

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

November 14, 2014

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

GL S-5844

Hawai'i

Status Report to the Board of Land and Natural Resources on Performance Bond, Improvement Bond, and Outstanding County of Hawaii Building, Electrical and Plumbing Code Violations; Approval of Plans and Specifications Submitted by Lessee for Review under General Lease No. S-5844, WHR LLC, Lessee; Waiakea, South Hilo, Hawaii, Tax Map Keys: 3rd/ 2-1-01:12 and 2-1-05:13, 16, 17, 27, 32, 46.

PURPOSE:

Report to the Board of Land and Natural Resources on Performance Bond, Improvement Bond, and Outstanding County of Hawaii Building, Electrical and Plumbing Code Violations; Approval of Plans and Specifications Submitted by Lessee for Review under General Lease No. S-5844, WHR LLC, Lessee.

LEGAL REFERENCE:

Section 171-6, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-01:12 and 2-1-05:13, 16, 17, 27, 32, 46, as shown on the attached map labeled Exhibit 1.

AREA:

68.926 acres (net area after exclusions), more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Hotel and golf course purposes.

TERM OF LEASE:

65 years, commencing on February 1, 2006 and expiring on January 31, 2071.

ANNUAL RENTAL:

\$500,000 minimum base rent, or 2% of gross revenues, whichever is greater, due in semi-annual payments.

BACKGROUND:

At the Board of Land and Natural Resources' meeting of June 13, 2014, under agenda item D-4, Land Division staff reported to the Board of Land and Natural Resources on two defaults under General Lease No. S-5844 to lessee WHR LLC (WHR) relating to performance bond and improvement bond. Staff additionally advised the Board of the outstanding County of Hawaii building, electrical and plumbing code violations relating to the premises, and explained that complete building plans for renovation of the hotel had not been submitted for the Board's review. Due to the defaults, staff recommended that WHR be given 30 days from the date of the Board meeting to post a construction bond and performance bond, or the lease would be terminated.

After the staff report, testimony from lessee's representative, Ed Bushor, and lessee's counsel, Michael Lam, and an executive session on the matter, the Board deferred the item for 90 days to allow lessee additional time to cure all outstanding defaults under the lease. A footnote regarding the deferral included on page 7 of the official Land Division copy of the submittal and Land Board decision states as follows:

[Former] Board member Goode who made the motion to defer told Ed Bushor "to cure all outstanding defaults" meant, in addition to the bonds or other security acceptable to the Department, the outstanding County of Hawaii violations, orders and fines. Ed Bushor had stated during testimony he was verbally told by someone from the County that some of the violations were "cured" from the County's perspective, and the County was willing to allow certain other violations to be cured during Ed's subsequent planned construction of improvements. Board member Goode indicated that the Board wanted to see written correspondence from the County indicating the specific or particular violations the County deemed cured, and those specific or particular violations the County is willing to wait to be cured during Ed Bushor's subsequent planned construction of

improvements.

A copy of the deferred submittal, less its lengthy exhibits, is attached as Exhibit 2.

REMARKS:

Performance and Improvement Bonds

Since the June 13, 2014 Board meeting, lessee has been working with staff to address the defaults and other matters raised at the meeting. Specifically, lessee and staff negotiated the language of an acceptable performance bond, and lessee has posted the performance bond in the amount of \$1 million with Land Division. A copy of the final bond is attached as Exhibit 3. Staff therefore considers the default regarding the performance bond cured.

Lessee and staff have also come to an agreement on the improvement bond for the renovations. As background, the lease was initially drafted to address the original minimum required improvements of \$5 million that was included in the lease and original auction package. The prior lessee, Hawaii Outdoor Tours, Inc. (HOTI), posted bonds when it undertook renovations in 2006. However, the bonds were terminated during HOTI's bankruptcy. WHR has since agreed to bond the entire value of its renovation project, which is expected to substantially exceed the original auction package requirement of at least \$5 million. WHR is still in the process of calculating the cost of construction for the required bond, but is endeavoring to have at least the form of the bond in place before the November 14, 2014 Board meeting. The calculation of the total construction costs may not be available until after the November 14 Board meeting, but WHR has committed to providing such a bond to cover the entire cost of construction for its proposed Naniloa renovation project. WHR's proposed form of the improvement bond is attached as Exhibit 4.

In lieu of providing a replacement \$1.115 million improvement bond for the Kilauea Tower,¹ Ed Bushor has offered a Personal Payment, Performance and Completion Guaranty in the form of Exhibit 5 attached. In addition, in the event of a later mechanic's or materialman's lien action being filed for work performed during the prior lessee, Hawaii Outdoor Tours, Inc.'s tenure, WHR has committed to immediately bond any such lien action that is filed, and hold the Department and the State of Hawaii harmless.

Staff considers the totality of the bonds, guaranty and agreements/understandings noted above as satisfactory overall in this particular instance, and is recommending the Land Board concur with the staff's recommendation of accepting the same to resolve the outstanding construction or improvement bond issues.

¹ Over the State's objection, the Bankruptcy Court also allowed the release of the \$1.115 million construction bond (to cover labor, materialmen and suppliers, and completion of the planned improvements) posted for the Kilauea Tower. Prior to the bankruptcy proceeding HOTI had gutted the Kilauea Tower but did not complete construction. Thus, no notice of completion has been filed to date for the Kilauea Tower.

Outstanding County of Hawaii Violations

WHR has continued to work with the County of Hawaii to resolve building and electrical code violations. According to WHR, it has requested a letter from the County specifically articulating which violations the County deems cured, and those the County is willing to allow WHR to cure during construction. However, the County cannot commit to a time frame for producing such a letter due to increased workload resulting from recent and ongoing natural disasters. In lieu of a letter from the County, attached as Exhibit 6 is WHR's summary of comments on the status of the violations as set forth in the County's letter dated June 25, 2014. WHR hopes to have additional information by the time of the Board meeting on November 14. In short, the County appears to be allowing WHR to cure most violations during the construction period. In any event, if the County were to pursue or enforce any of the violations, orders or fines against the Department, the Board would be able to, among other remedies available,² call the performance bond attached as Exhibit 3 to protect the State's interests.

Plans Submission to BLNR for Review and Approval

Since the June 13, 2014 Board meeting, WHR has continued to work on the plans and specifications for the hotel renovations, and has obtained or is working on obtaining the necessary County building, electrical and plumbing permits for the following phases of the project: 1) demolition of kitchen exhaust ventilation duct in Kilauea Tower, 2) demolition and construction of Mauna Loa Tower guest rooms, 3) fire alarm and sprinkler system, 4) lobby demolition and construction, and 5) roofing permit. Staff has continued to forward the various iterations of the plans and specifications to its engineering consultants, Brown and Caldwell, for review. Brown and Caldwell's summary of the plans and specifications submitted thus far is attached as Exhibit 7. As of the date of drafting this submittal, Brown and Caldwell was undertaking what is hoped to be a final review and evaluation of the plans and specifications submitted, and is hoping to have a report and recommendation for the Board at the November 14, 2014 meeting.

RECOMMENDATION: That the Board:

1. Acknowledge that the prior lease defaults for failure to post performance bond and improvement bond have been cured at this stage;
2. Approve the Plans and Specifications listed in Exhibit 7 attached hereto relating to the lease premises.³

² Other remedies that would be available upon such an event would be to call the lease into default, or call upon the indemnity obligations owed by the lessee to the Department and the State of Hawaii as the landlord.

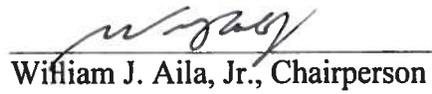
³ Staff is recommending the approval of the plans and specifications in this submittal subject to the later receipt of a satisfactory recommendation on the plans and specifications from the Department's consultants, Brown and Caldwell which is expected to be available shortly before the November 14, 2014 Board meeting.

Respectfully Submitted,



Kevin E. Moore
Acting State Lands Administrator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



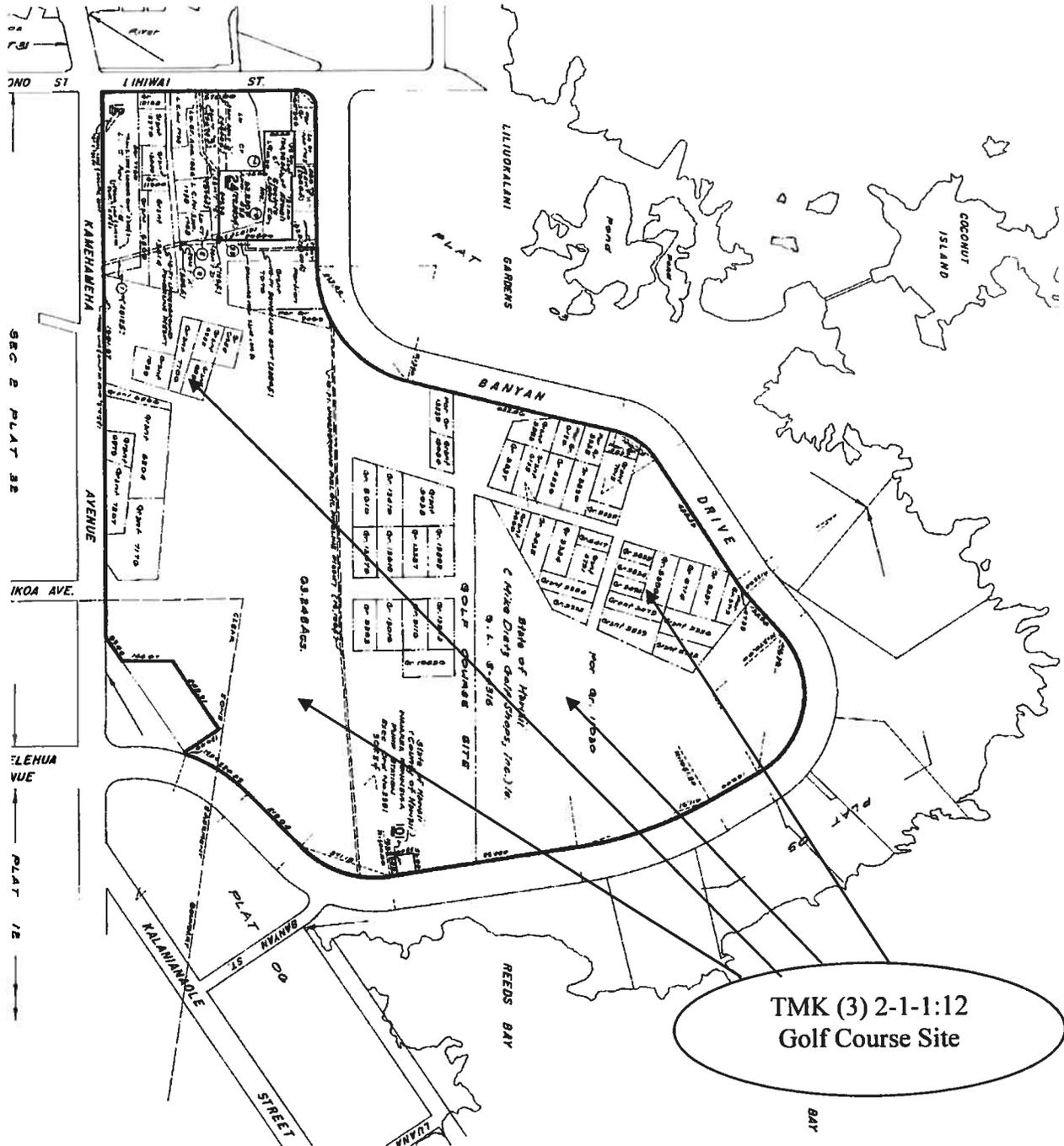
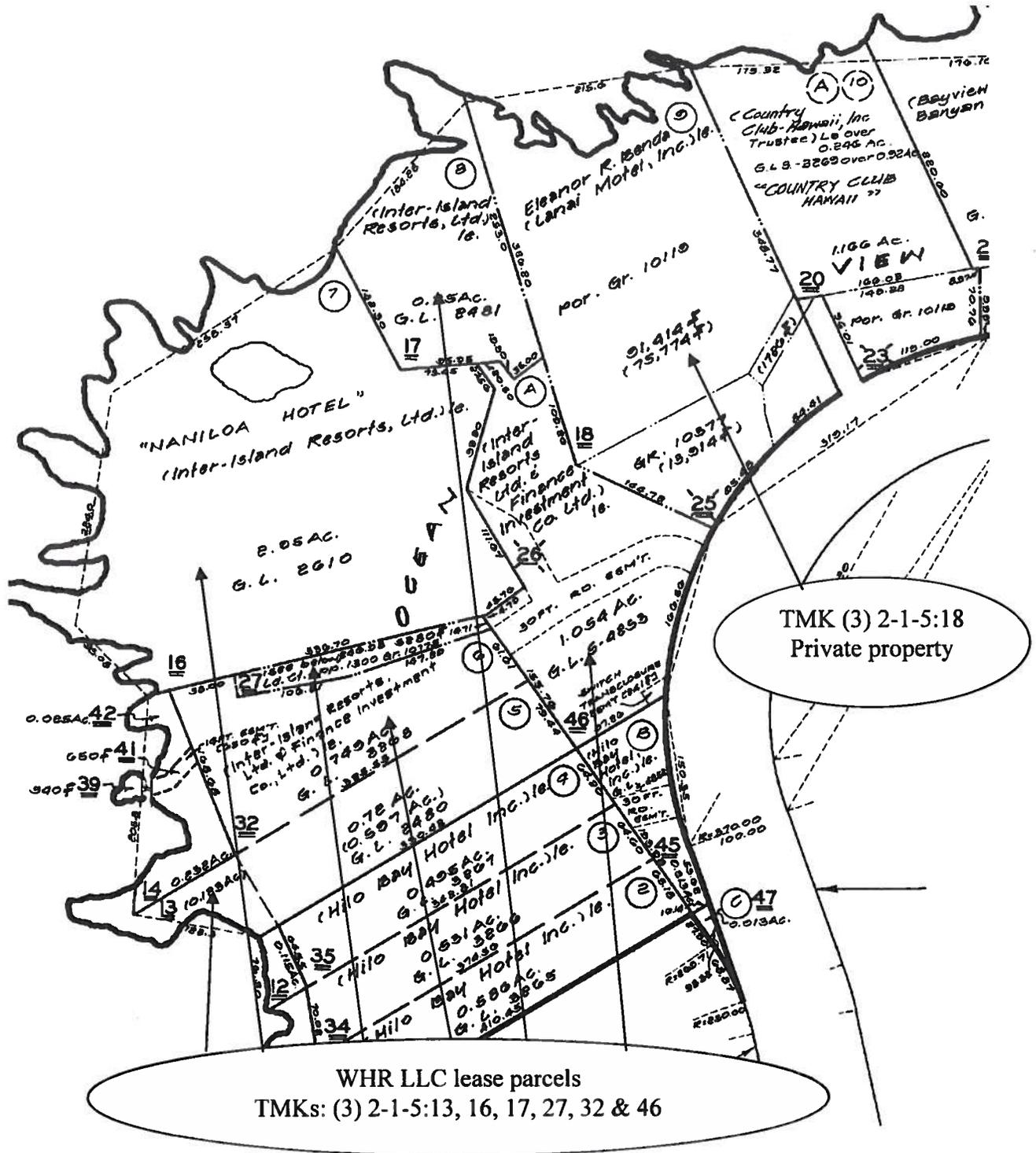


EXHIBIT 1



DEFERRED

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 13, 2014

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

GL S-5844

Hawai'i

Resubmittal:

(1) Report to the Board on Uncured Defaults for Performance Bond and Improvement Bond, and on Plans Submitted by Lessee for Review under General Lease No. S-5844, WHR LLC, Lessee; and (2) Authorization of Forfeiture of Lease in Event Defaults are not Cured, Waiakea, South Hilo, Hawaii, Tax Map Keys: 3rd/ 2-1-01:12 and 2-1-05:13, 16, 17, 27, 32, 46.

PURPOSE:

Report to the Board on uncured defaults for performance bond and improvement bond and on plans submitted by Lessee under General Lease No. S-5844, WHR LLC, Lessee, and authorization of forfeiture of lease in event defaults are not cured within 30 days of board meeting.

LEGAL REFERENCE:

Section 171-39, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-01:12 and 2-1-05:13, 16, 17, 27, 32, 46, as shown on the attached map labeled Exhibit A.

AREA:

68.926 acres (net area after exclusions), more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Hotel and golf course purposes.

Deferred
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
June 13, 2014 *wa*

D-4

EXHIBIT 2

TERM OF LEASE:

65 years, commencing on February 1, 2006 and expiring on January 31, 2071.

ANNUAL RENTAL:

\$500,000 minimum base rent, or 2% of gross revenues, whichever is greater, due in semi-annual payments.

BACKGROUND:

Pursuant to the authority granted the Chairperson by the Board of Land and Natural Resources at its meeting of January 11, 1980 and the breach provision contained in General Lease S-5844, WHR LLC, Lessee, was served a Notice of Default by certified mail dated January 10, 2014 for:

- Failure to keep lease rental payments current
- Failure to post required performance bond (\$1,000,000: Equal to twice the annual rent)**
- Failure to post required fire insurance policy
- Failure to post required liability insurance policy
- Failure to post required Improvement Bond Kilauea Tower: \$1,115,356**

Said notice, accepted by the Lessee on January 11, 2014, offered the Lessee a sixty-day cure period to correct the default. This cure period expired on March 11, 2014. As of April 29, 2014, this breach has not been cured.

As of April 29, 2014, the current status of all lease compliance items is as follows:

RENT: The Lessee is current with all rent obligations.

INSURANCE: The Lessee has posted the required liability and fire insurance policies.

PERFORMANCE BOND: The Lessee has not posted the required performance bond.

Section 18 of General Lease No. S-5844 requires the Lessee, at its own cost and expense, procure and deposit with the Lessor a performance bond to be kept in full force and effect during the term of this lease in an amount equal to two times the annual lease rent. This bond shall provide that in the case of a breach or default of any of the lease terms, covenants, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages.

OTHER: The Lessee has not posted the required improvement bond for the

construction of the Kilauea Tower.

Section 41 of General Lease No. S-5844 requires Lessee to procure and deposit with the Lessor a surety bond upon written approval of the improvement plans by the Chairperson. The original Lessee negotiated separate bonds agreements for the individual tower structures on the lease property. Renovations to the Kilauea Tower have not been completed.

REMARKS:

General Lease No. S-5844 was issued at public auction on September 30, 2005 to Hawaii Outdoor Tours, Inc. (HOTI) for a term of 65 years commencing on February 1, 2006. The lease character of use is for hotel and golf course purposes.

Bankruptcy

After defaulting on its purchase money mortgage loan,¹ HOTI filed for bankruptcy protection in November 2012. Initially, HOTI managed the bankruptcy estate as a debtor in possession. But later a bankruptcy trustee was appointed to manage the assets, including the lease. In September 2013, the bankruptcy trustee filed a motion with the court for an order authorizing the assumption of the lease. The State opposed this motion due to the many outstanding defaults under the lease, which were itemized in the Declaration of Russell Y. Tsuji dated October 7, 2013, a copy of which is attached hereto as Exhibit B. The declaration listed the defaults as of that date at paragraph 9. The defaults included:

- a. Delinquent rent in the amount of approximately \$263,000;
- b. Failure to provide evidence of renewal of required construction bonds;
- c. Failure to complete renovations of all facilities to applicable building codes and to a standard expected by the State or required by the lease;
- d. Failure to release all recorded liens by full payment;
- e. Delinquent utility bills of approximately \$245,000;
- f. Failure to provide evidence that all notices of violation issued by the County of Hawaii have been cured to the satisfaction of the County;
- g. Failure to provide evidence of payment in full of all amounts owed to any governmental entity or public utility for such matters as taxes, assessments, electrical, sewer and water charges;
- h. Failure to replenish the performance bond to the full \$1,000,000 required under the lease (a bond of \$500,000 was posted at the time); and
- i. Failure to pay the State's attorneys' fees and costs with regard to litigation.

Despite the State's opposition to the bankruptcy trustee's motion to assume the lease, in October 2013 the bankruptcy court allowed the assumption without requiring the trustee to cure the defaults. Nevertheless, the declaration and other documents filed with the court served as notice to all concerned parties of the outstanding defaults under the lease.

¹ \$10 million loan issued by First Citizens Bank & Trust Co.

Assignment of Lease to WHR LLC

The lease was then sold through the bankruptcy court by sealed bid to WHR LLC (WHR) and closing occurred on December 17, 2013. The bankruptcy court confirmed the sale (over the State's objection) based solely on high bid, without requiring all defaults to be cured or at least requiring reasonable assurances by the proposed buyer it would cure with a reasonable period of time the outstanding defaults under the lease.

In a presentation to the Land Board at its meeting of December 13, 2013, WHR's attorney, on behalf of WHR's principal, Ed Bushor, submitted a letter setting forth a preliminary construction schedule of improvements to the property. The schedule indicates that room renovations for towers 1 and 2 of the premises will be completed by November 30, 2014. See Exhibit C.

Staff met with Mr. Bushor, on January 16 and 31, 2014 and discussed with him his plans for the hotel and the importance of promptly curing the defaults under the lease. Staff informed WHR of the terms and conditions of the lease including the performance bond requirement and the replacement of the improvement bond for the ongoing construction of the Kilauea Tower.

On February 5, 2014, in response to Mr. Bushor's request, staff provided him with copies of the improvement bonds for the hotel's Kilauea and Mauna Kea Towers that were in place when HOTI was the lessee, so that Mr. Bushor could have samples of acceptable replacement improvement bonds under the lease. See Exhibit D. On February 26 and 27, 2014, Land Division Administrator Russell Tsuji sent Mr. Bushor a number of emails reiterating that the performance and improvement bonds needed to be posted promptly. See Exhibit E.

Mr. Bushor appeared before the Board at its meeting of February 28, 2014 and provided a timeline and some renderings of the proposed hotel renovations. The timeline included scheduled dates for the implementation of the performance bond and improvement bond requirements.²

Mr. Tsuji reminded Mr. Bushor of the outstanding performance and improvement bond defaults in emails dated March 13, April 1, April 4, April 9, and April 29, 2014. See Exhibit F and H.

Plans Submission to BLNR for Review and Approval

At its meeting of January 10, 2014, Item D-2, the Board authorized the procurement of an engineering consultant to assist in review of WHR's plans for the renovations of the hotel. The Engineering Division thereafter selected the engineering firm Brown and Caldwell as the consultant on the project. Between March 28 and April 9, 2014, WHR submitted to Land Division plans for various parts of the hotel renovation. Upon review, Brown and Caldwell found the plans to have varying percentages of drawings submitted, as follows:³

² The timeline indicated a delivery date of 3/21/2014 for the performance bond and the issuance of a \$5 million construction bond by 5/15/2014.

³ Mr. Bushor stated that some of the plans were submitted as 60% plans.

<u>Drawing Title</u>	<u>% of Drawings Submitted</u>
Owner Alterations Mauna Loa Tower	20%
Owner Alterations Lobby	64%
Owner Alterations Crown Room Lounge	9%
Owner Alterations Kilauea Tower	8%
Owner Alterations Mauna Kea Tower	8%
Partial Guest Room Demolition Mauna Loa Tower	100%
Ventilation Ductwork Demolition Kilauea Tower	100%
Bar Progress Set	Unknown ⁴
Hilo Naniloa Lighting Plans	Unknown
Banquet Plan	Unknown
Lobby Plan	Unknown
Mauna Loa Furniture Plan	Unknown

Brown and Caldwell advised that:

Due to the incompleteness of the drawings to date, such as the missing plumbing, mechanical, fire sprinkler, and electrical plans, we are unable to effectively conduct our review as requested to determine if the Lessee is complying with DLNR's lease terms with the proposed alterations to the Naniloa Resort. We respectfully request that the Lessee be asked when a complete set of drawings that includes all design disciplines for the various proposed alterations to the Naniloa Resort will be submitted so that we can conduct our review of all of the proposed drawings, as well as the accompanying specifications for the alterations that would normally be part of the construction documents for prospective Contractors constructing such alterations.

See Exhibit G attached.

As a result, staff will not be able to bring the construction plans to the Board for approval until they are in a format acceptable to the engineers. On April 9, 2014, Land Division inquired when the complete plans and cost estimates would be available. Mr. Bushor responded that work is proceeding in four overlapping phases to meet the targeted opening of the renovated hotel on January 1, 2015. Phase 1 covers the Mauna Loa Tower; phase 2 is the lobby and public areas; phase 3 is the restaurant and pool area; and phase 4 is the former Crown Room. Mr. Bushor explained that each phase covers a distinct area and will require a separate permit. He expected complete construction plans for phases 1 and 2 and submission of building, electrical and plumbing permits by April 21, 2014, but they were not provided to Land Division. Mr. Bushor added that construction plans for phases 3 and 4 will be submitted for permits in July 2014 after leases are signed and operators are selected. Mr. Tsuji reminded Mr. Bushor that all plans need to be approved by the Board before commencement of construction. See Exhibit H attached.

⁴ For those items marked "Unknown," Brown and Caldwell indicated that the drawings did not include an index sheet with the number of total drawings to be submitted. Accordingly, no percentage could be calculated.

Status of Bonds and Uncured Notices of Default

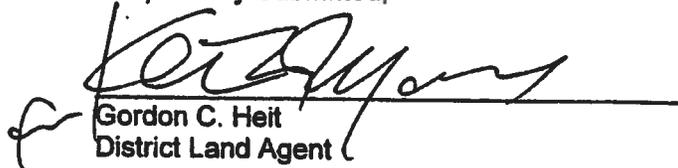
At present, the Department has no performance bond, though Land Division sent a proposed form of surety bond to Mr. Bushor on April 9, 2014. A copy of the proposed bond form is attached as Exhibit I. The language of this bond would give WHR some assurance that the bond would not be called for County of Hawaii violations, as long as the County did not pursue enforcement of the violations or impose fines. Additionally, WHR has not posted a construction bond for the Kilauea Tower. Attached as Exhibit J is a sample of the construction bond previously issued for the Kilauea Tower when HOTI had the lease. Everyone, including Mr. Bushor, understood the construction bond in at least the equivalent amounts as posted by HOTI needed to be replaced at closing, and later increased if further additional work is contemplated above the old plans previously approved by DLNR submitted by HOTI for the Kilauea Tower.

The continuing defaults on the performance and construction bonds are a serious concern. Staff therefore recommends below that WHR be given 30 days from the date of the Board meeting to post a construction bond (with substantially similar language and identical amount as the prior Kilauea Tower construction bond – see Exhibit J), and the performance bond in the form that staff recommended (see Exhibit I). If the bonds are not posted within 30 days of the Board meeting, the lease will automatically terminate.

RECOMMENDATION: That the Board:

1. In the event WHR LLC fails to post an acceptable performance bond in the amount of \$1,000,000, or an acceptable construction bond for the Kilauea Tower in the amount of \$1,115,356 within 30 days of this Board action, authorize the cancellation of General Lease No. S-5844 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-5844 to be applied to any past due amounts;
3. In the event of cancellation, terminate the lease and all rights of Lessee and all obligations of the Lessor effective as of the date of cancellation, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Lessor reserves all other rights and claims allowed by law; and
4. In the event of cancellation, authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under General Lease No. S-5844 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,


Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

Land Board Meeting: June 13, 2014; D-4: Deferred.

The Board deferred this item for 90 days to allow lessee additional time to cure all outstanding defaults under the lease.¹

¹Board member Goode who made the motion to defer told Ed Bushor "to cure all outstanding defaults" meant, in addition to the bonds or other security acceptable to the Department, the outstanding County of Hawaii violations, orders and fines. Ed Bushor had stated during testimony he was verbally told by someone from the County that some of the violations were "cured" from the County's perspective, and the County was willing to allow certain other violations to be cured during Ed's subsequent planned construction of improvements. Board member Goode indicated that the Board wanted to see written correspondence from the County indicating the specific or particular violations the County deemed cured, and those specific or particular violations the County is willing to wait to be cured during Ed Bushor's subsequent planned construction of improvements.

BOND NO.: K08942432
PREMIUM: \$15,000.00

KNOW ALL MEN BY THESE PRESENTS THAT WE, WHR, LLC, a Hawaii limited liability company, as Principal, and WESTCHESTER FIRE INSURANCE COMPANY, a corporation duly organized and doing business under and by the virtue of the laws of the State of Pennsylvania and duly licensed for the purpose of making, guaranteeing or becoming sole surety upon bonds or undertakings required or authorized by the laws of the said State, as Surety, are held and firmly bound unto STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES (hereinafter called the "Obligee") in the sum of ONE MILLION and 00/100 Dollars (\$1,000,000.00) for the payment whereof well and truly to be made we and each of us bind ourselves our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT, WHEREAS, the above bounded Principal is the Lessee under that certain Lease Agreement, GENERAL LEASE NO. S-5844 DATED JANUARY 20, 2006 (referred to herein as "Lease", a copy of which is or may be attached hereto, and is hereby referred to and made a part thereof), with the said Obligee subject to the following expressed conditions:

1. This bond shall be in effect from 09/08/2014 to 09/08/2015, but may be continued by certificate at the option of the Surety. ~~Failure of the Surety to continue this bond shall not be considered a default hereof.~~ Surety shall provide Obligee and Principal with a written notice of its intent not to continue this bond at least sixty (60) days prior to its anniversary date. In the event of such notice, Principal agrees to replace this bond on or before the anniversary date.

Surety shall be held firmly bound unto Obligee in the amount of ONE MILLION and 00/100 Dollars (\$1,000,000.00) for the full and faithful performance of all terms, covenants and conditions contained in the Lease.

Notwithstanding anything to the contrary contained herein, any default or obligation covered by the terms of the Improvement Bond required by paragraph 41 of the Lease shall first be satisfied with amounts obtained from the Improvement Bond(s) procured pursuant to that paragraph. Any payment obligation in excess of the penal sum of such Improvement Bond(s) will then be subject to payment under this bond. Upon release of all such Improvement Bond(s) by the Obligee, this provision for excess suretyship shall also be released, and Surety will no longer be bound to that obligation.

2. No claim shall be had or maintained against the Surety on this instrument unless the Principal fails to faithfully fulfill its Lease obligations, at which time such claim may be brought or instituted and process served upon the Surety prior to expiration date of the bond; furthermore, no suit shall be maintained against the Surety unless it is brought within thirty (30) days after the expiration date of the bond.

3. Obligations of Principal:

- a. Full and faithful observance and performance by Principal of all terms, conditions and covenants of the Lease;
- b. In the event of a breach or default by Principal of any of the Lease terms, covenants and conditions, wherein the principal fails to make any payments due which would constitute the basis of a claim hereunder, the Obligees shall provide the Surety, within 30 days of such failure, a written statement of the particular facts stating the basis of the claim under the bond, and Surety shall pay the amount due and owing to the Obligees as liquidated and ascertained damages and not as a penalty. Notwithstanding the foregoing, Obligees agree to refrain from calling this bond as to any Notices of Violations (NOVs), orders or fines that were issued by the County of Hawaii (County) prior to the date of this bond for building, electrical, plumbing or other violations at the leased premises as set forth on Schedule A attached hereto, as long as the County does not further prosecute, enforce or attempt to collect on such scheduled NOVs, orders or fines; provided, however, that in the event the County further prosecutes, enforces or attempts to collect at any time on the scheduled NOVs, orders or fines, Obligees may call upon the bond and seek payment for damages. The Surety shall not be liable for greater sum than the specified penal sum of this bond, and the liability hereunder will be reduced by and to the extent of any payment or payments made hereunder by the Surety.
- c. In the event of any breach or default by Principal of any of the Lease terms, covenants, conditions and agreements not covered by subparagraph 3.b above, Obligees shall deliver a notice of default and provide a right to cure of thirty (30) days for monetary defaults or sixty (60) days for non-monetary defaults, and in the event the cure is not complete by the time allowed, or by such other reasonable date to cure such default as the parties may agree in writing, then the full amount of damages, up to the penal sum of the bond shall be paid to the Obligees as liquidated and ascertained damages and not as penalty.
- d. Any notice, demand, certification, written statement, or request for payment, given or made under this bond shall be made in writing and shall be given by personal delivery or expedited delivery service, postage pre-paid, addressed to the parties at the addresses specified below or to such other address as shall have been specified by such parties to each of the parties to the transactions contemplated hereby.

NOW, THEREFORE, if the above bounded Principal shall comply with the provisions of said Lease, then this obligation to be null and void, otherwise to remain in full force and effect. No right of action shall accrue under this bond to or for the use of any person other than the said Obligees.

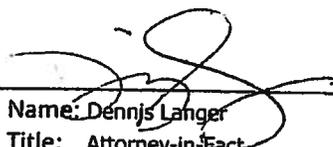
SIGNED AND SEALED THIS 16th day of September 20 14

WHR, LLC

By: 

Name:
Title

WESTCHESTER FIRE INSURANCE COMPANY

By: 

Name: Dennis Langer
Title: Attorney-in-Fact

“SCHEDULE A”

Below is the official list of Notices of Violations (“NOV”) that WHR, LLC, as principal, intends to cure as part of their obligation under bond # K08942432:

1. Building inspection required (work completed and in use without required inspection):
 - a. B2007-1611H and B2009-0969H Mauna Kea guest room renovations
 - b. B2008-2445H, Mauna Kea fire sprinkler (ground - 8th floor)
 - i. Permit Application: A2014-BH01012

2. Building inspection required (work in progress requires inspection):
 - a. B2007-1612H -Kilauea guest room renovations
 - b. B2007-1613H Mauna Loa guest room renovations
 - c. B2008-2444H Kilauea ground to 6th floor fire sprinkler system
 - d. B2009-1770H Mauna Loa ground to 12th floor fire sprinkler system
 - e. B-2009-1771 lobby/registration/office and former Sandalwood Lounge fire sprinkler system
 - f. B2009-1772H Crown Room fire sprinkler system.
 - i. Permit application A2014-BH00971- Mauna Loa Tower renovation of guest room levels 1 -12
 - ii. Permit application A2014-BH01011 (WHR LLC) Mauna Loa Tower fire sprinkler alteration.
 - iii. Permit application A2014-BH01013 (WHR LLC) Kilauea Tower fire sprinkler alteration.
 - iv. Permit application A2014-BH01014 (WHR LLC) Lobby and Common Area fire sprinkler alteration
 - v. Permit application A2014-BH01015 (WHR LLC) Crown Room fire sprinkler alteration.

3. Building permit required (change in occupancy use, alteration work completed and in use without required permit and inspection): Mauna Kea Tower main level former Beauty Salon conversion to Health Spa; Mauna Loa Tower former hotel guest room conversion to Barber Shop.
 - a. Permit Application : *A2013-BH01582, A2013-BH01797*

4. Building permit required (demolition work completed without required permit): former health spa demolition; former Kilohana Room bar demolition; former Ting Hao Restaurant demolition including the removal of stairway
 - a. Permit Application : *A2013-BH01579*

5. Building permit required (work in progress without required permit): Kilauea Tower alteration and change of occupancy use of guest rooms conversion to meeting rooms.
 - a. *Permit application A2013-BH01581*

6. Non-compliant: Kitchen Range Hood Exhaust Duct unprotected openings in two- hour fire-resistive shaft enclosure.
 - a. *Permit application A2014-BH00758 (WHR LLC)*

7. Electrical inspection required (work complete and in use without required inspection).
 - a. E2007 1394H Mauna Kea guest room renovation
 - b. E 2007-2308H Renovate Fire Alarm System.
8. Electrical inspection required (work in progress requires inspection):
 - a. E2007-1395H Kilauea guest room renovations
 - b. E2007 1396 Mauna Loa guest room renovations
 - c. E2007-2308H Renovate Fire Alarm System
9. Electrical permit required (alteration work completed and in use without required permit and inspection): Mauna Kea Tower main level former Beauty Salon conversion to Health Spa; Mauna Loa Tower former hotel guest room conversion to Barber Shop.
10. Electrical permit required (demolition work completed without required permit): former health spa; former Kilohana Room bar; former Ting Hao Restaurant
11. Electrical permit required (work complete and in use without required permit and inspection): Former Poly Room for service counter, non-compliant flexible power extension cord in use
12. Electrical permit required (work in progress without required permit): Kilauea Tower former guest rooms conversion to meeting rooms.
13. Non-compliant electrical work: conduit entering building below lobby area exposed to physical damage; Mauna Loa fire system junction box (ground - 13th floor) inaccessible (covered by drywall); Mauna Kea electrical boxes not installed so that the front edge of the box will not be set back of the finished surface more than 6mm (1/4 in.).
14. Plumbing inspection required (work complete and in use without required inspection):
 - a. M2007-1331 Mauna Kea guess room renovation; Plumbing inspection required (work in progress requires inspection)
 - b. M2007-1332H Kilauea guest room renovations
 - c. M2007-1333H Mauna Loa guest room renovations
15. Plumbing permit required (alteration work completed and in use without required permit and inspection): Mauna Kea Tower main level former Beauty Salon conversion to Health Spa; Mauna Loa Tower former hotel guest room conversion to Barber Shop.
16. Plumbing permit required (demolition work completed without required permit): former health spa; former Kilohana Room bar; former Ting Hao Restaurant
17. A. Plumbing permit required (work in progress without required permit): Kilauea Tower former guest rooms conversion to meeting rooms.
 - i. Permit application A2014-BH00970

B. 93 Banyan Drive. TMK 2-1-005:013. 016. 027 and 032. Noncompliance, electrical permit required (work complete and in use without required permit):—The lobby/registration/office and Kilauea Tower continues to operate on emergency generator power.

- ii. Required permit pending plan and schedule for restoration of permanent electrical service.
- iii. Restore permanent electrical service and/or remove all temporary emergency electrical work: Plan/schedule and restore permanent electrical service to the lobby/registration/office, and Kilauea Tower.
- iv. *Permit application A2014-EH00256*

C. 1713 Kamehameha Avenue. TMK 2-1-001:012 (October 10, 2013 NOV)

- b. Obtain building permit (construction, alteration without a required permit)
 - i. added decorative lattice/wire mesh enclosing lanai
 - ii. added wooden closure of 6-foot height between Pro-Shop and Restaurant
 - iii. added roof attachment to Golf Cart Storage
 - iv. added lean-to roof attachment to Maintenance Building.
- c. Substandard/unsafe buildings: general dilapidation or improper maintenance structures unsafe and constitute a hazard to safety, health and public welfare. Building permit required for any alteration, repair or demolition.
- d. Ensure compliance with all requirements of HCC Section 5-51, such as refraining from entering and/or the building or affected portion thereof except for the purpose of conducting required repair or demolition work.
- e. Obtain electrical permit(s) to remove and or correct unpermitted and non-conforming electrical work. Nonconforming and defective installations pursuant to the 200 National Electrical Code (NEC) Articles: 110.3(B); 110.26(D); 230.50(B); 300.5(A); 314.28(3)(C); 334.12(B)(4); 334.15(B); 344.30; and 511.12
- f. Disconnect defective electrical installations from their power source and tag as unsafe to operate until corrective action is made, inspected and approved.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

County of Los Angeles }

On September 16, 2014 before me, Yalonda M. Eubank, Notary Public
Date Here Insert Name and Title of the Officer

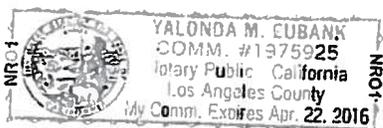
personally appeared Dennis Langer
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(x) whose name(x) is/xxx subscribed to the within instrument and acknowledged to me that he/xxx executed the same in xxx authorized capacityxxx and that by his/hxx xxx signature(x) on the instrument the person(x), or the entity upon behalf of which the person(x) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature [Handwritten Signature]
Signature of Notary Public Yalonda M. Eubank



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Bond No. K08942432 - Annually Renewable Performance Bond

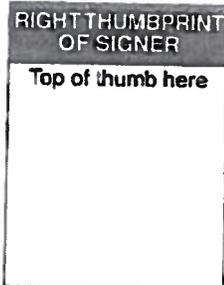
Document Date: September 16, 2014 Number of Pages _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Power of Attorney

WESTCHESTER FIRE INSURANCE COMPANY

Know all men by these presents: That WESTCHESTER FIRE INSURANCE COMPANY, a corporation of the Commonwealth of Pennsylvania pursuant to the following Resolution, adopted by the Board of Directors of the said Company on December 11, 2006, to wit:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into the ordinary course of business (each a "Written Commitment")

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise
- (2) Each duly appointed attorney-in fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such persons written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments
- (4) Each of the Chairman, the President and Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested

Does hereby nominate, constitute and appoint Dennis Langer, Janina Monroe, Michelle Haase, Paul Boucher, all of the City of LOS ANGELES, California, each individually if there be more than one named, its true and lawful attorney-in-fact, to make, execute, seal and deliver on its behalf, and as its act and deed any and all bonds, undertakings, recognizances, contracts and other writings in the nature thereof in penalties not exceeding Fifteen million dollars & zero cents (\$15,000,000.00) and the execution of such writings in pursuance of these presents shall be as binding upon said Company, as fully and amply as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office,

IN WITNESS WHEREOF, the said Stephen M. Haney, Vice-President, has hereunto subscribed his name and affixed the Corporate seal of the said WESTCHESTER FIRE INSURANCE COMPANY this 14 day of February 2013.

WESTCHESTER FIRE INSURANCE COMPANY

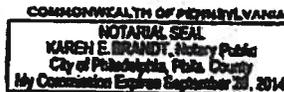


Stephen M. Haney
Stephen M. Haney, Vice President

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF PHILADELPHIA ss.

On this 14 day of February, AD. 2013 before me, a Notary Public of the Commonwealth of Pennsylvania in and for the County of Philadelphia came Stephen M. Haney, Vice-President of the WESTCHESTER FIRE INSURANCE COMPANY to me personally known to be the individual and officer who executed the preceding instrument, and he acknowledged that he executed the same, and that the seal affixed to the preceding instrument is the corporate seal of said Company, that the said corporate seal and his signature were duly affixed by the authority and direction of the said corporation, and that Resolution, adopted by the Board of Directors of said Company, referred to in the preceding instrument, is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Philadelphia the day and year first above written



Karen E. Brandt
Notary Public

I, the undersigned Assistant Secretary of the WESTCHESTER FIRE INSURANCE COMPANY, do hereby certify that the original POWER OF ATTORNEY, of which the foregoing is a substantially true and correct copy, is in full force and effect

In witness whereof, I have hereunto subscribed my name as Assistant Secretary, and affixed the corporate seal of the Corporation, this 15th day of SEPTEMBER 2013



William L. Kelly
William L. Kelly, Assistant Secretary

THIS POWER OF ATTORNEY MAY NOT BE USED TO EXECUTE ANY BOND WITH AN INCEPTION DATE AFTER February 14, 2015

**Exhibit 4 – Form of Improvement Bond
(To be distributed at meeting)**

PERSONAL PAYMENT, PERFORMANCE AND COMPLETION GUARANTY

THIS PERSONAL PAYMENT, PERFORMANCE AND COMPLETION GUARANTY (this "Guaranty") is made this _____ day of October, 2014 (the "Effective Date"), by ED BUSHOR ("Guarantor"), for the benefit of STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES ("State" and/or "DLNR").

1. Personal Payment, Performance and Completion Guaranty. In consideration of the mutual covenants and agreements contained under that certain General Lease No. 8-5844 (the "Lease"), by and between the State as Lessor, and WHR, LLC, a Hawaii limited liability company as Lessee ("Lessee"), the Guarantor absolutely and unconditionally guarantees to the State: a) the due and punctual payment of all sums due or to become due from the Lessee to the State for any amounts due and owing relating to the Kilauea Tower renovations located at 93 Banyan Drive (TMK 2-1-005-016) (the "Building") up to a sum not to exceed \$1,115,356.00 dollars (the "Indebtedness") for an claim or loss thereto that occurred prior to the Effective Date herein; b) completion of the Kilauea Tower consistent with Lessee's Phase 1 plans to be approved by DLNR; and c) provide an acceptable bond upon approval by DLNR of the new plans for the Kilauea Tower to be submitted for approval to DLNR in 2015.

2. Waivers. The Guarantor waives diligence, presentment, protest, notice of dishonor, demand for payment, notice of acceptance of this Guaranty, nonpayment at maturity and indulgences and notices of every kind, as well as all defenses based on impairment of collateral.

3. Consents. The Guarantor consents to and agrees that the obligations of the Guarantor shall not be released, impaired or otherwise affected by:

(a) any and all forbearances and extensions of the time of payment (including multiple extensions for longer than the original period) or of the Lessee's performance of any other obligation to be performed by the Lessee under any and all documents evidencing, securing payment of, or otherwise relating to the Indebtedness;

(b) any and all changes in the terms, covenants and conditions in any of the Lease, hereafter made or granted;

(c) the State's failure to obtain or perfect or foreclose its lien on or security interest in any collateral that the State obtained under the Lease;

(d) any and all substitutions, exchanges or releases of all or any part of the security for the payment of the Indebtedness;

(e) waivers of any of the terms, covenants or conditions set forth in any of the Lease, including this Guaranty;

(f) any election or elections by the State to pursue or enforce or to forbear from pursuing or enforcing any particular right or remedy against the Lessee or any collateral;

(g) any counterclaim, setoff or crossclaim, or the following defenses (legal or equitable) failure of consideration, breach of warranty, statute of frauds, bankruptcy, lack of legal capacity and usury, which the Guarantor has or could assert with respect to the Indebtedness.

4. Other Security. This Guaranty may be enforced by the State without first resorting to or exhausting any other security or collateral and without first having recourse to any of the property covered by any security instrument, and without first or concurrently proceeding against any other person or entity. However, nothing shall prevent the State from suing on the Lease, with or without making the Guarantor a party to the suit, or foreclosing on any security. If such suit, foreclosure or other remedy is availed of, only the net proceeds therefrom, after deduction of all charges and expenses of every kind and nature whatsoever, shall be applied in reduction of the Indebtedness and the State shall not be required to institute or prosecute proceedings to recover any deficiency as a condition of payment hereunder or enforcement hereof.

5. State's Expenses. If this Guaranty is placed in the hands of an attorney for enforcement of the Guarantor's obligations hereunder, the Guarantor will reimburse the State for all reasonable expenses incurred, including reasonable attorneys' fees, whether or not legal proceedings are commenced for such enforcement.

6. Merger; No Oral Modification. This Guaranty constitutes the complete agreement between each Guarantor and the State with respect to the subject matter of this Guaranty, and all prior oral and written agreements with respect thereto are deemed to be merged into this Guaranty and such prior oral and written agreements shall have no further force or effect except to the extent expressly incorporated in this Guaranty. This Guaranty may not be modified or amended except by a written agreement executed by the Guarantor and the State.

7. Continuing Obligations. The obligations of the Guarantor under this Guaranty shall be continuing obligations, a separate cause of action shall be deemed to arise in respect of each event of default under any or all of the Loan Documents, and the Guarantor will from time to time deliver, upon request of the State, satisfactory acknowledgments of the Guarantor's continued liability hereunder.

8. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given if given) by personal delivery, by overnight courier, by facsimile (upon receipt of confirmation thereof) or by mail (registered or certified mail, postage prepaid, return receipt requested) to the address of the party set forth in the first paragraph hereinabove, or to such other address as any party may have furnished to the other in writing in accordance herewith, and, unless delivered by facsimile (in which case it will be deemed effective immediately), will be deemed effective upon three (3) days from the date any such communication is sent regardless of the method of delivery, except that notices of change of address and notices by facsimile shall only be effective upon receipt.

9. Law. This Guaranty shall be construed in accordance with the laws of the State of Hawaii.

10. Successors. The State may assign this Guaranty, in whole or in part, at any time without notice to the Guarantor. This Guaranty shall inure to the benefit of and may be enforced by the State, his heirs, personal representatives and assigns, and any subsequent holder of any of the Indebtedness. This Guaranty shall be binding upon and enforceable against the Guarantor and its successors and assigns. The obligations under this Guaranty shall be joint and several.

11. Other Obligations Continue in Effect. This Guaranty is made in addition to, and shall not be deemed to supersede, modify or alter in any respect, any and all other obligations of the Guarantor to the State under any other agreements.

IN WITNESS WHEREOF, Guarantor has executed this instrument as of the day and year first above written.

GUARANTOR:

A handwritten signature in black ink, appearing to be 'ED BUSHOR', written over a horizontal line.

ED BUSHOR



BUILDING DIVISION • DEPARTMENT OF PUBLIC WORKS

101 Pauahi Street, Suite 7, Hilo, Hawai'i 96720
74-5044 Ane Keohokalole Highway, Building E, Kailua-Kona, Hawaii 96740

(808) 961-8331, Fax (808) 961-8410
(808) 323-4720, Fax (808) 327-3509

June 25, 2014

Updated by WHR July 4, 2014

Updated by WHR August 29, 2014

Updated by WHR September 30, 2014

Updated by WHR October 22, 2014

Mr. Ed Bushor
President & CEO
Tower Development Inc.
1050 Bishop Street, Suite 530
Honolulu, Hawai'i 96813
ed@towerdevcon.com

Mr. Stuart Miller
Vice President Development
Tower Development Inc.
1050 Bishop Street, Suite 530
Honolulu, Hawai'i 96813
stuart@towerdevcon.com

Re: Naniloa Hotel, 93 Banyan Drive, TMK 2-1-005-016
Naniloa Golf Course, 1713 Kamehameha Avenue, TMK 2-1-001-012
Status of Notices of Violations

Mr. Bushor:

This is a follow-up to our letter dated February 27, 2014, (enclosed) and our meeting on June 18, 2014, regarding the aforementioned properties. Your efforts to address outstanding violations and rehabilitate the Naniloa Hotel and Golf Course are appreciated. The following is an update on your progress addressing the outstanding building, electrical and plumbing code violations.

93 Banyan Drive, TMK 2-1-005:013, 016, 027 and 032 (May 9, 2013 NOV and October 8, 2013 Order)

After a review of our records and files, the current status of the following items listed in the notice of violation for 93 Banyan Drive, TMK 2-1-005:013, 016, 027 and 032 (Reference: May 9, 2013 Notice of Violation, October 8, 2013 Order) are as follows:

EXHIBIT 6

1. Building inspection required (work completed and in use without required inspection): B2007-1611H and B2009-0969H Mauna Kea guest room renovations; B2008-2445H, Mauna Kea fire sprinkler (ground - 8th floor);

- *Efforts to address violations ongoing.*
- *Permit application A2014-BH01012 (WHR LLC) was submitted 6/3/14, for Mauna Kea Tower fire sprinkler alteration. Review has been completed and returned to Applicant for corrections/clarifications.*

WHR LLC RESPONSE 6/27/14: All appropriate inspectors have toured the Kea tower with Alan Leonard early May 2014. All have commented that Building is acceptable for TCO. Alan will schedule final inspections on these open Kea permits for approval and sign off. WHR through KOA has submitted a letter requesting closing certain old open permits. WHR will be submitting plans to renovate 5 guest rooms to be ADA compliant. The submittal to occur on or before 8/15/14. WHR has submitted the fire sprinkler alteration and construction plans.

WHR, LLC Update as of 8/29/14: ADA plans for Mauna Kea tower are currently in Mechanical and Electrical Engineering and anticipates submittal for permit by 9/15/14.

WHR LLC Update as of 9/30/14: ADA plans for Mauna Kea tower are prepared for submittal. A recent design revision to provide an area of refuge for both the Mauna Loa and Mauna Kea Towers required a further study by the MEP group, and WHR anticipates submittal by October 30, 2014.

WHR LLC Update as of 10/22/14: Plans are on track for submittal by month's end.

2. Building inspection required (work in progress requires inspection): B2007-1612H Kilauea guest room renovations; B2007-1613H Mauna Loa guest room renovations; B2008-2444H Kilauea ground to 6th floor fire sprinkler system; B2009-1770H Mauna Loa ground to 12th floor fire sprinkler system; B-2009-1771 lobby/registration/office and former Sandalwood Lounge fire sprinkler system; B2009-1772H Crown Room fire sprinkler system.

- *Efforts to address violations ongoing.*
- *Permit application A2014-BH00971 (WHR LLC) was submitted 5/28/14, for Mauna Loa Tower renovation of guest room levels 1 -12, Review has been completed and returned to Applicant for corrections/clarifications. Applicant required to submit a fire system layout and device location; hydraulic calculation, ADA form, window/guard compliance information, corridor window compliance with exit obstruction / allowable opening size.*

WHR LLC RESPONSE 6/27/14 : Fire sprinkler plans permit were submitted on 7/7/14. WHR is in receipt of plan check corrections for Loa tower renovations by Koa Architects to submit on or before 7/26/14.

WHR, LLC Update as of 8/29/14: Permitted construction documents for Mauna Loa tower have been received; reference Building Permit No BH2014-01196

WHR, LLC Update as of 10/22/14: DLNR has not yet approved construction commencement and has requested comments and notes be added to plans. These comments have been incorporated into the plan sets. In recent communication with the DLNR, WHR believes this final revision will satisfy DLNR requirements and achieve their approval to commence construction.

- *Permit application A2014-BH01011 (WHR LLC) was submitted 6/3/14, Mauna Loa Tower fire sprinkler alteration. Review has been completed and returned to Applicant for corrections/clarifications. Applicant required to submit a fire system layout and device location; hydraulic calculation.*

WHR RESPONSE 6/27/14: WHR submitted on 6/3/14 with permit application A2014-BH01011 fire alarm plans for Loa tower; we are in receipt of corrections and they are currently being addressed by Ohana Controls to be resubmitted on or before 7/15/14.

WHR, LLC Update as of 8/29/14: A permit resubmittal for complete fire sprinkler plan

depicting and engineering the entire property is anticipated no later than September 15, 2014.

WHR LLC Update as of 9/30/14: Fire sprinkler plans were submitted September 18, 2014, and WHR anticipates comments and requests for revision, if required, from the Fire Department by October 3rd, 2014.

WHR LLC Update as of 10/22/14: Fire sprinkler plans were approved by the Hawaii Fire Department dated 10/17/14. However, DLNR has not yet approved construction commencement and has requested comments and notes be added to plans. These comments have been incorporated into the plan sets. In recent communication with the DLNR, WHR believes this final revision will satisfy DLNR requirements and achieve their approval to commence construction.

- *Permit application A2014-BH01013 (WHR LLC) was submitted 6/3/14, Kilauea Tower fire sprinkler alteration. Review has been completed and returned to Applicant for corrections/clarifications. Applicant required to submit a fire system layout and device location; hydraulic calculation*

WHR RESPONSE 6/27/14: WHR submitted on 6/3/14 with permit application A2014-BH01013 fire alarm plans for Loa tower; we are in receipt of corrections and they are currently being addressed by Ohana Controls to be resubmitted on or before 7/15/14.

WHR, LLC Update as of 8/29/14: A permit resubmittal for complete fire sprinkler plan depicting and engineering the entire property is anticipated no later than September 15, 2014.

WHR LLC Update as of 9/30/14: Fire sprinkler plans were submitted September 18, 2014, and WHR anticipates comments and requests for revision, if required, from the Fire Department by October 3rd, 2014.

WHR LLC Update as of 10/22/14: Fire sprinkler plans were approved by the Hawaii Fire Department dated 10/17/14. However, DLNR has not yet approved construction commencement and has requested comments and notes be added to plans. These comments have been incorporated into the plan sets. In recent communication with the DLNR, WHR believes this final revision will satisfy DLNR requirements and achieve their approval to commence construction.

- *Permit application A2014-BH01014 (WHR LLC) was submitted 6/3/14, Lobby and Common Area fire sprinkler alteration. Review has been completed and returned to Applicant for corrections/clarifications. Applicant required to submit a fire system layout and device location; hydraulic calculation.*

WHR RESPONSE 6/27/14: WHR submitted on 6/3/14 with permit application A2014-BH01014 fire alarm plans for Loa tower; we are in receipt of corrections and they are currently being addressed by Ohana Controls to be resubmitted on or before 7/15/14.

WHR, LLC Update as of 8/29/14: A permit resubmittal for complete fire sprinkler plan depicting and engineering the entire property is anticipated no later than September 15, 2014.

WHR LLC Update as of 9/30/14: Fire sprinkler plans were submitted September 18, 2014, and WHR anticipates comments and requests for revision, if required, from the Fire Department by October 3rd, 2014.

WHR LLC Update as of 10/22/14: Fire sprinkler plans were approved by the Hawaii Fire Department dated 10/17/14. However, DLNR has not yet approved construction commencement and has requested comments and notes be added to plans. These comments have been incorporated into the plan sets. In recent communication with the DLNR, WHR believes this final revision will satisfy DLNR requirements and achieve their approval to commence construction.

- *Permit application A2014-BH01015 (WHR LLC) was submitted 6/3/14, Crown Room fire sprinkler alteration. Review has been completed and returned to Applicant for corrections/clarifications. Applicant required to submit a fire system layout and device location; hydraulic calculation.*

WHR RESPONSE 6/27/14: WHR submitted on 6/3/14 with permit application

A2014-BH01015 fire alarm plans for Loa tower; we are in receipt of corrections and they are currently being addressed by Ohana Controls to be resubmitted on or before 7/15/14.

WHR, LLC Update as of 8/29/14: A permit resubmittal for complete fire sprinkler plan depicting and engineering the entire property is anticipated no later than September 15, 2014.

WHR LLC Update as of 9/30/14: Fire sprinkler plans were submitted September 18, 2014, and WHR anticipates comments and requests for revision, if required, from the Fire Department by October 3rd, 2014.

WHR LLC Update as of 10/22/14: Fire sprinkler plans were approved by the Hawaii Fire Department dated 10/17/14. However, DLNR has not yet approved construction commencement and has requested comments and notes be added to plans. These comments have been incorporated into the plan sets. In recent communication with the DLNR, WHR believes this final revision will satisfy DLNR requirements and achieve their approval to commence construction.

3. Building permit required (change in occupancy use, alteration work completed and in use without required permit and inspection): Mauna Kea Tower main level former Beauty Salon conversion to Health Spa; Mauna Loa Tower former hotel guest room conversion to Barber Shop.

- Efforts to address violations ongoing.
- Permit application A2013-BH01582 (HOT Inc) was submitted 9/5/13, as built guest room conversion to Barber Shop, returned for corrections 11/17/13, resubmitted 11/22/13, returned for corrections 2/19/14. Applicant has not submitted corrections to date.

WHR, LLC Update as of 8/29/14:

- Former Barber Shop located in Room 103, Mauna Loa tower, are shown on the construction documents and will be returned to a Guest Room. Permitted plans are approved and scheduled for pickup as of today, August 29, 2014.
- Former Beauty Salon conversion to Health Spa is showing on the Restaurant drawings; anticipate permit submittal no later than September 30, 2014.
- WHR LLC Update as of 9/30/14: The restaurant design is currently in review with a proposed operator, and thus, the permit submittal is pending the Leasee's review and design comments. On receipt and at which time, WHR will continue and prepare the revised restaurant plan (inclusive of the former Beauty Salon/Spa), for permit submittal.
- WHR LLC Update as of 10/22/14: No changes since last comment above.

- *Permit application A2013-BH01797 (HOT Inc) was submitted 10/3/1, as built guest room 109 conversion to chiropractor/nutritional health office, returned for correction 12/10/13, resubmitted 11/22/13, returned for corrections 2/19/13. Applicant has not submitted corrections to date.*

WHR RESPONSE 6/27/14: WHR has evicted the tenants that were previously occupying the spaces in question. WHR has submitted plans for Loa guest room renovations which show the "no longer occupied" unpermitted Barber Shop being reconverted back to a guest room. The Kea main level former restruant and beauty salon will be converted to a new restruant. The subject plans will be submitted on or before 7/25/14.

WHR, LLC Update as of 8/29/14: Existing finished space to remain as is, with the exception of fire life-safety which is designed to code and will be shown on fire-sprinkler submittal, anticipated by September 15, 2014.

WHR LLC Update as of 9/30/14: Fire sprinkler plans were submitted September 18, 2014, and WHR anticipates comments and requests for revision, if required, from the Fire Department by October 3rd, 2014.

WHR LLC Update as of 10/22/14: Fire sprinkler plans were approved by the Hawaii Fire Department dated 10/17/14. However, DLNR has not yet approved construction commencement and has requested comments and notes be added to plans. These comments have been incorporated into the plan sets. In recent communication with the DLNR, WHR believes this final revision will satisfy DLNR requirements and achieve their approval to commence construction.

4. Building permit required (demolition work completed without required permit): former health spa demolition; former Kilohana Room bar demolition; former Ting Hao Restaurant demolition including the removal of stairway;

- *Efforts to address violations ongoing.*
- *Permit application A2013-BH01579 (HOT Inc) was submitted 9/5/13, as built demolition to Mauna Kea Tower Spa and Kilohana Room, returned for corrections 9/17/13, resubmitted 11/22/13, returned for corrections 2/19/14. Applicant has not submitted corrections to date.*

WHR RESPONSE 6/27/14: WHR has asked Koa Architects to draw to the best of their knowledge what was existing in the Kilohana Room on the 10th Floor of the Kea tower to show what was removed without permit by the previous owner. WHR will submit on or before 7/25/14 new plans for the former Ting Hau Restaurant space renovated to a new restaurant. These plans will reflect to the best of Koa's knowledge what was demolished by the previous owner with out permit.

WHR, LLC Update as of 8/29/14:

Kilohana Room: Koa Architects have depicted the demolition performed by the previous owner, to the best of their knowledge. WHR anticipates building submittal for this work no later than September 13, 2014.

Ting Hao Restaurant: Koa Architects have also depicted the demolition performed by the previous owner, to the best of their knowledge. WHR anticipates building submittal of a comprehensive restaurant plan no later than September 30, 2014.

- *WHR LLC Update as of 9/30/14: The restaurant design is currently in review with a proposed operator, and thus, the permit submittal is pending the Leasee's review and design comments. On receipt and at which time, WHR will continue and prepare the revised restaurant plan (inclusive of the former Beauty Salon/Spa), for permit submittal.*
- *WHR LLC Update as of 10/22/14: No changes since last comment above.*

5. Building permit required (work in progress without required permit): Kilauea Tower alteration and change of occupancy use of guest rooms conversion to meeting rooms.

- Efforts to address violations ongoing.
- *Permit application A2013-BH01581 (HOT Inc) was submitted 9/5/13, Kilauea Tower demolition 1st floor guest room conversion to future meeting rooms, returned for corrections 9/17/13, resubmitted 10/16/13, returned for corrections 10/16/13, resubmitted 11/22/13, returned for corrections 2/19/13. Applicant has not submitted corrections to date.*

WHR RESPONSE 6/27/14: WHR intends on a complete resubmittal of construction plans for a new permit renovation of the Kilauea tower in 2015. WHR agrees not to do any work without a permit. Until such time as plans are submitted we have requested to delete any prior owner permits open. The tower will remain vacant, secure and safe until such time as the appropriate permits are applied for and issued. During the exterior renovation of the rest of the Project the Kilauea roof will be redone, as well as the exterior waterproofed and painted to match. Exterior roof permit to be applied for on or before 7/15/14. None of the 63 guest rooms have been converted to "Meeting Rooms"; however the former owner did demolish bathrooms and interior non load bearing partitions on the first floor which they used as storage. The new plans to be submitted in 2015 will show rebuilding of the subject spaces to guest rooms as formerly permitted.

WHR, LLC Update as of 8/29/14: The building has been secured and will be maintained until such time as WHR submits plans to reconstruct the guest rooms. Koa Architects will be retained to draw and submit for permit a demolition plan for the work performed by the previous owner; WHR anticipates submittal by early 2015.

6. Non-compliant: Kitchen Range Hood Exhaust Duct unprotected openings in two-hour fire-resistive shaft enclosure.

- Efforts to address violations ongoing.
- *Permit application A2014-BH00758 (WHR LLC) was submitted 4/24/14, Kilauea Tower Kitchen alteration to remove range hood and seal floor penetrations pending information from Planning Department regarding SMA.*

WHR RESPONSE 6/27/14: County has approved our plans for permit issuance. The removal of the duct, range hood and suppression system along with infill of floor penetrations will commence on or before 8/18/14.

WHR, LLC Update as of 8/29/14: WHR has contracted with Tower Construction Hawaii to perform the grease duct demolition and infill of abandoned openings. This work has been contracted for and is currently in progress; WHR anticipates completion and resolution of the Notice of Violation by the end of September, 2014.

WHR LLC Update as of 9/30/14: The grease duct has been removed and the openings have been completed and prepared for inspection. The hood and Ansul system are scheduled for removal the week of October 6th, and WHR will call for inspection on completion.

WHR LLC Update as of 10/22/14: The grease duct has been removed, openings infilled and inspected, and hood and Ansul system are removed. A final inspection has been requested and WHR expects final approval by end of October, 2014.

7. Electrical inspection required (work complete and in use without required inspection): E2007-1394H Mauna Kea guest room renovation; E 2007-2308H Renovate Fire Alarm System.

- Violations partially corrected.
- *E2007-1394H Mauna Kea guest room renovation complete, final inspection 3/10/14.*
- *E2007-2308H inspection rejected (mixture of conductors of different system not allowed in same junction box for fire system).*

WHR RESPONSE 6/27/14: WHR submitted on 6/3/14 with permit application A2014-BH01012 fire alarm plans for Kea tower; we are in receipt of corrections and comments by the Electrical Inspector; and they are currently being addressed by Ohana Controls to be resubmitted on or before 7/15/14.

WHR LLC RESPONSE 6/27/14: Fire sprinkler plans permit were submitted on 7/7/14. WHR is in receipt of plan check corrections for Loa tower renovations by Koa Architects to submit on or before 7/26/14.

All electrical work in the Kea Tower has been reinspected and approved.

WHR LLC Update as of 10/22/14: Fire sprinkler plans were approved by the Hawaii Fire Department dated 10/17/14. However, DLNR has not yet approved construction commencement and has requested comments and notes be added to plans. These comments have been incorporated into the plan sets. In recent communication with the DLNR, WHR believes this final revision will satisfy DLNR requirements and achieve their approval to commence construction.

All electrical work in the Kea Tower has been reinspected and approved.

8. Electrical inspection required (work in progress requires inspection): E2007-1395H Kilauea guest room renovations; ~~E2007-1396 Mauna Loa guest room renovations;~~ E2007-2308H Renovate Fire Alarm System.

- Violations partially corrected.*
- E2007-1395H inspection pending exposing concealed work*
- E2007-1396 Mauna Loa guest room renovations complete, final inspection 3/10/14.*
- E2007-23 08 final inspection pending correction of miscellaneous discrepancies (i. e., need access to electrical box, fixtures removed but not replaced, improper use of box extension ring, needed replacement boxes, etc.).*

WHR RESPONSE 6/27/14: WHR intends on a complete renovation of the Kilauea tower in 2015. It is also our intent to immediately address fire life safety issues; Fire Alarm plans have been submitted for plan check on 6/3/14 we have since received corrections from the County, and they are currently being addressed by Ohana Controls to be resubmitted on or before 7/15/14. Fire sprinkler system installation to be completed while the Lobby and Crown Room system is also being completed, estimated to commence work on or before 10/15/14.

WHR, LLC Update as of 8/29/14: The building has been secured and will be maintained until such time as WHR submits plans to reconstruct the guest rooms. Koa Architects will be retained to draw and submit for permit a demolition plan for the work performed by the previous owner; WHR anticipates submittal by early 2015.

WHR, LLC Update as of 10/22/14: No change from comment above.

9. Electrical permit required (alteration work completed and in use without required permit and inspection): Mauna Kea Tower main level former Beauty Salon

conversion to Health Spa; Mauna Loa Tower former hotel guest room conversion to Barber Shop-

- *Awaiting information from Tower Development Inc.*

WHR RESPONSE 6/27/14: WHR has evicted the tenants that were previously occupying the spaces in question. WHR has submitted plans for Loa guest room renovations which show the unpermitted Barber Shop being reconverted back to a guest room. The Kea main level former restruant and beauty salon will be converted to a new restruant. The subject plans will be submitted on or before 7/25/14.

WHR, LLC Update as of 8/29/14:

- *Former Barber Shop located in Room 103, Mauna Loa tower, are shown on the construction documents and will be returned to a Guest Room. Permitted plans are approved and have been received; reference Building Permit No. BH2014-01415.*
- *Former Beauty Salon conversion to Health Spa is showing on the Restaurant drawings; anticipate permit submittal no later than September 30, 2014.*
- *WHR LLC Update as of 9/30/14: The restaurant design is currently in review with a proposed operator, and thus, the permit submittal is pending the Leasee's review and design comments. On receipt and at which time, WHR will continue and prepare the revised restaurant plan (inclusive of the former Beauty Salon/Spa), for permit submittal.*
- *WHR, LLC Update as of 10/22/14: No change from comment above.*

10. Electrical permit required (demolition work completed without required permit): former health spa; former Kilohana Room bar; former Ting Hao Restaurant;

- *Awaiting information from Tower Development Inc.*

WHR RESPONSE 6/27/14: The subject plans covering the former health spa and the former Ting Hao Restaurant spaces will be submitted on or before 7/15/14. WHR has asked Koa Architects to draw to the best of their knowledge what was existing in the Kilohana Room on the 10th Floor of the Kea tower to show what was removed without permit by the previous owner. WHR will submit on or before 7/25/14 new plans for the former Ting Hau Restaurant space renovated to a new restaurant. These plans will reflect to the best of Koa's knowledge what was demolished by the previous owner with out permit.

WHR, LLC Update as of 8/29/14:

Kilohana Room: Koa Architects have depicted the demolition performed by the previous owner, to the best of their knowledge. WHR anticipates building submittal for this work no later than September 13, 2014.

Ting Hao Restaurant: Koa Architects have also depicted the demolition performed by the previous owner, to the best of their knowledge. WHR anticipates building submittal of a comprehensive restaurant plan no later than September 30, 2014.

- *WHR LLC Update as of 9/30/14: The restaurant design is currently in review with a proposed operator, and thus, the permit submittal is pending the Leasee's review and design comments. On receipt and at which time, WHR will continue and prepare the revised restaurant plan (inclusive of the former Beauty Salon/Spa), for permit submittal.*

11. ~~Electrical permit required (work complete and in use without required permit and inspection):~~ Former Poly Room for service counter, non compliant flexible power extension cord in use.

- *Violation corrected.*
- *Installed conduit and receptacle to address/replace non-compliant flexible power extension cord.*

WHR, LLC Update as of 8/29/14: Violation has been cured

12. Electrical permit required (work in progress without required permit): Kilauea Tower former guest rooms conversion to meeting rooms.

- *Awaiting information from Tower Development Inc.*

WHR RESPONSE 6/27/14: WHR intends on a complete renovation of the Kilauea tower mid to late 2015

WHR, LLC Update as of 8/29/14: The building has been secured and will be maintained until such time as WHR submits plans to reconstruct the guest rooms. Koa Architects will be retained to draw and submit for permit a demolition plan for the work performed by the previous owner; WHR anticipates submittal by early 2015.

WHR, LLC Update as of 10/22/14: No change from comment above.

13. Non-compliant electrical work: ~~conduit entering building below lobby area exposed to physical damage; Mauna Loa fire system junction box (ground - 13th floor) inaccessible (covered by drywall); Mauna Kea electrical boxes not installed so that the front edge of the box will not be set back of the finished surface more than 6mm (1/4 in-).~~

- *Violations partially corrected.*

- *Exposed conduit encased in concrete, electrical box installations corrected.*

WHR RESPONSE 6/27/14: During the Loa renovation a large access door will be installed at the subject location to allow access to the fire sprinkler system junction box.

WHR, LLC Update as of 8/29/14: Permit has been received; reference Building Permit No. BH2014-01415.

WHR, LLC as of 10/22/14: Installation of access door pending DLNR approval to commence construction.

14. Plumbing inspection required (work complete and in use without required inspection): M2007-1331 Mauna Kea guest room renovation; Plumbing inspection required (work in progress requires inspection): M2007-1332H Kilauea guest room renovations; M2007-1333H Mauna Loa guest room renovations.

- *Awaiting information from Tower Development Inc.*

WHR RESPONSE 6/27/14: WHR intends on a complete renovation of the Kilauea tower mid to late 2015. Kea shall be resolved via permit application to be submitted on or before 8/15/14.

Loa shall be resolved during renovation covered by the new permits which plans were submitted on 5/23/14.

WHR, LLC Update as of 8/29/14:

Kilauea Tower: The building has been secured and will be maintained until such time as WHR submits plans to reconstruct the guest rooms. Koa Architects will be retained to draw and submit for permit a demolition plan for the work performed by the previous owner; WHR anticipates submittal by early 2015.

Mauna Loa Guest Rooms: Permitted construction documents for Mauna Loa tower are scheduled for pickup today, August 29, 2014.

Mauna Kea Guest Rooms: Plumbing Inspector has performed a building walk on all renovations and has approved construction work. Violation has been cured.

15. Plumbing permit required (alteration work completed and in use without required permit and inspection): Mauna Kea Tower main level former Beauty Salon conversion to Health Spa; Mauna Loa Tower former hotel guest room conversion to Barber Shop.

- *Awaiting information from Tower Development Inc.*

WHR RESPONSE 6/27/14: The subject plans covering the former health spa and the former Ting Hao Restaurant spaces will be submitted on or before 7/25/14.

WHR will submit on or before 7/25/14 new plans for the former Beauty Salon space renovated to a new restaurant, which will resolve this issue.

WHR, LLC Update as of 8/29/14:

- Former Barber Shop located in Room 103, Mauna Loa tower, are shown on the construction documents and will be returned to a Guest Room. Permitted plans are approved and scheduled for pickup as of today, August 29, 2014.*
- Former Beauty Salon conversion to Health Spa is showing on the Restaurant drawings; anticipate permit submittal no later than September 30, 2014.*
- WHR LLC Update as of 9/30/14: The restaurant design is currently in review with a proposed operator, and thus, the permit submittal is pending the Leasee's review and design comments. On receipt and at which time, WHR will continue and prepare the revised restaurant plan (inclusive of the former Beauty Salon/Spa), for permit submittal.*

16. Plumbing permit required (demolition work completed without required permit): former health spa; former Kilohana Room bar; former Ting Hao Restaurant.

- Awaiting information from Tower Development Inc.*

WHR RESPONSE 6/27/14: The subject plans covering the former health spa and the former Ting Hao Restaurant spaces will be submitted on or before 7/25/14. WHR has asked Koa Architects to draw to the best of their knowledge what was existing in the Kilohana Room on the 10th Floor of the Kea tower to show what was removed without permit by the previous owner. These plans will reflect to the best of Koa's knowledge what was demolished by the previous owner with out permit, on or before 8/15/14.

WHR, LLC Update as of 8/19/14:

- Former Beauty Salon conversion to Health Spa is showing on the Restaurant drawings; anticipate permit submittal no later than September 13, 2014.*
- Kilohana Room: Koa Architects have depicted the demolition performed by the previous owner, to the best of their knowledge. WHR anticipates building submittal for this work no later than September 13, 2014.*
- Ting Hao Restaurant: Koa Architects have also depicted the demolition performed by the previous owner, to the best of their knowledge. WHR anticipates building submittal of a comprehensive restaurant plan no later than September 30, 2014.*
- WHR LLC Update as of 9/30/14: The restaurant design is currently in review with a proposed operator, and thus, the permit submittal is pending the Leasee's review and design comments. On receipt and at which time, WHR will continue and prepare the revised restaurant plan (inclusive of the former Beauty Salon/Spa), for permit submittal.*

17. Plumbing permit required (work in progress without required permit): Kilauea Tower former guest rooms conversion to meeting rooms.

- Awaiting information from Tower Development Inc.*

WHR RESPONSE 6/27/14: WHR intends on a complete renovation of the Kilauea tower mid to late 2015. The tower will be secured and there is no work in progress nor will there be any work in the Kilauea tower until the correct permits are applied for and issued.

WHR, LLC Update as of 8/29/14:

Kilauea Tower: The building has been secured and will be maintained until such time as WHR submits plans to reconstruct the guest rooms. Koa Architects will be retained to draw and submit for permit a demolition plan for the work performed by the previous owner; WHR anticipates submittal by early 2015.

Other Activities: Permit application A2014-BH00970 (WHR LLC) was submitted 5/28/14, renovate ground level banquet/bar area with new bar storage and game room; 1st level lobby, front desk, office with service bar to lounge/lanai; Rejected, requires food establishment permit review, fire alarm/sprinkler device locations shown on plan, solid waste approval, stair riser compliance, game room occupancy (age) loading to qualify exist requirement.

WHR RESPONSE 6/27/14: WHR is in receipt of plan check corrections which are currently being addressed by Koa Architects to be resubmitted on or before 7/15/14.

WHR, LLC Update as of 8/29/14:

A complete set of Construction Documents have been submitted as of August 18, 2014, and include all areas shown in the Lobby and lower level banquet/bar areas. The permit has been received; reference Building Permit No. BH2014-01416

WHR, LLC Update as of 10/22/14: DLNR has not yet approved construction commencement and has requested comments and notes be added to plans. These comments have been incorporated into the plan sets. In recent communication with the DLNR, WHR believes this final revision will satisfy DLNR requirements and achieve their approval to commence construction.

B. 93 Banyan Drive. TMK 2-1-005:013, 016, 027 and 032 (October 10, 2013 NOV and October 28, 2013 Order)

After a review of our records and files, the following items listed in the notice of violation for 93 Banyan Drive, TMK 2-1-005:013, 016, 027 and 032 (Reference: October 10, 2013 Notice of Violation, October 28, 2013 Order) have been corrected and their status are as follows:

~~1. Non compliance, electrical permit required (work complete and in use without required permit): The lobby/registration/office and Kilauea Tower continues to operate on emergency-generator power. Required permit pending plan and schedule for restoration of permanent electrical service.~~

~~2-7—Restore permanent electrical service and/or remove all temporary emergency electrical work. Plan/schedule and restore permanent electrical service to the lobby/registration/office, and Kilauea Tower. Obtain all required approvals and permits before commencing with this work.~~

- *Violations corrected.*

- *Permit application A2014-EH00256 (WHR LLC) was submitted 2/14/14 replace 1500 KV cable, issued 3/7/14, cable replacement generator removal completed 4/3/14, final inspection pending cabinet clearance correction.*

WHR RESPONSE 6/27/14: WHR intends on a complete renovation of the Kilauea tower in 2015. It is our plan to address this issue at time of permit submittal for the Kilauea renovations.

WHR, LLC Update as of 8/29/14:

Kilauea Tower: The building has been secured and will be maintained until such time as WHR submits plans to reconstruct the guest rooms. Koa Architects will be retained to draw and submit for permit a demolition plan for the work performed by the previous owner; WHR anticipates submittal by early 2015.

C. 1713 Kamehameha Avenue. TMK 2-1-001:012 (October 10, 2013 NOV)

After a review of our records and files, the current status of the following items listed in the notice of violation for 1713 Kamehameha Avenue, TMK 2-1-001:012 (Reference October 10, 2013 Notice of Violation) are as follows:

1. Obtain building permit (construction, alteration without a required permit): 1) added decorative lattice/wire mesh enclosing lanai; 2) added wooden closure of 6-foot height between Pro-Shop and Restaurant; 3) added roof attachment to Golf Cart Storage; 4) added lean-to roof attachment to Maintenance Building.
2. Substandard/unsafe buildings: general dilapidation or improper maintenance, structures unsafe and constitute a hazard to safety, health and public welfare. Building permit required for any alteration, repair or demolition.
3. Ensure compliance with all requirements of HCC Section 5-51, such as refraining from entering and/or the building or affected portion thereof except for the purpose of conducting required repair or demolition work.
4. Obtain electrical permit(s) to remove and or correct unpermitted and non-conforming electrical work. Nonconforming and defective installations pursuant to the 2008 National Electrical Code (NEC) Articles: 110.3(B); 110.26(D); 230.50(B); 300.5(A); 314.28(3)(C); 334.12(B)(4); 334.15(B); 344.30; and 511.12
5. Disconnect defective electrical installations from their power source and tag as unsafe

to operate until corrective action is made, inspected, and approved.

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During meetings in February 2014, Tower Development Inc. had indicated that the items listed within Section C (1-5) would be addressed once the outstanding violations and issues at the hotel towers and main property were addressed.

Awaiting updated and detailed information from Tower Development Inc. on timeline and plans to address these violations.

WHR RESPONSE 6/27/14: WHR intends on a renovation of the golf course structures at the end of 2014 or early 2015. Nonconfirming and defective electrical installations requested by the County in the occupied golf shop have been cured as of 6/27/14.

WHR, LLC Update as of 8/29/14:

All violations have been cured. WHR plans cosmetic upgrades to the golf course through 2014 and 2015.

D. CONCLUSION

We are requesting Tower Development Inc. provide monthly updates to the status of plans and schedules for addressing the remaining violations noted above.

WHR RESPONSE 6/27/14: WHR will report to the County monthly on progress until such time as all violations are cured.

WHR, LLC Update as of 8/29/14:

Now that WHR is in receipt of permits, construction is anticipated to commence in the 4th quarter, 2014, and monthly reporting will be provided.

WHR, LLC Update as of 10/22/14: DLNR has not yet approved construction commencement and has requested comments and notes be added to plans. These comments have been incorporated into the plan sets. In recent communication with the DLNR, WHR believes this final revision will satisfy DLNR requirements and achieve their approval to commence construction.

Should you have any questions regarding this matter, please do not hesitate to contact me at 961-8466 or email dvamamoto@co.hawaii.hi.us.

Respectfully,

David Yamamoto, P.E.
Building Chief

Enclosures

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Naniloa Resort List of Drawings and Specs Submitted (as of 10/23/14)

Item No.	Drawing and Specification Title	File Date	Drawing Nos. or Specification Submitted	Drawing Nos. or Spec Section Pending	Percentage of Dwgs/Pgs Submitted	Comments
1	Fire Alarm Plans for Naniloa Resort (2014.10.22 Fire Alarm plans approved by Fire Dept - HN.pdf)	10/22/2014	FA0.0, FA1.0, FA1.1, FA1.2, FA1.3, FA1.4, FA1.5, FA1.6, FA1.7, FA1.8, FA2.0, FA3.0, FA4.0, FA5.0 (14)	Unknown - No Sheet Index Provided.	Unknown	Fire Alarm Plans signed by licensed electrical engineer. Drawings have Hawaii Fire Department approval stamp dated 10/07/2014.
2	Fire Sprinkler Plans for Naniloa Resort (2014.10.20 Fire Sprinkler plans approved by Fire Dept - HN.pdf)	10/20/2014	F-001, F-002, F-003, F-004, F-100, F-101, F-102, F-103, F-104, F-201, F-202, F-203, F-204, F-205, F-301, F-302, F-303, F-401 (18)	Unknown - No Sheet Index Provided.	Unknown	Fire Alarm Sprinkler plan signed by licensed mechanical engineer. Drawings have Hawaii Fire Department approval stamp dated 10/07/2014.
3	Fire Alarm Sequence of Operation, Fire Alarm Speakers & Strobes, Smoke Sensors, Pull Stations (2014.10.23 Fire Alarm, Detectors, Speakers, Operational Sequence forms signed by Arch - HN.pdf)	10/23/2014	Ten (10) Pages	Unknown - No Sheet Index Provided.	Unknown	Catalog Cut Sheets and Table with Architect signature on cover page
4	Repair and Replacement of Roofing, Naniloa Resort (2014.10.22 KOA reroof plans DLNR corrections - HN.pdf)	10/23/2014	A0.0, A1.1, A2.1, A2.2, A2.3 (5)	None Identified on the Sheet Index	Unknown (Need to resolve conflict between Sheet index and drawings included in package.)	Sheets provided are signed by licensed architect.
5	Partial Guest Room Demolition Mauna Loa Tower (Renamed from Partial Demolition Mauna Loa Tower transmitted on 9/24/2014) (2014.10.22 KOA ML Guestroom demo plans DLNR corrections - HN.pdf)	10/22/2014	A0.0, A1.0, A2.0, A2.1 (4)	None Identified on the Sheet Index	100%	Sheets provided are signed by licensed architect with 2016 exp date. State and County approval stamps dated in May and June of 2014 on 9/18/2014 submittal not shown on 10/22/2014 version.

Naniiloa Resort List of Drawings and Specs Submitted (as of 10/23/14)

Item No	Drawing and Specification Title	File Date	Drawing Nos. or Specification Submitted	Drawing Nos. or Spec Section Pending	Percentage of Dwgs/ Pgs Submitted	Comments
6	Guest Room Alterations Mauna Loa Tower (2014.10.22 KOA ML Guestroom plans DLNR corrections - HN.pdf)	10/22/2014	A0.0, A1.0, A2.0, A2.1, A2.2, A2.3, A2.4, A2.5, D1 (9) M1, M2, M3, M4, M5, M6, M7, M8, M9 (9) (See Guest Room Mechanical - Mauna Loa Tower for updated drawings.) E1.0, E2.0, E3.0, E4.0, E4.1, E4.2, E4.3, E4.4, E4.5 (9) (See Guest Room Electrical - Mauna Loa Tower for updated drawings)	None Identified on the Sheet Index	100% of Architect drawings. 9 mechanical drawings and 9 electrical drawings provided in separate file.	Sheets provided are signed by licensed architect. State and County approval stamps dated in May and June of 2014 on 9/18/2014 submittal not shown on 10/22/2014 version.
7	Guest Room Mechanical - Mauna Loa Tower (2014.10.22 Uchida ML Guestroom plans DLNR corrections - HN.pdf)	10/23/2014	M1, M2, M3, M4, M5, M6, M7, M8, M9 (9)	None Identified on the Sheet Index	100%	Sheets provided are signed by licensed mechanical engineer.
8	Guest Room Electrical - Mauna Loa Tower (2014.10.22 Morikawa Guestroom plans DLNR corrections - HN.pdf)	10/22/2014	E1.0, E2.0, E3.0, E3.1 (New), E4.0, E4.1, E4.2, E4.3, E4.4, E4.5 (10)	None Identified on the Sheet Index	100%	Sheets provided are signed by licensed electrical engineer.
9	Lobby/Banquet Alterations (2014.10.22 KOA Lobby plans DLNR corrections - HN.pdf)	10/22/2014	A0.0, A0.1, A1.0, A2.0, A2.1, A2.2, A2.3, A2.4, A2.5, A2.6, A2.7, A3.0, A3.1, A3.2 (not listed on Sheet Index), A4.0, A4.1, D1, D2, D3, D4, D5 (21) M1, M2, M3, M4, M5, M6, M7, M8, M9 (9) (See Mechanical - Lobby/Banquet Alterations for updated drawings.) E1.0, E2.0, E3.0, E4.0, E4.1, E4.2, E4.3, E5.0, E5.1, E5.2, E5.3, E6.0, E7.0 (13) (See Mechanical - Lobby/Banquet Alterations for updated drawings.)	None Identified on the Sheet Index	100% of Architectural drawings. 9 mechanical drawings and 13 electrical drawings provided in separate file.	Sheets provided are signed by licensed architect. State and County approval stamps dated in May and June of 2014 on 9/18/2014 submittal not shown on 10/22/2014 version.
10	Mechanical - Lobby/Banquet Alterations (2014.10.22 Uchida Lobby Mech plans DLNR corrections - HN.pdf)	10/22/2014	M1, M2, M3, M4, M5, M6, M7, M8, M9 (9)	None Identified on the Sheet Index	100%	Sheets provided are signed by licensed mechanical engineer.
11	Electrical - Lobby/Banquet Alterations (2014.10.22 Morikawa Lobby Elect plans DLNR corrections - HN.pdf)	10/22/2014	E1.0, E2.0, E3.0, E4.0, E4.1, E4.2, E4.3, E5.0, E5.1, E5.2, E5.3, E6.0, E7.0 (13)	None Identified on the Sheet Index	100%	Sheets provided are signed by licensed electrical engineer.

Maniloa Resort List of Drawings and Specs Submitted (as of 10/23/14)

Item No	Drawing and Specification Title	File Date	Drawing Nos. or Specification Submitted	Drawing Nos. or Spec Section Pending	Percentage of Dwgs/Pgs Submitted	Comments
12	Ventilation Ductwork Demolition Kilauea Tower (2014.10.22 Kilauea Tower grease duct demo DLNR corrections - HN.pdf)	10/22/2014	A0.0, A1.0, A2.0, A2.1, A2.2, A2.3	None Identified on the Sheet Index	100%	Sheets provided are signed by licensed architect. State and County approval stamps dated in May and June of 2014 on 9/18/2014 submittal not shown on 10/22/2014 version.
13	Corridor Specification	9/18/2014	21 Pages. Drawings, Finishes and Lighting. Manufacturer's Cut and Catalog Sheets Provided.	Unknown - None Identified in TOC Provided	Unknown	Corridor Specifications signed by the licensed architect.
14	Corridor Drawings	9/18/2014	SK-301, SK-302, SK-303, SK-304, SK-305	Unknown - No Sheet Index Provided	Unknown	Corridor Drawings signed by the licensed architect.
15	Guest Room Specifications - Part 1 Finish Floors and Elevations	9/18/2014	Bath Accessories, Bed Mattress + Protection, Case goods, Equipment, Lamps, Seating, and Tables. Drawings and Manufacturer's Cut and Catalog Sheets Provided.	Unknown - None Identified in TOC Provided	Unknown	Guest Room Specifications signed by the licensed architect.
16	Guest Room Specifications - Part 2 Finishes	9/18/2014	Base, Carpet, Doors, Fabrics, Hardware, Light Fixtures + Lit Mirrors, Paint, Plastic Laminate, Plumbing fixtures, Stone + Tile, Thresholds, Wall covering, Window + Glass, Window Treatments, and Wood Veneer. Drawings and Manufacturer's Cut and Catalog Sheets Provided.	Unknown - None Identified in TOC Provided	Unknown	Guest Room Specifications signed by the licensed architect.
17	Lobby + Public Spaces Specifications	9/18/2014	Item List, Drawings (Lobby Furniture Plan, Lobby Finish Plan, Bar, and Cocoon), Fabrics, Accessories, and Finishes (Paint, Stone, Tile, and Wood Flooring). Drawings and Manufacturer's Cut and Catalog Sheets Provided.	Unknown - None Identified in TOC Provided	Unknown	Lobby and Public Spaces Specifications signed by the licensed architect.
18	Painting Specifications	9/18/2014	19 Pages. Manufacturer's Specification Provided.	Unknown - None Identified in TOC Provided	Unknown	Paint Specifications signed by the licensed architect.
19	Lighting Specification	9/18/2014	56 Pages. Light Fixture Schedule and Manufacturer's Catalog Sheets Provided.	Unknown - None Identified in TOC Provided	Unknown	Light Specifications signed by the licensed architect.

Naniiloa Resort List of Drawings and Specs Submitted (as of 10/23/14)

Item No.	Drawing and Specification Title	File Date	Drawing Nos. or Specification Submitted	Drawing Nos. or Spec Section Pending	Percentage of Dwgs/Pgs Submitted	Comments
20	Roofing Specification	9/18/2014	15 Pages. Manufacturer's Specification Provided.	Unknown - None Identified in TOC Provided	Unknown	Roofing Specifications signed by the licensed architect.
21	Corridor Specification	9/18/2014	21 Pages. Drawings, Finishes and Lighting. Manufacturer's Cut and Catalog Sheets Provided.	Unknown - None Identified in TOC Provided	Unknown	Corridor Specifications signed by the licensed architect.
22	Corridor Drawings	9/18/2014	SK-301, SK-302, SK-303, SK-304, SK-305	Unknown - No Sheet Index Provided	Unknown	Corridor Drawings signed by the licensed architect.
23	Guest Room Specifications - Part 1 Finish Floors and Elevations	9/18/2014	Bath Accessories, Bed Mattress + Protection, Case goods, Equipment, Lamps, Seating, and Tables. Drawings and Manufacturer's Cut and Catalog Sheets Provided.	Unknown - None Identified in TOC Provided	Unknown	Guest Room Specifications signed by the licensed architect.
24	Guest Room Specifications - Part 2 Finishes	9/18/2014	Base, Carpet, Doors, Fabrics, Hardware, Light Fixtures + Lit Mirrors, Paint, Plastic Laminate, Plumbing fixtures, Stone + Tile, Thresholds, Wall covering, Window + Glass, Window Treatments, and Wood Veneer. Drawings and Manufacturer's Cut and Catalog Sheets Provided.	Unknown - None Identified in TOC Provided	Unknown	Guest Room Specifications signed by the licensed architect.
25	Lobby + Public Spaces Specifications	9/18/2014	Item List, Drawings (Lobby Furniture Plan, Lobby Finish Plan, Bar, and Cocoon), Fabrics, Accessories, and Finishes (Paint, Stone, Tile, and Wood Flooring). Drawings and Manufacturer's Cut and Catalog Sheets Provided.	Unknown - None Identified in TOC Provided	Unknown	Lobby and Public Spaces Specifications signed by the licensed architect.
26	Painting Specifications	9/18/2014	19 Pages. Manufacturer's Specification Provided.	Unknown - None Identified in TOC Provided	Unknown	Paint Specifications signed by the licensed architect.
27	Lighting Specification	9/18/2014	56 Pages. Light Fixture Schedule and Manufacturer's Catalog Sheets Provided.	Unknown - None Identified in TOC Provided	Unknown	Light Specifications signed by the licensed architect.
28	Roofing Specification	9/18/2014	15 Pages. Manufacturer's Specification Provided.	Unknown - None Identified in TOC Provided	Unknown	Roofing Specifications signed by the licensed architect.