

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
THE MAKAHUENA
Weliweli, Koloa
County of Kauai, Hawaii

Registration No. 1114

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: October 30, 1979
Expires: November 30, 1980

SPECIAL ATTENTION

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

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION FILED WITH THE COMMISSION ON MARCH 30, 1979 AND ADDITIONAL INFORMATION SUBSEQUENTLY FILED AS OF OCTOBER 17, 1979. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF HIS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT SET FORTH IN CHAPTER 514A, HAWAII REVISED STATUTES, AS AMENDED.

1. Since the issuance of the Commission's Preliminary Public Report of April 26, 1979 on The Makahuena, Registration No. 1114, the Developer reports that certain changes have been made in the project. This Final Public Report (white paper stock) amends the Preliminary Public Report (yellow paper stock) becoming part of The Makahuena registration. The Developer is responsible for placing a true copy of this Final Public Report in the hands of all purchasers and prospective purchasers, along with a copy of the Preliminary Public Report. He is responsible for securing from each purchaser or prospective purchaser a signed receipt signifying that he has had an opportunity to read both Reports.

2. The Developer has submitted to the Commission for examination all documents deemed necessary for the registration of the condominium project and the issuance of this Final Report.

3. The Developer advises that the Declaration of Horizontal Property Regime and the Bylaws annexed thereto are filed in the Bureau of Conveyances of the State of Hawaii in Book 13973, Page 220. The Condominium Map has been filed with the Bureau of Conveyances as Map No. 638.

4. The Developer has submitted certain advertising and promotional materials which have been submitted pursuant to the rules and regulations of the Commission. Those materials include an artist's rendition of the project, copies of individual apartment floor plans as submitted to the Real Estate Commission, and a copy of a Condominium Map Locator showing prospective purchasers the approximate location of his apartment and parking stall(s).

5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Chapter 514A, Hawaii Revised Statutes, as amended, and the Horizontal Property Regimes (Condominium) Rules and Regulations promulgated by the Commission.

6. This Final Public Report automatically expires thirteen (13) months after date of issuance October 30, 1979, unless a Supplementary Public Report issues, or the Commission, upon review of the registration, issues an order extending the effective period of this report.

The information in the Preliminary Public Report of April 26, 1979, under the topical headings DESCRIPTION OF THE PROJECT, OWNERSHIP OF TITLE, ENCUMBRANCES AGAINST TITLE, and STATUS OF THE PROJECT, has been changed. The Developer reports that no other information in the Preliminary Public Report has changed.

DESCRIPTION OF THE PROJECT: The Declaration of Horizontal Property Regime filed with the Bureau of Conveyances and submitted to the Commission shows that the description of the buildings set forth in the Commission's Preliminary Public Report is unchanged except that the description of the existing dwelling has been amended to conform to Act 93 of the Tenth State Legislature, Regular Session of 1979, State of Hawaii, which amended

the Horizontal Property Act to require existing structures being converted to condominium status to meet applicable county requirements including county building, zoning and subdivision rules, codes, ordinances, and regulations. The Developer reports that the existing structure has been issued a building permit from the County of Kauai and upon excavation and renovation, will conform to the County of Kauai building, zoning, and subdivision rules, codes, ordinances, and regulations.

OWNERSHIP TO TITLE: The Preliminary Public Report stated that the Fee Owner has granted to the Developer certain development rights pursuant to an unrecorded Development Agreement dated December 27, 1978, a Short Form of which is recorded in the Bureau of Conveyances, State of Hawaii, Liber 13504 Page 404.

The Developer reports and a Certificate of Title issued by Security Title Corporation on July 19, 1979 confirms that the Fee Owner and the Developer have entered into a Master Lease dated June 15, 1979, a short form of which was recorded on June 18, 1979, in the Bureau of Conveyances, State of Hawaii, Liber 13775 Page 733.

ENCUMBRANCES AGAINST TITLE: The Preliminary Public Report listed as an encumbrance against title a Mortgage dated September 7, 1978, recorded on September 11, 1978 in the Bureau of Conveyances of the State of Hawaii in Book 13131 Page 279, made by WILLIAM LEE BRANDT, as Trustee of The Zalopany Children and Grandchildren Trust under written Declaration of Trust dated August 21, 1978, as Mortgagor(s), to FIRST HAWAIIAN BANK, a Hawaii corporation, as Mortgagee(s), to secure the repayment of the sum of \$1,450,000.00, any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to. Said Certificate of Title issued July 19, 1979 reflects that by Subordination Agreement dated June 15, 1979, recorded on June 18, 1979 in said Bureau of Conveyances in Book 13775 Page 723, the foregoing mortgage was subordinated to the lien of that certain mortgage referred to in Encumbrance 3 a) listed below.

Said Certificate of Title issued July 19, 1979 also reflects that subsequent to the issuance of the Preliminary Public Report, the land has been made subject to the following additional encumbrances:

1. By Additional Security Mortgage and Financing Statement dated June 15, 1979, recorded on June 18, 1979, recorded on June 18, 1979 in said Bureau of Conveyances in Book 13775 Page 677, WILLIAM LEE BRANDT, as Trustee of the Zalopany Children and Grandchildren Trust, (the "Trust") under written Declaration of Trust dated August 21, 1978, (the "Declaration of Trust") a short form of which is dated September 7, 1978 and recorded in the Bureau of Conveyances of the State of Hawaii in Book 13131, Page 265, assigned the fee simple title to the land therein described,

to FIRST HAWAIIAN BANK, a Hawaii corporation, as security for the repayment of the sum of \$13,600,000.00.

2. Easement A (6' wide) for public access purposes over and across Lot 1, as shown on survey prepared by Masao Fujishige, Registered Professional Surveyor, Certificate No. 1065-S, dated May 20, 1979.
3. The terms and provisions of that certain Master Lease dated June 15, 1979, recorded on June 18, 1979 in the Bureau of Conveyances of the State of Hawaii in Book 13775 Page 733, made by and between WILLIAM LEE BRANDT, as trustee of the Zalopany Children and Grandchildren Trust made by Leonard H. Zalopany and Alma Zalopany, husband and wife, under that certain unrecorded Declaration of Trust for the Zalopany Children and Grandchildren Trust dated August 21, 1978, a short form of which is dated September 7, 1978 and recorded on September 11, 1978 in the Bureau of Conveyances of the State of Hawaii in Book 13131, at Page 265, as Lessor, and THE MAKAHUENA CORP., as Lessee(s), for the term of sixty-five (65) years commencing on the execution hereof to and including December 31, 2045.

Said Lease subject to the following:

- a) Real Property Mortgage and Financing Statement dated June 15, 1979, recorded on June 18, 1979 in the Bureau of Conveyances of the State of Hawaii in Book 13776 Page 1, made by THE MAKAHUENA CORPORATION, a Hawaii corporation, as Mortgagor(s), to FIRST HAWAIIAN BANK, a Hawaii corporation, as Mortgagee(s), to secure the repayment of the sum of \$13,600,000.00, any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to, (affecting Master Lease). Consent thereto dated June 15, 1979 recorded in Book 13776 Page 47.
- b) Real Property Mortgage and Financing Statement dated June 15, 1979, recorded on June 18, 1979 in the Bureau of Conveyances of the State of HAWAII in Book 13776 Page 52, made by THE MAKAHUENA CORPORATION, a Hawaii corporation, as Mortgagor(s), to FIRST HAWAIIAN BANK, a Hawaii corporation, as Mortgagee(s), to secure the repayment of the sum of \$13,600,000.00, any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to, (affecting Development Agreement dated December 27, 1978). Consent thereto dated June 15, 1979 recorded in Book 13776 Page 99.

- c) Financing Statement dated June 15, 1979 covering certain Agreements and Contracts, etc., given as security by THE MAKAHUENA CORPORATION in favor of FIRST HAWAIIAN BANK, recorded on June 18, 1979 in the Bureau of Conveyances of the State of Hawaii in Book 13776 Page 104.
4. By Assignment of Rentals and Lessor's Interest in Lease dated June 15, 1979, recorded on June 18, 1979 in said Bureau of Conveyances in Book 13776 Page 113, WILLIAM LEE BRANDT, Trustee under the Zalopany Children and Grandchildren Trust, as Assignor, assigned all his right, title and interest in and to that certain Master Lease herein referred to, to FIRST HAWAIIAN BANK, a Hawaii corporation, as Assignee, as security for the repayment of the sum of \$13,600,000.00
5. By Assignment of Payments and Owner's Interest in Development Agreement dated June 15, 1979, recorded on June 18, 1979 in said Bureau of Conveyances in Book 13776 Page 131, WILLIAM LEE BRANDT, Trustee under the Zalopany Children and Grandchildren Trust, as Assignor, assigned all his right, title and interest in and to that certain Development Agreement dated December 27, 1978, to FIRST HAWAIIAN BANK, a Hawaii corporation, as Assignee, as security for the repayment of the sum of \$13,600,000.00.

The File Plan map prepared by Masao Fujishige, a registered land surveyor, and based on surveys made by said surveyor in August, 1978 and May, 1979 shows, and said Certificate of Title issued July 19, 1979 confirms, that the following encumbrances, listed as Encumbrances #9 and #10 in the Preliminary Report, are no longer on the property:

1. The Makai bottom corner of a wall between Parcel A-2 and Parcel 3 is 0.3 feet within the parcel of land.
2. A four inch (4") C.I. pipe and a two inch (2") plastic pipe running Mauka to Makai, parallel to the wall between Parcel A-2 and Parcel 3.

Each purchaser and prospective purchaser is reminded that all of his or her rights and interests under executed Sales Contracts for apartments in the Project are subject and subordinate to the rights and interests of First Hawaiian Bank, as construction lender under the interim construction loan for the Project, arising out of the above-described mortgages and assignments made to First Hawaiian Bank. The Developer advises that the construction loan to which the interests of purchasers and prospective purchasers are subordinated is in the principal amount of \$13,600,000.00; that the interest rate thereunder shall not exceed two (2) percentage points over First Hawaiian Bank's Prime Interest Rate; that the term of the construction loan shall not exceed thirty-six (36) months; and that the interest rate on default shall not

exceed four (4) percentage points over the interest rate on the note in effect at the time of default.

STATUS OF THE PROJECT: The Developer advises that it has entered into a Construction Contract with Morrison-Knudsen Company, Inc. and that it contemplates a completion date for construction to be on or about August 1, 1980.

A purchaser or prospective purchaser should be cognizant of the fact that this Public Report represents information disclosed by the Developer in the required Notice of Intention submitted March 30, 1979, and information subsequently filed as of October 17, 1979.

THIS FINAL HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT IS MADE PART OF REGISTRATION NO. 1114 FILED WITH THE COMMISSION ON MARCH 30, 1979.

This report when reproduced, shall be a true copy of the Commission's Public Report. The paper used in making facsimiles must be white.



(for)
AH KAUYOUNG, Chairman
Real Estate Commission
State of Hawaii

Distribution:

Department of Taxation
Bureau of Conveyances
Planning Department, County of Kauai
Federal Housing Administration
First Hawaiian Bank, Escrow Agent

Registration No. 1114

October 30, 1979