KASDAN TURNER THOMSON BOOTH LLLC
CONSTRUCTION DEFECT
CLASS ACTION
CONSUMER LITIGATION

REPLY TO HAWAII

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July 29, 2022

**BY PERSONAL SERVICE**

Alexander & Baldwin Inc.
Registered Agent
The Collection LLC, A Hawaii Limited
Liability Company
822 Bishop Street
Honolulu, HI 96813

Alyson J. Nakamura
Registered Agent
A&B Properties Hawaii, LLC
822 Bishop Street
Honolulu, HI 96813

Joseph P. Majkut
Registered Agent
Hawaiian Dredging Construction Company, Inc.
605 Kapiolani Boulevard, 11th Floor
Honolulu, HI 96813

RE: Association of Unit Owners of The Collection
Notice of Claims of Construction Defect Pursuant to Declaration, Article 22.4, and Request to Meet and Negotiate

To whom it may concern,

Pursuant to Article 22.4 of the Declaration of Condominium Property Regime for The Collection, the Association of Unit Owners of The Collection ("Association") hereby provides The Collection LLC, A Hawaii Limited Liability Company, and A&B Properties Hawaii, LLC ("Developers") and Hawaiian Dredging Construction Company, Inc. ("Contractor"), collectively "Development Parties," a Notice of Claims and Request to Meet and Negotiate.

This Notice is provided pursuant to Article 22, Section 22.4.1 of the Amended and Restated Declaration of Condominium Property Regime of the Collection ("Declaration"), whereby the Association hereby provides you with a specific Notice of Claims asserted by the Association as to the Defects in the project. Moreover, the Association sets forth remedies it suggests should be implemented by the Development Parties, or any or all of them. The Association offers to meet with you and enter into substantive discussions and negotiations with the Development Parties to resolve the Construction Defect claims.

This letter contains at Section I, a detailed itemization of the claims, and at Section II specifics as to the Association's proposed resolutions.

Specifically, the Board requests that you repair each claimed defect condition or agree to fund the repairs. Please be advised that the Association is willing to discuss and allow repairs to all or just some of the claimed defects. All not resolved on the August 22, 2022 negotiations can and will be subject to resolution pursuant to applicable statutes and other procedures including litigation. In furtherance of resolving these issues through good faith negotiation, the Association proposes that should you wish to review or inspect the conditions, the Board hereby offers to provide access to the premises to facilitate your investigation of the claims herein.

The Association requests, not as a precondition to either your inspection or meeting to discuss or negotiate resolutions, that you provide it with Construction Documents, including construction plans (including as-builts), RFIs, Submittals, and construction photographs for the Project. These documents should all be available electronically, and as Construction Documents would not contain privileged material, a lengthy review process to allow for production should not be required.

The Association offers to meet with representatives of the Development Parties on August 22, 2022 at 9:00am HST. It is suggested the meeting take place at a conference room in the Prince Waikiki Hotel, located at 100 Holomoana St., Honolulu, HI 96815, or such other mutually convenient location as the parties may agree. It is proposed the meeting be in person; however, in view of present Covid concerns, the Association is willing to conduct the meeting by Zoom if the parties so agree.

## I. ITEMIZATION OF CLAIMED DEFECTS

### 1.0 Roof

1.1 Excessive corrosion of rooftop mechanical equipment including fan motor mounts, springs and air chiller. For example, attached as Exhibit "A" are photos of corrosion at rooftop mechanical equipment.

1.2 Improper drainage of pool deck maintenance roof. Water ponding on roof. For example, attached as Exhibit "B" is a photo of ponding on the pool deck maintenance roof.

### 2.0 Plumbing

2.1 Premature deterioration of PEX pipe. Inappropriate selection of PEX pipe for site condition and usage. Defective PEX have led to at least 19 leaks in the building. Attached as Exhibit "C" are documents related to PEX leaks, including incident reports with photos.

2.2 Inappropriate installation of suds producing laundry stack. According to the plans, the laundry stack diminishes in size from top to bottom. For example, Drawing P5.07 shows diminishing laundry stack in size from top to bottom.

2.3 Failure to plumb pool patio drain to suitable location. The drain is piped to discharge off of the side of the building to an area without proper drainage. For example, attached as Exhibit "D" is a photo showing the pool patio drain pipe draining over the side of building.

2.4 Failure to plumb main garage storm drain lines to suitable location. The main garage storm drain lines discharge to grade where it is not adequately sloped to drain. For example, attached as Exhibit "E" is a photo showing ponding in the parking lot due to a failure to properly plumb main garage storm drains.

2.5 Failure to properly install Provent Proset at Sovent Aerator Box pipe penetration assemblies. A box cut out at least 3.5" deep in the slab results in a fire rating of the slab area, which is less than the required 2 hours. For example, attached as Exhibit "F" is a photo showing at least a 3.5" deep cut out in the slab observed through a corridor wall cut between Units 2404 and 2406.

2.6 Improper obstruction of Sovent vents on roof with wire mesh affixed to outlets, which can restrict air movement causing buildup on the piping and backups. For example, attached as Exhibit "G" is a photo showing wire mesh obstructing Sovent vents on the roof.

**3.0 Exterior Window and Wall Assembly**

3.1 Failure of exterior wall assembly glazing system, including damaged, deteriorating, missing or displaced exterior gaskets, louvers, and seals. This defect has been observed by Curtainwall Design Consulting and discussed in the CDC Glazing Systems Observations Report ("CDC Report") attached as Exhibit "H". The CDC Report is attached here to illustrate exterior window and wall assembly issues identified at the Project. The Association does not adopt the findings of the CDC Report.

3.2 Excessive corrosion on assembly including head of window wall glazing system. This defect has been observed by Curtainwall Design Consulting in the CDC Report attached as Exhibit "H". The CDC Report is attached here to illustrate exterior window and wall assembly issues identified at the Project. The Association does not adopt the findings of the CDC Report.

## 4.0 Parking Garage

4.1 Excessive cracking in concrete garage ceilings and unsealed cold joints, allowing for water intrusion through the concrete slabs. For example, attached as Exhibit "I" are photographs showing cracks in the 6th Floor garage lid.

4.2 Excessive corrosion of fire sprinklers and fittings in parking garage. For example, attached as Exhibit "J" are photographs showing corroding sprinklers and fittings on the 6th Floor of the parking garage.

4.3 Excessive corrosion on garage screen panel bolts. For example, attached as Exhibit "K" is a photograph showing corroding screen panel bolts. Attached as Exhibit "L" is a photo showing the garage panel.

4.4 Deterioration of concrete columns exposing steel supports. Attached as Exhibit "M" is a photo showing a deteriorating concrete column located on the 6th Floor of the parking garage.

## 5.0 Fire Protection Systems

5.1 Improper application of cement connecting CPVC pipes and fittings. Improper application of cement can cause the fire suppression system to be susceptible to leakage. For example, attached as Exhibit "N" is a photograph of a sprinkler pipe and fitting on the Floor 27 main water supply closet with improperly installed cement. Exhibit "O" is an example of a properly cemented sprinkler pipe and fitting.

5.2 Failure to adequately protect fire alarm panels from the elements. Fire alarm panels not adequate for use in outdoor environment. Failure and corrosion of fire alarm panels. For example, attached as Exhibit "P" are photographs showing corroding fire alarm panels.

## 6.0 Fire Rated Wall and Slab Defects

6.1 <u>Failure to construct wall assemblies in Staircases in accordance with 2-hour rating requirements</u>

6.1.1 Improper voids in the fire rated wall assemblies and fire rated sealant joint. For example, attached as Exhibit "Q" are photos showing voids in wall assemblies at the joint in the fire rated wall assembly on the 42nd Floor in Stairway 2.

6.1.2 Use of plastic trim at top and bottom of 2-hour rated assemblies in Stairways 1 and 2, with voids/lack of gypsum board behind the plastic

trim resulting in an open gap at joint. Failure of wall assembly, including joints, to conform to any rated 2-hour assembly. For example, attached as Exhibit "R" are photos of the cross section of a 2-hour rated assembly at Staircase 2, between levels 10 and 11 showing a plastic trim piece with an open gap in the joint.

6.1.3 Failure to install two layers of gypsum board in fire rated wall assemblies in Stairways 1 and 2 in accordance with 2-hour rating requirements. Fire rated walls behind metal stairway stringer are constructed with one layer of gypsum board or no gypsum board. For example, attached as Exhibit "S" are photos of locations where one layer or no gypsum board was found at Floor 37, Stairway 1; and Floor 36, Stairway 1.

6.1.4 Lack of and/or improperly installed fire rated sealant at various horizontal pipe and conduit penetrations through fire rated walls. For example, attached as Exhibit "T" are photos showing failure to seal penetrations in the fire rated wall assemblies on Floor 6.

6.1.5 Excessive gaps and holes through fire rated walls. Holes and gaps too large for proper installation of fire rated sealants.

6.2 Failure to construct slab assemblies in accordance with 2-hour rating requirements

6.2.1 Lack of and/or improperly installed fire rated sealants in vertical pipe and conduit penetrations. For example, attached as Exhibit "U" are photos showing failure to seal penetrations in the fire rated slab.

## II. PROPOSAL FOR RESOLUTION OF CLAIMED DEFECTS[1]

**1.0 Roof**

**1.1** **Defect**: Excessive corrosion of rooftop mechanical equipment including fan motor mounts, springs and air chiller.
**Proposed Resolution**: Remove and replace all corroded equipment. Replace all corroded mechanical equipment with new equipment of the same capacity/rating and of equal quality.

1.2 **Defect**: Improper drainage of pool deck maintenance roof.
**Proposed Resolution**: Re-sloping of roof to be accomplished by removal of existing membrane, install tapered roof insulation to achieve slope to existing

[1] The Defect Conditions in Section II provide a summary description of defects only. The full description for each defect can be found in Section I.

drains to avoid ponding. Reinstall and seal roof membrane and provide roof installer and manufacturer warranty equivalent to original roof installation.

**2.0 Plumbing**

**2.1** **Defect**: Premature deterioration of PEX pipe and leaking of pipe. Inappropriate selection of PEX pipe for site condition and usage.
**Proposed Resolution**: Remove and replace all PEX piping in entire building including common areas and inside units and replace with copper water lines. Repaint all drywall and paint all walls corner to corner with finish equivalent to original. All wallpaper damaged to be replaced for entire wall or panel.

2.2 **Defect**: Inappropriate installation of suds producing laundry stack pipes.
**Proposed Resolution**: Replumb all laundry suds producing stacks with pipe which does not diminish in diameter the entire length of pipe run. Repair all walls and slabs to original condition. Comply with pipe manufacturer's installation instructions, including properly rated slab firestop penetrations. All penetrations to be installed pursuant to product acceptance report with a rating of no less than 2-hours.

2.3 **Defect**: Failure to plumb pool patio drain to suitable location.
**Proposed Resolution**: Install new tight line pool patio drain into a properly rated storm water drainage stack. Remove all drainage lines pouring water over the Makai side of the building.

2.4 **Defect**: Failure to plumb main garage storm drain lines to suitable location.
**Proposed Resolution**: Install new tight line drainage lines at garage floor levels to storm drain capable of draining the average flow from a rainfall effect.

2.5 **Defect**: Failure to properly install Provent Proset at Sovent Aerator Box pipe penetration assemblies.
**Proposed Resolution**: Remove all Provent Proset devices at sovent aerator box penetrations where such system penetrates a floor/slab assembly and replace with a ICC rated 2-hour sleeve/firestop penetration such that there is no void adjacent to slab penetration. Fill the void created by the present provent system with a cement or epoxy patch certified to withstand a E119 Fire Test for a duration of 2 hours.

2.6 **Defect**: Improper obstruction of Sovent vents on roof with wire mesh affixed to outlets.
**Proposed Resolution**: Remove mesh affixed to sovent boxes on roof. Install a rain-block device approved by sovent to prevent rainfall from entering into open line.

**3.0 Exterior Window and Wall Assembly**

3.1 **Defect**: Failure of exterior wall assembly glazing system, including damaged, deteriorating, missing or displaced exterior gaskets, louvers, and seals.
**Proposed Resolution**: Inspect all exterior wall glazing systems and remove displaced exterior gaskets and seals and install new gaskets and seals.

3.2 **Defect**: Excessive corrosion on assembly including head of window wall glazing system.
**Proposed Resolution**: Remove corrosion on head of window wall glazing system as set forth by CDC report specified on item 3.2.

**4.0 Parking Garage**

4.1 **Defect**: Excessive cracking in concrete garage ceilings and unsealed cold joints, allowing for water intrusion through the concrete slabs.
**Proposed Resolution**: Epoxy grout and seal all cracks and gaps in parking garage. Seal all cold joints with flexible materials such that water does not enter into a designated cold joint.

4.2 **Defect**: Excessive corrosion of fire sprinklers and fittings in parking garage.
**Proposed Resolution**: Remove all exposed metal sprinkler line fittings and replace with new pipe which is corrosion resistant. Replace all corroded sprinklers. Where the pipe thread is corroded install new pipe run.

4.3 **Defect**: Excessive corrosion on garage screen panel bolts.
**Proposed Resolution**: Remove and replace bolts/screws on screen panel where corrosion is evident and replace with stainless steel bolts/fasteners. Scaffold or utilize a mechanical lift to allow inspection of all fasteners.

4.4 **Defect**: Deterioration of concrete columns exposing steel supports.

**Proposed Resolution**: Remove all corrosion on concrete steel supports. If corrosion can be removed without damaging integrity of metal support, install corrosive resistant coating. If metal has suffered loss of mass, remove brace and epoxy in new support stop certified by a Structural Engineer.

## 5.0 Fire Protection Systems

5.1 **Defect**: Improper application of cement connecting CPVC pipes and fittings.
**Proposed Resolution**: Inspect all visible CPVC pipe connections to identify if a "welded glue" seal has been achieved by verifying a glue bead to be present in accordance with CPVC pipe manufacturer's installation guidelines. If not, cut out sections of CPVC and re-install. This will require opening all access panels to observe connections and cutting access panels into locations where a sprinkler penetrates a common hallway to observe. After four full floor inspections, the parties to meet and confer if repair is viable or if further complete inspection or removal and replacement is required.

5.2 **Defect**: Failure to adequately protect fire alarm panels from the elements.
**Proposed Resolution**: Replace all fire alarm panels exposed to the elements with manufacturer certified waterproof equipment.

## 6.0 Fire Rated Wall and Slab Defects

6.1 **Defect**: <u>Failure to construct wall assemblies in Staircases in accordance with 2-hour rating requirements</u>

6.1.1 Improper voids in the fire rated wall assemblies and fire rated sealant joint.
**Proposed Resolution**: Inspect and fill all voids in Stairway 1 and Stairway 2 with fire rated sealant to a depth required to achieve a 2-hour fire rating; utilize backer rod or other procedures allowing for the sealant to reach the sealant manufacturer's 2-hour certification. Use Hilti 606 or equivalent, provided sealant will not come into contact with CPVC pipe; if CPVC is present, use a STI CPVC approved sealant material.

6.1.2 Use of plastic trim at top and bottom of 2-hour rated assemblies in Stairways 1 and 2, with voids/lack of gypsum board behind the plastic trim resulting in an open gap at joint and at corridor walls and walls between units.

**Proposed Resolution**: Remove all plastic "L" trim at the top and bottom of all 2-hour rated drywall walls inside Stair 1 and Stair 2 (2-hour walls) or any wall in the corridor or between units (1-hour rated wall). Remove plastic trim and reinstall drywall with an ICC or UL rated joint system.

6.1.3 Failure to install two layers of gypsum board in fire rated wall assemblies in Stairways 1 and 2 in accordance with 2-hour rating requirements at metal risers.
**Proposed Resolution**: At all locations where gypsum wallboard intersects the metal stairway riser in Stair 1 and Stair 2, remove drywall and install two sheets of Type X rated drywall or such other wallboard system having a 2-hour fire rating. Install drywall so that there is no gap between drywall and riser and drywall assembly. Certify the completed wall assembly including all metal stair tread and stairway support columns as being protected by a 2-hour wall.

6.1.4 Lack of and/or improperly installed fire rated sealant at various horizontal pipe and conduit penetrations through fire rated walls.
**Proposed Resolution**: Provide fire rated sealant at all horizontal pipe and conduit penetrations through 2-hour walls. Use Hilti 606 or equivalent provided no CPVC pipe is in contact with the sealant. If CPVC adjacent, use a STI rated product.

6.1.5 Excessive gaps and holes through fire rated walls. Holes and gaps too large for proper installation of fire rated sealants.
**Proposed Resolution**: Repair all gaps at pipe penetrations where sealant has been installed so as to certify that the annular space does not exceed the sealant manufacturer's recommendations for fire rated assemblies.

6.2 **Defect**: <u>Failure to construct slab assemblies in accordance with 2-hour rating requirements</u>

6.2.1 Lack of and/or improperly installed fire rated sealants in vertical pipe and conduit penetrations.
**Proposed Resolution**: Repair all gaps at pipe penetrations where sealant has been installed so as to certify that the annular space does not exceed the sealant manufacturer's recommendations for fire rated assemblies.

Please be advised that in accordance with Article 22, Development Parties are required to provide within 5 business days of the meeting a follow up Notice confirming the same. Should you desire to inspect any of the locations, please advise and the Association will use its best efforts to facilitate such.

The Association reserves all claims, rights, and remedies.

Regards,

*/s/ Kenneth S. Kasdan*

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ENCLOSURES: Exhibit A - U