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LAND COURT

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AFTER RECORDATION, RETURN BY: MAIL (X) PICK-UP ( )

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

Total No. of Pages: 39

Tax Map Key No. (2) 3-9-045-012

**DECLARATION OF CONDOMINIUM PROPERTY REGIME  
KIHEI COMMERCIAL PLAZA**

KNOW ALL BY THESE PRESENTS:

WHEREAS, KCCC, LLC, a Hawaii limited liability company, whose address is at 99-880 Iwaena Street, Aiea, Hawaii 96701 (the "**Declarant**"), is the fee simple owner of that certain parcel of real property more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof for all purposes; and

WHEREAS, Declarant has undertaken to improve said property by constructing thereon certain improvements herein described, in accordance with plans and specifications therefor incorporated herein by reference and filed in the Bureau of Conveyances of the State of Hawaii (the "**Bureau**") as Condominium File Plan No. 422 (the "**Condominium Map**"); and

NOW, THEREFORE, in order to create a condominium project consisting of said land and improvements (the "**Project**") to be known as "**KIHEI COMMERCIAL PLAZA**", Declarant does hereby declare Declarant's desire to and hereby submits said property and the improvements thereon to the condominium property regime established by the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended (the "**Act**"), and in furtherance thereof, makes the following declarations as to divisions, limitations, restrictions, covenants and conditions, and hereby declares and agrees that said property is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the declarations, restrictions, covenants and conditions set forth herein and in the

Bylaws of the Association of Unit Owners (the "**Bylaws**") to be recorded in the same manner as this Declaration, as the same may from time to time be amended, which declarations, restrictions, covenants and conditions shall constitute covenants running with the land and shall be binding on and for the benefit of Declarant, Declarant's successors, assigns, and all subsequent owners and lessees of all or any part of the Project and their respective heirs, legal representatives, successors and assigns.

A. **Name of Project.** The condominium property regime established hereby shall be known as "**KIHEI COMMERCIAL PLAZA.**"

B. **Description of Land.** The land submitted to the condominium property regime is described in Exhibit "A" attached hereto and made a part hereof for all purposes.

C. **Description of Project.** The Project consists of seventy-three (73) commercial condominium units (each, a "**Unit**" and collectively, the "**Units**"), constructed within four (4) buildings, as shown on the Condominium Map. Each building is comprised of a ground floor slab of poured reinforced concrete, a structural system of concrete with reinforcing steel, glu lam beams and concrete exterior, and a roof with a surface of modified bitchum mineral and related building materials. Buildings 1 and 2 are single story buildings, and Buildings 3 and 4 are two-story buildings. The Project includes one hundred ninety-nine (199) parking stalls. None of the buildings have a basement.

Building 1 of the Project consists of twenty-two (22) Units, designated herein and on said Condominium Map as Units "101" through "122" inclusive, and certain common and limited common elements specifically described in paragraphs E. and F. below.

Building 2 of the Project consists of eleven (11) Units, designated herein and on said Condominium Map as Units "201" through "211" inclusive, and certain common and limited common elements specifically described in paragraphs E. and F. below. Building 2 includes built-in mechanical, electrical and plumbing fixtures.

Building 3 of the Project consists of twenty (20) Units, designated herein and on said Condominium Map as Units "301" through "310" and "311" through "320", inclusive, and certain common and limited common elements specifically described in paragraphs E. and F. below.

Building 4 of the Project consists of twenty (20) Units, designated herein and on said Condominium Map as Units "401" through "410" and "411" through "420", inclusive, and certain common and limited common elements specifically described in paragraphs E. and F. below.

D. **Division of Property.**

1. **Units.** Freehold estates are hereby designated in the spaces within the perimeter and party walls, floors and ceilings of each of the Units of the Project; provided,

however, that should the descriptions and divisions set forth in this Declaration conflict with the depictions and divisions shown on the Condominium Map, the Condominium Map shall control; provided, further, that the Condominium Map is intended only to show the layout, location, Unit numbers and dimensions of the Units and elevations of the buildings and is not intended to contain any other representation or warranty.

The approximate net area (exclusive of parking areas) and percentage common interest of each Unit in the Project and the parking stall(s) appurtenant to each such Unit are set forth in Exhibit "B" attached hereto and made a part hereof for all purposes.

All of the units in the Project consist of "loft space." Each Unit in Buildings 1, 2, 3 and 4 shall consist of one (1) room and one (1) bathroom. All areas set forth in Exhibit "B" were computed by measuring from the interior surface of the Unit perimeter walls; no reduction was made to account for interior walls, ducts, shafts and the like, located within the perimeter walls.

The Unit numbers and locations of the Units in each Building are more fully shown on the Condominium Map. Building 1 is located in the southern portion of the Project. There are twenty-two (22) Units in Building 1 of the Project, which Units are numbered from "101" to "122" beginning at the northwest corner of the building and proceeding east from numbers "101" to "111" and "112" beginning at the southwest corner of the building and proceeding east to "122".

Building 2 is located in the northeast portion of the Project. There are eleven (11) Units in Building 2 of the Project, which Units are numbered from "201" to "211" beginning at the northern end of the building and proceeding south.

Building 3 is located in the northwest portion of the Project. There are ten (10) Units on each of the two (2) floors of Building 3 of the Project, which Units are numbered from "301" through "310" on the first floor and "311" through "320" on the second floor, beginning at the northwest corner of the building and proceeding counterclockwise.

Building 4 is located south of Building 3. There are ten (10) Units on each of the two (2) floors of Building 4 of the Project, which Units are numbered from "401" through "410" on the first floor and "411" through "420" on the second floor, beginning at the northwest corner of the building and proceeding counterclockwise.

2. **Limits of Units.** The respective Units shall not be deemed to include the exterior surfaces of the perimeter or party walls, the interior load-bearing walls, the exterior surfaces of all exterior walls, the exterior surfaces of the floors, ceilings and roofs for each Unit, or any pipes, wires, conduits or other utility lines running through such Unit which are utilized for or serve more than one (1) Unit, the same being deemed common elements as provided herein.

Subject to the foregoing, each Unit shall be deemed to include the following: all of the walls and partitions which are not load-bearing within its perimeter or party walls; the

inner surfaces of all walls, floors, ceilings and roofs; the doors, door frames, and louvers above such door frames, if any, windows, window frames of each such Unit, skylights installed in the ceiling of each such Unit, if any; and all fixtures in each such Unit.

3. **Access.** Each Unit on the ground floor of the Project has immediate access to the grounds of the property. Each Unit on the second floor of a building in the Project has immediate access to the grounds of the property or common elements leading to the grounds through a stairwell and through an elevator leading to the grounds of the property.

4. **Parking.** The designated uncovered parking stall(s) for each Unit is as shown in Exhibit "B".

E. **Common Elements.** One freehold estate is hereby designated in all of the remaining portions of the Project (the "**common elements**"). The common elements include the limited common elements described in paragraph F. below; all portions of the land and improvements other than the Units; the land on which the Units are located; and all common elements mentioned in the Act which are actually constructed on the land described herein. Said common elements also include, but are not limited to the following:

1. The land described in Exhibit "A".
2. All foundations, columns, girders, beams, floor slabs, supports, perimeter and load-bearing walls (except for the inner surfaces within each Unit ), roofs, walkways, entrances and exits of the buildings.
3. All yards, courtyards, grounds, fences, planters, landscaping, refuse and like facilities.
4. All walkways, driveways, parking area entryways and exitways, and all parking stalls, as designated on the Condominium Map.
5. All central and appurtenant installations for services such as power, lights, telephone, gas, hot and cold water lines, television lines, sewage disposal and other utilities (including all pipes, ducts, wires, cables and conduits used in connection therewith, whether located in common areas or in the Units), and all tanks, pumps, motors, fans, ducts, meters, sub-meters, check meters and other apparatus and installations existing for, or in the buildings for common use or for measuring the consumption of utilities.
6. Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, and normally in common use and not part of any Unit.

F. **Limited Common Elements.** Certain parts of the common elements (the "**limited common elements**") are hereby set aside and reserved for the exclusive use of certain

Units, which Units shall have appurtenant thereto exclusive easements for the use of such limited common elements. The limited common elements so set aside are as follows:

1. Limited Common Elements appurtenant only to Units in Building 1:

The fire sprinklers, hose bibs, gutters, drain downspouts, electrical room, air conditioning compressors, condensers and fan coils units at, on or within Building 1 shall be appurtenant to the Units within Building 1.

2. Limited Common Elements appurtenant only to Units in Building 2:

(i) The fire sprinklers, hose bibs, gutters, drain downspouts and electrical room at, on or within Building 2 shall be appurtenant to the Units within Building 2.

(ii) The yard area located in the rear of each Unit in Building 2 shall be appurtenant to and for the exclusive use of each such Unit.

(iii) The fences located in the rear yard areas of the Units in Building 2 shall be appurtenant to the Units in Building 2, and the cost of repair, maintenance and replacement of such fences shall be allocated among such Units in Building 2, in proportion to their Unit Building Interest (as defined below).

3. Limited Common Elements appurtenant only to Units in Building 3:

(i) The fire sprinklers, hose bibs, gutters, drain downspouts, electrical room, air conditioning compressors, condensers and fan coils units at, on or within Building 3 shall be appurtenant to the Units within Building 3.

(ii) The stairways and elevators located in Building 3 shall be appurtenant to and for the exclusive use of the Units within Building 3, and the cost of repair, maintenance and replacement of such stairways and elevators shall be allocated among such Units in Building 3, in proportion to their Unit Building Interest.

(iii) The electrical room located within Building 3 shall be appurtenant to and for the exclusive use of the Units within Building 3.

4. Limited Common Elements appurtenant only to Units in Building 4:

(i) The fire sprinklers, hose bibs, gutters, drain downspouts, electrical room, air conditioning compressors, condensers and fan coils units at, on or within Building 4 shall be appurtenant to the Units within Building 4.

(ii) The stairways and elevators located in Building 4 shall be appurtenant to and for the exclusive use of the Units within Building 4, and the cost of repair, maintenance and replacement of such stairways and elevators shall be allocated among such Units in Building 4, in proportion to their Unit Building Interest.

(iii) The electrical room located within Building 4 shall be appurtenant to and for the exclusive use of the Units within Building 4.

5. **Parking Stalls.** The parking stall(s) listed in Exhibit "B" attached hereto and designated for each Unit shall be appurtenant to and for the exclusive use of each such Unit, except for the parking stalls designated in Exhibit "B" as visitor parking stalls.

6. **Trash Enclosures.** The trash enclosure immediately to the east of Building 1 shall be a limited common element appurtenant to and for the exclusive use of the Units in Building 1. The trash enclosure immediately to the north of Building 2 shall be a limited common element appurtenant to and for the exclusive use of the Units in Building 2. The trash enclosures immediately to the northeast and northwest of Building 3 shall be limited common elements appurtenant to and for the exclusive use of the Units in Building 3. The trash enclosures immediately to the southeast and southwest of Building 4 shall be limited common elements appurtenant to and for the exclusive use of the Units in Building 4.

7. **Loading Areas.** The two (2) loading areas immediately adjacent to Building 1 shall be limited common elements appurtenant to and for the exclusive use of the Units in Building 1. The two (2) loading areas immediately adjacent to Building 2 shall be limited common elements appurtenant to and for the exclusive use of the Units in Building 2. The two (2) loading areas immediately to the Northeast of Building 3 shall be limited common elements appurtenant to and for the exclusive use of the Units in Building 3. The two (2) loading areas immediately adjacent to Building 4 shall be limited common elements appurtenant to and for the exclusive use of the Units in Building 4.

All costs of every kind pertaining to each limited common element, including but not limited to, costs of maintenance, repair, replacements, additions and improvements, shall be charged to and payable by the owners of the Units to which said limited common elements are appurtenant, in accordance with the method of allocation set forth in Part I of Exhibit "C" attached hereto and made a part hereof for all purposes.

G. **Common Interest and Unit Building Interest.** Each Unit shall have appurtenant thereto an undivided percentage interest (the "**common interest**") in all common elements of the Project and in all common profits and expenses of the Project and for all other purposes including voting. The common interest appurtenant to each Unit is set forth in Exhibit "B".

Each Unit shall also have appurtenant thereto an undivided percentage interest (the "**Unit Building Interest**") in all common elements of such Unit's respective building and in all common profits and expenses of such building and for all other purposes including voting. The Unit Building Interest appurtenant to each Unit is set forth in Exhibit "B".

H. **Easements.** The Units, limited common elements and common elements shall also have and be subject to the following easements:

1. Each Unit shall have appurtenant thereto nonexclusive easements in the common elements and the limited common elements designed for the following purposes: for ingress to and egress from; for utility services for and support, maintenance and repair of such Unit; for use of other common elements according to their respective purposes, subject always to the exclusive or limited use of the limited common elements as provided herein; and in all other Units and limited common elements of the Project for support.

2. If any part of the common elements now or hereafter encroaches upon any Unit or limited common element or if any Unit or limited common element now or hereafter encroaches upon the common elements, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall and does exist. In the event any Unit shall be partially or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any portion of the Project, minor encroachments of any parts of the common elements or Units or limited common elements due to such construction, shifting, settlement or movement shall be permitted and valid easements for such encroachments and the maintenance thereof shall exist.

3. Each Unit owner shall have an easement in common with the owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other Units for access to any common elements located in such Unit.

4. The Association of Unit Owners of Kihei Commercial Plaza (the "**Association**") shall have the right, to be exercised by the Board of Directors of the Association (the "**Board**") or its managing agent, to enter each Unit and the limited common elements from time to time as may be necessary for the operation of the Project, maintenance of the limited common elements, or at any time for making emergency repairs therein necessary to prevent damage to any Unit or the common elements.

I. **Alteration and Transfer of Interests.** The common interest and easements shall not be separated from the Unit to which they appertain and shall be deemed to be conveyed, leased or encumbered with such Unit even though such interest or easements are not expressly mentioned or described in the conveyance or other instrument. The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided by the Act; and, without limiting the provisions of Section 514A-21 of the Act, any such partition or division shall be subject to the prior written consent thereto by the holders of any first mortgage filed of record against any Unit of the Project.

J. **Use.** The Units shall be occupied and used only for office, retail sales, warehousing, research, food processing, light industrial, light manufacturing, and wholesale distribution purposes, as permitted by and in accordance with the laws and ordinances of the County of Maui and the State of Hawaii, and subject to such limitations as may be contained herein and in the Bylaws and Project Rules and Regulations which may be adopted from time to time governing the use of the Units.

Specifically prohibited uses include the following:

1. any use which creates an unsafe, obnoxious or offensive impact on other occupants within the project by reason of the emission of odor, dust, fumes, smoke, noise, noxious substances, vibration, refuse matter, water-carried waste or similar irritants unless appropriate mitigating measures to control such emissions are in full operation and effect, as approved by the Board;
2. dumping, storage, disposal, incineration, treatment, processing or reduction of the following: garbage, dead animals, hazardous or toxic substances, or refuse;
3. bars, nightclubs, taverns, and business engaged in the sale of obscene or pornographic materials or in the provision of entertainment featuring topless or nude performers;
4. explosives and firearms;
5. any use that is subject to the sewer surcharge under Section 14.31.030 of the Maui County Code; provided, however, that such use will be permitted if it is connected to its own separate County of Maui Department of Water Supply water meter;
6. residential use;
7. automobile body shops;
8. bath houses;
9. bed and breakfast homes;
10. dancehalls;
11. mortuaries or crematoriums;
12. sanitariums;
13. commercial recycling; and
14. restaurants.

The Unit owners of the respective Units shall have the absolute right to sell or transfer such Units, or their undivided interests therein, subject to all provisions of the Act, this Declaration and the Bylaws; provided, however, that no Unit owner shall cause the sale or transfer of less than the entire Unit, except by way of a transfer of an undivided interest therein.



Notwithstanding any provision to the contrary, no Unit owner shall offer, sell or transfer any time-sharing interest in any Unit in the Project. As used herein, the term "**time-sharing interest**" shall be deemed to include any interest in a Unit established on a fee, leasehold, right-to-use, license, partnership, association, membership, membership in club, reservation or any other basis for use during any specified limited time period (periodically recurring or in the form of a floating period with a right-to-use by notification) set forth by contract or agreement.

K. **Hazardous Materials.** "**Hazardous Materials**" mean any explosives, radioactive materials, hazardous wastes, or hazardous substances, including, without limitation, substances defined as "**hazardous substances**" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§9601-9657; the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §§1801-1812; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§6901-6987; or any other federal, state or local statute, law ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning hazardous materials, waste, or substances now or at any time hereafter in effect (hereinafter collectively referred to as "**Hazardous Material Laws**").

1. An owner of a Unit shall not cause or permit any Hazardous Materials to be generated, used, transported, stored or disposed of upon, in or about such Unit or the common elements except in a manner that complies with all applicable Hazardous Materials Laws.

2. An owner of a Unit shall comply with all laws pertaining to Hazardous Materials, including, without limitation, giving appropriate notice to the Department of Health of the State of Hawaii and giving written notice to the Board within three (3) business days after the owner learns or first has reason to believe that (i) a discharge of Hazardous Materials has occurred, or (ii) claims relating to the use, generation, storage, transport or disposal of Hazardous Materials at the Project. The notice shall be accompanied by copies of (a) all permits, licenses, and proofs of disclosure to governmental agencies pertaining to the Hazardous Materials that is the subject of the claim, (b) copies of any material data sheets pertaining to such substances that are required by applicable law, and (c) copies of any claim, report, complaint, notice, warning or other communication that is in the possession of or is reasonably available to the owner. The Association and any owner shall have the right to join and participate, as a party, if it so elects in any actions initiated in respect of any Hazardous Materials claims.

L. **Administration of Project.** Administration of the Project shall be vested in the Association consisting of all Unit owners of the Project in accordance with the Bylaws. Operation of the Project and maintenance, repair, replacement and restoration of the common elements, and any additions and alterations thereto, shall be in accordance with the provisions of the Act, this Declaration and the Bylaws, and specifically, but without limitation, the Association shall:

1. Make, build, maintain and repair all common elements, including fences, sewers, drains, roads, curbs, walkways and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Project or any part thereof and all limited common elements appurtenant to all Units for ingress, egress, support and repair, which are not properly maintained and repaired by the Unit owner at such Unit owner's expense.

2. Keep all common elements of the Project 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 for the time being applicable to the Project or the use thereof.

3. Well and substantially repair, maintain, amend and keep all common elements of the Project, including without limitation the Units thereof, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided herein, and maintain and keep said land and all adjacent land between any street boundary of the Project and the established curb or street line in a neat and attractive condition and all trees, shrubs and grass thereon in good cultivation and replant the same as may be necessary, and repair and make good all defects in the common elements of the Project herein required to be repaired by the Association.

4. Before commencing or permitting construction of any improvement on the Project the cost of which exceeds TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00), obtain a bond or certificate thereof naming as obligees, collectively, all Unit owners as their interests may appear, in a penal sum not less than one hundred percent (100%) of the cost of such construction and with a corporate surety authorized to do business in the State of Hawaii, guaranteeing performance of such construction free and clear of all mechanics' and materialmen's liens, and all claims in lieu of mechanics' and materialmen's liens arising under Section 514A-16 of the Act.

5. Observe any setback lines affecting the Project and not erect, place or maintain any building or structure whatsoever, except approved fences or walls, between any street boundary of the Project and the setback line along such boundary.

6. Not erect or place on the Project any building or structure including fences and walls, nor make additions or structural alterations to or exterior changes of any common elements of the Project, nor place or maintain thereon any signs, posters or bills whatsoever, except in accordance with plans and specifications including detailed plot plans, prepared by a licensed architect if so required by the Board, and also approved by a majority of Unit owners (or such larger percentage as required by law or this Declaration) including all owners of Units thereby directly affected where such additions, alterations to or exterior changes are made to any limited common elements of the Project, and complete any such improvements diligently after the commencement thereof.

7. Not make or suffer any strip or waste or unlawful, improper or offensive use of the Project.

8. Have the right, to be exercised by the Board or its managing agent, to enter any Unit from time to time during reasonable hours as may be necessary for the operation of the Project or at any time for making emergency repairs therein required to prevent damage to any Unit or common element or for the installation, repair or replacement of any common element.

9. Represent the interests of the Project and each Unit owner in meetings of the Kihei Commercial Roadways Association (the "**Roadways Association**"). The Share of Costs (as such term is defined in the Roadways Declaration) allocated to the land underlying the Project ("**Lot 1-A**") under 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, shall also be a common expense, and the Association shall collect from each Unit owner such Unit owner's share of such common expense. The Association, acting through its officers and its Board of Directors, shall be the exclusive representative of the Unit owners and shall have the right to cast all votes for the owner of Lot 1-A at all meetings of the Roadways Association.

M. **Managing Agent.** Operation of the Project shall be conducted for the Association by a responsible managing agent (the "**Managing Agent**") who shall be appointed by the Association in accordance with the Bylaws, except that the initial Managing Agent shall be Commercial Properties of Maui Management, Inc., a Hawaii corporation, whose address is at 1962B Wells Street, Wailuku, Hawaii 96793. The Managing Agent is hereby authorized to receive service of legal process in all cases provided in the Act.

N. **Common Expenses.** All charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration of the Project, including without limitation the operation thereof, any maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto, any labor, services, materials, supplies and equipment therefor, any liability whatsoever for loss or damage arising out of or in connection with the common elements or any accident, fire or nuisance thereon, charges for electricity, water, sewer, refuse collection and other utilities, unless separately charged or metered, any premiums for hazard and liability insurance herein required with respect to the Project and the Share of Costs allocated to Lot 1-A under the Roadways Declaration, shall constitute common expenses of the Project for which all Unit owners shall be severally liable in proportion to their respective common interests; provided, however, that all costs of every kind pertaining to each limited common element, including but not limited to costs of maintenance, repair, replacements, additions and improvements, shall be charged to and borne entirely by the owners of the Units to which it is appurtenant in an equitable manner as shall be established by the Board; provided, further that if individual insurance policies are obtainable for each Unit and limited common elements appurtenant thereto, then the premium for each policy shall be paid by the Unit owner covered by such policy and not in proportion to their respective common interests. Real property taxes and special assessments referred to in Section 514A-6 of the Act shall not be common expenses of the Project and no payments

thereof shall be payments of such common expenses. The Board shall from time to time assess the common expenses (including limited common expenses as provided in paragraph F. hereof) against the Units in their respective proportionate shares, and the unpaid amount of such assessments against any Unit, shall constitute a lien against such Unit, which may be foreclosed by the Board or the Managing Agent. No Unit owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his Unit.

In the event that assessments received during any year are in excess of the actual expenditures for such year by the Association for common expenses of the Project, the Board of Directors may determine that such excess shall be:

1. Applied in whole or in part to reduce the assessments for the immediately subsequent year;
2. Designated in whole or in part as a capital contribution to the Association to be used for future capital improvements and replacements; or
3. Segregated and held in whole or in part as a custodial fund to be expended solely for specifically designated capital improvements and replacements.

The proportionate interest of each Unit owner in said capital contributions or custodial or maintenance fund cannot be withdrawn or separately assigned, but shall be deemed to be transferred with such Unit even though not expressly mentioned or described in the conveyance thereof. In case the condominium property regime hereby created shall be terminated or waived, said capital contributions or custodial or maintenance fund, remaining after full payment of all common expenses of the Association, shall be distributed to all Unit owners in their respective proportionate shares, except for the owners of any Units then reconstituted as a new condominium property regime.

**O. Utilities.** The use of electricity by each Unit shall be separately measured by the use of sub-meters and charged to each Unit.

Each of the four (4) buildings in the Project shall have a separate two (2) inch water meter to measure water usage for such building. Meters and sub-meters shall be read by the Managing Agent. Each Unit owner shall be billed for water usage in proportion to such Unit owner's respective common interest in the Unit owner's respective building. If a Unit owner is required by Declarant or the Association to install a water sub-meter within such owner's Unit, such Unit owner shall be billed additionally for any water usage above the average water usage for Units in said Unit owner's respective building. Water sub-meters are installed at, on or within each building to measure water usage for landscaping purposes. Such water usage shall be a common expense and each Unit owner shall be billed for such water usage in proportion to such owner's respective Unit Building Interest.

All other utilities shall be charged to and payable in accordance with the method of allocation set forth in Part II of Exhibit "C" attached hereto and made a part hereof for all purposes.

**P. Compliance with Declaration, Bylaws and Roadways Declaration.** All Unit owners, their tenants, customers, invitees, licensees and guests, and any other persons who may in any manner use the Project, shall be bound by and comply strictly with the provisions of this Declaration, the Bylaws and the Roadways Declaration, as the same may from time to time be amended, and all agreements, decisions and determinations of the Association, as lawfully made or amended from time to time. 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 Board or Managing Agent on behalf of the Association or, in a proper case, by any aggrieved Unit owner.

**Q. Insurance.** At its common expense and as more particularly provided in the Bylaws, the Association shall at all times keep the buildings of the Project insured against loss or damage by fire, with extended coverage in an insurance company authorized to do business in the State of Hawaii, having a financial rating by Best's Insurance Reports of Class VI or better. Except as is otherwise provided in the Bylaws, in every case of such loss or damage, all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing or otherwise reinstating the building(s) in a good and substantial manner, according to the original plan and elevation thereof or modified plans, conforming to laws and ordinances then in effect as shall be first approved as herein provided; and the Association at its common expense shall make up any deficiency in such insurance proceeds.

**R. Uninsured Casualty.** In case at any time or times any improvements of the Project shall be substantially damaged or destroyed by any casualty not herein required to be insured against, such improvements shall be rebuilt, repaired or restored, unless the owners of at least seventy-five percent (75%) of the interests in the common elements execute an instrument expressing their decision not to rebuild, repair or restore. Any such approved restoration of the common elements shall be completed diligently by the Association at its common expense, and the Unit owners shall be solely responsible for any restoration of their respective Units so damaged or destroyed according to the original plan and elevation thereof or such other plan first approved as provided herein. Unless such restoration is undertaken within a reasonable time after such casualty, the Association at its common expense shall remove all remains of improvements so damaged or destroyed, and restore the site thereof to good orderly condition and even grade.

**S. Alteration of Project.** Restoration or replacement of the Project or of any building, or construction of any additional building or structural alteration, or addition to any building or Unit different in any material respect from the Condominium Map, shall be undertaken by the Association or any Unit owner only pursuant to an amendment of the Declaration, duly executed by or pursuant to the affirmative vote of seventy-five percent (75%) or more of the Unit owners, and accompanied by the written consent of the holders of all liens affecting any of the Units; and in accordance with complete plans and specifications therefor

first approved in writing by the Board and promptly upon completion of such restoration, replacement or construction, the Association shall duly record or file of record such amendment, together with a complete set of floor plans of the Project as so altered, certified as built by a registered architect or professional engineer; provided, however, that notwithstanding any provision in this Declaration to the contrary, any non-structural alterations or additions within a Unit shall require the written consent thereto and the written approval of the Unit owner's plans therefor, by only the holders of all liens affecting such Unit (if the lien holders require such consent and approval), and such alterations or additions may be undertaken without an amendment to this Declaration or filing of a complete set of floor plans of the Project so altered.

T. **Maintenance Reserve Fund.** As more particularly provided in the Bylaws, the Board shall establish and maintain a maintenance reserve fund (the "**Reserve Fund**") by the monthly assessment (against and payment by all the Unit owners in proportion to their respective common interests) of such annual amount as the Board determines to be adequate to provide for the common utilities, insurance, maintenance, repair, restoration and replacement of the common elements and other expenses of administration of the Project, and the furniture, fixtures and mechanical equipment thereof, and for such other purposes as the Board deems necessary, all of which shall be deemed conclusively to be a common expense of the Project. The Board may include reserves for contingencies in such assessment, and such assessment may from time to time be increased or decreased at the discretion of the Board, in accordance with the Bylaws. The amount of the common expenses allocated, used or to be used for capital improvements, or any other capital expenditure, shall not be deemed income to the Association; but shall be credited upon the books of the Association to the paid-in surplus account, as capital contributions by the Unit owners. The proportionate interest of each Unit owner in the Reserve Fund shall not be withdrawn or separately assigned, but shall be deemed to be transferred with such Unit even though not mentioned or described expressly in the instrument of transfer. If the condominium property regime established hereby is terminated or waived, the Reserve Fund remaining after full payment of all common expenses of the Association shall be distributed to all Unit owners, and their mortgagees (as their interests may appear) in proportion to their respective common interests, except for the shares in the Reserve Fund attributable to the owners of Units reconstituted as a new condominium property regime, which shares shall be retained for the reconstituted condominium property regime. The Board shall establish a working capital fund for the initial months of the Project's operations equal to two (2) months' estimated common expenses for each Unit.

U. **Amendment of Declaration.** Except as otherwise provided herein or in the Act, this Declaration may be amended by a vote of the owners of seventy-five percent (75%) of the interests in the common elements, effective only upon the recording of an instrument setting forth such amendment and vote, duly executed by such owners or by any two (2) officers of the Association; provided, however, that an amendment required to transfer parking stalls pursuant to Section 514A-14 of the Act need only be executed by the owners of the Units to which and from which such parking stalls are being transferred, and their mortgagee(s), if any, and such transfer of parking stalls between Units shall be effective only upon recording such amendment in the Bureau; provided, further that Declarant may, at any time prior to the recordation of a Deed in the Bureau conveying a Unit to a party not a signatory hereto, amend

this Declaration and the Bylaws in any manner as Declarant may deem fit, and specifically, may amend the designation of the parking stalls appurtenant to the Units; and provided, further, that Declarant reserves the right to amend this Declaration, without the consent or joinder of any other person then having an interest in a Unit, by filing an amendment to this Declaration pursuant to the provisions of Section 514A-12 of the Act, as amended, after completion of any Unit or building described herein, to which amendment shall be attached a verified statement of a licensed, registered architect or professional engineer certifying that the final plans theretofore filed or being filed simultaneously with such amendment fully and accurately depict the layout, location, Unit numbers and dimensions of the Units as built.

V. **Restatement of Declaration.** The Association may at any time restate this Declaration to set forth all amendments made thereof, in the manner set forth in, and subject to compliance with, the provisions of Section 514A-82.2 of the Act.

W. **Reserved Rights of Declarant.** In addition to any other rights reserved herein, the Declarant reserves the right, for a period of seven (7) years from the date of recordation of this Declaration, for itself and its agents to do the following:

1. To grant to any public or governmental authority easements for sewer, drainage, water and other facilities over, under along, across and through said land, all under the usual terms and conditions required by the grantee for such easement rights; to grant to any other person or entity any easements for ingress, egress or roadway purposes over, under, along, across and through said land (provided, however, that such easement rights shall be granted and exercised in such manner as not to unreasonably damage the buildings of the Project or unreasonably interfere with the use of said land by the Unit owners and their successors and assigns); and to quitclaim any easements in favor of the Project which are not required for the Project. Each Unit owner agrees that such Unit owner, and any person claiming an interest in said land by, through or under such Unit owner, shall, upon request, join in and execute any and all documents designating, granting and quitclaiming any such easements;

2. To amend this Declaration, the Condominium Map and the Bylaws consistent with any grant of rights by the Declarant under this paragraph;

3. Until the sale of the last unit in the Project, to maintain development facilities and conduct sales of units on and at the Project, including, but not limited to, maintaining model units, operating a sales office, conducting advertising, placing signs, using parking spaces and erecting lighting in connection with such sales; provided, however, that in exercising such right, the Declarant shall not, unless otherwise agreed to by the Unit owner affected, interfere with the rights of any Unit owner to the use of, or access to, such owner's Unit or any of the common elements or limited common elements appurtenant thereto;

4. To complete necessary improvements to and corrections of defects in the Project for which purpose the Declarant shall have an easement over and upon the Project;

5. To effect such modifications to Units and common elements in the

Project and/or to execute, record and deliver any amendments to this Declaration, the Condominium Map as well as the Bylaws and Project Rules and Regulations promulgated hereunder, as may be necessary or required to effect compliance by the Project, the Association, or the Declarant, with laws which apply to the Project, including, without limitation, 42 U.S.C. §§ 3601 et seq., including any and all rules and regulations promulgated thereunder, and the Americans With Disabilities Act, as amended, 42 U.S.C. §§12101 et seq., including any and all rules and regulations promulgated thereunder (the "ADA"). For instance, the Declarant will have the right to re-stripe parking stalls and reconfigure parking stalls to meet the requirements of the ADA; and

6. To record any amendment to this Declaration required under Section 514A-12 of the Act.

Each and every party acquiring an interest in the Project, by such acquisition, (i) consents to such modifications and to the recording of any and all documents necessary to effect the same in said Bureau, including any amendment or amendments of this Declaration, the Condominium Map, the Bylaws and the Project Rules and Regulations, as appropriate; (ii) agrees to execute, deliver and record such documents and instruments and do such other things as may be necessary or convenient to effect the same; and (iii) appoints Declarant and its assigns his attorney-in-fact with full power of substitution to execute, deliver and record such documents and instruments and to do such things on his behalf; which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties.

Further, Declarant shall have the right to assign such rights and authority to any other person or entity by an assignment recorded in the Bureau of Conveyances of the State of Hawaii.

#### **X. Initial Construction to Complete Units; Subsequent Alteration of Units.**

1. In connection with the initial construction of improvements, each Unit owner shall, at such Unit owner's cost and in accordance with plans and specifications therefor first approved in writing by Declarant's architect, construct such improvements and install such fixtures and provide such equipment and do all other things required to complete the Unit in a finished condition ready for the conduct of such Unit owner's business in the Unit. Each Unit owner will, before commencing any such construction, post with the Association a contract performance and labor and material payment bond or bonds with corporate surety satisfactory to the Association in the penal sum equal to one hundred percent (100%) of the cost of construction, guaranteeing the completion thereof free from any mechanics' or materialmen's lien and naming the Declarant, the Board on behalf of the Association, the Unit owners and holders of all liens affecting such Units, as their respective interests may appear as additional obligees. The construction of any Unit owner shall strictly comply with all applicable laws, ordinances, codes and regulations; and each Unit owner shall furnish to the Association a true copy of such Unit owner's building permit for such construction prior to the commencement of such work. All fixtures installed by each Unit owner will be new or completely reconditioned.



2. Subsequent to the initial completion of the Units described above, and subject to prior written notice to the Association and to the prior written consent of the holders of all liens affecting such Unit (if the lien holders require such consent and approval), the owner of any Unit shall have the right at any time and from time to time, at his sole cost and expense, to install, maintain, remove, and rearrange partitions and other structures from time to time within his Unit, and may paint, paper, panel, plaster, tile, finish, and do such other work on the interior surfaces of the ceilings, floors and walls within any such Unit and may finish, alter or substitute any plumbing, electrical or other fixtures attached to said ceilings, floors and walls as shall be appropriate for the utilization of such Unit; provided, that any construction or alteration shall strictly comply with all applicable laws, ordinances, codes and regulations and the owner of such Unit furnishes to the Association a true copy of the building permit for such construction or alteration and, if the Association requests the same within ten (10) days of the Association's receipt of such permit, a contract performance and labor and material bond or bonds with corporate surety satisfactory to the Association in the penal sum equal to one hundred percent (100%) of the cost of construction, guaranteeing the completion hereof free from any mechanics' or materialmen's lien, and naming the Board on behalf of the Association, the Unit owners and holders of all liens affecting such Units, as their respective interests may appear as additional obligees, prior to the commencement of such work; and provided, further, that such plumbing and electrical alterations and/or substitutions shall not adversely affect the structural integrity of the building or the plumbing and electrical systems contained therein or interfere with the use and enjoyment of the common elements by the other owners.

Any owner of a Unit which shall be divided by a common element which is a wall shall have the right at any time, and from time to time, to alter or remove all or portions of the intervening wall (whether or not load-bearing) so long as such alteration or removal shall not interfere with the use or enjoyment of any other Unit, if the structural integrity of the Project is not thereby affected and if the finish of the common element then remaining is restored to the condition substantially comparable to that of the common element prior to such alterations, and such owner may install in and attach to such opening or openings in such common elements, doors, and other service devices and may remove and retain ownership of the installed equipment; provided, that any alteration of a common element shall be performed under the supervision of a licensed architect. Prior to commencing any alteration of a common element, such owner shall present to the Board of Directors of the Association the signed statement of a professional engineer certifying that the proposed alteration will not affect the structural integrity of the Project and shall secure a performance and payment bond naming as obligees such owner, the mortgagee of the Unit, the Association, and collectively, the owners and mortgagees of all other Units, as their interests may appear, in a penal sum of not less than one hundred percent (100%) of the cost of the construction, guaranteeing completion of construction free and clear of all mechanic's and materialmen's liens and naming the Board on behalf of the Association, the Unit owners and holders of all liens affecting such Units, as their respective interests may appear as additional obligees. Upon the completion of any alteration which results in a change in the Project as depicted in the Condominium Map, said owner, shall, in connection with the alteration and to the extent required by law, execute

and file an amendment to the Declaration and said Condominium Map to accurately describe and depict said alteration.

3. Each conveyance, lease and mortgage or other lien made or created on any Unit in the Project and all common interests and other appurtenances thereto shall be subject to the provisions of this Paragraph X.

Y. **Power of Attorney.** To the extent that the joinder of all Unit owners may be required to validate any amendment of this Declaration as contemplated under paragraph W. herein, such joinder shall be accomplished by power of attorney from each of the owners to Declarant, and the acceptance of ownership of a Unit in the Project shall constitute a grant of such power and such grant, being coupled with the interest of Declarant as herein reserved to exercise its rights under said paragraph W., and shall be irrevocable so long as the rights reserved to Declarant under said paragraph W. shall remain in existence pursuant to the terms hereof. No amendment of this Declaration affecting any of the rights of Declarant under paragraph W. shall be effective unless the Declarant shall give its written consent to such amendment.

Z. **Definitions.** The terms "**majority**" or "**majority of Unit owners**" herein mean the owners of existing Units to which are appurtenant more than fifty percent (50%) of the common interests, and any specified percentage of the Unit owners means the owners of the Units to which are appurtenant such percentage of the common interests.

AA. **Invalidity.** The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such provision had never been included herein.


BB. **Conflicts.** This Declaration is set forth to comply with the requirements of the Act. In case any provisions of this Declaration conflict with the provisions of the Act, the provisions of the Act shall control. If any provisions of this Declaration conflict with the provisions of the Bylaws, the provisions of this Declaration shall control.

CC. **Rights of Action.** Nothing herein or in the Bylaws shall be deemed to abridge the right of an aggrieved Unit owner or the Association to bring and maintain an action against another Unit owner or the Association, as the case may be, for failure to comply with the provisions of this Declaration, the Bylaws or any other rules and regulations or decisions of the Association which have been duly promulgated and made pursuant to authority granted to the Association in said Declaration and Bylaws.

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IN WITNESS WHEREOF, Declarant has executed this instrument this 26  
day of September, 20 05.

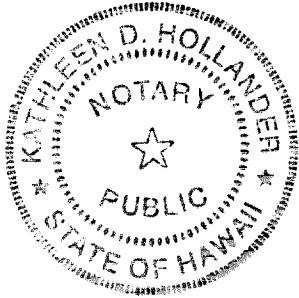
KCCC, LLC,  
a Hawaii limited liability company

By   
Name: Valentine Peroff, Jr.  
Title: Manager

Declarant

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

On this 26<sup>th</sup> day of September, 2005, before me personally appeared Valentine Peroff, Jr., to me personally known, who, being by me duly sworn, 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 Name of Notary)

Kath D Hollander  
(Signature of Notary)

Notary Public, State of Hawaii

My Commission Expires: 10/19/07

## EXHIBIT "A"

### Property Description

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° 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° 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° 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° 18' 30" 30.00 feet to a point on the southerly boundary of Ohukai Road;

4. 263° 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 : 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

## EXHIBIT "B"

### KIHAI COMMERCIAL PLAZA CONDOMINIUM PROJECT

Unit Number	Approximate Net Area (sq. ft.)	Percentage Common Interest	Percentage Unit Building Share	Reserved Parking Stall(s)
<b>Building 1</b>				
101	1,111	1.43%	4.70%	101, 102
102	1,080	1.38%	4.53%	104, 105
103	1,080	1.38%	4.53%	107, 108
104	1,080	1.38%	4.53%	109, 110
105	1,080	1.38%	4.53%	112, 113
106	1,080	1.38%	4.53%	114, 115
107	1,080	1.38%	4.53%	116, 117
108	1,080	1.38%	4.53%	119C, 120C
109	1,080	1.38%	4.53%	121, 122
110	1,080	1.38%	4.53%	123, 124
111	1,080	1.38%	4.53%	125, 126
112	1,111	1.43%	4.70%	129, 130
113	1,080	1.38%	4.53%	131, 132
114	1,080	1.38%	4.53%	133, 134
115	1,080	1.38%	4.53%	137, 138
116	1,080	1.38%	4.53%	139, 140
117	1,080	1.38%	4.53%	141, 142
118	1,080	1.38%	4.53%	143, 144
119	1,080	1.38%	4.53%	146, 147
120	1,080	1.38%	4.53%	145, 150
121	1,080	1.38%	4.53%	151, 152
122	1,080	1.38%	4.53%	153, 154
<b>Building 2</b>				
201	1,083	1.40%	9.54%	203, 204
202	1,017	1.30%	8.95%	206, 207
203	1,017	1.30%	8.95%	209, 210
204	1,017	1.30%	8.95%	211, 212
205	1,017	1.30%	8.95%	214, 215
206	1,017	1.30%	8.95%	217, 218
207	1,017	1.30%	8.95%	219, 220
208	1,017	1.30%	8.95%	222, 223
209	1,017	1.30%	8.95%	224, 225
210	1,017	1.30%	8.95%	227, 228
211	1,125	1.46%	9.91%	230, 231

Building 3				
301	1,133	1.46%	5.29%	320
302	1,036	1.33%	4.84%	318
303	1,036	1.33%	4.84%	316
304	1,036	1.33%	4.84%	314
305	1,048	1.34%	4.90%	312
306	1,293	1.67%	6.06%	345
307	1,036	1.33%	4.84%	347
308	1,036	1.33%	4.84%	349
309	1,036	1.33%	4.84%	331
310	1,133	1.46%	5.29%	329
311	1,133	1.46%	5.29%	319
312	1,036	1.33%	4.84%	317
313	1,036	1.33%	4.84%	315
314	1,036	1.33%	4.84%	313
315	1,048	1.34%	4.90%	311
316	1,048	1.34%	4.90%	344
317	1,036	1.33%	4.84%	346
318	1,036	1.33%	4.84%	348
319	1,036	1.33%	4.84%	330
320	1,133	1.46%	5.29%	328
Building 4				
401	1,048	1.34%	4.90%	424
402	1,036	1.33%	4.84%	422
403	1,036	1.33%	4.84%	420
404	1,036	1.33%	4.84%	418
405	1,133	1.46%	5.29%	416
406	1,133	1.46%	5.29%	412
407	1,036	1.33%	4.84%	441
408	1,036	1.33%	4.84%	439
409	1,036	1.33%	4.84%	437
410	1,293	1.67%	6.06%	343
411	1,048	1.34%	4.90%	423
412	1,036	1.33%	4.84%	421
413	1,036	1.33%	4.84%	419
414	1,036	1.33%	4.84%	417
415	1,133	1.46%	5.29%	415
416	1,133	1.46%	5.29%	411
417	1,036	1.33%	4.84%	442
418	1,036	1.33%	4.84%	440
419	1,036	1.33%	4.84%	438
420	1,048	1.34%	4.90%	436

Visitor Parking Stalls for each Building are listed as follows:

<b>Building 1</b>	<b>Building 2</b>	<b>Building 3</b>	<b>Building 4</b>
103	201	301	401
106	202H	302	402H
111H	205	303	403
118	208	304	404
127	213	305	405
128	216	306	406
135	221	307	407
136	226	308	408
148H	229	309H	409
149H	232	310	410
155C		321C	413
156C		322C	414
157C		323	425
158C		324	426
159C		325	427
160C		326	428
161C		327	429H
		332	430H
		333	431
		334	432
		335	433
		336H	434
		337H	435
		338	443C
		339	444C
		340	445C
		341	446C
		342	447C
		350C	448C
		351C	449C
		352C	450C
		353C	
		354C	
		355C	
		356C	

H = Handicapped Accessible Stall

C = Compact Stall

**EXHIBIT "C"**

**KIHEI COMMERCIAL PLAZA CONDOMINIUM PROJECT**

**I. Limited Common Elements**

<b>Limited Common Element</b>	<b>Method of Allocation of Cost</b>
Water meter for each Building	Building Common
Unit water sub-meter (if installed due to additional fixtures with approval of Seller or the Association)	Unit Owner
Unit fire sprinklers	Unit Owner
Hose bibs	Building Common
Water closets and lavatories	Unit Owner
Electrical transformers	Building Common
Electrical room, service breaker and main/meter	Building Common
Elevators	Building Common
Outdoor lighting	Common
Fire annunciators	Building Common
Air conditioning compressors, condensers and fan coils units	Unit Owner
Condensate drain piping and drywell	Unit Owner
Roof	Common
Gutters and drain downspouts	Building Common
Yard area behind Units in Building 2	Unit Owner
Fences surrounding rear yard area of Building 2	Building Common

Landscaping	Common
Parking lot/stalls	Common
Loading areas	Building Common
Building exteriors	Building Common
Trash enclosures	Building Common

## II. Utilities

Utility	Allocated to
Water usage by Units in each Building	Building Common
Electricity consumed by each Unit	Unit Owner
Electricity furnished to limited common elements for each Building	Building Common
Telephone service for each Unit	Unit Owner
Cable television service for each Unit	Unit Owner
Refuse collection for Units	Common
Sewer disposal for Units	Common

For the purposes of the foregoing:

**"Common"** means that each Unit Owner will be responsible for such Unit Owner's proportionate share, based on the Unit Owner's common interest percentage.

**"Building Common"** means that each Unit Owner will be responsible for such Unit Owner's proportionate share, based on the ratio which the Unit Owner's common interest bears to the aggregate common interest of all Unit Owners in the Building in which the limited common element is situate.

**"Unit Owner"** means each Unit Owner will be individually responsible for such item.