

KIHEI COMMERCIAL CONDOMINIUM II

SALES CONTRACT

This Sales Contract is made by and between **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 ("**Seller**"), and "**Purchaser**" named in **Section B**, below. This Sales Contract shall be effective and binding in accordance with **Section D.24**, below. All capitalized terms used herein and not otherwise defined shall have the meaning set forth in **Exhibit A** attached hereto and made a part hereof, and if not defined in **Exhibit A**, the Declaration. The purchase and sale transaction described in this Sales Contract is to be administered by Fidelity National Title & Escrow of Hawaii, Inc., a Hawaii corporation ("**Escrow**") and is made with reference to the following facts:

A. DESCRIPTION OF THE PROPERTY COVERED BY THIS SALES CONTRACT

Unit No. _____ within Kihei Commercial Condominium II located in Kihei, County of Maui, State of Hawaii, as shown on that certain Condominium Map recorded at the Bureau as Condominium Map No. 3285, and as described in the Declaration, as supplemented or amended from time to time, together with the undivided percentage interest in the Common Elements, as set forth in the Declaration and as depicted on the Condominium Map, together with those certain Limited Common Elements that are designated as appurtenant to such Unit, if any, as also shown on said Condominium Map and as further described in the Declaration;

TOGETHER WITH AND/OR SUBJECT TO certain other easements and/or any other encumbrances recorded against the Project described or reserved in Purchaser's Limited Warranty Unit Deed, Encumbrances and Reservation of Rights with Powers of Attorney for Kihei Commercial Condominium II ("**Unit Deed**").

The description provided under this **Section A** shall collectively be called the "**Unit**".

B. INFORMATION CONCERNING PURCHASER (Include all persons in whom title is to be vested)

1. Individual Purchaser(s)

Full name (if no middle name, state "NMN", do not use initials):

 () Single () Married () Trustee-indicate full legal name of trust

Address: _____

Office Tel.: _____ Home Tel.: _____ Cell Tel.: _____

Fax No.: _____ E-mail: _____

Spouse's Full Name: _____

Full name (if no middle name, state "NMN", do not use initials):

() Single () Married () Trustee-indicate full legal name of trust

Address: _____

Office Tel.: _____ Home Tel: _____ Cell Tel.: _____

Fax No.: _____ E-mail: _____

Spouse's Full Name: _____

2. Entity Purchaser

Full legal name and type of entity (i.e., Corporation, Partnership, Limited Partnership, Limited Liability Company or Limited Liability Partnership)

Business Address: _____

Office Tel.: _____ Office Fax: _____ Cell Tel.: _____

Email: _____

Representative authorized to sign, and title or position: _____

(NOTE: The following documents shall be delivered by Purchaser to Seller upon signing this Sales Contract, during Pre-Closing (as defined in Section D.7 below), or on such other date determined by Seller: (i) if Purchaser is a corporation, a resolution of the board of directors of such corporation authorizing the purchase hereunder and declaring which officer(s) is (are) authorized to execute this Sales Contract and all documents in connection herewith; (ii) if Purchaser is a foreign (non-Hawaii) corporation, a copy of its license to do business in the State of Hawaii or other evidence that it has registered to do business in the State of Hawaii; (iii) if Purchaser is a partnership or limited partnership, a copy of the Partnership Agreement or Limited Partnership Agreement (as applicable) and a copy of the partnership or limited partnership registration statement filed with the Department of Commerce and Consumer Affairs of the State of Hawaii ("DCCA"); (iv) if Purchaser is a limited liability company, a copy of the Operating Agreement and a copy of the Articles of Organization filed at the DCCA; (v) if Purchaser is a limited liability partnership, a copy of the Partnership Agreement and a copy of the Certificate of Limited Partnership filed at the DCCA; and (vi) if Purchaser is a trustee, a copy of the trust instrument or short form thereof, with an appropriate recitation as to the authority of the trustee.) PURCHASER ACKNOWLEDGES AND AGREES THAT IF PURCHASER IS A CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, OR OTHER ENTITY THAT IS NOT A NATURAL PERSON, SELLER MAY REQUIRE, AS A CONDITION TO ACCEPTANCE OF THIS SALES CONTRACT, THAT PURCHASER'S OBLIGATIONS UNDER THIS SALES CONTRACT BE GUARANTEED BY A FINANCIALLY RESPONSIBLE NATURAL PERSON WHO IS ACCEPTABLE TO SELLER, IN ITS SOLE DISCRETION.

3. Nature of Vesting of Title. The manner of vesting of title is at the discretion of Purchaser and can have significant legal and tax consequences. If Purchaser is unable to choose a manner of vesting at this time, Purchaser shall advise Seller and Escrow as soon as possible, but no later than by Pre-Closing, as defined herein, of how Purchaser will take title to the Unit. The information appearing in **Section B** hereof and any vesting information provided to Escrow by Purchaser will be used for preparing the Unit Deed. Purchaser affirms that the information is correct and complete and agrees to inform the Seller immediately if any of those details are changed. If, as a result of incorrect information provided by Purchaser or a change in the identity of the Purchaser, the Unit Deed is prepared incorrectly and must be redrawn, the Purchaser agrees to pay all costs involved in such redrafting.

- () Severalty () Tenants in Common () To be determined in Escrow
 () Joint Tenants () Tenants by the Entirety (See **Section D.7** herein)

C. TOTAL PURCHASE PRICE; METHOD AND SCHEDULE OF PAYMENT; ADDITIONAL SUMS TO BE PAID; ETC.

1. Total Purchase Price. The Total Purchase Price for the Unit is \$_____.

2. Method and Schedule of Payment. Payment shall be made by () all cash **OR** () cash down payment and the difference by way of a mortgage loan. The payment schedule shall be as follows:

(a) Initial Deposit \$ _____ Initial Deposit of _____ percent (_____ %) of the Total Purchase Price due upon Purchaser's execution of this Sales Contract.

(b) Second Deposit \$ _____ Second Deposit of _____ percent (_____ %) of the Total Purchase Price due no later than thirty (30) calendar days after the later of: (a) the date of Seller's delivery to and Purchaser's receipt of the Public Report or (b) the date Purchaser executes this Sales Contract; unless Purchaser exercises Purchaser's statutory cancellation rights prior to that date.

(c) Balance Due \$ _____ The balance of Total Purchase Price due on the earlier of (1) the Pre-Closing Date or (2) four (4) business days before the Closing Date; provided that if a portion of the balance of the Total Purchase Price is being paid by way of a loan from a Mortgage Lender, the loan proceeds shall be payable two (2) business days prior to the Closing Date.

NOTE: NO RECEIPT BY A SALESPERSON, EMPLOYEE OR AGENT OF SELLER OF THE DEPOSITS HEREINABOVE SET FORTH OR ANY OTHER SUMS FROM PURCHASER SHALL CONSTITUTE APPROVAL BY, OR BIND SELLER, NOR SHALL ANY SUCH SALESPERSON, EMPLOYEE OR AGENT BE AUTHORIZED OR BE EMPOWERED TO BIND SELLER TO THIS SALES CONTRACT. SELLER IS ONLY BOUND TO THIS SALES CONTRACT WHEN SELLER SIGNS IT AND DELIVERS IT OR A COPY THEREOF TO PURCHASER AND ESCROW.

NOTE: IF YOU DO NOT MAKE PAYMENT ON TIME, MEANING ON THE DUE DATES SET FORTH IN **SECTION C.2**, ABOVE, SELLER, AT ITS OPTION, MAY CANCEL YOUR SALES

CONTRACT AND EXERCISE ITS REMEDIES AS SET FORTH IN **SECTION D.30**, BELOW, OR MAY CHARGE YOU A LATE CHARGE OF EIGHTEEN PERCENT (18%) PER ANNUM, PRORATED DAILY, BASED ON THE AMOUNT OF SUCH PAYMENT.

3. Additional Sums to be Paid. Two (2) business days prior to the Closing Date, Purchaser agrees to pay one (1) month's maintenance fee to the Association and the closing costs provided for in **Section D.10**.

4. Sales Contract. Seller agrees to sell and Purchaser agrees to purchase the Unit described in **Section A**, above, and **Section D.2**, below, for the Total Purchase Price.

THE PURCHASE AND SALE OF THE UNIT IS SUBJECT TO AND IN CONSIDERATION OF THE "ADDITIONAL TERMS AND CONDITIONS" SET FORTH IN **SECTION D** OF THIS SALES CONTRACT, WHICH BY THIS REFERENCE ARE MADE A PART HEREOF AND INCORPORATED HEREIN FOR ALL PURPOSES. PURCHASER ACKNOWLEDGES HAVING READ THIS SALES CONTRACT IN FULL AND IS AWARE OF AND ACCEPTS THE TERMS, CONDITIONS AND LIMITATIONS AND DISCLAIMER OF WARRANTIES DESCRIBED HEREIN AND ACKNOWLEDGES THAT THIS SALES CONTRACT, **SECTIONS A THROUGH D.41**, TOGETHER WITH **EXHIBIT A** ATTACHED HERETO AND THE ADDENDA LISTED BELOW THAT ARE BEING EXECUTED CONCURRENTLY WITH THIS SALES CONTRACT, CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES.

- Cooperating/Referring Brokerage Agreement Addendum [check if applicable]
- Other Addenda [check if applicable and indicate below]

5. Receipt of Public Report. Purchaser acknowledges that he/she has read the Public Report for the Project for which the Commission has issued an effective date, prior to the signing hereof, and Purchaser acknowledges having received a copy thereof, along with the notice of Purchaser's thirty-day cancellation right ("**Notice of Right to Cancel**").

Purchaser's Initials _____

6. Agency Disclosure. In connection with the sale of the Unit pursuant to the Public Report, Purchaser acknowledges that Peake & Levoy, LLC, and all of its salespersons and brokers ("**Project Broker**"), represent Seller and not Purchaser, unless the Project Broker is acting as a dual agent (representing both Seller and Purchaser) and has so advised Seller and Purchaser. By initialing below, Purchaser acknowledges that written disclosures relating to agency have been provided prior to signing this Sales Contract.

Purchaser's Initials _____

7. **Purchaser's Broker.** Purchaser is ()/is not () represented by a real estate broker. If Purchaser is represented by a real estate broker, such representation shall be evidenced by (i) insertion of such broker's name below, and (ii) a Cooperating Brokerage Agreement signed by Seller and/or Project Broker and Purchaser's broker, and referring specifically to this Sales Contract.

Name of Purchaser's broker (write "none" if
Purchaser is not represented)

License No. and State of License

Company Name of Purchaser's Broker

Address of Purchaser's Broker

Telephone No. of Purchaser's Broker

If no name is written in the space above, Purchaser represents and warrants that no real estate broker or other person represented Purchaser or was engaged by Purchaser in connection with Purchaser's purchase of the Unit. Except with respect to Purchaser's broker listed above (if any), Purchaser hereby agrees to indemnify and hold harmless Seller against any liability including, reasonable costs and attorneys' fees, resulting from claims for brokerage commissions from any broker or any other party with whom Purchaser has dealt.

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IN WITNESS WHEREOF, Purchaser has executed this Sales Contract as of the date indicated below.

Purchaser's Signature

Purchaser's Signature

Purchaser's Name (print)

Purchaser's Name (print)

Date signed by Purchaser: _____

This Sales Contract is accepted by Seller.

JS MCA KIHEI LLC, a Nevada limited liability company

By: MCA REALTY INC.
Its Asset Manager

By: _____
Peter Cheng
Its Vice President

Date signed by Seller: _____

D. ADDITIONAL TERMS AND CONDITIONS FOR THIS SALES CONTRACT

In consideration of the respective covenants and agreements contained in the preceding **Sections A, B** and **C** of this Sales Contract and the respective covenants and agreements that follow, Seller and Purchaser agree as follows:

INFORMATION CONCERNING THE PROJECT AND THE UNIT

1. Project Information. The Project is located in Kihei, County of Maui, State of Hawaii. The Project is situated on approximately 5.741 acres of land and currently consists of seventy-two (72) commercial units located in five (5) one- to three-story buildings as set forth in the Declaration and shown on the Condominium Map, all of which land and improvements have been submitted to a condominium property regime under Chapter 514A, Hawaii Revised Statutes, as amended, and are to be governed by the Act pursuant to the Declaration. Pursuant to that certain Limited Warranty Deed dated September 29, 2017, and recorded at the Bureau as Document No. A-64810626, Seller obtained fee simple interest in sixty-one (61) B Units and, pursuant to that certain Assignment of Developer's Rights dated September 29, 2017, and recorded at said Bureau as Document No. 64810628, as amended by that certain Correction to Assignment of Developer's Rights dated November 22, 2017, and recorded at said Bureau as Document No. A-65350699, Seller obtained all of the rights held by the former developer, KIHEI CC, LLC, a Hawaii limited liability company ("**Kihei CC**"), under the Declaration, By-Laws, and Condominium Map. The actual number of units and/or stories may vary should Seller elect to exercise its reserved rights under the Declaration. A summary of the rights reserved to Seller is provided in Exhibit "H" to the Public Report and should be reviewed carefully by Purchaser.

2. Description of Unit. Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller, in fee simple, the Unit in accordance with the terms of this Sales Contract. The Unit shall be sold in accordance with and subject to all of the applicable limited warranties, terms, covenants, provisions, easements, rights, reservations, agreements and encumbrances and other provisions contained herein and in the Declaration, By-Laws, Unit Deed, and other Condominium Documents.

PAYMENT TERMS, INTEREST ON DEPOSITS, CLOSING AND OCCUPANCY

3. Payment of Total Purchase Price. For the Unit, Purchaser agrees to pay the Total Purchase Price, set forth in **Section C.1**, and all other amounts due hereunder, in immediately available funds denominated in United States Dollars, in the amounts and at the times set forth herein.

4. No Interest on Deposit. Seller has entered into the Escrow Agreement with Escrow covering the deposit with Escrow of all funds paid by Purchaser under this Sales Contract and the disbursement of such funds by Escrow. All payments to be made hereunder shall be deposited with Escrow pursuant to the Escrow Agreement and this Sales Contract. Except as otherwise provided herein, Purchaser agrees that all funds received by Escrow may be held together with other monies received by Escrow. All such funds may be deposited by Escrow into an interest bearing account or accounts in a federally insured bank or savings and loan institution. Any interest earned on Purchaser's Deposit shall accrue to Seller. Purchaser shall have no right to direct Escrow as to how or where the funds received hereunder by Escrow from Purchaser shall be deposited or otherwise invested. No interest will be payable upon Purchaser's Deposit where Purchaser's Deposit is either refunded by Seller or returned by Seller except pursuant to the provisions of this Sales Contract.

5. Purchaser's Financial Status; No Financing Contingencies.

a. Purchaser's Ability to Make Payments. Purchaser represents that Purchaser is able to make, when due, all of the payments required under **Section C.2**. Purchaser shall, within fifteen (15) calendar days after acceptance of this offer by Seller, give Seller such personal information and financial data (hereinafter the

"**Financial Data**") from Purchaser's bankers or accountants, or others, as Seller may require in order to demonstrate Purchaser's ability to make the cash payments due at the times and in the amounts described in **Section C.2** above. The Financial Data shall include, but not be limited to: (i) if Purchaser intends to purchase the Unit with cash, Purchaser shall provide Seller with proof of liquid assets in the form of a letter from a certified public accountant or banker, or provide Seller with a current bank or brokerage statement; or (ii) if Purchaser intends to finance the purchase of the Unit, Purchaser shall provide Seller with an acceptable letter from a qualified lender stating that the lender has seen Purchaser's financial information and performed underwriting, together with a current financial statement, income verification, and written authorization to Seller to access Purchaser's credit report. In the event that Seller, in its sole discretion, shall reject Purchaser's Financial Data as unacceptable, Seller shall notify Purchaser of such rejection in writing within sixty (60) calendar days after Seller has received such Financial Data, in which event this Sales Contract shall be cancelled, and Purchaser shall receive a refund of all sums paid hereunder, less any escrow cancellation fee.

Purchaser represents that the Financial Data to be submitted in connection with this Sales Contract to Seller shall be true and accurate, and that Purchaser is financially capable of making all required payments at the required times set forth herein. Purchaser agrees to notify Seller immediately of any material adverse change that occurs in the Purchaser's financial condition prior to the Closing. In addition, if requested to do so by Seller, Purchaser will confirm in writing that Purchaser's financial condition has not changed, or, if it has changed, Purchaser shall provide information reasonably requested by Seller to confirm Purchaser's then-current financial status. Purchaser authorizes Seller to make credit inquiries about Purchaser. In the event that Seller shall determine, after review of any financial information submitted by Purchaser, in its reasonable discretion, that Purchaser is unable to pay such sums as may be due at the time required or as a result of any change in Purchaser's financial condition, Seller may declare Purchaser in default of this Sales Contract, whereupon Seller will be entitled to exercise its remedies as set forth in **Section D.30** of this Sales Contract.

b. No Financing Contingencies. If Purchaser plans to pay any portion of the Total Purchase Price by way of a loan from a Mortgage Lender, Purchaser shall be solely responsible for securing such financing. PURCHASER'S OBLIGATIONS UNDER THIS SALES CONTRACT ARE NOT CONTINGENT OR CONDITIONED ON PURCHASER'S ABILITY TO SECURE FINANCING FROM A MORTGAGE LENDER OR ON PURCHASER'S ABILITY TO SELL PURCHASER'S CURRENT RESIDENCE OR ANY OTHER PROPERTY OR ASSETS. NO FINANCING BY SELLER OF ANY PORTION OF THE TOTAL PURCHASE PRICE IS AVAILABLE.

6. Unit Deed. At Closing, after payment by Purchaser of the Total Purchase Price and performance by Purchaser of all of Purchaser's other obligations under this Sales Contract, Seller agrees to provide Purchaser a duly executed Unit Deed for the Unit and Purchaser agrees to execute and accept such Unit Deed and thereby acquire fee simple title to the Unit.

7. Pre-Closing. Purchaser acknowledges that Seller intends to, and agrees that Seller may, prepare for Closing by having all documents necessary for Closing executed and deposited with Escrow, and have all cash funds necessary for Closing deposited with Escrow, at any time prior to the Closing Date selected by Seller. Purchaser acknowledges that regardless of the status of construction of the Project and in order to accommodate a bulk closing of the units by Seller, such Pre-Closing may occur up to thirty (30) calendar days prior to the Closing Date selected by Seller. To accomplish this, any time after the Effective Date of this Sales Contract, and upon receiving not less than five (5) calendar days written notice of Pre-Closing from Seller, Purchaser's mortgagee(s), or Escrow, Purchaser agrees to take and complete any action which may be necessary to enable Closing, including having all cash funds necessary for Closing deposited with Escrow, and Purchaser will execute at Pre-Closing all documents required for Closing including, without limitation, the Unit Deed and all promissory notes, mortgages and other loan documents necessary for Purchaser's financing of the Unit, all receipts for notices and disclosures, the conveyance tax certificate and a closing statement based on Seller's estimate of the date the Unit will be available for occupancy. This Sales Contract shall constitute Seller's and Purchaser's written authorization to

Escrow to date all documents, to add filing information and to adjust the estimated prorations in accordance with the provisions of this Sales Contract. Purchaser may be permitted by Seller to execute documents on another island or outside of the state and return the same by registered or certified mail, return-receipt requested.

In the event that Purchaser fails to designate the type of tenancy for the vesting of title at least fifteen (15) calendar days prior to the date selected for Pre-Closing, purchasers who are sole owners will take title as tenants in severalty; multiple purchasers other than married couples will take title as tenants in common; and married couple purchasers will take title as tenants by the entirety. If Purchaser consists of more than one married couple, or a couple and an individual, corporation or partnership, the couple (or each couple if there are more than one) will take title as tenants by the entirety as to each other, and the couple (or each couple if there are more than one) will be a tenant in common with every other couple, individual, corporation or partnership. Whenever a couple, individual, corporation or partnership takes title with another couple, individual, corporation or partnership as tenants in common, each tenant in common will take an equal interest, unless Purchaser specifies otherwise at least fifteen (15) calendar days prior to the date selected for Pre-Closing.

In the event that Purchaser requests changes to the Unit Deed and other Closing documents later than fifteen (15) calendar days prior to the date selected for Pre-Closing, Purchaser may be assessed a document revision fee for such changes.

If Purchaser is a trust, partnership, corporation, limited liability company or other business entity, Purchaser will be required to furnish appropriate resolutions and other evidence of authority to purchase and execute documents as Seller or Escrow may reasonably request, including, but not limited to, the documents set forth in the Note to **Section B** on page 3 hereof.

8. Inspection of Unit by Purchaser. Purchaser shall have the right to inspect the Unit during Purchaser's thirty (30)-day cancellation period set forth in **Section D.24**. With a minimum of two (2) days' notice to Seller, Purchaser (or Purchaser's agent or representative) may inspect the Unit. Such inspection may include evaluation and testing by licensed professionals with respect to the physical and environmental conditions in the Unit, provided such inspection does not cause unreasonable interference with the use and enjoyment of the Project by the occupants or cause any property damage. Any invasive testing must be approved in advance by Seller. Purchaser gives up all rights to inspect and is deemed to accept the Unit if Purchaser (or Purchaser's agent or representative) does not inspect the Unit or the Project on the date and at the time set by Purchaser and Seller or otherwise waives or is deemed to have waived his or her right to cancel the Sales Contract under **Section D.24** hereof.

Prior to entering the Project and the Unit to perform its inspection of the Unit, Purchaser shall provide Seller with a certificate of insurance showing that Purchaser maintains in full force and effect commercial general liability insurance against claims of property damage, and bodily injury and death, with a minimum combined single limit for bodily injury and property damage of \$1,000,000.00 and an aggregate limit of \$2,000,000.00. Seller, in Seller's discretion, may waive or modify the insurance requirement.

9. Closing Date; Title Insurance; Remedies for Default in Payment; Prorations; Refunds. The Closing Date shall be that date selected by Seller, in Seller's sole and absolute discretion; provided, however, that the Closing Date shall not be prior to the completion of construction of Purchaser's Unit as certified by the Project Architect. On the Closing Date, Seller and Purchaser shall be required to perform their respective obligations to sell and purchase the Unit under this Sales Contract. The parties agree that Seller may extend the Closing Date in its sole discretion. Seller or Escrow shall notify Purchaser of the Closing Date within a reasonable time, no less than ten (10) calendar days prior to the scheduled Closing Date. Purchaser expressly acknowledges that on the Closing Date, the construction of other units and portions of the Common Elements may not be fully completed and that such circumstances shall not in any way affect Purchaser's obligations to make the required payments and to close this sale.

Prorations and adjustments shall be made between Purchaser and Seller through Escrow as of the Closing Date for nondelinquent real property taxes and assessments. If the amount of real property taxes is unavailable for the current year, Seller shall estimate such taxes and assessments taking into consideration the existing tax rate, the Total Purchase Price, the County of Maui's tax and assessment formula, and such other information and factors as shall be deemed reasonable under the circumstances by Seller. Risk of loss shall transfer from Seller to Purchaser at Closing.

The Total Purchase Price and any closing costs that are Purchaser's responsibility, and any other amounts that are Purchaser's responsibility under this Sales Contract shall be due and payable in full as provided in **Section C.2**. If such amount is not paid on said date due to: (i) Purchaser's failure to complete (in a timely and diligent manner) all things of every description required of Purchaser to be undertaken in order for said payment to be made to Escrow on said date; or (ii) the failure of Purchaser's Mortgage Lender to make such payment to Escrow on the Closing Date, then such nonpayment shall result in a default by Purchaser under this Sales Contract. In the event of any default with respect to any payment hereunder, in addition to any other remedies permitted under this Sales Contract, a late charge of one and one-half percent (1½%) per month (or the maximum lesser rate, if any, permitted by law), prorated on a thirty (30)-day month basis, shall accrue from the due date of such payment until such payment, together with such late charges, is paid. Seller's acceptance of any of such late charges, late payments, or both, or failure to exercise any other right or remedy, shall not constitute a waiver of any of such defaults or of any of such rights, including, without limitation, the right to cancel this Sales Contract, and will not constitute a modification of this Sales Contract.

If, at Purchaser's request, Seller agrees, in its sole and absolute discretion, to extend the Closing Date, Purchaser agrees to pay an Agreement Extension Fee equal to one and one-half percent (1½%) (or the maximum lesser rate, if any, permitted by law) of the Total Purchase Price per month in advance, directly to Seller (unless otherwise directed by Seller). The Agreement Extension Fee is non-refundable and shall not be applied to any other amounts due from Purchaser; provided however, that the Agreement Extension Fee shall be earned by Seller on a *per diem* basis and any unearned portion of the Agreement Extension Fee shall be returned to Purchaser at Closing or applied, in Seller's sole discretion, to the Total Purchase Price. If Purchaser fails to pay the Agreement Extension Fee on time or to close this sale on the Closing Date chosen by Seller, Seller shall have the right to terminate this Sales Contract and keep all previously paid Agreement Extension Fees, and Escrow shall distribute the Deposit and any interest accrued thereunder to Seller in accordance with **Section D.30** below.

If, on the original Closing Date, Purchaser fails to make the payments required by this Section or otherwise fails to consummate this sale, then, without limiting any other remedies that Seller may have as a result of Purchaser's failure to make such payments or consummate this sale on a timely basis, all common expenses, real property taxes and other prorated expenses for the Unit shall be the responsibility of Purchaser, and shall be prorated as though Closing had occurred on the original Closing Date, regardless of when the Closing of the sale of the Unit actually occurs.

Except as otherwise provided by law, Escrow shall give each purchaser entitled to a return of funds notice thereof by certified or registered mail, addressed to such purchaser at the address shown in **Section B** above or any address later made known in writing to Escrow by such purchaser. IF PURCHASER SHALL NOT HAVE CLAIMED SUCH REFUND WITHIN SIXTY (60) CALENDAR DAYS FROM THE DATE SAID NOTICE IS MAILED, ESCROW SHALL THEREAFTER DEPOSIT SUCH FUNDS INTO A SPECIAL ACCOUNT IN A BANK OR OTHER DEPOSITORY SELECTED BY ESCROW, IN THE NAME OF SELLER, AS TRUSTEE FOR THE BENEFIT OF SUCH PURCHASER. After having sent the Seller written notice of the foregoing acts, Escrow shall thereupon be released from further liability with respect to such funds and such purchaser.

10. Closing Costs. Purchaser will pay all closing costs associated with this purchase and sale, including, without limitation: the escrow fee, cost of a preliminary title report, cost of preparation of the Unit Deed, cost of establishing separate escrow account(s), real property tax prorations and other customary prorations, all

acknowledgment fees, conveyance and transfer taxes of all types, title insurance, if requested by Purchaser, cost of any lender's title insurance, appraisal fees, costs for drafting of any notes and mortgages, all recording costs or fees, the cost of drafting any revisions or addenda to this Sales Contract other than the standard addenda listed in **Section C.4**, if any, loan fees, credit report costs and all other applicable mortgage costs, provided that it is understood that this sale is not subject to or conditioned upon Purchaser obtaining a loan. Two (2) business days prior to the Closing Date, Purchaser shall pay one (1) month's maintenance fee assessment to the Association, the closing costs provided for herein and any prorations.

11. Occupancy. Delivery of possession of the Unit to Purchaser shall be deemed to have occurred when Seller makes the Unit keys available for pick up by Purchaser, which shall take place after the Closing Date. Purchaser agrees that keys for the Unit will not be issued to Purchaser and Purchaser shall not be entitled to occupy the Unit until after such Closing.

PROJECT AND SALES DOCUMENTS; SELLER'S RIGHT TO MAKE CHANGES

12. Escrow Agreement. Seller has entered into the Escrow Agreement with Escrow, which by this reference is incorporated herein and made a part hereof, covering the deposit with Escrow of all funds paid by Purchaser under this Sales Contract and the disbursement of such funds by Escrow. All payments to be made hereunder, other than the Initial Deposit made through the Project Broker, shall be paid by Purchaser to Escrow pursuant to the Escrow Agreement. Purchaser hereby acknowledges that Purchaser has examined and approves the terms of the Escrow Agreement, and hereby assumes the benefits and obligations set forth therein. Purchaser understands and agrees that Escrow may charge Purchaser a cancellation fee of not less than Twenty Five and No/100 Dollars (\$25.00) in the event this Sales Contract is canceled, provided that such cancellation fee shall not exceed Two Hundred Fifty and No/100 Dollars (\$250.00), as provided in the Escrow Agreement ("**Cancellation Fee**"). Such Cancellation Fee, however, will apply if Purchaser cancels within the Hawaii thirty (30)-day cancellation period described in **Section D.24** herein.

13. Purchaser's Approval and Acceptance of Project Documents. Purchaser acknowledges receiving copies of, and having had a full opportunity to read and review, and hereby approves and accepts, the following documents pertaining to the Project: the Public Report, the Declaration, the By-Laws, the Condominium Map, the House Rules, the specimen Unit Deed, and the Escrow Agreement. Purchaser acknowledges that Purchaser shall make his/her own due diligence inspection of all other documents of record and reflected in the Unit Deed and/or updated title report. It is understood and agreed that this sale is in all respects subject to said documents, and the encumbrances noted therein.

14. Seller Has the Right to Make Certain Changes to the Condominium Documents and to the Project.

a. Changes. Purchaser authorizes Seller to make, and Purchaser hereby specifically approves, the following changes to the Condominium Documents and the Project after the Effective Date:

(i) Any such changes as may be required by law, any title insurance company, Mortgage Lender or governmental agency; provided, however, that such changes shall not (1) constitute a Material Change, or (2) increase the Total Purchase Price.

(ii) Any non-Material Changes which the Seller or the Project Architect, in their sole and absolute discretion, deem appropriate, to the Common Elements, including, without limitation, the roadways, parking areas, and landscaping or any changes for reasons related to financial feasibility or aesthetics.

(iii) Any Material Change made while Purchaser is under a binding sales contract; subject to prior written consent per Addendum.

(iv) Any changes made pursuant to the rights reserved by Seller, as Declarant, under the Declaration, as more fully explained in **Section D.15** below.

b. Eminent Domain. No taking by eminent domain (or transfer by Seller under threat of eminent domain) of an easement right or of a portion of the Common Elements which does not in any such case substantially interfere with or diminish the practical enjoyment and use by Purchaser of the Common Elements shall be deemed grounds for cancellation of this Sales Contract.

15. Seller has Certain Reserved Rights. Purchaser specifically acknowledges and agrees that Seller has the right to exercise reservations of certain rights in favor of Seller contained within the Declaration, and agrees that Seller has the right to exercise such rights as provided in said Declaration. The reserved rights are also summarized in Exhibit "I" to the Public Report.

WARRANTIES AND DISCLAIMERS

16. Seller Makes No Warranties or Promises Except as Expressly Stated in this Sales Contract. Except as otherwise expressly stated in this Sales Contract, Purchaser acknowledges that Seller has made no warranties, express or implied, with respect to (a) the Unit, its quality or grade, (b) any Common Element or anything installed therein, its quality or grade, or (c) any other portion of the Project, its quality or grade, or any other aspect thereof. Seller is not the original developer of the Project and was not involved in (and is not responsible for) the original planning or construction of the Project. Purchaser further acknowledges that the Project was substantially completed in 1991. Purchaser understands and agrees that the Unit is being sold "**AS IS, WHERE IS**" **WITH ALL FAULTS** and that Seller disclaims and makes no warranties or promises of any kind, express or implied, about the Unit, the land underlying the project (the "Land") or the Project (including the common elements of the project), or about any furnishings, fixtures, appliances or other consumer products, mechanical systems, plumbing systems, electrical systems, cooling or heating systems or anything else installed, attached, affixed or otherwise contained in the Unit, the Land or the Project (including the common elements of the Project), including any warranties or promises of "habitability", "merchantability", "workmanship" or "fitness for a particular use or purpose".

Purchaser for itself and its successors, heirs and assigns, releases Seller and its affiliates, and each of them and their respective past, present and future members, managers, directors, officers, shareholders, employees, property managers, agents, vendors, consultants, contractors and each of their respective successors and assigns (hereafter the "**Released Parties**") from (and waives any claim, action or liability which arises from or relates to) any latent or patent defect in any part of the Project or the Unit, known or unknown, which exists now or in the future, or which arises from or relates to any lack of compliance of the project with any state, federal, county or local law, code, ordinance, order, permit, administrative requirement, or regulation, that Purchaser may have against Seller under any federal, state or local law, ordinance, rule or regulation now existing or hereafter enacted or promulgated, including, without limitation, hazardous materials and environmental conditions or matters (including the presence of mold or mildew) in, on, under, about or migrating from or onto or into the Project, or by virtue of any common law right relating to hazardous material and environmental conditions or matters (including the presence of mold or mildew) in, on, under about or migrating from or onto or into the Project. Seller and Purchaser agree that this release from liability has been specifically negotiated between Seller and Purchaser.

Purchaser acknowledges and agrees that Seller's disclaimer of warranties and representations contained in this Section is an essential element of Seller's determination of the Purchase Price for the Unit being sold to Purchaser. This means that the Unit would not have been sold to Purchaser for the amount of the Purchase Price stated in this Sales Contract without Seller's disclaimer of warranties and representations.

17. Connection Fees. Purchaser shall be responsible for any connection fees, utility deposits, and use fees charged by governmental entities and/or utility companies.

18. The Condominium Map is Not a Warranty. The Condominium Map, as the same may be amended from time to time, is intended only to show the (a) unit numbers, (b) approximate layout, location and dimensions of units, (c) approximate elevation of the Project, and (d) parking plan and any other detail that is specifically required to be shown under Section 514B-33 of the Act. The Condominium Map is not intended to and shall not be interpreted as creating any obligation to construct or install any other improvements, amenities or facilities as may be depicted thereon, and no person may rely in any way on any other detail or other matter depicted thereon. In no event, whether before or after the Effective Date, shall the building plans and specifications or any artist's renderings or models constitute a representation or warranty in any way.

Statements of the approximate square footages of the units, as well as of the Common Elements located within the Project, may be made in the Condominium Map and the Declaration. Purchaser acknowledges that there are various methods for calculating the square footage of a unit and that, depending on the method of calculation, the quoted square footage may vary by more than a nominal amount. For example, architects often measure square footage from the outside edge of the exterior walls to the mid-point of the interior walls. Another method, typically used in condominium maps, measures square footage from the inside edge of exterior walls to the inside edge of interior walls and is referred to as the "net living area" of the unit. So long as the units are constructed substantially in accordance with the Condominium Map, Purchaser will have no right to rescind this Sales Contract, nor will Purchaser be entitled to any claim for breach of this Sales Contract or adjustment of the Total Purchase Price on account of alleged discrepancies in square footage calculations.

Purchaser's Initials _____

19. Estimate of Maintenance Fees. The estimate of monthly maintenance fees, as shown in the Public Report, was prepared by the Property Manager based upon information believed to be accurate and correct. Seller makes no warranty or promise regarding the accuracy of these amounts, however. PURCHASER AGREES THAT SUCH ESTIMATES ARE NOT INTENDED TO BE AND DO NOT CONSTITUTE ANY REPRESENTATION OR WARRANTY BY SELLER, INCLUDING BUT NOT LIMITED TO ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OF SUCH ESTIMATES. Purchaser also acknowledges and agrees that such maintenance fees may increase due to increases in insurance premiums, utility costs, maintenance services, management fees, and other costs.

20. Securities Laws and Regulations. Purchaser understands and agrees that:

a. Seller, its officers, employees, agents, and/or any other real estate brokers or real estate salespersons representing Seller, if any (collectively for purposes of this Section, "**Seller and/or its Agents**") have made no representations: (i) regarding the possibility or probability of economic benefit from the purchase and ownership of a unit; (ii) to the effect that Seller or any manager of the Project will provide services relating to the rental or sale of a unit; or (iii) as to the possible advantages of the ownership or the rental of a unit under federal law and state tax laws. Seller and/or its Agents have not made any representation regarding either economic benefit to be derived from the ownership, rental or tax treatment of a unit. The tax treatment may vary with individual circumstances, and Seller and/or its Agents recommend that Purchaser consult Purchaser's own attorney, accountant or other tax counsel for advice regarding tax treatment. Purchaser further agrees and acknowledges that Purchaser has not been induced or solicited by Seller and/or its Agents to purchase the Unit in the Project as a "security" as defined under federal or state securities laws and regulations.

b. Purchaser agrees that Seller may, as a condition to Closing, require Purchaser and any licensed real estate salesperson participating in the sale to sign additional documents to satisfy Seller that no representations contrary to the provisions of this Section have been made up to and including the Closing Date.

Purchaser's Initials _____

21. Ongoing Sales Activities After Purchaser Has Occupied Purchaser's Unit; Model Units. Purchaser specifically acknowledges that: (a) Seller's sales activities, which may include the use of model unit(s), signs and extensive sales displays and activities, may continue in the Project until the sale of the last unit located in the Project; (b) Seller reserves the right to utilize unassigned or guest parking spaces described in the Declaration for parking for prospective purchasers until the sale of the last unsold unit described in the Declaration; (c) Seller also reserves the right for itself, its sales representatives and prospective purchasers to utilize the Common Elements for ingress and egress to such parking spaces and model unit(s) in order to show the Common Elements to prospective purchasers; and (d) Purchaser agrees to take possession and close the sale of the Unit upon completion of the Unit, even though the Common Elements of the Project have not been completed, so long as Purchaser is given vehicular access to the Project. Purchaser hereby accepts the foregoing conditions set forth in this Section, as well as any inconvenience or annoyance including, but without limitation, construction work, dust, noise, and related debris, which Purchaser may experience as a result of such conditions, and hereby expressly waives any rights, claims or actions that Purchaser might otherwise have against Seller as a result of such circumstances. Seller reserves the right, in its sole discretion, to designate one or more units as model units for sales and display purposes.

22. Additional Disclosures; Disclaimers and Releases. Without limiting any other provision in the Condominium Documents, the following is a summary of some items that should be considered by a purchaser or that a purchaser may have objections to. Purchaser should carefully review the Condominium Documents and consider each of the following items before submitting an offer to purchase a unit. Purchaser shall conclusively be deemed to understand, and to have acknowledged and agreed to, all of the following, and such acknowledgment and agreement shall be deemed to survive Closing:

a. Security Disclaimer. The Association and/or the Condominium Manager may, but shall not be obligated to maintain or support certain activities within the Project designed to make the Project safer than it might otherwise be.

Neither the Association, the Condominium Manager, nor Seller shall in any way be considered insurers or guarantors of security within the Project, and neither the Association, the Condominium Manager, nor Seller, nor any successor-in-interest to Seller, shall be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of security measures undertaken. All owners of any unit, tenants, guests and invitees of any owner, as applicable, acknowledge that the Association, the Board, the Condominium Manager, and Seller, or any successor-in-interest to Seller, do not represent or warrant that any fire protection system or other security system designated or installed according to the guidelines established by Seller or the Association may not be compromised or circumvented, that any fire protection or burglar alarm systems or other security systems will prevent loss by fire, smoke, burglary, theft, hold-up, terrorism or otherwise, nor that fire protection or burglar alarm systems or other security systems will in all cases provide the detection or protection for which the system was designed or intended. Purchaser acknowledges and understands that the Condominium Manager, the Association, its Board and committees, Seller, and any other successor to Seller, is not an insurer, and that each owner assume all risks for loss or damage to persons, units and the contents of units, and further acknowledges that the Condominium Manager, the Association, its Board and committees, Seller, or any successor-in-interest to Seller, have made no representations or warranties, nor has Purchaser relied upon any representation or warranty, expressed or implied, including any warranty of merchantability as to the fitness of any alarm systems or other security systems recommended or installed, or any security measure undertaken within the Project.

b. Mold Development. Molds, mildews, toxins and fungi may exist and/or develop within the Unit and/or the Project. Purchaser is hereby advised that certain molds, mildews, toxins and/or fungi may be, or if allowed to remain for a sufficient period may become, toxin generating and potentially pose health risk. By acquiring title to a Unit, Purchaser shall be deemed to have assumed the risks associated with molds, mildew, toxins and/or fungi and to have released Seller from any and all liability resulting from the same.

c. Noise. The Association and Seller have no control over the transmission of noise, light or odors within the Project and/or from adjacent retail/entertainment, and commercial developments, and the potential effect of such noise, light or odors on units within the Project.

d. Neighboring Developments. Certain portions of land outside, abutting and/or near the Project (the "**Neighboring Developments**") may be subject to redevelopment, and in the future may be developed by third parties over whom Seller has no control. The Association and Seller have no jurisdiction over future Neighboring Developments, and, accordingly, there is no representation as to the nature, use or architecture of any future development or improvements on Neighboring Developments. Any such use, development and/or construction on Neighboring Developments may result in noise, dust, or other "nuisance" to the Project or owners, and Purchaser acknowledges the same.

MISCELLANEOUS PROVISIONS

23. This Sales Contract is Binding on Seller only if Seller Signs It. This Sales Contract shall not be binding upon Seller until executed by Seller. Execution of this Sales Contract and/or a receipt of any monies under **Section C.2** or other funds by the Project Broker or other sales agent of Seller shall not constitute execution or approval by Seller or obligate Seller to Purchaser pursuant to this Sales Contract or otherwise. Unless otherwise stated herein, delivery of a copy of this Sales Contract which has not been executed by Seller to a prospective purchaser does not create an option or any other right in favor of said prospective purchaser.

24. Binding Contracts; Delivery of Public Report; Purchaser's Right to Cancel; Waiver. This Sales Contract shall become binding when (a) Seller delivers to Purchaser (i) a true copy of the Public Report with an effective date issued by the Commission and all amendments thereto, and (ii) the Notice of Right to Cancel; and (b) Purchaser either (i) affirmatively waives Purchaser's right to cancel this Sales Contract, or (ii) is deemed to have waived the right to cancel. Purchaser may cancel this Sales Contract at any time up to midnight of the thirtieth (30th) day after (a) the date Purchaser signs this Sales Contract and (b) the Public Report and Notice of Right to Cancel are delivered to Purchaser. It is understood that Purchaser may, at any time after Purchaser's receipt of the Public Report and the Notice of Right to Cancel, waive Purchaser's right to cancel this Sales Contract by checking the waiver box on the Notice of Right to Cancel and delivering it to Seller. If Purchaser shall fail to take any action to cancel this Sales Contract within the thirty (30)-day cancellation period, Purchaser shall be deemed to have waived Purchaser's right to cancel this Sales Contract (by Purchaser's failure to give said written notice of cancellation within the thirty (30)-day period). The conveyance of the Unit to the Purchaser within the thirty (30)-day cancellation period referenced above shall also be treated as a waiver by Purchaser of Purchaser's right to cancel this Sales Contract.

25. New Laws and Other Events Beyond Seller's Control; Increase in Purchase Price. The Hawaii real estate market continually fluctuates due to changes in economic, social, and political conditions that directly affect the supply of and demand real estate. As a result, unit prices as well as the terms and conditions of sale are also subject to change. Therefore, (a) although the price of Purchaser's Unit may not change, Purchaser should be aware that Seller reserves the right at any time prior to or after Closing for the sale of Purchaser's Unit and without notice to Purchaser, to increase or decrease the total purchase price, adjust incentives, adjust the terms and conditions of sale and/or change the number, size, location, and design of other units in the Project; (b) Seller is not obligated to offer Purchaser the same price, incentives, and/or other terms and conditions of sale that Seller has previously offered or may subsequently offer to another purchaser; (c) Seller has neither offered nor agreed to any price protection or other similar commitment to Purchaser regarding the value or resale value of Purchaser's Unit (or any other property), and Seller shall not have any obligation or liability whatsoever to Purchaser in the event that any price changes directly or indirectly affect the value of Purchaser's Unit; and (d) when Purchaser entered into the Sales Contract, Seller may have owned other properties which may have been off the market and may not have been shown to or otherwise made available for purchase by Purchaser. Seller does not have any obligation to notify Purchaser if any of such properties come on the market or are otherwise available for purchase, nor shall Seller

have any obligation to notify Purchaser of any future properties Seller may develop and make available for purchase.

26. Material Changes in the Project. Where, after this Sales Contract has become binding in accordance with **Section D.24**, there is a Material Change in the Project, Purchaser may rescind this Sales Contract within thirty (30) days of Purchaser's receipt of a copy of a Disclosure Document providing a description of the Material Change and a Rescission Notice. As provided in Section 514B-87 of the Act, Purchaser may waive his/her right to rescind this Sales Contract by: (a) checking the waiver box on the Rescission Notice, signing it, and returning it to Seller; (b) allowing the thirty (30)-day rescission period to expire without taking any action to rescind; or (c) closing the purchase of the Unit before the thirty (30)-day rescission period expires. In the event Purchaser rescinds this Sales Contract pursuant to this Section, Purchaser shall be entitled to a prompt and full refund of all monies paid.

27. Purchaser's Interest under this Sales Contract; Subordination. This Sales Contract shall not be construed as a present transfer of any rights or of any interest in the Unit, but rather this Sales Contract is an agreement to transfer an interest in the future. Purchaser agrees not to record or cause to be recorded at the Bureau any form of this Sales Contract. Purchaser acknowledges that Seller has entered into or may enter into an agreement with one or more lenders (the "**Lender**") pursuant to which the Lender may loan an aggregate of up to Ten Million and No/100 Dollars (\$10,000,000.00) at an annual interest rate of up to Five (5.0) percentage points, or Five Hundred (500) basis points, over the Lender's chosen rate (which may be Lender's "prime rate," "base rate," or other rate, or may be the London Inter-Bank Offering Rate "LIBOR," or any other rate such Lender may select). The repayment provisions of the loan may call for repayment of the loan over a period of time likely not to exceed five (5) years. To secure the loan, Seller may grant to the Lender security interests covering the Seller's interest in the Project, including the Unit covered by this Sales Contract. Purchaser acknowledges and agrees that all security interests obtained by the Lender in connection with such loan as well as any extensions, renewals and modifications thereof shall be and remain at all times, until the recording of the Unit Deed, a lien or charge on the Project, including the Unit covered by this Sales Contract, prior to and superior to any and all liens or charges on the Project arising from this Sales Contract or any prior agreement. PURCHASER HEREBY INTENTIONALLY WAIVES, RELINQUISHES AND SUBORDINATES THE PRIORITY OR SUPERIORITY OF ANY LIEN OR OTHER LEGAL OR EQUITABLE INTEREST ARISING UNDER THIS SALES CONTRACT IN FAVOR OF THE LIEN OR CHARGE ON THE PROJECT OF THE SECURITY INTERESTS OF THE LENDER, INCLUDING BUT NOT LIMITED TO ANY LIEN, MORTGAGE OR CHARGE SECURING A LOAN MADE TO FINANCE THE ACQUISITION OF THE LAND AND THE COSTS OF CONSTRUCTION AND OTHER COSTS DURING SUCH CONSTRUCTION AND ANY AND ALL ADVANCES THEREFOR, WHETHER CONTRACTUAL OR VOLUNTARY, UNTIL THE FILING OF THE UNIT DEED. Purchaser further undertakes and agrees to execute any further documentation or subordination agreement required by the Lender to evidence this subordination and hereby irrevocably appoints Seller as Purchaser's attorney-in-fact to execute any such instrument on behalf of Purchaser, should Purchaser fail or refuse to do so within ten (10) business days after request is made or mailed. Said power of attorney is coupled with an interest, shall be irrevocable, and shall not be affected by the disability of the Purchaser. Purchaser also consents to Seller's assignment by way of security of Seller's interests in this Sales Contract and in Purchaser's Deposit to the Lender and agrees that in the event of passage of Seller's interest therein pursuant to said assignment, that Purchaser will, at Lender's option, perform to, attorn to and recognize Lender (and its successors in interest, if any) as the Seller hereunder, with all of the rights of the Seller hereunder, all as if the Lender were the original Seller hereunder. Purchaser further understands and agrees that the Lender has the right under certain circumstances set forth or to be set forth in the mortgage instrument, the security agreement and any other loan documents pertaining to said agreement between Seller and Lender to foreclose its mortgage and/or enforce its other remedies thereunder or under such other loan documents or possessed at law, and Purchaser hereby agrees in such connection that: (a) the manager of the Project is hereby irrevocably appointed by Purchaser as Purchaser's agent for acceptance of service of process during the term of this Sales Contract (which power is coupled with an interest and shall not be affected by the disability of the Purchaser), and any service of process upon said manager shall be deemed to be effective service of process upon Purchaser as though Purchaser has been

personally served therewith; and (b) the rights of Purchaser hereunder are purely contractual in nature, enforceable only against Seller and its legal successors and assigns and not against the real property, improvements and/or appurtenances thereto which are the subject of said mortgage instrument, security agreement or other loan documents, and Purchaser expressly acknowledges and agrees that Purchaser need not be named a party defendant or plaintiff in any cause of action or suit by Lender to foreclose and/or otherwise enforce its rights under said mortgage instrument or security agreement or other loan documents, nor does Purchaser have any right to be served with process in connection therewith or to be notified of the pendency thereof.

28. Administration and Management of Project. Purchaser acknowledges that the Association has retained J S Property Management, Inc. as the Condominium Manager for the Project. The Condominium Manager shall have the authority, subject to the provisions of the Declaration and By-Laws, to assume control and responsibility for the administration and management of the Project, at the expense of the Association. The Condominium Manager shall undertake administrative functions, including, but not limited to, (i) the preparation of a proposed budget and schedule of assessments, (ii) the custody and control of all funds of the Association and the maintenance of the books and records with respect thereto, (iii) the preparation and filing of financial reports, and (iv) the filing of any other applications or reports that may be required by governmental and non-governmental entities.

29. Assignment of Sales Contract. This Sales Contract may be assigned by Purchaser; provided that any such assignment shall not release Purchaser from his/her obligations under this Sales Contract. In the event that Purchaser decides to make such an assignment, Purchaser shall provide written notice thereof to Seller at least fifteen (15) calendar days prior to the date selected for Pre-Closing and shall provide to Seller and/or Escrow copies of such documents as Seller and/or Escrow, in their sole and absolute discretion, deem necessary to complete Closing.

Purchaser's Initials _____

30. SELLER'S REMEDIES UPON DEFAULT BY PURCHASER. IN THE EVENT PURCHASER SHALL HAVE DELIVERED THE DEPOSIT (OR PORTION THEREOF REQUIRED TO BE DELIVERED) PURSUANT TO THIS SALES CONTRACT, AND SHALL FAIL TO COMPLY WITH OR PERFORM ANY OF THE COVENANTS, AGREEMENTS OR OTHER OBLIGATIONS TO BE PERFORMED BY PURCHASER UNDER THE TERMS AND PROVISIONS OF THIS SALES CONTRACT, INCLUDING, WITHOUT LIMITATION, DELIVERY OF THE SECOND DEPOSIT TO ESCROW ON OR PRIOR TO THE SECOND DEPOSIT DELIVERY DATE, SELLER SHALL PROVIDE PURCHASER WITH WRITTEN NOTICE OF SUCH DEFAULT OR BREACH AND THE OPPORTUNITY FOR PURCHASER TO REMEDY SUCH DEFAULT OR BREACH WITHIN TWENTY (20) CALENDAR DAYS AFTER THE DATE OF RECEIPT OF SUCH NOTICE. IF PURCHASER HAS NOT REMEDIED SUCH DEFAULT OR BREACH WITHIN SUCH TWENTY (20) CALENDAR DAY PERIOD, SELLER SHALL BE ENTITLED TO ANY REMEDY AVAILABLE IN LAW OR IN EQUITY INCLUDING, WITHOUT LIMITATION, (I) SPECIFIC PERFORMANCE OF THIS SALES CONTRACT AND THE TERMS AND CONDITIONS SET FORTH THEREIN, OR (II) TERMINATION OF THIS SALES CONTRACT UPON WRITTEN NOTICE TO PURCHASER, WHEREUPON SELLER SHALL BE PAID THE DEPOSIT, AND ALL ACCRUED INTEREST, AS FIXED AND FULL LIQUIDATED DAMAGES. PURCHASER ACKNOWLEDGES THAT IT IS IMPOSSIBLE TO MORE PRECISELY ESTIMATE THE SPECIFIC DAMAGES TO BE SUFFERED BY SELLER FOR WHICH LIQUIDATED DAMAGES ARE PAYABLE PURSUANT TO THIS SALES CONTRACT, BUT THAT THE APPLICABLE SUM STIPULATED AS THE AMOUNT OF THE LIQUIDATED DAMAGES IS A REASONABLE AMOUNT.

31. PURCHASER'S REMEDIES UPON DEFAULT BY SELLER. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SALES CONTRACT, IF SELLER SHALL BE IN DEFAULT UNDER THE TERMS AND PROVISIONS OF THIS SALES CONTRACT, PURCHASER SHALL PROVIDE

WRITTEN NOTICE TO SELLER OF ANY SUCH DEFAULT BY SELLER. IF SELLER DOES NOT THEREAFTER CURE SUCH DEFAULT WITHIN THIRTY (30) CALENDAR DAYS OF SELLER'S RECEIPT OF PURCHASER'S WRITTEN NOTICE, PURCHASER MAY, PROVIDED THAT PURCHASER IS NOT THEN IN MATERIAL DEFAULT UNDER THIS SALES CONTRACT, ELECT TO TERMINATE THIS SALES CONTRACT BY WRITTEN NOTICE TO SELLER, IN WHICH EVENT PURCHASER'S DEPOSIT SHALL BE RETURNED TO PURCHASER UPON DEMAND.

ALTERNATIVE DISPUTE RESOLUTION NOTIFICATION AND PROCEDURES; WAIVERS

NOTICE TO PURCHASER

32. PURPOSE AND EXCLUSIVITY. THE PURPOSE OF THESE DISPUTE NOTIFICATION AND RESOLUTION PROCEDURES (THE "**PROCEDURES**") IS TO PROVIDE SELLER AND ITS OFFICERS, AGENTS, EMPLOYEES, BROKERS, OTHER REPRESENTATIVES OR ANY CONTRACTOR OR SUBCONTRACTOR, DESIGN PROFESSIONAL, ENGINEER OR SUPPLIER WHO PROVIDED LABOR, SERVICES OR MATERIALS TO THE PROJECT OR ANY PURCHASER OR OTHER OWNER OF AN INTEREST IN THE UNIT AND ANY PERSONS CLAIMING THEREUNDER (COLLECTIVELY FOR PURPOSES OF THIS SECTION, THE "**PARTIES**") WITH A MECHANISM TO RESOLVE DISPUTES THAT MAY DEVELOP IN THE FUTURE CONCERNING THE SUBJECT MATTER OF THIS SALES CONTRACT. THE PARTIES AGREE THAT THESE PROCEDURES SHALL BE THE EXCLUSIVE METHOD TO RESOLVE ALL DISPUTES AND THAT THE GOAL OF THE PARTIES IN AGREEING TO THESE PROCEDURES IS TO ENSURE THAT ALL DISPUTES ARE RESOLVED IN THE MOST EXPEDITIOUS AND INEXPENSIVE MANNER POSSIBLE. ALL PROVISIONS OF THESE PROCEDURES ARE TO BE INTERPRETED WITH THIS PURPOSE IN MIND.

a. DEFINITION. "**DISPUTES**" MEANS AND INCLUDES ANY AND ALL ACTIONS, CLAIMS OR DISPUTES BY, BETWEEN OR AMONG THE PARTIES: (A) THAT ARISE OUT OF: THE PROJECT; THIS SALES CONTRACT; DOCUMENTS RELATING TO THE ASSOCIATION; ANY OTHER AGREEMENTS BETWEEN THE PARTIES; THE SALE OF A UNIT; THE USE OR CONDITION OF ANY IMPROVEMENT OR ANY PORTION THEREOF; THE DESIGN OR CONSTRUCTION OF ANY IMPROVEMENT OR ANY PORTION THEREOF; OR ANY CONDITION ON OR AFFECTING THE PROJECT OR ANY PORTION THEREOF; INCLUDING WITHOUT LIMITING THE FOREGOING, CONSTRUCTION DEFECTS, SURVEYS, SOILS CONDITIONS, GRADING, SPECIFICATIONS, INSTALLATION OF IMPROVEMENTS OR DISPUTES WHICH ALLEGE BREACH OF IMPLIED OR EXPRESS WARRANTIES AS TO THE CONDITION OF ANY IMPROVEMENT OR THE PROJECT; AND (B) WHERE THE TOTAL AMOUNT IN CONTROVERSY (INCLUDING ALL CLAIMS AND COUNTERCLAIMS) IS GREATER THAN THREE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$3,500.00).

b. KNOWING RELEASE. THE PARTIES ACKNOWLEDGE THAT THE PROCEDURES HAVE BEEN A MATERIAL INDUCEMENT FOR THEM TO ENTER INTO THIS SALES CONTRACT. TO ACCOMPLISH THE PURPOSE OF THESE PROCEDURES, THE PARTIES, WITH RESPECT TO ANY DISPUTE, AND ANY PROHIBITED LITIGATION REFERRED TO IN **SECTION D.32.f** BELOW, WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL ON ANY CLAIM OR CAUSE OF ACTION THAT IS BASED UPON OR ARISING OUT OF SUCH DISPUTE, OR SUCH PROHIBITED LITIGATION. IN ADDITION, WITH RESPECT TO ANY DISPUTE OR PROHIBITED LITIGATION, THE PARTIES WAIVE ANY AND ALL RIGHT THAT EITHER OF THEM MAY HAVE TO RECOVER ANY TYPE OF PUNITIVE OR EXEMPLARY DAMAGES, OR TREBLE OR OTHER MULTIPLE DAMAGES PROVIDED FOR BY ANY STATUTE OR RULE. NOTHING CONTAINED IN THIS **SECTION D.32.b** SHALL PRECLUDE THE RECOVERY OF OTHER DAMAGES OR REASONABLE ATTORNEYS' FEES AND COSTS AS AND TO THE EXTENT PROVIDED ELSEWHERE IN THIS SALES CONTRACT.

c. NOTICE. ANY PERSON WITH A DISPUTE SHALL NOTIFY THE PARTY TO WHOM THE DISPUTE IS DIRECTED IN WRITING OF THE DISPUTE, WHICH WRITING SHALL DESCRIBE THE NATURE OF THE DISPUTE AND ANY PROPOSED REMEDY (THE "**DISPUTE NOTICE**"). WITHIN A REASONABLE PERIOD AFTER RECEIPT OF THE DISPUTE NOTICE, WHICH PERIOD SHALL NOT EXCEED SIXTY (60) DAYS, THE PARTIES TO THE DISPUTE, REPRESENTED BY INDIVIDUALS WITH DECISION MAKING AUTHORITY, SHALL MEET AT A MUTUALLY ACCEPTABLE PLACE WITHIN OR NEAR THE PROJECT TO DISCUSS THE DISPUTE. THE PARTIES TO THE DISPUTE SHALL NEGOTIATE IN GOOD FAITH IN AN ATTEMPT TO RESOLVE THE DISPUTE.

d. MEDIATION. IF THE PARTIES TO THE DISPUTE CANNOT RESOLVE SUCH DISPUTE PURSUANT TO THE CONTRACTOR REPAIR ACT OR THE PROCEDURES DESCRIBED IN **SECTION D.32.c**, ABOVE, THE MATTER SHALL BE SUBMITTED TO MEDIATION PURSUANT TO THE PROCEDURES ADOPTED BY DISPUTE PREVENTION AND RESOLUTION, INC. LOCATED IN HONOLULU, HAWAII (EXCEPT AS SUCH PROCEDURES ARE MODIFIED BY THE PROVISIONS OF THIS **SECTION D.32.d**) OR ANY SUCCESSOR THERETO OR TO ANY OTHER ENTITY OFFERING MEDIATION SERVICES THAT IS ACCEPTABLE TO THE PARTIES. THE MEDIATOR SHALL BE SELECTED WITHIN FIFTEEN (15) DAYS OF THE SUBMITTAL OF THE DISPUTE TO MEDIATION. NO PERSON SHALL SERVE AS A MEDIATOR IN ANY DISPUTE IN WHICH THE PERSON HAS ANY FINANCIAL OR PERSONAL INTEREST IN THE RESULT OF THE MEDIATION, EXCEPT BY THE WRITTEN CONSENT OF ALL PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION. PRIOR TO ACCEPTING ANY APPOINTMENT, THE PROSPECTIVE MEDIATOR SHALL DISCLOSE ANY CIRCUMSTANCES LIKELY TO CREATE A PRESUMPTION OF BIAS OR TO PREVENT A PROMPT COMMENCEMENT OF THE MEDIATION PROCESS.

(1) POSITION LETTER; PRE-MEDIATION CONFERENCE. WITHIN TEN (10) DAYS OF THE SELECTION OF THE MEDIATOR, EACH PARTY TO THE DISPUTE PARTICIPATING IN THE MEDIATION SHALL SUBMIT A LETTER SETTING FORTH A CONCISE DESCRIPTION OF ITS POSITION WITH REGARD TO THE ISSUES THAT NEED TO BE RESOLVED. SUCH LETTER SHALL BE OF A LENGTH AND MEET THE FORMATTING SPECIFICATIONS ESTABLISHED BY THE MEDIATOR, PROVIDED, HOWEVER, THAT IN NO EVENT SHALL THE MEDIATOR REQUIRE SUCH LETTER TO BE LESS THAN FIVE (5) SINGLE-SPACED PAGES. THE MEDIATOR SHALL HAVE THE RIGHT TO SCHEDULE A PRE-MEDIATION CONFERENCE AND ALL PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION SHALL ATTEND UNLESS OTHERWISE AGREED. THE MEDIATION SHALL BE COMMENCED WITHIN TEN (10) DAYS FOLLOWING THE SUBMITTAL OF THE LETTER AND SHALL BE CONCLUDED WITHIN FIFTEEN (15) DAYS FROM THE COMMENCEMENT OF THE MEDIATION UNLESS THE PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION MUTUALLY AGREE TO EXTEND THE MEDIATION PERIOD. THE MEDIATION SHALL BE HELD IN HONOLULU, HAWAII OR SUCH OTHER PLACE AS IS MUTUALLY ACCEPTABLE TO THE PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION.

(2) CONDUCT OF MEDIATION. THE MEDIATOR HAS DISCRETION TO CONDUCT THE MEDIATION IN THE MANNER THAT THE MEDIATOR BELIEVES IS MOST APPROPRIATE FOR REACHING A SETTLEMENT OF THE DISPUTE. THE MEDIATOR IS AUTHORIZED TO CONDUCT JOINT AND SEPARATE MEETINGS WITH THE PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION AND TO MAKE ORAL AND WRITTEN RECOMMENDATIONS FOR SETTLEMENT. WHENEVER NECESSARY, THE MEDIATOR MAY ALSO OBTAIN EXPERT ADVICE CONCERNING TECHNICAL ASPECTS OF THE DISPUTE, PROVIDED THE PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION AGREE AND ASSUME THE EXPENSES OF OBTAINING SUCH ADVICE. THE MEDIATOR DOES NOT HAVE THE AUTHORITY TO IMPOSE A SETTLEMENT ON THE PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION.

(3) PARTIES PERMITTED AT SESSIONS. PERSONS OTHER THAN THE PARTIES TO THE DISPUTE PARTICIPATING IN THE MEDIATION, THEIR AUTHORIZED REPRESENTATIVES AND THE MEDIATOR MAY ATTEND THE MEDIATION SESSIONS ONLY WITH THE CONSENT OF THE MEDIATOR, PROVIDED, HOWEVER, SUCH PERMISSION AND CONSENT SHALL NOT BE REQUIRED TO ALLOW PARTICIPATION OF SUCH PARTIES' LIABILITY INSURER IN THE MEDIATION TO THE EXTENT REQUIRED UNDER SUCH PARTIES' LIABILITY INSURANCE POLICY.

(4) RECORD. THERE SHALL BE NO STENOGRAPHIC RECORD OF THE MEDIATION PROCESS.

(5) EXPENSES. THE EXPENSES OF WITNESSES FOR EITHER SIDE SHALL BE PAID BY THE PARTY PRODUCING SUCH WITNESSES. ALL OTHER EXPENSES OF THE MEDIATION, INCLUDING, BUT NOT LIMITED TO, THE FEES AND COSTS CHARGED BY THE MEDIATOR AND THE EXPENSES OF ANY WITNESSES OR THE COST OF ANY PROOF OR EXPERT ADVICE PRODUCED AT THE DIRECT REQUEST OF THE MEDIATOR, SHALL BE BORNE EQUALLY BY THE PARTIES TO THE MEDIATION UNLESS THEY AGREE OTHERWISE. EACH PARTY TO THE MEDIATION SHALL BEAR ITS OWN ATTORNEYS' FEES AND COSTS IN CONNECTION WITH SUCH MEDIATION.

e. BINDING ARBITRATION. IF THE PARTIES TO THE DISPUTE CANNOT RESOLVE SUCH DISPUTE PURSUANT TO THE PROCEDURES DESCRIBED IN **SECTIONS D.32.c** AND **D.32.d**, ABOVE, THE MATTER SHALL BE SUBMITTED TO BINDING BILATERAL ARBITRATION PURSUANT TO (I) THE PROVISIONS OF CHAPTER 658A OF HAWAII REVISED STATUTES, AS AMENDED FROM TIME TO TIME (WITH EXCEPTION OF HAWAII REVISED STATUTES §§ 658A-21(a), (c) AND (e), AS AMENDED, WHICH THE PARTIES HEREBY AGREE TO WAIVE) AND (II) THE RULES AND PROCEDURES ADOPTED BY DISPUTE PREVENTION AND RESOLUTION, INC. (EXCEPT AS SUCH RULES ARE MODIFIED BY THE PROVISIONS OF THIS **SECTION D.32.e**) OR ANY SUCCESSOR THERETO OR TO ANY OTHER ENTITY OFFERING ARBITRATION SERVICES THAT IS ACCEPTABLE TO SUCH PARTIES ("**DISPUTE AGENCY**"). THE PARTIES ACKNOWLEDGE AND AGREE THAT THE ARBITRATION OF ANY DISPUTE SHALL BE BY AND BETWEEN PURCHASER AND SELLER ONLY. THE PARTIES EXPRESSLY WAIVE ANY AND ALL RIGHTS TO PURSUE CLASSWIDE CLAIMS RELATING TO ANY DISPUTE. PURSUANT TO HAWAII REVISED STATUTES SECTION 658A-10(c), THE PARTIES ACKNOWLEDGE AND AGREE THAT ANY DISPUTE SHALL NOT BE CONSOLIDATED WITH THE CLAIMS OF ANY OTHER PARTY. ALL ARBITRATION PROCEEDINGS SHALL BE CONDUCTED IN HONOLULU, HAWAII OR SUCH OTHER PLACE AS IS MUTUALLY ACCEPTABLE TO THE PARTIES TO THE DISPUTE PARTICIPATING IN THE ARBITRATION.

(1) SELECTION OF ARBITRATOR. ALL DISPUTES SHALL BE HEARD BY A SINGLE ARBITRATOR, WHO SHALL EITHER BE A FORMER JUDGE WITH SUBSTANTIAL EXPERIENCE IN RESIDENTIAL REAL ESTATE LITIGATION MATTERS OR A LICENSED ATTORNEY WITH AT LEAST TEN (10) YEARS EXPERIENCE IN COMMERCIAL REAL ESTATE TRANSACTIONS AND/OR LITIGATION INVOLVING COMMERCIAL REAL ESTATE; PROVIDED, HOWEVER, THAT IF THE DISPUTE RELATES TO A CONSTRUCTION DEFECT, THE ARBITRATOR SHALL EITHER BE A FORMER JUDGE WITH SUBSTANTIAL EXPERIENCE IN CONSTRUCTION DEFECT LITIGATION OR A LICENSED ATTORNEY WITH AT LEAST TEN (10) YEARS EXPERIENCE IN CONSTRUCTION DEFECT LITIGATION. THE ARBITRATOR SHALL BE SELECTED IN THE MANNER SET FORTH IN THE RULES OF THE DISPUTE AGENCY WITHIN TEN (10) DAYS AFTER THE SUBMITTAL OF THE MATTER TO ARBITRATION.

(2) POSITION STATEMENTS. WITHIN TEN (10) DAYS AFTER THE SELECTION OF THE ARBITRATOR, THE PARTY WHO REQUESTED ARBITRATION OF THE DISPUTE SHALL FILE WITH THE ARBITRATOR AND SERVE ON THE OTHER PARTY (AND COUNSEL) A POSITION STATEMENT SETTING FORTH A DESCRIPTION OF THE FACTS UNDERLYING THE DISPUTE, THE NATURE OF THE DISPUTE, THE QUESTION(S) TO BE RESOLVED AND THE RELIEF REQUESTED. WITHIN TEN (10) DAYS AFTER THE SERVICE OF THE INITIAL POSITION STATEMENT, THE OTHER PARTY(IES) SHALL FILE AND SERVE WHATEVER COUNTER-POSITION STATEMENT MAY BE APPROPRIATE TO PRESERVE AND ASSERT SUCH PARTY'S POSITION SETTING FORTH A DESCRIPTION OF THE FACTS UNDERLYING THE DISPUTE, THE NATURE OF THE DISPUTE, THE QUESTION(S) TO BE RESOLVED AND THE RELIEF REQUESTED. TEN (10) DAYS AFTER SERVICE OF THE COUNTER-POSITION STATEMENT, ALL PARTIES SHALL FILE AND SERVE A RESPONSE TO THE POSITION STATEMENTS FILED BY THE OTHER, WHICH RESPONSES SHALL CONTAIN A SHORT DESCRIPTION OF THE RESPONSE TO THE POSITIONS BEING ASSERTED, INCLUDING ANY DEFENSES OF AN AFFIRMATIVE NATURE. ANY QUESTION ARISING OUT OF THE SAME TRANSACTION OR OCCURRENCE SHALL BE SET FORTH IN THE RESPONSES OR BE FOREVER BARRED. THE ARBITRATOR MAY PERMIT A POSITION STATEMENT, COUNTER-POSITION STATEMENT, OR RESPONSE TO BE AMENDED TO ADD A QUESTION TO BE RESOLVED OR DEFENSE ONLY UPON PRESENTATION OF A REASONABLE BASIS THEREFOR.

(3) CONDUCT OF ARBITRATION HEARING. UNLESS A HEARING IS WAIVED IN WRITING BY ALL PARTIES, ALL DISPUTES SHALL BE DETERMINED BY THE ARBITRATOR AFTER A HEARING CONDUCTED IN ACCORDANCE WITH THESE PROCEDURES. THE ARBITRATOR MAY, IN THE ARBITRATOR'S SOLE DISCRETION, LIMIT TESTIMONY AND ARGUMENT, BOTH LEGAL AND FACTUAL. THE HEARING SHALL BE COMMENCED AT A TIME AND PLACE SELECTED BY THE ARBITRATOR IN HONOLULU, HAWAII, UNLESS OTHERWISE AGREED TO BY THE PARTIES IN WRITING, TO AFFORD EACH PARTY ADEQUATE PREPARATION FOR PRESENTING ITS POSITION AS TO THE DISPUTE BEING ARBITRATED, BUT IN NO EVENT LATER THAN SIXTY (60) DAYS AFTER THE FILING OF THE LAST OF THE PARTIES' RESPONSES. UNLESS OTHERWISE AGREED IN WRITING BY THE PARTIES, THE HEARING SHALL BE CONCLUDED WITHIN TWENTY (20) DAYS OF COMMENCEMENT OF THE HEARING.

(4) RECORD. UNLESS OTHERWISE AGREED TO BY THE PARTIES, THERE SHALL BE NO STENOGRAPHIC RECORD OF THE ARBITRATION PROCEEDINGS.

(5) POWERS OF THE ARBITRATOR. THE ARBITRATOR SHALL HAVE THE POWER TO DECIDE ALL DISPUTES SUBMITTED TO ARBITRATION HEREUNDER IN ACCORDANCE WITH THESE PROCEDURES. THE ARBITRATOR SHALL NOT HAVE THE POWER TO DECIDE ANY DISPUTE THAT WAS NOT SUBMITTED TO ARBITRATION BY THE PARTIES. THE PARTIES AGREE THAT IN ANY ARBITRATION PROCEEDING CONDUCTED UNDER THESE PROCEDURES, THE ARBITRATOR SHALL APPLY HAWAII LAW, SHALL FOLLOW THE TERMS OF THE DECLARATION, AND SHALL ONLY HAVE THE POWER TO PROVIDE IN THE AWARD FOR ANY REMEDY THAT WOULD HAVE BEEN AVAILABLE TO A COURT DECIDING THE SAME MATTER, SUBJECT TO THE LIMITATIONS AND REMEDIES CONTAINED IN THESE PROCEDURES. THE ARBITRATOR MAY EXTEND ANY OF THE DEADLINES SET FORTH IN THIS **SECTION D.32.e** UPON THE REQUEST OF EITHER PARTY FOR GOOD CAUSE; PROVIDED, HOWEVER, THAT THE ARBITRATOR SHALL ISSUE THE ARBITRATION AWARD IN THE TIME PRESCRIBED BY **SECTION D.32.e(9)**.

(6) DISCOVERY. THE SCOPE, METHODS, AND DURATION OF DISCOVERY SHALL BE WITHIN THE SOLE DISCRETION OF THE ARBITRATOR SUBJECT, HOWEVER, TO THE PROVISIONS OF THIS **SECTION D.32.e(6)**. DISCOVERY SHALL NOT BE PERMITTED AS A

MATTER OF RIGHT BUT ONLY TO THE EXTENT NECESSARY IN ACCORDANCE WITH HAWAII REVISED STATUTES § 658A-17(C), AS AMENDED, TO ACHIEVE THE PURPOSE OF THESE PROCEDURES, SET FORTH IN **SECTION D.32**, ABOVE. TO FACILITATE SUCH DISCOVERY, THE ARBITRATOR SHALL HAVE THE POWER TO ISSUE SUBPOENAS FOR THE ATTENDANCE OF WITNESSES AND PRODUCTION OF DOCUMENTS AS PERMITTED BY HAWAII REVISED STATUTES § 658A-17(A), AS AMENDED. THE PARTIES TO THE DISPUTE SHALL COOPERATE TO THE GREATEST EXTENT POSSIBLE SO AS TO AVOID THE NECESSITY FOR THE ISSUANCE OF SUBPOENAS.

(7) OTHER EVIDENCE. NEITHER HAWAII NOR THE FEDERAL RULES OF EVIDENCE OR CIVIL PROCEDURE WILL BE APPLICABLE, EXCEPT THAT THE ATTORNEY-CLIENT PRIVILEGE AND THE WORK PRODUCT DOCTRINE UNDER HAWAII LAW SHALL APPLY.

(8) EXPENSES AND FEES. ALL PROPER COSTS AND EXPENSES OF THE ARBITRATION, INCLUDING WITHOUT LIMITATION, WITNESSES' FEES, REASONABLE ATTORNEYS' FEES AND THE FEES OF THE ARBITRATOR, SHALL BE CHARGED TO A PARTY OR PARTIES IN SUCH AMOUNTS AS THE ARBITRATOR DECIDES AT THE TIME OF THE AWARD; PROVIDED THAT IF THE ARBITRATOR DECIDES A PARTY'S CLAIMS ARE WITHOUT MERIT OR FRIVOLOUS, SUCH PARTY SHALL SOLELY BE RESPONSIBLE FOR ALL PROPER COSTS AND EXPENSES OF THE ARBITRATION.

(9) ARBITRATION AWARD; FINALITY. THE ARBITRATOR SHALL ISSUE A WRITTEN DECISION ON THE MERITS OF THE ISSUE(S) FRAMED BY THE POSITION STATEMENT, COUNTER-POSITION STATEMENT AND RESPONSES WITHIN THIRTY (30) DAYS AFTER THE CLOSE OF THE HEARING. ALL DECISIONS OF THE ARBITRATOR SHALL BE FINAL, CONCLUSIVE AND BINDING ON THE PARTIES, AND SHALL BE SUBJECT TO THE PROVISIONS OF CHAPTER 658A, HAWAII REVISED STATUTES, AS THE SAME MAY BE AMENDED FROM TIME TO TIME. JUDGMENT MAY BE RENDERED UPON ANY AWARD SO RENDERED BY THE COURTS OF THE STATE OF HAWAII AND THE PARTIES CONSENT TO THE JURISDICTION OF SUCH COURTS.

f. NO JUDICIAL INTERVENTION. THE PARTY BRINGING ANY LITIGATION NOT PERMITTED UNDER THESE PROCEDURES SHALL BE RESPONSIBLE FOR ALL REASONABLE EXPENSES AND FEES (INCLUDING THOSE OF ATTORNEYS, EXPERTS, AND OTHER PROFESSIONALS) INCURRED BY THE OTHER PARTY AS A RESULT OF SUCH PROHIBITED LITIGATION.

g. CONFIDENTIALITY. ALL NEGOTIATIONS, MEDIATIONS, ARBITRATION PROCEEDINGS, AND ANY DISCOVERY CONDUCTED PURSUANT TO THESE PROCEDURES ARE CONFIDENTIAL. ALL PROCEEDINGS CONDUCTED PURSUANT TO THESE PROCEDURES SHALL BE TREATED FOR ALL PURPOSES AS COMPROMISE AND SETTLEMENT NEGOTIATIONS WITHIN THE MEANING OF RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND RULE 408 OF THE HAWAII RULES OF EVIDENCE. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS **SECTION D.32.g** SHALL LIMIT OR PREVENT A PARTY FROM DISCLOSING IN SUBMISSIONS TO THE COURT INFORMATION NECESSARY TO SUPPORT A MOTION UNDER CHAPTER 658A OF THE HAWAII REVISED STATUTES OR AN ACTION TO ENFORCE THE ARBITRATION AWARD.

h. STATUTES OF LIMITATION. NOTHING IN THIS **SECTION D.32** SHALL BE CONSIDERED TO TOLL, STAY, REDUCE OR EXTEND ANY APPLICABLE STATUTE OF LIMITATIONS; PROVIDED, HOWEVER, THAT ANY PARTY SHALL BE ENTITLED TO COMMENCE A LEGAL ACTION WHICH IN THE GOOD FAITH DETERMINATION OF THE PARTY IS NECESSARY TO PRESERVE THAT PARTY'S RIGHTS UNDER ANY APPLICABLE STATUTE OF LIMITATIONS, PROVIDED THAT THE

PARTY COMMENCING SUCH ACTION SHALL TAKE NO FURTHER STEPS IN PROCESSING THE ACTION UNTIL IT HAS COMPLIED WITH THE PROCEDURES DESCRIBED IN **SECTIONS D.32.c, D.32.d AND D.32.e** ABOVE.

i. SURVIVAL; SUCCESSORS AND ASSIGNS. THE RIGHTS AND OBLIGATIONS OF THE PARTIES PURSUANT TO THIS **SECTION D.32** SHALL SURVIVE THE CONVEYANCE OF THE UNIT PURSUANT TO THIS SALES CONTRACT, INCLUDING, SPECIFICALLY AS TO ANY CONTRACTORS OR SUBCONTRACTORS, THE COMPLETION OF ANY WORK BY ANY CONTRACTORS OR SUBCONTRACTORS. THIS **SECTION D.32** AND THE RIGHTS, DUTIES AND OBLIGATIONS OF THE PARTIES SHALL BE BINDING UPON AND SHALL INURE TO THE BENEFIT OF THEIR RESPECTIVE SUCCESSORS AND PERMITTED ASSIGNS.

PURCHASER _____ SELLER _____

END OF NOTICE TO PURCHASER

33. Time; Non-Waiver. Time is of the essence of this Sales Contract. No action or failure to act on the part of Seller shall constitute a waiver of any of Seller's rights or of any term or condition of this Sales Contract, nor shall such action or failure to act constitute approval of or acquiescence in any breach thereunder, except as the parties hereto shall agree in writing.

34. Notices. Notices to either party may be delivered personally or sent by fax or registered or certified mail return receipt requested, postage prepaid, or by overnight courier (i.e., FedEx) addressed to such party at its address set forth above (or such more recent address of which the mailing party may have notice) and shall be deemed to be given when so delivered, faxed or mailed. If more than one person is listed as a Purchaser, delivery, fax or mailing may be made to any one of them. Delivery, fax or mailing may also be made to any officer of a corporate party.

35. This Sales Contract is Binding on the Successors of the Parties and Purchasers are Responsible Individually and Together. Subject to the terms of **Section D.29** hereof, the terms "Purchaser" and "Seller" include the persons named and their respective heirs, successors, personal representatives, administrators or permitted assigns. The singular includes the plural and vice versa and the use of any gender includes the other as common sense shall require. If this Sales Contract is signed by more than one person as Purchaser, the contract obligations shall be joint and several.

36. Hawaii Law Governs this Sales Contract. The laws of the State of Hawaii shall govern all matters with respect to this Sales Contract, including all matters related to the formation, construction and performance of this Sales Contract.

37. Captions. The captions of the sections of this Sales Contract are for convenience only and do not amplify or limit in any way the provisions hereof.

38. Effect of Partial Invalidity on this Sales Contract. In the event that any provision of this Sales Contract is illegal, void or unenforceable for any reason, the remaining terms of this Sales Contract shall remain in full force and effect.

39. Brokers. Purchaser acknowledges that Project Broker has disclosed that it is a licensed real estate broker and represents only Seller in this transaction, and does not represent Purchaser. Purchaser was represented in his or her purchase of the Unit by Purchaser's broker, if any, who is identified in **Section C.7** of this Sales Contract and the Cooperating Brokerage Agreement, if any. Purchaser agrees that Seller is not responsible for any representations or statements of Purchaser's broker that are inconsistent with those set forth in this Sales Contract, the Public Report and other Condominium Documents. If Purchaser has indicated in **Section C.7**, above, that

Purchaser is not represented by a broker, Purchaser represents and warrants that no real estate broker or other person represented Purchaser or was engaged by Purchaser in connection with Purchaser's purchase of the Unit and Purchaser agrees to indemnify, defend and hold Seller harmless against any and all claims to the contrary.

40. Marketing Materials Proprietary. All sales and marketing material provided to Purchaser in connection with the sale of the Unit or otherwise are the property of the Seller, and may not be used by Purchaser in any fashion whatsoever. Any use of such material in any way by Purchaser will entitle Seller to enjoin such use and to pursue other remedies against Purchaser, independently of the obligations set forth in this Sales Contract. Seller, in its sole and absolute discretion, may pursue such remedies in the state courts of Hawaii or federal courts sitting in Hawaii, and shall not be bound to pursue such remedies in accordance with the mediation and arbitration provisions set forth in **Section D.32** hereof. Purchaser hereby agrees to submit to the jurisdiction and venue of such courts for the purpose of any lawsuit brought by Seller under this Section. Purchaser will be responsible to pay for all costs incurred by Seller in enforcing its proprietary rights in and to such material, including any and all reasonable attorneys' fees and costs incurred by Seller. This right will survive Closing of the sale of the Unit to Purchaser.

41. This is the Entire Agreement; Certain Obligations to Continue. This Sales Contract and any addenda attached hereto constitute the entire agreement between the parties with respect to the Unit and supersedes and cancels all prior negotiations, representations, understandings and agreements, both written and oral, of the parties hereto with respect to the Unit. No fact sheets, informational material, advertising material or other documents which purport to describe the Unit or the Project in any manner beyond or different from the description set forth in the Declaration, By-Laws, and the Public Report shall be valid or enforceable against Seller unless signed by Seller and no variations of this Sales Contract shall be valid or enforceable unless approved by the parties in writing and attached hereto as an addendum. Unless performed at or before Closing, provisions of this Sales Contract shall survive the execution and filing of the Unit Deed.

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EXHIBIT A

DEFINITIONS

When used in this Sales Contract with initial capital letters, unless otherwise defined in this Sales Contract, the terms listed below will have the following meanings:

"ACT" means the "Condominium Property Act" codified in Chapter 514B of the Hawaii Revised Statutes, as amended.

"AGREEMENT EXTENSION FEE" means that certain fee, equal to one and one-half percent (1½ %) of the Total Purchase Price per month in advance, to be paid by Purchaser pursuant to **Section D.9** of this Sales Contract in the event that Seller agrees, in its sole and absolute discretion, to extend the Closing Date.

"ASSOCIATION" means the Association of Owners of Kihei Commercial Condominium II, as established pursuant to the Declaration and By-Laws.

"BUREAU" means the Bureau of Conveyances of the State of Hawaii.

"BY-LAWS" means the Amended and Restated By-Laws of the Association of Owners of Kihei Commercial Condominium of II, dated January 31, 2018, recorded at the Bureau as Document No. A-66111034, as the same may be amended from time to time.

"CLOSING" shall mean the transfer of the Unit from Seller to Purchaser by way of the filing of the Unit Deed upon payment by Purchaser to Seller of the Total Purchase Price.

"CLOSING DATE" shall mean that date selected by Seller, as described in **Section D.9** of this Sales Contract, upon which Purchaser and Seller shall perform their respective obligations to purchase and sell the Unit.

"COMMON ELEMENTS" means those portions of the Project designated as Common Elements in the Declaration.

"COMMISSION" means the Real Estate Commission of the State of Hawaii.

"CONDOMINIUM DOCUMENTS" means the Condominium Map, Declaration, By-Laws, House Rules (if any), Unit Deed, Sales Contract, Escrow Agreement and all other documents required to be filed with the Commission in conjunction with the development and sale of the Project, as the same may be amended and/or supplemented from time to time.

"CONDOMINIUM MANAGER" means an entity or individual employed or retained by the Association from time to time for the management and administration of the Association, the Common Elements, and the property of the Association, if any.

"CONDOMINIUM MAP" means the Condominium Map for the Project filed at the Bureau as Condominium Map No. 3285, as the same may be amended from time to time.

"DECLARATION" means the Amended and Restated Declaration of Condominium Property Regime Kihei Commercial Condominium II, dated January 31, 2018, recorded at the Bureau as Document No. A-66111033, as the same may be amended from time to time.

"DEPOSIT" means the Initial Deposit, if any, and, if delivered, the Second Deposit as set forth in **Section C.2** above.

"DISCLOSURE DOCUMENT" means an amended Public Report or other document, which discloses a Material Change in the Project to Purchaser pursuant to Section 514B-87 of the Act.

"EFFECTIVE DATE" means that date this Sales Contract becomes binding pursuant to the provisions of **Section D.24** of this Sales Contract.

"ESCROW" means Fidelity National Title & Escrow of Hawaii, Inc., a Hawaii corporation. Unless otherwise agreed, references to Escrow shall be to Escrow at its office, 201 Merchant Street, Suite 2100, Honolulu, Hawaii 96813, phone: (808) 536-0404.

"ESCROW AGREEMENT" means the Kihei Commercial Condominium II Escrow Agreement by and between Seller and Escrow dated March 31, 2018, as the same may be amended and/or supplemented.

"HOUSE RULES" means the Rules and Regulations of the Association of Owners of Kihei Commercial Condominium II, as may be amended from time to time.

"LIMITED COMMON ELEMENTS" means those portions of the Common Elements designated in the Declaration as being appurtenant to one or more (but less than all) Units in the Project.

"MATERIAL CHANGE" means a change in the Project which (1) directly, substantially and adversely affects the use or value of the Unit or the Limited Common Elements appurtenant thereto or the amenities of the Project available for Purchaser's use, and (2) is not made pursuant to a right reserved to Seller under the Declaration.

"MORTGAGE LENDER" means a bank, insurance company, savings and loan association, credit union or other established lending institution authorized to make mortgage loans in the State of Hawaii, and selected by Purchaser to finance this transaction, if any.

"NOTICE OF RIGHT TO CANCEL" means notice of the prospective purchaser's thirty-day cancellation right on a form prescribed by the Commission, upon which the prospective purchaser may indicate that he/she has had an opportunity to read the Public Report, understands the Public Report, and exercises the right to cancel or waives the right to cancel.

"PRE-CLOSING" means the execution and delivery of documents in Escrow prior to the actual Closing Date as set forth in **Section D.7** of this Sales Contract.

"PRE-CLOSING DATE" means that date selected by Seller to have all documents necessary for Closing executed and deposited with Escrow, and to have all funds necessary for Closing deposited with Escrow, which Pre-Closing Date may be up to thirty (30) days prior to the Closing Date.

"PROJECT" means the Kihei Commercial Condominium II condominium project then constructed and located in Kihei, County of Maui, State of Hawaii.

"PROJECT BROKER" means Peake & Levoy, LLC, or such other broker for the Project as Seller may designate from time to time.

"PUBLIC REPORT" means the Developer's Public Report for the Project for which the Commission has issued an effective date, as amended. The Public Report shall be deemed to include those items specified in Section 514B-86(a)(1)(A) of the Act, provided that if the Condominium Map is not provided, it shall be sufficient that Purchaser is provided with notice of an opportunity to examine the map.

"RESCISSION NOTICE" means the notice of Purchaser's thirty (30)-day rescission right on a form prescribed by the Commission, upon which Purchaser may indicate that he/she has had an opportunity to read the Disclosure Document, understands the Disclosure Document, and exercises his/her right to rescind the Sales Contract or waives the right to rescind the Sales Contract.

"SALES CONTRACT" means this Sales Contract, together with (where applicable) any addenda attached hereto or subsequent amendment.

"SELLER" means JS MCA KIHEI LLC, a Nevada limited liability company, and its successors and assigns.

"TOTAL PURCHASE PRICE" means the amount set forth in **Section C.1** above.

"UNIT" means the Unit described in **Sections A** and **D.2** of this Sales Contract.

"UNIT DEED" means the Limited Warranty Unit Deed, Encumbrances and Reservation of Rights with Powers of Attorney for Kihei Commercial Condominium II. The Unit Deed is the legal document that Purchaser and Seller will sign to transfer fee simple ownership of the Unit at Closing to Purchaser. A specimen copy of the Unit Deed has been supplied to Purchaser; copies are also available from the Project Broker.