

# KAPILANA ESTATES MAINTENANCE MANAGEMENT AGREEMENT

AGREEMENT made and entered into on 26 **December, 2019** between KAPILANA ESTATES Homeowners' Association, Inc., a Missouri not-for-profit corporation, hereinafter called the Association, and Lily Ka Luna LLC., hereinafter called the Contractor.

WHEREAS, the Association is a nonprofit corporation of condominium owners in KAPILANA ESTATES Homeowner's Association, Inc. in **Camden** County, Missouri, and it deems it to be in its best interest and that of its members to enter into this contract that provides for the Grounds and Building maintenance of KAPILANA ESTATES CONDOMINIUMS.

WHEREAS, it is the purpose of this agreement to provide a broad and complete plan of administrative maintenance for the condominium property described and for the purpose of relieving the officers and directors of the Association from certain day-to-day responsibilities as delegated in this agreement and in the various Declarations of Condominium.

NOW, THEREFORE, in consideration of good and valuable considerations and the mutual promises herein contained, the parties agree as follows:

1. Right to manage the maintenance. The Maintenance Contractor is hereby given right to manage the Maintenance of the Condominium property known as KAPILANA ESTATES Condominiums during the term of this agreement to the exclusion of all others. In performing under this agreement, Contractor is acting as an independent contractor. Contractor shall, at all times, maintain Workman's Compensation and General Liability insurance covering him and all employed. Contractor shall provide proof of such insurance prior to performing any duties under this agreement.

2. Purpose. The purpose of entering into this agreement is to relieve the individual members of the Association from the daily duties and responsibilities of handling the details of managing the Maintenance of the Condominium as set forth herein and for the purpose of providing efficient, competent, professional, comprehensive and continuous maintenance for the condominium property.

3. Term. The agreement shall begin on 1 January, 2019 and continue until 31 December, 2019 unless sooner terminated pursuant to the terms contained herein.

4. Renewal. Negotiations for contract renewal shall be completed by 31 October 2019 and any modifications to the contract content and pricing shall be agreed for the subsequent 12 month period.

5. Duties of Maintenance Contractor  
The Maintenance Contractor shall provide for the maintenance and operation of all improvements and the maintenance of:

- (a) Landscaping to include fertilization of shrubbery, mowing of grounds and leaf and debris pick up and disposal.

- (b) Dock Maintenance, trash, de web, etc.
- (c) Operation of Pool, deck and patio area
- (d) Unit Thermostat checks
- (e) Beach Front Clean up daily
- (f) Buildings and surrounding areas
- (g) Light replacement as needed throughout including docks.
- (h) Winterize and De-winterize pool and docks.

**6. DETAILED DESCRIPTION OF DUTIES**

- I. Pool & pool area
- II. Buildings.
- III. Grounds
- IV. Docks.

**I. Pool & pool area.**

- a. Opening of pool: The pool shall be operational two weeks prior to Memorial Day. Remove, clean, dry and store pool cover. Power wash pool deck, patio and fencing around pool area. Inspect and prepare all pool equipment for operation and install ladders and rails. Check propane level and re order if necessary and verify operation of pool heater. Remove pool and patio furniture and trash container from storage and setup in pool and patio area. Clean all pool furniture and fixtures including access ladders and rails. Bring pool water up to normal operating level and treat with chemicals for operation. Check gates in and out of pool area for proper operation.
- b. Operation of pool: The pool shall be operational from 9 AM seven days per week. On a daily basis, the contractor shall:
  - i. Check, adjust and document chemical balance.
  - ii. Either use the HOA pool cleaner or vacuum and skim and empty all skimmer baskets.
  - iii. Ensure pool remains clear of floating debris throughout operational hours.
  - iv. Check pool pump for proper operation and backwash filter as needed.
  - v. arrange pool furniture; remove trash, empty ash trays.
  - vi. Check and empty patio trash container as required.
  - vii. Lower pool umbrellas during periods of high winds.
- c. At 9PM start the pool cleaner if used and lock both pool gates.
- d. Ensure access gates to pool equipment and chemicals remains locked when not being used for service.
- e. Contractor shall also sweep pool deck once a week and pressure wash pool deck, fence, and pool furniture and patio area once in July. Chemicals are not included in the contract and shall be billed separately.
- f. Closing of pool two weeks after Labor Day at the earliest, prepare pool and pool components for storage. Remove, clean and store inside pool enclosure, all pool

furniture, steps and handrails. Winterize plumbing equipment and cover the pool. Lock all gates into and out of pool area. Remove and store patio trash container. Should weather conditions permit, the pool may be left open for an extended period after approval from the Executive Board (EB).

## II. **Buildings**

- a. Survey all of the condominium buildings and stairs for needed repairs twice weekly from 1st January to 31st March and 1 October to 31 December and daily from 1 April to 30 September. Make minor repairs as needed i.e. screw down loose steps, etc. Minor maintenance actions taking less than 15 minutes or costing less than \$20 shall be considered to be included in the baseline contract. See cost sheet on NON-Routine repairs per hour.
- b. Thermostat Check shall be carried out weekly from 1 November through 30 March, check that thermostats in unoccupied units are set at 60 degrees and furnace is operational. Generally check unit to ensure there are no other obvious maintenance issues.
- c. Maintenance requests: Respond to maintenance issues that are the responsibility of the Association which arise as a result of homeowner request or routine inspection. Engage contractors as required for such maintenance actions anticipated to cost up to \$500 (however, the Association reserves the right to reduce this amount at its discretion).
- d. Routine Services. Coordinate pest control and trash collection schedules in accordance with the respective contracts. Ensure trash collection frequency is increased to two collections one week prior to Memorial Day and reduced to one collection one week after Labor Day. Allow access to and secure unoccupied units for pest control and ensure pest treatment is applied at contracted frequencies to all 75 units and by company selected by the EB.
- e. Light Inspection: During routine Grounds lighting inspection, ensure all house lighting on buildings is functional and replace bulbs and sensors as required.

## III. **Grounds**

Grounds shall include the entrance sign, trailer parking area, all landscaped areas around condominiums, shrubbery and planters around the pool, seawalls, dock entrances and all pedestrian ways, driveways and parking lots, and the beach (the beach shall be taken to mean the exposed gravel area between the sea wall and lake including four feet out so that any nearby floating debris shall be removed from the water). Minor debris collected during cleaning activities may be deposited in the Associations' trash dumpsters. Major items such as dock flotation modules recovered from the beach should be removed from the property as part of this contract.

- a. Grounds inspection: The Grounds shall be inspected every two weeks from January 1 through 31 March and October 1 through December 31. From April 1 through September 30 the property shall be inspected and cleaned daily. Litter shall be removed and any minor tasks (less than 15 minutes) identified shall be completed during the course of the inspection.

- b. Light inspection: Light inspection of all common areas including docks shall be done once per month from 1 January to 30 April and 1 October to 31 December; and every two weeks from May 1 to September 30. Inspection shall ensure functionality and include washing, cleaning, removing cobwebs and emptying insects from globes that are within reach from the ground, replacing exterior building light bulbs and light bulbs along seawall and retaining walls. Should any defective lights be reported as defective in between the scheduled light inspections, minor repairs (less than 15 minutes) shall be completed during the next daily property inspection at no additional charge to the Association. During the months when daily property inspections are not required, the repair shall take place the next day and this effort may be billed to the Association. Light bulbs and photocells are not included in the contract and shall be billed separately. Photo Cell replacement time shall be invoiced as a non-Routine item.
- c. Semi Annual Clean Up In March and October there shall be a spring and fall clean-up of beds/landscaped areas including leaf removal and spring planting of annuals at the pool. The October leaf removal may be delayed with agreement of the EB if it is considered there are still many leaves to fall. Cost of annual planters shall be invoiced as a non routine item.
- d. Routine general grounds care From 1st April to 30th September weed control of the entire complex (including encroaching weeds from neighboring properties) shall be completed every two weeks. Flowers shall be fertilized at appropriate treatment intervals. Shrubs within garden and landscaped areas throughout shall be pruned as required specific to each plant type. Dead or dying shrubs shall be removed as necessary. All rock areas shall be raked once a month to ensure rocks do not encroach on sidewalks, sea walls, etc. All grass areas shall be mowed, edged and trimmed as required. Consumables such as trash bags, weed killer and fertilizer are not to be included in the baseline contract cost.
- e. Routine and Storm-Related leaf, limb and debris removal Leaves and fallen limbs shall be removed from the grounds weekly from 1 April to 30 October, and monthly from November 1 through March 31; unless such debris is blocking walkways or driveways, in which case it should be removed immediately. Debris caused by severe weather shall not be considered routine and clean-up shall be billed separately after agreement with the EB. Low hanging limbs within reach and those interfering with walkways or buildings shall be trimmed back as needed.

#### IV. Docks

- a. Water to those docks that have it shall be turned on and the plumbing checked for leaks before 31 March assuming temperatures make it reasonable to do so. Docks shall be cleaned and inspected twice a week from 1 January to 31 December. Cleaning shall consist of walking the eight docks to pick up litter, trash and clean cobwebs and animal debris from dock platform. Visual inspection of walkways,

platforms, flotation, water lines, bolts, anchor cables and band boards for maintenance concerns shall be done while performing other tasks. Monitor forecast lake levels and adjust dock anchor and shore cables as required. The dock plumbing shall be winterized before 31 October. Winterization shall consist of draining water from potable water lines and filling with an approved anti freeze. The four pitcher pump lake water feed lines on the fish cleaning stations should be removed from the lake to prevent freezing and water should be drained from the pumps.

- b. Maintenance issues: All docks are to be checked for damaged band boards, decking, winches, failed electrical system (tripped breakers), etc.. twice weekly year round, and any significant maintenance requirements should be reported to the EB.. Minor repairs such as screwing down a deck board and any requiring less than 15 minutes or costing less than \$20 shall be considered to be included in the baseline contract. Any issues with owner boats such as covers detached, lifts sinking etc, should be notified to the relevant owner. Engage contractors as required for maintenance actions anticipated to cost up to \$500. Seek written approval (email is acceptable) from a member of the EB for actions anticipated to cost more than \$300. In all cases, itemized invoices shall be submitted to the EB for payment.

Services of Maintenance Contractor Staff. The Maintenance Contractor's staff shall maintain and repair ordinary wear and tear caused by usage and caused by the elements, all sidewalks, roadways, grounds, and landscaping in a first-class condition so that the standards and quality of the development can be maintained. The Contractor shall provide the necessary repairs to preserve the exterior of all buildings and shall maintain, care for, and fertilize the lawns, trees, and shrubbery on the condominium property and which is part of the common elements. It is understood that the EB has the exclusive right to make all final decisions as to any maintenance or repairs, or as to lawn, shrubbery, or landscaping care. The Maintenance Contractor shall not be responsible for any damages caused by any act of God, which shall include, but not be limited to wind, flooding, frost, or freezing, nor shall the Contractor be responsible for any repair to the condominium units or repair of any appliances, plumbing, wiring, or ducts located in the individual units.

## ADMINISTRATION

1. A maximum of 150 hours should be allowed for the administrative function. A monthly report of hours expended shall be provided to the EB and additional hours approved by the EB shall be charged at the rate identified in this contract. The Administrative Function comprises the following activities.
  - i. Coordinate maintenance and ground work with Employees, Contractors, EB, and Committees. Assist HOA Board of Directors with its activities as requested.
  - ii. Oversee the performance of all service providers i.e. pest control, snow removal, trash hauling and others as may be required to ensure performance meets all requirements and specifications as established by the EB.
  - iii. When requested by EB give advice on project specification, identify potential contractors, solicit bids (a minimum of three shall be required), assist with bid evaluation and hire all contractors when bid is approved by the EB. Manage contract execution and ensure quality and fitness for purpose and obtain any required lien waivers at final payment. Projects valued over \$10,000 shall have a service charge of 1% for Contractor to supervise project execution.
  - iv. For Outside Bids of Projects that Contractor may want to bid, all bids shall be requested as closed bids and presented to the EB for final approval of selected contractor. This shall prevent any conflict of interest in contractor negotiations.
  - v. Preparation and delivery (email is sufficient) a report of weekly contract activities for the EB Highlight reasons why any routine tasks have not been accomplished (weather etc.) and plans for rescheduling that work.
  - vi. Respond to all owners concerns and, unless the matter is clearly a private owner issue, report to EB so that any Association implications can be determined. Provide assistance to owners in selecting contractors for private routine maintenance and lock outs etc. Hold keys to all units in secure storage and allow access to condos as requested by owners. A fee of \$35 may be applied for these private services but billing for such private tasks should be sent directly to the owner concerned. In any event, time for these activities should not be charged to the 150 included in the baseline contract. Provide key control and monitor owner authorized access of all units during regular business hours.
  - vii. Provide 24-hours telephone number and response for emergency situations. Any effort required to coordinate the appropriate emergency response shall be considered part of the 150 hours under this administrative function. The EB shall be notified as soon as possible of any emergency situation in order to determine responsibility for payment of any resulting charges.

- viii. Maintain a service request system such that repair and maintenance activities within units can be monitored. A copy of such request shall be delivered to the unit concerned following completion of the work.
  - ix. Coordinate interior and exterior pest control, trash hauling, snow removal, swimming pool winterization, and other services as needed.
  - x. Monitor federal, state and local agency regulations and notify EB of any implications on Association interests that Contractor becomes aware of.
  - xi. Advise the EB of any contravention of the Association Covenants, Rules and Guidelines. Enforce House Rules of the Association.
2. The Contractor shall maintain business-like relations with members of the Association and its officers and shall handle complaints, which may be received from time to time, with reasonable dispatch and shall exercise its best efforts to remedy problems if they exist from time to time.
3. Compensation
- i. Invoicing. Contractor shall invoice on a calendar monthly basis in arrears. Invoices shall be delivered to the HOA Treasurer by the first business day of the month following that invoiced. Settlement terms shall be net 10 days.
  - ii. Invoice Breakdown. Invoices should be itemized as follows:
    - 1. Administration
    - 2. Survey Buildings, check thermostats
    - 3. Inspect & clean lights, clean beach
    - 4. Pool maintenance
    - 5. Dock maintenance
    - 6. Mow, trim shrubs, weed control, rake rock
    - 7. Blow walkways, remove leaves.
    - 8. Non routine maintenance activities (detailed)
  - iii. Pricing. Contractor shall be paid an annual price of **\$32,445** for the baseline contract in twelve equal monthly payments as described herein. The fixed hourly rate to be charged under this contract shall be \$35.
4. Liability of Company. The Contractor shall not, under any circumstances, be liable under or by reason of this agreement either directly or indirectly for any accident, injury, breakage or damage of any machinery or appliances not attributable to the action or inaction of the Contractor or any of its employees or agents; nor shall the Contractor be held responsible for any loss, damage, detention, or delay in furnishing materials or failure to perform its duties as herein provided when such is caused by fire, flood, strike, acts of civil or military authorities or by insurrection or riot, or by any other cause which is unavoidable or beyond the control of the Contractor or of any of its employees or agents.

5. Emergency repair. In the event of an emergency in which damage is done or being threatened to the condominium, the Contractor shall have authority to act for the Association in meeting such emergency. Said emergencies may include, with limitation, fires, tornadoes, wars, or other acts which require immediate action. Any costs incurred by the Contractor pursuant to this paragraph shall be reimbursed by the Association.
6. Responsibility for replacement. The Contractor has contracted to maintain, repair and provide certain services to the Association in connection with ordinary wear, tear, and usage; but the Contractor by this contract does not assume nor contract to replace any streets, sidewalks, water pipes, sewer lines, light poles, underground wiring, or any building of any type situated in the common property of unit owners who belong to this Association. This provision, however, does not release the Contractor for liability to any of the aforesaid for damage to or for which replacement is required due to its negligence or that of its employees or agents.
7. Compliance with the Law: The Contractor shall at all times during the term of this Agreement comply fully with all applicable laws, statutes, ordinances, rules and regulations. Contractor shall obtain and keep in force all permits, licenses, and authorizations required for the maintenance, repair, replacement, restoration, improvements, operation, and administration of the Association.
8. Insurance: The Contractor shall carry and maintain at its own expense comprehensive liability coverage in the minimum amount of \$1,000,000. In addition, Company shall have insurance coverage for employee dishonesty. The Company shall at all times maintain Workers Compensation insurance coverage for its workers.
9. Indemnification: The Association agrees to indemnify and hold Contractor harmless from all claims, actions, causes of action, losses, including reasonable attorney fees and court costs arising out of or in any way related to any matter and/or endeavor undertaken by the Contractor under and/or pursuant to the terms of this Agreement and/or in accordance with the direction of the Executive Board to the extent such claims, actions, causes of actions, and losses are not otherwise covered by a policy of insurance which actually defends and pays therefore and so long as such claims, actions, causes of action, and losses are not occasioned by the Contractor's willful wrongdoing or criminal wrongdoing.
10. Contractor agrees to indemnify and hold Association harmless of and from all claims, actions, causes of action, and losses including reasonable attorney fees and court costs arising out of or in conjunction with any matter and/or endeavor undertaken by the Company outside the scope and authority of the terms of this Agreement and/or in violation of the direction of the Executive Board to the extent that such claims, actions, causes of action, and losses are not otherwise covered by a policy of insurance which actually defends and pays therefore and so long as such claims, actions, causes of action, and losses are not occasioned by the Association's willful wrongdoing or criminal wrongdoing.
11. Amendment or modifications. This agreement constitutes the entire agreement between the parties hereto and no variance or modification hereto shall be valid or enforceable,

except by an amendment or supplemental agreement in writing executed or approved in the same manner as this agreement.

12. Severability. Invalidation of any portion of this agreement or any provision shall in no way affect any other provision of the remainder of this agreement, which shall remain in full force and effect.
13. Binding effect. This agreement shall be binding upon the successors and assigns of the parties hereto and may not be assigned by the Contractor without the written consent of the Association.
14. Termination. Notwithstanding anything contained herein to the contrary, Association may terminate this Agreement with a 60 day no cause, no cost termination.
15. Absence. Any periods of absence from the property shall be agreed with the Association and shall not exceed 21 cumulative days. A temporary responsible person shall be appointed and contact details notified to the EB.

IN WITNESS WHEREOF, the Contractor and the Association have caused this instrument to be executed by its duly authorized officer or agent.

ASSOCIATION:

Contractor::

KAPILANA ESTATES  
HOMEOWNERS'  
ASSOCIATION, INC.

Lily Ka Luna LLC.

By \_\_\_\_\_  
Diane Prenger, President

By  \_\_\_\_\_  
Brian Roberts, Owner

Date \_\_\_\_\_

Date 12/27/18

Attest \_\_\_\_\_  
Bill McGowan, Treasurer

Date \_\_\_\_\_