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KCOM Corp.  
99-880 Iwaena Street  
Aiea, Hawaii 96701  
(808) 487-1445

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**AMENDMENT AND RESTATEMENT OF  
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR KIHEI COMMERCIAL ROADWAYS ASSOCIATION**

THIS AMENDMENT AND RESTATEMENT OF DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR KIHEI COMMERCIAL ROADWAYS ASSOCIATION (the "**Amendment**") is dated October 6, 2004, by KIHEI COMMERCIAL ROADWAYS ASSOCIATION, a Hawaii nonprofit corporation (the "**Association**"), and the parties executing the Consent and Joinders attached to this Amendment.

**WITNESSETH:**

WHEREAS, KCOM CORP., a Hawaii corporation ("**KCOM**"), and VALENTINE PEROFF, JR., as Trustee of the Valentine Peroff, Jr. Revocable Living Trust created by unrecorded Trust Agreement dated July 7, 1989 ("**Peroff**"), entered into that certain Declaration of Protective Covenants, Conditions and Restrictions for Kihei Commercial Roadways Association, dated May 20, 2003, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2003-099707, as amended by instrument acknowledged November 21, 2003, and recorded as aforesaid as Document No. 2003-259113 (collectively, the "**Declaration**"), whereby KCOM and Peroff organized the Association to provide for maintaining, repairing, insuring, improving and repaving of certain roadways and access easements;

WHEREAS, the current Owners of Lots 1-B-1 through 1-B-6 (as such terms are defined in the Declaration) of the Kihei Commercial Center Subdivision, have voted to amend and restate said Declaration by a Majority Vote of the Owners (as such term is defined in the Declaration) to include the roadway located within Easement 3 as a "Roadway" and to make other amendments;

WHEREAS, this Amendment is also intended to supersede that certain Road Maintenance Agreement (Easement 3) dated September 6, 2001 and recorded as aforesaid as Document No. 2001-140241 (the "RMA");

NOW, THEREFORE, in consideration of the premises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Declaration is hereby amended and restated in its entirety.

I. The Declaration is hereby amended and restated to read as follows:

**A. Allocation of Costs and Liability Insurance**

1. The cost of maintaining, repairing, insuring, improving and repaving of the Roadways shall be allocated and borne by the owners of Lot 1-A, Lots 1-B-1 through 1-B-6 and Units A and B of the Condominium Project in the following proportions:

Unit or Lot Designation	Share of Costs
Lot 1-A	17.834%
Lot 1-B-1	9.236%
Lot 1-B-2	9.236%
Lot 1-B-3	9.236%
Lot 1-B-4	9.236%
Lot 1-B-5	9.236%
Lot 1-B-6	9.236%
Unit A	13.375%
Unit B	13.375%

The foregoing lot and unit owners shall hereinafter be referred to as the "Owners" and their respective proportionate shares the "Share of Costs".

For purposes of this Declaration, the cost of maintaining, repairing, insuring, improving and repaving of the Roadways shall also include, without limitation, the cost of irrigating the landscaping, the cost of repairing and maintaining the light standards, the cost of electricity for the illumination of said light standards, and all other reasonable costs incurred in the maintaining, repairing, insuring, improving and repaving of the Roadways and any appurtenant facilities of the Roadways, including a reasonable reserve for contingencies and for anticipated repair, repainting, maintenance or replacement, which reserve shall not be refundable to the Owners under any circumstances.

The cost of such maintaining, repairing, insuring, improving and repaving shall be administered, paid and assessed by and through the Association as set forth in this Declaration.

2. Damages to any portion of the Roadways caused by any Owner, or by or out of the acts or omissions of any person under the supervision, custody or control of said Owner, Owner's agents, employees or contractor, or in the company of the same, shall be repaired and restored at the sole expense of said Owner.

3. Any amendment of this Declaration shall be made by a Majority Vote of the Owners (as defined hereinbelow). The vote of an Owner where a lot or unit is owned by two (2) or more persons may be exercised by any one of them present at any meeting of the Owners in absence of protest by the other co-owners. In the event of protest by the other co-owners, each co-owner shall be entitled to a share of the vote based on such co-owner's interest in said lot or unit. Notwithstanding the foregoing, no decision of the Owners shall increase the share of any Owner in the costs described in Section A.1 without the specific consent of the Owner affected.

4. Each Owner agrees to cause the Association, as its expense, to procure and keep in effect liability insurance naming the Association and each of the Owners of the lots on which the Roadways are located (the "**Servient Lots**") as additional insureds and covering all claims, liabilities and expenses for property damage, death and personal injury from the use of the Roadways. The liability insurance shall include coverage with minimum limits of not less than Five Million Dollars (\$5,000,000) for injury or death to one person, and not less than One Million Dollars (\$1,000,000) for property damage in any one accident.

5. It the intent of this Declaration that the Association be solely responsible for the maintenance, repair, insurance, improvement and repavement of the Roadways. Accordingly, the Association shall indemnify, defend and hold the Owners of each of the Servient Lots (each, an "**Indemnified Party**") harmless from and against all liability for property damage, death or personal injury from the use of the Roadways to the extent the same is not covered by any insurance policy, except where such loss or damage to the Roadways or such injury or death of persons arises from the willful misconduct or negligence of the Indemnified Party. The Association shall be

responsible for such liability, except to the extent that such liability is caused by the willful misconduct or negligence of an Indemnified Party.

**B. Administration by Association.**

**1. DEFINITIONS.**

The following words when used in this Declaration, unless the context otherwise specifies or requires, shall have the following meanings:

**1.1 Articles of Incorporation.** "Articles of Incorporation" or "Articles" means the Articles of Incorporation of the Association granted pursuant to Chapter 414D of the Hawaii Revised Statutes, as amended.

**1.2 Association.** "Association" means the Kihei Commercial Roadways Association, a Hawaii non-profit corporation, and its successors and assigns.

**1.3 Association Property.** "Association Property" means the Roadways and any other real or personal property owner or leased by the Association.

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

**1.5 By-Laws.** "By-Laws" means the By-Laws of the Association.

**1.6 Condominium Project.** "Condominium Project" means that certain condominium property regime established as the Kihei Commercial Condominium II condominium project by that certain Declaration of Condominium Property Regime of Kihei Commercial Condominium II dated May 9, 2001, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-095548, as amended.

**1.7 Declarants.** "Declarants" means KCOM and Peroff.

**1.8 Declaration.** "Declaration" means this Declaration of Protective Covenants, Conditions and Restrictions, as the same may from time to time be amended.

**1.9 Lot.** "Lot" means a lot identified in **Exhibit "A"** attached hereto.

**1.10 Majority Vote of the Owners.** "Majority Vote of the Owners" means the vote of the Owners or Members to whom more than fifty percent (50%) of the Share of Costs is allocated.

1.11 **Member.** "Member" means any Person who is a member of the Association pursuant to Section B.3 hereof.

1.12 **Owner.** "Owner" means any Person (including Declarants) who is, or any persons who are, jointly or in common, the Record owner of the fee simple title to any Lot or Unit A or B of the Condominium Project. An Owner may assign all or a portion of his rights and privileges hereunder and delegate all or a portion of his duties and obligations hereunder as provided in Section B.2.4 below.

1.13 **Person.** "Person" means a natural individual, corporation, partnership or any other legal entity.

1.14 **Property.** "Property" means all of the real property described in **Exhibit "A"** attached hereto, together with all buildings and other improvements now or hereafter located thereon and all rights and interests appurtenant thereto.

1.15 **Record.** "Record", "Recorded" and "Recordation" means with respect to any document, the recordation or filing of such document in the Bureau of Conveyances of the State of Hawaii.

1.16 **Roadways.** "Roadways" means the roadways located within Lot 1-B-7 and Easements 3, 6, 7, 8 and 9 which are more particularly described in **Exhibit "B"** attached hereto, and any other common facilities obtained and maintained for the common benefit of all Owners, including, without limitation, all landscaping, sewerline and drainage easements conveyed to and accepted by the Association. Notwithstanding anything else to the contrary in this Declaration, any and all provisions applicable to the Roadways, including, but not limited to, those relating to insurance, maintenance, repair, indemnification or liability, shall also apply to and include the landscaping, sewerline and drainage easements and the common facilities described above.

1.17 **Share of Costs.** "Share of Costs" means the proportional interest of each Owner as set forth in Section A.1 above.

1.18 **Unit.** "Unit" means a unit in the Condominium Project.

## **2. PURPOSE.**

This Declaration, together with any and all rules and regulations promulgated pursuant hereto, is intended to provide for a formal mechanism for the administration of and the making of decisions with respect to the maintaining, repairing, insuring, improving and repaving of the Roadways.

## **3. THE ASSOCIATION.**

**3.1 General Purpose and Powers.** The Association has been incorporated to be and constitute the association to which reference is made in this Declaration. Upon dissolution of the Association, the assets of the Association shall be disposed of as set forth in the Articles or By-Laws.

**3.2 Membership; Voting Rights.** Each Owner shall be a Member of the Association, and each Member shall have a vote in proportion to such Owner's Share of Costs. Voting by proxy shall be permitted. In the event of multiple Owners of the same Lot or Unit, all such multiple Owners shall be Members, and the vote(s) for such Lot or Unit shall be exercised as such multiple Owners may themselves determine. Such multiple Owners shall, prior to each meeting of Owners, provide the Board with a written statement, signed by each such multiple Owner, designating one Person who shall have the right to cast the vote assigned to the Lot or Unit owned by such multiple Owners, and in the event that such multiple Owners shall fail to designate such Person to cast the vote assigned to such Lot or Unit, no Person shall be entitled to cast the vote assigned to such Lot or Unit. Subject to the Owners' rights to assign or delegate all or a portion of their rights as Members, the right to vote pursuant to this Section B.3.2 may not be severed or separated from any Lot or Unit, and any sale, transfer or conveyance of fee interest in any Lot or Unit to a new Owner or Owners shall operate to transfer the appurtenant voting rights without the requirement of any express reference thereto.

**3.3 Articles and By-Laws.** The purposes and powers of the Association and the rights and obligations with respect to Owners as Members of the Association set forth in this Declaration may and shall be amplified by provisions of the Articles and By-Laws of the Association, including any reasonable provisions with respect to corporate matters, but in the event that any such provisions may be, at any time, inconsistent with any provision of this Declaration, the provisions of this Declaration shall govern.

**3.4 Notification of Association.** Each Owner shall within ten (10) days of any sale, transfer or conveyance of the fee simple title to the Owner's Lot or Unit notify the Association of such sale, transfer or conveyance.

**3.5 First Meeting of the Association.** The first annual meeting of the Association shall be held not later than one hundred eighty (180) days after recordation of the first Lot conveyance; provided that at any time prior any two (2) Owners may agree to hold such meeting at an earlier date and notify the other Owners of the same.

#### **4. CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION.**

4.1 **Maintenance of the Roadways.** The Association shall provide for the maintaining, repairing, insuring, improving and repaving of the Roadways and related facilities.

4.2 **Labor and Services.** The Board, acting on behalf of the Association, may obtain and pay for the services of any Person to manage its affairs, or any part thereof, to the extent it deems advisable, as well as the services of such other personnel, including independent contractors, as the Board shall determine to be necessary or desirable for maintaining, repairing, insuring, improving and repaving of the Roadways, whether such personnel are furnished or employed directly by the Association or by any Person with whom or which it contracts. The Association may delegate to such Person any of its powers except the powers to (i) levy assessments; (ii) execute contracts involving Five Thousand Dollars (\$5,000) or more or the performance of work or services which will not be completed within sixty (60) days; and (iii) to sell, convey, mortgage or encumber any Association Property without prior approval of the Board. Any and all fees or costs for the services of such Person shall be paid in proportion to each Owner's Share of Costs.

4.3 **Association Functions.** The Association, acting through the Board, may undertake or contract for any lawful activity, function or service for the benefit of the Owners.

4.4 **Personal Property of Association.** The Association, acting through the Board, shall hold title to Roadway Lot 1-B-7 and any other roadway lots created for the common use and benefit of the Owners, and may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

4.5 **Real Property of Association.** The Association, acting through the Board, shall accept fee simple title to or a leasehold interest in any land underlying all or a part of the Roadways or in any other real property to be maintained, repaired, insured, improved and/or repaved for the common use or benefit of the Owners, and such other easements, rights of way and other property rights from time to time conveyed to it by Declarants for such common use or benefit, provided that the Association need not accept any such real property subject to a lien upon such real property securing or evidencing an obligation to pay money except a lien for nondelinquent real property taxes and assessments.

4.6 **Rules and Regulations.** The Association, through the Board, may make, alter, and enforce and from time to time rescind, reasonable and uniformly applied rules and regulations, not in conflict with the provisions of this Declaration or any applicable laws, ordinances or regulations, governing the use of the Roadways.

The Association shall furnish each Owner with a written copy of each and every rule or regulation adopted pursuant to this Section B.4.6; provided, however,

that failure to furnish said copy shall not be deemed to invalidate said rules or regulations to any extent.

The Association, acting through its Board of Directors or through an agent appointed by the Board, shall have the right to enforce any of the rules and regulations of the Association and the obligations of any Owner under this Declaration or any provision of the Articles or By-Laws, by having the Association assess a reasonable fine against such Owner and/or suspend the right of such Owner to use Association Property and/or suspend the right of such Owner to vote at meetings of the Association. If any such fine imposed on an Owner by the Association is not paid by said Owner within fifteen (15) days after said Owner has received from the Association written notice of the imposition of such fine, then payment thereof shall be immediately enforceable in the same manner as payment of an overdue Assessment may be enforced in accordance with Section B.5 hereof.

Within the 15-day period described above, said Owner may request a hearing, which shall be set by the Board. Such Owner shall have the right to be heard in person, by submission of a written statement, or through a spokesperson, at any such hearing; provided, however, that the failure of any Owner to appear at a hearing, the notice of which has been delivered to such Owner shall constitute a waiver of such Owner's right to be heard prior to imposition of penalties against such Owner. If a request for hearing is not made within the 15-day period described above, such Owner shall be deemed to have waived its right to a hearing and the sanctions shall take effect.

All fines imposed and collected by the Association shall be deposited into the general fund of the Association and shall thereafter be used for the benefit of the Association and its Members generally. The Association may also take judicial action against any Owner to enforce compliance with such rules, regulations or other obligations or to obtain damages for noncompliance, all to the extent permitted by law.

Notwithstanding anything to the contrary contained herein, the Association, acting through the Board, may elect to enforce the rules and regulations of the Association, by self-help (specifically including, but not limited to, the towing of vehicles) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth in Section D.2. In any such action, to the extent permissible, the Owner responsible for the violation shall pay the Association's costs and expenses, including reasonable attorneys' fees.

The foregoing remedies shall be in addition to any other remedies provided herein or at law or in equity for the enforcement of this Declaration, including, without limitation, Declarants' right to enforce this Declaration as provided in Section D.2 hereof, and the imposition of any fine or the suspension of voting rights shall not preclude the Association, the Declarants, or any Owner from pursuing or obtaining any other available remedies.



4.7 **Dedication of Land.** Subject to any other restrictions or easements of Record, the Association may dedicate, grant easements in or transfer any part of the Association Property to any public agency, authority or public or private utility.

4.8 **Real Property Taxes.** The Association shall pay all property taxes and assessments levied on any portion of Association Property. The Association may contest, by appropriate legal proceedings conducted in good faith and with due diligence, the amount, validity or application of any taxes or assessments.

4.9 **Implied Rights.** The Association shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

4.10 **Indemnification.** The Association shall indemnify, defend, and hold harmless each present and future officer, director, agent, and employee of the Association, and each Person who serves at the request of the Association as a director, officer, employee, or other agent of another corporation, partnership, joint venture, trust, or other enterprise against and from any and all claims, penalties, fines, losses, damages, costs, expenses, and liabilities, including without limitation amounts of judgments, amounts paid in compromise settlements, and reasonable attorney's fees resulting from or arising by reason of such Person's being or having been such officer, director, agent, or employee, except such costs, expenses, or liabilities as shall relate to matters as to which he shall in such action, suit, or proceeding be finally adjudged to be, or shall be, liable by reason of his gross negligence or willful misconduct toward the Association in the performance of his duties as such officer or director.

4.11 **Borrowing of Money.** The Board may authorize the borrowing of money to be used by the Association for the repair, replacement, maintenance, operation or administration of any Association Property, 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 an Association expense; provided that Owners holding greater than fifty percent (50%) of the Share of Costs, give written consent thereto or vote in favor thereof in person or by proxy at a meeting duly called, having been first notified of the purpose and use of the funds.

4.12 **Restrictions.** The Owner of any Lot or Unit on which an easement is located shall not erect any building, fence or other structure within the easement area or cut or alter any vegetation or alter the surface of the ground, without the prior written consent of the Association. Subject to the foregoing, unless otherwise provided in the easement document, the Owner of said Lot or Unit shall be entitled to the reasonable use of the easement area as long as such use does not interfere with the exercise by the owner of the easement of its easement rights.

## 5. ASSESSMENTS.

5.1 **Assessments.** Each Owner, or, in the event of multiple Owners of the same Lot or Unit, such multiple Owners jointly and severally, shall be obligated to, and shall, pay to the Association amounts as hereinafter provided, which amounts are herein called "**Assessments**". Assessments shall include "**Regular**", "**Supplementary**" and "**Additional**" Assessments.

Subject to the provisions hereof, the Board shall have the power and authority to determine all matters in connection with Assessments, including, without limitation, power and authority to determine where, when and how Assessments should be paid to the Association, and each Owner shall comply with all such determinations.

5.2 **Determination of Budgets and Assessments.** The fiscal year of the Association shall be the calendar year. The amount to be raised by Regular Assessments for any fiscal year or partial fiscal year shall be determined in the manner described herein. Prior to the annual meeting of the Members of the Association, the Board shall prepare or cause to be prepared and approve a budget for the fiscal year or partial fiscal year showing, in reasonable detail, the estimated operating costs and expenses for the costs of maintaining, repairing, insuring, improving and repaving of the Roadways which will be payable in that fiscal year or partial fiscal year to fulfill the regular operating functions and obligations of the Association in that fiscal year or partial fiscal year, including amounts necessary to cover obligations made in connection with, or contemplated under, any previously approved budgets, plus an amount sufficient to provide a reasonable reserve for the next fiscal year (the "**Operating Budget**"). The Board shall subtract from the Operating Budget the amount equal to the anticipated surplus attributable to Assessments collected but not disbursed in the fiscal year or partial fiscal year immediately preceding the fiscal year or partial fiscal year for which the Operating Budget has been prepared. The Board shall furnish a copy of the Operating Budget to each Owner at or prior to the annual meeting of the Members of the Association. The Operating Budget shall become effective on approval at a meeting by a Majority Vote of the Owners. Upon approval of the Operating Budget, Regular Assessments shall be apportioned among the Owners in accordance with their Share of Costs. If the Board fails to determine or cause to be determined the total amount to be raised by Regular Assessments in any fiscal year or partial fiscal year, and/or fails to notify the Owners of the amount of such Regular Assessments for any fiscal year or partial fiscal year, or if the Members of the Association shall disapprove the Operating Budget as provided above, then until such time as the Regular Assessments for the fiscal year are determined, Members will pay Regular Assessments at the same rate as the previous fiscal year or partial fiscal year, provided that upon determination of the amount of the actual Regular Assessments for the fiscal year, the difference between the actual and estimated Regular Assessments theretofore paid shall be immediately paid by or credited to the Members.

**5.3 Supplementary Assessments.** In addition to Regular Assessments, the Association, through the Board, may levy Supplementary Assessments, payable over such period as the Association may determine: (i) for the purpose of defraying any expense incurred or to be incurred as provided in this Declaration, including the acquisition of Association Property and any costs of capital improvements to Association Property; or (ii) to cover any deficiency, in the event that, for whatever reason, the amount received by the Association from Regular Assessments is less than the amount determined and assessed by the Association. If the aggregate amount of Supplementary Assessments levied in any calendar year exceeds Ten Thousand Dollars (\$10,000) or the Supplementary Assessment is for the purpose of acquisition of Association Property (other than title to the Roadways), then such Supplementary Assessment may not be levied without the prior approval of a Majority Vote of the Owners.

**5.4 Apportionment of Assessments.** The amount of the Regular or Supplementary Assessment for any fiscal period payable by an Owner for the Lot or Unit owned by such Owner shall be computed by multiplying the total amount to be raised by such Assessments by such Owner's Share of Costs.

**5.5 Additional Assessments.** In addition to Regular and Supplementary Assessments, all costs and expenses of activities, functions or services undertaken by the Association for the benefit of fewer than all of the Owners shall be assessed to the Owners benefited thereby, and such assessments ("**Additional Assessments**") shall be collected and enforced in accordance with the provisions of this Section B.5.

**5.6 Time for Payments.** The amount of any Regular, Supplementary or Additional Assessment shall become due and payable thirty (30) days after notice of the amount due as to such Regular, Supplementary or Additional Assessment shall have been given by the Association to the Owner of the Lot or Unit against which the Assessment is payable and the amount of any other charge, fine, penalty, or other amount payable with respect to any Owner, Lot or Unit, shall become due and payable as specified by the Board and, in any event, not more than fifteen (15) days after any notice of the amount due as to such other charge, fine, penalty or other amount shall have been given by the Association to such Owner. All such amounts shall bear interest at a rate of one percent (1%) per month, but in no event greater than the maximum amount permitted by law from the date due and payable until paid.

**5.7 Lien for Assessments and Other Amounts.** If an Owner does not pay in full any Assessment, charge, fine, penalty, cost, expense or other amount payable to the Association hereunder, or any installment thereof, or any interest accrued thereon, when due, the Owner shall be deemed to be in default and, upon Recording a notice of default describing the Lot or Unit owned by the defaulting Owner, the Association shall have a lien against such Lot or Unit to secure payment of any such Assessment, charge, fine, penalty, cost, expense or other amount due and

owing to the Association with respect to the Owner, Lot or Unit, plus interest from the date due and payable, plus all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees. The lien may be foreclosed in the manner for foreclosure of mortgages in the State of Hawaii. The foregoing remedies shall be in addition to any other remedies provided herein or at law or in equity for the enforcement of such obligations.

**5.8 Estoppel Certificate.** Upon payment of a reasonable fee and upon written request of any Owner, the Association shall furnish a written statement setting forth the amount of Assessments, charges, fines or penalties, if any, due or accrued and then unpaid with respect to the Owner and the Lot or Unit owned by such Owner and the amount of the Assessments for the current fiscal period of the Association payable with respect to the Lot or Unit owned by such Owner, which statement shall, with respect to the party to whom it is issued, be conclusive against the Association that no greater or other amounts were then due or accrued and unpaid.

**5.9 Liability of Owners and Purchasers.** The amount of any Assessment, charge, fine or penalty owing to the Association by any Owner under this Declaration shall be a joint and several obligation to the Association of such Owner and such Owner's heirs, personal representatives, successors and assigns. Each such amount, together with interest thereon, may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same.

**5.10 No Right to Withhold Payment of Assessments.** No Owner shall withhold any Assessment levied by the Association. An Owner who disputes the amount of an Assessment may request a written statement clearly indicating:

- (i) The amount of any Regular, Supplementary or Additional Assessment 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 the Owner has a right to resolve disputes about the amount or validity of the Association's Assessment as provided for in Section D.1 below, provided the Owner immediately pays the Assessment in full and keeps Assessments current; and
- (v) That payment in full of the Assessment does not prevent the Owner from contesting the Assessment or receiving a refund of amounts not owed.

## **6. INSURANCE.**

**6.1 Insurance Requirements Generally.** The Association shall obtain and maintain in full force and effect at all times certain fire, liability and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized to do insurance business in the State of Hawaii. All such insurance shall name as insureds Declarants, Owners, the Association, the Board and its members and the officers, directors, employees and agents of Declarants and the Association. All such insurance shall protect each of the insureds as if each were separately insured under separate policies. To the extent reasonably practicable, such insurance shall: (i) provide for a waiver of subrogation by the insurer as to claims against Declarants, Owners, the Association, the Board and its Members and the officers, directors, employees, and agents of Declarants and the Association and against each Owner and each Owner's employees; (ii) provide that the insurance cannot be cancelled, invalidated or suspended on account of the conduct of Declarants, the Association or the officers, members, employees or agents of Declarants, the Association, the Board or of any Owner or such Owner's employees; (iii) provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or mortgagee and that the insurance policy shall not be brought into contribution with insurance maintained by any Owner or mortgagee; (iv) contain a standard mortgage clause endorsement in favor of the mortgagee of any part of the Association Property except a mortgagee who is covered by other and separate insurance; and (v) provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least ten (10) days' prior written notice to the Association and to each mortgagee covered by any standard mortgage clause endorsement. To the extent possible, public liability and property damage insurance shall provide for coverage of any cross liability claims of Owners against the Association or other Owners and of the Association against Owners without right of subrogation. Any insurance policy may contain such deductible provisions as the Board deems consistent with good business practice.

The cost and expense of all insurance obtained by the Association, except insurance obtained at the request of and specifically benefiting any particular Owner or group of Owners, shall be an expense of the Association.

**6.2 Hazard Insurance.** The Association shall obtain and maintain fire insurance insuring all Association Property against loss or damage caused by such hazards as are covered under standard extended coverage policies, with vandalism and malicious mischief endorsements, and if available and if deemed appropriate by the Association, all risk, for the full insurable replacement cost of said Association Property.

**6.3 Public Liability and Property Damage Insurance.** The Association shall obtain and maintain the liability insurance as required by Section A.4 above.

**6.4 Worker's Compensation and Employer's Liability Insurance.**

The Association shall obtain and maintain worker's compensation and employer's liability insurance as may be necessary to comply with applicable laws.

**6.5 Insurance by Owners.**

Each Owner shall be responsible for obtaining insurance such Owner deems desirable, including, without limitation, fire insurance covering improvements, furnishings and personal property belonging to that Owner and that Owner's employees and invitees. Any insurance policy obtained by an Owner shall be such that it will not diminish or adversely affect or invalidate any insurance or insurance recovery under policies carried by the Association and shall, to the extent reasonably practicable, contain a waiver of the right of subrogation by the insurer as to any claim against the Association, its officers, directors, agents and employees, against Declarants, its officers, directors, employees and agents and against the Owners and their respective officers, directors, employees, agents and invitees. A copy of any insurance policy obtained by an Owner shall be furnished to the Association upon request of the Association.

**6.6 Receipt and Application of Insurance Proceeds.**

Except to the extent that a particular Person has a legal right to receive insurance proceeds directly, all insurance proceeds and recoveries shall be paid to and received by the Association.

**6.7 Other Insurance by Association.**

The Association shall have the power and authority to obtain and maintain other and additional insurance coverage, including fire insurance covering personal property of the Association, fidelity bonds or insurance covering employees and agents of the Association and insurance indemnifying officers, directors, employees and agents of the Association.

**7. DESTRUCTION, CONDEMNATION AND RESTORATION OF ROADWAYS.**

**7.1 Certain Definitions.**

The following terms shall have the following definitions:

**7.1.1 Substantial and Partial Destruction.**

"**Substantial Destruction**" shall exist whenever damage or destruction to the Roadways is valued at ten percent (10%) or more of the total assessed value of all of the Roadways. "**Partial Destruction**" shall mean any other damage or destruction.

**7.1.2 Substantial and Partial Condemnation.**

"**Substantial Condemnation**" shall exist whenever a taking of all of the Roadways under eminent domain or by grant or conveyance in lieu of condemnation is valued at ten percent (10%) or more of the total assessed value of all of the Roadways. "**Partial Condemnation**" shall mean any other such taking by eminent domain or grant or conveyance in lieu of eminent domain.

7.1.3 **Restoration.** "**Restoration**", in the case of any damage or destruction, shall mean restoration of the Roadways to a condition the same or substantially the same as the condition in which it existed prior to the damage or destruction and in the case of condemnation, shall mean restoration of the remaining portion of the Roadways to a state appropriate for a commercial property.

7.1.4 **Available Funds.** "**Available Funds**" shall mean any proceeds of insurance or condemnation awards or payments in lieu of condemnation and any uncommitted income or funds of the Association including funds carried over from the previous fiscal year. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee.

7.2 **Determination by the Board.** Upon the occurrence of any damage or destruction to the Roadways or any part thereof, or upon a complete or partial taking of the Roadways under eminent domain or by grant or conveyance in lieu of condemnation, the Board shall make a determination as to whether such damage or taking was substantial or partial.

7.3 **Restoration of the Roadways.** Restoration of the Roadways shall be undertaken by the Association without a vote of Owners in the event of Partial Destruction or Partial Condemnation. Within sixty (60) days after the Board has determined that Substantial Destruction or Substantial Condemnation has occurred, the Board shall send each Owner a written description of the Destruction or Condemnation and a ballot on which each Owner shall indicate whether or not Restoration is to be undertaken. Restoration shall be undertaken unless Owners holding greater than fifty percent (50%) of the Share of Costs vote against such Restoration. In the event the insurance proceeds actually received exceed the cost of Restoration when such Restoration is undertaken pursuant to this Section B.7.3, the excess shall be deposited in the Association's account and credited against future assessments.

7.4 **Action if Restoration of the Roadways is Disapproved.** If Restoration is not undertaken in the event of Substantial Destruction or Substantial Condemnation, the Association shall remove all damaged or destroyed improvements from the Roadways and restore the Roadways to a safe condition.

7.5 **Authority of Association to Restore.** The Association, as attorney-in-fact for each Owner, shall have full power and authority to restore the Roadways whenever Restoration is undertaken as hereinabove provided. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration.

7.6 **Payment of Proceeds.** All insurance proceeds attributable to damage or destruction of the Roadways shall be paid to the Association.

**7.7 Special Assessments for Restoration.** Whenever Restoration is to be undertaken, the Association may levy a Supplementary Assessment payable over such period as the Association may determine, to cover the costs and expenses of Restoration to the extent not covered by Available Funds.

**7.8 Receipt and Application of Condemnation Funds.** All compensation, damages or other proceeds constituting awards for a complete taking of the Roadways or a taking of part of the Roadways under eminent domain or by grant or conveyance in lieu of condemnation shall be payable to the Association. The award shall be applied to costs and expenses of Restoration if undertaken and, to the extent not so applied, shall be deposited in the Association's capital improvement account.

## **8. LIMITED LIABILITY.**

Neither Declarants, any Owner, the Association, the Board nor any officer, director, member, agent or employee of any of the same, shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was, on the basis of such information actually possessed by the Person against whom the claim is made, in good faith and without willful or intentional misconduct.

### **C. Subdivision of Roadways for Conveyance to the Association.**

1. The Owners of all Lots upon which a portion of the Roadways currently crosses over hereby agree to cooperate with Declarants to effect any plan to subdivide the Property so that the Roadways constitute separate subdivided lots. On any such subdivision of all or a portion of the Roadways, such Owner shall, on request by the Association or any Declarant execute a good and sufficient quitclaim, for Ten Dollars (\$10) and no additional consideration, of such Owner's respective interests in such subdivided portion of the Roadways to the Association. It is the intention of this provision that the Association shall, to the extent practicable, obtain title to and be responsible for the ownership, management, maintenance, repair, insuring, improving and repaving of the Roadways and the land underlying the Roadways in its entirety.

2. KCOM shall have the right to execute, acknowledge and deliver any and all instruments, including without limitation all amendments to this Declaration and to the Bylaws, all quitclaim conveyance instruments, and all amendments of mortgages necessary or appropriate for the purpose of carrying out the provisions and effecting the rights, power and privileges granted by this Section C. Any such action shall be deemed taken by KCOM as the true and lawful attorney-in-fact of the respective Owners and holders of any liens on the Lots. Each and every party acquiring an interest (including a mortgage lien or other security interest) in any Lot covered by this Declaration, by such acquisition, consents to the subdivision of the Roadways and to the execution and recordation of such documents as may be necessary to effect the same; agrees to execute such documents at Declarants' or KCOM's request and do such other things as may be necessary or convenient to effect the same; and



appoints KCOM as his, her or its attorney-in-fact with full power of substitution to execute such documents and do such other things on his, her or its behalf, which grant of such power, being coupled with an interest, is irrevocable and shall not be affected by the disability of any such party.

3. KCOM shall make reasonable commercial efforts to subdivide the Roadways at its own cost and expense, if such subdivision can be effected under applicable subdivision laws, and shall complete any such subdivision within a reasonable period after recordation of the first Lot conveyance.

#### **D. Miscellaneous.**

1. If at any time during the term of this Declaration or after the expiration or sooner termination thereof, any questions, disputes, differences or disagreements shall arise between the parties hereto which cannot be adjusted or settled by them to their mutual satisfaction, then every such matter shall, at the request of a party, be submitted to and be determined by a sole arbitrator, in which case such party may give to the others written notice to have an arbitration of the matter in question and nominate an arbitrator in said notice, whereupon the other parties, within ten (10) days after the receipt of such notice, may nominate an arbitrator, and if the parties cannot, within ten (10) days after the nomination of the second person, fail to appoint the sole arbitrator, any party may have the sole arbitrator appointed by a Judge of the Second Circuit Court of the State of Hawaii, and the arbitrator so appointed shall thereupon proceed to determine the matter in question and his or her decision shall be final, conclusive and binding upon the parties, as provided by Chapter 658A of the Hawaii Revised Statutes, as the same now is or may from time to time be amended or re-enacted. The arbitrator shall have all the power and duties prescribed by the statute, and judgment may be entered upon such award by the Circuit Court as provided by the statute. Each of the parties shall pay its own expenses, but the compensation and expenses of the arbitrator shall be allocated to and borne equally by all parties.

2. In addition to any other remedies herein provided, each provision of this Declaration with respect to an Owner or the Lot or Unit of an Owner shall be enforceable by the Association, by Declarants, or by any Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages. If any court proceedings are instituted in connection with the right of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover from the losing party its costs and expenses in connection therewith, including reasonable attorneys' fees.

3. Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration: (i) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in the Property or in any Lot or Unit is granted, devised or conveyed, whether or not set forth or referred to in such

deed or other instrument; (ii) shall, by virtue of acceptance of any right, title or interest in the Property or in any Lot or Unit by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner, and, as a personal covenant, shall be binding on such Owner and such Owner's heirs, personal representatives, successors, successors in trust and assigns and, as a personal covenant of an Owner, shall be deemed a personal covenant to, with and for the benefit of the Association and to, with and for the benefit of each and every other Owner; (iii) shall be deemed a real covenant by Declarants for themselves, their successors, successors in trust and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to the Property and each Lot or Unit and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of the Property and each Lot or Unit; and (iv) shall be deemed a covenant, obligation and restriction secured by a lien in favor of the Association burdening and encumbering the title to the Property and each Lot or Unit in favor of the Association.

4. The provisions of this Declaration shall be liberally construed to promote and effectuate the fundamental concepts set forth in this Declaration, and no provision hereof shall be construed to excuse any Person from observing any law or regulation of any governmental body having jurisdiction over the Property. No Owner through non-use of the Roadways or by abandonment of such Owner's Lot or Unit may avoid the burdens or obligations imposed on such Owner by this Declaration.

5. Whenever any notices are sent to an Owner, such notices shall be sent to the address of the Owner's Lot or Unit (or to such other address as previously shall have been given in writing and sent by registered or certified mail by the Owner to the Association), and shall be deemed to be received by the Owner on the earlier of the actual date of delivery or three (3) business days after postmark (whether or not actually received by the Owner). If a Lot or Unit is owned by more than one person, notice to any one person shall be deemed to be notice to all such persons. Each Owner, upon conveying fee simple ownership of a Lot or Unit to a new Owner immediately shall deliver or cause the new Owner to deliver a true and correct copy of the recorded conveyance instrument to the Association. Until such conveyance instrument is received by the Association, any notice identifying the previous Owner as addressee shall be deemed notice to the new Owner. All notices to the Association shall be sent to the Association's principal place of business (or such other address as the Association previously shall have given in writing to the Owners).

6. Declarants, as the current Owner of Lot 1-A, hereby reserve the right to subdivide Lot 1-A without the consent or approval of the other Owners and to amend this Declaration to recalculate the Share of Costs for Lot 1-A to divide Lot 1-A's total Share of Costs among each subdivided lot of Lot 1-A.

II. All exhibits attached to said Declaration are hereby deleted in their entirety and replaced with the exhibits attached hereto.

III. Except as modified hereunder, the Declaration is hereby ratified, confirmed and approved, and shall remain in full force and effect.

IV. The RMA is hereby cancelled and terminated and the parties thereto do hereby release and discharge each other and the land described therein from any and all obligations, claims and rights of whatever kind or character, and arising out of said RMA.

V. This Amendment may be signed and delivered in facsimile and/or in several counterparts, each of which shall be deemed an original, and all executed counterparts when taken together shall constitute a single complete agreement as long as each Party has signed at least one counterpart.

-The remainder of this page is intentionally left blank; the next page is the signature page-

IN WITNESS WHEREOF, the Association has entered into this Amendment and Restatement of Declaration of Protective Covenants, Conditions and Restrictions as of the day and year first above written.

KIHEI COMMERCIAL ROADWAYS  
ASSOCIATION,  
a Hawaii nonprofit corporation

By: 

Name: Valentine Puvff, Sr.  
Title: President

By: 

Name: JACK D. WATKINS  
Title: Secretary

ASSOCIATION



STATE OF HAWAII

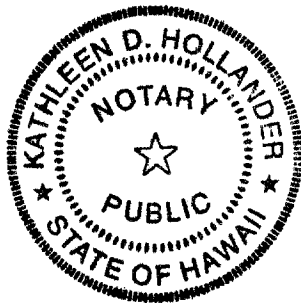
)

) ss.

CITY & COUNTY OF HONOLULU

)

On this 3<sup>rd</sup> day of February, 2004, before me personally appeared Jack D. Watkins, 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"

### DESCRIPTION OF LOTS

#### LOT 1-A

#### KIHEI COMMERCIAL CENTER SUBDIVISION

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 the Kihei Commercial Center Subdivision and along the remainder of said Grant 11400 to Ernest K. Naeole to a 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 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 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 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 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 said 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.

**LOT 1-B-1  
KIHAI COMMERCIAL CENTER SUBDIVISION**

All of that certain parcel of land, being Lot 1-B-1 of the Kihei Commercial Center Subdivision (the map thereof not being recorded), being a portion of Grant 11400 to Ernest K. Naeole, situated at Waiakoa, Kihei, Kula, Island and County of Maui, State of Hawai'i and being more particularly described as follows:

Beginning at a 3/4-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" at the West corner of this parcel of land, on the East boundary of the Piilani Highway F.A.P. No. RF-031-1(5) right-of-way, said pipe also being the Southwest corner of Lot 1-B-7 (private roadway lot) of said Kihei Commercial Center Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being:

14,867.01 feet North  
22,492.61 feet West

and running by azimuths measured clockwise from true South:

Thence along said Lot 1-B-7 (private roadway lot) of the Kihei Commercial Center Subdivision, 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:



1. 217° 24' 00" 46.36 feet to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983";
2. 268° 00' 00" 184.99 feet along said Lot 1-B-7 (private roadway lot) of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" on the West boundary of Lot 1-B-6 of said Kihei Commercial Center Subdivision;
3. 356° 46' 30" 198.57 feet along said Lot 1-B-6 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" on the North boundary of Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa and Parcel 16 of Tax Map Key: (2) 3-9-001;
4. 90° 04' 30" 187.92 feet along said Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa, along said Parcel 16 of Tax Map Key: (2) 3-9-001 to a found iron bolt on the East boundary of said Piilani Highway, F.A.P. No. RF-031-1(5) right-of-way;
5. 166° 48' 00" 158.92 feet along said East boundary of the Piilani Highway, F.A.P. No. RF-031-1(5) right-of-way to the point of beginning and containing an area of 39,560 Square Feet, more or less.

**LOT 1-B-2**  
**KIHEI COMMERCIAL CENTER SUBDIVISION**

All of that certain parcel of land, being Lot 1-B-2 of the Kihei Commercial Center Subdivision (the map thereof not being recorded), being a portion of Grant 11400 to Ernest K. Naeole, situated at Waiakoa, Kihei, Kula, Island and County of Maui, State of Hawai'i and being more particularly described as follows:

Beginning at a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" at the Northeast corner of this parcel of land, said pipe also being the Southeast corner of Lot 1-B-3, the Southwest corner of Lot 1-B-4 and the Northwest corner of Lot 1-B-5 of said Kihei Commercial Center Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being:

15,141.14 feet North  
22,316.62 feet West

and running by azimuths measured clockwise from true South:

1. 356° 46' 30" 188.04 feet along said Lot 1-B-5 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" on the North boundary of Lot 1-B-7 (private roadway lot) of said Kihei Commercial Center Subdivision;
2. 88° 00' 00" 180.63 feet along said Lot 1-B-7 (private roadway lot) of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983";

Thence along said Lot 1-B-7 (private roadway lot) of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole, on the arc of a curve to the right, concave Northeasterly with a radius of 30.00 feet, the chord azimuth and distance being:

3. 127° 24' 00" 38.08 feet to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" on the East boundary of the Piilani Highway , F.A.P. No. RF-031-1(5) right-of-way;
4. 166° 48' 00" 70.79 feet along said East boundary of the Piilani Highway, F.A.P. No. RF-031-1(5) right-of-way to a found ½-inch pipe;
5. 256° 48' 00" 15.00 feet along same to a found ¾-inch pipe;
6. 166° 48' 00" 93.25 feet along same to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" at the Southwest corner of said Lot 1-B-3 of the Kihei Commercial Center Subdivision;
7. 268° 00' 00" 223.19 feet along said Lot 1-B-3 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to the point of beginning and containing an area of 40,171 Square Feet, more or less.

**LOT 1-B-3**  
**KIHEI COMMERCIAL CENTER SUBDIVISION**

All of that certain parcel of land, being Lot 1-B-3 of the Kihei Commercial Center Subdivision (the map thereof not being recorded), being a portion of Grant 11400 to Ernest K. Naeole, situated at Waiakoa, Kihei, Kula, Island and County of Maui, State of Hawai'i and being more particularly described as follows:

Beginning at a  $\frac{3}{4}$ -inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" at the Southeast corner of this parcel of land, said pipe also being the Northeast corner of Lot 1-B-2, the Southwest corner of Lot 1-B-4 and the Northwest corner of Lot 1-B-5 of said Kihei Commercial Center Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being:

15,141.14 feet North  
22,316.62 feet West

and running by azimuths measured clockwise from true South:

1.    88° 00' 00"            223.19    feet along said Lot 1-B-2 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a  $\frac{3}{4}$ -inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" on the East boundary of the Piilani Highway, F.A.P. No. RF-031-1(5) right-of-way;
2.    166° 48' 00"            96.75    feet along said East boundary of the Piilani Highway, F.A.P. No. RF-031-1(5) right-of-way to a  $\frac{3}{4}$ -inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" at the Southwest corner of Lot 6 of the Piilani Business Park Subdivision;
3.    256° 48' 00"            187.00    feet along said Lot 6 of the Piilani Business Park Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a found iron bolt;
4.    166° 48' 00"            161.69    feet along same to a found  $\frac{3}{4}$ -inch pipe on the south end of the Huku Li'i Place roadway lot;

Thence along said South end of the Huku Li'i Place roadway lot, along the remainder of said Grant 11400 to Ernest K. Naeole, on the arc of a curve to the left, concave Northerly with a radius of 45.00 feet, the chord azimuth and distance being:

5. 269° 59' 38" 20.54 feet to a found chiseled hole in concrete;
6. 256° 48' 00" 21.00 feet along said South end of the Huku Li'i Place roadway lot, along the remainder of said Grant 11400 to Ernest K. Naeole to a found ¾-inch pipe at the Northwest corner of said Lot 1-B-4 of the Kihei Commercial Center Subdivision;
7. 346° 48' 00" 245.61 feet along said Lot 1-B-4 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983";
8. 356° 46' 30" 52.28 feet along same to the point of beginning and containing an area of 33,431 Square Feet, more or less.

**LOT 1-B-4  
KIHAI COMMERCIAL CENTER SUBDIVISION**

All of that certain parcel of land, being Lot 1-B-4 of the Kihei Commercial Center Subdivision (the map thereof not being recorded), being a portion of Grant 11400 to Ernest K. Naeole, situated at Waiakoa, Kihei, Kula, Island and County of Maui, State of Hawai'i and being more particularly described as follows:

Beginning at a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" at the Southwest corner of this parcel of land, said pipe also being the Northeast corner of Lot 1-B-2, the Southwest corner of Lot 1-B-3 and the most Westerly corner of Lot 1-B-5 of said Kihei Commercial Center Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being:

15,141.14 feet North  
22,316.62 feet West

and running by azimuths measured clockwise from true South:

1. 176° 46' 30" 52.28 feet along said Lot 1-B-3 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983";
2. 166° 48' 00" 245.61 feet along same to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" on the South end of the Huku Li'i Place roadway lot;

3. 256° 48' 00" 24.00 feet along said South end of the Huku Li'i Place roadway lot, along the remainder of said Grant 11400 to Ernest K. Naeole to a found ¾-inch pipe on the Southwesterly boundary of Lot 5 of the Piilani Business Park Subdivision;
4. 346° 48' 00" 157.00 feet along said Lot 5 of the Piilani Business Park Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a found ½-inch pipe;
5. 256° 48' 00" 152.50 feet along same to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" on the West boundary of said Lot 1-B-5 of the Kihei Commercial Center Subdivision;
6. 356° 46' 30" 173.51 feet along said Lot 1-B-5 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983";
7. 88° 00' 00" 158.52 feet along same to the point of beginning and containing an area of 29,480 Square Feet, more or less.

**LOT 1-B-5  
KIHEI COMMERCIAL CENTER SUBDIVISION**

All of that certain parcel of land, being Lot 1-B-5 of the Kihei Commercial Center Subdivision (the map thereof not being recorded), being a portion of Grant 11400 to Ernest K. Naeole, situated at Waiakoa, Kihei, Kula, Island and County of Maui, State of Hawai'i and being more particularly described as follows:

Beginning at a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" at the Southwest corner of this parcel of land, on the East boundary of Lot 1-B-7 (private roadway lot) of said Kihei Commercial Center Subdivision, said pipe also being the Northwest corner of Lot 1-B-6 of said Kihei Commercial Center Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being:

14,932.49 feet North  
22,280.82 feet West

and running by azimuths measured clockwise from true South:

1. 176° 46' 30" 21.79 feet along said Lot 1-B-7 (private roadway lot) of the Kihei Commercial Center Subdivision, along the

remainder of said Grant 11400 to Ernest K. Naeole to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983";

2. 88° 00' 00" 24.01 feet along same to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" at the Southeast corner of Lot 1-B-2 of said Kihei Commercial Center Subdivision;
3. 176° 46' 30" 188.04 feet along said Lot 1-B-2 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" at the Southeast corner of Lot 1-B-3 and the Southwest corner of Lot 1-B-4 of said Kihei Commercial Center Subdivision;
4. 268° 00' 00" 158.52 feet along said Lot 1-B-4 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983";
5. 176° 46' 30" 749.01 feet along said Lot 1-B-4 of the Kihei Commercial Center Subdivision and along Lots 5, 4, 3, 2 and 1 of the Piilani Business Park Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a point on the South boundary of the Ohukai Road right-of-way;
6. 263° 18' 30" 93.36 feet along said South boundary of the Ohukai Road right-of-way to a found chiseled cross in concrete sidewalk on the North boundary of Lot 2 of said Kihei Commercial Center Subdivision;

Thence along said Lot 2 of the Kihei Commercial Center Subdivision, 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:

7. 40° 02' 30" 41.12 feet to a found ¾-inch pipe at a point of reverse curvature;

Thence along said Lot 2 of the Kihei Commercial Center Subdivision, 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:

8. 1° 30' 22" 67.14 feet to a found ¾-inch pipe;
9. 6° 14' 14" 73.55 feet along said Lot 2 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a found ¾-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:

10. 1° 30' 22" 65.16 feet to a found iron bolt;
11. 356° 46' 30" 531.68 feet along said Lot 2 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a found ¾-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:

12. 311° 46' 30" 28.28 feet to a found chiseled cross;
13. 356° 46' 30" 20.00 feet along said Lot 2 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a found chiseled hole in top of concrete curb;
14. 86° 46' 30" 16.00 feet along same to a found chiseled hole in 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:

15. 41° 46' 30" 14.14 feet to a found chiseled cross;
16. 356° 46' 30" 149.24 feet along said Lot 2 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" at the Northeast corner of said Lot 1-B-6 of said Kihei Commercial Center Subdivision;
17. 88° 00' 00" 170.52 feet along said Lot 1-B-6 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to the point of beginning and containing an area of 75,789 Square Feet, more or less.

**LOT 1-B-6**  
**KIHEI COMMERCIAL CENTER SUBDIVISION**

All of that certain parcel of land, being Lot 1-B-6 of the Kihei Commercial Center Subdivision (the map thereof not being recorded), being a portion of Grant 11400 to Ernest K. Naeole, situated at Waiakoa, Kihei, Kula, Island and County of Maui, State of Hawai'i and being more particularly described as follows:

Beginning at a  $\frac{3}{4}$ -inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" at the Northwest corner of this parcel of land, on the East boundary of Lot 1-B-7 (private roadway lot) of said Kihei Commercial Center Subdivision, said pipe also being the Southwest corner of Lot 1-B-5 of said Kihei Commercial Center Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being:

14,932.49 feet North  
22,280.82 feet West

and running by azimuths measured clockwise from true South:

1. 268° 00' 00"      170.52 feet along said Lot 1-B-5 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a  $\frac{3}{4}$ -inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" on the East boundary of Lot 2 of said Kihei Commercial Center Subdivision;
2. 356° 46' 30"      226.99 feet along said Lot 2 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a found  $\frac{3}{4}$ -inch pipe on the North boundary of Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa and Parcel 16 of Tax Map Key: (2) 3-9-001;
3. 90° 04' 30"      170.77 feet along said Royal Patent 7447, Land Commission Award 3237, Part 2 to H. Hewahewa, along said Parcel 16 of Tax Map Key: (2) 3-9-001 to a  $\frac{3}{4}$ -inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" at the Southeast corner of Lot 1-B-1 of said Kihei Commercial Center Subdivision;
4. 176° 46' 30"      220.80 feet along Lots 1-B-1 and 1-B-7 (private roadway lot) of said Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to the point of beginning and containing an area of 38,169 Square Feet, more or less.



## EXHIBIT "B"

### DESCRIPTION OF ROADWAYS

#### EASEMENT No. 3

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.

**LOT 1-B-7  
(PRIVATE ROADWAY LOT)  
KIHEI COMMERCIAL CENTER SUBDIVISION**

All of that certain parcel of land, being Lot 1-B-7 (private roadway lot) of the Kihei Commercial Center Subdivision (the map thereof not being recorded), being a portion of Grant 11400 to Ernest K. Naeole, situated at Waiakoa, Kihei, Kula, Island and County of Maui, State of Hawai'i and being more particularly described as follows:

Beginning at a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" at the Southwest corner of this parcel of land, on the East boundary of the Piilani Highway, F.A.P. No. RF-031-1(5) right-of-way, said pipe also being the West corner of Lot 1-B-1 of said Kihei Commercial Center Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being:

14,867.01 feet North  
22,492.61 feet West

and running by azimuths measured clockwise from true South:

1. 166° 48' 00" 106.02 feet along said East boundary of the Piilani Highway, F.A.P. No. RF-031-1(5) right-of-way to a ¾-inch pipe

with yellow plastic cap marked "RLS 2715, RLS 5983"  
on the West boundary of Lot 1-B-2 of said Kihei  
Commercial Center Subdivision;

Thence along said Lot 1-B-2 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole, on the arc of a curve to the left, concave Northeasterly with a radius of 30.00 feet, the chord azimuth and distance being:

2. 127° 24' 00" 38.08 feet to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983";
3. 268° 00' 00" 204.64 feet along Lots 1-B-2 and 1-B-5 of said Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983";
4. 356° 46' 30" 44.02 feet along Lots 1-B-5 and 1-B-6 of said Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983";
5. 88° 00' 00" 184.99 feet along said Lot 1-B-1 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983";

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

6. 37° 24' 00" 46.36 feet to the point of beginning and containing an area of 10,341 Square Feet, more or less.

**EASEMENT No. 6  
(24-FT. WIDE FOR ACCESS & UTILITY PURPOSES))  
AFFECTING LOT 1-B-4 OF THE  
KIHEI COMMERCIAL CENTER SUBDIVISION**

All of that certain parcel of land, being Easement No. 6 (24-ft. wide for access and utility purposes) over, under and across a portion of Lot 1-B-4 the Kihei Commercial Center Subdivision (the map thereof not being recorded) in favor of said Kihei Commercial Center Subdivision, Maui Electric Company, Ltd. and Verizon Hawaii, Inc., being a portion of Grant 11400 to Ernest K. Naeole, situated at Waiakoa, Kihei, Kula, Island and County of Maui, State of Hawai'i and being more particularly described as follows:

Beginning at a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" at the Southwest corner of this easement, said pipe also being the Northeast corner of Lot 1-B-2, the Southeast corner of Lot 1-B-3, the Southwest corner of Lot 1-B-4 and the most Westerly corner of Lot 1-B-5 of said Kihei Commercial Center Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being:

15,141.14 feet North  
22,316.62 feet West

and running by azimuths measured clockwise from true South:

1. 176° 46' 30"                      52.28 feet along said Lot 1-B-3 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983";
2. 166° 48' 00"                      245.61 feet along same to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" on the South end of the Huku Li'i Place roadway lot;
3. 256° 48' 00"                      24.00 feet along said South end of the Huku Li'i Place roadway lot, along the remainder of said Grant 11400 to Ernest K. Naeole to a found ¾-inch pipe on the Southwesterly boundary of Lot 5 of the Piilani Business Park Subdivision;
4. 346° 48' 00"                      247.71 feet along said Lot 5 of the Piilani Business Park Subdivision, along the remainders of said Lot 1-B-4 of the Kihei Commercial Center Subdivision and said Grant 11400 to Ernest K. Naeole;
5. 356° 46' 30"                      54.89 feet along the remainders of said Lot 1-B-4 of the Kihei Commercial Center Subdivision and said Grant 11400 to Ernest K. Naeole to a point on the North boundary of said Lot 1-B-5 of the Kihei Commercial Center Subdivision;
6. 88° 00' 00"                      24.01 feet along said Lot 1-B-5 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to the point of beginning and containing an area of 7,206 Square Feet, more or less.

**EASEMENT No. 7  
(24-FT. WIDE FOR ACCESS AND UTILITY PURPOSES)  
AFFECTING LOT 1-B-5 OF THE  
KIHAI COMMERCIAL CENTER SUBDIVISION**

All of that certain parcel of land, being Easement No. 7 (24-ft. wide for access and utility purposes) over, under and across a portion of Lot 1-B-5 of the Kihei Commercial Center Subdivision (the map thereof not being recorded) in favor of said Kihei Commercial Center Subdivision, Maui Electric Company, Ltd., and Verizon Hawaii, Inc., being a portion of Grant 11400 to Ernest K. Naeole, situated at Waiakoa, Kihei, Kula, Island and County of Maui, State of Hawai'i and being more particularly described as follows:

Beginning at a  $\frac{3}{4}$ -inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" at the Northwest corner of this easement, said pipe also being the Northeast corner of Lot 1-B-2, the Southeast corner of Lot 1-B-3, the Southwest corner of Lot 1-B-4 and the most Westerly corner of Lot 1-B-5 of said Kihei Commercial Center Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being:

15,141.14 feet North  
22,316.62 feet West

and running by azimuths measured clockwise from true South:

- |    |              |        |   |
|----|--------------|--------|---|
| 1. | 268° 00' 00" | 24.01  | feet along said Lot 1-B-4 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole;  |
| 2. | 356° 46' 30" | 188.04 | feet along the remainders of said Lot 1-B-5 of the Kihei Commercial Center Subdivision and said Grant 11400 to Ernest K. Naeole to a $\frac{3}{4}$ -inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" at the Northeast corner of Lot 1-B-7 (private roadway lot) of said Kihei Commercial Center Subdivision;       |
| 3. | 88° 00' 00"  | 24.01  | feet along said Lot 1-B-7 (private roadway lot) of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a $\frac{3}{4}$ -inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" at the Southeast corner of said Lot 1-B-2 of the Kihei Commercial Center Subdivision; |
| 4. | 176° 46' 30" | 188.04 | feet along said Lot 1-B-2 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to the point of beginning and containing an area of 4,514 Square Feet, more or less.  |

**EASEMENT No. 8  
(FOR ACCESS AND UTILITY PURPOSES)  
AFFECTING LOT 1-B-5 OF THE  
KIHEI COMMERCIAL CENTER SUBDIVISION**

All of that certain parcel of land, being Easement No. 8 (for access and utility purposes) over, under and across a portion of Lot 1-B-5 the Kihei Commercial Center Subdivision (the map thereof not being recorded) in favor of Lot 1-B-6 of said Kihei Commercial Center Subdivision, Maui Electric Company, Ltd. and Verizon Hawaii, Inc., being a portion of Grant 11400 to Ernest K. Naeole, situated at Waiakoa, Kihei, Kula, Island and County of Maui, State of Hawai'i and being more particularly described as follows:

Beginning at a  $\frac{3}{4}$ -inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" at the Southwest corner of this easement, on the East boundary of Lot 1-B-7 (private roadway lot) of said Kihei Commercial Center Subdivision, said pipe also being the Southwest corner of Lot 1-B-5 and the Northwest corner of Lot 1-B-6 of said Kihei Commercial Center Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being:

14,932.49 feet North  
22,280.82 feet West

and running by azimuths measured clockwise from true South:

1. 176° 46' 30"                      21.79 feet along said Lot 1-B-7 (private roadway lot) of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to a  $\frac{3}{4}$ -inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983";

Thence along the remainders of said Lot 1-B-5 of the Kihei Commercial Center Subdivision and said Grant 11400 to Ernest K. Naeole, on the arc of a curve to the left, concave Northeasterly with a radius of 10.00 feet, the chord azimuth and distance being:

2. 312° 23' 15"                      13.99 feet;
3. 268° 00' 00"                      114.52 feet along the remainders of said Lot 1-B-5 of the Kihei Commercial Center Subdivision and said Grant 11400 to Ernest K. Naeole;

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

4. 222° 23' 15" 14.29 feet;
5. 356° 46' 30" 22.22 feet along the remainders of said Lot 1-B-5 of the Kihei Commercial Center Subdivision and said Grant 11400 to Ernest K. Naeole to a point on the North boundary of said Lot 1-B-6 of said Kihei Commercial Center Subdivision;
6. 88° 00' 00" 134.52 feet along said Lot 1-B-6 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to the point of beginning and containing an area of 1,657 Square Feet, more or less.

**EASEMENT No. 9  
(FOR ACCESS AND UTILITY PURPOSES)  
AFFECTING LOT 1-B-6 OF THE  
KIHAI COMMERCIAL CENTER SUBDIVISION**

All of that certain parcel of land, being Easement No. 9 (for access and utility purposes) over, under and across a portion of Lot 1-B-6 of the Kihei Commercial Center Subdivision (the map thereof not being recorded) in favor of said Kihei Commercial Center Subdivision, Maui Electric Company, Ltd. and Verizon Hawaii, Inc., being a portion of Grant 11400 to Ernest K. Naeole, situated at Waiakoa, Kihei, Kula, Island and County of Maui, State of Hawai'i and being more particularly described as follows:

Beginning at a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" at the Northwest corner of this easement, on the East boundary of Lot 1-B-7 (private roadway lot) of said Kihei Commercial Center Subdivision, said pipe also being the Southwest corner of Lot 1-B-5 and the Northwest corner of Lot 1-B-6 of said Kihei Commercial Center Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being:

14,932.49 feet North  
22,280.82 feet West

and running by azimuths measured clockwise from true South:

1. 268° 00' 00" 134.52 feet along said Lot 1-B-5 of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole;
2. 356° 46' 30" 21.80 feet along the remainders of said Lot 1-B-6 of the Kihei Commercial Center Subdivision and said Grant 11400 to Ernest K. Naeole;



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

3. 132° 23' 15" 13.99 feet;

4. 88° 00' 00" 114.52 feet along the remainders of said Lot 1-B-6 of the Kihei Commercial Center Subdivision and said Grant 11400 to Ernest K. Naeole;

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:

5. 42° 23' 15" 14.29 feet; to a ¾-inch pipe with yellow plastic cap marked "RLS 2715, RLS 5983" at the Southeast corner of said Lot 1-B-7 (private roadway lot) of said Kihei Commercial Center Subdivision;

6. 176° 46' 30" 22.23 feet along said Lot 1-B-7 (private roadway lot) of the Kihei Commercial Center Subdivision, along the remainder of said Grant 11400 to Ernest K. Naeole to the point of beginning and containing an area of 1,658 Square Feet, more or less.

## CONSENT AND JOINDER

KNOW ALL BY THESE PRESENTS:

That NCT, LLC, a Hawaii limited liability company, as the current owner of Lot 1-B-1 in the Kihei Commercial Center Subdivision, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, receipt whereof is hereby acknowledged, does hereby consent to and join in the foregoing Amendment and Restatement of Declaration of Protective Covenants, Conditions and Restrictions for Kihei Commercial Roadways Association dated October 6, 2004, by KIHEI COMMERCIAL ROADWAYS ASSOCIATIONS, a Hawaii nonprofit corporation, as if said NCT, LLC had originally executed the same.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 28 day of July, 2004.

NCT, LLC,  
a Hawaii limited liability company

By: Glenn M. Nakamura  
Name: Glenn M. Nakamura  
Title: Manager

STATE OF HAWAII

)

) ss.

COUNTY OF MAUI

)

On this 28 day of July, 2004, before me personally appeared GLENN M. NAKAMURA, 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.

Christine G. Pagan

(Print or Type Name of Notary)

Christine G. Pagan

(Signature of Notary)

Notary Public, State of Hawaii

My Commission Expires: 12-14-07

L.S.

## CONSENT AND JOINDER

KNOW ALL BY THESE PRESENTS:


That KCOM CORP., a Hawaii corporation ("**KCOM**"), and VALENTINE PEROFF, JR., as Trustee of the Valentine Peroff, Jr. Revocable Living Trust created by unrecorded Trust Agreement dated July 7, 1989 ("**Peroff**"), as the current owners of Lots 1-B-3 through 1-B-6 and Lot 1-A in the Kihei Commercial Center Subdivision and the owners of Unit B of the Kihei Commercial Condominium II condominium project, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, receipt whereof is hereby acknowledged, does hereby consent to and join in the foregoing Amendment and Restatement of Declaration of Protective Covenants, Conditions and Restrictions for Kihei Commercial Roadways Association dated October 6, 2004, by KIHEI COMMERCIAL ROADWAYS ASSOCIATIONS, a Hawaii nonprofit corporation, as if said KCOM and Peroff had originally executed the same.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 3rd day of August, 2004.

KCOM CORP.,  
a Hawaii corporation

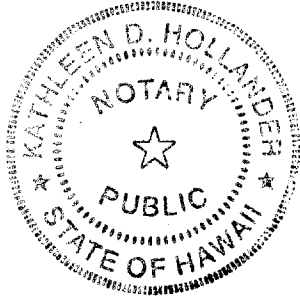
By: 

Name: Valentine Peroff, Jr.  
Title: President

  
VALENTINE PEROFF, JR.  
Trustee as aforesaid

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

On this 3<sup>rd</sup> day of August, 2004, 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)

Kahn D Hollender  
(Signature of Notary)

Notary Public, State of Hawaii

My Commission Expires: 10/19/07

## CONSENT AND JOINDER

KNOW ALL BY THESE PRESENTS:

That KIHEI STORAGE PARTNERS, LLC, a Hawaii limited liability company, as the current owner of Unit A of the Kihei Commercial Condominium II condominium project, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, receipt whereof is hereby acknowledged, does hereby consent to and join in the foregoing Amendment and Restatement of Declaration of Protective Covenants, Conditions and Restrictions for Kihei Commercial Roadways Association dated October 6, 2004, by KIHEI COMMERCIAL ROADWAYS ASSOCIATIONS, a Hawaii nonprofit corporation, as if said Kihei Storage Partners, LLC had originally executed the same.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 30 day of January, 2004.

KIHEI STORAGE PARTNERS, LLC,  
a Hawaii limited liability company

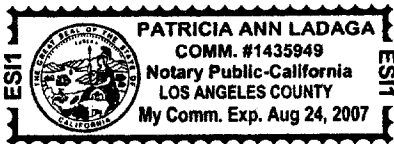
By: 

Name: Edmund Olson

Title: Manager

STATE OF CALIFORNIA )  
 ) ss.:  
COUNTY OF LOS ANGELES )

On this 30 day of January, 2004, before me personally appeared Edmund C. Olson, 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.



Patricia Ann LaDaga

(Print or Type Name of Notary)

Patricia Ann LaDaga  
(Signature of Notary)

Notary Public, State of California

My Commission Expires: August 24, 2007

## CONSENT AND JOINDER

KNOW ALL BY THESE PRESENTS:

That BI-COASTAL DEVELOPMENT LLC, a Hawaii limited liability company, as the current owner of Lot 1-B-2 in the Kihei Commercial Center Subdivision, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, receipt whereof is hereby acknowledged, does hereby consent to and join in the foregoing Amendment and Restatement of Declaration of Protective Covenants, Conditions and Restrictions for Kihei Commercial Roadways Association dated October 6, 2004, by KIHAI COMMERCIAL ROADWAYS ASSOCIATIONS, a Hawaii nonprofit corporation, as if said BI-COASTAL DEVELOPMENT LLC had originally executed the same.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 8<sup>th</sup> day of April, 2004.

BI-COASTAL DEVELOPMENT LLC,  
a Hawaii limited liability company

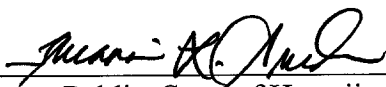
By GREAT POWER INTERNATIONAL  
LIMITED  
Its Sole Member

By:   
Name: Horst F. Geicke  
Title: President



STATE OF HAWAII            )  
                                      )SS.  
COUNTY OF MAUI         )

On this 8th day of April, 2004, before me personally appeared HORST F. GEICKE, to me personally known, who, being by me duly sworn or affirmed, did say that he is the President of Great Power International Ltd., the sole member of BI-COASTAL DEVELOPMENT LLC, a Hawaii limited liability company, that he executed the foregoing instrument as President of Great Power International Ltd., and that he acknowledged said instrument to be the free act and deed of said company.

  
\_\_\_\_\_  
Notary Public, State of Hawaii  
Print Name: Terianne L. Arreola  
My commission expires: August 15, 2006

*L.S.*