

## PUBLIC REPORT

Prepared &

Issued by:

Developer KB RESORT LLC, a Delaware limited liability company

Address 75-5801 Alii Drive Suite AU2, Kailua-Kona, Hawaii 96740

Project Name(\*): KAUAI BEACH RESORT

Address: 4331 Kauai Beach Drive, Lihue, Hawaii 96766

Registration No. 5753  
(Conversion)

Effective date: August 31, 2005

Expiration date: September 30, 2006

Preparation of this Report:

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

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

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

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

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

Type of Report:

<input type="checkbox"/>	<b>PRELIMINARY:</b> (yellow)	The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued by the developer when complete information is filed.
<input checked="" type="checkbox"/>	<b>FINAL:</b> (white)	The developer has legally created a condominium and has filed complete information with the Commission. [ X ] No prior reports have been issued. [ ] This report supersedes all prior public reports. [ ] This report must be read together with _____
<input type="checkbox"/>	<b>FIRST SUPPLEMENTARY:</b> (pink)	This report updates information contained in the: [ ] 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 expired on _____

(\*) Exactly as named in the Declaration

This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2643 to submit your request.

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

[ X ] Required and attached to this report as Exhibit H [ ] Not Required - disclosures covered in this report.

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

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

[ X ] No prior reports have been issued by the developer.

[ ] Changes made are as follows:

**SPECIAL ATTENTION**

THE DEVELOPER HAS DISCLOSED THAT THE APARTMENTS IN THE PROJECT WILL BE OFFERED AND SOLD **WITHOUT WARRANTIES** FROM THE DEVELOPER AS TO THE HABITABILITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR USE OR PURPOSE, WORKMANSHIP, MATERIALS, OR DEFECTS OF ANY KIND AND WITHOUT ANY OTHER EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE APARTMENT AND ANY FURNISHINGS, FIXTURES OR APPLIANCES IN AN APARTMENT, THE PROJECT OR ANY OF THE COMMON ELEMENTS OR LIMITED COMMON ELEMENTS. EACH APARTMENT SHALL BE SOLD BY THE DEVELOPER AND ACCEPTED BY THE PURCHASER STRICTLY IN "**AS IS**" CONDITION AS OF THE DATE OF CLOSING. NO REPRESENTATIONS OF ANY KIND ARE MADE ABOUT INCOME POTENTIAL OR FINANCIAL BENEFITS FROM OWNERSHIP.

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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. These 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 for 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 a spirit of cooperation.

## I. PERSONS CONNECTED WITH THE PROJECT

Developer: KB RESORT LLC Delaware limited liability company Phone: (800) 326-1540  
Name\* (Business)  
75-5801 Alii Drive Suite AU2  
Business Address  
Kailua-Kona, Hawaii 96740

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):

Managers: Brian A. Anderson  
Carrie L. Tillman

Member KB RESORT I LLC Delaware limited liability company

Real Estate Brokers\*: Carey Chamberlain Phone: (808) 651-8279  
Name (Business)  
440 Aleka Place  
Business Address  
Kapaa, Kauai, Hawaii 96746

Escrow\* Title Guaranty Escrow Services, Inc. Phone: (808) 521-0210  
(attention: Teresa Widmer) (Business)  
Name  
235 Queen St.  
Business Address  
Honolulu, Hawaii 96813

General Contractor Not Applicable (conversion) Phone  
Name (Business)  
Business Address  
(Construction completed 1970)

Condominium Managing Agent Hawaiiana Management Company, Ltd. Phone  
Name (Business)  
711 Kapiolani Boulevard, Suite 700  
Business Address  
Honolulu, Hawaii 96813

Attorney for Developer Cades Schutte Phone (808) 521-9200  
A Limited Liability Law Partnership LLP (Business)  
Attn: Bernice Littman or Scott T. Miyasato  
Suite 1200, 1000 Bishop Street  
Honolulu, Hawaii 96813  
Business Address

\*For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company, (LLC)

## 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. 2005-148104

Book \_\_\_\_\_ Page \_\_\_\_\_

☐ Filed - Land Court: Document No:

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

B. **Condominium Map (File Plan)** shows the floor plans, 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. 4039

☐ Filed - Land Court Condo Map No.

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

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 matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

☐ Proposed

☒ Recorded - Bureau of Conveyances: Document No. 2005-148105

Book \_\_\_\_\_ Page \_\_\_\_\_

☐ Filed - Land Court: Document No.

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:

☒ [ X ] Proposed      ☐ [ ] Adopted      ☐ [ ] Developer does not plan to adopt House Rules.  
See Exhibit H for further information

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%*	75%
Bylaws	65%	65%
House Rules	---	NA

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

2. **Developer:**

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

☒ [ x ] Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules:

See attached Exhibit "A"

### 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-Annually                      ☐ 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 specific 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-Annually                      ☐ 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 periods 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 the fee simple owner of the land in order to develop the project. The developer may have then entered into a 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: 4331 Kauai Beach Drive Tax Map Key (TMK): (4) 3-7-003-015  
Lihue, Kauai, Hawaii 96766

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

Land Area: 11.983 ☐ square feet ☐ acre(s) Zoning: Resort RR-20

Fee Owner: KB RESORT LLC  
 Name  
75-5801 Alii Drive Suite AU2, 96740  
 Address  
Kailua-Kona, Hawaii 96740

Lessor: N/A  
 Name  
 Address

C. **Building and Other Improvements:**

1. ☐ New Building(s).  
☒ Conversion of Existing Building(s)  
☐ Both New Building(s) and Conversion
2. Number of Buildings: 4 main buildings Floors Per Building: Main buildings  
 1 two floor, 2 three floor and 1 four floor  
☒ Exhibit "B" contains further explanations.
3. Principal Construction Material:  
☒ Concrete ☐ Hollow Tile ☐ Wood  
☒ Other: Steel
4. Uses Permitted by Zoning:

	No. of Apts.	<u>Use Permitted By Zoning</u>	
<input type="checkbox"/> Residential		<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Commercial	<u>15</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm		<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Hotel		<input type="checkbox"/> Yes	<input 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 checked="" type="checkbox"/> Other (Resort)	<u>349</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

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: None except as required by accessibility laws.

☐ Number of Occupants: \_\_\_\_\_

☒ Other: No rental pooling until Project sold. Restrictions to preserve hotel use See Exhibit "H".

☐ There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 7 Stairways: 7 Trash Chutes: 3

<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>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total Apartments: 364

See Exhibit "C"

**\*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:

See Exhibit "D"

Permitted Alterations to Apartments:

See Exhibit "E"

Apartments Designated for Owner-Occupants Only:

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, Hawaii Revised Statutes; or include the information here in this public report and in the announcement (see attachment 11a).

[X] Developer has not elected to provide the information in a published announcement or advertisement because of the Project's intended resort use and zoning.

7. Parking Stalls:

Total Parking Stalls: 263

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		TOTAL
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned (for each unit)	<u>0</u>	<u>263</u>		0	0	0	<u>263</u>
Guest		<u>0</u>	0	0	0	0	<u>0</u>
Unassigned	<u>0</u>	0	0	0	0	0	
Extra for Purchase	0	0	0	0	0	0	
Other:	0	0	0	0	0	0	
Total Covered & Open	<u>263</u>		<u>0</u>		<u>0</u>		<u>263</u>

Each apartment will have the exclusive use of at least 0 parking stall(s)\*.

Buyers are encouraged to find out which stall(s) will be available for their use.

All 263 Parking Stalls are appurtenant to Apartment 15, one of the Commercial Apartments

☐ Commercial parking garage permitted in condominium project.

☒ Exhibit H contains additional information on parking stalls for this condominium project.

\* The apartments are designated to hotel use pursuant to Section 10 of the Declaration (Exhibit H, Section 4, Subsection 3)

8. Recreational and Other Common Facilities:

☐ There are no recreational or common facilities.

☒ Swimming pool      ☒ Storage Area      ☐ Recreation Area (Building)

☒ Laundry Area\*\*      ☐ Tennis Court      ☒ Trash Chute/Enclosure(s)\*\*\*  
(Trash rooms)

☒ Other Ponds, Lagoons and a Spa

\*\* The laundry room is a limited common element to the Front Desk Apartment (Commercial Apartment 10). Also, Commercial Apartment 3 is currently used as a guest laundry, but is not a common element or limited common element.

\*\*\*The trash chutes are appurtenant to Commercial Apartment 10.

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 \_\_\_\_\_  
(Date)

10. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations (For conversions of residential apartments in existence for at least five years):

Not applicable. The Project is located in County-zoned/designated resort area.

11. Conformance to Present Zoning Code:

- a. ☐ No variances to zoning code have been granted.  
☒ Variance(s) to zoning code was/were granted as follows:

The County letter dated November 23, 2004 lists the Special Management Area permit and variances and is attached as Exhibit J.

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	<u>          x          </u>	<u>                          </u>	<u>                          </u>
Structures	<u>          x*          </u>	<u>                          </u>	<u>                          </u>
Lot	<u>          x*          </u>	<u>                          </u>	<u>                          </u>

\*To Developer's knowledge but see page 20 . Additional information.

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.

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 "F"  
☐ as follows:

2. Limited Common Elements: Limited 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 "C"

☐ 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 July 26, 2005 issued by Title Guaranty of Hawaii, Incorporated.

#### 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 specified 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.

#### Type of Lien

#### Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed **Prior to Conveyance**

#### Mortgage

Developer's interest in the Project is subject to a mortgage in the principal sum of \$50,000,000. If the Developer defaults under the mortgage then the lender may foreclose on the property and the lender may not be willing to honor the sales contracts for the Apartments. In that case the apartment buyers deposits will be returned by escrow less escrow's cancellation fee. Developer has made arrangements with the lender for partial releases of the mortgage to facilitate closing of the sale of apartments provided that Developer is not in default and is able to meet the conditions for partial release.

#### 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:

Construction of the project was completed nearly 20 years ago by a prior unrelated owner and renovated by another prior unrelated owner. The current developer has begun to make certain repairs and renovations to the buildings but makes no representations, warranties or other promises about those repairs and the project is being sold strictly in its "as is" condition as of the date of closing. The Developer makes no representations, warranties or other promises whatsoever, express or implied, as to the condition of the apartments, common elements or any improvements comprising part of the project, as to the habitability or merchantability of any apartment or the project, or as to the fitness of the apartments, the common elements and the project for any particular use or purpose. The Developer will assign to purchasers at closing any assignable warranty (if any) with respect to purchaser's apartment that is given by any repairing/renovation contractor .

##### 2. Appliances:

The Developer makes no warranties whatsoever as to any appliances, fixtures or furnishings conveyed together with an apartment or otherwise used or owned in common by the association or apartment owners of the project. If any new furniture, fixtures or appliances are installed by Developer the Developer will assign warranties given by the manufacturer to the extent assignable but Developer makes no representations that any such warranties will be assignable.

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

The project was completed in or about 1986 and renovated in or about 2000.

H. **Project Phases:**

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

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



#### 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:**

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, a lien may be placed on your apartment and the apartment may be 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 "H" 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 Refuse, hot water

\* The cost of all the above utility services shall be a Common Expense for collection purposes, but shall be allocated as set forth in Section 7.13 of the Bylaws. The cost of any utility service to any Commercial Apartment which is separately metered or check metered shall be payable by such Commercial Owner, payable directly to the utility company if a separate bill is rendered, or otherwise added to his share of Common Expenses. Utilities allocated to the Resort Apartments will be added to their share of Common Expenses and allocated among them in accordance with their respective Common Interests.

Note: Telephone and internet service will be appurtenant to Commercial Apartment 10.

## 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 "I" contains a summary of the pertinent provisions of the sales contract.
- ☒ Escrow Agreement dated July 29, 2005  
Exhibit "I" contains a summary of the pertinent provisions of the escrow agreement.
- ☐ Other \_\_\_\_\_

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

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer 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 laws: [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. 5753 filed with the Real Estate Commission  
On July 29, 2005.

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C. **Additional Information Not Covered Above:**

**ADDITIONAL DISCLOSURES CONCERNING THE PROJECT**

1. **Master Planned Community.** The Project is a part of a master planned community which includes the existing 150-unit Kauai Beach Villas condominium project to the north and a vacant, 34-acre undeveloped land parcel to the south. The community is part of the Kauai Beach Resort Association (the "Master Association"), which was formed to maintain the common facilities of the master community, which include roadways, beach access and a sewage treatment plant.

2. **Master Declaration.** The Project is subject to the covenants and restrictions set forth in that certain Kauai Beach Resort Amendment and Restatement of Declaration of Covenants and Restrictions, dated April 7, 2004, filed in the Bureau as Document No. 2004-072202, as now or hereafter amended (the "Master Declaration"), and all rules and regulations promulgated under the Master Declaration. By acquiring an interest in the Project, each Owner agrees to observe and comply with all covenants, conditions, restrictions and other requirements to which the Project is subject under the Master Declaration. The Master Declaration requires each Apartment Owner in the Project to be a member of the Master Association and to pay fees to the Master Association that are secured by liens on the individual Apartments. The Apartment Owners will exercise their membership rights in the Master Association through the condominium Association, so for example the condominium Association will appoint the Project's representative on the Master Association Board of Directors and the Master Association will bill the Apartments in the Project through the condominium Association which will collect the Master Association fees from the Apartment Owners.

3. **Changes in Codes.** Since the project was completed in or about 1986 many changes have been made to the zoning, building and other construction codes. If the project were destroyed or significantly damaged by a casualty any rebuilding would have to conform to current codes unless variances could be obtained.

4. **Structural Report.** The Developer received a structural report which included the following information:

- a. The building is generally in fair structural condition considering it is a 20-plus year old facility.
- b. Concrete cracking and spalling observed at the lanai slab edges.
- c. Strengthening of the typical exterior roof eave soffit.
- d. Replacement of wood bridge decking.

A copy of the report is attached to the Disclosure Abstract, but because of the limited nature of the observations, it may not be complete.

5. While the Developer plans to undertake certain repairs it does not make any representations as to the adequacy or completeness of the repairs or that they will address all deficiencies noted in the property reports or fully address deficiencies. Prospective purchaser should take into account that the Project is almost twenty years old and even after renovations will not be new buildings.

6. **ADA Report and Schedule.** Some barriers for persons with disabilities were identified by the barrier removal study. Accessible Resort Apartments are numbers 1106, 1108, 1112, 1117, 1123, 1127, 3101, 3102, 3103, 3104, 3128 and 3131. The developer will adopt a barrier removal plan that the Developer will implement while it holds apartments in the Project and operates them as a public accommodation. The Association may be responsible for the removal of architectural barriers in the common areas, to the extent readily achievable or if triggered by renovations. Purchasers who plan to use their apartments as rentals or public accommodations should consult their own advisers about their obligations under disabilities laws.

7. **Conveyance of Commercial Apartments to AOA subject to Leases.** The Project contains fifteen (15) commercial apartments, including restaurant, laundry, front desk, retail and other facilities. In order to provide the Association with income to reduce maintenance fees, the Seller intends, subject to the release of any security interest of any mortgage, security agreement or other instrument in favor of Seller's Lender, to convey certain commercial apartments to the Association. Prior to conveyance of the commercial apartments, the seller intends to enter into a Commercial Apartment Lease and Management Agreement (the "Contributed Apartment Lease") under which the tenant will rent Commercial Apartment 11 which includes certain restaurant and banquet facilities, and will operate Commercial Apartment 15, which is the Parking Apartment, for the account of the Association and provide rental management for Commercial Apartments 1 and 2, which are currently a spa and sales office, respectively, for the account of the Association. The Seller, or its nominee, will also lease from the

Association, Commercial Apartment 8, which is sometimes referred to as the Owners' Lounge but is not limited to that use, in order to provide additional rental income to the Association for the first five (5) years of its operation (the "Owner's Lounge Lease"). The Buyer understands that after expiration of the Owner's Lounge Lease it is highly unlikely that the Association will be able to rent Commercial Apartment 8 for a rent similar to the rent under the Owner's Lounge Lease. Estimates of the Association's income and expenses with respect to the Commercial Apartments to be contributed to the Association, and under the Contributed Apartment Lease and the Owner's Lounge Lease are included in the maintenance fee budget. The Buyer has received a copy of the Contributed Apartment Lease and the Owner's Lounge Lease and consents to the conveyance of Commercial Apartments 1, 2, 11 and 15 to the Association subject to the Lease and Commercial Apartment 8 subject to the Owner's Lounge Lease.

8. Broker Listing Agreement. The Broker Listing Agreement dated July 29, 2005, between KB Resort LLC, as Owner, and Carey Chamberlain, as Broker, is non-exclusive for the offer and sale of the Apartments for the term and upon all of the terms and conditions set forth in the Agreement. The Owner reserves the right to enter into other listing or brokerage agreements with other licensed brokers, and at that time will submit an amended disclosure abstract and copies of the broker listing agreements to the Real Estate Commission.

- D. The developer declares, to the best of its knowledge and based on the compliance letter issued by the County of Kauai and 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-A-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.

KB RESORT LLC, a Delaware limited liability company

Printed Name of Developer

By: 

Duly Authorized Signatory\*

July 28,  
Date

2005

Brian A. Anderson, Its Manager

Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, \_\_\_\_\_ County of Kauai

Planning Department, \_\_\_\_\_ County of Kauai

*\*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: DEVELOPER'S RIGHT TO CHANGE DOCUMENTS AND CERTAIN OTHER RIGHTS

The Developer has reserved certain rights, including the following rights to change the Declaration, Condominium Map, Bylaws, or House Rules:

1. As set forth in Section 8.8 (Developer's Easement for Sales Activities) of the Declaration, the Developer, its agents, employees, contractors, and licensees shall have the right to conduct extensive sales activities in the Project, including the Common Elements and Resort Elements, including the use of model Apartments, sales and management offices, and extensive sales displays and activities, including cocktail parties, dinners and sales events, and placing of signs in elevators, lobbies, entrances and driveways, until the Project Sell-Out Date.
2. As set forth in Section 8.9 (Developer's Easement for Repair and Renovation) of the Declaration, until twenty-four (24) months after the Project Sell-Out Date, Developer, its agents, employees, contractors and licensees shall have an easement over, under and upon the Project or any portion of the Project as may be necessary or useful in the opinion of the Developer for the completion of repairs and renovations to the Project.
3. As set forth in Section 8.10 (Developer's Easement to Create Noise etc.) of the Declaration, Developer, its agents, employees, contractors and licensees shall have an easement over, under and upon the Project or any portion of the Project, to create and cause noise, vibration, dust and other nuisances created by or resulting from any work connected with or incidental to the renovation, repair or sale of any Apartment or other improvements in the Project, and each Apartment owner, lessee, Mortgagee, lien holder or other person with an interest in the Project waives any right, claim or action which such person may have or acquire against Developer, its agents, employees, contractors, licensees, successors and assigns as a result of such activity or activities.
4. As set forth in Section 8.11 (Developer's Rights to Grant Easements) of the Declaration, the Developer reserves the right to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across, or through the Common Elements (including the Limited Common Elements) for any purpose the Developer considers necessary or appropriate in the Developer's sole discretion, which may include, but shall not be limited to, those purposes which are necessary to the operation, care, upkeep, maintenance or repair of any Apartment or the Common Elements or any easements for utilities benefiting the Project or any adjacent property or for any public purpose, including the grant of designated easements over, under, across and through the Land for the pipeline transmission of water and other utilities; and other designated easements; provided, however, that in exercising its rights under this Section, the Developer shall not do anything or permit anything to be done which shall unreasonably interfere with the use of the affected Common or Limited Common Element for its originally intended purpose, unless such action is required to ensure the public health, safety or welfare or to comply with any governmental rule, regulation, law or ordinance. The rights set out in this Section shall continue for a period of twenty-four (24) months following the Project Sell-Out Date. The Developer, by a recorded instrument, may transfer some or all of the rights under this Section to the Association, to be exercised as determined by the Board of Directors.
5. As set forth in Section 8.12 (Easements for Events) of the Declaration, the Developer and, subject to reasonable regulation in the Rules and Regulations, the Front Desk Owner and its respective agents, employees, contractors, and licensees shall have the right and easement to conduct events (such as a manager's cocktail party) in the Common Elements (but not Limited Common Elements) in the lobbies and on the lawns and recreational areas of the Project. The Developer or Front Desk Owner, as the case may be, shall be responsible for any additional cleaning and repairs caused by its exercise of this easement.
6. As set forth in Section 8.17 (Power of Attorney) of the Declaration, to the extent that the joinder or consent of any Apartment Owner may be required in order to confirm, effectuate or exercise any easements or rights granted or reserved to the Developer, or to validate any act or thing done in accordance with such easements, rights and reservations of the Developer, such joinder or consent may be executed and given by the Developer as the attorney-in-fact for, and in the name and stead and on behalf of, such Apartment Owner. Each Apartment Owner, by acquiring or accepting the ownership of an Apartment or any other interest in the Project or any Apartment (i) appoints the Developer as such Owner's attorney-in-fact as aforesaid, such appointment being coupled with an interest and being irrevocable, and (ii) agrees that such Owner shall, promptly upon the Developer's request and for no further consideration, execute, acknowledge and deliver to the Developer such instruments as the Developer may require to evidence or confirm such joinder or consent.
7. As set forth in Section 8.18 (Compliance with Laws) of the Declaration, if the Project is found not to be in compliance with any federal, state or local law in effect at the time of completion of the Project, the Developer shall have the right, at its election, at any time afterwards to enter the Project and make such modifications to the Common Elements as are necessary, in the Developer's judgment, to bring the Project into compliance with the applicable laws. This right shall include, but shall not be limited to, the right to cause noise, dust and other disturbances and nuisances incidental to modifying the Common Elements as required; provided, however, that the Developer or any

party performing such work on behalf of the Developer shall make reasonable efforts to minimize such disturbances and nuisances.

8. As set forth in Section 17.2 (Amendments by Developer) of the Declaration:

a. Before First Conveyance. At any time prior to the first recording of a conveyance or transfer (other than for security) of an Apartment to a person other than Developer, the Developer may amend this Declaration (including all Exhibits), the Bylaws and the Condominium Map in any manner, without the consent or joinder of any Apartment purchaser or any other party, but with the joinder of Developer's Mortgagee.

b. As Built Amendment. Notwithstanding the lease, sale or conveyance of any of the Apartments, the Developer may amend this Declaration (and when applicable, any Exhibits to this Declaration) and the Condominium Map to file the "as-built" verified statement required by Section 514A-12 of the Act (i) so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans previously filed fully and accurately depict the layout, location, Apartment numbers, and the dimensions of the Apartments as built, or (ii) so long as the plans filed with the verified statement involve only minor changes to the layout, location, or dimensions of the Apartments as built or any change in the Apartment number.

c. Amendments Required by Law etc. No matter what else this Declaration says, until the Project Sell-Out Date, the Developer shall have the right (but not the obligation) to amend this Declaration and the Bylaws (and the Condominium Map, if appropriate) without the consent or joinder of any Apartment owner, lienholder except Developer's Mortgagee, or other person or entity, for the purpose of meeting any requirement imposed by (i) any applicable law, (ii) the Real Estate Commission of the State of Hawaii, (iii) any title insurance company issuing a title insurance policy on the Project or any of the Apartments, (iv) any institutional lender lending funds on the security of the Project or any of the Apartments, or (v) any other governmental or quasi-governmental agency including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development or the Veterans Administration. However, no amendment which would change the Common Interest appurtenant to an Apartment or materially change the design, location or size of an Apartment shall be made without the consent of all persons having an interest in such Apartment and Developer can not use its power of attorney under Section 20.1 of the Declaration to grant itself that consent. Any amendment under this Section shall require the joinder of Developer's Mortgagee.

Each and every party holding or acquiring an interest in the Project, by joining in the Declaration or by such acquisition, consents to the amendments described in this Section and agrees to execute and deliver such documents and instruments and do such other things as may be necessary or convenient to effect the same.

10. As set forth in Section 17.3 (Subdivision And Consolidation Of Apartments) of the Declaration:

a. Subdivision.

(i) The Developer with respect to any Apartment owned by the Developer; the Developer together with an Apartment Owner with respect to any Apartment owned by such Apartment Owner; or any Commercial Owner with respect to any Commercial Apartment owned by such Commercial Owner (subject to Section 17.3.4 of the Declaration); can amend the Declaration without the joinder of any other Apartment Owner to do any or all of the following:

(a) Subdivide the Apartment to create two or more Apartments;

(b) Designate which Limited Common Elements of the subdivided Apartment will be appurtenant to the Apartments resulting from the subdivision.

(c) Change parts of the existing Apartment to Limited Common Elements appurtenant to one or more of the Apartments resulting from the subdivision.

(d) Change parts of the Limited Common Elements appurtenant only to the subdivided Apartment into parts of one or more of the Apartments resulting from the subdivision.

(ii) If the subdivided Apartment is the Front Desk Apartment the Owner must designate which resulting Apartment must comply with Section 10.4 of the Declaration and provide front desk service.



(iii) The Common Interest that was appurtenant to the subdivided Apartment will be divided among the Apartments resulting from the subdivision according to the ratio of their net living areas. The total of the Common Interests for the newly created Apartments must be equal to the Common Interest of the subdivided Apartment.

b. Consolidation.

(i) The Developer with respect to any Apartment owned by the Developer; the Developer together with an Apartment Owner with respect to any Apartment owned by such Apartment Owner; or any Commercial Owner with respect to any Commercial Apartment owned by such Commercial Owner (subject to Section 17.3.4 of the Declaration), can amend the Declaration without the approval of any other Apartment Owner to do either or both of the following:

(a) Consolidate the Apartments into a single Apartment;

(b) Make any Common Element walls between the Apartments part of the Apartment or its Limited Common Elements. This does not apply, however, to load-bearing walls;

(ii) The Common Interest of the newly created Apartment will be equal to the sum of the Common Interests of the Apartments being consolidated.

c. Consolidation and Resubdivision. The rights provided in Section 17.3.1 and Section 17.3.2 of the Declaration can be used in combination to consolidate and resubdivide Apartments in a single amendment.

d. Board Approval. Any Commercial Owner except Developer shall require the consent of the Board, which shall not be unreasonably withheld or delayed, to an amendment consolidating or subdividing or both.

11. As set forth in Section 17.6 (Developer's Rights to Amend in Connection with the Redevelopment Area) of the Declaration, the Developer shall have the right to amend the Declaration and Condominium Map without the joinder of any other Apartment Owner to the extent necessary or useful to exercise Developer's rights under Section 19.8 of the Declaration.

## EXHIBIT B: DESCRIPTION OF BUILDINGS

The Project is described in the Condominium Map and consists of four (4) main connected buildings in which are located the Resort Apartments and most of the Commercial Apartments including the Front Desk Apartment. "Building 1" has three (3) floors (first, second and third) and connects to "Building 2" which has a partial basement and four (4) floors (first, which is two stories high, third, fourth and fifth) and in turn connects to "Building 3" which has three (3) floors (first, second and third) and connects to "Building 4" which has two (2) floors (first and second). The Buildings are constructed principally of steel and concrete. The Project also contains a parking lot with two hundred and sixty-three (263) parking stalls. The recreational facilities include pools, ponds and a spa. There are two buildings between the pools one of which contains two Commercial Apartments, Limited Common Elements and Common Element restrooms and the other is a Limited Common Element. There is a separate Common Element building for pool equipment.

## Types of Resort Apartment

### COMMERCIAL APARTMENTS

The descriptions in brackets do not limit the use of the apartment but are the current uses and are included in this list only for identification. The Total Area is listed on CPR1 of the Condominium Map as the "Area" of the Apartments with appurtenant lanais.

Sheet No.	Com. Apt No.	Net Living Area in sq. feet	Limited Common Element Lanai Area in sq. feet	Total Area in sq. feet	Weighted Net Living Area	Common Interest %	Description [current use]
CPR5	1	1908	147	2055	457	0.378000	A Commercial Apartment with six (6) rooms, an outdoor lanai, and a men's and women's restroom. [Spa and fitness center]
CPR5	2	2293	387	2680	596	0.492900	A Commercial Apartment with six rooms and an outdoor lanai. [Sales room]
CPR5	3	316			316	0.261500	A Commercial Apartment with one (1) room and a bathroom [Guest Laundry]
CPR6	4	96			96	0.079600	A Commercial Apartment with no walls. [Desk]
CPR6	5	128			128	0.105900	A Commercial Apartment with no walls. [Future Desk Site]
CPR6	6	112			112	0.092700	A Commercial Apartment with no walls. [Future Desk Site]
CPR6	7	245			245	0.202800	A Commercial Apartment with one (1) room. [Retail Comm.]
CPR6	8	578			578	0.478400	A Commercial Apartment with one (1) room. [Owner's Lounge]
CPR6	9	351			351	0.290500	A Commercial Apartment with one (1) room. [Concierge]
CPR6	10	884			442	0.365800	A Commercial Apartment with two (2) rooms. [Front Desk]
CPR6	11	2178	291	2469	1,235	1.021800	A Commercial Apartment with one (1) room and an outdoor lanai. [Lobby Bar]
CPR6	12	2089			2,089	1.729000	A Commercial Apartment with two (2) rooms. [Retail]
CPR16	13	165			165	0.136600	A Commercial Apartment with one (1) room. [Pool Activity Rental]
CPR16	14	156			78	0.064600	A Commercial Apartment with one (1) room. [Snack Bar]
CPR 9	15	53			53	0.043900	A Commercial Apartment with one room [Parking Apartment]
Sub total						5.7440	

### EXHIBIT "C"

The Common Interests were calculated based on the relative square footage of Net Living Areas of the Resort Apartments and weighted Net Living Areas for the Commercial Apartments. The weighted Net Living Areas of certain Commercial Apartments were discounted because the Developer considers them to have a lower value per square foot or a lesser need to use the Common Elements.

The aggregate Common Interests of the Commercial Apartments is 5.7440%.

In the event that the Developer exercises its right to develop additional Commercial Apartments within the "Area of Reserved Rights to Developer" it shall reallocate the aggregate Common Interests appurtenant to the Commercial Apartments so that each shall have a percentage determined as follows:

The additional Commercial Apartments shall have a weighted Net Living Area equal to their actual Net Living Area times a weighting factor which may range from one hundred and fifty (150%) percent to fifteen (15%) per cent, as determined by Developer and set out in the amendment to this Declaration creating such additional Commercial Apartments.

The Common Interest of each Commercial Apartment shall then be adjusted based on that Commercial Apartment's weighted Net Living Area divided by the aggregate weighted Net Living Area of all Commercial Apartments and multiplied by 5.7440%.

## RESORT APARTMENTS

**Types of Resort Apartment:** The Resort Apartment Types, the Net Living Area and Common Interest of each Type and the description of the layout of each Type is listed below and in **Exhibit "C"** of the Declaration.

Drawing No	Type (Number of Apartments)	Net Living Area square feet	Description	Common Interest %	Aggregate %
CPR17	A (291)	320	Studio unit consisting of a living/sleeping room with bathroom.	0.264853	77.072223
CPR17	B (40)	307	Studio unit consisting of a living/sleeping room with bathroom.	0.254092	10.163680
CPR18	C (5)	360	Studio unit consisting of a living/sleeping room with bathroom.	0.297960	1.489800
CPR18	D (5)	311	Studio unit consisting of a living/sleeping room with bathroom.	0.257400	1.287000
CPR18	E (2)	655	One bedroom unit consisting of a living room, wetbar, bedroom and bathroom.	0.542100	1.084200
CPR18	F (2)	655	One bedroom unit consisting of a living room, wetbar, bedroom and one and a half (1½) bathrooms.	0.542100	1.084200
CPR18	G (2)	627	Studio unit consisting of a living/sleeping room, wetbar, and bathroom.	0.518950	1.037900
CPR18	H (1)	619	Studio unit consisting of a living/sleeping room, wetbar, and bathroom.	0.512298	0.512298
CPR18	I (1)	634	Studio unit consisting of a living/sleeping room with bathroom.	0.524699	0.524699
Subtotal for Resort Apts					94.256

The aggregate Common Interests of the Resort Apartments are 94.256% and the aggregate Common Interests are allocated among them based on relative Net Living Area with minor adjustments for rounding.

EXHIBIT C: APARTMENT TYPES, AREAS AND COMMON INTERESTS

Resort Apartment List: The Apartment number, Apartment Type and the area of its Limited Common Element lanai is listed for each Resort Apartment in **Exhibit "C-1"** of the Declaration.

Drawing No.	Apartment No.	Apartment Type	Lanai Area Sq. Ft.
CPR5	1106	A	82
CPR5	1107	A	82
CPR5	1108	A	82
CPR5	1109	A	82
CPR5	1110	A	82
CPR5	1111	A	82
CPR5	1112	A	82
CPR5	1113	A	82
CPR5	1114	A	82
CPR5	1115	A	82
CPR5	1116	A	82
CPR5	1117	A	82
CPR5	1118	A	82
CPR5	1119	A	82
CPR5	1120	A	82
CPR5	1121	A	82
CPR5	1122	A	82
CPR5	1123	A	82
CPR5	1124	A	82
CPR5	1125	A	82
CPR5	1126	A	82
CPR5	1127	A	82
CPR5	1128	A	82
CPR5	1129	A	82
CPR5	1130	A	82
CPR5	1131	C	60
CPR5	1132	B	58
CPR5	1133	B	58
CPR5	1134	B	58
CPR5	1135	D	73
CPR9	1201	A	72
CPR9	1203	A	72
CPR9	1205	A	43
CPR9	1206	A	43
CPR9	1207	A	43
CPR9	1208	A	43
CPR9	1209	A	43
CPR9	1210	A	43
CPR9	1211	A	43
CPR9	1212	A	43
CPR9	1213	A	43
CPR9	1214	A	43
CPR9	1215	A	43
CPR9	1216	A	43
CPR9	1217	A	43

Drawing No.	Apartment No.	Apartment Type	Lanai Area Sq. Ft.
CPR9	1218	A	43
CPR9	1219	A	43
CPR9	1221	A	43
CPR9	1222	E	87
CPR9	1223	A	43
CPR9	1225	A	43
CPR9	1226	F	87
CPR9	1227	A	43
CPR9	1228	A	43
CPR9	1229	A	43
CPR9	1230	A	43
CPR9	1231	C	60
CPR9	1232	B	58
CPR9	1233	B	58
CPR9	1234	B	58
CPR9	1235	D	73
CPR11	1301	A	43
CPR11	1303	A	43
CPR11	1305	A	43
CPR11	1306	A	43
CPR11	1307	A	43
CPR11	1308	A	43
CPR11	1309	A	43
CPR11	1310	A	43
CPR11	1311	A	43
CPR11	1312	A	43
CPR11	1313	A	43
CPR11	1314	A	43
CPR11	1315	A	43
CPR11	1316	A	43
CPR11	1317	A	43
CPR11	1318	A	43
CPR11	1319	A	43
CPR11	1320	A	43
CPR11	1321	A	43
CPR11	1322	A	43
CPR11	1323	A	43
CPR11	1324	A	43
CPR11	1325	A	43
CPR11	1326	A	43
CPR11	1327	A	43
CPR11	1328	A	43
CPR11	1329	A	43
CPR11	1330	A	43
CPR11	1331	C	60
CPR11	1332	B	58
CPR11	1333	B	58
CPR11	1334	B	58

Drawing No.	Apartment No.	Apartment Type	Lanai Area Sq. Ft.
CPR11	1335	D	73
CPR12	2301	A	50
CPR12	2302	B	58
CPR12	2303	A	43
CPR12	2304	B	58
CPR12	2305	A	43
CPR12	2306	B	58
CPR12	2307	A	43
CPR12	2308	B	58
CPR12	2309	A	43
CPR12	2310	B	58
CPR12	2311	A	43
CPR12	2312	B	58
CPR12	2313	A	43
CPR12	2314	B	58
CPR12	2315	A	43
CPR12	2316	B	58
CPR12	2317	A	43
CPR12	2318	B	58
CPR12	2319	A	43
CPR12	2320	B	58
CPR12	2322	B	58
CPR12	2323	A	43
CPR12	2325	A	43
CPR12	2327	A	43
CPR12	2329	A	43
CPR12	2330	A	43
CPR12	2331	A	43
CPR12	2332	A	43
CPR12	2333	A	43
CPR12	2334	A	43
CPR12	2335	A	43
CPR12	2336	A	43
CPR12	2337	A	43
CPR12	2338	A	43
CPR12	2339	A	43
CPR12	2340	A	43
CPR12	2341	A	43
CPR12	2342	A	43
CPR12	2343	A	43
CPR12	2344	A	43
CPR12	2345	A	43
CPR12	2346	A	43
CPR12	2347	A	43
CPR12	2348	A	50
CPR12	2349	A	50
CPR14	2401	A	50



Drawing No.	Apartment No.	Apartment Type	Lanai Area Sq. Ft.
CPR14	2402	B	58
CPR14	2403	A	43
CPR14	2404	B	58
CPR14	2405	A	43
CPR14	2406	B	58
CPR14	2407	A	43
CPR14	2408	B	58
CPR14	2409	A	43
CPR14	2410	B	58
CPR14	2411	A	43
CPR14	2412	B	58
CPR14	2413	A	43
CPR14	2414	B	58
CPR14	2415	A	43
CPR14	2416	B	58
CPR14	2417	A	43
CPR14	2418	B	58
CPR14	2419	A	43
CPR14	2420	B	58
CPR14	2422	B	58
CPR14	2423	A	43
CPR14	2425	A	43
CPR14	2427	A	43
CPR14	2429	A	43
CPR14	2430	A	43
CPR14	2431	A	43
CPR14	2432	A	43
CPR14	2433	A	43
CPR14	2434	A	43
CPR14	2435	A	43
CPR14	2436	A	43
CPR14	2437	A	43
CPR14	2438	A	43
CPR14	2439	A	43
CPR14	2440	A	43
CPR14	2441	A	43
CPR14	2442	A	43
CPR14	2443	A	43
CPR14	2444	A	43
CPR14	2445	A	43
CPR14	2446	A	43
CPR14	2447	A	43
CPR14	2448	A	50
CPR14	2449	A	50
CPR15	2501	A	50
CPR15	2502	B	58
CPR15	2503	A	43
CPR15	2504	B	58

EXHIBIT C: APARTMENT TYPES AND BOUNDARIES OF APARTMENTS

Drawing No.	Apartment No.	Apartment Type	Lanai Area Sq. Ft.
CPR15	2505	A	43
CPR15	2506	B	58
CPR15	2507	A	43
CPR15	2508	B	58
CPR15	2509	A	43
CPR15	2510	B	58
CPR15	2511	A	43
CPR15	2512	H	117
CPR15	2513	A	43
CPR15	2515	A	43
CPR15	2516	I	117
CPR15	2517	A	43
CPR15	2519	A	43
CPR15	2520	B	58
CPR15	2522	B	58
CPR15	2523	A	43
CPR15	2525	A	43
CPR15	2527	A	43
CPR15	2529	A	43
CPR15	2530	A	43
CPR15	2531	A	43
CPR15	2532	A	43
CPR15	2533	A	43
CPR15	2534	A	43
CPR15	2535	A	43
CPR15	2536	A	43
CPR15	2537	A	43
CPR15	2538	A	43
CPR15	2539	A	43
CPR15	2540	A	43
CPR15	2541	A	43
CPR15	2542	A	43
CPR15	2543	A	43
CPR15	2544	A	43
CPR15	2545	A	43
CPR15	2546	A	43
CPR15	2547	A	43
CPR15	2548	A	50
CPR15	2549	A	50
CPR8	3101	A	82
CPR8	3102	A	82
CPR8	3103	A	82
CPR8	3104	A	82
CPR8	3105	A	82
CPR8	3106	A	82
CPR8	3107	A	82
CPR8	3108	A	82
CPR8	3109	A	82

Drawing No.	Apartment No.	Apartment Type	Lanai Area Sq. Ft.
CPR8	3110	A	82
CPR8	3111	A	82
CPR8	3112	A	82
CPR8	3113	A	82
CPR8	3114	A	82
CPR8	3115	A	82
CPR8	3116	A	82
CPR8	3117	A	82
CPR8	3118	A	82
CPR8	3119	A	82
CPR8	3120	A	82
CPR8	3121	A	82
CPR8	3122	A	82
CPR8	3123	A	82
CPR8	3124	A	82
CPR8	3125	A	82
CPR8	3126	A	82
CPR8	3127	A	82
CPR8	3128	A	82
CPR8	3129	A	82
CPR8	3130	A	82
CPR8	3131	A	101
CPR8	3132	A	100
CPR10	3201	A	43
CPR10	3202	A	43
CPR10	3203	A	43
CPR10	3204	A	43
CPR10	3205	A	43
CPR10	3206	A	43
CPR10	3207	A	43
CPR10	3208	A	43
CPR10	3209	A	43
CPR10	3210	A	43
CPR10	3211	A	43
CPR10	3212	A	43
CPR10	3213	A	43
CPR10	3214	A	43
CPR10	3215	A	43
CPR10	3216	A	43
CPR10	3217	A	43
CPR10	3218	A	43
CPR10	3219	A	43
CPR10	3220	A	43
CPR10	3221	A	43
CPR10	3222	A	43
CPR10	3223	A	43
CPR10	3225	A	43
CPR10	3226	E	87

EXHIBIT C: APARTMENT TYPES AND BOUNDARIES OF APARTMENTS

Drawing No.	Apartment No.	Apartment Type	Lanai Area Sq. Ft.
CPR10	3227	A	43
CPR10	3228	F	87
CPR10	3229	A	43
CPR10	3231	A	50
CPR10	3232	A	50
CPR13	3301	A	43
CPR13	3302	A	43
CPR13	3303	A	43
CPR13	3304	A	43
CPR13	3305	A	43
CPR13	3306	A	43
CPR13	3307	A	43
CPR13	3308	A	43
CPR13	3309	A	43
CPR13	3310	A	43
CPR13	3311	A	43
CPR13	3312	A	43
CPR13	3313	A	43
CPR13	3314	A	43
CPR13	3315	A	43
CPR13	3316	A	43
CPR13	3317	A	43
CPR13	3318	A	43
CPR13	3319	A	43
CPR13	3320	A	43
CPR13	3321	A	43
CPR13	3322	A	43
CPR13	3323	A	43
CPR13	3324	A	43
CPR13	3325	A	43
CPR13	3326	A	43
CPR13	3327	A	43
CPR13	3328	A	43
CPR13	3329	A	43
CPR13	3330	A	43
CPR13	3331	A	50
CPR13	3332	A	50
CPR8	4101	A	43
CPR8	4102	A	43
CPR8	4103	A	43
CPR8	4104	A	43
CPR8	4105	A	43
CPR8	4106	A	43
CPR8	4107	A	43
CPR8	4108	A	43
CPR8	4109	A	43
CPR8	4110	A	43

Drawing No.	Apartment No.	Apartment Type	Lanai Area Sq. Ft.
CPR8	4111	D	73
CPR8	4112	G	117
CPR8	4113	B	58
CPR8	4114	C	60
CPR10	4201	A	43
CPR10	4202	A	43
CPR10	4203	A	43
CPR10	4204	A	43
CPR10	4205	A	43
CPR10	4206	A	43
CPR10	4207	A	43
CPR10	4208	A	43
CPR10	4209	A	43
CPR10	4210	A	43
CPR10	4211	D	73
CPR10	4212	G	117
CPR10	4213	B	58
CPR10	4214	C	60

Due to the variation in lanai area for Apartment Type A, a description of the lanai area for Apartment Type A is also shown on the Condominium Map.

## EXHIBIT D: BOUNDARIES OF APARTMENTS

1. Resort Apartments. Each Resort Apartment shall be deemed to include: (i) the space that is bounded by the interior undecorated surfaces of its perimeter walls, floors and ceilings, (ii) all the walls and partitions which are not load-bearing within its perimeter walls, (iii) the interior decorated or finished surfaces of all walls, floors and ceilings, including floor coverings, and (iv) all fixtures originally installed in the Resort Apartment and their replacements. The respective Resort Apartments shall not be deemed to include: (a) the interior undecorated or unfinished surfaces of the perimeter walls, the interior load-bearing walls, or the party walls, (b) any doors, door frames and door hardware and locks, windows and window frames along the perimeters (including any connecting doors between Resort Apartments) except any interior decorated or finished surfaces (but access to card keys to open the front door of the Resort Apartment shall be controlled as provided in Section 10.4.2 of the Declaration). (b) the undecorated or unfinished surfaces of the floors and ceilings surrounding each Resort Apartment, (c) the lanais adjacent to the Resort Apartments and (c) any pipes, shafts, wires, conduits or other utility or services lines running through such Resort Apartment which are utilized for or serve more than one Apartment, the same being considered Common Elements.

### 2. Commercial Apartments.

(a) Each Commercial Apartment shall be deemed to include: (i) the space that is bounded by the interior undecorated surfaces of its perimeter walls, floors and ceilings, (ii) all the walls and partitions which are not load-bearing within its perimeter walls (iii) any doors, door frames and door hardware and locks, windows and window frames along the perimeters and (iv) the interior decorated or finished surfaces of all walls, floors and ceilings, including floor coverings. The respective Commercial Apartments shall not be deemed to include: (A) the undecorated or unfinished surfaces of the perimeter walls, the interior load-bearing walls, or the party walls (b) the undecorated or unfinished surfaces of the floors and ceilings surrounding each Commercial Apartment, (c) any lanais adjacent to the Commercial Apartments and (c) any pipes, shafts, wires, conduits or other utility or services lines running through such Commercial Apartment which are utilized for or serve more than one Apartment, the same being considered Common Elements.

(b) Where there is no wall or window establishing the boundary of a Commercial Apartment, the boundary of the Commercial Apartment shall be an imaginary plane extending from the floor to the ceiling at the outer boundary of the Apartment as shown on the Condominium Map.

(c) The ceiling boundary of a Commercial Apartment shall be the undecorated underside of the floor/ceiling slab above.

**ALL AREAS ARE APPROXIMATE**

## EXHIBIT E: PERMITTED ALTERATIONS

The Declaration allows the following Alterations in the Project:

**19. Alterations to the Project.** All alterations and other modifications permitted by this **Section 19** shall be performed in compliance with the Resort Standard.

**19.1 Within an Apartment.** Any alterations or additions within an Apartment or a Limited Common Element appurtenant to the Apartment, which do not affect the structural integrity of the Building or the soundness or safety of the Project, or reduce the value of the Project or impair any easement, and complies with the Resort Standard shall require only the approvals provided in **Section 19.3**.

**19.2 Adjacent Apartments.** An Owner owning two or more Apartments, which Apartments are separated only by Common Elements which are walls or doors may alter or remove all or portions of the intervening walls or doors, if the Owner satisfies the following conditions:

**19.2.1** Obtains the prior written approval of the Board which shall not be unreasonably withheld or delayed;

**19.2.2** The structural integrity of the Building or the soundness and safety of the Project are not affected, the value of the Project is not reduced and no easement or hereditament of the Project is impaired;

**19.2.3** The remainder of the Common Element is restored to a finish substantially comparable to the finish of that Common Element prior to the work;

**19.2.4** On the termination of the common ownership of such adjacent Apartments if the intervening walls or door shall have been altered or removed in accordance with this **Section 19.2** each of the Owners of such Apartments shall be obligated to restore the intervening walls or doors to substantially the condition in which they existed before the alteration or removal.

If the adjacent Apartments remain in common ownership, the owner of the adjacent Apartments which have been altered or removed in accordance with this **Section 19.2** may, at any time, restore the intervening walls or doors to substantially the condition in which they existed before the alteration or removal.

**19.3 Additional Consents.** Improvements in accordance with **Sections 19.1** and **19.2** may be undertaken without an amendment to the Declaration or filing of a complete set of floor plans of the Project as so altered. Such improvements, including their plans, which shall be prepared by a licensed architect, shall require the written approval of only the holders of liens affecting such Apartments (if the lien holders require such approval), the Board, and all other Apartment owners directly affected (as conclusively determined by the Board). Apartment owners shall be determined to be directly affected only if such improvements are visible from such Owners' Apartments or increase the transmission of sound or heat to such owners' Apartments or decrease the transmission of light, all as determined by the Board.

**19.4 PROTECTION OF ZONING STATUS.** NO MATTER WHAT ELSE THIS DECLARATION SAYS NO ALTERATION WILL BE PERMITTED THAT WILL CAUSE THE PROJECT TO REQUIRE AN INCREASED NUMBER OF PARKING STALLS OR CAUSE THE PROJECT TO CEASE TO COMPLY WITH THE PROVISIONS OF THE KAUAI ZONING CODE.

**19.5 Front Desk Apartment.** In addition to the rights provided by **Section 19.1** and **19.2**, the Front Desk Owner may from time to time install, maintain, move or rearrange the reception desk, nonloadbearing partitions, and other nonstructural improvements within the Front Desk Apartment and the Front Desk Elements and such improvements shall not be considered an alteration or addition to the Front Desk Apartment or the Front Desk Elements but if the Front Desk Owner is not the Developer, then the Developer's prior written approval of the plans will be required until the Project Sell-Out Date.

**19.6 Other Commercial Apartments.** In addition to the rights provided by **Section 19.1** and **19.2**, any other Commercial Owner may from time to time install, maintain, move or rearrange, nonloadbearing partitions, and other nonstructural improvements within the Commercial Apartment or Common Elements and such improvements shall not be considered an alteration or addition to the Commercial Apartment or Common Elements but if the Commercial Owner is not the Developer, then the Developer's approval of the plans will be required until the Project Sell-Out Date.

**19.7 Developer's Alteration Rights.** Developer reserves the right to make any alterations to any Apartment owned by Developer or any Limited Common Element appurtenant only to Apartments owned by Developer without the consent of the Board or any other Apartment Owner.

**19.8 Developer's Rights to Redevelop the Area of Reserved Rights.**

**19.8.1 Extent of Rights.** The Condominium Map on sheet CPR16 shows outlined with dots and dashes an area shown as "Area of Reserved Rights to Developer." The Developer, without the joinder of any other Apartment Owner, shall have the right to redevelop the Area of Reserved Rights as follows:

(a) To install seating within the pool located within the Area of Reserved Rights, for the exclusive use of customers of the Limited Common Element Beach Bar currently appurtenant to Commercial Apartment 14, or any other restaurant or bar located beside the pool and grant an easement to the Owner of such Apartment for service of customers using such seating;

(b) To redevelop the Area of Reserved Rights and add or demolish improvements within the Area of Reserved Rights;

(c) To apply for and obtain any required zoning variance, demolition, building permits and any other required permits and if the signature of the Association or any Commercial Owner is required on any permit application may use its power of attorney under **Section 20.1** to sign on their behalf;

(d) To create one or more Commercial Apartments and appurtenant Limited Common Elements for restaurant purposes;

(e) To reallocate the Common Interests appurtenant to the Commercial Apartments in the Project as described in **Exhibit "B"**.

#### 19.8.2 Limitations of Rights.

(a) If Developer demolishes the whole or any part of:

(i) the Common Element restrooms described in **Section 4.1.4(d)**;

(ii) the Limited Common Element described in **Section 5.5.1(u)**; or

(iii) Commercial Apartment 13;

(iv) Commercial Apartment 14 or its Limited Common Element Beach Bar;

then the Developer shall replace them with facilities of substantially the same area and quality at the same location or a different location within the Area of Reserved Rights.

(b) Developer shall complete any required replacement within twelve (12) months after commencement of demolition and shall complete the entire redevelopment within twenty-four (24) months after commencement of construction.

(c) Developer shall give to the Association and the Owners of Commercial Apartments 11, 13 and 14 at least sixty (60) days written notice of Developer's intent to commence redevelopment.

(d) Redevelopment shall be in accordance with drawings and specifications prepared by a licensed architect and in conformity with all applicable laws and ordinances.

(e) No improvements shall exceed the height of the tallest existing structure in the Area of Reserved Rights and any new Commercial Apartments and their Limited Common Elements shall not exceed five thousand (5,000) square feet in the aggregate of interior area nor two thousand (2,000) square feet in the aggregate of lanai area.

(f) Redevelopment shall not require an increase in the number of parking stalls in the Project.

#### 19.9 Association's Right to Relocate Cooling Towers.

19.9.1 Right to Relocate. The Association shall have the right to be exercised by the Board, without the consent of the Owner of Commercial Apartment 15 or any other Apartment Owner, to relocate one or more of the Common Element cooling towers described in **Section 4.1.4(e)** to the area within Parking Area 2 marked on the Condominium Map Sheet CPR1 and CPR2 as "Designated Area for Future Cooling Tower Relocation".

#### 19.9.2 Limitations on Right.

(a) The Association shall replace all parking stalls displaced by the relocated cooling towers with an equal number of parking stalls of at least equal size, paving, striping and signage;

(b) The Association shall complete the relocation and replacement of parking stalls within ninety (90) days after their displacement.



(c) The Association shall give the Owner of the Commercial Apartment to which the displaced parking stalls are appurtenant at least sixty (60) days written notice of the Association's intent to commence relocation.

(d) No improvements shall exceed the height of the existing cooling tower.

(e) The Association shall use its reserved right to amend the Declaration and Condominium Map provided in **Section 17.5** to designate the area of the replacement parking stalls as a Limited Common Element appurtenant to the Apartment to which the replaced parking stalls were appurtenant and to designate the area of the replacement cooling towers as Common Elements.

19.10 Association's Right to Enter Into License or Reciprocal License Agreements. The Association, with the prior written consent of the Developer and Developer's Mortgagee, if before the Project Sell-Out Date, shall have the right, but not the obligation, to be exercised by the Board, without the consent of any Apartment Owner, to enter into a license agreement or reciprocal license agreement with respect to the Project and any other property subject to the Master Declaration, whereby the Project may use facilities on the other property or such other property may use facilities of the Project. However, if such facilities in the Project include Apartments or Limited Common Elements then such license agreement shall require the consent of the Apartment Owners of such Apartments."

## EXHIBIT F: COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

The Declaration lists the following as Common Elements:

"4. **Common Elements.** One (1) freehold estate is established by this Declaration in the Common Elements, which are all parts of the Project other than the Apartments. The Common Elements include, but are not limited to:

4.1.1 The Land, in fee simple;

4.1.2 The Limited Common Elements described in **Section 5**;

4.1.3 Doors, door frames and door hardware and locks, windows and window frames along the perimeters of the Resort Apartments;

4.1.4 The following facilities shown on the Condominium Map Sheets CPR2, CPR3, CPR4 and CPR16 on the ground level outside the Buildings:

(a) The pools, ponds and spa;

(b) The lagoons and the bridges over them, which are located partly on the Project and partly on the adjacent Kauai Beach Villas condominium project; to the extent they are located within the Project or appurtenant to the land of the Project;

(c) The pool equipment building;

(d) The restrooms shown as "Pool Common Area";

(e) The cooling towers and propane gas tanks;

(f) Emergency generator and fuel storage tank and the structures enclosing them; and

(g) The driveways, entrances and sidewalks.

4.1.5 The following facilities shown on the Condominium map Sheet CPR4 in the basement of Building 2: Women's and Men's Locker Rooms, Trash Room, Security, Sump, Electrical Rooms, Elevator Machine Room, Elevator Pit, Compressor Rooms, Storage, Heating Room, Work Room, Men's Room and Mechanical Rooms.

4.1.6 The vending machine areas shown as follows:

Building	Floor	Condominium Map Sheet
1	First	CPR5
1	Third	CPR11
2	Third	CPR12
2	Fourth	CPR14
2	Fifth	CPR15
3	First	CPR7
3	Second	CPR10
3	Third	CPR12

4.1.7 The Porte Cochere, Upper Lobby, Lower Lobby, Banquet Lobby with Women's and Men's restrooms, and Elevator Lobby shown the Condominium Map Sheet CPR 6 on the first floor of Building 2.

4.1.8 The elevators, stairways and corridors that are not within Apartments.

4.1.9 Whether or not shown on the Condominium Map:

(a) All foundations, columns, girders, beams, supports, perimeter walls, load-bearing walls, roofs, exterior stairs and stairways, pumps, ducts, pipes, wires, conduits, or other utility or service lines located outside of the Apartments and which are utilized for or serve more than one Apartment, and generally all equipment, apparatus, installations and personal property existing for common use in the Buildings or located on the Land;

(b) All pipes, wires, ducts, conduits or other utility or service lines running through an Apartment which are utilized by or serve more than one Apartment; and

(c) All landscaping, fences, gates, retaining walls, trash areas, maintenance structures and facilities and accessory equipment areas, including electrical and mechanical rooms or facilities located on the Land or within any of the buildings and serving more than one Apartment.

4.1.10 All other improvements on the Land which are not part of any Apartment.

5. **Limited Common Elements.** Certain of the Common Elements are set aside and reserved for the exclusive use of certain of the Apartments, and such Apartments shall have appurtenant to them exclusive easements for the use of their Limited Common Elements as follows:

5.1 **Elements for Each Apartment.** Each Apartment shall have appurtenant to it as Limited Common Elements all pipes, wires, ducts, conduits or other utility or service lines located within or running through the Apartment and utilized by or serving only that Apartment.

5.2 **Resort Apartment Lanais.** Each Resort Apartment shall have appurtenant to it as a Limited Common Element the adjacent lanai shown on the Condominium Map.

5.3 **Front Desk Elements.** The following Limited Common Elements are called the Front Desk Elements and are appurtenant to and for the exclusive use of the Front Desk Apartment.

5.3.1 Limited Common Elements marked LCE/FD and further identified on the Condominium Map as follows:

	Building	Floor	Identification	Condominium Map Sheet
	1	First, Second and Third	One space on each floor shown as BOH and the laundry chute between them	CPR5 CPR9 and CPR11
	1	Second	Eight Rooms with reception area shown as Executive Office 1 LCE to Front Desk	CPR9
	1	Second	Three rooms shown as Executive Office 2 LCE to Front Desk	CPR9
	2	Basement	Personnel Offices	CPR4
	2	Basement	Telephone Room LCE to Front Desk	CPR4
	2	Basement	A complex of rooms linked by a corridor shown as Housekeeping, Uniform Issue, Hamper Storage, Laundry Room, Linen Storage, Bulk Storage and House Keeping Storage	CPR4
	2	Basement	Work Shop	CPR4
	2	Basement	Maintenance Office	CPR4
	2	First	One space adjacent to the Front Desk Apartment shown as Utility and Telephones	CPR6
	2	First	One room shown as Bell Capt./Valet	CPR6
	2	Third, Fourth and Fifth	One space on each floor shown as BOH and connected by an empty elevator shaft and a laundry chute.	CPR12, CPR14 and CPR15
	2	Third, Fourth and Fifth	One space on each floor shown as BOH (leading to a Common Element service elevator that is a General Common Element).	CPR12, CPR14 and CPR15

	Building	Floor	Identification	Condominium Map Sheet
	3	First, Second and Third	One space on each floor shown as BOH	CPR7, CPR10 and CPR12

5.3.2 An area for installation of a signage monument, in the location shown on Sheets CPR1 and CPR2 as "Designated Area for Future Signage (LCE to Front Desk)," and not exceeding eight (8) feet in height.

5.3.3 The "Communications System" consisting of conduits, equipment and other installations for providing internet access, phone service, television service and other communications services, now or later installed in the Project.

5.4 Limited Common Element for Apartments 1 and 2. The space on the First floor of Building 1, shown on Condominium Map Sheet CPR5 as Reception/LCE/COM, shall be a Limited Common Element appurtenant to and for the exclusive use of Commercial Apartment 1 and Commercial Apartment 2.

5.5 Limited Common Elements for Commercial Apartment 11. The following Limited Common Elements shall be Limited Common Elements appurtenant to and for the exclusive use of Commercial Apartment 11.

5.5.1 The spaces designated on the Condominium Map as "LCE to Apt. 11" and further described as follows:

	Building	Floor	Identification	Condominium Map Sheet
	2	Basement	General Storage	CPR4
	2	Basement	Food Storage	CPR4
	2	Basement	One room opposite the Food Storage Room	CPR4
	2	First	Ballroom and the space next to the Ballroom	CPR6
	2	First	Prefunction	CPR6
	2	First	Midori Meeting Room	CPR6
	2	First	Orchid Meeting Room	CPR6
	2	First	Banquet Office	CPR6
	2	First	Banquet Set-Up	CPR6
	2	First	Table and Chair Storage	CPR6
	2	First	Banquet Liquor	CPR6
	2	First	Two spaces one marked Banquet Kitchen and the other within the Banquest Kitchen	CPR6
	2	First	Food & Bev. Office	CPR6
	2	First	Food & Beverage	CPR6

	2	First	Room Service	CPR6
	2	First	Freezer	CPR6
	2	First	Chefs Office	CPR6
	2	First	Naupaka Restaurant	CPR7
	2	First	Plumeria Room	CPR7
	2	First	Two spaces one marked Kitchen and an adjacent space providing access to the first space.	CPR7
	Pool Kitchen Building	Ground	One space marked LCE to Apt. 11.	CPR16

DESIGNATIONS SUCH AS ROOM SERVICE ARE SOLELY FOR THE PURPOSES OF IDENTIFYING THE LOCATION OF THE LIMITED COMMON ELEMENTS AND SHALL NOT BE CONSIDERED TO LIMIT THE USES TO WHICH THE LIMITED COMMON ELEMENTS MAY BE PUT. THE OWNER OF APARTMENT 11 SHALL HAVE THE RIGHT TO CHANGE CURRENT AND FUTURE USES, EXCEPT AS PROVIDED IN ANY EXPRESS LIMITATIONS CONTAINED IN THIS DECLARATION.

5.5.2 The concrete lmu pit with rock walls and the polygonal area around it shown on Condominium Map Sheet CPR 16. This Limited Common element includes the concrete lining the pit, the rock walls and any other improvements, equipment or landscaping within the boundary of the polygon.

5.6 Limited Common Elements for Commercial Apartment 14. The building shown as Beach Bar on CPR 16 and the building envelope around it shall be a Limited Common Element appurtenant to Commercial Apartment 14. The building envelope is an imaginary cube the boundaries of which are (a) a horizontal plane immediately above the topmost point of the roof of the Beach Bar building; (b) a horizontal plane immediately below the bottommost point of the foundations of the Beach Bar building, and (c) four vertical planes connecting the horizontal planes and each immediately outside the farthest point of the roof overhang on its side of the Beach Bar building.

5.7 Limited Common Elements for Apartment 15. The following Limited Common Elements shall be Limited Common Elements appurtenant to and for the exclusive use of Commercial Apartment 15.

5.7.1 The area adjacent to the Porte Cochere shown on Condominium Map Sheet CPR6 as Valet Station LCE to Com.Apt. 15, solely for use as a valet station for valet parking. The Valet Station includes an imaginary cube, with the area shown on Sheet CPR6 as the base and rising to a height of ten (10) feet.

5.7.2 The four parking areas Parking Area 1, Parking Area 2, Parking Area 3 and Parking Area 4, marked "LCE to Com.Apt. 15" shown on Condominium Map Sheet CPR1, to be used solely for parking purposes, except that they may be used for occasional events. The Parking Areas shall include the parking lot surface, directional signs, bollards, curbs, any ticket booths and access devices. A portion of Parking Area 2 is subject to relocation as provided in **Section 17.5**.

5.8 Boundaries of Limited Common Elements. Except as provided in this **Section 5** each Limited Common Element shall be deemed to include: (i) the space that is bounded by the interior undecorated surfaces of its perimeter walls, floors and ceilings, (ii) all the walls and partitions which are not load-bearing within its perimeter walls, (iii) the interior decorated or finished surfaces of all walls, floors and ceilings, including floor coverings and (iv) any doors and door frames, windows and window frames along the perimeters. The respective Limited Common Elements shall not be deemed to include: (a) the undecorated or unfinished surfaces of the perimeter walls, the interior load-bearing walls, or the party walls, (b) the undecorated or unfinished surfaces of the floors and ceilings surrounding each Limited Common Element, and (c) any pipes, shafts, wires, conduits or other utility or services lines running through any Limited Common Element which are utilized for or serve more than the Apartment or Apartments to which it is appurtenant or the Limited Common Elements appurtenant to those same Apartments, the same being considered Common Elements.

5.9 Other Limited Common Elements. Any other Common Element of the Project which is rationally related to less than all of the Apartments shall be deemed a Limited Common Element appurtenant to and for the exclusive use of the Apartment or Apartments to which such Common Element is rationally related."

## EXHIBIT F: COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

## EXHIBIT G: ENCUMBRANCES AGAINST TITLE

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Shoreline setbacks: "Shoreline setbacks established pursuant to the laws of the State of Hawaii, or any political subdivision thereof, and any ordinances, rules or regulations adopted or promulgated by any governmental authority pursuant to such laws."
3. Seaward boundary: "Determination of the seaward boundary of the land described herein pursuant to the laws of the State of Hawaii" .
4. Covenants, conditions, restrictions, reservations, agreements, obligations, exceptions and other provisions as contained in the following:

### WARRANTY DEED

Dated: August 8, 1980  
Book: 14918  
Page: 21  
but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons

The foregoing Covenants, Conditions and Restrictions was amended by the following:

Book	Page	Dated
15035	52	08/27/80

5. Covenants, conditions, restrictions, reservations, agreements, obligations, exceptions and other provisions as contained in the following:

### DECLARATION OF CONDITIONS

Dated: June 5, 1980  
Book: 14784  
Page: 751  
but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons

### 6. GRANT

In Favor Of: COUNTY OF KAUAI, a political subdivision of the State of Hawaii  
Dated: undated  
Document No. 2000-152257  
Purpose: granting an easement for shoreline pedestrian access and incidental purposes (A 6-foot wide easement as shown on survey map prepared by Cesar C. Portugal, Registered Professional Land Surveyor, dated December 5, 1979, last revised January 30, 1985)

7. Covenants, conditions, restrictions, reservations, agreements, obligations, exceptions and other provisions as contained in the following:

### DECLARATION OF COVENANTS AND RESTRICTIONS

Dated: May 4, 1981  
Book: 15595  
Page: 650  
but omitting any covenants or restrictions if any, based upon race, color,

religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons

The foregoing Declaration was amended by the following:

Book	Page	Dated
15873	22	10/09/81
20299	263	01/05/87
20299	274	01/05/87

The foregoing Declaration was amended and restated by the following:

Document No.	Dated
2004-072202	04/07/04

8. GRANT

In Favor Of: CITIZENS UTILITIES COMPANY (whose interest is now held by KAUAI ISLAND UTILITY COOPERATIVE) and HAWAIIAN TELEPHONE COMPANY (now known as HAWAIIAN TELCOM, INC.)  
Dated: July 23, 1982  
Book: 18463  
Page: 193  
Purpose: granting an easement for utility and incidental purposes

9. GRANT

In Favor Of: BOARD OF WATER SUPPLY OF THE COUNTY OF KAUAI  
Dated: August 11, 1982  
Document No. 90-184178  
Purpose: granting an easement for waterline and incidental purposes

10. Covenants, conditions, restrictions, reservations, agreements, obligations, exceptions and other provisions as contained in the following:

UNRECORDED ROOFTOP ANTENNA SITE LICENSE AGREEMENT

Licensor: K. H. HOTEL PARTNERSHIP, dba The Outrigger Kauai Beach Hotel  
Licensee: CYBERTEL CORPORATION, d.b.a. AMERITECH CELLULAR SERVICES  
Dated: May 1, 1997  
Term: Five (5) years commencing May 1, 1997 and terminating on April 30, 2002, with option to extend for one (1) successive period of five (5) years

Said Lease demising the following described premises:

A portion of the roof of the Outrigger Kauai Beach Hotel as shown on roof plan attached thereto.

Said License Agreement is subject to any matters arising from or affecting the same.

11. The following item(s), as shown on the survey map prepared by Dennis M. Esaki, Licensed Professional Land Surveyor No. 4383, dated December 2, 2004:

- (a) Concrete curbs and concrete medial strip with hibiscus Planter Boxes cross the boundary of Lot 1-E-1;
- (b) Concrete sidewalk and bridges cross the boundary of Lot 1-D; and
- (c) Lagoon

12. Unrecorded leases affecting certain Commercial Apartments.
13. Condominium Map No. 4039, as the same may be amended and supplemented from time to time.
14. Declaration of Condominium Property Regime Kauai Beach Resort, dated as of July 25, 2005 in the Bureau as Document No. 2005-148104, as the same may be amended from time to time.
15. Bylaws of the Association of Apartment Owners of Kauai Beach Resort, dated as of July 25, 2005 in the Bureau as Document No. 2005-148105, as the same may be amended from time to time.



## DISCLOSURE ABSTRACT

1.
  - (a) **PROJECT:** KAUAI BEACH RESORT  
4331 Kauai Beach Drive  
Lihue, Hawaii 96766
  - (b) **DEVELOPER:** KB Resort LLC,  
a Delaware limited liability company  
75-5801 Alii Drive Suite AU2,  
Kailua-Kona Hawaii 96740  
Telephone: (808) 326-1540
  - (c) **MANAGING AGENT:** Hawaiiana Management Company, Ltd.  
711 Kapiolani Boulevard, Suite 700  
Honolulu, Hawaii 96813  
Telephone: (808) 593-9100
  - (d) **REAL ESTATE AGENT:** Carey Chamberlain  
dba Anekona Realty  
440 Aleka Place  
Kapaa, Kauai, Hawaii 96746  
Telephone: (808) 822-3474

The estimated maintenance fees for 2005 are listed on page 8 and the estimated 2005 budget begins on page 7.

The Developer is not making any warranties relating to the materials and workmanship of the Project or the common elements. Prospective purchaser should take into account that the Project is almost twenty years old. The property reports revealed certain structural issues and mold. While the developer plans to undertake certain repairs it does not make any representations as to the adequacy or completeness of the repairs. Prospective purchaser should take into account that the Project is almost twenty years old and even after renovations will not be new buildings. Portions of reports are attached to this Disclosure Abstract.(See Section titled “Information from studies of the Property”).

## Page 1 of 10

#### 4. USE OF APARTMENTS.

The Project and each of the Apartments are intended for and shall be restricted to the following purposes and uses as provided in Section 10 of the Declaration:

1. Generally. Each Apartment shall be occupied and used only for the uses permitted in the applicable sections of Section 10. An Apartment Owner may rent his Apartment to any third party for any period permitted by this Declaration and by applicable zoning and any rules promulgated under the zoning, provided that the rental agreement is in writing. The Owner shall provide each rental tenant (as distinguished from a transient guest) with a copy of the Rules and Regulations and shall make a copy of the Bylaws, as amended, available for the tenant's review. An Owner who rents his Apartment shall at all times remain primarily and severally liable to all other Apartment Owners and to the Association for any failure on the part of such Owner's tenant(s) to observe and comply with all provisions of this Declaration, the Bylaws, the Rules and Regulations, and all other applicable laws.

2. Resort Standard. In order to maintain the values and amenities of the Project all portions of the Project shall at all times conform to the Resort Standard. The "Resort Standard" means the standard of maintenance, repair, replacement of components, and operation of the Project, including all Common Elements and Limited Common Elements, and Apartments to the extent that an Apartment is open to the public or Resort guests generally or that anything done or kept in the Apartment is perceptible to the senses outside the Apartment, all as more particularly described in the Rules and Regulations.

3. Resort Apartments.

3.1 All Resort Apartments shall be used only as hotel rooms or rooms for long term or transient occupancy.

3.2 No Resort Owner or occupant of a Resort Apartment shall place or maintain in the Apartment any fixture, appliance or device of any kind for heating or cooking food ("**cooking device**"), if Section 514A-14.5 of the Act would on that account require a parking stall to be assigned to the Resort Apartment or if the ordinances of the County would require a higher number of parking stalls in the Project on account of a Resort Apartment containing a cooking device than a Resort Apartment without a cooking device. It is understood the Kauai Zoning Ordinance would currently define a Resort Apartment with a cooking device as a dwelling unit with a higher parking requirement and a Resort Apartment with a cooking device might be considered an apartment for dwelling purposes under 514A-14.5 of the Act. In the event that the Kauai Zoning Ordinance is amended to permit a hotel room or a lodging unit to include any specific cooking device or class of cooking devices, without requiring additional or assigned parking, then the definition of cooking device in this Section 3 shall be deemed to exclude such device or class. Any advertisement or listing of a Resort Apartment for a period of more than thirty (30) days shall specify that the Resort Apartment is not a dwelling unit and contains no kitchen and any rental agreement for a Resort Apartment for a period of more than thirty (30) days shall contain a copy of this Section 3 and shall require the tenant to comply with

#### DISCLOSURE ABSTRACT

it. This Section 3 shall not prevent Resort Owners or occupants from maintaining or replacing any coffee maker provided by Developer for the Resort Apartment, which is not considered a cooking device.

3.3 It is intended that the exterior of the Project present a uniform appearance in compliance with the Resort Standard, and to effect that end:

3.3.1 No drapes, blinds, window treatments or other decoration visible outside the Resort Apartment shall be permitted except in accordance with the Resort Standard.

3.3.2 The use of the lanais of the Resort Apartments for the open storage of boxes, equipment, supplies and materials or the displaying of signs of any sort or kind whatsoever, or the drying or hanging of towels or other laundry is prohibited.

3.3.3 No barbecues, grills or similar devices shall be permitted on the lanais of the Resort Apartments.

3.3.4 No furniture or furnishings, lighting, decoration, carpeting, tile or other floor coverings shall be permitted on the lanais of the Resort Apartments except in conformity with the Resort Standard.

3.4 Because of the importance of maintaining the lawfulness of the Project under the Act and the Kauai Zoning Ordinance, and the importance of maintaining the Resort Standard, in the event that any Resort Owner or occupant of a Resort Apartment breaches any use restriction provided in this Section 3 and does not cure the breach within twenty-four hours after notice from the Board to do so, the Board shall have a right of access to the Resort Apartment to remove the offending fixture, appliance, device, window covering, furniture or other item, and by accepting a deed to the Resort Apartment or taking occupancy of the Apartment all Resort Owners or occupants waive any claim for trespass or otherwise in connection with such entry or removal.

3.5 All maids, cleaners, repairmen, workmen, contractors or other persons providing delivery, cleaning, linen service, maintenance, repair, replacement, construction or similar services to a Resort Apartment shall enter the Project or Buildings and proceed to the Resort Apartment only through the entrances, elevators, stairways and routes, and only during the hours designated for service persons by the Board in the Rules and Regulations, shall use only parking areas so designated and shall comply with any sign-in system adopted by the Board. All such persons shall be licensed, insured and bonded to the extent required by law and shall upon request provide evidence to the Managing Agent of such licensing, insurance or bonding.

#### 4. Front Desk Apartment.

4.1 The Front Desk Apartment shall at all times include a clerk's desk or counter with facilities for registration and keeping of records relating to resort guests. The remainder of the Front Desk Apartment and the Front Desk Elements may be used for any commercial purpose permitted by zoning and other applicable laws provided that such

purpose that such purpose does not cause the Project to require an increase in parking and is compatible with the Resort Standard.

4.2 The Front Desk operator shall at all times arrange for the issuance of card keys for the front doors of all Resort Apartments to control access to the Apartments and shall issue such card keys to Resort Owners.

4.2.1 A Resort Owner shall:

(a) leave the card keys in the custody of the Front Desk operator with instructions to issue the card keys to the Resort Owner or its tenants or other persons permitted by the Resort Owner to occupy the Resort Apartment; and the Resort Owner shall:

(i) Execute an indemnity agreement in a form provided by the Front Desk operator relieving the Front Desk operator and its employees and agents of liability in connection with the card keys except for gross negligence or willful misconduct;

(ii) Provide the Front Desk operator in writing from time to time the names and addresses of the persons to whom the card keys are to be issued and the dates for which they are to be issued; and

(iii) Pay a reasonable fee to the Front Desk operator for this service.

(b) Check in at the Front Desk Apartment whenever the Resort Owner uses the Resort Apartment and check out at the Front Desk Apartment whenever the Resort Owner leaves the Resort Apartment overnight or longer; and require any tenant, guest or other occupant of the Resort Apartment to do so also.

4.2.2 As used in this Section 4.2 "Front Desk operator" means the Front Desk Owner or such tenant or agent of the Front Desk Owner to whom the Front Desk Owner delegates its duties under this Section 4.2.

4.2.3 Card keys shall also be provided to the Association for access to the Resort Apartments and any Limited Common Elements accessed by card keys when such access is permitted by this Declaration, the Bylaws or the Act.

4.2.4 The Front Desk operator may charge a reasonable fee to Resort Owners for issuance of card keys and replacement of lost card keys.

4.3 Other Commercial Apartments. The other Commercial Apartments and Commercial Elements may be used for any retail or other commercial purpose permitted by zoning and other applicable laws provided that such purpose:

4.3.1 does not cause the Project to require an increase in parking;

#### **DISCLOSURE ABSTRACT**

4.3.2 is compatible with the Resort Standard; and

4.3.3 does not breach any exclusive use provided in any current lease of any area of the Project, nor any extension or replacement of such lease with the same or a more limited exclusive use.

5. Time Sharing Prohibited. No Apartment or any interest in the Apartment may be sold, transferred, conveyed, leased, occupied rented or used for or in connection with any time sharing purpose or under any time sharing plan, arrangement or program, including any “use plan” or “ownership plan” as defined by Chapter 514E HRS. The term “time sharing” includes any plan, program or arrangement under which the right to use, occupy, own or possess an apartment or apartments in the project rotates among various persons on a periodically recurring basis according to a fixed or floating interval or period of time (including periods of sixty (60) days or more, sometimes called “fractional ownership” which would not be subject to Chapter 514E HRS but are prohibited by this Section 5) whether by way of deed, lease, association or club membership, license, rental or use agreement, cotenancy agreement, partnership or otherwise, but does not include hotel use or transient vacation rental nor programs for the exchange of use rights between or among apartments or units in different properties.

6. Safety and Soundness. No Owner will suffer anything to be done or kept in an Apartment or elsewhere in the Project which would jeopardize the soundness of the Project, or which will interfere with or unreasonably disturb the rights of other Apartment Owners, or which will increase the rate of the hazard insurance on the Project or the contents of the Project, or which will reduce the value of the Project.

7. Signs etc. The Owner of any Apartment will not, without the prior written consent of the Board of Directors, display any sign in or upon any doors, windows, walls or other portions of the Apartment or the Common Elements so as to be visible from the exterior. However, this restriction shall not apply to signs displayed by the Developer for sales purposes prior to the Project Sell-Out Date nor to signs installed by the Front Desk Owner within its Limited Common Element described in Section 5.3.2 of the Declaration, nor to signs in or on the Commercial Apartments that comply with sign criteria that are part of the Resort Standard.

8. Use of Common Elements. Except as otherwise provided in section 514A-13 of the Act and in the Bylaws, the Common Elements shall be used only for the purposes for which they are designed and intended, provided however that identification of any Common Element in Section 4 of the Declaration or on the Condominium Map by a description of its current use or a description that could be interpreted as limiting the use of the Common Element, for example mechanical room, is only for purpose of identifying the location of the Common Element and shall not be deemed to be the intended use of the Common Element for purposes of Section 514A-13 of the Act. The Common Elements shall at all times be used for purposes compatible with the Resort Standard.

9. Use of Communications System. The Owner of the Commercial Apartment to which the Communications System is appurtenant may use the Communication System to provide to occupants or visitors to the Project, access to the internet or other communications system, local and long distance telephone service, premium television

## **DISCLOSURE ABSTRACT**

service, on demand movies and entertainment. Such Owner may combine one or more of such services, and one or more other services, alone or in cooperation with the owners of other facilities in the Project, in resort service packages to be offered to occupants of Apartments on a nightly or other basis, for such fees and on such terms as such owners may determine in their sole or joint discretion. By arrangement with the Front Desk Owner, such resort services packages may be charged to those occupants who elect to use them in the manner agreed upon between the providers of the services and the Front Desk Owner.

10. Prohibition of Rental Pools. The form of deed contains the following prohibition on rental pools. The Grantee further agrees for the benefit of Grantor, that until the date that all of the apartments in the Project have been conveyed to persons other than Grantor or Grantor's mortgage lender in the Project, Grantee will not enter into any contract or arrangement concerning the rental of the apartment, with a rental manager or anyone else, that provides for any present or future pooling of income from the apartment with income from any apartment or property owned by any other person. Grantee acknowledges that no representations have been made to Grantee concerning the availability of any rental pool arrangement now or in the future.

11. Conveyance of Commercial Apartments to Association. The Project contains fifteen (15) commercial apartments, including restaurant, laundry, front desk, retail and other facilities. In order to provide the Association with income to reduce maintenance fees, the Developer intends, subject to the release of any security interest of any mortgage, security agreement or other instrument in favor of Developer's Lender, to convey certain commercial apartments to the Association as more fully described in Section 5.5 of the Sales Contract and this Public Report. Prior to conveyance of the commercial apartments, the Developer intends to enter into a Commercial Apartment Lease and Management Agreement (the "Contributed Apartment Lease") under which the tenant will rent Commercial Apartment 11 which includes certain restaurant and banquet facilities, and will operate Commercial Apartment 15, which is the Parking Apartment, for the account of the Association and provide rental management for Commercial Apartments 1 and 2, which are currently a spa and sales office, respectively, for the account of the Association. The Developer, or its nominee, will also lease from the Association, Commercial Apartment 8, which is sometimes referred to as the Owners' Lounge but is not limited to that use, in order to provide additional rental income to the Association for the first five (5) years of its operation (the "Owner's Lounge Lease"). After expiration of the Owner's Lounge Lease it is highly unlikely that the Association will be able to rent Commercial Apartment 8 for a rent similar to the rent under the Owner's Lounge Lease. Estimates of the Association's income and expenses with respect to the Commercial Apartments to be contributed to the Association, and under the Contributed Apartment Lease and the Owner's Lounge Lease are included in the maintenance fee budget. Buyers will receive a copy of the Contributed Apartment Lease and the Owner's Lounge Lease and by signing the Sales Contract will consent to the conveyance of Commercial Apartments 1, 2, 11 and 15 to the Association subject to the Lease and Commercial Apartment 8 subject to the Owner's Lounge Lease.

## **DISCLOSURE ABSTRACT**

# ESTIMATED BUDGET FOR THE FIRST YEAR OF OPERATION OF THE ASSOCIATION OF APARTMENT OWNERS OF KAUAI BEACH RESORT

## **CASH RECEIPTS (1)**

	<u>Monthly</u>	<u>Yearly</u>
Maintenance Fees	\$123,188	\$1,478,262
Parking	33,552	402,628
Telephone	6,210	74,520
Commercial Space Rental (2)	48,000	576,000
Resort Use Fee (3)	15,000	180,000
Total Cash Receipts	\$225,951	\$2,711,410

## **CASH DISBURSEMENTS**

### **Utilities and Services (4)**

Cable	4,658	55,896
Refuse	3,113	37,357

### **Salaries**

Maintenance	18,042	216,510
Utility/Cleaning	12,661	151,927
Valet	8,968	107,612
Manager	3,018	36,221

### **Maintenance**

Elevator	1,824	21,888
Pest Control	1,200	14,400
Maintenance, Equipment & Paint Supplies	2,134	25,613
Cleaning Supplies	3,879	46,546
Decorations	183	2,200
Signs	142	1,707
Building & Air Conditioning	4,579	54,952
Contracts	2,384	28,608
Pool Supplies	3,626	43,514
Security	10,952	131,421
Grounds/landscaping	11,196	134,349

### **Utilities**

Electricity	19,474	233,687
Propane	2,506	30,073
Water/Sewer	1,410	16,915

### **Management**

Audit/Tax fees	383	4,600
Legal Fees	200	2,400
Custodial Services	5,208	62,500
Fiscal & Administrative Management	3,417	41,000
Cost of Telephone	4,705	56,456
Reserve Study	150	1,800
Condo Fund	578	6,940

## DISCLOSURE ABSTRACT

Board Expense/Meetings	150	1,800
Uniforms	150	1,800
Taxes-Income	0	0
GET/Other	1,398	16,773
Kauai Beach Resort Association (5)	21,080	252,962
Commercial Apts – allocations (6)	29,560	354,720
Real Property Taxes (7)	4,167	50,004
<b>Insurance (8)</b>		
Insurance	21,522	258,259
<b>Capital Reserves Funding (9)</b>	17,333	208,000
<b>TOTAL DISBURSEMENTS</b>	225,951	2,711,410
Less Misc Income	(102,762)	(1,233,148)
<b>TOTAL MAINTENANCE FEE (Net of Electricity, Propane &amp; Water/Sewer for Apartments)</b>	\$123,188	\$1,478,262
Electricity	69,044	828,527
Propane	13,059	156,713
Water/Sewer	7,238	86,855
<b>TOTAL MAINTENANCE FEES</b>	<u>\$212,530</u>	<u>\$2,550,358</u>

Forecasted budget based on Resort standards and is based on the resort's previous years' experience

(1) The Cash Receipts listed as Parking and Commercial Space Rental will become available to the Association only upon conveyance of Commercial Apartments 1, 2, 8, 11 and 15, which will not occur until the Developer's mortgage loan is repaid. Therefore the Cash Receipts may be lower than projected. In the event that the Developer's mortgage were not repaid and the mortgage were foreclosed the new owner of the Commercial Apartments would not be obliged to convey the Commercial Apartments to the Association and this source of revenue would not become available. Unless and until the Commercial Apartments are conveyed to the Association, the Association expenses will be reduced by the expenses associated with the Commercial Apartments such as property taxes. Until Commercial Apartments 1, 2, 8, 11 and 15 are contributed to the Association, the Developer will pay a subsidy to the Association equal to the lower of: (1) the net income it would have received from those Commercial Apartments, during the period from first conveyance of a Resort Apartment to a third party purchaser to the date of conveyance of such Commercial Apartments or (2) any shortfall in the Association's operating budget (Cash Receipts minus operating expenses) for that period

(2) Spa and sales office leased to third parties and Owner's Lounge Lease. .

(3) The Cash Receipts listed as Resort Use Fee are subject to the agreement of the Apartment Owners Association and Vacation Owners Associations of the Kauai Beach Villas condominium project and Developer makes no representation that the negotiations with those associations will be successful.

(4) Electricity, Propane & water/sewer allocation based on Pacific Energy Services study.

(5) The property is a member of the Kauai Beach Resorts Association and is obligated to contribute its proportionate share of the KBRA operating costs.

(6) Various commercial areas benefit the AOA as an amenity and allocations are best estimates of those benefits to the AOA

(7) Real property taxes for areas owned by the AOA based on \$160,000 annually and pro rated as a percentage of total square feet

(8) Insurance estimates based on current Operating Costs.

(9) Per Reserve Study by Armstrong Consulting, Inc. dated 1/3/05

## **DISCLOSURE ABSTRACT**



# AOAO KAUAI BEACH RESORT

Unit Allocations  
7/28/05

	MONTHLY	ANNUAL	COMMON APTS	HOTEL APTS	Common Areas	Common Area % of Annual Total	Annual Total
Electricity	\$ 88,518	\$ 1,062,215	\$ 544,918	\$ 283,611	\$ 213,687	22%	3,103,494 kWh elec
Propane	\$ 15,266	\$ 186,786	\$ 110,161	\$ 46,582	\$ 30,073	16%	62,042 Propane
Water/Sewer	\$ 8,848	\$ 106,170	\$ 27,006	\$ 59,796	\$ 16,915	100%	38,318,000 GAL
TOTALS	\$ 212,630	\$ 1,352,771	\$ 682,134	\$ 399,593	\$ 280,674		

Apartment Type	Number of Units	SQUARE FOOTAGE		Aggregate Common Interest	MONTHLY MAINTENANCE FEE					Sq Ft	Ratio of Common Interest
		Sub Total	Total		Electricity	Propane	Water	Total	Ave/Apt		
A	281	320	83,120	0.770722	16,325.47	3,172.09	4,074.75	21,572.31	417.58	93,120	0.378880
B	40	387	12,280	0.101637	2,548.51	418.31	537.35	3,494.17	400.62	12,280	0.492900
C	5	340	1,800	0.014868	1,835.28	373.96	61.33	2,270.57	488.76	1,800	0.281800
D	5	311	1,555	0.012870	1,565.44	322.71	52.97	1,940.12	455.83	1,555	0.079800
E	2	655	1,310	0.010842	1,325.61	271.87	44.62	1,642.10	821.05	1,310	0.105600
F	2	655	1,310	0.010842	1,335.61	271.87	44.62	1,652.10	825.55	1,310	0.092700
G	2	657	1,254	0.010379	1,278.57	200.25	34.87	1,513.69	756.84	1,254	0.202900
H	1	619	619	0.005123	631.09	21.09	27.69	679.87	679.87	619	0.478400
I	1	634	634	0.005247	646.37	21.80	27.74	695.91	695.91	634	0.200500
TOTAL	340		113,802	0.042560	116,172.55	23,634.26	4,583.25	144,390.06	425.61	113,802	0.385500
Commercial Apts											
1	Bldg 1, 1st Flr	Spa	2,055	0.003780	482.63	0.00	5.30	487.93	2,055.00	457	0.378880
2	Bldg 1, 1st Flr	Sales Office	2,680	0.004829	607.20	0.00	0.00	607.20	2,680.00	596	0.492900
3	Bldg 1, 2nd Flr	Guest Laundry	316	0.002615	322.14	0.00	277.76	599.90	2,005.00	316	0.281800
4	Bldg 2, 1st Flr	Tv deck 1	96	0.000796	96.06	0.00	0.00	96.06	96.06	96	0.079800
5	Bldg 2, 1st Flr	Tv deck 2	128	0.001059	130.46	0.00	0.00	130.46	130.46	128	0.105600
6	Bldg 2, 1st Flr	Tv deck 3	112	0.000827	114.20	0.00	0.00	114.20	114.20	112	0.092700
7	Bldg 2, 1st Flr	Jewelry	245	0.002028	249.83	304.21	0.00	554.04	554.04	245	0.202900
8	Bldg 2, 1st Flr	Owner lounge	578	0.004764	688.33	920.31	0.00	1,608.64	1,608.64	578	0.478400
9	Bldg 2, 1st Flr	Concierge	351	0.002960	357.85	0.00	0.00	357.85	357.85	351	0.200500
10	Bldg 2, 1st Flr	Front Desk	894	0.003658	480.82	13,559.36	983.33	14,923.51	22,207.40	894	0.385500
11	Bldg 2, 1st Flr	Lobby bar	2,469	0.010218	1,256.74	18,506.18	1,505.57	20,268.49	20,267.74	1,235	1.021800
12	Bldg 2, 1st Flr	Relax (WNH Smith)	2,088	0.017290	2,129.93	3,329.08	33.44	5,492.45	5,492.45	2,088	1.729000
13	Food Deck	Activity Rental	165	0.001386	168.28	885.85	0.00	1,054.13	1,054.13	165	0.138600
14	Food Deck	Snack Bar	156	0.000846	79.58	3,831.61	417.02	4,328.21	4,328.21	156	0.084600
15	Bldg 1, 2nd Flr	Parking Apt	53	0.000439	54.00	0.00	0.00	54.00	54.00	53	0.043900
TOTAL Commercial			12,377	0.057440	7,073.95	43,409.68	9,180.11	59,663.74	59,663.74	6,940	5.744000
TOTAL			128,252	1.000000	123,186.49	65,043.95	13,059.45	212,528.89	212,528.89	128,252	100.000000

Notes regarding allocation of commercial apartment common interest:  
1. AOAO  
2. Owner LLC - Brian Andersen

## DISCLOSURE ABSTRACT

I, Phyllis Kacher as Senior Vice President of Hawaiiana Management Company, Ltd., the Managing Agent for the Kauai Beach Resort condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

Phyllis Kacher

Signature

7-29-05

Date

(\*) Mandatory reserves assessment and collection in effect beginning 1994 budget year. The Developer is to attach to this exhibit an explanation whether, in arriving at the figure for "Reserves", the Developer has conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

Pursuant to §514A-83.6, HRS, 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.

#### EXPLANATION REGARDING RESERVES

Developer has obtained a Reserve Study dated January 3, 2005 by Armstrong Consulting, Inc. a portion of which is attached to this Disclosure Abstract.

#### DISCLOSURE ABSTRACT

Page 10 of 10

## INFORMATION FROM STUDIES OF THE PROPERTY

Note several are summaries and prospective purchasers are encouraged to review the materials in full. The Developer makes no representations, warranties or other promises that the studies are complete, accurate or reveal all defects.

1. Summary from Limited Survey for Moisture Intrusion and Visible Suspect Mold dated September 2004.
2. Report of Libbey Heywood, Inc. Structural Engineers dated August 31, 2004
3. Due Diligence Report of William and Associates dated September 21, 2004
4. Component Summary from Reserve Study by Armstrong Consulting, Inc. dated January 3, 2005

# LIBBEY HEYWOOD, INC.

STRUCTURAL ENGINEERS

210 Ward Avenue, Suite 122  
Honolulu, Hawaii 96814

Telephone (808) 531-4627  
Fax (808) 533-3745  
Email: mail@lhise.com

August 31, 2004

John Dominis  
c/o Cord Anderson  
43 Ahui Street  
Honolulu, Hawaii 96813

Attention: Brad Anderson

Subject: Radisson Kauai Beach Resort  
Structural Condition Assessment

Gentlemen:

At your request, the undersigned met with you on August 27, 2004 at the Radisson Kauai Beach Resort to carry out a brief review of the original structural drawings, perform visual observations to access the condition of the structure and have discussions with the facilities maintenance manager. The following is the result of the visit and our assessment of the condition of the facility.

## EXECUTIVE SUMMARY

The resort in our opinion is in fair structural condition considering it is a 20-plus year old facility. Repairs and maintenance is required for concrete spalling, corrosion of steel roof decking and framing, strengthening of the typical exterior roof eave soffit, replacement of wood bridge decking and other miscellaneous maintenance.

## DESCRIPTION OF STRUCTURES

The resort consists of four Main Buildings, a Porte Cochere, Banquet Wing and Pool Pavilion structure. The pools and various canopies were not evaluated by us.

We reviewed the original structural drawings dated August 1, 1980 that were prepared by John Graham, a Hawaii licensed architect (License No. 887). The set of drawings were incomplete in that 21 sheets were reviewed, 3 of these sheets were "A" (added sheets), the last sheet number was S-24, and sheet S-5A which is referenced is not included in the set. No other drawings were reviewed.

The drawings indicated that the original design was according to the requirements of the 1976 Uniform Building Code. The original soils engineer was Dames & Moore who presumably recommended spread footings with an allowable soil bearing pressure of 3000 psf. The following design loads were used:

- |    |                |                  |                            |
|----|----------------|------------------|----------------------------|
| 1) | Live Loads:    | Roof             | 20 psf                     |
|    |                | Floor            | 40 psf + 20 psf partitions |
|    |                | Corridors/Stairs | 100 psf                    |
| 2) | Wind Loads:    | 0'-30'           | 15 psf                     |
|    |                | 30'-49'          | 20 psf                     |
| 3) | Seismic Loads: |                  | Zone 0                     |

The four main buildings vary in height from one story at the Banquet Wing, two stories at Buildings 3 and 4, three stories at Building 1 and four stories at Building 2. A basement exists at Building 2 and the Banquet Wing. Also, the first level of Building 4 is suspended above grade while all the other structures utilize a slab on grade at the first or basement levels. With these exceptions, the main building structures are similar and are indicated on the drawings to be as follows:

Foundation: Spread and strip concrete footings.

Slab on Grade: The basement slab on grade is located at elevation 6.0 feet plus/minus with a 6 inch thick concrete slab. The building with slab on grade without a basement condition utilize a 4 inch thick concrete slab. Building 4 has a suspended first floor slab supported on 18 inch square concrete columns with 18 inch wide and 18 inch deep concrete beams typically running at 13'-0" o.c. with a concrete slab spanning between these beams.

Suspended Floors: Utilize a post-tensioned concrete flat plate slab nominally 6 inches thick spanning between concrete columns and CMU walls.

Roof: The lower roof consists of a 5 inch thick post-tensioned concrete slab spanning between concrete columns and CMU walls. The upper pitched roof structure utilizes a 1-1/2 inch galvanized metal decking spanning 6 to 6'-6" between structural

steel trusses or steel bar joist rafters. The trusses and rafters are supported on wide flange beams and tube columns.

Lateral Load

Resisting System:

The upper roof utilizes steel diagonal bracing to the lower roof concrete slab. Below the roof, CMU shear walls resist the lateral forces.

The Porte Cochere framing was missing from the structural drawing set that we reviewed. Visual observations indicated the appearance of concrete construction.

The Banquet Wing is framed similar to the main buildings except for the use of steel columns instead of concrete.

The Pool Pavilion framing was not included in the structural drawing set that we reviewed. Visual observations indicated that the roof is wood framed and supported on CMU walls.

## OBSERVATIONS

Visual observations resulted in the following items of structural concern:

- 1) Cracking and spalling of concrete at lanai slab edges (in particular at lanai rail post embedment locations), Building 4 foundation to first floor columns and first floor beams, and to a lesser degree, some stair treads. The spalling while observed on all main buildings, appears to be more prevalent on the windward side and structures closer to the ocean. Lanai edge cracking and spalling is of particular concern given that these slabs are post-tensioned. Should the corrosion be allowed to damage the post-tensioned cables the cost of repair will be greatly increased.
- 2) Corrosion of the metal decking, steel trusses and eave soffit framing was observed, particularly at the eave location of the windward side. Our observations did include only a portion of Building 2 attic space. Other attic spaces may have more or less corrosion damage. The damage observed indicated that significant metal loss has occurred to localized areas of the metal decking. Other metal decking and structural steel framing is starting to corrode but did not appear to have as yet significant metal loss.
- 3) The framing of the typical roof eave soffit is of concern in that it utilized a tie wire suspension system. This eave soffit extends approximately six feet beyond the concrete roof slab and has ventilation holes. The suspension tie wires are a concern since they cannot resist uplift (compression in the tie wires) forces that can result from high wind events.

- 4) While we are not certain if the typical wood bridges spanning the ponds between adjacent properties are included in this review, we did observe dry rot, localized replacement of some decking members with a synthetic plank which appears to be inadequate. The inadequacy is that the synthetic plank is very soft when stepped on indicating that it may be spanning a greater distance than permitted.
- 5) Minor ponding of the roofs and the growth of vegetation and/or mold growing at the building exterior at a few locations were noted. While this is not typically a structural comment, and we are not architects, we believe we should make you aware of this.
- 6) Corrosion of metal connectors was noted at the Pool Pavilion building and at the interconnecting building bridges supports.

#### **DISCUSSION WITH BUILDING MAINTENANCE MANAGER**

Discussions with Mr. Mel Perreira, Director of Engineering for the Radisson Kauai Beach Resort did not add any items of structural concern other than those mentioned above. However, we were informed of a failure and subsequent repair to portions of the typical roof eave soffits. Mr. Perreira did inform us that the facility had sustained minor damage during Hurricane Iniki in 1992 and that it was the only hotel operating immediately after the hurricane, and was used as FEMA's headquarters.

#### **DISCUSSION AND RECOMMENDATIONS**

Our discussion and recommendations are limited only to those items of concern indicated in our observations except as follows:

- 1) We rate the buildings as being in fair condition at this point due to the amount of spalling and corrosion observed for a relatively young 20 year old facility. This is in our opinion an indication of deferred maintenance for structures in an ocean front location where corrosion is more aggressive.
- 2) Items of concern which are outside our scope of expertise including, but not limited to, minor roof ponding, mold, vegetation on roofs, etc. . .
- 3) The facility is presumed by us to be "grandfathered" and does not require any structural strengthening. However, the original design by the 1976 Uniform Building Code provides for significantly less safety in wind and

seismic design requirements as does the current 1997 Uniform Building Code. The wind force design requirements have approximately doubled in primary frame force requirements and have about tripled in roof uplift force requirements. The seismic zone for Kauai has been changed from Zone 0 to Zone 1. While Zone 1 is a minor seismic risk it is larger than Zone 0 where no seismic design forces was required.

The items of structural concern are as follows:

- 1) The concrete cracking and spalling observed at the lanai slab edges, the columns and beams below Building 4 and other miscellaneous locations is the result of corrosion of the reinforcing. This must be repaired by chipping out the damaged concrete; expose, clean and apply a corrosion inhibitor to the reinforcing and install a concrete patch. There are various methods of stopping or slowing future corrosion, but a common method is to stop the water and salt from entering the concrete. This is accomplished by the application and maintaining of a waterproof coating on the top of the exposed lanais and painting of other surfaces.
- 2) The corrosion of the steel roof decking and steel trusses needs to be repaired by either replacing or repairing the metal decking where significant metal loss has occurred. Cleaning and painting with a zinc rich primer of all decking and steel framing where corrosion has started.
- 3) The 1976 Uniform Building Code did not have specific wind uplift requirements for the design of the roof eave soffits. However, these forces do exist and specific requirements do exist in the 1997 Uniform Building Code. Exposed suspended (tie wire hangars) systems are not able to resist uplift forces. The existing "hat" channels that span between the edge of the roof concrete slab and the fascia does not appear adequate for current code required uplift forces but is subject to further analysis. It is our preliminary opinion that the eave soffit framing should be reinforced. This reinforcing would in concept require the installation of a 4 inch gage metal "C" joist at 24 inches on center be added between the edge of concrete roof slab to fascia beam.
- 4) In our opinion, the wood bridges are in need of decking replacement due to the amount of dry rot and inadequacy of prior repairs. The bridge stringers should also be checked and repaired or replaced if necessary.
- 5) Miscellaneous metal connectors that show signs of corrosion should be cleaned and protected with zinc rich primers or other methods.



This concludes the items of structural concern that were observed during our reviews and observations.

## **SUMMARY**

This approximately 20 year old facility is in need of repairs, strengthening and a maintenance program that adequately addresses the aggressive corrosive environment associated with windward beachfront facilities. Also, while the original building design is presumed to be "grandfathered", we feel that at a minimum, strengthening of the roof eave soffit should be performed.

You understand that our observations consisted of less than six (6) hours of drawing review, visual observations and discussion with maintenance managers without any testing or calculations. All of the above observations, assessment and conclusions were not in any way meant to be exhaustive or conclusive, and that other areas of concern could have been detected if more time had been given to this review.

If there are any questions, please do not hesitate to contact our office.

Very truly yours,

**LIBBEY HEYWOOD, INC.**

Steven C. Heywood

SCH:bz

Attachment: Photos

rpt-RadissonKauaiBeach

## 2.0 Summary

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ENPRO Environmental, LLC (ENPRO) has completed a Limited Survey for Moisture Intrusion and Visible Suspect Mold (LSM) for the project site during August and September 2004. Factual information regarding operational conditions and data provided by the Client, owner, or their representatives have been assumed to be correct and complete.

The following summarizes the independent conclusions representing ENPRO's best professional judgment based on information and data available to us during the performance of this assignment. The conclusions presented are based on the conditions that existed at the time of the survey.

- ENPRO submitted inquiries via fax to the Wastewater Branch, the Noise, Radiation, and Indoor Air Quality Branch (NRFAQ), and the Hazard Evaluation and Emergency Response (HEER) Office of the Hawaii State Department of Health (DOH), regarding available records, communications and previous reports for the project site. At the time this report was prepared, only the HEER office records were made available for our review. For copies of all letters of correspondence, refer to Appendix D of this report.
- The records provided by HEER included a release notification regarding the presence of tar balls on the beach and a leaking underground storage tank on the subject property. None of these files provided information indicating moisture intrusion, flooding, or complaints regarding water or mold-related issues at the subject property.

- ENPRO reviewed available drawings and schematics of project site structures. Based on the records reviewed, ENPRO did not identify evidence indicating an obvious potential for moisture intrusion or visible suspect mold at the project site.
- ENPRO conducted an interview with Mr. Mel Perreira, Director of Engineering for the Radisson Kauai Beach Resort. Mr. Perreira provided information regarding chronic condensation problems, flooding incidents, and drainage issues associated with the subject property.
- Ms. Dricka Brown, Regional Project Manager for ENPRO, conducted the walk-through survey portion of the LSM. Ms. Brown observed that the majority of the guest rooms had visible suspect mold on the vinyl wallpaper around the exterior of the doorframes. In addition, she observed evidence of moisture intrusion and/or visible suspect mold in the main hotel structures (Buildings 1, 2, 3, and 4) at several locations, including:

### **Building 1**

- Moisture damage and peeling vinyl wall paper on the south wall behind ice machine on the first floor.
- Visible microbial growth on the northwest and northeast exterior walls.

### **Building 2**

- Dust accumulation and visible suspect mold on the southwest corner of the ceiling in the Orchid Ballroom.
- Water stained acoustic ceiling tiles exterior to the Orchid Ballroom.

- Visible suspect mold and condensation on HVAC supply vents along the west wall in the Paradise Coffee Roasters retail space.
- Condensation on HVAC supply vents in retail spaces.
- Water damaged ceiling material in several areas.
- Moisture damage and visible suspect mold in several areas of the kitchen.
- Visible suspect mold and condensation on the insulation of chilled water lines throughout the entire basement/back of house.
- Visible suspect mold and moisture damage on the southeast wall exterior to the walk-in freezer located in the purchasing room.
- Visible suspect mold below all toilets in the women's locker room. Water damaged tiles on the west wall of the shower area of the women's locker room.
- Condensation and leaking associated with the chillers and boiler.
- Moisture damage on the west wall below the beverage area in the employee cafeteria.
- Moisture damaged walls in the back room of the maintenance workroom.
- Moisture damage on the southwest exterior wall of Building 2 below a vent.
- Moisture damage on the building material of the eaves on the south side of Building 2.
- Moisture damage on the southwest corner exterior wall adjacent to staircase of Building 2.

### **Building 3**

- Moisture damage associated with the ice machines on the first and second floors.

### **Building 4**

- Visible suspect mold on the southeast ceiling/wall area, in the first floor corridor.
- Pooled water in the crawl space below Building 4.

For more details regarding our investigator's observations, refer to Section 5 of this report.

- ENPRO's investigator collected survey measurements within the project site structures, including ambient temperature, relative humidity, dew point, and surface temperature. Additionally, moisture measurements of drywall panels, suspected of having high moisture content, were collected and documented. High moisture meter readings were recorded in the following areas:

#### **Building 1**

- The south wall behind the ice machine on the third floor.
- The south wall behind the ice machine on the first floor.

#### **Building 2**

- The east wall behind the ice machine on the fifth floor.
- The east wall behind the ice machine on the fourth floor.
- The east wall behind the ice machine on the third floor.

#### **Building 3**

- The west wall behind the ice machine on the third floor.

- The west wall behind the ice machine on the second floor.
  - The west wall behind the ice machine on the first floor.
- Rooms with a high potential for condensation based on the measured dew point and surface temperatures included:

**Building 1**

- Guest room #1210

**Building 2**

- Guest room #2315
- Orchid Ballroom
- Resort Kitchen
- Housekeeping
- Engineering office

**Building 3**

- Guest room #3214
- Guest room #3228

**Building 4**

- Guest room #4103

- For details on the locations and values of the survey measurements, refer to Appendices B and C of this report.

**Based on the above information, ENPRO is of the opinion that the project site represents a moderate<sup>(1)</sup> risk level.**

(1) Although no regulatory standards currently exist for acceptable levels of moisture intrusion or microbial growth, ENPRO has used its professional judgment to assign a risk level to the site relative to the conditions existing at the time of the survey. ENPRO has adopted a ranking system of low, moderate, or high. *Low* is reserved for sites that have no or very limited indications of moisture intrusion and/or visible suspect mold and possess few or no areas or conditions that are conducive to such problems, as identified during the LSM. *Moderate* indicates that limited portions of the site have a strong potential to have been impacted by moisture intrusion and visible suspect mold, and that areas or conditions exist that are conducive to such problems, as identified during the LSM. *High* indicates that numerous portions of the site have a strong potential to have been impacted by moisture intrusion and visible suspect mold and that areas or conditions exist that are conducive to exacerbate such problems, as identified during the LSM. *High* further indicates that the extent of moisture intrusion and visible suspect mold may represent a significant financial liability for repairs, microbial investigation, remediation, and/or regulatory compliance.

*Radisson Kauai Beach Resort  
4331 Kauai Beach Drive  
Lihue, Kauai, Hawaii 96766  
Due Diligence Report  
September 21, 2004*

September 21, 2004

Mr. William T. Tanaka  
President / Hospitality Advisor  
**RADISSON KAUAI BEACH RESORT**  
4331 Kauai Beach Drive  
Lihue, Hawaii 96766



Subject: **DUE DILIGENCE REPORT**  
**TAX MAP KEY 3-7-03-15**

Built in 1982 with earlier foundations. Property Acreage 11.9. The hotel has (1) central area and (2) separate wings. The hotel has 350 rooms.

The guestrooms are separated into buildings. (79) Of the guest rooms are fitted with adjoining doors. (12) Guestrooms have been converted to A.D.A. by an Outrigger Design, which may or not be compliant. The hotel is fitted with a lobby reception area, meeting rooms, retail space, (1) restaurant, banquet rooms, executive offices, kitchens, bars, swimming pools, car parking spaces and support back of the house areas. The gardens are landscaped and illuminated at night. Gas fired tiki torches add ambience at night to the gardens, walkways and pool bar areas. The building construction is of steel framing, CMU concrete block, poured in place foundations. Interior walls are of drywall. Fire escape stairs and landings are steel with concrete inserts. The building is protected by fire sprinkler heads, smoke detectors and a control fire alarm system. All guestroom doors are fitted with electronic door locks.

### **ELECTRICAL**

The hotel has (2) primary feeders. Power is supplied by Kauai Citizens Utility. The building load is lighting, air conditioning, sewage plant, heating, elevators, kitchen, laundry and guestrooms. Voltage is 480/277 (3) Phase (4) Wire. All supply wiring is below grade. The hotel's switchgear was manufactured by Westinghouse. All transformers have no "P.C.B." decals. Electrical distribution is standard (3) phase to large prime users and single-phase secondary users. There is no aluminum wiring. All system wiring is copper with sheathing in good condition. The incoming power is metered. Some retail areas are sub metered. The Onan emergency generator is rated for 150 KVA/1000 AMPS. The engine is fitted with an automatic transfer switch to feed emergency lighting guest room hallways, minimum back of house lighting, telephone and PBX equipment and other life safety systems. The engine runs fully loaded and is tested each month at no load. The engines oil filter was changed 6/2/04, the starter battery is charged and the engine is in automatic standby mode. Fuel to the engine is supplied via an above ground diesel tank.



*Radisson Kauai Beach Resort  
4331 Kaula Beach Drive  
Lihue, Kauai, Hawaii 96766  
Due Diligence Report  
September 21, 2004*

### **RECOMMENDATION**

Remove rubbish and stored materials to another location. Check emergency lighting in the engine room. Test engine on load at least once per year.

### **COOLING TOWERS**

The hotel is fitted with (2) Delta Model TR-250 Cooling Towers. Manufactured and installed 2002, both towers are too small (capacity) and are already rusting. Both towers run a maximum speed without any control to try and keep up with the hotel's air conditioning demands. In addition, the hotel's central refrigeration plant is cooled from these cooling towers. Both towers are rusted at the discharge grill covers. There are no variable speed drives fitted, inlet air grills are corroded and covered with algae and mold. There is extensive condenser water carry over and the tower bases are rusting. Both float valves have been modified to allow maximum water levels to try and maintain operational temperature. With (2) 250-ton chillers running, the two towers cannot keep up with demand. There are no temperature gauges, no pressure gauges. The tower's operation is pure guesswork.

### **RECOMMENDATION**

Immediate overhaul, cleaning, ordering of spare parts to prevent potential short-term failure. The hotel cannot run an 80% occupancy with only one cooling tower. Replace cooling towers as soon as possible. Estimated cost \$ 180,000.00 including installation and disposal of existing towers. New towers should be sized correctly, have variable speed drives and be manufactured from fiberglass, stainless steel and plastic materials. If the towers are replaced, the cost savings in electrical power used by the chillers, towers and refrigeration systems would be considerable.

### **SEWAGE PLANT**

The plant is maintained under a separate contract between the condominiums and the hotel. The cost of the service agreement is \$ 3,265.00 per month. The monthly flow from the hotel to the plant in July was 3,635,000 gals. The average daily flow was 121,167 gals.

### **COMMENTS**

The plant is in fair to good condition. Herbicide is needed for weed control. The leach field and drying beds are overgrown. The hotel's small grease trap allows grease into the sewage plant. There is a concern that as the plant cannot handle the ever-increasing loads. The hotel grease trap needs to be replaced with a conforming unit, which would limit the amount of grease by passing the trap. The existing grease trap needs to be cleaned more frequently. In general, the plants processing control systems

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meet the Kauai Department of Health requirements. High hotel occupancies result in increased in put flows. High rainfalls result in the leaching fields inability to leach treated effluent from the sewage plant via the two injection wells. Air blowers for the plants operation need overhauls and the emergency generator requires a major service. The hotel and condominiums housekeeping departments have in the past dumped chemicals into the sewer piping. These chemicals upset the plant's balance and hinders the plants bacterial contact time. This results in having to re-seed the plant with new bacteria. Aqua Engineers make a monthly report to the hotel each month.

### **SEWAGE EJECTOR STATIONS**

The hotel has two ejector stations, one located in the swimming pool pump room, the other in the housekeeping department.

#### **PUMP #1**

One of the two submersible pumps is in need of a complete overhaul or replacement. The other pump is jury-rigged and is in daily operation. A serious condition exists. The jury-rigged pump needs to be made permanent and the condition of the pump room requires immediate attention. The odor into the housekeeping department is unacceptable. The pit needs a new cover plate and gasket along with new high and low alarms. The whole room needs to be cleaned.

#### **PUMP #2**

The equipment appears to be in good condition. An overhaul is recommended due to the equipment's age and location.

### **ELEVATORS**

There are 8 hydraulic elevators manufactured by Otis. All require modification and upgrading. See separate report.

### **LAUNDRY**

The in-house laundry equipment is in good working order. (2) 250 Lbs. Washex washing M/Cs and (1) 125 Lb. Washex M/C are in daily operation. (4) Larger 100 Lb. dryers and (1) 50 Lb. Cissell dryer complete the primary equipment. (1) Larger Chicago gas fired flat work ironer and (2) small steam presses provide the final finishing to the processed laundry. The laundry appears to be well run and operates (2) shifts when needed. Although some of the equipment was manufactured in 1985, the entire laundry plant is in good operational condition and staffed by people who are very familiar with the laundry's daily operation.

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### **COMMENT**

A study should be made to assess the cost of out sourcing the hotel's linens. All outside laundry costs are based on the cost per pound of linen processed. Be sure to weigh the linen "Dry" and "Wet". The contractor will claim a 2% moisture content as being acceptable. Be sure to weigh returned linen to avoid extra cost.

### **KITCHENS**

It appears that "Ecolab" owns the larger kitchen dishwasher – how this came about is something of a mystery. The kitchen equipment in general is in good condition. (This is a reference to the equipment being used on a daily basis). The kitchen is fitted with good quality brand names. The kitchen equipment shows some maintenance care. The kitchen floor has large concrete patches installed to replace broken floor tiles. The concrete is saturated with grease and should be replaced with good quality quarry tile as soon as possible. The kitchen floor tiles are in good condition but require re-grouting to prevent lifting. The kitchen ceiling has areas of missing tiles. The kitchen lighting needs to be reviewed for wattage, color and efficiency. Apart from (1) or (2) missing knobs, thin gaskets on reach-in refrigerators. All in all, the main kitchen works well.

Unfortunately the banquet kitchen and other storage areas are cluttered with old abandoned items of kitchen equipment that will never be used. The chef should make an inventory of what he needs (not wants) so the balance can be removed.

### **GAS STORAGE TANKS**

(2) 5,000-Gallon propane storage tanks are located in the guest parking area. Although, the tanks belong to the local Gas Company, the tanks need new gauges.

### **COMMENTS**

There is no remote gas shut off valve outside the tank CMU wall. It was also noted that no fire extinguishers were in the cabinets provided.

### **SWIMMING POOL WATER CHEMISTRY**

Both large swimming pool water conditions need improvement. Water clarity is poor, distribution of chlorine is not uniform through both pools. With the importance to the hotel, both pools should have the highest pool quality water to ensure reliable water chemistry.

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### INSULATION

All of the hotel's chilled water piping is deteriorated to the point of replacement. The 8" chilled water piping in the mechanical plant to the 1" chilled water insulated to the guest room fan coil units is leaking saturated, covered with slime, mold and taped up to prevent leakage. Crude drainage pans have been made to collect condensation and small condensate pumps have been installed to keep critical areas dry. Both fiberglass and foam rubatex insulation through the hotel needs to be replaced. The guestroom fan coil unit insulation has broken down completely. A large number of rooms have metal collection pans, which allow water to run to the unit below for collection. The rubatex insulation should be replaced with fiberglass with fire stopping material at each floor penetration. All fan coil units inspected are classic mold and mildew candidates.

### LIST OF SUB-CONTRACTORS USED IN THE ENGINEERING DEPARTMENT (ALL DOLLARS ARE MONTHLY AMOUNTS)

<u>AMOUNT</u>	<u>NAME</u>	<u>SERVICE PROVIDED</u>
\$ 829.00	Mechanical Air	Ahu Maintenance
\$ 390.00	Koloa Plants	Plant Rentals
\$ 600.00	Oahu Air	Chiller Maintenance
\$ 1,489.00	Micros Systems	FxB Point of Sale
\$ 120.00	Arch Wireless	Long Distance Provider
\$ 600.00	Safe Guard Service	Guest Room Safes
\$ 253.00	Pacific Wireless	Phone Equipment Maint.
\$ 650.00	Coast Power Cleaning (Quarterly)	Kitchen Hoods
\$ 350.00	Kauai Fire Protection (Quarterly)	Fire Equipment
\$ 70.00	Alert Alarm	Fire Control Panel
\$ 1,714.00	OTIS	Elevator Maintenance
\$ 500.00	Protec	Chemical Water Treatment
\$ 329.00	Sable	FxB Control
\$ 3,265.00	Aqua Engineers	Sewage Plant

\$ 10,159.00 x 12 = \$ 121,908.00

Quarterly \$ 4,000.00

**TOTAL \$ 125,908.00**

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### **REFRIGERATOR SYSTEMS**

Walk-in refrigerators are in good condition. Some doors have been replaced, door heaters are working but the Honeywell alarms over the door jambs are not operable. The temperature gauges should be checked for accuracy. The kitchen #1 walk-in has ceiling damage and Unit #3 has a large block of ice attached to the floor. The condensate drain on this unit should have a low voltage heater cable to prevent the drop pan from overflowing onto the floor.

The refrigeration plant has (8) compressors in a bank cooled by cooling tower condenser water with the condenser water supply at 85 degree plus. It is necessary to blend the plants cooling water with domestic cold water at 76 degree F. This blend keeps the plant running. Due to high cooling water temperatures, the plant is constantly running or hunting to keep the walk in boxes at the required temperatures. The cycling at high head press will over time damage the compressors. Some kitchen refrigeration systems are self contained and not connected to the refrigeration bank. These units create heat in the kitchen, which has to be removed mechanically.

### **AIR CONDITIONING PLANT**

The plant is fitted with (3) Trane water chillers. The largest is a CYHE 025F fitted with an auxiliary condenser. The Units is fitted with an old purge unit called #1. This M/C is inoperable and requires an overhaul or replacement. The chiller is not fitted with a track UCP. The (2) smaller Trane water chiller are CYHE 016F Units fitted with heat recovery condensers which are valved off. Both M/CS are piped in parallel. Both chillers are connected to the Trane tracer system, which is inoperable. The water chillers are fed by single chilled and condenser water pumps. There is a single stand by pump, which can be valved to supply condenser or chilled water in an emergency. This original design called for variable frequency drives for each pump but the VFD's have been disconnected.

The air conditioning plants press and temperature gauges should be replaced.

The mechanical room is full of unused equipment, stored materials and rubbish.

The hotel has only (2) reliable water chillers. It is recommended that the #1 chiller be overhauled or replaced.

### **AIR CONDITIONING CONTROLS**

The Tracer system was installed in 1995 in place of the non-functioning Johnson Controls system. It included a Tracer 100 series system level control panel, ten Programmable Control Modules (PCM's), ten Thermostat Control Modules (TCM's), two chiller Unit Control Panel (UCP) upgrades, chiller isolation valves, heat recovery isolation valves and Variable Frequency Drives (VFD's) for the chilled water pump and condenser water pump. Programmable Control Modules are panels that can have BOP's, AOP's, AIP's and BIP's and are programmable to control any function such as AHU's, cooling towers and pumps. Thermostat control modules are used as slave devices and have BOP's, BIP's and thermister AIP's. The chiller sequencing program, time of day schedules, timed override capability and trending

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resides in the Tracer panel of the controllers and are powered and communicating with the Tracer. The original Packard Bell computer is still working and connects to the Tracer in a Windows Hyper-Terminal session. It is text based and slow but sufficient for the Tracer 100 application. The phone line does not work. Mel is aware of this and will be tracking it down. The Tracer occasionally locks up but can be successfully reset by cycling the power. This has happened several times over the past few years. Mel is unfamiliar with the Tracer program and finds it difficult to use compared to the Tracer Summit system he had previously at a different property. To complicate matters, over the years much of the equipment has been disabled, completely disconnected from the Tracer system or has mechanical problems that would keep it from ever working properly. At one time all of the connected equipment worked and was controllable from the Tracer.

#### **Chiller Plant:**

The large chiller was not modified and is not connected to the Tracer. It can only be enabled manually. The two smaller chillers were retrofitted with a Unit Control Panel (UCP) version 2 and are piped in parallel. They are fed by a single chilled water pump and single condenser water pump so automatic isolation valves were installed to make sure water did not flow through the non-running chiller. Isolation valves were also installed on the auxiliary condenser piping. When the chiller is enabled to run the associated valves open and allow chilled water flow. VFD's were installed on the two system pumps and their speed was to be modulated based on pressure in the system piping. PCM10, located in the plant, monitored the pressure sensors and the pump speed was modulated against the setpoint. System chilled water supply and return temperature sensors also are tied into PCM10. The chiller sequencing program in the Tracer uses these two temperatures to make decisions about lead/lag control for the two chillers. PCM9, also located in the plant, controlled and monitored the cooling towers.

At this time the plant cannot function automatically. Chiller 3 is not communicating with the Tracer and cannot be controlled through it. The UCP seems to work OK and the chiller runs but it does not communicate with the Tracer. There may be a physical problem with the UCP or the addressing may be incorrect. The wiring is still connected. In any event, the programming is completely overridden such that both chillers would run continuously even if they did communicate properly. The isolation valve actuators on the condenser water piping are disconnected from the valves. The chilled water isolation valves and heat recovery isolation valves are still connected and assumed to work. The amperage draw on the two chillers were measured and compared against the readings on the UCP and are within about 5 amps of each other on the worst leg and within 1 amp on the best. The return chilled water temperature sensor is defective and needs to be replaced. The VFD's on both the chilled water pump and condenser water pump are off and in bypass, running full speed and the pressure sensor on the condenser water pump needs to be replaced. The Tracer controlled the cooling towers at one time. I don't know if the new towers were tied back into the Tracer system or not and what actually controls their temperature. In any case they are currently overridden in hand at the MCC.

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**SS-Pakalana:**

Controlled by PCM-1. The unit does control via the Tracer and appears to control temperature to setpoint when turned on. The fan DP switch needs to be replaced. However, Mel doesn't use the Tracer schedules and manually turns the unit on as needed.

**S6-Ginger:**

Controlled by PCM-2. The unit does control via the Tracer and appears to control temperature to setpoint when turned on. The fan DP switch needs to be replaced.

**S7-Mokihana:**

Controlled by PCM-3. The unit does control via the Tracer and appears to control temperature to setpoint when turned on.

**S12-Orchid, S13-Hibiscus:**

Controlled by PCM-4. The units do control via the Tracer and appear to control temperature to setpoint when turned on. The fan DP switches need to be adjusted or replaced.

**S17-Jacaranda:**

Controlled by PCM-5. The unit does control via the Tracer. The fan DP switch needs to be adjusted or replaced. It does not control to temperature and probably has a bad valve actuator.

**S19-Plumeria:**

Controlled by PCM-6. The unit does control via Tracer. The fan DP switch needs to be adjusted or replaced. It does control to setpoint.

**S20-Gilligans:**

Controlled by PCM-7. The unit has been removed from the Tracer for Start/Stop function and is connected to a time clock. The valve appears to still be controlled via the PCM though.

**S14-Mideri/Mokihana:**

Was controlled by PCM-8. The unit originally had a VFD and controlled supply air temperature and static pressure. It feeds two areas that had stand alone VAV boxes for local air distribution. The VFD failed years ago, was disconnected and never repaired. The AHU itself was replaced recently. However, the new AHU has no starter and is wired directly into the disconnect. The valve actuator is disconnected from the valve and the valve runs fully open.

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**Supply/Exhaust Fans:**

Many of the fans are completely disconnected. Most of those connected are overridden at the Tracer, either ON or OFF.

**S22-Kitchen:**

Was connected to TCM-1. According to John was removed from the system some time back. Not sure what, if anything, controls it.

**E18-Lobby, E19-Banquet Storage:**

Was connected to TCM-2. E18 shows as off and E19 is not functioning because the fan is bad.

**S25-Unit C West:**

Was connected to TCM-3. Not functioning, unit is bad.

**S24-Kitchen:**

Connected to TCM-4. Did not confirm operation.

**E1-Bldg. 1 Elevator:**

Was connected to TCM-5. Not functioning.

**E22-Gilligan's Dishwasher:**

Connected to TCM-5. Did not confirm operation.

**E23-Gilligan's Bathrooms:**

Connected to TCM-5. Did not confirm operation.

**S2-Unit B Switchgear:**

Connected to TCM-6. Works OK.

**E21-Bag Room:**

Was connected to TCM-6. Not functioning.



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**E11-Bldg. A:**

Was connected to PCM-6. No longer connected but has a small Leeson VFD and has a local timer.

**E12-Bldg. B:**

Was connected to PCM-6. No longer connected but has a small Leeson VFD and has a local timer.

**E26-Bldg. D Elevator Mechanical Room:**

Was connected to PCM-6. Not functioning.

**E8-Basement Elevator Room:**

Was connected to TCM-7. Not functioning.

**E13-Bldg. C Exhaust:**

Was connected to TCM-7. No longer connected but has a small Leeson VFD and has a local timer.

**E14-Bldg. D Exhaust:**

Connected to TCM-8. Works OK.

**E15-Bldg. E Exhaust:**

Connected to TCM-8. Tried to cycle but status didn't change. Did not confirm operation.

**S3-Unit B Caff:**

Connected to TCM-9. Did not confirm operation.

**S4-Unit B Laundry:**

Connected to TCM-10. Did not confirm operation.

**Summary:**

The Tracer panels all work and represent a distributed communication link that is still good. However, there are many equipment repair issues that have to be addressed. It seems that when repairs or replacements have been made the new equipment was installed with no controls or stand-alone controls. The system could be restored to full functionality if it is addressed at the time of repair or replacement of the affected equipment. The Tracer 100 program is difficult for the users. An upgrade to Tracer Summit

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is possible by replacing the Tracer 100 with a Summit Building Control Unit. This would also eliminate the problem of the Tracer locking up occasionally. The Summit software will be much easier for the staff to use. All of the downstream controllers, UCP2's, PCM's and TCM's will communicate with the BCU. The plant will not function in any automatic way until the identified mechanical repairs are made. A new Trane chiller will communicate with the existing Tracer 100 or new BCU. Upgrading the system to Summit as part of that upgrade would be very beneficial as the new plant could be re-commissioned on the Summit system.

#### **ENGINEERING COSTS (ESTIMATED)**

Electricity -	\$ 96,000.00 / Month
Water -	\$ 8,000.00 / Month
Gas -	\$ 16,000.00 / Month
Trash -	\$ 4,000.00 / Month

#### **MAINTENANCE STAFF**

Chief Engineer plus 10 maintenance crew including benefits.

Salaries and Wages - \$ 43,000.00 / Month

#### **MAINTENANCE PERCENTAGE TO GROSS REVENUE**

Estimated gross over a 12 month period \$ 18.5 million divided by 4% = \$ 740,000.00 repairs and maintenance cost.

#### **BUDGET ESTIMATES**

1. Budget cost to replace chilled water insulation -	\$ 1,126,500.00
2. Budget cost to replace 2 cooling towers -	\$ 280,000.00
3. Budget cost to upgrade 8 hydraulic elevators -	\$ 832,000.00
4. Budget cost to upgrade air conditioning control systems -	\$ 40,000.00
5. Budget cost to replace V.F.D. drives to condenser and chilled water pumps -	\$ 71,725.00

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6.	Budget cost to replace #1 chiller -	\$ 360,000.00
7.	Budget cost to overhaul #1 chiller -	\$ 40,000.00
8.	Replace control valve on AHU S-14 -	\$ 12,000.00
9.	Connect existing or new tower to air conditioning plant control system -	\$ 30,000.00
10.	Sewage plant repairs (estimate) -	\$ 30,000.00
11.	Sewage ejector pump replacements -	\$ 50,000.00
12.	Kitchen repairs / replacement -	\$ 25,000.00
13.	Swimming pool chlorination control improvement -	\$ 25,000.00

# KB Resort LLC

## Analysis 1

Description	Starting Date	Useful Life (yr/mo)	Adj. Life (yr/mo)	Sched. Rpl. (mo/yr)	Recur	Current Cost	Future Cost
<b>Carpeting-Repairs-On Going</b>	1/01/2005	07/00	00/00	01/05	Y	25,000	25,000
<b>Sub Total:</b>						<b>25,000</b>	<b>25,000</b>
<b>Carpeting-Common Areas</b>	1/01/2000	08/00	00/00	01/08	Y	245,000	267,718
<b>Sub Total:</b>						<b>245,000</b>	<b>267,718</b>
<b>Elevator Cab Finishes</b>	1/01/2005	10/00	00/00	01/05	Y	30,000	30,000
<b>Elevator-Modernization</b>	1/01/1986	25/00	+05/00	01/16	Y	728,000	1,008,020
<b>Sub Total:</b>						<b>758,000</b>	<b>1,038,020</b>
<b>Equipment-Grounds &amp; Maintenance</b>	1/01/1996	10/00	00/00	01/06	Y	12,000	12,360
<b>Sub Total:</b>						<b>12,000</b>	<b>12,360</b>
<b>Fire Alarm System-Repairs</b>	1/01/2005	10/00	00/00	01/05	Y	75,000	75,000
<b>Sub Total:</b>						<b>75,000</b>	<b>75,000</b>
<b>Furniture-Pool</b>	1/01/2000	06/00	+01/00	01/07	Y	19,250	20,422
<b>Sub Total:</b>						<b>19,250</b>	<b>20,422</b>

# KB Resort LLC

## Analysis 1

Description	Starting Date	Useful Life (yr/mo)	Adj. Life (yr/mo)	Sched. Rpl. (mo/yr)	Recur	Current Cost	Future Cost
Bathrooms Refurbish-Common	1/01/2000	10/00	00/00	01/10	Y	15,000	17,389
<b>Sub Total:</b>						<b>15,000</b>	<b>17,389</b>
Irrigation System Repairs	1/01/2005	12/00	00/00	01/05	Y	20,000	20,000
<b>Sub Total:</b>						<b>20,000</b>	<b>20,000</b>
Lighting-Parking Lots	1/01/1982	25/00	-02/00	01/05	Y	100,000	100,000
Lighting-Pathway	1/01/2005	20/00	00/00	01/05	Y	100,000	100,000
<b>Sub Total:</b>						<b>200,000</b>	<b>200,000</b>
Furnishings-Lobby	1/01/2000	10/00	00/00	01/10	Y	27,000	31,300
<b>Sub Total:</b>						<b>27,000</b>	<b>31,300</b>
Fresh Air Make Up Corridor	1/01/2005	50/00	00/00	01/05	Y	65,000	65,000
Generator-Emergency Back Up	1/01/1986	30/00	00/00	01/16	Y	75,000	103,848
Pool Equipment	1/01/2000	10/00	00/00	01/10	Y	15,000	17,389
Storage Tank- 2,500 Gal. Hot Water	1/01/1982	25/00	00/00	01/07	Y	30,000	31,827
<b>Sub Total:</b>						<b>185,000</b>	<b>218,064</b>

# KB Resort LLC

## Analysis 1

Description	Starting Date	Useful Life (yr/mo)	Adj. Life (yr/mo)	Sched. Rpl. (mo/yr)	Recur	Current Cost	Future Cost
Air Handlers Upgrade Control System	1/01/2005	20/00	00/00	01/05	N	40,000	40,000
Boilers-Hot Water 1.2 Million BTU	1/01/1986	20/00	+01/00	01/07	Y	40,000	42,436
Chiller System	1/01/1982	25/00	+02/00	01/09	Y	500,000	562,754
Cooling Tower #1-Main Plant	1/01/2005	20/00	00/00	01/05	Y	95,000	95,000
Cooling Tower #2-Main Plant	1/01/2000	20/00	-10/00	01/10	Y	95,000	110,131
Energy Management System	1/01/2005	25/00	00/00	01/05	Y	107,000	107,000
Exhaust Fan-Electrical Room	1/01/2005	12/00	00/00	01/05	Y	15,000	15,000
Exhaust Fans-Roof Top	1/01/1982	25/00	+05/00	01/12	Y	36,000	44,275
Lagging-Chill Water System	1/01/2005	25/00	00/00	01/05	Y	1,200,000	1,200,000
Pumps, Filters-Koi Pond	1/01/2000	10/00	00/00	01/10	Y	1,500	1,739
Pumps-Lift Station	1/01/1986	10/00	+10/00	01/06	Y	8,500	8,755
Swimming Pool Chlorination Controls	1/01/2005	10/00	00/00	01/05	Y	25,000	25,000
<b>Sub Total:</b>						<b>2,163,000</b>	<b>2,252,090</b>
Painting-Exterior	1/01/2001	07/00	-02/00	01/06	Y	350,000	360,500
<b>Sub Total:</b>						<b>350,000</b>	<b>360,500</b>
Asphalt Overlay With Striping	1/01/1982	20/00	+03/00	01/05	Y	210,000	210,000
Asphalt Slurry Seal	1/01/2005	07/00	00/00	01/05	Y	64,820	64,820
<b>Sub Total:</b>						<b>274,820</b>	<b>274,820</b>

# KB Resort LLC

## Analysis 1

Description	Starting Date	Useful Life (yr/mo)	Adj. Life (yr/mo)	Sched. Rpl. (mo/yr)	Recur	Current Cost	Future Cost
Plumbing Repairs General	1/01/1982	10/00	+16/00	01/08	Y	20,000	21,855
<b>Sub Total:</b>						<b>20,000</b>	<b>21,855</b>
Plaster-Pool	1/01/2000	10/00	00/00	01/10	Y	35,000	40,575
<b>Sub Total:</b>						<b>35,000</b>	<b>40,575</b>
Railings-Lanai	1/01/1982	07/00	+23/00	01/12	Y	10,800	13,283
<b>Sub Total:</b>						<b>10,800</b>	<b>13,283</b>
Spalling Allowance	1/01/2005	07/00	00/00	01/05	Y	45,000	45,000
<b>Sub Total:</b>						<b>45,000</b>	<b>45,000</b>
Roof-Built Up-Emulsion Coating	1/01/2005	05/00	00/00	01/05	Y	35,000	35,000
Roof-Tile Replace	1/01/1982	30/00	+05/00	01/17	Y	630,500	899,208
Roofs-Thatched	1/01/2000	08/00	00/00	01/08	Y	17,500	19,123
<b>Sub Total:</b>						<b>683,000</b>	<b>953,331</b>
<b>Grand Total:</b>						<b>5,162,870</b>	<b>5,886,727</b>

## EXHIBIT I SUMMARY OF SALES CONTRACT AND ESCROW AGREEMENT

The Sales Contract provides for the sale of an Apartment by the developer to a Buyer. The Escrow Agreement provides how the funds paid by Buyer under the Sales Contract to Escrow are to be held and released. Both the Sales Contract and Escrow Agreement contain many important provisions which are not set out here and should be carefully reviewed by every prospective Buyer. Both documents have been written in language intended to be easier for Buyers to read than that used in traditional legal documents. This summary is not complete and will not control in the event of any conflict with a provision in the Sales Contract or the Escrow Agreement. Prospective Buyers are cautioned and encouraged to read carefully the Sales Contract and Escrow Agreement.

### SALES CONTRACT:

1. In the Sales Contract the developer is called "Seller". The Sales Contract provides for the number, amount and timing of payments Buyer is to make to Escrow. The Sales Contract provides that all interest received by Seller or Escrow on Buyer's deposits will belong to Buyer if the Buyer closes its purchase of the Property and will belong to Seller if Buyer does not close its purchase.
2. The Sales Contract describes the "Property" being sold, including the Apartment and its common interest.
3. The Sales Contract confirms that Buyer has had the opportunity to read and approve certain important legal documents for the Project, including the Declaration, the Bylaws and the Rules and Regulations. Seller's rights to change the documents is described.
4. The Sales Contract contains provisions confirming that the developer is not the original developer of the Project and took no part in building or developing the Project. Buyer takes the Apartment and Project "as is". The "as is" provision is part of this Exhibit.
5. The Sales Contract provides that release of the Apartment from the mortgage of Seller's Lender is subject to certain "Seller's Lender Release Conditions" including minimum numbers of binding sales and concurrent closings. If Seller is unable to satisfy the Seller's Lender Release Conditions by February 28, 2006, Seller has the right, but not the obligation, to terminate the Sales Contract and refund Buyer's payments without interest.
6. The Sales Contract contains the following disclaimer about income

BUYER AGREES THAT NO ONE (INCLUDING SELLER OR ANY SALESPERSON) HAS TALKED TO BUYER AT ALL ABOUT ANY RENTAL INCOME OR RENTAL OR SALES SERVICES FOR BUYER'S APARTMENT. IF BUYER WANTS TO RENT OR SELL THE APARTMENT, HOW BUYER DOES IT WILL BE UP TO BUYER SUBJECT TO THE RESTRICTIONS CONTAINED IN THIS CONTRACT INCLUDING THE PROHIBITION ON RENTAL POOLING. 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.

7. The Sales Contract contains the following prohibition on income pooling:

Buyer agrees that before the Project Sell-Out Date, Buyer will not enter into any contract or arrangement concerning the rental of the Apartment, with a rental manager or anyone else, that provides for any present or future pooling of income from the Apartment with income from any apartment or property owned by any other person. Buyer acknowledges that no representations have been made to Buyer concerning the availability of any rental pool arrangement either before or after the Project Sell-Out Date. If Buyer breaches this Contract, Seller may obtain an injunction from a court to prevent Buyer's continuing with any rental pooling arrangement and Buyer will pay Seller's costs and attorneys' fees for obtaining the injunction. This prohibition is included in the form of Apartment Deed.

The Project Sell-out Date is the date all of the apartments in the Project have been conveyed to persons other than Seller or Seller's mortgage lender.

8. The Sales Contract contains the following "As is" provision in which Developer is referred to as Seller:

Buyer understands that the Project was completed in or about 1986. Seller did not construct or develop the Project. Any warranties from the original developer or the original contractor for the Project expired years before Seller bought the Project. The Project has experienced wear and tear. The reserve study for the Project includes information concerning the state of components in the Project. A copy of the reserve study has been given to Buyer. Buyer is encouraged to read the mold, accessibility and other property reports that Seller has made available at the sales office, but Buyer acknowledges that the reports may not include every defect in the Project. The Seller is making certain renovations to the Project but Seller is not making any promises about those renovations.

SELLER IS NOT GIVING ANY WARRANTIES TO BUYER. NO PERSON ACTING ON BEHALF OF SELLER IS AUTHORIZED TO MAKE, AND BY SIGNING THIS CONTRACT, BUYER AGREES THAT SELLER HAS NOT MADE, AND DISCLAIMS, ANY REPRESENTATIONS, WARRANTIES OR PROMISES OF ANY KIND



WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, CONCERNING OR WITH RESPECT TO:

THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROJECT;

THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROJECT;

ANY ARCHAEOLOGICAL SITES, REMAINS OR ARTIFACTS ON THE LAND;

THE PROJECT'S COMPLIANCE WITH LAWS, ORDINANCES OR REGULATIONS;

THE QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO THE PROJECT OR THE REPAIRS OR RENOVATIONS;

THE PRESENCE OR ABSENCE OF MOLD, STANDING WATER OR HAZARDOUS MATERIALS AT, ON, UNDER, OR ADJACENT TO THE PROJECT;

THE CONFORMITY OF THE PROJECT TO PAST, CURRENT OR FUTURE APPLICABLE ZONING OR BUILDING REQUIREMENTS OR SPECIAL PERMITS;

THE FACT THAT ALL OR A PORTION OF THE PROJECT MAY BE LOCATED ON OR NEAR A TSUNAMI INUNDATION AREA;

THE ABILITY OF THE PROJECT TO WITHSTAND EARTHQUAKE OR HURRICANE DAMAGE;

THE EXISTENCE OF TERMITES OR OTHER PESTS OR TERMITE DAMAGE,

THE LOCATION OF THE SHORELINE IN ACCORDANCE WITH THE LAWS OF THE STATE OF HAWAII, OR

ANY OTHER MATTER CONCERNING THE PROJECT.

9. If Developer's planned refurbishments to any Apartment have not been completed on the Reference Date of the Contract there will be a limited exception to the as is provision whereby Developer agrees to complete those refurbishments; completion may occur after closing and Developer reserves the right to enter the Apartment for that purpose. Certain personal property may also be delivered after closing.

#### **ESCROW AGREEMENT.**

1. The Escrow Agreement provides that Escrow is to collect Buyer's payments and hold them in accounts with banks or savings institutions that are federally insured.
2. The Escrow Agreement provides for the closing or settlement of the sale. Escrow collects all payments and other amounts owed under the Sales Contract, including closing costs which are shared between the Developer and Buyer as set forth in the Sales Contract.
3. Escrow handles the closing and the transfer of title in accordance with the Escrow Agreement. The Apartment must be conveyed to Buyer free and clear of any blanket liens, such as mortgages covering more than one apartment.
4. The Escrow Agreement provides certain protections to Escrow in the event of a dispute between Buyer and the Developer. These rights include filing an "interpleader" and the right to recover certain fees and costs. In an interpleader action the escrow deposit is given to the court to decide what action to take.
5. The Escrow Agreement sets out escrow fees, escrow cancellation fees and the fees for certain policies of title insurance.

**BRYAN J. BAPTISTE**  
MAYOR

**GARY K. HEU**  
ADMINISTRATIVE ASSISTANT



**IAN K. COSTA**  
DIRECTOR OF PLANNING

**GARY L. HENNIGH**  
DEPUTY DIRECTOR OF PLANNING

**COUNTY OF KAUAI  
PLANNING DEPARTMENT**

Kapule Building  
4444 Rice Street, Suite A473  
Lihue, Hawaii, 96766-1326

TELEPHONE: 808.241.8877  
FAX: 808.241.8899

**DATE:** November 23, 2004

**TO:** Senior Condominium Specialist  
Real Estate Commission  
P & VLD/DCCA  
250 South King Street, Suite 702  
Honolulu, Hawaii 96813

**FROM:** *[Signature]* Ian K. Costa, Director of Planning

**SUBJECT:** Certification of Inspection of Existing Buildings

Project Name: **RADISSON KAUAI BEACH RESORT**  
Condominium Project  
Tax Map Key: (4) 3-7-003: 015

The representative for the developer of the above-mentioned condominium project has requested that this office, as an agency of the County of Kauai, review the project for compliance with all ordinances, codes, rules, regulations and other requirements of the County of Kauai, (Section 515A-40 (b), (1), Hawaii Revised Statutes. Subject to the disclosures and waivers (item "5" below) specified herein, we certify the following:

1. The proposed project referred to as Radisson Kauai Beach Resort Condominium is in compliance with all ordinances, codes, rules, regulations and other requirements in force at the time of its construction, and to that extent, and subject to the conditions of waiver herein, the Planning Department adopts that certification as it pertains to the rules and regulations administered solely by the Department.

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Radisson Kauai Beach Resort Condominium  
TMK: (4) 3-7-003: 015  
November 23, 2004  
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2. The parcel does not contain any outstanding nonconforming uses or structures as a result of the adoption or amendments of any ordinances or codes and regulations.
3. There are no notices of violation of County building or zoning codes outstanding according to our records.
4. The variances that were approved for the subject property are as follows:
  - Z-IV-80-26/SMA (U) 80-11  
250 Room Hotel, Sewage Treatment Plant, Tennis Court and Project Office, Maintenance and Housekeeping Building, and Comfort Station.
  - Z-IV-80-26/SMA (U) 80-26  
Pool Complex (Snack Shop, Restrooms, Pools, and Rockscape)
  - Z-IV-80-26/SMA (U) 82-15  
Irrigation Pump System, Pool Deck Extension and Wall Addition.
  - Z-IV-2000-33/SMA (U) 2000-7  
Interior and Exterior Renovation to the Existing Hotel Project.
  - Z-584-86/SMA (M) 86-30  
Beach and Pool Concession Booth
  - SMA (M) 91-1  
Equalization Tank for Sewage Treatment Plant
  - Z-190-91/SMA (M) 91-4  
Enclose Walkways
5. WAIVER  
The foregoing certification is not a warranty to any compliance with applicable County and State rules and regulations. The sole reason for the execution hereof is to comply with statutory requirements relating to the regulations of condominiums under subsection 514 A-40, (b), and (1), Hawaii Revised Statutes.

If you have any questions, please contact Sheila Miyake at 241-6677.

cc: Greg Kamm, Developer's Representative