

CONDOMINIUM ESCROW AGREEMENT

THIS AGREEMENT, made this 20th day of January, 2005 is by and between TITLE GUARANTY ESCROW SERVICES, INC., a Hawaii corporation, whose principal place of business and post office address is 235 Queen Street, Honolulu, Hawaii 96813, hereinafter called "Escrow", and KCCC, LLC, whose address is 99-880 Iwaena Street, Aiea, Hawaii 96701, hereinafter called "Seller",

RECITALS:

A. Seller intends to enter into sales contracts for the sale of units in a condominium project established or to be established under a Declaration of Condominium Property Regime created under the Hawaii Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended (said chapter being hereinafter referred to as "Chapter 514A" and said statutes being hereinafter referred to as "HRS"), the terms of which sales contracts will provide for payment of the purchase price and closing costs to be made to Escrow, to be held and disbursed by Escrow pursuant to the provisions of this Agreement.

B. The name of the project is KIHEI COMMERCIAL PLAZA (herein called the "Project").

C. There are 73 units in the Project.

D. The land included or to be included within the Project is located in the County of Maui, State of Hawaii, and is designated as Tax Key (2) 3-9-045-012.

AGREEMENT

It is hereby mutually agreed by Escrow and Seller as

follows: 1. Sales Contracts.

(a) Sales Contracts Deposited in Escrow. As and when Seller shall enter into a sales contract for the sale of a unit, Seller shall deliver an executed copy of such sales contract to Escrow. Each sales contract shall contain the correct names and addresses of the purchasers, shall require that all payments to be made thereunder shall be made to Escrow and shall be accompanied by the initial deposit required thereunder.

(b) Public Report Status. Each sales contract shall specify whether the sale is made pursuant to a Preliminary, Final or Supplementary Public Report issued by the Real Estate Commission of the State of Hawaii (herein called the "Real Estate Commission") with an indication of the effective dates of all applicable public reports. If the type of public report is not specified in the sales contract, the sales contract must be accompanied by a statement indicating the type of public report and its effective date pursuant to which the sales contract was signed.

Seller shall provide to Escrow a true copy of each public report issued for the Project.

2. Funds Paid to Escrow.

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

(b) Interest On Funds In Escrow. Unless otherwise provided in this Agreement, any interest earned on funds deposited in escrow under this Agreement shall accrue as specified in the sales contract. If the sales contract does not specify to whom interest is to accrue, any interest earned on funds deposited in escrow under this Agreement shall accrue as set forth herein. Escrow shall not be liable to either Seller or any purchaser for loss or diminution in funds invested in accordance with instructions given to Escrow. If the sales contract is entered into pursuant to a Final Public Report, any interest earned on funds deposited in escrow under this Agreement shall accrue to the credit of Seller; except that, if Escrow is requested to establish a separate account for a purchaser, Escrow shall do so, the purchaser shall furnish to Escrow the purchaser's social security or federal identification number, the purchaser shall pay Escrow a fee of \$25.00 for such separate account and any interest earned on funds deposited in such account shall accrue to the credit of the purchaser.

3. Conditions to be Met Prior to Disbursement of Funds In Escrow. No disbursements of funds held in escrow shall be made unless and until the following conditions have been fulfilled:

(a) Final Public Report Must Be Issued. No disbursements shall be made from a purchaser's funds until (i) the Real Estate Commission shall have issued an effective date for a Final Report on the Project, and (ii) the purchaser shall have been given a copy of the Final Report and shall have acknowledged receipt of same or shall have been deemed to have acknowledged receipt of same and shall have waived or shall have been deemed to have waived the purchaser's right to cancel the sales contract.

(b) Receipt of Opinion by Escrow. Seller or Seller's attorney shall have delivered a written opinion to Escrow that the purchaser's sales contract has become effective; and stating that:

(i) the requirements of Sections 514A-62 and 514A-63, HRS, have been met;

(ii) all sales contracts delivered to Escrow are binding upon the purchasers; and

(iii) if the project is a conversion project, that requirements of Section 521-38, HRS, have been complied with.

Seller or Seller's attorney agrees to inform Escrow immediately in writing of the development of any event or occurrence which renders the opinion delivered by Seller or Seller's attorney pursuant to this subparagraph 3(b) untrue.

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

(d) Certificate. Seller shall have delivered to Escrow a certificate from Seller's architect stating that the project is in compliance with the Federal Fair Housing Amendment Act of 1988.

(e) Closing by Escrow. Funds of a purchaser shall not be disbursed until Escrow has closed the purchaser's sales contract in accordance with Section 6 of this Agreement.

4. Return of Purchaser's Funds and Documents.

(a) Cancellation or Rescission of A Sales Contract. Unless otherwise provided in this Agreement or the purchaser has waived or has been deemed to have waived the right to a refund, the purchaser shall be entitled to a return of such purchaser's funds and Escrow shall pay such funds to such purchaser, together with any interest which may have accrued to the credit of such purchaser, if any one of the following has occurred:

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

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

(iii) The purchaser shall have notified Escrow of purchaser's exercise of purchaser's right to cancel the sales contract pursuant to Section 514A-62, HRS; or

(iv) The purchaser shall have notified Escrow of purchaser's exercise of purchaser's right to rescind the sales contract pursuant to Sections 514A-63, HRS.

Escrow shall, upon the occurrence of the event described in (i) or (ii) above, pay said funds to said purchaser (less a cancellation fee commensurate with the work done by Escrow prior to such cancellation, up to a maximum of \$250.00); provided, however, that no refund shall be made to a purchaser at the purchaser's request prior to receipt by Seller of written notice from Escrow of Escrow's intent to make such refund. Upon the occurrence of the event described in (iii) above, Escrow shall make prompt and full refund to such purchaser, less any cancellation fees and other costs associated with the purchaser, up to a maximum of \$250.00. Upon the

occurrence of the event described in (iv) above, Escrow shall make prompt and full refund to such purchaser.

5. Unclaimed Funds. Escrow shall give each purchaser entitled to a return of funds notice thereof by registered, certified or regular mail, postage prepaid, addressed to such purchaser at the purchaser's address shown on the sales contract or any address later made known in writing to Escrow by such purchaser. If such purchaser shall not have claimed such refund within sixty (60) days, Escrow shall 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 notifying the purchaser of all such facts at the purchaser's address as described herein and delivering all partially executed conveyance documents to Seller, Escrow shall thereupon be released from any further duties or liability hereunder with respect to such funds and such purchaser.

6. Closing. Except for the sales contracts and any note and mortgage that is to be closed by the mortgagee thereof, Escrow shall promptly and diligently arrange for and supervise the execution of all documents related to the Project and shall promptly and diligently close the transactions and perform such services as are necessary or proper therefor. Upon receipt by Escrow of the conveyance document, the receipt for the Final Public Report, all necessary releases of encumbrances, the full amount of the purchase price of the unit, any mortgage or other instruments securing payment by the purchaser of all or part of the purchase price of the unit and purchaser's share of closing costs, Escrow will act with diligence and dispatch to "close" the sale of the unit by performing the following:

(a) Escrow shall cause the recording of such releases, conveyance document and mortgage, if any; and

(b) After recordation, Escrow may cause a copy of said conveyance document to be delivered to the purchaser, the release or partial releases to be delivered to Seller, the mortgage, if any, to be delivered to the purchaser's lending institution, and all sums respecting the purchase of the unit to be disbursed to Seller after deduction by Escrow of Seller's share of the closing costs.

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

8. Defects in Documents. Upon the closing of each sales transaction, provided that any individual mortgage in connection therewith may then be recorded, and it is legally possible to record all closing documents and none is in any way defective, Escrow shall proceed promptly and within five (5) business days (exclusive of the day of closing) record the necessary documents to effect the transfer of legal title to the purchaser. If for any reason it is determined that any document necessary to close the transaction is defective or cannot be recorded, Escrow shall promptly notify Seller of such fact and Escrow shall proceed promptly to correct such defects as are within its capacity as an escrow depository to correct. If, for any cause beyond Escrow's control, the necessary documents cannot be recorded within said five (5) day period

after closing, Escrow shall file or record the same within five (5) days after learning that the reason that prevented their recording no longer exists.

9. Purchaser's Default. If the purchaser fails to make such payment to Escrow on or before the due date thereof or if the purchaser fails to perform in any matter that is being handled by Escrow, Escrow shall promptly notify Seller of any such failure on the part of the purchaser. If Seller subsequently certifies in writing to Escrow that Seller has terminated the sales contract in accordance with the terms thereof and provides to Escrow copies of all such notices of termination sent to the purchaser, Escrow shall thereafter treat all funds of the purchaser paid on account of such purchaser's sales contract as funds of Seller and not as funds of the purchaser. Thereafter, such funds shall be free of the escrow established by this Agreement and shall be held by Escrow for the account of Seller. Upon written request by Seller, Escrow shall pay such funds to Seller, less any escrow cancellation fee. Escrow shall thereupon be released from any further duties or liability hereunder with respect to such funds and such purchaser.

10. Protection of Escrow. In consideration of Escrow acting as escrow holder hereunder, it is agreed that Escrow is relieved from all liability for acting in accordance with the terms hereof, notwithstanding a notice to the contrary by Seller or any purchaser or third person. Escrow shall not be responsible for the validity or sufficiency of any sales contracts or other documents received by it and shall be entitled for all purposes to assume that the same have been signed by the persons whose signatures purport to be thereon and that any written certification or instruments from Seller are true and accurate.

If any dispute or difference shall arise or if any conflicting demand shall be made upon Escrow, Escrow shall not be required to determine the same or take any action in the premises, but Escrow may await settlement of the controversy by final appropriate legal proceedings or otherwise as it may require, or Escrow may file a suit in interpleader in any court having jurisdiction in the matter, for the purpose of having the respective rights of the parties adjudicated and may deposit with the court any or all monies held hereunder. Upon institution of such interpleader suit or other action, depositing such money with the court, and giving notice thereof to the parties thereto by personal service or in accordance with the order of the court, Escrow shall be fully released and discharged from all further obligations hereunder with respect to the monies so deposited.

Seller agrees and shall cause each purchaser to agree (subject to purchaser's rights under paragraph 4 hereof) to pay Escrow on demand and to indemnify and hold Escrow harmless from and against all costs, damages, judgments, attorneys' fees, expenses, obligations and liabilities of every kind and nature reasonably suffered or incurred in connection with or arising out of this escrow, including, but not limited to, all costs and expenses incurred in connection with the interpretation of this Agreement or with respect to any interpleader or other proceeding, and excluding all of the foregoing that is the result of any act or omission by Escrow or its agents that is not generally accepted in the Honolulu business community as a reasonable business practice. Upon payment thereof, the prevailing party will be subrogated to Escrow's right to judgment for said costs, damages, judgments, attorneys' fees, expenses, obligations and

liabilities of every kind and nature against third persons.

11. Binding Effect. This Agreement shall be binding upon, shall apply to and shall inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns.

12. Termination. This Agreement may be terminated by either party hereto upon fifteen (15) days written notice to the other; provided, however, that all transactions in process hereunder at the time of such termination shall be completed under the terms of this Agreement.

13. Statutory Provisions Control. This Agreement is, in all of its provisions, to be deemed and interpreted as supplementary and subject to the provisions of Chapter 514A, Hawaii Revised Statutes, as now or hereafter amended, and if any conflict should arise between the provisions of this Agreement and the provisions of said Chapter 514A, the provisions of the latter shall control

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

15. Compensation of Escrow. The compensation of Escrow for performance hereunder shall be \$600.00 for each unit in the Project, on the condition that all sales of units in the Project are closed on or before two years after the date hereof. Escrow shall also arrange for the issuance of a title insurance policy (standard owner's or ALTA lender's policy) for the sum of \$700.00 for each unit in the Project. An additional fee of \$250.00 shall be charged to the purchaser for each mortgage obtained by the purchaser if the purchaser does not obtain a mortgage loan from a lender designated by Seller. Should the purchaser obtain a mortgage loan from any out-of-state lender, a fee of \$500.00 shall be charged to the purchaser for each mortgage obtained. If an escrow involves a 1031 Exchange, Escrow has a right to assess additional fees commensurate with the amount of work involved.

Escrow's compensation shall become due and payable with respect to a unit in the Project upon the first to occur of the following events: (1) the transfer to the purchaser of such unit of legal title thereto; or (2) final disbursement of the funds held in escrow in connection with such unit. In the event of the cancellation of any sales contract that has been submitted to Escrow, a cancellation fee commensurate with the services rendered by Escrow prior to such cancellation, up to a maximum of \$250.00 shall be charged to the purchaser, unless otherwise provided herein or agreed to by Seller and the purchaser. If Escrow shall for any reason without fault on its part be required to change subsequent to the commencement of preclosings or closings for the Project any closing statement or document previously approved as to form and figures by Seller, Seller agrees to pay an additional charge of \$30.00 for each such statement or document that is changed.

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

TITLE GUARANTY ESCROW SERVICES, INC.

KCCC, LLC

By 
Its GLEN Y. AJIMINE-SENIOR VICE PRESIDENT

By 
Its

By 
Its

By _____
Its

(Escrow)

(Seller)