

## LOAN MODIFICATION AND CONFIRMATION AGREEMENT

THIS LOAN MODIFICATION AND CONFIRMATION AGREEMENT (this "**Agreement**") is made effective as of September 15, 2008, by and between BANK OF HAWAII, a Hawaii banking corporation, CENTRAL PACIFIC BANK, a Hawaii banking corporation, and FINANCE FACTORS, LIMITED, a Hawaii corporation (collectively called the "**Lenders**"), BANK OF HAWAII in its capacity as Agent for the Lenders (the "**Agent**"), KE KAILANI DEVELOPMENT, LLC, a Hawaii limited liability company ("**Development**"), KE KAILANI CORP., a Hawaii corporation ("**Corp.**"), and MICHAEL J. FUCHS ("**Guarantor**"). Development and Corp. are collectively referred to herein as "**the Borrowers**".

### I. BACKGROUND

A. The Lenders have made the following loans (collectively, the "**Loans**") to the Borrowers:

1. that certain loan in a principal amount not to exceed \$26,490,000 (the "**Infrastructure Loan**"), evidenced by that certain Loan Agreement, dated July 6, 2005 (as heretofore amended, "**the Infrastructure Loan Agreement**") and that certain Amended and Restated Note, dated July 31, 2006 (as heretofore amended, "**the Infrastructure Note**"), executed by Borrowers, and

2. that certain loan in a principal amount not to exceed \$25,662,500 (the "**Villas Loan**"), evidenced by that certain Loan Agreement (as heretofore amended, the "**Villas Loan Agreement**") and that certain Note (as heretofore amended, the "**Villas Note**"), each dated July 31, 2006, executed by Borrowers.

B. The Loans are cross-collaterized under the following:

1. that certain Mortgage, Security Agreement, and Financing Statement dated July 6, 2005, made by Development, as Mortgagor, in favor of Agent, as Mortgagee recorded in the Bureau of Conveyances of the State of Hawaii (the "**Bureau**") as Document No. 2005-152593, as amended (the "**Infrastructure Mortgage**");

2. that certain Assignment of Sales Contracts and Sales Proceeds dated July 6, 2005, made by and between Development and the Agent, recorded in the Bureau as Document No. 2005-152594, as amended (the "**Infrastructure Assignment**");

3. that certain Mortgage, Security Agreement and Fixture Filing, dated July 31, 2006, made by Development, as Mortgagor, in favor of the Agent, as Mortgagee, recorded in the Bureau as Document No. 2006-144291, as amended (the "**Villas Mortgage**"); and

4. that certain Assignment of Sales Contracts and Sales Proceeds dated July 31, 2006, made by and between Development and the Agent, recorded in the Bureau as Document No. 2006-144292, as amended (the "**Villas Assignment**").

C. The Infrastructure Loan Agreement, the Villas Loan Agreement, the Infrastructure Note, the Villas Note, the Infrastructure Mortgage, the Villas Mortgage, the Infrastructure Assignment, the Villas Assignment, the "Guaranty" (as hereinafter defined) and any other documents which evidence or secure the Loans are hereinafter collectively called the "**Loan Documents**". Capitalized terms that are not otherwise defined in this Agreement shall have the meanings given to them in the Infrastructure Loan Agreement.

D. The Borrowers' obligations to pay the indebtedness evidenced by the Infrastructure Note and the Villas Note and to observe and perform all covenants, conditions, and agreements on the part of the Borrowers to be observed and performed under the Loan Documents are hereinafter called the "**Secured Obligations**"

E. Under a Guaranty and Indemnification dated July 6, 2005, and a Guaranty and Indemnification dated July 31, 2006 (collectively the "**Guaranty**"), the Guarantor has unconditionally guaranteed the payment of the Secured Obligations and indemnified the Lenders against any loss, damage, cost, expense, liability, claim or other obligation incurred by the Lenders or the Agent in connection with certain acts by the Borrowers.

F. As of September 10, 2008, the outstanding unpaid balance of the Infrastructure Loan is \$21,850,156.38, and remaining undisbursed loan commitment for the Infrastructure Loan is \$0.

G. As of September 10, 2008, the outstanding unpaid balance of the Villas Loan is \$6,267,628.74 and the remaining undisbursed loan commitment for the Villas Loan is \$3,577,290.54.

H. The Infrastructure Note matures on September 1, 2008.

I. The Villas Note matures on September 5, 2008, but is subject to two six-month extension options that may be exercised subject to the satisfaction of certain conditions.

J. The Borrowers have requested that the Lenders agree to the first extension of the maturity of the Villas Note from September 5, 2008 to and including March 5, 2009, and the Lenders have agreed upon the terms and subject to the conditions set forth in the Loan Documents and this Agreement.

K. The Borrowers have requested that the Lenders agree to an extension of the maturity of the Infrastructure Note from September 1, 2008 to and including March 5, 2009, and the Lenders have upon the terms and subject to the conditions set forth in the Loan Documents and this Agreement.

## II. AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Extension of Term of Infrastructure Note; Conditions. The Term of the Infrastructure Note shall be extended from September 1, 2008 to and including March 5, 2009, upon and subject to the following conditions:

a. On or before September 15, 2008, the Agent shall have received a standby letter of credit (the "**Letter of Credit**") with an expiry date of not earlier than April 5, 2009, issued to the Agent by a U.S. financial institution (the "**Issuer**") reasonably acceptable to the Agent, providing for the payment against one or more drafts of the aggregate amount of \$1,000,000, which Letter of Credit automatically increases to the aggregate amount of \$3,000,000 as of 5:00 p.m. Eastern Standard Time on November 18, 2008, unless, prior to that time, the Issuer has been advised in writing by the Agent that no increase in the amount of the Letter of Credit is required.

b. On or before September 15, 2008, the Borrowers shall have paid to the Agent an extension fee in the amount of \$43,700.31.

c. The Agent agrees that it shall promptly advise the Issuer in writing that no increase in the amount of the Letter of Credit is required if: (i) the Borrowers and a purchaser reasonably acceptable to the Agent (the "**Purchaser**") have entered into a purchase and sale agreement for the sale of the Project (the "**PSA**"); (ii) all of the Purchaser's contingencies to closing under the PSA shall have been satisfied or waived, other than the "material adverse change" clause and those contingencies that are customarily to be satisfied on or immediately prior to the closing date of the sale; and (iii) the Agent has been provided with reasonably satisfactory written evidence of the foregoing.

d. The Agent agrees that if all of the conditions set forth in Paragraph 1.c. above are satisfied after November 18, 2008, and the Purchaser is A & B Properties, Inc. or any of its related or affiliated entities or assignees, then Agent shall promptly advise the Issuer that the amount of the Letter of Credit shall be decreased to \$1,000,000.

2. Draws Under the Letters of Credit. Notwithstanding anything to the contrary contained in Paragraph 1 above, neither Agent nor any subsequent holder of the Letter of Credit shall be entitled to make a draw thereunder unless and until (A) there has been an Event of Default pursuant to (and as such term is defined in) Section 9 of the Infrastructure Note (provided, however, that in no event shall Agent or any subsequent holder of the Letter of Credit be entitled to make a draw thereunder as a result of an Event of Default as set forth in Section 9(i) of the Infrastructure Note); and (B) not less than two (2) business days prior to making any request to the Issuer for a draw on the Letter of Credit, Agent or any subsequent holder of the Letter of Credit shall have provided Borrowers with written notice of Agent's intent to draw on the Letter of Credit which notice shall also be set forth: the amount of the requested draw; the Event of Default under the Infrastructure Note claimed by Agent; and the factual bases for Agent's claim that such Event of Default has occurred. Any monies received by Lenders as a result of a draw on the Letter of Credit shall be applied by the Lenders to the indebtedness owing under the Infrastructure Note, first to interest and then to principal.

3. Re-Appraisal of the Project. The Borrowers agree that if the conditions set forth in Paragraph 1.c above have not been satisfied by November 18, 2008, the Agent may,

in addition to all other remedies provided under the Loan Documents, order a new appraisal of the Project to appraise the bulk discount value of the Project upon completion of the Project in accordance with the final subdivision map dated October 24, 2005. The Borrowers will promptly reimburse the Agent for the cost of such appraisal within ten days of the date on which payment is due to the appraiser.

4. Extension of Villas Note. The Lenders and Agent acknowledge and agree that on August 5, 2008 they received a payment in the amount of \$19,689.84 as the extension fee for the First Extension Period of the Villas Note; that all other terms and conditions for the First Extension Period of the Villas Note have been satisfied; and that the Term of the Villas Note has been extended from September 5, 2008 to and including March 5, 2009.

5. Confirmation of Representations, Warranties and Agreements. The Borrowers hereby certify that the representations and warranties of Borrowers set forth in the Loan Documents are true and correct in all material respects on and as of the date of this Agreement and that this Agreement and each of the other documents required hereunder from the Borrowers have been duly authorized and when executed and delivered by the Borrowers, will constitute the legal, valid and binding obligations of the Borrowers, enforceable in accordance with their terms.

6. Conforming Amendments to Loan Documents. Each of the Loan Documents is amended in conformity with this Agreement, and the Borrowers hereby confirm, warrant, and agree that (i) all Loan Documents shall continue in full force and effect, as amended by this Agreement; and (ii) all existing collateral and other security for the indebtedness of the Borrowers under the Loan Documents shall continue to secure the obligations of the Borrowers under the Loan Documents, as amended hereby.

7. No Defenses. The Borrowers acknowledge that as of the date of this Agreement they have no offsets, counterclaims, deductions or defenses to payment or performance of their duties and obligations under the Loan Documents.

8. Costs and Expenses. The Borrowers shall promptly reimburse the Agent, upon demand, for all out of pocket costs and expenses, including attorneys' fees, reasonably incurred by Agent in connection with this transaction.

9. Copies of Documents. The Borrowers shall provide to the Agent within two business days of the Borrowers' receipt thereof, copies of all executed letters of intent or purchase agreements relating to the Project, together with all amendments, modifications or terminations thereof.

10. Acknowledgment, Agreement and Confirmation by Guarantor. The Guarantor hereby acknowledges and agrees to the terms and conditions in this Agreement. The Guarantor confirms that his absolute and unconditional guarantee and agreements to the Lenders under the Guaranty shall apply to all of the Secured Obligations under the Loan Documents, as modified by this Agreement.

11. Other Terms and Conditions.

a. This Agreement constitutes a modification only, and not a novation.

b. Within five (5) days after the Agent's request, the Borrowers shall execute and deliver such further documents and do such other acts as the Agent may reasonably deem necessary to carry out the purposes of this Agreement.

c. This Agreement may be executed in counterparts, each of which shall be an original instrument and all of which shall together constitute one and the same agreement.

d. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Loan Modification And Confirmation Agreement to be duly executed as of September 15, 2008.

BANK OF HAWAII

By Brian H. Uemoto  
Its VICE PRESIDENT Brian H. Uemoto

CENTRAL PACIFIC BANK

By Ryan M. Harada  
Its **RYAN M. HARADA**  
Executive Vice President

FINANCE FACTORS, LTD.

By \_\_\_\_\_  
Its

("Lenders")

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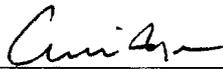
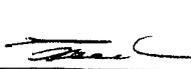
BANK OF HAWAII

By \_\_\_\_\_  
Its

CENTRAL PACIFIC BANK

By \_\_\_\_\_  
Its

FINANCE FACTORS, LTD.

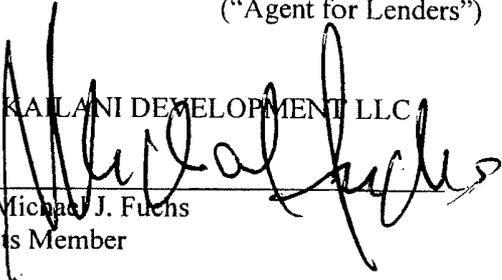
By    
It **ALVIN IGE** **THOMAS T. UECHI**  
**SENIOR VICE PRESIDENT** **VICE PRESIDENT**  
**(Lenders")**

BANK OF HAWAII

By   
Its VICE PRESIDENT Brian H. Uemori

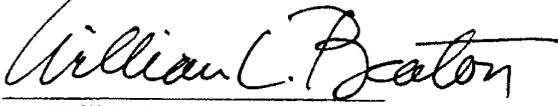
("Agent for Lenders")

KE KAILANI DEVELOPMENT LLC

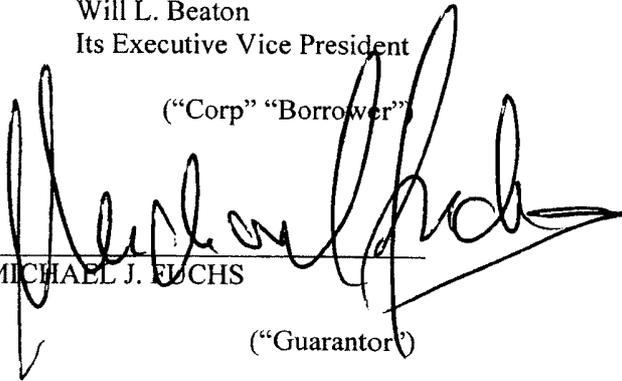
By   
Michael J. Fuchs  
Its Member

("Development" "Borrower")

KE KAILANI CORP.

By   
Will L. Beaton  
Its Executive Vice President

("Corp" "Borrower")

  
MICHAEL J. FUCHS

("Guarantor")