

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
DIAMOND HEAD ESTATES
3721 and 3725 Diamond Head Road
Honolulu, Hawaii 96816

REGISTRATION NO. 963

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: March 16, 1978
EXPIRES: April 16, 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 DECEMBER 22, 1977, AND INFORMATION SUBSEQUENTLY FILED ON MARCH 9, 1978. THE DEVELOPER, IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF CHAPTER 514A, HAWAII REVISED STATUTES.

1. DIAMOND HEAD ESTATES is a fee simple condominium project consisting of two single family dwellings. Apt. No. 1 is a two story dwelling with basement, and Apt. No. 2 is a one story dwelling with partial loft area. There are a total of two apartments and four covered parking spaces.

2. The Developer 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 basic documents (Declaration of Horizontal Property Regime, By-Laws of the Association of Apartment Owners and a copy of the approved Floor Plans) have been recorded in the Bureau of Conveyances of the State of Hawaii.

The Declaration of Horizontal Property Regime executed December 19, 1977, with By-Laws attached was recorded as aforesaid in Liber 12,624, Page 176, and amended by document dated February 9, 1978, recorded in the Bureau aforesaid in Liber 12,718, Page 719.

The approved Floor Plans showing the layout, location, apartment numbers, etc., have been designated Condominium File Plan No. 527.

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 and the Condominium Rules and Regulations which relate to Horizontal Property Regime.

6. This Final Public Report automatically expires thirteen (13) months after the date of issuance, March 16, 1978, unless a Supplementary Public Report issues or the Commission, upon review of the registration, issues an order extending the period of this report.

7. This Final Public Report is made a part of registration of DIAMOND HEAD ESTATES 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. Securing a signed copy of the Receipt for the Final Horizontal Property Regime Public Report from each purchaser is also the responsibility of the Developer.

NAME OF PROJECT: DIAMOND HEAD ESTATES

LOCATION: The approximate 22,137 square feet of land committed to the regime is situated at 3725 and 3721 Diamond Head Road, Honolulu, Hawaii.

TAX MAP KEY: FIRST DIVISION: 3-1-38-1

ZONING: R-3

GENERAL PLAN: Residential

LAND USE DESIGNATION: Urban

DEVELOPER: Donald C. and Margo McLane Marshall, [REDACTED]
[REDACTED] The Agent for Developer is Kathleen Kam Oi Conahan, 3725 Diamond Head Road, Honolulu, Hawaii (Tel: 531-5906).

ATTORNEY REPRESENTING DEVELOPER: Conahan & Conahan, Attorneys At Law, A Law Corporation, 745 Fort Street, 1500 Hawaii Building, Honolulu, Hawaii 96813, Telephone: 531-5906.

DESCRIPTION: The Declaration of Horizontal Property Regime and plans submitted by the Developer indicate a fee simple condominium project consisting of two (2) buildings, consisting of a total of two (2) apartments:

Apartment No. 1 (3725 Diamond Head Road) is located on Lot 1, as noted on the condominium file plan. It is built principally of a lava rock foundation and wood. It consists of a basement and two floors, as follows:

The basement area consists of a recreation room, one full bath, two half-baths, a laundry room, two storage rooms and a large, unimproved storage area. The total basement area is approximately 2,900 square feet.

The first floor consists of a living room, dining room, study room, family room, bedroom, bath, kitchen, pantry and patio/lanai. A porte cochere is on this level. The entire first floor is approximately 2,900 square feet.

The second floor consists of three bedrooms, two bathrooms, a rumpus room, a study and a large storage area. The approximate size is 2,900 square feet.

Apartment No. 1 also includes a detached two car garage and storage area.

Lot No. 1 is approximately 13,184 square feet in size.

Apartment No. 2 (3721 Diamond Head Road) is built principally of tongue and groove cedar. It consists of three bedrooms, two baths, living room, dining room, kitchen, and deck all on one floor. The approximate area is 1,500 square feet, excluding the deck which is approximately 500 square feet. The apartment includes a partial loft, which is approximately 450 square feet. The apartment also has a detached two car carport.

Lot No. 2 is approximately 8,953 square feet in size.

The apartments have immediate access to the grounds of the project.

COMMON ELEMENTS: One freehold estate is hereby 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 yards, grounds and landscaping;
3. All roads, driveways and parking areas;
4. 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;
5. Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

LIMITED COMMON ELEMENTS: Certain parts of the common elements, herein called the "limited common elements", are hereby designated and set aside for the exclusive use of certain apartments, and such apartments shall have appurtenant thereto easements for the use of such limited common elements as follows:

(a) Lot 1, together with roadway easement #2, as shown on said Condominium File Plan, and the electrical meter and cesspool located thereon, shall be appurtenant to and for the exclusive use of Apt. No. 1; subject, however, to an easement in favor of Apt. No. 2, consisting of a footpath to the beach through Lot No. 1, which easement shall be designated and located by the owner of Apt. No. 1 from time to time. Lot No. 1 also includes the roadway easement #2 shown on the File Plan.

(b) Lot 2, as shown on said Condominium File Plan, and the electrical meter and cesspool located thereon, shall be appurtenant to and for the exclusive use of Apt. No. 2.

(c) The owner of each limited common element shall at all times keep the same in good order and condition, and maintain and keep the land of such limited common element in a neat and attractive condition and all trees and shrubs and grass therein in good cultivation and replant the same as may be necessary, and repair and make good all defects. No apartment owner shall change the external appearance of any apartment without the prior written consent thereto by the Board of Directors.

INTEREST TO BE CONVEYED TO PURCHASERS: Documents filed with the Real Estate Commission indicate that the purchaser will secure an Apartment Deed, conveying to apartment No. 1 an undivided sixty percent (60%) interest in the common elements of the project and a forty percent (40%) interest in the common elements to Apt. No. 2. This same percentage interest for each apartment shall be used in determining each purchaser's proportionate share of all common profits and expenses of the project and shall be used for all other purposes including determining the proportionate representation for voting purposes in the Association of Apartment Owners of the project.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The 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 proceeding, 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. The apartments shall not be rented for transient or hotel purposes, which are defined as (a) rental for any period less than 30 days, or (b) any rental in which the occupants of the apartments are provided customary hotel services such as room service for food and beverage, maid service, laundry and linen or bellboy service. Except for such 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; provided, however, that no apartment owner may lease less than the entire apartment.

OWNERSHIP OF TITLE: A Preliminary Report issued by Security Title Corporation on February 3, 1978 states that title to said land is vested in Donald C. Marshall and Margo McLane Marshall, husband and wife, as joint tenants. The Developer has submitted documents to the Real Estate Commission indicating that the property has been sold to the Developer by way of an Agreement of Sale dated October 29, 1975 and recorded in the Bureau of Conveyances of the State of Hawaii in Book 10992, Page 30. The Developer has further advised the Real Estate Commission that the fee owners and the vendees under the Agreement of Sale are jointly developing the property described herein.

ENCUMBRANCES AGAINST TITLE: The Preliminary Public Report dated February 3, 1978, issued by Security Title Corporation, provides 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 First Division, Island of Oahu, Hawaii.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. The covenants as contained in that certain Instrument dated July 13, 1973, recorded on February 14, 1975 in the Bureau of Conveyances of the State of Hawaii in Book 10461 Page 333, to which reference is hereby made.
4. Mortgage dated October 23, 1975, recorded on October 31, 1975 in said Bureau of Conveyances in Book 10992 Page 49, made by DONALD C. MARSHALL and MARGO McLANE MARSHALL, husband and wife, as Mortgagors, to Bank of Hawaii, a Hawaii corporation, as Mortgagee, to secure the repayment of the sum of \$85,000.00, any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagors therein referred to.

5. Agreement of Sale dated October 29, 1975, recorded on October 31, 1975 in said Bureau of Conveyances in Book 10992 Page 30, made by and between DONALD C. MARSHALL and MARGO M. MARSHALL, husband and wife, as Sellers, and JAMES PATRICK CONAHAN and KATHLEEN KAM OI CONAHAN, husband and wife, AS TENANTS BY THE ENTIRETY, as Purchasers, wherein said sellers agree to sell, and said purchasers agree to buy, the land herein described, for the consideration and on the terms and conditions therein contained.

By instrument dated October 30, 1975, recorded on October 31, 1975 in said Bureau of Conveyances in Book 10992 Page 58, DONALD C. MARSHALL and MARGO McLANE MARSHALL, husband and wife, as Assignors, assigned to Bank of Hawaii, a Hawaii corporation, as Assignee, all of his right, title and interest as Sellers under the foregoing Agreement of Sale, as security for the repayment of the sum of \$85,000.00.

6. Grant dated April 13, 1977, recorded on June 7, 1977 in said Bureau of Conveyances in Book 12249, Page 249, in favor of Hawaiian Electric Company, Inc., a Hawaii corporation, and Hawaiian Telephone Company, a Hawaii corporation, granting a perpetual right and easement to build, etc., pole and wire lines, etc., as may be necessary for the transmission and distribution of electricity for light and power and/or communications and control circuits, etc., over, under, upon, across and through a portion of the land herein described.

7. The covenants, agreements, obligations, conditions and provisions set forth in that certain Declaration of Horizontal Property Regime dated December 19, 1977, recorded on December 21, 1977 in said Bureau of Conveyances in Book 12624, Page 176 and the By-Laws attached thereto.

Note: The First Amendment to Declaration of Horizontal Property Regime was recorded in said Bureau in Liber 12,718, Page 719.

METHOD OF FIRST CONVEYANCE: The entire project is presently encumbered by a first mortgage dated October 23, 1975, made by the fee owners DONALD C. and MARGO McLANE MARSHALL, husband and wife, in favor of the Bank of Hawaii, recorded in Book 10992, Page 49. In addition, the fee owners sold their entire interest to JAMES PATRICK and KATHLEEN KAM OI CONAHAN, husband and wife, by way of Agreement of Sale, on October 29, 1975, recorded in the Bureau of Conveyances, Book 10992, Page 30, which Agreement of Sale has been assigned to Bank of Hawaii as security for repayment of the mortgage and said assignment is recorded in the Bureau of Conveyances in Book 10992, Page 58. This Agreement of Sale provides that in the event the property is converted into a condominium, Seller will release one lot if Buyer has paid at least \$175,000 of the purchase price. Buyer intends to make a payment upon the Agreement of Sale which will release Bank of Hawaii's blanket mortgage on the property; such additional payment will be in excess of \$175,000 of the purchase price. Fee Owners (the Marshalls) will then convey Apt. No. 1 to the Conahans in fee simple, free of all blanket mortgages, and will convey Apt. No. 2 to the Conahans in fee

simple, and the Conahans will give the Marshalls a first mortgage to secure a note equal to the balance due under the existing Agreement of Sale. The existing Agreement of Sale will be cancelled. The Mortgage Release will be held in a holding escrow.

MANAGEMENT OF THE PROJECT: The By-Laws which are incorporated in the Declaration provide that the operation of the project may be conducted for the Association of Apartment Owners under the direction of the Board of Directors by a responsible managing agent, but there is no requirement that a managing agent be appointed. At this time, the Developer does not propose to so appoint a managing agent.

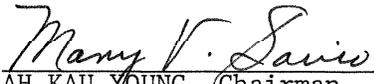
NOTE: Developer advises that no representation or references will be made to either purchasers or prospective purchasers concerning rental of the apartment, income from the apartment or any other economic benefit to be derived from the rental of the apartment, including but not limited to, any reference 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.

STATUS OF THE PROJECT: As per the Notice of Intention filed with the Commission on December 22, 1977, construction of the project was completed on August 15, 1976, and has been used since that time as single family residences.

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 December 22, 1977 and information subsequently filed as of March 9, 1978.

The purchasers (the Conahans) under the existing Agreement of Sale from the Developer, have agreed to indemnify the Developer, its administrators, successors and assigns, against all loss, expense or damage which may be incurred on account of any violation of laws, rules or regulations of the State of Hawaii, the Real Estate Commission, or any other governmental agency, in connection with establishing this horizontal property regime.

This is a FINAL HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT which is made a part of REGISTRATION NO. 963 filed with the Commission December 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 white.

for 

AH KAU YOUNG, Chairman
REAL ESTATE COMMISSION
STATE OF HAWAII

Distribution:

DEPARTMENT OF TAXATION
BUREAU OF CONVEYANCES
PLANNING COMMISSION, CITY AND COUNTY OF HONOLULU

REGISTRATION NO. 963

March 16, 1978.