

REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF REGULATORY AGENCIES

STATE OF HAWAII

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

PRELIMINARY

HORIZONTAL PROPERTY REGIMES (CONDOMINIUM)

PUBLIC REPORT

POIPU BREAKERS

Junction of Poipu and Maa Roads
Poipu, Koloa, Kauai

REGISTRATION NO. 362

IMPORTANT — Read This Report Before Buying

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

It reflects information obtained by the Real Estate Commission in its investigation of the project. This report, based on a principle of disclosure, is issued by the Commission for the purpose of preventing fraud, misrepresentation or deceit.

The developer shall not enter into a binding contract or agreement for the sale of any unit in a Condominium Project but may only take reservations therefore after

- (1) A copy of this Report has been given to the prospective purchaser,
- (2) The latter has been given an opportunity to read same, and,
- (3) His receipt taken therefor.

Issued: February 23, 1971

Expires: March 23, 1972

SPECIAL ATTENTION

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

THE REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED JANUARY 13, 1971 AND ADDITIONAL INFORMATION SUBSEQUENTLY FILED ON FEBRUARY 23, 1971. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF HIS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, CHAPTER 514, HAWAII REVISED STATUTES.

1. Poipu Breakers is a proposed leasehold condominium project consisting of thirty (30) residential apartment units arranged in a five-story hollow tile and reinforced concrete structure, containing six condominium apartment units on each floor, open parking areas, automatic self-operated elevator, and swimming pool. Except for the units on the ground or first floor, all units of the upper four floors are similarly constructed, containing four (4) one-bedroom and two (2) two-bedroom units with covered lanais. The ground or basement floor consists of two (2) two-bedroom apartments, three (3) one-bedroom apartments and a studio apartment, all with open covered lanais.

The common elements include the swimming pool, automatic self-operated elevator, paved visitor parking area located at the project entrance area, the garage structure, all yards, grounds, landscaping and refuse storage areas.

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 Preliminary Public Report.
3. The basic documents (Declaration of Horizontal Property Regime, By-Laws of Association of Apartment Owners and a copy of the approved floor plans) have not been filed in the office of the recording officer.
4. No advertising or promotional matter has been submitted pursuant to rules and regulations promulgated by the Commission.
5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Hawaii Revised Statutes, Chapter 514, and the rules and regulations of the Hawaii Real Estate Commission which relate to Horizontal Property Regimes.
6. This Preliminary Public Report automatically expires thirteen (13) months after date of issuance, February 23, 1971, unless a Supplementary Public Report is published or the Commission, upon review of registration, issues an order extending the effective period of this report.

NAME OF PROJECT: POIPU BREAKERS

LOCATION: The approximate 31,583 square feet of land to be committed to the regime is situated in Poipu Beach, Koloa, County of Kauai, State of Hawaii.

TAX KEY: 2-8-19-11 (Parcel 1st)
2-8-19-16 (Parcel 2nd)

ZONING: Apartment - Resort

DEVELOPER: Poipu Breakers, Inc., Honolulu, Hawaii. Telephone 531-8332. A Hawaii Corporation registered with the Department of Regulatory Agencies, State of Hawaii, on September 15, 1970.

The officers are:

Adolph J. Mendonca, President
336 Alexander Young Bldg., Honolulu, Hawaii

John A. Ferreiro, Vice President
336 Alexander Young Bldg., Honolulu, Hawaii

Jack H. Mizuha, Secretary-Treasurer
336 Alexander Young Bldg., Honolulu, Hawaii

ATTORNEY REPRESENTING DEVELOPER:

Jack H. Mizuha - 336 Alexander Young Bldg.
Honolulu, Hawaii Telephone 533-2941

Arthur S. K. Fong - 334 Alexander Young Bldg.
Honolulu, Hawaii Telephone 531-7660

DESCRIPTION: The proposed Declaration of the Horizontal Property Regime reflects that the project is to consist of thirty (30) residential apartments arranged in a five-story hollow tile and reinforced concrete structure, containing six apartment units on each floor, open parking areas, automatic self-operated elevator and swimming pool. Except for the units on the ground or first floor, all units of the upper four floors are similarly constructed, containing four (4) one-bedroom

and two (2) two-bedroom units with covered lanais. The ground or basement floor consists of two (2) two-bedroom apartments, three (3) one-bedroom apartments and a studio apartment all with open covered lanais.

The apartments other than on the ground floor are as follows:

- (a) Apartments 1 and 6 are two-bedroom apartments containing two bedrooms, living room, kitchen, two bathrooms and an open covered lanai with a floor area of 1,050 square feet including the lanai.
- (b) Apartments 2, 3, 4 and 5 are one-bedroom units containing a bedroom, living room, kitchen and two bathrooms plus the open covered lanai with a floor area of 800 square feet including the lanai.

The apartments on the ground or basement floor contain the following:

- (a) Apartments 001 and 006 are two-bedroom apartments with a floor area of 1,050 square feet including the patio and concrete walk.
- (b) Apartments 002, 003, and 005 are one-bedroom units containing in addition to the bedroom, living room area, kitchen, two bathrooms and covered open patio with a total floor area of 1,000 square feet including a patio and balcony.
- (c) Apartment 004 is a studio apartment containing one bath, kitchen and a covered patio with a total floor area of 500 square feet.

Limits of Units: 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 ceiling surrounding each unit or any pipes, wires, conduits or other utility lines running through such apartment which are utilized for or serve more than one apartment, the same being deemed common elements as hereinafter provided. Each apartment shall include any adjacent lanai or patio shown on said Condominium Map. Each unit shall be deemed to include all the walls and partitions which are not load-bearing within its perimeter walls, window and window frames, the inner decorated or finished surfaces of all walls, floors and ceilings and the air space bounded by the lanai or patio railing and the built-in fixtures including ranges, garbage disposal units, dishwashers and refrigerators.

COMMON ELEMENTS: The common elements will include the limited common element described in the next paragraph and all other portions of the land and improvements other than apartment units, the land on which they are located and all elements mentioned in the Horizontal Property Act which are actually constructed on the land described herein, and specifically which include, but shall not be limited to:

- (a) The land herein described.
- (b) All foundations, columns, girders, beams, supports, bearing walls, corridors, entry halls, stairs, walkways, the paved open parking area of eleven (11) stalls located at the project entrance area, and twenty (20) stalls in the basement area.
- (c) The roofs.
- (d) All yards, grounds, landscaping and refuse storage areas.
- (e) All entrance structures, doors and accessways, entrance driveway, paved exit driveway and exit structure.
- (f) Swimming pool.
- (g) All pipes, cables, conduits, ducts, electrical equipment, wiring and other central appurtenant installations for services such as power, light, water and electric mains, refuse and telephone.
- (h) Automatic self-servicing elevator.

- (i) Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

LIMITED COMMON ELEMENTS: Certain parts of the common elements, herein called and designated as "limited common elements" are hereby set aside and reserved for the exclusive use of certain apartments, and such apartments shall have appurtenant thereto an exclusive easement for the use of such limited common elements. The limited common elements so set aside and reserved are as follows:

The stairway serving an apartment or apartments shall be appurtenant to and for the exclusive use of such apartment or apartments which it serves.

COMMON INTEREST: Each apartment shall have appurtenant thereto an undivided fractional interest, called herein its "common interest" in the common elements for all purposes, including voting, as follows:

<u>Apartment</u>	<u>Common Interest</u>
004	1.73
01 on each floor and 001	3.50
02 on each floor and 002	3.33
03 on each floor and 003	3.33
04 on each floor	3.33
05 on each floor and 005	3.33
06 on each floor and 006	3.50

The proportionate shares in the profits and common expenses of the project and the proportionate representation for voting purposes in the Association of Apartment Owners of the Project shall be in said percentage for each apartment.

EASEMENTS: In addition to any exclusive easements hereby established in the limited common elements, the apartments and common elements shall also have and be subject to the following easements:

1. Each apartment shall have appurtenant thereto non-exclusive easements in the common elements designed for such purposes for ingress to, egress from utility services for, and support, maintenance and repair of such apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided herein; and in all other apartments and limited common elements of its building or structure for support.
2. If any part of the common elements encroaches upon any apartment or limited common element, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall and does exist.
3. The Association of Apartment Owners shall have the right to be exercised by its Board of Directors or the Managing Agent, to enter such apartment and the limited common elements from time to time during reasonable hours as may be necessary for the operation of the project or for making emergency repairs therein necessary to prevent damage to any apartments or common elements.

USE: The apartments shall be occupied and used only as private dwellings for a single family by the respective owners thereof, their tenants, families, domestic servants and social guests and for other purposes unless consent of the Board of Directors is secured.

DEVELOPMENT AGREEMENT: The Development Agreement between the Developer and the Owner provides that the Owner will execute leases directly with Purchasers of apartment units for a term not to exceed seventy-five (75) years. The average lease rendered from apartment buyers to the Owner shall be based on \$35.00 per month for all of the thirty apartment units, or a total of \$1,050 per month fixed rental for the first thirty years on, and of the individual apartment leases. The monthly rental for each apartment unit shall be computed on the Common Interest used and defined in determination of profit and expenses and our voting purposes as provided in pages 5 and 6 of the Declaration of Horizontal Property Regime filed with the Hawaii Real Estate Commission. Thereafter, for the remaining

forty-five years, the rental shall be fixed at fifteen-year intervals by mutual agreement between the apartment buyers and the owner, or, if necessary, by appraisal and arbitration.

This agreement becomes null and void in the event developer does not obtain all necessary governmental approval and permits for construction and development by April 9, 1972.

OWNERSHIP OF TITLE: A Certificate of Title issued March 16, 1967 and Continuations of Certificate of Title dated October 16, 1967 and January 29, 1971 prepared by Title Guaranty of Hawaii, Incorporated, certifies that Victor Vallies has fee title to the land committed to the project, and that Poipu Breakers, Inc., by assignment of a development agreement holds the development right on said property granted by said Victor Vallies. The Development Agreement, as amended, states that the owner will execute leases directly with purchasers of said units for a term not to exceed 75 years.

ENCUMBRANCES AGAINST TITLE: The Certificate of Title and Continuations of Certificate of Title identifies the following:

1. Mortgage by Victor Vallies to Central Pacific Bank, dated March 10, 1967, recorded in Liber 5605 Page 30.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines as reserved in Royal Patent Grant No. 1416.
3. Perpetual Easement as an appurtenance to other lands for road and utilities purposes over a 16-foot wide portion of Parcel 2nd, containing 1,775 square feet, and excepting and preserving therefrom the existing pipeline within said easement.
4. Additional Charge Mortgage by Victor Vallies to Central Pacific Bank, dated October 15, 1967, recorded in Liber 5830 Page 473.
5. Real Property Taxes that may be due and owing and a lien on the land under search.
6. Development Agreement between Victor Vallies, "Owner", and Adolph J. Mendonca, "Developer", dated March 8, 1969, recorded in Liber 6591 Page 121.
7. Amendment to Development Agreement and Addendum, dated December 10, 1970, recorded in Liber 7377, Page 224.
8. Assignment of Development Agreement between Adolph J. Mendonca, "Assignor", and Poipu Breakers, Inc., a Hawaii Corporation, "Assignee", dated December 17, 1970, recorded in Liber 7377 Page 227. Consent dated December 11, 1970, recorded in Liber 7377 Page 230.
9. Circuit Court Judgment against Adolph J. Mendonca and Violet G. Mendonca "Defendants" dated January 16, 1969, recorded in Liber 6384 Page 237.

PURCHASE MONEY HANDLING: A copy of the executed Escrow Agreement dated November 15, 1970, identifies First Hawaiian Bank as the Escrow Agent. On examination the specimen Contract of Sale and the executed Escrow Agreement are found to be in compliance with Hawaii Revised Statutes, Chapter 514, and particularly Hawaii Revised Statutes, Section 514-36 through Section 514-40.

Among other provisions the executed Escrow Agreement states that a purchaser under contract of sale is covered by Sections 514-36 through 514-39 (Hawaii Revised Statutes, as amended).

It is incumbent upon the purchaser and prospective purchaser that he reads with care the Agreement of Sale and the executed Escrow Agreement. The Escrow Agreement establishes how the proceeds from the dwelling units and all sums received from any source are placed in trust, as well as the retention and disbursement of said trust funds. Among other provisions, the Escrow Agreement provides that, if (a) at any time Escrow received a request in writing from Seller to return to a

Purchaser under a sales contract the funds of such Purchaser then held hereunder by Escrow, or (b) prior to the time the Final Report is issued, the Purchaser shall request in writing the return of his funds so deposited or there shall be any change in the building plans requiring approval of a City and County official having jurisdiction of the issuance of building permits, and the Purchaser's written approval of such change has not been obtained, or (c) the Final Report is not issued within one year from the date of the Preliminary Report, as required by Section 514-39 Hawaii Revised Statutes, Escrow shall, upon receipt of such request, or after such one-year period pay said funds to said Purchaser without interest and thereupon said sales contract and any apartment lease theretofore delivered to Escrow shall be returned to Seller and shall be deemed no longer held thereunder.

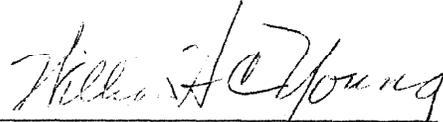
MANAGEMENT AND OPERATIONS: The By-Laws empower the Board of Directors with the services of a person or firm to manage the Horizontal Property Regime. No property manager has been identified in the notice of intention to sell. Holiday Management Corporation has, however, indicated an interest contract has been executed.

STATUS OF PROJECT: No building contract has been executed. In the Notice of Intention to Sell, Developer states the construction will commence after sale of 80% of apartments and issuance of the Commission's Final Public Report.

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 (January 13, 1971), and additional information subsequently filed as late as February 23, 1971.

This PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 362 filed with the Commission on January 13, 1971.

The report, when reproduced, shall be a true copy of the Commission's Public Report. In making facsimiles the paper stock shall be yellow in color.



for Douglas R. Sodeani, Chairman
REAL ESTATE COMMISSION
State of Hawaii

Distribution:
DEPARTMENT OF TAXATION
BUREAU OF CONVEYANCES
PLANNING COMMISSION, COUNTY OF KAUAI
FEDERAL HOUSING ADMINISTRATION
ESCROW AGENT

Date: February 23, 1971

Registration No. 362