

HISTORIC COMMERCIAL PROPERTY MAINTENANCE AGREEMENT

BY AND BETWEEN THE CITY AND COUNTY OF HONOLULU
A MUNICIPAL CORPORATION, AND

FOR THE PRESERVATION AND BENEFIT OF THE
DESIGNATED HISTORIC PROPERTY LOCATED AT

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation (the "City"), and _____, a Hawaii _____ (the "Owner").

RECITALS

WHEREAS, Sec. 8-10.30, Revised Ordinances of Honolulu 1990, as amended ("ROH") provides that an owner of certain commercial property that has been placed on either the National or the Hawaii Register of Historic Places after January 1, 1977, may dedicate such property for historic preservation by petitioning the Director of the Department of Budget and Fiscal Services of the City to obtain an exemption from real property taxation and agreeing to maintain the historic property in accordance with a maintenance agreement, which provides for the maintenance and preservation of the historic property, so as to retain its character as a property of historical significance;

WHEREAS, the Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, that have been placed on either the National or the Hawaii Register of Historic Places after January 1, 1977, either as an individual structure or as a structure that contributes to the integrity of a historic district, commonly known as _____, Hawai'i and more particularly described in Exhibit "A" (the "Historic Property"); and

WHEREAS, the City and the Owner, for their mutual benefit, now desire to enter into this Agreement both to protect and preserve the historically significant characteristics of the Historic Property and to qualify the Historic Property for an exemption from real property taxation pursuant to ROH Sec. 8-10.30.

AGREEMENT

NOW, THEREFORE, the City and the Owner, in consideration of the mutual covenants and conditions set forth herein, do hereby agree as follows:

1. Recitals. The Recitals set forth above are incorporated into this Agreement and any extensions of this Agreement for an additional 10-year period (the "Agreement").

2. Effective Date and Term of Agreement. This Agreement shall be effective as of July 1 200__ (the "Effective Date"), and shall remain in effect for a term of ten (10) years thereafter. This Agreement shall automatically renew for an additional ten (10) years, unless either party provides the other party, no less than three (3) months prior to the expiration of this Agreement, with written notice of its intent to not renew. There shall be no limit on the number of additional ten-year automatic renewal periods. Each additional Agreement shall be effective as of July 1, immediately following the end of the previous Agreement.

3. Standards for Historic Property. During the term of this Agreement, the Historic Property shall be subject to the following conditions, requirements and restrictions:

a. The Owner shall preserve and maintain the historically significant characteristics of the Historic Property, as specifically described in Exhibit "B" (the "Maintenance Plan"), in accordance with the United States Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings;

b. The Owner shall allow reasonable periodic examinations during regular business hours of the Owner, by prior appointment given at least twenty-four (24) hours in advance, of the interior and exterior of the Historic Property by representatives of the City's Real Property Assessment Division, or the State Historic Preservation Division, or their assigns and designees, as may be necessary to determine the Owner's compliance with the terms of this Agreement and the Maintenance Plan.

c. The Owner shall use the Historic Property as a commercial property. "Commercial property" means a property classified for real property tax purposes as commercial and excludes properties classified for real property tax purposes as hotel and resort or industrial. A "commercial property" may have other allowable uses under the land use ordinance.

d. The Owner shall provide the public with reasonable visual access to the Historic Property in accordance with the requirements of the National or the Hawaii Register of Historic Places, as applicable, and ROH Sec. 8-10.30.

4. Real Property Tax Exemption. Provided the Owner complies with the terms of this Agreement and ROH Sec. 8-10.30, fifty percent (50%) of the value of the Historic Property, or qualifying portion thereof, shall be exempt from real property taxes assessed by the City.

5. Provision of Information of Compliance. The Owner hereby agrees to furnish the City with all information necessary to determine compliance with the terms of this Agreement. All proprietary information provided by the Owner to the City shall be stamped "confidential" by the Owner and kept confidential by the City.

6. Termination.

a. The City may terminate this Agreement if it determines that the Owner has breached any of the material conditions of this Agreement, including the provisions in Paragraph 3 above, and has failed to cure said breach after notice, as set forth in Paragraph 7 below. In the event of termination, the City shall cancel the real property tax exemption provided to the Owner retroactive to the Effective Date of this Agreement or the effective date of any 10-year automatic renewal period and the Owner shall be subject to payment of all differences in the amount of taxes that were paid and those that would have been due but for the exemption allowed by this Agreement, together with interest at twelve percent (12%) per annum from the respective dates that these payments would have been due.

b. In the event that the Historical Property shall be taken or condemned by any duly constituted authority exercising the right of eminent domain, or is destroyed other than by Owner's actions or omissions and the Historical Property is unable to be reasonably reconstructed or restored, then this Agreement shall terminate and the Owner shall not be subject to the recapture provisions described in the paragraph above.

c. Upon the termination of this Agreement as described in this Paragraph 6, the Owner shall record a document, signed by the City, releasing the Owner from all covenants, reservations, and restrictions set forth in this Agreement, and shall provide a copy of said recorded release to the City.

7. Enforcement of Agreement.

a. In lieu of or in addition to any provisions to terminate this Agreement as referenced herein, the City may specifically enforce or enjoin the breach of the material terms of this Agreement. In the event of a material breach by the Owner under the provisions of this Agreement, the City shall give written notice to the Owner by registered or certified mail to the address stated in this Agreement or otherwise provided by the Owner, which notice shall specifically identify the alleged material breach and the proposed action which the City recommends to the Owner to cure said alleged material breach (the "Notice of Breach"). The Owner shall thereafter have sixty (60) days within which to initiate cure and fully remedy said alleged breach within one-hundred and eighty (180) days to the reasonable satisfaction of the City, subject to any acts of God or force majeure events; provided, however, in the case of any such breach whose cure cannot be initiated or fully remedied within such period described above, if

the Owner shall commence promptly to cure the same and thereafter prosecute the curing with diligence, the time within which such breach may be cured shall be extended for such period as necessary to complete the curing thereof with diligence. Upon completion by the Owner of the cure of the material breach to the reasonable satisfaction of the City, the City shall withdraw the Notice of Breach.

b. Should the Owner not cure such breach within the time period specified above, subject to any acts of God or force majeure events, then the City may, without further notice, declare a default under the terms of this Agreement and may bring any action necessary to specifically enforce the obligations of the Owner arising out of the terms of this Agreement, apply to any court, state or federal, for injunctive relief against any violation by the Owner or apply for such other relief as may be appropriate.

c. The City does not waive any claim of default by the Owner if the City does not enforce or terminate this Agreement. All other remedies at law or in equity, which are not otherwise provided for in this Agreement or in the City's regulations governing historic properties, are available to the City to pursue in the event that there is a breach of this Agreement. No waiver by the City of any breach or default under this Agreement shall be deemed to be a waiver of any other subsequent breach thereof or default hereunder.

8. Binding Effect of Agreement. The Owner hereby subjects the Historic Property to the covenants, reservations and restrictions as set forth in this Agreement. The Owner shall record a short form of this executed agreement and shall provide the City with a copy of the recorded short form. The City and the Owner hereby declare their specific intent that the covenants, reservations and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors and assigns in title or interest to the Historic Property. Each and every contract, deed or other instrument hereinafter executed covering or conveying the Historic Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions expressed in this Agreement regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. In the event of termination of this Agreement, the covenant shall be removed from the title by recordation of a release in the manner provided for in Paragraph 6 c. above.

9. Notice. Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto.

To City: City and County of Honolulu
Real Property Assessment Division

842 Bethel Street
Honolulu, HI 96813

Attention: Administration/Technical Branch

To Owner:

10. General Provisions.

a. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto nor any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause them to be considered joint ventures or members of any joint enterprise.

b. The Owner agrees to and shall hold the City and its elected officials, officers, agents and employees harmless from liability for damage or claims for damage for personal injuries, including death, and claims for property damage, which may arise from the direct or indirect use or operations of the Owner or those of its contractor, subcontractor, agent, employee or other person acting on its behalf, which relate to the use, operation and maintenance of the Historic Property. The Owner hereby agrees to and shall defend the City and its elected officials, officers, employees and agents with respect to any and all actions for damages caused by, or alleged to have been caused by, reason of the Owner's activities in connection with the Historic Property. This hold harmless provision applies to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Historic Property.

c. All of the agreements, rights, covenants, reservations and restrictions contained in this Agreement shall be binding upon and shall inure to the benefit of the parties herein, their heirs, successors, legal representatives, assigns and all persons acquiring any part or portion of the Historic Property, whether by operation of law or in any manner whatsoever.

d. In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any of the covenants, reservations or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover all reasonable attorney's fees to be fixed by the court, in addition to court costs and other relief ordered by the court.

e. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation,

the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

f. This Agreement shall be construed and governed in accordance with the laws of the State of Hawaii and the City and County of Honolulu.

11. Amendments. This Agreement and the Maintenance Plan may be amended, in whole or in part, only by a written instrument executed by the parties hereto, a short form of which shall be recorded by the Owner, who shall provide a copy of the recorded amendment to the City.

IN WITNESS WHEREOF, the City and the Owner have executed this Agreement on the day and year first written above.

DATED: _____

By _____

Department of Budget and Fiscal Services
CITY AND COUNTY OF HONOLULU

DATED: _____

By _____

Its

OWNER

Approved as to Form:

Deputy Corporation Counsel

EXHIBIT A

Legal Description of Historic Property

EXHIBIT B
MAINTENANCE PLAN
(Items for Preservation and Maintenance)