

# 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

Kihei Bay Surf Phase II  
Kihei Road  
Kihei, Maui, Hawaii

REGISTRATION NO. 1368

### 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: December 4, 1980  
Expires: January 4, 1982

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

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION FILED NOVEMBER 18, 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, AS AMENDED.

1. KIHEI BAY SURF PHASE II is a proposed leasehold condominium project consisting of six (6) buildings, each being two stories, without basements, and sixty-eight (68) apartments and ninety-four (94) parking stalls (fourteen (14) of which are compact parking stalls). The parking stalls will not be assigned or be appurtenant to apartments.

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. Advertising and promotional matter have been filed pursuant to the rules and regulations promulgated by the Commission.

5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of the Horizontal Property Act, Chapter 514A of the Hawaii Revised Statutes and the Condominium Rules and Regulations which relate to Horizontal Property Regimes.

6. This Preliminary Public Report automatically expires thirteen (13) months after the date of issuance, December 4, 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 KIHEI BAY SURF PHASE II condominium project. The Developer has the responsibility of placing a true copy of the Preliminary Public Report (yellow paper stock) and Disclosure Abstract in the hands of all purchasers and prospective purchasers and securing a signed copy of the Receipt therefor from each such person.

NAME OF PROJECT: KIHEI BAY SURF PHASE II

LOCATION: The approximately 2.293 acres of land to be committed to the regime is situated at Kihei Road, Maui, Hawaii.

TAX MAP KEY: SECOND DIVISION: 3-9-1-143.

ZONING: A-1 (Apartment).

DEVELOPER: The Shores Of Maui, Inc., a Hawaii corporation, Suite 4000, 1745 Kalakaua Avenue, Honolulu, Hawaii 96826, telephone: 955-6677; Officers: Walter G. Luckau, President/Treasurer, 309-C Lalo Place, Kahului, Maui, Hawaii 96753, and Jo Paul Rognstad, Vice President/Secretary, Suite 4000, 1745 Kalakaua Avenue, Honolulu, Hawaii 96826,

ATTORNEY REPRESENTING DEVELOPER: Hamilton, Gibson, Nickelsen, Rush & Moore (Attention: Walter Beh, II), 20th Floor, Hawaii Building, 745 Fort Street, Honolulu, Hawaii 96813, telephone: 521-0400.

DESCRIPTION: The proposed Declaration of Horizontal Property Regime and plans submitted by the Developer indicate a leasehold condominium project consisting of sixty-eight (68) apartments contained in six (6) two-story buildings, without basements, constructed principally of wood and concrete block.

The location and description of the various apartments of the project are as set forth in the Exhibit attached to this Preliminary Public Report.

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

COMMON ELEMENTS: One (1) freehold estate is designated in all remaining portions of the project, herein called the "common elements", including specifically but not limited to:

1. The land in fee simple;
  2. All foundations, floor slabs, columns, girders, beams, supports, unfinished perimeter, party and load-bearing walls, roofs, entries, stairways, walkways, entrances and exits of said buildings;
  3. All yards, grounds and landscaping;
  4. All parking areas;
  5. All pipes, cables, conduits, ducts, electrical equipment, wiring and other central and appurtenant transmission facilities and installations over, under and across the project which serve more than one apartment for services such as power, light, gas, water, sewer, telephone and television signal distribution, if any;
  6. Swimming pool, jacuzzi and recreation deck;
- and

7. Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

LIMITED COMMON ELEMENTS: No part of the common elements, herein called the "limited common elements", is designated and set aside for the exclusive use of certain apartments. The parking stalls will not be assigned or be appurtenant to apartments.

INTEREST TO BE CONVEYED TO PURCHASERS: Documents filed with the Real Estate Commission indicate that the purchaser will secure a Condominium Conveyance Document, consisting of an Apartment Deed conveying an apartment and an undivided percentage interest in the common elements of the project (exclusive of land), and a Ground Lease demising the same undivided interest in the lands of the project, and the same proportionate share of all common profits and expenses of the project and shall be used for all other purposes including voting, as set forth in the Exhibit attached hereto.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The proposed Declaration provides that, except when the holder of the first mortgage on an apartment has entered into possession of an apartment following (i) a default under its first mortgage, (ii) a foreclosure proceeding, or (iii) a conveyance in lieu of foreclosure, the apartments shall be occupied and used only as private dwellings by the respective owners thereof, their tenants, families, domestic servants and social guests; 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. No House Rules have been submitted as of the date of this Report.

OWNERSHIP OF TITLE: A Preliminary Report dated November 13, 1980, issued by Security Title Corporation, as submitted to the Commission, indicates that the Developer is the fee simple owner of the property to be committed to the regime.

ENCUMBRANCES AGAINST TITLE: Said Preliminary Report dated November 13, 1980, issued by Security Title Corporation provides that the following are encumbrances against title to the property:

1. For any taxes that may be due and owing and a lien on the land, reference is hereby made to the Office of the Tax Assessor of the Second Division, County of Maui, Hawaii.

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines as reserved in Royal Patent No. 7447.

3. The terms and provisions of that certain Water Agreement dated July 12, 1978, recorded in the

Bureau of Conveyances of the State of Hawaii in Liber 13161, Page 222, made by and between the County of Maui, Department of Water Supply, "County", and SHORES OF MAUI, INC., "Applicant".

4. Mortgage dated August 29, 1980, recorded as aforesaid in Liber 14962, Page 491, made by SHORES OF MAUI, INC., a Hawaii corporation, as Mortgagor, to GECC FINANCIAL CORPORATION, a Hawaii corporation, as Mortgagee, to secure the repayment of the sum of \$450,000.00.

5. Undated Financing Statement covering certain fixtures located on the real property, given as security by SHORES OF MAUI, INC. in favor of GECC FINANCIAL CORPORATION, recorded as aforesaid in Liber 14962, Page 503.

NOTE: The Developer advises it plans to grant utility easements over portions of the lands of the project.

PURCHASE MONEY HANDLING: A copy of the executed Escrow Agreement dated October 27, 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 and 514A-63 through 514A-66 thereof.

Among other provisions, the executed Escrow Agreement states that a purchaser under contract of sale, upon written request, shall be entitled to a refund of all moneys deposited with Escrow, without interest and less Escrow's cancellation fee, if any of the following events shall have occurred:

(a) Escrow receives a written request from Seller to return to Purchaser the funds of such Purchaser then held hereunder by Escrow; or

(b) If Purchaser's funds were obtained prior to the issuance of a Final Public Report and if there is any change in the building plans, subsequent to the execution of Purchaser's contract, requiring the approval of the 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 apartment or he has first occupied the apartment; or

(c) If the Purchaser's funds were obtained prior to the issuance of a Final Public Report and 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 difference; or

(d) If the Final Public Report is not issued within one year from 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 the Purchaser receives a copy of the Final Public Report, he is notified in writing of his right of refund and cancellation of obligation and the waiver of such right upon his failure to act within the thirty (30) day period.

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

1. Buyer acknowledges that neither Seller nor any of its representatives has made any representation or reference as to 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 Seller or the Managing Agent of the project will provide, directly or indirectly, any services relating to the rental of the apartment. It is understood and agreed that rental or other disposition of the apartment and the provisions of management services in connection therewith is and shall be the sole responsibility of the Buyer.

2. 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 apartment 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 apartment. 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 hereby. 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 APARTMENT, 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 APARTMENT FOR A PARTICULAR PURPOSE.

3. Reservation Agreement. Notwithstanding any other provisions of this Agreement to the contrary, it is expressly understood and agreed that unless and until Seller: (i) obtains the issuance by the Real Estate Commission of the State of Hawaii of the Final Public Report on the project; and (ii) has received from Buyer a fully executed receipt for the Final Public Report, that this Agreement shall represent only a reservation by the Buyer and shall not be binding upon either party hereto, and until such time, this Agreement may be terminated at the option of either party. In the event of such termination, 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. If this Agreement is entered into after the issuance of the Final Public Report, this paragraph shall be of no force or effect and this Agreement shall be fully binding upon Buyer and Seller upon acceptance of this Agreement by Seller as provided in Paragraph "F-23" of the Reservation Agreement.

4. Buyer agrees that all of the rights of Buyer under this Agreement are and shall be subject and subordinate to the lien of any mortgage securing the repayment of the interim loans, described above, made to finance the acquisition of the project, the cost of construction and other costs during construction and to

any and all advances made thereon, and to any and all sums which may become a lien pursuant to the terms of such interim loans or any other agreement relating thereto.

5. Final closing shall occur on the Date of Closing as defined herein. However, Buyer is hereby advised that Seller intends to preclose, regardless of the status of the construction of the apartments, by having all documents necessary for closing executed prior thereto and deposited with Escrow, and Buyer hereby agrees to execute all necessary documents for such closing, including irrevocable escrow instructions, upon request by Seller. Notwithstanding the foregoing, Seller shall not require a preclosing more than five (5) months prior to the estimated Date of Closing.

6. At the time of the preclosing described above, Buyer agrees to pay into escrow all sums due from buyer at closing, excluding only the mortgage proceeds, if applicable, which mortgage proceeds Buyer hereby authorizes Escrow to collect as of the Date of Closing.

7. In the event any payment to be made by Buyer hereunder is not made when due, such late payment shall bear interest at the rate of one percent (1%) per month until paid.

8. Buyer hereby agrees for the sole benefit of Seller that until Seller has closed out the sale of all the apartments in the condominium project or until June 30, 1984, whichever shall first occur, that Buyer will not enter into any "rental pool" or similar agreement with any purchaser, lessee or owner of another apartment in the condominium project and/or any third party under which Buyer agrees to share expenses and/or rentals of apartments in the condominium project.

9. This Agreement shall not be assignable without the prior written consent of Seller; which consent may be withheld at Seller's sole discretion.

It is incumbent upon the purchaser and the prospective purchaser that he read with care the Sales Contract and the executed Escrow Agreement. The latter establishes how the proceeds from the sale of apartments are placed in trust, as well as the retention and disbursement of said trust funds. The specimen Sales Contract specifically provides that the purchaser approves said Escrow Agreement and assumes the benefits and obligations therein provided.

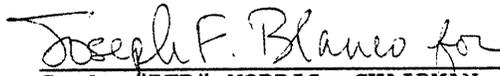
MANAGEMENT OF THE PROJECT: The By-Laws which are incorporated in the proposed Declaration provide that the operation of the project shall be conducted for the Association of Apartment Owners under the direction of the Board of Directors by a responsible managing agent. The specimen Sales Contract provides that the Developer may appoint the initial managing agent for the project. The

Developer indicates that it has not yet appointed an initial managing agent; the proposed Declaration indicates that the proposed initial managing agent is Turner Management Corporation, 1993 South Kihei Road, Kihei, Hawaii 96753.

STATUS OF PROJECT: The Developer advises that it estimates construction of the project will begin on April 1, 1981 and will be completed by April 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 November 18, 1980.

This PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 1368 filed with the Commission on November 18, 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.

  
G. A. "RED" 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. 1368

December 4, 1980

EXHIBIT

1. Apartment Nos. 101, 102, 103, 104, 105, 106, 107, 108 and 109 are located on the first floor of Building "B".
2. Apartment Nos. 201, 202, 203, 204, 205, 206, 207, 208 and 209 are located on the second floor of Building "B".
3. Apartment Nos. 112, 113, 114, 115, 116, 117, 118, and 119 are located on the first floor of Building "C".
4. Apartment Nos. 210, 211, 212, 213, 214, 215, 216, 217, 218 and 219 are located on the second floor of Building "C".
5. Apartment Nos. 120, 121, 122, 123, 124, 125, 126, 127 and 128 are located on the first floor of Building "D".
6. Apartment Nos. 220, 221, 222, 223, 224, 225, 226, 227 and 228 are located on the second floor of Building "D".
7. Apartment No. 129 is located on the first floor of Building "E".
8. Apartment No. 229 is located on the second floor of Building "E".
9. Apartment Nos. 130 and 131 are located on the first floor of Building "F".
10. Apartment Nos. 230 and 231 are located on the second floor of Building "F".
11. Apartment Nos. 132, 133, 134 and 135 are located on the first floor of Building "G".
12. Apartment Nos. 232, 233, 234 and 235 are located on the second floor of Building "G".
13. STUDIO: Forty-six (46) apartments, being Apartment Nos. 102, 103, 104, 105, 106, 107, 108, 112, 113, 114, 115, 116, 117, 118, 119, 121, 122, 123, 124, 125, 126, 127, 202, 203, 204, 205, 206, 207, 208, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 221, 222, 223, 224, 225, 226 and 227, are built according to a floor plan, or its mirror image, consisting of two (2) rooms, including a bedroom/living room/kitchenette, a bathroom and a lanai area. Each of these apartments has a floor area of approximately 441 square feet, plus the lanai area of approximately 32 square feet (except for Apartment Nos. 119, 210 and 219 which have lanai areas of approximately 29 square feet). Each of these apartments shall have an appurtenant common interest of 1.0054%.

14. ONE BEDROOM: Ten (10) apartments, being Apartment Nos. 101, 128, 131, 133, 134, 201, 228, 231, 233 and 234, are built according to a floor plan, or its mirror image, consisting of four (4) rooms, including a bedroom, a living room/kitchenette and two (2) bathrooms; in addition, Apartment Nos. 101, 128, 201, 228, 231, 233 and 234 have lanai areas. Each of these apartments has a floor area of approximately 882 square feet; in addition, Apartment Nos. 128, 228, 231, 233 and 234 have lanai areas of approximately 64 square feet, and Apartment Nos. 101 and 201 have lanai areas of approximately 99 square feet. Each of these apartments shall have an appurtenant common interest of 2.0110%.
15. ONE BEDROOM: Two (2) apartments, being Apartment Nos. 132 and 232, are built according to a floor plan consisting of four (4) rooms, including a bedroom, a living room/dining room/kitchenette and two (2) bathrooms; in addition, Apartment No. 232 has lanai areas. Each of these apartments has a floor area of approximately 1,027 square feet; in addition, Apartment No. 232 has lanai areas of approximately 99 square feet. Each of these apartments shall have an appurtenant common interest of 2.3414%.
16. TWO BEDROOM: Two (2) apartments, being Apartment Nos. 129 and 229, are built according to a floor plan consisting of six (6) rooms, including two (2) bedrooms, a living room/kitchenette and three (3) bathrooms; in addition, Apartment No. 229 has lanai areas. Each of these apartments has a floor area of approximately 1,335 square feet; in addition, Apartment No. 229 has lanai areas of approximately 97 square feet. Each of these apartments shall have an appurtenant common interest of 3.0436%.
17. TWO BEDROOM: Four (4) apartments, being Apartment Nos. 109, 120, 209 and 220, are built according to a floor plan, or its mirror image, consisting of six (6) rooms, including two (2) bedrooms, a living room/kitchenette, three (3) bathrooms and a lanai area. Each of these apartments has a floor area of approximately 1,345 square feet; in addition, Apartment No. 109 has a lanai area of approximately 32 square feet, Apartment No. 120 has a lanai area of approximately 29 square feet, and Apartment Nos. 209 and 220 have a lanai area of approximately 218 square feet. Each of these apartments shall have an appurtenant common interest of 3.0664%.
18. TWO BEDROOM: Four (4) apartments, being Apartment Nos. 130, 135, 230 and 235, are built according to a floor plan, or its mirror image, consisting of six (6) rooms, including two (2) bedrooms, a living room/kitchenette and three (3) bathrooms; in addition, Apartment Nos. 230 and 235 have lanai areas.

Each of these apartments has a floor area of approximately 1,163 square feet; in addition, Apartment Nos. 230 and 235 have lanai areas of approximately 130 square feet. Each of these apartments shall have an appurtenant common interest of 2.6515%.

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 NONPARTY WALLS AND THE INTERIOR HALF OF ITS PERIMETER PARTY WALLS, WHETHER LOAD-BEARING OR NONLOAD-BEARING.