

REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF REGULATORY AGENCIES

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

FINAL HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT

on
PONO KAI
Kuhio Highway
Kapaa, Kauai, Hawaii

REGISTRATION NO. 987

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 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: May 16, 1979

Expires: June 16, 1980

SPECIAL ATTENTION

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

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED APRIL 5, 1978, AND INFORMATION SUBSEQUENTLY FILED AS OF MAY 9, 1979. THE DEVELOPER IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY REGIMES ACT, CHAPTER 514A, HAWAII REVISED STATUTES, AS AMENDED.

1. Since the issuance of the Commission's Preliminary Report of May 16, 1978, on PONO KAI, Registration No. 987, the Developer reports that certain material changes have been made in the Project. This Final Public Report (white paper stock) amends the Preliminary Public Report (yellow paper stock) becoming a part of the PONO KAI registration. The Developer is

responsible for placing a true copy of this Final Public Report in the hands of all purchasers and prospective purchasers, along with a copy of the Preliminary Report. The Developer is responsible for securing from each purchaser or prospective purchaser a signed receipt signifying that he has had an opportunity to read both reports.

2. The Developer has submitted to the Commission for examination all documents deemed necessary for the registration of the condominium project and the issuance of this Final Public Report.
3. The Developer advises that the Declaration of Horizontal Property Regime and attached By-Laws are recorded in the Bureau of Conveyances of the State of Hawaii in Book 13670, Page 558. The Condominium Map has been filed in said Bureau as Condominium File Plan No. 611.
4. No advertising and promotional materials have been submitted 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 Chapter 514A, Hawaii Revised Statutes, as amended, and the condominium rules and regulations which related to Horizontal Property Regimes.
6. This Final Public Report automatically expires thirteen (13) months after date of issuance, May 16, 1979, unless a Supplementary Public Report issues, or the Commission, upon review of the registration, issues an order extending the effective period of this report.

Except for the topical headings which follow, the information in the topical headings of the Preliminary Report dated May 16, 1978, has not been disturbed.

LOCATION: An Affidavit filed in the Bureau of Conveyances of the State of Hawaii in Book 13208, Page 596, reveals that the planned consolidation and resubdivision of the land previously disclosed in the Preliminary Public Report was finally approved by the Planning Department of the County of Kauai by letter dated May 26, 1978, and was accomplished by the filing of the final subdivision map in said Bureau in Book 13208, Page 598. The Developer has also conveyed Lot A-2, the 10 foot wide lot for public beach access, to the State of Hawaii.

TAX MAP KEY: Fourth Division, 4-5-07-02.

ALTERATION OF PROJECT TO ADD COMMERCIAL APARTMENTS: As was disclosed in the Preliminary Report, the Developer has reserved the right to add commercial apartments to the Project at any time prior to January 1, 1990. The Developer has advised that

it intends to develop and construct commercial apartments and to add them to the Project commencing on or about the time the residential apartments and residential elements have been completed. Purchasers and prospective purchasers are advised that such construction may be occurring on the site after their occupancy and may result in noise, dust or other inconvenience.

PERCENTAGE OF UNDIVIDED OWNERSHIP AND COMMON AND RESIDENTIAL EXPENSES: Certain apartments were incorrectly identified by type on Page 9 of the Preliminary Public Report. Under the category Type A-2 Apartments, Apartments J-108, J-208 and J-308 should be deleted, and inserted should be Apartments J-107, J-207 and J-307; under the category Type A-3 Apartments, Apartments J-107 and J-207 should be deleted, and inserted should be Apartments J-106 and J-2-6; and under the category Type A-4 Apartments, Apartment J-307 should be deleted and inserted should be Apartment J-306.

OWNERSHIP TO TITLE: A Preliminary Title Report dated January 30, 1979, issued by Hawaii Escrow and Title, Inc., certifies that the fee simple title to the land is now vested in the Developer by Deed recorded June 8, 1978, in the Bureau of Conveyances in Book 12943, Page 333. The specimen form of Sales Contract had provided that in the event the Developer was unable to acquire the land, at its option the Developer could cancel the Sales Contract. Since the Developer has acquired the property, this provision is no longer effective.

ENCUMBRANCES ON TITLE: Said Preliminary Title Report dated January 30, 1979, but issued on February 8, 1979, reveals the following changes in the encumbrances on title:

1. For information on real property taxes, check with the Office of the Tax Assessor, Fourth Division.

2. Pursuant to the Developer's previously disclosed advice, the land was subjected to the following mortgages to finance the acquisition, development and construction of the Project:

(a) Mortgage, Security Agreement and Financing Statement from the Developer to Bank of Hawaii dated June 6, 1978, recorded June 8, 1978, in said Bureau in Liber 12943, Page 361, securing the repayment of \$14,650,000.00, together with interest thereon at the floating rate of 2-1/2% per annum above the prime rate of interest from time to time charged by Bank of Hawaii, and any additional advances and other amounts secured thereby, which sums are due and payable by June 6, 1980, pursuant to the terms and provisions of said mortgage and the note secured thereby.

The terms of the interim loan satisfy the conditions stated in Paragraph 12 of the specimen Sales Contract. Therefore, as was disclosed in the Preliminary Public Report under the heading "Purchase Money Handling", all security interests (including without limitation said Mortgage, Security Agreement and Financing

Statement) obtained by the Bank of Hawaii, as the construction lender, in connection with the construction loan, (as well as any extension, renewals and modifications of such loan), shall be and remain at all times a lien or charge on the Project prior to and superior to any and all liens and charges arising from the Sales Contract or any other prior reservation agreement with a purchaser.

(b) Mortgage from the Developer to John B. Fernandes, Sr., Yashiko Kuboyama, and William E. Fernandes, dated June 5, 1978, recorded June 8, 1978, in said Bureau in Book 12943, Page 342, securing the repayment of \$800,000.00, and any additional advances and other amounts secured thereby, pursuant to the terms and provisions of said mortgage. (Note: Said mortgages hold the mortgage as trustees under Declaration of Trust dated November 29, 1977, recorded June 8, 1978, in said Bureau in Book 12943, Page 356.)

The mortgage in favor of said trustees was subordinated to the mortgage in favor of Bank of Hawaii by Stand-Aside and Subordination Agreement and Limited Power of Attorney.

The Developer again advises that said mortgages will be released prior to any transfer of title to the purchaser.

3. Title to all mineral and metallic mines is reserved to the State of Hawaii.

4. Assessments levied by governmental authority, if any.

NOTE: The condition that Parcel Second of the Land shall be used for factory purposes only, as shown in said Preliminary Title Report, has been changed so that Parcel Second shall be used for residential purposes only. This change in permitted use was accomplished by Agreement to Amend Restrictive Covenant contained in Deed No. 7554, dated December 29, 1978, recorded in said Bureau in Book 13493, Page 641. A copy thereof has been provided the Commission.

Also encumbering the property are said Declaration and By-Laws with Condominium File Plan.

The Developer advises again that the property may be subjected to easements and like encumbrances for utilities and services to the Project, including without limitation utilities and services for the development of additional commercial apartment(s).

PURCHASE MONEY HANDLING: As was stated in the Preliminary Public Report, the specimen Sales Contract provides that it shall operate as a reservation of an apartment in favor of a purchaser, subject to purchaser's continued performance thereof, but not as a binding obligation to purchase, unless and until the purchaser voluntarily receipts for a copy of the Final Public Report on the Project. Accordingly, a purchaser may decline to receipt for a copy of the Final Public Report for any reason and obtain full refund of all moneys previously deposited.

The Developer advises that the Developer's covenant set forth in the specimen Sales Contract to complete the Project within two years after the date of the issuance of the Final Public Report for this Project is subject to extension only by reason of the occurrence of any event outside of the Developer's control making performance by the Developer within said two-year period impossible. Extension for any other reason is hereby waived by Developer.

The Developer also advises that it has waived all options to cancel set forth in the specimen Sales Contract, except the right to cancel in the event the purchaser should be in default (in addition to other rights and remedies stated in the specimen Sales Contract or otherwise available to the Developer), and provided that the Developer reserves the right to terminate a reservation, in the event the prospective purchaser shall fail promptly to receipt for a Final Public Report on the Project. The waived options to cancel include, without limitation, the following options which were disclosed in the Preliminary Public Report:

(a) The option to cancel if the Developer is prevented by law from proceeding with the construction of the Project.

(b) The option to cancel in the event that the Developer sold less than fifty percent (50%) of the apartments by September 30, 1978.

(c) The option to cancel in the event the Developer had not acquired the land is no longer effective as stated under the heading "Ownership to Title".

Also waived is the option to cancel if any governmental body or agency having jurisdiction of the Project should enact or adopt any law which would materially and adversely increase the cost of the Project.

MANAGEMENT AND OPERATIONS: Pursuant to the authority of the Developer set forth in the specimen Sales Contract, the Developer has named Certified Management, a Division of A R Corporation, as the initial managing agent pursuant to Management Agreement dated January 16, 1979, a copy of which is on file with the Commission.

STATUS OF PROJECT: The Developer has named Pacific Construction Co., Ltd., as the general contractor pursuant to Construction Contract effective June 8, 1978, a true copy of which (including

the building plans and specifications) are on file with the Commission. The Construction Contract states that the Developer has the right to order changes in the construction of the Project. It is estimated that pursuant to the Construction Contract, the construction is to be substantially completed on or about September 20, 1979, subject to extensions for certain unforeseen causes outside of the control of the contractor. The Building Permit for the Project has been obtained, and construction has commenced.


The Developer also advises that Honolulu Federal Savings & Loan Association has agreed to provide permanent loans to individual apartment purchasers, upon terms and conditions established by this lender. The Developer disclaims any responsibility and liability for any dealings between purchasers and prospective purchasers and said permanent lender, which is an independent lending institution.

NOTE: Purchasers and prospective purchasers are advised that the Developer has made other modifications and changes to the Declaration, By-Laws and Condominium Conveyance Document which are, in the Developer's opinion of lesser importance, and are not specifically mentioned in this Final Report. Each purchaser and prospective purchaser is advised to read with care these documents and to note all changes made.

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 May 11, 1978, and additional information subsequently filed as of May 9, 1979.

This FINAL HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of Registration No. 987 filed with the Commission on May 11, 1978.

The report, when reproduced, shall be a true copy of the Commission's Public Report. The paper stock used in making facsimilies must be white.



AH KAU YOUNG, CHAIRMAN
REAL ESTATE COMMISSION
STATE OF HAWAII

Distribution:

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

Registration No. 987

May 16, 1979