

REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF REGULATORY AGENCIES

STATE OF HAWAII
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**FINAL
HORIZONTAL PROPERTY REGIMES (CONDOMINIUM)
PUBLIC REPORT**

KONA BALI KAI
Alii Drive
Holualoa, North Kona
County of Hawaii, State of Hawaii

REGISTRATION NO. 817

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: March 14, 1977

Expires: April 14, 1978

SPECIAL ATTENTION

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

THE REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED OCTOBER 21, 1975, AND ADDITIONAL INFORMATION FILED AS OF MARCH 8, 1977. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF THE INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, CHAPTER 514, HAWAII REVISED STATUTES, AS AMENDED.

1. Since the issuance of the Commission's Preliminary Public Report of January 12, 1976 on KONA BALI KAI, Registration No. 817, the Developer reports the execution of a construction contract and a mortgage loan to finance the project. The information contained in this Final Public Report (white paper stock) amends the Preliminary Public Report (yellow paper stock) and becomes a part of KONA BALI KAI registration. The Developer is responsible for placing a true copy of this Final Public Report in the hands of all purchasers and prospective purchasers, along with a copy of the Preliminary Public Report. Securing a signed receipt for both reports shall also be the responsibility of the Developer.

2. Kona Bali Kai is a leasehold condominium project consisting of a swimming pool, and 154 apartments and a commercial unit arranged throughout 7 buildings. The developer proposes to sell each apartment together with an undivided interest in the common elements of the improvements (exclusive of the land) and to lease an undivided interest in the land to each purchaser by means of a Condominium Conveyance Document. Each unit is provided with at least one parking space.

3. A single condominium project is contemplated, however, the developer and its lessor has reserved the right to withdraw a portion of the Project (Phase II).

As shown on the condominium plans: (1) Phase I is situated makai of Alii Drive, Kona, Hawaii and shall consist of 85 apartments and one commercial unit contained in two buildings (Nos. 1 and 2), a swimming pool, and 94 parking spaces of which 3 are for guest parking; and (2) Phase II is situated mauka of Alii Drive, and shall consist of 69 apartments contained in 5 buildings (Nos. 3 through 7), and 92 parking spaces.

4. The developer has submitted to the Commission for examination all documents and exhibits deemed necessary for the issuance of this Final Public Report.

5. The basic documents (Declaration of Horizontal Property Regime, By-Laws of the Association of Apartment Owners) have been filed with the Bureau of Conveyances, State of Hawaii, in Liber 12049 at Page 32, and a copy of the approved floor plan has been filed as Condominium Map No. 490.

6. No advertising or promotional matter has yet been submitted pursuant to the Rules and Regulations promulgated by the Commission.

7. The prospective purchaser is advised to acquaint himself with the provisions of the Horizontal Property Act, Chapter 514, Hawaii Revised Statutes, and with the rules and regulations promulgated pursuant thereto.

8. This Final Report automatically expires thirteen (13) months after its date of issue, March 14, 1977, unless a Final or Supplementary Public Report issues or the Commission, upon review of the registration, issues an order extending the effective period of this report.

The information under the following topical headings in the Preliminary Public Report has been changed: LIMITED COMMON

ELEMENTS, USE, DEVELOPER'S OPTION TO WITHDRAW, OWNERSHIP OF AND ENCUMBRANCES AGAINST TITLE, PURCHASE MONEY HANDLING, MANAGEMENT AND OPERATION, HOUSE RULES, and STATUS OF PROJECT. A heading entitled PROGRAM OF FINANCING has been added. The information under the remaining topical headings of the Preliminary Public Report remains unchanged.

LIMITED COMMON ELEMENTS: The Declaration states that one (1) parking space as designated on the Condominium Map, and also set forth opposite to the number of each of the respective apartments as set forth in Exhibit "B", attached to the Declaration, shall be a limited common element and appurtenant to and for the exclusive use of such apartment. Some apartments will be assigned compact parking stalls. The Declaration provides that, subject to right of withdrawal as hereinafter provided, the remaining common elements of the project within the limits of each of Phases I and II as shown on the condominium plans, shall be limited common elements reserved for the use of the apartments within that phase. Upon the first issuance of a Condominium Conveyance Document covering an apartment in Phase II, the limited common elements reserved for the use of apartments in Phases I and II, other than the parking stalls reserved for the use of a certain apartment, shall automatically convert into and be deemed to be general common elements. The Declaration further provides that if Phase II is withdrawn from the project, the limited common elements reserved for the use of Phase I, other than the parking stalls reserved for the use of a certain apartment, shall automatically convert into and be deemed to be general common elements.

The Declaration states that common expenses attributable to limited common elements reserved for the use of more than one apartment shall be charged to the owners of the apartments for the use of which such limited common elements are reserved, the percentage share of such charges attributable to each of such apartments to equal the quotient obtained by dividing the common interests appurtenant to that apartment by the total of the common interests appurtenant to all of such apartments. The effect of the foregoing is that the common expenses attributable to Phase I shall be borne by the owners of apartments in Phase I until the first issuance of a Condominium Conveyance Document covering an apartment in Phase II, whereupon the common expenses attributable to all phases shall be borne by owners of all apartments.

The Declaration further provides in part that, until all of the Condominium Conveyance Documents have been assigned, the Lessor and Developer have reserved an easement over, under, and across the common elements of the Project, both general and limited, for purposes of all work connected with or incidental to the development, construction, and sale of the Project or any part thereof or any interest therein.

USE: The Declaration provides that, except for the commercial condominium unit, the accounting office and the manager's office, which shall be used, respectively, for commercial, accounting, and managerial purposes, the apartments shall be used only as living quarters and occupied and used by the respective owners thereof and their tenants, and the families, servants and guests of such owners and tenants, and for no other purpose; provided,

however, that until all Condominium Conveyance Documents covering the apartments in the project have been assigned to others, the developer shall be entitled to use the apartments as sales offices and as models for display to the public. The apartment owners shall have the absolute right to lease their apartments subject to limitations, restrictions, covenants, and conditions contained in the Declaration or the By-Laws.

DEVELOPER'S OPTION TO WITHDRAW: The Declaration provides that the Lessor and Developer have reserved the right to withdraw from the Project and from the provisions of the Horizontal Property Act, Phase II; however, the right to withdraw Phase II shall automatically terminate upon the first issuance of a Condominium Conveyance Document covering an apartment in Phase II or by December 31, 1978, whichever occurs first.

The Declaration further provides that the voting or approval rights of apartment owners shall be modified pending the development of Phase II. Until but not beyond the effective date of the first issuance of a Condominium Conveyance Document covering an apartment in Phase II or December 31, 1978, whichever occurs first, all matters affecting only Phase I and not Phase II and requiring the vote or approval of the apartment owners, shall be sufficiently voted upon or approved by the applicable owners of apartments in Phase I only. Upon the effective date of the first issuance of a Condominium Conveyance Document covering an apartment in Phase II, the modification of voting and approval rights provided shall automatically terminate.

OWNERSHIP OF AND ENCUMBRANCES AGAINST TITLE: Marjorie C. Hind, wife of R. Leighton Hind, is the Lessor of the property committed to the project. A copy of the Title Insurance, dated October 19, 1976, issued by Title Insurance and Trust Company, represents that title to the land is vested as aforesaid. Said Title Insurance reflects the following encumbrances on the project property:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

2. The terms and provisions of that certain Indenture of Lease dated April 21, 1960, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 3819 at Page 460, made by and between Marjorie C. Hind, also known as Marjorie Capps Hind, wife of R. Leighton Hind, as Lessor, and Hung Wo Ching, husband of Elizabeth Lau Ching, and Man Kwong Au, husband of Lilly Hee Au, Joint Tenants, as Lessee; as amended by instrument dated June 3, 1969, and recorded in said Bureau of Conveyances in Liber 6544 at Page 35; said Lease, through mense assignments is now held by Walter S. S. Zane, husband of Florence F. Zane, as Lessee, by Assignment of Lease dated January 15, 1973, recorded in said Bureau of Conveyances in Liber 10374 at Page 25; and said Lease has been further amended by instrument dated June 24, 1975, recorded in said Bureau of Conveyances in Liber 10857 at Page 408, and instrument dated October 12, 1976, recorded aforesaid in Liber 11745 at Page 52.

3. The terms, agreements, reservations, covenants, conditions and provisions contained in the Lease, as amended, referred to in paragraph 2.

4. Mortgage dated October 12, 1976, recorded in Liber 11745 at Page 83, made by Walter S. S. Zane, husband of Florence F. Zane, to Honolulu Federal Savings and Loan Association, a Federal Savings and Loan Association, to secure the repayment of the sum of \$6,779,000.00 together with interest thereon all according to the terms of that certain promissory note of the mortgagor of even date.

5. AS TO PARCEL FIRST ONLY: A grant of easement by Bishop Trust Company, Limited to Hawaii Electric Light Company, Inc., formerly known as Hilo Electric Light Company, Limited, dated January 13, 1958, as mentioned in instrument recorded in Liber 9167 at Page 2.

6. AS TO PARCEL FOURTH ONLY: Location of the seaward boundary in accordance with the law of the State of Hawaii.

7. For any taxes that may be due and owing, reference is made to the Office of the Tax Assessor, Third Division.

In addition, the project property is subject to the Declaration and By-Laws previously mentioned. Further, said Title Insurance reflects an additional security mortgage dated October 18, 1976, recorded in Liber 11745 at Page 153, made by Lawai Development Company, a Hawaii Registered Limited Partnership, to Honolulu Federal Savings & Loan Association, mortgaging all its right, title and interest in those certain five parcels of land situated at Lawai, Koloa, Island and County of Kauai, State of Hawaii, being more particularly described in Exhibit "A" of the aforesaid additional security mortgage, as additional security to the above mortgage referred to in paragraph 4 subject, however, to certain encumbrances reflected in said Title Insurance.

PURCHASE MONEY HANDLING: A copy of the executed Escrow Agreement dated December 31, 1975, between Title Guaranty of Hawaii and Walter S. S. Zane has been submitted as part of this registration. The specimen Sales Contract and the executed Escrow Agreement have been examined and have been found to conform with the requirement of Chapter 514, Hawaii Revised Statutes, including the requirements of Sections 514-36 through 514-40, Hawaii Revised Statutes.

The Sales Contract provides in part that the Seller may cancel the Sales Contract upon written notice to Buyer, in which event Seller shall refund to Buyer of all amounts paid by him hereunder, without interest and after deduction of Buyer's share of escrow fees and all mortgage loan expenses, (a) at any time prior to issuance of a Final Public Report, or (b) if upon expiration of nine months after the issuance of a Final Public Report, either the construction of apartments (other than model apartments) has not commenced or at least 80% of the apartments in the Phase in which Buyer's apartment is situated have not been sold under binding sales contracts.

The Sales Contract further provides that all payments made by the buyer shall be placed on deposit with Escrow and that such funds may be disbursed by Escrow in accordance with the escrow agreement to pay the cost of constructing the buildings and other improvements, and any related expenses of the project.

Prospective buyers should be aware that the Seller's mortgage loan (interim, renewals and extensions) used for the construction of the Project shall be and remain at all times a superior lien on the Project, and buyers intentionally waive and subordinate the priority of lien under the sales contract or reservation agreement in favor of the mortgage loan.

The Declaration reflects that in the event that the Developer withdraws a portion of the project, then the project will be considered as having two phases.

Since the Sales Contract gives both the prospective purchaser and the developer the option of cancellation upon the occurrence of certain events; and since the Escrow Agreement establishes the procedure for receiving and disbursing purchasers' funds deposited in escrow; and since the Sales Contract specifically provides that the purchaser approves the Escrow Agreement; it is incumbent upon the prospective purchaser to read and understand both the Escrow Agreement and the Sales Contract before executing the latter.

MANAGEMENT AND OPERATION: The Declaration and By-Laws of the Association of Apartment Owners provide that the operation of the project shall be conducted for the Association by a responsible corporate managing agent under the direction of the Association's Board of Directors. The specimen Sales Contract authorizes the developer to employ the first managing agent; gives the managing agent authority for the management, operation, and maintenance of the project; and provides that upon being billed for the same, the purchaser will pay his proportionate share of project maintenance expenses and reserves. The developer advises that it presently intends to retain Colony Hotels, Inc. as the initial managing agent, as evidenced by the executed Property Management Agreement on file with the Commission.

HOUSE RULES: The House Rules provide in part:

1. No water beds shall be permitted in an apartment unit.
2. Unless prior written approval is obtained from the resident manager, the maximum number of persons permitted to reside in an apartment unit shall not exceed: studio-3 persons; one bedroom-4 persons; two bedrooms-6 persons; and three bedrooms-8 persons.

STATUS OF PROJECT: A copy of the building contract with CAWDREY-MARS-JOINT VENTURE for Phases I and II, executed on May 6, 1976, is on file with the Commission. Construction has commenced and the estimated completion date for the project is October 1, 1977.

PROGRAM OF FINANCING: The statement of financing submitted by the Developer reflects that Honolulu Federal Savings and Loan Association has made a written commitment to provide the construction loan and the permanent take-out loans for the project.

The purchaser or prospective purchaser should recognize that this published report represents information disclosed by the developer in the required Notice of Intention submitted on October 21, 1975, and additional information filed as of March 8, 1977.

This FINAL HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 817 filed with the Commission on October 21, 1975.

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.

Manly K. Savio for
AH KAU YOUNG, CHAIRMAN
REAL ESTATE COMMISSION
STATE OF HAWAII

Distribution:

DEPARTMENT OF TAXATION
BUREAU OF CONVEYANCES
PLANNING DEPARTMENT, COUNTY OF HAWAII
FEDERAL HOUSING ADMINISTRATION
ESCROW AGENT

Registration No. 817

March 14, 1977.