

# REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION  
DEPARTMENT OF REGULATORY AGENCIES

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

## FINAL HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT

"441 LEWERS"  
441 Lewers Street  
Honolulu, Hawaii

REGISTRATION NO. 630

### 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 until

- (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: November 20, 1973  
Expires: December 20, 1974

#### 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:

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED OCTOBER 25, 1973. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF CHAPTER 514, HAWAII REVISED STATUTES.

1. 441 Lewers is a leasehold condominium consisting of an existing apartment-hotel building, containing a total of 40 leasehold residential condominium units, all in accordance with the plans filed with the Assistant Registrar of the Land Court of the State of Hawaii as Condominium Map No. 185. The owner intends to sell each apartment together with an undivided interest in the common elements of the improvements (exclusive of the land) by an APARTMENT DEED, and to lease an undivided interest in the land to each purchaser by means of a GROUND LEASE. Purchasers are particularly advised to study these documents,

with particular reference to what happens upon expiration of each Ground Lease. Each Ground Lease will be for an approximate term of 55 years. The fee owner is reserving all rights to assign the use of the ten parking spaces in the project under an exclusive parking license granted to the owner in the Declaration of Horizontal Property Regime.

2. The owner has submitted to the Commission for examination all documents deemed necessary for the issuance of this Final Public Report.
3. No advertising or promotional matter has been submitted pursuant to the rules and regulations promulgated by the Commission.
4. The basic documents (Declaration of Horizontal Property Regime, By-Laws of Association of Apartment Owners, and a copy of the approved Floor Plans) have been recorded in the office of the recording officer.

The Declaration of Horizontal Property Regime, together with the By-Laws of Association of Apartment Owners attached thereto, were filed with the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 655168, and Condominium Map No. 168 has been assigned to the project by said office.

5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Chapter 514 of the Hawaii Revised Statutes and the condominium rules and regulations which relate to horizontal property regimes.
6. This Final Public Report automatically expires thirteen (13) months after the date of issuance, November 20, 1973, unless a Supplementary Public Report issues or the Commission, upon review of the registration, issues an order extending the effective period of this report.

NAME OF PROJECT: "441 LEWERS"

LOCATION: The land submitted to the Regime, approximately 4,643 square feet, is located at 441 Lewers Street, one block makai of Ala Wai Boulevard.

TAX MAP KEY: FIRST DIVISION 2-6-20-9.

ZONING: H-2 (Hotel)

DEVELOPER: SMITH DEVELOPMENT CORP., a Hawaii corporation, and SANGER & WUCHER ENTERPRISES, a Hawaii partnership, doing business as "The 441 Lewers Joint Venture", a Hawaii joint venture, the principal place of business of which is Suite 1625, Davies Pacific Center, Honolulu, Hawaii 96813.

ATTORNEY REPRESENTING DEVELOPER: Carlsmith, Carlsmith, Wichman and Case, 190 S. King Street, Honolulu, Hawaii 96813 (Attention: Peter Starn), Telephone 524-5112.

DESCRIPTION: 441 Lewers is an existing apartment-hotel project which the owner has converted into a condominium. The project consists of one building with a total of 40 apartments. In addition, the project contains walkways, a driveway and parking area, and other amenities described below under "Common Elements" and "Limited Common Elements".

1. Building Description. The building has ten floors. Each apartment has access to an exterior balcony which has access to the grounds by means of two stairways, in addition, a passenger elevator serves all apartment floors except the penthouse floor.
2. Materials. The building is constructed principally of reinforced concrete, concrete block, steel, glass, wood and other related building materials.
3. Description of Apartments. Each apartment is equipped with built-in fixtures including a stove, refrigerator, sinks and bathroom fixtures. Each unit includes all walls and partitions within its perimeter walls, all glass windows, jalousie windows and panels along the perimeter; the interior half of all non-load bearing perimeter walls; the inner decorated or finished surfaces of all floors and ceilings; all built-in fixtures; and the lanai or lanais adjacent to said apartment; provided, however, that the portion of each perimeter wall which is included in any apartment is a limited common element appurtenant to said apartment (except for the inner decorated or finished surface of said wall, which is not a limited common element).

There are seven basic types of apartments as follows:

(a) Type "A" contains an entry, entry closet, living/sleeping area, kitchenette with sink, stove and refrigerator, bath with tub/shower, and the adjoining lanai. Apartments numbered "01" on the second through sixth and ninth floors are Type "A" apartments;

(b) Type "B" contains an entry, entry closet, living/sleeping area, kitchenette with sink, stove and refrigerator, bath with tub/shower, and the adjoining lanai. Apartments numbered "02" on the second through sixth and ninth floors are Type "B" apartments;

(c) Type "C" contains an entry, living/sleeping area with closet, kitchenette with sink, stove and refrigerator, bath with tub/shower, and the adjoining lanai. Apartments numbered "03" on the second through sixth and ninth floors and "02" on the seventh and eighth floors are Type "C" apartments;

(d) Type "D" contains an entry, living/sleeping area with closet, kitchenette with sink, stove and refrigerator, bath with tub/shower, and the adjoining lanai. Apartments numbered "04" on the second through sixth and ninth floors and "03" on the seventh and eighth floors are Type "D" apartments;

(e) Type "E" contains an entry, entry closet, living room, bedroom, (2) baths with tub/shower, kitchenette with sink, stove and refrigerator, and an adjoining lanai. Apartments numbered "05" on the second through sixth and ninth floors and "04" on the seventh and eighth floors are Type "E" apartments;

(f) Type "F" contains an entry, entry closet, living room, bedroom, (2) baths with tub/shower, kitchenette with sink, stove and refrigerator, and an adjoining lanai. Apartments numbered "01" on the seventh and eighth floors are type "F" apartments.

(g) PH1 contains an entry, living/sleeping area, kitchenette with sink, stove and refrigerator, storage closet, bath with tub/shower, and adjoining lanai.

(h) PH2 contains an entry, living/sleeping area, kitchenette with sink, stove and refrigerator, storage closet, bath with tub/shower, and adjoining lanai.

4. Location, Numbering, Area, Apartment Type and Percentage Interest of Apartments.

(a) Location and Apartment Numbers. Each apartment, except the penthouses, is assigned a three digit number which identifies the apartment and indicates its location. The first number indicates the floor on which the apartment is located. The last two digits indicate the location of that unit on the floor on which the unit is located; the last two digits are assigned consecutively to the apartments on each floor from northeast to southwest with the most northeasterly apartment on each floor being assigned "01" as its last two digits. For example, apartment 201 is the most northeasterly apartment on the second floor and apartment 905 is the most southwesterly apartment on the ninth floor. The two penthouses on the top level are assigned the designation "PH"; "PH1" is the northern penthouse and "PH2" is the southern penthouse.

(b) Area, Type and Common Interest. The approximate net floor area (excluding lanai and balcony), approximate gross floor area (including lanai only), apartment type and percentage of undivided interest in the common elements (common interest) of each unit are as follows:

<u>Apt. No.</u>	<u>Approx. Sq. Ft.</u>		<u>Type</u>	<u>Common Interest</u>
	<u>Net</u>	<u>Gross</u>		
201	263	506	A	2.0%
301	263	351	A	2.0%
401	263	351	A	2.0%
501	263	351	A	2.0%
601	263	351	A	2.0%
901	247	335	A	2.0%

202	285	493	B	2.0%
302	285	383	B	2.0%
402	285	383	B	2.0%
502	285	383	B	2.0%
602	285	383	B	2.0%
902	263	352	B	2.0%
203	259	380	C	2.0%
303	259	322	C	2.0%
403	259	322	C	2.0%
503	259	322	C	2.0%
603	259	322	C	2.0%
702	259	322	C	2.0%
802	259	322	C	2.0%
903	242	298	C	2.0%
204	257	378	D	2.0%
304	257	320	D	2.0%
404	257	320	D	2.0%
504	257	320	D	2.0%
604	257	320	D	2.0%
703	257	320	D	2.0%
803	257	320	D	2.0%
904	223	279	D	2.0%
205	556	1005	E	4.0%
305	556	803	E	4.0%
405	556	803	E	4.0%
505	556	803	E	4.0%
605	556	803	E	4.0%
704	556	803	E	4.0%
804	556	803	E	4.0%
905	521	713	E	4.0%
701	548	745	F	4.0%
801	548	745	F	4.0%
PH1	394	914	PH	2.0%
PH2	371	1076	PH	2.0%

COMMON ELEMENTS: The common elements will include the limited common elements described below and all of the portions of the project other than the apartments, including specifically, but not limited to: (a) the property in fee simple; (b) all foundations, floor slabs, beams, supports, bearing walls (except the inner decorated surface within each unit), roofs, stairways, walkways, balconies, and elevator; (c) all parking areas and all planted areas and grounds; (d) the main entrance and clerk's office, and all ducts and central appurtenant installations for common services, including power, light, water, sewer, telephone and refuse disposal; (e) the coin operated laundry, the appurtenant equipment, installations and the adjacent laundry area; (f) the "planter" area located on the balcony of the second floor, as shown on sheet A-9 of the condominium map; and (g) all other parts of the project necessary or convenient to its existence, maintenance and safety, or normally in common use.

LIMITED COMMON ELEMENTS: Certain parts of the common elements, herein designated as "limited common elements", are hereby set aside and reserved for the exclusive use of certain apartments:

(a) The stairways connecting the ninth floor with the penthouse floor are limited common elements appurtenant to and for the exclusive use of PH1 and PH2.

(b) The access balcony on each floor shall be appurtenant to and for the exclusive use of the apartments to which it provides access, except for the "planter" area located on the second floor balcony which shall be a common element as set forth above.

INTEREST TO BE CONVEYED TO PURCHASER: Each unit according to its type and location shall have appurtenant thereto an undivided percentage interest in the improvements (exclusive of land) called the "Common Interest", for all purposes, including voting, as listed above. In addition, each apartment purchaser will hold an undivided percentage leasehold interest in the underlying land, equal to his common interest.

USE: The Declaration provides that the apartments will be occupied and used as permanent or temporary residences and for no other purposes. The apartment owners have the right to lease their apartments to third parties.

OWNERSHIP TO TITLE: The Notice of Intention reflects that title to the land is vested in developer by deed from Charles Bai Kim, dated July 19, 1973, filed with the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 640003.

ENCUMBRANCES AGAINST TITLE: The developer has filed with the Commission a Preliminary Report prepared by Long & Melone Escrow, Ltd., dated October 10, 1973. That report reflects the following encumbrances:

1. Grant of Easement in favor of Hawaiian Electric Company, Inc., in, through, along, across and under Lot 31-B, dated July 24, 1933, and filed as aforesaid as Land Court Document No. 28853;
2. Perpetual Right of Way, in favor of the owners of Lots 31-A and 33-A for ingress and egress in common with all others entitled, over and along Lot 31-B, as granted in Deed dated August 17, 1933, filed as aforesaid as Land Court Document No. 28908;
3. Perpetual Right of Way in favor of owners of Lots 32-A, 34, 21-A and 21-B, for ingress and egress in common with all others entitled, over and along Lot 31-B, as granted in Deeds filed as aforesaid as Land Court Documents Nos. 29257 and 32762;
4. Perpetual Easement in favor of the owner of Lot 20-A, over Lot 31-B, as set forth in Deed dated July 30, 1945, and filed as aforesaid as Land Court Document No. 79636;

5. Grant of Easement in favor of Hawaiian Electric Company, Inc., in, through, across and under Lot 31-B, dated April 12, 1954 and filed as aforesaid as Document No. 164178.
6. Mortgage in favor of Amfac Financial Corp., to secure \$995,000.00, dated July 11, 1973 and filed as aforesaid as Document No. 640004.
7. Financing Statement in favor of Amfac Financial Corp., recorded in the Bureau of Conveyances of the State of Hawaii in Book 9325, Page 422.

NOTE: The developer has advised the Real Estate Commission that the Mortgage and Financing Statement will be released as to the interest of each apartment prior to the conveyance to the respective apartment purchasers.

PURCHASE MONEY HANDLING: A copy of the executed Escrow Agreement, dated October 18, 1973, between Long & Melone Escrow, Ltd., as Escrow Agent and owner, has been filed with the Commission. On examination the specimen Sales Contract and the executed Escrow Agreement are found to be in compliance with Chapter 514, Hawaii Revised Statutes, and particularly sections 514-36 through 514-40, Hawaii Revised Statutes.

Among other provisions the specimen Sales Contract provides that if less than 30 apartments are sold prior to December 1, 1973, Seller may at its option cancel this contract, in which event Seller will cause Escrow Agent to refund to Buyer all moneys paid without interest and Seller and Buyer shall be relieved and released of all further liability hereunder.

The Specimen Sales Contract further provides that the purchase price includes all built-in fixtures, including kitchenette with stove and refrigerator, and sinks and bathroom fixtures, and all furnishings, carpets and draperies in an "as is" condition, and the seller disclaims any warranty whatsoever of merchantability of such fixtures and their working condition.

It is incumbent upon the purchaser and the prospective purchaser that he reads with care the Sales Contract and the executed Escrow Agreement. The latter establishes how the proceeds from the sale of apartments are placed in escrow pending closing and disbursement of funds to the owner.

The purchaser and prospective purchaser is also advised to read with care the Rules and Regulations of said project as it contains unique provisions, such as provisions regarding animals on the premises, limit on the number of persons living in certain units, procedure necessary in leasing or renting units on a temporary basis.

LICENSE: The Declaration of Horizontal Property Regime provides that an exclusive and irrevocable license (hereinafter called the "License") in and to all of the ten (10) parking

spaces as shown on the condominium map (herein called the "licensed area"), is hereby granted to, and reserved by, "The 441 Lewers Joint Venture", and its successors and assigns (hereinafter called in this paragraph the "Licensee"). The License includes the exclusive use, control over the use, and occupation of the licensed area, together with all rights of access, ingress and egress (vehicular and otherwise) for the full use and occupation of the licensed area by Licensee or Licensee's permittees (which may include, without limiting the generality of the foregoing, members of the public). Licensee shall be responsible for the maintenance of said parking spaces including resurfacing and repainting and at least one cleaning per year. Anything to the contrary herein notwithstanding, Licensee may not use the licensed area for any unlawful purpose or in any way which would unreasonably impair the use of other Project areas not included in the License by the Owners as provided above. No owner of any apartment nor the Association of Apartment Owners shall have any right to, or any interest in any income or profits which arise in connection with Licensee's operation or use of the licensed area, and no part of said income or said profits shall be deemed to be common profit of the common elements of the Project. However, nothing herein shall be construed to change the status of the licensed area as common elements of the Project. The Licensee may at any time and from time to time assign, lease or sublicense all or any part of the licensed area or this License, without the consent of the owner of any apartment, the Association of Apartment Owners, or any mortgagee (except a mortgagee holding a security interest in the rights under the License itself). Neither the Association of Apartment Owners nor the fee owners shall have any right or power to cancel or in any way modify the terms of the License, without the written consent of Licensee and the fee owners. The License shall terminate automatically upon the removal of the property from the Horizontal Property Regime created by this Declaration, or January 1, 2073, whichever occurs sooner.

MANAGEMENT OF THE PROJECT: The By-Laws of the Association of Apartment Owners vest in the Board of Directors the power and duties necessary for the administration of the overall affairs of the project. The By-Laws of the Association of Apartment Owners specify that the presence at any meeting in person or by proxy of fifty percent (50%) of unit owners shall constitute a quorum and at any meeting in which a quorum is present, action by a majority of the voting power represented at such meeting shall be valid and binding on the Association except as otherwise provided in the By-Laws. Voting shall be on a percentage basis, the percentage of the total vote to which each unit is entitled shall be the same as the percentage of the common interests assigned to such unit in the Declaration; and any percentage of apartment owners specified in the By-Laws means the owners of apartments to which are appurtenant such percentage of the common interest. The Board of Directors of the Association of Apartment Owners may employ necessary personnel to carry out management and operation of the project. Pursuant to the By-Laws, the Property Management Agreement submitted to the Commission names First Hawaiian Bank as initial managing agent for an initial term of one (1) year.

STATUS OF PROJECT: The construction of the project has been completed since 1969 and has been used as an Apartment-Hotel. Therefore, no program of financing has been submitted to the Commission, nor any construction contract or other document appropriate for a project under construction.

NOTE: The developer has advised the Real Estate Commission that the building was built prior to the effective date of the Comprehensive Zoning Code of the City and County of Honolulu and therefore the prior zoning applies to the building and the building is a nonconforming use under the present Comprehensive Zoning Code, all as provided for in sections 21-107 and 21-1406 of said Comprehensive Zoning Code.

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The purchaser or prospective purchaser should be cognizant of the fact that this published report represents information disclosed by the Developer in the required Notice of Intention submitted October 25, 1973, and information submitted as late as November 20, 1973.

This FINAL HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 630 filed with the Commission October 25, 1973.

This report, when reproduced, shall be a true copy of the Commission's public report. The paper stock used in making facsimiles must be white.

  
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(for) DOUGLAS R. SODEY, Chairman  
REAL ESTATE COMMISSION  
STATE OF HAWAII

Distribution:  
DEPARTMENT OF TAXATION  
BUREAU OF CONVEYANCES  
PLANNING COMMISSION, CITY AND  
COUNTY OF HONOLULU  
FEDERAL HOUSING ADMINISTRATION  
ESCROW AGENT

Registration No. 630

November 20, 1973.