

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

SUPPLEMENTARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT

ON

THE POLO BEACH CLUB
20 Makena Road
Kihei, Maui, Hawaii

Registration No. 1279

This Report Is Not an Approval or Disapproval of This Condominium Project

It was prepared as a supplement to ~~an~~ earlier Report dated ^{April 9, 1980 and} ~~July 14, 1982~~ issued by the Real Estate Commission on the above 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 until

- (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: April 18, 1983
Expires: February 4, 1984

SPECIAL ATTENTION

A comprehensive reading of this report by prospective purchasers 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 SUBMITTED ON MARCH 27, 1980, AND ADDITIONAL INFORMATION SUBSEQUENTLY FILED AS OF APRIL 15, 1983. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, CHAPTER 514A, HAWAII REVISED STATUTES, AS AMENDED.

1. Since the issuance of the Commission's Preliminary Public Report of April 9, 1980 and Final Public Report of July 14, 1982 on the POLO BEACH CLUB, Registration No. 1279, the Developer has submitted additional information and documents reflecting material changes made to the Project.
2. The Developer of the project has submitted to the Commission for examination all documents deemed necessary for the registration of a condominium project and issuance of this Supplementary Public Report.
3. Advertising and promotional matter have been submitted to the Real Estate Commission pursuant to the rules and regulations promulgated by the Commission.
4. The basic documents (Declaration of Horizontal Property Regime, By-Laws of the Association of Apartment Owners, and the Condominium Map) have been recorded in the Bureau of Conveyances of the State of Hawaii as noted in the Final Public Report. A Third Amendment to the Declaration was recorded in Liber 16505 at Page 45 and a Fourth Amendment was recorded in Liber 16967 at Page 150.
5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Chapter 514A of the Hawaii Revised Statutes, as amended, and the Condominium Rules and Regulations of the Hawaii Real Estate Commission which relate to Horizontal Property Regimes.
6. The Final Public Report and this Supplementary Public Report will automatically expire on February 4, 1984, unless a Second Supplementary Public Report is issued or the Commission, upon review of this registration, issues an order extending the effective period of the reports.
7. This Report is made a part of the registration on THE POLO BEACH CLUB condominium project. The Developer shall be responsible for placing this Supplementary Public Report (pink paper stock), the Preliminary Public Report (yellow paper stock), the Final Public Report (white paper stock) and revised Disclosure Abstract in the hands of all purchasers and prospective purchasers and securing a signed copy of the receipt therefor.

Except for the information under the topical headings which follow, the information contained in the Preliminary Public Report dated April 9, 1980, as modified by the Final Public Report dated July 14, 1982, has not materially changed.

DEVELOPER: GECC Financial Corporation, a Hawaii corporation and Washington Mutual Savings Bank, a Washington corporation duly registered in Hawaii as a foreign lender, acting jointly and severally sub nom Polo Beach Club Associates. Their respective addresses are: GECC Financial Corporation, 700

Bishop Street, Suite 1600, Honolulu, Hawaii 96813; Telephone (808) 945-8100; Attn: Robert D. Turran; and Washington Mutual Savings Bank, 1101 Second Avenue, Seattle, Washington 98101; Telephone (206) 464-4400; Attn: David G. Murphy.

ATTORNEY REPRESENTING DEVELOPERS: Charles Edward Pear, Jr., 841 Bishop Street, Suite 2208, Honolulu, Hawaii 96813. Telephone: 528-2300.

PURPOSES OF AND RESTRICTIONS ON USE OF BUILDINGS AND INDIVIDUAL APARTMENTS: The Declaration of Horizontal Property Regime has been amended to provide, among other things:

(1) The apartments shall be occupied and used only as residential dwellings, but such apartments may be leased or rented from time to time to transients. The apartments may not be used, leased or rented, nor may any interests therein be conveyed in connection with any time share plan as that term is used in Chapter 514E, Hawaii Revised Statutes, as amended (or under any substitute or successor statute). The Association shall have the power to enact resolutions, rules and regulations, and have the power to amend and repeal the same from time to time, reasonably restricting and regulating the use of the apartments and the common elements; provided, that any such resolutions, rules or regulations shall be consistent with the terms of the Declaration and the By-Laws.

(2) The owners of the respective apartments shall have the absolute right to sell, lease, rent or otherwise transfer their interest in such apartments subject to all provisions of the Horizontal Property Act, the Declaration and the By-Laws attached thereto; provided, however, that no apartment owner may sell, lease, rent or otherwise transfer less than the entire apartment.

OWNERSHIP OF TITLE: A Preliminary Title Report issued by Title Guaranty of Hawaii, Inc., dated February 28, 1983, reflects that fee simple title to the land is held by the Developer.

ENCUMBRANCES AGAINST TITLE: The Preliminary Title Report issued by Title Guaranty of Hawaii, Inc., dated February 28, 1983, reflects the following encumbrances:

1. Real Property Taxes that are due and owing. For further information, check with the Department of Finance, County of Maui.
2. Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance and its effect, if any, upon the land.
3. Section VI(c) Agreement for Central Maui Areas dated July 29, 1980, recorded in Liber 14909 at Page 511, by and between the County of Maui, Department of Water Supply, and DM Development Company, formerly Dallas Maui Development Company, a Texas limited partnership.

4. MORTGAGE SECURITY AGREEMENT AND FINANCING STATEMENT.

MORTGAGOR: DM DEVELOPMENT COMPANY, a Texas limited
partnership
MORTGAGEE: GECC FINANCIAL CORPORATION, a Hawaii
corporation
DATED : December 17, 1980
RECORDED : Liber 15231 Page 352
AMOUNT : \$20,000,000.00

5. ADDITIONAL CHARGE MORTGAGE TO THE MORTGAGE, SECURITY
AGREEMENT AND FINANCING STATEMENT SET FORTH AS
ENCUMBRANCE No. 4.

MORTGAGOR: DM DEVELOPMENT COMPANY, a Texas Limited
Partnership registered to do business in
the State of Hawaii
MORTGAGEE: GECC FINANCIAL CORPORATION, a Hawaii
corporation
DATED : April 28, 1982
RECORDED : Liber 16315 Page 189
AMOUNT : \$3,000,000.00

6. SECOND ADDITIONAL CHARGE MORTGAGE, SECURITY AGREEMENT
AND FINANCING STATEMENT TO THE MORTGAGE SET FORTH AS
ENCUMBRANCE No. 4.

MORTGAGOR: DM DEVELOPMENT COMPANY, a Texas Limited
Partnership
MORTGAGEE: GECC FINANCIAL CORPORATION, a Hawaii
corporation
DATED : August 16, 1982
RECORDED : Liber 16518 Page 318
AMOUNT : \$4,000,000.00

7. SECURITY AGREEMENT dated December 17, 1980, recorded in
Liber 15231 at Page 369, made by DM DEVELOPMENT
COMPANY, a Texas limited partnership, to GECC FINANCIAL
CORPORATION, a Hawaii corporation, assigning all right,
title and interest in an to various instruments
involving the sale of condominium apartments in The
Polo Beach Club, etc., to secure the repayment of a
loan in the aggregate principal amount of
\$20,000,000.00. FIRST AMENDMENT OF SECURITY AGREEMENT
dated April 28, 1982, recorded in Liber 16315 at
Page 194. SECOND AMENDMENT OF SECURITY AGREEMENT DATED
August 16, 1982, recorded in Liber 16518 at Page 324.

8. Declaration of Covenants, Conditions and Restrictions
(Flood Zone) dated December 16, 1980, recorded in
Liber 15320 at Page 89.

9. Declaration of Covenants, Conditions and Restrictions
(Tsunami or Storm Wave District) dated December 16,
1980, recorded in Liber 15320 at Page 96.

10. The restrictions on use and other restrictions and all
other of the covenants, agreements, obligations,
conditions reservations, easements and other
provisions set forth in Declaration of Horizontal
Property Regime dated April 10, 1981, recorded in the

Bureau of Conveyances of the State of Hawaii in Liber 15549 at Page 396, and the By-Laws attached thereto, as the same are or may hereafter be amended in accordance with law, said Declaration or said By-Laws. (Project covered by Condominium Map No. 808 recorded in said Bureau of Conveyances.) Said Declaration was amended by instruments dated March 16, 1982, recorded in Liber 16219 at Page 496, dated April --, 1982, recorded in Liber 16367 at Page 530 and dated July 7, 1982, recorded in Liber 16505 at Page 45.

11. Agreement dated May 22, 1981, recorded in Liber 15575 at Page 99, by and between the County of Maui, Department of Water Supply, and DM Development Company, a Texas limited partnership.
12. Grant in favor of Maui Electric Company, Limited, a Hawaii corporation, dated March 1, 1982, recorded in Liber 16203 at Page 50; granting a perpetual right and easement to build, construct, reconstruct, rebuild, repair, maintain and operate pole and wire lines and underground powers lines, etc., over, across, through and under the premises.
13. APPLICATION FOR MECHANIC'S AND MATERIALMAN'S LIEN dated June 17, 1982, filed in the Circuit Court, Second Circuit, State of Hawaii, being M.L. No. 492; A-1 ROOFING, INC. "Lienor", vs. DM DEVELOPMENT COMPANY, "Owner", and CAWDREY-MARS, General Contractor, "Defendant-Respondents", in the amount of \$17,600.50, etc.
14. ORDER AUTHORIZING ATTACHMENT OF MECHANIC'S AND MATERIALMAN'S LIEN dated February 14, 1983, filed in the Circuit Court, Second Circuit, State of Hawaii, being M.L. No. 513(2), recorded in Liber 16861 at Page 774; HAWKINS AUDIO ENGINEERS, INC. dba HAWAIIAN COMMUNICATIONS, "Lienor", vs. ASSOCIATION OF APARTMENT OWNERS OF POLO BEACH CLUB, "Contracting Party", and DM DEVELOPMENT COMPANY, "Fee Owner", in the amount of \$35,763.50.
15. Possible claims arising under the bankruptcy or insolvency laws.

PURCHASE MONEY HANDLING: A revised specimen Condominium Sales Contract (hereinafter called "Sales Agreement") and a revised Escrow Agreement have been submitted to the Real Estate Commission as part of the registration. The Escrow Agreement dated March 23, 1983, identifies Title Guaranty Escrow Services, Inc. as the escrow agent. Upon examination, the specimen Sales Agreement and the executed Escrow Agreement are found to be in compliance with Chapter 514A, Hawaii Revised Statutes, as amended, and particularly with Section 514A-40, Section 514A-39 and Section 514A-63 through Section 514A-67. The provisions of the Sales Agreement and the Escrow Agreement should be carefully read by purchasers. The specimen Sales Agreement filed as part of the registration recites the conditions under which the purchaser acknowledges receipt of the Public Report.

Among other provisions, the Escrow Agreement provides that the purchaser shall be entitled to a refund of his funds only if (a) the developer advises Escrow in writing to refund the purchaser's funds or of the developer's rescission of the Sales Agreement; or (b) the developer notifies Escrow of the developer's or purchaser's cancellation of a reservation or of purchaser's exercise of any right of rescission in the Sales Agreement.

Among other provisions, the specimen Sales Agreement provides that:

(1) The developer makes no warranties, express or implied, with respect to the apartments, the project, or consumer products or other things installed therein, including warranties of merchantability, habitability, workmanlike construction, fitness for a particular purpose or sufficiency of design. The developer does, however, agree to attempt to pass through to the purchaser the benefit of the general contractor's warranties, if any, and also the unexpired term, if any, of any assignable manufacturer's or dealer's warranties covering any furnishings, fixtures and appliances in the apartment.

(2) The developer may cancel the Sales Agreement and hold the purchaser in default if any material discrepancies are discovered between the financial information furnished by the purchaser and the purchaser's actual financial status. The developer may also cancel if the purchaser's application or eligibility for a mortgage loan is rejected or not given unqualified approval or approval subject only to qualifications acceptable to the developer within forty-five (45) days after application. If purchaser proposes to pay the purchase price in cash and the developer, in its sole discretion, after reviewing the written evidence submitted to it by purchaser, determines that the developer is not satisfied as to purchaser's ability to make such cash payments, then the developer may cancel the Sales Agreement. The developer may also cancel the Sales Agreement if the purchaser should die.

(3) The developer's mortgage loan (interim, renewals and extensions, used for acquiring the land, constructing the project, sale of the apartments and associated costs) shall be and remain at all times a lien or charge on the project, including the individual apartments, prior to and superior to any and all other liens or charges on the project, and purchasers intentionally waive, relinquish and subordinate the priority or superiority of any lien or other legal or equitable interest they may have under the Sales Agreement in favor of the lien or charge on the project of the security interest of the lender. The purchasers also consent to the assignment for security of the developer's interest in the Sales Agreement and purchasers' escrow deposits to lender.

(4) The developer makes no representations with respect to the possibility or probability of rental or other income from the apartment or other economical benefits to be derived from the rental of the apartment, including but not limited to, any representations to the effect that the developer or the Managing Agent of the project or a third party will provide services relating to the rental or sale of the apartment nor

representations as to possible advantages from the rental of the apartment under federal or state tax laws. If purchaser wishes to rent the apartment to third persons, purchaser must make his own arrangements. Purchaser further agrees and acknowledges that in the event that the offer to sell and the purchase of the apartment or the activities of purchaser with respect to the apartment are determined to be or alleged to give rise to any violation of any federal or state securities laws or regulations, the developer may obtain an injunction enjoining any such activities by the purchaser, and the developer may in addition pursue any other remedies and purchaser shall pay the developer's cost and attorneys' fees in connection therewith. The terms of that particular paragraph will survive the closing, occupancy, and delivery of the apartment deed to the purchaser.

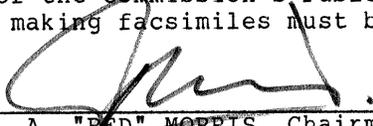
(5) The purchaser will pay all closing costs, including but not limited to, the escrow fee, conveyance taxes, all acknowledgment fees, all appraisal fees, all recording costs, charges for purchaser's credit report, costs for drafting of the mortgage and notes, and any assignment thereof, and costs to any title insurance. All applicable mortgage costs shall be paid by purchaser, and purchaser shall pay the nonrefundable start-up fee for commencement of the operations of the project by the Managing Agent and the Association of Apartment Owners. Real property taxes, maintenance costs and other prorations shall be made, and risk of loss shall transfer from the developer to purchaser on the scheduled Closing Date as defined in the specimen Sales Agreement. Purchaser shall execute all documents necessary for closing and deposit with escrow all funds other than proceeds of purchaser's first mortgage loan within ten (10) business days after receiving written notice to pre-close. Pre-closing may commence at any time after forty-five days after the effective date of the Sales Agreement.

It is incumbent upon purchasers and prospective purchasers that they read with care the specimen Sales Agreement and the executed Escrow Agreement. The Escrow Agreement establishes how the proceeds from the sale of the condominium apartments are placed in trust, as well as the retention and disbursement of funds.

MANAGEMENT AND OPERATION: The Declaration provides that the operation of the project shall be conducted for the Association of Apartment Owners by a responsible corporate Managing Agent. The Managing Agent shall be appointed by the Association, in accordance with the By-Laws, except that the initial Managing Agent was appointed by the Developer in the Declaration, as amended. The initial Managing Agent shall be Management Consultants of Hawaii, Inc. A copy of the Management Agreement has been submitted to the Commission.

The purchaser or prospective purchaser should be cognizant of the fact that this published report represents information disclosed by the Developer in the Notice of Intention submitted on March 27, 1980, and information subsequently filed as of April 15, 1983.

This SUPPLEMENTARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of Registration No. 1279 filed with the Commission on March 27, 1980. This report when reproduced shall be a true copy of the Commission's Public Report. The paper stock used in making facsimiles must be pink.



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

DISTRIBUTION:

Department of Finance
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Planning Department
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Federal Housing Administration
Escrow Agent

Registration No. 1279

Dated: April 18, 1983