

VYU

VYU

Of Counsel:  
BENDET, FIDELL, SAKAI & LEE  
ATTORNEYS AT LAW  
A LAW CORPORATION

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2007 DEC 20 AM 10:55

DENIS LEE 2973-0  
KYLE T. SAKUMOTO 3478-0  
1500 Davies Pacific Center  
841 Bishop Street  
Honolulu, Hawai'i 96813  
Telephone No.: (808) 524-0544  
Facsimile No.: (808) 521-7739

  
F. OTAKE  
CLERK

Attorneys for Plaintiff  
CREDIT SUISSE, as Agent for Lenders

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

CREDIT SUISSE, a Swiss bank,  
Plaintiff,

vs.

KUILIMA RESORT COMPANY, a Hawai'i  
general partnership; TBR PROPERTY,  
L.L.C., a Delaware limited liability company;  
WELLS FARGO BANK, N.A., a National  
Banking Association; JOHN DOES 1-100;  
JANE DOES 1-100; DOES  
CORPORATIONS 1-100; and/or OTHER  
DOE ENTITIES 1-100,

Defendants.

Civil No. 07-1-2399-12  
Category: Foreclosure

COMPLAINT FOR: (1) JUDICIAL  
FORECLOSURE; AND (2) SPECIFIC  
PERFORMANCE, APPOINTMENT  
OF RECEIVER AND INJUNCTIVE  
RELIEF; EXHIBITS "A" - "K";  
SUMMONS



COMES NOW Plaintiff CREDIT SUISSE, as Agent for Lenders, and by and through its attorneys, Bendet, Fidell, Sakai & Lee, and for its Complaint against Defendants above-named, alleges as follows:

**SUMMARY OF ACTION**

1. This action arises out of a loan ("Loan") in the amount of \$275,000,000 to Defendant Kuilima Resort Company ("Borrower") in September 2005 in connection with the project ("Project") known as Turtle Bay Resort, located on approximately 880 acres in the City and County of Honolulu, Oahu, Hawai'i, which includes (i) a hotel consisting of 375 guest rooms, 26 suites, 42 beach cottages and related amenities, (ii) two championship 18-hole golf courses, and (iii) entitlements for the development and sale of approximately 3,500 additional residential/resort units. The Loan is secured by, among other things, the real property (and certain leasehold interests therein) on which the Project is situated and the improvements thereon, as well as other collateral.

2. Borrower is in default under the Loan Documents (as defined below) for, among other things, (i) the failure to make a principal payment in the amount of \$687,500 due and payable on June 29, 2007, (ii) the failure to pay an amendment fee in the amount of \$1,015,781, due and payable on July 30, 2007, and (iii) the failure to comply with and cure numerous financial covenant defaults existing on and/or before May 30, 2007. As a result of each of these defaults, all unpaid principal and accrued interest on the Loan were declared immediately due and payable on August 31, 2007. To date, Borrower has failed to repay the outstanding balance of the Loan in excess of \$283,000,000. Accordingly, this Complaint seeks (i) foreclosure on the real property and the improvements thereon, as well as all other collateral, securing the Loan, and (ii) the appointment of a receiver and injunctive relief.

## THE PARTIES

3. Plaintiff Credit Suisse is, and at all times relevant herein has been, a bank organized under the laws of Switzerland, doing business in New York, New York, and through its Cayman Islands Branch, registered with the Cayman Islands Monetary Authority. Pursuant to the Loan Documents (as defined below), Credit Suisse ("Agent") is the administrative and collateral agent for the lenders ("Lenders") from time to time party to the Credit Agreement (as defined below). Pursuant to the Loan Documents, Lenders have directed Agent, and Agent is authorized, to maintain this action on behalf of the Lenders.

4. Defendant Kuilima Resort Company ("Borrower") is, and at all relevant times herein has been, a Hawai'i general partnership, doing business in the City and County of Honolulu, State of Hawai'i, and is the mortgagor holding 100% fee simple ownership of the real property (the "Fee Property") which is the subject of this action.

5. Defendant TBR Property, L.L.C. ("TBR") is, and at all relevant times herein has been, a Delaware limited liability company, doing business in the City and County of Honolulu, State of Hawai'i. TBR is a subsidiary of Borrower and is the mortgagor which is the tenant and holder of leasehold title in and to certain portions of the real property which is the subject of this action (the "Leased Property" and, together with the Fee Property, the "Property"). The Property is legally described in Exhibit "A" attached hereto and incorporated herein by this reference.

6. Agent is informed and believes, and based thereon alleges, that Defendant Wells Fargo Bank, N.A. is a federally chartered bank and subsidiary of Wells Fargo & Company, a Delaware corporation, with its headquarters in San Francisco, California ("Wells Fargo"). Agent is also informed and believes, and based thereon alleges, that Wells Fargo is the

administrative and collateral agent for those lenders (“Junior Lienholders”) which claim an interest in or lien on the Property which is subordinate to and subject to the first-priority lien of the Mortgage (as defined below) in favor of Agent and Lenders.

7. Defendants John Does 1-100, Jane Does 1-100, Does Corporations 1-100 and/or Does Entities 1-100 are parties who have or may claim to have lien rights or other interests in the Property and whose names, identities and capacities are presently unknown to Agent and its attorneys. Agent has obtained a title search, from a reputable title company, identifying all entities with a recorded interest in the Property. The lien holders and necessary parties to this action, as designated in the title search, have been identified as defendants in this Complaint. Agent has included unidentified defendants in this action as persons and/or entities who, for some reasons as yet unknown, were not named in the title search or otherwise made known to Agent.

#### **THE LOAN**

8. On or about September 30, 2005, Borrower, Agent and Lenders entered into that certain First Lien Credit Agreement (“Credit Agreement”), pursuant to which Borrower obtained a loan (the “Loan”) in the initial principal amount of \$275,000,000. Borrower utilized the proceeds of the Loan for, among other things, (i) refinancing the existing indebtedness owed by Borrower to a third-party lender, (ii) Borrower’s making of a one-time distribution to the beneficial owners of Borrower, and (iii) financing a portion of the development, construction and other costs associated with the Project. A true and correct copy of the Credit Agreement, dated as of September 30, 2005, is attached hereto as Exhibit “B.”

9. To secure payment of the principal sum, interest thereon, and all other charges as provided for in the Credit Agreement, and as part of the same transaction, Borrower and TBR executed and delivered to Agent, among other things:

a. A First Lien Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Financing Statement ("Mortgage"), dated as of September 30, 2005, a true and correct copy of which is attached hereto as Exhibit "C," encumbering the Collateral (as defined in the Mortgage and including, but not limited to, the Property), which was recorded on October 3, 2005, in the official records of the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Document No. 3335667, and in the Bureau of Conveyances of the State of Hawai'i as Document No. 2005-199933;

b. A Security Agreement ("Security Agreement"), dated as of September 30, 2005, a true and correct copy of which is attached hereto as Exhibit "D," granting Agent a security interest in all personal property of Borrower and TBR;

c. An Assignment of Rights ("Contract Assignment"), dated as of September 30, 2005, a true and correct copy of which is attached hereto as Exhibit "E," which was recorded on October 3, 2005, in the official records of the Bureau of Conveyances of the State of Hawai'i as Document No. 2005-199935; and

d. An UCC-1 Financing Statement ("UCC-1"), a true and correct copy of which is attached hereto as Exhibit "F," which was recorded on September 30, 2005, in the official records of the Bureau of Conveyances of the State of Hawai'i as Document No. 2005-199118.

10. The Credit Agreement (as amended as set forth below), Mortgage, Security Agreement, Contract Assignment, UCC-1 and all other documents executed by

Borrower and/or TBR to evidence, govern or secure the Loan are referred to herein collectively as the "Loan Documents."

11. Lenders are now, and at all times material to this action have been, the lawful owners and holders of the beneficial interest under the Loan Documents and, pursuant to the Loan Documents, have directed and authorized Agent to maintain this action on their behalf.

12. Agent and Lenders have performed all of the promises, conditions and covenants on their part required to be performed under the Loan Documents, except for those promises, conditions and covenants excused by the acts and omissions of Borrower and/or TBR.

### **BORROWER'S DEFAULTS**

13. On and/or before May 30, 2007, Borrower was in default, and certain Events of Default and Defaults existed, under the Credit Agreement (the "Specified Events of Default and Defaults"), including, but not limited to:

- a. Borrower's failure to comply with the Total Debt Ratio set forth in Section 6.6A of the Credit Agreement;
- b. Borrower's failure to comply with the First Lien Debt LTV Ratio set forth in Section 6.6B of the Credit Agreement;
- c. Borrower's failure to comply with the Interest Coverage Ratio set forth in Section 6.6C of the Credit Agreement;
- d. Borrower's failure to comply with the minimum liquidity covenant set forth in Section 6.6E of the Credit Agreement;
- e. The presence of a going concern qualification in the audit relating to Fiscal Year 2006 in violation of Section 5.3(iii)(c) of the Credit Agreement; and

f. Borrower's failure to deliver an Officer's Certificate and Compliance Certificate in connection with the delivery of financial statements relating to Fiscal Year 2006 and the First Quarter of 2007 in compliance with Section 5.3(iv) of the Credit Agreement.

14. As a result of the Specified Events of Default and Defaults described in Paragraph 13, above, and at the request of Borrower, Agent, Lenders and Borrower entered into that certain Waiver and Amendment to First Lien Credit Agreement ("Credit Agreement Amendment"), dated as of May 30, 2007, pursuant to which Lenders agreed to temporarily waive for a time (and subject to, and in accordance with, the terms and conditions set forth in the Credit Agreement Amendment) the Specified Events of Default and Defaults (the "Waiver Period"). A true and correct copy of the Credit Agreement Amendment, dated as of May 30, 2007, is attached hereto as Exhibit "G." As consideration for entering into the Credit Agreement Amendment, Borrower agreed to pay the fees (the "Amendment Fee" or "Amendment Fees") set forth in the Credit Agreement Amendment.

15. Notwithstanding the Credit Agreement Amendment, Borrower remained obligated to comply with its obligations to make principal amortization payments, accrued interest payments, and all other payments pursuant to the Credit Agreement. Among other things, Borrower was obligated to make the principal amortization payment in the amount of \$687,500 due on June 29, 2007, pursuant to Section 2.4A of the Credit Agreement. Borrower, however, failed to make such principal amortization payment on or before June 29, 2007.

16. Borrower's failure to make the principal amortization payment when due on June 29, 2007, constituted an immediate Event of Default under Section 7.1 of the Credit Agreement.

17. By letter dated July 25, 2007, a true and correct copy of which is attached hereto as Exhibit "H," Agent notified Borrower that the failure to pay the principal amortization payment due on June 29, 2007 constituted an Event of Default.

18. On July 29, 2007, the Waiver Period in the Credit Agreement Amendment expired by its own terms, with Borrower failing to cure the Specified Events of Default and Defaults.

19. On July 30, 2007, Borrower failed to pay the Amendment Fee of \$1,015,781 due and payable pursuant to Section 12(b)(ii) of the Credit Agreement Amendment. Borrower's failure to pay the Amendment Fee on July 30, 2007, constituted a further and immediate Event of Default.

20. By letter dated August 31, 2007, a true and correct copy of which is attached hereto as Exhibit "I," Agent notified Borrower of its continuing Events of Default based on, among other things, (i) Borrower's failure to pay the principal amortization payment of \$687,500 due on June 29, 2007, (ii) Borrower's failure to pay the Amendment Fee in the amount of \$1,015,781 due on July 30, 2007, and (iii) Borrower's failure to cure the Specified Events of Default and Defaults as set forth in the Credit Agreement Amendment. Agent further notified Borrower that, in light of each of these separate and continuing Events of Default, each of the (i) unpaid principal amount and accrued interest on the Loan, and (ii) all other Obligations (as defined in the Loan Documents) were immediately due and payable.

21. Borrower has failed to repay the Loan and all other Loan Obligations, including, but not limited to, the payment of additional Amendment Fees totaling \$1,354,372 due and owing for the periods August 29, 2007 (\$338,593), September 28, 2007 (\$338,593), October 31, 2007 (\$338,593) and November 30, 2007 (\$338,593).

22. Pursuant to the Loan Documents, as of November 30, 2007, Borrower owes an amount not less than \$283,699,818, which is comprised of (i) the outstanding principal amount of the Loan in the amount of \$270,875,000.00, (ii) the accrued and unpaid interest in the amount of \$10,454,662, and (iii) Amendment Fees in the amount of \$2,370,156. Interest, additional Amendment Fees, and other expenses and fees (including attorneys' fees and costs) will continue to accrue under the terms of the Loan Documents.

### **COUNT I**

#### **(For Specific Performance, Appointment Of A Receiver And Injunctive Relief Against All Defendants)**

23. Agent realleges and incorporates herein by this reference Paragraphs 1 through 22, above, as though fully set forth herein.

24. The Mortgage provides that Borrower and TBR have irrevocably granted and/or assigned to Agent, among other things: (i) the right to take possession of the Property, directly or through a court-appointed receiver; (ii) all right, title and interest Borrower and TBR hold in any and all proceeds of the Property and all other Collateral; (iii) the right to collect all proceeds derived from the Property and all other Collateral and apply those proceeds to the obligations owed under the Loan; and (iv) all right, title and interest to all contracts.

25. It is impractical and impossible for Agent to enjoy the rights granted to it under the Mortgage without the appointment of a receiver who has the power and authority to (i) take possession of the Property and all other Collateral and collect any proceeds derived therefrom, and (ii) to protect the security interest of Agent in the Property and all other Collateral.

26. There is no plain, adequate or speedy remedy at law for the enforcement of the terms of the Loan Documents or to compensate Agent for the damage caused to it by the failure and refusal of Borrower to perform its obligations under the Loan Documents. Agent will suffer irreparable damage, injury and harm unless equitable relief is granted.

27. For the purpose of satisfying the obligations secured by the Mortgage, Agent prays that this Court appoint a receiver to take control of and manage the Property and all other Collateral in accordance with the terms and provisions of the Loan Documents.

28. Agent is informed and believes, and based thereon alleges, that Defendants, and each of them, may claim the right to hold, occupy, possess and enjoy the Property and all other Collateral, and make, cancel, enforce or modify contracts relating thereto, all in derogation of Agent's rights under the Loan Documents, including the Mortgage.

29. Unless restrained and prevented by the Court in the exercise of its equitable jurisdiction to enter appropriate injunctive orders, Defendants' conduct will cause irreparable damage and injury to Agent. Accordingly, Agent requests that the Court issue an injunction to facilitate the receiver's appointment.

## **COUNT II**

### **(Judicial Foreclosure Against All Defendants)**

30. Agent realleges and incorporates herein by this reference Paragraphs 1 through 29, above, as though fully set forth herein.

31. The Mortgage provides that if Borrower is in default, Agent is entitled to foreclose on the Mortgage, including the Property and all other Collateral.

32. As a result of the aforementioned Events of Default, the entire sum of principal, interest and other costs and fees owed under the Loan Documents is immediately due and payable.

33. Agent has been, and may hereafter be, required to expend additional sums to protect its security, the Property, and all other Collateral, and Agent will amend this Complaint to allege the nature and amounts of such sums after such expenditures are made.

WHEREFORE, Plaintiff Credit Suisse, in its capacity as Agent, prays:

**ON COUNT I**

1. That a decree be entered for the specific performance by Borrower and TBR of all of the provisions of the Loan Documents giving Agent the right immediately to enter into possession of the Property and all other Collateral, either in person or by a receiver appointed by the Court to protect and preserve the Property and all other Collateral, and apply any proceeds derived from the Property and all other Collateral to the payment of the Loan;

2. That the Court appoint a receiver and grant the receiver the general duties of a court-appointed receiver, including the following specific powers and duties to:

a. Operate and manage the Property and all other Collateral and all businesses and enterprises conducted thereon, including, but not limited to, collecting revenues, taking possession of all accounts and receivables, and leasing the Property and all other Collateral;

b. File with the Court an inventory of all fixtures, equipment, machinery, personal property and inventory of the Property and all other Collateral of which he or she has taken possession;

c. Demand, collect and receive all rents, issues, profits, proceeds, cash, revenues, monies, deposits, security deposits, prepaid rent, impounds and accounts receivable in the possession of Borrower and/or TBR and/or their agents that arise from the Property and all other Collateral after the date of appointment, which shall be deposited into a deposit account ("Deposit Account") to be opened and maintained by the receiver;

d. Continue in effect any contracts, agreements, letters of credit and all other instruments presently existing and not in default relating to the Property and all other Collateral and make and enter into contracts or agreements affecting any part or all of the Property and all other Collateral or become the beneficiary of any letters of credit relating to the Property and all other Collateral and terminate any existing contract, agreement or instrument which is not commercially reasonable or beneficial to the Property and all other Collateral;

e. Continue in effect all entitlements related to the development of the Property, all other Collateral and/or the Project including, but not limited to those entitlements identified on Exhibit "J," attached hereto, and the entitlement extension set forth in Exhibit "K", attached hereto;

f. Negotiate leases or modifications of existing leases provided any such leases or modifications are approved or confirmed by the Court;

g. Obtain and/or eject tenants, and set or modify rents and terms of rent without prior Court approval, and employ and compensate unlawful detainer attorneys or eviction services with respect to the operation of the Property without prior Court approval;

h. Prepare and serve on all parties a monthly statement reflecting the receiver's fees and administrative expenses, including fees and costs of accountants and attorneys authorized by the Court, incurred during that month for the operation and administration of the

receivership estate and upon service of each statement, disburse from estate funds, if any, the amount of each statement;

i. Pay and discharge from the receivership funds all of the expenses of the receivership and the costs and expenses of operation, maintenance and all other aspects of the Property and all other Collateral and all businesses conducted thereon, including, without limitation, all taxes, governmental assessments and charges in the nature thereof lawfully imposed upon the Property;

j. Hire, employ and retain attorneys and pay reasonable fees for services rendered (with Court approval);

k. Employ agents, employees, clerks, accountants, and property managers to administer the receivership estate, purchase materials, supplies and services, and pay for them at the ordinary and usual rates out of receivership funds and do all things and incur the risks and obligations ordinarily incurred by owners, managers and operators of similar properties, businesses and enterprises;

l. At the receiver's election, pay any federal, state and local payroll taxes due in connection with employees of the receiver and/or any property managers;

m. Advance funds to keep current liens encumbering the Property and all other Collateral, if any, which are senior to the liens of Agent;

n. Apply for, obtain, maintain, obtain and file all documents and reports required in connection with, and pay any reasonable fees related to, any lawful licenses, permits, entitlements, or other governmental approvals relating to the Property, the enterprises and businesses conducted thereon, or the operation thereof; confirm the existence of and, to the extent permitted by law, exercise the privileges of any existing licenses, permits, entitlements,

and government approvals or the operation thereof, and do all things necessary to protect and maintain such licenses, permits, entitlements and approvals;

o. Do all things necessary to protect, maintain and operate all businesses and enterprises conducted upon the Property;

p. Borrow or otherwise receive funds from Agent or any other appropriate bank, financial institution or lender as may be necessary to satisfy the costs and expenses of the receivership, to the extent that the net revenues derived from the Property are insufficient to satisfy such costs and expenses;

q. Bring and prosecute all proper actions for (i) collection of proceeds of the Property, (ii) removal from the Property of persons not entitled to entry thereon, (iii) protection of the Property, (iv) any damages caused to the Property or other Collateral during the receivership, and (v) any indemnification from insurers;

r. Defend through appeal and to final judgment the action (including all related cross-claims and counterclaims) entitled Unite Here! Local 5; Eric W. Gill, Todd K. Martin, v. City and County of Honolulu, a municipal corporation; Kuilima Resort Company, a Hawai'i corporation, First Circuit Court, State of Hawai'i, Civil No. 06-1-0265 and Civil No. 06-1-0867 and presently pending in the Intermediate Court of Appeals of the State of Hawai'i, Case No. 28602;

s. Retain any consultants, engineers, architects, appraisers, and any other consultants (including land use consultants and environmental specialists) to perform (i) environmental inspections, investigations and assessments of the Property (including, but not limited to, Phase I and Phase II environmental surveys), (ii) any other inspections and assessments and prepare any reports or other documents required to obtain or maintain any

licenses, permits or approvals required in connection with the operation of the Property, and (iii) any other inspections and assessments and prepare any other reports which the receiver deems necessary to assist him or her in the discharge of his or her duties;

t. Market, sell, convey or transfer the Property, in whole or in part, or refinance the Loan; provided, however, that any such sale, conveyance, transfer or refinance is approved and/or confirmed by this Court;

u. Acquire (i) that certain property (and wastewater treatment plant located thereon) situated at Kahuku, District of Koolauloa, City of Honolulu, State of Hawai'i, and identified, respectively, by Tax Map Key No. (1) 5-7-001-035 and by Tax Map Key No. (1) 5-7-1-30 (Lot 1114), (ii) that certain related property adjacent thereto commonly known as the Mauka Land, and (iii) the ownership interests in that certain public utility that operates such wastewater treatment plant; provided, however, that any such acquisition and/or purchase is approved and/or confirmed by the Court;

v. Establish bank accounts for the deposit of monies and funds collected and received in connection with the receivership estate, at federally-insured banking institutions or savings associations which are not parties to this action;

w. Determine upon taking possession of the Property and any other Collateral whether in the receiver's judgment there is sufficient insurance coverage and, with respect to any insurance coverage, identify the receiver, Agent, Borrower and TBR as named insureds, additional insureds and loss payees on the policies, as appropriate, at least for the period that the receiver shall be in possession of the Property; if sufficient insurance coverage does not exist, notify the parties to this lawsuit and have thirty (30) calendar days to procure sufficient all-risk and liability insurance (including environmental, earthquake and/or flood

insurance) on the Property; provided, however, that if the receiver does not have sufficient funds to do so, seek instructions from the Court with regard to whether insurance shall be obtained and how it is to be paid and/or seek leave of Court to issue a Receiver's Certificate to borrow the funds necessary to procure such insurance;

x. Obtain one or more loans from Agent, Lenders or the Junior Lienholders, or any other appropriate bank, financial institution or lender, as may be necessary to satisfy the ordinary and necessary costs and expenses of the receivership to the extent that the receiver lacks funds to satisfy such costs and expenses;

y. In the event the receiver borrows funds from Agent or Lenders as an advance under the Loan Documents or as a direct loan, issue a Receiver's Certificate of Indebtedness to Agent evidencing the obligation of the receivership estate (and not the receiver individually) to repay such sums, which shall accrue interest at the default rate set forth in the Note;

z. Upon receipt by the receiver of a Commissioner's Deed and Assignment Upon Foreclosure, or such other order from the Court, or notice from Agent that Borrower has cured the defaults existing under the Loan, or that Agent has accepted a deed and assignment in lieu of foreclosure, turn over possession, custody and control of the Property and Collateral to either Agent, Borrower, or to the successful purchaser (whichever is appropriate) without further order of this Court; and

aa. Do such other things as may be necessary or incidental to the foregoing specific powers, directions and general authorities and take actions relating to the Property and/or other Collateral and the businesses and enterprises conducted thereon, beyond

the scope contemplated by the provisions set forth above, provided the receiver obtains prior Court approval for any actions beyond the scope contemplated herein;

3. To allow the receiver a fee for the services rendered, which will be fixed by agreement or Order of the Court and paid upon discharge, or earlier if so ordered by the Court;

4. Restrain Borrower, TBR and each of their agents, partners, property managers, employees, and all other persons acting in concert with, or for them, from:

a. Committing or permitting any waste on the Property and/or to the other Collateral or any part thereof, or committing or permitting any act on the Property and/or to the other Collateral or any part thereof in violation of law, or removing, transferring, encumbering or otherwise disposing of any of the real or personal property on the Property or the fixtures presently on the Property or any part thereof;

b. Demanding, collecting, receiving, discounting, or in any other way diverting or using any of the revenues of the Property and/or to the other Collateral;

c. Directly or indirectly interfering in any manner with the discharge of the receiver's duties or the receiver's possession of and operation or management of the Property and/or to the other Collateral;

d. Expending, disbursing, transferring, assigning, selling, conveying, devising, pledging, mortgaging, creating a security interest in, encumbering, concealing or in any manner whatsoever dealing in or disposing of the whole or any part of the Property and/or to the other Collateral or revenues, without prior Court order; and

e. Doing any act which will, or which will tend to, impair, defeat, divert, prevent or prejudice the preservation of the Property and/or to the other Collateral, and revenues, or the preservation of Agent's interest in the Property and/or to the other Collateral;

5. Require Borrower and TBR, and each of their agents, partners, property managers, employees, assignees, successors, representatives, and all persons acting under, in concert with, or for them, to:

a. Relinquish and turn over possession of the Property and all other Collateral to the receiver upon his appointment becoming effective;

b. Turn over to the receiver and direct all property managers and other third parties in possession thereof to turn over all keys and the original leases, contracts, agreements, instruments, books, records, books of account, ledgers, operating statements, budgets, real estate tax bills, plans, specifications, drawings, and all other business records relating to the Property and all other Collateral, wherever located, and in whatever mode maintained, including information contained on computers and any and all software relating thereto as well as all banking records, statements and cancelled checks, with copies thereof provided by the receiver to Borrower;

c. Turn over to the receiver all documents which pertain to all licenses, permits, government approvals, or entitlements relating to the Property and all other Collateral and immediately advise the receiver of the Federal Taxpayer Identification Number used in connection with the operation of the Property;

d. Turn over to the receiver all mail received relating to the Property and all other Collateral, with copies thereof provided by the receiver to Borrower;

e. Advise the receiver as to the nature and extent of insurance coverage on the Property and (i) immediately provide policies (including declaration page(s) and endorsement(s)) reflecting that the receiver, Agent, Borrower and TBR are named and/or additional insureds and loss payees on the insurance policies, as appropriate, for the period that the receiver shall be in possession of the Property, and (ii) not cancel, reduce or modify any insurance coverage currently in existence with respect to the Property and/or other Collateral; and

f. Turn over to the receiver all rents, issues, profits, proceeds, cash, revenues, monies, deposits, security deposits, prepaid rent, impounds and accounts receivable which are received, or have been received, by Borrower and/or TBR and their agents with respect to the Property and/or other Collateral from and/or after the date of appointment of the receiver, which shall then be deposited by the receiver into the Deposit Account.

## ON COUNT II

6. That the Court enter its judgment determining that the rights, claims, ownership, liens, titles and demands of Defendants are subject, subsequent and subordinate to the Mortgage;

7. Adjudging that the Mortgage, Security Agreement and Contract Assignment be foreclosed. Further adjudging that judgment be entered directing that the Property and all other Collateral be sold, according to law, by a receiver or other person or entity to be appointed by the Court; that the proceeds of sale be applied in payment of the amounts due to Agent and Lenders; that Defendants, and all persons claiming under any of them, subsequent to the execution of the Mortgage, either as lien claimants, judgment creditors, claimants under a junior deed of trust, purchasers, encumbrances, or otherwise, be barred and foreclosed from all

rights, claims, interests, or equity of redemption in the Property and all other Collateral, and every part of the Property and all other Collateral, when time for redemption has elapsed;

8. Permitting Agent, or any other parties to this suit, to become a purchaser at the foreclosure sale; that the receiver or other person or entity appointed by the Court execute a deed to the purchaser of the Property and all other Collateral at the sale, and that the purchaser be let into possession of the Property and all other Collateral on production of the deed;

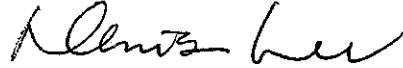
9. That if the proceeds of said sale shall be insufficient to pay the aforesaid sums to Agent, and it shall appear that a deficiency exists, that judgment then be entered for such deficiency against Borrower and TBR, jointly and severally, and that Agent have execution thereof.

**ON ALL COUNTS**

10. For all attorneys' fees and all costs of suit incurred herein; and

11. For such other and further relief as the Court may deem just and proper.

Dated: Honolulu, Hawai'i, DEC 19 2007



---

DENIS LEE  
KYLE T. SAKUMOTO  
Attorneys for Plaintiff