

R-656

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

JUN 14 1999 08:02 AM

Doc No(s) 99-094202

/s/ CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL (X) PICKUP ()

Munekiyo Arakawa & Hiraga, Inc.
305 High Street, Suite 104
Wailuku, Hawaii 96793

(Telephone No.: 244-2015)

UNILATERAL AGREEMENT AND DECLARATION

PARTIES TO DOCUMENT:

Declarant: KCOM CORP.

PROPERTY DESCRIPTION

TMK: (II) 3-9-045:12, 14 and 15

LIBER/PAGE:

DOCUMENT NO.:

TRANSFER CERTIFICATE OF
TITLE NO(S).:

UNILATERAL AGREEMENT AND DECLARATION

THIS INDENTURE, made this 18th day of May, 1999, by KCOM Corp., a Hawaii corporation, whose place of business and mailing address is 99-1379 Koaha Place, Aiea, Hawaii 96701, ("Declarant"), and who is the owner of record of those certain parcels of land located at Kihei, Maui, Hawaii, comprised of approximately 15.97 acres, more or less, and identified for real property tax purposes by Tax Map Key No. (II) 3-9-045:12, 3-9-045:14 and 3-9-045:15.

W I T N E S S E I H

WHEREAS, the Maui Planning Commission of the County of Maui, State of Hawaii, ("COMMISSION"), granted Declarant's request for an Off-Site Parking Approval, OSP 990001 (the "Approval") on April 13, 1999 for 53 parking stalls located at TMK 3-9-045:15 (Lot 1-B), formerly a portion of TMK 3-9-045:12 (Lot 1) for the Kihei Commercial Center located at TMK 3-9-045:14, formerly TMK 3-9-045:12 (Lot 2); and

WHEREAS, Declarant has agreed to execute this instrument pursuant to and in fulfillment of Condition No. 2 of the Approval;

NOW, THEREFORE, Declarant hereby makes the following Declaration:

1. That this Declaration is made pursuant to and in fulfillment of Condition No. 2 of Declarant's Off-Site Parking Approval, OSP 990001, granted on April 13, 1999;
2. That the 53 off-site parking stalls are and shall be held subject to the covenants, conditions, and restrictions contained herein and that all of such covenants, conditions, and restrictions shall be effective as to, from and after the recording of this

Declaration with the Bureau of Conveyances or Land Court of the State of Hawaii, as the case may be, without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant or the like with respect thereto by Declarant, the County of Maui, or any successor or assign, as the case may be, of any of them, that the acquisition of any right, title or interest in or with respect to the Property by any person or persons, entity or entities, whomsoever, shall be deemed to constitute the acceptance of all of the covenants, conditions, and restrictions of this Declaration by such person or persons, entity or entities, and that upon any transfer of any right, title, or interest in or with respect to the Property the same shall be subject to, and the transferee shall assume and be bound and obligated to observe and perform, all of the covenants, conditions, and restrictions of this Declaration as the same pertains to said right, title or interest acquired by said transferee;

3. This Declaration and all of the covenants, conditions, and restrictions contained herein shall continue to be effective as to and run with the land in perpetuity, or until the same is released as to the Parcel or any part thereof by the County;

4. The term "Declarant" and any pronoun in reference thereto, wherever used herein, shall be construed to mean the singular or the plural, the masculine or the feminine or the neuter, and vice versa, and shall include the "Declarant", Declarant's heirs, devisees, executors, administrators, personal representatives, successors, and assigns;

5. That the Declaration shall be recorded in, and shall become fully effective on the effective date upon recordation, in the Bureau of Conveyances or

office of the Assistant Registrar of the Land Court of the State of Hawaii, as the case may be;

6. The Parcel shall be subject to the following restrictions:
 - (a) That 53 off-site parking stalls to be located on TMK 3-9-045:15 (Lot 1-B), formerly a portion of TMK 3-9-045:012 (Lot 1) shall be reserved for the exclusive use by the patrons and employees of the Kihei Commercial Center located on TMK 3-9-045:14, formerly TMK 3-9-045:012 (Lot 2). Each parking stall shall be clearly marked as parking for the Kihei Commercial Center.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Agreement shall run with the land identified hereinabove and shall bind and constitute notice to all subsequent assignees, and the County of Maui shall have the right to enforce this Declaration by appropriate action at law or suit in equity against all such persons responsible for the observance and performance of the covenants, conditions and restrictions contained herein; provided, however, that the Declarant, its successors or assigns, may at any time and from time to time file a petition for the removal or modification of said covenants, conditions and restrictions, such petition to be processed through the Planning Department of the County of Maui.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the day and year first written above.

KCOM CORP., a Hawaii corporation



Valentine Peroff, Jr.
Its President

APPROVED AS TO FORM AND LEGALITY:



Kelly Anne Cairns
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this 10th day of MAU, 1999, before me personally appeared Valentine Peroff, Jr., to me personally known, who, being by me duly sworn, did say that he is the President of KCOM CORP., a Hawaii corporation, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

Carole K. DaMigcon

Carole K. DaMigcon
Notary Public, State of Hawaii

My Commission Expires: Dec. 2, 1999