

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer: RAMON S. & HARRIET E. DE LA PENA
Address: 6155 KATA KEA PLACE, KAPAA, HAWAII 96746

Project Name(\*): DE LA PENA ESTATES-2
Address: LOT 144-E-2, PORTION OF LOT 144, KAPAA HOMESTEADS 2ND SERIES, KAPAA, KAUAI, HAWAII
Registration No. 4310 Effective date: February 29, 2000
(Conversion) Expiration date: March 29, 2001

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.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
SUPPLEMENTARY: (pink) This report updates information contained in the:
And [ ] Supersedes all prior public reports.

(\* ) Exactly as named in the Declaration

This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request.

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.

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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### 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>Raymond S. De La Pena (Trustee)</u>         | <u>Harriet E. De La Pena (Trustee)</u>         |
|            | <u>Name</u><br>6155 Kala Kea Place             | <u>Name</u><br>6155 Kala Kea Place             |
|            | <u>Business Address</u><br>Kapaa, Hawaii 96746 | <u>Business Address</u><br>Kapaa, Hawaii 96746 |
|            | <u>Business Phone:</u> (808) 822-5957          | <u>Business Phone:</u> (808) 822-5957          |

Names of officers and directors of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership(LLP); or manager and members of a Limited Liability Company(LLC)(attach separate sheet if necessary):

n/a

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|                      |  |                              |
|----------------------|--|------------------------------|
| Real Estate Broker*: | <u>Sleeping Giant Realty, Inc.</u>             | Phone: <u>(808) 822-5957</u> |
|                      | <u>Name</u><br>4480 Ahukini Road               | (Business)                   |
|                      | <u>Business Address</u><br>Lihue, Hawaii 96766 |                              |

|         |   |                              |
|---------|---|------------------------------|
| Escrow: | <u>First American Long &amp; Melone</u><br><u>Title Company, Ltd.</u> | Phone: <u>(808) 245-8877</u> |
|         | <u>Name</u><br>4374 Kukui Grove, Ste. 201                             | (Business)                   |
|         | <u>Business Address</u><br>Lihue, Hawaii 96766                        |                              |

|                      |                         |              |
|----------------------|-------------------------|--------------|
| General Contractor*: | <u>n/a</u>              | Phone: _____ |
|                      | <u>Name</u>             | (Business)   |
|                      | <u>Business Address</u> |              |

|                              |  |              |
|------------------------------|--|--------------|
| Condominium Managing Agent*: | <u>Self-Managed by the Association</u> | Phone: _____ |
|                              | <u>Name of Apartment Owners</u>        | (Business)   |
|                              | <u>Business Address</u>                |              |

|                         |  |                              |
|-------------------------|--|------------------------------|
| Attorney for Developer: | <u>Patrick J. Childs</u>                         | Phone: <u>(808) 245-2863</u> |
|                         | <u>Name</u><br>4365 Kukui Grove Street, Ste. 104 | (Business)                   |
|                         | <u>Business Address</u><br>Lihue, Hawaii 96766   |                              |

\* For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company (LLC)

**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. 99-170584  
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. 2988  
 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. 99-170585  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

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

The House Rules for this condominium are:

Proposed                       Adopted                       Developer does not plan to adopt House Rules

E. Changes to Condominium Documents

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

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

|                                | <u>Minimum<br/>Set by Law</u> | <u>This Condominium</u> |
|--------------------------------|-------------------------------|-------------------------|
| Declaration<br>(and Condo Map) | 75%*                          | <u>100%</u>             |
| Bylaws                         | 65%                           | <u>65%</u>              |
| House Rules                    | —                             | <u>N/A</u>              |

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

2. Developer:

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

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

The Developer 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 on the apartments, as built, or any change in any apartment number.



[ ] 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 144-E-2, PORTION Tax Map Key (TMK): 4/4-4-10:13  
of Lot 144, Kapaa Homesteads 2nd Series, Kapaa, Kauai, Hawaii  
[ ] Address [ ] TMK is expected to change because \_\_\_\_\_

Land Area: 1.00 [ ] square feet [X] acre(s) Zoning: Agricultural



5. Special Use Restrictions:

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

- Pets: NO OWNER MAY KEEP MORE THAN TWO DOGS AS PETS WITHOUT WRITTEN CONSENT. NO HUNTING DOGS, PITBULLS OR OTHER DOGS OF SIMILAR DISPOSITION.
- Number of Occupants: \_\_\_\_\_
- Other: ALL OWNERS AND OCCUPANTS TO EXERCISE EXTREME CARE TO AVOID MAKING LOUD NOISES THAT MAY DISTURB OTHER OCCUPANTS.
- There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 0 Trash Chutes: 0

| Apt. Type | Quantity | BR/Barth   | Net Living Area (sf)* | Net Other Area (sf) | (Identify)                        |
|-----------|----------|------------|-----------------------|---------------------|-----------------------------------|
| A         | <u>1</u> | <u>4/2</u> | <u>1175</u>           | <u>490</u>          | <u>Carpport, Utility</u>          |
| B         | <u>1</u> | <u>3/1</u> | <u>821</u>            | <u>459</u>          | <u>Carpport, Laundry, Storage</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:

Each apartment owner shall have and is hereby granted the right to construct such improvements as may be allowed by law within his or her respective limited common elements and to amend this Declaration and the Condominium file plan by his or her signature alone to reflect such alterations.



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 A - 50%  
APARTMENT B - 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 Oct. 26, 1999 and issued by First American 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.

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.

| Type of Lien | Effect on Buyer's Interest and Deposit if Developer Defaults<br>or Lien is Foreclosed Prior to Conveyance   |
|--------------|---|
| MORTGAGE     | THE UNDERLYING MORTGAGE IS SUPERIOR TO AND TAKES PRECEDENCE OVER THE SALES CONTRACT. IF THE DEVELOPER DEFAULTS BUYER SHALL LOSE HIS OPTION OT CONSUMMATE HIS PURCHASE OF THE PROPERTY ANDBUYER'S MONEY SHALL BE REFUNDED, LESS ESCROW CANCELLATION FEE. |

**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:

APARTMENT A WAS COMPLETED IN 1978.

APARTMENT B WAS COMPLETED IN 1990.

H. Project Phases:

The developer [ ] has [X] 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 October 1, 1999

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. 4310 filed with the Real Estate Commission on December 6, 1999

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

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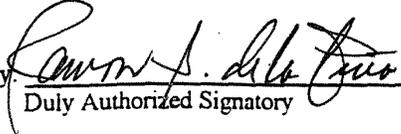
C. Additional Information Not Covered Above

1. The condominium interest created hereby is on agriculturally zoned land and, as such, is subject to all restrictions associated therewith. This is not residentially-zoned property and the Developer does not warrant that any residence will be permitted by the County of Kauai within any specific limited common element. Agricultural properties are subject to density requirements that may change. Any such change will effect the number of allowable units that may be placed on the underlying land.
2. The project qualifies for two residences on the basis of an Additional Dwelling Unit permit issued under the "Ohana" ordinance of the County of Kauai. The project and both units thereon are subject to said ordinance as the same may be amended.
3. This project is subject to the terms and provisions of that certain Ramon S. De La Pena Self-Trusteed Trust dated April 10, 1992, and in that certain Harriet El De La Pena Self-Trusteed Trust dated April 10, 1992. See attached Exhibits H & I for copies of these documents.
4. The project is subject to an 8 foot building setback line as shown on the Condominium Map.
5. 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 A and \$600.00 per year for Unit B. This estimate was prepared in accordance with generally accepted accounting principles.

2) 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.

Ramon S. De La Pena  
Printed Name of Developer

Harriet E. De La Pena  
Printed Name of Developer

By:   
Duly Authorized Signatory

By:   
Duly Authorized Signatory

Ramon S. De La Pena, as Trustee  
of his Self-Trusteed Trust  
Printed Name & Title of Signatory

Harriet E. De La Pena, as Trustee  
of her Self-Trusteed Trust  
Printed Name & Title of Signatory

Distribution:

Department of Finance, County of Kauai  
Planning Department, County of Kauai

*\*Must be signed for a: corporation by an officer; partnership or Limited Liability Partnership(LLP) by the general partner; Limited Liability Company(LLC) by the manager or member; and for an individual by the individual.*

10/98

**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 A, consisting of 21,778.40 square feet, on the Condominium Map, is reserved for the exclusive use of Apartment A for the support of the building and other improvements comprising Apartment A and for residential yard, driveway and parking purposes;
- (ii) that portion of the Land which is designated as Limited Common Element B, consisting of 21,781.20 square feet, on the Condominium Map, is reserved for the exclusive use of Apartment B for the support of the building and other improvements comprising Apartment B and for residential yard, driveway and parking 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. Tax Key: (4) 4-4-10-13

For Real Property Taxes that may be due or 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. 8 FOOT BUILDING SETBACK LINE

As shown on : Map attached to Dee dated July 7, 1992, recorded in the Bureau of Conveyance as Documents No. 92-111158.

4. Terms and provisions contained in that certain Ramon S. De La Pena Self-Trusteed Trust dated April 10, 1992, and in that certain Harriet E. De La Pena Self-Trusteed Trust dated April 10, 1992.

5. MORTGAGE AND FINANCING STATEMENT

Mortgagor(s) : Ramon S. De La Pena, Trustee of the Ramon S. De La Pena Trust dated April 10, 1992, and Harriet E. De La Pena, Trustee of the Harriet E. La Pena Self-Trusteed Trust dated April 10, 1992

Mortgagee(s) : American Savings Bank, F.S.B.

Dated : July 5, 1995

Recorded in the Bureau of Conveyances as Documents No. 95-089715.

To Secure : \$99,900.00 and any other amounts and/or obligations secured thereby

6. MORTGAGE AND FINANCING STATEMENT

Mortgagor(s) : Ramon S. De La Pena, Trustee of the Ramon S. De La Pena Trust dated April 10, 1992, and Harriet E. De La Pena, Trustee of the Harriet E. La Pena Self-Trusteed Trust dated April 10, 1992

Mortgagee(s) : American Savings Bank, F.S.B.

Dated : July 5, 1995

Recorded in the Bureau of Conveyances as Documents No. 95-089716.

To Secure : \$45,800.00 and any other amounts and/or obligations secured thereby

7. Covenants, conditions, restrictions, reservations, easements, liens for assessments, options, powers of attorney, limitations on title, and all other provisions, contained in or incorporated by reference in the Declaration of Condominium Property Regime

dated October 1, 1999, recorded in the Bureau of Conveyances as Documents No. 99-170584 (By-Laws thereto dated October 1, 1999, recorded in the Bureau of Conveyances as Documents No. 99-170585), Condominium Map No. 2988; any instrument creating the estate or interest herein set forth; and in any other allied instrument referred to in any of the instruments aforesaid.

End of Exhibit "B"

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 = Yearly Total</u> |
|------------------|---|
| A                | \$ 50.00 X 12 = \$ 600.00                     |
| B                | \$ 50.00 X 12 = \$ 600.00                     |

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



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 FIRST AMERICAN TITLE LONG & MELONE TITLE COMPANY, LTD. 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"

**AGOR ARCHITECTURE**

**4374 Kukui Grove Dr. Suite 204**

**Lihue, Kauai, Hawaii 96766**

ARCHITECT'S CERTIFICATION

The undersigned, being a licensed Architect within the State of Hawaii, and bearing Registration Number 5921, has inspected Unit A located at 6163 Kala Kea Pl. and Unit B located at 6159 Kala Kea Pl. of DE LA PENA ESTATES-2 CONDOMINIUM, Tax Map Key, 4th Division, 4-4-10:13 Lot: 144-E-2.

Unit A: 4 Bedrooms, 2 baths, living, kitchen, dining, utility, and a carport.  
Completed: 1978

Unit B: 3 Bedrooms, living, kitchen, dining, 1-1/2 bath, laundry rm., storage, carport.  
Completed 1990

The inspection included the exterior roof, foundation, walls, visible electrical, and plumbing systems, and I find as follows:

1. The systems and components, including visible structural, electrical, and plumbing, appears to be in satisfactory condition for the stated age thereof and appear to be in good sound condition.

2. Without conducting invasive examinations of covered structural, electrical, and plumbing components, the apartments appear to be constructed in conformity with the County of Kauai Zoning Ordinances, Building Code, and Rules and Regulations applicable to the construction at the time of construction thereof for Unit.

3. The apparent useful life of the Units, provided that proper maintenance is applied to the Units, are as follows:

Unit A: 39 years.

Unit B: 50 years.

4. There are no non-conforming uses existing on the property and no variances from any zoning or building codes have been granted for structures or uses on the property.

THIS IS NOT A WARRANTY OF COMPLIANCE WITH ALL CODES, RULES, AND REGULATIONS, ONLY A WARRANTY THAT INSPECTION WAS MADE AND NO APPARENT VIOLATIONS APPEAR TO EXIST. NO RIGHT SHALL ACCRUE TO ANY THIRD PARTY FOR SUBSEQUENT DISCOVERY OF ANY PROBLEMS WITH CODE COMPLIANCE OR FOR FUTURE CHANGES IN SUCH CODES.

DATED: Lihue, Kauai, Hawaii JUN 3 1999.



\_\_\_\_\_  
Ron Agor, Registered Professional  
Architect, No. 5921

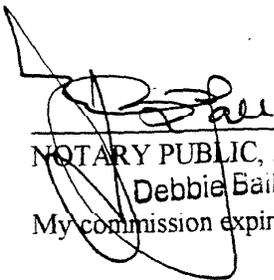
STATE OF HAWAII        )  
                                  ) s.s.  
COUNTY OF KAUAI     )

RON AGOR, being first duly sworn, deposes and says: That he is Registered Professional Architect No. 5921 in the State of Hawaii, has read the foregoing Certificate, knows the contents thereof and the same is true.



\_\_\_\_\_  
RON AGOR

Subscribed and sworn to before me  
this 3rd day of June, 1999.



\_\_\_\_\_  
NOTARY PUBLIC, STATE OF HAWAII  
Debbie Ball  
My commission expires: 8/19/2001

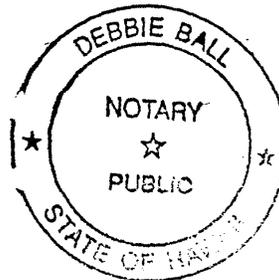


EXHIBIT "G"

Nov. 6, 1999

Mr. Dee Crowell  
County Planning Director  
4444 Rice Street, Suite 473  
Lihue, Hi. 96766

Re: DE LA PENA ESTATE-2  
TMK: 4/4-4-10:13

Dear Mr. Crowell:

This office represents me, the Developer for the above referenced project. Pursuant to Hawaii Revised Statutes 514 A-6, this office is to obtain a letter from the County regarding compliance with the various building and zoning ordinances. There exists on this project two structures in excess of five years old. In order to assist you, I have enclosed:

- 1) Architect's Statement
- 2) Condominium Map
- 3) Declaration
- 4) Notice of Intention & Questionnaire
- 5) Condominium Public Report (Draft)

Also, could you please certify that there are no legal non-conforming uses or variances or special use permits or grants with regards to the above referenced parcel and describe, if any, out standing violations of Zoning Ordinance or County Building Codes. Should you have any questions, please call me at 639-8329.

Sincerely,

  
Diane Treskon for  
Patrick J. Childs

EXHIBIT "H"

RAMON S. DE LA PEÑA  
SELF-TRUSTEED TRUST

RAMON S. DE LA PEÑA, husband of Harriet E. de la Peña, of Kapaa, County of Kauai, State of Hawaii, hereinafter called the "Settlor", hereby declares that he has transferred to himself, as "Trustee", the sum of TEN DOLLARS (\$10.00) and that that money and all other property hereafter added to the trust estate which is subject to this instrument shall be held, administered and distributed as follows:

ARTICLE I.

1.1 During the life of the Settlor, the Trustee shall pay the net income and principal of the trust estate as the Settlor shall direct and, if not otherwise directed by the Settlor, the Trustee shall pay to or for the benefit of the Settlor and his wife, HARRIET E. DE LA PEÑA, such portions or all of the net income and principal as the Trustee shall deem advisable.

1.2 So long as the Settlor shall be surviving and competent, the Trustee shall permit the Settlor to be in full, free and undisturbed possession of that real property which shall be included in the trust estate and be used as the Settlor's residence, and the Settlor shall have the right to occupy and use that property and to receive and retain all rents and income therefrom to the fullest extent incident to ownership thereof, without any rental or accounting therefor to the Trustee. The

Trustee as beneficiary and are on deposit with the Trustee. During such time as the Settlor shall be surviving and incompetent, the Trustee shall, to the extent that funds shall be in the Trustee's hands, pay all interest on any unpaid loans on such policies.

1.5 The Settlor shall retain the right to all payments, dividends, surrender values, proceeds of matured endowments and benefits of any kind which may accrue during the Settlor's life on account on any such policies, the right to exercise at any time any conversion option or other option or privilege with respect to any such policies, and the right to change the beneficiary of or to sell, assign or hypothecate any such policies. The Trustee shall deliver to the Settlor, on the Settlor's written request, any such policies deposited with the Trustee.

## ARTICLE 2.

2.1 Upon receiving proof of the death of the Settlor, the Trustee shall collect all sums of money on any policies of insurance on the life of the Settlor which are known to the Trustee and are payable to the Trustee, but the Trustee shall not be obligated to initiate any legal proceeding to recover any such sums until the Trustee shall have been indemnified in such amount and manner as the Trustee may reasonably require. The

Trustee may receipt for and grant any necessary releases in connection with the collection of any such sums and may settle, adjust and compromise any claims arising out of any of the policies, on such terms and conditions as the Trustee deems just and advisable, and any decisions made by the Trustee in that regard shall be final and binding on all persons interested in the trust estate. No one paying any such sums to the Trustee shall be under any obligation to see to the application thereof or to inquire into the authority of the Trustee.

2.2 The Trustee shall cause all bonds which are assets of the trust estate at the time of the Settlor's death and are redeemable for more than their fair market values in satisfaction of any estate tax imposed by the United States because of the Settlor's death to be redeemed in satisfaction of such estate tax (to the extent thereof), other than that portion of any such estate tax attributable to the Settlor's possession of a power of appointment.

#### ARTICLE 3.

3.1 If the Settlor's wife, Harriet E. de la Peña, shall survive the Settlor, upon the death of the Settlor the Trustee shall set aside, out of the trust property then in the Trustee's hands (other than that disposed of by paragraph 2.2 hereof) or passing to her by reason of the Settlor's death, as a separate

trust estate (herein referred to as the "Marital Trust") assets which qualify for the marital deduction under the provisions of the Internal Revenue Code applicable to the Settlor's estate and which have an aggregate value equal to the maximum marital deduction allowable in the United States estate tax proceeding relating to the Settlor's estate, reduced by (i) the total of any other amounts allowed as a marital deduction in that proceeding and (ii) the amount, if any, necessary to increase the Settlor's taxable estate for United States estate tax purposes to the largest sum which, after taking into account the credit for state death taxes (but only to the extent that the use of such credit does not increase the death tax payable to any state) and the unified credit (but no other credits) available to the Settlor's estate for such purposes, would result in the imposition of no United States estate tax with respect to the Settlor's estate. The assets set aside to the Marital Trust shall be assets which qualify for the marital deduction under the provisions of the Internal Revenue Code applicable to the Settlor's estate, and no property located in a foreign country shall be set aside to the Marital Trust, except to the extent that the remaining property included in the Settlor's gross estate is insufficient to complete the funding of the Marital Trust pursuant to this paragraph 3.1. Each asset

set aside to the Marital Trust shall be valued at the date it is so set aside. Regardless of anything to the contrary in this Article 3, the Trustee shall not be required, until six months after the Settlor's death, to implement the terms of this Article 3 with respect to the principal of the trust estate in such a way as to effectuate a "distribution" or other "disposition" of any of such principal to the Marital Trust, within the meaning of Section 2032 of the Internal Revenue Code. The Marital Trust shall be held, administered and distributed as provided in this Article 3.

3.2 From the date of the Settlor's death until the death of the Settlor's said wife, the Trustee shall pay to the Settlor's said wife all of the net income of the Marital Trust and shall also pay to the Settlor's said wife such portions or all of the principal of the Marital Trust as the Trustee shall determine in her sole discretion. Payments of income to the Settlor's said wife shall be made at times fixed by the Trustee, at least as often as quarterly and, if practicable, in regular periodic payments. Payments of principal of the Marital Trust may be made to the Settlor's said wife in such amount, for such purposes, at such times and in such manner as the Trustee shall determine in her uncontrolled discretion, without referring to

any standard or considering any income or property of or available to the Settlor's said wife.

3.3 Anytime that the value of principal of the Marital Trust shall be less than \$50,000.00, the Trustee shall have the power to terminate this trust, if, in the Trustee's sole and absolute discretion, the Trustee deems it advisable to do so. Upon such termination by the Trustee, the Trustee shall transfer all of the trust property, including any unpaid income, absolutely and free from any trust, to the Settlor's said wife. The Trustee's decision to terminate this trust shall be final and binding on all persons interested in the Marital Trust.

3.4 Unless the trust shall have been previously terminated pursuant to paragraph 3.3 hereof, upon the death of the Settlor's said wife, the Trustee shall transfer all of the trust property, including any unpaid income, absolutely and free from any trust, to such person or persons (including, without limitation, the estate of the Settlor's said wife), in such amount and proportions, for such estates and interests and upon such terms, trusts, conditions and limitations as the Settlor's said wife shall appoint by a will made after the Settlor's death which specifically refers to the power of appointment herein given to her. The power of appointment given to the Settlor's said wife by this paragraph 3.4 shall be exercisable by her

alone and in all events. All property of the Marital Trust as to which such power of appointment shall not be effectually exercised shall be disposed of as follows:

(1) To the extent that the remaining property of the Marital Trust is sufficient, the Trustee shall pay to the Settlor's said wife's personal representative a sum equal to the difference between (i) the total of the estate, inheritance, succession and other death taxes actually imposed because of the death of the Settlor's said wife and the expenses actually incurred in the administration of her estate, and (ii) what that total would have been if no part of the Marital Trust or the payment this subparagraph (1) directs be made had been considered in computing those taxes and administration expenses. The Trustee's determination in good faith of the amount of said payment shall be final and binding on all persons interested in the Marital Trust. Said payment shall be made on the condition that it discharges all obligations of those receiving property of the Marital Trust to reimburse the Settlor's said wife's personal representative for the portion of such taxes attributable to that property.

(2) The balance of that property of the Marital Trust as to which such power of appointment shall not have been effectually exercised shall be added to and become a part of the

principal of the Residuary Trust which is subject to Article 4 of this instrument and shall thereafter be so administered in all respects.

3.5 The approval by the Settlor's said wife of any act or omission on the part of the Trustee or of any account of the Trustee shall effectually authorize, ratify and empower such act or omission (including, in the case of approval of any account, all acts or omissions of the Trustee during the period covered by the account), shall constitute a full release of the Trustee with respect to such act or omission and such account, and shall, for all purposes, be binding on all persons (whether then in being or not) who are or may become interested in the Marital Trust.

#### ARTICLE 4.

4.1 Upon the death of the Settlor, all of the trust property not disposed of by paragraph 2.2 hereof or set aside to the Marital Trust shall be held by the Trustee as a separate trust estate (herein referred to as the "Residuary Trust"). Regardless of anything to the contrary in this Article 4, the Trustee shall not be required, until six months after the Settlor's death, to implement the terms of this Article 4 with respect to the principal of the trust estate in such a way as to effectuate a "distribution" or other "disposition" of any such

principal to the Residuary Trust, within the meaning of Section 2032 of the Internal Revenue Code. The Residuary Trust shall be held, administered and distributed as provided in this Article 4.

4.2 The Trustee shall pay to the Settlor's personal representative or to the taxing authorities and other obligees of the Settlor's estate such amounts as the personal representative shall certify, within the three-year period following the Settlor's death, to be the extent to which the Settlor's estate, after satisfaction of all of the Settlor's specific and general devises and bequests and after redemption of any bonds pursuant to paragraph 2.2 of this instrument, is insufficient for the payment of the Settlor's funeral and administration expenses, the expenses incurred in transferring and delivering all bequests to the Settlor's legatees at their residences, and all estate, inheritance, succession and other death taxes (including interest and penalties thereon) imposed by the United States or any state, territory or possession thereof by reason of the Settlor's death, whether or not measured by property passing under the Settlor's Will, other than taxes imposed pursuant to Chapter 13 of the Internal Revenue Code and taxes imposed by reason of the Settlor's possession of any unexercised power of appointment. The aforesaid payments shall be made out of the

principal of the trust estate remaining after redemption of any bonds pursuant to paragraph 2.2 of this instrument, subject to any prior disposition of such principals as herein provided, but (i) property which is excluded from the Settlor's gross estate for federal estate tax purposes shall not be used to make any payment on account of the Settlor's debts or funeral or administration expenses, estate taxes imposed by the United States, or expenses incurred in transferring and delivering bequests to the Settlor's legatees at their residences, and (ii) property which is exempt from inheritance and estate taxes imposed by the State of Hawaii shall not be used to make any payment on account of the Settlor's debts or funeral or administration expenses, inheritance or estate taxes imposed by the State of Hawaii, or expenses incurred in transferring and delivering bequests to the Settlor's legatees at their residences. The Trustee may rely absolutely on any such certificate and shall not be required to investigate its truth. The Trustee shall not be responsible for the application of any sums paid pursuant to such a certificate and shall not be required to recover any sums so paid which are not used for the purposes certified. Regardless of anything to the contrary in this instrument, during the three-year period following the Settlor's death the Trustee shall hold in trust from time to time such sum she determines, in her sole discre-

tion, is likely to be required for payment pursuant to such certification by the Settlor's personal representative. Any portion of the aforesaid sum as is from time to time determined by the Trustee to be in excess of the likely requirements of such certification or remains in the Trustee's hands unobligated by such certification upon the expiration of the three-year period shall be transferred, held or disposed of by the Trustee as the Trustee would have transferred, held or disposed of that portion if the Trustee had not been directed by this paragraph 4.2 to continue to hold it.

4.3 The Trustee may purchase from the Settlor's personal representative any securities or other property, real or personal, and may retain such property as if it had been an original part of the trust estate, even though similar property constitutes all or a large portion of the balance of the trust estate. The Trustee may make secured or unsecured loans to the Settlor's personal representative, at such rates of interest as the Trustee shall determine. In no event shall the Trustee be liable for any loss resulting to the trust estate by reason of any such purpose or loan.

4.4 From the date of the Settlor's death until the termination of this trust, the Trustee shall pay to or for the benefit of those who shall be surviving from time to time of the

Settlor's said wife and the Settlor's issue such portions or all of the net income and principal of the trust estate as the Trustee shall deem advisable, in accordance with their needs as determined by the Trustee in her discretion, with or without considering other resources available to them and without being required to keep the payments equal or proportionate, and the Trustee shall add all surplus net income to the principal of the trust estate; provided, however, that the Trustee shall pay none of the principal of the Residuary Trust to or for the benefit of the Settlor's said wife while the Marital Trust is in existence.

4.5 Anytime that the value of the principal of the trust estate shall be less than \$50,000.00, the Trustee shall have the power to terminate the trust, if, in the Trustee's sole and absolute discretion, the Trustee deems it advisable to do so. Upon such termination by the Trustee, the Trustee shall transfer all of the trust property, including any unpaid income, absolutely and free from any trust, to the Settlor's said wife, if still surviving, or to the Settlor's issue per stirpes. The Trustee's decision to terminate the trust shall be final and binding on all persons interested in the trust estate.

4.6 Unless previously terminated pursuant to paragraph 4.5 hereof, this trust shall terminate when the Settler and the Settlor's said wife shall have died. Upon such termination, the

Trustee shall transfer the trust property, absolutely and free from any trust, as follows:

a. Any interest in Lot 144-E-2, Kapaa Homesteads, Second Series, Kapaa, Island and County of Kauai, State of Hawaii, containing an area of 1.0 acre, more or less, and more particularly identified as Kauai Tax Map Key: 4-4-10-13, to the Settlor's son, RAYNARD D. DE LA PEÑA;

b. Any interest in Lot 13-B-9, Kilauea Plantation Subdivision, Kilauea, Island and County of Kauai, State of Hawaii, containing an area of 5.697 acres, more or less, and more particularly identified as Kauai Tax Map Key: 5-2-13-03, to the Settlor's son, RAMON S. DE LA PENA, JR.;

c. Any interest in Lot 144-E-1, Kapaa Homesteads, Second Series, Kapaa, Island and County of Kauai, State of Hawaii, containing an area of 1.0 acre, more or less, and more particularly identified as Kauai Tax Map Key: 4-4-10-03, to the Settlor's daughter, MARJORIE J. L. OCHSNER;

d. Any interest in Lot 144-E-3, Kapaa Homesteads, Second Series, Kapaa, Island and County of Kauai, State of Hawaii, containing an area of 1.0 acre, more or less, and more particularly identified as Kauai Tax Map Key: 4-4-10-14, to the Settlor's son, RYAN M. DE LA PEÑA;

e. All of the remaining trust property, including any unpaid income, shall be distributed equally to the Settlor's said children.

In the event that any of the Settlor's said children predecease the termination of the trust with issue the share of such predeceased child shall be distributed to his or her issue per stirpes. In the event that any of the Settlor's said children should predecease the termination of the trust without issue, the share of such predeceased child shall be distributed equally to the remaining children of the Settlor, the issue of any predeceased child to take the share of their parent per stirpes.

#### ARTICLE 5.

5.1 The provisions of this Article 5 shall apply to and govern the administration of the trust estate prior to the death of the Settlor and shall also apply to and govern the administration of both the Marital Trust and the Residuary Trust.

5.2 Except as otherwise provided in paragraph 1.2 hereof, the Trustee shall, in addition to all powers now or hereafter conferred by law, have the power and authority to manage, develop, improve, sell, convey, mortgage, partition, subdivide and change the character of any trust property; to dedicate to public use, abandon and otherwise dispose of any trust property,

when, in the judgment of the Trustee, it is in the interests of the beneficiaries to do so; to enter into any lease as lessor or lessee for a term within or extending beyond the duration of the trust; to grant or take an option to purchase or lease; to borrow funds, with or without trust property as security, for such purposes as the Trustee shall deem advisable; to invest and reinvest principal and income in every kind of property, real and personal; to place trust assets in the hands of agents selected by the Trustee, in order to facilitate transactions and record keeping in connection with those assets and for safekeeping; to continue or participate in the operation of any business or other enterprise and to effect incorporation, dissolution or other changes in the form of the organization thereof; to give revocable or irrevocable general or specific proxies or authorizations for voting or acting with respect to securities, with or without power of substitution and discretionary or nondiscretionary, including such authority to any protective or reorganization committee as the Trustee shall deem advisable; to effect distribution of property in kind or in money and in divided or undivided interest, and to allocate property among shares and adjust resulting differences in valuation; and generally to exercise the same control over and rights with respect to the

trust estate as could be exercised personally by an absolute owner of the trust property.

5.3 The Trustee shall not be required to give any bond.

5.4 (a) The Trustee shall not be required to file any account in any court.

(b) Except as otherwise provided in subparagraph (c)(1) of this paragraph 5.4, the Trustee shall not account to any of the beneficiaries during the lifetime of the Settlor.

(c) (1) So long as the Settlor shall be surviving, the Trustee shall annually deliver to the Settlor an account for each accounting year during which the Trustee shall have held property in trust pursuant to this instrument.

(2) After the Settlor's death, the Trustee shall annually deliver an account to each income beneficiary.

5.5 The Trustee shall be entitled to receive out of the trust property reasonable compensation for her services, without allowance, determination or review by any court; provided that Ramon de la Peña shall receive no compensation with respect to his services as Trustee, but he shall be reimbursed all expenses properly chargeable to the trust estate.

5.6 The interests of beneficiaries, other than the Settlor, in principal or income shall not be subject to claims of their creditors or others, or to legal process, and may not

be voluntarily or involuntarily alienated or encumbered; provided, that this paragraph 5.6 shall not limit or affect the exercise by the Settlor's said wife of her power of appointment with respect to the principal and income of the Marital Trust.

5.7 The determination of whether the Settlor is competent, for purposes of paragraphs 1.2, 1.4 and 7.7 hereof, shall be made by a medical doctor who has examined the Settlor, and that determination shall be final and binding on all persons interested in the trust estate.

5.8 All of the powers and discretion of the Trustee hereunder shall continue until all of the trust property has been distributed.

#### ARTICLE 6.

6.1 The provisions of this Article 6 shall apply to and govern the administration of the trust estate prior to the death of the Settlor and shall also apply to and govern the administration of the Residuary trust, but they shall not apply to or govern the administration of the Marital Trust.

6.2 The Trustee shall have the power and authority to borrow funds, with or without trust property as security, for such purposes as the Trustee shall deem advisable, including, without limitation, payment of debts of the Settlor or for any other purpose as directed by the Settlor, when expressly

directed by the Settlor and on terms and conditions approved by the Settlor, to hypothecate trust property in order to secure the payment of debts and performance of obligations arising from loans made to the Settlor or at the Settlor's request, as well as extensions, renewals or refinancings thereof; to invest and reinvest principal and income without being limited by any statute or rule of law affecting the investment of trust funds; to retain indefinitely any property received as part of the trust estate until, in the Trustee's judgment, disposition thereof should be made, regardless of any risk, nonproductivity or lack of diversification, and although, except for this express authority, it might be of a kind or in an amount which would be considered improper for a trust estate; and from time to time, in the Trustee's sole discretion and without reference to prior determinations, and for any purpose, to determine what is principal and what is income of the trust estate and to allocate receipts and disbursements to those accounts, with full discretion to allocate any receipt to principal for the purpose of providing funds for the payment of any charge against principal.

6.3 Upon the death of any income beneficiary, the interest of that beneficiary in all undistributed income shall terminate, regardless of when it shall have accrued, and all such income

shall be distributed as though it had accrued immediately after the death of that beneficiary.

6.4 Until the Trustee shall receive written notice of any event upon which any right in the trust estate may depend, the Trustee shall incur no liability with respect to disbursements and other actions in good faith which would have been proper in the absence of that event.

6.5 Whenever, prior to the termination of the trust, the Trustee shall be required or authorized to make payments to or for the benefit of a beneficiary who is under legal disability, such payments may be made to the beneficiary or to a third party for the benefit of the beneficiary, without liability on the part of the Trustee.

6.6 The Trustee shall determine the amount of depreciation and depletion chargeable against the tangible assets of the trust estate each year, in accordance with accounting principles, methods and formulas determined by the Trustee to be generally accepted and applicable, and shall charge against income and credit to principal the amount so determined; provided, (i) that the amount of depreciation and depletion charged with respect to any asset of the trust estate during any year shall not exceed the net income derived from that asset during that year, as determined by the Trustee, and (ii) that

the Trustee shall not be required to charge depreciation or depletion with respect to any improvement constructed on trust property by a lessee. All such determinations made in good faith by the Trustee shall be final and binding on all persons interested in the trust estate.

6.7 This instrument shall be liberally construed in the interest and for the benefit of the current income beneficiaries, and the exercise of any discretion of the Trustee in favor of any current income beneficiary shall be absolutely binding on all successor income beneficiaries and remaindermen; provided, that this paragraph 6.7 shall not be deemed to limit any discretion herein conferred upon the Trustee.

6.8 Possession of any or all household goods and personal effects at any time included in the trust estate may be given, in the Trustee's discretion, to any one or more of the current income beneficiaries (whether adult or minor), to the guardian of the person or property of any one or more of the current income beneficiaries or to the person or persons with whom any one or more of the current income beneficiaries may at any time be living, without being required to divide the property equally, and the Trustee shall not thereafter be liable for any damage to or loss of the property. The Trustee shall be entitled to regain possession of the property at any time.

6.9 Any person may at any time add to the trust estate property acceptable to the Trustee, and any property so added shall be subject in every respect to the terms and conditions of this instrument.

ARTICLE 7.

7.1 If there is no sufficient evidence that the Settlor and the Settlor's said wife shall have died otherwise than simultaneously, the Settlor's said wife shall, for all purposes of this instrument, be deemed to have survived the Settlor.

7.2 For purposes of this instrument, anyone (other than the Settlor's said wife) who dies within thirty days after the date of the Settlor's death, shall be considered to have died before the Settlor.

7.3 If the Settlor's said wife shall disclaim in whole or in part her interest in any property set aside to the Marital Trust, the property, or the portion thereof to which the disclaimer pertains, shall be added to and become a part of the principal of the Residuary Trust and shall thereafter be so administered in all respect.

7.4 If the Settlor's said wife shall take an elective share of his estate rather than taking under the provisions of the Settlor's Will, then, for purposes of this instrument, the Settlor's said wife shall be deemed to have predeceased the

Settlor and this instrument shall be construed, interpreted and applied in the same manner and so as to have the same effect as if the Settlor's said wife had predeceased him.

7.5 As used herein, "issue" means all persons who are descended from the ancestor referred to, either by legitimate relationship to or legal adoption by that ancestor or by any of that ancestor's legitimate or legally adopted descendants, "children" means such issue of the first generation, and "per stirpes" means in equal shares among living children and the issue of deceased children, the latter taking by right of representation. No person shall be considered illegitimate because of the invalidity of a purported divorce of a parent with reference to a prior marriage. Anyone otherwise entitled to a benefit hereunder as a blood descendant of any individual shall receive that benefit even if he or she shall have been adopted by another individual; provided, however, that anyone otherwise entitled to benefit hereunder as both a blood descendant and a descendant by legal adoption shall receive a benefit hereunder only as a blood descendant and that anyone otherwise entitled to benefit hereunder through such a person shall receive a benefit only through that person as a blood descendant.

7.6 References to statutes in Articles 3 and 4 hereof are to the Internal Revenue Code of 1954, as amended, and shall be deemed to refer to corresponding provisions of any subsequent United States tax law.

7.7 If Ramon S. de la Peña shall resign, die or become incompetent, the Settlor's sister-in-law, ELENA GABORNO, shall become and be the Trustee, and she shall be vested with and may exercise all of the rights, powers, duties and discretion herein given to the Trustee. Ramon S. de la Peña may resign as Trustee by an instrument delivered to Elena Gaborno, to take effect upon the date stated therein, but not sooner than the date of receipt of the instrument. If Elena Gaborno shall resign, die or become incompetent, Elena Gaborno's husband, MODESTO GABORNO, shall become and be the Trustee, and he shall be vested with and may exercise all of the rights, powers, duties and discretion herein given to the Trustee. Elena Gaborno may resign as Trustee by an instrument delivered to Modesto Gaborno, to take effect upon the date stated therein, but not sooner than the date of receipt of the instrument. If Modesto Gaborno declines his appointment as successor Trustee, he shall have no obligation to procure the appointment of a different successor Trustee. The trust estate shall vest in the Trustee who shall from time to time be appointed and acting hereunder, without instrument of transfer

or order of any court, but each successor Trustee shall be responsible only for that trust property which the successor Trustee actually receives from the immediate predecessor as Trustee or from the personal representatives of that immediate predecessor. No successor Trustee shall have any obligation or responsibility with respect to any of the acts, transactions and accounts of any prior Trustee. Each successor Trustee shall be entitled to rely absolutely upon the account and inventory furnished to the successor Trustee by the immediate predecessor as Trustee or by the personal representatives of that immediate predecessor.

7.8 This instrument may be amended in any respect, but only by another instrument signed by both the Settlor and the Trustee during the Settlor's lifetime.

7.9 The Settlor reserves the right to revoke the trust hereby created, at any time during his lifetime, but only by an instrument signed and acknowledged by him and received by the Trustee.

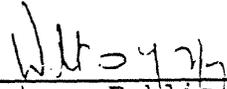
7.10 During the lifetime of the Settlor, the Trustee shall not register this trust pursuant to the provisions of the Uniform Probate Code and shall not reveal the terms of this instrument to any of the beneficiaries other than the Settlor.

IN WITNESS WHEREOF, RAMON S. DE LA PEÑA has signed this instrument on this 10th day of April, 1992.

  
\_\_\_\_\_  
RAMON S. DE LA PEÑA  
Settlor and Trustee

STATE OF HAWAII     )  
                          )    ss.  
COUNTY OF KAUAI    )

On this 10th day of April, 1992, before me personally appeared RAMON S. DE LA PEÑA, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

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

My commission expires: 4/1/92

EXHIBIT "I"

HARRIET E. DE LA PEÑA  
SELF-TRUSTEED TRUST

HARRIET E. DE LA PEÑA, wife of Ramon S. de la Peña, of Kapaa, County of Kauai, State of Hawaii, hereinafter called the "Settlor", hereby declares that she has transferred to herself, as "Trustee", the sum of TEN DOLLARS (\$10.00) and that that money and all other property hereafter added to the trust estate which is subject to this instrument shall be held, administered and distributed as follows:

ARTICLE I.

1.1 During the life of the Settlor, the Trustee shall pay the net income and principal of the trust estate as the Settlor shall direct and, if not otherwise directed by the Settlor, the Trustee shall pay to or for the benefit of the Settlor and her husband, RAMON S. DE LA PEÑA, such portions or all of the net income and principal as the Trustee shall deem advisable.

1.2 So long as the Settlor shall be surviving and competent, the Trustee shall permit the Settlor to be in full, free and undisturbed possession of that real property which shall be included in the trust estate and be used as the Settlor's residence, and the Settlor shall have the right to occupy and use that property and to receive and retain all rents and income therefrom to the fullest extent incident to ownership thereof, without any rental or accounting therefor to the Trustee. The

Trustee shall not be required to procure or maintain any insurance on any buildings on the property, to pay or secure the payment of any rents, liens or encumbrances, taxes or other charges against the property, to collect or disburse any rentals therefor or to protect or preserve the property or the improvements thereon or any title the Trustee may have thereto. It is the intention of the Settlor that all responsibilities toward the property shall, during the aforesaid period, rest solely and exclusively on the Settlor and not on the Trustee.

1.3 Prior to the death of the Settlor, the Trustee shall have no obligation to hold any policies of insurance on the life of the Settlor which have been or may be made payable to the Trustee. If the Trustee holds any such policies, the Trustee's obligations with respect to them during the life of the Settlor shall be solely those of safekeeping and of returning the policies to the Settlor upon demand.

1.4 So long as the Settlor shall be surviving and competent, the Trustee shall have no obligation to pay any premium, assessment or other sum that may become due with respect to any such policies. During such time as the Settlor shall be surviving and incompetent, the Trustee shall, to the extent that funds shall be in the Trustee's hands, pay all of the premiums on those policies which are owned by the Settlor, name the

Trustee as beneficiary and are on deposit with the Trustee. During such time as the Settlor shall be surviving and incompetent, the Trustee shall, to the extent that funds shall be in the Trustee's hands, pay all interest on any unpaid loans on such policies.

1.5 The Settlor shall retain the right to all payments, dividends, surrender values, proceeds of matured endowments and benefits of any kind which may accrue during the Settlor's life on account on any such policies, the right to exercise at any time any conversion option or other option or privilege with respect to any such policies, and the right to change the beneficiary of or to sell, assign or hypothecate any such policies. The Trustee shall deliver to the Settlor, on the Settlor's written request, any such policies deposited with the Trustee.

## ARTICLE 2.

2.1 Upon receiving proof of the death of the Settlor, the Trustee shall collect all sums of money on any policies of insurance on the life of the Settlor which are known to the Trustee and are payable to the Trustee, but the Trustee shall not be obligated to initiate any legal proceeding to recover any such sums until the Trustee shall have been indemnified in such amount and manner as the Trustee may reasonably require. The

Trustee may receipt for and grant any necessary releases in connection with the collection of any such sums and may settle, adjust and compromise any claims arising out of any of the policies, on such terms and conditions as the Trustee deems just and advisable, and any decisions made by the Trustee in that regard shall be final and binding on all persons interested in the trust estate. No one paying any such sums to the Trustee shall be under any obligation to see to the application thereof or to inquire into the authority of the Trustee.

2.2 The Trustee shall cause all bonds which are assets of the trust estate at the time of the Settlor's death and are redeemable for more than their fair market values in satisfaction of any estate tax imposed by the United States because of the Settlor's death to be redeemed in satisfaction of such estate tax (to the extent thereof), other than that portion of any such estate tax attributable to the Settlor's possession of a power of appointment.

### ARTICLE 3.

3.1 If the Settlor's husband, Ramon S. de la Peña, shall survive the Settlor, upon the death of the Settlor the Trustee shall set aside, out of the trust property then in the Trustee's hands (other than that disposed of by paragraph 2.2 hereof) or passing to her by reason of the Settlor's death, as a separate

trust estate (herein referred to as the "Marital Trust") assets which qualify for the marital deduction under the provisions of the Internal Revenue Code applicable to the Settlor's estate and which have an aggregate value equal to the maximum marital deduction allowable in the United States estate tax proceeding relating to the Settlor's estate, reduced by (i) the total of any other amounts allowed as a marital deduction in that proceeding and (ii) the amount, if any, necessary to increase the Settlor's taxable estate for United States estate tax purposes to the largest sum which, after taking into account the credit for state death taxes (but only to the extent that the use of such credit does not increase the death tax payable to any state) and the unified credit (but no other credits) available to the Settlor's estate for such purposes, would result in the imposition of no United States estate tax with respect to the Settlor's estate. The assets set aside to the Marital Trust shall be assets which qualify for the marital deduction under the provisions of the Internal Revenue Code applicable to the Settlor's estate, and no property located in a foreign country shall be set aside to the Marital Trust, except to the extent that the remaining property included in the Settlor's gross estate is insufficient to complete the funding of the Marital Trust pursuant to this paragraph 3.1. Each asset

set aside to the Marital Trust shall be valued at the date it is so set aside. Regardless of anything to the contrary in this Article 3, the Trustee shall not be required, until six months after the Settlor's death, to implement the terms of this Article 3 with respect to the principal of the trust estate in such a way as to effectuate a "distribution" or other "disposition" of any of such principal to the Marital Trust, within the meaning of Section 2032 of the Internal Revenue Code. The Marital Trust shall be held, administered and distributed as provided in this Article 3.

3.2 From the date of the Settlor's death until the death of the Settlor's said husband, the Trustee shall pay to the Settlor's said husband all of the net income of the Marital Trust and shall also pay to the Settlor's said husband such portions or all of the principal of the Marital Trust as the Trustee shall determine in her sole discretion. Payments of income to the Settlor's said husband shall be made at times fixed by the Trustee, at least as often as quarterly and, if practicable, in regular periodic payments. Payments of principal of the Marital Trust may be made to the Settlor's said husband in such amount, for such purposes, at such times and in such manner as the Trustee shall determine in her uncontrolled discretion, without referring to any standard or considering any

income or property of or available to the Settlor's said husband.

3.3 Anytime that the value of principal of the Marital Trust shall be less than \$50,000.00, the Trustee shall have the power to terminate this trust, if, in the Trustee's sole and absolute discretion, the Trustee deems it advisable to do so. Upon such termination by the Trustee, the Trustee shall transfer all of the trust property, including any unpaid income, absolutely and free from any trust, to the Settlor's said husband. The Trustee's decision to terminate this trust shall be final and binding on all persons interested in the Marital Trust.

3.4 Unless the trust shall have been previously terminated pursuant to paragraph 3.3 hereof, upon the death of the Settlor's said husband, the Trustee shall transfer all of the trust property, including any unpaid income, absolutely and free from any trust, to such person or persons (including, without limitation, the estate of the Settlor's said husband), in such amount and proportions, for such estates and interests and upon such terms, trusts, conditions and limitations as the Settlor's said husband shall appoint by a will made after the Settlor's death which specifically refers to the power of appointment herein given to him. The power of appointment given to the Settlor's said husband by this paragraph 3.4 shall be exercis-

able by him alone and in all events. All property of the Marital Trust as to which such power of appointment shall not be effectually exercised shall be disposed of as follows:

(1) To the extent that the remaining property of the Marital Trust is sufficient, the Trustee shall pay to the Settlor's said husband's personal representative a sum equal to the difference between (i) the total of the estate, inheritance, succession and other death taxes actually imposed because of the death of the Settlor's said husband and the expenses actually incurred in the administration of his estate, and (ii) what that total would have been if no part of the Marital Trust or the payment this subparagraph (1) directs be made had been considered in computing those taxes and administration expenses. The Trustee's determination in good faith of the amount of said payment shall be final and binding on all persons interested in the Marital Trust. Said payment shall be made on the condition that it discharges all obligations of those receiving property of the Marital Trust to reimburse the Settlor's said husband's personal representative for the portion of such taxes attributable to that property.

(2) The balance of that property of the Marital Trust as to which such power of appointment shall not have been effectually exercised shall be added to and become a part of the

principal of the Residuary Trust which is subject to Article 4 of this instrument and shall thereafter be so administered in all respects.

3.5 The approval by the Settlor's said husband of any act or omission on the part of the Trustee or of any account of the Trustee shall effectually authorize, ratify and empower such act or omission (including, in the case of approval of any account, all acts or omissions of the Trustee during the period covered by the account), shall constitute a full release of the Trustee with respect to such act or omission and such account, and shall, for all purposes, be binding on all persons (whether then in being or not) who are or may become interested in the Marital Trust.

#### ARTICLE 4.

4.1 Upon the death of the Settlor, all of the trust property not disposed of by paragraph 2.2 hereof or set aside to the Marital Trust shall be held by the Trustee as a separate trust estate (herein referred to as the "Residuary Trust"). Regardless of anything to the contrary in this Article 4, the Trustee shall not be required, until six months after the Settlor's death, to implement the terms of this Article 4 with respect to the principal of the trust estate in such a way as to effectuate a "distribution" or other "disposition" of any such

principal to the Residuary Trust, within the meaning of Section 2032 of the Internal Revenue Code. The Residuary Trust shall be held, administered and distributed as provided in this Article 4.

4.2 The Trustee shall pay to the Settlor's personal representative or to the taxing authorities and other obligees of the Settlor's estate such amounts as the personal representative shall certify, within the three-year period following the Settlor's death, to be the extent to which the Settlor's estate, after satisfaction of all of the Settlor's specific and general devises and bequests and after redemption of any bonds pursuant to paragraph 2.2 of this instrument, is insufficient for the payment of the Settlor's funeral and administration expenses, the expenses incurred in transferring and delivering all bequests to the Settlor's legatees at their residences, and all estate, inheritance, succession and other death taxes (including interest and penalties thereon) imposed by the United States or any state, territory or possession thereof by reason of the Settlor's death, whether or not measured by property passing under the Settlor's Will, other than taxes imposed pursuant to Chapter 13 of the Internal Revenue Code and taxes imposed by reason of the Settlor's possession of any unexercised power of appointment. The aforesaid payments shall be made out of the

principal of the trust estate remaining after redemption of any bonds pursuant to paragraph 2.2 of this instrument, subject to any prior disposition of such principals as herein provided, but (i) property which is excluded from the Settlor's gross estate for federal estate tax purposes shall not be used to make any payment on account of the Settlor's debts or funeral or administration expenses, estate taxes imposed by the United States, or expenses incurred in transferring and delivering bequests to the Settlor's legatees at their residences, and (ii) property which is exempt from inheritance and estate taxes imposed by the State of Hawaii shall not be used to make any payment on account of the Settlor's debts or funeral or administration expenses, inheritance or estate taxes imposed by the State of Hawaii, or expenses incurred in transferring and delivering bequests to the Settlor's legatees at their residences. The Trustee may rely absolutely on any such certificate and shall not be required to investigate its truth. The Trustee shall not be responsible for the application of any sums paid pursuant to such a certificate and shall not be required to recover any sums so paid which are not used for the purposes certified. Regardless of anything to the contrary in this instrument, during the three-year period following the Settlor's death the Trustee shall hold in trust from time to time such sum she determines, in her sole discre-

tion, is likely to be required for payment pursuant to such certification by the Settlor's personal representative. Any portion of the aforesaid sum as is from time to time determined by the Trustee to be in excess of the likely requirements of such certification or remains in the Trustee's hands unobligated by such certification upon the expiration of the three-year period shall be transferred, held or disposed of by the Trustee as the Trustee would have transferred, held or disposed of that portion if the Trustee had not been directed by this paragraph 4.2 to continue to hold it.

4.3 The Trustee may purchase from the Settlor's personal representative any securities or other property, real or personal, and may retain such property as if it had been an original part of the trust estate, even though similar property constitutes all or a large portion of the balance of the trust estate. The Trustee may make secured or unsecured loans to the Settlor's personal representative, at such rates of interest as the Trustee shall determine. In no event shall the Trustee be liable for any loss resulting to the trust estate by reason of any such purpose or loan.

4.4 From the date of the Settlor's death until the termination of this trust, the Trustee shall pay to or for the benefit of those who shall be surviving from time to time of the

Settlor's said husband and the Settlor's issue such portions or all of the net income and principal of the trust estate as the Trustee shall deem advisable, in accordance with their needs as determined by the Trustee in her discretion, with or without considering other resources available to them and without being required to keep the payments equal or proportionate, and the Trustee shall add all surplus net income to the principal of the trust estate; provided, however, that the Trustee shall pay none of the principal of the Residuary Trust to or for the benefit of the Settlor's said husband while the Marital Trust is in existence.

4.5 Anytime that the value of the principal of the trust estate shall be less than \$50,000.00, the Trustee shall have the power to terminate the trust, if, in the Trustee's sole and absolute discretion, the Trustee deems it advisable to do so. Upon such termination by the Trustee, the Trustee shall transfer all of the trust property, including any unpaid income, absolutely and free from any trust, to the Settlor's said husband, if still surviving, or to the Settlor's issue per stirpes. The Trustee's decision to terminate the trust shall be final and binding on all persons interested in the trust estate.

4.6 Unless previously terminated pursuant to paragraph 4.5 hereof, this trust shall terminate when the Settler and the

Settlor's said husband shall have died. Upon such termination, the Trustee shall transfer the trust property, absolutely and free from any trust, as follows:

a. Any interest in Lot 144-E-2, Kapaa Homesteads, Second Series, Kapaa, Island and County of Kauai, State of Hawaii, containing an area of 1.0 acre, more or less, and more particularly identified as Kauai Tax Map Key: 4-4-10-13, to the Settlor's son, RAYNARD D. DE LA PEÑA;

b. Any interest in Lot 13-B-9, Kilauea Plantation Subdivision, Kilauea, Island and County of Kauai, State of Hawaii, containing an area of 5.697 acres, more or less, and more particularly identified as Kauai Tax Map Key: 5-2-13-03, to the Settlor's son, RAMON S. DE LA PEÑA, JR.;

c. Any interest in Lot 144-E-1, Kapaa Homesteads, Second Series, Kapaa, Island and County of Kauai, State of Hawaii, containing an area of 1.0 acre, more or less, and more particularly identified as Kauai Tax Map Key: 4-4-10-03, to the Settlor's daughter, MARJORIE J. L. OCHSNER;

d. Any interest in Lot 144-E-3, Kapaa Homesteads, Second Series, Kapaa, Island and County of Kauai, State of Hawaii, containing an area of 1.0 acre, more or less, and more particularly identified as Kauai Tax Map Key: 4-4-10-14, to the Settlor's son, RYAN M. DE LA PEÑA;

e. All of the remaining trust property, including any unpaid income, shall be distributed equally to the Settlor's said children.

In the event that any of the Settlor's said children predecease the termination of the trust with issue the share of such predeceased child shall be distributed to his or her issue per stirpes. In the event that any of the Settlor's said children should predecease the termination of the trust without issue, the share of such predeceased child shall be distributed equally to the remaining children of the Settlor, the issue of any predeceased child to take the share of their parent per stirpes.

#### ARTICLE 5.

5.1 The provisions of this Article 5 shall apply to and govern the administration of the trust estate prior to the death of the Settlor and shall also apply to and govern the administration of both the Marital Trust and the Residuary Trust.

5.2 Except as otherwise provided in paragraph 1.2 hereof, the Trustee shall, in addition to all powers now or hereafter conferred by law, have the power and authority to manage, develop, improve, sell, convey, mortgage, partition, subdivide and change the character of any trust property; to dedicate to public use, abandon and otherwise dispose of any trust property,

when, in the judgment of the Trustee, it is in the interests of the beneficiaries to do so; to enter into any lease as lessor or lessee for a term within or extending beyond the duration of the trust; to grant or take an option to purchase or lease; to borrow funds, with or without trust property as security, for such purposes as the Trustee shall deem advisable; to invest and reinvest principal and income in every kind of property, real and personal; to place trust assets in the hands of agents selected by the Trustee, in order to facilitate transactions and record keeping in connection with those assets and for safekeeping; to continue or participate in the operation of any business or other enterprise and to effect incorporation, dissolution or other changes in the form of the organization thereof; to give revocable or irrevocable general or specific proxies or authorizations for voting or acting with respect to securities, with or without power of substitution and discretionary or nondiscretionary, including such authority to any protective or reorganization committee as the Trustee shall deem advisable; to effect distribution of property in kind or in money and in divided or undivided interest, and to allocate property among shares and adjust resulting differences in valuation; and generally to exercise the same control over and rights with respect to the

trust estate as could be exercised personally by an absolute owner of the trust property.

5.3 The Trustee shall not be required to give any bond.

5.4 (a) The Trustee shall not be required to file any account in any court.

(b) Except as otherwise provided in subparagraph (c)(1) of this paragraph 5.4, the Trustee shall not account to any of the beneficiaries during the lifetime of the Settlor.

(c) (1) So long as the Settlor shall be surviving, the Trustee shall annually deliver to the Settlor an account for each accounting year during which the Trustee shall have held property in trust pursuant to this instrument.

(2) After the Settlor's death, the Trustee shall annually deliver an account to each income beneficiary.

5.5 The Trustee shall be entitled to receive out of the trust property reasonable compensation for her services, without allowance, determination or review by any court; provided that Harriet E. de la Peña shall receive no compensation with respect to her services as Trustee, but she shall be reimbursed all expenses properly chargeable to the trust estate.

5.6 The interests of beneficiaries, other than the Settlor, in principal or income shall not be subject to claims of their creditors or others, or to legal process, and may not

be voluntarily or involuntarily alienated or encumbered; provided, that this paragraph 5.6 shall not limit or affect the exercise by the Settlor's said husband of his power of appointment with respect to the principal and income of the Marital Trust.

5.7 The determination of whether the Settlor is competent, for purposes of paragraphs 1.2, 1.4 and 7.7 hereof, shall be made by a medical doctor who has examined the Settlor, and that determination shall be final and binding on all persons interested in the trust estate.

5.8 All of the powers and discretion of the Trustee hereunder shall continue until all of the trust property has been distributed.

#### ARTICLE 6.

6.1 The provisions of this Article 6 shall apply to and govern the administration of the trust estate prior to the death of the Settlor and shall also apply to and govern the administration of the Residuary trust, but they shall not apply to or govern the administration of the Marital Trust.

6.2 The Trustee shall have the power and authority to borrow funds, with or without trust property as security, for such purposes as the Trustee shall deem advisable, including, without limitation, payment of debts of the Settlor or for any

other purpose as directed by the Settlor, when expressly directed by the Settlor and on terms and conditions approved by the Settlor, to hypothecate trust property in order to secure the payment of debts and performance of obligations arising from loans made to the Settlor or at the Settlor's request, as well as extensions, renewals or refinancings thereof; to invest and reinvest principal and income without being limited by any statute or rule of law affecting the investment of trust funds; to retain indefinitely any property received as part of the trust estate until, in the Trustee's judgment, disposition thereof should be made, regardless of any risk, nonproductivity or lack of diversification, and although, except for this express authority, it might be of a kind or in an amount which would be considered improper for a trust estate; and from time to time, in the Trustee's sole discretion and without reference to prior determinations, and for any purpose, to determine what is principal and what is income of the trust estate and to allocate receipts and disbursements to those accounts, with full discretion to allocate any receipt to principal for the purpose of providing funds for the payment of any charge against principal.

6.3 Upon the death of any income beneficiary, the interest of that beneficiary in all undistributed income shall terminate,

regardless of when it shall have accrued, and all such income shall be distributed as though it had accrued immediately after the death of that beneficiary.

6.4 Until the Trustee shall receive written notice of any event upon which any right in the trust estate may depend, the Trustee shall incur no liability with respect to disbursements and other actions in good faith which would have been proper in the absence of that event.

6.5 Whenever, prior to the termination of the trust, the Trustee shall be required or authorized to make payments to or for the benefit of a beneficiary who is under legal disability, such payments may be made to the beneficiary or to a third party for the benefit of the beneficiary, without liability on the part of the Trustee.

6.6 The Trustee shall determine the amount of depreciation and depletion chargeable against the tangible assets of the trust estate each year, in accordance with accounting principles, methods and formulas determined by the Trustee to be generally accepted and applicable, and shall charge against income and credit to principal the amount so determined; provided, (i) that the amount of depreciation and depletion charged with respect to any asset of the trust estate during any year shall not exceed the net income derived from that asset

during that year, as determined by the Trustee, and (ii) that the Trustee shall not be required to charge depreciation or depletion with respect to any improvement constructed on trust property by a lessee. All such determinations made in good faith by the Trustee shall be final and binding on all persons interested in the trust estate.

6.7 This instrument shall be liberally construed in the interest and for the benefit of the current income beneficiaries, and the exercise of any discretion of the Trustee in favor of any current income beneficiary shall be absolutely binding on all successor income beneficiaries and remaindermen; provided, that this paragraph 6.7 shall not be deemed to limit any discretion herein conferred upon the Trustee.

6.8 Possession of any or all household goods and personal effects at any time included in the trust estate may be given, in the Trustee's discretion, to any one or more of the current income beneficiaries (whether adult or minor), to the guardian of the person or property of any one or more of the current income beneficiaries or to the person or persons with whom any one or more of the current income beneficiaries may at any time be living, without being required to divide the property equally, and the Trustee shall not thereafter be liable for any

damage to or loss of the property. The Trustee shall be entitled to regain possession of the property at any time.

6.9. Any person may at any time add to the trust estate property acceptable to the Trustee, and any property so added shall be subject in every respect to the terms and conditions of this instrument.

#### ARTICLE 7.

7.1 If there is no sufficient evidence that the Settlor and the Settlor's said husband shall have died otherwise than simultaneously, the Settlor's said husband shall, for all purposes of this instrument, be deemed to have predeceased the Settlor.

7.2 For purposes of this instrument, anyone (other than the Settlor's said husband) who dies within thirty days after the date of the Settlor's death, shall be considered to have died before the Settlor.

7.3 If the Settlor's said husband shall disclaim in whole or in part his interest in any property set aside to the Marital Trust, the property, or the portion thereof to which the disclaimer pertains, shall be added to and become a part of the principal of the Residuary Trust and shall thereafter be so administered in all respect.

7.4 If the Settlor's said husband shall take an elective share of her estate rather than taking under the provisions of the Settlor's Will, then, for purposes of this instrument, the Settlor's said husband shall be deemed to have predeceased the Settlor and this instrument shall be construed, interpreted and applied in the same manner and so as to have the same effect as if the Settlor's said husband had predeceased her.

7.5 As used herein, "issue" means all persons who are descended from the ancestor referred to, either by legitimate relationship to or legal adoption by that ancestor or by any of that ancestor's legitimate or legally adopted descendants, "children" means such issue of the first generation, and "per stirpes" means in equal shares among living children and the issue of deceased children, the latter taking by right of representation. No person shall be considered illegitimate because of the invalidity of a purported divorce of a parent with reference to a prior marriage. Anyone otherwise entitled to a benefit hereunder as a blood descendant of any individual shall receive that benefit even if he or she shall have been adopted by another individual; provided, however, that anyone otherwise entitled to benefit hereunder as both a blood descendant and a descendant by legal adoption shall receive a benefit hereunder only as a blood descendant and that anyone otherwise

entitled to benefit hereunder through such a person shall receive a benefit only through that person as a blood descendant.

7.6 References to statutes in Articles 3 and 4 hereof are to the Internal Revenue Code of 1954, as amended, and shall be deemed to refer to corresponding provisions of any subsequent United States tax law.

7.7 If Harriet E. de la Peña shall resign, die or become incompetent, the Settlor's sister, ELENA GABORNO, shall become and be the Trustee, and she shall be vested with and may exercise all of the rights, powers, duties and discretion herein given to the Trustee. Harriet E. de la Peña may resign as Trustee by an instrument delivered to Elena Gaborno, to take effect upon the date stated therein, but not sooner than the date of receipt of the instrument. If Elena Gaborno shall resign, die or become incompetent, Elena Gaborno's husband, MODESTO GABORNO, shall become and be the Trustee, and he shall be vested with and may exercise all of the rights, powers, duties and discretion herein given to the Trustee. Elena Gaborno may resign as Trustee by an instrument delivered to Modesto Gaborno, to take effect upon the date stated therein, but not sooner than the date of receipt of the instrument. If Modesto Gaborno declines his appointment as successor Trustee,

he shall have no obligation to procure the appointment of a different successor Trustee. The trust estate shall vest in the Trustee who shall from time to time be appointed and acting hereunder, without instrument of transfer or order of any court, but each successor Trustee shall be responsible only for that trust property which the successor Trustee actually receives from the immediate predecessor as Trustee or from the personal representatives of that immediate predecessor. No successor Trustee shall have any obligation or responsibility with respect to any of the acts, transactions and accounts of any prior Trustee. Each successor Trustee shall be entitled to rely absolutely upon the account and inventory furnished to the successor Trustee by the immediate predecessor as Trustee or by the personal representatives of that immediate predecessor.

7.8 This instrument may be amended in any respect, but only by another instrument signed by both the Settlor and the Trustee during the Settlor's lifetime.

7.9 The Settlor reserves the right to revoke the trust hereby created, at any time during her lifetime, but only by an instrument signed and acknowledged by her and received by the Trustee.

7.10 During the lifetime of the Settlor, the Trustee shall not register this trust pursuant to the provisions of the

Uniform Probate Code and shall not reveal the terms of this instrument to any of the beneficiaries other than the Settlor.

IN WITNESS WHEREOF, HARRIET E. DE LA PEÑA has signed this instrument on this 10<sup>th</sup> day of April, 1992.

Harriet E. de la Pena  
HARRIET E. DE LA PEÑA  
Settlor and Trustee

STATE OF HAWAII            )  
  )    ss.  
COUNTY OF KAUAI        )

On this 10<sup>th</sup> day of April, 1992, before me personally appeared HARRIET E. DE LA PEÑA, 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.

Walter H. ...  
Notary Public, State of Hawaii  
My commission expires: 4/16/92