

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

KAWAINUI PARK PLACE
679 A, B, C & D Kihapai Street
Kailua, Hawaii

REGISTRATION NO. 965

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 28, 1977, AND ADDITIONAL INFORMATION SUBSEQUENTLY FILED AS OF MARCH 10, 1978. THE DEVELOPER, IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, CHAPTER 514A, HAWAII REVISED STATUTES.

1. KAWAINUI PARK PLACE is a fee simple condominium project consisting of four (4) one-story buildings, without basements, four (4) apartments and four (4) parking stalls.

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 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 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, and recorded in the Bureau of Conveyances of the State of Hawaii.

The Declaration of Horizontal Property Regime dated December 2, 1977, with By-Laws attached was filed as aforesaid as Document No. 851046, and recorded as aforesaid in Liber 12618, Page 205.

The approved Floor Plans showing the layout, location, apartment numbers, etc., have been designated Condominium Map No. 320 and Condominium File Plan No. 526.

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 Regimes.

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 project.

7. This Final Public Report is made a part of registration on KAWAINUI PARK PLACE condominium project. The Developer has the responsibility of placing a true copy of this Final Public Report (white paper stock) in the hands of all purchasers and prospective 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: KAWAINUI PARK PLACE.

LOCATION: The approximately 19,824 square feet of land to be committed to the regime is situated at 679 A, B, C & D Kihapai Street, Kailua, Hawaii.

TAX MAP KEY: FIRST DIVISION: 4-3-66-23.

ZONING: R-6.

DEVELOPER: RUDOLPH JAMES BRILHANTE and AUDREY DENIS BRILHANTE, husband and wife, 116 Hekili Street, Kailua, Hawaii 96734, Phone No. 262-6934.

ATTORNEY REPRESENTING DEVELOPER: Hamilton, Gibson, Nickelsen, Rush & Moore (Attention: Dwight M. Rush and Walter Beh, II), 20th Floor Hawaii Building, 745 Fort Street, Honolulu, Hawaii 98613, Phone No. 521-2611.

DESCRIPTION: The Declaration of Horizontal Property Regime and plans submitted by the Developer indicate a fee simple condominium project consisting of four (4) apartments contained in four (4) one-story buildings, without basements, constructed principally of wood.

The location and description of the various apartments of the project are as follows:

Apartment No. A is located in Building A. Apartment No. B is located in Building B. Apartment No. C is located in Building C. Apartment No. D is located in Building D.

Apartment Nos. A, B and C are built according to a floor plan consisting of five (5) rooms, all located on one floor, including two (2) bedrooms, a bathroom, a kitchen and a living room. Each of these apartments contains a floor area of approximately 540 square feet.

Apartment No. D is built according to a floor plan consisting of seven (7) rooms, all located on one floor, including three (3) bedrooms, two (2) bathrooms, a kitchen-dining room, a living room, a deck and a garage. This apartment contains a floor area of approximately 1,537 square feet, including the garage of approximately 277 square feet and the deck of approximately 400 square feet.

The apartments have immediate access to the grounds of the project. The respective apartments shall not be deemed to include 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 within its perimeter walls, all walls, floors, ceilings and roofs, doors and door frames, windows and window frames, the deck air space (if any), 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. The garage structure located immediately adjacent to the driveway;

3. All yards, grounds and landscaping;

4. All roads, driveways and parking areas;

5. 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

6. 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 designated and set aside for the exclusive use of certain apartments, and such apartments having appurtenant thereto easements for the use of such limited common elements as follows:

1. The lot upon which each respective apartment is built, as outlined in red on the condominium file plan and condominium map, shall be appurtenant to and for the exclusive use of such apartment;

2. The garage structure located immediately adjacent to the driveway shall be appurtenant to and for the exclusive use of Apartment Nos. A, B and C, provided that the parking space within the garage structure designated on the condominium file plan and condominium map with the same letter as the said respective apartments shall be for the exclusive use of such apartment.

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 twenty-five percent (25%) interest 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.

NOTE: The Declaration provides that each apartment owner shall be responsible for the proper repair and maintenance of the limited common elements appurtenant to his apartment, and shall at all times keep the same in good order and condition, and maintain and keep the land of his appurtenant lot in a neat and attractive condition and all trees and shrubs and grass thereon in good cultivation and replant the same as may be necessary, and repair and make good all

defects in the same of which notice shall be given by the Board of Directors or Managing Agent within thirty (30) days after the giving of such notice; provided, that the owners of Apartment Nos. A, B and C shall be jointly responsible, in equal shares, for the said common expenses of the said garage structure.

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 title report dated September 27, 1977, and Supplementary Report dated February 27, 1978, issued by Security Title Corporation, as submitted to the Commission, indicates that the Developer is the fee simple owner of the property to be submitted to the regime by Warranty Deed and Assumption of Mortgages dated November 12, 1970, recorded in Liber 7390, Page 346.

ENCUMBRANCES AGAINST TITLE: Said preliminary title report dated September 27, 1977, as updated by Supplementary Report of February 27, 1978, issued by Security Title Corporation, and documents submitted to the Commission, 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 First Division, City and County of Honolulu, Hawaii.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines as reserved in Royal Patent No. 7983.
3. The conditions and covenants in Deed dated April 24, 1946, filed in the Office of the Assistant Registrar of said Land Court as Document No. 84241, to which reference is hereby made.

4. Grant dated May 24, 1955, filed in the Office of the Assistant Registrar of said Land Court as Document No. 175489, in favor of Hawaiian Electric Company, Inc. and Hawaiian Telephone Company, granting easement for utilities encumbering Lot 759-B.

5. Real Estate Mortgage, Security Agreement and Financing Statement dated February 27, 1975, filed as aforesaid as Document No. 712610, made by RUDOLPH JAMES BRILHANTE and AUDREY DENIS BRILHANTE, husband and wife, as Mortgagor(s), to STATE SAVINGS AND LOAN ASSOCIATION, a Utah corporation, as Mortgagee(s), to secure the repayment of the sum of \$110,000.00.

6. Mortgage, Security Agreement and Financing Statement dated May 10, 1977, filed as aforesaid as Document No. 816964, made by RUDOLPH JAMES BRILHANTE and AUDREY DENIS BRILHANTE, husband and wife, as Mortgagor(s), to AMFAC FINANCIAL CORP., a Hawaii corporation, as Mortgagee(s), to secure the repayment of the sum of \$22,000.00.

7. Real Property Mortgage, Security Agreement and Financing Statement dated January 15, 1974, recorded on January 16, 1974 in the Bureau of Conveyances of the State of Hawaii in Liber 9692, Page 459, made by RUDOLPH JAMES BRILHANTE and AUDREY DENIS BRILHANTE, husband and wife, as Mortgagor(s), to HONOLULU FEDERAL SAVINGS AND LOAN ASSOCIATION, a federal savings and loan association, as Mortgagee(s), to secure the repayment of the sum of \$42,800.00.

8. Notice of Pendency of Action dated December 22, 1976, made in the matter entitled "HONOLULU FEDERAL SAVINGS AND LOAN ASSOCIATION, Plaintiff, vs. RUDOLPH JAMES BRILHANTE; AUDREY DENIS BRILHANTE; and AMERICAN SECURITY BANK, Defendants", now pending in the Circuit Court of the First Circuit, State of Hawaii, under Civil No. 50261, a certified copy of which was recorded on December 23, 1976 in said Bureau of Conveyances in Liber 11906, Page 173.

9. The lien of that certain Judgment in the amount of \$20,136.12 dated July 16, 1976, a certified copy of which was filed in said Bureau of Conveyances on July 21, 1976 in Liber 11546, Page 369.

10. Second Mortgage dated August 30, 1977, recorded on September 6, 1977 in the Bureau of Conveyances of the State of Hawaii in Liber 12414, Page 150, made by RUDOLPH JAMES BRILHANTE and AUDREY DENIS BRILHANTE, husband and wife, as Mortgagor(s), to DARLENE AZORA TAYLOR, unmarried, as Mortgagee(s), to secure the repayment of the sum of \$3,000.00.

11. Assessment under Improvement District No. 236 (Coconut Grove) for Assessment Lot No. 322.

12. Declaration of Horizontal Property Regime dated December 2, 1977 with By-Laws attached and filed as Document No. 851046, and recorded in Liber 12618, Page 205. The approved floor plans have been designated as Condominium Map No. 320 and Condominium File Plan No. 526.

PURCHASE MONEY HANDLING: A copy of the executed Escrow Agreement dated December 2, 1977, between Title Guaranty Escrow Services, Inc., 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 514A, Hawaii Revised Statutes, and particularly Sections 514A-39, 514A-63 through 514A-66 thereof.

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

1. "It is expressly understood and agreed by and between Seller and Buyer that the project consists of fully constructed and existing buildings. Buyer acknowledges that Buyer has been offered an adequate opportunity to examine the plans for the project (which are on file in the Bureau of Conveyances of the State of Hawaii as Condominium Map No. 526 and open to public inspection) and the actual project and Apartment covered hereby, and accepts the same "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. "Buyer further agrees and declares that as part of the consideration for this Agreement, Buyer has and does hereby waive any and all claims Buyer might otherwise have against Seller because of or arising out of any construction design work, including but not limited to, those on account of faulty or improper construction of improvements, patent or latent defects, and code violations in building construction."

3. "In the event less than four (4) apartments are sold prior to August 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."

4. "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, 1978, 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."

5. 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 approve said Escrow Agreement and assume 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 may 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 does not plan to appoint a managing agent for the project.

STATUS OF PROJECT: The Developer advises that Apartments A, B and C were completed in 1955 and that Apartment D was completed in 1956.

NOTE: As the buildings of the project were completed a number of years prior to the enactment of the existing Comprehensive Zoning Code (CZC), the buildings are probably nonconforming structures under the CZC. Section 21-107(d) of the CZD provides in part:

"Nonconforming structure. A nonconforming structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

(1) Enlargement or alteration. No nonconforming structure may be enlarged or altered in any way which increases its nonconformity.

(2) Damage or destruction. If a nonconforming structure is destroyed by any means to an extent of more than 50% of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this Chapter."

Also, the buildings of the project may be built upon a lot

that may be now nonconforming under the CZC. Section 21-107(e) of CZC provides in part:

"Nonconforming lots.

(1) A nonconforming lot shall not be reduced in area or width.

(2) Any conforming use or conforming structure on a nonconforming lot may be enlarged, extended, constructed, or moved so long as other requirements of this Chapter are met.

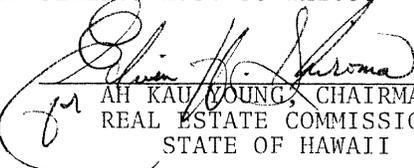
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(4) Any provision to the contrary notwithstanding, a single-family dwelling and customary accessory buildings may be erected on any nonconforming lot located in any district in which single-family dwellings are permitted."

Also, in the future if an approval for a subdivision, or a building permit, for all or any part of the project is sought, compliance with City and County of Honolulu Ordinance 4621 (being the "Park Lands Dedication Ordinance") may be required.

The purchaser or prospective purchaser should be cognizant of the fact that this Report represents information disclosed by the Seller in the required Notice of Intention submitted December 28, 1977 and additional information subsequently submitted as of March 10, 1978.

This FINAL HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 965 filed with the Commission on December 28, 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, CHAIRMAN
REAL ESTATE COMMISSION
STATE OF HAWAII

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ESCROW AGENT

REGISTRATION NO. 965

March 16, 1978