

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer THE SHEARWATER Address P. O. Box 3099, Princeville, Kauai Hawaii 96722

Project Name(\*): THE SHEARWATER (Increments I and IV) Address: 3730 Kamehameha Road, Princeville, Kauai Hawaii 96722

Registration No. 2277 Effective date: November 10, 1993 Expiration date: December 10, 1994

Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended. This report is not valid unless the Hawaii Real Estate Commission has issued a registration number and effective date for the report.

This report has not been prepared or issued by the Real Estate Commission or any other government agency. Neither the Commission nor any other government agency has judged or approved the merits or value, if any, of the project or of purchasing an apartment in the project.

Buyers are encouraged to read this report carefully, and to seek professional advice before signing a sales contract for the purchase of an apartment in the project.

Expiration Date of Reports. Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the effective date unless a Supplementary Public Report is issued or unless the Commission issues an order, a copy of which is attached to this report, extending the effective date for the report.

Exception: The Real Estate Commission may issue an order, a copy of which shall be attached to this report, that the final public report for a two apartment condominium project shall have no expiration date.

Type of Report:

PRELIMINARY: (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued by the developer when complete information is filed.

x FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission. [ ] No prior reports have been issued. [ x ] This report supersedes all prior public reports. [ ] This report must be read together with

SUPPLEMENTARY: (pink) This report updates information contained in the: [ ] Preliminary Public Report dated: [ ] Final Public Report dated: [ ] Supplementary Public Report dated:

And [ ] Supersedes all prior public reports [ ] Must be read together with [ ] This report reactivates the public report(s) which expired on

(\* ) Exactly as named in the Declaration



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### General Information On Condominiums

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, must be complied with. In addition, certain requirements and approvals of the County in which the project is located must be satisfied and obtained.

Some condominium projects are leasehold. This means that the land or the building(s) and other improvements are leased to the buyer. The lease for the land usually requires that at the end of the lease term, the lessees (apartment owners/tenants) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements at the lessee's expense. Leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

If you are a typical condominium apartment owner, you will have two kinds of ownership: (1) ownership in your individual apartment; and (2) an undivided interest in the common elements.

"Common elements" are the areas of the condominium project other than the individual apartments. They are owned jointly by all apartment owners and include the land, either in fee simple or leasehold, and those parts of the building or buildings intended for common use such as foundations, columns, roofs, halls, elevators, and the like. Your undivided interest in the common elements cannot be separated from ownership of your apartment.

In some condominium projects, some common elements are reserved for the exclusive use of the owners of certain apartments. These common elements are called "limited common elements" and may include parking stalls, patios, lanais, trash chutes, and the like.

You will be entitled to exclusive ownership and possession of your apartment. Condominium apartments may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift, or operation of law.

Your apartment will, however, be part of the group of apartments that comprise the condominium project. Study the project's Declaration, Bylaws, and House Rules. These documents contain important information on the use and occupancy of apartments and the common elements as well as the rules of conduct for owners, tenants, and guests.

### Operation of the Condominium Project

The Association of Apartment Owners is the entity through which apartment owners may take action with regard to the administration, management, and operation of the condominium project. Each apartment owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as an apartment owner. The Board of Directors and officers can take certain actions without the vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the apartment owners.

Until there is a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is important to all apartment owners that the transition of control from the developer to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

I. PERSONS CONNECTED WITH THE PROJECT

Developer: THE SHEARWATER Phone: (808) 826-6549  
**Name** (Business)  
P. O. Box 3099  
**Business Address**  
Princeville, Kauai Hawaii 96722

Names of officers or general partners of developers who are corporations or partnerships:

David E. Walters, General Partner  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Real Estate  
Broker: Owner's Management Corporation Phone: (808) 826-6549  
**Name** (Business)  
P. O. Box 3099  
**Business Address**  
Princeville, Kauai Hawaii 96722

Escrow: Hawaii Escrow & Title, Inc. Phone: (808) 532-2977  
**Name** (Business)  
850 Richards Street, #400  
**Business Address**  
Honolulu, Hawaii 96813

General  
Contractor: Hanalei Management Phone: (808) 826-6549  
**Name** (Business)  
P. O. Box 3099  
**Business Address**  
Princeville, Kauai, Hawaii 96722

Condominium  
Managing  
Agent: Owner's Management Corporation Phone: (808) 826-6549  
**Name** (Business)  
P. O. Box 3099  
**Business Address**  
Princeville, Kauai Hawaii 96722

Attorney for  
Developer: Michael H. Sakai Phone: (808) 531-4171  
**Name** (Business)  
201 Merchant Street, #902  
**Business Address**  
Honolulu, Hawaii 96813

**II. CREATION OF THE CONDOMINIUM;  
CONDOMINIUM DOCUMENTS**

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

- A. Declaration of Condominium Property Regime contains a description of the land, buildings, apartments, common elements, limited common elements, common interests, and other information relating to the condominium project.

The Declaration for this condominium is:

- Proposed  
 Recorded - Bureau of Conveyances: Document No. 93-142493  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

The Declaration referred to above has been amended by the following instruments [state name of document, date and recording/filing information]:

First Amendment to Declaration dated September 14, 1993, recorded as Document No. 93-157699  
Second Amendment to Declaration dated October 14, 1993, recorded as Document No. 93-174317

- B. Condominium Map (File Plan) shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment number, and dimensions of each apartment.

The Condominium Map for this condominium project is:

- Proposed  
 Recorded - Bureau of Conveyances Condo Map No. 1914  
 Filed - Land Court Condo Map No. \_\_\_\_\_

The Condominium Map has been amended by the following instruments [state name of document, date and recording/filing information]:

- C. Bylaws of the Association of Apartment Owners govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

- Proposed  
 Recorded - Bureau of Conveyances: Document No. 93-142494  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

The Bylaws referred to above have been amended by the following instruments [state name of document, date and recording/filing information]:

D. House Rules. The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the developer.

The House Rules for this condominium are:

Proposed                       Adopted             Developer does not plan to adopt House Rules

E. Changes to Condominium Documents

Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. Apartment Owners: Minimum percentage of common interest which must vote for or give written consent to changes:

|                                | <u>Minimum<br/>Set by Law</u> | <u>This Condominium</u> |
|--------------------------------|-------------------------------|-------------------------|
| Declaration<br>(and Condo Map) | 75%*                          | <u>75%</u>              |
| Bylaws                         | 65%                           | <u>65%</u>              |
| House Rules                    | ---                           | <u>N/A</u>              |

\* The percentages for individual condominium projects may be more than the minimum set by law for projects with five or fewer apartments.

2. Developer:

No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules.

Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules:

The Developer has retained certain rights in order to allow it to construct additional buildings and apartments in this Project. This means that additional buildings and apartments may be built in the future. The Developer has also retained the right to subdivide that portion of the land area that has not been utilized for a building site and remove it from the Project. In no event shall an existing structure or apartment ever be physically affected.

Your attention is directed to Exhibit "B" which contains further information and details on the rights and obligations of the Developer.

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

- Fee Simple: Individual apartments and the common elements, which include the underlying land, will be in fee simple.
- Leasehold or Subleasehold: Individual apartments and the common elements, which include the underlying land will be leasehold.

Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_

Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:             Monthly                             Quarterly  
    Semi-Annually                     Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per  Month     Year

For Subleaseholds:

- Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is:  
    Canceled             Foreclosed

- As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

- Individual Apartments in Fee Simple; Common Interest in the Underlying Land in Leasehold or Subleasehold:

Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_

Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:             Monthly                             Quarterly  
    Semi-Annually                     Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per  Month     Year

[ ] Other:

**IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advice of an attorney.

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed periods of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

**B. Underlying Land:**

Address: 3730 Kamehameha Road Tax Map Key: (4) 5-4-5-32  
Princeville, Kauai Hawaii 96722 (TMK)

[ ] Address [ ] TMK is expected to change because \_\_\_\_\_

Land Area: ± 3.599 [ ] square feet [x] acre(s) Zoning: R-10



5. Special Use Restrictions:

The Declaration and Bylaws may contain restrictions on the use and occupancy of the apartments. Restrictions for this condominium project include but are not limited to:

Pets: Pets are permitted only with the approval of the Board of Directors  
See Article V, Section 3(1) of By-Laws

Number of Occupants: \_\_\_\_\_

Other: \_\_\_\_\_

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0      Stairways: 4      Trash Chutes: 0

| <u>Apt.</u><br><u>Type</u> | <u>Quantity</u> | <u>BR/Bath</u> | <u>Net</u><br><u>Living Area (sf)*</u> | <u>Lanai/Patio (sf)</u> |
|----------------------------|-----------------|----------------|--|-------------------------|
| 2 Bedroom                  | 13              | 2/2            | 1316                                   | 245/52                  |
| 1 (unit 412)               | 1               | 0/0*           | _____                                  | _____                   |
| _____                      | _____           | _____          | _____                                  | _____                   |
| _____                      | _____           | _____          | _____                                  | _____                   |
| _____                      | _____           | _____          | _____                                  | _____                   |

Total Apartments: 14

\*This unit has a women's and men's restroom.

\*Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls.

Other documents and maps may give floor area figures which differ from those above because a different method of determining the floor area may have been used.

**Boundaries of Each Apartment:**

The apartments shall not be deemed to include the undecorated or the unfinished surfaces of perimeter walls, ceilings or floors, or interior load bearing walls.

**Permitted Alterations to Apartments:**

None.

7. Parking Stalls:

Total Parking Stalls: 43

|                                | <u>Regular</u> |             | <u>Compact</u> |             | <u>Tandem</u>  |             | <u>TOTAL</u> |
|--------------------------------|----------------|-------------|----------------|-------------|----------------|-------------|--------------|
|                                | <u>covered</u> | <u>open</u> | <u>covered</u> | <u>open</u> | <u>covered</u> | <u>open</u> |              |
| Assigned<br>(for each<br>unit) | _____          | <u>15</u>   | _____          | _____       | _____          | _____       | <u>15</u>    |
| Guest<br>Unassigned            | _____          | <u>28</u>   | _____          | _____       | _____          | _____       | <u>28</u>    |
| Extra for<br>Purchase          | _____          | _____       | _____          | _____       | _____          | _____       | _____        |
| Other:                         | _____          | _____       | _____          | _____       | _____          | _____       | _____        |
| Total<br>Covered & Open        | <u>43</u>      | _____       | _____          | _____       | _____          | _____       | _____        |

Each apartment will have the exclusive use of at least one parking stall(s).  
Buyers are encouraged to find out which stall(s) will be available for their use.

- Commercial parking garage permitted in condominium project.
- Exhibit \_\_\_\_\_ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

- There are no recreational or common facilities.
- Swimming pool       Storage Area       Recreation Area
- Laundry Area       Tennis Court       Trash Chute
- Other: \_\_\_\_\_

9. Compliance With Building Code and Municipal Regulations; Cost to Cure Violations

- There are no violations.       Violations will not be cured.
- Violations and cost to cure are listed below.       Violations will be cured by \_\_\_\_\_

10. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations  
(For conversions of residential apartments in existence for at least five years):

Not Applicable

11. Conformance to Present Zoning Code

a.  No variances to zoning code have been granted.

Variance(s) to zoning code was/were granted as follows:

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

|            | <u>Conforming</u> | <u>Non-Conforming</u> | <u>Illegal</u> |
|------------|-------------------|-----------------------|----------------|
| Uses       | x                 |                       |                |
| Structures | x                 | _____                 | _____          |
| Lot        | x                 | _____                 | _____          |

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure, or lot.

D. Common Elements, Limited Common Elements, Common Interest:

1. Common Elements: Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

described in Exhibit   C  .

as follows:

2. **Limited Common Elements:** Limited Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

There are no limited common elements in this project.

The limited common elements and the apartments which use them, as described in the Declaration, are:

described in Exhibit C.

as follows:

3. **Common Interest:** Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

described in Exhibit D.

as follows:

E. **Encumbrances Against Title:** An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of an apartment in the project.

Exhibit E describes the encumbrances against the title contained in the title report dated August 4, 1993 and issued by Hawaii Escrow & Title, Inc.

**Blanket Liens:**

A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

[ ] There are no blanket liens affecting title to the individual apartments.

[x] There are blanket liens which may affect title to the individual apartments.

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. The buyer's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

| <u>Type of Lien</u> | <u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>  |
|---------------------|--|
| Mortgage            | If the Developer defaults, the lender would foreclose on the mortgage. The purchaser's contract would be cancelled or assigned to the lender and purchaser's deposits may be refunded. |

**F. Construction Warranties:**

Warranties for individual apartments and the common elements, including the beginning and ending dates for each warranty, are as follows:

1. **Building and Other Improvements:**

One year after completion of the building and apartments.

2. **Appliances:**

All manufacturer's warranties shall be passed over and assigned to the respective purchasers.

**G. Status of Construction and Estimated Completion Date:**

Buildings 1 and 4 were completed in August, 1993 .

**H. Project Phases:**

The developer  has  has not reserved the right to add to, merge, or phase this condominium.

Summary of Developer's plans or right to perform for future development (such as additions, mergers or phasing):

The Developer has retained the right to add and construct additional buildings/apartments. It is the intention of the Developer to construct at most two buildings at any given time and to commence the sale of an apartment in a building once the building is completed. Furthermore, the Developer has the right to remove that portion of the land area that is not utilized for a building from the Project. In the event Developer elects not to delete that portion of land set aside for future development, then in such event, that portion of land shall become a permanent part of the common element. The Association of Apartment Owners shall then bear the full cost of maintaining the area. Further details on the Developer's rights and reservations are contained in Exhibit B.



V. MISCELLANEOUS

A. Sales Documents Filed With the Real Estate Commission:

Sales documents on file with the Real Estate Commission include but are not limited to:

- Notice to Owner Occupants
- Specimen Sales Contract  
Exhibit G contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated August 27, 1990  
Exhibit H contains a summary of the pertinent provisions of the escrow agreement.
- Other \_\_\_\_\_

B. Buyer's Right to Cancel Sales Contract:

1. Rights Under the Condominium Property Act (Chapter 514A, HRS):

Preliminary Report: Sales made by the developer are not binding on the prospective buyer. Sales made by the developer may be binding on the developer unless the developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to \$250.00.

Supplementary Report to a Preliminary Report: Same as for Preliminary Report.

Final Report or Supplementary Report to a Final Report: Sales made by the developer are binding if:

- A) The Developer delivers to the buyer a copy of:
  - 1) Either the Final Public Report OR the Supplementary Public Report which has superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission;

AND

  - 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;
- B) The buyer is given an opportunity to read the report(s); AND
- C) One of the following has occurred:
  - 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
  - 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
  - 3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Material Change: Binding contracts with the Developer may be rescinded by the buyer if:

- A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; AND
- B) The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:

- A) Condominium Public Reports issued by the developer which have been given an effective date by the Hawaii Real Estate Commission.
- B) Declaration of Condominium Property Regime, as amended.
- C) Bylaws of the Association of Apartment Owners.
- D) House Rules.
- E) Condominium Map.
- F) Escrow Agreement.
- G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
- H) Other Waiver & Release documents: Document No. 91-02961 dated January 27, 1991 and Document No. 93-139767, dated August 24, 1993

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce and Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P. O. Box 541, Honolulu, HI 96809, at a nominal cost.

This Public Report is a part of Registration No. 2277 filed with the Real Estate Commission on July 30, 1990.

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**C. Additional Information Not Covered Above**

**COMMON EXPENSES:** Paragraph 11.0 of the Declaration provides that the Developer (or its mortgagee) shall be responsible for certain costs in the event that the Project is not completed and the Developer or its first mortgagee exercises its right to remove or subdivide that portion of the land that is not developed.

**POWER OF ATTORNEY:** Each Purchaser of an apartment by virtue of the project instruments, sales contract, and apartment deed specifically grants a power of attorney to the Developer and/or its mortgagee to construct and develop the Project in phases and in order to exercise any of the Developer's and/or mortgagee's right to withdraw, remove and subdivide the undeveloped land from the Project.

**INCREASE IN COMMON EXPENSES:** The right of the Developer to develop additional buildings is only effective for 10 years from the recording of the Declaration. In the event the Developer is unable to withdraw the undeveloped Increments or develop future Increments by the end of the 10-year period, each Purchaser will be responsible for his pro-rata share of the cost to maintain and upkeep the undeveloped phases. The additional cost would include but not be limited to insurance, real property taxes, electricity, yard care and landscaping, and water.

The Developer has not and will not provide any assurances as to whether any further increments and apartments will be constructed. This Project may only consist of Fourteen (14) apartments.

**DECLARATION OF COVENANTS:** This Project is subject to the covenants and restrictions set forth in a Declaration of Restrictions, Covenants and Conditions dated March 1, 1971. That instrument was made by Eagle County Development Corporation which was the developer that originally established the Princeville Community. A summary of the Restrictions is attached hereto as Exhibit "I".

D. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

**THE SHEARWATER**

---

Name of Developer

By:   
Duly Authorized Signatory

9/20/93  
Date

David E. Walters, General Partner

---

print name & title of person signing above

Distribution:

Department of Finance, Island and County of Kauai  
Planning Department, Island and County of Kauai  
Federal Housing Administration

EXHIBIT "A"

Description of Apartments and Phasing/Increments

I. DESCRIPTION OF APARTMENTS. There are only two types of apartment in the Project as follows:

A. Two-bedroom Apartment. There are 13 separately designated and described freehold estates in Increment I. The building contains three floors with five apartments on the first and second floors, and three apartments on the third floor. Each apartment consists of 2 bedrooms, 2 bathrooms, a kitchen, living room, dining room and two lanais. The total net living area of a 2-bedroom apartment is 1316 square feet and the lanais are 245 and 52 square feet.

All units include kitchen with Jenn-Aire ranges, dishwashers, refrigerators, a washer and dryer, microwave, disposal, and a hot water heater.

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

II. PROJECT. The Project consists of the following:

FIRST INCREMENT:

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

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

II. RESERVATION TO DEVELOP FUTURE INCREMENTS. The Developer has reserved the right to construct and develop additional buildings and apartments in this Project. The reservation allows the Developer to do the following:

A. Increment II. To construct one building situated on Increment II in which there would be a six (6) apartments.

B. Increment III. To construct one building situated on Increment III in which there would be a thirteen (13) apartments.

C. Other Improvements. The Developer also reserves the right to construct and place within Increments II and III driveways, parking, landscaping and recreation area.

EXHIBIT "B"

Reservation By Developer To Phase Project And To Withdraw Land

I. PHASED DEVELOPMENT. The Developer at its sole option may develop one or more phases of the Project and obtain financing and separately encumber each apartment and the limited common land area for the phase.

A) POWER OF ATTORNEY - COMPLETION OF PROJECT. There is reserved during the ten year period from the date of the recording of the first Declaration unto the Developer and its successors and assigns an irrevocable power of attorney, coupled with an interest, to act on behalf of the unit owners of Building 1 and the Clubhouse Building to sign any joinder or other agreements and amendments and to execute, acknowledge and deliver such further instruments as may from time to time be required under any rights granted to, accruing to, or reserved by the Developer and the owner of the units of Building 1 and the Clubhouse Building under the Declaration or by the provisions of Chapter 514A, Hawaii Revised Statutes, as amended, including the reallocation of percentage interests and voting rights appurtenant to each of the units of Building 1 and the Clubhouse Building, in the Project and to execute such amendments to the Declaration as may be required from time to time for the purpose of carrying out and exercising its rights under Paragraph 24.0 of the Declaration.

B) DEVELOPER'S EXCEPTIONS, EXCLUSIONS AND RESERVATIONS. During the ten (10) year period from the date of the recording of the first Declaration it reserves the right to construct and develop additional condominium units, buildings, drives, lanes, roads and all other improvements on the undeveloped increments and in connection therewith reserves the right to use and excavate the surface and subsurface of the ground for the erection, construction and installation of said improvements and foundations, footings, floorings and basements, easements and rights of way. Developer reserves the right to lease and rent such subsequently constructed condominium units and the right to sell, grant and convey title to purchasers of such subsequently constructed condominium units. Developer also reserves the right to locate, install, maintain, repair all utilities and utility lines and sewers necessary for such construction, reconstruction, maintenance and operation. Developer reserves the right to grant to the County of Kauai easements or rights of way for ingress and egress to permit furnishing of municipal services and the right to convey or relinquish control to proper municipal authorities of all sewer mains, water mains and pipelines together with suitable easements or rights of way over the common driveway and Building 1 for the

continued maintenance, repair, replacement and operation thereof and to enter into such agreements filings or plattings with the County of Kauai in the nature of a planned-unit development project, cluster development, or otherwise as the County may require or amendments or changes therein in connection with the construction of this Condominium Project.

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

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

IV. DEVELOPER'S EXPENSES: The Developer shall be responsible for the expenses relating to the maintenance of the land areas within the increments that remain undeveloped. The expenses to include gardening and upkeeping of the grounds, water, any electricity associated with the undeveloped increments, the costs of any insurance required to be maintained for the increments, including but not limited to the liability insurance, and real property taxes associated with and allocable to the undeveloped increments. The responsibility of the Developer shall terminate upon the earlier of the development of a particular increment or the exercise of

Developer's right to remove and delete the undeveloped land, more particularly described in Paragraph 5.4 of the Declaration.

If the Developer does not develop or withdraw Increments II and III of the Project, the Owners of the Apartments will be responsible for the cost of maintaining these areas. In this event, these areas will be common elements of the Project. This will probably result in an increase in maintenance fees.

EXHIBIT "C"

Common Elements

The common elements include:

- a. The land in fee simple.
- b. The foundations, floor slabs, columns, girders, beams, supports, bearing walls, roofs, entry landings, and stairways in the buildings not within any of the apartments.
- c. The yards, landscaping, trash areas, including the open parking stalls which are not yet appurtenant or assigned to an apartment, all of the landscaped yards and lawns.
- d. The central and appurtenant installations for utility services used or necessary to the existence, maintenance and safety of the Project.
- e. All licenses, leases, or contractual arrangements that the Association enters into for the purpose of providing parking, recreational amenities, including but not limited to swimming pools, tennis courts, meeting rooms, clubhouses, and management facilities for the use or benefit of the apartment owners, their tenants and/or guest.
- f. Any limited common elements that by the terms of the Declaration shall become common elements.
- g. Any improvements placed on the grounds pursuant to a reservation in favor of Developer such as landscaping and parking.

Limited Common Elements

The limited common elements include:

- a. Building 1. The land area delineated as Increment I on the Condominium Map is a limited common element for the Apartments contained in Building 1 and is for the exclusive use of the apartments contained in Building 1.
- b. Clubhouse and Management Office. The land area delineated as Increment IV on the Condominium Map is a limited common element for the apartment contained in the Clubhouse and Management Office and is for the exclusive use of the apartment contained in the Clubhouse and Management Office.

c. Redesignation of Limited Common Elements as Common Elements. Notwithstanding any term or provision contained in the Declaration, upon the recording of an "As Built" architect's or engineer's certificate for each building in Increments I and IV and the Project, the land area including any landscaping, parking lot, driveways, swimming pool and/or recreation areas contained in such Increment shall be deemed to be common elements of the Project.

d. Designation of Limited Common Elements and Common Elements for Future Increments. The Developer has reserved the right to designate the land area together with any improvements within the Increments and any unassigned stalls of the Project to be developed as a limited common element for the apartments and/or building situated within such Increment and to redesignate such limited common element (excluding the assigned parking stalls), if any as a common element.

e. Assigned Parking. Each 2-bedroom apartment in the Project shall have the non-exclusive use of at least 1 parking stall. The owners of the parking stalls may exchange them by way of an amendment to the Declaration provided that in no event may an apartment have the use of less than one parking stall. Parking stall assignment is as shown on the Condominium Map. Apartment 401 shall have appurtenant thereto parking stall nos. 62 and 63.

EXHIBIT "D"

Common Interest

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

| <u>Phase Completed</u> | <u>Apartment Type</u> | <u>No.</u> | <u>%</u> | <u>Total</u>   |
|------------------------|-----------------------|------------|----------|----------------|
| I, IV                  | 2 Bedroom             | 13         | 6.699    | 87.087%        |
|                        | Apt. 401              | 1          | 12.913   | <u>12.913%</u> |
|                        |                       |            |          | 100.000%       |

FUTURE DEVELOPMENT. In the event Developer exercises its right to construct additional buildings and apartments, the following would be the percentage interest of an apartment after the completion of such additional apartments:

| <u>Additional Phase Completed</u> | <u>Apartment Type</u> | <u>No.</u> | <u>%</u> | <u>Total</u>  |
|-----------------------------------|-----------------------|------------|----------|---------------|
| II                                | 2 Bedroom             | 19         | 4.778    | 90.782%       |
|                                   | Apt. 401              | 1          | 9.218    | <u>9.218%</u> |
|                                   |                       |            |          | 100.000%      |
| III                               | 2 Bedroom             | 32         | 2.947    | 94.304%       |
|                                   | Apt. 401              | 1          | 5.696    | <u>5.696%</u> |
|                                   |                       |            |          | 100.000%      |

The percentage undivided interest is calculated by dividing an apartment's net living area by the sum of all the net living areas of all the apartments that have been constructed with minor adjustments to bring the total percentage to 100%. A Phase shall be completed and an apartment shall be considered constructed upon the recording of an Amendment to the Declaration which incorporates an "As Built" architect's or engineer's certificate as to the building and apartment(s) in each respective Phase.

EXHIBIT "E"

Encumbrances

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 in the Bureau of Conveyances, State of Hawaii, in Book 7444, Page 93.  
  
Declaration annexing additional land to Princeville at Hanalei, dated September 19, 1972, recorded 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 in Book 10756, Page 267, in the Bureau of Conveyances.
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 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 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 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, recorded in Book 17863, Page 593, in the Bureau of Conveyances.
12. Waiver and Release by David E. Walters, the General Partner of The Shearwater, a Hawaii limited partnership, to the County of Kauai by and for the Department of Water and Board of Water Supply dated January 27, 1991, re: Water Services, recorded in said Bureau, as Document No. 91-029601.
13. Mortgage dated July 15, 1992, in favor of JAL Cultural Development Co., Ltd., a Japan corporation, recorded in said Bureau, as Document No. 92-131799.
14. A Financing Statement covering certain personal property, The Shearwater as Debtor, JAL Cultural Development Co., Ltd., as Secured Party, recorded in said Bureau, as Document No. 93-106911.
15. A Financing Statement covering certain personal property, The Shearwater, a Hawaii limited partnership, as Debtor, JAL Cultural Development Co., Ltd., a Japan corporation, as Secured Party, recorded in said Bureau, as Document No. 93-114661.
16. Waiver and Release by David E. Walters, the General Partner of The Shearwater, a Hawaii limited partnership, to the County of Kauai by and for the Department of Water and Board of Water Supply dated August 24, 1993, re: Water Services for Clubhouse, recorded in said Bureau, as Document No. 93-139767.

17. Matters as shown on Condominium File Plan No. 1914, filed in the Bureau of Conveyances.
18. Covenants, conditions, restrictions, reservations, agreements, obligations, provisions, easements and by-laws set forth in the Declaration of Condominium Property Regime, dated June 16, 1993, recorded in said Bureau, as Document No. 93-142493. Said Declaration was amended by instruments dated September 14, 1993 and October 14, 1993, recorded in said Bureau, as Document Nos. 93-157699 and 93-174317, respectively.
19. By-Laws of the Association of the Apartment Owners of the Shearwater, dated June 16, 1993, recorded in said Bureau, as Document No. 93-142494.
20. For real property taxes due and owing, your attention is directed to the Director of Finance, County of Kauai.

SW/PR-F

EXHIBIT " F "

ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

| <u>Apartment</u> |                 | <u>Monthly Fee x 12 months = Yearly Total</u> |
|------------------|-----------------|---|
| 101              | \$ 871.37       | \$10,456.44                                   |
| 102              | 871.37          | 10,456.44                                     |
| 103              | 871.37          | 10,456.44                                     |
| 104              | 871.37          | 10,456.44                                     |
| 105              | 871.37          | 10,456.44                                     |
| 201              | 871.37          | 10,456.44                                     |
| 202              | 871.37          | 10,456.44                                     |
| 203              | 871.37          | 10,456.44                                     |
| 204              | 871.37          | 10,456.44                                     |
| 205              | 871.37          | 10,456.44                                     |
| 301              | 871.37          | 10,456.44                                     |
| 302              | 871.37          | 10,456.44                                     |
| 303              | 871.37          | 10,456.44                                     |
| 304              | 871.37          | 10,456.44                                     |
| 401              | <u>1,679.66</u> | <u>20,155.92</u>                              |
|                  | \$13,007.50     | \$156,090.00                                  |

The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency.

Estimate of Maintenance Fee Disbursements:

|                               | <u>Annually</u> |                  | <u>Total Annually</u> |            |
|-------------------------------|-----------------|------------------|-----------------------|------------|
|                               | <u>13 Units</u> | <u>Clubhouse</u> |                       |            |
| Pools & Ponds Maintenance     | 1,326           | 197              | 1,523                 |            |
| Landscaping & Grounds         | 11,271          | 1,673            | 12,944                |            |
| Pest Control                  | 1,492           | 221              | 1,713                 |            |
| Refuse Collection             | 1,160           | 172              | 1,332                 |            |
| Utilities                     | 9,945           | 1,476            | 11,421                |            |
| Television Cable              | 3,646           | 542              | 4,188                 |            |
| Princeville Dues              | 1,658           | 246              | 1,904                 |            |
| Property Taxes                | 18,564          | 2,756            | 21,320                |            |
| Interior/Exterior Maintenance | 37,791          | 5,610            | 43,401                |            |
| Clubhouse Expense             | 1,326           | 197              | 1,523                 |            |
| Accounting                    | 3,315           | 492              | 3,807                 |            |
| Insurance                     | 10,608          | 1,574            | 12,182                |            |
| Management Fee                | 10,608          | 1,574            | 12,182                |            |
| Reserves                      | <u>23,205</u>   | <u>3,445</u>     | <u>26,650</u>         |            |
|                               | TOTAL           | \$ 135,915       | \$ 20,175             | \$ 156,090 |

I, Lynn P. McCrory, as agent and employed by Owner's Management Corporation, the condominium managing agent or the developer, for the condominium project, THE SHEARWATER, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

  
 \_\_\_\_\_  
 Date September 10, 1993

EXHIBIT "G"

Summary of Sales Contract

The Sales Contract contains the price and other terms and conditions under which a purchaser will agree to buy an apartment in the Project. Among other things, the Sales Contract says:

(a) A buyer must obtain his own financing. Buyer acknowledges that this Sales Contract is contingent on any financing after the issuance of the final public report.

(b) That a purchaser's money will be held in escrow, under the terms of the Escrow Agreement.

(c) That interest on deposits shall belong to the buyer so long as said funds are held in escrow.

(d) That the unit will be subject to various other legal documents which the buyer certifies that he has examined.

(e) That the buyer must close the purchase at a certain date and pay closing costs, in addition to the purchase price.

The Sales Contract contains various other provisions with which the purchaser should become acquainted.

In addition to the foregoing, the Sales Contract describes all of the Developers reservations and rights with respect to the future development of additional units and apartments in the Project. The provisions are described in Paragraphs 10, 28 and 29 of the Sales Contract and Exhibit "B" of this Final Public Report.

EXHIBIT "H"

Summary of Escrow Agreement

The Escrow Agreement sets up an arrangement under which the deposits which a purchaser makes under a Sales Contract will be held by a neutral party ("Escrow"). Under the Escrow Agreement these things will or may happen:

- (a) Escrow will let purchasers know when payments are due.
- (b) Escrow will arrange for purchasers to sign all necessary documents.
- (c) The Escrow Agreement says under what conditions a refund will be made to a purchaser.
- (d) The Escrow Agreement says what will happen to a purchaser's funds upon a default under the Sales Contract.

The Escrow Agreement contains various other provisions and establishes certain charges with which the purchaser should become acquainted.

EXHIBIT "I"

Summary of Declaration of Restrictions,  
Covenants and Conditions

The Project is subject to a Declaration of Restrictions, Covenants and Conditions dated March 1, 1971 ("Declaration of Restrictions"), which was made by Eagle County Development Corporation ("Eagle"). This Declaration of Restrictions was recorded in the Bureau of Conveyances, State of Hawaii, in Book 7444, Page 93.

The following is a summary of the various provisions contained in the Declaration of Restrictions however a purchaser should understand that this summary is not intended to act as a substitute for the purchaser reading and understanding the Declaration of Restrictions. The Developer or the broker of the Project will make a copy available to a purchaser upon request. The information contained in the parentheses following each section describes the section where each particular provision is contained in the Declaration of Restrictions.

1. Property. The Declaration of Restrictions covers the properties located in Princeville, Kauai which includes the Project. (Exhibit "A").

2. Additional Property. Eagle has the right to annex additional property to the Declaration of Restrictions. (Article II, Section 2).

3. Classification of Lots. There are various design restrictions and requirements. There are three possible types of developments in the Princeville community: single family residential; multiple unit developments; and hotel developments. There are also various restrictions relating to construction of fences, minimum dwelling cost, location of structures, architectural standards and restrictions, landscaping, refuse disposal, temporary structures, signage, and animals. There are penalties if the covenants are not complied with (see paragraph o, page 12 of Declaration of Restrictions). The compliance with the requirements is determined by a Community Design Committee. (Article III).

NOTE: The Developer of The Shearwater had to meet all of the design requirements as part of the development process.

4. Community Design Committee. The committee is made up of five members. A simple majority vote of the committee is determinative for its decisions. The committee acts on all

applications and other proposals or plans submitted for its approval. The committee may adopt rules from time to time in order to implement the provisions of the Declaration of Restrictions. (Article IV).

5. Princeville at Hanalei Community Association. There is a community association which is organized as a Hawaii non-profit corporation. Every owner in the Princeville community is a member of the Association. The Association has the general responsibility to maintain and repair property of the Association, make assessments, and has all of the general powers of a corporation. (Article V).

6. Assessments. Each owner must pay his proportionate share of maintenance assessments and special assessments for capital improvements. There is a formula in the Declaration of Restrictions as to how such assessments will be determined based on three categories of land areas (single family, multiple, and hotel). The Board of the Association also has the right to levy an assessment on an owner who fails or refuses to comply with the Declaration of Restrictions and any rules promulgated thereunder. (Article VI).

NOTE: The current assessments for this Project are described as "Princeville Dues" in the Estimate of Maintenance Fee Disbursements contained in Exhibit "F" of this Final Public Report.

7. Sewer and Water Assessments. All of the lots in the community shall be subject to water and sewer assessments of the Kauai County Public Improvement Corporation. Each lot is also subject to a tap fee for waterline and sewer connections to the lot and to monthly fees for the use of water and sewer systems. (Article VII).

8. Miscellaneous Provisions.

a) The Declaration of Restrictions may be amended by the owners of 3/4ths of the total votes of each class of owners.

b) The Declaration of Restrictions shall be effective until February 28, 2026, at which time the same will be automatically extended for successive periods of five years.

c) The Association shall accept all land conveyed to it as Common Area by Eagle, its successors and assigns.