

# 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

HALE KAHEKILI  
Lower Honoapiilani Highway, Honokowai,  
Lahaina, Maui, Hawaii

REGISTRATION NO. 1180

### **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: April 3, 1980

Expires: May 3, 1981

#### 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 SEPTEMBER 25, 1979, AND INFORMATION SUBSEQUENTLY FILED AS OF MARCH 31, 1980. 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. HALE KAHEKILI is a leasehold condominium project consisting of one (1) four-story building, without basement, and twenty-four (24) apartments and thirty (30) parking stalls in this phase. An additional twenty-six (26) parking stalls will be constructed along with the said thirty stalls in this phase, and the buyers of the apartment units in this phase will be able to use the additional twenty-six parking stalls until the subsequent condominium project or projects are built. Of the total fifty-six (56) stalls, fourteen (14) shall be for compact cars.

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 514A 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, April 3, 1980, 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 HALE KAHEKILI 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: HALE KAHEKILI

LOCATION: The approximately 50,007 square feet of land to be committed to the regime is situated on Lower Honoapiilani Highway, Honokowai, Lahaina, Maui, Hawaii.

TAX MAP KEY: SECOND DIVISION: 4-4-01:39 and a portion of 40.

ZONING: Apartment (A-2)

DEVELOPER: J & J Development Co., Inc., a Hawaii corporation, Whalers Realty, Inc., Whalers Village, Kaanapali Beach, Hawaii 96761, Telephone 661-8777, whose officers are: William A. Jorgensen, President, James E. Cain, Vice President, Tove K. Jorgensen, Secretary-Treasurer, and Priscilla A. Cain, Assistant Secretary-Treasurer.

ATTORNEY REPRESENTING DEVELOPER: Ueoka & Luna (Attention: B. Martin Luna, Esq.), 2103 Wells Street, Wailuku, Maui, Hawaii 96793, Telephone 244-7914.

DESCRIPTION: The proposed Declaration of Horizontal Property Regime and plans submitted by the Developer indicate a leasehold condominium project consisting of twenty four (24) apartments contained in one (1) four-story building, without basements, constructed principally of concrete, masonry, wood and stucco.

Apartment Nos. 125 through 130, 225 through 230, 325 through 330 and 425 through 430, inclusive, are located in Building B (Lanai Building).

The apartments are built according to several different types of floor plans, as follows:

Type X-2 consists of one bedroom, one bathroom, a kitchen and a combination dining and living room with a floor area of 622 square feet and a lanai of approximately 105 square feet.

Type X-3 consists of one bedroom, one bathroom, a kitchen and a combination dining and living room with a floor area of 620 square feet and a lanai of approximately 103 square feet.

Type Y-6 consists of one bedroom, one bathroom, a kitchen and a combination dining and living room on the main level and a bedroom and one bathroom on the loft level, containing a total floor area of approximately 832 square feet and a lanai on the main level with an area of approximately 105 square feet.

Type Y-7 consists of one bedroom, one bathroom, a kitchen and a combination dining and living room on the main level and a bedroom and one bathroom on the loft level, containing a total floor area of approximately 823 square feet and a lanai on the main level with an area of approximately 105 square feet.

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.

The apartments in each building have immediate access to the grounds of the project or to an elevator and two stairways 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, the inner decorated or finished surfaces of all walls, floors and ceilings, doors and door frames, windows and window frames, the lanai air space (if any), and all fixtures originally installed therein.

The Developer has informed the Commission that the 24 units constitute the first increment of the project. Within the next ten years, the Developer plans to construct from time to time an additional 96 apartment units in three separate four (4) story buildings along with other recreational amenities, on the remaining area of the land and such other land that Developer may acquire in the interim. If the county government is unable to supply the additional units with water for domestic use, the Developer plans to provide such water for the new units from an existing well on the land, utilizing the reverse osmosis system or other water-purifying device for the well. Although the additional 96 units shall be a part of the present 24-unit development, the cost of maintaining the private water system for the 96 units may be borne only by said units unless the said system is used to supply water to the 24 apartments in the first phase also. The private water system for domestic use shall be utilized only after it is approved by the appropriate governmental agencies; meanwhile, it may be used by the Developer for irrigation purposes for the project.

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, stairwells and stairs, walkways, elevators, entrances and exits of said buildings;
3. All yards, grounds, landscaping and refuse areas and trash chutes;
4. All driveway and parking areas and parking stalls for 30 cars.
5. All pipes, 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;
6. Swimming pool and jacuzzi.
7. Mailbox structure.
8. Electrical and mechanical rooms, janitor and storage areas as designated on condominium map.
9. Solar water heating system and sewage treatment plant.
10. Any and all other apparatus and installations of common use and all other parts of the land described, necessary or convenient to its existence, maintenance and safety, or normally in common use to the owners of apartments within the project.

An additional 26 parking stalls will be constructed along with the said 30 stalls in this phase, and the buyers of apartment units in this phase will be able to use the additional parking stalls until the subsequent condominium project or projects are built. Of the total 56 parking stalls, 14 will be for compact cars.

NOTE: Hale Kahekili may merge with another condominium project or projects to be built by the Developer upon adjacent land owned by the Owners of the Hale Kahekili parcel. In the event of such merger, a total of 96 new apartments will become a part of Hale Kahekili, and the above mentioned common elements and the common elements of the new project or projects shall be merged to permit all the owners of the units in Hale Kahekili and the owners of the units in the new project or projects to enjoy them (See page 8 of the Preliminary Public Report regarding merger).

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: each entry hallway, all exterior doors and windows adjoining and serving an apartment or apartments appurtenant to and for the exclusive use of such apartment or apartments which it serves and mailboxes appurtenant to each apartment.

INTEREST TO BE CONVEYED PURCHASER: The Developer proposes to convey apartments by way of a Condominium Conveyance Document which purports to convey a fee interest in an apartment and a specified undivided interest in and to the common elements of the apartment building, together with a specified undivided leasehold interest in and to the land submitted to the Horizontal Property Regime. The Condominium Conveyance Document specifically provides that no assignment, mortgage or sublease may be made of the leasehold interest in the land separate and apart from a transfer of the apartment with which the Condominium Conveyance Document was issued.

Under the provisions of the proposed Declaration, the undivided interest in the common elements ("common interest") appertaining to each of the respective apartments and the undivided interests to be demised under the Condominium Conveyance Document to each of the respective apartment purchasers are as follows:

<u>Units</u>	<u>Unit Type</u>	<u>% Each</u>	<u>Total %</u>
125, 130, 225, 230 325 and 330	X-2	3.9035	23.4214
126, 127, 128, 129, 226, 227, 228, 229, 326, 327, 328 and 329	X-3	3.8821	46.5850
425 and 430	Y-6	5.0312	10.0623
426, 427, 428 and 429	Y-7	4.9828	<u>19.9313</u>
			100.0000

The foregoing common interests also represent the proportionate share of the respective apartment owners in all common profits and common expenses and for all other purposes, including voting. In the event Hale Kahekili is merged with another project or projects, the undivided percentage interest of each apartment unit will be reassessed on a proportionate basis as the area of each apartment unit compares with the total area of the apartments in the merged project.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The Declaration provides that, except when a first mortgagee has entered into possession of an apartment following (i) a default under a 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, except that the apartments may also be rented for transient 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.

The proposed House Rules provide that pets will not be allowed on the premises except upon the approval of the Board of Directors.

OWNERSHIP OF TITLE: A preliminary title report dated March 24, 1980, issued by Title Guaranty of Hawaii, Inc., as submitted to the Commission, indicates that William A. Jorgensen and Tove K. Jorgensen, husband and wife, and James E. Cain and Priscilla A. Cain, husband and wife, are the fee simple owners of the property to be committed to the regime.

ENCUMBRANCES AGAINST TITLE: Said preliminary title report dated March 24, 1980, issued by Title Guaranty of Hawaii, Inc., and documents submitted to the Commission, provide that the fee simple title to the land is vested in said William A. Jorgensen, Tove K. Jorgensen, James E. Cain, and Priscilla A. Cain, by deeds dated February 12, 1979, February 26, 1979, and March 9, 1979, and recorded in Liber 13504, Page 412, Liber 13517, Page 621, and Liber 13543, Page 244, respectively, and the following are encumbrances against title to the property:

1. Real Property taxes, second installment, fiscal year July 1, 1979 - June 30, 1980.

Tax Key: 4-4-1-39 & 40 (2)

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

3. Reservations and covenant contained in Land Patent Grant Number S-14,687, to-wit:

"Reserving to the State of Hawaii, its successors and assigns, in perpetuity, all minerals and surface and ground waters appurtenant to the land described, together with the right to enter, sever, prospect for, mine and remove such minerals by deep mining, strip mining, drilling and any other means whatsoever, and to occupy and use so much of the surface as may be required therefor or to capture, divert or impound water; provided, that the State shall pay just compensation to the surface owner for improvements taken as a condition precedent to the exercise of such reserved rights.

The Patentees, for themselves, their assigns and the heirs and assigns of the survivor of them, covenant that the use and enjoyment of the land herein granted shall not be in support of any policy which discriminates against anyone based upon race, creed, color or national origin."

4. Reservations and covenant contained in Land Patent Grant Number S-14,686, to-wit:

"Reserving to the State of Hawaii, its successors and assigns, in perpetuity, all minerals and surface and ground waters appurtenant to the land described, together with the right to enter, sever, prospect for, mine and remove such minerals by deep mining, strip mining, drilling and any other means whatsoever, and to occupy and use so much of the surface as may be required therefor or to capture, divert or impound water; provided, that the State shall pay just compensation to the surface owner for improvements taken as a condition precedent to the exercise of such reserved rights.

The Patentee, for herself, her heirs and assigns, covenants that the use and enjoyment of the land herein granted shall not be in support of any policy which discriminates against anyone based upon race, creed, color or national origin."

5. As to portion covered by Royal Patent Number 415, Land Commission Award Number 75 to C. Crockett:

Reservation contained in deed dated August 22, 1950, recorded in Liber 2388 on Page 81, to-wit:

"Pursuant to the provisions of Executive Order 9908, dated December 5, 1947, filed December 8, 1947, with the Division of the Federal Register (12 Fed. Reg. 8223, December 9, 1947), all uranium, thorium, and all other materials determined pursuant to Section 5 (B) (1) of the Atomic Energy Act of 1946 (60 Stat. 761) to be peculiarly essential to the production of fissionable material, contained, in whatever concentration, in deposits in Parcel No. 4 covered by this instrument are hereby reserved for the use of the United States, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same, making just compensation for any damage or injury occasioned thereby. However, such land may be used, and any rights otherwise acquired by this disposition may be exercised, as if no reservation of such materials had been made; except that, when such use results in the extraction of any such material from the land in quantities which may not be transferred or delivered without a license under the Atomic Energy Act of 1946, as it now exists or may hereafter be amended, such materials shall be the property of the United States Atomic Energy Commission, and the Commission may require delivery of such material to it by any possessor thereof after such material has been separated as such from the ores in which it was contained. If the Commission requires the delivery of such material to it, it shall pay to the person mining or extracting the same, or to such other person as the Commission determines to be entitled thereto, such sums, including profits, as the Commission deems fair and reasonable for the discovery, mining, development, production, extraction, and other services performed with respect to such material prior to such delivery, but such payment shall not include any amount on account of the value of such material before removal from its place of deposit in nature. If the Commission does not require delivery of such material to it, the reservation hereby made shall be of no further force or effect."

6. Mortgage made by William A. Jorgensen and Tove K. Jorgensen, husband and wife, and James E. Cain and Priscilla A. Cain, husband and wife, in favor of Finance Hawaii, Inc., a Hawaii corporation, dated February 12, 1979, and recorded in Liber 13504 on Page 418.

7. Mortgage made by William A. Jorgensen and Tove K. Jorgensen, husband and wife, and James E. Cain and Priscilla A. Cain, husband and wife, in favor of Finance Hawaii, Inc., a Hawaii corporation, dated February 7, 1979, and recorded in Liber 13517 on Page 625.

8. Mortgage made by William A. Jorgensen and Tove K. Jorgensen, husband and wife, and James E. Cain and Priscilla A. Cain, husband and wife, in favor of Finance Hawaii, Inc., a Hawaii corporation, dated February 12, 1979, and recorded in Liber 13543 on Page 252.

9. Consolidation Agreement dated May 9, 1979, recorded in Liber 13831 on Page 197, by and between William A. Jorgensen, Tove K. Jorgensen, James E. Cain and Priscilla A. Cain, "Owner", and the County of Maui.

10. Subdivision approval by the County of Maui.

NOTE: The proposed Declaration of Horizontal Property Regime states in part that the Developer, at its sole discretion without the consent of the apartment owners, shall reserve the right at any time up to but not later than December 31, 1989, unless such time is extended by all of the apartment owners in the project to merge the project with subsequent condominium project or projects containing 96 units on an adjacent parcel of land for a total of 120 apartment units, by consolidating the two parcels of land, upon the happening of all of the following:

1. Approval by the appropriate governmental agencies of the consolidation of the two parcels of land on which this Project and the subsequent condominium project or projects are situate.

2. Recordation in the Bureau of Conveyances of the State of Hawaii by the Developer of a "Certificate of Merger" which shall contain:

(a) A description of the land comprising the merged Projects upon consolidation of the parcels comprising Hale Kahekili and the subsequent condominium project or projects;

(b) The common interest of each apartment of the Project after completion of the merger, which percentage interests shall be determined for each apartment by dividing the approximate floor area of each apartment in the merged Project by the aggregate of the floor areas of all apartments in the Project.

(c) From and after the date of the recordation of the said Certificate of Merger, the following consequences shall ensue:

(1) Use of Common Elements. All of the apartments shall have the right to use the common elements in the Project to the same extent and subject to the same limitations as are imposed upon an apartment as though the merged phases had been developed as one project.

(2) Board of Directors. The Board of Directors of this Project, immediately upon the merger, shall govern the merged project after completion of the merger; at a special meeting called for the purpose after the merger, the apartment owners may remove the existing Board and elect a Board to govern the merged project until the next annual meeting. Procedures for calling and holding such a special meeting shall be those as set forth in the By-Laws.

(3) Interpretation. For purposes hereof, the Project shall be treated as a single project developed as a whole from the beginning, and there shall be only one Association of Apartment Owners and one Board, and the Declaration and the By-Laws of this Project and the Declaration and the By-Laws of the subsequent condominium project or projects shall be construed as one document applicable to the entire project. It is the purpose hereof to provide that from and after the date of the merger all of the project so merged shall be treated as though it had been developed, divided into apartments, held, occupied and used by the owners thereof as a single undivided project.

In connection with, and only to the extent necessary for the creation of the apartments and common elements, as aforesaid, the Developer shall have the right up to December 31, 1989, to remove, amend or add common elements by way of consolidating adjoining parcels of property; to remove, amend or add parking spaces; to enter upon the Project with employees, agents and contractors for all purposes reasonably necessary for or useful to constructing and completing the apartments and common elements according to plans and specifications or amended plans and specifications approved by the officer of the County of Maui having jurisdiction over the issuance of building permits; to connect the apartments and common elements to utilities of the Project, to file amendments to the Declaration for purposes of certifying condominium maps filed as reflecting the improvements shown therein to be "as built"; and to sell the apartments. Such rights shall include the following:

1. 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 apartments;
2. The right in the nature of an easement over and upon the existing building and common elements of the Project to create and cause dust, noise, vibration and other nuisances created by and resulting from any work connected with or incidental to the development, construction and sale of the apartments;
3. The right to place signs upon the Project in conjunction with sales of apartments;
4. The right of the Developer to use any apartment owned or rented by the Developer for sales or display purposes until all apartments have been sold.

then added apartment shall be required to advance to the Association, as constituted after merger, upon filing of the Certificate of Merger, an amount equal to the average existing apartment's share of funds on deposit immediately prior to such merger with the Association hereby created for operation of the merged project, including the Maintenance Reserve Fund, but excluding funds which will be expended during the next 30 days.

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 this paragraph, all as the true and lawful attorney-in-fact of the respective owners from time to time of the apartments of the Project as herein originally constituted or as merged as aforesaid.

PURCHASE MONEY HANDLING: A copy of the executed Escrow Agreement dated March 30, 1979, between Standard Escrow, 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-37, 514A-39, and 514A-63 through 514A-66 thereof.

Among other provisions, the Escrow Agreement provides in part:

A purchaser shall be entitled to a return of his funds, and Escrow shall pay such funds to such purchaser, without interest, promptly after purchaser has requested such return if Escrow shall have received from Developer a written notice that any one of the following has occurred:

(a) Developer shall have requested Escrow to return to purchaser the funds of purchaser then being held hereunder by Escrow; or

(b) Developer shall have notified Escrow of Developer's exercise of the option to rescind the sales contract pursuant to any right of rescission stated therein or otherwise available to Developer; or

(c) With respect to a purchaser whose funds were obtained prior to the issuance of the Final Report, there shall have been a change in the building plans requiring approval of a county officer having jurisdiction over the issuance of building permits except such changes as are specifically authorized in the Declaration of Horizontal Property Regime or by the terms of the Sales Contract or to which said purchaser has otherwise consented in writing; or

(d) The Final Report differs in a material respect from the Preliminary Report, and the purchaser's written approval of such change shall not have been obtained; or

(e) The Final Report shall not have been issued within one (1) year from the date of issuance of the Preliminary Report.

In any of the foregoing events, Escrow shall, upon receipt of a written request for a refund from purchaser, pay said funds to said purchaser (less cancellation fee to Escrow of \$25.00 per apartment) and thereupon said sales contract and any conveyance document theretofore delivered to Escrow shall be returned to Developer and shall be deemed no longer held hereunder; provided, however, that no refund shall be made to a purchaser at purchaser's request prior to receipt by Developer of written notice from Escrow of its intent to make such refund.

The specimen Sales Contract states that certain of its terms are subject to the terms of the Escrow Agreement. The Sales Contract also provides, in part: (1) that purchaser agrees that all rights and interest of the purchaser are and shall be subject and subordinate to the lien of any mortgage made to finance the cost of construction of the project by developer; (2) if construction of the project is not completed by March 31, 1982, either Developer or purchaser may, upon fifteen (15) days written notice to the other, terminate the Sales Contract and all sums paid by purchaser less escrow fee shall be refunded without interest; (3) if purchaser has defaulted on the Sales Contract, Developer may terminate said contract, at which time, Escrow shall charge a \$25.00 cancellation fee and thereafter treat all funds of such purchaser as the escrowed funds of Developer.

The Sales Contract also states that in the event less than 20 of the 24 apartments in the Project are sold by March 31, 1981, or if Seller is prevented by law or by conditions beyond Seller's control from proceeding with or completing the construction of the Project within the time and under the conditions as herein contemplated, Seller, at Seller's option, may cancel the Sales Contract upon written notice to Buyer, in which event all sums paid by Buyer thereunder, plus interest, shall be refunded to Buyer, and the Sales Contract shall be deemed to have been cancelled and both parties shall be released from all obligations and liability thereunder. Further, in the event the construction of the Project is at any time from time to time delayed due to governmental restrictions or regulations, or is delayed by fire, earthquake, acts of God, the elements, war or civil disturbances, strikes or other labor disturbances, or any other condition or event beyond the control of Seller, and if Seller determines that the total cost of completing the Project (as set forth in Seller's verified statement of all costs in completing the Project, filed or to be filed with the Real Estate Commission prior to issuance of the Final Public Report) has been or will be increased as a result of any such delay or delays, then in any such event, Seller may, at Seller's option, cancel the Sales Contract upon written notice to Buyer unless Buyer, within thirty (30) days after receipt of written notice from Seller advising Buyer of the increased purchase price, agrees in writing to pay such increased purchase price for the property as shall be determined by Seller; provided, however, that Seller may not increase the purchase price for the property by an amount in excess of the product of the above-stated undivided interest in the common elements multiplied by the total amount of the increases in the total cost of completing the Project. In the event Seller elects to cancel the Sales Contract pursuant to the terms of the preceding sentence, all sums paid by Buyer thereunder, plus interest, shall be refunded to Buyer, and the Sales Contract shall thereupon

be deemed to have been cancelled and both parties shall be released from all obligations and liability thereunder.

The Sales Contract further states:

It is understood that Seller, in order to finance the construction of the Project, may be granting a first mortgage lien on the Project and the underlying land to the interim lender during the construction period. Without limiting the generality of the foregoing, Buyer agrees that all of his rights and interest under the Sales Contract shall in all respects be inferior and subordinate to the lien of said mortgage, and that Buyer, upon foreclosure of the lien of said mortgage, shall execute any releases or other documents implementing said subordination as may be requested by the mortgagee. Seller agrees that the principal amount of said interim loan shall not exceed \$3,500,000.00; (b) the annual interest rate shall not exceed Bank of Hawaii prime plus 3%; (c) the loan shall be repaid not later than five (5) years from its date; and (d) the proceeds of said loan shall be used for construction, planning, marketing, and other development costs of the Project.

NOTE: The Sales Contract shall not be construed as a present transfer of an interest in the apartment or the land, but rather it is an agreement to transfer an apartment and an undivided fractional interest in the common elements of the Project (exclusive of land) and to lease an interest in the land.

NOTE: Developer advises the Commission 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 or prospective purchaser to read with care the Sales Contract and the executed Escrow Agreement. The Escrow Agreement establishes how the proceeds paid into escrow are placed in trust, as well as the retention, disbursement and refund of said trust funds.

MANAGEMENT OF THE PROJECT: The proposed Declaration states that the administration of the Horizontal Property Regime shall be vested in the "Association of Apartment Owners" of the Project, referred to as the "Association". Each fee owner of an apartment automatically, upon becoming an owner, becomes a member of said Association and remains a member until such time as his ownership ceases. Under the proposed By-Laws the Association will have the responsibility of the general administration of the project, establishing and collecting monthly assessments, and arranging for the management of the project by a managing agent. The Board of Directors are given the power and duty to manage, operate, care, and maintain the property of the regime, the common elements and the limited common elements, to approve the annual budget, and to employ and dismiss personnel necessary

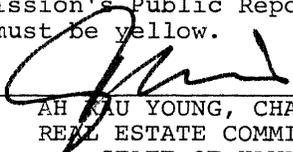
for the maintenance, operation, repair, and replacement of the common elements. At this time, the Developer has not yet appointed an initial managing agent.

FINANCING OF THE PROJECT: The Developer's attorney has advised the Commission that the Developer will obtain a Construction Mortgage and by virtue of said Mortgage the construction of the project will begin. Also, the Developer will attempt to obtain a commitment for permanent mortgages of individual apartment units.

STATUS OF PROJECT: The Developer states in its Notice of Intention that construction of the project will commence in April 1980, and that construction is estimated to be completed twelve months after construction begins.

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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 September 25, 1979.

This PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 1180 filed with the Commission on September 25, 1979. 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 MAUI
- FEDERAL HOUSING ADMINISTRATION
- ESCROW AGENT

REGISTRATION NO. 1180

April 3, 1980