

REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF REGULATORY AGENCIES

STATE OF HAWAII

1010 RICHARDS STREET
P. O. BOX 3469
HONOLULU, HAWAII 96801

PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT

on
MOKIHANA LODGE
276 Kuhio Highway
Waipouli, Kapaa, Kauai, Hawaii

REGISTRATION NO. 458

IMPORTANT — Read This Report Before Buying

This Report Is Not an Approval or Disapproval of This Condominium Project

It reflects information obtained by the Real Estate Commission in its investigation of the project. This report, based on a principle of disclosure, is issued by the Commission for the purpose of preventing fraud, misrepresentation or deceit.

The developer shall not enter into a binding contract or agreement for the sale of any unit in a Condominium Project but may only take reservations therefore after

- (1) A copy of this Report has been given to the prospective purchaser,
- (2) The latter has been given an opportunity to read same, and,
- (3) His receipt taken therefor.

Issued: July 14, 1972
Expires: August 14, 1973

SPECIAL ATTENTION

A comprehensive reading of this Report is urged in order that personal requirements and expectations to be derived from the property can be ascertained. The attention of the purchaser or prospective purchaser is particularly directed to the following:

THE REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTIONS SUBMITTED May 30, 1972. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY REGIME LAW, Hawaii Revised Statutes, Chapter 514.

1. Mokihana Lodge is a proposed fee simple condominium project consisting of 4 separate three-story buildings containing 72 apartments, a building containing a restaurant and bar, and common areas including a swimming pool and other recreational facilities. There will be a parking area sufficient for 72 cars, which shall be common elements.

2. The Developer of the project has submitted to the Hawaii Real Estate Commission ("Commission") for exam-

ination all documents deemed necessary for the registration of a condominium project and the issuance of this Preliminary Public Report.

3. The Developer reports that the Declaration of Horizontal Property Regime, the Bylaws and the Condominium Map will be filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii and recorded in the Bureau of Conveyances, Honolulu, Hawaii, immediately prior to the application for a Final Public Report.

4. As of this date, no advertising and promotional matters have been submitted to the Commission pursuant to its rules and regulations.

5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of the Hawaii Revised Statutes, Chapter 514, and the Rules and Regulations of the Hawaii Real Estate Commission which relate to Horizontal Property Regimes.

6. This Preliminary Public Report automatically expires thirteen (13) months after the date of issuance, July 14, 1972, unless a Final Public Report or a Supplementary Public Report issues, or the Commission, upon review of registration, issues an order extending the effective date of this report.

7. This Preliminary Public Report is made a part of the registration of Mokihana Lodge Condominium Project. The Developer has the responsibility of placing a true copy of this Preliminary Public Report (yellow paper stock) in the hands of all purchasers and prospective purchasers, and securing a signed copy of the receipt for the Preliminary Public Report from each purchaser.

8. Each purchaser of an apartment shall be required to become a limited partner of a limited partnership, formed under the laws of Hawaii, named Mokihana Lodge Associates (hereinafter the "Limited Partnership").

NO PERSON WILL BE PERMITTED TO PURCHASE AN APARTMENT IN THE PROPOSED CONDOMINIUM AND TO BECOME A LIMITED PARTNER IN THE LIMITED PARTNERSHIP UNLESS HE IS A BONA FIDE RESIDENT OF THE STATE OF HAWAII. NO PURCHASE OF AN APARTMENT OR INTEREST IN THE LIMITED PARTNERSHIP BY A NON-RESIDENT IS VALID; IF ATTEMPTED, ALL MONEYS RECEIVED WILL BE REFUNDED. NO APARTMENT OR AN INTEREST IN THE LIMITED PARTNERSHIP MAY BE TRANSFERRED TO A PERSON NOT A BONA FIDE RESIDENT OF HAWAII UNTIL AT LEAST ONE YEAR HAS ELAPSED FROM THE DATE OF PURCHASE OF AN APARTMENT OR INTEREST IN THE LIMITED PARTNERSHIP.

NAME OF PROJECT: Mokihana Lodge

LOCATION: The project is located at 276 Kuhio Highway, Waipouli, Kapaa, Kauai, Hawaii.

TAX KEYS: 4-3-7-11 and 4-3-8-8.

ZONING: Apartment-Hotel-Resort

DEVELOPER: Waipouli Ventures, a Hawaii partnership, is the developer of the project, and has its principal place of business at 745 Fort Street, Honolulu, Hawaii, and its post office address at P. O. Box 38, Honolulu, Hawaii 96810.

ATTORNEY REPRESENTING DEVELOPER: Cades Schutte Fleming & Wright (Attention: Douglas E. Prior or Richard A. Hicks), 17th Floor, First Hawaiian Bank Building, 165 South King Street, Honolulu, Hawaii 96813, telephone: 531-7232.

DESCRIPTION OF PROJECT: Mokihana Lodge (the "Project"), formerly known as the Castaways Hotel, was built in 1967. The Project is situated on 4.002 acres bordering the ocean (the "Land"), and consists of five (5) buildings, a swimming pool and other recreational and common areas. All of the buildings have ocean views and are set in well-landscaped surroundings.

There are five buildings in the Project. Building "X", a two-story structure, contains a restaurant, bar, kitchen, entertaining area, lobby and a hotel administration office on the ground floor, and a banquet or party area and an area for a resident manager's apartment on the second floor. The other four buildings (Buildings "A", "B", "C" and "D", respectively) are three-story structures containing a total of 72 apartments, as well as laundry facilities, storage rooms and maid stations.

Each of the buildings in the group A, B, C and D is connected to the immediately adjacent building or buildings in the group by means of a ground floor, covered, concrete walkway. In addition, Buildings A and B are connected to each other, and Buildings C and D to each other, on both the second and third floor levels, by covered wood frame walks which contain maid stations. The second and third floors of Buildings A, B, C and D can be reached from the ground floor level by staircases located at both ends of each building.

Each of Buildings A, B, C and D has eighteen apartments. The number of each apartment, its floor level within its building, the approximate size of each apartment's living area and of its lanai (or in the case of second or third floor apartments, its balcony) are as follows:

| <u>Building</u> | <u>Apartment Numbers</u> | <u>Floor</u> | <u>Approximate Square Feet of Living Area in Each Apartment</u> | <u>Approximate Square Feet of Lanai of Each Apartment</u> |
|-----------------|--------------------------|--------------|---|---|
| A | 101-106 inclusive | Ground | 276.389 | 63.33 |
| | 201-206 inclusive | Second | 276.389 | 63.33 |
| | 301-306 inclusive | Third | 276.389 | 63.33 |
| B | 107 | Ground | 328.055 | 79.583 |
| | 108-112 inclusive | Ground | 255.834 | 62.500 |
| | 207 | Second | 328.055 | 79.583 |
| | 208-212 inclusive | Second | 255.834 | 62.500 |
| | 307 | Third | 328.055 | 79.583 |

| <u>Building</u> | <u>Apartment Numbers</u> | <u>Floor</u> | <u>Approximate Square Feet of Living Area in Each Apartment</u> | <u>Approximate Square Feet of Lanai of Each Apartment</u> |
|-----------------|--------------------------|--------------|---|---|
| | 308-312 inclusive | Third | 255.834 | 62.500 |
| C | 114-119 inclusive | Ground | 276.389 | 63.33 |
| | 214-219 inclusive | Second | 276.389 | 63.33 |
| | 314-319 inclusive | Third | 276.389 | 63.33 |
| D | 120-125 inclusive | Ground | 276.389 | 63.33 |
| | 220-225 inclusive | Second | 276.389 | 63.33 |
| | 320-325 inclusive | Third | 276.389 | 63.33 |

Each ground floor apartment has private access through sliding glass doors to a covered, concrete lanai, on grade, separated from adjoining lanais by a solid wall. Each second and third floor apartment has access to a concrete balcony with open railing. The layout, location and number of each apartment is shown on the Condominium Map.

Each studio apartment in Buildings A, C and D contains a double closet and a bathroom containing water closet, tub-shower combination and lavatory. Studio apartments in Building B have identical facilities with the exception of a stall shower rather than a tub-shower combination. Each apartment is furnished with a double bed (or two single beds) with bedspread, one dresser, one coffee table, two chairs and drapes. All apartments are carpeted wall-to-wall, and the bath floors are covered with ceramic mosaic tile.

All apartments have access to the common elements at the first floor level.

The Project contains parking for 72 vehicles.

The respective apartments shall not be deemed to include the undecorated or unfinished walls, the floors and ceilings surrounding each apartment or any pipes, wires, conduits or other utility lines running through such apartment which are utilized for or serve more than one apartment, the same being deemed common elements as hereinafter provided. Each apartment shall include any adjacent lanai shown on said Condominium Map. Each apartment shall be deemed to include all the walls and partitions which are not load-bearing within its perimeter walls, the inner decorated or finished surfaces of all walls, floors and ceilings, and the built-in fixtures.

COMMON ELEMENTS: The common elements will include the Land and all improvements on the Land, including Building "X", the swimming pool, Buildings A, B, C and D (except for all

portions of Buildings A, B, C and D which are apartments), as well as all common elements mentioned in Chapter 514, Hawaii Revised Statutes, which are actually constructed on the Land, and specifically shall include, but shall not be limited to:

- (a) Said Land in fee simple;
- (b) All foundations, load-bearing walls, walkways, ramps, and staircases;
- (c) The roofs;
- (d) All landscaped yards, plantings and retaining walls, and similar items;
- (e) The swimming pool and other recreational areas;
- (f) All driveway areas as well as parking stalls;
- (g) All ducts, electrical equipment, wiring and other central and appurtenant installations for services including power, light, cold and hot water, refuse and telephone.
- (h) All other devices or other installations upon the Land existing for or rationally of common use to all the owners of apartments within the Project.

INTEREST TO BE CONVEYED TO PURCHASERS: The percentage of undivided interest in all of the common elements appertaining to Apartment 107 will be 1.594%; that appertaining to each of Apartments 207 and 307 will be 1.593%; and that appertaining to each of the remaining apartments will be 1.38%.

The undivided interest established and to be conveyed with the respective apartments cannot be changed, and the Developer covenants and agrees that the undivided interest in the common areas and facilities and the title to the respective apartments to be conveyed shall not be separated or separately conveyed, and each said undivided interest shall be deemed to be conveyed or encumbered with its respective apartment even though the description in the instrument of conveyance may refer only to one or other of the interests. The voting rights of an apartment owner, as well as his share of the common expenses, shall be in proportion to the common interest.

PURPOSES OF BUILDINGS: The Project is to be operated as a hotel. As a consequence, each apartment and its appurtenant interests in the common elements (hereinafter "Apartment") hereinabove described shall at all times be used only as a temporary dwelling for the owner, his family and social guests, or as a hotel. An apartment owner may not use his Apartment, or cause or permit it to be used, in a manner inconsistent with the provisions of (i) the Declaration of Horizontal Property Regime and the Bylaws of Mokihana Lodge, (ii) the "limited Partnership Agreement of Mokihana Lodge Associates" (hereinafter referred to as "Limited Partnership Agreement") by which the Limited Partnership is formed, in which the apartment owner is a Limited Partner, and to which Limited Partnership the owner shall grant a "license" to

use his Apartment, or (iii) the provisions of the governing documents of any successor in interest to said Limited Partnership which undertakes to perform functions similar to said Limited Partnership on terms and conditions similar to those contained in the Limited Partnership Agreement.

OWNERSHIP OF TITLE: A Preliminary Report prepared by Title Guaranty of Hawaii, Incorporated reports that as of April 25, 1972, the Developer has fee simple title to the land on which the Mokihana Lodge is situated.

ENCUMBRANCES: The Preliminary Report reflects that the property is subject to the following encumbrances:

- (1) Reservation in favor of the State of Hawaii for mineral and metallic mines.
- (2) Real Property Taxes that may be due and owing.
- (3) Shoreline Setback of Parcel 1st as enacted by Act 136, Session Laws of Hawaii 1970.
- (4) Quitclaim Deed on Parcel 6th dated March 29, 1965, recorded in Liber 5012 on Page 331, from The Lihue Plantation Company, Ltd. to the State of Hawaii.

PURCHASE MONEY HANDLING: A copy of the specimen Sales Contract and the Escrow Agreement have been submitted as part of the registration. The Escrow Agreement dated May 17, 1972, identifies Title Guaranty Escrow Services, Inc. as the Escrow. Upon examination, the executed Escrow Agreement is found to be in compliance with Chapter 514, Hawaii Revised Statutes, and particularly with §514-36 through §514-40, Hawaii Revised Statutes.

A prospective purchaser should carefully examine the form of the Sales Contract and the Escrow Agreement to determine the time for and the amount of payments of the purchase price, and the sharing of the closing costs. A prospective purchaser should also note that the Sales Contract reserves to "seller" the right to cancel the Sales Contract if less than 50 apartments in the Project have been sold prior to November 1, 1972. The Escrow Agreement provides that Escrow will not disburse any funds deposited with Escrow by a purchaser until "seller" has waived such right.

MANAGEMENT AND OPERATION: The Declaration and Bylaws provide for an association of apartment owners ("Association") which acts through its Board of Directors and officers to manage and administer the Project. The Bylaws provide that the Board of Directors shall at all times employ a responsible managing agent. The Developers are currently negotiating a contract with a prospective managing agent. Pursuant to the Bylaws, a monthly assessment is levied by the Association for maintenance of the common elements of the condominium. Because other apartment owners' interests are interdependent to some extent, insurance, utility service, telephone and similar charges are also made through the Association. (Each prospective purchaser will receive, together with this document, a separate sheet providing information regarding the estimated monthly maintenance charge for his Apartment.) The Bylaws reserve a lien upon each apartment to secure the payment of maintenance, supplemental and special assessments of the Association collected by the Association. If the owner is in default of payment of the assessments, this lien

may be foreclosed by the Association by appropriate legal action.

THE LIMITED PARTNERSHIP: The Limited Partnership, Mokiha-na Lodge Associates, will be formed pursuant to the laws of the State of Hawaii for the purpose of renting the Apartments in the Project. The Developer is presently negotiating with a prospective hotel operator who will also act as the General Partner. Membership in the partnership is mandatory for each apartment owner. An apartment owner will contribute to the partnership \$300.00 in cash and the use of his Apartment, including furniture. The terms and conditions of an apartment owner's use of his Apartment while he is a Limited Partner are outlined below.

The rights of a Limited Partner are governed by the Uniform Limited Partnership Act of the State of Hawaii, and by the terms of the Limited Partnership Agreement. Limited Partners may take no part in the management of the Partnership business, and shall have no right or authority to act for or by the Partnership. Each Limited Partner will receive an unaudited monthly profit and loss statement, and an annual profit and loss statement and balance sheet of the Partnership, certified by an independent Certified Public Accountant.

The Partnership Agreement provides that a General Partner may require additional capital contributions from Limited Partners if working capital becomes insufficient to pay costs, expenses and losses of the Partnership, and to maintain adequate reserves for three successive calendar months. The formula for determining the proportionate share of the total working capital insufficiency which each partner is required to contribute is set forth on page 3 of the Limited Partnership Agreement. A prospective purchaser is advised to carefully study this provision. If a Limited Partner fails to make the required contribution, the General Partner may withhold distribution of any "profits", and apply the distribution to the capital contribution required until the amount required has been met. This is the sole remedy of the General Partner so that the Limited Partners are not personally liable for any additional working capital contributions. Both the General Partner and the Limited Partners have certain rights to terminate the Limited Partnership.

The General Partner has all the rights and powers granted to it under the Hawaii Uniform Limited Partnership Act, and is solely responsible for the management and conduct of the partnership business. The General Partner shall exert its maximum efforts in managing and conducting the partnership business in a reputable and respectable manner so as to maximize the profits of the Partnership. The compensation which the General Partner shall receive for its services is currently being negotiated.

The General Partner (as well as any one of the Limited Partners) may engage in or possess an interest in other business ventures of every nature and description, independently or with others, including other condominium hotel projects. The General Partner is not liable to the Partnership or to the Limited Partners for any acts done or omitted in good faith.

The General Partner will be liable for all debts and other obligations of the Partnership.

Each Limited Partner shall have the right to sell his Apartment and assign his interest in the Partnership to whomever he wishes, but such assignee shall not acquire all the rights of a substituted limited partner until the assignment is consented to by the General Partner of the Partnership, as provided in the Partnership Agreement. A Limited Partner does not have the right to withdraw from the Partnership during the term of the Partnership.

The term of the Partnership has not as yet been established. Termination will result from (1) the withdrawal, bankruptcy, liquidation or dissolution of the General Partner (unless a new general partner agrees to be a General Partner and continues the Partnership), (2) the termination of the rental operation (as a result of, for example, a decision of the holders of 75% or more of the interests in the common elements), or (3) the agreement to terminate the Partnership by the General Partner and Limited Partners entitled to more than 50% of the Partnership proceeds.

The General Partner may withdraw from the Partnership if there are two consecutive years in which the Partnership experiences an aggregate net operating loss on its rental operation (as defined in the Partnership Agreement). The General Partner shall also have a right to withdraw if there are insufficient funds to operate the Project as a hotel, and the Limited Partners have failed to fully provide all sums required by the General Partner. Withdrawal of the General Partner will terminate the Partnership and the rental operation unless the Limited Partners can find a new General Partner.

To insure the Partnership an adequate supply of apartments to rent and to enable it to accept rental reservations, particularly during the peak tourist season, certain restrictions are imposed on the use of apartments owned by persons who join the Partnership. A Limited Partner or his guest may use his Apartment or another apartment on a space available basis for thirty (30) days each year (the "Owner's Use Period"), except during the months of June, July, August, December and January. The thirty (30) days need not be consecutive. At the end of each period of use, the owner or his guest must pay a charge of three percent (3%) of the daily room charge for the room used and for the number of days of use.

Each Limited Partner's share of the net profits or losses of the Partnership shall be determined by using a formula taking into account the value of the Apartment and the number of days each year his apartment is available for rent (not being used by the owner as part of the Owner's Use Period), and comparing both factors with the value and availability of all other apartments. The details of the formula used to compute each partner's share of the Partnership profits or losses are set forth in paragraph 12 of the Limited Partnership Agreement. Each prospective apartment purchaser should carefully analyze that paragraph.

The Partnership will receive income from room

rentals and the rental of the restaurant and bar facilities. The Developer has provided information about the past operation of Mokihana Lodge and about existing arrangements for management of the restaurant and bar. During the nine months ending December 31, 1971, the Developer reported the receipt of \$49,404 from room rentals, and \$12,016 from the operation of the restaurant and bar. The cost of sales was \$5,957, leaving a total gross profit of \$55,463. Total operating expenses were \$91,873, including \$16,462 for maintenance and repairs leaving a net operating loss of \$36,410. In addition to this, the Developer reported depreciation of \$47,516, and interest expenses of \$38,972. During most of the first quarter of 1972, the Project was closed for renovations; the operating results for the second quarter were not available at the date of this submission, May 30, 1972. The Developer has advised that a license agreement was entered into on February 28, 1972, between the Developer and Hui Luau, Inc. for the operation of the restaurant and bar of Mokihana Lodge. The term of the agreement is for five (5) years, beginning February 1, 1972, with an option to extend the license for an additional five-year period. It stipulates the following rental payments: 10% of gross sales of beverages sold at the bar; 5% of gross sales of food and beverages; and 10% of gross income from concessions granted with respect to the premises. In addition, licensee shall also pay all rates and charges for electricity, gas, water, sewage and other utilities, and Federal, State or local excise taxes and charges attributable to the rental income to be collected by the licensor. Prospective purchasers are advised that there is no assurance of a profit from apartment rentals, or that rental income will be sufficient to cover the purchaser's expenses, or that rental operations will not result in a loss. Each purchaser must therefore be prepared to meet all expenses of condominium operation without reliance on rental income to meet any part of such expenses. Apartment owners may lose their monetary contribution to the Limited Partnership if the rental operation is unprofitable.

Prospective purchasers should also consider the impact of competition upon profits. The Developer has advised that although there are no condominiums in the vicinity of Mokihana Lodge, there are nine hotels or apartments with approximately 1,272 rooms in the area; 160 additional rooms may be built in that area in the near future. The Developer further advises that there are at present 2,719 rental units on the island of Kauai; approximately 235 may be built in the near future.

The income tax consequences of ownership of a condominium may vary considerably, according to the owner's circumstances. The Developer has submitted to the Commission information set forth below which discusses tax consequences in a general manner. The Commission expresses no opinion on this information; it strongly recommends that each purchaser consult his tax adviser, or otherwise determine the tax consequences to him of a purchase of a condominium and interest in the Limited Partnership. In determining such tax consequences the Developer advises that the following items should be considered:

1. Federal Income Tax. It is the intention of those forming the Partnership that it will be treated as a partnership for Federal income tax purposes, and not as a corporation. However, no assurances can be given that the Internal Revenue Service will treat the

Partnership as a partnership. If the Partnership is treated as a partnership, any net income realized by the Partnership on the rental operation will be allocated among the partners in accordance with the terms of the Partnership Agreement, and will be reported by them on their individual returns, instead of being subject to a separate tax on the rental operation at corporate rates, as would be the case if the operation were regarded as a corporation. If expenses on the rental operation of the Partnership and depreciation exceed gross income for any year, the excess will be allocated among the partners, and will be deductible currently by them on their individual returns. Interest payments upon a mortgage loan are deductible on the owner's individual return.

For the purposes of determining gain or loss on the sale or other disposition of real property, the basis is generally the cost, reduced by any depreciation. So long as the owner is not deemed a dealer (that is, one who holds the property for re-sale) in real estate, profit or loss realized on the sale of such property would be treated as capital gain or loss under applicable Federal income tax provisions. Gain realized on the sale of an apartment owned for more than six months will be termed long-term capital gain. If the owner is deemed a "dealer" (his investment in the property is deemed not to be a capital asset), gain or loss on the sale or other disposition of such property would be treated as ordinary income or loss.

If an owner uses accelerated depreciation and sells his apartment at a gain, part or all of such gain may be taxed at ordinary income rates under present rules for depreciation "recapture".

2. Hawaii Income Tax. Limited Partners will be liable for the payment of the State of Hawaii income tax on net income received from such operation. The Hawaii income tax law closely resembles Federal law prior to its amendment by the Tax Reform Act of 1969, most features of which are not reflected in the Hawaii income tax law. Hence, the income tax consequences of limited partnership ownership under the Hawaii income tax law, as applied to Hawaii residents, would be generally similar to the income tax consequences of such ownership under the Federal income tax law, as discussed above.

3. Hawaii Excise Tax. The State of Hawaii excise or gross income tax, currently at the rate of 4%, is due on gross receipts obtained from the operation of most businesses within the State, including the rental of apartments. This tax is customarily added to each charge for rendered services. It is intended that the General Partner will collect this tax and pay it to the State on behalf of the Partnership.

The purchaser or prospective purchaser should be cognizant of the fact that this Public Report represents

information disclosed by the Developer in the required Notice of Intention submitted May 30, 1972, and additional information subsequently filed as of June 27, 1972.

THIS PRELIMINARY HORIZONTAL PROPERTY REGIME (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 458, filed with the Commission on May 30, 1972.

The Report when reproduced shall be a true copy of the Commission's Public Report. Paper stock used in making facsimiles must be yellow.


(For) DOUGLAS R. SODETANI, Chairman
Real Estate Commission
State of Hawaii

Distribution:

Department of Taxation
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Planning Department, County of Kauai
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Escrow Agent

Registration No. 458

July 14, 1972