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AS INSTRUMENT NO. 02-007991

Walter Makela
HAWAII ESCROW & TITLE INC

Return by Mail (✓) Pickup () To:

HET-17,930-2

The Shearwater
c/o Michael H. Sakai, Esq.
201 Merchant Street, Suite 902
Honolulu, Hawaii 96813

This document contains 29 pages

TMK: (4) 5-4-005-32

FIFTH AMENDMENT AND RESTATEMENT
OF DECLARATION OF
CONDOMINIUM PROPERTY REGIME
THE SHEARWATER
(Addition of Increment III)

KNOW ALL MEN BY THESE PRESENTS:

This Fourth Amendment and Restatement of Declaration of Condominium Property Regime is made this 6th day of January, 2000, by THE SHEARWATER, a Hawaii limited partnership, whose address is P. O. Box 3099, Princeville, Kauai, Hawaii 96722, hereinafter called "Declarant".

WITNESSETH THAT:

WHEREAS, by Declaration of Condominium Property Regime dated June 16, 1993, (hereinafter "Declaration") and Condominium Map recorded concurrently therewith, the Declarant submitted the land, described in Exhibit "A" attached to the Declaration and any improvements thereon, to a Condominium Property Regime pursuant to the provisions of Chapter 514A, Hawaii Revised Statutes, said Declaration and Condominium Map having

been recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 93-142493, and Condominium Map No. 1914, respectively; and

WHEREAS, said Declaration was amended by a First Amendment to Declaration dated September 14, 1993, and recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 93-157699;

WHEREAS, said Declaration was amended by a Second Amendment to Declaration dated October 14, 1993, and recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 93-174317;

WHEREAS, said Declaration was amended by a Third Amendment to Declaration dated May 18, 1996, and recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 96-120606;

WHEREAS, said Declaration was amended by a Fourth Amendment to Declaration dated September 6, 1996, and recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 96-131285;

WHEREAS, Declarant, pursuant to the terms of paragraph 4.1, 5.1, 5.2, 19.0, 23.0 and 24.0 of the Declaration, as amended, reserved the right to amend the Declaration and alter the Project by adding further Increments to the Project; and

WHEREAS, Declarant desires to amend and restate the Declaration to add Increment III (Building 3) which contains thirteen (13) apartments to the Project as hereinafter set forth and described.

NOW, THEREFORE, pursuant to the terms of the Declaration and the Condominium Project Act of the Declaration as previously amended is hereby amended and restated in its entirety to read as follows:

1.0 NAME OF REGIME. The name of this Project shall be "THE SHEARWATER".

2.0 DESCRIPTION OF PROPERTY. The Property is located at 3730 Kamahana Road, Princeville, Kauai, Hawaii, and is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

3.0 DESCRIPTION OF PROJECT. Increment I of the Project consist of one three-story building without a basement having a total of 13 apartments, Increment II consist of one two-story building without a basement having a total of 6 apartments, Increment IV of the Project consist of one two-story building containing one apartment, and Increment III of the Project consist of or will consist of one three-story building without a basement having a

total of 13 apartments, 3 car garage, together with a total of 61 open parking stalls constructed in accordance with plans and specifications certified to by Martin Dean Floerchinger, Registered Professional Architect, the Condominium Map thereof having been recorded at the Bureau of Conveyances, State of Hawaii, as Condominium Map No. 1914, as amended (the "Condominium Map").

3.1 DESCRIPTION OF BUILDINGS. The buildings in Increments I (Building 1) , II (Building 2) and III (Building 3) are constructed principally of wood, with post and beam construction. Building 1 is three floors in height and contains five apartments on the ground level and on the second level and three apartments on the third level. The apartments on the second and third levels have access through exterior stairs to the grounds and the ground floor units have access to the grounds from their entryways. Building 2 is two floors in height and contains three apartments on each level. The apartments on the second level have access to the grounds through exterior stairways. ~~Building 3 is three floors in height and contains four apartments on the ground level and a 3 car garage, five apartments on the second level and four apartments on the third level.~~ The apartments on the second and third levels have access through exterior stairs to the grounds and the ground floor units have access to the grounds from their entryways. The building in Increment IV (Clubhouse and Management Office Building) is constructed principally of wood and allied building materials. This building contains two levels (inclusive of the basement) and consist of one apartment unit together with appurtenant lanai. This clubhouse building contains a lounge area, office and restrooms on the top level and maintenance and storage rooms in the basement.

4.0 DIVISION OF PROJECT. The Project is hereby divided into four (4) areas (hereinafter called "Increments" I through IV). As used herein, the term "Increment" in the Project shall mean and include "Phase" and the term "Phase" shall mean and include "Increment". The number and location of each Increment are as set forth in the Condominium Map and described as follows:

A. Increment I. There is one building situated on Increment I in which there are 13 apartments, the number and location of which are as set forth in the Condominium Map and described as Building 1. Apartments 101 through 105 being located on the ground level, apartments 201 through 205 on the second level; and apartments 302 through 304 on the third level. There is also a swimming pool and recreation area located within Increment I.

B. Increment II. There is one building situated on Increment II in which there are 6 apartments, the number and location of which are as set forth in the Condominium Map and described as Building 2. Apartments 106 through 108 being located on the ground level and apartments 206 through 208 being located on the second level.

C. Increment III. There is or will be one building situated on Increment III in which there are 13 apartments and a 3 car garage, the number and location of the apartments are as set forth in the Condominium Map and described as Building 3. Apartments 109 through 112 being located on the ground level, apartments 209 through 213 on the second level; and apartments 310 through 313 on the third level.

D. Increment IV. There is one building situated on Increment IV in which there is one apartment, the number and location of which is as set forth in the Condominium map and described as the Clubhouse and Management Office. Apartment number 401 is contained in this building. Apartment 401 consists of the manager office and reception area located on the top level and the entire basement level which consists of a maintenance room, housekeeping area, linen room and two storage areas. The top level containing the reception area includes front desk and counter and the stairway leading to the lounge and manager's office.

4.1 FUTURE DEVELOPMENT. The Declarant has reserved the right to develop and construct Increment III in the future or not to develop and construct Increment III. By this instrument, Declarant is exercising its right to develop and construct Increment III.

A. Designation of Common Elements and Limited Common Elements. The land area around and under Building 3 delineated as Increment III by a dashed line on the Condominium Map is a limited common element for the apartments and/or building situated within Increment III. Declarant reserves the right to designate such land area or improvements as a common element of the Project upon completion of the construction and development of the building and improvements on Increment III. Completion shall occur upon the filing of an owner's notice of completion for Building 3 in accordance with Section 507-43, Hawaii Revised Statutes ("HRS").

B. Merger and Designation as Common Element. No merger of condominium may occur of one or more phases unless and until the following conditions have been satisfied with respect to all phases being merged.

a. All of the improvements constituting and comprising the phase that are the subject matter of such merger have been completed;

b. The period for filing a mechanic's, materialman's and/or any other similar lien pursuant to Section 507-43, HRS has expired; and

c. Said phase is free and clear of all mechanic liens.

C. Notice of Merger. The merger of Phase III with all prior phases shall be deemed completed and the limited common element land area of Increment III shall be

deemed a common element land area upon Declarant recording an amendment to the Declaration of Condominium Property which shall contain a statement that the terms of Paragraph 4.1B have been satisfied. The amendment shall include the "as-built" certificate of architect referred to in Paragraph 4.6b below.

4.2 DESCRIPTION OF APARTMENT. The Project contains 33 freehold estates located within Increments I, II, III and IV. Increment I and III each contain 13 residential apartments, Increment II contains 6 residential apartments, and Increment IV contains 1 office apartment.

A. Two-bedroom Apartment. There are 32 separately designated and described freehold estates. Each of the residential apartments consists of 2 bedrooms, 2 bathrooms, a kitchen, living and dining room, foyer, and either one or two lanais. All units in Building 2 and 3 have one lanai. All two bedroom apartments have the same or mirror image of the same layout. The net living area of each apartment with two lanais are approximately 1316 square feet; and the lanais are 245 and 52 square feet. The net living area of each apartment with one lanai is approximately 1368 square feet; and the lanai is 245 square feet. The total area of all residential apartments including the lanai(s) is 1613 square feet.

B. Office Apartment. There is one separately designated and described freehold estate. Apartment 401 is contained in the Clubhouse Management Office Building in Increment IV. The top level of the apartment contains a manager office, lounge and storage, reception area and men's and women's restrooms which has a net area of approximately 1592 square feet. There also is a lanai on the first level consisting of 315 square feet. The basement level of apartment 401 contains a maintenance room housekeeping work area, linen room, equipment room and cart storage area. The net area of the basement level is approximately 945 square feet. The top level and basement level is connected by an exterior stairwell. Additionally, each level has access to the grounds and/or parking areas from its own entrance ways.

C. Living Area. The floor area of an apartment is the net living area and is measured from the interior surface of the apartment perimeter walls.

4.3 LOCATION OF APARTMENTS. The apartments in Buildings 1, 2 and 3 on the first floor begin with the number "1"; on the second floor "2"; and on the third floor "3". There is only one apartment in Increment IV having number 401. The location of each apartment and the building are as shown on the Condominium Map. Each apartment has access to walkways and stairways to the pathways leading to the parking area, street and grounds.

4.4 LIMITS OF APARTMENTS. The respective apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter walls, ceilings, lanais,

floors, walls and ceilings surrounding each of them or any pipes, wires, conduits or other utility lines running through them which are utilized for or serve more than one unit are deemed common elements as herein provided. Each apartment shall be deemed to include all the walls and partitions, which are not load bearing within its perimeter walls including paint, wallpaper, or the like, carpeting, floor covering and built-in fixtures. Additionally, the boundary lines of each apartment are the exteriors of doors, windows, and glass walls and the frames thereof and the handrail of the lanai; provided that for maintenance purposes, the finished surfaces of the entry deck, lanai ceilings, lanais and lanai railings shall be deemed to be limited common elements.

4.5 COMMON ELEMENTS. The common elements include:

- a. The land in fee simple which includes the land areas delineated as Increments I, II and IV on the Condominium Map.
- b. The foundations, floor slabs, columns, girders, beams, supports, bearing walls, roofs, entry landings and/or deck, and stairways in the buildings not within any of the apartments.
- c. The yards, landscaping, trash area, including the open parking stalls which are not appurtenant or assigned to an apartment, and driveways, parking lot, and any easement or licenses affecting the Project.
- d. The central and appurtenant installations for utility services used or necessary to the existence, maintenance and safety of the Project.
- e. All licenses, leases, or contractual arrangements that the Association enters into for the purpose of providing parking, utilities, recreational amenities, including but not limited to a swimming pool, a clubhouse and management facilities for the use or benefit of the apartment owners, their tenants and/or guests.
- f. Any limited common areas or elements including any limited common elements that by the terms hereof may become common elements.
- g. Any improvements placed on the grounds pursuant to a reservation in favor of the Declarant that were made for the common use and enjoyment for all owners, tenants and/or guests such as landscaping, walkways and parking.

4.6 LIMITED COMMON ELEMENTS.

- a. Building 3. The land area delineated as Increment III on the Condominium Map is a limited common element for the Apartments contained in Building

3 and is for the exclusive use of the apartments contained in Building 3. The Declarant may separately encumber and mortgage the limited common land area contained in Increment III for the purpose of constructing the improvements within Increment III including Building 3.

b. Redesignation of Limited Common Elements as Common Elements. Notwithstanding any term or provision contained herein to the contrary, upon the recording of an "As Built" architect's or engineer's certificate for the building in Increment III and the Project, the land area including any landscaping, parking lot, and driveways contained or located on or within Increment III shall be deemed to be common elements of the Project.

c. Assigned Parking. Each 2-bedroom apartment in the Project shall have the use of at least 1 parking stall. If no parking stall assignments are shown on the Condominium Map, the Association of Apartment Owners may establish a system or procedure for the assignment of parking stalls provided that such assignments may not affect any stalls previously assigned to unit 401. The owners of the parking stalls may exchange them by way of amendment to the Declaration or with such procedure that the Association of Apartment Owners may establish from time to time; provided that in no event may an apartment have the use of less than one parking stall. The location of the parking stalls are more particularly described in the Condominium Map.

d. Apartment 401. Apartment 401 shall have appurtenant thereto open parking open stall nos. 62 and 63 and the 3 car garage and parking stalls contained in Building 3.

5.0 COMMON INTEREST. The common interest for each apartment is dependent upon the total number of apartments constructed. Upon construction of each building in each of the respective Phases, each apartment shall have appurtenant thereto the following undivided interest in all the common elements of the Project for determination of the common profits, expenses, voting and for all other purposes:

<u>Phase Completed</u>	<u>Apartment Type</u>	<u>No.</u>	<u>%</u>	<u>Total</u>
I, II, III	2 Bedroom	32	2.995	95.840%
IV	Commercial Apt.	1	4.160	<u>4.160%</u>
				100.000%

The percentage undivided interest is calculated by dividing an apartment's net living area including the lanai (or net area) exclusive of any limited common elements by the sum of all the net living areas of all the apartments that have been established and/or constructed

with minor adjustments to bring the total percentage to 100%. A Phase shall be completed and an apartment shall be considered constructed upon the recording of an Amendment to this Declaration which incorporates an "As Built" architect's or engineer's certificate as to the building and apartment(s) in each respective Phase.

5.1 PHASED DEVELOPMENT. The common interest for each phase shall be the total percentage for each phase. The common interest appurtenant to each apartment shall be the basis for determining the proportionate share for all purposes. The proportionate share shall be the percentage share of the apartment as it bears to the total percentage of the phases completed to determine the proportionate share in the project.

The Declarant at its sole option may develop one or more phases of the Project and obtain financing and separately encumber the apartments and appurtenant interest in the common elements for each phase.

5.2 DECLARANT EXPENSES. The Declarant shall be responsible for the expenses relating to the maintenance of the land areas and any improvements within Increment III. Declarant shall further be responsible for the all maintenance expenses associated with the any apartments within Building 3 that it holds title to. The expenses to include gardening and upkeep for the grounds, water, any electricity associated with Increment III, the cost of any insurance required to be maintained for the Increment, including but not limited to liability insurance, and real property taxes associated with and allocable to Increment III. The responsibility of the Declarant contained in this Paragraph 5.2 shall terminate upon the earlier of the development and completion of construction of Increment or the exercise of Declarant's right to remove and delete the undeveloped land as hereinafter described.

5.3 DELETION OF UNDEVELOPED PHASES. In the event that no further development of Increment III is undertaken by the Declarant and/or its mortgagee, as successor in interest to the Declarant, Declarant may delete the undeveloped phases pursuant to Section 514A-11(12) of the Condominium Act in accordance with the limited common area lines as set forth in the Condominium Map subject to boundary adjustments where necessary to meet building setback requirements and where a phase is not located with direct access to the roadway a perpetual easement shall be granted in favor of the inner phase for ingress and egress over the walkways, driveways, and grounds over the Project.

6.0 EASEMENTS. Each apartment (or a specific apartment) shall have and be subject to and have appurtenant thereto the following:

a. Non-exclusive easements in the common elements designated for such purposes as ingress to, egress from, utility services for, and support and maintenance and repair of each apartment and in the other common elements for use according to their respective purposes. If any part of the common elements encroaches upon any apartment

or limited common element, a valid easement for such encroachment and the maintenance thereof so long as it continues shall and does exist. In the event any portion of any building shall be partially or totally destroyed and then rebuilt, minor encroachments of any parts of the common elements due to such construction and maintenance thereof shall exist. The Association shall have the right to be exercised by its Board of Directors or the managing agent to enter into each apartment from time to time during reasonable hours as may be necessary for the operation of the Project or for making emergency repairs therein necessary to prevent damage to any apartment or common element.

b. The Declarant shall have the right to use in its sole discretion from time to time any apartments that it owns as models, management, promotional, marketing, advertising and/or sales offices and conduct time sharing programs, sales and rental operations within the Project and to maintain such advertising signs which it deems necessary to conduct its business so long as the signs comply with any governmental ordinance, which may be placed in any location of the project.

c. Each apartment shall have appurtenant thereto a non-exclusive easement over and across any driveways and parking areas, and walkways, over any limited common element that may be contained with any other Increment in the Project.

7.0 ALTERATION AND TRANSFER OF INTERESTS. Except as herein specified, the common interest and easements appurtenant to each apartment shall have a permanent character and shall not be altered without the consent of all of the apartment owners affected, expressed in an amendment to this Declaration and duly filed. The common interest and easements shall not be separated from the apartment to which they appertain and shall be deemed to be conveyed, leased or encumbered with such apartment even though such interest or easements are not expressly mentioned or described in the conveyance or other instrument.

8.0 USE. The residential apartments shall be occupied and used as an apartment, resort, residential, or time sharing use for any time period or periods including any annual recurring period on a fixed or floating basis and unit 401 shall be used for such retail or commercial purposes that may be permitted by the County of Kauai, by the respective owners thereof, their tenants, families, domestic servants and social guests, subject to such limitation as may be contained herein, the Bylaws and the House Rules which may be adopted from time to time governing the use of the apartments. The parking stalls are intended and shall be used primarily for parking purposes subject to such limitations as may be contained herein or the Bylaws and House Rules which may be adopted from time to time governing the use of the Project. Notwithstanding the foregoing, the Declarant shall have the right to use in its sole discretion from time to time any apartments that it owns as models, management, promotional, marketing, advertising and/or sales offices and conduct time sharing programs, sales and rental operations within the Project and to maintain such advertising signs which

it deems necessary to conduct its business so long as the signs comply with any governmental ordinance which may be placed in any location of the project.

9.0 ASSOCIATION OF APARTMENT OWNERS. Administration of the Project shall be vested in its Association consisting of all owners of apartments in the Project in accordance with the Bylaws of the Association filed concurrently with this Declaration. The owners of any apartment upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as its ownership ceases for any reason at which time his membership in the Association shall automatically cease. Operation and use of the Project and maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto shall be in accordance with the provisions of the Condominium Property Act, this Declaration and the Bylaws.

10.0 MANAGING AGENT AND SERVICE OF PROCESS. Operation of the Project shall be conducted for the Association by a managing agent which shall be appointed by the Association in accordance with the Bylaws. The initial managing agent shall be Pahio Resorts, Inc., a Hawaii corporation, whose principal place of business is at 3970 Wyllie Road, Princeville, Kauai, Hawaii 96722, and whose post office address is P. O. Box 3099, Princeville, Hawaii 96722, and, who is hereby authorized to receive service of legal process in all cases provided in said Condominium Property Act until the successor is appointed by the Board of Directors in which event such successor or any member of the Board of Directors, residing in the County of Kauai, State of Hawaii, may be served with such process of service.

11.0 COMMON EXPENSES. All charges, costs and expenses whatsoever incurred for or in connection with the administration of the Project, including without limitation the operation thereof, any maintenance, repair, replacement and restoration of the common elements and limited common elements and any additions and alterations thereto, any labor, services, materials, supplies and equipment therefore, any liability whatsoever for loss or damage arising out of or in connection with the common elements and limited common elements of any accident, fire or nuisance thereon, and any premiums for hazard and liability insurance herein required with respect to the Project shall constitute common expenses for each apartment. The Board of Directors of the Association shall have the authority to assess the common expenses against the apartments and the unpaid amounts of such assessments against any such apartment may be foreclosed by the Board of Directors, or the Managing Agent as provided by the Act, provided that 30 days' prior written notice of intention to foreclose shall be mailed, postage prepaid, to the Apartment Owner and all other persons having any interest in such apartment as shown in the Association's record of ownership. Said lien shall constitute a lien prior to all other liens except only (1) liens for taxes and assessments lawfully imposed by governmental authority against such apartment, and (2) all sums unpaid on mortgages of record, and costs and expenses including attorney's fees provided in such mortgages. The Board or the Managing

Agent acting on behalf of the Apartment owners shall have the power to bid on such apartment at a foreclosure sale and to acquire, hold, lease, mortgage and convey such apartment. A suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. Where the mortgagee of a mortgage of record or other purchaser of a apartment obtains title to the apartment as the result of foreclosure of such mortgage, the acquirer of title, its successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such apartment which became due prior to the acquisition of title to such apartment by such acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from the owners of all of the apartments, including the acquirer, its successors and assigns.

Utility services, such as electricity, if separately metered to apartments, shall be payable by apartment owners having such meters, and such charges payable by apartment owners shall not be considered to be common expenses. If any utility services are provided on a building by building basis, such expenses shall be pro-rated amongst the apartments in such buildings in accordance with their respective common interest.

11.1 DECLARANT'S COMMON EXPENSES. Notwithstanding anything contained herein to the contrary, until the Declarant exercises any rights to delete, remove or otherwise subdivide any portion of the undeveloped land of the Project or in the event the Declarant determines not to further develop any portion of the Project, the Declarant shall be liable and responsible for all cost rationally related to the unimproved or subdivided land including but not limited to landscaping, water, maintenance, insurance and real property taxes which cost shall be determined and prorated in an equitable manner by the Association and the Declarant.

12.0 COMPLIANCE WITH DECLARATION AND BYLAWS. All apartment owners, their tenants, agents, families, employees, and guests and any other persons who may in any manner use the project, shall be bound by and comply strictly with the provisions of this Declaration, the Bylaws of the Association and all agreements, decisions and determinations of the Association duly and lawfully made or amended from time to time, and failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board or Managing Agent on behalf of the Association or, in a proper case, by any aggrieved apartment owner.

13.0 INSURANCE. The Association on behalf of each owner as its common expenses shall at all times keep the buildings and improvements including any exterior glass which may be insured at the option of the Association insured against loss or damage by fire, flood and windstorm coverage with extended coverage including demolition and debris removal and war risk insurance when available with an insurance company authorized to do business in Hawaii having a financial rating in Best's Insurance Reports of Class VI or better, in an

amount as near as practicable to the full replacement cost therefore without deduction for depreciation, in the name of the Association as trustee for all apartment owners and apartment mortgagees in proportion to the loss or damage to their respective apartments and appurtenant common interests and easement interests and payable in case of loss to such bank or trust company authorized to do business in Hawaii as the Association shall designate for the custody and disposition as herein provided of all proceeds of such insurance, hereinafter referred to as "Trustee," without prejudice to the right of each apartment owner to insure his apartment for his own benefit. In every case of such loss or damage all insurance proceeds shall be used with all reasonable speed by the Association for rebuilding, repairing or otherwise reinstating the building in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws herein provided, and the Association at its common expense shall make up any deficiency in such insurance proceeds. Every such policy of insurance shall:

(a) Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration of contribution by reason of, any other insurance obtained by or for any apartment owner;

(b) Contain no provision relieving the insurer from liability for loss occurring while the hazard to such building is increased, whether or not within the knowledge or control of the Association, or because of any breach of warranty or condition or any other act or neglect by the Association or any apartment owner or any other persons under either of them;

(c) Provide that such policy may not be canceled (whether or not requested by the Association) except by the insurer giving at least 30 days' prior written notice thereof to the Association and every other person in interest who shall have requested such notice of the insurer;

(d) Contain a waiver by the insurer of any right of subrogation to any right of the Association or any unit owners against any of them or any other persons under them; and

(e) Contain a standard mortgagee clause which shall:

(1) Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages on any apartment or apartment lease or sublease in the Project, in their respective order and preference, whether or not amended therein;

(2) Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Association or apartment owners or any persons under any of them;

(3) Waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause; and

(4) Provide that, without affecting any provision afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to said bank or trust company designated by the Association.

The Association on behalf of each owner at its common expenses shall also effect and maintain at all times comprehensive general liability insurance, covering all apartment owners, the Association, the Board, its officers and its employees with respect to the Project, in an insurance company authorized to do business in Hawaii having a financial rating in Best's Insurance Reports of Class VI or better, with minimum limits of not less than \$500,000 for injury to one person and \$1,000,000 for injury to more than one person in any one accident or occurrence and \$50,000 for property damage, without prejudice to the right of any apartment owners to maintain additional liability insurance for their respective apartments.

Not less frequently than every three (3) years, and whenever requested by more than twenty percent (20%) of the owners of apartments in the Project, the Association shall review the adequacy of its casualty and liability insurance program and shall prepare in writing the conclusions of the Association and the action it has taken or proposes to take with respect thereto, to the owner of each apartment, and to the holder of any mortgage on any apartment who shall have requested a copy of such report. If it shall appear at any time that the replacement value of the building is above or below the replacement coverage of the policy or that the liability is above or below that customarily carried for similar projects, then the Board shall promptly cause such limits to be adjusted accordingly.

If the building is damaged by fire or other casualty which is insured against, and said damage is limited to a single apartment, the insurance proceeds shall be used by the Association or the Trustee for payment of the contractor retained by the Association to rebuild or repair such apartment in accordance with the original plans and specifications therefore. If the insurance proceeds are insufficient to pay all costs of repair, the deficiency shall be paid from the maintenance fund. If the maintenance fund is insufficient for this purpose, the Association shall levy a special assessment on all the owners of apartments in proportion to their respective common interests. If such damage extends to two or more apartments or extends to any part of the limited common elements, if any, or to the common elements:

(a) If the Association does not within ninety (90) days after such casualty decide in accordance with the provisions of this Declaration that the building need not be rebuilt, the Association shall thereupon contract to repair or rebuild the damaged portions of the building, including all apartments so damaged; as well as the common elements and limited common elements, in accordance with plans and specifications therefore, which will restore the same to the design immediately prior to destruction, or if reconstruction in accordance with said design is not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Association and the mortgagee of record of any interest in an apartment directly affected thereby, provided that in the event said modified plan eliminates any apartment and such apartment is not reconstructed the Trustee shall pay to the owner of said apartment the portion of said insurance proceeds allocable to said apartment (less the proportionate share of said unit in the cost of debris removal) and shall disburse the balance of insurance proceeds as hereinafter provided for the disbursement of insurance proceeds. The insurance proceeds shall be paid by the Trustee to the contractor employed for such work, in accordance with the terms of the contract for such construction in accordance with the terms herein set forth. If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding all damaged apartments, limited common elements and common elements, the Association is expressly authorized to pay such costs in excess of the insurance proceeds from the maintenance fund, and if the maintenance fund is insufficient for this purpose, the Association shall levy a special assessment on all the owners of apartments in proportion to their respective common interests.

(b) The cost of the work shall be paid out from time to time or at the direction of the Board as the work progresses; but subject to the following conditions:

(1) The work shall be in charge of an architect or engineer;

(2) Each request for payment shall be made on seven (7) days' prior written notice to the Trustee and shall be accompanied by a certified statement made by such architect or engineer stating that all of the work completed has been done in compliance with the approved plans and specifications and that the sum requested is justly due to the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the work (giving a brief description of such services and materials), and that when added to all sums previously paid out by the Trustee the sum required does not exceed the value of the work done to the date of such certificate;

(3) Each request shall be accompanied by waivers of liens satisfactory to the Trustee, covering that part of the work or which payment or reimbursement is being requested and by a bond or a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Trustee, that there has not been filed with respect to the premises any mechanics' or other lien or instrument for the retention of title in respect of any part of the work not discharged of record;

(4) The request for any payment after the work has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the premises legal;

(5) The fees and expenses of the Trustee as determined by the Association and the Trustee shall be paid by the Association as common expenses;

(6) Such other conditions not inconsistent with the foregoing as the Trustee may reasonably request.

(c) Upon completion of the work and payment in full therefore, any remaining proceeds of insurance then or thereafter in the hands of the Association or the Trustee shall be paid or credited to the owners of the apartments (or to the mortgagee of an apartment if there be a mortgage) in proportion to their respective common interests.

(d) To the extent that any loss, damage, or destruction to the buildings or other real property is covered by insurance procured by the Association, the association shall have no claim or cause of action for such loss, damage or destruction against any apartment owner or lessee. All policies of insurance referred to in this Paragraph (d) shall contain appropriate waivers of subrogation.

In the event all apartment owners in the Project shall agree in writing consented to by all mortgagees of their respective interests, if required, that the building need not be rebuilt, the insurance proceeds shall be used to remove any remaining improvements on the land included in the Project, and the balance, if any, shall be allocated to the apartment owners and their mortgagees in accordance with the interest in the common elements appurtenant to each apartment.

Any insurance policy providing the coverage required hereby shall contain a provision requiring the insurance carrier at the inception of the policy and on each anniversary date thereof to provide the Association with a written summary in layman's terms of the policy.

The summary shall include the type of policy, description of the coverage and the limits thereof, amount of annual premium and renewal dates. The Association shall provide this information to an apartment owner and any mortgagee of an apartment, or an apartment lessee demising the same upon request.

14.0 OPTIONS TO DELETE UNDEVELOPED LAND. Notwithstanding the conveyance of any apartment or anything to the contrary in this Declaration, the Bylaws, the Condominium Map, any Sales Contract, conveyance document, or any other document or instrument, if the Declarant does not exercise its right to complete the additional phases of the Project, then the Declarant or a mortgagee of the Declarant, as successor in interest to the Declarant, either by foreclosure or deed in lieu of foreclosure, including any third party that is the successful purchaser at any foreclosure auction (the "Succeeding Mortgagee"), of the undeveloped land on which the remaining phases of the Project were to be situated and any of the common elements that were to be located (the "Undeveloped Land") shall have the right, at its option, to delete the Undeveloped Land and remove any common elements that was to be situated on or within the Undeveloped Land of the Project by withdrawing from the Project any or all of the Undeveloped Land and any common elements thereon (including but not limited to landscaping) pursuant to Section 514A-11(12) of the Act (the "Withdrawn Land"). This option and right may be exercised by the Declarant or the Succeeding Mortgagee, at any time during the ten-year period following the date of recordation of this Declaration. Such withdrawal shall be effected on the following terms and conditions:

(a) The outer boundaries of the Withdrawn Land shall conform to the boundaries of any surrounding developed Phases, as set forth on the Condominium Map, subject to adjustments where necessary to meet building setback requirements imposed as a condition to subdivision of the Withdrawn Land and other county or engineering requirements or adjustments;

(b) The Declarant (but not the Succeeding Mortgagee unless it becomes the owner of the Withdrawn Land) shall use its best efforts to cause the Withdrawn Land to be subdivided from the remainder of the Project at its sole cost and expense, and shall promptly execute and file any subdivision applications and other documents which are necessary or appropriate in connection with the subdivision of the Withdrawn Land from the remainder of the Project;

(c) The Declarant (but not the Succeeding Mortgagee unless it becomes the owner of the Withdrawn Land) shall add, delete, relocate, realign, reserve and grant all easements and rights-of-way over, under and on the common elements necessary or desirable to service the Withdrawn Land, including but not limited to, easements and/or rights-of-ways for pedestrian and vehicular access, utilities, cesspools, sanitary and storm sewers, cable television, refuse disposal, driveways, parking areas and roadways, provided

that such easements and/or rights-of-way do not materially impair the use of any apartment or its appurtenant common interest in the common elements;

(d) The Declarant (but not the Succeeding Mortgagee unless it becomes the owner of the Withdrawn Land) shall give each apartment owner and lienholder at least thirty (30) days prior written notice of its intention to withdraw the Withdrawn Land;

(e) The Declarant (but not the Succeeding Mortgagee unless it becomes the owner of the Withdrawn Land) shall, at its own expense and without being required to obtain the consent or joinder of any apartment owner or lienholder, execute and file an amendment to the Declaration and the Condominium Map: (i) to delete the Withdrawn Land and any common elements situated within the Withdrawn Land from the Project, (ii) to add, delete, relocate, realign, reserve and grant all easements and rights-of-way over, under and on the common elements necessary or desirable to service the Withdrawn Land, including but not limited to, easements and/or rights-of-way for utilities, cesspools, sanitary and storm sewers, cable television, refuse disposal, driveways, parking areas and roadways provided that such easements and/or rights-of-way do not materially impair the use of any apartment or its appurtenant common interest in the common elements; (iii) to delete the apartments, common elements and limited common elements that were to be built on the Withdrawn Land from the project; (iv) to adjust the common interests appurtenant to the apartments of the Project to reflect the elimination of the apartments in the phases that were to be built on the Withdrawn Land from the Project; (v) to cancel all easements over the Withdrawn Land in favor of apartments in the Project; and (vi) to release all owners of any interest in the Withdrawn Land from any and all obligations and liabilities of the Project, including, without limitation, the obligation to pay common expenses and the lien securing the payment of such expenses.

(f) The withdrawal shall become effective upon the approval of the subdivision by the County of Kauai Planning Department and the filing with the Bureau of Conveyances of the State of Hawaii of an amendment to the Declaration and Condominium Map noting such withdrawal and setting forth a description of the Withdrawn Land.

(g) No withdrawal shall be permitted which requires the alteration or destruction of any constructed apartment.

(h) All rights of apartment owners shall be subject to the Declarant and Succeeding Mortgagee's rights to require withdrawal of the Withdrawn Land as set forth herein, and the acceptance of ownership of an apartment in the Project shall constitute an acceptance of such right.

15.0 POWER OF ATTORNEY - DELETION OF LAND. In furtherance of the rights and powers reserved to the Declarant and its successor in interest in the preceding paragraph,

each apartment owner and the Association of Apartment Owners hereby designates the Declarant and/or its successor in interest (including the Succeeding Mortgagee) as his attorney-in-fact, with power of substitution, to execute any and all applications for subdivision, amendments to the Declaration, the Bylaws, and the Condominium Map, deeds in lieu of foreclosure, easement agreements and any other documents of whatsoever nature necessary or appropriate to effect the withdrawal of any or all of the Undeveloped Land from the Project and any subsequent conveyance or transfer of such Withdrawn Land. The execution of this Declaration or acceptance of ownership of an apartment in the Project shall constitute a grant of such power, and such grant, being coupled with the interest of the Declarant and/or its successor in interest as herein reserved, shall be irrevocable so long as the rights reserved to the Declarant and/or its successor in interest under the preceding paragraph shall remain unexercised.

16.0 CONDEMNATION. In the event of a taking in condemnation or by eminent domain of a part or all of the common elements of the Project, all compensation shall be payable to such bank or trust company authorized to do business in Hawaii as designated by the Board doing business in Hawaii having net assets of not less than Five Million Dollars (\$5,000,000.00). The Board together with the Declarant, so long as Declarant has the right of removal of the Undeveloped Land, shall arrange for the repair and restoration of the building and improvements in accordance with the design thereof immediately prior to such condemnation or, if such repair and restoration laws then in force shall not permit such construction, then in accordance with such modified plan as shall be previously approved by the Board together with the Declarant, so long as Declarant has the right to develop any future Increment or exercise any right removal of the Undeveloped Land, and the mortgagee of record of any interest in a apartment directly affected thereby. In the event of a partial taking in which an apartment is eliminated or not restored or any undeveloped Increment (or portion thereof) is eliminated, the condemnation trustee shall disburse the portion of the proceeds of such award allocable to said apartment or Increment, less the proportionate share of said apartment of increment in the cost of debris removal, to the owner of said apartment or the Declarant, as the case may be, in satisfaction of his interest in said apartment or Increment. The condemnation trustee shall disburse the remainder of the proceeds of such award to the contractor engaged in such repair and restoration in appropriate progress payments and in the event such proceeds are insufficient to pay the costs from the maintenance fund and if the maintenance fund is insufficient for this purpose the Board shall levy a special assessment on the owners of apartments in proportion to their common interests. In the event sums are received in excess of the cost of repairing and restoring the remaining building and improvements, or in the event all of the building and improvements are so taken or condemned, such amount as shall exceed proceeds of said proceeds, as the case may be, shall be divided between the owners of apartments in accordance with their interests in the common elements and the Declarant for the undeveloped Increments.

17.0 UNINSURED CASUALTY. In case at any time or times any improvements of the Project shall be substantially damaged or destroyed by any casualty not herein required to be insured against, whether to rebuild, repair or restore such improvements shall be determined by vote of unit owners representing seventy-five percent (75%) of the common interest, that is, the building or improvements shall be rebuilt, repaired or restored unless the unit owners representing at least seventy-five percent (75%) of the common interests for the Project vote not to rebuild, repair or restore and such vote is reflected by an instrument expressing such decision. The cost of any rebuilding, restoring, or repairing the improvements shall be a common expense, provided that in no event shall such cost include any personal property of an apartment owner.

18.0 MAINTENANCE RESERVE FUND. The Board shall establish and maintain a maintenance reserve fund by the assessment of and payment of all the apartment owners in equal monthly installments based on their common interest. The amount of the common expenses allocated, used or to be used for capital improvements, or any other capital expenditures, shall not be deemed income to the Association but shall be credited upon the books of the Association to the paid-in surplus account as a capital contribution by the apartment owner. The interest of each apartment owner in said Fund cannot be withdrawn or separately assigned but shall be deemed to be transferred with such apartment even though not expressly mentioned or described in the conveyance thereof. In the event the Horizontal Property Regime hereby created shall be terminated, said Fund remaining after full payment of all common expenses of the Association shall be distributed to all apartment owners as their interests may appear except for the interests of owners of any apartments then reconstituted as a Horizontal Property Regime.

19.0 AMENDMENT OF DECLARATION. The Declaration may be amended by the vote of owners of seventy-five percent (75%) of the common interest, effective upon the recording of an instrument setting forth such amendment and vote, duly executed by such owners or by the proper officers of the Association; provided, however, that the Declarant reserves the right to amend this Declaration without the consent or joinder of any apartment owner in order to file an amendment pursuant to the provisions of Section 514A-12, Hawaii Revised Statutes, after construction of the buildings described herein and any buildings to be located on an Increment as set forth in Paragraph 4.1, and attaching to such amendment a verified statement of a registered architect certifying that the Final Plans theretofore filed fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments build. In the case of a modification or amendment to the Bylaws, this Declaration may be amended to set forth such modification or amendment pursuant to such percentage vote as is required by the Bylaws to render the modifications or amendments thereof effective.

Notwithstanding the foregoing, Declarant and/or its successor in interest (including the Succeeding Mortgagee) has the power to amend this Declaration without the approval of

75% of the owners in carrying out or exercising the provisions contained in Paragraphs 4.1, 4.6, 5.1, 5.2, 14.0 and 15.0 of the Declaration.

20.0 DEFINITIONS. The terms "majority" or "majority of apartment owners" herein mean the owners of the apartments to which are appurtenant more than fifty percent (50%) of the common interests of the Project and any specified percentages of the apartment owners mean the owners of the apartments to which are appurtenant such percentage of the common interests.

The term "owner" herein or any pronoun used in place thereof shall mean and include the masculine, feminine, or the singular or plural number and jointly and severally individuals, firms or corporations and their respective heirs, executors, administrators, successors and assigns, according to the context thereof.

The term "apartment" herein shall mean and include the apartment in the Project. The term "Project" herein shall mean and include all of the land and improvements in the Horizontal Property Regime now existing and hereafter added, less any deletions.

21.0 ARBITRATION OF DISPUTES. Any dispute involving an apartment owner, the Association, the Board, or the Managing Agent shall be submitted to arbitration as required by the Act; provided that no arbitration is required in connection with any claim by the Association against an owner or apartment for unpaid maintenance fees or assessments.

22.0 SUBORDINATION AND INTERPRETATION. This Declaration and any amendments hereto are subordinate and subject to the Act which shall control in case of any conflict. All terms herein (except where clearly repugnant to the context) shall have the same meaning as in said Act. In case any provision of this Declaration shall be held invalid, such invalidity shall not render invalid any other provisions hereof which can be given effect.

23.0 POWER OF ATTORNEY - COMPLETION OF PROJECT. There is reserved for ten years from the date of recording the initial Declaration of Condominium Property Regime for the Project unto the Declarant and its successor in interest (including the Succeeding Mortgagee), and the owner of apartments in Increments I, II, III and IV hereby grants to the Declarant and its successor in interest (including the Succeeding Mortgagee) an irrevocable power of attorney, coupled with an interest, to act on behalf of apartment owners in Increments I, II, III and IV to sign any joinder or other agreements and amendments and to execute, acknowledge and deliver such further instruments as may from time to time be required under any rights granted to, accruing to, or reserved by the Declarant and the apartment owners of Increments I, II, III and IV under this Declaration or by the provisions of Chapter 514A, Hawaii Revised Statutes, as amended, including the reallocation of percentage interests and voting rights appurtenant to each of the apartment owners in Buildings 1, 2, 3 and the Clubhouse Building in the Project and execute such

amendments to the Declaration as may be required from time to time for the purpose of carrying out and exercising its rights under Paragraph 24.0.

24.0 DECLARANT'S EXCEPTIONS, EXCLUSIONS AND RESERVATIONS; MERGER. For ten (10) years from the date this Declaration is recorded the Declarant reserves the right to construct and complete the construction of condominium units, buildings, drives, lanes, roads and all other improvements on said surrounding land areas (Unit Sites) of Increment III and in connection therewith reserves the right to use and excavate the surface and subsurface of the ground for the erection, construction and installation of said improvements and foundations, footings, floorings and basements, easements and rights of way. Upon an Amendment to the Declaration and Condominium Map which fully describes the apartments to be developed and constructed, within Increments II and III, the apartments shall be deemed to be merged with the Project and the apartments so built or to be constructed shall be apart of the Project. Declarant reserves the right to lease and rent such subsequently constructed condominium units and the right to sell, grant and convey title to purchasers of such subsequently constructed condominium units. Declarant also reserves the right to locate, install, maintain, repair all utilities and utility lines and sewers necessary for such construction, reconstruction, maintenance and operation. Declarant reserves the right to grant to the County of Kauai easements or rights of way for ingress and egress to permit furnishing of municipal services and the right to convey or relinquish control to proper municipal authorities of all sewer mains, water mains and pipelines together with suitable easements or rights of way over the common driveway and Increment III for the continued maintenance, repair, replacement and operation thereof and to enter into such agreements, filings or plattings with the County of Kauai in the nature of a planned-unit development project, cluster development, or otherwise as the County may require or amendments or changes therein in connection with the construction of this Condominium Project.

25.0 CONDOMINIUM MAP AMENDMENT. Amend Condominium Map No. 1914 registered in the Bureau of Conveyances by adding thereto six (6) sheets (sheets SP-1.3, A1.3, A2.3, A5, A14 and A15) describing Increment III being thirteen units in Building 3 and that the Condominium Map as amended fully and accurately depicts the elevations, layout, location, parking stalls, apartment numbers and dimensions of the apartments and buildings in the Project as filed with and approved by the Planning Department of the County of Kauai.

Except as specifically amended herein, all of the terms, covenants and conditions and provisions shall continue in full force and effect, and said Declaration, as further amended herein, is hereby ratified and confirmed.

IN WITNESS WHEREOF, the Declarant has executed these presents this
6th day of January, 2000.

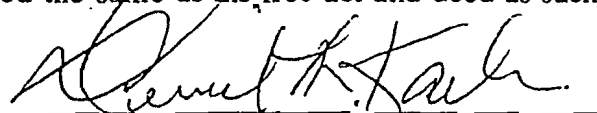
DECLARANT:

THE SHEARWATER
a Hawaii limited partnership

By 
DAVID E. WALTERS
Its General Partner

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) ss.
)

On this 6th day of January 2000, before me personally appeared DAVID E. WALTERS, General Partner of THE SHEARWATER, a Hawaii limited partnership, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed as such General Partner.


Denise M. Kaehu, Notary Public
Notary Public, State of Hawaii

My commission expires: 12/2/2001

EXHIBIT "A"

All of that certain parcel of land (being a portion of Grant 4845 to Albert S. Wilcox), being Lot 5-A, the same being a portion of Lot 5, Unit XII, Parcel 1-B of Princeville at Hanalei (File Plan 1350), situate at Hanalei, Halelea, Island and County of Kauai, State of Hawaii, being more particularly described as follows:

Beginning at the Southeast corner of this parcel of land, being also, the Northeast corner of Lot 5-B, the coordinates of said point beginning referred to Government Survey Triangulation Station "Pooku" being 7133.23 feet north and 2621.91 feet west and running by azimuths measured clockwise from true South.

- | | | | |
|----|--------------|--------|--|
| 1. | 101° 41' 07" | 240.25 | feet along Lot 5-B, along the remainder of Lot 5, Unit XII, Parcel 1-B of Princeville at Hanalei (File Plan 1350) along the remainder of Grant 4845 to Albert S. Wilcox; |
| 2. | 153° 26' 30" | 324.47 | feet along Lot 4-A, along the remainder of Lot 4, Unit XII, Parcel 1-B of Princeville at Hanalei (File Plan 1350) along the remainder of Grant 4845 to Albert S. Wilcox; |
| 3. | 243° 26' 30" | 358.99 | feet along Lot 4-B, along the remainder of Lot 4, Unit XII, Parcel 1-B of Princeville at Hanalei (File Plan 1350) along the remainder of grant 4845 to Albert S. Wilcox; |
| 4. | 313° 00' 45" | 302.95 | feet along the vegetation line at sea shore; |
| 5. | 44° 25' 48" | 177.89 | feet along the remainder of Grant 4845 to Albert S. Wilcox; |
| 6. | 12° 50' 04" | 169.96 | feet along the remainder of Grant 4845 to Albert S. Wilcox to the point of beginning and containing an area of 3.599 acres. |

Excepting therefrom any right and/or interest of the State of Hawaii in and to all land lying seaward of the seaward boundary line, as such boundary line is from time to time determined by law.

Together with nonexclusive appurtenant easement for road purposes over, across, along and upon the roadway lots shown on file plan nos. 1179, 1350 and 1360; provided,

however, that in the event said lots or any portion thereof is conveyed to that State of Hawaii, County of Kauai, or to any other governmental authority, said easement as to the lot or lots so conveyed shall immediately terminate.

Together also, with nonexclusive appurtenant easement for road and utility purposes, over, under, across, along and upon a portion of easement R-2 (22 feet wide) over and across Lot 4-A, Unit XII, Parcel 1-B, Princeville at Hanalei, hereinafter more particularly described; provided, however, that in the event said easement or any portion thereof is conveyed to the State of Hawaii, County of Kauai or to any other governmental authority, said easement to the extent so conveyed shall immediately terminate.

Beginning at the southeast corner of this parcel of land on the northerly end of Road A the coordinates of which referred to Government Survey Triangulation Station "Pooku", being 6608.88 feet north and 2772.74 feet west and running by azimuths measured clockwise from true south:

1. 78° 10' 36" 22.00 feet along the northerly side of Road A;
2. 168° 10' 36" 47.35 feet along the remainder of Lot 4-A along the remainder of Lot 4 of Princeville at Hanalei, Unit XII (File Plan 1350);

Thence, along the remainder of Lot 4-A, along the remainder of Lot 4 of Princeville at Hanalei, Unit XII (File Plan 1350) on a curve to the right with a radius of 187.00 feet, the chord azimuth and distance being:

3. 194° 09' 18" 163.82 feet;
4. 220° 08' 4.87 feet along the remainder of Lot 4-A, along the remainder of Lot 4 of Princeville at Hanalei, Unit XII (File Plan 1350).

Thence, along the remainder of Lot 5-B, along the remainder of Lot 5 of Princeville at Hanalei, Unit XII (File Plan 1350) on a curve to the right with a radius of 120.00 feet, the chord azimuth and distance being:

5. 354° 32' 05" 32.11 feet;

Thence, along the remainder of Lot 4-A, along the remainder of Lot 4 of Princeville at Hanalei, Unit XII (File Plan 1350) on a curve

to the left with a radius of 165.00 feet the chord azimuth and distance being:

- | | | | | | |
|----|------|-----|-----|--------|---|
| 6. | 11° | 05' | 43" | 128.51 | feet; |
| 7. | 348° | 10' | 36" | 47.35 | feet along the remainder of Lot 4-A, along the remainder of Lot 4 of Princeville at Hanalei, Unit XII (File Plan 1350) to the point of beginning and containing an area of 4,441 square feet. |

Together, also, with a nonexclusive easement for road and utility purposes over, under, across, along and through a portion of easement R-2 (22-foot wide) over and across Lot 5-B, Unit XII, Parcel 1-B, Princeville at Hanalei, more particularly described as follows:

Beginning at the most northerly corner of this parcel of land, being also on the north boundary of Lot 5-B on the south boundary of Lot 5-A the coordinates of which referred to Government Survey Triangulation Station "Pooku" being 7155.90 feet north and 2731.39 feet west and running by azimuths measured clockwise from true south:

- | | | | | | |
|----|------|-----|--|--------|--|
| 1. | 354° | 10' | | 66.24 | feet along the remainder of lot 5-B along the remainder of Lot 5 of Princeville at Hanalei, Unit XII (File Plan 1350); |
| 2. | 344° | 10' | | 117.59 | feet along the remainder of Lot 5-B along the remainder of Lot 5 of Princeville at Hanalei, Unit XII (File Plan 1350); |

Thence, along the remainder of Lot 5-B along the remainder of Lot 5 of Princeville at Hanalei, Unit XII (File Plan 1350) on a curve to the right with a radius of 171.00 feet the chord azimuth and distance being:

- | | | | | | |
|----|-----|-----|--|--------|---|
| 3. | 12° | 09' | | 160.47 | feet; |
| 4. | 40° | 09' | | 32.19 | feet along the remainder of Lot 5-B, along the remainder of Lot 5 of Princeville at Hanalei, Unit XII (File Plan 1350); |

Thence, along the remainder of Lot 5-B, along the remainder of Lot 5 of Princeville at Hanalei, Unit XII (File Plan 1350) on a curve to the left with a radius of 165.00 feet the chord azimuth and distance being:

5. 37° 04' 25" 17.61 feet;

Thence, along Lot 4-A, the remainder of Lot 4 of Princeville at Hanalei, Unit XII (File Plan 1350) on a curve to the left with a radius of 120.00 feet, the chord azimuth and distance being:

6. 174° 32' 05" 32.11 feet;

7. 220° 08' 27.32 feet along the remainder of Lot 5-B, along the remainder of Lot 5 of Princeville at Hanalei, Unit XII (File Plan 1350);

Thence, along the remainder of Lot 5-B, along the remainder of Lot 5 of Princeville at Hanalei, Unit XII (File Plan 1350) on a curve to the left with a radius of 149.00 feet along the chord azimuth and distance being:

8. 192° 09' 139.83 feet;

9. 164° 10' 119.51 feet along the remainder of Lot 5-A, along the remainder of Lot 5 of Princeville at Hanalei, Unit XII (File Plan 1350);

10. 174° 10' 68.96 feet along the remainder of Lot 5-A, along the remainder of Lot 5 of Princeville at Hanalei, Unit XII (File Plan 1350);

Thence, along the remainder of Lot 5-A, along the remainder of Lot 5 of Princeville at Hanalei, Unit XII (File Plan 1350) on a curve to the left with a radius of 31.00 feet the chord azimuth and distance being:

11. 168° 16' 50" 6.38 feet;

12. 281° 41' 07" 23.76 feet along Lot 5-A, along the remainder of Lot 5 of Princeville at Hanalei, Unit XII (File Plan 1350) to the point of beginning and containing an area of 8,419 square feet.

Being the same land conveyed to The Shearwater, a Hawaii limited partnership, by Warranty Deed dated August 12, 1983, recorded August 22, 1983, in the Bureau of Conveyances, State of Hawaii, in Book 17266, Page 584.

SUBJECT HOWEVER TO:

1. Title to all minerals and metallic mines reserved to the State of Hawaii.
2. The property borders on the ocean and is subject to the provisions of the State of Hawaii regarding shoreline setback and prohibitions on use.
3. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions set forth in the Declaration, dated March 1, 1971, recorded March 12, 1971, in Book 7444, Page 93, in the Bureau of Conveyances.

Declaration annexing additional land to Princeville at Hanalei, dated September 19, 1972, recorded September 20, 1972, in Book 8599, Page 6, in the Bureau of Conveyances.

4. An easement affecting a portion of said land and for the purposes stated herein, and incidental purposes, in favor of Kassler & Co. for roadway and utility purposes over, under and across Easement R-2, dated June 19, 1975, recorded July 2, 1975, in Book 10756, Page 267, in said Bureau.
5. Easement S-1, being 10 feet wide, for sanitary sewer purposes, as shown on File Plan 1350.
6. An easement affecting a portion of said land and for the purposes stated herein, and incidental purposes, in favor of Kauai County Public Improvement Corp., for Sanitary Sewer purposes under and across said Easement S-1, dated October 29, 1975, recorded November 13, 1975, in Book 11034, Page 88, in the Bureau of Conveyances.
7. Reservation in favor of Consolidated Oil & Gas, Inc., a Colorado corporation of easements R-2 and roadway lots in File Plan Nos. 1179, 1350 and 1360 as reserved in Deed dated November 20, 1979, recorded in the Bureau of Conveyances in Book 14252, Page 688 and Correction Deed dated September 17, 1980, but effective March 12, 1980, recorded in Book 14995, Page 447.
8. Easement E-2 (10 feet wide) for electrical purposes in favor of Kauai Electric Company, as shown in File Plan No. 1350.
9. An easement affecting a portion of said land and for the purposes stated herein, and incidental purposes, in favor of Citizens Utilities Company (Kauai Electric Division) for

electrical purposes over, under and across Easement E-2, dated December 6, 1976, recorded December 13, 1979, in Book 14306, Page 238, in the Bureau of Conveyances.

10. An easement affecting a portion of said land and for the purposes stated herein, and incidental purposes, in favor of Citizens Utilities Company, a Delaware corporation, for pole and wire lines, dated October 27, 1980, recorded November 14, 1980, in Book 15138, Page 494, in the Bureau of Conveyances.

11. An Easement affecting a portion of said land and for the purposes stated herein, and incidental purposes, in favor of Citizens Utilities Company, A Delaware Corporation, and Hawaiian Telephone Company, a Hawaii corporation, for Right-of-Entry for Utility Purposes, dated March 15, 1984, recorded May 10, 1984, in Book 17863, Page 593, in the Bureau of Conveyances.

12. Waiver and Release in favor of the County of Kauai by and for the Department of Water and Board of Water Supply dated January 27, 1991, recorded in said Bureau, as Document No. 91-029601. (re: Water Services)

13. Waiver and Release in favor of the County of Kauai by and for the Department of Water and Board of Water Supply dated August 24, 1993, recorded in said Bureau, as Document No. 93-139767. (Re: Water services for the clubhouse)

14. Matters as shown on Condominium File Plan No. 1914, filed in the Bureau of Conveyances.

15. Covenants, conditions, restrictions, reservations, agreements, obligations, provisions, easements and By-Laws set forth in the Declaration of Condominium Property Regime dated June 16, 1993, recorded in said Bureau, as Document No. 93-42493.

Said Declaration was amended by the following instruments:

<u>DATED:</u>	<u>INSTRUMENT NO.:</u>
September 14, 1993	93-157699
October 14, 1993	93-174317

Third Amendment and Restatement of Declaration of Condominium Property Regime The Shearwater (Addition of Increment II), dated May 18, 1996, recorded in said Bureau, as Document No. 96-120606, as further amended by a Fourth Amendment recorded as Document No. 96-131285.

16. By-Laws of the Association of Apartment Owners of The Shearwater, dated June 16, 1993, recorded in said Bureau, as Document No. 93-142494.

17. Waiver and Release in favor of The County of Kauai by and for the Department of Water and Board of Water Supply dated August 24, 1993, recorded in said Bureau, as Document No. 93-146644. (re: Water services for Increment I)

18. Waiver and Release in favor of The County of Kauai by and for the Department of Water and Board of Water Supply dated August 24, 1993, recorded in said Bureau, as Document No. 93-146645. (re: Water services for Increment II)

19. Waiver and Release in favor of The County of Kauai by and for the Department of Water and Board of Water Supply dated August 24, 1993, recorded in said Bureau, as Document No. 93-146646. (re: Water services for Increment III)

20. Declaration of Covenants, Conditions and Restrictions of Pahio at the Shearwater dated June 16, 1993, recorded in said Bureau, as Document No. 94-48932. The six units in Increment II were annexed to the interval plan by a Notice of Time Share Plan and Declaration of Annexation which was recorded as Document No. 96-131286.

Notice of Time Share Plan Declaration of Annexation Pahio at The Shearwater dated September 3, 1996, recorded in said Bureau, as Document No. 96-131286.

Said Declaration was amended by instrument dated October 18, 1996, recorded in said Bureau, as Document No. 96-156925.

Said Declaration was amended by instrument dated January 1, 1998, recorded in said Bureau, as Document No. 98-028904.

21. Right of Entry in favor of Citizens Utilities Company, a Delaware corporation, dated December 8, 1993, recorded in said Bureau, as Document No. 94-071045. (Re: Utility purposes)

22. Any and all easements encumbering the apartment herein mentioned, and/or the common interest appurtenant thereto, as created by or mentioned in said Declaration, as amended, and/or in said Apartment Deed, and/or as delineated on said Condominium File Plan.