

**AMENDED  
DEVELOPER'S PUBLIC REPORT  
FOR A CONDOMINIUM**

CONDOMINIUM PROJECT NAME	'ĀINA O KANE
Project Address	Land bordered by Kane St., Vevau St. and School Ave., Kahului, Maui, Hawaii
Registration Number	6592
Effective Date of Report	April 13, 2009
Developer(s)	A&B KANE LLC

**Preparation of this Report**

The Developer prepared this report to disclose relevant information, including "material facts", that are reasonably known to the Developer about the condominium project covered by this report. This report has been prepared pursuant to the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended from time to time. The law defines "material facts" to mean "any fact, defect, or condition, past or present that to a reasonable person, would be expected to measurably affect the value of the project, unit, or property being offered or proposed to be offered for sale."

This report has not been prepared or issued by the Real Estate Commission or any other governmental agency. The issuance by the Commission of an effective date for this Developer's Public Report (1) does not mean that the Commission approves or disapproves of the project; (2) does not mean that the Commission thinks that either all material facts or all pertinent changes, or both, about the project have been fully or adequately disclosed; and (3) is not the Commission's judgment of the value or merits of the project.

This report may be used by the Developer for promotional purposes only if it is used in its entirety. No person shall advertise or represent that the Commission has approved or recommended the project, this report or any of the documents submitted with Developer's application for registration of this project.

This report will be amended if, after the effective date of this report, any changes, either material or pertinent changes, or both, occur regarding the information contained in or omitted from this report. In that case, the Developer is required to submit immediately to the Commission an amendment to this report or an amended Developer's Public Report, clearly reflecting the changes, including any omitted material facts, together with such supporting information as may be required by the Commission. In addition, the Developer may choose at any time to change or update the information in this report. Annually, at least thirty days prior to the anniversary date of the Effective Date of this report, the Developer shall file an annual report to update the material contained in this report. If there are no changes, the Developer is required to state that there are no changes. The Developer's obligation to amend this report or to file annual reports ends when the initial sales of all units in the project have been completed.

Purchasers are encouraged to read this report carefully and to seek professional advice before signing a sales contract for the purchase of a unit in the project.

Signing a sales contract may legally bind a purchaser to purchase a unit in the project, though a purchaser may have rights to cancel or rescind a sales contract under particular circumstances that may arise.

*This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2643 to submit your request.*

## SPECIAL ATTENTION

[Use this page for special or significant matters which should be brought to the purchaser's attention and that are not covered elsewhere in this report.]

1. This project was originally known as "Kane Street" and was registered with the Real Estate Commission of the State of Hawaii under Chapter 514A, HRS, as Registration No. 5966. The Developer issued a Preliminary Public Report under Registration No. 5966. The Developer subsequently changed the name of the Project to "Āina o Kane", revised the Project's condominium documents and recorded them to create the Project under Chapter 514B, HRS.
2. This is a new registration under Chapter 514B, HRS. The original public report under this registration was issued an effective date of June 4, 2008. This Amended Public Report is a completely amended public report and supersedes the original 514B public report with effective date of June 4, 2008.
3. In accordance with the requirements of Section 514B-86(a)(A)(ii), the Developer hereby gives notice to all purchasers and prospective purchasers that a copy of the Condominium Map for the Project is available for examination at the Developer's sales office.
4. The following is a summary of changes from the information contained in the prior public report:

- a. Page (ii), TABLE OF CONTENTS: New Exhibits N (Variance) and O (Special Management Area Use Permit) have been added to the Table of Contents.
- b. Page 5, Section 1.12 Encumbrances Against Title: The date of the title report shown in Section 1.12 is changed to reflect that the Developer has obtained an updated title report for the project.
- c. Page 6, Section 1.13 Uses Permitted by Zoning and Zoning Compliance Matters: This section has been amended to disclose that a variance to the zoning code has been granted and that the variance is described in Exhibit "N" attached to this Amended Public Report.
- d. Page 9, Section 2.1 Officers and Directors of Developer's Manager/Member: This section has been amended to reflect changes in the Officers and Directors of A&B Properties, Inc., the manager and sole member of A&B Kane LLC, the Developer.
- e. Page 9, Section 2.6 Attorney for Developer: This section has been amended to reflect that the law firm representing the Developer has changed its name.
- f. Page 10, Sections 3.1 and 3.2 Declaration and Bylaws: These sections have been amended to reflect that amendments to the Declaration and Bylaws have been recorded in the Bureau of Conveyances.
- g. Page 14, Section 5.5 Status of Construction, Date of Completion or Estimated Date of Completion: This section has been amended to reflect a revised construction schedule and also to disclose that the Completion Deadline for up to 99 of the Units has been changed from 5 years to 10 years from the "Effective Date" as defined in the Sales Contract for the affected Units.
- h. Page 18, Section 6.1 Development and/or Sales in Increments: This section has been amended to clarify that the Project's buildings and Units may be constructed and/or offered for sale at different times.

*(continued on next page)*

- i. Page 18, Section 6.3 Multiple Zoning. This section has been amended to disclose that the Developer has obtained a variance to develop the Project on a single parcel that contains two different zoning classifications.
- j. Page 18b, Section 6.10 Affordable Housing. A new section 6.10 has been added on page 18b of this Amended Public Report to disclose that 35 units in the Project are subject to an affordable housing requirement.
- k. Pages 18b and 18c, Section 6.11 Special Management Area Use Permit. A new section 6.11 has been added on pages 18b and new page 18c of this Amended Public Report to disclose that the Project is subject to a Special Management Area Use Permit.
- l. Page 18c, Section 6.12 Archeological Matters. A new section 6.12 has been added on new page 18C of this Amended Public Report to disclose that the Project is located in an area that is known to contain traditional native Hawaiian burial sites and other archeological resources. New section 6.12 also discloses that the Developer has reserved various rights in connection with possible archeological discoveries and related matters at the Project.
- m. Exhibit "C" ("Alterations and Additions to Units and Limited Common Elements") attached to the Public Report is replaced in its entirety by the amended Exhibit "C" attached hereto and made a part hereof. Amended Exhibit "C" reflects that a new section 10.6 has been added to the Declaration prohibiting alterations or additions to units and limited common elements that violate the terms of the SMA Permit or the Variance.
- n. Exhibit "F" ("Encumbrances Against Title") attached to the Public Report is replaced in its entirety by the amended Exhibit "F" attached hereto and made a part hereof. Amended Exhibit "F" reflects information contained in the updated title report described in Section 1.12 of this Amended Public Report.
- o. Exhibit "G" ("Developer's Reserved Rights") attached to the Public Report is replaced in its entirety by the amended Exhibit "G" attached hereto and made a part hereof. Amended Exhibit "G" reflects changes to some of the Developer's rights reserved in the Declaration and Bylaws, as amended by the amendments disclosed in Sections 3.1 and 3.2 of this Amended Public Report.
- p. Exhibit "H" ("Estimate of Initial maintenance Fees and Estimate of Maintenance Fee Disbursements") attached to the Public Report is replaced in its entirety by the amended Exhibit "H" attached hereto and made a part hereof. Amended Exhibit "H" reflects revisions to the Project's budget.
- q. Exhibit "I" ("Summary of Sales Contract and Escrow Agreement") attached to the Public Report is replaced in its entirety by the amended Exhibit "I" attached hereto and made a part hereof. Amended Exhibit "I" reflects that the completion deadline under the 99-Unit Sales Contract has been changed from five (5) years from the Effective Date of the contract to ten (10) years from the Effective Date.
- r. Exhibit "J" ("Developer's Reserved Alteration, Withdrawal and Merger Rights") attached to the Public Report is replaced in its entirety by the amended Exhibit "J" attached hereto and made a part hereof. Amended Exhibit "J" reflects amendments to Section 23 of the Declaration pertaining to the Developer's reserved rights to withdraw units and land and recalculate common interests.
- s. Exhibit "M" ("Special Use Restrictions") attached to the Public Report is replaced in its entirety by the amended Exhibit "M" attached hereto and made a part hereof. Amended Exhibit "M" reflects that a new section 10.6 has been added to the Declaration prohibiting any use of units, limited common elements or common elements that violate the terms of the SMA Permit or the Variance.

*(continued on next page)*

- t. A new Exhibit "N" ("Variance") is attached hereto and made a part hereof. Exhibit "N" reflects that the Developer has obtained a variance for the Project's land relating to the fact that the land contains two different zoning classifications.
- u. A new Exhibit "O" ("Special management Area Use Permit") is attached hereto and made a part hereof. Exhibit "O" reflects that the Project is subject to the SMA Permit.

## TABLE OF CONTENTS

	<u>Page</u>
Preparation of this Report.....	1
General Information On Condominiums.....	2
Operation of the Condominium Project.....	2
1. THE CONDOMINIUM PROJECT.....	3
1.1 The Underlying Land.....	3
1.2 Buildings and Other Improvements.....	3
1.3 Unit Types and Sizes of Units.....	3
1.4 Parking Stalls.....	4
1.5 Boundaries of the Units.....	4
1.6 Permitted Alterations to the Units.....	4
1.7 Common Interest.....	4
1.8 Recreational and Other Common Facilities.....	4
1.9 Common Elements.....	5
1.10 Limited Common Elements.....	5
1.11 Special Use Restrictions.....	5
1.12 Encumbrances Against Title.....	5
1.13 Uses Permitted by Zoning and Zoning Compliance Matters.....	6
1.14 Other Zoning Compliance Matters.....	6
1.15 Conversions.....	7
1.16 Project in Agricultural District.....	8
1.17 Project with Assisted Living Facility.....	8
2. PERSONS CONNECTED WITH THE PROJECT.....	9
2.1 Developer.....	9
2.2 Real Estate Broker.....	9
2.3 Escrow Depository.....	9
2.4 General Contractor.....	9
2.5 Condominium Managing Agent.....	9
2.6 Attorney for Developer.....	9
3. CREATION OF THE CONDOMINIUM AND CONDOMINIUM DOCUMENTS.....	10
3.1 Declaration of Condominium Property Regime.....	10
3.2 Bylaws of the Association of Unit Owners.....	10
3.3 Condominium Map.....	10
3.4 House Rules.....	11
3.5 Changes to the Condominium Documents.....	11
3.6 Rights Reserved by the Developer to Make Changes to the Condominium Project or Condominium Documents.....	11
4. CONDOMINIUM MANAGEMENT.....	12
4.1 Management of the Common Elements.....	12
4.2 Estimate of the Initial Maintenance Fees.....	12
4.3 Utility Charges to be Included in the Maintenance Fee.....	12
4.4 Utilities to be Separately Billed to Unit Owner.....	12
5. SALES DOCUMENTS.....	13
5.1 Sales Documents Filed with the Real Estate Commission.....	13
5.2 Sales to Owner-Occupants.....	13
5.3 Blanket Liens.....	13
5.4 Construction Warranties.....	13
5.5 Status of Construction, Date of Completion or Estimated Date of Completion.....	14

## TABLE OF CONTENTS

	Page
5.6	Developer's Use of Purchaser Deposits to Pay for Project Construction Costs Before Closing or Conveyance..... 14
5.6.1	Purchaser Deposits Will Not Be Disbursed Before Closing or Conveyance..... 14
5.6.2	Purchaser Deposits Will Be Disbursed Before Closing..... 14
5.7	Rights Under the Sales Contract..... 16
5.8	Purchaser's Right to Cancel or Rescind a Sales Contract..... 16
5.8.1	Purchaser's 30-Day Right to Cancel a Sales Contract..... 16
5.8.2	Right to Cancel a Sales Contract if Completion Deadline Missed..... 17
5.8.3	Purchaser's Right to Rescind a Binding Sales Contract After a Material Change. 17
6.	MISCELLANEOUS INFORMATION NOT COVERED ELSEWHERE IN THIS REPORT..... 18
EXHIBIT A:	DESCRIPTION OF UNITS
EXHIBIT B:	BOUNDARIES OF UNITS
EXHIBIT C:	ALTERATIONS AND ADDITIONS TO UNITS AND LIMITED COMMON ELEMENTS
EXHIBIT D:	COMMON ELEMENTS
EXHIBIT E:	LIMITED COMMON ELEMENTS
EXHIBIT F:	ENCUMBRANCES AGAINST TITLE
EXHIBIT G:	DEVELOPER'S RESERVED RIGHTS
EXHIBIT H:	ESTIMATE OF INITIAL MAINTENANCE FEES AND ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS
EXHIBIT I:	SUMMARY OF SALES CONTRACT AND ESCROW AGREEMENT
EXHIBIT J:	DEVELOPER'S RESERVED ALTERATION, WITHDRAWAL AND MERGER RIGHTS
EXHIBIT K:	DECLARATION OF MERGER OF CONDOMINIUM PROJECTS
EXHIBIT L:	DEVELOPER'S RESERVED REPURCHASE RIGHTS
EXHIBIT M:	SPECIAL USE RESTRICTIONS
EXHIBIT N:	VARIANCE
EXHIBIT O:	SPECIAL MANAGEMENT AREA USE PERMIT

## **General Information On Condominiums**

A condominium is a special form of ownership of real property. To create a condominium in Hawaii after July 1, 2006, the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, must be followed. In addition, certain requirements and approvals of the county in which the project is located must be satisfied and obtained.

Some condominium projects are leasehold. This means that the land and/or the building(s) and other improvements are leased to the purchaser. The lease for the land usually requires that at the end of the lease term, the lessees (unit owners) deliver their interest in the land to the lessor (fee property owner).

If you are a typical condominium unit owner, you will have two kinds of ownership: (1) ownership in your individual unit; and (2) a percentage interest in the common elements.

You will be entitled to exclusive ownership and possession of your unit. Subject to the documents governing them, condominium units may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift or operation of law.

Your unit will, however, be part of the group of units that comprise the condominium project. Study the project's Declaration of Condominium Property Regime, Bylaws of the Association of Unit Owners, Condominium Map and House Rules, if any, which are being concurrently delivered to you with this report. These documents contain important information on the use and occupancy of the units and the common elements of the project, as well as the rules and regulations of conduct for unit owners, tenants and guests.

## **Operation of the Condominium Project**

The Association of Unit Owners is the entity through which unit owners may take action with regard to the administration, management and operation of the condominium project. Each unit owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as a unit owner. The Board and officers can take certain actions without the vote of the unit owners. For example, the Board may hire and fire employees, increase or decrease maintenance fees, adopt budgets for revenues, expenses and reserves and regulate the use, maintenance, repair and replacement of common elements. Some of these actions may significantly impact the unit owners.

Until there is a sufficient number of purchasers of units to elect a majority of the Board, it is likely at first that the Developer will effectively control the affairs of the Association. It is frequently necessary for the Developer to do so during the early stages of development and the Developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective purchasers should understand that it is important to all unit owners that the transition of control from the Developer to the unit owners be accomplished in an orderly manner and in a spirit of cooperation.

**1. THE CONDOMINIUM PROJECT**

**1.1 The Underlying Land**

Fee Simple or Leasehold Project	<input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold (attach Leasehold Exhibit)
Developer is the Fee Owner	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Fee Owner's Name if Developer is not the Fee Owner	
Address of Project	Land bordered by Kane St., Vevau St. and School Ave., Kahului, Maui, Hawaii
Address of Project is expected to change because	Street address has not yet been assigned
Tax Map Key (TMK)	(2) 3-7-005-003, -011 & -023
Tax Map Key is expected to change because	Land has been consolidated and resubdivided
Land Area	@ 3.811 acres
Developer's right to acquire the Property if Developer is not the Fee Owner (describe)	N/A

**1.2 Buildings and Other Improvements**

Number of Buildings	5
Floors Per Building	4
Number of New Building(s)	5
Number of Converted Building(s)	None
Principal Construction Materials (concrete, wood, hollow tile, steel, glass, etc.)	Wood, steel, concrete, concrete fill, glass, vinyl and allied building materials

**1.3 Unit Types and Sizes of Units**

Unit Type	Quantity	BR/Bath	Net Living Area	Net Other Areas	Other Areas (lanai, garage, etc.)	Total Area
See Exhibit "A".						

119	<b>Total Number of Units</b>
-----	------------------------------

Note: Net Living Area is the floor area of the unit measured from the interior surface of the perimeter walls of the unit. Other documents and maps may give floor area figures that differ from those above because a different method of determining floor area may have been used.

**1.4 Parking Stalls**

Total Parking Stalls in the Project:	303 (includes 22 stalls in 12 parking units)
Number of Guest Stalls in the Project:	None
Number of Parking Stalls Assigned to Each Unit:	281
Attach Exhibit <u>"A"</u> specifying the Parking Stall number(s) assigned to each unit and the type of parking stall(s) (regular, compact or tandem and indicate whether covered or open).	
If the Developer has reserved any rights to assign or re-assign parking stalls, describe such rights. See Exhibit <u>"G"</u> and section 9.4 of the Declaration. All Owners, including Developer, can transfer limited common element parking stalls among units. See section <u>9</u> of Declaration.	

**1.5 Boundaries of the Units**

Boundaries of the unit:  See Exhibit <u>"B"</u>
---

**1.6 Permitted Alterations to the Units**

Permitted alterations to the unit (if the unit is defined as a non-physical or spatial portion of the project, also describe what can be built within such portion of the project):  See Exhibit <u>"C"</u>
---

**1.7 Common Interest**

<b>Common Interest:</b> Each unit will have a percentage interest in the common elements appurtenant to each unit. This interest is called the "common interest". It is used to determine each unit's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by unit owners. The common interest for each unit in this project, as described in Declaration, is:
Described in Exhibit <u>"A"</u>
As follows:

**1.8 Recreational and Other Common Facilities (Check if applicable):**

<input type="checkbox"/>	Swimming pool
<input type="checkbox"/>	Laundry Area
<input type="checkbox"/>	Storage Area
<input type="checkbox"/>	Tennis Court
<input checked="" type="checkbox"/>	Recreation Area
<input type="checkbox"/>	Trash Chute/Enclosure(s)
<input type="checkbox"/>	Exercise Room
<input type="checkbox"/>	Security Gate
<input type="checkbox"/>	Playground
<input type="checkbox"/>	Other (describe):

**1.9 Common Elements**

<p><u>Common Elements:</u> Common elements are those parts of the condominium project other than the individual units and any other real estate for the benefit of unit owners. Although the common elements are owned jointly by all unit owners, those portions of the common elements that are designated as limited common elements (see Section 1.10 below) may be used only by those units to which they are assigned. In addition to the common facilities described in Section 1.8 above, the common elements for this project, as described in the Declaration, are set forth below.</p>									
<p>Described in Exhibit "D".</p>									
<p>Described as follows:</p>									
<table border="1"> <thead> <tr> <th>Common Element</th> <th>Number</th> </tr> </thead> <tbody> <tr> <td>Elevators</td> <td>3</td> </tr> <tr> <td>Stairways</td> <td>7</td> </tr> <tr> <td>Trash Chutes</td> <td>None</td> </tr> </tbody> </table>		Common Element	Number	Elevators	3	Stairways	7	Trash Chutes	None
Common Element	Number								
Elevators	3								
Stairways	7								
Trash Chutes	None								

**1.10 Limited Common Elements**

<p><u>Limited Common Elements:</u> A limited common element is a portion of the common elements that is reserved for the exclusive use of one or more but fewer than all units in the project.</p>
<p>Described in Exhibit "E".</p>
<p>Described as Follows:</p>

**1.11 Special Use Restrictions**

<p>The Declaration and Bylaws may contain restrictions on the use and occupancy of the units. Restrictions for this project include, but are not limited to, those described below.</p>	
<input checked="" type="checkbox"/>	Pets: Restrictions on pets: See Exhibit "M"
<input type="checkbox"/>	Number of Occupants:
<input checked="" type="checkbox"/>	Other: General restrictions on use of Units: See Exhibit "M"
<input type="checkbox"/>	There are no special use restrictions.

**1.12 Encumbrances Against Title**

<p>An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of a unit in the project. Encumbrances shown may include blanket liens which will be released prior to conveyance of a unit (see Section 5.3 on Blanket Liens).</p>
<p>Exhibit "F" describes the encumbrances against title contained in the title report described below.</p>
<p>Date of the title report: February 9, 2009</p>
<p>Company that issued the title report: Title Guaranty of Hawaii, Inc.</p>

**1.13 Uses Permitted by Zoning and Zoning Compliance Matters**

Uses Permitted by Zoning					
	Type of Use	No. of Units	Use Permitted by Zoning		Zoning
<input checked="" type="checkbox"/>	Residential	103	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	B-2 Community Business District and R-3 Residential
<input checked="" type="checkbox"/>	Commercial	4	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	B-2 Community Business District and R-3 Residential
<input type="checkbox"/>	Mix Residential/Commercial		<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input type="checkbox"/>	Hotel		<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input type="checkbox"/>	Timeshare		<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input type="checkbox"/>	Ohana		<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input type="checkbox"/>	Industrial		<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input type="checkbox"/>	Agricultural		<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input type="checkbox"/>	Recreational		<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input checked="" type="checkbox"/>	Other (specify): Parking	12	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	B-2 Community Business District and R-3 Residential
Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Variances to zoning code have been granted.			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Describe any variances that have been granted to zoning code.			See Exhibit "N"		

**1.14 Other Zoning Compliance Matters**

Conforming/Non-Conforming Uses, Structures and Lots			
<p>In general, a non-conforming use, structure or lot is a use, structure or lot that was lawful at one time but that does not now conform to present zoning requirements. Under present zoning requirements, limitations may apply to extending, enlarging or continuing the non-conformity and to altering and repairing non-conforming structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.</p> <p>If a variance has been granted or if uses, structures or lots are either non-conforming or illegal, the purchaser should consult with county zoning authorities as to possible limitations that may apply in situations such as those described above.</p> <p>A purchaser may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure or lot.</p>			
	Conforming	Non-Conforming	Illegal
Uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Structures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lot	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>If a non-conforming use, structure or lot exists in this project, this is what will happen under existing laws or codes if the structure is damaged or destroyed:</p> <p>N/A</p>			

**1.15 Conversions**

<p><b>Developer's statements regarding units that may be occupied for residential use and that have been in existence for five years or more.</b></p>	<p><input type="checkbox"/> Applicable  <input checked="" type="checkbox"/> Not Applicable</p>
<p>Developer's statement, based upon a report prepared by a Hawaii-licensed architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the units:</p>	
<p>Developer's statement of the expected useful life of each item reported above:</p>	
<p>List of any outstanding notices of uncured violations of any building code or other county regulations:</p>	
<p>Estimated cost of curing any violations described above:</p>	

<p><b>Verified Statement from a County Official</b></p>
<p>Regarding any converted structures in the project, attached as Exhibit ____ is a verified statement signed by an appropriate county official which states that either:</p> <p>(A) The structures are in compliance with all zoning and building ordinances and codes applicable to the project at the time it was built, and specifying, if applicable:</p> <ul style="list-style-type: none"> <li>(i) Any variances or other permits that have been granted to achieve compliance;</li> <li>(ii) Whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes; and</li> <li>(iii) Any violations of current zoning or building ordinances or codes and the conditions required to bring the structure into compliance;</li> </ul> <p style="text-align: center;">or</p> <p>(B) Based on the available information, the county official cannot make a determination with respect to the foregoing matters in (A) above.</p>
<p>Other disclosures and information:</p>

**1.16 Project in Agricultural District**

<p><b>Is the project in an agricultural district as designated by the land use laws of the State of Hawaii?</b>  <b>If answer is "Yes", provide information below.</b></p>	<p><input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No</p>
<p>Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable state and county land use laws? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the answer is "No", provide explanation.</p>	
<p>Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable county real property tax laws? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the answer is "No", provide explanation and state whether there are any penalties for noncompliance.</p>	
<p>Other disclosures and information:</p>	

**1.17 Project with Assisted Living Facility**

<p><b>Does the project contain any assisted living facility units subject to Section 321-11(10), HRS?</b>  <b>If answer is "Yes", provide information below.</b></p>	<p><input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No</p>
<p>Licensing requirements and the impact of the requirements on the costs, operations, management and governance of the project.</p>	
<p>The nature and the scope of services to be provided.</p>	
<p>Additional costs, directly attributable to the services, to be included in the association's common expenses.</p>	
<p>The duration of the provision of the services.</p>	
<p>Other possible impacts on the project resulting from the provision of the services.</p>	
<p>Other disclosures and information.</p>	

## 2. PERSONS CONNECTED WITH THE PROJECT

<p><b>2.1 Developer(s)</b></p>	<p>Name: A&amp;B Kane LLC</p> <p>Business Address: 822 Bishop Street Honolulu, Hawaii 96813</p> <p>Business Phone Number: (808) 525-6611</p> <p>E-mail Address: None</p>
<p>Names of officers and directors of developers that are corporations; general partners of a partnership; partners of a limited liability partnership (LLP); or a manager and members of a limited liability company (LLC) (attach separate sheet if necessary).</p>	<p>The manager and sole member of A&amp;B Kane LLC is A&amp;B Properties, Inc., a Hawaii corporation. The officers and directors of A&amp;B Properties, Inc., are W.A. Doane (Chairman of the Board, Dir.); R.K. Sasaki (Vice Chair., Dir.); N.M. Buelsing (Pres., Dir.); P.W. Hallin (Exec.V.P.); M.G. Wright (Exec.V.P.); A.K. Arakawa (Senior V.P.); D.I. Haverly (Senior V.P.); R.B. Stack, Jr. (Senior V.P.); G.Y.M. Chun (V.P.); N.I. Kiehm (V.P.); C.W. Loomis (V.P, Assist. Sec.); L.K. Parker (V.P.); T.H. Shigemoto (V.P.); D.M. Shigeta (V.P.); C.J. Benjamin (Treasurer, Dir.); A.J. Nakamura (Sec.); L.G. Rodolfich (Controller); M.J. Ching (Dir.); S.M. Kuriyama (Dir.)</p>
<p><b>2.2 Real Estate Broker</b></p>	<p>Name: Locations Maui LLC, dba Prudential Locations Maui Business Address: 2151 E. Wakea Avenue, Suite 204 Kahului, Hawaii 96732</p> <p>Business Phone Number: (808) 879-5200</p> <p>E-mail Address: None</p>
<p><b>2.3 Escrow Depository</b></p>	<p>Name: Title Guaranty Escrow Services, Inc. Business Address: 235 Queen Street, 1<sup>st</sup> Floor Honolulu, Hawaii 96813</p> <p>Business Phone Number: (808) 521-0211</p>
<p><b>2.4 General Contractor</b></p>	<p>Name: TO BE DETERMINED Business Address:</p> <p>Business Phone Number:</p>
<p><b>2.5 Condominium Managing Agent</b></p>	<p>Name: Certified Management, Inc. Business Address: 3179 Koapaka Street Honolulu, Hawaii 96819</p> <p>Business Phone Number: (808) 836-0911</p>
<p><b>2.6 Attorney for Developer</b></p>	<p>Name: Porter Tom Quitiquit Chee &amp; Watts, LLP (Attn: Jeffrey D. Watts) Business Address: 841 Bishop Street, Suite 2125 Honolulu, Hawaii 96813</p> <p>Business Phone Number: (808) 526-3011</p>

### 3. CREATION OF THE CONDOMINIUM AND CONDOMINIUM DOCUMENTS

A condominium is created by recording in the Bureau of Conveyances (Regular System) or filing in the Office of the Assistant Registrar of the Land Court, or both, a Declaration of Condominium Property Regime, a Condominium Map and the Bylaws of the Association of Unit Owners. The Condominium Property Act (Chapter 514B, HRS), the Declaration, Bylaws and House Rules control the rights and obligations of the unit owners with respect to the project and the common elements, to each other, and to their respective units.

#### 3.1 Declaration of Condominium Property Regime

The Declaration of Condominium Property Regime contains a description of the land, buildings, units, common interests, common elements, limited common elements, and other information relating to the condominium project.

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	April 1, 2008	2008-050900

#### Amendments to Declaration of Condominium Property Regime

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	March 9, 2009	2009-036186

#### 3.2 Bylaws of the Association of Unit Owners

The Bylaws of the Association of Unit Owners govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Unit Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters that affect how the condominium project will be governed.

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	April 1, 2008	2008-050901

#### Amendments to Bylaws of the Association of Unit Owners

Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	March 9, 2009	2009-036187

#### 3.3 Condominium Map

The Condominium Map contains a site plan and floor plans, elevations and layout of the condominium project. It also shows the floor plan, unit number and dimensions of each unit.

Land Court Map Number	
Bureau of Conveyances Map Number	4606
Dates of Recordation of Amendments to the Condominium Map: None	

**3.4 House Rules**

The Board of Directors may adopt rules and regulations (commonly called "House Rules") to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the Developer. Changes to House Rules do not need to be recorded to be effective.

The House Rules for this project:

Are Proposed	<input type="checkbox"/>	
Have Been Adopted and Date of Adoption	<input checked="" type="checkbox"/>	April 1, 2008
Developer does not plan to adopt House Rules	<input type="checkbox"/>	

**3.5 Changes to the Condominium Documents**

Changes to Condominium Documents: Changes to the Declaration, Bylaws and Condominium Map are effective only if they are duly adopted and recorded. Where permitted, the minimum percentages of the common interest that must vote for or give written consent to changes to the Declaration, Bylaws and Condominium Map are set forth below. The percentages for any individual condominium project may be more than the minimum set by law if the Declaration or Bylaws for the project so provide.

Document	Minimum Set by Law	This Condominium
Declaration	67%	67%
Bylaws	67%	67%

**3.6 Rights Reserved by the Developer to Make Changes to the Condominium Project or Condominium Documents**

<input type="checkbox"/>	No rights have been reserved to the Developer to change the Declaration, Bylaws, Condominium Map or House Rules (if any).
<input checked="" type="checkbox"/>	<p>Developer has reserved the right to change the Declaration, Bylaws, Condominium Map and House rules (if any) and to add to or merge the project or to develop the project in one or more phases, and such rights are summarized as follows:</p> <p style="text-align: center;">See Exhibits "<u>G</u>" and "<u>J</u>"</p>

#### 4. CONDOMINIUM MANAGEMENT

##### 4.1 Management of the Common Elements

<u>Management of the Common Elements:</u> The Association of Unit Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.	
The Initial Condominium Managing Agent for this project is (check one):	
<input checked="" type="checkbox"/>	Not affiliated with the Developer
<input type="checkbox"/>	None (self-managed by the Association)
<input type="checkbox"/>	The Developer or an affiliate of the Developer
<input type="checkbox"/>	Other (explain)

##### 4.2 Estimate of the Initial Maintenance Fees

<u>Estimate of the Initial Maintenance Fees:</u> The Association will make assessments against your unit to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your unit and the unit may be sold through a foreclosure proceeding. Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.
Exhibit "H" contains a breakdown of the estimated annual maintenance fees and the monthly estimated maintenance fee for each unit, certified to have been based on generally accepted accounting principles, with the Developer's statement as to when a unit owner shall become obligated to start paying the unit owner's share of the common expenses.

##### 4.3 Utility Charges to be included in the Maintenance Fee

If checked, the following utilities are included in the maintenance fee:	
<input checked="" type="checkbox"/>	Electricity for the common elements
<input type="checkbox"/>	Gas for the common elements
<input checked="" type="checkbox"/>	Water for the common elements and Units
<input checked="" type="checkbox"/>	Sewer for the common elements and Units
<input type="checkbox"/>	TV Cable
<input checked="" type="checkbox"/>	Other (specify): telephone for common elements; refuse collection

##### 4.4 Utilities to be Separately Billed to Unit Owner

If checked, the following utilities will be billed to each unit owner and are not included in the maintenance fee:	
<input checked="" type="checkbox"/>	Electricity for the Unit only
<input type="checkbox"/>	Gas for the Unit only
<input type="checkbox"/>	Water
<input type="checkbox"/>	Sewer
<input checked="" type="checkbox"/>	TV Cable for the Unit only
<input checked="" type="checkbox"/>	Other (specify) Telephone for Unit; all other utilities/services not provided by or through Assoc.

## 5. SALES DOCUMENTS

### 5.1 Sales Documents Filed with the Real Estate Commission

<input checked="" type="checkbox"/>	Specimen Sales Contract Exhibit "1" contains a summary of the pertinent provisions of the sales contract. Including but not limited to any rights reserved by the Developer.
<input checked="" type="checkbox"/>	Escrow Agreement dated: March 28, 2008; amended and restated May 30, 2008. Name of Escrow Company: Title Guaranty Escrow Services, Inc. Exhibit "1" contains a summary of the pertinent provisions of the escrow agreement.
<input type="checkbox"/>	Other:

### 5.2 Sales to Owner-Occupants

If this project contains three or more residential units, the Developer shall designate at least fifty percent (50%) of the units for sale to Owner-Occupants.

<input checked="" type="checkbox"/>	The sales of units in this project are subject to the Owner-Occupant requirements of Chapter 514B.
<input type="checkbox"/>	Developer has designated the units for sale to Owner-Occupants in this report. See Exhibit ____.
<input checked="" type="checkbox"/>	Developer has or will designate the units for sale to Owner-Occupants by publication.

### 5.3 Blanket Liens

Blanket Liens: A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project or more than one unit that secures some type of monetary debt (such as a loan) or other obligation. Blanket liens (except for improvement district or utility assessments) must be released as to a unit before the developer conveys the unit to a purchaser. The purchaser's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the unit to the purchaser.

<input checked="" type="checkbox"/>	There are <u>no blanket liens</u> affecting title to the individual units. (See page 13a)
<input type="checkbox"/>	There are <u>blanket liens</u> that may affect title to the individual units.

<u>Type of Lien</u>	Effect on Purchaser's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance

### 5.4 Construction Warranties

Construction Warranties: Warranties for individual units and the common elements, including the beginning and ending dates for each warranty (or the method of calculating them), are as set forth below:

Building and Other Improvements:

See page 13a

Appliances:

See page 13a

### **5.3 Blanket Liens (Continued)**

As of the effective date of this Amended Public Report, there are no blanket liens affecting title to any part of the Project. However, the Developer may subsequently obtain a construction loan and may secure the loan by placing a blanket mortgage on the entire Project. This would be a blanket lien that may affect title to the individual Units.

If the Developer places a blanket mortgage on the Project, the Buyer's interest under a sales contract will be subordinate to the interest of the mortgagee under such mortgage. This means, among other things, that if the Developer defaults under the mortgage, the mortgagee may take over the Project, cancel the sales contracts and refund the Buyer's deposits, less escrow cancellation fees, and the Buyer shall have no further interest in the Project.

### **5.4 Construction Warranties (Continued)**

Building and Other Improvements: The Units are being sold in "As Is" condition and the Developer makes no warranties or representations about the condition of the Units and the Project except for warranties of title that will be contained in the Unit Deeds and the limited warranties contained in the Sales Contract. Section F.7(a) of the Sales Contract provides that the closing date of the sale of the Unit shall constitute the assignment by the Developer (as "Seller" under the Sales Contract) to Buyer of any and all warranties given the Developer by the general contractor for the Project (the "Contractor") and by any subcontractor or materialmen, including the Contractor's guarantee of materials and workmanship against faulty or deficient materials installed for a period of one (1) year after "substantial completion" of the Unit, as defined in the construction contract for the Project, and the benefit of such warranties shall accrue to Buyer on closing without further instruments or documents. The Developer agrees to cooperate with Buyer during the effective period of any such warranties in asserting any claims based on such warranties. The Sales Contract requires Buyer to acknowledge that the Developer has made no other warranties, express or implied, with respect to the design, condition, workmanship, materials, value or use of the Project, the Unit or any common elements or anything thereon or therein.

Appliances: The Developer, not being the manufacturer of the furnishings and appliances that will be included with the Unit, nor the manufacturer's agent, disclaims any express or implied warranty of any kind whatsoever with respect to such furnishings and appliances, including the merchantability of such furnishings and appliances or their fitness for any particular purpose. However, the Buyer shall have the benefit of any existing manufacturer's or dealer's warranties covering such furnishings and appliances to the extent that such warranties are transferable to the Buyer.

**5.5 Status of Construction, Date of Completion or Estimated Date of Completion**

Status of Construction: Construction is estimated to commence in December of 2009 and to be completed in December of 2012.
Completion Deadline: If a sales contract for a unit is signed before the construction of the unit has been completed, or, in the case of a conversion, completion of any repairs, does not occur by the completion deadline set forth below, one of the remedies available to a purchaser is a cancellation of the purchaser's sales contract. The sales contract may include a right of the Developer to extend the completion deadline for force majeure as defined in the sales contract. The sales contract may also provide additional remedies for the purchaser.
Completion Deadline for any unit not yet constructed, as set forth in the sales contract:  Ten years from the "Effective Date" (as defined in the Sales Contract) for up to 99 of the Units, and Two years from the "Effective Date" (as defined in the Sales Contract) for the remaining 20 Units.
Completion Deadline for any repairs required for a unit being converted, as set forth in the sales contract:  N/A

**5.6 Developer's Use of Purchaser Deposits to Pay for Project Construction Costs Before Closing or Conveyance**

The Developer is required to deposit all moneys paid by purchasers in trust under a written escrow agreement with a Hawaii licensed escrow depository. Escrow shall not disburse purchaser deposits to the Developer or on behalf of the Developer prior to closing, except if a sales contract is canceled or if Developer has met certain requirements, which are described below.

**5.6.1 Purchaser Deposits Will Not Be Disbursed Before Closing or Conveyance**

<input type="checkbox"/>	<p>The Developer hereby declares by checking the box to the left that it shall use its own funds to complete the construction of the condominium project by the date indicated in Section 5.5 of this report, and the Developer, pursuant to its own analysis and calculations, certifies that it has sufficient funds to complete the construction of the condominium project.</p> <p><i>If this box is checked, Section 5.6.2, which follows below, will not be applicable to the project.</i></p>
--------------------------	--

**5.6.2 Purchaser Deposits Will Be Disbursed Before Closing**

Hawaii law provides that, if certain statutory requirements are met, purchaser deposits in escrow under a binding sales contract may be used before closing to pay for certain project costs. For this project, the Developer indicates that purchaser deposits may be used for the following purposes (check applicable box):	
<input checked="" type="checkbox"/>	For new construction: to pay for project construction costs described in the Developer's budget and approved by the Developer's lender or an otherwise qualified, financially disinterested person; or
<input type="checkbox"/>	For conversions: to pay for repairs necessary to cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance and legal fees, and for other incidental expenses.

In connection with the use of purchaser deposits (check Box A or Box B):

<p><b>Box A</b></p> <p><input type="checkbox"/></p>	<p>The Developer has submitted all information and documents required by law and the Commission prior to the disbursement of purchaser deposits before closing. This means that the Developer may use such deposits before closing. If the Developer decides not to use purchaser deposits before closing, the developer does not need to amend this report.</p> <p>If Box A is checked, you should read and carefully consider the following notice, which is required by law:</p> <p><b>Important Notice Regarding Your Deposits: Deposits that you make under your sales contract for the purchase of the unit may be disbursed before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase.</b></p>
<p><b>Box B</b></p> <p><input checked="" type="checkbox"/></p>	<p>The Developer has <u>not</u> submitted all information and documents required by law and the Commission, and, until all such information and documents are submitted, thus, the Developer cannot use purchaser deposits.</p> <p>If the Developer later submits all information and documents required by law and the Commission for the use of purchaser deposits, then the Developer must provide an amendment to this report or an amended developer's public report to each purchaser who has signed a sales contract. At such time, the <b>Important Notice Regarding Your Deposits</b> set forth immediately above will apply to all purchasers and will be restated in the amendment to this report or an amended developer's public report. When an effective date for such an amendment or an amended developer's public report is issued, <b>you will not have the right to rescind or cancel the sales contract by reason of such submission and amendment.</b> (This, however, does not affect your right to rescind for material changes or any other right you may have to rescind or cancel the sales contract, as described in Section 5.8 below.) If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.</p> <p>You should understand that, although the <b>Important Notice Regarding Your Deposits</b> set forth above does not currently apply to you, it might apply to you in the future, and, therefore, you should read and carefully consider it now to ensure that you understand the risk involved in deciding whether to proceed with your purchase.</p>

**Material House Bond.** If the Developer has submitted to the Commission a completion or performance bond issued by a material house instead of a surety as part of the information provided prior to the use of purchaser deposits prior to closing or conveyance of a unit, the Developer shall disclose the same below and disclose the impact of any restrictions on the Developer's use of purchaser deposits.

## 5.7 Rights Under the Sales Contract

Before signing the sales contract, prospective purchasers should carefully review all documents relating to the project. These include but are not limited to the documents listed below. Items 2, 3 and 4 are made a part of this public report, as well as Item 5, if any, and are being delivered to you with this report.	
1.	<b>Developer's Public Report</b>
2.	<b>Declaration of Condominium Property Regime (and any amendments)</b>
3.	<b>Bylaws of the Association of Unit Owners (and any amendments)</b>
4.	<b>Condominium Map (and any amendments)</b>
5.	House Rules, if any
6.	Escrow Agreement (and any amendments or restatements)
7.	Hawaii's Condominium Property Act (Chapter 514B, HRS, as amended) and Hawaii Administrative Rules (Chapter 16-107, adopted by the Real Estate Commission, as amended), provided that rules and regulations under Chapter 514B have not yet been adopted.
8.	Other: Declaration of Merger of Condominium Projects, dated April 1, 2008, recorded in the Bureau of Conveyances as Document No. 2008-050899 (see Exhibit "K").

Copies of the condominium and sales documents and amendments made by the Developer are available for review through the Developer or through the Developer's sales agent, if any. The Condominium Property Regime law (Chapter 514B, HRS) and the Administrative Rules (Chapter 107, HAR), are available online. Please refer to the following sites:

Website to access official copy of laws: [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov)

Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

## 5.8 Purchaser's Right to Cancel or Rescind a Sales Contract

A purchaser's right to cancel a sales contract or to rescind a sales contract may arise under varying circumstances. In the sections below, some circumstances that will give rise to a purchaser's right to cancel or rescind are described, together with what a purchaser must do if the purchaser wishes to exercise any of the rights.

### 5.8.1 When a Sales Contract becomes Binding and Purchaser's 30-Day Right to Cancel a Sales Contract

A sales contract signed by a purchaser and the developer will not become binding on a purchaser or the Developer until the following events have taken place:

(1) The purchaser has signed the sales contract.  
(2) The Developer has delivered to the purchaser a true copy of the developer's public report with an effective date issued by the Commission, together with all amendments to the report as of the date of delivery, and the project's recorded Declaration and Bylaws, House Rules (if any), the Condominium Map and any amendments to them to date (all of which are a part of the developer's public report). If it is impracticable to include a letter-sized Condominium Map, the Developer must provide written notice of an opportunity to examine the Condominium Map.

(3) The Developer has delivered to the purchaser a notice of the purchaser's 30-day cancellation right on a form prescribed by the Commission.

(4) The purchaser does at least one of the following:

(a) Waives the purchaser's right to cancel the sales contract within 30 days from receipt of the notice of the purchaser's 30-day cancellation right; or

- (b) Allows the 30-day cancellation period to expire without exercising the right to cancel; or
- (c) Closes the purchase of the unit before the 30-day cancellation period expires.

The purchaser or the Developer may cancel the sales contract at any time during the 30-day cancellation period, and the sales contract will be canceled and the purchaser's deposits returned to the purchaser, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.

### **5.8.2 Right to Cancel a Sales Contract if Completion Deadline is Missed**

In addition to the purchaser's 30-day cancellation right described in Section 5.8.1 above, when a sales contract is signed before completion of construction of a project, the purchaser will have the right to cancel if the unit is not completed by certain deadlines. In conversion projects, there must be a deadline for completion of any required repairs. Every sales contract shall contain an agreement of the Developer that the completion of construction shall occur on or before the completion deadline, and that completion deadline is set forth in this report in Section 5.5. The sales contract shall provide that the purchaser may cancel the sales contract at any time after the specified completion deadline, if completion of construction does not occur on or before the completion deadline, as the same may have been extended. Upon a cancellation, the purchaser's deposits shall be refunded, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.00.

### **5.8.3 Purchaser's Right to Rescind a Binding Sales Contract After a Material Change**

If a "material change" in a project occurs after a purchaser has signed a sales contract that has become binding, the purchaser will have a 30-day right to rescind after notification and description of the material change. A material change is defined in the Condominium Property Act to be any change that "directly, substantially and adversely affects the use or value of (1) a purchaser's unit or appurtenant limited common elements; or (2) those amenities of the project available for the purchaser's use."

The purchaser will be informed of the material change by the developer on a form prescribed by the Commission containing a description of the material change.

After notice of the material change, the purchaser may waive the right to rescind by:

- (1) Checking the waiver box on the rescission form; or
- (2) Letting the 30-day rescission period expire, without taking any action to rescind; or
- (3) Closing the purchase of the unit before the 30-day rescission period expires.

The rescission form must be signed by all purchasers of the affected unit and delivered to the developer no later than midnight of the 30<sup>th</sup> calendar day after the purchasers received the rescission form from the developer. Purchasers who validly exercise the right of rescission shall be entitled to a prompt and full refund of any moneys paid.

A rescission right shall not apply in the event of any additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of a project, made pursuant to the terms of the project's Declaration.

These provisions shall not preclude a purchaser from exercising any rescission rights pursuant to a contract for the sale of a unit or any applicable common law remedies.

## 6. MISCELLANEOUS INFORMATION NOT COVERED ELSEWHERE IN THIS REPORT

**6.1. Development and/or Sales in Increments.** The buildings in the Project may be constructed, and/or the Units in each of the buildings may be constructed and/or offered for sale, at different times. Sales prices and terms for substantially similar Units offered at one time may vary and may be more or less favorable than sales prices and terms for substantially similar Units offered at a different time. The Sales Contract for each Unit requires the buyer to release the seller from any claims that arise due to the buyer's Unit being offered at a sales price and/or on different terms than other Units in the Project, and to waive any right to require any change in the terms and conditions of the Sales Contract on account of such differences.

**6.2. Construction Effects.** The Project's buildings and other improvements may be constructed in increments over an extended period of time. Construction activity at the Project may continue after the buyer has occupied the Unit and this activity may result in noise, dust or other annoyances to the buyer and may temporarily limit the buyer's access to portions of the Project (collectively, the "Construction Effects"). By acquiring a Unit, the buyer will be required to waive any rights, claims or actions the buyer may have or acquire against the Developer as a result of or in any way related to the Construction Effects; and the buyer will further be required to agree to indemnify and hold harmless the Developer, the Developer's employees, agents, successors and assigns from any and all loss (including but not limited to economic loss), cost, expense, harm, injury or damage to person or property that the buyer or any of the buyer's family members, assigns, tenants, lessees, servants, guests, invitees, licensees, agents, employees, or any other person who may use or occupy the Unit or the Project by, through, or under the buyer may suffer as a result of the Construction Effects.

**6.3. Multiple Zoning.** The Project's Land falls within two different zoning classifications. To permit the development of the Project under these circumstances according to the Developer's plans, the Developer obtained a variance from the Maui County Code. The variance is more particularly described in section 30 of the Declaration and in Exhibit "N" attached to this Public Report. Section 10.6 of the Declaration provides that each owner and the Association shall at all times comply with all applicable terms and conditions of the variance and shall not use, alter, add to or otherwise modify any unit, limited common element or common element in violation of any applicable restriction, term or condition of the variance. Notwithstanding the variance, in order to develop and construct the Project, the Developer may be required to enter into special agreements with the County of Maui pertaining to the Land's multiple zoning classifications, and/or to subject the Land or portions thereof to special declarations, covenants, conditions and/or restrictions mandated by the County of Maui or otherwise required by applicable law, and/or to subdivide the Land so that portions of the Land are created as legally separate lots, and/or to withdraw a portion or portions of the Land from the Project. The Developer has reserved rights to accomplish these changes, as more particularly described in the Declaration and elsewhere in this Public Report.

**6.4. Vevau Street.** The Project's Land currently includes an area designated on the Condominium Map as "Vevau Street". Although privately owned, Vevau Street has historically been used by the public as a roadway for vehicle and pedestrian access, and Vevau Street may continue to be used by the public for these purposes, notwithstanding that Vevau Street is a common element of the Project and owned by all of the owners of Units in the Project, as tenants in common. Moreover, as explained elsewhere in this Public Report, the Developer reserved the right, for itself and/or on behalf of and in the name of the Association, to execute and cause to be recorded in the Bureau one or more agreements, declarations or other instruments granting, designating and otherwise setting aside a nonexclusive right in favor of the public to use all or part of Vevau Street. Because Vevau Street is a common element of the Project, the Association will be responsible for the maintenance, repair and insuring of Vevau Street even though the public may use Vevau Street, and all costs of such maintenance, repair and insurance will be a common expense of the Project, assessed to all Unit owners in accordance with the common interests appurtenant to their Units. By acquiring a Unit, the buyer will be required to acknowledge and accept these conditions and to waive any claims or rights of action or suits against the Developer, the Developer's members, managers and all of their respective officers, directors, employees, agents, successors and assigns, arising from or in any way relating to the public's use of Vevau Street.

**6.5. Mold.** Climatic conditions in Hawaii are conducive to the growth of mold and other types of potentially irritating or harmful growths (collectively "Mold"). By signing a Sales Contract, the buyer will acknowledge that the buyer understands that Mold can be irritating or harmful to the respiratory tract of certain individuals and can cause deterioration of property. By acquiring a Unit, the buyer will thereby assume the risk that Mold may be present from time to time in the Unit or elsewhere at the Project and the buyer will be required to waive any rights, claims or actions the buyer may have or acquire against the Developer as a result of or in any way related to Mold in the Unit or elsewhere at the Project, and the buyer will further be required to agree to indemnify and hold harmless the Developer, the Developer's employees, agents, successors and assigns from any and all loss (including but not limited to economic loss), cost, expense, harm, injury or damage to person or property that the buyer or any of the buyer's family members, assigns, tenants, lessees, servants, guests, invitees, licensees, agents, employees, or any other person who may use or occupy the Unit or the Project by, through, or under the buyer may suffer as a result of the presence of Mold in the Unit or anywhere else at the Project.

**6.6. Security Disclaimer.** By signing a Sales Contract, the buyer will acknowledge that the buyer understands and accepts that neither the Association nor the Developer shall in any way be considered insurers or guarantors of security within the Project, and neither the Association nor the Developer shall be held liable for any loss or damage by reason of failure to provide adequate security or the ineffectiveness of any security measures undertaken. All owners, tenants, guests, and invitees of any owner, shall be deemed to acknowledge that the Association, its Board of Directors, the Developer (and any committees established by any of the foregoing entities) are not insurers and that each owner, tenant, guest, and invitee assumes all risk of loss of damage to persons, to units, and to the contents of units, and further acknowledge that Developer, the Developer's representatives and real estate agents, the Association, the Board of Directors, and the committees have made no representations or warranties relative to any security measures recommended or undertaken.

**6.7. Mixed Use Project.** By signing a Sales Contract, the buyer will acknowledge that the buyer understands and accepts that the Project is a mixed-use condominium containing some ground-level commercial units, as well as residential and parking units. Although the Declaration and applicable zoning impose various restrictions on the use of the commercial units, some permitted uses may contribute to pedestrian and/or vehicular traffic on the common elements and noise or other disturbances at certain hours beyond what would be considered normal in a project that contained no commercial units. By signing a Sales Contract, the buyer will acknowledge that the buyer has determined the proximity of the buyer's unit to any commercial unit(s) and accepts the risk that some permitted uses of the commercial units (including the lawful and permitted presence and activities at the Project of non-resident employees, customers or patrons of the businesses operated in the commercial units) may cause noise, odors, congestion and/or other conditions that could be considered annoyances, nuisances or disturbances. By acquiring a unit, the buyer will be required to waive any rights, claims or actions the buyer may have or acquire against the Developer as a result of or in any way related to the existence of the commercial units and/or the uses to which they are put, regardless of whether such uses are or are not permitted by the Declaration; and the buyer will further be required to agree to indemnify and hold harmless the Developer, the Developer's employees, agents, successors and assigns from any and all loss (including but not limited to economic loss), cost, expense, harm, injury or damage to person or property that the buyer or any of the buyer's family members, assigns, tenants, lessees, servants, guests, invitees, licensees, agents, employees, or any other person who may use or occupy the unit or the Project by, through, or under the buyer may suffer as a result of the presence of the commercial units or their use.

**6.8. Contractor Repair Act Notice.** The Sales Contract contains the following notice:

CHAPTER 672E OF THE HAWAII REVISED STATUTES CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO DESIGNED, REPAIRED, OR CONSTRUCTED YOUR HOME OR FACILITY.

NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR AND/OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THE LAW, AND FAILURE TO FOLLOW THEM MAY NEGATIVELY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

**6.9. Flood Risk.** The Project is located less than a mile from Kahului Harbor at an approximate site elevation of 10 to 12 feet above sea level. Although the Project's land is not in an area currently designated as a high-risk flood zone, the buyer should be aware that flooding of coastal lands near sea level, or the failure of drainage or water disposal systems because of flooding in other lands nearby, is always a possibility. Because of this possibility, the initial estimate of maintenance fees for the Project disclosed in Exhibit "H" attached to this public report includes an amount to cover the cost of flood insurance for the Project's common elements. The Association's flood insurance, however, may not cover the units or their contents. Buyers (especially buyers of the Commercial Units, which are located at ground level in the Project's buildings) may wish to ask their insurance providers about the availability and cost of insurance that will cover the interiors of their units and personal property located within the units against damage by flooding or flood-related hazards, such as sewer or drain-line backup. By acquiring a unit, the buyer will be required to waive any rights, claims or actions the buyer may have or acquire against the Developer as a result of or in any way related to the elevation of the Project and the possibility of flooding at the Project; and the buyer will further be required to agree to indemnify and hold harmless the Developer, the Developer's employees, agents, successors and assigns from any and all loss (including but not limited to economic loss), cost, expense, harm, injury or damage to person or property that the buyer or any of the buyer's family members, assigns, tenants, lessees, servants, guests, invitees, licensees, agents, employees, or any other person who may use or occupy the unit or the Project by, through, or under the buyer may suffer as a result of the elevation of the Project and the occurrence of flooding or flood-related hazards at the Project.

**6.10 Affordable Housing.** The project is being developed subject to an Affordable Housing Agreement that requires the Developer to make thirty-five (35) of the Project's residential units available for sale only to persons who meet certain specific eligibility requirements, as set forth in the Affordable Housing Agreement. The requirements include (but are not limited to) owner-occupancy requirements and income limits. In particular, four units must be offered to buyers whose gross annual income is 100% or less of the "median annual income" (as defined in the Affordable Housing Agreement), eleven units must be offered to buyers whose gross annual income is 120% or less of the median annual income, ten units must be offered to buyers whose gross annual income is 140% or less of the median annual income, and ten units must be offered to buyers whose gross annual income is 160% or less of the median annual income. The Deeds to units sold as affordable housing under the Affordable Housing Agreement shall require that for a period of ten (10) years after the purchase of the unit, the unit shall at all times be owned and occupied by the original qualified buyer or by a buyer who also meets the requirements of the Affordable Housing Agreement. The Deeds may include other terms and conditions required by the Affordable Housing Agreement as well. **BUYERS WHO WISH TO PURCHASE AN AFFORDABLE HOUSING UNIT SHOULD CONSULT WITH THE SELLER TO DETERMINE APPLICABLE ELIGIBILITY REQUIREMENTS AND OWNERSHIP RESTRICTIONS FOR AFFORDABLE HOUSING UNITS BEFORE SIGNING A SALES CONTRACT.**

**6.11 Special Management Area Use Permit.** The Project is subject to a Special Management Area Use Permit (SM1 2005/0004), as more particularly described and approved in a letter dated June 30, 2005, from the County of Maui Department of Planning, as amended by letter dated September 14, 2007 (the "SMA Permit"). A copy of the SMA Permit is attached to the Declaration as Exhibit "D" and to this Public Report as Exhibit "O". The SMA Permit contains conditions, some of which

are binding on the Association, including (but not limited to) liability insurance requirements more particularly set forth in the SMA Permit. The SMA Permit also includes requirements for the Project's landscaping scheme and requirements that relate to that portion of Vevau Street that is part of the Project. Section 10.6 of the Declaration provides that each owner and the Association shall at all times comply with all applicable terms and conditions of the SMA Permit and shall not use, alter, add to or otherwise modify any unit, limited common element or common element in violation of any applicable restriction, term or condition of the SMA Permit. In addition to the conditions and requirements mentioned in this section 6.11, there are other conditions and requirements in the SMA Permit that may impose restrictions or obligations on the Association and/or individual unit owners, and the buyer should review all of the terms of the SMA Permit very carefully and consult with an attorney if the buyer has any questions about the terms and conditions set forth in the SMA Permit.

**6.12 Archeological Matters.** The general area in which the Project is located is known to contain traditional native Hawaiian burial sites and other archeological resources. Although archeological investigations of the Project site as of the effective date of this Public Report have not revealed any burials or other archeological sites or artifacts, it is possible that ancient or historic structures, burials, artifacts or other cultural deposits may be discovered during construction of the Project. Accordingly, the Developer adopted an Archeological Monitoring Plan (the "Monitoring Plan") for the Project, and the Monitoring Plan has been accepted by the State Historic Preservation Division ("SHPD") of the Department of Land and Natural Resources of the State of Hawaii. Copies of the Monitoring Plan and the SHPD acceptance are available for review upon request. The Monitoring Plan provides, among other things, that if archeological features or cultural deposits are discovered at the Project site during construction, construction activities at the location may have to be suspended temporarily while the site is fully evaluated and a determination is made as to how the cultural deposits should be treated. Buyers should be aware that discovery of archeological sites during construction may result in construction delays beyond the Developer's control. Buyers should also be aware that if human remains are discovered at the Project site, a Burial Treatment Plan may be prepared for review by SHPD and the Maui Island Burial Council. According to the Monitoring Plan, it is expected that any human remains identified at the Project will be permanently curated at an on-site re-burial shrine. The necessity for an on-site re-burial shrine, and/or other cultural deposit treatment requirements, may result in changes to the layout, configuration or construction of the buildings or other improvements or common elements at the Project and/or the execution and recordation of a burial site agreement or other agreement that will encumber title to the Project's Land. The Developer has reserved the right in the Declaration, in the Sales Contract and in the Deed, in and for itself and/or on behalf of and in the name of the Association and all individual unit owners, but without the joinder or consent of the Association, any unit owner, unit purchaser, lienholder or other person, to do all such things as are reasonably required to comply with the Monitoring Plan, any subsequent Burial Treatment Plan, the requirements of SHPD, MIBC and any other governmental or quasi-governmental entity or agency with jurisdiction over the Project, and all applicable rules, codes, permits and laws in connection with the discovery or existence of cultural deposits (including but not limited to human remains) anywhere at the Project. This right is more particularly described in Exhibit "G" attached to this Public Report.

The Developer declares subject to the penalties set forth in Section 514B-69, HRS, that this project conforms to the existing underlying county zoning for the project, zoning and building ordinances and codes and all applicable permitting requirements adopted by the county in which the project is located, all in accordance with Sections 514B-5 and 32(a)(13), HRS.

For any conversion, if any variances have been granted, they are specified in Section 1.14 of this report, and, if purchaser deposits are to be used by the Developer to cure any violations of zoning, permitting requirements or rules of the county in which the project is located, the violation is specified in Section 1.15 of this report, along with the requirements to cure any violation, and Section 5.5 specifies the date by which the cure will be completed.

The Developer hereby certifies that all the information contained in this report and the exhibits attached to this report and all documents to be furnished by the Developer to purchasers concerning the project have been reviewed by the Developer and are, to the best of the Developer's knowledge, information and belief, true, correct and complete. The Developer hereby agrees promptly to amend this report to report and include either or all material facts, material or pertinent changes to any information contained in or omitted from this report and to file annually a report to update the material contained in this report at least 30 days prior to the anniversary date of the effective date of this report.

A&B Kane LLC  
Printed Name of Developer

By A & B Properties, Inc.  
Its Manager

By:  3/2/09  
Duly Authorized Signatory\* Date

NATALIE I. KIEHM VICE-PRESIDENT  
Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Maui

Planning Department, County of Maui

\*Must be signed for a corporation by an officer; for a partnership or limited liability partnership (LLP) by the general partner; for a limited liability company (LLC) by the manager or an authorized member; and for an individual by the individual.

## DESCRIPTION OF UNITS

The Project contains ten (10) different types of Residential Units (including some reverse plans), designated in the Declaration as types 1, 1-R, 2, 2-R, 2-A, 2-A-R, 3, 3-R, 4 and 4-R. The Project also includes four (4) Commercial Units, designated in the Declaration as “Commercial,” and twelve (12) Parking Units, designated in the Declaration as types P-S, indicating a single-stall standard sized Parking Unit, or P-CT/T, indicating a Parking Unit consisting of two tandem stalls, one of which is compact and the other of which is standard sized.

The Residential Units are located on floors numbered 2, 3 and 4 of Buildings A-1, A-2, A-3 and B, and on floors numbered 1, 2, 3 and 4 of Building C. The Commercial Units are located on the first floors of Buildings A-1, A-2, A-3 and B. The Parking Units are located in the uncovered portion of the parking area, as shown on the Condominium Map.

The number of each Residential Unit begins with an “A” (indicating that the Unit is located in Building A-1, A-2 or A-3) or a “B” (indicating that the Unit is located in Building B) or a “C” (indicating that the Unit is located in Building “C”). The first numerical digit of each Residential Unit’s number indicates the floor on which the Unit is located. The numbers of some Residential Units end with “-H” indicating that those Units are fully accessible for persons with disabilities.

The number of each Commercial Unit is the same as the number of the Building in which the Unit is located.

The numbers of the Parking Units begin with “P” followed by the number or numbers (as shown on the Condominium Map) of the parking stall or stalls that comprise the Parking Unit. Parking Units whose numbers include six digits separated by a slash consist of two parking stalls. Parking Units whose numbers include three digits consist of a single parking stall.

The different types of Units are more particularly described as follows:

**TYPES 1 and 1-R UNITS:** The Project contains six (6) type 1 and seven (7) type 1-R Units. Each type 1 and 1-R Unit includes two (2) bedrooms, one (1) bathroom, a kitchen, a living/dining area and a lanai. The net living area of each type 1 and 1-R Unit is approximately 723.2 square feet. The net lanai area for type 1 and 1-R Units ranges from approximately 50.1 square feet to approximately 83.3 square feet, as shown on Exhibit “C” attached to the Declaration.

**TYPES 2 and 2-R UNITS:** The Project contains three (3) type 2 and ten (10) type 2-R Units. Each type 2 and 2-R Unit includes two (2) bedrooms, one (1) bathroom, a kitchen, a living/dining area and a lanai. The net living area of each type 2 and 2-R Unit is approximately 745.6 square feet. The net lanai area for the type 2 and 2-R Units ranges from approximately 65.0 square feet to approximately 97.5 square feet, as shown on Exhibit “C” attached to the Declaration. As shown on Exhibit “C”, the net lanai area for each type 2 and 2-R Unit includes an enclosed storage area of approximately 12.7 square feet.

## EXHIBIT “A”

**TYPES 2-A and 2-A-R UNITS:** The Project contains three (3) type 2-A and three (3) type 2-A-R Units. Each type 2-A and 2-A-R Unit includes two (2) bedrooms, one (1) bathroom, a kitchen, a living/dining area and a lanai. The net living area of each type 2-A and 2-A-R Unit is approximately 757.8 square feet. The net lanai area for the type 2-A and 2-A-R Units is approximately 65.0 square feet, as shown on Exhibit “C” attached to the Declaration. As shown on Exhibit “C”, the net lanai area for each type 2-A and 2-A-R Unit includes an enclosed storage area of approximately 12.7 square feet.

**TYPES 3 and 3-R UNITS:** The Project contains thirty-three (33) type 3 and twenty-three (23) type 3-R Units. Each type 3 and 3-R Unit includes two (2) bedrooms, two (2) bathrooms, a kitchen, a living/dining area and a lanai. The net living area of each type 3 and 3-R Unit is approximately 752.0 square feet. The net lanai area for the type 3 and 3-R Units ranges from approximately 61.9 square feet to approximately 94.8 square feet, as shown on Exhibit “C” attached to the Declaration. As shown on Exhibit “C”, the net lanai area for each type 3 and 3-R Unit includes an enclosed storage area of approximately 12.0 square feet or approximately 12.7 square feet.

**TYPES 4 and 4-R UNITS:** The Project contains nine (9) type 4 and six (6) type 4-R Units. Each type 4 and 4-R Unit includes three (3) bedrooms, two (2) bathrooms, a kitchen, a living/dining area and a lanai. The net living area of each type 4 and 4-R Unit is approximately 1,033.8 square feet. The net lanai area for the type 4 and 4-R Units ranges from approximately 57.5 square feet to approximately 63.0 square feet, as shown on Exhibit “C” attached to the Declaration.

**COMMERCIAL UNITS:**

The Project contains four (4) Commercial Units located on the ground floors of Buildings A-1, A-2, A-3 and B. Each Commercial Unit is designated by the same number as the Building in which it is located. Commercial Unit A-1 consists of an unfinished space on the ground floor of Building A-1 containing a net floor area of approximately 4,874.3 square feet. Commercial Unit A-2 consists of an unfinished space on the ground floor of Building A-2 containing a net floor area of approximately 2,316.1 square feet. Commercial Unit A-3 consists of an unfinished space on the ground floor of Building A-3 containing a net floor area of approximately 7,620.0 square feet. Commercial Unit B consists of two unfinished spaces separated by an open entry area, an elevator, an equipment room and a corridor on the ground floor of Building B. The smaller of the two spaces comprising Commercial Unit B contains a net floor area of approximately 736.0 square feet, and the larger of the two spaces comprising Commercial Unit B contains a net floor area of approximately 5,382.0 square feet, for an aggregate net floor area for Commercial Unit B of approximately 6,118.0 square feet.

**PARKING UNITS:**

The Project contains twelve (12) Parking Units. Each Parking Unit is either a standard sized uncovered parking stall with a net floor area of approximately 153 square feet or two tandem parking stalls (one compact and one standard) with a combined net floor area of approximately 289 square feet. The Parking Units are located in the open portion of the Project's parking area as shown on the Condominium Map.

The numbers, types, approximate areas, parking stall assignments and common interest of the Units are as set forth in the chart that begins on the next page.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

Unit Number	Unit Type	Building Number	***Approx. Unit Area in Square Feet	Approx. Lanai Area in Square Feet	Assigned Parking Stalls	Common Interest
A201	4	A-1	1,033.8	57.5	T83 <sup>CV</sup> , T82	1.0086%
A202	3	A-1	752	61.9*	T85 <sup>CV</sup> , T84	0.7337%
A203	4-R	A-1	1,033.8	57.5	T87 <sup>CV</sup> , T86	1.0086%
A204	4	A-1	1,033.8	57.5	T89 <sup>CV</sup> , T88	1.0086%
A301	4	A-1	1,033.8	57.5	T75 <sup>CV</sup> , T74	1.0086%
A302	3	A-1	752	61.9*	T77 <sup>CV</sup> , T76	0.7337%
A303	4-R	A-1	1,033.8	57.5	T79 <sup>CV</sup> , T78	1.0086%
A304	4	A-1	1,033.8	57.5	T81 <sup>CV</sup> , T80	1.0086%
A401	4	A-1	1,033.8	57.5	T67 <sup>CV</sup> , T66	1.0086%
A402	3	A-1	752	61.9*	T69 <sup>CV</sup> , T68	0.7337%
A403	4-R	A-1	1,033.8	57.5	T71 <sup>CV</sup> , T70	1.0086%
A404	4	A-1	1,033.8	57.5	T73 <sup>CV</sup> , T72	1.0086%
A205	3	A-2	752	67.8**	51 <sup>CV</sup> , 124	0.7337%
A206	4	A-2	1,033.8	63	C62 <sup>CV</sup> , 65	1.0086%
A305	3	A-2	752	67.8**	38 <sup>CV</sup> , 25	0.7337%
A306	4	A-2	1,033.8	63	61 <sup>CV</sup> , 64	1.0086%
A405	3	A-2	752	67.8**	43 <sup>CV</sup> , 20	0.7337%
A406	4	A-2	1,033.8	63	60 <sup>CV</sup> , 63	1.0086%
A207	2	A-3	745.6	65*	53 <sup>CV</sup> , 123	0.7274%
A208-H	2-R	A-3	745.6	65*	C52 <sup>CV</sup> , 122	0.7274%
A209	3	A-3	752	62.2*	54 <sup>CV</sup> , 120	0.7337%
A210	3-R	A-3	752	62.2*	55 <sup>CV</sup> , C121	0.7337%
A211	3-R	A-3	752	62.2*	57 <sup>CV</sup> , 119	0.7337%
A212	3	A-3	752	62.2*	C56 <sup>CV</sup> , 118	0.7337%
A213	2-A	A-3	757.8	65*	58 <sup>CV</sup> , 116	0.7393%
A214	2-A-R	A-3	757.8	65*	59 <sup>CV</sup> , C117	0.7393%
A307	2	A-3	745.6	65*	37 <sup>CV</sup> , C26	0.7274%
A308-H	2-R	A-3	745.6	65*	C36 <sup>CV</sup> , 27	0.7274%
A309	3	A-3	752	62.2*	35 <sup>CV</sup> , 28	0.7337%
A310	3-R	A-3	752	62.2*	34 <sup>CV</sup> , 31	0.7337%
A311	3-R	A-3	752	62.2*	33 <sup>CV</sup> , 30	0.7337%
A312	3	A-3	752	62.2*	C32 <sup>CV</sup> , 29	0.7337%
A313	2-A	A-3	757.8	65*	49 <sup>CV</sup> , 126	0.7393%
A314	2-A-R	A-3	757.8	65*	50 <sup>CV</sup> , C125	0.7393%
A407	2	A-3	745.6	65*	42 <sup>CV</sup> , 21	0.7274%
A408-H	2-R	A-3	745.6	65*	C40 <sup>CV</sup> , 23	0.7274%
A409	3	A-3	752	62.2*	41 <sup>CV</sup> , C22	0.7337%
A410	3-R	A-3	752	62.2*	C48 <sup>CV</sup> , 127	0.7337%
A411	3-R	A-3	752	62.2*	39 <sup>CV</sup> , 24	0.7337%

**EXHIBIT "A"**

Unit Number	Unit Type	Building Number	***Approx. Unit Area in Square Feet	Approx. Lanai Area in Square Feet	Assigned Parking Stalls	Common Interest
A412	3	A-3	752	62.2*	47 <sup>CV</sup> , 128	0.7337%
A413	2-A	A-3	757.8	65*	45 <sup>CV</sup> , 44	0.7393%
A414	2-A-R	A-3	757.8	65*	46 <sup>CV</sup> , 129	0.7393%
B201	1	B	723.2	50.1	CT138 <sup>CV</sup> , T139	0.7056%
B202-H	2-R	B	745.6	65*	T140 <sup>CV</sup> , T141	0.7274%
B203	3	B	752	62.2*	T194 <sup>CV</sup> , T195	0.7337%
B204	3-R	B	752	62.2*	142 <sup>CV</sup> , 143	0.7337%
B205	3-R	B	752	62.2*	T192 <sup>CV</sup> , T193	0.7337%
B206	3	B	752	62.2*	T190 <sup>CV</sup> , T191	0.7337%
B207	3	B	752	62.2*	T188 <sup>CV</sup> , T189	0.7337%
B208	3-R	B	752	62.2*	T186 <sup>CV</sup> , T187	0.7337%
B209	4-R	B	1,033.8	57.5	T219 <sup>CV</sup> , T220	1.0086%
B301	1	B	723.2	50.1	T136 <sup>CV</sup> , T137	0.7056%
B302-H	2-R	B	745.6	65*	T134 <sup>CV</sup> , T135	0.7274%
B303	3	B	752	62.2*	T132 <sup>CV</sup> , T133	0.7337%
B304	3-R	B	752	62.2*	T130 <sup>CV</sup> , T131	0.7337%
B305	3-R	B	752	62.2*	T227 <sup>CV</sup> , T228	0.7337%
B306	3	B	752	62.2*	T225 <sup>CV</sup> , T226	0.7337%
B307	3	B	752	62.2*	T223 <sup>CV</sup> , T224	0.7337%
B308	3-R	B	752	62.2*	T221 <sup>CV</sup> , T222	0.7337%
B309	4-R	B	1,033.8	57.5	T229 <sup>CV</sup> , T230	1.0086%
B401	1	B	723.2	50.1	T231 <sup>CV</sup> , T232	0.7056%
B402-H	2-R	B	745.6	65*	CT245 <sup>CV</sup> , T246	0.7274%
B403	3	B	752	62.2*	CT243 <sup>CV</sup> , T244	0.7337%
B404	3-R	B	752	62.2*	T241 <sup>CV</sup> , T242	0.7337%
B405	3-R	B	752	62.2*	T239 <sup>CV</sup> , T240	0.7337%
B406	3	B	752	62.2*	T237 <sup>CV</sup> , T238	0.7337%
B407	3	B	752	62.2*	T235 <sup>CV</sup> , T236	0.7337%
B408	3-R	B	752	62.2*	T233 <sup>CV</sup> , T234	0.7337%
B409	4-R	B	1,033.8	57.5	CT247 <sup>CV</sup> , T248	1.0086%
C101	1-R	C	723.2	83.3	T93 <sup>CV</sup> , T92	0.7056%
C102	3	C	752	94.8**	T91 <sup>CV</sup> , T90	0.7337%
C103-H	2-R	C	745.6	97.5*	T144 <sup>CV</sup> , T145	0.7274%
C104	3	C	752	94.8**	T184 <sup>CV</sup> , T185	0.7337%
C105	3-R	C	752	94.8**	CT146 <sup>CV</sup> , T147	0.7337%
C106	3-R	C	752	94.8**	T101 <sup>CV</sup> , T100	0.7337%
C107	3	C	752	94.8**	T99 <sup>CV</sup> , T98	0.7337%
C108	1-R	C	723.2	83.3	T97 <sup>CV</sup> , T96	0.7056%
C109	1	C	723.2	83.3	T95 <sup>CV</sup> , T94	0.7056%
C201	1-R	C	723.2	56.7	T183 <sup>CV</sup> , T182	0.7056%

**EXHIBIT "A"**

Unit Number	Unit Type	Building Number	***Approx. Unit Area in Square Feet	Approx. Lanai Area in Square Feet	Assigned Parking Stalls	Common Interest
C202	3	C	752	68.6*	T148 <sup>CV</sup> , T149	0.7337%
C203-H	2-R	C	745.6	70.4*	T180 <sup>CV</sup> , T181	0.7274%
C204	3	C	752	68.6*	T178 <sup>CV</sup> , T179	0.7337%
C205	3-R	C	752	68.6*	T176 <sup>CV</sup> , T177	0.7337%
C206	3-R	C	752	68.6*	T109 <sup>CV</sup> , T108	0.7337%
C207	3	C	752	68.6*	T107 <sup>CV</sup> , T106	0.7337%
C208	1-R	C	723.2	56.7	T105 <sup>CV</sup> , T104	0.7056%
C209	1	C	723.2	56.7	T103 <sup>CV</sup> , T102	0.7056%
C301	1-R	C	723.2	56.7	T150 <sup>CV</sup> , T151	0.7056%
C302	3	C	752	68.6*	T152 <sup>CV</sup> , T153	0.7337%
C303-H	2-R	C	745.6	70.4*	CT154 <sup>CV</sup> , T155	0.7274%
C304	3	C	752	68.6*	T156 <sup>CV</sup> , T157	0.7337%
C305	3-R	C	752	68.6*	T167 <sup>CV</sup> , T166	0.7337%
C306	3-R	C	752	68.6*	T169 <sup>CV</sup> , T168	0.7337%
C307	3	C	752	68.6*	T171 <sup>CV</sup> , T170	0.7337%
C308	1-R	C	723.2	56.7	T173 <sup>CV</sup> , T172	0.7056%
C309	1	C	723.2	56.7	T175 <sup>CV</sup> , T174	0.7056%
C401	1-R	C	723.2	56.7	112 <sup>CV</sup> , 115	0.7056%
C402	3	C	752	68.6*	111 <sup>CV</sup> , 114	0.7337%
C403-H	2-R	C	745.6	70.4*	110 <sup>CV</sup> , 113	0.7274%
C404	3	C	752	68.6*	160 <sup>CV</sup> , 158	0.7337%
C405	3-R	C	752	68.6*	161 <sup>CV</sup> , 159	0.7337%
C406	3-R	C	752	68.6*	162 <sup>CV</sup> , 164	0.7337%
C407	3	C	752	68.6*	163 <sup>CV</sup> , 165	0.7337%
A-1	Commercial	A-1	4,874.3	--	(Shared. See note below.)	4.7550%
A-2	Commercial	A-2	2,316.1	--	(Shared. See note below.)	2.2591%
A-3	Commercial	A-3	7,620.0	--	(Shared. See note below.)	7.4337%
B	Commercial	B	6,118.0	--	(Shared. See note below.)	5.9682%
P198	P-S	--	153	--	--	0.0145%
P199/200	P-CT/T	--	289	--	--	0.0274%
P201/202	P-CT/T	--	289	--	--	0.0274%
P203/204	P-CT/T	--	289	--	--	0.0274%
P205/206	P-CT/T	--	289	--	--	0.0274%
P207/208	P-CT/T	--	289	--	--	0.0274%
P209/210	P-CT/T	--	289	--	--	0.0274%
P211/212	P-CT/T	--	289	--	--	0.0274%

**EXHIBIT "A"**

Unit Number	Unit Type	Building Number	***Approx. Unit Area in Square Feet	Approx. Lanai Area in Square Feet	Assigned Parking Stalls	Common Interest
P213/214	P-CT/T	--	289	--	--	0.0274%
P215/216	P-CT/T	--	289	--	--	0.0274%
P217/218	P-CT/T	--	289	--	--	0.0274%
P252	P-S	--	153	--	--	0.0145%

**TOTAL: 100.0000%**

### LANAI AREAS

Some of the lanai areas reported above include an enclosed storage area that is part of the lanai. Lanai areas followed by "\*" include an enclosed storage area of approximately 12.7 square feet, and lanai areas followed by "\*\*\*" include an enclosed storage area of approximately 12.0 square feet.

### \*\*\*UNIT AREAS

The areas for the Residential Units reported above are "net living areas" measured in accordance with section 3.2 of the Declaration. The areas for the Commercial Units reported above are "net floor areas" measured in accordance with section 3.3 of the Declaration. The areas for the Parking Units reported above are "net floor areas" measured in accordance with section 3.4 of the Declaration.

### COMMON INTERESTS

The common interest for each Unit was initially determined by dividing the Unit's approximate net living (or floor) area (excluding lanais) by the approximate aggregate net living (and floor) area of all of the Units, then rounding the resulting fraction and converting the fraction into a percentage. The actual common interests shown above were determined by reducing the common interests of the Parking Units to ten percent (10%) of the amount they were initially allocated based upon square footage ratios, and then reallocating the common interests deducted from the Parking Units to the other Units in the Project, based upon square footage ratios but excluding the aggregate area of the Parking Units. Finally, the aggregate common interest appurtenant to the Commercial Units was increased by 0.0021% so that the aggregate common interest appurtenant to all of the Units equals 100%.

### ASSIGNED LIMITED COMMON ELEMENT PARKING STALLS

In this Exhibit and in the Declaration, assigned parking stalls whose numbers are followed by "cv" are covered or partially covered. All other assigned parking stalls are uncovered. The letter "C" preceding a parking stall number in this Exhibit, in the Declaration and on the Condominium Map indicates a compact sized stall. The letter "T" preceding a parking stall

### EXHIBIT "A"

number in this Exhibit and in the Declaration (but not on the Condominium Map) indicates a tandem stall. The letters "HC" preceding a parking stall number in this Exhibit, in the Declaration and on the Condominium Map indicates a handicap-accessible stall. All stalls with numbers that are not preceded by "C" or by "HC" are standard sized, including tandem stalls with no "C" designation.

### **STALLS ASSIGNED TO COMMERCIAL UNITS**

The Commercial Units, as a group, are assigned the following limited common element parking stalls:

1, 2, 3, 4, C5, 6, 7, 8, 9, 10, 11, 12, C13, 14, 15, 16, C17, 18, 19, HC196, HC197, HC249, HC250, HC251, 252, 253, C254, 255, 256, 257, C258, 259, 260, 261, C262, 263, 264, 265, 266, 267, 268, 269, 270, C271, 272, 273, 274, HC275, HC276, 277, 278, 279, 280, C281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302 and 303.

These stalls are available for use by the owners, tenants and business invitees of each of the Commercial Units on a first-come, first-served basis; provided, however, that the Owner of a Commercial Unit may limit the number of stalls available at any given time to such Owner's commercial tenants by so providing in the lease or rental agreement demising all or any portion of such Owner's Commercial Unit.

### ***THE PROJECT DOES NOT CONTAIN ANY UNASSIGNED COMMON ELEMENT PARKING STALLS FOR VISITORS OR GUESTS.***

Residential Unit Owners may transfer assigned limited common element parking stalls pursuant section 9 of the Declaration, provided that each Residential Unit shall always have at least one (1) parking stall as an appurtenant limited common element.

Handicap-accessible parking stalls HC196, HC197, HC249, HC250, HC251, HC275 and HC276 are assigned to the Commercial Units as a group. Under certain circumstances described in section 9 of the Declaration, the Developer shall have the right, for so long as the Developer retains an interest in any Unit in the Project, to transfer one or more handicap-accessible stalls from the Commercial Units to one or more Residential Units in exchange for an equal number of non-handicap-accessible stalls.

## **BOUNDARIES OF UNITS**

Each Residential and Commercial Unit shall be deemed to include: (i) all interior walls, doors, windows, window frames and partitions that are not load-bearing and that are located within the space bounded by the Unit's perimeter walls but not in the perimeter walls themselves, (ii) the interior decorated or finished surfaces of all walls, doors, door frames and window frames that are located in the Unit's perimeter walls, (iii) the decorated or finished surfaces of all interior walls, columns, doors, door frames and window frames that are load-bearing, (iv) the interior decorated or finished surfaces of all floors and ceilings, (v) all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated or finished surfaces of such walls, columns, doors, door and window frames, floors and ceilings, (vi) the air space surrounded by such walls, doors, door and window frames, floors and ceilings, and (vii) all fixtures (if any) originally installed in the Unit. The respective Residential and Commercial Units shall not be deemed to include: (a) the perimeter (including party) walls and doors, door frames, windows and window frames located in the perimeter walls and their undecorated or unfinished surfaces, (b) the interior load-bearing walls and columns and their undecorated or unfinished surfaces, (c) any load-bearing door or window frame located in the interior load-bearing walls and their undecorated or unfinished surfaces, and (d) any pipes, shafts, wires, conduits or other utility or service lines running through such Unit, the items described in (a) through (d) above being deemed common elements or limited common elements as provided in the Declaration.

Each Parking Unit shall be deemed to include a rectangular floor surface area of approximately 153 square feet (for single-stall Parking Units) or approximately 289 square feet (for Parking Units containing two tandem stalls) as shown on Exhibit "A" attached to this Public Report and on Exhibit "C" attached to the Declaration, bounded on the ends and sides by marked parallel lines (or, in some cases, by a wall or other permanent monument boundary), as shown on the Condominium Map. Each Parking Unit shall include the airspace enclosed by imaginary vertical planes extending upward from each of the floor surface boundary lines (or other permanent monument boundaries) to a height of eight (8) feet. The Parking Units shall not be deemed to include the underlying concrete or asphalt ground cover except for its surface, nor any pipes, conduits, wires, or other mechanical installations (if any) penetrating the Parking Units' air space.

Should the descriptions and divisions set forth in the Declaration conflict with the depictions and divisions shown on the Condominium Map, the Condominium Map shall control. The Condominium Map, however, is intended to show only the layout, location, Unit numbers and dimensions of the Units and elevations of the buildings and is not intended and shall not be deemed to contain or make any other representation or warranty.

The approximate areas of the Residential Units set forth in Exhibit "A" attached to this Public Report are "net living areas" based on measurements taken from the interior surfaces of all perimeter walls, except that no reduction is made to account for interior walls, ducts, vents, shafts, and the like located within the perimeter walls. The areas of the Residential Units set forth in Exhibit "A" are not exact but are approximations based on the floor plans of each type of

## **EXHIBIT "B"**

Residential Unit. The measurements of the Residential Units set forth in Exhibit "A" may not follow the designation of the limits of the Residential Units (the legally designated areas of the Residential Units) set forth above and in the Declaration, and the net living areas set forth in Exhibit "A" may be greater than the floor areas of the Residential Units as so designated and described above and in the Declaration.

The approximate areas of the Parking Units set forth in Exhibit "A" attached to this Public Report are "net floor areas" based on measurements taken from the floor surface boundaries of the Parking Units as described above and in section 3.7 of the Declaration.

The approximate areas of the Commercial Units set forth in Exhibit "A" attached to this Public Report are "net floor areas" based on measurements taken from the interior surfaces of all perimeter walls, except that no reduction is made to account for interior walls, ducts, vents, shafts, and the like located within the perimeter walls. The areas of the Commercial Units set forth in Exhibit "A" are not exact but are approximations based on the floor plans of the unimproved Commercial Units. The measurements of the Commercial Units set forth in Exhibit "A" may not follow the designation of the limits of the Commercial Units (the legally designated areas of such Units) set forth above and in the Declaration, and the net floor areas set forth in Exhibit "A" may be greater than the floor areas of the Commercial Units as so designated and described above and in the Declaration. Also, the interiors of the Commercial Units may be configured differently than shown on the Condominium Map from time to time, and the aggregate floor areas of the various spaces comprising the Commercial Units as so configured may be less than the net floor areas of the Commercial Units set forth in Exhibit "A".

**ALTERATIONS AND ADDITIONS TO  
UNITS AND LIMITED COMMON ELEMENTS**

Section 10.3 of the Declaration provides as follows:

**10.3 Alterations and Additions to Units and Limited Common Elements.**

(a) Except as otherwise provided herein, no Owner of a Unit shall, without the prior written approval of the Board, make any structural alterations in or additions to his Unit or any limited common elements appurtenant to the Unit or make any alterations in or additions to his Unit or any limited common elements appurtenant to the Unit that would change the exterior appearance of the Project.

(b) In no event shall any Unit Owner do any work (including, but not limited to, any work to such Owner's Unit or the limited common elements assigned to the Unit) that may jeopardize the soundness or safety of the Project, reduce the value thereof, or impair any easement, as reasonably determined by the Board.

(c) Except as otherwise provided herein, an Owner may make non-structural alterations and additions solely within his Unit, or solely within a limited common element (other than an assigned limited common element parking stall) appurtenant to and for the exclusive use of his Unit, at the Owner's sole cost and expense and without Board approval, provided that such alterations or additions do not change the exterior appearance of the Project, jeopardize the soundness or safety of the Project or any part thereof, reduce the value of the Project, impair any easement or otherwise affect any other Unit or common elements, all as reasonably determined by the Board; and provided, further, that any building permit or other governmental permit or authorization required for such alterations or additions is first duly obtained and filed with the Board and the proposed alteration or addition will not adversely affect the Project's insurance rating or premiums.

(d) No Unit Owner shall, without the prior written approval of the Board, install any wiring for electrical or telephone installations, television antenna, satellite dish or other telephone, television, radio, electronic or digital signal receiving device, machines or air-conditioning units, or other equipment, fixtures, appliances or appurtenances whatsoever on the exterior of the Buildings or protruding through the walls, windows or roofs thereof.

(e) No Unit Owner shall alter or replace any of the surface floor coverings provided with the Unit unless the Owner shall first provide evidence, satisfactory to the Board, that the original acoustical underlayment provided with the Unit shall remain undamaged and in tact; or, if the original underlayment will be damaged or removed, the Owner shall install an acoustical underlayment providing protection against sound and vibration transmission equal or superior to the protection provided by the acoustical underlayment originally installed beneath the Unit's floor surfaces.

(f) No Unit Owner shall, without the prior written approval of the Board, make any structural modifications, changes, additions or alterations to the Unit's lanai or add any awnings, sunscreens, louvers, exhaust vents, wind baffles, drain, door, window, panels or otherwise partially or wholly enclose the lanai. The Board may withhold its approval based upon the effect such proposed modifications, changes, additions or alterations may have on the appearance of the lanai and the Project on the whole, and based upon considerations of applicable zoning and requirements and the terms of any permits or authorizations pursuant to which the Project has been designed and constructed and any declarations of covenants or restrictions now or hereafter recorded against the Project in accordance with the requirements of such permits or authorizations.

(g) All interior window coverings (including curtains, drapes and screens of any kind) visible from outside of the Unit shall include a backing of a type, color and appearance approved by the Board. In addition, Owners may not, without the prior written approval of the Board, apply any substance, material or process to the exterior or interior surfaces of the Unit's windows which may alter the exterior color, appearance or reflectivity of the windows. Notwithstanding the foregoing, the Board may promulgate commercially reasonable standards, rules or guidelines, consistent with applicable zoning, for window displays, treatments and coverings in connection with the use and operation of the Commercial Units, and strict compliance with such standards, rules or guidelines will preclude the necessity of prior Board approval of such displays, treatments and coverings.

(h) It is intended that the exterior of the Project present a uniform and attractive appearance. Accordingly, whenever Board approval is required for any proposed modification, change, addition to or alteration of any Unit or limited common element, the Board shall base its decision to grant or deny approval at least in part upon considerations of whether (and to what extent) the proposed modification, change, addition or alteration will adversely affect the appearance of the Project. Except as otherwise provided in section 11 below in connection with proposed modifications to accommodate Owners with disabilities, if the Board determines that the proposed modification, change, addition or alteration will materially adversely affect the appearance of the Project, the Board shall deny its approval. It is acknowledged that the Board's determination will unavoidably involve an element of subjective taste. Therefore, the Board's determination that a proposed modification, change, addition or alteration will materially adversely affect the appearance of the Project shall not be challengeable by any Unit Owner or group of Unit Owners on the grounds that the determination is to any extent based upon subjective criteria.

(i) Whenever Board approval is required for any proposed modification, change, addition to or alteration of any Unit or limited common element, if the Board determines that the proposed modification, change, addition or alteration will not materially adversely affect the appearance of the Project, the Board shall not unreasonably withhold its approval, provided that it shall not be deemed unreasonable for the Board to withhold its approval if the proposed modification, change, addition or alteration may, in the Board's best estimate, adversely affect any of the Project's common elements or any Unit or other part of the Project in any way, or increase the Project's hazard or liability insurance

**EXHIBIT "C"**

premiums or other common expenses, or otherwise violate any applicable law, any provision of this Declaration, the Bylaws, the House Rules (if any) or the Act.

Section 10.4(e) of the Declaration provides as follows with respect to two or more commonly-owned adjacent Residential Units:

(e) The Owner of any two or more adjacent Residential Units separated by a common element wall may alter or remove all or portions of such wall if the structural integrity of the Building in which the Units are located is not thereby affected and if the finish of the remaining common element(s) is restored to a condition substantially comparable to that of the common elements prior to such alterations. Such alteration shall be done only by a contractor or contractors licensed to do business in the State of Hawaii and shall require only the written approval of the Board, including the Board's approval of the Owner's plans for such alteration, together with the approval of the holders of first mortgages on all Units affected by such alteration (if the mortgagees require approval), and the approval of the appropriate agencies of the State of Hawaii and/or the County of Maui if such agencies so require. The Board's approval may be conditioned upon the Board having first received a certified written statement of a registered Hawaii architect or engineer that the proposed alterations shall not adversely affect the structural integrity of any part of the Project or jeopardize the soundness or safety of the Project in any way. Such alteration may be undertaken without an amendment to the Declaration or the Condominium Map. As a further condition of its approval, the Board may require that the Owner of the Units affected provide evidence satisfactory to the Board of sufficient financing to complete such alterations or additions or, in lieu thereof, require that the Owner obtain a performance and lien payment bond, naming as obligees the Board, the Association and all Unit Owners and their mortgagees of record, as their interests may appear, for a penal sum of not less than one hundred percent (100%) of the estimated cost of such construction. Prior to the termination of the common ownership of any such adjacent Units, the Owner of such Units shall be obligated to restore the intervening wall between the Units to substantially the same condition in which the wall existed prior to its alteration or removal.

Section 10.6 of the Declaration provides as follows with respect to compliance with the SMA Permit and Variance more particularly described in the Declaration and in this Public Report:

10.6 **Compliance with SMA Permit and Variance.** Without limiting the generality of any other provision of this Declaration or the Bylaws, each Owner and the Association shall at all times comply with all applicable terms and conditions of the SMA Permit and the Variance and shall not use, alter, add to or otherwise modify any Unit, limited common element or common element in violation of any applicable restriction, term or condition of the SMA Permit or the Variance.

**EXHIBIT "C"**

Section 17 of the Declaration provides that, under certain circumstances, the Owners of the Commercial Units shall have the right to subdivide their Units into one or more resulting Units, subject to the terms and conditions set forth in section 17. In section 17.3 of the Declaration, the Developer reserves special rights to subdivide Developer-owned Commercial Units and to add or delete limited common elements in connection with such subdivision, subject to restrictions and conditions set forth in section 17.3.

Section 11 of the Declaration provides that, notwithstanding anything to the contrary contained in the Bylaws, the Declaration or the Rules and Regulations, Owners with disabilities shall be permitted to make reasonable modifications to their Units and/or common elements, at their sole expense (including the cost of obtaining any bonds required by the Declaration, the Bylaws or the Act), if such modifications are necessary to enable them to use and enjoy their Units and/or the common elements, as the case may be, provided that any Owner with a disability desiring to make such modifications shall make such request, in writing, to the Board of Directors. That request shall set forth, with specificity and in detail, the nature of the request and the reason that the requesting party needs to make such modifications, all as more particularly set forth in section 11.

Section 10 of the Declaration contains additional information regarding alterations to the Units, the common elements and the limited common elements.

**EXHIBIT "C"**

## COMMON ELEMENTS

Section 4 of the Declaration describes the common elements as follows:

4. **Common Elements.** One (1) freehold estate is hereby established in all other parts of the Project, which are common elements. The common elements include, but are not limited to:

(a) The Land, in fee simple, together with all rights, entitlements and easements appurtenant thereto, including (but not limited to) easements for roadway, walkway, utility and other purposes as the case may be;

(b) The limited common elements described in section 5 below;

(c) All slabs, foundations, columns, girders, beams, supports, exterior walls, perimeter walls, load-bearing walls, roofs, stairs and stairways, elevator cars, shafts, doors and related equipment and equipment areas, pumps, ducts, pipes, wires, conduits, or other utility or service spaces, rooms, lines, etc. located outside of the Units and which are utilized for or serve more than one Unit, and generally all machinery, equipment, apparatus, installations and personal property existing for common use in any part of the Buildings or located on the Land;

(d) All pipes, wires, ducts, conduits or other utility or service lines running through a Unit which are utilized by or serve more than one Unit;

(e) All recreational facilities and other amenities of the Project that are not part of any Unit;

(f) The manager's office located on the ground floor of Building A-3, as shown on the Condominium Map;

(g) All lobbies, elevators, driveways, walkways, stairways, roadways, bike paths and other common ways, all covered and uncovered parking spaces (excluding, however, parking spaces comprising all or part of any Parking Unit), all storage areas not located within a Unit or on a Unit's lanai, all landscaping, courtyards, fences, gates, retaining walls, mailboxes, trash areas, utility, communication, telephone and maintenance rooms and facilities, accessory equipment areas, including electrical and mechanical rooms or facilities located on the Land or within the Buildings and serving more than one Unit; and

(h) All other improvements on the Land that are not part of any Unit.

## LIMITED COMMON ELEMENTS

Section 5 of the Declaration describes the limited common elements as follows:

5. **Limited Common Elements.** Certain of the common elements are hereby set aside and reserved for the exclusive use of certain of the Units, and such Units shall have appurtenant thereto exclusive easements for the use of such limited common elements as follows:

5.1 Each Unit shall have appurtenant thereto as limited common elements all pipes, wires, ducts, conduits or other utility or service lines located within or running through the Unit and utilized by or serving only that Unit, and all doors and door frames, windows and window frames, exterior shades, shutters or awnings located in or attached to the Unit's perimeter walls and serving only that Unit. Any exterior shades, shutters or awnings that serve more than one Unit shall be deemed to be limited common elements appurtenant to the Units served, as a group.

5.2 Each Residential Unit shall have appurtenant thereto as limited common element(s) the parking stall(s) assigned to the Unit and identified on Exhibit "C" attached hereto and made a part hereof.

5.3 Each Residential Unit shall have appurtenant thereto as a limited common element the mailbox, wherever located at the Project, designated with the Unit's number.

5.4 The Residential Units located in Buildings A-1, A-2 and A-3, as a group, shall have appurtenant thereto as limited common elements all recreational amenities and facilities located on the roof-top deck of Building A-2 and designated on the Condominium Map as "Recreation Area."

5.5 The Residential Units, as a group, shall have appurtenant thereto as limited common elements:

(a) All recreational amenities and facilities located in the ground level area near Building C and designated on the Condominium Map as "Recreation Area."

(b) All stairways, elevators, mechanical, utility, communications rooms, areas, equipment and other facilities serving only the Residential Units;

(c) All ground-floor entry and mail areas that serve only the Residential Units;

(d) All other parts of the Project that serve and are intended to serve only the Residential Units, excluding, however, all structural components, exterior walls and roofs of the Buildings, which are common elements as herein provided.

### EXHIBIT "E"

5.6 The Commercial Units, as a group, shall have appurtenant thereto as limited common elements:

(a) The parking stalls assigned to the Commercial Units as a group, as shown on Exhibit "C" attached hereto; and

(b) All rooms, areas, facilities and equipment providing or relating to the provision of electrical, air-conditioning, water and other utility or communications services only to the Commercial Units.

5.7 Any other common element of the Project that is not described in this Declaration as part of any Unit, and that serves or is designed to serve a single Unit, and that is described as a limited common element in Section 514B-35 of the Act, shall also be deemed to be a limited common element appurtenant to and for the exclusive use of the Unit that it serves or is designed to serve.

**EXHIBIT "E"**

**Page 2 of 2**

**ENCUMBRANCES AGAINST TITLE**

That certain Preliminary Report dated **February 9, 2009**, issued by Title Guaranty of Hawaii, Inc., discloses that the land of the Project is subject to the following encumbrances:

1. Real Property taxes as may be due and owing. Refer to the County of Maui Director of Finances for further information.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Unrecorded grant of easement in favor of the County of Maui, granting a 10-foot wide easement for sewer purposes, as mentioned in that certain instrument dated May 20, 1952, recorded in Liber 2595 at Page 90.
4. DESIGNATION OF EASEMENT "A"

PURPOSE : Electric, telephone, and cable television purposes in favor of Maui Electric Company, Ltd., Hawaiian Telcom and Oceanic Time Warner Cable of Hawaii, respectively  
SHOWN : per survey dated October 26, 2007, and thus bounded and described to wit:

Beginning at a point at the southwesterly corner of this easement, on the easterly side of Kane Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 2,644.06 feet north and 8,241.22 feet east and running by azimuths measured clockwise from true South:

1. 160° 25' 74.00 feet along the easterly side of Kane Street to a pipe;
2. 250° 21' 456.80 feet along the remainder of Grant 3343 to Claus Spreckels (being along T.M.K: (2) 3-7-04:3) to a pipe;
3. 340° 21' 60.92 feet along Lot 1-B (Road widening lot) of the Kahului Townsite Subdivision to a point;
4. Thence over and across Lot 1-A of the Kahului Townsite Subdivision on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being:  
102° 25' 45" 31.87 feet to a point;
5. 70° 21' 399.80 feet over and across Lot 1-A of the Kahului Townsite Subdivision to a point;

**EXHIBIT "F"**

6. Thence over and across same on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being:
- 25° 21'                      42.43      feet to the point of beginning and containing an area of 0.469 acre, more or less.
5. No vehicular access permitted along the northern portion of course number 8, as shown on survey map dated January 24, 2006, revised.
6. Easement "A" is designated on the tax map as a portion of Vevau Street, which is used by the public.
7. The terms and provisions contained in the following:
- INSTRUMENT : DECLARATION OF MERGER OF CONDOMINIUM PROJECTS
- DATED : April 1, 2008
- RECORDED : Document No. 2008-050899
8. The terms and provisions contained in the following:
- INSTRUMENT : DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR "AINA O KANE" CONDOMINIUM PROJECT
- DATED : April 1, 2008
- RECORDED : Document No. 2008-050900
- MAP : 4606 and any amendments thereto
9. The terms and provisions contained in the following:
- INSTRUMENT : BY-LAWS OF THE ASSOCIATION OF UNIT OWNERS
- DATED : April 1, 2008
- RECORDED : Document No. 2008-050901
10. The terms and provisions contained in the following:
- INSTRUMENT : AGREEMENT TO SATISFY PARK ASSESSMENT REQUIREMENTS
- DATED : September 15, 2008
- RECORDED : Document No. 2008-160116
- PARTIES : A&B PROPERTIES, INC., a Hawaii corporation, and the COUNTY OF MAUI, DEPARTMENT OF PARKS AND RECREATION

**EXHIBIT "F"**

11. The terms and provisions contained in the following:

INSTRUMENT : ALEXANDER & BALDWIN, INC. AFFORDABLE HOUSING AGREEMENT

DATED : August 13, 2008

RECORDED : Document No. 2008-136272

PARTIES : ALEXANDER & BALDWIN, INC., a Hawaii corporation, and the COUNTY OF MAUI, a political subdivision of the State of Hawaii

**NOTES:**

Subsequent to issuance of the Preliminary Report identified above, the Developer recorded the following documents, which have become encumbrances against title:

- A. First Amendment of 'Āina o Kane Declaration of Condominium Property Regime, dated March 9, 2009, recorded in the Bureau as Document No. 2009-036186.
- B. First Amendment of the Bylaws of the Association of Unit Owners of 'Āina o Kane, dated March 9, 2009, recorded in the Bureau as Document No. 2009-036187.

**PRIOR TO CONVEYANCE OF A UNIT TO A BUYER, THE DEVELOPER MAY OBTAIN CONSTRUCTION FINANCING FOR THE PROJECT AND GIVE A BLANKET MORTGAGE ON THE PROJECT AS SECURITY. SECTION 5.3 ON PAGES 13 AND 13a OF THE PUBLIC REPORT TO WHICH THIS EXHIBIT IS ATTACHED EXPLAINS MORE ABOUT A POSSIBLE BLANKET MORTGAGE ON THE LAND.**

## **DEVELOPER'S RESERVED RIGHTS**

The following is a summary of rights reserved by the Developer in the Declaration and/or in the Bylaws and/or in the Sales Contract. This is only a summary. The Buyer should read the Declaration, the Bylaws and the Sales Contract for more information about the Developer's reserved rights before signing a Sales Contract.

(a) In section 8.6 of the Declaration (and in the Sales Contract), the Developer has reserved the right, in and for itself and/or on behalf of and in the name of the Association, but without the joinder or consent of Buyer, the Association, any other unit owner, lienholder or other person, to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across, or through the common elements (including the limited common elements) of the Project for any reasonable purpose, which may include, but shall not be limited to, those purposes that are necessary to the operation, care, upkeep, maintenance or repair of any Unit, the common elements or any easements for access or utilities or for any public purpose, and for those purposes contemplated by or incidental to the exercise of the rights reserved to the Developer in section 23 of the Declaration, or the exercise of any other rights reserved to the Developer in the Declaration; provided, however, that in exercising such rights, the Developer shall not do anything or permit anything to be done that shall unreasonably interfere with the use of the affected common or limited common element for its originally intended purpose, unless such action is required to ensure the public health, safety or welfare or to comply with any governmental requirement, permit, variance, rule, regulation, law or ordinance, or to permit the reasonable development, use and enjoyment of any of the property described in section 23 of the Declaration as "Withdrawn Property". These rights shall continue for so long as the Developer or the Developer's successor in interest owns any Unit in the Project.

(b) In section 8.7 of the Declaration (and in the Sales Contract), the Developer has reserved the right, in and for itself and/or on behalf of and in the name of the Association, but without the joinder or consent of Buyer, the Association, any other unit owner, lienholder or other person, to accept, transfer, cancel, relocate and otherwise deal with any easement over, under, across or through any lands adjacent to or in the vicinity of the Project, which easement may be appurtenant or made appurtenant to the land of the Project, for any reasonable purpose, which may include, but shall not be limited to, any of the same purposes set forth in section 8.6 of the Declaration or for the reason that any owner of any such lands adjacent to the Project exercises any right to require the relocation of any such easement. This right shall continue for so long as the Developer or the Developer's successor in interest owns any Unit in the Project.

(c) In section 8.8 of the Declaration (and in the Sales Contract), the Developer has reserved the right, in and for itself and/or on behalf of and in the name of the Association, but without the joinder or consent of Buyer, the Association, any other unit owner, lienholder or other person, to designate or otherwise establish a nonexclusive right in favor of the public to use all or part of that portion of the Project designated on the Condominium Map as "Vevau Street" for pedestrian and vehicular access purposes. This right includes the right to obligate the Association to maintain, repair and insure such area and to give the County of Maui or one or more political subsidiaries or subdivisions thereof the right to enforce the terms of any agreement, declaration or other instrument that designates or establishes the public's right to use

### **EXHIBIT "G"**

Vevau Street, all in accordance with requirements of the County of Maui. This right shall continue for so long as the Developer or the Developer's successor in interest owns any Unit in the Project.

(d) In section 8.9 of the Declaration (and in the Sales Contract), the Developer has reserved the right, in and for itself and/or on behalf of and in the name of the Association, but without the joinder or consent of Buyer, the Association, any other unit owner, lienholder or other person, to do all such things as are reasonably required to comply with the requirements of the County of Maui pertaining to the multiple zoning classifications of the Land, including, but not limited to, (i) the right to enter into, execute and record in the Bureau (if necessary or appropriate) all agreements, documents, declarations, covenants, restrictions and instruments that the County of Maui or applicable law may require to permit development of the Project according to the Developer's plans, (ii) the right to file and/or process to final approval an application with the County of Maui for the legal subdivision of the Land, and to do all things that such subdivision requires, including (but not limited to) filing or recording supporting plans, maps or other instruments with the County of Maui or in the Bureau, (iii) the right to remove, delete and withdraw from the Project and the effect of the Declaration and the Act such portions of the Project as may be required by the County of Maui or by applicable law to be withdrawn, and (iv) the right to execute and record in the Bureau one or more amendments to the Declaration (and the Bylaws, if appropriate) and the Condominium Map containing an amended description of the Project and the Land. This right shall continue for so long as the Developer or the Developer's successor in interest owns any Unit in the Project.

(e) If the Project is found not to be in compliance with any federal, state or local permit, rule, ordinance, code or other law in effect at any time before or after completion of the Project, the Developer has reserved, in and for itself and/or on behalf of and in the name of the Association, the right in section 8.10 of the Declaration (and in the Sales Contract), at its election but without obligation and without the joinder or consent of Buyer, the Association, any other unit owner, unit purchaser, lienholder or other person, to do all such things as are reasonably required to bring the Project into compliance with the applicable permit, rule, ordinance, code or other law, including (but not limited to) entering the Project and making such modifications to the common elements as are necessary, in the Developer's judgment, to bring the Project into such compliance. This right shall also include the right to cause noise, dust and other disturbances and nuisances incidental to modifying the common elements as required; provided, however, that the Developer or any party performing such work on behalf of the Developer shall make reasonable efforts to minimize such disturbances and nuisances. This right shall continue for so long as the Developer or the Developer's successor in interest owns any Unit in the Project.

(f) The general area in which the Project is located is known to contain traditional native Hawaiian burial sites and other archeological resources. Accordingly, the Developer has adopted an Archeological Monitoring Plan (the "Monitoring Plan") for the Project. The Monitoring Plan provides, among other things, that if archeological features or cultural deposits are discovered at the Project site during construction, construction activities at the location may have to be suspended temporarily while the site is fully evaluated and a determination is made as to how the cultural deposits should be treated. If human remains are discovered at the Project

## **EXHIBIT "G"**

site, a Burial Treatment Plan may be prepared for review by the State Historic Preservation Division (“SHPD”) of the Department of Land and Natural Resources of the State of Hawaii and the Maui Island Burial Council (“MIBC”). According to the Monitoring Plan, it is expected that any human remains identified at the Project will be permanently curated at an on-site re-burial shrine. The necessity for an on-site re-burial shrine, and/or other cultural deposit treatment requirements, may require (among other things) changes to the Project and/or the Developer’s execution and recordation of one or more agreements that pertain to archeological matters located at the Project and that may encumber title to the Project’s Land. In section 8.11 of the Declaration (and in the Sales Contract), the Developer has reserved the right, in and for itself and/or on behalf of and in the name of the Association and all individual Unit Owners, but without the joinder or consent of the Association, any Unit Owner, Unit purchaser, lienholder or other person, to do all such things as are reasonably required to comply with the Monitoring Plan, any subsequent Burial Treatment Plan, the requirements of SHPD, MIBC and any other governmental or quasi-governmental entity or agency with jurisdiction over the Project, and all applicable rules, codes, permits and laws in connection with the discovery or existence of cultural deposits (including but not limited to human remains) anywhere at the Project. The right reserved in section 8.11 includes (but is not limited to) the right to make changes to the layout, configuration or construction of the buildings or other improvements or common elements at the Project, to construct an on-site re-burial shrine and create easements over, around and leading to such shrine, to limit or prohibit owners’ access to the shrine and easement areas, to permit access to the shrine and easement areas to identified living cultural and lineal descendants of persons whose remains are located at the Project, and to execute and record a burial site agreement or other agreement that will contain conditions and restrictions regarding the re-burial shrine and access thereto, and will encumber title to the Project’s land. The right reserved in section 8.11 also includes the right to cause noise, dust and other disturbances and nuisances incidental to constructing an on-site re-burial shrine and/or doing such other things at the Project as may be required in connection with the identification, treatment and preservation of any cultural deposits provided, however, that the Developer or any party performing such work on behalf of the Developer shall make reasonable efforts to minimize such disturbances and nuisances. The right reserved in section 8.11 shall continue for so long as the Developer or the Developer’s successor in interest owns any Unit in the Project.

(g) In section 8.12 of the Declaration (and in the Sales Contract), the Developer has reserved for itself, its agents, employees, contractors, licensees, and successors in interest, an easement over and upon and a right to enter the Project as may be reasonably necessary for the completion of the Project and the sale of all Units in the Project. This easement and right to enter shall continue for so long as the Developer or the Developer’s successor in interest retains any interest in any Unit in the Project and shall include (but not be limited to) the right to use model Units, sales and management offices, parking stalls and sales displays.

(h) In section 9.3 of the Declaration (and in the Sales Contract), the Developer has reserved the right, without the joinder or consent of Buyer, the Association, any other unit owner, lienholder or other person, to transfer one or more handicap-accessible parking stalls from the Commercial Units to one or more Residential Units, in exchange for an equal number of non-handicap-accessible parking stalls, under conditions stated in section 9.3 of the Declaration.

(i) In section 9.4 of the Declaration (and in the Sales Contract), the Developer has reserved the right, without the joinder or consent of Buyer, the Association, any other unit owner, lienholder or other person to execute and record one or more amendment(s) to the Declaration to reassign any number of limited common element parking stalls, initially assigned to the Commercial Units as a group, to some or all of the individual Commercial Units for their exclusive use. This right shall continue for so long as the Developer retains fee simple ownership of all of the Commercial Units.

(j) Section 9.5 of the Declaration provides that to the extent that the joinder or consent of any Unit Owner may be required in order to confirm, effectuate or exercise any rights reserved to the Developer in sections 9.3 and/or 9.4 of the Declaration, or to validate any act or thing done pursuant to the exercise of such rights and reservations, or to execute and record any amendments or other instruments (including, but not limited to, the amendments contemplated by sections 9.3 and 9.4), such joinder or consent may be executed and given by the Developer as the attorney-in-fact for, and in the name and stead and on behalf of, such Unit Owner. Each Unit Owner, by acquiring or accepting the ownership of a Unit or any other interest in the Project or any Unit, thereby (i) appoints the Developer as such Owner's attorney-in-fact for the purpose of signing all instruments or documents required to evidence, confirm and/or effectuate such Owner's joinder and/or consent to any and all acts and things done by the Developer in the exercise of the rights reserved to the Developer in sections 9.3 and/or 9.4, such appointment being coupled with an interest and being irrevocable, and (ii) irrevocably agrees that such Owner shall, promptly upon the Developer's request and for no further consideration, execute, acknowledge and deliver to the Developer such instruments as the Developer may require to evidence or confirm such joinder or consent.

(k) In section 10.5 of the Declaration (and in the Sales Contract), the Developer has reserved the right, without the joinder or consent of any other person, to allow parties identified in section 10.5 of the Declaration as "Licensee" to enter upon the Land without committing a trespass and to construct and/or use for vehicle parking purposes up to twenty-two (22) parking stalls located or to be located anywhere on the Project's Land, including portions of the Land upon which buildings or other improvements will eventually be constructed. This right shall continue only during the period prior to construction of the Parking Units and transfer of title to any Unit to any person other than the Developer or the Developer's successor in interest.

(l) In section 17.3 of the Declaration (and in the Sales Contract), the Developer has reserved the right, subject to certain conditions and restrictions set forth in section 17.3 of the Declaration, to subdivide any Commercial Unit owned by the Developer and, by way of amendment of the Declaration and the Condominium Map, to adjust the common interests appurtenant to Developer-owned Commercial Units, and to add or delete limited common elements in connection with such subdivision, without the approval, joinder or consent of the Association, the Board, or any other person or entity except mortgagees of affected units. This right includes the right to convert all or any part of the common elements identified on the Condominium Map as for "Outdoor Seating" to limited common elements appurtenant to one or more of the Commercial Units.

(m) In section 18.1 of the Declaration (and in the Sales Contract), the Developer has reserved the right, without the joinder or consent of Buyer, the Association, any other unit owner, lienholder or other person, to amend the Declaration and the Condominium Map to file the “as-built” certification of a licensed architect, engineer or surveyor required by the Act, and/or to correct typographical or other drafting errors. In section 18.2 of the Declaration (and in the Sales Contract), the Developer has also reserved the right for so long as the Developer retains any interest in a Unit in the Project, without the joinder or consent of Buyer, the Association, any other unit owner, lienholder or other person, to amend the Declaration to meet any requirement imposed by any applicable federal, state or county law, rule or ordinance, the Real Estate Commission, any title insurance company issuing a title instance policy on the Project or any of the Units, any institutional lender lending funds on the security of the Project or any of the Units, or any other governmental or quasi-governmental agency including, without limitation, the County of Maui, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development or the Veterans Administration; provided, however, that no such amendment that would change the common interest appurtenant to a Unit owned by any person other than the Developer or substantially change the design, location or size of a Unit owned by any person other than the Developer shall be made without the consent of all persons having an interest in such Unit, except as expressly provided otherwise in the Declaration. Section 18.2 also provides that each and every person acquiring an interest in the Project, by such acquisition, consents to the amendments described in section 18.2 and agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same, and appoints the Developer and the Developer’s successor in interest as his or her attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on his or her behalf, which grant of such power, being coupled with an interest, is irrevocable for the duration of such reserved rights, and shall not be affected by the disability of such party or parties.

(n) In section 23 of the Declaration (and in the Sales Contract), the Developer has reserved various rights, including (but not limited to) the right to change the type, layout and dimensions (including overall net area) of any unsold Unit and/or the limited common elements appurtenant thereto, and/or to remove and delete from the Project and from the effect of the Declaration and the condominium property regime established thereby portions of the Project’s Land (including, without limitation, all or portions of Vevau Street) and/or all or any unsold Units and any related common elements and limited common elements, to change the common interests appurtenant to the remaining Units in the Project, to sell or otherwise dispose of the withdrawn land, or to establish (or cooperate in the establishment of) a new condominium property regime on the withdrawn land, all without being required to obtain the consent or joinder of any person or group of persons, including Buyer, the Association, any Unit owner or any mortgagee, lien holder, Unit purchaser, or any other person who may have an interest in the Project or in any Unit. The Developer has also reserved the right to merge (or cooperate in the merger of) such new project with the Project, all as more particularly disclosed in section 23 of the Declaration and in Exhibit “J” attached to this Public Report. Also attached to this Public Report as Exhibit “K” is a recorded Declaration of Merger of Condominium Projects referred to in section 23 of the Declaration and in Exhibit “J” attached to this Public Report. By purchasing a Unit, Buyer will give the Developer a power of attorney to do certain things and to sign certain documents in connection with the exercise of the Developer’s reserved rights under section 23 of

**EXHIBIT “G”**

the Declaration. THE BUYER IS ENCOURAGED TO READ EXHIBITS “J” AND “K” VERY CAREFULLY, AS THE EXERCISE OF THE DEVELOPER’S RIGHTS RESERVED IN SECTION 23 OF THE DECLARATION MAY HAVE A MATERIAL EFFECT ON THE BUYER’S INTEREST IN THE PROJECT.

(o) In section 24 of the Declaration (and in the Sales Contract), the Developer reserves the unilateral right, for itself and for any person or persons designated by the Developer, to appoint and remove all of the officers and members of the Association’s Board of Directors for the duration of the “Developer Control Period” described in section 24 of the Declaration.

(p) In section 25 of the Declaration (and in the Sales Contract), the Developer reserves the right to repurchase Buyer’s Unit under certain circumstances for a period of ten (10) years from the date of recordation of the Deed conveying the Unit to Buyer, provided that Buyer shall have complained to the Developer about the physical condition and/or design of the Unit or the Project or any matter in connection with the Unit or the Project and the Developer, after a good faith and diligent effort, shall be unable to rectify the complaint to Buyer’s satisfaction within a reasonable period of time. Section 25 of the Declaration contains specific terms for determining the repurchase price and specific mortgagee protection provisions, all of which are also more fully described and disclosed in Exhibit “L” attached to this Public Report.

(q) Section 10.2(a) of Article X of the Bylaws provides, among other things, that notwithstanding the general requirements for Bylaws amendments, the Developer (or the Association) may amend the Bylaws in the manner(s) and for the purpose(s) set forth in reservations in the Declaration that include the right to amend the Bylaws.

(r) In section 10.2(b) of Article X of the Bylaws (and in the Sales Contract), the Developer has reserved the right for so long as the Developer retains any interest in a Unit in the Project, without the joinder or consent of Buyer, the Association, any other unit owner, lienholder or other person, to amend the Bylaws to correct typographical or other drafting errors or to meet any requirement imposed by any applicable federal, state or county law, rule or ordinance, the Real Estate Commission, any title insurance company issuing a title instance policy on the Project or any of the Units, any institutional lender lending funds on the security of the Project or any of the Units, or any other governmental or quasi-governmental agency including, without limitation, the County of Maui, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development or the Veterans Administration; provided, however, that no amendment that would change the common interest appurtenant to a Unit owned by any person other than the Developer or substantially change the design, location or size of a Unit owned by any person other than the Developer shall be made without the consent of all persons having an interest in such Unit, except as expressly provided otherwise in the Declaration. Section 10.2(b) of the Bylaws also provides that each and every person acquiring an interest in the Project, by such acquisition, consents to the amendments described in section 10.2(b) (and in section 18.2 of the Declaration) and agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same, and appoints the Developer and the Developer’s successor in interest as his or her attorney-in-fact with full power of substitution to execute and deliver such documents and instruments and to do such things on his or her behalf,

which grant of such power, being coupled with an interest, is irrevocable for the duration of such reserved rights, and shall not be affected by the disability of such party or parties.

(s) Section 8.13 of the Declaration provides that, without limiting any of the specific reservations contained in the Declaration or in the Bylaws, and except as may otherwise be prohibited by the Act, each of the rights reserved to the Developer in the Declaration or in the Bylaws includes the right to execute (and, if appropriate, to cause to be recorded in the Bureau) any and all legal documents, agreements, certificates, amendments, maps, plans, conveyances and other instruments required by law to accomplish the tasks for which such rights are reserved, including (but not limited to) one or more amendments to the Declaration, the Bylaws and/or the Condominium Map as may be necessary to reflect changes to the Project or the Land caused by or otherwise related to the exercise of the rights reserved in the Declaration or in the Bylaws. Any such instrument or amendment need only be signed by the person or entity that is entitled to exercise such right under the section in which the right is reserved, without the joinder or consent of any other party, including any Unit Owner, Unit purchaser, mortgagee, lienholder, or any other person or entity whatsoever, unless the applicable section specifically requires the consent or joinder of such other party.

(t) Section 8.14 of the Declaration provides that, without limiting any other similar or more specific provision of the Declaration or the Bylaws, to the extent that the joinder or consent of any Unit Owner may be required in order to confirm, effectuate or exercise any rights granted or reserved to the Developer in the Declaration or in the Bylaws, or to validate any act or thing done pursuant to such rights and reservations of the Developer, or to execute or record any instruments or amendments to any instruments (including, but not limited to, the Declaration, the Bylaws and/or the Condominium Map), such joinder or consent may be executed and given by the Developer as the attorney-in-fact for, and in the name and stead and on behalf of, such Unit Owner. Each Unit Owner, by acquiring or accepting the ownership of a Unit or any other interest in the Project or any Unit, thereby (i) appoints the Developer as such Owner's attorney-in-fact as aforesaid, such appointment being coupled with an interest and being irrevocable, and (ii) agrees that such Owner shall, promptly upon the Developer's request and for no further consideration, execute, acknowledge and deliver to the Developer such instruments as the Developer may require to evidence or confirm such joinder or consent. Section F.3(g)(xix) of the Sales Contract provides that, at the Developer's request, no later than Closing, Buyer shall execute and deliver to the Developer (A) an instrument, in recordable form, legally sufficient to appoint the Developer as Buyer's special attorney-in-fact for the limited purpose of accomplishing the purposes of the rights reserved to the Developer in the Declaration, or, if Buyer is not a natural person, (B) a written instrument having the same legal effect as a power of attorney, properly executed and authorized and binding on Buyer, appointing the Developer as an authorized signatory for and on behalf of Buyer, which instrument may be in the form of a resolution or such other form as the Developer, the Bureau and/or any Project lender or title insurance company may require, and such appointment and/or authorization shall be coupled with an interest and irrevocable. In addition, by acquiring or accepting a Unit, Buyer shall thereby covenant and agree that Buyer shall, promptly upon the Developer's request and for no further consideration, execute, acknowledge and deliver to the Developer such further instruments as the Developer may require to fulfill the intent and purpose of the reservations of rights in favor of the Developer in the Sales Contract and in the Declaration.

**Estimate of Initial Maintenance Fees and Estimate of Maintenance Fee Disbursements  
for 'ĀINA O KANE**

**Estimate of Maintenance Fee Disbursements:** With the exception of cold water and sewer for the units, the estimate of fee disbursements is for maintenance of and service to the common elements only.

	Monthly	Yearly
<b>Utilities and Services</b>		
Electricity	\$2,806.00	\$33,672.00
Rubbish Removal	\$1,400.00	\$16,800.00
Sewer (common elements & units)	\$2,879.80	\$34,557.60
Telephone	\$50.00	\$600.00
Water (common elements & cold water for units)	\$2,648.80	\$31,785.60
<b>Maintenance, Repairs, Supplies</b>		
Site Management	\$4,095.00	\$49,140.00
Custodial	\$60.00	\$720.00
Security	\$50.00	\$600.00
Pest Control	\$250.00	\$3,000.00
Elevators	\$2,967.00	\$35,604.00
<b>Management</b>		
Property Management	\$1,200.00	\$14,400.00
Administrative Costs	\$424.00	\$5,088.00
Wages and Salaries	\$3,583.00	\$42,996.00
Employee Benefits	\$1,022.00	\$12,264.00
Legal	\$50.00	\$600.00
Other Professional	\$290.00	\$3,480.00
<b>Insurance</b>		
Property and Liability	\$2,683.00	\$32,196.00
Directors and Officers; Bond	\$126.00	\$1,512.00
Flood	\$745.00	\$8,940.00
<b>Miscellaneous</b>		
Reserves*	\$2,700.00	\$32,400.00
<b>TOTAL</b>	<b>\$30,529.60</b>	<b>\$366,355.20</b>

\*Pursuant to §514B-148, HRS, a new association need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting. In arriving at the figure for "Reserves" shown above, the Developer did not conduct a reserve study in accordance with §514B-148, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended. The amount shown for "Reserves" is an estimate only.

A unit owner shall not be obligated for the payment of the owner's share of the common expenses until such time as the developer sends the owner written notice that, after a specified date, the unit owner shall be obligated to pay for the portion of common expenses that is allocated to the owner's unit.

**Estimate of Initial Maintenance Fees and Estimate of Maintenance Fee Disbursements  
for 'ĀINA O KANE**

The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency.

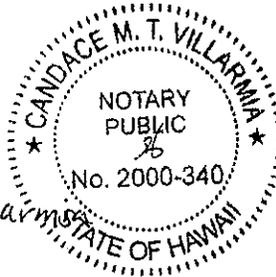
Stacy Tokairin is agent for/and/or employed by Certified Management Inc., the Managing Agent for the 'ĀINA O KANE condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

Stacy Tokairin  
Signature

2/23/09  
Date

Subscribed and sworn to  
Before me this 23<sup>rd</sup> day  
of February, 2009

Candace M.T. Villarmia  
Notary Public, State of Hawaii  
Typed or Printed Name: Candace M.T. Villarmia  
My Commission expires: 07/09/2012



Document Identification or Description: Estimate of Initial Maintenance Fees and Estimate of  
Maintenance Fee Disbursements for 'Āina o Kane

Document Date: 2/23/09 No. of Pages: 2

Name: Candace M.T. Villarmia First Circuit

Candace M.T. Villarmia 2/23/09  
Notary Signature Date

**NOTARY CERTIFICATE** (Hawaii Administrative Rules §5-11-8)

Apartment Number	Apartment Type	Building Number	Common Interest	Monthly Fee	Yearly Total
A201	4	A-1	1.0086%	\$ 307.92	\$ 3,695.06
A202	3	A-1	0.7337%	\$ 224.00	\$ 2,687.95
A203	4-R	A-1	1.0086%	\$ 307.92	\$ 3,695.06
A204	4	A-1	1.0086%	\$ 307.92	\$ 3,695.06
A301	4	A-1	1.0086%	\$ 307.92	\$ 3,695.06
A302	3	A-1	0.7337%	\$ 224.00	\$ 2,687.95
A303	4-R	A-1	1.0086%	\$ 307.92	\$ 3,695.06
A304	4	A-1	1.0086%	\$ 307.92	\$ 3,695.06
A401	4	A-1	1.0086%	\$ 307.92	\$ 3,695.06
A402	3	A-1	0.7337%	\$ 224.00	\$ 2,687.95
A403	4-R	A-1	1.0086%	\$ 307.92	\$ 3,695.06
A404	4	A-1	1.0086%	\$ 307.92	\$ 3,695.06
A205	3	A-2	0.7337%	\$ 224.00	\$ 2,687.95
A206	4	A-2	1.0086%	\$ 307.92	\$ 3,695.06
A305	3	A-2	0.7337%	\$ 224.00	\$ 2,687.95
A306	4	A-2	1.0086%	\$ 307.92	\$ 3,695.06
A405	3	A-2	0.7337%	\$ 224.00	\$ 2,687.95
A406	4	A-2	1.0086%	\$ 307.92	\$ 3,695.06
A207	2	A-3	0.7274%	\$ 222.07	\$ 2,664.87
A208-H	2-R	A-3	0.7274%	\$ 222.07	\$ 2,664.87
A209	3	A-3	0.7337%	\$ 224.00	\$ 2,687.95
A210	3-R	A-3	0.7337%	\$ 224.00	\$ 2,687.95
A211	3-R	A-3	0.7337%	\$ 224.00	\$ 2,687.95
A212	3	A-3	0.7337%	\$ 224.00	\$ 2,687.95
A213	2-A	A-3	0.7393%	\$ 225.71	\$ 2,708.46
A214	2-A-R	A-3	0.7393%	\$ 225.71	\$ 2,708.46
A307	2	A-3	0.7274%	\$ 222.07	\$ 2,664.87
A308-H	2-R	A-3	0.7274%	\$ 222.07	\$ 2,664.87
A309	3	A-3	0.7337%	\$ 224.00	\$ 2,687.95
A310	3-R	A-3	0.7337%	\$ 224.00	\$ 2,687.95
A311	3-R	A-3	0.7337%	\$ 224.00	\$ 2,687.95
A312	3	A-3	0.7337%	\$ 224.00	\$ 2,687.95
A313	2-A	A-3	0.7393%	\$ 225.71	\$ 2,708.46
A314	2-A-R	A-3	0.7393%	\$ 225.71	\$ 2,708.46
A407	2	A-3	0.7274%	\$ 222.07	\$ 2,664.87
A408-H	2-R	A-3	0.7274%	\$ 222.07	\$ 2,664.87
A409	3	A-3	0.7337%	\$ 224.00	\$ 2,687.95
A410	3-R	A-3	0.7337%	\$ 224.00	\$ 2,687.95
A411	3-R	A-3	0.7337%	\$ 224.00	\$ 2,687.95

Apartment Number	Apartment Type	Building Number	Common Interest	Monthly Fee	Yearly Total
A412	3	A-3	0.7337%	\$ 224.00	\$ 2,687.95
A413	2-A	A-3	0.7393%	\$ 225.71	\$ 2,708.46
A414	2-A-R	A-3	0.7393%	\$ 225.71	\$ 2,708.46
B201	1	B	0.7056%	\$ 215.42	\$ 2,585.00
B202-H	2-R	B	0.7274%	\$ 222.07	\$ 2,664.87
B203	3	B	0.7337%	\$ 224.00	\$ 2,687.95
B204	3-R	B	0.7337%	\$ 224.00	\$ 2,687.95
B205	3-R	B	0.7337%	\$ 224.00	\$ 2,687.95
B206	3	B	0.7337%	\$ 224.00	\$ 2,687.95
B207	3	B	0.7337%	\$ 224.00	\$ 2,687.95
B208	3-R	B	0.7337%	\$ 224.00	\$ 2,687.95
B209	4-R	B	1.0086%	\$ 307.92	\$ 3,695.06
B301	1	B	0.7056%	\$ 215.42	\$ 2,585.00
B302-H	2-R	B	0.7274%	\$ 222.07	\$ 2,664.87
B303	3	B	0.7337%	\$ 224.00	\$ 2,687.95
B304	3-R	B	0.7337%	\$ 224.00	\$ 2,687.95
B305	3-R	B	0.7337%	\$ 224.00	\$ 2,687.95
B306	3	B	0.7337%	\$ 224.00	\$ 2,687.95
B307	3	B	0.7337%	\$ 224.00	\$ 2,687.95
B308	3-R	B	0.7337%	\$ 224.00	\$ 2,687.95
B309	4-R	B	1.0086%	\$ 307.92	\$ 3,695.06
B401	1	B	0.7056%	\$ 215.42	\$ 2,585.00
B402-H	2-R	B	0.7274%	\$ 222.07	\$ 2,664.87
B403	3	B	0.7337%	\$ 224.00	\$ 2,687.95
B404	3-R	B	0.7337%	\$ 224.00	\$ 2,687.95
B405	3-R	B	0.7337%	\$ 224.00	\$ 2,687.95
B406	3	B	0.7337%	\$ 224.00	\$ 2,687.95
B407	3	B	0.7337%	\$ 224.00	\$ 2,687.95
B408	3-R	B	0.7337%	\$ 224.00	\$ 2,687.95
B409	4-R	B	1.0086%	\$ 307.92	\$ 3,695.06
C101	1-R	C	0.7056%	\$ 215.42	\$ 2,585.00
C102	3	C	0.7337%	\$ 224.00	\$ 2,687.95
C103-H	2-R	C	0.7274%	\$ 222.07	\$ 2,664.87
C104	3	C	0.7337%	\$ 224.00	\$ 2,687.95
C105	3-R	C	0.7337%	\$ 224.00	\$ 2,687.95
C106	3-R	C	0.7337%	\$ 224.00	\$ 2,687.95
C107	3	C	0.7337%	\$ 224.00	\$ 2,687.95
C108	1-R	C	0.7056%	\$ 215.42	\$ 2,585.00
C109	1	C	0.7056%	\$ 215.42	\$ 2,585.00
C201	1-R	C	0.7056%	\$ 215.42	\$ 2,585.00

Apartment Number	Apartment Type	Building Number	Common Interest	Monthly Fee	Yearly Total
C202	3	C	0.7337%	\$ 224.00	\$ 2,687.95
C203-H	2-R	C	0.7274%	\$ 222.07	\$ 2,664.87
C204	3	C	0.7337%	\$ 224.00	\$ 2,687.95
C205	3-R	C	0.7337%	\$ 224.00	\$ 2,687.95
C206	3-R	C	0.7337%	\$ 224.00	\$ 2,687.95
C207	3	C	0.7337%	\$ 224.00	\$ 2,687.95
C208	1-R	C	0.7056%	\$ 215.42	\$ 2,585.00
C209	1	C	0.7056%	\$ 215.42	\$ 2,585.00
C301	1-R	C	0.7056%	\$ 215.42	\$ 2,585.00
C302	3	C	0.7337%	\$ 224.00	\$ 2,687.95
C303-H	2-R	C	0.7274%	\$ 222.07	\$ 2,664.87
C304	3	C	0.7337%	\$ 224.00	\$ 2,687.95
C305	3-R	C	0.7337%	\$ 224.00	\$ 2,687.95
C306	3-R	C	0.7337%	\$ 224.00	\$ 2,687.95
C307	3	C	0.7337%	\$ 224.00	\$ 2,687.95
C308	1-R	C	0.7056%	\$ 215.42	\$ 2,585.00
C309	1	C	0.7056%	\$ 215.42	\$ 2,585.00
C401	1-R	C	0.7056%	\$ 215.42	\$ 2,585.00
C402	3	C	0.7337%	\$ 224.00	\$ 2,687.95
C403-H	2-R	C	0.7274%	\$ 222.07	\$ 2,664.87
C404	3	C	0.7337%	\$ 224.00	\$ 2,687.95
C405	3-R	C	0.7337%	\$ 224.00	\$ 2,687.95
C406	3-R	C	0.7337%	\$ 224.00	\$ 2,687.95
C407	3	C	0.7337%	\$ 224.00	\$ 2,687.95
A-1	Commercial	A-1	4.7550%	\$ 1,451.68	\$ 17,420.19
A-2	Commercial	A-2	2.2591%	\$ 689.69	\$ 8,276.33
A-3	Commercial	A-3	7.4337%	\$ 2,269.48	\$ 27,233.75
B	Commercial	B	5.9682%	\$ 1,822.07	\$ 21,864.81
P198	P-S	--	0.0145%	\$ 4.43	\$ 53.12
P199/200	P-CT/C	--	0.0274%	\$ 8.37	\$ 100.38
P201/202	P-CT/C	--	0.0274%	\$ 8.37	\$ 100.38
P203/204	P-CT/C	--	0.0274%	\$ 8.37	\$ 100.38
P205/206	P-CT/C	--	0.0274%	\$ 8.37	\$ 100.38
P207/208	P-CT/C	--	0.0274%	\$ 8.37	\$ 100.38
P209/210	P-CT/C	--	0.0274%	\$ 8.37	\$ 100.38
P211/212	P-CT/C	--	0.0274%	\$ 8.37	\$ 100.38

Apartment Number	Apartment Type	Building Number	Common Interest	Monthly Fee	Yearly Total
P213/214	P-CT/C	--	0.0274%	\$ 8.37	\$ 100.38
P215/216	P-CT/C	--	0.0274%	\$ 8.37	\$ 100.38
P217/218	P-CT/C	--	0.0274%	\$ 8.37	\$ 100.38
P252	P-S	--	0.0145%	\$ 4.43	\$ 53.12
			100.0%	\$ 30,529.60	\$ 366,355.20

## SUMMARY OF SALES CONTRACT AND ESCROW AGREEMENT

The Sales Contract provides for the sale of a condominium unit by the Developer (sometimes hereinafter called "Seller") to a Buyer. The Escrow Agreement provides how the funds paid by the Buyer to Escrow under the Sales Contract are to be held and released. Both the Sales Contract and Escrow Agreement contain many important provisions which are not set out here and should be carefully reviewed by every prospective Buyer.

Two different forms of Sales Contract will be used for the sale of the units. One of the Sales Contract forms (hereinafter called the "99-Unit Sales Contract") will be used in the sale of up to ninety-nine of the units, and the other Sales Contract form (hereinafter called the "2-Year Sales Contract") will be used in the sale of the remaining units in the Project. In most respects the two Sales Contract forms are the same. However, they differ in some respects in order to comply with the requirements of two different exemptions from registration under the federal Interstate Land Sales Full Disclosure Act. The most important differences are in when the contracts become binding, in the completion deadline required under section 514B-89 of Chapter 514B of the Hawaii Revised Statutes (the "Act"), and in the remedies available to the Buyer if the Seller misses the completion deadline or otherwise defaults under the Sales Contract. These differences are more fully summarized below. In this Exhibit, references to the "Sales Contract" apply to both forms of Sales Contract. When differences are discussed, the two forms of Sales Contract will be separately identified as either the "99-Unit Sales Contract" or the "2-Year Sales Contract."

The Sales Contract provides for the number, amount and timing of payments the Buyer is to make to Escrow. The Escrow Agreement provides that Escrow is to collect these payments and, upon instructions from Seller, deposit them in a federally-insured, interest-bearing account at any bank, savings and loan association, financial services loan company or credit union authorized to do business in Hawaii. The Sales Contract and Escrow Agreement provide who gets to keep interest that may be earned on the funds with Escrow. If the Sales Contract is signed before the Seller has delivered to the Buyer a Notice of Right to Cancel Sales Contract ("Notice of Right to Cancel") and before certain other things have happened (as described in the Sales Contract), the Sales Contract shall not be binding on the Buyer or the Seller, and either of them may cancel it at any time before it becomes binding.

Section F.1 of the 99-Unit Sales Contract provides that the contract will become binding when both Buyer and Seller have signed the contract, the Seller has delivered to the Buyer a true copy of the Public Report and all amendments (with effective dates), true copies of the recorded Declaration, Bylaws and Condominium Map for the Project and a Notice of Right to Cancel, and the Buyer has either waived the right to cancel or is deemed to have waived the right to cancel as provided in Section 514B-86 of the Act.

Section F.1 of the 2-Year Sales Contract provides that the contract will become binding when all of the events described above have occurred, **AND** both the Buyer and Seller have signed a separate 'Āina o Kane Confirmation Agreement. Section F.1(e) of the 2-Year Sales Contract expressly provides that, even though the Buyer may have waived or may be deemed

under Hawaii law to have waived the Buyer's statutory right to cancel the Sales Contract, the Seller will not be required to close the purchase and will not close the purchase unless and until the Buyer and Seller have both signed the Confirmation Agreement.

After the Sales Contract becomes binding it may be cancelled by the Seller if, among other reasons, the Buyer is obtaining financing and fails to obtain a pre-qualification letter within a certain time specified in the Sales Contract, or a loan commitment within a certain time also specified in the Sales Contract, or if the Buyer is a cash buyer and fails to furnish satisfactory evidence of ability to pay within other time periods. In certain cases, the Buyer may be responsible for cancellation fees.

Section F.6 of the 99-Unit Sales Contract provides that the Seller may cancel the 99-Unit Sales Contract after it has become binding and refund all sums paid by the Buyer if construction of the foundation of the building that contains the Buyer's Unit has not been completed within 12 months of the Effective Date of the contract. The 2-Year Sales Contract does not contain this construction contingency.

The Sales Contract provides that if the Sales Contract has become binding between the Buyer and the Seller in accordance with Section F.1 thereof, and if certain other statutory requirements have been met, then Escrow may disburse to the Seller, prior to closing to pay certain Project costs, all or portions of the Buyer's funds deposited with Escrow in accordance with and subject to the requirements of the Act, and the Escrow Agreement. The Escrow Agreement provides that no disbursement of the Buyer's funds shall be made to the Seller to pay Project costs prior to closing unless the Seller certifies to Escrow, and to Escrow's satisfaction, that the Seller has complied with all of the requirements of Section 514B-92 or 514B-93 (whichever is applicable) of the Act. Section F.2(a) of the Sales Contract expressly provides as follows:

**BUYER SHOULD CAREFULLY REVIEW THE DEVELOPER'S PUBLIC REPORT FOR THE PROJECT (AND ALL AMENDMENTS TO THE PUBLIC REPORT) TO DETERMINE WHETHER SELLER HAS MET ALL OF THE REQUIREMENTS OF THE ACT FOR THE USE OF PURCHASERS' DEPOSITS TO PAY PROJECT COSTS PRIOR TO CLOSING. SECTION 5.6 (AND IN PARTICULAR, SECTION 5.6.2) OF THE PUBLIC REPORT CONTAINS IMPORTANT INFORMATION ABOUT THE USE OF BUYERS' DEPOSITS.**

Section F.6 of the 99-Unit Sales Contract provides that Seller shall complete construction of the Unit so as to permit normal occupancy of the Unit within ten (10) years from the Effective Date of the contract. Section F.6 of the 99-Unit Sales Contract also provides that if Seller misses this completion deadline, Buyer's sole remedy is to cancel the Sales Contract and receive a refund of sums paid.

Section F. 6 of the 2-Year Sales Contract provides that Seller shall complete construction of the Unit so as to permit normal occupancy of the Unit within two (2) years from the Effective Date of the contract. Section F.6 of the 2-Year Sales Contract also provides that if Seller misses this completion deadline, Buyer may cancel the Sales Contract and receive a refund of sums

paid, and may pursue such other remedies for Seller's default as are provided in the 2-Year Sales Contract.

The Sales Contract provides that if the Buyer defaults under the Sales Contract after the Effective Date, the Buyer may lose all of the Buyer's deposits with Escrow up to 15% of the Purchase Price under the Sales Contract, or the Buyer may be liable to the Seller for the amount of damages the Seller incurs due to the Buyer's default, whichever is greater. The Seller, at its option, may pursue an action against the Buyer for specific performance and may pursue other legal or equitable remedies as well.

The 99 Unit Sales Contract provides that if the Seller defaults after the Effective Date, the Buyer's sole remedy shall be to cancel the contract and receive a refund of all sums the Buyer has paid under the contract. The 2-Year Sale Contract provides that, in addition to the foregoing cancellation and refund rights, the Buyer may pursue an action against the Seller for specific performance or any other remedy available to the Buyer at law or in equity.

The Sales Contract includes Seller disclosures and Buyer acknowledgments of various conditions pertaining to the Project and the sale of the Unit, including various property conditions and other conditions, all of which are more fully disclosed elsewhere in the Public Report to which this Exhibit is attached. The Sales Contract also discloses that the Seller has reserved various rights in the Declaration and/or in the Sales Contract. These reserved rights are also disclosed elsewhere in the Public Report.

The Sales Contract also provides that, by accepting title to the Unit, the Buyer shall thereby give the Seller a special power of attorney to sign documents and do other things that may be required in order for the Seller to exercise its rights reserved in the Declaration and/or in the Sales Contract.

The Sales Contract provides for refunds of the Buyer's deposit(s) (sometimes less escrow cancellation fees) if (a) either party cancels the Sales Contract before the Effective Date, or (b) if the Seller misses the completion deadline set forth in the Sales Contract, or (c) if the Seller cancels the 99 Unit Sales Contract because foundations have not been completed within 12 months of the Effective Date, or (d) if the Seller cancels the Sales Contract because the Buyer has not obtained financing within the time periods specified in the Sales Contract, or (e) with the exception of "Permitted Material Changes" as defined in the Sales Contract, if there is a material change in the Project after the Effective Date and the Buyer elects to cancel the Sales Contract, or (f) if the Buyer defaults under the Sales Contract and the Seller cancels the Sales Contract and retains 15% of the purchase price, in which case the Buyer may be entitled to a refund of deposits in excess of 15%, or (g) if the Buyer (or one of the Buyers, if there is more than one) is a natural person and dies before the Buyer has fulfilled all of its obligations under the Sales Contract and the Seller elects to rescind the Sales Contract.

The Sales Contract confirms that the Buyer has been given copies of certain important legal documents for the Project, including the Declaration, Bylaws, Escrow Agreement and Condominium Map. The Sales Contract also provides that the rights of any construction lender

with a mortgage against the Project will be superior to the rights of the Buyer under the Sales Contract.

The Sales Contract prohibits the Buyer from assigning or transferring the Buyer's rights under the Sales Contract without the Seller's prior written consent. The Sales Contract provides that the Seller may require a consent fee for any transfer. The Sales Contract also prohibits the Buyer from re-selling or re-offering the Unit for sale prior to the Buyer's acquisition of title to the Unit.

The Escrow Agreement provides for the closing or settlement of the sale. Escrow collects all payments and other amounts owed under the Sales Contract, including closing costs which are shared between the Seller and the Buyer as set forth below and in the Sales Contract.

The Sales Contract provides for "pre-closing." "Pre-closing" means that Escrow may set a time for the Buyer to sign all of the documents Escrow asks the Buyer to sign, including the Unit Deed and other closing documents, and the Buyer will pay the Buyer's share of the closing costs, as estimated by Escrow, prior to closing. The Buyer's share of closing costs include the Buyer's notary fees, the cost of drafting and recording the Unit Deed, the cost of a title report and any title insurance policy requested by the Buyer, any fees or charges pertaining to the Buyer's use of the unit (e.g., utility hook up fees), 50% of Escrow's fees, the Hawaii state conveyance tax, and any other closing costs not mentioned above that are customarily paid by buyers of Hawaii residential real estate.

The Sales Contract provides that the Buyer will be required to pay, at closing, two months estimated common expenses and an additional non-refundable, non-transferable "start-up fee" in an amount equal to two months estimated common expenses. The "start-up fee" shall become the Seller's property at closing but shall be used only for the limited and specific purposes set forth in the Sales Contract. Escrow then handles the closing, the transfer of title in accordance with the Escrow Agreement. The Unit must be conveyed to the Buyer free and clear of any blanket liens, such as mortgages covering more than one unit.

The Sales Contract provides that the Seller may elect to close several purchases (including the Buyer's purchase) at the same time in a "bulk closing". A bulk closing may require the Buyer to pre-close and to pay into Escrow all purchase funds other than mortgage loan proceeds as early as 60-days prior to the scheduled closing date. **THE BUYER SHOULD READ SECTION F.11(b)(ii) OF THE SALES CONTRACT VERY CAREFULLY TO BE SURE THAT THE BUYER UNDERSTANDS WHAT MAY BE REQUIRED IN A BULK CLOSING.**

The Escrow Agreement provides certain protections to Escrow in the event of a dispute between the Buyer and the Seller. These protections include the right to file an "interpleader" and the right to recover certain fees and costs. In an interpleader action the escrow deposit is given to the court to decide what action to take. The Escrow Agreement sets out escrow fees, escrow cancellation fees and the fees for certain policies of title insurance.

The Sales Contract gives notice to the Buyer that Hawaii law contains important requirements that the Buyer must follow before the Buyer may file a lawsuit or other action for defective construction against the contractor who designed or constructed the Buyer's Unit.

Under the Escrow Agreement the Seller agrees (and under the Sales Contract the Buyer agrees) to pay Escrow on demand, and to indemnify and hold harmless Escrow from and against, all costs, damages, judgments, attorneys' fees, expenses, obligations and liabilities of every kind and nature reasonably suffered or incurred in connection with or arising out of the escrow established under the Escrow Agreement, including, but not limited to, all costs and expenses incurred in connection with the interpretation of the Escrow Agreement or with respect to any interpleader or other proceeding, but excluding all of the foregoing that is the result of any act or omission by Escrow or its agents that is not generally accepted in the Honolulu business community as a reasonable business practice. The Escrow Agreement further provides that, upon payment of such costs, damages, judgments, attorneys' fees, expenses, obligations and liabilities, the prevailing party will be subrogated to Escrow's right to judgment for such costs, damages, etc., against third persons.

**THIS SUMMARY IS NOT COMPLETE AND WILL NOT CONTROL IN THE EVENT OF ANY CONFLICT WITH A PROVISION IN THE SALES CONTRACT OR THE ESCROW AGREEMENT. PROSPECTIVE BUYERS ARE CAUTIONED AND ENCOURAGED TO READ CAREFULLY THE SALES CONTRACT AND ESCROW AGREEMENT.**

## **DEVELOPER'S RESERVED ALTERATION, WITHDRAWAL AND MERGER RIGHTS**

Section 23 of the Declaration provides as follows:

### **23. Reservation to Change Units, Withdraw Land and/or Units and Reconfigure the Project.**

23.1 **Rights Generally.** Any other provision in this Declaration to the contrary notwithstanding, the Developer shall have the right (but shall not be obligated) in its sole discretion under this section 23, without being required to obtain the consent or joinder of any person or group of persons, including the Association, any Unit Owner or any mortgagee, lien holder, Unit purchaser, or any other person who may have an interest in the Project or in any Unit, to change the type, layout and dimensions (including overall net area) of any unsold Unit and/or the limited common elements appurtenant thereto, and/or to remove and delete from the Project and from the effect of this Declaration and the Act portions of the Land (including, without limitation, all or portions of Vevau Street) and/or all or any unsold Units and any related common elements and limited common elements; provided, however, that the right to withdraw shall not apply to any part of or interest in the Project actually utilized by and necessary for the use and enjoyment of any Unit owned by any person (an "Affected Person") other than the Developer at the time of such withdrawal, without first obtaining such Affected Person's consent. For purposes of this section 23, "unsold Unit" shall mean a Unit owned by the Developer and for which no sales contract for the purchase and sale of the Unit has become binding upon both the seller and the buyer under the contract. Those parts of the Project (Land and/or Units) withdrawn pursuant to the rights reserved to the Developer in this section 23 are sometimes hereinafter called the "Withdrawn Property."

23.2 **Effect of Withdrawal.** Upon such removal and deletion of the Withdrawn Property as set forth in this section 23, and with no further action required, no Unit Owner, mortgagee, lien holder, Unit purchaser or any other person (other than the Developer and the holder of any blanket mortgage covering the Withdrawn Property) who may have an interest in the Project or any Unit shall have any legal or equitable interest in the Withdrawn Property (it being the intent hereof that upon such removal and deletion, fee simple title to the Withdrawn Property, including the Land, common elements and Units so removed and deleted and any interests appurtenant thereto, will be vested solely in the Developer). If deemed necessary to effect the intent of this section 23, each Unit Owner, mortgagee, lien holder and any other person who may have an interest in the Project or any Unit shall, if requested by the Developer, unconditionally quitclaim and/or release its interest (if any) in the Withdrawn Property to the Developer, and the Developer shall quitclaim and/or release to the Owners of the remaining Units all of the Developer's interest (if any) in the remaining common elements of the Project, excluding, however, interests appurtenant to any remaining Units owned by the Developer and excluding, also, all rights reserved to the Developer herein or in the Bylaws insofar as such rights pertain to the remaining Units and/or the remaining common elements of the Project.

23.3 **Rights to Subdivide, Amend, Etc.** In the exercise of the rights reserved in this section 23, the Developer may (but shall not be obligated to) at any time (i) file and/or

process to final approval an application with the County of Maui for the legal subdivision of that portion of the Land to be withdrawn (including, if required, a legal consolidation and re-subdivision), (ii) file or record supporting file plans, maps or other instruments with the County of Maui or in the Bureau, (iii) record one or more amendments to this Declaration (and the Bylaws, if appropriate) in the Bureau containing an amended description of the Land, common elements and/or Units covered by this Declaration and deleting therefrom the Withdrawn Property, and amending the common interests appurtenant to the remaining Units by increasing such common interests so that the aggregate common interest appurtenant to all remaining Units equals 100%, (iv) file in the Bureau an amended Condominium Map reflecting the changes to the Units, common elements and/or limited common elements, and/or the removal and deletion of the Withdrawn Property, and (v) if deemed necessary or appropriate, apply for and obtain from the Real Estate Commission of the State of Hawaii an effective date for an amendment to (or a complete amendment of) the Developer's condominium public report describing the changes made to the Project pursuant to the terms of this section 23. Any changes to the Project made pursuant to this section 23 shall be deemed final and effective for all purposes upon the recordation in the Bureau of the amendment(s) to this Declaration (and the Bylaws and Condominium Map, if appropriate) referenced herein.

If Units are withdrawn from the Project pursuant to this section 23 and the common interests of the remaining Units are recalculated, the new common interests shall be determined by applying the general formula used to determine initial common interests stated in Exhibit "C" attached to this Declaration and making minor adjustments if necessary so that the aggregate common interest appurtenant to all of the remaining Units equals 100%; **provided, however,** that the Developer reserves the right (but shall in no event be obligated) to change only the common interests appurtenant to unsold Units if the resulting distribution of common interests among all of the Units equals 100% and appears reasonably equitable, notwithstanding that some unsold Units of a certain type and/or net living (or floor) area may thereby be assigned common interests that are different from the common interests assigned to sold Units of the same or similar Unit type and/or the same or similar net living (or floor) area.

If the net living (or floor) areas of any unsold Units are changed pursuant to this section 23 but no Units are withdrawn from the Project, the common interests appurtenant to the changed unsold Units will not be changed, notwithstanding that the common interests may no longer reflect the formula for determining initial common interests stated in Exhibit "C"; **provided, however,** that the Developer reserves the right (but shall in no event be obligated) to reallocate the common interests appurtenant to some or all of the changed unsold Units if the resulting distribution of common interests among the changed unsold Units appears reasonably equitable, and if the total aggregate common interests among all sold and unsold Units equals 100%.

23.4 **Rights to Deal With Withdrawn Property; Easements; Costs.** Upon the deletion and removal from the Project of the Withdrawn Property pursuant to the rights reserved to the Developer in this section 23, the Developer shall have the absolute right, without the joinder or consent of any other party except the holder of any blanket lien encumbering the Withdrawn Property, to dedicate for public use, convey, sell, lease, pledge or otherwise transfer

to any third party (whether or not related to the Developer) some or all of the Developer's interest in and/or title to some or all of the Withdrawn Property, or to develop, improve (or cooperate with any subsequent owner of the Withdrawn Property in such development or improvement) or otherwise deal with or dispose of the Withdrawn Property or any portions thereof in such manner as the Developer, in its sole discretion, sees fit, including developing or improving the Withdrawn Property for uses and with designs, materials and plans materially different from those of the Project. This right shall expressly include the unilateral right of the Developer to grant easements over, on or beneath portions of the Project in favor of and for the benefit of the Withdrawn Property for such purposes as may be necessary or convenient for the subdivision, subsequent development and/or use of the Withdrawn Property, including (but not limited to) easements for access and utilities. In the event that the development and use of the Withdrawn Property or any portion thereof (including, but not limited to, the use of any easement benefiting and serving all or any part of the Withdrawn Property) shall increase the common expenses of the Project (including but not limited to common expenses for roadway maintenance and repair and liability or other insurance), the owners from time to time of the Withdrawn Property so benefited may be required to contribute to the Association an equitable portion of such costs and expenses as determined by the Developer and applicable law. In the event that all or a portion of the Withdrawn Property is developed as a "New Project" (as defined in section 23.5 below) and subsequently merged with the Project in accordance with the Declaration of Merger (described in section 23.5 below), costs and expenses pertaining to the Project and the New Project will be apportioned and allocated between the Project and the New Project in accordance with the terms of the Declaration of Merger.

**23.5 Rights Regarding New Project and Merger.** Without limiting the generality of the foregoing, the Developer (or the Developer's successor in interest in and to the Withdrawn Property) may (but shall not be obligated to) submit all or portions of the Withdrawn Property to a separate condominium property regime by executing and recording in the Bureau a separate declaration of condominium property regime, bylaws and condominium map and such other documents as may be required. At any time following the establishment of all or a portion of the Withdrawn Property as a separate condominium property regime (the "New Project"), the Developer shall have the right (but shall not be obligated), without the joinder or consent of any person or group of persons, including the Association, any Unit Owner or any mortgagee, lien holder, Unit purchaser, or any other person who may have an interest in the Project or in any Unit, to cause a merger of the Project with such New Project (and/or to cooperate with any subsequent owner of the New Project in causing such merger) in accordance with the provisions and requirements of that certain Declaration of Merger of Condominium Projects (the "Declaration of Merger") pertaining to the Project and recorded in the Bureau immediately prior to recordation of this Declaration. This Declaration is expressly made subject to the Declaration of Merger, and all of the terms and provisions of the Declaration of Merger, including all reservations of rights in favor of the Developer as "Declarant" therein, are hereby incorporated into this Declaration by reference as if stated herein in their entirety.

**23.6 Developer's Successor in Interest.** Except as otherwise provided in this section 23.6, the Developer may transfer its rights reserved under this section 23 (and all other rights specifically reserved to the Developer in this Declaration, in the Bylaws, in the Declaration

of Merger and under the Unit Deeds) in whole or in part to any person who acquires all or a portion of the Developer's interest in the Project, including but not limited to the Withdrawn Property. Such reserved rights shall be transferred by express reference and assignment in the instrument conveying title to all or a portion of the Project to such person. The transfer of such rights shall be subject to the terms of Section 514B-136 of the Act. The term "Developer's successor in interest" or "successor in interest of the Developer," as used in this Declaration, shall mean any person who acquires title to the Developer's interest in and to all or a portion of the Project by a recorded instrument that also expressly assigns some or all of the rights reserved to the Developer in this section 23 and/or elsewhere in this Declaration, the Bylaws, the Declaration of Merger and the Unit Deeds. No deed or lease of a Unit or Units in the Project shall transfer any of the Developer's reserved rights under this Declaration, the Bylaws, the Declaration of Merger or the Unit Deeds unless the deed or lease expressly refers to and assigns said rights. Absent an express assignment of such reserved rights, each deed or lease or other transfer of a Unit or Units shall only transfer title to such Unit or Units, the common interest in the common elements appurtenant to such Unit or Units, and the rights (and obligations) of a Unit Owner as set forth herein, in the Bylaws and in the Act. Once all or a portion of the Developer's reserved rights are transferred to a successor in interest of the Developer, the transferee may have and exercise all of the rights of the Developer to the extent transferred, but only to such extent.

23.7 **Special Power of Attorney.** The Developer shall have the absolute right, notwithstanding the lease, sale or conveyance of any Unit, and without being required to obtain the consent or joinder of the Association, any Unit Owner or purchaser, any eligible mortgage holder (as defined in section 18.3), lien holder or other persons, to effect the changes to the unsold Units, the common elements and/or limited common elements and/or the removal and deletion of portions of the Project, and/or the subsequent development or submission to a new condominium property regime of all or portions of the Withdrawn Property, and/or the merger of the Project with any New Project, all in accordance with this section 23, and to execute, record and/or file the herein described application, amendments, quitclaims, declarations, bylaws, maps, releases and any and all other instruments necessary or appropriate for the purpose of effecting the changes to and/or removal and deletion and/or subsequent development and merger of portions of the Project as contemplated hereby. Any such action shall be deemed taken by the Developer as the true and lawful attorney-in-fact of the respective Unit Owners, eligible mortgage holders, lien holders and others who may have an interest in the Project. Each and every person acquiring an interest in any Unit, the Project or the Land covered by this Declaration, by such acquisition, consents to all such changes, deletion and/or removal (including an increase in the common interest appurtenant to any Unit owned by such person and a concomitant increase in such person's ownership interest in the Project's remaining common elements), and to the recordation of such documents as may be necessary to effect the same; agrees to execute such documents and do such other things as may be necessary or convenient to effect the same; and appoints the Developer his, her or its attorney-in-fact with full power of substitution to execute such documents and do all such other things on his, her or its behalf, as are contemplated in this section 23, which grant of such power, being coupled with an interest, is irrevocable and shall not be affected by the disability of any such person.

**EXHIBIT "J"**

23.8 **Association Bound.** Without limiting the generality of the foregoing, if the Developer or the Developer's successor in interest exercises or wishes to exercise any of the rights reserved to the Developer in this section 23 after the first meeting of the Association and the election of the Association's first elected Board of Directors, the Board, acting on behalf of the Association, upon the request of the Developer or the Developer's successor in interest, and without requiring the vote or consent of any Unit Owner, Board member or other person, shall execute such instruments (including but not limited to grants of easements) and do all such other things as may be necessary or convenient to enable the Developer or the Developer's successor in interest to exercise the rights reserved in this section 23, and accomplish the purposes contemplated by the reservation of such rights.

23.9 **Amendment of this Section 23.** Notwithstanding any provision herein to the contrary, this section 23 may not be amended without the written consent and joinder of the Developer for so long as the Developer retains an ownership interest in any Unit or in any portion of the Withdrawn Property.

THE ORIGINAL OF THE DOCUMENT  
RECORDED AS FOLLOWS:  
STATE OF HAWAII

**BUREAU OF CONVEYANCES**

DATE Doc 2008-050899 TIME \_\_\_\_\_  
APR 02, 2008 03:00 PM \_\_\_\_\_

Return by Mail ( ) Pickup (X) To:

Brooks Tom Porter & Quitiquit, LLP  
841 Bishop Street, Suite 2125  
Honolulu, Hawaii 96813

Tax Map Key No. (2) 3-7-005-003, -011 & -023  
Total No. of Pages: 11

**DECLARATION OF MERGER OF CONDOMINIUM PROJECTS**

**WHEREAS**, A&B KANE LLC, a Hawaii limited liability company whose mailing address is 822 Bishop Street, Honolulu, Hawaii 96813 (hereinafter called the "Declarant"), is the owner in fee simple of the land described in Exhibit "A" attached hereto and made a part hereof (the "Property"); and

**WHEREAS**, the Declarant currently intends to develop the Property as a single mixed-use condominium property regime with a total of 119 condominium units in five buildings, to be known as 'Āina o Kane; and

**WHEREAS**, the Declarant also intends to reserve the right to withdraw portions of the Property from the condominium property regime initially established, to further subdivide the Property if necessary, to develop one or more of the withdrawn portions of the Property as separate condominium property regimes, or to sell withdrawn portions of the Property to persons who may elect to develop such land as separate condominium property regimes; and

**WHEREAS**, in the event that multiple condominium property regimes are established on the Property (each such condominium property regime being hereinafter called a "project"), the Declarant wishes to reserve the right to merge the projects subsequently, either for management and administrative purposes only, or for ownership purposes as provided herein; and

**WHEREAS**, to effectuate the foregoing purpose the Declarant desires to establish covenants, restrictions and easements as part of a general and incremental plan of development of the Property so that, in the event that the projects are established as separate condominium

property regimes, upon completion of the development of the separate projects and the decision of the Declarant to merge such projects, the projects so merged shall be treated for administrative purposes (and possibly for ownership purposes) as integral parts of a single merged condominium project (the "Merged Project");

**NOW, THEREFORE,** the Declarant hereby declares that the Property is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the following limitations, restrictions, easements, covenants and conditions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the Property and for the merger of projects in accordance with Section 514B-46 of the Hawaii Revised Statutes, as amended, and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. All of the limitations, covenants, easements, restrictions and conditions set forth herein shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall inure to the benefit of and be binding upon each owner and such owner's heirs, devisees, personal representatives, successors, successors in trust and assigns.

1. **Definition of Merger.** Except as provided in paragraph 7 below where the definition of "merger" is expanded to include the merger of ownership interests, for the purposes hereof, "merger" shall mean and refer to the unification of the management and use of any project with the management and use of any other project or projects in accordance with the provisions hereof. Merger may occur with respect to any two or more projects at the same or at different times, and merger with respect to any two of such projects shall not affect the right of the Declarant to merge separately or together the other projects at a later date, subject to all of the terms, covenants and conditions herein contained.

2. **Merger.** The Declarant shall have the absolute right, notwithstanding the lease, sale or conveyance of any or all of the units in any of the projects being merged, and without being required to obtain the consent or joinder of any unit owner, lien holder or other persons, to effect any merger in accordance with the provisions hereof, and to execute and file the below-described certificate and any and all other instruments necessary or appropriate for the purpose of effecting the merger of projects as contemplated hereby. Except with respect to merger in accordance with the provisions of paragraph 7 below, where additional amendments must be recorded, merger shall take effect upon completion of all of the following:

(a) **Declaration and Condominium Map.** The Declarant shall have recorded with respect to each project to be merged a Declaration of Condominium Property Regime and Condominium Map. Each such Declaration of Condominium Property Regime, other than the Declaration of Condominium Property Regime being recorded concurrently herewith, shall be in form substantially similar to the Declaration of Condominium Property Regime being recorded concurrently herewith (with modifications for the physical description of the project, the units and common elements, and the percentage of common interest appurtenant to units therein).

(b) **Development.** The units and common elements described in the respective Declarations of Condominium Property Regime for the projects to be merged shall

have been constructed and a Certificate of Substantial Completion (or its equivalent) issued therefor.

(c) **Certificate of Merger.** The Declarant shall have recorded in the Bureau of Conveyances a certificate stating that the requirements of subparagraphs 2(a) and 2(b) hereof have been satisfied, that merger of the projects has become effective, and that the merger has not resulted in a breach of any of the conditions set out in paragraph 3 hereof.

3. **Limitations on Merger.** All mergers shall take place prior to the twentieth (20th) anniversary date hereof (the "Expiration Date"), and no merger shall take place after the Expiration Date unless and until approved by the vote or written consent of unit owners owning not less than sixty-seven percent (67%) of the total common interest of the projects to be merged.

4. **Effect of Merger.** From and after the effective date of a merger in accordance with the provisions of paragraph 2 hereof, the following consequences shall ensue:

(a) **Use of Common Elements.** Each unit in the Merged Project shall have appurtenant thereto nonexclusive easements and rights to use the common elements in each of the merged projects to the same extent as, and subject to the same limitations as are imposed upon, units in each of such projects as though the merged projects had been developed as a single project.

(b) **Common Expenses.** The merged projects will each bear a share of the total common expenses of the Merged Project, as the term "common expenses" is defined in the respective Declarations of Condominium Property Regime for the merged projects, treating all merged projects as one project for this purpose. The share for each project shall be a fraction, the numerator of which shall be the aggregate net living or floor area (exclusive of lanais, if any, and whether or not the same are considered to be part of the units) in such project, and the denominator of which shall be the aggregate net living or floor area (exclusive of lanais, if any, and whether or not the same are considered to be part of the units) of all of the units in the Merged Project. Each unit's share of the common expenses of the Merged Project shall be the product of the common interest appurtenant to the unit multiplied by the share of the common expenses allocated to the project in which said unit is located.

(c) **Accumulated Funds.** Any long-term funds accumulated for the purpose of major repairs and replacements in any pre-existing project or projects prior to the merger of projects shall remain intact in a separate account for such pre-existing project or projects, or shall be isolated and identified as pertaining only to the pre-existing project or projects, and shall be expended solely for the contemplated purposes before funds from any other source are so expended, and the interest in such funds of each unit owner in that project or in those projects shall be equal to his share of the vote prior to merger, and such interest shall not be separated from the unit to which it appertains, and shall be deemed to be conveyed with such unit even though not expressly mentioned or described in the instrument of conveyance. Other reserve funds shall be consolidated and maintained as a single fund for the Merged Project; and if necessary so that the interest in such other reserve funds attributable to each unit in the Merged Project shall be equal to that unit's share of the vote in the Merged Project, the Board shall make

adjustments to the account of each unit owner by (i) refund in whole or in part; and/or (ii) credit in whole or in part against future assessments; and/or (iii) special assessments or series of assessments; and/or (iv) any other means consistent with generally accepted accounting principles; provided, however, that the Board shall make such adjustments without charging any unit owner a special assessment for reserves in any one month which exceeds more than twenty percent (20%) of the monthly assessment for other common expenses, after excluding any assessment for reserves. Except as provided above, there shall be only one common fund for the Merged Project.

(d) **Association of Unit Owners/Managing Agent.** The Association of Unit Owners provided for in each project shall be merged into a single Association governing the entire Merged Project. There shall be only one Managing Agent.

(e) **Voting.** Each of the merged projects shall have the same share of the total votes of the Merged Project as the share set forth above for the sharing of common expenses. Thus, each unit owner's total vote will be the product of the common interest appurtenant to his unit multiplied by the fractional share of the common expenses allocated to the project in which said unit is located.

(f) **Election of Board.** Within sixty (60) days following any merger of projects a special meeting of the Association of Unit Owners of the Merged Project shall be called to elect a new Board of Directors to replace any existing Board of Directors and to govern the Merged Project. The procedure for calling and holding such meeting and all other meetings of such Association shall be the procedure for calling and holding special meetings of the Association of Unit Owners set forth in the applicable Bylaws of the Association of Unit Owners.

Notwithstanding anything provided to the contrary in the Bylaws of any of the projects, the Board of Directors of the Association of Unit Owners of the Merged Project shall consist of at least nine members unless unit owners having not less than sixty-seven percent (67%) of the total vote in the Merged Project vote by mail ballot, or at an annual or special meeting of the Association, to reduce the minimum number of directors. In the event that nine directors are required, the term of office of the three (3) members of the Board receiving the greatest number of votes shall be fixed at three (3) years, the term of office of the three (3) members of the Board receiving the next greatest numbers of votes shall be fixed at two (2) years, and the term of office of the three (3) members of the Board receiving the next greatest numbers of votes shall be fixed at one (1) year. After the expiration of the term of office of each of the initial members, each successor member of the Board shall be elected to serve for a term of three (3) years. Each member of the Board shall continue to exercise the powers and duties of the office until his successor shall have been elected by the unit owners.

(g) **Interpretation.** For the purpose of administration and use of the Merged Project, the projects after merger shall be treated as part of a single project developed as a whole from the beginning; and for such purpose the applicable Declarations of Condominium Property Regime and Bylaws thereafter shall be construed as one document applicable to the entire Merged Project, provided that in the event of any conflict between such instruments, the first

Declaration and Bylaws recorded after recordation of this Declaration of Merger shall control. From and after the date of any merger, all of the projects so merged shall be treated for purposes of administration, use and sharing of common expenses as though they had been developed as a single project.

(h) **Ownership.** Except as otherwise provided herein, the merger shall affect the administration and use of the projects and the sharing of common expenses only, and shall not affect the ownership of units and common elements in the respective projects. Except as otherwise provided herein, each unit owner owning a unit in a particular project shall not own any part of another project unless said unit owner shall also own a unit in that other project.

5. **Amendment.** Any amendment to this Declaration of Merger shall require the consent of the Declarant and the approval of unit owners (other than the Declarant) in each project that is subject to this Declaration of Merger who own at least 67% of the common interest not owned by Declarant in that project.

6. **Declarant's Right to Deal with Projects Prior to Merger.** Nothing in this Declaration of Merger shall be construed to require the Declarant (or any subsequent owner of any part of the Property) to develop any project or merge any project, once developed, with any other project or to prohibit the Declarant (or any subsequent owner of any part of the Property) from dealing freely with any project not merged into the Merged Project, including, without limitation, developing the whole or any part of such project for a purpose inconsistent with a merger of such project into the Merged Project.

7. **Merger of Ownership Interests.** The provisions of this paragraph shall only apply in the event that Declarant shall elect to merge ownership of the projects in addition to effecting the administrative merger of projects. The filing of the below-described amendments to effect the merger of ownership interests shall be conclusive evidence that Declarant has elected to merge ownership of the projects. In the event that Declarant shall elect to merge ownership of the projects, the provisions of this paragraph shall control in any event of conflict with the other provisions hereof. Notwithstanding anything herein provided to the contrary, "merger" for purposes of *this* paragraph shall mean and refer to, in addition to any other definition provided herein, the allocation of ownership interests in one project to unit owners in another project and vice versa. Each such merger shall take effect upon the filing in the Bureau of Conveyances of the State of Hawaii of the certificate of merger referred to above plus an amendment to the respective Declarations of Condominium Property Regime of the projects being merged, merging the projects and setting forth at least the undivided percentage interest appurtenant to each unit in the merged projects, and such other matters as the Declarant deems necessary or appropriate.

Each unit in the Merged Project shall have appurtenant thereto an undivided percentage interest in the common elements of all of the merged projects in the same proportion that such unit's net living or floor area (exclusive of lanais, if any, and whether or not the same are considered to be part of the units) bears to the total aggregate net living or floor area (exclusive of lanais, if any, and whether or not the same are considered to be part of the units) of all of the units in the Merged Project, as shown on the Condominium Map or Maps and/or as set forth in

the respective Declarations of Condominium Property Regime for the projects. The percentage interest appurtenant to each unit shall be calculated and rounded off in such a manner that each percentage interest will be reflected as a number having no more than five digits following the decimal point. Equitable adjustments to the common interest for one or more of the units may be made in Declarant's discretion if necessary to establish the total common interest for the Merged Project as 100%.

Notwithstanding anything herein provided to the contrary, each unit's undivided percentage interest, upon merger and when calculated in accordance with the provisions of this paragraph, shall constitute such unit's proportionate share in the common elements, profits and common expenses of the Merged Project, and such unit's proportionate representation for all other purposes, including voting in the Merged Project; provided, however, that the unit in any new project being merged into an existing and completed project shall not be assessed nor shall it have any obligation with respect to debts or obligations for such completed project incurred prior to the issuance of a temporary or permanent certificate of occupancy for that unit in the new project. Upon the filing of any such certificate and amendment, the deeds for the units of the Merged Project which have been recorded in the Bureau of Conveyances shall be deemed automatically amended to reflect the newly assigned undivided percentage interest appurtenant to the respective units.

Declarant shall have the absolute right, notwithstanding the lease, sale or conveyance of any or all of the units in any of the projects being merged, and without being required to obtain the consent or joinder of any unit owner, lien holder or other persons, to effect a merger in accordance with the provisions hereof, and to execute and record the above-described amendments and any and all other instruments necessary or appropriate for the purpose of effecting the merger of projects as contemplated hereby. Any such action shall be deemed taken by Declarant as the true and lawful attorney-in-fact of the respective unit owners. Each and every party acquiring an interest in the property, by such acquisition, consents to all such mergers of projects and to the filing or recording of such documents as may be necessary to effect the same; agrees to execute such documents and do such other things as may be necessary or convenient to effect the same, and appoints the Declarant and its assigns as his, her or its attorney-in-fact with full power of substitution to execute such documents and to do such things on his, her or its behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights and shall not be affected by the disability of any such party.

The Declarant may transfer its rights under this Declaration of Merger, in whole or in part, to any person who subsequently acquires all or a portion of the Property. Such rights shall be transferred by express reference and assignment in the instrument conveying title to all or a portion of the Property to such person. No deed or lease of a unit or units in any project shall transfer any of the Declarant's rights under this Declaration of Merger unless the deed or lease expressly refers to and assigns said rights. Absent an express assignment of such rights, each deed or lease or other transfer of a unit or units in any project shall only transfer title to such unit or units, the common interest in the common elements appurtenant to such unit or units, and the rights (and obligations) of a unit owner as set forth in such project's Declaration of Condominium Property Regime, Bylaws and in Chapter 514B of the Hawaii Revised Statutes, as amended. Once all or a portion of the Declarant's rights are transferred to a successor in interest

of the Declarant, the transferee may have and exercise all of the rights of the Declarant under this Declaration of Merger to the extent transferred, but only to such extent.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the Declarant has executed this instrument this 1<sup>st</sup> day of April, 2008.

**A&B KANE LLC,**  
a Hawaii limited liability company

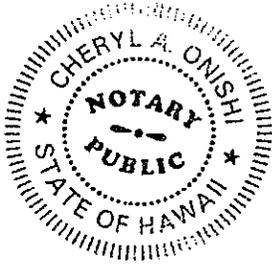
By: A & B PROPERTIES, INC.,  
a Hawaii corporation  
Its Manager

By   
Richard B. Stack  
Its Vice President

By   
R.K. SASARI  
Its President

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

On this 1<sup>st</sup> day of April, 2008, before me personally appeared Richard B. Stack, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

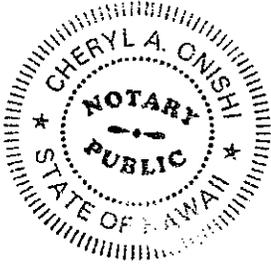


Cheryl A. Onishi  
CHERYL A. ONISHI  
Notary Public, State of Hawaii

My commission expires: APR 17 2009

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

On this 1<sup>st</sup> day of April, 2008, before me personally appeared R.K. SASAKI, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Cheryl A. Onishi  
CHERYL A. ONISHI  
Notary Public, State of Hawaii

My commission expires: APR 17 2009



BEING THE PREMISES ACQUIRED BY DEED

GRANTOR : ALEXANDER & BALDWIN, INC., a Hawaii corporation

GRANTEE : A&B KANE LLC, a Hawaii limited liability company

DATED : March 26, 2008

RECORDED : Document No. 2008-046782

-- END OF EXHIBIT "A" --

## DEVELOPER'S RESERVED REPURCHASE RIGHTS

Section 25 of the Declaration provides as follows:

25. **Developer's Repurchase Rights.** The Developer hereby reserves the right to repurchase a Unit from a Unit Owner for a period of ten (10) years from the date of recordation of the Deed conveying the Unit to the Owner, provided, however, that the Developer may exercise this right *if and only if* the Owner of the Unit shall have made a complaint to the Developer about the physical condition and/or design of the Unit or the Project and the Developer, after a good faith and diligent effort, shall be unable to rectify the matters complained about to the Unit Owner's satisfaction within a reasonable period of time, as determined by the Developer in its sole discretion. The exercise of the Developer's repurchase rights shall be subject to the following terms and conditions:

25.1 **Notice.** Developer shall give the Unit Owner and the Owner's mortgagee (if any) written notice of the Developer's election to exercise its right to repurchase the Owner's Unit.

25.2 **Closing.** The closing of the purchase shall be no earlier than six (6) months nor later than nine (9) months from the date of delivery of Developer's written notice of its election to exercise its repurchase right. Closing costs shall be apportioned between the Unit Owner and the Developer in accordance with customary practice in the State of Hawaii.

25.3 **Purchase Price.** The purchase price for the Unit shall be a price equal to the aggregate of (i) the price (the "Price") at which the Unit Owner purchased the Unit, (ii) the cost of any improvements added by the Owner to the Unit, and (iii) five percent (5%) per annum simple interest on the portion of the Price the Owner paid in cash from time to time for the Unit, computed from the date such amount was paid until the date that title to the Unit is transferred to the Developer. The purchase price for the Unit shall be paid in cash at closing.

25.4 **Appliances and Fixtures.** All appliances and fixtures originally sold with the Unit (or their replacements) shall remain in the Unit at the date of closing and shall be part of the property purchased by the Developer.

25.5 **Successors and Assigns.** Except as otherwise provided herein, the Developer's repurchase rights shall be binding upon each and every Unit Owner and such Owner's heirs, personal representatives, successors and assigns. The Developer's repurchase rights shall automatically transfer to and inure to the benefit of any person or entity who expressly acquires all of the rights and interests of the Developer under this Declaration.

25.6 **Mortgagee Protection.** The Developer's right to repurchase a Unit shall be subordinate to the interest of any mortgagee of record of the Unit. The Developer shall not exercise its right to repurchase a Unit if prior to or within sixty (60) days of giving notice to the Unit Owner and the Owner's mortgagee of the Developer's intent to exercise its repurchase right, the mortgagee has commenced a foreclosure action against the Unit. Notwithstanding the

formula for calculating the purchase price set forth in subsection 25.3 above, if the Unit to be repurchased is subject to a purchase money mortgage, the purchase price shall, at a minimum, be sufficient to enable the Unit Owner to repay such purchase money mortgage at closing. The Developer's right to repurchase a Unit shall be automatically extinguished upon any transfer of title to the Unit to a mortgage holder or other party pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced, or when a mortgage is assigned to a federal housing agency. A mortgagee under a mortgage covering any interest in a Unit prior to commencing mortgage foreclosure proceedings may notify the Developer in writing of (i) any default of the mortgagor under the mortgage within ninety (90) days after the occurrence of such default, and (ii) any intention of the mortgagee to foreclose the mortgage; provided that the mortgagee's failure to provide such written notice to the Developer shall not affect the mortgagee's rights under the mortgage.

## SPECIAL USE RESTRICTIONS

Section 10.6 of the Bylaws imposes the following restrictions on pets and other animals at the Project:

### **SECTION 10.6      Animals.**

(a)      **Generally.** No livestock, poultry, rabbits, or other animals whatsoever shall be allowed or kept in any Unit or in or on the limited common elements appurtenant to any Unit or in any other part of the Project except that dogs, cats and other generally recognized household pets in a reasonable number may be kept by the Owners and tenants in the Residential Units if the prior approval of the Board is obtained. Generally recognized household pets in a reasonable number may also be allowed to visit (but not to reside in) the Commercial Units, provided that such pets are at all times accompanied by their owner or keeper while at the Project. Notwithstanding the generality of the foregoing, parrots and other exotic birds that make sounds that can be easily heard from outside of the Unit in which they are kept will not be permitted. Permitted household pets shall not be kept, bred or used in any Unit or anywhere else at the Project for any commercial purpose nor allowed on any common element areas except when in transit and when carried or on leash. Household pet owners shall be responsible for the immediate clean up of their pet's waste and disposal of same in their own refuse container. Any pet which, in the sole judgment of the Board, causes a nuisance, unreasonable disturbance or threat to the health or safety of any Owner, tenant or guest may be ejected from the Project on the demand of the Board; provided, however, that upon assessment of the severity of the nuisance, disturbance or threat caused by such pet, the Board, in its sole discretion, may give the pet's owner an opportunity to remedy the situation short of ejection. All dogs permitted by these Bylaws shall be required to wear a conspicuous tag provided by the Board and any dog or cat may be detained by any person and delivered to the resident manager (if there is one) or managing agent or any director if found loose anywhere at the Project other than in the Owner's Unit. A detained dog or cat shall be released to its owner upon the payment of a reasonable administrative charge not to exceed \$25, payable to the Association.

(b)      **Guide Dogs, Signal Dogs, Etc.** Certified guide dogs, signal dogs, or other animals upon which disabled Owners, tenants or guests depend for assistance shall be permitted to be kept by such Owners, tenants and guests in their Units and shall be allowed to walk throughout the common elements while on a lead or leash, provided that such animals shall at all times be accompanied by and in the control of their owners or owners' agent while present upon the common elements. If such a certified guide dog, signal dog or other animal causes a nuisance or unreasonable disturbance or poses a threat to the health or safety of any Owner, tenant or guest, the owner thereof will be given an opportunity to rectify the problem by measures which fall short of ejection of the animal from the Project. Ejection will be required only if the Board reasonably determines that less drastic alternatives have been unsuccessful. If such an animal is ejected, it will nonetheless be allowed to remain at the Project for a reasonable period of time while the owner thereof attempts to find a suitable replacement animal, provided that the problem is controlled to a sufficient degree that the continued presence

of the animal during that time does not constitute an unreasonable imposition upon, or threat to the safety or health of, other Owners, tenants or guests.

(c) **Indemnifications.** In no event shall the Board, the Association, the Association's officers, the resident manager, the managing agent or any other persons acting by, through or on behalf of the Association be or be deemed to be liable for any loss, damage or injury to persons or property caused by or arising in connection with any Owner's, tenant's or guest's pet, guide dog, signal dog or other animal. By acquiring an interest in a Unit in the Project, each Owner agrees to indemnify, defend and hold harmless the Board, the Association, the Association's officers, the resident manager, the managing agent or any other persons acting by, through or on behalf of the Association from and against any claim or action at law or in equity arising out of or in any way relating to such Owner's or such Owner's tenant's or guest's pet, guide dog, signal dog or other animal.

Section 10.1 of the Declaration imposes the following restrictions on the use of the Units and limited common elements:

**10.1 Use of Units and Limited Common Elements.**

(a) Subject to more specific restrictions set forth herein, the Residential Units shall be used only for residential purposes, the Commercial Units shall be used only for such non-residential purposes as are permitted by applicable zoning, and the Parking Units shall be used only for the parking of motor vehicles. The Units may also be used for such other purposes as may be required in any development or other agreements that the Developer enters into with the County of Maui from time to time as a condition to the development of the Project.

(b) Notwithstanding the foregoing, no Commercial Unit shall be used as an educational facility, a testing center, a social-service office or agency, for public or semi-private assembly, as a pet store, a nightclub, an establishment featuring explicitly sexual, adults-only products or entertainment (including, without limitation, stores offering adult books or films, adults-only theaters, or facilities offering nude or semi-nude entertainment), or for the sale or offering for sale of paraphernalia typically associated with the use of illegal drugs or other illegal substances.

(c) A Unit Owner may lease or rent his Unit to any third party for any period permitted by applicable zoning, provided that the rental agreement is in writing and is expressly made subject to the covenants and restrictions contained in this Declaration, the Bylaws, the Rules and Regulations (if any) and the Act, and provided, further, that no Unit may be used as a rooming house or for bed and breakfast purposes. The Owner shall provide each rental tenant with a copy of the Rules and Regulations (if any) and shall make a copy of the Bylaws, as amended from time to time, available for the tenant's review. An Owner who rents his Unit shall at all times remain primarily and severally liable to all other Unit Owners and to the Association for any failure on the part of such Owner's tenant(s) to observe and comply with all provisions of this Declaration, the Bylaws, the Rules and Regulations (if any), and all other applicable laws.

(d) No Unit or any interest therein shall be sold, transferred, conveyed, leased, occupied, rented or used for or in connection with any time-sharing purpose or under any time-sharing plan, arrangement or program, including without limitation any so-called "vacation license," "residence club membership," "travel club membership" or "time interval ownership" arrangement. The term "time-sharing" as used herein shall be deemed to include, but is not limited to, any plan, program or arrangement under which the right to use, occupy, own or possess a Unit or Units in the Project is available to, or rotates among, various persons (whether or not identified) on a periodically recurring or nonrecurring basis, whether according to a fixed or floating interval or period of time or otherwise, and whether by way of deed, lease, association or club membership, license, rental or use agreement, cotenancy agreement, partnership or otherwise, and whether or not the program or arrangement is registered or required to be registered under Chapter 514E, Hawaii Revised Statutes, as amended, or under any successor law.

(e) No Owner will do (or allow to be done) or keep (or allow to be kept) in a Unit or elsewhere in the Project anything that may jeopardize the soundness or safety of the Project, or that may interfere with or unreasonably disturb the rights of other Unit Owners, or that may increase the rate of the hazard or liability insurance premiums on the Project or the contents thereof, or that may reduce the value of the Project.

(f) The Owner of any Unit will not, without the prior written consent of the Board, display any sign or place any other thing in or upon any doors, windows, walls, lanais or other portions of the Unit or the common elements so as to be visible from the exterior, provided, however, that this restriction shall not apply to signs displayed by the Developer for sales purposes prior to the completion of sales of all Units in the Project. Notwithstanding the foregoing, the Board of Directors may promulgate commercially reasonable standards, rules or guidelines, consistent with applicable zoning, for the display of signs in connection with the use and operation of the Commercial Units, and strict compliance with such standards, rules or guidelines will preclude the necessity of prior Board approval of such signs.

(g) No Unit Owner shall make or permit to be made any noise by himself or his tenants, employees, guests, or invitees, which will unreasonably annoy or interfere with the rights, comfort or convenience of other Owners or occupants of the Project.

(h) Every Unit Owner and occupant shall at all times observe, perform and abide by all laws, ordinances, rules and regulations now or hereafter made by any governmental authority or the Association for the time being applicable to the use of the Unit and the Project.

(i) No garments, rugs or other objects shall be hung from windows or lanais or over gates, railings, fences or walls of the Project, or anywhere else visible from other Units, the common or limited common elements or from adjoining properties. No rugs or other objects shall be dusted or shaken from windows, lanais or walkways or cleaned by beating or sweeping on any exterior part of the Project.

**EXHIBIT "M"**

(j) Nothing shall be allowed, done or kept in any Unit or common element of the Project that would overload or impair the floors, walls or roofs thereof, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Association.

(k) No Unit Owner or occupant shall make or suffer any strip or waste or unlawful, improper or offensive use of his Unit or the limited common elements appurtenant thereto.

(l) It is intended that the exterior of the Project present a uniform appearance, and to effect that end the use of Parking Units, lanais or limited common elements (including limited common element parking stalls) for the open storage of boxes, equipment, supplies and materials of any sort or kind whatsoever is prohibited.

Section 10.6 of the Declaration requires compliance at all times with the SMA Permit and the Variance and prohibits any use of a Unit, the limited common elements or the common elements that is in violation of any applicable restriction, term or condition of the SMA Permit or the Variance.

## VARIANCE

Section 31 of the Declaration provides as follows:

31. **Variance.** The Project's single parcel of Land falls within two different zoning classifications. To permit the development of the Project under these circumstances according to the Developer's plans, the Developer obtained a variance (the "Variance") from §18.04.030 of the Maui County Code, as evidenced by that certain variance approval letter dated October 28, 2008 (the "Variance Letter"). A copy of the Variance Letter is attached to this Declaration as Exhibit "E" and made a part hereof. The Project is subject to the Variance. The Variance contains conditions, some of which are binding on the Association, including (but not limited to) liability insurance requirements more particularly set forth in the Variance Letter. As a further condition to obtaining the Variance, the Developer entered into a Hold-Harmless Agreement with the County of Maui. The Hold-Harmless Agreement has been or will be recorded in the Bureau and is or will become an encumbrance on the Project's Land, binding on the Association and all of its members.

Section 14.2 of the Declaration provides, in part, that for so long as the Variance remains in effect the Association's liability insurance policy or policies shall name the County of Maui as an additional insured. All premiums on the policy or policies required under section 14.2 of the Declaration shall be borne by the Owners of the Units in proportion to their undivided interests in the common elements. If the liability insurance coverage required under section 14.2 of the Declaration is deemed insufficient by the County of Maui to meet the requirements of the Variance, the Board, on behalf of the Association, shall also purchase and maintain at all times while the Variance remains in effect, a policy or policies of liability insurance meeting the County of Maui's requirements.

A copy of the Variance Letter, with an attached copy of Findings of Fact, Conclusions of Law, Decision and Order and the Hold Harmless Agreement signed by the Developer, follows beginning on the next page of this Exhibit "N".

*[The remainder of this page is intentionally left blank.]*

CHARMAINE TAVARES  
Mayor

JEFFREY S. HUNT  
Director

KATHLEEN ROSS AOKI  
Deputy Director



COUNTY OF MAUI  
DEPARTMENT OF PLANNING

October 28, 2008

RECEIVED

OCT 29 2008

CHRIS HART & PARTNERS, INC.  
Landscape Architecture and Planning

CC: Jason  
w/originals

A&B Kane, LLC  
822 Bishop Street  
Honolulu, Hawai'i 96813

Mr. Jason Medema  
Chris Hart & Partners  
115 North Market Street  
Wailuku, Hawai'i 96793

Dear Mr. Medema:

RE: VARIANCE APPROVAL BY THE BOARD OF VARIANCES AND  
APPEALS

TMK: (2) 3-7-005:003, 011 & 023  
Project Name: Kane Street Mixed Use Commercial Project  
Description: Variance from Maui County Code, §18.04.030  
"Administration" for property located off of  
Kane and Vevau Streets, Kahului, Maui,  
Hawai'i (BVAV 20080002)

At its regular meetings on August 14, 2008, the Board of Variances and Appeals (Board) reviewed the above request and after due deliberation, voted to grant your request, with the following conditions:

1. That the variance approval be applicable only to the proposed request as described in the Applicant's variance application dated June 30, 2008;
2. That the owner, its successors and permitted assigns shall indemnify and hold the County of Maui harmless from and against any loss, liability, claim or demand arising out of this variance, and shall procure, at its own cost and expense, and shall maintain during the entire period of this variance, a policy or policies of comprehensive liability insurance, in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00), naming the County of Maui as a named additional insured, insuring and defending the applicant and County of Maui against any and all

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793  
MAIN LINE: (808) 270-7735; FACSIMILE: (808) 270-7634  
CURRENT DIVISION (808) 270-8205; LONG RANGE DIVISION (808) 270-7214; ZONING DIVISION (808) 270-7253

A&B Kane, LLC  
Mr. Jason Medema  
October 28, 2008  
Page 2

claims or demands for property damage, personal injury and/or death arising out of this variance approval, including but not limited to: (1) claims from any accident in connection with the approved variance, or occasioned by any act or nuisance made or suffered in connection with the approved variance in the exercise by the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this variance approval. Copies of a hold harmless agreement and the policy naming County of Maui as an additional named insured shall be submitted to the Planning Department within ninety (90) calendar days from the date of transmittal of the decision and order.

A copy of the Board's Findings of Fact, Conclusions of Law and Decision and Order, dated October 27, 2008, has been enclosed for your reference. Additionally, we have enclosed the hold harmless agreement form for your use.

Pursuant to Hawaii Revised Statutes, Section 91-14, should you or any aggrieved party wish to appeal this final decision and order, it must be filed with the Circuit Court of the Second Judicial Circuit within thirty (30) days from the date of said decision and order by certified mail.

Should you have any questions, please contact Trisha Kapua'ala, Staff Planner, at [Trisha.Kapuaala@mauicounty.gov](mailto:Trisha.Kapuaala@mauicounty.gov) or 270-8008.

Sincerely,



JEFFREY S. HUNT, AICP  
Planning Director

Attachment (Findings of Fact, Conclusions of Law, Decision and Order; Hold Harmless Agreement)

xc: Trisha Kapua'ala, Staff Planner  
BVAV 20080002 (KIVA related document)  
BVA Project File  
08/General File  
08/ZAED TMK File

JSH:AHS:TMLK:tkb  
K:\WP\_DOCS\PLANNING\BVA\VARIANCES\2008\0002\_KaneSteelProject\DecisionLtr\_Apprvd.doc

BEFORE THE BOARD OF VARIANCES AND APPEALS

COUNTY OF MAUI

STATE OF HAWAII

In The Matter of The Request of

A & B KANE, LLC

For approval of a variance from Maui County Code, §18.04.030 to allow open space, landscaping, and a children's play area within a portion of land that is located within the County's R-3 Residential District and designated as Community Plan Business/Commercial and State Land Use Urban for the Kane Street Mixed Use Commercial Project located off of Kane and Vevau Streets, Kahului, Maui, Hawaii; TMK: (2) 3-7-005:003, 011, and 023

DOCKET NO.: BVAV 20080002

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER; CERTIFICATE OF SERVICE

HRG. DATE: AUGUST 14, 2008

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER

The matter of a request by A & B KANE, LLC, having appeared at the hearing on August 14, 2008, and the Maui County Board of Variances and Appeals being fully advised thereon, now makes the following FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER.

FINDINGS OF FACTS

1. Pursuant to Maui County Code (hereinafter, "MCC"), Chapter 19.520 and Title MC-12, Subtitle 08, Chapter 801, Rules of Practice and Procedure for the Board of Variances and Appeals (hereinafter, "BVA Rules"), an application for a variance was filed with the Department of Planning, by A & B KANE, LLC. (hereinafter, "Applicant") on June 30, 2008. The subject application was certified as complete and ready for processing on July 3, 2008.
2. The Applicant requested variances from MCC, §18.04.030 to allow open space, landscaping, and a children's play area within a portion of land that is located within the County's R-3 Residential District and designated as Community Plan

Exhibit "A"

Business/Commercial and State Land Use Urban for the Kane Street Mixed Use Commercial Project located off of Kane and Vevau Streets, Kahului, Maui, Hawaii; TMK: (2) 3-7-005:003, 011, and 023 (hereinafter, "Property").

3. §8-8.7 of the Revised Charter of the County of Maui (1983), as amended, and MCC, §19.520.050(C) authorizes the Board of Variances and Appeals (hereinafter, Board") to hear the Applicant's request for a variance.
4. Pursuant to MCC, §19.520.020(B)(3)(f) and §12-801-77, BVA Rules, the Applicant mailed, by certified mail, a notice of application to all owners and lessees of record adjacent to and across the street from the subject property, on July 2, 2008.
5. Pursuant to MCC, §19.520.050(B) and §12-801-78(2), BVA Rules, the Applicant mailed, by certified mail, a notice of the date, time, place and subject matter of the public hearing to all owners and lessees adjacent to and across the street from the subject property, on July 11, 2008.
6. Pursuant to MCC, §19.520.030(C) and §12-801-78(1), BVA Rules, the Planning Director published a notice of the date, time, place and subject matter of the public hearing in the Maui News, on July 24, 2008.
7. Pursuant to MCC, §19.520.050(B)(2) and §12-801-78(3), BVA Rules, the Applicant published a notice of the date, time, place and subject matter of the public hearing in the Maui News, on July 17, 24 and 31, 2008.
8. MCC, Chapter 18.32.010 and §12-801-74, BVA Rules, authorizes the Board to grant variances from the provisions of MCC, Title 18 when:
  - a. There are special geographical or physical circumstances or conditions affecting the property that are not common to all property in the area;
  - b. The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner and extraordinary hardship would result from strict compliance with the provisions of this title because of the special geographical circumstances or conditions affecting the property;
  - c. The special circumstances or conditions affecting the property are not the result of previous actions

pertaining to the subdivision;

- d. The granting of the variance shall not be detrimental to the public's health, safety, or welfare or injurious to other property in the vicinity of said property;
  - e. The said property has obtained an appropriate zoning designation, provided that for the purposes of this chapter, districts with interim zoning shall not be considered an appropriate zoning.
9. On August 14, 2008 at 1:30 p.m., the Board conducted a public hearing on the Applicant's request at the Kalana Paku'i Building, Planning Conference Room, First Floor, 250 South High Street, Wailuku, Maui, Hawaii.
10. At the August 14, 2008 public hearing, the Board found the following evidence to be credible:
- a. The Property is located off of Kane, Vevau and School Streets, Kahului, Maui, Hawai'i. It is located within the County's B-2 Community Business and R-3 Residential Districts, with the Community Plan designation of Business Commercial and the State Land Use designation of Urban.
  - b. Maui County Code ("MCC"), §18.040.030 states in relative part that "[t]he director shall not approve any subdivision that does not conform to or is inconsistent with the county general plan, community plans, land use ordinances, the provisions of the Maui County Code, and other laws relating to the use of land.."
  - c. The Applicant submitted a subdivision application request on March 8, 2006 for the Kahului Townsite Subdivision (now known as the 'Aina 'O Kane Project) (Subdivision No. 3.2166) for parcels 003 and 011. Parcel 23 was not included in the original subdivision application. The applicant requested to process the subdivision application under MCC, §18.04.020, commonly known as "Ordinance 2372".
  - d. The Applicant filed building permit applications for four or more dwellings on September 20, 2006, as Building Permit Nos. BT2006/2737-2739 on TMKs: (2) 3-7-005:003 and 011. TMK: (2) 3-7-005:023 was

not included in the original building permit applications. Pursuant to Maui County Code (MCC) §§18.04.470 and 16.26.330, the construction of four or more dwellings are subject to the provisions of MCC, Title 18 (Subdivisions).

- e. The zoning for parcels 3 and 11 are in compliance with the Department's requirements under MCC, §18.040.030. The zoning for parcel 23 is does not conform to the consistency requirement of MCC, §18.040.030.
- f. On September 22, 2006, the Department of Public Works, Development Services Administration, Subdivision Section ("DSA") issued a letter to the permit applicant listing three items to be addressed prior to building permit issuance.
- g. Preliminary subdivision approval was granted on April 21, 2006, based upon Ordinance 2372. On April 13, 2007, the subdivider requested to add parcel 23 to the application and to consolidate this property with the other lots.
- h. On April 25, 2007, the DSA sent a letter to the subdivider stating it was agreeable to the request and listed items needed to continue processing the request. The Zoning and Flood Confirmation Request Form for parcel 23 was received by DSA on May 18, 2007.
- i. The requirements of an Ordinance 2372 application differ from that of a building permit application for four or more dwellings. At this time, the status of Vevau Street has not been addressed and the Applicant may be required to subdivide the roadway from the property prior to building permit issuance.
- j. The Applicant was exempt from MCC, §18.04.030 under subsection number 4, wherein it states in part, "Consolidations and resubdivisions where no additional developable lots are created"
- k. On May 31, 2007, the Department of Planning sent a letter to the Applicant stating in part, "[a] change in zoning or community plan amendment is required if none of the exclusions of MCC,

\$18.04.030 applies.”

- l. On June 5, 2007, Ms. Lesli Otani, Civil Engineer of DSA, e-mailed Ms. Carolyn Cortez, Staff Planner of the Department of Planning, stating the subdivision complies with MCC, \$18.04.030 under subsection number 4.
  - m. On September 17, 2007, the subdivision application received final approval based upon Ordinance 2372.
  - n. On March 4, 2008, the Department received an opinion from the Department of Corporation Counsel resulting in the Department including MCC, \$18.04.030 requirements within the review of building permit applications four or more dwellings. The result was amending all applicable, pending building permit applications' requirements to add a condition of showing compliance with this code section. The letter for the applicant's project is dated March 12, 2008.
  - o. The subject application for a variance request was filed on June 30, 2008, and certified as complete and ready for processing by the Planning Department on July 3, 2008.
  - p. The Department of Planning received no letters in support or opposition to the granting of the subject variance request.
11. At the August 14, 2008 public hearing, Mr. Grant Chun provided additional testimony in support of the granting of the subject variance request:
- a. The proposed ('Aina 'O Kane) development has a number of key objectives, which includes providing quality housing in Central Maui while producing quality in-fill construction on an underutilized site.
  - b. The site has been deemed to be most attractive to the Maui Community College faculty and students, as it is ideally situated to help the Applicant's overall goal for the area: to establish a dynamic pedestrian-oriented corridor connecting the different hubs in Kahului town. The 'Aina 'O Kane development as the start of revitalization of this

area: a once very vibrant center of Kahului town.

- c. 'Aina 'O Kane is' a mixed use commercial and multi family residential facility. It will contain 103 two and three-bedroom condominium residences. Over half of those residential units will be priced 120% of the HUD median income. The project is unique insofar as it will also provide for ground floor retail, commercial, and restaurant space (i.e., "it [is] a true mixed use project.")
- d. The project has received its Special Management Area approval as well as its NPDES permit. The building permit is still pending.
- e. At the time of the Special Management Area process, the Department of Planning concurred that the proposed project was consistent with the applicable zoning and community plan designations for the subject parcels.
- f. Parcel 23 will contain no structures, and will be landscaped for the use of a barbeque and a tot lot area. It is a substandard remnant parcel which is landlocked, with no roadway access of its own. It cannot be re-subdivided because it is substandard in size. It is shaped like a small triangle which creates a scenario where it is challenging, if not impossible, to develop it due to setback issues. It cannot be combined with other surrounding parcels because of differing ownership scenarios as well as differing zoning designations. The granting of the subject variance request will allow for the use of this underutilized site in a manner that is consistent with its existing zoning, and it is actually compatible and complimentary to the surrounding and proposed uses.
- g. This variance is necessary for the preservation and enjoyment of a substantial property right of the Applicant and extraordinary hardship would result from strict compliance with the provisions of this title because of the special geographical or physical circumstances or conditions affecting the property. Although the majority of the parcel is zoned B-2, which actually allows for construction of the condominium units, under the

current interpretation of County policy, the maximum number of dwelling units that would be allowed on this property without triggering a demonstration of that conformity is three. This would mean a loss of some of the 103 total housing units within the project, whereby 40 percent have already been reserved by local people from Central Maui.

- h. The loss of the Applicant's ability to proceed with the proposed development would be an extraordinary hardship on local buyers, and the granting of the subject variance request would preserve the Applicant's substantial property right.
- i. The reason for the subject variance request is that the current interpretation of County ordinance requires the demonstration of conformity between community plan and zoning at the time of building permit review. Ironically, the consolidation seeks to address the particular issues that exist with the parcel (i.e., its substandard size, its being landlocked, etc.).
- j. The ability to proceed with the proposed development will be beneficial to the public's health, safety, and welfare because the project will allow for the construction of much needed affordable housing. It will create economic activity and job opportunities in a currently under developed area, contributing to the revitalization of a new pedestrian-oriented downtown Kahului. Looking specifically at Parcel 23, inclusion of the parcel in the project will provide landscaped recreational open space that will also help with management of storm water quantity and quality.
- k. The property has obtained an appropriate zoning designation and it is not located in the Interim Zoning District. All of the proposed uses within the 'Aina 'O Kane development are located in areas with zoning designations appropriate to those uses. The condominium apartments and retail establishments will be located in the B-2 Community Business District. And Parcel 23, which is located in the R-3 Residential District, will

be used as a mini park which is a permitted use.

11. If a finding of fact is later found to be a conclusion of law it shall be so deemed.

#### CONCLUSIONS OF LAW

1. Hawaii Revised Statutes (hereinafter, "HRS"), §91-10(5) states that in a contested case proceeding, "[e]xcept otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence."
2. MCC, §18.32.010 and §12-801-74, BVA Rules, authorizes the Board to grant variances from the provisions of MCC, Title 18 when:
  - a. There are special geographical or physical circumstances or conditions affecting the property that are not common to all property in the area;
  - b. The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner and extraordinary hardship would result from strict compliance with the provisions of this title because of the special geographical circumstances or conditions affecting the property;
  - c. The special circumstances or conditions affecting the property are not the result of previous actions pertaining to the subdivision;
  - d. The granting of the variance shall not be detrimental to the public's health, safety, or welfare or injurious to other property in the vicinity of said property;
  - e. The said property has obtained an appropriate zoning designation, provided that for the purposes of this chapter, districts with interim zoning shall not be considered an appropriate zoning.
3. For the granting of the request from A & B KANE, LLC for a variance from MCC, §18.04.030 to allow open space,

landscaping, and a children's play area within a portion of land that is located within the County's R-3 Residential District and designated as Community Plan Business/Commercial and State Land Use Urban for the Kane Street Mixed Use Commercial Project located off of Kane and Vevau Streets, Kahului, Maui, Hawaii; TMK: (2) 3-7-005:003, 011, and 023, the Applicant has successfully demonstrated the burden of proof, the burden of evidence, and the burden of persuasion for the following requirements of MCC, §18.32.010 and §12-801-74, EVA Rules. Based on the facts stated above:

- a. There are special geographical and physical circumstances and conditions affecting the property that are not common to all property in the area;
  - b. The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner and extraordinary hardship would result from strict compliance with the provisions of this title because of the special geographical circumstances or conditions affecting the property;
  - c. The special circumstances and conditions affecting the property were not the result of previous actions pertaining to the subdivision;
  - d. The granting of the variance will not be detrimental to the public's health, safety, or welfare or injurious to other property in the vicinity of said property.
  - e. The said property has obtained an appropriate zoning designation.
5. If a conclusion of law is later found to be a finding of fact it shall be so deemed.

#### DECISION AND ORDER

It is hereby the final decision of the Board that the Findings of Fact and Conclusions of Law be made that request made by A & B KANE, LLC for a variance from MCC, §18.04.030 to allow open space, landscaping, and a children's play area within a portion of land that is located within the County's R-3 Residential District and designated as Community Plan Business/Commercial and State Land Use Urban for the Kane Street

Mixed Use Commercial Project located off of Kane and Vevau Streets, Kahului, Maui, Hawaii; TMK: (2) 3-7-005:003, 011, and 023, be approved, with the following conditions:

1. That the variance approval be applicable only to the proposed request as described in the Applicant's variance application dated June 30, 2008;
2. That the owner, its successors and permitted assigns shall indemnify and hold the County of Maui harmless from and against any loss, liability, claim or demand arising out of this variance, and shall procure, at its own cost and expense, and shall maintain during the entire period of this variance, a policy or policies of comprehensive liability insurance, in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00), naming the County of Maui as a named additional insured, insuring and defending the applicant and County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this variance approval, including but not limited to: (1) claims from any accident in connection with the approved variance, or occasioned by any act or nuisance made or suffered in connection with the approved variance in the exercise by the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this variance approval. Copies of a hold harmless agreement and the policy naming County of Maui as an additional named insured shall be submitted to the Planning Department within ninety (90) calendar days from the date of transmittal of the decision and order.

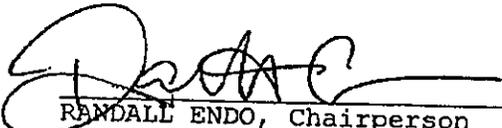
It is hereby the final order of the Board to approve the request by A & B KANE, LLC for a variance from MCC, S18.04.030 to allow open space, landscaping, and a children's play area within a portion of land that is located within the County's R-3 Residential District and designated as Community Plan Business/Commercial and State Land Use Urban for the Kane Street Mixed Use Commercial Project located off of Kane and Vevau Streets, Kahului, Maui, Hawaii; TMK: (2) 3-7-005:003, 011, and 023, with the following conditions:

1. That the variance approval be applicable only to the proposed request as described in the Applicant's variance application dated June 30, 2008;
2. That the owner, its successors and permitted assigns shall

indemnify and hold the County of Maui harmless from and against any loss, liability, claim or demand arising out of this variance, and shall procure, at its own cost and expense, and shall maintain during the entire period of this variance, a policy or policies of comprehensive liability insurance, in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00), naming the County of Maui as a named additional insured, insuring and defending the applicant and County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this variance approval, including but not limited to: (1) claims from any accident in connection with the approved variance, or occasioned by any act or nuisance made or suffered in connection with the approved variance in the exercise by the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this variance approval. Copies of a hold harmless agreement and the policy naming County of Maui as an additional named insured shall be submitted to the Planning Department within ninety (90) calendar days from the date of transmittal of the decision and order.

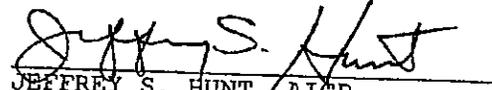
Pursuant to HRS, §91-14, should any aggrieved party wish to appeal this final decision and order, it must be filed with the Circuit Court of the Second Judicial Circuit within thirty (30) days from the date of the mailing by certified mail of the said decision and order.

Dated at Wailuku, Maui, Hawaii, this 27<sup>th</sup> of October, 2008.

  
RANDALL ENDO, Chairperson  
BOARD OF VARIANCES AND APPEALS  
COUNTY OF MAUI

C E R T I F I C A T I O N

I HEREBY CERTIFY that this is a full, true and correct copy of the Original.



JEFFREY S. HUNT, AICP,  
Planning Director  
Department of Planning

BEFORE THE BOARD OF VARIANCES AND APPEALS

COUNTY OF MAUI

STATE OF HAWAII

In The Matter of The Request of

A & B KANE, LLC

For approval of a variance from Maui County Code, §18.04.030 to allow open space, landscaping, and a children's play area within a portion of land that is located within the County's R-3 Residential District and designated as Community Plan Business/Commercial and State Land Use Urban for the Kane Street Mixed Use Commercial Project located off of Kane and Vevau Streets, Kahului, Maui, Hawaii; TMK: (2) 3-7-005:003, 011, and 023

DOCKET NO.: BVAV 20080002

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER; CERTIFICATE OF SERVICE

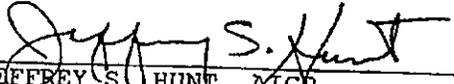
HRG. DATE: AUGUST 14, 2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Finding of Fact, Conclusions of Law and Decision and Order was duly served upon the party listed below by the means stated:

	<u>U.S.</u> <u>Mail</u>	<u>Personal</u> <u>Delivery</u>	<u>Facsimile</u>
A&B KANE, LLC 822 BISHOP STREET HONOLULU, HAWAI'I 96813	(X)	( )	( )
Certified Receipt No. 7007 1490 0003 3053 2422			
CHRIS HART & PARTNERS, INC. 115 NORTH MARKET STREET WAILUKU, HAWAI'I 96793	(X)	( )	( )
Certified Receipt No. 7007 1490 0003 3053 2439			

DATED at Wailuku, Maui, Hawaii, this 28<sup>th</sup> of October, 2008.

  
JEFFREY S. HUNT, AICP,  
Planning Director  
Department of Planning

K:\WP\_DOCS\PLANNING\BVA\VARIANCES\2008\0002\_KaneSteetProject\FOF.COL.DO.doc



W I T N E S S E T H:

WHEREAS, Applicant is the owner of a parcel of  
(owner/lessee)  
land situated at Kane Street, Kahului, Maui, Hawaii and  
(address/location)  
identified for real property tax purposes as Tax Map Key No. (TMK):  
(2) 3-7-005:003, 011, and 023 ; and

WHEREAS, Applicant requested approval of a variance from Maui  
County Code, Section(s) 18.04.030 , for  
approval of a variance from Maui County Code, Section 18.04.030 to allow  
(Public Hearing Notice)  
open space, landscaping, and a children's play area within a portion of land  
that is located within the County's R-3 Residential District and designated as  
Community Plan Business/Commercial and State Land Use Urban for the  
Kane Street Mixed Use Commercial Project located off Kane and Vevau Streets,  
Kahului, Maui, Hawaii; TMK: (2) 3-7-005:003, 011, and 023

\_\_\_\_\_, and  
WHEREAS, on August 14, 2008 , the Board of Variances  
and Appeals (Board) conducted a public hearing at the Applicant's  
request and subsequently decided to grant the variance, BVA File  
No. 20080002 , subject to the conditions attached hereto as  
Exhibit "A", and to hold the County of Maui harmless from any loss,  
liability, claim or demand arising out of the Board's approval of  
the subject variance; now, therefore,

In consideration of the Board's granting of the variance, the Applicant, the Applicant's heirs, assigns, and successors in interest agree to defend, indemnify, and hold harmless the Board and its members in their individual as well as official capacities, and the County, its employees and assigns from and against all claims including claims for property damage, personal injury, and wrongful death, that may arise from the approval of the subject variance and any approvals granted to the Applicant pursuant to said variance, and will reimburse the County, its employees, and assigns for any judgments, costs, and expenses, including attorney's fees incurred in connection with the defense of any such claim.

It is further understood that the provisions of this agreement shall run with the land and shall bind and constitute notice to all subsequent grantees, assignees, mortgagees, lienors and other persons who may claim an interest in the subject property.

IN WITNESS WHEREOF, the parties hereto duly executed this instrument on the date first above written.

APPLICANT(S): A&B KANE, LLC  
A Hawaii limited liability company  
By: A&B Properties, Inc., a Hawaii Corporation and its Manager

By: *[Signature]*  
(Applicant's Signature)

RICHARD B. STACK SENIOR VICE PRESIDENT  
(Print Name)

By: *[Signature]*  
(Applicant's Signature)

CHARLES W. LOOMIS ASST. SECRETARY  
(Print Name)

\_\_\_\_\_  
(Applicant's Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Applicant's Signature)

\_\_\_\_\_  
(Print Name)

APPROVED AS TO FORM  
AND LEGALITY

JAMES A. GIROUX  
Deputy Corporation Counsel  
COUNTY OF MAUI

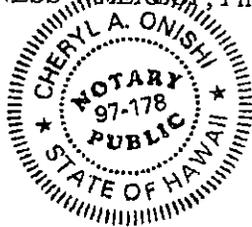
COUNTY OF MAUI

CHARMAINE TAVARES  
Its Mayor

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

On this 20<sup>th</sup> day of November, 2008, before me appeared Richard B. Stock, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, has been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Signature: *Cheryl A. Onishi*  
Print Name: CHERYL A. ONISHI  
Notary Public, State of Hawaii

My commission expires: APR 17 2009

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: Hold-Harmless

Agreement Doc. Date: Undated at time of notarization

No. of Pages: 9 w/ Exhibit A Jurisdiction: First Circuit

(in which notarial act is performed)

*Cheryl A. Onishi* 11/30/08  
Signature of Notary Date of Certificate

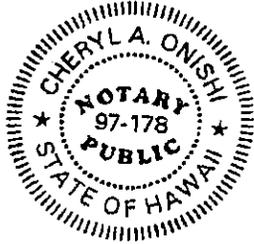
CHERYL A. ONISHI  
Printed Name of Notary



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

On this 20th day of November, 2008, before me appeared CHARLES W. LOOMIS, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, has been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Signature: Cheryl A. Onishi  
Print Name: CHERYL A. ONISHI  
Notary Public, State of Hawaii

My commission expires: APR 17 2009

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

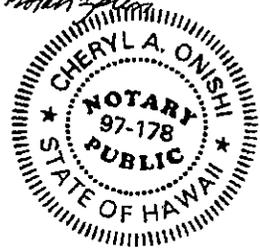
Document Identification or Description: Agreement Hold- Harmless

No. of Pages: 9 w/ Exhibit A Doc. Date: Undated at time of notarial act  
Jurisdiction: First Circuit

(in which notarial act is performed)

Signature of Notary: Cheryl A. Onishi Date of Certificate: 11/20/08

Printed Name of Notary: CHERYL A. ONISHI



STATE OF HAWAII        )  
                              ) SS.  
COUNTY OF MAUI        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn or affirmed did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	
_____	
_____	
_____	
Notary Signature: _____	
Date: _____	

STATE OF HAWAII        )  
                              ) SS.  
COUNTY OF MAUI        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before  
me personally appeared \_\_\_\_\_  
to me personally known, who, being by me duly sworn or affirmed did  
say that such person executed the foregoing instrument as the free  
act and deed of such person, and if applicable in the capacity  
shown, having been duly authorized to execute such instrument in  
such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official  
seal.

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	† Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	
_____	
_____	
_____	
Notary Signature: _____	
Date: _____	

STATE OF HAWAII        )  
                              ) SS.  
COUNTY OF MAUI        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared CHARMAINE TAVARES, to me personally known, who, being by me duly sworn, did say that she is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, in the capacity shown, having been duly authorized to execute such instrument in such capacity, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed in behalf of said County of Maui by authority of its Charter, and the said CHARMAINE TAVARES acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	
_____	
_____	
_____	
Notary Signature: _____	
Date: _____	

EXHIBIT "A"

1. That the variance approval be applicable only to the proposed request as described in the Applicant's variance application dated June 30, 2008.
2. That the owner, its successors and permitted assigns shall indemnify and hold the County of Maui harmless from and against any loss, liability, claim or demand arising out of this variance, and shall procure, at its own cost and expense, and shall maintain during the entire period of this variance, a policy or policies of comprehensive liability insurance, in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00), naming the County of Maui as a named additional insured, insuring and defending the applicant and County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this variance approval, including but not limited to: (1) claims from any accident in connection with the approved variance, or occasioned by any act or nuisance made or suffered in connection with the approved variance in the exercise by the applicant of said rights; and (2) all actions, suits damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this variance approval. Copies of a hold harmless agreement and the policy naming County of Maui as an additional named insured shall be submitted to the Planning Department within ninety (90) calendar days from the date of transmittal of the decision and order.

## SPECIAL MANAGEMENT AREA USE PERMIT

Section 30 of the Declaration provides as follows:

30. **Special Management Area Use Permit.** The Project is subject to a Special Management Area Use Permit (SM1 2005/0004), as more particularly described and approved in a letter dated June 30, 2005, from the County of Maui Department of Planning, as amended by letter dated September 14, 2007 (the "SMA Permit"). A copy of the SMA Permit is attached to this Declaration as Exhibit "D" and made a part hereof. The SMA Permit contains conditions, some of which are binding on the Association, including (but not limited to) liability insurance requirements more particularly set forth in the SMA Permit. The SMA Permit also includes requirements for the Project's landscaping scheme and requirements that relate to that portion of Vevau Street that is part of the Project.

A copy of the SMA Permit follows beginning on the next page of this Exhibit "O".

*[The remainder of this page is intentionally left blank.]*

JUL 25 '05 02:43PM

ALAN M. ANA'AAVA  
Mayor  
MICHAEL W. FOLEY  
Director  
WAYNE A. BOTEILHO  
Deputy Director



COUNTY OF MAUI  
DEPARTMENT OF PLANNING

June 30, 2005

RECEIVED  
JUL 06 2005

Mr. Michael Summers  
Chris Hart & Partners  
1955 Main Street, Suite 200  
Wailuku, Hawaii 96793

Dear Mr. Summers:

RE: Special Management Area Use Permit Application for the Kane Street Commercial Mixed Use Development and Related Improvements at TMK 3-7-005:003, 011 and 023, Kahului, Maui, Hawaii (SM1 2005/0004)

At its regular meeting on June 14, 2005, the Maui County Planning Commission (Commission) reviewed the above request and after due deliberation, voted to grant approval, subject to the following twenty-nine (29) conditions:

STANDARD CONDITIONS

1. That construction of the proposed project shall be initiated by June 30, 2007. Initiation of construction shall be determined as construction of offsite improvements, issuance of a foundation permit and initiation of construction of the foundation, or issuance of a building permit and initiation of building construction, whichever occurs first. Failure to comply within this two (2) year period will automatically terminate this Special Management Area Use Permit unless a time extension is requested no later than ninety (90) days prior to the expiration of said two (2) year period. The Planning Director shall review and approve a time extension request but may forward said request to the Planning Commission for review and approval.
2. That the construction of the project shall be completed within five (5) years after the date of its initiation. Failure to complete

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793  
PLANNING DIVISION (808) 270-7735; ZONING DIVISION (808) 270-7253; FACSIMILE (808) 270-7634

PUBLIC REPORT EXHIBIT "O"  
PAGE 2

Mr. Michael Summers  
June 30 2005  
Page 2

construction of this project will automatically terminate the subject Special Management Area Use Permit. A time extension shall be requested no later than ninety (90) days prior to the completion deadline. The Planning Director shall review and approve a time-extension request but may forward said request to the Planning Commission for review and approval.

3. The permit holder or any aggrieved person may appeal to the Planning Commission any action taken by the Planning Director on the subject permit no later than ten (10) days from the date the Director's action is reported to the Commission.
4. That the subject Special Management Area Use Permit shall not be transferred without prior written approval in accordance with §12-202-17(d) of the Special Management Area Rules of the Maui Planning Commission. However, in the event that a contested case hearing preceded issuance of said Special Management Area Use Permit, a public hearing shall be held upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.
5. That the applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Special Management Area Use Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this Special Management Area Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (1,000,000.00) naming the County of Maui as an additional named insured, insuring and defending the applicant and County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this permit. A copy of a policy naming County of

Mr. Michael Summers  
June 30 2005  
Page 3

Maui as an additional named insured shall be submitted to the Department within ninety (90) calendar days from the date of transmittal of the decision and order.

6. That full compliance with all applicable governmental requirements shall be rendered.
7. That the applicant shall submit plans regarding the location of any construction related structures such as, but not limited to trailers, sheds, equipment and storage areas and fencing to be used during the construction phase to the Maui Planning Department for review and approval.
8. That the applicant shall submit to the Planning Department five (5) copies of a detailed report addressing its compliance with the conditions established with the subject Special Management Area Use Permit. A preliminary report shall be reviewed and approved by the Planning Department prior to issuance of a BUILDING permit. A final compliance report shall be submitted to the Planning Department for review and approval prior to issuance of a certificate of occupancy.
9. That the applicant shall develop the property in substantial compliance with the representations made to the Commission in obtaining the Special Management Area Use Permit. Failure to so develop the property may result in the revocation of the permit.
10. That appropriate measures shall be taken during construction to mitigate the short term impacts of the project relative to soil erosion from wind and water, ambient noise levels (including Community Noise permit if required), traffic disruptions and construction waster.
11. That appropriate energy conservation measures shall be incorporated into the project, which may include but not limited to, energy conserving building materials, solar water heaters, state of the art air conditioning systems, photo voltaic systems, etc.
12. That low level lighting shall be used on the building and within the landscaped areas and further parking lot lighting shall be

PUBLIC REPORT EXHIBIT "O"

PAGE 4

Mr. Michael Summers  
June 30 2005  
Page 4

fully shielded subject to applicable design guidelines and crime prevention through environmental design.

13. Appropriate filtration measures to separate petroleum products and other potential contaminants shall be incorporated into the project's drainage plan and shall be maintained regularly and at a minimum annually.
14. That the applicant shall be responsible for all required infrastructure improvements as required by Maui County Code, as amended, and other County Codes and Rules and Regulations, including but not limited to water source and system improvements for both domestic and fire protection, drainage improvements, traffic related improvements, wastewater system improvements, and utility upgrades. Said improvements shall be constructed concurrently with the development and shall be completed prior to issuance of a certificate of occupancy unless improvements are bonded by the developer.
15. That the applicant shall use "best practices" in Crime Prevention Through Environmental Design (CPTED), whenever possible, in developing the project. In CPTED, the design and building of structures, landscaping, and lighting are interwoven to increase surveillance, limit accessibility, and increase opportunities for apprehension resulting in a decrease in the likelihood of crime.

**PROJECT SPECIFIC CONDITIONS**

16. In the event that historic sites (human skeletal remains, etc.) are identified during construction activities, all work will cease in the immediate vicinity of the find, the find will be protected from additional disturbance, and the State Historic Preservation Office (SHPD) will be contacted immediately. No further construction activity in the vicinity of the find will be permitted without the approval of the State Historic Preservation Office. Furthermore, an SHPD-approved monitoring plan will be implemented prior to any ground altering activities.

Mr. Michael Summers  
June 30 2005  
Page 5

17. That the proposed development will utilize native plants and trees in its landscaping scheme. That all canopy shade trees for Kane Street and School Avenue shall meet with the approval of the Department of Parks and Recreation pursuant to Maui County Code, Chapter 12.24A Landscape Planting and Beautification and that root barriers will be installed for all street trees.
18. That final construction, design and operation shall be in accordance with the site plans, designs and representations made on May 17, 2005 to the Maui County Urban Design Review Board at its regular meeting and approved by the Board subject to the agreed upon condition that Vevau Street shall have stamped and/or textured paving for the purposes of traffic calming. Furthermore, that the site plans approved by UDRB are subject to revisions for vehicular access, ingress and egress from Kane Street as recommended by DPWEM.
19. A road-widening lot shall be provided for the adjoining half of School Avenue to provide for future 56 foot wide right-of-way and improved to County standards to include, but not be limited to pavement widening, construction of curb, gutter and sidewalk, street lights and relocation of utilities underground. Said lot shall be dedicated to the County upon completion of the improvements.
20. That the existing Kane Street does not meet County standards based on roads located in business/commercial zoning and therefore shall be improved to County standards.
21. That a National Pollution Discharge Elimination System Permit (NPDES) will be obtained prior to building permit approval.
22. That the Applicant will coordinate with the Maui Electric Company (MECO) and may be required to provide access and electrical easements for existing MECO facilities. Applicant should meet with MECO to verify electrical demand and indicate desired service locations.
23. That the planting space shall be as large as possible; perhaps joining them to create a strip for a greater root growth area. Also, a variety of species shall be used within the parking lot.

Mr. Michael Summers  
June 30 2005  
Page 6

Suggestions were *Colvillea racemosa* (Fabaceae) aka Colvillea, *Koelreuteria elegans ssp formosana* (Sapindaceae) aka Golden Rain/Shrimp Tree; and *Michelia champaca* (Magnoliaceae) aka Orange Champak/Mulang. (Recommended by Arborist Committee)

24. That any modification to traffic-flow patterns on the privately owned segment of Vevau Street shall be coordinated with the County. Modifications to signing, pavement markings, and travel-flow patterns may be required and pedestrian and bicyclist safety issues at the crossing of Kane Street and Lono Avenue must be addressed.
25. That a detailed, final Traffic Impact Assessment Report for the entire subdivision/development shall be submitted to DPWEM and DOT for review and approval. The report shall address regional traffic impacts and include assessments from the local community police officer. Traffic impacts at the Kane Street - Kamehameha Avenue Intersection must also be analyzed. That any restriction to traffic circulation on Vevau Street may require mitigation through the installation of a traffic signal or other measures requisite of fair-share contribution by the Applicant.
26. That pedestrian safety improvements be incorporated to the satisfaction of DPWEM and/or the Police Department.
27. That the Applicant shall contribute its fair share for roadway improvements, traffic mitigation, and transportation / pedestrian safety measures as determined by DOT and/or DPWEM.
28. That the Applicant address the comments of DPWEM, as stated June 6, 2005 by letter, to the satisfaction of DPWEM prior to the issuance of a building permit.
29. That the developer address the comments of DOT, as stated May 20, 2005 by letter, to the satisfaction of DOT prior to the issuance of a building permit.

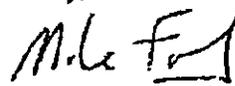
Mr. Michael Summers  
June 30 2005  
Page 7

The conditions of this Special Management Area Use Permit shall be enforced pursuant to §12-202-23 and §12-202-25 of the Special Management Area Rules for the Maui Planning Commission.

Further, the Commission adopted the Department Report and Recommendation prepared for the June 14, 2005, meeting as its Decision and Order. Parties to proceedings before the commission may obtain judicial review of decision and orders issued by the commission in the manner set forth in Chapter 91-14, Hawaii Revised Statutes.

Thank you for your cooperation. If additional clarification is required, please contact Mr. Thorne Abbott, Staff Planner, of my office at 270-7520.

Sincerely,

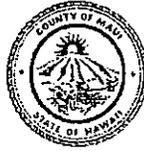


MICHAEL W. FOLEY  
Planning Director

MWF:TA:dm

- c: Wayne Botelho, Deputy Planning Director
- Clayton Yoshida, AICP, Planning Program Administrator
- Aaron Shinmoto, P.E., Planning Program Administrator (2)
- Thorne Abbott, Staff Planner
- Development Services Administration (2)
- Department of Transportation
- DLNR - SHPD
- Chris Hart and Partners
- Project File
- General File
- (K:\WP\_DOCS\PLANNING\SM1\2005\0004\_KaneCommercial\MPCAApproval.wpd).

CHARMAINE TAVARES  
Mayor  
JEFFREY S. HUNT  
Director  
COLLEEN M. SUYAMA  
Deputy Director



COUNTY OF MAUI  
DEPARTMENT OF PLANNING

SEP 20 2007  
CHRIS HART & PARTNERS  
Landscape Architecture & Planning

cc: MHC +  
JAS  
09/006

September 14, 2007

Mr. Michael Summers, Senior Planner  
Chris Hart & Partners, Inc.  
115 North Market Street  
Wailuku, Hawaii 96793

Dear Mr. Summers:

**RE: Amendment for Special Management Area Use Permit for the Kane Street Commercial Mixed Use Development and Related Improvements at TMK: 3-7-005:003, 011 and 023, Kahului, Maui, Hawaii (SM1 2005/0004)**

At its regular meeting on August 14, 2007, the Maui County Planning Commission (Commission) reviewed the above request pursuant to Chapter 12-202-17, *Amendments to and determinations of permit terms, conditions, and time stipulations*, Special Management Area Rules for the Maui Planning Commission. The Maui Planning Commission voted to grant approval for the request, dated April 13, 2007, to amend Condition No. 1 of the subject Special Management Area Use Permit to extend the time period to initiate construction of the project subject to the following amended condition standard condition:

1. That construction of the proposed project shall be initiated by **June 30, 2009**. Initiation of construction shall be determined as construction of offsite improvements, issuance of a foundation permit and initiation of construction of the foundation, or issuance of a building permit and initiation of building construction, whichever occurs first. Failure to comply within this **additional two (2) year** period will automatically terminate this Special Management Area Use Permit approval unless a time extension is requested no later than ninety (90) days prior to the expiration of said two (2) year period. The Planning Director shall review and approve a time-extension request but may forward said request to the Planning Commission for review and approval.

PUBLIC REPORT EXHIBIT "O"

PAGE 9

Mr. Michael Summers, Senior Planner  
September 14, 2007  
Page 2

On July 12, 2007, the Department of Planning (Department) approved the Preliminary Compliance Report (Report) for the project. The Report addressed the project's compliance with conditions to date and acknowledged the requirement for additional permits and compliance with project-specific conditions. **Prior to initiation of construction, please provide the Department with evidence of compliance with the following outstanding project-specific conditions:**

- Condition 16, Archeological Monitoring Plan approval letter;
- Condition 21, Evidence of National Pollutant Discharge Elimination System Permit;
- Condition 25, Final Traffic Impact Analysis Report approval letter;
- Condition 28, Evidence that the applicant has addressed Department of Public Works and Department of Environmental Management comments; and
- Condition 29, Evidence that the applicant has addressed State of Hawaii Department of Transportation comments.

Thank you for your cooperation. If additional clarification is required, please contact Mr. James Buika, Staff Planner, by email [james.buika@mauicounty.gov](mailto:james.buika@mauicounty.gov) or at 270-6271.

Sincerely,



JEFFREY S. HUNT, AICP  
Planning Director

JSH:JAB:bg

c: Clayton I. Yoshida, AICP, Planning Program Administrator  
Aaron H. Shinmoto, PE, Planning Program Administrator (2)  
Thorne E. Abbott, Staff Planner  
Jame A. Buika, Staff Planner  
Development Services Administration (2)  
Department of Public Works  
Department of Environmental Management  
State of Hawaii Department of Transportation  
Project File  
General File

K:\WP\_DOCS\PLANNING\SM11200510004\_KaneCommercialExtension 2007\TimeExtensionApproval, 08.14.07.wpd