

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

on

THE BANYAN TREE
Alii Drive
Holualoa, North Kona, Hawaii

REGISTRATION NO. 828

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: December 23, 1975
Expires: January 23, 1977

SPECIAL ATTENTION

A comprehensive reading of this report 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 DECEMBER 5, 1975 AND ADDITIONAL INFORMATION SUBSEQUENTLY FILED WITH THE COMMISSION AS OF DECEMBER 9, 1975. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT SET FORTH IN CHAPTER 514, HAWAII REVISED STATUTES.

1. THE BANYAN TREE is a proposed fee simple condominium project consisting of twenty apartment units contained in one four-story building. There are a total of 25 parking stalls.
2. The Developer of the project has submitted to the Commission for examination all documents deemed necessary for the registration of the condominium project and the issuance of this Preliminary Public Report.

3. The Developer reports that the basic documents (Declaration of Horizontal Property Regime, with By-Laws of the Association of Apartment Owners attached, and a copy of the approved Floor Plans) have not been filed in the office of the recording officer.
4. Advertising and promotional matter have not 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 514, Hawaii Revised Statutes and the Condominium Rules and Regulations which relate to Horizontal Property Regime.
6. This Preliminary Public Report automatically expires on January 23, 1977, unless a final or supplementary report is published or the Commission, upon review of the registration, issues an order extending the effective period of this report.
7. This Preliminary Public Report is made a part of the registration of THE BANYAN TREE condominium project. The Developer has the responsibility of placing a true copy of the Preliminary Public Report (yellow paper stock) in the hands of all purchasers or prospective purchasers. It is also the responsibility of the Developer to secure a signed copy of the receipt for the Preliminary Public Report from each purchaser or prospective purchaser, signifying that he has had an opportunity to read the report.

NAME OF PROJECT: THE BANYAN TREE

LOCATION: The 25,360 square feet of land committed to the Regime is located on Alii Drive at Holualoa, District of North Kona, Island of Hawaii, State of Hawaii.

Note: Said area is based on a September, 1975 survey of the parcel by Jerry S. Nakagawa of William Hee & Associates, Inc. and supercedes the area of 25,489 square feet referred to in the Developer's Notice of Intention, Sub-Agreement of Sale and the Escrow Agreement.

TAX KEY: THIRD DIVISION 7-6-14-14.

ZONING: V-125

DEVELOPER: Naoki Tokuhisa, 1792 Main Street, Wailuku, Maui, Hawaii, Telephone - 244-7152; Edgar D. Kerr, 359-B R.R. 1, Wailuku, Maui, Hawaii, Telephone - 879-2444; Mary L. Bishop, 1975 South Kihei Road, Kihei, Maui, Hawaii, Telephone - 879-2444.

ATTORNEYS REPRESENTING DEVELOPER: LANGA & KOHNE (Attention: Guy P. D. Archer), Wailuku Townhouse Building, Wailuku, Maui, Hawaii. Telephone - 244-9168.

DESCRIPTION: The proposed Declaration of Horizontal Property Regime states that the project is to consist of twenty apartments in one building as follows:

- A. APARTMENTS: Twenty apartment units are designated, comprised of the spaces within the center planes of the perimeter walls, floors and ceilings of each of twenty apartment units of the Project, all of which are contained in one concrete and wood frame building. The numbered units are as follows:

(1) Each apartment contains two bedrooms, two bathrooms, living room, kitchen, foyer, lanai and approximate floor area, including lanai, according to its respective plan as follows:

- (a) Three apartments contain approximately 1,168 square feet and are designated as Apartments 200, 300 and 400.
- (b) Three apartments contain approximately 1,164 square feet and are designated as Apartments 201, 301 and 401.
- (c) Six apartments contain approximately 1,220 square feet and are designated as Apartments 202, 302, 402, 203, 303 and 403.
- (d) Three apartments contain approximately 1,236 square feet and are designated as Apartments 204, 304 and 404.
- (e) Three apartments contain approximately 1,116 square feet and are designated as Apartments 205, 305 and 405.
- (f) Two apartments contain approximately 1,219 square feet and are designated as Apartments 306 and 406.

(2) The type of each apartment is set forth below:

<u>Type</u>	<u>Apartment Numbers</u>
A	200, 300, 400
B	201, 301, 401
C	202, 302, 402 203, 303, 403 204, 304, 404
D	205, 305, 405
E	306, 406

- (3) Apartments numbered 200 through 205 are on the second floor of the building. Apartments numbered 300 through 306 are on the third floor of the building. Apartments numbered 400 through 406 are on the fourth floor of the building.
- (4) The apartments are located in the manner shown on the set of floor plans filed with the Commission.
- (5) The respective apartments shall not be deemed to include any pipes, wires, conduits, or other utility lines running through such apartments which are utilized for or serve more than one apartment, the same being deemed common elements as hereinafter provided. Each apartment shall be deemed to include all the walls and partitions within its perimeter, appliances and fixtures.

COMMON ELEMENTS: One freehold estate is designated of all remaining portions of the project, called "common elements", including specifically, but not limited to:

- (1) Said land in fee simple;
- (2) All foundations, basement areas, columns, girders, beams, supports, bearing walls, roofs, chases entries and walkways of said buildings;
- (3) All yards, grounds and landscaping;
- (4) Five parking spaces and driveways;
- (5) All ducts, electrical equipment, wiring and other central and appurtenant installations including power, light, water, sewage treatment system, water sprinkling system and telephone;
- (6) Recreation area, swimming pool, office, mailboxes, refuse facilities and well sites.

LIMITED COMMON ELEMENTS: Certain parts of the common elements, called and designated "limited common elements", are set aside and reserved for the exclusive use of certain apartments, and said 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:

A parking stall or stalls as shown on said Condominium Map and any amendments thereto shall be appurtenant to such apartment as a limited common element. The Developer reserves the right, without the consent or joinder of anyone else having any interest in the project, to amend said Condominium Map one or more times in order to designate which parking stalls are appurtenant to apartments as provided in the preceding sentence as well as to designate the guest parking stalls.

COMMON INTEREST: The common interest, the proportionate share 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 5% for each apartment, and each apartment shall have appurtenant thereto an undivided 5% interest.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The proposed Declaration specifies that the apartments shall be used and occupied only as private dwellings by the respective owners, their tenants, families, domestic servants and social guests.

OWNERSHIP OF TITLE: A Certificate of Title dated November 26, 1975 prepared by Title Guaranty of Hawaii, Incorporated, certifies that Frank P. Krieger, Jr. and Lillia F. Krieger, husband and wife, have title to the land committed to the project.

ENCUMBRANCES AGAINST TITLE: Said Certificate of Title dated November 26, 1975 by Title Guaranty of Hawaii, Incorporated, certifies that there are no liens or encumbrances of whatever kind or nature of record against the title, save and except the following:

- (1) Agreement of Sale dated April 17, 1970, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 6997, Page 7, by and between said Frank P. Krieger, Jr. and Lillia F. Krieger, as Vendors, and Herbert J. Shanahan and Hazel L. Shanahan, as Vendees.
- (2) Sub-agreement of Sale dated November 20, 1974, recorded in said Bureau of Conveyances in Liber 10256, Page 376, by and between said Herbert J. Shanahan and Hazel L. Shanahan, as Sub-Vendors, and Naoki Tokuhisa, husband of Rose Tokuhisa, Edgar D. Kerr, husband of Ingrid L. Kerr, and Mary L. Bishop, unmarried, as Sub-Vendees.
- (3) Any real property taxes for the fiscal year July 1, 1975 to June 30, 1976 which may be due and owing.
- (4) The reservation in favor of the State of Hawaii of all mineral and metallic mines.
- (5) The location of the seaward boundary in accordance with the law of the State of Hawaii.
- (6) Pedestrian right of way.

PURCHASE MONEY HANDLING: A copy of the executed Escrow Agreement dated December 5, 1975 identifies Title Guaranty Escrow Services, Incorporated, as the escrow agent. On examination, the specimen Sales Contract and the executed Escrow Agreement are found to be in compliance with Sections 514-36 through 514-40, Hawaii Revised Statutes.

Among other provisions, the executed Escrow Agreement states that a purchaser under contract of sale, upon written request, shall be entitled to a refund of all moneys deposited with Escrow, without interest, and less Escrow's cancellation fee, if any of the following events shall have occurred:

- (1) Escrow receives a written request from Seller to return to Purchaser the funds of such Purchaser; or
- (2) If a Purchaser's funds were obtained prior to the issuance of a final public report and if there is any change in the condominium building plans, subsequent to the execution of Purchaser's sales agreement, requiring the approval of a county officer having jurisdiction over the issuance of permits for construction of buildings, unless the Purchaser has given written approval or acceptance of the specific change; or
- (3) If the Final Public Report differs in any material respect from the preliminary public report, unless the Purchaser has given written approval of acceptance of the difference; or
- (4) If the Final Public Report is not issued within one year from the date of issuance of the preliminary public report.

Among other provisions the specimen Deposit Receipt and Contract provides that in the event that less than 75% of the apartments are sold prior to issuance of the Final Public Report, Seller may at its option cancel said Contract, refund to Buyer all moneys paid, and be relieved and released of all further liability thereunder. Further, said specimen Contract provides that Developer

shall have the right to mortgage the land and improvements to any recognized lending institution for any purpose, and that such mortgage shall have priority over any interest that a purchaser may obtain by way of such contract, provided that prior to the conveyance of the apartment to a purchaser, the Developer will cause such apartment to be released from any such mortgage.

The specimen Deposit Receipt and Contract states that the terms of the Escrow Agreement are made a part of the Contract of Sale by reference. It is incumbent upon the purchaser and prospective purchaser that he reads with care the Deposit Receipt and Contract 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.

MANAGEMENT AND OPERATIONS: The By-Laws vest the Board of Directors with the authority to acquire and pay for 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.

STATUS OF PROJECT: The Developer reports that the estimated start of construction will be July 1, 1976 and the estimated completion date is December 31, 1976.

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 December 5, 1975 and additional information subsequently filed with the Commission as of December 9, 1975.

This PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 828 filed with the Commission on December 5, 1975.

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


(for) DOUGLAS R. SODEIANI, Chairman
REAL ESTATE COMMISSION
STATE OF HAWAII

DISTRIBUTION:

DEPARTMENT OF TAXATION
BUREAU OF CONVEYANCES
PLANNING DEPARTMENT,
COUNTY OF HAWAII
FEDERAL HOUSING ADMINISTRATION
ESCROW AGENT

REGISTRATION NO. 828
December 23, 1975