

REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE & CONSUMER AFFAIRS
STATE OF HAWAII

1010 RICHARDS STREET
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HONOLULU, HAWAII 96801

PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT

KIHEI PACIFIC PLAZA
Halelani Place and South Kihei Road
Kihei, Maui, Hawaii

Registration No. 1675

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: June 12, 1985
Expires: July 12, 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 SUBMITTED April 30, 1985, AND ADDITIONAL INFORMATION SUBSEQUENTLY FILED WITH THE COMMISSION AS OF June 6, 1985. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT SET FORTH IN CHAPTER 514A, HAWAII REVISED STATUTES, AS AMENDED.

1. KIHEI PACIFIC PLAZA is a proposed fee simple commercial condominium project consisting of twenty-eight (28) commercial apartment units contained in two 1-story buildings and one 3-story building. There will be forty-three (43) uncovered standard size parking spaces, eight (8) partially covered parking spaces, two loading spaces and landscaping.
2. The Developer of the Project has submitted to the Commission for examination all documents deemed necessary for the registration of this 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 or promotional matter has been submitted 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 Chapter 514A, Hawaii Revised Statutes, as amended, and the rules and regulations of the Hawaii Real Estate Commission which relate to Horizontal Property Regimes.
6. The Preliminary Public Report automatically expires thirteen (13) months after the date of issuance, June 12, 1985, unless a Final or Supplementary Public Report is published, or the Commission, upon review of the registration, issues an order extending the effective date of this report.
7. This Preliminary Public Report is made a part of the registration of KIHEI PACIFIC PLAZA condominium project. The Developer shall be responsible for placing this Preliminary Public Report (yellow paper stock) together with Disclosure Abstract in the hands of all purchasers and prospective purchasers, and for securing a signed receipt therefor from each purchaser and prospective purchaser.

NAME OF PROJECT: KIHEI PACIFIC PLAZA

LOCATION: The approximately 0.994 acres (43,318 square feet) of land committed to the Project is located in Kihei, County of Maui, State of Hawaii.

The Developer has submitted for Maui County Approval an application to subdivide and deed (dedicate) to Maui County approximately 5,340 square feet of land on the southern (Halelani Place) border of the property, for street widening purposes. The Developer does anticipate that this subdivision will be completed and the 5,340 square feet parcel dedicated, prior to commencement of construction of any apartments. Upon this occurrence, the remaining portion of the land to which the Declaration and all other documents will apply, will contain approximately 37,978 square feet.

TAX KEY: Second Division, 3-9-3-15.

ZONING: B-2, under the ordinances of the County of Maui.

DEVELOPER: Kihei Pacific Plaza Venture, a Hawaii general partnership, whose principal place of business is 1993-200 South Kihei Road, (P. O. Box 719) Kihei, Maui, Hawaii 96753 (Telephone No. 808-879-7755). The general partners of the partnership are Thomas A. Bodden and Irene S. Bodden, both have the same address, as above.

ATTORNEY REPRESENTING DEVELOPER: THOMAS A. BODDEN, Attorney at Law, A Law Corporation, 1993-200 South Kihei Road, Kihei, Maui, Hawaii 96753 (Telephone: 808-879-7755).

DESCRIPTION: The proposed Declaration of Horizontal Property Regime reflects that the project will consist of the following:

1. The Land. The land in fee simple will be submitted to the horizontal property regime. The Developer has reserved the right, however, to subdivide off from the Project and to deed (dedicate) to the County of Maui a portion of the land, located on its southern boundary and containing an area of approximately 5,340 square feet, for street widening purposes. This subdivision and dedication has been made a condition for issuance of final building permits by the County of Maui, and the Developer does anticipate that it will be accomplished prior to commencement of construction.

2. The Buildings. The project will consist of two one-story buildings and one three-story building. Each one-story building shall comprise one apartment unit. The three-story building shall contain twenty-six (26) apartment units. The principal materials to be used for the construction of the buildings will be poured and pre-formed concrete, glass, masonry wall and roof tiles and bronzed, anodized aluminum.

3. Parking. The project will also consist of fifty-one (51) standard size open parking spaces, two loading zones and landscaping.

4. Apartments. The twenty-eight (28) freehold estates, referred to herein as "apartments," are designated and depicted on said plans and are described as follows:

Apartment CS, consisting of Building CS, contains a net floor area of approximately 2,410 square feet.

Apartment FF, consisting of Building FF, contains a net floor area of approximately 1,350 square feet.

Apartments G-1 through G-10, are located on the ground floor of Building CB.

Apartments U-1 through U-8, are located on the upper or second floor of Building CB.

Apartments T-1 through T-8, are located on the top or third floor of Building CB.

The area of each apartment in Building CB is as follows:

<u>Apartment</u>	<u>Approx. Net Floor Area in Square Feet</u>
G-1	210
G-2	185
G-3	200
G-4	605
G-5	990
G-6	330
G-7	240
G-8	350
G-9	270
G-10	280
U-1	390
U-2	300
U-3	1,795
U-4	790
U-5	790
U-6	1,010
U-7	230
U-8	555
T-1	390
T-2	300
T-3	1,210
T-4	790
T-5	790
T-6	1,010
T-7	395
T-8	<u>390</u>
Total Net Square Footage	
Building CB Apartments	14,795

It is the specific intent of the Developer that Apartment CS shall be deemed to include all improvements contained within or constructed upon exclusive limited common element (Yard) area CS, other than any utility or service line which serves more than Apartment CS.

Similarly, it is the specific intent of the Developer that Apartment FF shall be deemed to include all improvements contained within or constructed upon exclusive limited common element (Yard) area FF, other than any utility or service line which serves more than Apartment FF.

Therefore, Apartments CS and FF shall each be deemed to include all interior and exterior walls and partitions, all foundations, supports, floors, ceilings and roofs, doors and door frames, windows and window frames, entrances and exits, appurtenant walkways and trash storage areas, the air space above the walkways and trash areas, if any, all service lines or utility installations for the sole use of either of said apartments, and any fixtures installed therein.

Each apartment in Building CB will consist of the space measured horizontally by the distances between the centerline of the perimeter party walls and the outside face, except for exterior decoration, of the perimeter non-party walls of each apartment; and measured vertically by the distances between the unfinished topside surface of the concrete floor and the

unfinished underside surface of the ceiling, and will be deemed to include the undecorated or unfinished surfaces of the perimeter party walls. The floors and ceilings surrounding each apartment, are deemed common elements. Each apartment shall also be deemed to include all the walls and partitions, floors and ceilings, which are not load bearing, within its perimeter walls including paper, wallpaper or other wall covering as well as carpeting, floor covering and built-in fixtures, if any.

Each apartment shall be unfurnished and shall, at the time of conveyance from Developer, contain unfinished and undecorated walls, floor and ceiling. Each apartment shall consist of a single room ("loft space") as depicted on the Condominium File Plan.

No apartments shall be deemed to include 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 of the apartments will have direct access to the grounds of the project or to a walkway leading to an elevator and stairways which lead to the grounds of the project. The walkways, elevator, stairways and the grounds are common or limited common elements as described below.

COMMON ELEMENTS: The proposed Declaration reflects that the common elements shall include all remaining portions of the Project other than the apartments, including specifically but not limited to:

- (a) The Land in fee simple;
- (b) All yards, grounds and landscaped areas and landscaping;
- (c) All roads, driveways, loading areas, ramps, easements, accessways and parking areas, and all parking spaces;
- (d) With respect to Building CB, the foundations, floor slabs, columns, girders, elevator, elevator shafts, beams, supports, bearing walls, roofs, corridors, walkways, stairways, fire escapes, entrances and exits of the building, except to the extent contained in and constituting part of an apartment;
- (e) All pipes, cables, conduits, ducts, electrical equipment, wiring and other central and appurtenant transmission facilities and installations over, under and across the Project which serve more than one apartment for services such as power, light, gas, water, sewer, telephone and television or other signal distribution, if any;
- (f) All areas, structures or facilities of the project, within or outside of the buildings, which are for common use or which serve more than one apartment space, such as electrical rooms, machine, mechanical and equipment rooms, hallways, walkways and common ways, planters, landscaping, yards, fences, and loading zones;

- (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;
- (h) All tangible personal property, accounts, general intangibles, instruments and money held by or belonging to, and any apartment acquired and held by, the Association, or its agents, for the administration, maintenance, safety and operation of the common elements of the Horizontal Property Regime, or for the common use and benefit of the apartment owners; and
- (i) Notwithstanding anything else in the Declaration to the contrary, the (general) common elements shall also be deemed to include (a) the electrical transformer, the concrete slab upon which it is located, and all common service lines connected thereto, and (b) the "Pacific Plaza Sign" being a ground sign of a type, style and content determined by the Board of Directors from time to time in compliance with applicable Maui County sign ordinances, which sign shall contain the name and any identifying logo of the Kihei Pacific Plaza, as well as (to the extent reasonably feasible) a directory containing the names of all other apartment owners (or their assignees) of the Project, which transformer, slab, lines and sign are all more particularly depicted on the Condominium File Plan.

LIMITED COMMON ELEMENTS: Certain parts of the common elements, called the "limited common elements," and further distinguished as "exclusive limited common elements" and "non-exclusive limited common elements," are designated and set aside for the exclusive use of certain apartments, and such apartments shall have appurtenant thereto easements for the use of such limited common elements as follows:

1. Exclusive Limited Common Elements

(a) All land, and any and all improvements (to the extent, if any, not comprising a part of Apartment CS) other than the said transformer, slab and common service lines, the said Pacific Plaza Sign, and pipes and utility lines, if any, which serve more than one apartment, included within the area designated "Yard Area CS" on the Condominium File Plan, including 9 parking spaces, numbered CS-1 through CS-9 (which Yard Area contains approximately 5,607 square feet of land and is more particularly described in Exhibit C-1 of the Declaration), shall be deemed to be an "Exclusive Limited Common Element," appurtenant to and for the exclusive use of Apartment CS;

(b) All land, and any and all improvements (to the extent, if any, not comprising a part of Apartment FF) other than pipes and utility lines, if any, which serve more than one apartment, included within the area designated "Yard Area FF" on the Condominium File Plan, including 4 parking spaces, numbered FF-1 through FF-4 (which Yard Area contains approximately 4,757 square feet of land and is more particularly described in Exhibit C-2 of the Declaration), shall be deemed to be an "Exclusive Limited Common Element," appurtenant to and for the exclusive use of Apartment FF;

(c) Those parking stalls, numbered FF-5 through FF-8, as depicted on the Condominium File Plan shall also be deemed to be an Exclusive Limited Common Element appurtenant to and for the exclusive use of Apartment FF.

2. Non-Exclusive Limited Common Elements. All land, and any and all improvements (to the extent not comprising a part of the 26 Apartments numbered G-1 through T-8), other than pipes and utility lines, if any, which serve either Apartment CS or Apartment FF and Parking Spaces FF-5 through FF-8 which are appurtenant to Apartment FF, which are included within the areas designated "Yard Area CB" and "Additional Parking Area CB," on the Condominium File Plan (which Yard and Additional Parking areas contain a combined total of approximately 17,984 square feet of land, all of which land is more particularly described in Exhibit C-3 to the Declaration), shall be designated Non-Exclusive Limited Common Elements and shall be appurtenant to and for the collective use of all of those apartments located in Building CB (but for those apartments only).

3. Parking Stalls. Each apartment contained in Building CB shall have appurtenant to it one or more parking stalls. Such parking stall(s) shall be from among those stalls, numbered CB-1 through CB-34, as depicted on the Condominium File Plan, provided that no specific stall(s) shall by the Declaration be assigned to any particular apartment. Notwithstanding the fact that no such stalls shall be specifically assigned to particular apartments under the Declaration, the Board of Directors, through the House Rules and/or the Rules and Regulations of Building CB, shall have the authority from time to time to regulate the usage and assignment of individual stalls, as deemed appropriate to facilitate traffic flow and customer parking within the Project.

Notwithstanding any other provision in the Declaration, apartment owners shall have the right to change the designation of parking stalls which are appurtenant to their respective apartments by amendment of the Declaration and respective Apartment Deeds involved. The amendment need only be signed and approved by the owners (and their respective mortgagees if any) of the apartments whose parking stalls are being changed. The amendment shall be effective only upon the recording of the same in the Bureau of Conveyances.

4. Certain Equipment. Any pump, motor, fan, compressor or duct, or any installation for power, light, telephone, gas, hot and cold water, heating, refrigeration, television, sewage disposal, air conditioning, or other utilities (including all pipes, ducts, wires, cables and conduits used in connection therewith), regardless of whether located in a common element, designed to serve only one apartment (that is, not designed or existing for common use), shall be appurtenant to such apartment, as a limited common element, and the same shall be reserved for the exclusive use and benefit of such apartment, and all costs and expenses of every description pertaining thereto including but not limited to the cost of the maintenance, repair and replacement thereof, and the making of any additions and improvements thereto, shall be charged to the owner of such apartment.

All costs and expenses incurred in connection with the maintenance, operation, repair, upkeep and/or replacement of the

limited common elements reserved for the exclusive use of Apartment CS or FF shall be borne by the owner of Apartment CS or FF, as the case may be.

All costs and expenses incurred in connection with the maintenance, operation, repair, upkeep and/or replacement of the non-exclusive limited common elements reserved for the (collective) exclusive use of the commercial apartments in Building CB shall be borne by all apartments contained in Building CB with such expenses being allocated among those apartments according to the relative percentage of common interests assigned to each Apartment.

INTEREST TO BE CONVEYED TO PURCHASER: Each purchaser of an apartment shall receive a Commercial Condominium Deed which shall convey to such purchaser fee simple ownership of the apartment purchased by such purchaser together with applicable exclusive and/or non-exclusive limited common elements appurtenant thereto and an undivided interest in the (general) common elements, including the Land, included within the Project. The land interest of each purchaser shall be equal to the percentage interest in the general common elements appurtenant to such purchaser's apartment.

The proposed Declaration provides that each apartment shall have appurtenant thereto an undivided percentage interest in all general common elements, and in the exclusive and non-exclusive limited common elements of the Project, as set forth below. Each apartment shall also be entitled based on the percentage interest in the general common elements, to vote on matters within the jurisdiction of the Association of Apartment Owners, as more particularly described in the By-Laws of the Project, and to share in all general common profits and expenses of the Project.

<u>Apt. No.</u>	<u>General Common Elements Percentage of Interest</u>	<u>Exclusive Limited Common Elements</u>	<u>Non-Exclusive Limited Common Elements</u>
CS	25.00000%	100.000%*	0
FF	25.00000%	100.000%**	0
CB: G-1	0.71000%	0	1.420%
G-2	0.62559%	0	1.251%
G-3	0.67632%	0	1.353%
G-4	2.04585%	0	4.092%
G-5	3.34775%	0	6.695%
G-6	1.11592%	0	2.232%
G-7	0.81158%	0	1.623%
G-8	1.18355%	0	2.367%
G-9	0.91303%	0	1.826%
G-10	0.94684%	0	1.894%
U-1	1.31900%	0	2.638%
U-2	1.01447%	0	2.029%
U-3	6.03949%	0	12.078%
U-4	2.67144%	0	5.343%
U-5	2.67144%	0	5.343%
U-6	3.41538%	0	6.831%
U-7	0.77776%	0	1.556%
U-8	1.87678%	0	3.754%
T-1	1.31882%	0	2.638%
T-2	1.01447%	0	2.029%
T-3	4.09170%	0	8.182%
T-4	2.67145%	0	5.343%
T-5	2.67145%	0	5.343%
T-6	3.41538%	0	6.831%
T-7	1.33572%	0	2.671%
T-8	<u>1.31882%</u>	0	<u>2.638%</u>
	100.00000%		100.000%

* Yard Area CS

** Yard Area FF and Parking Spaces FF

PURPOSE OF BUILDINGS AND RESTRICTIONS AS TO USE: The proposed Declaration provides that the apartments shall be occupied and used only for commercial and office purposes consistent with applicable zoning and for no other purpose. The respective apartment owners shall have the absolute right to rent or lease their apartments, subject to certain use restrictions as provided in the Declaration, By-Laws, House Rules and applicable Rules and Regulations.

OWNERSHIP OF TITLE: A Preliminary Title Report issued on April 24, 1985, by Title Guaranty of Hawaii, Incorporated ("Title Report"), certifies that title to the property is held by Halelani Plaza, a Hawaii limited partnership, subject to an Option to Purchase Agreement dated May 31, 1983, to Kihei Pacific Plaza Venture, as Optionee, a Memorandum of which was recorded in the Bureau of Conveyances of the State of Hawaii in Liber 18470, Page 265.

The Developer has advised that it intends to exercise the above Option following the issuance of this Preliminary Public Report and prior to the sale of any of the apartments.

ENCUMBRANCES AGAINST TITLE: The Title Report, dated April 24, 1985, and other documents furnished to the Commission, indicate that title to the property is subject to the following encumbrances:

1. Any non-delinquent real property 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.
3. Mortgage dated February 20, 1985, in favor of Finance Factors, Limited, a Hawaii corporation, recorded in said Bureau in Liber 18470, Page 256, in the principal amount of \$500,000.
4. MEMORANDUM OF OPTION

OPTIONOR: HALELANI PLAZA, a Hawaii limited partnership
OPTIONEE: KIHEI PACIFIC PLAZA VENTURE, a Hawaii general partnership
DATED: May 31, 1983
RECORDED: Liber 18470, Page 265
RE: Option to purchase land.

PURCHASE MONEY HANDLING: A copy of the executed Escrow Agreement dated April 30, 1985, between the Developer, as "Seller", and Title Guaranty Escrow Services, Inc., as "Escrow", has been submitted to the Commission as part of the registration. On examination, the specimen Sales Contract and the executed Escrow Agreement are found to be in compliance with Chapter 514A, Hawaii Revised Statutes, as amended, and particularly Sections 514A-37, 514A-39, 514A-40, 514A-63 and 514A-65.

The provisions of the Escrow Agreement should be carefully read and understood. It provides, among others, that a purchaser shall be entitled to a return of his funds, and Escrow shall pay such funds to such purchaser, less cancellation fee of not less than \$25 nor more than \$250, promptly after purchaser has requested such return if Escrow shall have received from Developer a written notice that any one of the following has occurred:

1. Developer shall have requested Escrow to return to purchaser the funds of purchaser then being held hereunder by Escrow; or
2. Any one of the provisions contained in the Sales Contract permitting or causing cancellation of the Contract, including, but not limited to, proper exercise by Buyer of any right of rescission permitted under paragraph 15 of the Sales Contract (relating to sales based upon a Preliminary Public Report) or Chapter 514A.

The provisions of the Sales Contract should also be carefully read and understood. It provides among other things, that:

1. Notwithstanding any other provision of the Sales Contract to the contrary, if at the time of execution of this Sales Contract, a Final Public Report has not been issued by the Real Estate Commission with respect to the Project, and received and receipted for by a Buyer, then the following limitations shall apply notwithstanding anything else stated in a Sales Contract to the contrary.

The Sales Contract shall not be binding upon Buyer (or Seller) until:

(a) A true copy of the Real Estate Commission's Final Public Report thereon has been delivered to Buyer, either personally or by registered or certified mail with return receipt requested, together with a true copy of all other public reports thereon, if any, issued prior to the date of such delivery and not previously delivered to Buyer;

(b) Buyer has been given an opportunity to read the reports; and

(c) Buyer (A) executes the form of the receipt and notice then prescribed by law; and (B) waives his right to cancel; provided that if Buyer does not execute and return the receipt and notice within thirty days from the date of delivery of such reports, or if the apartment is conveyed to the Buyer prior to the expiration of such thirty-day period, Buyer shall be deemed to have receipted for the reports and to have waived his right to cancel.

Upon Buyer's exercise of a right of rescission as described above, and upon the return by Escrow of the payments made by Buyer (less the Escrow cancellation charges described above, which shall not exceed \$250), whether or not upon Buyer's request, the rights of the parties hereto under the Sales Contract shall terminate, and neither party shall have any further rights or obligations in relation hereto.

If the Sales Agreement is entered into after issuance and Buyer's receipt of the Final Public Report, it shall be fully binding upon Buyer and Seller upon Buyer's signing a receipt for the Final Public Report.

2. Notwithstanding any other provision in the Sales Contract to the contrary, the project shall be completed within twenty four (24) months of the date of the execution by Buyer of the receipt for the Final Public Report for the project; provided, however, said two (2) year period shall be extended for any period of time during which Seller is actually and necessarily delayed in completing construction if said delay is caused by acts of God, material shortages or other conditions beyond the control of Seller.
3. Buyer agrees to subordinate his interest to the lien(s) of any interim mortgage(s) securing loans obtained from any lender for the development of the Project and to any and all advances, whether contractual or voluntarily made pursuant to said mortgage, and to any and all sums which may become a lien pursuant to the terms of said mortgage or any other agreement relating to said mortgage.

4. Buyer understands and agrees that Buyer may not and will not assign or transfer the Sales Contract or any of Buyer's rights thereunder, and that any assignment or transfer of the Sales Contract by Buyer shall be null and void and shall constitute a default of the Sales Contract by Buyer.
5. Seller and its agents and representatives make no representation or statement as to the rental or investment potential of the Property or income to be derived therefrom or any other economic benefit, including applicability of Federal or State tax laws, that may be derived from ownership or rental of the Property; and Buyer understands that (subject to limitations imposed by the Declaration, By-Laws, House Rules and/or Regulations lawfully made thereunder) Buyer is free to use his Apartment as Buyer chooses, and that Buyer may rent it, either directly or through any agent Buyer may select.
6. Seller reserves the right to modify the Declaration, By-Laws, House Rules and the Condominium Deed, as and to the extent required by law, any title insurance company or any institutional mortgagee, or by an administrative agency of any state, territory, possession or foreign country or other foreign jurisdiction as a condition precedent to marketing the Project therein, or by Seller's reasonable business judgment, provided that such modification shall not (a) increase the Buyer's percentage of common expenses more than .05%; (b) increase the cost of the Apartment to Buyer; (c) require a substantial physical change of the Apartment or of the building in which the Apartment is located; (d) substantially impair or modify any of the obligations given or undertaken by Seller; or (e) reduce the obligations of the Seller for common expenses on unsold Apartments.

Seller also specifically reserves the right to make minor changes in Buyer's and other Apartments and in the common elements (including relocating walkways, parking and common facilities).

Under the terms of the Sales Contract, Buyer irrevocably appoints Seller as Buyer's attorney-in-fact (which power of attorney shall be deemed to be "given as security" and "coupled with an interest"), to execute any documents reasonably necessary or convenient to implement the foregoing provisions of this section and/or any requirements which may be imposed by any governmental authority in connection with the Project. Buyer is also deemed to have specifically consented to all such changes and agrees that, except to the extent specifically required by Chapter 514A, HRS, no such change shall modify or diminish Buyer's obligations under the Contract.

7. If, due to changes in market conditions, interest rates or construction costs, strike(s), changes in law or governmental regulation, or other circumstances outside of its reasonable control, Seller determines that it is impossible or impractical to proceed with development of the Project as planned, Seller shall have the right to cancel any Sales Contract upon written notice, and without further obligation, to Buyer. In the event of such cancellation, all monies deposited by Buyer, together with specified interest, shall be promptly refunded by Escrow to Buyer. If, notwithstanding

such circumstances and cancellation, Seller makes a determination within ninety (90) days after such cancellation to resume or proceed with the development of the Project, Buyer shall have the first right and option (which option must be exercised within fifteen (15) days of notice of same to Buyer, or shall automatically terminate) to purchase the Apartment upon the price and terms then offered by Seller.

8. Buyer understands and agrees that Seller reserves the right, at Seller's sole discretion, to sell or assign Seller's development rights, option rights, rights under sales contracts and/or fee simple interest in the land to a third party, provided, however, that in such sale or assignment, Seller or a corporation or other entity controlled by Seller shall retain all developmental rights necessary for construction and completion of the project and that Seller or said corporation or entity shall continue to act as the Developer of the project. Buyer agrees that any such sale or assignment by Seller shall not release Buyer from any of Buyer's obligations under the Sales Contract. In the event Seller elects to sell or assign any of its interest as aforesaid, Seller reserves the right to modify the condominium documents of the project so as to reflect the change in ownership, and Buyer agrees, upon request by Seller, to promptly execute, deliver and accept any and all such condominium documents, as so modified, in lieu of the forms of such documents presently on file with the Real Estate Commission; provided, however, that it is understood and agreed that any such modifications to the condominium documents shall not materially alter or impair Buyer's rights under the Sales Contract.

9. Buyer specifically acknowledges and agrees that (a) construction activity by Seller or other apartment owners may continue on the site after Buyer has occupied the Apartment and specifically until 24 months after the later of (i) the date of the recording in the Bureau of Conveyances of the State of Hawaii of the first conveyance of an apartment to a buyer, or (ii) "substantial completion" (as the term is used in Chapter 507, Part II, HRS) of the improvements to be completed or corrected, and that this activity may result in noise, dust and other annoyances to Buyer and may limit Buyer's access to portions of the Project; (b) Seller's sales activities, including the use of model apartment units, signs and sales displays and activities may continue in the Project until the sale of the last unsold apartment in the Project or twenty-four (24) months after recordation of the first conveyance of an apartment to a Purchaser, whichever occurs first; (c) Seller also reserves the right, for itself, its sales representatives and prospective buyers to utilize five (5) parking spaces in the Project for parking for prospective purchasers until the sale of the last unsold apartment in the Project; and (d) Seller also reserves the right for itself, its sales representatives and prospective purchasers to utilize the common elements for ingress and egress to such parking spaces and to model apartments in order to show the common elements to prospective purchasers. Buyer accepts the foregoing conditions set forth in the Sales Contract as well as any inconvenience or annoyance which Buyer, Buyer's employees, invitees and/or customers may experience as a result of such conditions and expressly waives any rights, claims or actions which he might otherwise have against

Seller as a result of such circumstances. The terms of this paragraph shall survive the occupancy by Buyer and the delivery and recordation of the Commercial Condominium Deed.

10. Seller agrees to provide to Buyer, upon Buyer's payment to Seller of the full purchase price, a Commercial Condominium Deed duly executed by Seller and substantially in the form filed with the Real Estate Commission.
11. On the Pre-Closing Date, Buyer agrees to execute the Commercial Condominium Deed and such other documents as are required to effect transfer of title and to complete financing arrangements, if any, including execution of any note and mortgage, and Buyer hereby authorizes Seller, any mortgagee, and/or Escrow to date such documents as of the effective date thereof. Buyer further agrees to pay or cause to be paid to Escrow, thirty (30) days prior to the estimated Closing Date: (i) any portion of the Total Purchase Price remaining unpaid, (ii) all escrow fees, notary and recording fees, costs of credit report, any loan fee, the cost of preparing any notes, mortgages or conveyance documents, conveyance tax, the cost of any title insurance and any closing costs imposed by Buyer's lender, if any; (iii) payment of a capital start-up assessment equal to three (3) months' installments of Buyer's share of estimated common expenses under the Declaration, and three (3) months real estate taxes, which payments shall be nontransferable and nonrefundable in the event of subsequent sale of the Apartment by Buyer; and (iv) such other prepayments as may be required by Buyer's lender, if any.
12. Upon execution of said documents (referred to in Paragraphs 10 and 11 above) by Buyer and payment in full of all said amounts by Buyer, but not prior to the date designated by Seller in Seller's discretion as the Closing Date (the "Closing Date" or "Date of Closing"), Seller shall deliver the Commercial Condominium Deed to Buyer, and risk of loss for the Property shall thereupon pass to Buyer.
13. It is specifically agreed and understood that the Closing Date as established by Developer may be any time on or after the issuance of the Architect's Certificate of Substantial Completion and the County of Maui's issuance of a Certificate of Occupancy--both as to the Apartment--despite the fact that construction of other portions of the Project may not then be complete.
14. In addition to payment of the amounts set forth in paragraphs 10-12, above, Buyer acknowledges that he shall be required to prepay the maintenance fees attributable to the calendar month (or portion thereof) in which occupancy commences, and to pay real property taxes pro-rated as of the Closing Date. Buyer further agrees that all maintenance fees, insurance, taxes, assessments, interest on all financing, and other expenses shall be prorated between Seller and Buyer as of the Closing Date, regardless of whether the Commercial Condominium Deed is actually recorded and/or Buyer takes possession before or after that date.

MANAGEMENT AND OPERATION: The By-Laws annexed to the proposed Declaration state that the Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Project and may, at any and all times provide for management ("self management") or employ a responsible managing agent to manage and control the property, subject at all times to discretion by the Board. The initial Managing Agent is anticipated to be Island Shores Inc. (an affiliate of the Developer), subject to the provisions of Section 514A-84(a) of the Hawaii Horizontal Property Act, which states that a Developer can contract for this initial Managing Agent only for a term of one year, and that the contract must be terminable on sixty (60) days written notice by either party.

STATUS OF PROJECT: Construction is estimated to begin on or about July 15, 1985 and to be completed by December 15, 1986.

The Developer is currently in the process of selecting a contractor to construct the project, and arranging for financing of the project.

A Special Management Area permit was issued for the Project by the Planning Department, County of Maui, on October 10, 1984.

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The purchaser or prospective purchaser should be cognizant of the fact that this Public Report represents information disclosed by the Developer in the required Notice of Intention submitted April 30, 1985 and additional information subsequently filed as of June 6, 1985.

THIS PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 1675 filed with the Commission on April 30, 1985.

This report, when reproduced, shall be a true copy of the Commission's Public Report. The paper stock used in making facsimiles shall be yellow in color.


for G. A. "RED" MORRIS, CHAIRMAN
REAL ESTATE COMMISSION
STATE OF HAWAII

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Registration No. 1675

Date: June 12, 1985