

# 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  
MANUALOHA I - PHASE II  
Ho'ohu Road  
Poipu, Kauai, Hawaii

REGISTRATION NO. 1435

### 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: August 19, 1981  
Expires: September 19, 1982

#### SPECIAL ATTENTION

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

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED JUNE 19, 1981 AND INFORMATION SUBSEQUENTLY FILED AS OF AUGUST 14, 1981. DEVELOPER, IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL AND SUBMITTING INFORMATION ON THE PROJECT, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, CHAPTER 514A, HAWAII REVISED STATUTES, AS AMENDED.

1. MANUALOHA I - PHASE II is a fee simple condominium project consisting of 12 residential apartments in two (2) three-story buildings, 18 parking stalls (six of which are for guests) and a swimming pool complex. This Preliminary Public Report only covers the 12 residential apartments comprising Phase II of the Manualoha I condominium project.

2. The Developer of the Project has submitted to the Commission for its examination all documents deemed necessary for the registration of the condominium project and the issuance of this Preliminary Public Report.
3. The Developer reports that the Declaration of Horizontal Property Regime of Manualoha I, dated October 31, 1979, with the Bylaws of the Association of Apartment Owners attached thereto, was recorded in the Bureau of Conveyances of the State of Hawaii in Liber 14168 at Page 215, and was subsequently amended by First Amendment of Declaration of Horizontal Property Regime, dated March 2, 1981, recorded in said Bureau in Liber 15384 at Page 589, by Second Amendment of Declaration of Horizontal Property Regime, dated June 17, 1981, recorded in said Bureau in Liber 15633 at Page 46, and by Third Amendment of Declaration of Horizontal Property Regime dated July 30, 1981, recorded in said Bureau in Liber 15733 at Page 798. The approved floor plans have also been filed in said Bureau and designated as Condominium File Plan No. 662, as amended (the "Condominium Map").
4. No advertising or promotional materials have been submitted to the Commission.
5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Chapter 514A, Hawaii Revised Statutes, as amended, and the Rules and Regulations of the Hawaii Real Estate Commission which relate to Horizontal Property Regimes.
6. This Preliminary Public Report expires thirteen (13) months after issuance, August 19, 1981, unless a Final or Supplementary Public Report issues, or the Commission, upon review of the registration, issues an order extending the effective date of this report.
7. This Preliminary Public Report is part of the registration of MANUALOHA I - PHASE II. The Developer has the responsibility of placing a true copy of this Preliminary Public Report (yellow paper stock) together with the Disclosure Abstract in the hands of all purchasers and securing a signed copy of the receipt for both from each purchaser.

NAME OF PROJECT: MANUALOHA I - PHASE II

LOCATION: The Project is located at Ho'ohu Road, Poipu, Koloa, Kauai, Hawaii and, together with Manualoha I - Phase I, is situated on a land area of approximately 6.653 acres.

TAX KEY: Portion of 2-8-22:13 (4th Tax Division-County of Kauai).

ZONING: Residential District (R-10) under the Ordinances of the County of Kauai.

DEVELOPER: THE PALAKIKO COMPANY, LTD., a Hawaii limited partnership, 1520 Wilshire Boulevard, Los Angeles, California, with local post office address of P.O. Box 671, Koloa, Kauai, Hawaii 96756, and telephone number of (808) 742-1657. The general partners of the Developer are Theodore Barry, Mary Kelan Barry, Mary Kathleen Barry and Kevin Patrick Barry, all of 1520 Wilshire Boulevard, Los Angeles, California, Telephone: (213) 413-6080.

ATTORNEYS REPRESENTING DEVELOPER: Cades Schutte Fleming & Wright (Attention: Douglas E. Prior or Stanley M. Kuriyama), Suite 1100, 1000 Bishop Street, P. O. Box 939, Honolulu, Hawaii 96808, Telephone: (808) 521-9200.

DESCRIPTION OF PROJECT: The Project consists of 12 residential apartments in two (2) three-story buildings with 18 parking stalls. Recreational facilities include a swimming pool complex consisting of a swimming pool and restrooms. The Project and the apartments are more specifically described in Exhibit "A" attached hereto and made a part hereof. The Project constitutes the second of two phases of the Manualoha I condominium project and is sometimes hereinafter referred to as "Phase II". Phase I of Manualoha I has already been constructed, and consists of 52 residential apartments in nine (9) two- and three-story buildings, with 78 parking stalls.

Each apartment shall be deemed to include: (i) any adjacent lanai, deck or entry court area to which such apartment has direct, exclusive access, (ii) all the walls and partitions which are not load-bearing within its perimeter walls, (iii) the inner decorated or finished surfaces of all walls, floors and ceilings, (iv) any doors, windows or panels along the perimeters, and (v) all fixtures originally installed therein. The respective apartments shall not be deemed to include: (a) the undecorated or unfinished surfaces of the perimeter walls, the interior load-bearing walls, or the party walls, (b) the undecorated or unfinished floors and ceilings surrounding each apartment, or (c) any pipes, shafts, 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.

COMMON ELEMENTS: The common elements will include all portions of the Project, other than the apartments, including, specifically, but not limited to, all of the land submitted to this Horizontal Property Regime, in fee simple, the common elements mentioned in the Horizontal Property Act which are actually constructed on the land, and all other portions of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use, and which are not included as part of an apartment, including, but not limited to:

(a) All foundations, columns, girders, beams, supports, perimeter walls, load-bearing walls, roofs, walkways, boardwalks, ducts, pumps, pipes, wires, conduits, and generally all equipment, apparatus, installations and personal property existing for common use in the buildings or located on the Project lands;

(b) All driveways, roads and other common ways, landscaping, yards, fences, retaining walls, refuse collection areas, accessory equipment and parking areas situate on the Project lands, including 6 guest parking stalls;

(c) The Easement Area shown on the Condominium Map (certain portions of said Easement Area being designated as limited common elements as described below); and

(d) The swimming pool complex located on the Manualoha I lands, consisting of a swimming pool and restrooms.

LIMITED COMMON ELEMENTS: Each apartment shall have appurtenant thereto an exclusive easement for the use of the parking space designated with the same number as the apartment and as shown on the Condominium Map.

INTEREST TO BE CONVEYED TO PURCHASER: The apartments shall have the percentage common interests in the common elements of the Project and the same percentage in all common profits and expenses of the Project and for all other purposes, including voting, as set forth in Exhibit "B" attached hereto. Interests in each apartment will be transferred by the Developer to each buyer under an Apartment Deed, consisting of a deed of the improvements comprising the particular apartment, and an undivided percentage interest in the common elements, inclusive of the land.

PHASE DEVELOPMENT: The incorporation of the 12 apartments comprising Phase II into Manualoha I shall take effect on the date that a certificate of occupancy has been issued by the appropriate county agency with respect to each apartment in Phase II (the "Date of Issuance"). Upon the issuance of such certificate, the Developer shall without the consent or joinder of any apartment owner record in the Bureau of Conveyances of the State of Hawaii an amendment to the Declaration certifying that such certificate has been issued. From and after the Date of Issuance, the following consequences shall ensue:

(a) Use of Common Elements. All apartments in Phase I and Phase II (the "Completed Project"), shall have the right to full use and enjoyment of all 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 apartment by the provisions of the Declaration.

(b) Percentage Interest. Each apartment shall have such percentage in all common profits and expenses of the Completed Project and for all other purposes, including the payment of real property taxes and voting, as set forth in Exhibit "C" attached to the Declaration. All common expenses and profits

attributable to Phase II shall be treated as common expenses and profits of the Completed Project, and the payment and sharing of common expenses and profits shall be prorated between Phase I and Phase II apartment owners as of the Date of Issuance.

(c) Board of Directors. The Board of Directors governing Phase I immediately prior to the addition of the Phase II apartments shall govern the Completed Project after the completion and addition of the Phase II apartments until the next annual meeting of the Association, unless a special meeting of the Association is called pursuant to the provisions of the Bylaws for the election of new Board members.

PURPOSE OF BUILDINGS AND RESTRICTIONS AS TO USE: Each apartment shall at all times be used solely for permanent or temporary residential purposes.

The existing House Rules for Manualoha I, which also apply to Phase II, provide, in part: (1) A dog or cat may be kept and maintained within the apartment unit and/or enclosed area related to that specific unit. Each owner of a dog or cat must deposit \$100.00 with the Board of Directors to defray the cost of repairing any damage to or maintaining the sanitation or cleanliness of the common elements caused by or attributable to such pet. Should the owner cease to occupy his apartment or keep a dog or cat, the \$100.00 deposit or any unexpended portion thereof will be refunded.

OWNERSHIP OF TITLE: A Preliminary Report dated June 18, 1981, issued by Title Guaranty of Hawaii, Incorporated, states that fee simple title to the land is held by the Developer.

ENCUMBRANCES AGAINST TITLE: Said Preliminary Report states that title to the property is subject to the following encumbrances:

1. For any taxes that may be due and owing, reference is made to the Office of the Tax Assessor, fourth division.

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

3. A portion of Easement 'A' (10 feet wide) along Bacle Tract, Block 'C', as shown in red on the map attached to the Preliminary Report as Exhibit 'A'. A Grant of Easement conveying Easement 'A' and other easements for pedestrian purposes to the County of Kauai, was executed by Leadership Homes of Hawaii, Inc., a Delaware corporation, prior to its conveyance of the above described property to The Housing Group, a California corporation licensed to do business in Hawaii, and will be executed, dated and recorded by the County of Kauai subsequent hereto. The recordation of the Grant of Easement shall relate back and said Grant of Easement shall be considered to have been in effect prior to the date of the conveyance of the above described property by Leadership Homes of Hawaii, Inc., to The Housing Group, as set forth in Deed dated January 17, 1979, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 13428, Page 521.

4. Restrictive covenants and conditions contained in Declaration dated January 8, 1979, recorded in said Bureau in Liber 13428 at Page 440, as supplemented by First Supplemental Declaration of Covenants and Restrictions dated April 17, 1979, recorded in said Bureau in Liber 13622 at Page 445, Second Supplemental Declaration of Covenants and Restrictions dated May 22, 1979, recorded in said Bureau in Liber 13709 at Page 20, and Third Supplemental Declaration of Covenants and Restrictions dated October 31, 1979, recorded in said Bureau in Liber 14122 at Page 665, and as amended by Amendment and Certificate of Amendment to Declaration of Covenants and Restrictions dated October 3, 1980, recorded in said Bureau in Liber 15058 at Page 76.

5. Grant in favor of Poipu Kai Association, dated August 1, 1979, recorded in said Bureau in Liber 13910 at Page 298; granting a perpetual and non-exclusive easement in, upon, through, over and across a portion of the land, said easement being designated as EASEMENT "2", containing an area of 73,783 square feet, and being more fully described as per survey of Robert W. Cunningham, Registered Professional Land Surveyor, dated June 13, 1979.

Said Grant was amended by instrument dated October 31, 1979, recorded in said Bureau in Liber 14234 at Page 331; Consent to and Joinder in Amendment to Grant of Perpetual Non-exclusive Easement dated November 14, 1979, recorded in said Bureau in Liber 14234 at Page 338.

6. Declaration as to Merger of Increments in a Condominium Project Manualoha by the Palakiko Company, Ltd., a Hawaii registered partnership (Owner of Increment I), and Theodore Barry and Mary Barry, husband and wife (Owner of Increment II), dated October 31, 1979, recorded in said Bureau in Liber 14168 at Page 201. Said Declaration was amended by instrument dated February 23, 1981, recorded in said Bureau in Liber 15384 at Page 582.

7. The restrictions on use and other restrictions and all other of the covenants, agreements, obligations, conditions, reservations, easements and other provisions set forth in Declaration of Horizontal Property Regime dated October 31, 1979, recorded in said Bureau in Liber 14168 at Page 215, and the By-laws attached thereto, as the same are or may hereafter be amended in accordance with law, said Declaration or said By-laws. (Project covered by Condominium Map No. 662, as amended.) Said Declaration was amended by instrument dated March 2, 1981, recorded in said Bureau in Liber 15384 at Page 589.

8. Grant in favor of The Housing Group, dated October 24, 1980, recorded in said Bureau in Liber 15156 at Page 445; granting a perpetual, non-exclusive easement, for the benefit of and as an appurtenance to Lot D-17, for public vehicular and pedestrian access purposes, and for the construction, installation, maintenance, operation, replacement, repair and removal of lines, transmission facilities and appurtenances

for cable television purposes, in, upon, through, over and across a portion of the land, said easement being designated as Easement "AU-1" containing an area of 1200 square feet and being more fully described per survey of William D. Ng, Registered Land Surveyor, dated July 29, 1980.

9. Grant in favor of The Housing Group, dated October 24, 1980, recorded in said Bureau in Liber 15156 at Page 454; granting a non-exclusive easement, for the benefit of and as an appurtenance to Lot D-17, for the construction, installation, maintenance, operation, replacement, repair and removal of lines, transmission facilities and appurtenances for sewer purposes, in, upon, through, over and across a portion of the land, said easement being designated as Easement "U-1" containing an area of 100 square feet and being more fully described as per survey of William D. Ng, Registered Land Surveyor, dated July 29, 1980.

10. Right-of-Entry in favor of Citizens Utilities Company, dated December 1, 1980, recorded in said Bureau in Liber 15196 at Page 581; granting a right-of-entry and temporary easement for construction and maintenance of power and communication lines over the land.

11. Affidavit dated May 2, 1980, recorded in Liber 14705 at Page 248.

12. Various Deeds, Mortgages and Agreements of Sale covering apartment units within the Condominium Project known as "MANUALOHA I" which have been purposely omitted herefrom.

MERGER OF INCREMENTS: The Developer and Theodore and Mary Barry (the "Barrys") have placed on record a Declaration as to Merger of Increments in a Condominium Project, dated October 31, 1979, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 14168 at Page 201, as amended by instrument dated February 23, 1981, recorded in said Bureau in Liber 15384 at Page 582. The Declaration as to Merger permits the Barrys to develop a condominium project ("Increment II"), in one or more phases, on such adjacent property, and to thereafter merge Increment II or any phase therein with Manualoha I for purposes of administration and use. The Developer does not represent that Increment II will be developed or that, if developed, it will be merged with Manualoha I.

PURCHASE MONEY HANDLING: A copy of a specimen Deposit Receipt and Sales Contract and an executed Escrow Agreement have been submitted as part of the registration. The Escrow Agreement, dated June 18, 1981, identifies Title Guaranty Escrow Services, Inc. as the "Escrowee." Upon examination, the specimen Sales Contract and the executed Escrow Agreement are found to be in compliance with Chapter 514A, Hawaii Revised Statutes, as amended, and particularly with Section 514A-37, 39, 40, 63 through 66. A prospective purchaser should carefully examine the form of Sales Contract and the Escrow Agreement to determine the time for and the amount of the installment payments on the purchase price and his obligations to pay the closing

costs. It is incumbent upon the purchaser to read and understand the Escrow Agreement before signing the Sales Contract since the Escrow Agreement prescribes the procedure for receiving and disbursing the purchaser's down payments and the Sales Contract provides that the purchaser approves the Escrow Agreement.

The Deposit Receipt and Sales Contract, among other things, contains acknowledgments by each purchaser: (i) that the Developer will not sponsor, arrange or promote any program for the rental or temporary use and occupancy of apartments in the Project other than apartments owned by the Developer upon completion of the Project, if any, and the purchaser must make any such arrangements for his apartment, if desired, without the involvement or participation of the Developer; (ii) that the Developer has authorized no agents, salesmen or brokers to make any representations as to rental or other income from any apartment or any other economic benefit, including possible advantages from the ownership of an apartment under federal or state tax laws, to be derived from the purchase of an apartment in the Project; that the purchaser acknowledges that no such representations or warranties have been made and that the Developer expressly disclaims and repudiates any representation from any source as to any possible economic benefit arising from ownership of an apartment in the Project; (iii) that the Project is adjacent to certain lands presently being used for agricultural purposes and activities, including, but not limited to, the growing and harvesting of sugar cane, and such use may at times create dust, smoke, noise and other nuisances, and that the Developer shall under no circumstances be liable to any apartment owner in the Project for such use of the adjacent lands or for any nuisance or nuisances resulting from such use; and (iv) that the purchaser's right, title and interest under the Sales Contract shall be subject and subordinate to the liens and security interests of any mortgages or other security instruments made by the Developer in favor of any lending institutions to secure one or more loans for the purpose of constructing the Project.

The Escrow Agreement provides that a purchaser shall be entitled to a return of his funds, and Escrow shall pay such funds to such purchaser, without interest and less (except for any cancellation made pursuant to subparagraph (f)(i) below) an escrow cancellation fee commensurate with the work done by Escrow prior to such cancellation or \$25.00, whichever is greater, if any one of the following has occurred:

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

(b) The Developer shall have notified Escrow of the Developer's exercise of the option to cancel or rescind the sales contract pursuant to any right of cancellation or rescission provided therein or otherwise available to the 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, subsequent to the execution of purchaser's sales contract, requiring approval of a county officer having jurisdiction over the issuance of building permits, unless such change is specifically authorized in the Declaration of Horizontal Property Regime or by the terms of the sales contract or unless the purchaser's written approval or acceptance of the specific change is obtained or ninety days have elapsed since the purchaser has accepted in writing the unit or the purchaser has first occupied the unit; or

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

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

(f) The Developer and the purchaser shall have requested Escrow to return to purchaser the funds of purchaser held thereunder by Escrow and any one of the following events have occurred:

(i) No sales contract has been offered to the purchaser who has been placed on the Developer's reservation list of owner-occupant applicants; or

(ii) The purchaser has been unable to obtain adequate financing, or a commitment for adequate financing, for his unit within thirty calendar days following the end of the ten calendar day period during which the Developer is limited to selling to owner-occupants; or

(iii) The Developer desires to cancel the contract because of hardship circumstances such as those set forth in Section 514A-104(1), Hawaii Revised Statutes, or because the purchaser indicates an intent not to become an owner-occupant of such unit.

POIPU KAI ASSOCIATION MEMBERSHIP: Each apartment owner in the Project shall be a member of the Poipu Kai Association in addition to each apartment owner's membership in the Association of Apartment Owners of Manualoha I. In addition to the maintenance fees for the Project, each apartment owner is also subject to assessments by the Poipu Kai Association and the Poipu Kai Tennis Club.

POIPU KAI TENNIS CLUB: The Developer, on behalf of the Association of Apartment Owners of Manualoha I has entered into a License Agreement with ADM. International, Ltd. for the use of a private tennis club known as the "Poipu Kai Tennis Club". Under the terms of the License Agreement, the owner of an apartment in the Project and his respective family, tenants or

guests shall have a non-exclusive license to use the recreational facilities of the Poipu Kai Tennis Club upon payment by the Association of Apartment Owners of a monthly fee, which constitutes a portion of the common expenses reflected in the monthly assessment for the respective apartments.

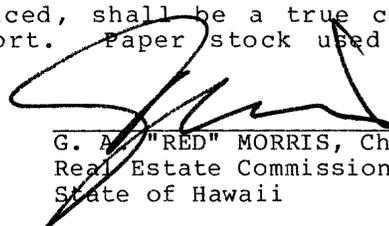
MANAGEMENT AND OPERATION: Article III, Section 3, of the Bylaws states that the Board of Directors shall at all times employ a responsible managing agent to manage and control the Project, subject at all times to direction by the Board of Directors. The managing agent initially selected by the Developer to manage the Project is Colony Condominium Management, Inc., 733 Bishop Street, Suite 1600, Honolulu, Hawaii.

STATUS OF PROJECT: Construction of the Project has already commenced and the Developer currently estimates that construction of the Project will be completed within one (1) year from the date of issuance of this Public Report.

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The purchaser and prospective purchasers should be cognizant of the fact that this Public Report represents information disclosed by the Developer in the required Notice of Intention submitted June 19, 1981 and information subsequently filed as of August 14, 1981.

This PRELIMINARY HORIZONTAL PROPERTY REGIME (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 1435 filed with the Commission on June 19, 1981.

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

  
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G. A. "RED" MORRIS, Chairman  
Real Estate Commission  
State of Hawaii

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Registration No. 1435

August 19, 1981