

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

Lawai Beach Resort
RR#1, Lawai Road
Koloa, Kauai, Hawaii

REGISTRATION NO. 1459

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 2, 1981
Expires: November 2, 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 SEPTEMBER 18, 1981, AND ADDITIONAL INFORMATION SUBSEQUENTLY FILED AS OF SEPTEMBER 29, 1981. 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. LAWAI BEACH RESORT is a proposed fee simple condominium project consisting of one (1) 4-story building, without a basement, and fifty (50) apartments and seventy-five (75) 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. No advertising and promotional matter, other than the Condominium Pre-Sales Offering under Act 189, Session Laws of 1980, has been filed pursuant to the rules and regulations promulgated by the Commission.

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

6. This Preliminary Public Report automatically expires thirteen (13) months after the date of issuance, October 2, 1981, 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 LAWAI BEACH RESORT condominium project. The Developer has the responsibility of placing a true copy of the Preliminary Public Report (yellow paper stock) and Disclosure Abstract (a copy of which is attached to this Report) 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: LAWAI BEACH RESORT

LOCATION: The approximately 8.152 acres of land to be committed to the regime are situated at RR#1, Lawai Road, Koloa, Kauai, Hawaii.

TAX MAP KEY: FOURTH DIVISION: 2-6-5-4 and 2-6-4-52.

ZONING: R-20.

DEVELOPER: Metropolitan Mortgage & Securities Co., Inc., a Washington corporation, West 929 Sprague Avenue, Spokane, Washington 99204, Telephone: (509) 838-3111; Corporate Officers: C. Paul Sandifur, Chairman of the Board, S. 4327 Pittsburg, Spokane, Washington 99203, Charles H. Sandifur, President, S. 704 - 6th Avenue, Spokane, Washington 99204, C. Paul Sandifur, Jr., Executive Vice President, E. 1108 - 27th Avenue, Spokane, Washington 99203, LaMar J. Miller, Vice President, C. 14410 - 10th, Averadale, Washington 99037, Irv Marcus, Vice President, S. 2212 Blake Road,

Spokane, Washington 99216, Douglas M. Sargent, Vice President, 332 Forest Drive, Coeur d'Alene, Idaho 83814, Donald J. Migliuri, Vice President, W. 520 Cascade Way, Spokane, Washington 99208, George J. Mazna, Vice President Emeritus, W. 3231 Boone Avenue, Spokane, Washington 99201, William F. Sandifur, Assistant Vice President, RR #1, Koloa, Kauai, Hawaii 96756, Reuel Swanson, Secretary-Treasurer, N. 11703 Madison S., Spokane, Washington 99218, Charles V. Carroll, Assistant Secretary, W. 927 - 23rd Avenue, Spokane, Washington 99203.

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 fee simple condominium project consisting of fifty (50) apartments contained in one (1) four-story building, without a basement, constructed principally of concrete and concrete block.

The location and description of the various apartments of the project are as follows:

1. Apartment Nos. 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112 and 113 are located on the first floor.

2. Apartment Nos. 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212 and 213 are located on the second floor.

3. Apartment Nos. 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312 and 313 are located on the third floor.

4. Apartment Nos. 402, 403, 404, 405, 406, 407, 408, 409, 410, 411 and 412 are located on the fourth floor.

5. The apartments are constructed according to several different floor plans. A description of each of the floor plans, designating the layout, the number of rooms and the approximate area thereof, is as follows:

(a) Type "A": Three (3) apartments, being Apartment Nos. 101, 201 and 301, are built according to this floor plan, consisting of six (6) rooms, including two (2) bedrooms, two (2) bathrooms, a kitchen, a living area and a deck. Each of these apartments contains a net living area of approximately 1056 square feet, plus a deck area of approximately 345 square feet, and shall have an appurtenant common interest of 2.5861 percent.

(b) Type "B" (First Floor): Nine (9) apartments, being Apartment Nos. 102, 103, 104, 105, 106,

107, 110, 111 and 112 are built according to this floor plan (or its mirror image), consisting of four (4) rooms, including a bedroom, a bathroom, a kitchen, a living area and a deck. Each of these apartments contains a net living area of approximately 683 square feet, plus a deck area of approximately 123 square feet, and shall have an appurtenant common interest of 1.6727 percent.

(c) Type "B" (Second, Third and Fourth Floors): Twenty-seven (27) apartments, being Apartment Nos. 202, 203, 204, 205, 206, 207, 210, 211, 212, 302, 303, 304, 305, 306, 307, 310, 311, 312, 402, 403, 404, 405, 406, 407, 410, 411 and 412, are built according to this floor plan (or its mirror image), consisting of four (4) rooms, including a bedroom, a bathroom, a kitchen, a living area and a deck. Each of these apartments contains a net living area of approximately 747 square feet, plus a deck area of approximately 123 square feet, and shall have an appurtenant common interest of 1.8294 percent.

(d) Type "C" (First Floor): Apartment No. 108 consists of five (5) rooms, including two (2) bedrooms, a bathroom, a kitchen, a living area and a deck. This apartment contains a net living area of approximately 961 square feet, plus a deck area of approximately 219 square feet, and shall have an appurtenant common interest of 2.3535 percent.

(e) Type "C" (Second, Third and Fourth Floors): Three (3) apartments, being Apartment Nos. 208, 308 and 408, are built according to this floor plan, consisting of five (5) rooms, including two (2) bedrooms, a bathroom, a kitchen, a living area and a deck. Each of these apartments contains a net living area of approximately 1049 square feet, plus a deck area of approximately 219 square feet, and shall have an appurtenant common interest of 2.5690 percent.

(f) Type "D" (First Floor): Apartment No. 109 consists of five (5) rooms, including two (2) bedrooms, a bathroom, a kitchen, a living area and a deck. This apartment contains a net living area of approximately 917 square feet, plus a deck area of approximately 123 square feet, and shall have an appurtenant common interest of 2.2457 percent.

(g) Type "D" (Second, Third and Fourth Floors): Three (3) apartments, being Apartment Nos. 209, 309 and 409 are built according to this floor plan, consisting of five (5) rooms, including two (2) bedrooms, a bathroom, a kitchen, a living area and a deck. Each of these apartments contains a net living area of approximately 1005 square feet, plus a deck area of approximately 123 square feet, and shall have an appurtenant common interest of 2.4612 percent.

(h) Type "E": Two (2) apartments, being Apartment Nos. 113 and 213 are built according to this floor plan, consisting of six (6) rooms, including two (2) bedrooms, two (2) bathrooms, a kitchen, a living area and a deck. Each of these apartments contains a net living area of approximately 1103 square feet, plus a deck area of approximately 372 square feet, and shall have an appurtenant common interest of 2.7013 percent.

(i) Type "F": Apartment No. 313 consists of six (6) rooms, including two (2) bedrooms, two (2) bathrooms, a kitchen, a living area and a deck. This apartment contains a net living area of approximately 1103 square feet, plus a deck area of approximately 447 square feet, and shall have an appurtenant common interest of 2.7012 percent.

NOTE: The net living area of each apartment is measured from the interior surface of the apartment perimeter and party walls.

The apartments have immediate access to an access corridor leading to two (2) stairways and an elevator, 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 deck air space (if any), the inner decorated or finished surfaces of all walls, floors and ceilings, and all fixtures originally installed therein.

NOTE: The proposed Declaration provides that the Developer reserves certain rights to carry on sales activities, withdraw from the Declaration certain portions of the lands of the project, add additional apartments, buildings and common elements, grant easements to others to use certain portions of the common elements (including parking areas) and other reservations, all as set forth in the Exhibit attached hereto and made a part hereof.

COMMON ELEMENTS: One 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, elevators, walkways, entrances and exits of said building;

3. All yards, grounds and landscaping;

4. All parking areas, including the seventy-five (75) unassigned parking stalls;

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; and

6. 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 an Apartment Deed conveying an apartment and an undivided percentage interest in the common elements 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 above.

NOTE: The Developer informs the Commission that the computation of the common interests of the various apartments in the project were computed as follows: the net living areas for all apartments in the project were totaled and divided into the net living area of each individual apartment, producing a percentage interest, that was rounded to four decimal places; the final decimal point of each percentage was adjusted so that the total of all percentage interests equaled 100%.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The proposed Declaration provides that, subject to applicable ordinances of the County of Kauai, the apartments shall be occupied and used only for residential or resort use or time-sharing ownership by the respective owners thereof, their tenants, families, domestic servants and social guests. The apartments may be sold, leased, rented or used for any time period or periods, including any annually recurring period on a fixed or floating basis. The owners of the respective apartments shall have the absolute right to lease such apartments from time to time on a daily, weekly, monthly or other basis, subject to all provisions of the Declaration and the By-Laws attached thereto.

NOTE: THE COUNTY OF KAUAI HAS INFORMED THE DEVELOPER THAT TIME-SHARING, RESORT USE, AND TRANSIENT VACATION RENTALS (AS DEFINED IN CHAPTER 514E OF THE HAWAII REVISED STATUTES) ARE NOT CURRENTLY ALLOWED WITHIN THE PROJECT, AND WILL NOT BE ALLOWED UNTIL THE COUNTY AUTHORIZES THE SAME BY ORDINANCE.

NOTE: BUYER SHOULD BE AWARE THAT ALTHOUGH THE PROPOSED DECLARATION PERMITS TIME-SHARING USE OF THE APARTMENTS AT SOME FUTURE TIME, IT SHOULD BE NOTED THAT SUCH TIME-SHARING USAGE WOULD REQUIRE A SUBSEQUENT REGISTRATION WITH THE STATE OF HAWAII, DEPARTMENT OF REGULATORY AGENCIES, AS REQUIRED BY CHAPTER 514E, HAWAII REVISED STATUTES, AND THE RULES PERTAINING TO TIME-SHARING ADOPTED BY THE DEPARTMENT OF REGULATORY AGENCIES UNDER THIS CHAPTER.

No House Rules have been submitted as of the date of this Report.

OWNERSHIP OF TITLE: A Preliminary Report dated August 25, 1981, issued by Title Guaranty of Hawaii, Incorporated, 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 August 25, 1981, issued by Title Guaranty of Hawaii, Incorporated, and the proposed Declaration for the project, provide 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 Fourth Division, County of Kauai, Hawaii.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Easement "S-1" (0.297 acre) as shown on Tax Map Keys 2-6-5-4 (4) and 2-6-4-52 (4).
4. The reservation unto McBryde Sugar Company, Limited, of all water rights.
5. "Excepting and reserving therefrom unto Grantor, its successors and assigns, all water rights appurtenant to said real property and easements for ditches, flumes, siphons, pipelines, tunnels, roads, power lines, pump lines, pumps and for all other existing facilities and future requirements, and rights to develop and transport water, including the right to grant any such easement and/or rights to other parties, together with the right to enter upon said premises for the purpose of maintaining same"; as excepted and reserved in Deed from McBryde Sugar Company, Limited, a Hawaii corporation, dated March 30, 1979, recorded in Liber 13800 at Page 173.

6. Grant in favor of Kauai Securities, Limited, a Hawaii corporation, dated November 27, 1974, recorded in Liber 10301 at Page 170; granting an easement for sewer purposes in favor of Lot 5-B through, under and across the easement areas described in the proposed Declaration.

7. Relocation of Easements for Roadway and Parking dated January 17, 1978, recorded in Liber 12696 at Page 737, in favor of Board of Directors of the Association of Apartment Owners of Prince Kuhio Condominium project; relocating said easements to the areas being more particularly described in the proposed Declaration.

8. The terms, covenants, conditions, restrictions, easements and other provisions of that certain unrecorded Agreement For Joint Use of Sewage Treatment Facility dated May 17, 1980, a copy of which is attached to the proposed Declaration as Exhibit "F"; reserving, however, unto Metropolitan Mortgage & Securities Co., Inc., a Washington corporation, all of the powers and rights set forth therein in its favor.

9. Mortgage in favor of Kauai Savings and Loan Association dated August 29, 1964, in the amount of \$40,000.00, recorded in Liber 4829, Page 86.

10. Additional Charge Mortgage to the Mortgage set forth as Encumbrance No. 9, in favor of Kauai Savings and Loan Association dated July 15, 1965, in the amount of \$3,200.00, recorded in Liber 5088, Page 515.

11. Additional Charge Mortgage to the Mortgage set forth as Encumbrance No. 9, in favor of Kauai Savings and Loan Association dated April 5, 1967, in the amount of \$531.00, recorded in Liber 5629, Page 337.

12. The above Mortgage and Additional Charge Mortgages were assigned to American Savings and Loan Association, a Utah corporation, by assignment dated December 29, 1971 (effective as of December 30, 1971), recorded in Liber 8055, Page 1.

13. Apartment No. 001, Commercial No. 1 and Commercial No. 2, as described in that certain Declaration of Horizontal Property Regime of Prince Kuhio dated September 24, 1963, recorded in Liber 4673, Page 517, as amended, shall have an exclusive easement for the parking of six (6) automobiles over and upon Easement P-2 as shown on the said condominium file plan for this project, together with the right of ingress and egress to and from the said easement area to Lawai Road across the paved roadway areas of the project.

14. The general public shall have an easement for the parking of ten (10) automobiles over and upon the area so noted on the said condominium file plan for the project and to use the public restroom facilities shown on said condominium file plan for this project,

together with the right of ingress and egress to and from the said easement areas to Lawai Road across the paved roadway areas of the project; provided, however, the Association of this project may from time to time at its expense relocate said easement areas to elsewhere within the lands of the project.

15. Developer shall have, and hereby reserves, the right up until December 31, 1990, to grant an easement (either a perpetual easement or for such period of time as Developer determines in its sole discretion) to the owner from time to time of the Beach House Restaurant (also known as the "Long House Restaurant"), located makai of the project across Lawai Road, for the parking of eleven (11) automobiles over and upon the area so noted on said condominium file plan for this project, together with the right of ingress and egress to and from the said easement area to Lawai Road across the paved roadway areas of the project.

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 August 19, 1981, between Title Guaranty Escrow Services, Inc., as Escrow, and Developer has been filed with the Commission. On examination, the executed Escrow Agreement filed with the Commission is found to be in compliance with Chapter 514A, Hawaii Revised Statutes, and particularly Sections 514A-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. No Rental Representations. 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. Sale Made Without Warranties. 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 OR MERCHANTABILITY, HABITABILITY, WORKMANLIKE CONSTRUCTION OR FITNESS OF THE APARTMENT FOR A PARTICULAR PURPOSE.

3. Condominium File Plan. The condominium file plan for the project which is to be filed with the Bureau of Conveyances and the Real Estate Commission is intended only to show the layout, location, apartment numbers and dimensions of the apartments and the Buyer acknowledges that the condominium file plan, consisting of the floor plans and elevations, is not intended to be and does not constitute any other representation or warranty by Seller.

4. 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.

5. Reservation Agreement.

(a) Notwithstanding any other provision of this Agreement to the contrary, it is expressly understood and agreed that if at the time of execution of this 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, this Agreement shall not be legally binding upon either the Buyer or Seller. In such event, this 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 apartment described above. This 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 THIS 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 this Agreement (or Seller terminates this Agreement for cause), 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 this Agreement or the loan application; if Seller terminates this Agreement without cause, then Seller shall pay the Escrow cancellation fee.

(b) If this Agreement 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 this Agreement shall be a fully binding contract upon Buyer and Seller upon acceptance of this Agreement by Seller.

6. Estimated Monthly Maintenance Charges.

Buyer has examined and approved the estimate of monthly maintenance charges and assessments for the apartment 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.

7. 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.

8. 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.

9. 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 December 31, 1990, 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.

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

11. Buyer understands that Seller proposes to develop, construct and sell additional increments to the project on the lands of the project as set forth in the Declaration, and that this may result in the creation of dust, noise, vibrations and other nuisances; and Buyer hereby agrees that neither Buyer nor anyone claiming by, through or under Buyer will hold or attempt to hold Seller responsible for the creation of any nuisances arising out of or in connection with any work incidental or connected with the development, construction or sale of said additional increments, and that no such nuisance shall constitute a breach of a covenant by Seller under said Conveyance Document or this Agreement. Buyer further understands and agrees that Seller, for itself and its assigns, and for the agents, employees and independent contractors of Seller or Seller's assigns, reserves an easement over, under and across the common elements of the project for the purpose of all work connected with or incidental to the development, construction or sale of said additional increments, but only until December 31, 1990. Buyer hereby agrees and represents to Seller that, notwithstanding Seller's proposed additional increment to the project, Buyer does not rely thereon.

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 the proposed initial managing agent is William F. Sandifur (also an Assistant Vice President of Developer).

STATUS OF PROJECT: The Developer advises that the construction of the project was substantially completed in August, 1981.

The purchaser or prospective purchaser should be cognizant of the fact that this published report represents information disclosed by the Developer in the required Notice of Intention submitted September 18, 1981 and information subsequently filed as of September 29, 1981.

This PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 1459 filed with the Commission on September 18, 1981. 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 KAUAI
FEDERAL HOUSING ADMINISTRATION
ESCROW AGENT

REGISTRATION NO. 1459

October 2, 1981