

they will not share in the costs of owning, operating, and maintaining the property owned by the Master Association. The Developer and the owner of Apartment 101, however, have certain easements to use the Master Association's property.

The Developer has the right to add to the Master Association Amenities any amenities located on any other project participating in the Master Association, but the Developer does not promise to do so. The Master Association has the rights stated in the Master Association Declaration to add, continue, change or remove any of the Master Association Amenities. This includes the right to change any Master Association Amenities located on the Condominium. For example, it may install, change and remove landscaping, waterfalls, ponds, streams, foot bridges, benches, tiki torches, walkways, water slides, and pools. It may add new amenities, remove or change old ones, and so on. The Master Association also maintains certain on-site and off-site landscaping and storm water runoff drainage facilities serving the Condominium and/or the Ocean Resort Villas condominium located next door to the Condominium (at Six Kai Ala Drive) and possibly other properties. Although these are maintained by the Master Association, they serve the entire Condominium and so the Owners of the commercial apartments must pay a share of the costs.

**4.6. KA'ANAPALI NORTH BEACH.** The Condominium is part of a larger community known as Ka'anapali North Beach. The former owner of the land of the Condominium recorded the Declaration of Covenants, Conditions, Easements and Restrictions for Ka'anapali North Beach (the "*Ka'anapali North Beach Declaration*") against all of the lands in Ka'anapali North Beach to ensure that such lands would be used and developed in accordance with the standards and restrictions described in the Ka'anapali North Beach Declaration. The Ka'anapali North Beach Declaration applies to the Condominium and to all owners of apartments, time share interests, or other interests in the Condominium.

The Ka'anapali North Beach Declaration provides for the use, administration, repair and maintenance of the "Common Area." This includes two parks, a roadway, an area set aside for public open space, and so on. It also provides for the implementation of a monitoring program for Hawksbill turtles in the Shoreline Setback Area. These functions will be performed by the Ka'anapali North Beach Master Association, Inc., a non-profit Hawaii corporation (the "*Ka'anapali North Beach Association*") whose members consist of the owners of the lands in the Ka'anapali North Beach Area.

Each owner of an apartment, Vacation Ownership Interest, or Fractional Ownership Interest in the Condominium will be a member of the Ka'anapali North Beach Association. Members may use the Common Areas of Ka'anapali North Beach subject to the conditions and restrictions imposed by the Ka'anapali North Beach Declaration, rules and regulations adopted by the Ka'anapali North Beach Association, and other documents and laws. The Condominium Association, not the individual apartment owners, has the right to vote in the Ka'anapali North

Beach Association. The Condominium Association must pay the amounts charged to it by the Ka'anapali North Beach Association. Those amounts will be a common expense of the Condominium and each Owner will pay a share of it.

**4.7. KA'ANAPALI NORTH BEACH / WEST MAUI BENEFIT FUND.** The Developer in cooperation with The West Maui Preservation Association, a Hawaii non-profit corporation, has established or will establish a community fund to be called the "North Beach/West Maui Benefit Fund (the "*Benefit Fund*") by means of a trust agreement or other appropriate entity or entities. The Benefit Fund will be controlled by a Board of Trustees or Board of Directors (the "*Benefit Fund Board*"). The Developer does not own the Benefit Fund or control the Benefit Fund Board. The Benefit Fund will be used for designated improvement projects, including land acquisition, improvement of coastal resources, roadway improvements and other appropriate benefits to the North Beach/West Maui area and community, as determined by the Benefit Fund Board in its sole discretion, and for certain other expenses such as the costs of defending any claims brought against The West Maui Preservation Association, or relating to the Benefit Fund or any projects approved by the Board.

The Association will make a yearly contribution to the Benefit Fund. The initial amount of the yearly contribution will be Ten Dollars (\$10) for each Every-Year Vacation Ownership Interest, and Five Dollars (\$5) for each Every-Other-Year Vacation Ownership Interest, sold and closed by the Developer as of January 1 of the year in which the contribution is made. The Association's contribution for each Every-Other-Year Vacation Ownership Interest must be paid in each year, even if the Owner of the Vacation Ownership Interest has no use rights in that year. The amount of the yearly contributions shall be adjusted each year by an amount equal to the percentage increase in the Consumer Price Index All Urban Consumers for Hawaii/City and County of Honolulu published by the Department of Labor, Bureau of Labor Statistics (the "*Benefit Fund CPI*") over the 12-month period from July 1 to June 30 of the preceding calendar years for which such contribution is due, but not more than five percent (5%) in any one year. The amount of the yearly contribution may only be adjusted upwards; it cannot be adjusted downward.

The yearly contributions will be suspended when the Benefit Fund reaches \$2 million, but contributions will resume when the amount in the Benefit Fund falls below \$1.5 million. The Developer and the Plan Manager have the right to receive the Benefit Fund's financial statements upon request. The financial statements will show the current balance held in the Benefit Fund together with a listing of all disbursements made out of the Benefit Fund during the prior 12-month period.

**4.8. NO WARRANTIES.** The Seller is the Developer of the Condominium but it is not related to the general contractors who built the buildings.

The Condominium consists of fully built and existing buildings, and all warranties have now expired.

*Except for the warranty of title in your deed, the Developer makes no warranties, express or implied, about your Vacation Ownership Interest(s), the apartments, the Condominium, the Master Association's property, or anything installed or contained in the apartments, the Condominium, or the Master Association property. This includes, but is not limited to, warranties of merchantability, habitability, workmanlike construction, fitness for a particular use or sufficiency of design. THE PROPERTY IS TRANSFERRED TO YOU "AS IS" AND WITH ALL DEFECTS, WHETHER VISIBLE OR HIDDEN, AND WHETHER KNOWN OR NOT.* This means, among other things, that Developer does not have to correct or fix any defect no matter what causes it or when it is discovered.

*You also give up (or, in legal terms, "waive and release") all rights and claims against the Developer and its officers, directors, agents and employees for (i) any defects in the apartments, the Condominium, the Master Association's property, or anything installed or contained in the apartments, the Condominium, the Master Association's property, and (ii) for injury to persons or property arising from any such defects.* This means that the Developer will not have to pay for any injury or damage to people or things as a result of any defect.

Finally, without limiting the other parts of this Section 4.8, the Condominium Map is not intended to be and does not create any representation or warranty by the Developer.

#### **4.9. HAZARD AND LIABILITY INSURANCE.**

You should read Chapter 15 of the Vacation Plan Declaration and Section 13 of the Condominium Declaration for a discussion of insurance coverages that the Association and the Condominium Association are supposed to have. Although the Association will attempt to obtain these coverages, it may obtain less insurance if certain coverage is not reasonably available or if the Board decides that it is too expensive. The following is a brief summary of the coverages required by the Condominium Documents and/or the Vacation Plan Documents:

A. **PROPERTY INSURANCE.** The Association or the Condominium Association must buy a policy of property insurance that covers fire, lightning, windstorm and hail, smoke, explosion, riot, civil commotion, aircraft and vehicle damage, and so on. If it is available at a reasonable cost, the insurance must cover 100% of the cost of replacing the property (except for things like the foundation) without deductions for depreciation.

B. **LIABILITY INSURANCE.** The Association or the Condominium Association must buy a commercial general liability insurance policy and, if necessary, commercial umbrella insurance. The policy must cover all Owners, the Board, the Association, the Developer, the Managing Agent, the Plan Manager, and their officers, directors, agents, and employees against claims for personal injury, bodily injury, death, and property damage. The policy limits must not be less than \$3,000,000 for personal injury, bodily injury and death, and \$1,000,000 for property damage.

The Association must also buy a commercial automobile liability policy of insurance if the Association owns or leases any motor vehicles. The policy limits may not be less than \$1,000,000 for bodily injury or death or property damage arising out of a single accident or occurrence.

You should note that the insurance policies are subject to various deductibles and that the Association and the Condominium Association may decide not to create reserves to pay the amount of the deductibles. If there is a loss, the Association or the Condominium Association may have to pay the amount of the deductibles from other funds.

You should review (or have a qualified insurance agent review) the insurance requirements stated in the Vacation Plan Documents, the Condominium Documents, the Master Association Documents and/or the Ka'anapali North Beach Documents, as well as the policies obtained by the various associations, to decide whether or not to buy more insurance for yourself. You are free to do so. You and the various associations are also free to buy insurance from any company licensed to do business in the State of Hawaii. Since insurance is the responsibility of these associations and the individual Owners, the Developer makes no guarantee that insurance will be available, or available at a reasonable cost, or adequate.

#### **4.10. ADDITIONAL INFORMATION.**

A. The property is located in a tsunami inundation area. It is also located in a flood zone and flood control measures may be required. The Condominium Documents require that the Condominium Association maintain a policy flood insurance that complies with the requirements of the National Flood Insurance Program and the Federal Insurance Administration.

B. The Condominium is subject to certain public access requirements providing access to the beach in front of the Condominium. The Condominium is also subject to a 150 foot setback from the ocean. Certain areas in the Shoreline Setback Area (as that term is defined in the Condominium Documents) have been designated and must be preserved as wetlands.

C. The County of Maui has not made a determination as to whether any portions of the Condominium may contain historical sites.

D. The developer entered into an agreement dated September 28, 2004, with The West Maui Preservation Association, a Hawaii non-profit corporation, a short form of which was recorded as Document No. 3242967. The agreement is binding on the Developer and on future owners, including Owners of Vacation Ownership Interests. The agreement requires, among other things, (i) construction and maintenance of certain off-site and on-site drainage systems and improvements incorporating best management practices and sufficient on-site and off-site storm water retention capacity; (ii) the drafting and implementation of a water quality management program incorporating best management

practices, and the periodic monitoring of near shore ocean waters; (iii) the drafting and implementation of a management program incorporating best management practices to control and mitigate erosion of, and other adverse effects upon, the sand dunes fronting the Condominium and adjacent parcels or portions thereof; (iv) the construction of certain improvements in the "Public Open Space / Recreation Area" located on property adjacent to Lot 2; and (v) the developer's obligation to impose certain financial obligation upon the Association. Some of these obligations will continue to apply to the Condominium even after the Developer has completed construction of the initial improvements. This means that the Condominium Association, and each of the apartment owners (including Owners of Vacation Ownership Interests) will have to pay the ongoing costs of complying with this agreement.

E. Preliminary entitlements, such as a special management area permit, have been granted for the development of a proposed 700 unit condominium, hotel and townhouse project on a nearby parcel. The construction of the 700-unit project may create and cause noise, dust, soot, smoke, odors, surface water runoff, vibrations, and other nuisances or hazards. The Developer is not responsible in any way for such development.

F. The Developer has registered phases 1, 2 & 3 of the Condominium with the Hawaii Real Estate Commission. The Real Estate Commission has issued an effective date for a Contingent Final Public Report on each of these phases. These reports (one report with an effective date of May 17, 2005 covers phase 1, and a separate report with an effective date of December 20, 2005 covers phases 2 and 3) each expire nine months after their respective effective dates. If and only if (i) your Purchase Agreement was made before the 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 both you and the Developer will have the right to rescind (cancel) your Purchase Agreement and the Developer will notify you in writing of this right. If either party rescinds the Purchase Agreement, the Escrow Agent will refund your Funds together with all interest earned on your funds.

## 5. (MULTIPLE LOCATION TIME SHARE PLAN)

Not applicable. The Plan includes only units in the Condominium.

## 6. TIME SHARE PLAN IN A CONDOMINIUM

### 6.1. CONDOMINIUM LEGAL STRUCTURE.

The Vacation Ownership Plan is located in the Ocean Resort Villas North Condominium. The Condominium was created

when the Condominium Documents were recorded (officially filed) in the real estate records of the State of Hawaii. The Condominium Documents are listed in Exhibit A.

The Condominium Property Act (Chapter 514A, HRS) and the Condominium Documents control the rights and obligations of the apartment owners with respect to the Condominium and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law. Each apartment owner (including each Owner of a Vacation Ownership Interest) must obey the Condominium Documents.

The Condominium Documents divide the Condominium into apartments and common elements. "*Common elements*" means all parts of the Condominium except for the apartments. For example, the land of the Condominium is a common element. So are the driveways and the Parking Building. Some common elements are set aside for the use of particular apartments. These are called "*limited common elements*." The limited common elements are described in section 5.4 of the Condominium Declaration. For example, 170 of the parking stalls have been designated as limited common elements of Apartment 101. Most of the common elements in or that are part of Buildings 5, 6, 7 and 8 are limited common elements of all resort apartments. Although commercial apartments 101 and 102 must pay a share of the costs of Building 6, most of the costs of Building 6 are allocated to the resort apartments, which include all of the Vacation Units. Similarly, while the owner of commercial apartment 101 must also pay a share of the costs of Buildings 7 and 8, most of the costs of these buildings are allocated to the resort apartments. Apartment 101 and the Master Association Apartment each have particularly extensive limited common elements. In fact, the Master Association controls most of the landscaping (except the 150 foot shoreline setback area) and the pools, pool deck, and various other amenities. Apartment 101 has most of the storage rooms, the telephone equipment rooms, and certain kiosks that the Developer can use for marketing and other purposes.

Each apartment comes with an ownership share, called a "*common interest*" in the common elements. This means that the owners can own their own apartments separately but that all of the apartment owners own the common elements together. The common interests for the Vacation Units are shown in Exhibit B.

The Association of Apartment Owners of Ocean Resort Villas North is an unincorporated association of the owners of apartments in the Condominium. It is responsible for the management of the common elements and the overall operations of the Condominium. Each owner of an apartment in the Condominium (including Owners of Vacation Ownership Interests in the Plan) is a member of the Condominium Association.

The apartment owners elect a board of directors to manage the Condominium. The board of directors is the governing body of the Condominium Association. Unless you serve as a board member or an officer, or are on a committee appointed by the