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Michael Bennett
HAWAII ESCROW & TITLE, INC.

LAND COURT SYSTEM

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The Shearwater
P.O. Box 3099
Princeville, Kauai, HI 96722

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR TIME INTERVAL OWNERSHIP AT
PAHIO AT THE SHEARWATER**

This Declaration is made this 16th day of June, 1993, by THE SHEARWATER, a Hawaii limited partnership, whose address is P.O. Box 3099, Princeville, Kauai, Hawaii 96722, hereinafter referred to as "Declarant".

RECITALS

Whereas, the Declarant is the owner of the apartment(s) in THE SHEARWATER condominium project, Princeville, Kauai, Hawaii ("Project"), which apartment(s) is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

Whereas, the Declarant intends to establish a time interval ownership plan called "PAHIO AT THE SHEARWATER" time

interval ownership plan and further intends to offer for sale those apartments listed in Exhibit "A" which it owns and others that it may add to or annex to the plan from time to time;

NOW THEREFORE, Declarant hereby declares that all apartments in the Project subject to this Declaration of Covenants, Conditions and Restrictions ("CC&R" or "CC&R's") are held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following terms and conditions, all of which shall be deemed to be covenants running with the land and shall be binding upon all parties having or acquiring any right, title or interest in the units that are made subject to these CC&R's.

ARTICLE I

GENERAL PROVISIONS

Section 1. Name. The name of the time interval ownership plan shall be "PAHIO AT THE SHEARWATER".

Section 2. Definitions. The following terms shall have the following meanings:

a. "Apartment" means an apartment or unit that is described in Exhibit "A" which may be added to or subtracted from time to time. There is only one type of apartment. When a reference is made to a unit type it refers to the unit type of apartments that is described in Exhibit "B" attached hereto and incorporated herein by reference.

b. "Bureau of Conveyances" means the Bureau of Conveyances, State of Hawaii.

c. "Buyer" means the person named as the Buyer in a Purchase Agreement which has not been terminated or consummated.

d. "Condominium Declaration" means the Declaration of Condominium Property Regime and By Laws for THE SHEARWATER dated June 16, 1993, recorded in the Bureau of Conveyances, State of Hawaii, as Document Nos. 93-142493 and 93-142494, respectively, as the same has been amended and may be amended from time to time, and any House Rules adopted pursuant thereto and the Bylaws of the Association of Apartment Owners of The Shearwater which was recorded concurrently with the Declaration of Condominium Property Regime, as amended from time to time. The Association for the Condominium Property Regime and its Board of Directors and the apartment owner shall be preceded by the word "Condominium" and

known respectively as the Condominium Association, Condominium Board and Condominium Owner.

e. "Owner" means any person owning a Time Interval including the Declarant's ownership of unsold Time Intervals, and a Buyer whom is conveyed and/or assigned a Time Interval which shall include a purchaser under an Agreement of Sale, their respective heirs, successors and assigns, as the case may be. Any mortgagee of a Time Interval that is conveyed and/or assigned the voting rights of an Owner shall be considered an owner for voting purposes.

f. "Plan Manager" means the person who manages the Time Intervals in the Pahio at The Shearwater time interval ownership plan and for the Time Interval Owners Association.

g. "Project" means The Shearwater condominium project as described in the Condominium Declaration.

h. "Time Interval Owners Association" or "Time Interval Association" shall refer to the association of owners of Time Intervals in the Pahio at The Shearwater time interval plan (the Pahio Time Interval Owners Association or Time Interval Association). All owners of Time Intervals shall automatically become members of the Time Interval Association. The Time Interval Association shall be responsible for the management of the Pahio at The Shearwater time interval ownership plan. The Declarant shall act in place of the Time Interval Association until the Time Interval Association is formed and is functioning or if the Time Interval Association fails to act, then the Declarant may act on behalf of the Association. It has or will be incorporated as a non-profit Hawaii corporation.

i. "Time Interval Board" means the Board of Directors for the Pahio Time Interval Owners Association.

j. "CC&R" and "CC&R's" means this Declaration of Covenants, Conditions and Restrictions for Time Interval Ownership at The Shearwater, as the same may be amended from time to time, which will also be referred to as "Time Interval Declaration".

k. "Time Interval" or "Interval" means a 1/51st undivided interest in an Apartment and its appurtenant common interest in the common elements of the Project for each Time Interval owned which entitles an Owner to the exclusive use during a Time Period for the use, occupancy, or possession of the Apartment described in the Owner's Time Interval Conveyance Document (or the same type of apartment) and the CC&R's. If the

Time Interval is an "every other year" Interval, then the phrase "Time Interval" means a 1/102nd undivided interest in an Apartment and its appurtenant common interest in the common elements of the Project for each every other year Time Interval owned which entitles an Owner to the exclusive use during a Time Period for the use, occupancy, or possession of an Apartment but only during an odd or even year, as described in an Owner's Time Interval Conveyance Document or such other use arrangement as may be provided for by the Rules and Regulations.

l. "Time Interval Plan" means the Pahio at The Shearwater time interval ownership plan or program in which the use, occupancy, or possession of the Apartment(s) described in the CC&R's (as amended from time to time) circulates among various owners for the Time Intervals that they have acquired.

m. "Time Interval Purchase Agreement" means the purchase agreement for a Time Interval entered into between the Declarant, as Seller, and the Buyer, as purchaser.

n. "Rules and Regulations" means the Rules and Regulations for the Time Interval Plan adopted initially by the Declarant pursuant to this CC&R which Rules and Regulations can be subsequently amended from time to time by the Declarant for the initial five (5) years subsequent to the recording and filing of the CC&R and thereafter by the Board as the need arises from time to time; provided that no amendment can diminish the rights of an Owner or interfere with the use rights of an Owner.

o. "Time Interval Conveyance" means a conveyance of a fractionalized interest in an Apartment.

p. "Time Period" means the maximum period of 7 consecutive days and 7 consecutive nights (or if permitted by the Rules and Regulations, there may be a split week which is a period of at least 3 consecutive days and nights for a cumulative total of 7 days for each year) for each Time Interval owned, in which an Owner has prior rights to or reserved the use of an Apartment in accordance with the reservation procedures set forth in the Rules and Regulations. The Time Period begins and ends on the day as designated for each Time Period as set forth in the Rules and Regulations, as amended from time to time.

Section 3. Purpose. The purpose of the Time Interval Owners Association is to provide the means whereby the use, possession and ownership of intervals in the Project that are submitted to the Time Interval Ownership Plan are governed.

ARTICLE II

OWNERSHIP AND VOTING RIGHTS

Section 1. Qualifications. The members of the Time Interval Association shall consist of Owners as defined herein.

Section 2. Transfer of Ownership. The right of each Owner to participate in the Time Interval Owners Association is appurtenant to and inseparable from his ownership of a Time Interval and shall be automatically transferred upon any authorized conveyance of the ownership of his Time Interval to any grantee or transferee whether by way of gift, bequest, conveyance or otherwise. The purchaser under an Agreement of Sale from the Declarant or an Owner for a Time Interval shall be considered the Owner under this CC&R. The Time Interval Owners Association at its option need not recognize any transfer in which the Owner is in default under his obligations in the Time Interval Purchase Agreement, the Time Interval Conveyance, any provisions of the CC&R's, the Rules and Regulations or Condominium Declaration and/or By-Laws. The Time Interval Owners Association is authorized to charge a reasonable sum to have the records of the Time Interval Owners Association reflect the change in ownership and also the change in mailing of a newsletter and other information relating to the Time Interval Ownership Plan and the Time Interval Owners Association.

Section 3. Nature of Ownership. For each Time Interval owned, an Owner will have a 1/51st undivided interest in an Apartment, as a tenant in common with other owners of the Apartment. If the Time Interval is an every other year interest, an Owner will have a 1/102nd undivided interest in an Apartment, as a tenant in common with the other owners of the Apartment. Each Apartment has an appurtenant common interest in the Project which common interest is set forth in Exhibit "A".

Section 4. Use Rights (Every Year Time Interval). An Owner shall have the right to use and occupy an Apartment for each Time Interval owned in accordance with the following terms, covenants, and conditions:

- a. If the Owner has a floating time period and where he has paid his common expense and met his other obligations according to the Rules and Regulations, he may reserve the Time Period or any alternative thereto for which he desires to use an Apartment in accordance with the procedures established by the Rules and Regulations. An owner may confirm and use only the number of Time Period(s) he owns.

b. If the Owner has a fixed time period and where he has paid his common expense and met his other obligations according to the Rules and Regulations, he may use an Apartment without making any reservation.

c. A reservation must be made by U.S. mail or such other method as established by the Rules and Regulations.

d. When an Apartment is not occupied or reserved, an Owner may make a reservation for a Time Period for each Time Interval he owns as set forth in the Rules and Regulations. The provisions of this subparagraph are included to enable Owners to have the benefit of advanced planning as well as to permit occupancy on short-term notice of Apartments which might otherwise remain unoccupied.

e. The Time Interval Owners Association will have the right, but not the obligation, to contract with a Plan Manager to utilize any unreserved weeks during the 89 days prior to the first day of a Time Period for the purpose of renting to non-owners of Time Intervals in order to pay for the Plan Manager's services in connection therewith. The foregoing shall be subject to any right on the part of the Declarant to use or reserve such unreserved Time Periods.

f. The Time Interval Owners Association shall provide for a compensatory use period or monetary compensation for any Owner who is unable to use his Time Period and Interval due to error by the Time Interval Owners Association or Plan Manager.

g. If an Owner fails to use his Time Period within a calendar year, that Time Period may not be accumulated. Notwithstanding the failure to use the Time Period the Owner will be required to pay his common expenses when due.

h. The Declarant by the Rules and Regulations shall establish the Check-in-Time and Check-out-Time for the Time Periods. The Rules and Regulations will provide for a week commencing on a certain day in the afternoon for check in and the following week in the morning as the Check-out-Time; provided that shorter time periods of no less than 3 consecutive days may be permitted as provided in the Rules and Regulations.

i. If any Owner fails to vacate an Apartment at the end of his Time Period and that thereby prevents another person from using or occupying the succeeding Time Period, then and in such event the Owner shall be assessed a cost equivalent to

300% of the daily rental per day, as determined by the Plan Manager, for the Apartment he fails to vacate. The assessment will be utilized for purposes of obtaining equivalent, temporary accommodations for the persons entitled to use the Apartment. The Time Interval Owners Association may further provide additional or alternative penalties as set forth in the Rules and Regulations.

j. There may be calendar years when there are more than 52 use weeks in such year. During those years where there are more than 52 use weeks, such additional week will belong to the Time Interval Owners Association whereby it may lease or rent it to non-owners or may permit the Plan Manager to utilize such additional week in accordance with paragraph (e) above.

Section 5. Use Rights, Every Other Year Time Interval. An Owner shall have the right to use and occupy an Apartment for each Time Interval owned that is an every other year interval during a Time Period reserved or occupied in accordance with Section 4 above except only during an odd or even as the case may be. The Rules and Regulations may provide for split week use whereby an every other year Interval Owner will be able to use a portion of the Time Period in an odd year and a portion of the balance in an even year, provided the total number of days in a two year period shall not exceed seven days for each Time Interval Owner. The Owners Time Interval Purchase Agreement and Time Interval Conveyance will indicate whether the Owner owns an every other year Time Interval or a whole Time Interval. If an Owner owns an odd year Time Interval, the Time Period may only be in an odd year. If an Owner owns an even year Time Interval, then the Time Period may only be in an even year.

Section 6. Voting Rights. Each Owner of a Time Interval shall have voting rights. An Owner shall be entitled to one vote for each Time Interval he owns or one-half vote for each every other year Time Interval he owns. When there is more than one Owner of a Time Interval, the one Owner present can vote on behalf of all other Owners of the Time Interval and in the event there is more than one Owner present and/or there is a dispute in which there is no majority to cast a vote for all of the Owners of the Time Interval then that vote will be deemed to be an abstention.

Section 7. Cumulative Voting. In any election of the Time Interval Board every Owner entitled to vote at such an election shall have the right of cumulative voting. The candidates receiving the highest number of votes shall be deemed elected.

Section 8. Partition. An Owner shall have no legal or equitable right to request or initiate partition proceedings regarding any Time Interval, Apartment and/or common elements of the Project.

ARTICLE III

GOVERNMENT

Section 1. Association. The Time Interval Owners Association organized hereunder shall govern the Apartments that are a part of the Time Interval Ownership Plan. The Time Interval Owners Association shall own all Apartment furnishings.

Section 2. Place of Meeting. All meetings of the Owners shall be held in the office of the Time Interval Owners Association in Princeville, Kauai, State of Hawaii, unless otherwise set forth in the notice of the meeting.

Section 3. Annual Meeting of Owners. There will be an annual meeting of the Owners entitled to vote, as set by the Time Interval Board or the President, in the first ten months following the beginning of each calendar year unless otherwise notified by the Time Interval Board, President or the Plan Manager.

Section 4. Special Meeting of Owners. A special meeting of the Owners may be called by the President at any time on his own initiative or upon the request of fifteen percent of the Owners entitled to vote at such meeting.

Section 5. Notice of Meetings. Notice of a meeting shall be mailed to each Owner at least twenty-one (21) days prior to the meeting and at such meeting there shall be considered only such business as is specified in the notice of the meeting.

Section 6. Quorum for Meeting. At all meetings of the Time Interval Association either regular or special, thirty percent of all Owners entitled to vote and in good standing as of the date of the notice of the meeting shall constitute a quorum. Quorum may be established by person and/or by proxy. The Declarant shall be entitled to vote the Time Intervals that it owns under this CC&R.

Section 7. Lack of Quorum. If a quorum is not present, the presiding officer may adjourn the meeting to a day and hour fixed by him.

Section 8. Proxy. Every Owner entitled to vote shall

have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such Owner and filed with the Secretary of the Time Interval Owners Association at least two business days prior to the date of the meeting at which the proxy is to be exercised. The proxy may be good for up to three years and applies to all meetings within that period from the date of the proxy unless otherwise restricted by law and then it shall be good only for such meeting to which the proxy pertains. A proxy is revocable at any time by sending written notice to the Secretary at anytime prior to a meeting. The presence of the Owner in person is effective to suspend the effectiveness of the proxy while said Owner exercises his right to vote.

Section 9. Order of Business. At all meetings of the Time Interval Owners Association the order of business unless otherwise indicated in the notice shall be as follows:

- (a) Call to Order;
- (b) Establishment of Quorum;
- (c) Reading of minutes of prior meeting;
- (d) Reports of officers;
- (e) Reports of committees and Plan Manager;
- (f) New business as specified in the notice of meeting;
and
- (g) Old business.

ARTICLE IV

BOARD OF DIRECTORS

Section 1. Number, Qualification, Term. There shall be three or more directors but not to exceed twelve directors except as otherwise provided by law, the initial number to be set by the Declarant and thereafter the same to be established at the annual meeting of the Time Interval Owners Association. The members of the Time Interval Board must be an Owner which shall include persons affiliated with the Declarant, or officers or employees of Declarant so long as Declarant is an owner of a Time Interval and/or its agent(s). At least one-third of the directors elected at each annual meeting shall serve for three years. The directors shall serve for a term of three years except those elected at the

first annual meeting, one-third of whom shall serve for a term of one year, one-third for two years and one-third for three years.

Section 2. Removal, Vacancies. The entire Time Interval Board or any individual director may be removed from office, with or without cause, at any duly noticed and held annual or special meeting of the Time Interval Owners Association, at which a quorum is present, by a majority of the total votes present at such meeting either in person or by proxy and entitled to vote.

Section 3. Place of Meeting. All meetings of the Time Interval Board shall be held in Lihue, Kauai, State of Hawaii, or any other place designated by the Time Interval Board or its President. Meetings of the Time Interval Board shall be open to all Owners. Telephonic board meetings conducted through a telephone conference call among Time Interval Board members shall be deemed to be held at the place of the originator of the telephonic conference.

Section 4. Organization Meeting of the Time Interval Board. Immediately after the annual meeting of the Time Interval Owners Association, the Time Interval Board shall hold a regular meeting at the same place for the purpose of organization, election of officers and the transaction of other business. Written notices of the organization meeting and regular meetings of the Time Interval Board shall be given by the Secretary or Plan Manager at least 21 days prior to the scheduled time of such meeting by direction of the Declarant or the President. Any notices shall be considered received 72 hours after the deposit in the United States mail or telegraphed.

Written notices of the time and place of special meetings and of the nature of any special business to be considered shall be given to each director at least 5 days prior to the scheduled time of such meeting by the Secretary or Plan Manager at the direction of the President, Vice President or any two directors and shall be delivered personally or sent by letter or by telegram, postage and/or charges prepaid, addressed to him at his address as it is shown upon the records of the Time Interval Owners Association, in case such notice is mailed or telegraphed, and it shall be deemed received 72 hours after being so deposited in the United States mail or so delivered to the telegraph company in the town or city where the Plan Manager is located.

Section 5. Quorum, Waiver of Notice. The transaction of any business at any meeting of the Time Interval Board, however called and noticed, or wherever held, shall be as valid as though made at a meeting duly held, regularly called and noticed, if a

quorum is present and there is on file a waiver, consent or approval of the holding of such meeting of directors who are not present, which are made a part of the minutes of the meeting.

Section 6. Telephonic Board Meeting or Action Without Meeting. Any action required or permitted by law to be taken by the Time Interval Board, may be taken through a telephonic board meeting, or without a meeting if all members of the Time Interval Board shall consent in writing to such action. Such written consent of action without meeting shall be filed with the minutes of the proceedings of the Time Interval Board and shall have the same force and effect as a unanimous vote of the Directors obtained at a duly called and noticed meeting. The telephonic board meeting shall reflect the actions taken by the Time Interval Board in writing.

Section 7. Powers of the Board. The Time Interval Board is authorized to take all actions of the Time Interval Owners Association including the power to adopt, amend or repeal the By Laws, appoint a Plan Manager pursuant to a written agreement for a term of up to 5 years with such powers as the Time Interval Board may authorize, appoint committees and to carry on all of the activities of the Time Interval Owners Association. The Time Interval Board is authorized to adopt rules and regulations governing the use of the Apartments under this Time Interval Plan. The Time Interval Board shall authorize the person who is to act on behalf of the Time Interval Owners Association in the Condominium Association of The Shearwater Condominium. Provided however that if a majority of Owners of Time Interval (more than 25 Time Intervals) in an Apartment decide to cast their own vote in a Condominium Association meeting, then in such event the Time Interval Board shall not be able or authorized to act on behalf of such Owners in an Apartment. At any such Condominium Association meeting, the majority vote of Owners in an Apartment shall determine the vote of the Apartment and shall cast such vote at the Condominium Association meeting. The Time Interval Board is authorized to vote on behalf of all Owners of Time Intervals for all matters, elections or meetings with regard to the Princeville Community Association (or any other master community association) unless a majority of all Owners shall determine, at its annual meeting, to limit or change the Board's authority for the upcoming fiscal year. At such Princeville Community Association meeting or election, the majority vote of the Time Interval Board shall determine such vote at such meeting or election.

Section 8. Accountant and Legal Counsel. The Time Interval Board may appoint and retain an accountant or accounting firm and/or legal counsel or counsels on retainer at the costs and

expenses of the Time Interval Owners Association to assist in the administration and management of the Time Interval Owners Association and Time Interval Board.

Section 9. Conflict of Interest. Members of the Time Interval Board may vote upon any matters provided that any conflict of interest is disclosed and noted in the minutes of the meeting.

ARTICLE V

OBLIGATIONS OF OWNERS

Section 1. Creation of Common Expenses. Declarant for the Time Interval Owners Association and the Time Interval Board after its organization as long as Declarant is an Owner, shall have the power from time to time to create the obligation of common expenses which shall be due and payable by an Owner on a budget initially established by the Declarant and thereafter as annually adjusted by the Plan Manager and approved by the then Time Interval Board. No Owner may waive or otherwise avoid liability for the common expense by non-use of his Time Interval or any part thereof or by any abandonment thereof. The assessment of the common expense together with interest, costs and reasonable attorney's fees shall be the personal obligation of each Owner at the time such assessment becomes due and payable and shall be a lien and charge upon the Time Interval of the Owner against which the assessment is made. The Declarant shall not be required to pay the common expenses as provided herein for any Apartments in which no Time Intervals have been sold; however, Declarant shall be responsible for the maintenance of such Apartment(s) which shall include the payment of any maintenance fees assessed by the Condominium Association. In the event only a portion of an Apartment has been conveyed to Owners, the Declarant shall be responsible for the common expenses for any unreserved Use Periods used or utilized by the Declarant; provided that such common expenses shall be limited to ordinary repairs, maintenance and upkeep of the Apartments which sum may be less than the annual assessments charged to an Owner. Declarant shall not be responsible for paying any common expenses for an apartment when 80% of the Intervals in any such Apartment has been sold.

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 Condominium Association maintenance fees, 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.

Section 3. Special Assessments. If the basic common expenses with respect to the Time Interval Plan is, or will become inadequate to meet all expenses incurred by the Time Interval Association, the Time Interval Board at its meeting shall determine the amount of such inadequacy, prepare and distribute a notice of special assessment against each Owner explaining the need and the necessity of the special assessment, and direct the Plan Manager to collect the assessment. All every other year Owners will be assessed the special assessment in the same year whether they own odd or even year Time Intervals.

Section 4. Enforcement of Restrictions. In amplification and not in limitation of the powers of the Time Interval Board provided in Section 7, Article IV above, the Time Interval Owners Association through the Time Interval Board and Plan Manager shall have the following rights and powers:

(a) In General. The Time Interval Owners Association shall have full power and authority to enforce compliance with the Condominium Declaration, the CC&R's, and the Rules and Regulations, including the right to bring an action for damages, an action to enjoin the violation of or specific performance of any violation of the aforesaid, enforce any lien, appoint a receiver, and the right to take possession of the Time Interval of any defaulting Owner. The Time Interval Owners Association shall have the right to recover a reasonable collection fee to collect delinquencies and reasonable attorney's fees incurred and/or expended in furtherance of such responsibilities. All sums payable by an Owner and delinquent for 14 days shall bear interest at 12% per annum and shall be subject to a late payment penalty fee. The penalty fee shall be established by the Rules and Regulations. All enforcement powers of the Time Interval Owners Association shall be cumulative. Common and special assessments may be billed monthly, quarterly, or annually, as determined by the Plan Manager or Time Interval Board.

(b) Suspension of Privileges. If any Owner shall be in breach of the Condominium Declaration, the CC&R's, or the Rules and Regulations, the Time Interval Owners Association shall give written notice of such violation and give such Owner 14 days from the date of the notice to cure such default. Such written notice although not releasing or waiving any future obligations of the Owner will suspend the right of such Owner to reserve or use his Time Period and to participate in any vote or other determination provided for herein. If any such suspension is based on an act or omission that continues and remains incurred, an Owner shall be given an additional 14 days written notice of suspension and termination as provided in subparagraph (c) hereafter. If the Owner disputes such suspension, then the Plan Manager shall receive such evidence from the Owner supporting why his privileges should not be suspended.

If the Plan Manager shall determine that based on the evidence submitted to it that the Owner's use rights shall be suspended and if the Owner further disputes the determination of the Plan Manager, the Owner shall have the right within 30 days to appeal to the Time Interval Board. The Time Interval Board, after review of the record and if requested by the Owner, will hold a hearing and accept submittal of any further evidence it deems relevant and material and make a determination of whether such privileges should be suspended. No determination by the Time Interval Board shall be made except by a majority of the Time Interval Board present at a meeting with at least a quorum of the Time Interval Board.

(c) Enforcement and Termination by Lien. The Time Interval Owners Association shall have a secured lien, in the nature of a mortgage with private power of sale of each Time Interval as security for the prompt and faithful performance of each Owner's obligation under the Condominium Declaration, the CC&R's and the Rules and Regulations. In the event of violation, the Time Interval Owners Association shall follow the procedure set forth in subsection (b) above. If such Owner fails or refuses to cure such default within 14 days, then and in such event the Time Interval Owners Association may either file a lien with the Bureau of Conveyances or the Office of the Assistant Registrar, Land Court, State of Hawaii, as the case may be, or give another 14 days' written notice to the Owner that the Time Interval Owners Association intends to exercise its rights of the private power of sale to sell or otherwise dispose of the Owner's interest in the Time Interval to the general public at the end of the 14 days. The Time Interval Owners Association itself may purchase it after a private sale announcement duly published once each week for two successive weeks in a newspaper of general circulation in the State

of Hawaii specifying the time, place and conditions of the private sale. Once such sale is made, the Time Interval Owners Association will become the attorney-in-fact coupled with an interest of the Owner and may transfer the Time Interval to any new Owner or to the Time Interval Owners Association as the case may be.

ARTICLE VI

ALTERATION, DAMAGE, DESTRUCTION, CONDEMNATION

Section 1. In General. The Time Interval Owners Association in the event of any damage or destruction of the Apartments or the furniture, fixtures or furnishings shall cause such damage or destruction to be repaired and shall use the proceeds from any insurance or condemnation proceeds to repair such damage. In the event of damage or destruction caused by the intentional or negligent act or omission of an Owner, his family, guest, invitee or tenant, the cost of such repair or the amount of such deficiency and any interest and penalty provided under the Rules and Regulations shall be a personal charge and paid by such Owner.

Any alteration to the Apartments and/or common elements not conducted at the direction of the Time Interval Board, is strictly prohibited. The Time Interval Board, may fine any Owner altering an Apartment and/or common element without the Time Interval Board's approval.

Section 2. Insurance. The Time Interval Owners Association shall obtain such insurance as is necessary to protect the Owners' interests in the Apartments and in the event of any deficiency, such deficiency shall be made up by the Owner(s) in proportion to their interests in the Apartments.

Section 3. Uninsured Casualty. In the event of any uninsured casualty which creates an obligation of repair or replacement on the part of the Time Interval Owners Association, the Time Interval Owners Association shall have the power to assess each Owner the cost to correct the uninsured casualty in proportion to their interest in the Apartment.

Section 4. Condemnation. In the event of any condemnation of one or more Apartments the Time Interval Owners Association shall use the proceeds of the condemnation to restore or replace the Apartment(s) condemned and if such is not practicable, then the proceeds for a particular Apartment shall be distributed to the Owners in proportion to their interest in the Apartment in which they have an interest as set forth in the Time

Interval Conveyance document and thereafter the rights of the Owners in the Apartment shall terminate.

ARTICLE VII

RESERVATIONS BY DECLARANT

Section 1. In General. The Declarant shall have the authority to adopt these CC&R's and the Rules and Regulations and other matters necessary to implement the establishment of the Time Interval Plan and any amendments thereto. The Declarant has the authority on behalf of the Time Interval Owners Association to enter into such contracts with the Condominium Association and the Plan Manager for carrying out the duties and obligations necessary for the management, upkeep and maintenance of the Project for such term as is deemed appropriate up to and including 5 years.

Section 2. Easements and Rights. The Declarant reserves the right to obtain such easements and rights from the Condominium Board and Condominium Association for such period as is agreed upon from time to time by the Condominium Board to carry on sales and marketing activities and to operate the Time Interval Plan.

Section 3. Sales. The Declarant reserves to itself, and its Sales Agents, Acquisition Agents, Plan Managers, employees and its agents the authority to conduct promotional, sales and other activities necessary to sell the Time Intervals and to furnish and utilize the Apartments subject always to the rights of an Owner to use an Apartment.

Section 4. Spaces, Improvements and Amenities. The Declarant reserves the right to rent such space, improve and/or construct such improvements and such other amenities on or off site as it deems necessary for the sales, marketing and operation of the Time Interval Plan; provided however that no such activities interferes with the use by an Owner of an Apartment.

Section 5. Responsibility for Payment of Expenses. Any of the foregoing activities which relate to real property taxes, management, utilities, maintenance and upkeep as set forth in the common expenses and any other charges, assessments and penalties as set forth herein shall be paid by the Owners. Any other expenses shall be paid for by the Time Interval Owners Association except for such expenses that the Declarant agrees in writing to assume by agreement with the Time Interval Owners Association or which are incurred and chargeable to any Sales Agents or Acquisition Agents.

Section 6. Condominium Development. The Declarant, as

the developer of the Project, has reserved the right to develop and construct additional apartments in the Project. The Developer's reservations are described in the Condominium Declaration.

ARTICLE VIII

MISCELLANEOUS

Section 1. Annexation and/or Removal of Apartments. The Declarant shall have the authority to annex additional Apartments to and/or withdraw Apartments from these CC&R's from time to time in its sole discretion; provided that in no event may an Apartment be removed if a Time Interval has been purchased by an Owner. The Apartments may include any of the various apartments and apartment types within the Project.

Section 2. Amendment of Declaration. These CC&R's may be amended by Declarant so long as there are any unsold Time Intervals in an Apartment subject to the terms of these CC&R's, as amended; provided that Declarant may not adopt any amendment that would diminish or interfere with the rights of an Owner. The right of Declarant to amend these CC&R's shall be suspended whenever 75% or more of all Apartments listed in Exhibit "A" which shall include the Apartments which have been annexed in accordance with Section 1 above, as amended from time to time, have been conveyed to the Owners; provided that the Declarant shall continue to have the right to delete unsold Apartments or add additional Apartments to Exhibit "A"; and then only during the periods Declarant's rights to amend are suspended will the Time Interval Owners Association have the authority to amend the CC&R's, except only Declarant shall have the right to amend Exhibit "A" (as amended) during the period there are unsold Time Intervals in any of the Apartments described in Exhibit "A" (as amended); provided further that the Declarant has the right to amend the CC&R if such amendment does not affect, interfere with or impair any existing Owners rights and such amendment only affects the Apartments to be annexed to the Time Interval Plan. Subject to the Declarant's rights described above, the Time Interval Owners Association may amend the CC&R's by a majority vote of Owners present in person or by proxy at a regular meeting or special meeting where a quorum is present; provided that no amendment may diminish or interfere with the rights of any Owner.

Section 3. Association Records. The Time Interval Owners Association shall keep at the Plan Manager's office a minute book, record of Owners, and records of the Time Interval Owners Association. Each director shall have the absolute right at any reasonable time to inspect such records which inspection may be

made in person or by an authorized agent or attorney including the right to make extracts, but not reproduce entire records of the Time Interval Owners Association; provided that upon reasonable advance written notice and submission of a deposit to defer duplication cost, a director may request the records of the Time Interval Owners Association. The minutes of all of the meetings of the Time Interval Owners Association and the Time Interval Board shall be available for inspection by the Owners during such reasonable hours as are established by the Plan Manager.

Section 4. No Corporate Seal. No corporate seal is required and if a corporate seal is obtained it shall be circular in form and shall have inscribed thereon the name of the Time Interval Owners Association, the date of its formation and the "State of Hawaii".

Section 5. Compensation of Officers and Directors. Any officer, director or Owner serving on committees or performing duties required under this CC&R may receive reasonable compensation for services actually rendered to the Time Interval Owners Association, but not to be compensated merely for holding office. Such director's fee, if any, shall not exceed \$50.00 per meeting or a total of \$200.00 per year. A director may be allowed to defray partially his out-of-pocket transportation and lodging expenses as established in the Rules and Regulations, from time to time.

Section 6. Indemnification. Every officer, director or Owner serving on committees or performing duties required under these CC&R's shall be indemnified by the Time Interval Owners Association against all reasonable costs, expenses and liabilities (including attorney's fees) actually and necessarily incurred by or imposed upon him in connection with or resulting from any claim, action, suit, proceeding, investigation or injury of whatever nature in which he may be involved as a party or otherwise by reason of his being or having been such officer, director or committee member, whether or not he continues to be such director, officer, or committee member at the time of incurring or the imposition of such costs, expenses or liabilities, except in relation to matters as to which he shall be finally adjudged in such action, suit, proceeding, investigation or inquiry to be liable for willful misconduct, willful neglect or willful negligence toward the Time Interval Owners Association in the performance of his duties as such officer, director or committee member. In the absence of such final adjudication of the existence of such liability the Time Interval Owners Association, Time Interval Board and each director and officer and committee member may conclusively rely upon an opinion of legal counsel selected by or in the matter designated by the Time Interval Board as to the

matter in issue. The foregoing right of indemnification shall be in addition to and not in limitation of all other rights to which such person may be entitled as a matter of law, and shall inure to the benefit of the legal representatives of such person.

IN WITNESS WHEREOF, these CC&R's were executed the day and year first above written.

THE SHEARWATER

By *David Walters*
DAVID E. WALTERS
Its General Partner

STATE OF HAWAII)
) ss.
ISLAND AND COUNTY OF KAUAI)

On this 25 day of January, 1993, ~~XCVIII~~, 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.

LS

John L. ...
Notary Public, State of Hawaii

My commission expires: June 1, 1993

SWTS\CC&R

(030292)

EXHIBIT "A"

FIRST: The Apartments described in Schedule 1 attached hereto and incorporated herein by reference of that certain condominium project known as "THE SHEARWATER", as shown on Condominium File Plan No. 1914 and described in the Declaration of Condominium Property Regime dated June 16, 1993, recorded as Document No. 93-142493, as the same was or may be amended from time to time, in the Bureau of Conveyances, State of Hawaii.

TOGETHER WITH appurtenant easements as follows:

- (A) Non-exclusive easement in the common elements designed for such purposes for ingress to, and egress from, utility services for and support of said apartment; in the other common elements for use according to their respective purposes.
- (B) Exclusive easements to use the limited common elements appurtenant to said apartment designated for its exclusive use by the Declaration.

SECOND: An undivided interest, as set forth herein after Item Third; in all common elements of the project and in the land on which said increment is located, as established for said apartment by the Declaration, or such other percentage interest as hereinafter established for said apartment by any amendment of the Declaration, as tenant in common with the other owners and tenants thereof. Said undivided interest will change from time to time upon completion of construction of each building in Phases (Increment) II and III.

THIRD:

UNDIVIDED INTEREST

<u>Upon Completion of Increment</u>	<u>Percentage of Undivided Interest</u>
I and IV	6.699%
II	4.778%
III	2.947%

LAND ON WHICH SAID CONDOMINIUM IS LOCATED:

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-feet 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 Liber 17266, Page 584, in said Bureau.

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.
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.
14. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions set forth in the Declaration of Condominium Property Regime dated June 16, 1993, recorded in said Bureau, as Document No. 93-142493, and Condominium File Map. No. 1914. Said Declaration was amended by a First Amendment and Second Amendment recorded in said Bureau, as Document Nos. 93-157699 and 93-174317, respectively.
15. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions set forth in the By-Laws of the Association of Apartment Owners of The Shearwater, dated June 16, 1993, recorded in said Bureau, as Document No. 93-142494.

SCHEDULE 1

<u>APARTMENT NO.</u>	<u>PERCENTAGE INTEREST*</u>
101 (EOY)	6.699%
102 (EOY)	6.699%
103 (EOY)	6.699%
104 (EOY)	6.699%
105 (EOY)	6.699%
201 (EOY)	6.699%
202 (EOY)	6.699%
203 (EOY)	6.699%
204 (EOY)	6.699%
205 (EOY)	6.699%
302 (EOY)	6.699%
303 (EOY)	6.699%
304 (EOY)	6.699%

*Subject to decrease.

(EOY) This means the unit is in the every other year program and will be sold on an every other year basis. Every year purchasers will be conveyed an "odd" and an "even" year interval in the same apartment unit.

EXHIBIT "B"

A. Two-bedroom Apartment. There are 13 separately designated and described freehold estates. Each of the apartments consist of 2 bedrooms, 2 bathrooms, a kitchen, living room, dining room, foyer, and two lanais. The net living area of an apartment is 1316 square feet and the lanais are 245 and 52, square feet.

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

BYLAWS

for the regulation, except as otherwise provided
by statute or the articles of incorporation
of

**THE SHEARWATER INTERVAL OWNERS ASSOCIATION
(The Shearwater)**

ARTICLE I

NAME AND OBJECT OF ASSOCIATION

1.01. Name. This Corporation shall be known as **THE SHEARWATER INTERVAL OWNERS ASSOCIATION**, hereinafter called the Association.

1.02. Objects. The objects of the Association shall be as stated in the Articles of Incorporation, and as the same may be amended from time to time.

1.03. Definitions. Capitalized terms shall have the same meaning ascribed to them in the Declaration of Covenants, Conditions and Restrictions for Time Interval Ownership at Pahio at The Shearwater, as amended from time to time.

ARTICLE II

MEMBERSHIP

2.01. Members. The membership of the Association in the Pahio at The Shearwater Interval Ownership Plan located in the The Shearwater condominium project ("Project") shall consist of those persons who are Owners and/or purchasers of Time Intervals in the Pahio at The Shearwater Interval Ownership Plan (the "Plan").

2.02. Qualification. Upon acquiring title to an Interval, an Owner shall be qualified to be a member of the Association; provided that the authorized number of members of the Association is not less than fifty-one (51), and to such number as is authorized by the Board of Directors of the Association.

2.03. Death of Member. Upon the death of any member, the certificate of membership and his Interval Interest shall automatically become part of the estate of the member. The rights

of members do not terminate upon death and pass under the applicable state law.

2.04. Certificate Assignability. The Certificate of Membership and the rights and privileges of a member shall be assignable together with the ownership of the Interval except that notice shall be given to the Association. Upon the transfer, the old certificate shall be turned in and a new certificate shall be issued at a cost set by the Board for the purpose of noting the change in the Association records.

2.05. Vote. The voting of the members shall be on the basis of one vote for each Interval (every year Interval) and a one-half (1/2) vote for each bi-annual week (every other year Interval) which a member owns. No member will be entitled to cast a vote until such time as the Developer of the Plan owns less than thirty percent (30%) of the intervals in a particular apartment unit. Until the time the Developer owns less than 30%, the Developer shall be entitled to cast all votes for all Interval owners in such apartment unit; provided that the Developer may not exercise any rights hereunder that would serve to encumber, diminish or interfere with the rights of an Owner.

ARTICLE III

GOVERNMENT

3.01. Board of Directors. The general management of the affairs of the Association shall be vested in the Board of Directors, who shall be elected as provided in 5.01 of Article V of these Bylaws. The minimum number of directors shall be three but not to exceed twelve (12) directors. The number of directors shall not be reduced below three, except upon an amendment of these Bylaws by the members in accordance with Article XII.

3.02. Officers. The officers of the Association shall consist of a President, a Vice-President, a Secretary and a Treasurer. All officers shall be members or partners or officer of a partnership or corporate member respectively and the President shall be selected from the Board of Directors, as provided in 5.02 of Article V of these Bylaws. Except for the President, any person may hold two offices.

3.03. President as Committee Member. The President shall be a member, ex officio, of all committees.

ARTICLE IV

MEETINGS

4.01. Annual Meeting of Members. There will be an annual meeting of the members entitled to vote as set by the Board of Directors in the first ten months following the beginning of the calendar year.

4.02. Special Meetings of Members. Special meetings of members may be called by the President at any time on his own initiative or by the President or Secretary upon request of fifteen percent (15%) of the members entitled to vote at such meeting made in writing. Notice of the meeting shall be mailed to each member at least twenty-one (21) days prior to the meeting, and at such special meeting there shall be considered only such business as is specified in the notice of meeting. All meetings of members shall be held at the principal office of the Association, or at such other place as the Board of Directors may designate within the United States that is specified in the notice calling the meeting.

4.03. Quorum for Members' Meeting. At all meetings of the Association either regular or special, the presence of thirty percent (30%) of all members entitled to vote and in good standing as of the date of the notice of the meeting shall constitute a quorum. Quorum may be established by person and/or proxy.

4.04. Lack of Quorum. If a quorum is not present, the presiding officer may adjourn the meeting to a day and hour fixed by him.

4.05. Proxy. Every person entitled to vote shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such person and filed with the Secretary of the Association prior to the commencement of the meeting at which the proxy is to be exercised. The proxy as provided therein may be good for up to two years and can cover all meetings within the two-year period from the date of the proxy. A proxy is revocable at any time and the presence of the Owner in person will be effective to suspend the effectiveness of the proxy while said Owner exercises his right to vote. An Owner may also revoke the proxy by submitting written notice to the Secretary.

4.06. Order of Business. At all meetings of the Association, the order of business shall be as follows:

- (a) Call to Order;

- (b) Establish quorum;
 - (c) Reading of minutes of prior meetings;
 - (d) Reports of officers;
 - (e) Reports of committees and Plan Manager;
 - (f) New business, as specified in the notice of meeting;
- and
- (g) Old business.

4.07. Organization Meeting of the Board. Immediately after the first annual meeting of the Association, the Board shall hold a regular meeting at the same place for the purpose of organization, election of officers and the transaction of other business. Written notices of the organizational meeting and regular meetings of the Board shall be given by the Plan Manager at least 21 days prior to the scheduled time of such meeting. Any notices shall be considered given 72 hours after the deposit in the United States mail or telegraphed except for personal delivery and facsimile which are effective when handed or transmitted to the director.

Written notices of the time and place of special meetings and of the nature of any special business to be considered shall be given to each director at least 5 days prior to the scheduled time of such meeting by the Plan Manager at the direction of the President, Vice President or any two directors and shall be delivered personally or sent by letter or by telegram or by facsimile, charges prepaid, addressed to him either at his address as it is shown upon the records of the Association, in case such notice is mailed or telegraphed, and it shall be deemed given and received seventy-two hours after being so deposited in the United States mail or so delivered to the telegraph company in Hawaii.

4.08. Meetings of Board. Special meetings of the Board of Directors shall be called by the President, Vice President or any two directors upon five (5) days written notice. Such notice shall be personally delivered, sent by letter or telegram, charges prepaid, addressed to the Director as is shown on the records of the Association. Notice shall be deemed given 72 hours after deposited in the U.S. Mail or when the notice is telegraphed except for personal delivery which is given when handed to the director.

4.09 Telephonic Board Meeting or Action Without Meeting. Any action required or permitted to be taken by the Board of

Directors, may be taken through a telephonic board meeting, or without a meeting if all members of the Board of Directors shall consent in writing to such action. Such written consent of action without meeting shall be filed with the minutes of the proceedings of the Board of Directors and shall have the same force and effect as a unanimous vote of the Directors. The telephonic Board of Directors meeting shall reflect the actions taken by the Board of Directors in writing.

4.10 Quorum, Waiver of Notice. The transaction of any business at any meeting of the Board of Directors, however called and noticed, or wherever held, shall be as valid as though made at a meeting duly held after regularly called and noticed, if a quorum is present and there is on file a waiver, consent or approval of the holding of such meeting of directors who are not present, which are made a part of the minutes of the meeting.

ARTICLE V

ELECTION OF DIRECTORS AND OFFICERS

5.01. Election of Directors. The Board of Directors of the Association shall be elected at the annual meeting or at a special meeting called for that purpose. Each member entitled to vote as provided in 2.05 shall be entitled to the vote as provided in the Interval ownership plan. The initial Directors shall be as set forth in the Articles of Incorporation and shall serve as Directors from the time of the adoption of these Bylaws until the death or resignation, or until their successors are elected.

5.02. Election of Officers. The Board of Directors shall elect from among their number a President and from the membership, a Vice-President, a Secretary and a Treasurer and any assistants except as to the President. The meeting of the Board of Directors to elect officers shall be held within three months following the annual meeting of members. Officers elected shall hold office until new officers are elected. Any Board member may hold up to two offices if there are only three members elected to the Board of Directors, except that the President may only hold that office.

ARTICLE VI

VACANCIES IN OFFICE

If a vacancy occurs among the officers or in the Board of Directors, the vacancy shall be filled for the unexpired term by a person appointed by the Board of Directors.

ARTICLE VII

DUTIES OF OFFICERS

7.01. President. The President shall preside at all meetings of the Association and of the Board of Directors and shall appoint such committees as he or the Association shall consider expedient or necessary.

7.02. Vice-President. In the absence of the President, the Vice-President shall perform his duties, and, in the absence of both President and Vice-President, the Secretary or Treasurer shall preside and assume the duties of the President.

7.03. Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors; shall, if requested, read such minutes at the beginning of each meeting for approval; and shall mail out all notices for meetings of the Association or the Board of Directors.

7.04. Treasurer. The Treasurer shall have charge of all receipts and moneys of the Association, deposit them in the name of the Association in a bank or banks approved by the Board of Directors, and disburse funds as ordered or authorized by the Board of Directors; provided that the day to day processing of receipts and disbursements may be delegated to the Plan Manager. He shall keep regular accounts of his receipts and give an itemized statement at regular meetings of the Association.

7.05. Execution of Instruments. Any two officers shall sign all leases, checks, contracts, or other instruments in writing unless otherwise directed by the Board of Directors.

ARTICLE VIII

DUTIES AND POWERS OF BOARD OF DIRECTORS

8.01. Management of Association. The Board of Directors shall have general charge and management of the affairs, funds, and property of the Association. The Board shall have full power, and it shall be the Board's duty, to carry out the purposes of the Association according to its Charter and Bylaws; select one of the officers to represent the Association and if none is available to select a person, appoint the Plan Manager, amend the Bylaws and to delegate certain activities of the Association to committees and/or the Plan Manager.

8.02. Rule making. The Board of Directors may set up rules to set forth the respective rights and obligations of members from The Shearwater Interval Ownership Plan subject to such terms as provided therein and work out such exchange and/or coordination necessary between The Shearwater Interval Ownership Plan and their members.

8.03. Appointment of Committees. The Board of Directors may appoint such committees as it deems necessary including a Membership Committee and a Rules Committee; it may vote the expenditure of monies as it deems necessary or advisable; and it may instruct the officers of the Association to contract for the lease or purchase in the name of the Association of facilities for the use of the members.

8.04. Authority to Impose Liability on Members. The Board of Directors may impose any liability or levy an assessment upon the members with respect to the Plan.

8.05. Place of Directors' Meetings. The meeting of the directors may be held in Princeville, Kauai, Hawaii, or wherever the Board of Directors designate.

8.06 Annual Reports. There will be an annual report or other periodic reports to members in any form that the Board considers appropriate.

8.07 Accountant and Legal Counsel. The Board of Directors may appoint and retain an accountant or accounting firm and/or legal counsel or counsels on retainer at the cost and expense of the Association to assist in the administration and management of the Association.

ARTICLE IX

COMPENSATION OF DIRECTORS AND OFFICERS

Any compensation of the officers and/or Directors shall be as provided in The Shearwater Interval Ownership Plan, and the Rules and Regulations. The Board of Directors can designate any officer as the general manager and he can be compensated in accordance with his duties and responsibilities.

ARTICLE X

RULES AND REGULATIONS FOR MEMBERS AND GUESTS

10.01. Right of Guest to Use Facilities. Members of the Association, and the families of such members, and/or guests of such members, may use any facilities owned, leased, or contracted for by the Association in accordance with their Time Interval Purchase Agreement or Time Interval Conveyance, as the case may be, and thereafter in accordance with the Association's Rules and Regulations.

10.02. Expulsion. Any member may be expelled or his Interval terminated in accordance with the provisions of The Shearwater Interval Ownership Plan.

ARTICLE XI

CLASSES, RIGHTS AND DUTIES OF MEMBERS

11.01. Membership Rights and Obligations. The class of membership, the rights and duties of the members shall be as set forth in The Shearwater Interval Ownership Plan.

11.02. Membership Suspension and Termination. The suspension and termination of members shall be as set forth in The Shearwater Interval Ownership Plan.

ARTICLE XII

AMENDMENTS

These Bylaws may be amended by the Declarant and after the Association is organized by a majority vote of the Board of Directors present at a regular or special meeting of the Board of Directors, or by a majority vote of the members where a quorum is present, provided notice of the purpose and the proposed amendment or amendments have been stated in the notice of the meeting.

ARTICLE XIII

CORPORATE RECORDS

13.01. Minute Book. The Association shall keep at the principal office or such other place as the Board of Directors may

order, a book of minutes of all meetings of its Directors and of its members, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice thereof given, the names of those present and the proceedings thereof.

13.02. Accounts. The Association shall keep and maintain adequate and correct accounts of its properties and transactions, including accounts of its assets, liabilities, disbursements, gains, losses, capital and surplus.

13.03. Directors' Rights of Inspection. Every Director shall have the absolute right at any reasonable time to inspect all books, records, documents of every kind, and the physical properties of the corporation and of any subsidiary corporations. Such inspection may be made in person or by agent or attorney, and the right of inspection includes the right to make extracts, but not to reproduce entire records of the Association. In the event a director or any member desires to obtain copies of the minutes of any Association or Board of Directors meetings, the such director or member shall submit a written request to the Association together with a reasonable deposit to defray the duplication cost of such records.

13.04. Membership. The Association shall keep a membership book containing the name and address of each member. Termination of any membership shall be recorded in the book, together with the date on which the membership ceased.

ARTICLE XIV

CORPORATE SEAL

No corporate seal is required. If a corporate seal is obtained it shall be circular in form and shall have inscribed thereon the name of the corporation, the date of its incorporation, and the "State of Hawaii."

ARTICLE XV

BYLAWS

15.01. General Scope of the Bylaws. The particular powers and provisions enumerated in these Bylaws are not intended to be, or to be construed to be, an exclusion of or a limitation upon the exercise of any right, privilege or power which the corporation may lawfully regulate or delegate in or by its Bylaws, and as to any matter which may hereafter arise and which is not

specifically provided for by these Bylaws, the Board of Directors shall have the right to act as the majority of them may determine, provided such action is not contrary to the laws of the State of Hawaii governing non-profit corporations.

15.02. Bylaws to be Kept at Office. A copy of these Bylaws as amended and altered up to date, certified by the Secretary of this corporation, shall be kept at the principal office of the corporation, and shall be open to inspection by the Directors at all reasonable times during office hours.

ARTICLE XVI

EXEMPT ACTIVITIES

Notwithstanding any other provisions of these Bylaws, no member, officer, employee, or representative of the Association shall take any action or carry on any activity by or on behalf of the Association not permitted to be taken or carried on by an organization exempt under Section 501 (c) (3) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended, or by an organization contributions to which are deductible under Section 170 (c) (2) of such Code and Regulations as they now exist or as they may hereafter be amended.

ARTICLE XVII

LIENS AND ENCUMBRANCES

The Association may acquire, condominium apartment units, and/or buildings for the use of the members through purchase, lease, land trust and/or stock ownership together with the right to use arrangements attached to the stock ownership. The buildings and units may be mortgaged, encumbered and/or pledged by the Association or any other person and/or entity transferring the same to the Association, provided that there is provision made for the amortization of the debt which affects the property being transferred to the Association or there is provision for a non-disturbance and/or attornment in favor of the Association for the members who continue to make their payments or have paid in full their membership. Notwithstanding the foregoing, the Association shall not exercise any right or undertake any act that would serve to diminish or interfere with the rights of an Owner; and no mortgage, encumbrance or pledge shall be effective to the extent that it diminishes or interferes with the rights of an Owner.

ARTICLE XVIII

INDEMNIFICATION

Every Director and officer shall be indemnified by the Association against all reasonable costs, expenses and liabilities (including counsel fees) actually and necessarily incurred by or imposed upon him in connection with or resulting from any claim, action, suit, proceeding, investigation or injury of whatever nature in which he may be involved as a party or otherwise by reason of his being or having been a Director or officer of the Association, whether or not he continues to be such Director or officer of the Association at the time of the incurring or imposition of such costs, expenses or liabilities, except in relation to matters as to which he shall be finally adjudged in such action, suit, proceeding, investigation or inquiry to be liable for willful misconduct, willful neglect or negligence toward the Association in the performance of his duties as such Director or officer. As to whether or not a Director or officer was liable by reason of willful misconduct, willful neglect or negligence toward the Association performance of his duties as such Director or officer, in the absence of such final adjudication of the existence of such liability, the Board of Directors and each Director and officer may conclusively rely upon an opinion of legal counsel selected by or in the matter designated by indemnification shall be in addition to and not in limitation of all other rights to which such person may be entitled as a matter of law, and shall inure to the benefit of the legal representatives of such person.

Adopted as the Bylaws of this Association this 7th day of December, 1993.

THE SHEARWATER INTERVAL
OWNERS ASSOCIATION

By David Walters
Its Director
DAVID E. WALTERS

By Jeffrey Meier
Its Director
JEFFREY MEIER

By Lynn P. McCrory
Its Director
LYNN P. MCCRORY

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(030292)

PAHIO AT THE SHEARWATER TIME INTERVAL OWNERSHIP PLAN
RULES AND REGULATIONS

The Shearwater condominium apartment units are located within The Shearwater condominium project ("Project"). These Rules and Regulations cover only those Apartments in the Pahio at The Shearwater time interval ownership plan (the "Plan") and are in addition to the Condominium Declaration, Bylaws, Condominium House Rules, the Time Interval Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation and Bylaws of The Shearwater Time Interval Owners Association and governs the Owners', and guests', invitees' and licensees' (collectively referred to as "Owner") use of the Apartments and the Project. Capitalized terms shall have the same meaning as defined in the Declaration of Covenants, Conditions and Restrictions for the Pahio at The Shearwater Time Interval Ownership Plan which shall hereinafter be referred to as "Time Interval Declaration".

I. RESERVATION AND USE

1. The Week.

The "week" as used herein includes seven consecutive nights commencing at 4:00 p.m. and ending at 10:00 a.m. the following week. Check in days will be either Thursday, Friday, Saturday or Sunday. Splitting the week in increments of not less than three consecutive nights may not be permitted.

2. Time Period.

The "Time Period" as used herein means a specific "week" reserved, desired, or purchased by an Owner.

3. Type of Apartment.

The Apartments are a Type 2/2 furnished apartments. The apartment types are described in Exhibit "B" of the Time Interval Declaration which apartments may be added or deleted from time to time as described in the Time Interval Declaration. The policy of the Plan Manager will be to upgrade Owners whenever possible, subject to availability at check in time.

4. Reservation Procedures.

a. Use of Fixed Intervals: Owners of fixed time Intervals do not have to confirm their reservations. However, the

Plan Manager may send out written confirmation to the Owners in order to confirm that the Owners will in fact be occupying their Time Period and Interval.

b. Floating Intervals and Other Reservations: Owners of floating time Intervals (including every other year Intervals) shall have the right to reserve a designated Time Period in accordance with the following procedures:

1) All reservation request must be mailed or faxed to the Plan Manager at the address of the Plan Manager or such other address that may be provided to the Owner.

2) Reservations will be handled on a first-come, first-served basis. The postmark or FAX date of the reservation request will be used to determine which reservations came in first.

3) Reservations will only be accepted by written request with post mark dates no earlier than August 1st of the calendar year preceding the desired use year, and no latter than September 15th, of the calendar year preceding the desired use year. Reservation requests shall be made on the form provided for such use.

4) Reservations post marked prior to August 1st will be deemed to have been post marked on August 1st. Reservation requests received after September 15th will receive an automatic assignment of a week. Such owners may either use the assigned week or spacebank with RCI.

5) All reservation requests shall list at least three choices of Time Periods. Last minute reservations may be allowed by the Plan Manager on a space available basis for uncommitted Time Periods in Apartments. In no event shall any type of last minute reservation be permitted by Owner if such Time Period is within 90 days from the commencement of such Time Period. These reservations may be subject to any prior commitments made by the Plan Manager.

6) Reservation requests will be confirmed by the Plan Manager as soon as practicable prior to the use year being reserved. If there are no available Time Periods based on the choices provided by the Owner in the reservation form, then the Plan Manager may assign a Time Period to the Owner. The Plan Manager will attempt to assign an available Time Period which is close in time to one of the Time Periods requested by Owner in the reservation form. Owners desiring to exchange or rent their Time Periods shall first wait to receive written confirmation prior to seeking any exchange or tenant.

7) If there are multiple reservations received with the same post mark date for the same Time Periods, Plan Manager may develop an arbitrary lottery system to establish the priority of the competing reservation request.

8) Any reservation requests received from Owners who have outstanding or delinquent maintenance fees and/or mortgage payments will not be honored until such time as the delinquency is remedied. When the delinquency is remedied, the Plan Manager may then assign a Time Period in accordance with the provisions of subparagraph 6 above.

9) The Developer of the Time Interval Plan, and its successors and assigns, may make reservation requests on its unsold inventory subject to the use of Owners of fixed Intervals and valid reservations made by Owners of floating Intervals.

5. Cancellation.

A cancellation notice post marked fewer than 90 days prior to the first day of a reserved and confirmed Time Period shall result in a \$25.00 cancellation fee payable by the Owner making the reservation to the Plan Manger or the Time Interval Owners Association. In the event the Plan Manager is not able to reassign a Time Period, the Owner shall be deemed to have used his Time Period for the year originally reserved.

6. Late Arrival and No-Show.

Any Owner who has a reserved and confirmed reservation for a floating time Interval and fails to arrive before 8:00 p.m. on the first day of the confirmed Time Period must notify the reservation office within the 24 hour period preceding the check-in time of the scheduled arrival day that he may be delayed. Owners of fixed time Intervals do not have to provide any notice during the same 24 hour period. Failure by the floating Interval Owner to notify the reservation office during the 24-hour period will result in the Owner's loss of use for that Time Period for that year. The Owner must pay his common expenses for the entire Time Period regardless of whether he uses the Time Period.

7. Additional Time Within the Project.

Each Owner on a space available basis will be allowed to extend his stay by payment of such charges as set by the Plan Manager and will be handled on the basis of a last minute reservation.

8. Common Expenses.

The common expenses are to be paid on such periodic installments and amounts as are specified by the Plan Manager and/or the Board of Directors of the Interval Owners Association

9. Collection Fee.

A collection fee of \$25.00 and interest charge shall be levied on any Owner who fails to make the payment within 14 days after written notice is given. The Interval Owners Association does not waive any of its rights to collect other charges, costs, expenses and damages.

10. Damage.

Any loss, breakage or damage beyond normal wear and tear of the Apartment, its furniture, equipment and furnishings and to the common or limited common elements of the Project, will be charged to the Owner. If the damage or charges cannot be determined as of the check out time of an Owner, the penalties and charges will be charged to the Owner in whose name the reservation was made which shall be payable upon billing of the charges.

11. Suspension of Privileges.

Any Owner who breaches the Condominium Declaration, By Laws, House Rules, Time Interval Declaration, Articles and Bylaws of the Time Interval Owners Association and these Rules and Regulations shall be suspended immediately from occupying his Time Period. (See Article V, Sec. 4 of the Time Interval Declaration for further enforcement provisions).

12. Vacating the Unit.

If an Owner fails to vacate at the end of his Time Period, he or she shall be evicted summarily. If an Owner prevents another person from occupying the succeeding Time Period, he or she agrees to pay an amount equivalent to 300% of the daily rental per day (of a comparable apartment in the same area where the Project is situated) to obtain temporary accommodations for the persons entitled to use the Apartment as determined by the Plan Manager.

II. BUILDING AND APARTMENT RULES

The Owners agree to be bound by the Condominium

Declaration, By Laws, House Rules, Time Interval Declaration, and the Articles and Bylaws of the Time Interval Owners Association and the Rules and Regulations, the most stringent of which shall control and be enforced. Owner's shall adhere to the following rules:

1. Reporting Damages

Any violations of these Rules and Regulations or damages to the Apartment or Project common area shall be reported promptly to the Plan Manager.

2. Nuisance

The occupants of Apartments shall not make any noise in the buildings which will annoy neighbors. Particular effort must be exercised to insure a minimum of noise between 10:00 p.m. and 8:00 a.m., Sunday through Thursday, and between midnight and 8:00 a.m. Fridays and Saturdays. This applies to among other things social gatherings, television sets, radios, stereos and musical instruments.

3. Cooking

No outdoor cooking shall be conducted on lanais. Outdoor cooking shall be permitted only in the common areas designated by the Plan Manager or as permitted by the Condominium Association. Fires other than outdoor cooking in grills designed for such purposes are not permitted.

4. Parking Area

Owners are to park only in designated areas as directed by the Plan Manager.

5. Pets

Owners are not allowed to keep pets in an Apartment.

6. Storage

Owners are not allowed to store any items of personal property including vehicles and sports equipment in an Apartment. Only personal belongings are allowed when the Owners are using the Apartment during a confirmed Time Period. The Plan Manager and Association will not be responsible for any personal effects left by an Owner within an Apartment.

7. Removal of Furniture and Furnishings

Owners are not allowed to remove fixtures, furniture, towels, glasses, utensils or any other items of personal property placed in the Apartment for the use and enjoyment of other Owners.

8. Hazards

The parking areas or other common areas shall not be used for recreational activities of any kind unless designated for the specific use employed. Parents or legal guardians are responsible for the appropriate supervision of minors at all times.

9. Illumination

Owners or guests shall not use any illumination other than an electric light bulb or a small number of candles, or use or permit to be brought into any Apartment or the buildings any flammable oils or fluids.

10. Appearance

No items of personal property will be allowed to be stored or displayed where such items are visible from outside of the Apartments. Clothes, towels or any other items shall not be hung on Apartment lanais or lanai railings.

11. Building Maintenance

Every owner is expected to do his or her part towards keeping the Apartments and the common areas clean and neat to the fullest practicable extent.

12. Swimming Pool

The swimming pool hours shall be as posted from time to time at the pool area. Owners will be liable and responsible for the conduct and safety of their guests, any non-swimmers, and any member of their family at all times. All non-swimmers shall be accompanied by persons who are able to swim at all times. No drinking glasses, bottles or jars are permitted at the pool and no food is permitted within ten feet of the pool. There is no lifeguard on duty at any time. There shall be no diving or jumping in the pool nor shall any running around the pool be permitted. Use of the swimming pool shall be further restricted by any rules posted at the pool area.

Adopted this _____ day of _____, 1992.

THE SHEARWATER INTERVAL
OWNERS ASSOCIATION

By *David Walters*
Its Director
DAVID E. WALTERS

By *Jeffrey Meier*
Its Director
JEFFREY MEIER

By *Lynn P. McCrory*
Its Director
LYNN P. MCCRORY

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