

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
POIPU ESTATE
("PHASE ONE")
Weliweli, Koloa, Kauai, Hawaii

REGISTRATION NO. 830

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: January 15, 1976

Expires: February 15, 1977

SPECIAL ATTENTION

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

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED December 11, 1975. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF CHAPTER 514, HAWAII REVISED STATUTES.

1. Poipu Estate ("Phase One") is a proposed fee simple condominium project consisting of two (2) single-family houses, which are for legal purposes designated as "apartments", and a detached parking garage facility, all in accordance with plans filed with the Real Estate Commission.

2. The Developer of the project has submitted to the Commission for examination all documents deemed necessary for the registration of a condominium project and issuance of this Preliminary Public Report. The Developer shall be responsible for placing this Preliminary Public Report (yellow stock paper) in the hands of all purchasers and prospective purchasers. Securing a signed copy of the receipt for this Public Report from each purchaser and prospective purchaser is also the responsibility of the Developer.

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

4. The basic documents (Declaration of Horizontal Property Regime, By-Laws of Association of Apartment Owners, and a copy of the approved floor plans) have not been recorded in the office of the recording officer.

5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Chapter 514 of the Hawaii Revised Statutes and the condominium rules and regulations which relate to horizontal property regimes.

6. This Preliminary Public Report automatically expires thirteen (13) months after date of issuance, January 15, 1976, unless a Supplementary or Final Public Report issues or the Commission, upon review of the registration issues an order extending the effective period of this Report.

NAME OF PROJECT: POIPU ESTATE ("Phase One").

LOCATION: The land submitted to the regime, approximately 64,213 square feet, is located in Weliweli, Koloa, Kauai.

TAX MAP KEY: FOURTH DIVISION, 2-8-20-14.

ZONING: R-4.

DEVELOPER: Howard Gruenberg and Ruth Allen Gruenberg, whose residence and post office address is [REDACTED]

ATTORNEY REPRESENTING DEVELOPER: CARLSMITH, CARLSMITH, WICHMAN AND CASE, Pacific Trade Center, 22nd Floor, Honolulu, Hawaii 96813 (Attention: James W. Boyle and Gerald A. Sumida), telephone number 524-5112.

DESCRIPTION: The proposed Declaration of Horizontal Property Regime submitted to the Commission (hereinafter referred to as the "Declaration") provides that the land will be improved, according to the Developer's plans and intention to sell, by constructing thereon two (2) single-family houses and a detached parking garage facility. In addition, the project will contain walkways and driveways. Each unit will include refrigerator, microwave and wall ovens, garbage disposal, range hood, trash compactor, dishwasher, washer, dryer and carpeting. Each apartment shall not be deemed to include any structural or service elements thereof, including any pipes, wires, conduits or other utility or service lines running through such apartment which are utilized for or serve more than one apartment, the same being deemed common elements as hereinafter provided. Each apartment shall be deemed to include the concrete floor slab on which it is constructed, the exterior walls and roof, all interior walls, ceilings and partitions, and the finished surfaces thereof, all paved or fenced patio and/or garden court areas to which each apartment has direct exclusive access, and all fixtures originally installed therein. Each apartment has immediate access to the common land area by walkways to the parking garage facility and driveway.

1. Building Description. The project will consist of two (2) single-family houses, and a detached parking garage facility.

2. Materials. The units will be constructed primarily of wood on a concrete floor slab.

3. Description, Area and Numbering of Units. There are two (2) single-family residential apartments in the project. The two apartments are designated as Houses 1 and 2, respectively, and are more particularly described below.

(a) House 1 contains ten (10) rooms, consisting of 3 bedrooms, 3 bathrooms (including one half-bathroom), kitchen, living/dining room, den/library room, utility room and patio and paved areas immediately adjacent to the living room (totalling approximately 850 square feet), and an uncovered fenced garden court (totalling approximately 105 square feet). The enclosed floor area is approximately 2,452 square feet; the gross floor area including patio and paved areas is approximately 3,302 square feet.

(b) House 2 contains eleven (11) rooms, consisting of 3 bedrooms, 3 bathrooms (including one half-bathroom), living room, family room, dining room, kitchen,

laundry room, and an indoor garden area as well as a fenced paved courtyard area (totalling approximately 271.5 square feet) and two separate uncovered paved areas (totalling approximately 64 and 127 square feet respectively). The enclosed floor area is approximately 2,622 square feet; the gross floor area including the paved areas is approximately 3,084.5 square feet.

There is a detached parking garage facility appurtenant to Houses 1 and 2. It consists of two enclosed parking garages, each totalling approximately 563 square feet.

The floor areas of the apartments were arrived at by taking the measurements to the interior surfaces of all perimeter walls, without exclusions for interior walls or other interior construction or equipment within such areas.

USE: The proposed Declaration provides that the apartments shall be occupied and used only as private dwellings by the respective owners thereof, their tenants, families, domestic servants, and social guests, and for no other purpose.

COMMON ELEMENTS: The common elements will include the limited common elements described in the next topical heading, LIMITED COMMON ELEMENTS, and all other portions of the project other than the apartments, and all other common elements mentioned in the Horizontal Property Act which are actually included in the project including specifically but not limited to:

- (a) The land in fee simple described in Exhibit A attached to the Declaration.
- (b) All yards, grounds and landscaped areas.
- (c) All parking areas, driveways and uncovered walkways.
- (d) All central and appurtenant transmission facilities and installations over, under and across the project which serve more than one apartment for such services such as power, light, water, gas, sewer, telephones and radio and television signal distribution, and trash disposal.
- (e) 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 "Limited Common Elements", are set aside and reserved 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:

(a) The site of each apartment, consisting of the land beneath and immediately adjacent thereto, as shown and delineated on the Plans.

(b) The portion of the parking garage facility assigned to each apartment as designated on the Plans.

(c) The paved entryway to each apartment.

(d) The walkways connecting each apartment to the appurtenant parking garage facility.

(e) With respect to House 1:

(1) The fenced garden court immediately adjacent to the master bathroom thereof.

(2) The patio and paved areas immediately adjacent to the living room thereof.

(f) With respect to House 2:

(1) The fenced courtyard immediately adjacent to the family room, dining area and living room thereof.

(2) The paved area immediately adjacent to the living room thereof.

(3) The paved area immediately adjacent to the master bedroom thereof.

INTEREST TO BE CONVEYED TO PURCHASER: Subject to reduction pursuant to paragraph 24 of the Declaration with respect to the construction of later phases, each apartment shall have appurtenant thereto an undivided percentage interest in all common elements of the project and the same proportionate share in all common profits and expenses of the project and for all other purposes including voting equal to 50%.

OWNERSHIP TO TITLE: The Preliminary Title Report dated November 17, 1975 prepared by Security Title Corporation reflects that title to the land is vested in the Developer.

ENCUMBRANCES AGAINST TITLE: The Preliminary Title Report prepared by Security Title Corporation, dated November 17, 1975, reflects the following:

(a) Reservation in favor of the State of Hawaii of all mineral and metallic mines as reserved in Royal Patent Grant 1416.

(b) Purchase Money Mortgage dated June 15, 1973, recorded on July 18, 1973 in the Bureau of Conveyances of the State of Hawaii in Liber 9322, Page 38, made by HOWARD GRUENBERG and RUTH ALLEN GRUENBERG, husband and wife, as Mortgagors, to VICTOR F. BENEDIKT, husband of Virginia A. Benedikt, as Mortgagee, to secure the repayment of the sum of \$67,000.00, any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said Mortgagors therein referred to.

(c) Mortgage dated June 15, 1973, recorded on July 18, 1973 in said Bureau of Conveyances in Liber 9322, Page 64, made by HOWARD GRUENBERG and RUTH ALLEN GRUENBERG, husband and wife, as Mortgagors, to JOSEPH JORDAN and DOROTHY H. JORDAN, husband and wife, as joint tenants, as Mortgagees, to secure the repayment of the sum of \$41,000.00, any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said Mortgagors therein referred to.

(d) Second Real Property Mortgage and Financing Statement dated December 13, 1974, recorded on December 17, 1974 in said Bureau of Conveyances in Liber 10319, Page 594, made by HOWARD GRUENBERG and RUTH ALLEN GRUENBERG, husband and wife, as Mortgagors, to FIRST HAWAIIAN BANK, a Hawaii corporation, as Mortgagee, to secure the repayment of the sum of \$70,000.00, any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said Mortgagors therein referred to.

(e) Third Real Property Mortgage and Financing Statement dated September 19, 1975, recorded on September 24, 1975 in said Bureau of Conveyances in Liber 10922, Page 536, made by HOWARD GRUENBERG and RUTH ALLEN GRUENBERG, husband and wife, as Mortgagors, to NORMAN ALWEIS and SHIRLEY ALWEIS, husband and wife, as joint tenants, as Mortgagees, to secure the repayment of the sum of \$135,000.00, any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said Mortgagors therein referred to.

(f) For any taxes that may be due and owing and a lien on the land, reference is made to the Office of the Tax Assessor of the Fourth Division.

PURCHASE MONEY HANDLING: A copy of the Escrow Agreement, dated December 3, 1975, between First Hawaiian Bank (Lihue Branch), a Hawaii corporation, as "Escrow" and the Developer as "Seller" has been submitted to the Commission as part of the registration. The Escrow Agreement applies only to sales of the apartments comprising "Phase One" of the project. On examination the Sales Contract, in specimen form, and the executed Escrow Agreement are found to be in compliance with Chapter 514, Hawaii Revised Statutes, and particularly Sections 514-36 through 40.

The provisions of the Escrow Agreement are to be carefully read and understood as follows:

If at the time of the execution of the Sales Contract a Final Report has not been issued by the Commission with respect to the project, then the following limitations shall apply:

(a) Purchaser's funds obtained prior to the issuance of a Final Report shall be refunded if there is any change in the condominium building plans subsequent to the execution of the Sales Contract, which change requires the approval of a county officer having jurisdiction over the issuance of permits for construction of buildings, unless purchaser's written approval or acceptance of the specific change is obtained or ninety (90) days have elapsed since purchaser has accepted the apartment in writing or since purchaser has first occupied the apartment.

(b) All rights under the Sales Contract shall not become enforceable against the purchaser until the purchaser has had a full opportunity to read the State Real Estate Commission's Final Public Report on the project, and to obtain refund of any moneys paid by the purchaser as well as release from all obligations under the Sales Contract if the Final Report differs in any material respect from the Preliminary Report.

(c) If the Final Public Report is not issued within one year from the date of the issuance of said Preliminary Report, the purchaser shall be entitled to refund of all moneys paid by him under the Sales Contract without further obligation.

(d) All moneys paid by the purchaser prior to the issuance of said Final Report shall be deposited in trust with the Escrow and the Escrow is hereby instructed that no disbursements shall be made from such trust fund on behalf of the Seller until the Sales Contract has become effective, and the requirements of Section 514-36 through 39, Hawaii Revised Statutes, have been met.

SALES CONTRACT: The provisions of the specimen Sales Contract are to be carefully read and understood as follows:

1. That Seller has made no representations with respect to its renting or managing the apartment on Buyer's behalf, and if Buyer wishes to rent the apartment to third persons, Buyer will make his own arrangements to do so; and that Buyer acknowledges that he has been informed that none of Seller's agents are authorized to make any representations concerning the foregoing, and

2. That Buyer agrees to subordinate his interest to the lien of the interim mortgage obtained for the construction of the applicable Phase of the Project and to any and all advances, whether contractual or voluntary made pursuant to said mortgage, and to any and all sums which may become a lien pursuant to the terms of said mortgage or the construction loan agreement or any other agreement relating to the interim mortgage. Buyer irrevocably appoints Seller the attorney-in-fact, coupled with an interest, of Buyer to execute and deliver on behalf of Buyer any instrument of subordination which the interim mortgagee or its successors or assigns may require. Seller agrees that as to each Phase: (a) the principal amount of any such interim loan (including any amendment thereto) shall not exceed \$1,000,000.00; (b) the interest rate shall not exceed the maximum rate permitted by law; (c) the loan shall be repaid not later than ten (10) years from its date; and (d) the proceeds of said loan shall be used for cost of land, construction, planning, marketing, and other development costs of the Project and/or the applicable Phase.

3. That Seller reserves the right to sell or lease unsold apartments free from any restrictions on such sale or lease which may under the Declaration and By-Laws apply to Buyer.

The specimen Sales Contract further provides that if any governmental body or agency having jurisdiction over the project should enact or adopt any law, ordinance, rule or regulation which would materially increase the cost of

the project, and if the effective date of such law, ordinance, rule or regulation occurs between the date of execution of the Sales Contract and the date of closing, the Seller has the right, to be exercised within sixty (60) days of the enactment or adoption of such law, ordinance, rule or regulation, to (a) bear the increased cost, in which case the Buyer shall waive any rescission rights contained in the Sales Contract and shall be limited solely to rescission rights provided in Chapter 514, Hawaii Revised Statutes, or (b) rescind the Sales Contract if the Seller chooses not to bear such increased cost. Upon such rescission, all moneys paid by the Buyer under the Sales Contract shall be refunded, without interest or any deduction, and the parties thereunder shall be fully released from all obligations to each other thereunder.

It is incumbent upon the purchaser and the prospective purchaser that they read, with care, the Sales Contract and the executed Escrow Agreement. The Escrow Agreement establishes how the proceeds from the sale of apartments and all sums from any source are placed in trust, as well as the retention, disbursement and refund of said trust funds.

DEVELOPER'S OPTION: As provided in the Declaration, the Developer reserves the right, to be exercised not later than December 31, 1982, to: Withdraw under certain conditions a designated area of land from the project; build additional apartments on the project; grant easements for utilities, sanitary and storm sewers, cable television, walkways, and rights-of-way, and relocate or realign any existing easements, rights-of-way and, including without limitation, any existing utilities, sanitary sewer lines and cable television and connect same over, under and on the common elements.

1. Reservation of Right to Construct Later Phases.

(a) The Declaration reserves the right in the Developer, at their option, to construct additional condominium units on the land described in Sheet 1 of the condominium plans filed with the Declaration ("Reserved Area"), which construction must begin on or before December 31, 1982, or the reserved rights will lapse. The Developer presently contemplates two (2) later phases consisting of four (4) single-family condominium apartments and two detached parking garage facilities in total. But if the applicable governmental law and rules and regulations governing zoning building requirements, and the like in effect at the time of the proposed construction require a reduction in the size of the later phases, then the Developer

reserves the right to reduce the size of the later phases as Developer, in their discretion, deems necessary or desirable. The present plans for later phases are substantially in the form of the Site Plan filed as Sheet 2 with the Declaration. The Developer reserves the right to determine hereafter the number and design of apartments of the later phases; provided that in no event shall the later phases contain more than four (4) apartments and two detached parking garage facilities. The Developer also reserves the right to alter the exterior of the later phases to conform to the interior design thereof, provided that such exterior design and appearance shall be harmonious with the exterior design and appearance of the project.

(b) Upon the issuance of a certificate of occupancy relating to the later phase apartments, the apartment owners of all of the initial 2 apartments and any later phase apartment for which a certificate of occupancy has been issued, shall constitute one association of owners. The common interest appurtenant to each of the initial 2 apartments in the project shall be decreased and a common interest appurtenant to each later phase apartment shall be allocated so that after said decrease and allocation, the common interest appurtenant to each apartment shall be the undivided percentage interest determined as follows:

$$\frac{100\%}{\text{total number of apartments then comprising the project}}$$

The common area assessments shall be prorated between the then existing apartments in the project and the later phase apartments as of the first day of the calendar month following the month in which the certificate of occupancy relating to the later phase apartments is issued.

(c) The Developer shall be responsible for all real property taxes with respect to the Reserved Area until the Developer exercises its right to construct any later phase, at which time, the later phase apartments, together with the apartments of any previous phase, shall become liable in their respective common interests for all real property taxes for that portion of the land which is no longer subject to withdrawal by the Developer as of the first day of the calendar month following the issuance of the first certificate of occupancy relating to the phase; and owners of later phase apartments shall become liable for the share of such real property taxes allocated to such

owner's apartment as of the first day of the calendar month following the issuance of the certificate of occupancy relating to such apartment. However, to the extent the Developer fails to exercise said reserved right by December 31, 1982, the real property taxes for the Reserved Area shall be prorated between the Developer and the apartments constituting the project as of January 1, 1983, after which time the apartments constituting the project shall be liable in their respective common interests for all real property taxes for that portion of the land which has not been withdrawn by the Developer; or to the extent the Developer releases its said reserved right in writing prior to December 31, 1982, then such proration date shall be the effective date the apartments then constituting the project shall be liable in their respective common interests for all real property taxes for that portion of the land which is no longer subject to withdrawal by the Developer.

(d) The purchaser or prospective purchaser is referred to paragraph 24 of the Declaration for a complete explanation of the terms and conditions of the reservation of this right to construct later phases.

2. Reserved Right to Withdraw Area. The Declaration also provides that if Developer decides not to construct any additional condominium apartment units other than the initial units and thereby releases its reserved rights as provided in paragraph 24 of the Declaration, then Developer reserves the right, at its option, to withdraw that portion of the land in the Reserved Area more particularly described in Sheet 3 of the plans filed with the Declaration as the "Reserved Withdrawal Area". This reserved right shall be exercised on or before December 31, 1982, and shall lapse if not exercised by that date. Upon the exercise of this right to withdraw, that portion of the Reserved Area other than the "Reserved Withdrawal Area" shall remain as part of the project and shall be included in the realigned boundaries of the land upon which the apartments then constituting the project are located. The Developer shall give the Association of Owners at least sixty (60) days' prior written notice of its intention to exercise said reserved right. The purchaser or prospective purchaser is referred to paragraph 25 of the Declaration for a complete explanation of the terms and conditions of the Developer's right to withdraw the designated portion of the Reserved Area.

MANAGEMENT OF THE PROJECT: The By-Laws of the Association of Apartment Owners vest in the Association the powers and duties necessary for the administration of the overall affairs of the project. The said By-Laws specify that the

presence at any meeting in person or by proxy of owners of apartments to which are appurtenant more than 50 percent of the common interests as established by the Declaration shall constitute a quorum and at any meeting in which a quorum is present, action by a majority of the voting power represented at such meeting shall be valid and binding on the Association except as otherwise provided in the Declaration or the By-Laws. Voting shall be on a percentage basis; the percentage of the total vote to which each apartment unit is entitled shall be the same as the percentage of the common interests assigned to such apartment unit in the Declaration; and any percentage of apartment unit owners specified in the By-Laws means the owners of apartment units to which are appurtenant such percentage of the common interest. The Association may employ necessary personnel to carry out the management and operation of the project. The Sales Contract permits the Developer to appoint a responsible individual or corporate managing agent to manage the project until the formation of the Association. Any contract with the managing agent shall not have a term exceeding one (1) year and shall be terminable by either party upon sixty (60) days' notice.

STATUS OF PROJECT: The developer advises that construction of the project by Blackwell Construction Co. has already commenced and will be completed about January 15, 1976.

The purchaser or prospective purchaser should be cognizant of the fact that this published report represents information disclosed by Developer in the required notice of intention filed December 11, 1975.

This PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 830 filed with the Commission on December 11, 1975.

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.


Member, REAL ESTATE COMMISSION
STATE OF HAWAII

Distribution

DEPARTMENT OF TAXATION
BUREAU OF CONVEYANCES
PLANNING DEPARTMENT, COUNTY OF KAUAI
FEDERAL HOUSING ADMINISTRATION
ESCROW AGENT

DATE: January 15, 1976
Registration No. 830