

# 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

MAKENA SURF  
Makena, Maui, Hawaii

REGISTRATION NO. 1331

### 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: October 29, 1980  
Expires: November 29, 1981

#### 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 and prospective purchaser is particularly directed to the following:

THE REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED JULY 9, 1980, AND INFORMATION SUBSEQUENTLY FILED ON OCTOBER 28, 1980. THE DEVELOPER, IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF CHAPTER 514A OF THE HAWAII REVISED STATUTES.

1. MAKENA SURF is a proposed fee simple condominium project, which when complete, shall consist of one hundred eighty-four (184) apartments arranged throughout ten (10) separate Apartment Buildings, each consisting of three (3) stories, including the ground floor, shown upon the proposed Condominium Map as "Building A", "Building B", "Building C",

"Building D", "Building E", "Building F", "Building G", "Building H", "Building J", and "Building K"; three (3) separate Pool Storage And Maintenance Buildings, each being a one-story building, shown upon the proposed Condominium Map as "Pool Storage And Maintenance Building No. 1", "Pool Storage And Maintenance Building No. 2", and "Pool Storage And Maintenance Building No. 3"; two (2) loading zones, two hundred fifty-two (252) parking stalls, of which sixteen (16) are reserved for the general public, forty-six (46) are for compact cars and eight (8) are for the handicapped; and an Office/Laundry/Manager's Building, consisting of two (2) stories, including the ground floor, as shown on the proposed Condominium Map.

2. The Developer has submitted to the Commission all documents deemed necessary for the registration of the condominium project and the issuance of this Preliminary Public Report.
3. The basic documents (Declaration Of Horizontal Property Regime, By-Laws of Association of Apartment Owners and a copy of the approved Floor Plans) have not been filed in the Office of the Recording Officer.
4. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Chapter 514A, Hawaii Revised Statutes, and the Condominium Rules and Regulations which relate to Horizontal Property Regimes.
5. Promotional material has not been submitted pursuant to the rules and regulations promulgated by the Commission.
6. This Preliminary Public Report is made a part of the registration of the MAKENA SURF project. The Developer is responsible for placing this Preliminary Public Report (yellow paper stock) together with the Disclosure Abstract in the hands of all purchasers and prospective purchasers. Securing a signed copy of the Receipt for same from each purchaser and prospective purchaser is also the responsibility of the Developer.
7. This Preliminary Public Report automatically expires thirteen (13) months after date of issuance, October 29, 1980, unless a Supplementary Public Report issues or the Commission, upon review of the registration, issues an order extending the effective period of this report.

NAME OF PROJECT: MAKENA SURF

LOCATION: The approximate 16.234 acres of land to be committed to the regime is situate at Makena, Makawao, Maui, Hawaii.

TAX KEY: SECOND DIVISION 2-1-07-36

ZONING: H-M (12.16 acres); A-2 (3.53 acres)

DEVELOPER: MAKENA SURF, a Joint Venture organized under the laws of the State of Oregon, whose principal place of business and post office address is 16015 South Agnes Street, Oregon City, Oregon 97045 (Phone No.: (503) 656-2651), and whose partners are:

DWK, INC., an Oregon corporation

FUHRMAN DEVELOPMENT CO., INC., an Oregon corporation

HTK, INC., an Oregon corporation

all of whose principal place of business and post office address is 16015 South Agnes Street, Oregon City, Oregon 97045 (Phone No.: (503) 656-2651).

ATTORNEY REPRESENTING DEVELOPER: Crockett and Nakamura (William F. Crockett), P. O. Box NNN, Wailuku, Maui, Hawaii. Telephone: (808) 244-3796.

DESCRIPTION: The proposed Declaration of Horizontal Property Regime reflects that the project is to consist of one hundred eighty-four (184) apartments arranged throughout ten (10) separate apartment buildings referred to as Apartment Building A, Apartment Building B, Apartment Building C, Apartment Building D, Apartment Building E, Apartment Building F, Apartment Building G, Apartment Building H, Apartment Building J and Apartment Building K; three (3) separate pool storage and maintenance buildings referred to as Pool Storage And Maintenance Building No. 1, Pool Storage And Maintenance Building No. 2 and Pool Storage And Maintenance Building No. 3; and an office/laundry/manager's building, all situate upon the 16.234 acres of land to be submitted to the said horizontal property regime. Apartment Building A will consist of three (3) stories, including the ground floor, and sixteen (16) apartments. Apartment Building B will consist of three (3) stories, including the ground floor, and twenty-two (22) apartments. Apartment Building C will consist of three (3) stories, including the ground floor, and ten (10) apartments. Apartment Building D will consist of three (3) stories, including the ground floor, and twenty (20) apartments. Apartment Building E will consist of three (3) stories, including the ground floor, and sixteen (16) apartments. Apartment Building F will consist of three (3) stories, including the ground floor, and thirty-two (32) apartments. Apartment Building G will consist of three (3) stories, including the ground floor, and sixteen (16) apartments. Apartment Building H will consist of three (3) stories, including the ground floor, and ten (10) apartments. Apartment Building J will consist of three (3) stories, including the ground floor, and twenty (20) apartments. Apartment Building K will consist of three (3) stories, including

the ground floor, and twenty-two (22) apartments. None of the Apartment Buildings contains a basement.

Each Pool Storage And Maintenance Building will be a one-story building. Pool Storage And Maintenance Building No. 1 and Pool Storage And Maintenance Building No. 3 will each contain one storage room and one pool equipment room. Pool Storage And Maintenance Building No. 2 will contain one storage room, one pool equipment room, and a kitchen. None of the Pool Storage And Maintenance Buildings contains a basement.

The Office/Laundry/Manager's Building will consist of two stories, including the ground floor, and will contain two apartments for the use of persons designated by the Association, an office, and a laundry. The Office/Laundry/Manager's Building does not contain a basement.

The principal materials of which each Apartment Building shall be constructed are as follows: The ground floor slab shall be of poured standardweight aggregate concrete; the construction of each floor above the ground floor shall be of wood joists, plywood decking and a poured 1½" thick lightweight concrete topping; the exterior sides shall be of wood frame; the structural perimeter walls between apartments shall be of reinforced concrete blocks finished with painted plaster; the walls between the rooms within each apartment shall be of wood studs covered with painted gypsum board; the ceilings within each apartment shall be of wood joists covered with textured painted gypsum board; the exterior (outside the apartments) stairs for each Apartment Building shall be steel formed pans filled with concrete; the roof of each Apartment Building shall be of colored concrete tile over plywood deck; the interior floor of each apartment shall be covered with carpet or quarry tile; the lanai floor of each apartment shall be quarry tile over 1½" thick lightweight concrete topping over plywood deck over wood joists.

The principal materials of which each Pool Storage And Maintenance Building shall be constructed are as follows: The ground floor slab shall be of poured standardweight aggregate concrete; the roof of each Pool Storage And Maintenance Building shall be of concrete colored tile over plywood deck; the exterior sides and interior walls shall be of reinforced lightweight aggregate concrete block.

The principal materials of which the Office/Laundry/Manager's Building shall be constructed are as follows: The ground floor slab shall be of poured standardweight aggregate concrete; the floor construction above the ground floor slab shall be of wood joists, plywood decking, and a poured 1½" thick lightweight concrete topping; the exterior sides shall be of wood frame; the roof shall be of colored concrete tile over plywood deck; the interior walls shall be of wood studs covered with painted gypsum board; the ceilings shall be painted textured gypsum board over wood joists; the interior floor shall be covered with carpet, quarry tile or vinyl.

Apartments A101 through A106 are located on the ground floor (lower level) of Apartment Building A, and are numbered, in ascending order, from south to north. Apartments A201 through A206 are located on the second floor (middle level) of Apartment Building A, and are numbered, in ascending order, from south to north. Apartments A301 through A304 are located on the third floor (top level) of Apartment Building A, and are numbered, in ascending order, from south to north.

Apartments B101 through B108 are located on the ground floor (lower level) of Apartment Building B, and are numbered, in ascending order, from south to north. Apartments B201 through B208 are located on the second floor (middle level) of Apartment Building B, and are numbered, in ascending order, from south to north. Apartments B301 through B306 are located on the third floor (top level) of Apartment Building B, and are numbered, in ascending order, from south to north.

Apartments C101 through C104 are located on the ground floor (lower level) of Apartment Building C, and are numbered, in ascending order, from south to north. Apartments C201 through C204 are located on the second floor (middle level) of Apartment Building C, and are numbered, in ascending order, from south to north. Apartments C301 and C302 are located on the third floor (top level) of Apartment Building C, and are numbered, in ascending order, from south to north.

Apartments D101 through D108 are located on the ground floor (lower level) of Apartment Building D, and are numbered, in ascending order, from south to north. Apartments D201 through D208 are located on the second floor (middle level) of Apartment Building D, and are numbered, in ascending order, from south to north. Apartments D301 through D304 are located on the third floor (top level) of Apartment Building D, and are numbered, in ascending order, from south to north.

Apartments E101 through E106 are located on the ground floor (lower level) of Apartment Building E, and are numbered, in ascending order, from south to north. Apartments E201 through E206 are located on the second floor (middle level) of Apartment Building E, and are numbered, in ascending order, from south to north. Apartments E301 through E304 are located on the third floor (top level) of Apartment Building E, and are numbered, in ascending order, from south to north.

Apartments F101 through F112 are located on the ground floor (lower level) of Apartment Building F, and are numbered, in ascending order, from south to north. Apartments F201 through F212 are located on the second floor (middle level) of Apartment Building F, and are numbered, in ascending order, from south to north. Apartments F301 through F308 are located on the third floor (top level) of Apartment Building F, and are numbered, in ascending order, from south to north.

Apartments G101 through G106 are located on the ground floor (lower level) of Apartment Building G and are numbered, in ascending order, from southeast to northwest. Apartments G201 through G206 are located on the second floor (middle level) of Apartment Building G and are numbered, in ascending order, from southeast to northwest. Apartments G301 through G304 are located on the third floor (top level) of Apartment Building G, and are numbered, in ascending order, from southeast to northwest.

Apartments H101 through H104 are located on the ground floor (lower level) of Apartment Building H, and are numbered, in ascending order, from south to north. Apartments H201 through H204 are located on the second floor (middle level) of Apartment Building H, and are numbered, in ascending order, from south to north. Apartments H301 and H302 are located on the third floor (top level) of Apartment Building H, and are numbered, in ascending order, from south to north.

Apartments J101 through J108 are located on the ground floor (lower level) of Apartment Building J, and are numbered, in ascending order, from south to north. Apartments J201 through J208 are located on the second floor (middle level) of Apartment Building J, and are numbered, in ascending order, from south to north. Apartments J301 through J304 are located on the third floor (top level) of Apartment Building J, and are numbered, in ascending order, from south to north.

Apartments K101 through K108 are located on the ground floor (lower level) of Apartment Building K, and are numbered, in ascending order, from south to north. Apartments K201 through K208 are located on the second floor (middle level) of Apartment Building K, and are numbered, in ascending order, from south to north. Apartments K301 through K306 are located on the third floor (top level) of Apartment Building K, and are numbered, in ascending order, from south to north.

There are twelve types of apartments:

- A (two bedroom)
- B (two bedroom/study)
- C (two bedroom)
- D (two bedroom)
- E (two bedroom)
- F (three bedroom)
- F-1 (three bedroom)
- F-2 (three bedroom)
- G (two bedroom/study)
- G-1 (two bedroom/study)
- H (two bedroom)
- H-1 (two bedroom)

The following forty-four (44) apartments are A (two bedroom) apartments:

A102, A103, A104, A105  
B102, B103, B104, B105, B106, B107  
C102, C103  
D102, D103, D106, D107  
E102, E103, E104, E105  
F102, F103, F106, F107, F108, F109, F110, F111  
G102, G103, G104, G105  
H102, H103  
J102, J103, J106, J107  
K102, K103, K104, K105, K106, K107

Each A (two bedroom) apartment shall consist of two bedrooms, two bathrooms, a hall, a kitchen, a living-dining area, an owner's closet, and a lanai; and each such apartment shall have an approximate enclosed floor space of 1510 square feet, a lanai of approximately 335 square feet, and an approximate total floor space of 1845 square feet.

The following twenty (20) apartments are B (two bedroom/study) apartments:

A101, A106  
B101, B108  
C101, C104  
D101, D108  
E101, E106  
F101, F112  
G101, G106  
H101, H104  
J101, J108  
K101, K108

Each B (two bedroom/study) apartment shall consist of two bedrooms, two bathrooms, a study, a hall, a kitchen, a living-dining area, an owner's closet, and a lanai; and each such apartment shall have an approximate enclosed floor space of 1548 square feet, a lanai of approximately 585 square feet, and an approximate total floor space of 2133 square feet.

The following forty-four (44) apartments are C (two bedroom) apartments:

A202, A203, A204, A205  
B202, B203, B204, B205, B206, B207  
C202, C203  
D202, D203, D206, D207  
E202, E203, E204, E205  
F202, F203, F206, F207, F208, F209, F210, F211  
G202, G203, G204, G205  
H202, H203  
J202, J203, J206, J207  
K202, K203, K204, K205, K206, K207

Each C (two bedroom) apartment shall consist of two bedrooms, two bathrooms, a hall, a kitchen, a living-dining area, an owner's closet, and a lanai; and each such apartment shall have an approximate enclosed floor space of 1313 square feet, a lanai of approximately 251 square feet, and an approximate total floor space of 1564 square feet.

The following twenty (20) apartments are D (two bedroom) apartments:

A201, A206  
B201, B208  
C201, C204  
D201, D208  
E201, E206  
F201, F212  
G201, G206  
H201, H204  
J201, J208  
K201, K208

Each D (two bedroom) apartment shall consist of two bedrooms, two bathrooms, a hall, a kitchen, a living-dining area, an owner's closet, and a lanai; and each such apartment shall have an approximate enclosed floor space of 1379 square feet, a lanai of approximately 237 square feet, and an approximate total floor space of 1616 square feet.

The following eighteen (18) apartments are E (two bedroom) apartments:

A302, A303  
B302, B303, B304, B305  
E302, E303  
F304, F305, F306, F307  
G302, G303  
K302, K303, K304, K305

Each E (two bedroom) apartment shall consist of two bedrooms, two bathrooms, a hall, a kitchen, a living-dining area, an owner's closet, and a lanai; and each such apartment shall have an approximate enclosed floor space of 1038 square feet, a lanai of approximately 251 square feet, and an approximate total floor space of 1289 square feet.

The following twenty (20) apartments are F (three bedroom) apartments:

A301, A304  
B301, B306  
C301, C302  
D301, D304  
E301, E304  
F301, F308  
G301, G304  
H301, H302  
J301, J304  
K301, K306

Each F (three bedroom) apartment shall consist of three bedrooms, three bathrooms, a hall, a kitchen, a living-dining area, an owner's closet, and two lanais; and each such apartment shall have an approximate enclosed floor space of 1640 square feet, two lanais of approximately 645 square feet (aggregate), and an approximate total floor space of 2285 square feet.

The following four (4) apartments are F-1 (three bedroom) apartments:

D302, D303  
F302, F303

Each F-1 (three bedroom) apartment shall consist of three bedrooms, three bathrooms, a hall, a kitchen, a living-dining area, an owner's closet, and two lanais; and each such apartment shall have an approximate enclosed floor space of 1640 square feet, two lanais of approximately 733 square feet (aggregate), and an approximate total floor space of 2373 square feet.

The following two (2) apartments are F-2 (three bedroom) apartments:

J302, J303

Each F-2 (three bedroom) apartment shall consist of three bedrooms, three bathrooms, a hall, a kitchen, a living-dining area, an owner's closet, and two lanais; and each such apartment shall have an approximate enclosed floor space of 1640 square feet, two lanais of approximately 722 square feet (aggregate), and an approximate total floor space of 2362 square feet.

The following four (4) apartments are G (two bedroom/study) apartments:

D104, D105  
F104, F105

Each G (two bedroom/study) apartment shall consist of two bedrooms, two bathrooms, a study, a hall, a kitchen, a living-dining area, an owner's closet, and two lanais; and each such apartment shall have an approximate enclosed floor space of 1627 square feet, two lanais of approximately 694 square feet (aggregate), and an approximate total floor space of 2321 square feet.

The following two (2) apartments are G-1 (two bedroom/study) apartments:

J104, J105

Each G-1 (two bedroom/study) apartment shall consist of two bedrooms, two bathrooms, a study, a hall, a kitchen, a living-dining area, an owner's closet, and two lanais; and each such apartment shall have an approximate enclosed floor space of 1626 square feet, two lanais of approximately 679 square feet (aggregate), and an approximate total floor area of 2305 square feet.

The following four (4) apartments are H (two bedroom) apartments:

D204, D205  
F204, F205

Each H (two bedroom) apartment shall consist of two bedrooms, two bathrooms, a hall, a kitchen, a living-dining area, an owner's closet, and two lanais; and each such apartment shall have an approximate enclosed floor space of 1420 square feet, two lanais of approximately 340 square feet (aggregate), and an approximate total floor area of 1760 square feet.

The following two (2) apartments are H-1 (two bedroom) apartments:

J204, J205

Each H-1 (two bedroom) apartment shall consist of two bedrooms, two bathrooms, a hall, a kitchen, a living-dining area, an owner's closet, and two lanais; and each such apartment shall have an approximate enclosed floor space of 1456 square feet, two lanais of approximately 322 square feet (aggregate), and an approximate total floor area of 1778 square feet.

Each apartment shall consist of the space measured horizontally by the distances between the interior surfaces of the perimeter walls of each apartment, and the space measured by the lanai (or lanais) of each apartment; and measured vertically by the distance between the topside surface of the floor and the underside surface of the ceiling of each apartment.

In interpreting (a) any deed, lease, mortgage, or any other instrument that creates any estate, right or interest in or with respect to an apartment, (b) the Declaration of Horizontal Property Regime, or the (c) Condominium Map, the existing physical boundaries of each apartment (as located in accordance with the foregoing description), or any apartment reconstructed substantially in accordance with the original Condominium Map, shall control and shall constitute the boundaries of each apartment, regardless of any settling or lateral movement of an Apartment Building, and notwithstanding any minor variations between such existing physical apartment boundaries and the apartment boundaries shown in the Condominium Map.

Each apartment located on the ground floor of an Apartment Building shall have immediate access to the Land. Each other apartment shall have immediate access to the open entry corridors that provide entry for the apartments located above the ground floor of an Apartment Building, the exterior stairs for each Apartment Building, and to the Land.

In addition to the rights and easements created and established by HAW. REV. STAT. Chapter 514A in and with respect to the common elements of the Horizontal Property Regime hereby established, each apartment shall have appurtenant thereto, under

and by virtue of the Declaration, a non-exclusive easement in the common elements designed for such purpose for ingress and egress, utility services, support, maintenance and repair, as the case may be; and the Association shall have the irrevocable right, under and by virtue of the Declaration, and in addition to the rights created and given to the apartment owners by HAW. REV. STAT. Section 514A-13(f), to be exercised by its Board of Directors, Manager or Managing Agent, as the case may be, to enter each apartment from time to time during reasonable hours as may be necessary for the repair, replacement, restoration or installation of any common element.

COMMON ELEMENTS: The proposed Declaration reflects that the common elements include:

(a) The land described in the Declaration, and the super-adjacent airspace above the roof, and next to the exterior walls, of each Apartment Building.

(b) All easements, rights and appurtenances that appertain to the benefit and use of the property.

(c) The following parts of each Apartment Building: all foundations, columns, girders, beams and supports, bearing walls, roofs, structural frame (except that the windows and window frames, doors and door frames, for each apartment, located within the structural frame of each Apartment Building, shall be a part of that apartment, and not parts of the common elements), perimeter walls between apartments, floors and ceilings, the open entry corridors, the open corridor on the third floor (top level) of each Apartment Building, the exterior stairs for each Apartment Building, the attic of each Apartment Building.

(d) The Office/Laundry/Manager's Building, the Pool Storage And Maintenance Buildings, the maid storage/electrical rooms located in each Apartment Building, tennis courts, swimming pools, sewage treatment plant, shuffleboard courts, outdoor lighting, all parking areas and loading zones, and all parking stalls.

NOTE: There are a total of two hundred fifty-two (252) parking stalls, of which sixteen (16) are reserved for the general public, forty-six (46) are for compact cars and eight (8) are for the handicapped.

(e) Those parts of the Property, as shown on the Condominium Map, which have been designated for use by the general public, hereinafter called the "General Public Common Elements", namely, "Historic Site 40, Canoe Shed", "Historic Site 29, Fishing Shrine or Ko'a", "Historic Site 31, Fishing Shrine or Heiau", the "Unimproved Walkway Within 40 Foot Setback", and the public beach access routes, as shown on the proposed Condominium Map. (The Property is subject to the rights held by the State of Hawaii over that part of the Property, shown as "Vehicular Easement No. 2 on Map 1 filed with Land Court Application No. 1846, under a grant to the State of Hawaii dated November 13, 1969, filed as Land Court Document No. 573198. Such easement right over the Property, which is held by the State of Hawaii, hereinafter called the "State of Hawaii Easement", is not a part of the common elements of the Horizontal Property Regime, and is not a part of the General Public Common Elements.) Signs shall be posted to identify the public beach access routes and the sixteen (16) parking stalls for the general public.

(f) All central and appurtenant installations for services such as power, light, telephone, gas, hot and cold water, refrigeration, television, sewage disposal, and other utilities (including all pipes, ducts, wires, cables, and conduits used in connection therewith, whether located within common elements or within apartments), and all tanks, pumps, motors, fans, compressors, ducts and other apparatus and installations existing for common use.

(g) All tangible personal property, accounts, general intangibles, instruments and money, and any apartment acquired and held by the Association, or its agents, for the administration, maintenance, safety and operation of the common elements of the Horizontal Property Regime, or for the common use and benefit of the apartment owners.

(h) All other apparatus and installations existing for, or rationally of common use to, or necessary or convenient to the existence, maintenance or safety of all the apartments of the Horizontal Property Regime.

The use made of those parts of the common elements which are an integral part of an Apartment Building, as shown and contemplated by the Condominium Map and by the Declaration, shall not be changed by the Association or by any apartment owner, except upon the unanimous consent of all the apartment owners, which shall be valid when evidenced by an instrument, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, made by two officers of the Association who have been duly authorized, certifying that such unanimous consent for such change in the use of such common elements have been given by all of the apartment owners, and that the Declaration has been amended accordingly. The use made of those parts of the common elements which are not an integral part of an Apartment Building, but which are upon or connected with the land described in the Declaration, as shown and contemplated by the Condominium Map and by the Declaration, shall not be changed by the Association or by any apartment owner, except by the vote of owners of apartments to which are appurtenant not less than seventy-five percent (75%) of common interests in the Horizontal Property Regime, which shall be valid when evidenced by an instrument, filed with the Office of the Assistant Registrar of the Land Court of the State of Hawaii, made by two officers of the Association who have been duly authorized, certifying that such vote for such change in the use of such common elements has been given, and that the Declaration has been amended accordingly.

The Association shall have the power to regulate the use of the General Public Common Elements. The Association shall be responsible for the maintenance and repair of the General Public Common Elements.

LIMITED COMMON ELEMENTS: The proposed Declaration states that the following are limited common elements:

Any pump, motor, fan, compressor or duct, or any installation for power, light, telephone, gas, hot and cold water, heating,

refrigeration, television, sewage disposal, air conditioning, or other utilities (including all pipes, ducts, wires, cables and conduits used in connection therewith), located in a common element, designed to serve only one apartment (that is, not designed or existing for common use), shall be appurtenant to such apartment, as a limited common element, and the same shall be reserved for the exclusive use and benefit of such apartment, and all costs and expenses of every description pertaining thereto including but not limited to the cost of the maintenance, repair and replacement thereof, and the making of any additions and improvements thereto, shall be charged to the owner of such apartment.

INTEREST TO BE CONVEYED TO PURCHASER: The proposed Declaration reflects that the percentage of undivided interest in the common elements appertaining to the apartments is as follows:

Apartment No. A101	.641%
A102	.555%
A103	.555%
A104	.555%
A105	.555%
A106	.641%
A201	.486%
A202	.470%
A203	.470%
A204	.470%
A205	.470%
A206	.486%
A301	.687%
A302	.388%
A303	.388%
A304	.687%
B101	.641%
B102	.555%
B103	.555%
B104	.555%
B105	.555%
B106	.555%
B107	.555%
B108	.641%
B201	.486%
B202	.470%
B203	.470%
B204	.470%
B205	.470%
B206	.470%
B207	.470%
B208	.486%
B301	.687%
B302	.388%
B303	.388%
B304	.388%
B305	.388%
B306	.687%

C101	.641%
C102	.555%
C103	.555%
C104	.641%
C201	.486%
C202	.470%
C203	.470%
C204	.486%
C301	.687%
C302	.687%
D101	.641%
D102	.555%
D103	.555%
D104	.698%
D105	.698%
D106	.555%
D107	.555%
D108	.641%
D201	.486%
D202	.470%
D203	.470%
D204	.529%
D205	.529%
D206	.470%
D207	.470%
D208	.486%
D301	.687%
D302	.713%
D303	.713%
D304	.687%
E101	.641%
E102	.555%
E103	.555%
E104	.555%
E105	.555%
E106	.641%
E201	.486%
E202	.470%
E203	.470%
E204	.470%
E205	.470%
E206	.486%
E301	.687%
E302	.388%
E303	.388%
E304	.687%

F101	.641%
F102	.555%
F103	.555%
F104	.698%
F105	.698%
F106	.555%
F107	.555%
F108	.555%
F109	.555%
F110	.555%
F111	.555%
F112	.641%

F201	.486%
F202	.470%
F203	.470%
F204	.529%
F205	.529%
F206	.470%
F207	.470%
F208	.470%
F209	.470%
F210	.470%
F211	.470%
F212	.486%

F301	.687%
F302	.713%
F303	.713%
F304	.388%
F305	.388%
F306	.388%
F307	.388%
F308	.687%

G101	.641%
G102	.555%
G103	.555%
G104	.555%
G105	.555%
G106	.641%

G201	.486%
G202	.470%
G203	.470%
G204	.470%
G205	.470%
G206	.486%

G301	.687%
G302	.388%
G303	.388%
G304	.687%

H101	.641%
H102	.555%
H103	.555%
H104	.641%

H201	.486%
H202	.470%
H203	.470%
H204	.486%
H301	.687%
H302	.687%
J101	.641%
J102	.555%
J103	.555%
J104	.693%
J105	.693%
J106	.555%
J107	.555%
J108	.641%
J201	.486%
J202	.470%
J203	.470%
J204	.535%
J205	.535%
J206	.470%
J207	.470%
J208	.486%
J301	.687%
J302	.710%
J303	.710%
J304	.687%
K101	.641%
K102	.555%
K103	.555%
K104	.555%
K105	.555%
K106	.555%
K107	.555%
K108	.641%
K201	.486%
K202	.470%
K203	.470%
K204	.470%
K205	.470%
K206	.470%
K207	.470%
K208	.486%
K301	.687%
K302	.388%
K303	.388%
K304	.388%
K305	.388%
K306	.687%

The undivided interests established and to be conveyed with the respective "apartments" cannot be changed, and the Developer covenants and agrees that the undivided interests in the "common areas and facilities" and the fee simple titles to the respective "apartments" to be conveyed, shall not be separated or separately conveyed, and each said undivided interest shall be deemed to be conveyed or encumbered with its respective "apartment" even though the description in the instrument of conveyance or encumbrance may refer only to the fee simple title to the "apartment". The proportionate shares of the separate owners of the respective "apartments" in the profits and common expenses in the "common areas and facilities" as well as their proportionate representation for voting purposes in the Association of Apartment Owners shall be the undivided interest shown above.

NOTE: The proposed Declaration states that the Association of Apartment Owners shall be formed as of the date of filing of the Declaration, and Declarant shall have and may exercise the rights, and shall be liable for the performance of the duties and obligations, of an apartment owner in respect of each apartment until Declarant delivers an apartment deed for such apartment.

NOTE: The Developer's attorney has notified the Commission that: "Under the specimen contract of sale the developer has the right to close a purchaser's contract of sale at any time after the expiration of the thirty day period following the architect's issuance of a certificate of substantial completion, and the County of Maui's issuance of a certificate of occupancy, for the apartment building in which the purchaser's apartment is located. An apartment purchaser will thus be required to pay the balance of the purchase price due for his apartment, and to close his contract of sale, after the architect issues a certificate of substantial completion, and the County of Maui issues a certificate of occupancy, for the apartment building in which his apartment is located, even though the construction of the rest of the project may not be complete at that time."

NOTE: The specimen Contract of Sale states in part: "The Makena Surf Association of Apartment Owners (the "Association") will be responsible for the care of the common elements of the Makena Surf property for the apartment owners. The Association will be formed when the developer files the Makena Surf declaration of horizontal property regime with the office of the Assistant Registrar of the Land Court of the State of Hawaii.

"Each apartment owner will be a member of the Association. Since the Developer will initially own all of the apartments, the developer will initially be the sole member of the Association. The developer will initially control the Association.

"The developer will have the power to employ the first manager (or managing agent) for the Association. That manager employed by the developer for the Association will have the power to act on behalf of the Association and the power to administer the business and the affairs of the Association until the first meeting of the Association. The Association will be bound by the acts of the manager employed by the developer before the first meeting of the Association.

"At the first meeting of the Association the apartment owners will elect a board of Directors for the Association. The Association's first board of Directors will not be obligated to continue the employment of the manager employed by the developer for the Association. If at the time of the Association's first meeting the developer still owns any of the apartments, the developer will be entitled to vote as a member of the Association with respect to those apartments.

"The developer will call the first meeting of the Association. The first meeting of the Association will be held no later than one hundred and eight days after the developer delivers the first deed for any apartment to a purchaser, if deeds for forty percent (40%) or more of the apartments have been delivered by that time. In any event, the first meeting of the Association will be held no later than one year after the developer delivers the first deed for any apartment to a purchaser.

"After the developer delivers the first deed for any apartment to a purchaser, the Association shall be liable for all of the costs and expenses for the Makena Surf property treated as common expenses under the Makena Surf declaration. Each apartment owner shall thereafter be liable for his share of those common expenses. The developer, as the owner of those apartments to which the developer still holds title, will thereafter be liable for its share of those common expenses.

"The developer may in its discretion elect to assume and to pay all the costs and expenses for the Makena Surf property for a period of time after the developer delivers the first deed for any apartment to a purchaser. In that event, the Association will not be liable for the common expenses for the property until after the expiration of that extended time during which the developer has assumed the obligation to pay all those common expenses. In that event, each apartment owner shall be liable for his share of the common expenses for the property after the expiration of that extended time during which the developer has assumed the obligation to pay all those common expenses.

"Each apartment purchaser must deposit with the escrow an amount equal to his apartment's estimated share of the common expenses for the property for one month. Each purchaser must also deposit with the escrow the sum of \$1,000.00 as a start up fee. Those deposits are Association funds. The escrow is authorized to disburse those funds to the manager employed by the developer for the Association.

"The Association will need various items of equipment, i.e. office furniture, pool furniture, garden tools and equipment and the like (the "Equipment"). The developer is not obligated to purchase the equipment for the Association. The Association must use its funds and credit to acquire the equipment. The manager employed by the developer for the Association, the apartment owners and the Association, will need the equipment before the first meeting of the Association. The developer expects that the manager employed by the developer for the Association will acquire the equipment for the Association before the first meeting of the Association. That manager may use the funds of the Association transferred to him by the escrow to acquire the equipment. That manager may also acquire the equipment on the Association's credit.

"After the Association becomes liable for the common expenses of the property, the manager employed by the developer for the Association (if the first meeting of the Association has not been held) will be required to pay for those common expenses. That manager may use the funds of the Association transferred to him by the escrow to pay for those common expenses. That manager may also arrange for the deferral of the payment of those common expenses by the Association.

"It is thus possible that upon taking office the first board of directors: (1) may not have any Association funds with which to carry on the business of the Association; and (2) may be required to arrange for the payment of substantial debts incurred by the Association."

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The proposed Declaration reflects that the apartments shall be used as residential apartments, but the apartments may be leased or rented from time to time to transients.

OWNERSHIP OF TITLE: A Commitment for Title Insurance dated September 17, 1980, issued by First American Title Co. of Hawaii, Inc., certifies that title to the land is vested in Calvin Pardee Erdman, Jr. and Tom Tomeo Hiranaga, Agent. The fee owners have entered into an Agreement of Sale dated December 23, 1977, with Makena Surf, Ltd. for purchase of said land. Said Agreement of Sale was assigned to Rolph Bowlby Fuhrman by Assignment of Agreement of Sale dated May 16, 1978, and further assigned to Makena Surf, the developer, by Assignment dated April 17, 1980.

ENCUMBRANCES AGAINST TITLE: The Commitment for Title Insurance, issued September 17, 1980, by First American Title Co. of Hawaii, Inc., certifies that there are no liens or encumbrances of whatever kind or nature of record against said title, save and except the following:

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 Second Division.

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

3. To the location of the Seaward boundary in accordance with the law of the State of Hawaii, and shoreline setback line in accordance with County regulation and/or ordinance.

4. Designation of Vehicular Easement No. 2, as shown on Map 1, filed with Land Court Application No. 1846.

5. Grant in favor of the State of Hawaii dated November 13, 1969, filed as Document No. 573198, granting Vehicular Easement 2, for pedestrian and vehicular access.

6. Declaration of Agency dated January 20, 1978, filed as Document No. 917057, recorded in Liber 13394, Page 653.

7. Lease in favor of Maui Electric Company, Limited, dated May 4, 1972, recorded in Liber 3366, Page 412.

8. Agreement of Sale dated December 23, 1977, in favor of Makena Surf, Ltd., filed as Document No. 853317, recorded in Liber 12643, Page 601, assigned to Rolph Bowlby Fuhrman by Assignment dated May 16, 1978, filed as Document No. 917058, recorded in Liber 13394, Page 659, and further assigned to Makena Surf by Assignment dated April 17, 1980, filed as Document No. 1015245, recorded in Liber 14767, Page 720.

The foregoing Agreement of Sale and Assignments are encumbered by Mortgage, Security Agreement and Financing Statement in favor of Bank of America National Trust and Savings Association dated February 22, 1979, filed as Document No. 925446, recorded in Liber 13514, Page 244.

PURCHASE MONEY HANDLING: A copy of the executed Escrow Agreement dated June 2, 1980, identifies First American Title Co. of Hawaii, Inc., a Hawaii corporation, as the Escrow Agent. The Escrow Agreement establishes how the proceeds from the sale of apartments and all sums received from any source are placed in trust, as well as the retention and disbursement of said trust funds. It is incumbent upon the purchaser and prospective purchaser that he read the executed Escrow Agreement with care. The terms of the Escrow Agreement are made a part of the Contract of Sale by reference.

On examination the specimen Contract of Sale and the executed Escrow Agreement are found to be in compliance with Hawaii Revised Statutes, Chapter 514A. Among other provisions, the specimen Contract of Sale states in part:

"Purchaser hereby undertakes and agrees that the mortgage and note for the Construction Loan, and any renewals or extensions of such mortgage and note, shall be and remain at all times a lien or charge prior and superior to any and all liens or interests arising from this Contract of Sale. Purchaser hereby waives, relinquishes and subordinates the priority or superiority of his interest under this Contract of Sale in favor of the lien or charge of the Construction Loan. Purchaser hereby undertakes and agrees to execute any subordination agreement required by the construction lender to evidence such subordination, and Purchaser does hereby constitute and appoint the Vendor his Attorney-In-Fact to execute any subordination agreement required by the construction lender as the act and deed of Purchaser."

Among other provisions the executed Escrow Agreement states that a purchaser under a contract of sale shall be entitled to a refund of all money deposited with Escrow, and Escrow shall return such funds to that Purchaser, without interest, and less a cancellation fee of \$25.00 to be kept by Escrow, if the Purchaser shall file with Escrow a written request for the refund of such funds, and if any of the following events shall have occurred:

(i) If funds were obtained from that Purchaser prior to the issuance of the Final Public Report upon the Project by the Hawaii Real Estate Commission, and there is a change in the plans for the construction of the Project requiring the approval of the official of the County of Maui having jurisdiction over the issuance of permits for the construction of buildings, unless: (a) Developer obtains the written approval or acceptance of such specific change in building plans by that Purchaser, (b) the Purchaser has inspected and has accepted in writing the apartment purchased, and ninety (90) days have elapsed; or (c) the Purchaser has occupied the apartment purchased.

(ii) The Final Public Report upon the Project differs from the Preliminary Public Report, if any, upon the Project issued by the Real Estate Commission of the State of Hawaii in any material respect, unless Developer obtains the written approval or acceptance of such material difference in the Project by such Purchaser.

(iii) The Final Public Report for the Project is not issued within one (1) year from the date of the issuance of the Preliminary Public Report for the Project, if any.

(iv) Upon the occurrence of any other event which, under HAW. REV. STAT., Chapter 514A, gives a Purchaser the right to the refund of his purchase money deposited in escrow.

In addition, the Escrow Agreement provides that, in the event of the rescission of any contract of sale, including without limitation a rescission of a contract of sale by the Developer for the failure of a Purchaser to furnish evidence of his ability to provide funds for the purchase of his apartment, Escrow shall have the right to retain a reasonable cancellation fee for its services from the purchase price deposited by that Purchaser.

It is incumbent upon the purchaser and prospective purchaser that he read with care the Contract of Sale.

MANAGEMENT AND OPERATIONS: The By-Laws empower the Board of Directors with the authority to acquire and pay for the services of a person or firm to manage the Horizontal Property Regime. No property manager has been identified in the Notice of Intention. The specimen Contract of Sale provides that the Developer shall have the power to employ the first Manager or Managing Agent for the Association, who shall be empowered to act as such Manager or Managing Agent from the date of the delivery by Developer of the first deed for any apartment of the Horizontal Property Regime until the first meeting of the Association.

STATUS OF PROJECT: The Developer represents in its Notice of Intention that construction of the project will commence on November 1, 1980, and it is estimated to be completed on May 1, 1982.

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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 July 9, 1980, and information subsequently filed on October 28, 1980.

This PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 1331, filed with the Commission July 9, 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 in color.



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G. A. MORRIS, 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. 1331

October 29, 1980