

CONDOMINIUM PUBLIC REPORT

Prepared &

Issued by: Developer BEACH CAPITAL, INC.

Address 765 Amana Street, Suite 500, Honolulu, Hawaii 96814

Project Name(\*): Royal Garden at Waikiki

Address 440 Olohana Street, Honolulu, Hawaii 96815

Registration No. 5417 (conversion)

Effective date: July 23, 2004

Expiration date: August 23, 2005

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 governmental 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: 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. A Final Public Report will be issued by the developer when complete information is filed.  
(yellow)

FINAL: The developer has legally created a condominium and has filed complete information with the Commission.  
(white)  
 No prior reports have been issued.  
 This report supersedes all prior public reports.  
 This report must be read together with \_\_\_\_\_

SUPPLEMENTARY: This report updates information contained in the:  
(pink)  
 Preliminary Public Report dated: \_\_\_\_\_  
 Final Public Report dated: \_\_\_\_\_  
 Supplementary Public Report dated: \_\_\_\_\_

And

Supersedes all prior public reports  
 Must be read together with \_\_\_\_\_  
 This report reactivates the \_\_\_\_\_  
public report(s) which expire 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 586-2643 to submit your request.

FORM: RECO-30 286/986/189/1190/892/0197/0800/0203/0104

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

Required and attached to this report  
as Exhibit "K"

Not Required - disclosure 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:

**SPECIAL NOTICE**

1. **Units Covered.** This Final Public Report only covers 12 units in the Royal Garden at Waikiki condominium project. The 12 units are described in Exhibit "A" attached hereto. Beach Capital, Inc., "Developer" is the equitable owner of the 12 units by way of an Agreement of Sale dated December 30, 1003 between Rodeo Partners LLC as Seller and Developer as Buyer.

2. **Original Developer.** Nichiei U.S.A., Inc., was the original developer who registered the Project with the Real Estate Commission, State of Hawaii under Reg. No. 4584 (the "Original Developer"). As of this date, the Original Developer is the owner of 178 of the total 212 units in the Project. Although the Developer is the equitable owner of an additional 22 units, it has contractually agreed to convey those 22 units back to the Original Developer. The 22 units that are being conveyed back to the Original Developer are also described in Exhibit "A". The Original Developer intends to file a Supplementary Public Report covering those 200 (178 + 22) units.

THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS FOR FURTHER INFORMATION REGARDING THE FORGOING.

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### **General Information on Condominiums**

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, must be complied with. 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 or the building(s) and other improvements are leased to the buyer. The lease for the land usually requires that at the end of the lease term, the lessees (apartment owners/tenants) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements at the lessee's expense. Leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

If you are a typical condominium apartment owner, you will have two kinds of ownership: (1) ownership in your individual apartment; and (2) an undivided interest in the common elements.

"Common elements" are the areas of the condominium project other than the individual apartments. They are owned jointly by all apartment owners and include the land, either in fee simple or leasehold, and those parts of the building or buildings intended for common use such as foundations, columns, roofs, halls, elevators, and the like. Your undivided interest in the common elements cannot be separated from ownership of your apartment.

In some condominium projects, some common elements are reserved for the exclusive use of the owners of certain apartments. The common elements are called "limited common elements" and may include parking stalls, patios, lanais, trash chutes, and the like.

You will be entitled to exclusive ownership and possession of your apartment. Condominium apartments may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift or operation of law.

Your apartment will, however, be part of the group of apartments that comprise the condominium project. Study the project's Declaration, Bylaws, and House Rules. These documents contain important information on the use and occupancy of apartments and the common elements as well as the rules of conduct for owners, tenants, and guests.

### **Operation of the Condominium Project**

The Association of Apartment Owners is the entity through which apartment owners may take action with regard to the administration, management, and operation of the condominium project. Each apartment 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 an apartment owner. The Board of Directors and officers can take certain actions without the vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the apartment owners.

Until there is a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary of 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 buyers should understand that it is important to all apartment owners that the transition of control from the developer to the apartment owners be accomplished in an orderly manner and in spirit of cooperation.

I. PERSONS CONNECTED WITH THE PROJECT

Developer: BEACH CAPITAL, INC. Phone: (808) 947-1407  
765 Amana Street, Suite 500  
Honolulu, Hawaii 96814  
Business Address

Names of officers and directors of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership (LLP); or manager and members of a Limited Liability Company (LLC) (attach separate sheet if necessary)

Ryan K. Totoki, President

Real Estate Broker: Prudential Locations, LLC Phone: (808) 735-4200  
Name (Business)  
3465 Waiialae Avenue, 4th Floor  
Business Address  
Honolulu, Hawaii 96816

Escrow: Guardian Escrow Services, Inc. Phone: (808) 951-6991  
Name (Business)  
2347 S. Beretania Street, Suite 200  
Business Address  
Honolulu, Hawaii 96826

General Contractor: Not Applicable Phone: \_\_\_\_\_  
Name (Business)  
Business Address  
\_\_\_\_\_

Condominium Managing Agent: Cadmus Properties Corp.\* Phone: (808) 531-6847  
Name (Business)  
332 N. School Street  
Business Address  
Honolulu, Hawaii 96819

Attorney for Developer: Michael H. Sakai, Esq. Phone: (808) 531-4171  
Name (Business)  
201 Merchant Street, Suite 902  
Business Address  
Honolulu, Hawaii 96813

\* Developer has been informed that Cadmus Properties Corp. is or will be designated as the managing agent for the Project by the Original Developer.

**II. CREATION OF THE CONDOMINIUM;  
CONDOMINIUM DOCUMENTS**

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

- A. **Declaration of Condominium Property Regime** contains a description of the land, buildings, apartments, common elements, limited common elements, common interests, and other information relating to the condominium project.

The Declaration for this condominium is:

- Proposed  
 Recorded - Bureau of Conveyances: Document No. \_\_\_\_\_  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. 2622791

The Declaration referred to above has been amended by the following instruments [state name of document, date and recording/filing information]:

First Amendment to Declaration dated June 18, 2004, filed as Land Court Document No. 3133952.

- B. **Condominium Map (File Plan)** shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment number, and dimensions of each apartment.

The Condominium Map for this condominium project is:

- Proposed  
 Recorded - Bureau of Conveyances, Condo Map No. \_\_\_\_\_  
 Filed - Land Court Condo Map No. 1383

The Condominium Map has been amended by the following instruments [state name of document, date and recording/filing information]:

The Condominium Map was amended by the First Amendment to Declaration described in A above.

- C. **Bylaws of the Association of Apartment Owners** govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment 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 manners which affect how the condominium project will be governed.

The Bylaws for this condominium re:

- Proposed  
 Recorded - Bureau of Conveyances: Document No. \_\_\_\_\_  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. 2662792

The Bylaws referred to above have been amended by the following instruments [state name of document, date and recording/filing information]:

D. **House Rules.** The Board of Directors may adopt 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.

The House Rules for this condominium are:

Proposed  Adopted\*  Developer does not plan to adopt House Rules  
 \*By Original Developer

E. **Changes to Condominium Documents**

Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. **Apartment Owners:** Minimum percentage of common interest which must vote for or give written consent to changes:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%*	<u>75%</u>
Bylaws	65%	<u>65%</u>
House Rules	---	<u>**</u>

\*The percentage for individual condominium projects may be more than the minimum set by law for projects with five or fewer apartments.

\*\*The House Rules may be amended by action of the Board of Directors of the Association of Apartment Owners of Royal Garden at Waikiki.

2. **Developer:**

No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules

Developer\* has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules:

See Exhibit B.

\*These are reservations in favor of the Original Developer. Beach Capital, Inc., does not have any reserved rights.

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

- Fee Simple: Individual apartments and the common elements, which include the underlying land, will be in fee simple.
- Leasehold or Subleasehold: Individual apartments and the common elements, which include the underlying land will be leasehold.

**Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.**

Exhibit \_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_

Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:      Monthly                              Quarterly  
                                    Semi-Automatically              Annually

Exhibit \_\_\_\_ contains a schedule of the lease rent for each apartment per  Month  Year

For Subleaseholds:

- Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is:
  - Canceled                      Foreclosed
- As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

Individual Apartments in Fee Simple; Common Interest in the Underlying Land in Leasehold or Subleasehold:

**Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.**

Exhibit \_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_

Rent Renegotiation Date(s) \_\_\_\_\_

Lease Rent Payable:      Monthly                              Quarterly  
                                    Semi-Automatically              Annually

Exhibit \_\_\_\_ contains a schedule of the lease rent for each apartment per  Month  Year

Other:

**IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advice of an attorney.

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed period of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with fee simple owner of the land in order to develop the project. The developer may have then entered into an sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

**B. Underlying Land:**

Address: 440 Olohana Street, Honolulu, Hawaii 96815

Tax Map Key (TMK): (1) 2-6-016-039

Address  TMK is expected to change because \_\_\_\_\_

Land Area: 28,750  square feet  acre(s)  Zoning: Apartment Precinct, Waikiki Special District.

**Fee Owner/Seller:** RODEO PARTNERS, LLC  
a Nevada corporation  
1777 Ala Moana Boulevard, Suite 107-017  
Honolulu, Hawaii 96815

**Agreement of Sale Buyer:** BEACH CAPITAL, INC.\*  
765 Amana Street, Suite 500  
Honolulu, Hawaii 96814

\*Beach Capital, Inc. (the Developer) is the equitable owner of units under an agreement of sale. Rodeo Partners, LLC (the Seller) has authorized Beach Capital, Inc. to file and obtain this public report.

**C. Buildings and Other Improvements:**

1.  New Building(s)  
 Conversion of Existing Building(s)  
 Both New Building(s) and Conversion

2. Number of Buildings: 1 Floors Per Building 24  
 Exhibit      contains further explanations.

3. Principal Construction Material:

Concrete                       Hollow Tile                       Wood

Other Steel, Glass and Aluminum and other allied building materials

4. Permitted Uses by Zoning:

	<u>No of Apts.</u>	<u>Use Permitted By Zoning</u>	
<input type="checkbox"/> Residential	—	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Commercial	— (4)**	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	—	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Hotel	<u>12</u> (208)**	<input type="checkbox"/> Yes	<input checked="" 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: Shed	—	<input type="checkbox"/> Yes	<input type="checkbox"/> No

\*Use permitted as a non-conforming use or otherwise permitted by Variance.

\*\*Only the 12 units described in Exhibit "A" are covered by this Final Public Report.

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?

Yes                       No

5. Special Use Restrictions:

The Declaration and Bylaws may contain restrictions on the use and occupancy of the apartments. Restrictions for this condominium project include but are not limited to:

Pets: See Exhibit C

Number of Occupants: \_\_\_\_\_

Other: See the House Rules adopted by Original Developer

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 3 Stairways: 2 Trash Chutes: 1

<u>Apt.</u> <u>Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net</u> <u>Living Area (sf)*</u>	<u>Net</u> <u>Other Area (sf)</u>	<u>(Identify)</u>
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See Exhibit A (This Exhibit only describes the 12 units covered by this Public Report)

Total Apartments: 12 (Total in Project is 212)

**\*Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls.**

**Other documents and maps may give floor area figures which differ from those above because a different method of determining the floor area may have been used.**

Boundaries of Each Apartment:

The boundary of each unit is the exterior finished surfaces of the units' perimeter walls, roofs, foundations, windows and frames, doors, beams, post entries, if any.

Permitted Alterations to Apartments:

See Exhibit D attached hereto.

Apartments Designated for Owner-Occupant Only: N/A

Fifty percent (50%) of **residential** apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by section 514A-102, HRS; or include the information here in this public report and in the announcement (see attachment 11a). Developer has (Not Applicable) elected to provide the information in a published announcement or advertisement.

7. Parking Stalls:

Total Parking Stalls: 63 (None of these stalls are assigned to the 12 units)

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	
Assigned (for each unit)	<u>56**</u>	<u>      </u>	<u>  1  </u>	<u>      </u>	<u>  2  </u>	<u>  4  </u>	<u>  63  </u>
Guest	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Unassigned	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Extra for Purchase	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Other:	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Total Covered & Open	<u>  56  </u>	<u>      </u>	<u>  1  </u>	<u>      </u>	<u>  6  </u>	<u>      </u>	<u>  63  </u>

\*All of the parking stalls in the Project are a limited common elements appurtenant to and for the exclusive use of Commercial Apartment No. 1

\*\*Including 1 handicap van accessible parking stall.

Commercial parking garage permitted in condominium project.

Exhibit \_\_\_\_ contain additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

There are no recreational facilities

Swimming pool                       Storage Area                       Recreation Area

Laundry Area                       Tennis Court                       Trash Chute/Enclosure(s)

Other:   Sauna  

9. Compliance with Building Code and Municipal Regulations; Cost to Cure Violations

There are no violations.\*\*                       Violations will not be cured.

Violations and cost to cure are listed below.     Violations will be cured by \_\_\_\_\_

\*\*Based on Original Developer's Public Report.

10. Conditions and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations

(For conversions of residential apartments in existence for at least five years):

All 12 apartments that are covered by this Final Public Report are hotel apartments. However, See Exhibit "L" attached hereto.

1. Conformance to Present Zoning Code

a.  No variances to zoning code have been granted.

Variance(s) to zoning code was/were granted as follows: (Based on Original Developer's Public Report)\*

- \_\_\_/\_\_\_/\_\_\_ File No. 1999/VAR-23: Variance to allow a fixed awning at the main entrance to the Project to encroach into a required front yard.
- 11/13/91 File No. 91/VAR-7: Variance to permit the expansion of the floor Area on the fourth floor of the Hotel.
- 11/27/77 File No. 77-ZBA-128: Variance to allow expansion of the hotel restaurant to a new mezzanine level.
- 11/17/77 File No. 77/ZBA-120: Variance to allow a 449 sq. ft. addition, including a sundries shop and toilets, to a nonconforming hotel.

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	_____	X*	_____
Structures	_____	X*	_____
Lot	X	_____	_____

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure or lot.

\*See letter dated January 4, 2001 from the Department of Planning and Permitting, City and County of Honolulu attached hereto as Exhibit "J" and Exhibit "C" for further information.

D. Common Elements, Limited Common Elements, Common Interest:

1. Common Elements: Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

described in Exhibit E.

as follows:

2. **Limited Common Elements:** Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

There are no limited common elements in this project.

The limited common elements and the apartments which use them, as described in the Declaration, are:

described in Exhibit F\*.

as follows:

\*Note: Land areas referenced herein are not legally subdivided lots.

3. **Common Interest:** Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest". It is used to determine each apartment'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 apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

described in Exhibit A.

as follows:

- E. **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 an apartment in the project.

Exhibit G describes the encumbrances against the title contained in the title report dated June 23, 2004 and issued by Island Title Corporation

Blanket Liens:

A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien is usually released on an apartment-by-apartment basis upon payment of specific sums so that individual apartments can be conveyed to buyers free and clear of the lien.

[ ] There are no blanket liens affecting title to the individual apartments.

[X] There are blanket liens which may affect title to the individual apartments.

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. The buyer's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
Mortgage/Agreement of Sale	If the Developer defaults before the apartment is conveyed to the Buyer, the Vendor under the Agreement of Sale or Mortgagee will have the right to decide whether to sell the apartment to the Buyer under the Sales Contract. If the Buyer's interest is terminated by the Vendor or Mortgagee then the Buyer's deposit will be refunded to the Buyer, less the escrow cancellation fee.

F. Construction Warranties:

Warranties for individual apartments and the common elements, including the beginning and ending dates for each warranty, are as follows:

1. Building and Other Improvements:

Seller makes no warranties or promises of any kind, express or implied, about the Apartment or the Project, or about any furnishings, fixtures, appliances or the consumer products or any thing else installed, attached, affixed or otherwise contained in the apartment in the project, including any warranties or promises of "merchantability", workmanlike construction or "fitness for a particular use or purpose".

2. Appliances: None. See paragraph 1 above.

None. There are no warranties, express or implied.

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

Construction of the Project building was completed on September 5, 1978 based on the Original Developer's Final Public Report.

Developer only acquired equitable title to the 12 units (amongst other units) in December, 2003. Developer may make some cosmetic upgrades to a unit such as fresh paint and carpeting. Except for the forgoing, the Developer intends to make no other improvements.

H. **Project Phases:**

The \*developer [ ] has [X] 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 and Original Developer have not reserved any merger rights.

IV. CONDOMINIUM MANAGEMENT

A. **Management of the Common Elements:** The Association of Apartment 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.

Initial Condominium Managing Agent: When the developer or the developer's affiliate is the initial condominium managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial condominium managing agent for this project, named on page five (5) of this report, is:

- not affiliated with the Developer  the Developer or the Developer's affiliate.
- self-managed by the Association of Apartment Owners  other \_\_\_\_\_

B. **Estimate of Initial Maintenance Fees:** See page 20 for additional information and Disclosure Abstract

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, your apartment may be liened and 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 \_\_\_\_\_ contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change)

C. **Utility Charges for Apartments:**

Each apartment will be billed separately for utilities except for the following checked utilities which are included in the maintenance fees:

- None  Electricity (\_\_\_\_\_ Common Elements only  Common Elements & Apartments)
- Gas ( Common Elements only \_\_\_\_\_ Common Elements & Apartments)
- Water  Sewer  Television Cable
- Other \_\_\_\_\_

V. MISCELLANEOUS

A. Sales Documents Filed With the Real Estate Commission:

Sales documents on file with the Real Estate Commission include but are not limited to:

Notice to Owner Occupants

Specimen Sales Contract

Exhibit H contains a summary of the pertinent provisions of the sales contract.

Escrow Agreement dated April 15, 2004

Exhibit I contains a summary of the pertinent provisions of the escrow agreement.

Other Agreement of Sale dated December 30, 2003

B. Buyer's Right to Cancel Sales Contract:

1. Rights Under the Condominium Property Act (Chapter 514A, HRS):

Preliminary Report: Sales made by the developer are not binding on the prospective buyer. Sales made by the developer may be binding on the developer unless the developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any cancellation fee up to \$250.00.

Supplementary Report to a Preliminary Report: Same as for Preliminary Report.

Final Report or Supplementary Report to a Final Report: Sales made by a developer are binding if:

A) The Developer delivers to the buyer a copy of:

1) Either the Final Public Report **OR** the Supplementary Public Report which as superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission;

**AND**

2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;

B) The buyer is given an opportunity to read the report(s); **AND**

C) One of the following has occurred:

1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or

2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or

3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Material Change: Binding contracts with the Developer may be rescinded by the buyer if:

A) There is a material change in the project which directly, substantially and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; **AND**

B) The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

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 Report issued by the developer which have been given an effective date by the Hawaii Real Estate Commission.
  - B) Declaration of Condominium Property Regime
  - C) Bylaws of the Association of Apartment Owners
  - D) House Rules, if any.
  - E) Condominium Map
  - 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: Agreement of Sale dated December 30, 2003

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 514A, HRS) and the Administrative Rules (Chapter 107) 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 unofficial copy of law: [www.hawaii.gov/dcca/hrs](http://www.hawaii.gov/dcca/hrs)  
Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

This Public Report is part of Registration No. 5417 filed with the Real Estate Commission on July 9, 2004.

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

yellow paper stock     white paper stock     pink paper stock

C. **Additional Information Not Covered Above**

1. **MAINTENANCE FEES.** The Original Developer has not commenced the collection of maintenance fees. Accordingly, the Developer is not able to provide any estimate of the amount of maintenance fees. The following statement was included in the public report previously made by the Original Developer:

“Until such time as the first meeting of the Association of Apartment Owners of Royal Garden at Waikiki is held in accordance with Section 514A-82(a)(\*11), the Developer may assume all the actual common expenses of the Project in lieu of paying the Developer's respective share of the budgeted common expenses; provided that the Developer shall continue to pay such actual common expenses until the date specified in an amended abstract filed by the Developer with the Real Estate Commission of the State of Hawaii (which date shall be no less than thirty (30) days after the date of filing of such amended abstract) which amended abstract shall provide that after such specified date each owner of any apartment in the project shall be obligated to pay for such owner's respective share of the common expenses allocated to its respective apartment. A copy of such amended abstract shall be delivered to each of the apartment owners whose maintenance expenses were assumed by the Developer.”

The most recent maintenance fee budget made available by the Original Developer is attached to the Disclosure Statement.

2. **HOTEL USE.** The Original Developer is operating a hotel and other related activities in the Project. The 12 units which are covered by this Public Report **ARE NOT** being sold with any hotel or other pooling arrangement. It is up to each prospective purchaser to determine what he/she will do with the unit being purchased. The use of the unit are subject to the use restrictions described in Exhibit “C”. Prospective purchasers are cautioned to carefully review the use restrictions.

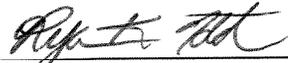
3. **AGREEMENT OF SALE.** Because the Developer only holds an equitable interest in the 12 apartments described in Exhibit “A”, all sales of the apartments are subject to Developer being able to satisfy and/or acquire the fee simple interest in such apartments. Accordingly, purchasers should be aware that unless and until the Developer acquires title to the apartment being sold, no closing of a sale to a prospective purchaser can occur.

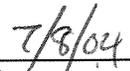
4. **SWIMMING POOL.** There is a large swimming pool with a waterfall feature that is adjacent to this Project. That pool is not a part of this Project. The Project only has a smaller swimming pool located behind the driveway area.

- D. The developer declares subject to the penalties set forth in section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A-1.6]. (The developer is required to make this declaration for issuance of an effective date for a final public report.)
- E. 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.

**BEACH CAPITAL, INC.**

Printed Name of Developer

By:  \_\_\_\_\_  
RYAN K. TOTOKI  
Its President

 \_\_\_\_\_  
Date

Distribution:

Department of Finance, City and County of Honolulu  
Planning Department, City and County of Honolulu

\*Must be signed for a: corporation by an officer; partnership or 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 "A"

### UNITS COVERED BY THIS FINAL PUBLIC REPORT

#### ROYAL GARDEN AT WAIKIKI

<u>APT. NO.</u>	<u>UNIT TYPE</u>	<u>BEDRM/ BATH</u>	<u>APPR. NET LIVING AREA (SQ.FT.)</u>	<u>APPR. NET LANAI AREA (SQ.FT.)</u>	<u>APPR. GROSS TOT.FLR. AREA (SQ.FT.)</u>	<u>COMMON INT (%)*</u>	<u>CPR NO.</u>
1800	G	2/2	1229	189	1418	1.2334	0142
1900	G	2/2	1229	189	1418	1.2334	0153
1903	D1	Studio/1	376	30	406	0.3531	0154
1904	A1	Studio/1	332	17	349	0.3036	0155
1905	C3R	Studio/1	352	30	382	0.3323	0156
1906	C2	Studio/1	352	30	382	0.3323	0157
1907	C1	Studio/1	352	30	382	0.3323	0158
1908	C2R	Studio/1	352	30	382	0.3323	0159
1909	C2R	Studio/1	352	30	382	0.3323	0160
1910	C2A	Studio/1	313	69	382	0.3323	0161
1911	C1	Studio/1	352	30	382	0.3323	0162
1912	B2	Studio/1	313	69	382	0.3323	0163

**Important Notice:** The square footage contained in this Exhibit "A" are based on information contained in the Original Developer's Final Public Report and other Project Documents. Developer does not make any statement or representation about the accuracy of the living and Lanai areas nor about the layout or configuration of each unit.

### UNITS NOT COVERED BY THIS FINAL PUBLIC REPORT

All of the following units will be conveyed by Beach Capital, Inc. back to Nichiei U.S.A., Inc.:

2000, 2003 through 2012, inclusive, 2100, and 2103 through 2112, inclusive.

## **EXHIBIT "B"**

### **ORIGINAL DEVELOPER'S RIGHTS TO CHANGE THE DECLARATION, CONDOMINIUM MAP, BYLAWS OR HOUSE RULES**

(this was contained in Exhibit "A" of the Final Public Report of the Original Developer)

1. Notwithstanding any other provision in this Declaration to the contrary, prior to (i) the time that all apartments in the Project have been sold and recorded, and (ii) the filing by the Developer of the "as built" verified statement (with plans, if applicable) required by Section 514A-12 of the Hawaii Revised Statutes (but in no event later than December 31, 2020), the Developer shall have the right, without consent, approval or joinder of any apartment owner, (a) to make alterations in the Project (and/or to amend this Declaration and the Condominium Map accordingly) which change the configuration of, alter the number of rooms of, decrease or increase the size of, or change the location of any apartment (and the limited common elements appurtenant thereto) in the Project which is not sold and recorded; or (b) to make alterations in the Project (and/or amend this Declaration and the Condominium Map accordingly) which divide the Commercial Apartments (and/or the limited common elements appurtenant thereto) into any number of separate retail or commercial apartments, provided that (i) the total undivided percentage common interest appurtenant to all Commercial Apartments in the Project shall at all times equal 13.9534%, and (ii) the limited common elements appurtenant to the Commercial Apartments shall remain, after any such division, limited common elements appurtenant to one or more of the Commercial Apartments; or (c) to make other alterations in the Project (and to amend this Declaration and the Condominium Map accordingly) which make minor changes in any apartment in the Project or the common elements which do not affect the physical location design or size of any apartment which has been sold and recorded; PROVIDED, HOWEVER, that as to (a), (b) and (c) hereinabove, any such changes shall be reflected in an amendment to the Declaration as Provided in Section 2 of Paragraph R of the Declaration. As used herein the term "sold and recorded" shall mean and refer to the sale of apartments in the Project, and the filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii of the apartment deeds transferring said apartments from the Developer to parties not signatory to the Declaration.
2. Notwithstanding the filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii of any or all apartment deeds conveying any or all of the apartments to any person, the Developer shall have the right to successively amend the Declaration (including the By-Laws and, when applicable, the Condominium Map), without the consent, approval or joinder of the persons then owning or leasing the apartments, to file the "as built" verified statement (with plans, if applicable) required by Section 514A-12, Hawaii Revised Statutes, as amended, (a) so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans theretofore files or being simultaneously with such amendment fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built, or (b) so long as any plans filed therewith involve only changes to the layout, location apartment numbers, dimensions of or other changes to the apartments and common elements as built which the Developer is permitted to make in accordance with Paragraph Q of the Declaration.
3. Until the filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii of apartment deeds covering all of the apartments in the Project (including all interests therein) in favor of parties not a signatory to the Declaration and other than to any mortgage of the Developer, the Developer shall have the right to amend the Declaration, the By-Laws and the Condominium Map, without the consent, approval or joinder of any purchaser of an apartment or any interest therein (including any lessee), and to make such amendments as may be required by law, by the Real Estate Commission of the State of Hawaii, by any title insurance company issuing a title insurance policy on the Project or any of the apartments or any interest therein, by any institutional lender lending funds

on the security of the Project or any of the apartments or any interest therein, or by any governmental agency of any state, territory, possession or foreign county or other foreign jurisdiction as a condition precedent to the marketing or sale of apartments or any interests therein in any such jurisdiction; provided, however, that no such amendment which would change the common interest appurtenant to an apartment or substantially change the design, location or size of an apartment shall be made without the consent to such amendment by all persons having an interest in such apartment.

## **EXHIBIT "C"**

### **SPECIAL USE RESTRICTIONS**

The following use restriction is contained in Paragraph H.1 of the Declaration of Condominium Property Regime.

1. Hotel Apartments. The Hotel Apartment shall be occupied and used only for hotel time sharing (if permitted by applicable law) use, except any Hotel Apartment with respect to which the holder of the first mortgage thereon has entered into possession of the Hotel Apartment following (i) a default under the first mortgage, (ii) a foreclosure proceeding, or (iii) a conveyance in lieu of foreclosure, provided, however, that no Hotel Apartment shall be used in any manner which would cause the Project to lose its status as a permitted nonconforming hotel (as explained below).

(a) The Project is currently located in the Waikiki Special District and in the Apartment Precinct. The current zoning for the land underlying the Project does not permit hotel use and to the best of Developer's knowledge, the current operation of the Project as a hotel is a permitted nonconforming hotel use.

(b) The Land Use Ordinance of the City and County of Honolulu ("LUO") as currently in effect defines the terms 'hotel', 'lodging units', 'dwelling units', and 'kitchens' in the following manner:

"Hotel" means a building or group of buildings containing lodging and /or dwelling units in which 50 percent or more of the units are lodging units. A hotel includes a lobby, clerk's desk or counter with 24-hour clerk service and facilities for registration and keeping of records relating to hotel guests.

"Lodging unit" means a room or rooms connected together, constituting an independent living unit for a family which does not contain any kitchen. Unless specifically permitted in use regulations, "lodging unit" shall not include a unit used for time sharing or a transient vacation unit as defined in this chapter.

"Dwelling unit" means room or rooms connected together, constituting an independent housekeeping unit for a family and containing a single kitchen. Two or more essentially separate structures, except for a token connection, such as a covered walkway or a trellis, do not constitute a single dwelling unit. Unless specifically permitted in use regulations, a dwelling unit shall not include a unit used for time sharing or a transient vacation unit as defined in this chapter.

"Kitchen" means a kitchen facility for a housekeeping unit that exists when there is, on the premises of the housekeeping unit, an item from all three of the following categories:

- (1) Fixtures, appliances or devices for heating or cooking food;
- (2) Fixtures, appliances or devices for washing utensils used for dining and food preparation and / or for washing and preparing food;
- (3) Fixtures, appliances or devices for refrigeration of food.
- (4) If the Project were to fail to meet any part of the definition of a hotel under the LUO, its current use as a hotel would become unlawful and Developer makes no representations as to whether any other use would be lawful given the age of the Tower, limited parking and any other relevant factors.

(c) The restrictions on the use of the Hotel Apartments contained in this Declaration are imposed in an attempt to maintain the status of the Project as a permitted nonconforming hotel and to thereby enable the continued use of the Project and Hotel Apartments for hotel purposes, and shall be interpreted and

enforced in accordance with the intention. Accordingly, at all times at least fifty percent (50%) of the Apartments in the Project shall be maintained as lodging units and not dwelling units. This requirement shall govern the Association's actions with respect to any proposed consolidation of a Hotel Apartment that would cause a net increase in the number of dwelling units or a net decrease in the number of lodging units in the Project that would result in the loss of the permitted nonconforming hotel status of the Project.

(d) General Discretion of the Association. The Association is hereby authorized and required to take any and all actions necessary and proper with respect to the Hotel Apartments to ensure that the Project as a whole maintains its status as a permitted nonconforming hotel. Such actions shall, to the extent possible, not prefer or favor one apartment or the owner thereof over another; provided, however, that the Association its sole discretion may take any such action based on a first to request preference, or a lottery system. The Association is further authorized and required to adopt other restrictions with respect to the Hotel Apartments as may be necessary or advisable to maintain the status of the Project as a lawful nonconforming hotel under the LUO.

(e) Time Sharing. USE OF THE HOTEL APARTMENTS AND / OR THE PROJECT FOR TIME SHARING PURPOSES IS EXPRESSLY AND EXPLICITLY PERMITTED SUBJECT TO APPLICABLE STATUTES, LAWS, ORDINANCES, RULES AND REGULATIONS AND SUBJECT TO THE PROVISIONS SET FORTH IN SUBPARAGRAPHS H.1(a) AND H.1(b) OF THIS DECLARATION. THE DEVELOPER EXPRESSLY DISCLOSES THAT TIME SHARING MAY NOT CURRENTLY BE PERMITTED BY THE ZONING FOR THE LAND.

The following restrictions relating to pets is contained in Article VI, Section 4(M) of the By-Laws of the Association of Apartment Owners.

#### PETS

No livestock, poultry or other animals whatsoever shall be allowed or kept in any part of the Project; provided, however, that certified guide dogs and signal dogs (as identified hereinbelow) and other such animals specially trained to assist handicapped individuals (hereinafter collectively referred to as "specially trained animals") shall be permitted at the Project, subject to the following restrictions:

(a) Such specially trained animals shall not be kept, bred, or used at the Project for any commercial purpose;

(b) Such specially trained animals shall be permitted on the common elements (including but not limited to the recreation areas) provided that the specially trained animal is on a leash.

Any specially trained animal causing a nuisance or unreasonable disturbance to any other occupant of the Project shall be permanently removed therefrom promptly upon notice given by the Board or the Managing Agent; provided, however, that any such notice shall provide that before such animal must be removed; its owner shall have a reasonable time to acquire a replacement specially trained animal unless the Board determines that such animal poses an imminent serious threat of physical harm to other occupants of the Project.

The Board may from time to time promulgate such rules and regulations regarding the keeping of pets and specially trained animals as the circumstances may require or the Board may deem advisable.

The term "guide dog" shall mean "any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and riding handle grasped by the person", as defined in H.R.S. §515-3(8), as the same may be amended from time to time in the future.

The term "signal dog" shall mean "any dog trained to alert a deaf person to intruders or sounds", as defined in H.R.S. §515-3(8), as the same may be amended from time to time in the future.

## EXHIBIT "D"

DESCRIPTION OF HOTEL APARTMENTS  
BY APARTMENT TYPE  
(excerpt from Exhibit "B" of Declaration)

<i>APT. TYPE</i>	<i>DESCRIPTION</i>
A1	Contains two (2) rooms, including a living/dining room with a sink, refrigerator and stove on floors 6 through 14, or a sink and refrigerator on floors 15 through 19, a bathroom and exterior lanai, and having a net living area of approximately 332 square feet and a lanai of approximately 17 square feet.
B2	Contains two (2) rooms, including a living/dining room with a sink, refrigerator and stove on floors 6 through 14, or a sink and refrigerator on floors 15 through 16, a bathroom and an exterior lanai, and having a net living area of approximately 313 square feet a lanai of approximately 69 square feet.
C1	Contains two (2) rooms, including a living/dining room with a sink and two (2) refrigerators, a bathroom and an exterior lanai, and having a net living area of approximately 352 square feet and a lanai of approximately 30 square feet.
C2	Contains two (2) rooms, including a living/dining room with a sink and refrigerator, a bathroom and an exterior lanai, and having a net living area of approximately 352 square feet and a lanai of approximately 30 square feet.
C2R	Contains two (2) rooms, including a living/dining room with a sink and refrigerator, a bathroom and an exterior lanai, and having a net living area of approximately 352 square feet and a lanai of approximately 30 square feet.
C2A	Contains two (2) rooms, including a living/dining room with a sink and refrigerator, a bathroom and an exterior lanai, and having a net living area of approximately 313 square feet and a lanai of approximately 69 square feet.
C3R	Contains two (2) rooms, including a living/dining room, a bathroom and an exterior lanai, and having a net living area of approximately 352 square feet and a lanai of approximately 30 square feet.
D1	Contains two (2) rooms, including a living/dining room with a sink and refrigerator, a bathroom and an exterior lanai, and having a net living area of approximately 376 square feet and a lanai of approximately 30 square feet.
G	Contains a foyer, six (6) rooms, including two (2) bedrooms, a living/dining room, a kitchen, two (2) bathrooms and three (3) exterior lanais, and having a net living area of approximately 1,299 square feet and lanais of approximately 189 square feet in the aggregate.

NOTE: There are other unit types of apartments in the Project but only the unit types corresponding with the 12 apartments contained in Exhibit "A" are described herein.

## **EXHIBIT "E"**

### COMMON ELEMENTS

1. The real property described in the Declaration of Condominium Property Regime of Royal Garden at Waikiki (the "Declaration") in fee simple;
2. All foundations, floor slabs, columns, girders, beams, supports, perimeter, party and load-bearing walls and partitions (excluding the finishes thereon), roofs, lobby areas, stairways (excluding private stairways located within and serving only the apartment), elevators, walkways, corridors, ramps, loading areas, elevator lobby areas, entrances, entry ways and exits of the building(s), the porte cochere, all storage rooms not located within an apartment, all maintenance rooms, all elevator machine rooms, all mechanical rooms, all electrical and all trash rooms;
3. All yards, grounds, walkways, walkway railings, landscaping, refuse facilities and gardens;
4. The swimming pool and sauna and appurtenant deck areas;
5. All toilets and restroom facilities not located within an Apartment;
6. All vents, shafts, sewer lines, electrical equipment, pipes, cables, conduits, ducts, electrical equipment, wiring and other central and appurtenant transmission facilities and installations over, under and across the Project which serve more than one apartment for services such as power, light, gas (if any), water, cable television (if any), air conditioning, sewer, refuse, telephone, and radio and television signal distribution (if any), except for the microwave antenna or antennae and/or other electronic or telecommunications equipment and facilities belonging to the Developer or such persons or entities authorized by the Developer, as more particularly set forth in Section 9 of Paragraph F of the Declaration;
7. Any and all other apparatus and installations existing for common use, such as tanks, pumps, motors, fans, compressors, and, in general, all other installations and apparatus existing for common use and any and all other parts of the Project necessary or convenient to its existence, maintenance or safety, or normally in common use;
8. All driveways, driveway ramps, parking stalls and parking areas;
9. All mailboxes;\*
10. The reception area located on Level 22 of the Project;
11. All laundry facilities not located within an Apartment; and
12. All ice machine rooms.

\*Developer believes that the room the mailboxes are in may be utilized as a baggage room. If this is done, the Developer believes that the mail will be held by the front desk for each unit.

## **EXHIBIT "F"**

### **LIMITED COMMON ELEMENTS**

1. Each apartment shall have for its exclusive use one (1) mailbox bearing the same number\* as such apartment.
2. The 63 parking stalls in the Project shall constitute limited common elements appurtenant to and for the exclusive use of Commercial Apartment No. 1.
3. The bell desk area, the area within a two (2) foot radius of the bell desk, and the two (2) mechanical rooms located on Level 1 of the Project and designated on the Condominium Map shall constitute limited common elements appurtenant to and for the exclusive use of Commercial Apartment No. 1.
4. The Engineer's Shop/Storage Room located on Level 3 of the Project and designated on the Condominium Map shall constitute a limited common element appurtenant to and for common use of Commercial Apartment No. 1.
5. The Roof Deck Area located on Level 4 of the Project adjacent to Commercial Apartment No. 2 and designated on the Condominium Map shall constitute a limited common element appurtenant to and for the exclusive use of Commercial Apartment No. 2.
6. The reception area located on Level 22 of the Project and designated on the Condominium Map shall constitute a limited common element appurtenant to and for the exclusive use of Commercial Apartment No. 1.
7. All laundry facilities not located within an apartment shall constitute limited common elements appurtenant to and for the exclusive use of Commercial Apartment No. 1.
8. All ice machine rooms in the Project and designated on the Condominium Map shall constitute a limited common element appurtenant to and for the exclusive use of Commercial Apartment No. 1.
9. The walkway on the ramp adjoining the laundry rooms on Level 4 of the Tower shall constitute a limited common element appurtenant to and for the exclusive use of Commercial Apartment No. 1, as shown on the Condominium Map.
10. The exhaust pipe which rises up from Commercial Apartment No. 2 and continues up through the Tower shall constitute a limited common element appurtenant to and for the exclusive use of Commercial Apartments Nos. 2 and 3 jointly.
11. The exhaust pipe which extends from Commercial Apartment 3 and continues through the side of the Tower shall constitute a limited common element appurtenant to and for the exclusive use of Commercial Apartment 3.
12. The connecting exhaust pipe which extends from the kitchen of Commercial apartment No. 3, through the ceiling space above Commercial Apartment No. 1 on Level 4 of the Tower and connects to the exhaust pipe described in Subparagraph D.3(i) above shall constitute a limited common element appurtenant to and for the exclusive use of Commercial Apartment No. 3.

13. The outlook deck adjacent to Commercial Apartment No. 3 on the side of the Tower facing Kuhio Avenue shall constitute a limited common element appurtenant to and for the exclusive use of Commercial Apartment No. 3.

\* Developer believes that the room designated for the mailboxes may be utilized as a baggage room. If this is done, mail may be held by the front desk for each unit.

## **EXHIBIT "G"**

### **ENCUMBRANCES AGAINST TITLE**

1. For real property taxes due and owing your attention is directed to the Director of Finance, City and County of Honolulu.

2. Title to all minerals and metallic mines reserved to the State of Hawaii.

3. AS TO PARCELS FIRST AND SIXTH ONLY:

(a) Grant of easement in favor of HAWAIIAN ELECTRIC COMPANY, INC., dated May 23, 1927, filed as Land Court Document No. 13116, for construction of electric power and telephone lines across strip of land 5 feet wide along Lot 187 and for perpetual easement for utility purposes over Lot 78.

4. AS TO PARCEL FIRST:

(a) Subsurface easements in favor of the CITY AND COUNTY OF HONOLULU, for sewer purposes and water purposes (Board of Water Supply); Hawaiian Electric Company, Inc. for subsurface electric lines and facilities; GTE Hawaiian Telephone Company, Incorporated for subsurface telephone lines and facilities; and the Honolulu Gas Company, Ltd. for subsurface gas lines, as set forth in Deed dated August 28, 1967, filed as Document No. 437474.

(b) The covenants, conditions, restrictions, reservations, agreements, obligations, easements and other provisions set forth in the DEED dated August 28, 1967, filed as Document No. 437474.

(c) Easement five (5) feet wide for utility purposes over and across Lot 187, as shown on Map 57, as set forth by Land Court Order No. 29984, filed April 30, 1969.

5. AS TO LOT K-3 ONLY:

(a) Subsurface easements in favor of the CITY AND COUNTY OF HONOLULU for sewer purposes and water purposes (Board of Water Supply); Hawaiian Electric Company, Inc. for subsurface electric lines and facilities; and GTE Hawaiian Telephone Company, Incorporated for subsurface telephone lines and facilities, as set forth in DEED dated April 6, 1967, filed as Document No. 415175.

(b) The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in DEED dated April 6, 1967, filed as Document No. 415175.

6. AS TO LOT K-4 ONLY:

(a) Subsurface easements in favor of the CITY AND COUNTY OF HONOLULU for sewer purposes and water purposes (Board of Water Supply); Hawaiian Electric Company, Inc. for subsurface electric lines and facilities; and GTE Hawaiian Telephone Company, Incorporated for subsurface telephone lines and facilities, as set forth in DEED dated May 4, 1967, filed as Document No. 416840.

(b) The covenants, conditions, restrictions, reservations, agreements, obligations, easements and other provisions set forth in the DEED dated May 4, 1967, filed as Document No. 416840.

7. AS TO LOT K-5 ONLY:

(a) Subsurface easements in favor of the City and County of Honolulu for sewer purposes and

water purposes (Board of Water Supply); Hawaiian Electric Company, Inc. for subsurface electric lines and facilities; GTE Hawaiian Telephone Company, Incorporated, for the subsurface telephone lines and facilities; and the Honolulu Gas Company, Ltd. for subsurface gas lines, as set forth in DEED dated June 22, 1967, filed as Document No. 636373.

(b) The covenants, conditions, restrictions, reservations, agreements, obligations, easements and other provisions set forth in the DEED dated June 22, 1967, filed as Document No. 636373.

8. AS TO PARCELS FIRST THROUGH FIFTH:

(a) The following encroachments, as set forth on the survey prepared by Richard K. Kawasaki, Registered Professional Land Surveyor, dated January 19, 1990:

1. "There is a sewer manhole in the northwesterly corner of Lot 77 as shown on the Location Survey Map."

2. "The hollow tile wall on the northwest corner of the subject parcel extends into the sidewalk area of Namahana Street as shown on the Location Survey Map and Enlargement 'A'."

3. "The hollow tile wall on the northwest corner of the subject parcel extends into the sidewalk area of Namahana Street shown in the Location Survey Map and Enlargement 'B'."

4. "The hollow tile wall at the cut monkeypod tree on the property boundary of Lots 187 and 194."

(b) Mortgage dated September 8, 1998, in favor of Finance Factors, Limited, a Hawaii corporation, filed in said Office, as Document No. 2484778.

(c) Assignment of Rents and Other Income dated January 8, 1998, in favor of Finance Factors, Limited, a Hawaii corporation, filed in said Office, as Document No. 2484779.

9. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in AGREEMENT FOR ISSUANCE OF CONDITIONAL USE PERMIT UNDER SECTION 4.40-21 OF THE LAND USE ORDINANCE dated January 15, 1992, filed as Land Court Document No. 1891152.

10. The covenants, conditions, restrictions, reservations, agreements, obligations, easements and other provisions set forth in the DECLARATION OF RESTRICTIVE COVENANTS (SPECIAL DESIGN), dated February 25, 1999, filed as Land Court Document No. 2525018.

11. Condominium Map No. 1383, filed in the Office of the Assistant Registrar of the Land Court, State of Hawaii.

12. The covenants, conditions, restrictions, reservations, agreements, obligations, easements and other provisions set forth in the Declaration of Condominium Property Regime dated October 31, 2000, filed in said Office, as Document No. 2662791.

13. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the By-Laws of the Association of Apartment Owners of Royal Garden at Waikiki, dated October 31, 2000, filed in said Office, as Document No. 2662792.

14. Any and all covenants, conditions, restrictions and easements encumbering the apartment herein mentioned, and/or the common interest appurtenant thereto, as created by or mentioned in said Declaration and/or in said Apartment Deed, and/or as delineated on said Condominium Map.

15. Mechanic's Lien in Civil No. 1ML93-0-000151, filed in the Circuit Court of the First Circuit, State of Hawaii, dated November 10, 1993.
16. Assignment of Sales Contracts and Deposits dated October 17, 2001, in favor of Finance Factors, Limited, a Hawaii corporation, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2001-166346.
17. Assignment of Rents and Other Income dated October 17, 2001, in favor of Finance Factors, Limited, a Hawaii corporation, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2001-166347.
18. Financing Statement recorded October 23, 2001, in favor of Finance Factors, Limited, a Hawaii corporation, in said Bureau, as Document No. 2001-166348.
19. Mortgage dated December 20, 2000, in favor of Finance Factors, Limited, a Hawaii corporation, filed in said Office, as Document No. 2875551. (Besides other properties)
20. Assignment of Sales Contracts and Deposits dated December 20, 2000, recorded in said Bureau, as Document No. 2002-231407. (Besides other properties)
21. Assignment of Rents and Income dated December 20, 2000, recorded in said Bureau, as Document No. 2002-231408. (Besides other properties)
22. Financing Statement recorded December 27, 2002, in favor of Finance Factors, Limited, a Hawaii corporation, recorded in said Bureau, as Document No. 2002-231409.
23. Real Property Mortgage dated August 28, 2003, made by Rodeo Partners LLC, a Nevada limited liability company, in favor of various persons c/o Investors Mortgage Corporation, a Nevada corporation, filed as Land Court Document No. 2999870. (Besides other properties)

The undivided interest of Investors Mortgage Corporation, a Nevada corporation was assigned by an Assignment of Mortgage dated October 24, 2003, filed in said Office, as Document No. 3034620.

The undivided interest of Kostelac Family Trust was assigned by an Assignment of Mortgage dated January 2, 2004, filed in said Office, as Document No. 3063437.

The undivided interest of Corey Adcock was assigned by an Assignment of Mortgage dated August 28, 2003, filed in said Office, as Document No. 3082977.
24. Agreement of Sale dated December 30, 2003, made by and between Rodeo Partners LLC, a Nevada limited liability company as Seller, and Beach Capital, Inc., a Hawaii corporation, as Purchaser, filed as Land Court Document No. 3050288.
25. Any facts, rights, interest, or claims which may arise by virtue of parties in possession and or unrecorded documents pertaining to said property.
26. Any recorded, unrecorded or unfiled subleases or rental agreements and any liens, charges or exceptions against any sublessees or tenants named therein.
27. Any short term rental agreements or occupancy agreements.

## **EXHIBIT "H"**

### Summary of Sales Contract

The Sales Contract (Deposit, Receipt Sales Contract) contains the purchase price, description and location of the apartment and other terms and conditions under which a Purchaser will agree to buy an apartment in the Project.

Among other things, the Sales Contract:

1. Provides a section for financing to be completed and agreed to by the parties which will set forth how Purchaser will pay the purchase price.
2. Identifies the escrow agent and states that purchaser's deposit will be held in escrow until the Sales Contract is closed or canceled.
3. Requires that Purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price.
4. Provides that the Developer is selling the apartments in "AS-IS WHERE-IS" condition. This means that the Developer is not making any warranties or representations with respect to the apartments and Project. Section 19 of the Sales Contract reads as follows:

"a. As Is - Where Is. Notwithstanding any other provision in this Agreement to the contrary, the Buyer agrees and acknowledges that the Seller is selling the Apartment in an "AS IS, WHERE IS" condition. All land, improvements and other real and personal property will be sold, conveyed, and assigned by the Seller to the Buyer "AS IS, WHERE IS" without any warranty or representations, express or implied, as to condition or fitness for any purpose whatsoever. The Buyer agrees, acknowledges, and affirms to the Seller that the Buyer as had full opportunity to inspect the same, and accepts all land, improvements and other real and personal property in their "AS IS, WHERE IS" condition. Buyer understands that Buyer is responsible to protect his own interest and that he should conduct his own thorough inspections. The Seller will not be required to make any repairs or pay any expenses concerning the condition of the Apartment or any other improvement in the Project. Seller specifically, without limiting the foregoing, makes no warranties or representations with regard to the following:

- (1) The condition, state of repair, operating order, safety, structural soundness, construction or habitability of any improvements on or under the land, Apartment and Project;
- (2) The fitness of any improvements for any particular purpose;
- (3) The compliance or regulation of the Apartment or Project or any improvements thereon with or under any building, environmental, archaeological, wetlands, endangered species, health, zoning, land use, subdivision, setback, or other applicable law, ordinance, rule or regulation;
- (4) The compliance of any easement, right-of-way or driveway with any building, health, zoning, land use, subdivision, setback or other applicable law, ordinance, rule or regulation;
- (5) The compaction, stability, composition, erosion or other condition of the soil for the buildings or any other purposes;
- (6) The existence of any improvements on or under the Project which go over the boundary lines of any adjoining lands;

(7) The existence of any improvements on or under any adjoining lands which go over the boundary lines of the Project;

(8) Any matter concerning the mechanical and other installations for electricity, water, gas, plumbing, sewer, telephone, cable television or any other utility for the Apartment (if any);

(9) Any matter concerning the electrical, water, gas, plumbing, sewer, or any other utility systems (if any);

(10) Any matter concerning any drainage easement or drainage system (if any) on or for the Project or on any adjoining or other lands over which any such drainage easement or drainage system may go;

(11) Any staking or survey done by any person;

(12) The existence or non-existence of any hazardous materials such as lead based paint, asbestos, except as specifically disclosed in Addendum "B" and "C" attached to and made a part of this Agreement and the compliance of such materials with any applicable federal, state or local law;

(13) The compliance of the improvements with any Fair Housing and other laws, rules and regulations relating to accessibility; and

(14) The existence or non-existence of any mold or mildew on or within the Apartment and whether the design or layout of an Apartment may or may not affect the growth or existence of such mold or mildew.

b. No Reliance by Buyer. Buyer is not relying on any representations or warranties (written, pictorial, oral, or otherwise) concerning the Apartment and Project and assumes all risks of the development or marketability of the Apartment and Project, the risk of changes in applicable laws, and the risk of obtaining any governmental approvals. Without limiting the foregoing, Buyer acknowledges that neither Seller nor any of Seller's employees, or Broker, or any of its salespersons have made any representation or warranty that the Apartment has good investment potential or will increase in value or can be successfully developed.

c. The Condominium Map Is Not A Warranty. The Condominium Map for the Project is intended to show only the layout, location, apartment numbers and dimensions of the apartments in the Project. BUYER AGREES THAT THE CONDOMINIUM MAP IS NOT INTENDED TO BE AND IS NOT A WARRANTY OR PROMISE OF ANY KIND BY SELLER OR BROKER. The living areas of the apartments and the lanais were based on information provided Nichiei U.S.A., Inc., ("Original Developer"). Buyer agrees that if it is discovered that the area of the Apartment or its lanai, are smaller or different in any manner from the Condominium Map that such differences shall not affect the Total Purchase Price. Buyer further acknowledges and agrees that his decision to purchase was not made or based on the living areas or the foregoing dimensions but rather, based on Buyer's inspection and viewing of the Apartment. Buyer has inspected and approves the design and location of the parking stall. Seller did not develop or construct the Apartment or any of the buildings. Seller only purchased various units in December, 2003 and has little, if any experience in operating the various units in the Project.

d. Seller Makes No Promises or Warranty About the Amount of Monthly Maintenance Charges. Buyer has examined and approved the estimate of monthly maintenance charges and assessments for the Apartment and the Project as shown in the Budget for the Project prepared by the Original Developer. Seller and Broker make no promises or warranties about the accuracy of those amounts. Buyer understands that those amounts are only estimates and may change for a lot of reasons. Buyer accepts and approves any changes in such estimate made by Original Developer or the Managing Agent.

e. Seller Makes No Promises About Rentals. BUYER AGREES THAT NO ONE (INCLUDING THE SELLER, BROKER OR ANY SALESPERSON) HAS TALKED TO BUYER AT ALL ABOUT ANY RENTAL OR HOTEL INCOME OR RENTAL OR SALES SERVICES OR POOLING ARRANGEMENT FOR BUYER'S APARTMENT. IF BUYER WANTS TO RENT OR SELL THE APARTMENT, HOW BUYER DOES IT WILL BE UP TO BUYER. BUYER ALSO AGREES THAT NO ONE HAS TALKED TO BUYER AT ALL ABOUT INCOME FROM THE APARTMENT OR ANY OTHER ECONOMIC BENEFIT TO BE DERIVED FROM THE PURCHASE OR OWNERSHIP OF THE APARTMENT OR ABOUT THE TAX EFFECTS OF BUYING THE APARTMENT.

f. Acceptance of Conditions; Release. Buyer hereby accepts all of the foregoing terms and conditions described in paragraphs a through e above as well as any loss or value, marketability, losses, expenses, damages, injury, sickness, inconvenience or annoyance which Buyer or any occupant may experience as a result of such conditions and hereby expressly waives any rights, claims or actions which he might otherwise have against Seller as a result of such circumstances (collectively the "Claims"). The Buyer, for himself, his heirs, personal representatives, successors, assigns, and any person using or occupying the Apartment, hereby fully, finally and forever, releases, and agrees to indemnify and hold harmless, Seller, Broker, Managing Agent, Seller's agents, employees, contractors, professionals, and its consultants, and each of their respective successors and assigns from and against any and all damages, liability, personal injury claims or illness, property damage claims, cost and expenses including reasonable attorney's fees, relating to any claim by the Buyer or any person using or occupying the Apartment arising directly or indirectly out of or from the Claims, including impairment of the use and enjoyment of the Apartment and loss of market value and hereby agrees to these provisions which shall also be contained in the Apartment Deed and Buyer shall further include these provisions in any subsequent conveyance of the Apartment. Buyer furthermore agrees that Buyer will not file suit or make any claim against Seller, Broker, Managing Agent, and any of their respective officers, directors, employees, agents, successors and assigns, on account of or resulting from the Claims or any inconvenience, disturbance, damages, claims, liability, and/or injury arising from or related to the conditions set forth in this Section 19. Buyer represents and warrants to Seller that Buyer, in Buyer's sole discretion, has determined that the benefits of owning and enjoying the Apartment outweighs the risks of any of the conditions described in paragraphs a through e above. The terms of this Section 19 shall survive the occupancy of the Apartment by Buyer and the delivery and recording of the Apartment Deed to Buyer."

5. If purchaser dies (any one of them) prior to closing, Developer has the right to return purchaser's funds, less any escrow cancellation fees and cost, and cancel the Sales Contract.

6. Provides that the closing cost shall be paid as follows:

a. By purchaser: title insurance, drafting of any note and mortgage, purchaser notary fees, recording fees, one half of escrow fees, and also a start fee for common expenses, if any.

b. By Developer: drafting of apartment deed and Developer notary fees, conveyance taxes, preliminary title report, and one half of escrow fees.

7. Provides the following remedies, in the event of default under the Sales Contract:

by purchaser:

- a. Developer may bring an action against purchaser for breach of contract;
- b. Developer may retain all deposit;
- c. Purchaser shall be responsible for expenses incurred.

by Developer:

- a. Purchaser may bring an action against Developer for breach of Contract;
- b. Purchaser may bring an action compelling Developer to perform under contract;
- c. Developer shall be responsible for expenses incurred.

Any awards to the prevailing party in any action are subordinate to escrow's expenses.

8. Provides that purchaser may not assign his/her interest in the Sales Contract without the prior written consent of Developer.

9. Contains Addendum "B" regarding Lead-Based Paint and Addendum "C" regarding Environmental Matters which Purchasers must acknowledge as part of the Sales Contract.

The Sales Contract contains various other provisions which purchaser should become acquainted with.

## EXHIBIT "I"

### Summary of Escrow Agreement

The Escrow Agreement sets up an arrangement under which the deposits which a purchaser makes under a Sales Contract will be held by a neutral party ("Escrow"). Escrow is GUARDIAN ESCROW SERVICES, INC.. Under the Escrow Agreement dated April 15, 2004, these things will or may happen:

(a) Developer or Escrow will let purchasers know when payments are due and all monies received from a purchaser will be deposited in Escrow. Any interest earned on the deposits will belong to Developer.

(b) Escrow will arrange for purchasers to sign all necessary documents.

(c) The Escrow Agreement specifies when purchaser funds may be disbursed upon closing of a sale. The conditions include:

i) Escrow receives the purchasers' signed "Receipt for Public Report(s) and Notice of Right to Cancel";

ii) Escrow receives a certification from the Developer that the Sales Contract is effective and that the rescission right requirements in favor of purchasers have been complied with by the Developer; and

iii) The apartment deed conveying the unit to the purchaser has been recorded in the Bureau of Conveyances.

(d) The Escrow Agreement says under what conditions a refund will be made to a purchaser. Refunds can occur under the following situations:

i) If Purchaser elects to cancel the transaction in accordance with the "Receipt for the Final Public Report and Notice of Right to Cancel". The Receipt provides that purchasers may cancel the Sales Contract and purchaser is the Receipt is mailed or sent by telegram to Developer before (1) the apartment unit is conveyed to purchaser or (2) midnight of the 30th day after delivery of the Public Report(s) to me, whichever is earlier.

ii) The Developer and purchaser agree to terminate the Sales Contract;

iii) if the Developer exercises any right to cancel the transaction which it may have reserved.

NOTE: If a transaction is cancelled, the purchaser must return all documents to the Developer.

(e) The Escrow Agreement says what will happen to a purchaser's funds upon a default under the Sales Contract. If a purchaser defaults, all deposits previously placed into Escrow will be forfeited by purchaser and Escrow may release such funds to Developer. See paragraph 11 of Escrow Agreement.

The Escrow Agreement contains various other provisions and establishes certain charges with which the purchaser should become acquainted.

## EXHIBIT "J"

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 523-4414 • FAX: (808) 527-6743 • INTERNET: [www.co.honolulu.hi.us](http://www.co.honolulu.hi.us)

JEREMY HARRIS  
MAYOR



RANDALL K. FUJIKI, AIA  
Acting DIRECTOR  
LORETTA K.C. CHEE  
DEPUTY DIRECTOR

2000/CLOG-5563(RLK)

January 4, 2001

Mr. Kai Yajima, A.I.A., President  
Kai Yajima, A.I.A., Inc.  
2600 South King Street, Suite 203  
Honolulu, Hawaii 96826-3266

Dear Mr. Yajima:

Subject: Condominium Conversion Project  
Royal Garden at Waikiki  
440 Olohana Street, Tax Map Key: 2-6-16: 39

This is in response to your letter dated October 12, 2000 requesting verification that the structure at the above-mentioned address met all applicable code requirements at the time of construction.

Investigation revealed that the twenty-four-story 260-unit hotel with 84 off-street parking spaces met all applicable code requirements when it was constructed in 1975 on this 24,250-square-foot previously zoned Hotel/Apartment Precinct. This lot was rezoned to Apartment Precinct on April 1, 1976, which made the hotel and its accessory uses nonconforming.

Investigation also revealed the following:

1. On November 3, 1977, 77/ZBA-120 a variance from the zoning code was approved with conditions to allow addition of sundry shop and toilet to nonconforming hotel which eliminated two off-street parking.
2. On November 3, 1977, 77/ZBA-128 a variance from the zoning code was approved with conditions which allowed the expansion of the existing hotel restaurant with the construction of a mezzanine level.

Mr. Kai Yajima, A.I.A., President

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January 4, 2001

3. On July 23, 1991, 91-WSD-16 a Special District Permit was approved with conditions for the addition of hotel windows.
4. On November 14, 1991, 91-VAR-7 a variance from the zoning code was approved with conditions for the expansion of nonconforming hotel which exceeds maximum density, decreases off-street parking and increases nonconformity.
5. On February 11, 1992, 92/CUP1-4 a Conditional Use Permit was approved with conditions for the joint development of Tax Map Keys 2-6-16: 39 and 2-6-16: 53.
6. On May 19, 1993, 93/WSD-34 a Special District Permit was approved with conditions to paint hotel and add stone veneer.
7. On October 3, 1995, 94/VAR-73 a variance from the zoning code was partially approved to allow the expansion of a nonconforming use by conversion of floor area from storage to banquet room use.
8. On February 3, 1999, 1998/SDD-514 a Special District Permit was approved for exterior alteration.
9. On July 19, 1999, 1999/VAR-23 a variance from the zoning code was approved with conditions for awning encroachment into required yard.
10. On November 15, 1999, 1999/SDD-96 a Special District Permit was approved with conditions for the exterior awning.

On March 17, 2000, building permit No. 506168 was issued to reduce the number of hotel units to 208. This permit is still active. The hotel and accessory uses are considered nonconforming. The structure (spacing, density-FAR) is considered nonconforming under the Land Use Ordinance because the building encroaches into the required 20-foot front yard along two streets, encroaches into the height setback, is deficient in open space, and exceeds the maximum density by 80,674 square feet.

The 63 existing all-weather surface off-street parking spaces were allowed by a variance (91-VAR-7).

For your information, the Department of Planning and Permitting cannot determine all legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes.

Mr. Kai Yajima, A.I.A., President

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Conversion to a condominium property regime (CPR) is not recognized by the City and County as an approved subdivision. CPR delineates ownership; it does not create a separate lot of record.

If you have any questions regarding this matter, please contact Mr. Ivan Matsumoto of this office at 527-6341.

Sincerely yours,

A handwritten signature in cursive script that reads "Randall K. Fujiki". The signature is written in black ink and is positioned above the printed name and title.

RANDALL K. FUJIKI, AIA

Acting Director of Planning and Permitting

RKF:ft

g:\cso\olohana.cnv

## **EXHIBIT "K"**

ROYAL GARDEN AT WAIKIKI  
Registration No. 5417 (conversion)

DISCLOSURE ABSTRACT  
Pursuant to Section 514A-61, Hawaii Revised Statutes

1. Project Name : ROYAL GARDEN AT WAIKIKI  
and Address : 440 Olohana Street  
Honolulu, Hawaii 96815  
  
Tax Map Key No. : (1) 2-6-016-039
2. Developer : BEACH CAPITAL, INC.  
765 Amana Street, Suite 500  
Honolulu, Hawaii 96814
3. Real Estate Broker : Prudential Locations, LLC  
3465 Waialae Avenue, 4th Floor  
Honolulu, Hawaii 96816  
Telephone: 735-4200  
  
Covering Units: 1800, 1900, 1903-1912
4. Escrow Agent : Guardian Escrow Services, Inc.  
2347 S. Beretania Street, Suite 200  
Honolulu, Hawaii 96826  
  
Covering Units: 1800, 1900, 1903-1912
5. Managing Agent : Cadmus Properties, Corp.  
332 N. School Street  
Honolulu, Hawaii 96819  
Telephone: 531-6847
6. MAINTENANCE FEES. A breakdown of the estimated monthly maintenance fee disbursements for the Project is set forth in Exhibit A attached hereto, and the estimated monthly common expenses assessable to each apartment in the Project are set forth in Exhibit 1 attached hereto. This was prepared on behalf of the original developer of the Project, Nichiei U.S.A., Inc. This is the most recent budget made available to Beach Capital, Inc., at this time. As of this date, no maintenance fees are being assessed against the apartments.

7. DESCRIPTION OF WARRANTIES COVERING THE APARTMENTS. The Apartment is being sold "as is". The Developer makes no warranties or promises of any kind, express or implied, about the Apartment or the Project, or about any furnishings, fixtures, appliances or other consumer projects or anything else installed, attached, affixed or otherwise contained in the Apartment or the Project, including any warranties or promises of "merchantability", "workmanlike construction", or "fitness for a particular use or purpose".

8. USE OF APARTMENTS. The Royal Garden at Waikiki condominium project consists of two hundred eight (208) hotel apartments and four (4) commercial apartments, but this public report only covers the 12 units designated in this report. The hotel apartments may be occupied and used only for permanent or temporary residential purposes by the respective owners thereof, their tenants, families, domestic servants and guests. There are significant and substantial use restrictions on all 208 hotel apartments. The commercial apartments may be used for commercial, retail or office purposes or for any of the purposes or uses as are permissible under applicable laws, statutes, ordinances, rules and regulations.

(signature page follows)

IN WITNESS WHEREOF, the Developer has executed this Disclosure Abstract on  
JUL 08 2004, 2004.

DEVELOPER:

BEACH CAPITAL, INC.

By   
RYAN K. TOTOKI  
Title: President

ROYAL GARDEN AT WAIKIKI

ESTIMATED MONTHLY MAINTENANCE FEE DISBURSEMENTS  
As of April 1, 2002

REVENUES:

3010	Maintenance Fees	\$81,880
3300	Capital Reserve	0
4010	Interest Income – Operating	30
4020	Interest Income – Capital	0
4100	Late Fees	0
4250	Rental Income	0
4300	Telephone	100
4900	Non-Tax Income	0
4400	Other Income	<u>0</u>
	TOTAL REVENUE	\$82,010

EXPENSES:

	Utilities:	
6010	Electricity	\$20,000
6050	Gas	5,000
6150	Water	4,055
6200	Telephone Expense	150
6250	Television Cable	1,100
	Music Service	<u>500</u>
		\$30,805
	Building:	
7010	Air Conditioning	\$ 760
7050	Cleaning Service	0
7060	Cleaning Supplies	500
7100	Communications – Internal	160
7150	Elevator	2,400
7200	Electric Bulbs/Electrical	400
7300	Fire Equipment	500
7350	Grounds & Grounds Supply	500
7450	Painting Expense	400
7500	Pest Control	-600
7550	Pool/Spa	350
7600	Pump & Ventilation	400
7650	Refuse	2,500
7700	Repairs & Purchases	1,000
7800	Watchmen	<u>10,000</u>
		\$20,470

	<b>Administration:</b>	
8010	Data Processing	\$ 400
8050	Management Fee	3,310
8100	Salaries – Utility Cleaning	3,300
8140	Salaries – Maintenance	5,000
8160	Salaries – Manager & Admin	5,500
8250	Payroll Tax Expenses	3,050
8300	Group Insurance	4,350
8350	Workers Compensation	1,315
8400	Rent Expense	0
		<u>\$26,225</u>
	<b>Other:</b>	
9010	Automobile Expense	\$ 50
9050	Insurance – Directors & Officers	190
9070	Insurance – CPP	2,090
9090	Insurance – Flood	590
9110	Insurance – Umbrella	415
9150	Insurance – Other	150
9250	Legal & Audit Expense	260
9300	Office Supplies	500
9320	Miscellaneous Expense	260
9321	Bad Debt – Operating	0
9350	Travel Expense	0
9600	Taxes – General Excise	5
9650	Taxes – Federal Income	0
9750	Taxes – State Income	0
		<u>\$ 4,510</u>
	<b>Non-Operating Transactions:</b>	
9942	Capital Reserve Expenditure	\$ 0
9955	Operating Reserves Transfers to	0
9955	Operating Reserves Transfers From	0
9957	Capital Reserves Transfers To	0
9957	Capital Reserves Transfers From	0
		<u>\$ 0</u>
	<b>TOTAL EXPENSES</b>	<u>\$82,010</u>
	<b>NET</b>	<u>\$ 0</u>

ROYAL GARDEN AT WAIKIKI

APT. NO.	COMMON INT' (%)	ESTIMATED INITIAL MAINTENANCE FEES \$
Com. 1	8.4552	\$6,923.16
Com. 2	3.4713	\$2,842.33
Com. 3	1.8788	\$1,538.32
Com. 4	0.1522	\$124.63
600	0.3488	\$285.59
601	0.3323	\$272.05
602	0.3531	\$289.15
603	0.3531	\$289.15
604	0.3036	\$248.55
605	0.3323	\$272.05
606	0.3323	\$272.05
607	0.3323	\$272.05
608	0.3323	\$272.05
609	0.3323	\$272.05
610	0.3323	\$272.05
611	0.3323	\$272.05
612	0.3323	\$272.05
700	0.3488	\$285.59
701	0.3323	\$272.05
702	0.3531	\$289.15
703	0.3531	\$289.15
704	0.3036	\$248.55
705	0.3323	\$272.05
706	0.3323	\$272.05
707	0.3323	\$272.05
708	0.3323	\$272.05
709	0.3323	\$272.05
710	0.3323	\$272.05
711	0.3323	\$272.05
712	0.3323	\$272.05
800	0.3488	\$285.59
801	0.3323	\$272.05
802	0.3531	\$289.15
803	0.3531	\$289.15
804	0.3036	\$248.55
805	0.3323	\$272.05
806	0.3323	\$272.05
807	0.3323	\$272.05
808	0.3323	\$272.05
809	0.3323	\$272.05
810	0.3323	\$272.05
811	0.3323	\$272.05

ROYAL GARDEN AT WAIKIKI

APT. NO.	COMMON INT (%)	ESTIMATED INITIAL MAINTENANCE FEES \$
812	0.3323	\$272.05
900	0.3488	\$285.59
901	0.3323	\$272.05
902	0.3531	\$289.15
903	0.3531	\$289.15
904	0.3036	\$248.55
905	0.3323	\$272.05
906	0.3323	\$272.05
907	0.3323	\$272.05
908	0.3323	\$272.05
909	0.3323	\$272.05
910	0.3323	\$272.05
911	0.3323	\$272.05
912	0.3323	\$272.05
1000	0.3488	\$285.59
1001	0.3323	\$272.05
1002	0.3531	\$289.15
1003	0.3531	\$289.15
1004	0.3036	\$248.55
1005	0.3323	\$272.05
1006	0.3323	\$272.05
1007	0.3323	\$272.05
1008	0.3323	\$272.05
1009	0.3323	\$272.05
1010	0.3323	\$272.05
1011	0.3323	\$272.05
1012	0.3323	\$272.05
1100	0.3488	\$285.59
1101	0.3323	\$272.05
1102	0.3531	\$289.15
1103	0.3531	\$289.15
1104	0.3036	\$248.55
1105	0.3323	\$272.05
1106	0.3323	\$272.05
1107	0.3323	\$272.05
1108	0.3323	\$272.05
1109	0.3323	\$272.05
1110	0.3323	\$272.05
1111	0.3323	\$272.05
1112	0.3323	\$272.05
1200	0.3488	\$285.59
1201	0.3323	\$272.05

ROYAL GARDEN AT WAIKIKI

APT. NO.	COMMON INT (%)	ESTIMATED INITIAL MAINTENANCE FEES \$
1202	0.3531	\$289.15
1203	0.3531	\$289.15
1204	0.3036	\$248.55
1205	0.3323	\$272.05
1206	0.3323	\$272.05
1207	0.3323	\$272.05
1208	0.3323	\$272.05
1209	0.3323	\$272.05
1210	0.3323	\$272.05
1211	0.3323	\$272.05
1212	0.3323	\$272.05
1400	0.3488	\$285.59
1401	0.3323	\$272.05
1402	0.3531	\$289.15
1403	0.3531	\$289.15
1404	0.3036	\$248.55
1405	0.3323	\$272.05
1406	0.3323	\$272.05
1407	0.3323	\$272.05
1408	0.3323	\$272.05
1409	0.3323	\$272.05
1410	0.3323	\$272.05
1411	0.3323	\$272.05
1412	0.3323	\$272.05
1500	1.2334	\$1,009.88
1503	0.3531	\$289.15
1504	0.3036	\$248.55
1505	0.3323	\$272.05
1506	0.3323	\$272.05
1507	0.3323	\$272.05
1508	0.3323	\$272.05
1509	0.3323	\$272.05
1510	0.3323	\$272.05
1511	0.3323	\$272.05
1512	0.3323	\$272.05
1600	1.2334	\$1,009.88
1603	0.3531	\$289.15
1604	0.3036	\$248.55
1605	0.3323	\$272.05
1606	0.3323	\$272.05
1607	0.3323	\$272.05
1608	0.3323	\$272.05

ROYAL GARDEN AT WAIKIKI

APT. NO.	COMMON INT (%)	ESTIMATED INITIAL MAINTENANCE FEES \$
1609	0.3323	\$272.05
1610	0.3323	\$272.05
1611	0.3323	\$272.05
1612	0.3323	\$272.05
1700	1.2334	\$1,009.88
1703	0.3531	\$289.15
1704	0.3036	\$248.55
1705	0.3323	\$272.05
1706	0.3323	\$272.05
1707	0.3323	\$272.05
1708	0.3323	\$272.05
1709	0.3323	\$272.05
1710	0.3323	\$272.05
1711	0.3323	\$272.05
1712	0.3323	\$272.05
1800	1.2334	\$1,009.88
1803	0.3531	\$289.15
1804	0.3036	\$248.55
1805	0.3323	\$272.05
1806	0.3323	\$272.05
1807	0.3323	\$272.05
1808	0.3323	\$272.05
1809	0.3323	\$272.05
1810	0.3323	\$272.05
1811	0.3323	\$272.05
1812	0.3323	\$272.05
1900	1.2334	\$1,009.88
1903	0.3531	\$289.15
1904	0.3036	\$248.55
1905	0.3323	\$272.05
1906	0.3323	\$272.05
1907	0.3323	\$272.05
1908	0.3323	\$272.05
1909	0.3323	\$272.05
1910	0.3323	\$272.05
1911	0.3323	\$272.05
1912	0.3323	\$272.05
2000	1.3056	\$1,068.99
2003	0.3575	\$292.71
2004	0.3114	\$254.96
2005	0.3401	\$278.46
2006	0.3401	\$278.46

ROYAL GARDEN AT WAIKIKI

APT. NO.	COMMON INT (%)	ESTIMATED INITIAL MAINTENANCE FEES \$
2007	0.3401	\$278.46
2008	0.3401	\$278.46
2009	0.3401	\$278.46
2010	0.3401	\$278.46
2011	0.3401	\$278.46
2012	0.3401	\$278.46
2100	1.3056	\$1,068.99
2103	0.3575	\$292.71
2104	0.3114	\$254.96
2105	0.3401	\$278.46
2106	0.3401	\$278.46
2107	0.3401	\$278.46
2108	0.3401	\$278.46
2109	0.3401	\$278.46
2110	0.3401	\$278.46
2111	0.3401	\$278.46
2112	0.3401	\$278.46
2200	0.9037	\$739.96
2202	0.7071	\$579.01
2204	0.3114	\$254.96
2205	0.7071	\$579.01
2207	0.7071	\$579.01
2209	0.7071	\$579.01
2211	0.7071	\$579.01
2300	1.2464	\$1,020.56
2303	0.3575	\$292.71
2304	0.3114	\$254.96
2305	0.7071	\$579.01
2307	0.7071	\$579.01
2309	0.7071	\$579.01
2311	0.7071	\$579.01
2400	1.2464	\$1,020.56
2403	0.3575	\$292.71
2404	0.3114	\$254.96
2405	0.7071	\$579.01
2407	0.7071	\$579.01
2409	0.7071	\$579.01
2411	0.7071	\$579.01
2500	1.7413	\$1,425.80
2504	0.3114	\$254.96
2505	0.7071	\$579.01
2507	0.7071	\$579.01

ROYAL GARDEN AT WAIKIKI

APT. NO.	COMMON INT (%)	ESTIMATED INITIAL MAINTENANCE FEES \$
2509	0.7071	\$579.01
2511	0.7071	\$579.01
	100.0000	\$81,880.00

Nichiei U.S.A., Inc., the developer of the Royal Garden at Waikiki condominium project (the "Project"), hereby certifies that the estimated monthly maintenance fee disbursements for the Project and the estimated initial monthly maintenance fees assessable to each apartment in the Project set forth hereinabove in Exhibits A and I were prepared in accordance with generally accepted accounting principles.

Pursuant to §514A-83.6, Hawaii Revised Statutes, 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. Accordingly, Nichiei U.S.A., Inc. has not conducted a reserve study for the Project.

NICHIEI U.S.A., INC.

By   
Name: Eiji Sato  
Title: President

## **EXHIBIT "L"**

### Statement of Condition

The attached Statement Re: Condition of Structural Components and Mechanical and Electrical Installations and Useful Life Estimates was made by Nichiei U.S.A., Inc. dated February 14, 2001 and was done in connection with its original condominium registration of the Royal Garden at Waikiki project with the State of Hawaii. There are numerous qualifications contained in the Statement. Beach Capital, Inc., as the Developer of this Final Public Report, is providing this information for prospective purchasers. However, each purchaser is cautioned that Beach Capital, Inc. has not made any attempt to verify the accuracy of any of the information contained in the Statement, has not determined whether any of the circumstances have changed that would make the Statement inaccurate in any respect, and has not conducted or undertaken any independent inspections of its own. Beach Capital, Inc. was only the purchaser of the 12 units covered by this Final Public Report since December 2003 and as such, has not had the opportunity to determine whether the nature of the disclosures contained in the Statement for each items remains true. Additionally, most of the items described in the Statement relate to the common elements of the Project which Beach Capital, Inc. does not exercise any control over. Each prospective purchaser is encouraged to conduct his or her own inspection of the apartment, building, and all other facilities relating to the use and enjoyment of the Project.

ROYAL GARDEN AT WAIKIKI

STATEMENT RE:  
CONDITION OF STRUCTURAL COMPONENTS  
AND MECHANICAL AND ELECTRICAL INSTALLATIONS  
AND USEFUL LIFE ESTIMATIONS

Nichiei U.S.A., Inc. (the "Developer"), the developer of the Royal Garden at Waikiki condominium project (the "Project"), hereby makes the following statement based on a report prepared by Kai Yajima, A.I.A. regarding the condition of the structural components and mechanical and electrical installations and their expected useful lives. The Developer however, expressly states that these statements of condition and useful life expectancies are only estimations and the actual life expectancies of each item may be shorter than anticipated and therefore, Developer makes no warranties as to the actual life expectancies of each of the items.

NICHIEI U.S.A., INC.

By:   
Name: Eiji Sato  
Title: President

Date: February 14, 2001

Royal Garden Hotel  
Equipment and Apparatus

1.	Carpet Replacement	New 2000 / 5 yrs life
2.	Common Area Furniture	New 2000
3.	A/C System	New 2000 /5 years
4.	Reline Pool	1994 / 30 years life
5.	Elevator Cab Renovation	1990 & 1995 years old.
6.	Entrance Landscaping	good condition / well maintained
7.	Recreation Furniture	1998 / 5 years life
8.	Ext.Paint	1990
9.	Locks &Keys	1994
10.	Water Pump	1992 /10 yrs life / well maintain
11.	Elevators	2000 / New System
12.	Lighting	1990 / 100 yrs life
13.	Resurface Top Deck	well maintain
14.	Heat Booster Pumps	Good condition/ booster new system
15.	Hot Water Tanks	Good Condition /50 yrs life
16.	Exhaust Fan Systems	Good Condition
17.	Exterior Renovations	Good Condition
18.	Fire Door, Frames & Closures	Good Condition /20 yrs life
19.	General Plumbing	Good Condition /20 yrs life
20.	Parking Garage Lighting	Good Condition
21.	Parking Stall Striping	1994 / Good Condition
22.	Pool Bathrooms	1994 / Good Condition
23.	Pool Deck Furniture	1995 / Good Condition
24.	Sauna	1994 Good Condition
25.	Security System	Good Condition
26.	Backup Generator	Good Condition
27.	Chainlink Fence-Perimeter	N/A
28.	Common Area Bathroom	Good Condition
29.	Custodial Equipment PH 2	Good Condition