



## **Real Estate Agency**

*TIMESHARE PUBLIC REPORT*

*ISSUED: 06-22-2007*

*FOR*

*THE COTTAGES AT CAPE KIWANDA  
(A TIMESHARE PLAN)*

*FILE NO. TS-29-0507-003*

*KIWANDA PROPERTIES LLC  
PO BOX 189  
PACIFIC CITY, OREGON 97135*

*THIS PROJECT HAS BEEN FILED WITH THE REAL ESTATE COMMISSIONER OF THE STATE OF OREGON IN ACCORDANCE WITH ORS 94.800 ET SEQ. ISSUANCE OF A PUBLIC REPORT DOES NOT CONSTITUTE A RECOMMENDATION OR ENDORSEMENT OF THE BY THE COMMISSIONER.*

*THE CONDITION OF THE STRUCTURE, DRAINAGE, SANITATION, DOMESTIC WATER SUPPLIES, IMPROVEMENTS AND THE PHYSICAL DEVELOPMENT OF THE PROJECT ARE NOT REGULATED BY THE REAL ESTATE COMMISSIONER. THIS REPORT DOES NOT RELIEVE ANY PERSON FROM THE RESPONSIBILITY OF COMPLYING WITH THE REQUIREMENTS OF ANY FEDERAL, STATE, COUNTY OR MUNICIPAL AGENCY WITHIN WHOSE JURISDICTION THE PROPERTY IS LOCATED.*

*THIS PUBLIC REPORT MUST BE GIVEN TO EACH PURCHASER PRIOR TO THE EXECUTION OF A BINDING CONTRACT OR AGREEMENT FOR THE ACQUISITION OF A TIMESHARE AND RECEIPT THEREFORE MUST BE TAKEN.*

**PROSPECTIVE PURCHASERS SHOULD READ THIS REPORT BEFORE BUYING**

**READ THE ENTIRE PUBLIC REPORT CAREFULLY. THE REPORT CONTAINS SPECIFIC INFORMATION ABOUT THE FOLLOWING MATTERS:**

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**RIGHT OF CANCELLATION**

**OREGON LAW PROVIDES THAT A PURCHASER HAS FIVE CALENDAR DAYS AFTER SIGNING THE FIRST WRITTEN OFFER OR THE FIRST CONTRACT TO CANCEL THE SALE FOR ANY REASON. SEE PAGE 3 OF THIS REPORT.**

**NOTICE OF DISCLAIMER**

**PROSPECTIVE PURCHASERS SHOULD BE FULLY AWARE THAT NO PHYSICAL ON-SITE INSPECTION HAS BEEN CONDUCTED BY THE OREGON REAL ESTATE AGENCY. THIS REPORT, WITH THE TIMESHARE INSTRUMENT AND DECLARATION OF OWNERSHIP PROGRAM, SHOULD NOT BE CONSTRUED AS AN OPINION OF THE OREGON REAL**

**ESTATE AGENCY RELATIVE TO THE QUALITY OF CONSTRUCTION OR THE AESTHETICS OF THE TIMESHARE ACCOMMODATIONS.**

**PROSPECTIVE PURCHASERS ARE ADVISED THAT QUALITY AND STANDARDS OF CONSTRUCTION AND OTHER PHYSICAL ASPECTS OF THE PROPERTY ARE CONTROLLED BY THE LOCAL JURISDICTION IN WHICH THE PROJECTS ARE LOCATED.**

**PROSPECTIVE PURCHASERS ARE URGED TO INSPECT THE PROPERTY AND DETERMINE FOR THEMSELVES IF THE TIMESHARE PLAN IS SUITABLE FOR THEIR NEEDS AND PURPOSES.**

\* \* \* \* \*

**PART I**

**PUBLIC DISCLOSURE**

Oregon law requires a developer to submit a notice to the Oregon Real Estate Commissioner of the developer's intent to sell timeshares in Oregon. Kiwanda Properties, LLC, an Oregon limited liability company (the "Developer"), has filed such notice for "The Cottages at Cape Kiwanda."

The Developer has submitted a "Declaration of Covenants, Conditions, Restrictions and Fractional Ownership Plan of The Cottages at Cape Kiwanda" (the "Timeshare Instrument") that was recorded in the county records of Tillamook County, Oregon. The Developer also recorded a "Master Declaration of Covenants, Conditions and Restrictions" (the "Master Declaration") in the county records of Tillamook County, Oregon, which includes provisions relating to the property which is the subject of the Timeshare Instrument and to additional property.

In the Timeshare Instrument, the Developer refers to the timeshare interests offered for sale in the timeshare plan as "fractional interests." The timeshare interests Developer is offering to sell are "timeshare estates" as defined in ORS 94.803(21) as "a right to occupy an accommodation during five or more separated timeshare periods over a period of at least five years, including renewal options, coupled with a freehold estate or an estate for years in the timeshare property." The timeshares interest Developer is offering to sell are not a "fractional interest" as defined in ORS 94.803(10) as "any undivided fractional ownership of real property which gives each and every fractional owner full rights to unlimited use and possession of the real property subject only to such limitation as the fractional owners may agree to among themselves."

The Cottages at Cape Kiwanda timeshare plan is located in Pacific City, Tillamook County, Oregon. The Timeshare Instrument and the Master Declaration contain all information required by Oregon Revised Statutes 94.803 to 95.945 for timeshare estates, including detailed disclosures concerning the functions of the timeshare plan and the accommodations and facilities. The contents of the Timeshare Instrument include, but are not limited to, the disclosures required by the State of Oregon.

Purchasers should carefully review the information contained in the Timeshare Instrument and Master Declaration and, if the material is not understood, should consult their own legal counsel or other competent advisor. Oregon law provides that upon receipt of a timely notice of cancellation, the Developer shall immediately return any payment received from the purchaser.

## **PART II**

### **A. SALES DOCUMENTS**

#### **PURCHASE AND SALE AGREEMENTS**

The Developer intends to sell timeshare estates, which the developer refers to as “fractional interests,” in The Cottages at Cape Kiwanda by agreements entitled “Purchase and Sale Agreement and Earnest Money Receipt” (the “Sale Agreement”).

The Sale Agreement may contain or refer to, in addition to the terms and conditions of the purchase, certain provisions pertaining to the usage and administration of the fractional interest property. Prospective purchasers should carefully review the entire Sale Agreement prior to signing.

### **B. RIGHT OF CANCELLATION**

Purchasers should carefully read the “NOTICE TO PURCHASER” attached to the Sale Agreement.

Oregon Law provides that a purchaser has, in accordance with ORS 94.836, **FIVE CALENDAR DAYS** from the date the purchaser signs the Sale Agreement to cancel for any reason by written notice to the Developer or Developer’s agent.

Cancellation occurs when the purchaser gives written notice to the developer at the developer’s address. A notice of cancellation given by a purchaser need not take a particular form and is sufficient if it indicates in writing the purchaser’s intent not to be bound by the contract or evidence of indebtedness. Notice of cancellation, if given by mail, shall be given by certified mail, return receipt requested, and is effective on the date that the notice is deposited with the United States Postal Service, properly addressed and postage prepaid.

### **C. ESCROW ARRANGEMENTS**

#### **ESCROW AGENT**

Prior to undertaking sales within the State of Oregon, the Developer will enter into an escrow agreement between the Developer and an escrow agent to provide for the holding of any cash, negotiable instruments, credit card authorizations or other documents necessary for the sale of a fractional interest. At the conclusion of the five calendar day cancellation period, the items mentioned above shall be forwarded to the Developer’s closing escrow agent identified in the materials provided to the Real Estate Agency. The Developer will also arrange for the availability of a collection escrow to retain documents involved with any sale financed by the Developer, as required by ORS 94.871.

## **PART III**

All timeshare interests are fractional ownership interests in the Cottages at Cape Kiwanda that is accessible via Cape Kiwanda Drive in Pacific City, Oregon. The development consists of three, two story buildings

(the “Cottages”) each of which contains six separate units. The Developer has created 307 timeshare interests and is retaining one timeshare interest. The developer is selling 306 timeshare interests in 18 units. Purchasers of a timeshare interest in The Cottages at Cape Kiwanda will be deeded an undivided 1/307<sup>th</sup> fee simple interest as a tenant in common in the property.

Each fractional interest represents three weeks of use per year (one week at a time, three different times of the year). One of the weeks is called a “Primary Week,” which does not change, and is determined at the time of purchase. The other two weeks are chosen by the owner in August of each year for the following year. An owner chooses one week from “Open Pool A” weeks and another week from “Open Pool B” weeks. The owner’s order of picking weeks in Open Pool A and Open Pool B rotates annually. *See* Exhibit D of the Timeshare Instrument for a detailed explanation of the selection procedures. The recorded Timeshare Instrument includes restrictions on the use of the property, the development generally and on the transfer of the fractional interests. *See* the Timeshare Instrument, Articles III and XIII .

An owners’ association has been established, namely, The Kiwanda Cottages Owners’ Association, Inc., an Oregon non-profit corporation. Assessments for the development will be shared by all fractional interest owners. By purchasing a fractional interest, each owner becomes a member of the Owners’ Association. Through legally enforceable provisions in the recorded Timeshare Instrument, membership in the Association will be automatic the moment a purchase is made. Membership will mean certain responsibilities and obligations under not only the Timeshare Instrument but also under rules and regulations adopted by the Owners’ Association. In order to provide funds for operation and maintenance of the properties common to all of the Cottages, the Association will have authority to levy assessments against all fractional interests. The anticipated income and expense of the Association, and the amount an owner may expect to pay annually through assessments, will be outlined in and predicated upon annual budgets which will vary from year to year. *See* Article VIII of the Timeshare Instrument. The Owners’ Association will enter a management agreement regarding the operation of The Cottages at Cape Kiwanda. The initial manager will be the Kiwanda Hospitality Group, Ltd.

The Developer has not stated any future development plans; however, Developer may build additional facilities (such as a lodge and pool) which may be available for use by owners of a fractional interest in the Cottages. Any such plans are tentative and subject to change at the Developer’s sole option.

**The attached “Declaration of Covenants, Conditions, Restrictions and Fractional Ownership Plan of The Cottages at Cape Kiwanda” (the “Timeshare Instrument”) of approximately 58 pages are Part III of this Public Report.**

OREGON REAL ESTATE COMMISSIONER  
By: Laurie Skillman

RECEIPT FOR PUBLIC REPORT

FOR

THE COTTAGES AT CAPE KIWANDA  
(A TIMESHARE PLAN)

A prospective purchaser of a Timeshare must be given a copy of the Public Report issued by the Oregon Real Estate Commissioner not later than the date the sales agreement is fully executed by all parties.

DO NOT SIGN THIS RECEIPT UNTIL YOU HAVE RECEIVED A COPY OF THE PUBLIC REPORT.

The undersigned hereby acknowledges receipt of a copy of the Public Report issues June 22, 2007, consisting of 5 pages, not later than the date the sales agreement is fully executed by all parties.

The undersigned understands that the Public Report is not a recommendation or endorsement of the project, but is for information only.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Purchaser

\_\_\_\_\_  
Purchaser

THE DEVELOPER IS REQUIRED TO RETAIN THIS RECEIPT FOR THREE  
YEARS

(PURCHASER'S COPY)

RECEIPT FOR PUBLIC REPORT

FOR

THE COTTAGES AT CAPE KIWANDA  
(A TIMESHARE PLAN)

A prospective purchaser of a Timeshare must be given a copy of the Public Report issued by the Real Estate Commissioner not later than the date the unit sales agreement is fully executed by all parties.

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Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Purchaser

\_\_\_\_\_  
Purchaser

THE DEVELOPER IS REQUIRED TO RETAIN THIS RECEIPT FOR THREE  
YEARS

(DEVELOPER'S COPY)