

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
THE WINDWARD PASSAGE
322 Aoloa St.
Kailua, Oahu, Hawaii

REGISTRATION NO. 863

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: September 22, 1976

Expires: October 22, 1977

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 JUNE 25, 1976 AND INFORMATION SUBSEQUENTLY FILED AS OF SEPTEMBER 8, 1976. 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. THE WINDWARD PASSAGE is a proposed leasehold condominium project consisting of two hundred three (203) residential apartment units plus one resident manager's apartment in one eighteen (18) story building without basement, a total of three hundred seventy-eight (378) parking stalls on grade and in a three level ramping garage, and recreational areas including a Tennis Club Facility.

2. The Developer has submitted to the Commission for examination all documents necessary for the issuance of this Preliminary Public Report.
3. Pursuant to Chapter 514 of the Hawaii Revised Statutes and the Rules and Regulations promulgated thereunder by the Real Estate Commission of the State of Hawaii advertising matter has been submitted.
4. The basic documents (Declaration of Horizontal Property Regime, By-Laws of Association of Apartment Owners and a copy of the proposed Condominium Map) have not been recorded as of this date in the office of the recording officer.
5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Chapter 514 of the Hawaii Revised Statutes, the Horizontal Property Act and the Condominium Rules and Regulations which relate to Horizontal Property Regimes.
6. This Preliminary Public Report automatically expires thirteen (13) months after the date of issuance, September 22, 1976, 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.
7. This Preliminary Public Report is made a part of the registration on "THE WINDWARD PASSAGE" condominium project. The Developer is responsible for placing a true copy of this Preliminary Public Report (yellow paper stock) in the hands of all purchasers and prospective purchasers and for securing a signed copy of the Receipt for Horizontal Property Regime Preliminary Public Report from such persons.

NAME OF PROJECT: THE WINDWARD PASSAGE.

LOCATION: The land submitted to the Regime, approximately 134,605 square feet, is located within the master planned Kailua Gardens Community at 322 Aoloa Street in Kailua, Oahu, Hawaii.

TAX MAP KEY: FIRST DIVISION 4-2-01: Parcel: 46 and portion of 45.

ZONING: A-3.

DEVELOPER: RAINALTER HOLDINGS LIMITED, a Hawaii corporation, whose principal place of business and post office address is Suite 506, 1000 Bishop Street, Honolulu, Hawaii. Telephone 533-6002. The officers are U. J. Rainalter Jr., President; Verena B. Rainalter, Vice-President/Treasurer; Alan I. Yoshimoto, Assistant Vice-President; and J. Thomas Van Winkle, Secretary.

ATTORNEY FOR DEVELOPER: Carlsmith, Carlsmith, Wichman and Case, 190 South King Street, Honolulu, Hawaii 96813 (Attention: Tom Welch or Ray Iwamoto), Telephone 524-5112.

DESCRIPTION: The land will be improved, according to the Developer's plans and intention to sell, with the construction of an apartment building containing two hundred three (203) residential apartments plus one resident manager's apartment, recreational areas (including Tennis Club Facilities) and a total of 378 parking stalls on grade and in a three level ramping garage. The specimen Sales Contract states that the Developer intends to sell the apartments therein to third persons, causing the Fee Owner, the Master Lessee and the Lessor (as said terms are defined in the Apartment Lease) to issue to each purchaser of a condominium unit a lease of such condominium unit and an undivided interest in the common elements of the Project (exclusive of the land).

1. Description of the Building.

(a) General Description. The Project consists of an eighteen (18) story apartment building and various areas and additional structures, portions of which are hereinafter designated and described as common elements, including a swimming pool, a ramping parking garage and Tennis Club Facilities comprising three (3) championship tennis courts, two air conditioned racquet ball courts and a clubhouse complete with whirlpool bath, saunas, gym equipment, and shower and locker rooms. In addition to the written description of the Project in the Declaration, the Project will also be depicted on the Condominium Map for the Project to be recorded in the Bureau. The apartment building has eighteen (18) levels with no basement. The levels are designated "floors" and are given numerical designations in ascending order from 1 through 17 and Penthouse (which would otherwise have been the 18th floor).

(b) Access. Each apartment has immediate access to an adjacent corridor leading to a lobby with three elevators and two stairways which provide access to the other levels of the building.

(c) Number of Apartments. The apartment building contains 203 residential apartments plus one Resident Manager's Apartment. The Resident Manager's Apartment No. 210 is for the use of the Resident Manager of the Project and is a common element of the Project. Each residential apartment (except the Resident Manager's apartment), constitutes an "apartment", as defined and used in Chapter 514 of the Hawaii Revised Statutes, and constitutes a separate estate. Sixty-seven (67) apartments are one-bedroom, one-bath units. Sixty-eight (68) apartments are two-bedroom, two-bath units. Sixty-eight (68) apartments are three-bedroom, two-bath units.

(d) Construction Materials. The apartment building shall be constructed principally of post-tensioned concrete floor slabs, reinforced concrete columns and sheer walls, post-tensioned concrete roof slabs, concrete masonry, lumber, steel, aluminum, glass and allied building materials.

(e) First Floor Level. The first floor will have a lobby, manager's office, meeting room, owner storage lockers, tennis clubhouse and locker rooms, employee locker room, bike and surfboard storage facilities and utility and equipment room.

2. Description of Apartments.

(a) Numerical Designation and Location of Apartments. There will be a total of seven (7) basic types of apartments, the detailed plans for which are shown on the proposed Condominium Map filed with the Commission. Each apartment within each of the foregoing types is substantially the same as all others within its type, except that the floor plans may be mirror images of other floor plans. Each apartment has been given a numerical designation by which its location in the building can be determined. The first numeral (two numerals in the case of floors having a two numeral designation and "PH" in place of numerals in the case of the 18th floor) of each apartment designation corresponds to the floor number on which it is located and the last two numerals of the designation indicate the location of the apartment on that floor. There are twelve (12) apartments including the Resident Manager's apartment on each of the upper seventeen (17) floors.

The apartment on the northeast (makai/Lanikai) corner of each floor, which is the apartment nearest to the Aolua Street-Kailua Road junction, is given a numeral designation ending in 01. The designation then numerically increases from east (Lanikai) to west (Kawainui) from number 01 to number 12 inclusive so that the odd-numbered apartments (in ascending order westward from 01 to 11) are located on the northern (makai) side of the corridor and the

even-numbered apartments (in ascending order westward from 02 to 12) are located on the southern (mauka) side.

(b) Description of Apartments. Each apartment shall include all walls and partitions within its perimeter walls; all glass windows, louvers, doors, and panels along the perimeter; the interior half of all perimeter party walls; to the exterior surface of all perimeter non-party walls; the inner decorated or finished surfaces of the floors and ceilings; any adjacent outdoor lanai or lanais shown on the Condominium Map to the exterior edges of the concrete floor slab thereof; the built-in fixtures including drop-in range with oven, dishwasher, disposer, sinks, bathroom fixtures, and all air space encompassed within the apartment; provided, however, that the portion of each perimeter wall including any ledges and the portion of any load bearing wall or column located within any apartment are common elements (except for the inner decorated surface of said wall or column within said apartment which is not a common element), provided, further, that any fire sprinkler system components, and any ducts, shafts, or other enclosed spaces for common wiring, pipes or air exhaust located within any apartment shall be deemed to be common elements.

There are thirty-four (34) Unit "A" type apartments (two on each floor) each containing a total area of approximately 1321 square feet, including a living/dining room, kitchen, three (3) bedrooms and two (2) bathrooms, a separate storage room, and including (within said total square footage) an outdoor lanai of approximately 92 square feet.

There are seventeen (17) Unit "B-1" type apartments and seventeen (17) Unit "B-2" type apartments (one each on each floor), with the Unit "B-1" type apartments each containing a total area of approximately 1384 square feet and the Unit "B-2" type apartments each containing a total area of approximately 1342 square feet, with both types including a living/dining room, kitchen, separate storage room, entry, three (3) bedrooms, two (2) baths, and including (within each of said total square footages) an outdoor lanai of approximately 98 square feet. The Unit "B-1" type apartment includes also a separate dressing room with walk-in closet. The Unit "B-2" type apartment on the second floor designated Apartment No. 212 has appurtenant to it as limited common elements an extended plant ledge and a private stairway to the parking structure.

There are thirty-four (34) Unit "C-1" type apartments and thirty-four (34) Unit "C-2" type apartments (two

each on each floor), with the Unit "C-1" type apartments each containing a total area of approximately 1056 square feet and the Unit "C-2" type apartments each containing a total area of approximately 1048 square feet, with both types including a living/dining room, kitchen, two (2) bedrooms, two (2) baths, a separate storage room, and including (within each of said total square footages) an outdoor lanai of approximately 92 square feet.

There are thirty-four (34) Unit "D" type apartments (two on each floor) each containing a total area of approximately 737 square feet, including a living/dining room, kitchen, indoor/outdoor lanai, dressing room, one (1) bedroom and one (1) bath.

There are thirty-three (33) Unit "E" type apartments (two on each floor except the second floor, which has the Resident Manager's Apartment No. 210 which is a common element) each containing a total area of approximately 713 square feet, including a living/dining room, kitchen, indoor/outdoor lanai, dressing room, one (1) bedroom and one (1) bath.

The total square footage areas for the respective unit types are computed from and to the center lines of the apartment perimeter party walls and the exterior surface of all other apartment perimeter walls, including the area to the edge of the floor slab of the indoor/outdoor lanais of all one-bedroom apartments, plus, as applicable, the respective outdoor lanai square footage areas which are computed from the adjacent exterior wall or glass line of the apartment to the edges of the lanai floor slab.

COMMON ELEMENTS. The common elements shall include the common elements described above in paragraph 2(b) of the topical heading "DESCRIPTION", the limited common elements set forth below, and all other portions of the Project other than the apartments, including specifically, but not limited to:

- (a) Saidland in fee simple.
- (b) All foundations, floor slabs, columns, girders, beams, supports, unfinished perimeter walls and interior load bearing walls and roofs of the residential building (the building contains no basement).
- (c) All yards, grounds and landscaping and all refuse facilities, if any, whether within or appurtenant to the Project.

(d) All roads, parking areas, driveways and walkways which are rationally of common use by owners of more than one apartment, including but not limited to a three-level ramping garage, and 378 parking stalls located both on grade and in said garage.

(e) All ducts, electrical equipment, wiring, pipes and other central and appurtenant transmission facilities over, under and across the Project which serve more than one apartment for services such as power, light, water, gas, sewer, telephone and radio and television signal distribution.

(f) The storage room, surfboard storage area, bike storage area, trash room and mechanic room.

(g) The meeting room.

(h) The recreation room and whirlpool bath.

(i) The resident manager's Apartment No. 210 and the manager's office.

(j) The recreation manager's office.

(k) The employees' bath and locker room.

(l) The tennis courts and racquet ball courts.

(m) The swimming pool.

(n) The men's bath, locker and sauna.

(o) The women's bath, locker and sauna.

(p) The entirety of the fire sprinkler system, including portions thereof installed within the various apartments.

(q) Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

LIMITED COMMON ELEMENTS. Certain parts of the common elements, herein called and designated as "limited common elements", are set aside and reserved for the exclusive use of certain apartments as described below and in paragraph 2(b) of the topical heading "DESCRIPTION" above. The costs and expenses of every description pertaining to the limited common elements, including but not limited to the costs of maintenance, repair, replacement, improvement or additions

to the limited common elements shall be charged to all apartment owners in proportion to the common interests appurtenant to their respective apartments, except as otherwise provided in this paragraph.

(a) Each apartment shall have appurtenant to it as a limited common element at least one (1) parking stall. Each parking stall shall be designated on the Condominium Map with both its stall number and the number of the apartment to which it shall be appurtenant. The Developer reserves the right to initially assign, in each case with the written consent of the Fee Owner and Lessee, any parking stalls to any apartments by amendment of the Declaration and Condominium Map; provided that until so assigned all unassigned parking stalls shall not be limited common elements but shall remain common elements. After their initial assignment, stalls may be reassigned from time to time by amendment to the Declaration and the Condominium Map.

(b) Each apartment shall have appurtenant to it as a limited common element one (1) storage locker. Each storage locker shall be designated on the Condominium Map by a number corresponding to the number of the apartment to which it shall be appurtenant. The assignment of storage lockers may be changed from time to time by amendment to the Declaration. The cost of routine cleaning and maintenance of the inside of any storage locker appurtenant to an apartment and the cost of repairing any damage to said storage locker caused by the owner or occupant of said apartment or their permittees shall be borne by the owner of said apartment; but the cost of any other repairs to said storage locker or the area in which it is located shall be borne by all apartment owners as a common expense.

(c) Each two-bedroom and three-bedroom apartment shall have appurtenant to it, as limited common elements, concrete ledges located adjacent to the exterior perimeter walls of each two-bedroom and three-bedroom apartment, such ledges being an extension of the floor slabs of those apartments.

(d) Apartment 212 shall have appurtenant to it, as a limited common element, an extended plant ledge and a private stairway to the adjacent parking structure as shown on the Condominium Map.

INTEREST TO BE CONVEYED TO PURCHASER: The undivided percentage ownership in the common elements (the "Common Interest") appertaining to each apartment and its owner for all purposes including voting shall be as follows:

Unit "A" Type Apartments:

201, 301, 401, 501,	211, 311, 411, 511,
601, 701, 801, 901,	611, 711, 811, 911,
1001, 1101, 1201, 1301,	1011, 1111, 1211, 1311,
1401, 1501, 1601, 1701	1411, 1511, 1611, 1711
and PH-1	and PH-11

Unit "B-1" Type Apartments:

202, 302, 402, 502,
602, 702, 802, 902,
1002, 1102, 1202, 1302,
1402, 1502, 1602, 1702
and PH-2

Unit "B-2" Type Apartments:

212, 312, 412, 512,
612, 712, 812, 912,
1012, 1112, 1212, 1312,
1412, 1512, 1612, 1712
and PH-12

Each of the foregoing apartments shall have a common interest of .590551%.

Unit "C-1" Type Apartments:

205, 305, 405, 505,
605, 705, 805, 905,
1005, 1105, 1205, 1305,
1405, 1505, 1605, 1705
and PH-5

Unit "C-2" Type Apartments:

203, 303, 403, 503,
603, 703, 803, 903,
1003, 1103, 1203, 1303,
1403, 1503, 1603, 1703
and PH-3

207, 307, 407, 507,
607, 707, 807, 907,
1007, 1107, 1207, 1307,
1407, 1507, 1607, 1707
and PH-7

209, 309, 409, 509,
609, 709, 809, 909,
1009, 1109, 1209, 1309,
1409, 1509, 1609, 1709
and PH-9

Each of the foregoing apartments shall have a common interest of .492126%.

Unit "D" Type Apartments:

206, 306, 406, 506,
606, 706, 806, 906,
1006, 1106, 1206, 1306,
1406, 1506, 1606, 1706
and PH-6

Unit "E" Type Apartments:

204, 304, 404, 504,
604, 704, 804, 904,
1004, 1104, 1204, 1304,
1404, 1504, 1604, 1704
and PH-4

208, 308, 408, 508,
608, 708, 808, 908,
1008, 1108, 1208, 1308,
1408, 1508, 1608, 1708
and PH-8

310, 410, 510, 610,
710, 810, 910, 1010,
1110, 1210, 1310, 1410,
1510, 1610, 1710 and
PH-10

Each of the foregoing apartments shall have a common interest of .393701% except for Apartment Nos. 204, 206, and 208 which shall each have a common interest of .393700%.

Each apartment and its appurtenant Common Interest shall be leased to each purchaser by an Apartment Lease.

USE: The proposed Declaration provides that (i) the residential apartments shall be occupied and used for residential apartment purposes only. The owners of apartments have the right to lease or rent their apartments to third parties, subject to all of the provisions of the Declaration and By-Laws and in particular Section 8 of Article V of the By-Laws which should be reviewed by the Purchaser.

OWNERSHIP TO TITLE: The Preliminary Report issued September 7, 1976 and prepared by Title Guaranty of Hawaii, Inc. states that title to the land is vested in JAMES C. CASTLE, JAMES GORDON McINTOSH and HAWAIIAN TRUST COMPANY, LIMITED, Trustees of the trust estates established pursuant to the Last Will and Testament, including Codicils First through Fifth, of Harold K. L. Castle, deceased, and IOLANI SCHOOL, a Hawaii eleemosynary corporation. LEWERS & COOKE, INC., a Hawaii corporation, whose principal place of business and post office address is 550 Paiea Street and P. O. Box 9607, Honolulu, Hawaii, respectively, is the holder of two Master Tract Leases (Lease No. 7014 and Lease No. 7015) covering the land and recorded in the Bureau of Conveyances of the State of Hawaii, respectively, in Liber 9371, at Page 374 and in Liber 9371, at Page 413. The Developer and Lewers & Cooke, Inc. have executed an Option Agreement, whereby, upon Developer's execution of the Option, Lewers & Cooke, Inc. will sublease the property covered by Lease No. 7015 and part of the property covered by Lease No. 7014 to the Developer by issuing a single Master Tract Sublease (the "Lease") to the Developer.

ENCUMBRANCES AGAINST TITLE: The Preliminary Report dated September 7, 1976, prepared by Title Guaranty of Hawaii, Inc. describes the following encumbrances:

1. For any taxes that may be due and owing, reference is made to the Office of the Tax Assessor, First Division.
2. Title to all mineral and metallic mines reserved to the State of Hawaii.
3. Declaration of Covenants, Conditions and Restrictions dated July 6, 1973, recorded in said Bureau in Liber 9371, at Page 352, as they may be amended from time to time.
4. Terms, agreements, reservations, covenants, conditions and provisions contained in Lease Nos. 7014 and 7015.

5. Mortgage and Financing Statement in favor of Bank of Hawaii dated December 12, 1972, recorded in said Bureau in Liber 8802, at Page 58, amended by Partial Release of Mortgage and Substitution of Security dated June 22, 1973 and recorded in said Bureau in Liber 9372, at Page 186.
6. Additional Charge Mortgage in favor of Bank of Hawaii dated November 5, 1973, recorded in said Bureau in Liber 9588, at Page 377.

The Developer has informed the Commission that it will place a construction mortgage on its leasehold interest. The respective liens of this mortgage and the mortgages described in items 5 and 6 above will be released and discharged of record as to each condominium apartment prior to its being transferred to a purchaser.

PURCHASE MONEY HANDLING: A copy of the executed Escrow Agreement dated June 22, 1976, between Title Guaranty Escrow Services, Inc. (the "Escrow"), as Escrow Agent, and Developer, 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, as amended.

The executed Escrow Agreement provides in part that if at any time (a) Escrow receives written notice from Developer to return to a purchaser under a Sales Contract the funds of such purchaser then held by Escrow under the Escrow Agreement, or (b) with respect to a purchaser whose funds were obtained prior to the issuance of the Final Report, there shall be any substantive change in the building plans of a type which gives Purchaser a right to cancel his Sales Contract pursuant to Chapter 514 of the Hawaii Revised Statutes (unless purchaser's written approval or acceptance of the specific change is obtained, or ninety (90) days have elapsed since the purchaser has accepted in writing the apartment or he has first occupied the apartment) or (c) the Final Report differs in a material respect from the Preliminary Report, and the purchaser's written approval of such change has not been obtained and the purchaser shall request the refund, or (d) the Final Report is not issued within one (1) year from the date of issuance of the Preliminary Report unless the sales contract is nevertheless affirmed by the purchaser, then in any such event Escrow shall return such funds to the purchaser, without interest earned unless otherwise instructed by Developer and furthermore unless Developer shall otherwise instruct Escrow, less: (1) Escrow's cancellation fee of \$25.00 per

apartment, (2) any mortgagee's cancellation fee, and (3) all other costs, if any, which have been incurred in connection with the Escrow mortgage processing, closing or legal documentation. It should be noted that the Sales Contract in effect provides that in the event the Seller cancels the Sales Contract for any reason not the fault of the purchaser, the purchaser's deposits will be refunded in full without any deductions. The Escrow Agreement further provides that Escrow shall also return to purchaser his Sales Contract marked "cancelled" and any apartment lease previously delivered to Escrow shall be returned to Developer marked "cancelled" and any mortgage documents which may have been executed shall also be marked "cancelled" and returned to the mortgagee, if any, and Developer and the purchaser shall be deemed no longer bound by the terms of the Sales Contract; provided, however, that no refund shall be made to purchaser at purchaser's request until Escrow has received written approval of such refund from Developer. After construction of the Project shall have commenced, (1) if the completion of construction for any reason is delayed for 180 calendar days beyond the original completion date under the Construction Contract and Developer elects to cancel the Sales Contract, (2) if the purchaser shall have earned interest on purchaser's deposits pursuant to the Sales Contract, and (3) if purchaser is not then in default of the Sales Contract, Developer will cause Escrow to refund purchaser's deposit together with interest earned as provided in the Sales Contract.

NOTE: Prospective purchasers should be aware that:

1. The Mortgage and other liens which will secure the Developer's first mortgage interim construction loan (renewals and extensions) for the construction of the Project shall be and remain at all times a superior lien on the Project, and purchasers intentionally waive and subordinate their interests under the Sales Contract or any reservation agreement in favor of the priority of all such liens.

2. It is incumbent upon the prospective purchaser that he read with care the Sales Contract and the executed Escrow Agreement. The latter establishes how the proceeds from the sale of apartments are placed in trust, as well as the retention and disbursement of the proceeds of said trust fund.

3. The prospective purchaser is advised that the Developer is selling the units in the Project pursuant to the Developer's rights under its Option Agreement with

Lewers & Cooke, Inc. and upon exercise of the option granted therein, its rights under the Master Tract Sublease to be issued by Lewers & Cooke. The Master Tract Sublease will contain a cancellation provision whereby if the Developer fails to pay the Lessor therein a certain stipulated sum by August 31, 1977, or within thirty (30) days after the start of construction, whichever shall first occur, the Master Tract Sublease can be cancelled at the Master Tract Sublessor's option. This fee is to be paid from purchaser's deposits in Escrow and/or from Developer's Construction Loan, which loan is, in turn, conditioned upon the Developer's achieving a specified number of sales and other customary conditions of closing. Such a cancellation of the Master Tract Sublease would mean that all of the rights of the Developer will be terminated and all of the purchaser's rights to purchase the apartment unit will be cancelled. Accordingly, the Sales Contract reserves the right in the Developer to cancel the Sales Contract and all of the purchaser's rights thereunder, or to the land and improvements, at the Developer's option, if less than 183 units are sold to qualified purchasers by June 30, 1977. The Sales Contract also reserves a limited right in the Developer (until the start of construction) to cancel the Sales Contract for certain delays and occurrences affecting the financial feasibility of the Project, with the right in the Developer thereupon to increase the sales prices of the units accordingly. If such right is exercised, the Developer is then obligated under the Sales Contract to offer the purchaser the first right to buy the same unit at the increased price. The Developer's right of cancellation for such delays and occurrences terminates once construction commences (as the term "commencement of construction" is defined in the Sales Contract).

4. The Sales Contract provides that if Seller fails to exercise its option to enter into the Master Sublease or the Master Sublease is terminated for any reason, including, without limitation, a termination pursuant to the Seller's rights to terminate the Master Sublease as provided therein or pursuant to the Lessor's rights to terminate as provided therein (including, without limitation, Seller's failure to pay to the Lessor a certain amount of money as specified therein), then such termination shall automatically cancel and extinguish the Sales Contract and Purchaser shall have no interests whatsoever in the land and shall have no right to require Seller or the Lessor of the Master Sublease or anyone else to construct the condominium unit contracted for under the Sales Contract. Upon such termination, Seller shall refund all sums paid by Purchaser under the Sales Contract, without interest.

5. The Sales Contract provides that Seller will have the right to cancel the Sales Contracts after the start of construction only if completion of construction is delayed for any reason for 180 days or more beyond the original construction contract completion date and Seller shall return to Purchaser all sums paid by Purchaser with interest thereon if earned by Purchaser as provided in the Sales Contract.

6. The Sales Contract provides that each purchaser who is not in default of the Sales Contract and performs all of his obligations thereunder will be paid eight percent (8%) annual interest compounded at the end of each calendar year on his funds in Escrow from the date when the Seller calls for and the purchaser makes Payment B until the Closing Date as defined in the Sales Contract. Seller will pay such interest to the purchaser for the period, and upon pertinent conditions, all as specified in the Sales Contract.

7. Purchaser should also note that the Sales Contract and the specimen Apartment Lease place restrictions on the Apartment Owners, precluding them from entering into any rental pool or other rental-sharing arrangements with other such Apartment Owners until after the expiration of fifteen (15) years from the date of recordation of purchaser's Apartment Lease.

8. The Project is part of the master-planned Kailua Gardens Community and, as such, all Apartment Owners in the Project will be members of the Kailua Gardens Community Association, a nonprofit corporation established to own certain common properties in the community and to provide certain services to all the members. The land (including the Project's) located in this community is subject to a Declaration of Covenants, Conditions and Restrictions which has been placed on record by the Fee Owners of the land. The Kailua Gardens Community Association is governed by the By-Laws of the Kailua Gardens Community Association. The members will include condominium Apartment Owners in this Project who will be obligated to pay assessments levied by the Association (over and above the common expense assessments of the Project itself, but included in the estimated monthly maintenance fees to be paid by each apartment purchaser) which, if unpaid, shall be a continuing lien on the purchaser's interest in purchaser's apartment as provided in the Declaration of Covenants, Conditions and Restrictions.

9. As provided in Section D.25 of the Sales Contract, the purchaser acknowledges that minor construction activity may continue on the site after purchaser has occupied his apartment, which may result in noise, dust or other annoyances. In addition, as further provided in said Section D.25, the Developer's sales activities, including the use of

model units and signs and the use of the first floor lobby area for sales displays and related activities, may continue until the last apartment in the Project is sold.

10. The purchaser's attention is directed to paragraph 8 of the Declaration, Section D.7 of the Sales Contract and paragraph 31 of the Apartment Lease, all of which reserves to the Developer a right to make certain amendments to the Declaration that may be necessary to comply with the provisions of law, the requirements of certain mortgagees, or to carry out the changes to the Project set forth in said paragraphs.

11. The Developer is considering installing and equipping the Project with a solar energy system which will be utilized to supplement the central gas hot water system and is exploring the practical aspects of leasing on behalf of the Association of Apartment Owners, such a system from certain competitive sources. The lease rentals for such a solar energy system will be a part of the common expenses of the Project, as provided in the By-Laws. Each purchaser acknowledges, in section D.7 of the Sales Contract, that Seller is authorized, on behalf of the Association of Apartment Owners, to enter into such a lease for a solar energy system.

MANAGEMENT OF THE PROJECT: The By-Laws vest in the Board of Directors (the "Board") the power and duties necessary for the administration of the overall affairs of the Project. The By-Laws submitted to the Commission permit the Developer to appoint the initial managing agent for the Project. The Developer has entered into a one-year contract (the "Management Contract") with Aaron M. Chaney, Inc. as the initial managing agent. The provisions of the Management Contract, which has been filed with the Commission, provide for earlier termination for cause. The managing agent's fee is \$1,377.00 per month.

HOUSE RULES: Purchasers and prospective purchasers are advised to read with care the House Rules for the Project which among other things provide that:

(a) Occupancy is limited to not more than three persons per one-bedroom apartment, five persons per two-bedroom apartment, and seven persons per three-bedroom apartment;

(b) One small dog or one cat or one pair of small birds may be kept in the apartment. Other types of animals may be kept only if the occupant obtains written permission from the Board of Directors. Occupants of any apartment containing a pet are required to register their pet with the

managing agent and pay a deposit of \$100.00 which will be held without interest by the Association;

(c) No water beds shall be allowed in any apartment.

STATUS OF PROJECT: The Developer advises that it has agreed in principle with Harvis Construction, Inc. as to contract price and contract terms for the construction of the Project. As of the date of this Preliminary Public Report, the construction contract is yet to be executed.

PROGRAM OF FINANCING: The Statement of Costs and the Program of Financing submitted by the Developer reflect that the Developer intends to pay the cost of the Project from funds available through a construction loan commitment of \$10,957,400.00, made by Amfac Financial Corp.

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 June 25, 1976 and information subsequently filed as of September 8, 1976.

This PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 863 filed with the Commission on June 25, 1976.

This 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.

Ah Kau Young

AH KAU YOUNG, 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. 863

September 22, 1976