

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

CONDOMINIUM PROJECT NAME	KAHULUI TOWN CENTER QUADRANT ONE
Project Address	Corner of Puunene and Kamehameha Avenues, Kahului, Maui 96732
Registration Number	6632
Effective Date of Report	April 8, 2009
Developer(s)	Kahului Town Center LLC, a Hawaii Limited Liability Company

**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.

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*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. **FUTURE DEVELOPMENT IMPACTS.** This Project initially consists of two 3-story office and retail Buildings, designated Buildings A and B. Although the Developer currently plans to construct both of these concurrently, the Developer has reserved the right to defer one of the Buildings and construct it in a later phase or to replace it depending on market and other considerations. The Developer has also reserved the right to construct additional Buildings in and around the Project and the Developer expects to do so in the future. Buyers should anticipate that the Developer's exercise of these rights may result in temporary or permanent impacts, including construction impacts such as noise, dust and changes in views, temporary or permanent closure of open areas as additional Buildings are constructed, and increases in the numbers of users of the parking areas and other common areas of the Project. PLANS FOR FUTURE EXPANSION OF THE PROJECT ARE SUBJECT TO CHANGE AT THE DEVELOPER'S DISCRETION. IN ORDER TO IMPLEMENT THE EXPANSION OF THE PROJECT THE DEVELOPER HAS RESERVED BROAD RIGHTS IN THE PROJECT DOCUMENTS THAT ALLOW DEVELOPER TO DO SO WITHOUT THE INPUT OR CONTROL OF UNIT OWNERS. THERE IS NO GUARANTY AS TO WHEN AND WHERE FUTURE BUILDINGS IN THE PROJECT WILL BE BUILT OR AS TO THE BUSINESSES, USES AND ACTIVITIES THAT MAY ULTIMATELY BE INCLUDED IN THE PROJECT, AND ALL USES PERMITTED UNDER APPLICABLE COUNTY ZONING COULD BE PERMITTED WITHIN THE PROJECT. BECAUSE THE FUTURE DEVELOPMENT OF THE PROJECT COULD HAVE SIGNIFICANT IMPACTS ON THE PROJECT AND BUYER'S USE AND ENJOYMENT OF A UNIT, BUYERS SHOULD CAREFULLY CONSIDER THE POSSIBILITY THAT THE PROJECT MAY BE DEVELOPED IN WAYS NOT CURRENTLY ANTICIPATED, AND BUYERS SHOULD PURCHASE A UNIT IN THE PROJECT ONLY IF THEY ACCEPT THE POSSIBILITY OF SUCH POTENTIAL CHANGES AND IMPACTS. Buyers should carefully review Exhibit G (Developer's Reserved Rights) for important information on these and other rights that the Developer has reserved.

2. **PERMITTED USES OF UNITS.** The Units in the Project may be used only for the businesses and activities permitted under the Project's condominium Declaration and the Unit's initial Unit Deed with Reservations and Covenants, which are summarized on Exhibit E (Permitted and Prohibited Uses). Each Buyer should carefully review the uses of Units that are permitted to confirm that the buyer's intended use is permissible.

3. **IMPACTS OF GROUND FLOOR USES.** The Developer currently anticipates that some Units on the ground floors of Buildings A and B will be used for restaurant, retail, medical office and other uses that may result in impacts such as noise, odors, and/or heavier use of parking at certain times of the day. Buyers of Units on the second and third floors of the Project should carefully consider these uses and their potential impacts.

THESE SPECIAL ATTENTION ITEMS CONTINUE ON THE NEXT PAGE

**4. TSUNAMI & FLOOD RISKS.** The Project is located in a low-lying area near Kahului Harbor and within a mile of the Pacific Ocean in a designated Tsunami Evacuation Area. This means that in the event of a Tsunami (Tidal Wave) the Project could be impacted by destructive and dangerous waves and flooding. The Project's location in a Tsunami Evacuation Area may also increase the cost of securing insurance and/or make it more difficult to secure insurance.

**5. KAHULUI TOWN CENTER MASTER CONDOMINIUM.** This Project is the initial increment of a larger, master-planned development called Kahului Town Center. Kahului Town Center when fully developed is anticipated to include most or all of the land bounded by Kaahumanu, Lono, Puunene, and Kamehameha Avenues. It is expected to be developed over at least five to ten years and as currently contemplated is planned to include a mix of residential, retail, office and commercial uses. As currently contemplated, Kahului Town Center will be developed as four blocks divided by intersecting private roadways; this Project is located within the first of those blocks, designated as Quadrant 1. PLANS FOR KAHULUI TOWN CENTER ARE SUBJECT TO CHANGE AT THE DEVELOPER'S DISCRETION. IN ORDER TO DEVELOP KAHULUI TOWN CENTER THE DEVELOPER HAS RESERVED BROAD RIGHTS IN THE DOCUMENTS FOR THIS PROJECT AND FOR KAHULUI TOWN CENTER AS A WHOLE THAT ALLOW DEVELOPER TO DEVELOP FUTURE PHASES OF THIS PROJECT AND KAHULUI TOWN CENTER WITHOUT THE INPUT OR CONTROL OF UNIT OWNERS. THERE IS NO GUARANTY AS TO WHEN AND WHERE FUTURE BUILDINGS AND IMPROVEMENTS IN KAHULUI TOWN CENTER WILL BE BUILT OR AS TO THE BUSINESSES, USES AND ACTIVITIES THAT MAY ULTIMATELY BE INCLUDED IN KAHULUI TOWN CENTER, AND ALL USES PERMITTED UNDER APPLICABLE COUNTY ZONING COULD BE PERMITTED WITHIN KAHULUI TOWN CENTER. BECAUSE THE FUTURE DEVELOPMENT OF KAHULUI TOWN CENTER COULD HAVE SIGNIFICANT IMPACTS ON THIS PROJECT AND A BUYER'S USE AND ENJOYMENT OF A UNIT, BUYERS SHOULD CAREFULLY CONSIDER THE POSSIBILITY THAT KAHULUI TOWN CENTER MAY BE DEVELOPED IN WAYS NOT CURRENTLY ANTICIPATED, AND BUYERS SHOULD PURCHASE A UNIT IN THE PROJECT ONLY IF THEY ACCEPT THE POSSIBILITY OF SUCH POTENTIAL CHANGES AND IMPACTS.

Kahului Town Center is being developed as a condominium, the Kahului Town Center Master Condominium (the "Master Condominium"), that initially consists of four Units. Each Unit in the Master Condominium consists of one of the blocks within KTC, and it is expected that each of the Units will be developed as a separate condominium within the Master Condominium. This Project is located within one of the four blocks in KTC, located at the corner of Puunene and Kamehameha Avenues, which is Unit 1 of the Master Condominium. The Master Condominium's principal common elements are the private roads within KTC, which will be maintained by the Master Condominium's owners association.

Because this Project is part of the Master Condominium, owners in this Project will be subject to the terms and conditions of the Master Condominium's Declaration and Bylaws. Owners in this Project will have rights to participate in management of the Master Condominium, including selection of a representative of this Project on the Master Condominium's Board of Directors, rights to attend and participate in meetings of the Master Condominium's Association and Board, and rights to information and documentation about the Master Condominium.

Further, as reflected in Exhibit H (Estimated Maintenance Fees), owners in this Project will pay a share of the common expenses of maintaining and operating the Master Condominium's common elements, which are included in this Project's maintenance fees. However, this Project will have its own separate meter for common area utilities such as water and electricity, and the expenses of those utilities will be a common expense of this Project. Similarly, as detailed in Exhibit H, most expenses of operating and maintaining this Project are separate from the Master Condominium.

KTC will also be subject to a recorded Master Community Charter for Kahului Town Center ("Charter") that contains covenants, conditions, easements and restrictions enforceable by the Developer that will be binding on all owners in this Project. This Charter has not been recorded yet, but it will be recorded prior to close of unit sales. An unrecorded copy of the Charter is attached as Exhibit M. When it is recorded, Developer may amend this report to delete the unrecorded copy attached as Exhibit M and instead provide purchasers with the recorded Charter.

**BUYERS SHOULD CAREFULLY REVIEW EXHIBIT K (IMPORTANT INFORMATION ABOUT KAHULUI TOWN CENTER MASTER CONDOMINIUM) AND THE MASTER CONDOMINIUM'S DECLARATION OF CONDOMINIUM PROPERTY REGIME, CONDOMINIUM MAP AND BYLAWS, AND MASTER COMMUNITY CHARTER, COPIES OF WHICH ARE PROVIDED TO ALL BUYERS.**

The Developer has registered the Master Condominium with the Real Estate Commission under Registration No. 6781. Prospective purchasers are encouraged to review the Developer's Public Report for the Master Condominium for additional information on the Master Condominium. **PROSPECTIVE PURCHASERS SHOULD CONSULT WITH LEGAL COUNSEL REGARDING THE MASTER CONDOMINIUM, THE MASTER CONDOMINIUM DOCUMENTS AND THE MASTER COMMUNITY CHARTER AND ANY IMPACTS THEY MAY HAVE ON OWNERSHIP AND USE OF A UNIT IN THIS PROJECT.**

**6. PARKING.** Units in this Project do not have assigned parking stalls and the use of parking stalls in the Project and in the rest of Kahului Town Center is subject to regulation and restrictions and management by Developer as set forth in the Master Community Charter for Kahului Town Center. Buyers should carefully review Exhibit K (Important Information About

the Kahului Town Center Master Condominium) and Exhibit M (Charter) for more information on parking.

**7. SPECIAL MANAGEMENT AREA.** The Project is located in the Special Management Area governed by Hawaii Revised Statutes Chapter 205A, which imposes certain assessment and permitting requirements on both the initial development of the Project and Kahului Town Center, and on subsequent construction, activities and work within the Project potentially including construction, build-out and renovations that Unit owners may undertake from time to time. Developer has secured a Special Management Area permit for the development of the Project and Kahului Town Center from the Planning Commission of the County of Maui, a copy of which is attached to this Developer's Public Report as Exhibit L. Buyers should be aware that this permit requires the Project to maintain certain monkeypod trees within the Project and to provide 24-hour security once residential components of the Project have been constructed. These obligations will be the responsibility of the Master Project Association as a common expense. Buyers should be aware that they may be subject to Special Management Area assessment and permit requirements; for more information Buyers should contact the Planning Department of the County of Maui.

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## **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 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	Corner of Puunene and Kamehameha Avenues, Kahului, Maui 96732
Address of Project is expected to change because	Street address not assigned yet.
Tax Map Key (TMK)	(2) 3-7-7-9 (por.)
Tax Map Key is expected to change because	
Land Area	3.55 acres
Developer's right to acquire the Property if Developer is not the Fee Owner (describe)	Not Applicable

**1.2 Buildings and Other Improvements**

Number of Buildings	Two (2)
Floors Per Building	Three (3)
Number of New Building(s)	Two (2)
Number of Converted Building(s)	None (0)
Principle Construction Materials (concrete, wood, hollow tile, steel, glass, etc.)	Concrete, concrete fill, steel, 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 <u>    A    </u> .						

57	<b>Total Number of Units</b>
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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:	225
Number of Guest Stalls in the Project:	225
Number of Parking Stalls Assigned to Each Unit:	0
Attach Exhibit <u>N/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 G (Developer's Reserved Rights) and Exhibit K (Important Information About Kahului Town Center).	

**1.5 Boundaries of the Units**

Boundaries of the unit: See Exhibit B (Unit Boundaries)
--

**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 C (Permitted Alterations)
--

**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 type="checkbox"/>	Recreation Area
<input checked="" 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**

**Common Elements:** 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.

Described in Exhibit D .

Described as follows:

Common Element	Number
Elevators	Four (4)
Stairways	Four (4)
Trash Chutes	0

**1.10 Limited Common Elements**

**Limited Common Elements:** 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.

Described in Exhibit D .

Described as follows:

**1.11 Special Use Restrictions**

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.

<input checked="" type="checkbox"/>	Pets:
<input type="checkbox"/>	Number of Occupants:
<input checked="" type="checkbox"/>	Other: See Exhibit E (Permitted and Prohibited Uses)
<input type="checkbox"/>	There are no special use restrictions.

**1.12 Encumbrances Against Title**

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).

Exhibit F describes the encumbrances against title contained in the title report described below.

Date of the title report: February 26, 2009

Company that issued the title report: Title Guaranty of Hawaii, Inc.

**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 type="checkbox"/>	Residential		<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<input checked="" type="checkbox"/>	Commercial	57	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	B-2
<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 type="checkbox"/>	Other (Specify):		<input type="checkbox"/> Yes	<input type="checkbox"/> No	
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 type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Describe any variances that have been granted to zoning code			Not Applicable		

**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>Not Applicable</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>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", complete 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: Kahului Town Center LLC</p> <p>Business Address: 822 Bishop Street Honolulu, Hawaii 96813</p> <p>Business Phone Number: (808)525-8485 E-mail Address: nkiehm@ABProp.com</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>Manager: A&amp;B Properties, Inc., a Hawaii corporation Member: A&amp;B Properties, Inc., a Hawaii corporation Officers of A&amp;B Properties, Inc.: N. M. Buelsing, President; P. W. Hallin Executive Vice President; M. G. Wright, Executive Vice President; G. Y. M. Chun, Vice President; D. I. Haverly, Senior Vice President; N. I. Kiehm, Vice President; C. W. Loomis, Vice President &amp; Assistant Secretary; L. K. Parker, Vice President; T. H. Shigemoto, Vice President, D. M. Shigeta, Vice President, R. B. Stack, Jr., Senior Vice President; A.K. Arakawa, Senior Vice President, C. J. Benjamin, Treasurer, A. J. Nakamura, Secretary; and L. G. Rodolfich, Controller.</p>
<p><b>2.2 Real Estate Broker</b></p>	<p>Name: Commercial Properties of Maui, LLC Business Address: 1955 Main Street Suite 400 Wailuku, Hawaii 96793</p> <p>Business Phone Number: (808) 244-2200 E-mail Address: GHowe@mauibiz.com</p>
<p><b>2.3 Escrow Depository</b></p>	<p>Name: Title Guaranty Escrow Services, Inc. Business Address: 235 Queen Street 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 Kopaka Street Honolulu, Hawaii 96819</p> <p>Business Phone Number: (808)836-0911</p>
<p><b>2.6 Attorney for Developer</b></p>	<p>Name: Richard Kiefer, Kiefer &amp; Garneau LLC Business Address: 444 Hana Highway Suite 204 Kahului, Hawaii 96732</p> <p>Business Phone Number: (808)871-6016</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 17, 2008	2008-067585

Amendments to Declaration of Condominium Property Regime		
Land Court or Bureau of Conveyances	Date of Document	Document Number
Bureau of Conveyances	February 12, 2009	2009-031747

#### 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 17, 2008	2008-067586

Amendments to Bylaws of the Association of Unit Owners		
Land Court or Bureau of Conveyances	Date of Document	Document Number

#### 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	4627
Dates of Recordation of Amendments to the Condominium Map: March 3, 2009	

**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			
Have Been Adopted and Date of Adoption		✓	April 17, 2008
Developer does not plan to adopt House Rules			

**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>See Exhibit G (Developer's Reserved Rights)</p>

#### 4. CONDOMINIUM MANAGEMENT

##### 4.1 Management of the Common Elements

<b>Management of the Common Elements:</b> 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

<b>Estimate of the Initial Maintenance Fees:</b> 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
<input checked="" type="checkbox"/>		Sewer
<input type="checkbox"/>		TV cable
<input checked="" type="checkbox"/>		Other (specify) Trash Collection & Common Area Irrigation

##### 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
<input type="checkbox"/>		Other (specify)

## 5. SALES DOCUMENTS

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

Sales Documents on file with the Commission include, but are not limited to, the following:	
<input checked="" type="checkbox"/>	Specimen Sales Contract Exhibit I 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: December 7, 2007 Name of Escrow Company: Title Guaranty Escrow Services, Inc. Exhibit J 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 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 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.
<input type="checkbox"/>	There are <u>blanket liens</u> that may affect title to the individual units.

Type of Lien	Effect on Purchaser's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance
There are no liens currently, but the Developer may make a mortgage to finance construction.	In case of default or foreclosure, a buyer may lose the right to buy the unit and may also lose some or all of the buyer's deposit.

### 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 Exhibit I (Summary of Sales Contract)
Appliances: No appliances are included in the Units.

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

<p>Status of Construction:                  Construction has not started. Construction is currently estimated to start by October 2009 and be completed by October 2011. <b>ESTIMATED DATES ARE SUBJECT TO CHANGE AND DELAYS.</b></p>
<p>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.</p>
<p>Completion Deadline for any unit not yet constructed, as set forth in the sales contract:                  Under Section H.1 of the Sales Contract, the Developer is obligated to complete construction of a buyer's Unit within five years from the date the Buyer's contract becomes binding, subject to extension if completion is delayed due to events beyond the Developer's control.</p>
<p>Completion Deadline for any repairs required for a unit being converted, as set forth in the sales contract:                  Not Applicable.</p>

**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>If the box to the left is checked, Sections 5.6.2 and 5.7, which follow below, will not be applicable to the project.</p>
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**5.6.2 Purchaser Deposits Will Be Disbursed Before Closing**

<p>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):</p>	
<input checked="" type="checkbox"/>	<p>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</p>
<input type="checkbox"/>	<p>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.</p>

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

<b>Box A</b> <input type="checkbox"/>	<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><u>Important Notice Regarding Your Deposits:</u></b> 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.</p>
<b>Box B</b> <input checked="" type="checkbox"/>	<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><u>Important Notice Regarding Your Deposits</u></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><u>you will not have the right to rescind or cancel the sales contract by reason of such submission and amendment.</u></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><u>Important Notice Regarding Your Deposits</u></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
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:  Kahului Town Center Master Condominium Declaration, Bylaws and Map and the Master Community Charter for Kahului Town Center. See Exhibit K (Important Information Regarding Kahului Town Center) regarding these documents, copies of which will be provided to all prospective purchasers.

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**

1. **CONTRACTOR REPAIR ACT NOTICE.** The following disclosure required by Hawaii Revised Statutes Chapter 672E applies to all Unit sales in the Project:

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.

2. **DEMOLITION OF EXISTING BUILDINGS.** The site of the Project and Kahului Town Center currently contains existing buildings which the Developer will demolish as this Project and Kahului Town Center are developed, and thus those buildings are not included in this condominium. Demolition of existing buildings and structures is subject to various county permitting requirements, compliance with which has the potential to cause delays to the Project. Developer anticipates that some of the structures being demolished may contain lead-based paint, asbestos, or other environmental conditions. Developer will be solely responsible for addressing and resolving such matters in accordance with applicable requirements.

3. **POTENTIAL ROOFTOP COMMUNICATIONS AND ENERGY FACILITIES.** As set forth in Section 18.9 of the Project's Declaration, the Developer has reserved the right to install on the roofs of Buildings A and B (i) communications antennas, including cellphone antennas, dishes, reflectors, towers, repeaters and accessory lines, cables, wiring, equipment and conduits, and/or (ii) a system or systems of photovoltaic panels and/or other equipment and apparatus for the collection and conversion of solar energy, wind energy or other forms of energy into electrical power.

4. **REPURCHASE OPTION.** Under Article 21 of the Declaration the Developer reserves the right to repurchase a Unit for a period of ten years from the close of the initial Unit sale 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 Owner's satisfaction within a reasonable period of time, as determined by the Developer in its sole discretion. **ARTICLE 21 OF THE DECLARATION CONTAINS SPECIFIC TERMS FOR DETERMINING THE REPURCHASE PRICE AND SPECIFIC MORTGAGEE PROTECTION PROVISIONS.**

5. **NON-POTABLE (IRRIGATION) WATER.** Irrigation water for landscaping within Kahului Town Center is expected to be provided by a private well located within the Kahului Town Center. Such water is not intended for human consumption and will not be filtered or chlorinated to meet the safe drinking water standards imposed by the State of Hawaii's Health Department. **ALL OWNERS AND OCCUPANTS OF THE PROJECT ARE CAUTIONED THAT THE WATER FROM THE IRRIGATION WATER SYSTEM MAY NOT BE CONSUMED OR USED FOR DOMESTIC POTABLE USES.**

6. ARCHEOLOGY. Archeological investigations of the Project site have not revealed any archeological sites or artifacts. Given the historic land use in the Kahului area it is possible however that during construction of the Project ancient or historic structures, burials, or traditional or historical cultural deposits maybe discovered. Accordingly the Developer has adopted a Archeological Monitoring Plan for the Project which has been accepted by the State of Hawaii's State Historic Preservation Division (SHPD); copies of the Plan and the SHPD acceptance are available for review upon request. Buyers should be aware that discovery of archeological sites during construction of the Project may result in delays due to the time required to properly and respectfully evaluate and address the sites and/or may result in changes to the layout, configuration or construction of the buildings or other improvements in the Project pursuant to Developer's reserved rights in the Project's Declaration.

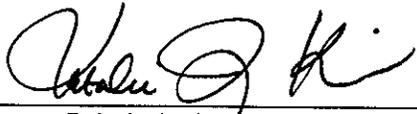
The Developer declares subject to the penalties set forth in Section 514B-69, HRS, that this project conforms to the existing underlying county zoning for the project, zoning and building ordinances and codes and all applicable permitting requirements adopted by the county in which the project is located,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

Kahului Town Center LLC

Printed Name of Developer

By:   
Duly Authorized Signatory\*

March 11, 2009  
Date

Natalie I. Kiehm, Vice President, A&B Properties, Inc., its Manager

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.**

**EXHIBIT A**

**LIST OF UNITS, UNIT AREAS AND COMMON INTEREST PERCENTAGES**

<u>Building A</u>			
<u>Unit No.</u>	<u>Net Area of Unit (Square Feet)</u>	<u>Approx. Lanai Area (Square Feet)</u>	<u>Common Interest (%)</u>
A101	2,644	--	3.7869%
A102	771	--	1.1043%
A103	820	--	1.1745%
A104	849	--	1.2160%
A105	849	--	1.2160%
A106	908	--	1.3005%
A107	1,564	--	2.2401%
A108	1,689	--	2.4191%
A113	2,367	--	3.3902%
A201	2,344	--	3.3573%
A202	1,338	--	1.9164%
A203	711	--	1.0183%
A204	711	--	1.0183%
A205	713	--	1.0212%
A206	1,564	--	2.2401%
A207	1,516	--	2.1713%
A213	2,317	--	3.3186%
A301	2,344	--	3.3573%

A302	1,338	--	1.9164%
A303	711	--	1.0183%
A304	711	--	1.0183%
A305	713	--	1.0212%
A306	1,564	--	2.2401%
A307	1,516	--	2.1713%
A314	2,317	--	3.3186%
<u>Building B</u>			
<u>Unit No.</u>	<u>Net Area of Unit (Square Feet)</u>	<u>Approx. Lanai Area (Square Feet)</u>	<u>Common Interest (%)</u>
B101	964	--	1.3807%
B102	928	--	1.3292%
B103	928	--	1.3292%
B104	944	--	1.3521%
B105	936	--	1.3406%
B106	851	--	1.2189%
B107	3,743	--	5.3610%
B108	928	--	1.3292%
B112	1404	--	2.0109%
B113	1050	--	1.5039%
B201	1,605	--	2.2988%
B202	778	--	1.1143%
B203	700	89	1.0026%

B204	700	89	1.0026%
B205	778	--	1.1143%
B206	778	--	1.1143%
B207	1,310	77	1.8763%
B208	1,181	--	1.6915%
B209	1,268	--	1.8161%
B215	860	--	1.2318%
B216	1,169	--	1.6743%
B301	1,605	--	2.2988%
B302	778	--	1.1143%
B303	700	89	1.0026%
B304	700	89	1.0026%
B305	778	--	1.1143%
B306	778	--	1.1143%
B307	1,310	--	1.8763%
B308	1,181	--	1.6915%
B309	1,268	--	1.8161%
B316	860	--	1.2318%
B317	1,169	--	1.6743%

## **Exhibit B**

### **Unit Boundaries**

As set forth in Section 3.2.2 of the Declaration of Condominium Property Regime for the Kahului Town Center Quadrant One condominium project, each Unit within Buildings A and B of the Project consists of the space within the boundaries of the Unit as shown on the Condominium Map, and shall be deemed to include as part of the Unit: (i) all the walls and partitions which are not load-bearing within its perimeter walls; (ii) the inner decorated or finished surfaces of all perimeter walls, floors and ceilings, including all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces; and (iii) all appliances and fixtures installed within the boundaries of the Unit and replacements thereof, including the portions of the air conditioning system serving the Unit that are located within the Unit (including any air handlers, ducts, and controls). The Units within Buildings A and B shall not be deemed to include: (i) the undecorated or unfinished surfaces of the perimeter (including party) walls or interior load bearing walls, (ii) the undecorated or unfinished surface of the floors and ceilings surrounding each Unit, (iii) any pipes, shafts, ducts, pumps, valves, wires, conduits or other utility or service lines which are utilized for or serve more than one Unit, (iv) a Unit's exterior shutters, awnings, doors and windows (together all cranks, frames and other window or door hardware), (v) any landing outside of the entry to a Unit, or (vi) the portions of the air conditioning system, including heat pumps, ducts, compressors, and other apparatus, that are located outside the boundaries of the Units.

## Exhibit C

### Permitted Alterations to Units

Each Unit in the Project is being sold in unimproved, "loft" condition. This means that the Developer will complete and deliver the Unit to a Buyer with only exterior door(s), metal framing studs showing demising walls (sheetrock not included), and bare concrete floors, and that Developer will not install any other improvements, utilities, appliances, floor coverings, furnishings, ceiling systems, utilities or other fixtures within the Unit. Accordingly, unless otherwise agreed in writing by the Developer, each Buyer is solely responsible for the "build-out" of the Buyer's Unit, including securing all necessary permits (including building and electrical permits, and Special Management Area assessments and/or permits), cladding and painting all interior walls, supplying and connecting all appliances, plumbing (to include "hook up" costs and fees), electrical connections and wiring (from "point of presence" for each building), telephone systems (from conduit running to each building ceiling space), furnishings, fixtures, floor coverings and ceiling systems for the Unit. Buyers must be aware that they will not be permitted to commence any Unit work or alteration until after their deed to the Unit has been recorded, they have secured all necessary permits from the County of Maui, including a Special Management Area (SMA) assessment and/or a SMA minor or major permit, if applicable, and the plans for their work or alterations have been approved in accordance with the Project's condominium documents.

Permitted Alterations and General Requirements. To implement the build-out of a Unit, the Buyer must comply with the applicable provisions of the Project's condominium documents. In particular, Section 16.2 of the Declaration provides that subject to the provisions of this Declaration, the Bylaws, the Association Rules, and the Act, each Owner of a Unit shall have the right, at any time, and from time to time, at such Owner's sole cost and expense, and without the necessity of the consent or joinder of any other Unit Owner or the amendment of the Declaration, but with the prior approval of the Board and with the presentation of such plans and specifications and other materials as the Board may require as set forth the Bylaws, to make any of the following alterations solely within the Unit: to install, maintain, remove, and rearrange non-load-bearing partitions and other structures from time to time within such Unit, and to paint, paper, panel, plaster, tile, finish, and do or cause to be done such other work on the interior surfaces of the ceilings, floors and walls within any such Unit and to finish, alter or substitute any plumbing, electrical or other fixtures attached to said ceilings, floors and walls as shall be appropriate for the utilization of such Unit by such Owner or the tenants or lessees thereof. The Declaration also prohibits any work or alteration that would jeopardize the soundness or safety of any part of the Project, reduce the value of the Project, adversely affect

any Common Element or other Unit, alter the uniform external appearance of the Project (which means that lanai enclosures are prohibited), or affect or impair any easement or right of any other Unit Owner.

Combining Units. Section 16.3 of the Declaration provides that the Owner of any two adjoining Units may, with the consent of the Board and of any mortgagee of such Units and at the Owner's sole expense, alter or remove all or portions of the non-structural or load bearing portion of the intervening wall which separates such Units if the structural integrity of the Project is not thereby affected and if the Common Elements affected are restored to a condition comparable to that of the Common Elements prior to such alteration of such Common Elements. In addition to all other requirements set forth herein, any alteration or removal of all or portions of such wall shall be done pursuant to written plans and specifications drawn by a licensed architect or structural engineer and approved by the Project Architect and such work shall be personally supervised by said architect or engineer. Any Owner making the alterations permitted hereunder shall secure a performance and payment bond naming as obligees said Owner and collectively the Owners of all other Units as their interests may appear in a penal sum of not less than one hundred percent (100%) of the cost of any construction, guaranteeing the payment of funds in an amount necessary to ensure the completion thereof free and clear of all mechanic's and materialmen's liens, and that any such construction shall be carried out in strict compliance with all applicable laws, rules and regulations. Each Owner of such adjoining Units may install in and attach to such opening or openings in such wall, doors and other service devices and may remove and retain ownership of the items so installed. Upon the termination of the common ownership of such adjoining Units, any intervening wall which has been altered or removed pursuant to the foregoing provisions shall be restored at the Owner's expense to substantially the same condition which existed prior to such alteration or removal, if the new Owner or Owners do not consent to such alteration.

Hallway Enclosures. Section 16.4 of the Declaration provides that the Owner of any two adjoining Units which are served exclusively by an interior hallway may, with the consent of the Board and of any mortgagee of such Units and at the Owner's sole expense, enclose such hallway by altering or removing non-structural or non-load-bearing walls which separates such Units from the hallways if the structural integrity of the Project is not thereby affected and if the Common Elements affected are restored to a condition comparable to that of the Common Elements prior to such alteration of such Common Elements. In addition to all other requirements set forth herein, any alteration or removal of all or portions of such wall shall be done pursuant to written plans and specifications drawn by a licensed architect or structural engineer and approved by the Project Architect and such work shall be personally supervised by said architect or engineer. Any Owner making the alterations permitted hereunder shall secure

a performance and payment bond naming as obligees said Owner and collectively the Owners of all other Units as their interests may appear in a penal sum of not less than one hundred percent (100%) of the cost of any construction, guaranteeing the payment of funds in an amount necessary to ensure the completion thereof free and clear of all mechanic's and materialmen's liens, and that any such construction shall be carried out in strict compliance with all applicable laws, rules and regulations. Upon the termination of the common ownership of such adjoining Units, the hallway enclosure shall be removed and the hallway shall be restored at the Owner's expense to substantially the same condition which existed prior to the enclosure.

## Exhibit D

### Common Elements and Limited Common Elements

As set forth in Section 3.3 of the Declaration, the "Common Elements" of the Kahului Town Center Quadrant One condominium include:

**A.** The Real Property on which the Project is located (which is Unit 1 of the Kahului Town Center Master Condominium), in fee simple, and any and all easements and appurtenances thereto.

**B.** The Buildings and other Improvements, including all unfinished, undecorated portions of all perimeter (including party) walls and interior load-bearing walls, the undecorated or unfinished surfaces of floors and ceilings, all structural components, foundations, floor slabs, columns, girders, beams, supports, shafts, ceilings and spaces between the ceiling and the floor slab or roof above, roofs, exterior surfaces of the Project, including any paint or coating thereon, but excluding the Units located within the Buildings.

**C.** All roads, parking areas and parking stalls, driveways, ramps, loading areas or zones, sidewalks and walkways which are rationally of common use by Owners of more than one Unit.

**D.** All grounds, planters, trellises, landscaping, dumpster enclosures and other refuse facilities within or appurtenant to the Project.

**E.** All chutes, flues, ducts, pumps, valves, sewer lines, drain lines, electrical equipment, cables, wiring, pipes, shafts, wires, conduits or other utility or service lines which are utilized for or serve more than one Unit and other central and appurtenant transmission facilities over, under and across the Project which serve more than one Unit for services such as power, light, water, gas, sewer, refuse, telephone and radio and television signal distribution.

**F.** The individual electrical meters for each of the Units, together with the electrical lines from such meters to the Units, but only to the point where such lines enter the Units.

**G.** The lobbies, elevators, common hallways, common restrooms and utility and electrical rooms in Buildings A and B as shown on the Condominium Map.

**H.** All storage areas, hallways, corridors, stairs, stairways, mechanical rooms, electrical rooms, communications rooms, trash rooms, and other similar areas which are not part of a Unit.

**I.** All exterior shutters, awnings, window boxes, exterior doors and windows (together all cranks, frames and other window or door hardware).

**J.** Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

As set forth in Section 3.4 of the Declaration, the "Limited Common Elements" of the Kahului Town Center Quadrant One condominium include:

**A. Utilities and Exterior Fixtures Serving or Used by Only One Unit.** The following shall be Limited Common Elements appurtenant to a Unit: (i) all chutes, flues, ducts, wires, conduits, or any other fixtures intended for the exclusive use of that Unit; (ii) grease traps designed to serve a single Unit; and (iii) any other fixtures that are designed to serve a single unit but that are located outside the Unit's boundaries.

**B. Building Structure.** The Building Structure of each Building in the Project (including Building A, Building B and any additional Buildings added to the Project in the future) is a Limited Common Element appurtenant to all of the Units located within that Building.

**C. First Floor Unit Exterior Elements.** All exterior shutters, awnings, doors, and windows, together with all frames, handles and other window or door hardware of a Unit on the first floor of Buildings A or B are Limited Common Elements appurtenant to that Unit.

**D. Outdoor Seating Areas.** The two outdoor areas adjacent to Unit A101 that are designed on the Condominium Map as "Outdoor Seating" are Limited Common Elements appurtenant to and for the exclusive use of Unit A101. The outdoor area adjacent to Unit A113 that is designed on the Condominium Map as "Outdoor Seating" is a Limited Common Element appurtenant to and for the exclusive use of Unit A113. The two outdoor areas adjacent to Unit B107 that are designed on the Condominium Map as "Outdoor Seating" are Limited Common Elements appurtenant to and for the exclusive use of Unit B107. The outdoor area adjacent to Unit B106 that is designed on the Condominium Map as "Outdoor Seating" is a Limited Common Element appurtenant to and for the exclusive use of Unit B106.

**E. Lanais.** The Lanais on the second and third floors of Building B are Limited Common Elements appurtenant to the Units to which they have immediate access.

**F. Rooftop Power and Communications Facilities.** The areas of the roof of Building A that are designated on the Condominium Map as "Future Photovoltaic System Location" are Limited Common Elements appurtenant to Unit A101. The areas of the roof of Building B that are designated on the Condominium Map as "Future Photovoltaic System Location" are Limited Common Elements appurtenant to Unit B107. As set forth in Section 18.9 of the Project's Declaration, the Developer has reserved the right to install communications antennas, dishes, reflectors, towers, repeaters and accessory lines, cables, wiring, equipment and conduits, and a system or systems of photovoltaic panels and/or other equipment and apparatus for the collection and conversion of solar energy, wind energy or other forms of energy into electrical power in these Limited Common Elements.

## Exhibit E

### Permitted and Prohibited Uses

Article 7 of the Declaration contains the following provisions regarding permitted and prohibited uses:

**Permissible Uses of Units.** The Declaration provides that each Unit in Buildings A & B may be used and occupied for any purpose permitted by law and by the terms, conditions and restrictions of the Unit's Unit Deed, if any. Uses prohibited in all Units specifically include are establishments featuring explicitly-sexual, adults-only entertainment (including, without limitation, stores offering adult books or films, adults-only theaters, or nude or semi-nude entertainment facilities); any illegal activity or conduct, including without limitation any establishment that offers illegal or illicit services under the guise of therapeutic massage; sale or offering of sale of paraphernalia for use with illegal drugs; and gambling facilities or operations.

The Unit Deed for each Unit will also contain specific restrictions on the use of the Unit, which shall be binding covenants that run with title to the Unit, bind all future owners, and are enforceable by the Association as if they were set forth in this Declaration. The specific restrictions applicable to a Unit shall be set forth in the Unit's Sales Contract; Buyer's should carefully review those restrictions.

**Prohibition of Unauthorized Uses and Activities.** No Owner shall do or suffer or permit to be done anything to any Unit or appurtenant Limited Common Element or elsewhere on the Project which will: (i) jeopardize the safety or soundness of the Project, or (ii) create a nuisance or interfere with or unreasonably disturb the rights of other Owners and occupants, (iii) result in the cancellation of any Association insurance required for the Project by the Declaration or Bylaws, or (iv) result in the increase in premiums of any Association insurance required for the Project by the Declaration or Bylaws without the prior written consent of the Board.

**Animals.** Guide Dogs, Signal Dogs and Service Animals as defined in Chapter 515, Hawaii Revised Statutes, are permitted at the Project, subject only to compliance with all applicable laws and ordinances. Animals may not otherwise live or be bred, kenneled, or otherwise permanently kept at the Project, but Owners may elect to bring, and to allow their employees to bring, domestic pets to their Units while such Owners and employees are present in the Unit, subject to the following restrictions: (i) pets shall be allowed in the common areas only when they are in transit to or from a Unit; (ii) pets must be restrained by leashes no more than six feet long or kept in carriers at all times when they are outside of a Unit; (iii) pet owners must

immediately collect all pet waste in sealed plastic bags and properly dispose of it; (iv) no pet shall be a nuisance or disturbance to any other Owner or occupant, and any such disturbance (including but not limited to excessive barking by dogs) will not be tolerated; and (v) no pet shall be allowed to attack or bite any person or animal.

## Exhibit F

### Encumbrances Against Title

The Preliminary Title Report dated February 26, 2009, and issued by Title Guaranty of Hawaii, Inc., regarding this Project lists the following encumbrances against title to the Project:

1. Real Property Taxes, if any, that may be due and owing.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. GRANT  
TO : COUNTY OF MAUI  
DATED : August 4, 1928  
RECORDED : Liber 985 Page 103  
GRANTING : easement to build, construct, lay, repair and maintain sanitary sewers along, across and under those certain strips of land ten (10) feet in width, more particularly set forth therein.
4. Existing easements and rights of way granted to the County of Maui for sewer and water lines, as contained in Deed recorded in Liber 3055 at Page 234.
5. Restriction of rights of vehicle access into and from KAAHUMANU AVENUE, pursuant to the rights (of access) acquired by the STATE OF HAWAII, by DEED dated October 11, 1957, recorded in Liber 3373 at Page 480; and subject to the terms and provisions contained therein, including but not limited to the reservation of the right to relocate and/or widen the existing points of vehicle access according to conditions set forth therein.
6. GRANT  
TO : MAUI ELECTRIC COMPANY, LIMITED, and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED now known as HAWAIIAN TELCOM, INC.  
DATED : April 12, 1989  
RECORDED : Liber 23382 Page 667  
GRANTING : a perpetual right and easement for utility purposes, as

shown on the sketches attached thereto.

7. PARKING EASEMENT A, for parking purposes in favor of Lot 1 Kahului Center Subdivision, over and across a portion of Lot 5-B of Kahului Center Subdivision No. 4, as granted by Deed dated August 8, 1989, recorded in Liber 23509 at Page 617, and more particularly described therein.

8. PARKING EASEMENT B, for parking purposes in favor of Lot 2 Kahului Center Subdivision, over and across a portion of Lot 5-B of Kahului Center Subdivision No. 4, as granted by Deed dated August 8, 1989, recorded in Liber 23509 at Page 617, and more particularly described therein.

9. PARKING EASEMENT C, for parking purposes, in favor of Lot 3-A, of Kahului Center Subdivision No. 2, over and across a portion of Lot 5-B of Kahului Center Subdivision No. 4, as granted by Deed dated August 8, 1989, recorded in Liber 23509 at Page 617, and more particularly described therein.

10. ACCESS EASEMENT 1, a non-exclusive easement for access purposes, in favor of Lot 3-A, of Kahului Center Subdivision No. 2, over and across a portion of Lot 5-B of Kahului Center Subdivision No. 4, as granted by Deed dated August 8, 1989, recorded in Liber 23509 at Page 617, and more particularly described therein.

11. ACCESS EASEMENT-3, (for Burger King) in favor of Lot 5-A of Kahului Center Subdivision No. 4, over and across a portion of Lot 5-B of Kahului Center Subdivision No. 4, as granted by Deed dated August 8, 1989, recorded in Liber 23509 at Page 617, and more particularly described therein.

12. PARKING EASEMENT "D" (for Burger King) in favor of Lot 5-A Kahului Center Subdivision No. 4, over and across a portion of Lot 5-B of Kahului Center Subdivision No. 4, as granted by Deed dated August 8, 1989, recorded in Liber 23509 at Page 617, and more particularly described therein.

13. ACCESS EASEMENT 2, a non-exclusive easement for access purposes, in favor of Lot 4 of the Kahului Center Subdivision No. 3, over and across a portion of Lot 5-B of Kahului Center Subdivision No. 4, as granted by Deed dated August 8, 1989, recorded in Liber 23509 at Page 617, and more particularly described therein.

14. The terms and provisions contained in the following:

INSTRUMENT : QUITCLAIM DEED WITH RESERVATIONS AND  
COVENANTS

DATED : April 7, 2008

RECORDED : Document No. 2008-056276

The foregoing includes, but is not limited to, matters relating to agricultural activities.

15. The terms and provisions contained in the following:

INSTRUMENT : A&B PROPERTIES, INC. RESIDENTIAL WORKFORCE HOUSING AGREEMENT

DATED: April 23, 2008

RECORDED: Document No. 2008-066572

PARTIES: A&B PROPERTIES, INC., a Hawaii corporation and the COUNTY OF MAUI, a political subdivision of the State of Hawaii

16. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR "KAHULUI TOWN CENTER MASTER CONDOMINIUM" CONDOMINIUM PROJECT

DATED : April 17, 2008

RECORDED : Document No. 2008-067573

MAP : 4626 and any amendments thereto

Said Declaration was amended by instrument dated February 12, 2009, recorded in said Bureau as Document No. 2009-031746.

17. The terms and provisions contained in the following:

INSTRUMENT : BY-LAWS OF THE ASSOCIATION OF UNIT OWNERS OF KAHULUI TOWN CENTER MASTER CONDOMINIUM

DATED : April 17, 2008

RECORDED : Document No. 2008-067574

18. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR "KAHULUI TOWN CENTER QUADRANT ONE" CONDOMINIUM PROJECT

DATED : April 17, 2008

RECORDED : Document No. 2008-067585

MAP : 4627 and any amendments thereto

Said Declaration was amended by instrument dated February 12,

2009, recorded in said Bureau as Document No. 2009-031747.

19. The terms and provisions contained in the following:

INSTRUMENT : BY-LAWS OF THE ASSOCIATION OF UNIT OWNERS  
"KAHULUI TOWN CENTER QUADRANT ONE"  
CONDOMINIUM  
DATED : April 17, 2008  
RECORDED : Document No. 2008-067586

20. 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

21. Any unrecorded leases and matters arising from or affecting the same.

Note: In accordance with Developer's Reserved Rights, Developer has the right to record other encumbrances against title to the Project, including utility easements necessary or incidental to the development of the Project and the Master Community Charter for Kahului Town Center, which will be recorded prior to the recording of buyers' deeds. Buyers' Units shall be subject to all such encumbrances.

Developer also expects to utilize this reserved right from time to time to modify, amend, release, and/or replace encumbrances against title to the Project, particularly the parking and utility easements described above, when and as necessary in connection with the development of the Project.

## Exhibit G

### Developer's Reserved Rights

In the Declaration of Condominium Property Regime for Kahului Town Center Quadrant One, the Developer reserved the following rights to change and expand the Project and do various other things, including the construction of planned additional buildings within the Project. The Developer can exercise these rights without consent or approval of buyers, Unit owners of the Unit Owners Association. The Developer's exercise of these rights can affect owners and their Units, so buyer's should carefully review and consider these reservations.

As set forth in Article 19 of the Declaration, these rights that the Developer reserved include:

1. **Reservation of Power to Grant Easements.** The Developer reserves to itself the non-exclusive right to grant from time to time within the Common Elements, easements and rights-of-way over, under, and across the Common Elements for utilities, sanitary and storm sewers, drains, cable television and other utility services for two (2) or more Units and the right to amend, relocate, realign or cancel the same, on such terms and conditions as the Developer may determine in Developer's reasonable discretion, provided that such easements, their use, relocation, realignment, or cancellation shall not materially impair or interfere with the use of any Unit.

2. **Required Amendments.** The Developer reserves the right to make, at any time prior to the recordation of a Unit Deed for the last Unit in the Project (including Units that may be added pursuant to Article 18 of the Declaration), amendments to the Declaration, the Bylaws, or the Condominium Map that are required by law, by the Real Estate Commission, by a title insurance company, by a mortgage lender, by any governmental agency, or to conform this Declaration to amendments to the Act or any other statute, ordinance, rule or regulation enacted by any governmental authority that is enacted after the date of this Declaration, provided that such amendments shall not change the Common Interest appurtenant to a Unit or substantially change the design, location, size or permitted use of any Unit for which a Unit Deed has been recorded without the consent of the Owner of such Unit.

3. **Restatement.** Any other provision of this Declaration notwithstanding, the Board, or the Developer acting on behalf of the Board during the Developer Control Period, shall have the authority as set forth in the Act to restate this Declaration from time to time to set forth any prior amendments hereof, or to amend this Declaration as required to conform with the provisions of the Act or any other statute, ordinance, rule or regulation enacted by any governmental authority.

4. **Amendment to Unit and Common Element Configurations and Uses.** Notwithstanding anything herein to the contrary, the Developer reserves the right to amend

this Declaration, the Bylaws, the Condominium Map and related condominium documents at any time to change the permitted uses, layout, floor area, partitions, ceilings, structures, fixtures, exterior doors and windows, pipes, ducts and other equipment of a Unit or the Common Elements to meet marketing, design, engineering, legal, archeological, architectural or construction requirements. Such changes may include, without limitation, the amendment of Section 7.2 of the Declaration to permit use of certain Units for residential purposes or live/work purposes (where a portion of the Unit is used as a residence, and the remainder is used for business purposes). If such changes affect the area of affected Units, the amendments may include adjustments to the Common Interests appurtenant to all Units to reflect such adjustments. Prior to the recording of a Unit Deed for the affected Unit, Developer may execute and record each such amendment unilaterally and without requiring the consent or joinder of any person; after the recording of a Unit Deed for the affected Unit the Developer may execute and record each such amendment provided that the Owner of the Unit and the Owner's mortgagee consent in writing. Developer may change the Condominium Map to reflect the new configuration of any Units, Buildings or other Common Elements, to change the description of Units or Common Elements, and to revise the statement of Unit net floor areas, and other changes as shall be appropriate under the circumstances.

**5. Subdivision or Consolidation of Units.** Developer reserves the right, at any time prior to the recording of a Unit Deed, to divide a Unit into two or more separate Units or to consolidate two or more Units (including Units located on different floors) into one Unit by: (i) amending the Condominium Map and related exhibits to this Declaration to reflect the subdivision, (ii) amending the provisions of this Declaration and Bylaws to provide that the Limited Common Elements appurtenant to the resulting Units shall be operated, maintained, repaired and replaced by the Association at the expense of the Owners of the resulting Units, and (iii) making such other amendments to this Declaration, the Bylaws, the Condominium Map, and other documents pertaining to the Project as the Developer deems necessary or convenient to effectuate the subdivision of the Unit.

**6. Reconfigure and Assign Parking.** Developer reserves the right to reconfigure the parking areas in the Project, which may include elimination of parking stalls, as Developer deems appropriate, and to amend the Declaration and the Condominium Map to reflect such reconfiguration. Developer further reserves the right to assign or reassign one or more parking stalls as Limited Common Elements appurtenant to a Unit. All parking stalls assigned to a specific Unit shall be Limited Common Elements associated with such Unit.

**7. Reserved Right to Develop the Buildings In Phases, and to Expand the Project to Include Additional Buildings and Units.** The Developer shall have the reserved right develop the Buildings in phases and to reduce or increase the number of Buildings and Units in the Project notwithstanding anything provided to the contrary. In exercising this reserved right, the

Developer may elect, without limitation, to construct Building A and Building B in two separate phases, to replace Building A or Building B with a Building of a different type, configuration, or use, or to create or construct other Buildings, Units and Improvements of any kind, all to the maximum extent permitted by applicable building and zoning codes. In connection with the exercise of this reserved right, the Developer may create, modify or eliminate Units, provided that no Unit for which a Unit Deed has been recorded shall be modified or eliminated without the consent of the Unit's Owner. Buyers should carefully review Section 18.7 of the Declaration in full for complete information regarding this reserved right.

**8. Reserved Right to Withdraw Portions of the Real Property from the Project.**

Developer shall have the reserved right, to exercise its right under the Master Condominium Declaration to withdraw portions of the Real Property, whether by subdivision into a separate lot or by amendment of said Declaration to make such portions a separate unit, and to withdraw said portions of the Real Property from the operation of this Declaration, and to convey said withdrawn areas to a third party as it deems appropriate or subject it to another condominium property regime neighboring the Project or annex it into one or more of the other Condominium Projects and/or consolidate it back into the Project. With regard to the area being subdivided and withdrawn, such may contain Improvements described in this Declaration, or shown on the Condominium Map. In connection with such right, Developer shall have the further reserved right to enter and go upon the Real Property to do all things necessary or proper to effectuate such subdivision and withdrawal and conveyance of said portions of the Real Property, including, without limitation, making surveys to undertake a reasonable realignment of boundaries of the Real Property to define the areas to be withdrawn (it being understood that the Developer shall have the reserved right to effect any such realignment), filing and recording any necessary file plan or subdivision map and related subdivision documentation and to facilitate the granting, reserving, adding, deleting, receiving, realigning, and/or relocating of easements and/or rights of ways for utilities, sanitary and storm sewers, cable television, telecommunication systems, refuse disposal, driveways, use of parking areas and roadways, pedestrian access and of all other required easements and/or rights of way; and provided further that Developer specifically reserves the right, whether or not in connection with its right to subdivide, withdraw and convey hereunder, to grant easements for access, driveway and parking purposes over the Project in favor of the withdrawn portion(s) of the Property, if any, in the event the same shall be withdrawn from the operation of this Declaration. Said subdivision, withdrawal and conveyance shall be subject to, and the Developer shall, at its own expense, comply with, all of the then-applicable governmental laws and rules and regulations, including all subdivision requirements.

**9. Reserved Right to Install Rooftop Communications and Power System.** The Developer reserves the right to construct and install on the roofs of Buildings A and B (i)

communications antennas, including cellphone antennas, dishes, reflectors, towers, repeaters and accessory lines, cables, wiring, equipment and conduits, and/or (ii) a system or systems of photovoltaic panels and/or other equipment and apparatus for the collection and conversion of solar energy, wind energy or other forms of energy into electrical power. This reservation specifically includes the right to amend the Declaration and the Condominium Map in accordance with Section 18.7 of the Declaration to designate the portions of the Building A and B rooftops identified as "Future Photovoltaic System Location" as Units whose boundaries are defined by spatial coordinates rather than structural boundaries, and to specifically permit the use of such Units for the installation and operation of photovoltaic or other systems for capturing solar energy and converting it to electricity, provided that the Owner of the Unit to which those areas are designated as Limited Common Elements must consent to such amendment. Each such Unit shall be assigned a Common Interest of 0.1%, and the Common Interest of the Unit to which the area was formerly a Limited Common Element shall be reduced accordingly.

**10. Reserved Right to Amend Recorded Documents.** The Developer reserves the right to amend, modify, supplement, cancel, terminate or release (in whole or in part) any easements, restrictions, covenants, agreements or other documents or instruments recorded on title to the Land, including without limitation amendments and modifications of the Master Community Charter in accordance with its terms, on such terms and conditions as the Developer may determine in Developer's reasonable discretion.

**Exhibit H**

**Estimated Maintenance Fees**

Estimate of Initial Maintenance Fees and Estimate Maintenance Fee Disbursement  
for Kahului Town Center Quadrant One

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

**Estimate of Maintenance Fee Disbursements:** With the exception of cold water for the apartments, the estimate of fee disbursements is for maintenance of service of the Common Elements only.

	Monthly	Yearly
<b>Utilities and Services</b>		
Electricity	\$4,650.00	\$55,800.00
Water	\$4,191.00	\$50,292.00
Sewer	\$3,000.00	\$36,000.00
Telephone	\$135.00	\$1,620.00
Gas	\$0.00	\$0.00
Television	\$0.00	\$0.00
<b>Maintenance, Repairs, Supplies</b>		
Custodial	\$4,000.00	\$48,000.00
Maintenance	\$4,815.00	\$57,780.00
Exterminating	\$500.00	\$6,000.00
Rubbish Removal	\$1,800.00	\$21,600.00
Security	\$6,500.00	\$78,000.00
Supplies	\$0.00	\$0.00
Elevator	\$1,000.00	\$12,000.00
<b>Management</b>		
Property Management	\$1,042.00	\$12,504.00
Legal	\$100.00	\$1,200.00
Other Professional	\$465.00	\$5,580.00
Wages and Salaries	\$1,800.00	\$21,600.00
Employee Benefits	\$445.00	\$5,340.00
Administrative Costs	\$850.00	10,200.00
<b>Insurance</b>		
Property and Liability	\$4,575.00	\$54,900.00
Directors and Officers, Bond	\$177.00	\$2,124.00
Flood	\$500.00	\$6,000.00
Misc./ Contingency	\$258.00	\$3,096.00
<b>SUBTOTAL</b>	<b>\$40,803.00</b>	<b>\$489,636.00</b>
<b>KTC Master Condo Common Expenses</b>		
	<b>\$1,550.57</b>	<b>\$18,606.83</b>
<b>Reserves</b>	<b>\$4,200.00</b>	<b>\$50,400.00</b>
<b>TOTAL</b>	<b>\$46,553.57</b>	<b>\$558,642.83</b>

Estimate of Initial Maintenance Fees and Estimate Maintenance Fee Disbursement  
for Kahului Town Center Quadrant One

Apartment owners shall not be obligated for the payment of their respective shares of the commons expenses until such time as the Developer files with the Real Estate commission an amended abstract providing that, commencing upon a date certain stated in the amended abstract, each apartment owner shall become obligated to pay his respective share of the common expenses.

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

I, \_\_\_\_\_, as agent for/and/or employed by Certified Management Inc., the Managing Agent for KAHULUI TOWN CENTER QUADRANT ONE, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

[Signature]  
Signature

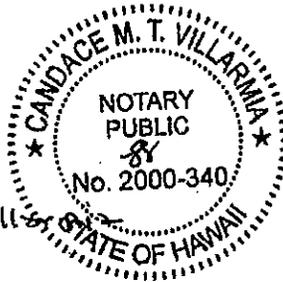
2/5/09  
Date

Pursuant to 514A-83.6 HRS, a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting. The Developer has not conducted a reserve study for the Project. The Budget amount for Reserves is an estimate only.

Subscribed and sworn to  
Before me this 5th day  
of February, 2009

[Signature]  
Notary Public, State of Hawaii

Typed or Printed Name: Candace M. T. Villarma  
My Commission expires: 07/09/2012



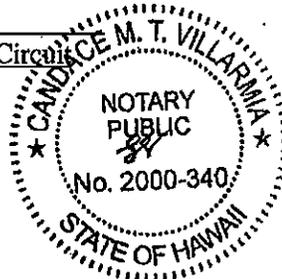
Date: 2/5/09 Number of Pages: 2

Name: Candace M. T. Villarma first Circular

Document Description: Estimate of Initial  
Maint. Fees + Estimate Maint Fee Disbursement

[Signature]  
Notary Signature

NOTARY CERTIFICATION



## Exhibit I

### Summary of Sales Contract

The form of Sales Contract and Receipt for Kahului Town Center Quadrant One ("Sales Contract") contains the price and other terms and conditions under which a buyer will to buy a Unit in the Project. Among other things, the Sales Contract states:

1. The total purchase price, method of payment and additional sums which must be paid in connection with the purchase of a Unit.

2. Requirements relating to a buyer's financing of the purchase of a Unit, including the Developer's rights to cancel a Sales Contract if a buyer's financing obligations and requirements are not met.

3. That a buyer's deposits will be held in escrow, under the terms of the Escrow Agreement, and may be disbursed prior to closing to pay Project construction cost. Buyers shall not earn or receive any interest on any deposits. However, upon the closing of the sale of the Unit, the buyer shall receive a credit against the Total Purchase Price in an amount determined by computing simple interest on all deposits at the First Hawaiian Bank passbook savings from and after the date each deposit is made to Escrow until the Closing Date, which shall be reflected on Purchaser's closing statement. If the closing of the sale of the Unit does not occur for any reason whatsoever, then Purchaser shall not have any right to claim or otherwise receive the Interest Credit.

4. That closing of a buyer's purchase shall occur on a date designated by Developer on or after the buyer's Unit is substantially complete and all prerequisites for Closing have been satisfied. The Sales Contract also provides that Developer shall complete construction of the Project so as to permit normal occupancy of the Unit within five (5) years from the date that this Sales Contract becomes a binding sales contract; provided, however, that such five-year period shall be extended for any period of time during which Seller is actually and necessarily delayed in beginning or completing construction if such delay is caused by fire, earthquake, act of God, the elements, war or civil disturbances, litigation, strikes or other labor disturbances, or economic controls making it impossible to obtain the necessary labor or materials, governmental action, inaction, or delays, or any other matter or condition beyond Seller's control.

5. That in addition to the purchase price the buyer shall at Closing pay one month's estimated maintenance fees plus an Association start-up fee equal to two months' maintenance fees.

6. That each Unit is sold as unimproved, "loft space", which means that the Developer will convey each Unit with exterior door(s), metal framing studs showing demising walls (sheetrock not included), and bare concrete floors, and will not install any other improvements, utilities, appliances, floor coverings, furnishings, ceiling systems, utilities or other fixtures within the Unit. This means that each buyer is solely responsible it's build-out of the Unit, including cladding and painting all interior walls, supplying and connecting all appliances, plumbing (to include "hook up" costs and fees), electrical connections and wiring (from "point of presence" for each building), telephone systems (from conduit running to each building ceiling space), furnishings, fixtures, floor coverings and ceiling systems for the Unit. Buyers may not commence construction of their build-out until after they have closed their purchase.

7. That purchase of a Unit does not include an assigned parking stall and that the use of parking stalls in the Project and in the rest of Kahului Town Center is subject to regulation and restrictions as set forth in the Declaration and the Master Community Charter. The Declaration and the Master Community Charter provide, among other things, that Seller has the right to restrict, regulate and limit the use of the parking stalls in the Project and Kahului Town Center, to require Unit owners and their employees, customers, guests and invitees to use parking located outside of the Project, including parking in other portions of Kahului Town Center, and to implement a system of metered or paid parking.

8. That a Buyer's use of a Unit will subject to the terms, conditions and limitations of the Declaration, applicable laws and ordinances, and limitations on use specified in the Sales Contract which will be incorporated in the Buyer's Unit Deed as covenants that run with the Unit and bind the Buyer and all future owners. Without limiting the foregoing, Units may not be used for the following uses: establishments featuring explicitly-sexual, adults-only entertainment (including, without limitation, stores offering adult books or films, adults-only theaters, or nude or semi-nude entertainment facilities); any illegal activity or conduct, including without limitation any establishment that offers illegal or illicit services under the guise of therapeutic massage; sale or offering of sale of paraphernalia for use with illegal drugs; and gambling facilities or operations. **BUYERS MUST CAREFULLY REVIEW THE USE RESTRICTIONS CONTAINED IN THEIR SALES CONTRACT TO ENSURE THAT THEIR INTENDED AND POTENTIAL USES OF THE UNIT COMPLY WITH THOSE USE RESTRICTIONS.**

9. That the Unit and the Project will be subject to various other legal documents which the purchaser should examine, and that the Developer may change these documents under certain circumstances.

10. That the Developer makes no warranties regarding the Unit, the Project or anything installed or contained in the Unit or the Project. Rather, Developer will enter into an agreement with the general contractor for the Project whereby the general contractor will agree to issue for the benefit of Developer and its buyers the customary warranty to correct any work found defective within one (1) year after the date of substantial completion of the work (as such terms are defined in the construction contract) ("Contractor's Warranty"). Developer does not make this warranty but merely passes on the Contractor's Warranty to buyers and the Association. Developer shall also at Closing assign to buyers any manufacturer's or dealer's warranties covering the furnishings and appliances (if any) in the Unit.

11. That Developer has reserved the right to defer construction of or eliminate the building in which the Unit is located due to market or other considerations Seller deems appropriate in its discretion, and that if Developer elects to defer or eliminate the building in which a purchaser's Unit is located, Developer shall have the right to cancel the purchaser's sales contract without liability. Upon such cancellation all of the purchaser's deposits shall be returned to purchaser without interest and the Developer and purchaser shall have no further obligations. If the Developer exercises this right, the Developer shall be responsible for any cancellation fees charged by Escrow and the purchaser shall be responsible for purchaser's own costs including mortgage loan application fees, if any. The Developer may exercise this cancellation right at any time up to the date twelve (12) months after the effective date of a purchaser's sales contract and if the Developer does not exercise this cancellation right on or before that date this cancellation right shall be deemed waived.

12. That the Project may be subject to ongoing sales activities which may result in certain annoyances to the purchaser.

13. That the Developer makes no representations concerning rental of a Unit, income or profit from a Unit, or any other economic benefit to be derived from the purchase of a Unit.

14. That any dispute by or between Developer and a buyer arising out of or incident to the Sales Contract, or the development or management of the Project, the sale of the Unit or the use or occupancy thereof, or any other aspect of the relationship between Developer and a buyer regarding the Project which is raised or otherwise asserted after the Closing shall be submitted to initial mediation through Dispute Prevention & Resolution, Inc., of Honolulu, Hawaii ("DPRI"), or such other dispute resolution agency as the parties may mutually select, in

accordance with DPRI's Mediation Rules, Procedures and Protocol currently in effect. If necessary, claims not resolved by mediation shall be decided by arbitration through DPRI, or such other dispute resolution agency as the parties may mutually select, which, unless the parties mutually agree otherwise, shall be in accordance with DPRI's Arbitration Rules, Procedures & Protocol.

15. That under Article 21 of the Declaration the Developer reserves the right to repurchase a Unit under certain circumstances for a period of ten (10) years from the date of recordation of the Deed conveying the Unit to a buyer if the buyer shall have complained to the Developer about the physical condition and/or design of the Unit, the Project or Kahului Town Center, or any matter in connection with the Unit, the Project, Kahului Town Center and the Developer, after a good faith and diligent effort, shall be unable to rectify the complaint to the buyer's satisfaction within a reasonable period of time.

**This is only a summary of certain important provisions of the Sales Contract. The Sales Contract contains many important provisions relating to the purchase of a Unit in the Project. Prospective buyers MUST read the complete Sales Contract in full and with care.**

## Exhibit J

### Summary of Escrow Agreement

A copy of the executed Escrow Agreement for the Project between Title Guaranty Escrow Services, Inc. ("Escrow") and Developer has been filed with the Commission. The Escrow Agreement provides for the deposit of the funds of a purchaser of an Unit pursuant to a Sales Contract and also provides for the retention or disbursement of the funds.

The Escrow Agreement provides that if a Sales Contract or Hawaii Revised Statutes Chapter 514B, as amended ("the Act") entitle a buyer to a refund of buyer's deposits held by Escrow, the Escrow, upon instruction from Developer, will refund Purchaser's deposits, less any escrow cancellation fee (which may not exceed \$250) or other costs payable by the Purchaser (e.g., loan processing fees, cost of credit reports, etc.) as provided in the Sales Contract, the Act, or Purchaser's loan application, commitment or prequalification letter.

The Escrow Agreement provides that a buyer's deposits may be disbursed from Escrow prior to closing as needed to pay for actual project construction costs and project architectural, engineering, finance and legal fees if (a) an effective date for a Developer's Public Report for the Project has been issued and all applicable requirements of the Act have been satisfied, and (b) Developer provides escrow with written certification that all legal requirements have been satisfied, the buyer's Sales Contract has become binding, and that Developer has waived any right to cancel the contract. The Escrow Agreement provides that a buyer's deposits may not otherwise be disbursed from Escrow until construction is completed, Escrow is satisfied that any liens have been cleared or otherwise covered, and the buyer's purchase closes.

If a Sales Contract is cancelled and the buyer is not in breach of the Sales Contract, the buyer is entitled to return of the buyer's deposits, as more specifically described in the Escrow Agreement and the Sales Contract. If a buyer is in default of the Sales Contract and Developer elects to cancel the Sales Contract, the buyer's deposits held in Escrow may be forfeited to Developer.

Prospective buyers should read the Escrow Agreement with care.

## Exhibit K

### Important Information About the Kahului Town Center Master Condominium

The Kahului Town Center Quadrant One condominium covered by this Developer's Public Report ("this Project") is a part of a larger development called Kahului Town Center ("KTC"). KTC, as currently planned, will include the entire area bordered by Kaahumanu, Lono, Kamehameha and Puunene Avenues and will be divided into four separate blocks, separated by intersecting private roads. As currently planned KTC will include office, retail, service, and residential components, all developed as a master-planned urban community over a period of at least five to ten years. Although complete build-out of KTC is currently expected to occur, there is no guaranty that will happen and the Developer has reserved the right to make changes to the project. Buyers should recognize that there is no assurance that KTC will be completed as currently planned, anticipate that such changes to KTC may occur, and understand that the Developer's development obligations to a buyer are limited to the terms of the buyer's sales contract.

Because this Project is just the initial increment of a larger master-planned development, buyers should expect that there will be extensive construction and development surrounding this Project as KTC is developed, all of which may cause nuisances, disruptions and inconveniences.

KTC is being developed as a condominium, the Kahului Town Center Master Condominium (the "Master Condominium"), that initially consists of four Units. Each Unit in the Master Condominium consists of one of the blocks within KTC, and it is expected that each of the Units will be developed as a separate condominium within the Master Condominium. This Project is located within one of the four blocks in KTC, located at the corner of Puunene and Kamehameha Avenues, which is Unit 1 of the Master Condominium. This means that this Project's Owners Association and Board of Directors will govern only that block, and will not have direct authority or control over the other parts of the Master Condominium. The Master Condominium's principal common elements are the private roads within KTC, which will be maintained by the Master Condominium's owners association.

Because this Project is part of the Master Condominium, owners in this Project will be subject to the terms and conditions of the Master Condominium's Declaration and Bylaws. Owners in this Project will have rights to participate in management of the Master Condominium, including the ability to participate through this Project's Association in the selection of a

representative of this Project on the Master Condominium's Board of Directors, rights to attend and participate in meetings of the Master Condominium's Association and Board, and rights to information and documentation about the Master Condominium. Further, as reflected in Exhibit H (Estimated Maintenance Fees), owners in this Project will pay a share of the common expenses of maintaining and operating the Master Condominium's common elements, which are included in this Project's maintenance fees. KTC will also be subject to a recorded Master Community Charter for Kahului Town Center that contains covenants, conditions and restrictions enforceable by the Developer that will be binding on all owners in this Project. Copies of the Master Association's Declaration of Condominium Property Regime, Condominium Map, and Bylaws and the Master Community Charter are provided to all buyers, who are encouraged to review them carefully.

That purchase of a Unit does not include an assigned parking stall and that the use of parking stalls in the Project and in the rest of Kahului Town Center is subject to regulation and restrictions as set forth in the Master Community Charter for Kahului Town Center. The Master Community Charter provides, among other things, that the Developer has the right to restrict, regulate and limit the use of the parking stalls in the Project and Kahului Town Center, to require Unit owners and their employees, customers, guests and invitees to use parking located outside of the Project, including parking in other portions of Kahului Town Center, and to implement a system of metered or paid parking.

The Master Community Condominium Declaration and the Master Community Charter also include Developer's Reserved Rights and restrictions incidental to the Developer's development of KTC in multiple increments over a period of many years. These include reserved rights to annex additional land into KTC, to construct additional buildings and improvements without consent or approvals from owners within KTC, to grant easements and other rights necessary or incidental to the development of the project, and to restrict construction or alteration of units and buildings in KTC by owners until the Developer has completed the full development of KTC.

Buyers in this Project should carefully review the KTC Master Condominium Declaration of Condominium Property Regime and Bylaws and the Master Community Charter for Kahului Town Center.

PLANS FOR FUTURE DEVELOPMENT OF KTC ARE SUBJECT TO CHANGE AT THE DEVELOPER'S DISCRETION. IN ORDER TO DEVELOP KTC THE DEVELOPER HAS RESERVED BROAD RIGHTS IN THE PROJECT DOCUMENTS AND THE MASTER CONDOMINIUM DOCUMENTS THAT ALLOW DEVELOPER TO DO SO WITHOUT THE INPUT OR CONTROL OF UNIT OWNERS. THERE IS NO GUARANTY AS TO WHEN AND WHERE FUTURE BUILDINGS OR IMPROVEMENTS IN KTC WILL BE BUILT OR AS TO THE BUSINESSES, USES AND ACTIVITIES THAT MAY ULTIMATELY BE INCLUDED IN KTC, AND ALL USES PERMITTED UNDER APPLICABLE COUNTY ZONING COULD BE PERMITTED

WITHIN KTC. BECAUSE THE FUTURE DEVELOPMENT OF KTC COULD HAVE SIGNIFICANT IMPACTS ON THE PROJECT AND BUYER'S USE AND ENJOYMENT OF A UNIT, BUYERS SHOULD CAREFULLY CONSIDER THE POSSIBILITY THAT KTC MAY BE DEVELOPED IN WAYS NOT CURRENTLY ANTICIPATED, AND BUYERS SHOULD PURCHASE A UNIT IN THE PROJECT ONLY IF THEY ACCEPT THE POSSIBILITY OF SUCH POTENTIAL CHANGES AND IMPACTS.

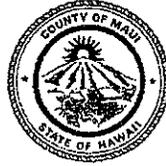
**EXHIBIT L**

**Special Management Area Permit for Kahului Town Center**

CHARMAINE TAVARES  
Mayor

JEFFREY S. HUNT  
Director

COLLEEN M. SUYAMA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

April 30, 2007

**RECEIVED**  
MAY 07 2007

CHRIS HART & PARTNERS  
Landscape Architecture & Planning

cc: Mike & Jason  
05/17/07

CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
#7005 3110 0002 6290 8053

Mr. Christopher L. Hart  
Chris Hart & Partners  
1955 Main Street, Suite 200  
Wailuku, Maui, Hawaii 96793

Dear Mr. Hart:

**SUBJECT: SPECIAL MANAGEMENT AREA USE PERMIT APPROVAL FOR THE KAHULUI TOWN CENTER PROJECT, A MIXED USE DEVELOPMENT CONSISTING OF COMMERCIAL, RESIDENTIAL, PARK AND RELATED IMPROVEMENTS INCLUDING, BUT NOT LIMITED TO, A FARMERS MARKET ON APPROXIMATELY 19.9 ACRES OF LAND AT TMK'S: 3-7-007:005, 008, 009, 010, 027, AND 050, KAHULUI, MAUI, HAWAII (SM1 2006/0010)**

At its regular meeting on March 27, 2007, the Maui Planning Commission (Commission) conducted a public hearing on the above request. After due deliberation, the Commission voted to grant approval of the Special Management Area Use Permit application, subject to the following conditions:

**Standard Conditions:**

1. That construction of the proposed project shall be initiated by **March 31, 2010**. Initiation of construction shall be determined as construction of off-site improvements or issuance of a grading, foundation or building permit and construction of the improvements, whichever occurs first. Failure to comply within this three (3) 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 three (3) 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 construction of this project within the specified time limit unless a time extension is granted, will require unfinished portions of the project to obtain a new Special Management Area 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 final construction shall be in accordance with preliminary plans received on **January 24, 2007**;
5. 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, traffic disruptions, and construction waste;
6. That the subject Special Management Area Use Permit shall not be transferred without prior written approval in accordance with Section 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;
7. 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. Proof of a policy naming County of 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;

8. That full compliance with all applicable governmental requirements shall be rendered;
9. 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;
10. 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 the grading, building or foundation permit, whichever occurs first. A final compliance report shall be submitted to the Planning Department for review and approval prior to issuance of a Certificate of Occupancy for each phase of the development;
11. 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.
12. That appropriate energy conservation measures shall be incorporated into the project, which may include but are not limited to, energy conserving building materials, solar water heaters, state of the art air conditioning systems, photo voltaic systems, etc.;

13. That all exterior illumination shall consist of fully shielded downward lighting throughout the project;
14. Appropriate filtration measures to separate petroleum products and other potential contaminants shall be incorporated into the project's final drainage plan and shall be maintained regularly per manufacturer's specifications, with the contaminant residuals from storm water treatment to be properly disposed of. Records of the disposal shall be kept by the applicant and made available for inspection by county and state agencies upon request. Plans for the filtration measures shall be submitted to the Planning Department together with the preliminary compliance report. Evidence of appropriate mechanisms to comply with this condition after filtration measures have been installed shall be submitted to the Planning Department as part of the final compliance report;

**PROJECT SPECIFIC CONDITIONS:**

15. That the applicant shall be responsible for all required infrastructural improvements, as required by Maui County Code, 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;
16. That water conservation measures and pollution prevention measures shall be incorporated into the project's design, construction and operation;
17. That to the extent practical, the monkeypod trees along Town Center Drive and Kinau Avenue shall be planted in a minimum 15'x15' space to promote the health of the trees;
18. That round the clock security for the project shall be provided once the residential component of the project is constructed;
19. The proposed Monkeypod Trees within the ½ acre park site shall be set back 15 ft. from the edge of pavement;
20. That the planting of new trees shall utilize amended soil as opposed to new soil;

21. That a certified and qualified arborist shall assess the health and structural integrity of all existing trees prior to each phase of development. For these trees found to be healthy and structurally sound, relocation of these trees could occur on-site or at another location of public benefit;
22. That existing trees found unable to be moved due to their age shall be replaced with new field stock trees;
23. That a final landscape plan for each phase of development shall be submitted to the Planning Department for review and approval to assure that the Arborist Committee concerns have been addressed. The Planning Department may refer said plans to the Arborist Committee for recommendation;
24. That a minimum five (5) acres of land suitable in shape, location, and topography for active ball fields or other such requirements as determined by the Parks Department shall be improved to the satisfaction of the Parks Department. Further, the approximate ½ acre "Town Square Park" shall not be used to satisfy the project's park assessment requirement;
25. That the applicant shall construct the required improvements at project intersections under the State jurisdiction as recommended by the project's TIAR to the satisfaction of the State DOT. An agreement reflecting the required improvements of pro rata share of improvements as determined by the SDOT shall be submitted to the Planning Department prior to the issuance of a building permit for the respective quadrant. Similarly, construction of the required improvements as approved by the SDOT shall be completed prior to the issuance of a certificate of occupancy for the respective phase;
26. That the applicant shall construct the required improvements at project intersections under the County jurisdiction as recommended by the project's TIAR to the satisfaction of the County DPWEM. An agreement reflecting the required improvements or pro-rata share of improvements as determined by the DPWEM shall be submitted to the Planning Department prior to the issuance of a building permit for the respective phase. Similarly, construction of the required improvements as approved by the DPWEM shall be completed prior to the issuance of a certificate of occupancy for the respective phase;

27. That the new driveway access on Puunene Avenue shall not be constructed without the approval of the SDOT. If the new access driveway is approved, written confirmation from SDOT shall be submitted to the Planning Department prior to issuance of building permits;
28. That a qualified archaeological monitor or monitors shall be present during all ground-altering activities conducted in the project area in order to document any historic properties which may be encountered during the proposed undertaking and to provide mitigation measures as necessary. An archaeological monitoring plan will need to be submitted to the State Historic Preservation Division for review and acceptance, prior to the commencement of any ground-altering activities. An archaeological monitoring plan must contain the following nine specifications: (1) The kinds of remains that are anticipated and where in the construction area the remains are likely to be found; (2) How the remains and deposits will be documented; (3) How the expected types of remains will be treated; (4) The archaeologist conducting the monitoring has the authority to halt the construction in the immediate area of the find in order to carry out the plan; (5) A coordination meeting between the archaeologist and construction crew is scheduled, so that the construction team is aware of the plan; (6) What laboratory work will be done on remains that are collected; (7) A schedule of report preparation; (8) Details concerning the archiving of any collections that are made; and (9) An acceptable report documenting the findings of the monitoring activities shall be submitted to the State Historic Preservation Division for review upon 180 days following the completion of the proposed undertaking;
29. The State Historic Preservation Division (Maui and O'ahu offices) shall be notified via facsimile upon the on-set and completion of the project and the monitoring plan;
30. That a copy of the approved National Pollutant Discharge Elimination System (NPDES) permit shall be filed with the Planning Department and the Department of Public Works and Environmental Management prior to approval of the grading permit;
31. That an appropriate Best Management Practices (BMPs) plan shall be reviewed and approved by the Department of Public Works and Environmental Management. Said plan shall address impacts associated with erosion, contaminants, and construction waste. The approved plan shall be filed with the Maui Planning Department prior to issuance of a grading permit;

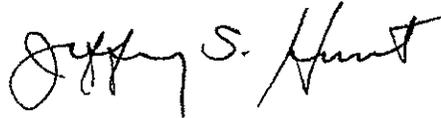
32. That should a Noise permit be required by the Department of Health, a copy of said permit shall be submitted to the Planning Department prior to issuance of a building permit;
33. That full compliance with the Department of Health's administrative rules regarding dust control, water quality, lead substances, Asbestos, and water quality;
34. That full compliance with the County of Maui's Residential Workforce Housing Policy, Chapter 2.96, Maui County Code shall be rendered. A copy of the executed workforce housing agreement shall be filed with the Planning Department prior to issuance of building permits for the residential units;
35. That as represented by the applicant, a voluntary contribution in the form of equipment, funds or services shall be made to the Department of Education to support classroom facility improvements or technological advancement needs at public schools serving the Kahului area. The valuation of the equipment, funds or services shall be a minimum of \$100,000.00, and may include, for example the purchase of computers, software, printers, digital cameras, projectors and other like equipment. The applicant shall secure written confirmation from Maui High School, stating that said equipment, funds and/or services have been contributed. A copy of Maui High School's written confirmation shall be filed with the Planning Department prior to issuance of a certificate of occupancy for the first residential unit; and
36. That major design modifications shall be approved by the Planning Department in accordance with established design guidelines dated February 6, 2007.

Further, the Commission adopted the Report and Recommendation prepared by the Maui Planning Department for the March 27, 2007 meeting as the Findings of Fact, Conclusions of Law, and Decision and Order, attached hereto and made a part hereof. 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.

Mr. Christopher L. Hart  
April 30, 2007  
Page 8

Thank you for your cooperation. If additional clarification is required, please contact Staff Planner Ann Cua, of this office, by e-mail at [ann.cua@mauicounty.gov](mailto:ann.cua@mauicounty.gov) or by telephone at (808-270-7521).

Sincerely,



JEFFREY S. HUNT, AICP  
Planning Director

xc: Clayton I. Yoshida, AICP, Planning Program Administrator  
Aaron H. Shinmoto, P.E., Planning Program Administrator (2)  
Ann T. Cua, Current Planning Supervisor  
Development Services Administration (2)  
Jeffrey Eng, Director, Department of Water Supply (w/report)  
Vanessa Medeiros, Director of Housing and Human Concerns (w/report)  
State Department of Transportation (w/report)  
Melissa Kirkendahl, DLNR, SHPD

JSH:ATC:bv

Project File  
General File

K:\WP\_DOCS\PLANNING\SM1\2006\0010\_KahuluiTownCenter\MPCapproval.wpd

## **Exhibit M**

### **Master Community Charter for Kahului Town Center**

This Master Community Charter for Kahului Town Center ("Charter") has not been recorded yet, but it will be prior to the close of unit sales. An unrecorded copy of the Charter is attached as Exhibit M. When the Charter is recorded, Developer reserves the right to amend this report to delete the unrecorded copy of the Charter attached as an exhibit and instead provide Purchasers a copy of the recorded Charter.

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail  Pickup  To:

Kiefer & Garneau LLC  
444 Hana Highway Suite 204  
Kahului, Hawaii 96732  
Attn: Richard Kiefer (808) 871-6016

TITLE OF DOCUMENT:

**MASTER COMMUNITY CHARTER  
FOR KAHULUI TOWN CENTER**

PARTIES TO DOCUMENT:

Developer: **KAHULUI TOWN CENTER LLC**, a Hawaii limited liability company

TAX MAP KEY(S): Maui 3-7-7-9

(This document consists of \_\_\_ pages.)

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## MASTER COMMUNITY CHARTER

FOR

### KAHULUI TOWN CENTER

This Master Community Charter ("**Charter**") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by **KAHULUI TOWN CENTER LLC**, a Hawaii limited liability company ("**Developer**").

#### BACKGROUND AND PURPOSE OF THIS CHARTER

A. Developer is the fee simple owner of the real property described in Exhibit "A" attached hereto ("**Land**") that is located in Kahului, Maui.

B. Developer plans to develop the Land as a mixed-use, master-planned urban development known as Kahului Town Center ("**Kahului Town Center**").

C. To further its plans to develop Kahului Town Center, Developer has submitted the Land to the Declaration of Condominium Property Regime of the Kahului Town Center Master Condominium dated April 17, 2008, and recorded in the Bureau of Conveyances of the State of Hawaii ("**Bureau**") as Document No. 2008-067574 (the "**Master Condominium Declaration**"), and Condominium Map No. 4626 filed therewith (the "**Master Condominium Map**") under Hawaii Revised Statutes, Chapter 514B, as amended ("**Act**"). By the Master Condominium Declaration and Map Developer created a condominium known as the Kahului Town Center Master Condominium (the "**Master Condominium**") that established four separate condominium units (the "**Master Units**") within the Land, numbered Units 1 through 4. Each of the Master Units contains a separate quadrant within the Land on which Developer intends, but is under no obligation, to develop separate condominium projects as parts of Kahului Town Center's integrated, master-planned community.

D. Developer has submitted Unit 1 of the Master Condominium to the Amended and Restated Declaration of Condominium Property Regime of Kahului Town Center Quadrant One dated February 12, 2009, and recorded in the Bureau as Document No. 2009-031747 (the "**Quadrant One Condominium Declaration**"), and Condominium Map No. 4627 (the "**Quadrant One Condominium Map**"). By the Quadrant One Condominium Declaration and Map, Developer established a condominium known as the Kahului Town Center Quadrant One Condominium (the "**Quadrant One Condominium**") consists initially of two three-story buildings that when constructed are currently planned to contain fifty-seven condominium units intended for office, commercial, retail, and restaurant uses.

E. Developer further anticipates, but does not guaranty, that Units 2 through 4 of the Master Condominium will be the sites of three separate condominium projects (which, together with the Quadrant One Condominium, shall be referred to as "**Condominium Projects**," and which each singularly shall be referred to as a "**Condominium Project**"). Each such Condominium Project, if and when developed, shall be submitted by its own declaration of condominium property regime pursuant to

the Act (each, a “**Condominium Declaration**”) and for each of which there will be a Unit Owner’s association (“**Association**”) each governed by its own bylaws (“**Bylaws**”). All of the Condominium Projects may or may not be developed by Developer. The Condominium Projects within Units 2 through 4 of the Master Condominium are currently anticipated to include residential, retail, office and commercial condominium units.

F. Developer also reserves the right, but is not obligated, to include within Kahului Town Center certain additional lots, separately or collectively, that are located within the block bordered by Kaahumanu, Puunene, Kamehameha and Lono Avenues that are identified on Exhibit “B” attached hereto, as the same may be reconfigured from time to time (“**Annexation Land**”). The Annexation Land is not subject to the terms, conditions, reservations, easements and restrictions contained in this Charter until such time as such land is annexed to this Charter as provided below.

G. Kahului Town Center shall be deemed to include the Land and the portions of the Annexation Land that are annexed to this Charter as provided below, together with any improvements located thereon, now existing or constructed hereafter, including, without limitation, the Condominium Projects and the buildings, landscaping and amenities constructed in the Condominium Projects.

H. Through this Charter, Developer desires to establish a common scheme and plan for the use, enjoyment, repair, maintenance, restoration and improvement of Kahului Town Center and the Condominium Projects contained therein. In addition, this Charter sets forth certain rights of the Developer necessary to future development of Kahului Town Center, including without limitation the granting of certain easements and the recording of Supplements to this Charter.

**NOW THEREFORE**, in furtherance of the orderly development, ownership and use of Kahului Town Center as a master-planned community, Developer hereby declares that the Land, the Master Condominium, and each of the Condominium Projects shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the following terms, covenants, conditions, reservations, easements and restrictions set forth in this Charter, as it may be amended from time to time, in accordance with the terms hereof and thereof, all of which are declared to be in furtherance of a plan established for the purpose of developing, maintaining, and operating Kahului Town Center at the Quality Standard and enhancing and perfecting the value, desirability and enjoyment of Kahului Town Center for all of the owners thereof or any interests therein.

## **ARTICLE 1**

### **DEFINITIONS**

Unless otherwise expressly provided, the following words and phrases, when used herein, shall have the following specified meanings:

1. **“Act”** means Hawaii Revised Statutes, Chapter 514B, as the same may be amended from time to time.
2. **“Annexation Land”** means the parcels of land described in Exhibit “B” attached hereto which Developer may annex to the Charter collectively or separately from time to time. Once annexed, Annexation Land shall be considered part of the Land.
3. **“Association”** means the condominium owners association of the Master Condominium or of a Condominium Project established in accordance with the Act, each of which may be a nonprofit corporation created and governed by the Bylaws.
4. **“Board”** means the board of directors of the Master Condominium’s Association or of each Condominium Project’s Association.
5. **“Bureau”** means the Bureau of Conveyances of the State of Hawaii.
6. **“Bylaws”** mean the Bylaws of the Association for the Master Condominium or for each Condominium Project, created pursuant to the Act.
7. **“Charter”** means this Master Community Charter for Kahului Town Center, as amended from time to time.
8. **“Code”** means Maui County Code, as amended.
9. **“Common Elements”** means the portions of the Master Condominium or each Condominium Project identified as “Common Elements” in the Master Condominium Declaration or applicable Condominium Declaration and/or depicted as such on the Master Condominium Map or the Condominium Map for each Condominium Project.
10. **“Common Expense”** means and includes all charges, costs and expenses whatsoever incurred by an Association for and in connection with the administration, management and operation of the Condominium Project, as further defined and described in the Condominium Declaration, including any Cross-Facilities License Fee.
11. **“Condominium Declaration”** means the Declaration of Condominium Property Regime for each Condominium Project, which shall be subordinate to the Charter, except with respect to the internal operations of each Condominium Project, in which event the terms and provisions of the Declaration of that specific Condominium Project shall control.
12. **“Condominium Documents”** means the documents made pursuant to the Act that create and/or govern the operation of the Master Condominium or any of the Condominium Projects, including without limitation their respective declarations of condominium property regimes, condominium maps, bylaws, condominium unit deeds, rules and regulations or house rules.

13. **“Condominium Map”** means the recorded condominium map, as amended from time to time, for each Condominium Project.
14. **“Condominium Projects”** means those certain condominium projects to which the Master Units in Kahului Town Center are submitted from time to time. Each individual project may be referred to herein as “Condominium Project.” Developer makes no representation or warranty that any or all of the estimated units or that any of the Condominium Projects specified herein will be created.
15. **“County”** means the County of Maui in the State of Hawaii, and its various departments, divisions, employees and representatives.
16. **“Cross-Facilities Easement”, “Cross-Facilities License” and “Cross-Facilities License Fee”** shall have the meanings set forth in Section 7.8.
17. **“Design Committee”** means that certain committee formed by the Developer, if any, authorized to promulgate and adopt design committee rules and to approve or deny any proposed improvement or renovation based upon design and/or integration of the proposed improvement or renovation into the overall theme and continuity of Kahului Town Center.
18. **“Design Committee Rules”** means the rules, if any, promulgated, adopted and enforced by the Design Committee.
19. **“Design Guidelines”** the guidelines regarding the construction, maintenance, repair, and renovation of any specific Condominium Project or portion thereof or any specific Improvements within Kahului Town Center that Developer may impose by a Supplement regarding such Condominium Project or Improvements.
20. **“Developer”** means Kahului Town Center LLC, a Hawaii limited liability company, as the initial Owner of the Land and Kahului Town Center, and its successors, and any Person to which it shall have assigned or delegated any of its rights or duties under the Charter by an express written assignment that is recorded in the Bureau. Any such assignment may be as to all or any portion of Kahului Town Center, may include only certain specific rights and/or duties of the Developer, and may be subject to such conditions as Developer may impose in its sole and absolute discretion.
21. **“Dispute”** means any controversy or claim arising out of, or related to, this Charter or any alleged construction or design defects pertaining to the Improvements in Kahului Town Center.
22. **“DPR”** means Dispute Prevention and Resolution, Inc. or, in the event that Dispute Prevention and Resolution, Inc. ceases to operate or to provide the required services, such other company as may be selected by the Developer.
23. **“Emergency Situations”** means entry into a Unit or Master Unit in those situations (a) requiring entry by an order of a court; (b) necessary to repair or maintain

any part of the property where a threat to personal safety on the property is discovered; (c) necessary to address a situation that will cause imminent harm to a person or property; (d) necessary to repair any part of the property that could not have been reasonably foreseen.

24. **“Force Majeure Event”** means events which are legally recognized under Hawaii law as defenses to contract actions based on impossibility of performance or frustration, including, but not limited to, fire, earthquake, act of God, the elements, war or civil disturbances, litigation, strikes or other labor disturbances, governmental delay or inaction, or economic controls making it impossible to obtain the necessary labor or materials, or any other matter or condition beyond the parties’ control.

25. **“Government Agency”** means any federal, state or County agency, board, commission, officer, council, or department with legal authority over any aspect of the development, construction, operation, use, or occupancy of Kahului Town Center.

26. **“Improvements”** means physical improvements to the Land including without limitation all buildings.

27. **“Kahului Town Center”** shall mean the Land and all the improvements located thereon, including the Master Condominium and the Condominium Projects to be located in the future on the Land.

28. **“Land”** means the real property described in Exhibit A to this Charter, together with any improvements located thereon. The description of the Land may change as the Developer exercises its right to subdivide, withdraw and consolidate, or annex to the land for each Condominium Project and/or to Kahului Town Center.

29. **“Limited Common Element”** means those Common Elements that are designated in each Condominium Declaration for a Condominium Project as reserved for the exclusive use of one or more Units within that Project to the exclusion of other Units.

30. **“Master Association”** means the Association of the Master Condominium.

31. **“Master Condominium”** means the condominium property regime to which all of Kahului Town Center is subject, and which divides Kahului Town Center into the four Master Units or Quadrants.

32. **“Master Condominium Declaration”** means the Declaration of Condominium Property Regime of the Kahului Town Center Master Condominium dated April 17, 2008, and recorded in the Bureau as Document No. 2008-067574, as amended from time to time.

33. **“Master Condominium Map”** means Condominium Map No. 4626 filed in the Bureau with the Master Condominium Declaration, as amended from time to time.

34. **“Master Unit”** means each of the condominium units established by the Master Condominium Declaration and the Master Condominium Map pursuant to the Act.

35. **“Merged Project”** means the new condominium project formed upon Developer’s or a Quadrant Developer’s exercise of its right to perform administrative or administrative and ownership merger of two or more Condominium Projects.

36. **“Mortgage”** means any recorded mortgage or deed of trust or other conveyance of some or all of a Unit or other interest to secure the payment of debt, which conveyance will be released or reconveyed upon the completion of such payment. A “First Mortgage” shall refer to a Mortgage which has priority over all other Mortgages encumbering the subject property.

37. **“Mortgagee”** shall mean a Person to whom a Mortgage is made.

38. **“Neighboring Developments”** means lands outside, abutting and/or near Kahului Town Center, which are or may be subject to development.

39. **“Owner”** or **“Unit Owner”** means one or more Persons who hold the record title to any Unit or Master Unit within Kahului Town Center, but in all cases excluding any party holding an interest merely as security for the performance of an obligation.

40. **“Permittees”** means those persons who are guests, lessees, patrons or customers of Unit Owner.

41. **“Person”** means a natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

42. **“Property”** or **“Land”** shall mean all of the real property described in the preamble of this Charter, together with any additional real property which may become subject to this Charter by way of annexation.

43. **“Proposed Development Plan”** means Developer’s proposed plans and timelines for the development of Kahului Town Center from time to time. The Developer has the right to amend such Proposed Development Plan in its discretion in accordance with the Charter.

44. **“Quadrant”** each of the four separate Master Units within Kahului Town Center may sometimes be referred to as a Quadrant. Developer intends, but it not bound, to develop each Quadrant as a separate Condominium Project.

45. **“Quadrant Developer”** means a person who undertakes to develop a real estate condominium project in any of the Master Units, including a person who succeeds to the interest of a developer by acquiring a controlling interest in the developer or the condominium project.

46. **“Quadrant One Condominium”** means the Condominium Project to which Master Unit No. 1 of the Master Condominium is subject.
47. **“Quadrant One Condominium Declaration”** means the Amended and Restated Declaration of Condominium Property Regime of Kahului Town Center Quadrant One dated February 12, 2009, and recorded in the Bureau as Document No. 2009-031747, as amended from time to time.
48. **“Quadrant One Condominium Map”** means Condominium Map No. 4627 filed in the Bureau with the Quadrant One Condominium Declaration, as amended from time to time.
49. **“Quality Standard”** means, as detailed in Article Three, the standard required to maintain and operate the various Improvements within Kahului Town Center in a condition and at a quality level no less than that which existed at the time such Improvements are initially completed (ordinary wear and tear excepted).
50. **“Shared Facility”** means, as set forth in Section 7.8, a portion of a Condominium’s Common Elements that is subject to a Cross-Facilities License or Easement.
51. **“SMA”** means the Special Management Area established pursuant to Chapter 205A of the Hawaii Revised Statutes to which Kahului Town Center is currently subject.
52. **“SMA Approval”** means any Governmental Agency permit, approval, consent, concurrence, exemption determination, or other action which may be required in connection with the development, construction, operation, use, or occupancy of Kahului Town Center or any Condominium Project, Master Unit or Unit therein under Chapter 205A of the Hawaii Revised Statutes or the rules and regulations adopted pursuant thereto, as amended from time to time.
53. **“SMA Permit”** means the SMA Approval for Kahului Town Center granted by the Planning Commission of the County on or about March 27, 2007, as amended, modified and extended from time to time.
54. **“Subdivided Lot(s)”** any additional lot or lots created through Developer’s exercise of its right to subdivide, consolidate and withdraw, as set forth herein.
55. **“Supplement”** means a document that Developer records in the Bureau to annex any of the Annexation Land to this Charter, to impose supplemental covenants, conditions, restrictions, easements or reservations on particular parts of Kahului Town Center, or to define the Quality Standard applicable to particular Improvements, Units or Condominium Projects within Kahului Town Center, all of which are binding and enforceable pursuant to this Charter.

56. **“Taxes”** means any and all applicable County or State of Hawaii general excise and real property taxes.

57. **“Unit”** includes all condominium units in Kahului Town Center, including (unless the context clearly indicates otherwise) the Master Units and condominium units within the Condominium Projects established within the Master Units.

58. **“Unit Owner”** or **“Owner”** means one or more Persons who hold the record title to any Unit in Kahului Town Center, but in all cases excluding any party holding an interest merely as security for the performance of an obligation.

## ARTICLE 2

### GENERAL

2.1 Scope. Developer hereby declares that the Land shall be held, transferred, sold, conveyed, leased, occupied and used subject to the easements, restrictions, reservations, covenants, charges, liens, conditions, and other provisions set forth in this Charter, all of which are established and declared for the mutual benefit of the owners of any interest in Kahului Town Center. The easements, restrictions, reservations, covenants, charges, liens, conditions, and other provisions set forth in this Charter shall touch and concern and run with the Land and shall be binding upon all persons acquiring any right, title or interest in and to the Land, and shall inure to the benefit of Developer and its successors and assigns.

2.2 Charter Binding Upon Unit Owners. Every purchaser or grantee of any interest in any Unit or any other real property subject to this Charter, by acceptance of a deed or other conveyance instrument thereof, thereby agrees that the provisions of this Charter shall run with and bind title to such Unit and real property as provided in this Charter.

2.3 Rights of Developer. Each person acquiring any right, title or interest in the Land, by the acceptance of any deed, mortgage, lease, rental agreement or other document conveying any right, title or interest in any part of the Land, acknowledges and agrees that the Developer and/or its affiliates, as developer and/or owner of the Land, has a continuing interest in maintaining the attractiveness, economic value and desirability of the Land and Kahului Town Center to the Quality Standard, and that all provisions of this Charter requiring the consent or approval of the Developer are reasonable restrictions because of such continuing interest.

2.4 Supplements to this Charter. Developer may from time to time execute and record Supplements in the Bureau to annex the Annexation Land in whole or in part to this Charter or to impose supplemental terms, conditions, covenants, restrictions, reservations or easements on particular Condominium Projects, Units, or Improvements within Kahului Town Center, provided that Supplement shall not be binding on Annexation Land or a Unit or other interest in Kahului Town Center that is not owned by Developer unless the fee Owner of such Land, Unit or interest consents to the

Supplement. Recorded Supplements shall be deemed a part of this Charter for all purposes, and all of the terms, conditions, covenants, restrictions, reservations or easements set forth in a recorded Supplement shall be binding and enforceable in accordance with the terms of this Charter as if they had been set forth herein.

2.5 Effect of Provisions of Charter. Each provision of this Charter, and an agreement, promise, covenant and undertaking to comply with each provision of this Charter, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Charter:

2.5.1 shall be deemed incorporated in each deed or other instrument by which any right, title or interest in a Unit, a Master Unit or the Land is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument;

2.5.2 shall, by virtue of acceptance of any right, title or interest in the Land, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner, and, as a personal covenant, shall be binding on such Owner and such Owner's heirs, devisees, personal representatives, successors and assigns; and further, as a personal covenant of an Owner, shall be deemed a personal covenant to, with and for the benefit of the Developer but not to, with or for the benefit of any other Owner;

2.5.3 shall be deemed a real covenant by Developer for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to the Unit, Master Unit or Land, and as a real covenant, and, further, as an equitable servitude, shall be deemed a covenant and servitude for the benefit of the Unit, Master Unit or Land; and

2.5.4 shall be deemed a covenant, obligation and restriction secured by a lien in favor of the Developer, burdening and encumbering title to the Land, the Master Condominium Project, the Master Units, and each Condominium Project and each Unit therein. If at any time during the term of this Charter, any Owner purchases or otherwise acquires any interest in a Unit, Master Unit or the Land which has not been submitted to the provisions of this Declaration, said interest so purchased or otherwise acquired shall thereafter be owned, held, used and occupied subject to the provisions of this Charter and to the covenants, conditions and restrictions herein contained, and said Owner will continue to have the rights and be subject to the obligations of an Owner, as set forth herein.

2.6 Construction. The provisions of this Charter shall be liberally construed to promote and effectuate the fundamental concepts of Kahului Town Center and the purposes of this Charter as set forth herein, and no provision hereof shall be construed to excuse any Person from observing any law or regulation of any governmental body having jurisdiction over Kahului Town Center. Each Owner by acquiring any interest in a Unit, a Master Unit or the Land shall be deemed to have agreed that such rule of construction shall apply to this Charter, notwithstanding any general principals of Hawaii law to the contrary which are expressly waived.

2.7 No Avoiding Compliance. No Owner through non-use of any Kahului Town Center, or through abandonment of such Owner's Unit, Mas interest in the Land, may avoid the burdens or obligations imposed on such this Charter.

2.8 Limited Liability. Neither Developer, nor any member, director, officer nor employee of any of the same, shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

2.9 Conflict with the Condominium Documents. In the event of any irreconcilable conflict between any provision of this Charter and any provision of any of the Condominium Documents, the provisions of this Charter shall govern and control to the maximum extent allowed by applicable laws, even if the Condominium Documents were executed or recorded prior to this Charter, the same being expressly subordinated to this Charter.

2.10 Special Blanket Use Restriction. Notwithstanding anything to the contrary in any Condominium Document, no Unit or other portion of Kahului Town Center may be used or occupied (a) for the conduct or operation of any store, business, trade or profession (whether separately or as a part of another entity), which requires or has a license or permit to conduct a pharmacy from the Hawaii State Board of Pharmacy, or other agency which hereafter may be empowered to license or permit the conduct of a pharmacy, or which employs or is required to employ a registered pharmacist in such capacity; (b) for the conduct or operation of any store, business, trade or profession (whether separately or as a part of another entity) which is called, labeled, named or it commonly known as or referred to as a "drug store" (or "drug department"), "pharmacy," or "apothecary", provided that the above restriction as to the "drug store" (or "drug department"), "pharmacy," or "apothecary" is intended to cover only those items the sale of which requires a pharmacy permit or the employment of a registered pharmacist; or (c) the conduct of any store, business or trade which sells alcoholic beverages at retail for off-premises consumption, provided that this restriction does not apply to the sale of beer or wine.

### ARTICLE 3

#### QUALITY STANDARDS & DESIGN REVIEW

3.1 Purpose. Developer intends Kahului Town Center to have a unique and consistent character derived from a mix of compatible architectural and landscaping styles, materials and construction methods that are initially chosen or approved by Developer, and from the cooperation of all Quadrant Developers and Owners in upholding minimum design, landscaping, and aesthetic standards. Such standards are referred to in this Charter as "Quality Standards". Given the variety of uses which may be included Kahului Town Center and the extended time-period over which it will be Developed, Developer intends and expects those Quality Standards may vary between the different components of Kahului Town Center and evolve over time. This Article

defines how the Quality Standards are established and how they are applied and maintained through a process requiring prior approval for construction of and modifications to Improvements within Kahului Town Center.

3.2 Quality Standard. The Quality Standard for any Improvement within Kahului Town Center shall be the condition and quality of design, construction, materials, finish and landscaping that the Improvement has at the time the Improvement is initially completed (ordinary wear and tear excepted).

3.3 Obligation to Maintain Quality Standard. All Condominium Projects, Improvements, Units and other properties within Kahului Town Center shall be constructed, maintained, operated, used, occupied, repaired and replaced at the Quality Standard applicable to such Projects, Improvements, or Units.

3.4 Design Committee. In order to implement, monitor and enforce compliance with the Quality Standard, Developer may appoint a Design Committee consisting of at least three (3) and no more than five (5) Persons, who shall serve and may be removed and replaced in the Developer's discretion. Design Committee members need not be Owners or representatives of Owners. The Design Committee may, but need not, include architects, engineers, or similar professionals. Design Committee members may be compensated in such manner and amount, if any, as the Design Committee Rules may provide from time to time. If at any time no Design Committee is duly constituted, Developer shall act as the Design Committee.

3.5 Design Committee Rules. The Design Committee may adopt rules consistent with this Charter that govern the construction, alteration, renovation, improvement, removal, demolition, or replacement of Improvements within Kahului Town Center ("Design Committee Rules"). The Design Committee Rules may provide for fees and charges applicable to applications for Committee approval of proposed work to cover the actual expenses incurred in reviewing, approving, and monitoring proposed work.

### 3.6 Quality Standard Review of Proposed Construction or Alternations.

3.6.1 Improvements within Kahului Town Center may not be constructed, altered, renovated, improved, removed, demolished, or replaced unless such work (the "Work") has first been approved in accordance with this Article. Such approval shall be required even if such Work is wholly within a Unit or is not visible from exterior portions of Kahului Town Center.

3.6.2 Prior to commencing any Work, the Person proposing the Work shall submit to the Design Committee (a) complete plans and specifications for the Work, (b) such other information as the Design Committee may require, (c) such review fees and charges as may be established from time to time to cover the actual expenses incurred in reviewing proposed Work, and (d) any other information or documentation

that may be required under the Design Committee Rules (if any) in effect from time to time.

3.6.3 The Design Committee shall review the proposed Work for compliance with the Quality Standard, and the Design Committee may withhold or condition approval if the Design Committee in its discretion determines that the Work does not meet or exceed the Quality Standard. In reviewing proposed Work, the Design Committee may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements. The Design Committee shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to review or appeal.

3.6.4 The Design Committee shall make a determination on each application after receipt of a completed application with all required information. The Design Committee permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Design Committee may (i) approve the Work with or without conditions; (ii) approve a portion of the Work and disapprove other portions; or (iii) disapprove the Work. The Design Committee shall notify the applicant in writing of the final determination on any proposed Work no later than 30 business days after its receipt of a completed application and all required submissions.

3.6.5 As part of any approval, the Design Committee may require that construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any Work. Once construction is commenced, it shall be diligently pursued to completion. All Work shall be completed within two years after commencement unless otherwise specified in the notice of approval or unless the Design Committee, in its discretion, grants an extension in writing.

3.6.6 The Design Committee may exempt certain activities from the application and approval requirements of this chapter if such activities are undertaken in compliance with the Design Committee Rules and any applicable Design Guidelines. If, following the approval of proposed Work by the Design Committee, the County requires any nonmaterial change to the approved plans and such change does not materially and adversely affect the plans' conformance to the Quality Standard or the Design Guidelines, the Owner may make such change to the plans with prior notice to but without further approval by the Design Committee. If, however, County requires any material change to the approved plans and such change materially and adversely affects the plans' conformance to the Design Guidelines or the Quality Standard, the Owner shall be required to submit such revised plans to the Design Committee for approval.

3.6.7 The people reviewing applications under this Article will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Quality Standard and the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. In such cases, the Design Committee may elect not to require changes to objectionable features. However, the Design Committee may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

3.6.8 The Design Committee authorize variances from compliance with any of the Design Guidelines and any procedures when it determines that circumstances such as natural obstructions, hardship, or aesthetic or environmental considerations justify such a variance, however, the Committee shall under no circumstances be obligated to grant variances. No variance shall (a) be effective unless in writing; (b) be contrary to this Charter; or (c) prevent the Design Committee from denying a variance in other circumstances.

3.6.9 This Article establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of Kahului Town Center; such standards and procedures do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based purely on aesthetic considerations. The Design Committee is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all Units are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Owners. The Developer, the Design Committee and their respective members shall not be responsible or liable for (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not the Design Committee has approved or featured such contractor; or (d) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Improvements

3.6.10 Any Owner may request in writing that the Design Committee issue a certificate of compliance certifying that there are no known violations of this Article, the Quality Standard or the Design Guidelines with respect to that Owner's Unit. The Design Committee shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall prevent the Developer from taking enforcement action against an Owner for any condition known to the Design Committee on the date of such certificate.

3.7 Additional Requirements. Any proposed Work must be constructed strictly in accordance with the approval of the Design Committee, including any conditions on such approval, as well as all applicable laws and regulations. No Owner may commence any Work unless the Owner has first secured any necessary SMA Approval and all other applicable Government Agency permits or approval.

3.8 Water Conservation Measures. In order to promote water conservation, proposed Work may be required to comply with water conservation techniques and practices, including without limitation: (a) installation of water conserving irrigation systems, including trickle, drip, or temporary irrigation; (b) irrigation restrictions, including hourly bans on irrigation; (c) prohibitions on use of potable water for irrigation uses when nonpotable water is available for such uses; (d) installation of water conservation fixtures and appliances; (e) design of structures and improvements to facilitate the collection of water; (f) implementation of rules regarding excess water; (g) use of mulch, bark, or rock areas as part of a landscaping program; and (h) use of native plants, including trees, shrubs, grasses, and perennials.

3.9 Grounds for Disapproval. Until such time as Developer completes its planned development of Kahului Town Center, approval to construct proposed Work may be denied if such Work would adversely impact Developer's ability to complete the development of Kahului Town Center. Examples of such Work include without limitation Work which alters or increases the density, floor area ratio, area, height, building footprint or parking requirements of any Improvements.

3.10 Enforcement. In addition to any other remedies available at law or equity or pursuant to this Charter, an Owner's failure to strictly comply with the term, conditions and requirements of this Article shall be grounds for Developer to seek injunctive relief halting any Work until the Owner is in full compliance with this Article.

## ARTICLE 4

### EASEMENTS IN PROJECT

4.1 Easement over Roads, Lanes, Parking Areas & Loading Zones. The Developer hereby expressly reserves the right to grant easements appurtenant to any Master Units, Units, Condominium Project, or neighboring lands or condominium projects or units thereon to do the following:

4.1.1 To enter onto and pass through Kahului Town Center from public streets and roads for purposes of accessing the properties benefitted by such easements;

4.1.2 To use the lanes, pathways, loading zones, walkways and roads in Kahului Town Center, subject to any reasonable limitations set by the Developer;

4.1.3 To use parking areas or parking stalls specifically identified or designated in the grant, provided that parking areas or stalls designated as a Limited

Common Element appurtenant to a Unit may not be so used without the consent of the Owner of the Unit;

4.1.4 To use the Common Elements of Kahului Town Center or Condominium Projects located therein as may be reasonably necessary in connection with the ordinary conduct of business operations in the benefitted properties.

4.2 Lateral and Subjacent Support. Each Condominium Project shall be subject to easements for the lateral and subjacent support of adjoining or abutting Condominium Projects.

4.3 Easements for Installation and Maintenance of Infrastructure and Landscaping.

4.3.1 Reservation of Easement. Developer reserves to itself, for so long as Developer owns any portion of or interest in Kahului Town Center, perpetual, non-exclusive easements throughout all areas of Kahului Town Center, to the extent reasonably necessary for the purpose of the following:

4.3.1.1 Installing utilities and infrastructure to serve the Condominium Projects or adjoining lands, including, but not limited to, wells, water systems, water reclamation facilities, waste water systems and facilities, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, roadways, sidewalks, and walkways, drainage systems, irrigation systems, street lights and signage;

4.3.1.2 Establishing and creating landscape, open space, and view easements for the benefit of the Condominium Projects or adjoining lands;

4.3.1.3 Inspecting, maintaining, repairing, replacing, monitoring, testing, redesigning and correcting the utilities and infrastructure described herein, and other structures, conditions, improvements in Kahului Town Center; and

4.3.1.4 Reading any utility meters.

4.3.1.5 Minimal Interference. All work associated with the exercise of the easements described above shall be performed in such a manner as to reasonably minimize interference with the use and enjoyment of the portion of Kahului Town Center burdened by the easement. Upon completion of the work, the Developer shall, to the extent reasonably possible, restore such property to its condition prior to the commencement of the work. Except in the case of an Emergency Situation, the exercise of such easements shall not extend to permitting entry into a Unit, nor shall it unreasonably interfere with the operation of any Condominium Project, and, except in an Emergency Situation, entry onto any Owner's Unit shall be made only after reasonable notice to the Owner or occupant thereof.

4.4 Encroachments Easements. Kahului Town Center and all portions thereof are subject to easements hereby created for encroachments among the Condominium Projects as follows:

4.4.1.1 In favor of each Condominium Project so that Kahului Town Center's Association shall have no legal liability when any part of such Condominium Project encroaches upon any abutting Condominium Project or the Common Elements of the Master Condominium;

4.4.1.2 In favor of Developer or any Quadrant Developer so that it shall have no legal liability when any part of a Condominium Project encroaches upon another Condominium Project or the Common Elements of the Master Condominium; and

4.4.1.3 In favor of Developer, any Quadrant Developer and each Association for the maintenance and repair of such encroachments.

4.5 Easements Pursuant to Exercise of Developer's Reserved Rights. Developer shall have the right to grant or accept, transfer, cancel or relocate, convey, modify or otherwise deal with any easements that Developer deems necessary or helpful in connection with the exercise of any of Developer's reserved rights set forth herein. Developer shall have the right, power, and authority, in connection with its exercise of the rights set forth in this Section, to execute and record in said Bureau or Office, as applicable, or any other court, tribunal, or agency, any and all documents that Developer may deem reasonably necessary therefor.

4.6 Easement to Complete Improvements. Developer and any Quadrant Developer shall have an easement over, under and upon Kahului Town Center, including the Condominium Projects, and any Unit, as may be reasonably necessary or appropriate for the completion of the improvements of Kahului Town Center and the correction of defects and other "punchlist" items therein. Each and every Owner or other person acquiring any interest in Kahului Town Center waives, releases and discharges any rights, claims or actions such party may acquire against Developer or any Quadrant Developer as a result of any noise, dust, vibration and other nuisances or annoyances arising from the completion of such improvements.

4.7 Easement for Noise and Dust. Developer and any Quadrant Developer shall have an easement over, under and upon Kahului Town Center, including the Condominium Projects, or any portion thereof, to create and cause noise, dust, vibration and other nuisances created by and resulting from any work connected with or incidental to the development, construction and sale of any Condominium Project and/or Unit or other improvements in Kahului Town Center. Each and every Owner or other person acquiring any interest in Kahului Town Center waives, releases and discharges any rights, claims or actions such party may acquire against Developer or any Quadrant Developer, their members, affiliates, agents, employees, consultants, contractors, licensees, successors and assigns, as a result of any such noise, dust, vibration, and other nuisances or annoyances.

4.8 Easement for Sales Activities. Developer and any Quadrant Developer shall have easements to conduct extensive sales activities at Kahului Town Center, including the use of any Unit owned by the Developer or Quadrant Developer, excluding conveyed Units, for model Units, sales, leasing, management and construction offices, parking and extensive sales displays and activities, the posting and maintenance of signs and other advertisements relating to such sales activities, and to install, maintain, locate, relocate, and reconfigure such structures, displays, advertising signs, billboards, flags, sales desks, kiosks, sales, leasing, management and/or construction offices, model Units, interior design and decorator centers, and parking areas for employees, agents, and prospective buyers, as may be necessary or convenient for the proper development and disposition of Units by sale, resale, lease, or otherwise, and the right, but not the obligation, to provide ongoing maintenance, operation, service, construction and repairs to individual Units. In the event that Developer's or a Quadrant Developer's mortgage lender, if any, or any successor to or assignee of such mortgage lender shall acquire any portion of Kahului Town Center in the course of any foreclosure or other legal proceeding or in the exercise of the mortgage remedies or by a deed or an assignment in lieu of foreclosure, such mortgage lender, its successors and assigns, shall have the same rights as Developer or Quadrant Developer to conduct such sales activities on Kahului Town Center.

Each and every party acquiring an interest in Kahului Town Center or the Land hereby acknowledges that the sales activities may result in noise and nuisances, and consents to such activity by Developer and any Quadrant Developer, and further waives, releases and discharges any rights, claims or actions such party may acquire against Developer or any Quadrant Developer, their members, brokers, sales agents, representatives, employees, consultants, attorneys and lenders, and their respective successors and assigns as a result of any such activity or activities.

4.9 Rights of Entry. There is hereby reserved to Developer, with the right to grant and transfer same, an easement in, on, over, along and across Kahului Town Center, and each Condominium Project, Master Unit and Unit in Kahului Town Center, including, without limitation, the interior of such Units, for the purpose of inspecting Kahului Town Center, and taking whatever corrective action may be deemed necessary or proper by the Developer, its assignee or delegee, consistent with the provisions of this Charter. However, such entry upon the interior of a Unit shall be made, except for Emergency Situations, only after three (3) days prior written notice to the Owner of such Unit. Nothing in this Section shall in any manner limit the right of any Unit Owner to exclusive occupancy and control over the interior of his or her Unit, (subject to the Unit Owner obligations provided in this Charter). However, a Unit Owner shall permit a right of entry to the Developer or any other person authorized by the Developer, as reasonably necessary, such as in case of any Emergency Situation originating in or threatening his or her Unit, whether the Owner is present or not. Any damage caused to a Unit by such entry by the Developer or by any person authorized by the Developer shall be repaired by the Developer.

4.10 Easements for Enforcement. The Developer shall have the right, but not the obligation, to enter upon any Condominium Project, Master Unit or Unit to inspect for the purpose of ensuring compliance with and enforcing the Charter. Except in an Emergency Situation, entry shall only be during reasonable hours and after notice to the Owner.

4.11 Easements for Emergencies. The Developer and all emergency personnel in the performance of their duties shall have an easement for access through Kahului Town Center for Emergency Situations, security, and safety reasons, and for making emergency repairs thereon necessary to prevent damage to Kahului Town Center. Nothing herein shall be deemed to obligate the Developer to make any such emergency repairs. Any damage to any real or personal property caused by the gross negligence or willful misconduct of the Developer or any of its employees or agents during any entry onto Kahului Town Center in any portion thereof pursuant to this Section shall be repaired by and at the expense of the Developer.

4.12 Amendment to Eliminate Easements. For so long as Developer owns any interest in any portion of Kahului Town Center (i) this Charter cannot be amended to modify or eliminate the easements reserved to Developer without prior written approval of Developer and any attempts to do so shall have no effect, and (ii) any attempt to modify or eliminate this Article or any provision hereof shall likewise require the prior written approval of Developer.

4.13 Nature of Easements. Unless otherwise set forth herein, any easement reserved in this Declaration shall be nonexclusive. Any and all easements reserved in this Declaration shall be deemed to be in full force and effect whether or not referred to, reserved, and/or granted, in any instrument of conveyance and shall be subject to the terms of this Charter and Condominium Declarations, as applicable. Developer shall have the right to assign its rights to the easements herein to any successor, assigns, contractors, agents, employees, affiliates and tenants.

4.14 Rules and Regulations for Use of Easements.

4.14.1 Termination and Abandonment of Rights. Notwithstanding any other applicable laws to the contrary, it is the intent of Developer that no easement granted or reserved hereunder be deemed abandoned or terminated merely by disuse or incompatible acts; rather, that except as otherwise provided herein, the easements granted hereunder shall continue in full force and effect unless terminated by a written instrument duly executed by Developer and duly recorded in said Bureau or Office, as applicable.

4.14.2 No Merger. Notwithstanding the union of (a) the fee simple title to any of Kahului Town Center or any portion thereof or (b) any right, title or interest in the easements granted by or reserved to the Unit Owners pursuant to this Charter, it is the intention of Developer that the separation of such fee simple estate and such right, title or interest in such easements shall be maintained, and that merger shall not take place without the express prior written consent of Developer.

## ARTICLE 5

### INTEGRATED PARKING MANAGEMENT

5.1 Management of Kahului Town Center Parking. Given the variety of commercial, retail, residential and other uses expected to be included in Kahului Town Center, and the competing demands for vehicular parking associated with such varied uses, it is essential that parking within Kahului Town Center be managed and administered on an integrated basis for the benefit of all Owners. For that purpose, Developer hereby expressly reserves:

5.1.1 A perpetual parking use and management easement in favor of Developer over all parking stalls and areas in Kahului Town Center except for parking stalls or areas (i) that are Limited Common Elements appurtenant to a Unit, the fee simple interest in which is no longer owned by Developer, (ii) included within a Unit (other than a Master Unit) that consists of one or more parking stalls, the fee simple interest in which is no longer owned by Developer, (iii) subject to a parking use or management easement in favor of a third party granted by Developer or with Developer's consent, or (iv) specifically identified in a Supplement regarding any Condominium Project or Annexation Land as not being subject to this easement. This easement covers all parking stalls and areas within Kahului Town Center as of the date of this Charter, including without limitation all parking stalls and areas within the Quadrant One Condominium. Pursuant to such easement, Developer shall have the exclusive right and power to manage and regulate such parking stalls and areas, limit, regulate and control their use, and do all other things provided in this Article Five in connection with such management for purposes of managing and administering parking stalls and areas on an integrated basis for the benefit of all Owners.

5.1.2 The right and power to enact, amend, enforce and repeal parking rules and regulations governing the use of parking stalls, parking areas, loading zones, interior roads, and undeveloped portions of Kahului Town Center;

5.1.3 The right and power to grant easements or licenses to use or occupy parking stalls, parking areas, loading zones or other vehicular facilities or areas within Kahului Town Center to Owners or others (including owners, tenants, occupants, guests or patrons of lands, projects or businesses located adjacent to Kahului Town Center), subject to any reasonable limitations set by the Developer in its discretion;

5.1.4 To retain professional parking management, to lease or license parking stalls or parking areas to such professional management to operate consistent with this Charter;

5.1.5 To implement, permit and enforce, or permit a professional parking manager to implement and enforce, a system of paid parking, including without limitation metered parking or secured, paid parking areas; and

5.1.6 To delegate to any Association the power to implement and enforce the provisions of this Article Five.

5.2 Protection of Assigned Parking. Notwithstanding the foregoing provisions of this Article Five, or any other provisions of this Charter, the provisions of Sections 5.1.3, 5.1.4 & 5.1.5 shall not apply to parking stalls designated as Limited Common Elements appurtenant to a Unit, or otherwise subject to exclusive rights of ownership, use or occupancy by an Owner.

## ARTICLE 6

### POWERS AND DUTIES OF DEVELOPER; RIGHTS OF ENFORCEMENT

Developer shall have the following powers and duties pursuant to this Charter:

6.1 Enforcement. The power and the duty to enforce the provisions of this Charter and the provisions of any agreement to which the Developer and any Association and/or any Unit Owner is a party.

6.2 Abatement and Suit.

6.2.1 Entry Onto Land. Subject to the restrictions set forth in this Charter and those imposed by law, in the event of any violation or threatened violation by any person of any of the terms, restrictions, covenants and conditions provided in this Charter, Developer shall have the right to take such reasonable action as is necessary to summarily abate and/or remove, at the expense of the applicable Association and/or Unit Owner or its respective Permittees, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of this Charter.

6.2.2 Commencement of Proceedings. Developer shall have the right to prosecute a proceeding at law or in equity, or initiate arbitration proceedings pursuant to this Charter, against any person or persons who have violated or who have attempted to violate any of the provisions, covenants, conditions, and restrictions set forth in this Charter, to enjoin or prevent them from doing so, to cause said violation or breach to be remedied or to recover damages for said violation; provided, however, that nothing herein contained shall be deemed to impose upon Developer any liability for the failure to correct or prosecute a violation or breach of this Charter.

6.2.3 Joint and Several Liability. Each person or entity comprising an Association or a Unit Owner shall be jointly and severally liable with each other person or entity comprising such Association or Unit Owner for the violation or breach of any covenant, condition, restriction or provision contained in this Charter (a) existing upon any part of Kahului Town Center owned by an Association or Unit Owner, or (b) caused or committed by such Association, Unit Owner or its respective Permittees.

6.3 Deemed to Constitute a Nuisance. The result of every action or omission whereby any covenant, condition, restriction or provision herein contained is violated in whole or in part is hereby declared to be and constitute a nuisance, and

every remedy allowed by law or equity against anyone causing a nuisance shall be applicable against the Association and/or Unit Owners or their Permittees, or any other person responsible for such action or omission, and may be exercised by the Developer and/or any aggrieved Unit Owner and/or Association.

6.3.1 Inspection. Developer, its affiliates and respective representatives, may, from time to time at any reasonable hour or hours and without notice to any Association and/or Unit Owner, or their respective Permittees, enter and inspect any part of Kahului Town Center to ascertain whether such part of Kahului Town Center, the improvements thereon and the uses thereof are in compliance with this Charter. In such event, no entering person shall thereby be deemed guilty of, or become liable for, any manner of trespass or unlawful entrance in connection with such entry and inspection.

6.3.2 Failure to Enforce Not a Waiver of Rights. The failure of Developer to enforce any covenant, condition, restriction or provision herein contained shall in no event be deemed to be a waiver of the right thereafter to do so, nor of the right to enforce any other covenant, condition, restriction or provision set forth in this Charter.

6.3.3 Termination. Notwithstanding anything contained or implied in this Charter to the contrary, in no event shall the remedies available hereunder for a breach of the provisions hereof include termination of this Charter. Instead, it is Developer's intention that, following the date hereof, this Charter shall be terminable only as set forth in this Charter. Each Unit Owner hereby waives any right under law, equity or otherwise, to terminate this Charter under any circumstance.

6.3.4 Remedy. Notwithstanding the foregoing, no party may exercise any remedy hereunder unless, after the failure of a defaulting party to cure a breach within any applicable cure period, such non-defaulting party delivers notice of the breach to each mortgagee of the defaulting party of which Developer has received notice below, and provides such mortgagee with the opportunity to cure such breach within an additional cure period as the Developer may determine in its reasonable discretion; provided, however, that nothing herein shall entitle such Mortgagee to arbitrate a breach that has already been arbitrated hereunder.

6.3.5 Force Majeure. Except as otherwise provided in this Article or elsewhere in this Charter, each party shall be excused from performing any obligation or undertaking provided in this Charter, except any obligation to pay any money (unless such payment is conditioned upon performance of an obligation or undertaking excused by this section) in the event but only to the extent and for so long as the performance of any such obligation is prevented or delayed, retarded or hindered by Force Majeure Event. Each party shall give notice of any such delay to the other party within thirty (30) days of such party's actual knowledge of the occurrence of the event with respect to which such party intends to claim a permitted delay hereunder.

6.4 Power to Levy and Assess Fines. Developer shall have the power to levy and assess fines against any Unit Owner and/or Association who violates, or

Owners who violate, this Charter, pursuant to the same notice and hearing procedure as is provided for suspension above. Upon notice to the Association and/or Unit Owners, the Developer may establish a schedule of fines for individual offenses and/or continuing offenses, which schedule shall thereafter govern the amount of the fines to be levied, until such schedule is modified or repealed by the Developer. Fines may be levied for each offense. Any Association or Unit Owner against whom such a fine is levied shall pay such fine to the Developer or its designee within ten (10) business days after such levy. The Developer shall be entitled to take any legal action or employ any remedies set forth hereunder or permitted by law to enforce the payment of such fines, and shall further be entitled to require the Association, to the extent necessary, to take any legal action or employ any remedies set forth under the Condominium Documents or permitted by law to be taken by the Association to enforce the payment of such fines, including without limitation the power to enforce a lien upon the Unit Owner's Unit in the manner provided in the Condominium Declaration.

6.5 Employment of Agents. The power, but not the duty, to employ the services of any person or entity to manage and conduct the business of the Developer with respect to Kahului Town Center, and upon such conditions as are deemed advisable by the Developer, to delegate to such person or entity any and/or all of its powers hereunder.

6.6 Taxes. The power, but not the duty, to pay any taxes and governmental assessments which are or could become a lien on Kahului Town Center.

6.7 Discipline. The power, but not the duty, to initiate and execute disciplinary proceedings against Associations, Unit Owners and their Permittees for violations of the provisions of this Charter.

6.8 Litigation. The power and the duty to prosecute or defend, in its own name and as agent of the Associations and/or Unit Owners, any action in which the Developer and/or the Associations and/or Unit Owners have an interest.

6.9 Delegation of Powers. The power, but not the duty, to delegate any of its powers hereunder to other persons, including, without limitation, committees, officers, employees, contractors, agents, and managers.

6.10 Other Services. The power, but not the duty, to institute any other services for the benefit of the Associations and/or Unit Owners deemed advisable by the Developer.

## ARTICLE 7

### RESERVED RIGHTS OF DEVELOPER

7.1 Right to Review Declarations and Other Documents. No Person shall file or record in said Bureau any declaration of covenants, conditions and restrictions, easements, or declaration of condominium property regime or similar instrument

affecting any Master Unit, Unit or portion of the Land without Developer's review and prior written consent thereto, and any attempted filing without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium property regime, easements, or similar instrument being void and of no force and effect unless subsequently approved within a reasonable time of recordation by the Developer recorded in the Bureau. All amendments to the Condominium Documents must be submitted to Developer and all such amendments affecting the use of Kahului Town Center and/or the Condominium Projects affecting the Quality Standard shall receive the prior consent of the Developer, which consent shall not be unreasonably withheld or delayed.

7.2 Right to Grant and Accept Access Rights and Easements.

Notwithstanding anything herein provided to the contrary, Developer reserves the right unto itself, its successors and assigns, to delete, cancel, relocate, realign, reserve, designate, grant and receive any and all easements licenses, and rights of way over, under, through, across the Land, including the Condominium Projects, provided that the Developer receives the prior consent of a Unit Owner if such Unit Owner's Unit or Limited Common Elements are directly, materially and adversely affected, and to receive any and all easements over any other adjacent or adjoining property, as required herein for the benefit of the Unit Owners as deemed necessary or desirable in Developer's sole discretion, including but not limited to, easements and/or rights of way for utilities, sanitary and storm sewers, cable television, telecommunications systems, refuse disposal, driveways, parking areas, roadways and easements and/or rights of way necessary to exercise any of its reserved rights herein, provided that except for construction and maintenance activities, such easements and/or rights of way shall not be exercised as to unreasonably disturb, impair or interfere with the normal use and enjoyment of Kahului Town Center by the Unit Owners.

7.3 Right to Consolidate, Subdivide and Withdraw. Developer shall have the reserved right, to subdivide the Land and to create separate parcels of land ("**Subdivided Lots**"), to withdraw said portions of the Land from Kahului Town Center and consequently from the operation of this Charter, and to convey said withdrawn land to a third party as it deems appropriate, or, subject it to a separate condominium property regime or annex it into an existing Condominium Project. With regard to the area being subdivided and/or withdrawn, such portion shall not have been improved with any Units or other Improvements described in this Declaration or any Condominium Declaration, or shown on any Condominium Map. In connection with such right, Developer shall have the further reserved right to enter and go upon the Land to do all things necessary or proper to effectuate such subdivision of the Land and withdrawal and conveyance of said portions of the Land, including, without limitation, making surveys to undertake a reasonable realignment of boundaries of the Land to define said Subdivided Lots (it being understood that the Developer shall have the reserved right to effect any such realignment), filing and recording the necessary subdivision maps and related subdivision documentation and to facilitate the granting, reserving, adding, deleting, receiving, realigning, and/or relocating of easements and/or rights of ways for utilities, cesspools, sanitary and storm sewers, cable television, telecommunication

systems, refuse disposal, driveways, parking areas and roadways, pedestrian access and of all other required easements and/or rights of way; and provided further that Developer specifically reserves the right, whether or not in connection with its right to subdivide, withdraw and convey hereunder, to grant easements for access, driveway and parking purposes over Kahului Town Center in favor of the withdrawn portion(s) of the Land, if any, in the event the same shall be withdrawn from the operation of this Charter. Said subdivision, withdrawal and conveyance shall be subject to, and the Developer shall, at its own expense, comply with, all of the then-applicable governmental laws and rules and regulations, including all subdivision requirements.

In connection with the exercise of its rights reserved unto it hereunder, Developer hereby further reserves the right, at its expense, to: (i) grant, reserve, add, delete, receive, realign and/or relocate over, across and under Kahului Town Center, as appropriate, easements and/or rights-of-ways for utilities, including, without limitation, sanitary and storm sewers, cable television, telecommunications systems, refuse disposal, access, driveways, parking areas and roadways, and walkways; (ii) enter into and execute any license and/or agreements, as appropriate, to facilitate the use of any areas located outside Kahului Town Center that will be used to benefit Unit Owners or of areas within Kahului Town Center to be used by third parties; and (iii) relocate or realign any existing easements and rights-of-way over, across and under Kahului Town Center, as appropriate, including, without limitation, any existing utilities, sanitary and storm sewer lines and cable television and telecommunications systems lines and connect the same over, across and under Kahului Town Center, provided that such easements and such relocations and connections of lines shall not materially impair or interfere with the use of any Unit in Kahului Town Center as then constituted; and provided further that Developer specifically reserves the right, whether or not in connection with its rights reserved hereunder, to grant an easement for access, driveway and parking purposes over Kahului Town Center in favor of the withdrawn portion(s) of the Land in the event the same shall be withdrawn from the operation of this Charter. The Developer shall have the right to set the compensation to any affected Association for the grant of any easement pursuant to the terms hereof, provided that such compensation shall be reasonable under the circumstances.

Upon the exercise of said reserved rights, Developer shall, at Developer's expense and without being required to obtain the consent or joinder of any Unit Owner or lienholder, execute, record and/or file in the appropriate recording agency the documents necessary to effect such subdivision and/or consolidation (and, to the extent deemed necessary or approved by Developer, for designation of easements), and amendments to the Charter and the affected Condominium Documents: (i) describing the withdrawn land and any improvements thereon; (ii) describing the realigned boundaries of the land upon which the Units then constituting Kahului Town Center are located; and (iii) where applicable and appropriate, granting, reserving or relocating easements over, under and on the Common Elements, as permitted above. The filing of the amendment to this Charter, the affected Condominium Documents and the affected Condominium Maps shall effectuate the withdrawal, without any further consent or joinder of any party. The Developer shall have the right, as grantor, to execute, deliver and file a deed of any subdivided and withdrawn area upon filing of the

amendments aforesaid. The exercise by Developer of the right to subdivide, withdraw and convey as provided in this Article shall not in any way limit or be deemed to limit Developer's full use of areas remaining in Kahului Town Center pursuant to any of the rights reserved to it in this Charter.

7.4 Right to Mortgage Interest. Developer hereby reserves for itself and shall have the right and authority to pledge, assign, mortgage, or otherwise hypothecate, or to grant security interests in, any and all of its right, title, or interest in this Charter, including, without limitation, the Developer's reserved rights, to secure obligations owed by the Developer to any Mortgagee; provided, however, that in the event that the recipient of any such pledge, assignment, hypothecation, or grant of any security interest shall foreclose thereon, such recipient shall be subject to the terms and conditions of this Charter, as the successor-in-interest to the Developer hereunder.

7.5 Right to Develop the Land. All buildings and improvements in Kahului Town Center are unlikely to be constructed at the same time; accordingly, Developer reserves the right at any time and from time to time to complete construction of all buildings and improvements in Kahului Town Center. Nothing in this Declaration shall be construed as a representation or warranty by Developer that all buildings and improvements will be developed and built, nor shall anything herein require the Developer to improve the Annexation Lands. Developer, its contractors and subcontractors, and their respective employees and agents, shall have the right and an easement in favor of the Developer and its successors and permitted assigns to enter upon the Land and use the Land to do all things reasonably necessary, desirable or useful for designing, developing and constructing or completing any buildings and improvements, installing and connecting infrastructure and selling any Units in Kahului Town Center, subject to the following terms and conditions:

(a) All Condominium Projects shall be constructed in accordance with plans and specifications prepared by a licensed architect and approved by Developer. Developer reserves the right to approve and/or modify any existing plans for the buildings and may change the area, layout, locations, types or numbers of Units constituting any building, and may further modify, delete and/or add types of Common Elements in connection with the development of any building in any Condominium Project.

(b) Developer shall have the right to add, delete, relocate, realign, reserve, grant and receive all easements and rights-of-ways and to otherwise make alterations in and use the Common Elements of any Condominium Project for such development and construction, and to designate limited common elements over, under and on the Common Elements, necessary or desirable with any building, including but not limited to, easements and rights of way for utilities (including, without limitation, electrical lines, cable television, telephone lines and water lines), sanitary and storm sewers, refuse disposal, driveways, parking areas and roadways; provided that such easements and rights-of-ways and limited common elements shall not be located on or within any existing building of Kahului Town Center as then constituted, unless owned by Developer. The Developer shall have the right, in the exercise of its rights hereunder, to eliminate, delete,

reconfigure, readjust and/or redesignate any Limited Common Element appurtenant to a Unit provided that a substantially equivalent Limited Common Element is substituted therefor.

(c) Developer shall have the right to erect additional buildings or other structures within Kahului Town Center or to add to or otherwise renovate, improve, alter, modify, redesign, change, rearrange, alter, reconstruct, modify, expand, reduce, supplement, demolish or remove structures or other improvements (other than the Units) now or hereafter existing within Kahului Town Center including, subject to the easement and license rights granted hereunder to the Unit Owners and, in connection therewith, to erect temporary scaffolds and other aids of construction within Kahului Town Center, limit or eliminate access to portions of Kahului Town Center, or perform work within Kahului Town Center; and

(d) Developer shall have the right to restrict access and install barriers as necessary to guide and control the orderly flow of pedestrian traffic and demolish, locate, construct, repair, replace and modify roadways, alleyways, parking facilities, sidewalks, walkways, landscaping, signs, traffic control devices and other improvements reasonably necessary in the judgment of Developer for the safe and efficient movement of vehicular and pedestrian traffic in Kahului Town Center conducive to the attractive appearance of Kahului Town Center, subject to the rights of Unit Owners herein and in the Condominium Declarations, and alter and control access to and in Kahului Town Center in a reasonable manner, but subject to the rights of the Unit Owners herein and in the Condominium Declarations. In addition, Developer shall have the right to erect temporary barriers and prohibit vehicular and pedestrian ingress and egress over certain portions of Kahului Town Center as reasonably necessary to (i) carry on construction, maintenance, repair and restoration of any portion of Kahului Town Center, (ii) to conduct special events and functions in Kahului Town Center, and (iii) to prevent the accrual of prescriptive rights in the general public; and enter upon any Project for the purposes of removing, excluding and restraining any person violating rules and regulations established by the Developer or any Association, or creating a nuisance, disturbing the peace or making unauthorized use of any portion of Kahului Town Center.

The Developer, its contractors and subcontractors, and their respective employees and agents, shall not, in their pursuit of the development of any building, cause any interruption other than a temporary interruption in the service of utilities to Kahului Town Center as then constituted, and shall use reasonable efforts without additional costs to the Developer and consistent with maintaining the progress of the design, development, construction, completion and sale, to minimize interference with the Unit Owners' use and enjoyment of Kahului Town Center as then constituted.

The Developer shall have the right to close any operations of any unconveyed portions of a Condominium Project, excluding the Common Elements, or any portion thereof (including, without limitation, all roadways, driveways, access-ways, sidewalks, corridors, elevators and other similar facilities now or hereafter within Kahului Town Center) or conveyed portions with the Unit Owners prior consent, at such times and in

such manner as it necessary and appropriate to do and perform all such activities in, to and with respect to such areas (all of which may also create dust, dirt, construction noise, visual obstruction and other reasonable interferences from any or all of such activities).

Developer shall have no responsibility or for any reason be liable to any Unit Owner for any direct or indirect interference with such Unit Owner's use of his or her Unit arising from any activities conducted by Developer in its good faith efforts to comply with this Charter nor shall any Unit Owner be entitled to any compensation or damages from Developer for any inconvenience or annoyance occasioned thereby. It is specifically understood and agreed that, Developer has made no representations regarding the conditions of Kahului Town Center or Condominium Projects or Units.

7.6 Right to Submit Portions of the Land to Condominium Property Regimes. Developer shall have the reserved right to submit the Land, the Master Units or portions thereof to condominium property regimes in accordance with the Act, and to record one or more condominium declarations in such form and substance as Developer may determine, in its sole discretion; provided, however, that each condominium declaration shall be subject to this Charter. After recording any condominium declaration, Developer may take any and all actions which Developer may deem necessary or appropriate for construction, operation, maintenance, and marketing of the condominium property regime created thereby. Except as provided in this Section, no other portion of the Land may be subject of a condominium property regime by any Unit Owner, other than the Developer or a Quadrant Developer without the prior written approval of Developer

7.7 Right to Alter the Proposed Development. There is no guarantee that Kahului Town Center will be developed as originally planned or contemplated. The Developer shall have the right to, from time to time, redesign Kahului Town Center or any portion or aspect thereof, including, but not limited to, reduce or increase the number of Condominium Projects, developments and improvements in Kahului Town Center to be built notwithstanding anything provided to the contrary, and except as otherwise provided by law. Any such alteration to the number of Condominium Projects and/or Units in Kahului Town Center shall be effective provided that:

7.7.1 Developer shall file or cause to be recorded an amendment to (a) this Charter describing the change; and (b) any constituent document, including condominium declarations and condominium maps, required to form any condominium project or additional development;

7.7.2 Any such alteration shall comply in all respects with all applicable governmental codes, statutes, ordinances and rules and regulations and with all variances granted therefrom;

7.7.3 No redesign, revision or modification to Kahului Town Center pursuant to this Section shall physically modify any Units that as of the date of redesign,

revision or modification are owned in fee simple by an Owner other than the Developer, unless such Owner shall consent to such redesign, revision or modification in writing.

**7.8 Right to Establish Revocable Cross-Facilities Licenses and Easements in Condominium Shared Facilities.** The Developer, shall have the right to establish, grant and receive for and on behalf of each Association, a nonexclusive license or easement for access, ingress, egress, use and enjoyment of, in and to the non-exclusive parking areas, common recreational facilities, and other Common Elements ("**Shared Facilities**") of the Condominium Projects in Kahului Town Center, including any services offered therein, if any (each a "**Cross-Facilities License**" or "**Cross-Facilities Easement**" as applicable). Such licenses and easements shall be appurtenant to and shall pass with title to every Unit in the respective Condominium Projects.

In consideration of the Cross-Facilities License or Cross-Facilities Easement, if any such license or easement is created by Developer, each Association shall reimburse the Other Condominium Project's Association for a portion of the expenses incurred by the Association for the maintenance, use and upkeep of the Shared Facilities and the provision of any services, as set forth in the Cross-Facilities License or Easement ("**Cross-Facilities License Fee**"). No Association shall be relieved of the obligation to pay its Cross-Facilities License Fee by waiving its rights to use the Shared Facilities located in Other Condominium Projects. Neither the Association nor any Unit Owner can abandon a Cross-Facilities License or Easement.

The Developer shall have the right to manage, administer, collect and enforce collection of the Cross-Facilities License Fee in order to streamline administration of and to facilitate prompt payment of such fee, provided that Developer may delegate such right to the Master Association. By acquiring an interest in Kahului Town Center, each Unit Owner consents to the right of the Developer to exercise any of the rights set forth in this Section, the permitted actions taken by Developer pursuant hereto, and to the recordation of any and all documents necessary to effect the same, and each Owner and Association hereby appoints Developer as his/her/its attorney-in-fact with full power of substitution to execute, deliver and file 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 term of said right, and shall not be affected by the disability of such party or parties, which grant of such power shall be binding upon any assigns of, or successors-in-interest to, any such party.

**7.9 Right to Modify Project.** Developer may implement such modifications to Kahului Town Center, the Master Project or the Condominium Projects and/or to execute, file and deliver any amendments to this Charter and, to the extent provided therein, the Condominium Documents, as may be necessary or required by Developer in its sole and absolute discretion to effect compliance by Kahului Town Center, or by the Developer, with laws which apply to Kahului Town Center, including, without limitation, the County's ordinances, rules and code, any variances or permits (including

the SMA Permit), the Act and the Fair Housing Act, as amended, 42 U.S.C. §§3601 et seq., including any and all rules and regulations promulgated thereunder, and the Americans With Disabilities Act, as amended, 42 U.S.C. §§ et seq., including any and all rules and regulations promulgated thereunder (the "ADA") and the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Federal National Mortgage Association.

7.10 Assignment of Developer's Rights; Attorney-in-Fact. Any or all of the rights of the Developer under this Charter may be transferred or assigned to the Master Association or to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein. The Developer currently contemplates that when Developer has substantially completed the development of Kahului Town Center, Developer may assign its rights under this Charter to the Master Association, and in that case the Master Association must accept such assignment as provided in the Condominium Documents for the Master Condominium. No assignment of Developer's rights under this Charter shall be effective unless it is in a written instrument signed by the Developer and recorded in the Bureau, or in the case of foreclosure or deed in lieu of foreclosure of a security interest granted by Developer, tax sale, judicial sale, or sale under the Title 11 of the United States Code, the Person acquiring title to the property being transferred may succeed to any or all of the Developer's rights under this Charter as set forth in the written instrument evidencing the conveyance, and duly recorded in the Bureau.

Each and every party acquiring an interest in Kahului Town Center, by such acquisition, consents to all of the rights reserved unto Developer as set forth in this Charter, the permitted actions taken by Developer pursuant thereto, and to the recordation of any and all documents necessary to effect the same in the appropriate recording agency, as applicable; agrees to execute, deliver and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints Developer as his or her attorney-in-fact with full power of substitution to execute, deliver and file 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 term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assign of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assign or successor-in-interest upon any transfer of any Unit or any interest therein, whether by deed, mortgage, or any other instrument of conveyance. Without limitation to the generality of the rights reserved unto Developer hereunder, Developer will have the right to execute, deliver and record any amendment to this Charter, any easement instrument, any deed, any assignment of rights or interest, or such other document or instrument that may be necessary or appropriate to permit Developer to exercise its rights pursuant to the provisions of this Charter.

## ARTICLE 8

### ANNEXATION

8.1 Annexation. Developer shall have the unilateral right, privilege, and option, from time to time until all of the Annexation Land described in Exhibit "B" attached hereto has been made subject to this Charter, to subject the provisions of this Charter and the jurisdiction of the Developer's rights under this Charter to all or any of the Annexation Land, whether held in fee simple or by leasehold. Such annexation shall be accomplished by recording in the Bureau a Supplement to this Charter describing the portion or portions of the Annexation Land to be annexed and declaring them to be annexed and subject to this Charter and such other terms, covenants, restrictions, easements or other matters that Developer may include in the Supplement. Such a Supplement shall require the consent or joinder of the owner of the fee simple interest in the land being annexed. The annexation of such land to this Charter shall take effect upon the recording of the Supplement in the Bureau, and thereafter such land shall be deemed to be part of the Land as if it were described in Exhibit A to this Charter. Developer may exercise this right without the joinder, consent or approval of any Owner or Association. Developer shall have the unilateral right to transfer to a Person the right, privilege, and option to annex additional land which is herein reserved to Developer, in whole or in part, by instrument recorded in the Bureau. Developer shall have the reserved right to do all things necessary or proper to effectuate such annexation, without limitation, making surveys and undertaking and securing County approval for reconfigurations or realignments of the boundaries of the Land or portions thereof reasonably necessary or convenient to incorporate the annexed land into Kahului Town Center or any of the Condominium Projects, filing and recording the necessary maps and related documentation and to facilitate the granting, reserving, adding, deleting, receiving, realigning, and/or relocating of easements and/or rights of ways for utilities, sanitary and storm sewers, cable television, telecommunication systems, refuse disposal, driveways, parking areas and roadways, pedestrian access and of all other required easements and/or rights of way as a result of the annexation. Said annexation shall be subject to, and the Developer shall, at its own expense, comply with, all of the then-applicable governmental laws and rules and regulations.

Any purchaser or grantee of any interest in any Unit, by acceptance of a deed or other conveyance instrument thereof, and/or in the Annexation Land by notice hereof, thereby waives any right to object to Developer's annexation rights hereunder. Any Condominium Project created on the land so annexed to this Charter shall be subject to the easements set forth herein, and any rights and obligations associated therewith and the covenants, conditions, reservations and restrictions set forth herein.

8.2 Additional Covenants and Easements. The Developer may unilaterally subject any portion of the property submitted to the Charter initially or by subsequent amendment or Supplement to this Declaration or to additional covenants and easements regarding access, use, maintenance and insurance of such additional annexed property. Any such additional covenants and easements shall be set forth in

the amendment recorded either concurrent with or after the annexation of the subject property and shall require the written consent of the fee owner(s) of such property.

## ARTICLE 9

### AMENDMENT TO DECLARATION; TERMINATION

9.1 Amendment. The Developer shall have the sole and absolute and exclusive right to amend, supplement or restate this Charter from time to time and to record in the Bureau any such amendment, supplement or restatement without prior notice to, or the consent, joinder or approval of, Owners if such amendment, supplement or restatement is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; or (d) to satisfy the requirements of any Government Agency. The Developer shall also have the sole and absolute and exclusive right to otherwise amend, supplement or restate this Charter from time to time and to record in the Bureau any such amendment, supplement or restatement without prior notice to, or the consent, joinder or approval of, Owners, provided that except as specifically permitted under the preceding sentence or under a Condominium Document no such amendment, supplement or restatement may: (i) require material physical alteration of the size or layout of a Unit that is no longer owned by Developer, or the Limited Common Elements appurtenant to such Unit, without the consent of the Unit Owner; (ii) materially limit or impair the use of a Unit that is no longer owned by Developer, or the Limited Common Elements appurtenant to such Unit, without the consent of the Unit Owner; (iii) allow the imposition of monetary assessments, charges or fees on Owners other than as expressly provided herein unless such change is approved in advance by the Board of the Master Association; or (iv) materially and adversely impair the protections for Mortgagees set forth in this Charter.

Each and every party acquiring an interest in Kahului Town Center, by such acquisition, consents to the right reserved unto Developer to amend, supplement and restate this Charter and/or to the recordation of any and all documents necessary to effect the same in the Bureau; agrees to execute, deliver and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and appoints Developer and its assigns as its attorney-in-fact with full power of substitution to execute, deliver and file 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 term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assigns of, or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assigns or successor-in-interest upon any transfer of any Unit or any interest therein, whether by deed, mortgage, or any other instrument of conveyance.

## ARTICLE 10

### PROTECTION OF MORTGAGEES

#### 10.1 Protection of Mortgages and Encumbrances.

10.1.1 No violation or breach of, or failure to comply with, any provision of this Charter and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any mortgage or other lien on any Unit taken in good faith and for value and recorded prior to the time of recordation of an instrument describing the Unit and listing the name or names of the Unit Owner(s) of the Unit and giving notice of such violation, breach or failure to comply; nor shall such violation, breach, failure to comply or action to enforce, affect, defeat, render invalid or impair the title or interest of the holder of any such mortgage or other lien or title or interest acquired by any purchaser upon foreclosure of any such mortgage or other lien or result in any liability, personal or otherwise, of any such holder or purchaser.

10.1.2 Upon foreclosure of any such mortgage or other lien, no such holder who thereby assumes title to a Unit shall be required to correct past violations hereof with respect to said Unit so long as said Unit is neither occupied nor used for any purpose by such holder but is merely held for prompt resale, and provided that all monetary obligations accruing pursuant to this Charter subsequent to such foreclosure shall be paid by such holder. Any such purchaser on foreclosure shall, however, take subject to all provision of this Charter.

10.2 Conflict. Developer shall have the right to mortgage or otherwise to encumber all, or any portion, of Kahului Town Center or any Condominium Project or any Unit (other than Units and any Common Elements appurtenant thereof that have been conveyed to other Unit Owners), and each Unit Owner shall have the right to mortgage or otherwise to encumber its Unit; provided, however, any Mortgage shall be subordinate to all of the provisions of this Charter and the applicable Condominium Documents and, in the event of foreclosure, the provisions of this Charter and the applicable Condominium Documents shall be binding upon any Unit Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure or otherwise. The provisions and requirements of this Article 10 and any other provisions and requirements of this Charter relating to the rights of Mortgagees shall prevail over any conflicting provisions of this Charter or any Condominium Documents.

10.3 Application of Assessments. No Mortgagee shall be liable for the payment of fines or assessments (if any) assessed against the mortgaged property pursuant to this Charter, except those accruing after such Mortgagee obtains title to the property pursuant to its remedies under its Mortgage.

10.4 Subordination of Assessment Lien. Any lien imposed under this Charter shall be subordinate to (i) taxes, bonds, assessments and other levies which by law are prior thereto, and (ii) the lien of any first priority Mortgage on the Unit recorded prior to the date on which any amounts to be enforced hereunder became delinquent.

However, the sale or transfer of title to property by deed, assignment or conveyance in lieu of foreclosure, or any other voluntary conveyance of title, shall not relieve (i) a party or its grantee (other than a Mortgagee) or other successors and assigns (whether as a result of a foreclosure or deed-in-lieu of foreclosure or otherwise by specifically excluding any Mortgagee itself) from liability from any charges which become due and payable before such sale or transfer or, (ii) a party or its grantee or other successors and assigns from liability from any charges which thereafter become due and payable, as the case may be.

10.5 Limitation of Enforcement Against Mortgagees. No violation of this Charter by a party or enforcement of this Charter against any party shall impair, defeat or render invalid the lien of any Mortgage against such party's property, but this Charter shall be enforceable against any party whose title is acquired by foreclosure, trustee's sale, voluntary conveyance, or otherwise.

10.6 Notices to Mortgagees. All persons and entities holding a Mortgage affecting any portion of a Unit may give written notice to the Developer of the nature of their interest and, upon written request and after furnishing their addresses in writing to the Developer, such Mortgagees shall be entitled to receive written notice from the Developer by certified mail of any default under this Charter by the Owner of the Unit subject to its Mortgage. In any case where a Mortgagee has requested such notice, Developer shall not take action to enforce this Charter (except in case of Emergency) until thirty (30) days after the date on which such notice is mailed to the Mortgagee.

## ARTICLE 11

### ALTERNATIVE DISPUTE RESOLUTION

11.1 Alternative Dispute Resolution. Except as otherwise specifically provided in the Act, any dispute by or between the Developer and an Association and/or any Owners arising out of or incident to the development, construction or management of Kahului Town Center or any other aspect of the relationship between Developer and an Association and/or Owners regarding the Kahului Town Center shall be submitted to initial mediation through Dispute Prevention & Resolution, Inc., of Honolulu, Hawaii ("DPRI"), or such other dispute resolution agency as the Developer may reasonably designate, in accordance with DPRI's Mediation Rules, Procedures and Protocol then in effect. If necessary, claims not resolved by mediation shall be decided by arbitration through DPRI, or such other dispute resolution agency as the parties may mutually select, which, unless the parties mutually agree otherwise, shall be in accordance with DPRI's Arbitration Rules, Procedures & Protocol then in effect. Any Person that desires to submit any issue or dispute to arbitration shall promptly so notify the other party in writing. The demand for arbitration shall be filed in writing with the other party to the dispute and with DPRI or another mutually-acceptable dispute resolution organization. All proper costs and expenses of such arbitration including, without limitation, witness fees, attorney's fees and the fees of the arbitrators shall be charged to the party or parties in such amounts as the arbitrator or arbitrators shall determine at the time of the award. An award so

rendered shall be binding in all aspects and shall be subject to the provisions of Chapter 658A, Hawaii Revised Statutes, as the same may be amended from time to time. In the resolution of any dispute or controversy as set forth in this paragraph, each party hereby irrevocably waives any right and claim to exemplary or punitive damages in any jurisdiction. The parties further agree that any documents of assignment, lease or conveyance of a Unit shall contain a provision substantially in the form set forth above, requiring the assignee, lessee or grantee to arbitrate any and all disputes concerning the Unit, provided that failure to include such a provision shall not relieve the assignee, lessee or grantee of the obligation to mediate and arbitrate hereunder. Further, Developer, an Association, and each Owner shall indemnify, defend and hold harmless the other from and against any and all damage occurring as a result of the resolution of any such dispute other than by arbitration due to the actions of such person. Any arbitration proceedings under this section will be submitted to arbitration on the island of Maui, Hawaii, unless the parties otherwise agree.

## **ARTICLE 12**

### **EXEMPTIONS FOR PERSONS WITH DISABILITIES**

Notwithstanding anything to the contrary contained in this Charter, Unit Owners with disabilities shall be allowed reasonable exemptions from this Charter and, when necessary and as appropriate to enable them to use and enjoy their Units, provided that any Unit Owner with a disability desiring such an exemption shall make such request, in writing, to the Developer. That request shall set forth, with specificity and in detail, the nature of the request and the reason that the requesting party needs to be granted such an exemption. The Developer shall not unreasonably withhold or delay its consent to such request, and any such request shall be deemed to be granted if not denied in writing, within forty-five (45) calendar days of the Developer's receipt thereof, or within forty-five (45) calendar days of the Developer's receipt of additional information reasonably required by the Developer in order to consider such request, whichever shall last occur.

## **ARTICLE 13**

### **DISCLOSURES AND LIMITATIONS ON LIABILITIES**

#### **13.1 Disclaimers of Liability And Indemnification.**

13.1.1 Indemnification of Developer and Its Agents, Employees and Affiliates. Notwithstanding anything to the contrary contained herein, all Unit Owners agree to defend, indemnify and hold harmless the Developer and its members, agents, employees and affiliates, and their respective officers, directors, employees and agents, from and against, and properly reimburse it for, any and all liability, cost, damages, expense or deficiency resulting from, arising out of, or in connection with the negligent acts of such Unit Owner.

13.1.2 Security Disclaimer. The Developer may, but shall not be obligated to maintain or support certain activities within Kahului Town Center designed to make Kahului Town Center safer than it might otherwise be. Developer shall not in any way be considered an insurer or guarantor of security within Kahului Town Center, and neither the Developer, nor any successor Developer or Quadrant Developer shall be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of security measures undertaken. All Owners of any Unit, tenants, guests and invitees of any Owner, as applicable, acknowledge that the Developer does not represent or warrant that any fire protection system or other security system designated or installed according to the guidelines established by Developer may not be compromised or circumvented, that any fire protection or burglar alarm systems or other security systems will prevent loss by fire, smoke, burglary, theft, hold-up, terrorism or otherwise, nor that fire protection or burglar alarm systems or other security systems will in all cases provide the detection or protection for which the system was designed or intended. Each Owner, his or her family, agents, transient guests, or other occupants of any Unit, as applicable, acknowledges and understands that the Developer, and any other successor to Developer is not an insurer, and that each Owner, his or her family, agents, transient guests, or other occupants of a Unit assume all risks for loss or damage to persons, Units and the contents of Units, and further acknowledges that the Developer, or any successor Developer have made no representations or warranties nor has any Owner, his or her family, agents, transient guests, long-term guests, or other occupants of a Unit relied upon any representation or warranty, expressed or implied, including any warranty of merchantability as to the fitness of any alarm systems or other security systems recommended or installed, or any security measure undertaken within Kahului Town Center.

13.2 No Liability For Mold Development. Molds, mildews, toxins and fungi may exist and/or develop within the Unit and/or Kahului Town Center. Each Owner is hereby advised that certain molds, mildews, toxins and/or fungi may be, or if allowed to remain for a sufficient period may become, toxic and potentially pose health risk. By acquiring title to a Unit, each Owner shall be deemed to have assumed the risks associated with molds, mildew, toxins and/or fungi and to have released Developer from any and all liability resulting from the same.

13.3 Additional Disclosures. Without limiting any other provision in this Charter, the Associations and, by acquiring title to a Unit, or by possession or occupancy of a Unit, each Owner in Kahului Town Center for itself and for the Owner's Permittees and other invitees, shall conclusively be deemed to understand, and to have acknowledged and agreed to, all of the following:

13.3.1 No Representations Regarding Rentals. Each Unit Owner specifically acknowledges and agrees that neither Developer, nor any of its agents or representatives, have made any representations, warranties, guaranties or other claims of any kind regarding (a) any rental income, if any, that may be obtained by a Unit Owner from renting a Unit; (b) any rental programs that may be currently available, or in the future made available, for participation by Unit Owners, or (c) any increase or appreciation in the value of Units which may occur over time.

13.3.2 Nuisances. Working or living in a project like Kahului Town Center entails working or living in very close proximity to other persons and businesses with attendant limitations on solitude and privacy. Walls, floors and ceilings have been designed to meet applicable building codes. Owners will hear noise from adjacent Units within Kahului Town Center and experience noise and lights from parking areas and roadways within and surrounding Kahului Town Center. Owners may also hear noise from such items as machinery, air conditioning systems, equipment, audio-visual equipment, or from people running, walking, exercising or socializing. Finally, Owners can expect to experience possibly substantial levels of light, sound, music, noise, odors, vibrations and other nuisances from retail, restaurant, and commercial components of Kahului Town Center. Each Unit Owner specifically acknowledges such potential impacts and accepts them as a normal part of working or living in a project like Kahului Town Center.

13.3.3 Noise. The Developer has no control over the transmission of noise, light or odors within Kahului Town Center and/or from adjacent retail, restaurant, entertainment, and commercial developments, and the potential effect of such noise, light or odors on Units within Kahului Town Center.

13.3.4 Views. Each Owner acknowledges that (a) there are no protected views or view plane easements in Kahului Town Center, and the Units are not assured the existence or unobstructed continuation of any particular view, (b) any view from the Unit is not intended as part of the value of the Unit, and is not guaranteed, and Developer makes no representation or warranty regarding the effect of the view on the value of a Unit, and (c) any future development, construction, landscaping, growth of trees or other installation of improvements by Developer, other Owners or owners of other property in the vicinity of Kahului Town Center, may impair the view from the Unit, and each Owner consents to such view impairment.

13.3.5 Neighboring Developments. Certain lands (the "**Neighboring Developments**") outside, abutting and/or near Kahului Town Center may currently be developed, or in the future may or will be developed or redeveloped. The Developer has no control over future Neighboring Developments and, accordingly, there is no representation as to the nature, use or architecture of any future development or improvements on Neighboring Developments. Any such use, development and/or construction on Neighboring Developments may result in noise, dust, or other "nuisance" to Owners in Kahului Town Center, and each Unit Owner acknowledges the same.

## ARTICLE 14

### MISCELLANEOUS

14.1 No Waiver. Failure to enforce any provision of this Charter shall not constitute a waiver of the right to enforce that provision, or any other provision of this Charter.

14.2 Severability. The provisions of this Charter shall be deemed independent and severable, and if any term stated in this instrument is subsequently determined to be invalid, illegal or unenforceable, that determination shall not affect the validity, legality or enforceability of the remaining terms stated in this instrument unless that is made impossible by the absence of the omitted term.

14.3 Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Charter, or the intent of any provisions thereof.

14.4 Perpetuities. If any covenants, conditions, restrictions, or other provisions of this Charter shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

14.5 Gender. The use of any gender in this Charter shall be deemed to include either or both genders and the use of the singular shall be deemed to include the plural whenever the context so requires.

14.6 Constructive Notice And Acceptance; Incorporation Of Declaration Into Deeds. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any Unit or other portion of Kahului Town Center is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and provision contained in this Charter, whether or not any reference to this Charter is contained in the instrument by which such person acquired an interest. Any deed or other instrument by which any Unit or other interest in Kahului Town Center is conveyed, whether by fee, easement, leasehold interest or otherwise, shall be subject to the provisions of this Charter and any instrument of conveyance shall be deemed to incorporate the provisions of this Charter, whether or not such instrument makes reference to this Charter.

14.7 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and not exclusive. The failure to exercise any remedy provided for in this Charter or any other document shall not constitute a waiver of such remedy or of any other remedy provided herein or therein.

14.8 Attorneys' Fees And Costs. If any party shall bring an action or proceeding (including, but not limited to, any cross-complaint, counter-claim, third party claim or arbitration proceeding) against the Developer, a Unit Owner, or an Association

by reason of the alleged breach or violation of any provision of this Charter, or for the enforcement of any provision hereof, or to interpret any provision hereof, or otherwise arising out of this Charter, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of such action or proceeding, including, but not limited to, its actual attorneys' fees, which shall be payable by the non-prevailing party whether or not such action or proceeding is prosecuted to judgment or award. For the purposes of this Charter, the term "attorneys' fees" shall mean the fees and expenses of counsel to the parties hereto, which may include fees incurred with respect to post-judgment motions, contempt proceedings, garnishment, levy, debtor and third-party examinations, discovery, bankruptcy, litigation, and may include expenses such as printing, copying, duplicating, filing fees, air freight charges and fees billed for law clerks, paralegal and other persons not admitted to the bar but performing services under the supervision of an attorney, all of which shall be deemed to have accrued upon the occurrence of the act or omission giving rise to the incurrence of such fees.

14.9 No Public Dedication. Nothing herein contained shall be deemed a gift or dedication of any portion of Kahului Town Center or portion thereof to the general public, or for the general public or for any public use or purpose whatsoever; it being the intention and understanding of the parties hereto that this Charter shall be limited to and for the purposes herein expressed solely for the benefit of the Owners of Units or other Interests within Kahului Town Center.

14.10 Governing Law. This Declaration shall be governed by the laws of the State of Hawaii without giving effect to the principles of conflict of laws thereof.

14.11 Provisions Run With Land. The provisions of this Charter are intended to run with the Land. When any interest in the Land, Units, or other real property in Kahului Town Center is conveyed, the interest shall be burdened by the provisions of this Charter for the benefit of the remaining portions of Kahului Town Center and the interest conveyed shall be entitled to the benefit of this Charter.

14.12 No Representations Or Warranties. No representations or warranties of any kind, express or implied, have been given or made in this Charter with respect to Kahului Town Center or any portion thereof or Condominium Project therein, or any Improvements, their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the development, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a master-planned community, except as specifically and expressly set forth in this Charter.

14.13 Invalidity and Changes in Law. The invalidity of any provision of this Charter for any reason shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Charter, and, in such event, all of the other provisions of this Charter shall continue in full force and effect as if such provision had never been included herein. In the event of a change in statutory law applicable to this Project occurring after the filing of this Charter, such change in law shall control over the provisions of this Charter only to the extent the legislative body

enacting such change in law expressly provides that the provisions of such change in law shall control over provisions to the contrary in the preexisting Charter.

**IN WITNESS WHEREOF**, the undersigned has executed these presents this  
\_\_\_\_\_ day of \_\_\_\_\_, 2009.

**KAHULUI TOWN CENTER LLC**  
By A&B Properties, Inc.  
Its Manager

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

Its:

Attachments:

**Exhibit A** – Description of the Land

**Exhibit B** – Description of the Annexation Land

STATE OF HAWAII )  
 ) ss.  
CITY & COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, before me personally appeared \_\_\_\_\_ to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

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

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_  
Name: \_\_\_\_\_ First Circuit  
Document Description: Master Community  
Charter for Kahului Town Center

\_\_\_\_\_  
Notary Signature  
NOTARY CERTIFICATION

**EXHIBIT A**

**DESCRIPTION OF THE LAND**

All of that certain parcel of real estate located at Kahului, Island and County of Maui, State of Hawaii, being Unit No. 1 of that certain condominium project known as "Kahului Town Center Master Condominium", as described in the Declaration of Condominium Property Regime of the Kahului Town Center Master Condominium dated April 17, 2008, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2008-067573, and as shown on Condominium Map No. 4626, together with the undivided 25.4 percent interest in all common elements of the Kahului Town Center Master Condominium, as established for said unit by said declaration, or such other percentage interest as hereinafter established for said unit by any amendment of the declaration, and all other rights and easements appurtenant thereto.

The land on which the Kahului Town Center Master Condominium is more particularly described as follows:

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 3343 to Claus Spreckels) situate, lying and being at Kahului, Island and County of Maui, State of Hawaii, being LOT 5-B of the KAHULUI CENTER SUBDIVISION NO. 4, as per survey dated February 8, 2008, to wit:

Beginning at a point at the southwesterly corner of this lot on the northerly side of Kamehameha Avenue, said point being also the southeasterly corner of Lot 2 of the Kahului Center Subdivision, the coordinates of said point of beginning referred to Government Triangulation Station "LUKE" being 2,789.28 feet North and 9,533.82 feet East and running by azimuths measured clockwise from true South:

- |    |          |        |   |
|----|----------|--------|---|
| 1. | 160° 16' | 147.00 | feet along Lot 2 of Kahului Center Subdivision to a point;        |
| 2. | 70° 16'  | 39.00  | feet along same to a point;                                       |
| 3. | 160° 16' | 31.00  | feet along same to a point;                                       |
| 4. | 70° 16'  | 216.00 | feet along Lots 1 and 2 of Kahului Center Subdivision to a point; |
| 5. | 160° 16' | 369.50 | feet along the easterly side of Lono Avenue to a point;           |
| 6. | 250° 16' | 189.67 | feet along Lot 4 of Kahului Center Subdivision No. 3 to a point;  |

7. 160° 16' 359.21 feet along same to a point;
8. 250° 18' 40" 204.27 feet along the southerly side of Kaahumanu Avenue to a point;
9. Thence along same on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being: 295° 19' 50" 28.29 feet to a point;
10. 246° 15' 60.15 feet along same to a point;
11. Thence along same on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being: 203° 45' 27.48 feet to a point;
12. 247° 09' 401.46 feet along same to a point;
13. Thence along same on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being: 291° 31' 12.5" 27.97 feet to a point;
14. 335° 53' 25" 24.79 feet along the easterly side of Puunene Avenue to a point;
15. Thence along Lot 5-A of Kahului Center Subdivision No. 4 on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being: 111° 31' 12.5" 41.96 feet to a point;
16. 67° 09' 95.68 feet along same to a point;
17. 335° 53' 25" 139.82 feet along same to a point;
18. 245° 53' 25" 125.00 feet along same to a point;
19. 335° 53' 25" 186.96 feet along the westerly side of Puunene Avenue to a point;
20. 70° 16' 52.74 feet along Lot 3-A of Kahului Center Subdivision No. 2 to a point;
21. 340° 16' 130.00 feet along same to a point;
22. 250° 16' 62.69 feet along same to a point;

23. 335° 53' 25" 445.29 feet along the westerly side of Puunene Avenue to a point;
24. Thence along the northwesterly side of the intersection of Puunene Avenue and Kamehameha Avenue on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being: 23° 04' 42.5" 29.34 feet to a point;
25. 70° 16' 708.10 feet along the northerly side of Kamehameha Avenue to the point of beginning and containing an area of 729,556 square feet or 16.748 acres, more or less.

Together with a perpetual nonexclusive easement under and across Easement "W" affecting Lot 4 of the Kahului Center Subdivision No. 3, for utility purposes, as granted by DECLARATION OF EASEMENT, dated --- (acknowledged June 9, 2000), recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2000-080963; and subject to the terms and provisions contained therein. Said Easement "W" being more particularly described as follows:

Beginning at a point at the northwesterly corner of this easement, on the easterly side of Lono Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 3,319.25 feet north and 9,072.80 feet east and running by azimuths measured clockwise from true South:

1. 250° 16' 189.67 feet over and across Lot 4 of the Kahului Center Subdivision No. 3 to a point;
2. 340° 16' 15.00 feet along Lot 5 of the Kahului Center Subdivision No. 3 to a point;
3. 70° 16' 189.67 feet over and across Lot 4 of the Kahului Center Subdivision No. 3 to a point;
4. 160° 16' 15.00 feet along the easterly side of Lono Avenue to the point of beginning and containing an area of 2,845 square feet, more or less.

Being the same premises conveyed to Grantor herein by Quitclaim Deed dated April 7, 2008, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2008-056276.

**EXHIBIT B**  
**ANNEXATION LANDS**

**NOTICE TO TITLE SEARCHERS, INDEXERS AND ABSTRACTORS:**

**THE FOLLOWING LOTS ARE NOT SUBJECT TO THE MASTER COMMUNITY CHARTER FOR KAHULUI TOWN CENTER TO WHICH THIS EXHIBIT IS ATTACHED. THEY ARE LISTED HERE SOLELY FOR PURPOSES OF IDENTIFYING THEM AS LOTS WHICH MAY IN THE FUTURE BE ANNEXED TO THAT CHARTER BY A RECORDED INSTRUMENT OF ANNEXATION. UNTIL SUCH TIME (IF EVER) THAT THEY ARE THUS ANNEXED NONE OF THE TERMS, CONDITIONS, RESERVATIONS, EASEMENTS OR RESTRICTIONS CONTAINED IN THE FOREGOING CHARTER APPLY TO OR BIND THESE LOTS OR THE OWNERS THEREOF.**

Parcel First: All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Grant Number 3343 to Claus Spreckels,) situate, lying and being at Kahului, Wailuku Commons, Island and County of Maui, State of Hawaii, being LOT 3-A of "KAHULUI CENTER SUBDIVISION NO. 2" and thus bounded and described as per survey dated July 31, 1989, to-wit:

Beginning at a nail in pavement at the westerly corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 3,562.99 feet north and 9,927.06 feet east, and thence running by azimuths measured clockwise from true South:

- |    |              |        |  |
|----|--------------|--------|--|
| 1. | 250° 16'     | 52.74  | feet along Lot 5-B of Kahului Center Subdivision No. 4 to a nail in pavement;                        |
| 2. | 335° 53' 25" | 130.38 | feet along the westerly side of Puunene Avenue;  |
| 3. | 70° 16'      | 62.69  | feet along Lot 5-B of Kahului Center Subdivision No. 4;  |
| 4. | 160° 16'     | 130.00 | feet along same to the point of beginning and containing an area of 7,503 square feet, more or less. |

Together with Parking Easement C for parking purposes only, over and across a portion of Lot 5-B of Kahului Center Subdivision No. 4 and more particularly described as follows:

Beginning at a nail in pavement at the northeasterly corner of this easement, being, also, the northwesterly corner of Lot 3-A, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 3,562.99 feet north and 9,927.06 feet east, and thence running by azimuths measured clockwise from true South:

- |     |          |        |   |
|-----|----------|--------|---|
| 1.  | 340° 16' | 19.50  | feet along Lot 3-A;   |
| 2.  | 70° 16'  | 35.09  | feet along the remainder of Lot 5-B;  |
| 3.  | 340° 16' | 230.50 | feet along same;  |
| 4.  | 70° 16'  | 87.00  | feet along same;  |
| 5.  | 160° 16' | 185.50 | feet along same;  |
| 6.  | 250° 16' | 38.50  | feet along same;  |
| 7.  | 160° 16' | 45.00  | feet along same;  |
| 8.  | 250° 16' | 18.59  | feet along same;  |
| 9.  | 160° 16' | 19.50  | feet along same;  |
| 10. | 250° 16' | 65.00  | feet along same to the point of beginning and containing an area of 19,588 square feet, more or less. |

Together, also, with Access Easement 1, a non-exclusive easement for access purposes only, over and across a portion of Lot 5-B of Kahului Center Subdivision No. 4, and more particularly described as follows:

Beginning at the northwesterly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 3,559.21 feet north and 9,768.44 feet east, and thence running by azimuths measured clockwise from true South:

- |    |              |        |   |
|----|--------------|--------|---|
| 1. | 250° 16'     | 199.50 | feet along the remainder of Lot 5-B;                                  |
| 2. | 335° 53' 25" | 50.15  | feet along the westerly side of Puunene Avenue to a nail in pavement; |
| 3. | 70° 16'      | 117.74 | feet along Lot 3-A and the remainder of Lot 5-B;                      |
| 4. | 340° 16'     | 19.50  | feet along the remainder of Lot 5-B;                                  |

- |     |          |        |   |
|-----|----------|--------|---|
| 5.  | 70° 16'  | 18.59  | feet along same;  |
| 6.  | 340° 16' | 45.00  | feet along same;  |
| 7.  | 70° 16'  | 38.50  | feet along same;  |
| 8.  | 340° 16' | 185.50 | feet along same;  |
| 9.  | 70° 16'  | 28.50  | feet along same;  |
| 10. | 160° 16' | 300.00 | feet along same to the point of beginning and containing an area of 20,041 square feet, more or less. |

Said above described parcel of land having been conveyed by Warranty Deed of WDCI, INC., a Hawaii corporation in favor of A&B Properties, Inc., a Hawaii corporation, dated December 21, 1995, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 95-166175, which was amended by Correction Deed dated January 8, 1996, effective as of December 21, 1995, recorded in said Bureau as Document No. 96-013275 (re: corrects Tax Map Key Designation) and Second Correction Deed dated April 19, 1996, effective December 21, 1995, recorded in said Bureau as Document No. 96-061187 (re: corrects Grantee).

Parcel Second: All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Grant 3343 to Claus Spreckels) situate, lying and being at Kahului, Wailuku Commons, Island and County of Maui, State of Hawaii, being LOT 1 and thus bounded and described:

Beginning at a pipe at the southeasterly corner of this lot, being also the northerly boundary of Kamehameha Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 2,755.16 feet north and 9,438.70 feet east, and running by azimuths measured clockwise from true South:

- |    |  |        |   |
|----|--|--------|---|
| 1. | 70° 16'  | 133.94 | feet along the northerly boundary of Kamehameha Avenue to a pipe; |
| 2. | Thence along the intersection of Kamehameha Avenue and Lono Avenue, along a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being: 115° 16' 28.28 feet to a pipe; |        |   |
| 3. | 160° 16'   | 158.00 | feet along the easterly boundary of Lono Avenue to a pipe;        |

- |    |          |        |   |
|----|----------|--------|---|
| 4. | 250° 16' | 169.55 | feet along Lot 3 and along Parking Avenue to a pipe;  |
| 5. | 340° 16' | 31.00  | feet along Lot 2 of this subdivision to a pipe;   |
| 6. | 70° 16'  | 15.61  | feet along same to a pipe;  |
| 7. | 340° 16' | 147.00 | feet along same to the point of beginning and containing an area of 27,799 square feet, more or less. |

Together with Parking Easement "A" for parking purposes only, over and across a portion of Lot 5-B of Kahului Center Subdivision No. 4, and more particularly described as follows:

Beginning at a 1/2 inch pipe at the northwesterly corner of this easement, on the easterly side of Lono Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 2,906.68 feet north and 9,220.80 feet east, and thence running by azimuths measured clockwise from true South:

- |    |          |        |  |
|----|----------|--------|--|
| 1. | 250° 16' | 169.55 | feet along the remainder of Lot 5-B to a spike in pavement;  |
| 2. | 340° 16' | 38.20  | feet along same to a spike in pavement;  |
| 3. | 70° 16'  | 169.55 | feet along Lot 1 to a 1/2 inch pipe;   |
| 4. | 160° 16' | 38.20  | feet along the easterly side of Lono Avenue to the point of beginning and containing an area of 6,477 square feet or more or less. |

Said above described parcel of land having been conveyed by Warranty Deed of T.G. Exchange, Inc., a Hawaii corporation in favor of WDCI, Inc., a Hawaii corporation, dated August 8, 1989, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 23509 at Page 654.

Parcel Third: All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 3343 to Claus Spreckels) situate, lying and being at Kahului, Wailuku Commons, Island and County of Maui, State of Hawaii, being LOT 4 of the "KAHULUI CENTER SUBDIVISION NO. 3", and thus bounded and described:

Beginning at a spike in pavement at the southwesterly corner of this lot, on the easterly side of Lono Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 3,218.53 feet north and

9,108.93 feet east, and thence running by azimuths measured clockwise from true South:

1. 160° 16' 334.77 feet along the easterly side of Lono Avenue to a 1/2 inch pipe;
2. Thence along the intersection of Lono Avenue and Kaahumanu Avenue on a curve to the right with a radius of 24.56 feet, the chord azimuth and distance being:
  - 205° 17' 20" 34.75 feet to a "+" on concrete sidewalk;
3. 250° 18' 40" 165.09 feet along the southerly side of Kaahumanu Avenue to a "+" on concrete sidewalk;
4. 340° 16' 359.21 feet along Lot 5-B of Kahului Center Subdivision No. 4 to a spike in pavement;
5. 70° 16' 189.67 feet along same to the point of beginning and containing an area of 68,015 square feet, more or less.

Together with Access Easement 2, a non-exclusive easement for access purposes only, over and across a portion of Lot 5-B of Kahului Center Subdivision No. 4, and more particularly described as follows:

Beginning at a "+" on concrete sidewalk at the northwesterly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 3,620.69 feet north and 9,166.18 feet east, and thence running by azimuths measured clockwise from true South:

1. 250° 18' 40" 25.00 feet along the southerly side of Kaahumanu Avenue;
2. 340° 16' 295.19 feet along the remainder of Lot 5-B of Kahului Center Subdivision No. 4;
3. 70° 16' 25.00 feet along same;
4. 160° 16' 295.21 feet along Lot 4 to the point of beginning and containing an area of 7,382 square feet, more or less.

Said above described parcel of land having been acquired by A & B Properties, Inc., a Hawaii corporation, by the following Deeds:

1. Deed of Hawaiian Commercial and Sugar Company, Limited, a Hawaii corporation, dated April 27, 1951, recorded in the Bureau of Conveyances in Liber 2471 at Page 281, as corrected by instrument dated April 27, 1951, recorded in said Bureau in Liber 2484 at Page 491; and

2. Deed by WDCI, INC., a Hawaii corporation, dated November 20, 2003, recorded in said Bureau as Document No. 2003-265735.

Parcel Fourth: All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 3343 to Claus Spreckles) situate, lying and being on the southwest corner of the intersection of Kaahumanu Avenue and Puunene Avenue, at Kahului, Island and County of Maui, State of Hawaii, being LOT 5-A of the "KAHULUI SHOPPING CENTER SUBDIVISION NO. 4" (Burger King Site), and thus bounded and described as per survey of Warren S. Unemori, Registered Professional Engineer & Land Surveyor, dated May 11, 1978, as revised, to-wit:

Beginning at the most westerly corner of this lot, on the south side of Kaahumanu Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 3,828.03 feet north and 9,729.11 feet east and running by azimuths measured clockwise from true South:

1. 247° 09' 95.68 feet along Lot 5-B of Kahului Center Subdivision No. 4 on the south side of Kaahumanu Avenue to a pipe;
2. Thence along the westerly side of Puunene Avenue on a curve to the right, having a radius of 30.00 feet, the chord azimuth and distance being  
291° 31' 12.5" 41.96 feet to a pipe;
3. 335° 53' 25" 107.72 feet along same to a spike in pavement;
4. 65° 53' 25" 125.00 feet along Lot 5-B of Kahului Center Subdivision No. 4 to a spike in pavement;
5. 155° 53' 25" 139.82 feet along same to the point of beginning and containing an area of 17,122 square feet, more or less.

Together with a nonexclusive easement for parking purposes and for ingress and egress over and across Lot 5-B of said "Kahului Shopping Center Subdivision No. 4", described as per survey of Warren S. Unemori, Registered Professional Engineer & Land Surveyor, dated May 11, 1978, as revised, to-wit:

Beginning at the most northerly corner of this easement, on the south side of Kaahumanu Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 3,828.03 feet north and 9,729.11 feet east and running by azimuths measured clockwise from true South:

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| 1. | 335° 53' 25" | 60.01  | feet along Lot 5-A of Kahului Center Subdivision No. 4;  |
| 2. | 67° 09'      | 101.00 | feet over and across Lot 5-B of Kahului Center Subdivision No.4;   |
| 3. | 157° 09'     | 60.00  | feet over and across same along Access Easement-3;   |
| 4. | 247° 09'     | 99.68  | feet over and across same on the south side of Kaahumanu Avenue to the point of beginning and containing an area of 6,020 square feet, more or less. |

Together with Access Easement-3 over and across Lot 5-B of Kahului Center Subdivision No. 4 of said "Kahului Shopping Center Subdivision No. 4", described as per survey of Warren S. Unemori, Registered Professional Engineer & Land Surveyor, dated May 11, 1978, as revised, to-wit:

Beginning at the most westerly corner of this easement, on the south side of Kaahumanu Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 3,681.46 feet north and 9,393.31 feet east and running azimuths measured clockwise from true South:

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| 1. | 246° 15' | 40.00  | feet along the south side of Kaahumanu Avenue;  |
| 2. | 337° 09' | 13.96  | feet over and across Lot 5-B of Kahului Center Subdivision No. 4;   |
| 3. | 247° 09' | 226.69 | feet over and across same;  |
| 4. | 337° 09' | 24.00  | feet over and across same along Parking Easement "D";   |
| 5. | 67° 09'  | 266.68 | feet over and across same;  |
| 6. | 157° 09' | 37.33  | feet over and across same to the point of beginning and containing an area 6,946 square feet, more or less. |

Said above described parcel of land having been conveyed by Warranty Deed by WDCI, INC., a Hawaii corporation in favor of Alexander & Baldwin, Inc., a Hawaii corporation, as to an undivided 62.3% interest; and A&B Properties, Inc., a Hawaii corporation, as to an undivided 37.7% interest, as Tenants in Common, dated December 21, 1995, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 95-166176 and as amended by Correction Deed is dated January 8, 1996, and recorded in said Bureau as Document No. 96-013274 (re: location of property).

Parcel Fifth: All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Grant Number 3343 to Claus Spreckels) situate, lying and being at Kahului, Wailuku Commons, Island and County of Maui, State of Hawaii, being LOT 2 of "KAHULUI CENTER SUBDIVISION", and thus bounded and described as per survey dated July 31, 1989, to-wit:

Beginning at a 1/2 inch pipe at the southwesterly corner of this lot, on the northerly side of Kamehameha Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 2,755.16 feet north and 9,438.70 feet east, and thence running by azimuths measured clockwise from true South:

1.	160° 16'	147.00	feet along Lot 1 of Kahului Center Subdivision to a 1/2 inch pipe;
2.	250° 16'	15.61	feet along same to a 1/2 inch pipe;
3.	160° 16'	31.00	feet along same to a spike in pavement;
4.	250° 16'	46.45	feet along Lot 5-B of Kahului Center Subdivision No. 4 to a spike in pavement;
5.	340° 16'	31.00	feet along same to a 1/2 inch pipe;
6.	250° 16'	39.00	feet along same to a 1/2 inch pipe;
7.	340° 16'	147.00	feet along Lot 5-B of Kahului Center Subdivision no. 4 to a 1/2 inch pipe;
8.	70° 16'	101.16	feet along the northerly side of Kamehameha Avenue to the point of beginning and containing an area of 16,296 square feet, more or less.

Together with Parking Easement B for parking purposes only, over and across a portion of Lot 5-B of Kahului Center Subdivision No. 4, and more particularly described as follows:

Beginning at a 1/2 inch pipe at the southwesterly corner of this easement on the northerly side of Kamehameha Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 2,789.28 feet north and 9,533.82 feet east, and thence running by azimuths measured clockwise from true South:

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| 1. | 160° 16' | 147.00 | feet along Lot 2 to a 1/2 inch pipe;  |
| 2. | 250° 16' | 33.00  | feet along the remainder of Lot 5-B to a 1/2 inch pipe;   |
| 3. | 340° 16' | 147.00 | feet along same to a 1/2 inch pipe;   |
| 4. | 70° 16'  | 33.00  | feet along the northerly side of Kamehameha Avenue to the point of beginning and containing an area of 4,851 square feet, more or less. |

Said above described parcel of land having been conveyed by Warranty Deed by WDCI, INC, a Hawaii corporation in favor of A&B Properties, Inc., a Hawaii corporation, dated December 21, 1995, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 95-166175 and as amended by Correction Deed dated January 8, 1996, effective as of December 21, 1995, recorded in said Bureau as Document No. 96-013275 (re: Parcel 50 was incorrectly identified as being Tax Map Key No. (2) 2-3-7-50 instead of Tax Map Key No. (2) 3-7-7-50) and by Second Correction Deed dated April 19, 1996, effective December 21, 1995, recorded in said Bureau as Document No. 96-061187 (re: corrects Grantee).