

**REAL ESTATE COMMISSION**

PROFESSIONAL & VOCATIONAL LICENSING DIVISION  
DEPARTMENT OF REGULATORY AGENCIES

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

**FINAL  
HORIZONTAL PROPERTY REGIMES (CONDOMINIUM)  
PUBLIC REPORT**

ON

KIAHUNA (PHASE III-A)  
Poipu Beach, Island and County of Kauai, Hawaii

REGISTRATION NO. 949

**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 until

- (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 31, 1978  
Expires: November 30, 1979

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 NOVEMBER 4, 1977, AND ADDITIONAL INFORMATION SUBSEQUENTLY SUBMITTED AS OF OCTOBER 25, 1978. THE DEVELOPER, IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF CHAPTER 514A, HAWAII REVISED STATUTES.

1. Since the issuance of the Commission's Preliminary Public Report of November 29, 1977, the Developer reports that changes have been made in the plan or setup of the Project. The changes subsequently made are determined to be a material revision to the information disclosed earlier.

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 Final Public Report.

3. The Developer advises that the Declaration of Horizontal Property Regime dated September 22, 1978, with By-Laws of the Association of Apartment Owners annexed thereto have been filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 901502. The approved floor plans have also been filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii and designated as Condominium Map No. 343.

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 Final Public Report is made a part of the registration on KIAHUNA (PHASE III-A) condominium project. The Developer has the responsibility of placing a true copy of the Final Public Report (white paper stock) in the hands of all purchasers and prospective purchasers together with a copy of the Preliminary Public Report (yellow paper stock). Securing a signed copy of the Receipt for these Horizontal Property Regime Public Reports from each purchaser and prospective purchaser is also the responsibility of the Developer.

7. This Final Public Report automatically expires thirteen (13) months after the date of issuance, October 31, 1978, unless a Supplementary Public Report issues or the Commission, upon review of the registration, issues an order extending the period of this report.

The information disclosed in the Preliminary Public Report of November 29, 1977 in the topical headings hereinafter set forth has been amended. Information disclosed in the remaining topical headings have not been disturbed.

DESCRIPTION: The Developer advises that contrary to the description contained in paragraph (b) on page 3 of the Preliminary Public Report of November 29, 1977, Beachhouses 226, 227, 228, 229, 230 and 231 are located on the third floor of Building No. 4 and Beachhouse A is located on the first floor of the Restaurant Building. The Developer further advises that the floor plan for Beachhouses 215,

216, 217, 218, 219, 226, 227, 228, 229, 230 and 231 as described in subparagraph (c)(1) on page 3 of the Preliminary Public Report of November 29, 1977, has been amended to delete the "storage closet" therefrom.

COMMON ELEMENTS: The Note appearing on page 5 of the Preliminary Public Report of November 29, 1977 has been deleted.

INTEREST TO BE CONVEYED TO PURCHASERS: The Note appearing on pages 6 and 7 of the Preliminary Public Report of November 29, 1977, with respect to Paragraph N of the Declaration should be amended to read as follows:

NOTE: Paragraph N of the Declaration provides that the Developer shall have the right at its sole option to amend the Project, by way of an amendment to the Declaration, as hereinafter provided, at any time:

(a) to withdraw from the Project approximately 4.240 acres of the project lands, together with Beachhouses A and B, being proposed Lot 223-B of Land Court Application No. 956, as more particularly shown on the preliminary subdivision map attached to the Declaration as Exhibit "C"; and/or

(b) by the construction and addition to the Project of up to thirty-one (31) residential beachhouses and three (3) commercial beachhouses (herein collectively referred to as the "Additional Beachhouses"), together with such supporting and servicing common and limited common elements which the Developer determines in its sole discretion are beneficial to the Project on approximately 4.240 acres of the project lands, being proposed Lot 223-B of Land Court Application No. 956 as shown on said Exhibit "C".

1. Withdrawal.

(a) Withdrawal of the described portion of the Project shall take effect upon the happening of all of the following conditions with respect thereto:

(i) Granting by the Land Court of the State of Hawaii of Developer's petition requesting subdivision of Lot 223, Land Court Application No. 956, into Lots 223-A and 223-B.

(ii) Filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii by the Developer of an Amendment to the Declaration of Horizontal Property Regime certifying that the subject property has been withdrawn from the horizontal property regime effective as of the date set forth in said Amendment and such Amendment shall also include a revised Condominium Map which accurately depicts the Project immediately subsequent to such Withdrawal.

(iii) Filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii of an appropriate instrument granting to the Association of Beach-house Owners a nonexclusive license to use the parking areas, and in particular Parking Stall Nos. 1 through 47 as shown on said Condominium Map, which are located on the property subject to withdrawal from the horizontal property regime. (Proposed Lot 223-B).

(b) From and after the date of the recordation of said Amendment to the Declaration with respect to such Withdrawal, the following consequences shall ensue:

(i) Use of Common Elements. The beachhouses remaining in the Project after such Withdrawal shall have the right to the full use and enjoyment of any of the common elements not withdrawn as hereinbefore provided to the same extent and subject to the same limitations which are imposed upon such beachhouses by the provisions of the Declaration, as amended.

(ii) After such Withdrawal the remaining beachhouses in the Project shall each have appurtenant thereto an undivided 1/31st fractional interest (a 3.2258+ percentage interest) in the common elements of the Project.

(iii) Board of Directors. The Board of the Project immediately prior to the withdrawal of said property shall continue to govern the Project after completion of said Withdrawal.

## 2. Additional Beachhouses.

(a) In the event Developer elects to add said Additional Beachhouses the incorporation of the Additional Beachhouses into the Project shall take effect upon the happening of all of the following conditions with respect thereto:

(i) Recordation in the Bureau of Conveyances of the State of Hawaii by the Developer of an Amendment to the Declaration of Horizontal Property Regime properly describing the Additional Beachhouses, and including without limiting the generality of the foregoing:

a. A revised Condominium File Plan which depicts the plot and floor plans of the Additional Beachhouses;

b. The location, layout and dimensions of the Additional Beachhouses, and any limited common elements appurtenant to the Additional Beachhouses;

c. The common interest of each beach-house in the Project, as amended; and

d. A revised plot plan showing the location of the buildings of the Completed Project after the incorporation of the Additional Beachhouses.

(b) From and after the date of the recordation of said Amendment to the Declaration with respect to the Additional Beachhouses, the following consequences shall ensue:

(i) Use of Common Elements. All beachhouses in the Completed Project shall have the right to full use and enjoyment of any of the common elements located in the Completed Project to the same extent and subject to the same limitations which are imposed upon an existing beachhouse by the provisions of the Declaration, as amended.

(ii) Common Interests. After addition of the Additional Beachhouses, each beachhouse in the Completed Project shall have appurtenant thereto an undivided fractional interest in the common elements of the Project equal to the fraction, the numerator of which is one (1) and the denominator of which is the total number of beachhouses in the Completed Project (i.e., if the maximum number of thirty-four (34) beachhouses are added, the common interest appurtenant to each beachhouse will be an undivided 1/67th fractional interest).

(iii) Board of Directors. The Board of the Project immediately prior to the addition of the Additional Beachhouses shall govern the Project after the completion and addition of the Additional Beachhouses; however, at a special meeting called for said purpose after the addition of the Additional Beachhouses, the beachhouse owners may remove the existing Board and elect a new Board to govern the Completed Project until the next annual meeting. Procedures for the calling and holding of such meeting shall be those as set forth in the By-Laws.

(iv) Interpretation. For purposes hereof, the Completed Project shall be treated as if it were a single project developed as a whole from the beginning, and there shall and can be only one Association of Beachhouse Owners and one Board, to be governed by the provisions of the Declaration of Horizontal Property Regime and the By-Laws attached to said Declaration as Exhibit "B", as amended from time to time. It is the purpose hereof to provide that from and after the date of the recordation of said Amendment to Declaration all of the property shall be treated as though it had been developed, divided into beachhouses, held, occupied and used by the owners thereof as a single and not an incremental project.

(c) Such Additional Beachhouses and their limited common elements, if any, shall be located on the common elements of the Project, or any part thereof, as determined by the Developer in its sole discretion, with reference, however, to the advice of a registered architect or professional engineer. The Developer shall for all purposes be

deemed the "beachhouse owner" as to such Additional Beachhouses, until the same have been initially conveyed by the Developer.

(d) In connection with, and only to the extent necessary for the creation of such Additional Beachhouses and limited common elements, as aforesaid, the Developer shall have the right to remove, amend or add common elements; to remove, amend or add parking spaces; to enter upon the Project premises with employees, agents and contractors for all purposes reasonably necessary for or useful to constructing and completing said Additional Beachhouses and common elements according to plans and specifications or amended plans and specifications approved by the officer of the County of Kauai having jurisdiction over the issuance of building permits; to connect the said Additional Beachhouses and their limited common elements to utilities of the Project; to file amendments to the Declaration for purposes of certifying condominium file plans filed as reflecting the improvements shown therein to be "as built"; and to sell or designate lessees of the said Additional Beachhouses.

3. The Developer shall have the right to execute, acknowledge and deliver any and all instruments necessary or appropriate for the purpose of carrying out the provisions and exercising the rights, powers and privileges granted by Paragraph N of the Declaration, all as the true and lawful attorney-in-fact of the respective owners from time to time of the beachhouses of the Project as herein originally constituted or as aforesaid.

4. If any one or more of the provisions of said Paragraph N shall be declared to be contrary to law, then such provision or provisions shall be null and void and shall be deemed separable from the remaining provisions of said Paragraph N and shall in no way effect the enforceability of any other provisions hereof.

5. The amendment to Declaration required by the provisions of Paragraph N may be filed and/or recorded by the Developer without the consent or joinder of the fee owner or any persons then owning or leasing the beachhouses.

NOTE: The Developer advises that pursuant to the provisions of Paragraph O it has reserved the right at any time and from time to time to construct and make certain additions to Beachhouses A and B in order to enlarge the interior floor area of said Beachhouses up to but not in excess of 4,000 square feet and 4,000 square feet, respectively, and that said additions(s) may include a second floor for said Beachhouses.

NOTE: The Developer further advises that it owns a tennis club known as the "Kiahuna Tennis Club" and that it proposes to enter into a License Agreement with the Association of Beachhouse Owners of Kiahuna (Phase III-A) for a term until April 15, 2050, under the terms of which the owner of a

beachhouse in the Project and his respective family, tenants or guests shall have a nonexclusive license to use the recreational facilities of the Kiahuna Tennis Club upon the payment by the Association of a monthly fee equal to 31/171 of the amount payable by Kiahuna Beach Houses, Ltd. with respect to the Kiahuna (Phase II) condominium project (i.e., 5% of the gross revenues from the rental of units in Kiahuna (Phase II) for the preceding month). This license fee will constitute a portion of the Association's common expenses which are reflected in the monthly assessment for common expenses against the respective beachhouses.

ENCUMBRANCES AGAINST TITLE: An updated Preliminary Title Report dated September 11, 1978, issued by Security Title Corporation, as submitted to the Commission discloses that the following are presently encumbrances against title to the property:

1. The terms and provisions of that certain Indenture of Lease dated May 8, 1968, by and between Hector MacDonald Moir and Alexandra Knudsen Moir, as Lessors, and Plantation Garden, Inc., as Lessee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 454562, as amended and supplemented.

Said Lease is subject to the following:

(a) Mortgage dated March 16, 1978, filed in said Office of the Assistant Registrar as Document No. 864960, in favor of BANK OF HAWAII;

(b) Mortgage dated March 16, 1978, filed in said Office of the Assistant Registrar as Document No. 864961, in favor of AMERICAN SECURITY BANK;

(c) Mortgage dated December 30, 1974, filed in said Office of the Assistant Registrar as Document No. 707244, in favor of PLANTATION GARDEN, INC; and

(d) Undated Financing Statement in favor of Plantation Gardens, Inc., recorded on December 31, 1974, in the Bureau of Conveyances of the State of Hawaii in Liber 10354, Page 548.

2. The terms and provisions of that certain Lease dated December 30, 1976, filed in said Office of the Assistant Registrar as Document No. 815170, made by and between MOANA CORPORATION, as Lessor, and TS/MOANA, a California general partnership, as Lessee.

NOTE: The Commission has been advised that the aforementioned Lease is a lease of the Restaurant Building which is not being offered for sale to the public.

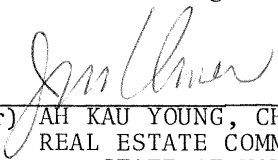
3. For any taxes that may be due and owing, reference is made to the Office of the Tax Assessor, Fourth Division.

NOTE: The Developer advises that pursuant to the provisions of Paragraph Q of the proposed Declaration that the Project lands are subject to a reciprocal use easement in favor of the eighteen (18) beachhouses to be constructed by the Developer on adjoining land and to be known as "KIAHUNA (PHASE III-B)" such that the said eighteen (18) beachhouses have and shall have the right appurtenant thereto to use all of the common elements of Kiahuna (Phase III-A) and the Kiahuna (Phase III-A) beachhouses shall have the same right to use all of the common elements of Kiahuna (Phase III-B) excluding, however, such as shall be located within the buildings, to the same extent and subject to the same limitations as are imposed upon a beachhouse in Kiahuna (Phase III-A) or Kiahuna (Phase III-B). It is understood and agreed that such right to use the common elements shall be in the nature of an easement and each person upon whom the Declaration is binding agrees, and shall agree, by the mere acquisition, rental or occupancy of any beachhouse, to be bound thereby.

STATUS OF PROJECT: The Developer advises that construction of the Project commenced on or about March 8, 1978 and estimates that the Project will be completed on or about December 15, 1978.

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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 as of November 4, 1977, and additional information subsequently submitted as of October 25, 1978.

This is a FINAL HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT which is made a part of REGISTRATION NO. 949 filed with the Commission November 4, 1977. This report when reproduced shall be a true copy of the Commission's Public Report. The paper stock used in making facsimiles must be white.

  
(for) AH KAU YOUNG, 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. 949

October 31, 1978