

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
BAY VILLAS (PHASE I)
Kapalua, Maui, Hawaii

REGISTRATION NO. 820

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: November 14, 1975

Expires: December 14, 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 or prospective purchaser is particularly directed to the following:

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED NOVEMBER 4, 1975 AND INFORMATION SUBSEQUENTLY FILED AS OF NOVEMBER 11, 1975. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, CHAPTER 514, HAWAII REVISED STATUTES.

1. BAY VILLAS is a proposed leasehold condominium project consisting of twelve (12) separate residential buildings containing a total of sixty-three (63) apartments, all to be built in accordance with floor plans filed with the Real Estate Commission. The project will contain not less than sixty-three (63) parking spaces.

2. The Developer of the project has submitted to the Commission for examination all documents deemed necessary for the issuance of this Preliminary Public Report. The Developer shall be responsible for placing this Preliminary Public Report (yellow paper stock) in the hands of all purchasers and prospective purchasers. Securing a signed copy of the receipt for this Public Report from each purchaser and prospective purchaser is also the responsibility of the Developer.
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, a copy of the approved floor plans and Declaration of Covenants and Restrictions) have not been recorded in the office of the recording officer, nor have the Charter of Incorporation and Bylaws of Kapalua Resort Association been filed with the Department of Regulatory Agencies.
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 Preliminary Public Report automatically expires thirteen (13) months after date of issuance, November 14, 1975, unless a Supplementary or Final Public Report issues or the Commission, upon review of the registration, issues an order extending the effective period of this Report.

NAME OF PROJECT: BAY VILLAS (Phase I)

LOCATION: The land submitted to the Regime, approximately 16.588 acres, is located in Kapalua, Maui.

TAX MAP KEY: Portion of 4-2-01:2.

ZONING: A-2 (Duplex District)

DEVELOPER: Kapalua Land Company, Ltd., a Hawaii corporation, whose post office address is P. O. Box 188, Kahului, Maui, Hawaii, telephone number 877-3882. The officers of the corporation are:

Colin C. Cameron	President
Thos Rohr	Vice President
Warren Harrison	Vice President
Benjamin W. Baker	Vice President
Charles F. DuBois	Secretary and Treasurer

ATTORNEY REPRESENTING DEVELOPER: CARLSMITH, CARLSMITH, WICHMAN AND CASE, Pacific Trade Center, 22nd Floor, Honolulu, Hawaii 96813 (Attention: James W. Boyle), telephone number 524-5112.

DESCRIPTION: The proposed Declaration of Horizontal Property Regime submitted to the Commission (hereinafter referred to as the "Declaration") provides that the land will be improved, according to the Developer's plans and intention to sell, by constructing thereon twelve (12) separate residential buildings, three (3) of which contain five (5) apartments each, seven (7) of which contain six (6) apartments each, and two (2) of which contain three (3) apartments each. The project will contain two swimming pools, walkways, driveways and outdoor parking areas. Each unit will include standard appliances. The respective apartments shall not be deemed to include (a) the undecorated or unfinished surfaces of the perimeter walls, interior load-bearing walls or interior party walls, (b) the floors and ceiling surrounding each apartment, or (c) any pipes, shafts, wires, conduits or other utility or service 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 be deemed to include (i) all the walls and partitions which are not load-bearing within its perimeter walls, (ii) the inner decorated or finished surfaces of all walls, floors and ceilings, (iii) any doors, windows or panels along the perimeters, (iv) any adjacent lanai to which each apartment has direct exclusive access, and (v) all fixtures originally installed therein. Each apartment has immediate access to the common land area with walkways to the parking areas and public highway.

1. Building Descriptions. The three (3) Type A buildings containing five (5) apartments each are designated as buildings 16, 19 and 23. The seven (7) Type B buildings containing six (6) apartments each are designated as buildings 14, 15, 17, 20, 21, 22 and 25. The two (2) Type C buildings containing three (3) apartments each are designated as buildings 18 and 24. Type A buildings have two (2) stories, including a ground floor, but no basement. Type B and Type C buildings have three (3) stories, including a ground floor, but no basement. The letter "r" after a building type means reversed.

2. Materials. Each building will be constructed principally of wood frame with concrete block exteriors, concrete roof tiles and a concrete floor slab.

3. Description, Area and Numbering of Apartments. There will be six (6) apartment unit types ("Units") designated as Units 1 - 1, 1L - 1-1/2E, 1L - 1-1/2I, 1 - 2D, 2 - 3D and 2L - 3D, which are described below.

The first number of the unit type indicates the number of bedrooms; the second number, the number of bathrooms; and the letters indicate: "L" - loft, "E" - end unit, "I" - interior unit, and "D" - divisible unit.

Unit 1-1 is a single-story apartment containing four (4) rooms consisting of one bedroom, one bathroom, kitchen, and a living room-dining area plus two lanais totaling approximately 268 square feet on bridge level apartments and approximately 303 square feet on garden level apartments. The apartment floor area excluding lanais is approximately 1006 square feet. The floor area including lanai is approximately 1274 square feet on the bridge level, and approximately 1309 square feet on the garden level. There are twenty (20) Unit 1-1 apartments in the Project.

Unit 1L - 1-1/2E is a two-story apartment containing five (5) rooms consisting of one bedroom, one and one-half bathrooms, kitchen, and living-dining room, plus two lanais totaling approximately 433 square feet. The apartment floor area excluding lanais is approximately 983 square feet, and approximately 1416 square feet including lanais. There are twelve (12) Unit 1L - 1-1/2E apartments in the Project.

Unit 1L - 1-1/2I is a two-story apartment containing five (5) rooms consisting of one bedroom, one and one-half bathrooms, kitchen and living-dining room, plus two lanais totaling approximately 222 square feet. The apartment floor area is approximately 987 square feet excluding lanais and approximately 1209 square feet including lanais. There are seven (7) Unit 1L - 1-1/2I apartments in the Project.

Unit 1-2D is a single-story apartment with two entrances, containing six (6) rooms consisting of one bedroom, two bathrooms, kitchen, living room, and dining room, plus two lanais totaling approximately 415 square feet. The apartment floor area is approximately 1096 square feet excluding lanais and approximately 1511 square feet including lanais. There are two (2) Unit 1-2D apartments in the Project.

Unit 2-3D is a single-story apartment with three entrances, containing eight (8) rooms consisting of two bedrooms, three bathrooms, kitchen, living room, and dining room, plus three lanais totaling approximately 468 square feet on bridge level units and approximately 528 square feet on garden level units. The apartment floor area excluding lanais is approximately 1518 square feet. The floor area including lanais is approximately 1986 square feet on bridge level units and approximately 2046 square feet on garden level units. There are thirteen (13) Unit 2-3D apartments in the Project.

Unit 2L-3D is a two-story apartment with two entrances, containing eight (8) rooms consisting of two bedrooms, three bathrooms, kitchen, living room, and dining room, plus three lanais totaling approximately 485 square feet. The apartment floor area is approximately 1547 square feet excluding lanais and approximately 2032 square feet including lanais. There are nine (9) Unit 2L-3D apartments in the Project.

Each apartment is designated by two digits, a letter and a single or multiple digits, in that order. The first two digits represent the building number, followed by either a "B" representing bridge level or "G" representing garden level, followed by the apartment number or two numbers in the case of Unit 1-2D and 2L-3D apartments or three numbers in the case of Unit 2-3D apartments. The numbering is from west to east and from 1 through 5 in the individual buildings. For example, Apartment 16B-2, 3 & 4 is in Building 16 on the bridge level and is the second unit from the west side of the building. Units with more than one entrance have an extra number for each entrance (e.g., 14G-3, 4 & 5), but the actual numbering on the entrances may not be in sequence.

The apartment types and numbers are listed below:

<u>APARTMENT UNIT TYPE</u>	<u>APARTMENT NUMBERS</u>
1 - 1	14G-2, 14B-1, 15G-4, 15B-4, 16G-2, 16B-1, 17G-4, 17B-4, 19G-4, 19B-4, 20G-4, 20B-4, 21G-4, 21B-4, 22G-4, 22B-4, 23G-2, 23B-1, 25G-4, 25B-4
1L - 1-1/2E	14G-1, 15G-5, 16G-1, 17G-5, 18G-3, 19G-5, 20G-5, 21G-5, 22G-5, 23G-1, 24G-3, 25G-5

<u>APARTMENT UNIT TYPE</u>	<u>APARTMENT NUMBERS</u>
1L - 1-1/2I	14B-2, 15B-3, 17B-3, 20B-3, 21B-3, 22B-3, 25B-3
1 - 2D	18G-1&2, 24G-1&2
2 - 3D	14G-3,4&5, 15G-1,2&3, 16G-3,4&5 16B-2,3&4, 17G-1,2&3, 19G-1,2&3 19B-1,2&3, 20G-1,2&3, 21G-1,2&3 22G-1,2&3, 23G-3,4&5, 23B-2,3&4 25G-1,2&3
2L - 3D	14B-3&4, 15B-1&2, 17B-1&2, 18B-1&2, 20B-1&2, 21B-1&2, 22B-1&2, 24B-1&2, 25B-1&2

The floor areas were arrived at by taking the measurements to the interior surface of all perimeter walls (or party walls, if applicable) and to the interior surface of the lanai railings, without exclusions for ducts, columns, stairs, elevators, walls, or other interior construction or equipment within such areas.

COMMON ELEMENTS: The common elements will include the limited common elements described in the next topical heading, LIMITED COMMON ELEMENTS, and all other portions of the project other than the apartments, and all elements mentioned in the Horizontal Property Act which are actually included in the project including specifically but not limited to:

- (a) The land in fee simple as described in Exhibit A attached to the Declaration;
- (b) All foundations, floor slabs, beams, columns, supports, girders, unfinished perimeter and load-bearing walls, walkways, ramps, fences, railings and roofs;
- (c) All driveways, roadways, pavements, parking areas and walkways and all planted areas, grounds, landscaping, and other recreational areas, including swimming pool(s), refuse facilities and mail boxes (NOTE: The Developer has advised the Commission that there will be 79 parking stalls on site--66 standard and 13 compact stalls);
- (d) All common laundry facilities and storage areas;
- (e) All ducts, electrical equipment, wiring, pipes and other central and appurtenant transmission facilities and installations over, under and across the project

which serve more than one apartment for services such as power, light, water, sewer, telephones and radio and television signal distribution;

(f) Any and all other apparatus and installations of common use and 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 called "Limited Common Elements", are set aside and reserved for the exclusive use of certain apartments, and such apartments shall have appurtenant thereto easements for the use of such limited common elements as follows:

(a) Entranceways to each apartment shall be limited common elements for the exclusive use of the apartment they serve.

INTEREST TO BE CONVEYED TO PURCHASER: Subject to reduction pursuant to paragraph 16 of the Declaration with respect to the construction of later phases, each apartment shall have appurtenant thereto an undivided percentage interest in all common elements of the project and the same proportionate share in all common profits and expenses of the project and for all other purposes including voting as set forth below.

<u>Apartment Unit Type</u>	<u>%</u>
1 - 1	1.2690
1L - 1-1/2E	1.2690
1L - 1-1/2I	1.2690
1 - 2D	1.5275
2 - 3D	2.1570
2L - 3D	2.1570

PURPOSE AS TO USE: The proposed Declaration provides that the apartments shall be occupied and used only as permanent or temporary residences, lodgings or rental and for no other purpose. The Developer, the Association, the Board, or other apartment owners may lease or use one or more apartments (or portions thereof) as a reception center for the Project with a front desk, master telephone switchboard, and similar facilities, including a manager's office and/or apartment. The center could serve later Phases and other portions of the Kapalua Resort (See topical heading POSSIBLE RECEPTION CENTER).

POSSIBLE RECEPTION CENTER: The specimen Sales Contract provides that the Developer is considering retaining an apartment within the Project and using a portion or all of the apartment to serve as a reception center for the Project. The Developer would lease such reception center to the Association as a common expense but subject to terms and conditions acceptable by the first Board of Directors after its election at the first annual meeting of the Association. The center could serve subsequent Phases and possibly other portions of the Kapalua Resort. The center would contain a front desk and such other facilities as the Developer shall determine, including possibly a manager's office. The Developer might discontinue the center in Phase I and substitute a reception center in a subsequent Phase (which might be an apartment or a portion or be a separate building or a portion of that building or of an apartment building) or possibly on other Kapalua Resort property, but subject to lease terms and conditions acceptable to the then Board of Directors of the Association. If the center were built on other Kapalua Resort property, the Developer may not necessarily lease the center to the Association but would probably use a contractual agreement subject to said Board's approval.

But the Developer does not promise to do all or any of the things listed above with respect to a reception center, as any such action is wholly within Developer's discretion.

OWNERSHIP OF TITLE: The Notice of Intention reflects that title to the land is vested in the Developer but that it intends to deed the land to Maui Land & Pineapple Company, Inc. and lease it back.

ENCUMBRANCES AGAINST TITLE: The Developer has filed with the Commission a Preliminary Title Report prepared by Title Guaranty of Hawaii, Incorporated, dated October 23, 1975. The report reflects the following:

1. Real property taxes for the fiscal year July 1, 1975 - June 30, 1976; rate pending.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Location of the seaward boundary in accordance with the law of the State of Hawaii.
4. Final approval of subdivision by the County of Maui.
5. Mortgage and Security Agreement

Mortgagor : Kapalua Land Company, Ltd., a Hawaii corporation

Mortgagee : Bank of Hawaii, a Hawaii banking
corporation

Dated : April 24, 1975
Recorded : Liber 10667 Page 1
Amount : \$8,200,000.00 on land under search,
besides other land.

By instrument dated May 23, 1975, recorded in Liber 10667 at Page 62, Kapalua Land Company, Ltd. and Maui Land & Pineapple Company, Inc., a Hawaii corporation, assign to Bank of Hawaii, all right, title and interest in and to the land under search, besides other land, as additional security to said above mortgage.

PURCHASE MONEY HANDLING: A copy of the Escrow Agreement, dated November 3, 1975, between Title Guaranty Escrow Services, Inc., a Hawaii corporation, as "Escrow" and the Developer as "Seller" (and Title Guaranty of Hawaii, Incorporated as to paragraph 16 only) has been submitted to the Commission as part of the registration. On examination, the Sales Contract, in specimen form, 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.

The provisions of the Escrow Agreement are to be carefully read and understood as follows:

If at the time of the execution of the Sales Contract a Final Report has not been issued by the Commission with respect to the project, then the following limitations shall apply:

(a) Purchaser's funds obtained prior to the issuance of a Final Report shall be refunded if there is any change in the condominium building plans subsequent to the execution of the Sales Contract, which change requires the approval of a county officer having jurisdiction over the issuance of permits for construction of buildings, unless purchaser's written approval or acceptance of the specific change is obtained or ninety (90) days have elapsed since purchaser has accepted the apartment in writing or since purchaser has first occupied the apartment.

(b) All rights under the Sales Contract shall not become enforceable against the purchaser until the purchaser has had a full opportunity to read the State Real Estate Commission's Final Public Report on the project, and to obtain refund of any moneys paid by the purchaser as well as release from all obligations under the Sales Contract if the

Final Report differs in any material respect from the Preliminary Report.

(c) If the Final Report is not issued within one year from the date of the issuance of said Preliminary Report, the purchaser shall be entitled to refund of all moneys paid by him under the Sales Contract without further obligation.

(d) All moneys paid by the purchaser prior to the issuance of said Final Report shall be deposited in trust with the Escrow and the Escrow is hereby instructed that no disbursements shall be made from such trust fund on behalf of the Seller until

(i) The Sales Contract has become effective, and the requirements of Sections 514-36 through 514-39, Hawaii Revised Statutes, have been met;

(ii) A Final Public Report for the project has been issued by the Real Estate Commission, Escrow has received a copy of purchaser's receipt for such Final Public Report and forty-eight (48) hours have elapsed since purchaser receipted for such Final Public Report;

(iii) The project has been completed free and clear of all mechanic's and materialman's liens or, if such liens are filed, or if the lien period has not expired, Seller has obtained a construction bond covering such liens or potential liens or has set aside sufficient funds to cover such liens or potential liens or obtained a title insurance policy insuring against such liens or potential liens;

(iv) Escrow has received satisfactory evidence that the purchaser's apartment is free and clear of all liens, other than the purchase money mortgage of purchaser, as evidenced by a certificate of title issued by a title company authorized to do business in the State of Hawaii;

(v) Escrow has received a condominium conveyance document in recordable form issued and acknowledged by the Seller and Lessor in favor of the purchaser;

(vi) Escrow has received releases or partial releases of any mortgage or financing statement encumbering the apartment; and

(vii) Purchaser's apartment is ready to be closed as provided for in paragraph 10 of the Escrow Agreement.

It is incumbent upon the purchaser and the prospective purchaser that they read, with care, the Sales Contract and the executed Escrow Agreement. The Escrow Agreement establishes how the proceeds from the sale of apartments and all sums from any source are placed in trust, as well as the retention, disbursement and refund of said trust funds.

SALES CONTRACT: The provisions of the specimen Sales Contract are to be carefully read and understood as follows:

1. Sales Conditional on Final Subdivision Approval.

If at the Seller's Acceptance Date (as defined in Sales Contract) Developer has not received final subdivision approval for the Land, then purchaser's performance under the Sales Contract shall be subject to the condition precedent of the issuance to Developer of such final approval by November 30, 1976 (the "Approval Deadline"), and the following provisions shall apply:

(a) Developer will proceed with all due diligence to obtain such final approval and shall comply with all of the county requirements of the preliminary and final subdivision approvals (including any construction requirements);

(b) Purchaser's funds deposited with Escrow prior to the Approval Deadline shall be refunded to purchaser without deductions, together with any interest earned, within ten (10) days after the Approval Deadline if the final subdivision approval has not been issued by that date;

(c) Pending such final approval, purchaser shall continue to perform under the provisions of the Sales Contract (including making Payment B and proceeding under either Paragraph 4(a) or (b) (relating to financing)); and

(d) If final subdivision approval has not been obtained by the Approval Deadline, then upon the return by Escrow Agent of the payments made by purchaser as provided above, the Sales Contract shall terminate and Developer and purchaser shall have no further rights or obligations with respect thereto.

But upon the issuance of the final subdivision approval by the Approval Deadline, the Sales Contract shall no longer be conditional with respect to subdivision approval and any failure by purchaser to perform fully with respect to the remaining terms and conditions of the Sales Contract shall give Developer the option to terminate it under Paragraph 16 thereunder (relating to purchaser's default).

If at the Seller's Acceptance Date final subdivision approval has been issued, this paragraph shall not apply. But if at that date final approval has not been so issued, then a stamp or other notation shall be made on the Sales Contract to that effect.

2. That Seller has made no representations with respect to its renting or managing the apartment on Buyer's behalf, and if Buyer wishes to rent the apartment to third persons, Buyer will make his own arrangements to do so; and that Buyer acknowledges that he has been informed that none of Seller's agents are authorized to make any representations concerning the foregoing, and

3. That Buyer cannot enter into a rental pool without Seller's consent.

4. That Buyer agrees to subordinate his interest to the lien of the interim mortgage obtained for the construction of the applicable Phase of the Project and to any and all advances, whether contractual or voluntary made pursuant to said mortgage, and to any and all sums which may become a lien pursuant to the terms of said mortgage or the construction loan agreement or any other agreement relating to the interim mortgage. Buyer irrevocably appoints Seller the attorney-in-fact, coupled with an interest, of Buyer to execute and deliver on behalf of Buyer any instrument of subordination which the interim mortgagee or its successors or assigns may require. Seller agrees as to each Phase: (a) the principal amount of any such interim loan (including any amendment thereto) shall not exceed \$10,000,000.00; (b) the interest rate shall not exceed the maximum rate permitted by law; (c) the loan shall be repaid not later than ten (10) years from its date; and (d) the proceeds of said loan shall be used for construction, planning, marketing, and other development costs of the Project and/or the applicable Phase.

5. That if less than thirty-two (32) apartments are sold within twelve (12) months of the Seller's Acceptance Date of the Sales Contract, Seller may, at its option, cancel the Contract, in which event, Seller will cause Escrow to refund to Buyer all monies paid, with any interest earned thereon, and Seller and Buyer shall be released from any further liability under such Contract.

6. That Seller reserves the right to sell or lease unsold apartments free from any restrictions on such sale or lease which may under the Declaration and By-Laws apply to Buyer.

7. Notwithstanding any item or items that may be contained in any model apartment or apartments located in the Project:

(a) That (i) carpeting (except for the kitchen, bathrooms, and lanais, all of which will have tile floors), draperies, and tracks are included in the apartment but no ceiling fixtures, no wallpaper and no furniture, furnishings, or appliances (other than the standard appliances) are included in the apartment; and that (ii) the walls will be painted white; and

(b) That minor finishing details in the apartment may be changed.

KAPALUA RESORT ASSOCIATION: All purchasers shall automatically become members of the Kapalua Resort Association, a Hawaii non-profit corporation, which Maui Land & Pineapple Company, Inc., as Declarant, intends to establish prior to the Final Report. The Resort Association's purpose is to provide for the management, maintenance, protection, preservation, and architectural control of land described in the proposed Declaration of Covenants and Restrictions to be filed later by Declarant.

Voting rights are determined as of January 1st of each year as follows:

(a) All Owners, including Declarant, shall receive Voting Rights entitling them to one (1) vote for every ten thousand (10,000) square feet of real property they own in fee simple (whether or not under lease) which is subject to the Kapalua Protective Provisions; and

(b) All other Voting Rights shall be determined in accordance with the following schedule:

1 vote for every Condominium Unit owned by the Owner, for every apartment in an apartment house owned by the Owner, and for every single-family residence owned by the Owner on a Single Family Residential Lot (excluding guest houses and servants quarters).

1 vote for each hotel guest room owned by the Owner.

1 vote for every 1,000 square feet of Floor Area in a building owned by the Owner (other than floor area in a hotel, in a project included under the definition of Condominium Unit, in an apartment house, or in improvements on a Single Family Residential

Lot) used for recreational, commercial, restaurant, convention or similar uses.

The Floor Area in buildings devoted to public utility purposes for the furnishing of gas, water, electricity, sewerage, or other utility services shall not be included in the computation of Voting Rights, nor shall the Owners thereof be entitled to any votes with respect to such Lots.

The Voting Rights of Owners of Condominium Units shall be exercised by the Board of Directors of the Association of Owners or Community Association, as the case may be, of the project in which the unit is located. If merchants or similar associations are established at Kapalua, the Voting Rights of the Owners of the Floor Area included in such associations shall be exercised through the board of directors of such associations.

Each Owner of any Lot or Condominium Unit by acceptance of a purchase and sale agreement, deed, lease or other conveyance document therefore, whether or not it shall be expressed in any such deed, lease or any other conveyance, shall be deemed to covenant and agree to pay his proportionate share of general and special maintenance assessments and assessments for capital contributions, such assessments to be fixed, allocated and collected from time to time.

The assessments levied by the Association shall be used exclusively for the purposes provided for in these Kapalua Protective Provisions.

NOTE: The Declaration of Covenants and Restrictions shall control in case of any conflict with the Declaration of Horizontal Property Regime.

NOTE: The purchaser or prospective purchaser should read the proposed Kapalua Resort Association documents carefully, especially the proposed Declaration of Covenants and Restrictions, which will give the Declarant rights to annex additional land.

DEVELOPER'S OPTION: As provided in the Declaration, the Developer intends to reserve the right, to be exercised not later than December 31, 1989, to: Withdraw certain areas of land from the project; build additional apartments on the project; change floor plans and apartment sizes; grant easements for utilities, sanitary and storm sewers, cable television, walkways, and rights-of-way, and relocate or

realign any existing easements, rights-of-way and, including without limitation, any existing utilities, sanitary sewer lines and cable television and connect same over, under and on the common elements.

1. Reservation of Right to Construct Later Phases.

(a) The Declaration reserves the right in the Developer, at its option, to construct additional condominium units on the land described in Exhibit D of the Declaration ("Reserved Area"), which construction must begin on or before December 31, 1989, or the reserved rights will lapse. The Developer presently contemplates two (2) later phases consisting of fifteen (15) buildings and seventy-eight (78) apartments in total. But if the applicable governmental law and rules and regulations governing zoning building requirements, and the like in effect at the time of the proposed construction require a reduction in the size of the later phases, then the Developer reserves the right to reduce or expand the size of the later phases, whichever is applicable, as Developer, in its discretion, deems necessary or desirable. The present plans for later phases are substantially in the form of the Site Plan attached to the Declaration as Exhibit C. The Developer reserves the right to determine hereafter the number, type, and design of apartments and buildings of the later phases; provided that in no event shall the later phases contain more than ninety (90) apartments or eighteen (18) buildings, which buildings shall be no more than four (4) stories high. The later phase construction shall also include the reserved right to construct a parking area or areas on the Reserved Area. The Developer also reserves the right to alter the exterior of the later phases to conform to the interior design thereof, provided that such exterior design and appearance shall be harmonious with the exterior design and appearance of the project.

(b) Upon the issuance of a certificate of occupancy relating to the later phase apartments, the apartment owners of all of the initial 63 apartments and any later phase apartment for which a certificate of occupancy has been issued, shall constitute one association of owners. The common interest appurtenant to each of the initial 63 apartments in the project shall be decreased and a common interest appurtenant to each later phase apartment shall be allocated so that after said decrease and allocation, the common interest appurtenant to each apartment shall be as provided in Exhibit E to the Declaration or such other percentage as shall be assigned to each apartment by the Developer according to an equitable formula. The common area assessments shall be prorated between the then existing

apartments in the project and the later phase apartments as of the first day of the calendar month following the month in which the certificate of occupancy relating to the later phase apartments is issued.

(c) The Developer shall be responsible for all real property taxes with respect to the Reserved Area until the Developer exercises its right to construct any later phase, at which time, the later phase apartments, together with the apartments of any previous phase, shall become liable in their respective common interests for all real property taxes for that portion of the land which is no longer subject to withdrawal by the Developer as of the first day of the calendar month following the issuance of the first certificate of occupancy relating to the phase; and owners of later phase apartments shall become liable for the share of such real property taxes allocated to such owner's apartment as of the first day of the calendar month following the issuance of the certificate of occupancy relating to such apartment. However, to the extent the Developer fails to exercise said reserved right by December 31, 1989, the real property taxes for the Reserved Area shall be prorated between the Developer and the apartments constituting the project as of January 1, 1989, after which time the apartments constituting the project shall be liable in their respective common interests for all real property taxes for that portion of the land which has not been withdrawn by the Developer; or to the extent the Developer releases its said reserved right in writing prior to December 31, 1989, then such proration date shall be the effective date set forth in the written notice from the Developer to the Association of Apartment Owners, after which effective date the apartments then constituting the project shall be liable in their respective common interests for all real property taxes for that portion of the land which is no longer subject to withdrawal by the Developer.

(d) The purchaser or prospective purchaser is referred to paragraph 16 of the Declaration for a complete explanation of the terms and conditions of the reservation of this right to construct later phases.

2. Reserved Right to Withdraw Area. The Declaration also provides for the right in the Developer, at its option, to withdraw all or any portion of the Reserved Area. This reserved right shall be exercised on or before December 31, 1989, and shall lapse if not exercised by that date. The Developer shall give the Association of Owners at least sixty (60) days' prior written notice of its intention to exercise said reserved right. The purchaser or prospective purchaser is referred to paragraph 17 of the Declaration for

a complete explanation of the terms and conditions of the Developer's reserved right to withdraw the area.

MANAGEMENT OF THE PROJECT: The By-Laws of the Association of Apartment Owners vest in the Board of Directors the powers and duties necessary for the administration of the overall affairs of the project. The said By-Laws specify that the presence at any meeting in person or by proxy of owners of apartments to which are appurtenant more than fifty percent (50%) of the common interests as established by the Declaration 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 Declaration or the By-Laws. Voting shall be on a percentage basis; the percentage of the total vote to which each apartment unit is entitled shall be the same as the percentage of the common interests assigned to such apartment unit in the Declaration; and any percentage of apartment unit owners specified in the By-Laws means the owners of apartment units to which are appurtenant such percentage of the common interest. The Board may employ necessary personnel to carry out the management and operation of the project. The Sales Contract permits the Developer to retain a corporate managing agent, including Kapalua Management Company, a division of Developer, to manage the project. The contract with the managing agent shall not have a term exceeding one (1) year and shall be terminable by either party upon sixty (60) days' notice.

STATEMENT OF FINANCING: The construction financing of the project will be done by the Bank of Hawaii. The cost of the project is unknown as yet.

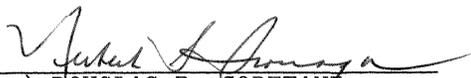
STATUS OF PROJECT: Construction of the project has not yet begun.

DISCLAIMER: Nothing in the Declaration and Sales Contract, nor any advertising or other documentation in connection with the project or the Kapalua Resort, shall be construed as obligating lessor, Developer or any other person to develop any land other than the land described in the Declaration, or to construct any improvements, including any recreational facilities, other than the improvements described in the applicable phase by the Declaration; nor as granting to purchasers any membership or other interest in any entity, club, or facility (recreational or otherwise) other than the project and the Kapalua Resort Association; and any representations to the contrary by Developer's agents are not authorized.

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 filed on November 4, 1975, and information subsequently filed as of November 11, 1975.

This PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 820 filed with the Commission on November 4, 1975.

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

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DATE: November 14, 1975
Registration No. 820