

# CONDOMINIUM PUBLIC REPORT

Prepared &

Issued by: Developer: JOHN F. TOWEY and SHANNON LECLAIRE TOWEY  
Address: P. O. Box 675  
Kilauea, Kauai, Hawaii 96754

Project Name(\*): Towey Estates  
Address: 6325-B Olohena Road  
Kapaa, Kauai, Hawaii 96746

Registration No. 5997  
(Conversion)

Effective date: September 15, 2006  
Expiration date: October 15, 2007

## 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, in any, of the project or of purchasing an apartment in the project.

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

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

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

## Type of Report:

**PRELIMINARY:**  
(yellow)

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

**FINAL:**  
(white)

The developer has legally created a condominium and has filed complete information with the Commission.

No prior reports have been issued.

This report supersedes all prior public reports.

This report must be read together with \_\_\_\_\_

**SUPPLEMENTARY:**  
(pink)

This report updates information contained in the:

Preliminary Public Report dated: \_\_\_\_\_

Final Public Report dated: \_\_\_\_\_

Supplementary Public Report dated: \_\_\_\_\_

And  Supersedes all prior public reports

Must be read together with \_\_\_\_\_

This report reactivates the \_\_\_\_\_  
public report(s) which expired on \_\_\_\_\_

(\*) Exactly as named in the Declaration

*This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2643 to submit your request.*

FORM: RECO-30 286/986/189/1190/892/0197/1098/0800/0203/0104

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

- [ X ] Required and attached to this report as Exhibit "I" [ ] 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.

- [ X ] 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 one residential structure and one shed on the property, both 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 governmental 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.
4. Facilities and improvements normally associated with County-approved subdivisions, 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 DOCUMENTS REFERENCED IN THIS PUBLIC REPORT 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: JOHN F. TOWEY Phone: (808) 821-9339
SHANNON LECLAIRE TOWEY
P. O. Box 675
Kilauea, Kauai, Hawaii 96754

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

Real Estate Broker \*: RE/MAX KAUAI.COM LLC Phone: (808) 826-9675
Princeville Center, Suite C-205 (Business)
Princeville, Kauai, Hawaii 96722

Escrow: TITLE GUARANTY ESCROW SERVICES, INC. Phone: (808) 245-3381
235 Queen Street (Business)
Honolulu, Hawaii 96813

General Contractor \*: N/A\* Phone: N/A
\* All structures older than 5 years (Business)

Condominium Managing Agent \*: Self-managed by Association of Unit Owners Phone: N/A
(Business)

Attorney for Developer: Jonathan J. Chun Phone: (808) 245-4705
Belles Graham Proudfoot & Wilson, LLP (Business)
4334 Rice Street, Suite 202
Lihue, Kauai, Hawaii 96766-1388

\*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. 2006-038725

Book \_\_\_\_\_ Page \_\_\_\_\_

Filed - Land Court:

Document No. \_\_\_\_\_

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

First Amendment to Declaration of Condominium Property Regime of Towey Estates dated June 9, 2006, recorded as Document No. 2006-112073.

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. 4175

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. 2006-038726

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 interests which must vote for or give written consent to changes:

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

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

2. **Developer**

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

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

The Developer reserves the right to change the Declaration and Condominium Map as provided for in Section M. of the Declaration.

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

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

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

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

Lease Term Expires:\_\_\_\_\_ Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:             Monthly                     Quarterly  
    Semi-Annually             Annually

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

For Sub-leaseholds:

- Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is:  
 Canceled                     Foreclosed
- As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

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

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

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

Lease Term Expires:\_\_\_\_\_ Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:             Monthly                     Quarterly  
    Semi-Annually             Annually

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

[ ] Other:

**IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

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

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

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

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

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

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

**B. Underlying Land:**

Address: 6325-B Olohena Road  
Kapaa, Kauai, Hawaii 96746

Tax Map Key: (TMK): (4) 4-4-009-014

[ ] Address [ X ] TMK is expected to change because CPR numbers will be added to the current TMK number.

Land Area: 13,229 [ X ] square feet [ ] acre(s) Zoning: Agriculture

Fee Owner: JOHN F. TOWEY and SHANNON LECLAIRE TOWEY  
P. O. Box 675  
Kilauea, Kauai, Hawaii 96754

Lessor: N/A  
Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_

**C. Buildings and Other Improvements:**

1.  New Building(s)  
 Conversion of Existing Building(s)  
 Both New Building(s) and Conversion
  
2. Number of Buildings: 2 Floors Per Building 1  
 Exhibit "A" contains further explanations.
  
3. Principal Construction Material:  
 Concrete       Hollow Tile       Wood  
 Other galvanized steel pipe and shade cloth
  
4. Permitted Uses by Zoning:

	No. of Apts.	<u>Use Permitted by Zoning</u>	
<input type="checkbox"/> Residential	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Agricultural	<u>1</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Other: Shed	<u>1</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

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

Yes                       No

5. Special Use Restrictions:

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

- [ X ] Pets: Bylaws, Article 13.1
- [ ] Number of Occupants: \_\_\_\_\_
- [ ] Other: \_\_\_\_\_
- [ ] There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 1 Trash Chutes: 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Other Area (sf)</u>	<u>Identify</u>
Unit A	<u>1</u>	<u>2/3</u>	<u>1,026</u>	<u>352</u>	<u>Storage/</u>
Unit B	<u>1</u>	<u>0/0</u>	<u>0</u>	<u>100</u>	<u>Workshop</u> <u>Shade Shed</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:

See Exhibit "A"

Permitted Alterations to Apartments:

See Exhibit "B"

Apartments Designated for Owner-Occupants Only:

Fifty percent (50%) of **residential** apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by Section 514A-102, HRS; or include the information here in this public report and in the announcement (see attachment 11a). Developer has not elected to provide the information in a published announcement or advertisement.

7. Parking Stalls:

Total Parking Stalls: 4 \*

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned (for each unit)	<u>2</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>4</u>
Guest	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Unassigned	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Extra for Purchase	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Other: <u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
Total Covered & Open:	<u>4</u>	<u>      </u>	<u>0</u>	<u>      </u>	<u>0</u>	<u>      </u>	<u>4</u>

Each apartment will have the exclusive use of at least 2 parking stall(s).  
Buyers are encouraged to find out which stall(s) will be available for their use.

\* Each unit has ample space for parking within its limited common element area.

Commercial parking garage permitted in condominium project.

Exhibit        contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

There are no recreational or common facilities.

Swimming pool

Storage Area

Recreation Area

Laundry Area

Tennis court

Trash Chute/Enclosure(s)

Other:       

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

There are no violations.

Violations will not be cured.

Violations and cost to cure are listed below.

Violations will be cured by         
(Date)

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

See Exhibit "J" for the Architect's Condition Report on Units A and B.

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 lawfully at one time but which does not now conform to present zoning requirements:

	Conforming	Non-Conforming	Illegal
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 Interests:

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

- described in Exhibit     "C"    .  
 as follows:

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

There are no limited common elements in this project.

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

described in Exhibit "D" \*.

as follows:

\* Note: Land areas referenced herein are not legally subdivided lots.

3. Common Interests: Each apartment will have an undivided fractional interests in all of the common elements. This interest is called the "common interests." 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:

Each unit shall have an appurtenant undivided interest in all common elements of the project and the same proportionate share in all common profits and common expenses of the property (except as otherwise provided herein or in the bylaws), and for all other purposes, including voting as follows: Unit A shall have appurtenant thereto a fifty-five percent (55%) undivided interest and Unit B shall have appurtenant thereto a forty-five percent (45%) undivided interest.

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 on or your purchase and ownership of an apartment in the project.

Exhibit "E" describes the encumbrances against the title contained in the title report dated March 7, 2006 and issued by Title Guaranty of Hawaii, Inc.

Blanket Liens:

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

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

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

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

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed <b>Prior to Conveyance</b></u>
Mortgage	Lender has priority over Buyer's rights under a sales contract, and has a right to terminate sales contracts upon foreclosure of its mortgage before an apartment sale is closed. Should the lender terminate Buyer's sales contract, Buyer shall be entitled to a refund of all deposits, 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: Units are sold "as is".

2. Appliances:

None. All appliances are sold "as is".

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

The construction of the Unit A residence was completed in 1956.  
The construction of the Unit B shed was completed in 2000 .

H. **Project Phases:**

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

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

IV. CONDOMINIUM MANAGEMENT

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

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

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

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

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

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

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

Exhibit "F" 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 "G" contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated March 24, 2006.  
Exhibit "H" contains a summary of the pertinent provisions of the escrow agreement.
- Other \_\_\_\_\_

### B. Buyer's Right to Cancel Sales Contract:

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

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

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

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

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

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

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

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

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been 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 or through the developer's sales agent, if any. The Condominium Property Regime law (Chapter 514A, HRS) and the Administrative Rules (Chapter 107) are available online. Please refer to the following sites:

Website to access official copy of laws: [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov)

Website to access unofficial copy of laws: [www.hawaii.gov/dcca/hrs](http://www.hawaii.gov/dcca/hrs)

Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

This Public Report is a part of Registration No. 5997 filed with the Real Estate Commission on April 25, 2006.

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

YELLOW paper stock

WHITE paper stock

PINK paper stock

C. **Additional Information Not Covered Above:**

1. Purchasers should be aware that Chapter 205, Hawaii Revised Statutes ("H.R.S."), does not authorize residential dwellings as a permissible use in an agricultural use district, unless the dwelling is related to an agricultural activity or is a "farm dwelling".

The term "farm dwelling" is defined in H.R.S. Chapter 205-4.5(a)(4) as a "single family dwelling located on and used in connection with a farm, including clusters of single-family farm dwelling permitted within agricultural parks developed by the State or where agricultural activity provides income to the family occupying the dwelling."

The penalty for violation of H.R.S. Section 205-4.5, is a fine of not more than \$5,000. If any person who is cited for a violation of the law fails to remove the violation within six months of such citation and the violation continues, such person is subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation.

In order for any purchaser to obtain a building permit to construct a single family residential unit (farm dwelling), the County of Kauai will require the purchaser to sign a Farm Dwelling Agreement in the form attached hereto as Exhibit "K".

In addition, Section K.2. of the Declaration imposes a duty of each unit owner to bear an equal burden proportionate to the unit owner's respective appurtenant interest in the common area for the cost of maintaining agricultural activities on the Project that are satisfactory to the Planning Department of the County of Kauai and that will allow the issuance of a Farm Dwelling Agreement and corresponding building permit to all of the units with the Project. See Section K.2. of Exhibit "B", Alteration of Project.

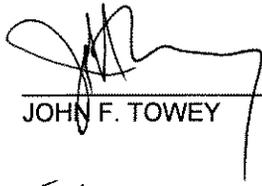
2. The use of hazardous material is restricted except as provided under Article H of the Declaration and all hazardous materials laws.
3. For the purpose of Exhibit "F" of the Final Condominium Public Report the Developer has not conducted a reserve study in accordance with § 514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.
4. Current County of Kauai ordinances allow the construction of one single family dwelling and one "additional dwelling unit" ("ADU"). As long as there is an Additional Dwelling Unit ("ADU") ordinance in effect in the County of Kauai, each of the Units shall be entitled to construct a single Condominium House (whether it is considered as the main residence or the ADU allowed to be constructed on the Property). The Developer makes no warranties or representations regarding the future of County of Kauai ordinances regarding ADUs or the ability at anytime in the future of an ADU to be constructed on the property. A County of Kauai Additional Dwelling Unit Facilities Clearance Form was approved on July 27, 2005, a copy of which is attached hereto as Exhibit "L".
5. No unit owner shall be allowed to construct a Guest House on the property at any time.
6. Due to the restriction on waste water disposal facilities on the Property, the dwelling on Unit A shall be restricted to no more than 3 bedrooms, and the dwelling to be constructed on Unit B shall be restricted to no more than 2 bedrooms.
7. Access to Units A and B are by way of Easement "AU-1", which is a common access easement affecting Lot 2, as shown on the Condominium Map.
8. Limited Common Element B is subject to Easement "H" (1,175 sq. ft.) for purposes of height restriction to six (6) feet above existing grade of any improvements and landscaping.
9. The common element constitutes a septic system with an area of 591 square feet and is shared by both Units A and B, as shown on the Condominium Map.

10. LEAD WARNING STATEMENT

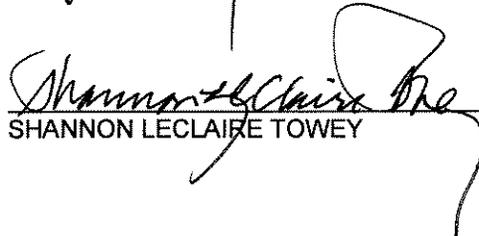
Pursuant to federal law, 42, U.S.C. 4852(d), the Residential Lead-Based Paint Reduction Act, "Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligent quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."

- D. The developer declares subject to the penalties set forth in section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A-1.6] (The developer is required to make this declaration for issuance of an effective date for a final public report.)
- E. 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.

JOHN F. TOWEY and SHANNON LECLAIRE TOWEY  
Owner/Developer

  
\_\_\_\_\_  
JOHN F. TOWEY

\_\_\_\_\_  
April 20, 2006  
Date

  
\_\_\_\_\_  
SHANNON LECLAIRE TOWEY

\_\_\_\_\_  
April 20, 2006  
Date

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.***

## EXHIBIT "A"

### DESCRIPTION OF BUILDINGS

The project consists of one (1) residential unit and one (1) ag shed constructed of galvanized steel pipe supports set in concrete and covered with shade cloth, without basements or foundations. Each structure (herein called "unit") is shown on the Condominium Map.

Unit A located as shown on the Condominium Map, consists of two (2) bedrooms, three (3) bathrooms, a living room, dining room, kitchen, workshop, and storage area. Unit A has a net living area of approximately 1,026 square feet, a storage and workshop with an area of 352 square feet, for a total area of 1,378 square feet.

Unit B located as shown on the Condominium Map, contains a total area of 100 square feet.

The approximate net floor areas of each unit as set forth above is measured from the interior surface of the unit perimeter walls and includes all of the walls and partitions within its perimeter walls.

## EXHIBIT "B"

### ALTERATION OF PROJECT

Paragraph K of the Declaration provides that:

1. Provided that the unit owner satisfies the applicable terms and conditions of the Project Documents and obtains all of the necessary governmental permits, each unit owner shall have the right at his sole option at any time and from time to time, as hereinafter set forth, without the consent and/or approval of the owner of any other unit or any other persons or entity, to construct, reconstruct, repair, maintain, improve, renovate, remodel, make additions to, enlarge, remove, replace, alter or restore the improvements to or in his unit or portions thereof or upon or within the Yard Areas or other limited common elements or easements appurtenant to his unit (collectively, the foregoing are referred to as "alterations"). Each unit owner who makes such alterations (hereinafter referred to as the "Altering Owner") shall have the right without the consent or joinder of any other person to amend this declaration and the Condominium Map to accomplish any such alterations. If required by the Act, promptly upon completion of such alterations the Altering Owner shall duly record such amendment to this declaration in the Bureau of Conveyances, together with a complete set of the floor plans of such unit as so altered, certified by a registered architect or professional engineer to fully and accurately depict the altered portions of the property as built. All existing unit owners and all future unit owners and their mortgagees, by accepting an interest in a unit, consent to all such alterations and agree to give and shall be deemed to have given the owner of the Altering Owner a power of attorney to execute an amendment to the declaration solely for the purpose of describing the alterations to such unit in the declaration so that the Altering Owner shall hereafter have a power of attorney from all the other unit owners to execute such amendment to the declaration. This power of attorney shall be deemed coupled with each owner's interest in his unit (including his common interest) and shall be irrevocable. If, despite the provisions of this paragraph, any governmental agency shall require some or all of the owners of units in the Project (other than the Altering Owner) to sign the necessary governmental permit application or related documents, then all of the other unit owners shall be required to sign any such permit applications or related documents (including authorizations allowing the Altering Owner to sign such governmental permits on behalf of such other owners) as may be necessary to allow a unit owner to obtain the governmental permit authorized by this paragraph. Any such unit owner who wrongfully refuses to sign such permits or provide the Altering Owner with the necessary authorizations: shall be liable to the Altering Owner for all such damages (including costs and attorneys' fees) incurred by the Altering Owner as a result of such refusal; and shall be subject to such other legal and/or equitable remedies as may be available to the Altering Owner.

2. H.R.S. Chapter 205 requires that the Condominium Houses located within the Project qualify and be used as Farm Dwellings. Each unit owner will be required to enter into an agreement with the County of Kauai certifying that the Farm Dwelling will be used in connection with a farm or where agricultural activity provides income to the family occupying the Farm Dwelling. In addition, the Planning Department of the County of Kauai may not allow any Farm Dwelling to be constructed after the first Farm Dwelling within the Project unless the Planning Department inspects the Project to confirm whether agricultural activities are being conducted on the Project in accordance with H.R.S. Chapter 205. Each unit owner in the Project, therefore, shall bear an equal burden proportionate to the unit owner's respective appurtenant interest in the common area, for the cost of maintaining agricultural activities on the Project that are satisfactory to the Planning Department of the County of Kauai and that will allow the issuance of a Farm Dwelling Agreement and corresponding building permit to all of the units within the Project. Any assessment that may be necessary to maintain agricultural activities pursuant to this paragraph may be imposed upon each unit in accordance with the Bylaws as a common expense of the association in connection with the operation of the Project.

3. Any alteration of a unit pursuant to this paragraph K shall be subject to the following conditions:

(a) All such alterations shall conform with all applicable governmental regulations, laws and ordinances.

(b) Such alterations may decrease or increase the size of the affected unit, provided that no alteration shall extend or place the unit outside of the limits of the Yard Area appurtenant to such unit.

(c) All such alterations shall be at the sole expense of the unit owner making the change and shall be made within one (1) year of the commencement thereof and in a manner that will not unreasonably interfere with the other unit owner's use of his unit or Yard Area.

(d) With the prior consent of the Board of Directors, the owner of the altered unit, at such owner's sole expense, shall have the right to: utilize, relocate, construct, reconstruct, realign and/or develop additional, central and appurtenant installations for services to the unit affected by such alteration for electricity, sewer and other utilities and services; and when necessary, add, delete, relocate, realign, designate and grant easements and rights-of-way over, under and on the common elements as necessary or desirable in connection therewith. Provided, however, that no work done pursuant to this paragraph shall cause any unreasonable interruption in the service of such utilities to any other part of the Project, nor shall it unreasonably interfere with any other unit owner's use or enjoyment of his unit or Yard Area.

4. No unit owner shall be allowed to construct a Guest House on the Property at any time.

5. Each and every conveyance, lease and mortgage or other lien made or created on any unit and all common interests, limited common elements, and other appurtenances thereto shall be subject to the provisions of this paragraph and any lease of a unit shall reserve to all unit owners the rights set forth in this paragraph.

\* SPECIAL NOTATION: When applying for building permits, use permits, zoning permits or any other land use permits with governmental agencies, 75% of the owners of the Project maybe required to sign the permit forms. In such case, all unit owners shall be required to sign such permit applications and related documents as may be necessary for any unit owner to obtain such permits.

Additionally, the creation of the Condominium Property Regime does not mean that the land has met the subdivision requirements of the County. As such, certain facilities and improvements normally associated with County approved subdivisions may not be necessarily included as part of this Project.

## EXHIBIT "C"

### COMMON ELEMENTS

The common elements of the project shall specifically include, but are not limited to, the following:

1. The land described in Exhibit "A", attached to the Declaration, in fee simple.
2. All central and appurtenant installations for common services, including utilities.
3. Any and all apparatus and installations of common use and all other parts of the project necessary or convenient to its existence, use, maintenance or safety, or normally in common use.
4. The septic system common element with an area of 591 square feet is shared by both Units A and B, as shown on the Condominium Map, and described in Exhibit "3" attached hereto and incorporated herein.

## EXHIBIT "3"

### Septic System Common Element Property Description

All of that certain parcel of land situate at Kapaa, District of Puna, Island and County of Kauai, State of Hawaii, being a portion of Lot 167, Kapaa Homesteads, Second Series, described in Land Patent (Grant) No. 10,556 issued to Samuel K. Kaahu, or his heirs, and being a portion of the land and premises devised to the said Grant by and under the will of Samuel Kealahao Kaahu, deceased, and as provided in the decree of Judge Philip L. Rice in "Order Approving Accounts, Determining Trusts, determining Devisee Entitled to Real Estate, and Distributing the Estate" in the matter of the Estate of Samuel Kealahao Kaahu, deceased in P. No. 998, Fifth Circuit Court, Territory of Hawaii, and recorded in the Bureau of Conveyances of the Territory of Hawaii in Liber 2397 on Pages 320-324, the parcel of land hereby conveyed being designated as Septic System Common Element of Lot 167-B-1, being more fully and particularly described as follows:

Beginning at a pipe on the Northeasterly corner of this parcel of land, the same being along the Southerly boundary of Unit B Limited Common Element of Lot 167-B-1, portion of Lot 167, Grant 10,556, Kapaa Homesteads, Second Series, and along the Northerly boundary of Unit A Limited Common Element of Lot 167-B-1, portion of Lot 167, Grant 10,556, Kapaa Homesteads, Second Series, the coordinates of said point of beginning referred to Government Survey Trig. Station "NONOU" being 5,141.4 feet North and 6,002.1 feet West as shown on Government Survey Registered Map 2452, and running by azimuths measured clockwise from true South:

- |    |      |     |            |  |
|----|------|-----|------------|--|
| 1. | 31°  | 27' | 21.33 feet | across Unit A Limited Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe  |
| 2. | 301° | 27' | 12.00 feet | across Unit A Limited Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe  |
| 3. | 31°  | 27' | 10.00 feet | across Unit A Limited Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe  |
| 4. | 121° | 27' | 36.00 feet | across Unit A Limited Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe  |
| 5. | 211° | 27' | 10.00 feet | across Unit A Limited Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe  |
| 6. | 301° | 27' | 12.00 feet | across Unit A Limited Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe  |
| 7. | 211° | 27' | 17.10 feet | along Unit B Limited Common Element of Lot 167-B-1, to the point of beginning and containing an area of 591 square feet, more or less. |

Being a portion of the property conveyed by the following:

#### QUITCLAIM DEED

Recorded: September 13, 2005 in the Bureau of Conveyances, State of Hawaii, as Document No.2005-182777

Grantor: John Francis Towey, husband of Shannon Leclairé Towey

Grantee: John Francis Towey and Shannon Leclairé Towey, husband and wife

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Title to all minerals, and metallic mines reserved to the State of Hawaii.

## EXHIBIT "D"

### LIMITED COMMON ELEMENTS

Certain units shall have appurtenant thereto easements for the exclusive use of certain limited common elements as follows:

Land Area A: Land Area A consists of the land area under and surrounding Unit A, contains approximately 8,326 square feet as designated on the Condominium Map and described in Exhibit 1 attached hereto and incorporated herein, and is reserved for the exclusive use of Unit A for the support of the building and other improvements comprising Unit A, and for the purposes described in the Project Documents.

Land Area B: Land Area B consists of the land area under and surrounding Unit B, contains approximately 4,312 square feet as designated on the Condominium Map and described in Exhibit 2 attached hereto and incorporated herein, and is reserved for the exclusive use of Unit B for the support of the building and other improvements comprising Unit B, and for the purposes described in the Project Documents.

# EXHIBIT "1"

## Unit A Limited Common Element Property Description

All of that certain parcel of land situate at Kapaa, District of Puna, Island and County of Kauai, State of Hawaii, being a portion of Lot 167, Kapaa Homesteads, Second Series, described in Land Patent (Grant) No. 10,556 issued to Samuel K. Kaahu, or his heirs, and being a portion of the land and premises devised to the said Grant by and under the will of Samuel Kealahao Kaahu, deceased, and as provided in the decree of Judge Philip L. Rice in "Order Approving Accounts, Determining Trusts, determining Devisee Entitled to Real Estate, and Distributing the Estate" in the matter of the Estate of Samuel Kealahao Kaahu, deceased in. P. No. 998, Fifth Circuit Court, Territory of Hawaii, and recorded in the Bureau of Conveyances of the Territory of Hawaii in Liber 2397 on Pages 320-324, the parcel of land hereby conveyed being designated as Unit A of Lot 167-B-1, being more fully and particularly described as follows:

Beginning at a pipe on the Southwesterly corner of this parcel of land, the same being the Northwesterly corner of Lot 167-B-2, portion of Lot 167, Grant 10,556, Kapaa Homesteads, Second Series, and on the Easterly boundary of Lot 166, Kapaa Homesteads, Second Series, the coordinates of said point of beginning referred to Government Survey Trig. Station "NONOU" being 5,082.7 feet North and 6,059.5 feet West as shown on Government Survey Registered Map 2452, and running by azimuths measured clockwise from true South:

1.	192°	01'	69.33 feet	along Lot 166, Kapaa Homesteads, Second Series, to a pipe
2.	282°	01'	31.23 feet	along Unit B Limited Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe
3.	31°	27'	17.10 feet	along Septic System Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe
4.	121°	27'	12.00 feet	along Septic System Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe
5.	31°	27'	10.00 feet	along Septic System Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe
6.	301°	27'	36.00 feet	along Septic System Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe
7.	211°	27'	10.00 feet	along Septic System Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe
8.	121°	27'	12.00 feet	along Septic System Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe
9.	211°	27'	21.33 feet	along Septic System Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe
10.	282°	01'	2.80 feet	along Unit B Limited Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe
11.	192°	01'	8.00 feet	along Unit B Limited Common Element of Lot 167-B-1, Kapaa Homesteads Second Series, to a pipe

Unit A Limited Common Element  
Property Description

12.	282° 01'	71.42 feet	along Unit B Limited Common Element of Lot 167-B-1, Kapaa Homesteads Second Series, to a pipe
13.	9° 06'	77.43 feet	along Lot 2 (30-foot Roadway), portion of said Lot 167 to a pipe
14.	102° 01'	122.11 feet	along 167-B-2, portion of said Lot 167, to the point of beginning and containing an area of 8,326 square feet, more or less.

TOGETHER WITH, THE FOLLOWING:

1. Perpetual easement to use the hereinafter described strip of land as and for a road right-of-way for the purposes of gaining ingress to and egress from the above granted parcel of land and as appurtenances thereof, same being a portion of Lot 167, Kapaa Homesteads, Second Series, situate at Waipouli, North Olohena, Kapaa, Puna, Kauai, described in Land Patent (Grant) No. 10,556 as aforesaid, and designated as Access & Utility Easement "AU-1", being more fully and particularly described by notes of survey as follows;

Beginning at the Northwesterly corner of this parcel of land, the same being on the South boundary of Olohena Road and 276 degrees 10 minutes 93.23 feet from the Northeast corner of Lot 166, Kapaa Homesteads, Second series, the coordinates of said point of beginning referred to Government Survey Trig. Station "NONOU" being 5,324.0 feet North and 5,913.3 feet West as shown on Government Survey Registered Map 2452 and running by azimuths measured clockwise from true south:

1.	276° 10'	60.08 feet	along Olohena Road to a pipe
2.			Thence along a curve to the left with a radius of 15 feet, the direct azimuth and distance being
	52° 38'	20.66 feet	to a pipe
3.	9° 06'	479.28 feet	along the remainder of Lot 167, Grant 10,556, Kapaa Homesteads, Second Series, to a pipe
4.	102° 01'	30.04 feet	along the land owned by Harold Lochridge to a pipe
5.	189° 06'	474.67 feet	along Lots 167-B-3, 167-B-2, 167-B-1 and 167-B, portion of Lot 167, Grant 10,556, Kapaa Homesteads, Second Series, to a pipe
6.			Thence along Lot 167-B, portion of Lot 167, Grant 10,556, Kapaa Homesteads, Second Series, on a curve to the left with a radius of 15 feet, the direct azimuth and distance to the point of beginning being
	142° 38'	21.75 feet	and containing an area of 14,858 square feet, more or less.

2. Perpetual easement over Unit B Limited Common Element of Lot 167-B-1 for the purposes of restricting any and all landscaping and improvements to a height limit of six feet above existing grade, same being a portion of Lot 167, Kapaa Homesteads, Second Series, situate at Waipouli, North Olohena, Kapaa, Puna, Kauai, described in Land Patent (Grant) No. 10,556 as aforesaid, and designated as Height Easement "H", being more fully and particularly described by notes of survey as follows;

Beginning at a pipe on the Northeasterly corner of this parcel of land, the same being the Southeasterly corner of Lot 167-B, portion of Lot 167, Grant 10,556, Kapaa Homesteads, Second Series, and on the Easterly boundary of Lot 166, Kapaa Homesteads, Second Series, the coordinates of said point

Unit A Limited Common Element  
Property Description

of beginning referred to Government Survey Trig. Station "NONOU" being 5,166.9 feet North and 5,922.5 feet West as shown on Government Survey Registered Map 2452, and running by azimuths measured clockwise from true South:

- |    |      |     |            |  |   |
|----|------|-----|------------|--|---|
| 1. | 9°   | 06' | 33.62 feet | along Lot 2 (30-foot Roadway), portion of said Lot 167, to a pipe  |   |
| 2. | 102° | 01' | 55.00 feet | along Unit A Limited Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe                                 |   |
| 3. | 240° | 46' | 19"        | 50.92 feet   | across Unit B Limited Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe |
| 4. | 282° | 01' | 15.00 feet | along Lot 167-B, portion of said Lot 167, to the point of beginning and containing an area of 1,175 square feet, more or less. |   |

Being a portion of the property conveyed by the following:

**QUITCLAIM DEED**

Recorded: September 13, 2005 in the Bureau of Conveyances, State of Hawaii, as Document No.2005-182777

Grantor: John Francis Towey, husband of Shannon Leclaire Towey

Grantee: John Francis Towey and Shannon Leclaire Towey, husband and wife

**SUBJECT, HOWEVER, TO THE FOLLOWING:**

1. Title to all minerals, and metallic mines reserved to the State of Hawaii.

## EXHIBIT "2"

### Unit B Limited Common Element Property Description

All of that certain parcel of land situate at Kapaa, District of Puna, Island and County of Kauai, State of Hawaii, being a portion of Lot 167, Kapaa Homesteads, Second Series, described in Land Patent (Grant) No. 10,556 issued to Samuel K. Kaahu, or his heirs, and being a portion of the land and premises devised to the said Grant by and under the will of Samuel Kealahao Kaahu, deceased, and as provided in the decree of Judge Philip L. Rice in "Order Approving Accounts, Determining Trusts, determining Devisee Entitled to Real Estate, and Distributing the Estate" in the matter of the Estate of Samuel Kealahao Kaahu, deceased in. P. No. 998, Fifth Circuit Court, Territory of Hawaii, and recorded in the Bureau of Conveyances of the Territory of Hawaii in Liber 2397 on Pages 320-324, the parcel of land hereby conveyed being designated as Unit B of Lot 167-B-1, being more fully and particularly described as follows:

Beginning at a pipe on the Northeasterly corner of this parcel of land, the same being the Southeasterly corner of Lot 167-B, portion of Lot 167, Grant 10,556, Kapaa Homesteads, Second Series, and on the Easterly boundary of Lot 166, Kapaa Homesteads, Second Series, the coordinates of said point of beginning referred to Government Survey Trig. Station "NONOU" being 5,166.9 feet North and 5,922.5 feet West as shown on Government Survey Registered Map 2452, and running by azimuths measured clockwise from true South:

1.	9°	06'	33.62 feet	along Lot 2 (30-foot Roadway), portion of said Lot 167, to a pipe
2.	102°	01'	71.42 feet	along Unit A Limited Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe
3.	12°	01'	8.00 feet	along Unit A Limited Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe
4.	102°	01'	46.75 feet	along Unit A Limited Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe
5.	192°	01'	41.57 feet	along Lot 166, Kapaa Homesteads, Second Series, to a pipe
6.	282°	01'	116.46 feet	along Lot 167-B, portion of said Lot 167, to the point of beginning and containing an area of 4,312 square feet, more or less.

Together with a perpetual easement to use the hereinafter described strip of land as and for a road right-of-way for the purposes of gaining ingress to and egress from the above granted parcel of land and as appurtenances thereof, same being a portion of Lot 167, Kapaa Homesteads, Second Series, situate at Waipouli, North Olohena, Kapaa, Puna, Kauai, described in Land Patent (Grant) No. 10,556 as aforesaid, and designated as Access & Utility Easement "AU-1", being more fully and particularly described by notes of survey as follows:

Beginning at the Northwesterly corner of this parcel of land, the same being on the South boundary of Olohena Road and 276 degrees 10 minutes 93.23 feet from the Northeast corner of Lot 166, Kapaa Homesteads, Second series, the coordinates of said point of beginning referred to Government Survey Trig. Station "NONOU" being 5,324.0 feet North and 5,913.3 feet West as shown on Government Survey Registered Map 2452 and running by azimuths measured clockwise from true south:

1.	276°	10'	60.08 feet	along Olohena Road to a pipe
2.				Thence along a curve to the left with a radius of 15 feet, the direct azimuth and distance being
	52°	38'	20.66 feet	to a pipe

Unit B Limited Common Element  
Property Description

3.	9°	06'	479.28 feet	along the remainder of Lot 167, Grant 10,556, Kapaa Homesteads, Second Series, to a pipe
4.	102°	01'	30.04 feet	along along the land owned by Harold Lochridge to a pipe
5.	189°	06'	474.67 feet	along Lots 167-B-3, 167-B-2, 167-B-1 and 167-B, portion of Lot 167, Grant 10,556, Kapaa Homesteads, Second Series, to a pipe
6.				Thence along Lot 167-B, portion of Lot 167, Grant 10,556, Kapaa Homesteads, Second Series, on a curve to the left with a radius of 15 feet, the direct azimuth and distance to the point of beginning being
	142°	38'	21.75 feet	and containing an area of 14,858 square feet, more or less.

Being a portion of the property conveyed by the following:

QUITCLAIM DEED

Recorded: September 13, 2005 in the Bureau of Conveyances, State of Hawaii, as Document No.2005-182777

Grantor: John Francis Towey, husband of Shannon LeClaire Towey

Grantee: John Francis Towey and Shannon LeClaire Towey, husband and wife

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Perpetual easement in favor of Unit A Limited Common Element of Lot 167-B-1 for the purposes of restricting any and all landscaping and improvements to a height limit of six feet above existing grade, same being a portion of Lot 167, Kapaa Homesteads, Second Series, situate at Waipouli, North Olohena, Kapaa, Puna, Kauai, described in Land Patent (Grant) No. 10,556 as aforesaid, and designated as Height Easement "H", being more fully and particularly described by notes of survey as follows;

Beginning at a pipe on the Northeasterly corner of this parcel of land, the same being the Southeasterly corner of Lot 167-B, portion of Lot 167, Grant 10,556, Kapaa Homesteads, Second Series, and on the Easterly boundary of Lot 166, Kapaa Homesteads, Second Series, the coordinates of said point of beginning referred to Government Survey Trig. Station "NONOU" being 5,166.9 feet North and 5,922.5 feet West as shown on Government Survey Registered Map 2452, and running by azimuths measured clockwise from true South:

1.	9°	06'	33.62 feet	along Lot 2 (30-foot Roadway), portion of said Lot 167, to a pipe
2.	102°	01'	55.00 feet	along Unit A Limited Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe
3.	240°	46'	19"	50.92 feet across Unit B Limited Common Element of Lot 167-B-1, Kapaa Homesteads, Second Series, to a pipe
4.	282°	01'	15.00 feet	along Lot 167-B, portion of said Lot 167, to the point of beginning and containing an area of 1,175 square feet, more or less.

2. Title to all minerals, and metallic mines reserved to the State of Hawaii.

**EXHIBIT "E"**

**ENCUMBRANCES AGAINST TITLE**

1. Any taxes that may be due and owing and tax liens that may exist, refer to Director of Finance, Kauai County.
2. Title to all minerals, and metallic mines reserved to the State of Hawaii.
3. MORTGAGE in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., solely as a nominee for FIRST MAGNUS FINANCIAL CORPORATION, an Arizona corporation, dated August 1, 2005, recorded as Document No. 2005-154451, in the amount of \$428,000.00.
4. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:  
  
Declaration of Condominium Property Regime of Towey Estates dated February 17, 2006, and recorded in said Bureau as Document No. 2006-038725.  
  
Condominium Map recorded as Map No. 4175, and any amendments thereto.  
  
First Amendment to Declaration of Condominium Property Regime of Towey Estates dated June 9, 2006, recorded as Document No. 2006-112073.
5. Bylaws of the Association of Unit Owners of Towey Estates dated February 17, 2006, and recorded in said Bureau as Document No. 2006-038726.

EXHIBIT "F"

ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee x 12 months = Yearly Total</u>
Unit A	\$30.00 x 12 = \$360.00
Unit B	\$30.00 x 12 = \$360.00

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

**Estimate of Maintenance Fee Disbursements:**

Monthly Fee x 12 months = Yearly Total

Utilities and Services

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

Maintenance, Repairs and Supplies

Building  
Grounds \$ 10.00 x 12 = \$120.00

Management

- Management Fee
- Payroll and Payroll Taxes
- Office Expenses

Insurance \$ 50.00 x 12 = \$600.00

Reserves(\*)

Taxes and Government Assessments

Audit Fees

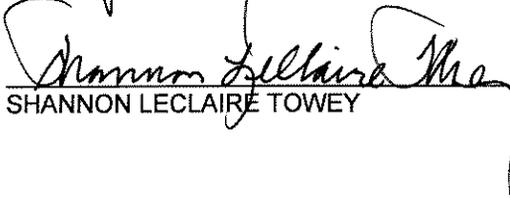
Other

TOTAL \$60.00 x 12 = \$720.00

We, JOHN F. TOWEY and SHANNON LECLAIRE TOWEY, the owners/developers for the TOWEY ESTATES condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

  
\_\_\_\_\_  
JOHN F. TOWEY

April 20, 2006  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
SHANNON LECLAIRE TOWEY

April 20, 2006  
\_\_\_\_\_  
Date

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

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

End of EXHIBIT     "F"

NOTE: Developer discloses that Developer has not conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules.

## EXHIBIT "G"

### SUMMARY OF DEPOSIT RECEIPT, OFFER AND ACCEPTANCE (DROA) CONTRACT

The Deposit Receipt, Offer and Acceptance contract, including the terms and conditions attached thereto as the CPR Addendum (hereinafter collectively called the "Sales Contract") contain the price and other terms and conditions under which a purchaser will agree to buy a unit in the Project. Among other things, the Sales Contract states:

(a) The total purchase price, method of payment and additional sums which must be paid in connection with the purchase of a unit.

(b) That the purchaser acknowledges having received and read a public report (either preliminary or final) for the Project prior to signing the Sales Contract.

(c) That the Developer makes no representations concerning rental of a unit, income or profit from a unit, or any other economic benefit to be derived from the purchase of a unit.

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

(e) Requirements relating to the purchaser's financing of the purchase of a unit.

(f) That the unit and the Project will be subject to various other legal documents which the purchaser should examine, and that the Developer may change these documents under certain circumstances.

(g) That the Developer makes no warranties regarding the unit, the Project or anything installed or contained in the unit or the Project.

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

(i) If the buyer shall default:

(1) The seller may bring an action for damages for breach of contract and/or retain the initial deposit and all additional deposits as liquidated damages; and

(2) The seller may pursue any other remedy, including specific performance, permitted by law or equity. All costs, including reasonable attorneys' fees, incurred by reason of default by the buyer shall be borne by the buyer.

(j) If the seller shall default:

(1) The buyer may bring an action for damages for breach of contract;

(2) The buyer may seek specific performance of the Sales Contract; and

(3) The Seller shall be responsible for any costs incurred in accordance with the Sales Contract.

The Sales Contract contains various other important provisions relating to the purchase of a unit in the Project. It is incumbent upon purchasers and prospective purchasers to read with care the specimen Sales Contract on file with the Real Estate Commission.

## EXHIBIT "H"

### SUMMARY OF ESCROW AGREEMENT

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

- (a) Escrow will let the purchaser know when payments are due.
- (b) Escrow will arrange for the purchaser to sign all necessary documents.
- (c) The purchaser is entitled to a refund if the purchaser or seller cancels the Sales Contract in accordance with its cancellation provisions, or if the purchaser terminates its reservation before the Sales Contract is binding. However, Escrow may deduct from the refund cancellation fees in accordance with the Sales Contract.
- (d) The purchaser's funds that are placed in trust prior to closing may be used by the seller after (1) the purchaser has (i) been provided with a final public report; (ii) executed a receipt and notice and has waived his right to cancel or thirty (30) days have elapsed since the purchaser has been provided with the final public report and receipt and notice of right to cancel; (2) the seller notifies escrow in writing that since (i) and (ii) have happened, the Sales Contract is binding; (3) the seller's attorney advises escrow that the Sales Contract is binding and the requirements of Hawaii Revised Statutes, Sections 514A-63 and -64.5 have been met; and (4) Escrow has closed the purchaser's sales contract in accordance with Section C of the Escrow Agreement.
- (e) If the purchaser is in default of any term under the Sales Contract and Escrow is notified by the seller that the seller has terminated the sales contract, Escrow shall treat all funds of the purchaser as funds of seller and shall pay said sums to seller in accordance with Section 9 of the Escrow Agreement. Seller may retain said funds as liquidated damages as provided in Section C-28 of the Sales Contract.

The Escrow Agreement contains various other important provisions and establishes certain charges with which a purchaser should be familiar. It is incumbent upon purchasers and prospective purchasers to read with care the executed Escrow Agreement on file with the Real Estate Commission.

**EXHIBIT "I"**

DISCLOSURE ABSTRACT

Pursuant to Hawaii Revised Statutes, Section 514(A)-61, the Developer of the Towey Estates condominium project makes the following disclosures:

1. The Developers of the Project are JOHN F. TOWEY and SHANNON LECLAIRE TOWEY, husband and wife, whose mailing address is P. O. Box 675, Kilauea, Kauai, Hawaii 96754, and telephone number is (808) 821-9339.

2. The real estate broker for the project is RE/MAX KAUAI.COM LLC, whose mailing address is P.O. Box 22-3609, Princeville, Kauai, Hawaii 96722 and whose telephone number is (808) 826-9675.

3. The escrow company for the project is TITLE GUARANTY ESCROW SERVICES, INC., whose mailing address is 235 Queen Street, Honolulu, Hawaii 96813, and whose telephone number is (808) 522-6261.

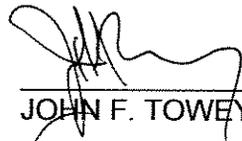
4. See Exhibit "F" to the Final Public Report for the projected annual maintenance fees. The Developer hereby certifies that the estimations have been based on generally accepted accounting principles.

5. There are no warranties against defects of material and workmanship in individual apartments, common elements or exclusive use areas, and the purchaser buys his/her unit in an "as is" condition.

6. All of the units of the Project are to be used for agricultural purposes only.

7. The Developer has not conducted a reserve study in accordance with Section 514A-83.6, and the replacement reserve rules, Subchapter 5, Title 16, Chapter 107, Hawaii Administrative Rules, as amended. There are no depreciable common elements in the Project.

IN WITNESS WHEREOF, the Developer has executed this Disclosure Abstract this 20<sup>th</sup> day of April, 2006.

  
\_\_\_\_\_  
JOHN F. TOWEY

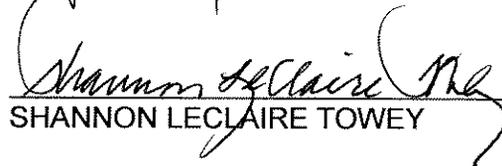
  
\_\_\_\_\_  
SHANNON LECLAIRE TOWEY

EXHIBIT "J"

ARCHITECT'S CONDITION REPORT

The undersigned, being a licensed Architect within the State of Hawaii, and bearing Registration Number 3781, has inspected Unit A and Unit B located in Towey Estates Condominium, Tax Map Key, 4<sup>th</sup> Division, 4-4-9-14.

Unit A: Dwelling  
Unit B: Ag. Shed

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

1. The systems and/or components of Unit A appear to be in satisfactory condition for the stated age of 49 years thereof and appear to be in good sound condition. Galvanized water pipe has been replaced with copper and a new electrical service has been installed.
2. Without conducting invasive examinations of covered structural components, the apartments appear to be constructed in conformity with the County of Kaua'i Zoning Ordinances, Building Code, and Rules and Regulations applicable to the construction at the time of construction thereof for Unit A and Unit B.
3. The apparent useful life of the Units provided that proper maintenance is provided for the Units is as follows:  
  
Unit A (Dwelling): 50 years.  
Unit B (Ag. Shed): 5 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: *L. June*, Kaua'i, Hawaii, *6-28*, 2006

DATED: Lihue, Kaua'i, Hawaii, 8-28, 2006

STATE OF HAWAII            )  
  ) s.s.  
COUNTY OF KAUA'I        )

ROBERT D. FERRIS, being first duly sworn, deposes and says: That he is Registered Professional Architect, No. 3781 in the State of Hawaii, has read the foregoing Architect's Condition Report, knows the contents thereof and the same is true.

Robert D. Ferris  
ROBERT D. FERRIS  
Registered Professional Architect  
No. 3781

Subscribed and sworn to before me  
this 28<sup>th</sup> day of August, 2006.

[Signature]  
NOTARY PUBLIC, STATE OF HAWAII

My commission expires: 5/26/07

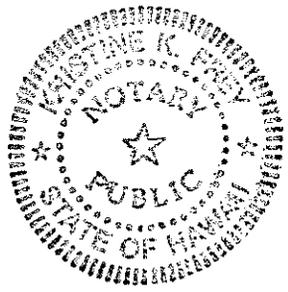


EXHIBIT "K"

\*\*\*FOR ILLUSTRATION ONLY\*\*\*



AFTER RECORDATION RETURN BY MAIL TO:  
COUNTY OF KAUAI  
Planning Department  
Building A, Suite 473  
4444 Rice Street  
Lihue, HI 96766

Document contains \_\_\_\_ pages

**FARM DWELLING AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_,  
20 \_\_\_, by and between \_\_\_\_\_,  
\_\_\_\_\_, whose residence and post office address  
is \_\_\_\_\_,  
\_\_\_\_\_, hereinafter called the "APPLICANT(S)", and the COUNTY OF  
KAUAI, Planning Department, its business and mailing address being 4444 Rice street, Building  
A, Suite 473, Lihue, Hawaii 96766, hereinafter called the "DEPARTMENT".

**WITNESSETH:**

WHEREAS, the APPLICANT(S) warrant and represent that he/she/they is/are the  
\_\_\_\_\_ of that certain parcel of land, Tax Map Key No. (4) \_\_\_\_\_,  
more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, this document pertains only to Unit(s) \_\_\_\_\_ as shown in Exhibit "B" and  
made a part hereof; and

WHEREAS, that certain parcel of land is classified Agriculture by the State Land Use commission and is zoned Agriculture by the County of Kauai; and

WHEREAS, Chapter 205, Hawaii Revised Statutes, and the state Land Use District Regulations only permit "farm dwellings" within the State Agriculture Land Use District unless otherwise relieved from the restriction by a special permit obtained pursuant to Chapter 205, Section 6, Hawaii Revised Statutes; and

WHEREAS, a "farm dwelling" is defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations as "a single family dwelling located on and used in connection with a farm where agricultural activity provides income to the family occupying the dwelling"; and

WHEREAS, the parcel identified by Tax Map Key No. (4) \_\_\_\_\_, is entitled to \_\_\_\_\_ residential units (and one guest house); and

WHEREAS, this Agreement is evidenced that \_\_\_\_\_ is entitled to one of those residential units; and

WHEREAS, a "family" as used in the definition of "farm dwelling" is defined by the State Land Use District Regulations as "an individual or two or more persons related by blood, marriage or adoption or a group comprising not more than five persons, not related by blood, marriage or by adoption"; and

WHEREAS, the APPLICANT(S) acknowledge that a violation of Chapter 205, Hawaii Revised Statutes, and the state Land Use District restriction is subject to a citation and fine of not more than \$5,000 pursuant to Chapter 205, Section 13, Hawaii Revised Statutes, as amended; and

WHEREAS, the APPLICANT(S) also acknowledge that failure to abide by this Agreement may result in the removal of the prohibited structure at the owner's expense; and

WHEREAS, the DEPARTMENT is charged with the enforcement of the restriction by Chapter 205, Hawaii Revised Statutes; and

WHEREAS, the APPLICANT(S) wish to construct a dwelling unit on that certain parcel of land describe in Exhibit A; and

WHEREAS, the APPLICANT(S) wish to execute this Farm Dwelling Agreement without first obtaining the signatures of all interest holders in the CPR;

NOW, THEREFORE, for and in consideration of the terms, covenants and conditions hereinafter contained, the parties hereby mutually agree as follows:

1. That the dwelling permitted to be constructed on the parcel of land described in Exhibit "A" classified Agriculture by the State Land Use Commission shall be a "farm dwelling"

as defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District regulations, as recited herein; and

2. That the dwelling shall only be occupied by a "family", as defined by the State Land Use District regulations and as recited herein, who derive income from the agricultural activity on the parcel; and

3. That the APPLICANT(S) and all present and future owners, lessees and occupants of said land grant the DEPARTMENT the right of entry at the request of the DEPARTMENT to inspect the premises to assure compliance with the provisions of this Agreement; and

4. That this Agreement shall be a covenant running with the land and be binding on the APPLICANT(S), and all present and future owners, lessees and occupants of said land and anyone claiming under said APPLICANT(S), their heirs, executors, administrators, successors and assigns, as owners or occupants thereof or otherwise; and

5. That this Agreement shall remain in effect so long as the land retains its Agriculture District classification under the State Land Use Commission and the pertinent restrictive provisions of Chapter 205, Hawaii Revised Statutes, and the State Land Use District regulations remain in effect; and

6. That the APPLICANT(S) expressly set forth the provisions of this Agreement in any subsequent conveyance, deed, lease or rental agreement to said property executed by them, so as to give effect to said covenant; and

7. That this Agreement shall be recorded with the State of Hawaii Bureau of Conveyances, fees to be paid by the APPLICANT(S); and

8. The DEPARTMENT and APPLICANT(S) shall execute the Farm Dwelling Agreement; and

9. The APPLICANT(S), for themselves (himself, herself), their (his/her) heirs, administrators, successors and assigns, do hereby waive and release the DEPARTMENT and the County of Kauai, a political subdivision of the State of Hawaii, whose principle place of business is 4444 Rice Street, Suite 473, Lihue, Hawaii 96766, from all claims and causes of action, either legal or equitable, which may hereafter accrue by reason of the DEPARTMENT'S execution of said Farm Dwelling Agreement; and

10. The APPLICANT(S) do(es) hereby promise to indemnify and hold the DEPARTMENT and the County of Kauai, its successors, assigns, offices, employees, agents, attorneys or any other person or legal entity connected with or legally responsible to them, harmless from any and all claims, actions, causes of action, lawsuits, demands or liability for damages of whatever kind and nature, arising out of the DEPARTMENT'S execution of said Farm Dwelling Agreement; and

11. This agreement shall be a covenant running with the portion of land described in Exhibit "A," and shall be binding on APPLICANT(S) and all present and future owners and occupants of said portion of land and any one claiming under APPLICANT(S), their successors and assigns, as owners or occupants thereof. The APPLICANT(S) further agree(s) to expressly set forth the provisions of this waiver and indemnity agreement in any subsequent conveyance, deed, lease, or rental agreement so as to give effect to said covenant.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

APPROVED:

APPLICANT(S)

\_\_\_\_\_  
Planning Director

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

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
County Attorney

STATE OF HAWAII        )  
                                  ) SS:  
COUNTY OF KAUAI     )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_, 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  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF HAWAII            )  
  ) SS:  
COUNTY OF KAUAI         )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me personally appeared \_\_\_\_\_, 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  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF HAWAII            )  
  ) SS:  
COUNTY OF KAUAI         )

On this day of \_\_\_\_\_, 20\_\_\_, before me appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, did say that (s)he is the \_\_\_\_\_ of the PLANNING DEPARTMENT of the COUNTY OF KAUAI; and that said instrument was executed on behalf of said PLANNING DEPARTMENT; and that said \_\_\_\_\_ acknowledged that (s)he executed the same as his/her free act and deed of the PLANNING DEPARTMENT of the COUNTY OF KAUAI. Said Department has no seal.

\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**END OF EXHIBIT "K"**

EXHIBIT "L"

May 18 2005 3:25PM

Beach and Bluff Realty

808 828-2869

p.17

ADDITIONAL DWELLING UNIT FACILITIES CLEARANCE FORM

OWNER: Print Kennison Nagahisa Sign [Signature]  
 Print Kerensa Nagahisa Sign [Signature]  
 TMK: 4th 4-4-9-14 LOT SIZE: 13,198 s.f. STREET FRONTING ADU: \_\_\_\_\_  
 PHONE NO. 635-6212 MAILING ADDRESS: Box 1703; Kapaa, HI 96746  
 PROPOSED:  One additional unit  Two new units  Convert guest house  Other: \_\_\_\_\_

**PLANNING DEPARTMENT USE ONLY**  
 ZONING: AG SLUD: AG FEES:  EIA \$ 0 PARK \$ 0 ZONING PERMIT \$ 10  
 COMMENTS: \_\_\_\_\_  
 SMA: yes  no   
 Planning Department [Signature] Date 6/2/05

**ENGINEERING DEPARTMENT USE ONLY**  
 Street Name: Private Rd. Paved:  Yes  No Pavement Width: \_\_\_\_\_ ft.  
 Pavement continuous to major thoroughfare:  Yes  No Pavement Condition:  Good  Fair  Poor  
 If road is not paved, or pavement is not continuous to a major thoroughfare, refer applicant to the Planning Department.  
 Flood Zone:  Yes  No 300 4/30/05 unshaded  
 Engineering Division [Signature] Date 6/2/05

Public Sewer Service Available:  Yes  No Public Sewer Service:  Adequate  Inadequate  
 Comments: NO PUBLIC SEWER  
 Wastewater Division [Signature] Date 6/3/05

**HEALTH DEPARTMENT USE ONLY**  
 Sanitary Sewer System:  Private  Individual Wastewater Cesspool was constructed into groundwater table.  
 Adequate  Inadequate  
 Comments: Cesspool must be upgraded to 2 septic system or water, oil, sewage tank, 400 gallon and comply with Chap 11-62, H.A.R.  
 Department of Health [Signature] Date 6/2/05

**FIRE DEPARTMENT USE ONLY**  
 Fire Protection:  Yes  No If yes, fire protection is:  Adequate  Inadequate  
 Comments: MEETS MINIMUM FIRE DEPT. REQUIREMENTS FOR FIRE FIGHT  
 Fire Department [Signature] Date 6/2/05

**DEPARTMENT OF WATER**  
 Water System:  Private  Public  
 Applicable charges must be paid prior to building permit approval. At the present time, these charges are:  
 \$ 1000 \* Facilities Reserve Charge  \$ \_\_\_\_\_ Meter Installation (Upon request)  
 Requirements/conditions for approval are subject to change.  
 Comments: \*The existing main fronting the lot is not adequate to service two dwelling units on the lot and will need to be upgraded prior to approval. Construction drawings are required  
 Department of Water [Signature] Date 6/3/05

**PLANNING DEPARTMENT**  
 Street name: PRIVATE ACCESS Existing Width: 30 ft. Required Width: 44 ft.  
 Dedication: \_\_\_\_\_ ft. Reserve: 7 ft.  N/A  
 Roadwidening provisions:  Yes  No If yes, specify: \_\_\_\_\_  
 Road Improvements required:  Yes  No No If yes, specify: all weather surface from Kihuna Road to the frontage of the property to the access point \*  
 Qualify  Does not qualify  
 Requirements complied with:  Yes  No  
 Qualify  Does not qualify  
 Planning Department [Signature] Date 6/3/05  
 Planning Department [Signature] Date 11/10/06

LINDA LINGLE  
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

November 14, 2005

Mr. Lawrence Dill  
Aneko Engineering Services  
P.O. Box 3213  
Princeville, Hawaii 96722

Dear Mr. Dill:

Subject: Individual Wastewater System (IWS) Plans for  
**John & Shannon Towey**  
Project Site: 6325B Olohena Road, Kapaa, Homesteads, Kauai  
TMK: (4) 4-4-009: 014  
IWS File No.: 4873

IWS plans consisting of a septic tank and soil absorption seepage pits (converted from cesspools) to serve an existing three bedroom-equivalent residence and future two bedroom additional dwelling unit located at the above site have been reviewed by the Wastewater Branch for conformance to applicable provisions of Hawaii Administrative Rules, Title 11, Chapter 62, entitled "Wastewater Systems." The IWS plan conforms to applicable provisions of Chapter 11-62.

The Department of Health will sign an applicable county building permit application, if required, provided that all information of the IWS plan and county building permit application are consistent and meet applicable provisions of Chapter 11-62 at the time of permit signature.

As the professional engineer responsible for the design, it is your responsibility to inform the owner/lessee of the property that: a) the IWS must be installed by a licensed contractor, b) inspected by the engineer, and c) authorized in writing by the Department before use.

Should you have any questions, please feel free to contact Joe Tateyama at 241-3323.

Sincerely,

Handwritten signature of Harold K. Yee in black ink.

HAROLD K. YEE, P.E.  
Chief, Wastewater Branch

JT:cle

Attachment

LINDA LINGLE  
VERNER OF HAWAII



CHRYSE L. FURUKO, M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH

P.O. BOX 3578  
HONOLULU, HAWAII 96801

In reply, please refer to  
EMD / WS

Return to: Mr. Joe Tateyama  
Wastewater Branch  
Kauai District Health Office  
Department of Health  
3040 Umi Street  
Lihue, Kauai, Hawaii 96766  
(808) 241-3323

Date: 2.16.06

File No. 4873

County of Kauai

Subject: Individual Wastewater System (IWS) for:  
JOHN & SHANNON TOWEY  
TMK: (4) 4-4-9:14

11-62-08(G) All wastewater systems, shall be constructed or expanded by a person meeting the requirements of Section 444, HRS and any pertinent rules promulgated by the Department of Commerce and Consumer Affairs, State of Hawaii.

I, JOHN & SHANNON TOWEY, the owner of the subject system, have read (please print name) the above and understand that my wastewater system must be constructed or expanded by a licensed contractor meeting the above requirements.

The following person has constructed or expanded my wastewater system:

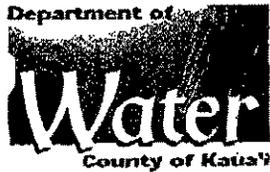
Name of Contractor / Company (print): ROBIN MURAYAMA - UNIFORM PLUMBING FIRE & SOLAR

Contractor's Signature: [Signature] Dated: 2/16/06

License Number: C20/37-20188/PJ-7403

Homeowner's Name (print): JOHN TOWEY & SHANNON TOWEY

Homeowner's Signature: [Signatures] Dated: 2.16.06



*Water has no substitute.....Conserve it*

June 9, 2005

UID #4797

Mr. John Towey  
Ms. Shannon Towey  
4175 Morri Street  
Kilauea, HI 96754

Dear Mr. and Ms. Towey:

Subject: Water Meter Service Request: Second 5/8-Inch Water Meter to Lot 167 B-1, (One Existing 5/8-Inch Water Meter) for an ADU, TMK: 4-4-09:014, Olohena Road, Wailua Homesteads, Kaua'i, Hawaii

This letter is in response to your June 2, 2005 water meter request letter.

Your request to install the second water meter to the lot along the Olohena Right-of-Way is approved. The existing 1-inch transmission main along the private roadway fronting the lot is not adequate for an additional unit/meter to the lot.

Prior to building permit or water meter approval for the ADU, the applicant shall:

1. Provide the Department of Water (DOW) with documentation that Lot 167 B-1 has an easement/access to the lot, from the proposed water meter location along Olohena Road.
2. Pay the applicable charges in effect at the time of payment to the DOW. At the present time these charges include, the Facilities Reserve Charge (FRC) of \$4,600 per unit/(5/8") water meter and the meter installation charge of \$760. The applicant shall be responsible to locate any necessary boundary pins prior to actual meter installation.

If the meter cannot be installed at a suitable location, the applicant may be required to complete a Surveyor Stake-Out Method or, prepare engineered construction drawings to install the water service connection and have the necessary construction work completed. The meter installation charge of \$760 will not be applicable if the applicant completes the necessary construction work.

This conditional approval is valid for a period of one (1) year from the date of this letter. After this one year period, this conditional approval shall be null and void and the applicant must re-apply to the Department for water service. Any such re-application will be dependent on the adequacy of the source, storage, and transmission facilities existing at that time.

If you have any questions, please contact Mr. Keith Aoki at (808) 245-5418.

Sincerely,

*Edward Dai*

Sur Gregg Fujikawa  
Chief of Water Resources and Planning

K.A.mill  
25-238 Wailua Hill, Towey/4-4-09-014



#5033V

DEPARTMENT OF WATER

County of Kauai

No 81412

OFFICIAL RECEIPT

\$ 5,360.00 Date 9/27/09

Received from JOHN J SHANNON TOWERY

the amount of FIVE THOUSAND THREE HUNDRED SIXTY AND NO/100

FOR:

Installation Charges 760.00

Specs. & Plans

Reopening

Refundable Water Deposit

Others 4,600.00

Authorized Agent  
WAIWA HILLS

Water System

Printing Services

4-4-09: 014 WAIWA HILLS-09-122