

REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF REGULATORY AGENCIES

STATE OF HAWAII

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

PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT

ON

KIAHUNA (PHASE IV-A)
Poipu, Island and County of Kauai

REGISTRATION NO. 1116

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 14, 1979
Expires: July 14, 1980

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 APRIL 3, 1979, AND ADDITIONAL INFORMATION SUBSEQUENTLY SUBMITTED AS OF JUNE 12, 1979. THE DEVELOPER, IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF CHAPTER 514A, HAWAII REVISED STATUTES.

1. KIAHUNA (PHASE IV-A) is a proposed leasehold condominium project consisting of three (3) buildings without basements and containing twenty (20) beachhouse units. There are a total of ninety-eight (98) parking stalls in the Project. Only eighteen (18) beachhouse units, being Beachhouse Nos. 301 through 318, inclusive, located in Building No. 1 are being offered for sale to the public.

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, June 14, 1979, 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 (PHASE IV-A) condominium project. The Developer has the responsibility of placing a true copy of the Preliminary Public Report (yellow paper stock) in the hands of all purchasers and prospective purchasers. Securing a signed copy of the Receipt for the Preliminary Horizontal Property Regime Public Report from each purchaser is also the responsibility of the Developer.

NAME OF PROJECT: KIAHUNA (PHASE IV-A)

LOCATION: The approximately 4.240 acres of land to be submitted to the horizontal property regime are situated at Poipu, Island and County of Kauai, State of Hawaii.

NOTE: The Developer advises that the Planning Department of the County of Kauai has approved the subdivision of Lot 223 as shown on Map 51, Land Court Application 956 into Lots 223-A and 223-B, and a Petition to grant this subdivision has been filed with the Land Court of the State of Hawaii. The KIAHUNA (PHASE IV-A) Condominium Project will be located upon Lot 223-B.

TAX MAP KEY NO.: 2-8-16: 7, 8 & 10.

ZONING: RR-20 and 0

DEVELOPER: MOANA/KAUAI CORPORATION, a California corporation, the principal place of business and post office

address of which is Suite 4340, 555 California Street, San Francisco, California; Phone: (415) 788-7421. The officers of the corporation are: Robert L. Harmon, President; Frank J. Supon, Vice President and Treasurer; and Donna G. Sidelinger, Secretary, all of whose business address is Suite 4340, 555 California Street, San Francisco, California.

ATTORNEY REPRESENTING DEVELOPER: Hamilton, Gibson, Nickelsen, Rush & Moore (Attention: Dwight M. Rush and D. Scott MacKinnon), 20th Floor Hawaii Building, 745 Fort Street, Honolulu, Hawaii 96813, Phone: 521-2611.

DESCRIPTION: The proposed Declaration of Horizontal Property Regime and plans submitted by the Developer indicate a leasehold condominium project consisting of twenty (20) condominium apartment units, which spaces, together with appurtenant lanais, if any, are referred to therein as "Beachhouses", and are contained in three (3) buildings without basements, of wood frame construction with redwood and cedar exteriors and cedar shingle roofs; there is one (1) three-story building, being Building No. 1 and two (2) one-story buildings, being the Restaurant Building and Sales Office Building. Said Buildings and Beachhouses are designated on the proposed Condominium Map and described as follows:

(a) The buildings of the Project are constructed according to three (3) different models, designated Model A-1 (Beachhouses 301-318), the Restaurant model (Beachhouse A), and the Sales Office model (Beachhouse B). Building No. 1 is constructed according to the layout designated in Model A-1 plans.

(b) Beachhouses 301, 302, 303, 304, 305 and 306 are located on the first floor of Building 1; Beachhouses 307, 308, 309, 310, 311 and 312 are located on the second floor of Building 1; and Beachhouses 313, 314, 315, 316, 317 and 318 are located on the third floor of Building 1; Beachhouse A is located on the first floor of the Restaurant Building; Beachhouse B is located on the first floor of the Sales Office Building.

(c) The beachhouses are constructed according to three (3) different floor plans. A description of each said floor plans, designating the layout, number of rooms and approximate floor areas is as follows:

(i) Beachhouses 301 through 318, inclusive, each contains one (1) bedroom, a bathroom, a living area, dining area, kitchen, an entry lanai and a lanai, with a total floor area of approximately 880 square feet, including the lanais.

(ii) Beachhouse A contains eleven (11) rooms, with a total floor area of approximately 8,050 square feet.

(iii) Beachhouse B contains one (1) room, which may be divided into one or more rooms, with a total floor area of approximately 800 square feet.

NOTE: The Developer advises that pursuant to the provisions of Paragraph O of the proposed Declaration the Developer has reserved the right to construct and make certain additions to Beachhouses A and B so as to enlarge the total interior floor area of said Beachhouses up to but not in excess of 12,000 square feet and 4,000 square, respectively; said additions may include the construction of a second floor for said beachhouses.

(d) Each of the beachhouses has immediate access to the grounds of the Project and/or to a corridor which leads to stairways leading to the grounds of the Project and the walkways connecting the building in which it is located to the street entrance and parking areas of the Project.

(e) The respective beachhouses 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 beachhouse or any pipes, wires, conduits or other utility or service lines running through such beachhouses which are utilized for or serve more than one beachhouse, the same being deemed common elements as hereinafter provided. Each beachhouse 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, including a built-in range and oven, refrigerator, dishwasher, garbage disposal, sink and water heater.

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, beams, supports, load-bearing walls, roofs, chases, entry halls, stairs, walkways, entrances and exits of the buildings of the Project;

(c) All yards, grounds, landscaping, refuse and service areas, and trash disposal equipment;

(d) All parking areas containing a total of 98 parking stalls (including without limitation 27 Parking Stalls designated on the parking plan constituting a portion of the proposed Condominium Map as Nos. 51 through 71 and 83 through 88).

(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 beachhouse for services such as power, light, gas, water, sewer, telephone and television signal distribution, if any;

(f) 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.

NOTE: The Developer advises that a portion of the common elements of the Project comprise a cactus garden known as the "Moir Cactus Garden" which contains many unusual and rare variety of cactus plants. Pursuant to Paragraph R of the Declaration the Association at its common expense is required to preserve, protect, maintain and keep the Moir Cactus Garden in a neat and attractive condition and may not remove, alter or add to the area designated on said Condominium Map as the Moir Cactus Garden without the prior written consent of the fee owner, Eric McDonald Moir.

LIMITED COMMON ELEMENTS: The proposed Declaration states that certain parts of the common elements, therein called the "limited common elements" are designated and set aside for the exclusive use of certain beachhouses, and such beachhouses shall have appurtenant thereto easements for the use of such limited common elements as follows:

(a) The seventy-one (71) parking stalls designated on the parking plan of the Condominium Map as parking stall nos. 1-34; 89-111; and, 141-154, respectively shall be appurtenant to and for the exclusive use of Beachhouses A and B.

All costs and expenses for the maintenance, repair, replacement, addition and improvement of the above-designated limited common elements shall be borne by the owner or owners of Beachhouses A and B, as follows:

Beachhouse A: 75%

Beachhouse B: 25%

INTEREST TO BE CONVEYED TO PURCHASERS: The proposed Declaration states that each beachhouse shall have appurtenant thereto an undivided 1/20th fractional interest (a 5.0% percentage interest), and the same proportionate share in

all common elements of the project (herein called the "common elements"), 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 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 IV-A) under the terms of which the Owner of a beachhouse in the Project and his respective family, tenants or guests shall have a non-exclusive license to use the recreational facilities of the Kiahuna Tennis Club upon the payment by the Association of a reasonable monthly fee to be determined on an annual basis by the owner of the Kiahuna Tennis Club, provided, however, that at no time shall such monthly fee exceed 18/171 of the amount payable by Kiahuna Beach House, 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 expenses which are reflected in the monthly assessment for common expenses against the respective beachhouses.

NOTE: Paragraph N of the proposed 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, at any time to withdraw from the 4.240 acres of the Project up to 2.714 acres of the Project lands together with Beachhouses A and B, being proposed Lot 223-B-2 of Land Court Application No. 956, as more particularly described on Exhibit "C" to the proposed Declaration.

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

(a) Filing in the Office of the Assistant Registrar of the State of Hawaii by the Developer of an Amendment to the Declaration properly describing the withdrawal of such property and including without limiting the generality of the foregoing:

(i) A revised Condominium Map which accurately depicts the Project immediately subsequent to such withdrawal; and

(ii) The common interest of each beachhouse in the Project immediately subsequent to such withdrawal.

(b) Filing in the Office of the Assistant Registrar of an appropriate instrument granting to the Association an irrevocable license to use the parking areas and in particular 27 Parking Stalls designated Nos. 51 through 71 and 83 through

88 on the proposed Condominium Map and located on the property subject to withdrawal from the horizontal property regime.

(c) The approximate common interest appurtenant to each of the beachhouses remaining after withdrawal of such property shall be an undivided 1/18th fractional interest (a 5.555+ percentage interest) in the common elements of the Project.

(d) 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 its 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 apartments of the Project.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The proposed Declaration provides that, except for Beachhouses A and B, the beachhouses shall be occupied and used by the respective owners thereof, their families, tenants and personal guests only for residential purposes, including resort hotel use and for no other purpose without the prior written approval of the Board of Directors. Beachhouses A and B may be occupied and used for any purposes whatsoever which may be permitted by the statutes, ordinances, rules or regulations of the State of Hawaii or County of Kauai, now or hereafter applicable thereto.

OWNERSHIP OF TITLE: The Developer in its Notice of Intention represents that Eric McDonald Moir, husband of Beryl Barnard Moir, is the owner of the fee simple title to the property to be submitted to the horizontal property regime. A Preliminary Title Report dated March 5, 1979, issued by Security Title Corporation, as submitted to the Real Estate Commission, verifies this.

ENCUMBRANCES AGAINST TITLE: Said Preliminary Title Report disclosed that the following are encumbrances against title to a property which includes the future project site of 4.240 acres:

1. The terms and provisions of that certain Indenture of Lease dated May 8, 1968, by and between Hector McDonald 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, and as subsequently assigned to the Developer, Moana/Kauai Corporation on November 23, 1977, filed in said Land Court as Document No. 864954.

2. Said Lease, is subject to the following:

(a) Lessor's Estoppel Certificate dated January 20, 1978, filed in the Office of the Assistant Registrar as Document No. 864959.

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

(c) Mortgage dated March 16, 1978, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 864961 in favor of AMERICAN SECURITY BANK.

3. Declaration of Horizontal Property Regime of Kiahuna (Phase III-A) dated September 22, 1978, filed in said Office of the Assistant Registrar as Document No. 901502, and the By-Laws attached thereto, and Condominium Map No. 343.

4. For real property taxes that may be due and owing, check with the Tax Assessor, Fourth Division.

NOTE: The Developer has indicated that items listed under Nos. 2 and 3 above pertain only to Lot 223-A on which KIAHUNA Phase III-A is located. As disclosed under the caption "LOCATION" above, the Developer has petitioned the Land Court to grant Subdivision of the property so that Phases III-A and IV-A will be on separate Lots. Upon the granting of said petition, the newly created Lot 223-B, on which Phase IV-A will be situated, will not be encumbered by items under Nos. 2 and 3.

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

NOTE: The Developer also advises that pursuant to the proposed Declaration the Fee Owner and Developer have reserved the right to:

(a) 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 serving the Project together with the right to grant or lease such rights-of-way over, across and under said easements for 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.

(b) Grant or lease a right, in the nature of an easement, to use all or any portion of the roadways, parking areas and walkways of the Project created by the Declaration of Horizontal Property Regime, for vehicular and pedestrian access or parking purposes over, across, upon, or through the common elements of the Project hereby created, such right to run in favor of any purchaser, purchasers, lessee, lessees, owner or owners and their respective families, tenants, customers, guests, employees, servants, agents and business invitees from time to time of all or any portion of the real property more particularly described in Exhibit "A-1" attached to the proposed Declaration; subject, however, to the right reserved to the Owners and Developer to relocate said roadways, parking areas and walkways provided that such relocation shall not materially restrict the use of said roadways and walkways nor unreasonably hinder, disturb or interfere with the enjoyment and use of the lands comprising said Project or the improvements thereon.

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 thirty-six (36) beachhouses to be constructed by the Developer on adjoining land and to be known as "KIAHUNA (PHASE III-B)" such that the said thirty-six (36) beachhouses have and shall have the right appurtenant thereto to use all of the common elements of Kiahuna (Phase IV-A) and the Kiahuna (Phase IV-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 IV-A) or Kiahuna (Phase III-B). The right to use the common elements shall be in the nature of an easement and each person upon whom the Declaration, by the mere acquisition, rental or occupancy of any beachhouse, shall be bound thereby and by said right in the nature of an easement, provided, however, that the reciprocal easements granted thereby shall continue only so long as such rights remain reciprocal between the Projects.

PURCHASE MONEY HANDLING: A copy of the executed Escrow Agreement dated November 20, 1978, 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-40(6), 514A-39, and 514A-63 through 514A-66, 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 if there is any change in the condominium building plans, subsequent to the execution of purchaser's sales contract, requiring the approval of a County officer having jurisdiction over the issuance of permits for construction of building, unless the purchaser has given written approval or acceptance of the specific change; or

3. If a purchaser's funds were obtained prior to the issuance of a Final Public Report and the request is prior to the time the Final Public Report is issued; or

4. If the Final Public Report differs in any material respect from the Preliminary Public Report, unless the purchaser has given written approval or acceptance of the difference; or

5. If the Final Public Report is not issued within one year of the date of issuance of the Preliminary Public Report.

It is incumbent of the purchaser and prospective purchaser to read and understand the Escrow Agreement before signing the Condominium Reservation Agreement since the Escrow Agreement prescribes the procedure for receiving and disbursing the purchaser's funds. The Specimen Condominium Reservation Agreement specifically provides that the purchaser approve said Escrow Agreement, assume the benefits and obligations therein provided, and agree to the subordination of his interest in the Condominium Reservation Agreement to the lien of any construction mortgage. Purchasers and prospective purchasers are advised to read with care the provisions of the Condominium Reservation Agreement.

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

NOTE: The Developer advises that in conjunction with the sale of the beachhouses in the Project it is not offering to provide services relating to the rental of beachhouses in the Project and no representation or reference to that effect has been made or will be made by or on behalf of the Developer. Rental or other disposition of the beachhouses and the provision of management services in connection therewith is the sole responsibility of the purchaser.

NOTE: The Developer advises that pursuant to Paragraph 25 of the Specimen Condominium Reservation Agreement the purchaser shall agree that until Developer has closed out the sale of all apartments in Project or until June 30, 1981, whichever shall first occur, the purchaser will not enter into a "rental pool" or similar agreement with any purchaser, lessee or owner of another apartment in the Project and/or any third party.

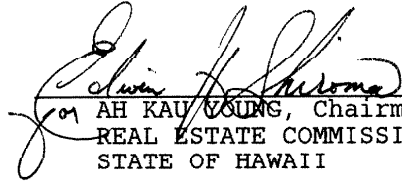
STATUS OF PROJECT: The Developer advises that it has not yet entered into a construction contract for construction of the Project and therefore has not yet determined an estimated date for the start of or completion of construction.

NOTE: Developer advises that it proposes to develop, construct and sell eighteen (18) apartments in a condominium project to be situated on an adjoining parcel of land and that this may result in the creation of dust, noise, vibrations and other nuisances. Pursuant to Paragraph 31 of the Condominium Reservation Agreement, the purchaser agrees not to hold Developer responsible or liable for the creation of any dust, noise, vibrations and other nuisances arising out of or in connection with any work incidental or connected with the development and construction of said additional project.

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 April 3, 1979, and information subsequently submitted as of June 12, 1979.

This is a PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT which is made a part of REGISTRATION NO. 1116 filed with the Commission April 3, 1979. This report when reproduced shall be a true copy of the Commission's

Public Report. The paper stock used in making facsimiles must be yellow.


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. 1116

June 14, 1979