

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

KIAHUNA GOLF VILLAGE (PHASE 1A)
Poipu, Island and County of Kauai

REGISTRATION NO. 1259

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 of this report 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 MARCH 6, 1980, AND ADDITIONAL INFORMATION SUBSEQUENTLY SUBMITTED AS OF MARCH 24, 1980. THE DEVELOPER, IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF CHAPTER 514A, HAWAII REVISED STATUTES.

1. KIAHUNA GOLF VILLAGE (PHASE 1A) is a proposed leasehold condominium project consisting of fourteen (14) buildings without basements and containing

sixty-four (64) apartment units. There are a total of ninety-six (96) parking stalls in the Project.

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 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

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, as amended, and the Condominium Rules and Regulations which relate to Horizontal Property Regimes.

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 the registration on KIAHUNA GOLF VILLAGE (PHASE 1A) condominium project. The Developer has the responsibility of placing a true copy of the Preliminary Public Report (yellow paper stock) and the Disclosure Abstract 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 purchaser and prospective purchaser is also the responsibility of the Developer.

NAME OF PROJECT: KIAHUNA GOLF VILLAGE (PHASE 1A).

LOCATION: The approximately 6.5 acres of land to be submitted to the horizontal property regime are situated at Poipu, Island and County of Kauai, State of Hawaii. The project is to be located upon proposed Lot B resulting from the consolidation and resubdivision of Lots 195 and 262 of Land Court Application 956. A copy of the Preliminary Subdivision Map has been submitted to the Commission.

TAX MAP KEY NO.: Fourth Div.: 2-8-14: Por. 5

ZONING: R-10

DEVELOPER: MOANA/GOLF VILLAGE DEVELOPMENT CORPORATION, a Hawaii corporation, the principal place of business and post office address of which are Koloa, Kauai, Hawaii and R.R. #1, Box 73, Koloa, Kauai, Hawaii, respectively, phone (808) 742-6411. The officers of the corporation are: Frank J. Supon, President; and Donna G. Sidelinger, Secretary, both of whose business address is Suite 4340, 555 California Street, San Francisco, California; and Robert J. German, Vice President; and Steven Takahashi, Treasurer, both of whose business address is Koloa, Kauai, Hawaii.

ATTORNEY REPRESENTING DEVELOPER: Hamilton, Gibson, Nickelsen, Rush & Moore (Attention: D. Scott MacKinnon and Earl T. Sato), 20th Floor Hawaii Building, 745 Fort Street, Honolulu, Hawaii 96813, phone: 521-0400.

DESCRIPTION: The proposed Declaration of Horizontal Property Regime and plans submitted by the Developer indicate a leasehold condominium project consisting of sixty-four (64) condominium apartment units, which spaces, together with appurtenant lanais, if any, are referred to therein as "Plantation Houses", and are contained in fourteen (14) buildings without basements, of wood frame construction with redwood and cedar exteriors and cedar shingle roofs; there are fourteen (14) two-story buildings, being Buildings Nos. 18 through 31. Said Buildings and Plantation Houses are designated on the Condominium Map and described as follows:

(a) The buildings of the Project are constructed according to two (2) different models, designated "Fourplex Building" and "Sixplex Building" Buildings 18, 20, 22, 23, 25, 26, 27, 28, 30 and 31 are constructed according to the layout designated as Fourplex Building; Buildings 19, 21, 24 and 29 are constructed according to the layout designated as Sixplex Building.

(b) Plantation Houses 1101 and 1102 are located on the first floor of Building 18; Plantation Houses 1103 and 1104 are located on the second floor of Building 18.

(c) Plantation Houses 1105, 1106 and 1107 are located on the first floor of Building 19; Plantation Houses 1108, 1109 and 1110 are located on the second floor of Building 19.

(d) Plantation Houses 1111 and 1112 are located on the first floor of Building 20; Plantation Houses 1113 and 1114 are located on the second floor of Building 20.

(e) Plantation Houses 1115, 1116 and 1117 are located on the first floor of Building 21; Plantation Houses 1118, 1119 and 1120 are located on the second floor of Building 21.

(f) Plantation Houses 1121 and 1122 are located on the first floor of Building 22; Plantation Houses 1123 and 1124 are located on the second floor of Building 22.

(g) Plantation Houses 1125 and 1126 are located on the first floor of Building 23; Plantation Houses 1127 and 1128 are located on the second floor of Building 23.

(h) Plantation Houses, 1129, 1130 and 1131 are located on the first floor of Building 24; Plantation Houses 1132, 1133 and 1134 are located on the second floor of Building 24.

(i) Plantation Houses 1135 and 1136 are located on the first floor of Building 25; Plantation Houses 1137 and 1138 are located on the second floor of Building 25.

(j) Plantation Houses 1139 and 1140 are located on the first floor of Building 26; Plantation Houses 1141 and 1142 are located on the second floor of Building 26.

(k) Plantation Houses 1143 and 1144 are located on the first floor of Building 27; Plantation Houses 1145 and 1146 are located on the second floor of Building 27.

(l) Plantation Houses 1147 and 1148 are located on the first floor of Building 28; Plantation Houses 1149 and 1150 are located on the second floor of Building 28.

(m) Plantation Houses 1151, 1152 and 1153 are located on the first floor of Building 29; Plantation Houses 1154, 1155 and 1156 are located on the second floor of Building 29.

(n) Plantation Houses 1157 and 1158 are located on the first floor of Building 30; Plantation Houses 1159 and 1160 are located on the second floor of Building 30.

(o) Plantation Houses 1161 and 1162 are located on the first floor of Building 31; Plantation Houses 1163 and 1164 are located on the second floor of Building 31.

(p) The Plantation Houses are constructed according to two (2) general floor plans designated as "One-Bedroom Type" and "Two-Bedroom Type". A description of each of said floor plans, designating the layout, number of rooms and approximate floor area is as follows:

(i) One-Bedroom Type. There are thirty-two (32) one-bedroom units in the project being Plantation

House Nos. 1101, 1102, 1105, 1106, 1107, 1111, 1112, 1115, 1116, 1117, 1121, 1122, 1125, 1126, 1129, 1130, 1131, 1135, 1136, 1139, 1140, 1143, 1144, 1147, 1148, 1151, 1152, 1153, 1157, 1158, 1161 and 1162. Each of these Plantation Houses contains four (4) rooms including one (1) bedroom, a bathroom, a dressing room, and a living/dining room with compact kitchen area, with an approximate floor area, including lanais, depending on the location of the unit within each building, as follows:

	<u>Interior</u>	<u>Lanai</u>	<u>Total</u>
End Unit:	729 sq. ft.	230 sq. ft.	959 sq. ft.
Middle Unit:	768 sq. ft.	193 sq. ft.	961 sq. ft.

(ii) Two-Bedroom Type. There are thirty-two (32) two-bedroom units in the Project, being Plantation House Nos. 1103, 1104, 1108, 1109, 1110, 1113, 1114, 1118, 1119, 1120, 1123, 1124, 1127, 1128, 1132, 1133, 1134, 1137, 1138, 1141, 1142, 1145, 1146, 1149, 1150, 1154, 1155, 1156, 1159, 1160, 1163 and 1164. Each of these Plantation Houses contains six (6) rooms including one (1) bedroom, one (1) bathroom, a dressing room, and a living/dining room with compact kitchen area on the first level and one (1) bedroom and one (1) bathroom on the mezzanine level of each unit, with an approximate floor area, including lanais, depending on the location of the unit within each building, as follows:

	<u>Interior</u>	<u>Lanais</u>	<u>Total</u>
End Unit:	1046 sq. ft.	274 sq. ft.	1320 sq. ft.
Middle Unit:	1085 sq. ft.	308 sq. ft.	1393 sq. ft.

NOTE: In accordance with local architectural practice the floor areas described above are gross floor areas measured from the center line of all party walls and to the outside of all perimeter walls, including all walls, vents, ducts and the like, some of which are common elements.

(q) Each of the Plantation Houses has immediate access to the grounds of the Project and/or to a corridor which leads to stairways leading to the grounds of the Project and the walkways connecting the building in which it is located to the street entrance and parking areas of the Project.

(r) The respective Plantation Houses 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 Plantation House or any pipes, wires, conduits or other utility or service lines running through such Plantation Houses which are utilized for or serve more than one Plantation House, the same being deemed common elements as hereinafter provided. Each Plantation House 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 exterior air space bounded by the interior of the lanai railing, and all fixtures originally installed therein, including a built-in range and oven, refrigerator, dishwasher, garbage disposal and water heater.

COMMON ELEMENTS: The proposed Declaration states that one (1) freehold estate is designated in all remaining portions of the Project, therein called the "common elements", including specifically but not limited to:

- (a) Said land in fee simple;
- (b) All foundations, floor slabs, columns, beams, supports, load-bearing walls, roofs, chases, entry halls, stairs, walkways, entrances and exits of the buildings of the Project;
- (c) All yards, grounds, landscaping, refuse and service areas, and trash disposal equipment;
- (d) All parking areas as designated on the Condominium Map;
- (e) 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 plantation house for services such as power, light, gas, water, sewer, telephone and television signal distribution, if any;
- (f) 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.

NOTE: The Developer advises that pursuant to the provisions of paragraph Q of the proposed Declaration that the Project lands are subject to a reciprocal use easement in favor of the thirty-four (34) fairway homes to be constructed by the Developer on adjoining land and to be known as "Kiahuna Golf Village (Phase 2A)" such that said thirty-four (34) fairway homes have and shall have the right appurtenant thereto to use all of the common elements of Kiahuna Golf Village (Phase 1A) excluding, however, such as shall be located within the buildings, to the same extent and subject to the same limitations as are imposed upon a plantation house in Kiahuna Golf Village (Phase 1A) or Kiahuna Golf Village (Phase 2A). It is understood and agreed that such right to use the common elements shall be in the nature of an easement and each person upon whom the Declaration is binding agrees, and shall agree, by the mere acquisition, rental or occupancy of any Plantation House to be bound thereby.

LIMITED COMMON ELEMENTS: There are no limited common elements in this Project.

INTEREST TO BE CONVEYED TO PURCHASERS: The proposed Declaration states that the plantation houses shall have appurtenant thereto an undivided 1/64th fractional interest (1.5625 percentage interest) in all common elements of the Project (therein called the "common interest") and the same proportionate share in all common profits and expenses of the Project and for all other purposes, including voting.

NOTE: The Developer advises that Moana/Kauai Corporation owns a tennis club known as the "Kiahuna Tennis Club" and that Moana/Kauai Corporation proposes to enter into a License Agreement with Kiahuna Plantation Houses, Ltd. under the terms of which the owner of a plantation house in the Project and his respective family, tenants or guests shall have a non-exclusive license to use the recreational facilities of the Kiahuna Tennis Club upon the payment of a reasonable monthly fee to be determined on an annual basis by the owner of the Kiahuna Tennis Club, but in no event greater than an amount equal to five percent (5%) of the gross revenues from the rental of units in Kiahuna Golf Village (Phases 1A and 1B) for the preceding month. This license fee will constitute a portion of the Association's expenses which are reflected in the monthly assessment for common expenses against the respective plantation houses.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The plantation houses shall be used by the respective owners thereof, their families, guests and tenants only for residential purposes, including resort hotel use and for no other purpose. The plantation houses in the Project or any interest therein shall not be sold, transferred, conveyed, leased, occupied, rented or used for or in connection with any time-sharing purpose or under any time-sharing plan, arrangement or program, including without limitation any so-called "vacation license", "travel club membership" or "time-interval ownership" arrangement. The term "time-sharing" as used herein shall be deemed to include, but is not limited to, any plan, program or arrangement under which the right to use, occupy, own or possess a plantation house or plantation houses in the Project rotates among various persons on a periodically recurring basis according to a fixed or floating interval or period of time, whether by way of deed, lease, association or club membership, license, rental or use agreement, co-tenancy agreement, partnership or otherwise.

EASEMENTS: The proposed Declaration provides that the Owners and Developer reserve 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 Plantation

Houses in any undeveloped portion of certain adjoining land. The Developer also reserves the right, appurtenant to the undeveloped portions of said adjoining land, in the nature of an easement over and upon any other portion of said land, to create and cause any noise, vibrations and other nuisances created by and resulting from any work connected with or incidental to the development, construction and sale of the Plantation Houses in said undeveloped portions of said adjoining land. The proposed Declaration also provides that the Developer shall have the right to conduct extensive sales activities on the Project, including the use of model Plantation Houses, sales and management offices, and extensive sales displays and activities.

OWNERSHIP OF TITLE: A Preliminary Title Report dated February 11, 1980, issued by Security Title Corporation discloses that FIRST HAWAIIAN BANK, a Hawaii corporation, and VALDEMAR L'ORANGE KNUDSEN, Trustees under Deed of Trust of Eric A. Knudsen dated April 30, 1922, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 639, Page 326, and also filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 27057, as amended, and BISHOP TRUST COMPANY, LIMITED, a Hawaii corporation, as Trustee under Deed of Trust of Augustus F. Knudsen, dated December 22, 1924, recorded as aforesaid in Liber 759, Page 399, as amended, are the owners of the fee simple title to the property to be submitted to the horizontal property regime. The Owners, have by Indenture of Lease dated July 1, 1978, filed as aforesaid as Document No. 919326, and also recorded in the Bureau of Conveyances in Liber 13425, Page 474, demised the property, among other lands, to Kiahuna Golf Village, Inc., a California corporation qualified to do business in the State of Hawaii. Kiahuna Golf Village, Inc. has the right under said Indenture of Lease to obtain an Increment Lease covering portions of the land demised thereby from the Lessors and will have Lessors issue an Increment Lease to Developer covering the Project lands from Lessors upon the Land Court's granting of the Petition to Subdivide Lot 195.

ENCUMBRANCES AGAINST TITLE: Said Preliminary Title Report as submitted to the Real Estate Commission discloses that the following are encumbrances against title to the property:

1. The provisions contained in that certain instrument dated August 27, 1937, filed in said Office of the Assistant Registrar as Document No. 40955, made by and between The McBryde Sugar Company, Limited, party of the first part, Bishop Trust Company, Limited, Trustee for Eric A. Knudsen and Augustus F. Knudsen, party of the second part, Eric A. Knudsen and Augustus F. Knudsen, parties of the third part, and Bishop Trust Company, Limited, party of the fourth part.

2. Stipulation dated June 7, 1951, filed in said Office of the Assistant Registrar as Document No. 135050, made in the matter entitled "CARL E. SCHIMMEL-FENNING, "Petitioner", vs. GROVE FARM COMPANY, LIMITED, BISHOP TRUST COMPANY, LIMITED, TRUSTEE FOR AUGUSTUS F. KNUDSEN, and COOKE TRUST COMPANY, LIMITED, and VALDEMAR L'ORANGE KNUDSEN, TRUSTEES FOR ERIC A. KNUDSEN, "Respondents, filed in the Circuit Court of the Fifth Circuit, Territory of Hawaii (now known as State of Hawaii), under E. No. 144. Re: To receive water from the Konohiki of the Ahupuaa of Koloa in a constant stream in the amount of 45,000 gallons per day, it being understood that the decree will determine the water rights petitioner's land is entitled to under the Hawaiian law of water rights.

3. The terms and provisions of that certain Lease dated July 1, 1978, filed in said Office of the Assistant Registrar as Document No. 919326 and also recorded on January 18, 1979 in said Bureau of Conveyances in Book 13425, Page 474, made by and between FIRST HAWAIIAN BANK, a Hawaii corporation, and VALDEMAR L'ORANGE KNUDSEN, Trustees under that certain Deed of Trust made by Eric A. Knudsen dated April 30, 1922, recorded in the Bureau of conveyances of the State of Hawaii in Liber 639, Page 326, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 27057, as amended, and BISHOP TRUST COMPANY, LIMITED, a Hawaii corporation, as Trustee under a Deed of Trust made by Augustus F. Knudsen dated December 22, 1924, recorded in said Bureau of Conveyances in Liber 759, Page 399, as amended, as Lessors, and KIAHUNA GOLF VILLAGE, INC., a California corporation, as Lessee, for a term of eighty (80) years and six (6) months from July 1, 1978.

4. For any taxes that may be due and owing reference is made to the Tax Assessor, Fourth Division.

PURCHASE MONEY HANDLING: A copy of the executed Escrow Agreement dated February 28, 1980, between Security Title Corporation, 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-40(6), and 514A-63 through 514A-66, H.R.S. 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:

1. Escrow receives a written request from Developer to return to purchaser the funds of such purchaser then held under the Escrow Agreement by Escrow; or

2. If a purchaser's funds were obtained prior to the issuance of a Final Public Report and if there is any material change in the condominium building plans, subsequent to the execution of purchaser's sales contract, requiring the approval of a county officer having jurisdiction over the issuance of permits for construction, unless the purchaser has given written approval or acceptance of the change, or ninety (90) days have elapsed since the purchaser has accepted in writing the plantation house or he has first occupied the plantation house; or

3. If a purchaser's funds were obtained prior to the issuance of a Final Public Report and the request is prior to the time the Final Public Report is issued; or

4. If 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 differences; or

5. If the Final Public Report is not issued within one (1) year of the date of issuance of the Preliminary Public Report; provided, that if the Final Public Report is issued after the one year period and a copy of the Final Public Report is delivered to the purchaser either personally or by registered or certified mail with return receipt requested, notwithstanding any law to the contrary, the purchaser shall have thirty (30) days from the date of delivery to exercise his right of refund and cancellation of obligation, after which period such right shall be deemed waived; provided further, that such waiver shall be effective only if at the time purchaser receives a copy of said Final Public Report he is notified in writing of his right of refund and cancellation and the waiver of such right upon his failure to act within the thirty (30) day period.

It is incumbent upon the purchaser and prospective purchaser to read and understand the Escrow Agreement before signing the Condominium Reservation Agreement since the Escrow Agreement prescribes the procedure for receiving and disbursing the purchaser's funds. Purchasers and prospective purchasers are advised to read with care the provisions of the Condominium Reservation Agreement. The Specimen Condominium Reservation Agreement specifically provides that the purchaser approve said Escrow Agreement, assume the benefits and obligations therein provided, and agree among other things to the following:

1. Late Charge. In the event any payment to be made by Buyer hereunder is not made when due, Buyer hereby agrees that such late payment shall bear interest at the rate of one percent (1%) per month from its due date until paid in full.

2. Warranties. Seller anticipates BUT DOES NOT WARRANT that the Construction contract with the general contractor for the Project will contain a clause similar to Section 13.2.2 of AIA Document A201 which provides in pertinent part that:

"If, within one year after the Date of Substantial Completion ..., any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition."

Seller makes no warranties itself, but Seller agrees that the assignment by Seller to Buyer of any and all warranties given Seller by the General Contractor for the Project, including the above described Contractor's agreement to promptly correct any of its work found to be defective or not in conformance with the Construction Contract for a period of one (1) year after the "Date of substantial Completion" of the plantation house as defined in the Construction Contract and the benefit of such agreement shall accrue to Buyer on closing without further instruments or documents. Seller hereby agrees to cooperate with Buyer during the effective period of such agreement in asserting any claims based thereon. Buyer acknowledges and agrees that Seller is not adopting the contractor's warranty or acting as co-warrantor but is merely attempting to pass through to Buyer the benefit of any such contractor's warranty, if any.

Seller shall also assign to Buyer the unexpired term, if any, of any manufacturer's or dealer's warranties covering any furnishings, fixtures and appliances in the plantation houses. Buyer acknowledges that the Seller is only passing through to Buyer any such manufacturer's or dealer's warranties; Seller is not undertaking to adopt any such warranties or to act as co-warrantor with respect to any furnishings, fixtures or appliances covered thereby. The terms of the manufacturer's or dealer's written warranties are available for the Buyer's examination at the Seller's sales office.

Except for the agreements set forth above, it is expressly understood and agreed by and between Seller and Buyer that SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PLANTATION HOUSE, CONSUMER PRODUCTS INSTALLED THEREIN, THE PROJECT OR ANYTHING INSTALLED THEREIN, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, HABITABILITY, WORKMANLIKE CONSTRUCTION OR FITNESS OF THE PLANTATION HOUSE FOR A PARTICULAR PURPOSE.

3. Reservation Agreement.

(a) Notwithstanding any other provision of the Sales Contract to the contrary, it is expressly

understood and agreed that if at the time of execution of the Agreement by the Buyer and the Seller, a Final Public Report for the Project has not been issued by the Real Estate Commission of the State of Hawaii, the Agreement shall not be legally binding upon either the Buyer or Seller. In such event, the Agreement shall constitute only a "reservation", and not a binding contract. Seller shall have no obligation to sell and Buyer shall have no obligation to buy the Plantation House described in the Agreement above. The Agreement will not become a binding sales agreement unless and until: (i) a Final Public Report is issued on the Project; (ii) Buyer has receipted for or is deemed to have receipted for the Final Public Report; and (iii) the Seller and Buyer have executed a separate confirmation letter in which they agree to render this Agreement a fully binding contract. AS LONG AS THE AGREEMENT CONSTITUTES A RESERVATION, IT MAY BE TERMINATED AT ANY TIME, WITH OR WITHOUT CAUSE, AT THE OPTION OF EITHER PARTY, BY WRITTEN NOTICE OF SUCH TERMINATION TO THE OTHER PARTY. In the event of such termination, the Seller shall cause Escrow to refund all payments previously made by Buyer without interest, and neither party shall have any other or further liability hereunder or with respect to the Project; provided that if Buyer terminates the Agreement, then Escrow shall deduct from the refund to Buyer the Escrow cancellation fee and all costs incurred by Seller, Escrow, or any lending institution in processing the Agreement or the loan application; if Seller terminates the Agreement, then Seller shall pay the Escrow cancellation fee.

(b) If the Sales Contract is entered into after the issuance of the Final Public Report on the Project, then the provisions of this paragraph shall be of no force or effect and the Agreement shall be a fully binding contract upon Buyer and Seller upon acceptance of the Agreement by Seller as provided in paragraph "F-23" of the Sales Contract.

4. No Present Transfer and Subordination to Construction Loan. The Sales Contract shall not be construed as a present transfer of any interest in the Property but rather it is an agreement to transfer in the future. Buyer acknowledges that Seller shall enter into an agreement with an established lending institution (the "Lender") pursuant to which the Lender may loan an aggregate of up to \$35,000,000.00 at an interest rate not to exceed five percent (5%) floating over the commercial prime rate of interest charged from time to time by Bank of Hawaii for a period of not more than thirty-six (36) months for construction costs, costs of acquiring the land and other associated costs of this Project and the proposed Kiahuna Golf Village Phase 1B, Phase 2A and Phase 2B condominium projects to be developed by the Seller or related entities upon lands adjoining this Project. To secure the loan, Seller shall grant to the Lender security interests covering the Seller's interest in the land and the Project, including the

Property covered by this Agreement. Buyer acknowledges and agrees that all security interests obtained by the Lender in connection with such loan as well as any extensions, renewals and modifications thereof shall be and remain at all times, until the final closing and delivery by Seller of a Condominium Conveyance Document to Buyer, a lien or charge on the Project, including the Property covered by the Agreement, prior to and superior to any and all liens or charges on the Project arising from the Agreement or any prior agreement. THE BUYER HEREBY INTENTIONALLY WAIVES, RELINQUISHES AND SUBORDINATES THE PRIORITY OR SUPERIORITY OF ANY LIEN OR OTHER LEGAL OR EQUITABLE INTEREST ARISING UNDER THIS AGREEMENT IN FAVOR OF THE LIEN OR CHARGE ON THE PROJECT OF THE SECURITY INTERESTS OF THE LENDER, INCLUDING BUT NOT LIMITED TO ANY LIEN, MORTGAGE OR OTHER CHARGE SECURING A LOAN MADE TO FINANCE THE ACQUISITION OF SAID LAND AND THE COSTS OF CONSTRUCTION AND OTHER COSTS DURING SUCH CONSTRUCTION AND ANY AND ALL ADVANCES THEREFOR, WHETHER CONTRACTUAL OR VOLUNTARY, UNTIL THE FINAL CLOSING AND DELIVERY BY SELLER OF A CONDOMINIUM CONVEYANCE DOCUMENT TO BUYER. The Buyer further covenants and agrees to execute any further documentation or subordination agreement required by the Lender to evidence this subordination and hereby irrevocably appoints Seller as Buyer's attorney-in-fact to execute any such instrument on behalf of Buyer, should Buyer fail or refuse to deliver the same within ten (10) days after request is made therefor. Said power of attorney is coupled with an interest, shall be irrevocable, and shall not be affected by the death or disability of the Buyer. Buyer also consents to Seller's assignment by way of security of Seller's interests in the Agreement and Buyer's deposits with Escrow to the Lender and agrees that in the event of passage of Seller's interests therein pursuant to said assignment, that Buyer will, at Lender's option, perform to, attorn to and recognize Lender (and its successors in interest, if any) as the Seller hereunder, with all of the rights of the Seller hereunder. Buyer further understands and agrees that prior to the consummation of the Agreement and delivery by Seller of a Condominium Conveyance Document to Buyer, the Lender has the right under certain circumstances set forth or to be set forth in the mortgage instrument, the security agreement and any other loan documents pertaining to the Agreement between Seller and Lender to foreclose its mortgage and/or enforce its other remedies thereunder or under such other loan documents or possessed at law, and purchaser hereby agrees in such connection that: the rights of Buyer hereunder are purely contractual in nature, enforceable only against Seller and its legal successors and assigns and not against the real property, improvements and/or appurtenances thereto which are the subject of said mortgage instrument, security agreement or other loan documents, and Buyer expressly acknowledges and agrees that Buyer need not be named a party defendant or plaintiff in any cause of action or suit by Lender to foreclose and/or otherwise enforce its rights under said mortgage instrument or security agreement or other loan documents, nor does

Buyer have any right to be served with process in connection therewith or to be notified of the pendency thereof.

5. Estimated Monthly Maintenance Charges.

Buyer has examined and approved the estimate of monthly maintenance charges and assessments for the Plantation Houses as shown in the Developer's Disclosure Abstract. Buyer is aware that such amounts are only estimates, and are subject to change for various reasons, and Buyer hereby specifically accepts and approves any such changes. BUYER AGREES THAT SUCH ESTIMATES ARE NOT INTENDED TO BE AND DO NOT CONSTITUTE ANY REPRESENTATION OR WARRANTY BY SELLER. INCLUDING BUT NOT LIMITED TO ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OF SUCH ESTIMATES.

MANAGEMENT OF THE PROJECT: The proposed By-Laws which are incorporated in the proposed Declaration provide that the operation of the Project shall be conducted for the Kiahuna Golf Village Owners Association (Phase 1A) by a responsible corporate Managing Agent under the direction of the Board of Directors. The Developer in its Notice of Intention indicates that the initial managing agent for the Project will be Moana/Golf Village Management Corporation, an affiliate of Developer. As provided in Section 514A-84 of the Hawaii Revised Statutes, the management contract will provide that it is for a term of one (1) year and may be terminated by either party upon sixty (60) days prior written notice.

NOTE: The Developer advises that the Condominium Reservation Agreement, Deposit Receipt & Contract to be used in connection with this Project provides that each purchaser of a Plantation House will be required to subscribe to and become a Limited Partner in Kiahuna Plantation Houses, Ltd., a limited partnership, to be organized for the purpose of operating the Plantation Houses as rental accommodations.

The purchaser and prospective purchaser is advised to read with care the agreement of Limited Partnership of Kiahuna Plantation Houses, Ltd. which provides in part:

"A Limited Partner (including his family, friends and guests) may occupy his plantation house(s) rent-free (including maid and linen service) for one or more periods each of at least three (3) days duration aggregating no more than thirty (30) days out of each calendar year, provided that he reserves his plantation house(s) ninety (90) days in advance, and that the plantation house(s) has not been rented for the period requested. If a Limited Partner does not use his full thirty (30) days' period of rent-free occupancy during any one calendar year, the

unused balance may be carried over to the following year."

NOTE: The Developer further advises that the offer and sale of the Plantation Houses in this Project together with the aforementioned limited partnership interest, has been registered with the Securities and Exchange Commission in conformity with the registration requirements of the Securities Act of 1933, and that in connection therewith the Developer has obtained the issuance of a Prospectus which will be given to each purchaser and prospective purchaser. The purchaser and prospective purchaser is advised to read with care the Prospectus before signing the Condominium Reservation Agreement.

STATUS OF PROJECT: The Developer advises that it has not yet entered into a construction contract for construction of the Project and therefore has not yet determined an estimated date for the start of or completion of construction.

The purchaser and 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 March 6, 1980, and information subsequently submitted as of March 24, 1980.

This is a PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT which is made a part of REGISTRATION NO. 1259 filed with the Commission March 6, 1980. 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

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REGISTRATION NO. 1259

April 3, 1980