

R-465

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
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/s/CARL T. WATANABE  
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The Shearwater  
P. O. Box 3099  
Princeville, Kauai, Hawaii 96722

This document contains 4 pages .

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FIRST AMENDMENT TO THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE PAHIO AT THE SHEARWATER  
INTERVAL OWNERSHIP PLAN

Developer: The Shearwater  
a Hawaii limited partnership  
P. O. Box 3099  
Princeville, Kauai, Hawaii 96722

This First Amendment to the Declaration of Covenants, Conditions and Restrictions for the Pahio at the Shearwater Interval Ownership Plan hereinafter referred to as "Declaration" is made this 1st day of January, 1998, by THE SHEARWATER, a Hawaii limited partnership, whose address is P.O. Box 3099, Princeville, Kauai, Hawaii 96722, hereinafter referred to as "Developer".

WHEREAS, Developer established a time interval plan known as Pahio at the Shearwater Interval Ownership Plan in the Shearwater condominium project by a Declaration of Covenants, Conditions and Restrictions for the Shearwater Interval Ownership Plan dated June 16, 1993, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 94-48932 ("Interval Declaration"); and

WHEREAS, additional Apartments were annexed to the Plan by the following instruments:

DATED:  
September 3, 1996

DOCUMENT NO.:  
96-131286

WHEREAS, pursuant to and in accordance with Article VIII, Section 2, of the Interval Declaration, Developer may amend the Interval Declaration so long as it owns Intervals in the Plan and no more than 75% of the Intervals have been conveyed to Owners; and

Whereas, the Developer is the owner of more than 25% of the Intervals and Apartments covered by said Interval Declaration as of January 1, 1998, and desires to further amend the Interval Declaration as hereinafter set forth.

NOW THEREFORE, pursuant to Article VII, Section 2 of the Interval Declaration, Developer hereby amends the Interval Declaration as follows:

1. Amend Section 2, Article V, by deleting it in its entirety and having it read as follows:

"Section 2. Allocation of Expenses. For each Time Interval owned, an Owner will be responsible for 1/51st of the total cost of maintaining an Apartment for a whole Time Interval and a 1/102nd interest of the total cost of maintaining an Apartment for an every other year Time Interval. Every other year Owners will be assessed in the same year that their time period is

in. The total cost of maintaining an Apartment includes but is not limited to taxes, management fees, clearing services and expenses relating to the furniture, appliances and other personal property provided by the Time Interval Owners Association for the use and benefit of the Owners. For the purpose of allocating the maintenance fees between apartments, each apartment's common interest shall be the same as provided in the Condominium Declaration, as amended from time to time. The cost allocable to a particular apartment will be determined by dividing an apartment's common interest by the sum of the common interest of all apartments in the Time Interval Plan."

2. Add a new Section 2.1 to Article V that reads as follows:

"Section 2.1. Condominium Association Maintenance Fees and Resort Community Association Fees. In addition to the common expenses referred to above in Section 1, Article V, each Owner shall be responsible for his proportionate share of Condominium Association and Resort Community Association Fees (the Hanalei at Princeville Community Association) maintenance fees. The proportionate share is determined in the same manner as the allocation of expenses set forth in Section 2, Article V, above. The Time Interval Owners Association and Resort Community Association is authorized as agent for each Owner to collect the Condominium Association and Resort Community Association maintenance fees and to delegate such function to the Plan Manager. If the Time Interval Owners Association and Resort Community Association or Plan Manager undertake to collect the Condominium Association and Resort Community Association maintenance fees as agent for the Owners, it shall have the right to determine how and when such fees will be collected and shall have the right to enforce the collection of such Condominium Association and Resort Community Association fees in the same manner as the collection of Time Interval maintenance fees."

3. Certification. By executing below, Developer hereby certifies the following as of the date hereof:

a. Developer is the fee simple owner of Intervals in the Plan; and

b. 75% or more of the Intervals in the Plan have not been conveyed to Owners, as such term is defined in the Interval Declaration.

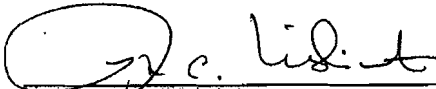
IN WITNESS WHEREOF, this First Amendment to the Declaration of Covenants, Conditions and Restrictions for the Pahio at the Shearwater Interval Ownership Plan is executed the day and year first above written.

THE SHEARWATER

By   
DAVID E. WALTERS  
Its General Partner

STATE OF HAWAII )  
County of Kauai ) ss.

On this 1st day of January, 1998, before me personally appeared DAVID E. WALTERS, to me known to be the person described in and who executed the foregoing instrument as the general partner of THE SHEARWATER, a Hawaii limited partnership, and who acknowledged that he executed the same as his free act and deed as such general partner of said limited partnership.

  
Notary Public, State of Hawaii

My commission expires: 6-14-2000

L.S.