as to Default.

The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate (one of the signers of which shall be the principal executive officer, principal financial officer or principal accounting officer of the Company), stating whether or not to the best knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

Section 10.5 Existence.

Subject to Article VIII, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises; provided, however, that the Company shall not be required to preserve any such right or franchise if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not and is not reasonably likely to be disadvantageous in any material respect to the Holders.

Section 10.6 Maintenance of Properties.

The Company will cause all properties used or useful in the conduct of its business or the business of any Subsidiary to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; provided, however, that nothing in this Section shall prevent the Company from discontinuing the operation or maintenance of any of such properties if such discontinuance is, in the judgment of the Company, desirable in the conduct of its business or the business of any Subsidiary and not disadvantageous in any material respect to the Holders.

Section 10.7 Payment of Taxes and Other Claims.

The Company will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (1) all taxes, assessments and governmental charges levied or imposed upon the Company or any Subsidiary or upon the income, profits or property of the Company or any Subsidiary, and (2) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon the property of the Company or any Subsidiary; provided, however, that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings and for which adequate provision is made.

Section 10.8 Waiver of Certain Covenants.

The Company may omit in any particular instance to comply with any term, provision or condition set forth in Sections 10.5 to 10.7, inclusive, with respect to the Securities of any series if before the time for such compliance the Holders of a majority in principal amount of the Outstanding Securities of such series shall, by act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

ARTICLE XI

Redemption of Securities

Section 11.1 Applicability of Article.

Securities of any series which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 3.1 for Securities of any series) in accordance with this Article.

Section 11.2 Election to Redeem; Notice to Trustee.

The election of the Company to redeem any Securities shall be evidenced by a Board Resolution. In case of any redemption at the election of the Company of less than all the Securities of any series, the Company shall, at least 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date, of the principal amount of Securities of such series to be redeemed and, if applicable, of

the tenor of the Securities to be redeemed. In the case of any redemption of Securities prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction.

Section 11.3 Selection by Trustee of Securities

If less than all the Securities of any series are to be redeemed (unless all of the Securities of such series and of a specified tenor are to be redeemed), the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof) of the principal amount of Securities of such series of a denomination larger than the minimum authorized denomination for Securities of that series. If less than all of the Securities of such series and of a specified tenor are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series and specified tenor not previously called for redemption in accordance with the preceding sentence.

The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities which has been or is to be redeemed.

Section 11.4 Notice of Redemption.

Notice of redemption shall be given by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed, at his address appearing in the Security Register.

All notices of redemption shall state:

- (1) the Redemption Date,
- (2) the Redemption Price and accrued interest, if any,

- (3) if less than all the Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption of any Securities, the principal amounts) of the particular Securities to be redeemed,
- (4) that on the Redemption Date the Redemption Price and accrued interest, if any, will become due and payable upon each such Security to be redeemed and, if applicable, that interest thereon will cease to accrue on and after said date.
- (5) the place or places where such Securities are to be surrendered for payment of the Redemption Price and accrued interest, if any,
- $\mbox{\ensuremath{\mbox{(6)}}}$ that the redemption is for a sinking fund, if such is the case, and
 - (7) the CUSIP numbers, if any, of the Securities to be redeemed.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company and shall be irrevocable.

Section 11.5 Deposit of Redemption Price.

Prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 10.3) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on, all the Securities which are to be redeemed on that date.

Section 11.6 Securities Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price, together with accrued interest to the Redemption Date; provided, however, that, unless otherwise specified as contemplated by Section 3.1, installments of interest whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant

Record Dates according to their terms and the provisions of Section 3.7.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal and any premium shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

Section 11.7 Securities Redeemed in Part.

Any Security which is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities of the same series and of like tenor, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

ARTICLE XII

Sinking Funds

Section 12.1 Applicability of Article.

The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of a series except as otherwise specified as contemplated by Section 3.1 for Securities of such series.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "mandatory sinking fund payment", and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an "optional sinking fund payment". If provided for by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 12.2. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series.

Section 12.2 Satisfaction of Sinking Fund Payments with Securities.

The Company (1) may deliver Securities of a series (other than any previously called for redemption) and (2) may apply as a credit Securities of a series which theretofore have been redeemed or otherwise acquired by the Company either at the

election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to the Securities of such series required to be made pursuant to the terms of such Securities as provided for by the terms of such series; provided that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

Section 12.3 Redemption of Securities for Sinking Fund.

Not less than 90 days prior to each sinking fund payment date for any series of Securities, the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities of that series pursuant to Section 12.2 and the basis for such credit and will also deliver to the Trustee any Securities to be so delivered. Not less than 30 days before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 11.3 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 11.4. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 11.6 and 11.7.

ARTICLE XIII

Subordination of Securities

Section 13.1 Securities Subordinate to Senior Indebtedness.

The Company covenants and agrees, and each Holder of a Security of any series, by his acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article (subject to the provisions of Article XIV), the indebtedness represented by the Securities of such series and the payment of the principal of (and premium, if any) and interest on each of all of the Securities of such series are hereby expressly made subordinate and subject in right of payment to the prior payment in full of all Senior Indebtedness and, as provided in Section 13.15, of all Other Financial Obligations.

Section 13.2 Payment Over of Proceeds Upon Dissolution, Etc.

In the event of (a) any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding in connection therewith, relative to the Company or to its creditors, as such, or to its assets, or (b) any liquidation, dissolution or other winding up of the Company, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy, or (c) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of the Company, then and in any such event the holders of Senior Indebtedness shall be entitled to receive payment in full of all amounts due or to become due on or in respect of all Senior Indebtedness, or provision shall be made for such payment in money or money's worth, before the Holders of the Securities of any series are entitled to receive any payment on account of principal of (or premium, if any) or interest on the Securities of such series, and to that end the holders of Senior Indebtedness shall be entitled to receive, for application to the payment hereof, any payment or distribution of any kind or character, whether in cash, property or securities, which may be payable or deliverable in respect of the Securities of any series in any such case, proceeding, dissolution, liquidation or other winding up or event.

In the event that, notwithstanding the foregoing provisions of this Section, the Trustee or the holder of any Security of any series shall have received any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, before all Senior Indebtedness is paid in full or payment thereof provided for, and if such fact shall, at or prior to the time of such payment or distribution have been made known to the Trustee or, as the case may be, such Holder, then and in such event such payment or distribution shall be paid over or delivered forthwith to the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee, agent or other Person making payment or distribution of assets of the Company for application to the payment of all Senior Indebtedness remaining unpaid, to the extent necessary to pay all Senior Indebtedness in full, after giving effect to any concurrent payment or distribution to or for the holders of Senior Indebtedness.

For purposes of this Article only, the words "cash, property or securities" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment which are subordinated in right of payment to all Senior Indebtedness which may at the time be outstanding to the same extent as, or to a greater extent than, the Securities are so subordinated as provided in this Article. The consolidation of the Company with, or the merger of the Company into, another Person or the liquidation or dissolution of

the Company following the conveyance or transfer of its properties and assets substantially as an entirety to another Person upon the terms and conditions set forth in Article VIII shall not be deemed a dissolution, winding up, liquidation, reorganization, assignment for the benefit of creditors or marshalling of assets and liabilities of the Company for the purposes of this Section if the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance, transfer or lease such properties and assets substantially as an entirety, as the case may be, shall, as a part of such consolidation, merger, conveyance, transfer or lease, comply with the conditions set forth in Article VIII.

Section 13.3 Prior Payment to Senior Indebtedness Upon Acceleration of Securities.

In the event that any Securities of any series are declared due and payable before their Stated Maturity, then and in such event the holders of Senior Indebtedness shall be entitled to receive payment in full of all amounts due or to become due on or in respect of all Senior Indebtedness, or provision shall be made for such payment in cash, before the Holders of the Securities of such series are entitled to receive any payment of the principal of, premium, if any, or interest on the Securities of such series or on account of the purchase or other acquisition of Securities of such series.

In the event that, notwithstanding the foregoing, the Company shall make any payment to the Trustee or the Holder of any Security of any series prohibited by the foregoing provisions of this Section, and if such fact shall, at or prior to the time of such payment, have been made known to the Trustee or, as the case may be, such Holder, then and in such event such payment shall be paid over and delivered forthwith to the Company.

The provisions of this Section shall not apply to any payment with respect to which Section 13.2 would be applicable.

Section 13.4 No Payment When Senior Indebtedness Default.

(a) In the event and during the continuation of any default in the payment of principal of (or premium, if any) or interest on any Senior Indebtedness beyond any applicable grace period with respect thereto, or in the event that any event of default with respect to any Senior Indebtedness shall have occurred and be continuing permitting the holders of such Senior Indebtedness (or a trustee on behalf of the holders thereof) to declare such Senior Indebtedness due and payable prior to the date on which it would otherwise have become due and payable, unless and until such event of default shall have been cured or waived or shall have ceased to exist and such acceleration shall have been rescinded or annulled, or (b) in the event any judicial

proceeding shall be pending with respect to any such default in payment, or event of default, then no payment shall be made by the Company on account of principal of (or premium, if any) or interest on the Securities of any series or on account of the purchase or other acquisition of Securities of any series.

In the event that, notwithstanding the foregoing, the Company shall make any payment to the Trustee or the Holder of any Security of any series prohibited by the foregoing provisions of this Section, and if such fact shall, at or prior to the time of such payment, have been made known to the Trustee or, as the case may be, such Holder, then and in such event such payment shall be paid over and delivered forthwith to the Company.

The provisions of this Section shall not apply to any payment with respect to which Section 13.2 would be applicable.

Section 13.5 Payment Permitted If No Default.

Nothing contained in this Article or elsewhere in this Indenture or in any of the Securities of any series shall prevent (a) the Company, at any time except during the pendency of any case, proceeding, dissolution, liquidation or other winding up, assignment for the benefit of creditors or other marshalling of assets and liabilities of the Company referred to in Section 13.2 or under the conditions described in Section 13.3 or 13.4, from making payments at any time of principal of (and premium, if any) or interest on the Securities of any series, or (b) the application by the Trustee of any money deposited with it hereunder to the payment of or on account of the principal of (and premium, if any) or interest on the Securities of any series or the retention of such payment by the Holder, if, at the time of such application by the Trustee, it did not have actual knowledge that such payment would have been prohibited by the provisions of this Article.

Section 13.6 Subrogation to Rights of Holders of Senior Indebtedness.

Subject to the payment in full of all Senior Indebtedness, the Holders of the Securities of a series shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Indebtedness pursuant to the provisions of this Article to the rights of the holders of such Senior Indebtedness to receive payments and distributions of cash, property and securities applicable to the Senior Indebtedness until the principal of (and premium, if any) and interest on the Securities of such series shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Senior Indebtedness of any cash, property or securities to which the Holders of the Securities of a series or the Trustee would be entitled except for the provisions of this Article, and no payments over pursuant to the provisions of this Article to the holders of Senior Indebtedness by Holders of

Securities of a series or the Trustee, shall, as among the Company, its creditors other than holders of Senior Indebtedness and the Holders of the Securities of such series, be deemed to be a payment or distribution by the Company to or on account of the Senior Indebtedness.

Section 13.7 Provisions Solely to Define Relative Rights.

The provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities of a series on the one hand and the holders of Senior Indebtedness (and, in the case of Section 13.15, Entitled Persons in respect of Other Financial Obligations) on the other hand. Nothing contained in this Article or elsewhere in this Indenture or in the Securities of any series is intended to or shall (a) impair, as among the Company, its creditors other than holders of Senior Indebtedness and the Holders of the Securities of any series, the obligation of the Company, which is absolute and unconditional (and which, subject to the rights under this Article of the holders of Senior Indebtedness and the rights under Section 13.15 of Entitled Persons in respect of Other Financial Obligations, is intended to rank equally with all other obligations of the Company), to pay to the Holders of the Securities of a series the principal of (and premium, if any) and interest on the Securities of such series as and when the same shall become due and payable in accordance with their terms; or (b) affect the relative rights against the Company of the Holders of the Securities of a series and creditors of the Company other than the holders of Senior Indebtedness or Entitled Persons in respect of Other Financial Obligations; or (c) prevent the Trustee or the Holder of any Security of any series from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Senior Indebtedness, and under Section 13.15 of Entitled Persons in respect of Other Financial Obligations, to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

Section 13.8 Trustee to Effectuate Subordination.

Each holder of a Security of any series by his acceptance thereof authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article and appoints the Trustee his attorney-in-fact for any and all such purposes.

Section 13.9 No Waiver of Subordination Provisions.

No right of any present or future holder of any Senior Indebtedness or an Entitled Person in respect of Other Financial Obligations to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any failure to act, in good faith, by any such holder, or by any non-compliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Indebtedness or an Entitled Person in respect of Other Financial Obligations may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders of the Securities of any series, without incurring responsibility to the Holders of the Securities of any series and without impairing or releasing the subordination provided in this Article or the obligations hereunder of the Holders of the Securities to the holders of Senior Indebtedness or an Entitled Person in respect of Other Financial Obligations, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior Indebtedness or Other Financial Obligations, or otherwise amend or supplement in any manner Senior Indebtedness or Other Financial Obligations or any instrument evidencing the same or any agreement under which Senior Indebtedness or Other Financial Obligations is outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Indebtedness or Other Financial Obligations; (iii) release any Person liable in any manner for the collection of Senior Indebtedness or Other Financial Obligations; and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

Section 13.10 Notice to Trustee.

The Company shall give prompt written notice to the Trustee of any fact known to the Company which would prohibit the making of any payment to or by the Trustee in respect of the Securities of any series. Notwithstanding the provisions of this Article or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment to or by the Trustee in respect of the Securities of a series, unless and until the Trustee shall have received written notice thereof from the Company or a holder of Senior Indebtedness or from any trustee therefor or from any Entitled Persons in respect of Other Financial Obligations; and, prior to the receipt of any such written notice, the Trustee, subject to the provisions of Section 6.1, shall be entitled in all respects to assume that no such facts exist; provided, however, that if the Trustee shall not have received the notice provided for in this Section at least two Business Days prior to the date upon which by the terms hereof any money may become payable for any purpose (including, without limitation, the payment of the principal (and premium, if any) or interest on any Security), then, anything herein

contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purpose for which such money was received and shall not be affected by any notice to the contrary which may be received by it within two Business Days prior to such date.

Subject to the provisions of Section 6.1, the Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Indebtedness (or a trustee therefor) or an Entitled Person in respect of Other Financial Obligations to establish that such notice has been given by a holder of Senior Indebtedness (or a trustee therefor) or an Entitled Person in respect of Other Financial Obligations. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Indebtedness or an Entitled Person in respect of Other Financial Obligations to participate in any payment or distribution pursuant to this Article, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness or Other Financial Obligations held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

Section 13.11 Reliance on Judicial Order or Certificate of Liquidating Agent.

Upon any payment or distribution of assets of the Company referred to in this Article, the Trustee, subject to the provisions of Section 6.1, and the Holders of the Securities of any series shall be entitled to rely upon any order or decree entered by any court of competent jurisdiction in which such insolvency, bankruptcy, receivership, liquidation, reorganization, dissolution, winding up or similar case or proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of Securities of such series, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Indebtedness and other indebtedness of the Company and the Entitled Persons in respect of Other Financial Obligations, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article.

Section 13.12 Trustee Not Fiduciary for Holders of Senior Indebtedness or Entitled Persons.

The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness or Entitled Persons with respect to Other Financial Obligations and shall not be liable to any such holders or creditors if it shall in good faith mistakenly pay over or distribute to Holders of Securities of any series or to the Company or to any other Person cash, property or securities to which any holders of Senior Indebtedness or Entitled Persons with respect to Other Financial Obligations shall be entitled by virtue of this Article or otherwise.

Section 13.13 Rights of Trustee as Holder of Senior Indebtedness or Entitled Person; Preservation of Trustee's Rights.

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article with respect to any Senior Indebtedness which may at any time be held by it and with respect to any Other Financial Obligations owed to the Trustee as the Entitled Person, to the same extent as any other holder of Senior Indebtedness or Entitled Person in respect of Other Financial Obligations, as the case may be, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder or Entitled Person.

Nothing in this Article shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.7.

Section 13.14 Article Applicable to Paying Agents.

In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee; provided, however, that Section 13.13 shall not apply to the Company or any Affiliate of the Company if it or such Affiliate acts as Paying Agent.

Section 13.15 Payment of Proceeds in Certain Cases.

(a) Upon the occurrence of any of the events specified in clauses (a), (b) and (c) of the first paragraph of Section 13.2, the provisions of that Section shall be given effect to determine the amount of cash, property or securities which may be payable or deliverable as between the holders of Senior Indebtedness, on the one hand, and the Holders of Securities, on the other hand.

- (b) If, after giving effect to the provisions of Section 13.2 and Section 13.6, any amount of cash, property or securities shall be available for payment or distribution in respect of the Securities ("Excess Proceeds"), and any Entitled Persons in respect of Other Financial Obligations shall not have received payment in full of all amounts due or to become due on or in respect of such Other Financial Obligations (and provision shall not have been made for such payment in money or money's worth), then such Excess Proceeds shall first be applied (ratably with any amount of cash, property or securities available for payment or distribution in respect of any other indebtedness of the Company that by its express terms provides for the payment over of amounts corresponding to Excess Proceeds to Entitled Persons in respect of Other Financial Obligations) to pay or provide for the payment of the Other Financial Obligations remaining unpaid, to the extent necessary to pay all Other Financial Obligations in full, after giving effect to any concurrent payment or distribution to or for Entitled Persons in respect of Other Financial Obligations. Any Excess Proceeds remaining after the payment (or provisions for payment) in full of all Other Financial Obligations shall be available for payment or distribution in respect of the Securities.
- (c) In the event that, notwithstanding the foregoing provisions of subsection (b) of this Section, the Trustee or Holder of any Security shall have received any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, before all Other Financial Obligations are paid in full or payment thereof duly provided for, and if such fact shall, at or prior to the time of such payment or distribution have been made known to the Trustee or, as the case may be, such Holder, then and in such event, subject to any obligation that the Trustee or such Holder may have pursuant to Section 13.2, such payment or distribution shall be paid over or delivered forthwith to the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee, agent or other Person making payment or distribution of assets of the Company for payment in accordance with subsection (b).
- (d) Subject to the payment in full of all Other Financial Obligations, the Holders of the Securities shall be subrogated (equally and ratably with the holders of all indebtedness of the Company that by its express terms provides for the payment over of amounts corresponding to Excess Proceeds to Entitled Persons in respect of Other Financial Obligations and is entitled to like rights of subrogation) to the rights of the Entitled Persons in respect of Other Financial Obligations to receive payments and distributions of cash, property and securities applicable to the Other Financial Obligations until the principal of and interest on the Securities shall be paid in full. For purposes of such subrogation, no payments or distributions to Entitled Persons in respect of Other Financial Obligations of any cash, property or securities to which Holders of the Securities or the Trustee would be entitled except for the

provisions of this Section, and no payments over pursuant to the provisions of this Section to Entitled Persons in respect of Other Financial Obligations by Holders of Securities or the Trustee, shall, as among the Company, its creditors other than Entitled Persons in respect of Other Financial Obligations and the Holders of Securities, be deemed to be a payment or distribution by the Company to or on account of the Other Financial Obligations.

(e) The provisions of subsections (b), (c) and (d) of this Section are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities, on the one hand, and the Entitled Persons in respect of Other Financial Obligations, on the other hand, after giving effect to the rights of the holders of Senior Indebtedness, as provided in this Article. Nothing contained in subsections (b), (c) and (d) of this Section is intended to or shall affect the relative rights against the Company of the Holders of the Securities and (1) the holders of Senior Indebtedness or (2) other creditors of the Company other than Entitled Persons in respect of Other Financial Obligations.

ARTICLE XIV

Defeasance and Covenant Defeasance

Section 14.1 Applicability of Article; Company's Option to Effect Defeasance or Covenant Defeasance.

If pursuant to Section 3.1 provision is made for either or both of (a) defeasance of the Securities of a series under Section 14.2 or (b) covenant defeasance of the Securities of a series under Section 14.3, then the provisions of such Section or Sections, as the case may be, together with the other provisions of this Article XIV, shall be applicable to the Securities of such series, and the Company may at its option by Board Resolution, at any time, with respect to the Securities of such series, elect to have either Section 14.2 (if applicable) or Section 14.3 (if applicable) be applied to the Outstanding Securities of such series upon compliance with the conditions set forth below in this Article XIV.

Section 14.2 Defeasance and Discharge.

Upon the Company's exercise of the above option applicable to this Section, the Company shall be deemed to have been discharged from its obligations with respect to the Outstanding Securities of such series on and after the date the conditions precedent set forth below are satisfied (hereinafter, "defeasance"). For this purpose, such defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by the Outstanding Securities of such

series and to have satisfied all its other obligations under such Securities and this Indenture, including the provisions of Article XIII hereof, insofar as such Securities are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (A) the rights of Holders of outstanding Securities of such series to receive, solely from the trust fund described in Section 14.4 as more fully set forth in such Section, payments of the principal of (and premium, if any) and interest on such Securities when such payments are due, (B) the Company's obligations with respect to such Securities under Sections 3.4, 3.5, 3.6, 10.2 and 10.3 and such obligations as shall be ancillary thereto, (C) the rights, powers, trusts, duties, immunities and other provisions in respect of the Trustee hereunder and (D) this Article XIV. Subject to compliance with this Article XIV, the Company may exercise its option under this Section 14.2 notwithstanding the prior exercise of its option under Section 14.3 with respect to the Securities of such series. Following a defeasance, payment of the Securities of such series may not be accelerated because of an Event of Default.

Section 14.3 Covenant Defeasance.

Upon the Company's exercise of the above option applicable to this Section and after the date the conditions set forth below are satisfied (hereinafter, "covenant defeasance"), the Company shall be released from its obligations under any covenant applicable to such Securities that is determined pursuant to Section 3.1 to be subject to this provision, and the occurrence of an event specified in Section 5.1(4) (with respect to any Section applicable to such Securities that are determined pursuant to Section 3.1 to be subject to this provision) or Section 5.1(5) shall not be deemed to be an Event of Default with respect to the outstanding Securities of such series. For this purpose, such covenant defeasance means that, with respect to the Outstanding Securities of such series, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such Section whether directly or indirectly by reason of any reference elsewhere herein to any such Section to by reason of any reference in any such Section to any other provision herein or in any other document, but the remainder of this Indenture and such Securities shall be unaffected thereby.

Section 14.4 Conditions to Defeasance or Covenant Defeasance.

The following shall be the conditions precedent to application of either Section 14.2 or Section 14.3 to the Outstanding Securities of such series:

(1) The Company shall irrevocably have deposited or caused to be deposited with the Trustee as trust ${\sf T}$

funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Securities, (A) money in an amount, or (B) U.S. Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or (C) a combination thereof, sufficient, without reinvestment, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee to pay and discharge, the principal of (and premium, if any) and interest on the Outstanding Securities of such series on the Maturity of such principal, premium, if any, or interest and any mandatory sinking fund payments or analogous payments applicable to the Outstanding Securities of such series on the due dates thereof. Before such a deposit the Company may make arrangements satisfactory to the Trustee for the redemption of Securities at a future date or dates in accordance with Article XI, which shall be given effect in applying the foregoing. For this purpose, "U.S. Government Obligations" means securities that are (x) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (y) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act of 1933, as amended) as custodian with respect to any such U.S. Government Obligation or a specific payment of principal of or interest on any such U.S. Government Obligation held by such custodian for the account of the holder of such depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal of or interest on the U.S. Government Obligation evidenced by such depository receipt.

(2) No Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to the Securities of such series shall have occurred and be continuing (A) on the

date of such deposit or (B) insofar as subsections 5.1(6) and (7) are concerned, at any time during the period ending on the 123rd day after the date of such deposit or, if longer, ending on the day following the expiration of the longest preference period applicable to the Company in respect of such deposit (it being understood that the condition in this Clause (B) shall not be deemed satisfied until the expiration of such period).

- (3) Such defeasance or covenant defeasance shall not (A) cause the Trustee for the Securities of such series to have a conflicting interest as defined in Section 6.8 or for purposes of the Trust Indenture Act with respect to any securities of the Company or (B) result in the trust arising from such deposit to constitute, unless it is qualified as, a regulated investment company under the Investment Company Act of 1940, as amended.
- (4) Such defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound.
- (5) Such defeasance or covenant defeasance shall not cause any Securities of such series then listed on any registered national securities exchange under the Securities Exchange Act of 1934, as amended, to be delisted.
- (6) In the case of an election under Section 14.2, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (x) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (y) since the date of this Indenture there has been a change in the applicable Federal income tax law, in either case to the effect that, and based thereon such opinion shall confirm that, the Holders of the Outstanding Securities of such series will not recognize income, gain or loss for Federal income tax purposes as a result of such defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred.
- (7) In the case of an election under Section 14.3, the Company shall have delivered to the Trustee an opinion of Counsel to the effect that the Holders of the Outstanding Securities of such series will not recognize income, gain or loss for Federal income tax purposes as a result of such covenant defeasance and

will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred.

- (8) At the time of such deposit; (A) no default in the payment of all or a portion of principal of (or premium, if any) or interest on any Senior Indebtedness shall have occurred and be continuing, and no event of default with respect to any Senior Indebtedness shall have occurred and be continuing and shall have resulted in such Senior Indebtedness becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable and (B) no other event of default with respect to any Senior Indebtedness shall have occurred and be continuing permitting (after notice or the lapse of time, or both) the holders of such Senior Indebtedness (or a trustee on behalf of the holders thereof) to declare such Senior Indebtedness due and payable prior to the date on which it would otherwise have become due and payable, or, in the case of either Clause (A) or Clause (B) above, each such default or event of default shall have been cured or waived or shall have ceased to exist.
- (9) Such defeasance or covenant defeasance shall be effected in compliance with any additional terms, conditions or limitations which may be imposed on the Company in connection therewith pursuant to Section 3.1.
- (10) The Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for relating to either the defeasance under Section 14.2 or the covenant defeasance under Section 14.3 (as the case may be) have been complied with.

Section 14.5 Deposited Money and U.S. Government Obligations to be Held in Trust; Other Miscellaneous Provisions.

Subject to the provisions of the last paragraph of Section 10.3, all money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee pursuant to Section 14.4 in respect of the Outstanding Securities of such series shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any Paying Agent (but not including the Company acting as its own Paying Agent) as the Trustee may determine, to the Holders of such Securities, of all sums due and to become due thereon in respect of principal (and premium, if any) and interest, but such money need not be segregated from other funds except to the extent

required by law. Money so held in trust shall not be subject to the provisions of Article ${\sf XIII}$.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the money or U.S. Government Obligations deposited pursuant to Section 14.4 or the principal and interest received in respect thereof.

Anything herein to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Government Obligations held by it as provided in Section 14.4 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect an equivalent defeasance or covenant defeasance.

Section 14.6 Reinstatement.

If the Trustee or the Paying Agent is unable to apply any money in accordance with Section 14.5 by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under the Securities of such series shall be revived and reinstated as though no deposit had occurred pursuant to this Article XIV until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 14.5; provided, however, that if the Company makes any payment of principal of (and premium, if any) or interest on any such Security following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money held by the Trustee or the Paying Agent.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, and their respective corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

FIRST HAWAIIAN, INC.

By /s/ Howard H. Karr

Title: Executive Vice President and Treasurer

Attest:

By /s/ Herbert E. Wolff
Title: Secretary

THE FIRST NATIONAL BANK OF CHICAGO, As Trustee

By /s/ Lawrence Dillard

Title: Vice President

Attest:

By /s/ T. Marshall

Title: Trust Officer and
Assistant Secretary

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

On the 9th day of August 9, 1993 before me personally came Howard H. Karr, to me known, who, being by me duly sworn, did depose and say that he is Executive Vice President of First Hawaiian, Inc., one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

/s/ Linda L. Uchida

Notary Public, First Judicial Circuit, State of Hawaii

Commission expires: February 11, 1996

EXHIBIT 10(iii)

LEASE AGREEMENT DATED AS OF DECEMBER 1, 1993 BETWEEN REFIRST, INC. AND FIRST HAWAIIAN BANK

LEASE AGREEMENT
between
REFIRST, INC., as Lessor
and
FIRST HAWAIIAN BANK, as Lessee
Dated as of December 1, 1993
Premises:
First Hawaiian Center Honolulu, Hawaii

TABLE OF CONTENTS

			Page
		ARTICLE I	
1.1	Property		3
1.2	Term		3
1.3	Title		3
		ARTICLE II	
2.1	Definitions		3
2.2	Other Definitional Provisions		. 18
0 1	Dont	ARTICLE III 	10
3.1 3.2	Rent		. 18 . 19
3.3			
3.4			
3.5			
3.6	Parformance on a Non-Rusiness Day		. 21
3.0	refrormance on a non-business bay		. 21
		ARTICLE IV	
4.1	General Taxes		. 21
4.2			
4.3			
4.4			
4.5			
4.6	Income Inclusions		. 25
4.7	withholding laxes		. 25
		ARTICLE V	
5.1	Quiet Enjoyment		. 25
		ARTICLE VI	
6.1	Net Lease		. 26
6.2	No Termination or Abatement		. 27
6.3	Right of Offset Against Lessor Base Rent		. 27
		ARTICLE VII	
7.1	Ownership of the Property		. 28
		RTICLE VIII	
8.1	Condition of the Property		. 29
8.2			
0 1	Compliance with Land Denvisorest and Torre	ARTICLE IX	
9.1	Compliance with Legal Requirements and Insurance		00
	Requirements		. 30
		ARTICLE X	
10.1	Maintenance and Repair; Return		. 30
10.2	Environmental Inspection		. 31

												Page
		ARTICLE	XI									
11.1	Modifications, Substitutions and Replacements						 				 	31
		ARTICLE										
12.1 12.2	Warranty of Title				: :	: :	 : :	: :	: :		 : :	33 34
		ARTICLE X	III									
13.1	Permitted Contests Other than in Respect of Impositions											35
13.2	Contests of Impositions											
		ARTICLE	XIV									
14.1	Public Liability and Workers' Compensation											
44.0	Insurance											
14.2 14.3	Hazard and Other Insurance			• •			 ٠.			• •	 	39 40
14.0	Coverage						 •				 •	40
15.1	Coqualty and Condemnation	ARTICLE										40
15.1	Casualty and Condemnation						 				 	42 47
15.3	Notice of Environmental Matters											
		ARTICLE	XVI									
16.1	Termination Upon Certain Events											
16.2	Procedures				٠.		 				 	48
		ARTICLE X										
17.1	Events of Default											
17.2	Surrender of Possession											
17.3 17.4	Reletting											
17.5	Acceleration of Rent											
17.6	Final Liquidated Damages											
17.7	Waiver of Certain Rights						 				 	53
17.8	Assignment of Rights under Contracts											
17.9	Remedies Cumulative						 				 	54
		ARTICLE X										
18.1	Lessor's Right to Cure Lessee's Defaults						 				 	54
		ARTICLE	XIX									
19.1	Provisions Relating to Lessee's Termination of this Lease or Exercise of Purchase Option						 				 	54
		ARTICLE	XX									
20.1	Lessee's Purchase Option											
20.2	Exercise of Purchase Option						 				 	55
20.3	Purchase Option Price											
20.4	Transfer of the Property Upon Exercise						 				 	56

		Page
	ADTTOLE VVI	
21.1 21.2	ARTICLE XXI Extended Terms	56 56
22.1	ARTICLE XXII Residual Guarantee	57
23.1	ARTICLE XXIII Holding Over	59
24.1	ARTICLE XXIV Risk of Loss	60
25.1	ARTICLE XXV Indemnification by Lessee	60
26.1 26.2 26.3	ARTICLE XXVI Subletting and Assignment	64
27.1	ARTICLE XXVII Estoppel Certificates	
28.1 28.2	ARTICLE XXVIII Right to Inspect During any Extended Term	66 66
29.1	ARTICLE XXIX Acceptance of Surrender	66
30.1	ARTICLE XXX No Merger of Title	66
31.1	Notices	67
32.1 32.2	ARTICLE XXXII Miscellaneous	68 68
32.2 32.3 32.4 32.5	Amendments and Modifications	
32.6 32.7 32.8	Schedules	69 69 69
32.8 32.9 32.10	Memorandum of Lease	69 69

										Pa	ge
33.1	Ground Lease	 	 		XXIII 		 	 	 		69
SCHEDULI	ES										

Schedule A: Schedule B: Schedule C: Schedule D: Schedule E:

Description of Land Permitted Exceptions Payment Dates and Lessor Base Rent Default Amount and Termination Amount Form of Non-disturbance and Attornment Agreement

LEASE AGREEMENT (this "Lease"), dated as of December 1, 1993, between REFIRST, INC., a Delaware corporation having its principal office at 1900 Indian Wood Circle, Maumee, Ohio 43537, as lessor, and FIRST HAWAIIAN BANK, a Hawaii banking corporation having its principal office at 1132 Bishop Street, Suite 2500, Honolulu, Hawaii 96813, as lessee.

WITNESSETH:

- A. WHEREAS, Lessor (such term, and all other capitalized terms not defined in these Recitals or in Article I, are as defined in Article II) has, pursuant to that certain Ground Lease, dated as of even date herewith (the "Ground Lease"), between First Hawaiian Center Limited Partnership and FH Center, Inc., collectively as ground lessors (collectively, the "Ground Lessors"), and Lessor, as ground lessee, (i) ground leased from the Ground Lessors those certain parcels comprising the Land, as described on Schedules A-1 and A-2 hereto, and (ii) received from the Ground Lessors all of the Ground Lessors' respective right, title and interest in and to the Appurtenant Rights relating to the Land described on Schedule A;
- B. WHEREAS, the Ground Lessors, Lessee and Lessor have executed and delivered that certain Participation Agreement, dated as of November 19, 1993 (the "Participation Agreement"), among Lessor, Lessee, the Ground Lessors and First Fidelity Bank, N.A., Pennsylvania, a national association (together with any replacement trustee appointed pursuant to the terms of the Indenture, the "Trustee"), pursuant to which, inter alia, (i) the Ground Lessors and Lessor agreed to enter into the Ground Lease and (ii) Lessor and Lessee agreed to enter into this Lease;
- C. WHEREAS, pursuant to that certain Leased Improvements Construction Agreement, dated as of even date herewith (the "Leased Improvements Construction Agreement"), between Lessee and Lessor, Lessor has agreed to cause to be demolished the Existing Improvements and to cause to be constructed in their place the Building (as defined below);
- D. WHEREAS, pursuant to that certain Construction Management, Escrow and Development Agreement, dated as of even date herewith (the "Construction Management Agreement"), among Lessor, Lessee and the Trustee, Lessee has in turn agreed for the benefit of Lessor and the Trustee to cause to be demolished the Existing Improvements and to cause to be constructed in their place the Building and to fulfill all other obligations, if any, of Lessor under the Leased Improvements Construction Agreement;
- E. WHEREAS, pursuant to (i) that certain Construction Agreement, dated November 2, 1993 (the "Construction Contract"), between Lessee and Fletcher Pacific Construction Co., Ltd. (the "General Contractor"), as general contractor, (ii) that certain

Abatement and Demolition Agreement, dated June 3, 1993 (the "Demolition Contract"), between Lessee and Cleveland Wrecking Company (the "Demolition Contractor"), as demolition contractor, and (iii) that certain Development Management Agreement, dated as of December 28, 1992 (the "Development Agreement"), between Lessee and The Myers Corporation (the "Developer"), as developer, Lessee has further provided for the demolition of the Existing Improvements and construction of the Building in order to satisfy its obligations under the Construction Management Agreement;

- F. WHEREAS, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, all of Lessor's right, title and interest in and to the Land, the Improvements, the Appurtenant Rights and the Fixtures referred to herein as the "Property", and defined more particularly in Section 1.1;
- G. WHEREAS, in order to provide funds for the demolition of the Existing Improvements and the construction of the Building, Lessor has issued \$161,990,000 of its 6.93% Class A Secured Notes Due 2003 (the "Class A Notes") and \$25,885,000 of its 6.98% Class B Secured Notes Due 2003 (the "Class B Notes" and, together with the Class A Notes, the "Notes"), pursuant to that certain Indenture, dated as of even date herewith (the "Indenture"), between Lessor and the Trustee, as trustee for the benefit of the holders from time to time of the Notes (collectively, the "Holders");
- H. WHEREAS, Lessor's obligations under the Notes are secured by (i) a Real Property Mortgage, Security Agreement and Financing Statement, dated as of even date herewith (the "Mortgage"), made by Lessor and the Ground Lessors in favor of the Trustee for the benefit of the Holders, on the Property, and (ii) an Assignment of Leases and Rents, dated as of even date herewith (the "Assignment of Lease"), made by Lessor in favor of the Trustee for the benefit of the Holders, and with respect to which Lessee has executed and delivered Lessee's Consent (the "Consent to Assignment"), dated as of even date herewith; and
- I. WHEREAS, this Lease is to be subordinated to the Mortgage but only during the Preliminary Term pursuant to that certain Subordination, Non-Disturbance and Attornment Agreement, dated as of even date herewith (the "Non-Disturbance Agreement"), among the Trustee, Lessee and Lessor, and shall at all times after the Primary Term Commencement Date, subject to the terms of the Non-Disturbance Agreement, be superior to the Mortgage.
- NOW, THEREFORE, in consideration of the foregoing, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE I

- 1.1 Property. Subject to the terms and conditions hereinafter set forth, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the following (collectively, the "Property"):
 - (a) all of Lessor's right, title and interest in and to the parcels of land described on Schedules A-1 and A-2 hereto (the "Land") pursuant to the terms and provisions of the Ground Lease;
 - (b) all of Lessor's right, title and interest in and to the $\mbox{\sc Improvements};$
 - (c) all of Lessor's right, title and interest in and to all easements, rights and appurtenances relating to the Land or the Improvements (collectively, the "Appurtenant Rights"); and
 - (d) all of Lessor's right, title and interest in and to all fixtures to the Improvements, including all components thereof, located in or on the Improvements, together with all replacements, modifications, alterations and additions thereto (collectively, the "Fixtures").
- $\,$ 1.2 Term. The Property is leased for the Preliminary Term, the Primary Term and any Extended Term, if applicable.
- 1.3 Title. The Property is leased to Lessee without any representation or warranty, express or implied, by Lessor and subject to the rights of parties in possession, the existing state of title (including, without limitation, the Permitted Exceptions) and all applicable Legal Requirements now or hereafter in effect. To obtain assurance as to the title to the Property as between Lessee and Lessor, Lessee is relying solely upon a policy of title insurance. Lessee shall in no event have any recourse against Lessor for any defect in title to the Property.

ARTICLE II

2.1 Definitions. As used in this Lease, terms defined in the caption or in the Recitals shall have the meanings set forth therein, and the following terms shall have the following meanings:

Additional Charges. As defined in Section 3.3.

 $\label{lem:defined} \mbox{Administrative Agent.} \ \ \mbox{As defined in the Participation Agreement.}$

Affiliate. When used with respect to any Person (as hereinafter defined), shall mean any other Person who, directly or indirectly, controls, is controlled by or is under common control with such Person. For the purposes of this definition, "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person.

After Tax Basis. With respect to any payment to be received, the amount of such payment increased so that, after deduction of the amount of all taxes required to be paid by the recipient (less any tax savings realized and the present value of any tax savings projected to be realized by the recipient as a result of the payment of the indemnified amount) with respect to the receipt by the recipient of such amounts, such increased payment (as so reduced) is equal to the payment otherwise required to be made.

Appraiser's Certificate. A certificate of an independent Person who is either (a) a licensed real estate broker which does not have a direct financial interest in the sublease in question or (b) a member of the Appraisal Institute, in each case having at least five years' experience in the downtown Honolulu commercial office market, stating that the rents payable under any sublease represent the fair rental value for the space sublet thereunder and that the other terms of such sublease, taken together with all of the terms of such sublease, are commercially reasonable.

Appurtenant Rights. As defined in Section 1.1(c).

Assignment of Lease. As defined in Recital H.

Base Rent. As defined in Section 3.1(a).

Beneficial Owner. As defined in the Participation Agreement.

Building. As defined in the Construction Management Agreement.

Business Day. Each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which national and/or state banks in the City of Philadelphia, Pennsylvania, or the City and County of Honolulu, Hawaii, are generally authorized or obligated, by law or executive order, to close

Casualty. As defined in Section 15.1(a)(i).

CERCLA. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. # 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986.

Certifying Party. As defined in Section 27.1.

Class A Base Rent. As defined in Section 3.1(a).

Class A Notes. The Class A Notes described in Recital G.

Class A Office Building. An office building generally consistent with other "Class A" office facilities located in the downtown Honolulu office market.

Class B Base Rent. As defined in Section 3.1(a).

Class B Notes. The Class B Notes described in Recital G.

Closing Expenses. All of those costs and expenses which are required to be paid by Lessee and referred to in Section 9.1 through 9.4 of the Participation Agreement.

Closing Tax Opinion. As defined in Section 4.4(a).

Code. The Internal Revenue Code of 1986, as amended from time to time, or any successor statute thereto. $\,$

Condemnation. As defined in Section 15.1(a)(ii).

Consent to Assignment. As defined in Recital H.

Construction Account. As defined in the Construction Management $\mathsf{Agreement}$.

Construction Contract. As defined in Recital E.

Construction Management Agreement. As defined in Recital D.

Debt Overdue Rate. 8.94%, but in no event shall such rate exceed the maximum rate permitted by law.

Default. An Event of Default or an event, condition or failure which, with the giving of notice or the lapse of time or both, would become an Event of Default.

Default Amount. For any Payment Date occurring during the Primary Term, the amount set forth on Schedule D with respect to such Payment Date.

Demolition Contract. As defined in Recital E.

Demolition Contractor. As defined in Recital E.

Developer. As defined in Recital E.

Development Agreement. As defined in Recital E.

Election Notice. As defined in Section 20.2.

Environmental Law. Whenever enacted or promulgated, any federal, state, county or local law, statute, ordinance, rule, regulation, license, permit, authorization, approval, covenant, criteria, guideline, administrative or court order, judgment, decree, injunction, code or requirement or any agreement with a Governmental Authority:

- (x) relating to pollution (or the cleanup, removal, remediation or encapsulation thereof, or any other response thereto), or the regulation or protection of human health, safety or the environment, including air, water vapor, surface water, groundwater, drinking water, land (including surface or subsurface), plant, aquatic and animal life, or
- (y) concerning exposure to, or the use, containment, storage, recycling, treatment, generation, discharge, emission, Release or threatened Release, transportation, processing, handling, labeling, containment, production, disposal or remediation of any Hazardous Substance, Hazardous Condition or Hazardous Activity,

in each case as amended and as now or hereafter in effect, and any common law or equitable doctrine (including, without limitation, injunctive relief and tort doctrines such as negligence, nuisance, trespass and strict liability) that may impose liability or obligations for injuries (whether personal or property) or damages due to or threatened as a result of the presence of, exposure to, or ingestion of, any Hazardous Substance, whether such common law or equitable doctrine is now or hereafter recognized or developed. Applicable laws include, but are not limited to, CERCLA; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. # 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. # 1251 et seq.; the Clean Air Act, 42 U.S.C. # 7401 et seq.; the National Environmental Policy Act, 42 U.S.C. # 4321; the Refuse Act, 33 U.S.C. ## 401 et seq.; the Hazardous Materials Transportation Act of 1975, 49 U.S.C. ## 1801-1812; the Toxic Substances Control Act, 15 U.S.C. ## 2601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. ## 136 et seq.; the Safe Drinking Water Act, 42 U.S.C. ## 300 f et seq.; and the Occupational

Safety and Health Act of 1970, each as amended and as now or hereafter in effect, and their state and local counterparts or equivalents, including the Hawaii Hazardous Waste Law, Haw. Rev. Stat. Ch. 342 J, and any regulations promulgated thereunder.

Environmental Violation. Any activity, occurrence or condition that violates or threatens to violate or results in or threatens to result in non-compliance with any Environmental Law.

 $\ensuremath{\mathsf{ERISA}}.$ The Employee Retirement Income Security Act of 1974, as amended from time to time.

Escrowee. The Trustee, any subsequent trustee appointed in accordance with Sections 608 and 609 of the Indenture and acting as trustee on behalf of the Holders or, if no mortgage then encumbers the Property, a bank or trust company experienced in administering construction loans and having a combined capital and surplus of at least \$50,000,000 as selected by Lessee in its sole discretion, reasonably exercised.

Event of Default. As defined in Section 17.1.

Excepted Liens. Any Liens on the Property which may arise as a result of a judgment rendered by a court of competent jurisdiction in favor of Lessee against Lessor resulting from a breach by Lessor of any of the provisions of the Operative Agreements; provided that Lessee agrees in writing with the Trustee that (i) such Liens will be subordinate to the Lien of the Mortgage and (ii) it will not take any action to foreclose, execute, garnish, levy, attach or otherwise enforce the Lien of such judgment until all obligations of Lessor under the Notes, the Indenture, the Mortgage and each of the other Operative Agreements have been paid in full, other than to garnish, levy, attach or offset with respect to amounts payable to Lessor solely on account of Lessor Base Rent.

Existing Improvements. As defined in the Participation Agreement.

Expiration Date. As defined in Section 20.2.

Extended Term. As defined in Section 21.1(b).

Extension Notice. As defined in Section 21.1(b).

Facility. A facility used for the treatment, storage or disposal of Hazardous Substances.

Final Substantial Completion Date. The date on which both the Substantial Completion Date for Core and Shell and each Substantial Completion Date for Lessee Installations have occurred.

Fixtures. As defined in Section 1.1(d).

General Contractor. As defined in Recital E.

Governmental Authority. Any federal, state, county, regional, municipal or other governmental or regulatory authority, agency, board, body, commission, instrumentality, court or quasi-governmental authority.

Ground Lease. As defined in Recital A.

Ground Lessors. As defined in Recital A.

Guarantee. As defined in the Participation Agreement.

Hawaii General Excise Tax. The tax imposed pursuant to Chapter 237, Hawaii Revised Statutes (or any corresponding provisions of any successor Hawaii tax statute) and any related surtaxes and surcharges, and any of the foregoing imposed by or on behalf of the State of Hawaii or any political subdivision or taxing authority thereof.

Hawaii Taxpayer. As defined in the Participation Agreement.

Hazardous Activity. Any activity, process, procedure or undertaking that directly or indirectly (i) produces, generates or creates any Hazardous Substance; (ii) causes or results in (or threatens to cause or result in) the Release of any Hazardous Substance into the environment (including air, water vapor, surface water, groundwater, drinking water, land (including surface or subsurface), plant, aquatic and animal life); (iii) involves the containment or storage of any Hazardous Substance; or (iv) would be regulated as hazardous waste treatment, storage or disposal within the meaning of any Environmental Law.

Hazardous Condition. Any condition that violates or threatens to violate, or that results in or threatens non- compliance with, any Environmental Law.

Hazardous Substance. Any of the following: (i) any petroleum or petroleum product, explosives, radioactive materials, asbestos, formaldehyde, polychlorinated biphenyls, lead and radon gas; (ii) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical waste, or pollutant, in each case whether naturally occurring, man-made or the by-product of

any process, that is toxic, harmful, hazardous or acutely hazardous to the environment or human health or safety; or (iii) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical waste or pollutant that would support the assertion of any claim under any Environmental Law, whether or not defined as hazardous as such under any Environmental Law.

 $\mbox{\sc Holders.}$ As defined in Recital G, together with any holder of a Renewal Note.

 $\mbox{H.15.}$ "Statistical Release $\mbox{H.15}(519),$ Selected Interest Rates", as published by the Board of Governors of the Federal Reserve System, or any successor publication.

Impositions. Except to the extent described in the following sentence, any and all liabilities, losses, expenses and costs of any kind whatsoever for fees, taxes, levies, imposts, duties, charges, assessments or withholdings ("Taxes") (including (i) real and personal property taxes, including personal property taxes on any property covered by this Lease that is classified by Governmental Authorities as personal property, and real estate or ad valorem taxes in the nature of property taxes; (ii) sales taxes, use taxes and other similar taxes (including rent taxes and intangibles taxes); (iii) the Hawaii General Excise Tax and any other excise taxes; (iv) real estate transfer taxes, conveyance taxes, stamp taxes and documentary recording taxes and fees; (v) taxes that are or are in the nature of franchise, income, value added, privilege and doing business taxes, license and registration fees; and (vi) assessments on the Property, including all assessments for public improvements or benefits, whether or not such improvements are commenced or completed within the Term), and in each case all interest, additions to tax and penalties thereon, which at any time prior to, during or with respect to the Term or in respect of any period for which Lessee shall be obligated to pay Additional Charges, may be levied, assessed or imposed by any Federal, state, city, county or local authority upon or with respect to (a) the Property or any part thereof or interest therein; (b) the financing, refinancing, demolition, construction, substitution, subleasing, assignment, control, condition, occupancy, servicing, maintenance, repair, ownership, possession, activity conducted on, delivery, insuring, use, operation, improvement, transfer of title, return or other disposition of the Property or any part thereof or interest therein; (c) the Notes or other indebtedness with respect to the Property or any part thereof or interest therein; (d) the rentals, receipts or earnings arising from the Property or any part thereof or interest therein; (e) the Operative Agreements or any payment made or accrued pursuant thereto; (f) the income or other proceeds received with respect to

the Property or any part thereof or interest therein upon the sale or disposition thereof; (g) any contract (including the Construction Management Agreement) relating to the demolition, construction, acquisition or delivery of the Existing Improvements or the Property or any part thereof or interest therein; (h) the issuance of the Notes; or (i) otherwise in connection with the transactions contemplated by the Operative Agreements.

The term "Imposition" shall not mean or include:

- (i) Taxes and impositions (other than Taxes that are, or are in the nature of, sales, use, rental, value added, transfer or property taxes) that are imposed on Lessor or the Trustee by the United States federal government that are based on or measured by the net income (including taxes based on capital gains and minimum taxes) of such Person; provided that this clause (i) shall not be interpreted to prevent a payment from being made on an After Tax Basis if such payment is otherwise required to be so made;
- (ii) Taxes and impositions (other than Taxes that are, or are in the nature of, sales, use, rental, transfer or property taxes and other than the Hawaii General Excise Tax) that are imposed by any state or local jurisdiction or taxing authority within any state or local jurisdiction and that are based upon or measured by the gross or net income or gross or net receipts (including any minimum taxes, withholding taxes or taxes on or measured by capital, net worth, excess profits or items of tax preference or taxes that are capital stock, franchise or doing business taxes) except that this clause (ii) shall not apply to any such taxes imposed on Lessor (or its Affiliates, to the extent such tax is imposed upon the Affiliate as a result of either (x) the filing of any return on any form of combined basis or (y) any theory of secondary liability) by the State of Hawaii (or any local taxing authority thereof or therein) or any jurisdiction into which any of the Property is moved, except in the case of net income taxes imposed by the State of Hawaii to the extent such taxes for such year (but not the amount of any interest, penalties or additions to tax) exceed \$80,000 for any calendar year; provided that this clause (ii) shall not be interpreted to prevent a payment from being made on an After Tax Basis if such payment is otherwise required to be so made;
- (iii) any Tax or imposition to the extent, but only to such extent, it relates to any act, event or omission that occurs after the termination of this ${\sf T}$

Lease (but not any tax or imposition that relates to any period prior to the termination of this Lease);

- (iv) any Tax or imposition for so long as, but only for so long as, it is being contested in accordance with the provisions of Article XIII;
- (v) any interest or penalties imposed on Lessor as a result of the failure of Lessor to file any return or report timely and in the form prescribed by law or to pay any Tax or imposition, except to the extent such failure is a result of a breach by Lessee of its obligations under Article IV; provided that this clause (v) shall not apply (x) if such interest or penalties arise as a result of a position taken (or requested to be taken) by Lessee in a contest controlled by Lessee under Article XIII or (y) to any such interest or penalties that result from Lessor's complying with the reporting procedures set forth in Section 4.4(a);
- (vi) any Taxes or impositions imposed on Lessor that are a result of Lessor not being considered a "United States person" as defined in Section 7701(a)(30) of the Code;
- (vii) any Taxes or impositions that are enacted or adopted by their express terms as a substitute for any tax that would not have been indemnified against pursuant to the terms of this Lease;
- (viii) any Taxes which are imposed as a result of a breach of a covenant or representation by Lessor in any Operative Agreement (unless caused by Lessee's breach of its representations, warranties and covenants) or as a result of the gross negligence or wilful misconduct of Lessor itself (as opposed to gross negligence or willful misconduct imputed to Lessor) or any of its Affiliates, but not Taxes imposed as a result of ordinary negligence of Lessor or any of its Affiliates;
- (ix) any Taxes or impositions to the extent that such taxes are actually reimbursed to Lessor by another Person other than an Affiliate of Lessor:
- (x) any Taxes or impositions imposed upon Lessor with respect to any voluntary transfer, sale, financing or other voluntary disposition (other than a transfer contemplated and permitted by the Operative Agreements, including any transfer in connection with (1) the exercise by Lessee of its Purchase Option, (2) the occurrence of an Event of Default under this Lease or an Indenture Event of Default, or (3) a Casualty or Condemnation affecting the Property) of any interest in

the Property or any interest in, or created pursuant to, the Operative Agreements or any voluntary transfer of any interest in Lessor (other than in accordance with the terms of the Guarantee and other than in connection with the existence of an Event of Default or an Indenture Event of Default) or any involuntary transfer of any of the foregoing interests resulting from the bankruptcy or insolvency of Lessor (other than in connection with the existence of an Event of Default or an Indenture Event of Default);

- (xi) any gift or inheritance Taxes;
- (xii) any Taxes or impositions, to the extent Lessor or its Affiliates actually receives a credit (or otherwise has a reduction in a liability for taxes) in respect thereof against taxes that are not indemnified hereunder (but only to the extent such credit is not taken into account in calculating the indemnity payment on an After Tax Basis);
- (xiii) any Tax or imposition to the extent that such Tax or imposition is imposed on the Lessor or any of its Affiliates in respect of a transaction or business in the jurisdiction imposing such Tax other than the transactions arising out of the Operative Agreements; or
- (xiv) any Tax or imposition imposed on a direct or indirect transferee, successor or assign of Lessor to the extent of the excess of such Taxes over the amount of such taxes that would have been imposed had there not been a transfer by the original Lessor of an interest arising under the Operative Agreements; provided that there shall not be excluded under this clause (xiv) any such Tax or imposition if such direct or indirect transferee, successor or assign of Lessor acquired its interest as a result of a transfer in connection with an Event of Default or an Indenture Event of Default; provided, further, that there shall not be excluded under this clause (xiv) any amount necessary to make any payment on an After Tax Basis.

Any Tax or imposition excluded from the defined term "Imposition" in any one of the foregoing clauses (i) through (xiv) shall not be construed as constituting an Imposition by any provision of any other of the aforementioned clauses.

Impositions Indemnitee. As defined in Section 13.2(a).

Improvements. As defined in the Mortgage.

Indemnified Parties. As defined in Section 25.1.

Independent Investment Banker. As defined in the Construction Management Agreement.

Indenture. As defined in Recital G.

Indenture Event of Default. Any event or condition defined as an "Event of Default" in Section 501(a) of the Indenture.

Insurance Requirements. All terms and conditions of any insurance policy required by this Lease to be maintained by Lessee and all requirements of the issuer of any such policy.

Land. As defined in Section 1.1(a).

Lease. This Lease Agreement.

Leased Improvements Construction Agreement. As defined in Recital C.

Legal Requirements. All federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting the Property, the Existing Improvements, the Improvements or the demolition, construction, use or alteration thereof, whether now or hereafter enacted and in force, including any that require repairs, modifications or alterations in or to the Property or in any way limit the use and enjoyment thereof (including all building, zoning and fire codes and the Americans with Disabilities Act of 1990, 42 U.S.C. # 12101 et. seq. and any other similar federal, state or local laws or ordinances and the regulations promulgated thereunder) and any that may relate to environmental requirements (including all Environmental Laws), and all permits, certificates of occupancy, licenses, authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments which are either of record or known to Lessee (other than those hereafter created by Lessor without the consent of Lessee) affecting the Property, the Appurtenant Rights and any easements, licenses or other agreements entered into pursuant to Section 12.2.

Lessee. First Hawaiian Bank, and its successors and assigns expressly permitted hereunder. $\,$

Lessee's Hawaii Tax Counsel. As defined in Section 4.4(a).

Lessor. REFIRST, Inc., and its successors and assigns expressly permitted hereunder.

Lessor Base Rent. As defined in Section 3.1(a).

Lessor Contribution. As defined in the Participation Agreement.

Lessor Make-Whole Premium. The amount, determined by an Independent Investment Banker as of the third Business Day prior to the day the payment is required to be made to Lessor, which equals the excess, if any, of (i) the sum of the present values of all remaining scheduled payments due to Lessor prior to December 1, 2003, if any, and all remaining scheduled payments of Lessor Base Rent as of the day payment is required to be made to Lessor, discounted semi-annually on each payment date at a rate equal to the Treasury Yield, based on a 360-day year of twelve 30-day months, over (ii) the Lessor Contribution.

Lessor Return Payment. An amount, as of the date of calculation, sufficient to provide Lessor with a pre-tax internal rate of return of 11.68%, and as adjusted during any Renewal Term in accordance with Section 21.1, on the Lessor Contribution from December 1, 1993 to the date of payment, which if calculated as of the expiration date of the Primary Term will be \$6,219,053.52.

Lessor's Hawaii Tax Counsel. As defined in Section 4.4(a).

Lessor's Margin. If thirty (30) days prior to the commencement of the first Extended Term the rating on the Class A Notes from S&P and Moody's is at least "A-" and "A3", respectively, then Lessor's Margin shall be an amount sufficient (i) to return the balance of the Lessor Contribution ratably over ten (10) years in equal installments on each six-month anniversary of the commencement of the first Extended Term, and (ii) to provide an annualized return on the outstanding balance of the Lessor Contribution equal to 6.85% plus the yield on the ten-year Constant Maturity Treasury as shown in H.15; otherwise, Lessor's Margin shall be an amount sufficient (x) to return the balance of the Lessor Contribution over five (5) years and (y) to provide an annualized return on the outstanding balance of the Lessor Contribution equal to 6.85% plus the yield on the five-year Constant Maturity Treasury as shown in H.15. Lessor's Margin shall be determined as of the commencement of the first Extended Term and such return to be provided ratably in equal installments on each six-month anniversary of the commencement of the first Extended Term.

Lessor Overdue Rate. 13.68%, but in no event shall such rate exceed the maximum rate permitted by law.

Lien. As defined in the Indenture.

Make-Whole Premium. As defined in the Indenture.

Maximum Residual Guarantee Amount. An amount equal to \$161,990,000, subject to reduction as provided in Section 21.2(a)(v).

Modifications. As defined in Section 11.1.

Moody's. As defined in the Participation Agreement.

Mortgage. As defined in Recital H.

Net Proceeds. All amounts paid in connection with any Casualty or Condemnation, and all interest earned thereon, less the expense of claiming and collecting such amounts, including all costs and expenses in connection therewith for which the Trustee, Lessor or the Holders are entitled to be reimbursed pursuant to this Lease.

Non-Disturbance Agreement. As defined in Recital I.

Notes. As defined in Recital G, together with any Renewal Notes.

Officer's Certificate. A certificate of Lessee signed by any individual holding the office of vice president or higher, which certificate shall certify as true and correct the subject matter being certified to in the certificate.

Operative Agreements. As defined in the Participation Agreement.

Outstanding. As defined in the Indenture.

Participation Agreement. As defined in Recital B.

Payment Date. As set forth on Schedule C or, during any Extended Term, as determined in accordance with Section 21.1.

Permitted Exceptions. The following:

- (a) those easements, rights-of-way, servitudes, reservations, rights, restrictions, liens, encumbrances, adverse claims and other defects and irregularities in title set forth on Schedule B hereto;

- (c) (i) any Liens for taxes, assessments and other governmental charges and any Liens in favor of mechanics, materialmen and laborers for work or services performed or materials furnished in connection with the Property, provided that the terms of Section 12.1(a)(iv) or Article XIII dealing with any such tax, assessment, other governmental charge or Lien shall have been complied with by Lessee or (ii) any Liens for taxes, assessments or other governmental charges which are not yet due and payable;
- (d) the rights of Lessee hereunder and of Lessor under the Ground Lease; $% \left\{ 1\right\} =\left\{ 1\right\} =\left$
 - (e) the Lien of the Mortgage and any rights granted thereby;
 - (f) the Assignment of Lease;
- (g) any non-disturbance and attornment agreements entered into with any sublessee in accordance with the terms of Article XXVI and any subleases which are entitled to the benefits of such non-disturbance and attornment agreements; and
 - (h) any Excepted Liens.

Permitted Refinancing. As defined in Section 21.2(a).

Person. An individual, corporation, partnership, trust, association, Governmental Authority or other entity.

Plans and Specifications. As defined in the Construction Management $\mbox{\sc Agreement}.$

Post Completion Escrow. As defined in Section 15.1(a).

Preliminary Term. The term commencing on the date hereof and expiring on the Final Substantial Completion Date.

Primary Term. The term commencing on the Final Substantial Completion Date and expiring on December 1, 2003.

Project Contracts. As defined in the Construction Management Agreement.

Property. As defined in Section 1.1.

Purchase Option. As defined in Section 20.1.

Purchase Option Price. As defined in Section 20.3.

Reasonable Basis. Reasonable Basis for a position shall exist if tax counsel may properly advise reporting such position on a tax return in accordance with formal opinion 85-352 issued by the Standing Committee on Ethics and Professional Responsibility of the American Bar Association.

Release. Any release, pumping, pouring, emptying, injecting, escaping, leaching, dumping, seepage, spill, leak, flow, discharge, disposal or emission of a Hazardous Substance.

Renewal Notes. Any note or notes issued by Lessor in connection with any Permitted Refinancing.

Renewal Rent. As defined in Section 3.1(b).

Rent Commencement Date. June 1, 1997.

Requesting Party. As defined in Section 27.1.

Residual Guarantee Amount. An amount equal to the excess, if any, of (i) the Purchase Option Price over (ii) the sale proceeds actually received, or deemed to have been received, by Lessor from a sale of the Property (net of any reasonable brokerage commissions and any other sales expenses).

S&P. As defined in the Participation Agreement.

Significant Casualty. As defined in Section 15.1(f).

Significant Condemnation. As defined in Section 15.1(f).

Substantial Completion Date for Core and Shell. As defined in the Construction Management Agreement.

Substantial Completion Date for Lessee Installations. As defined in the Construction Management Agreement.

Taxes. As defined in the definition of Impositions.

Term. Collectively, the Preliminary Term, the Primary Term, and, if exercised, any Extended Term or Extended Terms.

Termination Amount. As of any Payment Date, the amount set forth in Schedule D with respect to such Payment Date.

Termination Date. As defined in Section 16.2(a).

Termination Notice. As defined in Section 16.1(a).

Title Defects. As defined in Section 12.1(a).

Total Condemnation. As defined in Section 15.1(f).

Trustee. As defined in Recital B.

Withheld Amounts. As defined in Section 3.1(a).

- 2.2 Other Definitional Provisions. (a) Words and phrases used in the singular shall be deemed to include the plural and vice versa, and nouns and pronouns used in any particular gender shall be deemed to include any other gender, as the context may permit.
- (b) Unless otherwise specified, all references herein to designated "Articles", "Sections", "Schedules" and other subdivisions shall be to the designated Articles, Sections, Schedules and other subdivisions of this Lease.
- (c) The words "including" and "include", and words of similar import, shall be deemed to be followed by "without limitation".
- (d) The words "herein", "hereof" and "hereunder", and words of similar import, shall refer to this Lease as a whole and not to any particular Article, Section, Schedule or other subdivision of this Lease.

ARTICLE III

3.1 Rent. (a) From and after the Rent Commencement Date, Lessee shall pay to Lessor on each Payment Date, by delivering not later than 12:00 noon New York City time (to such account or accounts at such bank or banks or to such other Person or in such other manner as Lessor shall from time to time direct in writing), a net rental (the "Base Rent") equal to the sum of (i) interest due on such date to the Holders of the Class A Notes ("Class A Base Rent"), (ii) interest due on such date to the Holders of the Class B Notes ("Class B Base Rent") and (iii) all amounts due on such date to Lessor as set forth in Schedule C attached hereto (such amounts, the "Lessor Base Rent"). Lessee shall have no obligation to pay any amounts hereunder on account of Base Rent prior to the Rent Commencement Date. Notwithstanding anything to the contrary contained herein, Lessee acknowledges and agrees that it shall at all times make payments on each Payment Date to the Trustee such that the Trustee receives an amount equal to the Class A Base Rent and Class B Base Rent due on such Payment Date, except to the extent Lessee

is required by Hawaii state taxing authorities to pay any amounts on account of Hawaii state taxes due and payable by a Holder or Beneficial Owner which is a Hawaii Taxpayer (any such amounts, "Withheld Amounts"). Lessee will provide to the affected Holder or Beneficial Owner, Lessor and the Trustee, upon request, such information as any such party shall reasonably require to substantiate the withholding of any Withheld Amounts. Lessee has consented to Lessor's assignment of its rights to receive rents hereunder pursuant to the Assignment of Lease and acknowledges that the respective rights of the Persons entitled to receive amounts calculated by reference to Class A Base Rent, Class B Base Rent and Lessor Base Rent are as set forth in the Indenture. Notwithstanding the provisions of the Indenture and the Assignment of Lease, Lessee shall insure that Lessor will receive the Lessor Base Rent by 3:00 p.m., New York City time, on each Payment Date.

- (b) During each Extended Term, if any, on each Payment Date Lessee shall pay to Lessor, by delivering not later than 3:00 p.m. New York City time (to such account or accounts at such bank or banks or to such other Person or in such other manner as Lessor shall from time to time direct in writing), a net rental (the "Renewal Rent") in an amount calculated in the manner described in Article XXI. Lessee shall insure that Lessor will receive the portion of the Renewal Rent payable solely to Lessor by 3:00 p.m., New York City time, on each Payment Date.
- (c) The Base Rent and Renewal Rent shall be due and payable on the applicable Payment Date, in lawful money of the United States and shall be made by wire transfer of immediately available funds.
- (d) Neither Lessee's inability or failure to take possession of all or any portion of the Property when delivered by Lessor, nor Lessor's inability or failure to deliver all or any portion of the Property to Lessee on or before the Rent Commencement Date, whether or not attributable to any act or omission of Lessee or any act or omission of Lessee, or any other reason whatsoever, shall delay or otherwise affect Lessee's obligation to pay Rent commencing on the Rent Commencement Date.
- 3.2 Payment of Base Rent and Renewal Rent. The Base Rent and Renewal Rent shall be paid absolutely net to Lessor, so that this Lease shall yield to Lessor the full amount thereof, without setoff, deduction or reduction.
- 3.3 Additional Charges. During the Term, in addition to any Base Rent and Renewal Rent payable under this Lease, Lessee shall pay and discharge, at the times specified in this Lease, all other amounts, liabilities, obligations and Impositions which Lessee assumes or agrees to pay under this Lease or under the other Operative Agreements to or for the benefit of Lessor, including those obligations provided for in

Section 18.1. Lessee shall also pay, before the due date thereof, the costs and expenses incurred in the performance of Lessor's obligations under (a) the following sections of the Indenture: Section 102 (Compliance Certificate and Opinions); Section 401 (Satisfaction and Discharge of Indenture); Section 503 (Collection of Indebtedness and Suits for Enforcement by Trustee)(but only to the extent Lessor is obligated to pay any further amount to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee and its agents and counsel, and only to the extent such obligations arise as a result of the occurrence of an Event of Default or an event of default under the Construction Management Agreement); Section 606 (Compensation and Reimbursement); Section 907 (Recording); Section 914 (Further Instruments); Section 915 (Right of the Trustee to Prevent or Remedy Default); Section 916 (Right of the Trustee to Participate in Action Affecting Security); and Section 917 (Trustee's Expenses for Protection of Security) (unless caused by a default by Lessor of its obligations contained in any of the Operative Agreements which does not result from the default by Lessee of its obligations under any of such documents); (b) Sections 403 (unless caused by a default by Lessor of its obligations contained in any of the Operative Agreements which does not result from the default by Lessee of its obligations under any of such documents) of the Mortgage; and Section 501 of the Mortgage; and (c) Section 15 of the Assignment of Lease. Unless expressly provided otherwise in this Lease, in the event of any failure on the part of Lessee to pay and discharge any of such items, Lessee shall also promptly pay and discharge any fine, penalty, interest or cost which may be assessed or added for nonpayment or late payment of such items pursuant to the terms of the Indenture or otherwise. All of the items referred to above in the first three sentences of this Section 3.3 are referred to hereinafter collectively as the "Additional Charges". Base Rent, Renewal Rent and Additional Charges all constitute rent, and Lessor shall have all legal, equitable and contractual rights, powers and remedies provided either in this Lease, by statute or otherwise in the case of nonpayment of the Additional Charges as in the case of nonpayment of the Base Rent or Renewal Rent.

- 3.4 Construction Management Agreement. (a) Pursuant to the terms and conditions of the Construction Management Agreement, Lessee shall cause the Improvements to be constructed in the manner more fully described therein.
- (b) Notwithstanding any covenants contained in this Lease to the contrary, all of Lessee's obligations with respect to Additional Charges, and any other costs or expenses required to be paid by Lessee pursuant to the terms of this Lease shall first be paid from the Construction Account to the extent funds in the Construction Account are available for payment of such obligation, cost or expense pursuant to Article IV of the Construction Management Agreement. Nothing contained in the

preceding sentence shall be construed or interpreted to limit or impair the obligation of Lessee to pay Rent hereunder.

- 3.5 Payments at the Overdue Rate. (a) Lessee shall pay to Lessor interest at the Debt Overdue Rate on any portion of Class A Base Rent and the Class B Base Rent or any portion of the Additional Charges, the Default Amount, the Residual Guarantee Amount, the Termination Amount, the Purchase Option Price or the Make-Whole Premium that is required to be paid to the Trustee and applied to the payment of principal, premium (if any) and interest due under the Notes or to the payment of any other amount due to the Trustee hereunder, under the Indenture or under any other Operative Agreement, in each case not paid when due from the due date to the date of actual payment; provided, that the Debt Overdue Rate shall not apply to an overdue payment to the extent that the application of the Debt Overdue Rate would render unenforceable the payment of Make-Whole Premium due hereunder (but only if such payment of Make-Whole Premium would otherwise exceed the payment resulting from such application of the Debt Overdue Rate).
- (b) Lessee shall pay to Lessor interest at the Lessor Overdue Rate on any portion of Lessor Base Rent or any portion of the Additional Charges, the Default Amount, the Residual Guarantee Amount, Termination Amount, the Purchase Option Price or the Lessor Make-Whole Premium that is required to be paid to the Trustee on account of the Lessor Contribution, in each case not paid when due from the due date to the date of actual payment.
- 3.6 Performance on a Non-Business Day. If any payment or performance is required hereunder on a day that is not a Business Day, then such payment or performance shall be due on the next succeeding Business Day.

ARTICLE IV

4.1 General Taxes. Lessee shall pay and assume liability for, and does hereby agree to indemnify, protect and defend the Property, Lessor (and any Affiliate, successor, transferee and assignee (to the extent permitted under Sections 7(a) through (f) of the Guarantee and Sections 701 and 921(b) of the Indenture)) and the Trustee (exclusively with respect to the Trustee's own Impositions, but not with respect to Impositions payable by the Holders which shall be governed exclusively by the provisions of Section 14.12 of the Participation Agreement), and hold them harmless against, all Impositions on an After Tax Basis. Lessor agrees and agrees to cause the Guarantor to use good-faith efforts (but not including increasing its liability for Taxes not indemnifiable hereunder) to minimize the amount of Taxes indemnifiable by Lessee during any taxable year; provided that this sentence shall not be

construed to limit or impair any right of Lessor set forth in the Operative Agreements. Lessor further agrees, and agrees to cause the Guarantor, to comply with recommendations made by Lessee regarding techniques to minimize Taxes indemnifiable hereunder, provided that (i) Lessee agrees to make payments to (or otherwise indemnify) Lessor and the Guarantor against any cost or expense arising from instituting Lessee's recommendations and (ii) Lessor determines in its sole discretion that such recommendations will not have an adverse impact on Lessor or its Affiliates.

- 4.2 Refunds. Provided that no payment or bankruptcy Default or any Event of Default has occurred and is continuing, if Lessor or the Trustee, as the case may be, obtains a refund or a reduction in a liability (but only if such reduction relates to a Tax not otherwise indemnifiable hereunder and has not been taken into account in determining the amount of a payment on an After Tax Basis) as a result of any Imposition paid or reimbursed by Lessee (in whole or in part), Lessor or the Trustee, as the case may be, shall promptly pay to Lessee the lesser of (x) the amount of such refund or reduction in liability and (y) the amount previously so paid or advanced by Lessee, in each case net of reasonable expenses not already paid or reimbursed by Lessee.
- 4.3 Payments. (a) Subject to the terms of Section 13.2, Lessee shall pay or cause to be paid all Impositions directly to the taxing authorities where feasible and otherwise to Lessor or the Trustee, as appropriate, and Lessee shall at its own expense, upon Lessor's reasonable request, furnish to Lessor copies of official receipts or other satisfactory proof evidencing such payment.
- (b) In the case of Impositions for which no contest is conducted pursuant to Section 13.2 and which Lessee pays directly to the taxing authorities, Lessee shall pay such Impositions prior to the latest time permitted by the relevant taxing authority for timely payment. In the case of Impositions for which Lessee reimburses Lessor or the Trustee, Lessee shall do so within twenty (20) days after receipt by Lessee of demand by such Person describing in reasonable detail the nature of the Imposition and the basis for the demand (including the computation of the amount payable), but in no event shall Lessee be required to pay such reimbursement prior to thirty (30) days before the latest time permitted by the relevant taxing authority for timely payment. In the case of Impositions for which a contest is conducted pursuant to Section 13.2, Lessee shall pay such Impositions or reimburse Lessor or the Trustee, as the case may be, for such Impositions, to the extent not previously paid or reimbursed pursuant to Section 4.1, prior to the latest time permitted by the relevant taxing authority for timely payment after conclusion of all contests under Section 13.2.
- (c) Impositions imposed with respect to the Property for a billing period during which this Lease expires or ${\sf C}$

terminates (unless Lessee has exercised the Renewal Option or the Purchase Option) shall be adjusted and prorated on a daily basis between Lessee and Lessor, whether or not such Imposition is imposed before or after such expiration or termination and each party shall pay or reimburse the other for each party's pro rata share thereof.

- (d) At Lessee's request, the amount of any indemnification payment by Lessee pursuant to Section 4.1 shall be verified and certified by an independent public accounting firm mutually acceptable to Lessee, Lessor or the Trustee, as the case may be. The fees and expenses of such independent public accounting firm shall be paid by Lessee unless such verification shall result in an adjustment in Lessee's favor of 5% or more of the payment as computed by the indemnitee, in which case such fee shall be paid by the indemnitee.
- 4.4 Reports and Returns. (a) Lessor shall only file any reports and tax returns required in Hawaii to the extent required by, and in a manner consistent with, the opinion rendered on the Closing Date of Lessor's special Hawaii tax counsel (the "Closing Tax Opinion"). Lessor may seek a new opinion from Carlsmith Ball Wichman Murray Case Mukai & Ichiki or other Hawaii tax counsel selected by Lessor and reasonably acceptable to Lessee ("Lessor's Hawaii Tax Counsel"), if Lessor believes, in its reasonable opinion, that as a result of (i) a change in law (including any administrative or judicial pronouncement), (ii) the institution or increase of activities in Hawaii by Lessor or any Affiliate thereof, (iii) the registration by Lessor as a foreign corporation in the State of Hawaii (to the extent permitted by Section 14.8(a) of the Participation Agreement), (iv) the Trustee's failure to comply with its representation and covenant set forth in Sections 7.5(h) and 14.8(b) of the Participation Agreement, (v) Lessor's knowledge that Lessee is claiming rent deductions for Hawaii income tax purposes in respect of amounts paid by Lessee under this Lease (in a manner inconsistent with the intention of the parties as set forth in Section 7.1) or (vi) an audit of Lessor which results in the payment of any Hawaii tax by Lessor, the validity or applicability of the Closing Tax Opinion (or any subsequent opinion then in effect pursuant to this Section 4.4) would be affected. Lessor's Hawaii Tax Counsel shall be requested to opine that any reports and tax returns required to be filed in Hawaii should be filed to the extent required by, and in a manner consistent with, the positions expressed in the Closing Tax Opinion (or any subsequent opinion then in effect pursuant to this Section 4.4) unless there is no Reasonable Basis to assert such positions. Prior to rendering an opinion that is inconsistent with the Closing Tax Opinion (or any subsequent opinion then in effect pursuant to this Section 4.4), Lessor's Hawaii Tax Counsel shall consult with a law firm designated by Lessee as to whether any changes to the filing of such reports or tax returns is warranted. If Lessor's Hawaii Tax Counsel cannot

render an opinion that is consistent with the Closing Tax Opinion (or any subsequent opinion then in effect pursuant to this Section 4.4), Lessor shall so notify Lessee and Lessee may request, within 30 days of such notice, that an opinion be rendered by Cades Schutte Fleming & Wright or other Hawaii tax counsel selected by Lessee and reasonably acceptable to Lessor ("Lessee's Hawaii Tax Counsel"). Lessor agrees to fully cooperate (subject to receipt of appropriate confidentiality undertakings by such counsel) with Lessee's Hawaii Tax Counsel in order that Lessee's Hawaii Tax Counsel will be able to deliver such opinion. If Lessee requests that Lessee's Hawaii Tax Counsel render an opinion, no opinion shall be rendered by Lessor's Hawaii Tax Counsel. If Lessee does not request that Lessee's Hawaii Tax Counsel render an opinion, then Lessor's Hawaii Tax Counsel shall render an opinion. After completion of the procedure described in this Section 4.4(a), Lessor shall only file any and all reports and tax returns to the extent required by, and in the manner consistent with, such new opinion, whether issued by Lessor's Hawaii Tax Counsel or Lessee's Hawaii Tax Counsel. Lessee shall bear all reasonable costs and expenses in connection with the issuing of any such opinions.

(b) Lessee shall be responsible for preparing and filing any real and personal property or ad valorem tax returns in respect of the Property. In case any other report or tax return shall be required to be made with respect to any obligations of Lessee under or arising out of Section 4.1 and of which Lessee has knowledge or should have knowledge, Lessee, at its sole cost and expense, shall notify Lessor and/or the Trustee, as appropriate, of such requirement and (except if Lessor or the Trustee, as the case may be, notifies Lessee that such Person intends to file such report or return) (a) to the extent required or permitted by and consistent with applicable laws and regulations, make and file in its own name such return, statement or report; and (b) in the case of any other such return, statement or report required to be made in the name of Lessor or the Trustee, advise Lessor or the Trustee of such fact and prepare such return, statement or report for filing by Lessor or the Trustee or, where such return, statement or report shall be required to reflect items in addition to any obligations of Lessee under or arising out of Section 4.1, provide Lessor or the Trustee at Lessee's expense with information sufficient to permit such return, statement or report to be properly made with respect to any obligations of Lessee under or arising out of Section 4.1. Lessor and the Trustee shall, upon Lessee's request and at Lessee's expense, provide any data maintained by Lessor or the Trustee (and not otherwise within the control of Lessee) with respect to the Property which Lessee may reasonably require to prepare any required tax returns or reports.

 $\,$ 4.5 Utility Charges. Lessee shall pay or cause to be paid all charges for electricity, power, gas, oil, water, telephone, sanitary sewer service and all other rents and

utilities used in or on the Property during the Term. Lessee shall be entitled to receive any credit or refund with respect to any utility charge paid by Lessee and the amount of any credit or refund received by Lessor on account of any utility charges paid by Lessee, net of the costs and expenses incurred by Lessor in obtaining such credit or refund, shall be promptly paid over to Lessee. All charges for utilities imposed with respect to the Property for a billing period during which this Lease expires or terminates shall be adjusted and prorated on a daily basis between Lessor and Lessee, and each party shall pay or reimburse the other for each party's pro rata share thereof.

- 4.6 Income Inclusions. If as a result of the payment or reimbursement by Lessee of any expenses of Lessor or the payment of any Closing Expenses incurred in connection with the transactions contemplated by the Operative Agreements or as a result of earnings generated on amounts on deposit in the Construction Account, Lessor or any of its Affiliates shall suffer a net increase in any federal, state or local income tax liability, Lessee shall indemnify Lessor (without duplication of any indemnification required by Section 4.1) on an After Tax Basis for the amount of such increase. The calculation of any such net increase shall take into account any current or future tax savings realized or reasonably expected to be realized by Lessor or such Affiliate in respect thereof, as well as any interest, penalties and additions to tax payable by Lessor or such Affiliate in respect thereof.
- 4.7 Withholding Taxes. As between Lessee and Lessor, Lessee shall be responsible for, and Lessee shall indemnify and hold harmless Lessor (without duplication of any indemnification required by Section 4.1) on an After Tax Basis against, any obligation for United States withholding taxes imposed in respect of the interest payable on the Notes to the extent, but only to the extent, Lessor has actually paid funds to a taxing authority with respect to such withholding taxes (and, if Lessor receives a demand for such payment from any taxing authority, Lessee shall discharge such demand on behalf of Lessor).

ARTICLE V

5.1 Quiet Enjoyment. Subject to the rights of Lessor contained in Sections 17.2 and 17.3, Lessee shall peaceably and quietly have, hold and enjoy the Property for the Term, subject to the terms of this Lease, free of any claim or other action by Lessor or anyone rightfully claiming by, through or under Lessor (other than Lessee) with respect to any matters arising from and after the date hereof. Without the prior written consent of Lessee (such consent not to be unreasonably withheld), Lessor shall not create or consent to any Lien, encumbrance, defect, attachment, title retention agreement or claim upon the Property (other than the Permitted Exceptions) or any Modifications and

Lessor shall not take any affirmative act constituting an Environmental Violation. No failure by Lessor to comply with any of the foregoing covenants shall give Lessee any right to cancel or terminate this Lease or abate, reduce or make a deduction from or offset against the Rent or any other sum payable under this Lease, or to fail to perform any other obligation of Lessee hereunder, but such failure shall give rise to a separate claim by Lessee which it may assert in any legal proceeding; provided, however, the sole recourse against such claim shall be exclusively to the Lessor Base Rent or such portions of the Renewal Rent as are not required to be applied to the payment of principal and interest due under the Notes, as applicable.

ARTICLE VI

6.1 Net Lease. Subject to the terms of Section 7.1 (without limiting the obligations of Lessee under this Section 6.1 or Section 6.2), it is the intention of the parties that this Lease shall be treated as a triple net lease. Any present or future law to the contrary notwithstanding, this Lease shall not terminate, nor shall Lessee be entitled to any abatement, suspension, deferment, reduction, setoff, counterclaim, or defense with respect to the Rent, nor shall the obligations of Lessee hereunder be affected (except as expressly herein permitted and by performance of the obligations in connection therewith) by reason of: (i) any damage to or destruction of the Property or any part thereof; (ii) any taking of the Property or any part thereof or interest therein by Condemnation or otherwise; (iii) any prohibition, limitation, restriction or prevention of Lessee's use, occupancy or enjoyment of the Property or any part thereof, or any interference with such use, occupancy or enjoyment by any Person or for any other reason; (iv) any title defect or encumbrance or any matter affecting title to the Property; (v) any eviction by paramount title or otherwise; (vi) any default by Lessor hereunder; (vii) any delayed delivery of the Property; (viii) any action for bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding relating to or affecting Lessor; (ix) the impossibility or illegality of performance by Lessor, Lessee or both; (x) any action of any Governmental Authority; (xi) Lessee's acquisition of ownership of all or part of the Property; (xii) any breach of warranty or misrepresentation; (xiii) any defect in the condition, quality or fitness for use of the Property or any part thereof; or (xiv) any other cause or circumstances whether similar or dissimilar to the foregoing and whether or not Lessee shall have notice or knowledge of any of the foregoing. The parties intend that the obligations of Lessee hereunder shall be covenants and agreements that are separate and independent from an

- 6.2 No Termination or Abatement. Lessee shall remain obligated under this Lease in accordance with its terms and shall not take any action to terminate, rescind or avoid this Lease, notwithstanding any action for bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding affecting Lessor, or any action with respect to this Lease which may be taken by any trustee, receiver or liquidator of Lessor or by any court with respect to Lessor. Lessee hereby waives all right (i) to terminate or surrender this Lease or (ii) to avail itself of any abatement, suspension, deferment, reduction, setoff, counterclaim or defense with respect to any Rent. Lessee shall remain obligated under this Lease in accordance with its terms and Lessee hereby waives any and all rights now or hereafter conferred by statute or otherwise to modify or to avoid strict compliance with its obligations under this Lease. Notwithstanding any such statute or otherwise, Lessee shall be bound by all of the terms and conditions contained in this Lease.
- 6.3 Right of Offset Against Lessor Base Rent. Notwithstanding anything to the contrary contained in this Lease, in the event that Lessee shall have paid any amounts for the purpose of (a) discharging any Lien on the Property or (b) preventing any Lien on the Property from attaching, in each case only to the extent caused solely by a breach by Lessor of its obligations under an Operative Agreement (but only if Lessee has given Lessor notice of such Lien and Lessor has had a reasonable opportunity to discharge the Lien or prevent if from attaching), then Lessee shall have the right to offset against amounts owed to Lessor solely on account of Lessor Base Rent, or such portions of the Renewal Rent as are not required to be applied to the payment of principal and interest due under the Notes, in an amount sufficient to reimburse Lessee for such payments plus interest on such amount at the Lessor Overdue Rate to the date of actual payment, but in no event shall the Base Rent paid on any Payment Date be less than the sum of the Class A Base Rent and the Class B Base Rent. Further, notwithstanding anything to the contrary contained in this Lease, in the event that Lessee shall have obtained a judgment against Lessor in any court of competent jurisdiction and such judgment remains unsatisfied for a period of thirty (30) days, then Lessee shall have the right to offset against amounts owed to Lessor solely on account of Lessor Base Rent, or such portions of the Renewal Rent as are not required to be applied to the payment of principal and interest due under the Notes, in an amount sufficient to pay such judgment plus interest on such amount at the Lessor Overdue Rate to the date of actual payment, but in no event shall the Base Rent paid on any Payment Date be less than the sum of the Class A Base Rent and the Class B Base Rent.

ARTICLE VII

- 7.1 Ownership of the Property. (a) Lessor and Lessee intend that (i) for financial accounting and regulatory accounting purposes only, (A) this Lease will be treated as an "operating lease" pursuant to Statement of Financial Accounting Standards No. 13, as amended, (B) Lessor will be treated as the owner and lessor of the Property and (C) Lessee will be treated as the lessee of the Property, (ii) for federal income tax purposes (A) this Lease will be treated as a financing arrangement, (B) Lessor will be treated as a subordinated lender making a loan to Lessee in an amount equal to the Lessor Contribution, which loan is secured by the Property and (C) Lessee will be treated as the owner of the Property and will be entitled to all tax benefits ordinarily available to an owner of property like the Property for such tax purposes, and (iii) for all other purposes, (A) this Lease will be treated as a financing arrangement, (B) Lessor will be treated as a lender making loans to Lessee in amounts equal to the principal amount of the Class A Notes, the principal amount of the Class B Notes and the Lessor Contribution, which loans are secured by the Property, and (C) Lessee will be treated as the owner of the Property.
- (b) Lessor and Lessee further intend and agree that, for the purpose of securing Lessee's obligations for the repayment of the above-described loans, (i) this Lease shall also be deemed to be a security agreement within the meaning of Articles 8 and 9 of the Uniform Commercial Code as in effect in New York and Hawaii and a real property mortgage within the meaning of Section 506-1(a) of the Hawaii Revised Statutes, as amended, and also a security agreement and financing statement within the meaning of the Hawaii Uniform Commercial Code and for purposes of all applicable laws of the State of Hawaii; (ii) the conveyance provided for in Article I shall be deemed to be a grant by Lessee to Lessor of a mortgage lien and security interest in all of Lessee's right, title and interest in and to the Property and all proceeds of the conversion, voluntary or involuntary, of the foregoing into cash, investments, securities or other property, whether in the form of cash, investments, securities or other property; (iii) the possession by Lessor or its agent of notes and such other items of property as constitute instruments, money, negotiable documents or chattel paper shall be deemed to be "possession by the secured party" for purposes of perfecting the security interest pursuant to Section 9-305 of the Uniform Commercial Code as in effect in New York and Hawaii; and (iv) notifications to Persons holding such property, and acknowledgements, receipts or confirmations from financial intermediaries, bankers or agents (as applicable) of Lessee shall be deemed to have been given for the purpose of perfecting such security interest under applicable law. Lessor and Lessee shall, to the extent consistent with this Lease, take such actions as may be necessary to ensure that, if this Lease were deemed to

create a security interest in the Property in accordance with this Section, such security interest would be deemed to be a perfected security interest of first priority under applicable law and will be maintained as such throughout the Term.

(c) Lessor and Lessee further intend and agree that in the event of any insolvency or receivership proceedings or a petition under the United States bankruptcy laws or any other applicable insolvency laws or statute of the United States of America or any State or Commonwealth thereof affecting Lessee or Lessor, the transactions evidenced by this Lease shall be regarded as loans made by an unrelated third party lender to Lessee.

ARTICLE VIII

- 8.1 Condition of the Property. LESSEE IS RENTING THE PROPERTY AS IS WITHOUT REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) BY LESSOR AND SUBJECT TO (A) THE EXISTING STATE OF TITLE, (B) THE RIGHTS OF ANY PARTIES IN POSSESSION THEREOF, (C) ANY STATE OF FACTS WHICH AN ACCURATE SURVEY OR PHYSICAL INSPECTION MIGHT SHOW AND (D) VIOLATIONS OF LEGAL REQUIREMENTS WHICH MAY EXIST ON THE DATE HEREOF. NEITHER LESSOR NOR THE TRUSTEE NOR ANY HOLDER HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) OR SHALL BE DEEMED TO HAVE ANY LIABILITY WHATSOEVER AS TO THE TITLE, VALUE, HABITABILITY, USE, CONDITION, DESIGN, OPERATION, OR FITNESS FOR USE OF THE PROPERTY (OR ANY PART THEREOF), OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY (OR ANY PART THEREOF) AND NEITHER LESSOR NOR THE TRUSTEE NOR ANY HOLDER SHALL BE LIABLE FOR ANY LATENT, HIDDEN, OR PATENT DEFECT THEREIN OR THE FAILURE OF THE PROPERTY, OR ANY PART THEREOF, TO COMPLY WITH ANY LEGAL REOUIREMENT.
- 8.2 Possession and Use of the Property. The Property shall be used in a manner consistent with the Construction Management Agreement and, after the Final Substantial Completion Date, as a Class A Office Building including, without limitation, retail and commercial uses consistent with other Class A Office Buildings of similar design, construction and quality (including a parking garage and related automobile servicing); provided that such retail and commercial uses do not increase the liability, directly or indirectly, of Lessor or adversely affect the value of the Property. Lessee shall pay, or cause to be paid, all charges and costs required in connection with the use of the Property as contemplated by this Lease and the Construction Management Agreement, including, without limitation, all charges and costs in connection with providing the Property with security, maintenance, cleaning and parking garage services. Subject to Lessee's right to make Modifications to the Property in accordance with Article XI, Lessee shall not commit or permit any waste of the Property or any part thereof.

ARTICLE IX

9.1 Compliance with Legal Requirements and Insurance Requirements. Subject to the terms of Article XIII relating to permitted contests, Lessee, at its sole cost and expense, shall (a) comply with all Legal Requirements (including all Environmental Laws) and Insurance Requirements relating to the Property, including the use, construction, operation, maintenance, repair and restoration thereof, whether or not compliance therewith shall require structural or extraordinary changes in the Improvements or interfere with the use and enjoyment of the Property, and (b) procure, maintain and comply with all licenses, permits, orders, approvals, consents and other authorizations required for the construction, use, maintenance and operation of the Property and for the use, operation, maintenance, repair and restoration of the Improvements.

ARTICLE X

- 10.1 Maintenance and Repair; Return. (a) Lessee, at its sole cost and expense, shall maintain the Property and make all necessary repairs thereto, of every kind and nature whatsoever, whether interior or exterior, ordinary or extraordinary, structural or nonstructural or foreseen or unforeseen, in each case as required by all Legal Requirements and Insurance Requirements and on a basis consistent with the operation and maintenance of Class A Office Buildings comparable in type and location to the Property subject, however, to the provisions of Article XV with respect to Condemnation and Casualty.
- (b) Lessor shall under no circumstances be required to build any improvements on the Property, make any repairs, replacements, alterations or renewals of any nature or description to the Property, make any expenditure whatsoever in connection with this Lease or maintain the Property in any way, except in accordance with and to the extent provided in the Leased Improvements Construction Agreement. Lessor shall not be required to maintain, repair or rebuild all or any part of the Property, and Lessee waives the right to (i) require Lessor to maintain, repair, or rebuild all or any part of the Property, or (ii) make repairs at the expense of Lessor pursuant to the Ground Lease, any Legal Requirement, contract, agreement, covenants, condition or restriction at any time in effect.
- (c) Lessee shall, upon the expiration or earlier termination of this Lease with respect to the Property, vacate and surrender the Property to Lessor in its then-current, "AS IS" condition, subject to Lessee's obligations under Sections 9.1, 10.1(a), 10.2, 11.1 and 12.1.

10.2 Environmental Inspection. Upon surrender of possession of the Property, or not more than 120 days nor less than 30 days prior to the Expiration Date, Lessee shall, at its sole cost and expense, provide to Lessor a report by an environmental consultant selected by Lessee and satisfactory to Lessor certifying that Hazardous Substances have not at any time been generated, used, treated or stored on, transported to or from, Released at, on or from or deposited at or on the Property, and no portion of the Property has been used for such purposes other than (i) as necessary to use, operate, maintain, repair and restore the Property in accordance with this Lease and (ii) in full compliance with all Environmental Laws. If such is not the case, the report shall set forth a remedial response plan relating to the Property (which remedial response plan, if required by any Environmental Law or Governmental Authority, shall be approved by the appropriate Governmental Authority). Such remedial response plan shall include, but shall not be limited to, plans for full response, remediation, removal, or other corrective action, and the protection, or mitigative action associated with the protection, of natural resources including wildlife, aquatic species, and vegetation associated with the Property, as required by all applicable Environmental Laws. If such report includes a remedial response plan, Lessee shall promptly deposit funds in escrow sufficient to ensure the full execution of such plan.

ARTICLE XI

11.1 Modifications, Substitutions and Replacements. (a) So long as no Event of Default has occurred and is continuing, Lessee, at its sole cost and expense, may at any time and from time to time make alterations, renovations, improvements and additions to the Property or any part thereof and substitutions and replacements therefor (collectively, "Modifications"); provided, that: (i) except for any Modification required to be made pursuant to a Legal Requirement or an Insurance Requirement, no Modification shall cause a reduction in the value of the Property from that which existed immediately prior to such Modification and Lessee shall deliver an Officer's Certificate to such effect; (ii) the Modification shall be done expeditiously and in a good and workmanlike manner, using materials appropriate for a Class A Office Building; (iii) Lessee shall comply with all Legal Requirements (including all Environmental Laws) and Insurance Requirements applicable to the Modification, including the obtaining of all permits and certificates of occupancy, and the structural integrity of the Property shall not be adversely affected; (iv) to the extent required by Section 14.2(b), Lessee shall maintain builders' risk insurance at all times when a Modification is in progress; (v) subject to the terms of Article XIII relating to permitted contests, Lessee shall pay all costs and expenses and discharge any Liens arising with respect to the Modification; (vi) such

Modifications shall not change the primary character of the Property as a Class A Office Building; and (vii) no Improvements shall be demolished (except improvements made by subtenants pursuant to the terms of their subleases and the demolition contemplated by the Demolition Contract and the Construction Management Agreement), unless Lessee shall have first provided Lessor and the Trustee with appropriate financial and other assurances as to the rebuilding of such Improvements. All Modifications shall remain part of the realty and shall be subject to this Lease, and any such Modifications shall be subject to the Lien of the Mortgage. So long as no Event of Default has occurred and is continuing, Lessee may place upon the Property any inventory, trade fixtures, machinery, equipment or other property belonging to Lessee or third parties and may remove the same at any time during the term of this Lease, subject, however, to the terms of Section 10.1(a); provided that such inventory, trade fixtures, machinery, equipment or other property do not cause a reduction in the value of the Property.

- (b) Following the Final Substantial Completion Date, and other than with respect to work performed under Project Contracts (subject to the provisions of the Construction Management Agreement), Lessee shall notify Lessor and the Trustee of the undertaking of any construction, repairs or alterations to the Property the cost of which is anticipated to exceed FIVE MILLION DOLLARS (\$5,000,000) without regard to tenant installation and related costs. Prior to undertaking any such construction, repairs or alterations, Lessee shall deliver to Lessor and the Trustee (i) a brief narrative of the work to be done and a copy of the plans and specifications relating to such work; (ii) a letter from a member of the Appraisal Institute, having at least five years' experience in the downtown Honolulu commercial office market, stating (without regard to the value of the underlying leases and subleases affecting the Property) that such work when completed will not impair the value of the Property; and (iii) an Officer's Certificate stating that such work when completed will not impair the value of the Property. Lessor, by itself or its agents, shall have the right, but not the obligation, from time to time to inspect such construction to ensure that the same is completed consistent with such approved plans and specifications.
- (c) The demolition and construction provided for in the Construction Management Agreement and the Project Contracts are acknowledged by Lessor and the Trustee to be consistent with and in compliance with the terms and provisions of this Article XI.

ARTICLE XII

- 12.1 Warranty of Title. (a) Lessee agrees that except as otherwise provided herein and subject to the terms of Article XIII relating to permitted contests, Lessee shall not directly or indirectly create or allow to remain, and shall promptly discharge at its sole cost and expense, any Lien, defect, attachment, levy, title retention agreement or claim upon the Property or any Modifications or any Lien, attachment, levy or claim with respect to the Rent or with respect to any amounts held by the Trustee pursuant to the Indenture (such matters, excepting those referred to in clauses (i) through (v) below, being collectively referred to as "Title Defects"), other than:
 - (i) Permitted Exceptions (other than clause (c) thereof, which shall be governed by clauses (ii), (iii) and (iv) of this Section 12.1(a));
 - (ii) such encumbrances as are created by Lessor (as opposed to any Affiliate of Lessor) without the consent of Lessee, except for Liens with respect to Impositions and except for any Liens arising from nonpayment of any taxes or impositions that do not constitute Impositions pursuant to clauses (ii) through (xiv) of the last sentence of the definition of "Impositions" in Section 2.1;
 - (iii) Liens for Impositions or for sums resulting from noncompliance with Legal Requirements which are not yet due and payable or are due and payable subsequently without the addition of any fine or penalty;
 - (iv) Liens of mechanics, laborers, materialmen, suppliers or vendors for sums either disputed or not yet due, provided that, subject to Lessee's right otherwise to proceed in accordance with Article XIII relating to permitted contests, such Liens shall be discharged, by bonding or otherwise, within thirty (30) days after receipt of notice that the same have attached to the Property; and
 - (v) subleases with respect to the Property permitted by the terms of Article XXVI.

Lessee shall notify Lessor in the event it receives actual knowledge that a Title Defect has occurred with respect to the Property.

(b) Nothing contained in this Lease shall be construed as constituting the consent or request of Lessor, expressed or implied, to or for the performance by any contractor, mechanic, laborer, materialman, supplier or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Property or any part thereof. NOTICE IS HEREBY GIVEN THAT LESSOR IS NOT

AND SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO LESSEE, OR TO ANYONE HOLDING THE PROPERTY OR ANY PART THEREOF THROUGH OR UNDER LESSEE, AND THAT NO MECHANIC'S OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LESSOR IN AND TO THE PROPERTY.

- (c) Notwithstanding anything to the contrary in this Lease, Lessee may in the name of Lessor and at Lessee's sole cost and expense enforce any rights Lessor may have with respect to any Title Defects.
- 12.2 Grants and Releases of Easements. Provided that no Default of the type described in Section 17.1(e) or Section 17.1(f) shall have occurred and be continuing and subject to the provisions of Articles VIII, IX, X and XI hereof, Lessor hereby consents in each instance to the following actions by Lessee, in the name and stead of Lessor, but at Lessee's sole cost and expense: (a) the granting (prior to the lien of the Mortgage) of easements, licenses, rights-of-way and other rights and privileges in the nature of easements reasonably necessary or desirable for the use, repair, or maintenance of the Property as herein provided, whether or not such grants are reciprocal to Lessee; (b) the release (free and clear of the lien of the Mortgage) of existing easements or other rights in the nature of easements which are for the benefit of the Property; (c) the dedication or transfer (prior to the lien of the Mortgage) of unimproved portions of the Property for road, highway or other public purposes; (d) the execution of petitions to have the Property annexed to any municipal corporation or utility district; and (e) the execution of amendments to any covenants and restrictions affecting the Property; provided, however, in each case Lessee shall have delivered to Lessor an Officer's Certificate stating that (i) such grant, release, dedication or transfer does not materially impair the use of the Property or materially reduce its value, (ii) such grant, release, dedication or transfer is reasonably necessary in connection with the use, maintenance, alteration or improvement of the Property, (iii) Lessee shall remain obligated under this Lease and under any instrument executed by Lessee consenting to the assignment of Lessor's interest in this Lease as security for indebtedness, including the Consent to Assignment, in each such case in accordance with their terms, as though such grant, release, dedication or transfer, had not been effected and (iv) Lessee shall pay and perform any obligations of Lessor under such grant, release, dedication or transfer. Without limiting the effectiveness of the foregoing, provided that no Default of the type described in Section 17.1(e) or Section of Lessee, and at Lessee's sole cost and expense, execute and deliver any instruments necessary or appropriate to confirm any such grant, release, dedication or transfer to any Person permitted under this Section 12.2.

ARTICLE XIII

13.1 Permitted Contests Other than in Respect of Impositions. Except to the extent otherwise provided for in Article XXV, Lessee, on its own or on Lessor's behalf but at Lessee's sole cost and expense, may contest, by appropriate administrative or judicial proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any Legal Requirement, Insurance Requirement, or utility charges payable pursuant to Section 4.5 or any Lien, attachment, levy, encumbrance or encroachment, including those of the type described in Article XII, in any case other than in respect of Impositions, and Lessor agrees not to pay, settle or otherwise compromise any such item, provided that (a) the commencement and continuation of such proceedings shall suspend the collection thereof from, and suspend the enforcement thereof against the Property, Lessor, the Trustee and the Holders; (b) there shall be no risk of the imposition of a material Lien (other than Permitted Exceptions) on the Property and no part of the Property nor any Rent would be in any danger of being sold, forfeited, lost or deferred; (c) at no time during the permitted contest shall there be a risk of the imposition of criminal liability or material civil liability on Lessor, the Trustee or any Holder for failure to comply therewith; and (d) in the event that, at any time, (i)(x) prior to the Final Substantial Completion Date, any such contest shall involve a sum of money that is then due and payable or a potential loss (which shall include, for purposes of this Section 13.1, any potential fines or similar charges for failure to comply with a Legal Requirement) in excess of the sum of TEN MILLION DOLLARS (\$10,000,000) plus any security theretofore provided to and then held by Lessor pursuant to this Article XIII, or all of such contests at any one time pending shall involve a sum of money that is then due and payable or a potential loss in excess of the sum of FIFTEEN MILLION DOLLARS (\$15,000,000) plus any security theretofore provided to and then held by Lessor pursuant to this Article XIII, or (y) on or after the Final Substantial Completion Date, all such contests at any one time pending shall involve a sum of money that is then due and payable or a potential loss (which shall include, for purposes of this Section 13.1, any potential fines or similar charges for failure to comply with a Legal Requirement) in excess of the sum of TEN MILLION DOLLARS (\$10,000,000) plus any security theretofore provided to and then held by Lessor pursuant to this Article XIII; or (ii) there shall be a material risk of extending the application of such item beyond the end of the then current Primary Term or Extended Term, as the case may be, then Lessee shall (A) deliver to Lessor an Officer's Certificate certifying as to the matters set forth in clauses (a), (b) and (c) of this Section 13.1, and (B) provide such security as may be reasonably requested by Lessor to ensure the ultimate payment of the contest in question and prevent any sale or forfeiture of the affected Property. Lessor, at Lessee's

sole cost and expense, shall execute and deliver to Lessee such authorizations and other documents as may reasonably be required in connection with any such contest and, if reasonably requested by Lessee, shall join as a party therein at Lessee's sole cost and expense.

- 13.2 Contests of Impositions. (a) If a written claim is made against any party entitled to indemnification by Lessee under Section 4.1, 4.6 or 4.7 or Section 14.11 of the Participation Agreement (each such party, an "Impositions Indemnitee") or if any proceeding shall be commenced against any such Impositions Indemnitee (including a written notice of such proceeding), for any Impositions, such Impositions Indemnitee shall promptly notify Lessee in writing and shall not take any action with respect to such claim or proceeding without the consent of Lessee for thirty (30) days after the receipt of such notice by Lessee; provided, however, that, in the case of any such claim or proceeding, if action shall be required by law or regulation to be taken prior to the end of such 30-day period, such Impositions Indemnitee shall, in such notice to Lessee, so inform Lessee, and no action shall be taken with respect to such claim or proceeding without the consent of Lessee before the end of such shorter period; provided, further, that the failure of such Impositions Indemnitee to give the notices referred to in this sentence shall not diminish Lessee's obligation hereunder except to the extent such failure precludes Lessee from contesting all or part of such claim.
- (b) If, within thirty (30) days of receipt of such notice from the Impositions Indemnitee (or such shorter period as the Impositions Indemnitee has notified Lessee is required by law or regulation for the Impositions Indemnitee to commence such contest), Lessee shall request in writing that such Impositions Indemnitee contest such Imposition, the Impositions Indemnitee shall, at the expense of Lessee, in good faith conduct and control such contest (including, without limitation, by pursuit of appeals) relating to the validity, applicability or amount of such Impositions (provided, however, that (x) if such contest can be pursued independently from any other proceeding involving a tax liability of such Impositions Indemnitee, the Impositions Indemnitee, at Lessee's request, shall allow Lessee to conduct and control such contest and (y) in the case of any contest, the Impositions Indemnitee may request Lessee to conduct and control such contest) by, in the sole discretion of the Person conducting and controlling such contest, (1) resisting payment thereof, (2) not paying the same except under protest, if protest is necessary and proper, (3) if the payment be made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings, or (4) taking such other action as is reasonably requested by Lessee from time to time.
- (c) The party controlling any contest shall consult in good faith with the non-controlling party and shall keep the non- ${\bf r}$

controlling party reasonably informed as to the conduct of such contest; provided that all decisions ultimately shall be made in the sole discretion of the controlling party. The parties agree that an Impositions Indemnitee may at any time decline to take further action with respect to the contest of any Imposition and may settle such contest if such Impositions Indemnitee shall waive its rights to any indemnity from Lessee that otherwise would be payable in respect of such claim (and any future claim by any taxing authority with respect to other taxable periods that are based, in whole or in part, upon the resolution of such claim) and shall pay to Lessee any amount previously paid or advanced by Lessee pursuant to this Section 13.2 or Section 4.1, 4.6 or 4.7 by way of indemnification or advance for the payment of an Imposition.

(d) Notwithstanding the foregoing provisions of this Section 13.2, an Impositions Indemnitee shall not be required to take any action and Lessee shall not be permitted to contest any Impositions in its own name or that of the Impositions Indemnitee unless (i) Lessee shall have agreed to pay and shall pay to such Impositions Indemnitee on demand and on an After Tax Basis all reasonable costs, losses and expenses that such Impositions Indemnitee actually incurs in connection with contesting such Impositions, including, without limitation, all reasonable legal, accounting and investigatory fees and disbursements, (ii) in the case of a claim that must be pursued in the name of an Impositions Indemnitee (or an Affiliate thereof), the amount of the potential indemnity (taking into account all similar or logically related claims that have been or could be raised in any audit involving such Impositions Indemnitee for which Lessee may be liable to pay an indemnity under this Section 13.2 or Section 4.1, 4.6 or 4.7) exceeds \$50,000, (iii) the Impositions Indemnitee shall have reasonably determined that the action to be taken will not result in any material danger of sale, forfeiture or loss of the Property, or any part thereof or interest therein, will not interfere with the payment of Rent, and will not result in risk of criminal liability, (iv) if such contest shall involve the payment of the Imposition prior to the contest, Lessee shall provide to the Impositions Indemnitee an interest-free advance in an amount equal to the Imposition that the Impositions Indemnitee is required to pay (with no additional net after-tax cost to such Impositions Indemnitee), (v) in the case of a claim that must be pursued in the name of an Impositions Indemnitee (or an Affiliate thereof), Lessee shall have provided to such Impositions Indemnitee an opinion of independent tax counsel selected by the Impositions Indemnitee and reasonably satisfactory to Lessee stating that a reasonable basis exists to contest such claim (or, in the case of an appeal of an adverse determination, an opinion of such counsel to the effect that there is substantial authority for the position asserted in such appeal) and (vi) no Event of Default hereunder shall have occurred and be continuing. In no event shall an Impositions Indemnitee be required to appeal an adverse judicial determination to the United States Supreme

Court. In addition, an Impositions Indemnitee shall not be required to contest any claim in its name (or that of an Affiliate) if the subject matter thereof shall be of a continuing nature and shall have previously been decided adversely by a court of competent jurisdiction pursuant to the contest provisions of this Section 13.2, unless there shall have been a change in law (or interpretation thereof) and the Impositions Indemnitee shall have received, at Lessee's expense, an opinion of independent tax counsel selected by the Impositions Indemnitee and reasonably acceptable to Lessee stating that as a result of such change in law (or interpretation thereof), it is more likely than not that the Impositions Indemnitee will prevail in such contest.

ARTICLE XIV

14.1 Public Liability and Workers' Compensation Insurance. During the Preliminary Term, the Primary Term and any Extended Term, Lessee shall procure and carry, at Lessee's sole cost and expense, commercial general liability insurance for claims for injuries or death sustained by persons or damage to property while on the Property and such other public liability coverages as are ordinarily procured by Persons who own or operate similar Class A Office Buildings; provided, however, Lessor shall have the right from time to time to require such higher limits as may be reasonable and customary for properties of the type comparable to the Property. The commercial general liability insurance policy shall include coverage for premises and operations, independent contractors, products and completed operations, blanket contractual liability, personal and advertising injury, liquor liability (but only during the Primary Term and any Extended Term), employees as additional insureds and severability of interest. The combined single limit of liability for bodily injury and property damage shall be at least \$1,000,000 per occurrence, \$2,000,000 general aggregate and \$2,000,000 products -- completed operations aggregate. The limit for personal injury shall be at least \$1,000,000 per person/organization subject to \$2,000,000 general aggregate with umbrella (excess liability) coverage of \$50,000,000. The policy shall either exclusively cover the Property or be endorsed to state that the general aggregate of the primary policy applies exclusively to the Property. The policy shall be endorsed to name Lessor, the Trustee and the Ground Lessors as additional insureds. The policy shall also specifically provide that the policy shall be considered primary insurance which shall apply to any loss or claim before any contribution by any insurance which Lessor, the Trustee or the Ground Lessors may have in force. The insurance required to be obtained pursuant to this Section may have a deductible or self-insured retention provided that such deductible or self-insured retention shall not exceed \$2,000,000, if (i) during the Primary Term, the rating of the Class A Notes from S&P or Moody's is lower than "A" or "A1", respectively, and

(ii) during any Extended Term, Lessee's certificate of deposit rating from S&P or Moody's is lower than "A-1" or "P-1", respectively. Lessee shall, in the operation of the Property, comply with the applicable workers' compensation laws and protect Lessor against any liability under such laws.

14.2 Hazard and Other Insurance. (a) During the Primary Term or any Extended Term, Lessee shall keep, or cause to keep, the Improvements, Fixtures and boiler and machinery, and personal property on the Property owned by Lessee, continuously insured against loss or damage by fire and all other risks covered by an I.S.O., standard "broad" causes of loss form as filed with the Hawaii Insurance Commissioner or equivalent coverage (however, Lessee will not be required to maintain insurance covering the perils of wind if at any time such coverage is not maintained with respect to similar properties or is prohibitively expensive) in amounts equal to actual replacement cost (but in no event less than the outstanding principal balance of the Class B Notes, if such amount is greater than actual replacement cost) so long as the rating of the Class A Notes from S&P or Moody's is "A" or "A1" or higher, respectively, and otherwise in an amount at least equal to the Termination Amount (if such amount is greater than actual replacement cost and is commercially obtainable), but in either case, in no event less than the amount customarily maintained for properties similar to the Property. The insurance coverage required to be obtained pursuant to the immediately preceding sentence may have a deductible or self-insured retention, provided that (i) such deductible or self-insured retention shall not exceed \$2,000,000 and, in the case of windstorm coverage, may exceed \$2,000,000 but shall not exceed 5% of total insured values, if (x) during the Primary Term, the rating of the Class A Notes from S&P or Moody's is lower than "A" or "A1", respectively, or (y) during any Extended Term, Lessee's certificate of deposit rating from S&P or Moody's is lower than "A-1" or "P-1" respectively, and (ii) such deductible or retention shall not result in the limitation of coverage by reason of any co-insurance clause or rule applicable with respect to such coverage. Such policies shall contain an "agreed amount" endorsement and shall not contain any "causation" exclusion which would have the effect of deleting the coverage for fire damage. So long as no Event of Default exists, any loss payable under the insurance policy required by this Section will be paid to and adjusted solely by Lessee; provided, however, that any loss, the estimated cost of restoration of which is in excess of FIVE MILLION DOLLARS (\$5,000,000), shall be subject to the final approval of Lessor, and the proceeds of insurance on account of such a loss shall be delivered to Escrowee for deposit and shall be disbursed in accordance with Article XV. If, notwithstanding such provision, any such insurance proceeds are paid to Lessor, the Trustee or Lessee rather than to Escrowee, Lessor, the Trustee and Lessee, as the case may be, hereby agree to transfer any such payment to Escrowee.

- (b) During the Primary Term or any Extended Term and during any period in which Modifications costing in excess of FIVE MILLION DOLLARS (\$5,000,000) at the Property are being undertaken, Lessee shall obtain or cause the contractor performing such Modifications to obtain builder's risk, general liability, worker's compensation and automobile liability insurance with respect to the Improvements. Further, Lessee shall cause the contractor which is performing such Modifications to procure and maintain at all times a performance and payment bond issued by an appropriate surety company, in light of customary local standards, guaranteeing the faithful performance and payment of the obligations arising under the contract relating to such Modifications or the payment of an amount equal to the contract sum; provided if during the Primary Term and any Extended Term Modifications costing in excess of TWENTY MILLION DOLLARS (\$20,000,000) at the Property are being undertaken, such performance and payment bond shall be issued by a surety company meeting the requirements of Section 2.4(c) of the Construction Management Agreement.
- (c) If at any time during the Term the area in which the Property is located is designated a "flood-prone" area pursuant to the Flood Disaster Protection Act of 1973, or any amendments or supplements thereto, then Lessee shall comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973. In addition, Lessee will fully comply with the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as each may be amended from time to time, and with any other Legal Requirement, concerning flood insurance to the extent that it may apply to the Property.
- (d) During the Primary Term or any Extended Term, Lessee shall obtain and maintain for the Property a Difference-in- Conditions policy which includes at a minimum the perils of collapse, earthquake, volcanic activity and flood (unless in each case such coverage is at any time generally not maintained with respect to similar properties or is prohibitively expensive). The policy may be written on a loss limit basis and shall be for an amount not less than TWENTY-FIVE MILLION DOLLARS (\$25,000,000) which amount shall be determined in accordance with periodic maximum probable loss studies.
- (e) During the Primary Term or any Extended Term, Lessee shall maintain such other insurance on or in connection with the Property as Lessor may reasonably require, which at the time is commonly obtained in connection with properties similar to the Property.
- 14.3 Coverage. (a) All of the insurance coverages described in Sections 14.1 and 14.2 shall be with insurance companies that may lawfully conduct an insurance business in the State of Hawaii and that have a "Best's" rating of not less than

- A-/X. If the Best's rating system is changed or terminated, the above stated rating of A-/X shall be adjusted to a comparable rating, as established by an Officer's Certificate of Lessee. Further, in the event that the rating of the Notes from S&P or Moody's is at any time less than "BBB" or "Baa2", respectively, then Lessee will be required to either (i) maintain the property insurance covering the Property with an insurer which has, or whose parent corporation has, a "claims paying ability" rating from S&P and Moody's of at least "BBB" and "Baa2", respectively, or (ii) provide additional credit support for the obligations of the insurer which provides the property insurance for the Property in order to ensure that such obligations are equivalent to the obligations of an entity whose "claims paying ability" ratings from S&P and Moody's are at least "BBB" and "Baa2", respectively.
- (b) Lessee shall furnish Lessor with certificates showing the insurance required under Sections 14.1 and 14.2 to be in effect and naming Lessor and each of the Ground Lessors as additional insureds and showing the mortgagee endorsement required by Section 14.3(d). All such insurance shall be at the cost and expense of Lessee. Such certificates shall include a provision for thirty (30) days' advance written notice by the insurer to Lessor and the Trustee in the event of cancellation of such insurance. If an Event of Default has occurred and is continuing and Lessor so requests, Lessee shall deliver to Lessor copies of all insurance policies required by Sections 14.1 and 14.2.
- (c) Lessee agrees that the insurance policy or policies required by Sections 14.2(a), 14.2(c), 14.2(d) and, with respect to property insurance, Section 14.2(b), shall include an appropriate clause pursuant to which such policy shall provide that it will not be invalidated should Lessee waive, in writing, prior to a loss, any or all rights of recovery against any party for losses covered by such policy. Lessee hereby waives any and all such rights against the Ground Lessors, Lessor and the Trustee to the extent of payments made under such policies.
- (d) All insurance policies required by Section 14.2 shall include a "New York" or standard form mortgagee endorsement in favor of the Trustee.
- (e) Neither Lessor nor Lessee shall carry separate insurance concurrent in kind or form or contributing in the event of loss with any insurance required under this Article XIV except that Lessee and Lessor may carry separate liability insurance so long as (i) Lessee's insurance is designated as primary and in no event excess or contributory to any insurance Lessor may have in force which would apply to a loss covered under Lessee's policy and (ii) each such insurance policy will not cause Lessee's insurance required under this Article XIV to be subject to a co-insurance exception of any kind.

- (f) Lessee shall pay as they become due all premiums for the insurance required by Section 14.1 and Section 14.2, shall renew or replace each policy prior to the expiration date thereof and shall promptly deliver to Lessor and the Trustee certificates for renewal and replacement policies.
- (g) Anything in this Section 14.3 to the contrary notwithstanding, any insurance which Lessee is required to obtain pursuant to Sections 14.1 and 14.2 may be carried under "blanket" and umbrella policies governing other properties and liabilities of Lessee, provided that if during any year there are claims under any umbrella policy covering the Property in an aggregate amount of \$25,000,000 or more, Lessee will reinstate the coverage under such umbrella policy for the remainder of the year to the amount of \$50,000,000.
- (h) So long as the insurance required by Section 14.2 is carried under a "blanket" insurance policy, Lessee shall provide Lessor annually with an Officer's Certificate containing an estimate of the replacement cost and insurable value of the Improvements, Fixtures, the personal property on the Property owned by Lessee and all other property covered by such "blanket" insurance policy. Should Lessee elect to cover the Improvements under a specific policy rather than a "blanket" policy, it shall have the amount of the replacement cost of the property covered by such specific policy determined at least once every three years by an independent qualified appraiser or such other person reasonably satisfactory to Lessor, and shall deliver to Lessor and the Trustee such determination promptly upon receipt.
- (i) LESSEE IS HEREBY NOTIFIED THAT LESSEE MAY ACQUIRE INSURANCE RELATED TO THIS LEASE FROM AN INSURER OR AGENT OF ITS CHOICE, SUBJECT ONLY TO THE STANDARDS STATED HEREIN. This Section 14.3(i) is intended to comply with the requirements of Section 431:13-104, Hawaii Revised Statutes, to the extent applicable, and shall be construed in a manner consistent therewith.

ARTICLE XV

15.1 Casualty and Condemnation. (a) From and after the Substantial Completion Date for Core and Shell and subject to the provisions of this Article XV and Article XVI (in the event Lessee delivers, or is obligated to deliver, a Termination Notice) and subject at all times to the provisions of Section 15.1(i), and prior to the occurrence and continuation of an Event of Default, Lessee shall be entitled to receive (and Lessor hereby irrevocably assigns to Lessee all of Lessor's right, title and interest in) any award, compensation or insurance proceeds to which Lessee or Lessor may become entitled by reason of their respective interests in the Property (i) if all or a portion of the Property is damaged or destroyed in whole or in part by fire

or other casualty (a "Casualty") or (ii) if the use, access, occupancy, easement rights or title to the Property or any part thereof is wholly or partially (temporarily or permanently) taken or sold in, by or on account of any actual or threatened eminent domain proceeding or other taking of action by any Person having the power of eminent domain, including an action by a Governmental Authority to change the grade of, or widen the streets adjacent to, the Property or alter the pedestrian or vehicular traffic flow to the Property so as to result in a change in access to the Property, or by or on account of an eviction by paramount title or any transfer made in lieu of any such proceeding or action (in each instance, a "Condemnation"); provided, however, if an Event of Default shall have occurred and be continuing such award, compensation or insurance proceeds shall be paid directly to Lessor or, if received by Lessee, shall be held in trust for Lessor, and shall be paid over by Lessee to Lessor and held in accordance with the terms of paragraph (b) below; provided further, however, in the event of any Casualty or Condemnation, the estimated cost of restoration of which is in excess of FIVE MILLION DOLLARS (\$5,000,000), any such award, compensation or insurance proceeds shall be delivered in escrow (the "Post Completion Escrow") to the Escrowee, and any such award, compensation or insurance proceeds received by Escrowee shall be applied by Escrowee (1) first, to reimburse Lessor, the Trustee and the Holders for any expenses (including, without limitation, any reasonable attorneys' and consultants' fees and expenses) incurred by any of the foregoing in connection with the collection of any such award, compensation or insurance proceeds, or the determination of the amount of the loss, and, except as provided to the contrary below, (2) second, to Lessee to pay the cost of the restoration of the Property pursuant to the terms of an escrow agreement which shall be entered into by Lessee and Escrowee and which shall contain the provisions of Sections 11.1, 15.1(c) and 15.1(g) herein as well as the terms set forth in this Section 15.1(a), and (3) the balance, if any, shall be paid as provided in the last sentence of Section 15.1(g). If, notwithstanding such provision, any such award, compensation or insurance proceeds are paid to Lessor, the Trustee or Lessee rather than to Escrowee, Lessor, the Trustee and Lessee, as the case may be, hereby agree to transfer any such payment to Escrowee. All amounts held by Lessor hereunder on account of any award, compensation or insurance proceeds either paid directly to Lessor or turned over to Lessor shall be held as security for the performance of Lessee's obligations hereunder. Funds deposited in the Post Completion Escrow shall be invested at the written direction of Lessee, and all interest earned thereon shall be the property of Lessee and added to the sums deposited in the Post Completion Escrow.

(b) Any provision of this Lease to the contrary notwithstanding, Lessor shall not be obligated to deposit any award, compensation or insurance proceeds payable on account of a Casualty and Condemnation and received by Lessor with Escrowee in

the Post Completion Escrow, including any rental insurance proceeds, and Escrowee shall not make any amounts in the Post Completion Escrow available to Lessee for restoration or otherwise in accordance with the terms and conditions more particularly set forth herein if (i) an Event of Default has occurred and is continuing or (ii) the estimated cost to restore is in excess of the Net Proceeds available for such purpose and Lessee shall have failed to deposit with Escrowee a sum (by way of cash, letter of credit, guaranty or other similar liquid collateral reasonably satisfactory to Lessor and the Trustee) equal to the amount by which the estimated cost to restore shall exceed the Net Proceeds available for such purpose (and Lessee hereby covenants to make such deposit). In the event Lessor is entitled to hold the Net Proceeds and elects to do so, Lessor shall release the funds to Escrowee upon Lessor's acceptance of a cure for any Event of Default (in the case of clause (i) above) or Escrowee's receipt of the excess funds necessary to complete the restoration of the Property (in the case of clause (ii) above).

(c) With respect to all amounts held in the Post Completion Escrow, not more than once each month, Lessee shall submit to Escrowee for payment a cost breakdown of work completed to date, together with a requisition which shall be certified by Lessee and its architect and shall state that (i) such work has been completed substantially in accordance with the plans and specifications conforming to Section 15.1(g) and approved by Lessor (such approval not to be unreasonably withheld or delayed), (ii) the requested amount has been paid in full or has actually been incurred and is payable and a requisition therefor has not previously been submitted or if submitted, the requisitioned amount has not been paid in full to Lessee, and (iii) the then estimated cost of completing the restoration does not exceed the amount that Escrowee will hold pursuant to this Section 15.1 following the requested payment to Lessee. Lessee shall be obligated to deposit additional amounts (in cash or other forms described above in Section 15.1(b)) as shall be necessary to complete construction, based on Lessee's then estimated cost of completion and taking into account the remaining amount in the Post Completion Escrow. Disbursements by Escrowee with respect to costs of restoration (x) shall be subject to retainages equal to the amount actually withheld or to be withheld by Lessee with respect to any payment made or to be made to any contractors, laborers, subcontractors, mechanics, materialmen, vendors or any other Persons with respect to such restoration; (y) shall be conditioned upon receipt by Escrowee of such evidence of the absence of Liens as Lessor shall reasonably require; and (z) may be conditioned upon such independent inspections by Lessor or its agents of the restoration as Lessor may reasonably elect to make or cause to be made at Lessee's expense.

- (d) Lessee may appear in any proceeding or action to negotiate, prosecute, adjust or appeal any claim for any award, compensation or insurance payment on account of any such Casualty or Condemnation and shall pay all expenses thereof. At Lessee's reasonable request, and at Lessee's sole cost and expense, Lessor and the Trustee shall participate in any such proceeding, action, negotiation, prosecution or adjustment. Lessor and Lessee agree that from and after the Substantial Completion Date for Core and Shell this Lease shall control the rights of Lessor and Lessee in and to any such award, compensation or insurance payment, and any right under present or future law to the contrary is hereby waived.
- (e) If Lessor or Lessee shall receive notice of a Casualty or a possible Condemnation of the Property or any interest therein, Lessor or Lessee, as the case may be, shall give notice thereof to the other and to the Trustee promptly after the receipt of such notice.
- In the event of a Casualty or receipt of notice by Lessee or Lessor of a Condemnation after the Substantial Completion Date for Core and Shell, Lessee shall, not later than forty-five (45) days after such occurrence or such longer time as may reasonably be required (as specified by notice from Lessee to Lessor from time to time delivered prior to the termination of such forty-five (45) days, as the same may be extended) to determine the full extent of loss, the probable expense and time of restoration and the probable amount of the award or insurance payment, deliver to Lessor and the Trustee a notice stating that either (i) this Lease shall remain in full force and effect and, at Lessee's sole cost and expense, Lessee shall promptly and diligently restore the Property in accordance with the terms of Section 15.1(g) or (ii) this Lease shall terminate in accordance with Section 16.1. However, this Lease shall terminate under clause (ii) of the preceding sentence in the event of (1) a Condemnation that either (I) involves a taking of Lessor's entire leasehold title to the Land (a "Total Condemnation") or (II) in the reasonable, good faith judgment of Lessee (as evidenced by an Officer's Certificate), either (x) renders the Property unsuitable for continued use as a Class A Office Building or (y) is such that restoration of the Property to substantially its condition as existed immediately prior to such Condemnation would be impracticable or impossible (either (x) or (y), a "Significant Condemnation") or (2) a Casualty that in the reasonable, good faith judgment of Lessee (as evidenced by an Officer's Certificate) either (I) renders the Property unsuitable for continued use as a Class A Office Building or (II) is so substantial in nature such that restoration of the Property to substantially its condition as existed immediately prior to such Casualty would be impracticable or impossible (either (I) or (II), a Significant Casualty"). Notwithstanding the foregoing, this Lease shall not stay in full force and effect under the preceding clause (i) unless Lessee shall deliver to Lessor and

the Trustee an Officer's Certificate stating that either (x) such Condemnation is neither a Total Condemnation nor a Significant Condemnation or (y) such Casualty is not a Significant Casualty.

- (g) If pursuant to Section 15.1(f)(i) this Lease shall continue in full force and effect, Lessee shall, at its sole cost and expense, promptly and diligently repair any damage to the Property caused by such Casualty or Condemnation in conformity with the requirements of Section 11.1 using the as-built plans and specifications for the Building (as modified to give effect to any subsequent Modifications, any Condemnation affecting the Property and all applicable Legal Requirements) so as to restore the Property to the same condition, operation, function and value as existed immediately prior to such Casualty or Condemnation. In such event, title to the Property shall remain with Lesser. If the cost of such restoration shall exceed the Net Proceeds with respect to such Casualty or Condemnation, the excess shall be paid by Lessee. Any Net Proceeds remaining after final payment has been made for restoration shall belong to Lessee.
- (h) In no event shall a Casualty or Condemnation with respect to which this Lease remains in full force and effect under Section 15.1(f)(i) affect Lessee's obligations to pay Rent pursuant to Section 3.1.
- (i) Notwithstanding anything to the contrary set forth in Section 15.1(a) or Section 15.1(g), if during the Primary Term (i) a Casualty occurs or Lessee receives notice of a Condemnation, (ii) the estimated cost of restoring such Casualty or Condemnation is in excess of \$1,000,000 and (iii) following such Casualty or Condemnation, the Property cannot reasonably be restored on or before the 540th day prior to the Expiration Date to the same condition as existed immediately prior to such Casualty or Condemnation, then (x) any award, compensation or insurance proceeds to which Lessor or Lessee may be entitled to by reason of their respective interests in the Property on account of such Casualty or Condemnation shall be paid to the Trustee, (y) if any such award, compensation or insurance proceeds shall not in fact be paid to the Trustee on or prior to the Expiration Date, then Lessee shall pay to the Trustee on the Expiration Date an amount which in the reasonable good-faith judgment of Lessee (as evidenced by an Officer's Certificate) is equal to the award, compensation or insurance proceeds that will be payable in connection with such Casualty or Condemnation and any such award, compensation or insurance proceeds actually paid on or after such date shall be payable to Lessee, and (z) following any such Casualty, Lessee shall also deliver to the Trustee the full amount of the deductible or self-insured retention in effect with respect to the insurance coverage required pursuant to Section 14.2. The amount set forth in the preceding clause (z) shall be paid to the Trustee regardless of whether the estimated cost of restoring the Casualty is in excess of \$1,000,000. The amounts referred to in the preceding clauses

(x), (y) and (z) shall be applied by the Trustee at the expiration of the Primary Term to the outstanding principal amount of, and accrued and unpaid interest on, the Notes in accordance with the terms of the Indenture; provided, however, that if Lessee at any time delivers to Lessor an Election Notice pursuant to Section 20.2 or an Extension Notice pursuant to Section 21.1(b), then such amounts shall be promptly paid or repaid, as the case may be, by the Trustee to Lessee; provided, further that in the event Lessee delivers an Extension Notice pursuant to Section 21.1(b), Lessee shall thereafter be obligated to comply with the provisions of Sections 15.1(a) and (c) and to repair and restore the Property pursuant to Section 15.1(g).

- $\,$ 15.2 Environmental Matters. Promptly upon Lessee's actual knowledge of the presence of Hazardous Substances in any portion of the Property in concentrations and conditions that constitute an Environmental Violation, Lessee shall notify Lessor in writing of such condition. In the event of such Environmental Violation, Lessee shall, not later than forty-five (45) days after Lessee has actual knowledge of such Environmental Violation or such longer time as may reasonably be required (as specified by written notice from Lessee to Lessor from time to time delivered prior to the termination of such forty-five (45) days, as the same may be extended) to determine the full extent of the Environmental Violation and the probable expense and time of remediation and either deliver to Lessor and the Trustee an Officer's Certificate and a Termination Notice pursuant to Section 16.1(b), if applicable, or, at Lessee's sole cost and expense, promptly and diligently undertake any response, clean up, remedial or other action necessary to remove, cleanup or remediate the Environmental Violation in accordance with the terms of Section 9.1. If Lessee does not deliver a Termination Notice pursuant to Section 16.1(b), Lessee shall, upon completion of remedial action by Lessee, cause to be prepared by an environmental consultant reasonably acceptable to Lessor a report describing the Environmental Violation and the actions taken by Lessee (or its agents) in response to such Environmental Violation, and a statement by the consultant that the Environmental Violation has been remedied in full compliance with applicable Environmental Law.
- 15.3 Notice of Environmental Matters. Promptly, but in any event within five (5) Business Days from the date Lessee has actual knowledge thereof, Lessee shall provide to Lessor written notice of any material pending or threatened claim, action or proceeding involving any Environmental Law in connection with the Property. All such notices shall describe in reasonable detail the nature of the claim, action or proceeding and Lessee's proposed response thereto. In addition, Lessee shall provide to Lessor, within five (5) Business Days of receipt, copies of all material written communications with any Governmental Authority relating to any Environmental Law in connection with the Property. Lessee shall also promptly provide

such detailed reports of any such material environmental claims as may reasonably be requested by Lessor.

ARTICLE XVI

- 16.1 Termination Upon Certain Events. (a) If Lessor or Lessee shall have received notice of a Total Condemnation of the Property on or after the Substantial Completion Date for Core and Shell, then Lessee shall be obligated, within thirty (30) days after Lessee receives notice thereof, to deliver a written notice in the form described in Section 16.2(a) (a "Termination Notice") of the termination of this Lease.
- (b) If either: (i) Lessee or Lessor shall have received notice of a Condemnation of the Property on or after the Substantial Completion Date for Core and Shell and Lessee shall have delivered to Lessor an Officer's Certificate that such Condemnation is a Significant Condemnation in accordance with Section 15.1(f); or (ii) a Casualty occurs on or after the Substantial Completion Date for Core and Shell and Lessee shall have delivered to Lessor an Officer's Certificate that such Casualty is a Significant Casualty in accordance with Section 15.1(f); or (iii) an Environmental Violation occurs or is discovered and Lessee shall have delivered to Lessor an Officer's Certificate stating that, in the reasonable, good-faith judgment of Lessee, the cost to remediate the same will exceed FIVE MILLION DOLLARS (\$5,000,000); then, Lessee shall, simultaneously with the delivery of the Officer's Certificate pursuant to the preceding clause (i), (ii) or (iii), deliver a Termination Notice.
- 16.2 Procedures. a. A Termination Notice shall contain: (i) notice of termination of this Lease on the next Payment Date which occurs at least thirty (30) days after Lessor's receipt of such Termination Notice (the "Termination Date"); (ii) a binding and irrevocable agreement of Lessee to pay the Termination Amount and purchase the Property on such Payment Date; and (iii) the Officer's Certificate described in Section 16.1(b).
- b. On the Termination Date, Lessee shall pay to Lessor the Termination Amount, plus all amounts owing in respect of Rent (including Additional Charges) theretofore accruing and Lessor shall convey the Property or the remaining portion thereof, if any, to Lessee (or Lessee's designee) all in accordance with Section 19.1, as well as any Net Proceeds with respect to the Casualty or Condemnation giving rise to the termination of this Lease theretofore received by Lessor.

ARTTCLE XVTT

- 17.1 Events of Default. If any one or more of the following events (each an "Event of Default") shall occur:
 - a. Lessee shall fail to make payment of any Base Rent or Renewal Rent, as applicable, any Termination Amount, any Purchase Option Price, any Residual Guarantee Amount or the Default Amount within five (5) days after the same has become due and payable;
 - b. Lessee shall fail to make payment of any other Additional Charges due and payable within fifteen (15) days after receipt of notice thereof;
 - c. If the insurance policies required by Article XIV shall be terminated or expire without replacement;
 - d. Lessee shall fail to observe or perform any term, covenant or condition of this Lease, the Consent to Assignment, the Participation Agreement or any other Operative Agreement to which it is a party other than those set forth in Section 17.1(a), (b) or (c) hereof, or any representation or warranty set forth in this Lease or in Section 7.2 of the Participation Agreement as of the date hereof, or in Section 4.1(b) of the Construction Management Agreement, shall be inaccurate in any way materially adverse to Lessor, and such failure or misrepresentation or breach of warranty shall remain uncured for a period of thirty (30) days after receipt of written notice thereof; provided, however, no Event of Default shall be deemed to occur if such failure, misrepresentation or breach cannot reasonably be cured within such period, so long as Lessee shall have promptly commenced the cure thereof, continues to act with diligence to cure such failure, misrepresentation or breach and, with respect to any failure, misrepresentation or breach contained in Sections 4.1, 10.2, 12.1, 12.2, 14.1, 14.2, 14.3, 15.2, 15.3, 25.1 and 26.2 hereof and Sections 7.2(a), (b), (h), (l), (m), (o), (r), (t), (u), (v), 7.3(a), (b), (f), (g), (i), 7.4(a), (b), (f), (g), (i), Section 8, Section 9, Sections 14.1, 14.2, 14.3, 14.4, 14.5, 14.7 and 14.9 of the Participation Agreement, in fact cures such failure, misrepresentation or breach within 180 days after receipt of notice thereof;
 - e. Lessee shall (i) admit in writing its inability to pay its debts generally as they become due, (ii) file a petition under the United States bankruptcy laws or any other applicable insolvency law or statute of the United States of America or any State or Commonwealth thereof, (iii) make a general assignment for the benefit of its creditors, (iv) consent to the appointment of a receiver of itself or the whole or any substantial part of its property,

- (v) fail to cause the discharge of any custodian, trustee or receiver appointed for Lessee or the whole or a substantial part of its property within ninety (90) days after such appointment, or (vi) file a petition or answer seeking or consenting to reorganization under the United States bankruptcy laws or any other applicable insolvency law or statute of the United States of America or any State or Commonwealth thereof; or
- f. insolvency proceedings or a petition under the United States bankruptcy laws or any other applicable insolvency law or statute of the United States of America or any State or Commonwealth thereof shall be filed against Lessee and not dismissed within ninety (90) days from the date of its filing, or a court of competent jurisdiction shall enter an order or decree appointing, without the consent of Lessee, a receiver of Lessee or the whole or a substantial part of its property, and such order or decree shall not be vacated or set aside within ninety (90) days from the date of the entry thereof;

then, in any such event, Lessor may, in addition to the other rights and remedies provided for in this Article XVII and in Section 18.1, terminate this Lease by giving Lessee thirty (30) days notice of such termination and upon the expiration of the time fixed in such notice, this Lease shall terminate, subject to Lessee's rights under Section 17.6, and all rights of Lessee under this Lease shall cease. Lessee shall, to the fullest extent permitted by law, pay as Additional Charges all costs and expenses incurred by or on behalf of Lessor, including fees and expenses of counsel, as a result of any Event of Default hereunder.

- 17.2 Surrender of Possession. If an Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessee shall, upon thirty (30) days written notice, surrender to Lessor possession of the Property and Lessee shall quit the same, subject, however, to the rights of any subtenants of Lessee to whom Lessor has accorded nondisturbance rights pursuant to Section 26.2. Lessor may enter upon and repossess the Property by such means as are available at law or in equity, and may remove Lessee and all other Persons and any and all personal property and Lessee's equipment and personalty and severable Modifications from the Property. Lessor shall have no liability by reason of any such entry, repossession or removal performed in accordance with applicable law.
- 17.3 Reletting. If an Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessor may, but (except to the extent required by applicable law) shall be under no obligation to, relet the Property, for the account of Lessee

or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions (which may include concessions or free rent) and for such purposes as Lessor may determine, and Lessor may collect, receive and retain the rents resulting from such reletting. Lessor shall not be liable to Lessee for any failure to relet the Property or for any failure to collect any rent due upon such reletting.

17.4 Damages. Neither (a) the termination of this Lease as to all or any part of the Property pursuant to Section 17.1; (b) the repossession of all or any part of the Property; nor (c) except to the extent required by applicable law, the failure of Lessor to relet all or any part of the Property, the reletting of all or any portion thereof, nor the failure of Lessor to collect or receive any rentals due upon any such reletting shall relieve Lessee of its liability and obligations hereunder, all of which shall survive any such termination, repossession or reletting. If any Event of Default shall have occurred and be continuing and notwithstanding any termination of this Lease pursuant to Section 17.1, Lessee shall forthwith pay to Lessor all Rent and other sums due and payable hereunder to and including the date of such termination. Thereafter, on the days on which the Base Rent or Renewal Rent, as applicable, are payable under this Lease or would have been payable under this Lease if the same had not been terminated pursuant to Section 17.1 and until the end of the Term hereof or what would have been the Term in the absence of such termination, Lessee shall pay Lessor, as current liquidated damages (it being agreed that it would be impossible accurately to determine actual damages) an amount equal to the Base Rent or Renewal Rent, as applicable, and Additional Charges that are payable under this Lease or would have been payable by Lessee hereunder if this Lease had not been terminated pursuant to Section 17.1, less the net proceeds, if any, which are actually received by Lessor with respect to the period in question pursuant to the terms of the Mortgage and Assignment of Lease of any reletting of the Property or any portion thereof; provided that Lessee's obligation to make payments of Base Rent and Renewal Rent under this Section 17.4 shall continue only so long as Lessor shall not have received the amounts specified in Section 17.5 or Section In calculating the amount of such net proceeds from reletting, there shall be deducted all of Lessor's, the Trustee's and any Holder's expenses in connection therewith, including repossession costs, brokerage commissions, fees and expenses of counsel and any necessary repair or alteration costs and expenses incurred in preparation for such reletting. To the extent Lessor receives any damages pursuant to this Section 17.4, such amounts shall be regarded as amounts paid on account of Rent.

 $17.5\,$ Acceleration of Rent. In the event this Lease is deemed to be a true lease of the Property by Lessor to Lessee and not a financing arrangement, then to the extent permitted by

applicable law, if an Event of Default shall have occurred and be continuing, and this Lease shall not have been terminated pursuant to Section 17.1, and whether or not Lessor shall have collected any current liquidated damages pursuant to Section 17.4, Lessor may upon written notice to Lessee accelerate all payments of Base Rent or Renewal Rent due hereunder and, upon such acceleration, Lessee shall immediately pay Lessor, as and for final liquidated damages and in lieu of all current liquidated damages on account of such Event of Default beyond the date of such acceleration (it being agreed that it would be impossible accurately to determine actual damages) an amount equal to the sum of (a) all Base Rent or Renewal Rent, as applicable, due from the date of such acceleration until the end of the Term, plus (b) the Residual Guarantee Amount that would be payable under Section 22.1(d) assuming the proceeds of the sale pursuant to such Section 22.1(d) are equal to zero, discounted to present value at a rate equal to the lesser of (i) the rate then being paid on United States treasury securities with maturities corresponding to the then remaining Term or (ii) five percent (5%). Following payment of such amount by Lessee, Lessee will be permitted to stay in possession of the Property for the remainder of the Term, subject to the terms and conditions of this Lease, provided that no further Event of Default shall occur and be continuing, following which Lessor shall have all the rights and remedies set forth in this Article XVII (but not including those set forth in this Section 17.5). statute or rule of law shall limit the amount of such final liquidated damages to less than the amount agreed upon, Lessor shall be entitled to the maximum amount allowable under such statute or rule of law. Notwithstanding the foregoing, if Lessor has elected to seek damages under this Section 17.5, Lessee may at any time after the occurrence and during the continuance of an Event of Default elect to pay to Lessor the Default Amount in accordance with the terms of Section 17.6 and receive an assignment of Lessor's right, title and interest as lessee under the Ground Lease and Lessor's entire interest in the Improvements, Fixtures and Modifications all in accordance with the terms of Section 17.6.

17.6 Final Liquidated Damages. If an Event of Default shall have occurred and be continuing, whether or not this Lease shall have been terminated pursuant to Section 17.1 and whether or not Lessor shall have collected any current liquidated damages pursuant to Section 17.4, Lessor shall have the right to recover, by demand to Lessee and at Lessor's election, and Lessee shall pay to Lessor, as and for final liquidated damages, but exclusive of the indemnities payable under Section 25.1, and in lieu of all current liquidated damages beyond the date of such demand (it being agreed that it would be impossible accurately to determine actual damages) the sum of (a) the Default Amount specified for such Payment Date on Schedule D, plus (b) the Make-Whole Premium payable by reason of the application of such portion of the Default Amount as shall be required to be applied to the Notes upon acceleration thereof, plus (c) all other amounts owing in

respect of Rent and Additional Charges theretofore accruing under this Lease. If after this Lease shall be terminated pursuant to Section 17.1, Lessor shall not have elected to demand recovery of final liquidated damages pursuant to the first sentence of this Section 17.6, Lessee may, at any time within one hundred eighty (180) days after the earlier of (x) the date Lessor shall have commenced appropriate proceedings to remove Lessee from occupancy of the Property or (y) the date the Trustee shall have commenced appropriate proceedings to foreclose the lien of the Mortgage (but in no event after the completion of such foreclosure or the actual dispossession of the Lessee), pay the amount of final liquidated damages required by the first sentence of this Section 17.6 plus the Lessor Make-Whole Premium to Lessor. Upon payment of the amount specified pursuant to the first or second sentence of this Section 17.6, Lessee shall be entitled to receive from Lessor, at Lessee's request and cost, an assignment of Lessor's right, title and interest as lessee under the Ground Lease and Lessor's entire interest in the Improvements, Fixtures and Modifications, in each case (i) with covenants against grantor's acts, (ii) in recordable form and otherwise in conformity with local custom and (iii) free and clear of the Lien of all mortgages (including the Mortgage and the Assignment of Lease) and any defects. Liens or encumbrances that have been created by Lessor, other than (x) those that Lessee is responsible hereunder to pay or discharge or those created pursuant to Lessee's request made in accordance with Section 12.2 or otherwise consented to by Lessee, and (y) ad valorem taxes and Impositions. Lessee (or Lessee's designee) shall execute and deliver to Lessor an assumption of all of Lessor's obligations under the Ground Lease. The Property shall be conveyed to Lessee (or Lessee's designee) "AS IS" and in its then present physical condition. If any statute or rule of law shall limit the amount of such final liquidated damages to less than the amount agreed upon, Lessor shall be entitled to the maximum amount allowable under such statute or rule of law; provided, however, Lessee shall not be entitled to receive an assignment of Lessor's interest under the Ground Lease or in the Improvements, Fixtures and Modifications unless Lessee shall have paid in full the Default Amount, plus the Make-Whole Premium as provided above.

17.7 Waiver of Certain Rights. If this Lease shall be terminated pursuant to Section 17.1, Lessee waives, to the fullest extent permitted by law, (a) any notice of re-entry or the institution of legal proceedings to obtain re-entry or possession; (b) any right of redemption, re-entry or repossession; (c) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt; and (d) any other rights which might otherwise limit or modify any of Lessor's rights or remedies under this Article XVII.

 $17.8\,$ Assignment of Rights under Contracts. If an Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to

Section 17.1, Lessee shall upon Lessor's demand immediately assign, transfer and set over to Lessor all of Lessee's right, title and interest in and to the Construction Contract, the Demolition Contract, the Development Agreement, each other Project Contract and all other agreements executed by Lessee in connection with the construction, development, use or operation of the Property (including, without limitation, all right, title and interest of Lessee with respect to all warranty, performance, service and indemnity provisions), as and to the extent that the same relate to the construction and operation of the Property.

17.9 Remedies Cumulative. The remedies herein provided shall be cumulative and in addition to (and not in limitation of) any other remedies available at law, equity or otherwise, including, without limitation, the mortgage foreclosure remedies described in Chapter 667 of the Hawaii Revised Statutes.

ARTICLE XVIII

18.1 Lessor's Right to Cure Lessee's Defaults. Lessor, without waiving or releasing any obligation or Event of Default, may (but shall be under no obligation to) remedy any Event of Default for the account and at the sole cost and expense of Lessee, including the failure by Lessee to maintain the insurance required by Article XIV, and may, to the fullest extent permitted by law, and notwithstanding any right of quiet enjoyment in favor of Lessee, enter upon the Property for such purpose and take all such action thereon as may be necessary or appropriate therefor. No such entry shall be deemed an eviction of Lessee. All out-of-pocket costs and expenses so incurred (including fees and expenses of counsel), together with interest thereon at the Lessor Overdue Rate from the date on which such sums or expenses are paid by Lessor, shall be paid by Lessee to Lessor on demand.

ARTICLE XIX

- 19.1 Provisions Relating to Lessee's Termination of this Lease or Exercise of Purchase Option. In connection with any termination of this Lease pursuant to the terms of Section 16.2, or in connection with Lessee's exercise of its Purchase Option under Article XX, upon the Payment Date on which this Lease is to terminate or upon the Expiration Date, as applicable, and upon tender by Lessee (or Lessee's designee) of the amounts set forth in Section 16.2(b) or Section 20.2, as applicable:
 - (a) Lessor shall execute and deliver to Lessee (or to Lessee's designee) at Lessee's cost and expense an assignment of Lessor's right, title and interest as lessee under the Ground Lease and Lessor's entire interest in the

Improvements, Fixtures and Modifications (which shall include an assignment of all of Lessor's right, title and interest in and to any Net Proceeds not previously received by Lessor), in each case (i) with covenants against grantor's acts, (ii) in recordable form and otherwise in conformity with local custom and (iii) free and clear of the Lien of all mortgages (including the Mortgage and the Assignment of Lease) and any defects, Liens or encumbrances that have been created by Lessor, other than (x) those that Lessee is responsible hereunder to pay or discharge or those created pursuant to Lessee's request made in accordance with Section 12.2 or otherwise consented to by Lessee, and (y) ad valorem taxes and Impositions; and

(b) Lessee (or Lessee's designee) shall execute and deliver to Lessor an assumption of all of Lessor's obligations under the Ground Lease. The Property shall be conveyed to Lessee (or Lessee's designee) "AS IS" and in its then present physical condition.

ARTICLE XX

- 20.1 Lessee's Purchase Option. Lessor hereby grants to Lessee, an exclusive and irrevocable option (the "Purchase Option") to purchase Lessor's entire interest in the Property and Lessor's right, title and interest hereunder in the manner set forth in this Article XX.
- 20.2 Exercise of Purchase Option. The Purchase Option may be exercised by Lessee only by delivering to Lessor irrevocable written notice (the "Election Notice") of Lessee's intention to exercise the Purchase Option not later than 30 days prior to the scheduled expiration of the then current Primary Term or Extended Term, as applicable (such scheduled expiration, the "Expiration Date") (subject, nevertheless, to the terms of Section 21.2(c)). In the event that Lessee delivers the Election Notice to Lessor in the manner set forth in the preceding sentence or in the manner set forth in Section 21.2(c), then Lessee shall be obligated to pay to Lessor on the Expiration Date an amount equal to the Purchase Option Price and all amounts then owing in respect of Rent and Additional Charges.
- 20.3 Purchase Option Price. The purchase price (the "Purchase Option Price") for the Property and Lessor's right, title and interest therein shall be an amount equal to the excess, if any, of (a) the sum of (1) the aggregate outstanding principal balance of the Notes as of the Expiration Date, after applying thereto any payment of Base Rent or Renewal Rent to be made on the Expiration Date in accordance with the terms of the Indenture, plus (2) all accrued interest thereon, after applying thereto any payment of Base Rent or Renewal Rent to be made on the Expiration Date in accordance with the terms of the

Indenture, plus (3) the Lessor Return Payment, over (b) the amount of any Net Proceeds previously paid to Escrowee and not repaid or remitted to Lessee in accordance with Article XV that are applied by Escrowee to reduce the outstanding principal amount of the Notes on or prior to the Expiration Date.

20.4 Transfer of the Property Upon Exercise. In the event the Purchase Option shall have been exercised, on the Expiration Date and upon tender by Lessee of the Purchase Option Price and all amounts then owing in respect of Rent and Additional Charges, the terms of Section 19.1 shall be applicable.

ARTICLE XXI

- 21.1 Extended Terms. (a) Subject to the terms of Section 21.2, so long as no Event of Default is continuing, Lessor hereby grants to Lessee one or more options to extend the Term of this Lease on the terms and conditions set forth in this Section 21.1 and otherwise on all of the terms and conditions of this Lease.
- (b) Provided that Lessee has arranged a Permitted Refinancing in accordance with the terms of Section 21.2, at the expiration of the Primary Term and any Extended Term, Lessee shall have the right, upon irrevocable written notice (an "Extension Notice") to Lessor given at any time during the Term but not later than thirty (30) days prior to the Expiration Date to extend this Lease for one or more successive terms, each such term to be not less than two (2) years and expiring not later than the expiration of the Ground Lease (any such term an "Extended Term"). The exact length of each Extended Term shall be specified in the Extension Notice. The Renewal Rent for any Extended Term in question shall be equal to an amount sufficient to pay interest and principal, if any, due on any Renewal Notes during such Extended Term plus Lessor's Marqin.
- (c) In connection with each renewal of the Term, the Schedules hereto shall be amended as appropriate to (i) reflect the determination of the Renewal Rent caused by such renewal and (ii) change the Default Amount and the Termination Amount, if necessary. Unless otherwise agreed upon by the parties, the Payment Dates during the Extended Term shall be the dates upon which payments are required to be made under the applicable Renewal Notes.
- 21.2 Permitted Refinancing. (a) In the event that Lessee intends to exercise its rights to extend the Term and so notifies Lessor of such intention, Lessee will use all reasonable, good-faith efforts to obtain as soon as possible a mortgage loan secured by the Property, which loan shall (i) fully fund no later than the Expiration Date, (ii) be in an amount

equal to the outstanding principal balance of the Notes, plus, at Lessee's election, the costs and expenses described in Section 21.2(b) and similar costs and expenses incurred by Lessee, (iii) mature on the same date as the expiration of the proposed Extended Term, (iv) be secured by a mortgage containing provisions in respect of this Lease and Lessee's rights and obligations hereunder substantially equivalent to those contained in the Mortgage, subject, however, to the terms of this Section 21.2 and shall be recourse only to Lessor's interest in the Property, (v) provide for either interest-only coupon payments (i.e., no amortization of principal prior to maturity) or amortization of principal on a thirty (30) year schedule and in the latter event, the Maximum Residual Guarantee Amount shall be reduced by the amount of principal so amortized. A loan meeting the requirements of the foregoing clauses (i) through (v) is referred to herein as a "Permitted Refinancing". In the event Lessee is able to obtain a Permitted Refinancing, Lessor shall issue a Renewal Note or Renewal Notes and shall execute such other documents and instruments as are necessary in order to effectuate such Permitted Refinancing and to satisfy in full the outstanding principal balance of the Notes.

- (b) Except to the extent that the same are financed as a part of the principal of the Permitted Refinancing, as described in Section 21.2(a)(ii), Lessee shall pay all out-of-pocket expenses incurred by Lessor or the Trustee (including attorneys' fees and expenses), all premiums (if any) and all costs and expenses of the new lender incurred in connection with any Permitted Refinancing.
- (c) Notwithstanding anything to the contrary contained herein, if Lessee has delivered a notice pursuant to Section 22.1(b)(ii) and neither Lessee nor Lessor is able to obtain a Permitted Refinancing in accordance with this Section 21.2 at least thirty (30) days prior to the Expiration Date, then Lessee shall be obligated to exercise its Purchase Option in accordance with the terms of Article XX, in which event, Lessee shall be deemed to have delivered a timely Election Notice for the purposes of Section 20.2.

ARTICLE XXII

- 22.1 Residual Guarantee. (a) On or before the date which is eighteen (18) months prior to the Expiration Date, Lessee shall deliver to Lessor a notice indicating whether Lessee intends to attempt to sell the Property prior to the Expiration Date. Any notice delivered by Lessee to Lessor pursuant to the terms of this Section 22.1(a) shall not be binding on Lessee.
- (b) On or before the date which is twelve (12) months prior to the Expiration Date, Lessee shall deliver to Lessor a notice stating either that:

- (i) Lessee intends to sell the Property and to pay the Residual Guarantee Amount, if any, on the Expiration Date in accordance with Section 22.1(d) or pay the Maximum Residual Guarantee Amount on the Expiration Date in accordance with Section 22.1(e) (but without limiting Lessee's rights pursuant to Article XXI and Article XXII hereof); or
- (ii) Lessee irrevocably agrees to elect either to exercise the Purchase Option in accordance with Article XX or to extend the Term in accordance with Article XXI.

Any notice delivered by Lessee to Lessor pursuant to the terms of this Section 22.1(b) shall be irrevocable and binding on Lessee.

- (c) Notwithstanding anything to the contrary contained herein, if Lessee does not intend to exercise the Purchase Option or elect to extend the Term, then Lessee (as agent for Lessor) shall use all reasonable, good-faith efforts to solicit bids with respect to the Property from unrelated third parties, and Lessor's right, title and interest in the Property will be sold by Lessor to the Person submitting the highest cash bid (net of any brokerage commissions and any other sales expenses) as soon as is reasonably practicable. Lessor shall have no liability or obligation with respect to any purchase contract described in this Article XXII other than to transfer its right, title and interest in the Property as contemplated hereby.
- (d) In the event a sale of the Property is consummated, and the proceeds thereof received, on or prior to the Expiration Date in accordance with the terms of a contract entered into pursuant to Section 22.1(c), Lessee shall promptly pay to Lessor (but in no event later than the Expiration Date) the sum of (i) all such proceeds, plus (ii) the Residual Guarantee Amount, but in no event shall such payment exceed the Maximum Residual Guarantee Amount, plus (iii) all amounts owing in respect of Rent as of the Expiration Date.
- (e) In the event a sale of the Property is not consummated, or the proceeds thereof are not received by Lessor, on or prior to the Expiration Date for any reason, Lessee shall on the Expiration Date pay to Lessor (i) an amount equal to the Maximum Residual Guarantee Amount plus, (ii) at Lessee's sole option, such additional amount as may be required to satisfy in full the outstanding principal amount and accrued interest on the Notes. If Lessee shall have made the payment described in clause (ii) of the first sentence of this Section 22.1(e) and only in such event, then if a sale of the Property to a third party is consummated within 48 months of the Expiration Date, the net cash proceeds of such sale shall be paid by Lessor (x) first, to reimburse Lessee for any amounts paid by Lessee pursuant to clause (ii) above, plus interest on such amount at the Debt Overdue Rate until the date of actual payment, (y) second, to

Lessor on account of the Lessor Return Payment and (z) the balance, to Lessee.

(f) Notwithstanding anything to the contrary contained in this Article XXII, in the event Lessee notifies Lessor in accordance with Section 22.1(b)(i) that it will either pay the Residual Guarantee Amount, if any, on the Expiration Date in accordance with Section 22.1(d) or pay the Maximum Residual Guarantee Amount on the Expiration Date in accordance with Section 22.1(e), Lessee may nevertheless exercise the Purchase Option so long as it complies with the terms of Article XXI or exercise the Renewal Option so long as it complies with the terms of Article XXI.

ARTICLE XXIII

23.1 Holding Over. If Lessee shall for any reason remain in possession of the Property after the expiration or earlier termination of this Lease as to the Property (unless the Property is conveyed to Lessee), such possession shall be as a tenancy at sufferance during which time Lessee shall continue to pay Additional Charges that would be payable by Lessee hereunder were the Lease then in full force and effect with respect to the Property and Lessee shall continue to pay Base Rent or Renewal Rent at an annual rate equal to the average rate of Base Rent or Renewal Rent payable hereunder during the preceding Primary Term or Extended Term, as applicable; provided, however, that from and after the sixtieth (60th) day Lessee shall remain in possession of the Property after such expiration or earlier termination, Lessee shall pay Base Rent or Renewal Rent at an annual rate equal to one hundred and ten percent (110%) of the Base Rent or Renewal Rent payable hereunder immediately preceding such expiration or earlier termination. Such Base Rent or Renewal Rent shall be payable from time to time within ten (10) days after demand by Lessor, which demands shall not be made by Lessor more often than monthly. During any period of tenancy at sufferance, Lessee shall, subject to the second preceding sentence, be obligated to perform and observe all of the terms, covenants and conditions of this Lease, including Lessee's obligation to indemnify the Indemnified Parties pursuant to Section 25.1 (notwithstanding anything therein to the contrary), but shall have no rights hereunder other than the right, to the extent given by law to tenants at sufferance, to continue its occupancy and use of the Property and the rights of Lessee under Section 25.1 with respect to indemnification. Nothing contained in this Article XXIII shall constitute the consent, express or implied, of Lessor to the holding over of Lessee after the expiration or earlier termination of this Lease (unless the Property is conveyed to Lessee) and nothing contained herein shall be read or construed as preventing Lessor from maintaining a suit for possession of the Property or exercising any other remedy available to Lessor at law or in equity.

ARTICLE XXIV

24.1 Risk of Loss. During the Term, unless Lessee shall not be in actual possession of the Property in question solely by reason of Lessor's exercise of its remedies of dispossession under Article XVII, the risk of loss of or decrease in the enjoyment and beneficial use of the Property as a result of the damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise is assumed by Lessee, and Lessor shall in no event be answerable or accountable therefor.

ARTICLE XXV

- 25.1 Indemnification by Lessee. a. Lessee shall indemnify Lessor, the Administrative Agent, the Trustee and the Holders and any affiliate, officer, director, employee, agent or shareholder of Lessor, the Trustee or any Holder (the "Indemnified Parties"), on an After Tax Basis, from and against all actions, causes of action, claims, lawsuits, administrative proceedings, hearings, judgments, liabilities, awards, fines, penalties, costs, fees (including legal, engineers', experts' and consulting fees and expenses), damages (including natural resource damages), corrective action costs, financial assurance costs, remediation activities, clean-up costs (including investigation, monitoring, encapsulation, removal and response costs), Liens (including any environmental Lien) and all other liabilities incurred by or imposed on any of the Indemnified Parties, whenever incurred or imposed (but excluding any liabilities for Impositions imposed by any taxing authority, which liabilities are covered exclusively by Article IV hereof), arising out of, imposed upon or incurred by or asserted against the Indemnified Parties by reason of:
 - (i) any accident, injury to or death of natural persons or loss of or damage to property occurring on or about the Property;
 - (ii) Lessor's ownership of the Property or any Modification;
 - (iii) the failure by Lessor to qualify as a foreign corporation in the State of Hawaii;
 - (iv) any use, misuse, nonuse, condition, operation, possession, leasing, subleasing, financing, refinancing, disposition, maintenance or repair of the Property or of any Modification;

claims or penalties arising from any violation of law or liability in tort (strict or otherwise);

- (vi) entering into the Operative Agreements or any transaction arising out of the Operative Agreements;
- (vii) the breach by Lessee or either of the Ground Lessors of any representations and warranties in, or the failure on the part of Lessee or either of the Ground Lessors at any time to perform or comply with any of the terms or conditions of, the Operative Agreements to which any of them is a party;
- (viii) the nonperformance of any of the terms of any subleases of the Property to be performed by Lessee as the sublessor thereunder;
- (ix) any contest referred to in Article XIII relating to the Property;
- (x) the existence or presence at, on, in or under the Property of any Hazardous Substance or the Release of any Hazardous Substance from, at, under or within the Property into the environment (including air, water vapor, surface water, groundwater, drinking water, land (including surface or subsurface), plant, aquatic and animal life);
- (xi) the disturbance, pollution, contamination or interference with any wetland, body of water (whether surface or subsurface), aquifer or watercourse due to any Hazardous Activity or the existence or presence of a Hazardous Condition at the Property;
- $\mbox{(xii)}$ the occurrence at the Property of any Hazardous Activity or Hazardous Condition;
- (xiii) the transportation use, treatment, storage, disposition, Release or disposal of any Hazardous Substance found in, on, under or at the Property;
- (xiv) any personal injury to or death of natural persons or property damage resulting from any Hazardous Activity at the Property, the existence of a Hazardous Condition at the Property or the Release of any Hazardous Substance from, at, under or onto the Property;
- (xv) any Environmental Violation or alleged violation of Environmental Law at, on, in or under the Property or in connection therewith; and
- (xvi) the applications of Parts 4 and 5 of Subtitle B of Title I of ERISA (including, without limitation, any penalties imposed under Section 501(i) or (1) of ERISA) or

any excise taxes, charges or penalties imposed under Section 4975 of the Code, except as a result of the breach by Lessor or any Affiliate of Lessor of ERISA or any rule or regulation promulgated thereunder (other than a breach caused by or resulting from an act or omission of Lessee, either of the Ground Lessors, the Trustee, the Holders or any of their Affiliates);

except in each case, with respect to any Indemnified Party, to the extent such liabilities, obligations, claims, damages, penalties, causes of action, costs or expenses (1) are imposed upon or incurred by or asserted against such Indemnified Party by reason of the matters described in clauses (i) through (xvi) above that arise from events commencing solely and entirely after the later of (x) the expiration or earlier termination of this Lease and (y) Lessee's actual relinquishment of possession of the Property or (2) solely result from the gross negligence or the willful misconduct of such Indemnified Party (except, in the case of Lessor, for Lessor's failure to qualify as a foreign corporation in the State of Hawaii) or (3) solely result from the breach by such Indemnified Party of Section 905 or 921 of the Indenture or the breach by such Indemnified Party of any other provisions of the Operative Agreements after receipt of notice from Lessee of such breach and a reasonable opportunity to cure such breach (but only to the extent such Indemnified Party is not otherwise prevented from curing such breach). For purposes of the foregoing sentence, it is further agreed by Lessee that the Release or presence of any Hazardous Condition at, on, in or under the Property, or the presence of a Hazardous Condition at, on, in or under the Property, that exists as of (or at any time prior to) the later of the dates specified in clauses (x) and (y) in the foregoing sentence shall be included in the entirety within the scope of Lessee's obligations hereunder (even though the same may increase to remedial levels or require any response or remedial action only subsequent to such date).

- (b) The obligations of Lessee under this Section 25.1 shall remain unaffected and continue in full force and effect irrespective of and notwithstanding any action or failure to act or delay on the part of any of the Indemnified Parties to enforce any rights or remedies against Lessee. Such obligations shall remain unaffected irrespective of and notwithstanding any default by any such party in performing any obligation or duty arising under or out of any Operative Agreement or under this Section 25.1. No amendment, increase in the interest rate or in the principal amount of any of the Notes nor any other modification thereof shall act to (i) release Lessee from or (ii) modify any of Lessee's obligations under this Section 25.1.
- (c) The obligations of Lessee pursuant to this Section 25.1 shall survive (i) the expiration or earlier termination of this Lease; (ii) the repayment of the Notes whether at maturity or earlier due to the acceleration thereof and satisfaction

thereof out of any collateral security or by reason of payment by any guarantor thereof; (iii) the foreclosure of the Mortgage (or the conveyance of the Property due to any deed in lieu of foreclosure); and (iv) each and every conveyance of the Property after the date hereof.

(d) Any amounts which become payable by Lessee under this Article XXV shall be paid promptly and, if such payment is not timely paid, shall bear interest at the Lessor Overdue Rate from the date when due to the date of payment. Promptly after receipt by an Indemnified Party of notice of the commencement or assertion against it of any claim, action or proceeding, such Indemnified Party shall, if a claim in respect thereof is to be made against Lessee under this Section 25.1, notify Lessee thereof; but the omission so to notify Lessee shall not relieve Lessee from any liability which it may have to such Indemnified Party. Lessee, at its sole cost and expense, acting through counsel reasonably acceptable to the Indemnified Party, may contest, resist and defend any claim, action or proceeding with respect to which it shall have received the notice described in the preceding sentence and may compromise or otherwise dispose of the same as Lessee shall deem appropriate, and, upon such assumption by Lessee of such contest and defense, Lessee shall not be obligated to pay any attorneys' fees or other legal costs incurred by or on behalf of the Indemnified Party; provided that Lessee may only assume control of the defense of any such claim to the extent it has provided to such Indemnified Party written acknowledgement that Lessee is obligated to indemnify such Indemnified Party with respect to such claim under this Section 25.1; and provided further that Lessee shall not be entitled to assume and control the defense of any such contest, action, suit or proceeding if and to the extent that, (A) in the reasonable opinion of such Indemnified Party, (x) such contest, action, suit or proceeding involves the potential imposition of criminal liability or material civil liability (whether or not indemnified hereunder) on such Indemnified Party or (y) the control of such contest, action, suit or proceeding would involve Lessee in a bona fide conflict of interest, (B) an Event of Default has occurred and is continuing or (C) such contest, action, suit or proceeding involves matters which extend beyond or are unrelated to the transactions contemplated by the Operative Agreements and if determined adversely could be materially detrimental to the interests of such Indemnified Party notwithstanding indemnification by Lessee, in which case the Indemnified Party will be entitled to assume and take control of the defense thereof at Lessee's expense. The Indemnified Party may participate in a reasonable manner at its own expense and with its own counsel in any proceeding conducted by Lessee in accordance with the foregoing. Each Indemnified Party shall, at Lessee's request, cooperate with Lessee, at no cost or expense to the Indemnified Party, in the defense of any such claim, action or proceeding. If, in the opinion of counsel to any Indemnified Party there are legal defenses available to such Indemnified

Party which are different from or in addition to those available to Lessee, such Indemnified Party shall be permitted to participate in the defense of such claim, action or proceeding with separate counsel and Lessee shall pay the fees and expenses of such separate counsel.

ARTICLE XXVI

26.1 Subletting and Assignment. So long as no Event of Default has occurred and is continuing, Lessee may, without the consent of Lessor, the Trustee or any Holder, sublet all or any part of the Property or assign all or any part of its interest under this Lease as to the Property. Any sublease by Lessee executed during the Term shall by its terms be subject and subordinate to this Lease and to the rights of Lessor hereunder. In the event of any assignment or subletting, Lessee shall not be released from any of its obligations hereunder and shall remain directly and primarily liable under this Lease as to the Property, or portion thereof, so assigned or sublet. Lessee shall have the absolute right, without the consent of Lessor, to terminate any sublease of the Property, whether such sublease was entered into prior to the date of this Lease or during the Term. Upon the occurrence and during the continuance of an Event of Default, Lessor shall have the right to receive all rents under any sublease directly from the sublessee and any rent received by Lessee shall be deemed held in trust for Lessor and immediately paid over by Lessee to Lessor.

26.2 Attornment and Nondisturbance. Lessee shall insert in each sublease permitted under the terms of Section 26.1 and executed during the Term provisions to the effect that (a) in the event this Lease shall terminate before the expiration of such sublease, the sublessee thereunder shall attorn to Lessor and waive any right such sublessee may have to terminate the sublease or to surrender possession thereunder as a result of the termination of this Lease; and (b) in the event the sublessee receives notice from Lessor stating that there has occurred an Event of Default under this Lease, the sublessee shall thereafter be obligated to pay all rentals accruing under such sublease directly to Lessor or as Lessor may direct. Lessee shall deliver to Lessor and the Trustee an Appraiser's Certificate contemporaneously with the execution and delivery of any sublease of the Property during the Term with a Person unaffiliated with Lessee (i) the term of which extends beyond the Primary Term or (ii) the term of which does not extend beyond the Primary Term if such sublease, when taken together with any other subleases with respect to which Lessee has not delivered an Appraiser's Certificate, do not in the aggregate demise more than 42,000 net leasable square feet of the Improvements; provided that an Appraiser's Certificate shall not be required prior to the execution and delivery of any sublease referred to in the appraisal of the Property dated June 3, 1993 prepared by The

Hallstrom Group, Inc. if such sublease is on rental rates and on substantially identical other terms as referred to in such appraisal. Provided that Lessee shall deliver to Lessor, contemporaneously with the execution and delivery of a sublease of the Property with any Person unaffiliated with Lessee, an Appraiser's Certificate, then Lessor and the Trustee shall enter into a non-disturbance and attornment agreement substantially in the form of Schedule E hereto. Lessor and the Trustee shall also enter into a non-disturbance and attornment agreement in such form with respect to (i) each sublease referred to in the appraisal of the Hallstrom Group, Inc. described above, if such sublease is on rental rates and on substantially identical other terms as referred to in such appraisal, without the delivery of an Appraiser's Certificate, or (ii) if the sublease does not extend beyond the Primary Term and, when aggregated with any other subleases with respect to which the Bank has not delivered an Appraiser's Certificate pursuant to this clause (ii), does not in the aggregate demise more than 42,000 net leasable square feet of the Improvements; provided that Lessee agrees that each of the subleases referred to in the preceding clause (ii), with respect to which Lessee requests a non-disturbance and attornment agreement, will, in the reasonable good-faith judgement of Lessee, provide for rents that represent the fair market value for the space sublet and contain other terms which, when taken together with all of the term of the sublease, are commercially reasonable.

26.3 Subleases. Promptly following the execution and delivery of any sublease of the Improvements during the Term, Lessee shall deliver a copy of such executed sublease to Lessor and the Trustee.

ARTICLE XXVII

27.1 Estoppel Certificates. At any time and from time to time upon not less than twenty (20) days' prior request by Lessor or Lessee (the "Requesting Party"), the other party (whichever party shall have received such request, the "Certifying Party") shall furnish to the Requesting Party (but in the case of Lessor, as Certifying Party, not more than four times per year unless required to satisfy the requirements of any sublessees) a certificate signed by an individual having the office of vice president or higher in the Certifying Party certifying that this Lease is in full force and effect (or that this Lease is in full force and effect (or that this Lease is in full force and effect as modified and setting forth the modifications); the dates to which the Base Rent or Renewal Rent and Additional Charges have been paid; to the best knowledge of the signer of such certificate, whether or not the Requesting Party is in default under any of its obligations hereunder (and, if so, the nature of such alleged default); and such other matters as the Requesting Party may reasonably request. Any such certificate furnished pursuant to this Article

XXVII may be relied upon by the Requesting Party, and any existing or prospective mortgagee, purchaser or lender, and any accountant or auditor, of, from or to the Requesting Party (or any Affiliate thereof).

ARTICLE XXVIII

- 28.1 Right to Inspect During any Extended Term. During any Extended Term, Lessee shall upon reasonable notice from Lessor (except that no notice shall be required if an Event of Default has occurred and is continuing), permit Lessor and its authorized representatives to inspect the Property, provided that such inspections shall not reasonably interfere with Lessee's business operations at the Property and shall be made in compliance with the terms of any subleases made with respect to the Property of which Lessee shall have notified Lessor.
- 28.2 No Waiver. No failure by Lessor or Lessee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy upon a default hereunder, and no acceptance of full or partial payment of Rent during the continuance of any such default, shall constitute a waiver of any such default or of any such term. To the fullest extent permitted by law, no waiver of any default shall affect or alter this Lease, and this Lease shall continue in full force and effect with respect to any other then existing or subsequent default.

ARTICLE XXIX

29.1 Acceptance of Surrender. No surrender to Lessor of this Lease or of all or any portion of the Property or of any part of any thereof or of any interest therein shall be valid or effective unless agreed to and accepted in writing by Lessor and, so long as any Notes remain Outstanding, the Trustee, and no act by Lessor or the Trustee or any representative or agent of Lessor or the Trustee, other than a written acceptance, shall constitute an acceptance of any such surrender.

ARTICLE XXX

30.1 No Merger of Title. There shall be no merger of this Lease or of the leasehold estate created hereby by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, in whole or in part, (a) this Lease or the leasehold estate created hereby or any interest in this Lease or such leasehold estate, (b) the fee estate in the Property, except as may expressly be stated in a written instrument duly executed and delivered by the appropriate Person or (c) the stock of Lessor.

67

ARTICLE XXXI

31.1 Notices. All notices, demands, requests, consents, approvals and other communications hereunder shall be in writing and delivered personally or by a nationally recognized overnight courier service or mailed (by registered or certified mail, return receipt requested, postage prepaid), addressed to the respective parties, as follows:

If to Lessee:

First Hawaiian Bank 1132 Bishop Street Suite 2500 Honolulu, Hawaii 98613 Attention: Howard H. Karr

If to Lessor:

REFIRST, Inc. 1900 Indian Wood Circle Maumee, Ohio 43537 Attention: Vice President - First Hawaiian Bank Transaction

with a copy to:

REFIRST, Inc. c/o The Corporation Trust Company 1209 Orange Street Wilmington, Delaware 19801 Attention: Mark A. Ferrucci

If to the Trustee:

First Fidelity Bank, N.A., Pennsylvania 123 South Broad Street Philadelphia, Pennsylvania 19109 Attention: Corporate Trust Administration

or such additional parties and/or other address as such party may hereafter designate (provided, however, in no event shall either party be obligated to notify, in the aggregate, more than five (5) designees of the other party), and shall be effective upon receipt or refusal thereof.

ARTICLE XXXII

- 32.1 Miscellaneous. Anything contained in this Lease to the contrary notwithstanding, all claims against and liabilities of Lessee or Lessor arising from events commencing prior to the expiration or earlier termination of this Lease shall survive such expiration or earlier termination. If any term or provision of this Lease or any application thereof shall be declared invalid or unenforceable, the remainder of this Lease and any other application of such term or provision shall not be affected thereby. If any right or option of Lessee provided in this Lease, including any right or option described in Articles XV, XVI, XX, XXI or XXII, would, in the absence of the limitation imposed by this sentence, be invalid or unenforceable as being in violation of the rule against perpetuities or any other rule of law relating to the vesting of an interest in or the suspension of the power of alienation of property, then such right or option shall be exercisable only during the period which shall end twenty-one (21) years after the date of death of the last survivor of the descendants of Franklin D. Roosevelt, the former President of the United States, Henry Ford, the deceased automobile manufacturer, and John D. Rockefeller, the founder of the Standard Oil Company, known to be alive on the date of the execution, acknowledgement and delivery of this Lease.
- 32.2 Amendments and Modifications. Neither this Lease nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing in recordable form signed by Lessor and Lessee.
- 32.3 Successors and Assigns. All the terms and provisions of this Lease shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 32.4 Conclusive Reliance on Administrative Agent. Lessor hereby acknowledges and agrees that each of Lessee, the Ground Lessors and the Trustee may, in the absence of bad faith on their respective parts, conclusively rely upon, and in all events shall be fully protected in relying upon, any document, instrument, certificate, opinion or direction furnished to any of them by the Administrative Agent and otherwise conforming to the requirements of any applicable Operative Agreement, and Lessee, each of the Ground Lessors and the Trustee may treat any such document, instrument, certificate, opinion or direction as the document, instrument, certificate, opinion or direction of Lessor.
- 32.5 Headings and Table of Contents. The headings and table of contents in this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

- 32.6 Schedules. Immediately following are Schedules A, B, C, D and E referred to in this Lease, which Schedules are hereby incorporated by reference herein.
- 32.7 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.
- $32.8\,$ Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Hawaii.
- 32.9 Memorandum of Lease. This Lease shall not be recorded (except at Lessee's discretion), but Lessor and Lessee shall, concurrently herewith, execute and deliver a short-form memorandum of this Lease, in form suitable for recording under the laws of the State of Hawaii, which memorandum shall be recorded at Lessee's sole cost and expense.
- 32.10 Limitations on Recourse. Notwithstanding anything contained in this Lease to the contrary, Lessee agrees to look solely to Lessor's estate and interest in the Property for the collection of any judgment requiring the payment of money by Lessor in the event of liability by Lessor, and no other property or assets of Lessor or any shareholder, owner or partner (direct or indirect) in or of Lessor, or any director, officer, employee, beneficiary, Affiliate of any of the foregoing shall be subject to levy, execution or other enforcement procedure for the satisfaction of Lessee's remedies under or with respect to this Lease, the relationship of Lessor and Lessee hereunder or Lessee's use of the Property or any other liability of Lessor to Lessee. Nothing in this Section shall be interpreted so as to limit the terms of Sections 6.1 or 6.2.

ARTICLE XXXIII

- 33.1 Ground Lease. b. During the Term, Lessee shall observe and perform all of the obligations of Lessor under the Ground Lease and, in connection therewith, shall, prior to the occurrence and continuance of an Event of Default, have the right to enforce Lessor's rights as lessee under the Ground Lease.
- (b) During the Term, Lessee shall have the right to take enforcement actions against the Ground Lessors in Lessee's own name or, if necessary, in the name of Lessor, and for that purpose and only to such extent, prior to the occurrence and continuance of an Event of Default, all the rights of Lessor under the Ground Lease are hereby conferred upon and assigned to Lessee, and Lessee is hereby subrogated to such rights. Lessor agrees that it will cooperate with Lessee, at Lessee's expense, in pursuit of any such claims against the Ground Lessors.

(c) During the Term, Lessor shall not enter into any agreement to amend, waive or modify any of the terms, covenants or provisions of the Ground Lease without the consent of Lessee.

 $\,$ IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed and delivered as of the date first above written.

REFIRST, INC.,a Delaware corporation

By: /s/ Paul J. Bishop

Name: Paul J. Bishop Title: President

FIRST HAWAIIAN BANK

By: /s/ Thomas P. Huber

Name: Thomas P. Huber Title: Senior Vice President

EXHIBIT A OMITTED

SCHEDULE B OMITTED

Payment Dates and Lessor Base Rent

	Lessor
Payment Date	Base Rent
June 1, 1997	340,172.70
December 1, 1997	340,172.70
June 1, 1998	340,172.70
December 1, 1998	340,172.70
June 1, 1999	340,172.70
December 1, 1999	340,172.70
June 1, 2000	340,172.70
December 1, 2000	340,172.70
June 1, 2001	340,172.70
December 1, 2001	340,172.70
June 1, 2002	289,146.79
December 1, 2002	0.00
June 1, 2003	363,192.73
December 1, 2003	363,192.73

Default Amount and Termination Amount

Payment Date	Amount
June 1, 1997	193,699,875.00
December 1, 1997	193,699,875.00
June 1, 1998	193,699,875.00
December 1, 1998	193,699,875.00
June 1, 1999	193,699,875.00
December 1, 1999	193,699,875.00
June 1, 2000	193,699,875.00
December 1, 2000	193,699,875.00
June 1, 2001	193,699,875.00
December 1, 2001	193,699,875.00
June 1, 2002	193,750,900.91
December 1, 2002	194,094,053.52
June 1, 2003	194,094,053.52
December 1, 2003	194,094,053.52

SCHEDULE E OMITTED

EXHIBIT 10(iv)

CONSTRUCTION MANAGEMENT,
ESCROW AND DEVELOPMENT AGREEMENT
DATED AS OF DECEMBER 1, 1993
AMONG REFIRST, INC., FIRST HAWAIIAN BANK
AND FIRST FIDELITY BANK, N.A., PENNSYLVANIA

CONSTRUCTION MANAGEMENT, ESCROW AND DEVELOPMENT AGREEMENT

among

REFIRST, INC.,

FIRST HAWAIIAN BANK

and

FIRST FIDELITY BANK, N.A., PENNSYLVANIA, as Trustee

Dated as of December 1, 1993

						Page
Preliminary	Stat	ement				1
		ARTICLE I				
		DEFINITIONS				
	1.1 1.2					2 11
		ARTICLE II				
		APPOINTMENT OF CONSTRUCTION MANAGER				
	2.1 2.2 2.3 2.4 2.5 2.6 2.7 2.8		 		 	 12 12 12 15 16 16
		ARTICLE III				
		THE BUILDING				
	3.1 3.2 3.3 3.4	Demolition and Construction	:	:	:	20 23
		ARTICLE IV				
		PAYMENT OF COSTS OF WORK				
	4.1 4.2 4.3	Requisition of Funds Directly from the Construction Account				29

ARTICLE V

EVENTS OF DEFAULT

		Pag
5.4 5.5	Events of Default	31 33 33 34 34 34
	ARTICLE VI	
	CASUALTY AND CONDEMNATION	
6.1	Casualty and Condemnation	35
	ARTICLE VII	
	INDEMNITY	
	Indemnification by Construction Manager Payment; Procedure for Claims	35 37
	ARTICLE VIII	
	INSURANCE	
8.1 8.2 8.3	Property Insurance	39 41 42
	ARTICLE IX	
	LESSOR'S RIGHTS; CONSTRUCTION MANAGER'S RIGHTS	
9.2	Exercise of the Lessor's Rights	43 43 43
	ARTICLE X	
	MISCELLANEOUS	
10.1	Notice	44

		Page
10.3	GOVERNING LAW	44
10.4	Consent To Jurisdiction	44
10.5	Amendments and Waivers	46
10.6	Counterparts	46
10.7	Severability	46
10.8	Integration	46
10.9	Headings and Table of Contents	46
10.10	Security Agreement and Financing Statement	
	Under Uniform Commercial Code	46
10.11	Directions of the Lessor	47
10.12	Liabilities and Rights of the Trustee	47
10.13	Obligations Absolute and Unconditional	47

Schedules

Schedule	1 -	Default Amount
Schedule	2 -	Essential Design Elements
Schedule	3 -	[Reserved]
Schedule	4 -	Consulting Agreement
Schedule	5 -	Project Budget
Schedule	6 -	Project Schedule
Schedule	7 -	Form of Surety Bonds
Schedule	8 -	Form of Project Architect's Certificate of
		Substantial Completion for Core and Shell
Schedule	9 -	Form of Interior Design Architect's Certificate
		of Substantial Completion for Lessee Installations
Schedule	10 -	Termination Amount
Schedule	11 -	Replacement Construction Consultants
Schedule	12 -	Limits for Off Site Materials
Schedule	13 -	Assumed Earnings on Construction Account
Schedule	14 -	Form of Letter from the Trustee to Sureties

CONSTRUCTION MANAGEMENT, ESCROW AND DEVELOPMENT AGREEMENT, dated as of December 1, 1993, among REFIRST, INC., a Delaware corporation (the "Lessor"), FIRST HAWAIIAN BANK, a Hawaii banking corporation (the "Construction Manager"), and FIRST FIDELITY BANK, N.A., PENNSYLVANIA, a national banking association (the "Trustee").

Preliminary Statement

- A. The Lessor and the Lessee (as defined below) are parties to that certain Lease Agreement, dated as of even date herewith (the "Master Lease"), pursuant to which the Lessee has leased from the Lessor those certain parcels of real estate described on Schedules A-1 and A-2 to the Master Lease (the "Land") together with all of the Improvements (as defined below).
- B. The Lessor and the Lessee are also parties to that certain Leased Improvements Construction Agreement, dated as of even date herewith (the "Leased Improvements Construction Agreement"), pursuant to which the Lessor has agreed, for the benefit of the Lessee, to cause the demolition of the Existing Improvements (as defined below) and the construction of the Building (as defined below) in accordance with the Plans and Specifications (as defined below).
- C. In order to provide funds for the demolition of the Existing Improvements and the construction of the Building, the Lessor has issued \$161,990,000 of its 6.93% Class A Secured Notes Due 2003 (the "Class A Notes") and \$25,885,000 of its 6.98% Class B Secured Notes Due 2003 (the "Class B Notes" and, together with the Class A Notes, the "Notes"), pursuant to that certain Indenture, dated as of even date herewith (the "Indenture"), between the Lessor and the Trustee, as trustee for the benefit of the holders of the Notes (collectively, the "Holders"). The Lessor's obligations under the Notes are secured by a first mortgage on the Property (as defined below) granted pursuant to that certain Real Property Mortgage, Security Agreement and Financing Statement, dated as of even date herewith (the "Mortgage"), made by the Lessor and the Ground Lessors to the Trustee, and by an Assignment of Leases and Rents, dated as of even date herewith (the "Assignment of Lease"), from the Lessor to the Trustee and with respect to which the Lessee has executed and delivered Lessee's Consent (the "Consent to Assignment"), dated as of even date herewith.
- D. Subject to the terms and conditions hereof, (i) the Lessor desires to appoint the Construction Manager as its manager in connection with the demolition of the Existing Improvements and the construction of the Building in accordance with the Plans and Specifications and (ii) the Construction

Manager desires to assume, for the benefit of the Lessor and the Trustee, as trustee for the benefit of the Holders, each of the Lessor's obligations under the Leased Improvements Construction Agreement, including the obligations thereunder to cause the demolition of the Existing Improvements and the construction of the Building in accordance with the Plans and Specifications and such other liabilities and obligations as are herein set forth.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINITIONS

 $\,$ 1.1 Defined Terms. As used in this Agreement, terms defined in the caption or in the Preliminary Statement shall have the meanings set forth therein, and the following terms shall have the following meanings:

> Administrative Agent: As defined in the Participation Agreement.

> > Affiliate: As defined in the Master Lease.

After Tax Basis: As defined in the Master Lease.

 $\label{eq:construction} \textbf{Agreement: This Construction Management, Escrow and } \textbf{Development Agreement, as amended, supplemented or otherwise modified}$ from time to time.

Assignment of Lease: As defined in the Preliminary Statement.

Budget Finalization Date: As defined in Section 3.2(h) hereof.

Building: A 27 story first-class office tower containing approximately 378,000 square feet of Rentable Area and approximately 700 parking spaces to be built on the Land in accordance with the Plans and Specifications.

Business Day: As defined in the Master Lease.

Casualty: As defined in the Master Lease, but without regard to the limitation that such event occur on or after the Final Substantial Completion Date.

Change Order: As defined in Section 3.2(a) hereof.

Class A Notes: As defined in the Preliminary Statement.

Class B Notes: As defined in the Preliminary Statement.

Closing Date: As defined in the Participation Agreement.

Condemnation: As defined in the Master Lease, but without regard to the limitation that such event occur on or after the Final Substantial Completion Date.

Consent to Assignment: As defined in the Preliminary Statement.

Consulting Agreement: The agreement between the Bank and the Construction Consultant in the form attached as Schedule 4 hereto.

Construction Account: An account established by the Trustee on or prior to the Closing Date into which the Trustee shall deposit all payments, receipts and other consideration of any sort whatsoever received by the Trustee pursuant to this Agreement.

Construction Consultant: Parametrix, Inc., and following the removal of such construction consultant by the Construction Manager in accordance with the terms of Section 2.8 hereof, any replacement construction consultant selected by the Construction Manager from those construction consultants set forth on Schedule 11 hereto.

Construction Contract: The Construction Agreement dated November 2, 1993 between the Construction Manager and the General Contractor, providing for (a) the construction of the core and shell of the Building in accordance with the Plans and Specifications, (b) a maximum guaranteed price or stipulation sum, including interest carry, of not more than \$93,510,951 and (c) a turn-key completion, as such Construction Agreement may be amended, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

Construction Manager: As defined in the caption hereto.

Construction Project Costs: Those Project Costs which are payable with respect to all labor, materials, equipment and fixtures necessary for the demolition of the Existing Improvements and the construction of the Building, the Lessee Installations and the Subtenant Installations pursuant to the Project Contracts.

Construction Surety Bond: As defined in Section 2.4(d) hereof.

Contingency Reserve: The amount specified as such in the Project Budget.

Debt Overdue Rate: As defined in the Master Lease.

 $\begin{tabular}{lll} Default Amount: For any Payment Date, an amount set forth on Schedule 1 hereto with respect to such Payment Date. \\ \end{tabular}$

Demolition Contract: The Abatement and Demolition Agreement dated June 3, 1993 between the Construction Manager and the Demolition Contractor, providing for the demolition of the Existing Improvements, as such Demolition Agreement may be amended, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

Demolition Contractor: Cleveland Wrecking Company, or any replacement permitted under Section 2.4(a)(v) hereof.

Demolition Surety Bond: As defined in Section 2.4(d) hereof.

Developer: The Myers Corporation, or any replacement permitted under Section 2.4(a)(v) hereof.

Development Agreement: The Development Management Agreement, dated December 28, 1992, between the Construction Manager and the Developer, as such Development Management Agreement may be amended, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

Disbursement Amount: As defined in Section 4.1(a)(i)(t) hereof.

Disbursement Request: As defined in Section 4.1(a) hereof.

Environmental Law: As defined in the Master Lease.

Environmental Violation: As defined in the Master Lease.

ERISA: As defined in the Master Lease.

Escrow Termination Date: The date on which all funds maintained in the Construction Account have been disbursed pursuant to the terms of Article IV hereof and no additional funds are required to be deposited in the Construction Account by the Construction Manager under the terms hereof.

Essential Design Elements: Those general features and elements of the Building which are set forth in Schedule 2 hereto.

Event of Default: As defined in Section 5.1 hereof.

Excepted Payments: As defined in the Indenture.

Excepted Rights: As defined in the Indenture.

Excess Line Item Reserve: As defined in Section 3.2(b)(ii) hereof.

Existing Improvements: As defined in the Participation Agreement.

Final Substantial Completion Date: The date upon which both the Substantial Completion Date for Core and Shell and the final Substantial Completion Date for Lessee Installations shall have occurred.

Fixtures: As defined in the Master Lease.

Force Majeure Event: Any event in the nature of acts of $\ensuremath{\mathsf{God}},$ civil commotion or enemy action.

General Contractor: Fletcher Pacific Construction Co., Ltd., or any replacement permitted under Section 2.4(a)(v) hereof.

Governmental Authority: Any federal, state, county, regional, municipal or other governmental or regulatory authority, agency, board, body, commission, instrumentality, court or quasi-governmental authority.

Ground Lease: The Ground Lease, dated as of even date herewith, between the Ground Lessors, collectively as ground lessors, and the Lessor, as ground lessee.

Ground Lessors: As defined in the Participation Agreement.

Hazardous Activity: As defined in the Master Lease.

Hazardous Condition: As defined in the Master Lease.

Hazardous Substance: As defined in the Master Lease.

Holders: As defined in the Preliminary Statement.

Improvements: As defined in the Mortgage.

Indemnified Parties: As defined in Section 7.1(a) hereof.

Indenture: As defined in the Preliminary Statement.

Independent Investment Banker: An independent investment banking institution of national standing appointed by the Lessor that is independent in fact from, does not have any direct financial interest in, or any material indirect financial interest in, the Lessor or the Construction Manager or any Affiliate of the Lessor or the Construction Manager and is not connected with the Lessor or the Construction Manager or any Affiliate of the Lessor or the Construction Manager as an officer, employee, promoter, underwriter, trustee, partner, director or Person performing similar functions.

Insurance Requirements: As defined in the Master Lease.

Interior Design Architect: With respect to any portion of the interior space in the Building, the interior design architect selected by the Construction Manager or, with respect to any portion of the space in the Building subject to a sublease, the subtenant, as the case may be, to design such portion of the interior space in the Building.

Interior Design Plans and Specifications: The plans and specifications for the construction of the Lessee Installations, as such plans and specifications may be amended, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

Land: As defined in the Preliminary Statement.

Leased Improvements Construction Agreement: As defined in the Preliminary Statement.

Legal Requirements: As defined in the Master Lease.

Lessee: First Hawaiian Bank, a Hawaii banking corporation, and its successors and assigns expressly permitted under the Master Lease.

Lessee Installations: The tenant installations and fixtures to be constructed in the space in the Building to be initially occupied by the Lessee or any of its Affiliates.

Lessor Base Rent: As defined in the Master Lease.

Lessor Contribution: As defined in the Participation Agreement.

Lessor Make-Whole Premium: As defined in the Master Lease.

Lessor Overdue Rate: As defined in the Master Lease.

Lien: As defined in the Indenture.

Make-Whole Premium: As defined in the Indenture.

Master Lease: As defined in the Preliminary Statement.

Modifications: As defined in the Master Lease.

Moody's: As defined in the Participation Agreement.

Mortgage: As defined in the Preliminary Statement.

Notes: As defined in the Preliminary Statement.

Officer's Certificate: A certificate of the Construction Manager signed by an individual holding the office of vice president or higher, which certificate shall certify as true and correct the subject matter being certified to in such certificate.

Operative Agreements: As defined in the Participation $\mbox{\sc Agreement}.$

Outside Completion Date for Core and Shell: October 1, 1997, it being agreed this date may not be extended, regardless of any extension, whether by Change Order or otherwise, of the date by which the General Contractor or the Demolition Contractor must complete performance of its obligations under the Construction Contract or the Demolition Contract, as applicable.

Outside Completion Date for Lessee Installations: (a) With respect to 76,000 square feet of Rentable Area of space in the Building, October 1, 1998, (b) with respect to 114,000 square feet of Rentable Area of space in the Building, February 1, 1999, and (c) with respect to 152,000 square feet of Rentable Area of space in the Building, June 1, 1999, it being agreed that such dates may not be extended, regardless of any extension, whether by Change Order or otherwise, of the date by which the Lessee Installations must be completed under any Tenant Installation Contracts.

Outstanding: As defined in the Indenture.

Participants: As defined in Section 8.1(a) hereof.

Participation Agreement: The Participation Agreement, dated as of November 19, 1993, among the Lessee, the Ground Lessors, the Lessor and the Trustee.

Payment Date: As defined in the Indenture.

Permitted Exceptions: As defined in the Master Lease.

Plans and Specifications: The plans and specifications for the construction of the Building dated September 7, 1993 (as revised through the Closing Date) and prepared by the Project Architect, as such plans and specifications may be amended, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

Project Architect: Kohn Pedersen Fox Associates P.C., or another licensed architect selected by the Construction Manager which both (i) is comparable in size and experience to Kohn Pedersen Fox Associates P.C. and has comparable experience in the design and construction administration of projects similar to the Building and (ii) assigns to the Building an individual having experience in the design and construction administration of projects similar to the Building comparable to that of the on-site representative originally assigned by Kohn Pedersen Fox Associates P.C.

Project Budget: The budget attached as Schedule 5 hereto specifying all anticipated Project Costs, as such budget may be amended, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

Project Contracts: The collective reference to the Construction Contract, the Demolition Contract, the Development Agreement, the Tenant Installation Contracts, the Surety Bonds, the Consulting Agreement, and all other contracts between the Construction Manager and any architect, engineer, consultant, contractor or other professional which may be executed from time to time in connection with the demolition of the Existing Improvements, the development and construction of the Building, the Lessee Installations and the Subtenant Installations, or the preparation of the Building for occupancy by the Lessee or subtenants under Space Leases.

Project Costs: All costs and expenses incurred by the Construction Manager or otherwise expended in connection with the demolition of the Existing Improvements and the development, financing or construction of the Building, the Lessee Installations and the Subtenant Installations, or the preparation of the Building for occupancy by the Lessee or subtenants under Space Leases, including, without limitation, the following (but without duplication of any item): (a) the costs of obtaining, and complying with, all necessary demolition, building and other construction permits and licenses from Governmental Authorities; (b) the costs of reviewing and implementing safety programs; (c) the costs of preparing and distributing bid packages in connection with engaging architects, engineers, consultants, contractors or other professionals; (d) real estate taxes

and assessments; (e) personal property taxes, if applicable; (f) charges of utilities provided to the Land; (g) premiums payable under insurance policies (which, in the case of any policies covering multiple properties, shall be allocated to the Building pro rata in proportion to the insured value of the properties covered by such policies); (h) premiums payable under the Surety Bonds; (i) legal fees and expenses; (j) security costs; (k) fees and expenses of the Trustee, the Administrative Agent and the Construction Consultant; (l) survey costs and title premiums; (m) fees and expenses of architects, consultants, appraisers, engineers and other professionals; (n) costs for soil analysis, hazardous waste audits and other consultants' studies, reports and surveys; (o) the relocation expenses of Lessee; (p) Sublease Expenditures; (q) the cost of the Lessee Installations; and (r) all fees and expenses relating to the issuance and sale of the Notes, including legal fees and expenses, rating agency fees and expenses, accounting fees and expenses, printing fees and expenses and placement agent fees and expenses.

Project Costs Increase: As defined in Section 3.2(b)(i)(y) hereof.

Project Schedule: The construction schedule for the Building and the completion of the Lessee Installations attached as Schedule 6 hereto, as such schedule may be amended, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

Property: As defined in the Master Lease.

Release: As defined in the Master Lease.

Rent Commencement Date: As defined in the Master Lease.

Rentable Area: As defined by the Building Owners and Managers Association International, commonly known as BOMA.

S&P: As defined in the Participation Agreement.

Significant Event: As defined in Section 3.3(a)(i) hereof.

Space Leases: Subleases for space in the Building to tenants other than the Lessee or any of its ${\sf Affiliates}\,.$

Sublease Expenditures: All costs, expenses and fees relating to the subletting by the Lessee of space in the Building, including, without limitation, all costs and expenses relating to the Subtenant Installations, fees and expenses of architects and legal counsel, brokerage commissions, marketing costs, and any work allowance

payments made to subtenants in lieu of work letter installations.

Substantial Completion Date for Core and Shell: The date on which Substantial Completion for Core and Shell shall occur.

Substantial Completion Date for Lessee Installations: The dates on which Substantial Completion for Lessee Installations shall occur.

Substantial Completion for Core and Shell: The completion of construction of the Building in accordance with the Plans and Specifications, subject only to punch list items, as certified to by the Project Architect pursuant to a Certificate of Substantial Completion for Core and Shell, in the form attached as Schedule 8 hereto.

Substantial Completion for Lessee Installations: The completion of construction of Lessee Installations in 76,000 square feet of Rentable Area of space in the Building, 114,000 square feet of Rentable Area of space in the Building and 152,000 square feet of Rentable Area of space in the Building, respectively, in each case in accordance with the Interior Design Plans and Specifications, subject only to punch list items, as certified to by the Interior Design Architect pursuant to a Certificate of Substantial Completion for Lessee Installations, in the form attached as Schedule 9 hereto.

Subtenant Installations: The tenant installations and fixtures to be constructed in the space in the Building to be subleased by the Lessee to subtenants other than Affiliates of the Lessee.

Surety Bonds: Collectively, the Construction Surety Bond and the Demolition Surety Bond.

Tenant Installation Contracts: All contracts for the construction of Lessee Installations or Subtenant Installations.

Termination Amount: As of any Payment Date, the amount set forth on Schedule 10 hereto with respect to such Payment Date.

Termination Date: As defined in Section 3.3(c) hereof.

Termination Notice: As defined in Section 3.3(b) hereof.

Title Company: Ticor Title Insurance Co., or another nationally recognized title insurance company reasonably acceptable to the Trustee.

Title Policy: The lender's policy of title insurance issued on the Closing Date to the Trustee in an amount equal to 187,875,000.

Total Condemnation: As defined in the Master Lease.

Treasury Yield: With respect to the calculation of the Lessor Make-Whole Premium, a per annum rate, determined as of the date of determination of the Lessor Make-Whole Premium, equal to the weekly average yield to maturity of United States Treasury Notes having a constant maturity as set forth in the most recent weekly statistical release (or any successor release) published by the Board of Governors of the Federal Reserve System and designated "H.15(519) Selected Interest Rates" (the "H.15 Statistical Release"), corresponding to the average weighted life of the Lessor Contribution (calculated to the nearest 1/12 of a year) (the "Weighted Average Life"); such yield described in this clause to be calculated by the Independent Investment Banker, by interpolation (unless the Weighted Average Life of the Lessor Contribution equals a constant maturity set forth in the $\ensuremath{\text{\text{H.15}}}$ Statistical Release) on a straight-line basis, between the weekly average yields (rounded, if necessary, to the nearest 1/100 of 1% with any figure of 1/200 of 1% or above rounded upward) on (a) the United States Treasury Notes with a constant maturity closest to and greater than the Weighted Average Life and (b) the United States Treasury Notes with a constant maturity closest to and less than the Weighted Average Life, or if such weekly average yields are not available, by interpolation of comparable rates selected by the Independent Investment Banker.

Trustee: As defined in the caption hereto, or any replacement Trustee appointed pursuant to the terms of the Indenture.

- 1.2 Other Definitional Provisions. (a) Words and phrases used in the singular shall be deemed to include the plural and vice versa, and nouns and pronouns used in any particular gender shall be deemed to include any other gender, as the context may permit.
- (b) Unless otherwise specified, all references herein to designated "Articles", "Sections", "Schedules" and other subdivisions shall be to the designated Articles, Sections, Schedules and other subdivisions of this Agreement.
- (c) The words "including" and "include", and words of similar import, shall be deemed to be followed by "without limitation".
- (d) The words "herein", "hereof" and "hereunder", and words of similar import, shall refer to this Agreement as a whole

and not to any particular Article, Section, Schedule or other subdivision of this Agreement.

ARTICLE II

APPOINTMENT OF CONSTRUCTION MANAGER

- 2.1 Appointment. Subject to the terms and conditions hereof, the Lessor hereby irrevocably designates and appoints the Construction Manager as its exclusive manager in connection with the demolition of the Existing Improvements and the development and construction of the Building on the Land in accordance with the Plans and Specifications, as an independent contractor and not as the Lessor's agent. Notwithstanding any provision to the contrary contained in this Agreement, the Construction Manager shall not have any duties or responsibilities, except those expressly provided herein and in the other Operative Agreements to which the Construction Manager is a party, or any fiduciary relationship with the Lessor, and no implied covenants, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against the Construction Manager.
- 2.2 Assumption. The Construction Manager hereby unconditionally assumes, for the benefit of the Lessor and the Trustee, as trustee for the benefit of the Holders, the performance and satisfaction of all of the Lessor's obligations under the Leased Improvements Construction Agreement. The Construction Manager also hereby agrees, unconditionally and for the benefit of the Lessor and the Trustee, as trustee for the benefit of the Holders, to cause the Substantial Completion Date for Core and Shell to occur on or prior to the Outside Completion Date for Core and Shell and each Substantial Completion Date for Lessee Installations to occur on or prior to the applicable Outside Completion Date Completion Date for Lessee Installations. In consideration for such obligations, the Lessor has on the date hereof, deposited in the Construction Account for disbursement in accordance with the terms hereof, an amount equal to the Project Costs as specified in the current Project Budget less the amount specified in the Project Budget on account of assumed earnings on the Construction Account.
- 2.3 Term. This Agreement shall commence on the date hereof and shall terminate upon the earlier to occur of (a) the Escrow Termination Date and (b) payment by the Construction Manager of the Termination Amount in accordance with the terms of Section 3.3 hereof.
- 2.4 Scope of Authority. (a) The Lessor hereby expressly authorizes the Construction Manager, or the Developer as the agent of the Construction Manager, and the Construction Manager unconditionally agrees, for the benefit of the Lessor and the Trustee, to take all action necessary or desirable for the

performance and satisfaction of all of the Lessor's obligations under the Leased Improvements Construction Agreement and to fulfill all of the obligations of the Construction Manager hereunder, including, without limitation:

- (i) negotiating and entering into the Project Contracts and all other arrangements with architects, engineers, managers, consultants, contractors and other professionals on such terms and conditions as are customary and reasonable in light of local standards and practices;
- (ii) terminating for any reason any Project Contract (other than the Construction Contract, the Demolition Contract, the Development Agreement and the Surety Bonds) and terminating for cause the Construction Contract, the Demolition Contract, the Development Agreement or the Surety Bonds;
- (iii) to the extent expressly permitted by Section 3.2 hereof, modifying or amending the Project Contracts (subject at all times to the obligations contained in Section 2.4(c) hereof);
- (iv) supervising and directing the work of all architects, engineers, managers, consultants, contractors and other professionals;
- (v) entering into any contract or contracts necessary to replace a Project Contract that has been terminated in accordance with the terms hereof; provided that (x) the replacement Project Contract is substantially similar in scope to the Project Contract being terminated, by its terms will require Substantial Completion for Core and Shell to occur on or prior to the Outside Completion Date for Core and Shell, or, with respect to Lessee Installations, will require Substantial Completion for Lessee Installations to occur on or prior to the each Outside Completion Date for Lessee Installations, and will not increase the Project Costs except to the extent permitted under Section 3.2 hereof and (y) the contracting party has the demonstrable reputation, experience and economic capacity to perform the scope of work required under the replacement Project Contract; and provided further that in the event of the failure of the General Contractor, the Demolition Contractor or the Developer to perform their respective obligations under the Construction Contract, the Demolition Contract or the Development Agreement, respectively, in any material respect, the Construction Manager shall use its best efforts to replace the General Contractor, the Demolition Contractor or the Developer, as the case may be, as soon as reasonably practicable in light of the then current status of the Building;

- (vi) obtaining all necessary permits, licenses, consents, approvals and other authorizations, including those required under applicable Environmental Laws, from all Governmental Authorities in connection with the demolition and disposal of the Existing Improvements (including any Hazardous Substances) and the development and construction of the Building in accordance with the Plans and Specifications and the Lessee Installations in accordance with the Interior Design Plans and Specifications;
- (vii) performing all acts necessary or desirable to construct the Lessee Installations and the Subtenant Installations; and
- (viii) performing any other acts necessary or desirable in connection with the demolition of the Existing Improvements and the development and construction of the Building in accordance with the Plans and Specifications.
- (b) Neither the Construction Manager, the Developer nor any of their respective Affiliates or agents shall enter into any Project Contract which would, directly or indirectly, impose any liability or obligation on the Lessor.
- (c) The Construction Manager shall cause each of the Demolition Contractor and the General Contractor to procure and maintain at all times during which work is being performed under, or Disbursement Requests are being made in respect of, the Demolition Contract or the Construction Contract, as applicable, a performance and payment bond guaranteeing the faithful performance and payment of the obligations arising under the Demolition Contract and the Construction Contract, respectively, or the payment of an amount equal to the contract sum. Each such performance and payment bond shall be in the form attached as Schedule 7 hereto.
- (d) The surety bond which supports the obligations of the Demolition Contractor (the "Demolition Surety Bond") shall be issued by The Insurance Company of the State of Pennsylvania. The Surety Bond which supports the obligations of the General Contractor (the "Construction Surety Bond") will be issued by one or more insurance companies which has, or whose parent corporation has, a "claims paying ability" rating from S&P and Moody's of at least "A" and "A1", respectively. In the event that at any time prior to the completion of the demolition of the Existing Improvements the rating of the Notes from S&P or Moody's is less than "BBB" or "Baa2", respectively, unless at the same time the "claims paying ability" rating assigned to an insurance company which has issued (and is liable for the entire obligation under) the Construction Surety Bond, or its parent corporation, from either S&P or Moody's is at least equal to "BBB-" or "Baa3", respectively, then the Construction Manager shall either replace such surety with a surety which has, or whose parent corporation has, a "claims paying ability" rating from S&P and Moody's of at

least "BBB-" and "Baa3", respectively, or provide additional credit support for the obligations of The Insurance Company of the State of Pennsylvania in order to ensure that such obligations are equivalent to the obligations of an entity whose "claims paying ability" ratings from S&P and Moody's are at least "BBBand "Baa3", respectively. Further, in the event that at any time prior to the and "Baa3", respectively. Further, in the event that at any time prior to the completion of construction of the core and shell of the Building the rating of the Notes from S&P or Moody's is less than "BBB" or "Baa2", respectively, unless at the same time the "claims paying ability" rating assigned to an insurance company which has issued (and is liable for the entire obligation under) the Construction Surety Bond, or its parent corporation, from either S&P or Moody's is at least equal to "BBB-" or "Baa3", respectively, then the Construction Manager shall either replace such surety with one or more sureties which has, or whose parent corporation has, a "claims paying ability" rating from S&P and Moody's of at least "BBB-" and "Baa3", respectively, or provide additional credit support for the obligations of such surety in order to ensure that such obligations are equivalent to the obligations of an entity whose "claims paying ability" ratings from S&P and Moody's are at least "BBB-" and "Baa3", respectively.

- (e) The Trustee will promptly execute and deliver at the request of the Construction Manager a letter in the form attached as Schedule 14 hereto in favor of each of the insurance companies which have issued the Surety Bonds.
- 2.5 Assignment of Project Contracts and Construction Account. As security for its obligation to cause Substantial Completion for Core and Shell to occur on or prior to the Outside Completion Date for Core and Shell and to cause each Substantial Completion for Lessee Installations to occur on or prior to the applicable Outside Completion Date for Lessee Installations, the Construction Manager hereby assigns, transfers, conveys and sets over to the Lessor all of its right, title and interest in and to the Project Contracts. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing, the Construction Manager shall retain (i) all rights to pursue claims for damages in respect of the Building arising as a result of any default by any architect, engineer, consultant, contractor or other professional retained by the Construction Manager, including, without limitation, all rights with respect to warranty, service, performance guarantee and indemnity provisions contained in any Project Contract (it being agreed, however, that all warranties and guaranties relating to the Building, such as those covering the elevators, roof, curtain wall, heating, HVAC and electrical systems will be issued jointly to the Construction Manager and to the Lessor) and (ii) all rights to compel performance of the terms of the Project Contracts.
- (b) Pursuant to the Indenture, the Lessor has pledged its right, title and interest in and to all funds from time to

time deposited in the Construction Account to the Trustee as security for the benefit of the Holders. The Construction Manager and the Lessor each acknowledges that such pledge has been effected and agrees that the terms of the Indenture shall control the disposition of the funds in the Construction Account to the extent there exists or occurs any conflict between the terms of the Indenture and this Agreement.

- 2.6 Delegation of Duties. The Construction Manager may execute any of its duties under this Agreement by or through agents or attorneys-in-fact, including, without limitation, the Developer; provided, however, that no such delegation shall limit or reduce in any way the Construction Manager's duties and obligations under this Agreement.
- $2.7\,$ Covenants of the Construction Manager. The Construction Manager hereby covenants and agrees that it will:
 - (a) Permit the Construction Consultant to enter upon the Land, inspect the Improvements and all materials to be used in the construction thereof and examine all detailed plans and shop drawings which are kept on the Land; it will cooperate with, and cause the Demolition Contractor, the General Contractor, the Developer and all subcontractors to cooperate with, the Construction Consultant to enable him to perform his functions hereunder; at the time of each inspection by the Construction Consultant, the Construction Manager will make available to the Construction Consultant, on demand, daily log sheets covering the period since the immediately preceding inspection showing the date, weather, subcontractors on the job, number of workers and status of construction;
 - (b) Pay all Project Costs, including, without limitation:
 - (i) all costs and expenses of the Lessor incurred or required to be paid under the Leased Improvements Construction Agreement;
 - (ii) all document and stamp taxes, recording and filing expenses and fees and commissions lawfully due to brokers in connection with the transactions contemplated hereby; and
 - $\mbox{(iii)}$ the fees and expense of the Construction Consultant in connection with the transactions contemplated hereby.
 - (c) Following the commencement of construction of the Building, cause construction of the Building to be prosecuted diligently and continuously in accordance with the Plans and Specifications; and cause the Substantial Completion Date for Core and Shell to occur on or prior to

the Outside Completion Date for Core and Shell and cause each Substantial Completion Date for Lessee Installations to occur on or prior to the applicable Outside Completion Date for Lessee Installations, in each case in a good and workmanlike manner and free and clear of defects and Liens or claims for materials supplied or labor or services performed in connection with the demolition of the Existing Improvements or the construction of the Building or the Lessee Installations;

- (d) Upon the written request of the Lessor, the Trustee or the Construction Consultant, deliver to the Lessor, the Trustee or the Construction Consultant, as applicable, copies of all contracts, bills of sale, statements, receipted vouchers or agreements under which the Construction Manager claims title to any materials, fixtures or articles incorporated in the Building, or under which it has incurred costs or expenses for which it is entitled to a disbursement hereunder, and deliver to the Lessor, the Trustee and the Construction Consultant such other information or documents in connection with the Building and the Lessee Installations as they may from time to time reasonably request;
- (e) Upon demand of the Lessor, the Trustee or the Construction Consultant, correct any defects (including structural defects) in the Building or the Lessee Installations or any departures from the Plans and Specifications or the Interior Design Plans and Specifications not permitted under the terms of this Agreement;
- (g) Ensure that at all times there are sufficient funds on deposit in the Construction Account (after taking into account the interest expected to be earned on such funds as reflected in the Project Budget) in order to provide that (i) the Building will be constructed in accordance with the Plans and Specifications, (ii) the Lessee Installations will be constructed in accordance with the Interior Design Plans and Specifications, (iii) Substantial Completion for Core and Shell will occur on or prior to the Outside Completion Date for Core and Shell, and (iv) each Substantial Completion for Lessee Installations will occur on or prior to the applicable Outside Completion Date for Lessee Installations, in each case by depositing additional funds in the Construction Account as necessary to comply with this Section 2.7(g);
- (h) Following the Substantial Completion Date for Core and Shell and the final Substantial Completion Date for $\,$

Lessee Installations, respectively, use reasonable good-faith efforts to cause all outstanding punch list items with respect to the Building and the Lessee Installations to be completed:

- (i) Each year during the calendar month in which occurs the anniversary of the Substantial Completion Date for Core and Shell, the Construction Manager shall cause the Construction Consultant to enter upon the Land, to inspect the Improvements and to prepare a written report of the condition of the Improvements for delivery to the Lessor and the Trustee and shall cooperate with the Construction Consultant as may be reasonably required to enable it to prepare such report (and the obligation of the Construction Consultant set forth in this Section 2.7(i) shall expressly survive the expiration or earlier termination of this Agreement until the principal amount of the Notes shall have been paid in full); and
- (j) In addition to the right to receive a written report of the condition of the Improvements contained in Section 2.7(i) above, as often as the Lessor shall reasonably request, the Construction Manager shall promptly cause the Construction Consultant to enter upon the Land, to inspect the Improvements and to prepare a written report of the condition of the Improvements for delivery to the Lessor and shall cooperate with the Construction Consultant as may be reasonably required to enable it to prepare such report (and the obligation of the Construction Manager set forth in this Section 2.7(j) shall remain in full force and effect until December 1, 2003 notwithstanding any expiration or earlier termination of this Agreement). In the event that any report of the Construction Consultant contemplated by either the preceding sentence or Section 2.7(i) above reasonably demonstrates that a condition exists which results, or a potential condition exists which if left uncured could result, in a default hereunder or a default under the Master Lease or is adverse to the interests of the Lessor in the Property, then the Lessor shall deliver a written notice to the Construction Manager reasonably identifying such condition. Within fifteen (15) days of receipt by the Construction Manager of such notice from the Lessor, the Construction Manager will (i) remedy such condition or such potential condition, or (ii) present to the Lessor a plan to remedy such condition or potential condition and diligently commence efforts to cure such condition or such potential condition. If the Construction Manager fails to observe or perform its obligations under clauses (i) or (ii) of the preceding sentence, then the Lessor (in addition to any other rights and remedies it may have hereunder or under the Master Lease) shall have the right to inspect the Property. Further, if at any time there occurs and is continuing a default hereunder or a default under the Master Lease, then the Lessor shall (in

addition to any other rights and remedies it may have hereunder or under the Master Lease) have the right to inspect the Property in accordance with the terms and provisions of the Master Lease.

- 2.8 Covenants of the Construction Manager regarding the Construction Consultant. (a) The Construction Manager shall engage the Construction Consultant pursuant to the Consulting Agreement. The Construction Manager shall not terminate the Construction Consultant except for cause (which will in no event include the reasonable, good-faith performance by the Construction Consultant of its duties under the Consulting Agreement, even if the Construction Manager disagrees with the conclusions reached by the Construction Consultant in the performance of such duties).
- (b) The Construction Manager shall cause the Construction Consultant to perform its duties as set forth in the Consulting Agreement and shall terminate the Construction Consultant if at any time it fails to perform such duties.
- (c) The Construction Manager will not amend, modify or supplement the Consulting Agreement without the prior written consent of the Trustee.
- (d) In the event the Construction Consultant is terminated in accordance with clause (a) or (b) above, a replacement Construction Consultant shall be selected by the Bank from the consultants listed on Schedule 11 hereto (provided that such replacement consultant shall not at the time of its selection derive a significant portion of its annual revenues from the Construction Manager) to perform the same duties, and subject to the same terms and conditions, as set forth in the Consulting Agreement.
- (e) The obligations of the Construction Manager contained in this Section 2.8 shall remain in full force and effect until December 1, 2003 notwithstanding any expiration or earlier termination of this Agreement.

ARTICLE III

THE BUILDING

3.1 Demolition and Construction. (a) The Construction Manager will cause the Existing Improvements and any Hazardous Substances therein to be demolished, used, handled, managed, treated, stored, transported, deposited and disposed of in accordance with the Demolition Contract and in full compliance with all Legal Requirements, including, without limitation, all Legal Requirements relating to the removal, handling, management, storage, transport and disposal of the asbestos-containing materials present in the Existing Improvements.

- (b) The Construction Manager will cause (i) Substantial Completion for Core and Shell to occur on or prior to the Outside Completion Date for Core and Shell, and (ii) the Building to be constructed and equipped in full compliance with all Legal Requirements (including Environmental Laws) and Insurance Requirements.
- (c) The Construction Manager will cause (i) each Substantial Completion for Lessee Installations to occur on or prior to the applicable Outside Completion Date for Lessee Installations, (ii) the Subtenant Installations to be constructed as may be required under any Space Lease which requires construction of Subtenant Installations, and (iii) all Sublease Expenditures to be paid as and when incurred.
- 3.2 Change Orders. (a) The Construction Manager may at any time following the Budget Finalization Date revise, amend or modify the Plans and Specifications, the Interior Design Plans and Specifications, the Project Budget or the Project Schedule (but not beyond the Outside Completion Date for Core and Shell or the Outside Completion Date for Lessee Installations, as applicable) (any such revision, amendment or modification, a "Change Order") and enter into any related amendments, modifications or supplements to any of the Project Contracts (other than the Consulting Agreement), the Project Budget and the Project Schedule without the consent of the Lessor or the Trustee; provided that such Change Orders or related amendments, modifications or supplements to any Project Contract do not result in a rescission, termination or cancellation of the Construction Contract, the Demolition Contract, the Development Agreement or the Surety Bonds.
- (b) Except as otherwise provided in Sections 3.2(c) and 3.2(h) below, within thirty (30) days of implementing any such Change Order, the Construction Manager shall:
 - (i) deliver to the Lessor, the Trustee and the Construction Consultant an Officer's Certificate and a certificate of the Developer (each of which shall be executed only after consultation with the Project Architect and only with the concurrence of the Project Architect, if appropriate), in each case setting forth (x) any changes in the Project Budget or the Project Schedule resulting from the Change Order, (y) the estimated increase, if any, in Project Costs relating to any line item in the Project Budget that will result from implementation of the Change Order (each such increase, a "Project Costs Increase") and (z) a statement that the Change Order (1) is permitted under the Surety Bonds or that the Surety Bonds have been amended to allow such Change Order, (2) is in compliance with all applicable Legal Requirements, (3) will not extend the Substantial Completion Date for Core and Shell and will not extend any Substantial Completion Date for Lessee

Installations past the applicable Outside Completion Date for Lessee Installations, (4) if undertaken, would not result in the Building being constructed other than in accordance with the Essential Design Elements and (5) complies with the requirements of Section 3.2(f) hereof; and

(ii) to the extent that all or a portion of any Project Costs Increase cannot be funded from the yet unallocated Contingency Reserve line item in the Project Budget or from excess funds available under any line item of the Project Budget (other than the line item for Project Costs to be incurred for Subtenant Installations and Lessee Installations) where the yet unfunded amount allocated to such line item under the Project Budget exceeds the amount necessary to complete such line item as certified to by the Project Architect or, if such line item is outside the scope of the expertise of the Project Architect, by the Developer (as so certified, an "Excess Line Item Reserve"), cause to be deposited in the Construction Account an amount in cash equal to the Project Costs Increase or such portion thereof.

The Construction Manager shall cause the funds required by the preceding clause (ii) to be deposited by paying its own funds into the Construction Account. Any such funds so deposited in the Construction Account shall be disbursed in accordance with the terms of Article IV hereof.

- (c) Except as otherwise provided in Section 3.2(h) below, the Construction Manager shall comply with the requirements of clauses (i) and (ii) of Section 3.2(b) above at least ten (10) days in advance of implementing any such Change Order if either (i) prior to the time referred to in clause (ii) below, such Change Order anticipates a net increase or decrease of greater than \$1,000,000 either in (x) any one line item in the Project Budget individually or (y) any number of line items in the Project Budget in the aggregate or (ii) from and after the time the Construction Manager shall have begun the implementation of Change Orders, all of which Change Orders taken together result in a net increase or decrease of greater than \$5,000,000 in any number of line items in the Project Budget in the aggregate or in a net increase or decrease of greater than \$2,000,000 in any one line item in the Project Budget individually, such Change Order anticipates a net increase or decrease of greater than \$100,000 either in (x) any one line item in the Project Budget individually or (y) any number of line items in the Project Budget in the aggregate.
- (d) If either (i) prior to the time referred to in clause (ii) below, any Change Order anticipates a net decrease of greater than \$1,000,000 either in (x) any one line item in the Project Budget individually or (y) any number of line items in the Project Budget in the aggregate or (ii) from and after the time the Construction Manager has begun the implementation of

Change Orders, all of which Change Orders taken together result in a net decrease of greater than \$5,000,000 in any number of line items in the Project Budget in the aggregate or in a net decrease of greater than \$2,000,000 in any one line item in the Project Budget individually, any Change Order (when aggregated with any other Change Orders with respect to which the Construction Manager has not delivered an appraiser's certificate) anticipates a net decrease of greater than \$500,000 either in (x) any one line item in the Project Budget individually or (y) any number of line items in the Project Budget in the aggregate, then at least ten days in advance of implementing any such Change Order, the Construction Manager shall deliver to the Lessor, the Trustee and the Construction Consultant a certificate of The Hallstrom Group, Inc. or another reputable appraisal firm, which is a member of the Appraisal Institute, which has received not more than 5% of its gross income during the previous two (2) years from business with the Construction Manager and which has at least five (5) years experience in the downtown Honolulu office market, stating that the aggregate effect of such Change Order, together with any previous or contemporaneous Change Orders, will not be to reduce the fair market value of the Building when completed.

- (e) Upon compliance by the Construction Manager with all of the provisions of this Section, the Project Budget, the Project Schedule, the Plans and Specifications and the Interior Design Plans and Specifications shall be deemed amended in accordance with the Change Order.
- (f) The Construction Manager agrees that it will not implement any Change Order if the aggregate effect of such Change Order, together with any previous or contemporaneous Change Orders, would be to reduce the fair market value of the Building when completed.
- (g) The Project Budget assumes that the earnings, on a cumulative basis, on investments of the funds deposited in the Construction Account, on a month-by-month basis are as reflected on Schedule 13. To the extent that the actual cumulative earnings on investments of the funds deposited in the Construction Account for any particular month are less than the assumed cumulative earnings for such month set forth in Schedule 13, the Construction Manager shall either (i) deposit in the Construction Account an amount equal to such deficiency as a condition to any further disbursements or (ii) implement a Change Order in accordance with Section 3.2(a) through (f) which has the effect of reducing Project Costs by an amount at least equal to such deficiency. The Construction Manager shall have the right to implement a Change Order in respect of the earnings line item in the Project Budget to the extent of any reduction of another line item in the Project Budget (adopted in accordance with the Change Order procedures set forth in Section 3.2(a) through (f), and in that event, Schedule 13 shall be modified. To the extent that the actual cumulative earnings on the Construction Account

for any particular month are greater than the assumed cumulative earnings for such month set forth in Schedule 13, the Construction Manager shall have the right to implement one or more Change Orders which has the effect of increasing Project Costs by an amount equal to such excess.

- (h) Notwithstanding the provisions of paragraphs (a) through (g) above, the Construction Manager shall amend the Project Budget within four (4) months of the date of this Agreement without complying with the requirements of paragraphs (a) through (g) above and within a reasonable time after the General Contractor delivers to the Construction Manager its detailed breakdown of the costs and expenses included within the scope of the Construction Contract (the date upon which the Project Budget shall be so amended, the "Budget Finalization Date"). Pursuant to such amendment, the Construction Manager shall (i) reallocate the aggregate amount of \$93,510,951 set forth in the "Building Construction" category in the Project Budget among the nineteen (19) "Divisions" constituting the "Building Construction Categories" attached to the Project Budget and (ii) shall further allocate the amount allocated to each of these nineteen (19) "Divisions" to each of the line-items set forth as a subheading to such "Division" in the Project Budget. Such amendment with respect to the Project Budget shall be consistent in all material respects with the cost breakdown agreed upon between the Construction Manager and the General Contractor and shall be subject to the prior approval of the Construction Consultant.
- 3.3 Failure to Complete Building. (a) If at any time prior to the Substantial Completion Date for Core and Shell there occurs a Casualty or a Force Majeure Event or the Lessor or the Construction Manager receives notice of a Condemnation then in each case the Construction Manager shall either:
 - (i) terminate this Agreement in accordance with Sections 3.3(b) and 3.3(c) below in the event of (x) a Total Condemnation or (y) a Condemnation, Casualty or Force Majeure Event which in the reasonable, good-faith judgment of the Construction Manager (as evidenced by an Officer's Certificate) and in the judgment of the Construction Consultant (as evidenced by a certificate of the Construction Consultant) is so substantial in nature such that achieving (1) the Substantial Completion Date for Core and Shell on or prior to the Outside Completion Date for Core and Shell would be impracticable or impossible or (2) any Substantial Completion Date for Lessee Installations on or prior to the applicable Outside Completion Date for Lessee Installations would be impracticable or impossible (each of the events described in this Section 3.3(a)(i), a "Significant Event"); or
 - (ii) promptly and diligently complete the construction of the Building and the Lessee Installations in

accordance with the Plans and Specifications and the Interior Design Plans and Specifications, respectively, and with the terms hereof, and otherwise at the Construction Manager's sole cost and expense, and cause the Substantial Completion Date for Core and Shell to occur on or prior to the Outside Completion Date for Core and Shell and each Substantial Completion Date for Lessee Installations to occur on or prior to the applicable Outside Completion Date for Lessee Installations, in the event of a Condemnation, Casualty or Force Majeure Event which in the reasonable, good-faith judgement of the Construction Manager (as evidenced by an Officer's Certificate) does not constitute a Significant Event.

- (b) If prior to the Substantial Completion Date for Core and Shell the Lessor or the Construction Manager shall have received notice of a Total Condemnation of the Property, then the Construction Manager shall, within thirty (30) days after the Construction Manager receives notice thereof, deliver to the Lessor and the Trustee a written notice in the form described in Section 3.3(c) (a "Termination Notice") of the termination of this Agreement. If prior to the Substantial Completion Date for Core and Shell the Lessor or the Construction Manager shall have received notice of a Condemnation of the Property or a Casualty or Force Majeure Event occurs, and the Construction Manager shall have delivered to the Lessor an Officer's Certificate and a certificate of the Construction Consultant to the effect that such Condemnation, Casualty or Force Majeure Event constitutes a Significant Event in accordance with Section 3.3(a)(i), then the Construction Manager shall, simultaneously with the delivery of such Officer's Certificate and certificate of the Construction Consultant, deliver to the Lessor and the Trustee a Termination Notice.
- (c) A Termination Notice shall contain (i) notice of the Construction Manager's termination of this Agreement on the next Payment Date which occurs at least thirty (30) days after the Lessor's and the Trustee's receipt of such Termination Notice (the "Termination Date"), (ii) a binding and irrevocable agreement of the Construction Manager to pay the Termination Amount and purchase the Lessor's right, title and interest in the Property on such Payment Date and (iii) the Officer's Certificate and the certificate of the Construction Consultant described in Section 3.3(a)(i). On the Termination Date, the Construction Manager shall pay to the Lessor the Termination Amount and all amounts owing in respect of Rent (including Additional Charges), including any indemnities under Article VII hereof or Articles IV and XXV of the Master Lease (if any), theretofore accruing hereunder or under the Master Lease, and the Lessor shall convey its right, title and interest in the Property, or the remaining portion thereof, to the Construction Manager (or the Construction Manager's designee) in accordance with Section 19.1 of the Master Lease.

- (d) Notwithstanding anything to the contrary set forth in this Agreement, if a Casualty occurs or the Lessor or the Construction Manager shall receive notice of a Condemnation, in each case on or after the Substantial Completion Date for Core and Shell, such Casualty or Condemnation shall be governed by the provisions in respect thereof contained in the Master Lease. Notwithstanding anything to the contrary set forth in this Agreement, if a Force Majeure Event occurs after the Substantial Completion Date for Core and Shell, the Construction Manager shall cause construction of the Lessee Installations to be prosecuted diligently and continuously in accordance with the Interior Design Plans and Specifications but the Construction Manager shall be relieved of its obligation to achieve each Substantial Completion for Lessee Installations on or prior to the applicable Outside Completion Date for Lessee Installations and its obligation to deliver, or cause to be delivered, as a condition to its ability to receive funds from the Construction Account, certificates to the effect that each Substantial Completion for Lessee Installations will be achieved on or prior to the applicable Outside Completion Date for Lessee Installations.
- (e) Notwithstanding anything to the contrary set forth in this Agreement, if the Master Lease terminates as a result of the provisions of Section 16.1(b)(iii) thereof, this Agreement shall also terminate concurrently therewith.
- 3.4 Payments at the Overdue Rate. The Construction Manager shall pay to the Lessor (i) interest at the Debt Overdue Rate on any portion of the Termination Amount, Default Amount, Make-Whole Premium or other amount payable under this Agreement that is required to be paid to the Trustee and applied to the payment of principal, interest or premium (if any) due under the Notes or to the payment of any other amount due the Trustee hereunder, under the Indenture or under any other Operative Agreement (provided, that the Debt Overdue Rate shall not apply to an overdue payment to the extent that the application of the Debt Overdue Rate would render unenforceable the payment of Make-Whole Premium due hereunder (but only if such payment of Make-Whole Premium would otherwise exceed the payment resulting from such application of the Debt Overdue Rate) and (ii) interest at the Lessor Overdue Rate on any portion of the Termination Amount, Default Amount, Lessor Make-Whole Premium or other amount payable under this Agreement that is required to be paid to the Trustee on account of the Lessor Contribution or otherwise payable to the Lessor hereunder, in each case not paid when due from the due date to the date of actual payment.

ARTICLE IV

PAYMENT OF COSTS OF WORK

- 4.1 Requisition of Funds Directly from the Construction Account. (a) On the tenth (10th) day of each calendar month (or if such day is not a Business Day, the next succeeding Business Day), the Construction Manager shall submit to the Lessor, with a copy to the Construction Consultant and the Trustee, a request for a disbursement from the Construction Account (a "Disbursement Request"), together with:
- - (t) the amount of Project Costs that the Construction Manager has incurred in accordance with the Plans and Specifications and the Project Budget since the last Disbursement Request submitted to the Lessor for the payment of amounts due on account of Project Costs (the "Disbursement Amount") broken down by the categories identified in the Project Budget, accompanied by evidence supporting each such item of Project Costs covered by such Disbursement Request, including a copy of the disbursement request and all related information presented by the Demolition Contractor, the General Contractor or any other contractor under any Project Contract with respect to such Disbursement Request, and indicating that such amounts are currently due and payable;
 - (u) a statement and evidence that all amounts advanced to the Construction Manager during the previous calendar month for the payment of Project Costs have been properly applied to such Project Costs;
 - (v) a statement that the construction of the Building and the Lessee Installations, if applicable, to date has been performed in a good and workmanlike manner and in accordance with the Plans and Specifications and the Interior Design Plans and Specifications, as applicable, and in compliance with all applicable Legal Requirements (including Environmental Laws) and Insurance Requirements and that the progress thereof is such that the Substantial Completion Date for Core and Shell will occur on or prior to the Outside Completion Date for Lessee Installations will occur on or prior to the applicable Outside Completion Date for Lessee Installations at for Lessee Installations;
 - (w) a statement with respect to any Disbursement Amount that relates to the payment of Construction Project Costs, that such amount has been paid by the Construction Manager or is currently due and payable for (A) work, labor or materials incorporated in the Building, the Lessee

Installations or the Subtenant Installations; (B) materials suitably stored on the Land but not incorporated in the Building; (C) materials warehoused; or (D) materials otherwise identifiable and for which customary arrangements have been made with the manufacturer or fabricator for payment and delivery, in each case up to the date of such Disbursement Request (in the case of the first Disbursement Request) or to the date of such Disbursement Request from the date of the last previous Disbursement Request (in the case of any subsequent Disbursement Request), together with evidence that, following disbursement of that portion of the Disbursement Amount which relates to a particular category of materials described in the preceding clause (C) or this clause (D), the value of such materials, when aggregated with all materials of the same category which are currently neither incorporated into the Building, the Lessee Installations or the Subtenant Installations nor stored on the Land (but which are either warehoused or are otherwise identifiable and for which customary arrangements have been made for payment and delivery) and which were the subject of a previous Disbursement Request, do not exceed the amount set forth opposite such category listed on Schedule 12 hereto;

- (x) a statement with respect to any Disbursement Amount that relates to the payment of Project Costs (other than Construction Project Costs), that such amount has been paid by the Construction Manager or is currently due and payable for such Project Costs;
- (y) a statement that the unadvanced funds in the Construction Account (including the then current amount of assumed earnings on the Construction Account) allocable to Project Costs in each line item of the Project Budget are sufficient (after application of any available Excess Line Item Reserve and the Contingency Reserve) to pay in full Project Costs of such line item which will be required for the Substantial Completion Date for Core and Shell to occur on or prior to the Outside Completion Date for Core and Shell and for each Substantial Completion Date for Lessee Installations to occur on or prior to the applicable Outside Completion Date for Lessee Installations; and
- (z) a statement that no part of the Project Costs described in such Disbursement Request has been previously paid under a prior Disbursement Request.
- (ii) a certificate of the Project Architect setting forth the following:
- (x) a statement that to the best of the Project Architect's knowledge, information and belief, the work covered by such Disbursement Request and by all prior Disbursement Requests has been completed in accordance with

the Plans and Specifications and in a good and workmanlike manner; and

- (y) the stage and percentage of completion, based on the Plans and Specifications, which has been achieved with respect to the various contract categories in the construction of the Building.
- (iii) with respect to any Disbursement Request which contains a request for the funding of Subtenant Installations (and in lieu of the materials required under clause (ii) above), the following:
 - $\mbox{\ensuremath{(x)}}$ a certificate from the Interior Design Architect setting forth the following:
 - (1) a statement that to the best of the Interior Design Architect's knowledge, information and belief, the construction of the Subtenant Installations covered by such Disbursement Request and by all prior Disbursement Requests has been performed in a good and workmanlike manner and in accordance with the applicable terms of the Space Lease or Space Leases pursuant to which such Subtenant Installations are being performed: and
 - (2) with respect to each Space Lease pursuant to which Subtenant Installations are being performed, the stage and percentage of completion, based on the approved plans and specifications for such Space Lease, which have been achieved with respect to the various contract categories in the construction of such Subtenant Installations; and
 - (y) an Officer's Certificate, certified as true and correct by the Developer, stating that, after giving effect to such Disbursement Amount, and any previous Disbursement Amount for the payment of the costs of Subtenant Installations, the unadvanced funds in the Construction Account allocable to the line item for Project Costs to be incurred for Subtenant Installations are at least equal to \$40 per square foot of the remaining unimproved space demised to subtenants under Space Leases (with a partially improved space being considered improved to the extent of the percentage completion indicated by the Interior Design Architect in its certificate delivered pursuant to clause (iii)(x)(2) above).
- (iv) with respect to any Disbursement Request which contains a request for the funding of Lessee Installations (and in lieu of the materials required under clause (ii) above), a certificate from the Interior Design Architect setting forth the following:

- (x) a statement that to the best of the Interior Design Architect's knowledge, information and belief, the construction of the Lessee Installations covered by such Disbursement Request and by all prior Disbursement Requests has been performed in a good and workmanlike manner and in accordance with the Interior Design Plans and Specifications; and
- (y) the stage and percentage of completion, based on the Interior Design Plans and Specifications, which has been achieved with respect to the various contract categories in the construction of the Lessee Installations.
- (v) an endorsement to the Title Policy from the Title Company insuring that the Disbursement Amount is secured by the Mortgage and the Assignment of Lease and constitutes a valid first lien on the Land and the Improvements without exception, other than Permitted Exceptions.
- (b) Each Disbursement Request and each receipt of the Disbursement Amount requested thereby shall constitute a representation and warranty by the Construction Manager that each representation and warranty contained in Section 7.2 of the Participation Agreement (provided, that, except for the first disbursement to be made on the Closing Date, no such representation shall be made in respect of the first sentence of subsection 7.2(a) thereof, as to which a comparable representation shall be true, or in subsection 7.2(p), subsection 7.2(q), as to which a comparable representation shall also be true, or subsection 7.2(w) thereof) are true and correct on the date of such Disbursement Request or such receipt, as the case may be.
- (c) Unless within ten (10) days of receipt by the Lessor, the Trustee and the Construction Consultant of a Disbursement Request, the Construction Consultant advises the Construction Manager, the Lessor and the Trustee that the Disbursement Request is deficient (including, without limitation, due to the fact that any certification included therewith is inaccurate or that any condition to disbursement set forth in Section 4.2 has not been satisfied), the Trustee shall transfer from the Construction Account to the account of the Construction Manager maintained with the Trustee funds equal to the Disbursement Amount, as limited or adjusted in accordance with Section 4.2 below. If the Construction Consultant determines that the Disbursement Request is deficient in some manner, it shall promptly advise the Construction Manager, the Lessor and the Trustee of the nature of the deficiency.
- 4.2 Limitation on Obligation to Fund. (a) With respect to any Disbursement Request, disbursements for the payment of Project Costs in each category of cost in the Project Budget shall be limited (i) in the aggregate to the amount shown for such category in the Project Budget in the column entitled

"Reserve" and (ii) in each case to the Disbursement Amount on account of such amounts as stated in a particular Disbursement Request. Disbursements shall be made only to defray Project Costs described in the Project Budget and actually incurred or then due and payable.

- (b) If the unadvanced funds in the Construction Account allocable to Project Costs in any line item in the Project Budget is at any time not sufficient to pay in full Project Costs of such line item which will be required for the Substantial Completion Date for Core and Shell to occur on or prior to the Outside Completion Date for Core and Shell and for each Substantial Completion Date for Lessee Installations to occur on or prior to the applicable Outside Completion Date for Lessee Installations, the Trustee shall not make further Disbursements and the Construction Manager shall promptly (i) reallocate the amount of such deficiency from the Contingency Reserve line item in the Project Budget or from any available Excess Line Item Reserve, or any combination of such amounts, or (ii) deposit funds in the Construction Account in the amount of such deficiency. Following any such reallocation or deposit, the Project Budget shall be amended to reflect the increased Project Costs and the Trustee shall continue to make disbursements in accordance with such revised Project Budget. For the purpose of this Section 4.2(b), the Construction Account shall be deemed to include the then current amount, as shown on Schedule 13 hereto, of the assumed earnings on the Construction Account.
- (c) No disbursement shall be made if either (i) there shall have occurred and be continuing either a default hereunder, with respect to which the Construction Manager has received written notice thereof, or an Event of Default or (ii) any of the representations or warranties contained in Section 7.2 of the Participation Agreement (provided, that, except for the first disbursement to be made on the Closing Date, no such representation shall be made in respect of the first sentence of subsection 7.2(a) thereof, as to which a comparable representation shall be true, or in subsection 7.2(p), subsection 7.2(q), as to which a comparable representation shall also be true, or subsection 7.2(w) thereof) shall not be true and correct in any material respect as of the date of such disbursement.
- 4.3 Conditions to Disbursement for Retainage. On or prior to the date of the disbursement for the release of the retainage withheld from the General Contractor in accordance with the Construction Contract, the Lessor, the Trustee and the Construction Consultant shall have received, in addition to the documentation required by Section 4.1 hereof:
 - (a) Architects Certificate. A Certificate of Substantial Completion for Core and Shell in the form attached as Schedule 8 hereto signed by the Project Architect stating that, subject to punch list items, the

Building has been completed in accordance with the Plans and Specifications;

- (b) Release of Liens. A release of liens signed by the Project Architect, the Developer, the Demolition Contractor, the General Contractor, all other contractors under the Project Contracts and all other subcontractors and materialmen; provided that a release of liens shall not be required with respect to contracts (i) which the Construction Manager is contesting and with respect to which the Construction Manager has a reasonable, good-faith belief that a release of lien should have been delivered and (ii) the aggregate amount owed to contractors and subcontractors under which is no greater than \$2,000,000;
- (c) Survey. A survey of the Land and the Improvements by an independent surveyor licensed in the State of Hawaii (i) showing no encroachments by the Building over the lot lines or easements other than those permitted by express written easements or appropriate governmental approval, (ii) noting any visible work on the Land which is on-going on the date of such survey and (iii) based on an inspection within thirty (30) days prior to the date of the Disbursement Request;
- (d) Utilities. Letters from local utility companies or Governmental Authorities stating that electric power, sanitary and storm sewer and water facilities and other necessary utilities are available to and are serving the Building; and
- (e) Governmental Approvals. Evidence of approval by all Governmental Authorities whose approval may then be required with respect to the completion of the Building, the Lessee Installations and the Subtenant Installations, and the intended use thereof, under any Legal Requirements at such time.

ARTICLE V

EVENTS OF DEFAULT

- 5.1 Events of Default. If any one or more of the following events (each an "Event of Default") shall occur:
- (a) the Construction Manager shall fail to make any payment or deposit any funds required to be paid or deposited hereunder within five (5) days after receipt of notice that the same has become due and payable;
- (b) the Substantial Completion Date for Core and Shell shall fail for any reason to occur on or prior to the Outside Completion Date for Core and Shell or any

Substantial Completion Date for Lessee Installations shall fail for any reason to occur on or prior to the applicable Outside Completion Date for Lessee Installations:

- (c) if the insurance policy required by Section 8.2 shall be terminated or expire without replacement;
- (d) the Construction Manager shall fail to observe or perform any term, covenant or condition of this Agreement, the Master Lease, the Participation Agreement or any other Operative Agreement (except with respect to breaches discussed in clauses (a), (b) and (c) above) to which it is a party, or any representation or warranty set forth in Section 7.2 of the Participation Agreement as of the date hereof, or in Section 4.1(b) of this Agreement, shall be inaccurate in any way materially adverse to the Lessor, and such failure or misrepresentation or breach of warranty shall remain uncured for a period of thirty (30) days after notice thereof; provided, however, no Event of Default shall be deemed to occur if such failure, misrepresentation or breach cannot reasonably be cured within such period, so long as the Construction Manager shall have promptly commenced the cure thereof and continues to act with diligence to cure such failure, misrepresentation or breach and, with respect to any failure, misrepresentation or breach contained in Sections 2.2, 2.4, 2.5, 2.7(a), (b), (d), (g), 2.8, 3.1(b)(i), 3.1(c)(i), 3.2 and 7.1 hereof and Sections 7.2(a), (b), (h), (l), (m), (o), (r), (t), (u), (v), 7.3(a), (b), (f), (g), (i), 7.4(a), (b), (f), (g), (i), Section 8, Section 9, Sections 14.1, 14.2, 14.3, 14.4, 14.5, 14.7 and 14.9 of the Participation Agreement, in fact cures such failure, misrepresentation or breach within 180 days after receipt of notice thereof;
- (e) the Construction Manager shall (i) admit in writing its inability to pay its debts generally as they become due, (ii) file a petition under the United States bankruptcy laws or any other applicable insolvency law or statute of the United States of America or any State or Commonwealth thereof, (iii) make a general assignment for the benefit of its creditors, (iv) consent to the appointment of a receiver of itself or the whole or any substantial part of its property, (v) fail to cause the discharge of any custodian, trustee, receiver or conservator appointed for the Construction Manager or the whole or a substantial part of its property within ninety (90) days after such appointment, or (vi) file a petition or answer seeking or consenting to reorganization under the United States bankruptcy laws or any other applicable insolvency law or statute of the United States of America or any State or Commonwealth thereof; or
- (f) insolvency proceedings or a petition under the United States bankruptcy laws or any other applicable insolvency law or statute of the United States of America or

any State or Commonwealth thereof shall be filed against the Construction Manager and not dismissed within ninety (90) days from the date of its filing, or a court of competent jurisdiction shall enter an order or decree appointing, without the consent of the Construction Manager, a receiver or conservator of the Construction Manager or the whole or a substantial part of its property, and such order or decree shall not be vacated or set aside within ninety (90) days from the date of the entry thereof;

then, in any such event, the Lessor may, in addition to the other rights and remedies provided for in this Article, terminate this Agreement by giving the Construction Manager thirty (30) days notice of such termination and upon the expiration of the time fixed in such notice, this Agreement shall terminate and all rights of the Construction Manager under this Agreement shall cease, subject to the Construction Manager's rights under Section 5.3. The Construction Manager shall pay all costs and expenses incurred by or on behalf of the Lessor, including fees and expenses of counsel, as a result of any Event of Default hereunder.

- 5.2 Damages. The termination of this Agreement pursuant to Section 5.1 shall in no event relieve the Construction Manager of its liability and obligations hereunder or under the Master Lease, or in respect of any indemnity hereunder or under the Master Lease, all of which shall survive any such termination. In the event of any termination of this Agreement pursuant to Section 5.1, the Construction Manager shall forthwith pay to the Lessor all sums on account of funds required to be paid or deposited hereunder to and including the date of such termination.
- 5.3 Liquidated Damages. (a) At any time after this Agreement shall be terminated pursuant to Section 5.1, whether or not the Lessor shall have collected any damages pursuant to Section 5.2, the Lessor shall have the right to recover, by demand to the Construction Manager and at the Lessor's election, and the Construction Manager shall pay to the Lessor, as and for final liquidated damages, and in lieu of all current liquidated damages beyond the date of such demand (it being agreed that it would be impossible accurately to determine actual damages), but exclusive of any indemnity payments under Article VII hereof or Section 25.1 or Article IV of the Master Lease, an amount equal to the sum of (i) the Default Amount specified for such Payment Date on Schedule 1 hereto plus (ii) the Make-Whole Premium payable by reason of the application of the Default Amount as shall be required to be applied to the Notes upon acceleration thereof, plus (iii) the Lessor Make-Whole Premium, if any, required to be paid to the Lessor under Section 5.3(b) hereof, plus (iv) all amounts owing in respect of Rent (including Additional Charges) theretofore accruing under the Master Lease. Upon the payment in full of the amount specified in the first sentence of this Section 5.3, the Construction Manager or its

designee shall be entitled to receive from the Lessor, at the Construction Manager's request and cost, an assignment of the Lessor's right, title and interest as lessee under the Ground Lease and the Lessor's entire interest in the Improvements, Fixtures and Modifications all in accordance with Section 19.1 of the Master Lease. The Construction Manager (or the Construction Manager's designee) shall execute and deliver to the Lessor an assumption of all of the Lessor's obligations under the Ground Lease. The Property shall be conveyed to the Construction Manager (or the Construction Manager's designee) "AS IS" and in its then present physical condition. If any statute or rule of law shall limit the amount of such final liquidated damages to less than the amount agreed upon, the Lessor shall be entitled to the maximum amount allowable under such statute or rule of law; provided, however, that the Construction Manager shall not be entitled to receive an assignment of the Lessor's interest under the Ground Lease or in the Improvements unless the Construction Manager shall have paid in full the Default Amount plus the Make-Whole Premium, the Lessor Make-Whole Premium, if applicable, and all accrued Rent (including Additional Charges) as provided for in the previous sentence.

- (b) In the event this Agreement is terminated solely as a result of the Construction Manager's willful and deliberate failure to cause the Substantial Completion Date for Core and Shell to occur on or prior to the Outside Completion Date for Core and Shell or any Substantial Completion Date for Lessee Installations to occur on or prior to the applicable Outside Completion Date for Lessee Installations, then the Lessor shall have the right to recover on the Payment Date on which payment is made, pursuant to paragraph (a) above, by demand to the Construction Manager and at the Lessor's sole election, and the Construction Manager shall pay to the Lessor on such Payment Date, an amount equal to the Lessor Make-Whole Premium.
- 5.4 Waiver of Certain Rights. If this Agreement shall be terminated pursuant to Section 5.1, the Construction Manager waives, to the fullest extent permitted by law, (a) any notice of re-entry or the institution of legal proceedings to obtain re-entry or possession; (b) any right of redemption, re-entry or repossession; (c) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt; and (d) any other rights which might otherwise limit or modify any of the Lessor's rights or remedies under this Article.
- $5.5\,$ Remedies Cumulative. The remedies herein provided shall be cumulative and in addition to (and not in limitation of) any other remedies available at law, equity or otherwise.
- 5.6 Release of the Lessor. In the event the Lessor assigns all of its right, title and interest as lessee under the Ground Lease and its entire interest in the Improvements, Fixtures and Modifications to the Construction Manager (or the Construction Manager's designee) all in accordance with Section

19.1 of the Master Lease and the terms of this Agreement, then the Lessor shall be released from all of its obligations under this Agreement.

ARTICLE VI

CASUALTY AND CONDEMNATION

6.1 Casualty and Condemnation. In the event of a Casualty or Condemnation which occurs prior to the Substantial Completion Date for Core and Shell, any award, compensation or insurance proceeds shall be paid to the Trustee, and any such award, compensation or insurance proceeds received by the Trustee shall be (a) first applied by the Trustee to reimburse the Lessor, the Trustee and the Holders for any expenses (including, without limitation, any reasonable attorneys' and consultants' fees and expenses) incurred by any of the foregoing in connection with the collection of such award, compensation or insurance proceeds, or the determination of the amount of the loss, and then (b) deposited into the Construction Account to be disbursed in accordance with the terms of Article IV hereof.

ARTICLE VII

INDEMNITY

- 7.1 Indemnification by Construction Manager. (a) The Construction Manager shall indemnify the Lessor, the Administrative Agent, the Trustee and the Holders and any affiliate, officer, director, employee, agent or shareholder of the Lessor, the Administrative Agent, the Trustee or any Holder (collectively, the "Indemnified Parties"), on an After Tax Basis, from and against all actions, causes of action, claims, lawsuits, administrative proceedings, hearings, judgments, liabilities, awards, fines, penalties, costs, fees (including legal, engineers', experts' and consulting fees and expenses), damages (including natural resource damages), corrective action costs, financial assurance costs, remediation activities and clean-up costs (including investigation, monitoring, encapsulation, removal and response costs), Liens (including any environmental Lien), and all other liabilities incurred by or imposed on any of the Indemnified Parties, whenever incurred or imposed (but excluding any liabilities for Impositions imposed by any taxing authority, which liabilities are covered exclusively by Article IV of the Master Lease), arising out of, imposed upon or incurred by or asserted against the Indemnified Parties by reason of:
 - (i) any accident, injury to or death of natural persons or loss of or damage to property occurring on or about the Property;
 - (ii) the Lessor's ownership of the Property;

- (iii) the failure by the Lessor to qualify as a foreign corporation in the State of Hawaii;
- (iv) any use, misuse, nonuse, condition, operation, possession, leasing, subleasing, financing, refinancing, disposition, maintenance or repair of the Property;
- (v) the construction, design, purchase, acceptance, rejection, modification, substitution or condition of the Property, including, without limitation, claims or penalties arising from any violation of law or liability in tort (strict or otherwise);
- (vi) entering into the Operative Agreements or any transaction arising out of the Operative Agreements;
- (vii) the breach by the Construction Manager of any of its representations and warranties, or the failure on the part of the Construction Manager at any time to perform or comply with any of the terms or conditions, in any of the Operative Agreements to which it is a party;
- (viii) the existence or presence at, on, in or under the Property of any Hazardous Substance or the Release of any Hazardous Substance from, at, under or within the Property into the environment (including air, water vapor, surface water, groundwater, drinking water, land (including surface or subsurface), plant, aquatic and animal life);
- (ix) the disturbance, pollution, contamination or interference with any wetland, body of water (whether surface or subsurface), aquifer or watercourse due to any Hazardous Activity or the existence or presence of a Hazardous Condition at the Property;
- $\mbox{\ensuremath{(x)}}$ the occurrence at the Property of any Hazardous Activity or Hazardous Condition;
- (xi) the transportation, use, treatment, storage, disposition, Release or disposal of any Hazardous Substance found in, on, under or at the Property;
- (xii) any personal injury to or death of natural persons or property damage resulting from any Hazardous Activity at the Property, the existence of a Hazardous Condition at the Property or the Release of any Hazardous Substance from, at, under or onto the Property;
- (\mbox{xiii}) any Environmental Violation or alleged violation of Environmental Law at, on, in or under the Property or in connection therewith;
- (\mbox{xiv}) the applications of Parts 4 and 5 of Subtitle B of Title I of ERISA (including, without limitation, any

penalties imposed under Section 501(i) or (1) of ERISA) or any excise taxes, charges or penalties imposed under Section 4975 of the Code, except as a result of the breach by the Lessor or any Affiliate of the Lessor of ERISA or any rule or regulation promulgated thereunder (other than a breach caused by or resulting from an act or omission of the Construction Manager, either of the Ground Lessors, the Trustee, the Holders or any of their respective Affiliates); and

 $(xv)\,$ the demolition of the Existing Improvements or the development and construction of the Building as contemplated by this Agreement;

except in each case, with respect to any Indemnified Party, to the extent such liabilities, obligations, claims, damages, penalties, causes of action, costs or expenses (x) are imposed upon or incurred by or asserted against such Indemnified Party by reason of the matters described in clauses (i) through (xv) above that arise from events commencing solely and entirely after the later of the expiration or earlier termination of this Agreement; (y) solely result from the gross negligence or the willful misconduct by of such Indemnified Party (except, in the case of the Lessor, for the Lessor's failure to qualify as a foreign corporation in the State of Hawaii); or (z) solely result from the breach by such Indemnified Party of Section 905 or 921 of the Indenture or the breach by such Indemnified Party of any other provisions of the Operative Agreements after receipt of notice of such breach and a reasonable opportunity to cure such breach (but only to the extent such Indemnified Party is not otherwise prevented from curing such breach).

- (b) The obligations of the Construction Manager under this subsection shall remain unaffected and continue in full force and effect irrespective of and notwithstanding any action or failure to act or delay on the part of any of the Indemnified Parties to enforce any rights or remedies against the Construction Manager. Such obligations shall remain unaffected irrespective of and notwithstanding any default by any such party in performing any obligation or duty arising under this subsection.
- (c) The obligations of the Construction Manager pursuant to this subsection shall survive the expiration or earlier termination of this Agreement notwithstanding anything herein to the contrary.
- 7.2 Payment; Procedure for Claims. (a) Any amounts which become payable by the Construction Manager under subsection 7.1 shall be paid promptly after demand by the Indemnified Party entitled thereto and, if such payment is not timely paid, shall bear interest at the Lessor Overdue Rate from the date when due to the date of payment.

(b) Promptly after receipt by an Indemnified Party of notice of the commencement or assertion against it of any claim, action or proceeding, such Indemnified Party shall, if a claim in respect thereof is to be made against the Construction Manager under this subsection, notify the Construction Manager thereof; but the omission so to notify the Construction Manager shall not relieve the Construction Manager from any liability which it may have to such Indemnified Party. The Construction Manager, at its sole cost and expense, acting through counsel reasonably acceptable to the Indemnified Party, may contest, resist and defend any claim, action or proceeding with respect to which it shall have received the notice described in the preceding sentence and may compromise or otherwise dispose of the same as the Construction Manager shall deem appropriate, and, upon such assumption by the Construction Manager of such contest and defense, the Construction Manager shall not be obligated to pay any attorneys' fees or other legal costs incurred by or on behalf of the Indemnified Party; provided that the Construction Manager may only assume control of the defense of any such claim to the extent that it has provided to such Indemnified Party written acknowledgement that the Construction Manager is obligated to indemnify such Indemnified Party with respect to such claim; and provided further that the Construction Manager shall not be entitled to assume and control the defense of any such contest, action, suit or proceeding if and to the extent that (i) in the reasonable opinion of such Indemnified Party; (x) such contest, action, suit or proceeding involves the potential imposition of criminal liability or material civil liability (whether or not indemnified hereunder) on such Indemnified Party or (y) the control of such contest, action, suit or proceeding would involve the Construction Manager in a bona fide conflict of interest, (ii) an Event of Default has occurred and is continuing or (iii) such contest, action, suit or proceeding involves matters which extend beyond or are unrelated to the transactions contemplated by the Operative Agreements and if determined adversely could be materially detrimental to the interests of such Indemnified Party notwithstanding indemnification by the Construction Manager, in which case the Indemnified Party will be entitled to assume and take control of the defense thereof at the Construction Manager's expense. The Indemnified Party may participate in a reasonable manner at its own expense and with its own counsel in any proceeding conducted by the Construction Manager in accordance with the foregoing. Each Indemnified Party shall, at the Construction Manager's request, cooperate with the Construction Manager, at no cost or expense to the Indemnified Party, in the defense of any such claim, action or proceeding. If, in the opinion of counsel to any Indemnified Party, there are legal defenses available to such Indemnified Party which are different from or in addition to those available to the Construction Manager, such Indemnified Party shall be permitted to participate in the defense of such claim, action or proceeding with separate counsel and the Construction Manager shall pay the fees and expenses of such separate counsel.

ARTICLE VIII

TNSURANCE

- 8.1 Contractor's Insurance. The Construction Manager shall cause both the Demolition Contractor and the General Contractor, except as otherwise indicated, to purchase and maintain during the terms of the Demolition Contract and the Construction Contract, respectively (except that (x) the insurance referred to in Sections 8.1(b)(iii) and 8.1(d) below shall be carried by the Demolition Contractor for an additional period of one year following completion of work under the Demolition Contract and by the Construction Contract of for an additional period of three years following completion of work under the Construction Contract and (y) either (A) the insurance referred to in Section 8.1(f) below shall contain a three-year discovery period from the date of completion of the demolition of the Existing Improvements or (B) the Demolition Contractor shall carry, and continue to provide evidence of, completed operations coverage with respect to pollution liability insurance for a period of three years from the date of the completion of the demolition of the Existing Improvements), the following insurance coverages:
 - (a) Workers compensation and employers' liability insurance as required by Hawaii law or the laws of other applicable jurisdictions, with statutory limits for workers' compensation insurance and limits for employers' liability insurance of: \$1,000,000 each accident; \$1,000,000 disease policy limits; and \$1,000,000 disease each employee. Further, such policy shall contain a waiver of subrogation in favor of the Developer, the Ground Lessors, the Construction Manager, the Lessor, the Trustee and the Administrative Agent (the "Participants"). Alternatively, the Demolition Contractor and the General Contractor may be "qualified" self-insurers in the State of Hawaii.
 - (b) Commercial general liability insurance on an "occurrence" form, which shall include coverage for (i) premises-operations, (ii) independent contractors, (iii) products and completed operations, (iv) broad form property damage, (v) blanket contractual liability, (vi) personal and advertising injury, (vii) employees named as additional insureds, (viii) demolition, explosion, collapse, (ix) underground property damage, and (x) severability of interest. The limits for such coverage shall be (A) bodily injury and property damage combined single limit: \$1,000,000 per occurrence; \$2,000,000 general aggregate; and \$2,000,000 products-completed operations aggregate; and (B) personal injury limit: \$1,000,000 per occurrence; \$2,000,000 general aggregate; and a self-insured retention of no greater than \$2,000,000. Such policy shall also be specifically endorsed to provide that the policy

shall be considered to be primary insurance which shall apply to any loss or claim before any contribution by any insurance which any of the Participants may have in force; and shall name each of the Participants as an additional insured; and further it shall contain a waiver of subrogation clause with respect to each of the Participants. Such policy shall also contain a provision that the general aggregate limit thereunder applies exclusively to the demolition of the Existing Improvements or the construction of the Building, as the case may be.

- (c) Automobile liability insurance for all owned, non-owned and hired autos and automobile contractual liability, which contains limits of: \$1,000,000 per person/\$1,000,000 per accident-bodily injury; \$1,000,000 per accident-property damage; and basic no fault coverage as required by Hawaii law.
- (d) Umbrella or excess liability insurance which shall be excess over the commercial general liability, automobile liability and employers' liability. Such policy shall be written on an "occurrence" form with a limit of liability of \$10,000,000 during the term of the Demolition Contract and \$50,000,000 during the term of the Construction Contract. Such policy shall also be specifically endorsed to provide that it shall be considered to be part of an unbroken chain of primary and excess liability insurance which shall apply to any loss or claim before any contribution by any insurance which any of the Participants may have in force. Such policy shall also contain a clause specifically naming each of the Participants as an additional insured. Such policy shall also contain a waiver of subrogation clause which states that the insured waives any right of recovery they may have against any of the Participants because of payments made under such policy. If such policy contains an "insured vs. insured" exclusion, the policy must state that it applies only to the "named insured" or "insured persons" not "additional insureds."
- (e) Asbestos abatement liability insurance must be carried by the Demolition Contractor. Such policy shall be written on an "occurrence" form and shall include coverage for (i) operations including removal and disposal, (ii) independent contractors, (iii) completed operations, (iv) broad form property damage, (v) contractual liability, (vi) personal injury or death, (vii) employees named as additional insureds, and (viii) transportation to the disposal site. The limits of such policy shall be \$5,000,000 for bodily injury and property damage combined single limit each occurrence and project aggregate. Such policy shall name FH Center, Inc.; and Lessee shall use best efforts to promptly after the date hereof have the Lessor also named as an additional insured, and the Construction Manager as additional insureds. The policy shall also

contain a waiver of subrogation for FH Center, Inc. and the Construction Manager; and Lessee shall use best efforts to promptly after the date hereof obtain a waiver of subrogation for the Lessor.

- (f) Pollution liability insurance shall be carried by the Demolition Contractor. Such policy shall be written on a claims-made form which shall include coverage for bodily injury and property damage (defined to include loss of use of undamaged property and clean-up or response costs). The limit of such policy shall be \$5,000,000 each loss; \$5,000,000 project aggregate. Any self-insured retention on such policy shall not exceed \$500,000. Each of the Participants shall be a named insured; provided, however, that with respect to coverage for transportation of PCB's, the coverage shall be \$1,000,000 combined single limit bodily injury and property damage insurance and shall name the Developer, FH Center, Inc., the Construction Manager and the Lessor as an additional insured.
- 8.2 Property Insurance. (a) At all times during which work is being performed under, or Disbursement Requests are being made in respect of, the Construction Contract, the Construction Manager shall maintain property insurance in the amount of \$93,510,951 (or, if the Construction Contract is converted to a lump sum contract in accordance with Section 2.4(a)(iii) hereof, the lump sum payable under the Construction Contract) (plus any Project Costs Increases for which the Construction Manager is required to make deposits in accordance with Section 3.2(a)(ii) hereof) on a replacement basis. Such property insurance shall be a builder's risk policy form written on an I.S.O. standard "broad" causes of loss form as filed with the Hawaii Insurance Commissioner or equivalent coverage, including (unless such coverage is not commonly maintained with respect to similar properties or is prohibitively expensive) earthquake, volcanic activity, windstorm and flood, and shall insure against perils of direct physical loss to the work including loss occasioned by fire, lightning, vandalism, malicious mischief and collapse. The policy shall also include coverage for debris removal and reasonable compensation for architect's services and expenses required as a result of such insured loss.
- (b) The Construction Manager shall purchase and maintain boiler and machinery insurance which shall specifically cover such insured objects during installation and until final acceptance by the Construction Manager.
- (c) The builder's risk property insurance will be written with a deductible not to exceed \$500,000 to apply to damage occasioned by all perils of loss covered in the property insurance; provided, however, that the deductible for wind, earthquake and flood losses may exceed \$500,000 but will not exceed 5% of the estimated total completed value of the Building.

- (d) The property insurance maintained by the Construction Manager (or the property insurance maintained by the General Contractor) shall cover building materials for which disbursement has been made and which are (i) not yet installed but intended for use in the construction of the Building and stored on the Land, (ii) stored at other sites or (iii) in transit, other than ocean transit. The insurance will not cover any General Contractor's equipment including cranes or the tools owned by the General Contractor or any subcontractors stored at the job site or any other location.
- 8.3 Coverage. (a) The builder's risk property insurance required by this Agreement shall be maintained with insurance companies that may lawfully conduct insurance business in the State of Hawaii and that have a "Best's" rating of not less than A-/X. If the above-stated rating system is changed or terminated, the A-/X rating will be adjusted by the Construction Manager to a comparable rating, as established by an Officer's Certificate of the Construction Manager. Further, in the event that the rating of the Notes from S&P or Moody's is at any time less than "BBB" or "Baa2", respectively, then the Construction Manager will be required to either (i) maintain the builder's risk property insurance with an insurer which has, or whose parent corporation has, a "claims paying ability" rating from S&P and Moody's of at least "BBB" and "Baa2", respectively, or (ii) provide additional credit support for the obligations of the insurer which provides the builder's risk property insurance in order to ensure that such obligations are equivalent to the obligations of an entity whose "claims paying ability" ratings from S&P and Moody's are at least "BBB" and "Baa2", respectively.
- (b) The Construction Manager shall furnish the Lessor and the Trustee with certificates showing the insurance required under Sections 8.1 and 8.2 to be in effect and naming each of the Participants as an additional insured. All such insurance shall be at the cost and expense of the Construction Manager, the Demolition Contractor or the General Contractor. Such certificates shall include a provision for thirty (30) days' advance written notice by the insurer to the Lessor and the Trustee in the event of cancellation of such insurance. If an Event of Default shall have occurred and is continuing and the Lessor so requests, the Construction Manger shall deliver, or cause to be delivered, to the Lessor copies of all insurance policies required by Sections 8.1 and 8.2.
- (c) All insurance policies required by subsection 8.2 shall include a "New York" or standard form mortgagee endorsement in favor of the Trustee.
- (d) Neither the Lessor nor the Construction Manager shall carry separate insurance concurrent in kind or form or contributing in the event of loss with any insurance required under this Article VIII except that the Construction Manager and the Lessor may carry separate liability insurance so long as

(i) the Construction Manager's insurance is designated as primary and in no event excess or contributory to any insurance the Lessor may have in force which would apply to a loss covered under the Construction Manager's policy and (ii) the policy will not cause the Construction Manager's insurance required under this Article VIII to be subject to a co-insurance exception of any kind.

ARTICLE IX

LESSOR'S RIGHTS; CONSTRUCTION MANAGER'S RIGHTS

- 9.1 Exercise of the Lessor's Rights. Subject to the Excepted Rights and the Excepted Payments, the Lessor and the Construction Manager hereby acknowledge and agree that, subject to and in accordance with Section 909 of the Indenture, the rights and powers of the Lessor under this Agreement have been assigned to the Trustee for the benefit of the Holders. The Construction Manager and the Lessor further acknowledge and agree that the Trustee shall have the right to rely on the Construction Consultant in connection with exercising any such right or power and shall not object to any decision made by the Trustee on the basis of the Trustee's reliance on the advice of the Construction Consultant.
- 9.2 Lease Obligations. Notwithstanding anything contained herein or in the Master Lease to the contrary and to the extent not paid or satisfied out of funds deposited in the Construction Account, prior to the Final Substantial Completion Date, the Construction Manager shall perform or cause to be performed all of Lessee's obligations regarding (a) Additional Charges with respect to the Property pursuant to Section 3.3 of the Master Lease, (b) payment of taxes, utility and related charges pursuant to Article IV of the Master Lease, (c) maintenance and repair of the Property pursuant to Section 10.1 of the Master Lease, (d) the maintenance of title to the Property pursuant to Section 12.1(a) of the Master Lease, (e) compliance with all laws and insurance requirements pursuant to Section 9.1 of the Master Lease and (f) payments by Lessee to Lessor with respect to Lessor's right to cure defaults pursuant to Section 18.1 of the Master Lease; provided, that nothing in this Section shall in any way relieve the Lessee from any of its obligations under the Master Lease.
- 9.3 Lessor's Right to Cure Construction Manager's Defaults. The Lessor, without waiving or releasing any obligation or Event of Default, may (but shall be under no obligation to) remedy any Event of Default for the account of and at the sole cost and expense of the Construction Manager. All out of pocket costs and expenses so incurred (including fees and expenses of counsel), together with interest thereon at the Lessor Overdue Rate from the date on which such sums or expenses

are paid by the Lessor, shall be paid by the Construction Manager to the Lessor on demand.

ARTICLE X

MISCELLANEOUS

10.1 Notices. All notices, requests and demands to or upon the parties hereto to be effective shall be in writing (including by facsimile transmission), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows, or to such address as may be hereafter notified in writing by the parties hereto:

REFIRST, Inc. 1900 Indian Wood Circle Maumee, Ohio 43537 If to the Lessor:

Attention: Vice President - First Hawaiian Bank Transaction

REFIRST, Inc. with a copy to:

1209 Orange Street

Wilmington, Delaware 19801 Attention: Mark A. Ferrucci

If to the

First Hawaiian Bank Construction Manager:

1132 Bishop Street

Suite 2500

Honolulu, Hawaii 96813 Attention: Howard H. Karr

First Fidelity Bank, N.A., Pennsylvania If to the Trustee:

123 South Broad Street

Philadelphia, Pennsylvania 19109 Attention: Corporate Trust Administration

10.2 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Lessor, the Construction Manager, the Trustee, and their respective successors and assigns.

10.3 GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

10.4 Consent To Jurisdiction. (a) Each of the Lessor, the Construction Manager and the Trustee agrees that any

legal suit, action or proceeding arising out of or based upon this Agreement may be instituted in any state or Federal court in New York County, New York, and waives, to the extent it may effectively do so, any objection which it may have now or hereafter to the laying of the venue of any such suit, action or proceeding, and irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding.

- (b) The Lessor hereby (i) irrevocably designates, appoints and empowers CT Corporation System, 1633 Broadway, New York, New York 10019 as its agent to receive for and on its behalf service of process in said County in any such suit, action or proceeding, (ii) agrees that (x) service of any and all process which may be served in any such suit, action or proceeding in any such court may be made by (1) service on such agent, with a copy to the Lessor at the address set forth in Section 10.1 of this Agreement or (2) mailing by registered or certified mail, postage prepaid, return receipt requested, to such address, (y) either of (1) or (2) above shall be deemed in every respect effective service of process upon the Lessor in any such suit, action or proceeding and shall be taken and held to be valid personal service upon the Lessor, whether or not Lessor shall then be doing, or at any time shall have done, business within the State of New York, and (z) any such service of process shall be of the same force and validity as if service were made upon it according to the laws governing the validity and requirements of such service in such State, and waives all claim or error by reason of any such service.
- (c) The Construction Manager hereby (i) irrevocably designates, appoints and empowers CT Corporation System, 1633 Broadway, New York, New York 10019 as its agent to receive for and on its behalf service of process in said County in any such suit, action or proceeding, (ii) agrees that (x) service of any and all process which may be served in any such suit, action or proceeding in any such court may be made by (1) service on such agent, with a copy to the Construction Manager at the address set forth in Section 10.1 of this Agreement or (2) mailing by registered or certified mail, postage prepaid, return receipt requested, to such address, (y) either of (1) or (2) above shall be deemed in every respect effective service of process upon the Construction Manager in any such suit, action or proceeding and shall be taken and held to be valid personal service upon the Construction Manager, whether or not the Construction Manager shall then be doing, or at any time shall have done, business within the State of New York, and (z) any such service of process shall be of the same force and validity as if service were made upon it according to the laws governing the validity and requirements of such service in such State, and waives all claim or error by reason of any such service.
- (d) The Lessor and the Construction Manager each agree to take all action as may be necessary to continue the designation and appointment of the above-specified agents (or a

replacement agent) so that each of the Lessor and the Construction Manager shall at all times have an agent for service of process for the above purpose in the County designated above in this Section.

- (e) Notwithstanding the foregoing, nothing contained herein shall affect the right of any party hereto to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against any other party hereto in any other jurisdiction in which such other party may be subject to suit. Each of the Lessor, the Construction Manager and the Trustee agrees that final judgment (i.e., no longer appealable) in any such action or proceeding shall be conclusive and, to the extent permitted by applicable law, enforceable in any other jurisdiction by suit thereon, and that such party shall institute no proceedings or take any action inconsistent with the intent of the parties that such legal suit, action or proceeding arising out of or based upon this Agreement, shall have the venue and governing law set forth in this Agreement.
- $10.5\,$ Amendments and Waivers. The Lessor, the Construction Manager and the Trustee may from time to time, enter into written amendments, supplements or modifications hereto.
- 10.6 Counterparts. This Agreement may be executed on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument.
- 10.7 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- 10.8 Integration. This Agreement, the Participation Agreement and the Leased Improvements Construction Agreement represent the entire agreement of the Lessor, the Construction Manager and the Trustee with respect to the demolition of the Existing Improvements and the development and construction of the Building on the Land, and there are no promises, undertakings, representations or warranties by the Lessor, the Construction Manager or the Trustee relative to the subject matter hereof which are not expressly set forth or referred to herein or therein.
- 10.9 Headings and Table of Contents. The headings and table of contents contained in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

- 10.10 Security Agreement and Financing Statement Under Uniform Commercial Code. This Agreement shall constitute a security agreement and financing statement under the Uniform Commercial Code, as enacted in the State of New York; and the Construction Manager, as debtor, hereby grants to the Lessor, as secured party, a security interest in any or all of the Project Contracts. The Construction Manager and any permitted assignee of the Construction Manager will assist in the preparation of and execute from time to time, alone or with the Lessor, and deliver, file and record any financing or continuation statements, mortgages or other instruments, and do such further acts as the Lessor may request to establish, maintain and perfect the security interest of the Lessor in the Project Contracts and the Construction Account, and all renewals, additions, substitutions, 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 Agreement shall be deemed commercially reasonable within the meaning of the Uniform Commercial Code, as enacted in the State of New York.
- 10.11 Directions of the Lessor. The Lessor hereby acknowledges and agrees that each of the Construction Manager, the Construction Consultant and the Trustee may, in the absence of bad faith on their respective parts, conclusively rely upon, and in all events shall be fully protected in relying upon, any document, instrument, certificate, opinion or direction furnished to any of them by the Administrative Agent and otherwise conforming to the requirements of any applicable Operative Agreement, and the Construction Manager, the Trustee and the Construction Consultant may treat any such document, instrument, certificate, opinion or direction as the document, instrument, certificate, opinion or direction of the Lessor.
- 10.12 Liabilities and Rights of the Trustee. The Trustee is entering into this Agreement in its capacity as Trustee under the Indenture, and all of the rights, immunities, indemnities, and protections of the Trustee set forth in Article Six under the Indenture shall inure to the benefit of the Trustee hereunder. In all events, the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.
- 10.13 Obligations Absolute and Unconditional. The Construction Manager's obligations to make payments under this Agreement shall be absolute and unconditional and such payments shall be made without any abatement, suspension, deferment, reduction, setoff, counterclaim or defense whatsoever.

IN WITNESS WHEREOF, the parties hereto have caused this Construction Management, Escrow and Development Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

REFIRST, INC.

By: /s/ Paul J. Bishop

Name: Paul J. Bishop Title: President

FIRST HAWAIIAN BANK

By: /s/ Thomas P. Huber

Name: Thomas P. Huber Title: Senior Vice President

FIRST FIDELITY BANK, N.A., PENNSYLVANIA

By: /s/ John H. Clapham

Name: John H. Clapham Title: First Vice President

48

54 Schedule 1

Default Amount

Payment Date	Amount
June 1, 1994 December 1, 1994 June 1, 1995 December 1, 1995 June 1, 1996 December 1, 1996	194,000,000.00 193,862,187.50 193,862,187.50 193,724,375.00 193,724,375.00 193,699,875.00

Schedule 2

Essential Design Elements

The size of the lot area (55,775 square feet)

The height of the Building (428 feet, including a 35-foot mechanical penthouse)

The number of office floors (27)

The gross building area (418,313 square feet), plus or minus a variance of 5%

The rentable building area (380,000 square feet), plus or minus a variance of 5%.

700 parking spaces, plus or minus a variance of 5%

The size of the average typical floor plate is 14,066 gross square feet at the 16th floor. Note: Because of the configuration of the Building, the floor plate varies from floor to floor

The configuration of the exterior building envelope, including the tower and three-story podium $% \left(1\right) =\left(1\right) +\left(1\right) +\left($

The area of the below-grade structure (278,875 square feet), plus or minus a variance of $5\%\,$

The size of the First Hawaiian Banking Hall and Contemporary Art Museum at the ground floor (10,000 square feet), plus or minus a variance of 5%

The size and configuration of the public open space at grade (24,000 square feet), plus or minus a variance of $5\%\,$

The Bankers Club Private Dining facility

The size of the Health Club facility (5,451 gross square feet), plus or minus a variance of 5%

the vertical transportation configuration (3 garage, 5 low-rise, 1 service, 1 main branch and 4 outside high-rise elevators)

SCHEDULE 4 OMITTED

SCHEDULE S

First Hawaiian Center Consolidated Cashflow November 16, 1993

			Line Item Description	11/16/93 Budget
1.0 2.0 3.0	Demoli		uction g Features	\$93,510,951 \$5,000,000
0.0	3.1 3.2 3.3 3.4	Bankers Athletic	Club F F & E C Club F F & E Space F F & E	2,750,000 793,000 60,000 481,000
		_	Special Features Subtotal	\$4,084,000
4.0	Tenant 4.1 4.2 4.3	Base Bui	ent Allowance/Incentives ilding Tenant Improvements ves (In Excess of Allowance)	14,779,000 2,986,000
		4.1.1 4.1.2 4.1.3 4.1.4	Main Branch Staff Dining Executive Floors Administrative Offices	2,333,000 1,100,000 3,360,000 1,269,000
			Tenant Improvement Allowance/Incentive Subtotal	\$25,827,000
5.0	Soft Co			
	5.1	Due Dili 5.1.1 5.1.2	igence Soils Analysis Topographic & ALTA Surveys	74,000 10,000
	5.2	Permits 5.2.1 5.2.2 5.2.3	and Fees Demolition/Building Permit Water Fees Sewer Fees	144,000 200,000 150,000
	5.3	Design F 5.3.1 5.3.2 5.3.3 5.3.4 5.3.5 5.3.6 5.3.7 5.3.8 5.3.9 5.3.10 5.3.11 5.3.12 5.3.13 5.3.14 5.3.15 5.3.15		4,923,000 466,000 42,000 172,000 20,000 100,000 115,000 16,000 145,000 56,000 8,000 150,000 56,000 121,000 38,000 82,000 45,000 46,500

		5.3.20	Kitchen Consult	ant		50,500
		5.3.21	Specialty Glass	s Consultant		178,000
		5.3.22	Stone Consultar	nts		106,000
		5.3.23	Electronic Cons	sultant		47,000
		5.3.24	Special Buildir			
			5.3.24.1	Bankers Center		300,000
			5.3.24.2	Health Club		82,000
			5.3.24.3	Banking Hall/Main Branch (2nd & 3rd)		355,000
			5.3.24.4	FHB Staff Dining		171,000
			5.3.24.5	FHB Administrative Offices		66,000
			Consultant Rein	nbursables		1,300,000
	5.4		and Inspection			420,000
	5.5	Marketi	•			
		5.5.1	Public Relatior	1S		150,000
		5.5.2	Scale Model			176,000
		5.5.3	Architectural F			30,000
		5.5.4	Market Analysis			214,000
		5.5.5	Collateral			132,000
		5.5.6		ning/Space Planning		112,000
		5.5.7	Tenant Work Let			56,000
		5.5.8		shop Street" Book		150,000
	5.6		Administration			
		5.6.1	Photography			40,000
		5.6.2	Legal	5 5131		
			5.6.2.1	Due Diligence		50,000
			5.6.2.2	Contracts, Gen'l Conditions & Sec. 106		600,000
			5.6.2.3	Tenant Work Letter Legal		60,000
		5.6.3	Appraisals			40,000
		5.6.4	Accounting	. Wananananan		30,000
		5.6.5	TMC Development			9,999,820
		5.6.6	TMC Reimbursabl			430,000
	F 7	5.6.7	FHB Reimbursabl	ies		240,000
	5.7 5.8	Insuran				1,240,000
	5.8	Propert	y Taxes		Coft Coots Cubtotal	2,100,000
6.0	Financ	ing Costs			Soft Costs Subtotal	\$26,162,820
0.0	6.1	ing Costs	nsurance			150 000
	6.2		.iisur ance			150,000
	6.3	Legal Account	ina			3,000,000
	6.4		tion Fee			30,000
	6.5	Moody's				1,940,000 74,000
	6.6	,	d & Poor's Fee			92,000
	6.7	Printin				35,000
	6.8	Trustee				30,000
	6.9	Reimbur				30,000
	8.10		ince Tax			38,000
	8.11		iction Consultant	-		216,000
	8.12		Agencies Annual			39,888
	8.13		e's Annual Fees	. 555		55,704
	8.14		e Recordation Ta	ax		360,000
		9 4 9	,	-	Financing Costs Subtotal	\$6,090,592
					y	, ,

7.0	Project Contingency Total Project Costs		\$6,135,444 \$166,810,807
8.0	Projected Cumulative Outflow Actual Cumulative Outflow Interest		\$166,832,193
0.0	8.1 Interest: Purchase Stripped Treasuries 8.2 Projected Swap Income	Interest Expense Subtotal	37,748,000 (10,580,193) \$27,167,807
	Grand Total Project Costs	·	\$193,978,614
	Projected Cumulative Outflow Actual Cumulative Outflow		\$194,000,000

60

EXHIBIT A

First Hawaiian Center

Building Construction Categories

Division 1	GENERAL CONDITIONS	7,944,725
Division 2 02050 02140 02150 02200 02280 02400 02501 02511 02515 02517 02718 02722 02810 02900	SITEWORK Demolition and Removal Dewatering Permanent Prestressed Tock Anchors Earthwork (including shoring system) Soil Treatment and Subterranean Termite Control Storm Drainage System Paving and Surfacing Pavement Marking and Signage Concrete Sidewalks, Curbs and Gutters Precast Concrete Pavers Stone Paving/Feature Stone Water System Sanitary Sewer System Landscape Irrigation System Landscaping	10,452,645
Division 3 03100 03200 03250 03300 03345	CONCRETE Concrete Formwork Concrete Reinforcement Waterstop Cast in Place Concrete Cementitious Crystalline Waterproofing	16,344,068
Division 4 04220 04400 04401 04402	MASONRY Concrete Masonry Unit Exterior Hand Set Stone Cladding Interior Stone Cladding Stone Counters	1,506,830
Division 5 05120 05300 05500 05510 05700	METALS Structural Steel Metal Decking Miscellaneous Metals Metal Stairs Ornamental Metals/Metal Ceilings	9,644,049
Division 6 06200 06400 06600	WOOD AND PLASTICS Carpentry Architectural Woodwork Fiberglass Reinforced Fabrication	158,131

Division 7	THERMAL & MOISTURE	2,723,481
07110	Exterior Concrete Elastomeric Waterproofing	
07120	Fluid Applied Membrane Waterproofing	
07136	Composits Bentonite Waterproofing System	
07200 07253	Building Insulation	
07253 07271	Sprayed-on Fireproofing Firestops and Smokeseals	
07552	Fluid Applied Protected Membrane Roofing	
07575	Fluid Applied Membranes	
07579	Penetrating Sealers for Concrete	
07600	Sheet Metal Work	
07700	Roof Specialties and Accessories	
07900	Joint Sealers	
07910	Miscellaneous Joint Fillers	
Division 8	DOORS AND WINDOWS	14,958,466
08100	Metal Doors and Frames	14, 930, 400
08200	Wood Doors	
08300	Access Doors	
08330	Roll Up doors	
08340	Roll Up Grilles	
08411	Glazed Entrances and Storefronts	
08700	Finish Hardware	
08800	Miscellaneous Glass and Glazing	
08900	Glazed Curtainwall (Includes Assoc. Stone Cladding)	
08910	Art Glass Wall	
Division 9	FINISHES	7,243,326
09200	Lathing and Plastering	.,=,.=.
09250	Gypsum Drywall	
09310	Tile Work	
09510	Acoustic Panel Ceilings	
09600	Stone Flooring	
09660	Resilient Tile Flooring	
09685	Carpeting (Tackless)	
09900	Painting and Finishing	
Division 10	SPECIALTIES	783,464
10160	Ceiling Mounted Toilet Partitions	
10200	Aluminum Louvers	
10400	Identifying Devices	
10522	Fire Extinguishers and Cabinets	
10800	Toilet Accessories	
Division 11	EOUIPMENT	65,454
11012	Window Washing Equipment	03,434
11150	Parking Control Equipment	
11160	Loading Dock Equipment	
	3	
Division 13	SPECIAL CONSTRUCTION	520,657
13150	Electrical: Fountains and Waterways	
13151	Plumbing: Fountains and Waterways	
Division 14	CONVEYING SYSTEM	4,185,088
		4, 100, 000
14100	Dumb Waiter	

14200	Elevators (Include Cab Finish)	
Division 15 15060 15160 15240 15250 15320 15330 15400 15440 15611 15655 15680 15710 15720 15850 15870 15880	MECHANICAL Piping and Accessories (Includes valves) Pumps Sound Vibration and Siesmis Control Mechanical Insulation Fire Pump System Wet Pipe Sprinkler & Dry Standpipe System Plumbing Plumbing Plumbing Fixtures Fuel System Packaged Cooling System Water Chillers Cooling Towers Water Treatment Air Handling Equipment Dampers Air Distribution	6,421,928
Section 16 16050 16400 16500 16612 16720	ELECTRICAL Electrical: Basic Materials and Methods Electrical: Service and Distribution Luminaires Diesel Engine Standby Power Plant Fire Alarm and Detection System	3,860,595
Division 17 17200 17200 17200 17200 17200	SECURITY Point Monitoring & Access Control System (PMAC) Closed Circuit Television (CCTV) Intercom Console Construction Wires & Cables	347,104
Division 18 18050	BUILDING AUTOMATION SYSTEM Building Automation System	842,968
	PERFORMANCE BOND	541,483
	CONTRACTOR'S FEE	4,428,080
	G.I. TAX @ 4.17%	538,508
	TOTAL	93,510,951

SCHEDULE 6 OMITTED

SCHEDULE 7 OMITTED

SCHEDULE 8 OMITTED

SCHEDULE 9 OMITTED

67 SCHEDULE 10

Termination Amount

Payment Date	Amount
June 1, 1994	194,000,000.00
December 1, 1994	193,862,187.50
June 1, 1995	193,862,187.50
December 1, 1995	193,724,375.00
June 1, 1996	193,724,375.00
December 1, 1996	193, 699, 875.00

SCHEDULE 11 OMITTED

SCHEDULE 12 OMITTED

SCHEDULE 13 Assumed Earnings on Construction Account

January 1, 1994 February 1, 1994 March 1, 1994 April 1, 1994 May 1, 1994 June 1, 1994 July 1, 1994 August 1, 1994 September 1, 1994 October 1, 1994 November 1, 1994 December 1, 1995 February 1, 1995 February 1, 1995 March 1, 1995 May 1, 1995 June 1, 1995 July 1, 1995 August 1, 1995 September 1, 1995 October 1, 1995 November 1, 1995 November 1, 1995 December 1, 1995 January 1, 1996 February 1, 1996 February 1, 1996	\$490,854 483,848 470,923 465,996 459,198 453,386 447,672 439,165 431,873 423,160 414,416 403,812 393,204 381,711 367,434 355,044 342,576 327,504 313,291 296,096 280,060 265,688 251,204 236,768 223,868 223,868 229,866
April 1, 1995	355,044
·	
	313,291
August 1, 1995	296,096
September 1, 1995	280,060
October 1, 1995	265,688
,	,
·	•
March 1, 1996	197,997
April 1, 1996	186,838
May 1, 1996	173,529
June 1, 1996	159,431
July 1, 1996	140,783
August 1, 1996	120,639
September 1, 1996	99,037
October 1, 1996	78,321
November 1, 1996	57, 486
December 1, 1996	39,521

SCHEDULE 14 OMITTED

EXHIBIT 10(v)

GROUND LEASE
DATED AS OF DECEMBER 1, 1993
AMONG FIRST HAWAIIAN CENTER LIMITED PARTNERSHIP,
FH CENTER, INC. AND REFIRST, INC.

GROUND LEASE

DATED AS OF DECEMBER 1, 1993

BY AND BETWEEN

FIRST HAWAIIAN CENTER LIMITED PARTNERSHIP A HAWAII LIMITED PARTNERSHIP,

FH CENTER, INC.,

A HAWAII CORPORATION,

COLLECTIVELY, GROUND LESSOR

AND

REFIRST, INC.

A DELAWARE CORPORATION,

AS GROUND LESSEE.

FIRST HAWAIIAN CENTER

HONOLULU, HAWAII

Section		Page
	ARTICLE I	
	DEFINITIONS	
Section 1.01. Section 1.02. Section 1.03. Section 1.04. Section 1.05. Section 1.06. Section 1.07. Section 1.08. Section 1.09. Section 1.10. Section 1.11. Section 1.12. Section 1.13. Section 1.14. Section 1.16. Section 1.16.	Leasehold Term	4
00001011 11111	ARTICLE II	Ü
	GRANTING CLAUSE	
	Grant	
	ARTICLE III	
	RENTAL PAYMENTS	
Section 3.01. Section 3.02. Section 3.03.	Basic Ground Lease Rent	

Section			Page
		ARTICLE IV	
		CONDEMNATION AND CASUALTY	
	Section 4.01. Section 4.02. Section 4.03.	Termination Upon a Casualty or Condemnation	7 7 7
		ARTICLE V	
		USE OF SITE	
	Section 5.01.	Use of Site	8
		ARTICLE VI	
		IMPROVEMENTS	
	Section 6.01. Section 6.02. Section 6.03.	Free From Liens	8 9
		ARTICLE VII	
		INSURANCE	
	Section 7.01. Section 7.02. Section 7.03. Section 7.04.	Reconstruction Obligation	9 9 9
		ARTICLE VIII	
		SURRENDER	

ii

Section

		Page
	ARTICLE IX	
	ASSIGNMENT; SUBLETTING	
Section 9.01. Section 9.02.	,	10 11
	ARTICLE X	
	FINANCING	
Section 10.01. Section 10.02.	The Ground Lessee's Right to Obtain Financing	
Section 10.03.	Leasehold Mortgage; No Assumption By Noteholders	12
Section 10.04.	Notification of the Ground Lessor	13
Section 10.05. Section 10.06.	New Lease with Noteholders upon	
Section 10.07.	Termination	
	ARTICLE XI	
	REMEDIES	
Section 11.02. Section 11.03. Section 11.04.		17
	ARTICLE XII	
	WARRANTIES	
Section 12.01. Section 12.02. Section 12.03.	Indemnity	18

Section

		Pag -
	ARTICLE XIII	
	NET LEASE	
	NET LEASE	
Section 13.01.	Net Lease	18
	ARTICLE XIV	
	LIMITED LIABILITY	
Section 14.01.	Limited Liability	18
	ARTICLE XV	
	MISCELLANEOUS	
Section 15.01.	No Agency or Partnership	19
Section 15.02.	Estoppel Certificates	19
Section 15.03.	Headings	20
Section 15.04.	Notice	20
Section 15.05.	Governing Law	20
Section 15.06. Section 15.07.	Severability of Provisions	20 20
Section 15.07.	Multiple Counterparts	20
Section 15.00.	Successors and Assigns	20
Section 15.00.	Attorney's Fees	21
Section 15.11.	Attornment and Non-Disturbance	
	Agreements	21
Section 15.12.	Non-Merger	21
Section 15.13.	Inspection	21
Section 15.14.	Further Assurances and Cooperation	22
Exhibit A:	Portion of Site owned by the Partners	ship
Exhibit B:	Portion of Site owned by Cer	nter
Exhibit C:	Permitted Except	ions

iv

7

Section Page

Exhibit D: Restated Ground Lease

٧

Ground Lease (this "Ground Lease") dated as of December 1, 1993, by and between FH CENTER LIMITED PARTNERSHIP, a Hawaii limited partnership (the "Partnership"), and FIRST HAWAIIAN CENTER, INC., a Hawaii corporation ("Center" and together with the Partnership being collectively referred to as the "Ground Lessor"), as ground lessors, and REFIRST, INC., a Delaware corporation (the "Ground Lessee), as ground lessee.

WHEREAS, the Partnership is the owner of the property described in Exhibit A attached hereto and made a part hereof, and Center is the owner of the property described in Exhibit B attached hereto and made a part hereof (collectively, the "Site"); and

WHEREAS, this lease of the Site is being made by the Ground Lessor to the Ground Lessee (a) subject to a reservation by the Ground Lessor of all buildings and other improvements existing on the Site as of the date hereof (the "Existing Improvements"), (b) to permit Ground Lessee to cause the demolition and removal of the Existing Improvements and the development on the Site of an office building to be known as "First Hawaiian Center" (the "Building"), (c) to permit Ground Lessee to enter into a further sublease of the Site and a lease of the Building with First Hawaiian Bank, a Hawaii corporation ("FHB"), (d) to enable FHB to finance the demolition of the existing buildings on the Site and the construction of the Building by issuing certain notes (the "Notes") pursuant to an indenture (the "Indenture") between FHB and the indenture trustee (the "Trustee") and (e) to enable FHB to secure repayment of the Notes pursuant to a real property mortgage, financing statement and security agreement (the "Mortgage"), from FHB to the Trustee (the "Mortgagee") covering this Lease and FHB's interest in the Building; and

WHEREAS, the Ground Lessee desires to lease the Site from the Ground Lessor and the Ground Lessor agrees to lease the Site to the Ground Lessee, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Ground Lessor and the Ground Lessee, intending to be legally bound hereby, agree as follows:

ARTICLE I

Definitions

SECTION 1.01. GENERAL DEFINITIONS. For the purposes of this Ground Lease, capitalized terms used in this Ground Lease and not otherwise defined in this Article I or otherwise in this Ground Lease shall have the meanings assigned to them in the Participation Agreement, dated as of November 19, 1993 by and among FHB, Ground Lessee, Partnership, Center, and the Trustee (the "Participation Agreement"). Unless otherwise indicated, references in this Ground Lease to articles, sections, paragraphs, clauses, appendices, schedules and exhibits are to the same contained in or attached to this Ground Lease.

SECTION 1.02. ADDITIONAL RENTAL. "Additional Rental" means all payments due from the Ground Lessee to the Ground Lessor under this Ground Lease other than under Section 3.03 and other than Basic Ground Lease Rent.

SECTION 1.03. BASIC GROUND LEASE RENT. "Basic Ground Lease Rent" shall have the meaning assigned in Section 3.01.

SECTION 1.04. CLOSING DATE. "Closing Date" means December 1, 1993.

SECTION 1.05. DEFAULT RATE. "Default Rate" shall have the meaning assigned in Section 3.03. $\,$

SECTION 1.06. GROUND LEASE RENT. "Ground Lease Rent" means all payments of Basic Ground Lease Rent and Additional Rental due from the Ground Lessee to the Ground Lessor under the terms and provisions of this Ground Lease.

SECTION 1.07. GROUND LEASE TERM. "Ground Lease Term" means the entire term of this Ground Lease, which shall begin on the Closing Date and end on the date which is the 99th anniversary of the day prior to the Closing Date, which date is November 30, 2092, subject to the extension or earlier termination of this Ground Lease in accordance with the provisions hereof.

SECTION 1.08. GROUND LEASE YEAR. "Ground Lease Year" means, with respect to the first Ground Lease Year, the period commencing on the Closing Date and ending on the last day of the calendar year in which the Closing Date occurs, and, with respect to each subsequent Ground Lease Year, each successive calendar year thereafter (or, with respect to the last Ground Lease Year, the part thereof).

SECTION 1.09. GROUND LESSEE'S DEFAULT. "Ground Lessee's Default" means the occurrence of any one or more of the following events:

- (a) default by the Ground Lessee in the payment of any Ground Lease Rent as and when the same shall be due and payable, and the failure of the Ground Lessee to cure such default within 30 days after delivery of a written notice from the Ground Lessor to the Ground Lessee specifying such default and requesting that it be remedied:
- (b) default by the Ground Lessee in the observance or performance of any of the other covenants, agreements, or obligations to be performed by the Ground Lessee under the terms and provisions of this Ground Lease, and the failure of the Ground Lessee to cure such default within 60 days after delivery of written notice from the Ground Lessor to the Ground Lessee specifying such default and requesting that it be remedied; provided, that if such default is capable of being remedied and is not so remedied within such 60-day period, no Ground Lessee's Default shall be deemed to have occurred if the Ground Lessee or its sublessee commences actions to remedy such default within such 60-day period and thereafter diligently and continuously pursues such remedial actions until such default is cured; and
- (c) the commencement by the Ground Lessee of a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under bankruptcy, insolvency or other similar law now or hereafter in effect, or the seeking of the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or the consent by the Ground Lessee to any such relief or to the appointment of or taking of possession by any such official in an involuntary case or other proceeding commenced against it, or the making of a general assignment for the benefit of creditors, or the taking of any action to authorize any of the foregoing; or a decree or order for relief being entered by a court having jurisdiction over the Ground Lessee in any involuntary case under any bankruptcy, insolvency or other similar law now or hereafter in effect or appointing a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of property, or ordering the winding-up or liquidation of the affairs of either of them, and such decree or order shall remain undismissed or unstayed for a period of 180 consecutive days;

provided, however, that (i) none of the foregoing events or conditions set forth in clause (a) or in this Section 1.09 shall constitute a Ground Lessee's Default if such event or condition results from any failure on the part of the Ground Lessor or FHB to perform or observe or have performed or observed any of their respective

covenants, conditions, agreements, obligations, representations or warranties required by them to be performed under the Ground Lease or the Lease, or results from any default by the Ground Lessor or FHB under any of the Operative Agreements, and (ii) none of the foregoing events or conditions set forth in clause (a) or (b) in this Section 1.09 shall constitute a Ground Lessee's Default so long as any Ground Lessor's Default has occurred and is continuing under this Ground Lease, any Lease Default exists or any Lease Event of Default has occurred and is continuing, or any default by the Ground Lessor or FHB of their respective obligations under the other Operative Agreements has occurred or is continuing (it being understood and agreed that the Ground Lessee and any assignee of the Ground Lessee shall not be required to cure or remedy any such event occurring or condition caused by the Ground Lessor or FHB existing on or prior to the Lease Conversion Date).

SECTION 1.10. GROUND LESSOR'S DEFAULT. "Ground Lessor's Default" means a default by the Ground Lessor in the observance or performance of any of the covenants, agreements or obligations to be performed by the Ground Lessor hereunder and the failure of the Ground Lessor to cure such default within 60 days after delivery of a written notice from the Ground Lessee to the Ground Lessor specifying such default and requesting that it be remedied provided, that if such default is capable of being remedied but is not capable of being remedied within such 60-day period, no Ground Lessor's Default shall be deemed to have occurred if the Ground Lessor commences actions to remedy such default within such 60-day period and thereafter diligently and continuously pursues such remedial actions until such default is cured.

SECTION 1.11. LEASE. "Lease" means the Lease Agreement of even date herewith between Ground Lessee, as lessor, and FHB, as lessee, leasing the Building and subleasing the Site, substantially in the form of Exhibit C to the Participation Agreement, as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof.

SECTION 1.12. LEASEHOLD MORTGAGE. "Leasehold Mortgage" shall have the meaning assigned in Section 11.03.

SECTION 1.13. LEASEHOLD TERM. "LEASE TERM" SHALL MEAN THE TERM OF THE LEASE.

SECTION 1.14. LEASEHOLD MORTGAGEE. "Leasehold Mortgagee" shall have the meaning assigned in Section 11.03.

SECTION 1.15. LEASE CONVERSION DATE. "Lease Conversion Date" shall mean the earlier to occur of (i) the expiration of the then current term or renewal term of the Lease or the earlier termination of the Lease other than pursuant

to Article XVII of the Lease and (ii) after the occurrence of a Lease Event of Default and a termination of the Lease by the Ground Lessee or the Trustee or any other Leasehold Mortgagee, the earlier to occur of (w) the date which, but for such termination, would otherwise be the date of the event set forth in the previous clause (i), (x) the foreclosure by the Trustee or any other Leasehold Mortgagee on the Ground Lessee's interest in the Building and the Site, (y) the transfer of the Site by deed-in-lieu of foreclosure, or (z) any refinancing or restructuring of the debt evidenced by the Notes.

SECTION 1.16. PERMITTED EXCEPTIONS. "Permitted Exceptions" means those exceptions to title to the Site listed on Exhibit C attached hereto and made a part hereof.

SECTION 1.17. REAL ESTATE TAXES. "Real Estate Taxes" means any and all ad valorem taxes, special assessments and other governmental charges of any kind or character which may, at any time during the Ground Lease Term, be assessed against the Site and the Building or any part thereof (including any taxes, assessments or other governmental charges which may be levied or assessed against the Site and the Building or any part thereof in the future, whether similar or dissimilar to currently existing ad valorem taxes, assessments and governmental charges including, but not limited to, taxes assessed against the Ground Lessor relating to the receipt of Ground Lease Rent described below) by any state, city, county or municipal taxing authority having jurisdiction thereof; in all cases inclusive of penalties and interest. The term "Real Estate Taxes" shall not include any income taxes imposed against the Ground Lessor or against the Ground Lease Rent under any current or future laws of the United States, any state or any political subdivision or taxing authority thereof; any sales, excise, use or similar taxes payable by the Ground Lessor; any corporate franchise tax or similar tax or fee payable by the Ground Lessor, nor any other tax or charge payable by the Ground Lessor unless and to the extent that such tax or taxes are a substitute, in whole or in part, for the imposition of current Real Estate Taxes and otherwise fully comply with the definition thereof.

ARTICLE II

GRANTING CLAUSE

SECTION 2.01. GRANT. In consideration of the terms, covenants and conditions set forth in this Ground Lease, the Ground Lessor does hereby lease, demise and let unto the Ground Lessee, and the Ground Lessee does hereby take and lease from the Ground Lessor, the Site and all easements and rights that are appurtenant to the fee interest in the Site (the "Easements"), TO HAVE AND TO HOLD the Site and all such easements and rights that are appurtenant to the fee

interest in the Site, for the Ground Lease Term, subject to the Permitted Exceptions. It is the express intention of the Ground Lessor and the Ground Lessee that: (x) this Ground Lease and the Site, which is the subject of this Ground Lease, does not include the Existing Improvements, inasmuch as title to the Existing Improvements is being retained by the Ground Lessor.

SECTION 2.02. RESTATED GROUND LEASE PROVISIONS. From and after the Lease Conversion Date, the terms and conditions of this Ground Lease shall be and become the terms and conditions set forth in Exhibit D attached hereto and made a part hereof (the "Restated Ground Lease"). It is the intent of the parties that on the Lease Conversion Date this Ground Lease shall be restated in its entirety and the provisions of Exhibit D shall take effect and constitute the Ground Lease in substitution for the terms and conditions of the Ground Lease in effect from the Closing Date until the Lease Conversion Date.

ARTICLE III

RENTAL PAYMENTS

SECTION 3.01. BASIC GROUND LEASE RENT. Basic Rent. The Ground Lessee hereby covenants and agrees to pay rent ("Basic Ground Lease Rent"), over and above all other charges herein set forth, as follows:

- (a) No Rent During Term of the Lease. Prior to the Lease Conversion Date, Ground Lessee shall pay no rent for the Site.
- (b) After Termination of the Lease. From and after the Lease Conversion Date, the annual rental payable under this Ground Lease from and after such Lease Conversion Date shall be as set forth in the Restated Ground Lease.

SECTION 3.02. INTEREST. Upon the occurrence of a Ground Lessee's Default under Section 1.09(a) (except for nonpayment of Additional Rental), the Ground Lessor shall be entitled to collect from the Ground Lessee interest on the unpaid Ground Lease Rent from the date when due until the date paid at a rate per annum equal to the Lessor Overdue Rate (the "Default Rate"). In the event that any Additional Rental is not paid when due and remains unpaid for a period of ten Business Days after written notice of such failure to pay is delivered to the Ground Lessee, the Ground Lessor shall be entitled to collect from the Ground Lessee interest thereon from the date such written notice is delivered to Ground Lessee until the date paid at a rate per annum equal to the Default Rate.

SECTION 3.03. METHOD OF PAYMENT. Each payment of Ground Lease Rent shall be made in immediately available funds no later than 12:00 noon local time at the place of receipt and shall be paid to the Ground Lessor at its address specified in the Participation Agreement or at any other address so given to the Ground Lessee in the manner provided in Section 17.04. Nonetheless, the Ground Lessee shall be accorded a one-day grace period should it fail to cause Ground Lease Rent to be received as described in the immediately preceding sentence if such failure could not have been reasonably anticipated and corrected. Any payment that is due on either a day that is not a Business Day or a day on which banks in the place of receipt are not generally open for business may instead be made on the next succeeding day that is both a Business Day and a day on which banks in the place of receipt are generally open for business; and, notwithstanding Section 3.02, no interest shall accrue for the intervening period, nor in respect of any payments made in compliance with the above-described one-day grace period.

ARTICLE IV

CONDEMNATION AND CASUALTY

SECTION 4.01. TERMINATION UPON A CASUALTY OR CONDEMNATION. If, during the Ground Lease Term and when the Lease is in effect, the Ground Lessee has received written notice from FHB that FHB has declared a Significant Casualty or a Significant Condemnation, and the Ground Lessee has given written notice to the Ground Lessor that the Ground Lessee intends to terminate this Ground Lease, this Ground Lease shall terminate on the Lease Conversion Date, and all the obligations of Ground Lessee hereunder, including its obligation to pay Ground Lease Rent, arising after the occurrence of such Significant Casualty or Significant Condemnation shall terminate.

SECTION 4.02. APPLICATION OF PAYMENT. Any amount received at any time by the Ground Lessor or the Ground Lessee from any Governmental Authority or other Person as a result of any Condemnation or Casualty shall be applied in accordance with the provisions of the Lease (and shall be paid over by the recipient to the Persons entitled thereto under the Lease).

SECTION 4.03. TEMPORARY TAKING. If all or only a part of the Site is taken for any public or quasi-public use or purpose by virtue of eminent domain or by private sale in lieu thereof (which taking does not constitute a Significant Casualty or a Significant Condemnation) for a definite or indefinite period which is less than the then unexpired portion of the Ground Lease Term, this Ground Lease shall remain in full force and effect and the Basic Ground Lease Rent payable to the Ground Lessor hereunder, if any, shall not be reduced. Any amount received at any time by the

Ground Lessor or the Ground Lessee from any Governmental Authority or other Person as a result of the occurrence of any such event shall be applied (i) in accordance with the provisions of the Lease (and shall be paid over by the recipient to the Persons entitled thereto under the Lease) if such event occurs on or prior to the Lease Conversion Date or (ii) in accordance with the Restated Ground Lease if such event occurs after the Lease Conversion Date.

ARTICLE V

USE OF SITE

SECTION 5.01. USE OF SITE. The Ground Lessee may, during the Lease Term, use the Site for commercial office and retail purposes or any other use permitted by applicable Legal Requirements. Use of the Building and any other improvements are not and shall not be governed by this Ground Lease. The Ground Lessee may, after the Lease Conversion Date, use the Site for any use permitted by the Restated Ground Lease.

ARTICLE VI

IMPROVEMENTS

SECTION 6.01. IMPROVEMENTS. The Ground Lessee shall have the right to remove, repair, replace, modify, maintain, rebuild and construct improvements on the Site subject to the provisions of the Lease.

SECTION 6.02. FREE FROM LIENS. The Ground Lessee covenants and agrees that during the Ground Lease Term, the Site will be free and clear of all Liens, excepting Liens of the type described in clauses (i), (iii), (iv) and (v) of Section 12.1(a) of the Lease, such mortgage Lien or Liens as are expressly permitted under the provisions of this Ground Lease and the Leasehold Mortgage, and such Liens that are caused by the Ground Lessor or to which the Ground Lessor has consented. The Ground Lessee will conform to and observe all applicable Legal Requirements; provided that the Ground Lessee may in good faith contest any such Legal Requirements so long as such contest or noncompliance does not involve (A) any danger of (1) foreclosure, forfeiture or loss of the Building or the Site or (2) criminal liability being imposed on the Ground Lessor or (B) any substantial danger of (1) the sale of, or the creation of any Lien (other than a Liens of the type described in clauses (i), (iii), (iv) and (v) of Section 12.1(a) of the Lease) on, the Building or the Site, (2) material civil liability being imposed on the Ground Lessor or (3) the extension of the ultimate imposition of such Legal Requirements beyond the

last day of the Ground Lease Term. The Ground Lessee shall provide the Ground Lessor with notice of any contest of the type described in clause (A) above in detail sufficient to enable the Ground Lessor to ascertain whether such contest may have any material adverse effect of the type described in the above proviso.

SECTION 6.03. REVERSION OF TITLE TO BUILDING. Title to and ownership of all portions of the Building and any other improvements existing on the Site which have not theretofore been removed from the Site by the Ground Lessee in accordance with Section 7.01 shall, upon expiration or valid termination of this Ground Lease, revert to and vest in the Ground Lessor. At the expiration or valid termination of this Ground Lease, the parties, at the Ground Lessor's sole cost and expense, will execute a recordable instrument confirming such termination.

ARTICLE VII

INSURANCE

SECTION 7.01. RECONSTRUCTION OBLIGATION. In no event shall the Ground Lessor have any liability or responsibility whatsoever for rebuilding, reconstructing or replacing any portion of the Building.

SECTION 7.02. INSURANCE. During the Lease Term, the Ground Lessee shall have no obligation to maintain any insurance with respect to the Site or the Building and Lessee shall carry any such insurance as is required under the Lease and the Construction Management Agreement.

SECTION 7.03. EXCULPATION AND INDEMNIFICATION. The Ground Lessor shall not be liable to the Ground Lessee or to the Ground Lessee's agents, servants, employees, customers or invitees for any damage to person or property caused by any act, omission or neglect of the Ground Lessee, its agents, servants or employees, nor shall the Ground Lessor be liable for any loss, cost, expense or claim arising out of the ownership of the Site or operation of the Building, except to the extent such claims are based upon the willful acts or gross negligence of the Ground Lessor. Prior to the Lease Conversion Date, the Ground Lessee shall not be liable to the Ground Lessor or to the Ground Lessor's agents, servants, employees, customers or invitees for any damage to person or property caused by any act, omission or neglect of the Ground Lessor, its agents, servants or employees, and the Ground Lessor agrees to indemnify and hold the Ground Lessee harmless from any such claims or liabilities.

SECTION 7.04. DISTRIBUTION OF PROPERTY INSURANCE PROCEEDS. During the Lease Term, all proceeds from policies of insurance shall be distributed in

accordance with the terms of the Lease and thereafter in accordance with the terms of the Restated Ground Lease.

ARTICLE VIII

SURRENDER

SECTION 8.01. SURRENDER. The Ground Lessee shall, at the end of the Ground Lease Term or upon any termination of this Ground Lease at any other time, deliver up and surrender the Site to the Ground Lessor free and clear of any Liens created by or consented to by the Ground Lessee (except for Liens of the type described in clauses (i), (iii), (iv) and (v) of Section 12.1(a) of the Lease) and in compliance with material applicable Legal Requirements; provided, however, that the Ground Lessee shall have no obligation to comply with any applicable Legal Requirement that pertains to a condition of the Site or the improvements thereon or with the use or occupancy of the Site or the improvements thereon which existed on the Lease Conversion Date (unless (i) the Site and such improvements, in the absence of such compliance and assuming such improvements remain unused and unoccupied, would constitute a clear and present danger to health or safety or (ii) any removal by the Ground Lessee of building systems or other portions of the Building shall have caused material structural damage to the Building).

ARTICLE IX

ASSIGNMENT; SUBLETTING

SECTION 9.01. BY THE GROUND LESSOR. The Ground Lessor may sell or assign its fee simple title to the Site, in each case subject and subordinate to this Ground Lease and the other Operative Agreements to which the Ground Lessor is a party or which encumber the Site, to any Person and assign its rights and delegate its obligations under this Ground Lease to such Person without the consent of the Ground Lessee; provided, that such sale or assignment is permitted under the Participation Agreement and any other Operative Document. Before any such sale or assignment shall become effective, the Ground Lessor shall provide the Ground Lessee with the following:

(A) a representation and warranty by such Person that this Ground Lease and, prior to the Lease Conversion Date, any other Operative Agreements to which the Ground Lessor is a party will, upon the consummation of the sale or assignment, be the valid, legal and binding obligations of such Person; and

(B) an opinion of counsel (which counsel may be an employee of such Person or an Affiliate thereof), addressed to the Ground Lessee, in form and substance reasonably satisfactory to each of the Ground Lessee and any Leasehold Mortgagee, that (i) such Person is a corporation or other legal entity in good standing in the state of its incorporation or formation and is qualified to do business in the State of Hawaii and (ii) this Ground Lease and, prior to the Lease Conversion Date, any other Operative Agreements to which the Ground Lessor is a party will, upon the consummation of the sale or assignment, be the valid, legal and binding obligations of such Person.

After the Lease Conversion Date, subject to the provisions of the Restated Ground Lease, the Ground Lessor may grant a mortgage secured by its fee simple interest in the Site without the consent of the Ground Lessee, but subject and subordinate in any case to this Ground Lease and any other Operative Agreements to which the Ground Lessor is a party.

SECTION 9.02. BY THE GROUND LESSEE. At any time, from time to time, during the Ground Lease Term, the Ground Lessee, in addition to its rights under Article X, may mortgage, assign or pledge this Ground Lease, in whole or in part, to the Trustee or sublet the Site, in whole or in part, to any Person subject to the Lease, so long as the same shall be in effect; provided that such mortgage, assignment or pledge is permitted under the Participation Agreement or any other Operative Agreement. Before any such sublet or assignment shall become effective, the Ground Lessee shall provide the Ground Lessor with the following:

- (A) a representation and warranty by such Person that this Ground Lease and prior to the Lease Conversion Date, any other Operative Agreements to which the Ground Lessee is a party will, upon the assignment, be the valid, legal and binding obligations of such Person; and
- (B) an opinion of counsel (which counsel may be an employee of such Person or an Affiliate thereof), addressed to the Ground Lessor, in form and substance reasonably satisfactory to the Ground Lessor that this Ground Lease and prior to the Lease Conversion Date, any other Operative Agreements to which the Ground Lessee is a party will, upon the assignment, be the valid, legal and binding obligations of such Person.

ARTICLE X

FTNANCTNG

SECTION 10.01. THE GROUND LESSEE'S RIGHT TO OBTAIN FINANCING. Prior to the Lease Conversion Date, the Ground Lessee may encumber its leasehold interest in the Site as set forth in Section 9.02 and Section 10.03. After the Lease Conversion Date, at any time and from time to time, the Ground Lessee may refinance the indebtedness secured by the Indenture in accordance with the provisions of the Restated Ground Lease.

SECTION 10.02. LIMITATIONS ON FINANCING. The Ground Lessee's rights to obtain such financing and refinancing shall be subject to the following conditions:

- (a) No Ground Lessee's Default under this Ground Lease shall have occurred and be continuing.
- (b) Any instrument evidencing such financing or refinancing shall provide that the Ground Lessor shall not be liable for the payment of such indebtedness or the performance of any of the covenants contained in the documents securing payment thereof, and that in the event of default in payment or performance thereof, the holder of such indebtedness will not look to the Ground Lessor's interest in the Site for satisfaction of the indebtedness thereby secured.

SECTION 10.03. LEASEHOLD MORTGAGE; NO ASSUMPTION BY NOTEHOLDERS. The Ground Lessee may from time to time mortgage or otherwise encumber its leasehold interest in the Site and its interest in the Building (such a mortgage and related agreements (including the Indenture and the Mortgage) being collectively referred to as a "Leasehold Mortgage" and the holder of a Leasehold Mortgage (including the Trustee) a "Leasehold Mortgage"), and, in connection therewith, assign this Ground Lease and the rents, issues and profits from the Site and the Building; provided, however, that during the time the Notes are outstanding, the Indenture shall be the only Leasehold Mortgage of its leasehold interest in the Site and its interest in the Building permitted under this Ground Lease. Notwithstanding any other provision of this Ground Lease, any transfer of the Ground Lessee's leasehold interest in the Site and its interest in the Building pursuant to, or in lieu of, foreclosure (including a transfer ordered or authorized in a proceeding under the Bankruptcy Code) of a Leasehold Mortgage shall be permitted without the Ground Lessor's consent (any such transfer being hereinafter referred to as a "foreclosure"). Any Person who becomes the owner of the Ground Lessee's leasehold interest in the

Site and its interest in the Building through a foreclosure shall have no personal liability, direct or indirect, to the Ground Lessor for payment of any Ground Lease Rent (except as provided in clause (b)(i) of Section 10.05(b) or clause (i) of Section 10.06) or for satisfaction of any other claims based on events occurring prior to the date of such Person's acquisition of the Site and the Building, nor for conditions existing on or prior to the date of such Person's accession to title, and any such Person may thereafter assign this Ground Lease and transfer the Building with the prior written consent of Ground Lessor and shall be released from any and all obligations under this Ground Lease which arise after, or relate to any period following, the effective date of such assignment. If a Leasehold Mortgagee or its designee shall become the owner of the Building and a leasehold interest in the Site and if the Building shall have been or become materially damaged on, before or after the date such Leasehold Mortgagee or its designee acquires the Building and a leasehold interest in the Site, the Leasehold Mortgagee or its designee shall be obligated to repair or reconstruct the Building or raze the Building and clear the Site only to the extent that the cost of the repair or reconstruction or razing and clearing can be paid from the net insurance proceeds actually received by the Leasehold Mortgagee or its designee by reason of such damage.

SECTION 10.04. NOTIFICATION OF THE GROUND LESSOR. If the Ground Lessee shall grant a Leasehold Mortgage and shall provide the Ground Lessor with notice thereof specifying the name and address of the Leasehold Mortgagee, then the Ground Lessor, upon giving the Ground Lessee a notice of (i) default, (ii) termination or proposed termination, (iii) a matter on which the Ground Lessor may claim or base a default, (iv) consent to an assignment or subletting or (v) any other matter which could materially and adversely affect the rights or obligations of the Ground Lessor or the Ground Lessee, shall at the same time also give such notice to the Leasehold Mortgagee or the notice given shall be deemed ineffective as to the Leasehold Mortgagee and the Ground Lessee. In the case of a default notice, such notice shall set forth with particularity those defaults being claimed at that time. The Ground Lessor hereby acknowledges notice of the Indenture and the Mortgage as a Leasehold Mortgage and the name and address of the Trustee as a Leasehold Mortgage.

SECTION 10.05. RIGHTS OF HOLDERS OF INDEBTEDNESS. (a) A Leasehold Mortgagee shall have the right, but not any obligation, to perform any term, covenant, condition or agreement of this Ground Lease and to remedy any default by the Ground Lessee hereunder within the time limits set forth in this Ground Lease (and such additional time (x) as is reasonably required to cure any non-monetary Ground Lessee's Default which is capable of cure, proceeding with diligence and (y) if possession of the Building and a leasehold interest in the Site is required to cure such default, as is reasonably required to obtain possession of the Site and the Building and to cure such default) and the Ground Lessor will accept such performance.

Notwithstanding anything contained in this (b) Ground Lease to the contrary, the Ground Lessor hereby acknowledges and agrees for the sole benefit of the Trustee that the Ground Lessor will not be entitled to terminate this Ground Lease by reason of any Ground Lessee's Default for so long as any of the Notes secured by the Indenture is outstanding or until the Trustee has succeeded to the interest of the Ground Lessee in connection with the exercise of its rights under the Indenture. Without limiting the foregoing, if at any time a Ground Lessee's Default shall occur which would otherwise entitle the Ground Lessor to terminate this Ground Lease, the Ground Lessor shall have no right to terminate this Ground Lease unless, following the expiration of the period of time given the Ground Lessee to cure such default, the Ground Lessor shall give the Leasehold Mortgagee additional written notice of the Ground Lessee's Default and the Leasehold Mortgagee shall have 60 days following its receipt of such notice to remedy any such default (and such additional time (x) as is reasonably required to cure any non-monetary Ground Lessee's Default which is capable of cure, proceeding with diligence and (y) if possession of the Site and the Building is required to cure such default, as is reasonably required to obtain possession of the Site and the Building and to cure such default) and the Ground Lessor will accept such performance. In the event that the Leasehold Mortgagee fails to cure any Ground Lessee's Default in the manner or within the time period herein provided, the Ground Lessor shall provide the Leasehold Mortgagee with written notice of the Ground Lessor's intent to terminate this Ground Lease at least 60-days in advance of the proposed effective date of such termination. The Leasehold Mortgagee, in addition to its right as described above to cure defaults by the Ground Lessee, shall have the right to postpone the date on which this Ground Lease would terminate as a result of the Ground Lessee's default in accordance with said notice by (a) giving Ground Lessor written notice within such 60-day period of the Leasehold Mortgagee's election to postpone the date on which the Ground Lease would terminate, and (b) proceeding with due diligence (i) to cure all defaults, if any, from the date of the Ground Lessee's Default then existing which may be cured by the payment of a sum of money (other than obligations of the Ground Lessee to satisfy or otherwise discharge any Lien against the premises junior in priority to the Lien of the Leasehold Mortgage held by such Leasehold Mortgagee), (ii) to initiate and pursue steps to acquire the Site and the Building by foreclosure of its Leasehold Mortgage or otherwise and (iii) after obtaining possession of the Site and the Building, to cure any other then existing default of the Ground Lessee susceptible of being cured by the Leasehold Mortgagee from the date of the Ground Lessee's Default. In the case of a default which is personal to the Ground Lessee and which cannot be cured by the Leasehold Mortgagee, the Ground Lessor's right to terminate this Ground Lease on account thereof shall be deemed to be waived so long as all other defaults are cured by the Leasehold Mortgagee as provided in this Ground Lease.

SECTION 10.06. NEW LEASE WITH NOTEHOLDERS UPON TERMINATION. If within 60 days (as such period may be extended while diligent efforts to cure are proceeding) following Leasehold Mortgagee's receipt of notice pursuant to Section 11.05 of the Ground Lessor's intention to terminate this Ground Lease, the Leasehold Mortgagee shall deliver to the Ground Lessor a written request for a new ground lease of the Site, then the Ground Lessor shall promptly enter into a new ground lease of the Site with such Leasehold Mortgagee or its designee effective as of the date of actual termination of Ground Lessee's rights under this Ground Lease on the same terms as this Ground Lease, provided, that (i) the Ground Lessor receives, at or prior to the execution of such new ground lease, payment of any Ground Lease Rent due from the date of the Ground Lessee's Default to the date of the delivery of the new ground lease (to the extent any such Ground Lease Rent would be due if this Ground Lease were not terminated and after offsetting an amount equal to any income derived by the Ground Lessor from the operation of the Building or other improvements located on the Site during the period prior to execution of the new ground lease), and (ii) the Ground Lessor receives an undertaking in writing that, promptly following the delivery of the new ground lease, such Leasehold Mortgagee or its designee will perform or cause to be performed all of the other covenants and agreements contained in this Ground Lease on the Ground Lessee's part to be performed from the date of the Ground Lessee's Default (except to the extent (i) the Ground Lessee shall have performed the same prior to the date of delivery of such new ground lease, (ii) performance is not required pursuant to clause (b)(i) of the fourth sentence of the fifth sentence of Section 10.05 hereof or (iii) such covenants and agreements cannot reasonably, with the exercise of due diligence, be performed by such Leasehold Mortgage or its designee). A new ground lease shall (a) be effective as of the date of the termination of the Ground Lessee's rights under this Ground Lease as such remainder existed immediately prior to termination, (b) require the same Ground Lease Rent and other charges to be paid as were payable under this Ground Lease, (c) include the same terms, covenants, conditions and agreements as are contained in this Ground Lease (including priority over any mortgage or other Lien on the fee title to the Site), and (e) provide that the ground lessee under such any ground lease shall be liable to perform the obligations imposed on the ground lessee by such new ground lease only during the time period that such party is the ground lessee of the Site. In the event that the Leasehold Mortgagee fails to provide a written response to the Ground Lessor's notice of intent to terminate this Ground Lease or sign and deliver the new ground lease tendered by the Ground Lessor as provided for in this Section 10.06 within the applicable 60-day period, this Ground Lease shall terminate on the date provided for in the Ground Lessor's notice of intent to terminate. . Notwithstanding anything to the contrary contained herein, the Ground Lessor acknowledges and agrees that the Ground Lessor shall, without further request, notice or action by the Trustee, grant to the Leasehold Mortgagee a new ground lease if the Ground Lessee

rejects this Ground Lease under Section 365 of the Bankruptcy Code in a bankruptcy of the Ground Lessee.

SECTION 10.07. CONSENT TO MODIFICATION. It is understood and agreed by the parties hereto that any waiver, consent, alteration, modification, amendment, supplement or termination of or in respect of this Ground Lease that requires the consent of the Trustee or any or all Noteholders (in each case as provided in the Indenture) shall not be effective unless and until such consent shall have been obtained as provided in, and in accordance with the provisions of, the Indenture. With respect to any Leasehold Mortgagee other than the Trustee, the Ground Lessor will not accept any surrender, agree to the cancellation, or enter into any modification, of this Ground Lease without the prior written consent thereto of any Leasehold Mortgagee of which the Ground Lessor has been given notice by the Ground Lessee. Without limiting the generality of the foregoing, no termination under Section 365(h) of the Bankruptcy Code shall be effective against the Leasehold Mortgagee without the prior written consent of the Leasehold Mortgagee.

ARTICLE XI

REMEDIES

SECTION 11.01. DEFAULT BY THE GROUND LESSEE. Upon the occurrence of a Ground Lessee's Default, and following the expiration of all applicable notice, grace and cure periods, the Ground Lessor shall have only the following rights, exercisable any time thereafter so long as such Ground Lessee's Default remains uncured (the Ground Lessor expressly agrees that the rights enumerated in this Section 11.01 shall constitute the sole remedies of the Ground Lessor and hereby waives the benefit of, and covenants not to exercise, any other right or remedy that may be available to the Ground Lessor at law, in equity, or otherwise):

- (a) To enforce, by all proper, equitable and legal suits and other means, its rights hereunder, including, but not limited to, the collection of Ground Lease Rent, without reentering or resuming possession of the Site and without terminating this Ground Lease;
- (c) Subject to the rights of the Leasehold Mortgagee under Article X, to terminate this Ground Lease and all of the Ground Lessee's rights hereunder, and to enforce such termination by an action in ejectment, or

similar legal action, and to have such other rights and remedies as are provided for in the Restated Ground Lease.

SECTION 11.02. DEFAULT BY THE GROUND LESSOR. Upon the occurrence of a Ground Lessor's Default, and following the expiration of all applicable notice, grace and cure periods, the Ground Lessee shall be entitled to cure such default and recover any sums so reasonably expended, together with interest thereon from the date expended at a rate per annum equal to the Default Rate directly from the Ground Lessor, and to seek injunctive or other equitable relief and to exercise any remedy, including, without limitation, the right of offset provided hereunder; provided, however, that, except as otherwise expressly provided herein, it is expressly agreed that the rights enumerated in this Section 11.02 shall be the Ground Lessee's sole remedies and the Ground Lessee hereby waives the benefit of, and covenants not to exercise, any other right or remedy which may be available to the Ground Lessee at law or in equity.

SECTION 11.03. NO WAIVER. No waiver by the Ground Lessor or the Ground Lessee of any default or breach of any covenant, condition or stipulation herein contained shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition or stipulation hereof.

SECTION 11.04. FORCE MAJEURE. It is expressly understood and agreed that if the curing of any Ground Lessor's Default or any Ground Lessee's Default (other than failure to pay Ground Lease Rent), or the performance of any other covenant, agreement, obligation or undertaking herein contained is delayed by reason of war, riot or civil commotion, acts of God, governmental restrictions or regulations, fire or other casualty, strikes, shortages of labor or material or any circumstances beyond the control of the party obligated or permitted under the terms hereof to do or perform the same, regardless of whether or not any such circumstance is similar to any of those enumerated above, the Ground Lessee or the Ground Lessor, as the case may be, shall be excused from doing or performing the same during such period of delay.

ARTICLE XII

WARRANTIES

SECTION 12.01. QUIET ENJOYMENT. The Ground Lessor hereby warrants to the Ground Lessee that the peaceable possession, use and enjoyment of the Site shall not be disturbed by the Ground Lessor or any other Person claiming by or through the Ground Lessor or acting at the direction of the Ground Lessor.

SECTION 12.02. INDEMNITY. The Ground Lessor shall indemnify and hold harmless the Ground Lessee against any violation of the warranty set forth in Section 12.01. From and after the Lease Conversion Date, and except as otherwise provided herein, the Ground Lessee covenants and agrees to abide by, perform, satisfy and otherwise fulfill all of the duties and obligations with respect to the leasehold interest in the Site which are created or arise under applicable Legal Requirements and any encumbrance affecting title to the leasehold interest in the Site to which the Ground Lessee shall have specifically consented in writing.

SECTION 12.03. COVENANTS OF THE GROUND LESSOR. The Ground Lessor hereby covenants and agrees with the Ground Lessee that during the Ground Lease Term, the Ground Lessor shall not take or omit to take any action that will cause the Ground Lessee's ownership, use or occupancy of the Building or use and occupancy of the Site to violate applicable Legal Requirements.

ARTICLE XIII

NET LEASE

SECTION 13.01. NET LEASE. This is a net lease and all costs of maintenance and repair to the Site and insurance required hereunder shall be at the sole cost and expense of the Ground Lessee; and (except for damages caused by the Ground Lessor or any of its agents, servants or employees) the Ground Lessor shall not be obligated to make any improvements, repairs, alterations, additions or replacements whatsoever to the Building or to the Site.

ARTICLE XIV

LIMITED LIABILITY

SECTION 14.01. LIMITED LIABILITY. The Ground Lessee shall have no personal or corporate liability for the payment of monies or the performance of any of its covenants or obligations herein contained, except to the extent (i) of its interest in the Site, and (ii) that the Ground Lessee shall have personal and corporate liability the extent of the actual receipt of funds, money or proceeds from any policy of insurance, condemnation award or similar circumstance associated with the Site and the Building.

ARTICLE XV

MTSCELL ANEOUS

SECTION 15.01. NO AGENCY OR PARTNERSHIP. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that no provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of ground lessor and ground lessee.

SECTION 15.02. ESTOPPEL CERTIFICATES.

(a) The Ground Lessee agrees, at any time and from time to time, upon not less than 30 days' prior written notice from the Ground Lessor, to execute, acknowledge and deliver to the Ground Lessor a statement in writing (i) certifying that this Ground Lease is unmodified and in full force and effect (or if there have been modifications, that this Ground Lease is in full force and effect as modified and stating the modifications hereto); (ii) stating the dates to which the Ground Lease Rent and other charges hereunder have been paid by the Ground Lessee; and (iii) stating the address to which notices to the Ground Lessee shall be sent. Prior to the commencement of, or during the Ground Lease Term, the Ground Lessor shall, if requested by the Ground Lessee, deliver an estoppel certificate, in the substance and form described above, relative to the status of this Ground Lease and any underlying first mortgage.

(b) The Ground Lessor agrees, at any time and from time to time, upon not less than 30 days' prior written notice from the Ground Lessee, to execute, acknowledge and deliver to the Ground Lessee a statement in writing (i) certifying that this Ground Lease is unmodified and in full force and effect (or if there have been modifications, that this Ground Lease is in full force and effect as modified and stating the modifications hereto); (ii) stating the dates to which the Basic Ground Lease Rent and other charges hereunder have been paid by the Ground Lessee; (iii) stating whether or not the Ground Lessor has knowledge that the Ground Lessee is in default in the performance of any covenant, agreement or condition contained in this Ground Lease, and, if the Ground Lessor has knowledge of such a default, specifying each such default; and (iv) stating the address to which notices to the Ground Lessor shall be sent. If so requested by the Ground Lessee, the Ground Lessor shall also address such estoppel certificates to lenders, partners, investors or others with a bona fide business purpose requesting the same.

SECTION 15.03. HEADINGS. The division of this Ground Lease into sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Ground Lease.

SECTION 15.04. NOTICE. All communications, declarations, demands and notices provided for in this Ground Lease shall be in writing and shall be given in person or by means of telecopy, or other wire transmission, or mailed by registered or certified mail, or sent by courier, addressed as provided in the Participation Agreement. All such communications, declarations, demands and notices given in such manner shall be effective on the date of receipt. Each party's initial address for delivery of any notice is designated in the Participation Agreement, but any party from time to time may designate a different address for delivery of any notice by delivering to the other party notice of such different address as provided herein.

SECTION 15.05. GOVERNING LAW. This Ground Lease shall be governed by and construed in accordance with the laws of the State of Hawaii without regard to conflicts of laws principles.

SECTION 15.06. SEVERABILITY OF PROVISIONS. Any provision of this Ground Lease that may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable Legal Requirements, the Ground Lessee and the Ground Lessor hereby waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

SECTION 15.07. AMENDMENT; EXPANSION OF SITE. The provisions of this Ground Lease may not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by the Ground Lessor and the Ground Lessee.

SECTION 15.08. MULTIPLE COUNTERPARTS. This Ground Lease may be executed in a number of identical counterparts, each of which constitutes an original, but all of which together shall constitute one and the same agreement; provided, however, that in making proof of this Ground Lease, it shall not be necessary for any party hereto to produce or account for more than one such counterpart.

SECTION 15.09. SUCCESSORS AND ASSIGNS. This Lease shall be binding upon and inure to the benefit of the Ground Lessor and the Ground Lessee, and their respective permitted successors and permitted assigns except as otherwise limited or specifically qualified in this Ground Lease. For purposes of this Ground Lease, any action by either Ground Lessor shall lawfully bind the other Ground Lessor and third parties shall be entitled to rely thereon.

SECTION 15.10. ATTORNEYS' FEES. In the event of any action or proceeding brought by either party under this Ground Lease against the other party, the prevailing party in such action or proceeding shall be entitled to recover from the other party all costs or expenses (including reasonable attorneys' fees) incurred by reason of such action or proceeding.

SECTION 15.11. ATTORNMENT AND NON-DISTURBANCE AGREEMENTS. From time to time at the request of the Ground Lessee, the Ground Lessor shall execute and deliver to the Ground Lessee for the benefit of any tenant in the Building attornment and non-disturbance agreements in form and substance reasonably satisfactory to the Ground Lessor under which the Ground Lessor, as applicable, shall agree to recognize the lease of any such tenant and to permit such tenant to remain in occupancy of its premises within the Building notwithstanding any default hereunder by the Ground Lessee, so long as such tenant is not in default under the lease covering its premises within the Building and the tenancy of such tenant does not extend beyond the Ground Lease Term (calculated without regard to terminations resulting from a Ground Lessee's Default). Any such agreement shall provide that such tenant is obligated to attorn to the Ground Lessor if this Ground Lease is terminated under the terms hereof and to recognize the Ground Lessor as the landlord under the lease with such tenant covering its premises within the Building. The issuance of any such agreement shall in no way release or diminish the Ground Lessee's duties and obligations under this Ground Lease. Notwithstanding the foregoing, this Section 15.11 does not apply to the Trustee under the Indenture.

SECTION 15.12. NON-MERGER. There shall be no merger of this Ground Lease, the leasehold interest in the Site or the Building with the fee estate in and to the Site by reason of the fact that this Ground Lease, the leasehold interest in the Site or the Building, or any interest in any of them, may at any time be held directly or indirectly by or for the account of any Person who shall own the fee estate in and to the Site, or any portion thereof, and no such merger shall occur unless and until all persons at the time having any interest in the fee estate and all persons having any interest in this Ground Lease, the leasehold estate, or the improvements to the Site, including the holder of any mortgage upon the fee estate in and to the Site, shall join in a written instrument effecting such merger.

SECTION 15.13. INSPECTION. Upon not less than five Business Days' notice to the Ground Lessee, the Ground Lessor and their authorized representatives shall have the right to inspect the Site (subject, in each event, to applicable Legal Requirements, applicable confidentiality understandings, then existing leases as to the Building, and the Ground Lessee's reasonable procedures) expense. Upon not less than five Business Days' notice to the Ground Lessee after the delivery of a notice of termination of this Ground Lease or within the last year of the Ground Lease Term, the Ground Lessor and its authorized representatives shall have the right (subject, in

29
each event, to applicable Legal Requirements, applicable confidentiality understandings, then existing leases as to the Building, and the Ground Lessee's reasonable procedures), at their expense, to inspect the books and records of the Ground Lessee relating to the Building and the Site or the operation thereof and to make copies of and extracts therefrom (other than copies of and extracts from proprietary data and information) copies of and extracts from proprietary data and information).

SECTION 15.14. FURTHER ASSURANCES AND COOPERATION. The Ground Lessor and the Ground Lessee each agree to cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents and assurances as the other party from time to time may reasonably request in order to carry out more effectively the intent and purposes of this Ground Lease. Upon request of the Ground Lessee, the Ground Lessor shall cooperate with the Ground Lessee in obtaining the valid and effective issuance or transfer or amendment, as the case may be, of all Governmental Approvals necessary or in the reasonable opinion of the Ground Lessee desirable for the ownership, operation and possession of the Site and the Building (or any property purported to be covered by this Ground Lease) by the Ground Lessee or any transferee, lessee or assignee thereof.

IN WITNESS WHEREOF, each of the parties hereto has caused this Ground Lease to be duly executed by an officer thereunto duly authorized as of the date and year first above written.

GROUND LESSOR

FIRST HAWAIIAN CENTER LIMITED PARTNERSHIP, a Hawaii limited partnership

By: FHB Properties, Inc., its general partner

By: /s/ Thomas P. Huber

Name: Thomas P. Huber Title: Vice President

FH CENTER, INC., a Hawaii corporation

By: /s/ Thomas P. Huber

Name: Thomas P. Huber Title: Vice President

GROUND LESSEE

REFIRST, INC., a Delaware corporation

By: /s/ Paul J. Bishop

Name: Paul J. Bishop Title: President

EXHIBIT B OMITTED

EXHIBIT C OMITTED

34

EXHIBIT D

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup (X) Phone: 521-9200 To:

AMENDED AND RESTATED GROUND LEASE

THIS INDENTURE OF LEASE ("Ground Lease") is dated as of ________, by and between FIRST HAWAIIAN CENTER LIMITED PARTNERSHIP, a Hawaii limited partnership (the "Partnership"), and FH CENTER, INC., a Hawaii corporation ("Center"), both having their principal places of business and post office addresses at First Hawaiian Tower, 1132 Bishop Street, 25th Floor, Honolulu, Hawaii 96813, hereinafter collectively called the "Ground Lessor", and REFIRST, INC., a Delaware corporation, with principal place of business and post office address at 1900 Indian Wood Circle, Maumee, Ohio 43537, hereinafter called the "Ground Lessee",

-1-

BACKGROUND

- 1. The Partnership is the owner of the property described in Exhibit "A" attached hereto and made a part hereof, and Center is the owner of the property described in Exhibit "B" attached hereto and made a part hereof (hereafter collectively called the "Site"), together with the building and other improvements thereon.
- 2. The Ground Lessee has caused to be constructed upon the Site a high rise office building known as "First Hawaiian Center" (the "Building").
- 3. This Ground Lease amends and restates the Ground Lease, dated as of December 1, 1993, by and between the Partnership, the Center and Ground Lessee (the "Original Ground Lease").

GROUND LEASE

SECTION 1 GRANTING CLAUSE

1.1 DEMISE. In consideration of the rent hereinafter reserved and of the covenants herein contained and on the part of the Ground Lessee to be observed and performed and upon and subject to the terms and conditions hereinafter set forth, the Ground Lessor hereby demise and lease to the Ground Lessee, and the Ground Lessee hereby leases from the Ground Lessor all of the Site described in Exhibits "A" and "B" attached hereto and made a part hereof for every purpose;

TO HAVE AND TO HOLD THE SAME, together with all buildings, fixtures and other improvements hereafter constructed on the Site, and all tenements, rights, easements, privileges and appurtenances thereon or thereunto belonging or appertaining, or held and enjoyed therewith, unto the Ground Lessee, for the term hereinafter get forth.

SUBJECT to the encumbrances (the "Encumbrances") described in Exhibits "A" and "B".

1.2 CONDITION OF THE SITE. The Ground Lessee is renting the Site without representation, warranty or covenant, expressed or implied, by the Ground Lessor, except as set out in this Ground Lease, and subject to any state of facts which an accurate survey or physical inspection might show. Except as

expressly set out in this Ground Lease, Ground Lessor has not made nor shall be deemed to have made any representation or warranty, express or implied, nor shall be deemed to have any liability whatsoever as to the value, habitability, use, condition, design, operation or fitness for use of the Site (or any part thereof), or any other representation or warranty whatsoever, express or implied, with respect to the Site (or any part thereof) and the Ground Lessor shall not be liable for any latent, hidden, or patent defect therein or the failure of the Site or any part thereof, to comply with any legal requirement applicable to the Site or Ground Lessee's use thereof.

SECTION 2 TERM. The term of this Ground Lease (together with the term of the Original Ground Lease) shall be for a period of ninety-nine (99) years, from December 1, 1993 (the "Original Commencement Date"), to and including December 1, 2092, unless such term is extended or sooner terminated as hereinafter provided (the "Term"). The date of this Ground Lease is referred to herein as the "Commencement Date." Each one-year period from the anniversary of the Original Commencement Date is referred to as a "Ground Lease Year."

SECTION 3 RENT.

BASIC RENT. The Ground Lessee hereby covenants and 3.1 agrees to pay, over and above all other charges herein set forth, from and after the Commencement Date, annual rental during each Ground Lease Year as follows: (a) for each of the first ten Ground Lease Years and for so long thereafter as the Lease Agreement dated as of December 1, 1993 between the Ground Lessee, as lessor, and First Hawaiian Bank, as lessee (the "Bank Lease") is outstanding, an amount equal to \$0; (b) for the eleventh through the twentieth Ground Lease Years (so long as the Bank Lease is not in effect) an amount equal to the product of \$4,080,000 multiplied by the percentage increase in the Consumer Price Index for Honolulu, Hawaii from the Original Commencement Date to the commencement of the eleventh Ground Lease Year; (c) for each ten Ground Lease Years thereafter (so long as the Bank Lease is not in effect) an amount equal to the product of (i) the fair market value in fee simple of the Site (exclusive of improvements) as of the commencement of such ten Ground Lease Years and (ii) the prevailing annual rate of return, as of the commencement of such ten Ground Lease Years, on land of similar use and location on the Island of Oahu; PROVIDED, HOWEVER, that if the Ground Lessor and the Ground Lessee are unable to agree upon such fair market value or such prevailing annual rate of return or both, the same shall be determined by an appraiser or appraisers appointed as

hereinafter provided, who shall ascertain the fair market value in fee simple of the Site (exclusive of any improvements and as if unencumbered by any lease), or the prevailing annual rate of return on land of similar use and location on the Island of Oahu, or both, as of the commencement of such ten Ground Lease Years for which rent is sought to be determined. Such rent, whether determined by agreement or appraisal, shall in no event be less than the annual rent payable during the immediately preceding ten Ground Lease Year period. Such annual rent shall be payable in equal monthly installments in advance on the first day of each month. Each subsequent ten Ground Lease Years after November 30, 2003 shall hereafter be referred to as a "Subsequent Rental Period."

3.2 APPRAISAL. (a) If the Ground Lessor and the Ground Lessee are unable to agree upon the fair market value of the Site or upon the prevailing annual rate of return on land of similar use and location on the Island of Oahu, or both, at least ninety (90) days prior to the commencement of a Subsequent Rental Period, then either party may give to the other written notice of a desire to have such fair market value, or such prevailing annual rate of return, or both, determined by appraisal. If the parties agree upon a single appraiser, such appraiser shall determine such fair market value or such prevailing rate of return, or both, and his decision shall be final, conclusive and binding upon both parties, subject to the minimum limitations stated above. If the parties fail to agree upon a single appraiser, Ground Lesser and Ground Lessee shall each promptly appoint an appraiser and such appraisers shall perform the appraisal required hereunder, provided that if either Ground Lessor or Ground Lessee fail to appoint an appraiser by the end of the ten (10) day period following the appointment of an appraiser by the other, then the appraiser appointed by one party shall alone perform such appraisal. The appraisers shall render their appraisals in writing within thirty (30) days after their appointment and shall deliver counterpart copies thereof to Ground Lessor and Ground Lessee. The fair market value of the Site or the prevailing annual rate of return, or both, shall be deemed to be the average of the two figures reported by the two appraisers appointed pursuant to this Section 3.2; provided, however, that in the event the larger of such figures for fair market value or prevailing rate of return is greater than one hundred and five percent (105%) of the smaller of such figures, the two appraisers so appointed shall appoint a third appraiser within ten (10) days of notice by either Ground Lessee or Ground Lessor that such appointment is necessary and an appraisal shall be made by such third appraiser within thirty (30) days of the appointment of the

third appraiser. If the two appraisers appointed by Ground Lessor and Ground Lessee shall be unable to agree on a third appraiser, either party hereto may apply to a court of competent jurisdiction to make such appointment. In the event a third appraiser is so appointed, the fair market value of the Site or prevailing rate of return, as applicable, shall be deemed to be the average of the two greatest figures reported by the three appraisers appointed pursuant to this Section 3.2. All appraisers appointed pursuant to this Section 3.2 shall be members in good standing of the American Institute of Real Estate Appraisers (or any successor organization thereto). Ground Lessee and Ground Lessor shall each be responsible for the aggregate cost of the appraisals delivered hereunder.

- (b) In determining fair market value in fee simple of the Site, the appraisers shall assume for purposes of their appraisal that the Site, enhanced by street and road improvements, contributing benefits, betterments and other related economic influences and value factors, are vacant of all buildings, unencumbered by lease or the subsistence of any right to or interest in the Site in a person other than the Ground Lessor, and available for immediate development and utilization to the use then being made of the Site by the Ground Lessee. Subject to the foregoing provisions, the process or method of appraisal shall be that receiving general acceptance among competent, experienced and recognized appraisers in the field of real estate valuation in the State of Hawaii.
- (c) If and whenever the fixing of such fair market value, or such prevailing annual rate of return, or both, is being determined by appraisal, the Ground Lessee, pending the determination thereof, shall continue to pay the same rent which it had been paying during the last preceding Subsequent Rental Period and shall promptly pay the deficiency, if any, upon the conclusion of the appraisal process, plus interest at the rate of twelve percent (12%) per annum on the amount of such deficiency computed from the date or dates when the amount of such deficiency would have been payable but for the pendency of the appraisal process.
- 3.3 NET RENT; GENERAL EXCISE TAXES. All of such rent shall be net above taxes, assessments and charges of any kind otherwise payable by the Ground Lessee; and the Ground Lessee shall also pay (in addition to such rent, taxes, assessments and charges) an amount (presently 4.167% of each such payment) which when added to such rents and other payments shall yield to the Ground Lessor after deduction of all such tax payable by the Ground Lessor with respect to all such payments

a net amount which the Ground Lessor would have realized from such payment had no such tax been imposed. It is the intent of this provisions and of the other provisions of this Ground Lease to insure that all amounts provided hereunder to be paid to the Ground Lessor by the Ground Lessee will be received by the Ground Lessor without diminution by any tax, assessment, charge or levy of any nature whatever, except any net income taxes, and the terms and conditions of this Ground Lease shall be liberally construed to effect such purpose.

SECTION 4 GROUND LESSOR'S COVENANTS. The Ground Lessor hereby covenants with the Ground Lessee that upon payment by the Ground Lessee of the rent as aforesaid, and upon the observance and performance of all of the terms, covenants and conditions and agreements herein contained and on the part of the Ground Lessee to be observed and performed, the Ground Lessee shall peaceably hold and enjoy the Site during the term of this Ground Lease without hindrance or interruption by the Ground Lessor or anyone lawfully or equitably claiming by, through or under it, except as in this Ground Lease expressly provided.

SECTION 5 GROUND LESSEE'S COVENANTS. The Ground Lessee, in consideration of the premises, hereby covenants and agrees with the Ground Lessor as follows:

5.1 PAYMENT OF RENT. The Ground Lessee will pay all of the rent and other charges herein reserved in lawful money of the United States of America to the Ground Lessor at the Ground Lessor's principal places of business in Honolulu, Hawaii, or at such other place and to such person or agent as the Ground Lessor shall designate by notice in writing to the Ground Lessee, in the manner and time aforesaid, without any deduction or set-off and without any other notice or demand.

5.2 PAYMENT OF IMPOSITIONS.

(a) Except as described in the next sentence, Impositions shall mean any and all liabilities, losses, expenses and costs of any kind whatsoever for fees, taxes, levies, imposts, duties, charges, assessments or withholdings ("Taxes") including (i) real and personal property taxes, including personal property taxes on any property covered by this Ground Lease that is classified by governmental authorities as personal property, and real estate or ad valorem taxes in the nature of property taxes; (ii) sales taxes, use taxes and other similar taxes (including rent taxes and intangibles taxes); (iii) the Hawaii General Excise Tax; (iv) real estate transfer taxes,

conveyance taxes, stamp taxes and documentary recording taxes and fees; (v) taxes that are or are in the nature of franchise, income, value added and doing business taxes; and (vi) assessments on the Site and the Building, including all assessments for public improvements or benefits, whether or not such improvements are commenced or completed within the Term); and all interest and penalties thereon, which at any time prior to, during or with respect to the Term or in respect of any period for which Ground Lessee shall be obligated to pay any amounts due hereunder, may be levied, assessed or imposed by any Federal, State, city or local authority upon or with respect to (a) the Site and the Building or any part thereof; (b) the financing, refinancing, demolition, construction, substitution, subleasing, assignment, control, condition, occupancy, servicing, maintenance, repair, ownership, possession, activity conducted on, delivery, insuring, use, operation, improvement, transfer of title, return or other disposition of the Site and the Building or any part thereof; (c) indebtedness with respect to the Site and the Building or any part thereof; (d) the rentals, receipts or earnings arising from the Site; (e) the income or other proceeds received with respect to the Site and the Building or any part thereof upon the sale or disposition thereof; or (f) any contract relating to the demolition, construction, acquisition or delivery of the Site or any part thereof.

The term "Imposition" shall not mean or include:

(i) Taxes and impositions that are imposed on Ground Lessor or the Trustee (as defined in the Lease) by the United States federal government that are based on or measured by the net income (including taxes based on capital gains and minimum taxes) of either of them;

(ii) any Tax or imposition to the extent, but only to such extent, it relates to any act, event or omission that occurs after the termination of this Ground Lease (but not any tax or imposition that relates to any period prior to the termination of this Ground Lease);

(iii) any Tax or imposition for so long as, but only for so long as, it is being contested in accordance with the provisions of this Ground Lease;

(iv) any interest or penalties imposed on the Ground Lessor as a result of the failure of the Ground Lessor to file any report timely and in the form prescribed by law or pay any tax or imposition, except to the extent such

failure is a result of a breach by the Ground Lessee of its obligations hereunder; provided that this clause (iv) shall not apply if such interest or penalties arise as a result of a position taken (or requested to be taken) by the Ground Lessee in a contest controlled by Ground Lessee under Section 5.2(e) hereof.

(v) any Taxes or impositions imposed on the Ground Lessor that are a result of the Ground Lessor not being considered a "United States person" as defined in Section 7701(a)(30) of the Code:

(vi) any Taxes or impositions that are enacted or adopted by their express terms as a substitute for any tax that would not have been indemnified against pursuant to the terms of this Ground Lease;

(vii) any Taxes which are imposed as a result of the gross negligence or wilful misconduct of the Ground Lessor itself (as opposed to gross negligence or wilful misconduct imputed to the Ground Lessor) or any of the Ground Lessor Affiliates, but not taxes as a result of ordinary negligence of the Ground Lessor of any of the Ground Lessor Affiliates:

(viii) any Taxes or impositions to the extent that such taxes are actually reimbursed to the Ground Lessor by another person;

(ix) any Taxes or impositions imposed upon the Ground Lessor with respect to any voluntary transfer, sale, financing or other voluntary disposition of any interest in the Site or any involuntary transfer of any of the foregoing interests resulting form the bankruptcy or insolvency of Ground Lessor (other than in connection with the existence of an event of default);

(x) any gift or inheritance taxes; or

(xi) any Taxes or impositions, to the extent the Ground Lessor actually receive a credit (or otherwise has a reduction in a liability for taxes) in respect thereof against taxes that are not indemnified hereunder (but only to the extent such credit is not taken into account in calculating the indemnity payment on an After Tax Basis (as defined in the Lease).

Any Tax or imposition excluded from the defined term

"Imposition" in any one of the foregoing clauses (i) through (xi) shall not be construed as constituting an Imposition by any provision of any other of the aforementioned clauses.

- $\hbox{ (b)} \qquad \hbox{The Ground Lessee shall pay or cause to} \\ \hbox{be paid and assume liability for all Impositions.}$
- (c) If any written claim is made against the Site, the Building or the Ground Lessor, or if any proceeding is commenced against the Site, the Building or the Ground Lessor, in each case for any Impositions as to which the Ground Lessee has an obligation pursuant to this section, the Ground Lessor shall promptly notify the Ground Lessee. If the Ground Lessor obtains a refund of all or any part of any Imposition paid or reimbursed by the Ground Lessee, the Ground Lessor shall promptly pay to the Ground Lessee the amount of such refund net of reasonable expenses not already paid or reimbursed by the Ground Lessee.
- (d) Subject to the Ground Lessee's right to contest Impositions set out below, the Ground Lessee shall pay or cause to be paid all Impositions for which it is liable under this section directly to the taxing authorities where feasible and otherwise to the Ground Lessor and the Ground Lessee shall, upon the Ground Lessor's reasonable request, furnish to the Ground Lessor copies of official receipts or other satisfactory proof evidencing such payment.

In the case of Impositions for which the Ground Lessee is liable pursuant to this Section 5.2 and for which no contest is conducted and which the Ground Lessee pays directly to the taxing authorities, the Ground Lessee shall pay such Impositions prior to the latest time permitted by the relevant taxing authority for timely payment. In the case of such Impositions for which the Ground Lessee reimburses the Ground Lessor, the Ground Lessee shall do so within thirty (30) days after receipt by the Ground Lessee of demand therefor. In the case of Impositions for which the Ground Lessee is liable pursuant to this section and for which a contest is conducted, the Ground Lessee shall pay such Impositions or reimburse the Ground Lessor for such Impositions, to the extent not previously paid or reimbursed, prior to the latest time permitted by the relevant taxing authority for timely payment after conclusion of all contests under this section.

Impositions imposed with respect to the Site and the Building for the initial and terminal years hereof shall be prorated on a daily basis as of the date of

commencement and the date of termination of the term hereof, respectively. If any Imposition may, at the option of the taxpayer, lawfully be paid in installments, then, (i) if such Imposition is payable during the term of this Ground Lease, the Ground Lessee may exercise, or at the request of the Ground Lessee, the Ground Lessor shall exercise the option to pay the same in installments, and in such event the Ground Lessee shall pay only those installments that become due and payable during the term of this Ground Lease and (ii) if such Imposition is payable prior to the commencement of this Ground Lease, the Ground Lessor shall exercise the option to pay the same in installments, and in such event the Ground Lessor shall (subject to the Ground Lessor's right to contest the same in good faith by appropriate legal proceedings) pay only those installments that become due and payable prior to the commencement of this Ground Lease.

- the Ground Lessee from contesting in good faith the amount or validity, or both, of any such Impositions by appropriate legal proceedings commenced before the same become delinquent, and the Ground Lessor, if legally required to do so, shall join in such proceedings, on condition, however, that such proceedings shall not operate to cause the sale of the Site or of the improvements thereon or any part thereof to satisfy any such Imposition, and on further condition that the Ground Lessee shall pay on demand any reasonable costs or attorneys' fees incurred by the Ground Lessor in any such proceedings, and on further condition that if all or part of any such Imposition, the amount or validity of which shall have been so contested, shall finally be determined by any court or other governmental authority of competent jurisdiction to be lawfully charged, assessed, imposed, due or payable, the Ground Lessee will promptly pay the same, together with any interest, penalty or fine resulting from any such contest by the Ground Lessee.
- (f) If the Ground Lessee shall fail to pay any such Imposition as herein provided, the Ground Lessor may at any time after the same become due pay the same, together with any interest, penalties, fines and costs accrued thereon or imposed in connection therewith, and the Ground Lessee will repay to the Ground Lessor, upon demand, the full amount so paid by the Ground Lessor.
- 5.3 UTILITY CHARGES. The Ground Lessee will pay or cause to be paid directly, before the same become delinquent, all charges, duties, rates and other outgoings of every description to which the Site or any part thereof or any

improvements thereon, or the Ground Lessor or the Ground Lessee in respect thereof, may during the term be assessed or become liable for electricity, gas, refuse collection, telephone, sewage disposal, water, cable television or any other utilities or services or any connections or meters therefor, whether assessed to or payable by the Ground Lessor or the Ground Lessee.

- 5.4 IMPROVEMENTS REQUIRED BY LAW. The Ground Lessee will, at the Ground Lessee's own expense, during the entire term, make, build, maintain and repair all fences, walls, sewers, drains, roads, curbs and sidewalks which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Site, the Building or any part thereof, in the same manner as would be required of the Ground Lessee if the Ground Lessee were the owner in fee simple of the lands demised hereunder.
- $5.5\,$ USE OF SITE. The Ground Lessee may use the Site for any lawful purpose, including, without limitation, the construction, maintenance and operation thereon of an office building.
- 5.6 CONSTRUCTION OF IMPROVEMENTS. The Ground Lessee, without cost to the Ground Lessor, may at any time and from time to time after completion of the Building, make or cause to be made further alterations, renovations, improvements and additions to the Building or any part thereof and substitutions and replacements therefor (collectively, the "Modifications"); PROVIDED, HOWEVER, that (i) the Modification shall be done expeditiously and in a good and workmanlike manner; and (ii) the Ground Lessee shall comply with all legal and insurance requirements applicable to the Modification, including the obtaining of all permits and certificates of occupancy.
- 5.7 LIENS AND ENCUMBRANCES. The Ground Lessee will keep the Site free of any mechanics' or materialmen's liens and any attachment, execution or judgment liens, and any charge or encumbrance whatsoever. Should any such lien, charge or encumbrance or notice thereof be recorded against or attach to the Site, or any part thereof, or any interest therein, then, unless the Ground Lessee shall elect to contest the validity of the same or the amount of the claim in respect of which the same shall have been recorded as provided below, the Ground Lessee will immediately pay off the same and cause the same to be satisfied and discharged of record. If the Ground Lessee shall not elect to contest in a timely manner the validity of the same

or the amount of the claim in respect of which the same shall have been recorded and shall not pay off the same and cause it to be satisfied and discharged of record promptly, the Ground Lessor may, at the Ground Lessor's option, pay off the same, and any amount so paid by the Ground Lessor shall thereupon be and become immediately due and payable by the Ground Lessee to the Ground Lessor; PROVIDED, HOWEVER, that the Ground Lessee will have the right to contest the amount or validity of any such lien, charge or encumbrance or of the claim in respect of which the same shall have been recorded by appropriate legal proceedings, and the Ground Lessor, if legally required to do so, will join in such proceedings, on condition, however, that such proceedings shall not operate to cause the sale of the Site or the improvements thereon, or any part thereof, to satisfy any such lien, charge or encumbrance, and on further condition that the Ground Lessee shall pay all reasonable costs and attorneys' fees incurred by the Ground Lessor in any such legal proceedings, and on further condition that if all or any part of such lien, charge or encumbrance, or claim in respect of which the same shall have been recorded, the amount or validity of which shall have been go contested, shall be finally determined by any court, or any other governmental authority of competent jurisdiction, to be lawful or valid, the Ground Lessee shall promptly pay the same, together with any interest, penalty or fine resulting from such contest by the Ground Lessee and shall promptly cause the same to be satisfied and discharged of record.

5.8 INDEMNITY. The Ground Lessee, as a material part of the consideration to the Ground Lessor for this Ground Lease, will and does hereby assume all risk of bodily injury, wrongful death and/or property damage, business interruption or economic loss occasioned by any accident, fire or nuisance made or suffered in the Site or the Building or resulting from any failure on the part of the Ground Lessee to maintain the Site or the Building in a safe condition, and the Ground Lessee hereby waives on its own behalf, and on behalf of its agents, employees, contractors, invitees, customers, sublessees and licensees (herein collectively called the "Ground Lessee's Affiliates"), all claims in respect thereof against the Ground Lessor and the Ground Lessor's officers, directors, partners, trustees, employees, agents, licensees, contractors and invitees (herein collectively called the "Ground Lessor's Affiliates"), and acknowledges that this assumption of risk by the Ground Lessee has been bargained for in determining rent and other obligations of the Ground Lessee under this Ground Lesse. The Ground Lessee hereby agrees to indemnify and save harmless the Ground Lessor and the Ground Lessor's Affiliates from and

against any and all claims for bodily injury, wrongful death and/or property damage, business interruption and economic loss by any person (including without limiting the generality of said term, the Ground Lessee's Affiliates and the Ground Lessor's Affiliates) arising out of, caused by, occasioned by or resulting from any accident, fire or nuisance in the Site and the Building, or the Ground Lessee's failure to maintain the Site and the Building, except where such injury, death or loss is caused by the willful act or gross neglect of the Ground Lessor or the Ground Lessor's Affiliates. The Ground Lessee further agrees to indemnify and save harmless the Ground Lessor, and the Ground Lessor's Affiliates, from and against any and all liability, loss, costs, charges, fines, penalties, obligations or expenses of whatsoever nature in connection with any and all claims by or on behalf of any person or persons, firm or firms, corporation or corporations, arising from the conduct or management of any work or thing whatsoever done by the Ground Lessee or the Ground Lessee's Affiliates in or about the Site and the Building, or from any transactions of Ground Lessee concerning the Site and the Building, and will further indemnify and save the Ground Lessor and the Ground Lessor's Affiliates harmless from any and all claims arising from any breach or default on the part of the Ground Lessee in the performance of any covenants or agreement on the part of the Ground Lessee to be performed pursuant to the terms of this Ground Lease, or arising from any act or negligence of the Ground Lessee or the Ground Lessee's Affiliates for all costs, attorneys' fees, expenses and liabilities incurred in connection with any such claim or any action or proceeding brought thereon. The Ground Lessee further agrees that in case of any claim, demand, proceeding, action or cause of action, threatened or actual, against the Ground Lessor or the Ground Lessor's Affiliates, the Ground Lessee, upon the written request of the Ground Lessor or any of the Ground Lessor's Affiliates, shall defend the Ground Lessor and the Ground Lessor's Affiliates at the Ground Lessee's expense by counsel satisfactory to the Ground Lessor or Ground Lessor's Affiliates, as the case may be. If the Ground Lessor or any of the Ground Lessor's Affiliates does not request such defense or the Ground Lessee does not provide such defense, then the Ground Lessee will reimburse the Ground Lessor and the Ground Lessor's Affiliates as aforesaid, and agrees to cooperate with the Ground Lessor and the Ground Lessor's Affiliates in such defense, including, but not limited to, by providing affidavits and testimony upon request of the Ground Lessor or the Ground Lessor's Affiliates.

ASSUMPTION OF RISK BY THE GROUND LESSEE. The Ground Lessee, as a material part of the consideration to the Ground Lessor for this Ground Lease, will and hereby does assume all risk of loss or damage to buildings, structures, improvements, machinery, equipment, fixtures, supplies, merchandise, and other property, by whomsoever owned, stored or placed in, upon or about the Site, and does hereby agree that the Ground Lessor shall not be responsible for loss or damage to any such property, unless caused by the willful act or gross neglect of the Ground Lessor or Ground Lessor's Affiliates, and the Ground Lessee waives all claims in respect thereof and acknowledges that this assumption of risk by the Ground Lessee has been bargained for in determining rent and other obligations of the Ground Lessee under this Ground Lease. The Ground Lessee hereby agrees to indemnify and save harmless the Ground Lessor and the Ground Lessor's Affiliates from and against any and all claims for such loss or damage, including claims for bodily injury, wrongful death, property damage, business interruption and/or economic loss, other than damage or loss caused by the willful act or gross neglect of the Ground Lessor and the Ground Lessor's Affiliates, or arising out of a defect which the Ground Lessor is required hereunder to repair and has failed to remedy within a reasonable time after having been given notice in writing thereof. Without prejudice to the generality of the foregoing, the Ground Lessor shall not be liable for loss or damage to any property entrusted to the Ground Lessor or the Ground Lessor's Affiliates nor for loss or damage to any property at any time stored or kept in the Site and the Building, either from rain or from any other water which may leak, issue or flow from any part of the Site and the Building, or from the pipes or plumbing of the same or from any other place or quarter, nor for any loss or damage to property in the Site and the Building caused by theft, or by accident involving escalators, or for damage or any character, including bodily injury, wrongful death, property damage, business interruption or economic loss arising out of defects of construction of the Building or any machinery, equipment, electrical wiring or facility therein or failure or breakdown thereof or from lack of repair or proper operation of the same or from any other cause unless the cause be a defect with the Ground Lessor is required hereunder to repair and the Ground Lessor shall have failed to remedy such defect within a reasonable time after written notice thereof.

5.10 REPAIR AND MAINTENANCE. The Ground Lessee will, at the Ground Lessee's own expense, from time to time and at all times during the term, keep all buildings, structures, fixtures and improvements hereafter constructed on the Site in good

order, condition and repair, excepting reasonable wear and tear.

5.11 WASTE; OBSERVANCE OF LAWS. Subject to Ground Lessee's right to demolish the existing improvements on the Site, to construct the Building and to make Modifications as provided in Section 5.6 above, the Ground Lessee will not make or suffer any waste or strip and will not make or suffer any improper, offensive or unlawful use of the Site and the Building and will at all times during the term keep the Site and the Building in good order and in a strictly clean and sanitary condition. Subject to the terms of Section 5.2(e) relating to permitted contests, Ground Lessee will observe and comply with all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to or in connection with the Site or any improvement thereon or the use thereof.

5.12 HAZARD INSURANCE.

- (a) GENERAL REQUIREMENTS. (i) Ground Lessee shall during the term of this Ground Lease, keep or cause to be kept, the buildings, fixtures and other improvements now situated or hereafter constructed on the Site continuously insured against loss or damage by fire and all other risks covered by an I.S.O. standard "broad" causes of loss form as filed with the Hawaii Insurance Commissioner or equivalent coverage in amounts equal to actual replacement cost. The insurance coverage required to be obtained pursuant to the immediately preceding sentence may have a deductible or self-insured retention.
- (ii) During any period in which Modifications costing in the aggregate in excess of FIVE MILLION DOLLARS (\$5,000,000) at the Site are being undertaken, the Ground Lessee shall obtain or cause the contractor performing such Modifications to obtain builder's risk, general liability, worker's compensation and automobile liability insurance with respect to the improvements on the Site.
- (iii) If at any time during the term of this Ground Lease the area in which the Site is located is designated a "flood-prone" area pursuant to the Flood Disaster Protection Act of 1973, or any amendments or supplements thereto, then the Ground Lessee shall comply or cause compliance with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973. In addition, the Ground Lessee will fully comply or cause compliance with the requirements of the National Flood Insurance Act of 1968 and the

Flood Disaster Protection Act of 1973, as each may be amended from time to time, and with any other legal requirement, concerning flood insurance to the extent that it may apply to the Site.

- (iv) The Ground Lessee shall obtain and maintain or cause to be obtained and maintained during the term of this Ground Lease for the Site and the Building a Difference-in-Conditions policy which includes at a minimum the perils of collapse, earthquake and flood. The policy may be written on a loss limit basis determined to be prudent by the Ground Lessee.
- (b) RIGHTS TO INSURANCE PROCEEDS. Every policy of insurance required to be obtained by Section 5.11(a) shall provide that such insurance proceeds shall be payable to the Ground Lessee, and will be adjusted by or at the direction of the Ground Lessee. The respective interests of the Ground Lessor and the Ground Lessee in any proceeds of such insurance payable for loss or damage to such buildings, fixtures and improvements shall be fixed and determined as of the date of such loss or damage as follows:
- (i) The Ground Lessor will be entitled to collect and receive all Net Proceeds (as defined in Section 6.3 below) payable for loss or damage to any building, fixtures and other improvements located on the Site at the commencement of the term of this Ground Lease.
- (ii) The interest of the Ground Lessor in the Net Proceeds described in Section 5.11(b)(i) above shall be a proportionate amount thereof in the ratio which the expired portion of the term of this Ground Lease from the date of original completion of such building and improvements to the date of such loss or damage, bears to the portion of such term from the date of original completion of such building to the date prescribed in Section 2 of this Ground Lease for expiration of the term of this Ground Lease. The interest of the Ground Lessee therein shall be the balance of such proceeds.
- 5.13 LIABILITY INSURANCE. The Ground Lessee shall procure and carry, or cause to procure and carry, without cost to the Ground Lessor, at all times during the term of this Ground Lease, commercial general liability insurance for claims for injuries or death sustained by persons or damage to property while on the Site and such other public liability coverages as are ordinarily procured by persons who own or operate similar buildings in Honolulu, Hawaii. The commercial general liability

insurance policy shall include coverage for premises and operations, independent contractors, products and completed operations, blanket contractual liability, personal and advertising injury, liquor liability, employees as additional insureds and severability of interest. The combined single limit of liability for bodily injury and property damage shall be \$1,000,000.00 per occurrence, \$1,000,000.00 general aggregate, and \$1,000,000.00 products --completed operations aggregate. The limit for personal injury shall be \$1,000,000.00 per person/organization subject to \$1,000,000.00 general aggregate. Umbrella (excess liability) coverage shall be \$50,000,000.00. The policy shall be endorsed to state that the general aggregate of the primary policy applies exclusively to the Site. The policy shall be endorsed to name the Ground Lessor, any mortgagee of any interest of the Ground Lessor in the Site and any Leasehold Mortgagee as hereinafter defined (collectively, the "Additional Insureds"), as additional insureds. The policy shall also specifically provide that the policy shall be considered primary insurance which shall apply to any loss or claim before any contribution by any insurance which any Additional Insured may have in force. The insurance required to be obtained pursuant to this Section may have a deductible or self-insured retention as approved by the Ground Lessor.

5.14 PARTICULAR INSURANCE POLICY PROVISIONS.

- (a) All of the insurance coverages described in Sections 5.11 and 5.12 shall be with insurance companies that may lawfully conduct an insurance business in the State of Hawaii and that have a "Best's" rating of not less than A/VI. If the Best's rating system is changed or terminated, the rating of A/VI shall be adjusted to a comparable rating.
- (b) Ground Lessee shall furnish the Ground Lessor with certificates showing the insurance required under Sections 5.11 and 5.12 to be in effect and naming the Ground Lessor, any mortgagee of any interest of the Ground Lessor in the Site and the Building and any Leasehold Mortgagee, as additional insureds. All such insurance shall be at the cost and expense of Ground Lessee or its sublessees. Such certificates shall include a provision for thirty (30) days' advance written notice by the insurer to each of the Additional Insureds in the event of cancellation of such insurance.
- (c) The Ground Lessee agrees that the insurance policy or policies required by Sections 5.11(a)(i), 5.11(a)(iii), 5.11(a)(iv) and, with respect to property

insurance, Section 5.11(a)(ii), shall include an appropriate clause pursuant to which the insurance carriers waive all rights to subrogation against each of the Additional Insureds with respect to losses payable under such policy, and such policy shall also provide that such policy will not be invalidated should the Ground Lessee waive, in writing, prior to a loss, any or all rights of recovery against any party for losses covered by such policy.

- (d) All insurance policies required by Section 5.11 shall include a standard form mortgagee endorsement which shall:
 - (i) provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any interest in the Site, in their respective order and preference;
 - (ii) provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of any Additional Insured, the Ground Lessee or any person claiming by, through or under any of them; and
 - (iii) waive any provision invalidating such mortgagee clause by reason of the failure of any Additional Insured or the Ground Lessee or any person claiming by, through or under any of them to notify the insurer of any hazardous use, vacancy or occupancy, any requirement that any mortgagee pay any premium thereon, and any contribution clause.
- (e) Ground Lessee shall pay or cause to pay as they become due all premiums for the insurance required by Section 5.11 and Section 5.12, shall renew or replace or cause to be renewed or replaced each policy prior to the expiration date thereof and shall promptly deliver to each Additional Insured certificates for renewal and replacement policies.
- (f) Anything in this Section 5.13 to the contrary notwithstanding, any insurance which the Ground Lessee is required to obtain pursuant to Sections 5.11 and 5.12 may be carried under a "blanket" or umbrella policy or policies governing other properties or liabilities of the Ground Lessee.
- 5.15 INSPECTION. The Ground Lessee will permit the Ground Lessor and its agents, at all reasonable times during the term of this Ground Lease, to enter upon the Site and the

Building and to inspect and examine the same, and the use being made of the same, and the state of repair and condition of the same.

- 5.16 SUBLETTING AND ASSIGNMENT. The Ground Lessee may, without the consent of the Ground Lessor, sublet all or any part of the Site and the Building or assign all or any part of its interest under this Ground Lease. Any sublease by the Ground Lessee shall by its terms be subject and subordinate to this Ground Lease and to the right of the Ground Lessor hereunder. In the event of any assignment or subletting, the Ground Lessee shall not be released from its obligation hereunder and shall remain directly and primarily liable under this Ground Lease as to the Site and the Building, or portion thereof, so assigned or sublet. The Ground Lessee will deliver to the Ground Lessor a true copy of any such sublease or assignment document promptly upon signing the same.
- 5.17 ATTORNMENT AND NON-DISTURBANCE. From time to time at the request of the Ground Lessee, the Ground Lessor shall execute and deliver to the Ground Lessee for the benefit of any tenant in the Building attornment and non-disturbance agreements in form and substance reasonably satisfactory to the Ground Lessor under which the Ground Lessor, as applicable, shall agree to recognize the lease of any such tenant and to permit such tenant to remain in occupancy of its premises within the Building notwithstanding any default hereunder by the Ground Lessee, so long as such tenant is not in default under the lease covering its premises within the Building and the tenancy of such tenant does not extend beyond the Term (calculated without regard to terminations resulting from a Ground Lessee's default). Any such agreement shall provide that such tenant is obligated to attorn to the Ground Lessor if this Ground Lease is terminated under the terms hereof and to recognize the Ground Lessor as the landlord under the lease with such tenant covering its premises within the Building. The issuance of any such agreement shall in no way release or diminish the Ground Lessee's duties and obligations under this Ground Lease.
- 5.18 GROUND LESSOR'S COSTS AND ATTORNEYS' FEES. The Ground Lessee will pay to the Ground Lessor, on demand, all costs and expenses, including attorneys' fees, incurred by the Ground Lessor in enforcing any of the covenants herein contained, in remedying any breach by the Ground Lessee of its covenants, in recovering possession of the Site, in collecting any delinquent rent, taxes or other charges payable by the Ground Lessee hereunder, or in connection with any litigation commenced by or against the Ground Lessee (other than

condemnation proceedings) to which the Ground Lessor, without any fault on its part, shall be made a party.

5.19 SURRENDER. Upon the expiration of the term of this Ground Lease or any extension thereof, or sooner termination thereof as in this Ground Lease provided, the Ground Lessee will peaceably and quietly leave and surrender and deliver up to the Ground Lessor possession of the Site, together with the buildings, structures, fixtures and other improvements hereafter constructed thereon, in good repair, order and condition, except for reasonable wear and tear, and unavoidable casualty against which insurance is not required under this Ground Lease; PROVIDED, HOWEVER, that the Ground Lessee may, if the Ground Lessee is not in default under this Ground Lease, remove furniture, furnishings, appliances and equipment placed by the Ground Lessee on the Site, and if the Ground Lessee shall so remove any of the same, the Ground Lessee will complete such removal and repair all damage occasioned thereby prior to the expiration of the term or any extension thereof.

5.20 HAZARDOUS MATERIALS.

(a) USE OF HAZARDOUS MATERIALS. Except as provided herein, the Ground Lessee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Site and the Building by the Ground Lessee without the prior written consent of the Ground Lessor, which consent may be granted or withheld in the Ground Lessor's sole discretion. As a condition of obtaining the Ground Lessor's consent, the Ground Lessee must demonstrate to the Ground Lessor's sole satisfaction that such Hazardous Material is necessary or useful to the Ground Lessee's business and will be used, kept, stored and disposed of in a manner that complies with all laws regulating any such Hazardous Material so brought upon or used or kept in or about the Site. If the Ground Lessee breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on the Site and the Building caused or permitted by the Ground Lessee results in contamination of the Site or the Building, or if contamination of the Site or the Building by Hazardous Material otherwise occurs for which the Ground Lessee is legally liable to the Ground Lessor for damage resulting therefrom, then the Ground Lessee shall indemnify, defend and hold the Ground Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Site or the Building, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Site or the Building, and sums paid in settlement of claims, attorneys

fees, consultation fees and expert fees) which arise during or after the Ground Lease term as a result of such contamination. This indemnification of the Ground Lessor by the Ground Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water under the Site. Without limiting the foregoing, if the presence of any Hazardous Material on the Site or the Building caused or permitted by the Ground Lessee results in any contamination of the Site or the Building, the Ground Lessee shall promptly take all actions at its sole expense as are necessary to return the Site the Building to the condition existing prior to the introduction of any such Hazardous Material to the Site or the Building; provided that the Ground Lessor's prior written approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Site or the Building. The foregoing indemnity shall survive the expiration or earlier termination of this Ground Lease.

(b) DEFINITIONS. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Material Table (49 CFR 172.101) or by the United States Environmental Protection Agency as hazardous substance (40 CFR Part 302) or as defined in the Hawaii Hazardous Waste Law (Haw. Rev. Stat. Chapter 342J) and amendments thereto, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law, including infectious waste governed by the provisions of Section 321-21 of the Haw. Rev. Stat. and the rules and regulations promulgated thereunder.)

(c) DISCLOSURE. At the commencement of this Ground Lease, and on January 1 of the each year thereafter (each such date being hereafter called "Disclosure Dates"), including January 1 of the year after the termination of this Ground Lease, the Ground Lessee shall disclose to the Ground Lessor the names and amounts of all Hazardous Material, or any combination thereof, which were stored, used or disposed of or on the Site or the Building, or which the Ground Lessee intends to store, use or dispose of or on the Site or the Building in the future.

(d) INSPECTION. The Ground Lessor and their

agents shall have the right, but not the duty, to inspect the Site and the Building at any time to determine whether the Ground Lessee is complying with the provisions of this Section 5.20, the Ground Lessor shall have the right to immediately enter upon the Site and the Building to remedy any contamination caused by the Ground Lessee's failure to comply notwithstanding any other provision of this Ground Lease. The Ground Lessor shall use reasonable efforts to minimize interference with the Ground Lessee's business but shall not be liable for any interference caused thereby.

- (e) REPORTS. To the extent the Ground Lessee is required to file any reports with the United States Environmental Protection Agency or any other federal, state, city or county agency having jurisdiction over Hazardous Material, the Ground Lessee shall concurrently provide the Ground Lessor a copy of such report.
- COMPLIANCE WITH DISABILITY ACCESS LAWS. The Ground 5.21 Lessee hereby covenants and agrees with the Ground Lessor that the Ground Lessee shall at all times during the term of this Ground Lease comply with any and all governmental regulation of the Site and the Building regarding access of disabled persons, including without limitations, Titles III and V of the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101 et seq. or any other similar federal, state or local laws or ordinances and the regulations promulgated thereunder (collectively "Disability Access Laws"). The Ground Lessor shall not be liable for any failure by the Ground Lessee to comply with the requirements of the Disability Access Laws with respect to the Site and the Building during the term hereof and the Ground Lessee expressly releases the Ground Lessor from any and all liability for any failure by the Ground Lessee to so comply. The Ground Lessee shall indemnify, defend and hold the Ground Lessor harmless from and against any and all claims and demands for loss or damage, including claims for discrimination, personal injury, monetary damage or injunctive relief arising out of or in connection with any failure or alleged failure of the Site or the Building to comply with the Disability Access Laws, and the Ground Lessee shall reimburse the Ground Lessor for all costs and expenses, including reasonable attorneys' and other professional or consultants! consultants' fees, paid or incurred by the Ground Lessor in connection with the defense of any such claims including, but not limited to, all costs for research regarding settlement or other preventive measures which the Ground Lessor may take prior to the filing of such action or to attempt to prevent the filing of such an action.

SECTION 6 MUTUAL COVENANTS. The Ground Lessor and the Ground Lessee hereby mutually covenant and agree, each with the other, as follows:

6.1 CONDEMNATION.

- (a) CONSEQUENCES OF CONDEMNATION. In the event at any time or times during the term of this Ground Lease the Site or any part thereof shall be taken or condemned by any authority having the power of eminent domain, then, and in every such case, the estate and interest of the Ground Lessee in any part of the Site so taken or condemned shall at once cease and terminate at the effective date of condemnation defined in section 6.1(b) below, and the Ground Lessee shall peaceably surrender possession of the Site so taken or condemned.
- (b) COMPENSATION AND DAMAGES. In every such case of taking or condemnation of the Site or any part thereof, all Net Proceeds (as defined in Section 6.3 below) payable for or on account of the Ground Lessor's fee simple interest (as encumbered by this Ground Lease) in any of the land hereby demised shall be payable to and be the sole property of the Ground Lessor, and the Ground Lessee shall have no interest or claim to such Net Proceeds or any part thereof whatsoever; and all Net Proceeds payable for or on account of the buildings, fixtures and other improvements on the Site and the Ground Lessee's interest in the Site shall be payable to the Ground Lessor and the Ground Lessee, as their respective interests shall appear, and said respective interests in such Net Proceeds payable for or on account of any such buildings, fixtures and other improvements shall be fixed and determined as of the date ("the effective date of condemnation") when the Ground Lessee shall by reason of such taking or condemnation lose the right to possession of such part of the Site so taken or condemned, as follows:
 - (i) The Ground Lessor shall be entitled to collect and receive all Net Proceeds payable for or on account of the building, fixtures and other improvements located on the Site at the commencement of the Term of this Ground Lease.
 - (ii) The interest of the Ground Lessor in the Net Proceeds payable for or on account of the Building, fixtures and other improvements constructed on the Site after the commencement of the Term shall be a proportionate amount thereof in the ratio which the expired portion of the term of this Ground Lease

from the date of original completion of such building and improvements to the date of such loss or damage, bears to the portion of such term from the date of original completion of such building to the date prescribed in section 2 of this Ground Lease for expiration of the term of this Ground Lease. The interest of the Ground Lessee therein shall be the balance of such proceeds.

- (c) ABATEMENT OF RENT ON CONDEMNATION. In case any portion of the land hereby demised shall be taken by condemnation by any duly constituted authority and thereby pass out of the control of the Ground Lessor, and the Ground Lessee shall by reason thereof lose the right to possession of such portion of such land as lessee hereunder, then, and in every such event, unless the parties shall otherwise agree, the annual rental payable hereunder shall be reduced, except as hereinafter provided, in the proportion which the area of the land taken bears to the total area covered by this Ground Lease.
- (d) CONDEMNATION OF LEASEHOLD INTEREST. If at any time or times during the term of this Ground Lease a leasehold interest in the Site or any part thereof shall be so taken or condemned, then, and in every such case, notwithstanding the foregoing provisions of this section 6.1, such taking or condemnation shall not result in any reduction in rent hereunder, or give the Ground Lessee any right to terminate this Ground Lease with respect to any part of the Site, or excuse the Ground Lessee from the full and faithful performance of its covenants and obligations hereunder for the payment of money, or excuse or relieve the Ground Lessee from the performance of its other covenants and obligations hereunder, except to the extent that and for so long as the performance of such other covenants and obligations shall be rendered impossible by reason of the loss by the Ground Lessee of possession of such part of the Site subject to such taking or condemnation; but in every such case of taking or condemnation of a leasehold interest, the Ground Lessee shall be entitled to claim and recover from the condemning authority its damages sustained by reason thereof, and all compensation and damages payable for or on account of such taking or condemnation of any part of the leasehold interest of the Ground Lessee hereunder shall be payable to and be the sole property of the Ground Lessee.
- (e) LOSS OF BUSINESS DAMAGES. Notwithstanding the foregoing provisions of this section 6.1, the Ground Lessee shall have the right to claim and recover from the condemning

authority, but not from the Ground Lessor, such compensation as may be separately awarded or recoverable by the Ground Lessee in its own right on account of any and all damage to its business by reason of any condemnation and for or on account of any cost or loss to which the Ground Lessee might be put in removing its furnishings and equipment.

- PAYMENT AND USE OF INSURANCE OR CONDEMNATION 6.2 PROCEEDS. Subject to the Ground Lessee's right to terminate this Ground Lease as provided in Section 6.3 below, in case:
 - the buildings, fixtures or other improvements on the Site, or any part thereof, shall be destroyed or damaged by fire or other casualty herein required to be insured against (a "Casualty"),
 - 2. the use, access, occupancy, easement rights or title to the Site or any part thereof is wholly, partially or temporarily taken or sold in, by or on account of any actual or threatened eminent domain proceeding or other taking of action by any person having the power of eminent domain, including an action by a governmental authority to change the grade of, or widen the streets adjacent to, the Site or alter the pedestrian or vehicular traffic flow to the Site so as to result in a change in access to the Site, or by or on account of an eviction by paramount title or any transfer made in lieu of any such proceeding or action (in each instance, a "Condemnation");

then, and as often as the same shall happen, any award, compensation or insurance proceeds to which Ground Lessee or Ground Lessor may become entitled by reason of a Casualty or Condemnation shall be paid to Ground Lessee and available for and used with all reasonable dispatch by the Ground Lessee in rebuilding, repairing or otherwise reinstating such buildings, fixtures and other improvements in conformity with the requirements of Section 5.6 above so as to restore the operation and function of the Site to the same condition as existed immediately prior to such Casualty or Condemnation; provided, however, that any loss, the estimated cost of restoration of which is in excess of FIVE MILLION DOLLARS (\$5,000,000), shall be made payable to an escrow agent, a lender providing financing for the construction of improvements on the Site, or a trustee experienced in administering construction loans, as chosen by or

at the direction of the Ground Lessee in its discretion (the "Escrowee"). The Escrowee shall have no obligation whatsoever to effect, maintain or renew such insurance, or to attend to any claim for loss or damage thereunder, or the collection of any proceeds thereof, or to incur any expenses therefor, and shall be responsible only for the proper custody and application as herein provided of all award, compensation or insurance proceeds that shall actually come into its possession, and the Ground Lessee will pay or cause to be paid all fees and expenses of the Escrowee for or in connection with its services. In case such proceeds shall be insufficient in amount to so rebuild, repair or reinstate such buildings, fixtures and other improvements, the Ground Lessee shall make up the deficiency for such purpose out of the Ground Lessee's own funds.

Notwithstanding anything to the contrary contained herein, the Ground Lessor and the Ground Lessee agree that during such time as the Lease is in effect, any award, compensation or insurance proceeds shall be adjusted, held, deposited, and disbursed pursuant to the provisions of the Lease.

The Ground Lessee may appear in any proceeding or action to negotiate, prosecute, adjust or appeal any claim for any award, compensation or insurance payment on account of any Casualty or Condemnation and shall pay all expenses thereof. At the Ground Lessee's request, the Ground Lessor shall participate in any such proceeding, action, negotiation, prosecution or adjustment.

Ground Lessor or the Ground Lessee shall receive notice of a possible Condemnation of the Site or any interest therein, it shall give notice thereof to the other promptly after the receipt of such notice. In the event of a Significant Casualty (as defined below) or receipt of notice by Ground Lessee of a Total Condemnation or a Significant Condemnation (each as defined below), the Ground Lessee shall, not later than forty-five (45) days after such occurrence or such longer time as may reasonably be required (as specified by notice from Ground Lessee to Ground Lessor from time to time delivered prior to the termination of such forty-five (45) days, as the same may be extended) to determine the full extent of loss, the probable expense and time of restoration and the probable amount of the award or insurance payment, deliver to the Ground Lessor a written notice stating Ground Lessee's election either (i) to keep this Ground Lease in full force and effect and, at Ground Lessee's sole cost and expense, promptly and diligently restore

the Site in accordance with the terms of Section 5.6 or (ii) to terminate this Ground Lease in accordance with this Section 6.3. As used herein, "Total Condemnation" means a Condemnation that involves a taking of Ground Lessor's entire fee simple title to the Site. "Significant Condemnation" means a Condemnation that in the reasonable, good faith judgment of Ground Lessee either (a) renders the Building unsuitable for continued use as a first-class office building or (b) is so substantial in nature such that restoration of the Building to substantially its condition as existed immediately prior to such Condemnation would be impracticable. "Significant Casualty" means a Casualty that in the reasonable, good faith judgment of Ground Lessee either (x) renders the Building unsuitable for continued use as a first-class office building or (y) is so substantial in nature such that restoration of the Building to substantially its condition as existed immediately prior to such Casualty would be impracticable or, because of applicable legal requirements, impossible.

If the Ground Lessee shall elect to terminate this Ground Lease then, this Ground Lease shall terminate on the termination date specified in the written notice. On the termination date, Ground Lessee shall pay to the Ground Lessor all rent and other obligations theretofore accruing under the Ground Lease, and Ground Lessor and Ground Lessee shall be entitled to all Net Proceeds as provided in Section 5.12(b) or 6.1(b), respectively. Upon such termination, the Ground Lessee shall be relieved of all further obligations under this Ground Lease, and the Ground Lessor shall refund to the Ground Lessee any unearned portion of the rent paid in advance prior to the effective date of such termination. As used herein, the term "Net Proceeds" shall mean all amounts paid in connection with any Casualty or Condemnation, and all interest earned thereon, less the expense of claiming and collecting such amounts, including all costs and expenses in connection therewith for which the Ground Lessor or Ground Lessee is entitled to be reimbursed pursuant to this Ground Lease (including reasonable fees and expenses of counsel).

6.4 CONSENT TO MORTGAGE AND PROTECTION OF MORTGAGEE.

(a) RIGHT TO MORTGAGE. Notwithstanding any provision in this Ground Lease to the contrary, the Ground Lessee shall have the absolute right without the consent of the Ground Lessor to take back a purchase money leasehold mortgage upon a sale or assignment of all or any portion of its right, title and interest in, to and under this Ground Lease, or to assign all or any portion of its right, title and interest in,

to and under this Ground Lease, by way of mortgage, to any bank, insurance company, trustee on behalf of secured note holders or other established lending institution or institutions or any officer or designee of the foregoing (including, without limitation, the Mortgagee) (each such bank, insurance company, lending institution, officer or designee herein called a "Leasehold Mortgagee"), to secure the repayment of funds borrowed in connection with the construction, repair or alteration of any building or improvements now or hereafter located on the Site, which mortgage may contain such terms, conditions and maturity as the Ground Lessee may determine, and the Ground Lessee may enter into any and all such extensions, modifications or amendments of any such mortgage as it may determine, PROVIDED that the Ground Lessee shall upon execution of any such mortgage, extension, modification or amendment promptly deliver a true copy thereof to the Ground Lessor (the Ground Lessor hereby acknowledging that they have received an executed copy of the Mortgage). The execution and delivery of any such mortgage shall not be deemed to constitute such an assignment or transfer of this Ground Lease as would require the holder or holders thereof, as such, to assume the observance or performance of any of the terms, covenants or conditions on the part of the Ground Lessee to be observed or performed hereunder. Any Leasehold Mortgagee and its successors and assigns, may enforce such mortgage and may acquire title to the mortgaged leasehold estate in any lawful way, and pending foreclosure of such mortgage (or sale by deed or assignment in lieu of foreclosure) may take possession of and sublease the Site and Building demised hereunder, or cause any person to take possession of and sublease the Site and Building demised hereunder, and upon foreclosure thereof (or in the event of any sale by deed or assignment in lieu of foreclosure) may without further consent of the Ground Lessor sell and assign this Ground Lease by assignment in which the assignee shall expressly assume and agree to observe and perform all the covenants of the Ground Lessee hereunder for so long as such assignee shall retain title to the Ground Lessee's interest hereunder, and any such assignee shall also have the absolute right to assign all or any portion of its right, title and interest in, to and under this Ground Lease to any other Leasehold Mortgagee, by way of mortgage, upon the same terms and conditions hereinabove made available to the Ground Lessee, provided that upon the execution of any such assignment or mortgage a true copy thereof shall be delivered promptly to the Ground Lessor. The Leasehold Mortgagee and each of its assigns shall be liable to perform the obligations of the Ground Lessee hereunder only during the period that such person has possession of or title to the Ground Lessee's interest hereunder.

(b) PROTECTION OF LEASEHOLD MORTGAGEE. The following provisions shall apply and inure to and for the benefit of each Leasehold Mortgagee, and its successors and assigns:

- (i) This Ground Lease shall not be amended, altered, modified or rescinded, or (except in accordance with the provisions contained in this subsection following the Ground Lessee's default) terminated prior to the expiration of the stated term hereof, without the prior written consent of each Leasehold Mortgagee.
- (ii) The Ground Lessor shall, upon serving the Ground Lessee any notice of default under the provisions of or with respect to this Ground Lease, at the same time serve a copy of such notice upon each Leasehold Mortgagee, by registered or certified mail or by courier service, addressed to it at the address shown in such mortgage, and no notice of default by the Ground Lessor to the Ground Lessee shall be deemed to be duly given unless and until a copy thereof shall have been go mailed to each Leasehold Mortgagee.
- (iii) Each Leasehold Mortgagee, if the Ground Lessee shall be in default hereunder, shall have the right (but shall not be obligated) within the same period as is given to the Ground Lessee therefor, plus the additional period of time specified in subsection 6.4(b)(v) below, to remedy or commence to remedy such default or to cause the same to be remedied, and the Ground Lessor shall accept such performance by or at the instigation of such mortgagee as if the same were done by the Ground Lessee.
- (iv) The Ground Lessee hereby constitutes and appoints each Leasehold Mortgagee as the Ground Lessee's agent and attorney-in-fact with full power, in the Ground Lessee's name, place and stead, and at the Ground Lessee's cost and expense, to enter upon the Site and the Building and make repairs thereon and therein, maintain the same, remove any violations of law, statutes, ordinances or rule or regulation of governing authorities and otherwise to perform any of the obligations of the Ground Lessee under this Ground Lease.

In the event of any default of the Ground Lessee (including those relating to bankruptcy or insolvency) other than a default in the payment of money or a default susceptible of being cured by the payment of money, the Ground Lesser shall not take any action to effect a termination of this Ground Lease, whether by service of a notice of termination or otherwise, due to such default of the Ground Lessee, without allowing each Lessee. Lessee, without allowing each Leasehold Mortgagee (or a receiver appointed at the Leasehold Mortgagee's request or an independent contractor with the Leasehold Mortgagee) one hundred twenty (120) days within which either (1) to obtain possession of the Site and the Building and the interest of the Ground Lessee under this Ground Lease and cure the default, if the default is susceptible of being cured after obtaining such possession by the Leasehold Mortgagee, receiver or independent contractor, or (2) if not enjoined or stayed, to institute and complete foreclosure proceedings or otherwise sell or acquire the Ground Lessee's interest in the Site and the Building and in this Ground Lease, and any such default shall be considered as having been waived by the Ground Lessor upon the completion of foreclosure, or such sale or acquisition of the Ground Lessee's interest, PROVIDED that (A) the Leasehold Mortgagee shall not be required to continue possession or foreclosure proceedings if the default which would have given cause for such notice shall have been cured or if such Leasehold Mortgagee gives to the Ground Lessor not less than 30-days' notice of its intention to abandon such foreclosure proceedings or discontinue such possession, (B) during any period of forbearance, the foregoing shall not preclude the Ground Lessor from exercising any remedies hereunder relating to any other default of the Ground Lessee, and (C) on and after the date of such foreclosure sale or other acquisition and for so long as it shall hold such title, the party holding title to the Ground Lessee's interest under this Ground Lease shall observe and perform, or cause to be observed and performed, all of the covenants and agreements on the part of the Ground Lessee hereunder to be observed and performed. If during the 120 day period, the Leasehold Mortgagee shall have instituted foreclosure proceedings or otherwise taken steps to sell or acquire the Ground Lessee's interest in the Site and the Building and this Ground Lease, but not completed such proceedings

by the end of the 120 day period despite its good faith and reasonable diligence, or if such proceedings shall have been stayed or enjoined, then this Ground Lease shall not terminate at the end of the 120 day period and the time for completion by the Leasehold Mortgagee of its proceedings shall continue so long as the Leasehold Mortgagee is stayed or enjoined and thereafter for so long as the Leasehold Mortgagee proceeds to complete steps to acquire or sell Ground Lessee's interest in the Site and this Ground Lease by foreclosure or other appropriate means with reasonable diligence and continuity. Nothing in this subsection (v) shall be construed to extend this Ground Lease beyond the term of this Ground Lease.

- (vi) No such Leasehold Mortgagee shall become personally liable under the agreements, terms, covenants or conditions of this Ground Lease unless and until such time as the Leasehold Mortgagee becomes, and then only for as long as it remains, the owner of the leasehold estate, or is in possession of the Site, PROVIDED that, upon assignment of this Ground Lease by the Leasehold Mortgagee, such assignee shall assume and agree to perform and observe all covenants and conditions in this Ground Lease contained and on the part of the Ground Lessee to be performed and observed.
- (vii) In the event of termination of this Ground Lease or any succeeding Ground Lease made pursuant to the provisions of this subsection (vii) prior to its stated expiration date for any reason whatsoever (including termination that results from rejection of this Ground Lease by the Ground Lesse's trustee in bankruptcy), the Ground Lessor will enter into a new Ground Lease of the demised Site with the Leasehold Mortgagee, or, if there be more than one mortgage, then with the Leasehold Mortgagee entitled under subparagraph (C) of this subsection (vii), for the remainder of the term, effective as at the date of such termination, at the rent and upon the covenants, agreements, terms, provisions and limitations herein contained (which lease shall have the same priority as this Ground Lease had prior to its termination), PROVIDED:
 - $\hbox{(A)} \quad \text{such Leasehold Mortgagee makes} \\ \text{written request upon the Ground Lessor}$

for such new Ground Lease within thirty (30) days from the date of its receipt of notice from the Ground Lessor of such termination:

- (B) such Leasehold Mortgagee pays to the Ground Lessor at the time of the execution and delivery of such new Ground Lease any and all sums which would at the time of the execution and delivery thereof be due under this Ground Lease but for such termination and pays any and all expenses, including reasonable counsel fees, court costs and disbursements incurred by the Ground Lessor in connection with any such default and termination as well as in connection with the execution and delivery of such new Ground Lease, less the net income derived by the Ground Lessor from the Site and the Building subsequent to the date of Ground Lease termination and prior to the execution and delivery of the new Ground Lease; and
- (C) if more than one such Leasehold Mortgagee makes written request upon the Ground Lessor in accordance with the provisions of subparagraph (A) of this subsection (vii), the new Ground Lease shall be delivered to Mortgagee, unless all of the Notes have been paid in full, in which event the new lease shall be delivered to the Leasehold Mortgagee requesting such new Ground Lease whose mortgage is prior in lien, and the written request of any Leasehold Mortgagee whose mortgage is subordinate in lien shall be void and of no force and effect.
- (viii) Any new Ground Lease made in accordance with the provisions of subsection (vii) of this paragraph, shall be prior to any mortgage or other lien on, or charge or encumbrance of the fee of the Site which was subordinate to this Ground Lease, and the new lessee shall have the same right, title and interest in and to the Site and the Building and other improvements thereon as the Ground Lessee had under this Ground Lease.
- $\mbox{(ix)}\mbox{\ }\mbox{\ }\mbox{\$

of subsection (vii) of this paragraph, the Ground Lessee's interest in all subleases and management agreements which theretofore may have been assigned or otherwise transferred to the Ground Lessor shall thereupon be assigned and transferred without recourse by the Ground Lessor to the Leasehold Mortgagee as the new lessee.

- (x) Each Leasehold Mortgagee shall have and be subrogated to any and all rights of the Ground Lessor with respect to the remedying of any default hereunder by the Ground Lessee. The Ground Lessee irrevocably authorizes and directs the Ground Lessor to accept, and the Ground Lessor shall accept, performance by a Leasehold Mortgagee of any of the covenants or agreements on the Ground Lessee's part to be performed hereunder, with the same force and effect as though performed or exercised by the Ground Lessee. A Leasehold Mortgagee who acquires the Ground Lessee's interests in this Ground Lease or who obtains a new Ground Lease pursuant to 6.4(b)(vii) shall, upon any assignment of such interest, be released of all rights and obligations hereunder accruing thereafter.
- (xi) The Ground Lessee shall deliver to each Leasehold Mortgagee copies of all notices and other instruments which the Ground Lessee may deliver pursuant to this Ground Lease. Any notice, approval, estoppel, consent, waiver or other delivery purportedly delivered or given (or deemed delivered or given) by or on behalf of the Ground Lessee pursuant to this Ground Lease shall be of no force or effect unless in writing and consented to by each Leasehold Mortgagee.
- 6.5 GRANTS AND RELEASES OF EASEMENTS. The Ground Lessor hereby consents in each instance to the following actions by the Ground Lessee, in the name and stead of the Ground Lessor, but at the cost and expense of the person performing such action: (a) the granting of easements, licenses, rights-of-way and other rights and privileges in the nature of easements reasonably necessary or desirable for the use, repair or maintenance of the Site and the Building as herein provided, whether or not such grants are reciprocal to the Ground Lessee, (b) the release of existing easements or other rights in the nature of easements which are for the benefit of the Site or the Building, (c) the dedication or transfer of unimproved portions of the Site for road, highway or other public purposes, (d) the

execution of petitions to have the Site annexed to any municipal corporation or utility district and (e) the execution of amendments to any covenants and restrictions affecting the Site or the Building; PROVIDED, HOWEVER, in each case the Ground Lessor shall have received a certificate of the person performing the action stating that (i) such grant, release, dedication or transfer does not materially impair the use of the Site or the Building, or materially reduce their value, (ii) such grant, release, dedication or transfer is reasonably necessary in connection with the use, maintenance, alteration or improvement of the Site or the Building, (iii) the Ground Lessee shall remain obligated under this lease in accordance with its terms, as though such grant, release, dedication or transfer, had not been effected and (iv) the person performing such action shall pay and perform any obligations of the Ground Lessor under such grant, release, dedication or transfer. Without limiting the effectiveness of the foregoing, the Ground Lessor shall, upon the request of the Ground Lessee or the Lessee, and at the sole cost and expense of the requesting person, execute and deliver any instruments necessary or appropriate to confirm any such grant, release, dedication or transfer to any person permitted under this section.

- APPLICATIONS FOR BUILDING PERMITS AND OTHER APPROVALS. The 6.6 Ground Lessor will cooperate with the Ground Lessee in the execution and delivery of any instruments required, and in all other respects, in connection with any applications made by the Ground Lessee for building permits, easements, licenses or other forms of governmental permission required or desirable in connection with the construction of the improvements or otherwise in connection with the use and enjoyment of the Site.
- 6.7 ESTOPPEL CERTIFICATES. From time to time, the Ground Lessor and the Ground Lessee shall provide each to the other, upon written request therefor, estoppel certificates in recordable form certifying that, if such be the case, there are no outstanding breaches of the terms, conditions or covenants contained in this Ground Lease.
- CONSENTS. Whenever under the terms of this Ground Lease the 6.8 consent of either party shall be required, such consent shall not be unreasonably or arbitrarily withheld, and no charge, direct or indirect, shall be made therefor other than a reasonable fee reflecting the costs of processing such approval. If the party receiving any request for consent or approval shall fail to act upon such request within sixty (60) days after receipt of written request therefor, such consent or

- $6.9\,$ EVENTS AND CONSEQUENCES OF DEFAULT. This demise is upon the express condition that if any one or more of the following events of default shall occur, to wit:
- (a) The Ground Lessee shall fail to pay the rent herein reserved or any part thereof when due, and such failure shall continue for a period of ten (10) days after written notice thereof shall have been given by the Ground Lessor to the Ground Lessee; or
- (b) The Ground Lessee shall fail to observe or perform any other of the covenants herein contained and on the part of the Ground Lessee to be observed and performed, and such failure shall continue for a period of thirty (30) days after written notice thereof shall have been given by the Ground Lessor to the Ground Lessee, unless the Ground Lessee shall have taken steps in good faith within such period to remedy the same and is continuing to so act with diligence and continuity reasonably satisfactory to the Ground Lessor; or
 - (c) The Ground Lessee shall abandon the Site; or
- (d) The Ground Lessee then entitled to possession of the Site shall become bankrupt or seek protection under any provision of the Federal Bankruptcy Act, or if any assignment of the Ground Lessee's property for the benefit of the Ground Lessee's creditors shall be made, or if the Site shall be attached through legal process or taken upon execution, unless the Ground Lessee shall take steps in good faith to have such attachment or execution set aside within ninety (90) days after such attachment or execution;

THEN, AND IN CASE OF ANY SUCH EVENT OF DEFAULT, the Ground Lessor may, upon the occurrence of such event of default, or at any time thereafter during the continuance of such default, at the Ground Lessor's option, terminate this Ground Lease by giving thirty (30) days' prior written notice thereof to the Ground Lessee, and upon such termination, the Ground Lessor may then or at any time thereafter reenter the Site or any part thereof, in the name of the whole, and thereupon, take possession of the Site and all improvements thereon and may expel and remove from the Site the Ground Lessee and those claiming under the Ground Lessee, and the Ground Lessee's and their effects, without service of notice or resort to any legal process and without being deemed guilty of any trespass or

becoming liable for any loss or damage which may be occasioned thereby, or may then, or at any time thereafter, bring an action for summary possession of the Site or any part thereof as provided by law, all without prejudice to any other remedy or right of action which the Ground Lessor may have for arrears of rent or for any preceding or other breach of this Ground Lease. Such termination of this Ground Lease may, but need not necessarily, be made effective by filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii (if appropriate) or by recording in the Bureau of Conveyances of the State of Hawaii an affidavit that such notice of termination has been given to the Ground Lessee.

- 6.10 NONWAIVER OF BREACH. The acceptance of rent by the Ground Lessor shall not be deemed to be a waiver by the Ground Lessor of any breach by the Ground Lessee of any term, covenant or condition of this Ground Lease herein contained, or of the Ground Lessor's right to declare and enforce a forfeiture for any such breach. The failure of the Ground Lessor to insist upon strict performance of any of the terms, covenants and conditions of this Ground Lease, or to exercise any option herein conferred in any one or more instances, shall not be construed as a waiver or relinquishment for the future of any such terms, covenants, conditions or option, but the same shall be and remain in full force and effect.
- 6.11 INTERPRETATION. Unless the context otherwise requires, the term "Site" means and includes the land hereinabove described and all buildings, structures, fixtures and improvements now located upon or at any time hereafter constructed or placed upon such land during the term of this Ground Lease; the term "mortgage" means any assignment, deed of trust or other transfer of this Ground Lease, made as security for any indebtedness of the Ground Lessee; the term "mortgagee" means any person to whom any such mortgage of this Ground Lease is made. The headings of sections and subsections herein are inserted only for convenience and reference and shall in no way define, limit or describe the scope or intent of any provision of this Ground Lease. The use of any gender shall include all genders. Use of the singular shall include the plural, and use of the plural shall include the singular, as appropriate in the context. This Ground Lease contains all of the agreements between the parties relating to the Ground Lesse's use and occupancy of the Site and supersedes all other prior or concurrent oral or written letters, agreements and understandings. This Ground Lease shall be construed and interpreted under and pursuant to the laws of the State of Hawaii.

- 6.12 NEITHER GROUND LESSOR NOR GROUND LESSEE DEEMED DRAFTER. All provisions of this Ground Lease have been negotiated by the Ground Lessor and the Ground Lessee at arm's length and with full representation of their respective legal counsel and neither party shall be deemed to be the drafter of this Ground Lease. If this Ground Lease is ever construed by a court of law, such court shall not construe this Ground Lease or any provision of this Ground Lease against either party as the drafter of the Ground Lease.
- 6.13 NOTICES. Any notice or demand to be given to or served upon either the Ground Lessor or the Ground Lessee in connection with this Ground Lease shall be deemed to have been sufficiently given or served for all purposes by being sent as registered or certified mail, postage prepaid, addressed in the case of the Ground Lessor to such party at the place hereinabove designated for the payment of rent, or at such other address as the Ground Lessor may from time to time designate in writing to the Ground Lessee, and in the case of the Ground Lessee, to such party at the Site, or at such other address or to such other persons as the Ground Lessee may from time to time designate in writing to the Ground Lessor, and any such notice or demand shall be deemed conclusively to have been given or served upon the earlier to occur of the actual date of delivery or five (5) days after the date of mailing.
- 6.14 PARTIES IN INTEREST. All of the terms, conditions and covenants of this Ground Lease shall inure to the benefit of and be binding upon the successors and assigns of the Ground Lessor, and the successors and permitted assigns of the Ground Lessee, and each Leasehold Mortgagee and its successors and assigns, to the same extent as such terms, conditions and covenants inure to the benefit of and are binding upon the Ground Lessor and the Ground Lessee, respectively.
- 6.15 PERFORMANCE ON A NON-BUSINESS DAY. If any payment or performance is required hereunder on a day that is not a banking day in both the City of New York, New York, and the City and County of Honolulu, Hawaii, then such payment or performance shall be due on the next succeeding business day.
- 6.16 SHORT FORM GROUND LEASE. On the date hereof, the parties shall join in the execution of a memorandum or so-called "short form" of this Ground Lease for the purposes of recordation. Such memorandum or short form of this Ground Lease shall describe the parties, the leased Site and the term of this Ground Lease and shall incorporate this Ground Lease by reference.

- 6.17 NO ACCORD AND SATISFACTION. No payment by the Ground Lessee or receipt by the Ground Lessor of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and the Ground Lessor may accept such check or payment without prejudice to the Ground Lessor's right to recover the balance of such rent or pursue any other remedy in this Ground Lease provided.
- 6.18 INTEREST ON PAST DUE ACCOUNT. Any amount owing by the Ground Lessee to the Ground Lessor under the terms of this Ground Lease shall bear interest from the date the same became due until paid at a floating rate equal to three (3) percent over the large business prime rate then being charged by First Hawaiian Bank, but in no event to exceed the highest rate then allowed by applicable law. Said interest shall be considered as a part of the rental payable hereunder.
- 6.19 PERFORMANCE BY THE GROUND LESSOR. If the Ground Lessee shall fail to pay any sum of money other than rent required to be paid by it hereunder, or shall fail to perform any other act or affirmative covenant to be performed by the Ground Lessee pursuant to the terms of this Ground Lease, and such failure shall continue for ten (10) days after written notice thereof to the Ground Lessee, then the Ground Lessor may, but shall not be obligated so to do, perform any such affirmative covenant, or make any such payment, as the Ground Lessee's agent, and the full amount of the cost and expense entailed, or the Ground Lessor, and the Ground Lessor shall have the right to add the amount thereof, together with interest at the rate specified in Section 6.18, from the date of payment, to the rentals then due or thereafter coming due hereunder. The option given in this Section is for the sole protection of the Ground Lessor, and its existence shall not release the Ground Lessee from the obligation to perform any of the covenants herein provided to be performed by the Ground Lessee, or deprive the Ground Lessor of any legal rights which the Ground Lessor may have by reason of any such default by the Ground Lessee.
- 6.20 GROUND LESSOR'S FAILURE TO PERFORM. The Ground Lessor shall not be deemed to be in default in the performance of any obligation required by it under this Ground Lease unless and until it has failed to perform such obligation within thirty (30) days after written notice by the Ground Lessee to the Ground Lessor, specifying wherein the Ground Lessor have failed to perform such obligation; provided that if the nature of

Ground Lessor's obligation is such that more than thirty (30) days are required for its performance, the Ground Lessor shall not be in default if Ground Lessor commences to cure the default within such thirty (30) day period and thereafter diligently prosecutes the same to completion. No such failure by the Ground Lessor shall constitute grounds for cancelling this Ground Lease.

- 6.21 BROKERAGE COMMISSIONS. The Ground Lessee agrees to indemnify the Ground Lessor against, and hold the Ground Lessor harmless from, all liabilities arising from the claims of any broker, the finder or the like relating to this Ground Lease based upon acts of the Ground Lessee (including, without limitation, attorneys' fees incurred by the Ground Lessor in connection therewith).
- 6.22 SALE OR ASSIGNMENT BY GROUND LESSOR. The term "Ground Lessor" as used in this Ground Lease shall be limited to mean and include only the fee owner or owners at the time in question of the Site. Each Lessor shall be automatically free and relieved from all liability respecting the performance of any covenants or obligations on the part of the Ground Lessor contained in this Ground Lease upon a sale, conveyance or assignment of its interest in the Site, except as to obligations already accrued. Upon any such sale, conveyance or assignment, the buyer, grantee or assignee shall only become responsible for all of the covenants and conditions herein contained and on the part of the Ground Lessor to be observed and performed after the time of such sale or conveyance. Notwithstanding any provision in this Ground lease to the contrary, the Ground Lessor shall have the right without the consent of the Ground Lessee to assign by way of mortgage all or any portion of its fee interest in the land demised hereunder, provided that any such mortgage shall be expressly subordinate to the Ground Lessee's interest under this Ground Lease.
- 6.23 REIMBURSEMENT OF THE GROUND LESSOR'S PROCESSING COSTS. The Ground Lessee shall reimburse the Ground Lessor for all costs and expenses (including attorneys' fees and other professional fees) incurred by the Ground Lessor in processing all consents and approvals required of the Ground Lessor including, but not limited to, the preparation and review of all documents, plans or specifications in connection therewith. The amount of such costs and expenses shall be payable to the Ground Lessor on demand and, if not paid, shall carry interest as provided in this Ground Lease. Failure to pay such amounts shall also constitute a default under this Ground Lease entitling the Ground Lessor to exercise their rights upon

73 default by the Ground Lessee. 74

Ву		
Its		
Ву		
Its		
FH CENTER, INC.		
Ву		
Its		
Ву		
Its		
	"GROUND	LESSOR"
REFIRST, INC.		
Ву		
Its		
Ву		
Its	"GROUND	LESSEE"

FIRST HAWAIIAN LIMITED PARTNERSHIP

75 STATE OF HAWAII) SS: CITY AND COUNTY OF HONOLULU)
on this day of, 1993, before me appeared, and, to me personally known, who, being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.
Notary Public, State of Hawaii My commission expires:

76 STATE OF HAWAII)) SS:
CITY AND COUNTY OF HONOLULU	
to me personally known, who, that such persons executed t deed of such persons, and if	day of, 1993, before me appeared and, being by me duly sworn or affirmed, did say he foregoing instrument as the free act and applicable in the capacity shown, having ute such instrument in such capacity.
	Notary Public, State of Hawaii
	My commission expires:

11			
STATE OF HAWAII)) SS:		
CITY AND COUNTY OF HONOR	,		
On this	- day a£	1000 hafara wa annaarad	
	•	, 1993, before me appeared , and, to me	
personally known, who, bersons executed the fo	being by me duly swor regoing instrument as	rn or affirmed, did say that such s the free act and deed of such shown, having been duly authorized	
o execute such instrume			
		Notary Public, State of Hawaii	
		My commission expires:	

1

EXHIBIT 12

STATEMENT RE: COMPUTATION OF RATIOS

YEAR ENDED DECEMBER 31,

				, 				
	1993	1992	1991	1990	1989			
•	(dollars in thousands)							
Income before income taxes and cumulative effect of a change in accounting principle	\$ 119,105	\$ 127,880	\$ 120,200 	\$ 104,540	\$ 83,853			
Fixed charges:(1) Interest expense Capitalized interest	163,541 1,084	217,693 3,732 2,069	270,851 1,404	283,676 - 851	249, 674 - 835			
Rental expense Less interest on deposits	2,929 167,554 129,719	223,494 186,725	1,510 273,765 255,099	284,527 271,710	250,509 238,991			
Net fixed charges	37,835	36,769	18,666	12,817	11,518			
Earnings, excluding interest on deposits	\$ 156,940 =======	\$ 164,649 =======	\$ 138,866 ======	\$ 117,357 =======	\$ 95,371 ======			
Earnings, including interest on deposits	\$ 286,659 ======	\$ 351,374 ======	\$ 393,965 ======	\$ 389,067 ======	\$ 334,362 =======			
Ratio of earnings to fixed charges:								
Excluding interest on deposits	4.15 X	4.48 x	7.44 x	9.16	8.28 x			
Including interest on deposits	1.71 X	1.57 x	1.44 x	1.37	1.33 x			

(1) For purposes of computing the above ratios, earnings represent income before income taxes plus fixed charges. Fixed charges, excluding interest on deposits, include interest (other than on deposits), whether expensed or capitalized, and that portion of rental expense (generally one third) deemed representative of the interest factor. Fixed charges, including interest on deposits, include all interest, whether expensed or capitalized, and that portion of rental expense (generally one third) deemed representative of the interest factor.

Exhibit 12

1

EXHIBIT 13

CORPORATION'S ANNUAL REPORT 1993

- 14 Corporate Organization
- 15 Common Stock Information
- 16 Summary of Selected Consolidated Financial Data
- 17 Management's Discussion and Analysis of Financial Condition and Results of Operations
- 33 Summary of Quarterly Financial Data (Unaudited)
- 34 Report of Independent Accountants

Financial Statements:

- 35 Consolidated Balance Sheets
- 36 Consolidated Statements of Income
- 37 Consolidated Statements of Changes in Stockholders' Equity
- 38 Consolidated Statements of Cash Flows
- 39 Notes to Financial Statements
- 52 Corporate Addresses
- 52 Supplemental Information

FIRST HAWAIIAN, INC.

First Hawaiian, Inc. ("Parent") is a registered bank holding company under the Bank Holding Company Act of 1956, as amended, and is incorporated under the laws of the State of Delaware. As a bank holding company, the Parent is allowed to acquire or invest in the securities of companies that are engaged in activities closely related to banking and sanctioned by the Federal Reserve Board and other regulatory agencies.

The Parent's organization consists of the following wholly-owned subsidiaries:

FIRST HAWAIIAN BANK

First Hawaiian Bank ("Bank") is a full-service bank conducting general commercial and savings banking business and offering trust services. The Bank's activities include receiving demand, savings and time deposits, making commercial, agricultural, real estate and consumer loans; selling traveler's checks, bank money orders, mutual funds and annuities; issuing letters of credit; handling domestic and foreign collections; renting safe deposit boxes; and providing data processing services to customers.

The Bank's main office is located in Honolulu, Hawaii with 58 other banking offices located throughout the State of Hawaii. It also has two banking offices in Guam, an offshore branch in Grand Cayman, British West Indies, a representative office in Tokyo, Japan and a worldwide network of correspondent banks.

Deposits in the Bank are insured by the Federal Deposit Insurance Corporation ("FDIC") to the extent, and subject to the limitations, set forth in the Federal Deposit Insurance Act, as amended (the "Act"). The Bank is a State of Hawaii chartered bank and is not a member of the Federal Reserve System.

The Bank also conducts business through the following wholly-owned subsidiaries:

- O FH CENTER, INC. FH Center, Inc. was organized to own certain real property in connection with the construction of First Hawaiian Center.
- o FHB MORTGAGE COMPANY, INC. FHB Mortgage Company, Inc. was organized to operate a mortgage brokerage company and is presently doing business as Phoenix Financial Services in Honolulu, Hawaii.
- o FIRST HAWAIIAN OVERSEAS CORPORATION First Hawaiian Overseas Corporation is engaged in foreign banking investements and activities outside the United States.
- O FHB PROPERTIES, INC. AND AMERICAN SECURITY PROPERTIES, INC. FHB Properties, Inc. and American Security Properties, Inc. were organized to hold title to certain property and premises upon which the Bank's business is conducted.

PIONEER FEDERAL SAVINGS BANK

Pioneer Federal Savings Bank ("Pioneer") is a federally chartered savings bank headquartered in Honolulu, Hawaii. Pioneer, chartered in 1890, currently conducts its business through 19 full-service offices located on the islands of Oahu, Maui, Hawaii and Kauai. Pioneer has two wholly-owned subsidiaries -- Pioneer Insurance Agency, Inc. and Pioneer Advertising Agency, Inc. The operations of these subsidiaries constitute a small portion of Pioneer's business.

Pioneer's principal business consists of attracting deposits from the general public through a variety of deposit products. The deposits are insured by the Savings Association Insurance Fund of the FDIC to the extent, and subject to the limitations, set forth in the Act. The deposits, together with borrowings, principally from the Federal Home Loan Bank ("FHLB") of Seattle, and funds from ongoing operations, are used in the origination of one-to-four family residential mortgage loans and, to a lesser extent, consumer loans and other mortgage loans.

FIRST HAWAIIAN CREDITCORP, INC.

First Hawaiian Creditcorp, Inc. ("Creditcorp") is a financial services laon company operating in the State of Hawaii.

The lending activities of Creditcorp are concentrated in both consumer and commercial financing which are primarily collateralized by real estate.

The primary source of funds of Creditcorp is receiving savings and time deposits. Deposits are insured by the FDIC to the extent, and subject to the limitations, set forth in the Act.

Creditcorp has 11 branch offices located throughout the four major islands of the State of Hawaii and a loan production office in Guam.

FIRST HAWAIIAN LEASING, INC.

First Hawaiian Leasing, Inc. is primarily engaged in commercial equipment and vehicle leasing and financing and is also a licensed financial services loan ${\bf r}$

company.

FHI INTERNATIONAL, INC.

FHI International, Inc. was organized to engage and/or invest in consumer financing services and related activities outside the United States.

COMMON STOCK INFORMATION

The common stock of First Hawaiian, Inc. ("Company") is traded over-the-counter on the National Association of Securities Dealers ("Nasdaq") National Market under the symbol FHWN. As of December 31, 1993, there were 5,151 holders of record of the Company's common stock. A large number of shares are also held in the names of nominees and brokers for individuals and institutions.

On December 1, 1993, the Bank purchased certain assets and assumed certain liabilities of GKN, Inc., which did business as Phoenix Financial Services at a purchase price of \$1,000,000 in the form of an exchange for 41,186 newly-issued shares of common stock of the Company.

On August 27, 1992, the Company entered into a merger agreement with Finance Investment Company, Limited whereby the Company acquired FH Center, Inc. and its parcel of land in exchange for 423,077 newly-issued shares of the Company's common stock.

On March 15, 1990, the Company's stockholders approved an increase in the number of authorized shares of common stock from 40,000,000 to 60,000,000 shares. On May 25, 1990, the Company's stockholders approved a further increase in the number of authorized shares of common stock from 60,000,000 to 66,500,000 shares and waived their preemptive rights to purchase those shares.

On July 24, 1990, the Company sold 4,600,000 shares of common stock in a public offering at a price of \$23.75 per share. Additionally, on August 2, 1990, the underwriter exercised its option to purchase 570,000 shares to cover over-allotments. Proceeds from the sale of the 5,170,000 shares of common stock were \$118,114,000, net of underwriting discount and expenses.

A compilation of certain quarterly and annual per share data is presented below:

	Not	Dividando	Market Price			
	Net Income	Dividends Paid	High	Low	Close	
1993						
First Quarter	\$.67	\$.28	\$ 30 1/4	\$ 26 3/4	\$ 30 1/4	
Second Quarter	.68	. 28	30 3/4	26 1/2	28	
Third Quarter	.57	. 28	29 1/2	27	27 1/2	
Fourth Quarter	.60	. 295	28	23 3/4	24 3/4	
Annual	\$ 2.52	\$ 1.135	30 3/4	23 3/4	24 3/4	
1992						
First Quarter	\$.66	\$.26	29 3/4	24 1/4	26 1/4	
Second Quarter	. 69	. 26	27 3/4	23 1/2	25	
Third Quarter	. 66	. 26	27 1/4	24 1/4	24 7/8	
Fourth Quarter	. 69	. 28	29 1/2	23 1/2	28 3/4	
Annual	\$ 2.70	\$ 1.06	29 3/4	23 1/2	28 3/4	
1991	\$ 2.55	\$.95	31 1/4	17 3/4	27 3/4	
1990	\$ 2.45	\$.83	25 3/4	14 1/2	19 3/4	
1989	\$ 2.14	. 70	26 3/4	14 7/8	25 1/4	

The Company expects to continue its policy of paying quarterly cash dividends. The declaration and payment of cash dividends are subject to the Company's future earnings, capital requirements, financial condition and certain limitations as described in Note 10 to the Financial Statements.

Stockholders' equity At December 31:

Loans and leases

Stockholders' equity
SELECTED RATIOS

Return on average total assets

Average stockholders' equity to average total assets

Return on average stockholders' equity Dividend payout ratio

Long-term debt

Deposits

Total assets

SUMMARY OF SELECTED CONSOLIDATED FINANCIAL DATA		First Hawaiian, Inc. and Subsidiaries			
	1993	1992	1991	1990	1989
INCOME STATEMENTS AND DIVIDENDS (in thousands) Interest income				\$498,889	
Interest expense				283,676	
Net interest income Provision for loan and lease losses Other operating income Other operating expenses	278,054 13,262 70,013 215,700	268,579 12,812 60,738 188,625	252,727 10,252 54,265 176,540	215,213 9,077 42,006 143,602	181,455 9,012 42,370 130,960
Income before income taxes and cumulative effect of change in accounting principle Income taxes	119,105	127,880	120,200	104,540 33,068	83,853
Income before cumulative effect of a change in accounting principle Cumulative effect of a change in accounting principle	78,207 3,650		81,710	71,472	57.435
Net income				\$ 71,472	
Cash dividends COMMON STOCK DATA Per share:				\$ 24,463	
Income before cumulative effect of a change in accounting principle Net income Cash dividends Book value (at December 31) Market price (close at December 31) Average shares outstanding (in thousands) BALANCE SHEETS (in millions)	\$ 18.69 \$ 24.75	\$ 2.70 \$ 1.06 \$ 17.30 \$ 28.75	\$ 2.55 \$.95 \$ 15.53 \$ 27.75	\$ 2.45 \$ 2.45 \$.83 \$ 13.93 \$ 19.75 29,175	\$ 2.14 \$.70 \$ 10.45 \$ 25.25
Average balances: Total assets Total earnings assets Loans and leases Deposits Stockholders Loguity	\$ 6,106 \$ 4,619 \$ 5,069	4 5,084	\$ 5,538 \$ 3,837 \$ 5,159	\$ 4,922 \$ 3,032	\$ 3,959

\$

\$

\$

\$

584

7,269

5,067

5,220

1.21%

14.01%

45.04%

8.65%

608

\$

\$

\$

\$

\$

\$

\$

526

6,553

\$ 5,088

4,396

71

562

1.33%

16.52%

39.26%

8.05%

\$

\$

\$

\$

470

6,511

4,329

62

498

1.36%

17.38% 37.25%

7.82%

\$ 5,337

5,509

3,262

4,777 50

1.35%

20.29%

33.88%

6.66%

447

352

\$

\$

\$ 4,512

\$

5,080

2,807

60

281

1.29%

22.15% 32.71%

5.83%

259

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

First Hawaiian, Inc. and Subsidiaries

OVERVIEW

1993 marked the second highest year of earnings for First Hawaiian, Inc. ("Company"). The year was highlighted by the acquisition of Pioneer Federal Savings Bank ("Pioneer") on August 6, 1993 and an increase in dividends--the sixth increase in the last five years

sixth increase in the last five years.

Consolidated net income for 1993 was \$81,857,000, compared to \$86,900,000 for 1992, a decrease of \$5,043,000, or 5.8%. This decrease resulted primarily from a slowdown in earnings growth caused by the current economic recession in Hawaii. Net income for 1992 increased by \$5,190,000, or 6.4%, over 1991, reflecting growth in both net interest income and other operating income and continued control over operating expenses. The Company's net income has grown at an annual compounded rate of 13.6% for the last five years and 14.5% for the last ten years.

On a per share basis, net income for 1993 was \$2.52, a decrease of \$.18, or 6.7%, compared to the \$2.70 earned in 1992. Net income per share was \$2.55 in 1991.

The Company's return on average total assets for 1993 was 1.21% compared to 1.33% for 1992 and 1.36% for 1991. This rate of return has averaged 1.30% for the last five years.

In 1993, the return on average stockholders' equity was 14.01% compared to 16.52% for 1992 and 17.38% in 1991. This rate of return has averaged 18.07% for the last five years.

The Company's asset quality measures, which have historically been strong compared to its peer group, improved from 1992 to 1993, with nonperforming assets (including 90 days and over past due loans and leases) decreasing to 2.24% of total loans and leases and other real estate owned from 2.92% in 1992. Net charge-offs remained stable at .27% of average loans and leases in both 1993 and 1992, which continues to be well below peer group levels. At December 31, 1993, the Company's coverage ratio (consisting of the allowance for loan and lease losses to nonperforming loans and leases, excluding 90 days and over past due loans and leases) increased to 1.03x from .79x at year-end 1992. The coverage ratio was 1.49x at year-end 1991.

The Company's continued commitment to tight expense controls has kept its

The Company's continued commitment to tight expense controls has kept its overhead expense levels below that of its peer group. The Company's efficiency ratio (consisting of other operating expenses as a percentage of total operating revenue and exclusive of nonrecurring items) was 59.3% for 1993, 56.1% for 1992 and 55.7% for 1991.

RECENT ACQUISITIONS

The Company has completed two significant acquisitions since 1991: the acquisition on May 31, 1991 of First Interstate of Hawaii, Inc. ("FIHI"), a commercial bank holding company with \$900 million of total assets, and the acquisition on August 6, 1993 of Pioneer, a federal savings bank with \$604 million in total assets. Both acquisitions were accounted for under the purchase method and accordingly, are included in the Company's financial statements from the respective dates of acquisition.

[GRAPHS]

First Hawaiian, Inc. and Subsidiaries

TABLE 1: EARNINGS ANALYSIS (TAXABLE EQUIVALENT BASIS)

						% Change	
(in thousands, except per share data)	1993	1992	1991	1990	1989	1993/92	1992/91
Interest income (1)	\$449,766	\$493,269	\$533,542	\$509,552	\$441,984	` ,	
Interest expense	163,541	217,693	270,851	283,676	249,674	(24.9)	(19.6)
Net interest income	286,225	275,576	262 601	225,876	192,310	2.0	4.9
Provision for loan and lease losses	,	12,812		9,077			25.0
	70,013			42,006			11.9
	215,700		176,540				6.8
one operations	,						
<pre>Income before income taxes, cumulative effect of a change in accounting principle and</pre>							
taxable equivalent adjustment	127,276	134,877	130,164	115,203	94,708	(5.6)	3.6
Income taxes	40,898	40,980	38,490	33,068	26,418	(0.2)	6.5
Income before cumulative effect of a change in accounting principle and taxable equivalent adjustment	86,378	93,897	91,674	82,135	68,290	(8.0)	2.4
Cumulative effect of a change	•	•	•	•	,	. ,	
in accounting principle	3,650						
Taxable equivalent adjustment (1)	•	6,997	9,964	10,663	10,855	16.8	(29.8)
Net income	\$ 81,857 ======	\$ 86,900 =====	\$ 81,710 ======	\$ 71,472 ======	\$ 57,435 ======	(5.8)% ====	6.4% =====
Net income per share	\$2.52 =====	\$2.70 =====	\$2.55 =====	\$2.45 =====	\$2.14 =====	(6.7)% ====	5.9% =====

NOTE:

⁽¹⁾ Interest income is adjusted to a taxable equivalent basis; that is, income exempt from Federal income taxes is converted to a taxable equivalent basis by the amount of income taxes that would have been applicable. This adjustment is also reflected in the income tax provision in the above analysis.

NET INTEREST INCOME

As reflected in Table 1, net interest income, on a taxable equivalent basis. increased \$10,649,000, or 3.9%, from \$275,576,000 in 1992 to \$286,225,000 in 1993. This increase was due to the 2.3% increase in average earning assets (principally as a result of the Pioneer acquisition) and a 7 basis point (1% equals 100 basis points) increase in the net interest margin. Net interest income increased by \$12,885,000, or 4.9%, from 1991 to 1992 due to the 7.7% increase in average earning assets (principally as a result of the FIHI acquisition) which offset a 12 basis point decline in the net interest margin.

Tables 2 and 3 present an analysis of the components and changes in net

interest income for 1993, 1992 and 1991.

In 1993, the yield on average earning assets decreased 90 basis points and the rate paid for the sources of funds used for such earning assets decreased 97 basis points, which resulted in an increase in the net interest margin from 4.62% to 4.69%. The increase in the net interest margin was primarily attributable to the lower interest rate on savings accounts. In 1991, First Hawaiian Bank ("Bank") committed to pay a rate of 5.5% through December 1, 1992 on all savings accounts opened before December 1, 1991. Upon the expiration of this commitment, rates on these savings accounts declined to current market rates. As a result, the average interest rate paid on the Company's savings accounts declined from 4.76% in 1992 to 2.58% in 1993.

The net interest margin declined between 1991 and 1992 by 12 basis points, from 4.74% to 4.62%, as lower prevailing interest rates resulted in a steeper drop in yields on earning assets than in the rates paid on savings accounts, many of which were held at prevailing 1991 rates for most of 1992 pursuant to the Bank's commitment described above.

Average earning assets increased by \$139,586,000, or 2.3%, in 1993 over 1992. In addition, the mix of earning assets changed slightly, as the Company increased the amount of higher-yielding loans and leases in its portfolio, from 73% of total earning assets in 1992 to 76% in 1993, and reduced the amount of investment securities from 20% of total earning assets in 1992 to 18% in 1993. Average loans and leases increased by \$261,038,000, or 6.0%, from 1992 to 1993, principally as a result of the Pioneer acquisition.

Primarily as a result of the acquisition of FIHI, average earning assets increased by \$428,145,000, or 7.7%, in 1992 over 1991. In addition, the mix of earning assets reflected an increase in the higher-yielding loans and leases from 69% of total earning assets in 1991 to 73% in 1992. Average loans and

leases increased by \$521,519,000, or 13.6%, from 1991 to 1992.

During 1993, average interest-bearing deposits and liabilities increased by \$81,125,000, or 1.6%, over 1992. As reflected in Table 3, the decrease in total interest expense of \$54,152,000 from 1992 to 1993 was comprised of an increase of \$2,396,000 due to higher average balances, offset by a decrease of \$56,548,000 due to lower interest rates; primarily, the rate on savings accounts. The increase in average interest-bearing deposits and liabilities was a result of the acquisition of Pioneer's deposits and related interest-bearing liabilities and the issuance of \$100,000,000 of subordinated notes in order to finance the acquisition of Pioneer.

Average interest-bearing deposits and liabilities increased by \$364,962,000, or 7.9%, from 1991 to 1992, principally as a result of the FIHI acquisition. The Bank's commitment to retain a 5 1/2% interest rate to December 1, 1992, accounted for the 60.3% increase in savings balances from 1991 to 1992.

[GRAPHS]

TABLE 2: AVERAGE BALANCES, INTEREST INCOME AND EXPENSE, AND YIELDS AND RATES (TAXABLE EQUIVALENT BASIS)

	1993				1992			1991		
(dollars in thousands)	Average Balance	Interest Income/ Expense	Yield/ Rate	Average Balance	Interest Income/ Expense	Yield/ Rate	Average Balance	Interest Income/ Expense	Yield/ Rate	
ASSETS Earning assets: Interest-bearing deposits in other banks: Domestic Foreign	\$ 21,098 211,543	\$ 633 6,666	3.00% 3.15	\$ 12,316 194,020	\$ 729 9,537	5.92% 4.92	\$ 22,182 260,524	\$ 1,282 19,848	5.78% 7.62	
Total interest-bearing deposits in other banks	232,641	7,299	3.14	206,336	10,266	4.98	282,706	21,130	7.47	
Federal funds sold and securities purchased under agreements to resell Held-to-maturity securities: (1) U.S. Treasury and other U.S. Government agencies and	160,647	5,097	3.17	235,890	8,323	3.53	148,422	8,776	5.91	
corporations States and political	803,096	39,537	4.92	840,485	57,715	6.87	777,495	62,266	8.01	
subdivisions Other	184,678 54,476	21,925 3,879	11.87 7.12	193,870 131,186	21,317 8,246	11.00 6.29	214,552 277,966	23,582 19,305	10.99 6.95	
Total held-to-maturity securities	1,042,250	65,341	6.27	1,165,541	87,278	7.49	1,270,013	105,153	8.28	
Available-for-sale securities (1) Loans and leases: (1)(2)	50,777	1,950	3.84							
Domestic Foreign	4,412,653 206,748	352,742 17,337	7.99 8.39	4,126,715 231,648	367,742 19,660	8.91 8.49	3,629,823 207,021	370,182 28,301	10.20 13.67	
Total loans and leases	4,619,401	370,079	8.01	4,358,363	387,402	8.89	3,836,844	398,483	10.39	
Total earning assets	6,105,716	449,766	7.37	5,966,130	493,269	8.27	5,537,985	533,542	9.63	
Cash and due from banks Premises and equipment Core deposit premium Goodwill Other assets	298,765 230,547 13,156 67,678 39,390			298,818 174,288 11,903 57,441 28,021			269,439 121,899 7,950 29,422 40,169			
Total assets	\$6,755,252			\$6,536,601			\$6,006,864			

Notes:

⁽¹⁾ Interest income on investment securities and loans and leases is adjusted to a taxable equivalent basis.

(2) Interest income on loans and leases includes loan fees.

	1993				1992		1991		
(dollars in thousands)	Average Balance	Interest Income/ Expense	Yield/ Rate	Average Balance	Interest Income/ Expense	Yield/ Rate	Average Balance	Interest Income/ Expense	Yield/ Rate
LIABILITIES AND STOCKHOLDERS' EQUITY Interest-bearing deposits and liabilities: Deposits: Interest-bearing demand	\$1,212,630	\$ 26,036	2.15%	\$1,182,870	\$ 34,858	2.95%	\$1,153,811	\$ 54,797	4.75%
							, ,		
Savings Time	1,395,859 1,407,310	35,964 63,905	2.58 4.54	1,285,884 1,584,905	61,178 83,876	4.76 5.29	802,312 2,173,367	41,769 144,256	5.21 6.64
Foreign (interest-	, ,	00,000		_,, .,	33,3.3			2,200	0.0.
bearing)	127,830	3,814	2.98	161,196	6,813	4.23	247,245	14,277	5.77
Total interest-bearing deposits Short-term borrowings Long-term debt	4,143,629 814,843 127,505	129,719 26,477 7,345	3.13 3.25 5.76	4,214,855 723,731 66,266	186,725 26,622 4,346	4.43 3.68 6.56	4,376,735 201,042 62,113	255,099 9,800 5,952	5.83 4.87 9.58
Total interest- bearing deposits and liabilities	5,085,977	163,541	3.22	5,004,852	217,693	4.35	4,639,890	270,851	5.84
Noninterest-bearing demand deposits Other liabilities	925,497 159,403			869,025 136,849			782,279 114,683		
Total liabilities Stockholders' equity	6,170,877 584,375			6,010,726 525,875			5,536,852 470,012		
Total liabilities and stockholders' equity	\$6,755,252 =======			\$6,536,601			\$6,006,864		
Net interest income and margin on earning assets Tax equivalent adjustment		286,225 8,171	4.69%	-	275,576 6,997	4.62%	-	262,691 9,964	4.74%
Net interest income		\$278,054			\$268,579			\$252,727	
WEL THEFE EST THEOMIG		\$276,054 ======			=======			Φ252,727 =======	

TABLE 3: ANALYSIS OF CHANGES IN NET INTEREST INCOME (TAXABLE EQUIVALENT BASIS)

	1993 Compared to 1992 Increase (Decrease) Due to:			1992 Compared to 1991 Increase (Decrease) Due to:			
(in thousands)	Volume		Net Increase (Decrease)			Net Increase (Decrease)	
Interest earned on: Interest-bearing deposits in other banks:							
Domestic Foreign	\$ 332 800	\$ (428) (3,671)	\$ (96) (2,871)	\$ (541) (4,314)	\$ (12) (5,997)	, ,	
Total interest- bearing deposits							
in other banks	1,132	(4,099)	(2,967)	(4,855)	(6,009)	(10,864)	
Federal funds sold and securities purchased under							
agreements to resell Available-for-sale securities Held-to maturity securities: U.S. Treasury and other U.S. Government	(2,451) 1,950	(775) 	(3,226) 1,950	3,933 	(4,386) 	(453) 	
agencies and corporations States and political	(2,469)	(15,709)	(18,178)	4,784	(9,335)	(4,551)	
subdivisions Other	(1,040) (5,344)	1,648 977	608 (4,367)	(2,274) (9,373)	9 (1,686)	(2,265) (11,059)	
Total held-to-maturity securities	(8,853)	(13,084)	(21,937)	(6,863)	(11,012)	(17,875)	
Loans and leases: (1) (2) Domestic Foreign	24,425 (2,090)	(39, 425) (233)	(15,000) (2,323)	47,347 3,062	(49,787) (11,703)	. , ,	
Total loans and leases	22,335	(39,658)	(17,323)	50,409	(61,490)	(11,081)	
Total earning assets	14,113	(57,616)	(43,503)	42,624	(82,897)	(40,273)	
<pre>Interest paid on: Deposits:</pre>							
Interest-bearing demand Savings Time Foreign (interest-bearing)	857 4,855 (8,810) (1,239)	(9,679) (30,069) (11,161) (1,760)	(8,822) (25,214) (19,971) (2,999)	1,347 23,278 (34,531) (4,216)	(21,286) (3,869) (25,849) (3,248)	(19,939) 19,409 (60,380) (7,464)	
Total interest-bearing deposits Short-term borrowings Long-term debt	(4,337) 3,149 3,584	(52,669) (3,294) (585)	(57,006) (145) 2,999	(14,122) 19,609 655	(54, 252) (2, 787) (2, 261)	(68,374) 16,822 (1,606)	
Total interest-bearing deposits and liabilities	2,396	(56,548)	(54, 152)	6,142	(59,300)	(53,158)	
<pre>Increase (decrease) in net interest income (taxable equivalent basis)</pre>	\$11,717	\$ (1,068)		\$ 36,482	\$(23,597)	\$ 12,885	

Notes:

⁽¹⁾ Nonaccruing loans and leases have been included in the computations of

average loan and lease balances.

(2) Interest income for loans and leases includes loan fees of \$25,145, \$28,725 and \$19,884 for 1993, 1992 and 1991, respectively.

OTHER OPERATING INCOME

Total other operating income increased 9,275,000, or 15.3%, from 60,738,000 in 1992 to 70,013,000 in 1993.

Trust fees increased \$3,230,000, or 17.8%, from 1992 to 1993. This increase was primarily the result of increases in fees from pension plans and irrevocable trusts and investment management fees which were the result of new business and the performance of the stock market which increased the value of assets under management.

Service charges on deposit accounts increased \$3,468,000, or 18.9%, from 1992 to 1993. This increase was partly attributable to increases in fees on checking accounts and on checks returned and paid from Pioneer.

Other service charges and fees increased \$631,000, or 3.7%, from 1992 to 1993. This increase was primarily the result of fee income from annuity sales.

The Company sold certain trading securities and recognized a gain of \$1,873,000 in 1993. The Company held no trading securities as of December 31, 1993.

Other operating income of FIHI is included in the Company's other operating income since May 31, 1991 and primarily accounts for the increase between 1992 and 1991.

Components of and changes in other operating income are reflected below for the years indicated:

				1993/92	J	1992/91	Ü
(in thousands)	1993	1992	1991	Amount	% 	Amount	%
Trust income Service charges on deposit	\$21,401	\$18,171	\$15,937	\$3,230	17.8%	\$2,234	14.0%
accounts Other service charges	21,791	18,323	14,911	3,468	18.9	3,412	22.9
and fees	17,918	17,287	15,913	631	3.7	1,374	8.6
Securities gains, net	1,955	161	262	1,794	1,114.3	(101)	(38.5)
Other ,	6,948	6,796	7,242	152	2.2	(446)	(6.2)
Total other operating income	\$70,013 ======	\$60,738 ======	\$54,265 ======	\$9,275 =====	15.3% ====	\$6,473 =====	11.9% ====

PROVISION AND ALLOWANCE FOR LOAN AND LEASE LOSSES

The provision for loan and lease losses is based upon management's judgment as to the adequacy of the allowance to absorb future losses. In assessing the adequacy of the allowance for loan and lease losses, management's methodology takes into consideration the Company's historical loan loss experience, value and adequacy of collateral, level of nonperforming (nonaccrual and renegotiated) loans and leases, loan concentrations, risk exposures, if any, in connection with its highly-leveraged transactions, the growth and composition of the portfolio, review of monthly delinquency reports, results of examinations of individual loans and leases and/or evaluation of the overall portfolio by senior credit personnel, internal auditors, and Federal and State regulatory agencies and general economic conditions. This assessment is performed on a quarterly basis.

The provision for loan and lease losses for 1993 was \$13,262,000, an increase of 3.5%, or \$450,000 compared to 1992, reflecting the decline in nonperforming assets and stable trend in net charge-offs from 1992 to 1993. Net charge-offs in 1993 totalled \$12,619,000 compared to \$11,561,000 in 1992. Net charge-offs in 1993 and 1992 represented .27% of average outstanding loans and leases, which remains below peer group levels.

At December 31, 1993, the allowance for loan and lease losses totalled \$62,253,000 and represented 1.23% of total outstanding loans and leases compared to \$56,385,000 and 1.28% as of December 31, 1992.

The provision for loan and lease losses in 1992 was \$12,812,000, an increase of 25.0%, or \$2,560,000, compared to 1991, reflecting increased levels of nonperforming assets and charge-offs due to weak real estate markets in California and the recession in Hawaii. Net charge-offs in 1992 totalled \$11,561,000 compared to \$5,106,000 in 1991.

(dollars in thousands)	1993	1992 	1991	1990	1989	
Loans and leases outstanding (end of year)	\$5,066,809	\$4,396,018 =======	\$4,329,321 =======	\$3,262,000 ======	\$2,807,000 ======	
Average loans and leases outstanding	\$4,619,401	\$4,358,363	\$3,836,844	\$3,032,000	\$2,525,000 ======	
Allowance for loan and lease losses:	=======	=======	=======	=======	=======	
Balance at beginning of year Allowance applicable to loans	\$ 56,385	\$ 55,134	\$ 39,847	\$ 34,154	\$ 27,733	
of purchased company (1) Loans and leases charged off:	5,225		10,141			
Commercial, financial and agricultural	3,004	2,110	758	167	322	
Real estatecommercial	125	250	294	200	15	
Real estateresidential	562			13		
Real estateconstruction	4,506	3,932				
Consumer	6,839	7,093	5,481	3,461	3,195	
Lease financing	27	7,093 25	5,461	67	3, 195	
		25		570		
Foreign				570	600	
Total loans and leases charged off	15,063	13,410	6,533	4,478	4,136	
Recoveries on loans and leases previously charged off:						
Commercial, financial and agricultural	235	349	313	308	136	
Real estatecommercial	321	1	42	21	818	
Real estateresidential	207	35		46	4	
Real estateconstruction			1			
Consumer	1,667	1,456	1,066	713	558	
Lease financing	14	8	, 5	6	29	
Total managemina on large and large						
Total recoveries on loans and leases previously charged off	2,444	1,849	1,427	1,094	1,545	
Net charge-offs	(12,619)	(11,561)	(5,106)	(3,384)	(2,591)	
Provision charged to expense	13,262	12,812	10,252	9,077	9,012	
Balance at end of year	\$ 62,253	\$ 56,385 =======	\$ 55,134 =======	\$ 39,847	\$ 34,154	
Net loans and leases charged off						
to average loans and leases Net loans and leases charged off to	. 27%	. 27%	.13%	.11%	.10%	
allowance for loan and lease losses Allowance for loan and lease losses to	20.27%	20.50%	9.26%	8.49%	7.59%	
total loans and leases (end of year) Allowance for loan and lease losses to nonperforming loans and leases:	1.23%	1.28%	1.27%	1.22%	1.22%	
Excluding past due loans and leases	1.03x	.79x	1.49x	25.19x	49.14x	
Including past due loans and leases	.62x	.44x	.86x	4.36x	4.35x	
• 1	=====	=====	=====	=====	=====	

Note:

⁽¹⁾ Allowances of \$5,225 and \$10,141 were related to the acquisition of Pioneer Federal Savings Bank and First Interstate of Hawaii, Inc. and its primary, wholly-owned subsidiary, First Interstate Bank of Hawaii, respectively.

The Company has allocated a portion of the allowance for loan and lease losses according to the amount deemed to be reasonably necessary to provide for the possibility of losses being incurred within the various loan and lease categories as of December 31 for the years indicated:

	1	993	1992		1991		1990		1989	
(in thousands)	Allowance Amount	Percent of Loans/Leases in Each Category to Total Loans/Lease	Allowance	Percent of Loans/Leases in Each Category to Total Loans/Lease	Allowance	Percent of Loans/Leases in Each Category to Total Loans/Lease		Percent of Loans/Leases in Each Category to Total Loans/Lease	Allowance	Percent of Loans/Leases in Each Category to Total Loans/Leases
Domestic: Commercial, financial										
and agricultural Real estate	\$13,000	24%	\$14,700	27%	\$14,335	26%	\$10,282	27%	\$ 7,410	26%
construction Real estate	11,850	7	4,400	10	7,719	11	5,648	9	4,230	8
commercial Real estate	3,400	17	5,400	16	1,785	17	1,394	17	1,307	14
residential	4,700	35	3,000	28	2,626	25	1,722	21	1,868	20
Consumer	7,500	9	7,100	10	7,121	11	3,710	14	3,305	17
Lease financing	1,350	4	1,300	4	1,367	5	1,431	5	640	5
Foreign	1,600	4	1,700	5	500	5	1,153	7	2,050	10
General allowance	18,853	N/A	18,785	N/A	19,681	N/A	14,507	N/A	13,344	N/A
Consolidated	\$62,253 ======	100% ===	\$56,385 ======	100% ===	\$55,134 ======	100% ===	\$39,847	100% ===	\$34,154 ======	100% ===

[GRAPH]

In May, 1993, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 114, "Accounting by Creditors for Impairment of a Loan," which requires that impaired loans be measured based on the present value of expected future cash flows discounted at the loan's effective interest rate or the market price or fair value of the collateral if the loan is collateral dependent. SFAS No. 114 is effective for fiscal years beginning after December 15, 1994. The Company has not determined the effect, if any, the adoption of SFAS No. 114 will have on its financial position or results of operations.

OTHER OPERATING EXPENSES

Total other operating expenses for 1993 totalled \$215,700,000, an increase of \$27,075,000, or 14.4%, from 1992.

Total personnel expenses for 1993 increased \$8,529,000, or 8.3%, over 1992. Salaries and wages increased \$5,691,000, or 7.1%, reflecting normal merit increases and increased staff levels, primarily as a result of the Pioneer acquisition.

Occupancy expense increased \$3,395,000, or 19.9%, as a result of higher depreciation expense related to the new operations center and rental expense, primarily as a result of the Pioneer acquisition.

Equipment expense increased \$1,721,000, or 9.3%, primarily as a result of higher depreciation and rental expense and maintenance service contracts in connection with the conversion of the computer mainframes and improvements in the delivery and processing systems.

Deposit insurance expense remained unchanged compared to 1992 as the Company continued to shift public deposits into security repurchase agreements

which has resulted in annual savings in excess of \$1,500,000.

Other expenses increased \$7,893,000, or 32.3%, primarily as a result of higher outside services, telephone charges and professional fees, the Pioneer acquisition and lower interest capitalization on construction in progress.

Other operating expenses of FIHI are included in the Company's other operating expenses since May 31, 1991 and primarily account for the increase between 1992 and 1991.

				1993/92 Change		1992/91 Change	
(in thousands)	1993	1992	1991	Amount	%	Amount	%
Personnel:							
Salaries and wages	\$ 86,011	\$ 80,320	\$ 73,096	\$ 5,691	7.1%	\$ 7,224	9.9%
Employee benefits	24,781	21,943	18,981	2,838	12.9	2,962	15.6
Total personnel expenses	110,792	102,263	92,077	8,529	8.3	10,186	11.1
Occupancy expense	20,416	17,021	15,034	3,395	19.9	1,987	13.2
Equipment expense	20,243	18,522	16,815	1,721	9.3	1,707	10.2
Deposit insurance	11,122	11,122	10,468			654	6.2
Stationery and supplies	8,430	8,922	8,284	(492)	(5.5)	638	7.7
Advertising and promotion	6,911	6,326	7,216	585	9.2	(890)	(12.3)
Write-off of building costs	5,444	·	·	5,444		` ´	`
Other	32, 342	24,449	26,646	7, 893	32.3	(2,197)	(8.2)
Total other operating							
expenses	\$215,700	\$188,625	\$176,540	\$27,075	14.4%	\$ 12,085	6.8%
	=======	=======	=======	======	====	=======	====

Effective January 1, 1993, the Company adopted SFAS No. 106, "Employers' Accounting for Postretirement Benefits Other Than Pensions," which changes the practice of accounting for postretirement benefits from a cash basis to an accrual basis during the years that the employee renders the necessary service. The Company has been accounting for postretirement medical benefits on an accrual basis. As a result, the adoption of SFAS No. 106 did not have a material effect on the consolidated financial statements of the Company.

In November, 1992, the FASB issued SFAS No. 112, "Employer's Accounting for Postretirement Benefits," which requires that the estimated cost of benefits provided by an employer to former or inactive employees after employment but before retirement be accounted for on an accrual basis. SFAS No. 112 is effective for fiscal years beginning after December 15, 1993. The Company has not determined the effect, if any, the adoption of SFAS No. 112 will have on its financial position or results of operations.

INCOME TAXES

The provision for income taxes as shown in the Consolidated Statements of Income represents 34.3% of pre-tax income for 1993, compared with 32.0% for both 1992 and 1991, respectively.

On a taxable equivalent basis, the effective tax rate for 1993, 1992 and 1991 was 38.6%, 35.6% and 37.2%, respectively. Additional information on the Company's income taxes is provided in Note 13 to the Financial Statements.

Effective January 1, 1993, the Company adopted SFAS No. 109,
"Accounting for Income Taxes," the cumulative effect of which was the
recognition of an income tax benefit of \$3,650,000 in the first quarter of
1993. Under SFAS No. 109, deferred tax assets and liabilities are measured
using enacted tax rates scheduled to be in effect at the time the related
temporary differences between financial reporting and tax reporting of income
and expense are expected to reverse. The effect of changes in tax rates is
recognized in income in the period that includes the enactment date. On August
10, 1993, the Omnibus Budget Reconciliation Act of 1993 was signed into law,
increasing the Federal corporate tax rate from 34% to 35%, retroac-

tive to January 1, 1993. As a result, the Company recognized retroactive adjustments to its deferred tax liability and current tax provision of \$1,520,000 and \$402,000, respectively, in the third quarter of 1993.

LOANS

The following table sets forth the loan portfolio by major categories and loan \min as of December 31 for the years indicated:

(in millions)	1993	1992	1991	1990	1989	
Domestic:						
Commercial, financial and agricultural	\$1,209	\$1,175	\$1,149	\$ 883	\$ 741	
Real estate:						
Construction	317	438	484	283	212	
Residential	1,786	1,217	1,060	697	563	
Commercial	883	720	739	555	399	
Consumer	312	326	355	364	379	
Credit cards	148	148	142	104	93	
Lease financing	201	171	181	149	129	
Foreign:						
Governments and official institutions	2	3	22	13	17	
Banks and other financial institutions			4	36	112	
Commercial and industrial	79	78	74	79	78	
Other Other	130	120	119	99	84	
Total loans and leases	\$5,067	\$4,396	\$4,329	\$3,262	\$2,807	
	=====	=====	=====	=====	=====	

The loan and lease portfolio is the largest component of earning assets and accounts for the greatest portion of total interest income. At December 31, 1993, total loans and leases were \$5,066,809,000, an increase of 15.3% from December 31, 1992. The increase was primarily attributable to the acquisition of Pioneer as well as increased origination volume by the Bank. At December 31, 1993, total loans of Pioneer, which primarily consist of real estate-residential loans, were \$543,959,000.

Total loans and leases at December 31, 1993, represented 69.7% of total assets, 78.6% of total earning assets and 97.1% of total deposits compared to 67.1% of total assets, 74.2% of total earning assets and 86.4% of total deposits at December 31, 1992. Governmental and certain other time deposits were shifted into security repurchase agreements at December 31, 1993 and 1992 to reduce the Company's deposit insurance premiums. If these repurchase agreements had been included in the deposit base, total loans and leases as a percentage of total deposits would represent 83.8% and 80.8%, respectively, at such dates.

Loan concentrations are considered to exist when there are amounts loaned to multiple borrowers engaged in similar activities which would cause them to be similarly impacted by economic or other conditions. At December 31, 1993, commercial real estate loans totalled \$882,628,000, or 17.4%, of total loans and leases. The increase in commercial real estate loans of \$162,546,000, or 22.6%, from December 31, 1992 to December 31, 1993 was attributable to loans transferred from real estate--construction, and new loans made to a diverse range of commercial sectors including shopping centers, and office and industrial buildings. The Company has selectively participated as a lender on commercial properties on the mainland United States, principally on the west coast. Such loans totalled \$67,642,000 and \$67,951,000 at December 31, 1993 and 1992, respectively. At December 31, 1993, the largest concentration of commercial real estate loans to a single borrower was \$31.0 million.

Construction and land development loans decreased 27.6% from December 31, 1992 to December 31, 1993 due to repayments, transfers to commercial real estate as discussed previously, and a curtailment of new lending in such categories by the Company in light of deteriorating conditions in both mainland and Hawaii real estate markets.

At December 31, 1993, the Company's outstanding loans to highly-leveraged transaction ("HLT") borrowers were \$47,445,000, with additional unfunded commitments of \$7,534,000. At December 31, 1993, the HLT

portfolio consisted of six borrowers. The Company's largest single outstanding HLT loan exposure (including unfunded commitments) at December 31, 1993 was \$19,339,000 and the average exposure was \$9,163,000. Of the six HLT borowers, five are either based in Hawaii or had subsidiaries or divisions operating in Hawaii. At December 31, 1992, the Company's loans outstanding to HLT borrowers were \$69,183,000, with additional unfunded commitments of \$6,808,000.

NONPERFORMING ASSETS AND PAST DUE LOANS Nonaccrual loans at December 31, 1993 consist of real estate secured loans. The decrease in the nonaccrual loan category of \$11,142,000, or 15.6%, at December 31, 1993 from December 31, 1992 was primarily attributable to a \$6.1 million commercial loan which was returned to performing status and a \$10.0 million commercial real estate loan secured by West Coast property which was transferred to other real estate owned as a result of foreclosure, offset by the addition of a \$4.6 million commercial loan to nonaccrual status and nonaccrual loans of \$3.5 million which were acquired in the Pioneer acquisition.

Nonperforming assets are reflected below for the years indicated:

(dollars in thousands)	1993	1992	1991	1990	1989
Nonperforming loans and leases:					
Nonaccrual:					
Commercial, financial and agricultural	\$14,024	\$15,489	\$11,389	\$ 504	\$ 285
Real estate:					
Commercial	8,571	3,790	2,199	856	80
Construction	28,571	41,018	23,298		
Residential:					
Insured, guaranteed, or conventional	1,685	1,950			
Home equity credit lines	255				
• •					
Total real estate loans	39,082	46,758	25,497	856	80
Consumer	45	106		30	55
Lease financing		27			
Foreign	7.161	9,074			
.					
Total nonaccrual loans and leases	60,312	71.454	36,972	1.390	420
Renegotiatedcommercial, financial and agricultural	20	77	136	192	275
Total nonperforming loans and leases	60,332	71.531	37,108	1.582	695
Other real estate owned	13,034	,	1,811	,	1,281
Total nonperforming assets	\$73,366	\$72,742	\$38,919	\$2,830	\$1,976
, ,	======	======	======	=====	=====
Nonperforming assets to total loans and leases					
and other real estate owned (end of year):					
Excluding past due loans and leases	1.44%	1.65%	.90%	.09%	. 07%
Including past due loans and leases	2.24%	2.92%		.32%	. 33%
Nonperforming assets to total assets (end of year):		2.02/0	2.02/0	.02/0	
Excluding past due loans and leases	1.01%	1.11%	.60%	. 05%	. 04%
Including past due loans and leases	1.56%	1.96%	1.01%	.19%	.18%
2	====	====	====	===	===

Other real estate owned increased from 1,211,000 at December 31, 1992 to 13,034,000 at December 31, 1993 primarily as a result of the foreclosure mentioned previously.

Loans and leases past due 90 days or more and still accruing interest totalled \$40,285,000 and \$55,704,000 at December 31, 1993 and 1992, respectively. All of the loans which are past due 90 days or more and still accruing interest are in management's judgement adequately secured and in the process of collection.

The following table presents information related to loans and leases on a nonaccrual basis for the year ended December 31, 1993:

(dollars in thousands)	Domestic	Foreign 	Total
Interest income which would have been recorded if loans and leases had been current	\$7,699	\$	\$7,699
Interest income recorded			
during this period	\$ 419	\$	\$ 419
	=====	=====	=====

DEPOSITS

Deposits are the largest component of the Company's liabilities and account for the greatest portion of total interest expense. At December 31, 1993, total deposits were \$5,220,128,000, an increase of \$131,969,000, or 2.6%, from December 31, 1992. The increase was primarily attributable to the acquisition of Pioneer, which had total deposits of \$399,424,000 at December 31, 1993, which offset a reduction in deposits at the Bank of \$280,743,000, or 5.9%, from the prior year as a result of the continuing shifting of public deposits as previously described and customers seeking higher-yielding alternative investments.

For 1993, average deposits decreased \$14,754,000, or .3%, as compared to 1992. Exclusive of the average deposits of Pioneer for the year ended December 31, 1993, average deposits decreased \$177,541,000, or 3.5%. Average deposits decreased \$75,134,000, or 1.5%, from 1991 to 1992. The investment by customers in higher-yielding alternative investments, generally with non-financial institutions, and the shift of public deposits contributed to the decrease in average deposits during the last two years.

	1993		199	2	1991	
(dollars in millions)	Amount	Rate	Amount	Rate	Amount	Rate
Domestic:						
Noninterest-bearing						
demand	\$ 925	%	\$ 869	%	\$ 782	%
Interest-bearing						
demand	1,213	2.15	1,183	2.95	1,154	4.75
Savings	1,396	2.58	1,286	4.76	802	5.21
Time	1,407	4.54	1,585	5.29	2,174	6.64
Foreign	128	2.98	161	4.23	247	5.77
3						
Total	\$5,069		\$5,084		\$5,159	
	=====		======		=====	

The following table presents the maturity distribution of domestic time certificates of deposits of \$100,000 or more at December 31 for the years indicated:

(in millions)	1993	1992	1991
3 months or less	\$231	\$271	\$ 744
Over 3 months through 6 months	66	111	136
Over 6 months through 12 months	97	76	82
Over 12 months	129	100	73
Total	\$523	\$558	\$1,035
	====	====	=====

LIQUIDITY MANAGEMENT

Liquidity refers to the Company's ability to provide sufficient cash flows to fund operations and to meet obligations and commitments on a timely basis at reasonable costs. The Company achieves its liquidity objectives from both assets and liabilities.

Asset-based liquidity is derived from its investment securities portfolio and short-term investments which can be readily converted to cash. These liquid assets consist of cash and due from banks, interest-bearing deposits, Federal funds sold, securities purchased under agreements to resell and investment securities. The aggregate of these assets represented 25.0% of total assets at the end of 1993 compared to 28.0% in 1992. Additional information on off-balance sheet items is presented in Note 17 to the Financial Statements.

Liability-based liquidity is provided primarily from deposits. Average total deposits for 1993 decreased \$14,755,000, or .3%, to \$5,069,126,000. Average total deposits had a five-year annual compound growth rate of 7.5%. Average total deposits for 1993 and 1992 funded 75.0% and 77.8%, respectively, of average total assets. The decrease between 1993 and 1992 was primarily attributable to the transfer of public deposits to security repurchase agreements. Demand, savings and domestic time deposits under \$100,000--which the Company considers its core deposits because of their historical stability and relatively low cost--constituted 82.7% of total deposits at December 31, 1993 and 84.2% at December 31, 1992.

Additional liquidity was provided from short-term borrowings, which consisted of commercial paper issued by the Parent, Federal funds purchased and securities sold under agreements to repurchase, lines of credit from other banks and credit facilities from the Federal Home Loan Bank. Additional information on short-term borrowings is provided in Note 7 to the Financial Statements. Also, the Company has access to offshore deposits in the international market which provides another available source of funds.

The Company currently has a BankWatch rating of A/B, which describes a company that "is financially very solid with a favorable track record and no readily apparent weakness," from the internationally recognized bank rating organization of Thomson Bankwatch, Inc. This was the highest rating assigned to any local financial institution. In addition, the Company's commercial paper is assigned a rating of A2 by Standard & Poor's ("S&P"). The Company's long-term debt is assigned a rating of Baa-1 by Moody and BBB+ by S&P.

As indicated in the Consolidated Statements of Cash Flows, net cash provided by operating and financing activities was \$197,721,000 and net cash used in investing activities was \$87,251,000 for 1993. For 1992, net cash provided by operating activities was \$135,647,000 and net cash used in investing and financing activities was \$163,974,000. For 1991, net cash provided by operating and financing activities was \$20,860,000 and net cash used in investing activities was \$191,026,000.

Because the Parent is a holding company, its ability to pay dividends depends primarily upon dividends and other payments from its subsidiaries, which are subject to certain limitations as described in Note 10 to the Financial Statements. In addition, at December 31, 1993, the Parent had \$18.4 million in liquid assets available to meet its current cash flow requirements.

ASSET/LIABILITY MANAGEMENT

In order to minimize interest rate risk and stabilize net interest margin while at the same time allowing the Company to take advantage of profitable business opportunities, the Company actively manages the repricing characteristics of its assets and liabilities.

Interest rate risk refers to the exposure to earnings and capital arising from changes in future interest rates. In order to measure and monitor the level of interest rate risk inherent in the Company, the balance sheet is carefully evaluated using gap, simulation, and market value of equity analyses. Identified exposure to adverse changes in interest rate is managed through the use of off-balance sheet instruments such as interest rate swaps or floors and through extending or shortening the duration of the securities portfolio.

The Company thus minimizes its negative exposure to changes in interest rates while allowing for consistent growth in net interest income.

INTEREST RATE SENSITIVITY
The Company's interest rate sensitivity position as of December 31, 1993, is presented below. The interest rate sensitivity gap, shown at the bottom of the table, refers to the difference between assets and liabilities subject to repricing, maturity and/or volatility during a specified period. However, since all interest rates and yields do not adjust at the same velocity and volatility is subject to change, the gap is only a general indicator of interest rate sensitivity. At December 31, 1993, the cumulative one-year contractual gap for the Company was a negative \$170.4 million, representing 2.34% of total assets.

(dollars in thousands)	0-3 Months	4-6 Months	7-12 Months	Over 1 year	Total
Assets: Earning assets: Interest-bearing deposits in					
other bank Federal funds sold and securities purchased under agreements to	\$ 115,670	\$ 1,066	\$	\$	\$ 116,736
resell	35,000				35,000
Investment securities	263,001	102,377	174,789	690,311	1,230,478
Net loans and leases	2,427,410	597,488	707,468	1,272,190	5,004,556
Total earning assets	2,841,081	700,931	982 257	1,962,501	6 386 770
Other assets	320,924	700,931	,	561,437	882,361
other assets				301,407	
Total assets	\$ 3,162,005	\$ 700,931	\$ 882,257	\$2,523,938	\$7,269,131
	=========	========	========	========	========
Liabilities and stockholders' equity:					
Deposits	\$ 3,479,899		\$ 294,956	\$1,218,995	\$5,220,128
Short-term borrowings	757,771	224,577	79,667	7,667	1,069,682
Long-term debt	50,000			171,767	221,767
Other liabilities	29,512			119,673	221,767 149,185
Stockholders' equity				608,369	608,369
Off-balance sheet adjustment	190,905	(428,327)	10,341	227,081	
Total liabilities and					
stockholders' equity	\$ 4,508,087 =======	\$ 22,528 =======	\$ 384,964 =======	\$2,353,552 =======	\$7,269,131
Interest sensitivity gap	\$(1,346,082)			\$ 170,386	
Cumulative gap	\$(1,346,082)	. ,	. ,	\$	
Cumulative gap as a percent of	+(-,0.0,002)	+ (55.7616)	+ (2.3/000)	*	
total assets	(18.52)%	(9.19)%	(2.34)%	%	
	========	========	=======	========	

CAPITAL REQUIREMENTS

Bank holding companies are required to comply with risk-based capital guidelines as established by the Federal Reserve Board. The guidelines define qualifying capital (Tier 1 Capital and Total Capital) and risk-weighted assets. Tier 1 Capital includes common and qualifying perpetual preferred stockholders' equity and minority interests in equity accounts of consolidated subsidiaries, less goodwill and, beginning in 1993, all other intangibles, subject to certain exceptions described below.

Total Capital includes, in addition to Tier 1 Capital, mandatory convertible debt, preferred stock not qualifying as Tier 1 Capital, subordinated and other qualifying term debt and a portion of the allowance for loan and lease losses. The Tier 1 component must comprise at least 50% of qualifying Total Capital. Risk-based capital ratios are calculated with reference to risk-weighted assets which include both on- and off-balance sheet exposures. A company's risk-based capital ratio is calculated by dividing its qualifying capital (the numerator of the ratio) by its risk-weighted assets (the denominator). The minimum required qualifying Total Capital ratio is 8%, of which at least 4% must consist of Tier 1 Capital.

In addition, bank holding companies are required to maintain a minimum leverage ratio of Tier 1 Capital to average quarterly total assets (net of goodwill). The Federal Reserve Board has stated that the minimum leverage ratio is 3% for the most highly rated banking organizations which are not experiencing or anticipating significant growth. Other banking organizations are expected to maintain leverage ratios of at least one to two percent higher. The following tables present the Corporation's regulatory capital position

The following tables present the Corporation's regulatory capital position at December 31, 1993:

Risk-Based Capital Ratios

(in thousands)	Amount	Ratio
Tier 1 Capital Tier 1 Capital minimum requirement	\$ 522,832 206,982	10.10% 4.00
Excess	\$ 315,850 ======	6.10%
Total Capital Total Capital minimum requirement		13.24% 8.00
Excess	\$ 271,122	5.24%
Risk-weighted Assets	\$5,174,542 =======	
Leverage Ratio		
(in thousands)	Amount	Ratio
Tier 1 Capital to average quarterly total assets (net of goodwill) (Tier 1 Leverage Ratio) Minimum leverage requirement	\$ 522,832 210,628	7.45% 3.00
Excess	\$ 312,204	4.45%
Average Quarterly Total Assets (net of goodwill)	\$7,020,949 ======	

A summary of unaudited quarterly financial data for 1993 and 1992 is presented below:

		Quar	ter		A
(in thousands, except per share data)	First	Second	Third	Fourth	Annual Total
1993					
Interest income	\$108,857	\$107,841	\$111,209	\$113,688	\$441,595
Interest expense	41,711	38,559	40,698	42,573	163,541
Net interest income	67,146	69,282	70,511	71,115	278,054
Provision for loan and lease losses	3,903	2,903 17,709	3,213	3,243	13,262
Other operating income	15,684		18,337	18,283	70,013
Other operating expenses	53,225	51,371	54,487	56,617	215,700
Income before income taxes and cumulative effect of a change					
in accounting principle	25,702	32,717	31.148	29.538	119,105
Income taxes	7,706	10,614	31,148 12,418	29,538 10,160	40,898
Cumulative effect of a change in	,	-,-	, -	-,	,
accounting principle	3,650				3,650
Net income	\$ 21,646 ======	\$ 22,103 ======	\$ 18,730 ======	\$ 19,378 ======	\$ 81,857 ======
Per share: Income before cumulative effect of a change in accounting principle Net income	\$.56 \$.67	\$.68 \$.68	\$.57 \$.57	\$.60 \$.60	\$2.41 \$2.52
NCC INCOME	=======	=======	=======	=======	=======
1992					
Interest income	\$125,836	\$125,437	\$117,823	\$117,176	\$486,272
Interest expense	60,299	57,181	52,832	47,381	217,693
Net interest income	65,537	68,256	64,991	69,795	268,579
Provision for loan and lease losses	2,453	3,128	2,753	4,478	12,812
Other operating income	15, 263	14,662	15,484	15,329	60,738
Other operating expenses	47,485	47,272	46,436	47,432	188,625
other operating expenses					
Income before income taxes	30,862	32,518	31,286	33,214	127,880
Income taxes	9,817	10,353	10,041	10,769	40,980
Net income	\$ 21,045 ======	\$ 22,165 ======	\$ 21,245 ======	\$ 22,445 ======	\$ 86,900
Net income per share	\$.66	\$.69	\$.66	\$.69	\$2.70
	=======	=======	=======	=======	=======

TO THE STOCKHOLDERS FIRST HAWAIIAN, INC.

We have audited the accompanying consolidated balance sheets of First Hawaiian, Inc. and Subsidiaries as of December 31, 1993 and 1992, and the related consolidated statements of income, changes in stockholders' equity and cash flows for each of the three years in the period ended December 31, 1993. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of First Hawaiian, Inc. and Subsidiaries as of December 31, 1993 and 1992, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 1993 in conformity with generally accepted accounting principles.

As discussed in Notes 2 and 13 to the financial statements, the Company

As discussed in Notes 2 and 13 to the financial statements, the Company changed its method of accounting for certain investments in debt and equity securities and income taxes, respectively, in 1993.

COOPERS & LYBRAND

Honolulu, Hawaii January 20, 1994

		ber 31,
(in thousands, except shares and per share data)	1993	
Assets Cash and due from banks Interest-bearing deposits in other banks Federal funds sold and securities purchased under agreements to resell Investment securities:	\$ 436,129 116,736 35,000	\$ 325,659 156,316 405,000
Held-to-maturity (fair value of \$1,144,327 in 1993 and \$977,822 in 1992) (note 2) Available-for-sale (note 2) Loans and leases:	1,132,025 98,453	
Loans and leases (note 3) Less allowance for loan and lease losses (note 4)	5,066,809 62,253	4,396,018 56,385
Net loans and leases	5,004,556	4,339,633
Premises and equipment (note 5) Customers' acceptance liability Core deposit premium (net of accumulated amortization of	249,479 854	207,242 1,000
\$3,026 in 1993 and \$1,850 in 1992) (note 1) Goodwill (net of accumulated amortization of	15,380	12,250
\$6,348 in 1993 and \$3,514 in 1992) (note 1) Other assets	81,231 99,288	61,257 93,836
Total Assets	\$7,269,131 =======	93,836 \$6,553,382 ========
Liabilities and Stockholders' Equity Deposits: Noninterest-bearing demand Interest-bearing demand Savings Time (fair value of \$1,352,925 in 1993 and \$1,279,283 in 1992) (note 6) Foreign (fair value of \$252,715 in 1993 and \$187,119 in 1992) (note 6) Total deposits	\$ 974,478 1,143,037 1,507,200 1,343,841 251,572	\$1,027,796 1,203,441 1,399,362 1,271,090 186,470 5,088,159
Short-term borrowings (note 7) Acceptances outstanding Other liabilities Long-term debt (note 8)	1,069,682 854	713,914 1,000 117,056 71,057
Total liabilities	6,660,762	5,991,186
Commitments and contingent liabilities (notes 11, 16 and 17) Stockholders' equity: Common stock \$5 par value (notes 9 and 11) Authorized66,500,000 shares Issued and outstanding32,542,797 shares in 1993 and		
32,501,611 shares in 1992 Surplus Retained earnings (note 10)	162,713 133,820 311,836	162,507 132,889 266,800
Total stockholders' equity	608,369	562,196
Total liabilities and stockholders' equity	\$7,269,131 =======	

The accompanying notes are an integral part of these consolidated financial statements.

		ar Ended December	
(in thousands, except shares and per share data)	1993	1992 	
Interest income			
Interest and fees on loans Lease financing income	\$ 356,687 12,722	\$ 372,577 14,259	\$ 382,220 14,986
Interest on investment securities:	,		
Taxable interest income Exempt from Federal income taxes	45,025	64,860	20 122
Other interest income	12,396	15,987 18,589	29, 905
Total interest income			523 578
		486,272 	
Interest expense Deposits (note 6)	120 710	186,725	255 000
Short-term borrowings	26,477	26,622	9,800
Long-term debt	7,345	4,346	5,952
Total interest evenes	160 541	186,725 26,622 4,346 217,693	255,099 9,800 5,952 270,851
Total interest expense			
Net interest income	278,054	268,579	252,727
Provision for loan and lease losses (note 4)	13,262	268,579 12,812	10,252
Net interest income after provision for loan and			
lease losses	264,792	255,767	242,475
Other operating income			
Trust income	21,401	18,171	15,937
Service charges on deposit accounts	21,791	18,323	14,911
Other service charges and fees Securities gains, net (note 2)	17,918	17,287	15,913
Other	6,948	6,796	7,242
		18,323 17,287 161 6,796	
Total other operating income	70,013	60,738	54,265
Other operating expenses			
Salaries and wages	86,011	80,320 21,943	73,096
Employee benefits (note 11)	24,781	21,943	18,981
Occupancy expense (notes 5 and 16) Equipment expense (notes 5 and 16)	20,416	17,021 18,522	15,034 16,815
Other (note 12)	64,249	50,819	52,614
,			
Total other operating expenses	215,700	50,819 188,625	176,540
Income before income taxes and cumulative effect			
of a change in accounting principle	119,105	127,880	120,200
Income taxes (note 13)			
Provision before effect of change in tax rate	38,976	40,980	38,490
Adjustment to deferred tax liability			
for change in tax rate Adjustment to current tax provision	1,520		
for change in tax rate	402		
Total income toyon	40.000	40.000	20, 400
Total income taxes	40,898	40,980	38,490
Income before cumulative effect of a			
change in accounting principle Cumulative effect of a change in accounting principle	78,207	86,900	81,710
(note 13)	3,650		
Net income	\$ 81,857	\$ 86,900	\$ 81,710
	=======	=======	=======
Per share data Income before cumulative effect of a			
change in accounting principle	\$2.41	\$2.70	\$2.55
Cumulative effect of a change in accounting principle	.11		
Net income	\$2.52	\$2.70	\$2.55
	=====	=====	=====
Cash dividends	\$1.135 =====	\$1.06 =====	\$.95 ====
Average shares outstanding	32,505,109	32,225,339	32,078,534
- •	=======	=======	=======

The accompanying notes are an integral part of these consolidated financial statements.

	Common	n Stock		
(in thousands, except shares and per share data)	Shares	Amount	Surplus	Retained Earnings
Balance, December 31, 1990 Net income1991 Incentive Plan for Key Executives (note 11) Cash dividends (\$.95 per share) (note 10)	32,078,534 	\$160,392 	\$123,646 203 	\$162,746 81,710 (30,395)
Balance, December 31, 1991 Net income1992 Incentive Plan for Key Executives (note 11) Cash dividends (\$1.06 per share) (note 10) Issuance of common stock (note 9)	32,078,534 423,077	160,392 2,115	123,849 155 8,885	214,061 86,900 (34,161)
Balance, December 31, 1992 Net income1993 Incentive Plan for Key Executives (note 11) Cash dividends (\$1.135 per share) (note 10) Issuance of common stock (note 9)	32,501,611 41,186	162,507 206	132,889 137 794	266,800 81,857 (36,821)
Balance, December 31, 1993	32,542,797	\$162,713 ======	\$133,820 ======	\$311,836 ======

The accompanying notes are an integral part of these consolidated financial statements.

27

Year Ended December 31, (in thousands) 1993 1992 1991 Cash and due from banks at beginning of year \$ 325,659 \$ 353,986 \$ 324,152 Cash flows from operating activities: Net income 81,857 86,900 81,710 Provision for loan and lease losses 13,262 12,812 10,252 Depreciation and amortization 20,765 19,157 16,232 Adjustment to current tax provision for change in tax rate 402 Adjustment to deferred tax liability for change in tax rate 402 Adjustment to deferred tax liability for change in tax rate 1,520 Cumulative effect of a change in accounting principle (3,650) Decrease (increase) in interest receivable 170 9,043 (6,527) Increase (decrease) in interest payable 1,424 10,083 (531) Decrease (increase) in prepaid expenses (1,031) (3,864) 2,476 Write-off of building costs 20,136
Cash and due from banks at beginning of year \$ 325,659 \$ 353,986 \$ 324,152 Cash flows from operating activities: Net income 81,857 86,900 81,710 Provision for loan and lease losses 13,262 12,812 10,252 Depreciation and amortization 20,765 19,157 16,232 Income taxes (5,415) 21,682 6,342 Adjustment to current tax provision for change in tax rate 402 Cumulative effect of a change in accounting principle (3,650) Decrease (increase) in interest receivable 170 9,043 (6,527) Increase (decrease) in interest payable 1,424 10,083 (531) Decrease (increase) in prepaid expenses (1,031) (3,864) 2,476 Write-off of building costs 5,444
Cash and due from banks at beginning of year \$ 325,659 \$ 353,986 \$ 324,152 Cash flows from operating activities: Net income 81,857 86,900 81,710 Provision for loan and lease losses 13,262 12,812 10,252 Depreciation and amortization 20,765 19,157 16,232 Income taxes (5,415) 21,682 6,342 Adjustment to current tax provision for change in tax rate 402 Cumulative effect of a change in accounting principle (3,650) Decrease (increase) in interest receivable 170 9,043 (6,527) Increase (decrease) in interest payable 1,424 10,083 (531) Decrease (increase) in prepaid expenses (1,031) (3,864) 2,476 Write-off of building costs 5,444
Cash flows from operating activities: Net income Provision for loan and lease losses Depreciation and amortization Income taxes Adjustment to current tax provision for change in tax rate Adjustment to deferred tax liability for change in tax rate Cumulative effect of a change in accounting principle Decrease (increase) in interest receivable Increase (decrease) in interest payable Decrease (increase) in prepaid expenses Write-off of building costs 81,857 86,900 81,710 81,857 86,900 81,710 81,262 12,812 10,252 19,157 16,232 16,342 17,520
Cash flows from operating activities: Net income Provision for loan and lease losses Depreciation and amortization Income taxes Adjustment to current tax provision for change in tax rate Adjustment to deferred tax liability for change in tax rate Cumulative effect of a change in accounting principle Decrease (increase) in interest receivable Increase (decrease) in interest payable Decrease (increase) in prepaid expenses Write-off of building costs 81,857 86,900 81,710 81,857 86,900 81,710 81,262 12,812 10,252 19,157 16,232 16,342 17,520
Net income 81,857 86,900 81,710 Provision for loan and lease losses 13,262 12,812 10,252 Depreciation and amortization 20,765 19,157 16,232 Income taxes (5,415) 21,682 6,342 Adjustment to current tax provision for change in tax rate 402 Adjustment to deferred tax liability for change in tax rate 1,520 Cumulative effect of a change in accounting principle (3,650) Decrease (increase) in interest receivable 170 9,043 (6,527) Increase (decrease) in interest payable 1,424 10,083 (531) Decrease (increase) in prepaid expenses (1,031) (3,864) 2,476 Write-off of building costs 5,444
Depreciation and amortization 20,765 19,157 16,232 Income taxes (5,415) 21,682 6,342 Adjustment to current tax provision for change in tax rate 402 Adjustment to deferred tax liability for change in tax rate 1,520 Cumulative effect of a change in accounting principle (3,650) Decrease (increase) in interest receivable 170 9,043 (6,527) Increase (decrease) in interest payable 1,424 10,083 (531) Decrease (increase) in prepaid expenses (1,031) (3,864) 2,476 Write-off of building costs 5,444
Depreciation and amortization 20,765 19,157 16,232 Income taxes (5,415) 21,682 6,342 Adjustment to current tax provision for change in tax rate 402 Adjustment to deferred tax liability for change in tax rate 1,520 Cumulative effect of a change in accounting principle (3,650) Decrease (increase) in interest receivable 170 9,043 (6,527) Increase (decrease) in interest payable 1,424 10,083 (531) Decrease (increase) in prepaid expenses (1,031) (3,864) 2,476 Write-off of building costs 5,444
Cumulative effect of a change in accounting principle (3,650)
Cumulative effect of a change in accounting principle (3,650)
Cumulative effect of a change in accounting principle (3,650)
Decrease (increase) in prepaid expenses (1,031) (3,864) 2,476 Write-off of building costs 5,444
Decrease (increase) in prepaid expenses (1,031) (3,864) 2,476 Write-off of building costs 5,444
Decrease (increase) in prepaid expenses (1,031) (3,864) 2,476 Write-off of building costs 5,444
WILLE-OIL OI DULLULING COSES 5,444
WILLE-OIL OI DULLULING COSES 5,444
Other 20,136
Net cash provided by operating activities 134,884 135,647 109,954
Cash flows from investing activities:
Net decrease in interest-bearing deposits in other banks 39,580 35,716 114,575 Net decrease (increase) in Federal funds sold and
securities purchased under agreements to resell 370,000 (235,136) 84,302
Purchase of held-to-maturity investment securities (940,385) (704,746) (520,194)
securities purchased under agreements to resell 370,000 (235,136) 84,302 Purchase of held-to-maturity investment securities (940,385) (704,746) (520,194) Proceeds from sale of held-to-maturity investment securities 322,315 402,201 169,383
Proceeds from maturity of held-to-maturity investment
securities 498,858 576,855 496,110
Purchase of available-for-sale investment securities (263,828)
Purchase of available-for-sale investment securities (263,828) Proceeds from sale of available-for-sale investment securities 137,709
Proceeds from maturity of available-for-sale investment
•
securities 27,666
Capital expenditures (60,067) (65,484) (49,246)
Purchase of First Interstate of Hawaii, Inc., net of
cash acquired of \$63,680 (75,646)
Purchase of Pioneer Fed BanCorp, Inc.,
net of cash acquired of \$18,157 (68,950)
Other (15,950) (15,950) (17,95
Net cash used in investing activities (87,251) (100,362) (191,026)
Cash flows from financing activities:
Net decrease in deposits (293,973) (248,534) (225,496)
Net increase in short-term borrowings 309,631 209,743 357,452 Proceeds from long-term debt 108,000 10,000 36,000 Payments on long-term debt (21,525) (508) (26,411)
Proceeds from long-term debt 108,000 10,000 36,000
Cash dividends paid (36,821) (34,161) (30,395) Purchase of common stock for issuance under
Incentive Plan for Key Executives and Stock Incentive Plan (2,475) (152) (244)
Theelitive rian for key Executives and Stock Intentive rian (2,413) (132) (244)
Net cash provided by (used in) financing activities 62,837 (63,612) 110,906
Cash and due from banks at end of year \$ 436,129 \$ 325,659 \$ 353,986
=======================================
Supplemental disclosures:
Interest paid \$ 160,551 \$ 227,776 \$ 271,382
Net income taxes paid \$ 40,945 \$ 19,298 \$ 32,148

The accompanying notes are an integral part of these consolidated financial statements.

NOTES TO FINANCIAL STATEMENTS

SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The accounting and reporting policies of First Hawaiian, Inc. and Subsidiaries ("Company") conform with generally accepted accounting principles and practices within the banking industry. The following is a summary of the significant accounting policies:

RECLASSIFICATIONS

Certain reclassifications were made to the 1992 and 1991 Consolidated Statements of Income to conform to the 1993 presentation. Such reclassifications did not have a material effect on the Consolidated Statements of Income.

CONSOLTDATION

The consolidated financial statements of the Company include the accounts of First Hawaiian, Inc. ("Parent") and its wholly-owned subsidiary companies--First Hawaiian Bank and its wholly-owned subsidiaries ("Bank"); Pioneer Federal Savings Bank and its wholly-owned subsidiaries; First Hawaiian Creditcorp, Inc.; First Hawaiian Leasing, Inc.; and FHI International, Inc. All significant intercompany balances and transactions have been eliminated in consolidation.

INVESTMENT SECURITIES

Investment securities consist principally of debt instruments issued by the U.S. Treasury and other U.S. Government agencies and corporations, state and local government units and asset-backed securities.

As of December 31, 1993, the Company adopted Statement of Financial Accounting Standards ("SFAS") No. 115, "Accounting for Certain Investments in Debt and Equity Securities." In accordance with SFAS No. 115, investment securities are classified in three categories and accounted for as follows: (1) held-to-maturity securities are debt securities, which the Company has the positive intent and ability to hold to maturity, and are reported at amortized cost; (2) trading securities are debt securities that are bought and held principally for the purpose of selling them in the near term and are reported at fair value, with unrealized gains and losses included in current earnings; and (3) available-for-sale securities are debt securities not classified as either held-to-maturity securities or trading securities and are reported at fair value, with unrealized gains and losses excluded from current earnings and reported in a separate component of stockholders' equity.

Certain securities which could be liquidated prior to their respective maturities under certain circumstances have been classified as available-forsale. Unrealized gains or losses are reflected as changes to the capital

Prior to December 31, 1993, since the Company had both the ability and the intent to hold the investment securities to maturity, they were carried at cost, adjusted for amortization of premiums and accretion of discounts.

Gains and losses realized on the sales of investment securities are determined using the specific identification method.

LOANS AND LEASE FINANCING

Loans are stated at their principal outstanding amounts, net of any unearned discounts. Interest income on loans is accrued and recognized on the principal amount outstanding.

Loan origination fees and substantially all loan commitment fees are deferred and accounted for as an adjustment of the yield.

Lease financing transactions consist of two types:

- (1) Equipment without outside financing is accounted for using the direct financing method with income recognized over the life of the lease based upon a constant periodic rate of return on the net investment in the lease.
- (2) Leveraged lease transactions are subject to outside financing through one or more participants, without recourse to the Company. These transactions are accounted for by recording as the net investment in each lease the aggregate of rentals receivable (net of principal and interest on the related nonrecourse debt) and estimated residual value of the equipment less the unearned income. Income from these lease transactions is recognized during the periods in which the net investment is positive.

Loans and leases are placed on nonaccrual status when serious doubt exists as to the collectibility of the principal and/or interest. When loans are placed on nonaccrual status, any accrued and unpaid interest is reversed against interest income of the current period. Interest payments received on nonaccrual loans and leases are applied as a reduction of the principal when concern exists as to the ultimate collection of the principal; otherwise, such payments are recorded as income. Loans and leases are removed from nonaccrual status when they become current as to both principal and interest and when concern no longer exists as to the collectibility of principal and interest.

ALLOWANCE FOR LOAN AND LEASE LOSSES

The allowance for loan and lease losses ("Allowance") is maintained at a level which, in management's judgment, is adequate to absorb future losses. Estimates of future loan and lease losses involve judgment and assumptions as to various factors which, in manage-

ment's judgment, deserve current recognition in estimating such losses and in determining the adequacy of the Allowance. Principal factors considered by management include the historical loss experience, the value and adequacy of collateral, the level of nonperforming (nonaccrual and renegotiated) loans and leases, loan concentrations, risk exposures, if any, in connection with its highly-leveraged transactions, the growth and composition of the portfolio, the review of monthly delinquency reports, the results of examinations of individual loans and leases and/or evaluation of the overall portfolio by senior credit personnel, internal auditors, and Federal and State regulatory agencies and general economic conditions.

The Allowance is reduced by loans and leases charged off when collectibility becomes doubtful and the underlying collateral, if any, is considered inadequate to liquidate the outstanding debt. Recoveries on loans and leases previously charged off are added to the Allowance.

PREMISES AND EQUIPMENT

Premises and equipment, including leasehold improvements, are stated at cost less accumulated depreciation and amortization. Depreciation and amortization are computed on a straight-line basis over the estimated useful lives of 10-40 years for premises, 3-13 years for equipment and the lease term for leasehold improvements.

CORE DEPOSIT PREMIUM AND GOODWILL

The core deposit premium is being amortized on the straight-line method over various lives ranging from 9 to 20 years. The excess of the purchase price over the fair value of the net assets acquired is accounted for as goodwill and is being amortized on the straight-line method over 25 years.

Effective January 1, 1993, the Company adopted SFAS No. 109, "Accounting for Income Taxes," which requires recognition of deferred income tax liabilities and assets for the expected future tax consequences of events that have been included in the financial statements or tax returns. Under this method, deferred income tax liabilities and assets are determined based on the difference between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse.

Prior to January 1, 1993, the provision for income taxes was based on taxable income and expenses reported in the Consolidated Statements of Income, in accordance with Accounting Principles Board Opinion No. 11, rather than amounts currently payable under tax laws.

Excise tax credits relating to premises and equipment and certain nonleveraged lease equipment are accounted for under the flow-through method which recognizes the benefit in the year the asset is placed in service. The investment and excise tax credits related to leveraged lease equipment, except for investment and excise tax credits that are passed on to lessees, are recognized during the periods in which the net investment is positive.

A consolidated Federal income tax return is filed for the Company. Amounts equal to income tax benefits of those companies having taxable losses or credits are reimbursed by other companies which would have incurred current income tax liabilities.

INTEREST RATE SWAPS AND FLOORS

The Company engages in interest rate swap and floor activities in managing its interest rate risk. Since the contracts represent an exchange of interest payments and the underlying principal balances are not affected, there is no effect on the total assets or liabilities of the Company. The net settlement amount is recorded as an adjustment to interest expense on a periodic basis.

Net income per share is computed on the weighted average number of shares

outstanding during the year, adjusted to reflect stock splits.

Dividends per share are based on the number of outstanding shares, adjusted to reflect stock splits, exclusive of reacquired shares, at the time of dividend payments.

FAIR VALUES OF FINANCIAL INSTRUMENTS

The following methods and assumptions were used by the Company in estimating the fair value of financial instruments:

Cash and due from banks: The carrying amounts reported in the Consolidated Balance Sheets of cash and short-term instruments approximate fair values.

Investment securities (including mortgage-backed securities): Fair values of investment securities are based on quoted market prices, where available. If quoted market prices are not available, fair values are based on quoted market prices of comparable instruments.

Loans and leases: For variable-rate loans that reprice frequently and with no significant change in credit risk, fair values are based on carrying values. The fair values for certain mortgage loans (e.g., one-to-four family residential), credit card loans, and other consumer loans are based on quoted market prices of similar loans sold in conjunction with securitization transactions, adjusted for differences in loan characteristics. The fair values of other loans (e.g., commercial real estate and rental property mortgage loans, commercial and industrial loans, financial institution loans, and agricultural loans) are estimated using discounted cash flow analyses, which utilize interest rates currently being offered for loans with similar terms to borrowers of similar credit quality. The carrying amount of accrued interest approximates its fair value.

Off-balance sheet commitments and contingent liabilities: Fair values of off-balance sheet commitments and contingent liabilities are based upon quoted market prices of comparable instruments (foreign currency exchange forward contracts and interest rate floors); fees currently charged to enter into similar agreements, taking into account the remaining terms of the agreements and the counterparties' credit standing (letters of credit and commitments to extend credit); or, pricing models based upon brokers' quoted markets, current levels of interest rates, and specific cash flow schedules (interest rate swaps).

Deposits: The fair values of demand deposits (e.g., interest and noninterest checking, passbook savings, and certain types of money market accounts) are, by definition, equal to the amount payable on demand at the reporting date (i.e., their carrying amounts). Fair values of fixed-rate certificates of deposit are estimated using a discounted cash flow calculation that applies interest rates currently being offered on certificates to a schedule of aggregated expected monthly maturities on time deposits.

Short-term borrowings: The carrying amounts of overnight Federal funds purchased, borrowings under repurchase agreements, and other short-term borrowings approximate their fair values.

Long-term debt: The fair values of the Company's long-term debt (other than deposits) are estimated using discounted cash flow analyses, based on the Company's current incremental borrowing rates for similar types of borrowing arrangements.

1. BUSINESS COMBINATIONS PIONEER FEDERAL SAVINGS BANK

On August 6, 1993, the Company acquired for cash all of the outstanding stock of Pioneer Fed BanCorp, Inc. ("Pioneer Holdings") at a purchase price of \$87 million through the merger of Pioneer Holdings with and into the Company (the "Merger"). As a result of the Merger, Pioneer Federal Savings Bank ("Pioneer"), a savings bank with 19 branches statewide, became a wholly-owned subsidiary of the Company. The acquisition was accounted for using the purchase method of accounting and the results of operations of Pioneer are included in the Consolidated Statements of Income from the date of acquisition. The excess of cost over net assets acquired amounted to approximately \$22 million.

The following unaudited pro forma information shows the consolidated results of operations as though the above acquisition, including the related purchase accounting adjustments, had been made at the beginning of the year:

(in thousands, except per share data)	1993	1992
Interest income	\$469,413	\$533,427
Interest expense	\$183,860	\$247,534
Other operating income	\$ 72,313	\$ 65,446
Other operating expenses	\$227,473	\$207,368
Net income	\$ 81,419	\$ 88,550
Earnings per share	\$ 2.50	\$ 2.75
	=======	=======

FIRST INTERSTATE OF HAWAII, INC.

On May 31, 1991, the Company acquired for cash all of the outstanding stock of First Interstate of Hawaii, Inc. ("FIHI") at a purchase price of \$144 million. The principal asset of FIHI was First Interstate Bank of Hawaii ("FIBH"), a commercial bank with 19 branches statewide at the time of acquisition. The acquisition was accounted for using the purchase method of accounting and the results of operations of FIHI were included in the Consolidated Statements of Income from the date of acquisition. The excess of cost over net assets acquired amounted to approximately \$62 million.

The following unaudited pro forma information shows the consolidated results of operations as though the above acquisition, including the related purchase accounting adjustments, had been made at the beginning of the year:

(in thousands, except per share data)	1991
Interest income Interest expense Other operating income Other operating expenses Net income Earnings per share	\$555,986 \$287,100 \$ 58,971 \$193,431 \$ 83,243 \$ 2.59

The final regulatory approvals received for the acquisition of FIHI required the Company to (1) divest six FIBH branches and a branch of First Hawaiian Creditcorp, Inc. ("Creditcorp"), a wholly-owned subsidiary of the Company; and (2) terminate FIBH's license to participate as a franchisee in the First Interstate system and terminate the use of the First Interstate trademark and logos by May 31, 1992 (actually terminated in February, 1992).

As of December 31, 1993, the Company sold two branches of FIBH (October, 1991 and November, 1993) and a branch of Creditcorp (October, 1991). The results of operations of the three branches are included in the Consolidated Statements of Income up to the dates of sale. The sale of the remaining four branches is pending consummation, expected in 1994. The sale of these branches will not have a significant effect on the Company's financial position or results of operations.

2. INVESTMENT SECURITIES

As of December 31, 1993, the Company adopted SFAS No. 115, "Accounting for Certain Investments in Debt and Equity Securities." The adoption of this accounting policy had no material effect on the consolidated financial statements of the Company.

Held-to-Maturity

Comparative book and fair values of held-to-maturity investment securities at December 31, 1993 and 1992 were as follows:

	1993			
(in thousands)	Book Value	Unrealized Gains	Unrealized Losses	Fair Value
U.S. Treasury and other U.S. Government agencies and				
corporations States and political	\$ 914,868	\$ 1,490	\$1,321	\$ 915,037
subdivisions	177,876	12,530	413	189,993
Other	39,281	16		39,297
Total held-to-maturity investment				
securities	\$1,132,025	\$14,036	\$1,734	\$1,144,327
	========	======	=====	========

	1992			
(in thousands)	Book	Unrealized	Unrealized	Fair
	Value	Gains	Losses	Value
U.S. Treasury & other U.S. Government agencies and corporations	\$684,734	\$ 9,338	\$265	\$693,807
States and political subdivisions Other	196,270	15,346	25	211,591
	70,185	2,600	361	72,424
Total held-to-maturity investment securities	\$951,189	\$27,284	\$651	\$977,822
	======	======	====	======

The book and fair values of held-to-maturity investment securities at December 31, 1993, by contractual maturity, excluding securities which have no stated maturity, were as follows:

(in thousands)	Book Value	Fair Value
Due within one year Due after one but within five year Due after five but within ten years Due after ten years	\$ 360,464 507,098 86,213 143,920	\$ 361,485 519,178 86,145 143,188
and an east com your o		
Total held-to-maturity investment securities	\$1,097,695 ======	\$1,109,996 =======

At December 31, 1993, the unamortized cost, which approximates fair value, of available-for-sale investment securities, by contractual maturity, excluding securities which have no stated maturity, was as follows:

	U.S. Treasury and other U.S. Government agencies and corporations	States and political sub- divisions	Other	Total
Due within one year Due after one but	\$	\$	\$	\$
within five years Due after five but			10,460	10,460
within ten years		3,000	17,211	20,211
Due after ten years	3,202	22,700	41,880	67,782
Total available-for- sale investment				
securities	\$3,202 =====	\$25,700 =====	\$69,551 ======	\$98,453 ======

The Company sold certain trading securities and recognized a gain of \$1,873,000 in the second quarter of 1993. The Company held no trading securities as of December 31, 1993.

As of December 31, 1993, the Company had entered into interest rate swaps of \$168,247,000 designed to modify the repricing characteristics of a portion of its municipal holdings. The fair value of the interest rate swaps was an unrealized loss of \$17,848,000. However, it is management's intent to keep the interest rate swaps in place until their respective termination dates which approximate the maturities of the municipal holdings, at which time the unrealized losses would be eliminated.

The Company also had other interest rate swaps of \$450,970,000 and floors of \$300,000,000 hedging other parts of the balance sheet. The fair value of these other interest rate swaps was an unrealized loss of \$1,965,000.

Investment securities with an aggregate book value of \$1,046,026,000 at December 31, 1993 were pledged to secure public deposits and repurchase agreements as required by law.

NOTES TO FINANCIAL STATEMENTS (Continued) First Hawaiian, Inc. and Subsidiaries

The Company did not hold any investment securities which were in excess of

10% of stockholders' equity at December 31, 1993.

Gross gains of \$2,038,000, \$283,000 and \$315,000 and gross losses of \$83,000, \$122,000 and \$53,000 were realized on sales of investment securities during 1993, 1992 and 1991, respectively.

3. LOANS AND LEASES

At December 31, 1993 and 1992, loans and leases were comprised of the following:

	199	1993		92
(in thousands)	Book Value	Fair Value	Book Value	Fair Value
Commercial, financial and				
agricultural Real estate:	\$1,208,912	\$1,219,156	\$1,175,395	\$1,203,172
Construction	317,036	317,017	438,041	438,540
Commercial	882,628	949,425	720,082	739,562
Residential	1,785,961	1,734,467	1,217,331	1,209,838
Consumer	459,910	456,226	473,510	475,318
Lease financing	201,449	201,512	170,558	170,558
Foreign	210,913	210,755	201,101	201,348
Total loans				
and leases	\$5,066,809	\$5,088,558	\$4,396,018	\$4,438,336
	========	========	========	========

At December 31, 1993, loans totalling \$40,848,000 were pledged to secure public deposits as required by law.

At December 31, 1993 and 1992, loans and leases aggregating \$60,312,000 and \$71,454,000, respectively, were on a nonaccrual basis.

In the normal course of business, the Company makes loans to its executive officers and directors, and to companies and individuals affiliated with executive officers and directors of the Company. Changes in the loans to such parties were as follows:

(in thousands)	1993	1992
Balance at beginning of year	\$ 370,169	\$ 309,422
New loans made	244,171	351,015
Repayments	(203,061)	(290,268)
Balance at end of year	\$ 411,279	\$ 370,169
	=======	=======

At December 31, 1993 and 1992, loans to such parties by the Parent were \$15,759,000 and \$15,102,000, respectively, and the income related to these loans was \$920,000, \$1,134,000 and \$1,092,000 for 1993, 1992 and 1991, respectively.

4. ALLOWANCE FOR LOAN AND LEASE LOSSES

Changes in the allowance for loan and lease losses were as follows for the years indicated:

(in thousands)	1993	1992	1991
Balance at beginning of year Provision charged to expense Net charge-offs:	\$ 56,385 13,262	\$ 55,134 12,812	\$39,847 10,252
Loans and leases charged off Recoveries on loans and	(15,063)	(13,410)	(6,533)
leases charged off	2,444	1,849	1,427
Net charge-offs	(12,619)	(11,561)	(5,106)
Allowance applicable to loans of purchased company	5,225		10,141
Balance at end of year	\$ 62,253 ======	\$ 56,385 ======	\$55,134 ======

In May, 1993, the Financial Accounting Standards Board ("FASB") issued SFAS No. 114, "Accounting by Creditors for Impairment of a Loan," which requires that impaired loans be measured based on the present value of expected future cash flows discounted at the loan's effective interest rate or the market price or fair value of the collateral if the loan is collateral dependent. SFAS No. 114 is effective for fiscal years beginning after December 15, 1994. The Company has not determined the effect, if any, the adoption of SFAS No. 114 will have

5. PREMISES AND EQUIPMENT At December 31, 1993 and 1992, premises and equipment were comprised of the following:

(in thousands)	1993	1992
Premises	\$207,080	\$194,515
Equipment	128,302	107,469
	335,382	301,984
Less accumulated depreciation		
and amortization	85,903	94,742
Net book value	\$249,479	\$207,242
	=======	=======

Occupancy and equipment expenses include depreciation and amortization expenses of \$15,133,000, \$14,383,000 and \$13,248,000 for 1993, 1992 and 1991,respectively.

6. DEPOSITS

For 1993, 1992 and 1991, interest expense related to deposits was as follows:

(in thousands)	1993	1992	1991
Interest-bearing demand	\$ 26,036	\$ 34,858	\$ 49,851
Savings	35,964	61,178	46,835
TimeUnder \$100	40,324	47,595	63,403
Time\$100 and over	23,581	36,281	80,733
Foreign	3,814	6,813	14,277
Total interest expense			
on deposits	\$129,719	\$186,725	\$255,099
	=======	=======	=======

Time deposits in denominations of \$100,000 or more at December 31, 1993 and 1992 were as follows:

	=======	=======
Foreign	\$130,108	\$ 60,611
Domestic	\$522,892	\$558,116
(in thousands)	1993	1992

7. SHORT-TERM BORROWINGS

At December 31, 1993 and 1992, short-term borrowings were comprised of the following:

(in thousands)	1993 	1992
First Hawaiian Bank: Federal funds purchased Securities sold under agreements	\$ 122,975	\$ 20,825
to repurchase	825,837	673,352
First Hawaiian, Inc. (Parent) Commercial paper Nonbank subsidiaries: Advances from Federal Home Loan	9,605	10,237
Bank of Seattle	111,265	9,500
Total short-term borrowings	\$1,069,682 =======	\$713,914 ======

Average rates and average and maximum balances for these short-term borrowings were as follows for the years indicated: $\frac{1}{2} \left(\frac{1}{2} \right) = \frac{1}{2} \left(\frac{1}{2} \right) \left$

(dollars in thousands)	1993	1992 	1991
Federal funds purchased: Average interest rate at			
December 31	2.7%	2.8%	3.9%
Highest month-end balance Average daily outstanding	\$172,215	\$340,375	\$143,525
balance	\$ 98,042	\$180,991	\$110,600
Average daily interest			
rate paid Securities sold under	2.8%	3.6%	5.3%
agreements to repurchase:			
Average interest rate at			
December 31	3.2%	3.5%	4.2%
Highest month-end balance	\$871,891	\$806,793	\$316,846
Average daily outstanding balance	PCCO 474	¢400 004	ф 47 E7O
Average daily interest	\$660,474	\$499,084	\$ 47,570
rate paid	3.2%	3.6%	4.6%
Commercial paper:			
Average interest rate at			
December 31	4.0%	3.4%	4.8%
Highest month-end balance	\$ 11,271	\$ 25,549	\$ 55,126
Average daily outstanding balance	\$ 8,430	\$ 13,617	\$ 33,000
Average daily interest	Ψ 0,400	Ψ 15,017	Ψ 33,000
rate paid ´	3.1%	4.1%	5.8%
Advances from Federal Home			
Loan Bank of Seattle:			
Average interest rate at December 31	4.3%	3.4%	6.2%
Highest month-end balance	\$111,265	\$ 37,500	\$ 20,000
Average daily outstanding	Ψ111, 200	Ψ 01,000	Ψ 20,000
balance	\$ 43,499	\$ 29,891	\$ 10,740
Average daily interest			
rate paid	4.6% ===	4.6% ===	5.5% ===
	===	===	===

Securities sold under agreements to repurchase were treated as financings and the obligations to repurchase the identical securities sold were reflected as a liability with the dollar amount of securities underlying the agreements remaining in the asset accounts. At December 31, 1993, the weighted average contractual maturity of these agreements was 140 days and represents investments by public (governmental) entities. A schedule of maturities of these agreements is as follows:

Overnight 270,149 Less than 30 days 30 to 90 days 287,653 Over 90 days 268,035 \$825,837

Commercial paper represents obligations of the Parent with maturities up to 180 days. The Parent has \$70,000,000 in unused lines of credit with unaffiliated banks to support its commercial paper borrowings as of December 31, 1993.

8. LONG-TERM DEBT

At December 31, 1993 and 1992, long-term debt was comprised of the following:

	19	93	199	92
(dollars in thousands)	Book Value	Fair Value	Book Value	Fair Value
First Hawaiian, Inc. (Parent):				
Note due 1997 6.25% subordinated	\$ 50,000	\$ 50,006	\$50,000	\$50,000
notes due 2000 First Hawaiian Bank 7%-11% capital lease obligations	100,000	97,345		
due through 2041 Nonbank subsidiaries 4.24%-9.10% notes	826	1,804	1,057	1,833
due through 2000	70,941	70,991	20,000	20,416
Total long-term debt	\$221,767 ======	\$220,146 ======	\$71,057 ======	\$72,249 ======

First Hawaiian, Inc. (Parent) The note due in 1997 represents two separate drawings of \$24,000,000\$ and \$26,000,000 on a \$50,000,000 unsecured commitment with interest payable at preselected periods of one, two or three months at London Interbank Offered Rate (LIBOR) plus .225% (\$24,000,000 at 3.60% and \$26,000,000 at 3.7875% at December 31, 1993).

The 6.25% subordinated notes due in 2000 are unsecured obligations with interest payable semiannually.

Nonbank Subsidiaries

The 4.24%-9.10% notes due through 2000 represent advances from the Federal Home Loan Bank of Seattle of the Company's nonbank subsidiaries (Creditcorp and Pioneer) with interest payable monthly.

As of December 31, 1993, the principal payments due in the next five years and thereafter on these borrowed funds were as follows:

(in thousands)	First Hawaiian, Inc. (Parent)	First Hawaiian Bank	Nonbank Subsidiaries	Total
1994	\$	\$ 43	\$23,701	\$ 23,744
1995		33	21,192	21,225
1996		27	20,053	20,080
1997	50,000	29	3,995	54,024
1998	·	33	1,000	1,033
1999 and thereafter	100,000	661	1,000	101,661
Total	\$150,000	\$826	\$70,941	\$221,767
	=======	====	======	=======

9. COMMON STOCK

On December 1, 1993, the Bank purchased certain assets and assumed certain liabilities of GKN, Inc., which did business as Phoenix Financial Services for \$1,000,000 in the form of an exchange for 41,186 newly-issued shares of the Company's common stock.

On August 27, 1992, the Company entered into a merger agreement with Finance Investment Company, Limited whereby the Company acquired FH Center, Inc. and its parcel of land in exchange for 423,077 newly-issued shares of the Company's common stock.

10. LIMITATIONS ON PAYMENT OF DIVIDENDS

The primary source of funds for the dividends paid by First Hawaiian, Inc. to its stockholders is dividends received from its subsidiaries. The Bank, Pioneer and Creditcorp are subject to regulatory limitations on the amount of dividends they may declare or pay. In addition, the payment of dividends by the Company, is limited to an amount not greater than 50% of consolidated net income as stipulated in the debt covenants of a certain line of credit.

11. EMPLOYEE BENEFIT PLANS

Pension Plans

The Company has a noncontributory pension plan, covering substantially all employees (except for Pioneer employees who will participate in the plans effective January 1, 1994), after satisfying age and length of service requirements. It also has an unfunded supplemental employee retirement plan for key executives.

The net pension expense for 1993, 1992 and 1991 included the following components:

(in thousands)	1993	1992	1991
Service cost-benefits earned			
during the period	\$3,955	\$3,724	\$ 2,618
Interest cost on projected			
benefit obligation	6,553	5,933	4,579
Actual return on plan assets	(3,810)	(3,619)	(15,708)
Net amortization and deferral	(3,577)	(3,429)	9,846
Net pension expense	\$3,121	\$2,609	\$ 1,335
	======	======	======

The Company generally makes contributions to the trust fund of the regular employee retirement plan equal to the amounts accrued for pension expense to the extent such contributions are currently deductible for tax purposes.

The following table sets forth the reconciliation of the funded status of the plans at December 31, 1993 and 1992:

(in thousands)	1993	1992
Actuarial present value of benefit obligation:		
Vested benefits	\$54,524	\$48,032
Nonvested benefits	2,581	2,585
Accumulated benefit obligation	\$57,105	\$50,617
	======	======
Plan assets at fair value (primarily listed		
stocks and fixed income securities)	\$88,873	\$88,544
Projected benefit obligation	90,668	82,456
Plan assets in excess of (less than)		
projected benefit obligation	(1,795)	6,088
Unrecognized net gain	(6,138)	(8,549)

Unrecognized prior service cost Unrecognized net asset being	7,640	6,148
recognized over 9 and 15 years	(9,328)	(10,392)
Pension liability	\$(9,621) ======	\$(6,705) ======

Plan assets included common stock of the Company with a fair value of \$14,549,000 at December 31, 1993.

In 1993 and 1992, the weighted average discount rate was 8.0%; the rates of increase in future compensation used in determining the projected benefit obligation were 8.5% to age 45, 7.5% to age 55, and 6.5% thereafter; and the expected long-term rate of return on plan assets was 8.5% for 1993 and 1992.

Pioneer's pension plan had a net pension credit of 3,000 and a prepaid pension cost of 1,194,000 at December 31, 1993.

Postretirement Benefits

Effective January 1, 1993, the Company adopted SFAS No. 106, "Employer's Accounting for Postretirement Benefits Other than Pensions" which changed the prevalent practice of accounting for postretirement benefits from a cash basis to an accrual basis during the expected service life of an employee. The Company has been accounting for postretirement medical benefits on an accrual basis. As a result, the adoption of SFAS No. 106 did not have a material effect on the consolidated financial statements of the Company.

NOTES TO FINANCIAL STATEMENTS (Continued) First Hawaiian, Inc. and Subsidiaries

The Company has unfunded postretirement medical and life insurance plans which are available to retirees who have satisfied age and length of service requirements. The following table sets forth the reconciliation of the funded status of the plan at December 31, 1993:

Accumulated postretirement benefit obligation: Retirees Other fully eligible plan participants Other active plan participants	\$3,217,952 1,353,395 1,665,143
Total	\$6,236,490
Fair value of assets	
Funded status Unrecognized transition obligation Unrecognized prior service cost Unrecognized net gain	\$6,236,490 (2,714,387) (696,644)
Accrued postretirement benefit cost	\$2,825,459 ======
Service cost Interest cost Expected return on assets Amortization of:	\$ 161,691 405,794
Transition obligation Unrecognized prior service cost Unrecognized net (gain) loss	142,863
Net periodic postretirement benefit cost	\$ 710,348

The assumed health care cost trend is not applicable since the medical plan provides a flat dollar commitment. Thus, there is no effect due to a one-percentage-point increase in the trend rate.

In 1993, the weighted average discount rate was 7.0% and the rate of increase in future compensation used in determining the projected benefit obligation was 5.0%.

PROFIT SHARING AND CASH BONUS PLANS

The profit sharing and cash bonus plans cover substantially all employees, after satisfying age and length of service requirements. Annual contributions to the plans are based upon a formula and are limited to the total amount deductible under the applicable provisions of the Internal Revenue Code. The profit sharing and cash bonus formula provides that 50% of the Company's contribution be paid directly to eligible members as a year-end cash bonus and the other 50%, less forfeitures, be paid into the profit sharing trust fund. The profit sharing contribution and cash bonus (reflected in salaries and wages) for 1993, 1992 and 1991 totalled \$4,328,000, \$4,738,000 and \$6,043,000, respectively.

INCENTIVE PLAN FOR KEY EXECUTIVES

The Company has an Incentive Plan for Key Executives ("IPKE"), under which awards of cash or common stock of the Company, or both, are made to key executives. The IPKE limits the aggregate and individual value of the awards that could be issued in any one fiscal year. Shares awarded under the Plan are held in escrow and key executives concerned may not, under any circumstances, voluntarily dispose or transfer such shares prior to the earliest of attaining 60 years of age, completion of 20 full years of employment with the Company, retirement, death or termination of employment prior to retirement with the approval of the Company, Additionally, there is a five year restriction from the date of all subsequent shares awarded to those key executives who had previously met the minimum restrictions of completion of 20 full years of employment or attaining 60 years of age.

At December 31, 1993, 157,397 shares, including 20,049 shares authorized, but unissued, were available for future awards under the IPKE.

STOCK INCENTIVE PLAN

In 1992, the stockholders approved a Stock Incentive Plan ("SIP"), which authorized the granting of up to 1,000,000 shares of common stock to key employees. The purpose of the SIP is to promote the success and enhance the value of the Company by providing additional incentives to selected key employees in a way that links their interests with those of stockholders and provides those employees with an incentive for outstanding performances. The SIP is administered by the Executive Compensation Committee of the Board of Directors. The SIP provides for grants of restricted stock, incentive stock options, non-qualified stock options and reload options. Options are granted at exercise prices not less than the fair market value of the common stock on the date of grant. Options vest 25% per year after the date of grant Stock options have exercise periods no longer than ten years from the date of grant and may not be exercised for six months after the date of grant and/or vesting. Stock options can be exercised, in whole or in part, by payment of the option price in cash or, if allowed under the option agreement, shares of common stock already owned by the optionee (reload options). Upon the occurrence of a change in control of the Company, as defined in the SIP, all options granted and held at least six months become immediately vested and exercisable.

The following table summarizes activity under the SIP for 1993 and 1992 and the status at December 31, 1993:

റ	n	+	i	\sim	n	c

	Outstanding		Exercisable	
(dollars in thousands)	Shares	Average Option Price	Shares	Average Option Price
Options granted Less Forfeitures	113,690 (770)	\$ 26.00 26.00		\$
Balance at December 31, 1992 Options granted Became exercisable Less:	112,920 106,060 	26.00 30.25 	28,230	26.00
Exercised Forfeitures	(60) (435)	26.00 30.25	(60) 	26.00
Balance at December 31, 1993	218,485 ======	\$28.05 =====	28,170 =====	\$26.00 =====

At December 31, 1993, 781,455 stock options were available for future grants under the SIP. $\,$

LONG-TERM INCENTIVE PLAN

The Company has a Long-Term Incentive Plan ("LTIP") designed to reward key executives for the Company's and individuals' performances measured over three-year periods. The first period covers 1991-1993; the second period 1992-1994; and so on. The LTIP has no expiration date. The LTIP is administered by the Executive Compensation Committee of the Board of Directors. The LTIP provides for the grant of incentive cash awards to certain key employees of the Company after each three-year performance cycle. For each of the current performance cycles, the Company's average return on assets relative to a group of peer financial institutions and the Company's growth in assets are used to measure the Company's performance and to determine the payout factor, which ranges from 0% to 140% of base salaries. A threshold minimum performance level of 15% average return on stockholders' equity must be achieved for each of the current three-year performance cycles. The first three-year performance cycle (1991-1993) ended on December 31, 1993. The threshold level was achieved during this cycle. Financial information for the peer companies is not presently available. Accordingly, awards will be paid for this cycle sometime in 1994 when the Executive Compensation Committee can calculate and approve awards. The Company has accrued \$1,000,000 for potential LTIP payouts.

POSTEMPLOYMENT BENEFITS

In November, 1992, the FASB issued SFAS No. 112, "Employers' Accounting for Postemployment Benefits," which requires that the estimated cost of benefits provided by an employer to former or inactive employees after employment but before retirement be accounted for on an accrual basis. SFAS No. 112 is effective for fiscal years beginning after December 15, 1993. The Company has not determined the effect, if any, the adoption of SFAS No. 112 will have on its financial position or results of operations.

12. OTHER EXPENSES

For the years ended December 31, 1993, 1992 and 1991, other expenses included the following:

(in thousands)	1993 	1992	1991
Deposit insurance	\$11,122	\$11,122	\$10,468
Stationery and supplies	8,430	8,922	8,284
Advertising and promotion	6,911	6,326	7,216
Write-off of building costs	5,444		
Other	32,342	24,449	26,646
Total other expenses	\$64,249	\$50,819	\$52,614
	======	=====	======

13. INCOME TAXES

Effective January 1, 1993, the Company adopted SFAS No. 109, "Accounting for Income Taxes," the cumulative effect of which was the recognition of an income tax benefit of \$3,650,000, or \$.11 per share, in the first quarter of 1993. Such amount has been reflected in the Consolidated Statements of Income as the cumulative effect of a change in accounting principle. Under SFAS No. 109, deferred tax assets and liabilities are measured using enacted tax rates scheduled to be in effect at the time the related temporary differences between financial reporting and tax reporting of income and expense are expected to reverse. The effect of changes in tax rates is recognized in income in the period that includes the enactment date. On August 10, 1993, the Omnibus Budget

Reconciliation Act of 1993 was signed into law, increasing the Federal corporate tax rate from 34% to 35%, retroactive to January 1, 1993. As a result, the Company recognized retroactive adjustments to its deferred tax liability and current tax provision of \$1,520,000 and \$402,000, respectively, in the third quarter of 1993.

For the years ended December 31, 1993, 1992 and 1991, the provision for income taxes was comprised of the following:

(in thousands)	1993	1992 	1991
Current:			
Federal	\$19,755	\$21,135	\$20,714
Hawaii	4,776	5,923	5,211
Total current	24,531	27,058	25,925
Deferred:			
Federal	12,116	11,243	9,391
Hawaii	4,251	2,679	3,174
Total deferred	16,367	13,922	12,565
Total income tax provision	\$40,898	\$40,980	\$38,490
	======	======	======

The provision for income taxes has been reduced by investment and excise tax credits of \$1,000,000, \$988,000 and \$1,024,000 in 1993, 1992 and 1991, respectively. The Company also has alternative minimum tax credit and foreign tax credit carryforwards amounting to \$3,689,000 at December 31, 1993 which may be used to offset future Federal income tax expense. The foreign tax credit carryover of \$1,041,000 will expire at the end of 1997, and the remainder of \$1,000,000 will expire at the end of 1998.

The components of net deferred income tax liabilities at December 31, 1993 and January 1, 1993 were as follows:

(in thousands)	December 31, 1993	January 1, 1993
Assets Federal and State income tax credit carryovers Employee benefit deductions Provision for loan and lease losses Loan fees and other income Hawaii State franchise taxes Other	\$ 2,494 10,443 25,201 5,324 5,959	\$ 2,071 6,689 21,838 6,646 2,481 3,754
Total deferred income tax assets	49,421 ======	43,479 ======
Liabilities Lease expenses Depreciation expense Intangible assets-net premiums Other	(103,046) (17,930) (3,801) (3,531)	
Total deferred income tax liabilities	(128,308) ======	(98,018) ======
Net deferred income tax liabilities	\$ (78,887) ======	\$(54,539) ======

Net deferred income tax liabilities are included in other liabilities in the Consolidated Balance Sheets.

At December 31, 1993, net deferred income tax liabilities include \$8,578,000 of net deferred income tax liabilities acquired in connection with the Pioneer Federal Savings Bank acquisition.

At December 31, 1993, Federal income taxes had not been provided on \$2,832,000 of bad debt deductions. If in the future, these amounts are used for any purpose other than to absorb losses on bad debts, a tax liability will be imposed on the Company for these amounts at the then current income tax rates.

The following analysis reconciles the Federal statutory income tax rate to the effective income tax rate for the years indicated:

	1993	1992	1991
Federal statutory income tax			
rate	35.0%	34.0%	34.0%
Municipal and other tax-			
exempt income	(4.4)	(4.5)	(5.9)
Hawaii State income and franchise taxes, net of Federal			
tax benefit	4.9	4.4	4.6
Other	(1.2)	(1.9)	(.7)
Effective income tax rate	34.3%	32.0%	32.0%
	====	====	====

14. INTERNATIONAL OPERATIONS

The Company's international operations involve foreign banking and international financing activities, including short-term investments, loans, acceptances, letters of credit financing and international funds transfers.

International activities are identified on the basis of the domicile of the Company's customer.

Total revenue, income before income taxes, net income and total assets for foreign, domestic and consolidated operations at and for the years ended December 31, 1993, 1992 and 1991 were as follows:

1993			
Total revenue	\$ 26,586	\$ 485,022	\$ 511,608
Income before			
income taxes	\$ 2,726	\$ 116,379	\$ 119,105
Net income	\$ 1,772	\$ 80,085	\$ 81,857
Total assets	\$326,197	\$6,942,934	\$7,269,131
	=======	========	========
1992			
Total revenue	\$ 32,443	\$ 514,567	\$ 547,010
Income before	,	•	,
income taxes	\$ 4,843	\$ 123,037	\$ 127,880
Net income	\$ 3,196	\$ 83,704	\$ 86,900
Total assets	\$356,414	\$6,196,968	\$6,553,382
	=======	========	========
1991			
Total revenue	\$ 43,507	\$ 534,336	\$ 577,843
Income before	• •	•	,
income taxes	\$ 6,599	\$ 113,601	\$ 120,200
Net income	\$ 4,355	\$ 77,355	\$ 81,710
Total assets	\$396,503	\$6,114,051	\$6,510,554
	=======	=======	========

Under current intercompany pricing procedures, transfers of funds are priced at prevailing market rates. In general, the Company has allocated all direct expenses and a proportionate share of general and administrative expenses to the income derived from loans and transactions by the Company's international operations.

15. FIRST HAWAIIAN, INC. (PARENT COMPANY ONLY) FINANCIAL STATEMENTS

Balance Sheets

	December 31,	
(in thousands, except shares and per share data)	1993	1992
Assets Cash on deposit with First Hawaiian Bank Loans	\$ 250 15,759	\$ 985 15,102
Investment securities Securities purchased from	5,000	
First Hawaiian Bank Investment in subsidiaries: First Hawaiian Bank	13,125	•
Other subsidiaries Due from:	146, 153	520,916 61,716
First Hawaiian Bank Other subsidiaries Other assets	65,886 23,053 4,919	77,530 27,140 1,115
Total assets	\$845,696 ======	\$715,084 ======
Liabilities and Stockholders' Equity Commercial paper Current and deferred income taxes Other liabilities Long-term debt	\$ 9,605 74,919 2,803 150,000	92, 192 459
Total liabilities	237,327	152,888
Commitments and contingent liabilities Stockholders' equity: Common stock \$5 par value Authorized66,500,000 shares Issued and outstanding32,542,797 shares in 1993 and 32,501,611		
shares in 1992 Surplus Retained earnings	162,713 133,820 311,836	162,507 132,889 266,800
Total stockholders' equity		562,196
Total liabilities and stockholders' equity	\$845,696 ======	

Statements of Income

(in thousands)	1993	1992	1991
Income Dividends from:			
First Hawaiian Bank Other subsidiaries		\$31,043 3,225	
Interest from First Hawaiian Bank Interest and fees from other	419		
subsidiaries	321	817 1,177	2,524
Other interest and dividends	1,148	1,1//	1,159
Total income	40,029	36,679	36,429
Expenses			
Interest expense: Commercial paper Long-term debt Other	259 5,514 254	564 3,250 125	1,923 3,122 130
Professional services		219	190
0ther	381	106	199
Total expenses		4,264	
Income before income tax expense (benefit) and equity in undistributed income of			
subsidiaries Income tax expense (benefit)		32,415	
income tax expense (benefit)	(1,763)	(582) 	
Income before equity in undistributed income of subsidiaries Equity in undistributed income of subsidiaries:	34,891	32,997	30,432
First Hawaiian Bank Other subsidiaries		47,145 6,758	

Year Ended December 31,

Net income \$81,857 \$86,900 \$81,710 ====== ====

49

		nded Decembe	
(in thousands)	1993	1992 	1991
Cash at beginning of year	\$ 985	\$ 240	\$ 807
Cash flows from operating activities: Net income Excess of equity in earnings of subsidiaries over		86,900	
dividends received Other	(46,966) (439)	(53,903) (145)	(51,278) 90
Net cash provided by operating activities		32,852	
Cash flows from investing activities: Net change in: Securities sold to (purchased			
from) First Hawaiian Bank Loans made to directors and officers	(2,545)	1,605 (942)	(3,625)
Advances from (to) subsidiaries		40,100	
Purchase of investment securities Purchase of First Interstate of	(5,000)		
Hawaii, Inc. Purchase of Pioneer			(139, 326)
Fed BanCorp, Inc. Capital contributions to	(87,107)		
subsidiaries Other	(343)	(4,509) (425)	(3,828)
Net cash provided by (used in) investing activities		35,829	
Cash flows from financing activities: Net change in commercial paper balances			
Proceeds from long-term debt Cash dividends paid Issuance of common stock under IPKE Purchase of common stock for issuance under IPKE and SIP	100,000 (36,821)	(34,061) (34,161)	26,000 (30,395)
	493	438	592
	(2,475)	(152)	(244)
Net cash provided by (used in) financing activities	60,565	(67,936)	(21,065)
Cash at end of year	\$ 250 =====	(67,936) \$ 985 ======	\$ 240 =====
Supplemental disclosures: Interest paid Net income taxes		\$ 4,186	
paid (refund)	\$ (375) ======	\$ (338) ======	\$ 632 ======

16. LEASE COMMITMENTS

Future minimum lease payments by year and in the aggregate under all noncancelable operating and capital leases having initial or remaining terms in excess of one year consisted of the following at December 31, 1993:

(in thousands)	Operating Leases	Less Sublease Income	Net Operating Leases	Capital Leases
1994 1995 1996 1997 1998 1999 and thereafter	\$ 10,108 10,365 9,343 23,148 23,367	\$ 1,716 1,464 1,956 3,254 3,055	\$ 8,392 8,901 7,387 19,894 20,312	\$ 173 173 173 173 173 173
Total	\$221,729 ======	\$29,461 =====	\$192,268 ======	3,704
Less amount represe interest Present value of mi lease payments		I		2,878 \$ 826 =====

premises' leases also provide for payments of real property taxes, insurance and maintenance

In most cases, leases for the premises provide for periodic renegotiation of the rents based upon a percentage of the appraised value of the leased property. The renegotiated annual rent is usually not less than the annual amount paid in the previous period. Where future commitments are subject to appraisals, the minimum annual rental commitments are based on the latest annual rents.

In December, 1993, the Company entered into a noncancelable agreement to lease a certain office building to be constructed on land owned in fee simple by the Company. Concurrently, the Company entered into a ground lease of the land to the lessor of the building. Rent obligation for the building will commence on December 1, 1996 and will expire on December 1, 2003 ("Primary Term"). The Company is obligated to pay all taxes, insurance, maintenance and other operating costs associated with the building during the Primary Term and to assume certain responsibilities during the construction period. The Company plans to occupy approximately 40% of the building and sublease the remaining 60% to third parties. As of December 31, 1993, the Company has executed certain noncancelable subleases with third parties. These amounts are included in sublease income in the above table.

At the end of the Primary Term, the Company $\mbox{ may, at its option: (1)} \mbox{ extend the lease term at rents}$

based on the lessor's cost of funds at the time of renewal; (2) purchase the building for an amount approximately equal to that expended by the lessor to construct the building; or (3) arrange for the sale of the building to a third party on behalf of the lessor and pay to lessor any shortfall between the sales proceeds and a specified residual value, such payment not to exceed \$161,990,000. This lease is accounted for as an operating lease.

For 1993, 1992 and 1991, rental expense was \$8,782,000, \$6,207,000 and \$4,530,000, respectively.

17. COMMITMENTS AND CONTINGENT LIABILITIES

FINANCIAL INSTRUMENTS WITH OFF-BALANCE SHEET RISK

The Company is a party to various financial instruments with off-balance sheet risk in the normal course of business to meet the financing needs of its customers and to reduce its own exposure to fluctuations in interest rates. These financial instruments include commitments to extend credit, standby and commercial letters of credit and interest rate floors and swaps. These instruments involve, to varying degrees, elements of credit and interest rate risk in excess of the amounts recognized in the Consolidated and Parent Company Balance Sheets. The contract or notional amounts of those instruments reflect the extent of involvement the Company has in particular classes of financial instruments.

The Company's exposure to credit losses in the event of nonperformance by the other party to the financial instrument for commitments to extend credit and standby and commercial letters of credit is represented by the contractual notional amount of those instruments. Since these commitments may expire without being drawn upon, the total commitment amounts do not necessarily represent future cash flows. For interest rate floor and swap transactions, the contract or notional amounts do not represent exposure to credit losses.

Off-balance sheet instruments must meet the same criteria of acceptable risk established for the Company's lending and other financing activities. The Company manages the credit risk of counterparty defaults in these transactions by limiting the total amount of outstanding arrangements, both by the individual counterparty and in the aggregate, by monitoring the size and maturity structure of the off-balance sheet portfolio, and by applying the uniform credit standards maintained for all of its credit activities.

Off-balance sheet commitments and contingent liabilities at December 31, 1993 and 1992 were as follows:

	1993	1992
(in thousands)	Notional/ Contract Amount	Notional/ Contract Amount
Commitments to extend credit Standby letters of credit Commercial letters of	\$2,377,421 \$ 103,537	\$2,195,040 \$ 123,918
credit Interest rate floors Interest rate swaps	\$ 18,628 \$ 300,000 \$ 619,217 =======	\$ 14,090 \$ 220,500 \$ 557,047 =======

Fair values of off-balance sheet financial instruments are based upon the following: commitments to extend credit (\$11,032,000 in 1993 and \$9,270,000 in 1992) and letters of credit (\$1,531,000 in 1993 and \$1,851,000 in 1992) are based upon fees currently charged to enter into similar agreements, taking into account the remaining terms of the agreements and the counterparties' credit standing; foreign currency exchange forward contracts (\$276,000 in 1993 and \$22,000 in 1992) and interest rate floors (zero for 1993 and 1992) are based upon quoted market prices of comparable instruments and other interest rate swaps and floors (net unrealized loss of \$19,813,000 in 1993 and \$16,576,000 in 1992) are determined using pricing models based upon brokers' quoted markets, current levels of interest rates, and specific cash flow schedules.

Additional information related to interest rate swaps and floors as of December 31, 1993 and 1992 was as follows:

	1993		1992	
	Swaps	Floors	Swaps	Floors
Range of original terms to maturity	2-10 year	1 year	2-10 year	4 years
Weighted average original term	5.19 year	1 year	4.66 year	4 years
Weighted average term to maturity	2.15 year	.20 year	1.79 year	.78 years
Weighted average fixed rate Weighted average	6.90%	NA	7.54%	NA
variable rate	3.47% ====	NA ==	3.58% ====	NA ==

LITIGATION

Various legal proceedings are pending against the Company. In the opinion of management, based upon advice of counsel, the aggregate liability, if any, resulting from these proceedings would not have a material effect on the Company's consolidated financial position or results of operations.

FIRST HAWAIIAN, INC. 1132 Bishop Street Honolulu, Hawaii 96813 or

P.O. Box 3200 Honolulu, Hawaii 96847

FIRST HAWAIIAN CREDITCORP, INC. Interstate Building, Second Floor 1314 South King Street Honolulu, Hawaii 96814 Telephone (808) 593-5500

FIRST HAWAIIAN LEASING, INC. Interstate Building, Second Floor 1314 South King Street Honolulu, Hawaii 96814 Telephone (808) 593-5300

PIONEER FEDERAL SAVINGS BANK 900 Fort Street Honolulu, Hawaii 96813 Telephone (808) 522-6777

FIRST HAWAIIAN BANK 1132 Bishop Street Honolulu, Hawaii 96813

or P.O. Box 3200 Honolulu, Hawaii 96847 Telephone (808) 525-7000 Cable Address: FIRSTBANK (Honolulu, Hawaii) S.W.I.F.T.: FHBKUS77

FedWire: ABA 121301015 FST HAW HONO

Yasuraka (Peter) Onodera Senior Vice President Japan Representative Office, Room 237, Ohtemachi Building 6-1, Ohtemachi 1-Chome, Chiyoda-Ku, Tokyo 100, Japan Telephone: (03) 3201-6081 Telex: J27572 FHBTOKYO

SUPPLEMENTAL INFORMATION

First Hawaiian, Inc.'s shares are traded on the Nasdaq National Market, and quotations are furnished under the Nasdaq symbol: FHWN.

TRANSFER AGENT American Stock Transfer & Trust Company 40 Wall Street, 46th Floor New York, New York 10005

FORM 10-K AND OTHER FINANCIAL INFORMATION

The Company's 1993 Form 10-K annual report, which is to be filed with the Securities and Exchange Commission by March 31, 1994, will be available to stockholders after that date. Analysts, investors and others seeking a copy of the Form 10-K or any other financial information should write to: Howard H. Karr Executive Vice President and Treasurer First Hawaiian, Inc. P.O. Box 3200 Honolulu, Hawaii 96847

ANNUAL MEETING

The annual meeting of stockholders of First Hawaiian, Inc. will be held on Thursday, April 21, 1994 at 9:30 A.M. in the 20th floor Dining Room of the Plaza Club, 900 Fort Street, Honolulu, Hawaii.

INDEPENDENT ACCOUNTANTS Coopers & Lybrand Honolulu, Hawaii

DIVIDEND REINVESTMENT PLAN

Stockholders may reinvest their dividends in additional shares of the First Hawaiian, Inc. common stock through the Dividend Reinvestment Plan. Stockholders wishing to participate in the Plan can receive a descriptive brochure and authorization card by writing to: American Stock Transfer & Trust Company 40 Wall Street, 46th Floor New York, New York 10005 or calling toll free at 1-800-937-5449

EXHIBIT 22

SUBSIDIARIES OF THE REGISTRANT

The Corporation or one of its wholly-owned subsidiaries beneficially owns 100% of the outstanding capital stock and voting securities of the following corporations. The Corporation is indirectly the sole general partner of First Hawaiian Center Limited Partnership.

NAME 	STATE OR OTHER JURISDICTION OF INCORPORATION
First Hawaiian Bank First Hawaiian Overseas Corporation FIH International, Inc. American Security Properties, Inc. Real Estate Delivery, Inc. FH Center, Inc. FHB Mortgage Company, Inc. dba Phoenix Financial Services FHB Properties, Inc. First Hawaiian Center Limited Partnership	Hawaii Hawaii Hawaii Hawaii Hawaii Hawaii Hawaii
First Hawaiian Creditcorp, Inc.	Hawaii
First Hawaiian Leasing, Inc.	Hawaii
FHI International, Inc.	Hawaii
Pioneer Federal Savings Bank Pioneer Insurance Agency, Inc. Pioneer Advertising Agency, Inc.	Federal Hawaii Hawaii

All subsidiaries were included in the consolidated financial statements of the Corporation.

1

EXHIBIT 23

CONSENT OF INDEPENDENT ACCOUNTANTS

2

Exhibit 23

CONSENT OF INDEPENDENT ACCOUNTS

We consent to the incorporation by reference in the registration statements of First Hawaiian, Inc. and subsidiaries on Forms S-3 (File No. 33-64786) and S-8 (File No. 33-66400) of our report dated January 20, 1994, on our audits of the consolidated financial statements of First Hawaiian, Inc. and subsidiaries as of December 31, 1993 and 1992, and for the years ended December 31, 1993, 1992, and 1991, which report is incorporated by reference in this Annual Report on Form 10-K.

COOPERS & LYBRAND

Honolulu, Hawaii March 22, 1994