

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer WB KUKIO RESORTS, LLC, a Delaware limited liability company
Address P.O. Box 5439, Kailua-Kona, Hawaii 96745
Project Name(\*): THE KŪKI'O BEACH CLUB AND COTTAGES, PHASE 1
Address: Mile Marker 87, Queen Kaahumanu Highway, Kailua-Kona, Hawaii 96740

Registration No. 4644

Effective date: August 24, 2001
Expiration date: September 24, 2002

Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended. This report is not valid unless the Hawaii Real Estate Commission has issued a registration number and effective date for the report.

This report has not been prepared or issued by the Real Estate Commission or any other government agency. Neither the Commission nor any other government agency has judged or approved the merits or value, if any, of the project or of purchasing an apartment in the project.

Buyers are encouraged to read this report carefully, and to seek professional advice before signing a sales contract for the purchase of an apartment in the project.

Expiration Date of Reports. Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the effective date unless a Supplementary Public Report is issued or unless the Commission issues an order, a copy of which is attached to this report, extending the effective date for the report.

Exception: The Real Estate Commission may issue an order, a copy of which shall be attached to this report, that the final public report for a two apartment condominium project shall have no expiration date.

Type of Report:

- PRELIMINARY: (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
[X] SUPPLEMENTARY: (pink) This report updates information contained in the:
[X] Preliminary Public Report dated: June 20, 2001
[X] Final Public Report dated:
[X] Supplementary Public Report dated:
And
[X] Supersedes all prior public reports
[X] Must be read together with the Preliminary Public Report dated June 20, 2001
[X] This report reactivates the public report(s) which expired on

(\* ) Exactly as named in the Declaration
This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request.

**Disclosure Abstract:** Separate Disclosure Abstract on this condominium project:

Required and attached to this report                       Not Required - Disclosures covered in this report.

**Summary of Changes from Earlier Public Reports:**

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

No prior reports have been issued by the developer.

Changes made are as follows:

1. Subsequent to the issuance of the Preliminary Public Report dated June 20, 2001, Developer consolidated Lots 103A through 108A of the Kukio Bay Beach Club subdivision into Lot A. Accordingly, Developer has attached a revised page 16 to this Supplementary Public Report, substituting the current Lot designation in Section III.H (Project Phases).
2. Subsequent to the issuance of the Preliminary Public Report dated June 20, 2001, Developer revised its Reservation Agreement, Sales Contract and Receipt. Accordingly, Developer has attached a revised **Exhibit D** (Summary of Sales Contract) to this Supplementary Public Report.
3. Developer has attached a revised **Exhibit E** (Summary of Escrow Agreement) to this Supplementary Public Report to correct a typographical error contained in the Preliminary Public Report dated June 20, 2001.

**SPECIAL ATTENTION**

This is a **CONDOMINIUM PROJECT**, not a subdivision. It does not involve the sale of individual subdivided lots. The land area beneath and immediately appurtenant to each unit is designated a **LIMITED COMMON ELEMENT** and not a legally subdivided lot. The dotted lines on the Condominium Map bounding the designated number of square feet in each limited common element land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.

1. This public report does not constitute approval of the Project by the Real Estate Commission, or any other government agency, nor does it ensure that all applicable County codes, ordinances and subdivision requirements have been complied with.

2. Facilities and improvements normally associated with county approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owner and emergency traffic, drainage facilities, etc., may not necessarily be provided for, and services such as County street maintenance and trash collection will not be available for interior roads and driveways.

**THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS REFERENCED IN THIS PUBLIC REPORT FOR FURTHER INFORMATION WITH REGARD TO THE FOREGOING.**

**G. Status of Construction and Date of Completion or Estimated Date of Completion:**

Site work for the Project has commenced. Construction of the Project's buildings is expected to commence in June 2001 and the Project is currently expected to be completed by May 2003. Please note that these dates are estimates and are subject to change.

**H. Project Phases:**

The developer  has  has not reserved the right to add to, merge, or phase this condominium.

Summary of Developer's plans or right to perform for future development (such as additions, mergers or phasing):

The Developer currently anticipates that it may annex to the Project two additional areas. The first is located immediately south of the project and consists of Lot A of the master planned community known as Kukio. The Developer currently anticipates constructing approximately 12 additional Cottage Apartments on this area. The second area which the Developer currently expects may be annexed to the project consists of Lots 15A and 20A of the Kukio Bay Beach Club subdivision. Developer currently anticipates constructing approximately 12 additional Cottage Apartments on this area, some or all of which may be annexed to the Project. The Developer may also annex other areas to the Project from time to time. The Developer is not, however, obligated to annex these or any other additional areas to the Project.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:

- A) Condominium Public Reports issued by the developer which have been given an effective date by the Hawaii Real Estate Commission.
- B) Declaration of Condominium Property Regime, as amended.
- C) Bylaws of the Association of Apartment Owners, as amended.
- D) House Rules, if any.
- E) Condominium Map, as amended.
- F) Escrow Agreement.
- G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
- H) Other: \_\_\_\_\_

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce and Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P. O. Box 541, Honolulu, Hawaii 96809, at a nominal cost.

This Public Report is a part of Registration No. 4644 filed with the Real Estate Commission on May 30, 2001.

Reproduction of Report. When reproduced, this report must be on:

YELLOW paper stock       WHITE paper stock       PINK paper stock

D. 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 buyers 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.

WB Kukio Resorts, LLC, a Delaware limited liability company  
Printed Name of Developer

By Westbrook United Land Investments, L.P., Its Managing Member  
By Westbrook United, L.L.C., Its General Partner

By: Marcus L. Scroggins 8/20/01  
Duly Authorized Signatory\* Date

MARCUS L. SCROGGINS, CFO  
Print Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Hawaii  
Planning Department, County of Hawaii

\* Must be signed for a: corporation by an officer; partnership of Limited Liability Partnership (LLP) by the general partner; Limited Liability Company (LLC) by the manager or member; and for an individual by the individual.

## EXHIBIT D

### SUMMARY OF SALES CONTRACT

The specimen Reservation Agreement, Sales Contract and Receipt, filed with the Commission, provides for, among other things, a description of the Cottage Apartment to be sold, the purchase price, the closing costs, the time, manner and place of payment, the Purchaser's obligations regarding financing, the Seller's warranties and disclaimers regarding the Condominium Map and the Project, and the remedies of the Seller and of the Purchaser in the event of a default under the Sales Contract.

Among other provisions, the specimen Sales Contract provides:

1. That the Sales Contract is only a reservation agreement until (i) a true copy of the Final Public Report (or Contingent Final Public Report, if applicable) is delivered to the Purchaser, (ii) the Purchaser has an opportunity to read the report(s), (iii) a Deemed Acceptance of such report(s) by the Purchaser shall have occurred. If the Deemed Acceptance shall have occurred by Purchaser affirmatively accepting a Report by waiving his right to cancel on the Receipt Form, the execution of a Confirmation Agreement shall not be required and the Sales Contract will become binding in such event as a contract for the purchase and sale of the Apartment on the date of Deemed Acceptance. If the Deemed Acceptance shall have occurred in any manner other than by waiver of the right to cancel on the Receipt Form, the Sales Contract shall not become binding as a contract for the purchase and sale of the Cottage Apartment unless and until Purchaser shall have executed a Confirmation Agreement.

2. The Seller has entered into an Escrow Agreement with Title Guaranty Escrow Services, Inc. ("Escrow"), covering the deposit with the Escrow of all funds paid by the Purchaser under the Sales Contract and the disbursement of the funds by Escrow. In the event a purchase is cancelled, Escrow may charge a cancellation fee on account of escrow services performed not to exceed \$250.00.

3. The Sales Contract requires the Purchaser to pay the full Purchase Price by a series of payments prior to Closing, as follows: Payment A (20% of the Purchase Price) when Purchaser signs the Sales Contract; Payment B (20% of the Purchase Price) no later than ten (10) calendar days after Seller notifies Purchaser that the Cottage Apartment's foundation is complete; Payment C (20% of the Purchase Price) no later than ten (10) calendar days after Seller notifies Purchaser that the Cottage Apartment's roof is complete; Payment D (20% of the Purchase Price) payable no later than ten (10) calendar days after Seller notifies Purchaser that the Cottage's interior walls are complete; Payment E (10% of the Purchase Price) payable no later than ten (10) calendar days after Seller notifies Purchaser that construction of the Cottage is complete; and Payment F (Remaining 10% of the Purchase Price) paid no later than two (2) business days prior to the Closing Date.

4. The Sales Contract provides that the Purchaser shall not earn or receive any interest on any Deposits.

5. The Sales Contract provides that closing costs and expenses shall be allocated as follows: Seller shall pay 60% of the premium for the Title Policy, the cost of drafting of conveyance documents, Seller's notary fees, conveyance tax, and 50% of escrow fees. Purchaser shall pay 40% of the premium for the Title Policy, and any additional costs relating to the issuance of extended coverage policy (including a lender's policy), the cost of drafting of any revisions or addenda to the purchase contract, the cost of obtaining Purchaser's consents, if any, Purchaser's notary fees, all recording fees, 50% of escrow fees, and any mortgage fees, Hawaii Hurricane Relief Fund, and Hawaii General Excise Tax. The Sales Contract also provides that at Closing Purchaser shall pay (a) one (1) month's maintenance fee for the Project's Owner's Association, (b) a non-refundable, non-transferrable start-up fee to the Project's Owner's Association in the amount equal to two (2) months' maintenance fee assessments, and (c) a \$1,000.00 start-up fee to the Kūki'o Community Association, the master community association for the Kūki'o master-planned community in which the Project is located. These start-up fees are one-time assessments at Closing and are not advance payments of common expenses or assessments, and shall be in addition to the normal monthly assessments.

6. The Sales Contract provides that Seller shall complete construction of the Project so as to permit normal occupancy of the Cottage Apartment covered the Contract within two (2) years from the date that the Sales Contract becomes a binding sales contract; provided, however, that such two (2) 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, or any other matter or condition beyond Seller's control.

7. The Sales Contract provides that it may not be assigned by Purchaser, in whole or in part, without the prior written consent of Seller which consent may be withheld by Seller in its sole and absolute discretion. Any assignment of the Sales Contract made without Seller's written consent is void and of no legal effect.

8. The Sales Contract provides that any dispute by or between Seller and Purchaser arising out of or incident to the Sales Contract, or the development or management of the Project, the sale of the Cottage Apartment or the use or occupancy thereof, or any other aspect of the relationship between Seller and Purchaser regarding the Project which is raised or otherwise asserted after the Closing shall be submitted to mediation and, if necessary, to arbitration in accordance with the terms, conditions and procedures set forth in the Sales Contract. The Sales Contract also provides that any dispute by or between Seller and Purchaser arising out of or incident to the Sales Contract that is raised or otherwise asserted before Closing need not be submitted to arbitration, and Seller and Purchaser shall be free to pursue such dispute, as otherwise provided herein, in proceedings in a court of competent jurisdiction, provided that any judicial proceedings initiated shall be conducted in Honolulu, Hawaii.

The foregoing is only a summary of some of the key terms of the Sales Contract. It is incumbent upon a prospective Purchaser to read the full text of the Sales Contract with care.

## EXHIBIT E

### 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 Apartment (a "Purchaser") pursuant to the Sales Contract and also provides for the retention or disbursement of the funds. The Escrow Agreement specifically permits the disbursement of Purchasers' funds prior to closing, subject to certain conditions, to pay for certain Project costs, including costs of constructing the Project's buildings, fixtures and other improvements, Developer's architectural, engineering, finance, and legal fees, and other incidental expenses of the Project (excluding marketing expenses and brokerage fees relating to sales of Apartments).

The Escrow Agreement provides in part that any interest earned on money on deposit shall be paid to the parties in accordance with the terms of the Sales Contract. In the event that the Sales Contract or Hawaii Revised Statutes Chapter 514A entitle a Purchaser to a refund of Purchaser's Deposits held by Escrow, then Escrow, upon instruction from Developer, will refund Purchaser's deposits, less certain cancellation fees and costs (e.g., escrow cancellation fees, loan processing fees, cost of credit reports, etc.) as provided in the Sales Contract and Chapter 514A, Hawaii Revised Statutes, as amended.

By law the total amount of such cancellation fees shall not exceed Two Hundred Fifty and No/100 Dollars (\$250.00) so long as the cancellation occurs prior to the time the Sales Contract becomes effective (following issuance of the Final Public Report). Under the Escrow Agreement no disbursement of funds can be made to the Developer until the Sales Contract becomes effective under the provisions of Chapter 514A, Hawaii Revised Statutes.

It is incumbent upon a prospective Purchaser to read the executed Escrow Agreement with care.