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11                   **THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
12                   **IN AND FOR THE COUNTY OF MARICOPA**

13 NORMAN ZWICKY,

14 Plaintiff,

15 vs.

16 PREMIERE VACATION COLLECTION  
17 OWNERS ASSOCIATION, f.k.a. Premiere  
18 Vacation Club, an Arizona nonprofit  
19 corporation,

20 Defendant.

Case No. CV2015-051911

**MOTION FOR SUMMARY  
JUDGMENT**

(ASSIGNED TO THE HONORABLE  
**JOHN HANNAH**)

**ORAL ARGUMENT REQUESTED**

21 Plaintiff Norman Zwicky, by and through undersigned counsel, moves for summary  
22 judgment on the basis that there is no genuine issue of material fact and he is entitled to  
23 judgment as a matter of law. Rule 56(c), Ariz.R.Civ.P., 16 A.R.S.; *Orme Sch. v. Reeves*,  
24 166 Ariz. 301, 311, 802 P.2d 1000, 1010 (1990).

25 The essential, operative facts are beyond dispute. Plaintiff, as a matter of both  
26 common law and Arizona statutory law, is entitled to an order compelling Defendant to  
open up its financial records for inspection and copying to Plaintiff, as requested in the  
Complaint. Summary adjudication would serve the salutary purpose of promoting judicial  
efficiency in this very straightforward matter, and would be consistent with statutes calling

1 for prompt adjudication of such disputes. A.R.S. § 10-1604(A) & (B) (general corporations;  
2 shareholder inspection and copying rights to be “summarily” enforced; proceedings to take  
3 place on an “expedited basis”); A.R.S. § 10-11604(A) & (B) (same as to nonprofit  
4 corporations).

5 At the outset, it is essential to clarify that although Plaintiff is providing a significant  
6 amount of background information—some of which may potentially be disputed by the  
7 Defendant—the *sole* issue in this case is simple and straightforward: Whether Plaintiff has  
8 the *legal right to inspect* the books and records of the Association to determine, for himself,  
9 whether there has been mismanagement of the Association’s affairs. As discussed, *infra*,  
10 Plaintiff must show a “proper purpose” in his request for inspection. The background  
11 information provided herein is intended *solely* to demonstrate that Plaintiff has a *good faith*  
12 basis for insisting upon his inspection rights and a proper purpose for doing so.<sup>1</sup>

### 13 **THE FACTS**

14 Plaintiff Norman Zwicky formerly owned a timeshare in Kohl’s Resort in Payson.  
15 (Statement of Material Facts, ¶ 1.) In October of 2004 he converted his timeshare into  
16

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17 <sup>1</sup> Addressing this precise issue, the Supreme Court of Delaware stated:

18 [D]efendant maintains that plaintiff failed to produce any evidence of  
19 mismanagement. This argument misses the point. In [an action to  
20 enforce Delaware’s statutory inspection rights], a stockholder has the  
21 burden of proof to demonstrate a proper purpose, but a stockholder is  
22 “not required to prove by a preponderance of the evidence that waste  
23 and [mis]management are actually occurring.” The threshold for a  
24 plaintiff ... is not insubstantial. Mere curiosity or a desire for a fishing  
expedition will not suffice. But the threshold may be satisfied by a  
credible showing, through documents, logic, testimony or otherwise,  
that there are legitimate issues of wrongdoing.

25 *Sec. First Corp. v. U.S. Die Casting & Dev. Co.*, 687 A.2d 563, 568 (Del. 1997) (*footnotes, internal*  
26 *citations omitted*).

1 “points” in the Premier Vacation Collection (SMF, ¶ 1), which is a grouping of resorts in  
2 Arizona, Colorado, Indiana and Mexico owned or controlled by Defendant Premier  
3 Vacation Collection Association (“the Association”), which in turn is part of Diamond  
4 Resorts International and its network of controlled and/or managed resorts. SMF, ¶ 2.

5 Plaintiff paid over \$26,000 for his 13,000 points (including the trade-in value of his  
6 Kohl’s Resort timeshare). SMF, ¶ 3. Points are units or shares of ownership and serve  
7 also DRI’s internal “currency,” so to speak, that Association members use to purchase resort  
8 vacation accommodations within the Collection. SMF, ¶ 4. In addition to paying the  
9 purchase price, Plaintiff became contractually obligated as a member of the Association to  
10 pay annual and special assessments, ostensibly representing his proportionate share of  
11 common expenses of the Association. SMF, ¶ 5.

12 Although the Association is ostensibly “nonprofit,” it is in fact controlled by DRI, a  
13 corporation listed on the New York Stock Exchange. Specifically, DRI controls the board  
14 of directors of the Association by exercising its appointment powers as “developer” and by  
15 virtue of its massive numerical voting power in director elections as holder of substantial  
16 unsold inventory (points). SMF, ¶ 6.<sup>2</sup> In 2014, for example, the Association’s board had 5  
17 directors, 3 of them developer-employed. SMF, ¶ 7. These directors served also as the  
18 sole officers of the incorporated Association: president, vice president, and  
19 secretary/treasurer. SMF, ¶ 7. Each of these officers/directors of the Association is a vice  
20 president-level executive employee of DRI. (*Id.*)

21 The Association, as stated, controls a number of constituent resorts within the  
22 Collection. Each resort has a homeowner’s association (“HOA”), which is similarly a  
23 captive of DRI. Quoting DRI’s 2014 Form 10-K filed with the SEC:  
24

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25 <sup>2</sup> The developer purportedly has extraordinary voting rights. Until 95% of all interests are  
26 sold, DRI’s points are given 9 times the voting power of private (non-developer) owners’ points. *Id.*

1  
2           HOA. Each of the Diamond Resorts managed resorts ... is  
3 typically operated through an HOA, which is administered by a  
4 board of directors. Directors are elected by the owners of  
5 intervals at the resort (which may include one or more of the  
6 Diamond Collections and may also include representatives  
7 appointed by us as the developer of the resort). As a result, we  
8 are entitled to voting rights with respect to directors of a given  
9 HOA by virtue of our (i) ownership of intervals at the related  
10 resort; (ii) our control of the Diamond Collections that hold  
11 intervals at the resort and/or (iii) our status as the developer of  
12 the resort. The board of directors of each HOA hires a  
13 management company to provide the services described above,  
14 which in the case of all Diamond Resorts managed resorts, is us.

15 SMF, ¶ 9.

16           The DRI-dominated board of the Defendant-Association (i.e., the “Collection” or  
17 master association holding all of the constituent resorts), hires DRI not only to serve as  
18 property management company of each resort (*supra*) but also to serve as property  
19 management company of the Association itself. SMF, ¶ 10, quoting DRI 2014 SEC 10K,  
20 Exhibit B at p. 19 (“The board of directors of each Diamond Collection hires a company to  
21 provide management services to the Diamond Collection, which in each case is us.”). The  
22 property management company of the Defendant-Association is Diamond Resorts  
23 Management, Inc., which is “the management company arm of Diamond Resorts  
24 International.” SMF, ¶ 11.

25           Under *both* the property management agreements for the respective constituent  
26 resorts, and the *separate* management agreement for the Collection (i.e., the Defendant, the  
master Association), DRI receives a guaranteed, cost-plus management fee of 15% of the  
common expenses (*all Collections* pay 15%, with *some* individual resorts within the vast,  
worldwide DRI network reportedly paying a somewhat lower percentage). SMF, ¶ 12. This  
guaranteed—and by all appearances duplicative—management fee is unaffected by

1 occupancy rates or any other performance benchmarks commonly utilized in the property  
2 management industry. SMF, ¶ 13. Moreover, and as a result of a modification of the  
3 various property management agreements in place, the *internal overhead expense* of the  
4 property management company was shifted over to the associations and reclassified as a  
5 *common expense* to be defrayed by members. SMF, ¶ 14, quoting DRI 2014 10-K report,  
6 Exhibit B at p.17 (“Our management fees are based on a cost-plus structure and are  
7 calculated based on the direct and indirect costs ... including the absorption of a substantial  
8 portion of our overhead related to the provision of management services ... incurred by the  
9 HOA of the applicable resort.”); and SMF, ¶ 14, Exhibit F at p.3, DRI Registration  
10 Statement filed with SEC, Note 7 to Consolidated Financial Statement (“**Transactions with**  
11 **Related Parties ... Allocation of Expenses.** In addition to management services revenues,  
12 the Company has entered into agreements with the HOAs to be reimbursed for a portion of  
13 the Company’s resort management and general and administrative expenses to the HOAs”;  
14 further acknowledging more than \$24 million in such re-allocated expenses in 2009, and  
15 more than \$30 million in 2010).

16 Plaintiff’s annual assessments are considerably higher than he expected and in fact in  
17 his view exorbitant. SMF, ¶ 15. For example, in 2014 his bill for assessments was  
18 \$2,162.59—roughly triple the amount of his assessments for his Kohl’s Ranch timeshare;  
19 and in addition, he was charged a service fee called a “Premier Club Connection Fee” of  
20 \$175.00. SMF, ¶ 16. In Plaintiff’s view, these assessments and dues are so high that there  
21 is no appreciable net economic benefit of membership (when comparable accommodations  
22 in his opinion are publicly available at the same cost as the annual assessments, without the  
23 up-front investment in the points, without bookings being restricted to resorts in the DRI  
24 network, and without a perpetual obligation for assessments). SMF, ¶ 17.

25 When Plaintiff exchanged his Kohl’s Ranch timeshare unit for his “points” in the  
26

1 Collection (paying substantial additional cash in the transaction), he had no idea that his  
2 assessments would reach present levels. SMF, ¶ 18. At no time were terms of the  
3 “sweetheart” DRI property management agreements, or the agreements by the Association  
4 to subsidize millions of dollars of DRI’s internal overhead, disclosed to Plaintiff. SMF, ¶  
5 19.

6 Plaintiff is currently faced with an asserted perpetual assessment liability of over  
7 \$2,000 a year, even though he has ceased participating in the vacation plans. SMF, ¶ 20.  
8 The Association claims that he owes more than \$10,000 in assessment and dues arrearages.  
9 SMF, ¶ 21.

10 Plaintiff’s investment of over \$26,000 in “points” is now essentially worthless.  
11 SMF, ¶ 22. Some similarly-situated Association members are offering to resell thousands  
12 of their Premier Vacation Collection points on the Internet for \$1 or to even *give* them away.  
13 (*Id.*)

14 Plaintiff seeks the financial records of the Association (including those of Diamond  
15 Resorts Management, Inc., its property management company, and including those of the  
16 HOA of the constituent resorts) to investigate potential mismanagement or other legal  
17 wrongdoing. SMF, ¶ 23. Plaintiff wants to know whether the massive assessment  
18 arrearages that the Association now claims he owes are legitimate; or whether, on the other  
19 hand they are the product of unlawful conduct. *Id.* If the evidence reveals the latter, he  
20 will affirmatively pursue his legal remedies, perhaps in conjunction with fellow members  
21 who themselves believe they are the victims of legal wrongs. *Id.*

22 Plaintiff previously requested access to the books and records of the Association, and  
23 has been provided with financial statements, earnings statements, and certain other  
24 summaries. SMF, ¶ 24. However, these summaries are not verifiable, and do not provide  
25 sufficient detail for Plaintiff and his counsel to properly investigate and independently  
26

1 evaluate (1) whether and to what extent the board-approved property management  
2 agreements with DRI (on both the Association and local HOA levels) violate fiduciary  
3 principles of commercial reasonableness and good faith; and (2) whether DRI is paying its  
4 fair and lawful share of common expenses for the units (points) it owns or controls in its  
5 capacity as developer within the Collection. SMF, ¶ 25.

6 Plaintiff has also not been given access to the actual management agreements, or a  
7 sub-list of members protesting the excessiveness of their assessments. SMF, ¶ 26.

## 8 THE LAW

### 9 Common Law

10 The common law recognizes a shareholder’s right to inspect the books and records of  
11 a corporation as “fundamental.” 5A Fletcher Cyc. Corp. § 2213; *Danziger v. Luse*, 103  
12 Ohio St. 3d 337, 338, 815 N.E.2d 658, 659 (Ohio 2004) (“At common law, the right of a  
13 shareholder to inspect the books and records of a corporation was a fundamental incident to  
14 ownership of stock.”) (*internal citations, quote marks, omitted*).

15 “[T]he right of a stockholder extends to all books, papers, contracts, minutes or other  
16 instruments from which he can derive any information that will enable him to protect his  
17 interest.” *Tucson Gas & Elec. Co. v. Schantz*, 5 Ariz. App. 511, 513-14, 428 P.2d 686, 688-  
18 89 (1967). 5A Fletcher Cyc. Corp. § 2213. “Those in charge of the company may be guilty  
19 of gross incompetence or dishonesty for years and escape liability if the shareholders cannot  
20 inspect the records and obtain information.” 5A Fletcher Cyc. Corp. § 2213.

21 These common law inspection rights apply generally to common interest real estate  
22 communities (whether or not incorporated). Restatement (Third) of Property (Servitudes) §  
23 6.13(1)(d) (2000) (“In addition to duties imposed by statute and the governing documents,  
24 the association has the following duties to the members of the common-interest community:  
25 ... (d) to provide members reasonable access to information about the association, the  
26

1 common property, and the financial affairs of the association.”). Under basic fiduciary  
2 principles, these common law disclosure duties extend to those serving as property  
3 management company (agent) for the Association. Restatement (Second) of Agency § 382  
4 (1958) (An “agent is subject to a duty to keep, and render to his principal, an account of  
5 money ... which he has received or paid out on behalf of the principal.”).

6 Where, as here, the developer has not relinquished control of the association to its  
7 members, the association has a duty not only to open up its financial records, but to disclose  
8 contractual dealings (here, the property management contracts with the developer’s  
9 subsidiary, Diamond Resorts Management, Inc.). Restatement (Third) of Property  
10 (Servitudes) § 6.20(7) (2000) (recognizing developer’s duty to “disclose all material facts  
11 and circumstances affecting the financial condition of the association, including the interest  
12 of the developer and the developer's affiliates in any contract, lease, or other agreement  
13 entered into by the association”).

#### 14 **“Proper Purpose”**

15 The common law right of inspection, in Arizona, “is not an absolute one but rather a  
16 qualified one”; it requires the showing of a “proper purpose.” *Tucson Gas & Elec. Co.*, 428  
17 P.2d at 688, citing 5 Fletcher, Cyclopaedia Corporations § 2214 (1952). A shareholder (here,  
18 a member) has a “right to inform himself as to the management of the corporate property by  
19 directors and officers who are his trustees in direct charge of the property.” *Tucson Gas &*  
20 *Elec. Co.*, 428 P.2d at 688. Obtaining information necessary to protect a shareholder’s  
21 financial interests is not only a proper purpose, but the basic underlying purpose of  
22 inspections rights generally. *Id.*, at 688-689.

23 Plaintiff in the present case seeks the books and records for fully legitimate reasons:  
24 To investigate whether he has been the victim of fraud, breach of fiduciary duty, or other  
25 wrongdoing and to thereby determine his legal rights and liabilities *vis-à-vis* the  
26

1 Association, the board, and its manager. This is a quintessential “proper purpose”. *Seinfeld*  
2 *v. Verizon Commc'ns, Inc.*, 909 A.2d 117, 121 (Del. 2006) (“It is well established that a  
3 stockholder's desire to investigate wrongdoing or mismanagement is a ‘proper purpose’.”);  
4 5A Fletcher Cyc. Corp. § 2225 (“The right of a shareholder to inspect the books is not  
5 improper where the object may be to commence an action against ... the officers or the  
6 corporation to correct abuses.”).

7 Plaintiff has also requested a list of other Association members who have disputed  
8 their assessment liability or complained that their assessments were excessive or improper.  
9 SMF, ¶ 27. Access to shareholder lists is part of the general common law inspection right.  
10 *Durnin v. Allentown Federal Savings and Loan Ass'n*, 218 F.Supp. 716, 718 (E.D. Pa. 1963)  
11 (“The right to examine the stockholders list is a basic privilege of every stockholder of a  
12 corporation....”); accord, e.g., *Bell v. Arnold*, 175 Colo. 277, 285, 487 P.2d 545, 549 (1971)  
13 (holding that shareholders in a nonprofit water corporation have a “fundamental right” to  
14 inspect the corporation's shareholder list).

15 Plaintiff may seek to join forces with such fellow members in pursuing his legal  
16 rights and remedies, if his initial investigation reveals actionable, unlawful management  
17 practices on the part of the Association, its board, and/or DRI. This is a proper purpose. 5A  
18 Fletcher Cyc. Corp. § 2225 (“Shareholders may inspect shareholders' lists for the purpose  
19 of informing other shareholders concerning suits that they have brought to ascertain whether  
20 any of them desire to join the action.”), citing *Laher Spring & Tire Corp. v. Superior Court*  
21 *of Alameda Cnty.*, 52 Cal. App. 2d 467, 468, 126 P.2d 391, 391 (1942) (“If the shareholder  
22 believes that the officers of the corporation have [acted unlawfully] and he desires to  
23 associate with other shareholders in like condition in order to enforce their respective rights  
24 as shareholders[,] it is too clear for controversy that an inspection of the share register to  
25 ascertain the names of such other shareholders is reasonably related to his interest as a  
26

1 shareholder.”).

2 **Statutory inspection rights supplement common law rights**

3  
4 It is well-established in Arizona, and in other jurisdictions, that statutes governing  
5 inspection rights do not restrict, supplant or supersede common law inspection rights.  
6 *Tucson Gas & Elec. Co.*, 428 P.2d at 688-89 (“Th[e] common law right of inspection is a  
7 remedial right which exists independently of statute. ... Statutes providing for a  
8 shareholder's right of inspection have been construed as enlarging or extending the common  
9 law right rather than as a restriction or abrogation of the right of inspection.”); 5A Fletcher  
10 Cyc. Corp. § 2215.10 (stating that inspection statutes are not merely declaratory of common  
11 law, but typically “enlarge the right of inspection and remove certain common-law  
12 restrictions, thus rendering the right consistent and coextensive with the shareholder's rights,  
13 as a common owner of the property, books and papers of the corporation”).  
14  
15

16 Indeed Arizona statutes explicitly and uniformly preserve independent common law  
17 inspection rights: A.R.S. § 10-1602(E)(2) (for-profit corporations); A.R.S. § 10-  
18 11602(D)(2) (non-profit corporations); A.R.S. § 33-2209(D)(2) (timeshare associations).

19 **Statutory inspection rights.**

20  
21 A shareholder in a for-profit corporation who has owned his or her shares for more  
22 than 6 months is entitled, upon proper demand and for a proper purpose, to inspect the  
23 “accounting records of the corporation” and the “record of shareholders.” Ariz. Rev. Stat.  
24 Ann. § 10-1602(B)(2) & (3). The Court is empowered by statute (and otherwise) to enforce  
25  
26

1 these inspection rights. A.R.S. § 10-1604(A) (court may “summarily order inspection and  
2 copying of the records demanded at the corporation's expense on application of the  
3 shareholder”).  
4

5 Parallel rights are given to members of non-profit corporations. A.R.S. § 11-602  
6 (B)(2) & (3) (right of inspection of “accounting records of corporation” and “membership  
7 list” given to member of 6 months duration, who presents proper demand and has proper  
8 purpose); A.R.S. § 10-11604(A) (court may “summarily order” inspection and copying).  
9

10 Timeshare associations—which are excepted from the *nonprofit* corporation  
11 inspection statute (A.R.S. § 10-11602(H))—are subject to similar disclosure duties.<sup>3</sup>  
12 Section 33-209 provides, in pertinent part: “[A]ny owner or any person designated by the  
13 owner in writing as the owner's representative may inspect and copy *all financial and other*  
14 *records* of the association or other managing entity that are directly related to the timeshare  
15 plan....” A.R.S. § 33-2209(A) (*emphasis added*). As is the case of both for profit and  
16 nonprofit corporations, the member must have a proper purpose and give proper notice of  
17  
18

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19  
20 <sup>3</sup> Cf., *Phoenix Gen. Hosp. v. Superior Court of Maricopa Cnty.*, 1 Ariz. App. 298, 300, 402  
21 P.2d 233, 235 (suggesting different standard for non profit corporations under former A.R.S. §10-  
22 175), *writ rescinded*, 98 Ariz. 262, 403 P.2d 815 (1965). Although the Association is ostensibly  
23 “nonprofit,” and may be treated as such for certain tax purposes (see Internal Revenue Code, 26  
24 U.S.C. § 528), it is quite apparently a mere instrumentality of DRI, which—at least through its  
25 property management functions—clearly profits from its operations, and perhaps quite illicitly so.  
26 For common law purposes at least, the Association should be treated as an ordinary, for-profit  
corporation. There is nothing eleemosynary about its functions. Moreover, Plaintiff has invested  
substantial funds, owns the functional equivalent of an undivided fractional interest in Association  
assets, and continues to incur substantial monetary obligations, by virtue of his membership. He  
has a vested financial interest in the Association, much like a shareholder in an ordinary  
corporation, and very much unlike a member of a typical nonprofit organization.

1 demand. A.R.S. § 33-2209(E). The Association may insist that the member use records  
2 only for the member’s stated purpose. A.R.S. § 33-2209(E)(5).

3  
4 As previously noted, the timeshare association-inspection statute (like those applying  
5 to both general corporations and nonprofit corporations) specifically preserves common law  
6 inspection rights. A.R.S. § 33-2209(D)(2) (“This section does not affect ... [t]he power of a  
7 court, independently of this chapter, to compel the production of records for examination on  
8 proof by an owner of proper purpose.”).

9  
10 **CONCLUSION**

11 Plaintiff clearly has the right to know how and why his assessments have reached  
12 exorbitant proportions, and how and why his investment of \$26,000 in this timeshare  
13 scheme became worthless. His inspection rights, existing both by common law and statute,  
14 include not only all relevant financial records, but also a shareholder’s list or member’s list,  
15 and *a fortiori* a sub-list of fellow members who have raised complaints or concerns about  
16 excessive assessments. Plaintiff seeks nothing more than basic transparency and  
17 accountability. But nothing less.  
18

19  
20 Based upon the foregoing the Court should order disclosure of all financial records  
21 allowing a thorough, detailed, independent and verifiable examination of Plaintiff’s annual  
22 assessment charges (including records showing the allocation of common expenses to  
23 developer-controlled inventory, and those allowing for a determination of the developer’s  
24 equitable share of assessments); any property management agreements and related  
25  
26

1 agreements showing the financial arrangements between Diamond Resorts International (or  
2 subsidiaries) and the Association (or constituent HOAs); and a list of members who have  
3 complained about excessive assessments.  
4

5 An appropriate proposed order is attached.

6 RESPECTFULLY SUBMITTED this 25th day of November, 2015.

7 PHELPS & MOORE, PLC  
8

9 By /s/ Jon L. Phelps

10 Jon L. Phelps  
11 4045 East Union Hills Drive  
12 Suite A-102  
13 Phoenix, Arizona 85050  
14 Counsel for Plaintiff

13 **ORIGINAL** of the foregoing efiled on  
14 this the 25th day of November, 2015;

15 **COPY** of the foregoing delivered via azturbocourt.gov  
16 on this the 25th day of November, 2015 to:

17 The Honorable John Hannah  
18 Northeast Regional Center  
19 18380 N. 40<sup>th</sup> Street  
20 Phoenix, Arizona 85032

21 **COPY** of the foregoing delivered via U.S. mail  
22 on this the 25th day of November, 2015 to:

23 John E. DeWulf  
24 Katherine DeStefano  
25 **COPPERSMITH BROCKELMAN PLC**  
26 2800 North Central Avenue, Suite 1200  
Phoenix, Arizona 85004  
Counsel for Defendant

By /s/ Kelly Naddaff

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10 Attorney for Plaintiff

11                   **THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
12                   **IN AND FOR THE COUNTY OF MARICOPA**

13 NORMAN ZWICKY,

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15 vs.

16 PREMIERE VACATION COLLECTION  
17 OWNERS ASSOCIATION, f.k.a. Premiere  
18 Vacation Club, an Arizona nonprofit  
19 corporation,

20 Defendant.

Case No. CV2015-051911

**STATEMENT OF FACTS IN SUPPORT  
OF MOTION FOR SUMMARY  
JUDGMENT**

**(ASSIGNED TO THE HONORABLE  
JOHN HANNAH)**

21                   **PLAINTIFF'S STATEMENT OF MATERIAL FACTS**

22 Pursuant to Rule 56(c)(3), Arizona Rules of Civil Procedure, Plaintiff Norman Zwicky  
23 submits his statement of material facts in support of his Motion for Summary Judgment:

24                   **1.** Plaintiff Norman Zwicky formerly owned a timeshare in Kohl's Resort in  
25 Payson; and in October of 2004 converted his timeshare into "points" in the Premier  
26 Vacation Collection. **Exhibit A**-Purchase contract.

**2.** The Premier Vacation Collection is a grouping of resorts in Arizona,  
Colorado, Indiana and Mexico owned or controlled by Defendant Premier Vacation  
Collection Association ("the Association"), which in turn is part of Diamond Resorts

1 International and its network of controlled and/or managed resorts. **Exhibit B**-Excerpts from  
2 2014 10-K filing of Diamond Resorts International with U. S. Securities and Exchange  
3 Commission, p. 2.

4 **3.** Plaintiff paid over \$26,000 for his 13,000 points (including the trade-in value  
5 of his Kohl's Resort timeshare). **Exhibit A**-Purchase contract.

6 **4.** Points are units or shares of ownership and serve also DRI's internal  
7 "currency," so to speak, that Association members use to purchase resort vacation  
8 accommodations within the Collection. **Exhibit B**- Excerpts, 2014 DRI 10-K report, p. 3.

9 **5.** In addition to paying the purchase price, Plaintiff became contractually  
10 obligated as a member of the Association to pay annual and special assessments, ostensibly  
11 representing his proportionate share of common expenses of the Association. **Exhibit B**-  
12 Excerpts, 2014 DRI 10-K report, p. 4; **Exhibit C**-Excerpts, Second Amended and Restated  
13 Premier Vacation Collection Membership Plan ("Plan"), p. 3.

14 **6.** Although the Association is ostensibly "nonprofit," it is in fact controlled by  
15 DRI, a corporation listed on the New York Stock Exchange. Specifically, DRI controls the  
16 board of directors of the Association virtue of its appointment power and massive numerical  
17 voting power in director elections as holder of substantial unsold inventory (points). **Exhibit**  
18 **B**- Excerpts, 2014 DRI 10-K report, p. 2 ("The Premier Vacation Collection allows the  
19 developer to appoint the board of directors until 90% of all memberships are sold.");  
20 **Exhibit C**-Excerpts, Plan, p. 2-3 (purporting to give developer's points *9 times* the voting  
21 power of private owners until the developer sells 95%).

22 **7.** In 2014, for example, the Association's board had 5 directors, 3 of them  
23 developer-employed. **Exhibit D**-Premier Collection Member's Website, "Meet your  
24 Board.)

25 **8.** These directors served also as the sole officers of the incorporated  
26

1 Association: president, vice president, and secretary/treasurer. *Id.* Each of the  
2 officers/directors of the Association is a vice president-level executive employee of DRI.  
3 *Id.*

4       **9.** The Association controls a number of constituent resorts within the  
5 Collection. Each resort has a homeowner’s association (“HOA”), which is similarly a  
6 captive of DRI. Quoting DRI’s 2014 Form 10-K filed with the SEC:

7  
8           *HOA.* Each of the Diamond Resorts managed resorts ... is  
9 typically operated through an HOA, which is administered by a  
10 board of directors. Directors are elected by the owners of  
11 intervals at the resort (which may include one or more of the  
12 Diamond Collections and may also include representatives  
13 appointed by us as the developer of the resort). As a result, we  
14 are entitled to voting rights with respect to directors of a given  
15 HOA by virtue of our (i) ownership of intervals at the related  
16 resort; (ii) our control of the Diamond Collections that hold  
17 intervals at the resort and/or (iii) our status as the developer of  
18 the resort. The board of directors of each HOA hires a  
19 management company to provide the services described above,  
20 which in the case of all Diamond Resorts managed resorts, is us.

21 **Exhibit B-** Excerpts, 2014 DRI 10-K report, p. 8.

22       **10.** The DRI-dominated board of the Defendant-Association (i.e., the “Collection”  
23 or master association holding all of the constituent resorts), hires DRI not only to serve as  
24 property management company of each resort (*supra*) but also to serve as property  
25 management company of the Association itself. **Exhibit B-** Excerpts, 2014 DRI 10-K  
26 report, p. 2; and *id.* at p.8 (“The board of directors of each Diamond Collection hires a  
company to provide management services to the Diamond Collection, which in each case is  
us.”).

**11.** The property management company of the Defendant-Association is Diamond  
Resorts Management, Inc., which is “the management company arm of Diamond Resorts

1 International.” **Exhibit E**-Premier Collection Member’s Website, “Management  
2 Company.”

3 **12.** Under *both* the property management agreements for the respective  
4 constituent resorts, and the *separate* management agreement for the Collection (i.e., the  
5 Defendant, the master Association), DRI receives a guaranteed, cost-plus management fee  
6 of 15% of the common expenses (*all Collections* pay 15%, with *some* individual resorts  
7 within the vast, worldwide DRI network reportedly paying a somewhat lower percentage).  
8 **Exhibit F**-Excerpts, Diamond Resorts International 2011 Registration Statement filed with  
9 U.S. Securities and Exchange Commission (as amended) (hereinafter, “DR Registration  
10 Statement”), p. 2; **Exhibit B**- Excerpts, 2014 DRI 10-K report, p. 5-7, 8.

11 **13.** This guaranteed—and by all appearances duplicative—management fee is  
12 unaffected by occupancy rates or any other performance benchmarks commonly utilized in  
13 the property management industry. **Exhibit B**- Excerpts, 2014 DRI 10-K report, p. 8.

14 **14.** Moreover, and as a result of a modification of the various property  
15 management agreements in place, the *internal overhead expense* of the property  
16 management company was shifted over to the associations and reclassified as a *common*  
17 *expense* to be defrayed by members. **Exhibit B**- Excerpts, 2014 DRI 10-K report, p. 8  
18 (“Our management fees are based on a cost-plus structure and are calculated based on the  
19 direct and indirect costs ... including the absorption of a substantial portion of our overhead  
20 related to the provision of management services ... incurred by the HOA of the applicable  
21 resort.”); and **Exhibit F**-Excerpts, DRI Registration Statement, p. 3, Note 7 to Consolidated  
22 Financial Statement of Diamond Resort Parent, LLC (“Transactions with Related Parties ...  
23 Allocation of Expenses. In addition to management services revenues, the Company has  
24 entered into agreements with the HOAs to be reimbursed for a portion of the Company’s  
25 resort management and general and administrative expenses to the HOAs”; further  
26

1 acknowledging more than \$24 million in such re-allocated expenses in 2009, and more than  
2 \$30 million in 2010).

3       **15.** Plaintiff’s annual assessments are considerably higher than he expected and in  
4 fact in his view exorbitant. **Exhibit G**-Affidavit of Plaintiff Zwicky.

5       **16.** For example, in 2014 his bill for assessments was \$2,162.59—roughly triple  
6 the amount his assessments for his Kohl’s Ranch timeshare; and in addition, he was charged  
7 a service fee called a “Premier Club Connection Fee” of \$175.00. **Exhibit H**-DRI billing  
8 statement.

9       **17.** In Plaintiff’s view, these assessments and dues are so high that there is no  
10 appreciable net economic benefit of membership (when comparable accommodations in his  
11 opinion are publicly available at the same cost as the annual assessments, without the up-  
12 front investment in the points, without bookings being restricted to resorts in the DRI  
13 network, and without a perpetual obligation for assessments). **Exhibit G**-Affidavit of  
14 Plaintiff Zwicky.

15       **18.** When Plaintiff exchanged his Kohl’s Ranch timeshare unit for his “points” in  
16 the Collection (paying substantial additional cash in the transaction), he had no idea that his  
17 assessments would reach present levels. *Id.*

18       **19.** At no time were terms of the “sweetheart” DRI property management  
19 agreements, or the agreements by the Association to subsidize millions of dollars of DRI’s  
20 internal overhead, disclosed to Plaintiff. *Id.*

21       **20.** Plaintiff is currently faced with an asserted perpetual assessment liability of  
22 over \$2,000 a year, even though he has ceased participating in the vacation plans. *Id.*;  
23 **Exhibit I**-Premier Vacation Collection member site for Norman Zwicky (showing last  
24 reservation in system 5 years ago).

25       **21.** The Association claims that he owes more than \$10,000 (actually \$14,446.19  
26

1 as of October 22, 2015), in assessment and dues arrearages. **Exhibit I**-Premier Vacation  
2 Collection member site for Norman Zwicky.

3 **22.** Plaintiff's investment of over \$26,000 in "points" is now essentially worthless.  
4 Some similarly-situated Association members are offering to resell thousands of their  
5 Premier Vacation Collection points on the Internet for \$1 or to even *give* them away.  
6 **Exhibit G**-Affidavit of Plaintiff Zwicky; **Exhibit J**-Internet advertisements for sale of  
7 Premier Collection points.

8 **23.** Plaintiff's purpose in seeking the financial records of the Association  
9 (including those of Diamond Resorts Management, Inc., its property management company,  
10 and including those of the HOA of the constituent resorts) is to investigate potential  
11 mismanagement or other legal wrongdoing. Plaintiff wants to know whether the massive  
12 assessment arrearages that the Association now claims he owes are legitimate; or whether,  
13 on the other hand they are the product of unlawful conduct. If the evidence reveals the  
14 latter, he will affirmatively pursue his legal remedies, perhaps in conjunction with fellow  
15 members who themselves believe they are the victims of legal wrongs. **Exhibit G**-Affidavit  
16 of Plaintiff Zwicky.

17 **24.** Plaintiff has requested access to the books and records of the Association  
18 identified by letter, later clarifying the scope of the documents requiring inspection through  
19 his Rule 26.1 Initial Disclosures. **Exhibit K**-Letter from Attorney Jon Phelps requesting  
20 disclosure; **Exhibit L**-Excerpts Initial Disclosures. Counsel has been provided with  
21 financial statements, earnings statements, and certain other summaries.

22 **25.** However, these summaries are not verifiable, and do not provide sufficient  
23 detail for Plaintiff and his counsel to properly investigate and independently evaluate (1)  
24 whether and to what extent the board-approved property management agreements with DRI  
25 (on both the Association and local HOA levels) violate fiduciary principles of commercial  
26

1 reasonable and good faith; and (2) whether DRI is paying its fair and lawful share of  
2 common expenses for the units (points) it owns or controls in its capacity as developer  
3 within the Collection. **Exhibit M**-Affidavit of Jon Phelps.

4 **26.** Plaintiff has also not been given access to the actual management agreements,  
5 or a sub-list of members protesting the excessiveness of their assessments. *Id.*

6 **27.** Plaintiff has also requested, but has not received, a list of other Association  
7 members who have disputed their assessment liability or complained that their assessments  
8 were excessive or improper. *Id.*

9 RESPECTFULLY SUBMITTED this 25th day of November, 2015.

10 PHELPS & MOORE, PLC

11  
12 By /s/ Jon L. Phelps \_\_\_\_\_

13 Jon L. Phelps  
14 4045 East Union Hills Drive  
15 Suite A-102  
16 Phoenix, Arizona 85050  
17 Counsel for Plaintiff

18 **ORIGINAL** of the foregoing efiled on  
19 this the 25th day of November, 2015;

20 **COPY** of the foregoing delivered via azturbocourt.gov  
21 on this the 25th day of November, 2015 to:

22 The Honorable John Hannah  
23 Northeast Regional Center  
24 18380 N. 40<sup>th</sup> Street  
25 Phoenix, Arizona 85032

26 **COPY** of the foregoing delivered via U.S. mail  
on this the 25th day of November, 2015 to:

John E. DeWulf  
Katherine DeStefano  
**COPPERSMITH BROCKELMAN PLC**  
2800 North Central Avenue, Suite 1200  
Phoenix, Arizona 85004  
Counsel for Defendant

By /s/ Kelly Naddaff \_\_\_\_\_



VACATION CLUB MEMBERSHIP PURCHASE AGREEMENT

511412 Contract Number

This Purchase Agreement (the "Agreement") is entered into as of the 25th day of October, 2004, by and between

Premiere Development Incorporated

(as "Developer" and "Seller," each term being inclusive of the other below unless otherwise stated or the context requires otherwise), and

Norman H. Zwicky

(the "Buyer," sometimes referenced by "you" or "your").

1. Agreement to Purchase. Buyer agrees to buy from Seller, and Seller agrees to sell to Buyer, the vacation club membership (the "Membership") described as follows:

Name of Resort/Program: ILX Premiere Vacation Club
Location: Phoenix, Arizona
Membership No.: Membership number to be assigned at closing.
Unit Type or Number: Platinum Membership
Duration of Occupancy/Occupancy Period: Full Week
Seasonal Priority/Membership Category: Prime
Annual Frequency: Every Year (Annual)
Type and Duration of Ownership: Deed
Maximum Occupancy/Occupancy Right: not less than four (4) persons
Current Exchange Company and Color: Interval International - Red
Club/Owner's Association: ILX Premiere Vacation Club
Developer: Premiere Development Incorporated

Subject to certain terms and conditions, Buyer's purchase of the Membership entitles Buyer to periodically occupy lodging accommodations and affords Buyer various other benefits. Buyer understands that the various rights and obligations associated with Buyer's purchase are set forth in this Agreement as well as in the Membership Plan, Articles, Bylaws, Rules & Regulations and/or other governing documents associated with the Membership and the other documents executed concurrently or in connection herewith, all of which are incorporated herein by this reference and all of which are collectively referred to as the "Membership Documents."

2. Purchase Price and Itemization of Amount Financed. The Purchase Price for the Membership shall be \$26,395.00 payable by Buyer as follows:

Table with 2 columns: Description and Amount. Rows include Total Purchase Price (\$26,395.00), Less: Cash at execution (\$0.00), Cash by N/A (\$0.00), Net Value of Other Consideration (\$18,900.00), Total Downpayment (\$18,900.00), and Balance Due and Amount Financed (\$7,495.00).

Receipt of the Deposit is hereby acknowledged by Seller. The Deposit and any other funds paid by Buyer, if any, prior to the expiration of the cancellation period referred to below, will be held in trust in the ILX Resorts Incorporated Sales Account at Wells Fargo (Arizona).

3. Promissory Note. The undersigned Buyer promises to pay to the order of Seller, its successors and assigns, the principal sum of Seven Thousand Four Hundred Ninety-five Dollars

DOLLARS (\$7,495.00), with interest that shall accrue on the unpaid principal balance commencing 30 days prior to the first scheduled date of payment as set forth in the Federal Truth-in-Lending Disclosures below. Interest shall accrue at the rate of 16.900% per annum. The principal and interest shall be payable to Seller, 2111 East Highland Ave., Suite 210, Phoenix, Arizona 85016; or such other place as the holder may designate in writing, in consecutive monthly installments of \$152.74 commencing on December 14, 2004 and continuing on the same day of each month thereafter until the entire indebtedness evidenced hereby is fully paid, except that any remaining indebtedness, if not sooner paid, shall be due and payable on November 14, 2011

Interest will be calculated and charged on the balance of the Amount Financed which is outstanding as of the due date of each payment. If a payment is late, you will be charged the lesser of \$15, 10% of your monthly payment, or the maximum amount allowed by law. If you pay off early, you will not have to pay a penalty. Except as otherwise required by law, each payment shall be applied first to late charges or collection charges, next to interest, and last to principal. Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors and endorsers hereof. This Agreement shall be the joint and several obligation of all those listed as Buyer above, sureties, guarantors and endorsers and shall be binding upon them and their heirs, personal representatives, successors and assigns. Section 9 of this Agreement concerning defaults and remedies is incorporated herein by this reference. This Section 3 shall be deemed and defined as the "Promissory Note," which is a material part of this Agreement. Seller reserves the right to sell, assign, hypothecate, pledge, or otherwise dispose of this Promissory Note without Buyer's consent.

4. Federal Truth-in-Lending Disclosures. The disclosures below, which are made by Seller as "Creditor," are part of this Agreement.

Table with 5 columns: ANNUAL PERCENTAGE RATE, FINANCE CHARGE, AMOUNT FINANCED, TOTAL OF PAYMENTS, and TOTAL SALE PRICE. Each column contains a brief description of the metric.

EXHIBIT A Statement of Material Facts

Net Value of Other Consideration  
 Total Downpayment **\$18,900.00**  
 Balance Due and Amount Financed, if any **\$7,495.00** (This is the amount of credit, if any, provided to you for the purchase of the Membership.)

Receipt of the Deposit is hereby acknowledged by Seller. The Deposit and any other funds paid by Buyer, if any, prior to the expiration of the cancellation period referred to below, will be held in trust in the ILX Resorts Incorporated Sales Account at Wells Fargo (Arizona). Such funds shall be released: (a) to Seller (subject to the requirements of any applicable governmental authority or Seller's lender) upon expiration of the cancellation period, if any; or (b) to Buyer, without interest, if Buyer has exercised any such right of cancellation. Seller shall pay all closing costs.

3. **Promissory Note.** The undersigned Buyer promises to pay to the order of Seller, its successors and assigns, the principal sum of Seven Thousand Four Hundred Ninety-five Dollars

DOLLARS (\$7,495.00), with interest that shall accrue on the unpaid principal balance commencing 30 days prior to the first scheduled date of payment as set forth in the Federal Truth-In-Lending Disclosures below. Until the principal sum is paid in full, interest shall accrue at the rate of 16.900 % per annum. The principal and interest shall be payable to Seller, 2111 East Highland Ave., Suite 210, Phoenix, Arizona 85016, or such other place as the holder may designate in writing, in consecutive monthly installments of \$152.74 commencing on December 14, 2004 and continuing on the same day of each month thereafter until the entire indebtedness evidenced hereby is fully paid, except that any remaining indebtedness, if not sooner paid, shall be due and payable on November 14, 2011

Interest will be calculated and charged on the balance of the Amount Financed which is outstanding as of the due date of each payment. If a payment is late, you will be charged the lesser of \$15, 10% of your monthly payment, or the maximum amount allowed by law. If you pay off early, you will not have to pay a penalty. Except as otherwise required by law, each payment shall be applied first to late charges or collection charges, next to interest, and last to principal. Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors and endorsers hereof. This Agreement shall be the joint and several obligation of all those listed as Buyer above, sureties, guarantors and endorsers and shall be binding upon them and their heirs, personal representatives, successors and assigns. Section 9 of this Agreement concerning defaults and remedies is incorporated herein by this reference. This Section 3 shall be deemed and defined as the "Promissory Note," which is a material part of this Agreement. Seller reserves the right to sell, assign, hypothecate, pledge or otherwise dispose of this Promissory Note without Buyer's consent.

4. **Federal Truth-In-Lending Disclosures.** The disclosures below, which are made by Seller as "Creditor," are part of this Agreement.

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
<b>ANNUAL PERCENTAGE RATE</b> The cost of your credit as a yearly rate.	<b>FINANCE CHARGE</b> The dollar amount the credit will cost you.	<b>AMOUNT FINANCED</b> The amount of credit provided to you or on your behalf.	<b>TOTAL OF PAYMENTS</b> The amount you will have paid after you have made all payments as scheduled.	<b>TOTAL SALE PRICE</b> The total cost of your purchase on credit, including your down payment of
<u>16.900%</u>	<u>\$5,335.16</u>	<u>\$7,495.00</u>	<u>\$12,830.16</u>	<u>\$18,900.00</u> <u>\$31,730.16</u>
Your payment schedule will be:				
<b>NUMBER OF PAYMENTS</b>	<b>AMOUNT OF PAYMENTS</b>	<b>WHEN PAYMENTS ARE DUE</b>		
<u>84</u>	<u>\$152.74 per month</u>	<u>On the 14th of each month beginning December 14, 2004</u>		
<b>SECURITY:</b> YOU ARE GIVING A SECURITY INTEREST IN THE MEMBERSHIP BEING PURCHASED.				
<b>LATE CHARGES:</b> IF A PAYMENT IS LATE, YOU WILL BE CHARGED THE LESSER OF \$15, 10% OF YOUR MONTHLY PAYMENT, OR THE MAXIMUM AMOUNT ALLOWED BY LAW.				
<b>PREPAYMENT:</b> IF YOU PAY OFF EARLY, YOU WILL NOT HAVE TO PAY A PENALTY.				
THE AMOUNTS SHOWN AS THE TOTAL OF PAYMENTS AND THE FINANCE CHARGE ARE ESTIMATES BASED UPON THE ASSUMPTION THAT THE SCHEDULE OF PAYMENTS WILL BE MADE AS AGREED.				
REFER TO THE MEMBERSHIP DOCUMENTS FOR ANY ADDITIONAL INFORMATION ABOUT NONPAYMENT, DEFAULT, RIGHT TO ACCELERATE THE MATURITY OF THE OBLIGATIONS, AND PREPAYMENT REBATES AND PENALTIES.				



VACATION CLUB MEMBERSHIP  
PURCHASE AGREEMENT

511412  
Contract Number

ADDITIONAL TERMS AND CONDITIONS

5. **Personal Use.** BUYER HEREBY REPRESENTS AND WARRANTS THAT THE PURCHASE OF THIS MEMBERSHIP IS MADE FOR BUYER'S PERSONAL USE, AND NOT FOR ANY RENTALS, RETURNS OR INVESTMENT POTENTIAL.
6. **Annual Maintenance Fees and Other Assessments.** According to the terms and conditions of the Membership Documents, Buyer shall pay to the Club annual maintenance fees and other assessments for each Membership purchased, which maintenance fees may be increased, pursuant to the terms and conditions of the applicable Membership Documents.
7. **Amendments to Governing Documents.** The Club and Developer shall have the right to amend the Membership Plan, the Articles of Incorporation, the Bylaws, and the Rules and Regulations in their discretion at any time for reasons described in such documents or to comply with the regulatory requirements of any jurisdiction in which the Club or Developer plan to conduct activities. Any such amendment shall be binding upon Buyer, and a copy thereof will be provided by Club upon request.
8. **Membership v. Lease.** Buyer understands and hereby agrees that the interest created by the Membership Documents shall not be defined as a lease or a rental agreement, nor shall it be subject to the provisions of state law governing residential landlord/tenant relations or landlord/tenant matters in general.
9. **Default by Buyer.** Buyer shall be deemed to be in default of this Agreement if Buyer: (i) fails to make any payment under this Agreement when and as due; (ii) fails to perform any of Buyer's obligations under this Agreement when and as due; or (iii) fails to make any payment or perform any other obligation to the Club or Seller when and as due under any of the Membership Documents. Failure of Buyer to pay to Club all or any part of the annual maintenance fees or other assessments when the same become due and payable shall create a default. Buyer may not occupy a Unit while a default exists. Upon default, the holder hereof may, in its sole discretion, declare the entire balance of unpaid principal, all accrued and unpaid interest, and all other sums due under this Agreement to be immediately due and payable. The holder's failure to exercise such option shall not constitute a waiver of its right to do so as long as Buyer is in default under this Agreement. In addition, Seller may also take any or all of the following actions, as well as all others available to it in law and equity: (a) Terminate this Agreement; (b) Retain all payments made by Buyer hereunder; and (c) Elect to retain all payments made by Buyer hereunder as liquidated and agreed damages (the parties acknowledging that damages may be difficult to ascertain) to cover administrative costs, marketing costs, the cost of taking occupancy rights off the market and other reasonable costs incurred by Seller as payment for services rendered, and resell the Membership without any reimbursement to the Buyer. The Club may terminate a Buyer's Membership upon receipt of Seller's written notice to the Club of said Buyer's default under the terms of this Agreement. Neither Seller's, the Club's nor any holder's pursuit of a particular remedy or remedies, nor the delay in pursuing a remedy or remedies, shall operate as an election of remedies, and Seller, the Club or such holder may, at any time or from time to time, pursue any remedy or remedies available to it in law or equity. Except as otherwise required by state law, the parties hereby acknowledge that neither Seller, the Club nor any holder hereof shall be under any obligation to extend any cure period to Buyer. No failure to enforce any covenants against Buyer shall waive the right to demand strict compliance with this Agreement from Buyer.
10. **Evidence of Ownership.** Provided no default or cancellation shall have occurred, and provided that Buyer's financing (if applicable) has been approved by Seller (and in such event further subject to the provisions of Section 16 below), Seller as soon as practicable shall cause formal written transfer of the ownership of the Membership into Buyer's name by recorded deed, membership certificate or otherwise, as described in the Membership Documents. All provisions contained in this Agreement shall survive the execution and delivery of such evidence of ownership.
11. **Transfer.** THE MEMBERSHIP IS TRANSFERABLE ONLY IN ACCORDANCE WITH THE MEMBERSHIP DOCUMENTS AND IS NOT SEPARABLE FROM THE DEED.
12. **Notices.** All notices provided for in this Agreement shall be in writing. Notice to Buyer shall be deemed given when hand delivered (in which event such notice shall be deemed effective upon delivery) or the earlier of actual receipt of any notice or seventy-two (72) hours after deposit of same in any authorized mailbox, postage prepaid. Any notice to Buyer shall be addressed to Buyer at the last address for Buyer provided to Seller. Notices to Seller shall be hand delivered or sent by certified mail, return receipt requested, and shall be deemed effective upon actual receipt. Notices to Seller shall be addressed to ILX Incorporated, Attention: General Counsel, 2111 East Highland Ave., Suite 210, Phoenix, Arizona 85016. The addresses for purposes of this Section may be changed by giving written notice in the manner herein provided for giving notice. Unless and until such written notice is received, the last address as stated by written notice shall be deemed to continue in effect for all purposes hereunder.
13. **Attorneys' Fees.** In any action or proceeding to enforce or interpret this Agreement, the prevailing party or parties shall be entitled to reimbursement of its reasonable attorneys' fees and litigation expenses from the non-prevailing party or parties to this Agreement, as the court or arbitrator may determine.
14. **Entire Agreement.** This Agreement supersedes any previous understandings and agreements between Buyer and Seller and, together with the Membership Documents, represents the entire agreement between Buyer and Seller. No previous representations or inducements not included in this Agreement shall be of any force or effect and Buyer acknowledges that Buyer is not relying on representations other than those included in this Agreement and the Membership Documents. This Agreement may be amended or modified only by a writing signed by both Buyer and Seller. If there is any conflict between this Agreement and the Membership Documents, the Membership Documents shall control. The Membership is subject to prior sale. This Agreement becomes binding only when signed by Seller.
15. **Miscellaneous.** The waiver by any party of the performance of any provisions of this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other provision of this Agreement. The exercise of any remedy provided by law and this Agreement shall not exclude the exercise of any other remedy. Subject to the restriction on transfer set forth in the Membership Documents, this Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by, the successors and assigns of Buyer and Seller. If there is more than one person shown above as Buyer, then each of such persons shall be jointly and severally liable for the obligations in this Agreement. This Agreement shall be enforced and interpreted in accordance with the laws of the State of Arizona. Time is the essence of this Agreement. This Agreement, and both Seller's and Buyer's rights and obligations hereunder, are subject to the requirements of all applicable governmental authorities and Seller's lender(s), if any.
16. **Financing.**
  - (a) If any portion of the purchase price of the Membership is to be financed by Seller, then Seller's obligations hereunder are contingent upon approval of financing for Buyer. If, upon investigation, Seller is not satisfied with Buyer's credit standing, Seller may by notice to Buyer given within sixty (60) business days of the date hereof (plus such additional period of time as may be reasonably necessary for Seller to investigate Buyer's credit standing) cancel this Agreement, in which event Seller shall refund to Buyer all sums paid by Buyer, and each party shall be relieved of all further obligations hereunder. Buyer hereby agrees to cooperate with any investigation regarding Buyer's credit standing. Failure of Buyer to promptly provide documents or authorize review of credit information shall constitute a breach of this Agreement by Buyer and shall, without requirement of notice or cure period, result in forfeiture by Buyer of the Deposit and any other sums paid to Seller by Buyer hereunder, as liquidated damages.
  - (b) If this is a financed sale, Buyer hereby grants to Seller a first lien and security interest against the Membership to secure Buyer's obligations under the Promissory Note and all other sums due under the terms of this Agreement (collectively referred to hereinafter as "Buyer's Obligations"). For such purposes, simultaneously herewith, and as a condition to Seller's obligations, Buyer shall execute and deliver to Seller a Deed of Trust or Mortgage and/or such other instruments as may be reasonably required by Seller due to the location or nature of the Membership or otherwise. Buyer agrees and acknowledges that Seller may record and/or file such instruments against Buyer's interest in the Membership in the applicable public records.

Seller may in addition require that Buyer execute and deliver to Seller an Agreement for Sale Addendum hereto which Seller may instead use to secure Buyer's Obligations. In such event, until all amounts are paid hereunder, such document will not appear in any public record but will nonetheless solely constitute Buyer's evidence of ownership (equitable) in lieu of any deed, membership certificate or other document. Seller may elect to cancel said Agreement for Sale Addendum at any time and to substitute therefor as security for Buyer's Obligations the Deed of Trust or Mortgage or other instrument executed simultaneously herewith.

**EXHIBIT A**  
**Statement of Material Facts**

10-K 1 diamondresorts-12312014x10k.htm DR 12.31.2014 10-K

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM 10-K**

(Mark One)

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the fiscal year ended December 31, 2014**

**OR**

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the transition period from to .  
Commission file number: 001-35967**

**DIAMOND RESORTS INTERNATIONAL, INC.**

*(Exact name of registrant as specified in its charter)*

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**46-1750895**

(I.R.S. Employer  
Identification No.)

**10600 West Charleston Boulevard  
Las Vegas, Nevada**

(Address of principal executive offices)

**89135**

(Zip code)

**(702) 684-8000**

(Registrant's telephone number including area code)

Securities registered pursuant to Section 12(b) of the Act:

**Title of Each Class**

Common Stock, par value \$0.01 per share

**Name of each exchange on which registered**

New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

(Title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES  NO

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. YES  NO

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES  NO

Indicate by check mark whether the Registrant has submitted electronically and posted on its corporate web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit and post such files). YES  NO

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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. (Check one):

Large accelerated filer

Accelerated filer

**Exhibit B-SMF**

**Page 1**

- the Premiere Vacation Collection (the “Premiere Vacation Collection”), which includes interests in resorts added to our network in connection with our acquisition of certain assets from ILX Resorts Incorporated in August 2010 (the “ILX Acquisition”) located in Arizona, Colorado, Indiana, Nevada and Baja, Mexico;
- Monarch Grand Vacations (the “Monarch Grand Collection”), which includes interests in resorts added to our network in connection with the PMR Acquisition (see “*Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations—Overview*” for the definition of the PMR Acquisition) located in California, Nevada, Utah and Mexico;
- the Diamond Resorts European Collection (the “European Collection”), which includes interests in resorts located in Austria, England, France, Italy, Norway, Portugal, Scotland, Spain Balearics, Spain Canaries and Spain Costa;
- the Diamond Resorts Latin America Collection (the “Latin America Collection”), which currently includes interests in the Cabo Azul Resort located in Baja California Sur, Mexico, which was added to our network in connection with the PMR Acquisition; and
- the Diamond Resorts Mediterranean Collection (the “Mediterranean Collection”), which includes interests in resorts added to our network in connection with the Aegean Blue Acquisition (see “*Our Strategic Acquisitions*” for the definition of the Aegean Blue Acquisition) located in the Greek Islands of Crete and Rhodes.

Each of the Diamond Collections is operated through a Collection Association, which is administered by a board of directors. Directors are elected by the points holders within the applicable Diamond Collection with the following exceptions: (i) The Premiere Vacation Collection allows the developer to appoint the board of directors until 90.0% of all membership interests are sold, (ii) the board of directors of the European Collection is comprised of five directors, three of whom are appointed by the developer and two of whom are appointed by the members of that Collection (provided the developer may exercise its vote as a member of that Collection) and (iii) the board of Directors of the Mediterranean Collection is comprised of three directors, two of whom are appointed by the developer and one of whom is appointed by the Trustee.

We own a significant number of points in each of the Diamond Collections (which in the case of the Mediterranean Collection are in the form of shares but for simplicity are also referred to in this annual report as points), which we hold as inventory. The board of directors of each Diamond Collection hires a company to provide management services to the Diamond Collection, which in each case is us.

As with our HOA management contracts, management fees charged to the Diamond Collections in the U.S. are based on a cost-plus structure and are calculated based on the direct and indirect costs (including the absorption of a substantial portion of our overhead related to the provision of our management services) incurred by the Diamond Collection. Under our current Diamond Collection management agreements, we receive management fees of 15.0% of the other costs of the applicable Diamond Collection (except with respect to our management agreement with the Monarch Grand Collection, under which we receive a management fee of 10.0% of the costs of the Monarch Grand Collection). Our management fees are included in the budgets prepared by each Collection Association, which determines the annual maintenance fee charged to each owner. One of the management services we provide to all of the Diamond Collections is the billing and collection of annual maintenance fees on the Diamond Collection's behalf. Annual maintenance fees for a given year are generally billed during the previous November, due by January and deposited in a segregated or restricted account we maintain on behalf of each Diamond Collection. As a result, a substantial majority of our fees for February through December of each year are collected from owners in advance. Funds are released to us from these accounts on a monthly basis for the payment of management fees as we provide our management services.

Apart from the management contract for the European Collection and the Mediterranean Collection, our Diamond Collection management contracts have initial terms of three to ten years, with automatic renewals of three to ten years, and can generally only be terminated by the Diamond Collection upon a vote of the Diamond Collection's members prior to each renewal period, other than in some limited circumstances involving cause. In the case of the Mediterranean Collection, the management agreement is indefinite and irrevocable. In the case of the resorts we manage that are part of the European Collection, generally the management agreements have either indefinite terms or long remaining terms (approximately 40 years) and can only be terminated for an uncured breach by the manager or a winding up of the European Collection. No Diamond Collection has terminated, or elected not to renew, any of our management contracts during the past five years. Save for the above, we generally have the right to terminate our Diamond Collection management contracts at any time upon written notice to the applicable Diamond Collection. The management contract for the European Collection has an indefinite term, can only be terminated by the European Collection for an uncured breach by the manager or a winding up of the European Collection, and may not be terminated by the manager.

**CRUISES**

<b>Cruise</b>	<b>Location</b>
Norwegian Cruise Lines Alaskan Glacier Bay Cruise	Alaska
Norwegian Cruise Lines Baltic Capitals Cruise	Baltic Capitals
Norwegian Cruise Lines Eastern Caribbean Cruise	Caribbean
Norwegian Cruise Lines Western Mediterranean Cruise	Mediterranean

\* Denotes a resort, hotel or cruise itinerary with which we have recently entered into an affiliation arrangement, but which had not yet been integrated into our network, and therefore was not available to our members, as of December 31, 2014.

***Diamond Luxury Selection***

In addition to our managed resorts and affiliated resorts, since October 2013 we have offered members with large point ownership, as an additional Club benefit, the ability to use their points to rent from a collection of approximately 2,500 private luxury properties, including villas, resorts, boutique hotels and yachts, through participation in The Diamond Luxury Selection. In general, a qualifying member is able to rent these private luxury properties by depositing a designated number of points with us, and we are then required to pay to the owners of these private luxury properties, on behalf of our members, a rental fee. This rental fee determines the number of points required to be used by our members for any particular rental. We also have the option of using these properties for marketing or rental purposes. Similar to our affiliated resorts, we do not manage these luxury properties, they do not carry our brand name and they are not part of any of our Diamond Collections or our resort network.

**Our Flexible Points-Based Vacation Ownership System and the Clubs**

***Our Points-Based System.*** Our customers become members of our vacation ownership system by purchasing points, which act as an annual currency that is exchangeable for occupancy rights in accommodations at the managed and affiliated resorts in our network. In 2014, the average cost to purchase points equivalent to an annual one-week vacation at one of the U.S. resorts in our network was \$27,434. Purchasers of points do not acquire a direct ownership interest in the resort properties in our network. Rather, our customers acquire a membership in one of the eight Diamond Collections. Legal title to the interests in our resort properties in a Diamond Collection, other than the Latin America Collection, is held by the trustee or the Collection Association for that Diamond Collection for the benefit of the members and, with respect to resorts in which interests are not wholly owned by a Diamond Collection, by unaffiliated third parties that also hold interests in the applicable resort.

The principal advantage of our points-based system is the flexibility it gives to members with respect to the use of their points versus the use of traditional intervals. With traditional intervals, an owner has the “fixed” use of a specific accommodation type for a one-week time period at a specific resort or has the “floating” use of a specific type of accommodation for a week to be selected for a particular season at that same resort. An owner may alter his or her vacation usage by exchanging the interval through an external VOI exchange program with which the resort is affiliated, such as Interval International or RCI, for which a fee is charged by the exchange company. Unlike interval owners, points holders can redeem their points for one or more vacation stays in the resorts included in our network (subject to membership type limitations, availability and having the number of points required in their account) without having to use an external exchange company and without having to pay any exchange transaction fees. Because points function as currency within our network, our members have flexibility to choose the location, season, duration and size of accommodation for their vacation based on their annual points allocation, limited only by the range of accommodations within our network and subject to availability. Our members may also “save” their points from prior years, “borrow” points from future years, or pay cash for additional one-time points usage for additional flexibility with respect to reserving vacations at peak times, in larger accommodations, for longer periods of time or for vacationing more often throughout the year.

We evaluate and allocate a points value for each of the resorts in our network. Points values are determined by unit type for each resort and are based on season, demand, location, amenities and facilities. We make a points directory available to our customers online, which allows them to evaluate how they may allocate their available points and select dates and locations for

Each Diamond Collection member is required to pay to the respective Diamond Collection a share of the overall cost of that Diamond Collection's operations, which includes that Diamond Collection's share of the costs of maintaining and operating the component resort units within that Diamond Collection. A specific resort property may have units that are included in more than one Diamond Collection, or have a combination of units owned by a Diamond Collection and by individual interval owners. To the extent that an entire resort property is not held completely within a specific Diamond Collection, each Diamond Collection pays only the portion of operating costs attributable to its interval ownership in that resort. With the exception of the Mediterranean Collection, each Diamond Collection member's annual maintenance fee is composed of a base fee and a per point fee based on the number of points owned by the member. The annual maintenance fee is intended to cover all applicable operating costs of the resort properties and other services, including reception, housekeeping, maintenance and repairs, real estate taxes, insurance, rental expense, accounting, legal, human resources, information technology and funding of replacement and refurbishment reserves for the underlying resorts. The annual maintenance fee for a holder of points equivalent to one week at one of the resorts in our network generally ranges between \$1,411 and \$1,842 per year, with an average of \$1,627. Assessments may be billed if insufficient operating funds are available or if planned capital improvements exceed the amount of available replacement and refurbishment reserves. If the member does not pay annual maintenance fees or any assessment, the member's use rights may be suspended, and the Diamond Collection may enforce its lien and recover the member's points, subject to the rights of the member's lender, if any. The Diamond Collections then effectively assign their recovery rights to us through their respective inventory recovery agreements with us.

### Managed Resorts Outside of Diamond Collections

VOIs for a limited number of the resorts managed by us, consisting principally of the resorts acquired in the Island One Acquisition, are not included in any of our Diamond Collections. Owner-families hold deeded VOIs in these resorts. See "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Overview" for the definition of the Island One Acquisition. Unsold intervals have been allocated point equivalent amounts that allow members of the Clubs to stay at these resorts.

### Interval Ownership

In addition to points, we historically marketed and sold intervals. We generally discontinued selling intervals in October 2007, although several of the resorts we manage continue to have a significant number of legacy deeded interval owners. We believe that points offer our members greater choice and flexibility in planning their vacations as compared to intervals. From an operational perspective, our points-based structure enables us to efficiently manage our inventory and sales centers by selling points-based access to our global network from any sales location, rather than being limited to selling intervals at a specific resort. In addition, the recovery of points-based inventory from our members who default on their maintenance fee or loan payments is easier than the recovery of interval-based products, which are typically governed by local real estate foreclosure laws that can significantly lengthen recovery periods and increase the cost of recovery.

An interval typically entitles the owner to use a fully-furnished vacation accommodation for a one-week period, generally during each year or in alternate years, usually in perpetuity. Typically, the owner holds either a fee simple ownership interest in a specific vacation accommodation or an undivided fee simple ownership interest in an entire resort. An interval owner has the right to stay only at the specific resort from which the interval owner has purchased the interval. However, many of our interval owners in the U.S. are also members of one of the Clubs, and thereby are entitled to the points equivalent for their interval which they may use to stay at other resorts in our network.

Each interval owner is required to pay an annual maintenance fee to the related HOA to cover the owner's share of the cost of maintaining the property. The annual maintenance fee is intended to cover the owner's share of all operating costs of the resort and other related services, including reception, housekeeping, maintenance and repairs, real estate taxes, insurance, rental expense, accounting, legal, human resources and information technology. In addition, the annual maintenance fee includes an amount for the funding of replacement and refurbishment reserves for the related resort to provide for future improvements when necessary. Assessments may be billed if insufficient operating funds are available or if planned capital improvements exceed the amount of available replacement and refurbishment reserves. Annual maintenance fees for interval owners generally range between \$591 and \$1,589 per year for a one-week interval, with an average of \$975. If the owner does not pay the annual maintenance fees or any assessment, the owner's use rights may be suspended, and the HOA may enforce its lien on the owner's intervals, subject to the rights of the owner's lender, if any. See "Recovery of VOIs." The amount of an interval owner's annual maintenance fees and assessments is determined on a pro rata basis consistent with such person's ownership interest in the resort. For purposes of this allocation, each of the Diamond Collections is assessed annual maintenance fees and assessments based on the intervals held by such Diamond Collection.

we can offer services, activities and upgrade opportunities and an expanded ownership base to which we can potentially sell additional points.

***Our business may be adversely affected if we are unable to maintain an optimal level of points or intervals in inventory for sales to customers.***

Our ability to maintain an optimal level of points or intervals in inventory for sale to customers is dependent on a number of factors, including fluctuations in our sales levels and the amount of inventory recovered through consumer loan and association fee defaults.

*If we experience a significant decline in our inventory of points available for sale, we may be required to expend more capital to acquire or build inventory.*

We have entered into inventory recovery agreements with substantially all of the Diamond Collections and HOAs for our managed resorts in North America, together with similar arrangements with the European Collections and a majority of our European managed resorts. Pursuant to these agreements and arrangements, we have the option to recapture VOIs either in the form of points or intervals, and bring them into our inventory for sale to customers. During each of the past six years, approximately 2% to 5% of the outstanding points or intervals were recovered by us pursuant to these agreements. We need to maintain such level of recovery to provide us with our relatively low-cost inventory of VOIs for sales to our customers. However, the volume of points or intervals recovered by us could decline in the future for a variety of reasons, including as a result of termination or non-renewal of our inventory recovery agreements. In addition, if a viable VOI resale market were to develop in the future, our members may choose to resell their interests to third parties. Further, in the event applicable state law makes it more difficult to recover points or intervals, it could extend the time required to consummate a recovery or otherwise make it more difficult to consummate such recoveries. An increased level of VOI sales would also reduce our inventory available for sale. If our inventory available for sale were to decline significantly, generally or in a particular Diamond Collection, we may need to make significant capital expenditures to replenish our inventory by purchasing points or intervals or building or acquiring new inventory at existing resorts, including through arrangements with financial sponsors. Alternatively, we would need to substantially reduce the volume of our VOI sales.

*If the volume of our inventory of points held by us were to significantly increase, our carrying costs with respect to that inventory would increase.*

If VOI sales levels do not keep pace with inventory recovery levels, the volume of our inventory of points or intervals may become higher than desired. Also, if the amount of customer defaults increases and we repurchase more VOI inventory than desired pursuant to our inventory recovery agreements, our carrying costs will increase due to the maintenance fees on the recovered VOI inventory that we are required to pay.

Our recent strategic acquisitions have provided us with additional VOI inventory, and potential future acquisitions may include additional inventory. Further, as part of some of our recent acquisitions, we have incurred additional obligations to repurchase defaulted inventory (either by taking back defaulted consumer loans or repurchasing the inventory that collateralizes such loans). We incur carrying costs associated with our VOI inventory, as we are obligated to pay annual maintenance fees and assessments on any VOIs held in inventory, and higher-than-desired VOI inventory levels would result in increases in these carrying costs. If our inventory available for sale were to increase significantly, we may need to sell some of this excess inventory at significantly discounted prices. In addition, the inventory recovery agreements we enter into with the HOAs and Diamond Collections are subject to annual renewal, and as a result, we may not always repurchase VOI inventory from customers in default. If we do not repurchase such inventory, the annual maintenance fees and assessments are allocated among the remaining non-defaulting owners of units in the HOA and the Diamond Collection, increasing the amounts paid by each of those owners (including us, to the extent we hold units in inventory). This increases the risk that owners of such other units may be unwilling or unable to pay such increased fees and may default as well. The increased per-unit costs could also make units in the HOA and the Diamond Collection less attractive to prospective purchasers.

***A substantial portion of our business is dependent upon contracts with HOAs to manage resort properties and with the Diamond Collections. The expiration, termination or renegotiation of these management contracts could adversely affect our business and results of operations.***

We are party to management contracts relating to 93 properties and the eight Diamond Collections, under which we receive fees for providing management services. We derive a substantial amount of revenue from these contracts, and our hospitality and management services business accounts for a greater percentage of our Adjusted EBITDA than of our total consolidated revenue. Each of the Diamond Resorts managed resorts, other than certain resorts in our European Collection and the Latin America

Collection, is typically operated through an HOA, and each of the Diamond Collections is typically operated through a Collection Association. Each of the HOAs and Collection Associations is administered by a board of directors. The

boards of directors of the HOAs and Collection Associations are responsible for authorizing these management contracts, and negotiate and enforce the terms of these agreements as fiduciaries of their respective resort properties and Diamond Collections. Furthermore, some state regulations impose limitations on the amount of fees that we may charge the HOAs and Diamond Collections for our hospitality management services and the terms of our management contracts. Our management contracts generally have three to ten year terms and are automatically renewable, but provide for early termination rights in certain circumstances. Any of these management contracts may expire at the end of its then-current term (following notice by a party of non-renewal) or be terminated, or the contract terms may be renegotiated in a manner adverse to us. In addition, our growth strategy contemplates leveraging these existing management contracts to add services provided to our members under our management contracts and increase the management fees to cover those new services. There are no guarantees that this strategy will be successful. We believe there are limits to how much we can increase management fees before the HOAs and Diamond Collections are unwilling or unable to pay such increased fees, and, if such fees are perceived as being too high by prospective customers, our VOI sales may be adversely affected.

Our growth strategy also contemplates our acquisition of, and entry into, new management contracts. We face significant competition to secure new contracts and may be unsuccessful in doing so on favorable terms, if at all.

***To the extent our rental proceeds may decline or our vacation interest carrying costs may increase, we may not be able to cover certain other expenditures against which we offset rental proceeds.***

Under our inventory recovery agreements, we are required to pay owners' past due maintenance and assessment fees to the HOAs and Diamond Collections. See "Item 1. Business—Recovery of VOIs." In order to offset these expenses, we rent the available units, in which case we are also obligated to pay to the HOAs and Diamond Collections cleaning fees for room stays incurred by our guests who stay with us on a per-night or per-week basis. In 2014, 2013 and 2012, our net vacation interest carrying costs, consisting of carrying costs related to the VOIs that we owned in each of these periods, less amounts generated from rental of these VOIs in these periods were \$35.5 million, \$41.3 million and \$36.4 million, respectively. Additionally, participating members can rent private luxury properties, book high-profile sporting events and take customized international guided excursions by depositing a designated number of points with us. In turn, we pay a usage fee to third parties on behalf of our members. See "Item 1. Business—Our Resort Network—Diamond Luxury Selection." Similarly, under arrangements that we have with certain of our affiliated resorts, holders of our points or intervals who desire to stay at any such affiliated resort deposit points with us and, in exchange, we pay our affiliated resort the funds required to allow such holder access to the desired unit. In order to offset these payments to the third parties or the affiliated resorts, as applicable, we rent available units at our managed resorts. Our ability to rent units is subject to a variety of risks common to the hospitality industry, including competition from large and well-established hotels, changes in the number and occupancy and room rates for hotel rooms, seasonality and changes in the desirability of geographic regions of the resorts in our network. In addition, we experience strong competition in the rental market and are at a disadvantage when competing against larger and better-established hotel and resort chains that focus on the rental market, have more experience in and greater resources devoted to such market, and can offer rental customers additional benefits such as loyalty points related to rentals and a significantly larger pool of potentially available rental options.

***We have incurred net losses in the past and may not experience positive net income in the future.***

We have incurred net losses in the past and we may incur net losses in the future. As of December 31, 2014, our accumulated deficit was \$180.5 million. Excluding a non-recurring gain on bargain purchase from business combination of \$2.9 million and \$20.6 million for the years ended December 31, 2013 and 2012, our net losses for such periods were \$5.4 million and \$7.0 million, respectively. Any failure by us to obtain or sustain profitability, or to continue our revenue growth, could cause the price of our common stock to decline significantly.

***We utilize external exchange program affiliations as important sources of sales prospects and leads, and any failure to maintain such affiliations could reduce these prospects.***

We have an affiliation agreement for an external exchange program with Interval International, which was renegotiated in April 2014 and complements our own vacation ownership exchange programs. As a result of this affiliation, members of THE Club may use their points to reserve the use of a vacation accommodation at more than 2,900 resorts worldwide that participate in Interval International. In addition, interval owners at our managed resorts may join either Interval International or RCI, as their HOA constitutions dictate. Such interval owners may then deposit their deeded intervals in exchange for an alternative vacation destination. When our points and intervals are exchanged through Interval International or RCI, this inventory is made available to owners from other resorts, who are potential customers for our VOI sales. If we do not maintain our external exchange program affiliations, the number of individuals exchanging interests through these programs to stay at our managed resorts may decline substantially.

shops, an online reservation system, customer service contact centers, rental, billing and collection, accounting and treasury functions and communications and information technology services.

As an integral part of our hospitality and management services, we have entered into inventory recovery agreements with a substantial majority of the Diamond Collections and HOAs for our managed resorts in North America, together with similar arrangements with the European Collection and a majority of our European managed resorts, whereby we recover VOIs from members who fail to pay their annual maintenance fee or assessments due to, among other things, death or divorce or other life-cycle events or lifestyle changes. Because the majority of the cost of operating the resorts that we manage is spread across our member base, by recovering VOIs from members who have failed to pay their annual maintenance fee or assessments, we reduce bad debt expense at the HOA and Diamond Collection level, which is a component of the management fees billed to members by each resort's HOA or each Diamond Collection's non-profit members association (each, a "Collection Association"), supporting the financial well-being of those HOAs and the Diamond Collections.

*HOAs.* Each of the Diamond Resorts managed resorts, other than certain resorts in our European Collection and Latin America Collection, is typically operated through an HOA, which is administered by a board of directors. Directors are elected by the owners of intervals at the resort (which may include one or more of the Diamond Collections) and may also include representatives appointed by us as the developer of the resort. As a result, we are entitled to voting rights with respect to directors of a given HOA by virtue of (i) our ownership of intervals at the related resort; (ii) our control of the Diamond Collections that hold intervals at the resort and/or (iii) our status as the developer of the resort. The board of directors of each HOA hires a management company to provide the services described above, which in the case of all Diamond Resorts managed resorts, is us. Through December 31, 2014, we functioned as the HOA for two resorts in St. Maarten and collected maintenance fees, earned management fees and incurred operating expenses at these two resorts. Effective January 1, 2015, however, we assigned our rights and obligations to two newly-created stand-alone HOAs and ceased functioning as the HOA for such resorts, and now provide management services to these resorts pursuant to our customary management agreements. See "Note 31—Subsequent Events" of our consolidated financial statements included elsewhere in this annual report for further detail.

Our management fees with respect to a resort are based on a cost-plus structure and are calculated based on the direct and indirect costs (including the absorption of a substantial portion of our overhead related to the provision of management services) incurred by the HOA of the applicable resort. Under our current resort management agreements, we receive management fees generally ranging from 10% to 15% of the other costs of operating the applicable resort (with a weighted average of 12.9% based upon the total management fee revenue for the year ended December 31, 2014). Unlike typical commercial lodging management contracts, our management fees are not impacted by changes in a resort's ADR or occupancy level. Instead, the HOA for each resort engages in an annual budgeting process in which the board of directors of the HOA estimates the costs the HOA will incur for the coming year. In evaluating the anticipated costs of the HOA, the board of directors of the HOA considers the operational needs of the resort, the services and amenities that will be provided at or to the applicable resort and other costs of the HOA, some of which are impacted significantly by the location, size and type of the resort. Included in the anticipated operating costs of each HOA are our management fees. The board of directors of the HOA discusses the various considerations and approves the annual budget, which determines the annual maintenance fees charged to each owner. One of the management services we provide to the HOA is the billing and collection of annual maintenance fees on the HOA's behalf. Annual maintenance fees for a given year are generally billed during the previous November, due by January and deposited in a segregated or restricted account we manage on behalf of the HOA. As a result, a substantial majority of our fees for March through December of each year are collected from owners in advance. Funds are released to us from these accounts on a monthly basis for the payment of management fees as we provide our management services.

Our HOA management contracts typically have initial terms of three to ten years, with automatic renewals. These contracts can generally only be terminated by the HOA upon a vote of the owners (which may include one or more of the Diamond Collections) prior to each renewal period, other than in some limited circumstances involving cause. No HOA has terminated any of our management contracts during the past five years. We generally have the right to terminate our HOA management contracts at any time upon written notice to the respective HOA. During the past five years, we have terminated only one and sold two immaterial HOA management contracts.

*Diamond Collections.* The *Diamond Collections* currently consist of the following:

- the Diamond Resorts U.S. Collection (the "U.S. Collection"), which includes interests in resorts located in Arizona, California, Florida, Missouri, Nevada, New Mexico, South Carolina, Tennessee, Virginia and St. Maarten;
- the Diamond Resorts Hawaii Collection (the "Hawaii Collection"), which includes interests in resorts located in Arizona, California, Hawaii, Nevada and Utah;
- the Diamond Resorts California Collection (the "California Collection"), which includes interests in resorts located in Arizona, California and Nevada;

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WHEN RECORDED, PLEASE RETURN TO:  
ILX ACQUISITION, INC.  
ATTENTION CLUB MANAGER  
10615 Park Run Drive  
Las Vegas, NV 89144.

**SECOND AMENDED AND RESTATED  
PREMIERE VACATION COLLECTION  
MEMBERSHIP PLAN**

THIS SECOND AMENDED AND RESTATED PREMIERE VACATION COLLECTION MEMBERSHIP PLAN (this "Plan") is executed and effective as of the 8th day of November, 2010 (the "Effective Date"), pursuant to the Original Membership Plan described in Recital "A" below by **ILX Acquisition, Inc., a Delaware corporation ("Seller")**, as assignee of those certain Assignors defined in Recital "B" below, and the Board of Directors for Premiere Vacation Collection Owners Association, Inc. an Arizona nonprofit corporation (the "Board" and together with Seller, the "Parties"). Unless context suggest otherwise, all capitalized terms have the meanings given them in Article I below.

**RECITALS**

A. The Premiere Vacation Club Membership Plan (Restated) recorded in the Official Records of Maricopa County, Arizona on February 15, 2008 as Instrument No. 2008-0133225, as amended by that certain First Amendment to Premiere Vacation Club Membership Plan (Restated) recorded in the Official Records of **Maricopa County, Arizona on NOVEMBER 24, 2010** as Instrument No. **2010-1029162** (collectively referenced the "**Original Membership Plan**"), amended all other membership plans and related documents referenced therein. The Original Membership Plan created the multi-site vacation ownership membership program previously known as the "Premiere Vacation Club," which **Club is now known as the Premiere Vacation Collection, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference.**

B. **ILX Resorts Incorporated, an Arizona corporation (f/k/a International Leisure Enterprises, Inc.), ILE Sedona Incorporated, an Arizona corporation, Premiere Development Incorporated, an Arizona corporation, Los Abridados Partners Limited Partnership, an Arizona limited partnership, VCA Tucson Incorporated, an Arizona corporation, and VCA South Bend Incorporated, an Arizona corporation (collectively, "Assignors") and Seller, as "Assignee,"** Recorded on September 2, 2010, in the Official Records of the Maricopa County, Arizona Recorder as Instrument No. 20100761955; and Recorded on September 3, 2010 in the Official Records of the Coconino County, Arizona Recorder as Instrument No. 3572888, in the Official Records of the Maricopa County, Arizona Recorder as Instrument No. 20100766541, and in the Official Records of the Pima County, Arizona Recorder as Docket No. 13887, at Page 5012,

ARTICLE III  
TITLE, MEMBERSHIP AND VOTING

3.1 Transfer to Association. As contemplated by and in continued accordance with the Original Membership Plan, Seller will cause or has caused certain Resort Interests to be transferred to Association, free and clear of all Blanket Liens or with a Non-Disturbance Agreement in place with respect to any Blanket Lien that continues to encumber such Resort Interests, to be held by the Association for the use and benefit of the Members. It is the intention of the Parties that a short memorandum or notice of this Plan shall be recorded in the county in which a Resort Interest is located, together with a listing of only the respective Resort Interests located in such county as an Exhibit thereto.

3.2 Effect of Transfer to the Association. As also contemplated by and in continued accordance with the Original Membership Plan, the terms of this Plan (as amended from time to time) shall apply to all Resort Interests conveyed to the Association. Upon the transfer of initial or additional Resort Interests to the Association, such Resort Interests shall be deemed part of the Collection and shall be subject to the terms of this Plan and the other Collection Instruments, subject to all Seller Rights including without limitation the Seller Rights identified in Article VII of the Original Membership Plan. Seller reserves the unilateral right to require an officer of the Association to execute and record one or more instruments from time to time to evidence the Seller Rights. Notwithstanding any provision of the Collection Instruments to the contrary, for so long as Seller holds for sale in the ordinary course of its business one (1) or more Memberships, the Association shall not take any action which would be detrimental to the sale by Seller of Memberships.

3.3 Memberships. In return for transferring Resort Interests to the Association, and as provided in the Original Membership Plan, (a) the Association will cause the related Bulk Memberships to be registered in the name of any Person(s) so instructed by Seller or its affiliates in accordance with the Collection Instruments and (b) notwithstanding any amendment to any of the Collection Instruments to the contrary, Seller alone will have the right to sell Memberships and to receive amounts paid for such Memberships in accordance with and as contemplated by the Original Membership Plan. As further described in the Original Membership Plan, any Person who is entered into the Register of Members at the instruction of Seller shall automatically become a Member of the Association in accordance with the provisions of the Collection Instruments and shall be issued a Points Certificate. Regardless of whether or not there has been any entry into the Register of Members with respect to Points available for sale by Seller, Seller shall be deemed to be a Member of the Association based on its Bulk Membership and its related Points.

3.4 Voting. The voting power assigned to each Membership is based on the Membership Share, wherein the numerator is equal to the total number of Points assigned to the Membership and the denominator is equal to the total number of Points, of all types, that exist from time to time (the “**Total Authorized Voting Membership Shares**”). Recognizing that the Membership Share will be calculated based on the number of Points assigned to each Membership, all other provisions in the Original Membership Plan which govern voting continue in full force and effect. By way of example and not limitation, Section 3.03 of the Original Membership Plan remains in effect and provides that until such time as 95% of the Total

Authorized Voting Membership Shares in the Collection (including those held for sale by Seller and its affiliates) have been sold by Seller and its affiliates, Seller shall be entitled to cast a number of votes equal to Seller's total Membership Share for all Memberships held by Seller and its affiliates (including those held for sale by Seller and its affiliates) multiplied by nine (9). For each Membership, the Primary Member shall be the only Person entitled to vote in respect of such Membership.

3.5 Register of Members. The Association shall cause to be maintained the Register of Members in accordance with the Original Membership Plan, which shall identify for each Membership sold by Seller from time to time the name, address, number of Points, type of Points and Primary Member. The Register of Members may be maintained in paper or electronic format. Notwithstanding anything in any of the Collection Instruments to the contrary, the Register of Members shall be the definitive list for purposes of determining those Members entitled to notice of meetings of Members and to vote on matters which are to be determined by the Members, as well as those Members entitled to distribution of funds upon any termination or liquidation of the Collection in accordance with the Collection Instruments.

3.6 Assessments and Special Assessments. Each Member, other than Seller, shall pay all Assessments levied by the Association, through the Board, for each Membership owned in accordance with the Collection Instruments. Each Member's Assessment shall be calculated using an Operational Assessment and a Points Assessment. For purposes of this Plan, "**Operational Assessment**" means that amount of the Assessment that is charged on a Points Category basis; "**Points Assessment**" means that amount of the Assessment that is charged on a per Point basis; and "**Points Category**" means a grouping of Members as determined by the Board based on the number of Points owned by a Member, for example, the Board may create Points Categories whereby Members owning less than or equal to 3,500 Points are in one Points Category, Members owning 3,501 to 6,000 Points are in another Points Category, etc. The Board shall have the right to adopt, revise, and promulgate policies further describing the methodology used, under advice from the Manager, to determine the Points Categories, and establish the Operational Assessment and Points Assessment, as it shall determine in its sole and subjective discretion. The Board may, in an assessment period, determine the need for, and levy a Special Assessment applicable to that period only, as may be necessary. Such Special Assessment shall be levied by the Board pursuant to the procedures described in the Original Membership Plan, subject to the "**CPI Dues Adjustment Percentage**," as such term is defined therein, which currently means a percentage equal to the sum of the percentage increase during the twelve (12) months ending on June 30th in the current Calendar Year in the U.S. city average all items Consumer Price Index for all urban consumers (1982-4 = 100) as determined by the United States Department of Labor, Bureau of Labor Statistics, plus twenty five percent (25%).

#### ARTICLE IV CONVERSION TO A POINTS PROGRAM

4.1 Conversion to Points. Notwithstanding anything contained in the Original Membership Plan to the contrary, which provisions are hereby expressly amended to be consistent with this Article IV, Points shall be the currency of use in the Collection through which Members reserve the use and occupancy of the Collection Accommodations in the Component Sites in accordance with the Collection Instruments. Accordingly, the Rules and

## Snapshot

Member No.: **51-918386**

2015 Remaining Points: **13000**

2016 Points Allocated: **13000**

Since: **01-Jan-2011**

Type: **Premiere Club Connection**

Level: **Club Connection**

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- HOA Information
- > Premiere Vacation Collection Ow...
- > [Board / Committee](#)
- > Meet Your Board / Committee

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  - [News](#)
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# Meet Your Board / Committee

## Troy Magdos, President

Mr. Magdos is Senior Vice President – Resort Specialist for Diamond Resorts International®. He is currently in charge of the Engineering and Life Safety Division for North America and the Caribbean. Mr. Magdos has been employed by Diamond Resorts for the past 30 years and has served as an officer and director on several HOA associations over the past 22 years. Mr. Magdos has a strong background in resort operations, HOA operations, HOA financial operations and HOA/Board regulations.

## **Linda Riddle, Vice President**

Ms. Riddle is the Vice President, Association Administration, for Diamond Resorts International®. She has a strong background in all areas of HOA management, principally compliance with HOA laws and governing documents, HOA board regulations, and HOA financial operations and budgeting, as well as extensive knowledge of resort operations and timeshare sales and marketing. Previously, Ms. Riddle was the Legal Manager for Sunterra Corporation where she supervised paralegals and support staff involved with all functions of HOA management, developer documentation, timeshare registration, and sales and marketing promotions. Before joining Sunterra, Ms. Riddle served as Lead Paralegal and Finance Manager for the Pittsburg and Haskell County, Oklahoma, District Attorney's Office. Ms. Riddle obtained her Paralegal certification at University of Nevada Las Vegas and specialized in HOA and Contract Law.

## **Kathy Wheeler, Secretary/Treasurer**

Ms. Wheeler is a Vice President with the Homeowners Association Division of Diamond Resorts International®. She has been with Diamond Resorts for 12 years and has a strong background in accounting. Additionally, she works closely with all the departments that assist with the operations of the resorts, including budgeting and cost analysis. She currently serves on several HOA boards.

## **Janet Webber, Director**

Janet Webber (and her husband Dale) residing in the area have been owners at Los Abrigados for 15 years. Janet has a 25 year background in direct sales along with owning a service oriented business in the Midwest. She finished her college degree from Governor State University while rearing seven kids in Illinois. Presently she and her husband are retired and enjoy their passion of visiting National Parks and Monuments. She enjoys staying at all the PVC resorts within driving distance as well. Volunteering at the Red Rock Ranger Station and numerous other service organizations keeps her busy when they are not traveling.

## **Beverly Jackson, Director**

In addition to being a timeshare owner at Los Abrigados, Ms. Jackson has spent over 40 years employed in the financial management of multi-family development, syndication of and annual reporting to limited partnership ownership entities, and asset management of multi-family apartment residences with two organizations. She is currently employed as a Senior Manager in the Performance Management Division of a national consulting firm that specializes in training and implementation of HUD regulations for multi-family developers, owners and management agencies. She resides near Sedona.

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**Exhibit D-SMF**

## Snapshot

Member No.: **51-918386**

2015 Remaining Points: **13000**

2016 Points Allocated: **13000**

Since: **01-Jan-2011**

Type: **Premiere Club Connection**

Level: **Club Connection**

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- > Management Company

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# Management Company

## Who We Are

Diamond Resorts Management, Inc., is the management company arm of Diamond Resorts International®. We are committed to consistently delivering a higher standard of guest satisfaction by providing our owners, members and guests with simplicity, choice and comfort—every time, for a lifetime. Our experienced team consistently strives to exceed expectations in the areas of service and satisfaction to the resorts we manage, the associations we support and the ownership base we serve. We provide management and maintenance services necessary for the day-to-day operations of most of the resorts in your Collection and provide accounting, billing, collection and administration functions for the association. We leverage our size, global reach and purchasing power to offer several unique, unparalleled and cost-efficient products and services that benefit associations, owners and resorts.

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As filed with the Securities and Exchange Commission on May 2, 2011

Registration No. 333- 172772

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

Amendment No. 1  
to  
**FORM S-4**  
REGISTRATION STATEMENT  
UNDER  
*THE SECURITIES ACT OF 1933*

**DIAMOND RESORTS CORPORATION**

*(Exact name of registrant as specified in its charter)*  
SEE TABLE OF ADDITIONAL REGISTRANTS

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

**7011**  
*(Primary Standard Industrial  
Classification Code Number)*

**95-4582157**  
*(I.R.S. Employer  
Identification Number)*

**10600 West Charleston Boulevard  
Las Vegas, Nevada 89135  
Tel: (702) 684-8000**  
*(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)*

**Elizabeth Brennan, Esq.**  
**Executive Vice President and General Counsel**  
**Diamond Resorts Corporation**  
**10600 West Charleston Boulevard**  
**Las Vegas, Nevada 89135**  
**(702) 823-7550**  
*(Name, address, including zip code, and telephone number, including area code, of agent for service)*

*With a copy to:*  
**Howard S. Lanznar, Esq.**  
**Katten Muchin Rosenman LLP**  
**525 West Monroe Street**  
**Chicago, Illinois 60661**  
**(312) 902-5200**

Approximate date of commencement of proposed exchange offer: As soon as practicable after this Registration Statement is declared effective.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is

## Table of Contents

**HOAs.** Each of our branded resorts, other than certain resorts in our European Collection, is typically operated through an HOA, which is administered by a board of directors. Directors are elected by the owners of intervals at the resort (which may include one or more of our Collections) and may also include representatives appointed by us as the developer of the resort. As a result, we may be entitled to voting rights with respect to directors of a given HOA by virtue of (i) our ownership of intervals at the related resort, (ii) our control of the Collections that hold intervals at the resort and/or (iii) our status as the developer of the resort. The board of directors of each HOA hires a management company to provide the services described above, which in the case of all branded resorts, is us. The European Collection manages the 20 European branded resorts that do not have an HOA.

Our management fees are based on a cost-plus structure and are calculated based on the direct and indirect costs (including an allocation of a substantial portion of our overhead related to the provision of management services) incurred by the HOA. Most of our current management agreements are priced at cost plus a range of 10% to 15%. Unlike typical commercial lodging management contracts, our management fees are not impacted by changes in a resort's ADR or occupancy level. Our management fees are included in the budgets prepared by each HOA, which determine the annual maintenance fee charged to each owner. One of the management services we provide to the HOA is the billing and collection of annual maintenance fees on the HOA's behalf. Annual maintenance fees for a given year are generally billed during the previous November, collected by January and deposited in a segregated or restricted account we maintain on behalf of the HOA. As a result, a substantial portion of our fees for February through December of each year are collected from owners in advance. In each of the past two years, over 80% of annual maintenance fees have been collected by the end of February of such year. Funds are released to us from these accounts on a monthly basis for the payment of management fees as we provide our management services.

Our HOA management contracts typically have initial terms of three to five years with automatic one-year renewals. These contracts can generally only be terminated by the HOA upon a vote of the owners (which may include one or more of our Collections) prior to each renewal period, other than in some limited circumstances involving cause. No HOA has terminated any of our management contracts during the past five years, with the exception of one immaterial HOA management contract. We generally have the right to terminate our HOA management contracts at any time upon notice to the HOA.

**Collections.** Each of our Collections is operated through a collection association, which is administered by a board of directors. Directors are elected by the Collection's points holders. We own a significant number of points in each of the Collections, which we hold as inventory. The board of directors of each Collection hires a company to provide management services, which in each case is us.

As with our HOA management contracts, management fees charged to the Collections are based on a cost-plus structure and are calculated based on the direct and indirect costs (including an allocation of our overhead) incurred by the Collection. All of our current Collection management agreements are priced at cost plus 15%. Our management fees are included in the budgets prepared by each collection association, which determines the annual maintenance fee charged to each owner. One of the management services we provide to our Collections is the billing and collection of annual maintenance fees on the Collection's behalf. Annual maintenance fees for a given year are generally billed during the previous November, collected by January and deposited in a segregated account we maintain on behalf of each Collection. As a result, a substantial portion of our fees for February through December of each year are collected from owners in advance. In each of the past two years, over 80% of annual maintenance fees have been collected by the end of February of such year. Funds are released to us from these accounts on a monthly basis for the payment of management fees as we provide our management services.

Our Collection management contracts also have initial terms of three to five years, with automatic three to five year renewals. These contracts can generally only be terminated by the Collection upon a vote of the Collection's members prior to each renewal period, other than in some limited circumstances involving cause. No Collection has terminated any of our management contracts during the past five years. We generally have the right to terminate our Collection management contracts at any time upon notice to the Collection.

**Sales and Marketing of VOIs.** We market and sell VOIs that provide access to our network of 69 branded and 127 affiliated resorts. Since October 1, 2007, we have marketed and sold VOIs primarily in the form of points.

[Table of Contents](#)**DIAMOND RESORTS PARENT, LLC AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

carrying cost) and approximately \$4.6 million that will either be collected from the owners or, if uncollected, will remain on the Company's balance sheet as the cost basis of the reclaimed underlying Vacation Interests.

The Company's obligation under the 2009 agreements as of the June 30, 2009 settlement date totaled approximately \$8.6 million, including approximately \$5.7 million related to the fiscal year ended December 31, 2009 usage rights of the underlying Vacation Interests (expensed during 2009 as a component of Vacation Interest carrying cost) and approximately \$2.9 million that will either be collected from the owners or, if uncollected, will remain on the Company's balance sheet as the cost basis of the reclaimed underlying Vacation Interests.

The Company's obligation under the 2008 agreements as of the June 30, 2008 settlement date totaled approximately \$7.0 million, including approximately \$3.9 million related to the fiscal year ended December 31, 2008 usage rights of the underlying Vacation Interests (expensed during 2008 as a component of Vacation Interest carrying cost) and approximately \$3.1 million that will either be collected from the owners or, if uncollected, will remain on the Company's balance sheet as the cost basis of the reclaimed underlying Vacation Interests.

The Company has renewed these agreements for 2011. No amounts have been recorded under the 2011 agreements as of December 31, 2010.

**Management Services**

Included within the amounts reported as management, member and other services revenue are revenues from resort management services provided to the HOAs, which totaled \$31.3 million, \$29.3 million and \$26.8 million for the years ended December 31, 2010, 2009 and 2008, respectively. See "Due from Related Parties, Net and Due to Related Parties, Net" section above for detail of these services performed.

Also included within the amount reported as management, member and other services revenue are revenues earned from managing the off-balance sheet trusts which hold legal title to the vacation property real estate out of which the Company conveys vacation points to its customers. These amounts total \$16.8 million, \$11.6 million and \$11.5 million for the years ended December 31, 2010, 2009 and 2008, respectively.

**Allocation of Expenses**

In addition to management services revenues, the Company also has entered into agreements with the HOAs to be reimbursed for a portion of the Company's resort management and general and administrative expenses to the HOAs. The following table presents the amounts passed through to the HOAs for the years ended December 31, 2010, 2009 and 2008, respectively (in thousands):

	2010	2009	2008
Reduction of management, member, and other services expenses	\$ 6,701	\$ 5,222	\$ 4,696
Reduction of general and administrative expenses	24,065	19,245	9,947
<b>Total allocation of expenses</b>	<b>\$30,766</b>	<b>\$24,467</b>	<b>\$14,643</b>

**Note 7—Other Receivables, Net**

Other receivables, net consisted of the following as of December 31 (in thousands):

	2010	2009
THE Club dues receivable	\$29,534	\$26,076
Mortgage interest receivable	3,651	3,925
Rental receivables and other resort management-related receivables	2,893	2,686
THE Club conversion receivable	1,409	2,101
Owner maintenance fee receivable	2,097	1,647

### Affidavit

Norman Zwicky, upon being duly sworn, on his oath deposes and says:

1. I am an adult resident of Arizona, and the plaintiff in the case titled *Zwicky v. Premiere Vacation Collection Owners Association*, Maricopa County Superior Court Case Number CV2015-051911.

2. My purpose in bringing the lawsuit is to force the Premier Vacation Collection Owners Association to disclose their financial records so that my lawyers can investigate whether the Association's charges for dues and assessments against me are valid, or whether on the other hand those charges are improper and excessive.

3. I purchased 13000 "points" in the Premier Vacation Collection for \$26,395 in October of 2004. The purchase price included turning over to DRI the timeshare that I owned in Kohl's Ranch in Payson, for which I received a credit of \$18,900.

4. The annual charges of the Association (more than \$2,000 a year) have been far in excess of my expectations, are roughly triple the amount of annual assessments I was paying for my timeshare at Kohl's Ranch, and are so high that there seems to be very little benefit in my membership because I can buy very good hotel accommodations on the Internet for that amount, without being obligated to pay dues and assessments to the Association, and without being restricted to the resorts that are in the Diamond Resorts system.

5. I have recently been informed that the property management company of the Association is charging very large management fees on a cost-plus basis (15% of common expenses) to both the Association and to the constituent resorts; also that the property management company is shifting its overhead expenses to be paid by both the Association and the resorts.

6. I was never informed of either of these practices.

7. I believe my points are now basically worthless, and I believe there are other owners in the Association facing that same problem.

8. In fact I am informed that a number of people owning "points" in the Premier Vacation Collection are trying to give them away on the Internet, in order to avoid the huge annual bills for dues and assessments from the Association.

9. My purpose in attempting to review the accounting records of the Association, and the property management company, is also to find out why my assessments are so high, and why my investment is worthless, and specifically whether those problems are due to improper management practices.

10. If my lawyers tell me that the financial records show that my excessive annual charges and investment losses were caused by improper management practices, I will file a separate lawsuit, and I intend to seek out other members of the Association to join in my effort.

11. I believe my purposes are completely lawful and proper because in essence I am investigating my legal rights.

FURTHER, Affiant sayeth naught.

*Norman Zwicky*  
\_\_\_\_\_  
NORMAN ZWICKY

STATE OF ARIZONA     )  
                                  ) ss.  
County of Maricopa     )



SUBSCRIBED AND SWORN to before me this 25<sup>th</sup> day of November, 2015 by  
Norman Zwicky.

*Karen Duckworth*  
\_\_\_\_\_  
NOTARY PUBLIC

saved

Premiere Vacation Collection Owners Association, Inc.  
Assessment Fee Department  
10600 West Charleston Boulevard  
Las Vegas, NV 89135-1014

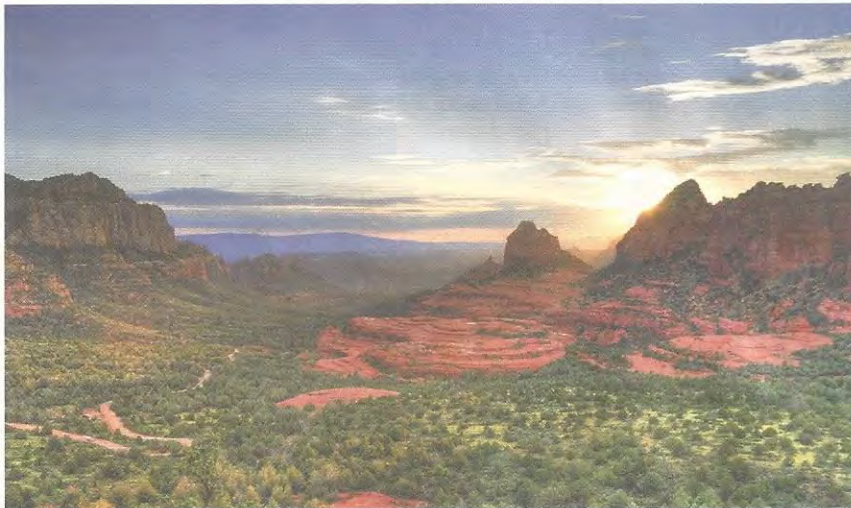
2015 Assessment Fee  
Account#: 1554010

Description	Debit	Credit	Amount
Balance As Of 11/05/2014	.00	.00	10972.36
ARDA-ROC Voluntary Contribution	5.00	.00	5.00
2015-PVC Base Standard Assessment	350.00	.00	350.00
2015-PVC Point Standard Assessment	1812.59	.00	1812.59
2015-Premiere Club Connection Fee	175.00	.00	175.00

Save your association credit card fees,  
pay by check (US funds only)

**Amount Due** \$13314.95

Visit our new **MY COMMUNITY** area at [DiamondResorts.com](http://DiamondResorts.com) for the latest developments within the Association.  
Please make check payable to: **Premiere Vacation Collection Owners Association, Inc.**



**Save money** for your association and  
**PAY YOUR FEES ONLINE!**

Log in to your account and select **Payments**  
from within the **My Accounts** section.

If you have never logged in, please **register**:

1. Go to **DiamondResorts.com**
2. Click **Register**
3. Follow the online instructions
4. Once complete, a confirmation e-mail will be sent asking you to validate your account.
5. You can now pay your fees online!

20992

Please detach and return coupon with payment

Premiere Vacation Collection Owners Association, Inc.  
Assessment Fee Department  
10600 West Charleston Boulevard  
Las Vegas, NV 89135-1014

**2015 Assessment Fee**

Account #: 1554010  
Due Date: Jan 1, 2015  
Statement Date: Nov 20, 2014  
Amount Due: \$13314.95



**Make Check Payable to:**

Premiere Vacation Collection  
Owners Association, Inc.  
PO Box 863596  
Orlando, FL 32886-3596



DR\_CLUB ▲ 000198  
Norman Zwicky T5 P1  
18811 N 13th Ave  
Phoenix AZ 85027-5503

850000155401013314957

**Exhibit H-SMF**

# Diamond Resorts International®

Menu

## Dashboard

### Account Summary

Name: **Norman Zwicky**

Address: **c/o Phelps & Moore, Law Offices 4045 East Union Hills Dr, Suite A-102**

Country: **UNITED STATES**

Email:

[Account Information](#)

### Reservation

Next Reservation(s):

[more](#)

*No Future Reservation(s)*

Past Reservation(s):

[more](#)

**17-Sep-2010/ Payson**

[Create Reservation](#)

### Financial Summary

Annual Fee:

Balance Due:

**\$14,446.19**

Last Payment:

**\$1,020.00**

[Make Payment](#)

### Snapshot

Member No.: **51-918386**

2015 Remaining Points: **13000**

2016 Points Allocated: **13000**

Since: **01-Jan-2011**

Type: **Premiere Club Connection**

Level: **Club Connection**

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Member Home



Shop by category

Search...

All Categories



Search

Advanced

[Back to home page](#) | Listed in category: [Real Estate](#) > [Timeshares for Sale](#)

Bidding has ended on this item.

This is a private listing. [Sign in](#) to view your status or [learn more](#) about private listings.

### DIAMOND PREMIERE VACATION COLLECTION - 6,000 ANNUAL POINTS - TIMESHARE FOR SALE!

[See original listing](#)



Item condition: --

**"110% GUARANTEE!!! FREE AND CLEAR!! READY TO BE TRANSFERRED INTO YOUR NAME! USE YOUR POINTS AT"**

[... Read more](#)

Ended: Apr 06, 2015, 11:00PM

Winning bid: **US \$1.00** [ 1 bid ]

Shipping: Local pick-up offered.

Item location: Las Vegas, Nevada, United States

Seller: [acobbfan](#) (260) | [Seller's other items](#)

**FREE Online Courses** Get the skills you need to land the job you want.

**START LEARNING NOW ▶**

[Ad Feedback](#) | [AdChoice](#)

#### More chances to get what you want

[Feedback on our suggestions](#)



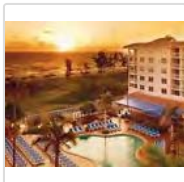
[FESTIVA ADVENTURE CLUB!! 6,000 ANNU...](#)

**US \$1.00**

0 bids

#### More from the same seller

[Feedback on our suggestions](#)



[PALM BEACH SHORES RESORT!! \\*FLORIDA\\*...](#)

**US \$1.00**

0 bids



[WILLIAMSBURG PLANTATION 4...](#)

**US \$249.00**

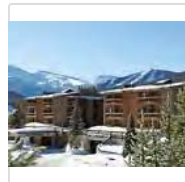
1 bid



[WYNDHAM KINGSGATE 101,500 ANNUAL...](#)

**US \$299.00**

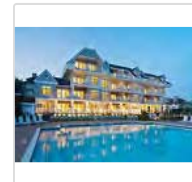
0 bids



[SILVERADO II ANNUAL TIMESHARE FOR SA...](#)

**US \$1.00**

0 bids



[WATER'S EDGE RESORT & SPA!! ...](#)

**US \$202.50**

10 bids

## Description

eBay item number: 321686711166

Seller assumes all responsibility for this listing.


Last updated on Apr 04, 2015 09:21:57 PDT [View all revisions](#)

### Item specifics

**Exhibit J-SMF**

**Timeshare User's Group** [www.tug2.net](http://www.tug2.net) The first user's group devoted to timeshare owners

TUG Links external to TUG BBS: [TUG Home](#) | [Resorts & Reviews](#) | [Marketplace](#) | [TUG Help](#) | [Advice](#) | [Join TUG](#)



Timeshare Users Group Forums > [Timesharing](#) >  
[Buying, Selling, Renting](#) > [Bargain Deals](#)  
**8500 Diamond Resorts Premiere Vacation Collection points - \$1 and Free Closing!**

**Log into the TUG BBS:**  
 User Name   Remember Me?  
 Password

[Posting Rules](#)
[REGISTER](#) as BBS User
[BBS Help](#)
[Calendar](#)
[Today's Posts](#)
[Search](#) ▾

**Bargain Deals** Items posted here MUST be "Bargain deals" as decided by the membership. Not limited to Timeshares! Posts and threads subject to removal if deemed inappropriate or blatant advertising!


**GLOBAL ANNOUNCEMENTS**

**NEW!** Add a 'Timeshare Vacation History' link to your posts! [Learn How](#)

Free TUG Newsletter! [Sign up today!](#)

TUG Member Banner Travels the World w/photos! [Follow the Banner!](#)

[No ad shown when registered users are logged in]



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March 2, 2015, 02:50 PM

#1

**[Peterh1952](#)**  
 TUG Member  
 BBS Reg. Date: Nov 28, 14  
 Location: Nova Scotia, Canada  
 Posts: 31  
 Resorts: Los Abrigados,  
 Sedona Trapp Family Guest  
 Houses, Stowe, Vermont

**8500 Diamond Resorts Premiere Vacation Collection points - \$1 and Free Closing!**

My wife and I are offering, for a nominal amount (\$1), 8500 points in the Diamond Resorts Premiere Vacation Collection. The MF is \$1760 (point fee \$1185, base standard assessment fee \$400, club dues \$175). The property has no liens, mortgages or other debt and all points (8500) are available for your use in either 2015 or 2016 (your choice). 2015 dues are completely paid and nothing else due until December 31, 2015.

***We will pay all closing fees and transfer fees arranged through LT transfers (they are recommended as a highly reputable firm) We will also pay the transfer fee of \$250.***

I am also open to negotiation on 2016 MF – PM me and we can talk about an even sweeter deal.  
 8500 points will get you into 2 places each year in many instances if you are looking for a 1 bedroom; or perhaps a nice 2 bedroom in peak season in Sedona. Its very flexible and entirely your choice how you use the points among the resorts shown below. You can even carry them over into the next year and accumulate 17000 over two years. Also use for short stays (2, 3 days or

something like that). I am a private citizen, not a broker, living in Canada, and I would love to tell you more about the points and what we have done with them.

The resorts listed can be reserved, subject to availability (which is usually pretty good). No fees are charged for reserving, and I've never paid any additional fees at the many resorts within the collection that we have stayed at. This is really a very nice collection – combining the best of US destinations in all the popular resort areas, with a great non-US offering (Europe, Mexico, South America)

- Cypress Point Resort & Villas, Orlando, FL
- Daytona Beach Regency, Daytona Beach, FL
- Mystic Dunes Resort and Golf, FL
- Grand Beach Resort (Phase 1 and 2), Orlando, FL
- Grande Villas Resort, Orlando, FL
- Desert Paradise Resort, Las Vegas, NV
- Cancun Resort, Las Vegas, NV
- Polo Towers Villas and Suites, Las Vegas, NV
- The Carriage House, Las Vegas, NV
- Greensprings Vacation Resort, Williamsburg, VA
- Historic Powhatan Resort, Williamsburg, VA
- Scottsdale Links Resort, Scottsdale, AZ
- Scottsdale Villa Mirage, Scottsdale, AZ
- Bell Rock Inn, Sedona, AZ
- Los Abridados Resort and Spa, Sedona, AZ
- Kohl's Ranch Lodge, Payson, AZ
- PVC at the Roundhouse Resort, Pinetop, AZ
- Rancho Manana Resort, Cave Creek, AZ
- Sedona Summit Resort, Sedona, AZ
- The Ridge on Sedona Golf Resort, Sedona, AZ
- The Roundhouse Resort, Pinetop, AZ
- Varsity Clubs of America, Tucson, AZ
- Lake Tahoe Vacation Resort, Lake Tahoe, CA
- Palm Canyon Resort & Spa, CA\*
- Villas de Santa Fe, Santa Fe, NM
- Suites at Fall Creek, Branson, MO
- Bent Creek Golf Village, Gatlinburg, TN
- Varsity Clubs of America, South Bend, IN
- The Historic Crags Lodge, Estes Park, CO

#### INTERNATIONAL

- Flamingo Beach Resort, St. Maarten
- Flamingo Beach Villas, St. Maarten

Grand Palladium Riviera Resort and Spa, Akumal, Cancun , Mexico  
Sea of Cortez Beach Club, San Carlos, Mexico

Grand Palladium Imbassai Resort and Spa, Imbassai, Brazil

Le Club Mougins, Mougins, Cannes, France

East Clare Golf Village, Bodyke, Ireland  
Fisherman's Lodge, Scarriff, Ireland

Diamond Suites on Malta, St. Julian's Malta

Vilar do Golf, Almancil, Algarve, Portugal

Garden Lago, Puerto Alcudia, Mallorca, Balearic Isles, Spain  
White Sands Beach Club, Menorca, Balearic Isles, Spain  
Cala Blanca, Gran Canaria, Canary Islands, Spain  
Club del Carmen, Puerto del Carmen, Lanzarote, Spain  
Jardines del Sol, Lanzarote, Spain  
Royal Sunset Beach Club, Adeje, Tenerife, Spain  
Royal Tenerife Country Club, San Miguel de Abona, Tenerife, Spain  
Santa Barbara Golf and Ocean Club, San Miguel de Abona, Tenerife, Spain

**Timeshare User's Group** [www.tug2.net](http://www.tug2.net) The first user's group devoted to timeshare owners

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TUG BBS

[Timeshare Users Group Forums](#) > [Timesharing](#) > **Log into the TUG BBS:**

[Buying, Selling, Renting](#) > [Bargain Deals](#)

**FREE DIAMOND RESORTS Premier Vacation Club Ownership**

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**Bargain Deals** Items posted here MUST be "Bargain deals" as decided by the membership. Not limited to Timeshares! Posts and threads subject to removal if deemed inappropriate or blatant advertising!

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August 2, 2013, 11:40 AM

#1

**[Bonster](#)**  
 Guest

BBS Reg. Date: Aug 2, 13  
 Location: California  
 Posts: 7

**FREE DIAMOND RESORTS Premier Vacation Club Ownership**

---

**Diamond Resorts International Premier Vacation Club Membership**

2013 points available: **1500\***  
 2014 points available: **5000**

(A week in a Studio Deluxe unit in Lake Tahoe, for example, is available in September for 1,250 points -- during ski season, it'll go up to 2,500 points.)

*\*If you won't be using this until next year, I think I can "save" the 2013 points to 2014.*

2013 Maintenance Fee (& Club Dues): \$1,280 (PAID)

No current reservations.

**I will pay for the title transfer and other related fees, if any.**

Background Info: In 2009 we bought a 1-week every-other-year 1 bedroom unit timeshare in beautiful Sedona, AZ (for \$8,995). That resort was bought by ILX or DRI (confusing; their correspondence uses both names) in 2011. The timeshare ownership was changed to a points-based vacation membership. Our unit was

given a value of 3,000 points. We bought an additional 2,000 points (for \$6,840), bringing our total membership points to 5,000.

You can find out more about DRI and their properties here:  
<https://www.diamondresorts.com/>

Our "home" resort is Los Abrigatos Resort & Spa in Sedona. We love it. We spent a week in Maui earlier this year, and that resort was fantastic, too (Ka'anapali Beach Club). We have no complaints and have always received fantastic service. Family obligations, however, will prevent us from using this membership for the foreseeable future, so I'm hoping to find it a good home.

**BONUS:** I'll throw in a \$100 Amazon Gift Card.

Anyone interested?

---

*Last edited by Bonster; August 2, 2013 at 07:17 PM.*

August 5, 2013, 09:31 AM #2

**Bonster**  
 Guest  
 BBS Reg. Date: Aug 2, 13  
 Location: California  
 Posts: 7

RE: Saving the 1500 points from this year to next, there is a deadline to do this. It's July... but I just logged into my account and it's still showing that I can still save them to 2014, so there must be a grace period. It'll probably expire soon, though... so if anyone is considering this offer, please let me know as soon as possible if you'd like me to try to save those points to next year.

August 7, 2013, 01:54 PM #3

**Bonster**  
 Guest  
 BBS Reg. Date: Aug 2, 13  
 Location: California  
 Posts: 7

Oops. I just received a message of clarification from Diamond Resorts regarding my post:

Quote:

While you are welcome to transfer your ownership if your account is Paid in Full (IT IS) and the Maintenance Fees are current (THEY ARE), please be aware that saved points do not transfer to the new owner. If you were to transfer your ownership this year, for example, the new owner would have to start with 2014 usage and would be required to pay the 2014 Maintenance Fees.

Sorry about the mistake! 🙄

I'll bump up the value of the Amazon Gift Card to \$200.

August 7, 2013, 03:01 PM #4

**Paumavista**  
 TUG Member  
 BBS Reg. Date: Jun 14, 05  
 Location: Seneca, SC  
 Posts: 428

**A question**

Couldn't you make a reservation with your 2013 points (at the request & interest of a new buyer) and "gift" that vacation to the new buyer before transferring? I don't know how this works exactly but an extra vacation may interest someone as much as the gift card.....at least the points wouldn't be wasted. Good luck with your transfer/gift/sale.....

August 11, 2013, 12:12 PM #5

**Bonster**

I could do this. But wouldn't it be difficult to find someone who wants to vacation

LAW OFFICES  
**PHELPS & MOORE**  
Professional Limited Liability Company

**Street Address:**  
4045 East Union Hills Drive  
Suite A-102  
Phoenix, Arizona 85050

**JON L. PHELPS**  
Phone (602) 788-2089  
Fax (602) 663-9050  
jon@phelpsandmoore.com

**ERICA M. FEDON**  
erica@phelpsandmoore.com

March 16, 2015

Patricia Rosado/Legal Department  
Diamond Resorts International  
10600 W. Charleston Blvd.  
Las Vegas, NV 89135

*Re: Norman Zwicky: Contract No. 51141; Membership No.: 1554010*

Ms. Rosado:

As I never received a response to my letter dated February 21, 2014, I am writing to follow up on the matter. My client hereby revokes the offer set forth in my February 21, 2014 letter.

As a member of the Association, my client is entitled to and is requesting the following documentation for each of the past four years:

- Number of "points" in each resort held by private owners (owners who are not Diamond Resorts or affiliated with the Diamond Resorts), and the percentage of total ownership of all units devoted to timeshare use in that resort that those points represent.
- Number of "points" in each resort owned or controlled by Diamond Resorts, and the percentage of total ownership of all units devoted to timeshare use in that resort that those points represent.
- Number of "points" in each resort owned or controlled by the local resort association, and the percentage of total ownership of all units devoted to timeshare use in that resort that those points represent.
- Number of "points" in each resort owned or controlled by the Premier Vacation Club Association, Inc., and the percentage of total ownership of all units devoted to timeshare use in that resort that those points represent.
- The amount paid by Diamond Resorts (or any affiliate) to each local resort association in the form of assessments or other contributions towards common expenses (please specify), and how that amount was calculated or determined.

**Pltf. Disclosures-Exhibit D**

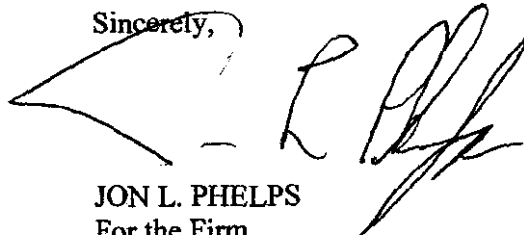
PROTECTING YOUR INTERESTS

Patricia Rosatto/Legal Department  
Diamond Resorts International  
March 16, 2015  
Page 2

- The amount paid by Diamond Resorts (or any affiliate) to Premier Vacation Club Association, Inc., in the form of assessments or other contributions towards common expenses (please specify), and how that amount was calculated or determined.

I urge you to give this matter your immediate attention. If we do not receive the requested documents on, or before, **April 13, 2015**, litigation for an accounting will be commenced without further demand.

Sincerely,



JON L. PHELPS  
For the Firm

JLP/emf

Y:\JLP\Zwick, Norman\Correspondence\Diamond Resorts Legal 2.21.14.doc

**Pltf. Disclosures-Exhibit D**

1 LAW OFFICES  
2 PHELPS & MOORE  
3 PROFESSIONAL LIMITED LIABILITY COMPANY  
4 4045 EAST UNION HILLS DRIVE  
5 SUITE A-102  
6 PHOENIX, ARIZONA 85050  
7 (602) 788-2089

8 Jon L. Phelps (027152)  
9 jon@phelpsandmoore.com  
10 Attorneys for Plaintiff Norman Zwicky

11 THE SUPERIOR COURT OF THE STATE OF ARIZONA  
12 IN AND FOR THE COUNTY OF MARICOPA

13 NORMAN ZWICKY,  
14 Plaintiff,

15 vs.

16 PREMIERE VACATION COLLECTION  
17 OWNERS ASSOCIATION, f.k.a. Premiere  
18 Vacation Club, an Arizona nonprofit  
19 corporation,

20 Defendant.

Case No. CV2015-051911

**PLAINTIFF'S INITIAL RULE 26.1  
DISCLOSURE STATEMENT**

(ASSIGNED TO THE HONORABLE  
JOHN HANNAH)

21 **PLAINTIFF'S INITIAL DISCLOSURE STATEMENT**

22 Pursuant to 26.1, Arizona Rules of Civil Procedure, Plaintiff Norman Zwicky hereby  
23 provides the following initial disclosures:

24 **1. Factual basis of the claim.**

25 The claim in this case consists entirely in the enforcement of Plaintiff's rights to  
26 inspect the books and records of the Defendant Premier Vacation Collection Owners  
Association for the purpose of determining whether the fiscal affairs of the Association have  
been managed lawfully. The facts supporting his claim to entitlement are that Plaintiff is a  
member of the Association; that he acquired his membership ("points") for consideration  
exceeding \$26,000; that his points are essentially worthless and he is saddled with a  
perpetual liability for dues and assessments having illusory economic value; and that his

1 value of points (**Exhibit C 1-3**); and Plaintiff's demand for inspection (**Exhibit D**).

2 **8. Description of documents relevant to subject matter.**

3 The categories of records relevant to the subject matter of this action (all within the  
4 exclusive custody and control of Defendant and its agent, the property management  
5 company, except as noted) are generally described as follows:

6 (a.) Articles of Amendment to Articles of Incorporation, Premier Vacation Club.  
7 Already in Defendant's possession.

8 (b.) Bylaws (Restated), Premier Vacation Club. Already in Defendant's  
9 possession.

10 (c.) Second Amended and Restated Rules and Regulations, Premier Vacation  
11 Collection Owners Association, Inc. Already in Defendant's possession.

12 (d.) Purchase agreement and related documents showing Plaintiff's  
13 purchase of 1,300 points for \$26,395 in 2004. (Attached as **Exhibit A**.)

14 (e.) 2014 Assessment billing to Plaintiff. (Attached as **Exhibit B**.)

15 (f.) Documents showing lack of value of points in secondary market.

16 i. **Exhibit C-1**: Ad for sale of 6,000 points for \$1 (attached).

17 ii. **Exhibit C-2**: Ad for sale of 8,500 points for \$1 (attached).

18 iii. **Exhibit C-3**: eBay offer to give away 5,000 points (attached).

19 (g.) Demand for inspection, April 26, 2015. (Attached as **Exhibit D**.)

20 (h.) Public Report, amendment, or similar or related documents, filed with  
21 Arizona Department of Real Estate and any other jurisdiction covering  
22 Collection. Already in Defendant's possession.

23 (i.) Annual budgets, past 5 years (for Association and each constituent resort).  
24 Already in Defendant's possession.

25 (j.) All property management contracts between Diamond Resorts International or  
26 any subsidiary (hereinafter, collectively, "DRI") and the Association, any

1           **modifications** thereof, and any documents relating to or explaining the  
2           purpose of such modification. These documents are within Defendant's  
3           exclusive knowledge, possession and control.

4           **(k.) All property management contracts between DRI and any Resort**  
5           **included within the Premier Collection,** any modifications thereof, and any  
6           documents relating to or explaining the purpose of such modification. These  
7           documents are within Defendant's exclusive knowledge, possession and  
8           control.

9           **(l.) All documents showing the nature, date, purpose, and amounts paid or owing**  
10           **to DRI by the Association as a management fee, reimbursement of overhead,**  
11           **or similar or related property management charge.** These documents are  
12           within Defendant's exclusive knowledge, possession and control.

13           **(m.) All documents showing the nature, date, purpose, and amounts paid or**  
14           **owing to DRI by any Resort included within the Premier Collection as a**  
15           **management fee, reimbursement of overhead, or similar or related property**  
16           **management charge.** Already in Defendant's possession.

17           **(n.) Documents showing the identities of the Board members of the**  
18           **Defendant and each constituent Resort,** and their relationship (if any) with  
19           Diamond Resorts International. These documents are within Defendant's  
20           exclusive knowledge, possession and control.

21           **(o.) All documents previously identified in Plaintiff's Amended Request for**  
22           **Production that will allow Plaintiff to determine, precisely and in full detail,**  
23           **the nature, amount and purpose of all common expenses as between private**  
24           **(non-DRI) owners and DRI.** These documents are within Defendant's  
25           exclusive knowledge, possession and control.

26           **(p.) All documents previously identified in Plaintiff's Amended Request**

1 for Production that will allow Plaintiff to determine, precisely and in full  
2 detail, the basis of apportionment all common expenses as between private  
3 (non-DRI) owners and DRI. These documents are within Defendant's  
4 exclusive knowledge, possession and control.

5 (q.) All documents previously identified in Plaintiff's Amended Request  
6 for Production that will allow Plaintiff to determine, precisely and in full  
7 detail, the nature, amount and source of all revenues derived by operations of  
8 the Association, by any of its constituent Resorts, by any timeshare unit or  
9 "points" within each Resort, whether each of these is treated as common  
10 revenues, and if not how such revenues are allocated or apportioned as  
11 between or among DRI, the Association, the constituent Resort, and/or any  
12 individual owner. These documents are within Defendant's exclusive  
13 knowledge, possession and control.

14 (r.) Tax returns of the Defendant-Association, or for DRI (acting in its capacity as  
15 property management company of the Association, or as owner of timeshare  
16 units or points, or otherwise) for the past 4 years, including returns for income  
17 tax, sales tax, gross receipts tax, hotel tax, "transient lodger" tax, or similar or  
18 related tax returns relating to revenues from units within any constituent resort  
19 or points included within in the Association.

20 (s.) Documents previously identified in Plaintiff's Amended Request for  
21 Production that will allow Plaintiff to determine, precisely and in full detail,  
22 the actual number, basis for classification, and treatment (for legal and  
23 accounting purposes, including assessment liability) of all categories of  
24 ownership timeshare units or "points" within the Collection, and within each  
25 Resort— including Private (non-DRI affiliated) owners; DRI; non-occupied  
26 timeshare units or "points" in default; timeshare units or "points" owned or

1 controlled by the Association; and any other categories of ownership  
2 recognized by the Association. These documents are within Defendant's  
3 exclusive knowledge, possession and control.

4 (t.) Documents showing the identities of Association members who have  
5 complained that their assessments were unlawful or excessive, or claimed or  
6 alleged that the charges or operations of the Association were fraudulent  
7 (including documents relating to any litigation where the foregoing were or  
8 are at issue). These documents are within Defendant's exclusive knowledge,  
9 possession and control.

10 DATED this 5<sup>th</sup> day of October, 2015.

11 PHELPS & MOORE, PLC

12  
13 By 

14 Jon L. Phelps  
15 4045 East Union Hills Drive  
16 Suite A-102  
17 Phoenix, Arizona 85050  
18 Counsel for Plaintiff

19 ORIGINAL sent via U.S. Mail this  
20 5<sup>th</sup> day of October, 2015 to:

21 Coppersmith Brockelman PLC  
22 John E. DeWulf  
23 2800 N. Central Avenue  
24 Suite 1200  
25 Phoenix, AZ 85004  
26 Counsel for Defendant

By: 

## Affidavit

Jon L. Phelps, upon being duly sworn, on his oath deposes and says:

1. I am an attorney at law, duly licensed to practice in the State of Arizona, and represent Norman Zwicky, who is the plaintiff in the case titled *Zwicky v. Premiere Vacation Collection Owners Association*, Maricopa County Superior Court Case Number CV2015-051911.

2. Mr. Zwicky's stated purpose in initiating the lawsuit is to compel inspection of the business records of Defendant Premiere Vacation Collection Owners Association to determine whether his annual assessment liability charged by the Defendant, which Mr. Zwicky contends are exorbitant, are lawful; and further to determine why his investment of more than \$26,000 in "points" in the system are by all appearances worthless.

3. In this regard I have attached, to the Statement of Material Facts filed with Plaintiff's Motion for Summary Judgment, copies of Internet advertisements from owners in the Premier Vacation Collection offering to sell thousands of units for a nominal amount (or give them away).

4. I have, on Mr. Zwicky's behalf, received and reviewed certain records provided by the Defendant Premiere Vacation Collection Owners Association, through pre-suit disclosure, Rule 26.1 initial disclosure, and a request for production.

5. The records I received are inadequate in my judgment to clearly ascertain and verify the basis for calculating Mr. Zwicky's annual assessments, and whether those were lawfully imposed.

6. I have detailed the records I believe are reasonably necessary to scrutinize the legal validity of Mr. Zwicky's assessments charged by the Association in the Plaintiff's Rule 26.1 Initial Disclosures, relevant excerpts of which are attached to the Statement of Material Facts.

7. We have also requested, but have not received, the management contracts (and modifications thereto) between Diamond Resorts International and either the Association or its constituent resorts.

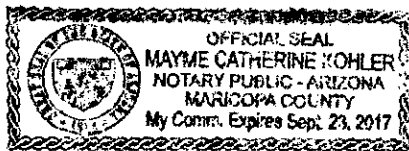
8. We have also requested, but have not received, sub-lists of owners who have complained that their dues are excessive, or been involved in litigation with the Association in which the validity of the assessments was or is in issue.

FURTHER, Affiant sayeth naught.

  
JON L. PHELPS

STATE OF ARIZONA     )  
  ) ss.  
County of Maricopa     )

SUBSCRIBED AND SWORN to before me this 25 day of November, 2015 by Jon L. Phelps.



  
NOTARY PUBLIC