

REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF REGULATORY AGENCIES

STATE OF HAWAII

1010 RICHARDS STREET
P. O. BOX 3469
HONOLULU, HAWAII 96801

FINAL HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT

ON

KIAHUNA (PHASE III-B)
INCREMENT I

Poipu Beach, Island and County of Kauai, Hawaii

REGISTRATION NO. 950

IMPORTANT — Read This Report Before Buying

This Report Is Not an Approval or Disapproval of This Condominium Project

It reflects information obtained by the Real Estate Commission in its investigation of the project. This report, based on a principle of disclosure, is issued by the Commission for the purpose of preventing fraud, misrepresentation or deceit.

The developer shall not enter into a binding contract or agreement for the sale of any unit in a Condominium Project until

- (1) A copy of this Report has been given to the prospective purchaser,
- (2) The latter has been given an opportunity to read same, and,
- (3) His receipt taken therefor.

Issued: January 24, 1979
Expires: February 24, 1980

SPECIAL ATTENTION

A comprehensive reading of this report 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 JANUARY 19, 1979. THE DEVELOPER, IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF CHAPTER 514A, HAWAII REVISED STATUTES.

1. Since the issuance of the Commission's Preliminary Public Report of November 29, 1977, on KIAHUNA (PHASE III-B), the Developer reports that changes have been made in the plans and development of the Project. The changes, which include the provision for an additional 18 units for a total of 36 units incrementized into two (2) parts of 18 units each,

are determined to be a material revision to the information disclosed earlier. This Final Public Report only covers the eighteen (18) beachhouses situated in Increment I of the KIAHUNA (PHASE III-B) Condominium Project as herein described.

2. The Developer of the Project has filed all documents and materials deemed necessary by the Commission for the registration of this condominium project and the issuance of this Final Public Report.

3. The Developer advises that the Declaration of Horizontal Property Regime dated November 15, 1978, with By-Laws of the Association of Apartment Owners annexed thereto have been filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 914094. The approved floor plans have also been filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii and designated as Condominium Map No. 352.

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 514A of the Hawaii Revised Statutes, as amended, and the Condominium Rules and Regulations which relate to Horizontal Property Regimes.

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

7. This Final Public Report automatically expires thirteen (13) months after the date of issuance, January 24, 1979, unless a Supplementary Public Report issues or the Commission, upon review of the registration, issues an order extending the period of this report.

The information disclosed in the Preliminary Public Report of November 29, 1977 in the topical headings hereinafter set forth has been amended. Information disclosed under the other topical headings, which do not appear here, has not been disturbed. The Developer has added two (2) new topical headings to this Final Report (EASEMENTS and DEVELOPMENT IN TWO INCREMENTS).

DESCRIPTION: The Declaration of Horizontal Property Regime and plans submitted by the Developer disclose that Increment I of the condominium project consists of the two (2) buildings and two models described in the Preliminary Report.

COMMON ELEMENTS: The Note on parking areas appearing on pages 4 and 5 of the Preliminary Public Report of November 29, 1977, should be deleted.

EASEMENTS: The Developer advises that pursuant to Paragraph C.4 of the Declaration, the Owners and Developer therein have reserved until December 31, 1983, or until such time as all of the improvements contemplated for the land described in the Declaration have been completed, whichever shall first occur, the following rights:

(a) An easement over, under and across the common elements of the Project for the purposes of all work connected with or incidental to the development, construction and sale of the beachhouses in any undeveloped portion of said land.

(b) The right, appurtenant to the undeveloped portions of said land, in the nature of an easement over and upon any other portion of said land, to create and cause noise, and other nuisances created by and resulting from any work connected with or incidental to the development, construction and sale of the beachhouses in said undeveloped portions of said land.

NOTE: Paragraph N of the Declaration provides that the Developer, with the prior written consent of the Owners, shall have the right up to and including December 31, 1983, or until such time as all of the improvements contemplated for the land described in the Declaration have been completed, whichever shall first occur, to construct and add to the Project the eighteen (18) residential beachhouses comprising Increment II, together with such supporting and servicing common and limited common elements which the Developer determines in its sole discretion are beneficial to the Project on approximately 0.8 acres of the Project lands, as more particularly shown on said Condominium Map.

DEVELOPMENT IN TWO INCREMENTS:

1. The future creation of Increment II as provided for in Paragraph N of the Declaration:

(a) The incorporation of the beachhouses comprising Increment II into the Project shall take effect on the date the Developer files in the Office of the Assistant Registrar of the Land Court of the State of Hawaii a certificate from the project architect in the form of an Amendment to the Declaration of Horizontal Property Regime certifying that the beachhouses in Increment II have been completed and are ready for occupancy.

(b) From and after the date of the recordation of said Amendment to the Declaration with respect to the Increment II beachhouses, the following consequences shall ensue:

(i) Use of Common Elements. All beachhouses in the Completed Project shall have the right to full use and enjoyment of any of the common elements located in the Completed Project to the same extent and subject to the same limitations which are imposed upon an existing beachhouse by the provisions of the Declaration, as amended.

(ii) Board of Directors. The Board of the Project immediately prior to the addition of the Increment II beachhouses shall govern the Project after the completion and addition of the Increment II beachhouses; however, at a special meeting called for said purpose after the addition of the Increment II beachhouses, the beachhouse owners may remove the existing Board and elect a new Board to govern the Completed Project until the next annual meeting. Procedures for the calling and holding of such meeting shall be those as set forth in the By-Laws.

(iii) Interpretation. For purposes hereof, the Completed Project shall be treated as if it were a single project developed as a whole from the beginning, and there shall and can be only one Association of Beachhouse Owners and one Board, to be governed by the provisions of the Declaration of Horizontal Property Regime and the By-Laws attached to said Declaration as Exhibit "B", as amended from time to time. It is the purpose hereof to provide that from and after the date of the recordation of said Amendment to Declaration all of the property shall be treated as though it had been developed, divided into beachhouses, held, occupied and used by the owners thereof as a single and not an incremental project.

(c) The beachhouses comprising Increment II and their limited common elements, if any, shall be located on the common elements of the Project, or any part thereof, as determined by the Developer in its sole discretion, with reference, however, to the advice of a registered architect or professional engineer. The Developer shall for all purposes be deemed the "beachhouse owner" as to such Increment II beachhouses, until the same have been initially conveyed by the Developer.

(d) In connection with, and only to the extent necessary for the creation of the beachhouses in Increment II and limited common elements, as aforesaid, the Developer, with the prior written approval of the Owners, shall have the right to enter upon the Project premises with employees, agents and contractors for all purposes reasonably necessary for or useful to constructing and completing said Increment II beachhouses and common elements according to plans and specifications or amended plans and specifications approved by the officer of the County of Kauai having jurisdiction over the issuance of building permits; to connect the said

Increment II beachhouses and their limited common elements to utilities of the Project; to file amendments to the Declaration for purposes of certifying condominium file plans filed as reflecting the improvements shown therein to be "as built"; and to sell or designate lessees of the Increment II beachhouses.

2. 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 the 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 beachhouses of the Project as herein originally constituted or as aforesaid.

3. If any one or more of the provisions of said Paragraph N shall be declared to be contrary to law, then such provision or provisions shall be null and void and shall be deemed separable from the remaining provisions of said Paragraph N and shall in no way effect the enforceability of any other provisions hereof.

4. The amendment to Declaration required by the provisions of Paragraph N may be filed and/or recorded by the Owners and Developer without the consent or joinder of any persons then owning or leasing the beachhouses.

INTEREST TO BE CONVEYED TO PURCHASERS: The Developer advises that the common interest appurtenant to each beachhouse in Increment I has been revised such that each beachhouse shall have appurtenant thereto an undivided 1/36th fractional interest (a 2.777+ percentage interest), and the same proportionate share 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, except that until the entire Project is completed, each purchaser in Increment I shall be liable for 1/18th of the common expenses attributable to Increment I.

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-B) 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 monthly fee equal to 18/171 of the amount payable by Kiahuna Beach Houses, 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). Upon completion of the eighteen (18) beachhouses to be situated in Increment II of the Kiahuna Phase III-B Condominium Project the monthly license fee shall be increased from 18/171 to 36/171 of the amount payable by

Kiahuna Beach Houses, Ltd. with respect to the Kiahuna (Phase II) Condominium Project. This license fee will constitute a portion of the Association's common expenses which are reflected in the monthly assessment for common expenses against the respective beachhouses.

(The underlined portion added to "Note:" as it appeared in the Preliminary Report).

ENCUMBRANCES AGAINST TITLE: An updated Preliminary Title Report dated November 15, 1978, issued by Security Title Corporation, as submitted to the Commission discloses that the following are presently encumbrances against title to the property:

1. The terms and provisions of that certain Indenture of Lease dated December 15, 1972 (but effective April 15, 1972), by and between First Hawaiian Bank and Valdemar L'Orange Knudsen, Trustees of the Eric A. Knudsen Trust, and Bishop Trust Company, Limited, Trustee of the Augustus F. Knudsen Trust, as Lessor, and Moana Development Corporation, as Lessee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 618969; said Lease now held by Moana/Kauai Corporation by Assignment of Lease dated November 23, 1977, filed in said Office of the Assistant Registrar as Document No. 864956.

Said Lease is subject to the following:

(a) Mortgage dated March 16, 1978, filed in said Office of the Assistant Registrar as Document No. 864960, in favor of BANK OF HAWAII;

(b) Mortgage dated March 16, 1978, filed in said Office of the Assistant Registrar as Document No. 864961, in favor of AMERICAN SECURITY BANK;

(c) Estoppel Certificate dated January 20, 1978, filed in said Office of the Assistant Registrar as Document No. 864958.

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

The Developer advises that the Fee Owners and Developer have reserved unto themselves under Exhibit "A" of the Declaration the right to grant or lease the following:

1. The right to grant or lease a non-exclusive easement of ingress and egress over and across the lands of the Project for pedestrian purposes in favor of any designated persons, groups or entities, including an Association of Apartment Owners, the State of Hawaii, County of Kauai, any other appropriate governmental authority and/or the general public; provided, however, that said easement shall not be

wider than five (5) feet and shall be subject to being originally located by Moana/Kauai Corporation, and provided, further, that said easement shall not be located through or within any existing structures on said property and shall not disturb unnecessarily the normal enjoyment and use of said property or the improvements located thereon.

2. The right to grant or lease to any public utility, governmental authority, State of Hawaii, County of Kauai, or agencies thereof, or other corporation, partnership, association or individual any and all easements for drainage, sewer and water pipelines, electrical and telephone lines and grant or lease such rights-of-way over, across and under said easements for lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewer, drainage and other public services and utilities, and the right to enter for such purposes and to repair such facilities and to trim any trees in the way of such lines.

3. The right to grant a non-exclusive roadway easement for access purposes over and across the proposed roadway easement (over existing pavement) as shown on the Preliminary Subdivision Map attached to the Declaration as Exhibit "C", to the general public and/or the owners and lessees from time to time of all or any portion of the real property more particularly described in Exhibit A-1 attached to the Declaration and their respective families, tenants, guests, employees, servants and business invitees; provided, however, that Fee Owners and Moana/Kauai Corporation reserve the right to relocate said roadway easement provided that said roadway easement shall not be relocated through or within any existing structure on said property and shall not disturb unnecessarily the enjoyment and use of said property or the improvements thereon or materially restrict the use of said roadway easement as relocated; and provided, further, that in the event that said roadway is conveyed or dedicated to the State of Hawaii, County of Kauai, or to any other governmental authority, the easement as to the lot or lots so conveyed or dedicated shall immediately terminate.

The Developer further notes the following encumbrances which appear in Exhibit "A" of the aforementioned Indenture of Lease:

1. Letter of Agreement dated December 26, 1961, by and between First Hawaiian Bank and Valdemar L'Orange Knudsen, Trustees of the Eric A. Knudsen Trust, and Bishop Trust Company, Limited, Trustee of the Augustus F. Knudsen Trust and the Clifford Kimball Trust.

2. That certain Agreement dated June 9, 1962, by and between First Hawaiian Bank and Valdemar L'Orange Knudsen, Trustees of the Eric A. Knudsen Trust, and Bishop Trust Company, Limited, Trustee of the Augustus F. Knudsen Trust and Karin Aaser Latham, et al.

3. That certain Letter of Agreement dated May 28, 1962, by and between First Hawaiian Bank and Valdemar L'Orange Knudsen, Trustees of the Eric A. Knudsen Trust, and Bishop Trust Company, Limited, Trustee of the Augustus F. Knudsen Trust and Mr. and Mrs. Hector Moir.

Finally, the Developer advises that the Note starting on Page 6 of the Preliminary Report is still applicable but the Note relating to the Kiahuna Access Road should be deleted.

STATUS OF PROJECT: The Developer advises that construction of the Project commenced on or about March 8, 1978 and was completed on or about January 18, 1979.

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 as of November 4, 1977, and additional information subsequently submitted as of January 19, 1979.

This FINAL HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 950 filed with the Commission on 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 white.

Ah Kau Young

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. 950

January 24, 1979