



**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: July 1, 1988  
Expires: January 1, 1989

**Report Purpose:**

This report is based on information and documents submitted by the developer to the Real Estate Commission as of June 17, 19 88 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:**           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.  
      (yellow)

       **FINAL:**                    The developer has legally created a condominium and has filed complete information with the Commission.  
      (white)  
          [ ] Supersedes all prior public reports  
          [ ] Must be read together with \_\_\_\_\_

  X   **SUPPLEMENTARY:**       Updates information contained in the  
      (pink)  
          [ X ] Prelim. Public Report dated July 25, 1986  
          [ X ] Final Public Report dated April 9, 1987  
          [ ] Supp. Public Report dated \_\_\_\_\_

And [ ] Supersedes all prior public reports  
      [ X ] Must be read together with said Final Public Report  
  
      [ ] This report reactivates the \_\_\_\_\_  
          public report(s) which expired on \_\_\_\_\_

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

[ ] Required                   [ X ] 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.

1. The Declaration of Horizontal Property Regime of February 5, 1987, as amended by First Amendment on March 26, 1987 has been further amended by the Second Amendment to Declaration dated October 15, 1987 in Book 21238, Page 476, to reflect the "as built" Condominium Map which is the same as Condominium Map No. 1048 as amended by the First Amendment.
2. The Notice of Completion of the Project has been filed with the Clerk of the Fifth Circuit Court on June 8, 1987.
3. The Certificate of Occupancy was issued by the County of Kauai, Department of Public Works on July 23, 1987.
4. The Real Estate Agent has been changed to Pacific Ocean Properties, Inc.
5. The Management Agent has been changed to Condotech Hawaiiana Resorts, Inc.
6. The Agreement to Provide Access dated June 29, 1987 has been recorded in the Bureau of Conveyances, State of Hawaii, in Book 21862, Page 166.

Pages 5, 8-14, 16, 19 of this Supplementary Public Report are deleted. The attached Pages 1-4, 6, 7, 15, 17, 18, 20 and Exhibit "C", Exhibit "D" and Disclosure Statement as of May 18, 1988 supersede those pages as numbered in the Final Public Report.

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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.



**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.  
Second Amendment to Declaration dated October 15, 1987, recorded in Book 21238, Page 476.

- 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.  
Second Amendment reflects the "as built" Condominium Map.

- 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:

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 May 17, 1988.

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.  
[ X ] other As of January 1, 1988 Condotech Hawaiiana Resorts, Inc. has replaced Hotel Corporation of the Pacific, Inc. dba Aston Hotels & Resorts as the Managing Agent.

**J. Status of Construction and Estimated Completion Date:**

The Notice of Completion of the Project was filed on July 8, 1987 with the Clerk of the Fifth Circuit Court. The Certificate of Occupancy was issued by the County of Kauai, Department of Public Works on July 23, 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 entered 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 are restrictions placed on the use in terms of time of day; path of access; and standards of conduct. There is also 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. The Agreement to Provide Access was executed between Poipu Equities, Inc. and the County of Kauai on June 28, 1987 and recorded in the Bureau of Conveyances, State of Hawaii, in Book 21862, Page 166.

This Public Report is a part of Registration No. 1776 filed with the Real Estate Commission on July 2, 1986.

Reproduction of Report. When reproduced, this report must be on:

yellow paper stock                       white paper stock                       pink paper stock

Expiration Date of Reports. Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the date of issuance unless a Supplementary Public Report is issued or unless the Commission issues an order extending the effective period for the report.

Supplementary Public Reports expire on the expiration date given on the front of the report.



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GLORIA DAMRON, 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 "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 Conveyances 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. Second Amendment dated October 15, 1987, recorded in the Bureau of Conveyances, State of Hawaii, in Book 21238, Page 476.

The foregoing Declaration was amended by Amendments dated March 26, 1987, recorded in Book 20507, Page 660 and dated October 15, 1987, recorded in Book 21228, Page 476.

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.
17. Grant of Easement in favor of The County of Kauai dated September 22, 1986, recorded in said Bureau in Book 20414, Page 267, for easement for drainage purposes over, under, across and along Lot 31-C and Easement "D-1".
18. The terms and provisions of that certain AGREEMENT to Provide Public Access dated June 29, 1987, in favor of The County of Kauai, a political subdivision of the State of Hawaii, granting a nonexclusive public access through the area designated as pedestrian easement "P-1" containing an area of 1,238 square feet, recorded in the Bureau of Conveyances of the State of Hawaii in Book 21862, Page 166, to which reference is hereby made.

WHALE3  
EX C PRE

WHALER'S COVE AT POIPU  
ESTIMATED MAINTENANCE BUDGET

	<u>Monthly</u>	<u>Annual</u>
Receipts:		
Maintenance Fee	\$18,047 =====	\$216,564 =====
Disbursements:		
Electricity	\$1,300	\$15,600
Gas	180	2,160
Sewer	1,000	12,000
Water	700	8,400
Telephone	160	1,920
Television Cable	346	4,152
Elevator	315	3,780
Grounds	1,000	12,000
Lighting	100	1,200
Pest Control	150	1,800
Pool/Hydro Spa	347	4,164
Refuse	100	1,200
Repairs & Purchases	350	4,200
Window Cleaning	946	11,352
Data Processing	-0-	-0-
Management Fee	390	4,680
Salaries Grounds & Maintenance	3,475	41,700
Salaries Manager	1,000	12,000
Payroll Taxes	384	4,608
Group Insurance	469	5,628
Worker's Compensation	362	4,344
Apartment Rent	-0-	-0-
Automobile	-0-	-0-
Insurance	3,625	43,500
Insurance DIC	-0-	-0-
Legal & Audit	315	3,780
Office Supplies & Printing	300	3,600
Miscellaneous	-0-	-0-
Reserve	<u>733</u>	<u>8,796</u>
Total Disbursements	\$18,047 =====	\$216,564 =====

EXHIBIT "D"

Maintenance Fees:

<u>Type of Apartment</u>	<u>% Common Interest</u>	<u>No. of Apartments</u>	<u>Monthly Maintenance Fee</u>
Type 2A	2.5968	5	\$ 468.20
Type 2A*	2.5732	2	463.93
Type 2B	2.6345	2	475.00
Type 2C	2.2824	5	411.51
Type 2C*	2.2588	2	407.27
Type 2D	2.2793	2	410.95
Type 2E	2.2431	12	404.43
Type 2F	3.8606	1	696.05
Type 2F*	3.8370	2	691.80
Type 2G	3.3906	1	628.60
Type 2G*	3.4629	2	624.35
Type 3A	3.0936	1	557.74
Type 3B	2.6865	1	484.34
Type 1M	<u>1.5641</u>	<u>1</u>	<u>281.96</u>
	<u>100.0000%</u> =====	<u>39</u> ==	<u>\$18,047.00</u> =====

\* Apartments next to an elevator shaft.

Condotech's Hawaiiana Resorts, Inc. does hereby certify that the foregoing breakdown of annual maintenance fee and monthly estimated costs for each apartment is based upon generally accepted accounting principles.

CONDOTECH HAWAIIANA RESORTS, INC.

By: Harlow F. White  
Harlow F. White  
President

4/1/88  
Date

EXHIBIT "D"

WHALERS COVE AT POIPU

REGISTRATION NO. 1776

DISCLOSURE STATEMENT AS OF May 18, 1988

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: Hawaiiana Resorts, Inc., 1270 Ala Moana Boulevard, Honolulu, Hawaii 96814, Telephone (808) 523-7785.

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 "A" attached hereto and made a part hereof.

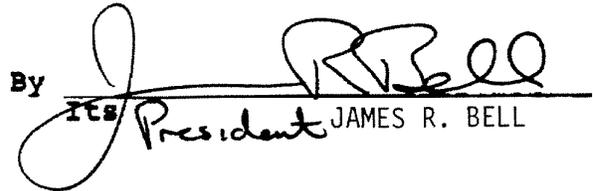
5. Warranties: The dwellings and the common elements of the Project shall have the benefit of a one-year warranty against defects in materials and workmanship, which warranty shall commence as of the date of the issuance of a Certificate of Occupancy for such dwellings and common elements. It is estimated 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: Toms River, New Jersey, this 20<sup>th</sup> day of  
May, 1988.

POIPU EQUITIES, INC.

By   
its President JAMES R. BELL

Subscribed and sworn to before  
me this 20<sup>th</sup> day of May, 1988.

  
Notary Public, State of New Jersey

My commission expires:  
LORAIN RUSSO  
A Notary Public of New Jersey  
My Commission Expires March 16, 1989

DIS STMT  
POIPU2