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LAND COURT

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KCCC, LLC
99-880 Iwaena Street
Aiea, Hawaii 96701

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**BYLAWS
OF THE ASSOCIATION OF UNIT OWNERS
OF
KIHEI COMMERCIAL PLAZA**

WHEREAS, KCCC, LLC, a Hawaii limited liability company (the "**Developer**"), whose mailing address is at 99-880 Iwaena Street, Aiea, Hawaii 96701, is the owner in fee simple of the land described in Exhibit "A" attached hereto and made a part hereof (the "**Land**");

WHEREAS, the Developer intends to develop the Land and the improvements thereon as a condominium project known as "Kihei Commercial Plaza" (the "**Project**") in accordance with plans recorded in the Bureau of Conveyances of the State of Hawaii (the "**Bureau**") as Condominium File Plan No. 4177 (the "**Condominium Map**"); and

WHEREAS, the Developer has submitted all of its interest in the Land and all improvements thereon to a Condominium Property Regime as established by Chapter 514A, Hawaii Revised Statutes, as amended (the "**Act**"), by Declaration of Condominium Property Regime Kihei Commercial Plaza dated of even date herewith, recorded in said Bureau concurrently herewith (such Declaration of Condominium Property Regime, as the same may be amended from time to time, is hereinafter referred to as the "**Declaration**");

NOW, THEREFORE, the Developer hereby declares that the Land and all improvements now or hereafter placed thereon are and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the Declaration and to the following Bylaws of the Association of Unit Owners of Kihei Commercial Plaza, as the same may be lawfully amended from time to time (the "**Bylaws**"), all of which are declared to be in furtherance of the plan set forth in the Declaration and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Project. These Bylaws shall constitute covenants running with the Land and shall be binding upon and inure to the benefit of the Developer, its successors and assigns, and all present and future Unit Owners, mortgagees, tenants, and occupants of the Units and any other person who may use any part of the Project.

ARTICLE I

DEFINITIONS

SECTION 1.1 **Definitions.** The terms used in these Bylaws shall have the meanings given to them in the Act, except as expressly provided otherwise below:

"**Association**" means the Association of Unit Owners of Kihei Commercial Plaza.

"**Board of Directors**" or "**Board**" means the Board of Directors of the Association.

"**Bylaws**" means these Bylaws of the Association of Unit Owners of Kihei Commercial Plaza, as the same may be amended from time to time.

"Common elements" means those parts of the Project designated in the Declaration as common elements, including the limited common elements.

"Declaration" means the Declaration of Condominium Property Regime Kihei Commercial Plaza, recorded in the Bureau concurrently with these Bylaws, as the same may be amended from time to time.

"Deed" refers to the deed of a Unit from the Developer to a Unit Owner recorded in the Bureau.

"Developer" means KCCC, LLC, a Hawaii limited liability company.

"Limited common elements" means those parts of the Project designated in the Declaration as limited common elements.

"Majority of Unit Owners" has the meaning given to such term in Section 3.6 of these Bylaws.

"Mortgagee of a Unit" or **"Unit mortgagee"** means the holder of a mortgage encumbering the fee title to, or any recorded leasehold interest in, a unit.

"Person" (whether or not capitalized) means any individual, corporation, association, partnership, limited liability company, agency, trust, institution, organization, or other entity, and his, her, or its legal representative.

"Project" means and includes the Land and all improvements thereon and all easements, rights and appurtenances belonging thereto and all articles of personal property intended for use in connection therewith.

"Record", "recorded" or "recordation" means to record or to be recorded in the Bureau.

"Rules and Regulations" means the rules and regulations adopted pursuant to these Bylaws, as the same may be amended from time to time, governing the details of the operation and use of the Project, and certain details regarding the use of the units.

"Unit" or "Units" refers to the Units identified in and created under the Declaration.

"Unit Owner" or "Owner" means a person or entity owning a Unit and the common interest appertaining thereto severally or as co-tenant, to the extent of such interest owned; provided that to such extent and for such purposes, including the exercise of voting rights, as shall be provided by the terms of any lease recorded in the Bureau, a lessee or sublessee of a Unit shall be deemed to be the Owner of such Unit to the extent provided in such lease. The vendee of a Unit pursuant to an agreement of sale recorded in the Bureau shall have the rights of an Owner, including the right to vote; provided that the vendor may retain the right to vote

on matters substantially affecting vendor's interest in the Unit, as provided in Section 514A-83 of the Act. Where an Owner is a corporation, trust, limited liability company or partnership, the method for designating the natural person who shall act as and for the Owner is as set forth in Section 3.7 of these Bylaws. In the event that any interest in a Unit is transferred to a trustee under a land title-holding trust (under which substantially all powers of management, operation and control of the Unit remain vested in the trust beneficiary or beneficiaries), the beneficiary or beneficiaries of any such trust shall be deemed to be the Owner or Owners of the Unit to the extent of their interest therein, except insofar as the trustee notifies the Association otherwise in writing. A transferee of the beneficial interest in any such trust shall have all of the rights and duties of an Owner, when notice of such transfer is given to the Association by the trustee. Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purposes; and the transferor may continue to be recognized by the Association as the Owner, and shall have all of the rights and obligations of ownership.

ARTICLE II

APPLICATION AND ENFORCEMENT

SECTION 2.1 Administration and Operation. The administration and operation of the Project shall be governed by the Declaration, these Bylaws, the Rules and Regulations, the Act and all other applicable laws.

SECTION 2.2 Personal Application. All present and future Owners, mortgagees, tenants and occupants of Units and their guests and employees, and any other person who may use the Project in any manner are subject to these Bylaws, the Declaration and the Rules and Regulations, as each may be amended from time to time. The acceptance of a Deed, conveyance, mortgage or similar instrument, or the acquisition of any interest in the Project, or the entry into or the act of occupancy of a Unit, shall constitute an agreement that the provisions of these Bylaws, the Declaration, and the Rules and Regulations are accepted, ratified and shall be complied with.

SECTION 2.3 Compliance with Declaration, Bylaws, Rules and Regulations, etc. Each Unit Owner, such Unit Owner's employees, tenants, guests, invitees, and any other persons using the Project shall comply strictly with the covenants, conditions and restrictions set forth in the Declaration, these Bylaws, that certain Amendment and Restatement of Declaration of Protective Covenants, Conditions and Restrictions for Kihei Commercial Roadways Association dated October 6, 2004 (the "**Roadways Declaration**"), more particularly described in Exhibit "A" attached hereto, and the Rules and Regulations. Each Unit Owner is fully responsible for ensuring that all employees, tenants, guests, and invitees of the Unit Owner comply strictly with such covenants, conditions and restrictions, and shall be personally liable for any such noncompliance. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the managing agent or Board of Directors on behalf of the Association or, in a proper case, by an aggrieved Unit Owner.

SECTION 2.4 Attorneys' Fees and Expenses of Enforcement. All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for:

- (1) Collecting any delinquent assessments against any Owner's Unit;
- (2) Foreclosing any lien thereon; or
- (3) Enforcing any provision of the Declaration, these Bylaws, the Roadways Declaration, the Rules and Regulations, the Act or the rules and regulations of the Real Estate Branch of the State of Hawaii Department of Commerce and Consumer Affairs;

against a Unit Owner, such Unit Owner's employees, tenants, guests, or invitees, shall be promptly paid on demand, by such Unit Owner, to the Association; provided that if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by such Unit Owner as a result of the action of the Association, shall be promptly paid on demand to such Unit Owner by the Association.

If any claim by an Owner in any action against the Association, any of its officers or the Board of Directors, to enforce any provision of the Declaration, these Bylaws, the Roadways Declaration, the Rules and Regulations or the Act is substantiated, then all reasonable and necessary expenses, costs and attorneys' fees incurred by such Owner shall be awarded to such Owner; provided that no such award shall be made in any derivative action unless:

- (1) The Owner first shall have demanded and allowed reasonable time for the Board of Directors to pursue such enforcement; or
- (2) The Owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board of Directors would have been fruitless.

SECTION 2.5 Conflicts. These Bylaws are set forth to comply with the requirements of the Act. In case any of these Bylaws conflict with the Act or the Declaration, the provisions of the Act or the Declaration, as the case may be, shall control.

ARTICLE III

ASSOCIATION

SECTION 3.1 Purpose of Association; Qualifications for Membership. The Association shall be organized and operated for the purposes of managing, maintaining, acquiring, constructing and caring for the Association property which includes the common elements, funds and other property held by the Association or the nominee of the Association, property owned in common by one (1) or more Owners, but held by the Association; and

property within or forming part of the Project privately held by one (1) or more Owners, but which may be subject to a common maintenance assessment by the Association for such purposes as insurance; and property owned by a government agency, public utility or other third party, and used for the benefit of the Association or one (1) or more Owners. All Unit Owners of the Project shall constitute the Association. The Owner of any Unit, upon acquiring title thereto, shall automatically become a member of the Association and shall remain a member thereof until such time as such Owner's ownership of such Unit ceases for any reason, or until the Association is dissolved by termination of the condominium property regime established by the Declaration, at which time his membership in the Association shall automatically cease. Notwithstanding anything to the contrary provided herein, the Developer shall be entitled to vote and act on all matters, as the Association and the Board of Directors, until such time as the first meeting of the Association. Thereafter, the Developer, as the owner of any unsold Units, shall be entitled to vote the interest of each such Unit.

SECTION 3.2 First Meeting; Annual Meetings. The first annual meeting of the Association shall be held not later than one hundred eighty (180) days after recordation of the first Unit conveyance, provided forty percent (40%) or more of the Project has been sold and recorded. If forty percent (40%) of the Project is not sold and recorded by the end of one year after the first Unit conveyance, an annual meeting shall be called, provided ten percent (10%) of the Unit Owners so request. Thereafter, the annual meetings of the Association shall be held within three (3) calendar months following the end of the fiscal year selected by the Board; and if the annual meeting date for any year shall not be held or called within said period, then the annual meeting for such year shall be held on the first day of the fourth calendar month following the end of the fiscal year selected by the Board. At such annual meetings, including the first annual meeting, the Board of Directors shall be elected by ballot of the Unit Owners in accordance with Article IV, Section 4.3 of these Bylaws. The Unit Owners may transact such other business at such meetings as may properly come before them.

SECTION 3.3 Place of Meetings. All meetings of the Association shall be held at the address of the Project, or elsewhere within the State of Hawaii convenient to the Unit Owners as determined by the Board of Directors.

SECTION 3.4 Method of Calling Special Meetings. Except as otherwise provided herein, special meetings of the Association shall be held at any time upon the call of the President or upon written request signed by at least twenty-five percent (25%) of the Unit Owners and presented to the Secretary. Upon the receipt of such call or written request, the Secretary shall send written notice of the meeting to all Unit Owners and the meeting shall be held no earlier than fourteen (14) and no later than sixty (60) days from the receipt of such call or written request, at such time, date, and place as shall be determined by the Board.

SECTION 3.5 Notice of Meetings. Written notice of all Association meetings, whether annual or special, shall be given to each Unit Owner at least fourteen (14) days but not more than ninety (90) days prior to the meeting, in any of the following ways: (a) by delivering it personally to the Unit Owner; or (b) by mailing it, postage prepaid, addressed to the Unit Owner at the address of such Owner as it appears on the Association's record of

ownership; or (c) by sending it by email to an email address designated by the Unit Owner. The written notice of meeting shall contain at least: the date, time and place of the meeting, the items on the agenda for the meeting, and a standard proxy form authorized by the Association, if any. Upon notice being given in accordance with the provisions of this Section, the failure of any member of the Association to receive actual notice of any meeting shall not in any way invalidate the meeting or proceedings thereat. The presence of a Unit Owner or Unit mortgagee in person or by proxy at any meeting shall be deemed a waiver of any required notice to such Owner or Unit mortgagee, unless such Owner or Unit mortgagee shall at the opening thereof object to the holding of such meeting because of the failure to give notice in accordance with the provisions hereof.

SECTION 3.6 **Quorum.** At all meetings of the Association, the presence, in person or by proxy, of a Majority of Unit Owners shall constitute a quorum, and the acts of a Majority of the Unit Owners, present in person or by proxy, at any meeting of the Association at which a quorum is present, shall be binding upon all Unit Owners for all purposes, except as otherwise provided in the Declaration or in these Bylaws. The term "Majority of Unit Owners" herein means the Owners of Units to which are appurtenant more than fifty percent (50%) of the common interests of the Project; and any other specified percentage of Unit Owners means the Owners of Units to which are appurtenant such specified percentage of the common interests.

SECTION 3.7 **Voting.** Voting shall be on a percentage basis, and the percentage of the total vote to which each Unit is entitled shall be the percentage of the common interest assigned to such Unit pursuant to the Declaration. Votes allocated to any area which constitutes a common element under Section 514A-13(h) of the Act shall not be cast at any Association meeting, whether or not such area is designated as a common element in the Declaration. Votes may be cast in person or by proxy by the Unit Owners. A personal representative, executor, administrator, guardian, beneficiary or trustee may vote in person or by proxy, at any meeting of the Association, the vote for any Unit owned or controlled by him in such capacity; provided that prior to such meeting he shall first present to the Secretary written evidence, satisfactory to the Board of Directors, that he owns or controls such Unit in such capacity. The vote for any Unit owned by two or more persons may be exercised by any one of them present at any meeting, in the absence of protest by the other or others; and, in case of protest, each co-tenant shall be entitled to only a share of such vote, in proportion to that co-tenant's share of ownership in such Unit. In the case of joint tenants, each Owner's share of ownership for voting purposes shall be deemed to be a fraction of the total vote allocated to the Unit, the numerator of which shall be one (1) and the denominator of which shall be the total number of joint owners of the Unit. In the case of tenants by the entirety, each co-tenant shall have one-half (1/2) of the total vote allocated to the Unit. Corporations, general partnerships, limited partnerships and limited liability companies which are Owners shall designate an officer, general partner, manager or member for the purpose of exercising the vote; and prior to any meeting at which such representative intends to vote, the representative shall present to the Secretary written evidence satisfactory to the Board of his or her designation and authority as representative of such corporation, general partnership, limited partnership or limited liability company.

SECTION 3.8 Proxies and Pledges.

(a) No managing agent shall solicit, for use by the managing agent, any proxies from any Unit Owner, nor shall the managing agent cast any proxy vote at any Association meeting, except for the purpose of establishing a quorum. Before the Board uses Association funds to distribute proxies, the Board shall first post notice of its intent to distribute proxies, in prominent locations within the Project at least thirty (30) days prior to its distribution of proxies; provided that if the Board of Directors receives, within seven (7) days of the posted notice, a request by any Owner for use of Association funds to solicit proxies accompanied by a statement, the Board of Directors shall:

- (i) Mail to all Owners a proxy form containing either the names of all Owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or
- (ii) Mail to all Owners a proxy form containing no names, but accompanied by a list of names of all Owners who have requested the use of Association funds for soliciting proxies and their statements.

The statement shall not exceed one hundred words, indicating the Owner's qualifications to serve on the Board of Directors and reasons for wanting to receive proxies.

(b) The authority given by any Unit Owner to another person to represent such Unit Owner at meetings of the Association shall be by written proxy satisfying the requirements of Section 514A-83.2 of the Act, signed by such Owner and filed with the Secretary no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and must contain at least: the name of the Association, the date of the meeting of the Association, the printed name and signature of the person or persons giving the proxy, the Unit or Units for which the proxy is given, the printed name of the person or entity to whom the proxy is given, and the date that the proxy is given.

(c) A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the Owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the applicable Unit.

(d) A proxy must contain boxes wherein the Owner has indicated that the proxy is given (i) for quorum purposes only; (ii) to the individual whose name is printed on a line next to this box; (iii) to the Board as a whole and that the vote be made on the basis of the preference of the majority of the board; or (iv) to those directors present at the meeting and the vote to be shared with each Board member receiving an equal percentage. Proxy forms which are not so marked shall be considered a choice by the Owner that the vote be made on the basis of the preference of the majority of the Board.

(e) Neither the Board nor any member of the Board shall use Association funds to solicit proxies, except for the distribution of proxies as set forth in Section 514A-82(b)(4) of the Act; provided that this shall not prevent an individual member of the Board from exercising his right as a Unit Owner under Section 514A-82(b)(4) of the Act.

(f) Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any Unit or interest therein, a copy of which is filed with the Board of Directors, shall be exercised only until the written release or other termination thereof is filed with the Board of Directors.

(g) A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original proxy.

(h) Nothing in subsections (b), (c), (d), (e), (f) or (g) of this Section 3.8 shall affect the holder of any proxy under a first mortgage of record or under an agreement of sale of any Unit or interest therein.

(i) Any one of two or more persons owning any Unit may give or revoke a proxy for the entire vote of such Unit. No proxy may be given by a co-Owner or co-Owners for only a share of a Unit's vote. Any proxy given by a co-Owner or co-Owners of a Unit may be exercised to cast the entire vote for such Unit, in the absence of protest by another co-Owner or the holder of a proxy from another co-Owner; and, in case of such protest, the entire vote allocated to such Unit shall not be counted except for purposes of establishing a quorum.

SECTION 3.9 Adjournment of Meetings. Any meeting of the Association may from time to time be adjourned to a time not less than forty-eight (48) hours from the time the original meeting was called, as may be determined by a majority of the Unit Owners present, without any further notice other than the announcement at such meeting. If a quorum is present upon reconvening such adjourned meeting, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

SECTION 3.10 Order of Business. The order of business at all meetings of the Association shall be generally as follows:

- (a) Roll call;
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting (unless waived by vote of a majority of the Association members present at such meeting);
- (d) Reports of officers;

- (e) Report of Board of Directors;
- (f) Reports of committees;
- (g) Election of members of the Board of Directors (when so required);
- (h) Unfinished business; and
- (i) New business.

SECTION 3.11 Conduct of Association Meetings. All meetings of the Association shall be conducted in accordance with the most current edition of Robert's Rules of Order.

SECTION 3.12 Registration of Association. Within thirty (30) days of the first meeting of the Association, the Association shall register with the Real Estate Branch of the State of Hawaii Department of Commerce and Consumer Affairs (the "REB"), as required by Section 514A-95.1 of the Act. Prior to June 30 of each odd-numbered year, the Association, through the managing agent, if any, shall pay to the REB a registration fee as prescribed by rules adopted by the Director of Commerce and Consumer Affairs, and as required by Section 514A-95.1 of the Act.

ARTICLE IV

BOARD OF DIRECTORS

SECTION 4.1 Powers and Duties. The affairs of the Association, except as otherwise provided by the Act, the Declaration or these Bylaws shall be conducted and managed by a Board of Directors. Each Director shall owe the Association a fiduciary duty in the performance of the Director's responsibilities. Pursuant to Section 6.3 of these Bylaws, the Board may employ a responsible corporate managing agent, with such powers and duties of the Board as shall be delegated by the Board.

SECTION 4.2 Number; Qualification; and Compensation.

(a) The Board of Directors shall initially be constituted of five (5) persons, each of whom shall be an Owner, co-Owner, vendee under an agreement of sale, or an officer of any corporate Owner of a Unit or, in the case of fiduciary owners, the fiduciary or officers of corporate fiduciaries. The partners in a general partnership, the general partners of a limited partnership, the managing member of a manager-managed limited liability company and any member of a member-managed limited liability company shall be deemed to be the Owners of a Unit for this purpose.

(b) There shall be no more than one representative on the Board of Directors from any one Unit.

(c) No employee of the managing agent of the Project shall serve on the Board of Directors.

(d) No member of the Board of Directors shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses incurred in the course of acting as such Director if such expenses are necessary, all Owners are informed in advance that such expenses will be incurred and why the expenses are deemed necessary, and a Majority of Unit Owners approve the actual amount of the expenses.

SECTION 4.3 Method of Electing the Board. Election of Directors shall be by cumulative voting by secret ballot at each annual meeting of the Unit Owners and any special meeting called for that purpose; provided, however, that at any meeting at which Directors are to be elected, the requirement that voting for Directors be by secret ballot may be waived by the vote of a majority of those persons present and entitled to vote at such meeting.

SECTION 4.4 Term of Office. At the first annual meeting of the Unit Owners, the term of office of the two (2) members of the Board receiving the greatest number of votes shall be fixed at three (3) years; the term of office of the two (2) members of the Board receiving the third and fourth greatest numbers of votes shall be fixed at two (2) years; and the term of office of the member of the Board receiving the next greatest number of votes shall be fixed at one (1) year. After the expiration of the term of office of each of the initial members, each successor member of the Board shall be elected to serve for a term of three (3) years. Each member of the Board shall continue to exercise the powers and duties of the office until his successor shall have been elected by the Unit Owners.

SECTION 4.5 Removal of Directors. At any regular or special meeting of Unit Owners, any one or more of the members of the Board of Directors may be removed with or without cause by a majority of the Unit Owners, and a successor shall then and there be elected for the remainder of the term to fill the vacancy thus created; provided, however, that an individual director shall not be removed (unless the entire Board is removed) if Owners having sufficient votes to elect one director by cumulative voting present at such meeting shall vote against his removal. A member of the Board of Directors, whose removal is proposed by the Unit Owners, shall be given an opportunity to be heard at the meeting. If such removal and replacement is to occur at a special meeting, the call for such meeting shall be by the President or by a petition to the Secretary or managing agent, signed by not less than twenty-five percent (25%) of the Unit Owners as shown in the Association's record of ownership; provided that if the Secretary or managing agent does not send out the notices for the special meeting within fourteen (14) days of receipt of the petition, the petitioners shall have the authority to set the time, date and place for the special meeting and the authority to send out notices for the special meeting, in accordance with the requirements for notice contained herein. Except as otherwise provided in the Act, such meeting for the removal from office and replacement of directors shall be scheduled, noticed and conducted in accordance with these Bylaws.

SECTION 4.6 Annual Meetings. The Board of Directors shall meet at least once a year. Each annual meeting of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association. At such meeting the Board shall elect the officers of the Association for the ensuing year. The first meeting of the first elected Board shall be held at the place of and immediately following the first annual meeting of the Association as provided in Section 3.2 of these Bylaws.

SECTION 4.7 Proxy Vote. Unless permitted by law, a director shall not cast any proxy vote at any Board meeting.

SECTION 4.8 Conflict of Interest. Unless permitted by law, a director shall not vote at any Board meeting on any issue in which the director has a conflict of interest. If there is any disagreement as to whether or not there exists a conflict of interest, the determination of whether a conflict of interest exists as to a particular director or directors shall be made by a majority of the non-interested directors, which determination shall be conclusive and binding on all parties.

SECTION 4.9 Disclosure of Conflict. A director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest, prior to a vote on that issue at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

SECTION 4.10 Board Meetings. All meetings of the Board of Directors shall be conducted in accordance with the most current edition of Robert's Rules of Order. All meetings of the Board of Directors, other than executive sessions, shall be open to all members of the Association, and Association members who are not on the Board of Directors may participate in any deliberation or discussion of the Board of Directors, unless a majority of a quorum of the Board of Directors votes otherwise. The Board of Directors, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters or litigation in which the Association is or may become involved. The nature of any and all business to be considered in executive session shall first be announced in open session.

SECTION 4.11 Regular Meetings. Regular meetings of the Board of Directors may be held at the address of the Project, or elsewhere within the State of Hawaii and at such time as shall be determined from time to time by the Board of Directors. Unless the Board of Directors determines otherwise, meetings shall be held quarterly; provided, however, that at least two (2) regular meetings, in addition to the annual meeting of the Board, shall be held during each fiscal year. Notice of the time and place for each regular meeting of the Board of Directors shall be given to each member of the Board of Directors in writing at least five (5) business days prior to the day named for such meeting.

SECTION 4.12 Special Meetings. Special meetings of the Board of Directors may be called by the President, or any one Director, on ten (10) business days' written notice

to each member of the Board of Directors, which notice shall state the time, place and purpose of the meeting.

SECTION 4.13 Notice of Board Meetings. Whenever practicable, notice of all Board meetings shall be posted by the managing agent or a member of the Board, in prominent locations within the Project, seventy-two (72) hours prior to the meeting or simultaneously with notice to the Board. If posting is not practicable, notice of Board meetings shall be given to the Owners by the managing agent or the Board, at least seventy-two (72) hours prior to the meeting, in such manner as the Board deems appropriate under the circumstances.

SECTION 4.14 Waiver of Notice. Any member of the Board of Directors may at any time waive notice of any meeting of the Board, and such waiver shall be deemed equivalent to the timely receipt of such notice. Attendance by a member of the Board of Directors at any meeting of the Board of Directors shall constitute a waiver of notice by him of the time and place thereof. If all the members of the Board of Directors are present at any meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.

SECTION 4.15 Minutes of Meetings. The minutes of meetings of the Board of Directors shall include the recorded vote of each member of the Board of Directors on all motions, except motions voted on in executive session.

SECTION 4.16 Travel Expenses. (a) Directors shall not expend Association funds for their travel or per diem, unless the expenses are necessary, Owners are informed in advance that such expenses will be incurred and why the expenses are deemed necessary, and a majority of the Unit Owners approve the actual amount of the expenses.

(b) Members of the Board may expend Association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget includes these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State of Hawaii, all other travel expenses incurred under this subsection 4.16(b) shall be subject to the requirements of the foregoing subsection 4.16(a) of these Bylaws.

SECTION 4.17 Decisions of Board of Directors. At all meetings of the Board of Directors, a majority of the members thereof shall constitute a quorum for the transaction of business. The vote of a majority of directors present at a meeting at which a quorum of directors is present shall constitute the decision of the Board. If at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. Following such adjournment, at any reconvened meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

SECTION 4.18 Vacancies. Vacancies in the Board of Directors, caused by any reason other than the removal of a member thereof by a vote of the Unit Owners, shall be filled by a vote of a majority of the remaining members at any meeting of the Board at which a majority of the remaining members are present, called for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum. Each person so elected shall hold office until the next annual meeting of the Association, at which time a successor director shall be elected by the Unit Owners. Any successor director elected by the Unit Owners in the foregoing manner shall serve for the remaining unexpired term in respect of which the vacancy occurred.

SECTION 4.19 Indemnity of Directors, Officers, Employees and Agents. To the fullest extent permitted by law, the Association shall indemnify against liability asserted or incurred, and may advance expenses to, each individual serving as a former or current director of the Association, who is made a party to a proceeding against such individual, in such individual's capacity as a director or arising from such individual's status as a director. The Association shall also indemnify, and may advance expenses to, each individual serving as a former or current officer of the Association, to the same extent as if such individual were serving as a director. The Association may also, by contract approved by vote of a majority of the Board of Directors or by vote of a majority of the Board of Directors, indemnify to the same extent as a director, an individual serving as an employee or agent of the Association, who is made a party to a proceeding against the individual, in the individual's capacity as an employee or agent of the Association or arising from the individual's status as an employee or agent of the Association. The provisions of Sections 414D-160 through 414D-163, 414D-165 and 414D-167 of the Hawaii Revised Statutes, as the same may be amended from time to time, are hereby incorporated herein by reference.

To the fullest extent permitted under Section 414D-166 of the Hawaii Revised Statutes, as the same may be amended from time to time, on behalf of an individual who, at the request of the Association, is or was serving as a director, officer, employee or agent, the Association may purchase and maintain insurance against liability asserted against or incurred by the individual in that capacity, or arising from the individual's status as a director, officer, employee or agent, whether or not the Association would have power to indemnify the individual against the same liability under Sections 414D-160 or 414D-161 of the Hawaii Revised Statutes, as the same may be amended from time to time.

SECTION 4.20 Fidelity Bonds. A managing agent employed or retained by the Board of Directors shall provide evidence of a fidelity bond in an amount not less than the minimum amount required by law. In addition, the Board of Directors shall obtain annually, as a common expense, a fidelity bond or bonds in an amount not less than the minimum amount required by law, to cover all officers, directors, employees and managing agents of the Association who handle the Association's funds. To the extent reasonably obtainable, the bonds shall: (a) provide that the bonds may not be cancelled or substantially modified (including cancellation for nonpayment of premiums) without at least thirty (30) days' prior written notice to the Board and to all Unit mortgagees and every other person in interest who shall have in writing requested such notice; and (b) contain a waiver of defense based upon the

exclusion of persons who serve without compensation, from any definition of "employee" or similar expression. Notwithstanding the foregoing, should such managing agent be an active real estate broker in compliance with and licensed under Chapter 467, Hawaii Revised Statutes, as amended, such managing agent shall not be required to comply with the foregoing fidelity bond requirements; provided, however, that such managing agent shall annually provide the Board with evidence of such licensing.

SECTION 4.21 Inspection by Directors; Copies of Documents. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association, and the physical properties owned or controlled by the Association. This right of inspection by a director includes the right to make extracts and copies of documents.

SECTION 4.22 Telephone Meetings. Any other provision of these Bylaws notwithstanding, and if permitted by applicable law, at any regular or special meeting of the Board at which at least one (1) Board member is physically present, whether held in open or executive session, any member of the Board not physically present may participate in such meeting by telephone for purposes of constituting a quorum and for all other purposes; and the Board may carry on all business within the Board's authority as if all members participating by telephone were physically present at such meeting; provided, however, that all persons authorized to participate in and actually participating in such meeting (including members of the Association who are not on the Board and who may participate pursuant to Section 514A-83.1(a) of the Act) are at all times during such meeting able to hear and, when appropriate, be heard by all other participants.

ARTICLE V

OFFICERS

SECTION 5.1 Election and Term of Office. The officers of the Association shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be elected by (and in the case of the President from among) the Board of Directors. The Board of Directors may designate and elect such other officers as in its judgment may be necessary. The officers of the Association shall be elected annually by the Board of Directors and shall hold office at the pleasure of the Board of Directors.

SECTION 5.2 Restriction on Qualification. An Owner shall not act both as an officer of the Association and as an employee of the managing agent employed by the Association, if any.

SECTION 5.3 President. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and of the Board of Directors. The President shall have all of the general powers and duties which are incident to the office of President of a corporation organized under the laws of the State of Hawaii, including, but not limited to, the power to appoint committees from among the Unit

Owners from time to time, as he may in his discretion decide to be appropriate to assist in the conduct of the affairs of the Association.

SECTION 5.4 **Vice President.** The Vice President shall have all of the general powers and duties which are incident to the office of Vice President of a corporation organized under the laws of the State of Hawaii. In particular, the Vice President shall perform all of the duties and exercise all of the powers and rights of the President provided by these Bylaws or otherwise, during the absence or disability of the President or whenever the office of President is vacant, and shall perform all other duties assigned by the Board.

SECTION 5.5 **Secretary.** The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors and shall keep the minute book wherein resolutions shall be recorded. The Secretary shall see that all notices are given in accordance with these Bylaws. The Secretary shall have charge of such books and papers of the Association as the Board of Directors may direct. The Secretary shall, in general, perform all the duties incident to the office of Secretary of a corporation organized under the laws of the State of Hawaii. Duties of the Secretary may be delegated to and performed by the managing agent.

SECTION 5.6 **Treasurer.** The Treasurer shall keep the financial records and books of account of the Association showing all receipts and disbursements, and shall be responsible for the preparation of all required financial data. The Treasurer shall be responsible for the deposit of all moneys and other valuable effects of the Association in such depositories as shall be designated by the Board of Directors. The Treasurer shall, in general, perform all the duties incident to the office of Treasurer of a corporation organized under the laws of the State of Hawaii. Duties of the Treasurer may be delegated to and performed by the managing agent or any outside accounting organization.

SECTION 5.7 **Audits.** (a) The Association shall require an annual audit of the Association's financial accounts and no less than one annual unannounced verification of the Association's cash balance by a public accountant; provided that if the Association at any time consists of less than twenty (20) Owners, the annual audit and the annual unannounced cash balance verification may be waived by a majority vote of all Unit Owners, taken at an Association meeting.

(b) The Board of Directors shall make available a copy of the annual audit to each Unit Owner and to each Unit mortgagee at least thirty (30) days prior to the annual meeting which follows the end of the fiscal year, but in any event not later than one hundred twenty (120) days following the Association's fiscal year-end. The Board shall provide, upon all official proxy forms, a box wherein the Owner may indicate that the Owner wishes to obtain either a summary of the annual audit report, or an unabridged copy of the annual audit report. The Board shall not be required to submit a summary of the annual audit report or a copy of the annual audit report to the Owner, if the proxy form is not marked. If the annual audit has not been completed by that date, the Board shall make available:

(i) An unaudited year end financial statement for the fiscal year, to each Unit Owner at least thirty (30) days prior to the annual meeting; and

(ii) The annual audit to all Owners, at the annual meeting or as soon as the audit is completed, whichever occurs later.

If the Association's fiscal year ends less than two months prior to the convening of the annual meeting, the year to date unaudited financial statement may cover the period from the beginning of the Association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed.

SECTION 5.8 Removal of Officers. Upon the affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

SECTION 5.9 Compensation of Officers. No officer shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses incurred in the course of acting as such officer, provided that a majority of a quorum of the Board has first approved such expenses.

SECTION 5.10 Agreements, Contracts, Deeds, Checks and Other Instruments. All agreements, contracts, certificates, deeds, leases, checks and other instruments of the Association, including any amendments to these Bylaws, shall be signed by the President and the Vice President, or such other person or persons as may be designated by resolution of the Board of Directors.

ARTICLE VI

MANAGEMENT

SECTION 6.1 Management and Operation of the Project. The Board of Directors shall at all times manage and operate the Project, including the common elements of the Project, and shall have the powers and duties necessary or proper therefor, and may do all acts and things, except such as by law or the Declaration or these Bylaws may not be delegated to the Board of Directors by the Unit Owners. Such delegable powers and duties of the Board of Directors shall include, but shall not be limited to, the following:

(a) Operation, care, upkeep, replacement, repair and maintenance of the common elements;

(b) Preparation annually of a budget of the common expenses required for the affairs of the Association (including, without limitation, the operation and maintenance of the Project) and determination of the amounts of monthly and special assessments;

- (c) Levy and collection of monthly and special assessments of the common expenses and other charges payable by the Unit Owners;
- (d) Purchase and maintenance of insurance pursuant to the Declaration and these Bylaws;
- (e) Adoption and amendment of the Rules and Regulations, and enforcement of the Rules and Regulations, applicable provisions of the Declaration, these Bylaws and the Act;
- (f) Establishment of bank accounts on behalf of the Association and designating the signatories required therefor;
- (g) Restoration, repair or alteration of the Project, in accordance with the provisions of the Declaration and these Bylaws, after damage or destruction by fire or other casualty or as a result of eminent domain proceedings;
- (h) Procurement of legal and accounting services necessary or proper for the administration and operation of the Project or the interpretation, enforcement or implementation of the Declaration, these Bylaws, the Roadways Declaration, the Rules and Regulations and any other material documents or decisions affecting the Project;
- (i) Purchase, lease or other procurement of materials, equipment, supplies, furniture, labor and services, make repairs or structural alterations which the Board is required to procure, make or pay pursuant to the Declaration, these Bylaws or by law or which in the Board's opinion shall be necessary or proper for the operation of the Project or the enforcement of the Declaration or these Bylaws; provided that if any such materials, equipment, supplies, furniture, labor, services, repairs, or structural alterations are required because of the particular actions or negligence of the Owner of a particular Unit, the cost thereof shall be specially assessed to the Owner of such Unit;
- (j) Maintenance and repair of any Unit or limited common element(s) appurtenant thereto if such maintenance or repair is necessary, in the discretion of the Board, to protect the common elements or any other Unit and the Owner or Owners of the Unit shall have failed or refused to perform the maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board to the Owner or Owners; provided that the Board shall levy a special assessment against such Unit for the cost of such maintenance or repair and any attorneys' fees and other expenses incurred in levying and collecting such special assessment;
- (k) Payment of any amount necessary to discharge any lien or encumbrance levied against the entire Project, or any part thereof, which may in the opinion of the Board constitute a lien against the Project or against the common elements rather than merely against the interest therein of particular Owners. If one or more Owners are responsible for the existence of any such lien, they shall be jointly and severally liable for the cost of discharging it and the costs incurred by the Board by reason of such lien;

(l) Access to each Unit from time to time during reasonable hours as may be necessary for the operation of the Project or for emergency repair of any Unit or the limited common elements appurtenant thereto necessary to prevent damage to the common elements or to another Unit; provided that the cost of such repair shall be chargeable to the Owner of such Unit and the Board shall assess a special assessment on the Owner of such Unit for the cost of such repair and any attorneys' fees and other expenses incurred in levying and collecting such special assessment;

(m) Access to each Unit from time to time during reasonable hours to perform periodic inspections of the air conditioning and climate control equipment and components, if any, located within the Unit including inspection of the dryer ducts and plenums;

(n) Access to each Unit from time to time during reasonable hours to permit the inspection, testing, maintenance and repair, by appropriate governmental authorities or their agents, of all fire safety equipment and devices located within the Unit or in or on limited common elements appurtenant to the Unit;

(o) Access to each Unit from time to time during reasonable hours to perform periodic inspections, maintenance and repair of those common elements which are most readily accessible only from within or through the Unit, including, but not limited to, inspection, maintenance and repair of utility pipes, plumbing, conduits, wiring, roofs and the exterior surface of the building;

(p) Appointment of a managing agent and delegating to the managing agent such of its powers as the Board deems necessary or appropriate, the delegation of which is not otherwise prohibited herein or in the Declaration or by law;

(q) Employment, designation, supervision and dismissal of personnel necessary for the maintenance, repair, replacement and restoration of the common elements;

(r) Establishment of such penalties and fines and any interest thereon as the Board deems appropriate with respect to enforcement of the provisions of the Declaration, these Bylaws and the Rules and Regulations; including penalties and fines and any interest thereon for failure or refusal to pay to the Association on demand all costs, expenses, common expenses and assessments (special or otherwise) required to be paid hereunder; provided such penalties and fines are not inconsistent with applicable laws or the provisions of these Bylaws;

(s) Subject to the affirmative vote or written consent of at least sixty-five percent (65%) of the Unit Owners, the Board may purchase or otherwise acquire any Unit in the name of the Association on behalf of all Unit Owners; and may borrow money and give a mortgage on the Unit to secure repayment of such money; and do all things reasonably required by any institutional lender to facilitate purchase money financing for the purchase of such Unit;

(t) Subject to any approval requirements and spending limitations contained herein or in the Declaration, the Board may authorize the borrowing of money to be used by the Association for the repair, replacement, maintenance, operation, or administration of the

common elements of the Project, or the making of any additions, alterations and improvements thereto. The cost of such borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to such borrowing, shall be a common expense of the Project; provided that Unit Owners representing fifty percent (50%) of the common interest and Units give written consent to such borrowing, having been first notified of the purpose and use of the funds;

(u) If the Board so chooses, conduct (or direct another responsible party to conduct) a background check on applicants applying for employment as a security guard or manager or for a position which would allow such employees access to the keys of or entry into the Units or access to Association funds, provided such employee applicant signs an authorization to conduct such background check;

(v) Disposal of personalty abandoned in or on the common elements of the Project in any one of the following ways:

- (i) Selling the personalty in a commercially reasonable manner;
- (ii) Storing such personalty at the expense of its owner;
- (iii) Donating such personalty to a charitable organization; or
- (iv) Otherwise disposing of such personalty, provided that no such sale, storage, or donation shall occur until sixty (60) days after the Board complies with the following:

(A) If the identity or address of the Owner is known, the Board shall notify the Owner in writing of:

- (1) The identity and location of the personalty;
- (2) The Board's intent to so sell, store, donate, or dispose of the personalty. Notification shall be by certified mail, return receipt requested, to the Owner's address as shown by the records of the Association, or to an address designated by the Owner for the purpose of notification; or, if neither of these is available, to the Owner's last known address, if any; and
- (3) The Board's requirement to hold the proceeds, from any sale or other disposition of personalty, for thirty (30) days, after which any proceeds not claimed shall become the property of the Association; or

(B) If the identity or address of the Owner is unknown, the Board shall first advertise the sale, donation, or disposition at least once in a daily newspaper of general circulation within the County of Maui.

The proceeds of any sale or disposition of personalty as set forth above shall, after deduction of any accrued costs of mailing, advertising, storage, and sale, be held for the Owner for thirty (30) days, after which any proceeds not claimed shall become the property of the Association;

(w) Expenditure of Association funds on behalf of Board members, to the extent permitted under Sections 4.2(d) and 4.16(a) and on behalf of officers, to the extent permitted by Section 5.9;

(x) Custody and control of all funds of the Association, maintenance of full and accurate books of account and records of such funds and preparation of regular financial reports thereof;

(y) Delegation of its powers to committees, agents, officers, representatives and employees; and

(z) Payment of all taxes and assessments and other common expenses which the Board is required to pay pursuant to the Declaration, these Bylaws or by law or which in the Board's opinion shall be necessary or proper for the operation of the Project or the enforcement of the Declaration or these Bylaws; provided that if any such insurance, taxes or assessments are required because of the particular actions or negligence of the Owner of a particular Unit, the cost thereof shall be specially assessed to the Owner of such Unit.

Section 6.2 Association Funds; Handling and Disbursement.

(a) The funds in the general operating account of the Association shall not be commingled with funds of other activities such as lease rent collections and rental operations, if any; nor shall the managing agent, if any, commingle any Association funds with the managing agent's own funds.

(b) All funds collected by the Association or by the managing agent for the Association, shall be:

(1) Deposited in a financial institution, including a federal or community credit union, located in the State of Hawaii and whose deposits are insured by an agency of the United States government;

(2) Held by a corporation authorized to do business under Article 8 of Chapter 412 of the Hawaii Revised Statutes, as amended;

(3) Held by the United States Treasury; or

(4) Purchased in the name of and held for the benefit of the Association through a securities broker that is registered with the Securities and Exchange Commission, has an office in the State of Hawaii, and the accounts of which are held

by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation.

All funds collected by the Association or the by the managing agent shall be invested only in:

- (1) Demand deposits, investment certificates, and certificates of deposit;
- (2) Obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten (10) years after the purchase date unless approved otherwise by a majority vote of the Unit Owners at an annual or special meeting of the Association or by written consent of a majority of the Unit Owners; or
- (3) Mutual funds comprised solely of investments in the obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten (10) years after the purchase date unless approved otherwise by a majority vote of the Unit Owners at an annual or special meeting of the Association or by written consent of a majority of the Unit Owners.

Notwithstanding anything herein to the contrary, before any investment longer than one (1) year is made by the Association, the Board must approve the action. In addition, the Board must clearly disclose to Unit Owners all investments longer than one (1) year, at each year's Association annual meeting.

(c) The managing agent or the Board shall not transfer Association funds by telephone between accounts, including but not limited to the general operating account and reserve fund account.

(d) The managing agent shall keep and disburse funds, collected on behalf of the Unit Owners, in strict compliance with any agreement made with the Unit Owners, Chapter 467 of the Hawaii Revised Statutes, as amended, the rules of the REB, and all other applicable laws.

(e) Any person who embezzles or knowingly misapplies Association funds received by the managing agent or the Association shall be guilty of a class C felony.

SECTION 6.3 Employment of Managing Agent. The Board of Directors may (but shall not be required to) employ a responsible managing agent duly registered with the REB, subject at all times to direction by the Board with such powers and duties of the Board as shall be delegated by the Board. The compensation of the managing agent shall be specified by the Board. Notwithstanding the foregoing, the Developer shall have the right to select the initial managing agent for the Project, subject, however, to the provisions of Section 514A-84

of the Act. The managing agent shall at all times comply with all of the requirements of the Act.

The managing agent shall have such powers and duties as may be necessary or proper in connection with (a) supervision of the immediate management and operation of the Project; (b) maintenance, repair, replacement and restoration of the common elements and any additions or alteration thereto; (c) the purchase or lease, maintenance or replacement of any equipment; (d) provision for service of all utilities to the building and the various Units; (e) employment, supervision and dismissal of such personnel as the managing agent deems necessary for the maintenance and operation of the Project; (f) conclusion of contracts with others for the furnishing of such services as the managing agent deems proper for the Project; (g) preparation of a proposed budget and schedule of assessments; (h) collection of all assessments and payment of all bills; (i) purchase of such insurance and fidelity bonds as is contemplated by these Bylaws; (j) custody and control of all Association funds; (k) maintenance of books and records using generally accepted accounting principles; (l) preparation of financial reports and registration of the Association with the REB; and (m) investment of Association funds in financial instruments as permitted by law. The Board of Directors may in its discretion limit any of the powers herein granted to the managing agent, or grant additional powers to the managing agent.

SECTION 6.4 Renting or Selling of Units by Association Employees. An employee of the Association shall not engage in renting or selling Units in the Project, except for Units owned by the Association, unless such activity is approved by an affirmative vote of sixty-five percent (65%) of the Unit Owners.

SECTION 6.5 Rules and Regulations. The Developer shall initially adopt, and the Board of Directors shall thereafter adopt and amend, such Rules and Regulations as the Developer or the Board of Directors, as the case may be, deems necessary or desirable, governing the details of the operation and use of the common elements and certain details of the use of the Units; including, without limitation, such operation and use of the Units and the limited common elements as may affect the operation and use of the common elements. Such rules shall be binding upon the Unit Owners, and all invitees, guests, employees and tenants of the Unit Owners and all occupants of the Units, and shall be enforceable by the managing agent on behalf of the Board.

SECTION 6.6 Abatement and Enjoinment of Violations by Unit Owners. The violation of any of the Rules and Regulations, the breach of any of these Bylaws, or the breach of any provision of the Declaration, shall give the Board the following rights, in addition to any other rights set forth in these Bylaws:

(a) To enter (by force, if necessary) the Unit in which, or as to which, such violation or breach exists and summarily to abate any structure, thing or condition that may exist therein in violation of the Rules and Regulations, these Bylaws or the Declaration; and the Board shall not thereby be guilty of any trespass or be or become liable for any damage to the Unit or any common elements caused by such entry, all costs of repairing any such damage

being the sole responsibility of the defaulting Owner; provided, however, that notwithstanding the foregoing, the Board shall have such right of entry (forcible or otherwise) only in the instance where such violation or breach threatens an immediate, substantial and undeniable threat to life, limb or property of any Unit Owner, member of his family, tenant, guest or invitee; or

(b) To enjoin, abate or remedy, by appropriate legal proceedings, the continuance of any such breach, and all costs thereof, including attorneys' fees, shall be paid by the defaulting Unit Owner on demand.

SECTION 6.7 Insurance. The Association shall purchase and at all times maintain insurance which covers the common elements and, whether or not part of the common elements, all exterior and interior walls, floors, and ceilings, in accordance with the as-built condominium plans and specifications, against loss or damage by fire sufficient to provide for the repair or replacement thereof in the event of such loss or damages. Flood insurance shall also be maintained if the property is located in a special flood hazard area as delineated on flood maps issued by the Federal Emergency Management Agency. The flood insurance policy shall comply with the requirements of the National Flood Insurance Program and the Federal Insurance Administration. Exterior glass may be insured at the option of the Association. The insurance coverage shall be written on the property in the name of the Association. Premiums shall be common expenses. Provision for the insurance shall be without prejudice to the right of each Unit Owner to insure the Owner's own Unit for the Owner's benefit.

As provided in Section 4.19, the Association may purchase and maintain directors' and officers' liability insurance, and premiums shall be common expenses. The Association may also procure insurance against such additional risks as the Association may deem advisable, for insurance of a character normally carried with respect to properties of comparable character and use.

Every policy of insurance shall contain a provision requiring the insurance carrier, at the inception of the policy and on each anniversary date thereof, to provide the Board with a written summary in layman's terms describing said policy, which summary shall include the type of policy, a description of the coverage and limits thereof, amount of annual premium, renewal date, and such other information as may be required by law. The Board shall provide said summary to each Unit Owner.

ARTICLE VII

COMMON EXPENSES

SECTION 7.1 Common Expenses Defined. "Common expenses" means and includes all sums designated in the Declaration or in these Bylaws as common expenses; all sums incurred by or on behalf of the Board of Directors in the conduct and management of the affairs of the Association pursuant to the Declaration and these Bylaws; such amounts as the

Board of Directors deems proper to maintain an adequate reserve fund for the operation and maintenance of the Project, including, without limitation, anticipated needs for working capital, capital improvements, and for replacements, repairs and contingencies; and such amounts as the Board of Directors deems proper to make up any deficit in the common expense assessments for any prior year. Without limiting the generality of the foregoing, common expenses shall include all charges for taxes (except real property taxes and other such taxes which are or may hereafter be assessed separately on each Unit and the common interest in the common elements appertaining thereto or the personal property or any other interest of the Owner), assessments, insurance (including fire and other casualty and liability insurance), costs of repair, reinstatement, rebuilding and replacement of the common elements (including those limited common elements which the Association is responsible to maintain and repair pursuant to the Declaration or these Bylaws), costs of landscaping and other similar services, wages, accounting and legal fees, management fees and other necessary expenses of upkeep, maintenance, management and operation actually incurred on or for the common elements and the cost of all utility services (including water, electricity, gas, garbage disposal, telephone and any similar services) unless separately metered or sub-metered, in which case the amounts shall be charged to each Unit and shall be payable by the Owner of such Unit. The interest of any Unit Owner in the reserves of the Association may not (except upon the termination of the Condominium Property Regime established by the Declaration) be withdrawn or assigned separately, but shall be deemed to be transferred automatically with each transfer of the Unit, whether or not mentioned or described expressly in the transfer document.

SECTION 7.2 Method of Determining and Collecting Common Expenses.

Except as otherwise provided in the Declaration or these Bylaws, each Unit Owner shall be liable for and pay a share of the common expenses, in proportion to the common interest appurtenant to his Unit. Assessments of common expenses shall be payable in monthly installments on the first day of each month, or at such other times as shall be determined by the Board of Directors. The Developer shall fix the rate of the assessments of common expenses until such rate shall be redetermined by the Board of Directors. The Board of Directors shall annually fix the rate of assessments of common expenses, and shall notify each Unit Owner in writing of the amount of the assessments applicable to such Owner's Unit, not less than thirty (30) days in advance of the beginning of such annual assessment period. The Board of Directors may from time to time during any year, increase the assessment rate or impose a special assessment, provided the Board of Directors shall notify each Unit Owner in writing of such increase or special assessment, not less than thirty (30) days before the effective date of such increase or assessment. Any portion of an Owner's assessments used or to be used by the Association, for capital improvements or any other capital expenditure, shall not be treated as income to the Association; but shall be treated as a capital contribution by the Owners to the Association, and shall be credited by the Association upon its books as paid-in-surplus.

SECTION 7.3 Payment as Agent. The Board will pay or cause to be paid, on behalf of the Owners, all common expenses. Each Owner, as principal, shall be liable for and pay such Owner's share, determined as provided in the Declaration and these Bylaws, of all common expenses; and the Board shall be responsible, as agent for each Owner, only to transmit the payments made by the Owner to third persons to whom such payments must be

made by the Owner. The Board may require the managing agent to assist in the Board's duties hereunder. The Board or the managing agent collecting the common expenses shall not be liable for payment of such common expenses as principal, but only as the agent of all Owners to transmit said payments to third persons to whom such payments must be made by the Owners.

SECTION 7.4 Budget and Reserves. Subject to the Act and any further regulations adopted by the REB:

(a) The Board of Directors shall prepare and adopt an annual operating budget and distribute it to the Unit Owners. At a minimum, the budget shall include the following:

- (i) The estimated revenues and operating expenses of the Association;
- (ii) Information as to whether the budget has been prepared on a cash or accrual basis;
- (iii) The total replacement reserves of the Association as of the date of the budget;
- (iv) The estimated replacement reserves the Association will require to maintain the Project based on a reserve study performed by the Association;
- (v) A general explanation of how the estimated replacement reserves are computed;
- (vi) The amount the Association must collect for the fiscal year to fund the estimated replacement reserves; and
- (vii) Information as to whether the amount the Association must collect for the fiscal year, to fund the estimated replacement reserves, was calculated using a percent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to subparagraph (iv) above.

(b) The Association shall assess the Unit Owners to fund a minimum of fifty percent (50%) of the estimated replacement reserves, or fund one hundred percent (100%) of the estimated replacement reserves when using a cash flow plan; provided that the Association need not collect estimated replacement reserves until the fiscal year which begins after the Association's first annual meeting. For each fiscal year, the Association shall collect the amount assessed to fund the estimated replacement for that fiscal year reserves, as determined by the Association's plan, except that the Association shall have the right to fund in increments, over three years, estimated replacement reserves that have been substantially depleted by an emergency, to the extent permitted by applicable rules of the REB.

(c) The Association shall compute the estimated replacement reserves by a formula which is based on the estimated life and the estimated capital expenditure or major maintenance required for each part of the Project. The estimated replacement reserves shall include:

(i) Adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and

(ii) Separate, designated reserves for each part of the Project for which capital expenditures or major maintenance will exceed \$10,000. Parts of the Project for which capital expenditures or major maintenance will not exceed \$10,000 may be aggregated in a single designated reserve.

(d) Neither the Association nor any Unit Owner, director, officer, managing agent, or employee of the Association, who makes a good faith effort to calculate the estimated replacement reserves for the Association, shall be liable if the estimate subsequently proves incorrect.

(e) The Board of Directors may not exceed its total adopted annual operating budget by more than twenty percent (20%) during the fiscal year to which the budget relates, except in emergency situations. Prior to the imposition or collection of an assessment under this paragraph, the Board of Directors shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved, and why the expense was not or could not have been reasonably foreseen in the budgeting process; and the resolution shall be distributed to the members with the notice of assessment.

(f) The requirements of this Section 7.4 shall override any requirements in the Declaration, these Bylaws, or any of the Association's other documents relating to preparation of budgets, calculation of reserve requirements, assessment and funding of reserves, with the exception of:

(i) any provisions relating to the repair and maintenance of Project;

(ii) any requirements in the Declaration, these Bylaws, or any of the Association's other documents which require the Association to collect more than fifty percent (50%) of reserve requirements; or

(iii) any provisions relating to upgrading the common elements, such as additions, improvements, and alterations to the common elements.

(g) Subject to the procedures of Section 514A-94 of the Act and any rules adopted by the REB, any Unit Owner may enforce the Board's compliance with this Section 7.4 in the event the Board fails to so comply. In the event the Board has not prepared an annual operating budget and reserve study, as required in this Section 7.4, the Board shall have the burden of proving the Board has complied with this Section 7.4, in any proceeding to enforce such compliance.

(h) As used in this Section:

"Capital expenditure" means an expense which results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset which extends the life of an existing asset for a period greater than one year.

"Cash flow plan" means a minimum twenty-year projection of the Association's future income and expense requirements to fund fully its replacement reserves requirements each year during that twenty-year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that twenty-year period, except in an emergency.

"Emergency situation" means any of the following:

- (i) An extraordinary expense required by an order of a court;
- (ii) An extraordinary expense necessary to repair or maintain any part of the Project for which the Association is responsible, where a threat to personal safety on the Project is discovered;
- (iii) An extraordinary expense necessary to repair any part of the Project for which the Association is responsible, that could not have been reasonably foreseen by the Board of Directors in preparing and distributing the annual operating budget;
- (iv) An extraordinary expense necessary to respond to any legal or administrative proceeding brought against the Association, that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget; or
- (v) An extraordinary expense necessary for the Association to obtain adequate insurance for the Project, which the Association must insure.

"Major maintenance" means an expenditure for maintenance or repair which will result in extending the life of an asset for a period greater than one year.

"Replacement reserves" means funds for the upkeep, repair, or replacement of those parts of the Project including, but not limited to roofs, walls, decks, paving, and equipment, which the Association is obligated to maintain.

SECTION 7.5 Default in Payment of Assessments. Each monthly (or other periodic) assessment and each special assessment shall be the separate, distinct and personal debt and obligation, as of the date of assessment, of the Owner against whom the same is assessed; and, in the case of a Unit owned by more than one person, shall be the joint and several obligation of such co-Owners. Any assessment not paid within ten (10) days after the due date thereof shall accrue interest at the rate of twelve percent (12%) per annum from such due date until paid, and shall be subject to the assessment of a late charge in such amount as

may be determined by the Board from time to time. The Board may adopt a schedule of priorities specifying the order in which amounts paid shall be applied to an Owner's outstanding obligations to the Association, provided that such schedule shall be consistent with all provisions of the Act and any rules promulgated thereunder pertaining to the application of payments. All unpaid amounts of such assessments (or any other assessments provided for in the Declaration or these Bylaws) against any Unit or Unit Owner shall constitute a lien on such Unit or such Owner's Unit, prior to all other liens except only (i) liens for taxes and assessments lawfully imposed by governmental authority against such Unit (which by law have priority over the Association's lien), and (ii) liens of any bona fide mortgage which was recorded prior to the recording of a notice of a lien by the Association. Such lien for an unpaid assessment may be foreclosed by suit or by non-judicial or power of sale foreclosure procedures set forth in Chapter 667 of the Hawaii Revised Statutes, as amended, brought by the Board or by the managing agent on behalf of the Association, as provided by the Act in like manner as the foreclosure of a mortgage of real property; provided that notice of intention to foreclose such lien shall be provided to the Owner of the Unit to be foreclosed upon, consistent with applicable law. In any such foreclosure, the Unit Owner shall be required to pay a reasonable rental for the Unit, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the same. Subject to the approval requirements of Section 6.1(s) of these Bylaws, the Board or the managing agent, acting on behalf of the Association, shall be entitled to bid on such Unit at the foreclosure sale and to acquire, hold, lease, mortgage and convey such Unit. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing such assessments.

In the event of a default or defaults in payment of any such assessment or assessments, and in addition to any other remedies the Board of Directors may have, the Board of Directors may enforce each such obligation as follows:

(a) By suit or suits at law to enforce such assessment obligation. Each such action must be authorized by a majority of the Board at a regular or special Board meeting, and any such suit may be instituted by the Board or the managing agent (if so authorized by the Board in writing), on behalf of the Association. Any judgment rendered in favor of the Association in any such action shall include reasonable attorneys' fees and costs. Upon full satisfaction of any such judgment, the Board shall authorize any two (2) members thereof or officers of the Association, acting in the name of the Board and the Association, to execute and deliver to the judgment debtor an appropriate satisfaction thereof; and/or

(b) By foreclosure by action (including non-judicial power of sale, to the extent the same is lawfully permitted) by the managing agent or the Board, acting on behalf of the Unit Owners, in like manner as a mortgage on real property.

(c) As an alternative to the foreclosure proceedings available under this Section 7.5 and in the Act, where an Unit is owner-occupied, the Association may authorize the managing agent or the Board to terminate the delinquent Unit's access to the common elements and cease supplying the delinquent Unit with any and all services normally supplied or paid for by the Association, subject, however, to all of the notice and other procedural requirements set forth in section 514A-90 of the Act.

A certificate executed and acknowledged or made under penalty of perjury by any two (2) members of the Board or officers of the Association or the managing agent shall be conclusive upon the Association and the Unit Owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained, and any Owner shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his Unit (or the fact that all assessments due are paid if such is the case) within fifteen (15) days after demand therefor and upon payment of a reasonable fee or service charge, in an amount fixed from time to time by the Board. If any notice of lien is filed as aforesaid and thereafter the Board receives payment in full of the amount claimed to be due and owing (including accrued interest, late fees and any costs of enforcement and/or attorneys' fees) then upon demand of the Unit Owner and payment of a reasonable fee, the Board, acting by any two (2) members of the Board or officers of the Association or the managing agent, shall execute, acknowledge and deliver to the Owner a release of lien, stating the date of the original notice of lien, the date, the filing data of the notice of lien and that the lien is fully satisfied, released and discharged.

SECTION 7.6 Assessment Disputes.

(a) No Unit Owner shall withhold any assessment claimed by the Association. A Unit Owner who disputes the amount of an assessment may request a written statement clearly indicating:

(i) The amount of common expenses included in the assessment, including the due date of each amount claimed;

(ii) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;

(iii) The amount of attorneys' fees and costs, if any, included in the assessment;

(iv) That under Hawaii law, a Unit Owner has no right to withhold assessments for any reason;

(v) That a Unit Owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an Association's assessment, provided the Unit Owner immediately pays the assessment in full and keeps assessments current; and

(vi) That payment in full of the assessment does not prevent the Unit Owner from contesting the assessment or receiving a refund of amounts not owed.

Nothing in these Bylaws shall limit the rights of a Unit Owner to the protection of all fair debt collection procedures mandated under federal and state law.

(b) A Unit Owner who pays the Association the full amount claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. If the Unit Owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration, under Section 10.8 of these Bylaws or part VII of the Act, whichever is applicable; provided that a Unit Owner may only file for arbitration if all amounts claimed by the Association are paid in full on or before the date of filing. If the Unit Owner fails to keep all Association assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the Unit Owner pays all Association assessments within thirty days of the date of suspension, the Unit Owner may ask the arbitrator to recommence the arbitration proceedings. If the Unit Owner fails to pay all Association assessments by the end of the thirty day period, the Association may ask the arbitrator to dismiss the arbitration proceedings. The Unit Owner shall be entitled to a refund of any amounts paid to the Association which are not owed.

SECTION 7.7 Waiver. The failure of the Board to insist in any one or more instances upon a strict performance of or compliance with any of the covenants of the Owner hereunder, or to exercise any right or option herein contained, or to serve any notice, or to institute any action or summary proceeding, shall not be construed as a waiver or a relinquishment for the future, of such covenant, option or right; but such covenant, option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by the Owner hereunder, with or without knowledge by the Board of the breach of any covenant hereof, shall not be deemed a waiver of such breach; and no waiver, express or implied, by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in a resolution of the Board of Directors.

SECTION 7.8 Liability of Acquirer of Title on Foreclosure for Unpaid Common Expenses. Except as otherwise provided in section 514A-90(g) of the Act, where the Unit mortgagee of a mortgage of record or other purchaser of a Unit obtains title to the Unit as a result of foreclosure on the mortgage, the acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to the Unit which became due prior to the acquisition of title to the Unit by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Unit Owners, including the acquirer, his successors, and assigns. The acquirer shall be deemed to acquire title, and shall be required to pay the Unit's share of common expenses and assessments at the time specified in Section 514A-90(b) of the Act.

SECTION 7.9 Joint and Several Liability of Grantor and Grantee for Unpaid Common Expenses. In a voluntary conveyance, the grantee under a Deed covering a Unit is jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the common expenses up to the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee

therefor. However, any such grantor or grantee is entitled to a statement from the managing agent or Board of Directors, setting forth the amount of the unpaid assessments against the grantor; and except as to the amount of subsequently dishonored checks mentioned in such statement as having been received within the 30-day period immediately preceding the date of such statement, the grantee is not liable for, nor is the Unit conveyed subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

SECTION 7.10 Waiver of Use of Common Elements; Abandonment of Unit; Conveyance to Board of Directors. No Unit Owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his Unit. Any Unit Owner may, by conveying his Unit and his common interest to the Board of Directors on behalf of all other Unit Owners, exempt himself from common expenses thereafter accruing.

SECTION 7.11 Taxes and Assessments. Each Owner of a Unit shall be obligated to have the real property taxes for such Unit, and its appurtenant interest in the common elements assessed separately by the proper governmental authority; and to pay the amount of such real property taxes so determined. The foregoing sentence shall apply to all types of taxes which now are or may hereafter be assessed separately by law on each Unit and the common interest in the common elements appertaining thereto or the personal property or any other interest of the Owner. Each Owner shall execute such documents and take such action as may be reasonably specified by the Board to facilitate dealing with the proper governmental authority regarding such taxes and assessments. Each Owner shall be obligated to pay to the Board his proportionate share of any assessment by the Board for any portion of taxes or assessments, if any, assessed against the entire Project or any part of the common elements as a whole and not separately, such payment to be made as directed by the Board. If, in the opinion of the Board, any taxes or assessments may be a lien on the entire Project or any part of the common elements, the Board may pay such taxes or assessments as part of the common expenses. Such assessments by the Board are secured by the lien created by Section 7.5 hereof.

SECTION 7.12 Utility Expenses. The cost of utility services to any Unit or limited common element which are separately metered, sub-metered or check metered shall be payable by the Owner of such Unit or the Owner(s) of the Unit(s) to which such limited common element is appurtenant, payable directly to the utility company if a separate bill is rendered, or otherwise payable to the Association on demand. For all utility expenses not separately metered, sub-metered or check metered, the Board shall allocate a share of such utility expenses to each Unit as set forth in the Declaration.

SECTION 7.13 Collection from Tenant.

(a) If an Owner at any time rents or leases his Unit and is in default for a period of thirty (30) days or more in the payment of the Unit's share of the common expenses, the Board may, so long as such default continues, demand in writing and receive each month from any renter or lessee (hereinafter in this paragraph referred to as "tenant") of the Owner occupying

the Unit an amount sufficient to pay all sums due from the Unit Owner to the Association, including interest, if any; but the amount shall not exceed the tenant's rent due each month. The tenant's payment under this Section shall discharge that amount of payment from the tenant's rent obligation, and any contractual provision to the contrary shall be void as a matter of law.

(b) Prior to taking any action under this Section, the Board shall give to the delinquent Unit Owner written notice of the Board's intent to collect the rent owed. The notice shall:

- (i) Be sent both by first-class and certified mail;
- (ii) Set forth the exact amount the Association claims is due and owing by the Unit Owner; and
- (iii) Indicate the intent of the Board to collect such amount from the rent, along with any other amounts that become due and remain unpaid.

(c) The Unit Owner shall not take any retaliatory action against the tenant for payments made under this Section.

(d) The payment of any portion of the Unit's share of common expenses by the tenant, pursuant to a written demand by the Board, is a complete defense to the extent of the amount demanded and paid by the tenant, in an action for nonpayment of rent brought by the Unit Owner against the tenant.

(e) The Board may not demand payment from the tenant pursuant to this Section if:

- (i) A commissioner or receiver has been appointed to take charge of the premises pending a mortgage foreclosure;
- (ii) A mortgagee is in possession pending a mortgage foreclosure; or
- (iii) The tenant is served with a court order directing payment to a third party.

(f) In the event of any conflict between this Section and any provision of Chapter 521 of the Hawaii Revised Statutes (as amended), the conflict shall be resolved in favor of this Section; provided that if the tenant is entitled to an offset of rent under Chapter 521, the tenant may deduct the offset from the amount due to the Association, up to the limits stated in Chapter 521. Nothing herein precludes the Unit Owner or tenant from seeking equitable relief from a court of competent jurisdiction or seeking a judicial determination of the amount owed.

ARTICLE VIII

USE AND MAINTENANCE OF PROJECT

(a) Each Unit in the Project shall be used only for the purposes set forth in the Declaration.

(b) All common elements of the Project shall be used only for their respective purposes as designed and as set forth in the Declaration, subject to:

(i) The right of the Board, upon the approval of the Owners of seventy-five percent (75 %) of the common interest, to change the use of the common elements;

(ii) The right of the Board, on behalf of the Association, to lease or otherwise use for the benefit of the Association those common elements which are not actually used by any of the Unit Owners for an originally intended special purpose, as determined by the Board; provided that unless the approval of the Owners of seventy-five percent (75%) of the common interest is obtained, any such lease shall not have a term exceeding five (5) years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty (60) days written notice;

(iii) The right of the Board to lease or otherwise use for the benefit of the Association those common elements not falling within paragraph (ii) above, upon obtaining (A) the approval of the Owners of seventy-five percent (75%) of the common interest, including all directly affected Owners and all Owners of Units to which such common elements are appurtenant in the case of limited common elements, and (B) approval of all mortgagees of record on Units with respect to which Owner approval is required by (A) above, if such lease or use would be in derogation of the interest of such mortgagees.

(c) No Unit Owner shall make or permit to be made any noise by himself or his tenants, employees, guests, or invitees, which will unreasonably annoy or interfere with the rights, comfort or convenience of other Owners or occupants of the Project.

(d) Except as otherwise provided herein or in the Declaration in connection with certain limited common elements which the Association is obligated to maintain, every Unit Owner and occupant shall at all times keep his Unit and the limited common elements appurtenant thereto in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority or the Association for the time being applicable to the use of the Project.

(e) No refuse, garbage or trash of any kind shall be thrown, placed or kept on any common elements of the Project outside of the disposal facilities provided for such purpose.

(f) Nothing shall be allowed, done or kept in any Unit or common element of the Project which would overload or impair the floors, walls or roofs thereof, or cause any

increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Association.

(g) No Unit Owner or occupant shall place, store or maintain in or on walkways, driveways, stairways, ramps, hallways, corridors, lobbies or other access areas or common elements any furniture, packages or objects of any kind or otherwise obstruct transit through such walkways, driveways, stairways, ramps, hallways, corridors, lobbies or other access areas.

(h) No Unit Owner or occupant shall make or suffer any strip or waste or unlawful, improper or offensive use of his Unit or the Project nor alter or remove any furniture, furnishings or equipment of the common elements.

(i) No Unit Owner or occupant, without the prior written consent of the Board, shall erect, place or maintain any television or other antennas on the Project visible from any point outside of his unit. The foregoing shall not apply to the extent that such consent is prohibited for a device covered by 47 C.F.R. Section 1.4000 (Over-the-Air Reception Device Rule) as the same may be amended from time to time ("Covered Device").

If maintenance of the Project requires temporary removal of a Covered Device, the Board shall provide the Unit Owner or occupant with ten (10) days' written notice. The Unit Owner shall be responsible for removing or relocating the Covered Device before maintenance begins and replacing such afterward. If the Covered Device is not removed in the required time, the Board may do so at the Unit Owner's expense. The Board is not liable for any damage to the Covered Device caused by Board removal and the Board is not responsible for reinstalling the removed Covered Device.

If such Covered Device poses an immediate threat to any Unit Owner or Association personnel or their property, then the Board has the right to remove the Covered Device. The Board is not liable for any damage to the Covered Device caused by this removal.

ARTICLE IX

MORTGAGES

SECTION 9.1 **Notice to Unit Mortgagees.** All notices permitted or required to be given to a Unit Owner pursuant to these Bylaws or the Declaration shall also be given to the Unit mortgagees of such Unit Owner, if such Unit mortgagees have delivered to the Board of Directors written request for such notices.

SECTION 9.2 **Notice to Board of Directors.** An Owner who mortgages his interest in a Unit shall notify the Board of Directors of the name and address of his mortgagee, and within ten (10) days after the recordation of the same shall provide the Board of Directors with a true copy of the mortgage as recorded in the Bureau.

SECTION 9.3 **Mortgage Protection.** Notwithstanding any provisions to the contrary contained herein:

(a) All taxes, assessments and charges which may become liens, prior to a first mortgage of record on a Unit in the Project under the laws of the State of Hawaii, shall relate only to the individual Units and not to the Project as a whole.

(b) The Declaration and these Bylaws shall not give a Unit Owner or any other party priority over any rights of mortgagees of Units, pursuant to their mortgages, in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards.

(c) No amendment to this Section 9.3 shall affect the rights of any Unit mortgagee whose mortgage is recorded prior to the recordation of such amendment, and who does not consent thereto.

(d) Any holder or insurer of a duly recorded first mortgage of a Unit or any interest therein, whose interest appears in the record of ownership of (or who has otherwise delivered a written request to the Association) shall be entitled to timely written notice of:

(i) any proposed amendment to the Declaration or these Bylaws;

(ii) any proposed termination of the Project;

(iii) any actual or threatened condemnation or eminent domain proceeding affecting the Project or any portion thereof;

(iv) any default of any Unit Owner whose Unit is subject to such mortgage, if the default has not been cured within sixty (60) days;

(v) any significant damage or destruction to the common elements or to a Unit covered by the first mortgage held or insured by such party;

(vi) any proposal to subdivide, encumber, sell or transfer the common elements or any part thereof; provided, however, that the granting of easements for public or private utilities or for public purposes consistent with the intended use of the common elements of the Project and the relocation of any easements appurtenant to the Project over other lands pursuant to the exercise of any right to relocate such easements by the Owner of such other lands shall not be deemed a transfer within the meaning of this clause;

(vii) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

(viii) any proposed action that requires the consent of a specified percentage of mortgage holders.

(e) Any holder or insurer of a duly recorded first mortgage of a Unit or any interest therein, whose interest appears in the record of ownership of (or who has otherwise delivered a written request to the Association) shall also be entitled to a copy of all pleadings filed in any lawsuit, administrative proceeding, or other action affecting the Project or any portion thereof, at such party's expense for reproduction costs and at such party's specific written request.

SECTION 9.4 Release of Information. The Board may provide any information available to the Board, pertaining to a Unit or the Project, to the first mortgagee of such Unit; and such mortgagee may provide any information to the Board regarding the mortgagor, the mortgagor's loan and the status of such loan.

SECTION 9.5 Notification. The Board shall give notification in writing to all holders of first mortgages on Units, as shown in the Association's record of ownership or of which the Board has been given written notice, of any loss or taking of the common elements of the Project, if such loss or taking exceeds TEN THOUSAND DOLLARS (\$10,000.00). The Board shall give notification in writing to the holder of a first mortgage on any Unit as shown in the Association's record of ownership or of which the Board has been given written notice, of any loss or taking of such Unit, if such loss or taking exceeds ONE THOUSAND DOLLARS (\$1,000.00).

ARTICLE X

GENERAL PROVISIONS

SECTION 10.1 Right of Access. The Board, the managing agent and any other person authorized by the Board (or, in case of an emergency, authorized by any Unit Owner) shall have a right of access to any Owner's Unit for the purpose of making inspections or correcting any condition existing in a Unit and threatening another Unit or the common elements; or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other common elements in a Unit or elsewhere in the Project; provided that requests for entry shall be made in advance and any such entry shall be at a time reasonably convenient to the Owner; provided further, however, that in case of an emergency, no prior request for entry need be made and such right to enter shall be deemed granted and effective immediately, whether or not the Owner is present at the time. If the Unit Owner has elected not to provide keys to the Unit to the managing agent, and a forced entry is reasonably required in the event of an emergency, the Unit Owner shall be solely liable for all costs and expenses arising in connection with such forced entry, including all costs of replacing or repairing any part of the Unit or the common elements damaged by or in connection with the forced entry.

SECTION 10.2 Amendment.

(a) **Required Percent.** Except as to those amendments requiring the prior written approval of all of the eligible mortgage holders as hereinafter provided, these Bylaws may be

amended in any respect consistent with law or the Declaration by affirmative vote of sixty-five percent (65%) of all Unit Owners at any meeting of the Association duly called for such purpose or by written consent of sixty-five percent (65%) of all Unit Owners, and shall be effective only upon the recording in the Bureau of an instrument setting forth such amendment duly executed by the authorized officers of the Association; provided that each one of the particulars set forth in subsection 514A-82(b) of the Act shall be embodied in these Bylaws always. Any proposed amendment to these Bylaws with the rationale for such proposal may be submitted by the Board or by a volunteer Unit Owners' committee. If submitted by a volunteer Unit Owners' committee, any proposed amendment to these Bylaws with the rationale for the proposal, shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the Unit Owners whose names appear on the Association's list of members as provided in Section 10.9 of these Bylaws. The proposed amendments to these Bylaws, the rationale, and the ballots for voting on such amendments shall be mailed by the Board to the Unit Owners at the common expense of the Association for vote or written consent without change, within thirty (30) days of the receipt of the petition by the Board. The vote or written consent required to adopt the proposed amendments to these Bylaws shall be not less than sixty-five percent (65%) of all Unit Owners; provided that the vote or written consent must be obtained within one hundred twenty (120) days after mailing for a proposed amendment to the Bylaws, submitted either by the Board or a volunteer Unit Owners' committee. If the proposed amendments to these Bylaws are duly adopted, then the Board shall cause the amendments to these Bylaws to be recorded in the Bureau. The volunteer Unit Owners' committee shall be precluded from submitting a petition for proposed amendments to these Bylaws, which are substantially similar to those which have been previously mailed to the Unit Owners, within one (1) year after the original petition was submitted to the Board. This Section 10.2(a) shall not preclude any Unit Owner or voluntary Unit Owners' committee from proposing any amendment to these Bylaws, at any annual meeting of the Association.

(b) **Consent of Eligible Mortgage Holders.** Amendments of a material nature to these Bylaws shall require the prior written approval of not less than fifty-one percent (51%) of the eligible mortgage holders. Further, any amendment which would allow any action to terminate the Condominium Property Regime created by the Declaration, for reasons other than substantial destruction or condemnation, shall require the prior written approval of not less than sixty-seven percent (67%) of the eligible mortgage holders. The term "eligible mortgage holders" as used in these Bylaws shall mean and refer to holders, insurers or guarantors (which have requested notice of any proposed amendment to the condominium documents pursuant to these By-Laws) of first mortgages of Units. The term "fifty-one percent (51%) of the eligible mortgage holders" shall mean eligible mortgage holders representing at least fifty-one percent (51%) of the votes of the Units that are subject to mortgages held by the eligible mortgage holders.

In the event that an eligible mortgage holder fails to appear at a meeting of the Association at which amendments to the Bylaws are proposed and considered, or fails to file a written response with the Association within thirty (30) days after the mortgage holder receives proper notice of the proposed amendment, delivered by certified or registered mail with a

"return receipt" requested, then and in any such event such amendments shall conclusively be deemed approved by such eligible mortgage holder.

(c) **Restatement of Bylaws.** Any other provision of these Bylaws notwithstanding, the Board, upon resolution duly adopted, shall have the authority as set forth in the Act to restate these Bylaws from time to time, to set forth any prior amendments hereto, or to amend these Bylaws as required to conform with the provisions of the Act or any other statute, ordinance, rule or regulation enacted by any governmental authority.

SECTION 10.3 Condominium Documents for Board Members. The Association, at its own expense, shall provide all Board members with a current copy of the Declaration, Bylaws, Rules and Regulations, and annually, a copy of the Act with amendments.

SECTION 10.4 Meeting Minutes; Financial Statements; Examination.

(a) Minutes of meetings of the Board of Directors and the Association shall be approved at the next succeeding meeting; provided that for Board of Directors meetings, no later than the second succeeding meeting.

(b) Minutes of all meetings shall be available within seven (7) calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty (60) days after the meeting; provided that the minutes of any executive session may be withheld if publication would defeat the lawful purpose of the executive session.

(c) The Association's most current financial statement shall be available to any Owner, at no cost or on twenty-four (24) hour loan, at a convenient location designated by the Board of Directors. The meeting minutes of the Board of Directors, once approved, for the current and prior year shall either:

(i) Be available for examination by Unit Owners at no cost or on twenty-four hour loan at a convenient location at the Project, to be determined by the Board of Directors; or

(ii) Be transmitted to any Unit Owner making a request for the minutes, by the Board of Directors, the managing agent, or the Association's representative, within fifteen days of receipt of the request; provided that the minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the Unit Owner, if the Unit Owner indicated a preference at the time of the request; and provided further that the Unit Owner shall pay a reasonable fee for administrative costs associated with handling the request.

(d) Minutes of Board meetings shall include the recorded vote of each Board member on all motions, except motions voted on in executive session.

(e) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts and invoices of the Association for the duration those records are kept by the Association and delinquencies of ninety (90) days or more shall be available for examination by the Unit Owners at convenient hours at a place designated by the Board; provided that:

(i) The Board may require the Unit Owners to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith and for the protection of the interest of the Association or its members or both; and

(ii) The Unit Owners pay for administrative costs in excess of eight hours per year.

Copies of these items shall be provided to any Unit Owner upon such Owner's request, provided that such Owner pays a reasonable fee for duplication, postage and stationery and other administrative costs associated with the handling of the request.

(f) The Unit Owners shall also be permitted to view proxies, tally sheets, ballots, Unit Owners' check-in lists and the certificates of election for a period of thirty (30) days following any meeting of the Association; provided that:

(i) The Board may require the Unit Owners to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith and for the protection of the interest of the Association or its members or both; and

(ii) The Unit Owners pay for administrative costs in excess of eight hours per year.

Proxies and ballots may be destroyed following the thirty-day period. Copies of tally sheets, Unit Owners' check-in lists and the certificates of election from the most recent meeting of the Association shall be provided to any Unit Owner upon such Owner's request; provided that such Owner pay a reasonable fee for duplicating, postage, stationery and other administrative costs associated with handling such request.

(g) Owners may file a written request with the Board to examine other documents. The Board shall give written authorization or written refusal with an explanation of the refusal within thirty (30) calendar days of receipt of the request.

SECTION 10.5 Availability of Project Documents. An accurate copy of the Declaration, these Bylaws, the Roadways Declaration, the Rules and Regulations, a sample original Deed, all public reports and any amendments thereto, shall be kept at the managing agent's office. The managing agent shall provide copies of those documents to Owners and prospective purchasers and their prospective agents, during normal business hours, for which

the managing agent shall charge a reasonable fee to defray any administrative or duplicating costs. In the event that the Project is not managed by a managing agent, the foregoing requirements shall be undertaken by a person or entity, if any, employed by the Association, to whom this function is delegated. Notwithstanding the foregoing, no Unit Owner who requests legal or other information from the Association, the Board or the managing agent, shall be charged for the cost of providing such information, unless the Association notifies the Unit Owner that the Association intends to charge the Unit Owner for the cost. The Association shall notify the Unit Owner in writing at least ten (10) days prior to incurring the cost of providing such information, except that no prior notice shall be required to assess the cost of providing information on delinquent assessments or in connection with proceedings to enforce the law or the Association's governing documents. After being notified of the cost of providing such information, the Unit Owner may withdraw the request, in writing. A Unit Owner who withdraws a request for information shall not be charged for the cost of providing such information.

SECTION 10.6 Records; Examination; Disposal.

(a) The managing agent or Board of Directors shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The managing agent or Board of Directors shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses.

(b) All records and the vouchers authorizing the payments and statements shall be kept and maintained at the address of the Project or the office of the managing agent, or elsewhere within the State of Hawaii as determined by the Board of Directors and shall be available for inspection by the Directors, officers, Unit Owners and Unit mortgagees.

(c) Any managing agent employed or retained by the Association may dispose of the records of the Association, which are more than five (5) years old, without liability if the managing agent first provides the Board of Directors with written notice of the managing agent's intent to dispose of the records, if not retrieved by the Board within sixty (60) days, which notice shall include an itemized list of the records which the managing agent intends to dispose of.

(d) No person shall knowingly make any false certificate, entry, or memorandum upon any of the books or records of the managing agent or the Association. No person shall knowingly alter, destroy, mutilate, or conceal any books or records of the managing agent or the Association.

SECTION 10.7 Animals. No livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any Unit or any other part of the Project except as provided in the Rules and Regulations, as the same may be amended from time to time.

SECTION 10.8 Mediation/Arbitration of Disputes Concerning the Act, the Declaration, these Bylaws or the Rules and Regulations. If a Unit Owner or the Board requests mediation of a dispute involving the interpretation or enforcement of the Declaration, these Bylaws, the Rules and Regulations or any other matter specified by Section 514A-121.5 of the Act, the other party in such dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in such mediation; unless at the end of the mediation process, both parties agree that one party shall pay all or a specified portion of the mediation costs. Thereafter, at the request of any party, any remaining unresolved controversy shall be submitted to arbitration as provided by Section 514A-121 of the Act. Nothing in this paragraph shall be interpreted to require the arbitration of any dispute which is either exempt from arbitration pursuant to Section 514A-121 of the Act or determined to be unsuitable for arbitration pursuant to Section 514A-122 of the Act.

SECTION 10.9 Membership List. The managing agent or Board of Directors shall keep an accurate and current list of members of the Association and their current addresses, the names and addresses of the vendees of any Unit under an agreement of sale, if any, and the names and addresses of Unit mortgagees, if any. The list shall be maintained at a place designated by the Board of Directors, and a copy shall be available, at cost, to any Unit Owner; provided the Unit Owner furnishes to the managing agent or Board of Directors a duly executed and acknowledged affidavit stating that the list (a) will be used by such Owner personally and only for the purpose of soliciting votes or proxies or providing information to other Owners with respect to Association matters, and (b) shall not be used by such Owner or furnished to anyone else for any other purpose.

Each Owner shall promptly record the Deed or other conveyance to him of his Unit and any mortgage of his interest in his Unit, and file with the Board of Directors, through the managing agent, a recorded copy of the Deed or other conveyance document. Each vendor of a Unit under an agreement of sale shall promptly record the agreement of sale and file a copy of such document with the Board of Directors. Each Unit Owner, vendor, vendee and Unit mortgagee shall promptly notify the Board of Directors of any changes in his or its address.

SECTION 10.10 Owners May Incorporate. All of the rights, powers, obligations and duties of the Association imposed hereunder may be exercised and enforced by a nonprofit membership corporation, formed under the laws of the State of Hawaii for the purposes herein set forth by the Association. The corporation shall be formed upon the written approval of all Unit Owners. The formation of the corporation shall in no way alter the terms, covenants and conditions set forth herein and these Bylaws shall be adopted by the corporation as the bylaws thereof. The Articles of the corporation shall be subordinated hereto and controlled hereby. Any action taken by the corporation which is in violation of any or all of the terms, covenants or conditions contained herein, shall be void and of no effect.

SECTION 10.11 Notices. All notices to the Association shall be either mailed or delivered to the members of the Board of Directors at their respective addresses as shown on the membership list, or to such other address as the Board of Directors may designate by notice to all Owners and all Unit mortgagees. Except as otherwise provided herein or as

required by applicable law, all notices to any Owner shall be either mailed or delivered to him at his address as shown on the membership list. All notices to Unit mortgagees shall be mailed to their respective addresses as shown on the membership list, or to such other addresses as designated by them by notice to the Board of Directors. All notices shall be in writing and service of such notice shall be deemed complete upon the earlier of the date of actual delivery or, if mailed, the third day after the date of mailing, except notices of addresses and changes of addresses, which shall be deemed to have been given when received.

SECTION 10.12 Captions. The captions of these Bylaws are inserted only as a matter of convenience and shall in no way define, limit or prescribe the scope of these Bylaws or the intent of any provision hereof.

SECTION 10.13 Pronouns. All pronouns used in these Bylaws include the male, female, and neuter genders and include the singular and plural numbers, as the case may be.

SECTION 10.14 Interpretation. The provisions of these Bylaws shall be liberally construed to effectuate the purpose of creating a uniform condominium project whereby the Owners of Units shall carry out and pay for the operation and maintenance of the Project as a mutually beneficial and efficient establishment.

SECTION 10.15 Severability. The provisions of these Bylaws shall be deemed independent and severable, and the invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.


SECTION 10.16 Changes in Law. In the event any change in the Act shall result in a conflict or inconsistency between the provisions of these Bylaws and the Act, the provisions of the Act shall prevail.

SECTION 10.17 Subordination. These Bylaws are subordinate and subject to all provisions of the Declaration and any amendments thereto, the Condominium Property Act (Chapter 514A , Hawaii Revised Statutes, as amended) and the Hawaii Administrative Rules, Title 16, Chapter 107, which shall control in case of any conflict. All terms herein (except where clearly repugnant to the context) shall have the same meaning as in the Declaration or said Condominium Property Act.

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IN WITNESS WHEREOF, the Developer has executed and adopted these Bylaws as
of the 26 day of September, 2005.

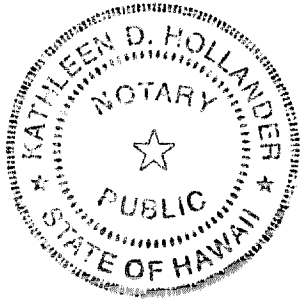
KCCC, LLC,
a Hawaii limited liability company

By 
Name: Valentine Peroff, Jr.
Title: Manager

"Developer"

STATE OF HAWAII)
) SS.:
CITY AND COUNTY OF HONOLULU)

On September 26th, 2005, before me personally appeared VALENTINE PEROFF, JR., to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Kathleen D Hollander
(Print or Type Notary Name)

Kath D Hollander
Notary Public, State of Hawaii

My commission expires: 10/19/07

EXHIBIT "A"

DESCRIPTION OF THE LAND

All of that certain parcel of land (being portion of the land(s) described in and covered by Land Patent Grant Number 11400 to Ernest K. Naeole) situate, lying and being at Waiakoa, Kihei, (Kula), Island and County of Maui, State of Hawaii, being LOT 1-A of the "KIHEI COMMERCIAL CENTER SUBDIVISION" (the map thereof not being recorded), same being a portion of Lot 1, and thus bounded and described as per survey of Bruce R. Lee, Land Surveyor, with Newcomer-Lee Land Surveyors, Inc., dated September 30, 1998:

Beginning at a 3/4-inch pipe at the southeast corner of this parcel of land, on the westerly boundary Lot 10 of the Waiakoa Makai Homesteads, said point being also the northeast corner of Lot 2 of said Kihei Commercial Center Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being:

15,419.28 feet north
21,775.65 feet west

and running by azimuths measured clockwise from true South:

1. 86° 46' 30" 355.27 feet along said Lot 2 of the Kihei Commercial Center Subdivision and along the remainder of said Grant 11400 to Ernest K. Naeole to a 3/4-inch pipe on the easterly boundary of Lot 1-B of said Kihei Commercial Center Subdivision;
2. 176° 46' 30" 269.68 feet along said Lot 1-B of said Kihei Commercial Center Subdivision and along the remainder of said Grant 11400 to Ernest K. Naeole to an iron bolt;

Thence along same on the arc of a curve to the right, concave easterly with a radius of 395.00 feet, the chord azimuth and distance being:

3. 181° 30' 22" 65.16 feet to a 3/4-inch pipe;
4. 186° 14' 14" 73.55 feet along said Lot 1-B of said Kihei Commercial Center Subdivision and along the remainder of said Grant 11400 to Ernest K. Naeole to a 3/4-inch pipe;

Thence along same on the arc of a curve to the left, concave westerly with a radius of 407.00 feet, the chord azimuth and distance being:

5. 181° 30' 22" 67.14 feet to a 3/4-inch pipe at a point of reverse curvature;

Thence along said Lot 1-B of said Kihei Commercial Center Subdivision and along the remainder of said Grant 11400 to Ernest K. Naeole on the arc of a curve to the right, concave southeasterly with a radius of 30.00 feet, the chord azimuth and distance being:

6. 220° 02' 30" 41.12 feet to a chiseled hole on sidewalk on the southerly boundary of Ohukai Road;
7. 263° 18' 30" 304.64 feet along said southerly boundary of Ohukai Road to a 3/4-inch pipe on the westerly boundary of said Lot 10 of the Waiakoa Makai Homesteads;
8. 356° 46' 30" 522.44 feet along Lot 10 of the Waiakoa Makai Homesteads and along the remainder of said Grant 11400 to Ernest K. Naeole to the point of beginning and containing an area of 4.101 acres, more or less.

Together with the following described easements as granted by instrument dated July 20, 1987, recorded in Liber 20934 at Page 687, subject, however, to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein:

DRAINAGE EASEMENT NO. 1
(25.00 feet wide)
TAX MAP KEY: 3-9-01:16

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number 7447, Land Commission Award Number 3237, Part 2 to H. Hewahewa (Certificate of Boundaries No. 56)) situate, lying and being at Kaonoulu, Wailuku, Island and County of Maui, State of Hawaii, being an easement 25.00 feet wide for drainage purposes over, under and across Parcel 16 of Tax Map Key: 3-9-01, and thus bounded and described:

Beginning at the northwesterly corner of this easement, on the easterly side of Piilani Highway (F.A.P. RF-031-1(5)), said point being also the northwesterly corner of said Parcel 16 and the southwesterly corner of Lot 9 of the Waiakoa Makai Homesteads, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU" being:

14,712.29 feet north
22,456.32 feet west

and running by azimuths measured clockwise from true South:

1. 270° 04' 30" 25.69 feet along said Lot 9 of the Waiakoa Makai Homesteads and along Grant 11400 to Ernest K. Naeole;

2. 325° 10' 30" 67.81 feet along the remainders of said Parcel 16 and said Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa (Certificate of Boundaries No. 56);
3. 346° 48' 00" 1,320.33 feet along same;
4. 316° 48' 00" 50.00 feet along same;
5. 346° 48' 00" 140.69 feet along same;
6. 46° 48' 00" 57.74 feet along same;
7. 346° 48' 00" 556.96 feet along same;
8. 30° 49' 00" 35.98 feet along the southeasterly boundary of said Parcel 16, being also the Wailuku District Line and along the remainder of said Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa (Certificate of Boundaries No. 56) to the easterly side of said Piilani Highway;
9. 166° 48' 00" 596.83 feet along said easterly side of said Piilani Highway;
10. 226° 48' 00" 57.74 feet along the remainders of said Parcel 16 and said Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa (Certificate of Boundaries No. 56);
11. 166° 48' 00" 120.00 feet along said easterly side of said Piilani Highway;
12. 136° 48' 00" 50.00 feet along the remainders of said Parcel 16 and said Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa (Certificate of Boundaries No. 56);
13. 166° 48' 00" 1,322.25 feet along said easterly side of said Piilani Highway;
14. 145° 10' 30" 67.82 feet along the remainders of said Parcel 16 and said Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa (Certificate of Boundaries No. 56);
15. 166° 48' 00" 10.66 feet along said easterly side of said Piilani Highway to the point of beginning and containing an area of 55,216 square feet or 1.268 acres, more or less.

DRAINAGE EASEMENT NO. 2
(25.00 feet wide)
TAX MAP KEY: 2-2-02:15

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number 7447, Land Commission Award Number 3237, Part 2 to H. Hewahewa (Certificate of Boundaries No. 56)) situate, lying and being at Kaonoulu, Makawao, Island and County of Maui, State of Hawaii, being an easement 25.00 feet wide for drainage purposes over, under and across Parcel 15 of Tax Map Key: 2-2-02, and thus bounded and described:

Beginning at the northwesterly corner of this easement, on the easterly side of Piilani Highway (F.A.P. RF-031-1(5)) and on the Wailuku District Line, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU" being:

12,585.05 feet north
21,957.39 feet west

and running by azimuths measured clockwise from true South:

1. 210° 49' 00" 35.98 feet along the northerly boundary of said Parcel 15, along said Wailuku District Line and along the remainder of said Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa (Certificate of Boundaries No. 56);
2. 346° 48' 00" 146.52 feet along the remainders of said Parcel 15 and said Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa (Certificate of Boundaries No. 56);
3. 316° 48' 00" 60.00 feet along same;
4. 346° 48' 00" 156.70 feet along same;
5. 76° 48' 00" 25.00 feet along same to the easterly side of said Piilani Highway;
6. 166° 48' 00" 150.00 feet along said easterly side of said Piilani Highway;
7. 136° 48' 00" 60.00 feet along the remainders of said Parcel 15 and said Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa (Certificate of Boundaries No. 56);
8. 166° 48' 00" 127.34 feet along said easterly side of said Piilani Highway to the point of beginning and containing an area of 8,757 square feet, more or less.

Together also with a perpetual non-exclusive right and easement for sewer disposal purposes, etc., over and across the following described easement area, as granted by instrument dated

April 24, 1990, recorded as Document No. 90-058932, subject, however, to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein:

WAIAKOA MAKAI HOMESTEADS, LOT 9-A
Description of EASEMENT 1
(Sewerline Easement)

All of that certain parcel of land (being portion of the land(s) described in and covered by Land Patent Grant Number 11400 to Ernest K. Naeole) situate, lying and being at Waiakoa, Kihei (Kula), Island and County of Maui, State of Hawaii, being SEWERLINE EASEMENT 1 in favor of Lot 9-B and Lot 10 of the "WAIAKOA MAKAI HOMESTEADS" over and across a portion of Lot 9-A of the "Waiakoa Makai Homesteads", and thus bounded and described:

Beginning at a point at the southwest corner of this easement, being also the southwest corner of Lot 9-A of the Waiakoa Makai Homesteads, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU" being, 1,227.58 feet north and 22,561.76 feet west, and running by azimuths measured clockwise from true South:

1. 166° 48' 410.00 feet along the easterly side of Piilani Highway (F.A.P. RF-031-1(5));
2. 256° 48' 5.00 feet along same;
3. 166° 48' 511.85 feet along same;
4. Thence along same on a curve to the right having a radius of 77.50 feet, the chord azimuth and distance being:

 184° 55' 30" 48.22 feet;
5. 346° 48' 557.68 feet over and across a portion of Lot 9-A of the Waiakoa Makai Homesteads;
6. 348° 10' 40" 208.06 feet over and across same;
7. 346° 48' 202.00 feet over and across same;
8. 76° 48' 15.00 feet along Lot 9-B of the Waiakoa Makai Homesteads to the point of beginning and containing an area of 14,815 square feet, more or less.

Together with an easement for roadway and utility purposes over Easement "3" for access and utility purposes affecting Lot 1-B of the Kihei Commercial Center Subdivision, as granted by instrument dated April 20, 1999, recorded as Document No. 99-075906, subject, however, to

the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein, said easement being more particularly described as follows: All of that certain parcel of land, being Easement 3 (for access and utility purposes) over, under and across Lot 1-B in favor of Lot 1-A and Lot 2 of the Kihei Commercial Center Subdivision (the map thereof not being recorded), being a portion of Land Patent Grant 11400 to Ernest K. Naeole, situated at Waiakoa, Kihei, (Kula), Island and County of Maui, State of Hawaii, and thus bounded and described as per survey of Bruce R. Lee, Land Surveyor, with Newcomer-Lee Land Surveyors, Inc., revised April 29, 1999:

Beginning at a 3/4-inch pipe at the southeast corner of this easement, on the northerly boundary of Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa, said point also being the southeast corner of Lot 1-B and the southwest corner of Lot 2 of said Kihei Commercial Center Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being:

14,711.82 feet north
22,097.63 feet west

and running by azimuths measured clockwise from true South:

1. 90° 04' 30" 36.06 feet along said Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa;
2. 176° 46' 30" 609.02 feet along the remainders of said Lot 1-B of the Kihei Commercial Center Subdivision and said Grant 11400 to Ernest K. Naeole to a 3/4-inch pipe at the southwest corner of Lot 5 of said Piilani Business Park Subdivision;
3. 176° 46' 30" 575.50 feet along Lots 5, 4, 3, 2 and 1 of said Piilani Business Park Subdivision and along the remainder of said Grant 11400 to Ernest K. Naeole to a 3/4-inch pipe on the southerly boundary of Ohukai Road;
4. 263° 18' 30" 93.36 feet along said southerly boundary of Ohukai Road to a chiseled hole on sidewalk at the northwest corner of Lot 1-A of said Kihei Commercial Center Subdivision;

Thence along said Lot 1-A of the Kihei Commercial Center Subdivision and along the remainder of said Grant 11400 to Ernest K. Naeole, on the arc of a curve to the left, concave southeasterly with a radius of 30.00 feet, the chord azimuth and distance being:

5. 40° 02' 30" 41.12 feet to a 3/4-inch pipe at a point of reverse curvature;

Thence along said Lot 1-A of the Kihei Commercial Center Subdivision and along the remainder of said Grant 11400 to Ernest K. Naeole, on the arc of a curve to the right, concave westerly with a radius of 407.00 feet, the chord azimuth and distance being:

6. 1° 30' 22" 67.14 feet to a 3/4-inch pipe;
7. 6° 14' 14" 73.55 feet along said Lot 1-A of the Kihei Commercial Center Subdivision and said Grant 11400 to Ernest K. Naeole to a 3/4-inch pipe;

Thence along same on the arc of a curve to the left, concave easterly with a radius of 395.00 feet, the chord azimuth and distance being:

8. 1° 30' 22" 65.16 feet to an iron bolt;
9. 356° 46' 30" 269.68 feet along said Lot 1-A of the Kihei Commercial Center Subdivision and said Grant 11400 to Ernest K. Naeole to a 3/4-inch pipe at the northwest corner of said Lot 2 of the Kihei Commercial Center Subdivision;
10. 356° 46' 30" 262.00 feet along said Lot 2 of the Kihei Commercial Center Subdivision and along the remainder of said Grant 11400 to Ernest K. Naeole to a 3/4-inch pipe;

Thence along same on the arc of a curve to the left, concave northeasterly with a radius of 20.00 feet, the chord azimuth and distance being:

11. 311° 46' 30" 28.28 feet to a chiseled cross;
12. 356° 46' 30" 20.00 feet along said Lot 2 of the Kihei Commercial Center Subdivision and along the remainder of said Grant 11400 to Ernest K. Naeole to a chiseled hole on top of concrete curb;
13. 86° 46' 30" 16.00 feet along same to a chiseled hole on top of concrete curb;

Thence along same on the arc of a curve to the left, concave southeasterly with a radius of 10.00 feet, the chord azimuth and distance being:

14. 41° 46' 30" 14.14 feet to chiseled cross;

15. 356° 46' 30" 376.23 feet along said Lot 2 of the Kihei Commercial Center Subdivision and along the remainder of said Grant 11400 to Ernest K. Naeole to the point beginning and containing an area of 1.176 acres, more or less.

Together with non-exclusive easements for access over, on and across Lot 1-B-7 and the Access Easements (Easement No. "6" affecting Lot 1-B-4, Easement No. "7" affecting Lot 1-B-5, Easement No. "8" affecting Lot 1-B-5 and Easement No. "9" affecting Lot 1-B-6) of the "Kihei Commercial Center Subdivision", as granted by GRANT OF EASEMENTS (Access) dated December 15, 2003, recorded as Document No. 2003-276132; and subject to the terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained therein. Said Lot 1-B-7, Easement No. "6", Easement No. "7", Easement No. "8" and Easement No. "9", being more particularly described in said Grant of Easements (Access).

SUBJECT, HOWEVER, to the following:

1. SECTION 14.12.080 AGREEMENT FOR CENTRAL MAUI AREAS

DATED : May 5, 1987
RECORDED : Liber 20719 Page 69
PARTIES : TONY HARUYOSHI HASHIMOTO and HILDA
HASHIMOTO, husband and wife, EVELYN HILDA
HASHIMOTO, wife of Frank Lau, HEDY NAOMI KANEOKA,
wife of Kelvin Muneyoshi Kaneoka, GRACE TOMIKO
TSUTAHARA, wife of Melvyn Takao Tsutahara, SUSAN
HISAYE HASHIMOTO-SHINOZUKA, wife of Keith
Shinozuka, and HARRY HITOSHI HASHIMOTO, husband of
Valerie Hashimoto, and DEPARTMENT OF WATER SUPPLY

2. SUBDIVISION (THREE LOTS OR LESS) AGREEMENT

DATED : July 13, 1987
RECORDED : Liber 20904 Page 160
PARTIES : TONY HARUYOSHI HASHIMOTO and HILDA HASHIMOTO
(fka Hildegard Z. Hashimoto), husband and wife, EVELYN H.
HASHIMOTO, wife of Frank Lau, HEDY NAOMI KANEOKA,
wife of Kelvin Muneyoshi Kaneoka, GRACE T. TSUTAHARA
(fka Grace T. Hashimoto), wife of Melvyn Takao Tsutahara,
SUSAN H. HASHIMOTO-SHINOZUKA (fka Susan H.
Hashimoto), wife of Keith Shinozuka, HARRY H.
HASHIMOTO, husband of Valerie Hashimoto, TONY H.
HASHIMOTO, Trustee under that certain unrecorded Tony H.
Hashimoto Revocable Living Trust Agreement dated August 9,
1975, and HILDA HASHIMOTO, Trustee under that certain

unrecorded Hilda Hashimoto Revocable Living Trust Agreement
dated August 9, 1975, and COUNTY OF MAUI

3. SUBDIVISION AGREEMENT (LARGE LOTS)

DATED : July 13, 1987
RECORDED : Liber 20904 Page 171
PARTIES : TONY HARUYOSHI HASHIMOTO and HILDA HASHIMOTO
(fka Hildegard Z. Hashimoto), husband and wife, EVELYN H.
HASHIMOTO, wife of Frank Lau, HEDY NAOMI KANEOKA,
wife of Kelvin Muneyoshi Kaneoka, GRACE T. TSUTAHARA
(fka Grace T. Hashimoto), wife of Melvyn Takao Tsutahara,
SUSAN H. HASHIMOTO-SHINOZUKA (fka Susan H.
Hashimoto), wife of Keith Shinozuka, HARRY H.
HASHIMOTO, husband of Valerie Hashimoto, TONY H.
HASHIMOTO, Trustee under that certain unrecorded Tony H.
Hashimoto Revocable Living Trust Agreement dated August 9,
1975, and HILDA HASHIMOTO, Trustee under that certain
unrecorded Hilda Hashimoto Revocable Living Trust Agreement
dated August 9, 1975, and COUNTY OF MAUI

4. SECTION VI(c) AGREEMENT FOR CENTRAL MAUI AREAS

DATED : July 6, 1989
RECORDED : Liber 23463 Page 94
PARTIES : KCOM CORPORATION, a Hawaii corporation, and
DEPARTMENT OF WATER SUPPLY of the County of Maui

Said above Agreement was amended by instruments dated March 27, 1990, recorded as Document No. 90-057153, and dated October 16, 1990, recorded as Document No. 90-164419.

5. Conditions contained in the following: NOTICES TO ALL OWNERS/DEVELOPER/AUTHORIZED AGENTS, re: Kihei Wastewater Treatment Capacity (a) dated July 7, 1989, recorded in Liber 23514 at Page 586; (b) dated July 7, 1989, recorded in Liber 23514 at Page 588; (c) dated July 7, 1989, recorded in Liber 23514 at Page 590; (d) dated November 17, 1989, recorded in Liber 24040 at Page 479; and (e) dated June 28, 1990, recorded as Document No. 90-110641.

6. DESIGNATION OF EASEMENT "1" (15 feet wide)

PURPOSE : utility
SHOWN : on survey map prepared by Bruce R. Lee, Land Surveyor, with
Newcomer-Lee Land Surveyors, Inc., dated June 6, 1996, last
revised January 21, 1997, and described as follows:

All of that certain parcel of land, being Easement 1 (15-ft. wide for utility purposes) over, under and across Lot 1 in favor of Lot 2 of the Kihei Commercial Center Subdivision (the map thereof not being recorded), being a portion of Lot 9-B-1 of the Waiakoa Makai Homesteads, also being a portion of Land Patent Grant Number 11400 to Ernest K. Naeole, situated at Waiakoa, Kihei, (Kula), Island and County of Maui, State of Hawaii, and thus bounded and described as per survey of Bruce R. Lee, Land Surveyor, with Newcomer-Lee Land Surveyors, Inc., dated October 31, 1996:

Beginning at the northeast corner of this easement, on the southerly boundary of Ohukai Road, said point being $83^{\circ} 18' 30''$ 274.64 feet from the northeast corner of said Lot 1 of said Kihei Commercial Center Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being:

15,905.40 feet north
21,107.61 feet west

and running by azimuths measured clockwise from true South:

1. $353^{\circ} 18' 30''$ 15.00 feet along the remainders of said Lot 1 of the Kihei Commercial Center Subdivision and said Grant 11400 to Ernest K. Naeole;

2. $83^{\circ} 18' 30''$ 55.98 feet along the same;

Thence along same on the arc of a curve to the right, concave southeasterly with a radius of 30.00 feet, the chord azimuth and distance being:

3. $233^{\circ} 18' 30''$ 30.00 feet to a point on the southerly boundary of Ohukai Road;

4. $263^{\circ} 18' 30''$ 30.00 feet along the southerly boundary of Ohukai Road to the point beginning and containing an area of 726 square feet, more or less.

7. GRANT

TO : MAUI ELECTRIC COMPANY, LIMITED and GTE
HAWAIIAN TELEPHONE COMPANY INCORPORATED,
now known as VERIZON HAWAII, INC.

DATED : February 6, 1998

RECORDED : Document No. 98-139018

GRANTING : a perpetual right and easement for utility purposes over, across,
through and under said Easement "1"

8. DESIGNATION OF EASEMENT "2" (24 feet wide)

PURPOSE : parking
SHOWN : on survey map prepared by Bruce R. Lee, Land Surveyor, with Newcomer-Lee Land Surveyors, Inc., dated June 6, 1996, last revised January 21, 1997, and described as follows:

All of that certain parcel of land, being Easement 2 (24-ft. wide for parking purposes) over, under and across Lot 1 in favor of Lot 2 of the Kihei Commercial Center Subdivision (the map thereof not being recorded), being a portion of Lot 9-B-1 of the Waiakoa Makai Homesteads, also being a portion of Land Patent Grant Number 11400 to Ernest K. Naeole, situated at Waiakoa, Kihei, (Kula), Island and County of Maui, State of Hawaii, and thus bounded and described as per survey of Bruce R. Lee, Land Surveyor, with Newcomer-Lee Land Surveyors, Inc., dated October 31, 1996:

Beginning at a 3/4-inch pipe at the southeast corner of this easement, on the westerly boundary of Lot 10 of the Waiakoa Makai Homesteads, said point being also the northeast corner of said Lot 2 of the Kihei Commercial Center Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being:

15,419.28 feet north
21,775.65 feet west

and running by azimuths measured clockwise from true South:

1. 86° 46' 30" 355.27 feet along said Lot 2 of the Kihei Commercial Center Subdivision and along the remainder of said Grant 11400 to Ernest K. Naeole;
2. 176° 46' 30" 24.00 feet along the remainders of said Lot 1 of the Kihei Commercial Center Subdivision and said Grant 11400 to Ernest K. Naeole;
3. 266° 46' 30" 355.27 feet along same to a point on the westerly boundary of said Lot 10 of the Waiakoa Makai Homesteads;
4. 356° 46' 30" 24.00 feet along said Lot 10 of the Waiakoa Makai Homesteads and along the remainder of said Grant 11400 to Ernest K. Naeole to the point beginning and containing an area of 8,526 square feet or 0.196 acre, more or less.

9. Electrical box located on the common boundary between Lot 1, now Lot 1-A, (southerly boundary) and Lot 2 (north boundary), as shown on Certification Map prepared by Bruce R. Lee, Land Surveyor, with Newcomer-Lee Land Surveyors, Inc., dated September 30, 1997.

10. EXISTING EASEMENT "C" for sewer purposes in favor of Lot 10 of the Waiakoa Makai Homesteads, as shown on survey map prepared by Bruce R. Lee, Land Surveyor, with Newcomer-Lee Land Surveyors, Inc., dated June 6, 1996, last revised January 21, 1997.

11. Conditions contained in the following: NOTICES TO ALL OWNERS/DEVELOPERS /AUTHORIZED AGENTS, re: Kihei Wastewater Treatment Capacity:

RECORDED AS
DOCUMENT NO.

DATED

OWNER/DEVELOPER/TENANT

91-004282	December 3, 1990	DESIGN 579, INC.
91-004284	December 14, 1990	KCOM CORP.
91-011493	November 7, 1990	KIHEI WINE & SPIRITS
91-018395	January 28, 1991	LES GIDDENS
91-018396	January 28, 1991	KCOM CORP.
91-018397	January 28, 1991	KCOM CORP.
91-018398	January 30, 1991	PACIFIC RIM INTERIOR DESIGN
91-021631	January 15, 1991	MAUI ECONOMIC DEVELOPMENT BOARD, INC.
91-024310	January 23, 1991	POWERHOUSE, INC.
91-024315	December 31, 1990	ATTCO, INC.
91-024319	January 11, 1991	PARADISE COMPUTER PRODUCTS, LTD.
91-127059	June 27, 1991	SILK PLANTS HAWAII, INC.
91-144489	June 24, 1991	YOST ENTERPRISES, INC.

12. SECTION VI (c) FOR CENTRAL MAUI AREAS AGREEMENT

DATED : March 21, 1991
RECORDED : Document No. 91-041775
PARTIES : KIHEI TRADE CENTER, a Hawaii General Partnership, and
DEPARTMENT OF WATER SUPPLY of the County of Maui

13. Reservations, covenants, conditions and restrictions contained in DECLARATION

DATED : July 27, 1990
RECORDED : Document No. 91-096587

14. Conditions contained in the NOTICE re: Kihei Wastewater Treatment Capacity, dated March 24, 1992, recorded as Document No. 92-065726.

15. Reservations, covenants, conditions and restrictions contained in DECLARATION OF EASEMENT AND COVENANTS, RESTRICTIONS AND RESERVATIONS RELATING THERETO

DATED : April 17, 1997
RECORDED : Document No. 97-051215

Said Declaration was amended and restated by AMENDED AND RESTATED DECLARATION OF EASEMENT AND COVENANTS, RESTRICTIONS AND RESERVATIONS RELATING THERETO dated September 5, 1997, recorded as Document No. 97-121272.

16. MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

MORTGAGOR : KCOM CORP., a Hawaii corporation, and VALENTINE PEROFF, JR., husband of Barbara Joanna Peroff, Trustee of the Valentine Peroff, Jr. Revocable Living Trust created by unrecorded Trust Agreement dated July 7, 1989

MORTGAGEE : CENTRAL PACIFIC BANK, a Hawaii corporation

DATED : December 14, 2001

RECORDED : Document No. 2001-201776

AMOUNT : \$8,715,000.00 - covers the land described herein, besides other lands

17. ASSIGNMENT OF LESSOR'S INTEREST IN LEASES AND RENTS dated December 14, 2001, filed as Land Court Document No. 2763843, recorded as Document No. 2001-201777, by and between KCOM CORP., a Hawaii corporation, and VALENTINE PEROFF, JR., husband of Barbara Joanna Peroff, Trustee of the Valentine Peroff, Jr. Revocable Living Trust created by unrecorded Trust Agreement dated July 7, 1989, "Assignor", and CENTRAL PACIFIC BANK, a Hawaii corporation, "Assignee", assigning the entire interest of the Assignor in and to any and all tenant leases and all of the rents, income and profits arising from the leases and renewals of the premises described therein, besides other lands, to secure the repayment of that certain Promissory Notes in the amounts of \$3,192,000.00 and \$5,523,000.00.

18. FINANCING STATEMENT

DEBTOR : KCOM CORP. and VALENTINE PEROFF, JR.

SECURED

PARTY : CENTRAL PACIFIC BANK

RECORDED : Document No. 2001-201784

RECORDED ON: December 21, 2001

AMENDMENT recorded as Document No. 2004-005739 on January 12, 2004.

AMENDMENT recorded as Document No. 2004-136203 on July 6, 2004.

AMENDMENT recorded as Document No. 2004-141326 on July 13, 2004.

AMENDMENT recorded as Document No. 2004-163931 on August 11, 2004.

AMENDMENT recorded as Document No. 2004-219121 on October 28, 2004.

19. Reservations, covenants, conditions and restrictions contained in DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR KIHEI COMMERCIAL ROADWAYS ASSOCIATION

DATED : May 20, 2003
RECORDED : Document No. 2003-099707

Said Declaration was amended by AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS acknowledged November 21, 2003, recorded as Document No. 2003-259113, and further amended and restated by AMENDMENT AND RESTATEMENT OF DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS dated October 6, 2004, recorded as Document Nos. 2004-206538 through 2004-206542.

20. SUBDIVISION AGREEMENT (LARGE LOTS)

DATED : June 15, 2005
RECORDED : Document No. 2005-130158
PARTIES : KCCC, LLC and COUNTY OF MAUI

21. GRANT

TO : MAUI ELECTRIC COMPANY, LIMITED, a Hawaii corporation, and HAWAIIAN TELCOM, INC.

DATED : July 6, 2005
RECORDED : Document No. 2005-168250
GRANTING : a perpetual right and easement for utility purposes, over, across, through and under that portion of the lands of the Grantor described in Exhibit "A" attached thereto