

REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE & CONSUMER AFFAIRS

STATE OF HAWAII

1010 RICHARDS STREET
P. O. BOX 3469
HONOLULU, HAWAII 96801

PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT

ON

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

REGISTRATION NO. 1635

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.

December 28, 1984

January 28, 1986

SPECIAL ATTENTION

A comprehensive reading of this report by the prospective purchaser is urged in order that personal requirements and expectations to be derived from the property can be ascertained. The attention of the prospective purchaser is particularly directed to the following:

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION FILED SEPTEMBER 14, 1984, AND ADDITIONAL INFORMATION SUBSEQUENTLY SUBMITTED AS OF DECEMBER 21, 1984. THE DEVELOPER, IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF CHAPTER 514A, HAWAII REVISED STATUTES.

1. KIAHUNA GOLF VILLAGE (PHASE 1) is a proposed fee/leasehold condominium project consisting of seven (7) buildings without basements and containing twenty-eight (28) fairway cottage units. There are a total of fifty-six (56) parking stalls in the Project.

2. The Developer of the Project has filed all documents and materials deemed necessary by the Commission for the registration of this proposed condominium project and the issuance of this Preliminary Public Report.

3. The basic documents (Declaration of Horizontal Property Regime, By-Laws of the Association of Apartment Owners and a copy of the approved Floor Plans) have not yet been filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

4. No advertising or promotional matter has been filed pursuant to the rules and regulations promulgated by the Commission.

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

6. This Preliminary Public Report automatically expires thirteen (13) months after the date of issuance, December 28, 1984, unless a Final or Supplementary Public Report issues or the Commission, upon review of the registration, issues an order extending the period of this report.

7. This Preliminary Public Report is made a part of the registration on KIAHUNA GOLF VILLAGE (PHASE 1) condominium project. The Developer has the responsibility of placing a true copy of the Preliminary Public Report (yellow paper stock) and the Disclosure Abstract in the hands of all purchasers and prospective purchasers. Securing a signed copy of the Receipt for the Preliminary Horizontal Property Regime Public Report and Disclosure Abstract from each purchaser and prospective purchaser is also the responsibility of the Developer.

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

LOCATION: The approximately 5.4 acres of land to be submitted to the horizontal property regime are situated at Poipu, Island and County of Kauai, State of Hawaii. The project is to be located upon proposed Lot 389-A resulting from the subdivision of Lot 389 of Land Court Application 956. A copy of the Preliminary Subdivision Map has been submitted to the Commission.

TAX MAP KEY NO.: Fourth Div.: 2-8-14: 5 and 26 (por.)

ZONING: R-10

DEVELOPER: KIAHUNA GOLF VILLAGE, INC. a California corporation authorized to do business in Hawaii, the principal place of business and post office address of which are Koloa, Kauai, Hawaii, and R.R. #1, Box 73, Koloa, Kauai, Hawaii, respectively, phone (808) 742-9558. The officers

of the corporation are: Frank J. Supon, President; Russell Young, Vice President; LaVerne Spencer, Secretary, all of whose business address is Koloa, Kauai, Hawaii, and whose mailing address is P. O. Box 73, R.R. 1, Koloa, Kauai, Hawaii.

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

DESCRIPTION: The proposed Declaration of Horizontal Property Regime and plans submitted by the Developer indicate a fee/leasehold condominium project consisting of twenty-eight (28) condominium units, which spaces, together with appurtenant lanais, if any, are referred to therein as "Fairway Cottages", and are contained in seven (7) two-story buildings without basements (designated on said Condominium Map as Buildings A, B, C, D, E, F and G) constructed principally of wood and reinforced concrete, steel and aluminum. Said Fairway Cottages are designated on the Condominium Map and described as follows:

Fairway Cottages 1 and 3 are located on the first floor of Building A; Fairway Cottages 2 and 4 are located on the second floor of Building A.

Fairway Cottages 5 and 7 are located on the first floor of Building B; Fairway Cottages 6 and 8 are located on the second floor of Building B.

Fairway Cottages 9 and 11 are located on the first floor of Building C; Fairway Cottages 10 and 12 are located on the second floor of Building C.

Fairway Cottages 13 and 15 are located on the first floor of Building D; Fairway Cottages 14 and 16 are located on the second floor of Building D.

Fairway Cottages 17 and 19 are located on the first floor of Building E; Fairway Cottages 18 and 20 are located on the second floor of Building E.

Fairway Cottages 21 and 23 are located on the first floor of Building F; Fairway Cottages 22 and 24 are located on the second floor of Building F.

Fairway Cottages 25 and 27 are located on the first floor of Building G; Fairway Cottages 26 and 28 are located on the second floor of Building G.

The Fairway Cottages are constructed according to two (2) general floor plans designated as Type 1 and Type 2. A description of each of said floor plans, designating the layout, number of rooms and approximate floor area is as follows:

(a) Type 1. There are fourteen (14) Type 1 units in the project being Fairway Cottages Nos. A-1, A-3, B-5, B-7, C-9, C-11, D-13, D-15, E-17, E-19, F-21, F-23,

G-25 and G-27. Each of these contains eight (8) rooms including two (2) bedrooms, two and one-half bathrooms, a dining room, a living room, and a kitchen, with an approximate floor area, including lanais, as follows:

<u>Living Area</u>	<u>Lanais</u>	<u>Total</u>
1,574 sq. ft.	855 sq. ft.	2,429 sq. ft.

(b) Type 2. There are fourteen (14) Type 2 units in the Project, being Fairway Cottages Nos. A-2, A-4, B-6, B-8, C-10, C-12, D-14, D-16, E-18, E-20, F-22, F-24, G-26 and G-28. Each of these contains eight (8) rooms including two (2) bedrooms, two and one-half bathrooms, a dining room, a living room, and a kitchen, with an approximate floor area, including lanais, as follows:

<u>Living Area</u>	<u>Lanais</u>	<u>Total</u>
1,574 sq. ft.	354 sq. ft.	1,928 sq. ft.

Each of the Fairway Cottages has immediate access to the grounds of the Project and/or to an entry deck and/or stairway which leads to the grounds of the Project.

The respective Fairway Cottages 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 Fairway Cottage or any pipes, wires, conduits or other utility or service lines running through such Fairway Cottages which are utilized for or serve more than one Fairway Cottage, the same being deemed common elements as hereinafter provided. Each Fairway Cottage shall be deemed to include all the walls and partitions which are not load bearing within its perimeter or party walls, the inner decorated or finished surfaces of all walls, floors and ceilings, doors and door frames, windows and window frames, the exterior air space bounded by the interior of the lanai railing, and all fixtures originally installed therein.

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

- (a) Said land in fee simple;
- (b) All foundations, floor slabs, columns, girders, beams, supports, unfinished perimeter, party and load-bearing walls, roofs, entries, stairs, walkways, entrances and exists of the buildings of the Project;
- (c) All yards, grounds, landscaping, and garden areas;
- (d) The swimming pool and appurtenant deck area;

(e) All driveways, parking areas and loading areas;

(f) 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 Fairway Cottage for services such as power, light, gas, water, sewer, telephone and television signal distribution, if any;

(g) 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: Certain parts of the common elements, called the "limited common elements", are designated and set aside for the exclusive use of certain Fairway Cottages, and such Fairway Cottages shall have appurtenant thereto easements for the use of such limited common elements as follows:

(a) One (1) parking space, as designated on said Condominium Map by a number, which number is also set forth opposite the number of each of the respective Fairway Cottages set forth on Exhibit "A" attached hereto shall be appurtenant to and for the exclusive use of such Fairway Cottage.

(b) The separate stairway and entry deck leading to each of the respective Fairway Cottages situated on the second floor of their respective buildings shall be appurtenant to and for the exclusive use of each such Fairway Cottage.

Notwithstanding any provision in the Declaration to the contrary, all costs and expenses, including but not limited to, maintenance, repair, replacement, additions and improvements to any of the aforementioned limited common elements of the Project shall be charged to the owner of the Fairway Cottage or Fairway Cottages to which the limited common element is appurtenant. If a limited common element is appurtenant to more than one Fairway Cottage all such costs and expenses shall be borne on a pro rata basis among such Fairway Cottages.

INTEREST TO BE CONVEYED TO PURCHASERS: The proposed Declaration states that the Fairway Cottages shall have appurtenant thereto an undivided 1/28th fractional interest (3.5714+ percentage interest) in all common elements of the Project (therein called the "common interest") and the same proportionate share in all common profits and expenses of the Project and for all other purposes, including voting.

NOTE: The Developer advises that Moana/Kauai Corporation owns a tennis club known as the "Kiahuna Tennis Club" and

that Developer owns a golf club known as the "Kiahuna Golf Club". Each owner of a Fairway Cottage shall be entitled to receive and maintain a membership in both the Kiahuna Tennis Club and Kiahuna Golf Club which valid and current membership will entitle the owner and his family to use the recreational facilities of both of said Clubs on a nonexclusive basis. Continued membership in both of these Clubs will require payment of an annual membership fee and possibly certain use fees for the tennis courts and golf course which fees are subject to change from time to time within the sole discretion of the Club. The fees for 1985 have been established as follows:

	<u>Annual Membership Fee</u>
Kiahuna Tennis Club (Note: There are no court fees for members.)	\$720.00
Kiahuna Golf Club (Note: There will be no green fees for members, but an initial use fee of \$5.00 per person per round for golf cart use.)	\$720.00

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The Fairway Cottages shall be used by the respective owners thereof, their families, guests and tenants only for residential purposes and for no other purpose.

EASEMENTS: The proposed Declaration provides that the Fee Owners and Developer reserve certain easements over, under and across the common elements of the Project including without limitation the following:

1. The Developer shall have the right to conduct extensive sales activities on the Project, including the use of model Fairway Cottages, sales and management offices, and extensive sales displays and activities until the earlier to occur of (a) eighteen (18) months from the date of the filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii of the first condominium conveyance document covering a Fairway Cottage or (b) the closing of the sale of the last unsold fairway cottage in the Project. In the event that the Developer is unable to sell all of the Fairway Cottages within the eighteen (18) month period, the Developer shall have the right to conduct sales activities on the Project until the closing of the sale of the last unsold Fairway Cottage in the Project provided that such sales activities are conducted in an unobtrusive manner which will not unreasonably interfere with the use, possession, and aesthetic enjoyment of the Project by the other Fairway Cottage owners. In the event that the Developer's mortgage lender or any successor to or assignee of the Developer's mortgage lender shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or

by an assignment in lieu of foreclosure, such mortgage lender, its successors and assigns, shall have the right to conduct such extensive sales activities on the Project until at least ninety-five percent (95%) of all of the Fairway Cottages have been sold and closed, notwithstanding the foregoing.

2. The Developer, its agents, employees, contractors, licensees, successors, and assigns shall have an easement over and upon the Project as may be reasonably necessary for the completion of the planned improvements and correction of defects in the Project. Such easement shall terminate twenty-four (24) months after the later of (i) the date of the filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii of the first condominium conveyance document on a Fairway Cottage, or (ii) "substantial completion" (as the term is used in Chapter 507, Part II, Hawaii Revised Statutes) of the planned renovations.

3. The Fee Owners and/or Developer reserve the right to grant or lease to any public utility, governmental authority, State of Hawaii, County of Kauai, or agencies thereof, or other corporation, partnership, association or individual, any and all easements for drainage, sewer and water pipelines, electrical and telephone lines and any utilities together with the right to grant or lease such rights-of-way over, across and under said property for the construction, reconstruction, installation, maintenance and operation of such pipes, lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewer, drainage and other public services and utilities, and the right to enter for such purposes and to repair such facilities and to trim any trees in the way of such lines.

OWNERSHIP OF TITLE: A Preliminary Title Report dated September 13, 1984, issued by Security Title Corporation discloses that FIRST HAWAIIAN BANK, a Hawaii corporation, and VALDEMAR L'ORANGE KNUDSEN, Trustees under Deed of Trust of Eric A. Knudsen dated April 30, 1922, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 639, Page 326, and also filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 27057, as amended, and BISHOP TRUST COMPANY, LIMITED, a Hawaii corporation, as Trustee under Deed of Trust of Augustus F. Knudsen, dated December 22, 1924, recorded as aforesaid in Liber 759, Page 399, as amended, are the owners of the fee simple title to the property to be submitted to the horizontal property regime. The Fee Owners have by Indenture of Lease dated July 1, 1978, filed as aforesaid as Document No. 919326, and also recorded in the Bureau of Conveyances in Liber 13425, Page 474, demised the property, among other lands, to Developer, a California corporation qualified to do business in the State of Hawaii. Developer has the right under said Indenture of Lease to obtain an Increment Lease covering portions of

the land demised thereby from the Lessors and will have Lessors issue an Increment Lease to Developer covering the Project lands from Lessors upon the Land Court's granting of the Petition to Subdivide Lot 389.

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

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

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

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

4. Undated Mortgage, filed in said Office of the Assistant Registrar as Document No. 1053898, and also recorded on February 5, 1981 in said Bureau of Conveyances in Book 15326, Page 606, made by KIAHUNA GOLF VILLAGE,

INC., a California corporation, as Mortgagor(s), to BANK OF HAWAII, a Hawaii banking corporation, as Mortgagee(s), to secure the repayment of the sum of \$12,000,000.00, any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to. (Also affects other property.)

5. Mortgage dated December 23, 1980, filed in said Office of the Assistant Registrar as Document No. 1052329, and also recorded on January 26, 1981 in said Bureau of Conveyances in Book 15303, Page 585, made by KIAHUNA GOLF VILLAGE, INC., a California corporation, as Mortgagor(s), to FIRST HAWAIIAN BANK, a Hawaii corporation, VALDEMAR L'ORANGE KNUDSEN, Trustees of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in said Bureau of Conveyances in Book 639, Page 326, and also filed in said Office of the Assistant Registrar as Document No. 27057, as amended, and BISHOP TRUST COMPANY, LIMITED, a Hawaii corporation, Trustee of the Augustus F. Knudsen Trust under Deed of Trust dated December 22, 1924, recorded as aforesaid in Book 759, Page 399, a amended, as Mortgagee(s), to secure the repayment of the sum of \$2,999,000.00, any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to. (Also affects other property.)

The Lien or Charge of the above referenced mortgage was subordinated to the lien or charge of the mortgage shown in item No. 4, by Agreement dated January 29, 1981, filed in said Office of the Assistant Registrar as Document No. 1053897, and also recorded on February 5, 1981 in said Bureau of Conveyances in Book 15326, Page 587.

6. Mortgage dated May 17, 1984, filed in said Office of the Assistant Registrar as Document No. 1236554, and also recorded in said Bureau of Conveyances in Liber 17881, Page 710, made by MOANA CORPORATION and KIAHUNA GOLF VILLAGE, INC. in favor of the TRUSTEES OF THE FIRESTONE TIRE & RUBBER COMPANY PENSION TRUST NO. 5, to secure the repayment of the sum of \$1,658,665.20, all according to the terms of that certain promissory note therein referred to. (Also affects other property.)

7. The effect of that certain Declaration of Covenants dated July 27, 1977, recorded in said Bureau of Conveyances in Book 12379, Page 549.

As amended by instrument dated July 3, 1978, recorded in said Bureau of Conveyances in Book 13040, Page 234.

8. Easements M and N, road easements appurtenant to certain Exclusions as shown on Maps 2 and 4, of Land Court Application 956 across Lot 273, as shown on Map 68, set forth by Land Court Order No. 58517, filed December 11, 1980.

9. Rights of Way by necessity for exclusions not otherwise provided for. (Also affects other property.)

10. Grant dated March 9, 1981, recorded on March 10, 1981 in said Bureau of Conveyances in Book 15429, Page 313, in favor of CITIZENS UTILITIES COMPANY, a Delaware corporation, duly authorized to do business in the State of Hawaii, granting a right-of-entry over and across TMK 2-8-14-por. 5. (Also affects other property.)

11. The terms and provisions of that certain Lease dated February 10, 1981, filed in said Office of the Assistant Registrar as Document No. 1064132, and also recorded on April 23, 1981 in said Bureau of Conveyances in Book 15497, Page 443, made by and between KIAHUNA GOLF VILLAGE, INC., a California corporation, as Lessor, and KIAHUNA HOMESITES COMMUNITY ASSOCIATION-I, a Hawaii non-profit corporation, as Lessee, for a term commencing as of the date hereof and ending December 31, 2058. (Also affects other property.)

12. Designation of Easements 67 and 68 affecting Lot 273 as shown on Map 82, as set forth by Land Court Order No. 65923, filed May 16, 1983.

13. Designation of Easement 70 affecting Lot 272 as shown on Map 84, as set forth by Land Court order No. 66827, filed August 10, 1983.

14. Grant dated June 16, 1983, filed in said Office of the Assistant Registrar as Document No. 1189737, in favor of KAUAI ELECTRIC DIVISION OF CITIZENS UTILITIES COMPANY, a Delaware corporation, and HAWAIIAN TELEPHONE COMPANY, a Hawaii corporation, granting easements for utility purposes over and across Easement 66 affecting Lot 171 and Easements 67 and 68 affecting Lot 273 (besides other lands). Consents thereto filed as Documents Numbered 1189738 and 1189739.

15. Grant dated September 6, 1983, filed in said Office of the Assistant Registrar as Document No. 1193963, in favor of CITIZENS UTILITIES COMPANY, a Delaware corporation duly authorized to do business in the State of Hawaii, granting a right-of-entry over and across Lots 271 and 273. Consent thereto filed as Document No. 1193964.

16. The terms and provisions of that certain Lease dated November 11, 1983, filed in said Office of the Assistant Registrar as Document No. 1210206, made by and between MOANA CORPORATION, a California corporation authorized to do business in Hawaii, as Lessor, and GERALD JOSEPH PERATA, unmarried, as Lessee, for a term of 5 years commencing on the date of issuance by the County of Kauai of the Certificate of Occupancy of the Building in which the restaurant is located.

17. Grant dated December 16, 1983, filed in said Office of the Assistant Registrar as Document No. 1221727,

in favor of the BOARD OF WATER SUPPLY, COUNTY OF KAUAI, a municipal corporation of the State of Hawaii, granting easement 70 affecting Lot 272. Consents thereto filed as Document Nos. 1221728 and 1221729.

18. Short Form Option to Purchase dated May 17, 1984, filed in said Office of the Assistant Registrar as Document No. 1236548, made by and between MOANA CORPORATION, a California corporation, "Buyer", and FIRST HAWAIIAN BANK, a Hawaii corporation, and VALDEMAR L'ORANGE KNUDSEN, as Trustees under that certain Deed of Trust made by Eric A. Knudsen dated April 30, 1922, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 639, Page 326, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 27057, as amended, and BISHOP TRUST COMPANY, LIMITED, a Hawaii corporation, as Trustee under Deed of Trust made by Augustus F. Knudsen dated December 22, 1924, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 759, Page 399, as amended, "Sellers".

19. Undated Financing Statement covering certain fixtures located on the real property, given as security by MOANA CORPORATION and KIAHUNA GOLF VILLAGE, in favor of JOHN E. ROONEY and T. A. LESHER, not as individuals but as Trustees of The Firestone Tire & Rubber Company Pension Trust No. 5, recorded on May 17, 1984 in said Bureau of Conveyances in Book 17882, Page 77.

20. Easements 76, 77, 78, 81, 82 and 83, as shown on Map 88, as set forth by Land Court Order No. 70366, filed July 3, 1984.

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

PURCHASE MONEY HANDLING: A copy of the executed Escrow Agreement dated June 12, 1984, as amended, between Security Title Corporation, as Escrow, and Developer has been filed with the Commission. On examination, the executed Escrow Agreement filed with the Commission is found to be in compliance with Chapter 514A, Hawaii Revised Statutes, and particularly Sections 514A-39, 514A-40(6), and 514A-63, H.R.S. Among other provisions, the executed Escrow Agreement states that a purchaser shall be entitled to a refund of his funds, and Escrow shall pay said funds to said purchaser, without interest, and less Escrow's cancellation fee, if purchaser shall in writing request refund of his funds and any one of the following shall have occurred:

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

2. If a purchaser's funds were obtained prior to the issuance of a Final Public Report and the purchaser's request is prior to the time the purchaser has receipted for or is deemed to have receipted for the Final

Public Report and waived or is deemed to have waived his right to cancel in accord with Section 514A-62, Hawaii Revised Statutes, as amended; or

3. Except for any additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of a project, made pursuant to the terms of the Declaration, the purchaser shall have the right to rescind a sale made under a binding contract (after issuance and receipt of the Final Public Report) if there is a material change in the Project which directly, substantially, and adversely affects the use or value of (1) such purchaser's apartment or appurtenant limited common elements, or (2) those amenities of the Project available for such purchaser's use.

The purchaser's right of rescission shall be waived upon (1) delivery to such purchaser, either personally or by registered or certified mail, return receipt requested, of a disclosure document which describes the material change and contains a provision for such purchaser's written approval or acceptance of such change, and (2) such purchaser's written approval or acceptance of the material change, or the lapse of ninety (90) days since such purchaser has accepted the apartment, or the occupancy of the apartment by such purchaser; provided that if such purchaser does not rescind the contract or execute and return the written approval or acceptance of such change as provided in the disclosure document within thirty (30) days from the date of delivery of such disclosure document, such purchaser shall be deemed to have approved and accepted such change; provided further that the deemed approval and acceptance shall be effective only if at the time of delivery of the disclosure document, such purchaser is notified in writing of the fact that such purchaser will be deemed to have approved and accepted the change upon such purchaser's failure to act within the thirty (30) day period; provided further that if, prior to delivery of such disclosure document, ninety (90) days have lapsed since such purchaser has accepted the apartment, or such purchaser has occupied the apartment, then such purchaser's right of rescission shall not be waived unless such purchaser shall execute the written approval or acceptance of such change as provided in the disclosure document within thirty (30) days from the date of delivery of such disclosure document or such purchaser is deemed to have approved and accepted such change as set forth above.

It is incumbent upon the purchaser and prospective purchaser to read and understand the Escrow Agreement before signing the Condominium Reservation Agreement since the Escrow Agreements prescribes the procedure for receiving and disbursing the purchaser's funds. Purchasers and prospective purchasers are advised to read with care the provisions of the Condominium Reservation Agreement. The Specimen Condominium Reservation Agreement specifically provides that the purchaser approve said Escrow Agreement,

assume the benefits and obligations therein provided, and agree among other things to the following:

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

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

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

Seller makes no warranties itself, but Seller agrees that the assignment by Seller to Buyer of any and all warranties given Seller by the General Contractor for the Project, including the above described Contractor's agreement to promptly correct any of its work found to be defective or not in conformance with the Construction Contract for a period of one (1) year after the "Date of substantial Completion" of the Fairway Cottage 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 Fairway Cottage. Buyer acknowledges that the Seller is only passing through to Buyer any such manufacturer's or dealer's warranties; Seller is not under taking to adopt any such warranties or to act as co-warrantor with respect to any furnishings, fixtures or appliances covered thereby. The terms of the manufacturer's or dealer's written warranties are available for the Buyer's examination at the Seller's sales office.

Except for the agreements set forth above, it is expressly understood and agreed by and between Seller and Buyer that SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE FAIRWAY COTTAGE, 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 FAIRWAY COTTAGE FOR A PARTICULAR PURPOSE.

3. Reservation Agreement.

(a) Notwithstanding any other provision of the Sales Contract to the contrary, it is expressly understood and agreed that if at the time of execution of the Agreement by the Buyer and the Seller, a Final Public Report for the Project has not been issued by the Real Estate Commission of the State of Hawaii, the Agreement shall not be legally binding upon either the Buyer or Seller. In such event, the Agreement shall constitute only a "reservation", and not a binding contract. Seller shall have no obligation to sell and Buyer shall have no obligation to buy the Fairway Cottage described in the Agreement above. The Agreement will not become a binding sales agreement unless and until: (i) a Final Public Report is issued on the Project; and (ii) Buyer has receipted for or is deemed to have receipted for the Final Public Report and the Buyer has waived or is deemed to have waived Buyer's right to cancel as more particularly provided in Section 514A-62 of the Hawaii Revised Statutes. AS LONG AS THE AGREEMENT CONSTITUTES A RESERVATION, IT MAY BE TERMINATED AT ANY TIME, WITH OR WITHOUT CAUSE, AT THE OPTION OF EITHER PARTY, BY WRITTEN NOTICE OF SUCH TERMINATION TO THE OTHER PARTY. In the event of such termination, the Seller shall cause Escrow to refund all payments previously made by Buyer without interest, and neither party shall have any other or further liability hereunder or with respect to the Project; provided that if Buyer terminates the Agreement, then Escrow shall deduct from the refund to Buyer the Escrow cancellation fee and all costs incurred by Seller, Escrow, or any lending institution in processing the Agreement or the loan application; if Seller terminates the Agreement, then Seller shall pay the Escrow cancellation fee.

(b) If the 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 the Agreement shall be a fully binding contract upon Buyer and Seller upon acceptance of the Agreement by Seller as provided in paragraph F.23 of the Condominium Reservation Agreement.

4. No Present Transfer and Subordination to Construction Loan. The Sales Contract shall not be construed as a present transfer of any interest in the Property but rather it is an agreement to transfer in the future. Buyer acknowledges that Seller shall enter into an agreement with an established lending institution (the "Lender") pursuant to which the Lender may loan an aggregate of up to \$10,000,000.00 at an interest rate not to exceed five percent (5%) floating over the commercial prime rate of interest charged from time to time by Bank

of Hawaii for a period of not more than thirty-six (36) months for construction costs, costs of acquiring the land and other associated costs of this Project. To secure the loan, Seller shall grant to the Lender security interests covering the Seller's interest in the land and the Project, including the Property covered by the Agreement. Buyer acknowledges and agrees that all security interests obtained by the Lender in connection with such loan as well as any extensions, renewals and modifications thereof shall be and remain at all times, until the final closing and delivery by Seller of a Condominium Conveyance Document to Buyer, a lien or charge on the Project, including the Property covered by the Agreement, prior to and superior to any and all liens or charges on the Project arising from this Agreement or any prior agreement. THE BUYER HEREBY INTENTIONALLY WAIVES, RELINQUISHES AND SUBORDINATES THE PRIORITY OR SUPERIORITY OF ANY LIEN OR OTHER LEGAL OR EQUITABLE INTEREST ARISING UNDER THE AGREEMENT IN FAVOR OF THE LIEN OR CHARGE ON THE PROJECT OF THE SECURITY INTERESTS OF THE LENDER, INCLUDING BUT NOT LIMITED TO ANY LIEN, MORTGAGE OR OTHER CHARGE SECURING A LOAN MADE TO FINANCE THE ACQUISITION OF SAID LAND AND THE COSTS OF CONSTRUCTION AND OTHER COSTS DURING SUCH CONSTRUCTION AND ANY AND ALL ADVANCES THEREFOR, WHETHER CONTRACTUAL OR VOLUNTARY, UNTIL THE FINAL CLOSING AND DELIVERY BY SELLER OF A CONDOMINIUM CONVEYANCE DOCUMENT TO BUYER. The Buyer further covenants and agrees to execute any further documentation or subordination agreement required by the Lender to evidence this subordination and hereby irrevocably appoints Seller as Buyer's attorney-in-fact to execute any such instrument on behalf of Buyer, should Buyer fail or refuse to deliver the same within ten (10) days after request is made therefor. Said power of attorney is coupled with an interest, shall be irrevocable, and shall not be affected by the death or disability of the Buyer. Buyer also consents to Seller's assignment by way of security of Seller's interests in the Agreement and Buyer's deposits with escrow to the Lender and agrees that in the event of passage of Seller's interests therein pursuant to said assignment, that Buyer will, at Lender's option, perform to, attorn to and recognize Lender (and its successors in interest, if any) as the Seller hereunder, with all of the rights of the Seller hereunder. Buyer further understands and agrees that prior to the consummation of the Agreement and delivery by Seller of a Condominium Conveyance Document to Buyer, the Lender has the right under certain circumstances set forth or to be set forth in the mortgage instrument, the security agreement and any other loan documents pertaining to said agreement between Seller and Lender to foreclose its mortgage and/or enforce its other remedies thereunder or under such other loan documents or possessed at law, and purchaser hereby agrees in such connection that: the rights of Buyer hereunder are purely contractual in nature, enforceable only against Seller and its legal successors and assigns and not against the real property, improvements and/or appurtenances thereto which are the subject of said mortgage instrument, security agreement or other loan documents, and Buyer expressly

acknowledges and agrees that Buyer need not be named a party defendant or plaintiff in any cause of action or suit by Lender to foreclose and/or otherwise enforce its rights under said mortgage instrument or security agreement or other loan documents, nor does Buyer have any right to be served with process in connection therewith or to be notified of the pendency thereof.

5. Estimated Monthly Maintenance Charges.

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

6. No Rental Representations; No Rental Pool.

(a) Buyer acknowledges that neither Developer 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 Developer 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.

(b) Buyer hereby agrees for the sole benefit of Developer that until Developer has closed out the sale of the Fairway Cottages in the condominium project or until December 31, 1986, whichever shall first occur, that Buyer will not enter into any "rental pool" or similar agreement with any purchase, lessee or owner of another Fairway Cottage in the condominium project and/or any third party under which Buyer agrees to share expenses and/or rentals of Fairway Cottages in the condominium project. This agreement of Buyer shall survive the issuance to Buyer of the Conveyance Document described in Paragraph "A" above, and shall bind Buyer's heirs, personal representatives, successors and assigns during the term thereof. In the event of Buyer's breach of the agreement contained in this paragraph, the parties hereto understand and agree that the injury to Developer will be uncertain as to nature and amount and difficult and expensive to ascertain. Therefore, in the event of a breach of said agreement by Buyer, the parties hereto agree that Developer may obtain an injunction from any court of competent jurisdiction enjoining Buyer from breaching said agreement. Developer

may, in addition to obtaining injunctive relief, pursue any other remedy, including seeking damages caused by such breach, as are permitted in law or equity. All costs and expenses, including reasonable attorneys' fees, incurred by Developer in connection with a breach of said agreement by the Buyer, shall be borne by the Buyer.

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

DECLARATION AS TO MERGER OF INCREMENTS: The Developer further advises that the proposed Declaration and all of the property described therein shall be subject and subordinate to the terms and provisions contained in the proposed Declaration as to Merger of Increments in a Condominium Project which has been provided to the Commission. The proposed Declaration as to Merger provides that the condominium project described in this Preliminary Public Report may be merged for administrative purposes with similar condominium projects contemplated by the Developer upon the lands adjoining this Project. Purchasers and prospective purchasers are advised to read with care the proposed Declaration as to Merger of Increments in a Condominium Project.

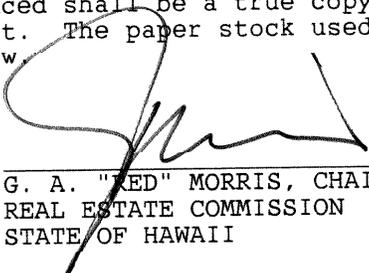
NOTE: Pursuant to paragraph S of the proposed Declaration, the Developer and Fee Owners have reserved the right at any time prior to December 31, 1990, without the consent or joinder of any persons then owning or leasing the Fairway Cottages, to withdraw from the Project lands all or any portion of the Project lands cross-hatched in red on the map attached to the Declaration as Exhibit "D", provided the Developer and Fee Owners have obtained final subdivision map approval from the County of Kauai and the Land Court of the State of Hawaii of a subdivision out of the designated portion or portions of the Project lands. Any such withdrawal shall not alter, affect or amend any other provision in the Declaration including without limitation the common interest appurtenant to each of the Fairway Cottages.

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

estimated date for the start of or completion of construction.

The purchaser and prospective purchaser should be cognizant of the fact that this published report represents information disclosed by the Developer in the required Notice of Intention submitted September 14, 1984, and information subsequently submitted as of December 21, 1984.

This is a PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT which is made a part of REGISTRATION NO. 1635 filed with the Commission September 14, 1984. This report when reproduced shall be a true copy of the Commissions 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 DEPARTMENT, COUNTY OF KAUAI
FEDERAL HOUSING ADMINISTRATION
ESCROW AGENT

REGISTRATION No. 1635

December 28, 1984

EXHIBIT "A"

<u>Building</u>	<u>Floor</u>	<u>Unit No.</u>	<u>Living Area (Sq. Ft.)</u>	<u>Lanai Area (Sq. Ft.)</u>	<u>Total (Sq. Ft.)</u>	<u>Parking Stall No.</u>
A	1	1	1574	855	2,429	1
A	2	2	1574	354	1,928	3
A	1	3	1574	855	2,429	5
A	2	4	1574	354	1,928	7
B	1	5	1574	855	2,429	9
B	2	6	1574	354	1,928	11
B	1	7	1574	855	2,429	13
B	2	8	1574	354	1,928	15
C	1	9	1574	855	2,429	17
C	2	10	1574	354	1,928	19
C	1	11	1574	855	2,429	21
C	2	12	1574	354	1,928	23
D	1	13	1574	855	2,429	25
D	2	14	1574	354	1,928	27
D	1	15	1574	855	2,429	29
D	2	16	1574	354	1,928	31
E	1	17	1574	855	2,429	33
E	2	18	1574	354	1,928	35
E	1	19	1574	855	2,429	37
E	2	20	1574	354	1,928	39
F	1	21	1574	855	2,429	41
F	2	22	1574	354	1,928	43
F	1	23	1574	855	2,429	45
F	2	24	1574	354	1,928	47
G	1	25	1574	855	2,429	49
G	2	26	1574	354	1,928	51
G	1	27	1574	855	2,429	53
G	2	28	1574	354	1,928	55