



**REAL ESTATE COMMISSION  
STATE OF HAWAII**  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
PROFESSIONAL & VOCATIONAL LICENSING DIVISION  
1010 Richards Street  
P. O. Box 3469  
Honolulu, Hawaii 96801

**CONDOMINIUM PUBLIC REPORT**

on

WHALERS COVE AT POIPU  
Puuholo and Kaheka Road  
Koloa, County of Kauai  
State of Hawaii

Registration No. 1776

Issued: April 9, 1987  
Expires: May 9, 1988

**Report Purpose:**

This report is based on information and documents submitted by the developer to the Real Estate Commission as of April 7, 19 87 and is issued by the Commission for informational purposes only. It represents neither approval nor disapproval of the project. Buyers are encouraged to read this report carefully.

**Type of Report:**

- PRELIMINARY:** (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued when complete information is filed.
- FINAL:** (white) The developer has legally created a condominium and has filed complete information with the Commission.
  - Supersedes all prior public reports
  - Must be read together with \_\_\_\_\_
- SUPPLEMENTARY:** (pink) Updates information contained in the
  - Prelim. Public Report dated \_\_\_\_\_
  - Final Public Report dated \_\_\_\_\_
  - Supp. Public Report dated \_\_\_\_\_

And  Supersedes all prior public reports

Must be read together with \_\_\_\_\_

This report reactivates the \_\_\_\_\_ public report(s) which expired on \_\_\_\_\_

**Disclosure Abstract:** Separate Disclosure Abstract on this condominium project:

Required                       Not Required -- disclosures covered in this report.

Summary of Changes from Earlier Public Reports:

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

Since the issuance of the Preliminary Public Report on July 25, 1986, the following have occurred:

1. The Declaration of Horizontal Property Regime, Bylaws, and Condominium Map have been recorded at the Bureau of Conveyances, State of Hawaii. The Declaration has also been amended by a First Amendment of Declaration of Horizontal Property Regime.
2. Construction of the Project has commenced.
3. The land area for the Project has been resurveyed and it was discovered that the actual Project site consist of 98,960 square feet, rather than the previously disclosed area of 99,018 square feet.

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## GENERAL INFORMATION ON CONDOMINIUMS

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of Hawaii's "Horizontal Property Act" (Chapter 514A, Hawaii Revised Statutes) must be followed.

If you are a typical condominium apartment owner, you will have two kinds of ownership: (1) ownership in your individual apartment; and (2) an undivided interest in the common elements.

Common elements are the areas of the condominium project other than the individual apartments. They are owned jointly by all apartment owners and include the land, either in fee simple or leasehold, and those parts of the building or buildings intended for common use such as foundations, columns, roofs, halls, elevators, and the like. Your undivided interest in the common elements cannot be separated from ownership of your apartment.

In some condominium projects, some common elements are reserved for the exclusive use of the owners of certain apartments. These common elements are called limited common elements and may include parking stalls, patios, lanais, trash chutes, and the like.

You will be entitled to exclusive ownership and possession of your apartment. Condominium apartments may be individually bought, sold, rented, mortgaged, or encumbered, and they may be disposed of by will, gift, or operation of law.

Your apartment will, however, be part of the group of apartments that comprise the condominium project. Study the Declaration, Bylaws, and House Rules. These documents contain important information on the use and occupancy of apartments and the common elements as well as the rules of conduct for owners, tenants, and guests.

Some condominium projects are leasehold. This means that the land or the land, building(s) and other improvements are leased to the buyer. The lease for the land usually requires that at the end of the lease term, the lessees (apartment owner/tenant) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements. The leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

### Operation of the Condominium Project

The Association of Apartment Owners is the entity through which apartment owners may take action with regard to the administration, management, and operation of the condominium project. Each apartment owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as an apartment owner. The Board of Directors and officers can take certain actions without a vote of the owners. Some of these actions may significantly impact the quality of life for all apartment owners.

Until there is a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is vitally important to all apartment owners that the transition from developer to owner control be accomplished in an orderly manner and in a spirit of cooperation.



I. PEOPLE CONNECTED WITH THE PROJECT

Developer: POIPU EQUITIES, INC. Phone: (808) 742-6889  
Name P.O. Box 220 (Business)  
Business Address  
Poipu, Kauai, Hawaii

Names of officers or general partners of developers who are corporations or partnerships:

James R. Bell President/Treasurer  
Lawrence E. Bathgate Vice President/Secretary

Real Estate Sales Agent: RANDY ABBOTT REALTY, INC. Phone: (808) 742-6428  
Name P.O. Box 220 (Business)  
Business Address  
Poipu, Kauai, Hawaii

Escrow: SECURITY TITLE CORPORATION Phone: (808) 521-9511  
Name 1001 Bishop Street, 12th Floor (Business)  
Business Address  
Honolulu, Hawaii 96813

Managing Agent: HOTEL CORPORATION OF THE PACIFIC, INC. Phone: (808) 923-0745  
dba ASTON HOTELS & RESORTS (Business)  
Name 2255 Kuhio Avenue, 18th Floor  
Business Address  
Honolulu, Hawaii 96815-2658

Attorney for Developer: HIROSHI SAKAI, ATTORNEY AT LAW, A LAW CORPORATION & MICHAEL H. SAKAI  
Name 810 Richards Street, Suite 602  
Business Address  
Honolulu, Hawaii 96813

**II. CREATION OF THE CONDOMINIUM;  
CONDOMINIUM DOCUMENTS**

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Horizontal Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners.

- A. **Declaration of Horizontal Property Regime** contains a description of the land, buildings, apartments, common elements, limited common elements, common interests, and other information relating to the condominium project.

The Declaration for this condominium is:

Proposed  
 Recorded – Bureau of Conveyances – Book 20352 Page 329  
 Filed – Land Court – Document Number \_\_\_\_\_

Amendment date(s) and recording/filing information:

First Amendment to Declaration dated March 26, 1987, recorded in Book 20507, Page 660.

- B. **Condominium Map (File Plan)** shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment number, and dimensions of each apartment.

The Condominium Map for this condominium project is:

Proposed  
 Recorded – Bureau of Conveyance Condo Map No. 1048  
 Filed – Land Court Condo Map No. \_\_\_\_\_

Amendment date(s) and recording/filing information:

Amended Sheets 1 and 13A of the Condominium Map by the aforesaid First Amendment to Declaration.

- C. **Bylaws of the Association of Apartment Owners** govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the way in which meetings will be conducted, and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

Proposed  
 Recorded – Bureau of Conveyances – Book 20353 Page 347  
 Filed – Land Court – Document Number \_\_\_\_\_

Amendment date(s) and recording/filing information:

D. **House Rules.** The Board of Directors may adopt house rules to govern the use and operation of the common elements and individual apartments. House rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais, keeping of pets, and occupancy limits. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial house rules are usually adopted by the developer.

The House Rules for this condominium are:

Proposed       Adopted

Developer does not plan to adopt house rules.

E. **Changes to Condominium Documents**

Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. **Apartment Owners:** Minimum percentage of apartment owners who must vote for or give written consent to changes:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%	<u>75%</u>
Bylaws	65%	<u>65%</u>
House Rules	--	See Article V, Sec. 4, <u>Bylaws</u>

The percentages for individual condominium projects may be more than the minimum set by law.

2. **Developer:** The developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws, or House Rules:

Reservation in the Sales Contract. During the sales and/or construction period, the Developer has reserved the right to make any changes to said documents and the Project as may be required by law, any title insurance company, institutional mortgage lender, or governmental agency, provided only that such changes shall not substantially impair the prospective use and enjoyment of the Apartment, substantially reduce the usable space within the Apartment, render unenforceable the Purchaser's mortgage loan commitment, increase the Purchaser's share of common expenses or increase the purchase price.

The Condominium Statute (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

Fee Simple: Individual apartments and the underlying land will be in fee simple.

Leasehold or Subleasehold: Individual apartments and the underlying land will be leasehold.

The leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.

Exhibit \_\_\_\_\_ contains further explanations.

Lease Term Expires: \_\_\_\_\_

Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:  Monthly  Quarterly  
 Semi-Annually  Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per  
 Month  Year.

Individual Apartments in Fee Simple, Underlying Land in Leasehold or Subleasehold:

The leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners -- tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements; or (2) convey the building(s) and improvements to the lessor, often at a specified price.

Exhibit \_\_\_\_\_ contains further explanations.

Lease Term Expires: \_\_\_\_\_

Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:  Monthly  Quarterly  
 Semi-Annually  Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per  
 Month  Year.

Other:

For Subleaseholds:

Buyer's sublease may be cancelled if the master lease between the sublessor and fee owner is  
 Cancelled  Foreclosed.

As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is cancelled or foreclosed.

B. Underlying Land:

Address: Puuholo Road and Kaheka Road Tax Map Key: (4th Div.) 2-6-7-13  
Poipu, Kauai, Hawaii (TMK)

[ ] Address [ ] TMK is expected to change because \_\_\_\_\_

Land Area: 98,960 [X] square feet [ ] acre(s) Zoning: R 20 & Open

Fee Owner: POIPU EQUITIES, INC.  
name  
P.O. Box 220  
address  
Poipu, Kauai, Hawaii

Sublessor: \_\_\_\_\_  
name  
\_\_\_\_\_  
address  
\_\_\_\_\_

C. Buildings and Other Improvements:

1. [X] New Building(s) [ ] Conversion of Existing Building(s)  
[ ] Both New Building(s) and Conversion

2. Buildings: 2 Floors Per Building: 3 with basement

[X] Exhibit A contains further explanations.

3. Principal Construction Material:

[X] Concrete [X] Hollow Tile [X] Wood

[X] Other Glass, steel and aluminum.

4. Permitted Uses:

	<u>No. of Apts.</u>		<u>No. of Apts.</u>
[ ] Commercial	_____	[ ] Industrial	_____
[X] Residential	<u>39</u>	[ ] Agricultural	_____
[ ] Timeshare/Hotel	_____	[ ] Recreational	_____
[X] Other: <u>Apartment/ Resort Time Sharing</u>			<u>39</u>

5. Special Use Restrictions:

The Declaration, Bylaws, and House Rules may contain restrictions on the use and occupancy of apartments. Restrictions for this condominium project include but are not limited to:

[ X ] Pets: None allowed without Board of Director approval.

[ ] Number of Occupants: \_\_\_\_\_

[ ] Other: \_\_\_\_\_

[ ] There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Total Apartments 39

Elevators 2                      Stairways 8                      Trash Chutes -0-

Apt. Type	Qty	BR/Bath	Net Living Area* **	Lanai/Patio **
<u>See Exhibit "A"</u>				
<u>1M</u>	<u>1</u>	<u>1/1</u>	<u>995</u>	
<u>2A-2D</u>	<u>18</u>	<u>2/1.75</u>	<u>1179-1318</u>	<u>245-388</u>
<u>2E-2G</u>	<u>18</u>	<u>2/2.5</u>	<u>1231-2060</u>	<u>196-396</u>
<u>3A-3B</u>	<u>2</u>	<u>3/2</u>	<u>1476-1508</u>	<u>233-460</u>

\*Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls. Please see Exhibit "A"

\*\*The range of floor areas are set forth here. for details.  
Other documents and maps may give floor area figures which differ from those above because a different method of determining floor area may have been used.

Boundaries of Each Apartment:

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 of them or any pipes, wires, conduits or other utility lines running through them which are utilized for or serve more than one unit are deemed common elements as herein provided. Each apartment shall be deemed to include all the walls and partitions, floors and ceilings which are not load bearing within its perimeter walls and built-in fixtures. Additionally, the boundary lines of each apartment are the exteriors of doors, windows; and glass walls and the frames thereof and the handrail of the lanai.

Permitted Alterations to Apartments:

Except as herein specified, the common interest and easements appurtenant to each apartment shall have a permanent character and shall not be altered without the consent of all of the apartment owners affected, expressed in an amendment to the Declaration of Horizontal Property Regime and duly filed. The common interest and easements shall not be separated from the apartment to which they appertain and shall be deemed to be conveyed, leased or encumbered with such apartment even though such interest or easements are not expressly mentioned or described in the conveyance or other instrument.

7. Parking Stalls:

Total Parking Stalls: 58

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	
Assigned (for individual units)	_____	_____	_____	_____	_____	_____	_____
Guest Unassigned	_____	<u>44</u>	_____	<u>13</u>	_____	_____	<u>57</u>
Extra Available for Purchase	_____	_____	_____	_____	_____	_____	_____
Other: Handicap	_____	<u>1</u>	_____	_____	_____	_____	<u>1</u>
Total Covered & Open	<u>45</u>		<u>13</u>		_____		

Each apartment will have the non-exclusive use of the parking stalls.

Commercial parking garage permitted in condominium project.

Exhibit \_\_\_\_\_ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

There are no recreational or common facilities.

Swimming pool & jacuzzi       Storage Area

Recreation Area       Laundry Area

Tennis Court       Trash Chute

Other: Manager's office

9. Present Condition of Improvements

(For conversions of residential apartments in existence for five years):

a. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations

b. Compliance with Building Code and Municipal Regulations; Cost to Cure Violations

10. Conformance to Present Zoning Code

a.  No variances to zoning code have been granted.

Variance(s) to zoning code was/were granted as follows:

A variance has been granted to allow the Developer to deviate from the minimum parking requirements (Variance Permit V-84-19).

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	<u>  X  </u>	<u>      </u>	<u>      </u>
Structures	<u>  X  </u>	<u>      </u>	<u>      </u>
Lot	<u>  X  </u>	<u>      </u>	<u>      </u>

If a variance has been granted or if uses, improvements, or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure, or lot.

D. Common Elements, Limited Common Elements, Common Interest:

1. Common Elements: Common Elements are those parts of the condominium project intended to be used by all apartment owners. They are owned jointly by all apartment owners.

Exhibit   B   describes the common elements.

2. Limited Common Elements: Limited Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

There are no limited common elements in this project.

The limited common elements and the apartments which may use them are:

described in Exhibit \_\_\_\_\_

as follows:

3. Common Interest: Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is often used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium. It may also be used for other purposes, including voting on matters requiring action by apartment owners.

Exhibit   A   describes the common interests for each apartment.

as follows:

E. Encumbrances Against Title: An encumbrance is a claim against or a liability on the property.

Exhibit C describes the encumbrances against the title contained in the title report dated February 9, 1987.

Blanket Liens:

A blanket lien is a mortgage on a condominium project that secures a construction loan. It is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

[ ] There are no blanket liens affecting title to the individual apartments.

[X] There are blanket liens which may affect title to the individual apartments.

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. Buyer's interest will be affected only if the developer defaults prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest If Developer Defaults</u>
Mortgage	To be released prior to closing.

F. Management of the Common Elements: The Association of Apartment Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a managing agent to assist the Association in managing the condominium project.

Initial Managing Agent: When the developer or the developer's affiliate is the initial managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial managing agent for this condominium is: Hotel Corporation of the Pacific, Inc.  
dba Aston Hotels & Resorts

[X] not affiliated with the Developer.

[ ] the Developer or the Developer's affiliate.

[ ] other \_\_\_\_\_

G. Estimate of Initial Maintenance Fees:

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, your apartment may be liened and sold through a foreclosure proceeding.

Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided to each apartment.

Exhibit   D   contains a schedule of maintenance fees and maintenance fee disbursements.

H. Utility Charges for Apartments:

Each apartment will be billed separately for utilities except for the following checked utilities which are included in the maintenance fees:

- |                                      |   |
|--------------------------------------|---|
| <input type="checkbox"/> Electricity | <input type="checkbox"/> Television Cable |
| <input type="checkbox"/> Gas         | <input type="checkbox"/> Water & Sewer    |
| <input type="checkbox"/> Other _____ |   |

I. Construction Warranties:

Warranties for individual apartments and the common elements, including the beginning and ending dates for each warranty, are as follows:

1. Building and Other Improvements:

The Contractor warrants against structural defects in an apartment of which written notice has been given to the Contractor by the apartment owner at any time within one year from the date of substantial completion of the project or conveyance of title to the apartment owner, whichever occurs first. In addition, the Contractor warrants against structural defects in the common elements for one year from substantial completion of the project.

2. Appliances:

Manufacturer's warranties on appliances furnished with an apartment shall be assigned by the Developer and shall thereafter run in favor of the apartment purchaser directly from the manufacturer. These warranties will expire at different times, depending on the date of installation of the appliances. The Developer will assure each purchaser only that the appliances are in working order at the time of occupancy by the purchaser.

J. Status of Construction and Estimated Completion Date:

The Developer has received its construction loan and construction of the Project has commenced. The estimated time of completion of the Project is June 1, 1987.

K. Project Phases:

The developer  has  has not reserved the right to add to, merge, or phase this condominium.

Summary of Developer's Present Plans for Future Development:

L. Sales Documents Filed with the Real Estate Commission:

Sales documents on file with the Real Estate Commission include but are not limited to:

Notice to Owner Occupants

Specimen Sales Contract

Exhibit  E  contains a summary of the pertinent provisions of the sales contract.

Escrow Agreement dated \_\_\_\_\_

Exhibit  F  contains a summary of the pertinent provisions of the escrow agreement.

Other \_\_\_\_\_

#### IV. ADDITIONAL INFORMATION NOT COVERED ABOVE

PUBLIC ACCESS: The Developer has or will enter into an Agreement with the County of Kauai, State of Hawaii, which will provide access to the County of Kauai and the public to the lands seaward of the certified shoreline of the property. There may be restrictions placed on the use in terms of time of day; path of access; and standards of conduct. There will also be a provision which will require the County of Kauai to indemnify and hold the Developer and its successors in interest harmless from any liability arising out of the public access agreement.

**Buyer's Right to Cancel Sales Contract:**

**A. Rights Under the Condominium Statute:**

Preliminary Report: Sales made by the Developer are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to \$250.00.

Supplementary Report to a Preliminary Report: Same as for Preliminary Report.

Final Report, Supplementary Report to a Final Report: Sales made by the Developer are binding if:

1. The Developer delivers to the buyer a copy of:
  - a. Either the Final Public Report OR the Supplementary Public Report which has superseded the Final Public Report;  
AND
  - b. Any other public report issued by the Commission prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;
2. The buyer is given an opportunity to read the report(s); and
3. One of the following has occurred:
  - a. The buyer has signed a receipt for the report(s) and waived the right to cancel; or
  - b. Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
  - c. The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Material Change: Binding contracts with the Developer may be rescinded by the buyer if:

1. There is a material change in the condominium which directly, substantially, and adversely affects (a) the use or value of the buyer's apartment or its limited common elements; or (b) the amenities available for buyer's use; and
2. The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

**B. Rights Under the Sales Contract:**

Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the condominium. These include but are not limited to the:

1. Condominium Public Reports issued by the Hawaii Real Estate Commission.
2. Declaration of Horizontal Property Regime and Condominium Map.
3. Bylaws of the Association of Apartment Owners.
4. House Rules.
5. Escrow Agreement.
6. Hawaii's Condominium Law (Chapter 514A, HRS, as amended; Hawaii Administrative Rules, Chapter 16-107, adopted by the Real Estate Commission).
7. Other \_\_\_\_\_

If these documents are not in final form, the buyer should ask to see the most recent draft.

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Law (Chapter 514A, HRS and Hawaii Administrative Rules Chapter 16-107) are available at the Department of Commerce and Consumer Affairs.

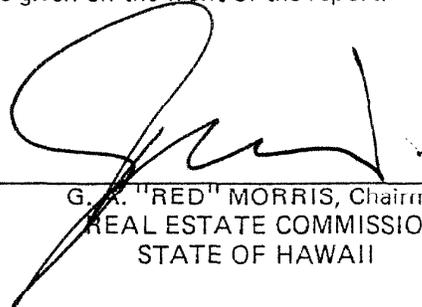
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G. A. "RED" MORRIS, Chairman  
REAL ESTATE COMMISSION  
STATE OF HAWAII

Distribution:

Bureau of Conveyances  
Department of Finance, County of Kauai  
Planning Department, County of Kauai  
Federal Housing Administration  
Escrow Agent

## EXHIBIT "A"

Schedule of Apartments and Common Interests

<u>Building No.</u>	<u>Apt. No.</u>	<u>Type</u>	<u>Approximate Net Living Floor Area</u>	<u>Lanai Area</u>	<u>Percentage Interest</u>
1	110	2B	1,288	388	2.6320%
1	111	2A	1,318	334	2.5943%
1	112	2F	2,060	396	3.8569%
1	113	2A	1,318	334	2.5943%
1	114*	2A	1,303	334	2.5707%
1	115*	2F	2,045	396	3.8333%
1	116	2A	1,318	334	2.5943%
1	117	2A	1,318	334	2.5943%
1	120	2D	1,205	245	2.2771%
1	121	2C	1,194	258	2.2802%
1	122	2G	1,912	306	3.4831%
1	123	2C	1,194	258	2.2802%
1	124*	2C	1,179	258	2.2567%
1	125*	2G	1,897	306	3.4596%
1	126	2C	1,194	258	2.2802%
1	127	2C	1,194	258	2.2802%
1	130	2E	1,231	196	2.2410%
1	131	2E	1,231	196	2.2410%
1	132	2E	1,231	196	2.2410%
1	133	2E	1,231	196	2.2410%
1	134	2E	1,231	196	2.2410%

1	135	2E	1,231	196	2.2410%
1	136	2E	1,231	196	2.2410%
1	137	2E	1,231	196	2.2410%
1	138	3A	1,508	460	3.0905%
2	210*	2A	1,303	334	2.5707%
2	211*	2F	2,045	396	3.8333%
2	212	2A	1,318	334	2.5943%
2	213	2B	1,288	388	2.6320%
2	220*	2C	1,179	258	2.2567%
2	221*	2G	1,897	306	3.4596%
2	222	2C	1,194	258	2.2802%
2	223	2D	1,205	245	2.2771%
2	224	1M	995	-0-	1.5624%
2	230	2E	1,231	196	2.2410%
2	231	2E	1,231	196	2.2410%
2	232	2E	1,231	196	2.2410%
2	233	2E	1,231	196	2.2410%
2	234	3B	1,476	233	<u>2.6838%</u>
					100.0000%

\*Apartment next to the elevator shaft.

NOTE: The percentage undivided interest was calculated by dividing the percentage's net living area and lanai area by the sum of all the living areas and lanai areas of all the apartments, with minor adjustments to bring the total percentage to 100%.

Description of Apartments. The apartments in the Project consist of one type of one-bedroom apartment, seven types of two-bedroom apartments and two types of three-bedroom apartments.

A. One-Bedroom Apartment. The one-bedroom apartment contains a dining-living room, kitchen, one bedroom, one bathroom, and a walk-in closet. The total living area of Type 1M apartment is 995 square feet.

B. Two Bedroom/One and Three-Fourths Bathroom Apartment. The two-bedroom apartments 2A through 2D inclusive contain a dining-living room, kitchen, two bedrooms, and one and three-fourths bathrooms and walk-in closet together with a lanai. The total living area of the apartments are as follows: 2A is 1,318 square feet together with a lanai area of 334 square feet; 2A units next to the elevator shaft is 1,303 square feet together with a lanai area of 334 square feet; 2B is 1,288 square feet together with a lanai area of 388 square feet; 2C is 1,194 square feet together with a lanai area of 258 square feet; 2C units next to the elevator shaft is 1,179 square feet together with a lanai area of 258 square feet; and 2D is 1,205 square feet together with a lanai area of 245 square feet.

C. Two-Bedroom/Two and One-Half Bathroom. The two-bedroom apartments 2F through 2G inclusive contain a dining-living room, kitchen, two bedrooms, two and one-half bathrooms, walk-in closet and laundry area together with a lanai. The total living area of the apartments are as follows: 2F is 2,060 square feet together with a lanai area of 396 square feet; 2F units next to the elevator shaft is 2,045 square feet together with a lanai area of 396 square feet; 2G is 1,912 square feet together with a lanai area of 306 square feet; and 2G units next to the elevator shaft is 1,897 square feet together with a lanai area of 306 square feet. The two-bedroom 2E apartment is a two level apartment with a stairwell of 1,231 square feet with a dining-living room, kitchen and one-half bathroom on the lower level and two bedrooms, two bathrooms and closet on the upper level together with a lanai area of 196 square feet.

D. Three-Bedroom Apartments. The three-bedroom Type 3A and 3B apartments are two level apartments with a stairwell containing a dining-living room, kitchen, one bedroom, one bathroom, walk-in closet together with a lanai on the lower level and two bedrooms, one bathroom and closet on the upper level. The total living area of the apartments areas follows: 3A is 1,508 square feet together with a lanai area of 460 square feet; and 3B is 1,476 square feet together with a lanai area of 233 square feet.

E. The floor area of the living area of an apartment is the net area and is measured from the interior surface of the apartment perimeter walls.

WHALE3  
EX A PRE

EXHIBIT "B"

Common Elements

- a. The land in fee simple.
- b. The foundations, floor slabs, columns, girders, beams, supports, bearing walls, roofs, entry landings, Manager's Office together with one-half bathroom, Linen Room, Maintenance Room and an Office, stairways and elevators in the buildings not within any of the apartments.
- c. The yards, landscaping, sewage treatment plant, trash area, swimming pool including hot tub, parking areas including the 58 parking stalls.
- d. The central and appurtenant installations for services such as power, light, gas, telephone, sewer, hot and cold water and like utilities.
- e. All other parts of the project existing for the common use or necessary to the existence, maintenance and safety of the Project.

EXHIBIT "C"

Encumbrances

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines as reserved in Royal Patent 6714.
2. As to that portion of the land herein described bordering on the Ocean:  
  
The effect of Sections 205-31 to 205-37, inclusive, Hawaii Revised Statutes, as now or hereafter amended pertaining to shoreline setbacks.  
  
Any adverse claim based upon (a) a conflict in the determination of the seaward boundary of said land, (b) a conflict in the location of such seaward boundary, or (c) the assertion that any portion of said land is submerged land or is land beneath tidal waters.
3. Any adverse claim to any portion of said land which has been created by artificial means or has accreted to such portion so created.
4. Reservation to the State of Hawaii, its successors and assigns, as reserved in that certain Quitclaim Deed dated September 28, 1979, recorded on October 2, 1979 in the Bureau of Conveyances of the State of Hawaii in Book 14037, Page 370.
5. The covenants as contained in that certain Quitclaim Deed dated September 28, 1979, recorded on October 2, 1979 in said Bureau of Conveyances in Book 14037, Page 370.
6. Grant dated September 10, 1979, recorded on January 23, 1980 in said Bureau of Conveyances in Book 14433, Page 748, in favor of HAWAIIAN TELEPHONE COMPANY, a Hawaii corporation, and CITIZENS UTILITIES COMPANY, a Delaware corporation, a Right-of-Entry and temporary easement for construction and maintenance of power and communication lines.
7. The terms and provisions of that certain Waiver and Indemnity Agreement dated July 25, 1983, made by and between THE ASSOCIATION OF APARTMENT OWNERS OF POIPU VILLAGE RESORT, as "Applicants" and THE COUNTY OF KAUAI, a political subdivision of the State of Hawaii, recorded on August 25, 1983 in said Bureau of Conveyances in Book 17276, Page 675.

8. Easement "D-1", (15 feet wide), for drainage purposes, in favor of the COUNTY OF KAUAI.
9. Future road widening setback line running along Maulili Road, Kaheka Road and Puuholo Road, as disclosed by survey map prepared by Oscar Portugal, Registered Professional Land Surveyor, Certificate No. 4973.
10. Right-of-Entry dated December 15, 1986, recorded on January 20, 1987 in said Bureau of Conveyance in Book 20292, Page 92, in favor of CITIZENS UTILITIES COMPANY, a Delaware corporation, duly authorized to do business in the State of Hawaii, and HAWAIIAN TELEPHONE COMPANY, a Hawaii corporation, granting a right-of-entry and easement subject to the terms and conditions contained herein.
11. Mortgage dated January 30, 1987, recorded on February 2, 1987 in said Bureau of Conveyances in Book 20330, Page 622, made by POIPU EQUITIES, INC., a Hawaii corporation, as Mortgagor(s), to SECURITY PACIFIC MORTGAGE AND REAL ESTATE SERVICES, INC., a Delaware corporation, duly qualified and doing business in the State of Hawaii, as Mortgagee(s), to secure the repayment of the sum of \$5,800,000.00, any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said Mortgagor(s) therein referred to.
12. By instrument entitled "Assignment of Rents" dated January 30, 1987, recorded on February 2, 1987 in said Bureau of Conveyances in Book 20330, Page 648, POIPU EQUITIES, INC., a Hawaii corporation, assigned to SECURITY PACIFIC MORTGAGE AND REAL ESTATE SERVICES, INC., a Delaware corporation, duly qualified and doing business in the State of Hawaii, as additional security for the repayment of the loan secured by the mortgage referred to herein.
13. "Assignment of Leases" dated January 30, 1987, recorded on February 2, 1987 in said Bureau of Conveyances in Book 20330, Page 656, whereby POIPU EQUITIES, INC., a Hawaii corporation, "Owner" assigned to SECURITY PACIFIC MORTGAGE AND REAL ESTATE SERVICES, INC., a Delaware corporation, duly qualified to do business in the State of Hawaii, all right, title and interest in and to unrecorded lease or leases, etc., as additional security for the repayment of the loan secured by the mortgage referred to herein.
14. The covenants, agreements, obligations, conditions and other provisions set forth in that certain DECLARATION OF HORIZONTAL PROPERTY REGIME OF WHALERS COVE AT POIPU dated

February 5, 1987, recorded on February 9, 1987 in said Bureau of Conveyances in Book 20352, Page 329, as amended by First Amendment to Declaration of Horizontal Property Regime dated March 26, 1987, recorded in the Bureau of Conveyances, State of Hawaii, in Book 20507, Page 660.

By-Laws of The Association of Apartment Owners of Whalers Cove at Poipu dated February 5, 1987, recorded on February 9, 1987 in said Bureau of Conveyances in Book 20352, Page 347.

15. Condominium Map No. 1048, filed in said Bureau of Conveyances on February 9, 1987.
16. Real property taxes that may be due and owing reference is made to the Department of Finance, County of Kauai.

WHALE3  
EX C PRE

EXHIBIT  D

ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee</u> x 12 months =	<u>Yearly Total</u>
Type 2A	\$468.20	\$5,618.40
Type 2A*	463.93	5,567.16
Type 2B	475.00	5,700.00
Type 2C	411.51	4,938.12
Type 2C*	407.27	4,887.24
Type 2D	410.95	4,931.40
Type 2E	404.43	4,853.16
Type 2F	696.05	8,352.60
Type 2F*	691.80	8,301.60
Type 2G	628.60	7,543.20
Type 2G*	624.35	7,492.20
Type 3A	557.74	6,692.88
Type 3B	484.34	5,812.08
Type 1M	281.96	3,383.52

[  ] Revised on  3-30-87

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The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency.

**Estimate of Maintenance Fee Disbursements:**

Monthly x 12 months = Yearly Total

**Utilities and Services**

<b>Air Conditioning</b>		
<b>Electricity</b>		
<input checked="" type="checkbox"/> common elements only	\$ 1,250	\$ 15,000
<input type="checkbox"/> common elements and apartments		
<b>Gas</b>	---	---
<b>Refuse Collection</b>	150	1,800
<b>Telephone</b>	75	900
<b>Water</b>	450	5,400
<b>Sewer</b>	875	10,500
<b>Maintenance, Repairs and Supplies</b>		
Pest Control	145	1,740
<b>Building</b>	500	6,000
<b>Grounds</b>	250	3,000
Pool/Spa	125	1,500
<b>Management</b>		
Data Processing	200	2,400
<b>Management Fee</b>	500	6,000
<b>Payroll and Payroll Taxes</b>	3,390	40,680
<b>Office Expenses</b>	150	1,800
Legal & Audit	300	3,600
<b>Insurance</b>	1,420	17,040
Insurance - DIC	6,667	80,004
<b>Reserves</b>	200	2,400
<b>Taxes and Government Assessments</b>		
<b>Audit Fees</b>		
<b>Other</b>		
TV Cable	400	4,800
Elevator	300	3,600
Manager's Apartment Rent	600	7,200
Auto	50	600
Miscellaneous	50	600
<b>TOTAL</b>	<u>\$18,047</u>	<u>\$216,564</u>

I/We, HCP/Aston Hotels & Resorts, as managing agents for the condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

HCP/ASTON HOTELS & RESORTS

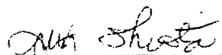
  
\_\_\_\_\_  
Vice President- Condominium Administration  
Date: 6-30-86

EXHIBIT "E"

Summary of Sales Contract

The Sales Contract contains the price and other terms and conditions under which a purchaser will agree to buy an apartment in the Project. Among other things, the Sales Contract says:

(a) A buyer must obtain his own financing. Buyer acknowledges that this Sales Contract is contingent on any financing after the issuance of the final public report.

(b) That a purchaser's money will be held in escrow, under the terms of the Escrow Agreement.

(c) That interest on deposits shall belong to the buyer so long as said funds are held in escrow.

(d) That the unit will be subject to various other legal documents which the buyer certifies that he has examined.

(e) That the buyer must close the purchase at a certain date and pay closing costs, in addition to the purchase price.

The Sales Contract contains various other provisions with which the purchaser should become acquainted.

EXHIBIT "F"

Summary of Escrow Agreement

The Escrow Agreement sets up an arrangement under which the deposits which a purchaser makes under a Sales Contract will be held by a neutral party ("Escrow"). Under the Escrow Agreement these things will or may happen:

- (a) Escrow will let purchasers know when payments are due.
- (b) Escrow will arrange for purchasers to sign all necessary documents.
- (c) The Escrow Agreement says under what conditions a refund will be made to a purchaser.
- (d) The Escrow Agreement says what will happen to a purchaser's funds upon a default under the Sales Contract.

The Escrow Agreement contains various other provisions and establishes certain charges with which the purchaser should become acquainted.

WHALERS COVE AT POIPU

REGISTRATION NO. 1776

DISCLOSURE STATEMENT AS OF July 25, 1986

1. Name and Address of Project: Whaler's Cove at Poipu, Kaheka Road and Puuholo Road, Poipu, Kauai, Hawaii 96756

2. Name, Address and Telephone Number of Developer: POIPU EQUITIES, INC., 5126 Hoona Road, Koloa, Kauai, Hawaii 96756, and whose post office address is P.O. Box 905, Koloa, Kauai, Hawaii 96756, Telephone (808) 742-7246.

3. Managing Agent of Project: Aston Hotels and Resorts, Inc., 2255 Kuhio Avenue, 18TH Floor, Honolulu, Hawaii 96815, Telephone (808) 923-0745.

4. Maintenance Fees: The breakdown of the annual maintenance fees and the monthly estimated costs for each dwelling, which is hereby certified to be based on generally accepted accounting principles, is more particularly set forth in Exhibit "D" attached hereto and made a part hereof.

5. Warranties: The dwellings and the common elements of the Project shall have the benefit of a one-year warranty against defects in materials and workmanship, which warranty shall commence as of the date of the issuance of a Certificate of Occupancy for such dwellings and common elements. It is estimated that the commencement date of such warranties will be June 1987.

6. Use: The Project shall consist of thirty-nine (39) dwellings which shall be utilized apartment, resort, residential or time sharing use for any time period or periods including any annual recurring period on a fixed or floating basis by the respective owners thereof their tenants, families, domestic servants and social guests.

7. Extent of Non-Residential Development: The Declaration provides for a reception and counter for the check in and check out of owners and others and the receipt of mails and/or deliveries. Other than that the uses are as set forth in paragraph 6 above.

DATED: Koloa, Kauai, Hawaii this 17th day of  
June, 1986.

POIPU EQUITIES, INC.

By J R Bell  
its President

Subscribed and sworn to before me this 17 day of  
JUNE, 1986.

Jo Ann Rooney  
Notary Public

My commission expires:  
JO ANN ROONEY  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Oct. 12, 1989

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