

REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE & CONSUMER AFFAIRS

STATE OF HAWAII

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

PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT

ON

THE SHEARWATER
3730 Kamehameha
Hanalei, Kauai, Hawaii

REGISTRATION NO. 1564

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: October 14, 1983
Expires: November 14, 1984

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 FILED AUGUST 26, 1983, AND INFORMATION SUBSEQUENTLY FILED AS OF OCTOBER 7, 1983. THE DEVELOPER, IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, CHAPTER 514A, HAWAII REVISED STATUTES, AS AMENDED.

1. THE SHEARWATER is a proposed fee simple condominium project consisting of three (3) three-story buildings, with no basements, containing thirty-five (35) apartments and fifty-three (53) unassigned parking stalls.

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 condominium 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 recorded in the Bureau of Conveyances of the State of Hawaii.

4. Advertising and 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 on October 14, 1983, 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 THE SHEARWATER condominium project. The Developer has the responsibility of placing a true copy of the Preliminary Public Report (yellow paper stock) and Disclosure Abstract in the hands of all purchasers and prospective purchasers and securing a signed copy of the receipt therefor.

NAME OF PROJECT: THE SHEARWATER

LOCATION: 3730 Kamehameha, Hanalei, Kauai, Hawaii, with approximately 3.899 acres of land committed to the Regime.

TAX MAP KEY: FOURTH DIVISION: 5-4-5-26 and 32.

ZONING: R-10

DEVELOPER: The Shearwater, a Hawaii limited partnership, P. O. Box 803, Hanalei, Kauai, Hawaii 96714, telephone: 826-6549. The general partner of the partnership is David E. Walters and the limited partner is Egbert Associates, a Massachusetts general partnership.

ATTORNEY REPRESENTING DEVELOPER: Hamilton, Gibson, Nickelsen, Rush & Moore (Attention: Walter Beh, II, and Earl T. Sato), 20th Floor, Hawaii Building, 745 Fort Street, Honolulu, Hawaii 96813, telephone: 521-0400.

DESCRIPTION:

1. Apartments. The proposed Declaration of Horizontal Property Regime and plans submitted by the Developer indicate a fee simple condominium project consisting of three (3) three-story buildings, with no basements, constructed principally of wood with stucco and wood exteriors. There is also a separate garage building containing six (6) parking spaces. There will be thirty-five (35) freehold estates designated in the spaces within the perimeter walls of each of the thirty-five (35) apartment units contained in the building, which spaces, together with appurtenant lanais, if any, are referred to herein as "apartments" and are designated on said plans and described as follows:

Building 1 contains fifteen (15) apartments situated on three (3) levels. Apartment Nos. 101, 102, 103, 104, 105 and 106 are situated on the ground level. Apartment Nos. 201, 202, 203, 204, 205 and 206 are situated on the second level. Apartment Nos. 303, 304 and 305 are situated on the third level.

Building 2 contains seven (7) apartments situated on three (3) levels. Apartment Nos. 107, 108 and 109 are situated on the ground level. Apartment Nos. 207, 208 and 209 are situated on the second level. Apartment No. 308 is situated on the third level.

Building 3 contains thirteen (13) apartments situated on three (3) levels. Apartment Nos. 110, 111, 112, 113 and 114 are situated on the ground level. Apartment Nos. 210, 211, 212, 213 and 214 are situated on the second level. Apartment Nos. 311, 312 and 313 are situated on the third level.

The apartments are constructed according to eighteen (18) different floor plans, or their reverse or mirror image, which floor plans are similar in layout. The apartments each contain two (2) bedrooms, two (2) bathrooms, a kitchen, a dining room, a living room, a storage room, a fiberglass hot tub and a lanai, as shown on the Condominium File Plan. In addition, some apartments also contain loft space with a third bedroom, a third bathroom and an additional lanai.

NOTE: The Developer advises that the fiberglass hot tub incorporates a series of hydro-jets and may also be referred to as a "spa".

The apartments, floor plan types, number of bedrooms and bathrooms, and floor areas are as follows:

Floor Area (Square Feet)

<u>Floor Plan</u>	<u>Apt. Nos.</u>	<u>Bedrooms/ Bathrooms</u>	<u>Interior</u>	<u>Lanai(s)</u>	<u>Total</u>
A	209, 214	2/2	1,695	236	1,931
A1	106, 109, 114	2/2	1,695	290	1,985
A2	206	3/3	2,153	394	2,547
B1	101, 110	2/2	1,695	284	1,979
B2	201, 210	3/3	2,153	402	2,555
C	203, 205	2/2	1,653	236	1,889
C1	103, 105	2/2	1,653	276	1,929
C2	303, 305	3/3	2,111	394	2,505
D	208, 211, 212, 213, 311, 312, 313	2/2	1,610	236	1,846
D1	108, 111, 112, 113	2/2	1,610	276	1,886
D2	308	3/3	2,068	394	2,462
E1	107	2/2	1,791	284	2,075
E2	207	3/3	2,249	402	2,651
F	202	2/2	1,748	244	1,992
F1	102	2/2	1,748	284	2,032
G	204	2/2	1,653	236	1,889
G1	104	2/2	1,653	276	1,929
G2	304	3/3	2,111	394	2,505

NOTE: The floor areas described above are net floor areas measured from the interior surfaces of the apartment perimeter walls.

2. The respective apartments 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 apartment or any pipes, wires, conduits or other utility or service lines running through such apartment which are utilized for or serve more than one apartment. Each apartment shall be deemed to include all the walls and partitions which are not load-bearing within its perimeter or party walls, doors and door frames, windows and window frames, the lanai air space (if any), the inner decorated or finished surfaces of all walls, floors and ceilings, and all fixtures originally installed therein.

COMMON ELEMENTS: The proposed Declaration provides that one (1) freehold estate is designated in all remaining portions of the project, herein called the "common elements", including specifically but not limited to:

1. The land in fee simple;
2. All foundations, floor slabs, columns, girders, beams, supports, unfinished perimeter, party and load-bearing walls, roofs, entries, stairways, walk ways, entrances and exits of said buildings;
3. All yards, grounds and landscaping;
4. All parking areas;
5. The trash enclosures situated in the garage building;
6. 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 apartment for services such as power, light, gas, water, sewer, telephone and television signal distribution, if any; and
7. 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: The proposed Declaration provides that the garage building (except for the trash enclosures) and parking spaces 20, 21, 22, 23, 24 and 25 situated in the garage building are designated and set aside for the exclusive use of Apartment No. 201.

INTEREST TO BE CONVEYED TO PURCHASERS: The proposed Declaration states that each apartment shall have appurtenant thereto an undivided 1/35th fractional interest

(2.857+ percent interest) in all common elements of the project (therein called the "common interest"), and the same proportionate share of all common profits and expenses of the project and for all other purposes, including voting.

Each purchaser will secure an Apartment Deed conveying an apartment, together with said undivided interest in the common elements of the project.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The Declaration states that the apartments shall be occupied and used only for residential or resort use or time sharing ownership 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 lease such apartments, subject to all provisions of the Declaration and the By-Laws, and any amendments thereto.

The apartments of the project or any interest therein may be sold, transferred, conveyed, leased, occupied, rented or used for or in connection with any time-sharing plan, arrangement or program, including without limitation any so called "vacation license", "travel club membership" or "time-interval ownership" arrangement or "time share plan," as defined in Chapter 514E, Hawaii Revised Statutes, as amended. The term "time-sharing" shall be deemed to include, but is not limited to, any plan, program or arrangement under which the right to use, occupy, own or possess an apartment or apartments in the project rotates among various persons on a fixed or floating interval or period of time, whether by way of deed, lease, association or club membership, license, rental or use agreement, co-tenancy agreement, partnership or otherwise. Any such time-sharing plan, arrangement or purpose shall be in accordance with the applicable laws of the State of Hawaii and the ordinances of the County of Kauai, and provided further that:

(a) The provisions thereof are not inconsistent with and are made subject to the provisions of the Declaration and the By-Laws, and any amendments thereto;

(b) The developer, sales agent, acquisition agent and the plan manager of any such time share plan (as such persons or entities are defined by said Chapter 514E) shall save and hold harmless the Grantor, the Association (including its Board of Directors and officers), all apartment owners not participating in any such time share plan, and the project Managing Agent from any and all claims, liability or damages, including reasonable attorneys fees necessarily incurred in defending the same, which may arise from the implementation or the existence of any such time share plan; and

(c) Excepting where the Grantor is the developer, sales agent, acquisition agent and/or plan manager of any such time share plan, each grantee, lessee, or participant of any interest acquired through any such time share plan shall execute a waiver and acknowledgment in a form acceptable to Grantor, which shall provide that such grantee, lessee or participant acknowledges that the Grantor has no interest or liability in or arising from the time share plan through which such grantee, lessee or participant has acquired an interest in the apartment or time share plan.

NOTE: In the event any person, including the Developer, desires to sell any time-share interest in any apartment in the Project, such person(s) will have to fully comply with the provisions of Chapter 514E of the Hawaii Revised Statutes and any rules and regulations promulgated thereunder prior to selling any such time-share interest.

OWNERSHIP OF TITLE: A preliminary title report dated September 28, 1983, issued by Hawaii Escrow & Title, Inc., indicates that the fee simple title to the property submitted to the regime is vested in The Shearwater, a Hawaii limited partnership.

ENCUMBRANCES AGAINST TITLE: The preliminary title report dated as of September 28, 1983, issued by Hawaii Escrow & Title, Inc., submitted to the Commission, provides that the following are encumbrances against title to the property:

1. For any taxes that may be due and owing and a lien on the land, reference is hereby made to the Office of the Tax Assessor of the Fourth Division, County of Kauai, Hawaii.
2. Title to all minerals and metallic mines reserved to the State of Hawaii.
3. The location of the seaward boundary of the property and shoreline setbacks as affected by the law of the State of Hawaii.
4. Declaration of Restrictions, Covenants and Conditions, dated March 1, 1971, recorded in the Bureau of Conveyances in Liber 7444, Page 93.

NOTE: All apartment owners are subject to, bound by, and shall comply with the provisions of the Declaration of Restrictions, Covenants and Conditions and to become a member of the Princeville at Hanalei Community Association and subject to a monthly assessment of association dues (estimated to be \$4.50 per apartment per month for the current year).

5. Reservation in favor of Princeville Corporation in Deed recorded as aforesaid on October 24, 1973 in Liber 9560, Page 438.

6. An easement affecting a portion of said land and for roadway and utility purposes over, under and across Easement R-2, in favor of KASSLER & CO., dated June 19, 1975, recorded as aforesaid in Liber 10756, page 267.

7. Easement S-1, being 10 feet wide, for sanitary sewer purposes, as shown on File Plan 1350.

8. An easement affecting a portion of said land and for sanitary sewer purposes under and across said Easement S-1, in favor of KAUAI COUNTY PUBLIC IMPROVEMENT CORP., dated October 29, 1975, recorded as aforesaid in Liber 11034, Page 88.

9. Reservation in favor of Consolidated Oil & Gas, Inc., of Easement R-2 and roadway lots in File Plan Nos. 1179, 1350 and 1360 as reserved in Deed dated November 20, 1979, recorded as aforesaid in Liber 14252, Page 688, and Correction Deed dated September 17, 1980, but effective March 12, 1980, recorded as aforesaid in Liber 14995, Page 447.

10. Easement E-2 (10 feet wide) for electrical purposes in favor of Kauai Electric Company as shown on File Plan No. 1350.

11. An easement for electrical purposes over, under and across Easement E-2, in favor of CITIZENS UTILITIES COMPANY (Kauai Electric Division), dated December 6, 1976, recorded as aforesaid in Liber 14306, Page 238.

12. An easement for pole and wire lines purposes, in favor of CITIZENS UTILITIES COMPANY, dated October 27, 1980, recorded as aforesaid in Liber 15138, Page 494.

13. Agreement dated June 2, 1981, recorded as aforesaid in Liber 15687, Page 353, made by and between Consolidated Oil & Gas, Inc., a Colorado corporation, and Norman Lacayo.

14. Mortgage made by POV Inc., a Hawaii corporation, as Mortgagor, in favor of Avanti Investment & Development Corporation, a Hawaii corporation, and Kamahana Joint Venture Associates, a Canadian joint venture, dated September 22, 1982, recorded as aforesaid in Liber 16586, Page 606.

15. Subordination Agreement dated December 17, 1982, recorded as aforesaid in Liber 16750, Page 275, made by Avanti Investment & Development Corporation, a Hawaii

corporation, Kamahana Joint Venture Associates, a Canadian joint venture, and American Savings and Loan Association, a Utah corporation.

16. Mortgage made by Princeville Oceanside Villas, a Hawaii limited partnership, in favor of American Savings and Loan Association, a Utah corporation, dated December 17, 1982, recorded as aforesaid in Liber 16750, Page 285.

17. Mortgage made by Princeville Oceanside Villas, a Hawaii limited partnership, in favor of First Hawaiian Bank, a Hawaii corporation, Trustee of the Norman Lacayo, AIA, Inc. Defined Benefit Pension Plan, dated January 20, 1983, recorded as aforesaid in Liber 16822, Page 30.

PURCHASE MONEY HANDLING: Copies of the executed Escrow Agreement dated August 8, 1983, between Hawaii Escrow & Title, Inc., as Escrow, and the Developer and a specimen Condominium Reservation Agreement, Deposit Receipt & Contract have been filed with the Commission. On examination, the executed Escrow Agreement and the Sales Contract filed with the Commission are found to be in compliance with Chapter 514A, Hawaii Revised Statutes, as amended.

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 Twenty-Five Dollar (\$25.00) cancellation fee, if purchaser shall in writing request refund of his funds and any one of the following shall have occurred:

(a) Escrow receives a written request from Seller to return to purchaser the funds of such purchaser then held hereunder by Escrow; or

(b) If purchaser's funds were obtained prior to the issuance of a Final Public Report and if there is any change in the building plans, subsequent to the execution of purchaser's contract, requiring the approval of the county officer having jurisdiction over the issuance of permits for construction, unless the purchaser has given written approval or acceptance of the change, or ninety (90) days have elapsed since the Purchaser has accepted in writing the apartment or he has first occupied the apartment; or

(c) If the purchaser's funds were obtained prior to the issuance of a Final Public Report and 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

(d) If the Final Public Report is not issued within one year from the date of issuance of the Preliminary Public Report; provided that if the Final public report is issued after the one-year period and a copy of the Final Public Report is delivered to the purchaser either personally or by registered or certified mail with return receipt requested, notwithstanding any law to the contrary, the purchaser shall have thirty (30) days from the date of delivery to exercise his right of refund and cancellation of obligation, after which period such right shall be deemed waived; provided, further, that such waiver shall be effective only if at the time the purchaser receives a copy of the Final Public Report, he is notified in writing of his right of refund and cancellation of obligation and the waiver of such right upon his failure to act within the thirty (30) day period.

The specimen Sales Contract filed with the Commission contains, among others, the following provisions:

(a) The construction contract with the general contractor for the project contains the following clause, which provides in pertinent part that:

"If, within one year after the Date of Substantial Completion . . . , any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition."

Seller makes no warranties itself, but Seller agrees that the assignment by Seller to purchaser of any and all warranties given Seller by the general contractor for the project, including the above-described contractor's agreement to promptly correct any of its work found to be defective or not in conformance with the construction contract for a period of one (1) year after the "Date of Substantial Completion" of the apartment as defined in the construction contract and the benefit of such agreement shall accrue to purchaser on closing without further instruments or documents. Seller hereby agrees to cooperate with purchaser during the effective period of such agreement in asserting any claims based thereon. Purchaser acknowledges and agrees that Seller is not adopting the contractor's warranty or acting as co-warrantor but is merely attempting to pass through to purchaser the benefit of any such contractor's warranty, if any.

Seller shall also assign to purchaser the unexpired term, if any, of any manufacturer's or dealer's warranties covering any furnishings, fixtures and appliances in the apartment. Purchaser acknowledges that the

Seller is only passing through to Buyer any such manufacturer's or dealer's warranties; Seller is not undertaking to adopt any such warranties or to act as co-warrantor with respect to any furnishings, fixtures or appliances covered hereby. The terms of the manufacturer's or dealer's written warranties are available for the purchaser's examination at the Seller's sales office.

Except for the agreements above, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE APARTMENT, CONSUMER PRODUCTS INSTALLED THEREIN, THE PROJECT OR ANYTHING INSTALLED THEREIN, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, HABITABILITY, WORKMANLIKE CONSTRUCTION OR FITNESS OF THE APARTMENT FOR A PARTICULAR PURPOSE.

(b) NO INSULATION WILL BE INSTALLED IN THE APARTMENT.

(c) Reservation Agreement. Notwithstanding any other provision in the Sales Contract to the contrary, unless and until Seller: (i) obtains the issuance by the Real Estate Commission of the State of Hawaii of the Final Public Report on the project; and (ii) has received from purchaser a fully executed receipt for the Final Public Report, that the Sales Contract shall represent only a reservation by the purchaser and shall not be binding upon either party hereto, and until such time, the Sales Contract may be terminated at the option of either party. In the event of such termination, Seller shall cause Escrow to refund all payments previously made by purchaser, without interest, and neither party shall have any other or further liability thereunder. If the Sales Contract is entered into after the issuance of the Final Public Report, this paragraph shall be of no force or effect and this Agreement shall be fully binding upon purchaser and Seller upon acceptance of the Sales Contract by Seller as provided in Paragraph "F-24" of the Sales Contract.

(d) Until Seller has closed out the sale of all the apartments in the condominium project or until August 1, 1985, whichever shall first occur, purchaser will not enter into any "rental pool" or similar agreement with any purchaser, lessee or owner of another apartment in the condominium project and/or any third party under which purchaser agrees to share expenses and/or rentals of apartments in the condominium project.

(e) Final closing shall occur on the Date of Closing. However, purchaser is advised that Seller intends to preclose, regardless of the status of the construction of the apartments, by having all documents necessary for closing executed prior thereto and deposited with Escrow, and purchaser agrees to execute all necessary documents for such closing, including irrevocable escrow instructions, upon request by Seller.

(f) In the event any payment to be made by purchaser is not made when due, such late payment shall bear interest at the rate of one percent (1%) per month until paid.

(g) Owner-Occupant Sales. In addition, the specimen Sales Contract complies with the requirements of Section 514A-105, Hawaii Revised Statutes, and provides:

(1) Within thirty (30) calendar days following the end of the ten (10) calendar day period during which Seller is limited to selling to owner-occupants under the provisions of Part VI, Chapter 514A, Hawaii Revised Statutes, the Buyer shall obtain such statements and documents as Seller may reasonably require to satisfy itself that Buyer is financially capable of making, when due, all the required payments as set forth herein, either by way of cash payments and/or a commitment for financing such noncash portion of the purchase price; if such proof of financing or commitment for financing is not obtained within said period, the contract shall be cancelled by Seller, subject, however, to the approval of such cancellation by the lender financing the project.

(2) If during the ten (10) calendar day period following the issuance of the first public report on the project by the Real Estate Commission (i) the Buyer desires to cancel the contract on account of hardship circumstances such as serious illness of the Buyer or a member of Buyer's family, job or military transfer, unforeseeable change in marital status, or the birth of a child, or (ii) Buyer indicates an intent not to become an owner-occupant of the apartment, Seller shall cancel the contract, subject, however, to the approval of such cancellation by the lender financing the project.

(3) Upon cancellation of the contract for any of the reasons set forth above, Seller shall return all moneys paid pursuant thereto, without interest, but may deduct from the moneys returned any reasonable amount representing expenses incurred by the Seller to process the contract, and thereafter neither Seller nor Buyer shall have any further obligation hereunder.

(4) If after the initial period set forth above, Buyer's application or commitment for Buyer's mortgage financing or eligibility and credit approval therefor is rejected by such lending institution at any time, Seller shall have the option to terminate the contract and cause Escrow to refund to Buyer all monies previously paid, without interest, less the cost of any credit reports and all other costs including escrow charges incurred by Seller. Seller shall give written notice of such termination to Buyer and a copy thereof shall be given to Escrow.

(5) If after the period set forth above, Seller shall determine, in its sole opinion, that Buyer is incapable of making, when due, all the required payments as set forth in the contract, Seller shall have the option to terminate the contract and cause Escrow to refund to Buyer all monies previously paid, without interest, less the cost of any credit reports and all other costs including escrow charges incurred by Seller. Seller shall give written notice of such termination to Buyer and a copy thereof shall be given to Escrow.

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. NOTE: DEVELOPER ADVISES THAT NO REPRESENTATIONS OR REFERENCES WILL BE MADE TO EITHER PURCHASERS OR PROSPECTIVE PURCHASERS CONCERNING RENTAL OF THE APARTMENT, INCOME FROM THE APARTMENT OR ANY OTHER ECONOMIC BENEFIT TO BE DERIVED FROM THE RENTAL OF THE APARTMENT, INCLUDING BUT NOT LIMITED TO, ANY REFERENCE OR REPRESENTATION TO THE EFFECT THAT DEVELOPER OR THE MANAGING AGENT OF THE PROJECT WILL PROVIDE, DIRECTLY OR INDIRECTLY, ANY SERVICES RELATING TO THE RENTAL OR SALE OF THE APARTMENT. RENTAL OF THE APARTMENT AND THE PROVISIONS OF MANAGEMENT SERVICES IN CONNECTION THEREWITH IS AND SHALL BE THE SOLE RESPONSIBILITY OF THE PURCHASER.

It is incumbent upon the purchaser and the prospective purchaser that he read with care the Sales Contract and the executed Escrow Agreement. The latter establishes how the proceeds from the sale of residential apartments are placed in trusts, as well as the retention and disbursement of said trust funds. The specimen Sales Contract specifically provides that the purchaser approves said Escrow Agreement and assumes the benefits and obligations therein provided.

MANAGEMENT OF THE PROJECT: The By-Laws provide that the operation of the project shall be conducted for the Association of Apartment Owners under the direction of the Board of Directors by a responsible managing agent. The Developer anticipates selecting Owner's Management Corporation, whose post office address is P. O. Box 803, Hanalei, Kauai, Hawaii 96714 as the initial managing agent.

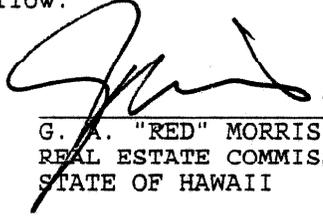
STATUS OF PROJECT: The Developer has advised the Commission that construction of the project has not commenced

but that it estimates construction of the project will begin by November, 1983 with an estimated date of completion of September, 1984.

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 August 26, 1983 and information subsequently filed as of October 7, 1983.

This is a PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT which is made a part of REGISTRATION NO. 1564 filed with the Commission on August 26, 1983.

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.



G. A. "RED" MORRIS, CHAIRMAN
REAL ESTATE COMMISSION
STATE OF HAWAII

Distribution:

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

REGISTRATION NO. 1564

October 14, 1983

DISCLOSURE ABSTRACT

1. (a) Name and Address of Project:

THE SHEARWATER
3730 Kamehameha
Hanalei, Kauai, Hawaii 96714

(b) Names, Addresses and Telephone Numbers of
Developers:

THE SHEARWATER
P. O. Box 803
Hanalei, Kauai, Hawaii 96714
Tel. No. 826-6549

2. Attached hereto is a projected budget which indicates, among other items, that the estimated maintenance fees for each of the apartments will be approximately as follows:

<u>Monthly</u>	<u>Annually</u>
\$235.00	\$2,820.00

NOTE

SELLER ADVISES THAT THE COSTS AND EXPENSES OF MAINTENANCE AND OPERATION OF A CONDOMINIUM PROJECT ARE DIFFICULT TO ESTIMATE INITIALLY AND EVEN IF SUCH COSTS AND EXPENSES HAVE BEEN ACCURATELY ESTIMATED, THAT SUCH COSTS AND EXPENSES WILL TEND TO INCREASE WITH PRICE INCREASES AND THE INCREASED AGE OF THE FACILITIES.

3. The sales contract for the project contains the following provisions concerning warranties:

"Seller anticipates BUT DOES NOT WARRANT that the construction contract with the general contractor for the Project will contain a clause similar to Section 13.2.2 of AIA Document A201 which provides in pertinent part that:

'If, within one year after the Date of Substantial Completion ..., any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition.'

"Seller makes no warranties itself, but Seller agrees that the assignment by Seller to Buyer of any and all warranties given Seller by the General Contractor for the Project, including the above described Contractor's agreement to promptly correct any of its work found to be

defective or not in conformance with the Construction Contract for a period of one (1) year after the "Date of Substantial Completion" of the apartment as defined in the Construction Contract and the benefit of such agreement shall accrue to Buyer on closing without further instruments or documents. Seller hereby agrees to cooperate with Buyer during the effective period of such agreement in asserting any claims based thereon. Buyer acknowledges and agrees that Seller is not adopting the contractor's warranty or acting as co-warrantor but is merely attempting to pass through to Buyer the benefit of any such contractor's warranty, if any.

"Seller shall also assign to Buyer the unexpired term, if any, of any manufacturer's or dealer's warranties covering any furnishings, fixtures and appliances in the apartment. Buyer acknowledges that the Seller is only passing through to Buyer any such manufacturer's or dealer's warranties; Seller is not undertaking to adopt any such warranties or to act as co-warrantor with respect to any furnishings, fixtures or appliances covered thereby. The terms of the manufacturer's or dealer's written warranties are available for the Buyer's examination at the Seller's sales office.

"Except for the agreements set forth above, it is expressly understood and agreed by and between Seller and Buyer that SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE APARTMENT, CONSUMER PRODUCTS INSTALLED THEREIN, THE PROJECT OR ANYTHING INSTALLED THEREIN, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, HABITABILITY, WORK-MANLIKE CONSTRUCTION OR FITNESS OF THE APARTMENT FOR A PARTICULAR PURPOSE."

4. A statement of the proposed number of apartments to be used for residential or hotel use in a mixed use project containing apartments for both residential and hotel use:

The Declaration provides that:

"The apartments shall be occupied and used for residential or resort use or time sharing ownership 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 lease such apartments subject to all provisions of this Declaration and the By-Laws of the Association of Apartment Owners recorded concurrently herewith ("By-Laws"); the apartments may be sold or leased, rented or used for any time period or periods, whether daily, weekly or monthly, including any annually recurring period on a fixed or floating basis.

"Notwithstanding the foregoing to the contrary, any apartment in the Project may be used, sold, rented, leased or otherwise conveyed under a "time share plan", as defined in Chapter 514E, Hawaii Revised Statutes, as amended, provided that the said time share plan is in accordance with the applicable laws of the State of Hawaii and the ordinances of the County of Kauai, and provided further that:

a. The provisions thereof are not inconsistent with and are made subject to the provisions of this Declaration and the By-Laws;

b. The developer, sales agent, acquisition agent and the plan manager of any such time share plan (as such persons or entities are defined by said Chapter 514E) shall save and hold harmless the Grantor, the Association (including its Board of Directors and officers), all apartment owners not participating in any such time share plan, and the Project Managing Agent from any and all claims, liability or damages, including reasonable attorneys' fees necessarily incurred in defending the same, which may arise from the implementation or the existence of any such time share plan; and

c. Excepting where the Grantor is the developer, sales agent, acquisition agent and/or plan manager of any such time share plan, each grantee, lessee or participant of any interest acquired through any such time share plan shall execute a waiver and acknowledgment in a form acceptable to Grantor, which shall provide that such grantee, lessee or participant acknowledges that the Grantor has no interest or liability in or arising from the time share plan through which such grantee, lessee or participant has acquired an interest in the apartment or time share plan."

5. A statement of the extent of commercial or non-residential development in the project:

None.

ESTIMATED MAINTENANCE COST OF THE SHEARWATER

	<u>Monthly</u>	<u>Annually</u>
Resident Manager's Salary	\$ 750.00	\$ 9,000.00
Payroll Taxes & Benefits	150.00	1,800.00
Telephone	75.00	900.00
Office Expenses	100.00	1,200.00
Princeville Assoc. Dues	144.00	1,728.00
Accounting	200.00	2,400.00
Management Fees	650.00	7,800.00
Insurance	800.00	9,600.00
Bank Charges	5.00	60.00
Electricity	431.00	5,172.00
Electric Bulbs & Supplies	75.00	900.00
Water	860.00	10,320.00
Rubbish Removal	50.00	600.00
Salaries & Wages	1,000.00	12,000.00
Rental-Property Manager	600.00	7,200.00
Equipment Rental	35.00	420.00
Building	100.00	1,200.00
Pool Supplies	100.00	1,200.00
Vehicle Expense	50.00	600.00
Grounds & Landscaping	2,000.00	24,000.00
Miscellaneous	50.00	600.00
	<u>\$8,225.00</u>	<u>\$98,700.00</u>
TOTAL		

Per Apartment:

<u>Monthly</u>	<u>Annually</u>
\$235.00	\$2,820.00

It is hereby certified that the foregoing budget is based on generally accepted accounting principles.

DATED: Hanalei, Kauai, Hawaii, August 26, 1983.

THE SHEARWATER

By


DAVID E. WALTERS
Its General Partner