

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

KIHEI GARDEN ESTATES
Corner of Lipoa and Uluniu Streets
Kihei, Maui, Hawaii

REGISTRATION NO. 806

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: October 9, 1975
Expires: November 9, 1976

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 and prospective purchaser is particularly directed to the following:

THE REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED ON SEPTEMBER 2, 1975, AND INFORMATION SUBSEQUENTLY FILED ON SEPTEMBER 16, 1975. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF THEIR INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, CHAPTER 514, HAWAII REVISED STATUTES.

1. The Kihei Garden Estates Condominium is a proposed fee simple condominium project consisting of eighty-four (84) dwelling units contained in eight (8) two-story residential apartment buildings. Ninety-eight (98) uncovered, unassigned parking stalls are available.
2. The Developer of the project has submitted to the Commission for examination all documents deemed necessary for the registration of a condominium project and issuance of this Preliminary Public Report.

3. The basic documents (Proposed Enabling Declaration of Horizontal Property Regime, By-Laws of Association of Apartment Owners and a copy of the Proposed Floor Plans, as revised) have not been filed in the Office of the recording officer.
4. No advertising or promotional matter has been submitted pursuant to rules and regulations promulgated by the Commission.
5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Chapter 514, Hawaii Revised Statutes, and the Condominium Rules and Regulations which relate to Horizontal Property Regime.
6. This Preliminary Public Report automatically expires thirteen (13) months after date of issuance, October 9, 1975, 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: KIHEI GARDEN ESTATES

LOCATION: Two parcels of land, 1.338 acres and 1.926 acres, having a total area of 3.264 acres, in fee simple, to be committed to the regime, are situate at the corner of Lipoa and Uluniu Streets, Kihei, Island and County of Maui, State of Hawaii.

TAX KEY: Second Taxation Division, 3-9-08-11 and 26

ZONING: Apartment (A-1), County of Maui

DEVELOPER: Donald E. Schmider, Raymond R. Pursche, Jerald C. Briske, H. Dean Briske and Donald L. Summers have formed a joint venture and are the Developer. The place of business of the joint venture is Kihei, Maui, Hawaii, and the post office address is P. O. Box 269, Kihei, Maui, Hawaii 96753. The telephone number is 879-1404. The joint venture is not registered with the State of Hawaii. The joint venturers are Raymond R. Pursche, P. O. Box 269, Kihei, Maui, Hawaii, Donald E. Schmider, P. O. Box 2113, Anchorage, Alaska, Jerald C. Briske and H. Dean Briske, both of 3909 Cope, Anchorage, Alaska, and Donald L. Summers, 6832 Cutty Sark, Anchorage, Alaska.

ATTORNEY REPRESENTING DEVELOPER: Ueoka, Luna & Romanchak, 2103 Wells Street, Wailuku, Maui, Hawaii 96793. Telephone: 244-7914. (Attention: Meyer M. Ueoka, Esq.)

DESCRIPTION: The proposed Enabling Declaration Establishing a Plan for Condominium Ownership (Declaration of Horizontal Property Regime) reflects that the project is to consist of eighty-four (84) separately designated and legally described fee simple estates, being the area or space contained in the

perimeter walls of each of the units in eight (8) two-story buildings. The proposed plans submitted by the Developer reflect that the project shall also consist of a recreation building and a swimming pool. The proposed Declaration also reflects that the ninety-eight (98) uncovered parking stalls shall be unassigned.

The eighty-four (84) individual apartments shall be within eight (8) two-story buildings designated "A", "B", "C", "D", "E", "F", "G" and "H". The size of each apartment's living room area, including lanai, by model type, is as follows:

<u>Model Type</u>	<u>Floor Area</u>
1	725 square feet
2	834 square feet
3	893 square feet
4	936 square feet

The number of each apartment, its model type as shown on the condominium map, and the number of bedrooms within each unit are as follows (Floor level for all apartments are reflected in the first digit of each apartment number):

<u>Bldg. No.</u>	<u>Unit No.</u>	<u>Model Type</u>	<u>Number of Bedrooms</u>
A	101-A	2	End unit w/lanai 2 bdrm. 1 bath
A	102-A	1	1 bedroom - 1 bath w/lanai
A	103-A	1	1 bedroom - 1 bath w/lanai
A	104-A	2	End unit w/lanai 2 bdrm. 1 bath
A	201-A	2	End unit w/lanai 2 bdrm. 1 bath
A	202-A	4	2 bedroom - 2 bath Mezz. w/lanai
A	203-A	4	2 bedroom - 2 bath Mezz. w/lanai
A	204-A	2	End unit w/lanai 2 bdrm. 1 bath
B	101-B	2	End unit w/lanai 2 bdrm. 1 bath

B	102-B	1	1 bedroom - 1 bath w/lanai
B	103-B	1	1 bedroom - 1 bath w/lanai
B	104-B	2	End unit w/lanai 2 bdrm. 1 bath
B	201-B	2	End unit w/lanai 2 bdrm. 1 bath
B	202-B	4	2 bedroom - 2 bath Mezz. w/lanai
B	203-B	4	2 bedroom - 2 bath Mezz. w/lanai
B	204-B	2	End unit w/lanai 2 bdrm. 1 bath
C	101-C	2	End unit w/lanai 2 bdrm. 1 bath
C	102-C	1	1 bedroom - 1 bath w/lanai
C	103-C	1	1 bedroom - 1 bath w/lanai
C	104-C	1	1 bedroom - 1 bath w/lanai
C	105-C	1	1 bedroom - 1 bath w/lanai
C	106-C	1	1 bedroom - 1 bath w/lanai
C	107-C	1	1 bedroom - 1 bath w/lanai
C	108-C	1	1 bedroom - 1 bath w/lanai
C	109-C	1	1 bedroom - 1 bath w/lanai
C	110-C	2	End unit w/lanai 2 bdrm. 1 bath
C	201-C	2	End unit w/lanai 2 bdrm. 1 bath
C	202-C	4	2 bedroom - 2 bath Mezz. w/lanai

C	203-C	4	2 bedroom - 2 bath Mezz. w/lanai
C	204-C	4	2 bedroom - 2 bath Mezz. w/lanai
C	205-C	4	2 bedroom - 2 bath Mezz. w/lanai
C	206-C	4	2 bedroom - 2 bath Mezz. w/lanai
C	207-C	4	2 bedroom - 2 bath Mezz. w/lanai
C	208-C	4	2 bedroom - 2 bath Mezz. w/lanai
C	209-C	4	2 bedroom - 2 bath Mezz. w/lanai
C	210-C	2	End unit w/lanai 2 bdrm. 1 bath
D	101-D	2	End unit w/lanai 2 bdrm. 1 bath
D	102-D	1	1 bedroom - 1 bath w/lanai
D	103-D	1	1 bedroom - 1 bath w/lanai
D	104-D	2	End unit w/lanai 2 bdrm. 1 bath
D	201-D	2	End unit w/lanai 2 bdrm. 1 bath
D	202-D	4	2 bedroom - 2 bath Mezz. w/lanai
D	203-D	4	2 bedroom - 2 bath Mezz. w/lanai
D	204-D	2	End unit w/lanai 2 bdrm. 1 bath
E	101-E	2	End unit w/lanai 2 bdrm. 1 bath
E	102-E	1	1 bedroom - 1 bath w/lanai
E	103-E	1	1 bedroom - 1 bath w/lanai
E	104-E	2	End unit w/lanai 2 bdrm. 1 bath

E	201-E	2	End unit w/lanai 2 bdrm. 1 bath
E	202-E	4	2 bedroom - 2 bath Mezz. w/lanai
E	203-E	4	2 bedroom - 2 bath Mezz. w/lanai
E	204-E	2	End unit w/lanai 2 bdrm. 1 bath
F	101-F	3	End unit w/lanai 2 bdrm. 2 bath
F	102-F	1	1 bedroom - 1 bath w/lanai
F	103-F	1	1 bedroom - 1 bath w/lanai
F	104-F	3	End unit w/lanai 2 bdrm. 2 bath
F	201-F	3	End unit w/lanai 2 bdrm. 2 bath
F	202-F	4	2 bedroom - 2 bath Mezz. w/lanai
F	203-F	4	2 bedroom - 2 bath Mezz. w/lanai
F	204-F	3	End unit w/lanai 2 bdrm. 2 bath
G	101-G	3	End unit w/lanai 2 bdrm. 2 bath
G	102-G	1	1 bedroom - 1 bath w/lanai
G	103-G	1	1 bedroom - 1 bath w/lanai
G	104-G	1	1 bedroom - 1 bath w/lanai
G	105-G	1	1 bedroom - 1 bath w/lanai
G	106-G	1	1 bedroom - 1 bath w/lanai
G	107-G	1	1 bedroom - 1 bath w/lanai

G	108-G	3	End unit w/lanai 2 bdrm. 2 bath
G	201-G	3	End unit w/lanai 2 bdrm. 2 bath
G	202-G	4	2 bedroom - 2 bath Mezz. w/lanai
G	203-G	4	2 bedroom - 2 bath Mezz. w/lanai
G	204-G	4	2 bedroom - 2 bath Mezz. w/lanai
G	205-G	4	2 bedroom - 2 bath Mezz. w/lanai
G	206-G	4	2 bedroom - 2 bath Mezz. w/lanai
G	207-G	4	2 bedroom - 2 bath Mezz. w/lanai
G	208-G	3	End unit w/lanai 2 bdrm. 2 bath
H	101-H	3	End unit w/lanai 2 bdrm. 2 bath
H	102-H	1	1 bedroom - 1 bath w/lanai
H	103-H	1	1 bedroom - 1 bath w/lanai
H	104-H	3	End unit w/lanai 2 bdrm. 2 bath
H	201-H	3	End unit w/lanai 2 bdrm. 2 bath
H	202-H	4	2 bedroom - 2 bath Mezz. w/lanai
H	203-H	4	2 bedroom - 2 bath Mezz. w/lanai
H	204-H	3	End unit w/lanai 2 bdrm. 2 bath

COMMON ELEMENTS: The proposed Declaration of Horizontal Property Regime identifies the following as common elements: (a) undivided fee simple interest in the land; the foundations, beams and supports, girders, walls, roofs, main walls, bearing walls, floors and ceilings, entrances and exits of said building, staircases, lobbies, halls, parking area, ninety-eight (98) (uncovered)

unassigned parking stalls, recreation building, office and store-room, yards, refuse area, swimming pool, and sewage disposal system; all ducts, electrical equipment, wiring and other central and appurtenant installations for services, including power, light, water, disposal, telephone, water tanks and pumps or the like, or other public utility lines, and all other elements and facilities rationally in common use or necessary to the existence, upkeep and safety of the buildings.

LIMITED COMMON ELEMENTS: Certain parts of the common elements called and designated "limited common elements" in the proposed Declaration are set aside and reserved for the exclusive use of certain apartments and such apartments will have appurtenant thereto an exclusive easement for the use of such limited common elements. Said limited common elements set aside and reserved are as follows: (a) entry hallway adjoining an apartment or apartments will be appurtenant to and for the exclusive use of such apartment or apartments which it adjoins.

INTEREST TO BE CONVEYED PURCHASER: The proposed Declaration reflects that percentage of the undivided interest in the common elements pertaining to each apartment and its owner for all purposes, including voting, by model type, is as follows:

<u>Model Type</u>	<u>Number of Units of Each Model Type</u>	<u>Common Interest</u>
1	26	.010219
2	20	.011755
3	12	.012587
4	26	.013390

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The proposed Declaration states that the "apartment spaces" shall be occupied and used by the respective owners only as provided by the laws of the State of Hawaii and ordinances of the County of Maui and for no other purpose.

OWNERSHIP TO TITLE: The Notice of Intention states, and the Preliminary Title Report prepared on August 20, 1975 by the licensed title abstractor, Title Guaranty of Hawaii, Inc., verifies that title to the land is vested in Donald E. Schmider and Raymond R. Pursche.

ENCUMBRANCES AGAINST TITLE: The title search identifies the following:

1. Real property taxes (if any due and owing) on Tax Key 3-9-08-11 & 26 (Second Taxation Division).
2. Proposed Master Plan 44-foot right-of-way as shown on map prepared by Robert T. Tanaka, Registered Professional Land Surveyor, dated April 12, 1967.

3. Mortgage made by Raymond R. Pursche, an unmarried person, and Donald E. Schmider, an unmarried person, in favor of Sakae Mukai, husband of Lillian F. Mukai, Norman Dang, an unmarried person, and Francis L. K. Hong, husband of Rowena M. Hong, dated October 16, 1973, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 9566 on Page 315 in the amount of \$486,000.00, said mortgage being amended by Instrument dated April 21, 1975, and recorded in the said Bureau of Conveyances in Liber 10627 on Page 542.

4. Notice of State of Hawaii Tax Lien (Department of Labor & Industrial Relations) against Raymond Pursche dated February 5, 1975, and recorded in the said Bureau of Conveyances in Liber 10451 on Page 11 in the amount of \$886.73.

5. Notice of State of Hawaii Tax Lien (Department of Taxation) against Raymond R. Pursche, dba The Fogcutter, dated April 14, 1975, and recorded in the said Bureau of Conveyances in Liber 10568 on Page 515 in the amount of \$2,969.04.

6. Notice of State of Hawaii Tax Lien (Department of Labor & Industrial Relations) against Raymond Pursche dated May 21, 1975, and recorded in the said Bureau of Conveyances in Liber 10669 on Page 281 in the amount of \$831.15.

PURCHASE MONEY HANDLING: A copy of an Escrow Agreement dated August 27, 1975 has been executed and filed with the Commission. The Escrow Agent is Title Guaranty Escrow Services, Inc. Upon examination, the executed Escrow Agreement is found to be in consonance with the provisions of Chapter 514, Hawaii Revised Statutes. The executed Escrow Agreement states in part:

"Subject to the provisions of Paragraphs 5 and 6 below, and upon prior approval of the Seller's mortgagee, disbursements from the escrow fund (including purchasers' funds) shall be made by Escrow, for a mutually acceptable fee for each such disbursement, from time to time to pay for (a) construction costs in proportion to the valuation of the work completed by the contractor on the apartment building to be constructed on said land, as certified by a registered architect or professional engineer, and approved by the Seller's mortgagee, (b) architectural, engineering, finance and legal fees and other incidental expenses upon submission of bills for disbursements to the extent approved by the Seller's mortgagee, (c) payment of interest due on the mortgagee's loan funds, (d) for the total or partial release of any master mortgage or mortgages or other liens covering the project or portions of the project and for the removal of any other encumbrances required to be removed in order to place title of the project in the required state for conveyance; (e) for such title reports and costs of recordation as may be necessary or proper in connection with recordation of apartment deeds, mortgages, and other documents required to effect transfer of title under the contracts; and (f) payment of sales commission(s) to sales agent(s) as set forth in said contracts of sale for the apartment units upon

the close of escrow and recordation of documents. The balance of the monies remaining in the escrow fund shall be disbursed in accordance with the direction of the Seller only upon completion of the buildings, and when Escrow has received satisfactory evidence that all mechanics' and materialmen's liens have been cleared or sufficient funds have been set aside to cover claims, if liens are filed, otherwise forty-six (46) days after the filing with Escrow of a copy of the affidavit of publication of notice of completion.

"Except as provided in Sections 514-14 and 514-15(6) of the Hawaii Revised Statutes (with respect to disbursements under subparagraphs 4(a) and (b) above), no disbursements of purchasers' funds shall be made from the escrow fund under paragraph 4 unless and until Escrow is notified by Seller that the Real Estate Commission has issued a Final Public Report on the project and that each purchaser has been given a copy of said Final Public Report and has receipted for the same; and Seller shall further have furnished to Escrow a written opinion of its attorney that the purchasers' contracts relating to deposits to be disbursed have become effective, and all other requirements of Sections 514-36 through 514-39, Hawaii Revised Statutes, have been met.

"Purchaser shall be entitled to a refund of his funds, and Escrow shall pay said funds to said purchaser, without interest and less Escrow's cancellation fee, if purchaser shall in writing request refund of his funds and any one of the following shall have occurred:

(a) Escrow receives a written request from Seller to return to purchaser the funds of such purchaser then held hereunder by Escrow; or

(b) If purchaser's funds were obtained prior to the issuance of a Final Public Report and if there is any change in the building plans, subsequent to the execution of purchaser's contract, requiring the approval of the city and county officer having jurisdiction over the issuance of permits for construction, unless the purchaser has given written approval or acceptance of the change; or

(c) If the purchaser's funds were obtained prior to the issuance of a Final Public Report and the Final Public Report differs in any material respect from the Preliminary Public Report, unless the purchaser has given written approval or acceptance of the difference; or

(d) If the Final Public Report is not issued within one (1) year from the date of issuance of the Preliminary Public Report.

"Upon refund of said funds to purchaser as aforesaid, Escrow shall return to Seller such purchaser's sales contract

and any Apartment Deed theretofore delivered to Escrow, and thereupon neither the purchaser nor Seller shall be deemed obligated thereunder.

"If at any time Seller shall certify in writing to Escrow that a purchaser, whose funds are being held hereunder by Escrow, has defaulted under the terms of his sales contract and that Seller has terminated said contract pursuant to the terms thereof, Escrow shall notify said purchaser by registered mail of such default and shall thereafter treat all funds of such purchaser paid under such contract, less Escrow's TWENTY FIVE AND NO/100 DOLLARS (\$25.00) cancellation fee, as the escrowed funds of Seller and not of purchaser."

The specimen Contract of Sale also states in part:

"Lien and Security Interest. The rights derived under this Contract of Sale are subject and subordinate to the lien rights and security interest of the lending institution financing the construction of the project and/or the financing of the purchases of the apartments therein."

It is incumbent upon the purchaser and prospective purchaser that he reads the Contract of Sale and the executed Escrow Agreement. The latter establishes how the proceeds from the sale of dwelling units and funds from other sources are placed in trust, as well as the retention and disbursement of said trust funds.

MANAGEMENT AND OPERATIONS: Administration of the project, as proposed in the Proposed Declaration will be vested in the Association of Apartment Owners. The proposed By-Laws of the Association of Apartment Owners grant the Board of Directors the powers and duties necessary for the administration of the affairs of the Association. The Board of Directors shall employ for the Association a management agent or manager.

STATUS OF PROJECT: Construction of the project has not yet begun, but it is anticipated that it shall commence on or about October 1, 1975, as per the Notice of Intention. As yet, the developer has not entered into a construction contract for the construction of buildings.

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 September 2, 1975, and information subsequently filed on September 16, 1975.

The PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 806, filed with the Commission on September 2, 1975.

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


DOUGLAS R. SODEHANI, Chairman
Real Estate Commission
State of Hawaii

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REGISTRATION NO. 806
October 9, 1975