

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

KAMAHANA
Princeville, Hanalei
Kauai, Hawaii

REGISTRATION NO. 956

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: December 19, 1977
Expires: January 19, 1979

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 29, 1977 AND INFORMATION SUBSEQUENTLY FILED AS OF DECEMBER 6, 1977. THE DEVELOPER, IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, CHAPTER 514, HAWAII REVISED STATUTES.

1. KAMAHANA is a fee simple condominium project consisting of ten (10) two-story buildings without basements, and thirty (30) apartments and fifty-one (51) parking stalls.

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 recorded in the Bureau of Conveyances of the State of Hawaii.

4. No advertising and 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 and the Condominium Rules and Regulations which relate to Horizontal Property Regime.

6. This Preliminary Public Report automatically expires thirteen (13) months after the date of issuance, December 19, 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 registration on KAMAHANA 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 such person is also the responsibility of the Developer.

NAME OF PROJECT: KAMAHANA

LOCATION: The approximately 3 acres of land to be committed to the regime is situated at Princeville, Hanalei, Kauai, Hawaii.

TAX MAP KEY: FOURTH DIVISION: 5-4-05-13

ZONING: R-10

DEVELOPER: AVANTI INVESTMENT & DEVELOPMENT CORPORATION, a Hawaii corporation, Suite 1222, 500-4th Avenue S. W., Calgary, Alberta, Canada, Phone 263-3356 (Canada). The officers of the corporation are: Marvin L. Livingston, 516 Lake Bona Vista Drive, SE Calgary, Alberta, Canada - President; Frank S. Fishel, 930 Kaahue Street, Honolulu, Hawaii - Vice President; Gene C. Patton, 68 Baycrest Place, SW Calgary, Alberta, Canada - Secretary/Treasurer.

ATTORNEY REPRESENTING DEVELOPER: Hamilton, Gibson, Nickelsen, Rush & Moore (Attention: Walter Beh, II and Dwight M. Rush), 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 fee simple condominium project consisting of thirty (30) apartments contained in ten (10) two-story buildings, without basements, constructed principally of wood.

The location and description of the various apartments of the project are as set forth in Exhibit "A" attached to this Preliminary Public Report.

The apartments have immediate access to the grounds of the project or to a stairway leading to the grounds of the project.

The respective apartments 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 apartment or any pipes, wires, conduits or other utility or service lines running through such apartment which are utilized for or serve more than one apartment, the same being deemed common elements as hereinafter provided. Each apartment shall be deemed to include all the walls and partitions which are not load-bearing within its perimeter or party walls, doors and door frames, windows and window frames, the lanai air space (if any), the inner decorated or finished surfaces of all walls, floors and ceilings, and all fixtures originally installed therein.

COMMON ELEMENTS: One (1) freehold estate is designated in all remaining portions of the project, herein called the "common elements", including specifically but not limited to:

1. The land in fee simple;
2. All foundations, floor slabs, columns, girders, beams, supports, unfinished perimeter, party and load-bearing walls, roofs, entries, stairways, walkways, entrances and exits of said buildings;
3. All yards, grounds and landscaping;
4. All parking areas;
5. The cabana, and the swimming pool and its appurtenant deck area;
6. 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 apartment for services such as power, light, gas, water, sewer, telephone and television signal distribution, if any; and

7. 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: No part of the common elements, herein called the "limited common elements", are designated or set aside for the exclusive use of certain apartments.

INTEREST TO BE CONVEYED TO PURCHASERS: Documents filed with the Real Estate Commission indicate that the purchaser will secure an Apartment Deed, conveying an apartment and an undivided interest, as set forth in said Exhibit "A", in all common elements of the project and the same proportionate share of all common profits and expenses of the project and shall be used for all other purposes including voting.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The proposed Declaration provides that, except when a mortgagee has entered into possession of an apartment following (i) a default under a first mortgage, (ii) a foreclosure proceedings, or (iii) a conveyance in lieu of foreclosure, 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 for no other purpose; except that the apartments may also be rented for transient or hotel purposes. The owners of the respective apartments shall have the absolute right to lease such apartments subject to all provisions of the Declaration and the By-Laws attached thereto.

OWNERSHIP OF TITLE: A Certificate of Title report dated October 7, 1977, issued by Long & Melone, Ltd., as submitted to the Commission, indicates that the Developer is the fee simple owner of the property to be committed to the regime.

ENCUMBRANCES AGAINST TITLE: Said Certificate of Title dated October 7, 1977, issued by Long & Melone, Ltd. provide that the following are encumbrances against title to the property:

1. For any taxes that may be due and owing and a lien on the land, reference is hereby made to the Office of the Tax Assessor of the Fourth Division, County of Kauai, Hawaii.

2. Easement S-1 (10 feet wide) as shown on said File Plan 1350 for sanitary sewer and located along a portion of the Northeasterly boundary of Lot 5-B.

3. Declaration of Restrictions, Covenants and Conditions dated March 1, 1971, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 7444, Page 93, as amended.

4. GRANT OF EASEMENT in favor of Kassler & Co., a Colorado corporation, dated June 19, 1975, recorded as aforesaid in Liber 10756, Page 267, for roadway and utility purposes, and located within a portion of Easement R-2.

5. GRANT OF EASEMENT S-1 in favor of Kauai County Public Improvement Corporation, dated October 29, 1975, recorded as aforesaid in Liber 11034, Page 88, for sanitary sewer purposes, as shown on File Plan 1350.

6. AS TO ROADWAY LOTS: Portion of Easement R-2 (22 feet wide) for road and utility purposes over and across Lot 5-B, more particularly described in the proposed Declaration.

7. Reservations unto Consolidated Oil & Gas, Inc., a Colorado corporation, as set forth in Deed dated August 26, 1977 and recorded as aforesaid in Liber 12479, Page 405, (and a proposed correction deed as yet unrecorded) of the following:

- (a) Nonexclusive easement for road and utility purposes over, under, across, along and through said portion of Easement R-2, together with the right to enter on said Lot 5-B for the maintenance and repair of said road and utility lines, together also with the right to grant to the State of Hawaii, County of Kauai or any other appropriate governmental authority or to any public utility corporation, Princeville of Hanalei Community Association, Kauai County Public Improvement easements for such purposes under such terms and conditions required by the grantee or grantees of such easements.
- (b) Right to grant roadway easements over and across any and all roadway lots shown on File Plan Nos. 1179, 1350 and 1360, to the purchaser, purchasers, lessee, lessees, owner or owners of each of the lots within Princeville at Hanalei, and to any purchaser, purchasers, lessee, lessees, owner or owners of lots hereinafter created at Princeville at Hanalei; and of the right to grant roadway and utility easements over, under, across, along and upon that portion of Easement R-2 crossing over said Lot 5-B to any purchaser, purchasers, lessee and lessees of Lot 5-A, being the remainder of Lot 5 (File Plan 1350) and of Lot 4-B, being the parcel of land situate adjacent to said Lot 5-A.

8. Encumbrances, restrictions, covenants, agreements, reservations, obligations, conditions and other provisions set forth in Deed dated August 26, 1977 and recorded as aforesaid in Liber 12479, Page 405.

9. Mortgage in favor of Consolidated Oil & Gas, Inc., a Colorado corporation, dated August 31, 1977 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 12479, page 415.

PURCHASE MONEY HANDLING: A copy of the executed Escrow Agreement dated November 14, 1977, between Long & Melone Escrow, Ltd., 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 514-36 through 514-40 thereof.

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: (a) Escrow receives a written request from Seller to return to purchaser the funds of such purchaser then held by Escrow; (b) if purchaser's funds were obtained prior to the issuance of a Final Public Report and if there is any change in the building plans, subsequent to the execution of purchaser's contract, requiring the approval of the county officer having jurisdiction over the issuance of permits for construction, unless the purchaser has given written approval or acceptance of the change; (c) if the purchaser's funds were obtained prior to the issuance of a Final Public Report and 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 (d) if the Final Public Report is not issued within one (1) year from the date of issuance of the Preliminary Public Report.

The specimen Sales Contract filed with the Commission contains, among others, the following provisions:

1. "The proposed Construction Contract for the project will contain an agreement by the Contractor that it will promptly correct any of its work found to be defective or not in conformance with its Construction Contract, for a period of one (1) year after the "Date of Substantial Completion" as defined in the standard form AIA Construction Contract. Seller hereby agrees that if the Buyer informs Seller of any construction within Buyer's Apartment which does not conform to those standards within 330 days after the "Date of Substantial Completion" as defined in said Construction Contract, that Seller will direct and will employ all reasonable efforts to have the Contractor correct any such fault(s) or defect(s) pursuant to its agreement with Seller; provided, however, that written notice thereof shall be given to Seller by Buyer within said 330 day period."

"Except for the agreement set forth above, it is expressly understood and agreed by and between Seller and Buyer that Buyer's apartment described in Paragraph "A" hereof will be conveyed to Buyer "AS IS" and that THERE ARE NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS OF THE APARTMENT FOR A PARTICULAR PURPOSE, involved in this sale."

2. "In the event less than fifteen (15) apartments are sold prior to June 30, 1978, Seller may at its option cancel this Agreement, in which event Seller will cause Escrow to refund all monies paid by Buyer, without interest, and less Escrow's cancellation fee and Seller shall be relieved and released of all further liability hereunder."

3. "Buyer hereby agrees for the sole benefit of Seller that until Seller has closed out the sale of all the apartments in the condominium project or until December 30, 1980, whichever shall first occur, that Buyer will not enter into any "rental pool" or similar agreement with any purchaser, lessee or owner of another apartment in the condominium project and/or any third party under which Buyer agrees to share expenses and/or rentals of apartments in the condominium project."

4. "Buyer understands that Seller proposes to develop, construct and sell a separate condominium project consisting of approximately 32 apartments on adjoining land and that this may result in the creation of dust, noise, vibrations and other nuisances; and Buyer hereby agrees that neither Buyer nor anyone claiming by, through or under Buyer will hold or attempt to hold Seller responsible for the creation of any nuisances arising out of or in connection with any work incidental or connected with the development construction or sale of said Project, and that no such nuisance shall constitute a breach of a covenant by Seller under said Apartment Deed or this Agreement."

NOTE: PROSPECTIVE PURCHASERS SHOULD BE AWARE THAT THE SELLER'S MORTGAGE LOANS (CONSTRUCTION, RENEWALS AND EXTENSIONS) FOR THE PROJECT SHALL BE AND REMAIN AT ALL TIMES A SUPERIOR LIEN ON THE PROJECT, AND PURCHASERS INTENTIONALLY WAIVE AND SUBORDINATE THE PRIORITY OF LIEN UNDER THE SALES CONTRACT IN FAVOR OF THE MORTGAGE LOANS.

NOTE: DEVELOPER ADVISES THAT NO REPRESENTATION OR REFERENCES WILL BE MADE TO EITHER PURCHASERS OR PROSPECTIVE PURCHASERS CONCERNING RENTAL OF THE APARTMENT, INCOME FROM THE APARTMENT OR ANY OTHER ECONOMIC BENEFIT TO BE DERIVED FROM THE RENTAL OF THE APARTMENT, INCLUDING BUT NOT LIMITED TO, ANY REFERENCE OR REPRESENTATION TO THE EFFECT THAT DEVELOPER OR THE MANAGING AGENT OF THE PROJECT WILL PROVIDE, DIRECTLY OR INDIRECTLY, ANY SERVICES RELATING TO THE RENTAL OR SALE OF THE APARTMENT. RENTAL OF THE APARTMENTS AND THE PROVISIONS OF MANAGEMENT SERVICES IN CONNECTION THEREWITH IS AND SHALL BE THE SOLE RESPONSIBILITY OF THE PURCHASER.

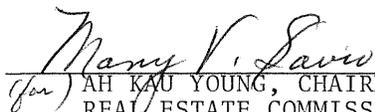
It is incumbent upon the purchaser and the prospective purchaser that he read with care the Sales Contract and the executed Escrow Agreement. The latter establishes how the proceeds from the sale of residential apartments are placed in trusts, as well as the retention and disbursement of said trust funds. The specimen Sales Contract specifically provides that the purchaser approves said Escrow Agreement and assumes the benefits and obligations therein provided.

MANAGEMENT OF THE PROJECT: The By-Laws which are incorporated in the Declaration provide that the operation of the project shall be conducted for the Association of Apartment Owners under the direction of the Board of Directors by a responsible managing agent. The Developer advises that it has appointed as initial managing agent for the project: Aaron M. Chaney Inc., Box 188, Hanalei, Kauai, Hawaii.

STATUS OF PROJECT: The Developer advises that it estimates construction of the project will begin in May of 1978.

The purchaser or prospective purchaser should be cognizant of the fact that his published report represents information disclosed by the Developer in the required Notice of Intention submitted November 29, 1977.

This PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 956 filed with the Commission on November 29, 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.



(for) 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. 956

December 19, 1977

EXHIBIT "A"

1. Apartment Nos. 1 and 3 are located on the first floor of Building No. 1.
2. Apartment Nos. 2 and 4 are located on the second floor of Building No. 1.
3. Apartment Nos. 5 and 6 are located on the first and second floors of Building No. 2, the two floors of each of these apartments being connected by an internal stairway.
4. Apartment Nos. 7 and 9 are located on the first floor of Building No. 3.
5. Apartment Nos. 8 and 10 are located on the second floor of Building No. 3.
6. Apartment Nos. 11 and 12 are located on the first and second floors of Building No. 4, the two floors of each of these apartments being connected by an internal stairway.
7. Apartment Nos. 13 and 14 are located on the first and second floors of Building No. 5, the two floors of each of these apartments being connected by an internal stairway.
8. Apartment Nos. 15 and 16 are located on the first and second floors of Building No. 6, the two floors of each of these apartments being connected by an internal stairway.
9. Apartment Nos. 17 and 19 are located on the first floor of Building No. 7.
10. Apartment Nos. 18 and 20 are located on the second floor of Building No. 7.
11. Apartment Nos. 21 and 23 are located on the first floor of Building No. 8.
12. Apartment Nos. 22 and 24 are located on the second floor of Building No. 8.
13. Apartment Nos. 25 and 27 are located on the first floor of Building No. 9.
14. Apartment Nos. 26 and 28 are located on the second floor of Building No. 9.
15. Apartment No. 29 is located on the first floor of Building No. 10.
16. Apartment No. 30 is located on the second floor of Building No. 10.

APARTMENT TYPE A: Eight (8) apartments, being Nos. 5, 6, 11, 12, 13, 14, 15 and 16, are built according to this floor plan, each consisting of eight (8) rooms, including a bedroom, a kitchen, a living room, a bathroom, a dining room and two (2) lanais located on the first floors of their respective buildings, and two (2) bedrooms, a bathroom and a lanai located on the second floor of their respective buildings. Each of these apartments contains a floor area of approximately 2,007 square feet, including the lanais, and shall have an appurtenant common interest of 4.20%.

APARTMENT TYPE B: Five (5) apartments, being Nos. 3, 7, 21, 27 and 29, are built according to this floor plan, each consisting of seven (7) rooms, including two (2) bedrooms, a kitchen, a living room, two (2) bathrooms, a dining room and three (3) lanais, all located on the first floors of their respective buildings. Each of these apartments contains a floor area of approximately 1,732 square feet, including the lanais, and shall have an appurtenant common interest of 3.60%.

APARTMENT TYPE C: Five (5) apartments, being No. 4, 8, 22, 28 and 30 are built according to this floor plan, each consisting of six (6) rooms, including two (2) bedrooms, a kitchen, a living/dining room, two (2) bathrooms and a lanai, all located on the second floors of their respective buildings. Each of these apartments contains a floor area of approximately 1,145 square feet, including the lanai, and shall have an appurtenant common interest of 2.36%.

APARTMENT TYPE D: Six (6) apartments, being Nos. 1, 9, 17, 19, 23 and 25, are built according to this floor plan, each consisting of seven (7) rooms including two (2) bedrooms, a kitchen, a living room, two (2) bathrooms, a dining room and three (3) lanais, all located on the first floors of their respective buildings. Each of these apartments contains a floor area of approximately 1,759 square feet, including the lanais, and shall have an appurtenant common interest of 3.70%.

APARTMENT TYPE E: Six (6) apartments, being Nos. 2, 10, 18, 20, 24 and 26, are built according to this floor plan, each consisting of six (6) rooms, including two (2) bedrooms, a kitchen, a living/dining room, two (2) bathrooms and a lanai, all located on the second floors of their respective buildings. Each of these apartments contains a floor area of approximately 1,171 square feet, including the lanai, and shall have an appurtenant common interest of 2.40%.

NOTE: IN ACCORDANCE WITH LOCAL PRACTICE, THE APPROXIMATE GROSS FLOOR AREA OF EACH APARTMENT AS SET FORTH ABOVE INCLUDES ALL OF THE WALLS AND PARTITIONS WITHIN ITS PERIMETER WALLS, THE ENTIRETY OF ITS PERIMETER NON-PARTY WALLS AND THE INTERIOR HALF OF ITS PERIMETER PARTY WALLS, WHETHER LOAD-BEARING OR NON-LOAD BEARING.