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STATE OF HAWAII

**BUREAU OF CONVEYANCES**

Doc A-46471181

September 21, 2012 10:45 AM

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail  Pickup  To:

Castle & Cooke Land Company  
for Castle & Cooke Waikoloa, LLC  
680 Iwilei Road, Suite 510  
Honolulu, HI 96817  
C. Kurasaki (548-2909)

This document contains  
8 pages

Tax Map Key No.: (3) 6-8-037-059 CPR 0001 to 0092, inclusive;  
(3) 6-8-037-060

**FIRST AMENDMENT TO  
DECLARATION OF MERGER OF CONDOMINIUM PHASES**

This First Amendment to Declaration of Merger of Condominium Phases is made as of the 19<sup>th</sup> day of September, 2012, by CASTLE & COOKE WAIKOLOA, LLC, a Hawaii limited liability company, whose principal place of business is 680 Iwilei Road, Suite 510, Honolulu, Hawaii 96817, and whose post office address is 680 Iwilei Road, Box 510, Honolulu, Hawaii 96817, hereinafter referred to as the "Developer", and the ASSOCIATION OF UNIT OWNERS OF MAKANA KAI AT WEHILANI – PHASE I, an unincorporated association, whose address is c/o Certified Management, Inc., 3179 Koapaka Street, 2nd Floor, Honolulu, Hawaii 96819-5199, hereinafter referred to as the "Phase I Association",

**WITNESSETH:**

WHEREAS, the Developer is the developer of that certain real property situated at Waikoloa, District of South Kohala, Island and County of Hawaii, State of Hawaii, more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"); and

WHEREAS, in connection with the development of the Land, the Developer recorded that certain Declaration of Merger of Condominium Phases dated July 6, 2006, in the Bureau of Conveyances of the State of Hawaii as Document No. 2006-127949 (the "Declaration of Merger"); and

WHEREAS, the Declaration of Merger provides, among other things, that the Developer shall have the right, in its sole and absolute discretion, without the further act, consent or joinder of any unit owner, lien holder or any other persons, to cause and effect an administrative merger or mergers of any two or more of the Phases (as defined in the Declaration of Merger); and

WHEREAS, pursuant to the Declaration of Condominium Property Regime of Makana Kai at Wehilani – Phase I dated July 6, 2006, recorded as Document No. 2006-127950, the Developer did submit a portion of the Land to a condominium property regime known as "Makana Kai at Wehilani – Phase I", pursuant to Chapter 514A of the Hawaii Revised Statutes, as amended; and

WHEREAS, the By-Laws of the Association of Unit Owners of Makana Kai at Wehilani – Phase I dated July 6, 2006, recorded as Document No. 2006-127951, and the condominium map for Makana Kai at Wehilani - Phase I was filed as Condominium File Plan No. 4294; and

WHEREAS, the Declaration of Condominium Property Regime or the By-Laws for the Additional Phases (as defined in the Declaration of Merger) have not yet been recorded in the Bureau of Conveyances of the State of Hawaii; and

WHEREAS, Section 12 of the Declaration of Merger provides in part that prior to a merger of any two or more Phases, any amendment of the Declaration of Merger shall require the consent of the Developer and the vote or written consent of unit owners in each phase having not less than sixty-seven percent (67%) of the common interests in each phase; and

WHEREAS, as of the date hereof, Makana Kai at Wehilani – Phase I has not been merged with the Additional Phases; and

WHEREAS, the Developer has consented to the amendment of the Declaration of Merger in the manner hereinafter set forth; and

WHEREAS, at least sixty-seven percent (67%) of the common interests in Makana Kai at Wehilani – Phase I have consented to the amendment of the Declaration of Merger in the manner hereinafter set forth; and

WHEREAS, as of the date hereof, Developer owns one hundred percent (100%) of the other Land subject to the Declaration of Merger that is the Land upon which the Additional Phases will be located, and as owner of one hundred percent (100%) of the other Land subject to the Declaration, has consented to the amendment of the Declaration of Merger in the manner hereinafter set forth;

NOW, THEREFORE, pursuant to Section 12 of the Declaration of Merger, Section 8 of the Declaration of Merger is hereby amended and restated as follows:

"Limitation on Time for Merger.

(a) Administrative Merger. If administrative merger of all of the Phases is not effected pursuant to the foregoing provisions prior to December 31, 2018 (the "Administrative Merger Expiration Date"), the right of Developer to effect any such merger shall terminate automatically on the Administrative Merger Expiration Date unless and until an administrative merger after the Administrative Merger Expiration Date is approved by the vote or written consent of unit owners in each of the phases to be merged who own at least sixty-seven percent (67%) of the common interests in that phase.

(b) Ownership Merger. If ownership merger of all of the Phases is not effected pursuant to the foregoing provisions prior to December 31, 2018 (the "Ownership Merger Expiration Date"), the right of Developer to effect any such merger shall terminate automatically on the Ownership Merger Expiration Date."

Except as amended hereby, the Declaration of Merger is hereby ratified and confirmed and shall continue in full force and effect.

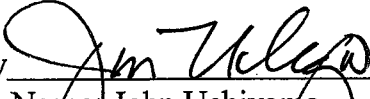
This instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts together shall constitute one and the same instrument binding the parties hereto notwithstanding that all of the parties hereto are not signatory to the original or the same counterparts.

This instrument shall be effective as of the date that it is recorded in the Bureau of Conveyances of the State of Hawaii.

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed as of the day and year first above written.


CASTLE & COOKE WAIKOLOA, LLC  
By Castle & Cooke Homes Hawaii, Inc.  
Its Member

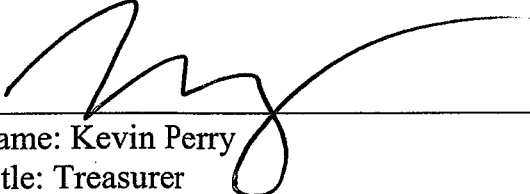
By   
Name: W. Bruce Barrett  
Title: Executive Vice President

By   
Name: John Uchiyama  
Title: Sr. Vice President, Controller and  
Assistant Secretary

Developer

ASSOCIATION OF UNIT OWNERS OF  
MAKANA KAI AT WEHILANI – PHASE I

By   
Name: Douglas E. Pearson  
Title: President

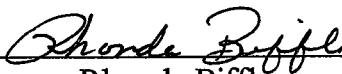
By   
Name: Kevin Perry  
Title: Treasurer

Association

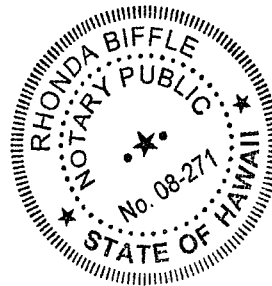
STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this 19<sup>th</sup> day of September, 2012, before me

personally appeared W. Bruce Barrett and John Uchiyama, to me personally known, who, being by me duly sworn or affirmed, did say that such persons executed this 8-page First Amendment to Declaration of Merger of Condominium Phases dated Sept. 19, 2012, in the First Circuit of the State of Hawaii, 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: Rhonda Biffle  
Notary Public, State of Hawaii

My commission expires: August 3, 2016



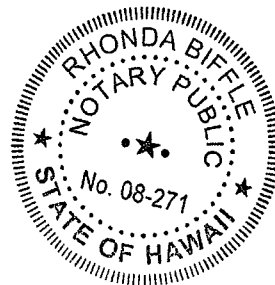
STATE OF HAWAII )  
 ) SS  
CITY & COUNTY OF HONOLULU )

On this 19<sup>th</sup> day of September, 2012, before me

personally appeared Douglas E. Pearson, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed this 8-page First Amendment to Declaration of Merger of Condominium Phases dated Sept. 19, 2012, in the First Circuit of the State of Hawaii, 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.

Rhonda Biffle  
Name: Rhonda Biffle  
Notary Public, State of Hawaii

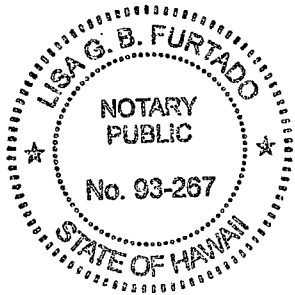
My commission expires: Aug. 3, 2016



STATE OF HAWAII )  
County of Hawai'i ) SS  
\_\_\_\_\_ )

On this 13 day of Sept, 2012, before me

personally appeared Kevin Perry, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed this 8-page First Amendment to Declaration of Merger of Condominium Phases dated undated, 20  , in the 3rd Circuit of the State of Hawaii, 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.



Lisa G. B. Furtado  
Name: Lisa G. B. Furtado  
Notary Public, State of Hawaii

My commission expires: 5/20/13

## EXHIBIT A

### MAKANA KAI AT WEHILANI – PHASE I

That certain parcel of land situate at Waikoloa, District of South Kohala, Island and County of Hawaii, State of Hawaii, being Lot 59-B of the “MAKANA KAI AT WEHILANI”, as shown on File Plan No. 2427, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 7.700 acres, more or less.

### ADDITIONAL PHASES

That certain parcel of land situate at Waikoloa, District of South Kohala, Island and County of Hawaii, State of Hawaii, being Lot 59-C of the “MAKANA KAI AT WEHILANI”, as shown on File Plan No. 2427, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 8.003 acres, more or less.