

# 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  
THE POIPU SANDS  
Poipu, Kauai, Hawaii  
REGISTRATION NO. 1109

### 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: May 7, 1979  
Expires: June 7, 1980

#### 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 purchase or prospective purchaser is particularly directed to the following:

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED MARCH 27, 1979 AND INFORMATION SUBSEQUENTLY FILED AS OF MAY 4, 1979. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, CHAPTER 514A, HAWAII REVISED STATUTES.

1. "THE POIPU SANDS" condominium project is a proposed fee simple condominium which will consist of five (5) buildings containing a total of seventy-two (72) residential apartments and a detached operations center. There will be a total of 112 unassigned parking stalls.
2. The Developer of the project has submitted to the Commission for examination all documents deemed necessary 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 recording officer.
4. No advertising and promotional materials have 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 Chapter 514A, Hawaii Revised Statutes, and the condominium rules and regulations which relate to Horizontal Property Regimes.
6. This Preliminary Public Report is made a part of the registration of THE POIPU SANDS condominium project. The Developer is responsible for placing a true copy of this Preliminary Public Report (yellow paper stock) in the hands of all purchasers and prospective purchasers. Securing a signed receipt for said Preliminary Public Report from all purchasers and prospective purchasers is also the responsibility of the Developer.
7. This Preliminary Public Report automatically expires thirteen (13) months after date of issuance, May 7, 1979, unless a Final or Supplementary Public Report is issued or the Commission, upon review of the registration, issues an order extending the effective period of this report.

NAME OF PROJECT: THE POIPU SANDS

LOCATION: The 7.2 acres of land to be submitted to the regime is situate at Poipu on the Island and County of Kauai, State of Hawaii.

TAX KEY: Fourth Division, portion of 2-8-20-8

ZONING: R-10

DEVELOPER: The Poipu Sands Limited Partnership, a registered Hawaii limited partnership whose principal place of business

and post office address is Suite 209, Lihue Shopping Center, Lihue, Kauai, Hawaii 96766. Telephone number: 245-3391. The general partner is Western Shore Apartments, Inc. of the aforementioned address.

ATTORNEY REPRESENTING DEVELOPER: Mukai, Ichiki, Raffetto & MacMillan (Attention: Wesley Y. S. Chang and Stanley Y. Mukai), 345 Queen Street, Suite 800, Honolulu, Hawaii. Telephone number: 531-6277.

DESCRIPTION OF PROJECT: The proposed Declaration of Horizontal Property Regime describes the Project as follows:

1. Description of Buildings. The Declaration of Horizontal Property Regime reflects that the Project will consist of five (5) buildings, designated as Buildings "1", "2", "3", "4" and "5", containing seventy-two (72) residential apartments and a detached operation and recreation building. Each building will be a three-story structure and shall be constructed principally of wood, tile, gypsum board, glass and related building materials on a concrete slab foundation reinforced with wire mesh. Buildings 1, 2 and 3 shall each contain fourteen (14) apartments, Building 4 shall contain eighteen (18) apartments, and Building 5 shall contain twelve (12) apartments. The operation and recreation building is designated as Building "6" on said Condominium File Plan and will be a two-story structure constructed principally of wood, tile, gypsum board, glass and related building materials on a concrete slab foundation reinforced with wire mesh. The first floor of the operation and recreation building will contain a check-in area, manager's office, laundry and linen facilities, maintenance and storage room, and restroom facilities. The second floor will contain a bar, kitchen, staff recreation room, storage room and a maid's room.

2. Description of Apartments. The Project is divided into seventy-two (72) separately designed condominium apartments, as more particularly described below and on said Condominium File Plan.

a. One-Bedroom Apartments. The Type 1 apartment is a one-bedroom apartment which includes a living room, dining room, kitchen, powder room (1/2 bath), bedroom, a full bath with tub and contains an approximate living area of 956 square feet, plus a lanai of approximately 196 square feet inclusive of a storage area.

b. Two-Bedroom Apartments. The Type 2 apartment includes a living room, dining room, kitchen, two bedrooms, two bathrooms and contains an approximate living area of 1353 square feet with a lanai area of approximately 287 square feet inclusive of a storage area. The Type 2T apartment is a townhouse apartment which includes a living room, dining room, kitchen, two bedrooms, two bathrooms and contains an approximate living area of 1371 square feet, plus two lanai areas of approximately 196 and 158 square feet with storage area. One bedroom and bath is located on the second floor of the unit.

c. Three-Bedroom Apartments. The Type 3 apartment includes a living room, dining room, kitchen, three bedrooms, and three bathrooms. The Type 3 apartment contains a living area of approximately 1772 square feet, plus two lanai areas of approximately a total of 287 and 158 square feet with a storage area.

All areas set forth hereinabove were computed by measuring from the outside of exterior walls and from the center line of interior party walls, and no reduction has been made to account for interior walls, ducts, shafts and the like located within the perimeter walls.

The location, numbering, approximate gross floor area, lanai area, apartment type, number of rooms and common interest of each of the apartments are as follows:

<u>Building</u>	<u>Apt. No.</u>	<u>Apt. Type</u>	<u>No. of Rooms</u>	<u>Gross Floor Area</u>	<u>Lanai Area</u>	<u>Percentage Common Interest</u>
1	111	2	7	1640	287	1.42617
	112	1	6	1152	196	1.0018
	113	2	7	1640	287	1.42617
	114	2	7	1640	287	1.42617
	115	1	6	1152	196	1.0018
	116	2	7	1640	287	1.42617
	121	2T	7	1725	354	1.50009
	122	2T	7	1725	354	1.50009
	123	2	7	1640	287	1.42617
	124	2	7	1640	287	1.42617
	125	2T	7	1725	354	1.50009
	126	2T	7	1725	354	1.50009
	133	2	7	1640	287	1.42617
	134	2	7	1640	287	1.42617
2	211	2	7	1640	287	1.42617
	212	1	6	1152	196	1.0018
	213	2	7	1640	287	1.42617
	214	2	7	1640	287	1.42617
	215	1	6	1152	196	1.0018
	216	2	7	1640	287	1.42617
	221	2T	7	1725	354	1.50009
	222	2T	7	1725	354	1.50009
	223	2	7	1640	287	1.42617
	224	2	7	1640	287	1.42617
	225	2T	7	1725	354	1.50009
	226	2T	7	1725	354	1.50009
	233	2	7	1640	287	1.42617
	234	2	7	1640	287	1.42617
3	311	2	7	1640	287	1.42617
	312	1	6	1152	196	1.0018
	313	2	7	1640	287	1.42617
	314	2	7	1640	287	1.42617
	315	1	6	1152	196	1.0018
	316	2	7	1640	287	1.42617
	321	2T	7	1725	354	1.50009

<u>Building</u>	<u>Apt. No.</u>	<u>Apt. Type</u>	<u>No. of Rooms</u>	<u>Gross Floor Area</u>	<u>Lanai Area</u>	<u>Percentage Common Interest</u>
	322	2T	7	1725	354	1.50009
	323	2	7	1640	287	1.42617
	324	2	7	1640	287	1.42617
	325	2T	7	1725	354	1.50009
	326	2T	7	1725	354	1.50009
	333	2	7	1640	287	1.42617
	334	2	7	1640	287	1.42617
4	411	1	6	1152	196	1.0018
	412	2	7	1640	287	1.42617
	413	1	6	1152	196	1.0018
	414	2	7	1640	287	1.42617
	415	1	6	1152	196	1.0018
	416	1	6	1152	196	1.0018
	417	2	7	1640	287	1.42617
	418	1	6	1152	196	1.0018
	419	3	9	2217	445	1.92803
	422	3	9	2217	445	1.92803
	423	2T	7	1725	354	1.50009
	424	2	7	1640	287	1.42617
	425	2T	7	1725	354	1.50009
	426	2T	7	1725	354	1.50009
	427	2	7	1640	287	1.42617
	428	2T	7	1725	354	1.50009
	434	2	7	1640	287	1.42617
	437	2	7	1640	287	1.42617
5	511	2	7	1640	287	1.42617
	512	2	7	1640	287	1.42617
	513	1	6	1152	196	1.0018
	514	2	7	1640	287	1.42617
	515	2	7	1640	287	1.42617
	521	2T	7	1725	354	1.50009
	522	2	7	1640	287	1.42617
	523	2T	7	1725	354	1.50009
	524	2	7	1640	287	1.42617
	525	2T	7	1725	354	1.50009
	532	2	7	1640	287	1.42617
	534	2	7	1640	287	1.42617

3. Limits of Apartments. The respective apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter walls or interior load-bearing walls, the floors and ceilings surrounding each apartment, any pipes, wires, conduits or other utility lines running through such apartment which are utilized for or serve more than one apartment, the same being deemed common elements as provided in the proposed Declaration. Subject to the foregoing, each apartment shall be deemed to include all of the walls and partitions which are not load-bearing within its perimeter or party walls, any glass windows or panels within its perimeter, the inner decorated or finished surfaces of all walls, floors and ceilings, all adjacent lanais, and any fixtures and appliances originally installed therein.

4. Access. Each apartment on the ground floor of each building has a first floor entry permitting immediate access to the grounds and parking area of the Project. Each apartment on the second or third floor of its building has immediate access to its entry and to the stairway leading to the ground floor.

COMMON ELEMENTS: The proposed Declaration states that the common elements shall include all of the land and improvements other than apartments specifically including:

1. All of the land of the Project;
2. All foundations, columns, girders, beams, floor slabs, supports, unfinished perimeter and load-bearing walls (except for the inner decorated surface within each apartment), roofs, stairways, walkways, entrances and exits of the buildings;
3. The operation and recreation building situate between Buildings 2 and 3;
4. All yards, grounds, landscaping, refuse and like facilities;
5. All recreation areas of the Project, including the swimming pool and its filtration system;
6. All parking stalls and parking areas designated in said Condominium File Plan;
7. All driveways, loading areas, parking area entryways, and parking area exitways;
8. All central and appurtenant installations for services such as power, lights, telephone, gas, hot and cold water lines, television lines, sewage disposal and other utilities (including pipes, ducts, wires, cables and conduits used in connection therewith, whether located in common areas or in apartments), and all tanks, pumps, motors, fans, ducts and other apparatus and installations existing for, or in the buildings for common use; and
9. 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, and normally in common use and which are not part of any apartment.

LIMITED COMMON ELEMENTS: The proposed Declaration provides that there will be no limited common elements. No parking stalls will be assigned to any apartments.

INTEREST TO BE CONVEYED TO PURCHASERS: The Developer shall, by means of an Apartment Deed, convey the apartment and the undivided percentage interest in the common elements (including land) appurtenant thereto. The percentage interest appurtenant to each apartment is set forth hereinabove under the heading "Description of Buildings" and shall be the same proportionate share in all common profits and expenses of the Project, and for all other purposes including voting.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The apartments shall be occupied and used only as private dwellings by the respective owners thereof, their tenants, families, domestic servants and social guests. The owners of the respective apartments shall have the absolute right to rent or lease such apartments subject to all provisions of the Declaration.

NOTE: Among other provisions, the House Rules provide that no livestock, poultry, rabbits, or other animals whatsoever shall be allowed or kept in any part of the Project, without the prior written consent of the Board.

NOTE: Purchasers and prospective purchasers of apartments should be specifically informed that all apartment owners, their tenants, families, servants and guests, and any other persons who may in any manner use the project, shall be bound by and strictly comply with not only the provisions of the Declaration of Horizontal Property Regime, the By-Laws of the Association, and all agreements, decisions and determinations of the Association (including the House Rules for the Project), but also the provisions of the Declaration of Covenants and Restrictions for the Poipu Kai Subdivision (of which the Project is a part) dated January 8, 1979 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 13428 at Page 440. Purchasers and prospective purchasers are therefore advised to read and fully understand the Declaration of Covenants and Restrictions as well as the Declaration of Horizontal Property Regime, the By-Laws of the Association of Apartment Owners, and the House Rules prior to executing any Sales Contract for the Project. Among other provisions contained in the Declaration of Covenants and Restrictions, purchasers and prospective purchasers should take note of the following:

(1) No more than one family shall occupy any Condominium Unit. A "family" is defined as an individual or two or more persons related by blood or marriage and their legal issue or a group of not more than five (5) unrelated individuals.

(2) Each lot and all improvements located thereon shall be maintained by the owner thereof in good condition and repair, and in such manner as not to create a fire hazard or visual or other nuisance, all at the owner's expense. A "lot" is defined to include a condominium unit unless the context clearly indicates a contrary intent.

(3) No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other Owners of all lots in the enjoyment of their lots. Without limiting any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the lot and improvements located thereon, shall be placed or used upon any lot without prior written approval of the Design Committee.

(4) The parking of vehicles on the roads shall at all times be subject to and in accordance with applicable laws and further restrictions established by supplemental declarations of the Poipu Kai Associations Rules.

(5) Except in the case of commercial lots, no gainful occupation, profession or trade shall be maintained on any lot or in any structure on any lot without the prior approval of the Design Committee, except that thi provision shall in no way limit nor prevent Owners from renting their houses, apartment units or Condominium Units.

(6) No exterior antenna of any sort shall be installed or maintained on any lot except of a height, size and type approved by the Design Committee, provided, however, that this restriction shall not apply to any cable facility installed by The Housing Group. No activity shall be conducted within Poipu Kai which interferes with the television or radio reception in Poipu Kai.

(7) No reflective finishes (other than paint and glass) shall be used on the exterior surfaces of any improvements conctructed or placed on any lot.

OWNERSHIP OF TITLE: A preliminary title report dated March 12, 1979 by Title Guaranty of Hawaii, Incorporated, indicates that title to the land is vested in The Poipu Sands Limited Partnership, a registered Hawaii limited partnership.

ENCUMBRANCES AGAINST TITLE: Said preliminary title report dated March 12, 1979 reports that title to the land is subject to the following:

1. Real property taxes that might be due and owing.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Pedestrian easement "C" in favor of the County of Kauai along Lot D-24.
4. Declaration of Covenants and Restrictions dated January 8, 1978, recorded in Liber 13428 at Page 440.
5. Mortgage and Financing Statement

Mortgagor : Leadership Homes of Hawaii, Inc., a Delaware corporation

Mortgagee : First Hawaiian Bank, a Hawaii corporation

Dated : June 7, 1974

Recorded : Liber 9953 Page 333

Amount : \$3,600,000.00 - covers Lot D-1 besides other land

The above Mortgage was assigned

To : Crocker National Bank, a national  
banking association

Dated : February 10, 1977  
Recorded : Liber 12037 Page 332

Those certain agreements executed by and between Leadership Homes of Hawaii, Inc., a Delaware corporation, and Leadership Housing, Inc., a Delaware corporation ("Debtor") and Crocker National Bank, a national banking association (the "Bank"), dated February 9, 1977, recorded in Liber 12037 at Page 334 and in Liber 12996 at Page 433.

6. Mortgage and Security Agreement

Mortgagor : The Poipu Sands Limited Partnership, a registered Hawaii limited partnership, by its General Partner, Western Shore Apartments, Inc.

Mortgagee : The Housing Group, a California corporation

Dated: : January 25, 1979  
Recorded : Liber 13451 Page 784  
Amount : \$760,410.00

PURCHASE MONEY HANDLING: An executed Escrow Agreement dated February 15, 1979, identifies Title Guaranty Escrow Services, Inc., a Hawaii corporation, as the escrow agent. Upon examination, the specimen Deposit Receipt and Sales Contract and the executed Escrow Agreement are found to be in compliance with Chapter 514A, Hawaii Revised Statutes, and particularly Section 514A-39 and Sections 514A-63 and 514A-66.

Among other provisions, the Escrow Agreement and Sales Contract provide that a purchaser under a Sales Contract shall be entitled to a return of his funds, without interest, less an escrow cancellation fee of \$25.00 and other costs incurred by the Seller's or Buyer's mortgagee, if any one of the following has occurred:

(a) Developer and the purchaser shall have requested Escrow to return to purchaser the funds of purchaser then being held by Escrow; or

(b) Developer shall have notified Escrow of Developer's exercise of the option to rescind the Sales Contract pursuant to any right of cancellation or rescission stated therein or otherwise available to Developer; or

(c) With respect to a purchaser whose funds were obtained prior to the issuance of the Final Report, there shall have been a change in the building plans of the Project requiring the approval of a county officer having jurisdiction over the issuance of building permits (except such changes as

are specifically authorized in the Declaration of Horizontal Property Regime or to which the purchaser has otherwise consented to in writing); or

(d) The Final Report differs in a material respect from the Preliminary Report and the purchaser's written approval of such change has not been obtained; or

(e) The Final Report shall not have been issued within one (1) year from the date of issuance of this Preliminary Report, and the purchaser has not waived his right to a refund.

The Escrow Agreement provides that upon the occurrence of the event described in (a) or (b) above or upon receipt of a written request for a refund from a purchaser upon the occurrence of an event described in (c), (d) or (e) above, Escrow will pay said funds to said purchaser and thereupon the Sales Contract and any conveyance document theretofore delivered to Escrow shall be returned to Developer and shall be deemed no longer held under the Escrow Agreement; provided, however, that no refund shall be made to a purchaser at a purchaser's request prior to receipt by Developer of written notice from Escrow of its intent to make such refund.

The specimen Deposit Receipt and Sales Contract also states that:

(1) The Buyer will pay at the time of closing all closing costs, including but not limited to the cost for drafting of the Apartment Deed, all conveyance taxes, all other closing costs or loan origination charges, credit reports, escrow fees, costs of drafting all documents, notary and recording fees, and the cost of any title insurance policy, title report, certificate of title or lien letter. The Buyer shall, at the closing, also prepay maintenance fees for a period of two (2) months and any real property taxes and/or insurance premiums to the extent required by any first mortgage lender.

(2) If the Seller shall default in selling the apartment to Buyer as provided in the Sales Contract and the remedy of specific performance is not available to the Buyer for any reason, the parties agree that in such event the injury to the Buyer, in view of the uncertain nature of the real estate market in Hawaii and the rising costs of construction and construction materials, will be difficult and expensive to measure and that, therefore, as a reasonable estimate of Buyer's fair compensation for any damages resulting from such default, the parties have agreed on the payment to the Buyer of \$1,000.00 as liquidated damages, if the Buyer is not then in default under the Sales Contract.

NOTE: PROSPECTIVE PURCHASERS SHOULD BE AWARE THAT THE SELLER'S MORTGAGE LOANS (CONSTRUCTION, RENEWALS AND EXTENSIONS) FOR THE PROJECT SHALL BE AND REMAIN AT ALL TIMES A SUPERIOR LIEN ON THE PROJECT, AND PURCHASERS INTENTIONALLY WAIVE AND SUBORDINATE THE PRIORITY OF LIEN UNDER THE SALES CONTRACT IN FAVOR OF THE MORTGAGE LOANS.

It is incumbent upon the purchaser and prospective purchaser to read and understand the Escrow Agreement before executing the Deposit Receipt and Sales Contract, since the Escrow Agreement describes the procedure for receiving and disbursing purchaser's funds, and the Deposit Receipt and Sales Contract specifically provides that the Purchaser approves that Escrow Agreement and assumes the benefit and obligations therein provided.

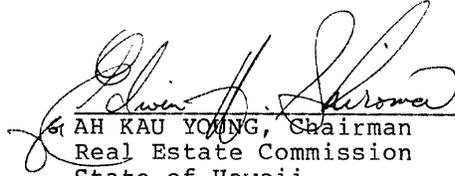
MANAGEMENT AND OPERATIONS: The By-Laws, which are incorporated in the Declaration, provide that the operation of the project shall be conducted for the Association by a responsible corporate Managing Agent who shall be appointed by the Association in accordance with the By-Laws, although the Declaration permits the Developer to appoint the initial Managing Agent. To date, no Managing Agent has been appointed.

STATUS OF PROJECT: Construction of the project has not yet commenced; however, it is expected that the construction of the project will be commenced September 1, 1979 and completed on or about September 1, 1980.

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The purchaser or 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 March 27, 1979, and subsequently filed as of May 4, 1979.

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

The 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 Department,  
County of Kauai  
Federal Building Administration  
Escrow Agent

Registration No. 1109

May 7, 1979