

MAUI LAND & PINEAPPLE CO INC

Form S-3/A

October 01, 2008

[Table of Contents](#)

As Filed with the Securities and Exchange Commission on October 1, 2008

Registration No. 333-153203

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

---

**Amendment No. 1**

to

**FORM S-3**

**REGISTRATION STATEMENT**

**UNDER**

**THE SECURITIES ACT OF 1933**

---

# Maui Land & Pineapple Company, Inc.

(Exact name of registrant as specified in its charter)

**Hawaii**  
(State or other jurisdiction of incorporation or  
organization)

**99-0107542**  
(I.R.S. Employer Identification No.)

**120 Kane Street, P.O. Box 187, Kahului, Maui, Hawaii, 96733-6687**

**(808) 877-3351**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

---

**Robert I. Webber**

**Chief Operating Officer, Chief Financial Officer and Executive Vice President**

**120 Kane Street, Kahului, Maui, Hawaii, 96732**

**(808) 877-3351**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

**Copies to:**

**Christopher D. Ivey, Esq.**

**Joshua A. Lane, Esq.**

Stradling Yocca Carlson & Rauth,

A Professional Corporation

660 Newport Center Drive, Suite 1600

Newport Beach, California 92660

**Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.**

Edgar Filing: MAUI LAND & PINEAPPLE CO INC - Form S-3/A

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer, and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller Reporting Company

---

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

---

Table of Contents

**The information in this prospectus is not complete and may be changed. We may not sell these securities until the Securities and Exchange Commission declares our registration statement effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED OCTOBER 1, 2008**

**PRELIMINARY PROSPECTUS**

**MAUI LAND & PINEAPPLE COMPANY, INC.**

**1,432,836 Shares of Common Stock**

---

Pursuant to a securities purchase agreement entered into on July 27, 2008, we issued \$40.0 million aggregate principal amount of senior secured convertible notes, or the convertible notes, in a private placement that closed on July 28, 2008. This prospectus may be used by the selling stockholders named in this prospectus to resell from time to time the shares of common stock issuable upon conversion of their convertible notes.

The convertible notes are initially convertible into 1,194,030 shares of common stock, based on a conversion price of \$33.50, which is subject to reset on the date that is 18 months following the closing of the private placement, but in no event shall the conversion price be reduced below \$30.00 per share as a result of such reset. The conversion price is also subject to adjustment from time to time as the result of certain issuances of our common stock, or securities convertible into or exercisable for shares of common stock, below the then existing conversion price.

Pursuant to a registration rights agreement entered into in connection with the issuance of the convertible notes, we agreed to register for resale 120% of the shares issuable upon conversion of the convertible notes, or initially 1,432,836 shares. We are not selling any common stock under this prospectus and will not receive any of the proceeds from the sale of shares by the selling stockholders.

The selling stockholders may sell the shares of common stock described in this prospectus in a number of different ways and at varying prices. See **Plan of Distribution** below for additional information on how the selling stockholders may conduct sales of our common stock. Other than underwriting discounts and commissions, if any, we have agreed to bear all expenses incurred in connection with the registration and sale of the common stock offered by the selling stockholders and to indemnify the selling stockholders against certain liabilities, including liabilities under the Securities Act of 1933.

Our common stock is traded on the New York Stock Exchange under the symbol **MLP**. On September 30, 2008, the closing price of our common stock was \$27.49 per share.

**Investing in these securities involves a high degree of risk. See Risk Factors on page 2 to read about the risks you should consider carefully before deciding whether to invest in these securities.**

---

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

The date of this prospectus is \_\_\_\_\_, 2008.

---

Table of Contents

TABLE OF CONTENTS

	<b>Page</b>
<u>ABOUT MAUI LAND &amp; PINEAPPLE COMPANY, INC.</u>	1
<u>RISK FACTORS</u>	2
<u>CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS</u>	3
<u>DESCRIPTION OF PRIVATE PLACEMENT AND MATERIAL TERMS OF THE NOTES</u>	4
<u>USE OF PROCEEDS</u>	14
<u>SELLING STOCKHOLDERS</u>	14
<u>PLAN OF DISTRIBUTION</u>	16
<u>LEGAL MATTERS</u>	18
<u>EXPERTS</u>	18
<u>WHERE YOU CAN FIND ADDITIONAL INFORMATION</u>	18
<u>INCORPORATION OF CERTAIN INFORMATION BY REFERENCE</u>	19

---

You should rely only on the information contained or incorporated by reference in this prospectus and any applicable prospectus supplements. We have not, and the selling stockholders have not, authorized anyone to provide you with information different from that contained in this prospectus. Offers to sell, and offers to buy, the shares of common stock are valid only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as to the date of this prospectus, regardless of the time of delivery of the prospectus or of any sale of the common stock.

Table of Contents

**ABOUT MAUI LAND & PINEAPPLE COMPANY, INC.**

In this prospectus, depending on the context, the terms the Company, we, our, or us refer to Maui Land & Pineapple Company, Inc. alone or to Maui Land & Pineapple Company, Inc. and its subsidiaries, collectively.

We are a Hawaii corporation, the successor to a business organized in 1909. We operate as a landholding and operating parent company for our principal subsidiaries, including Maui Pineapple Company, Ltd., a producer and marketer of Maui-grown pineapple, and Kapalua Land Company, Ltd., the operator of Kapalua Resort, a 23,000-acre master-planned community in West Maui. Our reportable operating segments are Agriculture, Resort and Community Development.

*Agriculture*

The Agriculture segment primarily includes growing, packing, and marketing of fresh premium pineapple. Our fresh pineapple is sold under the brand names *Maui Gold*® and Hawaiian Gold. We also grow and market fresh organic pineapple.

*Resort*

The Resort segment includes our ongoing operations at the Kapalua Resort. These operations include two championship golf courses, a tennis facility, a vacation rental program, and several retail outlets. In December 2007, our new Kapalua Adventure Center opened and, in January 2008, the Mountain Outpost began operations.

*Community Development*

The Community Development segment includes our real estate entitlement, development, construction, sales and leasing activities. This segment also includes the operations of Kapalua Realty Company, a general brokerage real estate company, and Public Utilities Commission regulated water and sewage transmission operations located within Kapalua Resort. The Community Development segment also includes our investment in Kapalua Bay Holdings, LLC, a limited liability company formed as a joint venture between the Company, Marriott International Inc. and Exclusive Resorts LLC. We have a 51% interest in and are the managing member of Kapalua Bay Holdings. Kapalua Bay Holdings is constructing The Residences at Kapalua Bay, consisting of approximately 146 units that will be sold as whole ownership and fractional ownership residences, a clubhouse, pool, spa and other amenities.

More comprehensive information about us, our products, our projects and our financial information is available through our website at [www.mauiland.com](http://www.mauiland.com) and in our recent filings with the Securities and Exchange Commission, or SEC. See the sections in this prospectus entitled Where You Can Find More Information and Incorporation of Certain Documents by Reference. The information on our website is not

Edgar Filing: MAUI LAND & PINEAPPLE CO INC - Form S-3/A

incorporated by reference into this prospectus.

**Our main offices are located at 120 Kane Street, Kahului, Maui, Hawaii, 96732, and our telephone number is (808) 877-3351.**



**Table of Contents**

**RISK FACTORS**

Investing in our common stock involves a high degree of risk. Please consider carefully the risk factors described in the Risk Factors section of our Annual Report on Form 10-K for the year ended December 31, 2007, and our Quarterly Report on Form 10-Q for the quarter ended June 30, 2008, as amended from time to time, each of which are incorporated by reference in this prospectus, in any future filings made by us with the SEC and incorporated by reference in this prospectus, and the additional risk factors set forth below, which pertain to the risks associated with the private placement and convertible notes. The occurrence of any of these risks might cause you to lose all or part of your investment in our common stock. Please also refer to the section below entitled Cautionary Notice Regarding Forward-Looking Statements.

**The number of shares being registered for resale is significant in relation to our outstanding shares and trading volume and sales of substantial amounts of our common stock may adversely affect our market price.**

As of September 30, 2008 we had 8,170,895 shares of common stock outstanding and our average weekly trading volume during the four full weeks prior to September 30, 2008 was 20,975 shares. The convertible notes are convertible at the option of the holders into 1,194,030 shares of our common stock at an initial conversion price of \$33.50 per share. We filed a registration statement with the SEC, of which this prospectus is a part, for the public resale of the shares of common stock issuable upon conversion of the convertible notes. Accordingly, so long as the registration statement remains effective, the common stock issued upon conversion of the convertible notes will be freely tradable in the public markets without restriction and sales of a substantial number of shares could occur at any time during such period. Such sales may adversely affect the prevailing market prices of our common stock. In addition, the existence of the convertible notes may encourage short selling by market participants because the conversion of the convertible notes could be used to satisfy short positions, and anticipated conversion of the convertible notes into shares of our common stock could depress the price of our common stock.

**The conversion price of the convertible notes is subject to adjustment and, if adjusted, will result in dilution to our existing holders of common stock.**

The convertible notes are convertible, at any time following their issuance, into shares of our common stock at an initial conversion price of \$33.50 per share, which is equal to an initial conversion rate of 29.8507 shares per \$1,000 principal amount of the convertible notes, or 1,194,030 shares in the aggregate, assuming payment in cash of all interest payments. The conversion price is subject to (i) standard weighted-average anti-dilution protection, and (ii) to an automatic reset 18 months following the closing of the sale of convertible notes at the lower of the then current conversion price and 115% of the closing bid price of our common stock as reported on the New York Stock Exchange, or the NYSE, on the adjustment date, provided, that, with respect to the reset adjustment, in no event shall the conversion price be reset below \$30.00 per share. If the conversion price is reduced, the convertible notes will be convertible into additional shares of our common stock without the payment of any additional consideration, resulting in dilution to our then existing holders of common stock. There can be no assurance that an event that results in a reduction of the conversion price will not occur.

**The convertible notes provide the holders with certain rights of redemption and, upon the occurrence of various events of default and change of control transactions, the right to require us to redeem the convertible notes for cash. We may not have the funds necessary to redeem the convertible notes for cash, or any such redemption of the convertible notes could leave us with little or no working capital for operations or capital expenditures.**

On the third anniversary of the closing of the sale of convertible notes, or upon a change of control transaction, each investor has the right to require us to redeem all or any portion of such investor's convertible note at a redemption price equal to 100% of the principal amount of the convertible note being redeemed, plus accrued and unpaid interest thereon. If an investor elects to convert its convertible note in connection with a change of control, we may also have to pay a make-whole premium. In addition, the convertible notes allow each investor to require us to redeem the convertible notes upon the occurrence of various events of default. In such a situation, we may be required to redeem all or part of the convertible notes, including any accrued interest, redemption premiums and penalties. If holders of the convertible notes elect to redeem their notes or an event of default or a change of control occurs, we may be unable to repay the full redemption amount in cash. Even if we were able to prepay the full amount in cash, any such repayment could leave us with little or no working capital for our business. We have not established a sinking fund for payment of our obligations under our convertible notes, nor do we anticipate doing so. Any failure to pay amounts due under the convertible notes may also constitute an event of default under the terms of our other credit facilities existing at the time.

**Security interests granted to the holders of the convertible notes limits our ability to obtain secured financing in the future.**

The convertible notes will be secured by a portion of our real property assets, including our headquarters, our Merriman's property, and portions of our central resort and upcountry Hali'imaile properties. To the extent that these properties previously were unencumbered, with limited exceptions, they will no longer be available to secure on a senior basis other debt obligations that we may wish to incur in the future. In addition, a portion of proceeds from the sale of any such properties will be deposited into a collateral account to secure our payment obligations under the convertible notes. Therefore such portion of cash proceeds will be restricted and unavailable for operations.

**We have agreed to certain limitations on our ability to sell our securities in future financings, which may restrict our ability to raise capital.**

We have agreed, for so long as any convertible notes remain outstanding, that we will not issue or sell, subject to certain exceptions, shares of our common stock or securities exercisable or convertible into shares of our common stock if the effect of such issuance or sale would be to cause the number of shares of our common stock issuable upon conversion of the convertible notes to exceed the number of shares of common stock that we may issue without breaching our obligations under the rules and regulations of the NYSE. In addition, we have agreed, for so long as any convertible notes remain outstanding, that we will not sell securities with a conversion or exercise price that varies with the market price of our common stock unless the conversion or exercise price cannot be less than the applicable conversion price under the convertible notes. These limitations will restrict our ability to raise capital through equity financing in the future. If we need to raise additional capital and cannot raise such capital or obtain additional financings on terms satisfactory to us, we may have to reduce our capital expenditures, scale back our development projects, reduce our workforce or take other actions that may have an adverse effect on our business operations and financial results.

Table of Contents

**CAUTIONARY NOTICE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus and the documents and reports that we have filed with the SEC that are incorporated herein by reference contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and we intend that such forward-looking statements be subject to the safe harbors created thereby. These statements relate to future events or our future financial performance and involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to differ materially from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. They contain words such as may, will, project, might, expect, believe, anticipate, intend, could, would, estimate, continue or pursue, or the variations thereof or comparable terminology. Actual results could differ materially from those projected in forward-looking statements as a result of the following factors, among others:

- success of our initiatives to gain structural efficiencies in our businesses;
- timing and success of sales and construction at the Residences at Kapalua Bay project;
- timing and success of the Kapalua Resort initiatives to enhance and improve the resort and the Kapalua Villas;
- expectations as to our cash commitments;
- expectations as to our cash flows from operating and investing activities;
- recoverability from operations of real estate development deferred costs;
- impact of current and future local, state and national government regulations, including Maui County affordable housing legislation;
- general economic factors, including fuel and travel costs;
- dependence on third parties and actual or potential lack of control over joint venture relationships;
- future cost of compliance with environmental laws;
- timing of approvals and conditions of future real estate entitlement applications;
- effects of weather conditions and natural disasters; and
- effect of changes in assumptions on net periodic pension and other benefit costs.

Such risks and uncertainties also include those risks and uncertainties discussed under the heading **Risk Factors** and elsewhere in this prospectus. Because the factors referred to above could cause actual results or outcomes to differ materially from those expressed in any forward-looking statements made by us or on our behalf, you should not place undue reliance on any forward-looking statements. New factors

## Edgar Filing: MAUI LAND & PINEAPPLE CO INC - Form S-3/A

emerge from time to time, and it is not possible for us to predict which factors will arise. In addition, we cannot assess the impact of each factor on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. Further, any forward-looking statement speaks only as of the date on which it is made, and, except as required by law, we undertake no obligation to publicly revise our forward-looking statements to reflect events or circumstances that arise after the date of this prospectus or the date of documents incorporated by reference in this prospectus that include forward-looking statements. You should read this prospectus and the documents that we reference and have filed as exhibits to the registration statement of which this prospectus is a part with the understanding that we cannot guarantee future results, levels of activity, performance or achievements.

Table of Contents

**DESCRIPTION OF PRIVATE PLACEMENT AND MATERIAL TERMS OF THE NOTES**

On July 27, 2008, we entered into a securities purchase agreement with certain institutional accredited investors, or the investors, to sell and issue to the investors in reliance on Section 4(2) of the Securities Act an aggregate of \$40,000,000 in principal amount of the Company's senior secured convertible notes, or the convertible notes, bearing 5.875% interest per annum payable quarterly in cash in arrears beginning October 15, 2008 (the Financing). The Financing closed on July 28, 2008.

The Financing resulted in gross proceeds to us of approximately \$40.0 million before deduction of placement agent fees and offering expenses. Banc of America Securities acted as placement agent for the Financing and received a fee of \$1.2 million for services rendered in that capacity. The Financing resulted in net proceeds to us of approximately \$38.5 million, after deducting the placement agent fee and approximately \$300,000 in legal and accounting expenses relating to the Financing. The net proceeds from the Financing were used to repay approximately \$37.7 million of our existing indebtedness, and the remaining net proceeds of approximately \$800,000 million were used to fund our working capital.

The convertible notes are convertible, at any time following their issuance, into shares of our common stock at an initial conversion price of \$33.50 per share, which is equal to an initial conversion rate of 29.8507 shares per \$1,000 principal amount of the convertible notes. On July 28, 2008, the date the Financing closed, the closing sales price for a share of our common stock was \$28.62. The conversion price is subject to (i) standard weighted-average anti-dilution protection, and (ii) to an automatic reset 18 months following the closing of the Financing at the lower of the then current conversion price and 115% of the closing bid price of our common stock as reported on the New York Stock Exchange, or the NYSE, on the adjustment date, provided, that, with respect to the reset adjustment, in no event shall the conversion price be reset below \$30.00 per share. The convertible notes are not convertible to the extent that their conversion would cause the holder to be the beneficial owner of more than 4.99% of our common stock immediately after giving effect to such conversion.

Further, if an adjustment to the conversion price would result in any investor owning in excess of (i) such investor's FIRPTA Cap (as defined below) on an as converted basis (without regard for any limitations of conversion set forth in the convertible notes) or (ii) the Exchange Cap Allocation (as defined below), then in lieu of the full anti-dilution adjustment, the conversion price will be reduced to the conversion price that would result in such note being convertible into such number of shares of common stock equal to the lower of the investor's FIRPTA Cap or Exchange Cap Allocation, as applicable (without regard to any limitations on conversion set forth in the convertible note), and, in addition, no later than five business days following the date of conversion of the convertible note, such investor shall receive a cash payment from us equal to the product of (x) the closing bid price of our common stock on such conversion date and (y) the number of shares of common stock in excess of such FIRPTA Cap or Exchange Cap Allocation, as applicable, that would have otherwise been issuable without regard to such limitation and any other limitations on conversion set forth in the convertible note.

The FIRPTA Cap means, with respect to any investor, the percentage indicated on the investor's conversion notice, which shall be such investor's reasonable estimate of the maximum number of shares of common stock that such investor may hold without being subject to tax under the Foreign Investment in Real Property Tax Act of 1980.

The Exchange Cap Allocation means, with respect to any investor, the number of shares of common stock equal to the product of (i) the aggregate number of shares of common stock which we may issue upon conversion of the convertible notes without breaching our obligations under the rules



Table of Contents

or regulations of the NYSE or any other national securities exchange on which our shares of common stock are then listed, multiplied by (ii) a fraction, the numerator of which is the principal amount of convertible notes issued to such investor and the denominator of which is the aggregate principal amount of all convertible notes issued to all of the investors.

The convertible notes mature on July 15, 2013. However, at any time after the second anniversary of the closing, we have the right, but not the obligation, to require the investors to convert their convertible notes into shares of our common stock at the then applicable conversion price if the average of the daily volume weighted average price of our common stock is 175% of the conversion price then in effect for 20 out of 30 consecutive trading days.

On the third anniversary of the closing, each investor has the right to require us to redeem all or any portion of such investor's convertible note at a redemption price equal to 100% of the principal amount of the convertible note being redeemed, plus accrued and unpaid interest thereon. Upon the occurrence of a change of control of the Company, each investor will have the right to require us to repurchase all or any portion of such investor's convertible note at a repurchase price equal to 100% of the principal amount of the convertible note being redeemed, plus accrued and unpaid interest thereon. If an investor elects to convert its convertible note in connection with a change of control, we will pay a make-whole premium to such investor, unless (i) at least 90% of the consideration, excluding cash payments for fractional shares, in such change of control consists of shares of capital stock of the surviving or resulting entity that are listed on, or immediately after the transaction or event will be listed on, a national securities exchange and as a result of such transaction or transactions the convertible notes become convertible into or exchangeable or exercisable for such capital stock of the surviving or resulting entity and such entity has assumed the obligations under this convertible note or (ii) we continue to be the successor entity and our common stock continues to be listed on a national securities exchange. The make-whole premium table included in the convertible notes sets forth the number of additional shares to be paid depending upon the effective date of the change of control triggering the make-whole premium payment and the price paid per share of common stock in the change of control.

Additionally, the convertible notes may become immediately due and payable upon an event of default, which, with respect to each convertible note, generally includes, without limitation, each of the following:

- any registration failure under the terms of the registration rights agreement;
- the suspension from trading or failure of the common stock to be listed on the NYSE or any other national securities exchange for a period of five (5) consecutive trading days or for more than an aggregate of ten (10) trading days in any 365-day period;
- our (A) failure to cure a conversion failure by delivery of the required number of shares of common stock or make-whole premium shares within the time period specified in the convertible notes, or (B) notice of our intention not to comply with a request for conversion of any convertible notes into shares of common stock;
- at any time following the tenth (10<sup>th</sup>) consecutive business day that the number of shares of common stock reserved for conversion is less than the number of shares of common stock that a holder would be entitled to receive upon full conversion of such holder's convertible note (without regard to any limitations on conversion);

- failure to pay any amount of principal, interest or other amounts when and as due under the convertible notes (if such failure continues beyond the expiration of any applicable cure or grace periods);



- our (A) failure to pay when due any principal, interest or premium on any indebtedness secured by the Collateral (as such term is defined on page 9 of this prospectus), excluding indebtedness evidenced by the convertible notes, to the extent that the aggregate principal amount of all such indebtedness exceeds \$250,000, and such failure shall continue after any applicable grace period, or (B) any other default under any agreement or instrument relating to any such indebtedness or any other indebtedness by us for borrowed money in excess of an aggregate principal amount of \$500,000, or any other event, shall occur and shall continue after any applicable grace period, if the effect of such default or event is to accelerate, or to permit the acceleration of, the maturity of any such indebtedness or any such indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), redeemed, purchased or defeased or an offer to prepay, redeem, purchase or defease such indebtedness shall be required to be made, in each case, prior to the stated maturity;
- specific events of bankruptcy, insolvency, reorganization or liquidation with respect to us;
- a final judgment or judgments for the payment of money aggregating in excess of (A) \$100,000 are rendered against us or (B) \$50,000 are rendered against any of our officers or directors, and which judgments are not, within sixty (60) days after the entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within sixty (60) days after the expiration of such stay; provided that any judgment which is covered by insurance or an indemnity from a credit worthy party shall not be included in calculating the amounts set forth above so long as we receive the proceeds of such insurance or indemnity within sixty (60) days of the issuance of such judgment;
- we breach any material warranty, covenant or other term or condition of any transaction document, except, in the case of a breach of a covenant or other term or condition of any transaction document which is curable, only if such breach continues for a period of at least twenty (20) days;
- any one or more of the transaction documents shall be terminated otherwise than in accordance with the terms thereof or with the approval of the holders of the convertible notes, or otherwise determined to be illegal, invalid or unenforceable in accordance with the terms thereof;
- any breach or failure in any respect to comply with our post-closing covenants contained in the securities purchase agreement;
- any breach or failure in any respect to comply with the covenants contained in the convertible notes (if such failure continues beyond the expiration of any applicable cure or grace periods);

- our failure to perform or comply with (i) any material covenant or agreement contained in any security agreement (other than the collateral account agreement) or (ii) any covenant or agreement contained in the collateral account agreement (if such failure continues beyond the expiration of any applicable cure or grace periods);

- any provision of any security document (as determined by the collateral agent) shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against us, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by us or any governmental authority having jurisdiction over us, seeking to establish the invalidity or unenforceability thereof, or we shall deny in writing that we have any liability or obligation purported to be created under any security document;
- any security agreement or any other security document shall for any reason fail or cease to create a valid and perfected and, except to the extent permitted by the terms of the applicable transaction documents, first priority lien in favor of the collateral agent for the benefit of the holders of the convertible notes on any Collateral purported to be covered thereby;
- any bank at which any collateral account is maintained shall fail to comply with any material term contained in the collateral account agreement;
- any damage to, or loss, theft or destruction of, any Collateral, whether or not insured, if any such damage, or loss, theft or destruction could reasonably be expected to have a material adverse effect on us; or
- any event of default occurs with respect to any other convertible notes.

If a convertible note is redeemed in connection with an event of default, we may be required to pay a redemption premium, in which case the redemption amount would equal 115% multiplied by (i) the principal and accrued and unpaid interest under the convertible note, or (ii) the highest closing sale price of our common stock during the period between the event of default and delivery of redemption notice multiplied by the number of shares of our common stock into which a convertible note is then convertible.

We intend to make all required payments on the convertible notes, and we believe that we have a reasonable basis for our belief that we will have the financial ability to do so.

The convertible notes are secured by a security interest in the form of and with respect to the following property (the Real Property Collateral ):

- a first priority lien on our headquarters, with up to 30% of all proceeds realized from any sale of the headquarters being placed in a Collateral account for the repayment of the convertible notes (the Collateral Account );
- a first priority lien on what is known as the Central Resort property, provided that the security interest granted in the Central Resort will be subordinated to any future construction or other project financing;

Table of Contents

- a first priority lien on all or a portion of what is known as the Upcountry Hali imaille property, with up to 35% of all proceeds realized from any sale of such property being placed in the Collateral Account; and
- a first priority lien on all or a portion of what is known as the Merriman s property, with up to 35% of all proceeds realized from any sale of such property being placed in the Collateral Account.

We have also agreed to deposit into the Collateral Account up to 10% of any proceeds or distributions realized from our equity interest in Kapalua Bay Holdings, LLC, and up to 50% of any proceeds or distributions realized from our equity interest in W2005 Kapalua/Gengate Hotel Holdings L.L.C. (the Operating Collateral and together with the Real Property collateral, the Collateral ). All liens placed on the Real Property Collateral will be released by the investors at such time as at least 80% of the outstanding principle and accrued interest owing under the convertible notes has been deposited into the Collateral Account. In addition, all cash deposited into the Collateral Account shall be released back to us if and when the convertible notes are converted into shares of our common stock.

Pursuant to a registration rights agreement entered into in connection with the issuance of the convertible notes, we agreed to register for resale 120% of the shares issuable upon conversion of the convertible notes. The convertible notes are initially convertible into 1,194,030 shares of common stock, based on a conversion price of \$33.50 per share. Thus, 120% of 1,194,030 shares equals 1,432,836 shares, which is the number of shares we are registering for resale as a secondary offering pursuant to the registration statement of which this prospectus forms a part. We are required to use our best efforts to have the registration statement declared effective as soon as practicable (but in no event later than 90 days after the closing of the Financing if the registration statement is not subject to a full review by the SEC, or 120 days if the registration statement is subject to a full review by the SEC). If we do not have an effective registration statement by the deadline, we will be subject to certain monetary penalties, as set forth in the registration rights agreement. The monetary penalties will accrue at the rate of 1.0% of the initial principal amount of the convertible notes, payable on every thirtieth day after the day of the registration failure until such failure is cured (all such periods to be pro rated for periods totaling less than thirty days). In any event, registration failure payments shall cease to accrue after the date that is 6 months after the closing of the Financing. In the event that we are unable to include in the registration statement all shares of our common stock issuable pursuant to the convertible notes, then we will be required to file additional registration statements to register the resale of any shares excluded from the originally filed registration statement. Our registration obligations terminate with respect to any investor, on the earlier of (i) the date as of which such investor may sell all of the shares of common stock covered by the applicable registration Statement without restriction or limitation pursuant to SEC Rule 144 and without the requirement to be in compliance with SEC Rule 144(c)(1) relating to the availability of adequate current public information with respect to the Company, or (ii) the date on which such investor shall have sold all of the shares of common stock covered by such applicable registration statement.

**Total Dollar Value of Common Shares Underlying the Convertible Notes**

On July 28, 2008, the date the Financing closed, the closing sales price for a share of our common stock was \$28.62. Pursuant to a registration rights agreement entered into in connection with the issuance of the convertible notes, we agreed to register for resale 120% of the shares issuable upon conversion of the convertible notes. Thus, based on the closing sales price for a share

Table of Contents

of our common stock on the date the Financing closed, the total dollar value of the shares of common stock underlying the convertible notes that have been registered for resale in the registration statement to which this prospectus is a part is \$41,007,766. However, using the conversion price of the convertible notes on the date the Financing closed, which has not changed through the date of this prospectus, the convertible notes are convertible into 1,194,030 shares of our common stock. Thus, based upon the closing sale price on the date the Financing closed, the total dollar value of the shares of common stock into which the convertible notes are convertible is \$34,173,139.

**Total Potential Payments to Selling Stockholders under the Convertible Notes**

The following table sets forth the dollar amount of each payment (including the value of any payments to be made in common stock) that we have made or may be required to make to the selling stockholders in connection with the sale of the convertible notes.

Type of Payment	Amount
Interest(1)	Up to an aggregate of \$11,665,139
Premium(2)	Up to an aggregate of \$7,760,880
Liquidated damages(3)	Up to an aggregate of \$2,000,000
<b>Total potential required payments under the convertible notes(4)</b>	<b>Up to an aggregate of \$21,426,019</b>

(1) The convertible notes bear interest at the rate of 5.875% per annum payable quarterly in cash in arrears beginning October 15, 2008. Interest on the convertible notes commenced accruing on July 28, 2008 and is computed on the basis of a 360-day year comprised of twelve (12) thirty (30) day months. The convertible notes mature on July 15, 2013.

(2) Upon the occurrence of a change of control, the holders are entitled to convert their convertible notes at a premium, which we refer to as the make-whole premium, or, alternatively, upon an event of default, the holders are entitled to redeem the convertible notes for cash at a premium, which we refer to as the redemption premium. The following is a description of these alternative options of the holders:

**Make-Whole Premium.** A make-whole premium is payable upon the occurrence of certain changes of control, as defined in the convertible notes, where an investor elects to convert its convertible note in connection with such change of control. The maximum make-whole amount equals \$194.022 per \$1,000 principal amount of the convertible notes, or up to an aggregate of \$7,760,880, with such maximum amount being constant over the 5-year period following the issuance of the convertible notes. For any conversion notice delivered before the effective date of the change of control, the make-whole amount will be payable in shares of our common stock, and for any such notice delivered after the effective date of such change in control, the make-whole premium amount shall be paid in cash.

**Redemption Premium in the Case of Certain Events of Default.** Prior to any other conversion or redemption of the convertible notes (including a conversion in connection with which a make-whole premium is payable), the convertible notes may become immediately due and payable upon an event of default, as such term is described beginning on page 5 of this prospectus. If a convertible note is redeemed in connection with an event of default, we may be required to pay a redemption premium, in which case the redemption amount would equal 115% multiplied by (i) the principal and accrued and unpaid interest under the convertible note, or (ii) the highest closing sale price of our common stock during the period between the event of default and delivery of redemption notice multiplied by the number of shares of our common stock into which a convertible note is then convertible. We will never be required to pay both a make-whole premium and a redemption premium to the holders of the convertible notes

(3) Liquidated damages will be incurred by us if:

- the registration statement has not been filed by a certain date;
- the registration statement has not been declared effective by a certain date; or
- sales cannot be made pursuant to the registration statement, following its effectiveness, except during an allowable grace period.

Table of Contents

Liquidated damages are equal to 1.0% of the initial principal amount of the convertible notes, payable every thirtieth day after the day of the registration failure until such failure is cured (all such periods to be pro rated for periods totaling less than thirty days). In any event, registration failure payments shall cease to accrue after the date that is 6 months after the closing of the Financing.

(4) In addition to the payments described above, we may also be required to make certain other payments to the investors, the maximum amount of which cannot be reasonably determined at this time. If an adjustment to the conversion price would result in any investor owning in excess of (i) such investor's FIRPTA Cap (as defined on page 4 of this prospectus) on an as converted basis (without regard for any limitations of conversion set forth in the convertible notes) or (ii) the Exchange Cap Allocation (as defined on page 4 of this prospectus), then in lieu of the full anti-dilution adjustment, the conversion price will be reduced to the conversion price that would result in such note being convertible into such number of shares of common stock equal to the lower of the investor's FIRPTA Cap or Exchange Cap Allocation, as applicable (without regard to any limitations on conversion set forth in the convertible note), and, in addition, no later than five business days following the date of conversion of the convertible note, such investor shall receive a cash payment from us equal to the product of (x) the closing bid price of our common stock on such conversion date and (y) the number of shares of common stock in excess of such FIRPTA Cap or Exchange Cap Allocation, as applicable, that would have otherwise been issuable without regard to such limitation and any other limitations on conversion set forth in the convertible note.

**Total Potential Payments to Selling Stockholders in the First Year Following the Sale of the Convertible Notes**

The following table sets forth the total possible payments to the selling stockholders and any of their affiliates in the first year following the sale of convertible notes.

Type of Payment	Amount
Interest	Up to an aggregate of \$2,350,000
Premium(1)	Up to an aggregate of \$7,760,880
Liquidated damages	Up to an aggregate of \$2,000,000
<b>Total potential required payments in first year</b>	<b>Up to an aggregate of \$12,110,880</b>

(1) As noted in Footnote 2 on page 10 above, upon the occurrence of a change of control, the holders are entitled to convert their convertible notes at a make-whole premium or, alternatively, upon an event of default, the holders are entitled to redeem their convertible notes for cash at a redemption premium.

**Potential Profit from Conversion of the Convertible Notes**



## Edgar Filing: MAUI LAND & PINEAPPLE CO INC - Form S-3/A

The conversion price of the convertibles notes, \$33.50 per share, is greater than the closing sale price of our common stock on the date of closing the Financing, \$28.62 per share. Therefore, there was no conversion discount and the selling stockholders would not realize any profit upon conversion of the notes based upon the market price of our common stock and the conversion price of the convertible notes at the time of closing the Financing. The following table sets forth the value of the underlying shares based upon the value our common stock as of the date of closing the

Table of Contents

Financing. Although interest is required to be paid quarterly under the convertible notes, the following table assumes no interest has been paid throughout the term of the convertible notes and all such interest is converted into shares of our common stock at the conversion price.

Market price per share on July 28, 2008	\$	28.62
Conversion price per share on July 28, 2008	\$	33.50
Total possible shares underlying the convertible notes		1,542,243
Aggregate market price of shares underlying the convertible notes based on market price on July 28, 2008	\$	