

# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR

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DEREK S.K. KAWAKAMI, MAYOR  
REIKO MATSUYAMA, MANAGING DIRECTOR

October 7, 2024

Public Testimony and/or Agency comments received by the Planning Department as of October 7, 2024, 9:00 am for the October 8, 2024, Planning Commission meeting regarding the following item:

- G.1.a. 2024 Annual Report on the progress of compliance and conditions of the subject permits for RP21 COCO PALMS LLC. (formerly Coco Palms Hui, LLC.) in accordance with Condition No. 29 of Special Management Area Use Permit SMA(U)-2015-6, Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, and Variance Permit V-2015-1, Tax Map Keys: (4)4-1-003:004 (Por.), 005, 007, 011, 017; 4-1-005:014 & 017.

**Shanlee Jimenez**

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**From:** William Wong <alohadundee@yahoo.com>  
**Sent:** Thursday, October 3, 2024 9:25 AM  
**To:** Planning Department  
**Subject:** Testimony on G1-A

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Dear Members of the Kauai County Planning Commission,

We are writing to respectfully request that the commission defer acceptance of the annual report on the permits associated with the proposed redevelopment of the Coco Palms Hotel. Given the ongoing legal proceedings, specifically mortgage broker Paul Honkavaara's motion to nullify RP21's title and enjoin the development, it would be prudent for the commission to wait until the court issues its ruling before taking any further action regarding the project.

The legal outcome of Mr. Honkavaara's motion could significantly impact the future of the redevelopment, and accepting the annual report prematurely may complicate matters that are yet to be fully resolved. In the interest of transparency, fairness, and respecting the legal process, I urge the commission to withhold acceptance of the report until the court has made its decision.

Thank you for your consideration of this matter. We appreciate your ensuring that all legal concerns are addressed prior to advancing this project.

Mahalo,

Robin and William Wong  
Wailua, Kauai

**Shanlee Jimenez**

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**From:** Richard Janik <rjj5000@outlook.com>  
**Sent:** Thursday, October 3, 2024 9:47 AM  
**To:** Planning Department  
**Subject:** Testimony regard G-1-a Planning Commission

**Follow Up Flag:** Follow up  
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Dear Sir/Madam:

I request that the Kauai County Planning Commission **NOT** accept the 2024 Annual Report on Coco Palm's until the court rules on mortgage broker, Paul Honkavaara's motion to nullify RP21's title and enjoin the development.

Sincerely yours,  
Richard Jan, MD  
4548 Ekolu St  
Lihue, HI 96766

*Richard J Janik*

**Shanlee Jimenez**

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**From:** teresa tico <haenagirl@gmail.com>  
**Sent:** Thursday, October 3, 2024 1:28 PM  
**To:** Planning Department  
**Subject:** RE: Agenda Item G.1.a.1 re: Annual Report, Coco Palms, 10/8/2024 mtg  
**Attachments:** Coco Palms\_ICA Summary Disposition\_CAAP-20-0000429sdo (1).pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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Dear Commissioners,

I am a Kauai resident and attorney. I am writing on my own behalf in regard to Item G.1.a.1 regarding RP21 Coco Palms' annual report and director's report.

I respectfully request that you hold in abeyance acceptance of the reports pending a Fifth Circuit Court hearing on 10/31/2024 that will likely result in the nullification of the applicant's deed to the subject real property and injunction prohibiting the applicant from proceeding further with the development.

Please see the attached Decision from the Hawaii Intermediate Court of Appeals vacating the foreclosure judgment that resulted in the Commissioner's deed to the subject property being improperly awarded to applicant RP21 Coco Palms.

Thank you for your consideration.

Sincerely,  
Teresa Tico

**Electronically Filed  
Intermediate Court of Appeals  
CAAP-20-0000429  
28-JUN-2024  
08:00 AM  
Dkt. 160 SO**

NOS. CAAP-20-0000429 and CAAP-20-0000527

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

**CAAP-20-0000429**

PRIVATE CAPITAL GROUP, INC., a Utah Corporation,  
Plaintiff-Appellee, v. COCO PALMS HUI, LLC, a Delaware Limited  
Liability Company; TYLER SCOTT GREENE, Defendants-Appellees,  
and  
CHAD WATERS, Defendant-Appellant,  
and  
PAUL M. HONKAVAARA dba Chartered Financial Group,  
Defendant-Appellee,  
and  
DOE DEFENDANTS 1-50, Defendants  
(CASE NO. 5CC191000086)

and

**CAAP-20-0000527**

PRIVATE CAPITAL GROUP, INC., a Utah Corporation,  
Plaintiff-Appellee, v. COCO PALMS HUI, LLC, a Delaware Limited  
Liability Company; TYLER SCOTT GREENE, Defendants-Appellees,  
and  
CHAD WATERS, Defendant-Appellee,  
and  
PAUL M. HONKAVAARA dba Chartered Financial Group,  
Defendant-Appellant,  
and  
DOE DEFENDANTS 1-50, Defendants  
(CASE NO. 5CC191000086)

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT

**SUMMARY DISPOSITION ORDER**

(By: Hiraoka, Presiding Judge, Wadsworth and Nakasone, JJ.)

Paul M. **Honkavaara**, doing business as Chartered Financial Group, appeals from the Amended Final Judgment for Private Capital Group, Inc. (**PCG**) entered by the Circuit Court of the Fifth Circuit on September 20, 2021.<sup>1</sup> We vacate and remand.

PCG filed a foreclosure complaint against **Coco Palms Hui LLC**, Tyler Scott **Greene**, Chad **Waters**, and Honkavaara. The complaint alleged that PCG serviced a **Mortgage** on real **Property** owned by Coco Palms Hui. The Mortgage secured a **Note** made by Coco Palms Hui. The Note was payable to a group of lenders, for whom PCG claimed to act. Coco Palms Hui defaulted on the Note. Greene and Waters had guaranteed Coco Palms Hui's obligation under the Note. Honkavaara claimed an interest in the Property as a judgment creditor of Coco Palms Hui.<sup>2</sup>

PCG moved for summary judgment and a decree of foreclosure on November 5, 2019. Honkavaara and Waters opposed the motion. The circuit court entered an order granting partial summary judgment and a decree of foreclosure on June 17, 2020. Waters filed a notice of appeal on June 25, 2020, creating CAAP-20-0000429. A "Final Judgment" was entered on August 10, 2020. Honkavaara filed a notice of appeal on August 25, 2020, creating CAAP-20-0000527. We consolidated the appeals and temporarily remanded the case for entry of a judgment that complied with Hawai'i Rules of Civil Procedure Rule 54(b) and Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). The Amended Final Judgment was entered on September 20, 2021. We approved the parties' stipulation to dismiss Waters' appeal on March 6, 2024. Only Honkavaara's appeal remains before us.

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<sup>1</sup> The Honorable Randal G.B. Valenciano presided.

<sup>2</sup> Honkavaara's answer admitted that his judgment lien was junior and subordinate to the lien of the Mortgage.

Honkavaara contends the circuit court erred by granting summary judgment because PCG: **(1)** lacked standing to enforce the Note; **(2)** did not prove it suffered an injury-in-fact; and **(3)** had unclean hands. We review a grant of summary judgment de novo. Bank of Am., N.A. v. Reyes-Toledo, 139 Hawai'i 361, 367 n.9, 390 P.3d 1248, 1254 n.9 (2017).

**(1)** A copy of the Note was attached to PCG's motion for summary judgment. As the foreclosing plaintiff moving for summary judgment, PCG had to prove it was entitled to enforce the Note. Reyes-Toledo, 139 Hawai'i at 367, 390 P.3d at 1254 (citing HRS § 490:3-301). It had to show it was either **(a)** the holder of the Note, or **(b)** a nonholder in possession of the Note with the rights of a holder. HRS § 490:3-301 (2008).<sup>3</sup>

**(a)** PCG vice president Benjamin C. **Schramm** submitted a declaration stating that PCG had possession of the Note since it was executed. Under the Hawai'i Uniform Commercial Code, a *holder* of a note is a person in possession of a note that is payable to the bearer, or to "an identified person that is the person in possession[.]" HRS § 490:1-201 (2008). The Note was payable to WCMF Inc., Coco Lenders Partnership, Blue Glacier Fund, L.P., Crestline AK Opportunistic Fund, L.P., and PCG Credit Partners LLC, "or their successors and assigns[.]" A declaration by PCG's custodian of records stated that WCMF Inc. assigned its interest in the Note to Robert Conte, who assigned it to WSNT LLC. Neither assignment appears in the record.

The Note was not specially indorsed to PCG. HRS § 490:3-205(a) (2008). The Note was not indorsed in blank. HRS § 490:3-205(b) (2008). PCG did not show it was the holder of the Note.

**(b)** PCG argues it was a nonholder in possession of the Note with rights of a holder because it was the "disclosed agent" of the payees named in the Note (and presumably their assignees).

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<sup>3</sup> The HRS § 490:3-301 provisions about lost, stolen, or destroyed notes, or instruments paid or accepted by mistake, do not apply here.

Schramm's declaration stated that PCG had serviced Coco Palms Hui's loan since its origination, maintained all of the loan servicing records, and had possession of the Note. That agency relationship does not prove PCG had the rights of a holder.

HRS § 490:3-203 (2008) provides, in relevant part:

(a) An instrument is transferred when it is delivered by a person other than its issuer *for the purpose of giving to the person receiving delivery the right to enforce the instrument.*

(Emphasis added.)

Uniform Commercial Code § 3-203 official comment 2. states: "Because the transferee's rights are derivative of the transferor's rights, those rights must be proved. . . . The instrument, by its terms, is not payable to the transferee and the transferee must account for possession of the unindorsed instrument *by proving the transaction through which the transferee acquired it.*" (Emphasis added.) As the supreme court of one Uniform Commercial Code state noted, "because [a transferee] seeking to enforce the note cannot 'prove' its right to enforce through the use of a valid endorsement [sic], the party must 'prove' by some other means that it was given possession of the note *for the purpose of enforcing it.*" Leyva v. Nat'l Default Servicing Corp., 255 P.3d 1275, 1281 (Nev. 2011) (emphasis added) (footnote omitted).

Schramm's declaration showed only that PCG serviced the loan. It did not establish that WCMF Inc., Coco Lenders Partnership, Blue Glacier Fund, L.P., Crestline AK Opportunistic Fund, L.P., PCG Credit Partners LLC, Robert Conte, or WSNT LLC authorized PCG to file suit to enforce the Note. PCG did not submit a loan servicing agreement or other evidence "of such authority to demonstrate that the principals unequivocally manifested their intention to authorize the loan servicer to exercise those rights [to foreclose a mortgage.]" J.E. Robert Co. v. Signature Props., LLC, 71 A.3d 492, 504 n.19 (Conn. 2013)

(cleaned up). PCG did not show it was a nonholder in possession of the Note with rights of a holder.

(2) A plaintiff must have suffered an injury-in-fact to establish standing to "justify exercise of the court's remedial powers" on their behalf. Wells Fargo Bank, N.A. v. Behrendt, 142 Hawai'i 37, 41, 414 P.3d 89, 93 (2018) (citation omitted). In a foreclosure case, "the injury-in-fact is the mortgagor's failure to satisfy its obligation to pay the debt obligation to the note holder." Id. (cleaned up). The Note did not obligate Coco Palms Hui to pay PCG. PCG did not establish it suffered an injury-in-fact giving it standing to prosecute the foreclosure action.

(3) We need not address unclean hands because we are vacating the order granting partial summary judgment on other grounds, and remanding this case for further proceedings.

For these reasons, the circuit court's June 17, 2020 Findings of Fact and Conclusions of Law and Order Granting Plaintiff's Motion for Partial Summary Judgment and Interlocutory Decree of Foreclosure and September 20, 2021 Amended Final Judgment are vacated, and this case is remanded for further proceedings consistent with this summary disposition order.

DATED: Honolulu, Hawai'i, June 28, 2024.

On the briefs:

Porter Devries,  
for Defendant-Appellant  
and Defendant-Appellee  
Chad Waters.

/s/ Keith K. Hiraoka  
Presiding Judge

/s/ Clyde J. Wadsworth  
Associate Judge

Keith M. Kiuchi,  
for Defendant-Appellee  
and Defendant-Appellant  
Paul M. Honkavaara dba  
Chartered Financial Group.

/s/ Karen T. Nakasone  
Associate Judge

Bradley R. Pulice,  
Scott I. Batterman,  
for Plaintiff-Appellee  
Private Capital Group, Inc.

## Shanlee Jimenez

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**From:** haunani@aloha.net  
**Sent:** Thursday, October 3, 2024 2:37 PM  
**To:** Planning Department; Planning Department  
**Subject:** AGENDA ITEM G-1-a/COCO PALMS

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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Aloha Planning Commissioners,

RE: Agenda Item G-1-a reads: 2024 Annual Report on the progress of compliance and conditions of the subject permits for RP21 Coco Palms LLC (formerly Coco Palms Hui, LLC) in accordance with Condition No. 29 of Special Management Use Permit SMA(U)-2015-6, Class IV Zoning Permit Z-IV-2015-8, Project Development USE Permit PDU-2015-7, and Variance Permit V-2015-1, Tax Map Keys: (4)-1-003-004 (Por), 005,007,011,017,4-1-005:014&017

My name is Haunani Rossi and I am a resident, land owner, and native Hawaiian. I have lived in the Wailua Houselots Subdivision for 43 years with my family, and also own property behind the Coco Palms Resort on Koki Road.

I am requesting that the Kauai Planning Commission NOT accept the 2024 Annual Report on any of the proposed permits associated with the re-development of the Coco Palms until the following matters listed below have been resolved:

1/ Court rules Mortgage broker, Paul Honkavaara's motion to nullify RP21's title and enjoin the development which is set for a hearing on October 31, 2024 at 1PM, due to commission owed for securing funding.

2/ Friends of Mahaulepu (FOM) submitted a petition to revoke zoning and variance permits that the Kauai Planning Commission denied based on Friends of Mahaulepu lack of standing. That decision was appealed in civil count in April 2024 and the matter last heard on September 25, 2024. According to court records Judge Kathleen Watanabe is expected to make a decision on the appeal within 2 weeks.

I humbly ask that with all the testimony and information submitted, that the Kauai Planning Commission does not accept any report in favor of the developer until the courts rule on the above.

**Shanlee Jimenez**

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**From:** judith matola <judiamatola@gmail.com>  
**Sent:** Thursday, October 3, 2024 4:13 PM  
**To:** Planning Department  
**Subject:** "G-1-a"

**Follow Up Flag:** Follow up  
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Sent f am writing in regard to agenda D5 and why it should be voted against. I have lived up in Wailua Homestead more than half my life even remembering before there was a light down at the highway on the corner of Coco palms. There was no traffic there was a wonderful beach a restaurant across the street wonderful memories I'm afraid if there is a hotel built there, it will cause even more havoc to the traffic congestion. But most importantly, it's a slap in the face to the Hawaiian people. This . is their land, and everyone on Kauai is against the development of a new hotel there .I am begging you to please do what the people of Kauai want.We need a Park, a Hawaiian, cultural center free space for people to roam not another hotel.

Sent from my iPhone

**Shanlee Jimenez**

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**From:** Colin McCubbin <colinmcc@direct.ca>  
**Sent:** Friday, October 4, 2024 4:24 AM  
**To:** Planning Department  
**Subject:** Meeting agenda item "G-1-a" .Tuesday, October 8, 2024

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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Friday, October 4th, 2024.

Aloha mai kākou,

I understand that on Tuesday, October 8, 2024, the Kaua'i County Planning Commission is meeting and the annual report on the permits associated with the proposed redevelopment of the Coco Palms hotel is on the agenda. Ref: **Agenda item "G-1-a"**

I hereby request that the Commission not accept the report until the court rules on mortgage broker, Paul Honkavaara's motion to nullify RP21's title and enjoin the development. This hearing for the motion has been set for October 31, 2024 at 1 PM.

In addition, Friends of Māhāu'lepū submitted a petition to revoke zoning and variance permits that the Commission ultimately denied based on Friends of Māhāu'lepū's lack of standing. That decision was appealed in civil court in April, and the matter was last heard on Sept. 25. According to court records, Judge Kathleen Watanabe is expected to make a decision on the appeal within two weeks.

Accordingly I am requesting that the Planning Commission not accept the 2024 Annual Report until these matters have been sorted out.

Thank you,  
Colin McCubbin.

**Shanlee Jimenez**

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**From:** Georgia Hoopes <hoopesgeorgia@gmail.com>  
**Sent:** Friday, October 4, 2024 2:53 PM  
**To:** Planning Department  
**Subject:** Agenda Item G-1-a

**Follow Up Flag:** Follow up  
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I'm requesting that the Commission not accept the G-1-a report until the court rules on mortgage broker, Paul Honkavaara's motion to nullify RP21's title and enjoin the development.

Also, an article in the Kaua'i Now News talked about the action Friends of Māhāu'lepū (FOM) took back in March of this year. FOM submitted a petition to revoke zoning and variance permits that the Commission ultimately denied based on FOM's lack of standing. That decision was appealed in civil court in April, and the matter was last heard on Sept. 25. According to court records, Judge Kathleen Watanabe is expected to make a decision on the appeal within two weeks.

**We are requesting that the Planning Commission not accept the 2024 Annual Report until these matters have been sorted out.**

Mahalo,  
Georgia Hoopes

**Shanlee Jimenez**

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**From:** Steve O'Neill <son@2oneills.us>  
**Sent:** Friday, October 4, 2024 6:59 PM  
**To:** Planning Department  
**Subject:** G-1-A

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Planning Commission

I strongly urge the commission to not accept the annual report on the Coco Palms project.

Turn it into a park for the public to enjoy !

Regards, Steve and Linda O'Neill

**Shanlee Jimenez**

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**From:** marem@aloha.net  
**Sent:** Friday, October 4, 2024 9:58 PM  
**To:** Planning Department  
**Subject:** How is the development at Coco Palms going to handle all the traffic?

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It's such a flood prone area I think it should've been a park.

Marianne Martin

**Shanlee Jimenez**

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**From:** eliel starbright <elielstarbright@icloud.com>  
**Sent:** Friday, October 4, 2024 10:07 PM  
**To:** Planning Department  
**Subject:** I am requesting that the Planning Commission not accept the 2024 Annual Report until matters have been sorted out

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**Please do not accept the 2024 Annual Report until matters have been sorted out. I am Request that the Commission not accept the report until the court rules on mortgage broker, Paul Honkavaara's motion to nullify RP21's title and enjoin the development.**

## **Shanlee Jimenez**

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**From:** dgcarsten@aol.com  
**Sent:** Saturday, October 5, 2024 9:17 AM  
**To:** Planning Department  
**Subject:** Coco Palms

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Members of the Planning Department,

First, I am vehemently opposed to the construction of a hotel on the site of the Coco Palms. This land is sacred to the entire state of Hawaii, not just the county of Kauai. Despite words to the contrary, I do not trust the current owners to care for this property properly.

In addition, there is already a traffic nightmare in Kapa'a, and adding a large hotel in that location would guarantee almost full time gridlock.

On the agenda of your October meeting is the 2024 Annual Report on the progress of compliance and conditions for the subject permits for RP21 Coco Palms LLC. This report should not even be considered until after October 31, the date set by the Fifth Circuit Court to rule on Paul Honkavaara's motion to nullify RP21's title and enjoin the development.

Further, Judge Kathleen Watanabe is expected to rule within the next two weeks on the appeal of Friends of Mahau'lepu to revoke zoning and variance permits. This petition was denied by the Commission due to FOM's "lack of standing" which decision I, as a member of FOM, find to be egregious.

The Commission should not consider this Annual Report until the pending litigation has been completed. To do otherwise suggests that the Commission does not care if sacred lands are destroyed, or if the people of Kauai must suffer due to even more traffic in the Kapa'a/Wailua area.

Sincerely,  
Donna Gould Carsten  
Wailua Homesteads

## **Shanlee Jimenez**

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**From:** Leslie Larsen <leslie.larsen@icloud.com>  
**Sent:** Saturday, October 5, 2024 10:12 AM  
**To:** Planning Department  
**Subject:** Agenda item G-1-a reads: 2024 Annual Report on the progress of compliance...

**CAUTION:** This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

TESTIMONY RE: Agenda item G-1-a reads: 2024 Annual Report on the progress of compliance and conditions of the subject permits for RP21 Coco Palms LLC (formerly Coco Palms Hui, LLC) in accordance with Condition No. 29 of Special Management Area Use Permit SMA(U)-2015-6, Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, and Variance Permit V-2015-1, Tax Map Keys: (4)4-1-003:004 (Por.), 005, 007, 011, 017; 4-1-005:014 & 017 and

Aloha Kauai Planning Commission

Please do not accept this 2024 Annual Report. There are relevant court cases being heard by Kaua'i judges scheduled in October 2024 that have bearing upon your decisions.

The Kaua'i, Friends of Māhāu'lepū (FOM) petition to revoke zoning and variance permits, that was appealed to civil court and heard by the Honorable Judge Kathleen Watanabe, is expected to be decided upon by October 15, 2024, and

The California mortgage broker, Paul Honkavaara's motion to nullify RP21's title and enjoin the development has a hearing before set for October 31, 2024 at 1 PM. The documents state the lender was five different entities, all out of state: WCMF, Coco Lenders Partnership, Blue Glacier Fund, Crestline AK Opportunistic Fund, and Private Capital Group Credit Partners.

Considerable questions regarding ownership and standing need to be determined before and this annual report regarding "compliance" can be approved.

Thank you,

Leslie Larsen

**Shanlee Jimenez**

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**From:** Serafina Gajate <sgajate@yahoo.com>  
**Sent:** Saturday, October 5, 2024 11:38 AM  
**To:** Planning Department  
**Subject:** Testimony concerning G-1-a

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Aloha mai kākou

I am writing to submit testimony on agenda item G-1-a, respectfully asking that the Commission NOT accept the 2024 annual report until the court rules on mortgage broker Paul Honkavaara's motion to nullify RP21's title and enjoin the development.

Mahalo nui  
Serafina Gajate

## Shanlee Jimenez

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**From:** Bridget Hammerquist <friendsofmahaulepu@hawaiiintel.net>  
**Sent:** Saturday, October 5, 2024 4:50 PM  
**To:** Kaaina Hull; Planning Department; Chris Donahoe  
**Cc:** Council Members  
**Subject:** Coco Palms Annual Report Agenda Item G  
**Attachments:** Coco Palms--Annual Report 2024.pdf; Coco Palms--Planning Commission Order 12312018.pdf; Coco Palms--Entitlements--Assignment Of Intangible Property.pdf; Coco Palms--Entitlements--Assignment Of Intangible Property.pdf

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**RE:           **Agenda Item G.1.a.1.****  
Annual Status Report 2024  
Special Management Area Use Permit SMA (U)-2015-6  
Class IV Zoning Permit Z-IV-2015-8  
Project Development Use Permit PDU-2015-7  
Variance Permit V-2015-1  
Tax Map Keys: (4) 4-1-003:004 (Por.), 005, 007, 011 & 017;  
                  4-1-005:014 & 017  
Wailua, Kaua'i

**APPLICANT: RP21 COCO PALMS LLC.**  
(formerly Coco Palms Hui, LLC.)

Aloha Director Hull, Members of the Planning Commission and Kauai County Attorneys,

Please accept this comment filed on behalf of Friends of Maha`ulepu (FOM), many of whose members reside in Wailua and Kapaa and are likely to be directly impacted if a luxury resort is built on the former Coco Palms site destroyed by hurricane Iniki in 1992. This comment is filed with the intent that our County have the information necessary to require the appropriate action(s) by the applicant(s). There is a large fundamental error in the County Planning Department Director's Report to the Commission.

In his report, the Director identifies the Applicant as "RP21 Coco Palms LLC (formerly Coco Palms Hui, LLC)". That statement is legally incorrect. RP21 Coco Palms, LLC was and is an independent corporation incorporated in the State of Utah. Coco Palms Hui, LLC was and is an independent corporation incorporated in the State of Delaware. They remain separate corporations today. According to those state's records, they remain independent separate corporations today.

When Coco Palms Hui, LLC purchased the fee simple properties and assets previously owned by Coco Palms Ventures, LLC from 2006 until their transfer of their deeds and assets back to PR2 (Prudential), in May 2016, there were documents recorded with the State of Hawaii Bureau of Conveyance, copies attached, that identify the assets assigned PR2 to Coco Palms Hui, LLC.

Coco Palms Hui, LLC was owned by Chad Waters and Tyler Green. Coco Palms Hui, LLC was initially

incorporated by the owners in the State of Hawaii but later was incorporated in the State of Delaware in 2016. In 2019, a loan servicing entity foreclosed on Coco Palms Hui, LLC alleging that Coco Palms Hui, LLC and Chad Waters and Tyler Green were in default of a loan funded by Reef Capital and its affiliates that was brokered by Paul Honkavaaro. Mr Honkavaaro never received the load broker fee that Chad Waters, Tyler Green and Coco Palms Hui, LLC were contractually obligated to pay. Mr Honkavaaro obtained a separate judgement for his unpaid fees.

The foreclosure action proceeded with the transfer of a Commissioner's Deed from Coco Palms Hui, LLC to RP21 Coco Palms, LLC in 2021, the year this latter corporation was created.

Recently, the Court of Appeal found in favor of Paul Honkavaaro and determined that the foreclosure action and deed transfer in 2012, having been prosecuted by a loan processing company rather than the lender, was in error. Just prior to the Appellate Court's Determination, Chad Waters and Tyler Green were persuaded to transfer any remaining interest they held in Coco Palms Hui, LLC to affiliates of Reef Capital in return for a release of their personal guarantees on the loan that had been brokered Mr Honkavaaro. They also agreed to drop their Appeal that alleged the foreclosure against them and Coco Palms Hui, LLC was contrary to Federal Law that was amended after 2018 to require foreclosures be prosecuted by the lenders and not a loan servicing entity.

These facts are material to help the County appreciate that there are still two separate corporations. While the ownership of Coco Palms Hui, LLC has been transferred, from Chad Waters and Tyler Green to affiliates of Reef Capital, there has never been an assignment or recordation of any assets of Coco Palms Hui, LLC to Reef Capital Coco Palms, LLC.

The attached December 31, 2018 entitlement to Coco Palms Hui, LLC. has never been assigned to RP21 Coco Palms, LLC. and we were not able to find any Bureau of Conveyance recording that would confirm or support the statement of Director Hull that the applicant before the County is "RP21 Coco Palms LLC (formerly Coco Palms Hui, LLC)". As the record of our hearing on the FOM Petition to Revoke Coco Palms Development Permits for failure to comply with conditions that are nearly six years old reflects, there are a large number of Kauai residents who have commented and asked the Planning Commission to not let this development proceed further.

While the annual report is a requirement of the permit holder, by definition you are not receiving the report from the permit holder if the report is being filed by RP21 Coco Palms, LLC. a separate and distinct corporation. We ask that the County of Kauai do nothing further with these entities until they are working with the corporation that holds actual title to the fee simple property. When the Appellate Court recently reversed the foreclosure action filed against Coco Palms Hui, LLC., the entitlements they held as of the Notice of Foreclosure should have been restored with that legal entity, Coco Palms Hui, LLC., a separate corporation whose ownership was transferred, but the transfer was not to RP21 Coco Palms, LLC. Our County should know who they are dealing with and this much belated development should not be allowed to proceed based on inaccurate statements and an incorrect claim that RP21 Coco Palms, LLC was somehow formerly Coco Palms Hui, LLC. That is an incorrect statement and the County should take the appropriate action and not deal with an entity or extend permits to an entity that was never the applicant for the development rights extended by the Permit Letter of December 31, 2018 (copy attached).

Mahalo nui,

Bridget Hammerquist, President  
Friends of Maha`ulepu, a 501(c)(3)  
Kia`i Wai o Wai`ale`ale, Co-founder  
PO Box 1654  
Koloa, HI 96756  
[friendsofmahaulepu.org](http://friendsofmahaulepu.org)  
[friendsofmahaulepu@hawaiiantel.net](mailto:friendsofmahaulepu@hawaiiantel.net)  
(808) 742-1037 home  
(808) 346-1973 cell



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## DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR  
REIKO MATSUYAMA, MANAGING DIRECTOR

### PLANNING DIRECTOR'S REPORT

**RE:** Annual Status Report 2024  
Special Management Area Use Permit SMA(U)-2015-6  
Class IV Zoning Permit Z-IV-2015-8  
Project Development Use Permit PDU-2015-7  
Variance Permit V-2015-1  
Tax Map Keys: (4) 4-1-003:004 (Por.), 005, 007, 011 & 017;  
4-1-005:014 & 017  
Wailua, Kaua'i

**APPLICANT:** RP21 COCO PALMS LLC.  
(formerly Coco Palms Hui, LLC.)

#### PROJECT BACKGROUND

The subject permits were approved by the Planning Commission on March 10, 2015 to authorize the renovation and redevelopment of the Coco Palms Resort consisting of 350 hotel units. In addition, the development includes support facilities containing retail shops, several restaurants, office space and hotel lobby area, museum, meeting rooms, new maintenance building, new spa and gym building, and 399 off-street parking stalls.

Condition No. 29 of the permits requires the Applicant to submit an annual report to the Planning Commission to report the progress of the project until it's completed and it reads:

*"29. On or before June 30th of each year until all conditions have been satisfied, the Applicant shall submit an annual report to the Planning Commission of the status of and progress on, each unsatisfied condition, particularly conditions with workforce housing requirements and transportation requirements. These conditions shall be modified by the Planning Commission to reflect the satisfaction of any condition."*

#### APPLICANT'S REQUEST

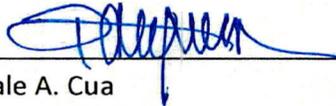
In accordance with Condition No. 29, the Applicant is providing the attached status and progress report (dated June 30, 2023) on behalf of Coco Palms Hui, LLC., refer to Exhibit 'A'. All conditions of the original permit are addressed by the Applicant in the attached report. The matrix provided also identify the progress with the compliance of the specific requirement.

G.I.A.I.

OCT 08 2026

**RECOMMENDATION**

It is recommended that the Commission receives the Applicant's Annual Status Report dated July 1, 2024. Additionally, the Applicant is advised that all applicable conditions of approval, including the provision of annual status report as required by Condition No. 29, shall remain in effect.

By  \_\_\_\_\_  
Dale A. Cua  
Planner

Approved and recommended to Commission:

By  \_\_\_\_\_  
Ka'aina S. Hull  
Director of Planning  
Date: 9/30/2024

# EXHIBIT “A”

(2024 Annual Report)

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JUL 1 '24 PM12:59  
PLANNING DEPT

**ca-des · schutte**  
A LIMITED LIABILITY LAW PARTNERSHIP

**Transmittal Memorandum**

**VIA EMAIL:** [planningdepartment@kauai.gov](mailto:planningdepartment@kauai.gov); [khull@kauai.gov](mailto:khull@kauai.gov)

**TO:** County of Kauai Planning Commission  
County of Kauai Planning Department  
4444 Rice Street, Suite A473  
Lihue, HI 96766-1326

**FROM:** Mauna Kea Trask, Esq.

**DATE:** July 1, 2024

**RE:** Class IV Zoning Permit Z-IV-2015-8, Project Development  
Use Permit PDU-2015-7, Variance Permit V-2015-1 and Special  
Management Area Use Permit SMA(U)-2015-6 at Tax Map Keys  
4-1-003: 004 (por.), 005, 007, 011, and 017 and 4-1-005: 014 and 017

We are sending you the following:

ORIG.	COPIES	DATED	DESCRIPTION
<input checked="" type="checkbox"/>		July 1, 2024	Coco Palms Permit Conditions Matrix Status Report as of July 1, 2024

- For your information
- For your files
- Per your request
- Per our conversation
- For necessary action
- Are returned herewith

- For signature and return
- For signature, forwarding,  
as noted below & return
- For review & comment
- For distribution
- For recording/filing

**REMARKS:** If you have any questions, please contact me at (808) 521-9297 or [mtrask@ca-des.com](mailto:mtrask@ca-des.com).

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**Coco Palms Permit Conditions Matrix  
Status Report as of July 1, 2024**

**Development Permits:** Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1 and Special Management Area Use Permit SMA(U)-2015-6 at Tax Map Keys 4-1-003: 004 (por.), 005, 007, 011, and 017 and 4-1-005: 014 and 017, with approval conditions as set forth in letter dated December 31, 2018, from the Planning Commission of the County of Kauai

**Applicant:** The Applicants are Coco Palms Hui LLC ("Hui") and RP21 Coco Palms LLC ("RP21").

	<b>Count</b>	<b>Conditions</b>
<b>Completed Condition:</b>	10	1, 2, 3 (a-e), 4, 5, 10, 12, 13, 28, 29
<b>Ongoing:</b>	12	6, 7, 8, 9, 11, 14, 15, 17, 21 (except 21.b), 23, 25, 26,
<b>Forthcoming:</b>	7	16, 18, 19, 20, (21.b), 22, 24, 27
	<b>29</b>	

	<b>Condition</b>	<b>Status</b>	<b>Comments to County</b>
1.	The Applicant shall contribute \$50,000.00 to the County of Kauai to assist the Planning Department's historic preservation mission via its efforts to perpetuate the cultural and historic significance of the Wailua/Waipouli region consistent with the Department's historic preservation program, including the creation of educational programs and signage.	Complete	This contribution was paid to, and received by, the County of Kauai on October 17, 2015.
2.	The Applicant shall contribute \$50,000.00 to the County of Kauai to assist the County with its current place making efforts, including moku and ahupua'a signage of the Wailua area.	Complete	This contribution was paid to, and received by, the County of Kauai on October 17, 2015.

	Condition	Status	Comments to County
3.	Prior to building permit approval, the Applicant shall meet the requirements and standards of the Department of Land and Natural Resources (DLNR), State Historic Preservation Division (SHPD). The Applicant is further advised that should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the Applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures. The Planning Department has reviewed the comments of the State Historic Preservation Division, and under its independent Chapter 6E and related Hawaii Constitutional obligations and duties, requires the following historic preservation measures be fulfilled by the Applicant.	Complete	<p>As of June 2016, the Applicant has received approval from SHPD with respect to their HRS 6E-42 review and required mitigation actions.</p> <p>As of February 16, 2024, SHPD notified the County that the demolition of Coco Palms may resume under the SHPD approved process and archaeological monitoring plan.</p> <p>As of June 3, 2024, SHPD has approved Applicant's landscaping and maintenance plan.</p> <p>Discussions with SHPD are ongoing, and Applicants consultants and contactors remain aware that should any human remains be discovered as a consequence of digging activities, WORK MUST IMMEDIATELY STOP IN THE VICINITY OF THE FIND AND SHPD AND THE PLANNING DEPARTMENT MUST BE NOTIFIED.</p>
3.a	A revised SOW for the project, including any proposed work with potential to affect the historic lagoon, including staging areas, construction of new bridges, dredging, or filling in of areas near the lagoon;	Complete	
3.b	Information regarding any potential federal funding or federal permits that may be required, especially relative to the historic lagoons;	Complete	
3.c	An Intensive-Level Survey (ILS) that identifies and assesses all remaining architectural historic properties and their potential eligibility for the Hawaii and National Registers;	Complete	

Coco Palms Permit Conditions Matrix  
 Status Report as of July 1, 2024  
 Page 3 of 13

	Condition	Status	Comments to County
3.d	A Burial Treatment Plan (BTP) that meets HAR §13-300-34(b), and following a determination by the KIBC regarding burial treatment, a Burial Site Component of a Data Recovery Plan (BSCDRP) that meets HAR §13-300-34(b)(3)(B); and	Complete	
3.e	A Revised Archaeological Monitoring Plan (AMP) that includes provisions for addressing architectural monitoring concerns and meets HAR §13-279-4, including ongoing monitoring during construction and 90 days after completion of construction.	Complete	
4.	Applicant shall submit a Construction and Demolition Debris Management Plan, and have the plan reviewed and concurred with by the Department of Public Works, Solid Waste Management Division. Applicant is encouraged to employ broad diversion efforts in its waste management plan.	Complete	This condition 4 is satisfied.

<p>5.</p>	<p>Applicant is aware that any final construction plans involving the former Seashell Restaurant site that deviates substantially from the conceptual plans presented to the State Department of Land and Natural Resources may trigger compliance with the statutes and regulations under the jurisdiction of the Office of Coastal and Conservation Lands, Hawaii State Department of Land and Natural Resources if final development is proposed within the shoreline area. Applicant is on notice that, if any such final plans proposes development within the shoreline area, this permit action may be deemed invalid and require modification and re-approval only after compliance with Chapter 343, Hawaii Revised Statutes, is attained.</p>	<p>✓</p> <p>Complete</p>	<p>Applicants' final construction plans involving the Seashell Restaurant Site do not "deviate substantially" from the conceptual plans presented to the State Department of Land and Natural Resources. All proposed work for the Seashell Restaurant Site will occur within the State Land Use Commission ("SLUC") Urban District, which is not under the jurisdiction of OCCL.</p> <p>On April 26, 2024, BLNR approved the issuance of a 30-year term, non-exclusive easement to RP21 for encroachment, landscaping and related purposes on the State parcel adjacent to the Seashell. This disposition allows for the maintenance of the encroaching structures on the State parcel, including a portion of the restaurant structure, sidewalks, and hardstands for outdoor dining tables and RP21's continued use of the improvements as recorded with the National and State Historic Registries."</p> <p>In issuing the aforementioned easement, BLNR found that the approved uses were exempt from the preparation of an environmental assessment pursuant to the Exemption List for the DLNR (November 2020), General exemption Type 1, Part 1, Item 39, and Item 40.</p>
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	Condition	Status	Comments to County
6.	In order to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds, all external lighting shall be only of the following types: shielded lights, cut-off luminaries, indirect lighting or other types permissible under applicable Federal Law or otherwise approved by the United States Fish and Wildlife Service. Spotlights aimed upward or spotlighting of structures, landscaping, or the ocean shall be prohibited unless otherwise permissible under Federal Law or approved by the United States Fish and Wildlife Service.	Ongoing	No external lighting being used at this time.
7.	To the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kauai contractors as long as they are qualified and reasonably competitive with other contractors, and shall seek to employ residents of Kauai in temporary construction and permanent jobs. It is recognized that the Applicant may have to employ non-Kauai residents for particular skilled jobs where no qualified Kauai resident possesses such skills. For the purposes of this condition, the Commission shall relieve the Applicant of this requirement if the Applicant is subjected to anti-competitive restraints on trade or other monopolistic practices.	Ongoing	As the project progresses, Applicants will solicit bids from local contractors in accordance with this condition.
8.	The Applicant shall implement to the extent possible sustainable building techniques and operational methods for the project, such as Leadership in Energy and Environmental Design (L.E.E.D.) standards or another comparable state-approved, nationally recognized, and consensus-based guideline, standard, or system, and strategies, which may include but is not limited to recycling, natural lighting, extensive landscaping, solar panels, low-energy fixtures, low energy lighting and other similar methods and techniques. All such proposals shall be reflected on the plans submitted for building permit review.	Ongoing	Building Specifications for the Project are being developed, to the extent possible, with sustainable building techniques and operational methods, which may include recycling, natural lighting, solar panels, low-energy plumbing and electrical fixtures.

Coco Palms Permit Conditions Matrix  
 Status Report as of July 1, 2024  
 Page 6 of 13

	Condition	Status	Comments to County
9.	As part of the building permit application, the Applicant shall comply with the building code requirements applicable to the construction plans submitted for the vertical Improvements for the project. Any revisions shall be identified accordingly on the final site development plan and vertical building construction plans for building permit review and processing in accordance with applicable building code requirements.	Ongoing	25 of the 25 Building Permits for the Hotel Site have been approved and issued as of Feb 28, 2023.
10.	The Applicant shall contribute \$10,000.00 to the County of Kauai Transportation Agency to assist with the construction of a new bus stop along Kuhio Highway in the Wailua area.	Complete	This contribution has been paid to, and received by, the County of Kauai Transportation Agency on October 17, 2015.
11.	Applicant shall coordinate project plans with the Department of Public Works Wastewater Management Division to ensure that connection to a public sewer system is accomplished properly. Applicant shall also submit a current wastewater preliminary engineering report, as per County Sewer Standards, identifying details of sewer connections. Prior to building permit approval for vertical construction, Applicant shall submit construction plans for any necessary sewer improvements and if applicable, pay any required wastewater sewer system fees.	Ongoing	DPW/WMD has approved all of the 25 permit applications for the Hotel Site.
12.	Applicant shall submit a detailed water demand (both domestic and irrigation) calculations along with the proposed water meter size. Water demand calculations submitted by your engineer or architect should also include fixture count and water meter sizing worksheets. The Department of Water may require the payment fees specified in the existing County of Kauai ordinances as a consequence of the approved water demand calculations that are in addition to the existing water allocated to the property.	Completed	DOW has approved all 25 permit applications for the Hotel Site.

	Condition	Status	Comments to County
13.	Applicant shall prepare and receive the Department of Water's approval of construction drawings for the necessary water system facilities and construct said facilities. These facilities shall include but not be limited to: a) the interior plumbing with the appropriate backflow prevention device; b) the domestic service connection, if applicable; c) the fire service connection, if applicable. Requests for additional water meters or increase in water meter size beyond water meters already allocated to the property will be dependent on the adequacy of the source, storage and transmission facilities existing at the time.	Completed	DOW has approved all 25 permit applications for the Hotel Site. Collectively, the water demand of all 25 Buildings do not exceed the capacity of the installed 4-inch water meter.
14.	Applicant acknowledges affordable housing requirements apply to this proposal, and in compliance with Chapter 7A, Kauai County Code (1987), Applicant has entered into, and will perform its obligations under, that certain Housing Agreement (for Coco Palms) dated December 4, 2015, directly with the Kauai County Housing Agency, which has been fully executed and recorded on February 9, 2016.	Ongoing	Housing Agreement with County Housing Agency recorded on February 9, 2016. Discussions with the County Housing Agency are ongoing.
15.	Applicant shall submit by August 31, 2019 plans to for all remaining building permits for the construction of vertical improvements on the project site, and will thereafter diligently work in good faith with the Kauai Division of Buildings ("Building Division") to obtain final building permit approval for all remaining permits. Construction shall commence within one year after the date of final approval of the referenced building permits. Further, pursuant to PDU requirements in the CZO, construction shall commence within one year after the date of full approval of such building permits. Also, Applicant shall pull all such building permits within six months after the approval of the final building permit.	Ongoing	The first submittal of all building permit plans was complete on or before August 31, 2019.  25 of the 25 permit applications for the Hotel Site have been approved and issued as of Feb 28, 2023.

	Condition	Status	Comments to County
16.	Screening of the construction site during construction along Kuhio Highway and Kuamoo Road to be aesthetically consistent with current construction standards on Kauai while maintaining compatibility with the nature of the site sitting at a coastal gateway for the area. Screening shall be properly maintained in a manner acceptable to the Director until such time as the Applicant has completed all vertical improvements. Further, the Applicant shall work with the State Department of Transportation to provide landscaping along the strip of land fronting the property fronting Kuhio Highway and properly maintain this landscaping in perpetuity.	Forthcoming	Screening of the construction site has been substantially complete along Kuhio Highway and Kuamoo Road. Applicant is committed to working with DOT on the landscaping along the Kuhio Highway.
17.	Applicant shall substantially complete the demolition work described in the existing demolition permits issued for the property by March 31, 2017 subject to extension caused by the occurrence of force majeure events.  Applicant agrees that, if the concrete structures that remain on the property after the demolition work is completed is not incorporated into the construction of the vertical improvements by June 30, 2021, the Applicant shall, at its sole cost and expense, secure such concrete structures in full compliance with all health and safety requirements set forth in all applicable laws and ordinances.	Ongoing	The three large concrete buildings, Shell Bldg., Ali'i Kai I and Ali'i Kai II were taken down as of June 2024. Demolition is ongoing pursuant to the approved waste management plan.  Applicant has spent more than \$5 MM for the demolition work.
18.	Applicant shall provide 20 public parking spaces at the North end of the project site with signage identifying their use by beachgoers and those using public transit when the operator opens to the public the building of the project that is closest to the parking lot containing such public parking spaces. Further, the Applicant shall provide 20 stalls for parking with signage identifying their use by public beachgoers along the south end of the project. These stalls shall be clearly marked for public beachgoers use only. Also, the Applicant at its own expense shall work with the county to site, design, construct, and maintain in perpetuity, a comfort station consisting of restrooms and showers for beachgoers. This comfort station shall be located adjacent or approximate to this public beachgoers parking area.	Forthcoming	There will be 20 identified parking spaces for public beachgoers and those using public transit at the North and South end of the project. A Building Permit for a Comfort Station adjacent to the South Parking lot has been approved and issued.

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	Condition	Status	Comments to County
19.	All parking for guests, customers, and employees shall be accommodated on site. No parking on Kuamoo, Halelilio or Apana roads shall be allowed. No use of parking lots on adjacent property shall be allowed as well.	Forthcoming	Parking spaces shown on the site plans shall be for all guests, customers and employees. No parking on public roads will be allowed
20.	Given outstanding evaluation of the Traffic Impact Analysis Report (TIAR) by both the Department of Public Works and State Department of Transportation, in the interim, the Applicant shall provide the following to mitigate traffic impacts created by the development:	<i>See below.</i>	
20.a	Provide, at the Applicant's expense, a shuttle for eighteen (18) months beginning when the hotel operator opens the main lobby, at least 277 guest rooms and the food and beverage facilities and services of the project to the public as a pilot program to facilitate transit to and from the Lihue Airport and the development;	Forthcoming	
20.b	Provide, at the Applicant's expense, a circulator shuttle for eighteen (18) months beginning when the hotel operator opens the main lobby, at least 277 guest rooms and the food and beverage facilities and services of the project to the public to move patrons from the hotel to Lydgate and Wailua Beach Park, the Seashell Restaurant Site, the Coconut Marketplace and other destinations within the main Kapaa transit corridor that shall be determined by the County of Kauai Executive on Transportation at least 90 days before such shuttle service is scheduled to begin.	Forthcoming	
20.c	Provide, at the Applicant's expense, a bike share program operated by Applicant or a vendor selected by Applicant for patrons of the resort to allow guests to ride bikes into Kapaa Town and other destinations without driving;	Forthcoming	
20.d	The Applicant shall work with the State Department of Transportation and Department of Public Works to resolve pedestrian crossing, sidewalks and vehicular traffic demands created by the development, and bear implementation costs proportional to the impact that arises, including the installation of a continuous public sidewalk on the Kuhio Highway frontage between Kuamoo and Halelilio; and	Forthcoming	

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Coco Palms Permit Conditions Matrix  
 Status Report as of July 1, 2024  
 Page 10 of 13

	Condition	Status	Comments to County
20.e	Provide the Planning Department, Department of Public Works and State Department of Transportation an update to the TIAR one (1) year after receiving the last certificate of occupancy for the project evaluating traffic impacts created by the resort and analyze the need for additional bus stops.	Forthcoming	
20.f	Provide the Department with a report on the Applicant's efforts to work with the Department of Land and Natural Resources to obtain permission to use the lands held by lease for a mauka access, either vehicular, or bike/pedestrian, to allow movement of residents between Kuamoo road and Haleilio Road.	Forthcoming	
20 con't	Should the updated TIAR, as accepted by the three agencies, determine a significant adverse change in the traffic conditions resulting solely from project beyond the traffic conditions anticipated in the original TIAR, Applicant is aware that this permit is subject to reasonable modification by the Planning Commission that Applicant may be responsible for the proportionate costs for any impacts of such significant adverse change for which a nexus to the additional anticipated traffic conditions may be identified.	Forthcoming	
21.	Applicant shall work with the county and bear the costs of the following improvements:	See below.	

	Condition	Status	Comments to County
21.a	<p>Provide an in lieu payment of \$93,750 to the County of Kauai by June 30, 2017 for the cost of a dedicated right turn lane on Haleilio Road, from Apana Road to Kuhio Highway In addition to an existing through lane. The County shall design and complete construction of continuous public sidewalks along Apana Road to Haleilio Road and along Haleilio Road to Kuhio Highway fronting the Applicant's property. Sidewalks must be a minimum of 5 feet wide and shall be dedicated to the County to the extent owned by Applicant. The portions of said right turn lane owned by Applicant shall be dedicated to the County; provided that the Applicant shall have the reserved right of entry over the dedicated areas in connection with its project. By January 31, 2019, the Applicant shall submit plans for the subdivision of the portions of its land to be dedicated to the Kauai Planning Department and shall thereafter diligently work in good faith with the Planning Department to obtain final subdivision approval of such plans, and to dedicate such subdivided portions to the County</p>	Ongoing	<p>This \$93,750 lieu payment was paid to, and received by, the County of Kauai on June 30, 2017.</p> <p>Subdivision plans submitted to Kauai Planning Department on January 18, 2019, deadline. Condition satisfied.</p> <p>Final Subdivision approval issued by the Kauai Planning Commission on Jan. 28. 2020, including modification waiving requirement of Applicant to provide curbs, gutters and sidewalks. Surveyor's Affidavit recorded February 27, 2020, as Doc. No. A-73620668. Condition of Title Guarantee has been issued by Old Republic Title and submitted to the Planning Dept.</p> <p>The form of the dedication deed was delivered to the Planning Dept. on November 12, 2020, for review and comment; currently awaiting approval.</p>

	<b>Condition</b>	<b>Status</b>	<b>Comments to County</b>
21.a <i>(sic)</i>	Design and complete construction of widening Apana Road to be wide enough for two-way vehicle travel from the project entry on Apana Road to Haleililo Road. The Applicant will work with the County of Kauai Department of Public Works on the width, length, and other design details for this improvement, which shall be dedicated to the County of Kauai to the extent owned by Applicant; provided that the Applicant shall have the reserved right of entry over the dedicated areas in connection with its project.	Ongoing	<p>The \$93,750 lieu payment was paid to, and received by, the County of Kauai on June 30, 2017.</p> <p>Completed, except for pending dedication of subdivided portion to County with a reserved of right of entry to Applicant.</p> <p>Conversations with DPW regarding the design details concerning the improvements are ongoing.</p>
21.b	Design and complete construction of "Do Not Block" markings along the eastbound lanes of Haleililo Road at the intersection with Apana Road, similar to the striping at Kuamo'o Road and Wailua Road.	Forthcoming	Marking to be performed upon completion of new Haleililo Road right turn lane project.

	Condition	Status	Comments to County
21. <i>con't</i>	The Applicant shall retain a surveyor to survey the portions of the Applicant's land over which the right turn lane right-of-way and sidewalks to be constructed pursuant to subparagraphs a-b above that will be dedicated to the County, then prepare and record the necessary title documents. The County, Planning Department and Department of Public Works will cooperate fully to process all necessary subdivision and dedication approvals on an expedited basis.	Ongoing	<p>Final Subdivision approval issued by the Kauai Planning Commission on Jan. 28, 2020, including modification waiving requirement of Applicant to provide curbs, gutters and sidewalks. Surveyor's Affidavit recorded February 27, 2020, as Doc. No. A-73620668. Condition of Title Guarantee has been issued by Old Republic Title and submitted to the Planning Dept.</p> <p>The form of the dedication deed was delivered to the Planning Dept. on November 12, 2020, for review and comment; currently awaiting approval.</p> <p>Conversations with DPW regarding the design details concerning the improvements are ongoing.</p>
22.	If requested by the Transportation Agency due to increased ridership demand caused by the development, Applicant shall provide proportional support for one (1) additional bus stop and shelter for the Kauai bus.	Forthcoming	
23.	Form and character of the development shall reflect the prior history of the resort and the brand standards of the hotel operator including the usage of similar looking roof and facade material, color and landscaping. Further, non-reflective materials are necessary to promote the seashore area aesthetics. Prior to building permit application for reconstruction or new construction of buildings and landscaping, the Applicant shall submit renderings and plans for departmental design review.	Ongoing	The resort will reflect the prior resort with similar looking roof, color, and landscaping. Submitted building plans address this requirement.

Coco Palms Permit Conditions Matrix  
 Status Report as of July 1, 2024  
 Page 14 of 13

	Condition	Status	Comments to County
24.	Applicant shall encourage employees to utilize the County's Transportation Agency transit services to mitigate commuter trips to and from the development. The Applicant shall work with the Transportation Agency on promotional events encouraging usage of the transit system at Coco Palms, including selling bus passes on behalf of the agency, signage, etc.	Forthcoming	
25.	The Applicant is advised that in connection with the issuance of building permits for the vertical improvements of the project, additional conditions from the reviewing government agencies may be imposed. It shall be the Applicant's responsibility to resolve those conditions with the respective agencies.	Ongoing	Applicant remains in constant dialogue with State and County agencies and has been working cooperatively with them to address any concerns they have.
26.	The Planning Commission reserves the right to add or delete conditions of approval in order to address or mitigate unforeseen Impacts that any subsequent changes to this project as proposed by Applicant may create, or revoke the permits through the proper procedures should conditions of approval be violated.	Ongoing	No additional Development Permit conditions have been imposed to date.
27.	During September 15 through December 15, construction shall only occur during daylight hours. Where possible as to not compromise safety of seabirds identified to be protected under Federal Law, exterior facility lights should be positioned low to the ground, be motion-triggered, and be shielded and/or full cut-off. Effective light shields should be completely opaque, sufficiently large, and positioned so that the bulb is only visible from below. Staff at the development shall be educated and shall educate visitors with Information regarding such endangered or protected seabird fallout and response protocols for staff to recover downed birds. Design elements shall also minimize collision by such protected seabirds with objects that protrude above the vegetation layer, such as utility lines, guide wires and communication towers. Should development yield conditions leading to any take of protected species, Applicant is on notice that an incidental take permit is required.	Forthcoming	

	Condition	Status	Comments to County
28.	Applicant shall seek guidance from the Fish and Wildlife Service for the Applicant to develop and implement measures (e.g. monitoring, etc.), in order to avoid and minimize impacts to Hawaiian waterbirds during construction and operation of the development.	Complete	<p>Applicants' predecessor(s) sought guidance from US Fish and Wildlife Service ("FWS") who provided comments on the CPH application to the Planning Commission in a letter dated March 2015.</p> <p>Upon resuming the repair and restoration of Coco Palms, RP21 and Hui engaged AECOS, Inc. to act as their consultant. Based upon his prior contact with FWS, an updated survey for waterbirds performed on August 30, 2023, and guidance from FWS' Animal Avoidance and Minimization Measures (USFWS-PIFWO, 2023), AECOS, Inc. conducted an Endangered Avian Resource Assessment at the Coco Palms Hotel and created a training module for working at Coco Palms. Applicants are in full compliance with Condition 28.</p>
29.	On or before June 30th of each year until all conditions have been satisfied, the Applicant shall submit an annual report to the Planning Commission of the status of and progress on, each unsatisfied condition, particularly conditions with workforce housing requirements and transportation requirements. These conditions shall be modified by the Planning Commission to reflect the satisfaction of any condition.	Complete	Status report submitted on July 1, 2024.



PLANNING COMMISSION  
THE COUNTY OF KAUAI

KA'AINA S. HULL, CLERK OF THE COMMISSION

Donna Apisa

Glenda Nog-ami Streufert  
VICE CHAIR

Kanoe Ahuna  
Eleszer Calipjo Roy  
Ho

Kim M. Keawe  
Sean Mahoney  
MEMBERS

December 31, 2018  
Coco Palms Hui LLC  
1050 Bishop Street, Suite 303  
Honolulu, Hawaii 96813

Attn: Mr. Tyler Greene

RE: Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1 and Special Management Area Use Permit SMA(U)-2015-6 at Tax Map Keys 4-1-003: 004 (pr.), 005, 007, 011, and 017 and 4-1-005: 014 and 017. Coco Palms Hui, LLC, Applicant  
Kauai Planning Commission Action August 11, 2015

Dear Sirs,

This letter memorializes the action taken by the Kauai Planning Commission effective November 13, 2018 concerning the dismissal of the enforcement-related order to show cause and acceptance of stipulated amendments to the above subject permits. The conditions below reflect the permit in its entirety.

Notwithstanding those improvements and/or alterations required under the subject permits' additional conditions of approval, the resort facility and associated structures and uses shall be generally constructed and operated as represented. Any changes to the subject building and/or operations shall be reviewed by the Department to determine whether Planning Commission review and action is required. The conditions of approval are as follows:

1. The applicant shall contribute \$50,000.00 to the County of Kauai to assist the Planning Department's historic preservation mission via its efforts to perpetuate the cultural and historic significance of the Wailua/Waipouli region consistent with the Department's historic preservation program, including the creation of educational programs and signage. This contribution was paid to, and received by, the County of Kauai on October 17, 2015.
2. The applicant shall contribute \$50,000.00 to the County of Kauai to assist the County with its current placemaking efforts, including moku and ahupuaa signage of the Wailua area. This contribution was paid to, and received by, the County of Kauai on October 17, 2015.

[www.kauai.gov](http://www.kauai.gov)

4444 Rice Street Suite A473

Hawai'i 96766 • (808) 241-4050 (t) (808) 241-6699 (f)  
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3. Prior to building permit approval, the applicant shall meet the requirements and standards of the Department of Land and Natural Resources (DLNR), State Historic Preservation Division (SHPD). The applicant is further advised that should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the

applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures. The Planning Department has reviewed the comments of the State Historic Preservation Division, and under its independent Chapter 6E and related Hawaii Constitutional obligations and duties, requires the following historic preservation measures be fulfilled by the applicant.

- a. A revised SOW for the project, including any proposed work with potential to affect the historic lagoon, including staging areas, construction of new bridges, dredging, or filling in of areas near the lagoon;
- b. Information regarding any potential federal funding or federal permits that may be required, especially relative to the historic lagoons;
- c. An Intensive-level Survey (ILS) that identifies and assesses all remaining architectural historic properties and their potential eligibility for the Hawaii and National Registers;
- d. A Burial Treatment Plan (BTP) that meets HAR 513-300-34(b), and following a determination by the KIBC regarding burial treatment, a Burial Site Component of a Data Recovery Plan (BSCDRP) that meets HAR 513-300-34(b)(3)(B); and
- e. A Revised Archaeological Monitoring Plan (AMP) that includes provisions for addressing architectural monitoring concerns and meets HAR 513-279-4, including ongoing monitoring during construction and 90 days after completion of construction.

As of June 2016, the Applicant has received approval from SHPD with respect to their HRS 6E-42 review and required mitigation actions. However, Applicant is also advised that should any human remains be discovered as a consequence of digging activities, **WORK MUST IMMEDIATELY STOP IN THE VICINITY OF THE FIND AND SHPD AND THE PLANNING DEPARTMENT MUST BE NOTIFIED.**

4. Applicant shall submit a Construction and Demolition Debris Management Plan, and have the plan reviewed and concurred with by the Department of Public Works, Solid Waste Management Division. Applicant is encouraged to employ broad diversion efforts in its waste management plan. This condition 4 is satisfied,
5. Applicant is aware that any final construction plans involving the former Seashell Restaurant site that deviates substantially from the conceptual plans presented to the State Department of Land and Natural Resources may trigger compliance with the statutes and regulations under the jurisdiction of the Office of Coastal and Conservation Lands, Hawaii State Department of Land and Natural Resources if final development is proposed within the shoreline area. Applicant is on notice that, if any such final plans proposes development within the shoreline area, this permit action may be deemed invalid and require modification and re-approval only after compliance with Chapter 343, Hawaii Revised Statutes, is attained.
6. In order to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds, all external lighting shall be only of the following types: shielded lights, cut-off luminaries, indirect lighting or other types permissible under applicable Federal Law or otherwise approved by the United States Fish and Wildlife Service. Spotlights aimed upward or spotlighting of structures, landscaping, or

the ocean shall be prohibited unless otherwise permissible under Federal Law or approved by the United States Fish and Wildlife Service.

7. To the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the applicant shall seek to hire Kauai contractors as long as they are qualified and reasonably competitive with other contractors, and shall seek to employ residents of Kauai in temporary construction and permanent jobs. It is recognized that the applicant may have to employ non- Kauai residents for particular skilled jobs where no qualified Kauai resident possesses such skills. For the purposes of this condition, the Commission shall relieve the applicant of this requirement if the applicant is subjected to anti- competitive restraints on trade or other monopolistic practices.
8. The applicant shall implement to the extent possible sustainable building techniques and operational methods for the project, such as Leadership in Energy and Environmental Design (L.E.E.D.) standards or another comparable state-approved, nationally recognized, and consensus-based guideline, standard, or system, and strategies, which may include but is not limited to recycling, natural lighting, extensive landscaping, solar panels, low-energy fixtures, low energy lighting and other similar methods and techniques. All such proposals shall be reflected on the plans submitted for building permit review.
9. As part of the building permit application, the applicant shall comply with the building code requirements applicable to the construction plans submitted for the vertical improvements for the project. Any revisions shall be identified accordingly on the final site development plan and vertical building construction plans for building permit review and processing in accordance with applicable building code requirements.
10. The Applicant shall contribute \$10,000.00 to the County of Kauai Transportation Agency to assist with the construction of a new bus stop along Kuhio Highway in the Wailua area. This contribution has been paid to, and received by, the County of Kauai Transportation Agency on October 17, 2015.
11. Applicant shall coordinate project plans with the Department of Public Works Wastewater Management Division to ensure that connection to a public sewer system is accomplished properly. Applicant shall also submit a current wastewater preliminary engineering report, as per County Sewer Standards, identifying details of sewer connections. Prior to building permit approval for vertical construction, applicant shall submit construction plans for any necessary sewer improvements and if applicable, pay any required wastewater sewer system fees.
12. Applicant shall submit a detailed water demand (both domestic and irrigation) calculations along with the proposed water meter size. Water demand calculations submitted by your engineer or architect should also include fixture count and water meter sizing worksheets. The Department of Water may require the payment fees specified in the existing County of Kauai ordinances as a consequence of the approved water demand calculations that are in addition to the existing water allocated to the property.
13. Applicant shall prepare and receive the Department of Water's approval of construction drawings for the necessary water system facilities and construct said facilities. These facilities shall include but not be limited to: a) the interior plumbing with the appropriate

backflow prevention device; b) the domestic service connection, if applicable; c) the fire service connection, if applicable. Requests for additional water meters or increase in water meter size beyond water meters already allocated to the property will be dependent on the adequacy of the source, storage and transmission facilities existing at the time.

14. Applicant acknowledges affordable housing requirements apply to this proposal, and in compliance with Chapter 7A, Kauai County Code (1987), Applicant has entered into, and will perform its obligations under, that certain Housing Agreement (for Coco Palms) dated December 4, 2015, directly with the Kauai County Housing Agency, which has been fully executed and recorded on February 9, 2016.
15. Applicant shall submit by August 31, 2019 plans to for all remaining building permits for the construction of vertical improvements on the project site, and will thereafter diligently work in good faith with the Kauai Division of Buildings ("Building Division") to obtain final building permit approval for all remaining permits. Construction shall commence within one year after the date of final approval of the referenced building permits. Further, pursuant to PDU requirements in the CZO, construction shall commence within one year after the date of full approval of such building permits. Also, Applicant shall pull all such building permits within six months after the approval of the final building permit.
16. Screening of the construction site during construction along Kuhio Highway and Kuamoo Road to be aesthetically consistent with current construction standards on Kauai while maintaining compatibility with the nature of the site sitting at a coastal gateway for the area. Screening shall be properly maintained in a manner acceptable to the Director until such time as the Applicant has completed all vertical improvements. Further, the Applicant shall work with the State Department of Transportation to provide landscaping along the strip of land fronting the property fronting Kuhio Highway and properly maintain this landscaping in perpetuity.
17. Applicant shall substantially complete the demolition work described in the existing demolition permits issued for the property by March 31, 2017 subject to extension caused by the occurrence of force majeure events. This condition 17 is satisfied.

Applicant agrees that, if the concrete structures that remain on the property after the demolition work is completed is not incorporated into the construction of the vertical improvements by June 30, 2021, the Applicant shall, at its sole cost and expense, secure such concrete structures in full compliance with all health and safety requirements set forth in all applicable laws and ordinances.

18. Applicant shall provide 20 public parking spaces at the North end of the project site with signage identifying their use by beachgoers and those using public transit when the operator opens to the public the building of the project that is closest to the parking lot containing such public parking spaces. Further, the applicant shall provide 20 stalls for parking with signage identifying their use by public beachgoers along the south end of the project. These stalls shall be clearly marked for public beachgoers use only. Also, the applicant at its own expense shall work with the county to site, design, construct, and maintain in perpetuity, a comfort station consisting of restrooms and showers for beachgoers. This comfort station shall be located adjacent or approximate to this public beachgoers parking area.
19. All parking for guests, customers, and employees shall be accommodated on site. No parking on Kuamoo, Haleilio or Apana roads shall be allowed. No use of parking lots on adjacent property shall be allowed as well.

20. Given outstanding evaluation of the Traffic Impact Analysis Report (TIAR) by both the Department of Public Works and State Department of Transportation, in the interim, the Applicant shall provide the following to mitigate traffic impacts created by the development:

- a. Provide, at the Applicant's expense, a shuttle for eighteen (18) months beginning when the hotel operator opens the main lobby, at least 277 guest rooms and the food and beverage facilities and services of the project to the public as a pilot program to facilitate transit to and from the Lihue Airport and the development;
- b. Provide, at the Applicant's expense, a circulator shuttle for eighteen (18) months beginning when the hotel operator opens the main lobby, at least 277 guest rooms and the food and beverage facilities and services of the project to the public to move patrons from the hotel to Lydgate and Wailua Beach Park, the Seashell Restaurant Site, the Coconut Marketplace and other destinations within the main Kapaa transit corridor that shall be determined by the County of Kauai Executive on Transportation at least 90 days before such shuttle service is scheduled to begin.
- c. Provide, at the Applicant's expense, a bike share program operated by Applicant or a vendor selected by Applicant for patrons of the resort to allow guests to ride bikes into Kapaa Town and other destinations without driving;
- d. The applicant shall work with the State Department of Transportation and Department of Public Works to resolve pedestrian crossing, sidewalks and vehicular traffic demands created by the development, and bear implementation costs proportional to the impact that arises, including the installation of a continuous public sidewalk on the Kuhio Highway frontage between Kaumoo and Haleilio; and
- e. Provide the Planning Department, Department of Public Works and State Department of Transportation an update to the TIAR one (1) year after receiving the last certificate of occupancy for the project evaluating traffic impacts created by the resort and analyze the need for additional bus stops.
- f. Provide the Department with a report on the Applicant's efforts to work with the Department of Land and Natural Resources to obtain permission to use the lands held by lease for a mauka access, either vehicular, or bike/pedestrian, to allow movement of residents between Kuamoo road and Haleilio Road.

Should the updated TIAR, as accepted by the three agencies, determine a significant adverse change in the traffic conditions resulting solely from project beyond the traffic conditions anticipated in the original TIAR, Applicant is aware that this permit is subject to reasonable modification by the Planning Commission that Applicant may be responsible for the proportionate costs for any impacts of such significant adverse change for which a nexus to the additional anticipated traffic conditions may be identified.

21. Applicant shall work with the county and bear the costs of the following improvements:

- a. Provide an in lieu payment of \$93,750 to the County of Kauai by June 30, 2017 for the cost of a dedicated right turn lane on Haleilio Road, from Apana Road to Kūhiō Highway in addition to an existing through lane. This \$93,750 lieu payment was paid to, and received by, the County of Kauai on June 30, 2017. The County shall design and complete construction of continuous public sidewalks along Apana Road to Haleilio Road and along Haleilio Road to Kūhiō Highway fronting the Applicant's property. Sidewalks must be a minimum of 5 feet wide and shall be dedicated to the County to the extent owned by Applicant. The portions of said right turn lane owned

by Applicant shall be dedicated to the County; provided that the Applicant shall have the reserved right of entry over the dedicated areas in connection with its project.

By January 31, 2019, the Applicant shall submit plans for the subdivision of the portions of its land to be dedicated to the Kauai Planning Department and shall thereafter diligently work in good faith with the Planning Department to obtain final subdivision approval of such plans, and to dedicate such subdivided portions to the County.

- a. Design and complete construction of widening Apana Road to be wide enough for two-way vehicle travel from the project entry on Apana Road to Haleililo Road. The Applicant will work with the County of Kauai Department of Public Works on the width, length, and other design details for this improvement, which shall be dedicated to the County of Kauai to the extent owned by Applicant; provided that the Applicant shall have the reserved right of entry over the dedicated areas in connection with its project.
- b. Design and complete construction of "Do Not Block" markings along the eastbound lanes of Haleililo Road at the intersection with Apana Road, similar to the striping at Kuamo'o Road and Wailua Road.

The Applicant shall retain a surveyor to survey the portions of the Applicant's land over which the right turn lane right-of-way and sidewalks to be constructed pursuant to subparagraphs a-b above that will be dedicated to the County, then prepare and record the necessary title documents. The County, Planning Department and Department of Public Works will cooperate fully to process all necessary subdivision and dedication approvals on an expedited basis.

22. If requested by the Transportation Agency due to increased ridership demand caused by the development, applicant shall provide proportional support for one (1) additional bus stop and shelter for the Kauai bus.
23. Form and character of the development shall reflect the prior history of the resort and the brand standards of the hotel operator including the usage of similar looking roof and facade material, color and landscaping. Further, non-reflective materials are necessary to promote the seashore area aesthetics. Prior to building permit application for reconstruction or new construction of buildings and landscaping, the Applicant shall submit renderings and plans for departmental design review.
24. Applicant shall encourage employees to utilize the County's Transportation Agency transit services to mitigate commuter trips to and from the development. The Applicant shall work with the Transportation Agency on promotional events encouraging usage of the transit system at Coco Palms, including selling bus passes on behalf of the agency, signage, etc.
25. The applicant is advised that in connection with the issuance of building permits for the vertical improvements of the project, additional conditions from the reviewing government agencies may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).
26. The Planning Commission reserves the right to add or delete conditions of approval in order to address or mitigate unforeseen impacts that any subsequent changes to this project as proposed by Applicant may create, or revoke the permits through the proper procedures should conditions of approval be violated.

27. During September 15 through December 15, construction shall only occur during daylight hours. Where possible as to not compromise safety of seabirds identified to be protected under Federal Law, exterior facility lights should be positioned low to the ground, be motion-triggered, and be shielded and/or full cut-off. Effective light shields should be completely opaque, sufficiently large, and positioned so that the bulb is only visible from below. Staff at the development shall be educated, and shall educate visitors with information regarding such endangered or protected seabird fallout and response protocols for staff to recover downed birds. Design elements shall also minimize collision by such protected seabirds with objects that protrude above the vegetation layer, such as utility lines, guide wires and communication towers. Should development yield conditions leading to any take of protected species, Applicant is on notice that an incidental take permit is required.
28. Applicant shall seek guidance from the Fish and Wildlife Service for the Applicant to develop and implement measures (e.g. monitoring, etc.), in order to avoid and minimize impacts to Hawaiian waterbirds during construction and operation of the development.
29. On or before June 30th of each year until all conditions have been satisfied, the Applicant shall submit an annual report to the Planning Commission of the status of and progress on, each unsatisfied condition, particularly conditions with workforce housing requirements and transportation requirements. These conditions shall be modified by the Planning Commission to reflect the satisfaction of any condition.

Should you have any questions, please do not hesitate to contact me at the information above.

Me Ke Aloha Pumehana,



KA AINA S. HULL  
Clerk

Kauai Planning Commission

3/Asq



**STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED**

May 06, 2016 8:01 AM

Doc No(s) A-59700450



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/s/ NICKI ANN THOMPSON  
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CASE LOMBARDI PETTIT  
Pacific Guardian Center, Mauka Tower, Suite 2600  
737 Bishop Street  
Honolulu, Hawaii 96813

Attention: Jon M. Pang, Esq.  
Telephone: (808) 547-5468



6828025638

**TITLE OF DOCUMENT:**

**ASSIGNMENT OF INTANGIBLE PROPERTY**

**PARTIES TO DOCUMENT:**

**ASSIGNOR: PR II COCO PALMS LLC, a Delaware limited liability company**

**ASSIGNEE: COCO PALMS HUI LLC, a Delaware limited liability company**  
1050 Bishop Street, #303  
Honolulu, Hawaii 96813

Tax Map Key No.: (4) 4-1-003:004; (4) 4-1-003:007; (4) 4-1-005:014

(This document consists of 6 pages.)

**ASSIGNMENT OF INTANGIBLE PROPERTY**

THIS ASSIGNMENT OF INTANGIBLE PROPERTY (this "Assignment"), is made as of May 4, 2016, by and between PR II COCO PALMS LLC, a Delaware limited liability company ("Assignor"), and COCO PALMS HUI LLC, a Delaware limited liability ("Assignee").

WITNESSETH:

WHEREAS, pursuant to the terms of that certain Purchase and Sale Agreement, dated as of August 7, 2013, by and between Assignee and Assignor (as the same may have been amended, modified or assigned, the "Sale Agreement"), Assignor agreed to sell to Assignee, *inter alia*, certain real property, the improvements located thereon and certain rights appurtenant thereto, all as more particularly described in the Sale Agreement (collectively, the "Real Property"). Initially capitalized terms not otherwise defined herein shall have the respective meanings ascribed to such terms in the Sale Agreement; and

WHEREAS, the Sale Agreement provides, *inter alia*, that Assignor shall assign to Assignee rights to certain intangible property and that Assignor and Assignee shall enter into this Assignment.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto hereby agree as follows:

1. Assignment of Intangible Property. Assignor hereby assigns, sets over, conveys and transfers to Assignee all of Assignor's right, title and interest in, to and under the following, if and only to the extent the same may be assigned or quitclaimed by Assignor without expense to Assignor in excess of a nominal transfer fee:

(a) the contracts, equipment leases, and other agreements relating to the Real Property that are described in Exhibit A attached hereto and made a part hereof; and

(b) all licenses, permits, written authorizations, government-related or quasi-government-related documents, and other material documents in effect as of the date hereof with respect to the Real Property, including those described in said Exhibit A; and

(c) all guaranties and warranties in effect as of the date hereof with respect to any portion of the Real Property or the personal property conveyed to Assignee by Assignor concurrently herewith; and

(d) all entitlements, easements, development rights, reserved rights, zoning or subdivision approvals and/or applications, permits, soils reports, surveys, plans, specifications, architectural and engineering designs and other studies, reports, records and files, pertaining to the Real Property; and

(e) all copyrights, service marks, logos, designs, trade names, trademarks, domain names and other intellectual property relating to the Real Property, including without limitation all copyrights, service marks, logos, designs, trade names, trademarks and domain names relating to "Coco Palms".

Assignee hereby accepts the foregoing assignment of the interests described in this Section 1 (collectively, the "Intangible Property") and assumes the obligations with respect thereto as and to the extent provided in the Sale Agreement.

2. Reservation of Benefits. Notwithstanding anything to the contrary in this Assignment, to the extent that Assignor continues to have liability after the date hereof with respect to the Intangible Property, Assignor reserves and retains such benefits under the Intangible Property as are necessary or desirable for Assignor to defend or protect itself with respect to or to assert any rights relating to any matter for which Assignor may continue to have liability from and after the date hereof; provided, however, said benefits reserved and retained by Assignor pursuant to this Section shall exist jointly with Assignee's benefits under the Intangible Property, and such benefits may be enforceable by each of Assignor and Assignee to the extent of their respective liability or damages for any matters relating thereto. Assignee and Assignor agree to cooperate with the reasonable requests of the other party in enforcing their respective benefits under the the Intangible Property to the extent such benefits are reserved by Assignor pursuant to the terms of this Section.

3. Limitation on Liability. Assignor's liability under this Assignment shall be limited as set forth in Section 4.3 of the Sale Agreement.

4. Cooperation and Further Documents. Assignor agrees to cooperate with Assignee and to perform any reasonable further acts, including the execution and delivery of all documents and instruments (including cover sheets and other forms as may be required to effectuate any federally-registered and internationally-registered intellectual property), reasonably requested by Assignee and all at Assignee's sole cost and expense, to fully effect, this Assignment and transfer of Assignor's right, title and interest in and to the Intangible Property to Assignee.

5. Miscellaneous. This Assignment and the obligations of the parties hereunder shall be binding upon and inure to the benefit of the parties hereto, their respective legal representatives, successors and assigns, shall be governed by and construed in accordance with the laws of the State in which the Real Property is located applicable to agreements made and to be wholly performed within said State and may not be modified or amended in any manner other than by a written agreement signed by the party to be charged therewith.

6. Severability. If any term or provision of this Assignment or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Assignment or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforced to the fullest extent permitted by law.

7. Counterparts. This Assignment may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement.

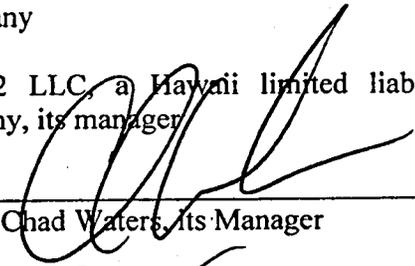
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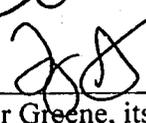


IN WITNESS WHEREOF, the undersigned have executed this Assignment to be effective as of the date first set forth hereinabove.

COCO PALMS HUI, LLC, a Delaware limited liability company

By: KK1&2 LLC, a Hawaii limited liability company, its manager

By:   
Chad Waters, its Manager

By:   
Tyler Greene, its Manager

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

On April 22, 2016, before me personally appeared **Chad Waters**, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person in the capacity shown, having been duly authorized to execute such instrument in such capacity.

L.S.

Deborah S. Apana-Tran  
Print name: Deborah S. Apana-Tran  
Notary Public, State of Hawaii  
My commission expires: 11/19/18

Date of Doc: <u>Undated at time of notarization</u>	# Pages: <u>8 (includes Exh. A)</u>
Name of Notary: <u>Deborah S. Apana-Tran</u>	Notes: <u>TMK: (4) 4-1-003-005 (por),</u>
Doc. Description: <u>Assignment of Intangible</u>	<u>017 (por), 044 (por)</u>
Property	(stamp or seal)
<u>Deborah S. Apana-Tran</u> 4/22/16	L.S.
Notary Signature	Date
First Circuit, State of Hawaii	
NOTARY CERTIFICATION	

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

On April 22, 2016, before me personally appeared **Tyler Greene**, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person in the capacity shown, having been duly authorized to execute such instrument in such capacity.

LS

Deborah S. Apana-Tran  
Print name: Deborah S. Apana-Tran  
Notary Public, State of Hawaii  
My commission expires: 11/19/18

Date of Doc: <u>Undated at time of notarization</u>	# Pages: <u>8 (includes Exh. A)</u>
Name of Notary: <u>Deborah S. Apana-Tran</u>	Notes: <u>TMK: (4) 4-1-003-005 (por),</u>
Doc. Description: <u>Assignment of Intangible</u>	<u>017 (por), 044 (por)</u>
Property _____	(stamp or seal)
Notary Signature: <u>Deborah S. Apana-Tran</u>	Date: <u>4/22/16</u>
First Circuit, State of Hawaii	
NOTARY CERTIFICATION	

-

**EXHIBIT A**

Assignor assigns, sets over, conveys and transfers to Assignee all of Assignor's right, title and interest in, to and under the following:

1. All land use and/or zoning approvals, project plan approvals, site plan approvals, governmental approvals, development rights, development agreements, development orders, variances, notices, special or conditional use permits, building permits, the Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1 and Special Management Area Use Permit SMA(U)-2015-6 for TMK NOS. 4-1-003: 004 (por.).

Msq



STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

May 06, 2016 8:01 AM

Doc No(s) A-59700450



1 14/15 VKK  
B-32803484

/s/ NICKI ANN THOMPSON  
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CASE LOMBARDI PETTIT  
Pacific Guardian Center, Mauka Tower, Suite 2600  
737 Bishop Street  
Honolulu, Hawaii 96813

Attention: Jon M. Pang, Esq.  
Telephone: (808) 547-5468



6828025638

TITLE OF DOCUMENT:

ASSIGNMENT OF INTANGIBLE PROPERTY

PARTIES TO DOCUMENT:

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1050 Bishop Street, #303  
Honolulu, Hawaii 96813

Tax Map Key No.: (4) 4-1-003:004; (4) 4-1-003:007; (4) 4-1-005:014

(This document consists of 6 pages.)

**ASSIGNMENT OF INTANGIBLE PROPERTY**

THIS ASSIGNMENT OF INTANGIBLE PROPERTY (this "Assignment"), is made as of May 9, 2016, by and between PR II COCO PALMS LLC, a Delaware limited liability company ("Assignor"), and COCO PALMS HUI LLC, a Delaware limited liability ("Assignee").

WITNESSETH:

WHEREAS, pursuant to the terms of that certain Purchase and Sale Agreement, dated as of August 7, 2013, by and between Assignee and Assignor (as the same may have been amended, modified or assigned, the "Sale Agreement"), Assignor agreed to sell to Assignee, *inter alia*, certain real property, the improvements located thereon and certain rights appurtenant thereto, all as more particularly described in the Sale Agreement (collectively, the "Real Property"). Initially capitalized terms not otherwise defined herein shall have the respective meanings ascribed to such terms in the Sale Agreement; and

WHEREAS, the Sale Agreement provides, *inter alia*, that Assignor shall assign to Assignee rights to certain intangible property and that Assignor and Assignee shall enter into this Assignment.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto hereby agree as follows:

1. Assignment of Intangible Property. Assignor hereby assigns, sets over, conveys and transfers to Assignee all of Assignor's right, title and interest in, to and under the following, if and only to the extent the same may be assigned or quitclaimed by Assignor without expense to Assignor in excess of a nominal transfer fee:

(a) the contracts, equipment leases, and other agreements relating to the Real Property that are described in Exhibit A attached hereto and made a part hereof; and

(b) all licenses, permits, written authorizations, government-related or quasi-government-related documents, and other material documents in effect as of the date hereof with respect to the Real Property, including those described in said Exhibit A; and

(c) all guaranties and warranties in effect as of the date hereof with respect to any portion of the Real Property or the personal property conveyed to Assignee by Assignor concurrently herewith; and

(d) all entitlements, easements, development rights, reserved rights, zoning or subdivision approvals and/or applications, permits, soils reports, surveys, plans, specifications, architectural and engineering designs and other studies, reports, records and files, pertaining to the Real Property; and

(e) all copyrights, service marks, logos, designs, trade names, trademarks, domain names and other intellectual property relating to the Real Property, including without limitation all copyrights, service marks, logos, designs, trade names, trademarks and domain names relating to "Coco Palms".

Assignee hereby accepts the foregoing assignment of the interests described in this Section 1 (collectively, the "Intangible Property") and assumes the obligations with respect thereto as and to the extent provided in the Sale Agreement.

2. Reservation of Benefits. Notwithstanding anything to the contrary in this Assignment, to the extent that Assignor continues to have liability after the date hereof with respect to the Intangible Property, Assignor reserves and retains such benefits under the Intangible Property as are necessary or desirable for Assignor to defend or protect itself with respect to or to assert any rights relating to any matter for which Assignor may continue to have liability from and after the date hereof; provided, however, said benefits reserved and retained by Assignor pursuant to this Section shall exist jointly with Assignee's benefits under the Intangible Property, and such benefits may be enforceable by each of Assignor and Assignee to the extent of their respective liability or damages for any matters relating thereto. Assignee and Assignor agree to cooperate with the reasonable requests of the other party in enforcing their respective benefits under the the Intangible Property to the extent such benefits are reserved by Assignor pursuant to the terms of this Section.

3. Limitation on Liability. Assignor's liability under this Assignment shall be limited as set forth in Section 4.3 of the Sale Agreement.

4. Cooperation and Further Documents. Assignor agrees to cooperate with Assignee and to perform any reasonable further acts, including the execution and delivery of all documents and instruments (including cover sheets and other forms as may be required to effectuate any federally-registered and internationally-registered intellectual property), reasonably requested by Assignee and all at Assignee's sole cost and expense, to fully effect, this Assignment and transfer of Assignor's right, title and interest in and to the Intangible Property to Assignee.

5. Miscellaneous. This Assignment and the obligations of the parties hereunder shall be binding upon and inure to the benefit of the parties hereto, their respective legal representatives, successors and assigns, shall be governed by and construed in accordance with the laws of the State in which the Real Property is located applicable to agreements made and to be wholly performed within said State and may not be modified or amended in any manner other than by a written agreement signed by the party to be charged therewith.

6. Severability. If any term or provision of this Assignment or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Assignment or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforced to the fullest extent permitted by law.

7. Counterparts. This Assignment may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement.

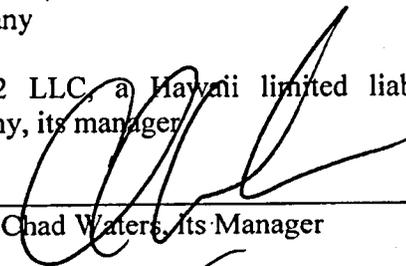
*[Remainder of page intentionally blank]*

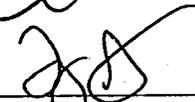


IN WITNESS WHEREOF, the undersigned have executed this Assignment to be effective as of the date first set forth hereinabove.

COCO PALMS HUI, LLC, a Delaware limited liability company

By: KK1&2 LLC, a Hawaii limited liability company, its manager

By:   
Chad Waters, its Manager

By:   
Tyler Greene, its Manager

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

On April 22, 2016, before me personally appeared **Chad Waters**, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person in the capacity shown, having been duly authorized to execute such instrument in such capacity.

L.S.

Deborah S. Apana-Tran  
Print name: Deborah S. Apana-Tran  
Notary Public, State of Hawaii  
My commission expires: 11/19/18

Date of Doc: <u>Undated at time of notarization</u>	# Pages: <u>8 (includes Exh. A)</u>
Name of Notary: <u>Deborah S. Apana-Tran</u>	Notes: <u>TMK: (4) 4-1-003-005 (por),</u> <u>017 (por), 044 (por)</u>
Doc. Description: <u>Assignment of Intangible</u>	
Property	(stamp or seal)
<u>Deborah S. Apana-Tran</u> 4/22/16	L.S.
Notary Signature	Date
First Circuit, State of Hawaii	
NOTARY CERTIFICATION	

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

On April 22, 2016, before me personally appeared **Tyler Greene**, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person in the capacity shown, having been duly authorized to execute such instrument in such capacity.

LS

Deborah S. Apana-Tran  
 Print name: Deborah S. Apana-Tran  
 Notary Public, State of Hawaii  
 My commission expires: 11/19/18

Date of Doc: <u>Undated at time of notarization</u>	# Pages: <u>8 (includes Exh. A)</u>
Name of Notary: <u>Deborah S. Apana-Tran</u>	Notes: <u>TMK: (4) 4-1-003-005 (por),</u>
Doc. Description: <u>Assignment of Intangible</u>	<u>017 (por), 044 (por)</u>
Property _____	(stamp or seal)
Notary Signature: <u>Deborah S. Apana-Tran</u>	Date: <u>4/22/16</u>
First Circuit, State of Hawaii	
NOTARY CERTIFICATION	

LS

**EXHIBIT A**

Assignor assigns, sets over, conveys and transfers to Assignee all of Assignor's right, title and interest in, to and under the following:

1. All land use and/or zoning approvals, project plan approvals, site plan approvals, governmental approvals, development rights, development agreements, development orders, variances, notices, special or conditional use permits, building permits, the Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1 and Special Management Area Use Permit SMA(U)-2015-6 for TMK NOS. 4-1-003: 004 (por.).

## Shanlee Jimenez

---

**From:** Amber Suzanne Ramsey <ambersuzanneramsey@gmail.com>  
**Sent:** Sunday, October 6, 2024 2:02 PM  
**To:** Planning Department  
**Cc:** Mayor; puali@hawaii.edu  
**Subject:** I request the commission NOT ACCEPT the report until the report until the court rules on RP21's title & enjoin development.

**CAUTION:** This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Please make Patrick Manning accountable to land use violations, including cutting down palm trees w/o consent, conducting work w/o proper permits, and openly admitted to land use violations in a state land use conservation district.

Kumu Pua and I ola Wailuanui are the only lawful heirs to this Hawaiian Historical Land division.

The desecration of land and to our children's iwi kupuna must cease.

Rapa opened a music school and cultural center for the people of Rapa, and it is an earth ship design.

Environmental stewardship is a priority as well as our cultural inheritance from our iwi kupuna.

Mahalo

Let's make the wrong of a hotel turn right by giving the aina to it's rightful heir. The Hawaiian people.

**Shanlee Jimenez**

---

**From:** bpenn@hawaii.rr.com  
**Sent:** Sunday, October 6, 2024 3:52 PM  
**To:** Planning Department  
**Subject:** Coco Palms testimony

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Attn: Commissioners

Please do not accept the 2024 Annual Report until the court rules on the recent motion to nullify the developers title and enjoin the development.

Mahalo,

Barbara Penn

Wailua Homesteads

## Shanlee Jimenez

---

**From:** Paul Honkavaara <paul@charteredinancialgroup.com>  
**Sent:** Sunday, October 6, 2024 4:10 PM  
**To:** Planning Department; Chris Donahoe  
**Subject:** Testimony for Agenda Item G-1-a for Planning Commission Hearing 10/08/2018  
**Attachments:** Coco Palms--Entitlements--Assignment Of Intangible Property.pdf; Coco Palms--Exemplified Foreign Judgment Recorded November 15, 2017.pdf; Coco Palms--Kiuchi Letter To Kauai County Planning Commission 07\_26\_2023.pdf; Coco Palms--State of Hawaii RE Coco Palms Hui LLC.pdf; Coco Palms--State Of Utah Entity Info--RP 21 Coco Palms LLC.pdf; Coco Palms--State of Utah RE REEF--PCG LLC.pdf; Coco Palms--State of Utah showing Stillwater Equity Partners LLC former name of REEF Private Equity.pdf; Coco Palms--CFG Motion For Hearing 10\_31\_2024.pdf; Coco Palms--CFG Testimony For Kauai Planning Commission 10\_08\_2024.pdf

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Mr. Donahue and Mr. Hull

Please accept this as my written testimony for Agenda Item G-1-a for the Planning Commission hearing October 8, 2024.

For my testimony please see the file with the file name "Coco Palms—CFG Testimony For Kauai Planning Commission 10\_08\_2024". The other files are supporting attachments referenced in that testimony and should be included as part of the record for my testimony.

Please confirm receipt.

Best wishes,

Paul

Paul M. Honkavaara  
Chartered Financial Group

[t] 559-906-5001 • [e] [Paul@CharteredFinancialGroup.com](mailto:Paul@CharteredFinancialGroup.com) • [www.CharteredFinancialGroup.com](http://www.CharteredFinancialGroup.com) • 7881 N. Thompson Ave., Clovis, CA 93619



October 6, 2024

TO: Ka'aina Hull,  
Planning Director of Kauai Planning Commission  
[planningdepartment@kauai.gov](mailto:planningdepartment@kauai.gov)

Chris Donahue  
[cdonahoe@kauai.gov](mailto:cdonahoe@kauai.gov)

FROM: Paul M. Honkavaara  
Judgment Creditor Against Coco Palms Hui LLC

Please accept this memo and the attachments to the transmittal email as testimony for Agenda Item G-1-a for the Kauai Planning Commission meeting 10/08/2024 the Coco Palms proposed development.

The attachments to include with my testimony are:

- a. My motion for the October 31, 2024 hearing.
- b. Assignment of Intangible Property recorded May 6, 2016.
- c. The Hawaii Intermediate Court of Appeals ruling in CAAP-20-0000429 and CAAP-20-0000527 of June 28, 2024.
- d. Letter from Keith Kiuchi to Kauai Planning Commission July 26, 2023.
- e. Paul M. Honkavaara dba Chartered Financial Group Exemplified Foreign Judgment against Coco Palms Hui LLC recorded with the Bureau of Conveyances November 15, 2017.
- f. DCCA Business Registration for Coco Palms Hui LLC.
- g. State of Utah filing showing Stillwater Equity Partners LLC as a former name of REEF Private Equity LLC.
- h. State of Utah filing for RP21 Coco Palms LLC.
- i. State of Utah filing for REEF--PCG

**1. RP21 Coco Palms LLC No Longers Owns the Coco Palms Properties As a Result of the ICA's June 28, 2024 Decision**

As you know, on June 28, 2024 the Hawaii Intermediate Court of Appeals (ICA) vacated:

- a. The Amended Final Judgment for Private Capital Group, Inc. entered by the Circuit Court of the Fifth Circuit on September 20, 2021, and
- b. The circuit court's June 17, 2020 Findings of Fact and Conclusions of Law and Order Granting Plaintiff's Motion for Partial Summary Judgment and Interlocutory Decree of Foreclosure

Due to that ICA ruling, the prior 2021 foreclosure of the Coco Palms properties that lead to RP21 Coco Palms, LLC (RP21) temporally owning those properties has been vacated and RP21 no longer owners those properties.

Since RP21 no longer owns the Coco Palms properties as a result of the ICA's June 28, 2024 decision, on September 16, 2024 on remand back to the Circuit Court, my attorney Keith Kiuchi filed a motion to be heard on October 31, 2024 to:

- a. Vacate June 17, 2020 Filed Findings of Fact, Conclusions of Law and Order Granting Plaintiffs For Summary Judgment.
- b. Vacate Amended Final Judgment Filed September 20, 2021.
- c. Vacate Judgment Filed on March 28, 2022.
- d. Vacate Commissioners Deed Filed May 13, 2022.
- e. Grant Defendant Paul M. Honkavaara [me] Leave to File Counterclaim.
- f. Preliminary Injunction Barring Any Further Work On The Subject Property.
- g. For Appointment of a Receiver for the Subject Property.

Since RP21 no longer owns the Coco Palms properties and my motion will be heard on October 31, 2024, please do NOT approve, accept, or receive a report from RP21 Coco Palms LLC.

Effective January 1, 2018 an entity of Private Capital Group, Inc., Stillwater Equity Partners LLC became a manager of Coco Palms Hui LLC. (See the Second Amended Restated Operating Agreement of Coco Palms Hui LLC). The name of Stillwater Equity Partners LLC has been changed to REEF Private Equity LLC. (See State of Utah record showing Stillwater Equity Partners LLC as a former name of REEF Private Equity LLC)

Parker Enloe has been the manager responsible for the Coco Palms project since January 1, 2018 and now subsequently for REEF Private Equity LLC. He continues to be a manager responsible for Coco Palms.

Parker has told me on a number of occasions that if I won my above-referenced appeal, which I did, that Coco Palms Hui LLC (which is now the owner again for the Coco Palms properties) will attempt to foreclose a second time. My attorney Keith Kiuchi will vigorously defend and object to Coco Palms Hui LLC's attempts to do so, and if needed intends to file another appeal to the ICA, even if CPH is temporally successful in foreclosing again on the Coco Palms properties.

Prior to any further development of the Coco Palms project, Coco Palms Hui LLC's upcoming second foreclosure should fully run its course, including any appeals and decisions by the ICA and Hawaii Supreme Court,.

## **2. My Now \$1 Million Recorded Judgment Against the Coco Palms Properties**

I am the commercial mortgage broker who brokered the \$22 million loan between Coco Palms Hui LLC and Private Capital Group Inc. (PCG). My fee agreement was sent to with receipt acknowledged by escrow for payment of my fee to me upon close of escrow. However, in violation of our signed fee agreement, when escrow closed CPH and PCG deliberately and il"neglected" to pay me.

On October 26, 2017 I obtained a Judgment in Fresno County against Coco Palms Hui LLC for \$521,878.84. That judgment was recorded as an Exemplified Foreign Judgment with Hawaii's Bureau of Conveyances on November 15, 2017. With accrued interest and costs, including my attorneys fees, the balance of that Judgment is roughly \$1 million.

My \$1 million recorded Judgment is now equivalent to a mortgage or security interest against the assets of Coco Palms Hui LLC, including against its Coco Palms properties.

### **3. 2016 Assignment of Intangible Property to Coco Palms Hui LLC**

As a result of my \$1 million recorded Judgment against Coco Palms Hui LLC, my Judgment also attaches to any intangible properties owned by Coco Palms Hui LLC, including all of its entitlements, including all of that were transferred to RP21 since it no longer owns the Coco Palms properties as a result of the the ICA's June 28, 2024 Decision.

The current entitlements for Coco Palms Hui LLC were first issued while PR II Coco Palms, LLC (PR II) owned the property. PRII assigned those entitlements to CPH by recording an Assignment of Intangible Property May 6, 2016 with the Bureau of Conveyances. None of the items transferred by that 2016 assignment may be taken, given, used or transferred to someone or some entity away from Coco Palms Hui LLC without a similar assignment being properly executed and recorded with the Bureau of Conveyances. There has been no subsequent recorded assignment.

Section 1 (d) and Exhibit A of the Assignment of Intangible property detail the items assigned from PR II to CPH and recorded by the Bureau of Conveyances.

Section 1 (d) of that assignment is:

All entitlements, easements, development rights, reserved rights, zoning or subdivision approvals and/or applications, permits, soils reports, surveys, plans, specifications, architectural and engineering designs and other studies, reports records and files, pertaining to the Real Property

Exhibit A is:

All land use and/or zoning approvals, project plan approvals, government approvals, development agreements, development orders, variances, notices, special or conditional use permits, building permits, the Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2017-7, Variance Permit V-2015-1 and Special Management Area Use Permit SMA (U)-205-6 for TMK NOS 4-1-003:004

None of the items in Section 1 (d) and/or Exhibit A were used as security for the mortgage and none of those items were transferred to Private Capital Group, Inc. nor RP21 Coco Palms LLC as part of the foreclosure. They also may not be included in any subsequent foreclosure. I have had and continue to have a security interest in all of those items equivalent to a first mortgage.

The security interest I have in those assets is separate from and not effected by any foreclosure action.

#### **4. Letter From Keith Kiuchi to Kauai Planning Commission of July 26, 2023**

My attorney, Keith Kiuchi, wrote the Kauai Planning Commission July 26, 2023. With that letter he included a copy of my recorded Judgment and respectfully cautioned the Kauai Planning Commission NOT to participate in a fraudulent transfer that would violate HRS §651C-4. That letters expressly states:

Our position is that NONE of the above-referenced permits from the County of Kauai were NOT part of the foreclosure auction and thus remained the property of Coco Palms Hui LLC. Furthermore, under HRS §651C-4, any effort to transfer those permits without first paying Mr. Honkavaara, may constitute a fraudulent transfer of those permits. This includes any previous transfer(s) of them, since Mr. Honkavaara was not paid any amount at all, nonetheless the fair-market value of the permits transferred.

This letter is to notify the Planning Commission that no permits shall be transferred from Coco Palms Hui LLC to RP21 Coco Palms LLC—WITHOUT Mr. Honkavaara first being paid the fair market value of any permits under his attached Exemplified Foreign Judgment. Otherwise, any such transfer of permits may institute a fraudulent transfer under the above statue.

Despite my attorney Mr. Kiuchi's warnings, the Kauai Planning Commission allowed RP21 to use the entitlements that have been assigned Coco Palms Hui LLC through the Assignment of Intangible Property recorded with the Bureau of Conveyances May 6, 2016.

In addition. earlier this year the County of Kauai transferred all of the building permits for the project from Coco Palms Hui LLC to RP21.

Both of those were fraudulent transfers pursuant to HRS §651C-4.

So as to NOT violate HRS §651C-4, please stop participating in and do NOT transfer any assets of Coco Palms Huui LLC, including any of its entitlements or permits, etc. without first ensuring that appropriate payment to me is made first until my \$1 million Judgment against Coco Palms Hui LLC is fully satisfied.

**5. RP21 Coco Palms LLC and Coco Palms Hui LLC Are NOT the Same Legal Entity; They Are Distinct & Legally Different/ Separate.**

The State of Utah Department of Commerce shows that as of October 6, 2024 RP21 Coco Palms is registered in the State of Utah and the manager of that LLC is REEF-PCG LLC.

That Utah state agency also shows that REEF—PCG LLC has been “voluntarily dissolved” and that it is “inactive”.

The State of Hawaii DCCA shows as of October 6, 2024 that Coco Palms Hui LLC is registered in the State of Delaware and the manager of that LLC is REEF Private Equity LLC.

As noted above REEF Private Equity LLC was formerly called Stillwater Equity Partners LLC and is the LLC in the PCG cluster of LLCs used for Parker Enloe to manage the Coco Palms project.

It is clear that RP21 Coco Palms LLC and Coco Palms Hui LLC are two different LLCs that were organized in two different states.

Respectfully Submitted

/s/ Paul M. Honkavaara

KEITH M. KIUCHI, ALC  
KEITH M. KIUCHI #2735  
American Savings Bank Tower  
1001 Bishop Street, Suite 985  
Honolulu, Hawaii 96813  
Phone: (808) 533-2230; Fax: (808) 533-4391

Attorney for Defendant PAUL M. HONKAVAARA  
dba Chartered Financial Group

**Electronically Filed  
FIFTH CIRCUIT  
5CC191000086  
16-SEP-2024  
04:12 PM  
Dkt. 181 MVAC**

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

PRIVATE CAPITAL GROUP, INC., a Utah  
corporation,

Plaintiff,

vs.

COCO PALMS HUI LLC, a Delaware  
Limited Liability Company; TYLER SCOTT  
GREEN; CHAD WATERS; PAUL M.  
HONKAVAARA dba Chartered Financial  
Group, and DOE DEFENDANTS 1- 50,

Defendants.

) CIVIL NO. 19-1-0086 (JRV)  
) (Foreclosure)  
)  
) DEFENDANT PAUL M. HONKAVAARA  
) dba CHARTERED FINANCIAL GROUP'S  
) MOTION TO: (1) VACATE JUNE 17,  
) 2020-FILED FINDINGS OF FACT,  
) CONCLUSIONS OF LAW, AND ORDER  
) GRANTING PLAINTIFF'S MOTION FOR  
) SUMMARY JUDGMENT, AND FOR  
) INTERLOCUTORY DECREE OF  
) FORECLOSURE FILED NOVEMBER 5,  
) 2020; (2) VACATE AMENDED FINAL  
) JUDGMENT FILED ON SEPT. 20, 2021;  
) (3) VACATE JUDGMENT FILED ON  
) MARCH 28, 2022; (4) VACATE  
) COMMISSIONER'S DEED FILED ON  
) MAY 13, 2022; (5) GRANT DEFENDANT  
) PAUL M. HONKAVAARA LEAVE TO  
) FILE A COUNTERCLAIM; (6)  
) PRELIMINARY INJUNCTION BARRING  
) ANY FURTHER WORK ON THE  
) SUBJECT PROPERTY; AND (7) FOR  
) APPOINTMENT OF A RECEIVER FOR  
) THE SUBJECT PROPERTY;  
) DECLARATION OF KEITH M. KIUCHI;  
) EXHIBITS A – J; MEMORANDUM OF  
) LAW IN SUPPORT OF MOTION;  
) NOTICE OF REMOTE HEARING; and  
) CERTIFICATE OF SERVICE  
)  
)

)  
) Hearing Date: Thurs, Oct. 31, 2024  
) Hearing Time: 1:00p.m.  
) Judge: Randall G. B. Valenciano  
)  
) No Trial Date  
)

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**DEFENDANT PAUL M. HONKAVAARA dba CHARTERED FINANCIAL GROUP'S MOTION TO: (1) VACATE JUNE 17, 2020-FILED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, AND FOR INTERLOCUTORY DECREE OF FORECLOSURE FILED NOVEMBER 5, 2020; (2) VACATE AMENDED FINAL JUDGMENT FILED ON SEPT. 20, 2021; (3) VACATE JUDGMENT FILED ON MARCH 28, 2022; (4) VACATE COMMISSIONER'S DEED FILED ON MAY 13, 2022; (5) GRANT DEFENDANT PAUL M. HONKAVAARA LEAVE TO FILE A COUNTERCLAIM; (6) PRELIMINARY INJUNCTION BARRING ANY FURTHER WORK ON THE SUBJECT PROPERTY; AND (7) FOR APPOINTMENT OF A RECEIVER FOR THE SUBJECT PROPERTY**

COMES NOW Defendant PAUL M. HONKAVAARA dba CHARTERED FINANCIAL GROUP, by and through his attorney Keith M. Kiuchi, and hereby moves this Court, pursuant to the Summary Disposition Order entered by the Intermediate Court of Appeals on June 28, 2024 (Exhibit E), and the Judgment on Appeal filed in the Intermediate Court of Appeals on July 29, 2024 (Exhibit F), for an Order granting the following relief: (1) to vacate the June 17, 2020-filed Findings of Fact, Conclusions of Law, Order Granting Plaintiff's Motion for Summary Judgment, and for Interlocutory Decree of Foreclosure Against All Parties filed November 5, 2020 (Exhibit A); (2) to vacate the Amended Final Judgment filed on Sept. 20, 2021 (Exhibit B); (3) to vacate the Final Judgment on Order Granting Plaintiff's Motion Filed August 18, 2021 for Confirmation of Sale by Commissioner, filed on July 11, 2022 (Exhibit C) (and the August 18, 2021 Order

Granting Plaintiff's Motion Filed August 18, 2021, For Confirmation of Sale by Commissioner, said Order being filed on Oct. 26, 2021); (4) to vacate and declare null and void the Commissioner's Deed filed on May 13, 2022 (**Exhibit D**), and order that the subject property be conveyed back to COCO PALMS HUI, LLC, (5) grant Paul M. Honkavaara leave to file a Counterclaim against Plaintiff for Wrongful Foreclosure; (6) grant a preliminary injunction barring any further work or demolition on the subject property until this foreclosure action has been decided; and (7) appoint a receiver for the subject property pursuant to HRS §651-14.

This Motion is made for good cause pursuant to Rules 7, 13, 15, 60(b)(4), 60(b)(5), 65(b) and 66 of the Hawaii Rules of Civil Procedure, and is based upon the Summary Disposition Order entered by the Intermediate Court of Appeals on June 28, 2024 (**Exhibit E**), and the Judgment on Appeal filed in the Intermediate Court of Appeals on July 29, 2024 (**Exhibit F**), Exhibits A – J attached hereto, the attached Declaration of Keith M. Kiuchi; the attached Memorandum of Law in support of motion, the pleadings and files in this matter, and upon any matters brought to the attention of this Court in the hearing on this matter.

DATED: Honolulu, Hawaii, September 14, 2024.

/s/ Keith M. Kiuchi

---

KEITH M. KIUCHI  
Attorney for Defendant PAUL M.  
HONKAVAARA dba Chartered Financial Group

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PRIVATE CAPITAL GROUP, INC., a Utah corporation,	)	CIVIL NO. 5CC191000086 (JRV)
	)	(Foreclosure)
	)	
Plaintiff,	)	DECLARATION OF KEITH M. KIUCHI
	)	
vs.	)	
	)	
COCO PALMS HUI LLC, a Delaware Limited Liability Company; TYLER SCOTT GREEN; CHAD WATERS; PAUL M. HONKAVAARA dba Chartered Financial Group, and DOE DEFENDANTS 1- 50,	)	
	)	
Defendants.	)	
	)	
	)	
	)	
	)	

---

**DECLARATION OF KEITH M. KIUCHI**

KEITH M. KIUCHI, declares and states:

1. That I am an attorney licensed to practice law in the State of Hawaii. All of the facts set forth in this declaration are within my personal knowledge.
2. That I represent Defendant Paul M. Honkavaara dba Chartered Financial Group in the above-entitled matter.
3. **Exhibit A** attached hereto is a true and correct copy of the June 17, 2020-filed Findings of Fact and Conclusions of Law and Order Granting Plaintiff's Motion for Summary Judgment and Interlocutory Decree of Foreclosure filed November 5, 2019.
4. **Exhibit B** attached hereto is a true and correct copy of the Amended Final Judgment filed on Sept. 20, 2021.

5. **Exhibit C** attached hereto is a true and correct copy of the Final Judgment on Order Granting Plaintiff's Motion Filed August 18, 2021 for Confirmation of Sale by Commissioner, filed on July 11, 2022.

7. **Exhibit D** attached hereto is a true and correct copy of the Commissioner's Deed filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii on May 13, 2022 as Document No. T-11820232, and also recorded in the Bureau of Conveyances of the State of Hawaii on May 13, 2022 as Document No. A-8160740. This document shows that the subject property was conveyed to RP21 Coco Palms LLC.

8. That **Exhibit E** attached hereto is a true and correct copy of the Summary Disposition Order of the Intermediate Court of Appeals filed on November 16, 2023.

9. That **Exhibit F** attached hereto is a true and correct copy of the Judgment on Appeal filed by the Intermediate Court of Appeals on July 29, 2024. No application for writ of certiorari to the Hawaii Supreme Court has been filed from this Judgment on Appeal.

10. That **Exhibit G** attached hereto is a true and correct copy of the Second Amended and Restated Operating Agreement for Coco Palms Hui, LLC, a Delaware Limited Liability Company. This document was filed with this Court on February 24, 2020, as JEFS Dkt 61.

11. That **Exhibit H** attached hereto is a true and correct copy of a letter from Teresa Tico, Attorney, to Matthew Bracken, Kauai County Attorney dated July 3, 2024. This letter specifically requests, on behalf of I Ola Wailuanui, a Hawai'i non-profit organization, that the County of Kauai issue a Cease and Desist letter to RP21 Coco Palms LLC, instructing them that all of the entitlements, building permits, State leases and revocable permits issue to RP21 Coco Palms LLC be nullified. To the best of my knowledge, the County of Kauai has not acted on this letter. I have been in communication with Ms. Tico and I understand that construction is continuing on the property, even after the ICA's decision on June 28, 2024.

12. That **Exhibit I** attached hereto is a true and correct copy of a letter that I have received from Russell Tsuji, the Deputy Director of the Board of Land and Natural Resources. This letter was sent to me in response to a letter that I sent to Dawn Chang, Chair of the Board of Land and Natural Resources, to ask that BLNR stop and desist from the execution of any easement agreements in favor of RP21 Coco Palms LLC, or the issuance of any revocable permits to RP21 Coco Palms LLC.

13. That **Exhibit J** attached hereto is a true and correct copy of a news report from Hawaii News Now dated July 3, 2024. In that news report, the chief financial officer of Reef Capital Partners is quoted as saying: "The ruling is entirely unrelated to Reef's ownership of Coco Palms. While the ruling shifted ownership of Coco Palms from RP21 Coco Palms back to Coco Palms Hui, both of those companies are 100% owned and controlled by Reef Capital Partners. Therefore the ruling has no impact on Reef's ability or commitment to restore the historic Coco Palms Hotel in a sustainable and culturally responsible manner. Reef remains on track to welcome the local community and guests to the restored property in late 2026."

I declare under penalty of law that the foregoing is true and correct. Executed on September 16, 2024.

/s/ Keith M. Kiuchi

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KEITH M. KIUCHI

OF Counsel:  
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Attorneys for Plaintiff  
PRIVATE CAPITAL GROUP, INC.

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IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

PRIVATE CAPITAL GROUP, INC., a Utah  
Corporation,

Plaintiff,

vs.

COCO PALMS HUI LLC, a Delaware Limited  
Liability Company, TYLER SCOTT GREENE,  
CIAD WATERS; PAUL M. HONKAVAARA dba  
Chartered Financial Group, and DOE  
DEFENDANTS 1-50,

Defendants.

CIVIL NO. 19-1-0086  
(Foreclosure)

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
AND ORDER GRANTING PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT AND  
INTERLOCUTORY DECREE OF FORECLOSURE  
FILED NOVEMBER 5, 2019; EXHIBIT A

DATE: MARCH 3, 2020 AND MAY 12, 2020

TIME: 1:00 P.M.

JUDGE: HON. RANDALL G.B. VALENCIANO

TRIAL DATE: NOT SET

SCF JUDGE: NOT ASSIGNED

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER  
GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT  
AND INTERLOCUTORY DECREE OF FORECLOSURE FILED NOVEMBER 5, 2019

On November 5, 2019, Plaintiff PRIVATE CAPITAL GROUP, INC. ("Private Capital Group") filed a Motion For Partial Summary Judgment And Interlocutory Decree Of Foreclosure (the "Motion"). The matter was brought on for hearing on March 3, 2020, at 1:00 p.m. before the

(CERTIFICATE OF SERVICE ATTACHED)

Hon. Randall G. B. Valenciano, and again on May 12, 2020 at 1:00 p.m. (telephonically) for hearing and decision.

Scott I. Batterman, Esq. appeared on behalf of Plaintiff PRIVATE CAPITAL GROUP. Mark R. Zenger, Esq. appeared on behalf of Defendant COCO PALMS HUI LLC ("COCO PALMS"). J. Porter Devries, Esq. appeared on behalf of Defendant CHAD WATERS. Keith M. Kiuchi, Esq. appeared on behalf of Defendant PAUL M. HONKAVAARA dba Chartered Financial Group ("HONKAVAARA").

The Court, having reviewed the memoranda, declarations and exhibits filed by the parties and having considered the argument of the parties and being fully advised in the premises and good cause appearing therefor, this Court now makes the following Findings of Fact and Conclusions of Law:

**I. FINDINGS OF FACT**

1. PRIVATE CAPITAL GROUP is and was, at all times relevant herein, a Utah corporation.
2. Pursuant to a Loan Servicing Agreement with the individuals and entities variously identified as Lenders (Schedule A to Exhibit 1 to the Motion and Schedule A to Exhibit 2 to the Motion) and Holders (Schedule A to Exhibit 3 to the Motion), modified as set forth below, PRIVATE CAPITAL GROUP services the mortgage sought to be foreclosed through this litigation as the agent of the said individuals and entities, and has full power and authority to initiate and prosecute this action on their behalf and/or as the real party in interest.
3. Defendant COCO PALMS is a Delaware limited liability company.
4. Defendant HONKAVAARA is a citizen and resident of the State of California.

5. The real property at issue in this foreclosure is identified as Tax Map Key (4) 4-1-003-007 (CPR Nos. 1 through 216), (4) 4-1-005-14 and (4) 4-1-003-004 located on the Island and County of Kauai, State of Hawaii, as more particularly described in Schedule B to the Mortgage, Security Agreement, Assignment of Leases and Rents, Fixture Filing, and Financing Statement, Exhibit 1 to the Motion (the "Property").

6. Defendant COCO PALMS holds title to the Property by virtue of (1) a Special Warranty Deed and Quitclaim which was recorded in the Bureau of Conveyances for the State of Hawaii (the "BOC") on May 6, 2016 as Land Court Document Number T-9622255, being the property described in and covered by Transfer Certificate of Title No. 1116173; (2) a Special Warranty Deed and Quitclaim which was recorded in the BOC on May 6, 2016 as Document Number A-59700445; (3) a Special Warranty Deed which was recorded in the BOC on May 6, 2016 as Document Number A-59700446; and (4) a Special Warranty Deed which was recorded in the BOC on May 6, 2016 as Document Number A-59700447.

7. On or about May 2, 2016, those certain Lenders identified in Schedule A of the Loan Agreement, entered into a Loan Agreement with Defendant COCO PALMS, which set forth the terms of the \$22,231,000 loan (the "Loan Amount") made by the Lenders to Defendant COCO PALMS (the "Loan Agreement"). Exhibit 2 to the Motion.

8. The Loan Agreement defined the "Loan Documents" as the Loan Agreement (including all schedules and exhibits) and the documents described in Section 10 of the Loan Agreement, which included, among other documents, the Secured Promissory Note (further identified below), and the Mortgage and Security Agreement (further identified below)(the "Loan Documents"). Exhibit 2 to the Motion.

9. On May 2, 2016, pursuant to the terms of the Loan Agreement, Defendant COCO PALMS executed a Secured Promissory Note whereby Defendant COCO PALMS promised to pay the Holders listed in Schedule A thereof (who are the same as the Lenders listed in Schedule A of Exhibit 2), the Loan Amount plus interest at a rate of 12% (the "Promissory Note"). Exhibit 3 to the Motion.

10. The Promissory Note contains a provision that states "[u]pon the occurrence of an Event of Default that is not cured within the applicable grace period, Holder shall have the right, without notice to [Defendant COCO PALMS], to immediately accelerate the Note and enforce its remedies hereunder or under the Loan Documents." Exhibit 3 to the Motion.

11. The Promissory Note identifies, among other events, Defendant COCO PALMS's "[f]ailure to make any payment as herein provided immediately when due [and/or] the failure of [Defendant COCO PALMS] to timely satisfy any of the covenants and conditions set forth in this Note" as an Event of Default. Exhibit 3 to the Motion.

12. The original Maturity Date for the Promissory Note was February 2, 2017. Exhibit 3 to the Motion.

13. Pursuant to the Promissory Note, Defendant COCO PALMS executed a Mortgage, Security Agreement, Assignment of Leases and Rents, Fixture Filing, and Financing Statement, which was recorded in the BOC on May 6, 2016 as Document Number A-59700448 and also in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. T-9622256, noted on Certificate of Title No. 1116173 (the "Mortgage"), that secured the Promissory Note with a mortgage lien against the Property in favor of the Lenders listed in Schedule A thereof (who are the same persons and entities as listed as Lenders in Schedule A of Exhibit 2 and as Holders in Schedule A of Exhibit 3). Exhibit 1 to the Motion.

14. The Mortgage was subsequently amended by an Amended Mortgage, Security Agreement, Assignment of Leases and Rents, Fixture Filing, and Financing Statement, which was recorded in the BOC on August 8, 2016 as Document Number A-60640164 and also in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. T-9716090, noted on Certificate of Title No. 1116173 (the "Mortgage"), that amended the original Mortgage by correcting the percentage interests of two of the Lenders, Blue Glacier Fund, L.P., a Delaware limited partnership, and Crestline AK Opportunistic Fund, L.P., a Delaware limited partnership, and by adding "for the benefit of its Class C-2 holders" to the description of Blue Glacier Fund, L.P. In all other respects, the original Mortgage was unchanged, and remained in full force and effect. Exhibit 4 to the Motion.

15. The interest of one of the Lenders and Holders, WCMF Inc., a Nevada corporation with an undivided five and eighty-nine million, three hundred twenty-eight-thousand, twenty-eight hundred-millionths percent (5.89328028%) interest in the Mortgage, was subsequently assigned by WCMF Inc. to Robert Conte by Assignment of Mortgage dated September 7, 2018, and thereafter subsequently assigned by Robert Conte to WSNT LLC, Assignment of Mortgage also dated September 7, 2018 and recorded in the BOC on October 23, 2018, as Document Number A-68700791 and also in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. T-10522309, noted on Certificate of Title No. 1116173.

16. Plaintiff PRIVATE CAPITAL GROUP is the agent for WSNT LLC, Coco Lenders Partnership, Crestline AK Opportunistic Fund, L.P., Blue Glacier Fund, L.P., and PCG Credit Partners LLC, and their successors and assigns, who are the named parties in the Note (the Lenders).

17. In the Loan Agreement, Promissory Note, Mortgage and Security Agreement, Plaintiff PRIVATE CAPITAL GROUP is a disclosed agent of, or actually signs as an agent on behalf of the Lenders.

18. Plaintiff PRIVATE CAPITAL GROUP has serviced the Loan since its origination.

19. As the agent for the Lenders, Plaintiff PRIVATE CAPITAL GROUP holds and maintains all of the business records related to the servicing of this Loan.

20. Plaintiff PRIVATE CAPITAL GROUP has at all times maintained physical possession of the original Note.

21. The Mortgage contains a provision that states “[u]pon the occurrence of an Event of Default, [Defendant COCO PALMS] agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against [Defendant COCO PALMS] and in and to the Property, including, but not limited to ... declare the entire unpaid Debt to be immediately due and payable [and/or] institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument ... [and/or] sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of [Defendant COCO PALMS] therein and rights of redemption thereof ... .” Exhibit 1 to the Motion.

22. The Mortgage identifies, among other events, an event where “any portion of the Debt is not paid on or prior to the date the same is due or if the entire Debt is not paid on or before the Maturity Date” as an Event of Default. Exhibit 1 to the Motion.

23. Subsequent to the execution of the Promissory Note, but prior to the expiration of the original maturity date, the Maturity Date for the Promissory Note was extended to February 2, 2018.

24. On February 2, 2018, the amended Maturity Date for the Promissory Note, Defendant COCO PALMS failed to make its payment of the outstanding principal, interest, and other amounts due under the terms of the Loan Agreement and Promissory Note.

25. By letter dated May 5, 2019, Defendant COCO PALMS was advised that Defendant COCO PALMS was in default under the Loan Documents:

This Notice of Default and Acceleration of Note is being sent on behalf of Private Capital Group, Inc. ("PCG") as agent for those entities listed on Exhibit A (the "Lender").

Please be advised that this document shall act as a notice of default from Lender to COCO PALMS HUI LLC, a Delaware limited liability company ("Borrower"). Unless otherwise indicated herein, all capitalized terms used in this letter shall have the same definition assigned to such terms in the Loan Agreement, dated May 2, 2016, as amended (the "Loan Agreement"), and the Loan Documents (as defined in the Loan Agreement). Any capitalized terms not defined herein shall have the meaning given in the Loan Documents.

As you are aware, this loan entered default status on or about October 1, 2016 when the first of many Events of Default occurred. In particular, Borrower failed to deposit \$5,000,000.00 in the Additional Escrow Account on or before October 1, 2016 (Loan Agreement, Section 12. xiv.). Since that time, other Events of Default have also occurred and were never cured including but not limited to the following:

1. Borrower failed to pay when due installments of principal, interest, and other sums payable under the Loan Documents (Loan Agreement, Section 12. i.)
2. Borrower defaulted in the performance of various agreements and terms in the Loan Documents (Loan Agreement, Section 12. iii.) make timely payments, including failing to fully repay all the amounts owed to Lender on the Maturity Date; and
3. Borrower (via Chad Waters or Tyler Greene) has made false representations to PCG (Loan Agreement, Section 12. iv.).

(Note that the above list of Events of Default is not exhaustive, and PCG and Lender reserve the right to further elucidate any further Event of Default that has occurred that has not been listed herein.)

As you are aware, the Note was accelerated as a result of the default, and the balance has been due in full since at least October 1, 2016. Despite repeated attempts to work with you on a solution and a long period wherein Lender forbore from instituting foreclosure proceedings, the Loan remains unpaid. As a result, PCG has elected or may elect to exercise some or all of its rights and remedies as permitted under the Loan Documents including but not limited to the commencement of foreclosure proceedings, and/or proceedings seeking the appointment of a receiver.

Exhibit 7 to the Motion.

26. There was due and owing under the Promissory Note and Mortgage as of October 1, 2019 the following sums:

Principal	\$22,231,000.00
Default and Regular Interest to October 1, 2019	23,607,005.71
Protective Advances	372,755.70
Protective Advance Interest to October 1, 2019	34,667.58
Late Fee	0.00
Costs	342,910.21
Reconveyance Fee	150.00
Less Remaining Reserves	0.00
Less Agreed-upon Reduction of Payoff	(1,000,000.00)
<b>TOTAL OWING</b>	<b>\$45,588,489.18</b>

27. Defendant COCO PALMS failed to cure its default or to pay the sums due and owing under the Loan Documents, despite due demand therefore.

28. Subsequent to the execution of the Loan Documents, after Defendant COCO PALMS was unable to perform all of its obligations and went into default under the Loan Documents, in order to gain time to find additional funding to pay off the loan, Defendants TYLER SCOTT GREENE and CHAD WATERS, on behalf of Defendant COCO PALMS negotiated with PRIVATE CAPITAL GROUP as the agent for the Lenders and proposed a restructuring plan.

29. Under the proposed restructuring plan, Defendants TYLER SCOTT GREENE, CHAD WATERS and COCO PALMS would be given additional time to secure additional financing to pay off or pay down the loan in exchange for amending the Borrower's Operating Agreement to

reflect that if it failed to meet the time lines negotiated and contained in the restructuring plan, Stillwater Equity Partners (“SEP”), would become the sole Manager of Defendant COCO PALMS.

30. It was only after the Lenders, acting through their agent Plaintiff PRIVATE CAPITAL GROUP, accepted the proposed restructuring plan, and Defendant COCO PALMS failed to meet its obligations as set out in the restructuring plan and remained in Default under the Loan Documents, that this action was filed. At that time, and before SEP became the sole manager of Defendant COCO PALMS, the loan was already in default.

31. HONKAVAARA claims an interest in the Property by reason of an Exemplified Foreign Judgment filed November 3, 2017, in the Circuit Court of the First Circuit of the State of Hawaii, under S.P. 17-1-0360, with respect to a Judgment entered in the Superior Court of the State of California, County of Fresno, in Case No. 17CECG02343, which interest is junior and subordinate to that of the Mortgage.

## **II. CONCLUSIONS OF LAW**

The Findings of Fact, to the extent they constitute Conclusions of Law, are incorporated below. The Conclusions of Law, to the extent they constitute Findings of Fact, are incorporated in the Findings of Fact. Based upon the foregoing, this Court now makes the following Conclusions of Law:

- A. This action seeks to foreclose Lender’s Mortgage Lien interest in the Property.
- B. Pursuant to Hawaii Revised Statutes (“HRS”) §§ 603-21.5 and 667-1, the Circuit Courts of the State of Hawaii have subject matter jurisdiction over this action.
- C. This Court has jurisdiction over the parties and over the subject matter of this proceeding.

D. Pursuant to HRS § 634-35, the Circuit Courts of the State of Hawaii have personal jurisdiction over Defendants.

E. Pursuant to HRS § 603-36, the Circuit Courts of the Firth Circuit for the State of Hawaii is the proper venue.

F. Under HRCF Rule 56 Summary Judgment is proper if:

the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits ... show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

G. To be entitled to a decree of foreclosure, a party is required to prove four (4) material factual elements:

1. The existence of the Mortgage and Note;
2. The terms of the Mortgage and Note;
3. Default under the Note and Mortgage; and
4. The giving of requisite notice, if any.

*Bank of Honolulu v. Anderson*, 3 Haw. App. 545, 551 (1982).

H. The exact amount of indebtedness, and the priority of the payees, is not required until after the confirmation of a foreclosure sale; proof of default is sufficient to order foreclosure. *Id.* at 550.

I. Plaintiff PRIVATE CAPITAL GROUP has proved by the declarations submitted in support of its Motion the following *undisputed* facts identified under *Bank of Honolulu, supra*:

J. Defendants did not raise a material issue of fact as these matters, nor as to the amount due and owing pursuant to the Declaration of Indebtedness filed by PRIVATE CAPITAL GROUP.

1. Defendant COCO PALMS entered into the loan agreements pursuant to the terms and conditions set forth in the Loan Agreement and Promissory Note.
2. Defendant COCO PALMS defaulted in the repayment terms of the Promissory Note and Mortgage.
3. Plaintiff PRIVATE CAPITAL GROUP fully complied with the notice provisions of the Note and Mortgage.

K. PRIVATE CAPITAL GROUP has thus met its burden here, as the Note and Mortgage are in evidence, the Note and Mortgage were not paid at maturity, which is a default, and COCO PALMS was given notice, even though the Note and Mortgage did not require it.

L. Authority to enforce a note and its underlying mortgage, is found in HRS § 490:3-301:

“Person entitled to enforce” an instrument means (i) the holder of the instrument, (ii) a **nonholder in possession of the instrument who has the rights of a holder**, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to section 490:3-309 or 490:3-418(d). A person may be a person entitled to enforce the instrument **even though the person is not the owner of the instrument** or is in wrongful possession of the instrument. [Emphasis added.]

M. This provision of the law is an amendment to the prior version of the law.

The Official Comment to the change notes the following:

This section replaces former section 3-301 that stated the rights of a holder. The rights stated in former section 3-301 to transfer, negotiate, enforce, or discharge an instrument are stated in other sections of article 3. In revised article 3, section 3-301 defines “person entitled to enforce” an instrument. **The definition recognizes that enforcement is not limited to holders.** The quoted phrase includes a person enforcing a lost or stolen instrument. Section 3-309. It also includes a person in possession of an instrument who is not the holder. A nonholder in possession of an instrument includes a person that acquired rights of a holder by subrogation or under section 3-203(a). It also includes **any other**

**person who under applicable law** is a successor to the holder or otherwise **acquires the holder's rights**. [Emphasis added.]

N. Comment 2 of the Comments to the Official Text specifically clarifies HRS §490:3-203(b) to say:

"If the transferee is not a holder because the transferor did not indorse, the transferee is nevertheless a person entitled to enforce the instrument under Section 3-301 if the transferor was a holder at the time of transfer. Although the transferee is not a holder, under Section 3-203(b) the transferee obtained the rights of the holder.

O. The Official Comments to the Uniform Commercial Code are deemed persuasive. *See, e.g., Torres v. Nw. Eng'g Co.*, 86 Haw. 383, 394, 949 P.2d 1004, 1015 (Haw. App. 1997); *United Indep. Ins. Agencies v. Bank of Honolulu*, 6 Haw. App. 222, 228, 718 P.2d 1097, 1102 (1986).

P. As further stated by the Permanent Editorial Board for the Uniform Commercial Code, in a draft report quoted in *In re Jackson*, 451 B.R. 24, 29-30 (Bankr. E.D. Cal. 2011):

The second way that a person may be the person entitled to enforce a note is to be a "nonholder in possession of the [note] who has the rights of a holder."

[a] How can a person who is not the holder of a note have the rights of a holder? **This can occur by operation of law outside the UCC**, such as the law of subrogation or estate administration, by which **one person** is the successor to or **acquires another person's rights**. It can also occur if the delivery of the note to that person constitutes a 'transfer' (as that term is defined in UCC Article 3, see below) because transfer of a note "vests in the transferee any right of the transferor to enforce the instrument." Thus, if a holder (who, as seen above, is a person entitled to enforce a note) transfers the note to another person, **that other person (the transferee) obtains from the holder the right to enforce the note even if the transferee does not become the holder** (as in the example below). Similarly, a subsequent transfer will result in the subsequent transferee being a person entitled to enforce the note.

[b] Under what circumstances does delivery of a note qualify as a transfer? As stated in UCC Section 3-203(a), a note is transferred "when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument." For example, assume that the payee of a note sells it to an assignee, intending to transfer all of the payee's rights to the note, but delivers the note to the assignee without indorsing it. The assignee will not qualify as a holder (because the note is still payable to the payee) but, because the transaction between the payee and the assignee qualifies as a transfer, the assignee now has all of the payee's rights to enforce the note and thereby qualifies as the person entitled to enforce it. Thus, the failure to obtain the indorsement of the payee does not prevent a person in possession of the note from being the person entitled to enforce it, but demonstrating that status is more difficult. This is because the person in possession of the note must also demonstrate the purpose of the delivery of the note to it in order to qualify as the person entitled to enforce.

Q. This interpretation of HRS §490:3-301 is also supported by *Pascual v. Aurora Loan Servs., LLC*, 2012 U.S. Dist. LEXIS 84561 \*19-20 (D. Haw. 2012) where the court recognized that there are alternative means that allow for a person to properly be entitled to enforcement of an instrument: "[t]ransfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument".

R. Plaintiff PRIVATE CAPITAL GROUP is entitled to enforce the Promissory Note under HRS §490:3-301(ii), because it is a non-holder in possession of the instrument who has the rights of a holder. Plaintiff PRIVATE CAPITAL GROUP has this status, under HRS §490:3-203(b), even without a servicing agreement and/or an indorsement of the note, because: "Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course . . ."

S. *Bank of America, N.A. v. Reyes-Toledo*, 130 Haw. 361, 367, 390 P.3d 1248, 1254 (2017), does not provide otherwise, as the focus of that case was when standing must exist,

not the source of standing. Under HRS § 490:3-301, Plaintiff PRIVATE CAPITAL GROUP does not need to establish that it is a holder of the note, and *Reyes-Toledo* does not create any obligation greater than that required by § 490:3-301.

T. As part of the aforementioned agency relationship, the Lenders, as the Holders of the Promissory Note, transferred to the Plaintiff PRIVATE CAPITAL GROUP their rights as a holder under the Promissory Note, specifically so that Plaintiff PRIVATE CAPITAL GROUP could service and enforce the Loan Agreement. *See, e.g.*, RESTATEMENT (THIRD) OF AGENCY, § 2.02.

- (1) An agent has actual authority to take action designated or implied in the principal's manifestations to the agent and acts necessary or incidental to achieving the principal's objectives, as the agent reasonably understands the principal's manifestations and objectives when the agent determines how to act.

U. As comment (d) to the above notes, the agent has the authority to do all acts necessary or incidental to achieving the principal's objectives:

For the basic proposition on an agent's authority to do acts incidental and necessary to accomplishing the principal's objective, see 1 Floyd R. Mechem, *A Treatise on the Law of Agency* § 715 (2d ed. 1914). The underlying concept has been characterized as one of "medium powers, which are not expressed. By medium powers I mean all the means necessary to be used in order to obtain the accomplishment of the object of the principal power. . . ." *Howard v. Baillie*, (1796) 2 H. Bl. 618, 619, further discussed in Francis M.B. Reynolds, *Bowstead & Reynolds on Agency* 102 (17th ed. 2001). Strict construction of an instrument does not preclude establishing an agent's actual authority to do acts necessary and incidental to expressly stated authority. . . . *Compare Castillo v. Case Farms of Ohio, Inc.*, 96 F.Supp.2d 578, 593 (W.D.Tex.1999) ("giving an agent express authority to undertake a certain act also includes the implied authority to do all things proper, usual, and necessary to exercise that express authority"; authority to recruit and hire workers for chicken-processing plant in remote location encompassed authority to resolve housing and transportation issues) (emphasis in original) with *Beall Transp. Equip. Co. v. Southern Pac. Transp. Co.*, 13 P.3d 130 (Or. App.2000), *reversed on other grounds*, 60 P.3d 530 (Or.2002) (railyard manager's general duties, which included arranging isolated sales of small amounts of scrap,

did not include incidental authority to sell trailers not owned by his employer). [Emphasis added]

V. The requirement of an injury in fact is thus satisfied here, because the Lenders, who are the principals, suffered an injury in fact, and Private Capital Group as the agent is able to claim injury of the principals and enforce their rights.

W. There is no authority for the assertion by Defendant TYLER SCOTT GREENE that "undue control" is a defense to a foreclosure action, nor any evidence that undue control was exercised, nor that the default of Defendant COCO PALMS was the result of undue control.

X. Defendant HONKAVAARA did not present any evidence that indicated that Plaintiff PRIVATE CAPITAL GROUP is guilty of fraud, deceit, or other misconduct, and thus failed to raise an issue of fact with respect to any asserted defense of unclean hands.

Y. The mere presence of a lender's representatives exercising power within a borrowing entity in and of itself does not act as a bar on the lender's ability to foreclose. *First State Bank v. Hoehnke Nursery Co.* 63 Ore. App. 816, 820 (1983).

**III. ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND INTERLOCUTORY DECREE OF FORECLOSURE FILED NOVEMBER 5, 2019**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1) Partial Summary Judgment and an Interlocutory Decree of Foreclosure in favor of Plaintiff PRIVATE CAPITAL GROUP and against all Defendants is hereby entered. Pursuant to HRCF Rule 54(b), this Court expressly directs that said summary judgment and decree of foreclosure be and is hereby entered as a final judgment as to Plaintiff PRIVATE CAPITAL GROUP's complaint as there is no just reason for delay.

2) The Mortgage currently held by Lenders and serviced by Plaintiff PRIVATE CAPITAL GROUP shall be and is hereby foreclosed as prayed, and the mortgaged property shall be

sold at public auction, without an upset price, as authorized by law and under the provisions of said mortgage. The sale shall not be final until approved and confirmed by the Court.

3) Craig DeCosta, whose address is 4028 Rice St., Ste. B, Lihue, HI 96766, and whose telephone number is 808-632-2444, is hereby appointed as Commissioner of this Court and is vested with all equitable and legal title to the subject property and is directed to take possession of and sell the property identified as Tax Map Key (4) 4-1-003-007 (CPR Nos. 1 through 216), (4) 4-1-005-14 and (4) 4-1-003-004 located on the Island and County of Kauai, State of Hawaii, which is more particularly described in Exhibit A attached hereto.

4) The Commissioner is hereby authorized and directed to:

- a. Take possession, manage, preserve, and dispose of the property as directed herein.
- b. Sell the subject property in its AS IS condition, without any representations or warranties whatsoever as to title or possession and by way of a quitclaim conveyance by public commissioner's sale, without an upset price, in accordance with this order.
- c. Conduct two (2) open houses for public viewing prior to the sale on two separate days. They should take place on a reasonable date, time and hours (usually on either Saturdays or Sundays).
- d. Hold a commissioner's sale after notice of the sale of the property is published in a newspaper having a general circulation in the Circuit where the property is located. The notice shall be published once in each week for three (3) consecutive weeks, with the sale to take place no sooner than fourteen (14) days after the third date of publication. The notice shall give the date, time and place of sale and an intelligible

description of the mortgaged property, and shall disclose all of the terms of the sale. The Commissioner may continue the sale from time to time in the Commissioner's discretion. No bond shall be required of the Commissioner. The Commissioner shall be awarded a reasonable fee as Commissioner in an amount to be subsequently determined by the Court. The Commissioner's fees and costs shall be deemed to be secured by the Lenders' lien on the mortgaged property.

e. Plaintiff PRIVATE CAPITAL GROUP, on behalf of Lenders and all parties, is hereby authorized to purchase the mortgaged property at the foreclosure sale. The successful bidder at the sale shall make a down payment to the Commissioner in an amount not less than ten percent (10%) of the highest successful bid price. This payment shall be in cash, money order, by cashier's check or by certified check, provided that Lenders, acting through Plaintiff PRIVATE CAPITAL GROUP may satisfy the down payment by way of offset up to the amount of the secured debt as set forth in Finding of Fact No. 26 above ("credit bid"). Prior to bidding, any person not hereby authorized to credit bid must show the Commissioner such person's present ability to make the required down payment immediately upon the close of the bidding. At the Court's discretion, the 10% down payment may be forfeited in whole or in part if the purchaser shall fail to pay the balance of the purchase price as hereinafter set forth. The balance of the purchase price shall be paid to the Commissioner upon approval and confirmation of the sale.

f. The Commissioner shall hold the proceeds of the sale of the mortgaged Property subject to the directions of this Court. A further hearing shall be held in this action to consider the confirmation of the sale. At the hearing, the Court shall hear

proof of the claim of any other party and shall determine the priority among the claims of the parties. At the hearing, the Court may also, for good cause shown, allow further bidding. In the event further bidding is allowed, the first post auction bid must be at least one hundred five percent (105%) of the highest bid at the Commissioner's sale. The Court reserves jurisdiction to determine the party or parties to whom any surplus shall be awarded. The Court shall determine the amount of the fee of the Commissioner and the amount of the attorneys' fees and costs of Plaintiff PRIVATE CAPITAL GROUP and shall direct the final payment of the proceeds of the sale. Upon distribution of the sale proceeds according to the directions of the Court, the Commissioner shall file an accurate accounting of receipts, expenses and distributions.

5) All costs and expenses of the closing of the sale, including without limitation, the costs of conveyance, including preparation of the conveyance document, conveyance tax, escrow and recording fees, any proof of title or title insurance, and notary fees, as well as the costs of securing possession of the mortgaged property, shall be the responsibility of and paid by the purchaser. Neither the availability of title insurance nor securing possession of the mortgaged property shall be a condition of closing.

6) Upon the closing of the sale, and all persons claiming by, through or under said Defendants, except a governmental authority enforcing a lien for unpaid real property taxes or a community association enforcing a proper lien for unpaid special assessments as to the Mortgaged Property shall be perpetually barred of and from any and all right, title and interest in the Mortgaged Property or any part thereof.

7) This Court retains jurisdiction over all matters not yet determined.

DATED: Honolulu, Hawaii, 6-17-20.



JUDGE OF THE ABOVE-ENTITLED COURT

## EXHIBIT "A"

### -PARCEL FIRST:-

All of that certain parcel of land situate on the Northwest side of Lihue Plantation Company, Limited's Railroad Right of Way and Kauai Belt Road at Wailua, Puna, District of Lihue, Island and County of Kauai, State of Hawaii, described as follows:

LOT 2, area 2.444 acres, as shown on Map 1, filed in the office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1667 of Veda Warner Hills;

### -PARCEL SECOND:-

All of that certain parcel of land situate on the Northwest side of Lihue Plantation Company, Limited's Railroad Right of Way and Kauai Belt Road at Wailua, Puna, District of Lihue, Island and County of Kauai, State of Hawaii, described as follows:

LOT 1, area 6.713 acres, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1667 of Veda Warner Hills;

Together with an easement for road and utility purposes over and across the strip of land 15 feet wide within Lot 2 as shown on Map 1 of said Land Court Application No. 1667 parallel to and adjacent to the Southerly boundary of said Lot 2;

### -AS TO PARCELS FIRST AND SECOND:-

Being the premises described in Transfer Certificate of Title No. 1,116,173 issued to COCO PALMS HUI LLC, a Delaware limited liability company.

## EXHIBIT A

EXHIBIT A CONTINUED

-PARCEL THIRD:-

All of that certain parcel of land (portion of the land described in and covered by Land Patent Grant Number 12211 to Ernest Apana and Parcel A of portion of Land Patent Grant Number S-15,564 to Island Holidays, Limited, dba Coco Palms Resort Hotel, a Hawaii corporation) situate, lying and being at Wailua (Puna), Island and County of Kauai, State of Hawaii, being LOT 1-C-2-A, same being a portion of Lot 1 of the "WAILUA RICE AND KULA LOTS", and approved by the Planning Commission of the County of Kauai on August 12, 1981, and thus bounded and described as per survey of Calvin L. K. Ching, Registered Professional Land Surveyor, dated May 6, 1985, to-wit:

Beginning at the West corner of this lot, the same being the South corner of Lot 1-C-1, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 3,766.52 feet South and 6,629.14 feet East and running by azimuths measured clockwise from True South:

1. 208° 39' 30" 196.70 feet along Lot 1-C-1 to a pipe;
2. 298° 07' 165.41 feet along Lot 53-A, Wailua Houselots, Fourth Series to a pipe;
3. 42° 10' 214.50 feet along Lot 53-A, Wailua Houselots, Fourth Series and Lot 2 of Land Court Application 1667 (Map 1) to a pipe;
4. 123° 46' 115.76 feet along Lot 2, Land Court Application 1667 (Map 1) to the point of beginning and containing a GROSS AREA of 28,549 SQUARE FEET, more or less.

EXCEPTING AND EXCLUDING, however, the Wailua Coconut Grove Drainage Ditch Right-of-Way, 15 feet wide, which is fully described as follows:

Beginning at the Southeast corner of this Right-of-Way, and on the Southwest boundary of Lot 1-C-2-A, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 3,828.86 feet South and 6,722.39 feet East and running by azimuths measured clockwise from True South:

EXHIBIT A CONTINUED

1. 123° 46' 16.02 feet along the Southwest boundary of Lot 1-C-2-A to a pipe;

Thence along the remainder of Lot 1-C-2-A for the next four (4) courses, the azimuths and distances being:

2. 193° 12' 16.24 feet to a pipe;
3. 212° 25' 30" 90.15 feet to a pipe;
4. 212° 07' 30" 48.10 feet to a pipe;
5. 203° 57' 30" 52.72 feet to a pipe;
6. 298° 07' 15.04 feet along Lot 53-A, Wailua House Lots, Fourth Series to a pipe;

Thence along the remainder of Lot 1-C-2-A for the next four (4) courses, the azimuths and distances being:

7. 23° 57' 30" 52.70 feet to a pipe;
8. 32° 07' 30" 49.22 feet to a pipe;
9. 32° 25' 30" 87.65 feet to a pipe;
10. 13° 12' 19.32 feet to the point of beginning and containing an AREA of 3,121 SQUARE FEET, leaving a NET AREA of 25,428 SQUARE FEET.

-PARCEL FOURTH:-

All of that certain parcel of land (being all of the land described in and covered by Land Patent Grant Number 12,756 issued to Veda Warner Hills) situate, lying and being at Wailua, Puna, Island and County of Kauai, State of Hawaii, being LOT 10 of the "WAILUA HOUSE LOTS, 1st SERIES", and thus bounded and described:

Beginning at the South corner of this lot, and on the West side of the Ahukini Terminal and Railway Company Limited's Right-of-Way, the coordinates of said point of beginning referred

EXHIBIT A CONTINUED

to Government Survey Trig. Station "NONOU" being 4081.4 feet South and 6839.6 feet East, as shown on Government Survey Registered Map 2716, and running by true azimuths:

- |    |          |       |  |
|----|----------|-------|--|
| 1. | 111° 37' | 32.0  | feet along 10 foot road;   |
| 2. | 151° 43' | 85.8  | feet along L. C. Award 3303 Apana 2 to Makaiki;  |
| 3. | 228° 43' | 99.0  | feet along L. C. Award 3111-3559 Apana 3 to Debora Kapule;   |
| 4. | 331° 43' | 4.5   | feet along same;   |
| 5. | 232° 30' | 95.7  | feet along same;   |
| 6. | 21° 37'  | 222.7 | feet along the West side of the Ahukini Terminal and Railway Company Limited's Right-of-Way to the point of beginning. |

Containing an area of 12,072 square feet, more or less.

-PARCEL FIFTH:-

All of that certain parcel of land (being all of the land described in and covered by Royal Patent Number 4826, Land Commission Award Number 3568, Apana 2 to Kelani) situate, lying and being approximately 450 feet Northwesterly from Kuhio Highway and 390 Northerly from Kuamoo Road at Kawaiiki, Wailua, District of Kawaihau, Island and County of Kauai, State of Hawaii, and thus bounded and described as per survey of John Cline Mann, Registered Professional Land Surveyor, dated August 5, 1985, to-wit:

Beginning at the Southeast corner of this piece of land, being also the end of course 4 of the description of Land Court Application 1667 as shown on Map 1 thereof, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 4,494.61 feet South and 6,291.76 feet East, and running by true azimuths measured clockwise from South:

- |    |         |       |   |
|----|---------|-------|---|
| 1. | 91° 00' | 92.40 | feet along Lot 1 of Land Court Application 1667 and Parcel F of Wailua Coconut Grove (General Lease S-4878 to Fort Associates |
|----|---------|-------|---|

EXHIBIT A CONTINUED

- Limited Partnership);
2. 179° 00' 85.80 feet along Parcel F of Wailua Coconut Grove (General Lease S-4878 to Fort Associates Limited Partnership);
  3. 271° 00' 92.40 feet along Parcel F of Wailua Coconut Grove (General Lease S-4878 to Fort Associates Limited Partnership) and Lot 1 of Land Court Application 1667;
  4. 359° 00' 85.80 feet along Lot 1 of Land Court Application 1667 to the point of beginning and containing an area 7,923 square feet, more or less.

Together with a right-of-way ten (10.00) feet wide, in a nature of an easement for ingress and egress between said L. C. Award and Kuamoo Road, such right-of-way to be designated by the Commissioner of Public Lands or his successors in office at such time as he may deem proper and necessary; as set forth in General Lease No. S-4878, dated March 15, 1984.

-PARCEL SIXTH:-

All of that certain parcel of land (being all of the land described in and covered by Land Patent Grant Number 11,279 issued to (Mrs.) Kimiko M. Kodama, whose husband is Shoichi Kodama and Parcel B of a portion of Land Patent Grant Number S-15,564 to Island Holidays, Limited, dba Coco Palms Resort Hotel, a Hawaii corporation) situate, lying and being at Wailua, District of Puna, Island and County of Kauai, State of Hawaii, being LOT 53-A, same being a consolidation of Lot 53 of the "WAILUA HOUSE LOTS, FOURTH SERIES" and PARCEL B (C.S.F. No. 19,165) and approved by the Planning Commission of the County of Kauai on August 12, 1981, and thus bounded and described:

Beginning at a 3/4-inch pipe at the North corner of this lot, the West corner of Lot 54, and on the Southeast side of Apana Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 3424.18 feet South and 6724.09 feet East, as shown on Government Survey Registered Map 2999 and running by azimuths measured clockwise from true South:

1. 298° 07' 00" 329.78 feet along Lot 54 to a 3/4-inch

EXHIBIT A CONTINUED

pipe on the West side of Lihue Plantation Company's Railroad Right-of-Way;

2. Thence along the West side of Lihue Plantation Company's Railroad Right-of-Way, 40.0 feet wide, on a curve to the right with a radius of 617.27 feet, the direct azimuth and distance being 13° 17' 35" 183.69 feet to a 3/4-inch pipe;
3. 21° 51' 00" 9.69 feet along the West side of Lihue Plantation Company's Railroad Right-of-Way 40.0 feet wide to a 1-1/4-inch pipe;
4. 139° 26' 30" 54.52 feet along L. C. Award 3111-3559, Apana 3 to Debora Kapule to a concrete monument;
5. 120° 20' 00" 85.80 feet along same to a concrete monument;
6. 222° 10' 00" 14.50 feet along Lot 1, Wailua Rice and Kula Lots, to a 3/4-inch pipe;
7. 118° 07' 00" 298.20 feet along same to a 1-1/4-inch pipe;
8. 170° 10' 00" 32.03 feet along same to a 3/4-inch pipe on the Southeast side of Apana Road;
9. 238° 28' 00" 144.55 feet along the Southeast side of Apana Road to the point of beginning.

Containing an area of 1.424 acres, more or less.

-PARCEL SEVENTH:-

All of that certain parcel of land (portion of the land described in and covered by Land Patent Grant Number 11,176 issued to (Mrs.) Ruth T. Palk) situate, lying and being at the corner of Apana Road and Haleilio Road at Wailua (Puna), Island and County

EXHIBIT A CONTINUED

of Kauai, State of Hawaii, being LOT A, same being a portion of Lot 54 of the "WAILUA HOUSE LOTS FOURTH SERIES", and thus bounded and described as per survey of Calvin L. K. Ching, Registered Professional Land Surveyor, dated May 6, 1985, to-wit:

Beginning at a pipe at the West corner of this Lot, the same being the North corner of Lot 53, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 3,424.18 feet South and 6,724.09 feet East and running by azimuths measured clockwise from True South:

1. 238° 28'                    234.96        feet along the Southeast side of Apana Road to a pipe;
2. Thence along the intersection of Apana Road and Haleililo Road on a curve to the right having a radius of 20.00 feet, the chord azimuth and distance being: 278° 44' 25.85 feet to a pipe;
3. 319° 00'                    103.40        feet along Haleililo Road to a pipe;
4. 0° 17'                      148.72        feet along the Wailua Sewage Pumping Station Site, Executive Order 2744, to a pipe;
5. Thence along the Wailua Sewage Pumping Station Site, Executive Order 2744 on a curve to the right having a radius of 617.27 feet, the chord azimuth and distance being: 2° 30' 35" 47.96 feet to a pipe;
6. 118° 07'                    329.78        feet along Lot 53 to the point of beginning and containing an AREA of 1.008 ACRES, more or less.

-AS TO PARCELS FIRST TO SEVENTH, INCLUSIVE:-

Together with a Grant of Non-exclusive Easement dated February 5, 1997, recorded as Document No. 97-017437, made by and between STATE OF HAWAII, by its Board of Land and Natural Resources, "Grantor", and WAILUA ASSOCIATES, a California limited partnership, "Grantee"; granting a non-exclusive easement fifteen

EXHIBIT A CONTINUED

(15) feet wide for drainage ditch, pedestrian walkway, lagoon, and culvert purposes.

BEING THE PREMISES ACQUIRED BY SPECIAL WARRANTY DEED AND  
QUITCLAIM

GRANTOR : PR II COCO PALMS LLC, a Delaware limited liability  
company

GRANTEE : COCO PALMS HUI LLC, a Delaware limited liability  
company

DATED : May 6, 2016

FILED : Land Court Document No. T-9622255

DeVries & Associates

PORTER DEVRIES (10024)  
1164 Bishop St. Suite 1555  
Honolulu, HI 96813  
(808) 465-2500  
porter@devriespc.com

Electronically Filed  
FIFTH CIRCUIT  
5CC191000086  
20-SEP-2021  
10:54 AM  
Dkt. 144 AMJUD

Counsel for Defendant CHAD WATERS

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT  
STATE OF HAWAII

PRIVATE CAPITAL GROUP, INC., a Utah  
Corporation

Plaintiff,

vs.

COCO PALMS HUI, LLC, a Delaware  
Limited Liability Company, *et al.*,

Defendants.

CIVIL No. 5CC19-1-0086

(Foreclosure)

**AMENDED FINAL JUDGMENT**

Trial date: None.

AMENDED FINAL JUDGMENT

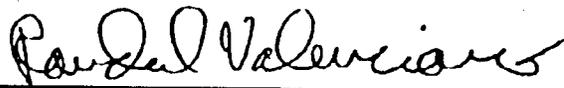
Pursuant to the Order for Temporary Remand filed in CAAP-20-0000429 (consolidated with CAAP-20-0000527), and in accordance with Rule 60 of the Hawaii Rules of Civil Procedure, the Final Judgment, filed herein on August 10, 2020, is hereby amended and restated as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, in accordance with the Findings of Fact and Conclusions of Law and Order Granting Plaintiff's Motion for Partial Summary Judgment and Interlocutory Decree of Foreclosure entered on June 17, 2020:

1. Judgment is granted on Count 1 of the Complaint (Foreclosure) in favor of Plaintiff as against Defendants Coco Palms Hui, LLC, Chad Waters, Tyler Scott Greene and Paul M. Honkavaara dba Chartered Financial Group; as to foreclosure on the mortgage; and
2. Count 2 of the Complaint (Guaranty) is not resolved by this judgment as this Court has not made the requisite findings of fact and/or conclusions of law.

Upon entry of this Final Judgment, the claims of the Plaintiff in Count 2 of the Complaint, as against Defendants Chad Waters and Tyler Scott Greene, and Plaintiff's claims in Count 1 of the Complaint as to Confirmation of the Sale as to all Defendants, and Deficiency Judgment as against Defendants Chad Waters and Tyler Scott Greene, remain. This Court finds that pursuant to Rule 54(b) of the Hawaii Rules of Civil Procedure that there is no just reason for delay and it therefore expressly directs that this judgment be entered as a final judgment in favor of Plaintiff against Defendants Coco Palms Hui LLC, Chad Waters, Tyler Scott Greene and Paul M. Honkavaara dba Chartered Financial Group.

DATED: 9-20-21

  
\_\_\_\_\_  
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

/s/SCOTT I. BATTERMAN

SCOTT I. BATTERMAN

Attorney for Plaintiff

PRIVATE CAPITAL GROUP, INC.

/s/KEITH M. KIUCHI

KEITH M. KIUCHI

Attorney for Defendant

PAUL HONKAVAARA

---

*Private Capital Group, Inc. v. Coco Palms Hui, LLC, et al.; Civil No. 19-1-0086-05: AMENDED FINAL  
JUDGMENT*

Of Counsel:  
CLAY CHAPMAN IWAMURA PULICE & NERVELL

BRADLEY R. PULICE # 4946  
SCOTT I. BATTERMAN #5017  
Topa Financial Center, Bishop Street Tower  
700 Bishop Street, Suite 2100  
Honolulu, Hawaii 96813  
Telephone: (808) 535-8400  
Facsimile: (808) 535-8446  
Email: sib@paclawteam.com

Attorneys for Plaintiff  
PRIVATE CAPITAL GROUP, INC.

Electronically Filed  
FIFTH CIRCUIT  
5CC191000086  
11-JUL-2022  
04:03 PM  
Dkt. 154 FJ

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

PRIVATE CAPITAL GROUP, INC., a Utah  
Corporation,

Plaintiff,

vs.

COCO PALMS HUI LLC, a Delaware Limited  
Liability Company, TYLER SCOTT GREENE,  
CHAD WATERS; PAUL M. HONKAVAARA dba  
Chartered Financial Group, and DOE  
DEFENDANTS 1-50,

Defendants.

CIVIL NO. 19-1-0086  
(Foreclosure)

FINAL JUDGMENT ON ORDER GRANTING  
PLAINTIFF'S MOTION FILED AUGUST 18, 2021,  
FOR CONFIRMATION OF SALE BY  
COMMISSIONER

TRIAL DATE: NONE

FINAL JUDGMENT ON ORDER GRANTING PLAINTIFF'S MOTION FILED  
AUGUST 18, 2021, FOR CONFIRMATION OF SALE BY COMMISSIONER

Pursuant to the ORDER GRANTING PLAINTIFF'S MOTION FILED AUGUST 18, 2021,  
OR CONFIRMATION OF SALE BY COMMISSIONER, entered on October 26, 2021, and the express  
finding therein in Paragraph L that the Court determines and directs that said Order be entered as  
a final judgment pursuant to HRCF Rule 54(b), the ORDER GRANTING PLAINTIFF'S MOTION  
FILED AUGUST 18, 2021, OR CONFIRMATION OF SALE BY COMMISSIONER, entered on October 26,

2021 is hereby entered as a judgment in favor of Plaintiff Private Capital Group as against Defendants Chad Waters, Paul Honkavaara, and Coco Palms Hui LLC.

DATED: Honolulu, Hawaii, 7-11-22.



\_\_\_\_\_  
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

s/ Porter DeVries  
PORTER DEVRIES, ESQ.  
Attorney for Defendant  
CHAD WATERS

s/ Keith M. Kiushi  
KEITH M. KIUCHI, ESQ.  
Attorney for Defendant  
PAUL M. HONKAVAARA dba Chartered  
Financial Group

s/ Mark R. Zenger  
MARK R. ZENGER, ESQ.  
Attorney for Defendant  
COCO PALMS HUI, LLC

s/ Craig A. De Costa  
CRAIG A. DE COSTA  
Commissioner

**DOUBLE SYSTEM**

411  
C



**STATE OF HAWAII  
OFFICE OF THE ASSISTANT REGISTRAR  
RECORDED**

May 13, 2022 12:25 PM

Doc No(s) T - 11820232  
on Cert(s) 1116173  
Issuance of Cert(s) 1237067

Pkg 12019901 YH

/s/ LESLIE T KOBATA  
ASSISTANT REGISTRAR

Conveyance Tax \$222,310.00



**STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED**

May 13, 2022 12:25 PM

Doc No(s) A - 81680740

Pkg 12019901 OFC

/s/ LESLIE T KOBATA  
REGISTRAR

Conveyance Tax \$0.00

**LAND COURT**

**REGULAR SYSTEM**

**RETURN BY MAIL ( ) PICKUP (X) TO:**

**RS - 3**

Clay Chapman Iwamura Pulice & Nervell  
700 Bishop Street, Suite 2100  
Honolulu, HI 96813  
Attention: Post Sale Closing Department

4641.008

**TOTAL NO. OF PAGES: 19**

**TAX MAP KEY NOS.** (4) 4-1-003-007 (CPR NOS. 1 THROUGH 216)  
(4) 4-1-005-014; AND  
(4) 4-1-003-004)

**AFFECTING TRANSFER CERTIFICATE OF TITLE NO. 1116173**

**COMMISSIONER'S DEED**

**COMMISSIONER'S DEED**

THIS COMMISSIONER'S DEED is made this 20th day of April, 2022, by **Craig A. DeCosta**, as Commissioner, whose address is 4028 Rice Street, Suite B, Lihue, HI 96766, hereinafter called the "Grantor" to RP21 Coco Palms LLC, a Utah Limited Liability Company, whose address is 160 West Canyon Crest Rd., Alpine, UT 84004, hereinafter called the "Grantee".

**RECITALS:**

1. Coco Palms Hui LLC, a Delaware Limited Liability Company, was the owner of that certain fee simple property described in Exhibit "A" attached hereto and incorporated herein by reference, subject to the first mortgage lien of WCMF Inc., a Nevada corporation, Coco Lenders Partnership, a Utah general partnership, Crestline AK Opportunistic Fund, L.P., a Delaware limited partnership, Blue Glacier Fund, L.P., a Delaware limited partnership, and PCG Credit Partners LLC, a Delaware limited liability company, being the Lenders listed in Amended Mortgage, Security Agreement, Assignment of Leases and Rents, Fixture Filing, and Financing Statement, which was recorded in the Bureau of Conveyances, State of Hawaii, on August 8, 2016 as Document Number A 60640164 and also in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. T-9716090, noted on Certificate of Title No. 1116173 (the "Lenders");

2. Private Capital Group, Inc., as agent for the Lenders, instituted legal proceedings in the Fifth Circuit Court, State of Hawaii, entitled Private Capital Group, Inc., "Plaintiff" v. Coco Palms Hui LLC, et al., "Defendants", Civil No. 5CC191000086 (the "Foreclosure Action"), for the foreclosure of its mortgage lien on the property described in Exhibit "A".

3. By Findings of Fact, Conclusions of Law and Order Granting Plaintiff's Motion for Partial Summary Judgment and Interlocutory Decree of Foreclosure, filed in the Foreclosure Action on November 5, 2019, and to be recorded in the Bureau of Conveyances, State of Hawaii, in said proceedings, the mortgage lien was foreclosed, and the Grantor was duly appointed Commissioner and was authorized and directed to sell all the property described in Exhibit "A".

4. By Order Granting Plaintiff's Motion Filed August 18, 2021, For Confirmation Of Sale By Commissioner; Exhibit A filed in the Foreclosure Action on October 26, 2021, and to be recorded in the Bureau of Conveyances, State of Hawaii, the sale of all the property hereinafter described in Exhibit A to Private Capital Group, Inc. or its nominee, was ratified, approved and confirmed, and the Grantor, as Commissioner, was ordered and directed to convey the mortgaged property to Grantee or its nominee.

6. The nominee of Private Capital Group, Inc. is RP21 Coco Palms LLC, a Utah Limited Liability Company.

**CONVEYANCE:**

The Grantor, for a valuable consideration, the receipt whereof is hereby acknowledged, does hereby give, grant, bargain, sell and convey unto the Grantee, "As Is", without warranty express or implied, all the property described in Exhibit "A".

TO HAVE AND TO HOLD the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith, unto said Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor, has executed these presents on the day and year first above written.

  
\_\_\_\_\_  
**Craig A. DeCosta**  
Commissioner

"Grantor"

(The remainder of this page has intentionally been left blank)

STATE OF HAWAII  
COUNTY OF KAUAI

)  
) ss:  
)

On this 20th day of April, 2022, before me Megan Deets, a Notary Public in and for said State, personally appeared **Craig A. DeCosta**, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

  
PRINT NAME: Megan Deets  
Notary Public, State of Hawaii



My commission expires 04/10/2023

Doc. Date: <u>04/20/2022</u>	# Pages: <u>4</u>
Notary Name: <u>Megan Deets</u>	<u>Fifth</u> Circuit
Doc. Description: <u>Commissioner's Deed</u>	
 Notary Signature	<u>04/20/2022</u> Date
 Stamp or Seal	
NOTARY CERTIFICATION	

**SCHEDULE B**

ITEM I: [TMK: (4) 4-1-003-007 (CPR NOS. 1 THRU 216)]

**PARCEL FIRST:**

All of that certain parcel of land situate on the Northwest side of Lihue Plantation Company, Limited's Railroad Right of Way and Kauai Belt Road at Wailua, Puna, District of Lihue, Island and County of Kauai, State of Hawaii, described as follows:

Lot 2, area 2.444 acres, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1667 of Veda Warner Hills.

**PARCEL SECOND:**

All of that certain parcel of land situate on the Northwest side of Lihue Plantation Company Limited's Railroad Right of Way and Kauai Belt Road at Wailua, Puna, District of Lihue, Island and County of Kauai, State of Hawaii, described as follows:

Lot 1, area 6.713 acres, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1667 of Veda Warner Hills.

TOGETHER WITH an easement for road and utility purposes over and across the strip of land 15 feet wide within Lot 2 as shown on Map 1 of said Land Court Application No. 1667 parallel to and adjacent to the Southerly boundary of said Lot 2.

**AS TO PARCELS FIRST AND SECOND**

TOGETHER WITH an easement twenty-five (25.00) feet wide for a road right of way over and across Parcel C of the Wailua Coconut Grove as shown on Map 1, Land Court Application 1667.

Being a portion of the property described in the following:

**SPECIAL WARRANTY DEED AND QUITCLAIM**

Recorded: MAY 06 2016, 2016 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. T-

962255

Grantor: PR II COCO PALMS LLC, a Delaware limited liability company

Grantee: COCO PALMS HUI LLC, a Delaware limited liability company

Being the property described in and covered by Transfer Certificate of Title No. 1116173

**PARCEL THIRD:**

All of that certain parcel of land (portion of the land described in and covered by Land Patent Grant Number 12211 to Ernest Apana and Parcel A of portion of Land Patent Grant Number S-15,564 to Island Holidays, Limited dba Coco Palms Resort Hotel, a Hawaii corporation) situate, lying and being at Wailua (Puna), Island and County of Kauai, State of Hawaii, being Lot 1-C-2-A, same being a portion of Lot 1 of the "Wailua Rice and Kula Lots", and thus bounded and described as per survey of Calvin L. K. Ching, Registered Professional Land Surveyor, dated May 6, 1985, to-wit:

Beginning at the West corner of this lot, the same being the South corner of Lot 1-C-1, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Nonou" being 3,766.52 feet South and 6,629.14 feet East and running by azimuths measured clockwise from True South:

1. 208° 39' 30" 196.70 feet along Lot 1-C-1 to a pipe;
2. 298° 07' 165.41 feet along Lot 53-A, Wailua House Lots, Fourth Series to a pipe;
3. 42° 10' 214.50 feet along Lot 53-A, Wailua House lots, Fourth Series and Lot 2 of Land Court Application 1667 (Map 1) to a pipe;
4. 123° 46' 115.76 feet along Lot 2, Land Court Application 1667 (Map 1) to the point of beginning and containing an area of 28,549 square feet, more or less.

EXCEPTING AND EXCLUDING, however, the Wailua Coconut Grove Drainage Ditch Right-of-Way, 15 feet wide, which is fully described as follows:

Beginning at the Southeast corner of this Right-of-Way, and on the Southwest boundary of Lot 1-C-2-A, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Nonou" being 3,828.86 feet South and 6,722.39 feet East and running by azimuths measured clockwise from True South:

5. 123° 46' 16.02 feet along the Southwest boundary of Lot 1-C-2-A to a pipe;

Thence along the remainder of Lot 1-C-2-A for the next four (4) courses, the azimuths and distances being:

6. 193° 12' 16.24 feet to a pipe;
7. 212° 25' 30" 90.15 feet to a pipe;
8. 212° 07' 30" 48.10 feet to a pipe;
9. 203° 57' 30" 52.72 feet to a pipe;

10. 298° 07' 15.04 feet along Lot 53-A, Wailua House Lots, Fourth Series to a pipe;

Thence along the remainder of Lot 1-C-2-A for the next four (4) courses, the azimuths and distances being:

11. 23° 57' 30" 52.70 feet to a pipe;

12. 32° 07' 30" 49.22 feet to a pipe;

13. 32° 25' 30" 87.65 feet to a pipe;

14. 13° 12' 19.32 feet to the point of beginning and containing an area of 3,121 square feet, more or less.

**PARCEL FOURTH:**

All of that certain parcel of land (being all of the land described in and covered by land Patent Grant Number 12,756 issued to Veda Warner Hills) situate, lying and being at Wailua, Puna, Island and County of Kauai, State of Hawaii, being Lot 10 of the "Wailua House Lots, 1st Series", and thus bounded and described:

Beginning at the South corner of this lot, and on the West side of the Ahukini Terminal and Railway Company Limited's Right-of-Way, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Nonou" being 4,081.4 feet South and 6,839.6 feet East, as shown on Government Survey Registered Map 2716, and running by true azimuths:

1. 111° 37' 32.0 feet along 10 foot road;

2. 151° 43' 85.8 feet along Land Court Award 3303 Apana 2 to Makaiki;

3. 228° 43' 99.0 feet along Land Court Award 3111-3559 Apana 3 to Debora Kapule;

4. 331° 43' 4.5 feet along same;

5. 232° 30' 95.7 feet along same;

6. 21° 37' 222.7 feet along the West side of the Ahukini Terminal and Railway Company Limited's Right-of-Way to the point of beginning and containing an area of 12,072 square feet, more or less.

**PARCEL FIFTH:**

All of that certain parcel of land (being all of the land described in and covered by Royal Patent Number 4826, Land Commission Award Number 3568, Apana 2 to Kelani) situate, lying and

being approximately 450 feet Northwesterly from Kuhio Highway and 390 Northerly from Kuamoo Road at Kawaiiki, Wailua, District of Kawaihau, Island and County of Kauai, State of Hawaii, and thus bounded and described as per survey of John Cline Mann, Registered Professional Land Surveyor, dated August 5, 1985, to-wit:

Beginning at the Southeast corner of this piece of land, being also the end of course 4 of the description of Land Application 1667 as shown on Map 1 thereof, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Nonou" being 4,494.61 feet South and 6,291.76 feet East, and running by true azimuths measured clockwise from South:

- |    |          |       |   |
|----|----------|-------|---|
| 1. | 91° 00'  | 92.40 | feet along Lot 1 of Land Court Application 1667 and Parcel F of Wailua Coconut Grove (General Lease S-4878 to Fort Associates Limited Partnership); |
| 2. | 179° 00' | 85.80 | feet along Parcel F of Wailua Coconut Grove (General Lease S-4878 to Fort Associates Limited Partnership);  |
| 3. | 271° 00' | 92.40 | feet along Parcel F of Wailua Coconut Grove (General Lease S-4878 to Fort Associates Limited Partnership) and Lot 1 of Land Court Application 1667; |
| 4. | 359° 00' | 85.80 | feet along Lot 1 of Land Court Application 1667 to the point of beginning and containing an area of 7,923 square feet more or less                  |

TOGETHER WITH right-of-way ten (10.00) feet wide, in a nature of an easement for ingress and egress between said Land Court Award and Kuamoo Road, such right-of-way to be designated by the Commissioner of Public Lands or his successors in office at such time as he may deem proper and necessary, as set forth in General Lease No. S-4878, dated March 15, 1984.

**PARCEL SIXTH:**

All of that certain parcel of land (being all of the land described in and covered by Land Patent Grant Number 11,279 issued to (Mrs.) Kimiko M. Kodama, whose husband is Shoichi Kodama and Parcel B of a portion of Land Patent Grant Number S-15,564 to Island Holidays, Limited, dba Coco Palms Resort Hotel, a Hawaii corporation) situate, lying and being at Wailua, District of Puna, Island and County of Kauai, State of Hawaii, being Lot 53 of the "Wailua House Lots, Fourth Series", and thus bounded and described:

Beginning at a 3/4-inch pipe at the North corner of this lot, the West corner of Lot 54, and on the Southeast side of Apana Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Nonou" being 3,424.18 feet South and 6,724.09 feet East, as shown on Government Survey Registered Map 2999 and running by azimuths measured clockwise from true South:

- |    |              |        |  |
|----|--------------|--------|--|
| 1. | 298° 07' 00" | 329.78 | feet along Lot 54 to a 3/4-inch pipe on the West side of Lihue Plantation Company's Railroad Right-of- |
|----|--------------|--------|--|

Way;

2. Thence along the West side of Lihue Plantation Company's Railroad Right-of-Way, 40.0 feet wide, on a curve to the right with a radius of 617.27 feet, the direct azimuth and distance being 13° 17' 35" 183.69 feet to a 3/4-inch pipe;
3. 21° 51' 00" 9.69 feet along the West side of Lihue Plantation Company's Railroad Right-of-Way 40.0 feet wide to a 1-1/4-inch pipe;
4. 139° 26' 30" 54.52 feet along Land Court Award 3111-3559, Apana 3 to Debora Kapule to a concrete monument;
5. 120° 20' 00" 85.80 feet along same to a concrete monument;
6. 222° 10' 00" 14.50 feet along Lot 1, Wailua Rice and Kula Lots, to a 3/4-inch pipe;
7. 118° 07' 00" 298.20 feet along same to a 1-1/4-inch pipe;
8. 170° 10' 00" 32.03 feet along same to a 3/4-inch pipe on the Southeast side of Apana Road;
9. 238° 28' 00" 144.55 feet along the Southeast side of Apana Road to the point of beginning and containing an area of 1.424 acres, more or less.

**PARCEL SEVENTH:**

All of that certain parcel of land (portion of the land described in and covered by Land Patent Grant Number 11,176 issued to (Mrs.) Ruth T. Palk) situate, lying and being at the corner of Apana Road and Haleilio Road at Wailua (Puna), Island and County of Kauai, State of Hawaii, being a portion of Lot 54 of the "Wailua House Lots Fourth Series", and thus bounded and described as per survey of Calvin L. K. Ching, Registered Land Surveyor, dated May 6, 1985, to-wit:

Beginning at a pipe at the West corner of this Lot, the same being the North corner of Lot 53, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Nonou" being 3,424.18 feet South and 6,724.09 feet East and running by azimuths measured clockwise from True South:

1. 238° 28' 234.96 feet along the Southeast side of Apana Road to a pipe;
2. Thence along the intersection of Apana Road and Haleilio Road on a curve to the right having a radius of 20.00 feet, the chord azimuth and distance being: 278° 44' 25.85 feet to

- a pipe;
3. 319° 00' 103.40 feet along Haleililo Road to a pipe;
  4. 0° 17' 148.72 feet along the Wailua Sewage Pumping Station Site, Executive Order 2744, to a pipe;
  5. Thence along the Wailua Sewage Pumping Station Site, Executive Order 2744 on a curve to the right having a radius of 617.27 feet, the chord azimuth and distance being: 2° 30' 35" 47.96 feet to a pipe;
  6. 118° 07' 329.78 feet along Lot 53 to the point of beginning and containing an area of 1.008 acres, more or less.

AS TO ALL PARCELS FIRST TO SEVENTH, INCLUSIVE:

TOGETHER WITH a Grant of Non-Exclusive Easement dated February 5, 1997, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 97-017437, made by and between the State of Hawaii, by its Board of Land and Natural Resources, as Grantor, and Wailua Associates, a California limited partnership, as Grantee, granting a non-exclusive easement fifteen (15) feet wide for drainage ditch, pedestrian walkway, lagoon, and culvert purposes.

Being a portion of the property described in the following:

**SPECIAL WARRANTY DEED AND QUITCLAIM**

Recorded: MAY 06 2016, 2016 in the Bureau of Conveyances, State of

Hawaii, as Document No. A-59700445  
 Grantor: PR II COCO PALMS LLC, a Delaware limited liability company

Grantee: COCO PALMS HUI LLC, a Delaware limited liability company

NOTE: The aforementioned premises has been divided into 216 apartment units more particularly described in the Declaration of Condominium Property Regime of Coco Palms Resort, recorded October 9, 2006 in the Bureau of Conveyances of the State of Hawaii as Document No. 2006-184341, and in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3494488, as shown on Condominium Map No. 4317 recorded in said Bureau and as shown on Condominium Map No. 1845 recorded in said Office.

ITEM II: [TMK: (4) 4-1-005-14]

All of that certain parcel of land (being all of the land(s) described in and covered by Land Patent Grant Number 11929 to Lawrence L. Patterson and portion of Papaloa Road) situate, lying and being at Wailua, District of Lihue, Island and County of Kauai, State of Hawaii, being Lot 13-A-1, being also all of Lot 13-A of the "Wailua House Lots, Third Series", and Remnant Lot A and thus bounded and described as per survey of Thomas H. Oi, Licensed Professional

Land Surveyor, with Portugal & Associates, Inc., dated July 17, 1998, to-wit:

Beginning at the North corner of this parcel of land and on the Southwest side of Papaloa Road, the coordinates of which referred to Government Survey Triangulation Station "Nonou" being 3,775.45 feet South and 7,045.91 feet East and running by azimuths measured clockwise from true South:

1. 295° 17' 00" 132.44 feet along, Lot 13, Wailua House Lots, Third Series, Grant 13088;
2. 268° 58' 00" 82.40 feet along, Lot 13, Wailua House Lots, Third Series, grant 13088;
3. 71° 10' 00" 80.00 feet along Wailua River State Park, portion of Governor Executive Order 2819;
4. 89° 46' 00" 160.85 feet along Lot 13-B, State of Hawaii, Wailua Assoc. Rev. Prmt. S-6234;
5. 201° 40' 30" 67.54 feet along East side of Kuhio Highway;
6. Thence along Papaloa Road, on a curve to the right with a radius of 120.00 feet, the chord azimuth and distance being: 206° 42' 22" 21.05 feet to the point of beginning and containing an area of 8,893 square feet, more or less.

Being a portion of the property described in the following:

**SPECIAL WARRANTY DEED**

Recorded: MAY 06 2016, 2016 in the Bureau of Conveyances, State of Hawaii, as Document No. A- 59700446

Grantor: PR II COCO PALMS LLC, a Delaware limited liability company  
Grantee: COCO PALMS HUI LLC, a Delaware limited liability company

ITEM III: [TMK: (4) 4-1-003-004]

All of that certain parcel of land (portions of the lands described in and covered by Royal Patent Number 6020, Land Commission Award Number 3561 to Iosia Kaunualii and Royal Patent Number 5489, Land Commission Awards 3111 and 3559, Apana 1 to Debora Kapule) situate, lying and being on the Northeasterly side of Kuamoo Road at Wailua, Kawaihau, Island and County of Kauai, State of Hawaii, and thus bounded and described as per survey of John Cline Mann, Registered Professional Land Surveyor, dated August 5, 1985, to-wit:

Beginning at the South corner of this piece of land, being also the Southwest corner of Parcel 1 of Wailua Drainage Canal, and on the Northeasterly side of Kuamoo Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Nonou" being 4,536.56 feet South and 5,632.86 feet East, and running by true azimuths measured clockwise from true South:

Along the Northeasterly side of Kuamoo Road on a curve to the right with a radius of 780.00 feet, the chord azimuth and distance being:

1.	129°	22'	33"	86.83	feet; thence,
2.	132°	34'		241.38	feet along the Northeasterly side of Kuamoo Road;
3.	222°	28'		148.82	feet along Royal Patent 6020, Land Commission Award 3561 to Iosia Kaumualii along Executive Order 2927, parcel 1, addition to Poliahu Park;
4.	114°	21'		32.80	feet along Executive Order 2927, Parcel 1, addition to Poliahu Park;
5.	138°	38'		159.97	feet along Executive Order 2927, Parcel 1, addition to Poliahu Park;
6.	236°	40'		63.78	feet along the Crown land of Wailua;
7.	151°	08'		964.34	feet along the Crown land of Wailua;
8.	223°	07'	30"	109.60	feet along fence;
9.	226°	59'	30"	82.66	feet along fence;
10.	233°	46'		30.88	feet along fence;
11.	254°	53'		74.55	feet along fence;
12.	243°	41'		73.97	feet along fence;
13.	238°	58'		123.15	feet along fence;
14.	237°	07'		75.68	feet along fence;
15.	321°	18'		952.85	feet along fence;
16.	317°	35'		244.22	feet along Parcel F to Wailua Coconut Grove (General Lease S-4878 to Fort Associates Limited Partnership);
17.	61°	30'		704.00	feet along Parcel F of Wailua Coconut Grove, (General Lease S-4878 to Fort Associates Limited Partnership) and Parcel 1 of Wailua Drainage Canal;

18. 348° 05' 30" 401.52 feet along Parcel 1 of Wailua Drainage Canal to the point of beginning and containing an area of 18.880 acres, more or less.

Being a portion of the property described in the following:

**SPECIAL WARRANTY DEED**

Recorded: MAY 06 2016, 2016 in the Bureau of Conveyances, State of Hawaii, as Document No. A- 59700447  
Grantor: PR II COCO PALMS LLC, a Delaware limited liability company  
Grantee: COCO PALMS HUI LLC, a Delaware limited liability company

SUBJECT, HOWEVER, to the following:

1. Title to all minerals, and metallic mines reserved to the State of Hawaii.
2. AS TO ITEM I, PARCEL FIRST ONLY:

An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument: GRANT  
Granted To: ISLAND HOLIDAYS, LTD., a Hawaii corporation  
For: road and utility purposes  
Dated: January 26, 1954  
Recorded: July 7, 1955 in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 176424  
Affects: a strip of land 15 feet wide, parallel to and adjacent to the Southerly boundary of Lot 2.

3. AS TO ITEM I, PARCEL THIRD ONLY:

- (A) An easement, 10 feet wide for drainage purposes, along its Southwest boundary, as shown on tax maps of the Department of Taxation and is more fully described as follows:

Beginning at the Southwest corner of this Easement, the same being the West corner of Lot 1-C-2-A, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Nonou" being 3,766.52 feet South and 6,629.14 feet East and running by azimuths measured clockwise from True South:

1. 208° 39' 30" 10.04 feet along Lot 1-C-1, Rice and Kula Lots;
2. 303° 46' 93.29 feet along the remainder of Lot 1-C-2-A;
3. 13° 12' 10.68 feet along the Wailua Coconut Grove Ditch Right-of-Way;

4. 123° 46' 96.15 feet along Lot 2, Land Court Application 1667 (Map 1) to the point of beginning and containing an area of 947 square feet, more or less.

(B) Terms and provisions as contained in an instrument,

Entitled: WAIVER AND INDEMNITY AGREEMENT  
Executed By: ISLAND HOLIDAYS, LTD., a Hawaii corporation  
Dated: February 8, 1977  
Recorded: May 4, 1977 in the Bureau of Conveyances, State of Hawaii, in Book 12176, Page 443

Re: Applicant does hereby waive and release the County of Kauai from all claims and causes of action, either legal or equitable, which may hereafter accrue by reason of any flooding or surface waters upon said parcel.

4. AS TO ITEM I, PARCELS THIRD AND THIRD ONLY:

(A) Covenants, conditions, restrictions, reservations, agreements, obligations, easements and other provisions set forth in Land Patent Grant Number S-15,564, dated December 30, 1981.

(B) Water or water rights as reserved to the State of Hawaii in the instrument, Entitled: Land Patent Grant Number S-15,564, dated December 30, 1981

5. AS TO ITEM I, ALL PARCELS:

(A) Terms and provisions as contained in an instrument,

Entitled: WAIVER AND INDEMNITY AGREEMENT  
Executed By: ISLAND HOLIDAYS, LTD., a Hawaii corporation  
Dated: October 31, 1975  
Recorded: December 11, 1975 in the Bureau of Conveyances, State of Hawaii, in Book 11079, Page 439

Re: Applicant does hereby waive and release the County of Kauai from all claims and causes of action, either legal or equitable, which may hereafter accrue by reason of any flooding of surface waters upon said parcel, besides other land.

(NOT NOTED ON TRANSFER CERTIFICATE OF TITLE REFERRED TO HEREIN)

(B) Terms and provisions as contained in an instrument,

Entitled: WAIVER AND INDEMNITY AGREEMENT Executed By:  
ISLAND HOLIDAYS, LTD., a Hawaii corporation  
Dated: October 9, 1980  
Recorded: October 20, 1980 in the Bureau of Conveyances, State of Hawaii, in Book 15070, Page 674

Re: Applicant does hereby waive and release the County of Kauai from all claims and causes of action, either legal or equitable, which may hereafter accrue by reason of any flooding of surface waters upon said parcel, besides other land.

(NOT NOTED ON TRANSFER CERTIFICATE OF TITLE REFERRED TO HEREIN)

(C) Terms and provisions as contained in an instrument,

Entitled: WAIVER AND INDEMNITY AGREEMENT Executed By:  
ISLAND HOLIDAYS, LTD., a Hawaii corporation  
Dated: September 14, 1981  
Recorded: October 19, 1981 in the Bureau of Conveyances, State of Hawaii, in  
Book 15931, Page 44

Re: Applicant does hereby waive and release the County of Kauai from all claims and causes of action, either legal or equitable, which may hereafter accrue by reason of any flooding of surface waters upon said parcel, besides other land.

(NOT NOTED ON TRANSFER CERTIFICATE OF TITLE REFERRED TO HEREIN)

(D) ASSIGNMENT OF TRANSMISSION LINE AND ELECTRICAL EASEMENTS

Dated: November 1, 2002  
Recorded: October 21, 2002 in the Bureau of Conveyances, State of Hawaii, as  
Document No. 2002-194846, and in the Office of the Assistant  
Registrar of the Land Court, State of Hawaii, as Document No.  
2856272  
Assignor: CITIZENS COMMUNICATIONS COMPANY, formerly known as  
Citizens Utilities Company, a Delaware corporation, successor-in-  
interest to KAUAI ELECTRIC COMPANY, LIMITED  
Assignee: KAUAI ISLAND UTILITY CO-OP, a Hawaii cooperative  
corporation

(E) Condominium Map No. 4317, filed in the Bureau of Conveyances, State of Hawaii and  
Condominium Map No. 1845, filed in the Office of the Assistant Registrar of the Land  
Court, State of Hawaii.

(F)

Entitled: Declaration of Condominium Property Regime  
Recorded: October 9, 2006 in the Bureau of Conveyances, State of Hawaii, as  
Document No. 2006-184341, and in the Office of the Assistant  
Registrar of the Land Court, State of Hawaii, as Document No.  
3494488

(G) Bylaws of the Association of Unit Owners of COCO PALMS RESORT recorded  
October 9, 2006 in the Bureau of Conveyances, State of Hawaii, as Document No.

2006-184342, and in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 3494489.

6. AS TO ITEM II ONLY:

- (A) Easement "U-1" (4 sq. ft.) for water meter purposes, in favor of the Department of Water, County of Kauai, as shown on survey map prepared by Thomas H. Oi, Licensed Professional Land Surveyor with Portugal & Associates, Inc. dated July 17, 1998, as set forth in an instrument dated May 20, 1999, recorded June 7, 1999 in the Bureau of Conveyances, State of Hawaii, as Document No. 99-089795
- (B) An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument: GRANT OF EASEMENT  
Granted To: COUNTY OF KAUAI, a political subdivision of the State of Hawaii  
For: A perpetual right and easement to build, construct, reconstruct, rebuild, repair, maintain and operate a shared-use path or public access purposes (bike and pedestrian path)  
Dated: February 9, 2009  
Recorded: June 26, 2009 in the Bureau of Conveyances, State of Hawaii, as Document No. 2009-099004  
Affects: Easement "A-1"

CONSENT thereto:

Recorded: June 26, 2009 in the Bureau of Conveyances, State of Hawaii, as Document No. 2009-099005  
By: NATIONAL CITY BANK, a national banking association

7. AS TO ITEM III ONLY:

- (A) Any and all existing roadways and/or easements, particularly those shown on the tax maps of the Department of Taxation, State of Hawaii, and as set forth WARRANTY DEED dated August 26, 1982, recorded August 26, 1982 in the Bureau of Conveyances, State of Hawaii, in Book 16533, Page 718, to wit:
- a. Roadway running across the Southeasterly portion of the herein described land.
  - b. Roadway running across the Northwesterly portion of the herein described land.
  - c. Proposed Wailua Drainage Canal identified as Lot 2, area 1.439 acres.
- (B) Terms and provisions as contained in an instrument,

Entitled: WAIVER AND INDEMNITY AGREEMENT  
Executed By: THE LIHUE PLANTATION COMPANY, LIMITED, as Applicant

Dated: May 7, 1981  
Recorded: June 4, 1981 in the Bureau of Conveyances, State of Hawaii, in Book 15591, Page 669  
Re: Applicant does hereby waive and release the County of Kauai from all claims and causes of action, either legal or equitable, which may hereafter accrue by reason of any flooding of surface waters upon said parcel.

(C) Existing Wailua Drainage Canal identified as Lot 2, area 1.439 acres, and existing roadway as shown on survey by John Cline Mann, Registered Professional Land Surveyor, dated August 8, 1985, as amended August 26, 1985, as disclosed in Deed dated August 27, 1985, recorded August 29, 1985 in the Bureau of Conveyances, State of Hawaii, in Book 18896, Page 82.

(D) Exception and reservation contained in Deed dated August 26, 1982, recorded August 26, 1982 in the Bureau of Conveyances, State of Hawaii, in Book 16533, Page 718, as amended by Partial Cancellation and Waiver of Reservation Re Alternate Energy Facility by the Lihue Plantation Company, Limited, dated August 27, 1985, recorded August 28, 1985 in the Bureau of Conveyances, State of Hawaii, in Book 18896, Page 36, to-wit:

Exception and reservation in favor of Amfac, Inc. and The Lihue Plantation Company, Limited and their respective subsidiaries, successors and assigns forever, as appurtenant to their respective lands located in the District of Wailua now owned and use or hereafter acquired and used by them in sugar plantation operations, the perpetual right and easement over and upon the granted premises to discharge, emit, diffuse, and inflict noise, smoke soot, dust, lights, noxious vapors, odors and other minor nuisances of every description created by and resulting from their reasonable operations in burning sugar cane and bagasse, milling, generating power, trucking, hauling and all other activities incidental to the operation of a sugar plantation.

(E) Ten-foot street widening setback line along Kuamoo Road, as shown on survey prepared by John Cline Mann, Registered Professional Land Surveyor, dated August 8, 1985, as amended August 26, 1985, as disclosed in Deed dated August 27, 1985, recorded August 29, 1985 in the Bureau of Conveyances, State of Hawaii, in Book 18896, Page 82.

8. Terms and provisions as contained in an instrument,

Entitled: HOUSING AGREEMENT (FOR COCO PALMS)  
Dated: December 4, 2015  
Recorded: February 9, 2016 in the Bureau of Conveyances, State of Hawaii, as Document No. A-58830145

9. Assertion by R. X. Aki (Transpacific Enterprises, Inc.), of right to block the existing drainage ditch or auwai along the boundary between Land Commission Awards 3405 and 3557:1, as disclosed by instrument dated September 28, 2004, recorded in the

Bureau of Conveyances, State of Hawaii, as Document No. 2006-017590.

10. Existing bridges and building encroachments as shown on survey prepared by John Cline Mann, Registered Professional Land Surveyor, dated August 8, 1985, as amended August 26, 1985, as disclosed by instrument dated September 28, 2004, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2006-017590.

**Electronically Filed  
Intermediate Court of Appeals  
CAAP-20-0000429  
28-JUN-2024  
08:00 AM  
Dkt. 160 SO**

NOS. CAAP-20-0000429 and CAAP-20-0000527

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

**CAAP-20-0000429**

PRIVATE CAPITAL GROUP, INC., a Utah Corporation,  
Plaintiff-Appellee, v. COCO PALMS HUI, LLC, a Delaware Limited  
Liability Company; TYLER SCOTT GREENE, Defendants-Appellees,  
and  
CHAD WATERS, Defendant-Appellant,  
and  
PAUL M. HONKAVAARA dba Chartered Financial Group,  
Defendant-Appellee,  
and  
DOE DEFENDANTS 1-50, Defendants  
(CASE NO. 5CC191000086)

and

**CAAP-20-0000527**

PRIVATE CAPITAL GROUP, INC., a Utah Corporation,  
Plaintiff-Appellee, v. COCO PALMS HUI, LLC, a Delaware Limited  
Liability Company; TYLER SCOTT GREENE, Defendants-Appellees,  
and  
CHAD WATERS, Defendant-Appellee,  
and  
PAUL M. HONKAVAARA dba Chartered Financial Group,  
Defendant-Appellant,  
and  
DOE DEFENDANTS 1-50, Defendants  
(CASE NO. 5CC191000086)

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT

**SUMMARY DISPOSITION ORDER**

(By: Hiraoka, Presiding Judge, Wadsworth and Nakasone, JJ.)

Paul M. **Honkavaara**, doing business as Chartered Financial Group, appeals from the Amended Final Judgment for Private Capital Group, Inc. (**PCG**) entered by the Circuit Court of the Fifth Circuit on September 20, 2021.<sup>1</sup> We vacate and remand.

PCG filed a foreclosure complaint against **Coco Palms Hui LLC**, Tyler Scott **Greene**, Chad **Waters**, and Honkavaara. The complaint alleged that PCG serviced a **Mortgage** on real **Property** owned by Coco Palms Hui. The Mortgage secured a **Note** made by Coco Palms Hui. The Note was payable to a group of lenders, for whom PCG claimed to act. Coco Palms Hui defaulted on the Note. Greene and Waters had guaranteed Coco Palms Hui's obligation under the Note. Honkavaara claimed an interest in the Property as a judgment creditor of Coco Palms Hui.<sup>2</sup>

PCG moved for summary judgment and a decree of foreclosure on November 5, 2019. Honkavaara and Waters opposed the motion. The circuit court entered an order granting partial summary judgment and a decree of foreclosure on June 17, 2020. Waters filed a notice of appeal on June 25, 2020, creating CAAP-20-0000429. A "Final Judgment" was entered on August 10, 2020. Honkavaara filed a notice of appeal on August 25, 2020, creating CAAP-20-0000527. We consolidated the appeals and temporarily remanded the case for entry of a judgment that complied with Hawai'i Rules of Civil Procedure Rule 54(b) and Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). The Amended Final Judgment was entered on September 20, 2021. We approved the parties' stipulation to dismiss Waters' appeal on March 6, 2024. Only Honkavaara's appeal remains before us.

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<sup>1</sup> The Honorable Randal G.B. Valenciano presided.

<sup>2</sup> Honkavaara's answer admitted that his judgment lien was junior and subordinate to the lien of the Mortgage.

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

Honkavaara contends the circuit court erred by granting summary judgment because PCG: (1) lacked standing to enforce the Note; (2) did not prove it suffered an injury-in-fact; and (3) had unclean hands. We review a grant of summary judgment de novo. Bank of Am., N.A. v. Reyes-Toledo, 139 Hawai'i 361, 367 n.9, 390 P.3d 1248, 1254 n.9 (2017).

(1) A copy of the Note was attached to PCG's motion for summary judgment. As the foreclosing plaintiff moving for summary judgment, PCG had to prove it was entitled to enforce the Note. Reyes-Toledo, 139 Hawai'i at 367, 390 P.3d at 1254 (citing HRS § 490:3-301). It had to show it was either (a) the holder of the Note, or (b) a nonholder in possession of the Note with the rights of a holder. HRS § 490:3-301 (2008).<sup>3</sup>

(a) PCG vice president Benjamin C. Schramm submitted a declaration stating that PCG had possession of the Note since it was executed. Under the Hawai'i Uniform Commercial Code, a holder of a note is a person in possession of a note that is payable to the bearer, or to "an identified person that is the person in possession[.]" HRS § 490:1-201 (2008). The Note was payable to WCMF Inc., Coco Lenders Partnership, Blue Glacier Fund, L.P., Crestline AK Opportunistic Fund, L.P., and PCG Credit Partners LLC, "or their successors and assigns[.]" A declaration by PCG's custodian of records stated that WCMF Inc. assigned its interest in the Note to Robert Conte, who assigned it to WSNT LLC. Neither assignment appears in the record.

The Note was not specially indorsed to PCG. HRS § 490:3-205(a) (2008). The Note was not indorsed in blank. HRS § 490:3-205(b) (2008). PCG did not show it was the holder of the Note.

(b) PCG argues it was a nonholder in possession of the Note with rights of a holder because it was the "disclosed agent" of the payees named in the Note (and presumably their assignees).

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<sup>3</sup> The HRS § 490:3-301 provisions about lost, stolen, or destroyed notes, or instruments paid or accepted by mistake, do not apply here.

**NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER**

Schramm's declaration stated that PCG had serviced Coco Palms Hui's loan since its origination, maintained all of the loan servicing records, and had possession of the Note. That agency relationship does not prove PCG had the rights of a holder.

HRS § 490:3-203 (2008) provides, in relevant part:

(a) An instrument is transferred when it is delivered by a person other than its issuer *for the purpose of giving to the person receiving delivery the right to enforce the instrument.*

(Emphasis added.)

Uniform Commercial Code § 3-203 official comment 2. states: "Because the transferee's rights are derivative of the transferor's rights, those rights must be proved. . . . The instrument, by its terms, is not payable to the transferee and the transferee must account for possession of the unindorsed instrument *by proving the transaction through which the transferee acquired it.*" (Emphasis added.) As the supreme court of one Uniform Commercial Code state noted, "because [a transferee] seeking to enforce the note cannot 'prove' its right to enforce through the use of a valid endorsement [sic], the party must 'prove' by some other means that it was given possession of the note *for the purpose of enforcing it.*" Leyva v. Nat'l Default Servicing Corp., 255 P.3d 1275, 1281 (Nev. 2011) (emphasis added) (footnote omitted).

Schramm's declaration showed only that PCG serviced the loan. It did not establish that WCMF Inc., Coco Lenders Partnership, Blue Glacier Fund, L.P., Crestline AK Opportunistic Fund, L.P., PCG Credit Partners LLC, Robert Conte, or WSNT LLC authorized PCG to file suit to enforce the Note. PCG did not submit a loan servicing agreement or other evidence "of such authority to demonstrate that the principals unequivocally manifested their intention to authorize the loan servicer to exercise those rights [to foreclose a mortgage.]" J.E. Robert Co. v. Signature Props., LLC, 71 A.3d 492, 504 n.19 (Conn. 2013)

**NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER**

(cleaned up). PCG did not show it was a nonholder in possession of the Note with rights of a holder.

(2) A plaintiff must have suffered an injury-in-fact to establish standing to "justify exercise of the court's remedial powers" on their behalf. Wells Fargo Bank, N.A. v. Behrendt, 142 Hawai'i 37, 41, 414 P.3d 89, 93 (2018) (citation omitted). In a foreclosure case, "the injury-in-fact is the mortgagor's failure to satisfy its obligation to pay the debt obligation to the note holder." Id. (cleaned up). The Note did not obligate Coco Palms Hui to pay PCG. PCG did not establish it suffered an injury-in-fact giving it standing to prosecute the foreclosure action.

(3) We need not address unclean hands because we are vacating the order granting partial summary judgment on other grounds, and remanding this case for further proceedings.

For these reasons, the circuit court's June 17, 2020 Findings of Fact and Conclusions of Law and Order Granting Plaintiff's Motion for Partial Summary Judgment and Interlocutory Decree of Foreclosure and September 20, 2021 Amended Final Judgment are vacated, and this case is remanded for further proceedings consistent with this summary disposition order.

DATED: Honolulu, Hawai'i, June 28, 2024.

On the briefs:

Porter Devries,  
for Defendant-Appellant  
and Defendant-Appellee  
Chad Waters.

/s/ Keith K. Hiraoka  
Presiding Judge

/s/ Clyde J. Wadsworth  
Associate Judge

Keith M. Kiuchi,  
for Defendant-Appellee  
and Defendant-Appellant  
Paul M. Honkavaara dba  
Chartered Financial Group.

/s/ Karen T. Nakasone  
Associate Judge

Bradley R. Pulice,  
Scott I. Batterman,  
for Plaintiff-Appellee  
Private Capital Group, Inc.

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NOS. CAAP-20-0000429 and CAAP-20-0000527

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

**CAAP-20-0000429**

PRIVATE CAPITAL GROUP, INC., a Utah Corporation,  
Plaintiff-Appellee, v. COCO PALMS HUI, LLC, a Delaware Limited  
Liability Company; TYLER SCOTT GREENE, Defendants-Appellees,  
and  
CHAD WATERS, Defendant-Appellant,  
and  
PAUL M. HONKAVAARA dba Chartered Financial Group,  
Defendant-Appellee,  
and  
DOE DEFENDANTS 1-50, Defendants  
(CASE NO. 5CC191000086)

and

**CAAP-20-0000527**

PRIVATE CAPITAL GROUP, INC., a Utah Corporation,  
Plaintiff-Appellee, v. COCO PALMS HUI, LLC, a Delaware Limited  
Liability Company; TYLER SCOTT GREENE, Defendants-Appellees,  
and  
CHAD WATERS, Defendant-Appellee,  
and  
PAUL M. HONKAVAARA dba Chartered Financial Group,  
Defendant-Appellant,  
and  
DOE DEFENDANTS 1-50, Defendants  
(CASE NO. 5CC191000086)

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT

JUDGMENT ON APPEAL

(By: Hiraoka, J., for the court<sup>1</sup>)

Pursuant to the Summary Disposition Order of the Intermediate Court of Appeals of the State of Hawai'i entered on June 28, 2024, the Circuit Court of the Fifth Circuit's June 17, 2020 Findings of Fact and Conclusions of Law and Order Granting Plaintiff's Motion for Partial Summary Judgment and Interlocutory Decree of Foreclosure and September 20, 2021 Amended Final Judgment are vacated, and this case is remanded for further proceedings consistent with the summary disposition order.

DATED: Honolulu, Hawai'i, July 29, 2024.

FOR THE COURT:

/s/ Keith K. Hiraoka  
Associate Judge

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<sup>1</sup> Hiraoka, Presiding Judge, Wadsworth and Nakasone, JJ.

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**SECOND AMENDED AND RESTATED  
OPERATING AGREEMENT  
FOR  
COCO PALMS HUI, LLC  
A DELAWARE LIMITED LIABILITY COMPANY**

**THE SECURITIES REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR REGISTERED OR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER THE SALE, TRANSFERRED, UNLESS QUALIFIED AND REGISTERED UNDER THE APPLICABLE STATE AND FEDERAL SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE COMPANY, SUCH QUALIFICATION AND REGISTRATION IS NOT REQUIRED. ANY TRANSFER OF THE SECURITIES REPRESENTED BY THIS AGREEMENT IS FURTHER SUBJECT TO THE OTHER RESTRICTIONS, TERMS AND CONDITIONS THAT ARE SET FORTH HEREIN.**

**SECOND AMENDED AND RESTATED OPERATING AGREEMENT  
OF COCO PALMS HUI LLC**

This Second Amended and Restated Operating Agreement is made and entered into as of January 1, 2018 ("Effective Date"), by and among KK1&2 LLC, a Hawaii limited liability company ("KK1&2"), BLCJPL OHANA LLC, a Hawaii limited liability company, Stillwater Equity Partners LLC, a Utah limited liability company ("SEP") and PR II COCO PALMS LLC, a Delaware limited liability company ("PR II").

**RECITALS**

A. The Members formed a limited liability company known as Coco Palms Hui LLC (the "Company") under the laws of the State of Delaware by filing a Certificate of Formation with the Secretary of State of the State of Delaware on July 31, 2013. The Company was formed for the purpose of carrying on certain business and activities permitted for limited liability companies by the laws of the State of Delaware.

B. The Members originally entered into that certain operating agreement of the Company dated July 31, 2013, which was amended and restated pursuant to that Amended and Restated Operating Agreement signed by the Members.

C. The Members now desire to amend and restate the operating agreement of the Company in its entirety and to set forth the terms and conditions by which the Company will be governed as of the Effective Date.

IN CONSIDERATION of the foregoing recitals which are hereby incorporated as part of this Agreement, the mutual covenants and agreement contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members hereby amend and restate the operating agreement of the Company and agree as follows:

**ARTICLE I  
FORMATION**

1.1 Name. The name of the limited liability company (the "Company") is Coco Palms Hui LLC.

1.2 Certificate of Formation. The Company's Certificate of Formation filed with the Delaware Secretary of State effective as of July 31, 2013 (the "Articles") are hereby approved, ratified and adopted.

1.3 Principal Place of Business. The principal place of business of the Company is located at 1050 Bishop St. #303, Honolulu, HI. 96813 or such other place or places as the Managers may establish from time to time in its discretion.

1.4 Registered Office and Registered Agent. The Company's registered office shall be at 16192 Coastal Highway, Lewes, Delaware 19958, and the name of its initial registered agent at such address shall be Harvard Business Services, Inc. The Manager may change the registered office and registered agent from time to time.

1.5 Business Purpose. The Company is organized to purchase, own, improve, operate, market and sell that certain real property located in Kauai County, Hawaii described in Schedule 1, attached hereto and made a part hereof, and commonly known as Coco Palms Resort, Kauai, Hawaii (the "Project"), and to conduct any lawful activities incidental thereto. The Company shall engage in no other business.

1.6 Agreement. The Company was formed pursuant to the Delaware Limited Liability Company Act, as amended from time to time (the "Act"). To the extent any provision of the Operating Agreement is prohibited or ineffective under the Act, the Operating Agreement shall be considered amended to the smallest degree possible in order to make the Operating Agreement effective under the Act. In the event the Act is subsequently amended or interpreted in such a way to make valid any provision of the Operating Agreement that was formerly invalid, such provision shall be considered to be valid from the effective date of such interpretation or amendment. Further, it is the express intention of the Members that the Company be treated as a partnership for purposes of federal and state taxation. The Members agree to take such actions and make such elections as may be necessary or convenient to allow the Company to be treated as a partnership for such purposes. If it is determined that the Company is not, or will not, be classified as a partnership under the Internal Revenue Code (the "Code"), then the Operating Agreement shall be considered amended to the smallest degree possible in whatever manner necessary to ensure that the Company is or shall be treated as a partnership under the Code for purposes federal and state taxation.

## ARTICLE II MEMBERS, CONTRIBUTIONS, AND INTERESTS

2.1 Initial Members. The names and addresses of the initial members of the Company (the "Members"), their initial capital contributions and their initial percentage ownership of the limited liability company interests in the Company (the "Sharing Ratios"), are as set forth on Exhibit A, attached hereto and made a part hereof.

2.2 Limitation of Liability. Each Member's liability shall be limited to the maximum extent permitted by applicable law. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs shall not be grounds for imposing personal liability on the Members or the Profits Interest Holder for liabilities of the Company.

2.3 No Liability for Company Debts. A Member shall not be personally liable for any debts or losses of the Company beyond his respective capital contribution, except as otherwise required by law. This Section 2.3 shall not in any way limit the obligations and liability of any co-borrower or guarantor Member(s) pursuant to any existing or future loan documents and in any other collateral given to a lender to secure any obligations of the Company.

2.4 Other Business of Members. Except as may be otherwise provided in agreements among the Members and/or the Company, any Member and the Profits Interest Holder may engage independently or with others in other business and investment ventures of every nature and description and no Member or the Profits Interest Holder shall have any obligation to account to the Company, the Members or the Profits Interest Holder for such business or investments.

2.5 Additional Members. Subject to the terms and conditions set forth in this Operating Agreement, additional Members shall only be admitted upon the unanimous vote of the Managers and the written consent of the Profits Interest Holder, which consent of the Profits Interest Holder shall not be unreasonably withheld.

2.6 Additional Contributions. The Managers may determine from time to time that additional contributions are needed to enable the Company to conduct its business. Upon making such a determination, the Company shall give notice to all Members in writing at least ten (10) days prior to the date on which such additional capital contribution is due. Such notice shall set forth the amount of additional capital contribution needed from each Member, the purpose for which such capital contribution is needed, and the date by which the Members must contribute. Such additional capital contributions shall be payable proportionately in accordance with the Members' respective Sharing Ratios. The additional capital contributions shall be an obligation of a Member to the Company. If any Member fails to make any additional capital contribution by the due date specified in the notice, then such Member (a

“Delinquent Member”) shall be in breach of its obligations under this Operating Agreement, and the additional capital contribution shall be deemed a recourse obligation of the Delinquent Member. The Members other than the Delinquent Member (individually, a “Non-Delinquent Member” and collectively, the “Non-Delinquent Members”) may elect to allow the Non-Delinquent Members to contribute the amount of any additional capital contribution proportionately in accordance with the Non-Delinquent Members’ respective Sharing Ratios. If a Non-Delinquent Member makes an additional capital contribution (such Member is referred to herein as a “Contributing Member”) under this Section within thirty (30) days following the due date specified in the notice, the capital contribution by the Contributing Member shall be considered a recourse loan (a “Member Loan”) to the Delinquent Member bearing interest at a rate equal to the lesser of: (1) the greater of (a) the prevailing First Bank of Hawaii prime rate plus three percent (3%); or (b) twelve percent (12%); or (2) the maximum non-usurious rate permitted by law for such loans. Such Member Loans shall be due and payable in full thirty (30) days from the date advanced. The first funds otherwise available for distribution by the Company to the Delinquent Member shall instead be paid to the Contributing Members to pay off the Member Loans. The rights of Non-Delinquent Members under this Section shall be in addition to any other remedies available at law or in this Operating Agreement, including, without limitation, the right to treat the failure to contribute as a Buy/Sell Event under Section 9.5 upon a vote of the Non-Delinquent Members in accordance with Section 3.6.

2.7 Interest on Capital Contributions. No interest shall accrue or be paid on capital contributions.

2.8 Loans. The Company may borrow money from any Member or third parties upon such commercially reasonable terms and conditions as the Manager may approve.

2.9 Profits Interest Holder. PR II Coco Palms LLC, a Delaware limited liability company, shall be a “Profits Interest Holder” in the Company, but not be a Member of the Company. The Profits Interest Holder shall have the rights set forth in this Operating Agreement, including the rights to the inspection of the Company books and records in accordance with Article VI, and to distributions from the Company in accordance with Articles VIII and X. In no event shall the Profits Interest Holder be responsible for any capital contributions to the Company, or any debts, judgments, obligations or other liabilities of the Company. The Profits Interest Holder shall not have any voting rights regarding the Company; provided, however, that the written approval of the Profits Interest Holder shall be required for any amendment to this Operating Agreement.

In addition, except for any transaction, compensation, payment or contract expressly described herein, the prior written consent of the Profits Interest Holder shall be required to: (a) authorize or effect the merger or consolidation of the Company into one or more entities; (b) cause the Company to enter into any transaction with, pay any compensation to or contract with a Member, Manager or an Affiliate of a Member, Manager or the Company where such contract, transaction or compensation is not entered into on an arms-length basis; and (c) Transfer more than fifty percent (50%) of the original Sharing Ratios (as set forth in this Operating Agreement), on a cumulative basis. No consent or approval of Profits Interest Holder shall be necessary or required for any loan or financing obtained by the Company in connection with the acquisition, development, construction, maintenance, repair, improvement, operation or use of the Project and the execution and delivery of all documents and instruments related thereto. Notwithstanding the foregoing, the prior written consent of the Profits Interest Holder shall not be required for any transaction between Private Capital Group, Inc. (“PCG”) and the Company.

Upon written request by the Profits Interest Holder, the Manager shall cause the Company to deliver an estoppel certificate to the Profits Interest Holder within ten (10) days of such request, certifying: (1) the existence and validity of the Profits Interest Holder’s interest in the Company, (2) that no modifications or amendments have been made to the Operating Agreement, (3) no parties are in default under the Operating Agreement, and (4) any other certification that the Profits Interest Holder shall reasonably request.

On the Effective Date, the Company and the Profits Interest Holder shall execute in recordable form a Memorandum of Profits Interest in the form of Exhibit B attached hereto and incorporated herein by this reference and shall cause the Memorandum of Profits Interest to be recorded in the office of the Bureau of Conveyances of the State of Hawaii.

2.10 Company's Purchase Option of Profits Interest. *Intentionally Deleted.*

ARTICLE III  
MEMBER MEETINGS

3.1 Meetings. A meeting of Members shall be held if called by Members holding at least fifty percent (50%) of the Sharing Ratios who sign, date and deliver to the Company's principal office a written request for the meeting which describes the purpose or purposes for which said meeting is to be held. Meetings of Members shall be held at the principal office of the Company or any other place specified in the notice of meeting.

3.2 Notice of Meeting. Notice of the date, time, and place of each meeting of the Members shall be given to each Member not more than sixty (60) days and not less than ten (10) days before the meeting date. The notice shall also include a description of the purpose or purposes for which the meeting is called.

3.3 Record Date. The persons entitled to notice of and to vote at a meeting of the Members, and their respective Sharing Ratios, shall be determined as of the record date for the meeting. The record date shall be a date selected by the Manager, which date shall be not more than seventy (70) days and not less than ten (10) days before the meeting. If the Manager does not specify a record date, the record date shall be the date on which notice of the meeting was first mailed or otherwise delivered.

3.4 Quorum. The presence, in person or by proxy, of Members holding more than fifty percent (50%) of the Sharing Ratios shall constitute a quorum.

3.5 Proxies. A Member may be represented at a meeting in person or by written proxy.

3.6 Voting. On all matters requiring action by the Members, each Member shall be entitled to vote the Member's Sharing Ratio. Except as otherwise stated in the Certificate of Formation or this Operating Agreement or required by the Act, a matter submitted to a vote of the Members shall be deemed approved if the Sharing Ratios voted in favor at a meeting at which a quorum is present exceed those voted against the matter.

ARTICLE IV  
MANAGEMENT

4.1 Number and Qualifications of Managers. The Company shall be managed by one or more Managers as determined by the unanimous approval and consent of all of the Members. Managers may be individuals or entities, and need not be members of the Company. Beginning on the Effective Date, the Company shall have two (2) Managers. The Managers shall be KK1&2 LLC, a Hawaii limited liability company, and Stillwater Equity Partners LLC, a Utah limited liability company (SEP) which has been designated as a manager by PCG.

4.2 Manager Authority. Subject to restrictions that may be imposed from time to time by the Managers or Members and the restrictions contained in this Operating Agreement, the business, property and affairs of the Company shall be managed exclusively by the Managers. Except as otherwise provided herein, or as may otherwise be required by the Act, in the event that the Company has more than one (1) Manager, decisions of the Managers shall require the unanimous approval and consent of all of the Managers.

4.3 Limitation on Authority. Except as otherwise provided herein, or as may otherwise be required by the Act, the following actions shall require the prior unanimous approval and consent of all of the Members and the Profits Interest Holder: (a) acquiring, or committing to acquire, any new real estate investment or any interest therein; (b) confessing a judgment against the Company; (c) the admission of a new Member; and (d) dissolution of the Company.

4.4 Managers' Standard of Care. A Manager's duty of care in the discharge of its duties to the Company and its Members is limited to refraining from engaging in grossly negligent conduct or intentional misconduct. In discharging its duties, a Manager shall be fully protected in relying in good faith upon the records required to be maintained under the Act and upon such information, opinions, reports or statements by any of the other members, agents, or other persons as to matters the Manager reasonably believes are within such other person's professional or expert competence. Any Manager may have other business interests and may engage in any other activities in addition to those relating to the Company, including, without limitation, business interests and activities that are in competition with those of the Company.

Notwithstanding anything contained in this Agreement to the contrary, to the full extent permitted under applicable law, the parties hereby (i) agree that those duties and liabilities of PCG and each Manager designated by PCG, including SEP, (each, a "PCG Manager") expressly created or acknowledged by this Agreement replace all other duties, obligations and liabilities of PCG and the PCG Managers and (ii) waive any fiduciary or other duty of PCG and the PCG Managers not expressly set forth in this Agreement, including, without limitation, fiduciary duties.

Notwithstanding anything to the contrary contained in this Agreement, each Manager of the Company other than the PCG Managers shall have fiduciary duties to the Company (and shall be held to the standards in respect thereof) that are the same as those of an individual holding a comparable office (and/or directorship or position, as applicable) in a Delaware corporation, including in relation to loyalty, self-dealing, corporate opportunities and care.

4.5 Election of Managers; Term; Vacancy. Managers shall be elected at meetings of Members called for the purpose of electing Managers. The notice for such meeting must state that one of the purposes of the meeting is the election of Managers. A Manager shall serve for a term ending when the Members next hold a meeting at which managers are elected, or until the earlier of the Manager's death, dissolution, resignation, or removal. If a vacancy occurs in the number of Managers, the remaining Managers shall fill the vacancy immediately. If there are no remaining Managers, the Members shall fill the vacancy immediately by majority vote. A vacancy that will occur at a specific later date may be filled before the vacancy occurs but the new Manager may not take office until the vacancy occurs.

4.6 Resignation. A Manager may resign at any time by delivering written notice of resignation to the other Managers or to the Members. A resignation shall be effective upon receipt, unless the resignation notice specifies a later effective date. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of such Member.

4.7 Removal of Manager by Members. Upon the affirmative vote of a majority of the Members, the Members may remove one or more Managers at any time, with or without cause. A Manager may be removed by the Members only at a meeting called for the purpose of removing the Manager. The notice for such meeting must state that one of the purposes of the meeting is the removal of the Manager; provided, however, that the express written consent of PCG shall be required for the removal of any PCG Manager.

4.8 Manager Compensation. Managers shall not receive compensation for their management services to the Company, except as may be otherwise agreed by the unanimous vote of the Members.

4.9 Employment of Affiliates. The Managers may retain, employ, sell or lease to the affiliates of the Managers and/or the Company provided that such transaction be made on terms and conditions which are no less favorable to the Company than if such transaction had been entered into with an independent third party. The Company shall retain BPG Hawaii LLC, a Hawaii limited liability company ("Bridge"), to provide project/development consulting and services for the Project, with Bridge to receive a project/development fee of equal to three percent (3%) of the total construction costs for the Project as set forth in the construction budget approved by the construction lender(s) financing the construction of the Project. The principals of KK1&2 LLC are principals of Bridge.

4.10 Tax Matters. Except as otherwise specifically provided herein or prohibited by law, the Manager shall make any and all elections for federal and state income tax purposes, including, without limitation, any election, if permitted by applicable law to: (a) adjust the basis of Company property pursuant to Code § 754, § 734(b), and § 743(b), or comparable provisions of state or local law, in connection with transfers of membership interests and Company distributions; (b) extend the statute of limitations for assessment of tax deficiencies against Members with respect to adjustments to the Company's federal, state or local tax returns; and (c) represent the Company before taxing authorities or courts of competent jurisdiction in tax matters affecting the Company.

4.11 NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE MANAGEMENT PROVISIONS OF THIS OPERATING AGREEMENT SHALL BE FURTHER SUBJECT TO THE TERMS, CONDITIONS AND RESTRICTIONS SET FORTH IN THE "SPECIAL LENDER PROVISIONS" OF EXHIBIT "C" ATTACHED HERETO. IN THE EVENT OF ANY CONFLICT BETWEEN THE PROVISIONS OF THIS AGREEMENT AND EXHIBIT "C", THE PROVISIONS OF EXHIBIT "C" SHALL CONTROL.

#### ARTICLE V ACTIONS WITHOUT NOTICE, WITHOUT MEETING, OR BY TELEPHONE

5.1 Meeting of all Members or Managers. Notwithstanding any other provision of this Operating Agreement, if all of the Members or Managers hold a meeting at any time and place, such meeting shall be valid without call or notice.

5.2 Action Without Meeting. Any action required or permitted to be taken by the Members or Managers at a meeting may be taken without a meeting if all of the Members or Managers sign a written consent describing the action taken.

5.3 Meetings by Telephone. Meetings of the Members or Managers may be held by conference telephone or by any other means of communication by which all participants can hear each other simultaneously during the meeting, and such participation shall constitute presence in person at the meeting.

#### ARTICLE VI ACCOUNTING AND RECORDS

6.1 Books of Account. The Manager shall maintain books and records of the Company's operation which are appropriate and adequate for the Company's business and for the carrying out of the activities contemplated by this Operating Agreement, including a register showing the names, addresses and Sharing Ratios of the Members. Each Member and the Profits Interest Holder shall have access to the Company's books and records at all reasonable times and may, at its option, conduct internal audits of the books, records and accounts of the Company. The Company's books and records shall be prepared in accordance with U.S. generally accepted accounting principles consistently applied.

6.2 Fiscal Year. The fiscal year of the Company shall be the calendar year.

6.3 Accounting Reports. Within ninety (90) days after the close of each fiscal year or as

soon thereafter as reasonably practicable, the Manager shall cause each Member and the Profits Interest Holder to receive an unaudited report of the activities of the Company for the preceding fiscal year, including a copy of a balance sheet of the Company as of the end of such year and a statement of income or loss for such year. In addition, the Company shall deliver to the Profits Interest Holder any and all information and documents reasonably requested by the Profits Interest Holder relating to the business and operations of the Company.

6.4 Tax Returns. The Manager shall cause all required federal and state income tax returns for the Company to be prepared and timely filed with the appropriate authorities. Within ninety (90) days after the end of each fiscal year, each Member and the Profits Interest Holder shall be furnished a statement suitable for use in the preparation of the Member's and Profits Interest Holder's income tax return, showing the amounts of any distributions, contributions, gains, losses, profits, or credits allocated to the Members and the Profits Interest Holder during such fiscal year.

6.5 Tax Matters Partner. The Members designate the Manager to act as the tax matters Member of the Company pursuant to § 6231(a)(7) of the Code. Any person designated as tax matters Member shall take such action as may be necessary to cause such person to become a *notice partner* within the meaning of § 6223 of the Code. Any person who is designated tax matters Member may not take any action contemplated by §§ 6222 through 6232 of the Code without the consent of the Members.

## ARTICLE VII ALLOCATIONS

7.1 Capital Accounts. An individual capital account shall be maintained for each Member. Each Member's capital account shall be (i) credited with all capital contributions by such Member and the Member's distributive share of all income and gain (including any income exempt from federal income tax); and (ii) charged with the amount of all distributions to such Member and the Member's distributive share of losses and deductions. Capital accounts shall be maintained in accordance with federal income tax accounting principles as set forth in Treas. Reg. 1.704-1(b)(2)(iv) or any successor provision.

7.2 Net Losses. Net losses of the Company for each fiscal year shall be allocated to the Members at the end of such fiscal year in the following order: (a) first, to the Members in proportion to, and to the extent of, the positive balance standing in each such Member's capital account; provided, however, if the amount of net losses to be allocated is less than the sum of the capital account balances of all Members with a positive capital account balance, then such net losses shall be allocated in such amount as though the allocation were a distribution under Article VIII; and (b) thereafter, to the Members in proportion to their Sharing Ratios.

7.3 Net Profits. Net profits for the Company for each fiscal year shall be allocated to the Members at the end of such fiscal year in the following order: (a) first, to the Members in proportion to, and to the extent of, the negative balance, if any, for each such Member's capital account; and (b) thereafter, the remaining net profits shall be allocated to the Members in such amount as though the allocation were a distribution under Article VIII.

7.4 Compliance with Section 704. The provisions of this Article VII as they relate to the maintenance of capital accounts are intended, and shall be construed to cause the allocations of profits, losses, income, gain and credit pursuant to Article VII to have substantial economic effect under the Regulations promulgated under §§ 704(b) and 704(c) of the Code, in light of the distributions made pursuant to Articles VIII and X and the capital contributions made pursuant to Article II. In the event any curative allocation is required in order to give substantial economic effect to the allocations under this Operating Agreement, then a special offsetting allocation shall be made in such amount as to cause the capital balances of the Members to equal the balances prior to the curative allocation.

## ARTICLE VIII DISTRIBUTIONS

8.1 Distributions at Managers' Discretion. Except as otherwise provided in this Operating Agreement, distributions of the Company's cash shall be made at the discretion of the Managers, in accordance with this Article VIII. Upon distribution in accordance with this Article, the capital account for each Member shall be charged for the amount of the distributions to that Member. Notwithstanding anything in this Operating Agreement to the contrary, distributions of: (i) operating cash available for distribution shall be made no less frequently than quarterly and (ii) extraordinary cash available for distribution shall be made within 30 days after the Company's receipt thereof.

8.2 Definitions. For purposes of this Article VIII, the phrase "operating cash available for distribution" shall mean cash generated from the ordinary operation of the Company's business which the Managers reasonably determine may be distributed to the Members and the Profits Interest Holder without impairing the ability of the Company to carry out its purposes, after taking into account the actual and anticipated expenses of the Company and such reserves as the Managers reasonably deem advisable to protect the Company from future cash shortfalls. For purposes of this Article VIII, the phrase "extraordinary cash available for distribution" shall mean cash generated from the sale, financing, casualty or condemnation of Company assets or the refinancing of Company indebtedness which the Managers reasonably determine may be distributed to the Members and the Profits Interest Holder without impairing the ability of the Company to carry out its purposes, after taking into account the actual and anticipated expenses of the Company and such reserves as the Managers reasonably deem advisable to protect the Company from future cash shortfalls.

8.3 Distributions of Operating Cash. Operating cash available for distribution shall be distributed to the Members and Profits Interest Holder in the following order: (a) first, to the Members, *pari passu*, until each Member has received an eight percent (8%) per annum return, compounded annually (the "Priority Return"), on the balance of the Member's unreturned capital contribution from time to time; (b) next, thirty percent (30%) to the Profits Interest Holder and seventy percent (70%) to the Members according to the Members' respective Sharing Ratios.

8.4 Distributions of Extraordinary Cash. Extraordinary cash available for distribution shall be distributed to the Members and the Profits Interest Holder in the following order: (a) first, to the Members, *pari passu*, until each Member has received an eight percent (8%) per annum return, compounded annually (the "Priority Return"), on the balance of the Member's unreturned capital contribution from time to time; (b) next, to the Members, *pari passu*, in an amount equal to each Member's unreturned capital contributions; (c) next, thirty percent (30%) to the Profits Interest Holder and seventy percent (70%) to the Members according to the Members' respective Sharing Ratios.

For purposes of clarification, Section 8.3 (a) and Section 8.4(a) provide for distributions to Members of Priority Return only. No distribution pursuant to Section 8.3 or 8.4(a) shall be deemed a return of a Member's capital contribution. Section 8.4(b) provides for distributions to Members that return the Members' respective capital contributions.

## ARTICLE IX TRANSFERS OF MEMBERSHIP INTERESTS

9.1 Restrictions on Disposition. No Member or assignee shall sell, contribute, gift, pledge, encumber, hypothecate, exchange or otherwise dispose of (collectively, "Transfer") all or any portion of his Sharing Ratio without the express, prior unanimous written consent of the remaining Members (which may be withheld or granted in the sole discretion of the remaining Members), except as provided in Article II, this Article IX and other provisions hereof. Each Member hereby acknowledges the reasonableness of the restrictions on disposition imposed by this Operating Agreement in view of the Company's purposes and the relationship of the Members. Accordingly, the restrictions on disposition contained herein shall be specifically enforceable.

9.2 Prohibited Transfers. Any purported Transfer of all or any portion of a Sharing Ratio that does not satisfy the requirements of this Article IX shall be null and void and of no force or effect whatsoever; provided that, if the Company is required to recognize a Transfer that does not meet such requirements (or if the Company, in its sole discretion, elects to recognize a Transfer that does not satisfy such requirements), the Transferred Sharing Ratio shall be strictly limited to the transferor's economic rights with respect to the Transferred Sharing Ratio, which economic rights may be applied (without limiting any other legal or equitable rights of the Company) to satisfy any debts, obligations, or liabilities for damages that the transferor or assignee of such Sharing Ratio may have to the Company. In the case of a Transfer or attempted Transfer of a Sharing Ratio that does not satisfy such requirements, the parties engaging or attempting to engage in such Transfer shall be liable to indemnify, defend and hold harmless the Company and the other Members from all cost, liability, and damage that any of such indemnified persons may incur (including, without limitation, incremental tax liability and attorneys' fees and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce the indemnity granted hereby.

9.3 Permitted Transfers of Sharing Ratios. Each Member, from time to time and in its sole discretion, without complying with the provisions of Sections 9.1 and 9.4, may Transfer its Sharing Ratio, or portion thereof, to (i) any other Member, (ii) to trusts, family limited partnerships and other entities for estate planning purposes upon the express condition that the Member making such Transfer shall be the only person entitled to exercise the incidents of ownership of any Sharing Ratio that has been Transferred pursuant to this Section 9.3 and such Member shall provide the Manager and other Members with written documents evidencing such authority of the Member making such a Transfer and (iii) ownership interests in a Member may be Transferred to other existing owners of any Member upon the express condition that the Member making such Transfer shall be the only person entitled to exercise the incidents of ownership of any Sharing Ratio that has been Transferred pursuant to this Section 9.3 and such Member shall provide the Manager and other Members with written documents evidencing such authority of the Member making such a Transfer. Any transferee under this Section 9.3, by acceptance of the Transferred Sharing Ratio, hereby agrees to be bound by all the terms, conditions and provision of this Operating Agreement (including, without limitation, the provisions of this Article IX). Any Transfer either (a) permitted or required by the terms of this Operating Agreement; or (b) otherwise approved in writing by all of the Members shall be a "Permitted Transfer." Any Permitted Transfer shall not relieve the transferor of any of its obligations hereunder unless expressly approved by all of the Members or otherwise provided herein.

9.3.1 Transferees. Notwithstanding anything to the contrary contained in this Operating Agreement, no Transfer of all or any part of any Sharing Ratio shall be made if, as a result thereof, any income of the Company will be subject to corporate federal income tax at the Company level or the Company's real estate assets will be subject to reassessment for property tax purposes, or such Transfer would violate any loan commitment or any mortgage, deed of trust of other security instrument encumbering all of any portion of the Project. No transferee of all of any portion of any Sharing Ratio shall be admitted as a Member of the Company unless such Sharing Ratio is transferred in compliance with the applicable provisions of this Operating Agreement, such transferee shall have agreed to be bound by all the terms, conditions and provisions of this Operating Agreement (including, without limitation, the provisions of this Article IX), and such transferee shall have executed and delivered to the Company such instruments necessary to effectuate the admission of such transferee as a Member and to confirm the agreement of such transferee to be bound by all the terms, conditions and provisions of this Operating Agreement with respect to such Sharing Ratio. As promptly as practicable after the admission of any Person as a Member, the books and records of the Company shall be changed to reflect such admission. All reasonable costs and expenses incurred by the Company in connection with any Transfer of any Sharing Ratio and, if applicable, the admission of any transferee as a Member shall be paid by such transferee.

9.3.2 Admission of Additional Member. No person may be admitted as an additional Member of the Company (or as a substitute Member in connection with a Permitted Transfer) without the prior unanimous written consent of all the Members in accordance with Section 3.6, which consent may

be given or withheld in the sole discretion of all the Members. Any additional Member admitted to the Company shall execute and deliver documentation in form satisfactory to all the Members pursuant to the terms of Section 3.6 hereof, accepting and agreeing to be bound by all the terms, conditions and provisions of this Operating Agreement, and such other documentation as all the Members shall require in order to affect such person's admission as an additional Member pursuant to the terms of Section 3.6 hereof. The admission of any person as an additional Member (an "Additional Member") shall become effective as of the date upon which the name of such person is recorded in the books and records of the Company following the consent of all the Members to such admission.

9.3.3 Certain Definitions. For purposes of this Operating Agreement, the word "Person" shall mean any individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or any other entity whether domestic or foreign. For purposes of this Operating Agreement, "Affiliate" shall mean: (a) any other Person directly or indirectly controlling, controlled by, or under common control with the Person or entity to which such terms applies; (b) as to any natural person, any member of such person's "Immediate Family," meaning such person's spouse, child, grandchild, sibling, parent, aunt, uncle or cousin, as well as the spouse of any of the foregoing, or a trust for the benefit of any such person or a limited liability company or partnership in which one or members of the Immediate Family hold a controlling interest; (c) as to any corporation, limited liability company or partnership, any person with any of the foregoing relationships to any person in control of such partnership as general partner or otherwise in control of such corporation or limited liability company shall be deemed an Affiliate of such corporation, limited liability company or partnership; (d) as to any trust, any member of the Immediate Family of any beneficiary thereof; (e) an Affiliate of a Member shall include any partnership in which such Member of any Affiliate of such Member is a general partner or otherwise has control, as well as any corporation, limited liability company of other entity in which such Member or any Affiliate of such Member has control; (f) for purposes of this Operating Agreement, "Control" as applied to any person or entity means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies and decision-making of such person or entity, whether through the ownership of voting interests or by contract or otherwise. "Control" shall also include, without limitation, the possession of direct or indirect equity or beneficial interests in at least fifty percent (50%) of the profits or voting control of any entity.

9.3.4 Divorce of a Member. Upon the divorce of any Member or owner of a controlling interest in a Member (the "Divorced Member"), (i) the Divorced Member's spouse ("Spouse") shall not be entitled to participate in the management of, or otherwise vote upon any matter affecting the business and affairs of, the Company or any matter that the Divorced Member is entitled to vote upon under this Operating Agreement, (ii) the rights of the Spouse shall be limited solely to those of an Assignee in accordance with the provisions of Sections 9.3.1, 9.3.2 and 9.7, and (iii) the Spouse shall not have any authority to act for or bind the Company. The Divorced Member shall continue to be obligated to perform all such Member's duties and obligations under this Operating Agreement. If the Divorced Member fails to perform any of the duties and obligations such Member is obligated to perform under this Operating Agreement, then the other Member(s) shall have the right, but not the obligation, either (i) to perform such duties and obligations and be paid a reasonable fee by the Divorced Member for providing such services that is commensurate with fees charged by independent third parties for providing similar services and/or (ii) to retain an independent third party paid by the Divorced Member to provide such services on such terms and conditions as are determined in the reasonable discretion of the Member(s).

9.4 Transfer of Sharing Ratio, Right of First Refusal. Except as provided in this Article IX, no Transfer of all or any portion of a Sharing Ratio shall be made by a Member or his assignees to any person who is not a Member of the Company, except according to the following terms and conditions:

9.4.1 Offer Notice. Except as provided in this Article IX, if a Member (an "Offering Member") desires to transfer his Sharing Ratio, or any portion thereof (the "Offered Interest"), to any person who is not a Member, the Offering Member shall first submit to the Company and remaining Members of the Company satisfactory written evidence of the agreement to purchase the Offered Interest by such third person, including the name of such third person, the names and respective ownership

interests of any principals of such third person if such third person is an entity, and the price and complete terms agreed to be paid for the Offered Interest (the "Offer Notice").

9.4.2 Company's Right of First Refusal. The Company may agree to purchase all (but not less than all) of the Offered Interest on the same terms and conditions as contained in the Offer Notice. If the Company agrees to purchase the Offered Interest at the same price and according to the same terms as contained in the Offer Notice, the Offered Interest shall be sold to the Company. The Company shall have thirty (30) days after the receipt of the Offer Notice within which to elect in writing to purchase the Offered Interest.

9.4.3 Remaining Members' Right of First Refusal. If the Company does not desire to purchase all of the Offered Interest, the remaining Members may agree to purchase all (but not less than all) of the Offered Interest at the same price and according to the same terms as contained in the Offer Notice, with the Offered Interest to be sold to the remaining Members in such proportionate amounts as their respective Sharing Ratios bear to the entire Sharing Ratios held by such purchasing Members of the Company, or in such other proportion as the purchasing Members may agree. The Members shall have thirty (30) days from the earlier of receipt of notice from the Company declining to purchase all of the Offered Interest or the expiration of the Company's thirty (30) day right of first refusal period within which to elect in writing to purchase the Offered Interest. If any of the remaining Members do not desire to purchase the Offered Interest, then it shall be sold at the same price and according to the same terms as contained in the Offer Notice to the Members of the Company who desire to purchase it, and in the same proportion specified above unless the purchasing Members otherwise agree.

9.4.4 Sale to Third Party. If the remaining Members have not elected to purchase all of the Offered Interest within the thirty (30) day period, or have declined in writing to purchase the Offered Interest, the Offering Member may sell the Offered Interest to the third party named in the agreement to purchase the Offered Interest, and to that person or entity only, which sale shall be in strict accordance with the price and terms set forth in the agreement to purchase; provided, however, that any such sale must be completed with one hundred twenty (120) days from the date of the Offer Notice. Upon the Transfer of the Offered Interest, satisfactory evidence of compliance with the terms of the foregoing restriction shall be submitted to the Managers and accepted by them before any such Transfer shall be effective.

9.4.5 Transferred Sharing Ratios Subject to Right of First Refusal. The Offered Interest shall continue to be subject to all of the terms of this Operating Agreement, including, without limitation, all restrictions on Transfers regardless of whether the Offered Interest is sold.

9.5 Buy/Sell Events. For purposes of this Article IX, the following shall constitute "Buy/Sell Events"):

(a) Default. The failure of a Member of make timely a contribution required to be made pursuant to Section 2.6 and/or to repay timely a Member Loan pursuant to Section 2.6 followed by the election of a majority of the Contributing Members to treat such failure as a Buy/Sell Event in accordance with Section 3.6;

(b) Prohibited Transfer. A Transfer or attempted Transfer by a Member of such Member's Sharing Ratio (or portion thereof) contrary to the provisions of Article IX or a withdrawal of a Member without the consent of all of the other Members;

(c) Bankruptcy or Insolvency. The rendering, by a court of appropriate jurisdiction, of a decree or order (I) adjudging a Member bankrupt or insolvent; or (II) approving as properly filed a petition seeking reorganization, readjustment, arrangement, composition, or similar relief for a Member under the federal bankruptcy laws or any other similar applicable law or practice; provided that such decree or order shall remain in force, undischarged and unstayed, for a period of ninety (90) days;

(d) Appointment of Receiver. The rendering, by a court of appropriate jurisdiction, of a decree or order (I) for the appointment of a receiver, a liquidator, or a trustee or assignee in bankruptcy or insolvency of a Member, or for the winding up and liquidation of such Member's affairs; provided that such decree or order shall remain in force, undischarged and unstayed, for a period of sixty (60) days; or (II) for the sequestration or attachment of any property of a Member without its return for the possession of such Member or its release from such sequestration or attachment within sixty (60) days thereafter; and

(e) Bankruptcy Proceedings. A Member (I) institutes proceedings to be adjudicated a voluntary bankrupt or an insolvent; (II) consents to the filing of a bankruptcy proceedings against such member; (III) files a petition or answer or consent seeking reorganization, readjustment, arrangement, composition, or similar relief for such Member under the federal bankruptcy laws or any other similar applicable law or practice; (IV) consents to the filing of any such petition, or to the appointment of a receiver, a liquidator, or a trustee or assignee in bankruptcy or insolvency for such Member or a substantial part of such Member's property; (V) makes an assignment for the benefit of such Member's creditors; (VI) is unable or admits in writing such Member's inability to pay such Member's debts generally as they become due; or (VII) takes any action in furtherance of any of the aforesaid purposes.

For purposes of implementing the provisions contained in this Article IX, the "Defaulting Member" shall be: (A) in the case of the event referenced in Section 9.5(a), the Non-Contributing Member that failed to make the required capital contribution and/or failed to timely repay a Member Loan; (B) in the case of the occurrence of the event referenced in Section 9.5(b), the Member that has transferred such Member's rights or interests contrary to the provisions of Article IX; and (C) in the case of the occurrence of any of the events referenced in Section 9.5(c), (d) and/or (e), the Member that is the subject of such court decree or order or has instituted such proceedings or filed such petitions or who is insolvent, etc. The "Non-Defaulting Members" shall be the Members who are not the Defaulting Member.

9.5.1 Rights Arising From a Buy/Sell Event. Upon the occurrence of a Buy/Sell Event, each Non-Defaulting Member shall have the right, but not the obligation, to implement the buy/sell procedures set forth in this Article IX by giving written notice ("Election Notice") thereof to the Defaulting Member within thirty (30) days following such occurrence.

9.5.2 Determination of the Purchase Price. Within fifteen (15) days after the determination of the Appraised Value of the assets of the Company, the certified public accountants regularly employed by the Company (the "Accounting Firm") shall determine the amount of cash which would be distributed to each Member pursuant to Article VIII hereof if (a) the assets of the Company were sold for the Appraised Value thereof as of the effective date of the Election Notice; (b) the liabilities of the Company (including, without limitation, any and all prepayment penalties or fees contained in any financing documents secured by the Project or any portion thereof which are at that time in full force and effect) were liquidated in accordance with the terms this Operating Agreement; (c) a reasonable reserve for any contingent, unmatured or conditional liabilities of the Company was established by the Non-Defaulting Members; and (d) the liabilities of the Company were liquidated pursuant to Article X. Upon such determination, the Accounting Firm shall give each Member written notice ("Accountant's Notice") thereof. The determination by the Accounting Firm of such amounts, including all components thereof, shall be deemed conclusive. Ninety percent (90%) of the amount which would be distributed to the Defaulting Member pursuant to Article VIII shall be deemed the purchase price for such Member's Sharing Ratio in the Company (the "Defaulting Member's Purchase Price") if the same is purchase and sold pursuant to this Article IX; subject, however, to adjustment for any Member Loans as provided in Section 9.5.6.

(a) Determination of Appraised Value. For purposes of this Article IX, the appraised value (the "Appraised Value") of the assets of the Company shall be determined as follows: The Company shall, at its cost, engage an appraiser, who shall provide a copy of his opinion (the "first appraisal") to the Company and to the Member whose Sharing Ratio is being purchased. If such Member

does not agree with the first appraisal, then the Company and such Member shall either together engage an appraiser whose opinion as to value shall be final and binding on the parties, and whose cost shall be divided equally, or such Member shall, at his cost, engage an appraiser who shall deliver a copy of his opinion to the Company and such Member. In the latter case, if the Company and such Member cannot thereafter agree upon a value based on the two opinions, then the two appraisers shall together determine the value, or if they cannot agree, shall appoint a third appraiser, whose cost shall be divided equally and who shall decide the issue by selecting either appraiser's value or fixing a value in the range between the two appraisers' values.

**9.5.3 Non-Defaulting Members' Option.** For a period of thirty (30) days after the effective date of the Accountant's Notice, each Non-Defaulting Member shall have the right, but not the obligation, to elect to purchase the entire Sharing Ratio of the Defaulting Member for the Defaulting Member's Purchase Price, and on the terms and conditions set forth in this Article IX by giving written notice thereof to each other Member within such thirty (30) day period. If more than one (1) Non-Defaulting Member elects to exercise such right to purchase, then such electing Non-Defaulting Members shall collectively purchase the Defaulting Member's Sharing Ratio in the Company in proportion to the respective Sharing Ratios of such electing Non-Defaulting Members as of the effective date of the Accountant's Notice (or in such different proportion as such electing Non-Defaulting Members unanimously agree). Failure by any Non-Defaulting Member to timely give written notice exercising such Member's right to purchase set forth in this Section 9.5.3 shall be deemed an election by such Member to waive such right to purchase with respect to the particular Buy/Sell Event that triggered the application of the provisions of this Article IX.

**9.5.4 Closing of Purchase and Sale.** The closing of a purchase and sale pursuant to this Article IX shall be held at the principal executive office of the Company within one hundred twenty (120) days after the notice set forth in Section 9.5.3 (or such earlier date as is unanimously agreed to by the purchasing Members). The Defaulting Member shall transfer to the purchasing Non-Defaulting Members (or such Member(s)' nominee(s)) the entire Sharing Ratio of the Defaulting Member free and clear of all liens, security interests, and competing claims and shall deliver to the purchasing Non-Defaulting Members (or such Member(s)' nominee(s)) such instruments of transfer and such evidence of due authorization, execution, and delivery, and of the absence of any such liens, security interests, or competing claims as such purchasing Non-Defaulting Member(s) (or such Member(s)' nominee(s)) shall reasonably request.

**9.5.5 Payment of the Defaulting Member's Purchase Price.** The purchasing Non-Defaulting Members shall pay the Defaulting Member's Purchase Price, in proportion to the portion of such Sharing Ratio purchased by each such Non-Defaulting Member, by delivery at the closing of a promissory note (or separate promissory notes if more than one (1) Non-Defaulting Member is purchasing such Sharing Ratio) in an aggregate principal amount equal to one hundred percent (100%) of the Defaulting Member's Purchase Price. Said promissory note or notes shall bear interest at the rate of eight percent (8%) per annum (or, if less, the maximum non-usurious rate permitted by law for such loans), non-compounded, and shall be repayable only from such funds as may thereafter be received by such Non-Defaulting Member(s) on account of such Non-Defaulting Member(s) purchase of the Sharing Ratio of the Defaulting Member hereunder, which funds would otherwise have been received by the Defaulting Member from the Company but for such purchase. Except for such Non-Defaulting Member(s)' proportionate share of such funds, the Defaulting Member shall have no recourse whatsoever against any other property or assets of such Non-Defaulting Member(s) for repayment of such promissory note or notes. Until such time as all principal and accrued interest under such promissory note or notes has been paid in full, payments thereunder shall be made semi-annually, commencing six (6) months from the date of closing. Each such semi-annual payment shall be equal to such Non-Defaulting Member(s)' proportionate share of the aggregate amount of such funds received and collected by such Non-Defaulting Member(s) (if any) during the six (6) month period immediately preceding the date of such payment attributable to the portion of the Defaulting Member's Sharing Ratio purchased by such Non-Defaulting Member(s). All payments under such promissory note or notes shall first be credited against accrued interest and thereafter against principal. Notwithstanding anything contained hereinabove to the contrary,

if any such promissory note or notes are not paid in full (together with all accrued interest thereon) on or before the expiration of twenty (20) years from the date of closing, such promissory note or notes shall be deemed canceled in full, and the Defaulting Member shall be entitled to no further payments or principal or interest thereunder.

**9.5.6 Repayment of Member Loans.** The Defaulting Member shall be required at the closing pursuant to Section 9.5.4 to repay the outstanding balance of any Member Loan(s) (together with all accrued interest thereon) previously made to the Defaulting Member from the Defaulting Member's Purchase Price that would otherwise be payable to the Defaulting Member pursuant to this Article IX. To the extent the proceeds of the Defaulting Member's Purchase Price are not sufficient to fully repay any and all outstanding Member Loans (together with all accrued, unpaid interest thereon) previously made to such Defaulting Member, then the Defaulting Member's Purchase Price shall be applied to repay each Member Loan in the proportion that the outstanding balance of such Member Loan bears to the outstanding balances of all of the outstanding Member Loans. For all purposes of this Operating Agreement, the Defaulting Member shall, to the extent any Member Loan is repaid pursuant to this Section 9.5.6, be deemed to have received the Defaulting Member's Purchase Price and to have used the proceeds thereof to repay such Member Loan(s). Also, notwithstanding any provision of this Operating Agreement to the contrary, the unpaid balance of any and all Member Loans (including all outstanding principal amounts thereof and all accrued, unpaid interest thereon) made by an Defaulting Member to any other Member shall continue to be payable from the cash flow that is distributable to such other Member with respect to such other Member's original Sharing Ratio in the Company in accordance with the provisions of Article IX.

**9.6 Admission of Assignees as Members.** Except as otherwise expressly provided to the contrary in this Article IX, an assignee of a Sharing Ratio may be admitted to the Company as a Member only upon the satisfaction of the terms and conditions for admission of members contained in this Operating Agreement.

**9.7 Rights of Unadmitted Assignees.** A person who acquires a Sharing Ratio but who is not admitted as a Member pursuant to this Article IX (an "Assignee") shall be entitled only to the economic rights with respect to such transferred Sharing Ratio in accordance with this Operating Agreement, and shall have no right to vote on any matters as a Member, shall have no right to any information or accounting of the affairs of the Company, shall not be entitled to inspect the books or records of the Company, and shall not have any of the rights of a Member under the Act or this Operating Agreement.

**9.8 Abandonment of Profits Interest.** Notwithstanding anything to the contrary contained in this Operating Agreement, the Profits Interest Holder shall have the right, but not the obligation, to at any time abandon its interest in the Company by delivery to the Company of written notice thereof (the "Abandonment Notice"). Upon delivery of the Abandonment Notice, the Profits Interest Holder shall no longer have any interest in the Company; provided, however, that the Profits Interest Holder shall continue to be entitled to indemnification as set forth in this Operating Agreement.

**9.9 Satisfaction of Liquidity Requirements.** Notwithstanding anything to the contrary contained in this Operating Agreement, except for the express written consent of SEP, no consent or approval of any Member, Profits Interest Holder, Lender or any other lender or party shall be necessary for any Transfer, admission or substitution of a Member, Member Loans or additional capital contributions approved and determined by Manager, in its sole and absolute discretion, to be necessary to satisfy any liquidity, debt service, loan to value or any other financial requirements of Lender or any other lender of the Company.

**9.10 NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE TRANSFER OF MEMBERSHIP INTERESTS PROVISIONS OF THIS OPERATING AGREEMENT SHALL BE FURTHER SUBJECT TO THE TERMS, CONDITIONS AND RESTRICTIONS SET FORTH IN THE "SPECIAL LENDER PROVISIONS" OF EXHIBIT "C"**

ATTACHED HERETO. IN THE EVENT OF ANY CONFLICT BETWEEN THE PROVISIONS OF THIS AGREEMENT AND EXHIBIT "C", THE PROVISIONS OF EXHIBIT "C" SHALL CONTROL.

## ARTICLE X WITHDRAWAL AND DISSOLUTION

10.1 Withdrawal. Each Member agrees not to withdraw from the Company without the prior written consent of all other Members. If a Member withdraws from the Company without such consent, such Member shall be in default of this Operating Agreement and the other Members shall be entitled to all available remedies, including, without limitation, the option to purchase the withdrawing Member's Sharing Ratio under Section 9.5, which remedies shall be cumulative.

10.2 Events of Dissolution. Except as otherwise provided in this Operating Agreement, the Company shall dissolve upon the earlier of: (a) sale of all or substantially all of the Company's assets; or (b) approval of dissolution by a unanimous vote of the Members.

10.3 Distribution Upon Dissolution. Upon dissolution of the Company as provided in this Article X, the proceeds therefrom shall be applied and distributed in the following order:

- 10.3.1 First, to pay secured debts to third parties and Members (excluding any debts to be assumed pursuant to an asset sale, if any); then
- 10.3.2 Second, in the case of the sale of substantially all of the Company's assets, to pay the costs of such sale that are the obligation of the Company; then
- 10.3.3 Third, to pay unsecured debts of the Company owed to creditors other than Members; then
- 10.3.4 Fourth, to pay unsecured debts of the Company owed to Members; then
- 10.3.5 The balance, if any, to the Members and Profits Interest Holder in accordance with Section 8.4.

## ARTICLE XI INDEMNIFICATION OF MEMBERS AND MANAGERS

The Company shall indemnify, defend, protect, and hold harmless and pay all judgments and claims against each of its Members, Managers, affiliates of Managers and the Profits Interest Holder to the fullest extent permissible under Delaware law, as the same exists or may hereafter be amended, against all liability, loss and costs (including, without limitation, attorney fees through all levels of action) incurred or suffered by such person by reason of or arising from such Member's or Manager's or Manager's affiliates' management of the Company, or, with respect to the Profits Interest Holder, by reason of the Profits Interest Holder being a party to this Operating Agreement; provided, however, that the Company shall not be required to indemnify, defend, protect and hold harmless a Member, Manager or affiliate of Manager for any liability, loss and costs due to such Member's, Manager's or affiliate of Manager's willful misconduct or gross negligence in performing or failing to perform such Member's, Manager's or affiliate of Manager's duties under this Operating Agreement. The Company may, by action of the Members, provide indemnification to employees and agents of the Company who are not Members or Managers. The indemnification provided in this section shall not be exclusive of any other rights to which any person may be entitled under any statute, bylaw, agreement, resolution of Members, contract, or otherwise.

## ARTICLE XII AMENDMENTS

This Operating Agreement and its provisions may be amended, modified, supplemented, repealed or restated only upon the affirmative vote of a majority of the Sharing Ratios, the express written consent of PCG and SEP, and the written approval of the Profits Interest Holder, but only to the extent that any amendment, modification, supplement, repeal or restatement would have an adverse effect on the rights of the Profits Interest Holder as set forth in this Operating Agreement.

## ARTICLE XIII MISCELLANEOUS

13.1 Additional Documents. Each Member shall execute such additional documents and take such actions as are reasonably requested by the Managers in order to complete or confirm the transactions contemplated by this Operating Agreement.

13.2 Headings. Headings in this Operating Agreement are for convenience only and shall not affect its meaning.

13.3 Severability. The invalidity or unenforceability of any provision of this Operating Agreement shall not affect the validity or enforceability of the remaining provisions.

13.4 Third-Party Beneficiaries. The provisions of this Operating Agreement are intended solely for the benefit of the Members and shall create no rights or obligations enforceable by any third party, including creditors of the Company, except as otherwise provided by applicable law.

13.5 Binding Effect. Except as otherwise provided in this Operating Agreement, every covenant, term, and provision of this Operating Agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, legatees, legal representatives, successors, transferees, and assigns.

13.6 Construction. Every covenant, term, and provision of this Operating Agreement shall be construed simply according to its fair meaning and not strictly for or against any Member. The terms of this Operating Agreement are intended to embody the economic relationship among the Members and shall not be subject to modification by, or be conformed with, any actions by the Internal Revenue Service except as this Operating Agreement may be explicitly so amended and except as may relate specifically to the filing of tax returns.

13.7 Time. Time is of the essence with respect to this Operating Agreement.

13.8 Governing Law. The laws of the State of Delaware shall govern the validity of this Operating Agreement, the construction of its terms, and the interpretation of the rights and duties of the Members.

13.9 Waiver of Action for Partition; No Bill for Partnership Accounting. Each of the Members irrevocably waives any right that he may have to maintain any action for partition with respect to any of the Company's property. To the fullest extent permitted by law, each Member covenants (except with the consent of the Managers) not to file a bill for a limited liability company accounting.

13.10 Counterpart Execution. This Operating Agreement may be executed in any number of counterparts, including counterparts transmitted electronically or via facsimile, with the same effect as if all of the Members and the Profits Interest Holder had signed the same document. All counterparts shall be construed together and shall constitute one agreement.

13.11 Specific Performance. Each Member agrees with the other Members that the Members would be irreparably damaged if any of the provisions of this Operating Agreement are not performed in accordance with their specific terms and that monetary damages would not provide an adequate remedy in such event. Accordingly, it is agreed that, in addition to any other remedy to which the non-breaching Members may be entitled, at law or in equity, the non-breaching Members shall be entitled to injunctive relief to prevent breaches of the provisions of this Operating Agreement and specifically to enforce the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having subject matter jurisdiction thereof.

13.12 Notice. All notices, demands, requests and other communications required or permitted hereunder shall be in writing and shall be deemed delivered on the earlier of (i) three (3) days after the date of posting of registered or certified mail, addressed to the addressee at its address set forth herein or at such other address as such party may have specified theretofore by notice delivered in accordance with this Section, (ii) attempted delivery or refusal to accept delivery if sent by courier or other personal delivery service, (iii) actual receipt by the addressee regardless of the method of giving notice, or (iv) the date of delivery by email or facsimile, with confirmation of receipt.

13.13 Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

13.14 Waivers. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

13.15 Attorney Fees. In the event any action is instituted to enforce or determine the parties' rights or duties arising out of the terms of this Operating Agreement, the prevailing party shall recover reasonable attorney fees and costs through all levels of any action incurred in such proceeding.

13.16 Securities Laws. Each Member hereby covenants that such Member understands that the Sharing Ratios have not been and will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), and have not been and will not be registered or qualified in any state in which they are offered. Each Member further acknowledges and covenants that such Member may not be able to resell or otherwise transfer his Sharing Ratio unless the Sharing Ratios are registered under the Securities Act and registered or qualified under applicable state securities laws, or an exemption from such registration or qualification is available. Each Member hereby represents, warrants and covenants that such Member is an "accredited investor" as defined in Regulation D of the Securities Act. Each Member hereby agrees to indemnify, defend and hold harmless the Company, the Manager, the other Members, and the Profits Interest Holder from and against any and all claims, losses, damages, expenses or liabilities that arise from or relate to any breach of the representations and warranties set out in this Section 13.16.

#### ARTICLE XIV

ADOPTED effective as of the Effective Date, by the undersigned, constituting all the Members of the Company and the Profits Interest Holder.

KKI&2 LLC,  
a Hawaii limited liability company

DocuSigned by:  
By: Chad Waters  
Chad Waters  
Its: Manager

DocuSigned by:  
By: Tyler Scott Greene  
Tyler Scott Greene  
Print: Tyler Scott Greene  
Its: Manager

"Member"

**BLCJPL Ohana LLC,**  
a BLCJPL Ohana LLC limited liability company

DocuSigned by:  
By: Leland Sun  
Leland Sun  
Print: Leland Sun  
Its: Investor

DocuSigned by:  
By: Peggy Sun  
Peggy Sun  
Print: Peggy Sun  
Its: Investor

"Member"

**STILLWATER EQUITY PARTNERS LLC,**  
a Utah limited liability company

DocuSigned by:  
By: Jed Robinson  
Jed Robinson  
Print: Jed Robinson  
Its: Manager

**PR II COCO PALMS LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: \_\_\_\_\_

"Profits Interest Holder"

Exhibit A

Names and Addresses of Members, Manager, Profits Interest Holder, Initial Capital Contributions, Sharing Ratios and Percentage of Distributions

<u>Name and Address</u>	<u>Initial Capital Contribution</u>	<u>Sharing Ratio</u>	<u>Percentage of Distributions*</u>
<b>MEMBERS:</b>			
KK1&2 LLC 1050 Bishop Street, #303 Honolulu, HI 96813	\$2,500,000	_____ %	_____ %
Stillwater Equity Partners LLC 160 W. Canyon Crest Rd. Alpine, UT. 84004	\$ _____	_____ %	_____ %
BLCJPL Ohana LLC 432 Amherst Dr. Burbank, CA 91504	\$1,000,000	_____ %	_____ %
<b>Member Subtotals:</b>	<b>\$3,500,000</b>	<b>100%</b>	<b>70%</b>

<u>Name and Address</u>	<u>Initial Capital Contribution</u>	<u>Sharing Ratio</u>	<u>Percentage of Distributions*</u>
<b>MANAGER:</b>			
KK1&2 LLC 1050 Bishop Street, #303 Honolulu, HI 96813	N/A	N/A	N/A
Stillwater Equity Partners LLC 160 W. Canyon Crest Rd. Alpine, UT 84004			
<b>PROFITS INTEREST HOLDER:</b>			
PR II Coco Palms LLC c/o Prudential Real Estate Investors 4 Embarcadero Center, Suite 2700 San Francisco, CA 94111	N/A	N/A	30%

\*Percentages of distributions are subject to the terms and conditions set forth in this Operating Agreement.

Exhibit "C"

SPECIAL LENDER PROVISIONS

Private Capital Group, Inc. ("PCG") is the agent for a holder of a Promissory Note in the amount of \$22,231,000.00 (the "Promissory Note") from Coco Palms Hui, LLC (the "Company"), a Delaware limited liability company, which is secured by a Mortgage, Security Agreement, Assignment of Leases and Rents, Fixture Filing and Financing Statement dated May 6, 2016 ("Mortgage") also from Company as to certain real property located in Kauai, Hawaii. Presently, the outstanding balance owed to Lender by Company is approximately \$30,000,000.00; and

The provisions set forth herein are being adopted in order to facilitate the Company obtaining additional investment capital from new investors, and to reduce the outstanding balances owed to PCG by Company, through the creation and use of convertible promissory notes. Notwithstanding anything contained in the Operating Agreement to the contrary the following provisions shall apply to the Obligation and the control and management of the Company:

ADDITIONAL MEMBERS:

1. The Company shall have the right to market Convertible Promissory Notes (the "Convertible Notes") to prospective investors. The Convertible Notes would bear an 8% (or less) interest rate and have a term of five (5) years. The Convertible Notes would allow the holder to convert the principal balance owed under the note into a membership interest upon the expiration of the term or the refinancing of the project by Company.
2. A holding trust (hereinafter the "Holding Trust") shall be created to hold the Promissory Note secured by the Mortgage.
3. The Trustee of the Holding Trust will hold the Promissory Note pending efforts by Company to create new investment capital by offering the Convertible Notes to new investors. The holders of the Convertible Notes will become a part of the beneficiary class of the Holding Trust in addition to PCG. The proportionate beneficial interest of the members of the beneficiary class will be determined a predetermined formula set forth in the trust document.
4. As the money comes in through the Convertible Notes, 75% of the funds generated will be applied to the outstanding balance owed to PCG, and 25% would be used to fund the operating expenses of the Company and the interest owed on the Convertible Notes. As the Promissory Note is paid down, PCG's interest in the trust asset (the "PCG Note") would also decrease. If there is a sale, foreclosure or other disposition of the property any proceeds would first go to the Holding Trust to be divided up amongst the beneficiaries according to their proportional beneficial interest in the Holding Trust.
5. In addition to the above, PCG shall also have the right to convert a portion of its debt to equity
6. In no event shall the conversion rights set forth in the Convertible Notes be subject to the unanimous consent provisions governing the admission of new Members under Section 4.3 and 9.3.2.

#### FORBEARANCE:

1. PCG, as agent for the holder of the Promissory Note, hereby agrees to refrain and forbear from exercising and enforcing its remedies under the Promissory Note, or under applicable laws, as to the property pledged as collateral for the Loan, including, without limitation, the right to collect rents, the appointment of a receiver and the pursuit of foreclosure proceedings (the "Forbearance") subject to the terms hereof.
2. The forbearance shall continue until June 1, 2018 ("Forbearance Period"). In the event that the outstanding balance owed to PCG is reduced by \$5,000,000.00 or more by June 1, 2018, the Forbearance Period shall be extended to August 1, 2018. In the event that the outstanding balance owed to PCG is reduced by \$10,000,000.00 or more by August 1, 2018, the Forbearance Period shall be extended to February 1, 2019.
3. The occurrence of any default under the Special Lender Provisions of this Operating Agreement or any of the loan documents, and the failure of Company to cure any default, will immediately terminate the forbearance provisions set forth herein.

#### ADDITIONAL CONTRIBUTIONS

1. In no event shall SEP be responsible for any additional capital contributions to the Company, nor shall SEP be subject to the provisions of Section 2.6 of the Operating Agreement.

#### MANAGEMENT

1. The Members shall not, so long as any indebtedness, liabilities and obligations of the Company exist under the Promissory Note ("Obligation"), amend, change, or repeal any provision this Operating Agreement or any other document governing the formation, management or operation of the Company without the prior written consent of Lender.
2. Unless and until the Obligation has been reduced by \$23,000,000.00, the Members shall cause the Company to have Stillwater Equity Partners LLC (SEP) as one of its two (2) Managers.
3. In the event that the Obligation has not been reduced by \$5,000,000.00 by June 1, 2018 SEP shall become the sole Manager of the Company and shall have all of the management powers as set forth in Article IV of this Operating Agreement.
4. In the event that the Forbearance Period is extended to August 1, 2018 and the Obligation has not been reduced by \$10,000,000.00 by August 1, 2018, SEP shall become the sole Manager of the Company and shall have all of the management powers as set forth in Article IV of this Operating Agreement.
5. In the event that the Forbearance Period is extended to February 1, 2019 and the Obligation has not been reduced by \$23,000,000.00 by February 1, 2019, SEP shall become the sole Manager of the Company and shall have all of the management powers as set forth in Article IV of this Operating Agreement.

**TERESA TICO, ATTORNEY**

**PO Box 220**

**Hanalei, HI 96714**

**(808) 639-9080**

**July 3, 2024**

Matthew Bracken  
Kauai County Attorney  
4444 Rice St.  
Lihue, HI 96766

RE: Coco Palms Proposed Development, Wailua, County of Kauai, State of Hawaii

Dear Mr. Bracken:

On behalf of I Ola Wailuanui, a Hawaii non-profit organization whose members include lineal descendants of the Wailuanuiaho'ano District and whose mission is to preserve, protect and restore the natural, cultural, and historic resources of Wailuanui, I enclose a copy of the Summary Disposition Order filed by the Hawaii Intermediate Court of Appeals last Friday, June 28, 2024.

Based on the Summary Disposition Order, we request that you and/or the Kauai Planning Director immediately issue a Cease and Desist Letter to Coco Palms Resort developer RP21 Coco Palms, its partners, agents, assigns, and others working in concert with them, ordering them to stop all earth disturbance, grading, filling, construction, and any other activities associated with the development of their proposed 350 room resort at Wailua, Kauai, Hawaii.

**BACKGROUND:**

The Coco Palms Hotel at Wailua, Kauai, was developed in the early 1950s by Lyle ("Gus") Guslander, and managed and marketed by Grace Buscher. The hotel was bought and sold several times before Hurricane Iniki destroyed it in 1992. Since that time, various developers have attempted to reconstruct the hotel, unsuccessfully.

In 2016, Chad Waters and Tyler Greene, who formed Coco Palms Hui, purchased the fee simple parcels. According to the ICA decision, they borrowed approximately \$18 million from a consortium of lenders including WCMF Inc., Coco Lenders Partnership, Blue Glacier Fund, L.P., Crestline AK Opportunistic Fund, L.P., and PCG Credit Partners. They defaulted on the loan.

The loan servicer, Private Capital Group, Inc., a Utah Corporation, filed the foreclosure action. The Fifth Circuit Court entered an order granting partial summary judgment and a decree of foreclosure on June 17, 2020. A commissioner was appointed by the court and the property was auctioned. The only bidder was an attorney for Private Capital Group. A Commissioner's Deed granting title of the property to RP21 Coco Palms, Private Capital Group's designee, was recorded on May 13, 2022.

Chad Waters and Paul Honkavaara, a judgment creditor of Coco Palms Hui who was named as a defendant in the foreclosure action, appealed the foreclosure judgment. Waters dismissed his appeal on March 6, 2024, leaving only Honkavaara as a defendant/appellant.

On June 28, 2024, the ICA vacated the Interlocutory Decree of Foreclosure and Judgment, and remanded the case to the Fifth Circuit Court, State of Hawaii, for further proceedings. The ICA concluded the Note that was foreclosed on did not obligate Coco Palms Hui to pay PCG. PCG did not have standing to prosecute the foreclosure action.

It is our position that the decision will result in the nullity of the Commissioner's Deed awarding the three Coco Palms fee simple parcels to RP21 Coco Palms LLC which, effectively, will nullify RP21's entitlements, building permits, State leases and RPs. We request that you immediately issue a Cease and Desist Letter to RP21 Coco Palms and all others acting in concert.

Sincerely,

*Teresa Tico*

Teresa Tico, Attorney for  
I Ola Wailuanui, Inc.

cc: Ka'aina Hull, Kauai Planning Director

JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE  
LEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



DAWN H. E. CHANG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA  
LAND DIVISION

P.O. BOX 621  
HONOLULU, HAWAII 96809

August 7, 2024

Keith M. Kiuchi, Esq.  
Keith M. Kiuchi, A Law Corporation  
1001 Bishop Street  
ASB Tower, Suite 985  
Honolulu, HI 96813

Dear Mr. Kiuchi:

**Subject:** Board of Land and Natural Resources' Consent to Quitclaim Assignment of Lease and Easement; Amendment of State of Hawaii Lease and Easements, Wailua, Kauai

Your letter of July 29, 2024 to Chairperson Dawn Chang regarding the subject matter was forwarded to Land Division for response.

On April 2, 2024, the Chairperson signed the Consent to Quitclaim Assignment of Lease and Easement (Assignment) from PR II Coco Palms LLC, as assignor, to Coco Palms Hui LLC (Coco Palms Hui). Also on April 2, 2024, the Chairperson signed an Amendment of State of Hawaii Lease and Easements (Amendment) with Coco Palms Hui allowing the easements to "run with the land" and inuring to the benefit of the private property designated as Tax Map Key: (4) 4-1-003:007. We note that both documents were executed prior to the June 28, 2024 Summary Disposition Order of the Intermediate Court of Appeals referenced in your letter.

Please be advised that the Department of Land and Natural Resources (Department) did not record either the Assignment or the Amendment with the Bureau of Conveyances. However, Coco Palms Hui received an original of the documents and the Department does not know whether Coco Palms Hui or its successors-in-interest have recorded their original or intend to do so in the future. In any event, recordation only provides notice of the conveyance and is not a necessary step to perfect it. We also note that to the extent your client has a valid judgment against Coco Palms Hui's interest in the easements and a lien on those property interests, transfers made after entry of the judgment do not affect the lien, except if the lien was expressly waived or discharged by an appropriate authority.

Keith M. Kiuchi, Esq.  
August 7, 2024  
Page 2

Finally, please be advised that after the prior action of the Board of Land and Natural Resources from its meeting on May 25, 2018 (see attached board submittal), the Department has no pending action and will not be taking any steps to amend or rescind the Assignment or Amendment. As the documentation is complete, no further action by the Board is required in this matter.

Please let us know if you have any further questions.

Very truly yours,

*Russell Tsuji*

Russell Y. Tsuji  
Land Division Administrator

Enclosure

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

May 25, 2018

Ref. No.: GLS-4878, GLS-4244  
GLS-4645, LODS-12,850,  
LODS-27,442

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

KAUAI

Consent to Assign General Lease No. S-4878, Grant of Easement Nos. S-4244 & S-4645, and Land Office Deed Nos. S-12,850 & S-27,442, Coco Palms Ventures LLC, as First Assignor, to PR II Coco Palms LLC, as First Assignee/ Second Assignor, and from PR II Coco Palms LLC, First Assignee/ Second Assignor, to Coco Palms Hui LLC, as Second Assignee, Wailua, Kawaihau (Puna), Kauai, Tax Map Keys: (4) 4-1-003:005, por. 017, por. 039, and por. 044.

Amendment of Grant of Easement Nos. S-4244 and S-4645, and Land Office Deed Nos. S-12,850 and S-27,442, Coco Palms Hui LLC, Grantee, Wailua, Kawaihau (Puna), Kauai, Tax Map Keys: (4) 4-1-003:005, por. 017, por. 039 & por. 044, and 4-1-005:017.

Grant of Easement Nos. S-4244 and S-4645, and Land Office Deed Nos. S-12,850 and S-27,442 already exist. The purpose of amending the documents is to insert a provision allowing the easements to "Run with the Land," thereby becoming assignable without the written consent of the Board of Land and Natural Resources. The easements will be appurtenant to and inure to the benefit of Coco Palms Hui LLC's private property identified as Tax Map Key: (4) 4-1-003:007.

APPLICANTS:

Coco Palms Ventures LLC, a Delaware limited liability company.  
PR II Coco Palms LLC, a Delaware limited liability company.  
Coco Palms Hui LLC, a Delaware limited liability company.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Wailua, Kawaihau (Puna), Kauai, Tax Map Keys: (4) 4-1-003:005, por. 017, por. 039 & por. 044, and (4) 4-1-005: 017, labeled as Exhibit A.

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
May 25, 2018 (10)

**TRUST LAND STATUS:**

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:  
 YES \_\_\_ NO x

**CHARACTER OF USE/ TERM/ ANNUAL RENT**

<b>DISPOSITION</b>	<b>CHARACTER OF USE:</b>	<b>TERM OF LEASE AND EASEMENTS:</b>	<b>ANNUAL RENTAL:</b>
<b>General Lease No. S-4878</b>	For landscaping and maintenance of premises for aesthetic, park and recreation purposes.	65 years, commencing on August 18, 1983 and expiring on August 17, 2048. Last rental reopening occurred on August 17, 2013; next rental reopening is scheduled for August 17, 2023.	\$3,796 (Semi-annual installments on August 18th and February 18th of each year).
<b>Grant of Easement No. S-4244</b>	For sanitary sewer purposes: Part 1, a sewer pipeline over the Wailua Sewer Pump Station Site; Part 2, a sewer pipeline over cane haul road.	65 years, commencing on May 13, 1969 and expiring on May 12, 2034. There is no rental reopening scheduled.	\$730 (a one-time payment, paid on May 1969).
<b>Grant of Easement No. S-4645</b>	For access purposes.	65 years, commencing on May 16, 1980 and expiring on May 15, 2045. There is no rental reopening scheduled.	\$2,900 (a one-time payment, paid on August 1980)
<b>Grant of Easement, Land Office Deed No. S-12,850</b>	For a 25 feet wide road right-of-way.	Perpetual non-exclusive easement for 25 feet wide road right-of-way purposes.	\$518.33 (a one-time payment, paid on January 1955).
<b>Grant of Easement, Land Office Deed No. S-27,442</b>	For underground sewer line purposes.	Perpetual, non-exclusive easement for sewer line purposes.	\$966 (a one-time payment, paid on July 1983).

**CONSIDERATION:**

\$ 10.00 (TEN AND NO/100 DOLLARS).

At its meeting of January 14, 2006, item D-29, the Board of Land and Natural Resources (Board) consented to the assignment of the Coco Palms Lease and easements from Wailua Associates to Coco Palms Ventures LLC. After years of planning, obtaining building permits, etc., the economic downturn of 2008 arrived and Coco Palms Ventures LLC struggled to finance its renovation project and to find new investors. Effective February 14, 2006, Coco Palms Ventures LLC, a Hawaii limited liability company, was converted to a Delaware limited liability company. It eventually had to give up on its investment in the hotel and was forced into foreclosure.

In 2014, pursuant to an Agreement for Deed in Lieu of Foreclosure, First Assignee/Second Assignor PR II Coco Palms LLC, a wholly owned subsidiary of Prudential Insurance (Prudential Real Estate Investors), agreed to accept an assignment of the Coco Palms lease and easements from First Assignor, Coco Palms Ventures LLC, upon the Board's consent, together with a conveyance of the private property constituting a part of the hotel site and designated as Tax Map Key: (4) 4-1-003:007 (Parcel 7). The assignment instruments were executed and placed in escrow until such time as the parties could obtain the Board's consent to the transaction.

In 2016, PR II Coco Palms LLC executed assignment of lease and easement documents in favor of Coco Palms Hui LLC, along with a deed conveyance of Parcel 7. The parties arranged for the assignment documents to once again be deposited with escrow with express instructions that they be recorded immediately upon receipt of Board consent.<sup>2</sup> The purpose of the present request is to obtain the Board's consent to the assignment of the lease and easements from Coco Palms Ventures LLC, the First Assignor, to PR Coco Palms LLC, the First Assignee/Second Assignor, then to Coco Palms Hui LLC, the Second Assignee.

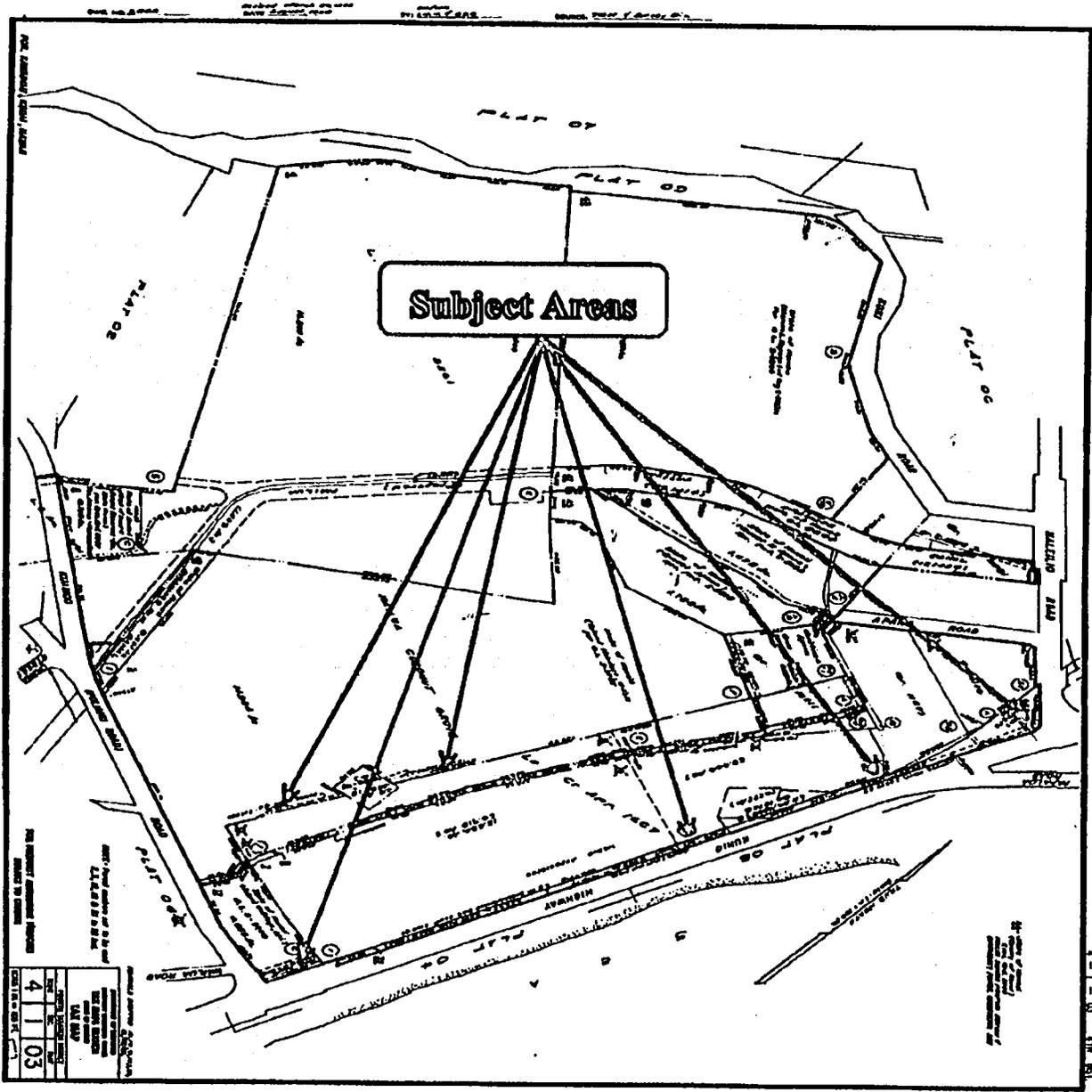
The lease premises under General Lease No. S-4878 are located adjacent to the private hotel land (private Parcel 7). As noted above, the lease character of use is for park and recreational purposes. The lease premises will continue to be devoted to these purposes if the assignment is approved. The four easements that are the subject of the assignment are for various utility and access purposes and benefit Parcel 7.

Coco Palms Hui LLC, a Delaware limited liability company, as the present owner of the hotel site on private Parcel 7, and the proposed assignee of the State lease and easements, is composed of members with longstanding experience in developing real estate properties. Coco Palms Hui LLC plans to extensively renovate the property to create a hotel with full amenities, while retaining the atmosphere of the original Coco Palms Hotel.

In 2016, as part of the conveyance of the Coco Palms Hotel, various revocable permits

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<sup>2</sup> The originals of the 2014 and 2016 assignments of leases and easements were misplaced in escrow. The parties subsequently re-executed the assignments with new instructions to escrow.



**EXHIBIT A**



ADVERTISEMENT

## Opponents of Coco Palms redevelopment hail a court ruling, but it may not stop the rebuilding

The long saga of Coco Palms on Kauai may be heading back to court after a three-judge panel canceled a foreclosure deal that led to the current redevelopment.

By Ben Gutierrez

Published: Jul 3, 2024 at 10:11 PM HST



WAILUA (HawaiiNewsNow) - The long saga of Coco Palms on Kauai may be heading back to court after a three-judge panel canceled a foreclosure deal that led to the current redevelopment.

The state Intermediate Court of Appeals ruled that the foreclosure involving a previous developer was invalid.

The Utah company spent \$400 million to build a new resort on the property and said the latest ruling was no big deal. But opponents beg to differ.

"They vacated it. They vacated the whole thing. So now we start from scratch. It all goes back to ground zero," said Teresa Tico, an attorney for the group I Ola Wailuanui, in response to the court's ruling.

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The court said, however, that the company was not the lender, and only lenders can file a foreclosure action.

"If that decision, foreclosure decision was vacated, the title has to be vacated. And if they don't have a title, how can they move forward with the construction of the hotel?" asked Tico.

"There are multiple players involved in the property, any disputes, challenges on the property, and ownership and management of the property," said Mason Chock, vice president of I Ola Wailuanui.

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The group RP21 Coco Palms had the title to the property, and Coco Palms Hui defaulted. RP21 was moving ahead with Coco Palms, a Kimpton Resort with 350 rooms.

Jon Day, the chief financial officer of developer Reef Capital Partners, said that the ruling "clarifies the steps needed to resolve an issue with a creditor of the previous owner of Coco Palms."

*"This ruling is entirely unrelated to Reef's ownership of Coco Palms. While the ruling shifted ownership of Coco Palms from RP21 Coco Palms back to Coco Palms Hui, both of those companies are 100% owned and controlled by Reef Capital Partners. Therefore, the ruling has no impact on Reef's ability or commitment to restore the historic Coco Palms Hotel in a sustainable and culturally responsible manner. Reef remains on track to welcome the local community and guests to the restored property in late 2026."*

"There are many possible outcomes to this. I mean -- I hope we don't have to go to court," said Tico.

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Opponents aren't giving up the fight and still aim to buy the land and turn it into a park.

"We don't want to wait around another 30 years to have everyone figure this out on the legal front," said Chock. "We want to be poised as a community to be ready to be a part of what the future of this important place is."

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Ste. 3900  
Chicago, IL 60606  
USA  
**Country**  
**Phone** (312) 759-1935  
**Fax**  
**Email** matthew.holm@troutman.com  
**Law School** U. of Illinois  
**Graduated**  
**Admitted HI Bar** 10/14/2016

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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

PRIVATE CAPITAL GROUP, INC., a Utah corporation,	)	CIVIL NO. 5CC191000086 (JRV)
	)	(Foreclosure)
	)	
Plaintiff,	)	MEMORANDUM OF LAW IN SUPPORT
	)	OF MOTION
vs.	)	
	)	
COCO PALMS HUI LLC, a Delaware Limited Liability Company; TYLER SCOTT GREEN; CHAD WATERS; PAUL M. HONKAVAARA dba Chartered Financial Group, and DOE DEFENDANTS 1- 50,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

---

**MEMORANDUM OF LAW IN SUPPORT OF MOTION**

**I. Vacating Previous Orders and Judgments of the Court**

On June 28, 2024, the Intermediate Court of Appeals entered a Summary Disposition Order in CAAP-20-0000429 (**Exhibit E**), which was an appeal filed by Defendant-Appellant Paul Honkavaara in this matter. The ICA held that Plaintiff had failed to establish that it had standing to enforce the Note and that it failed to prove that it had suffered an injury-in-fact. For these reasons, the ICA vacated the Circuit Court's June 17, 2020 Findings of Fact and Conclusions of Law and Order Granting Plaintiff's Motion for Partial Summary Judgment and Interlocutory Decree of Foreclosure, and the September 20, 2021 Amended Final Judgment and remanded the matter back for further proceedings consistent with the summary disposition order. (Pg. 5, **Exhibit E**)

Based upon the ICA decision, this Court should vacate the June 17, 2020-filed Findings of Fact and Conclusions of Law and Order Granting Plaintiff's Motion for Partial Summary Judgment and Interlocutory Decree of Foreclosure (**Exhibit A**), the Amended Final Judgment filed on September 20, 2021 (**Exhibit B**), Final Judgment on Order Granting Plaintiff's Motion Filed August 18, 2021 for Confirmation of Sale by Commissioner, filed on July 11, 2022 (**Exhibit C**) (and the August 18, 2021 Order Granting Plaintiff's Motion Filed August 18, 2021, For Confirmation of Sale by Commissioner, said Order being filed on Oct. 26, 2021). The July 11, 2022 Judgment and Order should be vacated because the foreclosure order has been ordered, by the ICA, to be vacated, and thus the property cannot be sold, and any order confirming a sale of the subject property should be vacated. These orders and judgments should be vacated under either Rule 60(b)(4), which states that a party may seek relief if a judgment is void, or Rule 60(b)(5), which states that a judgment may be vacated if it has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment have prospective application.

What should also be vacated is the Commissioner's Deed (**Exhibit D**), because that conveyed the subject property to Plaintiff's nominee, RP21 Coco Palms LLC. Since the foreclosure order and judgment have been ordered to be vacated by the ICA, the property should be conveyed back to the original owner, Coco Palms Hui, LLC.

## **II. Motion for Leave to File a Counterclaim**

On remand, Mr. Honkavaara asks that this Court grant him leave to file a counterclaim based upon wrongful foreclosure because Plaintiff did not have standing at the time they filed the Complaint. Rule 13(e) of the Hawaii Rules of Civil Procedure allows a party to bring a counterclaim which matured or was acquired by the pleader after they filed their answer. Such a

claim may only be filed with the permission of the court. Rule 14(a) allows a defendant to bring in a third party, and Rule 15(d) allows a party to file supplemental pleadings “setting forth occurrences or events which have happened since the date of the pleading sought to be supplemented.” This also requires leave of the court. In *Marks v. Marks*, 51 Haw. 548, 563-564, 465 P.2d 996, 1004 (1970), the Hawaii Supreme Court held that in reviewing whether a trial court erred in granting leave under HRCF Rule 13(e), the standard of review was abuse of discretion and that some discretion was vested in the trial court’s hands.

Federal courts have case law on this area as well, in the form of determining when a motion for leave to amend should be granted. In *Johnson v. Buckley*, 356 F.3d 1067, 1977 (9<sup>th</sup> Cir. 2004) (citing *Nunes v. Ashcroft*, 348 F.3d 815, 1818 (9<sup>th</sup> Cir. 2003), the Ninth Circuit held that “Five factors are taken into account to assess the propriety of a motion for leave to amend: bad faith, undue delay, prejudice to the opposing party, futility of the amendment, and whether the party has previously amended a pleading.

Bad faith can be an issue if the party seeks to prolong meritless litigation by adding baseless amendments to their complaint or if there is any evidence of a wrongful motive. *Jones v. Bates*, 127 F.3d 839, 847, n. 8 (9<sup>th</sup> Cir. 1997) In this case this is the first time Mr. Honkavaara has sought to amend his pleadings, and the matter has just been reversed and remanded by the appellate court and no trial date has been set. Therefore, there is no intent to prolong meritless litigation. Mr. Honkavaara, based upon the ICA decision, can assert that the complaint was a wrongful foreclosure because Plaintiff did not have standing when they filed the Complaint, and has done nothing to change that lack of standing.

### **III. Motion for Preliminary Injunction**

Mr. Honkavaara also asks for a preliminary injunction because work on the Coco Palms project is continuing, even after the ICA decision. At this point, regardless of statements made by the CFO of Reef Capital Group (and it has never been made part of the record as to how Reef Capital Group and Plaintiff are related), as shown in **Exhibit J**, the fact is that the ICA Summary Disposition Order of June 28, 2024 puts the property back in the ownership of Coco Palms Hui. **Exhibit H**, which is Teresa Tico's letter to Kauai County, shows that the permits and entitlements with the County were in the name of RP21 Coco Palms LLC. By contrast, a letter from the Board of Land and Natural Resources (**Exhibit I**), shows that easements issued by BLNR were in the name of Coco Palms Hui LLC. Thus, no work should be allowed, until the disposition of the foreclosure, because the permits and entitlements with the County are in the name of RP21 Coco Palms LLC.

"Generally, the granting or denying of injunctive relief rests with the sound discretion of the trial court and the trial court's decision will be sustained absent a showing of a manifest abuse of discretion. Abuse of discretion may be found where the trial court lacked jurisdiction to grant the relief, or where the trial court based its decision on an unsound proposition of law." *Sierra Club v. Dep't of Transp. Of State of Hawaii*, 120 Hawai'i 181, 197, 202 P.3d 1226, 1242 (2009) (quoting *Hawaii Pub. Employment Relations Bd. v. United Pub. Workers, Local 646, AFSME, AFL-CIO*, 66 Haw. 461, 467-468, 667 P.2d 783, 788 (1983)). It is well settled that a temporary injunction may be granted under Rule 65(b) of the Hawaii Rules of Civil Procedure when it is necessary to create or preserve a state of affairs such that the court will be able to render a meaningful decision on the merits. *Life of the Land v. Ariyoshi*, 59 Haw. 156, 577 P.2d 1116 (1978). The test for determining whether such injunctive relief should be granted is as follows: (1) Is the plaintiff likely to prevail on the merits? (2) Does the balance of irreparable

damage favor the issuance of a temporary injunction? (3) Does the public interest support granting the injunction? *Id.*

In *Winter v. Natural Res. Def. Council*, 129 S. Ct. 365, 374 (2008), the U.S. Supreme Court rejected Ninth Circuit case law holding that a plaintiff need only demonstrate a possibility of irreparable injury as opposed to a likelihood irreparable injury. See *id.* at 375 ("agree[ing] . . . that the Ninth Circuit's 'possibility' standard is too lenient"; adding that "plaintiffs seeking preliminary relief [must] demonstrate that irreparable injury is likely in the absence of an injunction") (emphasis added). However, "[t]he majority opinion in *Winter* did not, . . . explicitly discuss the continuing validity of the 'sliding scale' approach to preliminary injunctions employed by [the Ninth] [C]ircuit and others. Under this approach, the elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another." *Alliance For The Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). Most notably, under the sliding scale approach, "a preliminary injunction could issue where the likelihood of success is such that 'serious questions going to the merits were raised and the balance of hardships tips sharply in [plaintiff's] favor.'" *Id.* at 1131-32. This sliding scale approach survived the U.S. Supreme Court decision in *Winter*.

This case is a little unusual because this is a foreclosure action, and Mr. Honkavaara, despite prevailing on the appeal, cannot show that he is likely to prevail on the defense of the foreclosure. But if a renewed motion for summary judgment is granted (provided that Plaintiff's can provide the documentation set out in the ICA decision), then the subject property has to be put up for auction again. There is no guarantee that Plaintiff or RP21 Coco Palms would be the successful bidder at that auction, especially given the fact that permits and entitlements, which were an issue, are less of an issue now than they were at the time of the previous auction. But

the public interest also should be considered here on that sliding scale, where there has been opposition to the development. Allowing Plaintiff and/or RP21 Coco Palms to proceed would not be equitable given that the circumstances here and all construction work on the property should be stopped.

#### **IV. Appointment of a Receiver**

A receivership is equitable in nature and the court's extraordinary broad remedial powers and wide discretion to appoint receivers derive from its inherent powers of equity to fashion relief. In other words, a court of law without equity jurisdiction or statutory authority generally has no power to appoint a receiver. The power is a branch of equity jurisdiction not dependent upon any statute.

65 Am.Jur.2d Receivers § 7 at 658–59 (2001) (footnotes omitted).

This Court has the power in equity to appoint a receiver, but may also do so under HRS § 651-14, which allows a court to appoint a receiver where an action is pending under a foreclosure complaint, to take possession of the property and collect revenues. “[C]ourts of equity have the power to mold their decrees to conserve the equities of the parties under the circumstances of the case.” *Honolulu, Ltd. v. Blackwell*, 7 Haw.App. 210, 219, 750 P.2d 942, 948 (1988) (citation omitted); *Jenkins v. Wise*, 58 Haw. 592, 598, 574 P.2d 1337, 1342 (1978) (A court sitting in equity on a foreclosure case “has the plenary power to fashion a decree to conform to the equitable requirements of the situation.” (Citation omitted.)). A circuit court’s decisions involving its supervision of an equitable receivership are viewed for abuse of discretion. *Sec. & Exch. Comm’n v. Hardy*, 803 F.2d 1034, 1037 (9th Cir.1986).

It is obvious from the quote attached as part of **Exhibit J**, that Plaintiff has a disregard for the rule of law and because it asserts it controls Coco Palms Hui, LLC, believes that it can ignore the ICA decision and proceed how they want. That may be because Plaintiff has reached a settlement with Mr. Greene and Mr. Waters, who are Defendants. But the Second Operating

Agreement for Coco Palms Hui, LLC (**Exhibit G**) has other parties listed, namely BLCJPL Ohana LLC as a member, and PR II Coco Palms LLC, as a profit interest holder. The point is that because there are other parties affected by the Second Operating Agreement, Plaintiff cannot and should not be able to make decisions on its own as it has a fiduciary duty to these other parties. Plaintiff also should not make decisions without court approval if that affects Mr. Honkavaara's judgment. An appointment of a receiver is needed to avoid Plaintiff from acting unilaterally on its own as any foreclosure should still be subject to this Court's approval.

DATED: Honolulu, Hawaii, September 16, 2024.

/s/ Keith M. Kiuchi

---

KEITH M. KIUCHI  
Attorney for Defendant PAUL M.  
HONKAVAARA dba Chartered Financial Group

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

PRIVATE CAPITAL GROUP, INC., a Utah corporation,	)	CIVIL NO. 19-1-0086 (JRV)
	)	(Foreclosure)
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF HEARING ON MOTION
	)	
COCO PALMS HUI LLC, a Delaware Limited Liability Company; TYLER SCOTT GREEN; CHAD WATERS; PAUL M. HONKAVAARA dba Chartered Financial Group, and DOE	)	No Trial Date
DEFENDANTS 1- 50,	)	
	)	
Defendants.	)	

---

**NOTICE OF HEARING ON MOTION**

**TO: BRADLEY R. PULICE, ESQ.  
SCOTT I. BATTERMAN, ESQ.  
CLAY CHAPMAN IWAMURA PULICE & NERVELL  
Topa Financial Center  
700 Bishop Street, Suite 1200  
Honolulu, HI 96813**

Attorney for Plaintiff

PLEASE TAKE NOTICE that the foregoing Motion will be presented before the Honorable Randal G. B. Valenciano, Judge of the above-entitled Court, in the Courtroom of said Judge at 3970 Kaana Street, Lihue, Kauai, HI 96766, on the \_\_\_\_ day of \_\_\_\_\_, 2024, at the hour of \_\_\_\_\_ said day, or as soon thereafter as Counsel can be heard.

DATED: Honolulu, Hawaii, September 16, 2024.

/s/ Keith M. Kiuchi

---

KEITH M. KIUCHI  
Attorney for Defendant Paul Honkavaara



3/15/16



**STATE OF HAWAII  
BUREAU OF CONVEYANCES  
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/s/ NICKI ANN THOMPSON  
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CASE LOMBARDI PETTIT  
Pacific Guardian Center, Mauka Tower, Suite 2600  
737 Bishop Street  
Honolulu, Hawaii 96813

Attention: Jon M. Pang, Esq.  
Telephone: (808) 547-5468



6828005638

**TITLE OF DOCUMENT:**

**ASSIGNMENT OF INTANGIBLE PROPERTY**

**PARTIES TO DOCUMENT:**

**ASSIGNOR: PR II COCO PALMS LLC, a Delaware limited liability company**

**ASSIGNEE: COCO PALMS HUI LLC, a Delaware limited liability company  
1050 Bishop Street, #303  
Honolulu, Hawaii 96813**

**Tax Map Key No.: (4) 4-1-003:004; (4) 4-1-003:007; (4) 4-1-005:014**

(This document consists of 6 pages.)

## ASSIGNMENT OF INTANGIBLE PROPERTY

THIS ASSIGNMENT OF INTANGIBLE PROPERTY (this "Assignment"), is made as of May 4, 2016, by and between PR II COCO PALMS LLC, a Delaware limited liability company ("Assignor"), and COCO PALMS HUI LLC, a Delaware limited liability ("Assignee").

### WITNESSETH:

WHEREAS, pursuant to the terms of that certain Purchase and Sale Agreement, dated as of August 7, 2013, by and between Assignee and Assignor (as the same may have been amended, modified or assigned, the "Sale Agreement"), Assignor agreed to sell to Assignee, *inter alia*, certain real property, the improvements located thereon and certain rights appurtenant thereto, all as more particularly described in the Sale Agreement (collectively, the "Real Property"). Initially capitalized terms not otherwise defined herein shall have the respective meanings ascribed to such terms in the Sale Agreement; and

WHEREAS, the Sale Agreement provides, *inter alia*, that Assignor shall assign to Assignee rights to certain intangible property and that Assignor and Assignee shall enter into this Assignment.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto hereby agree as follows:

1. Assignment of Intangible Property. Assignor hereby assigns, sets over, conveys and transfers to Assignee all of Assignor's right, title and interest in, to and under the following, if and only to the extent the same may be assigned or quitclaimed by Assignor without expense to Assignor in excess of a nominal transfer fee:

(a) the contracts, equipment leases, and other agreements relating to the Real Property that are described in Exhibit A attached hereto and made a part hereof; and

(b) all licenses, permits, written authorizations, government-related or quasi-government-related documents, and other material documents in effect as of the date hereof with respect to the Real Property, including those described in said Exhibit A; and

(c) all guaranties and warranties in effect as of the date hereof with respect to any portion of the Real Property or the personal property conveyed to Assignee by Assignor concurrently herewith; and

(d) all entitlements, easements, development rights, reserved rights, zoning or subdivision approvals and/or applications, permits, soils reports, surveys, plans, specifications, architectural and engineering designs and other studies, reports, records and files, pertaining to the Real Property; and

(e) all copyrights, service marks, logos, designs, trade names, trademarks, domain names and other intellectual property relating to the Real Property, including without limitation all copyrights, service marks, logos, designs, trade names, trademarks and domain names relating to "Coco Palms".

Assignee hereby accepts the foregoing assignment of the interests described in this Section 1 (collectively, the "Intangible Property") and assumes the obligations with respect thereto as and to the extent provided in the Sale Agreement.

2. Reservation of Benefits. Notwithstanding anything to the contrary in this Assignment, to the extent that Assignor continues to have liability after the date hereof with respect to the Intangible Property, Assignor reserves and retains such benefits under the Intangible Property as are necessary or desirable for Assignor to defend or protect itself with respect to or to assert any rights relating to any matter for which Assignor may continue to have liability from and after the date hereof; provided, however, said benefits reserved and retained by Assignor pursuant to this Section shall exist jointly with Assignee's benefits under the Intangible Property, and such benefits may be enforceable by each of Assignor and Assignee to the extent of their respective liability or damages for any matters relating thereto. Assignee and Assignor agree to cooperate with the reasonable requests of the other party in enforcing their respective benefits under the the Intangible Property to the extent such benefits are reserved by Assignor pursuant to the terms of this Section.

3. Limitation on Liability. Assignor's liability under this Assignment shall be limited as set forth in Section 4.3 of the Sale Agreement.

4. Cooperation and Further Documents. Assignor agrees to cooperate with Assignee and to perform any reasonable further acts, including the execution and delivery of all documents and instruments (including cover sheets and other forms as may be required to effectuate any federally-registered and internationally-registered intellectual property), reasonably requested by Assignee and all at Assignee's sole cost and expense, to fully effect, this Assignment and transfer of Assignor's right, title and interest in and to the Intangible Property to Assignee.

5. Miscellaneous. This Assignment and the obligations of the parties hereunder shall be binding upon and inure to the benefit of the parties hereto, their respective legal representatives, successors and assigns, shall be governed by and construed in accordance with the laws of the State in which the Real Property is located applicable to agreements made and to be wholly performed within said State and may not be modified or amended in any manner other than by a written agreement signed by the party to be charged therewith.

6. Severability. If any term or provision of this Assignment or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Assignment or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforced to the fullest extent permitted by law.

7. Counterparts. This Assignment may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement.

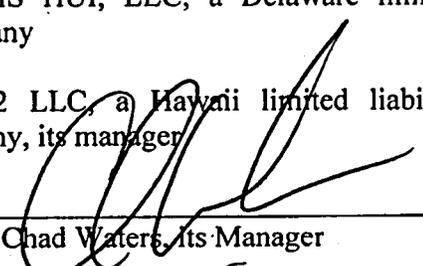
*[Remainder of page intentionally blank]*

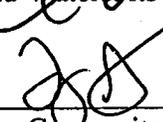


IN WITNESS WHEREOF, the undersigned have executed this Assignment to be effective as of the date first set forth hereinabove.

COCO PALMS HUI, LLC, a Delaware limited liability company

By: KK1&2 LLC, a Hawaii limited liability company, its manager

By:   
Chad Waters, its Manager

By:   
Tyler Greene, its Manager

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

On April 22, 2016, before me personally appeared **Chad Waters**, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person in the capacity shown, having been duly authorized to execute such instrument in such capacity.

L.S.

Deborah S. Apana-Tran  
 Print name: Deborah S. Apana-Tran  
 Notary Public, State of Hawaii  
 My commission expires: 11/19/18

Date of Doc: <u>Undated at time of notarization</u>	# Pages: <u>8 (includes Exh. A)</u>
Name of Notary: <u>Deborah S. Apana-Tran</u>	Notes: <u>TMK: (4) 4-1-003-005 (por),</u>
Doc. Description: <u>Assignment of Intangible</u>	<u>017 (por), 044 (por)</u>
Property	(stamp or seal)
<u>Deborah S. Apana-Tran</u> 4/22/16	L.S.
Notary Signature	Date
First Circuit, State of Hawaii	
NOTARY CERTIFICATION	

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

On April 22, 2016, before me personally appeared **Tyler Greene**, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person in the capacity shown, having been duly authorized to execute such instrument in such capacity.

LS

Deborah S. Apana-Tran  
Print name: Deborah S. Apana-Tran  
Notary Public, State of Hawaii  
My commission expires: 11/19/18

Date of Doc:	<u>Undated at time of notarization</u>	# Pages:	<u>8 (includes Exh. A)</u>
Name of Notary:	<u>Deborah S. Apana-Tran</u>	Notes:	<u>TMK: (4) 4-1-003-005 (por),</u> <u>017 (por), 044 (por)</u>
Doc. Description:	<u>Assignment of Intangible</u>		
Property			(stamp or seal)
<u>Deborah S. Apana-Tran</u> <u>4/22/16</u>			LS
Notary Signature	Date		
First Circuit, State of Hawaii			
NOTARY CERTIFICATION			

**EXHIBIT A**

Assignor assigns, sets over, conveys and transfers to Assignee all of Assignor's right, title and interest in, to and under the following:

1. All land use and/or zoning approvals, project plan approvals, site plan approvals, governmental approvals, development rights, development agreements, development orders, variances, notices, special or conditional use permits, building permits, the Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1 and Special Management Area Use Permit SMA(U)-2015-6 for TMK NOS. 4-1-003: 004 (por.).

## **Keith M. Kiuchi, A Law Corporation**

1001 Bishop Street, ASB Tower, Suite 985 | Honolulu, HI 96813 | Tel.: (808) 533-2230 |  
FAX: (808) 533-4391

**VIA Regular Mail**

July 26, 2023

Planning Commission  
c/o County of Kauai Planning Department  
4444 Rice Street, Suite A473  
Lihue, HI 96766

**Re: SPECIAL AREA USE PERMIT SMA (U)-2015; PROJECT  
DEVELOPMENT U.2015.7; VARIANCE PERMIT V.ZO I 5. I;  
CLASS IV ZONING PERMIT 2015-8 (for RP 21 COCO PALMS, LLC)**

To Whom It May Concern:

I represent Paul Honkavaara dba Chartered Financial Group. Mr. Honkavaara holds an Exemplified Foreign Judgment against Coco Palms Hui, LLC. A copy of that Exemplified Foreign Judgment is attached. Applicant Coco Palms Hui, LLC owns a number of permits and entitlements for the Coco Palms project issued by the County of Kauai. Those permits and entitlements include, but are not limited to, a number of building permits, Class IV Zoning Permits Z-IV-2015-8, Project Development Use Permit PDU-20015-7, Variance Permit V-2015-1 and Special Use Permit SMA(U)-2015-6.

It is my client's understanding that some of the above permits were transferred from Coco Palms Hui, LLC to RP 21 Coco Palms, LLC (which is essentially the same entity as the entity that foreclosed on the property) – WITHOUT applicant Coco Palms Hui, LLC authorizing any transfer of those permits. While Judge Valenciano entered a foreclosure order and the property was sold at a foreclosure auction, my client timely filed, on Dec. 21, 2022, a Notice of Pending Appeal, which is also attached and is still pending (awaiting a decision) before the Hawaii Intermediate Court of Appeals.

Our position is that NONE of the above-referenced permits from the County of Kauai were NOT part of the foreclosure auction, and thus remained the property of Coco Palms Hui, LLC. Furthermore, under HRS § 651C-4, any effort by RP 21 Coco Palms, LLC to transfer those permits without first paying Mr. Honkavaara, may constitute a fraudulent transfer of those permits. This includes any previous transfer(s) of them, since Mr. Honkavaara was NOT paid any amount at all, nonetheless the fair-market value of the permits transferred.

Mr. Honkavaara's judgment has priority over any other judgment, including any judgment that RP 21 Coco Palms, LLC may have against applicant Coco Palms HUI, LLC. (Our

understanding is RP 21 Coco Palms LLC has no judgment against applicant Coco Palms HUI, LLC.) The reason for this includes:

1. The permits were NOT (and still are NOT) part of the July 26, 2021 foreclosure sale, as evidenced by the fact that: (a) the Order Confirming the Foreclosure Sale does NOT mention the permits at all, and (b) the Commissioner's Deed conveys only the property, and not the permits (and there is no separate conveyance of the permits); AND

2. RP 21 Coco Palms, LLC's subsequent money judgment against Coco Palms Hui, LLC was obtained after Mr. Honkavaara's judgment against Coco Palms Hui, LLC, and thus Mr. Honkavaara's judgment has priority.

This letter is to notify the Planning Commission that no permits should be transferred from Coco Palms Hui, LLC to RP 21 Coco Palms, LLC -- WITHOUT Mr. Honkavaara first being paid the fair-market value of any permits, until he is paid all amounts he is owed under his attached Exemplified Foreign Judgment. Otherwise, any such transfer of permits may constitute a fraudulent transfer under the above statute.

Sincerely,

Keith M. Kiuchi

Encl.

J



STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

November 15, 2017 10:45 AM

Doc No(s) A-65280627



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B-33080926

/s/ LESLIE T. KOBATA  
REGISTRAR

LAND COURT

REGULAR SYSTEM

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KEITH M. KIUCHI, ALC  
Keith M. Kiuchi, Esq.  
1001 Bishop Street, Suite 985  
Honolulu, HI 96813  
Tel No. (808) 533-2230 Fax. No. 533-4391

TITLE OF DOCUMENT:

EXEMPLIFIED FOREIGN JUDGMENT; DECLARATION OF KEITH M.  
KIUCHI; EXHIBITS "1" - "2"; AND CERTIFICATE OF SERVICE

PARTIES TO DOCUMENT:

PAUL M. HONKAVAARA dba CHARTERED FINANCIAL GROUP, Petitioner

vs.

COCO PALMS HUI LLC, a Delaware limited liability company; Respondent

COCO PALMS HUI LLC: General Excise Tax No: GE-048-828-6208-01

KEITH M. KIUCHI, ALC  
KEITH M. KIUCHI #2735  
ASB Tower  
1001 Bishop Street, Suite 985  
Honolulu, Hawaii 96813  
Tel. No. 533-2230  
Fax. No. 533-4391

Attorney for Petitioner

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2017 NOV -3 PM 3:41

F. OTAKE  
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

PAUL M. HONKAVAARA dba  
CHARTERED FINANCIAL GROUP,

Petitioner,

vs.

COCO PALMS HUI LLC, a Delaware limited  
liability company;

Respondent.

S.P. NO. 17 - 1 - 0360 BIA  
(Other Civil Action)

EXEMPLIFIED FOREIGN JUDGMENT;  
DECLARATION OF KEITH M. KIUCHI;  
EXHIBITS "1" - "2"; and CERTIFICATE  
OF SERVICE

**EXEMPLIFIED FOREIGN JUDGMENT**

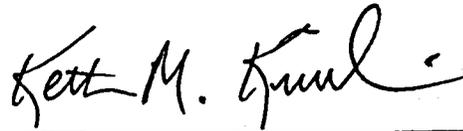
COMES NOW PETITIONER PAUL M. HONKAVAARA dba CHARTERED FINANCIAL GROUP, by and through his attorney, KEITH M. KIUCHI, and hereby files with Circuit Court of the First Circuit, State of Hawaii, a request for an Exemplification of a Foreign Judgment that is dated October 26, 2017 and is entered in the Fresno County Superior Court, for the State of California, in favor of Petitioner PAUL M. HONKAGAARA dba CHARTERED FINANCIAL GROUP, as against Respondent COCO PALMS HUI, LLC, a Delaware limited liability company.

I do hereby certify that this is a full, true, and correct copy of the original on file in this office.

  
Clerk, Circuit Court, First Circuit

The Certificate of Exemplification signed by the Deputy Clerk of the Superior Court for Fresno County is dated October 26, 2017 and the Certificate of Exemplification signed by the Clerk of the Superior Court for Fresno County is dated October 30, 2017, and the Judgment is dated October 26, 2017, and both Certificates of Exemplification and the Judgment are attached hereto and identified as Exhibit "1".

DATED: Honolulu, Hawaii, November 3, 2017.

A handwritten signature in black ink, appearing to read "Keith M. Kiuchi", written over a horizontal line.

KEITH M. KIUCHI  
Attorney for Petitioner

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

PAUL M. HONKAVAARA dba  
CHARTERED FINANCIAL GROUP,

Petitioner,

vs.

COCO PALMS HUI LLC, a Delaware limited  
liability company;

Respondent.

S.P. NO. 17-1-0368 BIA  
(Other Civil Action)

DECLARATION OF KEITH M. KIUCHI

**DECLARATION OF KEITH M. KIUCHI**

KEITH M. KIUCHI, declares and says:

1. That Declarant is an attorney licensed to practice law in the court of the State of Hawaii and that he is the attorney representing Petitioner in the above entitled matter in the State of Hawaii.

2. That attached hereto as Exhibit "1" is a true and correct copy of: (a) a Certificate of Exemplification signed by the Deputy Clerk of the Superior Court for Fresno County dated October 26, 2017, (b) a Certificate of Exemplification signed by the Clerk of the Superior Court for Fresno County dated October 30, 2017, and (c) the Judgment in favor of Petitioner Paul M. Honkavaara dba Chartered Financial Group as against Respondent Coco Palms Hui, LLC, dated October 26, 2017, filed in the Superior Court for the Fresno County Superior Court, State of California, having been signed by Kimberly Gaab, Presiding Judge of the Superior Court of California, Fresno County, granting Judgment in favor of Petitioner Paul

M. Honkavaara dba Chartered Financial Group as against Coco Palms Hui, LLC, in the following amounts:

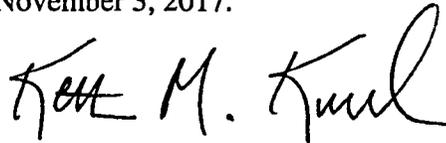
Damages	\$444,620.00
Prejudgment Interest	\$ 65,533.78
Attorney Fees	\$ 11,139.50
Costs	\$ 585.56
TOTAL	\$521,878.84

3. The principal on said judgment shall bear interest at a rate of 10% per annum.
4. That attached hereto as Exhibit "2" is a true and correct copy of the information on file for Respondent Coco Palms Hui LLC with the Dept. of Commerce and Consumer Affairs, which shows that
  5. That the name and current address of the Petitioner, Judgment creditor, is:  
  
Paul M. Honkavaara dba Chartered Financial  
c/o Steven R. Stoker, Esq.  
Pascuzzi, Pascuzzi & Stoker  
2377 W. Shaw Avenue, Suite 101  
Fresno, CA 93711
  6. That upon information and belief and the information set forth in Exhibit 2, the name and current address of the Respondent Coco Palms Hui LLC, which is the Judgment debtor, is:  
  
Coco Palms Hui LLC  
1050 Bishop St. Suite 303  
Honolulu, HI 96813
  7. That upon information and belief and the information set forth in Exhibit 2, the name and current address of the registered agent in the State of Hawaii for Respondent Coco Palms Hui LLC, which is the Judgment debtor, is:

KK1&2 LLC  
1050 Bishop St. Suite 303  
Honolulu, HI 96813

That I declare under the penalty of perjury under the laws of the United States of  
America that the foregoing are true and correct.

DATED: Honolulu, Hawaii, November 3, 2017.

A handwritten signature in black ink, appearing to read "Keith M. Kiuchi". The signature is written in a cursive style with a large, looping "K" at the beginning and a long, sweeping tail.

---

KEITH M. KIUCHI

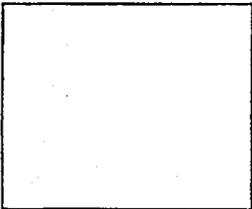
CASE TITLE <b>Paul M. Honkavaara dba Chartered Financial Group vs. Coco Palms Hul, LLC</b>	CASE NUMBER: <b>17CECG02343</b>
---	------------------------------------

STATE OF CALIFORNIA,  
County of Fresno

I, Edith Bidegain, Deputy Clerk of the Superior Court of California, County of Fresno, which is a court of record having by law a clerk and a seal, do hereby certify that I have compared the following copies, and each of them, respectively, with the original:

in Case No. **17CECG02343** of said Superior Court, entitled: Judgment

as the said originals now remain on file and of record in my office and that said copies are, and each of them respectively is, a full, true and correct copy of such originals and of the whole thereof.



Witness, Deputy Clerk of the Superior Court, with the seal of the Court affixed.  
Date: 10/26/2017

*Edith Bidegain*  
\_\_\_\_\_  
(Deputy Clerk of the Superior Court)

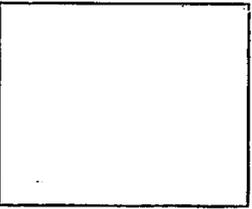
I, Kimberly Gaab, Presiding Judge of the Superior Court of California, County of Fresno, do hereby certify that said Court is a court of record and that Edith Bidegain, whose signature is affixed above is a Deputy Clerk of said Superior Court; that said certificate is attested in due form according to the laws of the State of California; that the aforesaid signature of said Deputy Clerk is genuine; that said Deputy Clerk is a proper officer to execute the said certificate and attestation, and the seal thereto affixed is the seal of said Superior Court.

Witness, my hand at Fresno, California

Date: 10-30-17

*Kimberly Gaab*  
\_\_\_\_\_  
Presiding Judge of the Superior Court of California, County of Fresno)

I, Sheran Morton, Clerk of the Superior Court of California, County of Fresno, do hereby certify that said Court is a court of record and having by law a clerk and a seal, do hereby certify that Kimberly Gaab, Presiding Judge, whose name is subscribed in the foregoing certificate, is a Judge of the Superior Court of California, County of Fresno, duly elected, sworn and qualified and that the signature of said Judge to said certificate is genuine.



Witness, Clerk of the Superior Court, with the seal of the Court affixed.  
Date: 10/30/2017

*Sheran Morton*  
\_\_\_\_\_  
(Clerk of the Superior Court)

PLAINTIFF: Paul M. Honkavaara d [redacted] Chartered Financial Group  
 DEFENDANT: Coco Palms Hui, LLC, Private Capital Group, Inc. NUMBER: 17 CE CG 02343

JUDGMENT IS ENTERED AS FOLLOWS BY:  THE COURT  THE CLERK

4.  Stipulated Judgment. Judgment is entered according to the stipulation of the parties.

5. Parties. Judgment is

a.  for plaintiff (name each):  
 Paul M. Honkavaara dba Chartered Financial Group  
 and against defendant (names):  
 Coco Palms Hui, LLC

c.  for cross-complainant (name each):  
 and against cross-defendant (name each):

Continued on Attachment 5a.

Continued on Attachment 5c.

b.  for defendant (name each):

d.  for cross-defendant (name each):

6. Amount.

a.  Defendant named in Item 5a above must pay plaintiff on the complaint:

(1) <input checked="" type="checkbox"/> Damages	\$	444,620.00
(2) <input checked="" type="checkbox"/> Prejudgment interest at the annual rate of 10 %	\$	65,533.78
(3) <input checked="" type="checkbox"/> Attorney fees	\$	11,139.50
(4) <input checked="" type="checkbox"/> Costs	\$	585.56
(5) <input type="checkbox"/> Other (specify):	\$	
(6) TOTAL	\$	521,878.84

c.  Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

(1) <input type="checkbox"/> Damages	\$	
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$	
(3) <input type="checkbox"/> Attorney fees	\$	
(4) <input type="checkbox"/> Costs	\$	
(5) <input type="checkbox"/> Other (specify):	\$	
(6) TOTAL	\$	0.00

b.  Plaintiff to receive nothing from defendant named in item 5b.  
 Defendant named in item 5b to recover costs \$  
 and attorney fees \$

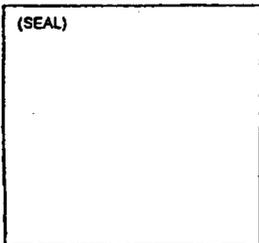
d.  Cross-complainant to receive nothing from cross-defendant named in item 5d.  
 Cross-defendant named in item 5d to recover costs \$  
 and attorney fees \$

7.  Other (specify):

Date: 10/26/17

  
 JUDICIAL OFFICER

Date:  Clerk, by \_\_\_\_\_, Deputy



CLERK'S CERTIFICATE (Optional)

I certify that this is a true copy of the original judgment on file in the court.

Date:

Clerk, by \_\_\_\_\_, Deputy

# DCCA State of Hawaii

Downloaded on November 3, 2017.

The information provided below is not a certification of good standing and does not constitute any other certification by the State.

Website URL: <http://hbe.ehawaii.gov/documents>

## Business Information

MASTER NAME	COCO PALMS HUI LLC
BUSINESS TYPE	Foreign Limited Liability Company (LLC)
FILE NUMBER	149586 C6
STATUS	Active
PLACE INCORPORATED	Delaware UNITED STATES
REGISTRATION DATE	Apr 21, 2016
MAILING ADDRESS	1050 BISHOP ST STE 303 HONOLULU, Hawaii 96813 UNITED STATES
PARTNER TERMS	AT-WILL
MANAGED BY	MANAGER(S)
AGENT NAME	KK1&2 LLC
AGENT ADDRESS	1050 BISHOP ST STE 303 HONOLULU, Hawaii 96813 UNITED STATES

## Annual Filings

FILING YEAR	DATE RECEIVED	STATUS
2017	Apr 24, 2017	Processed

## Officers

NAME	OFFICE	DATE
WATERS, CHAD	MGR	Apr 21, 2016
GREENE, TYLER	MGR	Apr 21, 2016

## Trade Names

NAME	TYPE	CATEGORY	REGISTRATION DATE	STATUS
COCO PALMS	Trade Name	NO CATEGORY SELECTED	Nov 1, 2016	Active
COCO PALMS RESORT	Trade Name	NO CATEGORY SELECTED	Nov 1, 2016	Active

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

PAUL M. HONKAVAARA dba  
CHARTERED FINANCIAL GROUP,

Petitioner,

vs.

COCO PALMS HUI LLC, a Delaware limited  
liability company;

Respondent.

17-1-0360 BIA  
S.P. NO. \_\_\_\_\_  
(Other Civil Action)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was duly served upon the following interested parties by depositing same in the U.S. Post Office, postage prepaid, at Honolulu, Hawaii, on the 3<sup>rd</sup> day of November, 2017.

Coco Palms Hui LLC  
1050 Bishop St. Suite 303  
Honolulu, HI 96813

Respondent

KK1&2 LLC  
1050 Bishop St. Suite 303  
Honolulu, HI 96813

Registered Agent for Respondent

DATED: Honolulu, Hawaii, November 3, 2017.



\_\_\_\_\_  
KEITH M. KIUCHI  
Attorney for Petitioner

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state, and address): <b>Steven R. Stoker</b> 154947 <b>Pascuzzi, Pascuzzi &amp; Stoker</b> 2377 W. Shaw Avenue, Suite 101 Fresno, CA 93711 TELEPHONE NO.: (559) 227-1100 FAX NO. (Optional): (559) 227-1290 E-MAIL ADDRESS (Optional): sstoker@pascuzzi.net ATTORNEY FOR (Name): Paul M. Honkaavara dba Chartered Financ	FOR COURT USE ONLY  <h1 style="margin: 0;">FILED</h1> OCT 26 2017 FRESNO COUNTY SUPERIOR COURT By _____ DEPUTY						
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Fresno STREET ADDRESS: 1130 "O" Street MAILING ADDRESS: CITY AND ZIP CODE: Fresno, CA 93721 BRANCH NAME:							
PLAINTIFF: Paul M. Honkavaara dba Chartered Financial Group DEFENDANT: Coco Palms Hui, LLC							
<p style="text-align: center;"><b>JUDGMENT</b></p> <table style="width:100%; border: none;"> <tr> <td style="width:33%;"><input type="checkbox"/> By Clerk</td> <td style="width:33%;"><input checked="" type="checkbox"/> By Default</td> <td style="width:33%;"><input type="checkbox"/> After Court Trial</td> </tr> <tr> <td><input checked="" type="checkbox"/> By Court</td> <td><input type="checkbox"/> On Stipulation</td> <td><input type="checkbox"/> Defendant Did Not Appear at Trial</td> </tr> </table>	<input type="checkbox"/> By Clerk	<input checked="" type="checkbox"/> By Default	<input type="checkbox"/> After Court Trial	<input checked="" type="checkbox"/> By Court	<input type="checkbox"/> On Stipulation	<input type="checkbox"/> Defendant Did Not Appear at Trial	CASE NUMBER: 17 CE CG 02343
<input type="checkbox"/> By Clerk	<input checked="" type="checkbox"/> By Default	<input type="checkbox"/> After Court Trial					
<input checked="" type="checkbox"/> By Court	<input type="checkbox"/> On Stipulation	<input type="checkbox"/> Defendant Did Not Appear at Trial					

**JUDGMENT**

1.  **BY DEFAULT**
  - a. Defendant was properly served with a copy of the summons and complaint.
  - b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
  - c. Defendant's default was entered by the clerk upon plaintiff's application.
  - d.  Clerk's Judgment (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
  - e.  Court Judgment (Code Civ. Proc., § 585(b)). The court considered
    - (1)  plaintiff's testimony and other evidence.
    - (2)  Plaintiff's written declaration (Code Civ. Proc., § 585(d)).
  
2.  **ON STIPULATION**
  - a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
  - b.  the signed written stipulation was filed in the case.
  - c.  the stipulation was stated in open court  the stipulation was stated on the record.
  
3.  **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
  - a. The case was tried on (date and time):  
before (name of judicial officer):
  - b. Appearances by:
 

<input type="checkbox"/> Plaintiff (name each): (1) (2) <input type="checkbox"/> Continued on Attachment 3b. <input type="checkbox"/> Defendant (name each): (1) (2) <input type="checkbox"/> Continued on Attachment 3b.	<input type="checkbox"/> Plaintiff's attorney (name each): (1) (2)  <input type="checkbox"/> Defendant's attorney (name each): (1) (2)
--	--
  - c.  Defendant did not appear at trial. Defendant was properly served with notice of trial.
  - d.  A statement of decision (Code Civ. Proc., § 632)  was not  was requested.

BREG DCCA

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## COCO PALMS HUI LLC

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Foreign Limited Liability Company (llc)

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[Receive Annual Report Reminders \(/documents/notifyLogin?fileNumber=149586C6\)](/documents/notifyLogin?fileNumber=149586C6)

**MASTER NAME**

COCO PALMS HUI LLC

**BUSINESS TYPE**

Foreign Limited Liability Company (LLC)

**FILE NUMBER**

149586 C6

**STATUS**

Active

**ORGANIZED IN**

Delaware UNITED STATES

**REGISTRATION DATE**

Apr 21, 2016

**MAILING ADDRESS**

2600 N ASHTON BLVD.

STE 200B

LEHI, Utah 84043

UNITED STATES

**TERM**

AT-WILL

**MANAGED BY**

MANAGER(S)

**AGENT NAME**

FILEJET INC.

**AGENT ADDRESS**

1441 KAPIOLANI BLVD. STE. 1115

HONOLULU, Hawaii 96814

UNITED STATES

# Annual Filings

Filing Year	Date Received	Status
2024	Apr 25, 2024	Processed
2023	Jun 2, 2023	Processed
2022	Apr 4, 2022	Processed
2021	Jan 10, 2022	Processed
2020	Jul 20, 2020	Processed
2019	Nov 5, 2019	Processed
2018	Jun 15, 2018	Processed
2017	Apr 24, 2017	Processed

# Member/MGR

Name	Office [More info]	Date
REEF PRIVATE EQUITY LLC	MGR	Apr 1, 2023

# Trade Names

Name	Type	Category	Registration Date	Expiration Date
<a href="#">COCO PALMS (trade.html?fileNumber=149586C6&amp;certificate=4176552)</a>	Trade Name	NO CATEGORY SELECTED	Nov 1, 2016	Oct 31, 2021

Name	Type	Category	Registration Date	Expiration Date
<a href="https://www.cca.hawaii.gov/trade.html?fileNumber=149586C6&amp;certificate=4176553">COCO PALMS RESORT (trade.html?fileNumber=149586C6&amp;certificate=4176553)</a>	Trade Name	NO CATEGORY SELECTED	Nov 1, 2016	Oct 31, 2021

## Other Filings

Date	Description	Remarks
Dec 14, 2023	Change of Registered Agent	Change of Registered Agent
May 23, 2023	Change of Registered Agent	Change of Registered Agent
Oct 26, 2020	Address Change	Address Change
Oct 26, 2020	Officer / Director Change	Officer / Director Change
Apr 21, 2016	Application For Certificate of Authority For FLLC	Application For Certificate of Authority For FLLC

**Note:** Transactions may be available for purchase. Please see the **Buy Available Docs** tab for additional information.

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335 Merchant St Rm 201  
Honolulu, Hawaii 96813

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## REEF PRIVATE EQUITY LLC

[Update this Business](#)

**Entity Number:** 8909674-0160

**Company Type:** LLC - Domestic

**Address:** 2600 N ASHTON BLVD. STE 200 LEHI, UT 84043

**State of Origin:**

**Registered Agent:** REGISTERED AGENT SERVICES LLC

**Registered Agent Address:**

2600 N ASHTON BLVD., STE 200B

Lehi, UT 84043

[View Management Team](#)

**Status:** [Active](#)

[Purchase Certificate of Existence](#)

**Status:** Active ● as of 01/14/2014

**Renew By:** 01/31/2025

**Status Description:** Current

The "Current" status represents that a renewal has been filed, within the most recent renewal period, with the Division of Corporations and Commercial Code.

**Employment Verification:** Not Registered with Verify Utah

[History](#)

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**Registration Date:** 01/14/2014

**Last Renewed:** 01/18/2024

[Additional Information](#)

**NAICS Code:** 5313 **NAICS Title:** 5313-Activities Related to Real Estate

[Doing Business As](#)

STILLWATER EQUITY PARTNERS

REEF PRIVATE EQUITY

[Former Business Names](#)

CRE MANAGERS LLC

STILLWATER EQUITY PARTNERS LLC

[<< Back to Search Results](#)

---

Business Name:

**ENTITY INFORMATION**

**ENTITY INFORMATION**

**Entity Name:**

RP21 COCO PALMS LLC

**Entity Number:**

12517391-0160

**Entity Type:**

Domestic Limited Liability Company

**Formation Date:**

10/13/2021

**Entity Subtype:**

Limited Liability Company

**Formation Effective Date:**

10/13/2021

**Profession:**

N/A

**Assumed Name:**

N/A

**Entity Status:**

Active

**Entity Status Details:**

Current

**FEI/EIN Number:**

Not Provided

**Renew By Date:**

10/31/2024

**FEI/EIN Status:**

**Last Renewed Date:**

10/27/2023

**REGISTERED AGENT INFORMATION**

**Name:**

REGISTERED AGENT SERVICES LLC

**Registered Agent Type:**

Individual

**Street Address:**

2600 N ASHTON BLVD., STE 200B, Lehi, UT, 84043, USA

**Last Updated:**

9/13/2024 9:22:44 PM

**PRINCIPAL INFORMATION**

Title	Name	Address	Last Updated
Manager	REEF-PCG LLC	2600 N ASHTON BLVD, LEHI, UT, 84043, USA	09/19/2024

Page 1 of 1, records 1 to 1 of 1

**ADDRESS INFORMATION**

**Physical Address:**

2600 N ASHTON BLVD, SUITE 200B, LEHI, UT, 84043, USA

**Updated Date:**

9/13/2024 8:42:59 PM

**Mailing Address:**

**Updated Date:**

**SERVICE OF PROCESS INFORMATION**

**Service of Process Name:**

RP21 COCO PALMS LLC

**Last Updated:**

9/13/2024 8:42:59 PM:

**Service of Process Address:**

2600 N ASHTON BLVD, SUITE 200B, LEHI, UT, 84043, USA

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[Name History](#)

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**ENTITY INFORMATION**

**ENTITY INFORMATION**

**Entity Name:**

REEF-PCG LLC

**Entity Number:**

12888076-0151

**Entity Type:**

Assumed Name (DBA)

**Formation Date:**

06/07/2022

**Entity Subtype:**

Assumed Name - 151

**Formation Effective Date:**

06/07/2022

**Profession:**

N/A

**Assumed Name:**

N/A

**Entity Status:**

Inactive

**Entity Status Details:**

Voluntarily Dissolved

**FEI/EIN Number:**

Not Provided

**Renew By Date:**

06/30/2025

**FEI/EIN Status:**

**Last Renewed Date:**

N/A

**REGISTERED AGENT INFORMATION**

**Name:**

REGISTERED AGENT SERVICES LLC

**Registered Agent Type:**

Individual

**Street Address:**

2600 N ASHTON BLVD., STE 200B, Lehi, UT, 84043, USA

**Last Updated:**

9/13/2024 9:22:44 PM

**PRINCIPAL INFORMATION**

Title	Name	Address	Last Updated
Applicant	REEF PRIVATE CREDIT LLC	2600 N ASHTON BLVD., LEHI, UT, 84043, USA	09/13/2024

Page 1 of 1, records 1 to 1 of 1

**ADDRESS INFORMATION**

**Physical Address:**

160 West Canyon Crest Rd, Alpine, UT, 84004, USA

**Updated Date:**

9/13/2024 8:42:59 PM

**Mailing Address:**

**Updated Date:**

**SERVICE OF PROCESS INFORMATION**

**Service of Process Name:**

REEF-PCG LLC

**Last Updated:**

9/13/2024 8:42:59 PM:

**Service of Process Address:**

160 West Canyon Crest Rd, Alpine, UT, 84004, USA

[Filing History](#)

[Name History](#)

[Mergers/Conversions](#)

[Return to Search](#)

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**Shanlee Jimenez**

---

**From:** Michelle Kamai <michellekamai808@gmail.com>  
**Sent:** Sunday, October 6, 2024 5:04 PM  
**To:** Planning Department  
**Subject:** October 8th planning commission meeting

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

file:///var/mobile/Library/SMS/Attachments/9b/11/606AF552-1227-4D03-B7DA-9494BC5D4847/2024%20Oct%20Kauai%20Planning%20Commission'Alae'ula%20.pdf