

**KIHEI COMMERCIAL CONDOMINIUM II  
ESCROW AGREEMENT**

**THIS AGREEMENT**, made this 31<sup>st</sup> day of March, 2018 ("**Effective Date**"), is by and between **FIDELITY NATIONAL TITLE & ESCROW OF HAWAII, INC.**, a Hawaii corporation, whose principal place of business and post office address is 201 Merchant Street, #2100, Honolulu, Hawaii 96813, hereinafter called "**Escrow**", and **JS MCA KIHEI LLC**, a Nevada limited liability company, whose address is c/o MCA Realty, Inc., 18818 Teller Avenue, Suite 250, Irvine, California 92612, hereinafter called "**Seller**".

**R E C I T A L S:**

A. Seller intends to enter into sales contracts for the sale of commercial units in a condominium project established pursuant to that certain Declaration of Condominium Property Regime dated May 9, 2001 and recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2001-095548, as amended, and as may be further amended from time to time (the "**Declaration**"). The Declaration was subsequently restated under the Hawaii Condominium Property Act, Chapter 514B of the Hawaii Revised Statutes, as amended (the "**Act**"). The terms of the sales contracts will provide for payment of the purchase price and closing costs to be made to Escrow, to be held and disbursed by Escrow pursuant to the terms and provisions of this Agreement.

B. The name of the Project is Kihei Commercial Condominium II (the "**Project**").

C. Seller has acquired from the prior developer, and plans to market and sell 61 commercial units (the "**Units**") in the Project, all of which are subject to this Agreement.

D. The land included within the Project is located in the County of Maui, State of Hawaii, and is currently identified as Tax Map Key No. (2) 3-9-045:014.

E. The Project is located at 300 Ohukai Road, Kihei, Hawaii 96753.

F. Seller desires to engage Escrow to act as the escrow agent for the Project, and Escrow is willing to accept such engagement, upon the terms and conditions of this Agreement.

**A G R E E M E N T**

It is hereby mutually agreed by Escrow and Seller as follows:

1. **Appointment of Escrow.** Seller hereby appoints Escrow to act as the escrow agent for the closing of the sale of Units in the Project, and Escrow hereby accepts such appointment, upon and subject to the terms and conditions contained in this Agreement.

2. **Sales Contracts Deposited in Escrow.** As and when Seller shall enter into a sales contract for the sale of a Unit in the Project, Seller shall deliver an executed copy of such sales contract and any amendments and/or addenda thereto to Escrow. Each sales contract shall (a) contain the correct name(s), mailing address(es) and email address(es) of the purchaser(s),

(b) identify the unit number to be conveyed, (c) require that all payments to be made thereunder shall be made to Escrow, and (d) be accompanied by an initial deposit as may be required thereunder.

3. Public Reports. Each sales contract shall refer to the Developer's Public Report for the Project and any and all amendments thereto (herein called the "**Public Report**") for which the Real Estate Commission of the State of Hawaii (herein called the "**Real Estate Commission**") has issued an effective date.

4. Funds Paid to Escrow.

(a) Deposit of Funds by Seller. Seller shall pay over to Escrow any monies received by Seller from purchasers under sales contracts covering the Units in the Project, including all disbursements made on loan commitments, if any, from lending institutions to individual purchasers. Escrow shall receive, deposit and hold in escrow and disburse as herein set forth: (1) all payments received by Escrow under sales contracts executed by Seller; (2) all sums received by Escrow hereunder from Seller; (3) all funds from any lending institution pursuant to a mortgage loan for the purchase of any Unit by purchasers; and (4) all sums received by Escrow from any other source on account of this Project. In accordance with written instructions from Seller that are acceptable to Escrow, Escrow shall deposit all funds so received, within a reasonable time of their receipt by Escrow and in reasonably convenient sums, in a federally-insured, interest-bearing account at any bank or savings and loan association, authorized to do business in the State of Hawaii; provided, however, if Escrow is instructed to make such deposits more frequently than once each calendar week, Seller shall pay to Escrow a reasonable service charge for each additional deposit made during such week.

(b) Receipt of Purchaser's Financing Documents. Escrow shall receive evidence, in such form and of such content specified by Seller, of each purchaser's ability to pay in cash the purchase price stated in the sales contract either: (1) from the purchaser's own funds; or (2) partially from the purchaser's own funds and the balance from the proceeds of a loan (the "**Purchaser's Loan**") to the purchaser from a responsible lending institution (the "**Purchaser's Lender**") which has issued a written commitment to make a loan to the purchaser in the amount of such balance. If all or a portion of the purchase price is to be financed, Escrow shall receive from Purchaser's Lender a note and a mortgage for execution by, or theretofore executed by, the purchaser, and shall receive funds representing the Purchaser's Loan for the purchase of the Unit, which funds are to be held for disbursement in accordance with instructions of Purchaser's Lender and in conformity with the sales contract. If the purchase price is to be paid with purchaser's own equity funds, Escrow shall hold from purchaser any security required by Seller pursuant to the sales contract; it being understood that any security required by Seller is independently enforceable by Seller if purchaser is or becomes obligated to purchase.

(c) Interest on Funds in Escrow. Unless otherwise provided in this Agreement, any interest earned on funds deposited in escrow under this Agreement shall accrue as specified in the sales contract. If the sales contract does not specify to whom interest is to accrue, any interest earned on funds deposited in escrow under this Agreement shall accrue to the credit of the purchaser. Escrow shall not be liable to either Seller or any purchaser for loss or diminution in funds invested in accordance with instructions given to Escrow. If the purchaser

requests that a separate account be established for the purchaser, the purchaser shall furnish to Escrow the purchaser's social security number or federal identification number and the purchaser shall pay Escrow a fee of \$50.00 for such separate account.

(d) Collection of Purchaser's Funds. Upon receipt of notice in writing from Seller that any payments are due under any sales contract, Escrow shall give notice in writing to each purchaser under such agreement or contract held by Escrow, and shall call for such payment to be made to Escrow. Escrow shall not be liable for any purchaser's failure to make such payments to Escrow.

5. Conditions to Be Met Prior to Disbursement of Funds in Escrow. No disbursements of funds held in escrow shall be made, except by way of refunds thereof pursuant to Section 6 below, unless and until the following conditions have been fulfilled:

(a) Effective Public Report and Amendments. Seller shall have delivered to the purchaser a true copy of the Public Report including all amendments, with effective date(s) issued by the Real Estate Commission. Seller shall provide to Escrow a true copy of each Public Report and all amendments issued for the Project, and each pending amendment with the date that the pending amendment was filed with the Real Estate Commission.

(b) Waiver of Cancellation Rights.

(i) Notice of Cancellation. Seller shall have delivered to the purchaser notice of the purchaser's statutory thirty-day right of cancellation on a form prescribed by the Real Estate Commission.

(ii) Waiver of Cancellation Rights. The purchaser shall have waived the right to cancel or shall be deemed to have waived the right to cancel in accordance with § 514B-86(c) of the Act.

(iii) Receipts Related to Cancellation Rights. Seller shall have provided to Escrow evidence that the purchaser has received a true copy of the Public Report and all amendments thereto and the notice of the thirty-day right of cancellation, which evidence may be a receipt for the Public Report signed by the purchaser, a receipt of the notice of the thirty-day right of cancellation signed by the purchaser, return receipts for copies of the Public Report or notice sent by certified or registered mail or such other evidence satisfactory to Escrow.

(c) Waiver of Rescission Rights.

(i) No Material Change. Seller shall affirm to Escrow that Seller has made a determination that there has been no material change in the Project, as such term is defined in § 514B-3 of the Act (hereinafter, "**Material Change**"), that gives rise to rescission rights under § 514B-87(a) of the Act after the sales contract became binding. Otherwise, the rescission provisions set forth below shall apply.

(ii) Rescission Waived. In the event of a Material Change in the Project that gives rise to rescission rights under § 514B-87(a) of the Act, after the sales contract

becomes binding, Seller shall affirm that Seller has delivered to the purchaser a description of the Material Change on a form prescribed by the Real Estate Commission.

(iii) Notice of Right of Rescission Because of Material Change. Seller shall have delivered to the purchaser notice of the purchaser's thirty-day rescission right on a form prescribed by the Real Estate Commission.

(iv) Waiver of Rescission Rights. The purchaser shall have waived the right to rescind or shall be deemed to have waived the right to rescind in accordance with § 514B-87(b) of the Act. (The purchaser may waive the purchaser's rescission right by (A) checking the waiver box on the rescission notice, signing it and delivering it to Seller; (B) letting the thirty-day rescission period expire without taking any action to rescind; or (C) closing the purchase of the Unit before the rescission period expires.)

(v) Receipts Related to Rescission Rights. Seller shall have provided to Escrow evidence that the purchaser has received the thirty-day notice of right of rescission, which evidence may be a receipt for the notice of the thirty-day right of rescission signed by the purchaser, return receipts for copies of the notice mailed certified or registered mail or such other evidence satisfactory to Escrow.

(d) Receipt of Written Assurances by Escrow. Seller shall have delivered to Escrow written certifications, and Escrow shall have the right to rely on such certifications, as follows:

(i) the Real Estate Commission has issued an effective date for the Public Report for the Project;

(ii) Seller has not entered into any sales contracts for the Units prior to registration with the Real Estate Commission of the State of Hawaii and prior to delivery of the Public Report to the purchasers;

(iii) the Public Report includes the matters required to be stated therein; there has been no material or pertinent change since the issuance of the Public Report that has not been described in the Public Report or an amendment thereto, or if there has been a pertinent change not in the Public Report or amendment, Seller's certification shall describe the pertinent change and confirm that Seller filed an amendment to the Public Report and shall provide Escrow with a copy of the amendment;

(iv) Seller has not entered into nonbinding preregistration agreements and no monies from prospective purchasers were collected;

(v) after the issuance of the effective date for the Public Report, a true copy of the Public Report including all amendments was delivered to each prospective purchaser, together with a notice of the purchaser's cancellation right; any purchaser whose deposits are to be released from escrow has waived the right to cancel or is deemed to have waived the right to cancel;

(vi) the sales contracts delivered to Escrow under which purchaser's funds are to be released are binding for purposes of § 514B-92 of the Act;

(vii) Seller has complied with all other requirements of §§ 514B-82, 83, 85, 86, 88, 92 and 93 of the Act, as applicable;

(viii) upon any cancellation as provided in § 514B-90 of the Act, the purchaser shall be entitled to a refund of all monies paid, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.00 as provided therein.

(ix) all conditions contained in this Agreement that must be met prior to the disbursement of purchasers' funds have been satisfied.

(e) Receipt of Opinion by Escrow. Seller shall have caused Seller's attorney to deliver to Escrow a written legal opinion, with qualifications, that, relying solely upon a review of the project documents and the factual certifications of Seller, as provided above, without any independent investigation:

(i) the attorney has no actual knowledge that the factual certifications made by Seller to Escrow are untrue in any material respect;

(ii) Seller's Public Report and all amendments (if any) thereto contain those items enumerated in §§ 514B-83(a), 84 (if applicable) and 86(a)(1)(A) of the Act;

(iii) as of the date of the attorney's letter, an amendment to the Public Report is not required pursuant to § 514B-56(a) of the Act; and

(iv) that the sales contract forms prepared by the attorney for use by Seller includes the requirements of § 514B-89 of the Act.

(f) Notification. Seller agrees to inform Escrow immediately in writing of the development of any event or occurrence which renders the certification delivered by Seller pursuant to Section 5(d) above untrue in any material respect.

(g) Seller's Waiver. Seller shall have given Escrow a written waiver of any option reserved by Seller in any sales contract to cancel such sales contract.

6. Return of Purchaser's Funds. Unless otherwise provided in this Agreement, a purchaser shall be entitled to a return of such purchaser's funds and Escrow shall pay such funds to such purchaser, together with any accrued interest, if any one of the following has occurred:

(a) Seller and purchaser shall have requested Escrow in writing to return to purchaser the funds of purchaser held hereunder by Escrow; or

(b) Seller shall have notified Escrow of purchaser's exercise of a purchaser's right to cancel the sales contract pursuant to § 514B-86 of the Act (thirty-day right to cancel); or

(c) Seller shall have notified Escrow of Seller's exercise of the option to cancel or rescind the sales contract pursuant to any right of cancellation or rescission provided therein or otherwise available to Seller; or

(d) Purchaser or Seller shall have notified Escrow of purchaser's exercise of purchaser's right to rescind the sales contract pursuant to § 514B-87 of the Act, by a valid rescission signed by all purchasers of the affected Unit and postmarked no later than midnight of the thirtieth (30<sup>th</sup>) calendar day after the date that the purchaser(s) received the notice of rescission from Seller, in which case such purchaser(s) shall be entitled to a prompt and full refund of any monies paid.

Upon the cancellation or rescission of any sales contract, as specified above, Escrow shall be entitled to a cancellation fee commensurate with the services rendered by Escrow prior to such cancellation, plus all costs incurred, up to a maximum of \$250.00. Notwithstanding anything herein or in any sales contract provided to the contrary, said cancellation fee shall be the sole expense of the purchaser and shall not in any way be the obligation of Seller, unless the purchaser rescinds the sales contract pursuant to § 514B-87 of the Act, whereupon Seller shall pay such fee. Any other refund or reimbursement (other than purchaser's funds held in escrow) that the purchaser may be entitled to upon rescission under § 514B-87 of the Act shall be the sole responsibility of Seller (and not Escrow). No refund shall be made to a purchaser at the purchaser's request prior to receipt by Seller of written notice from Escrow of Escrow's intent to make such refund.

(e) Pursuant to the sales contract, in the event that Seller, in its sole discretion, rejects a purchaser's financial data (as may be required under the sales contract) as unacceptable, Seller shall notify such purchaser of such rejection as set forth in the sales contract, in which event Seller may cancel the sales contract and said purchaser shall receive a refund of all sums paid under the sales contract, with accrued interest (if applicable), less any cancellation fee. As set forth in the sales contract, a purchaser's obligations under a sales contract are not contingent or conditioned on such purchaser's ability to secure financing of any kind (i.e., from a mortgage lender or from a purchaser's ability to sell purchaser's current residence or other assets).

7. Unclaimed Funds. Escrow shall give each purchaser entitled to a return of funds notice thereof by registered, certified or regular mail, postage prepaid, addressed to such purchaser at the purchaser's address shown on the sales contract or any address later made known in writing to Escrow by such purchaser. If such purchaser shall not have claimed such refund, Escrow shall escheat such unclaimed funds pursuant to Hawaii Revised Statutes § 523A-3. Escrow shall thereupon be released from any further duties or liability hereunder with respect to such funds and such purchaser.

8. Closing. Except for the sales contracts and any note and mortgage that are to be closed by the mortgagee thereof, Escrow shall promptly and diligently arrange for and supervise the execution and recordation of all documents related to the Project and shall promptly and diligently close the transactions and perform such services as are necessary or proper therefor. Upon receipt by Escrow of the conveyance document, the receipt for the Public Report, all other receipts required by Escrow under Section 5 of this Agreement, all necessary releases of encumbrances, the full amount of the purchase price of the Unit, any mortgage or other

instruments securing payment by the purchaser of all or part of the purchase price of the Unit and purchaser's share of closing costs, Escrow will act with diligence and dispatch to "close" the sale of the Unit by performing the following:

(a) Escrow shall cause the recording and/or filing of the following documents in the order that they are listed: (i) any applicable releases or partial releases; (ii) the unit deed; and (iii) any mortgage(s), if any.

(b) After recordation, Escrow may cause a copy of said unit deed to be delivered to the purchaser via email or U.S. Postal regular mail, the release or partial releases to be delivered to Seller if requested in writing, the mortgagee, if any, to be delivered to the purchaser's lending institution, and all sums respecting the purchase of the Unit to be disbursed to Seller after deduction by Escrow of Seller's share of the closing costs.

9. Pre-Closings. Escrow agrees that upon ten (10) business days' written notice from Seller or Seller's mortgage lender, Escrow will act with due diligence and dispatch to "pre-close" sales (a) by arranging for the execution of the unit deeds and such other documents as are required to effect the transfer of title, and (b) by calling for payments then required from purchaser, all as provided for in the sales contract.

10. Partial Closings. It is understood that partial closings, i.e., closings for some but not all of the Units, may be desired by Seller. If Seller desires to close any or all sales at different times, Escrow agrees to cooperate with Seller and shall vary its performance of the directions contained herein in such manner as will facilitate its performance of such partial closings.

11. Defects in Documents. With respect to the closing of each sales transaction, upon the closing date selected by Seller ("**Closing Date**"), provided that any individual mortgage in connection therewith may then be recorded, and it is legally possible to record all closing documents and none is in any way defective, Escrow shall proceed promptly and within five (5) business days of the Closing Date (exclusive of the Closing Date) to record the necessary documents to effect the transfer of legal title to the purchaser. If for any reason it is determined that any document necessary to close the transaction is defective or cannot be recorded, Escrow shall promptly notify Seller of such fact and Escrow shall use reasonable efforts to obtain the necessary corrections. If, for any cause beyond Escrow's control, the necessary documents cannot be recorded within said five (5) day period after the Closing Date, Escrow shall record the same within five (5) days after learning that the reason that prevented their recording no longer exists.

12. Purchaser's Default. Seller shall give notice in writing to Escrow of the occurrence of each event that initiates an obligation of a purchaser to make a payment to Escrow pursuant to the sales contract as well as notice of the amount and due date of such payment. If the purchaser fails to make such payment to Escrow on or before the due date thereof or if the purchaser fails to perform in any matter that is being handled by Escrow, Escrow shall promptly notify Seller of any such failure on the part of the purchaser. If Seller subsequently certifies in writing to Escrow that Seller has terminated the sales contract in accordance with the terms thereof and provides to Escrow copies of all such notices of termination and proof of receipt sent

to the purchaser, Escrow shall thereafter treat all funds of the purchaser paid on account of such purchaser's sales contract as funds of Seller and not as funds of the purchaser. Thereafter, such funds shall be free of the escrow established by this Agreement and shall be held by Escrow for the account of Seller. Upon written request by Seller, Escrow shall pay such funds to Seller, less any escrow cancellation fee. Escrow shall thereupon be released from any further duties or liability hereunder with respect to such funds and such purchaser.

13. Representations and Warranties of Seller. Seller represents and warrants the following as to each sales contract held by Escrow pursuant to this Agreement, and each such representation shall continue to be true and correct through closing of each transaction evidenced by such sales contract. If any change in circumstance renders any representation incorrect at any time, Seller shall thereupon promptly notify Escrow in writing.

(a) Public Reports and Notices. Seller has provided the purchaser with copies of the Public Report and all amendments thereto existing at the point at which the sales contract was entered into for which effective dates have been issued by the Real Estate Commission and has delivered to the purchaser the required notice of purchaser's right to cancel.

(b) No Material Change in Project. There has been no Material Change in the Project that would permit a purchaser to rescind a binding sales contract under § 514B-87 of the Act; or, if there is a Material Change, the purchaser has reviewed the change in an effective amendment to the Public Report and has waived or deemed to have waived purchaser's right to rescind.

(c) Suspension of Sales; Termination of Registration. No governmental entity or court has suspended sales, issued a cease and desist order, issued an order rejecting or revoking the registration, terminated the registration, or issued any injunction with respect to the Project, the Units or their sale.

(d) Compliance with Law. Seller has complied with the applicable requirements of the Act.

14. Protection of Escrow. In consideration of Escrow acting as escrow holder hereunder, it is agreed that Escrow is relieved from all liability for acting in accordance with the terms hereof and escrow instructions mutually agreed to, notwithstanding a notice to the contrary by Seller or any purchaser or third person; provided, however, that Escrow shall not be relieved from any liability arising out of or in connection with its own negligence or reckless acts or omissions. Escrow shall not be responsible for the validity or sufficiency of any sales contracts or other documents received by it and shall be entitled for all purposes to assume that the same have been signed by the persons whose signatures purport to be thereon and that any written certifications or instruments from Seller are true and accurate.

Except as specifically provided herein, if any dispute or difference shall arise or if any conflicting demand shall be made upon Escrow, Escrow shall not be required to determine the same or take any specific action, but Escrow may await settlement of the controversy by final appropriate legal proceedings or otherwise as it may require, or Escrow at its sole discretion may file a suit in interpleader in any court having jurisdiction in the matter, for the purpose of having



the respective rights of the parties adjudicated, and may deposit with the court any or all monies held hereunder with deductions for Escrow's attorney's fees and costs. Upon institution of such interpleader suit or other action, depositing such money with the court, and giving notice thereof to the parties thereto by personal service or in accordance with the order of the court, Escrow shall be fully released and discharged from all further obligations hereunder with respect to the monies so deposited.

Seller agrees to use commercially reasonable efforts to cause each purchaser to agree to pay Escrow on demand and to indemnify and hold Escrow harmless from and against all costs, damages, judgments, reasonable attorneys' fees, expenses, obligations and liabilities of every kind and nature reasonably suffered or incurred in connection with or arising out of this escrow, including, but not limited to, all costs and expenses incurred in connection with the interpretation of this Agreement or with respect to any interpleader or other proceeding, and excluding all of the foregoing that is the result of any act or omission by Escrow or its agents that is not generally accepted in the Honolulu business community as a reasonable business practice. Upon payment thereof, the prevailing party will be subrogated to Escrow's right to judgment for said costs, damages, judgments, attorneys' fees, expenses, obligations and liabilities of every kind and nature against third persons.

Seller expressly agrees that Escrow shall not be required to mail any notice or to keep any records that may be required under the Act.

15. Binding Effect. This Agreement shall be binding upon, shall apply to and shall inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors, successors in trust, and assigns, and shall upon its acceptance by a given purchaser (which shall automatically occur upon Seller's execution of a sales contract), also be binding upon and inure to the benefit of such purchaser, his or her heirs, personal representatives, devisees, successors and permitted assigns.

16. Assignment. Escrow may not assign its rights or delegate its duties under this Agreement without the prior written consent of Seller.

17. Termination. This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice to the other; provided, however, that unless otherwise specified by Seller, all transactions in process hereunder at the time of such termination shall be completed under the terms of this Agreement. Upon such termination, Escrow shall make no disbursements of funds held hereunder (except with respect to transactions completed after the termination hereof, as provided in the proviso in the preceding sentence) except disbursements to another escrow depository which has entered into an escrow agreement with Seller and which complies with the requirements of the Act with respect to escrow arrangements for the deposit and disbursement of purchasers' funds. In any other event, this Agreement shall terminate upon the recording and delivery of all pertinent documents relating to the last Unit to be sold in the Project and final disbursement of all funds deposited with Escrow hereunder.

18. Statutory Provisions Control. This Agreement, in all of its provisions, is to be deemed and interpreted as supplementary and subject to the provisions of the Act, and if any

conflict should arise between the provisions of this Agreement and the provisions of the Act, the provisions of the latter shall control.

19. Reports and Billings by Escrow. Escrow shall furnish Seller with a semi-monthly Seller's report that will cover the status of each sales contract in escrow. Seller shall give notice in writing to Escrow of the occurrence of each event that initiates an obligation of a purchaser to make a payment to Escrow pursuant to the sales contract as well as notice of the amount and due date of such payment. Escrow shall thereupon promptly give the purchaser notice of the amount and due date of such payment.

20. Compensation of Escrow. The compensation of Escrow for performance hereunder shall be as shown in Exhibit A, plus applicable Hawaii general excise tax, for each Unit in the Project. Escrow shall also arrange for the issuance of a title insurance policy (standard owner's or ALTA lender's policy) for the sum as shown in Exhibit A for each Unit in the Project. The above escrow and title fees shall remain fixed for an initial period of three (3) years and thereafter until Escrow notifies Seller of an increase in such fees. The title insurance premium rate, however, may be subject to changes if reinsurance rates change or if special endorsements or additional title services are requested. If additional escrow or title work is required that does not pertain to the sales contract, Escrow reserves the right to charge additional fees. An additional fee of \$150.00 shall be charged to the purchaser for each mortgage obtained by the purchaser if the purchaser does not obtain a mortgage loan from a lender designated by Seller. Should the purchaser obtain a mortgage loan from an out-of-state lender, a fee of \$250.00 shall be charged to the purchaser for each mortgage obtained. If an escrow involves a 1031 Exchange, Escrow has the right to assess additional fees commensurate with the amount of work involved.

Escrow's compensation shall become due and payable with respect to a Unit in the Project upon the first to occur of the following events: (a) the transfer to the purchaser of such Unit of legal title thereto; or (b) final disbursement of the funds held in escrow in connection with such Unit. In the event of the cancellation of any binding sales contract that has been submitted to Escrow, a cancellation fee commensurate with the services rendered by Escrow prior to such cancellation, plus all costs incurred by Escrow, up to a maximum of \$250.00, shall be charged to the purchaser, unless such cancellation occurs before the sales contract becomes legally binding, or unless otherwise provided for in this Agreement or agreed to by Seller and the purchaser. If Escrow shall for any reason without fault on its part be required to change subsequent to the commencement of preclosings or closings for the Project any closing statement or document previously approved as to form and figures by Seller, Seller agrees to pay an additional charge of \$30.00 for each such statement or document that is changed.

21. Entire Agreement. This Agreement and any exhibits attached hereto and by reference forming a part hereto constitute and set forth all of the covenants, promises, agreements, conditions and understandings between the parties concerning the Project, and supersede and cancel all prior negotiations, representations, understandings and agreements, both oral and written, of the parties hereto. No subsequent alteration, amendment, change or addition to this Agreement shall be valid, binding or enforceable unless reduced to writing and signed by the parties.

22. Modifications and Additions. Pursuant to written instructions from Seller, purchaser and mortgagee, Escrow shall make such modifications and accept such additions to documents deposited into escrow pertaining to the Project as requested by Seller and as required by law.

23. No Party Deemed Drafter. No party shall be deemed the drafter of this Agreement. If this Agreement is ever construed in a court of law, such court shall not construe this Agreement or any provision hereof against any party as drafter.

24. Notices. Any notice or demand provided for or permitted by this Agreement may be given sufficiently for all purposes in writing, mailed as registered or certified mail, addressed to the purchaser at such purchaser's address as set forth in said purchaser's sales contract or any other address made known to Escrow by purchaser or delivered personally within the State of Hawaii to such purchaser and shall be deemed conclusively to have been given on the date of such mailing or such personal delivery. Notices to Escrow and Seller shall be addressed to Escrow and Seller at such addresses as set forth herein. Any notice or demand to Escrow or Seller shall be mailed as registered or certified mail. Such notice shall be deemed conclusively to have been given to Escrow or Seller on the date of such mailing.

25. Document Preparation. All legal documents required for the conveyance of Units in the Project to purchasers shall be prepared by Imanaka Asato LLC ("IA"). Escrow shall send IA any orders for the preparation of any such documents at least forty-eight (48) hours in advance or at the earliest time practicable.

26. Severability. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstances shall, to any extent, be declared illegal, void, invalid, ineffective or unenforceable for any reason by any court or other authority of competent jurisdiction, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held illegal, void, invalid, ineffective or unenforceable shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

27. Headings and Paragraphs. The headings and sections and paragraphs herein are inserted only for convenience and reference and shall in no way define, limit or describe the scope or intent of any provisions of this Agreement.

28. Counterparts. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original, and all of which taken together shall constitute one and the same agreement, binding upon all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this agreement duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.


29. Hawaii Law; Jurisdiction; Venue. The laws of the State of Hawaii (without regard to its conflict of law provisions) shall govern this Agreement. Any judicial proceeding to interpret or enforce this Agreement shall be brought in the state or federal courts of Hawaii.

(The remainder of this page is intentionally left blank. Signatures to follow.)

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

FIDELITY NATIONAL TITLE &  
ESCROW OF HAWAII, INC., a Hawaii  
corporation

JS MCA KIHEI LLC, a Nevada limited  
liability company

By   
Name: Brenda Sete  
Its: VP

By \_\_\_\_\_  
Name: John Saunders  
Its: Manager

(Escrow)

(Seller)


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

FIDELITY NATIONAL TITLE &  
ESCROW OF HAWAII, INC., a Hawaii  
corporation

JS MCA KIHEI LLC, a Nevada limited  
liability company

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

(Escrow)

By  \_\_\_\_\_  
Name: John Saunders  
Its: Manager

(Seller)

**EXHIBIT "A"**

**SCHEDULE OF ESCROW & TITLE FEES**

**Escrow Fees: \$950.00**

**Title Insurance: 50% off of the current rate schedule**



# TITLE RATES

## BASIC TITLE INSURANCE RATE TABLE

# 2018-2019

AMOUNT OF INSURANCE    BASE RATE

AMOUNT OF INSURANCE    BASE RATE

\$0-60,000	\$350
60,001-80,000	451
80,001-100,000	535
100,001-120,000	597
120,001-140,000	670
140,001-160,000	743
160,001-180,000	815
180,001-200,000	894
200,001-220,000	997
220,001-240,000	1070
240,001-260,000	1137
260,001-280,000	1210
280,001-300,000	1277
300,001-320,000	1386
320,001-340,000	1459
340,001-360,000	1532
360,001-380,000	1605
380,001-400,000	1672
400,001-420,000	1745
420,001-440,000	1824
440,001-460,000	1891
460,001-480,000	1964
480,001-500,000	2037
500,001-520,000	2201

520,001-540,000	2295
540,001-560,000	2353
560,001-580,000	2377
580,001-600,000	2401
600,001-620,000	2444
620,001-640,000	2523
640,001-660,000	2588
660,001-680,000	2647
680,001-700,000	2705
700,001-720,000	2742
720,001-740,000	2833
740,001-760,000	2927
760,001-780,000	2947
780,001-800,000	2966
800,001-820,000	3035
820,001-840,000	3103
840,001-860,000	3170
860,001-880,000	3238
880,001-900,000	3307
900,001-920,000	3375
920,001-940,000	3443
940,001-960,000	3510
960,001-980,000	3579
980,001-1,000,000	3647