

CONDOMINIUM PUBLIC REPORT

Prepared &

Issued by: Developer EMILY H. SOUZA AND VIRGINIA A. RAPOZO

Address c/o Patrick J. Childs, 4365 Kukui Grove Street, Suite #104 Lihue, HI. 96766

Project Name(\*): AYRES CONDOMINIUM

Address: LOT 2-B, Kula Tract, Koloa, Island of Kauai, State of Hawaii

Registration No. 4140 (conversion)

Effective date: June 9, 1999 Expiration date: July 9, 2000

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.
FINAL (white) The developer has legally created a condominium and has filed complete information with the Commission. [X] No prior reports have been issued. [ ] 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

**Disclosure Abstract:** Separate Disclosure Abstract on this condominium project:

- Required and attached to this report                       Not Required - Disclosures covered in this report.

**Summary of Changes from Earlier Public Reports:**

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

No prior reports have been issued by the developer.

Changes made are as follows:

**SPECIAL ATTENTION**

This is a CONDOMINIUM PROJECT, not a subdivision. There are County restrictions on the number of residential dwelling units, or other structures, which may be built on the property. Therefore, unless the Purchaser is buying an existing residential dwelling, THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A RESIDENTIAL DWELLING UNIT ON THE PROPERTY. THERE IS ALSO NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO CONVERT AN EXISTING NON-RESIDENTIAL STRUCTURE TO A RESIDENTIAL USE. The Purchaser should consult with the appropriate County agencies to determine whether the Purchaser may build a residential dwelling unit, or any other type of structure on the property.

1. There are presently TWO RESIDENTIAL STRUCTURES ON THIS PROPERTY, each of which may be defined as an "apartment", under the condominium property act.
2. This public report does not constitute an approval of the project by the Real Estate Commission or any other government agency, nor does it warrant that all applicable County codes, ordinances, and subdivision requirements have necessarily been complied with.
3. The land area beneath and immediately appurtenant to each unit is designated a LIMITED COMMON ELEMENT and is not a legally subdivided lot. The dotted lines on the Condominium Map bounding the designated number of square feet in each limited common element land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.

SPECIAL ATTENTION (CONCLUDED):

4. Facilities and improvements normally associated with County-approved subdivision, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owners and emergency traffic, drainage facilities, etc. may not be provided, and services such as County street maintenance and trash collection may not be available for interior roads and driveways.
5. Apartment A may not be rebuilt, reconstructed or improved upon in such a manner that the present building foot print is exceeded.
6. Apartment B may not be rebuilt, reconstructed or improved upon in such a manner that the present building footprint is exceeded.

THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENT REFERENCED IN THIS PUBLIC FOR FURTHER INFORMATION WITH REGARD TO THE FOREGOING.

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EXHIBIT A: COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

EXHIBIT B: ENCUMBRANCES AGAINST TITLE

EXHIBIT C: ESTIMATE OF INITIAL MAINTENANCE FEES AND DISBURSEMENTS

EXHIBIT D: SUMMARY OF SALES CONTRACT

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EXHIBIT F: CERTIFICATIONS OF INSPECTIONS OF EXISTING BUILDINGS

EXHIBIT G: CO-OWNERSHIP AGREEMENT

EXHIBIT H: VIRGINIA A. RAPOZA LIVING TRUST AGREEMENT AND DECLARATION

EXHIBIT I: DEED DATED NOVEMBER 18, 1993

EXHIBIT J: ARCHITECT'S CONDITION REPORT

## **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:	<u>EMILY J. SOUZA</u>	<u>VIRGINIA A. RAPOZO</u>
	Name	Name
	<u>P.O. Box 6307</u>	<u>P.O. Box 405</u>
	<u>Business Address</u> <u>Ocean View, Hawaii 96737-6307</u>	<u>Business Address</u> <u>Kalaheo, Hawaii 96741</u>
	<u>Business Phone:</u>	<u>Business Phone:</u>

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

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Real Estate Broker:	<u>SLEEPING GIANT REALTY, INC.</u>	Phone: <u>(808) 245-8831</u>
	Name	(Business)
	<u>4480 Ahukini Road</u>	
	<u>Business Address</u> <u>Lihue, Hawaii 96766</u>	

Escrow:	<u>SECURITY TITLE CORPORATION</u>	Phone: <u>(808) 245-6975</u>
	Name	(Business)
	<u>4370 Kukui Grove Street, Suite 203</u>	
	<u>Business Address</u> <u>Lihue, Hawaii 96766</u>	

General Contractor:	<u>N/A</u>	Phone: _____
	Name	(Business)
	<u>Business Address</u>	

Condominium Managing Agent:	<u>SELF-MANAGED BY ASSOCIATION</u>	Phone: _____
	Name	(Business)
	<u>OF APARTMENT OWNERS</u>	
	<u>Business Address</u>	

Attorney for Developer:	<u>PATRICK J. CHILDS</u>	Phone: <u>(808) 245-2863</u>
	Name	(Business)
	<u>4354 Kukui Grove Street, Suite 104</u>	
	<u>Business Address</u> <u>Lihue, Hawaii 96766</u>	

**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. 99-021036  
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]:

- 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. 2855  
 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. 99-021037  
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 Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%*	100%
Bylaws	65%	65%
House Rules	---	N/A

\* 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 may amend the Declaration (and, when applicable, any exhibits to the Declaration and the Condominium Map) (a) as may be provided in the Declaration and (b) to file the "as built" statement required by Section 514A-12 of the Act (i) so long as such verified statement is a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment numbers and the dimensions of the apartments as built, or (ii) so long as the plans filed therewith involve only minor changes to the layout, location or dimensions of the apartments, as built, or any change in any apartment number.

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 Sub-leasehold: 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 Sub-leaseholds:

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 Sub-leasehold:

**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: LOT 2-B, KULA TRACT, KOLOA, Tax Map Key (TMK): (4)2-6-006:05  
ISLAND AND COUNTY OF KAUAI, STATE OF HAWAII  
 Address  TMK is expected to change because \_\_\_\_\_

Land Area: 7464  square feet  acre(s) Zoning: R-4

Fee Owner: EMILY H. SOUZA, as Trustee VIRGINIA A. RAPOZO, as Trustee  
Name  
P.O. Box 6307 P.O. Box 405  
Address  
Ocean View, Hawaii 96737-6307 Kalaheo, Hawaii 96741

Lessor: N/A  
Name  
Address

C. Buildings and Other Improvements:

1.  New Building(s)  Conversion of Existing Building(s)  Both New Building(s) and Conversion

2. Number of Buildings: 2 Floors Per Building 1

Exhibit \_\_\_\_\_ contains further explanations.

3. Principal Construction Material:

Concrete  Hollow Tile  Wood

Other \_\_\_\_\_

4. Uses Permitted by Zoning:

	No. of Apts.	Use Permitted By Zoning		No. of Apts.	Use Permitted By Zoning
<input checked="" type="checkbox"/> Residential	<u>2</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Ohana	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Commercial	___	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Industrial	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	___	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Agricultural	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Hotel	___	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Recreational	___	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Timeshare	___	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Other: _____	___	<input type="checkbox"/> Yes <input type="checkbox"/> No

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?

Yes  No

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:

- NETTHER OWNER SHALL KEEP OR MAINTAIN DOG KENNELS OR BREED DOGS, CHICKENS  
 Pets: OR OTHER LIVE STOCK WITHIN THEIR LIMITED COMMON ELEMENTS. NO MORE THAN 2 DOGS WITHOUT THE WRITTEN CONSENT OF THE OTHER OWNERS.  
 Number of Occupants: NO MORE THAN ONE FAMILY SHALL OCCUPY A UNIT AND NO MORE THAN ONE RESIDENTIAL UNIT ALLOWED IN ANY LIMITED COMMON ELEMENT.  
 Other: ALL OWNERS TO EXERCISE EXTREME CARE TO AVOID MAKING DISTURBING NOISES.  
 There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0      Stairways: 0      Trash Chutes: 0

Apt. Type	Quantity	BR/Bath	Net Living Area (sf)*	Net Other Area (sf)	(Identify)
<u>1</u>	<u>1</u>	<u>2/1</u>	<u>918</u>	<u>254</u>	<u>Lanai, Heater Room</u>
<u>2</u>	<u>1</u>	<u>2/1</u>	<u>918</u>	<u>254</u>	<u>Lanai, Heater Room</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total Number of Apartments: 2

**\*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:

PERIMETER WALL TO PERIMETER WALL, FLOOR TO EXTERIOR OF ROOF.

Permitted Alterations to Apartments:

ANY ALTERATIONS PERMITTED BY LAW.

7. Parking Stalls: EACH APARTMENT HAS MORE THAN SUFFICIENT AREA APPURTENANT THERETO TO ACCOMODATE PARKING.

Total Parking Stalls: 3

	<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 (for each unit)		Apt 1=1					<u>3</u>
		Apt 2=2					
Guest							
Unassigned							
Extra for Purchase							
Other:							
Total Covered & Open:	<u>3</u>		<u>0</u>		<u>0</u>		<u>3</u>

Each apartment will have the exclusive use of at least 1 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/Enclosure(s)

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 \_\_\_\_\_ (Date)

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):

Apartments 1 and 2 were completed in March of 1994 and the components of the structures, including visible structural, electrical and plumbing appear to be in satisfactory and sound condition for the stated age thereof. The structure and related systems and components have an expected useful life in excess of 45 years.

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	<u>  X  </u>	<u>      </u>	<u>      </u>
Structures	<u>  X  </u>	<u>      </u>	<u>      </u>
Lot	<u>  X  </u>	<u>      </u>	<u>      </u>

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   A  .

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 A.

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 \_\_\_\_\_.

as follows:

APARTMENT 1 COMMON INTEREST : 50%  
APARTMENT 2 COMMON INTEREST : 50%

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 B describes the encumbrances against the title contained in the title report dated Feb. 12, 1999 and issued by Old Republic National Title Insurance Company.

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.

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

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:  
NONE.

2. Appliances:  
NONE.

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

Apartments 1 and 2 were both completed in March 1994.

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):

IV. CONDOMINIUM MANAGEMENT

A. **Management of the Common Elements:** The Association of Apartment Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.

**Initial Condominium Managing Agent:** When the developer or the developer's affiliate is the initial condominium managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial condominium managing agent for this project, named on page five (5) of this report, is:

- not affiliated with the Developer  the Developer or the Developer's affiliate.
- self-managed by the Association of Apartment Owners  Other: \_\_\_\_\_

B. **Estimate of Initial Maintenance Fees:**

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your apartment and the apartment may be sold through a foreclosure proceeding.

Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.

Exhibit C contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

C. **Utility Charges for Apartments:**

Each apartment will be billed separately for utilities except for the following checked utilities which are included in the maintenance fees:

- None  Electricity ( \_\_\_\_\_ Common Elements only \_\_\_\_\_ Common Elements & Apartments)
- Gas ( \_\_\_\_\_ Common Elements only \_\_\_\_\_ Common Elements & Apartments)
- Water  Sewer  Television Cable
- Other \_\_\_\_\_

## 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 D contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated November 20, 1998  
Exhibit E 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 issued 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, as amended.
- D) House Rules, if any.
- E) Condominium Map, as amended.
- 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 \_\_\_\_\_

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. 4140 filed with the Real Estate Commission on March 11, 1999

Reproduction of Report. When reproduced, this report must be on:

- YELLOW paper stock       WHITE paper stock       PINK paper stock

C: Additional Information Not Covered Above

1. This project is subject to the terms and provisions of that certain TMK: (4) 2-6-6-5 Co-Ownership Agreement dated August 11, 1989, made and by and between Virginia Rapozo, wife of Frank Rapozo and Emily H. Souza, wife of Frank Souza, recorded in the Bureau of Conveyances of the State of Hawaii in Book 23525 Page 72. See attached Exhibit G for a copy of this agreement.
2. This project is subject to the terms and provisions of that certain Virginia A. Rapozo Living Trust Agreement and Declaration dated September 15, 1989. See attached Exhibit H for a copy of this agreement.
3. This project is subject to the terms and provisions of that certain Declaration of Trust dated April 26, 1993, for the benefit of Emily H. Souza. See attached Exhibit I for a copy of this agreement.
4. Maintenance fees. All costs of every kind pertaining to each apartment and its respective limited common element, including but not limited to, cost of landscaping, maintenance, repair, replacement and improvement shall be borne entirely by the respective owner. Section 514A-86, Hawaii Revised Statutes, requires the Association of Apartment Owners purchase fire insurance to cover the improvements of the Project, and that premiums be common expenses. Developer anticipates that the Association will elect to permit individual apartment owners to obtain and maintain separate policies of fire insurance and name the Association as an additional insured. In such case, fire insurance premiums will be the responsibility of individual apartment owners and not common expenses. Developer estimates such annual premium expense to be about \$600.00 per year for Unit 1 and \$600.00 per year for Unit 2. This estimate was prepared in accordance with generally accepted accounting principles.

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.

EMILY H. SOUZA  
Printed Name of Developer

VIRGINIA A. RAPOZO  
Printed Name of Developer

By: *Emily H. Souza*  
Duly Authorized Signatory

By: *Virginia A. Rapozo*  
Duly Authorized Signatory

EMILY H. SOUZA, DEVELOPER  
Printed Name & Title of Signatory

VIRGINIA A. RAPOZA, DEVELOPER  
Printed Name & Title of Signatory

Distribution:

Department of Finance, COUNTY OF KAUAI  
Planning Department, COUNTY OF KAUAI

EXHIBIT "A"

1. Common Elements. The common elements of the Project consist only of the following:

- (i) all of the Land, in fee simple;
- (ii) the limited common elements hereinafter described, subject to the provisions set forth in Paragraph 6.
- (iii) all pipes, wires, conduits, or other utility or service lines, drainage ditches or appurtenant drainage structures retaining walls (if any) and yard fences, which are located outside the buildings and which are utilized for or serve more than one apartment.

2. Limited Common Elements. The limited common elements of the Project consist only of the following:

- (i) That portion of the Land which is designated as Limited Common Element 1, being 3,481 square feet in area, on the Condominium Map, is reserved for the exclusive use of Apartment 1 for the support of the building and other improvements comprising Apartment 1, or attendant thereto, and for parking, yard, driveway, agricultural and residential purposes.
- (ii) That portion of the Land which is designated as Limited Common Element 2, being 3,983 square feet in area, on the Condominium Map, is reserved for the exclusive use of Apartment 2 for the support of the building and other improvements comprising Apartment 2, or attendant thereto, and for parking, yard, driveway, agricultural and residential purposes.

3. The common interest in this project is arbitrarily derived.

\*\*\*\*\*  
NOTICE: This is not a subdivision. The Limited Common Elements that are reserved for the exclusive use of individual units are not subdivided parcels. As such they do not fall within the ordinances of the County of Kauai as the same pertain to subdivision nor do they derive any benefits therefrom.  
\*\*\*\*\*

EXHIBIT "B"

ENCUMBRANCES AGAINST TITLE

1. TAXES                    Tax Map Key: KAUAI (4) 2-6-006-005  
  
For Real Property Taxes that may be owing, reference is made to the Director of Finance, County of Kauai.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. The terms and provisions of that certain TMK 2-6-6-5 Co-Ownership Agreement dated August 11, 1989, made by and between Virginia Rapozo, wife of Frank Rapozo and Emily H. Souza, wife of Frank Souza, recorded in the Bureau of Conveyances of the State of Hawaii in Book 23525 Page 72, to which reference is hereby made.
4. The terms and conditions of that certain Virginia A. Rapozo Living Trust Agreement and Declaration dated September 15, 1989, to which reference is hereby made.
5. The terms and provisions of that certain Declaration of Trust dated April 26, 1993, for the benefit of Emily Souza, to which reference is hereby made.
6. The covenants, agreements, obligations, conditions, easements and other provisions as contained in the following:  
  
DECLARATION OF CONDOMINIUM PROPERTY REGIME OF "AYRES CONDOMINIUM":  
  
Dated:                    November 20, 1998  
Document No.            99-021036  
  
Condominium Map No. 2855, as amended, to which reference is hereby made.
7. BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF "AYRES CONDOMINIUM"  
  
Dated:                    November 20, 1998  
Document No.            99-021037

EXHIBIT C

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 =</u>	<u>Yearly Total</u>
A	\$50.00	\$600.00
B	\$50.00	\$600.00

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:**

Monthly x 12 months = Yearly Total

**Utilities and Services**

- Air Conditioning
- Electricity
  - common elements only
  - common elements and apartments
- Elevator
- Gas
  - common elements only
  - common elements and apartments
- Refuse Collection
- Telephone
- Water and Sewer

**Maintenance, Repairs and Supplies**

- Building
- Grounds

**Management**

- Management Fee
- Payroll and Payroll Taxes
- Office Expenses

Insurance	\$100.00	\$1,200.00
Reserves(*)		
Taxes and Government Assessments		
Audit Fees		
Other		
<b>TOTAL</b>	<b>\$100.00</b>	<b>\$1,200.00</b>

I, EMILY H. SOUZA and VIRGINIA A. RAPOZO, trustees of their respective trusts, the  
 developer for the AYRES condominium project, hereby  
 certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance  
 with generally accepted accounting principles.

Virginia A Rapozo Nov 20 1998  
 Signature Date

Emily H. Souza Nov. 20, 1998  
 Signature Date

(\*) Mandatory reserves assessment and collection in effect beginning 1994 budget year. The Developer is to attach to this exhibit an explanation whether, in arriving at the figure for "Reserves", the Developer has conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

Pursuant to §514A-83.6, HRS, a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting.

Developer discloses no reserve study was done in accordance with Chapter 514A-83.6, HR and replacement reserves rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules.

EXHIBIT "D"

SUMMARY OF SALES CONTRACT:

The Seller intends to use the Hawaii Association of Realtors' form of Deposit Receipt, Offer and Acceptance ("DROA") as the sales contract for the sale of apartments in the Project. The sales contract contains the purchase price, description and location of the apartment and other terms and conditions under which a Buyer will agree to buy an apartment.

Among other things, the sales contract and addendum:

1. Provides a section for financing to be completed and agreed to by the parties which will set forth how Buyer will pay the purchase price.

2. Identifies the escrow agent and states that Buyer's deposit will be held in escrow until the sales contract is closed or cancelled.

3. Requires that Buyer must close the purchase at a certain date and pay closing costs, in addition to the purchase price.

4. Provides the following remedies, in the event of default under the sales contract:

by Buyer:

- a. Seller may bring an action against Buyer for breach of contract;
- b. Seller may retain Buyer's initial deposit;
- c. Buyer shall be responsible for expenses incurred.

By Seller:

- a. Buyer may bring an action against Seller for breach of contract;
- b. Buyer may bring an action compelling Seller to perform under contract;
- c. Seller shall be responsible for expenses incurred.

Any awards to the prevailing party in any action are subordinate to escrow's expenses.

5. Allocation of payment of closing costs.

## EXHIBIT "E"

### SUMMARY OF ESCROW AGREEMENT:

An escrow Agreement allows the Condominium Buyers' money to be held by a neutral party, the Escrow Agent, until the Seller can deliver good and marketable title to the Condominium. The Escrow Agreement for this project provides for, among other things:

1. That SECURITY TITLE CORPORATION is the Escrow Agent.
2. That, upon execution of a Sales Contract, the Developer shall deliver all money received over to the Escrow Agent.
3. That there shall be no disbursement of the purchaser's deposit until: [a] Escrow receives a copy of "Receipt for Public Report(s) and Notice of Right to Cancel", in the form specified by Section 514A-62 of the Condominium Act for the Final and any Supplementary Public Reports, executed by the purchaser; [b] Escrow has received a certification that the requirements of Section 514A-39 and 514A-63 have been met and [c] until the purchaser's apartment deed is filed in the Bureau of Conveyances of the State of Hawaii.
4. That the Buyer shall receive all public documents relating to the project.
5. That a Buyer's money shall be returned to him under the following conditions: [a] Escrow receives a written request from the Developer and purchaser for the return of purchaser's funds or [b] Developer and purchaser notify Escrow of a rescission or [c] Developer and purchaser notify Escrow that the conditions for a refund under Sections 514A-62 and 514A-63 of the Condominium Act have been met.
6. That, upon the Seller providing good title to the Condominium, the Buyer's money shall be turned over to the Seller.
7. That the Escrow Agent will record with the State of Hawaii all documents requiring such.
8. That, if the Buyer is unable to perform and has money on deposit in escrow, these monies will be turned over to the Seller.

EXHIBIT "F"

COPY

COUNTY OF KAUAI  
PLANNING DEPARTMENT  
4444 Rice Street, Suite 473, Bldg. A,  
Lihue, Hawaii 96766

M E M O R A N D U M

DATE: February 4, 1999

TO: Senior Condominium Specialist  
Real Estate Commission  
P&VLD/DCCA  
250 South King Street, Suite 702  
Honolulu, Hawaii 96813

FROM: Dee M. Crowell, Planning Director

Subject: Certification of Inspection of Existing Buildings for

PROJECT NAME: AYRES CONDOMINIUM  
TAX MAP KEY: (4) 2-6-06:5

The developer of the above-mentioned condominium project has requested that this office, as an agency of the County of Kauai, review the project for compliance with all ordinances, codes, rules, regulations and other requirements of the County of Kauai (Section 514A-40 (b)(1), HRS). Subject to the disclosures and waiver (item "e" below) specified herein, we certify the following:

- a. The developer has contracted architect Avery H. Youn to certify that the existing buildings on the proposed project referred to as Ayres Condominium, Unit 1 and Unit 2 are in compliance with all ordinances, codes, rules, regulations and other requirements in force at the time of its construction, and to that extent, and subject to the conditions of waiver herein, the Planning Department adopts that certification as it pertains to the rules and regulations administered solely by this department.
- b. There were no variances approved for the subject property.
- c. The parcel does not contain any outstanding legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes.
- d. There are no notices of violation of County Building or zoning codes outstanding according to our records.

Senior Condominium Specialist  
Page 2  
February 4, 1999

- e. WAIVER  
The foregoing certification is not a warranty as to any compliance with all applicable County and State rules and regulations. The sole reason for the execution hereof is to comply with statutory requirements relating to the regulation of condominiums under Subsection 514A-40 (b) (1), Hawaii revised Statutes.

If you have any questions, please contact Alvin Fukushima of my staff at 241-6697

cc: Patrick J. Childs

122597

RECORDATION REQUESTED BY:

AFTER RECORDATION, RETURN TO:

VIRGINIA A. RAPOZO  
P.O. BOX 405  
KALAHEO, KAUAI, HAWAII 96741

AUG 14 AM 11:00

23525

RETURN BY: MAIL (X) PICKUP ( )

TMK: 2-6-6-5

TMK 2-6-6-5 CO-OWNERSHIP AGREEMENT

AGREEMENT made this 11<sup>th</sup> day of August, 1989, between VIRGINIA RAPOZO, wife of Frank Rapozo, whose residence address is Kalaheo, Kauai, Hawaii, and mailing address is P. O. Box 405, Kalaheo, Hawaii 96741, and EMILY H. SOUZA, wife of Frank Souza, whose residence and mailing address is 94-563 Laenui Street, Waipahu, Hawaii 96741;

W I T N E S S E T H :

WHEREAS, the parties hereto are the legal owners of that certain real property located at Koloa, Kona, Kauai, Hawaii, being Lot 2-B, designated as Tax Map Key 2-6-6-5 and containing an area of 7,464 square feet, more or less, hereinafter called the "Property" and more particularly described in Exhibit "A", attached hereto and made a part hereof;

WHEREAS, the parties hereto desire to document their understandings and agreements regarding the rights and liabilities of the respective parties towards the use and development of the property;

NOW, THEREFORE, for and in consideration of the terms, covenants and conditions hereinafter contained and on the part of the parties to be observed and performed, the parties hereto mutually agree as follows:

1. Co-Ownership: Division of Profits and Expenses. The parties shall share equally in the expenses and earnings and avails of the Property.

2. No Partnership Intended or Created. Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture between the parties.

3. Maintenance of Books of Account. Full and accurate books of account, showing all income, expenses, advances, withdrawals, assets and liabilities, shall be maintained by such accountant or accountants as may be designated by the parties and the costs of such accountant or accountants shall be a proper charge on the income of the Property.

4. Expenses and Contributions.

a. The Property is being held solely for investment purposes. The parties consider it to be located in a fast growing area and to have definite possibilities for an increase in value. No party shall have any authority to obligate the other for any expense or liability in connection therewith, or to contract or deal with the Property on behalf of the other in any manner. Each party shall be liable only for his share of the special assessments, public liability insurance and other expenses of improved property.

b. Failure by a party to contribute his share of the money necessary to accomplish any of the purposes for which the Property is held or to pay any expenses or liability in connection therewith shall, at the option of the other party, create a debt from the delinquent party to the other party in the amount of his liability, plus interest at 12% per annum thereon until paid, collectible either by suit or by charging it against any income or, proceeds of sale then or thereafter due to the delinquent party.

5. Default

If a party shall fail or refuse to pay any funds required to be paid pursuant to this Agreement, including mortgage or agreement of sale obligations, within thirty (30) days after the same may be requested or in no event however, later than its due date, such party shall be deemed to be in default and in such event the other party may elect any combination of the following:

a. To advance such sum or any part thereof, in which case the party advancing the same shall be reimbursed for sums advanced, together with interest at the rate of one percent (1%) per month thereon, or at the maximum rate allowed by law, whichever is greater, commencing on the day following the

advancement made, and the defaulting party shall not be relieved of his obligations hereunder.

b. To bring an action against the defaulting party for payment of the amount required to be paid by such party, in which case the defaulting party shall pay for reasonable attorney's fees and court costs incurred by the other party in bringing such action and interest at the rate of one percent (1%) per month, or at the maximum rate allowed by law, whichever is greater, on the unpaid amount from the date of default to the date the amount is actually paid by the defaulting party.

c. To place a lien upon the defaulting party's interest in the Property in the amount of the defaulted payment plus interest at the rate of one percent (1%) per month thereon, or at the maximum rate allowed by law, whichever is greater, and reasonable attorney's fees and recording costs. Such lien shall become effective by recording of a notice of default in the Bureau of Conveyances, State of Hawaii, and may be foreclosed in the same manner as if the defaulting party were a defaulting mortgagor and cause the interest of the defaulting party in the Property, including the owner's rights to his parcel and all improvements thereon, to be disposed of pursuant to the provisions of Hawaii Revised Statutes Chapter 667 relating to mortgage foreclosures. Without limiting the provisions of said Chapter 667, the procedure to be followed in such event shall include the following:

i. The non-defaulting party may proceed either by a civil action or by private advertisement and sale at public auction.

ii. The upset price at the sale of the defaulting party's interest shall be equal to the amount of the default projected to the date of the sale plus all reasonable costs of the sale, attorney's fees, court costs or other expenses reasonably incurred as a result of the default.

iii. The non-defaulting party shall, upon default, have the immediate right to receive and collect all rents, income and profits attributable to the defaulting party's interest in the Property and to apply same against the default. The non-defaulting party shall not be liable for any loss which may arise for uncollectible rents so long as they act with ordinary prudence.

iv. If the non-defaulting party elects to proceed by private advertisement and sale, such sale shall be held in Lihue, Hawaii, and the defaulting party hereby appoints the non-defaulting party as his attorney-in-fact to receipt for moneys and to assign, transfer and convey the interest sold to the purchaser absolutely and forever. Sale in any manner shall forever bar the defaulting party and all persons claiming under the defaulting party from all right and interest in the Property, notwithstanding any provision of law to the contrary.

v. Proceeds of the sale shall go to pay first the costs and expenses thereof, including attorney's fees, then the amount of the default as of the date of sale; any excess after deduction for such costs, expenses and amounts shall be paid to the defaulting party. If the sale proceeds are insufficient to pay the costs, expenses and default amounts, the non-defaulting party shall be entitled to pursue any legal remedy for the deficiency.

vi. The non-defaulting party may be a purchaser at the sale of the defaulting owner's interest.

vii. In the event no bids are received at the sale, the non-defaulting party may cure the default and take over the defaulting party's interest in the lot without further compensation to the defaulting owner.

d. Each separate default by a party shall entitle the other party to pursue the remedies detailed in this paragraph 5 for said default, and any delay in pursuing the remedies stated herein shall not be deemed a waiver of the right to do so.

6. Encumbrances Prohibited. No party shall commit any act nor fail to take any action whereby the subject property or any portion thereof or interest therein shall become liable to seizure, foreclosure, or attachment, in bankruptcy or otherwise. No party shall, without the prior consent of all the other party, undertake any actions or fail to take any actions wherein the subject property or any portion thereof becomes subject to any lien or encumbrance, including materialmen's and/or mechanic's liens for improvements placed by a party.

7. Right to Transfer Beneficial Interest Within Family. Each party shall have the right to sell, give, or bequeath all or any part of her interest to any other party hereto without restrictions of any kind. Each party shall have the right to

sell, give, or bequeath all or any part of her interest to her spouse or children, or trusts for their benefit provided such assignee shall become a party to this Agreement. The rights accorded each party under this paragraph may also be exercised by any executor, administrator, spouse or child who may have succeeded to her interest. A party may assign her interest to a corporation either wholly-owned by her or the majority of whose stock she owns notwithstanding any other provision of this Agreement, provided such corporation shall become a party to this Agreement.

8. Right to Sell Beneficial Interest to Outsider.

a. If any party desires to sell all or part of her interest in a transaction not covered by section 7, or in the event of the bankruptcy of a party, the other party shall have the first right to purchase such interest at a price determined pursuant to paragraph 11 hereof.

b. If the selling party has received a bona-fide offer from a third party for all or part of her interest, which offer she desires to accept, she shall in writing notify the other party of the terms and conditions of the offer, the other party to have the right, if she elects, to purchase on the same terms and conditions as so offered. An offer to sell shall be made in writing and acceptance thereof shall be made in writing. If the other party agrees to exercise the right of purchase, notice thereof shall be given to the selling party within sixty (60) days from the date of receipt of the written offer. Payment shall be made upon tender of proper instruments of transfer at the end of the determined sixty (60) day period. All interest or part thereof offered for sale and not purchased by the other party may be sold to such proposed purchaser after the expiration of the sixty-day period of acceptance. PROVIDED, HOWEVER, That anything to the contrary notwithstanding, any such third-party outsider shall become a party to this Agreement.

c. If a party notifies the other party that she desires to sell all or part of her interest and if the offeree does not exercise the right to purchase, and if thereafter the party giving notice or offer to sell does not complete the sale of such interest within 120 days from the date of her written offer to the other party, the right of that party to sell her interest pursuant to that notice shall terminate and the provisions for

notice and first right to purchase provided in paragraphs 8a and 8b shall thereafter apply.

9. Rights on Death. On the death or judicially determined incompetency of any party who has an interest hereunder and on the offer by her personal representative for sale of all or part of her interest, the other party shall have the first right to purchase such interest of the deceased or incompetent party in the manner described in section 8, except that the value of the interest of that deceased or incompetent party for the purpose of determination of the sale price shall be determined pursuant to paragraph 10, below.

10. Appraisal. Whenever this agreement provides that the value of the Property or any interest therein shall be determined by appraisal, then such value shall be determined by a real estate appraiser agreed upon by the parties hereto and in case of failure to agree on such appraiser within thirty (30) days, then by three impartial real estate appraisers, one to be appointed by each of the parties hereto, and each party shall each promptly name one such appraiser and give written notice thereof to the other party, and in case either party shall fail so to do within ten (10) days after appointment of the first appraiser, the party who has named an appraiser may apply to the person then sitting as the judge in service of the Circuit Court of the Fifth Circuit of Hawaii for the appointment of a second appraiser, and the two appraisers thus appointed in either manner shall appoint a third appraiser, and in case of their failure to do so within ten (10) days after appointment of the second appraiser, either party may have such third appraiser appointed by said judge, and the three appraisers so appointed shall proceed to determine the matter in question, and the decision of said appraisers or a majority of them shall be final, conclusive and binding upon both parties hereto, and the parties shall each pay one-half of all proper costs and expenses of such appraisal other than attorneys' fees.

11. Arbitration.

In the event of any dispute arising between the parties with respect to any of the covenants and/or conditions contained herein, such controversy may be submitted to arbitration at the option of any party in interest under the laws of the State of Hawaii as provided in Chapter 658 of the Hawaii Revised Statutes, as amended.

12. Amendments and Miscellaneous.

a. Any additions or amendments shall require the approval of all of the parties.

b. This Agreement shall be binding on the parties, their heirs, personal representatives and permitted assigns, but shall not be assigned except as herein provided.

c. All notices must be served by registered or certified mail.

d. The parties herein agree to execute any and all other documents which may be required to carry out the purposes of this Agreement.

e. The terms and provisions of this Agreement are severable; the invalidity of any part of this Agreement shall not affect the validity of the other parts hereof.

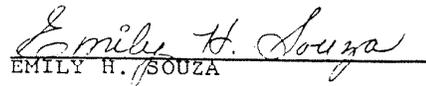
f. The failure of any party hereto to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

g. The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

h. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

  
VIRGINIA RAPOZO

  
EMILY H. SOUZA

STATE OF HAWAII )  
 : ss.  
CITY & COUNTY OF HONOLULU )

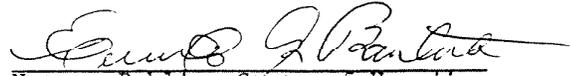
On this 11<sup>TH</sup> day of AUGUST, 1989, before me personally appeared VIRGINIA RAPOZO, to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

  
Notary Public, State of Hawaii

My commission expires: SEPT. 09, 1991

STATE OF HAWAII )  
 : ss.  
CITY & COUNTY OF HONOLULU )

On this 11<sup>TH</sup> day of AUGUST, 1989, before me personally appeared EMILY H. SOUZA, to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

  
Notary Public, State of Hawaii

My commission expires: SEPT. 09, 1991

EXHIBIT "A"

## LOT 2-B

Being portions of Kula Tract and R. P. 6/14, L. C. Award 7714-B, Apana 2 to Kekuaiwa No Moses Kekuanaoa at Koloa, Kona, Kauai, Hawaii, and more fully described as follows:

Beginning at a pipe at the Westernmost corner of the Lot, the same being the Southernmost corner of Lot 1, Kula Tract, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Wahiawa," being 11,041.77 feet South and 19,074.31 feet West and running by azimuths measured clockwise from true South:

1. 215° 24' 56.20 feet along the East boundary of Lot 1, Kula Tract to a pipe; thence,
2. 313° 29' 100.91 feet along the South boundary of Lot 2-A, Kula Tract to a pipe; thence,
3. 305° 24' 0.10 feet along the South boundary of Lot 2-A, Kula Tract to a pipe; thence,
4. 35° 24' 76.00 feet along the West boundary of Lot 4, Kula Tract to a pipe; thence,
5. 133° 20' 50.50 feet along the North side of Lawai Beach Road to a pipe; thence,
6. 139° 48' 51.60 feet along the North side of Lawai Beach Road to the point of beginning and containing an area of 7,464 square feet.

Being a consolidation of Lots 2 and 3, Kula Tract, File Plan 258, and Lots B and C, Portion of R. P. 6714, L. C. Award 7714-B, Apana 2 to Kekuaiwa No Moses Kekuanaoa as shown on Tax Map Keys 2-6-06-27 and 2-6-06-5 and 6.

EXHIBIT "H"

VIRGINIA A. RAPOZO LIVING TRUST AGREEMENT AND DECLARATION

This Trust Agreement made on this 15<sup>th</sup> day of September, 1989, by and between VIRGINIA A. RAPOZO, whose residence address is Kalaheo, Kauai, Hawaii 96741 and whose post office address is P.O. Box 405, Kalaheo, Kauai, Hawaii 96741, hereinafter called "Settlor", and VIRGINIA A. RAPOZO of the same address, hereinafter referred to as "Trustee".

RECITALS

1. I have declared a trust over property listed on Exhibit A; and transferred the same to the Trustee contemporaneously with signing this agreement, the receipt of which he acknowledges, and
2. The parties agree that all property transferred or devised to the Trustee is to be administered and distributed as provided in this Agreement.
3. This Trust shall be known as the "Virginia A. Rapozo Living Trust".

ARTICLE ONE  
RESERVATION OF RIGHTS

1. I reserve the following rights, to be exercised, except as may otherwise be specified, without the consent or participation of any other person.
  - 1.1 To amend, in whole or in part, or to revoke this Agreement by a writing delivered to a Trustee other than myself.

1.2 To add any other property by transferring such property to the Trustee, which property shall be described in a receipt signed by the Trustee, and to add any other property by my will. The Trustee shall administer and distribute any such property as if it has been a part of the original trust assets.

1.3 To make payable to the Trustee death benefits from insurance on my life, annuities, retirement plans or other sources. If I do so I reserve all incidents of ownership; and I shall have the duties of safekeeping all documents, of giving any necessary notices, of obtaining proper beneficiary designations, of paying premiums, contributions, assessments or other charges and of maintaining any litigation.

1.4 As long as I live, whether I am legally competent or not to receive accounts from all Trustees (or the personal representative of any deceased Trustee). While I am a Trustee, my approval of these accounts by writing delivered to another Trustee shall cover all transactions disclosed in these accounts and shall be binding and conclusive as to all persons.

1.5 To examine the records of any Trustee which relate to this Trust.

1.6 To direct the Trustee, while I am a Trustee, as to the retention, acquisition, or disposition of any trust assets by a writing delivered to the Trustee. Any assets retained or acquired pursuant to such directions shall be retained as a part of the trust estate while I am a Trustee unless I otherwise direct a like writing so delivered. The Trustee shall not be

liable to anyone for any loss resulting from any action taken in accordance with any such direction of mine.

ARTICLE TWO  
TRUST ADMINISTRATION  
DURING MY LIFETIME

2. The Trustee shall hold and distribute the principal and income of the trust estate during my lifetime as follows:

2.1 The Trust shall be operated for my benefit. The Trustee shall pay to me, or in accordance with my instructions, such portions of net income and principal as I direct. In the event that I am not a Trustee, these directions shall be in writing.

2.2 If in the opinion of two physicians, one of whom shall be my attending physician, I become incapacitated or disabled so as not to be able to conduct my business affairs properly, the Trustee or Successor Trustee, is authorized to pay to or for my benefit such portions of the Trust income or principal as the Trustee, in the exercise of his/her reasonable discretion, deems necessary or advisable to provide for my care, comfort, support and maintenance.

ARTICLE THREE  
TRUST ADMINISTRATION  
UPON MY DEATH

3. Upon my death, the Trustee shall make distributions from the remaining trust assets, including all property that becomes distributable to the Trustee at my death, as follows:

3.1 United States obligations redeemable at par for

the payment of federal estate taxes shall be applied by the Trustee to the payment of any federal estate taxes that become due because of my death. The Trustee may make that payment directly or through the legal representative of my estate.

3.2 The Trustee, if requested by the legal representative of my estate shall, or in his/her own discretion may, pay the following taxes, debts and expenses directly or through the legal representative of my estate:

3.2.1 The expenses of other death taxes, except any generation-skipping transfer tax, that become due because of my death, including any interest and penalties.

3.2.2 Any estate or other death taxes, except any generation-skipping transfer tax, that become due because of my death, including any interest and penalties.

3.2.3 All payments under the preceding provisions of this Article shall be made from the remaining trust assets prior to the final allocation of assets under Article Four of this Agreement. There shall be no apportionment of any taxes so paid, and I waive on behalf of the beneficiaries any right to recover any part of any taxes so paid from any person, including any recipient of property passing apart from this Agreement, provided that the Trustees shall recover from my estate the amount of any estate taxes so paid that are recovered by my estate under Section 2207A of the Internal Revenue Code or its counterpart under any state's estate tax law that permits an estate tax marital deduction for qualified terminable interest

property.

ARTICLE FOUR  
REMAINING TRUST ASSETS  
ALLOCATION

4. The remaining trust assets not effectively disposed of under the preceding provisions of this agreement shall be allocated and disposed of as follows:

4.1 If my spouse survives me,

4.1.1 The remaining trust assets shall be allocated between the Family Share and the Marital Share as follows:

4.1.1.1 The Family Share shall be an amount, if any, that when added to the value of all interests in property included in my federal taxable estate as finally determined for federal estate tax purposes other than the amount computed in this paragraph will equal the largest taxable estate on which no federal estate tax is payable with respect to my estate after deduction of the credits allowable in my estate under Section 2010 of the Internal Revenue Code and to the extent that the use of the credit under Section 2011 does not increase the death tax payable to any state under Section 2011.

4.1.1.2 The remaining trust assets not effectively disposed of under the preceding provisions of this Article shall be the Marital Share.

4.1.2 The Family Share and the Marital Share shall be disposed of as follows:

4.1.2.1 I give the Family Share to my Trustee to be disposed of as provided in Article Five.

4.1.2.2 I give the Marital Share to my Trustee to be disposed of as provided in Article Six.

4.2 If my spouse does not survive me,

4.2.1 If the house and lot (or any interest therein) in which I am living at the date of this agreement is owned by my trust or by me upon the date of my death, I leave such interest in said house and lot to my son, JOHN FRANKLIN RAPOZO, of Honolulu, Hawaii.

4.2.2 The remaining trust assets shall constitute the Family Share.

4.2.3 I give the Family Share to my Trustee to be disposed of as provided in Article Five.

ARTICLE FIVE  
FAMILY SHARE--DISPOSITION

5. The Family Share shall be disposed of by my Trustee as follows:

5.1 If my spouse survives me, the Trustee shall administer the Family Share during my spouse's life as the Family Trust as follows:

5.1.1 The Trustee shall distribute the net income at least annually to my spouse; provided that if the Independent Trustee determines that my spouse has other adequate income, such Trustee may either distribute all or any part of the net income to one or more of my descendants in any proportions

deemed advisable by such Trustee or may accumulate all or any part of the same and add it to principal.

5.1.2 If there are no principal funds readily available in my spouse's separate estate, the Trustee may distribute to my spouse such portions of the principal as the Independent Trustee deems advisable to provide for my spouse's health, education, support and maintenance.

5.1.3 Upon the death of my spouse, the assets of the Family Trust shall be distributed in accordance with the exercise by my spouse of a special power of appointment which I hereby give to my spouse to appoint by my spouse's will to any one or more of my descendants who survive him or her. Any asset not so appointed shall be distributed in accordance with this Article as if I had died immediately after my spouse's death.

5.2 If my spouse does not survive me and any descendant of mine survives, the Family Share shall be distributed as follows:

5.2.1 If the house and lot in which I live at the date of this trust agreement (or any interest in the said house and lot) belongs to this trust or to me, I give said interest in house and lot to my son John Franklin Rapozo.

5.2.2 All the rest and residue of the trust estate, real and personal, wherever situate, shall be distributed into shares among my descendants who survive me, per stirpes. The share for each descendant of mine shall be distributed to such descendant, or, if such descendant has not then attained age

twenty-one (21), shall be disposed of in accordance with the provisions of paragraph 8.1.1. My children include BARBARA JEAN RAPOZO REGO, of Kalaheo, Hawaii and JOHN FRANKLIN RAPOZO, of Honolulu, Hawaii.

5.3 If my spouse does not survive me and no descendant of mine survives me, the Family Share shall be distributed outright, to my heirs, as determined by the Hawaii Statutes of Intestate Succession in force at the execution of this Agreement.

5.4 Any portion of the Family Trust that my spouse disclaims shall be distributed in accordance with this Article as if my spouse did not survive me.

ARTICLE SIX  
RESIDUAL MARITAL SHARE  
DISPOSITION

6. The Marital Share shall be disposed of by my Trustees as follows:

6.1 The Trustees shall distribute the Marital Share to my spouse.

6.2 Any interest in the Marital Share that my spouse disclaims shall constitute a separate trust for my spouse's benefit to be administered and distributed in the same manner as the Family Trust under Article Five, except that my spouse shall not have any power of appointment over such trust.

ARTICLE SEVEN  
TRUSTEES SELECTION

7. Trustees shall be appointed and replaced as follows:

7.1 During my life:

7.1.1 While I am serving as a Trustee, I reserve the power to remove any Trustee and to appoint successor or additional Trustees.

7.1.2 If my personal physician, plus one other medical doctor licensed in the state of Hawaii states in a writing delivered to my Successor Trustee, or if she predecease me, my son John Franklin Rapozo of Honolulu, Hawaii, that I am unable to manage my financial affairs with adequate competence, I shall cease to be a Trustee.

7.1.3 When I cease to be a Trustee, in the event that I have not appointed some other person to act as Successor Trustee, Barbara Jean Rapozo Rego of Kalaheo, Hawaii, shall act as my Successor Trustee, or if she predeceases me, fails to qualify or declines to serve, my son John Franklin Rapozo of Honolulu, Hawaii shall act as my Successor Trustee.

7.2 Upon my death:

7.2.1 Barbara Jean Rapozo Rego, if not then acting, shall, upon acceptance, succeed me as Trustee and become the Successor Trustee, or if she predeceases me, fails to qualify or declines to serve, my son John Franklin Rapozo shall succeed me as Trustee. In the event that neither of my two said children serve as Trustee, the Trustee serving in their stead shall be an independent trustee as defined herein.

7.2.2 The Independent Trustee may appoint additional Trustees, and when any Trustee (except an Independent

Trustee who is removed) ceases to serve may appoint a successor to such Trustee.

7.2.3 My spouse shall have the power to remove any Independent Trustee and the court shall appoint a successor to any Independent Trustee so removed.

ARTICLE EIGHT  
FIDUCIARY PROVISIONS

8. The powers granted to my Trustee may be exercised during the term of any trust hereunder, and during such time after the termination of any such trust as is reasonably necessary to distribute the trust assets. The Trustee shall have all powers conferred by law to the extent not inconsistent with those stated in this document. All of the powers are exercisable without any court authorization or approval.

8.1 Dispositive Powers. I give to my Trustee the following dispositive powers:

8.1.1 Disposition of Certain Assets. Despite anything to the contrary contained herein, if any assets of any trust become distributable to a descendant who has not attained age twenty-one (21), such assets, in the sole discretion of the Independent Trustee, may be distributed to such person, or to a custodian for such person under an applicable Uniform Gifts to Minors Act or may be retained in a separate trust for such person's benefit. Any assets retained in trust shall be administered as follows:

8.1.1.1 The Trustee may pay to such person such portion of the income and principal as the Independent Trustee deems advisable for such person's support, health care and education;

8.1.1.2 When such person attains age twenty-one (21), the Trustee shall distribute the remaining trust assets to such person;

8.1.1.3 If such person dies before receiving final distribution, the Trustee shall distribute the remaining trust assets to such person's estate.

8.1.2 Merger of Trusts. The Trustee may merge the assets of any trust with those of any other trust, by whomever created, having the same beneficiaries and substantially the same terms, and if there is a disparity in the maximum duration of the trusts so merged, the shortest maximum duration shall control.

8.1.3 Discretionary Termination. The Independent Trustee may terminate any trust, whenever such termination is deemed advisable by such Trustee, by distributing the assets to the beneficiary to whom income may then be distributed or if more than one beneficiary may then receive income to my spouse if my spouse is an income beneficiary or if my spouse is not then an income beneficiary, to any one, some or all of such beneficiaries in such amounts and proportions as the Independent Trustee deems advisable.

8.1.4 Outright Distribution. If the

assets of any trust are, by the terms of this agreement, to become part of any trust or trust share and would be immediately distributable, such assets may be distributed by the Trustee in exactly the same manner as provided in such trust or trust share without requiring such trust to be established.

8.1.5 Elections of Benefit from Qualified Plans. If the benefits from any qualified pension, profit sharing or retirement plans that can be exempt from taxation under Section 2039 of the Internal Revenue Code (if any) are payable to or receivable by my Trustee, the Independent Trustee shall have the power, in the sole discretion of such Trustee, to exercise all options or elections relating to such benefits.

8.1.6 Allocation of Non-Taxable Assets. Any such benefits which are not included in my estate for federal estate tax purposes shall be distributed to, or constitute, the Family Share as a gift in addition to the amount otherwise determined under Article Four.

8.2 Administrative Powers. In addition, I give to my Trustee the following powers and authorities:

8.2.1 To retain any assets, however acquired, for as long as the Trustee deems advisable, even if the Trustee is personally interested in the assets or their retention results in a lack of diversification.

8.2.2 To sell, exchange, mortgage, lease, convey, encumber, pledge or otherwise dispose of any real, personal or other property for any period, upon any terms and

conditions, to any person, entity, beneficiary, fiduciary, or agent or to a trust or estate of which one of my Trustees is also a fiduciary, including my estate.

8.2.3 To purchase as an investment of the trust estate any asset of my probate estate or which belongs to any trust created by me under my will or under any other agreement; or to lend money to my estate or to any other such trust without personal liability of the fiduciaries thereof for repayment of such loans, such investments or loans to be made at such prices, upon such security, if any, and upon such terms as may be satisfactory to the Trustee, any Trustee may make any such investments or loans even if a Trustee may also be an executor of my estate or a Trustee of such other estate.

8.2.4 To invest and reinvest in any assets they deem advisable, without limitation by any statute, rule of law or regulation limiting the investment of funds by corporate or individual fiduciaries in or to certain kinds of investments, requiring diversification or prohibiting fiduciaries from being interested in sales or purchases, delegating investment functions or commingling assets.

8.2.5 To hold securities or other assets in their own names, with or without disclosure of fiduciary capacity, or in the name or a nominee, or in bearer form.

8.2.6 To deposit cash in the commercial or savings departments of any corporate fiduciary or of any other bank or trust company or in any other depository.

8.2.7 To borrow money for any purpose they deem advisable from any source even if they are personally interested in the source.

8.2.8 To allocate between principal and income, in their discretion, all receipts and disbursements, including receipts of my estate received or accrued during probate administration, in any manner that will not result in the loss of the marital deduction. The Trustee may, but need not, create reserves out of income for depreciation, obsolescence, or amortization, or depletion in mineral or timber properties.

8.2.9 To divide the trust, to determine values, to distribute like or unlike assets to different beneficiaries or trusts and to make distributions in cash or in kind, in divided or undivided interests; provided that any assets allocated in kind in satisfaction of any pecuniary gift under Article Three and Four shall be valued at fair market value of such asset on the date of such allocation and any assets which do not qualify for the federal marital deduction to which a death tax is paid to a country or subdivision thereof shall be allocated to the Family Share to the extent possible.

8.2.10 To make all payments of income or principal authorized hereunder directly to the beneficiary or for the beneficiary's benefit, and, in the case of a beneficiary who is a minor or under other legal disability, all such payments and all distributions of tangible personal property may be made directly to the beneficiary despite the disability.

8.2.11 To settle, compromise, submit to arbitration or litigate claims in favor of or against the trust.

8.2.12 To contest, settle or compromise all tax matters, to elect to claim any expense of my trust as an income tax deduction or as an estate tax deduction, and to make any other elections authorized or permitted by law all without reimbursement or adjustment between principal and income or in favor of any beneficiary, even if the elections directly affects the value of any beneficiary's share.

8.2.13 To employ agents, lawyers, investment counsel, accountants and others, even if they are associated with a Trustee, and to delegate both ministerial and discretionary powers and duties to such persons with liability only for reasonable care in their selection and to place assets in an account with a trust department of a bank they select, under any agency or such other type of agreement, to rely on information and advice furnished by them without the duty of independent investigations, and to pay them reasonable compensation from the trust.

8.2.14 To exercise every other power not specifically granted by this agreement that may be necessary to enable them to create, continue, operate, expand and change the form of any individual proprietorship, partnership, joint venture, corporation or other business.

8.2.15 To accept additions to the trust from any source.

8.2.16 To execute and deliver all instruments that will accomplish or facilitate the exercise of the above powers and duties and to perform all other acts necessary or advisable to administer the trust.

### 8.3 Administrative Provisions.

8.3.1 Waiver of Bonds. No bond or other indemnity shall be required of any Trustee nominated or appointed hereunder.

8.3.2 Waiver of Court Jurisdiction. I expressly waive any requirement that any trust be submitted to the jurisdiction of any court, or that the Trustee be appointed or confirmed or that his/her accounts be heard by any court. This waiver shall not prevent any Trustee or beneficiary from requesting any of these procedures.

8.3.3 Trustee Succession, Appointment and Removal Procedures. If a vacancy in the trusteeship occurs and a Successor Trustee to fill such vacancy is named in this agreement, the remaining Trustees shall promptly notify such named successor, in writing, of the occurrence and date of such vacancy. A named Successor Trustee's appointment shall become effective, following such a vacancy, upon the Successor Trustee's written acceptance within thirty (30) days following the date of such vacancy, filed with another Trustee, or, if none, with the Court. To effect the appointment of a Trustee, the person entitled to make such appointment shall file with the Trustee to be appointed a written statement that such appointment is made.

The appointment of a Trustee so appointed shall become effective upon receipt by the person entitled to make the appointment of the newly-appointed Trustee's written acceptance within thirty (30) days following the filing of such written statement. A Successor Trustee shall, upon acceptance, succeed to the preceding Trustee's title to the trust assets. To effect the removal of a Trustee other than myself, the person entitled to remove the Trustee shall either deliver to such Trustee a written statement that the removal is made, or mail such statement to the Trustee's last known business address by registered or certified mail, return receipt requested. After such delivery or mailing, a removed Trustee shall have no further duties, other than to account, and shall not be liable or responsible for the acts of any Successor Trustee.

8.3.4 Resignation Right. Any Trustee shall have the right to resign at any time by delivering a written resignation to those entitled to appoint a Trustee. The resignation shall be effective sixty (60) days after the date of delivery of the resignation, or upon the earlier appointment of a Successor Trustee. After the resignation becomes effective, the Trustee shall have no further duties, other than to account, and shall not be liable or responsible for the acts of any Successor Trustee.

8.3.5 Approval of Trustee's Accounts if I am Not a Trustee. If I am not a Trustee, all Trustees or the personal representative of any deceased Trustee may render

accounts to such of my spouse and any descendants as are living and legally competent when these accounts are rendered. The approval of these accounts by those persons, in writings delivered to any Trustee, shall constitute a valid and effective release of the Trustee with respect to all transactions disclosed by the accounts, and shall be binding and conclusive as to all persons. Nothing contained in this paragraph shall give any person the power or right to enlarge or shift the beneficial interest of any beneficiary of the trust. Despite anything to the contrary contained in this Trust, I shall have the right, even if I am declared legally incompetent to demand and receive from the Trustee, an annual accounting from the said Trustee or Trustees which shall be rendered unto me within a reasonable time thereafter.

8.3.6 Majority Vote and Delegation. If more than one Trustee is serving, their powers shall be exercisable by a majority vote of the Trustees authorized to act. I hereby authorize any Trustee to delegate for any period of time to any other Trustee authorized to exercise such power, the power to act on behalf of the delegating Trustee. During my life, and with my consent, the other trustees may delegate in writing all discretions, authority and power to one Trustee, including myself if I am then acting as Trustee, and if such occurs the other Trustees shall not be responsible or liable to any person, in their capacities as Trustees, for the administration of the trust during the time such delegation is in force.

8.3.7 Custody of Assets. If a Corporate Trustee is serving, it shall have custody of all assets, handle receipts and disbursements and prepare accountings.

8.3.8 Change of Trust Situs. The Independent Trustee may transfer the situs of the administration of any trust created hereunder from Hawaii to another state and the Independent Trustee may elect to have the governing law of the trust instrument be the laws of the state even if contrary to provisions herein.

8.3.9 Income at Termination. Unless such income is expressly made subject to a sole income beneficiary's general power of appointment, any accrued or undistributed income at the termination of a trust with a sole income beneficiary shall be distributed to such beneficiary, or if the beneficiary is deceased, to the beneficiary's estate; in all other cases such income shall be added to principal.

8.3.10 Payment of Generation-Skipping Tax. If a "taxable termination" as defined in Section 2613(b)(1) of the Internal Revenue Code of an interest or power in any trust hereunder occurs or is deemed to have occurred and any generation-skipping tax is thereby imposed, to the extent the tax is not otherwise paid, the Trustees, with respect to each beneficiary who is a transferee or deemed transferee for purposes of computing the tax, shall pay or otherwise provide for the tax so computed, from the portion of the trust assets to be transferred or deemed to be transferred to such beneficiary,

within the time allowed by applicable statutes and before completing distribution.

ARTICLE NINE  
GENERAL GOVERNING PROVISIONS

9. In applying the provisions of this document, the following shall govern:

9.1 Definitions.

9.1.1 My spouse's name is FRANK RAPOZO, and all references in this agreement to my husband or my spouse are to him only.

9.1.2 "Descendants" or "issue" means all persons who are lineally descended from the person whose descendants are referred to (including legally adopted lineal descendants) except illegitimate descendants and their descendants.

9.1.3 "Child" means a descendant of the first generation.

9.1.4 "Per Stirpes" means in equal shares among living children of the person whose descendants are referred to and the descendants taken collectively of each deceased child of such person, with such deceased child's descendants taking by right of representation the share of such deceased child.

9.1.5 A descendant in gestation at the time of an event, who is later born alive is "living" or "surviving" at the time of such event.

9.1.6 All references to my spouse's surviving me mean that if my spouse and I die under such circumstances that it cannot be established by sufficient evidence that we died otherwise than simultaneously, my spouse shall be deemed to have survived me. All references to any other person's surviving me mean that if such person and I die under such circumstances that it cannot be established by sufficient evidence that we died otherwise than simultaneously, such person shall be deemed not to have survived me.

9.1.7 "Trustee" means an original or Successor Trustee of any trust hereunder, and may include individuals and corporations.

9.1.8 "Corporate Trustee" means a qualified trust company or national or state banking institution having trust or fiduciary powers.

9.1.9 "Independent Trustee" means any Trustee other than:

9.1.9.1 A Trustee who is a beneficiary to whom income or principal could be distributed currently.

9.1.9.2 A Trustee who has a legal obligation to support a beneficiary to whom income or principal could be distributed currently; or

9.1.9.3 A Trustee who would, by possession the power of an Independent Trustee, become a "younger generation beneficiary" possession a "present power", as defined in Section 2613 of the Internal Revenue Code and who would be

assigned, under Section 2611(c) of the Internal Revenue Code, to a generation other than the generation assigned thereunder to any younger generation beneficiary of a trust who at any time has possessed a present interest in such trust.

9.1.10 The requirement that a person act in "writing" requires a dated written document signed by such person.

9.1.11 My "personal physician" is Dr. Thomas Harrison. If he should be unavailable to act under this agreement, any other physician who I identify by a writing delivered to any Trustee is my "personal physician".

9.1.12 "Generation-skipping tax" means any state or federal tax imposed on a generation-skipping transfer.

9.1.13 Where appropriate, the masculine includes the feminine, the singular includes the plural, and vice versa.

## 9.2 Rules of Construction.

9.2.1 Governing Law. The law of Hawaii, except as altered by this document, shall govern the meaning and legal effect of this document and the administration of my trust. Except as otherwise provided, all references to applicable law and Hawaii Revised Statutes mean those in force on the date of this agreement and shall include any amendments and successor provisions, and references to the Internal Revenue Code shall mean the Internal Revenue Code of 1954, as amended, and references to a particular section of the Internal Revenue Code

shall include corresponding provisions of any subsequent federal tax law.

9.2.2 Captions. Captions are for convenience only and are not intended to alter any of the provisions of this document.

9.3 Protective Provisions.

9.3.1 Marital Deduction. All provisions of this agreement shall be construed and applied so that the gifts under Article Three qualify for the federal and Hawaii marital deduction and the Marital Share can qualify for the federal marital deduction, and any provision of this agreement incapable of being so construed or applied shall not apply such gifts and Marital Share. My spouse shall have the power to require the Trustees of a Marital Trust to render any asset of a Marital Trust productive of income.

9.3.2 Death Benefits. No part of any benefits payable to or receivable by any Trustee hereunder from qualified pension, profit sharing or retirement plans that are exempt from taxation under Section 2039 of the Internal Revenue Code shall be directly or indirectly applied to the payment or reimbursement of any estate, succession or other death taxes or of the expenses, debts, and other items required to be paid by my personal representatives or Trustees. No insurance proceeds payable to my Trustees shall be used to pay any debts, administration expenses or taxes of mine or of my estate.

9.3.3 Individual Fiduciary Liability Limited. No

individual Trustee who has acted in good faith shall be liable for the acts of any co-trustee or for failure to assert breaches of trust by a deceased, resigned or removed Trustee.

9.3.4 Spendthrift Provisions. Neither principal nor income or any trust nor any beneficiary's interest therein shall be subject to alienation, assignment, encumbrance, appointment or anticipation of by the beneficiary, to garnishment, attachment, execution or bankruptcy proceedings, to claims for alimony or support or any other claims by any creditor or other person against the beneficiary or to any other transfer, voluntary or involuntary, by or from any beneficiary provided that the foregoing shall not restrict the exercise of any general testamentary power of appointment and that any principal distributable to any beneficiary by reason of having attained a specified age shall be fully alienable by such beneficiary after attaining such age.

9.3.5 Special Powers of Appointment. Any special power of appointment may be exercised by appointment, outright or in trust, to one or more of the permissible appointees in such portions as the donee of the power may appoint; provided, the power (i) shall not be exercisable in favor of the donee, the donee's estate, the donee's creditors or the creditors of the donee's estate, (ii) shall not include the power to create another power of appointment that, under the applicable local law, can be exercised so as to postpone the vesting of any estate or interest in the trust property or

vesting of any estate or interest in the trust property or suspend the absolute ownership of power or alienation of such trust property for a period ascertainable without regard to the date of creation of this power, and (iii) must be specifically referred to in the donee's valid will for the appointment to be effective.

9.3.6 Rule Against Perpetuities. Each Trust, if not sooner terminated pursuant to the provisions hereof, shall terminate twenty-one (21) years after the death of the survivor of my spouse and all descendants of mine who are living on the date appearing at the beginning of this agreement. Any trust assets governed by a statute or rule of law under which such assets could not validly remain in trust until that date shall be distributed on the last date on which such assets can validly remain in trust. In the event of termination of a trust in whole or in part under this provision, the trust assets shall be distributed to my descendant who was, or if more than one per stirpes, to my descendants who were, permissible recipients of the trust income immediately prior to such termination.



AGREEMENT OF SUCCESSOR TRUSTEE

For good and valuable consideration, the undersigned  
Successor Trustee agrees that they will administer the said Trust  
in accordance with the terms set out in this document as Trustor  
may from time to time amend the same, if they assume the position  
of Successor Trustee.

*Barbara Jean Rapozo Grego*

DECLARATION

A. STATEMENT OF DECLARANT

Declaration made this 15<sup>th</sup> day of Sept, 1989.

I, VIRGINIA A. RAPOZO of Kalaheo, County of Kauai, State of Hawaii, being of sound mind, willfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, and do hereby declare:

If at any time I should have an incurable or irreversible condition certified to be terminal by two physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that I am unable to make decisions concerning my medical treatment, and that without administration of life-sustaining treatment my death will occur in a relatively short time, and where the application of life-sustaining procedures would serve only to prolong artificially the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication to alleviate pain.

In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this Declaration shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

I understand the full import of this Declaration and I am emotionally and mentally competent to make this Declaration.

Virginia A Rapozo  
Address: P.O. Box 41050  
KALAEHO, HI 96741

**B. STATEMENT OF WITNESSES**

I am at least 18 years of age and

-not related to the Declarant by blood, marriage, or adoption; and

-not the attending physician, an employee of the attending physician, or an employee of the medical care facility in which the Declarant is a patient.

The Declarant is personally known to me and I believe the Declarant to be of sound mind.

Witness Marlyn M. Delacruz

Address 4122 Lanekona St Wahi, HI 96766

Witness Samuel J. Linko

Address 101 4357 Ohi St Lihoe, HI

C. NOTARIZATION

Subscribed, sworn to and acknowledged before me by  
VIRGINIA A. RAPOZO, the Declarant, and subscribed and sworn to  
before me by Marilyn M. Lulu Cruz and James W. Licker  
witnesses, this 15<sup>th</sup> day of September, 1989.

Maria n. Gonzalez  
Notary Public, Fifth Judicial  
Circuit, State of Hawaii

My commission expires: 7-7-90

OFFICE OF ASSISTANT REGISTRAR  
RECORD

R-524

AUG 26, 1993 08:37 AM

Doc No(s) 2059576

on Cert(s)

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

AUG 26, 1993 08:37 AM

Doc No(s) 93-139360

EXHIBIT "I"

/s/ S. FURUKAWA  
ASSISTANT REGISTRAR

CONVEYANCE TAX: \$0.00

/s/ S. FURUKAWA  
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$0.00

AFTER RECORDATION, RETURN BY MAIL ( ) PICK-UP ( )

ANDREW S. IWASHITA  
IWASHITA & GLEED  
77 MOHOULI STREET  
HILO, HAWAII 96720

TITLE OF DOCUMENT:

DECLARATION OF TRUST

PARTIES TO DOCUMENT:

GRANTOR: EMILY H. SOUZA

TRUSTEE: EMILY H. SOUZA

DECLARATION OF TRUST

GRANTOR: EMILY H. SOUZA

NAME OF TRUSTEE: EMILY H. SOUZA

NAME OF TRUST: THE EMILY H. SOUZA Revocable Living Trust Agreement

DATE OF TRUST: April 26, 1993

ESTATE\DOC\519souz.dec

WITNESSETH:

The Grantor executed the unrecorded trust agreement noted above. The Trustee, or any successor Trustee has been granted all common law and statutory trust powers, and additional powers, including but not limited to the following.

A. To buy, sell, mortgage, or lease real or personal property owned by the trust or any interest therein, and to retain, lease, invest and reinvest the trust property, wherever located, whether by sale, exchange, option or otherwise; the Trustee may specifically buy or sell securities, commodities and futures of any nature including, but not limited to, short sales and margin transactions. The Trustee may maintain and operate margin accounts with brokers and may pledge any securities held or purchased by the Trustee with such brokers as security for loans and advances made to the Trustee. The Trustee further has the discretion to buy "Flower Bonds" when advisable. Notwithstanding the provisions of HRS Sec. 560:3-715 and Sec. 531-29, the Trustee shall have the power to sell any real property at any sale, public or private, without court approval. The Trustee is further authorized, in its sole discretion, to buy life insurance contracts of any kind and to enter into split dollar agreements. The Trustee shall name the trust as beneficiary of any policies owned by the trust and shall administer said proceeds as directed by Grantor in the unrecorded trust agreement.

B. To borrow funds from any person or entity, and to mortgage or pledge trust assets.

C. To open any checking, savings or other accounts as may be necessary to conduct trust investments.

D. To compromise or arbitrate any matter relating to the trust property.

E. To vote on any question relating to the trust property, in person or by proxy.

F. To sign, acknowledge and deliver any instrument required relating to this trust.

G. To hold property in the name of any nominee without indication of any trust.

The Trustee is not required to give bond or file any account in court unless required by law.

Any person (whether individual, corporation or other entity) may deal with a Trustee hereunder without liability as to the

application of any property or cash delivered to the Trustee.

Any person dealing with the Trust shall not be obligated to inquire into the necessity or expediency of any act of the Trustee, or be obligated to inquire into any of the terms of the Trust Agreement; and every deed, trust deed, mortgage, lease or other instrument executed by the Trustee in relation to the trust property shall be conclusive evidence in favor of every person relying upon or claiming under any such conveyance, lease or other instrument, (a) that at the time of the delivery, the Trust was in full force and effect (b) that such conveyance or other instrument was executed in accordance with the trusts, conditions, and limitations contained therein and in the Trust Agreement (or in any amendments) and binding upon all beneficiaries, (c) that the Trustee was duly authorized and empowered to execute and deliver every such deed, trust deed, lease, mortgage or other instrument, and (d) if the conveyance is made to a successor trustee, that such trustee has been properly appointed and is fully vested with all the title, estate, rights, powers, authorities, duties and obligations of the prior Trustee.

The Grantor declares that this trust is not a Land Trust as defined in Hawaii Revised Statutes, Chapter 501.

IN WITNESS WHEREOF, I have executed the instrument on this 26th day of April, 1993.

GRANTOR:

*Emily H. Souza*  
\_\_\_\_\_  
EMILY H. SOUZA

STATE OF HAWAII            )  
                                  ) ss.  
COUNTY OF HAWAII        )

On this 26th day of April, 1993, before me personally appeared EMILY H. SOUZA, to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

*Judy Spai*  
\_\_\_\_\_  
Notary Public, State of Hawaii  
My Commission expires: 11/19/96

LS

DECLARATION OF REVOCABLE TRUST

OF

EMILY H. SOUZA

THIS TRUST AGREEMENT is made in the State of Hawaii, between the Grantor and the Trustee who have signed below.

The Grantor of this trust is EMILY H. SOUZA and all references herein to "the Grantor" shall be to said person or to the survivor of him.

The initial Trustee of this trust is EMILY H. SOUZA and all references herein to "the trustee" shall be to said Trustee or to the successor duly appointed hereunder.

Grantor's Declarations. The Grantor declares as follows:

The Grantor is widowed.

The Grantor was married to Frank Souza, now deceased. The Grantor has three (3) living children of this marriage, namely, Francine Souza, date of birth August 11, 1961; Franklin Souza, date of birth June 24, 1963; and Francis Souza, date of birth January 28, 1966. All references herein to the Grantors "children", "issue" and "descendants" shall be to said persons and to their descendants.

Trust Property. The Grantor transfers to the trustee the sum of ONE DOLLAR (\$1.00) together with the property described in the attached Schedule A. Such property, and any other property that may hereafter be received by the trustee shall be held and disposed of upon the following trusts.

## Article I

Life Insurance Policies. During the Grantor's life, the trustee shall have no responsibility with respect to the safekeeping of said policies or the payment of any premiums, assessments or other sums due on any of the policies. Grantor retains during said Grantor's life all rights under insurance policies payable to the trust, including but not limited to the right to all dividends, conversion and option privileges, cash surrender values and the right to change the beneficiaries. The Grantor may assign any policy to any lender, including any trustee, as security for any loan. The rights of the assignee of any policy shall be superior to the rights of the trustee. If any policy is surrendered or if the beneficiary of any policy is changed, this Trust shall be ineffective with respect to that policy only.

Life Insurance Proceeds. Upon the death of the Grantor, the trustee, in its discretion, may collect the net proceeds of any policy on the life of the Grantor held by or known to and payable to it or may exercise any optional method of settlement. Payment to and the receipt by the trustee shall be a full discharge of the liability of any insurance company, which need not take notice of this instrument or see to the application of any payment. If other assets of the trust are insufficient to defray expenses, the trustee need not engage in litigation to enforce payment of any policy without satisfactory indemnification for any resulting expense.

## ARTICLE II

Revocation. The Grantor shall have the right to revoke this agreement at any time by an instrument in writing, signed by the Grantor, acknowledged before a notary public and delivered to the trustee. No guardian, committee, conservator or similar legal representative shall have any power of revocation. Upon revocation the trustee shall return to the Grantor any and all property, including life insurance policies if held for safekeeping by the trustee, which may have been added to the trust during the lifetime of the Grantor.

Amendment. The Grantor and the trustee acting jointly may amend this agreement at any time by changing the beneficiaries of the trust estate hereby created, or the dispositive provisions, or any other provisions hereof.

## Article III

Payments To Grantor. During the life of the Grantor, the trustee shall pay all the net income of the trust to the Grantor or as the Grantor otherwise directs in writing, and the trustee shall pay any part of the principal of the trust as the Grantor directs in writing. However, during any period in which the Grantor, in the opinion of the trustee, is incapable of managing the Grantor's own affairs, the trustee, in its discretion, may pay to or use for the benefit of the Grantor, so much of the income and principal of the trust as the trustee determines to be required for the Grantor's support, comfort and welfare, in the Grantor's accustomed manner of living, or for any other purposes the trustee believes to

be for the Grantor's best interest. Any excess income shall be added to principal at the discretion of the trustee.

#### Article IV

Payments to Grantor's Estate. After the Grantor's death, to the extent that cash and marketable securities in the Grantor's estate are stated by the personal representative or legal representatives to be insufficient, pursuant to an instrument or instruments in writing delivered to the trustee, the trustee shall pay the Grantor's funeral expenses, legally enforceable claims against the Grantor or the Grantor's estate, reasonable expenses of administration of the estate, any allowances by court order for those dependent upon the Grantor, any deficiencies needed to complete the payment of any legacies and all inheritance, estate, succession and death taxes, including but not limited to the taxes on the testamentary estate, payable by reason of the Grantor's death, together with any interest or other additions to the tax, without reimbursement from the Grantor's personal representative or administrator or from any beneficiary of insurance upon the Grantor's life, United States savings bonds, or property held by the Grantor jointly with any person or from any other person. Subject to any limitations set forth herein or in the Grantor's will, all such payments shall be charged generally against the principal of the trust. Written statements by the personal representative or administrator of the sums to be paid shall be sufficient evidence of the amount and propriety for the protection of the trustee, and the trustee shall be under no duty to see to

the application of any payments. The trustee shall have no responsibility with respect to the fixing, ascertainment and determination of the estate, inheritance, succession and death taxes and is not required to take any steps to protest or bring legal proceedings with respect to the determination of such taxes.

## Article V

### Termination of Trust

Subject to the terms of the above Article IV, the trustee shall, after the Grantor shall have died, distribute the real property described as T.M.K. (4) 2-4-005-154, Kalaheo, Kauai, Hawaii, free and clear from any trust to Grantor's son, Francis Souza, if he survives, if he does not survive, to his issue, per stirpes, provided that said property is a part of the trust estate at the time of Grantor's death. Subject to the above provisions, the trustee shall, after the Grantor shall have died, distribute all remaining trust property, together with any unpaid income, absolutely and free from any trust to Grantor's children; Francine Souza; Franklin Souza, and Francis Souza, if they survive, to be divided equally between them, per stirpes.

## Article VI

### Beneficiaries

1. (a) Payments for Benefit of Beneficiary. If at any time any beneficiary to whom the trustee is directed or authorized in this instrument to pay any income or principal is under legal disability or, in the opinion of the trustee, is incapable of properly managing its affairs, the trustee may use such income or

principal for said beneficiary's health, support, education and maintenance subject to the limitations set forth herein.

(b) Income Upon Death of Beneficiary. Upon the death of any beneficiary any accrued or undistributed income shall be held and accounted for or distributed in the same manner as if it had been received and accrued after the beneficiary's death.

2. Payments to Parent or Guardian. The trustee either may expend directly any income or principal which it is authorized in this instrument to use for the benefit of any person, or may pay it over to said person or for said person's use to said person's parent or guardian or to any person with whom said person is residing, without responsibility for its expenditure.

3. Spendthrift Limitation. No interest under this instrument shall be transferable or assignable by any beneficiary or be subject during his life to the claims of his creditors. This paragraph shall not restrict the exercise of any power of appointment.

4. Termination in Lieu of Perpetuities. Notwithstanding anything to the contrary, the trusts under this instrument shall terminate not later than twenty-one (21) years after the death of the last survivor of the Grantor, at the end of which period the trustee shall distribute the remaining trust property to the beneficiary or beneficiaries, at that time, of the current income, and if there is more than one beneficiary, in the proportions in which they are beneficiaries.

Article VII

Trustee

1. Miscellaneous.

(a) Bond. No trustee or successor trustee shall be required (i) to give any bond as trustee; (ii) to qualify before, be appointed by or, in the absence of breach of trust, account to any court; or (iii) to obtain the order of approval of any court in the exercise of any power or discretion.

(b) Compensation. Any trustee shall be entitled to reasonable compensation for services in administering and distributing the trust property and to reimbursement for expenses; however, compensation shall not exceed the amount charged by trust companies in the State of Hawaii for similar services. The trustee shall receive such reasonable compensation at least annually, allocated to and payable out of income or principal or both. The amount and allocation payable to any corporate trustee shall from time to time be based on whatever schedules, rates or customs the trustee has adopted or is using at such time in connection with its similar trusts in general. The amount and allocation may be (subject to review by court as to the reasonableness thereof) more or less than that provided or permitted by any statute or rule of law as may, except for this Agreement, be applicable to this trust.

(c) Notice. The trustee may rely upon any notice, certificate, affidavit, letter, telegram or other paper or document believed by it to be genuine or upon any evidence deemed by it to be sufficient in making any payment or distribution. The trustee

shall incur no liability for any payment or distribution made in good faith and without actual notice or knowledge of a changed condition or status affecting any person's interest in the trust.

(d) Actions of Trustee. No one dealing with the trustee shall be bound to inquire into the propriety of its action or to see to the application of any money paid or property delivered to the trustee.

2. Powers. The trustee, its successor or substitute, shall have the following powers, and any others that may be granted by law, with respect to the trust created hereunder to be exercised as the trustee in its discretion determines to be in the best interest of the beneficiaries:

(a) To buy and/or sell and invest and reinvest the trust estate in bonds, including but not limited to United States Treasury "Flower Bonds," notes, real estate or any interest in real estate, and interests in trusts, including common trust funds, or in any other property or undivided interests in property, wherever located; to buy, sell and trade in securities of any nature, including options and short sales, commodities (including precious metals), commodity futures contracts and commodity futures options, on margin, and for such purposes to maintain and operate margin accounts with brokers; to pledge or hypothecate any securities, commodities, commodity futures contracts and commodity futures options held or purchased by it with such brokers as security for loans and advances made to the trustee; and to delegate authority to agents to enter orders in securities and commodities transactions;

(b) To lease any real property for such term or terms as it may deem advisable,

without the authorization of any court and whether or not any such term may extend beyond the period of any trust, and in connection with any such lease to enter into any agreements and covenants which it may deem advisable with respect thereto or with respect to any improvements which may then or thereafter be erected thereon; to make repairs, alterations, and improvements on any real property, including the right to demolish and replace buildings, and to erect new buildings and employ architects and contractors in connection therewith; to execute and deliver consents to assign leases or to the placing of mortgages on leases; to subdivide real estate, to grant easements, and to accept the surrender of any leases or leasehold interests and buildings or improvements thereon; to purchase buildings on any real property and the right, title and interest of tenants in such buildings; to demand, receive, collect, sue for, and compromise rents, debts, claims and demands of any nature in connection with any real property, and to execute and deliver releases, discharges and other instruments relating thereto, including satisfaction of any judgment recovered therefor; to institute summary proceedings for the recovery of any real property or possession thereof; to prosecute or defend any actions, claims or proceedings affecting any real property, and to compromise, settle and discontinue the same; to insure such real properties against fire and any other risk whatsoever and to make proof of loss under such insurance; to adjust losses and collect the proceeds; to mortgage for such amounts, rates of interest, rates of amortization and terms as may be deemed wise, including the right to mortgage for terms which may extend beyond the period of any trust, and to receive the proceeds of such mortgages; to extend the time of payment of any mortgages and to make agreements modifying, assigning or satisfying such mortgages; to file protests against the taxes or assessments on such real property; to make

applications for reduction of assessed valuations thereon and to bring certiorari proceedings to obtain the reduction of such assessed valuations; and to adjust and compromise any real estate taxes or tax valuations;

(c) To sell any trust property, including both real and personal, for cash or on credit at public or private sales; to exchange any trust property for other property; to grant options to purchase or acquire any trust property; and to determine the prices and terms of sales, exchanges and options;

(d) To borrow money for any purpose from the trustee or from others, and to mortgage or pledge any trust property;

(e) To make loans in such amounts, upon such terms, secured or unsecured, at such rates of interest and to such persons, firms or corporations as it may deem advisable;

(f) To employ attorneys, accountants, auditors, depositaries and agents, with or without discretionary powers; to exercise in person or by proxy all voting and other rights with respect to stocks or other securities; and to keep any property in bearer form or in the name of a trustee or a nominee, with or without disclosure of any fiduciary relationship;

(g) To select and employ any person, firm or corporation engaged in rendering investment counsel and real estate management; to be advised by them in making investments, managing securities, or making decisions with reference to the purchase, retention, sale or other disposition of real property, securities or other property held by the trustee; however, nothing herein shall be construed to require the trustee to follow the advice of any such investment counsel;

(h) To determine the allocation or apportionment of all receipts and

disbursements between income and principal in accordance with "The Revised Uniform Principal and Income Act" as adopted by Hawaii;

(i) To take any action with respect to conserving or realizing upon the value of any trust property and with respect to foreclosures, reorganizations or other changes affecting the trust property; to collect, pay, contest, compromise or abandon demands of or against the trust estate wherever situated; and to execute contracts, notes, conveyances and other instruments, including instruments containing covenants and warranties binding upon and creating a charge against the trust estate and containing provisions excluding personal liability;

(j) To receive additional property from any source and add it to the trust estate;

(k) To keep any or all of the trust property at any place or places in the United States or abroad or with a depository or custodian at such place or places;

(l) To enter into any transaction authorized by this Article with trustees, personal representatives or administrators of other trusts or estates in which any beneficiary has any interest, even though any such trustee or representative is also trustee under this instrument; and in any such transaction to purchase property or make loans on notes secured by property, even though similar or identical property constitutes all or a large proportion of the balance of the trust estate, and to retain any such property or note with the same freedom as if it had been an original part of the trust estate;

(m) To hold, manage, invest and account for the trust in one or more consolidated funds, in whole or in part, as it may determine; and to create the divisions of each consolidated fund into the various

shares comprising such fund only on the trustee's books of account, in which each trust shall be allotted its proportionate part of the principal and income of the fund and charged with its proportionate part of the expenses thereof. In no event, however, shall such holding defer the vesting in possession of any estate created herein;

(n) To establish out of income and credit to principal reasonable reserves for the depreciation of tangible and intangible property;

(o) To retain any property or undivided interests in property received from any source, including residential property, regardless of any lack of diversification, risk or non-productivity;

(p) To make any distribution or division of the trust property in cash or in kind or both.

3. Successor Trustees.

(a) The term "trustee" as used herein shall apply to EMILY H. SOUZA so long as said person serves as the Trustee, and during such time said person shall have all the powers granted to the trustee herein. In the event EMILY H. SOUZA dies, resigns or becomes incapacitated, FRANCINE SOUZA, shall become trustee without the necessity of court action or other action other than providing written notice to the beneficiaries hereunder. If FRANCINE SOUZA, dies, resigns or is unable or unwilling to serve, BENJAMIN A. TORO, shall become trustee without the necessity of court action or other action other than providing written notice to the beneficiaries hereunder. If BENJAMIN A. TORO, dies, resigns or is unable or unwilling to serve, a successor trustee

may be appointed by a majority in number of the beneficiaries to whom the trustee is to, or may, distribute the income from the trust at the time of appointment.

(b) In carrying out the provisions of this Article, the guardian or conservator of the estate of a beneficiary under legal disability or the parents or guardian of the person of a minor beneficiary for whose estate no guardian has been appointed, may act and receive notice for the beneficiary and sign any instrument for such beneficiary.

(c) The resignation of any trustee shall be by written notice, specifying the effective date of the resignation, delivered to any named successor trustee(s), and during the Grantor's lifetime to the Grantor. After the death of the Grantor, said written notice shall be given to the beneficiaries to whom the trustee is to or may distribute the income at the time of giving notice and to any named successor trustee(s).

(d) No successor trustee shall be personally liable for any act or omission of any predecessor trustee. Any successor trustee shall accept without examination or review the accounts rendered and the property delivered by or for a predecessor trustee, without incurring any liability or responsibility. Any successor trustee shall have all the title, powers and discretion of the trustee succeeded without the necessity of any conveyance or transfer.

## Article VIII

### Tax and Savings Provisions

1. Tax Elections. The trustee may make such elections under the tax laws applicable to the estate of the Grantor and to the trust estate as the trustee determines should be made. No compensating adjustments between principal and income nor with respect to any trust shall be made even though the elections made under the tax laws by the trustee may affect (beneficially or adversely) the interests of the beneficiaries. The action of the trustee shall be binding upon all beneficiaries.

2. Survivorship.

(b) 60-Day Survivorship. If any beneficiary under the trust dies within sixty (60) days of the Grantor's death, he shall be deemed not to have survived the Grantor.

## Article IX

### Miscellaneous

1. Hawaii Laws Applicable. This instrument and the dispositions under it shall be construed and regulated and their validity and effect shall be determined by the laws of Hawaii.

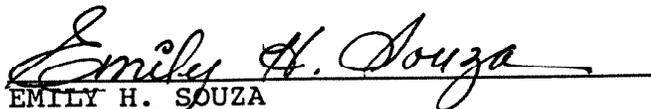
2. Tenancy of Beneficial Interest. During the life of the Grantor, the Grantor's beneficial interests in the various trust assets shall be deemed to be held by her as Tenant in Severalty.

3. Interpretation. Whenever necessary in this agreement and where the context permits, the singular term and the related pronoun shall include the plural, the masculine, the feminine and the neuter.

4. Confidentiality. The terms and provisions of this trust shall be kept in confidence by the trustee. If and to the extent that the law permits, and then only during the lifetime of the undersigned Grantor, the trustee is hereby directed not to and shall not file the trust instrument nor any copy thereof in any court, and shall not register the trust with any court or governmental body, and shall not reveal the terms thereof to any beneficiary or to any other person, except as authorized by the Grantor. Upon the death of the Grantor the trustee may make such filing or registration, or may from time to time make such revelation or accounting to any beneficiary as the trustee in its sole discretion may deem necessary or advisable.

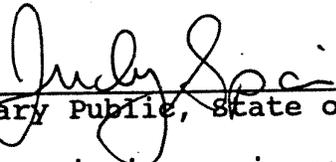
5. Headings. The paragraph headings used herein are for descriptive purposes only and shall not be deemed to alter or modify the meaning of any paragraph contained herein.

IN WITNESS WHEREOF, EMILY H. SOUZA as Grantor and Trustee, have signed this agreement this 26<sup>th</sup> day of April 1993.

  
EMILY H. SOUZA  
Grantor and Trustee

STATE OF HAWAII     )  
                              )  SS.  
COUNTY OF HAWAII   )

On this 26th day of April, 1993, before me appeared EMILY H. SOUZA, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

  
\_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires: 11/19/96  
LS

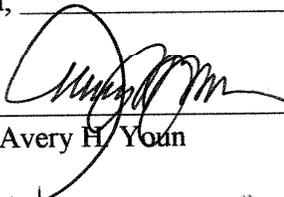
**AVERY H. YOUN, ARCHITECT  
2980 EWALU STREET #1  
LIHUE, HAWAII 96766**

**ARCHITECT'S CONDITION REPORT  
"AYRES CONDOMINIUM"**

The undersigned, being a licensed architect within the State of Hawaii and bearing Registration Number 3576, having inspected Units 1 & 2 of the project "AYRES CONDOMINIUM", both structures are (5) five years of age which may be occupied for residential use, situated at Koloa, Kauai, and identified as Tax Map Key No. (4) 2-6-006: 05.

The inspection included the exterior roof, foundation, visible electrical and plumbing systems, and I find that the systems and components of the structure, including visible structural, electrical and plumbing, appear to be in satisfactory and sound condition for the stated age thereof. The structure and related systems and components have an expected useful life in excess of 45 years.

DATED: Jan. 28, 1999 Kauai, Hawaii, \_\_\_\_\_

  
\_\_\_\_\_  
Avery H. Youn

