

**AOUO OF KIHEI COMMERCIAL CONDOMINIUM II
PROPERTY MANAGEMENT AND AGENCY AGREEMENT**

THIS PROPERTY MANAGEMENT AND AGENCY AGREEMENT made this 1st day of January, 2018, by and between:

A. AOUO Kihei Commercial Condominium II, Federal ID #94-3453065, Hawaii Tax I.D. No. GE 049-712-5376-01, whose address is c/o 4040 Macarthur Boulevard, Suite 300, Newport Beach, CA 92660, hereinafter referred to as "**Developer**", for and on behalf of the ASSOCIATION OF UNIT OWNERS OF KIHEI COMMERCIAL CONDOMINIUM II, hereinafter referred to as the "**Association**", and

B. J S PROPERTY MANAGEMENT, INC., a Hawaii corporation, whose address is at 1962B Wells Street, Wailuku, Hawaii 96793, hereinafter referred to as the "**Agent**"

WITNESSETH THAT:

In consideration of the terms, conditions and covenants hereinafter set forth, the parties mutually agree as follows:

I. GENERAL PROVISIONS:

1. Developer, for and on behalf of the Association, hereby appoints Agent and Agent hereby accepts appointment, on the terms and conditions hereinafter provided, as exclusive managing agent of the condominium project known as KIHEI COMMERCIAL CONDOMINIUM II (the "**Project**") consisting of seventy-two (72) commercial units and situated on that certain parcel of land located at 300 Ohukai Road, Kihei, Hawaii 96753, which is further identified on the tax maps of the State of Hawaii, Second Division, at Tax Map Key No. 3-9-045-014.

2. Agent understands that the function of the Association is the operation and management of the Project, and Agent will, notwithstanding the authority given to Agent in this Agreement, confer fully and freely with designated member or members of the Board of Directors of the Association (the "**Board**") in the performance of its duties as herein set forth. It is further understood that the authority and duties conferred upon Agent are confined to the limited common elements and common elements as defined in the Horizontal Property Regime of the Project (the "**Declaration**"), and the Condominium Property Act, Hawai'i Revised Statutes ("Condominium Property Act") unless otherwise specified herein.

3. In order to facilitate the efficient operation of the Project, the Association shall furnish Agent with a complete set of plans and specifications of the Project and the Declaration and Bylaws of the Association filed with the Bureau of Conveyances of the State of Hawaii. Copies of guaranties and warranties pertinent to the limited common elements and common elements of the Project and in force at the time of the execution of this Agreement shall also be furnished to Agent. All costs to obtain these copies shall be at the Association's expense.

4. Unless otherwise directed by the Board of Directors, the Agent shall establish and maintain, in a bank, savings and loan company or other financial institution located in the State of Hawaii, whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC) or Federal Savings and Loan Insurance Corporation (FSLIC), and in a manner to indicate the custodial nature thereof, one or more separate bank accounts as agent of the Association for the deposit of the Association's Funds, with authority to draw thereon for any payments to be made by Agent to discharge any liabilities or obligations incurred pursuant to the Agreement, and for the payment of Agent's fee. All such accounts will be in the name of the Association. Interest earned on the accounts shall be credited in the Association's name to the same or other accounts as directed by the Association Treasurer. No more than \$250,000.00 shall be allowed to accumulate in any one account. The operating account, 1 signature of agent, all reserve account withdrawals, transfers, checks, will be authorized by 1 board member of the Association and signed by Agent unless the Association changes this requirement in writing. No monies collected by Agent for the Association shall be commingled with funds of Agent or other properties it manages. Should a deficiency occur in the Operating Account, Agent will promptly notify the Association. Agent shall have no obligation to use its own funds to make up any deficiency unless the deficiency is caused by Agent's neglect or malfeasance.

5. Agent, in consultation with the Board member or members designated by the Board, and on behalf of the Association, shall render the following services and perform the following duties:

(a) Maintain businesslike relations with the Association members and, with respect to the common and limited common elements of the Project, receive and consider inquiries, complaints and service requests by the Association members and take appropriate action on those complaints and service requests which Agent deems reasonable.

(1) If Agent shall deem any such complaint or service request unreasonable, it shall advise the Board of the complaint or service request and the reason for its opinion that the complaint or service request is unreasonable.

(2) Further, Agent shall report complaints of a serious nature to the Board, together with Agent's recommendations thereon.

(b) Collect all monthly assessments due from the Association members, to include maintenance fees, late charges, and legal fees due from owners; and, under the Association's authorization, request, demand, collect, receive and receipt for any and all charges that at any time become due the Association and take such action in the name of the Association by way of legal process.

(c) Furnish the Association with a list of all delinquent accounts on a monthly basis.

(d) Cause limited common elements and common elements to be maintained in accordance with standards as set forth in the Declaration and By-Laws and acceptable to the Association.

(1) For any one item of repair or replacement of the common elements, the expense shall not exceed the unbudgeted sum of FIVE HUNDRED and NO/100 DOLLARS (\$500.00), unless specifically authorized by the Board of Directors, excepting, however, emergency repairs immediately necessary for the preservation and safety of life and property.

(2) Notwithstanding this authority as to emergency repairs, Agent will, if at all reasonably possible, confer immediately with the President and Treasurer of the Association regarding such expenditures.

(e) Negotiate and enter into contracts, on behalf of the Association, for maintenance and repairs of improvements, maintenance of landscaping and ground, utilities, including water, electricity, gas, telephone and the like, security, refuse removal, pest control, fire alarm system and fire protection equipment, and other such services or such of them as the Board deems advisable and in accordance with the governing documents; and further to negotiate and enter into contracts for such equipment, tools, appliances, materials and supplies as are necessary to properly maintain the Project; provided, however, all such contracts shall be subject to the approval of the Board.

(f) Advise the Association with respect to proper insurance coverage for the maintained area, and if requested by the Board, cause to be effected and/or maintained (if obtainable), in such amounts and through such carriers as the Board shall designate or approve, fire, liability, and any other insurance which the Association may elect to carry or as set forth in the Declaration and/or By-Laws or as may be required by law.

(g) Cause to be kept in good order the books and records of the Association and to maintain orderly files, including files with respect to each unit, which should contain records and documents pertaining to the ownership and transfer of ownership of units and voting rights.

(1) Upon the request of the Association, Agent shall make the same or copies thereof available to the Association, the Association's officers, accountants, attorneys or other representative for delivery to the Association or its aforesaid agent on demand of the Association and assist and cooperate in any audit conducted by the Board or the Association.

(2) Agent may prescribe reasonable fees to be paid for copies of any books, records, documents or papers kept or maintained by Agent for the Association.

(h) Prepare, or cause to be prepared, each year, at least sixty (60) days prior to the end of the Association's fiscal year with the assistance of the Association's Treasurer, if need be, an operating budget setting forth an itemized statement of the anticipated

receipts and disbursements for the new year, based on the current schedule of monthly assessments and taking into account the general condition of the Project.

(1) The budget shall serve as a supporting document for the schedule of monthly assessments for the new year.

(2) Except as provided in subsection (1) above, no expenses may be incurred or commitments made by Agent in connection with the maintenance and operation of the Project in excess of the amounts allocated to the various classifications of expense in the approved budget without the prior consent of the Board, except that is necessary because of an emergency, provided it is brought promptly to the attention of the Board.

(i) In accordance with the directive of the designated member of the Board, arrange for a suitable meeting place for, send notices to the Association members and members of the Board, prepare agendas for and cause a representative of Agent to attend the annual meeting of the Association of Unit Owners and annual meeting of the Board of Directors.

(j) Agent shall prepare monthly and submit to the Board the following reports for the month on or before the twenty-fifth (25th) day of the next month:

- (1) Balance Sheet
- (2) Income/Expense Statement
- (3) General Ledger
- (4) Deposit Register
- (5) Check Register
- (6) Budget Comparison Report
- (7) Accounts Receivable Summary
- (8) CAM Fee Roll
- (9) Bank Statement and reconciliation

(k) Send out the annual audit report, all letters and reports to all unit owners, as the Board may reasonably request, all costs of which shall be borne by the Association unless otherwise determined.

(l) In accordance with the Condominium Property Act, cause a certified public accounting firm, of the Board's choice, to conduct an annual audit of all financial records and prepare the required tax returns for the Association.

(1) The expense of such audit and preparation of tax returns shall be borne by the Association.

(2) Agent will not be held liable for any tax returns or audits that are done by a firm that Agent does not recommend, should any later ramifications occur.

(m) Operate and maintain the Project as directed by the Board, in accordance with a standard consistent with the overall plan of the Association.

(1) Agent, in conjunction with on-site staff, if any, shall reasonably attempt to see that all members are informed with respect to such rules and regulations and notices, as may be promulgated by the Association from time to time.

(n) Maintain at all times, a Fidelity Bond that protects the Association, as well as the Agent, from any fraud, mishandling of funds or any such type of occurrences, with the provisions of the bond, as well as the minimum amount of such bond, meeting the requirements as established from time to time by the laws of the State of Hawaii and the governing documents of the Association.

(o) Any payments made by Agent hereunder shall be made out of such funds as Agent may from time to time hold for the account of the Association or as may be provided by the Association.

(1) Agent shall not be obliged to make any advance to or for the account of the Association or to pay any amount except out of funds held or provided as aforesaid nor shall Agent be obliged to incur any extraordinary liability or obligation unless the Association shall furnish Agent with the necessary funds for discharge thereof.

(2) If Agent shall voluntarily advance for the Association's account any amount for the payment of any obligation or necessary expense connected with the maintenance or operation of the maintained area, or otherwise, the Association shall reimburse Agent thereof on demand.

(p) Deposit all funds, collected by Agent for the account of the Association in accordance with this agreement.

(1) Agent shall not commingle any funds of the Association with other funds collected by Agent as agent for others.

(2) Agent shall be under no liability or responsibility for any loss resulting from the insolvency of such depository.

(q) Work with the Board to place fire and extended insurance coverage, liability insurance, at the cost and expense of the Association, with insurance carriers and limits, with the Agent being named as a part insured under the liability policy in accordance with the governing documents.

6. The Association agrees to indemnify, defend, hold and save Agent free and harmless from any claim for damage or injury against Agent and the Association; jointly or

severally, affecting or due to the condition or use of the maintained area, or the acts or omissions of the Association or employees of the Association, or Agent when Agent is carrying out the provisions of this Agreement, or acting under the expressed or implied direction of the Association except to the extent caused by the Agent's own negligence or intentional misconduct. Nothing contained in this paragraph shall relieve Agent from responsibility for negligence or willful misconduct.

II. FEES:

1. Each month during the term of this Agreement, the Association shall pay Agent, as full compensation for its services herein, a management fee of TWO THOUSAND EIGHT HUNDRED EIGHTY FOUR AND 01/100 DOLLARS (\$2,884.01) plus all applicable general excise taxes.

2. At a time of transfer of ownership between buyers and sellers of any unit, Agent will provide to escrow a certification of client balances and any documentation that may be needed and shall be allowed to charge a reasonable fee for such work. The Association will not be held liable in any way for an error in documentation provided to escrow unless it can be proven that the error was caused by the Association giving improper information on the transfer of accounts.

3. Agent will provide one mailing per month as part of this contract, any additional mailings will be charged to the Association at \$0.25 per page plus postage costs.

4. Any additional services requested of Agent not included as part of this Agreement will be billed at \$100.00 per hour.

III. COMMENCEMENT:

1. This Agreement shall become effective as of the date first above written and shall remain in effect for a period of one (1) year. This Agreement may be terminated by Agent and/or the Association, without cause or payment of a termination fee, by giving the other thirty (30) days' written notice to terminate.

2. It is understood that this Agreement provides for all the responsibilities and duties of Agent. From time to time the Association may wish to have Agent perform additional services, not included in this Agreement. In such event, the Association will submit its request for such services in writing and Agent will promptly inform the Association of its charge for such additional services. The Association will be free to accept the charge quoted by Agent or have the services performed by a third party.

3. Any notice required to be served upon Agent may be mailed to Agent at Agent's address set forth on page 1, above.

4. Any notice required to be served upon the Association shall be mailed to the President and Vice President of the Association at the last address noted on Agent's file, via Certified Mail, Return Receipt Requested.

IV. MISCELLANEOUS:

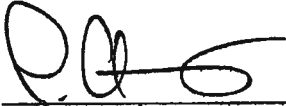
1. This Agreement shall constitute the entire Agreement between Agent and the Association, and no variance or modification thereof shall be valid and enforceable, except by supplemental agreement in writing, executed and approved in the same manner as this Agreement. Any notice by either party to the other should be in writing and shall be given, and be deemed to have been duly given, if either delivered personally or mailed in a registered or certified, postpaid envelope addressed to the party. This Agreement shall inure to the benefit of and constitute a binding obligation upon the Developer, the Association, Agent and their respective successors and assigns. Agent may assign or transfer this Agreement without the prior consent of the Association. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. Subsequent to the formation of the Association, the Developer shall no longer be a party in interest to this Agreement and shall thereupon have no liability hereunder.

2. This instrument may be executed in counterparts. In addition, this instrument may contain more than one counterpart of the signature page and this instrument may be executed by the affixing of the signatures of each of the parties to one of such counterpart signature pages and the assembly of such signature pages with this instrument as one document; and all of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

- The remainder of this page is intentionally left blank; the next page is the signature page -

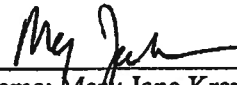
IN WITNESS WHEREOF, the parties have duly executed these presents on the day and year first above mentioned.

KIHEI CC, LLC,
a Hawaii limited liability company

By 
Name: PETER CHENG
Title: VICE PRESIDENT

"DEVELOPER"

J S PROPERTY MANAGEMENT, INC.,
a Hawaii corporation

By 
Name: Mary Jane Kramer
Title: President

"AGENT"