

**PROPERTY MANAGEMENT AND AGENCY AGREEMENT**  
**(MARY SAVIO MEDICAL PLAZA AT NEWTOWN CONDOMINIUM PROJECT)**

THIS PROPERTY MANAGEMENT AND AGENCY AGREEMENT (this "Agreement"), made and entered into this 9th day of July, 2012, by and between KMC PARTNERS LLC, a Hawaii limited liability company, whose address is 931 University Avenue, Suite 105, Honolulu, Hawaii 96813 ("Developer") acting not individually but on behalf of the Association of Unit Owners of Mary Savio Medical Plaza at Newtown (the "Association") organized pursuant to Part VI of the Hawaii Revised Statutes ("HRS") Chapter 514B, as amended, and Hawaiiana Management Company, Ltd., a Hawaii corporation (the "Agent").

Description of Property Covered by This Agreement (the "Property"):

Property: **Mary Savio Medical Plaza at Newtown**

Location: **98-1247 Kaahumanu Street, Aiea, Hawaii 96701**

Tax Map Key: **1-9-8-8-26**

Public Report No.: **[REDACTED]**

Architect: **Ernest M. Umemoto, A.I.A.**

Attorney: **Chun Kerr Dodd Beaman & Wong (Danton S. Wong, Esq.)**

Developer: **KMC Partners LLC**

Total Units: **Approximately 67**

Type Units: **Commercial Condominium**

Number of Floors: **3**

Additional Area: **a multi-story parking structure and office building to be constructed, new office building may bring total units to 100.**

Land Title: **Fee Simple**

Type of Accounting: **Cash**

Information Concerning the Association:

Association: **Association of Unit Owners of**

**Mary Savio Medical Plaza at Newtown**

Address: **98-1247 Kaahumanu Street  
Aiea, Hi 96701**

Information Concerning Agent:

Name: **Hawaiiana Management Company, Ltd.**

Address: **711 Kapiolani Boulevard, Suite 700  
Honolulu, Hawaii 96813**

RECITALS:

A. The Declaration of Condominium Property Regime of Mary Savio Medical Plaza at Newtown (the "Declaration") and the Bylaws of the Association of Unit Owners of Mary Savio Medical Plaza at Newtown (the "Bylaws") provide that the authority to manage the Property is delegated to the Board of Directors of the Association (the "Board");

B. Pursuant to the Declaration and the Bylaws, the Board is authorized to engage a managing agent to manage the Property and the affairs of the Association; and

C. The Board and the Agent desire to enter into this Agreement whereby the Agent will provide property management services to the Association in accordance with the terms of this Agreement.

NOW THEREFORE, it is agreed as follows:

1. APPOINTMENT OF AGENT

The Association hereby employs the Agent to serve as the managing agent for the Property as set forth herein throughout the Term of this Agreement. The Agent agrees to provide the management services described herein to the extent, for the period, and upon the terms herein provided.

2. TERM

The initial term of this Agreement shall be one (1) year (the "Term"), commencing on the closing of the sale of the first unit in the Project (the "Effective Date"). Thereafter the term shall automatically renew for successive one-year terms, provided either party may terminate this Agreement upon ninety (90) days' written notice of termination to the other party for any reason or no reason. The term shall also be subject to the early termination provisions set forth herein. This Agreement may be terminated, in writing, prior to the closing of the sale of the first unit in the condominium project, provided that upon termination a fee of Two Thousand and No/100 Dollars (\$2,000) will be paid to the Agent as full and fair compensation for services rendered prior to such termination.

3. SERVICES TO BE PROVIDED BY THE AGENT

The Agent shall be responsible for the good and orderly day-to-day operation, management, maintenance and repair of the Property, as more particularly described in this Agreement, subject to the limitations and terms herein and the periodic review of such operation, management, maintenance and repair by the Board, and such policies as may from time-to-time be promulgated by the Board respecting the same. More particularly, the Agent shall

perform the following services in the name of and on behalf of the Association, and the Association hereby gives the Agent the authority and powers required to perform these services:

(a) Collections

The Agent shall, on a mutually agreed upon monthly date, collect Property maintenance fees, assessments, and charges (collectively, "Fees") on behalf of the Association and, as necessary, shall apply the proceeds of such collections to the appropriate accounts as determined in writing by the Board.

The agent shall mail to all unit owners, or their designated agent or representative, on an annual basis, a twelve-month payment coupon book with preprinted envelopes for the payment of Fees.

The Agent is expressly authorized to request, demand, collect, receive and receipt as necessary any and all Fees, and to take all such action in the name of the Association.

Upon the direction of the Board, the Agent shall engage an attorney designated by the Board on behalf of the Association and at the Association's expense to seek to place a lien on a unit for which Fees are unpaid and overdue for sixty (60) days or more. The Agent is expressly authorized to execute on behalf of the Association, such liens, notices of liens, releases of liens, complaints, and such other legal documents as may be deemed necessary in furtherance of the collection of Fees. Notwithstanding the foregoing, the Agent shall not authorize the Association's attorney to commence foreclosure proceedings without the prior express written authorization of the Board. All costs of foreclosure (including, without limitation, related legal fees and expenses) shall be paid by the Association.

(b) Financial Records and Reporting

The Agent shall maintain financial records, reports and statements based on all cash receipts and expenditures affecting the common elements of the Property. The Agent shall submit to the Board a statement of the Association's receipts and disbursements, cash accounts and delinquent Fees for the preceding month by the fifteenth (15<sup>th</sup>) business day of the month.

Within thirty (30) days after the end of each fiscal year, the Agent shall submit to the Board a summary of the Association's receipts and expenditures and a statement of remaining cash on hand relating to the Property for the preceding year, provided that this service shall not be construed to require the Agent to supply an audit unless otherwise expressly provided herein.

(c) Disbursement Authorization

The Agent shall make all disbursements for recurring expenses included in the Board-approved, annual budget from collected Fees. In the event a budget is not approved by the Board prior to beginning of the next fiscal year, the previously approved budget shall remain in effect. Initially, the Agent shall make disbursements pursuant to the budget attached hereto as Addendum B. In the course of performing the Agent's obligations herein, the Agent is hereby granted authority to make non-budgeted expenditures from the collected Fees subject to the approval of the Treasurer and one other officer of the Board and the limitations below.

In discharging its responsibilities, the Agent shall not make any non-budgeted expenditure exceeding \$500.00 nor incur any contractual obligation exceeding \$500.00 without the prior written consent of the Board except in emergency situations which require prompt action to avoid damage to property, bodily injury, or life-threatening circumstances.

If during the Developer control period, the Agent is tasked with providing bill payment services, funds equal to two (2) months estimated operating expenses shall be provided by the Developer to the Agent to facilitate payment of bills. The Agent shall not be expected to utilize start-up fees, prepaid maintenance fees paid by owners through escrow for payment of any bills until all unit owners, including the Developer, become obligated for the payment of their share of the common expenses allocated to their unit(s).

(d) Employee Taxes

In the event that the Association employs any employees, the Agent shall cause employee taxes to be paid and necessary State and Federal employment reports filed when due. Taxes thus paid shall be operating expenses of the Association.

The Agent shall cause all returns and other instruments to be filed and perform all acts required of the Association as an employer under the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, Subtitle C of the Internal Revenue Code of 1954 and the Hawaii Income Tax Act with respect to wages paid by the Agent on behalf of the Association and under any similar Federal, State or Municipal law now or hereafter in force (and in connection therewith the Association agrees upon request to execute and deliver promptly to the Agent all necessary powers of attorney, notices of appointment and the like).

(e) Budget Preparation

By such deadline as may be specified in the Association's Bylaws or, if none, by ninety (90) days prior to the end of each fiscal year, the Agent shall prepare and submit to the

Board a recommended budget for the Association's next fiscal year showing anticipated receipts and expenditures for such year. The Association is responsible for final review and approval of the budget and thus the Agent shall not be responsible for any omissions or revisions thereto.

(f) Real Property Taxes

Until such time as the units are separately assessed, the Agent shall collect and pay all real property taxes due based upon each unit owner's percentage of common interest pursuant to the Declaration.

(g) Annual Audit and Tax Return

In accordance with the requirements of HRS 514B, the Agent shall cause a certified public accounting firm chosen by the Board to conduct an annual audit of the Association's financial records and prepare a federal and state income tax return for the Association. The Agent shall ensure that at least one unannounced verification of cash balances be conducted by the selected certified accounting firm. The Agent will also cause to be prepared and filed the Hawaii State General Excise Tax return as required by statute. The fees and costs for such audit, unannounced cash verification and preparation of tax return shall be borne by the Association.

(h) Building Maintenance

Subject to the direction and at the expense of the Association, the Agent shall cause the common elements of the Property to be maintained according to appropriate standards of maintenance consistent with the character of the Property, including cleaning, painting, plumbing, carpentry, decorating and such other maintenance and repair work as may be necessary.

The Agent shall assume the management of the Property, buildings, and equipment under the direction of the Board and shall direct, supervise and order to be done those things requested by the Board or which are, in the Agent's judgment, necessary to preserve and protect the Property. The Agent shall make recommendations for improvement of the Property to the Board.

Notwithstanding the foregoing, the Agent is not responsible for the maintenance or upkeep of the individual units or any other portion of the Property with respect to which the duty of maintenance and upkeep has been imposed upon an unit owner or owners by law or by the Association's Declaration, Bylaws, or House Rules of the Association (the "House Rules").

(i) Inspections; Inventory

The Agent shall make quarterly inspections of the common elements of the Property and shall render reports and make recommendations to the Board as the Agent deems appropriate or advisable. The Agent will be on call, or have a designated agent on call, twenty-four (24) hours a day to respond to emergencies at the Property to the extent that a site manager is not available to respond. The Agent will inspect the Association's capital improvement items on-site no later than 2 weeks before the annual budget is due in order to properly complete the budget preparation. Inspections will be conducted from readily accessible common areas, and will be limited to those items that can be reasonably seen and inspected from such areas. Notwithstanding the foregoing, Association acknowledges that the Agent is not a professional property inspector and agrees that the Agent shall not be liable if the budget does not reflect the costs of any maintenance or repairs later determined to be necessary or advisable.

The Agent shall maintain inventories of all Association furniture, materials, tools, equipment and supplies and shall update such inventories in the first month of each fiscal year.

(j) Contracts on the Association's Behalf

The Agent shall, as directed by the Board, negotiate and prepare for Board signature, contracts on behalf of the Association for such necessary services as the Board and/or the Agent shall deem advisable. The Agent may place orders for such equipment, tools, appliances, materials, utility services and supplies as are necessary to properly maintain the Property. All such contracts and orders shall be made in the name of the Association and shall be subject to the limitations set forth in this Agreement. When taking bids for purchases, the Agent shall act under the direction of the Board and shall, when possible, secure for and credit to the latter any discounts, commissions, or rebates obtained as a result of such purchases.

(k) Utility Taxes (and Related Fees) and Expense Items

The Agent shall pay from the funds of the Association all taxes, building and elevator inspection fees, water rates and other governmental charges, and all other charges or obligations incurred by the Association with respect to the maintenance or operation of the Property or incurred by the Agent on behalf of the Association pursuant to the terms of this Agreement or pursuant to other authority granted by the Board.

(l) Insurance

At the Association's expense, the Agent shall cause to be placed and kept in force such policies of insurance to protect the Association as is specified in the Declaration and as the Board shall direct. Such insurance will include property insurance, comprehensive

general liability insurance (including liquor liability if liquor is sold, distributed, or served from the Property), a fidelity bond, directors' and officers' liability insurance, boiler and machinery insurance, umbrella insurance, and worker's compensation insurance, and all other insurance required by applicable Laws (defined below) or otherwise required, and shall name Agent as an additional insured for all policies except workers' compensation. Such insurance policies shall apply to any loss or claim before any contribution by any insurance which Agent may have in force, shall provide that such insurance cannot be canceled or modified upon less than thirty (30) days prior written notice to Agent, and shall include a waiver by the appropriate insurance carrier of the right of subrogation. Association and all parties claiming under such insurance waive any right of recovery against the Agent for any loss or damage to the extent such loss or damage is covered by any policy of insurance maintained by Association, whether or not such loss is caused by the fault or negligence of Agent. The Agent shall maintain appropriate records of all insurance coverage carried by the Association. The Agent shall assist and cooperate with the Association and its employees in investigating and reporting all accidents or claims for damage relating to the ownership, operation and maintenance of the common elements of the Property including any damage or destruction thereto.

(m) Compliance with Applicable Laws and Regulations

The Agent shall take such action as may be necessary to comply with all legal requirements of HRS 514B and any other governmental orders or requirements applicable to the Property of which the Agent is notified in writing by any Federal, State, or City and County authority having jurisdiction thereover, subject to the limitations upon expenditures contained in this Agreement. The Agent, however, shall not take any action under this subparagraph so long as the Association is contesting or has affirmed its intention to contest any such order or requirement. The Agent shall notify the Association in writing of all such orders and notices of requirements promptly upon receipt.

(n) Personnel Management

The Agent is authorized, at the direction of the Board, to supervise employees and/or independent contractors. The Agent, on behalf of the Association and at the direction of the Board of Directors, will offer support and guidance to the site manager and act as a liaison between the Board and the site manager if so directed by the Board. If the Board hires additional employees, the site manager will be responsible for the supervision of such employees. Agent will conduct an annual performance review of the site manager on Agent's standard performance review form and shall provide a copy to the Board. The site manager will be responsible for conducting any performance reviews of any other Association employees as required by the Board. The site manager and all other employees hired by the Board will for all purposes be employees of the Association and not of the Agent, and the Board will determine the job standards, and wage rates for the

Association's employees. Agent will cause the Association's employees' wages to be paid from the Association's funds in accordance with instructions received from the Board.

4. BANK ACCOUNTS/FIDUCIARY RESPONSIBILITY

The Agent shall act as a fiduciary and custodian for all moneys collected by it on behalf of the Association. The Agent shall establish, in the name of the Association, and maintain in a bank, savings and loan company or other financial institution located in the State of Hawaii, whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC), and in a manner to indicate the custodial nature thereof, one or more separate bank accounts as agent of the Association for the deposit of the Association's funds. The Agent shall have the authority to draw from the accounts for any payments to be made by the Agent to discharge any liabilities or obligations incurred pursuant to this Agreement, and for the payment of the Agent's fees, all of which payments shall be subject to the limitations contained in this Agreement. Interest earned on the accounts shall be credited in the Association's name to the same or other accounts as directed by the Association Treasurer. Unless authorized by the Board, no Association reserve accounts shall exceed FDIC limits.

The Agent agrees that its employees, and the employees of the Association, who handle or are responsible for the safekeeping of the Association's funds shall be covered by a fidelity bond, which complies with HRS 514B. The Agent shall obtain the fidelity bond at the Association's cost and in an amount at least as large as required by the Bylaws and with a company selected by the Agent.

The Association acknowledges and agrees that the Agent is not a professional financial advisor and makes no representations to that effect. The Agent's management services are not intended to substitute for the services of a professional financial advisor. All risks associated with any Association investment decisions shall be borne by the Association.

5. MEETINGS

The Agent agrees that one of its employees shall be designated "Property Manager" for the Association. The Association shall have the right to require that the Agent appoint a different Property Manager if the Association is dissatisfied with the Property Manager's performance. The Property Manager shall, upon not less than two (2) business days' notice, attend up to one (1) regular Board meeting per month and one (1) regular Association meeting per year at no charge. For meetings in excess of this number, or for meetings lasting more than two (2) hours, or for meetings held on Saturday, Sunday or generally recognized holidays, the Association will be charged an additional fee as specified in Addendum A, a copy of which is attached hereto and by this reference made a part hereof.

The Agent shall organize the annual meeting of the Association, including the preparation and delivery of notice of the meeting and proxy forms. The Agent shall prepare the agenda for the



meetings, assist in the conduct of the meetings and oversee the election of directors with all direct costs to be borne by the Association.

The Agent shall send notices of Board meetings to the directors, prepare the agenda therefore, circulate minutes of any such meetings as prepared by the Agent at rates in Addendum A, and implement instructions as approved by the Board.

6. RECORDS

The Agent shall maintain records of the affairs of the Association as required by HRS 514B, including but not limited to, minutes of the Association and Board meetings, Association correspondence, and amendments to the Declaration, Bylaws and House Rules. The Agent shall maintain a system of office records, books and accounts in a professional manner. The Association's records shall be made available as required by HRS 514B for examination and copying by the Association's members by prior appointment during the Agent's normal business hours, subject to such reasonable compensation as may be permitted by HRS 514B.

The Agent will maintain at Agent's office a complete list of (i) the Association's members and their respective unit ownership interests containing current addresses and contact information, and names and addresses of vendees under agreements of sale, if any, and (ii) the members of the Board and their respective terms of office. Upon the transfer of ownership of a unit, the Agent will require the applicable escrow company or the new unit owner to provide a copy of the conveyance document and the new unit owner's information at closing including the unit owner's then current mailing address. A reasonable fee will be charged to prospective unit purchasers by the Agent for certification of status of a unit's account and to register the new unit owner in the Association's records.

Prior to the commencement of the term of this Agreement, the Association shall provide Agent with: (a) specifications for the Property's common and limited common elements, if available; (b) copies of all Property-related guarantees and warranties in effect; (c) copies of all project governance documents, including, without limitation, the Articles of Incorporation of Association (if any), Bylaws, the recorded Declaration, Board resolutions, project rules and regulations, policy statements, and all amendments to the foregoing; and (d) copies of the Association's opening account balances, owner records, financial reports, and the Association state and federal tax returns. The Agent shall be entitled to rely on information and records provided by the Association to be accurate and complete.

Upon the termination of this Agreement for any reason, the Agent shall have the right (but not the obligation) to retain copies of Property-related records, in the Agent's reasonable discretion.

7. MANAGEMENT FEE

The Association shall pay to the Agent a monthly management fee plus State of Hawaii General Excise tax, due and payable on the first of each month throughout the Term of this Agreement. If the Term of this Agreement commences or terminates on a date other than the first of the month, then the management fees for such first or last month shall be prorated. The initial management fee for the Term shall be Fourth Thousand Eight Hundred Twenty-Four and 66/100 Dollars (\$4,824.66) per month plus State of Hawaii General Excise Tax. **No transfer fees shall be charged on the first close of sale of units.**

Such management fee is based upon the description of the Property set forth above and assumes that a **part-time** site manager will be employed at the association's expense before first closing to handle day-to-day operational issues such as parking and security issues, maintenance and repair problems and to coordinate any capital improvements.) If a **part-time** on-site manager is not employed by the association prior to the first closing, Agent's monthly management fee will be increased by One Thousand Eight Hundred Forty-Seven and 50/100 Dollars (\$1,847.50), plus GET tax.

The Agent establishes its management fees on a calendar year basis (commencing January 1st and ending December 31st). The Agent's management fees for the following year shall be incorporated into the recommended budget prepared pursuant to Paragraph 3(e) of this Agreement.

No later than October 1 of each calendar year, the Agent shall prepare and submit to the Board for approval the management fees for the following year. The Board will approve or disapprove of the new management fees within thirty (30) days after receipt of the proposal; if the Board fails to respond within the 30-day period the new fees will be deemed approved by the Board. In the event the Board disapproves of the proposal, the Board shall state its reasons therefore and the Agent shall revise and resubmit a proposal to the Board within ten (10) days after its receipt of the Board's notice of disapproval. The Board will have fifteen (15) days after receipt of the revised proposal to approve or disapprove of the new management fees; if the Board fails to respond within the 15-day period the new fees will be deemed approved by the Board. In the event the Board disapproves of the proposal, the Board shall state its reasons therefore and the Agent and the Board shall attempt in good faith to arrive at a mutually agreeable fee structure. In the event that the parties cannot agree on a new fee structure, this Agreement may be terminated by either party upon sixty (60) days prior written notice to the other party.

All costs incurred for photo copies, postage, printing, envelopes, other administrative supplies and functions in relation to the Association's operations or otherwise in furtherance of the Agent's performance of its obligations under this Agreement are chargeable to the Association at the rates established in Addendum A. The Agent may increase the rates and fees set forth on Addendum A annually. The rates and fees shall not be escalated by more than the change in the Honolulu Consumer Price Index for All Urban Consumers (All Items) (1982-1984=100, not seasonally adjusted) as published by the Bureau of Labor Statistics of the U.S. Department of

Labor ("CPI-U") between June of the preceding year and June of the escalation year, unless the Agent delivers written notice thereof to the Association on or before ninety (90) days prior to the expiration of the Term of this Agreement then in effect and such increase goes into effect on or after the commencement of the following one-year term. If the CPI-U is changed or replaced by the United States Government, the government published conversion factor shall be used to compute annual adjustments. In addition to the foregoing, the Association shall reimburse the Agent for travel expenses incurred for conducting business on behalf of Association at a rate equal to the IRS standard mileage rate then in effect.

The Association shall pay to the Agent as an additional fee, together with each payment of management fee or any other payment hereunder which is subject to the State of Hawaii General Excise Tax on gross income, as such taxing statute may be amended, and all other similar taxes imposed on the Agent on said management fee or other payment in the nature of a gross receipts tax, sales tax, privilege tax or the like (excluding federal or state net income taxes) whether imposed by the United States of America, the State of Hawaii, or the City and County of Honolulu, an amount which, when added to such management fee or other such payments, a net amount equal to that which the Agent would have realized from such payments had no such tax been imposed.

It is mutually agreed that the fees earned by the Agent as specified in this Agreement encompass all the usual and routine services normally required by the Association. In the event the Association requires additional special or unique management services that involve investment of significant resources on the part of the Agent, it is agreed that these services shall be performed by the Agent for an additional fee as established in Addendum A. Design review services, if requested by the Association, will be performed by the Agent at an hourly rate of \$150.00 per hour. Usual and routine services do not include frequent legal meetings, detailed analysis of records of prior managing agents, or other non-operating efforts. Special services not detailed in Addendum A will be negotiated with the Board prior to performance of the service.

#### 8. REPORTING RELATIONSHIP

The Board shall designate a single individual who shall be authorized to deal with the Agent on any matters relating to the management of the Property. The Agent is directed not to accept directions or instructions with regard to the management of the Property from anyone else. In the absence of any other designation by the Board, the President of the Board shall have this authority.

The Agent will respond as appropriate to queries from individual owners regarding their personal accounts or general Association matters.

#### 9. LIMITATIONS TO AGENT'S AUTHORITY AND RESPONSIBILITY

The Agent shall have no authority to make any structural changes in the Property or to make any other major alterations or additions in or to any building or equipment therein, except such emergency repairs as may be required because of danger to life or property or which are immediately necessary for the preservation and safety of the Property or the safety of the owners and occupants or are required to avoid the suspension of any necessary service to the Property.

The Agent is given no responsibility for compliance of the Property or any of its equipment with the requirements of any ordinances, laws, rules, or regulations (including those relating to the disposal of solid, liquid and gaseous wastes) of the City and County of Honolulu, State, or Federal Government, or any public authority or official thereof having jurisdiction over it except Agent shall notify the Board promptly, or forward to the Board promptly, any complaints, warnings, notices, or summonses received by it relating to such matters, provided, however, that where the Agent knows of a failure to comply with such law, the Agent will promptly advise the Association. Notwithstanding the foregoing, the Agent shall comply with HRS 467 (Real Estate Brokers and Salespersons) and HRS 514B (Condominiums) and pursuant to HAR, Title 16, Chapter 99 (Real Estate Brokers and Salespersons) and HAR Chapter 107 (Rules Relating to Condominium Property Regimes), to the extent applicable to condominium managing agents.

The Association represents that to the best of its knowledge the Property complies with all applicable ordinances, laws, rules, codes and regulations (collectively, the "Laws"), and authorizes the Agent to disclose the ownership of the Property to any such officials, and agrees to indemnify and hold harmless the Agent, its representatives, servants and employees, of and from all loss, cost, expense and liability whatsoever which may be imposed on them or any of them by reason of any present or future violation or alleged violation of the Laws, unless the Agent is found by appropriate court proceedings to have been negligent or guilty of willful misconduct in such actions.

#### 10. INDEMNIFICATION

##### (a) Indemnification of the Agent

The Association agrees to indemnify and hold the Agent free and harmless from any loss, liability or cost (including reasonable attorneys' fees) which is not covered by insurance proceeds and which the Agent may sustain, incur or assume as a result of, or relative to, any allegations, claims, civil or criminal actions, proceedings, charges or prosecutions (collectively, "Claim") which may be alleged, made, instituted or maintained against the Agent arising out of the Agent's performance of its obligations pursuant to this Agreement, including without limitation, injury to person(s) and damage to property or business, excluding any such uninsured loss, liability or cost (including costs of defense) which is determined to have resulted from the gross negligence, willful misconduct or criminal conduct of the Agent or its agents or employees.

(b) Indemnification of the Association

The Agent agrees to indemnify and hold the Association free and harmless from any loss, liability or cost (including reasonable attorneys' fees) which is not covered by insurance proceeds and which the Association may sustain, incur, or assume as a result of, or relative to, any Claim which may be alleged, made, instituted or maintained against the Association or the Agent, jointly or severally, and which is determined to have resulted from the gross negligence, willful misconduct or criminal conduct of the Agent or its employees, in connection with the Property.

(c) Notice of Claims

Each party shall, immediately after receipt by it of notice of a Claim or the commencement of any action for which indemnity may be sought against the other, notify the other in writing, as set forth in Paragraph 14(e) below, of such Claim or the commencement of such suit. The failure to so notify shall not release a party from any liability which such party may have to the other, except to the extent such other party was prejudiced by or suffered any losses as a result of its failure to provide timely notice. In case any such action shall be brought against the Agent or unit owner and notification was given herein provided, the party from which indemnification is sought shall be entitled, but not required, to participate in and to direct the defense thereof at its own expense including selection of counsel.

(d) Indemnified Parties

The indemnities contained in this Paragraph 10 shall run to the benefit of the Association, the Agent, and each of their respective partners, members, managers, shareholders, directors, officers and employees.

(e) Survival

The provisions of this Paragraph 10 shall survive any cancellation, termination or expiration of this Agreement and shall remain in full force and effect until such time as the applicable statute of limitations shall cut off each Claim that is the subject of the provisions of this Paragraph.

11. EARLY TERMINATION

(a) The Agent or the Association shall have the right to terminate this Agreement by delivering ninety (90) days' prior written notice of termination to the other for any reason or no reason.

(b) If Agent defaults on any material obligation set forth in this Agreement, then the Association may terminate this Agreement by delivering thirty (30) days' prior written notice of termination to Agent. Notwithstanding the foregoing, the Agent shall not be deemed to be in default of this Agreement unless and until the Agent fails to perform or comply with any material terms or provisions of this Agreement for a period of thirty (30) days after the Association's delivery of written notice thereof to the Agent or such longer time as may be required, provided that the Agent shall within said period commence such cure and then continue it to completion.

(c) If a petition in bankruptcy is filed by either the Association or the Agent, or if either shall make an assignment for the benefit of creditors, the other party hereto may terminate this Agreement by serving thirty (30) days' prior written notice to the party who filed for bankruptcy or made an assignment for the benefit of creditors.

(d) Upon the taking of the entire or substantial portion of the Property through condemnation proceedings by any governmental party, either party may terminate this Agreement by serving ninety (90) days' prior written notice of termination to the other party.

## 12. TERMINATION ACCOUNTING

Upon delivery of notice of early termination of this Agreement, or sixty (60) days prior to the expiration of this Agreement, the Agent shall begin transitioning the Property management duties to a party identified by the Board. The Agent shall deliver Property-related records to the Board or the party identified by the Board, subject to the Association's payment of the record retrieval fees set forth on Addendum A and reimbursement of any other delivery costs actually incurred by the Agent. Unless otherwise instructed by the Board in writing, the Agent shall only be responsible for paying those invoices which are received by the Agent as of the date of the last routinely scheduled disbursement prior to the termination of this Agreement, and no other expenses. If the Association has indicated that any received invoices are in dispute, then the Agent shall not pay such invoices and the Association shall indemnify, defend, and hold the Agent harmless from any claims or liabilities relating thereto. The Agent shall, at the Association's expense, arrange for the Association's accountant to conduct a transition audit immediately following the termination of this Agreement.

## 13. CHANGES TO THE AGREEMENT

Changes to this Agreement shall be ineffective and unenforceable unless stated in writing and signed by both parties. Also as noted in Addendum A, Addendum A is subject to change on a periodic basis. Any changes to Addendum A shall not constitute a change to this Agreement. Any oral modifications to the Agreement made between the Agent and the Association shall be ratified by the Board at their next regular meeting.

14. MISCELLANEOUS

(a) Preliminary Dispute Resolution

The parties shall attempt in good faith to resolve any dispute between them promptly by negotiation. Either party may send the other a request to negotiate. If the negotiation does not result in resolution within forty-five (45) days of the notice, the parties shall attempt to resolve the dispute through confidential, nonbinding mediation in Honolulu, Hawaii. The parties agree that a good faith attempt to resolve all issues in mediation is a pre-condition to any further suits or adversarial proceedings of any kind.

(b) Attorneys' Fees

In the event of any suit or other proceeding to construe or enforce any provision of this Agreement or any other agreement to be entered into pursuant hereto, or otherwise in connection with this Agreement, the prevailing party's reasonable attorneys' fees and costs (in addition to all other amounts and relief to which such party may be entitled) shall be paid by the other party hereto.

(c) Terms Used Herein

In this Agreement, unless the context otherwise requires, words in the singular include the plural and in the plural include the singular, and the use of any gender will be construed to include all genders. The word "include" and its derivatives shall not imply any limitation to the items listed thereafter.

(d) No Party Deemed Drafter

This Agreement and each provision hereof have been negotiated among the parties and their respective legal counsel, and shall not be construed against any party as the drafter thereof.

(e) Notices

Any notice given hereunder shall be in writing and shall be deemed effective upon the earlier of personal delivery or the third day after mailing by U.S. certified mail, postage prepaid and return receipt requested, to the addressee's address set forth herein or such address as may be furnished by the addressee in writing for such purpose.

(f) Partial Invalidity

If any provision of this Agreement or the application of any such provision to a party or any circumstances shall be determined by any court of competent jurisdiction to be invalid

and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such party or circumstances other than those to which it is so determined to be invalid and unenforceable shall not be affected thereby, and each provision hereof shall be validated and shall be enforced to the fullest extent permitted by law.

(g) Entire Agreement

This Agreement and the addenda attached hereto constitute the final, exclusive and complete understanding of the parties with respect to the subject matter hereof and supersede any and all prior agreements, understandings and discussions with respect thereto. No amendment, variation or modification of this Agreement shall be valid unless in writing and signed by the party against whom enforcement of any such amendment, variation, or modification is sought.

(h) Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii without regard to conflict of law provisions.

(i) Successors and Assigns

This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

(j) No Partnership

This Agreement shall not be construed to create a partnership or joint venture among the parties hereto.

(k) Addenda

Each Addendum attached hereto is hereby incorporated into and is an integral part of this Agreement.

(l) Counterpart Signatures

This Agreement may be executed in any number of counterparts, each of which when so executed shall constitute an original copy hereof, but all of which together shall constitute one agreement. The submission of a party's signature by facsimile or electronic transmission shall be deemed an "original" signature for purposes of this Agreement.



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*[Signatures appear on the following page.]*

IN WITNESS WHEREOF, the Developer, on behalf of the Association, and the Agent have executed this Agreement as of the date first above written.


THE DEVELOPER ACTING ON BEHALF OF  
THE ASSOCIATION OF UNIT OWNERS OF  
MARY SAVIO MEDICAL PLAZA AT  
NEWTOWN

KMC PARTNERS LLC,  
a Hawaii limited liability company

By KMC MANAGER LLC,  
a Hawaii limited liability company  
Its Manager

By   
Name Peter Savio  
Its Sole Member

HAWAIIANA MANAGEMENT COMPANY,  
LTD., a Hawaii corporation

By   
Name J. Michael Hartley  
Its President