

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

(TOWER TWO)

Kaanapali, Maui, Hawaii

Registration No. 642

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: January 9, 1974
Expires: February 8, 1975

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 11, 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 two (2) towers, each with a basement, and an underground parking garage. The towers shall be substantially identical and shall be designated as Tower One and Tower Two. Each tower shall be constructed of pre-cast reinforced concrete panels and shall consist of twelve (12) floors and a basement. Each tower has fifteen (15) apartments on each floor, and a

total of one hundred eighty (180) residential apartment units. Both towers have a combined total of 360 apartment units, and the project contains a total of two hundred sixty (260) parking spaces.

NOTE: The Commission, on the basis of documents previously submitted to it by the Developer, previously issued a Preliminary Public Report on Registration No. 608, dated October 23, 1973, covering Tower One only of the project. Subsequently, the Developer informed the Commission that it has exercised its option contained in the Declaration of Horizontal Property Regime filed in connection with Registration No. 608 to construct Tower Two of the project. The Developer has filed with the Commission an Amendment to said Declaration of Horizontal Property Regime concerning the addition of Tower Two to the project, and it is upon the basis of information submitted to the Commission as late as December 11, 1973, that this Preliminary Public Report is issued. The purchaser or prospective purchaser should realize that this Preliminary Public Report is issued with respect only to Tower Two of the project, and shall be used in connection with sales of apartment units in Tower Two only.

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, Amendment of 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, January 9, 1974, 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 Kaaanapali Beach.

LOCATION: The land submitted to the Regime, approximately 6.67 acres, is located in Kaaanapali 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 524-5112.

DESCRIPTION: The land to be improved consists of that portion of the land submitted to the Regime designated as the "reserved area" on Sheet A-1A of project plans. This "reserved area" 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 (15) apartments on each floor, and designated as Tower Two of the project. Tower Two will be substantially similar to Tower One, and Tower Two and its appurtenances will be integrated with Tower One and its appurtenances in order that Tower One, Tower Two and their respective appurtenances will constitute a unified condominium project. In addition, the project will contain a swimming pool and other recreational facilities, walkways, driveways, and outdoor parking areas. Each Tower Two 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. Tower Two 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 pre-cast reinforced concrete panels.
3. Description, Area and Numbering of Units. There are 180 apartments in Tower Two, 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 Two.

(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 Two.

(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 Two.

(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 Two.

(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 Two.

(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 Two.

(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 Two.

Each apartment number has three 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 1051 is located on the extreme end of the tenth floor at Tower Two, and the apartment numbered 1063 is in approximately the center of the tenth floor of Tower Two. Additionally, in order to avoid any confusion of the apartment numbers in Tower One and Tower Two, all apartment numbers in Tower Two have been increased by "50". Thus the apartment numbered 152 is located on the first floor of Tower Two, while the apartment numbered 102 is located on the first floor of Tower One. The plan for each apartment and apartment numbers are listed below.

TOWER TWO

<u>Apartment Unit Type</u>	<u>Apartment Numbers</u>	<u>Common Interest* of Each Apartment</u>
A	152, 173, 252, 273, 352, 373, 452, 473, 552, 573, 652, 673, 752, 773, 852, 873, 952, 973, 1052, 1073, 1152, 1173, 1252, 1273	0.00469
B	156, 159, 256, 259, 356, 359, 456, 459, 556, 559, 656, 659, 756, 759, 856, 859, 956, 959, 1056, 1059, 1156, 1159, 1256, 1259	0.00293
C	157, 160, 169, 170, 257, 260, 269, 270, 357, 360, 369, 370, 457, 460, 469, 470, 557, 560, 569, 570, 657, 660, 669, 670, 757, 760, 769, 770, 857, 860, 869, 870, 957, 960, 969, 970, 1057, 1060, 1069, 1070, 1157, 1160, 1169, 1170, 1257, 1260, 1269, 1270	0.00294

<u>Apartment Unit Type</u>	<u>Apartment Numbers</u>	<u>Common Interest* of Each Apartment</u>
D	151, 251, 351, 451, 551, 651, 751, 851, 951, 1051, 1151, 1251	0.00306
E	174, 274, 374, 474, 574, 674, 774, 874, 974, 1074, 1174, 1274	0.00294
F	161, 163, 165, 261, 263, 265, 361, 363, 365, 461, 463, 465, 561, 563, 565, 661, 663, 665, 761, 763, 765, 861, 863, 865, 961, 963, 965, 1061, 1063, 1065, 1161, 1163, 1165, 1261, 1263, 1265	0.00176
G	162, 164, 262, 264, 362, 364, 462, 464, 562, 564, 662, 664, 762, 764, 862, 864, 962, 964, 1062, 1064, 1162, 1164, 1262, 1264	0.00170

*NOTE: The common interest of each apartment is based upon the entire project, which consists of 360 apartment units in Tower One and Tower Two.

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, chases, 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.

(g) The resident manager's apartment, being Apartment 17⁴ located in Tower Two.

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: Each apartment in Tower One and Tower Two 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.

Apartment Unit Type

A	0.00496
B	0.00293
C	0.00294
D	0.00306
E	0.00294
F	0.00176
G	0.00170

NOTE: The appurtenant undivided percentage interests designated above are based upon the entire project, which consists of 360 apartment units in Tower One and Tower Two.

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. 502139.

ENCUMBRANCES AGAINST TITLE: The Developer has filed with the Commission a Preliminary Title Report prepared by Hawaii Escrow and Title Inc., dated December 4, 1973. The report reflects the following:

(a) TAXES for the year 1973-1974 are a lien. A Certificate of Taxes from the Tax Assessor of the 2nd Division has been requested and will be forwarded when it is available.

(b) 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.

(c) 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;

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

(e) 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;

(f) 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.

(g) 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 ("Tower Two") 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. The right to withdraw said land and the right to construct Tower Two are mutually exclusive rights. Hence, since the Developer has exercised its right to construct Tower Two, its reserved right to withdraw said land is automatically canceled and terminated. 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 and exercise of this right to construct Tower Two.

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 Tower Two is not completed on or before December 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 provisions of the Declaration with respect to the addition of Tower Two provide that, upon filing of the Amendment to the Declaration, the apartment owners of all apartments in Tower One and Tower Two shall constitute one Association, which shall elect one Board of Directors in accordance with the By-Laws.

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 (i.e., Tower One and Tower Two) until the election of the Board of Directors.

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 December 12, 1973.

This PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 642 filed with the Commission on December 12, 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.



(For) DOUGLAS R. SODEANI, Chairman
REAL ESTATE COMMISSION
STATE OF HAWAII

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Registration No. 642
Date: January 9, 1974