

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

KIAHUNA (PHASE III-A)
Poipu, Island and County of Kauai

REGISTRATION NO. 949

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 29, 1977
Expires: December 29, 1978

SPECIAL ATTENTION

A comprehensive reading by the prospective purchaser is urged in order that personal requirements and expectations to be derived from the property can be ascertained. The attention of the prospective purchaser is particularly directed to the following:

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION FILED NOVEMBER 4, 1977, AND ADDITIONAL INFORMATION SUBSEQUENTLY SUBMITTED AS OF NOVEMBER 22, 1977. THE DEVELOPER, IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF CHAPTER 514, HAWAII REVISED STATUTES.

1. KIAHUNA (PHASE III-A) is a proposed leasehold condominium project consisting of six (6) one, two and three story buildings containing thirty-three (33) beachhouse units. All buildings are without basements. There is a total of

seventy-two (72) parking stalls in the Project, twenty-five (25) of which shall be appurtenant to and for the exclusive use of Beachhouse A.

2. The Developer of the Project has filed all documents and materials deemed necessary by the Commission 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 Assistant Registrar of the Land Court of the State of Hawaii.

4. No advertising or promotional matter has been filed pursuant to the rules and regulations promulgated by the Commission.

5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of the Horizontal Property Act, Chapter 514 of the Hawaii Revised Statutes, as amended, 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, November 29, 1977, unless a Final or Supplementary Public Report issues or the Commission, upon review of the registration, issues an order extending the period of this report.

7. This Preliminary Public Report is made a part of the registration on KIAHUNA (PHASE III-A) condominium project. The Developer has the responsibility of placing a true copy of the Preliminary Public Report (yellow paper stock) in the hands of all purchasers and prospective purchasers. Securing a signed copy of the Receipt for the Preliminary Horizontal Property Regime Public Report from each purchaser is also the responsibility of the Developer.

NAME OF PROJECT: KIAHUNA (PHASE III-A)

LOCATION: The approximately 6.81 acres of land to be submitted to the horizontal property regime are situated at Poipu, Island and County of Kauai, State of Hawaii.

TAX MAP KEY: 2-8-16: 7, 8 and 10.

ZONING: RR-20 and 0

DEVELOPER: MOANA/KAUAI CORPORATION, a California corporation, the principal place of business and post office address of which is 451 Jackson Street, San Francisco, California; Phone: (415) 788-7421. The officers of the corporation are: Robert L. Harmon, President; Frank J. Supon, Vice President and Treasurer; and Donna G. Sidelinger, Secretary.

ATTORNEY REPRESENTING DEVELOPER: Hamilton, Gibson, Nickelsen, Rush & Moore (Attention: Dwight M. Rush and D. Scott MacKinnon), 20th Floor Hawaii Building, 745 Fort Street, Honolulu, Hawaii 96813, Phone: 521-2611.

DESCRIPTION: The proposed Declaration of Horizontal Property Regime and plans submitted by the Developer indicate a leasehold condominium project consisting of six (6) buildings without basements: Building No. 1 contains two-stories and four (4) beachhouses; Building No. 2 contains two-stories and five (5) beachhouses; Building No. 3 contains three-stories and ten (10) beachhouses; Building No. 4 contains three-stories and twelve (12) beachhouses; the Restaurant Building contains one-story and one (1) beachhouse; and the Sales Office Building contains one-story and one (1) beachhouse. Said Buildings and beachhouses, to be constructed principally of wood, are designated on said plans and described, as follows:

(a) The buildings of the Project are constructed according to six (6) different models, designated Model A, Model B, Model C, Model D, the Restaurant and the Sales Office. Building No. 1 is constructed according to the layout designated on said plans as Model A; Building No. 2 is constructed according to the layout designated on said plans as Model B; Building No. 3 is constructed according to the layout designated on said plans as Model C; and, Building No. 4 is constructed according to the layout designated on said plans as Model D.

(b) Beachhouses 201, 202, 203 and 204 are located on the first and second floors of Building No. 1; Beachhouses 205, 206, 207, 208 and 209 are located on the first and second floors of Building No. 2; Beachhouses 210, 211, 212, 213 and 214 are located on the first and second floors of Building No. 3; Beachhouses 215, 216, 217, 218 and 219 are located on the third floor of Building No. 3; Beachhouses 220, 221, 222, 223, 224 and 225 are located on the first and second floors of Building No. 4; Beachhouses 226, 227, 228, 229, 230 and 231 are located on the first floor of the Restaurant Building; and, Beachhouse B is located on the first floor of the Sales Office Building.

(c) The beachhouses are constructed according to four (4) different floor plans. A description of each of said floor plans, designating the layout, number of rooms and approximate floor area is as follows:

(1) Beachhouses 215, 216, 217, 218, 219, 226, 227, 228, 229, 230 and 231 each contains one (1) bedroom, a bathroom, a living area, dining area, kitchen, storage closet, an entry lanai and a lanai, with a total floor area of approximately 880 square feet, including the lanais.

(2) Beachhouses 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 220, 221, 222, 223, 224 and 225 are two (2)-story apartments, and each contains two (2) bedrooms, two (2) bathrooms, an entry lanai and a lanai on the lower floor, and a living area, dining area, kitchen and deck on the upper floor, with a total area of approximately 1,584 square feet, including the lanais and deck.

(3) Beachhouse A contains eleven (11) rooms, with a total floor area of approximately 8,050 square feet.

(4) Beachhouse B contains one (1) room, which may be divided into one or more additional rooms, with a total floor area of approximately 800 square feet.

(d) Each of the beachhouses has immediate access to the grounds of the Project and the walkways connecting the building in which it is located to the street entrance and parking areas of the Project.

(e) The respective beachhouses shall not be deemed to include the undecorated or unfinished surfaces of the perimeter or party walls or interior load-bearing walls, the floors and ceilings surrounding each beachhouse or any pipes, wires, conduits or other utility or service lines running through such beachhouses which are utilized for or serve more than one beachhouse, the same being deemed common elements as hereinafter provided. Each beachhouse shall be deemed to include all the walls and partitions which are not load-bearing within its perimeter or party walls, the inner decorated or finished surfaces of all walls, floors and ceilings, doors and door frames, windows and window frames, the exterior air space bounded by the interior of the lanai railing, and all fixtures originally installed therein, including a built-in range and oven, refrigerator, dishwasher, sink and water heater.

COMMON ELEMENTS: The proposed Declaration states that one (1) freehold estate is designated in all remaining portions of the Project, therein called the "common elements", including specifically but not limited to:

(a) Said land in fee simple;

(b) All foundations, floor slabs, columns, beams, supports, load-bearing walls, roofs, chases, entry halls, stairs, walkways, entrances and exits of the buildings of the Project;

(c) All yards, grounds, landscaping, refuse and service areas, and trash disposal equipment;

(d) All parking areas, including without limitation the parking stalls designated as Parking Stall Nos. 1 through 47 on said Condominium Map;

(e) All pipes, cables, conduits, ducts, electrical equipment, wiring and other central and appurtenant transmission facilities and installations over, under and across the Project which serve more than one beachhouse for services such as power, light, gas, water, sewer, telephone and television signal distribution, if any;

(f) 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.

NOTE: The Developer advises that pursuant to the proposed By-Laws, the Board of Directors of the Association shall have the right to adopt rules and regulations concerning the use and maintenance of all parking areas in the Project and the Board shall have at all times sole and exclusive control over the parking areas of the Project including the right, from time to time, to limit the use of one (1) or more of the parking stalls to a particular beachhouse on a non-discriminatory basis.

LIMITED COMMON ELEMENTS: The proposed Declaration states that certain parts of the common elements, therein called the "limited common elements" are designated and set aside for the exclusive use of certain beachhouses, and such beachhouses shall have appurtenant thereto easements for the use of such limited common elements as follows:

(a) The following designated common elements are reserved for the exclusive use of and are appurtenant to Beachhouse A:

(i) The "Moir cactus garden" as outlined in red on the Condominium Map shall be appurtenant to and for the exclusive use of Beachhouse A; and

(ii) The twenty-five (25) parking stalls designated on said Condominium Map as "Restaurant Parking" shall be appurtenant to and for the exclusive use of Beachhouse A.

(b) All costs and expenses for the maintenance, repair, replacement, addition and improvement of the above designated limited common elements of the Project shall be borne by the owner or owners of Beachhouse A.

INTEREST TO BE CONVEYED TO PURCHASERS: The proposed Declaration states that each beachhouse shall have appurtenant

thereto an undivided 1/33rd fractional interest (a 3.0303+ percentage interest), and the same proportionate share in all common elements of the project (herein called the "common interest"), and the same proportionate share in all common profits and expenses of the Project and for all other purposes, including voting.

NOTE: Paragraph N of the proposed Declaration provides that the Developer shall have the right at its sole option to amend the Project, by way of an Amendment to the Declaration, at any time up to, but not later than December 31, 1983, to withdraw from the Project up to 4.240 acres of the Project lands together with Beachhouses A and B, being proposed Lot 223-B of Land Court Application No. 956, as more particularly described on Exhibit "C" to the Declaration.

Withdrawal of the described portion of the Project shall take effect upon the happening of all of the following conditions with respect thereto:

(a) Filing in the Office of the Assistant Registrar of the State of Hawaii by the Developer of an Amendment to the Declaration properly describing the withdrawal of such property and including without limiting the generality of the foregoing:

(i) A revised Condominium Map which accurately depicts the Project immediately subsequent to such withdrawal; and

(ii) The common interest of each beachhouse in the Project immediately subsequent to such withdrawal.

(b) Filing in the Office of the Assistant Registrar of an appropriate instrument granting to the Association an irrevocable license to use the parking areas and in particular Parking Stall Nos. 1 through 47 as shown on the Condominium Map and located on the property subject to withdrawal from the horizontal property regime.

(c) The approximate common interest appurtenant to each of the beachhouses remaining after withdrawal of such property shall be an undivided 1/31st fractional interest (a 3.225+ percentage interest) in the common elements of the Project.

(d) The Developer shall have the right to execute, acknowledge and deliver any and all instruments necessary or appropriate for the purpose of carrying out the provisions and exercising its rights, powers and privileges

granted by Paragraph N of the Declaration, all as the true and lawful attorney-in-fact of the respective owners from time to time of the apartments of the Project.

NOTE: The Developer advises that it owns a tennis club known as the "Kiahuna Tennis Club" and that it proposes to enter into a License Agreement with the Association of Beachhouse Owners of Kiahuna (Phase III-A) for a term until April 15, 2050, under the terms of which the owner of a beachhouse in the Project and his respective family, tenants or guests shall have a non-exclusive license to use the recreational facilities of the Kiahuna Tennis Club upon the payment by the Association of a reasonable monthly fee to be determined on an annual basis by the owner of the Kiahuna Tennis Club, provided, however, that at no time shall such monthly fee exceed 31/171 of the amount payable by Kiahuna Beach House, Ltd. with respect to the Kiahuna (Phase II) condominium project (i.e., 5% of the gross revenues from the rental of units in Kiahuna (Phase II) for the preceding month). This license fee will constitute a portion of the Association's expenses which are reflected in the monthly assessment for common expenses against the respective beachhouses.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The proposed Declaration provides that, except for Beachhouses A and B, the beachhouses shall be occupied and used by the respective owners thereof, their families, tenants and personal guests only for residential purposes, including resort hotel use and for no other purpose without the prior written approval of the Board of Directors. Beachhouses A and B may be occupied and used for any purposes whatsoever which may be permitted by the statutes, ordinances, rules or regulations of the State of Hawaii or County of Kauai, now or hereafter applicable thereto.

OWNERSHIP OF TITLE: The Developer in its Notice of Intention represents that Eric McDonald Moir, husband of Beryl Bernard Moir, is the owner of the fee simple title to the property to be submitted to the horizontal property regime.

ENCUMBRANCES AGAINST TITLE: A Preliminary Title Report dated October 20, 1977, issued by Security Title Corporation, as submitted to the Real Estate Commission, discloses that the following are encumbrances against title to the property:

1. The terms and provisions of that certain Indenture of Lease dated May 8, 1968, by and between Hector McDonald Moir and Alexandra Knudsen Moir, as Lessors, and Plantation Garden, Inc., as Lessee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 454562, as amended and supplemented.

Said Lease is subject to the following:

(a) Mortgage dated December 30, 1974, filed in said Office of the Assistant Registrar as Document No. 707244, made by MOANA CORPORATION, a California corporation, as Mortgagor, to PLANTATION GARDEN, INC., as Mortgagee.

(b) Mortgage dated April 1, 1977, filed in said Office of the Assistant Registrar as Document No. 815171, made by MOANA CORPORATION, as Mortgagor, to WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgagee.

(c) Mortgage dated April 1, 1977, filed in said Office of the Assistant Registrar as Document No. 815172, made by MOANA CORPORATION, as Mortgagor, to WILLIAM L. STRONG, KENNETH G. AGIN and DONALD L. SEELEY, not individually but as Trustees for the Firestone Tire & Rubber Company Pension Trust No. 5, as Mortgagee(s).

(d) Undated Financing Statement covering certain fixtures located on the real property, given as security by MOANA CORPORATION, in favor of PLANTATION GARDEN, INC., recorded on December 31, 1974 in the Bureau of Conveyances of the State of Hawaii in Liber 10354, Page 548.

2. The terms and provisions of that certain Lease dated December 30, 1976, filed in said Office of the Assistant Registrar as Document No. 815170, made by and between MOANA CORPORATION, as Lessor, and TS/MOANA, a California General Partnership, as Lessee.

NOTE: The Commission has been advised that the aforementioned is a lease of the Restaurant Building, which is not being offered for sale to the public.

3. For information on real property taxes that may be due and owing, please check with the tax assessor for the Fourth Division.

NOTE: The Developer advises that pursuant to the provisions of Paragraph Q of the proposed Declaration that the Project lands are subject to a reciprocal use easement in favor of the eighteen (18) beachhouses to be constructed by the Developer on adjoining land and to be known as "KIAHUNA (PHASE III-B)" such that the said eighteen (18) beachhouses have and shall have the right appurtenant thereto to use all of the common elements of Kiahuna (Phase III-A) and the Kiahuna (Phase III-A) beachhouses shall have the same right to use all of the common elements of Kiahuna (Phase III-B) excluding, however, such as shall be located within the

buildings, to the same extent and subject to the same limitations as are imposed upon a beachhouse in Kiahuna (Phase III-A) or Kiahuna (Phase III-B). It is understood and agreed that such right to use the common elements shall be in the nature of an easement and each person upon whom the Declaration is binding agrees, and shall agree, by the mere acquisition, rental or occupancy of any beachhouse, to be bound thereby.

PURCHASE MONEY HANDLING: A copy of the executed Escrow Agreement dated October 21, 1977, between Security Title Corporation, as Escrow, and Developer has been filed with the Commission. On examination, the executed Escrow Agreement filed with the Commission is found to be in compliance with Chapter 514, Hawaii Revised Statutes, and particularly Sections 514-15(6) and 514-36 through 514-40, H.R.S. Among other provisions, the executed Escrow Agreement states that a purchaser shall be entitled to a refund of his funds, and Escrow shall pay said funds to said purchaser, without interest, and less Escrow's cancellation fee, if purchaser shall in writing request refund of his funds and any one of the following shall have occurred:

1. Escrow receives a written request from Developer to return to purchaser the funds of such purchaser then held under the Escrow Agreement by Escrow; or
2. If a purchaser's funds were obtained prior to the issuance of a Final Public Report and if there is any change in the condominium building plans, subsequent to the execution of purchaser's sales contract, requiring the approval of a County officer having jurisdiction over the issuance of permits for construction of building, unless the purchaser has given written approval or acceptance of the specific change; or
3. If a purchaser's funds were obtained prior to the issuance of a Final Public Report and the request is prior to the time the Final Public Report is issued; or
4. If the Final Public Report differs in any material respect from the Preliminary Public Report, unless the purchaser has given written approval or acceptance of the difference; or
5. If the Final Public Report is not issued within one year of the date of issuance of the Preliminary Public Report.

It is incumbent of the purchaser and prospective purchaser to read and understand the Escrow Agreement before signing the Condominium Reservation Agreement since the Escrow Agreement prescribes the procedure for receiving and disbursing the purchaser's funds. The Specimen Condominium Reservation Agreement specifically provides that the

purchaser approve said Escrow Agreement, assume the benefits and obligations therein provided and agree to the subordination of his interest in the Condominium Reservation Agreement to the lien of any construction mortgage. Purchasers and prospective purchasers are advised to read with care the provisions of the Condominium Reservation Agreement.

MANAGEMENT OF THE PROJECT: The proposed By-Laws which are incorporated in the draft Declaration provide that the operation of the Project shall be conducted for the Association of Beachhouse Owners by a responsible corporate Managing Agent under the direction of the Board of Directors. The Developer in its Notice of Intention indicates that it will be the initial managing agent for the Project. As provided in Section 514-20.5 of the Hawaii Revised Statutes, the management contract will provide that it is for a term of one (1) year and may be terminated by either party upon sixty (60) days prior written notice.

NOTE: The Developer advises that in conjunction with the sale of the beachhouses in the Project it is not offering to provide services relating to the rental of beachhouses in the Project and no representation or reference to that effect has been made or will be made by or on behalf of the Developer. Rental or other disposition of the beachhouses and the provision of management services in connection therewith is the sole responsibility of the purchaser.

NOTE: The Developer advises that pursuant to Paragraph 25 of the Specimen Condominium Reservation Agreement the purchaser shall agree that until Developer has closed out the sale of all apartments in Project or until December 31, 1979, whichever shall first occur, the purchaser will not enter into a "rental pool" or similar agreement with any purchaser, lessee or owner of another apartment in the Project and/or any third party.

STATUS OF PROJECT: The Developer advises that it has not yet entered into a construction contract for construction of the Project and therefore has not yet determined an estimated date for the start of or completion of construction.

NOTE: Developer advises that it proposes to develop, construct and sell eighteen (18) apartments in a condominium project to be situated on an adjoining parcel of land and that this may result in the creation of dust, noise, vibrations and other nuisances. Pursuant to Paragraph 31 of the Condominium Reservation Agreement, the purchaser agrees not to hold Developer responsible or liable for the creation of any nuisances arising out of or in connection with any work incidental or connected with the development and construction of said additional project.

The purchaser and 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 November 4, 1977, and information subsequently submitted as of November 22, 1977.

This is a PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT which is made a part of REGISTRATION NO. 941 filed with the Commission November 4, 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 HOUSING ADMINISTRATION
ESCROW AGENT

REGISTRATION NO. 949

November 29, 1977