

board, your participation in the administration and operation of the Condominium will in most cases be limited to your right to vote as an Owner. The board of directors and officers can take certain actions without the vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the apartment owners.

The board of directors hires a Managing Agent to provide essentially all management services needed by the Condominium Association. The Developer has appointed the initial Managing Agent of the Condominium and it is the same company that serves as Plan Manager of the Plan.

Common expenses of the Condominium are divided among the apartments according to their common interests as are voting rights. The term "*common expenses*" means the expenses of operating the Condominium and all other amounts designated as common expenses under the Condominium Documents or under the Hawaii Condominium Property Act. Note that under the Hawaii Condominium Law, charges for common expenses to an apartment do not begin until the County issues a certificate of occupancy for that apartment.

Each apartment owner (including each Owner of a Vacation Ownership Interest) is responsible to pay the common expenses for his or her apartment. The Condominium Association has a lien on each apartment to secure payment of that apartment's share of the common expenses. If the common expenses are not paid, an apartment can be taken from its owners and sold by foreclosure. The Condominium Association can also sue the apartment owners for the amounts due.

The Condominium Association and its Managing Agent may enter any apartment as needed to operate the Condominium or to make emergency repairs.

In Condominium Association meetings or votes, the Ocean Resort Villas North Vacation Owners Association must cast the vote of each Vacation Unit unless Owners of a majority of the votes for Vacation Ownership Interests in that Vacation Unit elect to cast the vote for their apartment themselves.

The Developer has various special rights, called the "*Developer's Reserved Rights*", under the Condominium Documents. These are described in Exhibit D. You should understand, and by signing your Purchase Agreement, Buyer's Acknowledgment, and Deed, you accept and agree that the Condominium Developer has and may exercise and assign these special rights.

**6.2. USE OF THE CONDOMINIUM APARTMENTS.** The Condominium Declaration divides the apartments into commercial apartments and resort apartments.

A. The resort apartments may be occupied and used as a permanent or temporary residence or for hotel or transient vacation rental purposes. They may also be used in a time share plan or fractional plan if the Developer creates the plan or if it authorizes or consents to that use in a recorded document.

The resort apartments and their limited common elements must not be used to carry on any business, trade or profession, or for the sale of any articles or goods. Except for the Developer, no owner or occupant of a resort apartment can bring clients, customers or other business invitees onto the premises on a regular basis for business purposes.

B. The commercial apartments may be operated and used for any purpose permitted by law. Any part of apartment 101 located in a building containing resort apartments (and any apartments that were originally part of apartment 101 and that are located in a building containing resort apartments) may be configured for use as resort apartments and then used as time share units in a vacation plan, or as units in a fractional plan if the developer creates the plan or if the developer authorizes or otherwise consents to that use in a recorded document.

C. Notwithstanding the things stated above, nobody except the Developer can use the Condominium or any part of it: (1) for the promotion or sale of time share interests or other vacation interests or fractional interests, whether directly or indirectly, or (2) for the operation of a tour or activity desk or any other business that directly or indirectly promotes the sale of time share interests or other vacation interests or fractional interests.

**6.3. EASEMENTS.** "*Easement*" is a legal term. In general, it refers to the right of one person to use property in the possession of someone else. The Condominium Documents create various easements. Some of them can be summarized as follows:

A. The Shoreline Setback Area is subject to an existing easement. This easement requires that the Shoreline Setback Area remain open and available to the public as open space, for recreational access and passive recreational uses, and for Native Hawaiian use for traditional and customary uses of the shoreline and near-shore ocean waters. The Native Hawaiian uses include fishing, diving, ho'okupu ceremonies (ritual prayers on the shoreline) and gathering.

B. Employees, customers, and so on, of a commercial apartment, can come onto the Condominium, park in unassigned parking stalls, make deliveries, make casual use (such as after dinner strolls) of the walkways, and do other things reasonably necessary in connection with the ordinary conduct of business operations.

C. Persons authorized by the Master Association may come onto the Condominium as necessary or convenient to use, operate, maintain, add to, install, or replace the Master Association's properties. They may also park in unassigned parking stalls, make deliveries, and use the Shoreline Setback Area and any other recreation areas and facilities adjacent to the beach (e.g., showers).

D. The Developer and persons authorized by it may use the limited common elements of the Master Association Apartment to conduct educational, cultural, entertainment or

result in a fair division of maintenance fees among the apartments. For example, the cost of sending a newsletter or notice of an Association meeting to an Owner is the same regardless of the size of the Owner's unit.

As a result, the Developer has adopted a plan for dividing Plan Expenses among the Vacation Units based on their "Relative Valuation". The Developer determines a Relative Valuation for each Unit Type based on the size of the Vacation Unit, the estimated maintenance and expense burden, sleeping capacity, and other relevant factors as determined by the Developer in its sole discretion. The Relative Valuation for Vacation Units currently included in the Plan is listed in Exhibit B.

Note that Relative Valuation is not intended to reflect the fair market value of (i) Vacation Units that are a particular Unit Type, or (ii) Vacation Ownership Interests in Vacation Units of a particular Unit Type. The Relative Valuation for a Unit Type will not change based on changes in market conditions.

2) **Fair Share.** "Fair Share" means a share based on a comparison of the Relative Valuation of one Vacation Unit to the total of the Relative Valuations for all of the Vacation Units, as follows:

- ❖ The Fair Share for each Every-Year Vacation Ownership Interest in a Vacation Unit is 1/52nd of the following fraction:

The Relative Valuation of that Vacation Unit  
The Sum of the Relative Valuations  
For All Vacation Units for Which  
Assessments Have Begun

- ❖ The Fair Share for each Every-Other-Year Vacation Ownership Interest in a Vacation Unit is 1/104th of the same fraction. In other words, the Fair Share for an Every-Other-Year Vacation Ownership Interest is one half of the Fair Share of an Every-Year Vacation Ownership in the same Unit Type. In addition, the Fair Share for an Every-Other-Year Vacation Ownership Interest will include a yearly service or bookkeeping fee in an amount set by the Board from time to time, and currently set to \$20.

3) **When Assessments Begin.** For any Vacation Unit, Assessments begin on the later of (i) first day of the month after a deed transferring a Vacation Ownership Interest in that Vacation Unit is recorded, or (ii) the date when the County of Maui issues a temporary or permanent certificate of occupancy for that Vacation Unit. From then on, the Owner of each Vacation Ownership Interest in that Vacation Unit, whether it is the Developer or someone else, must pay a Fair Share of the Plan Expenses.

C. **REGULAR ASSESSMENTS.** Every year, the Association adopts a budget showing the Plan Expenses for the coming year. The budget reflects Plan Expenses based on the property that is expected to be included in the Plan by the start of the coming year. Of course, the actual expenses may vary, especially as additional property is included in the Plan. A

copy of the current budget of Plan Expenses is attached as Exhibit G to this Disclosure Statement. You must pay your Fair Share of the Plan Expenses. This is called your "Regular Assessment".

D. **SPECIAL ASSESSMENTS.** If there is a shortfall in the budget or if the Vacation Property is damaged or destroyed, the Board may adopt a special budget to deal with the problem. You must pay your Fair Share of that budget. This is called a "Special Assessment".

E. **DEVELOPER SUBSIDY.** The Developer must pay Assessments on unsold Vacation Ownership Interests in Vacation Units for which Assessments have begun. Instead of doing so, however, the Developer may enter into a "Subsidy Contract" with the Association in which the Developer agrees to pay to the Association the difference between (i) the actual Plan Expenses incurred by the Association and (ii) the Assessments collected from Owners other than the Developer and all other amounts paid to the Association by anyone other than the Developer. The Developer does not have to pay, however, the amount of any Special Assessments for capital expenditures, insurance policy deductibles, underinsured losses, or uninsured losses.

F. **INITIAL PROGRAM EXPENSES.** The Regular Assessment for 2010 is \$1,845.44 per year for an Every-Year Vacation Ownership Interest and \$999.53 per year for an Every-Other-Year Vacation Ownership Interest. The regular assessments charged by the Condominium Association are \$581.77 for an Every-Year Vacation Ownership Interest and \$290.89 for an Every-Other-Year Vacation Ownership Interest and for the Master Association are \$165.83 for an Every-Year Vacation Ownership Interest and \$82.92 per year for an Every-Other-Year Vacation Ownership Interest. See Exhibits G, H, and I.

G. **PERSONAL CHARGES.** A "Personal Charge" is an expense not covered by Assessments. This includes expenses that result from the act, failure to act, or other conduct of an Owner, Occupant or an Occupant's Guest. It also includes charges for extra services requested or used by Owners, Occupants or their Guests. Personal charges include, for example:

- ❖ Food and beverage charges; telephone charges; extra housekeeping services.
- ❖ Charges for use or rental of sports supplies or other recreational equipment, or any amenities (for example, a spa) of the Condominium, the Master Association or Ka'anapali North Beach.
- ❖ The cost to repair any damage (except for ordinary wear and tear and unavoidable accidents) to Vacation Units or their furnishings, or to replace any missing items.
- ❖ Expenses to any other Owner or the Association due to a Person's intentional or negligent Act or failure to Act.

- ❖ Expenses resulting from any intentional or negligent violation of the Ka'anapali North Beach documents, the Master Association Documents, the Condominium Documents, or the Vacation Plan Documents.
- ❖ Costs of and charges, including fines, for enforcing the Vacation Plan Documents; and late charges and interest on, and all costs of collecting Assessments and Personal Charges, including court costs and legal fees.
- ❖ Any late charges and interest on overdue payments.
- ❖ So long as the Plan is part of the Club, any Club Fees charged to the Association or to any Owner by the Club Operator (except for Club Fees that are Plan Expenses).

An Owner is fully responsible for the Personal Charges of his or her Guests. An Owner is not responsible, however, for the Personal Charges of anyone who uses his or her use rights through an exchange program, including the Club and SVN.

**H. OTHER FEES AND ASSESSMENTS.** So long as the Plan is part of the Club, you must also pay any Club Fees charged to you by the Club Operator. So long as the Plan is part of the Club and the Club is part of SVN, you must pay any SVN Fees charged to you by the SVN Operator. These fees are Personal Charges. See the SVN Fees Chart which appears in the Owner's Handbook for details on Club Fees and SVN Fees. These amounts are current as of the date when this disclosure statement was issued, but the Developer reserves the right to change them without notice. You may opt out of the SVN program by signing an opt out agreement with the Club Operator that will terminate your membership and participation in SVN, but even if you do, you still must pay the Club Fees. The SVN Fee Chart also lists the Transaction Fees which you may be required to pay in certain circumstances.

In addition to your Fair Share of the Plan Expenses, you must also pay a share of the regular and special assessments charged to your Unit by the Condominium Association and the Master Association. The current amount of these assessments is shown in Exhibits H and I. These budgets are based on the construction of Buildings 5, 6, 7 and 8.

In the case of the Master Association, each unit for which assessments have begun pays a share of the Master Association expenses proportionate to the relative valuation of that unit as compared to the relative valuation of all Master Association units. A Vacation Owner pays 1/52<sup>nd</sup> (for an every-year Vacation Ownership Interest) or 1/104<sup>th</sup> (for an every-other-year Vacation Ownership Interest) of the amount charged to his or her Unit by the Master Association.

In the case of the Condominium, the costs of the limited common elements generally are charged to the apartments to which they are assigned. Because most parts of the buildings containing the resort apartments are limited common elements of the resort apartments, the resort apartments will pay for nearly all of the costs of those buildings. The commercial apartments located in Buildings 6, 7 and 8, however, pay a

share of the costs of those buildings in proportion to the square footage of their commercial apartment in the building as compared to the square footage of all apartments in the building. The remaining common expenses are divided among the apartments in proportion to their common interests. A Vacation Owner pays 1/52<sup>nd</sup> (for an every-year Vacation Ownership Interest) or 1/104<sup>th</sup> (for an every-other-year Vacation Ownership Interest) of the amount charged to his or her Unit by the Condominium Association

#### **I. ENFORCEMENT OF FINANCIAL DUTIES.**

To collect all money you owe, the Association may charge late fees and interest. It also has a lien on your Vacation Ownership Interest. It may foreclose on that lien and sell your Vacation Ownership Interest to someone else. If the money from the foreclosure sale is not enough to pay all amounts due plus legal fees and costs, you must pay the shortfall.

If you are in default, the Association may also refuse to allow you to make a reservation or to check in. It may also suspend services to your Vacation Unit or even file a lawsuit.

If you do not pay your Club Fees or SVN Fees, then the Club Operator and/or the SVN Operator may charge late fees and interest. Also, they will not process or confirm your reservation or exchange requests until you pay all amounts due. And they also may cancel any reservations that you are holding.

**J. TAXES.** The State of Hawaii taxes the occupancy of time share units. The amount of the tax is 7.25% of the fair market rental value. By law, the "fair market rental value" is set to one-half of the gross daily maintenance fees paid by the owner and attributable to the time share unit unless the taxpayer proves or the tax director determines that the gross daily maintenance fees do not fairly represent fair market rental value taking into account comparable transient accommodation rentals or other appraisal methods. Based on maintenance fees, the tax should be about \$90 for a one-week stay. The State of Hawaii also charges a 4% gross excise tax on amounts collected by the Association or the Master Association, including Regular and Special Assessments, and Personal Charges. The Vacation Units are subject to real property taxes levied by the County of Maui. For the 2009/2010 County fiscal year, the County began assessing each Vacation Unit separately. As a result, the 2009/2010 real property taxes for the total number of Vacation Units at the property have increased by approximately \$5,188,370.00, and the Regular Assessment for a Vacation Ownership Interest in your Association's 2010 budget will include corresponding increases. The additional taxes due will be paid using Association funds and/or from a loan obtained by the Association. If a loan is obtained, each member of the Association will be responsible for repaying the loan balance and interest. Funds necessary to repay the loan may be obtained by a special assessment levied on the Members or incorporated as a specific line item in the Association's 2010 budget. The Developer and Association are currently challenging the increase in the assessed value. Real Property taxes paid under protest are paid into a claims litigation account which may not

be used by the Developer, Association or Maui County until the protest is resolved.

### 13. ESCROW ACCOUNT

The Hawaii "Time Share Law" is contained in Chapter 514E, Hawaii Revised Statutes, and Chapter 16-106, Hawaii Administrative Rules. It requires that: (a) Buyer's Funds, Notes, and Loan Documents be put in escrow before closing and that the Buyer's Funds be refunded if the Buyer cancels as explained in Section 8 above; (b) Buyer's Funds must be refunded in the other circumstances explained in Section 14; and (c) Closing cannot occur until the Buyer is protected from Blanket Liens.

"Funds" means money. "Notes" means any "negotiable instrument" as defined in the Time Share Law. A check is an example of a negotiable instrument. A "negotiable instrument" generally is a document that the Developer could give to someone else who could then force the Buyer to keep his or her promise to pay free from any claim or defense that the Buyer might have against the Developer. "Loan Documents" means any "purchase money contract" as defined in the Time Share Law. In general, "purchase money contract" refers to things like a promissory note, an agreement of sale, or other contract in which the Buyer agrees to repay a loan made to finance the Buyer's purchase of a Vacation Ownership Interest and made to the Buyer by the Developer or by a lender that is (i) affiliated with the Developer or (ii) to whom the Developer referred the Buyer.

"Closing" refers to completing the sale of a Vacation Ownership Interest. This normally includes recording your Vacation Ownership Deed and any mortgage that you sign, and payment to the Developer of all sums due under your Purchase Contract.

"Blanket liens" are certain kinds of encumbrances (for example, a mortgage) as defined in the Time Share Law that affect two or more Vacation Ownership Interests.

An escrow account for the Developer and its sales agents has been established with Hawaii Resort Escrow, Inc. (the "Escrow Agent"). Its address, telephone and fax numbers are 810 Richards Street, Suite 770, Honolulu, Hawaii 96813. Telephone: (404) 954-9831; Fax No. (404) 954-9898.

The Developer or the sales agent must give each Buyer's Funds, Notes and Loan Documents to the Escrow Agent to hold in this account. But, as permitted by Hawaii's Time Share Law, the Developer or any sales agent may initially hold all Notes (such as a Buyer's check) and Loan Documents (a) that are payable to the Escrow Agent, or (b) that are not negotiable instruments, until: (1) the Seven-Day Cancellation Period expires; and (2) the expiration of any longer period stated in the Purchase Contract in which a Buyer may cancel.

### 14. ESCROW AGREEMENT

The Escrow Agreement is dated April 12, 2005. When you sign your Purchase Contract, you also adopt the Escrow Agreement, just as if you had signed it yourself. Be sure to read it. The Escrow Agreement contains the Developer's and your instructions for the handling of your Funds, Notes and Loan Documents, and for Closing your purchase. Some of the key provisions of the Escrow Agreement may be summarized as follows:

**14.1. RELEASE OF BUYER'S FUNDS.** No matter what else the contract documents say, the Escrow Agent may not release your Funds, Notes or Loan Documents to the Developer or a sales agent, or to someone else for the benefit of the Developer or a sales agent, until the last of these events occurs:

A. The Hawaii Real Estate Commission has issued an effective date for a Final Condominium Public Report on the Condominium.

B. Your Purchase Contract "has become binding, and the requirements of sections 514A-40, 514A-39.5 and 514A-63 have been met" as that phrase is used in Section 514A-65 of the Hawaii Condominium Property Act.

C. The Escrow Agent has received a copy of a receipt for the Hawaii Disclosure Statement signed by you.

D. Your Seven-Day Cancellation Period has expired.

E. If and only if (i) your Purchase Agreement was made before the date when the Hawaii Real Estate Commission issues an effective date for a Final Condominium Public Report on the phase in which your Unit is located, and (ii) the Hawaii Real Estate Commission does not issue an effective date for a Final Condominium Public Report on that phase by the date on which the Contingent Final Public Report for that phase expires, then these conditions must be met:

- ❖ The Seller has given you written notice, by certified mail, that you have the right to rescind because the Real Estate Commission did not issue an effective date for a Final Public Report on the phase containing your Unit by the date on which the Contingent Final Public Report for that phase expired, and

- ❖ Both you and the Seller sign documents giving up (in legal terms, "waiving") your rights to rescind.

F. The Escrow Agent receives a sworn statement from the Developer stating, among other things, that the Developer has not received a valid notice of cancellation from you.

**14.2. CLOSING DATE.** The Developer must pick the day for the closing. That date is called the "Closing Date". It must occur within 90 days after the Closing Conditions are met. The Developer, however, can postpone the closing if it wishes to do so. Neither the Developer nor the Escrow Agent have to give you notice of the Closing Date.