

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 WHALER ON KAA NAPALI BEACH  
Kaanapali, Maui, Hawaii

REGISTRATION NO. 608

**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: October 23, 1973  
Expires: November 23, 1974

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 AUGUST 16, 1973 AND INFORMATION SUBSEQUENTLY FILED AS OF OCTOBER 19, 1973. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF CHAPTER 514, HAWAII REVISED STATUTES.

1. The Whaler on Kaanapali Beach is a proposed leasehold condominium project consisting of one (1) tower, a basement and an underground parking garage, designated as Tower One. Tower One shall be constructed of precast reinforced concrete panels, and shall consist of twelve (12) floors and a basement. There are fifteen (15) apartments on each floor. There are a total of one hundred eighty (180) residential apartment units, and two hundred sixty (260) parking spaces.

2. The Developer of the project has submitted to the Commission for examination all documents deemed necessary for the issuance of this Preliminary Public Report.
3. No advertising or promotional matter has been submitted pursuant to the rules and regulations promulgated by the Commission.
4. 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 recorded in the office of the recording officer.
5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Chapter 514 of the Hawaii Revised Statutes and the condominium rules and regulations which relate to horizontal property regimes.
6. This Preliminary Public Report automatically expires thirteen (13) months after date of issuance, October 23, 1973, unless a Supplementary Public Report issues or the Commission, upon review of the registration issues an order extending the effective period of this Report.

NAME OF PROJECT: The Whaler on Kaanapali Beach.

LOCATION: The land submitted to the Regime, approximately 6.67 acres, is located in Kaanapali Parkway, Lahaina, Maui.

TAX MAP KEY: SECOND DIVISION, 4-4-08-2.

ZONING: H-2

DEVELOPER: Kaanapali Properties, a registered Hawaii joint venture, whose address is P. O. Box 3230, Honolulu, Hawaii, composed of West Maui Properties, Inc., a Hawaii corporation, 700 Bishop Street, Honolulu, Hawaii (Tel: 546-8144) and Kaanapali Realty Co. Inc., a Washington corporation, 1125 Denny Building, Seattle, Washington 98121 (Tel: (206)682-2143).

ATTORNEY REPRESENTING DEVELOPER: CARLSMITH, CARLSMITH, WICHMAN AND CASE, Pacific Trade Center, 22nd Floor, Honolulu, Hawaii 96813 (Attention: James W. Boyle and Gerald A. Sumida), telephone number 531-2071.

DESCRIPTION: The land will be improved, according to the Developer's plans and intention to sell, by constructing thereon a tower, with a basement and underground parking garage, consisting of twelve (12) floors with fifteen (15) apartments on each floor. In addition, the project will contain a swimming pool and other recreational facilities, walkways, driveways, and outdoor parking areas. Each unit will include built-in fixtures as chosen by the purchaser from the options provided by the Developer. The respective apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter walls, interior load-bearing walls, or the interior party walls, the floors and ceiling surrounding each apartment or any pipes, shafts, wires,

conduits or other utility or service 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 be deemed to include all the walls and partitions which are not load-bearing within its perimeter walls, the inner decorated or finished surfaces of all walls, floors and ceilings, any doors, windows or panels along the perimeters, and the lanai to which each apartment has direct exclusive access. Each apartment also includes all fixtures and carpets originally installed therein.

1. Building Description. The project will consist of one tower containing twelve (12) floors, a basement and an underground parking garage.
2. Materials. The tower will be constructed primarily of precast reinforced concrete panels.
3. Description, Area and Numbering of Units. There are 180 apartments in Tower One, with 15 apartments per floor. There are seven apartment unit types ("Unit") designated as Units A, B, C, D, E, F and G, which are more particularly described below.

(a) Unit A consists of a single floor apartment dwelling unit containing 2 bedrooms, 2 bathrooms, kitchen, living room, dining room and storage closet as well as appurtenant clothes and utility areas, and a lanai totalling 508 square feet. The enclosed floor area is 1,444 square feet; the gross floor area including lanai is 1,952 square feet. There are two Unit A apartments per floor, each of which is a mirror image of the other, and 24 Unit A apartments in Tower One.

(b) Unit B consists of a single floor apartment dwelling unit containing 1 bedroom, 1 bathroom, living room, kitchen, storage closet, appurtenant clothes and utility areas and a lanai totalling 213 square feet. The enclosed floor area is 901 square feet; the gross floor area including lanai is 1,114 square feet. There are two Unit B apartments per floor, and 24 Unit B apartments in Tower One.

(c) Unit C consists of a single floor apartment dwelling unit containing 1 bedroom, 2 bathrooms, living room, kitchen, storage closet, appurtenant clothes and utility areas and a lanai totalling 213 square feet. The enclosed floor area is 905 square feet; the gross floor area including lanai is 1,118 square feet. There are four Unit C apartments per floor, and 48 Unit C apartments in Tower One.

(d) Unit D consists of a single story apartment dwelling unit containing 1 bedroom, 2 bathrooms, living room, kitchen, storage closet and appurtenant clothes and utility areas, and a lanai totalling 408 square feet. The enclosed floor area is 941 square feet; the gross floor area including lanai is 1,349 square feet. There is one Unit D apartment per floor, and 12 Unit D apartments in Tower One.

(e) Unit E consists of a single story apartment dwelling unit containing 1 bedroom, 2 bathrooms, living room, kitchen, storage closet and appurtenant clothes and utility areas, and a lanai totalling 346 square feet. The enclosed floor area is 905 square feet; the gross floor area including lanai is 1,251 square feet. There is one Unit E apartment per floor, and 12 Unit E apartments in Tower One.

(f) Unit F consists of a single floor apartment dwelling unit containing a combination of bedroom/living room, 1 bath, kitchen, storage closet and appurtenant clothes and utility areas, and a lanai totalling 98 square feet. The enclosed floor area is 542 square feet; the gross floor area including lanai is 640 square feet. There are three Unit F apartments per floor, and 36 Unit F apartments in Tower One.

(g) Unit G consists of a single floor apartment dwelling unit containing a combination of bedroom/living room, 1 bath, kitchen, storage closet and appurtenant clothes and utility area, and a lanai totalling 98 square feet. The enclosed floor area is 523 square feet; the gross floor area including lanai is 621 square feet. There are two Unit G apartments per floor, and 24 Unit G apartments in Tower One.

Each apartment number has three digits for apartments located on floors 1 through 9, and four digits for apartments located on floors 10 through 12. The first digit for apartments located on floors 1 through 9, and the first and second digits for apartments located on floors 10 through 12 indicate the floor on which the apartment is located. The last two digits in all apartment numbers indicate the position of the apartment on its floor. The apartments on each floor are numbered sequentially from one end of a floor to the other. For example, the apartment numbered 1001 is located at the extreme end of the tenth floor, and the apartment numbered 1013 is in approximately the center of the tenth floor. The plan for each apartment and apartment numbers are listed below.

<u>Apartment Unit Type</u>	<u>Apartment Numbers</u>
A	102, 121, 202, 221, 302, 321, 402, 421, 502, 521, 602, 621, 702, 721, 802, 821, 902, 921, 1002, 1021, 1102, 1121, 1202, 1221
B	119, 120, 219, 220, 319, 320, 419, 420, 519, 520, 619, 620, 719, 720, 819, 820, 919, 920, 1019, 1020, 1119, 1120, 1219, 1220

<u>Apartment Unit Type</u>	<u>Apartment Numbers</u>
C	105, 106, 109, 110, 205, 206, 209, 210, 305, 306, 309, 310, 405, 406, 409, 410, 505, 506, 509, 510, 605, 606, 609, 610, 705, 706, 709, 710, 805, 806, 809, 810, 905, 906, 909, 910, 1005, 1006, 1009, 1010, 1105, 1106, 1109, 1110, 1205, 1206, 1209, 1210
D	101, 201, 301, 401, 501, 601, 701, 801, 901, 1001, 1101, 1201
E	124, 224, 324, 424, 524, 624, 724, 824, 924, 1024, 1124, 1224
F	114, 116, 118, 214, 216, 218, 314, 316, 318, 414, 416, 418, 514, 516, 518, 614, 616, 618, 714, 716, 718, 814, 816, 818, 914, 916, 918, 1014, 1016, 1018, 1114, 1116, 1118, 1214, 1216, 1218
G	113, 115, 213, 215, 313, 315, 413, 415, 513, 515, 613, 615, 713, 715, 813, 815, 913, 815, 1013, 1015, 1113, 1115, 1213, 1215

USE: The Declaration provides that the apartments shall be occupied and used only as private dwellings by the respective owners thereof, their tenants, families, domestic servants, and social guests, and for no other purpose.

COMMON ELEMENTS: The common elements will include the limited common elements described in the next topical heading, LIMITED COMMON ELEMENTS, and all other portions of the project other than the apartments, and all elements mentioned in the Horizontal Property Act which are actually included in the project including specifically but not limited to:

- (a) The land in fee simple described in Exhibit A attached to the Declaration;
- (b) All foundations, floor slabs, columns, girders, beams, supports, unfinished perimeter and load-bearing walls, chasis, entries and roofs;

(c) All yards, grounds, landscaping, the swimming pool and other recreational facilities, laundry facilities; all refuse facilities, mail boxes, patio slabs and rock gardens; and all storage lockers.

(d) All parking areas and spaces, driveways and walkways.

(e) All ducts, electrical equipment, central water heating system, wiring, pipes and other central and appurtenant transmission facilities installations over, under and across the project which serve more than one apartment for such services such as power, light, water, gas, sewer, telephones and radio and television signal distribution.

(f) 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 called "Limited Common Elements", are set aside and reserved for the exclusive use of certain apartments, and such apartments shall have appurtenant thereto easements for the use of such limited common elements as follows:

(a) The planters located on or separating the lanais which are part of apartments shall be appurtenant to each such apartment or apartments.

INTEREST TO BE CONVEYED TO PURCHASER: Subject to reduction pursuant to paragraph 23 of the Declaration with respect to the construction of Tower Two, each Tower One apartment shall have appurtenant thereto an undivided percentage interest in all common elements of the project and the same proportionate share in all common profits and expenses of the project and for all other purposes including voting as set forth below.

<u>Apartment Unit Type</u>	
A	0.93805
B	0.58531
C	0.58791
D	0.61129
Note: Apartment 1201 only	0.61133
E	0.58791
F	0.35209
G	0.33975

OWNERSHIP TO TITLE: The notice of intention reflects that title to the land is vested in Amfac, Inc., a Hawaii corporation, as trustee for Developer under Declaration of Trust, dated October 11, 1972, and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii on October 13, 1972, as Document No. 602139.

ENCUMBRANCES AGAINST TITLE: The Developer has filed with the Commission a Preliminary Title Report prepared by Hawaii Escrow and Title Inc., dated July 27, 1973 and updated as of October 15, 1973. The report reflects the following:

(a) RESERVATION of all mineral or metallic mines of every description to the Hawaiian Government; said reservation, however, being subject to that certain covenant that neither the State of Hawaii nor persons authorized by it will enter, occupy or use the said land for the exercise of the reserved mineral and mining rights for a period of 75 years from January 1, 1960, as contained in the certain instrument dated January 29, 1960 and recorded in the Office of the Registrar of Conveyances in Book 3822, Pages 37-40.

(b) EASEMENT "6" for utility purposes, as shown on Maps 2 and 12, as set forth by Land Court Order No. 18960, filed April 27, 1961;

(c) EASEMENT "32", for storm drainage purposes, over and across Lot 49 shown on Map 12, and set forth by Land Court Order No. 27504;

(d) RESERVATION IN DEED executed by PIONEER MILL COMPANY, LIMITED, a Hawaii corporation, in favor of Amfac, Inc., a Hawaii corporation, dated October 11, 1967, filed October 16, 1967 as Land Court Document No. 428919;

(e) DECLARATION OF TRUST dated October 11, 1972, filed October 13, 1972 as Land Court Document No. 602139, pursuant to which Amfac, Inc., a Hawaii corporation, holds said property, including any after acquired interest therein, until December 31, 2051, as Trustee for Developer.

(f) MORTGAGE executed by Amfac, Inc., a Hawaii corporation, as owner in fee simple of the said property, and as Trustee for the Developer, under and by virtue of that certain Declaration of Trust dated October 11, 1972 and filed as Land Court Document No. 602139, and Developer, in favor of Amfac Financial Corporation, a corporation, in the amount of \$10,000,000.00 dated August 7, 1973 and filed August 14, 1973 as Land Court Document No. 643810.

NOTE: As provided in the Declaration, the Developer has reserved the right, to be exercised not later than December 31, 1983, to: Withdraw a certain area of land from the project; build a second apartment tower on the project substantially similar to Tower One; change floor plans and apartment sizes; grant easements for utilities, sanitary and storm sewers,

cable television, and rights-of-way, and relocate or realign any existing easements, rights-of-way and including without limitation, any existing utilities, sanitary sewer lines and cable television and connect same over, under, and on the common elements.

1. Reservation of Right to Construct Tower Two. The Declaration reserves the right in the Developer, at its option, to construct a second tower ("Tower Two"), the south one-half of the parking garage and appurtenant common elements, which construction must begin on or before December 31, 1983, or the reserved rights shall lapse. It is presently intended that Tower Two shall consist of twelve stories and a basement; however, if the applicable governmental law and rules and regulations governing zoning, building requirements, and the like in effect at the time of the proposed construction require a reduction in the size of Tower Two, or permit an expansion in the size of Tower Two, then the Developer reserves the right to reduce or expand the size of Tower Two, in the Developer's discretion. The present plans for Tower Two are substantially in the form as the plans for Tower One, except that no designation of specific individual apartments has been made. The Developer reserves the right to determine hereafter the number, type, and design of apartments on each floor of Tower Two. The Developer also reserves the right to alter the exterior of Tower Two to conform to the interior design thereof, provided that such exterior design and appearance is harmonious with the exterior design and appearance of Tower One. When the Developer files the amendment to the declaration to include the Tower Two apartments, the Tower One and Tower Two apartment owners shall constitute one association of owners. The common interest appurtenant to each Tower One apartment shall be decreased and the common interest appurtenant to each Tower Two apartment shall be allocated so that after said decrease and allocation the common interest appurtenant to each apartment shall be of the same ratio to the total of common interest appurtenant to all apartments combined as the gross area of each said apartment bears to the total gross area of all apartments combined. The common area assessments shall be prorated between the Tower One and Tower Two apartments as of the first day of the calendar month following the month in which the Tower Two amendment is filed. The Developer shall be responsible for all real property taxes attributable to the area reserved for Tower Two until the Tower Two amendment is filed, at which time it will be prorated between the Tower One and Tower Two apartments, or upon termination of the reserved right (assuming the withdrawal right has not been exercised with respect to the land as set forth below) at which time the Tower One apartments shall be responsible for the property taxes thereafter. The purchaser or prospective purchaser is referred to paragraph 23 of the Declaration for a complete explanation of the terms and conditions of the reservation of this right to construct Tower Two.

2. Reserved Right to Withdraw Area. The Declaration also provides for the right in the Developer, at its option, to withdraw all or any portion of the land area reserved for the Tower Two apartments, portion of the parking garage, and other common area amenities, to be exercised on or before December 31, 1983, if the Tower Two reserved right is not exercised. The Declaration provides that to insure fairness and certainty to all apartment owners in the exercise of Developer's rights under paragraph 24, Developer agrees to submit its proposed amendment to the Declaration and the plans to the Board of Directors of the Association for approval prior to filing such amendment in the Office of the Assistant Registrar of the Land Court of the State of Hawaii; and the Board of Directors shall have sixty (60) days to comment and work out final agreement on such amendment, and if a final agreement cannot be reached with the Developer by a vote of the majority of the Directors then in office, then the Developer agrees to submit any such disagreement to binding arbitration in accordance with the rules of the American Arbitration Association to be decided in accordance with the purpose and intent of paragraph 24. The purchaser or prospective purchaser is referred to paragraph 24 for a complete explanation of the terms and conditions of the Developer's reserved right to withdraw the land.

PURCHASE MONEY HANDLING: A copy of the Escrow Agreement, dated August 9, 1973, between Hawaii Escrow and Title Inc., a Hawaii corporation, as "Escrow" and the Developer as "Seller" has been submitted to the Commission as part of the registration. On examination the Sales Contract, in specimen form, and the executed Escrow Agreement are found to be in compliance with Chapter 514, Hawaii Revised Statutes, and particularly Section 514-15(b).

The provisions of the Escrow Agreement are to be carefully read and understood as follows:

If at the time of the execution of the Sales Contract a Final Report has not been issued by the Commission with respect to the project, then the following limitations shall apply:

(a) Purchaser's funds obtained prior to the issuance of a Final Report shall be refunded if there is any change in the condominium building plans subsequent to the execution of the Sales Contract, which change requires the approval of a county officer having jurisdiction over the issuance of permits for construction of buildings, unless purchaser's written approval or acceptance of the specific change is obtained.

(b) All rights under the Sales Contract shall not become enforceable against the purchaser until the purchaser has had a full opportunity to read the State Real Estate Commission's Final Public Report on the project, and to obtain refund of any moneys paid by the

purchaser as well as release from all obligations under the Sales Contract if the Final Report differs in any material respect from the Preliminary Report.

(c) If the Final Public Report is not issued within one year from the date of the issuance of said Preliminary Report, the purchaser shall be entitled to refund of all moneys paid by him under the Sales Contract without further obligation.

(d) All moneys paid by the purchaser prior to the issuance of said Final Report shall be deposited in trust with the Escrow and the Escrow is hereby instructed that no disbursements shall be made from such trust fund on behalf of the Seller until the Sales Contract has become effective, and the requirements of Sections 514-36 through 39, Hawaii Revised Statutes, have been met.

Also the specimen Sales Contract provides that if construction of the Tower in which the apartment covered by the Sales Contract is located is not completed on or before October 15, 1975, either Seller or the Buyer may upon fifteen (15) days written notice to the other, terminate the sales contract and all sums paid by the Buyer hereunder shall be refunded without interest.

The specimen Sales Contract further provides that if any governmental body or agency having jurisdiction over the project should enact or adopt any law, ordinance, rule or regulation which would materially increase the cost of the project, and if the effective date of such law, ordinance, rule or regulation occurs between the date of execution of the Sales Contract and the date of closing, the Seller has the right, to be exercised within sixty (60) days of the enactment or adoption of such law, ordinance, rule or regulation, to (a) bear the increased cost, in which case the Buyer shall waive any rescission rights contained in the Sales Contract and shall be limited solely to rescission rights provided in Chapter 514, Hawaii Revised Statutes, or (b) rescind the Sales Contract if the Seller chooses not to bear such increased cost. Upon such rescission, all moneys paid by the Buyer under the Sales Contract shall be refunded, without interest or any deduction, and the parties thereunder shall be fully released from all obligations to each other thereunder.

It is incumbent upon the purchaser and the prospective purchaser that he reads, with care, the Sales Contract and the executed Escrow Agreement. The Escrow Agreement establishes how the proceeds from the sale of apartments and all sums from any source are placed in trust, as well as the retention, disbursement and refund of said trust funds.

MANAGEMENT OF THE PROJECT: The By-Laws of the Association of Apartment Owners vest in the Board of Directors the powers and duties necessary for the administration of the overall affairs of the project. The said By-Laws specify that the

presence at any meeting in person or by proxy of owners of apartments to which are appurtenant more than 50 percent of the common interests as established by the Declaration shall constitute a quorum and at any meeting in which a quorum is present, action by a majority of the voting power represented at such meeting shall be valid and binding on the Association except as otherwise provided in the Declaration or the By-Laws. Voting shall be on a percentage basis; the percentage of the total vote to which each apartment unit is entitled shall be the same as the percentage of the common interests assigned to such apartment unit in the Declaration; and any percentage of apartment unit owners specified in the By-Laws means the owners of apartment units to which are appurtenant such percentage of the common interest. The Board of Directors of the Association of Apartment Owners may employ necessary personnel to carry out the management and operation of the project. The Sales Contract permits the Developer to appoint a corporate managing agent to manage the project until the election of the Board of Directors.

STATEMENT OF FINANCING: Amfac, Inc., a Hawaii corporation, as owner in fee simple of the property, and as Trustee for the Developer under and by virtue of that certain Declaration of Trust dated October 11, 1972 and filed as Land Court Document No. 602139, and Developer have executed a mortgage in favor of Amfac Financial Corporation, a corporation, dated August 7, 1973 and filed as Land Court Document No. 643810, in the amount of \$10,000,000.00 to finance construction of the project.

STATUS OF PROJECT: The Developer is also the contractor and it expects to commence construction shortly.

NOTE: The specimen Sales Contract specifically states that Seller has made no representations with respect to its renting or managing the apartment on Buyer's behalf, and if Buyer wishes to rent the apartment to third persons, Buyer will make its own arrangements to do so; and that Buyer acknowledges that it has been informed that none of Seller's agents are authorized to make any representations concerning the foregoing.

-----  
The purchaser or prospective purchaser should be cognizant of the fact that this published report represents information disclosed by Developer in the required notice of intention filed August 16, 1973 and information subsequently filed as of October 19, 1973.

This PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 608 filed with the Commission on August 16, 1973.

This report, when reproduced, shall be a true copy of the Commission's public report. The paper stock used in making facsimiles shall be yellow in color.

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

Distribution:

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

DATE: October 23, 1973

Registration No. 608