

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

sporting events, and other activities of general community interest.

E. The Developer and persons authorized by it have the exclusive right and an easement to conduct marketing and sales activities (which may be extensive) on the common elements (including but not limited to the limited common elements of the resort apartments and the limited common elements of the Master Association Apartment) and from any apartment owned by it. This right includes but it is not limited to the right to permit purchasers and prospective purchasers to come onto the project and to park in unassigned parking stalls, the right to show the project to those persons, the right to use apartments owned by the Developer as model apartments, sales, management, and/or administrative offices, the right to establish and operate tour or activity desks or other businesses intended to promote sales, and the right to use banners, signs or other extensive sales displays and activities at the Condominium.

This easement applies to activities conducted in connection with the initial sale and/or any resale of (i) one or more apartments, Vacation Ownership Interests and/or Fractional Ownership Interests in the Condominium, and (ii) one or more apartments, time share interests and/or fractional interests in any Adjacent Projects (meaning project located on any Adjacent Parcel).

F. The Developer and persons authorized by it have an easement as may be reasonably necessary or convenient to complete any improvements and to correct any defects and other punchlist items in the common elements or any apartment or to use any of the other Developer's Reserved Rights.

G. The Owner of Apartment 101 has the exclusive right (but no duty) to provide (i) bellhop service, (ii) room service, (iii) valet parking service, and (iv) food and beverage services in the Courtyards of the Condominium.

H. The Developer and the Master Association have the right (but no duty) to operate one or more children's programs. They may make these programs available to children of Owners, occupants, other Master Association Members and occupants of their property, potential Master Association Members, and guests of any of these persons. The programs may involve use of the amenities of the Master Association or the Condominium, the Shoreline Setback Area (subject to the requirements of the SMA Permits), and the beach.

I. The Developer and persons authorized by it have an easement to create and cause noise, dust, soot, smoke, odors, surface water runoff, vibrations, and other nuisances or hazards in connection with (a) the use of its other easement rights, (b) the development of any Adjacent Parcel, or (c) the use of the Developer's Reserved Rights or any other rights of the Developer described in the Condominium Declaration.

J. The Developer has the right to establish, operate and maintain in the Shoreline Setback Area no more than three

beach or beach side (meaning on the parts of the Condominium near the beach) concession stands. (The Developer also has the right to additional concession stands in the Courtyards and the other limited common elements of the Master Association Apartment.)

K. The Master Association Apartment has an easement over, under, across and through the Condominium for the purpose of designing, installing, constructing, using, maintaining, repairing, replacing, relocating, realigning, removing, and otherwise dealing with underground drainage lines and related improvements (the "Drainage Improvements") serving the Condominium and/or any Adjacent Parcel and to connect the Drainage Improvements to the retention basins shown on the Condominium Map and/or to drainage lines and related improvements of any Adjacent Parcel including but not limited to the Ocean Resort Villas condominium located next door to the Project.

L. Both the Developer and the Association have certain rights to create, grant, accept, change, or otherwise deal with easements in favor of the Condominium, and easements over, under or through the Condominium in favor of others or their property.

Each person who has any interest in the Condominium (i) understands, acknowledges and accepts that some or all of these easements activities may result in noise, dust, soot, smoke, odors, surface water runoff, vibrations and other nuisances and hazards, (ii) consents to this activity, and (iii) gives up (in legal terms, "waives, releases and discharges") any rights, claims or actions that he or she may have, now or in the future, against the Developer and various other persons. Each Owner and every other interested party assumes the risk of any property damage, personal injury or loss in property value arising from the exercise of these easements.

7. RESTRAINTS ON TRANSFER OF BUYER'S INTEREST

7.1. UNDER THE VACATION PLAN DECLARATION.

A. **GENERAL RULE.** One of the many benefits of owning a Vacation Ownership Interest is that you can transfer it to your children, a friend, or just about anyone else. Because it is a real estate interest, you can also mortgage your Vacation Ownership Interest. If you own more than one Vacation Ownership Interest, you may transfer or mortgage each of them separately. However you cannot transfer or mortgage less than an entire Vacation Ownership Interest. There are two exceptions (i) you can pledge or transfer your voting rights to a lender having a mortgage on your Vacation Ownership Interest (or for whom someone else holds a mortgage on your Vacation Ownership Interest); and (ii) the seller under an agreement of sale may retain legal title and the right to vote on certain matters. The Buyer may transfer his or her entire interest under the agreement of sale, but nothing less. The Association has a

lien on each Vacation Ownership Interest for all amounts charged to it or to its Owner. This is discussed in Section 12.

B. **NOTICE OF TRANSFER.** The Vacation Plan Declaration requires that notice of any transfer must be given to the Association. If notice is not given, neither the Association nor the Plan Operator have to recognize the transfer, and the person making the transfer will remain liable to the Association for charges for the Vacation Ownership Interest. The Association and the Plan Operator may charge a reasonable service charge to register the change in ownership on their records.

7.2. WHEN THE DEVELOPER'S CONSENT IS REQUIRED.

A. The Developer's consent is required if you want to transfer your Purchase Contract before Closing, or to transfer a Vacation Ownership Interest that is mortgaged to the Developer. If the Developer assigns the mortgage to someone else, that person's consent will also be necessary.

B. Without the Developer's written consent, you cannot transfer, lease, rent, or otherwise contribute your Vacation Ownership Interest or its use rights, Points or Vacation Period to (i) another vacation ownership or time share plan or program, (ii) a fractional ownership plan, or (iii) a Competitor of the Developer (but this does not prevent an Owner from participating in a "Traditional Exchange Program", as that term is defined in the Vacation Plan Documents, or any Exchange Program available through the Club Operator or the SVN Operator). Any attempt to do so will not be effective; it will be void. The Developer may withhold its consent in its sole discretion. Also, Competitors of the Developer are not allowed to own any interest in the Property. If a Competitor acquires any interest in a Vacation Ownership Interest without the Developer's consent, or if anyone who has any interest in a Vacation Ownership Interest becomes a Competitor without the Developer's written consent, that interest will return to the Developer automatically. The Developer may withhold its consent in its sole discretion.

A "Competitor" is anyone who is: (i) a developer, marketer, sales agent (including but not limited to any OPC), or manager of another time share plan or fractional ownership plan; or (ii) an exchange company other than the Club or SVN; or (iii) anyone collaborating with anyone listed in items (i) or (ii). The Developer may cancel your Purchase Contract if you are a Competitor.

C. **RIGHT OF FIRST REFUSAL TO PURCHASE.** If you receive an offer to buy (the "Offer to Buy") your Vacation Ownership Interest and if you want to accept it, you must first notify the Developer before accepting the offer and must provide a complete copy of the Offer to Buy. The Developer will then have the right and an option to buy your Vacation Ownership Interest at the same price and on the same terms contained in the Offer to Buy. If the Developer decides to buy it, then the Developer will send you written notice of that decision within ten (10) business days after the

Developer receives your notice of the Offer to Buy. The Developer's notice will create a binding contract between you and the Developer to buy your Vacation Ownership Interest on the terms stated in the Offer to Buy (subject, however, to a reasonable extension of the closing date). If the Developer does not send notice of its decision to buy the Vacation Ownership Interest within the ten (10) business day period, then you may sell your Vacation Ownership Interest to the person who submitted the Offer to Buy. If the Offer to Buy is changed in any way (for example, a reduction in the price, a change in the Buyer or an assignment of the Buyer's rights to someone else), or if the sale does not close within ninety days, then the Offer to Buy will be considered a new Offer to Buy and you must re-submit it to the Developer and the requirements of this section will apply again. If the Developer chooses not to buy the Vacation Ownership Interest, this will not constitute consent by the Developer of a sale or other transfer of the Vacation Ownership Interest to a Competitor.

8. MUTUAL RECISSION PROVISION

You and the Developer both have the right to cancel your Purchase Contract without penalty by giving the other party written notice within seven calendar days after: (1) signing the contract; or (2) you receive this disclosure statement, whichever is later. The seven-day period is called the "Seven-Day Cancellation Period". You will receive a form of Notice of Cancellation [Form TS-10 of the Department of Commerce and Consumer Affairs of the State of Hawaii ("DCCA")] with all pertinent information filled in at the time that you sign your Purchase Contract. If you cancel, then, within 15 business days all of your payments must be returned to you.

9. TITLE DEFECTS OR ENCUMBRANCES

"Encumbrances" are interests in or claims on property held by someone other than the owner of that property. They also include duties imposed by certain documents that affect the property and its owner. For example, a document giving the telephone company a right to install telephone lines across the land of a resort is an encumbrance.

Your Vacation Ownership Interests will be deeded to you subject to the encumbrances listed in Exhibit A and to (i) any mortgage signed by you, and (ii) any other encumbrances that do not make your title unmarketable. These are called the "Permitted Encumbrances."

The Condominium Documents, the Master Association Documents, and the Vacation Plan Documents are Permitted Encumbrances. The Developer has certain special and reserved rights, called the "Developer's Reserved Rights", under these documents. Some of those rights are described in Exhibits C and D. When you sign your Vacation Ownership Deed, you consent to, accept, approve, and make the agreements about the Developer's Reserved Rights as discussed in those exhibits. You also give to the Developer the right of first refusal

described in Section 7.2.C, above. These consents, acceptances, approvals, agreements, and the right of first refusal will also be encumbrances on your Vacation Ownership Interest. You should read your Vacation Ownership Deed and your Purchase Contract with care.

10. PENDING OR ANTICIPATED SUITS

Not applicable. There are now no suits pending or anticipated that are material to the Vacation Ownership Interests or the Plan of which the Developer has or should have knowledge.

11. FINANCIAL OBLIGATION OF PURCHASERS

11.1. PURCHASE OBLIGATION. You must pay the Purchase Price stated in your Purchase Contract. You may pay it at once in cash or over time on credit from the Developer. If you buy on credit then you must make monthly loan payments both before and after Closing. See your Truth-In-Lending Disclosure Statement for the annual percentage rate and other information. The Developer is not arranging, and has no duty to arrange, outside financing for any Buyer. If you buy on credit, you must pay all costs of the collection agent to whom your payments are made. You must also pay closing costs in the amount listed on your Purchase Contract as the "Administrative Fee". The Developer will pay all closing costs beyond that except that you must pay any title insurance premiums in excess of \$100. See Exhibit E for information about sales prices, installment purchase terms and closing costs. All amounts are in United States dollars. Be sure to ask about special purchase prices and terms that may be offered from time to time. The Developer has the right to change Exhibit E from time to time.

11.2. ASSOCIATION CHARGES. As an Owner, you must pay all amounts charged to you by the Association, the Condominium Association, and the Master Association. See Section 12.

11.3. ENFORCEMENT. You should be aware that if you do not pay or keep the promises you make in your Purchase Contract (or in any note and mortgage that you sign), the Developer may take any action permitted by the Purchase Contract (or note and mortgage) and allowed by law. Among other things, the Purchase Contract allows the Developer to keep any payments made by a Buyer who defaults, and the mortgage permits the Developer to foreclose. You should read these documents carefully.

12. ESTIMATE OF DUES, MAINTENANCE FEES, REAL PROPERTY TAXES, ETC.

ASSESSMENTS. After Closing, you must pay your Assessments and Personal Charges. The current amount of

assessments is shown in Exhibit F. Assessments are set in this way:

A. **PLAN EXPENSES.** The Association pays all costs of operating the Plan and maintaining, repairing and replacing the Vacation Property. These expenses are called "Plan Expenses". You and every other Owner must pay a share of the Plan Expenses. Among other things, these are Plan Expenses:

- ❖ The cost of utility services such as water, electricity, garbage disposal, telephone and cable television.
- ❖ The cost of repairing, rebuilding, replacing, remodeling, or making improvements to the Vacation Property.
- ❖ The cost of buying insurance required or permitted by the Vacation Plan Documents.
- ❖ All amounts charged to the Vacation Units by the Master Association, the Condominium Association or the Ka'anapali North Beach Association (except amounts separately charged to individual Owners). This includes, for example, the expenses of operating and maintaining the Condominium or the Master Association Amenities.
- ❖ A yearly contribution to the North Beach/West Maui Benefit Fund as described in Section 4.7.
- ❖ Any real property taxes and other government taxes and charges on the Vacation Units (except amounts separately charged to individual Owners).
- ❖ Amounts needed for the Reserve Accounts. These are savings accounts of the Association. The money is used to pay for Capital Improvements. "Capital Improvements" are things like replacing the carpeting or appliances, other major repairs and remodeling, or replacing the Vacation Units or Common Furnishings.
- ❖ Any amounts due from the Association under the Club Affiliation Agreement, including but not limited to the Annual Club Dues for each Owner (unless separately charged to the individual Owners).
- ❖ Housekeeping and cleaning fees, and other expenses necessary to maintain, repair, manage and operate the Vacation Property.

B. **YOUR SHARE OF PLAN EXPENSES.** Each Owner must pay a share of the Plan Expenses (called a "Fair Share"). Your Fair Share of Plan Expenses depends on the Unit Type of Your Unit. It works like this:

1) **Relative Valuation.** The Developer sets a Relative Valuation for each Unit Type. *Relative Valuation* refers to the idea that each Vacation Unit's share of the Plan Expenses should be based on a comparison of that Vacation Unit to other Vacation Units included in the Plan. While some time share plans compare the size of apartments to determine their share of the Plan's expenses, this does not necessarily