

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

NIHI KAI

Pee, Maa, Hoone and Nalo Roads
Koloa, Kauai, Hawaii

REGISTRATION NO. 923

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: July 27, 1977
Expires: August 27, 1978

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 22, 1977 AND INFORMATION SUBMITTED AS OF JULY 20, 1977. 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. NIHI KAI is a proposed leasehold condominium project consisting of eight (8) wood frame residential buildings containing seventy (70) condominium apartment units. The project will have two (2) one-bedroom apartment units, sixty-six (66) two-bedroom apartment units and two (2) three-bedroom apartment units. One hundred five (105) parking stalls will be available, of which twenty (20) are compact stalls. The project shall also contain two detached single-story wood frame recreational buildings, a swimming pool, a paddle tennis court and two tennis courts.
2. The Developer of the project has submitted to the Commission for examination all documents deemed necessary for the registration of this proposed condominium project and the issuance of this Preliminary Public Report.
3. The basic documents (Declaration of Horizontal Property Regime, By-Laws of the Association of Apartment Owners, and a copy of the approved floor plans) have not yet been filed in the office of the recording officer.
4. The Developer has advised the Commission that advertising and promotional materials required to be filed pursuant to the rules and regulations promulgated by the Commission will be submitted prior to public exposure.
5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Chapter 514, Hawaii Revised Statutes, and the condominium rules and regulations which relate to horizontal property regimes.
6. This Preliminary Public Report is made a part of the registration of the NIHI KAI 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. Securing a signed receipt for said Preliminary Public Report from all purchasers and prospective purchasers is also the responsibility of the Developer.
7. This Preliminary Public Report automatically expires thirteen (13) months after date of issuance, July 27, 1977, unless a Final or Supplementary Public Report is issued or the Commission, upon review of the registration, issues an order extending the effective period of this report.

NAME OF PROJECT: NIHI KAI

LOCATION: The land of the project, consisting of approximately 268,503 square feet, is situate at the intersection of Nalo Hoone, Maa and Pee Roads at Weliweli, Koloa, Island of Kauai, Hawaii.

TAX KEY: 4th Division, 2-8-19:12 and 22.

ZONING: RR-10

DEVELOPER: NIHI KAI ASSOCIATES, a registered Hawaii general partnership, whose principal place of business and post office address is P. O. Box 119, Koloa, Kauai, Hawaii. The two partners of Nihi Kai Associates are Eugene Evanetz and Paul Mitchell, both of Koloa, Kauai, Hawaii.

ATTORNEY REPRESENTING DEVELOPER: Mukai, Ichiki, Raffetto & MacMillan (Attention: Richard G. MacMillan and Michael R. Garner), 345 Queen Street, Suite 800, Honolulu, Hawaii. Telephone number: 531-6277.

DESCRIPTION OF PROJECT: The proposed Declaration of Horizontal Property Regime describes the project as follows:

1. Description of Buildings. The ten (10) buildings of the project, hereinafter described and designated on said Condominium File Plan as Buildings 1 through 10, inclusive, are more particularly described as follows:

(a) Building "1" will be a one-story structure containing two (2) apartments.

(b) Buildings "2", "3" and "6" will be two-story structures each containing four (4) split-level apartments.

(c) Buildings "4" and "5" will be three-story structures containing, respectively nine (9) and eighteen (18) apartments. Building "4" shall have six (6) split-level apartments on the first two floors and three (3) apartments on the third floor while Building "5" will contain twelve (12) split-level apartments on the first two floors and six (6) apartments on the third floor.

(d) Building "7" will be a two-story structure containing six (6) split-level apartments.

(e) Building "8" will be a four-level structure (the ground floor of which is subgrade) containing six (6) split-level apartments on the ground floor and second floor, five (5) apartments on the second floor, eight (8) apartments on the fourth floor.

(f) Building "9" and "10" will be recreational buildings located adjacent to the swimming pool and tennis courts, respectively. Building "9" will contain pool equipment, sewage plant equipment, storage areas, shower and lavatory facilities, and building "10" will be an open-sided pavilion.

2. Description of Apartments. The project is divided into seventy (70) separately designated condominium apartments, as more particularly described hereinbelow and on said Condominium File Plan. The numbering, type, approximate gross area in square feet, number of rooms, appurtenant parking stall and appurtenant common interest of said apartments are as follows:

<u>Apartment No.</u>	<u>Floor Plan Type</u>	<u>Approx. Living Area in Sq. Ft.</u>	<u>Approx. Lanai Area in Sq. Ft.</u>	<u>No. of Rooms</u>	<u>Parking Stall No.</u>	<u>Percentage Common Interest</u>
<u>Building 1</u>						
100	C3	1,527	371	7	*4	1.69086
101	C3	1,527	371	7	2	1.69086
<u>Building 2</u>						
200	G	1,472	349	6	*3	1.62227
201	H	1,221	286	6	1	1.34254
202	H	1,221	286	6	26	1.34254
203	G	1,472	349	6	25	1.62227
<u>Building 3</u>						
300	G	1,472	349	6	24	1.62227
301	H	1,221	286	6	22	1.34254
302	H	1,221	286	6	20	1.34254
303	G	1,472	349	6	18	1.62227
<u>Building 4</u>						
400	G	1,472	349	6	14	1.62227
401	H	1,221	286	6	12	1.34254
402	H	1,221	286	6	10	1.34254
403	H	1,221	286	6	8	1.34254
404	H	1,221	286	6	7	1.34254
405	G	1,472	349	6	9	1.62227
430	A2	1,531	293	6	11	1.66949
431	B2	1,279	228	6	13	1.34253
432	A2	1,531	293	6	17	1.66949
<u>Building 5</u>						
500	G	1,472	349	6	68	1.62227
501	H	1,221	286	6	67	1.34254
502	H	1,221	286	6	66	1.34254
503	H	1,221	286	6	65	1.34254
504	H	1,221	286	6	61	1.34254
505	H	1,221	286	6	59	1.34254
506	H	1,221	286	6	57	1.34254
507	H	1,221	286	6	55	1.34254
508	H	1,221	286	6	52	1.34254
509	H	1,221	286	6	50	1.34254
510	H	1,221	286	6	48	1.34254
511	G	1,472	349	6	46	1.62227
530	A2	1,531	293	6	42	1.66949
531	B2	1,279	228	6	40	1.34253
532	B2	1,279	228	6	38	1.34253
533	B2	1,279	228	6	32	1.34253
534	B2	1,279	228	6	30	1.34253
535	A2	1,531	293	6	*28	1.66949

<u>Apartment No.</u>	<u>Floor Plan Type</u>	<u>Approx. Living Area in Sq. Ft.</u>	<u>Approx. Lanai Area in Sq. Ft.</u>	<u>No. of Rooms</u>	<u>Parking Stall No.</u>	<u>Percentage Common Interest</u>
<u>Building 6</u>						
600	G	1,472	349	6	64	1.62227
601	H	1,221	286	6	62	1.34254
602	H	1,221	286	6	60	1.34254
603	G	1,472	349	6	58	1.62227
<u>Building 7</u>						
700	G	1,472	349	6	53	1.62227
701	H	1,221	286	6	51	1.34254
702	H	1,221	286	6	49	1.34254
703	H	1,221	286	6	47	1.34254
704	H	1,221	286	6	43	1.34254
705	G	1,472	349	6	41	1.62227
<u>Building 8</u>						
800	E	1,451	471	7	103	1.71224
801	B1	1,264	227	6	102	1.32829
802	F	1,255	405	6	97	1.47884
803	D	792	168	4	96	0.85523
804	F	1,255	405	6	95	1.47884
805	B1	1,264	227	6	88	1.32829
806	F	1,255	405	6	85	1.47884
807	D	792	168	4	86	0.85523
808	F	1,255	405	6	78	1.47884
809	B1	1,264	227	6	77	1.32829
810	E	1,451	471	7	71	1.71224
820	A1	1,517	291	6	104	1.61070
821	B1	1,264	227	6	94	1.32829
822	B1	1,264	227	6	91	1.32829
823	B1	1,264	227	6	90	1.32829
824	B1	1,264	227	6	83	1.32829
825	B1	1,264	227	6	82	1.32829
826	B1	1,264	227	6	79	1.32829
827	A1	1,517	291	6	70	1.61070
830	B1	1,264	227	6	93	1.32829
831	B1	1,264	227	6	92	1.32829
832	B1	1,264	227	6	81	1.32829
833	B1	1,264	227	6	80	1.32829

*denotes compact stalls

All areas set forth hereinabove are computed by measuring from the outside of exterior walls and from the centerline of interior party walls, and no reduction has been made to account for interior walls, ducts, vent shafts and the like located within the perimeter walls.

3. Types of Apartments.

(a) The two (2) apartments designated as Type "A1" hereinabove are end units situated on the third

floor of Building "8". Each apartment will contain an entry foyer and six (6) rooms consisting specifically of two bedrooms, two bathrooms, a living/dining room, and a kitchen. Each unit shall also have a lanai area.

(b) Each of the four (4) apartments designated as Type "A2" hereinabove will contain an entry foyer and six (6) rooms consisting of specifically of two bedrooms, two bathrooms, a living/dining room, and a kitchen. Each such unit shall also contain a lanai area.

(c) Each of the thirteen (13) apartments designated as Type "B1" hereinabove will contain an entry foyer and six (6) rooms consisting specifically of two bedrooms, two bathrooms, a living/dining room, and a kitchen. Each such unit shall also contain a lanai area.

(d) Each of the five (5) apartments designated as Type "B2" hereinabove will contain an entry foyer and six (6) rooms consisting specifically of two bedrooms, two bathrooms, a living/dining room, and a kitchen. Each such unit shall also contain a lanai area.

(e) The two (2) apartments designated as Type "C3" hereinabove are located in Building "1" and each apartment will contain an entry foyer and seven (7) rooms consisting specifically of three bedrooms, two bathrooms, a living/dining room, and a kitchen. Each such unit shall also contain a lanai area and an enclosed storage area adjacent thereto.

(f) The two (2) apartments designated as Type "D" hereinabove are interior units situated on the second floor of Building "8". Each apartment will contain an entry foyer and four (4) rooms consisting specifically of one bedroom, one bathroom, a living/dining room, and a kitchen. Each such unit shall also contain a lanai area.

(g) The two (2) apartments designated as Type "E" hereinabove are split-level end units located on the first and second floors of Building "8". Each apartment will contain seven (7) rooms consisting specifically of two bedrooms and two bathrooms located on the lower floor and a kitchen, living/dining room, and a den area on the upper floor. Each unit shall also contain an entry foyer on the upper level and lanai areas on the upper and lower levels.

(h) Each of the four (4) apartments designated as Type "F" hereinabove is a split-level interior unit located on the first and second floors of Building "8". Each apartment will contain six (6) rooms consisting specifically of two bedrooms and two bathrooms on the lower level and a kitchen and living/dining room on the upper level. Each unit shall also contain an entry foyer on the upper level and lanai areas on the upper and lower levels.

(i) Each of the twelve (12) apartments designated as Type "G" hereinabove is a split-level interior unit located

on the first and second floors of its respective building. Each apartment will contain six (6) rooms consisting specifically of two bedrooms and two bathrooms on the lower level and a kitchen and living/dining room located on the upper level. Each such unit shall also contain an enclosed storage area and an entry foyer on the upper level and lanai areas adjacent thereto on the upper and lower levels.

(j) Each of the twenty-four (24) apartments designated as Type "H" hereinabove shall contain six (6) rooms situated throughout a split-level interior unit located on the first and second floors of its respective building. Each apartment shall consist of two bedrooms and two bathrooms on the lower level and a kitchen and living/dining room on the upper level. Each unit shall also contain an entry foyer on the upper level and lanai areas adjacent thereto on the upper and lower levels.

4. Access. Each apartment has immediate access to its entries and to the walkways, corridors and the stairway(s), if any, appurtenant to such apartment connecting its building to the walkways leading to the parking and recreational areas of the project.

5. Limits of Apartments. The respective apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter walls or interior load-bearing walls, the floors and ceilings surrounding each apartment, any pipes, wires, conduits or other utility lines running through such apartment which are utilized for or serve more than one apartment, the same being deemed common elements as hereinafter provided. Subject to the foregoing, each apartment shall include all of the walls and partitions which are not load-bearing within its perimeter walls, any glass windows or panels within its perimeter, the inner decorated or finished surfaces of all walls, floors and ceilings, all adjacent lanais, and any fixtures and appliances originally installed therein.

COMMON ELEMENTS: The proposed Declaration states that the common elements shall include, but shall not be limited to, the following:

- (a) All land of the project;
- (b) All foundations, columns, girders, beams, floor slabs, supports, unfinished perimeter and load-bearing walls (except for the inner decorated surface within each unit), roofs, stairways, walkways, entrances and exits of said buildings;
- (c) All yards, grounds, walkways, landscaping, refuse facilities, the swimming pool and its filtration equipment, the paddle tennis and tennis courts, and all other recreational facilities and appurtenances;
- (d) All driveways and parking areas;
- (e) Thirty-five (35) guest parking stalls as designated on said Condominium File Plan and more particularly identified in said proposed Declaration;
- (f) All ducts, sewer lines, sewage pumping stations, electrical equipment, pipes, wiring and other

central and appurtenant transmission facilities, installations which serve more than one apartment for services such as power, light, water, gas, air conditioning, refuse, telephone and radio and television signal distribution; and

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

LIMITED COMMON ELEMENTS: The proposed Declaration provides that certain parts of the common elements, designated as "limited common elements", are set aside and reserved for the exclusive use of certain apartments, and such apartments shall have appurtenant thereto exclusive easements for the use of such limited common elements. The limited common elements so set aside and reserved are as follows:

(a) The exterior access corridor located on each floor above the ground floor in any of the buildings of the project shall be appurtenant to and for the exclusive use of the apartments which are located on each such floor;

(b) The stairways serving each building of the project shall be for the exclusive use of the apartments in such building served thereby; and

(c) One (1) automobile parking stall shall be appurtenant to and for the exclusive use of each apartment. The particular parking stall appurtenant to each apartment is set forth in paragraph 2 under the heading "Description of Project" above. Each apartment shall always have at least one parking stall appurtenant to it, but otherwise any parking stalls may be transferred from apartment to apartment in the project as provided by law.

INTEREST TO BE CONVEYED TO PURCHASERS: Developer shall, by means of a condominium conveyance document, convey the apartment and the undivided percentage interest in the common elements (exclusive of land) appurtenant thereto, and demise an undivided percentage interest, equal to the above stated percentage interest, in the land described in the proposed Declaration. The percentage interest appurtenant to each apartment is set forth hereinabove under the heading of "Description of Project" and shall be the same proportionate share in all common profits and expenses of the project, and for all other purposes including voting.

RESTRICTIONS AS TO USE: The apartments shall be occupied and used only as private dwellings by the respective owners thereof, their tenants, families, domestic servants and social guests, and may be utilized for long-term or transient rentals. The owners of the respective apartments shall have the absolute right to rent or lease such apartments subject to all provisions of the Declaration.

OWNERSHIP OF TITLE: A preliminary title report dated May 31, 1977, by Title Guaranty of Hawaii, Inc., indicates that title to the land is vested in A & Z Corporation (which acquired title under the name of Poipu Shores, Inc.). The property is subject to that certain Agreement of Sale dated August 1, 1969, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 6623, Page 384, the vendee thereunder being Ma-Ka-Poi Ventures, a limited partnership. Ma-Ka-Poi Ventures has sold all of its interest in and to the property to Paul Mitchell and Eugene Evanetz pursuant to that certain Deposit Receipt and Sales Contract dated March 30, 1977. Messrs. Mitchell and Evanetz have assigned all of their right, title and interest in and to said Deposit Receipt and Sales Contract to the Developer herein by assignment dated May 12, 1977, a copy of which is on file with the Commission.

ENCUMBRANCES AGAINST TITLE: The Preliminary Title Report dated May 31, 1977, issued by Title Guaranty of Hawaii, Inc., reports that title to the land is subject to the following:

1. For any real property taxes that may be due and owing, reference is made to the Office of the Tax Assessor, 4th Division.

2. The reservation in favor of the State of Hawaii of all mineral and metallic mines.

3. Agreement of Sale dated August 1, 1969, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 6623, Page 384, made by and between Alma Kuulei Zalopany (aka Alma K. Zalopany) and Leonard H. Zalopany, wife and husband, and Poipu Shores, Inc., a Hawaii corporation, as vendor, and Ma-Ka-Poi Ventures, a limited partnership, as vendee.

4. Mortgage dated December 31, 1973, recorded in said Bureau as aforesaid in Liber 9678, Page 391, made by Poipu Shores, Inc., a Hawaii corporation, and Leonard H. Zalopany and Alma Kuulei Zalopany (aka Alma K. Zalopany), husband and wife, as mortgagor, to First Hawaiian Bank, a Hawaii corporation, as mortgagee, to secure the repayment of the sum of \$200,000.00.

5. As to Parcel First only (Tax Map Key No. 2-8-19-22):

(a) An easement 20 feet wide for road and utility purposes; and

(b) A six feet lane situate along the easterly boundary of Lot 1, as shown on the tax map.

PURCHASE MONEY HANDLING: An executed Escrow Agreement, dated June 7, 1977, identifies Title Guaranty Escrow Services, Inc.,

a Hawaii corporation, as the escrow agent. Upon examination, the specimen Deposit Receipt and Sales Contract and the executed Escrow Agreement are found to be in compliance with Chapter 514, Hawaii Revised Statutes, and particularly §514-35 through §514-40.

Among other provisions, the Escrow Agreement provides that a purchaser under a Sales Contract shall be entitled to a return of his funds, without interest and less the \$25.00 escrow cancellation fee, after purchaser has requested such return and if Escrow has received from Developer a written notice that any one of the following has occurred:

(a) Developer has requested Escrow to return to purchaser the funds of purchaser then being held by Escrow; or

(b) Developer has notified Escrow of Developer's exercise of the option to rescind the Sales Contract pursuant to any right of rescission stated therein or otherwise available to Developer; or

(c) There is any change in the building plans of the project subsequent to the date of Developer's execution of the Sales Contract which change requires the approval of a county officer having jurisdiction over the issuance of building permits unless the purchaser gives his written approval or acceptance of the specific change; or

(d) The Preliminary Public Report differs in a material respect from the Final Public Report unless the purchaser has given written approval or acceptance of the changes in the said Final Public Report; or

(e) The Final Public Report is not issued within one (1) year of the date of issuance of this Preliminary Public Report.

According to the specimen Deposit Receipt and Sales Contract, in the event that less than forty-five (45) apartments in the project are sold prior to January 15, 1978, Developer may, at its option, cancel the contract and cause the escrow agent to refund to buyer all monies paid without interest and less a cancellation fee of \$25.00.

The specimen Deposit Receipt and Sales Contract also states:
(1) If the project is not completed and ready for occupancy on or before June 1, 1979, or if closing is delayed for a period of more than 120 days after the date of substantial completion due to any cause beyond the control of Seller, then Seller shall have the option to terminate the Sales Contract upon thirty (30) days' written notice to Buyer and Seller shall cause Escrow to refund all payments previously made by Buyer, with interest, less \$25.00 cancellation fee and Seller shall be relieved and released of all further liability;
(2) All of the Buyer's rights are and shall be subject and subordinate to the lien of any mortgage made by Seller to finance the cost of construction and other costs of the project.

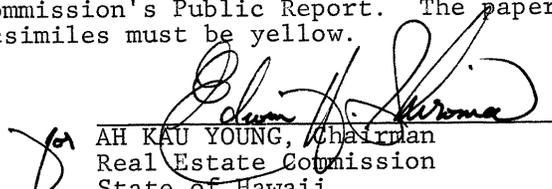
It is incumbent upon the purchaser and prospective purchaser to read and understand the Escrow Agreement before executing the Deposit Receipt and Sales Contract, since the Escrow Agreement describes the procedure for receiving and disbursing purchasers' funds, and the Deposit Receipt and Sales Contract specifically provides that the purchaser approves that Escrow Agreement and assumes the benefit and obligations therein provided.

MANAGEMENT OF PROJECT: The By-Laws, which are incorporated in the Declaration, provide that the operation of the project shall be conducted for the Association by a responsible corporate Managing Agent who shall be appointed by the Association in accordance with the By-Laws. The initial Managing Agent has not yet been selected; however, the Developer is authorized by the Declaration to receive service of legal process in all cases provided in the Horizontal Property Act until such time as a Managing Agent shall be selected.

STATUS OF PROJECT: Construction of the project has not yet commenced; however, it is expected that the project will be completed on or about June 1, 1979.

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 22, 1977 and information subsequently filed as of July 20, 1977.

This PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 923, submitted on June 22, 1977. 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.


AH KAU YOUNG, Chairman
Real Estate Commission
State of Hawaii

Distribution:

Department of Taxation
Bureau of Conveyances
Planning Commission,
County of Kauai
Federal Building Administration
Escrow Agent

Registration No. 923
July 27, 1977