

**FIDELITY NATIONAL TITLE**



**THE CLOSING COMPANY**

## DOCUMENT RECEIPT AND APPROVAL

Property: 1778 Ala Moana Boulevard, #3403, Honolulu, HI 96815 TMK: (1) 2-6-012-010-0253

Escrow: 14009180

Seller(s): John Johnson Jr. & Carolyn Johnson Buyer(s): Joan Reep

Condominium/Subdivision/Homeowner Association Documents for: Discovery Bay

- ✓ Declaration and Amendments
- ✓ Current House Rules
- ✓ Current and/or Proposed Budget
- ✓ Minutes of the last Annual Meeting
- ✓ By-laws and Amendments
- ✓ Current Financial Statement
- ✓ Approved Minutes of the last three Board of Directors Meetings
  - Copy of any and all pending litigation filed by or against the Association and/or its Directors that are currently unresolved
  - Reserve Study and Summary
  - Lender's Disclosure
- ✓ Insurance Summary
  - Covenants, Conditions, and Restrictions
  - Articles of Incorporation
  - Building Permit Package
- ✓ RR105c Disclosure
- ✓ Other: Apartment Change-Over Notice, Info & Forms on Minimum 30-Day Rental
- ✓ Other: Leasehold Status Letters, Resolutions, Washing Machine Hose Notice
- ✓ Other: Newsletters

**RECEIPT:** The undersigned hereby acknowledges receipt of the aforementioned documents and agrees to return all documents in a timely manner should the transaction be terminated for any reason by either Seller or Buyer. Buyer/Buyer's Representative acknowledges receipt of the above check-marked documents.

\_\_\_\_\_  
Buyer/Buyer's Representative      Date

\_\_\_\_\_  
Buyer/Buyer's Representative      Date

**APPROVAL:** Buyer and/or Buyer's Representative has read and hereby approves the documents/reports received.

\_\_\_\_\_  
Buyer/Buyer's Representative      Date

\_\_\_\_\_  
Buyer/Buyer's Representative      Date



## PROJECT INFORMATION FORM



Condominium, Co-op, PUD, and other Homeowner Organizations  
Hawaii Association of REALTORS® Standard Form  
(To be used in conjunction with RR109 Seller's Real Property Disclosure Statement)  
Revised 12/10 (NC) For Release 5/12

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Property Reference or Address: Discovery Bay, 1778 Ala Moana Blvd., Honolulu, HI 96815

Tax Map Key: Div. 1 /Zone 2 /Sec. 6 /Plat 12 ("Project") /Parcel 10 /CPR \_\_\_\_\_ (If applicable)

Project is managed by a licensed real estate broker. ☒ Yes ☐ No If a licensed real estate broker, is managing agent registered with the Real Estate Commission as a Condominium Managing Agent? ☒ Yes ☐ No

Name of Managing Agent: HAWAIIANA MANAGEMENT COMPANY LTD.

Managed by this Managing Agent since: JANUARY 1, 1997

Managing Agent provides (Check those services that apply):

- ☐ Administrative Management Services  
☒ Fiscal Management Services  
☐ Physical Management Services  
☐ Other Management Services - \_\_\_\_\_

☐ Project is self-managed since: \_\_\_\_\_

### A. GENERAL & LEGAL

Total number of apartments: 665 Number of guest parking stalls available: NONE  
If applicable, what percentage of Condominium Apartments has been sold and conveyed (excluding to the Developer)? 100 %  
What approximate percentage of Condominium Apartments are primary residences? \_\_\_\_\_ %  
What approximate percentage of Condominium Apartments are second homes? \_\_\_\_\_ %  
What approximate percentage of Condominium Apartments are investor properties? 60 %  
Approximately how many foreclosures have been filed by the Board of Directors during the past twelve (12) months? 0  
What approximate percentage of owners is more than one month delinquent in maintenance fees? 10 %

"If answer is "yes", using the SAME number below, describe in the space provided."

- | Yes                                 | No                                  | NTMK                     | (Not To My Knowledge) |  |
|-------------------------------------|-------------------------------------|--------------------------|-----------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |                       | (1) Within the past year, has the Board of Directors had discussions with the Lessor regarding the purchase of the leased fee interest in the land?  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |                       | (2) Does the Association own any fee interest in the Project? <u>Owns Beneficial Interest</u>  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |                       | (3) Has the Association taken a loan to acquire its fee interest? <u>To Acquire Beneficial Interest</u>  |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                       | (4) Are any owners assessed to repay the Association's loan?   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |                       | (5) Are there any current or contemplated negotiations regarding the lease?  |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                       | (6) Is Property subject to phasing or development of additional increments?  |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                       | (7) Has the Owners Association or Corporation been in control of the operations of Property for less than two (2) years?   |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                       | (8) Are there any lawsuits, arbitration or mediation actions affecting Property and/or Association other than delinquent owner maintenance fees?   |
|                                     |                                     |                          |                       | Attorney for Association of Apartment Owners: _____  |
|                                     |                                     |                          |                       | <b>NOTE: Any attorney fees or other costs incurred for further answering this inquiry shall not be at the expense of the Association of Apartment Owners, nor of the Managing Agent.</b>   |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                       | (9) If Project is a Condominium, does any single entity, individual or partnership own more than 10 percent of the common interest of Project?   |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                       | (10) Are any Association or Corporation approvals required for transfer of Ownership?  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |                       | (11) Is a resident manager's apartment a part of the common elements, or is one owned by the Association or Corporation (does not apply to Planned Unit Developments)?   |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                       | (12) Is a time share operation located at Project? Name of Operator: _____   |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                       | (13) Is there a hotel operation or mandatory rental pool? Name of operator? _____  |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                       | (14) Have any of the following items been discovered by the Association or Corporation at Project?<br><input type="checkbox"/> asbestos; <input type="checkbox"/> formaldehyde; <input type="checkbox"/> radon gas; <input type="checkbox"/> lead-based paint; <input type="checkbox"/> mold, mildew, fungus |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |                       | (15) Are there commercial apartments, lots or commercial use of the common areas or common elements at Project?  |

BUYER'S INITIALS & DATE \_\_\_\_\_



Number of Question answered "YES" and Explain: \_\_\_\_\_

(1) ON GOING CONFIDENTIAL NEGOTIATIONS WITH LAND OWNER

(2) 62.6785% of the Beneficial Interest

(3) FIRST HAWAIIAN BANK Loan to Acquire Beneficial Interest

(5) ON GOING CONFIDENTIAL NEGOTIATIONS WITH LAND OWNER

(11) TWO APARTMENTS ARE COMMON ELEMENT. ONE APARTMENT IS OWNED BY THE AOA

(15) COMMON ELEMENTS AND AREA BELOW 5TH LEVEL ARE SHARED BY ONE COMMERCIAL APARTMENT

#### B. INSURANCE

Name of Insurance Company: FIRST INSURANCE COMPANY

Name of Insurance Agent: JOHN H. CONNORS, INC. Phone: (808) 521-3663

\*\*If answer is "yes", using the SAME number below, describe in the space provided.\*\*

Yes No NTMK Note: In case of Planned Unit Development, questions #14 to #17 apply to common areas only.

[X] [ ] [ ] (16) Are any improvements located in a designated Flood Hazard Zone that require insurance?

[X] [ ] [ ] (17) Is Project covered by Flood Insurance?

[ ] [X] [ ] (18) Is Project located in a tsunami inundation area?

[ ] [X] [ ] (19) Has there been any substantial damage to Project due to earthquake, fire, floods, winds, landslides, tsunami, or volcanic activity within the last five years?

Number of Question answered "YES" and Explain: \_\_\_\_\_

(16) REGULAR FLOOD PROGRAM - ZONE B

(17) SEE ENCLOSED INSURANCE SUMMARY SHEET

#### C. FINANCIAL

What does the apartment maintenance fees include?

[X] Air Conditioning [ ] Real Property Tax  
[X] Cable TV Signal [ ] Recreation/Community Association Dues  
[ ] Electricity [X] Sewer  
[X] Gas [X] Water  
[X] Hot Water [ ] Loan(s): \_\_\_\_\_  
[ ] Lease Rent [ ] Other: \_\_\_\_\_  
[ ] Parking [ ] Other: \_\_\_\_\_

Are there any other fees billed to the owners by the Association? Please described (type and amount) \_\_\_\_\_

How frequently is a financial statement prepared? [X] Monthly [ ] Quarterly Specify: [X] Cash Basis [ ] Accrual Basis

\*\*If answer is "yes", using the SAME number below, describe in the space provided.\*\*

Yes No NTMK

BUYER'S INITIALS & DATE

- ☐ ☐ ☐ (20) Has the Association or Corporation Board of Directors approved a maintenance fee increase, special assessment, or loan?
- ☒ ☐ ☐ (21) Are any special assessments or loans in effect at this time?
- ☐ ☒ ☐ (22) Are any assessments required to be paid in full at the time of conveyance of ownership?

Number of Question answered "YES" and Explain: \_\_\_\_\_

(21) LOAN FOR PURCHASE OF BENEFICIAL INTEREST

(20) 3.8% as of January 1, 2014

#### D. PROJECT CONDITION

\*\*If answer is "yes", using the SAME number below, describe in the space provided.\*\*

Are there any major repairs required or planned within the next 12 months with respect to the following common elements/common areas of the Project?

Yes	NTMK		Yes	NTMK	
(23)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(37)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(24)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(38)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(25)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(39)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(26)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(40)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(27)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(41)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(28)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(42)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(29)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(43)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(30)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(44)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(31)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(45)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(32)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(46)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(33)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(47)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(34)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(48)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(35)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(49)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(36)	<input type="checkbox"/>	<input checked="" type="checkbox"/>			

Yes	No	NTMK	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(50) Are lanai enclosures presently permitted by the Association or Corporation Board of Directors?
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(51) Do you know, within the past year, of the presence of live infestation, wood boring insects/termites in the common elements/common areas of Project?
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(52) Do you know, within the past year, of leaks and/or water damage in the common elements/common areas of Project?
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(53) Are you aware, within the past year, of any structural problems in the common elements/common areas caused by water, settling, sliding, subsidence, filled land, etc.?

Number of Question answered "YES" and Explain: \_\_\_\_\_

(50) SEE MANAGER FOR SEPCIFICATIONS & PROCEDURES

BOARD OF DIRECTORS APPROVAL NEEDED TO ENCLOSE LANAI

BUYER'S INITIALS & DATE



**E. DISCLAIMER**

While not guaranteed, the information contained in this Project Information Form is based on information reasonably available to the Managing Agent at the time this form was completed. It has been provided by the Managing Agent at Owner/Seller's request and is believed to be current and correct to the best of the Managing Agent's knowledge at the time this form was completed. All persons relying upon the information contained in this form are advised that the information provided cannot be considered a substitute for a careful inspection of Project and Project's governing documents, meeting minutes, financial documents and other documentation; and that they should refer to qualified experts in the various professional fields, including but not limited to attorneys, accountants, architects, engineers, contractors and other appropriate professionals for detailed evaluation of areas where additional clarification or information is desired. The person or entity completing the form is doing so only as an accommodation to the parties and shall not be held liable for any errors or omissions whatsoever. The person or entity completing this form is not required to and has not completed any special investigation, and is only reporting facts already known to that person or entity or readily available. Specifically and without limitation, the person or entity completing the form has not reviewed any records except official records of meetings in the possession of that person or entity and only for the current and prior year. Where the answer to a question is not applicable, unknown or is otherwise unanswerable, it has been marked "NTMK". Where the Managing Agent has marked "NTMK" or "NO" in response to a question concerning project condition, it must be recognized that this does not mean there may not be a defect which an expert could discover or the passage of time would reveal. Likewise, a problem could be more serious than the Managing Agent, the Association, the Corporation or its Board of Directors knows. All such persons having access to this Project Information Form understand and acknowledge that this Project Information Form is not a warranty or guaranty of any kind by the Managing Agent, the Association or its Board of Directors.

Person completing this form:

  
Signature

8/7/14  
Date

Name: CHRIS HERNDON Title: GENERAL MANAGER  
Company: DISCOVERY BAY ASSOCIATION OF APARTMENT OWNERS  
Address: 1778 ALA MOANA BLVD., HONOLULU HI 96815  
Phones: (808) 941-3307 Fax: (808) 946-3201  
E-Mail: discoverybay@hawaii.rr.com

NOTE: THERE IS NO WARRANTY ON PLAIN LANGUAGE. An effort has been made to put this agreement into plain language. But there is no promise that it is in plain language. In legal terms, THERE IS NO WARRANTY, EXPRESSED OR IMPLIED, THAT THIS AGREEMENT COMPLIES WITH CHAPTER 487A OF THE HAWAII REVISED STATUTES, AS AMENDED. This means that the Hawaii Association of REALTORS® is not liable to any Buyer, Seller, or other person who uses this form for any damages or penalty because of any violation of Chapter 487A. People are cautioned to see their own attorneys about Chapter 487A (and other laws that may apply).

\_\_\_\_\_  
BUYER'S INITIALS & DATE



RECEIPT OF PROJECT INFORMATION FORM  
Hawaii Association of REALTORS® Standard Form  
Revised 12/10 (NC) For Release 11/12



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Property Reference or Address: 1778 Ala Moana Boulevard, #3403, Honolulu, HI 96815  
("Project")

Tax Map Key: Division 1 /Zone 2 /Sec. 6 /Plat 012 /Parcel 010 /CPR 0253 (if applicable).

By signing below, I acknowledge and agree that:

1. I received a copy of the Project Information Form RR105c dated August 7, 2014.
2. The information contained in this form is being provided by the Managing Agent at the Seller's request and is based only upon the knowledge and information available to the Managing Agent.
3. The information provided on the form cannot be considered to be a substitute for a careful inspection of the Project and the Project's governing documents, minutes of meetings, financial documents, and the like.
4. I am advised that I should refer to qualified experts in the various fields, including but not limited to attorneys, accountants, engineers and contractors for detailed evaluation of areas where additional information is desired.
5. If the Managing Agent has marked "NTMK" in response to any questions, I recognize that this does not mean there may not be a defect which an expert could discover, or the passage of time would reveal. Likewise, I recognize that a problem may be more serious than the Managing Agent knows.
6. This form is not a warranty of any kind by Seller, the Managing Agent, or any Brokerage Firm and all of its licensees representing Seller or Buyer.

\_\_\_\_\_  
Buyer Date

\_\_\_\_\_  
Buyer Date

**NOTE:** THERE IS NO WARRANTY ON PLAIN LANGUAGE. An effort has been made to put this agreement into plain language. But there is no promise that it is in plain language. In legal terms, THERE IS NO WARRANTY, EXPRESSED OR IMPLIED, THAT THIS AGREEMENT COMPLIES WITH CHAPTER 487A OF THE HAWAII REVISED STATUTES, AS AMENDED. This means that the Hawaii Association of REALTORS® is not liable to any Buyer or other person who uses this form for any damages or penalty because of any violation of Chapter 487A. People are cautioned to see their own attorneys about Chapter 487A (and other laws that may apply).



MINUTES OF THE BOARD OF DIRECTORS' MEETING  
DISCOVERY BAY  
March 10, 2014  
4:00 P.M., PRINCE HOTEL – HALEAKALA ROOM

CALL TO ORDER

Vice President Gary Holt called the March 10, 2014 board meeting to order at 4:00 p.m.

ESTABLISH A QUORUM

A quorum was established.

Members Present: Vice President Gary Holt, Secretary Duncan Seaman, Treasurer William Nichols and Directors Charlie Fox, Kenneth Wood, Rusty Adams, Randy Kinst and Michael Bruser

Members Excused: President John Stewart

Also Present: Chris Herndon, Discovery Bay General Manager,  
Ralph Ahles, Management Executive, Hawaiiana Management Co.  
Adrienne Yoshihara, Attorney, Chun, Kerr, Dodd, Beaman & Wong  
Danton Wong, Chun, Kerr, Dodd, Beaman & Wong  
Malia Nickison, Attorney, Revere & Associates

Owners Present: (See attached list)

OWNERS' FORUM – No concerns raised by owners present at the meeting.

COMMERCIAL SHOPPING CENTER – No report.

GENERAL MANAGER'S REPORT

General Manager Herndon submitted a written report dated March 10, 2014. A copy will be on file at the Management Office for owner review.

GENERAL CORRESPONDENCE – Deferred to executive session.

APPROVAL OF MINUTES

10-29-2013 Board Meeting Minutes – On motion of Secretary Seaman with a second by Director Fox, the October 29, 2013 Board meeting minutes were approved as circulated.

01-22-2014 Annual & Organizational Meeting Minutes – On motion of Treasurer Nichols with a second by Secretary Seaman, the Annual and Organizational meeting minutes of January 22, 2014 were approved for circulated.

TREASURER'S REPORT

- a) January 2014 Operational Financial Statements – Treasurer Nichols gave a brief summary report on the operational financial statements for the above month. On motion of Director

MINUTES OF THE BOARD OF DIRECTORS' MEETING  
DISCOVERY BAY  
MARCH 10, 2014  
PAGE 2

Adams with a second by Director Kinst, the Board unanimously accepted the January 2014 Operational Financial Statement, subject to audit.

- b) January 2014 Beneficial Financial Statement – Treasurer Nichols gave a brief summary report on the beneficial financial statement for the above months. On motion of Treasurer Nichols with a second by Director Kinst, the Board unanimously accepted the January 2014 Beneficial Financial Statement, subject to audit.
- c) Delinquency Report – Treasurer Nichols presented a summary report on delinquent accounts for the period ending January 2014.
- d) Annual Audit Report for 2013 – On motion of Secretary Seaman with a second by Director Kinst, the Board approved to accept the 2013 annual report from Terry Wong CPA.

COMMITTEE REPORTS

- A. Building & Grounds – Chairperson Fox gave a report on the following items:
  - 1) 2014 Reserve Study Project Upgrades:
    - a) 7<sup>th</sup> floor a/c valve & insulation replacement
    - b) A/c chiller and pump/motor upgrade
    - c) Security camera system upgrade
    - d) Endeavour Lobby a/c fan coil replacement
    - e) Back office/employee lounge renovations
    - f) Residential Hallway Renovations-Working on getting the project started to include lighting, wallpapering and painting, re-carpeting and also refurbishment of the unit doors.
- B. Finance Committee – Chairperson Nichols reported the Finance Committee had a meeting to review actual expenses versus budgeted expenses.
- C. Personnel Committee – No report.

UNFINISHED BUSINESS – None.

NEW BUSINESS

- 1) Storage Lockers- Treasurer Nichols presented proposed rates on storage locker rentals for the next three years (to be provided by Management). On motion of Director Fox with a second by Director Kinst, the Board approved the new locker rental rates effective August 1, 2014.

MINUTES OF THE BOARD OF DIRECTORS' MEETING  
DISCOVERY BAY  
MARCH 10, 2014  
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- 2) Non-compliant Units on High Risk Component Upgrade: On motion of Director Fox with a second by Director Kinst the Board unanimously approved to send follow up letters to those owners not in compliance with the high risk component replacement stating they must complete the work themselves within 60 days or the Association Management will contract to have the work completed and bill back the expense to the non-compliant owners.
- 3) Flood Insurance Renewal – On motion of Treasurer Nichols with a second by Director Wood, the Board unanimously approved to allow Management to pay the flood insurance renewal with the 7% increase over the current premium for the period April 27, 2014 thru April 27, 2015.

MEETING IN RECESS

On motion of Director Adams with a second by Treasurer Nichols, Vice President Holt announced the meeting in recess at 4:30 p.m. after which the board will go into executive session to discuss several legal matters.

EXECUTIVE SESSION

At 4:35 p.m., Vice President Holt announced the Board meeting in executive session.

At 5:05 p.m., Vice President Holt announced the meeting in recess pending the arrival of attorney Adrienne Yoshihara of Chun, Kerr, Dodd, Beaman & Wong.

At 5:15 p.m., Vice President Holt announced the Board meeting back in executive session with the arrival of attorney Adrienne Yoshihara.

At 6:00 p.m., Vice President Holt announced the Board meeting back in regular session with the following items acted on in executive session:

- 1) 1219 Drain backup – Correspondence was received from legal counsel of unit 1219 requesting the Board clean the lines rather than use an enzyme and hire a consultant to investigate whether there is a building defect in the system. The Board took the matter under advisement with Management to provide an appropriate response.
- 2) Legal Matters Regarding Beneficial Interest – The Board members agreed to attend a court hearing on Wednesday, March 12<sup>th</sup> at 10:00 a.m. in First Circuit Court before Probate Judge Chan.

DATE, TIME AND PLACE OF NEXT MEETING

The next regularly scheduled meeting of the Board of Directors will be determined at a later date.

ADJOURNMENT

MINUTES OF THE BOARD OF DIRECTORS' MEETING  
DISCOVERY BAY  
MARCH 10, 2014  
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There being no further business, on motion of Secretary Seaman with a second by Treasurer Nichols, Vice President Holt adjourned the Regular Board meeting of March 10, 2014 at 6:00 p.m.

Submitted by:



Ralph Ahles  
Recording Secretary

Approved by:



Duncan Seaman  
Secretary

**DISCOVERY BAY BOARD MEETING  
HAWAII PRINCE HOTEL, MARCH 10, 2014, 4:00 PM**

**ATTENDEES**

APT #	FULL NAME - please print (FIRST & LAST)	SIGNATURE
3205	LORNE McMILLAN	Lorne M. Millan
2916	BETTY DORREN	Betty Dorren
1710	John Macy	John Macy
2812	MIKE & JOANNE STRAIN	Mike Strain
3007	LILLY SPRINGER	L. Springer
2709, 10	HENNY OHLMAN N	H. Ohlman
2401	C. ROTHE	C. Rothe
1412	J. Wainy	J. Wainy
3003	R. MIHALIK	R. Mihalik
3209	M. FLEMMINGS	M. Flemmings
1408	R. & Nadia Craig	M. Craig
1918	Silva Adams	Silva Adams
3904	Harry W. Russell	Harry W. Russell
4013	Seiko Sebas	Seiko Sebas
2409	Michiko Kurosu	Michiko Kurosu
2706	L. WILSON SHIPS	L. Wilson
2208	M. E. FEECHER	M. E. Feecher
1712	Michael De Gungor	Michael De Gungor
1119	Harry Gammuto	Harry Gammuto
4001 <sup>st</sup>	Janet Kiger-Hellard	Janet Kiger-Hellard
1914	Jennie Nakamura	Jennie Nakamura

**MINUTES OF THE BOARD OF DIRECTORS' MEETING**  
**DISCOVERY BAY**  
October 29, 2013  
4:00 P.M., PRINCE HOTEL – HALEAKALA ROOM

**CALL TO ORDER**

President Stewart called the October 29 2013 board meeting to order at 4:00 p.m.

**ESTABLISH A QUORUM**

A quorum was established.

**Members Present:** President John Stewart, Secretary Duncan Seaman, Treasurer William Nichols and Directors Charlie Fox, Gary Holt, Rusty Adams and Randy Kinst.

**Members Excused:** Michael Bruser

**Also Present:** Chris Herndon, Discovery Bay General Manager,  
Ralph Ahles, Management Executive, Hawaiiana Management Co.  
Adrienne Yoshihara, Attorney, Chun, Kerr, Dodd, Beaman & Wong  
Terry Revere, Association Legal Counsel  
Danton Wong, Chun, Kerr, Dodd, Beaman & Wong

**Owners Present:** (See attached list)

**CORRESPONDENCE**

President Stewart informed the Board members present that Director Brian Esplen had resigned from the Board. On motion of Director Seaman with a second by Director Kinst, the Board unanimously approved the appointment of owner Kenneth Wood to fill the board position vacated by Mr. Esplen until the next annual meeting scheduled for January 22, 2014.

**OWNERS' FORUM** – President Stewart asked for a motion to have Property Manager Ahles act as chairperson for the Owners' Forum of the meeting. On motion of Treasurer Nichols with a second by Director Adams, the Board unanimously approved to have Mr. Ahles chair the Owners' Forum of the meeting. Mr. Ahles assumed the chair and addressed the assembly on the procedures to be followed during the Owners Forum as follows:

- 1) The time permitted for the Owners' Forum is limited to 15 minutes total.
- 2) Any owner addressing the Board will be given a maximum of 2 minutes. If an owner has another question/concern, he/she will be asked to wait until all owners have had a chance to address the board, time permitting.
- 3) Owner's questions/concerns should be directed to the whole board, not to any particular member of the board, not to management, and not to your fellow owners in attendance. If you have a specific question to a particular board member, please make arrangements to meet with that board member outside of board meeting time or send your question/concern in writing to that individual member of the board. The same applies to any questions you may have for management. Remember, this is a meeting of the Board, not management or the association.
- 4) Owners' questions/concerns are being recorded and will be included in the meeting minutes. Any comment or reply to owner questions/concerns raised will be either addressed later on in the board meeting or referred to committee for further review and comment if warranted.



MINUTES OF THE BOARD OF DIRECTORS' MEETING  
DISCOVERY BAY  
OCTOBER 29, 2013  
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- 5) Finally, when you address the Board, please come forward so all can hear what you have to say, especially the Board. State your name and unit number for the record before presenting your question/concern.

The Following owners addressed the Board:

- 1) **#1004** (Rodgers) – Inquired on the balance in the beneficial account as to why is it not increasing; concerned that the Board appears to be acting as the Lessor and making changes to the lease agreement; requested information from the Board on what happens at the end of the Lease and owners have to leave their units. Mr. Rodger's questions were referred to the association's legal counsel that is working on the beneficial interest and lease matters.
- 2) **#1410** (Weisner)-Concerned about cigarette butts around the building and requested something be done about it. The matter was turned over to management regarding follow-up on enforcement.

**At 4:20 p.m. President Stewart continued the meeting as the chairperson.**

**COMMERCIAL SHOPPING CENTER REPORT** – No report.

**GENERAL MANAGER'S REPORT**

General Manager Herndon submitted a written report dated October 29, 2013. A copy will be on file at the Management Office for owner review.

**APPROVAL OF MINUTES**

**7-25-2013 Board Meeting Minutes** – On motion of Secretary Seaman with a second by Director Fox, the July 25, 2013 Board Meeting Minutes were approved as circulated.

**TREASURER'S REPORT**

- a) **July-August-September, 2013 Operational Financial Statements** – Treasurer Nichols gave a brief summary report on the July, August and September, 2013 Operational and Beneficial financial statements. On motion of Treasurer Nichols with a second by Director Kinst, the Board unanimously accepted the July, August and September, 2013 Operational and Beneficial financial statements subject to audit.
- b) **Delinquency Report** – Treasurer Nichols presented a summary report on delinquent accounts for the period ending September 30, 2013.
- c) **Beneficial Loan Term** – Owner Ron Reibman raised a question on when the beneficial loan term ends. Treasurer Nichols responded that the loan has a 10 year term ending on July 15, 2020.

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DISCOVERY BAY  
OCTOBER 29, 2013  
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COMMITTEE REPORTS

- A. Building & Grounds – Chairperson Fox gave a report on the following items:
- 1) Capital Improvement Items-Chairperson Fox reported on capital improvement items that were either moved up or back based on actual condition of each item with examples given. On motion of Director Fox with a second by Treasurer Nichols, the reserve update adjustments were approved for the coming fiscal year.
  - 2) Replacement of Elliptical Machine – A request was made to replace elliptical machine in the exercise room with a ATM 835 Adaptive Motion Trainer at a cost of \$9,004.18. On motion of Director Holt with a second by Director Adams, the Board unanimously approved the purchase of the 935 Adaptive Motion Trainer at a cost not to exceed \$9,004.18.
- B. Finance Committee – Chairperson Nichols addressed the Board with the following financial matters:
- 1) 2014 Propose Budget-The Finance Committee presented a final draft of the 2014 budget with a recommendation to increase maintenance fees by 3.8% for the coming year. Although the operational expenses remained flat for the coming year, the increase was needed for a higher contribution to reserves due to some major capital improvements coming up in a few years requiring large outlays of reserve funds. On motion of Treasurer Nichols with a second by Secretary Seaman, the Board unanimously approved the proposed 2014 Operational and Reserve Budgets with a 3.8% increase in maintenance fees effective January 1, 2014.
  - 2) Cash Flow Requirement – Treasurer Nichols presented a 20 year cash flow summary for board review. On motion of Treasurer Nichols with a second by Director Kinst, the Board unanimously approved the 20-year cash flow plan for the coming year.
- C. Personnel Committee – Chairperson Holt reported that Hawaiiana Management Company has switched from HMSA to UHA on its group medical plan for its employees and those associations requesting to also transfer from HMSA to UHA. On motion of Director Holt with a second by Director Adams the Board unanimously approved to join with Hawaiiana Management and switch its group medical coverage from HMSA to UHA effective January 1, 2014. On motion of Director Holt with a second by Director Fox the Board unanimously approved to pay up to the same premium amount as provided by UHA for any of its employees who wish to remain with Kaiser, HMSA or any other medical provider of their individual choice.

UNFINISHED BUSINESS – None.

NEW BUSINESS – None.

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MEETING IN RECESS

On motion of Director Adams with a second by Director Kinst, President Stewart announced the meeting in recess at 4:45 p.m. after which the board will go into executive session to discuss several legal matters.

EXECUTIVE SESSION

At 4:50 p.m., President Stewart announced the Board meeting in executive session.

At 6:00 p.m., President Stewart announced the Board meeting back in regular session with the following items acted on in executive session:

- 1) Legal Matters Regarding Beneficial Interest – Another meeting with Bank of Hawaii will be scheduled within the next two weeks.
- 2) Commercial Grass Shack – Management will send a violation notice to the Commercial Owner for the tenant occupying LL101 not getting approval and a permit for the Grass Shack constructed outside McDonalds.
- 3) GM Employment Agreement – Chairperson Holt circulated a draft of a GM employment agreement for the board to review in the interim before the next meeting.
- 4) 2014 Salary Increase For Employees – The Board moved to increase the wages and salaries of the Association's employees as recommended by the Personnel Committee and already presented and approved as part of the 2014 Budget.

DATE, TIME AND PLACE OF NEXT MEETING

The next regularly scheduled meeting of the Board of Directors will be determined at a later date.

ADJOURNMENT

There being no further business, on motion of Treasurer Nichols with a second by Director Fox, President Stewart adjourned the Regular Board meeting of October 29, 2013 at 6:00 p.m.

Submitted by:



Ralph Ahles  
Recording Secretary

Approved by:



Duncan Seaman  
Secretary

**DISCOVERY BAY BOARD MEETING  
HAWAII PRINCE HOTEL, OCTOBER 29, 2013, 4:00 PM**

**ATTENDEES**

APT #	FULL NAME - please print (FIRST & LAST)	SIGNATURE
2915	JEAN LAPORTE	Jean Laporte
4008	Magg Edamurs	Magg Edamurs
2812	JOANNE SERIAL	Joanne Serial
1608	KARLA GIGSON	
1918	Silva Adams	Silva Adams
2401	CLAUDE ROTHE	CR -
1712	Michael DeGregory	
TH 121	<del>JAMES WATSON</del>	
1004	Clark Rogers	Clark Rogers
2010	Mike Tane	Mike Tane
3003	R. McDaniel	R. McDaniel
3601	H. Reibman Linda Reibman	
1710	Carolyn Macy Carolyn Macy	
1905	SUSAN L. LARKIN	Susan Larkin
3117	John K. Higer	John K. Higer
3904	Harry Russell	
	George Weiner	

MINUTES OF THE BOARD OF DIRECTORS' MEETING  
DISCOVERY BAY  
July 25, 2013  
4:00 P.M., PRINCE HOTEL – HALEAKALA ROOM

CALL TO ORDER

Call to order at 4:00 p.m.

ESTABLISH A QUORUM

A quorum was established.

Members Present: President John Stewart, Vice President Brian Esplen, Secretary Duncan Seaman, Treasurer William Nichols (*via Conference*), and Directors: Charlie Fox, Gary Holt, Rusty Adams and Randy Kinst.

Members Excused: Michael Bruser

Also Present: Chris Herndon, Discovery Bay General Manager,  
Ralph Ahles, Management Executive, Hawaiiana Management Co.  
Adrienne Yoshihara, Attorney, Chun, Kerr, Dodd, Beaman & Wong  
Terry Revere, Association Legal Counsel  
Danton Wong, Chun, Kerr, Dodd, Beaman & Wong

Owners Present: (See attached list)

CORRESPONDENCE

#2904 (Mike Intille) – A letter was received from Mr. Intille requesting time to address the Board at their July 25, 2013 meeting on lease fee interest matters.

OWNERS' FORUM – No comments.

COMMERCIAL SHOPPING CENTER REPORT – No report.

GENERAL MANAGER'S REPORT

General Manager Herndon submitted a written report dated July 25, 2013. The following significant items were discussed:

- 1) Chill Water Valves & Lagging – General Manager Herndon stated that the valve change-out is scheduled for January 2014. On motion of Director Adams with a second by Secretary Seaman, the Board unanimously approved to have Johnson Controls change out the valves and Acutron to replace the pipe lagging.
- 2) Elevator Modernization – General Manager Herndon stated the elevator modernization has been completed and the six month warranty program began on July 1, 2013 before a new maintenance contract is initiated.
- 3) Nano Tek-On – General Manager Herndon presented a proposal from Nano Tek-On to setup a test program by installing an electronic device to save energy and dumping of water on the pool and spa. If successful, the device will be recommended for the A/C chill/condenser water systems. On motion of Director Kinst with a second by Director Fox, the Board unanimously

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approved to have Nano Tek-On proceed with the test program on the pool and spa water systems at a cost of \$4,500.

- 4) High Risk Components/Plumbing Replacement Project – General Manager Herndon presented the Board a draft of a follow up letter to those owners who still have not replaced the gate valves, supply lines and washing machine hoses as determined by a previous high risk plumbing inspection working on getting the remainder of those units needing to have valves and supply lines replaced. After minor changes to the draft letter, Management was instructed to send out the letter.
- 5) Wooden Structure At Entrance to Commercial Shopping Center – to be discussed later in executive session.

APPROVAL OF MINUTES

5-6-2013 Board Meeting Minutes – On motion of Secretary Seaman with a second by Director Holt, the May 6, 2013 Board Meeting Minutes were approved as corrected.

TREASURER'S REPORT

- a) April-May-June, 2013 Operational Financial Statements – On behalf of Treasurer Nichols, Chris Herndon gave a brief summary report on the April through June, 2013 operational financial statements. On motion of Director Fox with a second by Secretary Seaman, the Board unanimously accepted the April, May & June, 2013 operational financial statements subject to audit.
- b) April-May-June, 2013 Beneficial Financial Statements – Treasurer Nichols gave a brief summary report on the April through June, 2013 beneficial financial statements. On motion of Director Adams with a second by Director Fox, the Board unanimously accepted the April, May & June, 2013 beneficial financial statements subject to audit.

*(Owner Mark Rodgers attempted to address the Board without first being recognized by the chair and was prevented from continuing to address the Board.)*

- c) Delinquency Report – On motion of Treasurer Nichols with a second by Director Esplen, the Board unanimously approved to have an amount of \$106,519.81 of bad debt removed from the association's financial records. Management will send an updated list of the bad debt being removed.

COMMITTEE REPORTS

- A. Building & Grounds – Addressed under General Manager's Report.
- B. Personnel – Chairperson Holt presented a written ***"Declaration of Operation and Maintenance Responsibilities For AOA Discovery Bay"*** to the Board for their review and approval. The matter was deferred to Executive Session for further discussion by the Board.

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DISCOVERY BAY  
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UNFINISHED BUSINESS – None.

NEW BUSINESS – None.

MEETING IN RECESS

President Stewart announced the meeting in recess at 4:30 p.m. after which the board will go into executive session to discuss several legal matters.

EXECUTIVE SESSION

At 4:37 p.m., President Stewart announced the Board meeting in executive session.

At 6:00 p.m., President Stewart announced the Board meeting back in regular session with the following items acted on in executive session:

1) Connelly v. AOA Discovery Bay – On motion of President Stewart with a second by Director Holt, the Board unanimously declined to offer any contribution toward the settlement of the suit.

2) Lease Beneficial Interest – Two issues under consideration.

a) tax matters – On motion of Director Holt with a second by Treasurer Nichols, the Board unanimously approved to authorize \$20,000 to have Chun, Kerr, Dodd, Beaman & Wong draft a letter to send to the IRS regarding a tax ruling on the beneficial interest money coming to the Association. On motion of President Stewart with a second by Director Kinst, the Board unanimously approved to have Chris Mashiba at a cost not-to-exceed \$5,000 to review the tax matter.

b) Bank of Hawaii Resignation – First Hawaiian Bank and Central Pacific Bank have declined being backup trustees in place of Bank of Hawaii. Bank of Hawaii will continue to administer the trust in the interim. Legal Counsel will continue to work with First Hawaiian Bank to see what language needs to be changed in order for First Hawaiian Bank to accept the position as Trustee.

3) InSynergy Engineering Commercial Sewer Line Evaluation Report – President Stewart volunteered to draft a letter for Board review to send to Commercial owner Mike Bruser to accompany the InSynergy Engineering Report.

4) Commercial Grass Shack & Signage – A recent survey sent out by the Board received comments back on the poor condition of the Commercial Shopping Center. Also, the Board received an anonymous letter from a concerned owner in Discovery Bay about the Commercial Shopping Center. The Board was in agreement to send both the Survey comments and the anonymous letter directly to Mr. Bruser.

5) Declaration of Operation and Maintenance Responsibility – Management will meet with the Personnel Committee to come up with a final draft for Board Review and approval at their next meeting.

MINUTES OF THE BOARD OF DIRECTORS' MEETING  
DISCOVERY BAY  
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6) House Rules Changes- Director Fox suggested procedures be set up on inquiries from owners (i.e. legal advice).

DATE, TIME AND PLACE OF NEXT MEETING

The next regularly scheduled meeting of the Board of Directors will be determined at a later date.

ADJOURNMENT

There being no further business, on motion of Director Fox with a second by Director Esplen, President Stewart adjourned the Regular Board meeting of July 25, 2013 at 6:03 p.m.

Submitted by:



Ralph Ahles  
Recording Secretary

Approved by:



Duncan Seaman  
Secretary



# DISCOVERY BAY

## TRANSCRIPT OF BOARD MEETING HELD ON MONDAY, MAY 6<sup>th</sup>, 2013

24:50 (Recording Indicator)

(JOHN STEWART)

"Does anyone have any questions they would like to ask Adrienne who came specifically to answer those questions, here? About what it is that we are exploring over the next several months which will probably not come to fruition for two or so years. Does anybody have any questions for Adrienne?"

(JOHN SMITH)

"It 's really just a comment... It would seem that after reading the correspondence (on) both sides that some questions of law are not going to be determined until they are actually tested in law. Is that, is that a valid observation?"

(ADRIENNE YOSHIHARA)

"I'm not sure what you are asking about specifically...."

(JOHN SMITH)

"Well, for example, do I have to give the keys away in 2039?"

(ADRIENNE YOSHIHARA)

"The answer is... if nothing changes, as of today, if everything's the same on December 31<sup>st</sup>, 2039 as it is today, the answer is yes. Under your leases, just pull it out, this is not anything mandatory.... when you bought your units, you had full disclosure from your sales, correct? They gave you copies of your leases that says in one of those sections of your lease, it says that on December 31<sup>st</sup>, 2039, when the lease expires, you will turn over your keys to the apartment as it says in good condition and you will be asked to leave the building, that is correct. And because this board and boards before it that we have been working with, recognize that and because in the past, um I think some of you remember it was what was called a mandatory conversion law... the city had that available for those homeowners who lived in the building and did not own any other property in the State of Hawaii. They made it available to those owners...that law has gone away...so it is not available to anybody, any more, any lease holders right now. And the Board recognized that, that says "what do we need to do to, in order to ensure our fellow members the right to stay living in the building in their apartments on January 1<sup>st</sup>, 2014, the day after your lease expires. And because the leasehold was not available....."

*(ADRIENNE YOSHIHARA) Continued*

"Let's go back, you know, it has been a long time.. I mean, I think I first ...a... met with all of you, the members, in 2005 and some of you were not owners at that time, some of you probably weren't even attending the meetings, and so in 2005 your Board asked Peter Savio and Derrick Fujisaki to pursue purchase of the beneficial interest...and let me explain why...okay.. You can't purchase the fee right now because it's owned in a Trust, okay..which is odd, in Hawaii, State of Hawaii, you know your neighbors in the next apartment building...the fee is owned by a landlord, not a trustee, probably an entity, or a an individual and they are free to sell it at will... they can sell their fee, lease fee to the owners or the apartment owners in that building...and you see it all over town, you hear it... you hear such and such a building...leased fee got purchased by all the apartment owners...hurray...great! And you are wondering how come that can't happen for me? Well, you happen to be living in a project that, that the fee, the land is owned by a trustee...it does not have the power to sell the leased fee interest. That Trustee has to operate by a trust...it's an agreement by the people who put all the land under your building together...there were six families... they put all of their land together to build Discovery Bay back in 1972... and was built in 1976, okay? This Trustee has no right or authority or power to sell that fee unless every one of the beneficiaries of that trust says 'yes', we want to sell."

"So, back in 2004, from what I understand from Peter and from John... they were very close, really close to getting all the beneficiaries to say 'Yes'. And it was heart-breaking, because what happened was, one of the beneficiaries died and their heirs, the kids ... her heir... said, "No, no deal!" "All bets are off"!

"So, in 2004, you had... you were so close to getting a 100% of all the beneficiaries to say, yes... will sell the lease fee. When we, when we learned, the AOA Board learned they would not going to be able to buy that leased fee from the beneficiaries, or getting the beneficiaries to vote and instruct the Trustee...unanimous... um... group of beneficiaries...they said, "what else can we do?" And based on Peter's discussion with us... we said, well, you could buy the beneficial interest...you could buy the interest of the beneficiaries in that trust. The beneficiaries can sell their interests. The Trustee can't sell the leased fee... I know it sound weird... but that's the way it is. So, the beneficiaries were approached by the AOA delegation... Derrick and Peter... to try to buy a beneficiary's interest in the Trust. Now, let me just... How many people here have trusts? Okay, that means you set up a trust, is that right? Okay, that means that you're the settler of that trust, alright that's what a settler is... a settler is a person who sets up or creates a trust. You set up a trust when you, as a settler, you have to put property into that trust, okay? So, as a settler, you put property into that trust... and then, what else do you have? You have beneficiaries. Right now a lot of you are the beneficiaries of your own trust. Okay? But you also name your children, and your grandchildren and the Zoo, and you know, the Metropolitan Opera as beneficiaries of your trust, okay? So, and, what else do you have...? You have a trustee... Right now most of you are trustees of your own trust. You own the property of the trustee (Trust), okay?"

"So, essentially, that's the same structure that you're working with... and that trust that you set up is probably governed by a written document... you signed a document that that I'm the settler of this trust, these are the beneficiaries that I named. This is how I want things run and this is who is going to be the

*(ADRIENNE YOSHIHARA) Continued*

trustee, okay? The same thing holds for the Discovery Bay Trust. It's that simple. Except again, I am just letting you know that the Trustee of the Discovery Bay Trust has very limited powers or authority... with respect to the leased fee interest, to the property that it was given."

"So, knowing that, the Board said okay, what we need to do is... we need to drive... okay...the goal is still to get 100%. There's no doubt about that, that would be the best thing in the whole wide world... to buy the beneficial interest from every single living beneficiary... Okay.. However, what we also understood was, I think at the start there was a lot of discussion... there was a number recalcitrant owners who said "No way Jose! It is not going to happen in my life-time." But the Board understood one thing...they said that if we drive for a majority of interest...we have weakened, start dictating some of our future."

"But, let me tell you something, all the Board had to do to protect your interest was to buy one person's interest. That's all it had to do! So, back in 2005 we bought .975% interest from one beneficiary. She had approximately 1%. And the Board bought that, okay...that's all the Board had to do. It did not have to go out and buy the rest of the 99% to protect you, because that meant that on December ...you know crazy as it sounds...but it really had... would work... on December 31<sup>st</sup>, 2039 the AOA would have been a beneficiary and as crazy as it sounds, they would have, they could have distributed one 666 interest of that one % to every single one of these owners... now what does that mean...it means you have a voice at the table. It did not necessarily guarantee you the right to stay in your apartment. But it guaranteed you the right to the table on January 1, 2040. But the next thing they (Board) said, okay, they told Peter and Derrick, "Get out there and buy as much as you can but we need the majority in interest. And through 2007, it took that long to purchase approximately 62% of the beneficial interest in the Trust. So, the beneficial interest, you bought the interest of the beneficiary in the Trust. A beneficiary has the right to the benefits of the assets in the Trust. The beneficiary does not have a right to the assets of the Trust. That is managed solely by the trustee. And in this instance, unlike perhaps the interest in some of your trusts, you're thinking...well how come I gave my beneficial interests the right to push the trustee around..and in this instance, the beneficiaries have no such right except if they can group together, 100% of them, and instruct the trustee to sell the interest... or to do something with leased fee interest, okay. So that's where you're at right now as of 2007."

*(JOHN SMITH)*

"The reason I raised the question is that somewhere in the correspondence, on which line I forget, there was some hint or suggestion that if the individual apartment owners had a percentage, somehow that was a stronger position then if the Board owned the percentage."

*(ADRIENNE YOSHIHARA)*

"Okay, so here's what's being discussed right now...."

(GARY HOLT)

"He said the Board... doesn't own it... it's the Association."

(ADRIENNE YOSHIHARA)

"So, but what we are examining right now is "How soon or how...when should the Board distribute its interest to its members?" Because, don't forget, you got to have something, you have to have a stake in the Trust on December 31, 2039... you have got to own something...because... okay this is where it sounds crazy...this is going to sound really crazy. But, the Board bought 62% and its intention has always been to distribute that at some time... sometime before the lease has expired. Now, the reason for that...there are two reasons: first, you need to have an interest so you can sit at the table on January 1<sup>st</sup>, 2040; but the other reason is... just think of it this way...on December 31<sup>st</sup>, 2039, your leases expire, okay! Now, who are the members of the AOA as of January 1<sup>st</sup>, 2040? You are all gone! You have left...you had to leave the building, you are not members of the AOA anymore. (The Trust) Yes, the member of the AOA is the trustee. So, this is kind of mind-blowing...that if the Board did not do something and get you that interest... this is weird, the trustee is going to be the only member of the AOA and it will own 62% of the beneficial interest of the Trust! So, the Board really needs to get this interest out to you. You need this interest... and that's all we are trying to figure out is "how to get it to you, when to get it to you. Not why! The 'why' is...is because their job is to protect your interest in your apartment. That's the answer!"

(JOHN SMITH)

"So it was a valid observation that we are in a better position that we as opposed to the Association, own that piece".

"Let me make, pose another question... At 11:59 p.m. on December 30th (31<sup>st</sup>), I hand the keys to someone, right? At 12:01, as the majority, could we not issue a new lease that says that the lease cost is a dollar per year?"

(ADRIENNE YOSHIHARA)

"Well um... you could... as a majority, you could certainly issue a new lease..."

(JOHN SMITH)

"We wouldn't own it, you know the property, but the asset per se, but we could say, okay the lease is now a dollar a year for every member."

(ADRIENNE YOSHIHARA)

"Well, I suspect, you might be able to do it with respect to your interest, but the other 38%, because of in Hawaii trust law says that you cannot harm your co-beneficiaries, so if you, if you want to not pay lease rent, that's fine, but your co-beneficiaries will get 38% of their market value at the time of ... when you re-negotiate the lease."

(JOHN SMITH)

"So there is no escape."

(ADRIENNE YOSHIHARA)

"No, Good try though!"

(ADRIENNE YOSHIHARA)

"Okay, Can I just answer one thing about...somebody keeps saying something about reversionary interest. So, let's get something clear about that...okay. There is a reversionary interest in ... what happens at the end of the day when the Trust goes away... now when you are asking... When does the Trust go away? The Trust goes away someone can confirm that the last living descendant of Queen Victoria, who is alive on the day that the Trust came into effect, which I think was June 1976, has died, okay. And the last time we checked, there might be close to several hundred of her descendants that were alive in June 1976. But we'll have to...somebody's going to have to confirm the last of those descendants were alive on the day that your Trust...or the Discovery Bay Trust came into effect, has died. And that's when the Trust goes away, okay. And, at that moment, let's pretend nothing else happened, nothing absolutely, you don't get your interest or anything. I don't care at that moment. But we care about is the reversionary interest. When the Trust goes away, the beneficiaries of the Trust at that moment get their property back...that's what is called a reversionary interest. So, it has nothing to do with the discussion today or in the future about the distribution of the beneficial interest you own. It has nothing to do with that, because the reversionary interest is something that happens when the Trust terminates. That's way in the future. So, there's... that has nothing to do with the discussion with respect to the evaluation of the distribution."

(BILL NICHOLS)

"Could you explain the time and effort you've spent in linking the beneficial interest to the specific apartment and not being able to separate those two?"

(ADRIENNE YOSHIHARA)

"So, there's a question about...Can um... What happens when I buy my beneficial interest..you know,...what does it do, does it stick with my apartment...can I pull it apart and sell it separately from my apartment... and the answer is generally yes, unless there is something that requires that it stay

*(ADRIENNE YOSHIHARA) Continued*

with your apartment. And that's exactly what they're (the Board) are considering... is making sure that when you take ownership of that... your share of the beneficial interest, that document is going to say that it cannot be transferred except with the apartment. So, it's going to go...as they say, you hear this term...it runs...it'll run with the land, it will with your apartment. So, when you sell your apartment, it must be sold with your apartment. You can't pick and choose what interest in your apartment you're going to take apart and sell to the next buyer. The buyer will buy your apartment and he will buy the beneficial interest that you purchased that goes with that apartment."

*(ADRIENNE YOSHIHARA)*

"Somebody said the other day, what happens when I get a divorce? Does my wife get the beneficial interest? Do I get the apartment? No, I think your wife's going to get everything!"

*(RON REIBMAN)*

"In 2040, what happens if the trustee says, let's extend the lease for another 30 years?"

*(ADRIENNE YOSHIHARA)*

"Okay, fair question! And you know the trustee's going to ask that question only upon the instructions of the 100% of the beneficiaries. You're going to have a say, the AOA, as a 62% owner, will have a say in, whether there's going to be a new lease issued."

*(SOMEONE STATED???)*

"That will be negative!"

*(ADRIENNE YOSHIHARA)*

"That's right! And, you know, if nothing happens...with respect to anything that has to do with the lease fee, it's got to be unanimous... if there is going to be a new lease that's going to be put onto the fee, then it's got to be unanimous. And so... there's a lot of scenarios and hypotheticals that we are looking at. There so many that they are not worth talking about right now, but needless-to-say, what, why it is taking awhile for them to evaluate the proposed distribution. How do we... if we do it now, sooner? So, John's letter is, if you take a look at it again, and I really urge you to do so. In John's letter, he lays out a couple of benefits for everyone here, if we distribute sooner. And one of the reasons to distribute sooner of course is because if we are looking to do is... you have the power, you can't force the trustee, instruct the trustee to sell the leased fee interest. But you have the authority, the majority, to instruct the trustee to amend the leases of individuals who purchased their share of the beneficial interest. And your lease then will be... the lease rent will be reduced by the 62%, or whatever percentage is necessary, because the trustee still needs a few dollars from everybody to, you know, administer, to pay for its

*(ADRIENNE YOSHIHARA) Continued*

administration. So, your lease rent will be immediately reduced. And wouldn't it be nice to have reduced lease rent sooner than later. So, that's one reason."

"Another reason is that is this concept of having your apartment, having your beneficial interest, having your beneficial interest with that apartment... Peter can speak better to this, I know Peter has said this on a number of occasions that it should stabilize the prices of your apartment. There's no promise to that, but we do know that the value of the apartments of Discovery Bay have not risen as fast or recovered from 2008 as most of the apartments and the properties in Waikiki have. We know that Discovery Bay everyday still has this problem of trying to explain the beneficial interest to... a...would be purchaser. And Peter believes that once, you know, you have this, your apartment and the added layer and protection of the beneficial interest, people will be a lot more interested and hopefully the values will start stabilizing. So, there are two kind of economic benefits that beyond saving your apartment, the ability to stay in your apartment at the end of the lease that the Board is looking at."

*(JOHN SMITH)*

"So, there's no question then, I gather, that the ability to alter the lease exists. It's not even a question... it exists."

*(ADRIENNE YOSHIHARA)*

"It exists. Now whether the trustee is going to...how the trustee is going to handle that... is another question."

*(JOHN SMITH)*

"Well, forever, I suppose."

*(ADRIENNE YOSHIHARA)*

"And what... the trustee is always going to be much more(temple?). And the... it will take time and as we said in January, for example, we've approached First Hawaiian Bank to help owners with financing... if you can't purchase the beneficial interest on your own today, maybe you can finance it. FHB is interested, but that's all they said. It's going to take a lot more and a lot more time to get to that...will you finance? will you program for our owners? So, the same thing goes for the trustee... you have the power, you are the majority owner ... you own the majority of the square footage of land. You have the right under the terms of the Trust Agreement or that, as I said, that contract, that trust contract...to direct the trustee to do administrative things. One of the administrative things is that they administer the leases. So we have to, you know...we'll have to work with the trustee to make sure that they're comfortable with all of their ... They've dotted their 'I's and crossed their 'T's before they start amending the leases to reduce your rent. Everything takes time."

(JOHN SMITH)

"So, again with regards to the original question, there are no questions in law, the law is known, true?"

(ADRIENNE YOSHIHARA)

"True."

(MARK RODGERS)

"Sorry, what statute are you referring to? The law is known....so please state the State Statute."

(ADRIENNE YOSHIHARA)

"There is no statute... No, this is trust law that, there is something, ok... so everybody knows, some law is governed by what Mr. Rodgers is talking about is called a statute. It is written by the legislature, the State legislature. So you can go to a bunch of books, you know and a...that's what's called statutory law.

So, just to be clear...but most law is not. Most law is made by people going to court and to history. So, what I am talking about is trust law. And most of what we know to be legal or what we believe we have legal basis for saying happens is to be based not in statute but in this...this long history of law."

(BILL NICHOLS)

"One, to elaborate on that point...we were in the negotiations with the trustee on the back rent and they amended the leases on the back rent so we only paid 50% of the back rent and that whole negotiation went through providing on the Trust, it had no adverse impact on the remaining 38%. So, any time we want to go to the trustee and say, amend the leases in this form, providing it does not adversely impact the other owners, we can do it as the majority owner. We've got a history of doing it, we have already established the precedent."

(MARK RODGERS)

"Can I ask if we need unanimous approval to do that? Or, did they do that because you are the majority interest?"

(ADRIENNE YOSHIHARA)

"They did it because we are the majority interest."



(MARK RODGERS)

"That is one of the best things I've heard, you know in giving me assurances that... that if I buy the beneficial interest, that I have some assurances that...that it will somehow allow me to have a vote, a seat at the table... for example."

(JOHN STEWART)

"so here is what... here's what we're going to do. A... we've run over the time... Let me, let me just make this clear... a... We don't react well to the tone of this particular letter. And you folks can write whatever you want to write, but we're all human beings, we're all getting paid the same amount to attend this meeting, every meeting I've gone through, all the ... not one day goes by that I'm not involved as a lawyer, out of State, working with Adrienne or others in her office and Peter and Derrick and so on and so forth. We are still evaluating this.. but what we are going to do as we go forward, we're going to have a series of informational meetings that will not be board meetings as such, but will be meetings as we go through this process so that people can understand what's going on. And frankly, any of you, or all of you have every right to engage your own lawyer to find out if what it is that what we're telling you is correct or not correct. You all have that right. When you, for example, bought your unit, if you did not understand the Trust, you had every right to go and hire someone to tell you what you were buying so that you would know now what you have. And I would strongly urge... a... particularly, some of you who...a... may not have a law degree to engage a lawyer here in town...a ... that can understands this and what the credentials and the curriculum vitae... of Adrienne and Danton and Peter and so on and so forth... we're all in this together and we don't have a ton of options... he one option we do not intend to deal with is... on that midnight time... to be sitting here with the association itself owning 62% of the beneficial interest... that's a non-starter from every perspective that there is. So that's... what we're going to be doing for the next several months, probably into next year, as we move through this process, a... and a ... we'll schedule meetings, oh probably the next meeting probably will be in July and we can make provisions so that we can give you an updated report as to where we are or what we're doing and what the progress is and you will have your chance like you have today to... to ask questions and get them answered."

(RON REIBMAN)

"As long as this is being recorded, I would love to see the transcription of what this lady just said. It makes a huge difference as to the perspective of what's going on here. It takes it out of the Board's control and puts it into the legal control without any question... And I think that is what you want to do."

53:05 (Recording Indicator)



**DISCOVERY BAY**

**CONDOMINIUM CONVEYANCE DOCUMENT**

**(LEASE)**

RECORDATION REQUESTED BY:

HONOLULU MORTGAGE CO., LTD.  
235 Queen Street  
Honolulu, Hawaii 96813

AFTER RECORDATION, RETURN TO:

HONOLULU MORTGAGE CO., LTD.  
235 Queen Street  
Honolulu, Hawaii 96813

RETURN BY: MAIL ( ) PICKUP (x)

APARTMENT NO. \_\_\_\_\_

PARKING STALL NO(S). \_\_\_\_\_

UNDIVIDED INTEREST \_\_\_\_\_ 3

CONDOMINIUM CONVEYANCE DOCUMENT

THIS INDENTURE, made this 1st day of December, 1976, by and between HAWAIIAN TRUST COMPANY, LIMITED, a Hawaii corporation, whose principal place of business and post-office address is Financial Plaza of the Pacific, Honolulu, Hawaii, the Trustee under that certain Trust Agreement dated June 6, 1974, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 687964, as amended by instrument dated November 27, 1974, and filed in said Office as Land Court Document No. 705673, and as further amended by instrument dated January 13, 1975, and filed in said Office as Land Court Document No. 707915 (hereinafter referred to as the "Trustee"), and MEPC PROPERTIES (HAWAII) INC., a Hawaii corporation, whose principal place of business and post-office address is Suite 2345, Pacific Trade Center, 190 South King Street, Honolulu, Hawaii (hereinafter referred to as "MEPC"), and MEPC PROPERTIES (HAWAII) INC., a Hawaii corporation, whose principal place of business and post-office address is Suite 2345, Pacific Trade Center, 190 South King Street, Honolulu, Hawaii 96813 (hereinafter referred to as "Apartment Owner"), as Tenant in Severalty,

W I T N E S S E T H T H A T :

WHEREAS, MEPC has caused buildings and other improvements to be constructed on those certain parcels of land situate at Kalia, Waikiki, City and County of Honolulu, State of Hawaii, more particularly described in Exhibit "A" attached hereto and made a part hereof by reference, said buildings and the apartments therein being described in that certain Declaration of Horizontal Property Regime filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 789431 and noted on Transfer Certificate of Title No. 172,913, hereinafter called the "Declaration", and shown on Condominium Map No. 295 filed in said Office; and

WHEREAS, MEPC and the Trustee have submitted said buildings, other improvements and land to a Horizontal Property Regime by filing said Declaration, together with the By-Laws annexed thereto, and said Condominium Map in said Office, thereby creating a condominium project known as Discovery Bay (the "Project"), all in accordance with Chapter 514, Hawaii Revised Statutes;

N O W, T H E R E F O R E,

I. Apartment Conveyance. MEPC, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to it paid, receipt of which is hereby acknowledged, does hereby sell, convey, assign, transfer, set over and deliver to Apartment Owner:

FIRST: That certain apartment located in the Project and bearing the number set forth at the top of the first page hereof, all as more fully shown on the aforesaid Condominium Map and described in the aforesaid Declaration.

TOGETHER WITH appurtenant easements as follows:

(a) An exclusive easement to use the parking space(s) designated on said Condominium Map by the same number as set forth at the top of the first page hereof;

(b) Nonexclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for, and support of said apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive or limited use of the limited common elements as provided in the Declaration; and in all other apartments of the Project for support;

(c) A nonexclusive easement over and across the sidewalks, ramps and walkways which are located within the Commercial Unit on the second floor of the Project for ingress to and egress from the main lobby area on said floor serving the residential tower wherein the apartment is situate;

(d) All other rights, privileges and easements described in said Declaration as being appurtenant to such apartment;

SUBJECT to easements for the encroachment by any part of the common elements of the Project now or hereafter existing thereon and for entry as may be necessary for the operation of the Project or for making repairs therein or the installation, repair or replacement of any common elements as provided in the Declaration.

SECOND: An undivided percentage interest, equal to the percentage interest set forth at the top of the first page hereof, in all common elements of the Project, exclusive of land, as established for said apartment by the Declaration, or such other fractional or percentage interest as hereafter established for said apartment by any amendment of the Declaration, as tenant in common with the other owners thereof, subject as to said common elements, exclusive of land, to nonexclusive easements appurtenant to all apartments for ingress, egress, support and repair.

SUBJECT as to said undivided interest to the restriction that the same shall not be transferred or assigned separately and apart from the apartment hereinabove described.

TO HAVE AND TO HOLD the same unto Apartment Owner, forever, subject as aforesaid and subject also to said Declaration of Horizontal Property Regime and the By-Laws attached thereto, all of which are incorporated herein by reference with the same effect as though fully set forth herein, and as the same are or may hereafter be amended in accordance with the law and the terms of said Declaration and By-Laws.

MEPC, for itself and its successors and assigns, hereby covenants that it is the owner of said apartment and that the same is free and clear of all encumbrances except as herein mentioned; that it has the right to sell the apartment and said undivided interest in the common elements of the Project (exclusive of land) unto the Apartment Owner and will warrant the same unto the Apartment Owner and the Apartment Owner's heirs, executors, administrators, successors and assigns against the lawful claims of all persons except as herein mentioned. MEPC hereby declares and Apartment Owner understands that said apartment and common elements (exclusive of land) are the consequence of a development undertaken by MEPC and that Trustee has not exercised any control over said development, and that Trustee is not, and shall not be, responsible for any design or construction defect of said development, it being understood and agreed that any claim therefor shall be against MEPC, its contractors and consultants, and not against the Trustee.

II. Ground Conveyance. Trustee (hereinafter referred to as the "Lessor"), in consideration of the rent hereinafter reserved and of the covenants herein contained and on the part of the Apartment Owner to be observed and performed, and upon and subject to the terms and conditions hereinafter set forth, does hereby demise and let unto the Apartment Owner, and the Apartment Owner does

hereby lease from the Lessor, an undivided interest, equal to Apartment Owner's common interest in the common elements appurtenant to the apartment as set forth in the Declaration, as amended from time to time, or as set forth in any replacement declaration covering the demised land or, if the demised land is removed from the Horizontal Property Regime, then as set forth in the Declaration immediately preceding such removal, as tenants in common with other lessees, in and to the land situate at Kalia, Waikiki, City and County of Honolulu, State of Hawaii, more particularly described and subject to the encumbrances noted in said Exhibit "A", said land described in Exhibit "A" being sometimes herein referred to as the "demised land".

Subject to the Declaration and By-Laws as now or hereafter amended, said land being a common element as described in said Declaration.

Reserving and subject to all the easements now or hereafter required by the Trustee for drainage, sewers and utilities serving the Project and all other rights reserved in the Declaration.

TO HAVE AND TO HOLD said premises unto the Apartment Owner for the term commencing on the 1st day of December, 1976, and terminating at midnight on the 31st day of December, 2039.

The Lessor hereby covenants with the Apartment Owner that upon payment by the Apartment Owner of the rent and upon observance and performance of the covenants by the Apartment Owner herein contained, the Apartment Owner shall peaceably hold and enjoy the demised land for the term hereby demised as tenants in common with other apartment owners without hindrance or interruption by the Lessor or any person or persons lawfully or equitably claiming by, through or under the Lessor except as otherwise provided herein.

**III. Interrelationship of Interests.** It is mutually understood and agreed that the interests conveyed hereunder, identified under I and II above, are not separately transferable. Thus, under no circumstances may the apartment and the undivided interest in the common elements of the Project (exclusive of land) appurtenant thereto be separated or may either of them be separated from the undivided interest in the demised land, and said apartment and undivided interest in the common elements of the Project (exclusive of land) may only be transferred or encumbered together and with the undivided interest in the demised land. Furthermore, none of the interests conveyed hereunder may be individually fragmented so as to separate the benefits and burdens of that interest in any way. For example, the holder of the rights contained herein to the undivided interest in land conveyed hereunder, whether acquired by contract, operation of law, or otherwise, shall be burdened with and shall be responsible for all of the duties contained herein to the Lessor.

It is mutually understood that the interests conveyed hereunder have been submitted to the Horizontal Property Regime established by Chapter 514, Hawaii Revised Statutes, and shall during the whole of said term, unless and until waived or otherwise terminated as provided by law, constitute a part of the Project.

The Apartment Owner does hereby covenant on behalf of the Apartment Owner and the Apartment Owner's heirs, executors, administrators, successors and assigns, with the Lessor, for the benefit of the owners from time to time of all other apartments in the Project, to observe, perform and comply with the aforesaid Declaration and By-Laws attached thereto as the same exist or may hereafter be amended in accordance with the law and the terms of said Declaration and By-Laws.

**IV. Apartment Owner's Covenants.** The Apartment Owner, in consideration of the premises, hereby covenants and agrees with the Lessor as follows:

1. **Rental.** Apartment Owner covenants and agrees to pay or cause to be paid in lawful money of the United States of America to Lessor, or as Lessor may hereafter designate in writing, in equal quarterly installments each in advance on the first day of January, April, July and October in each and every year during said term (provided that the first payment thereof shall be prorated to the next rental due date and paid upon the execution hereof), rental as follows:

- (a) \$ \_\_\_\_\_ per annum for the period as of said commencement date and ending on the 31st day of December, 1987;
- (b) \$ \_\_\_\_\_ per annum for the next 10 years of said term, ending on the 31st day of December, 1997;
- (c) \$ \_\_\_\_\_ per annum for the next 10 years of said term, ending on the 31st day of December, 2007;
- (d) Such net annual rent for and during the next two successive eleven-year periods and the remaining ten-year period of said term as shall equal Apartment Owner's proportionate share of the net annual rental established for the fee simple land described in Exhibit "A" as shall be determined for each of said periods by written agreement of Apartment Owner and Lessor or, if they fail to reach such agreement at least 90 days before the commencement of each such period, by appraisal as hereinafter provided.

2. Managing Agent. Apartment Owner, in conjunction with the owners of other residential apartments, shall cause the Board of Directors of the Association of Apartment Owners (the "Association") to employ a Managing Agent for such apartments who, acting under the authority of and as agent for all apartment owners, shall be responsible for the repair, operation, and administration of the common elements and the limited common elements described in the Declaration as being appurtenant to the Apartment or to the residential apartments and the Commercial Unit (but not those limited common elements appurtenant only to the commercial unit). Said Managing Agent shall collect and distribute all sums due and owing by the Apartment Owner and other apartment owners which arise from the ownership, occupancy or use of the demised premises or the apartments, including those sums which, by the terms hereof, are payable directly to the Lessor. Said Managing Agent shall maintain detailed accounts of the collections and disbursements affecting the property subject to its management and administration and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or in behalf of the Project or any group of apartment owners. All amounts payable directly to the Lessor by the terms hereof shall be collected and paid over to the Lessor prior to the date said amounts are due. All accounts shall be kept in accordance with good accounting procedures. The books, contracts, records, documents and papers pertaining to that portion of the Project under the management of the Managing Agent or the Association shall be the property of the apartment owners and shall be maintained by the Managing Agent subject to the inspection and examination by the apartment owners at reasonable times. Apartment Owner shall cause the Association to engage Hawaiiana Management Company, a Hawaii corporation, as initial Managing Agent for an initial minimum period of three years. Notwithstanding such agency, the Apartment Owner shall at all times remain liable directly to Lessor for the performance of all his obligations hereunder.

3. Improvements Required By Law. Apartment Owner will, during the whole of said term, pay his proportionate share of the cost of making, erecting, maintaining and repairing all fences, sewers, drains, sidewalks and walls which may be required by law to be made, erected, maintained or repaired upon or adjoining or in connection with or for the use of the demised land or any part thereof.

4. Payment of Common Expenses. Apartment Owner will pay before the same become delinquent all assessments for his proportionate share of the common expenses and other expenses for which he is responsible under the terms of the Declaration of Horizontal Property Regime or the By-Laws, and all charges, duties, rates and other outgoings of every description to which the demised premises or the apartment, or the Lessor or Apartment Owner in respect thereof may during said term be assessed or become liable whether made by governmental authority or any public or community service company or by the Association and whether assessed to or payable by Lessor or Apartment Owner. No failure by Apartment Owner to pay any assessment for his proportionate share of the common expenses shall constitute a default entitling Lessor to exercise the power of sale contained herein if the Association diligently commences and consummates foreclosure of any lien it may have under the Horizontal Property Act, Chapter 514, Hawaii Revised Statutes.

5. Payment of Taxes and Assessments. Apartment Owner will pay at least twenty (20) days before the same become delinquent all real property taxes and assessments of every description to which the premises or the apartment or Lessor or Apartment Owner in respect thereof are now or may during the term be assessed or become liable, whether assessed to or payable by the Lessor or Apartment Owner, except that such taxes and assessments shall be prorated as of the dates of commencement and expiration, respectively, of said term; provided, however, that with respect to any assessment made under any betterment or improvement law which may be paid in installments, Apartment Owner shall be required to pay only such installments, together with interest thereon, as shall be due and payable during said term.

6. Payment of Gross Income Tax. In addition to the rental and all other charges of every description payable hereunder, Apartment Owner shall pay to the Lessor, at the same time Apartment Owner pays said rental and other charges, an amount equal to the amount, if any, payable by Lessor pursuant to the Hawaii General Excise Tax Law or any successor or substitute law assessed or based on gross income actually or constructively received by the Lessor hereunder or in connection herewith, including, without limiting the generality of the foregoing, payment of any amount constructively received (to the extent so taxed) by reason of payment by the Apartment Owner to others of property taxes, insurance premiums or any other charges or costs required to be paid by Apartment Owner hereunder, but excluding Federal or State net income taxes imposed on Lessor.

7. Construction of Improvements. Apartment Owner will not individually or by the Association erect or place on the premises any building or structure including fences and walls, nor make any additions or structural alterations to or exterior changes of any common elements of the Project, nor place or maintain thereon any signs, posters or bills whatsoever, except in accordance with plans and specifications including detailed plot plan, prepared by a licensed architect if so required by Lessor, first approved in writing by Lessor and the Board of Directors of the Association and also approved by a majority of apartment owners (or such larger percentage required by law or the Declaration) including all owners of apartments thereby directly affected.

8. Bond. Prior to the commencement of construction of any building or improvement on or in the premises above described or any alterations or additions to existing improvements costing in excess of Five Thousand Dollars (\$5,000.00), the Apartment Owner or the Association, unless his or its contractor has already done so, shall furnish to the Lessor satisfactory proof (a) that the contractor has procured a bond, in form, amount and with one or more sureties satisfactory to the Lessor, guaranteeing the completion of such construction free and clear of all mechanics' and materialmen's liens and naming the Lessor as an additional obligee; and (b) that adequate arrangements have been made to pay for the construction cost.

9. Observance of Laws. Apartment Owner will at all times during said term keep the demised land and all improvements constructed thereon in a strictly clean and sanitary condition and will observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the demised land and will indemnify Lessor against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance of said laws, ordinances, rules and regulations or of this covenant.

10. Indemnity and Liability Insurance. Apartment Owner will, during the whole of said term, pay his proportionate share of the cost of a policy or policies with a responsible insurance company insuring the Board of Directors, the Managing Agent, the Apartment Owners, and the Lessor against any liability to the public or to the Apartment Owners, their invitees and tenants, incident to the ownership and/or use of the demised land. Limits of liability under such insurance shall not be less than combined single-limit coverage of One Million Dollars (\$1,000,000) (such limit to be reviewed at least annually by the Board and increased in its discretion), payable to the Board, in trust for the apartment owners and the Lessor. Apartment Owner agrees that at any meeting of the apartment owners he shall not vote to reduce the amount or extent of this insurance and if a prudent businessman owning the premises and using the same would carry insurance with higher limits, then he agrees to vote to increase the limits of insurance to such higher limits.



11. Assignment and Subletting. Apartment Owner may assign, mortgage or sublet the interests conveyed hereunder, without approval or consent of Lessor, and the assignee or sublessee shall have the same rights and obligations hereunder as the original Apartment Owner; provided, however, that any assignment or sublease shall provide that the assignee or sublessee undertakes to perform all the obligations of Apartment Owner hereunder. In case of an assignment, the Apartment Owner shall not be relieved of his obligations hereunder without the written consent of the Lessor, and Apartment Owner agrees to deliver an executed copy of any assignment, mortgage or sublease to Lessor.

12. Lessors' Costs and Expenses. In case of any breach by Apartment Owner of Apartment Owner's covenants herein contained, Lessor may at any time without notice cure such breach for the account and at the expense of Apartment Owner. Apartment Owner will pay to Lessor all costs and expenses, including reasonable attorneys' fees incurred or paid by Lessor in enforcing any of the covenants and conditions herein contained, in curing any breach by Apartment Owner of its covenants herein contained, in recovering possession of the demised premises or any part thereof or in collecting any delinquent rent, taxes or other charges hereunder payable by Apartment Owner. In case the Lessor shall, without any fault on the Lessor's part, be made a party to any litigation (other than condemnation proceedings or proceedings affecting the Lessors' title) as a result of a default by Apartment Owner hereunder, then Apartment Owner will pay all costs and expenses, including reasonable attorneys' fees incurred or paid by Lessor in connection therewith.

13. Indemnity for Claims. Apartment Owner will indemnify and save harmless Lessor from all claims, loss or damage, including property damage, personal injury, or wrongful death, arising out of any accident on the demised land or any nuisance made or suffered thereon or any failure by Apartment Owner to maintain the demised land in a safe condition and will reimburse Lessor for any attorney's fee or other costs and expenses in connection with the defense of any such claim.

14. No Liens. Apartment Owner will keep the demised land at all times free and clear of any and all liens, charges and encumbrances of any nature other than mortgages permitted hereunder.

15. Waste and Unlawful Use. Apartment Owner will not make or suffer any strip or waste or unlawful, improper or offensive use of the demised land or any portion thereof.

16. Surrender. At the end of said term or upon sooner termination, the Apartment Owner will peaceably deliver up to the Lessor the undivided interest in the premises demised hereunder, it being understood that the Apartment Owner, with the approval of and together with all of the other apartment owners of the buildings situate on the demised land, may during the term hereof or within thirty (30) days of sooner termination remove or dispose of said buildings. If said buildings shall not be so moved or disposed of, then the Apartment Owner shall, join with all the other apartment owners in delivering or in causing the Association of Apartment Owners to deliver up to the Lessor possession of the buildings in good order, repair and condition, reasonable wear and tear excepted. Regardless of whether said buildings shall be so moved or disposed of, Apartment Owner shall properly execute and deliver to Lessor a document conveying Apartment Owner's apartment (including all voting rights and other rights and privileges appurtenant thereto) and undivided interest in the common elements of the Project to the Lessor. If said buildings shall not have been so moved or disposed of, then MEPC shall pay to the Apartment Owner his proportionate share of \$100,000 upon delivery to Lessor of such document. If and in the event the Apartment Owner should fail to execute such a document, and regardless of whether said buildings shall be so moved or disposed of, it shall be deemed to have been executed thirty (30) days from the termination of the term hereof, or upon removal of the buildings, whichever shall first occur; and in either such event, the Lessor is hereby irrevocably appointed the attorney in fact of the Apartment Owner with power in the name of the Apartment Owner to execute such document and to effectually convey said apartment and said undivided interest, including the power to cause such document to be filed in said Office of the Assistant Registrar of the Land Court.

V. Mutual Covenants. The Lessor and the Apartment Owner hereby mutually covenant and agree, each with the other, as follows:

A. Appraisal. Whenever it is provided hereunder that the net annual rental shall be determined by appraisal for computation of any rent hereunder, the said rental shall be determined by three appraisers, one to be appointed by the Lessor, one to be appointed by the Association acting by and through its Board of Directors, and the third to be appointed by the two so appointed. In case the Lessor or the Association, within fifteen (15) days after written demand by the other (which written demand may be given at any time following the ninetieth (90th) day before the beginning of said period), fails or neglects to appoint an appraiser (and to notify in writing the other party thereof), such failure or neglect by the party failing so to appoint an appraiser may be construed by the non-defaulting party as an agreement on the part of the defaulting party to allow and irrevocably authorize the other to make the appointment of an appraiser for the defaulting party. In the event the appraisers appointed by the Lessor and Association fail or neglect to appoint a third appraiser within twenty (20) days after the appointment of the second of them, then either the Lessor or the Association may apply to any judge of the Circuit Court of the First Judicial Circuit of the State of Hawaii (or, if such Court does not exist, then to any judge of an existing Court of comparable jurisdiction) for the designation or appointment of an appraiser. The three appraisers so appointed shall proceed to determine the net annual rental to be paid during each of said periods on the basis of the then prevailing market-percentage rate of return per annum on the market value of the land as if encumbered by this lease and exclusive of any improvements constructed thereon, as of the first day of the period for which rent is being also determined. Each appraiser shall be a member of the American Institute of Real Estate Appraisers or of a similar professional society. Each appraiser shall, before entering upon the performance of his duties, take an oath to honestly, justly and impartially perform his duties as an appraiser and shall subscribe such oath before some officer then authorized by the laws of the State of Hawaii to administer oaths.

The decision as to rental so determined shall be binding upon the Lessor, the Association and the Apartment Owner; provided, however, that in no event shall the annual rent be less than the annual rent specified during the immediately preceding ten (10) year period. Each party shall pay for its own appraiser, and all other costs and expenses of such appraisal, including the fee of the third appraiser, shall be paid equally by the Lessor and the Association (the Apartment Owner hereby agreeing to pay his proportionate share of such costs). In the event either party fails to appoint his own appraiser, then all costs and expenses of such appraisal, including the fees of all three appraisers, shall be paid equally by the Lessor and the Association.

The process of appraisal to be used by said appraisers in making an estimate of market value shall be as follows:

(i) Each separate parcel comprising the demised land shall be evaluated and appraised on the basis that the same is a separate and distinct parcel retaining the same area and parcel configuration as shown on the maps filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 852, notwithstanding any subsequent consolidation of such parcels.

(ii) Each separate parcel shall be further evaluated and appraised on the basis that the same is a part of the parcels with which it was assembled for development as a unit (whether or not such parcels are actually consolidated), and the appraiser shall allocate to each such parcel that portion of the value of all of said assembled parcels appraised as an assembled whole which is equal to the ratio that the square-footage of said parcel bears to the total square footage of all of the assembled parcels.

(iii) The appraisers shall assume for purposes of their appraisal that the demised land appraised as separate parcels, as provided in subparagraph (i), or as a single consolidated parcel assembled for development as a unit, as provided in subparagraph (ii), is enhanced by then existing street improvements, contributing benefits, betterments and other related economic influences and value

factors, are vacant of all buildings, unencumbered by lease or the subsistence of any right to or interest in said premises in a person other than the Lessor, and available for immediate development to the highest and best use therefor, which use is defined as the most profitable use for which the premises are adaptable. The then use to which the premises are employed shall be considered as a use to which the premises are adaptable, but such adaptability shall not restrict further consideration by said arbitrators of the highest and best use, having regard for alternative uses for which the premises may be employed and the influence of a ready adaptability to alternative use; and

(iv) The higher of the values established for each parcel, pursuant to subparagraph (i) or (ii) hereinabove shall be added together and the resulting total shall be the market value of the demised land for the period for which rent is established.

B. Condominium Status. The demised land is a portion of the Horizontal Property Regime hereinabove described and shall during the whole term hereof remain so unless terminated in accordance with the law and with the consent of the Lessor and Apartment Owner, and the mortgagees of any interests conveyed hereunder. The demised land is and shall remain until such termination subject to all of the terms, covenants and conditions in the Declaration and the By-Laws attached thereto. The Apartment Owner hereby covenants and agrees with the Lessor to observe and perform or cause the Association to perform all of the provisions of the Declaration and the By-Laws with respect to the demised land. It is further understood and agreed that the Apartment Owner is and shall be one of the members of the Association and shall have all rights, duties and obligations thereunto appertaining, including, without limitation, membership and voting rights in the Association; provided, however, that any vote or other action of Apartment Owner or the Association with respect to any matter as to which this Condominium Conveyance Document, the Declaration or By-Laws requires the approval or consent of Lessor or with respect to partition of the Project, termination of the Horizontal Property Regime, or amendment of said Declaration or By-Laws shall be effective only upon the approval or consent of Lessor in writing; however, it is agreed that performance by the Association of any act required by a covenant of the Apartment Owner hereunder shall be deemed performance by the Apartment Owner. The Apartment Owner covenants particularly, and without limiting the generality of the other provisions of this paragraph, to exert all reasonable efforts to require the Board of Directors of the Association, and any Managing Agent employed by it, to carry out the terms of the Declaration and the By-Laws, and particularly, without limiting the generality of the foregoing, to maintain or cause to be maintained the demised land in good and neat order and condition.

C. Condemnations. In case at any time or times during the term hereof the interests conveyed hereunder or any part thereof shall be required, taken or condemned in fee simple by any authority having the power of eminent domain, then and in every such case the estate and interest of Apartment Owner in the demised land so required, taken or condemned shall at once cease and determine upon acquisition by such authority of title thereto or right to possession thereof, and Apartment Owner shall not by reason of such taking or condemnation be entitled to any claim against Lessor or others for compensation or indemnity for his leasehold interest, and all compensation and damages for or on account of any land shall be payable to and be the sole property of Lessor, and all compensation and damages for or on account of any buildings or improvements on the demised land shall be payable to and be the sole property of the owners of the buildings and improvements as their interests may appear and shall be payable as provided in said By-Laws.

In case a portion of the demised land shall be so required, taken or condemned, and the remaining land shall, in the reasonable judgment of the Association, be suitable for the purposes for which the same was being used prior to the taking, the aggregate rent payable by all of the apartment owners or the remaining apartment owners, as the case may be, for the remainder of said term shall be reduced in the ratio that the area of such portion taken bears to the total area of the demised land immediately prior to such event.

In the event the demised land is completely condemned, or so much thereof shall be taken that the Apartment Owner's apartment is unsuitable for its permitted use, then if the Apartment Owner and other affected apartment owners

shall remove all debris and restore the remaining improvements and demised land to a clean and orderly condition and even grade, the Apartment Owner may, at his option, surrender to Lessor this lease and thereby be relieved of any further obligation hereunder, upon the following terms and conditions:

(1) Apartment Owner shall have paid or then pays to Lessor all rent accrued hereunder and taxes with respect to Apartment Owner's unit for the full current tax period;

(2) Any mortgagee of Apartment Owner's interest shall join in such surrender; and

(3) Such surrender shall be made not later than thirty (30) days after Apartment Owner loses the right to possession of the demised land so taken.

In the event of any such surrender, all condemnation proceeds allocable to said apartment, less Apartment Owner's proportionate share of the cost of debris removal and of restoring of the remaining improvements and demised land to a clean and orderly condition and even grade, shall be paid to the Apartment Owner and his mortgagee, if any, as their interests may appear, and the remaining apartments shall, by appropriate amendment of the Declaration, be reconstituted as a new Horizontal Property Regime without such apartment.

If so much of the demised land shall be required, taken or condemned as to render the remaining land unsuitable for the purposes for which the same was being used prior to the taking, then if the Apartment Owner and the other apartment owners shall promptly remove the remainder of the buildings and restore the remaining land to a clean and orderly condition and even grade, using the award for the buildings to the extent necessary therefor, Apartment Owner may, at his option, after payment to Lessor of all rent accrued hereunder and taxes with respect to his unit for the full current tax period, surrender to Lessor this lease and thereby be relieved of any further obligations hereunder, upon the following terms and conditions:

(1) Any mortgagee of Apartment Owner's interest shall join in such surrender;

(2) All other apartment owners shall execute and deliver to Lessor a surrender of their leases, with joinder therein by their respective mortgagees, if any; and

(3) All of such surrenders shall be made not later than ninety (90) days after Apartment Owner loses the right to possession of the premises so taken, or the order of possession becomes effective, whichever sooner occurs.

In the event of such surrender, all of the proceeds of such condemnation other than the portion thereof attributable to land, after payment for the removal of the remainder of the buildings, shall be payable to the apartment owners and their respective mortgagees in proportion to their respective common interests.

In the event the portion of the condemnation proceeds attributable to land shall not be determined by the Court in the condemnation proceedings, the portion of the total award attributable to land shall be determined by a Board of three appraisers selected in accordance with the provisions herein contained for selection of appraisers to determine net annual rental with either Lessor or the Board of Directors of the Association having the right to initiate such determination by selecting an appraiser and giving notice thereof to the other.

Condemnation of any leasehold interest in the Project shall not terminate this lease nor excuse Apartment Owner from full performance of his covenants hereunder for the payment of money or other obligations hereunder capable of performance by Apartment Owner, but in such case Apartment Owner may claim and recover from the condemning authority all compensation and damages payable on account of his leasehold interest.

D. Casualty Insurance. The Apartment Owner will during said term cause the Association to procure and maintain from a company or companies qualified to do business in Hawaii a policy or policies of fire insurance, with endorsements

for extended coverage, special extended coverage, vandalism and malicious mischief and flood, and during time of war, to the extent that the same is reasonably obtainable, against war risks (from any source) for as nearly as practicable to 100% of the replacement cost, without deduction for depreciation, covering all buildings on the demised land and their fixtures and building service equipment, all as provided in the By-Laws. Apartment Owner shall bear his proportionate share of the premiums as provided by the By-Laws. Without limiting the generality of any provision herein contained, the Apartment Owner shall comply and cause the Association to comply with all provisions of the By-Laws concerning damage and rebuilding, and application of insurance proceeds. In the event the insurance proceeds are insufficient to pay the cost of repairing or reconstructing any damage occasioned by an insured hazard, the Apartment Owner shall pay his proportionate share of any special assessment levied by the Association to pay the cost, in excess of the insurance proceeds, of repairing or rebuilding; provided, however, that if the restoration of Apartment Owner's apartment or the tower in which Apartment Owner's unit is located, in accordance with the original plans and specifications or with such modified plans as shall be agreed upon by the Lessor and the Association, shall not be permissible under the laws and regulations then existing, then Apartment Owner by tender of a written instrument in a form suitable for recording and consented to by his mortgagee, if any, within sixty (60) days after such casualty, may surrender his leasehold interest effective as of the date of such casualty, provided there has been full compliance with the following conditions:

(i) Apartment Owner shall have paid or then pays to Lessor all rent then accrued hereunder and taxes with respect to Apartment Owner's unit for the full current tax period; and

(ii) In the event that restoration of the tower in which Apartment Owner's apartment is located shall not then be permissible, all subsisting leasehold interests held by the owners of apartments in said tower shall be surrendered and all mortgagees shall join in such surrender.

In the event of such surrender, any remaining insurance proceeds shall first be applied to payment for the removal of the damaged building and all debris in connection therewith and to payment for restoration of the demised land to good and orderly condition and even grade. Any proceeds remaining after such payments shall be payable to the Apartment Owner and any mortgagee of his leasehold interest, as their interests may appear, and the Apartment Owner shall be released and relieved of all further obligations in respect of his leasehold interest hereunder. That portion of the proceeds payable to the apartment owners shall be divided between such owners in the manner established by the By-Laws and Declaration. In the event that less than all of the apartments owners surrender their leasehold interests pursuant to the foregoing terms, the remaining apartments shall, by appropriate amendment to the Declaration, be reconstituted as a new Horizontal Property Regime.

**E. Consent to Mortgage.** Apartment Owner may from time to time without further consent assign the interests conveyed hereunder by way of mortgage to any bank, insurance company or other established lending institution as mortgagee, and the mortgagee may enforce such mortgage and acquire title to such interests in any lawful way, and pending foreclosure of such mortgage may take possession of and rent the same, and upon foreclosure thereof may sell and assign said interests by assignment containing the written undertaking of the assignee to perform all obligations of Apartment Owner hereunder, provided that upon execution of any such assignment or mortgage a true copy thereof shall be delivered promptly to Lessor. Any person acquiring the said interests in consideration of the extinguishment of the debt secured by such mortgage or through foreclosure sale, judicial or otherwise, shall be liable to perform the obligations imposed on Apartment Owner hereunder only during the period such person has possession or ownership of such interests.

**F. Notice.** All notices shall be sent by registered or certified mail to the Lessor, c/o Hawaiian Trust Company, Limited at its principal place of business, and to the Apartment Owner at his last-known address, or to such other address as the Lessor or Apartment Owner may in writing give to the other party from time to time.

G. Protection of Mortgage. During the existence of any permitted mortgage, Lessor will not terminate Apartment Owner's leasehold interest in the event of default by Apartment Owner, or for any other cause whatsoever, if within a period of one hundred twenty (120) days after Lessor has mailed written notice of such default or other cause to mortgagee, the mortgagee shall either cure such default or other cause if the same can be cured by the payment of money, or, if such is not the case, shall undertake in writing to perform and shall thereafter perform all of Apartment Owner's covenants contained herein which are capable of performance by it until such time as there is a sale upon foreclosure pursuant to such mortgage, or the mortgagee shall institute foreclosure proceedings within said period and thereafter prosecute the same in a diligent and timely manner, shall pay all rents and other charges and items required to be paid by Apartment Owner during said period of time and shall complete such foreclosure with due diligence; and provided, further, that the mortgagee or any other party acquiring the leasehold shall undertake to cure any defaults which shall continue to exist after such acquisition so far as curable by such party, and thereafter to perform all of the continuing covenants on the part of the Apartment Owner to be observed and performed as long as such party shall hold this lease. The fact that the time has expired for performance of a covenant by the Apartment Owner shall not be deemed to render performance by the mortgagee or a purchaser impossible, but in such event, if the mortgagee or any purchaser on foreclosure shall promptly undertake to perform the Apartment Owner's defaulted obligation and shall diligently proceed with such performance, the time for such performance shall be extended by such period as shall be reasonably necessary to complete such performance. If any such default shall be the failure of the Apartment Owner promptly to discharge or cause to be discharged any lien, charge or encumbrance which may be filed against the demised land or any improvements thereon, junior in priority to said mortgage, the mortgagee may cure such default by accomplishing the foreclosure of said mortgage, and such default shall be deemed to be cured within said period of one hundred twenty (120) days if such foreclosure shall be accomplished through proceedings or action instituted within said period and thereafter prosecuted in a diligent and timely manner.

H. Defeasance. This demise is upon the express condition that if any one or more of the following events of default shall occur, to wit:

(i) Apartment Owner shall fail to pay said rent or any part thereof within thirty (30) days after the same becomes due, whether the same shall or shall not have been legally demanded; or

(ii) Apartment Owner shall fail to observe or perform faithfully any of the other covenants or agreements herein contained and on the part of Apartment Owner to be observed and performed and such failure shall continue for a period of thirty (30) days after written notice thereof given to the Apartment Owner or mailed to his last-known address; provided, that any failure of the Board of Directors to perform its duties as set forth in the Declaration and By-Laws shall not constitute a default if the Apartment Owner has done everything reasonably within his power to see that such covenants are performed; or

(iii) Apartment Owner shall abandon the demised land; or

(iv) Apartment Owner shall become bankrupt or insolvent, or seek protection under any provision of the Bankruptcy Act, or if any assignment be made of Apartment Owner's property for the benefit of creditors, or if the Apartment Owner's interest in the demised land shall be taken upon execution;

then, and in any such event, Lessor shall have a lien with a power of sale on the Apartment and undivided interest in the common elements, exclusive of land, Apartment Owner's leasehold interest in the land hereby demised (hereinafter collectively called the "property"), which lien may be foreclosed by court proceeding, advertisement and sale, or by any other manner now or then provided by law, and said property sold at public auction without right of redemption, and Lessor may, in its own name or as the attorney-in-fact for the Apartment Owner, for such purpose hereby irrevocably appointed, effectually convey the property so sold to the purchaser or purchasers thereof absolutely and forever; and any foreclosure shall forever bar the Apartment Owner and all persons claiming under the Apartment Owner from all right and interest in said property. The proceeds of such foreclosure

sale shall be used first to pay all of the Lessor's costs of foreclosure, including all attorney's fees; secondly, to pay all delinquent rent and real property taxes, and the balance of such sale proceeds shall be the property of the Apartment Owner. If such proceeds shall be insufficient to discharge the same in full, the Apartment Owner shall be liable for any deficiency.

In furtherance of the foregoing rights reserved to Lessor, and to secure the observance and performance by Apartment Owner of the covenants and agreements herein contained on the part of the Apartment Owner to be observed and performed, Apartment Owner hereby grants, assigns and conveys unto Lessor a security interest in and lien on the property, which security interest and lien shall remain in effect so long as Apartment Owner's leasehold interest shall subsist. Apartment Owner further agrees to execute, from time to time, such documents as may reasonably be required by Lessor for the purpose of further evidencing, perfecting, or enforcing said security interest and lien.

I. Definitions. The term "Lessor" in these presents shall mean Hawaiian Trust Company, Limited, and its successors in trust and assigns. The term "Apartment Owner" herein, or any pronoun used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, and jointly and severally individuals, firms or corporations, and their and each of their respective successors, executors, administrators, successors and assigns. Wherever it shall herein provide for the Apartment Owner's "proportionate share", Apartment Owner's share shall be equal to the total multiplied by the Apartment Owner's then percentage undivided interest in the common elements as provided in the Declaration of Horizontal Property Regime.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

MEPC PROPERTIES (HAWAII) INC.

By \_\_\_\_\_  
Its Secretary-Treasurer  
"MEPC"

HAWAIIAN TRUST COMPANY, LIMITED

By \_\_\_\_\_  
Its Assistant Vice President

By \_\_\_\_\_  
Its Assistant Vice President  
"Trustee"

LESSOR

MEPC PROPERTIES (HAWAII) INC.

By \_\_\_\_\_  
Its Secretary-Treasurer

APARTMENT OWNER

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

On this \_\_\_\_\_ day of \_\_\_\_\_ November \_\_\_\_\_, 1976, before  
me appeared \_\_\_\_\_ Ronald D. Olson \_\_\_\_\_, to me personally known, who,  
being by me duly sworn, did say that he is the \_\_\_\_\_ Secretary-Treasurer \_\_\_\_\_  
of MEPC PROPERTIES (HAWAII) INC., a Hawaii corporation, and that the seal affixed  
to the foregoing instrument is the corporate seal of said corporation and that  
said instrument was signed and sealed in behalf of said corporation by authority  
of its Board of Directors, and the said \_\_\_\_\_ Ronald D. Olson \_\_\_\_\_  
acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public, First Judicial Circuit  
State of Hawaii

My commission expires: \_\_\_\_\_ 12/8/78 \_\_\_\_\_

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

On this \_\_\_\_\_ day of \_\_\_\_\_ November \_\_\_\_\_, 1976, before  
me appeared \_\_\_\_\_ and \_\_\_\_\_,  
to me personally known, who, being by me duly sworn, did say that they are the  
\_\_\_\_\_ Assistant Vice President \_\_\_\_\_ and \_\_\_\_\_ Assistant Vice President \_\_\_\_\_, respectively,  
of HAWAIIAN TRUST COMPANY, LIMITED, a Hawaii corporation, and that the seal  
affixed to the foregoing instrument is the corporate seal of said corporation and  
that said instrument was signed and sealed in behalf of said corporation by  
authority of its Board of Directors, and the said \_\_\_\_\_  
and \_\_\_\_\_ acknowledged said instrument to be the free  
act and deed of said corporation.

\_\_\_\_\_  
Notary Public, First Judicial Circuit  
State of Hawaii

My commission expires: \_\_\_\_\_ 12/8/78 \_\_\_\_\_



EXHIBIT "A"

All of those certain parcels of land situate at Kalia, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

FIRST:

Lot 38-A, area 5,249.0 square feet, as shown on Map 16, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 852 of Bishop Trust Company, Limited, Trustee;

Together with perpetual rights of way for roadway purposes and all public utility purposes, in common with all others entitled thereto, over, upon, across, along and under Lot 97-A, as an easement appurtenant thereto, as shown on Map 33 of said Application.

SECOND:

(a) Lot 42, area 7,763.0 square feet, as shown on Map 15, filed in the said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

Together with perpetual right of way for roadway purposes and all public utility purposes, in common with all others entitled thereto, over, upon, across and along Lot 97-A, area 19,063 square feet, as an easement appurtenant thereto, as shown on Map 33 of said Application No. 852;

(b) Lot 40, area 6,405.0 square feet, as shown on Map 15, filed in the said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

Together with a perpetual right of way as an easement, appurtenant thereto, in common with all others entitled thereto, over, upon, across and along Lot 97-A, area 19,063 square feet, as shown on Map 33 of said Application No. 852;

THIRD:

Lot 31-A, area 6,602.0 square feet, as shown on Map 15, filed in the said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

FOURTH:

Lot 33-A-1, area 6,551.0 square feet, as shown on Map 35, filed in the said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

FIFTH:

Lot 30, area 6,814.0 square feet, as shown on Map 15, filed in the said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

Together with a perpetual right of way as an easement appurtenant to said Lot 30, in common with all others entitled thereto, over, upon, across and along Lot 97-A, as shown on Map 33 of said Application No. 852;

SIXTH:

Lot 32, area 6,500.0 square feet, as shown on Map 15, filed in the said Office of the Assistant Registrar of the Land Court with said Application No. 852;

Together with a perpetual right of way for roadway purposes and all public utility purposes in common with all others entitled thereto, over, upon, across, along and under Lot 97-A, as an easement appurtenant to said Lot 32, as shown on Map 33 of said Application No. 852;

SEVENTH:

Lot 34, area 6,500.0 square feet, as shown on Map 15, filed in the said Office of the Assistant Registrar of the Land Court with said Application No. 852;

Together with a perpetual right of way as an easement appurtenant thereto, in common with all others entitled thereto over, upon, across and along Lot 97-A, as shown on Map 33 of said Application No. 852;

EIGHTH:

Lot 36, area 6,452.0 square feet, as shown on Map 15; and  
Lot 38-B, area 1,127.0 square feet, as shown on Map 16;

Said maps are on file in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 852;

Together with a perpetual right of way as an easement appurtenant thereto, in common with all others entitled thereto over, upon, across and along Lot 97-A, as shown on Map 33 of said Land Court Application No. 852;

NINTH:

Lots 37-A-1, area 9,191.0 square feet, as shown on Map 37; and  
35-A-1, area 8,799.0 square feet, as shown on Map 25;

Both maps are filed in the said Office of the Assistant Registrar of the Land Court with said Application No. 852;

TENTH:

Lot 29-A-1, area 6,518.0 square feet, as shown on Map 40, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with said Application No. 852;

Together with a perpetual right of way as an easement appurtenant to Lot 29-A-1, in common with all others entitled thereto, over, upon, across and along Lot 97-A, as shown on Map 33 of said Land Court Application No. 852;

Being the same premises described in Transfer Certificate of Title No. 172,913 issued to Hawaiian Trust Company, Limited, a Hawaii corporation, Trustee under that certain Trust Agreement dated June 6, 1974, filed as Land Court Document No. 687964, as amended.

SUBJECT, HOWEVER, as to FIRST through TENTH to all liens and encumbrances set forth in said Transfer Certificate of Title No. 172,913.

OFFICE OF THE  
ASSISTANT REGISTRAR, LAND COURT  
STATE OF HAWAII  
(Bureau of Conveyances)

The original of this document was  
recorded as follows:

DOCUMENT NO. 2845704  
DATE SEP 11 1992 TIME 2:00 PM

LAND COURT SYSTEM

AFTER RECORDATION, RETURN TO:

JOHN A. MORRIS, ESQ./mc  
ASHFORD & WRISTON  
ALII PLACE, SUITE 1400  
1099 ALAKEA STREET  
P. O. BOX 131  
HONOLULU, HAWAII 96810

REGULAR SYSTEM

RETURN BY: MAIL ☐ PICKUP ☐

Total Page(s): 30

FIRST RESTATEMENT OF DECLARATION

OF

CONDOMINIUM PROPERTY REGIME

OF

DISCOVERY BAY

(Affects TCT #172,913)



FIRST RESTATEMENT OF DECLARATION OF  
CONDOMINIUM PROPERTY REGIME OF  
DISCOVERY BAY

WHEREAS, each of Helen Nahm Choy, a widow, and Herbert Young Cho Choy, Trustee of the Doo Wook Choy and Helen Nahm Choy Foundation (Parcel Second), Toyoko Ishiguro Lucas, wife of Norman Ululani Lucas, and Alice Hanako Kodama Yokokama, wife of Irvine Kiroyoshi Yokokama (Parcel First), Louis Lyman Gowans and Helen Taylor Gowans, husband and wife (Parcels Fifth, Sixth, Seventh and Eighth), Umematsu Watada and Yasu Nakao Watada, husband and wife (Parcel Third), Quon Moi Ching Wong, a widow (Parcel Fourth), and MEPC Properties (Hawaii), Inc., a Hawaii corporation (Parcels Ninth and Tenth), was the beneficial owner of the parcel or parcels of real property set forth after their respective name hereinabove, which parcels were more particularly described in Exhibit "A", attached to the "Declaration of Horizontal Property Regime," dated November 11, 1976 and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 789431 ("Declaration"); and

WHEREAS, said Parcels First through Eighth, inclusive, were subject to various leases in favor of MEPC Properties (Hawaii), Inc., a Hawaii corporation, whose principal place of business and post office address is Suite 2345, Pacific Trade Center, 190 South King Street, Honolulu, Hawaii (hereinafter referred to as the "Developer"); and

WHEREAS, in order to facilitate the joint development of said parcels, said owners transferred and conveyed legal title thereto, subject to said leases, to Hawaiian Trust Company, Limited, a Hawaii corporation, whose principal place of business and post office address was Financial Plaza of the Pacific, Honolulu, Hawaii (hereinafter referred to as the "Trustee"), under and pursuant to that certain Trust Agreement dated June 6, 1974, which was filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 687964, as amended by instrument dated November 27, 1974 and filed in said Office as Land Court Document No. 705673, and as further amended by instrument dated January 13, 1975 and filed in said Office as Land Court Document No. 707915; and

WHEREAS, pursuant to said Trust Agreement and said leases, Developer has improved said parcels by the construction thereon of certain improvements hereinafter described, in accordance with plans filed in said Office as Condominium Map No. 295; and

WHEREAS, in order to create a condominium project consisting of said land and improvements (hereinafter called the "Project"), Trustee and Developer executed the Declaration whereby they submitted the Project, and their respective interests therein, to the Condominium Property Regime established by Chapter 514A, Hawaii Revised Statutes, as amended, and in furtherance thereof, made the following declarations as to divisions, limitations, restrictions, covenants, and conditions and declared and agreed that said Project was to be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, and improved subject to the declarations, restrictions and conditions set forth in the Declaration and in the By-Laws attached as Exhibit "C" to the Declaration, as the same may from time to time be amended, which declarations, restrictions and conditions constituted covenants running with the land and were binding on and for the benefit of the parties hereto, their successors and assigns, and all subsequent owners and lessees of all or any part of the Project and their respective successors, heirs, executors, administrators and assigns (See Endnote 1); and

WHEREAS, the Declaration was amended by "First Amendment to Declaration of Horizontal Property Regime of Discovery Bay," dated December 1, 1976, recorded in said Office as Land Court Document No. 794652; by "Second Amendment to Declaration of Horizontal Property Regime of Discovery Bay," dated July 1, 1977, recorded in said Office as Land Court Document No. 825197; by "Third Amendment to Declaration of Horizontal Property Regime of Discovery Bay," dated September 22, 1977, recorded in said Office as Land Court Document No. 838373; by "Amendment of the Declaration of Horizontal Property Regime and By-Laws of Discovery Bay," dated April 22, 1980, recorded in said Office as Land Court Document No. 1008846; by "Amendment of the Declaration of Horizontal Property Regime and By-Laws of Discovery Bay," dated March 30, 1982, recorded in said Office as Land Court Document No. 1146216; by "Amendment of the Declaration of Horizontal Property Regime and By-Laws of Discovery Bay," dated October 11, 1984, recorded in said Office as Land Court Document No. 1264352; by "Amendment to By-Laws of Discovery Bay," dated January 3, 1989, recorded in said Office as Land Court Document No. 1604840; by "Amendment to the By-Laws of Discovery Bay," dated February 7, 1994, recorded in said Office as Land Court Document No. 2117982; and by the "Amendment of the By-Laws of the AOA Discovery Bay" dated January 21, 2000, recorded in said Office as Land Court Document No. 2604198;

WHEREAS, Section 514A-82.2, Hawaii Revised Statutes, empowers the Board of

Directors of the Association of Apartment Owners of Discovery Bay (the "Association") to restate the Declaration to include any amendments to it and to conform them to the provisions of Chapter 514A, Hawaii Revised Statutes, and any other statute, ordinance, rule, or regulation enacted by any governmental authority, by a resolution adopted by the Board of Directors; and

WHEREAS, at a meeting duly held on \_\_\_\_\_, 2002, the Board of Directors resolved to restate the Declaration in accordance with Section 514A-82.2, Hawaii Revised Statutes;

NOW THEREFORE, the Declaration is hereby restated to read as follows:

1. The Project. The Condominium Property Regime established hereby shall be known as "DISCOVERY BAY".
2. Land Description. The land submitted to the Condominium Property Regime is described in Exhibit "A" which is attached hereto and made a part hereof for all purposes.
3. Description of Project. The Project shall consist of two 42-story residential towers which are integrated with and constructed above a structure which shall be primarily used for parking and commercial purposes. The Project shall be constructed principally of reinforced concrete steel, aluminum, glass and allied building materials and shall contain six hundred sixty-six (666) condominium units (hereinafter collectively referred to as "units" and individually referred to as "unit") consisting of six hundred sixty-five (665) residential apartment units (hereinafter called "apartments" or "residential units"), one commercial apartment unit (hereinafter referred to as the "Commercial Unit") and nine hundred twenty-five (925) parking stalls.

The residential tower on the Ewa side of the Project is identified and designated herein as the "Endeavour" tower, and shall contain a total of three hundred thirty-three (333) residential units, together with the two manager's apartments. The other residential building, located on the Diamond Head side of the Project, is identified and designated herein as the "Resolution" tower and shall contain a total of three hundred thirty-two (332) residential units.

The first or street level of the Project contains a portion of the Commercial Unit (including sixty-five (65) parking stalls), driveways, exit and entrance ramps, loading areas, mechanical, electrical, chiller, trash and telephone rooms, and a separate elevator lobby for each of the residential towers.

The second or mall level of the Project shall contain portions of the Commercial Unit, exit and entrance ramps, driveways, twenty-seven (27) parking stalls, stairwells, lavatory facilities, and the main lobby areas for each of the residential towers. Each of such lobby areas will contain an elevator foyer, manager's office, storage room and mail room.

The third level of the Project shall contain exit and entrance ramps, driveways, fifty-three (53) parking stalls, a portion of the Commercial Unit (including fifteen (15) parking stalls), storage area, stairways and a separate elevator lobby for each of the residential towers.

The fourth level of the Project shall contain exit and entrance, ramps, driveways, twenty-two (22) parking stalls, a portion of the Commercial Unit (including one hundred forty-one (141) parking stalls), stairways and a separate elevator lobby for each of the residential towers.

The fifth level of the Project shall contain exit and entrance ramps, driveways, one hundred forty-two (142) parking stalls, a promenade and recreation area, stairways and a separate elevator lobby for each of the residential towers.

The sixth and seventh levels of the Project shall contain, respectively, one hundred forty (140) and one hundred forty-one (141) parking stalls, and each of said levels will also have entry and exit ramps, driveways, stairways, and a separate elevator lobby for each of the residential towers.

The eighth, ninth and tenth floors of the Project shall be partial residential floors, and each of such floors will contain thirteen (13) apartments, consisting of seven (7) apartments in the Endeavour tower and six (6) apartments in the Resolution tower, interior access corridors, exit and entrance ramps, driveways, parking stalks, stairways, and a separate elevator lobby for each residential building. There will be sixty-seven (67) parking stalls on each of the eighth and ninth floors and forty-five (45) parking stalls on the tenth level.

The eleventh floor of the Project will be the first full residential floor of the Project and will contain twenty (20) residential units, consisting of ten (10) apartments in the Resolution tower and ten (10) apartments in the Endeavour tower. The eleventh floor of each tower will also have interior access corridors, stairways, an elevator lobby, foyer, and lavatory facilities. A recreation deck will extend between the two towers on the eleventh floor which shall include a swimming pool, wading pool, putting green, and a cabana containing meeting rooms, kitchen and lavatory facilities. (See Endnote 2)



The twelfth through the forty-first floors of the Project shall each contain twenty (20) apartments, with ten (10) apartments per floor in each of the residential towers. Each of such floors in both towers shall also have an interior access corridor, an elevator lobby, stairways, an electrical room, and a trash room.

The forty-second floor of the Project will contain eight (8) penthouse apartments, with four (4) apartments per floor in each of the residential towers. The forty-second floor in each building will also have an elevator lobby, an interior corridor, elevator, electrical room, stairways, and a trash room.

4. Division of Property.

(a) The Project is hereby divided into six hundred sixty-six (666) separate condominium units, consisting of six hundred sixty-five (665) residential units and the Commercial Unit. The condominium units, and the two manager's units which are part of the common elements, are more particularly described in Exhibit "B" which is attached hereto and made a part hereof and on said Condominium Map.

Each condominium unit, whether commercial or residential, shall not be deemed to include the undecorated or unfinished surfaces of the perimeter walls or interior load-bearing walls, the unfinished floors and ceilings surrounding each such condominium unit or any pipes, wires, conduits or other utility lines running through such unit which are utilized for or serve more than one unit, the same being deemed common elements as hereinafter provided. Each condominium unit shall include all of the walls and partitions which are not load bearing within its perimeter walls, any glass windows or panels along its perimeter, the inner-finished surfaces of all walls, floors and ceilings, any fixtures, equipment or built-ins originally installed therein and any adjacent lanai shown on said Condominium Map. Notwithstanding the designation of the limits of the respective apartments hereinabove, the approximate gross floor areas of each apartment, as set forth in Exhibit "B" attached hereto, is computed by measuring from the outside of exterior walls and from the centerline of interior party walls and no reduction has been made to account for interior walls ducts, vent shafts and the like located within the perimeter walls.

(b) For the sake of clarity and convenience in reference, said Condominium Map has been coded to delineate and set forth (to the extent that it is possible to delineate the same) the vertical boundaries of the Commercial Unit and the vertical boundaries of

those portions of the Project which are either common elements appurtenant to both the Commercial Unit and the residential units, or limited common elements appurtenant only to the residential units. The separate delineation of said boundaries on said Condominium Map shall not be deemed to limit or prejudice the enumeration of the common and limited common elements of the Project as set forth in paragraphs 5 and 6 hereinbelow.

5. Common Elements. The common elements of the Project will include the limited common elements described in paragraph 6 hereinbelow and all portions of the land and improvements other than the condominium units, including the building(s), and the land on which it is located. Said common elements shall include, but shall not be limited to:

- (a) All of the land described in Exhibit A;
- (b) All foundations, columns, girders, beams, floor slabs, supports, load-bearing walls (except for the inner-finished surfaces within each unit) below the level of the floor slab of the fifth floor of the Project;
- (c) All portions of the following stairways which are at or below the level of the floor slab of the fourth floor: (i) the stairway at the Diamond Head end of the Project which serves the parking floors of the Project, and (ii) the stairways adjacent to the residential elevators in each tower which are shown as common elements on said Condominium Map;
- (d) On the street level of the Project, the vehicular entrance and exit ramps, loading docks, chiller room, and all telephone, mechanical and electrical rooms situate on such level;
- (e) On the second or mall level, the loading dock area adjacent to Kaioo Drive, the vehicular ramp leading to the fourth level, the restroom facilities adjacent to the main lobby area of the Endeavour tower, and the corridor giving access to such restrooms which leads from the Commercial Unit to the main lobby area of the Endeavour tower.
- (f) All vehicular entrance and exit ramps and driveways on the first through fourth levels, except (i) any which are shown on said Condominium Map as being contained within the Commercial Unit; and (ii) the vehicular ramp on the Diamond Head side of the Project leading from Ala Moana Boulevard to the second floor parking area, which ramp shall be deemed a limited common element appurtenant to the residential units as provided in paragraph 6(b) below; and

(g) All ducts, sewer lines, electrical equipment, pipes, wiring and other central and appurtenant transmission facilities and installations which serve all condominium units for services such as power, light, water, gas, air conditioning, refuse, telephone, radio and television signal distribution.

6. Limited Common Elements. Certain parts of the common elements, herein called and designated "limited common elements" are hereby set aside and reserved for the exclusive use of certain condominium units, and such units shall have appurtenant thereto exclusive easements for the use of such limited common elements. The limited common elements so set aside and reserved are listed below. Unless otherwise provided herein, all costs of every kind pertaining to each limited common element, including but not limited to costs of security, maintenance, repair, replacements, additions and improvements, shall be borne entirely by the unit or units to which they are appurtenant. If any cost is charged to more than one unit, each such unit shall bear that portion of the cost equal to the ratio which its common interest bears to the total common interest of all units responsible for such cost.

(a) The following limited common elements are appurtenant to and for the exclusive use of the Commercial Unit: (i) all ducts, water lines, electrical equipment, pipes, wiring and other facilities and installations serving only the Commercial Unit or any limited common elements appurtenant only to the Commercial Unit; and (ii) all other common elements of the Project which are rationally related to only the Commercial Unit.

(b) The following limited common elements are appurtenant to for the exclusive use of and residential units:

(1) All foundations, columns, girders, beams, floor slabs, supports, load-bearing walls (except for the inner decorated surface within each unit) on all floors of the Project above the bottom level of the floor slab of the fifth floor;

(2) All yards, grounds, and landscaped areas (except such areas as are contained within the Commercial Unit as shown on said Condominium Map);

(3) All parking areas of the Project (with the exception of those parking areas on the first, third and fourth levels which constitute a part of the Commercial Unit as shown on said Condominium Map), the vehicular ramp connecting the second floor parking area with Ala Moana Boulevard, and all ramps, driveways and turnaround areas situate above the fourth floor of the Project;

(4) The two manager's apartments, being Apartment Nos. 1109 and 1110 in the Endeavour tower, and the parking stalls designated on said Condominium Map as 1109 and 1110;

(5) All ventilating fans and shafts providing ventilation to the floors of the Project above the fourth floor;

(6) All electrical rooms and electrical wiring, with appurtenant ducts and related equipment, located above the fourth floor of the Project;

(7) All components of the hot and cold water circulation system serving the residential units, including heaters, pumps, waste lines, conduits and pipes;

(8) All components of the air-conditioning circulation system which directly serve only the residential units; and

(9) All recreation areas of the Project, including the promenade on the fifth floor and the recreation deck on the eleventh floor, including the swimming pool and wading pool and their respective filtration systems, barbeque pits, putting green, children's play area and other amenities. (See Endnote 2)

(c) Certain areas of the Resolution and the Endeavour towers are hereby set aside and reserved for the exclusive use of all residential units located in such tower or all residential units located on a particular floor of such tower; provided, that all residential units in the Project shall be responsible for all costs pertaining to each such limited common element in proportion to their respective common interests. The limited common elements so set aside and reserved are as follows:

(1) The main lobby area of each residential tower on the second floor of the Project, including the manager's office, mail room, and storage rooms shall be appurtenant to and for the exclusive use of apartments located in the tower served by such lobby;

(2) The four (4) residential apartment elevators serving all floors of each tower, with elevator housing and machinery and elevator rooms, shall be appurtenant to and for the exclusive use of all apartments situated within such residential tower; and

(3) All elevator lobbies and access corridors on each floor from the eighth through the forty-second floors, inclusive, of each of the two residential towers shall

be appurtenant to and for the exclusive use of the apartments on such floor; provided, that the elevator lobby, foyer, and restroom facilities on the eleventh floor of each tower, and the corridors on such floor giving direct access to the recreation deck shall be appurtenant to and for the use of all apartments situate within such tower.

(d) At least one automobile parking stall, so designated on said Condominium Map by the number corresponding to the number of the residential unit to which said stall(s) are assigned, shall be appurtenant to and for the exclusive use of each unit. Where a unit has been assigned two or more parking stalls, said stalls are identified on the Condominium Map by the number of said unit followed by an identifying letter suffix. For example, if two parking stalls are assigned to apartment No. 2107, said stalls shall be shown on the Condominium Map as 2107A and 2107B. Each residential unit shall always have at least one parking stall appurtenant to it but otherwise any parking stall easement may, with the consent of the Board of Directors, be conveyed and made appurtenant to another unit by a written instrument expressly identifying the unit to which the parking stall is appurtenant as well as the unit to which the parking stall will become appurtenant, which written instrument shall be denominated as an amendment of this Declaration and of the conveyance document of each unit affected, shall be executed by the owner of each unit affected and shall contain the consent of the Trustee, which consent shall not be unreasonably withheld, and also the consent of the mortgagee of each unit affected; provided, however, that there shall be at all times at least one parking stall appurtenant to each apartment. The conveyance, Amendment of Declaration and amendment of the respective conveyance document shall be effective upon filing of the same in the Office of the Assistant Registrar of the Land Court of the State of Hawaii. A copy of said instrument, together with the recording data, shall be given to both the Trustee and the Association by the affected apartment owners within fifteen (15) days of the filing thereof.

7. Percentage of Undivided Interest. The percentage of undivided interest (herein called the common interest"), in the common elements appertaining to each unit, for all purposes, including voting, is as set forth in Exhibit "B". Certain common interests are subject to adjustment as set forth in paragraph 12 hereinbelow.

8. Easements. In addition to any easements herein established in the limited common elements, the condominium units and common elements shall also have and be subject to the following easements:

(a) Each unit shall have appurtenant thereto nonexclusive easements in the common elements designed for such purposes for ingress to, egress from, and support, maintenance and repair of such unit; in the other common elements for use according to their respective purposes, subject always to the exclusive or limited use of the limited common elements as provided herein; and in all other units and limited common elements of the building for support.

(b) If any part of the common elements encroaches upon any unit or limited common element, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall and does exist. In the event the unit shall be partially or totally destroyed and then rebuilt, minor encroachments of any part of the common elements upon any unit or of any unit upon any other unit or upon any portion of the common elements due to construction shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist.

(c) The Association of Apartment Owners shall have the right, to be exercised by its Board of Directors or the Managing Agent, to enter each apartment and the limited common elements from time to time during reasonable hours as may be appropriate for the operation of the Project or for making emergency repairs therein which may be necessary to prevent damage to any unit or common element.

(d) Each unit owner shall have an easement in common with the owners of all other units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other units or limited common elements, and the owner of the Commercial Unit (and the owners of the additional commercial units into which the Commercial Unit may be divided pursuant to paragraph 12 hereof) shall have an easement to use and maintain all vents, pipes, wires, ducts, cables and utility lines exclusively serving such unit or units which are located in or through the common elements or limited common elements. Each unit shall also be subject to an easement in favor of the owners of all other units for access to any common element located in such unit.

(e) The owners of the residential units shall have a nonexclusive easement over and across any sidewalks, ramps and walkways on the second level which are contained within the Commercial Unit for ingress to and egress from the lobby areas of the residential towers which are located on such floor.

9. Alteration and Transfer of interests. The common interest and easements appurtenant to each unit shall have a permanent character, and, except as provided in paragraphs 11 and 12 below, shall not be altered without the consent of the owner of each unit affected thereby expressed in a duly recorded amendment to this Declaration. Said common interest and easements appurtenant to each unit shall not be separated from said unit and shall be deemed to be conveyed or encumbered with said unit even though not expressly mentioned or described in the conveyance or other instrument. The common elements shall remain undivided, and no rights shall exist to partition or divide any part thereof except as provided by said Condominium Property Act.

10. Use. Said buildings and other improvements and each of the units shall be restricted to the following uses:

(a) Each residential unit shall be used and occupied solely for residential purposes and for no other purpose. The owner of each residential unit shall have the absolute right to lease his unit subject to the restrictions, limitations, covenants and conditions contained in this Declaration, the By-Laws, or any conveyance document.

(b) The Commercial Unit (and any constituent units into which the same may be divided pursuant to paragraph 12 hereof) may be used for any purposes which may from time to time be permitted by law; provided, however, that the commercial areas shall at all times be operated and maintained in accordance with standards which are applicable to a first-class shopping center and which are consistent with the nature of the Project and the locality wherein the Project is situate.

(c) Except as permitted herein or in the By-Laws, no owner will suffer anything to be done or kept in his unit or elsewhere which will jeopardize the soundness of the building, or which will interfere with or unreasonably disturb the rights of other owners, or which will obstruct the lobbies, corridors or stairways, or walkways of the Project or which will cause an increase in the then existing rate of fire insurance on the improvements of the Project, or the contents thereof, or which will reduce the value of any of such improvements.

(d) Except as otherwise provided herein or in the By-Laws, no unit owner will, without the prior written consent of the Board of Directors and the Trustee (and any other persons required by the By-Laws or by law), make any structural alterations within his unit or make any alterations in or additions to the exterior of the building (including, in the case of

the residential apartments only, any awnings, jalousies, screens or air conditioners) or to any other portion or portions of the common elements.

(e) The owner of any residential unit will not, without the prior written consent of the Trustee and the Board of Directors, display any sign or place any other thing in or upon any door, window, wall or other portion of the apartment or common elements, so as to be visible from the exterior. The owner of the Commercial Unit may, without prior consent of the Trustee or the Board of Directors or Managing Agent, display any sign or any other device in accordance with the rules and regulations pertaining thereto which may from time to time be established by the owner of the Commercial Unit.

11. Alterations of Commercial Unit.

(a) To facilitate the use and occupancy of the commercial areas of the Project, the owner of the Commercial Unit, or the owners of the additional commercial units into which the Commercial Unit may be divided pursuant to paragraph 12 hereof, shall have the right at any time and from time to time, at its or their sole cost and expense, and without the consent or joinder of the residential owners, to alter such unit or units, or to cause or permit such alterations to be made by its or their tenants and sublessees, in accordance with the provision hereinafter set forth. Specifically, but without limiting the generality of the foregoing, such owners may, or may cause or permit its or their tenants and sublessees to install, maintain, remove, and rearrange partitions and other structures from time to time within any such commercial unit, and to paint, paper, panel, plaster, tile, finish, and do or cause to be done such other work on the interior surfaces of the ceilings, floors and walls within any such commercial unit and to finish, alter or substitute any plumbing, electrical or other fixtures attached to said ceilings, floors and walls as shall be appropriate for the utilization of such unit by such owner or the tenants thereof; provided, that such plumbing and electrical alterations and/or substitutions shall not adversely affect the plumbing and electrical systems of the Project. All such alterations shall be made in accordance with plans and specifications therefor first approved by Trustee, and prior to commencing or permitting any work to be commenced thereon, such owner shall secure a performance and payment bond naming the Trustee as co-obligee in a penal sum of not less than 100% of the construction, guaranteeing completion of construction free and clear of all mechanics' and materialmen's liens.



With respect to any portions of a commercial unit which shall be separated only by a common element which is a wall or floor, the owner of the Commercial Unit, or the owner of any two adjacent units if the Commercial Unit is subdivided as provided in paragraph 12, shall have the right at any time, and from time to time, with the prior consent of the Trustee to alter, remove all or portions of the intervening wall or floor (whether or not load-bearing) if the structural integrity of the Project is not thereby affected and if the finish of the common element then remaining is restored to the condition substantially comparable to that of the common element prior to such alterations. The owner of the Commercial Unit, or the owner of such adjacent units in the event of a subdivision of the Commercial Unit, may install in and attach to such opening or openings in such common elements, elevators, stairways, lifts, tubes and other service devices and may remove and retain ownership of the installed equipment. The owner of any such commercial unit may also install windows, ducts, vents, pipes, wiring and other utility installations in or through exterior walls. Any of the foregoing provisions to the contrary notwithstanding, any alteration of a common element shall be performed under the supervision of a licensed architect, and prior to commencing any alteration of a common element, the owner of the Commercial Unit or any additional commercial unit shall secure a performance and payment bond naming as obligees such owner, the Trustee, and collectively the owners of all other units, both residential and commercial, as their interests may appear, in a penal sum of not less than 100% of the cost of the construction, guaranteeing completion of construction free and clear of all mechanics' and materialmen's liens. Upon the termination of the common ownership of any adjacent units, if the intervening floor or wall shall have been altered or removed pursuant to the foregoing provisions, such intervening wall or floor shall be restored to substantially the condition in which the same existed prior to such alteration or removal, if the new owner or owners do not consent to such alteration. In the event that any such change or alteration requires any amendment to this Declaration or the Condominium Map, such amendment may be executed by the Trustee, and the owner(s) of such Commercial Unit(s), without requiring the consent or joinder of the owners of the residential units or any other person or group, other than any mortgagee of such unit, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

The owner of any two adjacent residential units on any floor (except the 42nd floor) which are separated only by a wall may, with the consent of the Trustee, the Board of

Directors and any mortgagee, alter or remove all or portions of the intervening wall (whether or not load-bearing) which separates such units if the structural integrity of the Project is not thereby affected and if the finish of the common element then remaining is restored to a condition substantially comparable to that of the common elements prior to such alteration; provided, that prior to commencing any such alteration of a common element, the owner shall secure a performance and payment bond naming as obligees the Trustee and collectively the owners of all other units as their interests may appear, in a penal sum of not less than 100% of the cost of such construction, guaranteeing the completion thereof free and clear of all mechanics' and materialmen's liens. The owner of such adjacent units may install in and attach to such opening or openings in such wall, doors and other service devices and may remove and retain ownership of the items so installed. Upon the termination of the common ownership of such adjacent units, any intervening wall which has been altered, or removed pursuant to the foregoing provisions shall be restored to substantially the condition in which the same existed prior to such alteration or removal. Subject to the terms and conditions of the applicable condominium conveyance documents and at the sole expense of the unit owner involved, the owner of any such two adjacent residential units shall have the right to make additions to or alterations and physical partitions within such residential units; provided, that no work shall be done which would jeopardize the soundness or safety of the Project, reduce the value thereof, detract from the external appearance of the unit, or impair any easement, without in every such case the prior written consent of the Trustee, the Board and all other residential unit owners directly affected thereby (as determined by the Board). Notwithstanding the foregoing, no unit owner or owners shall be permitted to physically partition any corridor in such a manner as to limit the access of any other unit to its entrance doorway, or to any stairwell or elevator.

12. Creation of Additional Commercial Units. Any provisions of this Declaration to the contrary notwithstanding, the owner of the Commercial Unit shall, at any time and from time to time, have the right, with the prior written consent of the Trustee and any mortgagee of said unit, to require alteration of the Project at its sole cost and expense by dividing the Commercial Unit into two or more commercial units, with appurtenant common elements, upon the following terms and conditions:

(a) Any such division, and any alterations to the Commercial Unit which are made as a consequence thereof, shall not require the alteration or demolition of any

existing residential apartments or of any portion of the common elements, except as otherwise permitted in this Declaration, nor shall any such division be undertaken if it would have a materially adverse effect on the State or Federal tax liability of the other owners of the Project.

(b) The owner of the Commercial Unit shall have the right, in connection with any such division of said unit, to execute and file an amendment to the Declaration and said Condominium Map: (1) to create the additional Commercial Units; (2) to describe the common interest and common elements appurtenant to the additional commercial units; (3) to decrease the common interest appurtenant to the existing Commercial Unit, as provided hereinbelow; and (4) when applicable, to add, delete, relocate, realign, reserve and grant all easements and rights of way over, under and on the common elements necessary or desirable to service all of the commercial units so created; provided that such easements and rights of way shall not, without the written consent of the owners affected thereby, impair the access to or the use of any unit or its appurtenant interests in the common elements.

(c) The common interest appurtenant to each residential unit, as set forth in Exhibit "B" attached hereto, shall not be altered as a result of the subdivision of the Commercial Unit, and said amendment to the Declaration and the Condominium Map, but the allocation of common interests to any additional commercial units shall cause a pro rata reduction in the common interest appurtenant to the existing Commercial Unit only. Said common interest shall be allocated between and among the subdivided commercial units in any equitable manner as shall be determined by the owner of the Commercial Unit and approved by the Trustee (which approval shall not be unreasonably withheld); provided, that following such subdivision, the aggregate common interests appurtenant to all of the commercial units so created shall be equal to the common interest appurtenant to the existing Commercial Unit as established herein.

(d) Any alterations required in connection with the creation of additional commercial units shall be undertaken only in accordance with plans and specifications therefor first approved by Trustee, and prior to commencing such work, the owner of the Commercial Unit shall obtain and deposit with the Trustee a performance and payment bond naming the Trustee (and, if any such work shall require the alteration of any portion of the common elements, also naming collectively the owners of all residential units as their interests may appear) as co-obligee, in a penal sum of not less than 100% of the cost of construction,

guaranteeing completion of such construction free and clear of all mechanics' and materialmen's liens. The owner of the Commercial Unit, its employees, agents, contractors and subcontractors shall then have the right to enter upon the Project and the common elements thereof and to do all things reasonably necessary or useful to construct and complete all improvements and appurtenant limited common elements, which shall be required in connection with the creation of any additional commercial units.

(e) Each such amendment to the Declaration and the Condominium Map shall be executed and acknowledged by the owner of the Commercial Unit, the Trustee and the mortgagee of said unit, if any, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

13. Indemnification. The owner(s) of the Commercial Unit(s) shall indemnify and save the owners of the residential units harmless from and against any and all claims, suits, damages, costs and expenses for injury to or death of any person and for loss, damage or destruction of any property, arising out of or resulting from the operation, maintenance, alteration and/or subdivision of the Commercial Unit pursuant to paragraphs 11 and 12 hereinabove.

14. Service of process; Managing Agent. Operation of the Project shall be conducted for the Association of Apartment Owners by a responsible corporate Managing Agent who shall be appointed in accordance with the restated By-Laws. The Managing Agent is hereby authorized to receive service of legal process in all cases provided in said Condominium Property Act. The initial Managing Agent shall be Hawaiiana Management Co., Suite 410, 1860 Ala Moana Boulevard, Honolulu, Hawaii. (See Endnote 3)

15. Percentage of Votes Required for Rebuilding. Where an election is permissible under the terms of the By-Laws or any Condominium Conveyance Document, the percentage of votes by the unit owners which shall be determinative of whether or not to rebuild, repair or restore any improvements of the Project shall be 80% of the total common interests of all owners of units in the Project; that is, the said improvements shall be rebuilt, repaired or restored unless the owners of units in the Project, and the institutional holders of first mortgage liens on said respective units, representing 80% of the total common interests appurtenant to all of the units in the Project vote against any such rebuilding, repair or restoration.

16. Liens Securing Assessments.

(a) All sums assessed by the Association of Apartment Owners but unpaid for the share of the common expenses chargeable to any unit shall constitute a lien on such unit prior to all other liens except only (1) liens for taxes and assessments lawfully imposed by governmental authority against such unit, and (2) all sums unpaid on mortgages of record which were recorded prior to the recordation of a notice of lien by the Association, and costs and expenses, including attorneys' fees provided in such mortgages. Such lien may be foreclosed by suit or by nonjudicial or power of sale foreclosure procedures set forth in Chapter 667, Hawaii Revised Statutes, by the Board of Directors of the Association or the Managing Agent, acting on behalf of the unit owners, in like manner as a mortgage of real property, provided that thirty (30) days' prior written notice of the intention to foreclose shall be mailed, postage prepaid, to the unit owner and all other persons having an interest in such apartment as shown in the Association's record of ownership. The Board of Directors of the Association or the Managing Agent, acting on behalf of the unit owners, shall have the power to bid in such unit at foreclosure sale and to acquire, hold, lease, mortgage and convey such unit. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. (See Endnote 4)

(b) Where the mortgagee of a first mortgage of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such unit which became due prior to the acquisition of title to such unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the units, including such acquirer, his successors and assigns.

17. Reserved Rights. In addition to other rights reserved herein, the Trustee, with the consent of all mortgagees, the owner of the Commercial Unit, and the Board of Directors of the Association of Apartment Owners, reserves the right to grant, relocate, cancel and otherwise dispose of any and all utility and other easements now or hereafter located on or affecting the land above described.

18. Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of

this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such provision had never been included herein.

19. Operation of the Project. The operation of the Project shall be governed by the By-Laws, as restated, and the conveyance document conveying all of the units described hereinabove. Each unit owner shall comply strictly with the By-Laws and his Condominium Conveyance Document.

20. Amendment. Except as provided in paragraphs 11 and 12, and subject to all terms of the conveyance document for each unit, this restated Declaration of Condominium Property Regime may be amended, consistent with the provisions of Chapter 514A, Hawaii Revised Statutes, by the affirmative vote of the owners of units, and the institutional holders of first mortgage liens on said respective units, representing at least 80% of all common interests, which amendment shall be effective upon filing in the Office of the Assistant Registrar of the Land Court an instrument in writing, signed and acknowledged by any two officers of the Association of Apartment Owners (and by the owner of the Commercial Unit, if such unit is affected by such Amendment) and consented to by the Bank of Hawaii if, at such time, its construction loan mortgage has not been duly released of record; provided that: (i) the Trustee and Developer reserve the right to file the "as built" verified statement (with plans, if applicable) required by said Chapter 514 so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed fully and accurately depict the layout, locations, apartment number and dimensions of the units as built, or so long as any plans filed therewith involve only immaterial changes to the layout, location, unit numbers, or dimensions of the units as built; and (ii) without limiting any other provision herein pertaining to the amendment of this Declaration, at any time prior to the sale and conveyance of any unit in the Project by Developer, the Trustee and Developer may amend this Declaration in any lawful manner.

21. Architect's Verified Statement. Construction of the structure described herein has been completed and the architect's verified statement certifying such construction was attached as Exhibit "A" to "First Amendment to Declaration of Horizontal Property Regime of Discovery Bay," dated December 1, 1976, recorded in said Office as Land Court Document No. 794652. (See Endnote 5)

The undersigned of said project hereby adopts the foregoing as the First Restatement of Declaration of Condominium Property Regime of Discovery Bay, this 30<sup>th</sup> day of August, 2002.

ASSOCIATION OF APARTMENT OWNERS  
OF DISCOVERY BAY

By Leo Berque  
Its PRESIDENT

By Duncan & Seaman  
Its SECRETARY

STATE OF HAWAII       )  
                                  )  
COUNTY OF HONOLULU )       SS.

On this 30th day of AUGUST, 2002, before me personally  
appeared LEON BERGMAN, to me known to be the person  
described in and who executed the foregoing instrument, and acknowledged that he/she executed  
the same as his/her free act and deed.

SS

Bde Senna Samaritano  
Notary Public, State of Hawaii  
Print Name: B. de Senna Samaritano  
My Commission expires 6/14/2006  
My commission expires:

STATE OF HAWAII       )  
                                  )  
COUNTY OF HONOLULU )       SS.

On this 30th day of AUGUST, 2002, before me personally  
appeared DUNCAN R. SEAMAN, to me known to be the person  
described in and who executed the foregoing instrument, and acknowledged that he/she executed  
the same as his/her free act and deed.

SS

Bde Senna Samaritano  
Notary Public, State of Hawaii  
Print Name: B. de Senna Samaritano  
My Commission expires 6/14/2006  
My commission expires:



## ENDNOTES

The following endnotes correspond to provisions in the Declaration which have been restated to conform to Chapter 514A, Hawaii Revised Statutes, and the Federal Fair Housing Act, as amended (42 U.S.C. Sections 3601 et seq.), and to integrate all amendments made to the Declaration. This Restated Declaration correctly states without change the corresponding provisions of the original Declaration, as amended, and supersedes the original Declaration and all prior amendments thereto. This Restatement is made solely for the purpose of information and convenience. In the event of a conflict, the Restated Declaration shall be subordinate to the cited statute and original Declaration.

1. Act 98 (SLH, 1977) re-designated Chapter 514 as Chapter 514A, Hawaii Revised Statutes, and Act 65 (SLH, 1988) redesignated the Horizontal Property Act as the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes ("HRS"). Therefore, throughout this Restatement, references to the previous usage have been amended to reflect present terminology.
2. The project does not have a wading pool, putting green, or a cabana containing meeting rooms, kitchen, and children's play area.
3. The By-Laws were originally attached to the Declaration as Exhibit "C" but are now recorded separately, in compliance with Section 514A-81, HRS.
4. Paragraph 16 (a) has been amended to incorporate the requirements of Section 514A-90(a), HRS, which now provides that a mortgage does not take priority over an association's lien for unpaid assessments unless the mortgage was recorded prior to the association's notice of lien.
5. The Declaration was so amended to comply with Section 514A-12, HRS, by referring to the architect's certification that the building was completed in accordance with plans and specifications shown in Condominium Map 295.

## EXHIBIT A

The lands upon which said Condominium Project "DISCOVERY BAY" is located are described as follows:

All of those certain parcels of land situate at Kalia, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

### -PARCEL FIRST:-

LOT 38-A, area 5,249 square feet, more or less, as shown on Map 16, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 852 of Bishop Trust Company, Limited, Trustee;

Together with perpetual rights of way for roadway purposes and all public utility purposes, in common with all others entitled thereto, over, upon, across, along and under Lot 97-A, as an easement appurtenant thereto, as shown on Map 33 of said Application;

### -PARCEL SECOND:-

(A) LOT 42, area 7,763 square feet, more or less, as shown on Map 15, filed in said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

Together with perpetual rights of way for roadway purposes and all public utility purposes, in common with all others entitled thereto, over, upon, across and along Lot 97-A, area 19,063 square feet, as an easement appurtenant thereto, as shown on Map 33 of said Application No. 852;

(B) LOT 40, area 6,405 square feet, more or less, as shown on Map 15, filed in said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

Together with a perpetual right of way as an easement appurtenant thereto, in common with all others entitled thereto, over, upon, across and along Lot 97-A, area 19,063 square feet, as shown on Map 33 of said Application No. 852;

### -PARCEL THIRD:-

LOT 31-A, area 6,602 square feet, more or less, as shown on Map 15, filed in said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

## EXHIBIT A CONTINUED

### - PARCEL FOURTH: -

LOT 33-A-1, area 6,551 square feet, more or less, as shown on Map 35, filed in said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

### -PARCEL FIFTH:-

LOT 30, area 6,814 square feet, more or less, as shown on Map 15, filed in said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

Together with a perpetual right of way as an easement appurtenant to said Lot 30, in common with all others entitled thereto, over, upon, across and along Lot 97-A, area 19,063 square feet, as shown on Map 33 of said Application No. 852;

### -PARCEL SIXTH:-

LOT 32, area 6,500 square feet, more or less, as shown on Map 15, filed in said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

Together with a perpetual right of way for roadway purposes and all public utility purposes, in common with all others entitled thereto, over, upon, across, along and under Lot 97-A, as an easement appurtenant to said Lot 32, as shown on Map 33 of said Application No. 852;

### -PARCEL SEVENTH:-

LOT 34, area 6,500 square feet, more or less, as shown on Map 15, filed in said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

Together with a perpetual right of way as an easement appurtenant thereto, in common with all others entitled thereto, over, upon, across and along Lot 97-A, area 19,063 square feet, as shown on Map 33 of said Application No. 852;

### -PARCEL EIGHTH:-

LOTS: 36, area 6,452 square feet, more or less, as shown on Map 15;

And

38-B, area 1,127 square feet, more or less, as shown on Map 16; said Maps are on file in said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

## **EXHIBIT A ENDS**

Together with a perpetual right of way as an easement appurtenant thereto, in common with all others entitled thereto, over, upon, across and along Lot 97-A, area 19,063 square feet, as shown on Map 33 of said Application No. 852;

### **-PARCEL NINTH: -**

LOTS: 37-A-1, area 9,191 square feet, more or less, as shown on Map 37;

and

35-A-1, area 8,799 square feet, more or less, as shown on Map 25;

said Maps are on file in said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

### **-PARCEL TENTH:-**

LOT 29-A-1, area 6,518 square feet, more or less, as shown on Map 40, filed in said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

Together with a perpetual right of way as an easement appurtenant to Lot 29-A-1, in common with all others entitled thereto, over, upon, across and along Lot 97-A, area 19,063 square feet, as shown on Map 33 of said Application No. 852;

Parcels First through Tenth, inclusive, being the land(s) described Transfer Certificate of Title No. 172,913 issued to Hawaiian Trust Company, Limited, a Hawaii corporation, Trustee under that certain Trust Agreement dated June 6, 1974, filed as Land Court Document No. 687964, as amended.

EXHIBIT B

1. Description of Commercial Unit. The Commercial Unit shall consist of those areas on the first level, mall (second) level, third level and fourth level of the Project which are more particularly delineated on said Condominium Map and identified as being part of the Commercial Unit. Specifically, but without limiting the generality of the foregoing, the Commercial Unit shall consist of the following:

(a) On the first floor: (i) all space designated on said Condominium Map as Commercial Space 100-1 and the trash room adjacent thereto; (ii) all of the parking area contained on said floor, including 66 parking stalls, but excluding the vehicular entry and exit ramps and the portions of the driveway area which are required to serve the common areas located on the first floor, all as delineated on said Condominium Map; (iii) the commercial elevator and any stairways and ramps shown on said Condominium Map as being located within the Commercial Unit; and (iv) the conveyor equipment and the other fixtures and facilities originally installed within any portion of the Commercial Unit located on such floor.

(b) On the second or mall level: (i) the areas designated on said Condominium Map as Commercial Space 200-1, Commercial Space 200-2 (including the mezzanine and storage areas adjacent thereto), and Commercial Spaces 200-3 through 200-10 inclusive (including the covered mall area between such shops); (ii) all yards and landscaped areas fronting Ala Moana Boulevard and approximately the first 100 feet of the landscaped areas fronting on Hobron Lane, as more particularly shown on said Condominium Map; (iii) all pedestrian walkways, stairways and ramps giving access to the enclosed portions of the Commercial

Unit (or any part thereof) from Ala Moana Boulevard and all walkways and stairways between and among any portions of the Commercial Unit situate on such floor; and (iv) the commercial elevator, conveyor equipment and other fixtures and facilities originally installed within any portion of the Commercial Unit on the second floor.

(c) On the third level, 16 parking stalls located adjacent to the vehicular ramp, as shown on said Condominium Map; and

(d) On the fourth level: (i) all parking areas contained on said floor, including 162 parking stalls, and all driveways and turn around areas serving such parking stalls, but excluding any driveways and ramps which are necessary for access to the third or fifth levels; and (ii) the commercial elevator and all other fixtures and facilities originally installed within any portion of the Commercial Unit on the fourth floor.

## 2. Description of Residential Units.

(a) Each residential unit has been given a number designation by which its location in the project can be determined. The last two digits of each apartment number indicates the tower within which such unit is situate and the digit or digits preceding the last two digits indicates the floor of the tower on which such unit is located. With respect to the last two digits, all apartment numbers ending in "01" through "10", inclusive refer to units located in the Endeavour tower and all apartment numbers ending in "11" to "20", inclusive, refer to units located in the Resolution tower. On the forty-second floor, the residential units in the Endeavour tower are numbered PH-01 through PH-04, inclusive, and the units in the Resolution tower are numbered PH-11 through PH-14, inclusive.

(b) Each residential unit designated hereinbelow and on said Condominium Map as utilizing a Type "A", A-1, "E" and "F" floor plan shall contain two bedrooms, two bathrooms, living-dining

room, kitchen and adjacent lanai. Type "A-1" units do not have a separate lanai and occur only on the 41st floor of each tower.

Each residential unit designated hereinbelow and on said Condominium Map as utilizing a Type "B", "B-1", and "C" floor plan contain one bedroom, one bathroom, living-dining room, kitchen and adjacent lanai. Type "B-1" units have an enclosed lanai which is smaller than the open lanai contained in the Type "B" units and occur only on the 41st floor of each tower. Apartment Numbers 801, 811, 901, 911, 1001 and 1011 differ from other Type "B" units of the Project in that they do not have a window in the makai wall of the living room.

Each residential unit designated hereinbelow and on said Condominium Map as utilizing a Type "D" floor plan shall contain two bedrooms, two bathrooms, living room, dining room, kitchen and adjacent lanai.

Each residential unit designated hereinbelow and on said Condominium Map as utilizing a "Studio" floor plan shall contain one multi-purpose room, a kitchen and a bathroom. Studio units will not have a lanai.

3. Location, Area, Common Interest of Units. The location, approximate gross floor area (including lanai, if any), approximate net floor area (excluding lanais but including interior walls), number of rooms, and common interest of each condominium unit and the two manager's apartments, are set forth below. All areas shown are computed by measuring from the outside of the exterior walls and from the centerline of interior party walls without deduction for interior walls ducts, vent shafts and the like located within the perimeter walls. Furthermore, any sequential apartment numbers designated hereinbelow, i.e., 802-4102, are inclusive only of apartment numbers containing the same final two digits.

<u>Unit Number or Designation</u>	<u>Type of Unit</u>	<u>Gross Floor Area Sq. Ft.</u>	<u>Net Floor Area Sq. Ft.</u>	<u>Location</u>	<u>No. of Rooms</u>	<u>Common Interest</u>
Commercial Unit	-	-	43,014.0	Portions of first, second and fourth floors	Various, subject to partition	7.4173%
<u>Endeavor Tower</u>						
801-1101	B	852.0	724.4	Southwest (Makai) Corner	4	.1465%
1201-4001	A	1,130.8	1,003.2	Southwest (Makai) Corner	6	.1945%
4101	A-1	1,081.2	1,081.2	Southwest (Makai) Corner	6	.1859%
802-4102	C	769.5	682.7	West Side	4	.1324%
803-4103	C	769.5	682.7	West Side	4	.1324%
804-4004	A	1,130.8	1,003.2	Northwest (Ewa) Corner	6	.1945%
4104	A-1	1,081.2	1,081.2	Northwest (Ewa)	6	.1859%
805-4105	Studio	464.0	464.0	North Side	3	.0798%
806-4006	B	852.0	724.4	Northeast (Mauka) Corner	4	.1465%
4106	B-1	802.4	802.4	Northeast (Mauka) Corner	4	.1379%
807-4107	C	769.5	682.7	East Side	4	.1324%
1108-4108	C	769.5	682.7	East Side	4	.1324%
1109 (Manager's Apartment)	B	852.0	724.4	Southeast (Diamond Head) Corner	4	----
1209-4009	B	852.0	724.4	Southeast (Diamond Head) Corner	5	.1465%
4109	B-1	802.4	802.4	Southeast (Diamond Head) Corner	5	.1379%
1110 (Manager's Apartment)	Studio	464.0	464.0	South Side	3	----
1210-4110	Studio	464.0	464.0	South Side	3	.0798%
PH-01	E	1,838.0	1,667.0	Southwest (Makai) Corner	6	.3161%



<u>Unit Number or Designation</u>	<u>Type of Unit</u>	<u>Gross Floor Area Sq. Ft.</u>	<u>Net Floor Area Sq. Ft.</u>	<u>Location</u>	<u>No. of Rooms</u>	<u>Common Interest</u>
<u>Endeavor Tower</u>						
PH-02	D	1,897.1	1,564.3	Northwest (Ewa) Corner	7	.3263%
PH-03	F	1,838.0	1,667.0	Northwest (Mauka) Corner	6	.3161%
PH-04	D	1,897.1	1,564.3	Southeast (Diamond Head) Corner	7	.3263%
<u>Resolution Tower</u>						
811-1111	B	852.0	724.4	Southwest (Makai) Corner	4	.1465%
1211-4011	A	1,130.8	1,003.2	Southwest (Makai) Corner	6	.1945%
4111	A-1	1,081.2	1,081.2	Southwest (Makai) Corner	6	.1859%
812-4112	C	769.5	682.7	South Side	4	.1324%
813-4113	C	769.5	682.7	South Side	4	.1324%
814-4014	A	1,130.8	1,003.2	Southeast (Diamond Head) Corner	6	.1945%
4114	A-1	1,081.2	1,081.2	Southeast (Diamond Head) Corner	6	.1859%
815-4115	Studio	464.0	464.0	East Side	4	.0798%
816-4016	B	852.0	724.4	Northeast (Makai) Corner	4	.1465%
4116	B-1	802.4	802.4	Northeast (Makai) Corner	4	.1379%
1117-4117	C	769.5	682.7	North Side	4	.1324%
1118-4118	C	769.5	682.7	North Side	4	.1324%
1119-4019	B	851.0	724.4	Northwest (Ewa) Corner	4	.1465%
4119	B-1	802.4	802.4	Northwest (Ewa) Corner	4	.1379%
1120-4120	Studio	464.0	464.0	West Side	3	.0798%
PH-11	E	1,838.0	1,667.0	Southwest (Makai) Corner	6	.3161%
PH-12	D	1,897.1	1,564.3	Southeast (Diamond Head) Corner	7	.3263%
PH-13	F	1,838.0	1,667.0	Northeast (Mauka) Corner	6	.3161%
PH-14	D	1,897.1	1,564.3	Northeast (Ewa) Corner	7	.3263%

4. Access.

(a) Those portions of the Commercial Unit on the second or mall level shall have direct access to walkways leading to the street entrance of the Project. Those portions of the Commercial Unit on the first and fourth floors shall have access to the street entrance of the Project after travel by stairway or the elevator serving the Commercial Unit.

(b) Each residential unit has immediate access to its entry after travel by passenger elevator or stairway to its designated floor and by the walkways, driveways and ramps connecting its building to the street entrances of the Project. Each residential tower shall be serviced by two stairways and four high speed elevators.

OFFICE OF THE  
ASSISTANT REGISTRAR, LAND COURT  
STATE OF HAWAII  
(Bureau of Conveyances)

The original of this document was  
recorded as follows:

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LAND COURT SYSTEM

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ASHFORD & WRISTON  
ALII PLACE, SUITE 1400  
1099 ALAKEA STREET  
P. O. BOX 131  
HONOLULU, HAWAII 96810

REGULAR SYSTEM

RETURN BY: MAIL ☐ PICKUP ☐

Total Page(s):

SUPPLEMENTAL AMENDMENT OF FIRST RESTATEMENT OF DECLARATION OF  
CONDOMINIUM PROPERTY REGIME OF  
DISCOVERY BAY

WHEREAS, each of Helen Nahm Choy, a widow, and Herbert Young Cho Choy, Trustee of the Doo Wook Choy and Helen Nahm Choy Foundation (Parcel Second), Toyoko Ishiguro Lucas, wife of Norman Ululani Lucas, and Alice Hanako Kodama Yokokama, wife of Irvine Kioyoshi Yokokama (Parcel First), Louis Lyman Gowans and Helen Taylor Gowans, husband and wife (Parcels Fifth, Sixth, Seventh and Eighth), Umematsu Watada and Yasu Nakao Watada, husband and wife (Parcel Third), Quon Moi Ching Wong, a widow (Parcel Fourth), and MEPC Properties (Hawaii), Inc., a Hawaii corporation (Parcels Ninth and Tenth), were the beneficial owners of the parcel or parcels of real property noted after their respective names hereinabove, which parcels were more particularly described in Exhibit "A", attached to the "Declaration of Horizontal Property Regime," dated November 11, 1976 and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 789431 ("Declaration"); and

WHEREAS, said Parcels First through Eighth, inclusive, were subject to various leases in favor of MEPC Properties (Hawaii), Inc., a Hawaii corporation (the "Developer"); and

WHEREAS, in order to facilitate the joint development of the parcels, the owners transferred and conveyed legal title thereto, subject to the leases, to Hawaiian Trust Company, Limited, a Hawaii corporation (the "Trustee"), under and pursuant to that certain Trust Agreement dated June 6, 1974, which was filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 687964, as amended; and

WHEREAS, pursuant to the Trust Agreement and the leases, Developer improved the parcels by the construction of certain improvements, in accordance with plans filed in said Office as Condominium Map No. 295; and

WHEREAS, in order to create a condominium project consisting of the land and improvements (hereinafter called the "Project"), Trustee and Developer executed the Declaration whereby they submitted the Project, and their respective interests therein, to the Condominium Property Regime established by Chapter 514A, Hawaii Revised Statutes, as amended, and agreed that the Project was to be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, and improved subject to the declarations, restrictions and conditions stated in the Declaration and in the By-Laws attached as Exhibit "C" to the Declaration, as amended; and

WHEREAS, the Declaration was amended by "First Amendment to Declaration of Horizontal Property Regime of Discovery Bay," dated December 1, 1976, recorded in said Office as Land Court Document No. 794652; by "Second Amendment to Declaration of Horizontal Property Regime of Discovery Bay," dated July 1, 1977, recorded in said Office as Land Court Document No. 825197; by "Third Amendment to Declaration of Horizontal Property Regime of Discovery Bay," dated September 22, 1977, recorded in said Office as Land Court Document No. 838373; by "Amendment of the Declaration of Horizontal Property Regime and By-Laws of Discovery Bay," dated April 22, 1980, recorded in said Office as Land Court Document No. 1008846; by "Amendment of the Declaration of Horizontal Property Regime and By-Laws of Discovery Bay," dated March 30, 1982, recorded in said Office as Land Court Document No. 1146216; by "Amendment of the Declaration of Horizontal Property Regime and By-Laws of Discovery Bay," dated October 11, 1984, recorded in said Office as Land Court Document No. 1264352; by "Amendment to By-Laws of Discovery Bay," dated January 3, 1989, recorded in said Office as Land Court Document No. 1604840; by "Amendment to the By-Laws of Discovery Bay," dated February 7, 1994, recorded in said Office as Land Court Document No. 2117982; and by the "Amendment of the By-Laws of the AOA Discovery Bay"

dated January 21, 2000, recorded in said Office as Land Court Document No. 2604198;

WHEREAS, pursuant to Section 514A-82.2, Hawaii Revised Statutes, the Board of Directors of the Association of Apartment Owners of Discovery Bay (the "Association") restated the Declaration to include the above amendments and to conform the Declaration to the provisions of Chapter 514A, Hawaii Revised Statutes, and any other statute, ordinance, rule, or regulation, by a document dated August 30, 2002, recorded as Land Court Document No. 2845704 and noted on Certificate of Title 172,913; and

WHEREAS, pursuant to Section 514A-11(11), Hawaii Revised Statutes, owners of more than seventy-five percent (75%) of the common interests of the Project have given their written consent to amend the Declaration to make the amendments outlined below;

NOW THEREFORE, the Declaration shall be amended to add a new section, Section 22, to read as follows:

**22. Voluntary Conversion.** In addition to any other powers provided in this Declaration and Article IV, Section 1L of the By-laws, the Board of Directors shall also have the following powers in connection with the negotiation to purchase, the purchase, and the sale of the leased fee interest:

(a) To negotiate the acquisition of the leased fee interest in the land and property described in Exhibits A and B of this Declaration (referred to as the "Property"). The power to negotiate such acquisition shall include the power to take all steps necessary or appropriate to accomplish the same, including, but not limited to, the following: (i) negotiate with the trustee (referred to as the "Trustee") under the Trust Agreement dated June 6, 1974, as amended (referred to as the "Trust Agreement" or the "Trust"), that owns the legal and beneficial title to the Property for the purchase of the leased fee interest in the Property, or a portion thereof; (ii) negotiate with the beneficiaries under the Trust Agreement (collectively referred to as the "Beneficial Owners"), or their successors, for the purchase of their respective beneficial interests in the Trust; (iii) retain any professionals to represent the Association or the individual unit owners in the negotiations; (iv) purchase all or any portion of the leased fee interest from the Trustee or its successor; (v) purchase all or any portion of the beneficial interests of the Beneficial Owners or their successors; (vi) waive the Association's right of first refusal under Chapter 514C, Hawaii Revised Statutes; (vii) terminate the Trust; and (viii) sign any document and do any and all other acts or things necessary and incidental to the completion of the acquisition. The Board's power to negotiate the acquisition of the leased fee interest on behalf of the

Association, or any portion thereof, also includes the right to reject any terms or conditions the Board deems unacceptable.

(b) On behalf of the Association, to: (i) purchase the leased fee interest in the Property; (ii) purchase the beneficial interest of any of the Beneficial Owners; (iii) retain the leased fee interest of those units the owners of which are unwilling or unable to purchase their leased fee interests from the Association; (iv) retain the beneficial interests until the Trust is terminated and the Association thereafter owns the leased fee interest in the Property; and (v) retain the beneficial interests until such time that, in the determination of the Board, such interests may be sold to the individual unit owners.

(c) If, on behalf of the Association, the Board is authorized to acquire the leased fee interest (including a portion thereof), which acquisition may include purchasing the beneficial interests of the Beneficial Owners (or a portion of the total beneficial interests in the Trust), the Board shall have, in addition to any other existing powers and without any further approval of the Association, the power and authority to:

(1) Own, improve, use and otherwise deal in and with the leased fee interest, the beneficial interests under the Trust Agreement, or any or all undivided interests in the leased fee or beneficial interest;

(2) Incur liabilities, borrow money from any individual, entity or lending institution, and secure any of its obligations by mortgage or pledge of all or any portion of the Association's property, assessments and funds to effectuate acquisition of the leased fee interest (which acquisition may include purchasing the beneficial interests of the Beneficial Owners, or a portion thereof);

(3) Assess as a common expense the expenses incurred in acquiring and holding the leased fee interest, which acquisition may include acquiring the beneficial interests of the Beneficial Owners or their successors, and to service any debt associated therewith;

(4) Sell the leased fee interest in a condominium unit to the then condominium unit owner or subsequent purchaser of such unit; provided that if the unit owner or subsequent purchaser declines to purchase the leased fee interest, the leased fee interest may be sold to other persons so long as reasonable disclosure is made of the Association's intent to sell the leased fee interest to such other persons, and the disclosure includes a statement that the unit owners may have no legal remedy if they subsequently wish to purchase the leased fee interest and the other persons refuse to sell or will sell only at a price unacceptable to the unit owners;

(5) Participate as a Beneficial Owner in the operation and management of the Trust administered by the Trustee, and in the termination of the Trust Agreement; and

(6) Undertake any and all action as the Board deems necessary or appropriate to administer the leased fee interest acquired, including, but not limited to, establishing lease rents under the unit leases, negotiating lease rent increases under the unit leases, retaining professionals to assist in establishing and/or negotiating the lease rents at the renegotiation dates under the unit leases and collecting the lease rents.

(d) The authority and power of the Board to acquire the leased fee interest in the Property, which acquisition may include the purchase of all or a portion of the beneficial interests under the Trust Agreement, shall include all actions relating to said acquisition undertaken by the Board in reliance upon authority other than this paragraph 22; and, providing that the Board is authorized and empowered under this section (d), the aforesaid actions are hereby ratified.

In all other respects, the First Restatement of Declaration Condominium Property Regime of Discovery Bay as amended, is hereby ratified and confirmed and shall be binding upon and inure to the benefit of the parties to it and their respective successors and permitted assigns. The undersigned officers of the Association hereby certify that the above amendment was adopted by the written consent of more than seventy-five percent (75%) of the members of the Association.

IN WITNESS WHEREOF, the undersigned have executed this instrument on this 31<sup>st</sup> day of January, 2005.

ASSOCIATION OF APARTMENT OWNERS  
OF DISCOVERY BAY

By William R. Carter  
Its Vice President

By Duncan R. Seama  
Its Secretary

STATE OF HAWAII            )  
City & COUNTY OF HONOLULU    )    SS.

On this 31st day of January, 2005, before me personally  
appeared Melvin R. Cutler, to me known to be the person  
described in and who executed the foregoing instrument, and acknowledged that he/she executed  
the same as his/her free act and deed, *in such capacity*

B. de Senna Samaritano  
Notary Public, State of Hawaii  
Print Name: \_\_\_\_\_

*B. de Senna Samaritano*  
My commission expires 6/14/2006  
My commission expires:

STATE OF HAWAII            )  
City & COUNTY OF HONOLULU    )    SS.

On this 31st day of January, 2005, before me personally  
appeared Duncan R. Seaman, to me known to be the person  
described in and who executed the foregoing instrument, and acknowledged that he/she executed  
the same as his/her free act and deed, *in such capacity*

B. de Senna Samaritano  
Notary Public, State of Hawaii  
Print Name: \_\_\_\_\_

*B. de Senna Samaritano*  
My commission expires 6/14/2006  
My commission expires:



Doc 3737960  
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Ekimoto & Morris  
Attn: John A. Morris, Esq./alt  
American Savings Bank Tower  
1001 Bishop Street, Suite 780  
Honolulu, Hawai'i 96813-3410

**Total pages: 6**

G:\DISCOVERY BAY - JM\1-GM\OPT IN TO 514B\DRAFT Amendment re opt in r1 (2-25-08).doc

**Tax Map Key: (1) 2-6-12-10**

**Condominium Map No. 295**

**THIRD AMENDMENT TO FIRST RESTATEMENT OF DECLARATION OF  
CONDOMINIUM PROPERTY REGIME OF DISCOVERY BAY**

This **THIRD AMENDMENT TO FIRST RESTATEMENT OF DECLARATION OF CONDOMINIUM PROPERTY REGIME OF DISCOVERY BAY** ("Amendment") is made by the **ASSOCIATION OF APARTMENT OWNERS OF DISCOVERY BAY**, whose address is 1778 Ala Moana Boulevard, Honolulu, Hawai'i 96815 ("Association"),

**WITNESSETH THAT:**

WHEREAS, each of Helen Nahm Choy, a widow, and Herbert Young Cho Choy, Trustee of the Doo Wook Choy and Helen Nahm Choy Foundation (Parcel Second), Toyoko Ishiguro Lucas, wife of Norman Ululani Lucas, and Alice Hanako Kodama Yokokama, wife of Irvine Kioyoshi Yokokama (Parcel First), Louis Lyman Gowans and Helen Taylor Gowans, husband and wife (Parcels Fifth, Sixth, Seventh and Eighth), Umematsu Watada and Yasu Nakao Watada, husband and wife (Parcel Third), Quon Moi Ching Wong, a widow (Parcel Fourth), and MEPC Properties (Hawaii), Inc., a Hawai'i corporation (Parcels Ninth and Tenth), were the beneficial owners of the parcel or parcels of real property noted after their respective names hereinabove, which parcels were more particularly described in Exhibit "A", attached to the "Declaration of Horizontal Property Regime," dated November 11, 1976, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Land Court Document No. 789431 ("Declaration"), and noted on the Certificate of Title 172,913; and

WHEREAS, said Parcels First through Eighth, inclusive, were subject to various leases in favor of MEPC Properties (Hawaii), Inc., a Hawai'i corporation (the "Developer"); and

WHEREAS, in order to facilitate the joint development of the parcels, the owners transferred and conveyed legal title thereto, subject to the leases, to Hawaiian Trust Company, Limited, a Hawai'i corporation (the "Trustee"), under and pursuant to that certain Trust Agreement dated June 6, 1974, which was filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 687964, as amended; and

WHEREAS, pursuant to the Trust Agreement and the leases, Developer improved the parcels by the construction of certain improvements, in accordance with plans filed in said Office as Condominium Map No. 295; and

WHEREAS, in order to create a condominium project consisting of the land and improvements (hereinafter called the "Project"), Trustee and Developer executed the Declaration whereby they submitted the Project, and their respective interests therein, to the Condominium Property Regime established by Chapter 514A, Hawai'i Revised Statutes, as amended, and agreed that the Project was to be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, and improved subject to the declarations, restrictions and conditions stated in the Declaration and in the By-Laws attached as Exhibit "C" to the Declaration, as amended; and

WHEREAS, the Declaration provided for the organization and operation of the Association of Apartment Owners of Discovery Bay (the "Association") to operate and manage the Project in accordance with the By-Laws; and

WHEREAS, the Declaration was amended by instruments dated December 1, 1976, filed as Land Court Document No. 794652; dated July 1, 1977, filed as Land Court Document No. 825197; dated September 22, 1977, filed as Land Court Document No. 838373; dated April 22, 1980, filed as Land Court Document No. 1008846; dated March 30, 1982, filed as Land Court Document No. 1146216; dated October 11, 1984, filed as Land Court Document No. 1264352; dated January 3, 1989, filed as Land Court Document No. 1604840; dated February 7, 1994, filed as Land Court Document No. 2117982; dated January 21, 2000, filed as Land Court Document No. 2604198; and

WHEREAS, the Declaration was restated by First Restatement of Declaration of Condominium Property Regime of Discovery Bay dated August 30, 2002 (the "Restated Declaration"), filed as Land Court Document No. 2845704;

WHEREAS, the Restated Declaration was amended by instruments dated January 24, 2005, filed as Land Court Document No. 3222328, and dated January 31, 2005, filed as Land Court Document No. 3226298; and

WHEREAS, the Association was incorporated on June 9, 1983 under Chapter 416, Hawai'i Revised Statutes, as the Association of Apartment Owners of Discovery Bay; and

WHEREAS, Section 514B-23, Hawai'i Revised Statutes ("HRS"), empowers the Association to generally amend the Project documents, with the vote or written consent of a majority of the owners, to achieve any results permitted by HRS Chapter 514B; and

WHEREAS, at the Association's annual meeting on February 7, 2008, a majority of the Association's owners (including the owner of the commercial unit) affirmatively voted in favor of "opting in" to the provisions of HRS Chapter 514B;

NOW THEREFORE, the Restated Declaration is hereby amended to "opt-in" to HRS Chapter 514B, as set forth below. To the extent that there is any conflict between the provisions of the Restated Declaration and HRS Chapter 514B, the provisions of the Restated Declaration shall be subordinate to HRS Chapter 514B, including all approval requirements in HRS Chapter 514B. This amended version of the Restated Declaration shall supersede the original Declaration and all prior amendments thereto.

### **AMENDMENT**

A new Section 23. is added to the Declaration, to generally amend the Project documents to achieve any results permitted by HRS Chapter 514B, to read as follows:

23. Governing Law. Notwithstanding anything to the contrary in the Project governing documents, including but not limited to this Declaration, the By-Laws ("Bylaws"), the House Rules, and the Condominium Map:

(a) This Project shall be governed by the provisions of Hawai'i Revised Statutes, Chapter 514B, as amended;

(b) Any apartment deed, and the Project's Declaration, Bylaws, House Rules, and Condominium Map shall be liberally construed to facilitate the operation of the Project under the law;

(c) Amendments to the Declaration and Bylaws, including but not limited to amendments relating to the alteration of the Project, shall require approval of 67% of the owners;

(d) Approval requirements of 75% for alterations to the common elements shall be reduced to 67%;

(e) Punitive damages may not be awarded except as provided in Hawaii Revised Statutes, Section 514B-10; and

(f) Approval requirements for leases or uses of the common elements shall be governed by Hawaii Revised Statutes, Section 514B-38.

In all other respects, the Restated Declaration, as amended, is hereby ratified and confirmed and shall be binding upon and inure to the benefit of the parties to them and their respective successors and permitted assigns. The undersigned officers of the Association of Apartment Owners of Discovery Bay hereby certify that the above amendment was made by the affirmative vote of more than a majority of the members of the Association (including the owner of the commercial unit).

Each of the undersigned officers of the Association warrants and represents that he or she is legally authorized to sign this Amendment on behalf of the Association. The officers of the Association agree that this Amendment may be executed in counterparts, each of which shall be deemed an original, and those counterparts shall together constitute one and the same

instrument, binding all the Parties thereto, notwithstanding that all the Parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, the undersigned have executed this instrument on this  
11th day of APRIL, 2008.

ASSOCIATION OF APARTMENT OWNERS  
OF DISCOVERY BAY

By: Melvin R. Cutler  
(Print name: MELVIN R. CUTLER)  
Its: VICE PRESIDENT

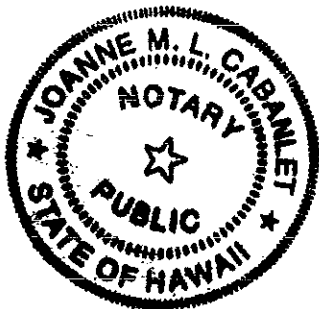
By: Duncan R. Seaman  
(Print name: DUNCAN R. SEAMAN)  
Its: SECRETARY

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)  
) ss.  
)

On this 11<sup>th</sup> day of April, 2008, before me personally appeared Melvin R. Cutler, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

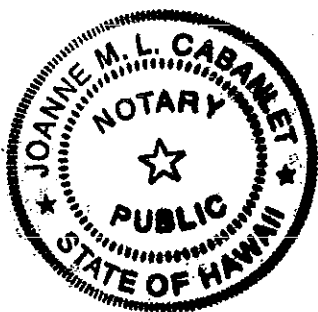


Joanne M. L. Cabanlet  
Print Name: Joanne M. L. Cabanlet  
Notary Public, State of Hawaii

My Commission Expires: May 9, 2008

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

On this 14th day of April, 2008, before me personally appeared Duncan R. Seaman, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Joanne M. L. Cabanlet  
Print Name: Joanne M. L. Cabanlet  
Notary Public, State of Hawaii

My Commission Expires: May 9, 2008

OFFICE OF THE CLERK  
ASSISTANT RECORDER OF LAND COURT  
STATE OF HAWAII  
(Bureau of Conveyances)

The original of this document was  
recorded as follows:

DOCUMENT NO. 2845705  
DATE SEP 11 2002 TIME 2:08 PM

LAND COURT SYSTEM

AFTER RECORDATION, RETURN TO:

JOHN A. MORRIS, ESQ. Vmc  
ASHFORD & WRISTON  
ALII PLACE, SUITE 1400  
1099 ALAKEA STREET  
P. O. BOX 131  
HONOLULU, HAWAII 96810

REGULAR SYSTEM

RETURN BY: MAIL ☐ PICKUP ☐

Total Page(s): 60

FIRST RESTATEMENT OF THE BY-LAWS

OF

THE ASSOCIATION OF APARTMENT OWNERS

OF

DISCOVERY BAY

(Affects TCT #172,913)





FIRST RESTATEMENT OF THE BY-LAWS OF  
THE ASSOCIATION OF APARTMENT OWNERS OF  
DISCOVERY BAY

WHEREAS, each of Helen Nahm Choy, a widow, and Herbert Young Cho Choy, Trustee of the Doo Wook Choy and Helen Nahm Choy Foundation (Parcel Second), Toyoko Ishiguro Lucas, wife of Norman Ululani Lucas, and Alice Hanako Kodama Yokokama, wife of Irvine Kioyoshi Yokokama (Parcel First), Louis Lyman Gowans and Helen Taylor Gowans, husband and wife (Parcels Fifth, Sixth, Seventh and Eighth), Umematsu Watada and Yasu Nakao Watada, husband and wife (Parcel Third), Quon Moi Ching Wong, a widow (Parcel Fourth), and MEPC Properties (Hawaii), Inc., a Hawaii corporation (Parcels Ninth and Tenth), was the beneficial owner of the parcel or parcels of real property set forth after their respective name hereinabove, which parcels were more particularly described in Exhibit "A", attached to the "Declaration of Horizontal Property Regime," dated November 11, 1976 and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 789431 ("Declaration"); and

WHEREAS, said Parcels First through Eighth, inclusive, were subject to various leases in favor of MEPC Properties (Hawaii), Inc., a Hawaii corporation, whose principal place of business and post office address is Suite 2345, Pacific Trade Center, 190 South King Street, Honolulu, Hawaii (hereinafter referred to as the "Developer"); and

WHEREAS, in order to facilitate the joint development of said parcels, said owners transferred and conveyed legal title thereto, subject to said leases, to Hawaiian Trust Company, Limited, a Hawaii corporation, whose principal place of business and post office address was Financial Plaza of the Pacific, Honolulu, Hawaii (hereinafter referred to as the "Trustee"), under and pursuant to that certain Trust Agreement dated June 6, 1974, which was recorded in said Office as Land Court Document No. 687964, as amended by instrument dated November 27, 1974 and recorded in said Office as Land Court Document No. 705673, and as further amended by instrument dated January 13, 1975 and recorded in said Office as Land Court Document No. 707915; and

WHEREAS, pursuant to said Trust Agreement and said leases, Developer improved said parcels by the construction thereon of certain improvements hereinafter described, in accordance with plans filed in said Office as Condominium Map No. 295; and

WHEREAS, in order to create a condominium project consisting of said land and improvements (hereinafter called the "Project"), Trustee and Developer executed the Declaration whereby they submitted the Project, and their respective interests therein, to the Condominium Property Regime established by Chapter 514A, Hawaii Revised Statutes, as amended (See Endnote 1); and

WHEREAS, the Declaration and By-Laws were amended by "First Amendment to Declaration of Horizontal Property Regime of Discovery Bay," dated December 1, 1976, recorded in said Office as Land Court Document No. 794652; by "Second Amendment to Declaration of Horizontal Property Regime of Discovery Bay," dated July 1, 1977, recorded in said Office as Land Court Document No. 825197; by "Third Amendment to Declaration of Horizontal Property Regime of Discovery Bay," dated September 22, 1977, recorded in said Office as Land Court Document No. 838373; by "Amendment of the Declaration of Horizontal Property Regime and By-Laws of Discovery Bay," dated April 22, 1980, recorded in said Office as Land Court Document No. 1008846; by "Amendment of the Declaration of Horizontal

Property Regime and By-Laws of Discovery Bay," dated March 30, 1982, recorded in said Office as Land Court Document No. 1146216; by "Amendment of the Declaration of Horizontal Property Regime and By-Laws of Discovery Bay," dated October 11, 1984, recorded in said Office as Land Court Document No. 1264352; by "Amendment to By-Laws of Discovery Bay," dated January 3, 1989, recorded in said Office as Land Court Document No. 1604840; by "Amendment to the By-Laws of Discovery Bay," dated February 7, 1994, recorded in said Office as Land Court Document No. 2117982; and by the "Amendment of the By-Laws the AOA Discovery Bay", dated January 2000, and recorded in said Office as Land Court Document No. 2604198;

WHEREAS, Section 514A-82.2, Hawaii Revised Statutes, empowers the Board of Directors of the Association of Apartment Owners of Discovery Bay (the "Association") to restate the By-Laws to include any amendments to it and to conform them to the provisions of Chapter 514A, Hawaii Revised Statutes, and any other statute, ordinance, rule, or regulation enacted by any governmental authority, by a resolution adopted by the Board of Directors; and

WHEREAS, at a meeting duly held on \_\_\_\_\_, 20\_\_\_\_, the Board of Directors resolved to restate the By-Laws in accordance with Section 514A-82.2, Hawaii Revised Statutes;

NOW THEREFORE, the By-Laws are hereby restated to read as follows:

FIRST RESTATEMENT OF THE BY-LAWS OF  
THE ASSOCIATION OF APARTMENT OWNERS OF  
DISCOVERY BAY

The following restated By-Laws shall apply to the above-named condominium project (herein called the project"), as described in and created by Declaration of Condominium Property Regime (herein called the "Declaration) to be filed of record in the State of Hawaii contemporaneously herewith, and to all present and future owners, tenants and occupants of any apartments of the project and all other persons who shall at any time use the project. The term "apartment means (except where such meaning would be clearly repugnant to the context) any unit in the project, whether a residential unit or the Commercial Unit. The term "common elements" means those elements designated in the Declaration as common elements. The term "commercial element" means a limited common element appurtenant only to the commercial unit, but not appurtenant to any residential unit. The term "residential elements" means limited common elements which are appurtenant to only a residential apartment or apartments.

**ARTICLE I**

**ASSOCIATION OF APARTMENT OWNERS**

Section 1.     Qualification. All owners of apartments of the project shall constitute the Association of Apartment Owners, herein called the "Association". The owner of any apartment, upon acquiring his interest therein, shall automatically become a member of the Association and shall remain a member thereof until such time as his interest in such apartment ceases for any reason, at which time his membership in the Association shall automatically cease; provided, however, that to such extent and for such purposes, including voting, as shall be provided by any condominium conveyance document, lease or Agreement of Sale of any apartment filed with the Board of Directors of the Association (hereinafter sometimes called the "Board"), the apartment owner under such condominium conveyance document, lessee under such lease or purchaser of such apartment shall be deemed to be the owner thereof Notwithstanding anything in these By-Laws to the contrary, at all times prior to the first conveyance of an apartment, Trustee shall act in any and all matters as the Association and Board of Directors.

Section 2. Place of Meetings. Meetings of the Association shall be held at the project or such other suitable place convenient to the apartment owners within the State of Hawaii as may be designated by the Board.

Section 3. Annual Meeting. The first meeting of the Association shall be held as soon as practicable after the completion of the project upon the call of at least ten percent (10%) of the apartment owners, or upon the call of the Trustee; provided, that the first meeting of the Association shall be held not later than one hundred eighty (180) days after a Certificate of Occupancy has been issued for the project by the appropriate agency of the City and County of Honolulu. Thereafter, the annual meeting of the Association shall be held at the office of the Association, or such other suitable place within the State of Hawaii as may be designated by the Board, within ninety (90) days following the close of the fiscal year of the Association, or at such other time as the Board of Directors shall from time to time determine. The annual meeting shall be a general meeting, and at such meeting any business within the powers of the Association, without special notice of such business, may be transacted except as limited by law, the Declaration, or by these By-Laws.

Section 4. Special Meetings. Upon the call of the President, the Board or a petition signed by the owners of at least twenty-five percent (25%) of the common interests, a special meeting may be called. Upon the receipt of such call, the Secretary shall send out to all apartment owners written notice of the meeting, which shall be held at any reasonable time and place within thirty (30) days of the receipt of such call by the Secretary. Notwithstanding anything in these By-Laws to the contrary, the Trustee, when acting for the Association as provided in Section 1 of this Article I, may act without a formal meeting and without a call or notice,

Section 5. Notices. Any notice permitted or required to be given herein must be in writing and may be delivered either personally or by mail. The notice of every meeting of the Association shall state whether it is an annual or a special meeting, the authority for the call of the meeting, and shall contain at least the date, time and place of such meeting, the items on the agenda and a standard proxy form authorized by the Association, if any. Notices of Association meetings, whether annual or special, shall be given at least fourteen (14) days before the date of such meeting. If delivery is made by mail, it shall be deemed to have been delivered twenty-four

(24) hours after a copy of it has been deposited in the United States mail, postage prepaid, addressed to the person to whom the notice is to be given at the address given by such person to the Board or to the apartment which such person owns if no address has been given to the Board. Such address may be changed from time to time by notice in writing to the Board, Upon written request for notice delivered to the Board, the holder of any duly recorded mortgage against any apartment may promptly obtain a copy of any and all notices permitted or required herein to be made to the owner or owners whose apartment is subject to said mortgage. Said request for notice need not be renewed and shall entitle the holder of such mortgage requesting such notice to receive all notices sent to the owner or owners whose apartment is subject to said mortgage from and after the date of said request until said request is withdrawn or the mortgage is discharged of record. If notice is given pursuant to the provisions of this section, the failure of any apartment owner to receive actual notice of the meeting shall in no way invalidate the meeting or any proceedings thereat. The presence of all of the apartment owners, in person or by proxy, at any meeting shall render the same a valid meeting under this section and any meeting so held without objection, notwithstanding the fact that no notice of the meeting was given or that such notice was given improperly, shall be valid for all purposes, and at such meeting any general business may be transacted and any action may be taken by the Association of Apartment Owners. The presence of any apartment owner in person or by proxy at any meeting shall be deemed a waiver of any required notice to such owner unless he shall at the opening thereat object to the holding of such meeting because of the failure to give notice in accordance with the provisions hereof

Section 6. Quorum. The presence at any meeting in person or by proxy of a majority of the apartment owners shall constitute a quorum, and the acts of a majority of the apartment owners present at any meeting at which a quorum is present shall be the acts of the Association except as otherwise provided herein. As used in these By-Laws, the term "majority of apartment owners" means the owners of apartments to which are appurtenant more than fifty percent (50%) of the common interests as established by the Declaration. The term "majority of the owners present at any meeting" shall mean owners of apartments to which are appurtenant more than fifty percent (50%) of the aggregate common interests appurtenant to apartments owned by those present at the meeting. Any other specified percentage of the apartment owners means the

owners of apartments to which are appurtenant such specified percentage of the common interests.

Section 7. Voting. All apartment owners shall be members of the Association and shall be entitled to vote at meetings thereof Voting shall be on a percentage basis with the percentage of the total vote to which each apartment is entitled being the same as the percentage of the common interest assigned to such apartment in the Declaration. Votes may be cast in person or by proxy by the respective apartment owners as shown in the record of ownership of the Association. An executor, administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any apartment owned or controlled by him in such capacity, whether or not the same shall have been transferred to his name in the Association's record of ownership, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such apartment in such capacity. The vote for any apartment owned of record by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other co-owner or co-owners, provided written notice of such co-ownership has been given to the Board at least two (2) days prior to any meeting. In case of such protest each co-owner shall be entitled to only the share of such vote proportionate to his share of ownership in such apartment.

Section 8. Proxies and Pledges. The authority given by any apartment owner to another person to represent him at meetings of the Association shall be in writing, signed by the owner and delivered to the Secretary or the Managing Agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and must contain at least: the name of the Association, the date of the meeting of the Association, the printed name and signature of the persons giving the proxy, the apartment or apartments for which the proxy is given, the printed name of the person or entity to whom the proxy is given, and the date that the proxy is given. The proxy form which accompanies a notice of meeting shall be valid for the meeting to which the notice pertains and its adjournment only, may designate any person as proxy, and may be limited as the apartment owner desires and indicates. Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any apartment or interest herein, a true copy of which is filed with the Board through the Secretary or Managing Agent, shall be exercised only by the person designated in such instrument until the written

release or other termination thereof is filed with the Board; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit.

All proxy forms, at a minimum, shall contain boxes wherein the owner may indicate that the owner wishes the proxy:

- (1) To be given for quorum purposes only;
- (2) To be given to a specific individual whose name is printed next to this box;
- (3) To be given to the board of directors as a whole and that the vote be made on the basis of the preference of the majority of the board; or
- (4) To be given to those directors present at the meeting and the vote to be shared with each board member receiving an equal percentage.

Neither the Board of Directors nor a member of the Board shall use Association funds to solicit proxies; provided that this shall not prevent a Board member from exercising his right as an apartment owner under Section 8A, below. A copy, facsimile, telecommunication, or other reliable reproduction of a proxy may be used instead of the original proxy, provided the copy, facsimile or other reproduction is a complete copy of the entire original proxy.

Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering an apartment or under an agreement of sale affecting an apartment. (See Endnote 2)

Section 8A. Solicitation of Proxies. No resident manager or Managing Agent shall solicit, for use by the manager or Managing Agent, any proxies from any apartment owner, nor shall the resident manager or Managing Agent cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. If the Board of Directors intends to use Association funds to distribute proxies, the Board shall first post notice of its intent to distribute proxies in prominent locations within the project at least thirty days prior to its distribution of proxies; provided that if the Board receives within seven days of the posted notice a request by any owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall mail to all owners:

(A) A proxy form containing either the names of all owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or

(B) A proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of Association funds for soliciting proxies and their statements.

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

The Board of Directors shall not adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to association matters on the common elements by apartment owners; provided that the Board of Directors may adopt rules regulating reasonable time, place, and manner of such solicitations or distributions, or both. The Board of Directors may prohibit commercial solicitations. (See Endnote 3)

Section 9. Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the apartment owners present, whether or not a quorum be present, without notice other than the announcement at such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

Section 10. Order of Business. The order of business at all annual meetings of the Association shall be as follows:

- A. Roll call;
- B. Proof of notice of meeting;
- C. Reading of minutes of last annual meeting and last preceding meeting, if any;
- D. Report of officers;
- E. Report of committees;
- F. Election of Directors;
- G. Unfinished business;
- H. New business.

The order of business at all special meetings of the Association shall be as follows:

- A. Roll call;



- B. Proof of notice of meeting;
- C. Reading of minutes of preceding meeting;

All meetings of the Association and the Board of Directors shall be conducted in accordance with Robert's Rules of Order or other accepted rules for the conduct of meetings.

Section 11. Committees. The Association may create and appoint such general or special committees as the affairs of the Association may require and define the authority and duties of such committees.

Section 12. Minutes of Meetings. Minutes of meetings of the Board of Directors and Association shall include the recorded vote of each Board member on all motions except motions voted on in executive session. The minutes of meetings of the Board of Directors and Association shall be available for examination by apartment owners at convenient hours at a place designated by the Board of Directors. The most current minutes of the Board of Directors, once approved, shall be available to any owner at no cost or on twenty-four hour loan at a convenient location designated by the Board. Copies of other meeting minutes shall be provided to any owner upon the Owner's request provided that the owner pays a reasonable fee for duplication, postage, stationery and other administrative costs associated with handling the request.

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

Minutes of all meetings shall be available within seven calendar days after approval and unapproved final drafts of the minutes of a meeting shall be available within sixty days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session. (See Endnote 4)

## ARTICLE II

### BOARD OF DIRECTORS

Section 1.     Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of nine (9) persons, each of whom shall be the sole owner or co-owner of record of an apartment, or the vendee thereof under an Agreement of Sale, or in the case of a corporate owner, shall be an officer or employee of such corporation, or in the case of a fiduciary owner, shall be the fiduciary or an officer or an employee of such fiduciary. The partners in a general partnership and the general partner of a limited partnership shall also be deemed owners of an apartment for such purpose. No resident manager of the project shall serve on the Board of Directors. The election of directors shall be subject to the following additional requirements:

A.     A majority of the directors shall be residents of the State of Hawaii and shall also be residents of apartments in the project

B.     At least three (3) directors shall be residents of apartments in the "Resolution" tower and at least three (3) members of the Board shall be residents in the "Endeavour" tower; and

C.     One (1) director shall at all time be the owner of the Commercial Unit or an officer of said owner if it is a corporate entity; provided, that said director shall have the power to vote only on matters pertaining to the administration of the common elements (excluding limited common elements which are appurtenant only to the residential units) or affecting the Commercial Unit or the commercial elements.

Directors shall not expend Association funds for their travel, Director's fees, and per diem, unless owners are informed and a majority approve of these expenses. (See Endnote 5)

Section 2.     Powers. The Board of Directors shall have all powers necessary for the administration of the affairs of the Association and may do all such acts and things therefor except (i) those acts or things which are by law, the Declaration or these By-Laws directed to be exercised or done only by the apartment owners, and (ii) those acts or things which are reserved to the owner of the Commercial Unit by these By-Laws.

Section 3.     Election and Term. Election of directors shall be by cumulative voting by secret ballot at each annual meeting and each special meeting called for the purpose, with the three (3) directors representing each of the residential towers to be elected solely by the residents of such tower and two (2) "at-large" director to be elected by the vote of all apartment owners.

Directors shall hold office for a period of three years and until their respective successors have been elected, subject to removal as herein provided, except that at the first annual meeting three (3) directors (consisting of one director each from both of the residential towers and one (1) "at large" director) shall be elected for one year, three (3) directors (consisting of one director each from both of the residential towers and the director representing the owner of the Commercial Unit) for two years and three (3) directors (consisting of one director each from both of the residential towers and one (1) "at-large" director) for three years.

Section 4. Vacancies. Except as provided in the following paragraph, any vacancies in the Board of Directors (other than a vacancy caused by the natural expiration of the term of a director) shall be filled by vote of a majority of the remaining directors (who, in the case of any vacancy in any seat held by the director designated by the owner of the Commercial Unit, shall fill such vacancy from among a slate of nominees presented by the owner of such unit), even though they may constitute less than a quorum, and each person so elected shall serve until his successor is elected at the next annual meeting of the Association. Death, incapacity or resignation of any director, or his continuous absence from the State of Hawaii for more than six months, or the corporation or partnership of which he is an officer, employee or partner ceasing to be the sole owner or co-owner of an apartment (except in the case of the director representing the Commercial Unit), shall cause his office to become vacant.

Section 5. Removal of Directors. At any regular or special meeting of the Association, duly called, any one or more of the directors may be removed with or without cause by vote of a majority of apartment owners and a successor shall be elected to fill the vacancy thus created. Such removal and replacement shall be in accordance with all applicable requirements and procedures in these By-Laws for the removal and replacement of Directors, including, but not limited to, any provision relating to cumulative voting. If such removal and replacement is to occur at a special Association meeting, the call for such meeting shall be by the President or by a petition to the Secretary or Managing Agent signed by not less than twenty-five percent of the apartment owners as shown in the Association's record of ownership; and provided further that if the Secretary or Managing Agent shall fail to send out the notice for the special meeting within fourteen days of receipt of the petition, then the petitioners shall have the authority to set the time, date and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of these By-Laws. Except as otherwise

provided herein, such meeting for the removal and replacement from the office of directors shall be scheduled, noticed and conducted in accordance with these By-Laws. Any director whose removal has been proposed by the apartment owners shall be given an opportunity to be heard at such meeting. (See Endnote 6)

Section 6. Annual Meeting. An organizational meeting of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association, and no notice shall be necessary to any directors in order validly to constitute such meeting, provided that a majority of the whole Board shall be present. At such meeting the Board shall elect the officers of the Association for the ensuing year.

Section 7. Regular Meeting. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least one such meeting shall be held during each calendar quarter every year. Notice of regular meetings of the Board shall be given to each director, personally or by mail, telephone or telegraph, at least three business days prior to the date of such meeting. For purposes of this and the following paragraphs, notice shall be deemed to be delivered forty-eight (48) hours after it has been deposited in the mail, or twelve (12) hours after communicated to a telegraph agent.

Section 8. Special Meetings. Special meetings of the Board may be called by the President on at least eight (8) hours' notice to each director, given personally or by telephone or telegraph, which notice shall state the time, place and purpose of such meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and with like notice on the written request of at least two directors.

Section 9. Waiver of Notice. Before, or at any meeting of the Board of Directors any director may in writing waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice to him of such meeting. If all the directors are present at any meeting of the Board, no notice thereof shall be required, and any business may be transacted at such meeting.

Section 9A. Posting of Notice. Whenever practicable, notice of all Board meetings shall be posted by the resident manager or a member of the Board in prominent locations within

the project seventy-two hours prior to the meeting or simultaneously with notice to the Board of Directors. (See Endnote 7)

Section 10. Quorum of Board. At all meetings of the Board of Directors a majority of the total number of directors established by these By-Laws shall constitute a quorum for the transaction of business, and action by a majority of the directors present at any meeting at which a quorum is present shall constitute action by the Board, provided that with reference to any business to be transacted by the Board which does not affect the common elements, the Commercial Unit or the commercial elements, the director appointed by the Owner of the Commercial Unit shall not be included or considered in determining the presence or absence of a quorum. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 10A. Owner Attendance at Board Meetings. All meetings of the Board of Directors, other than executive sessions, shall be open to all members of the Association, and Association members who are not on the Board of Directors may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Board of Directors votes otherwise.

The Board of Directors, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters or litigation in which the Association is or may become involved. The nature of any and all business to be considered in executive session shall first be announced in open session. (See Endnote 8)

Section 11. Temporary Vacancy. In case of temporary vacancy due to the absence of any director from the state, or the sickness or disability of any director, the remaining directors, whether constituting a majority or a minority of the whole Board (or the owner of the Commercial Unit in the case of any directors appointed by such owner), may appoint some person as a substitute director, which person shall be an apartment owner. Such substitute director shall act as a director during the absence or disability of the director for whom he substitutes.

Section 12. Fidelity Bonds. In compliance with Sections 514A-95 and 514A-95.1, Hawaii Revised Statutes, the Board of Directors shall require that all officers, employees and agents of the Association handling or responsible for its funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association as a common expense. Notwithstanding the foregoing, the Managing Agent, at its own expense, shall obtain its own fidelity bonds covering its officers, employees and other agents in such amounts and from such insurer as may be required by the Board of Directors. (See Endnote 9)

Section 13. Conflicts of Interest. A Director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made. No director shall vote at any board meeting on any matter in which he or she has a conflict of interest. The existence of a conflict of interest shall be determined by a majority in number of the Board of Directors, excluding the director who is alleged to have a conflict of interest. (See Endnote 10)

Section 14. Audit. In accordance with Section 514A-96, Hawaii Revised Statutes, the members of the Association of Apartment Owners shall require, by vote at the annual meeting, a yearly audit of the Association books by a certified public accountant. The Association shall also make available or distribute copies of the audited financial statement as required by Section 514A-96, Hawaii Revised Statutes. (See Endnote 11)

Section 15. Documents to be Furnished to Directors; Education Expenses. The Association, at its own expense, shall provide all Board members with a current copy of the Association's Declaration, By-Laws, House Rules, and annually, a copy of Chapter 514A with amendments.

The Directors may expend association funds, which shall not be deemed to be compensation to the Directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as Directors; provided that the approved annual operating budget include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this

subsection shall be subject to the requirements of Section 514A-82(b)(10), Hawaii Revised Statutes. (See Endnote 12)

Section 16. Duty of Directors. Each Director shall owe the Association a fiduciary duty in the performance of the Director's responsibilities. (See Endnote 13)

Section 17. Prohibition on Employment of Officers. An owner shall not act as an officer of the Association and an employee of the Managing Agent employed by the Association. (See Endnote 14)

Section 18. Prohibition on Employees Selling or Renting Units. The Association's employees shall not engage in selling or renting apartments in the project except Association-owned units, unless such activity is approved by an affirmative vote of sixty-five percent of the Association members. (See Endnote 15)

### ARTICLE III

#### OFFICERS

Section 1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of who shall be elected by, and in the case of the President, from, the Board of Directors. The Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary.

Section 2. Election and Term. The officers of the Association shall be elected annually by the Board of Directors at its annual meeting and shall hold office at the pleasure of the Board.

Section 3. Removal. Any officer may be removed either with or without cause by vote of a majority of the members of the Board of Directors and his successor shall be elected at any regular meeting of the Board or any special meeting called for such purpose in accordance with these By-Laws.

Section 4. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. Subject to the control of the Board, he shall exercise general supervision and direction over the

management and conduct of the business and affairs of the Association. He shall also have such other powers and duties as may be provided by these By-Laws or assigned to him from time to time by the Board.

Section 5.     Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board of Directors, give all notices thereof as provided by these By-Laws, maintain and keep a continuous and accurate record of ownership of all apartments, have charge of such books, documents and records of the Association as the Board may direct, and in general perform all the duties incident to the office of Secretary.

Section 6.     Treasurer. The Treasurer shall maintain and keep the financial records and books of account of the Association, prepare regular reports thereof and be responsible for the proper deposit and custody in the name of the Association of all its funds and securities. The Treasurer may be a corporation.

Section 7.     Auditor. The Association shall require the appointment of a certified public accountant as auditor, who shall not be an officer of the Association nor own any interest in any apartment, to audit the books and financial records of the Association as required by Article II, Section 14 of these By-Laws or as directed additionally by the Board of Directors. (See Endnote 16).

Section 8.     Commercial Unit. Nothing in this Article III shall give the Association or its officers any powers or duties over the management of the Commercial Unit, or any commercial element, which powers and duties shall be vested in the owner or owners of the Commercial Unit as hereinafter provided.

## ARTICLE IV

### ADMINISTRATION

Section 1.     Management. The Board of Directors shall have the power and duties necessary for the administration of the affairs of the project and may do all acts and things except as may be otherwise expressly prohibited by law, or by the Declaration or these By-Laws. Such powers and duties shall include, but shall not be limited to, the following:

- A.     The Board of Directors shall be the exclusive agent for the Association in



the exercise of the management and control of the common elements and the residential elements; provided that the owner of the Commercial Unit shall supervise the management and operation of the commercial elements.

B. The Board shall have the exclusive power to contract for all goods and services necessary in the operation of the common elements and residential elements; provided, however, the Association may, by resolution adopted at a meeting duly called for the purpose, prohibit any proposed action by the Board of Directors which has not yet imposed an enforceable obligation on the Board of Directors or the Association; provided that nothing herein shall be construed to require that a meeting of the Association be called for the purpose of approving or disapproving any such proposed action by the Board.

C. The Board of Directors may, from time to time, adopt and/or amend administrative rules and regulations governing the details of the operation and use of the common elements and the residential elements (excluding the commercial elements); provided, however, that no such administrative rules or regulations shall be effective if disapproved by a resolution of the Association adopted at a meeting duly called for the purpose; provided, further, that nothing herein shall be construed to require that a meeting of the Association be called for the purpose of approving or disapproving administrative rules and regulations adopted by the Board of Directors.

D. Within 30 days prior to the beginning of each fiscal year, the Board of Directors shall cause to be prepared a budget covering the itemized estimated income of the common elements and residential elements, if any, from all sources and the estimated cost of maintaining and operating the Condominium Property Regime during the ensuing fiscal year, including all expenses for taxes, insurance premiums, improvements, assessments, utility charges, maintaining and operating expenses, and all other charges and outgoings of any description to which the Association, or the common elements or residential elements may be assessed or become liable. The common expenses may also include such amounts as the Board may deem proper to make up any deficit in the common expenses for any prior year, and/or any reserve fund for the operation and maintenance of the project, including, without limitation, anticipated needs for working capital of the project and for replacements, repairs and contingencies. In addition to the budget, the Board of Directors shall prepare a schedule of

monthly assessments against each apartment owner for his proportionate share of such estimated cost of maintaining and operating the property of the Condominium Property Regime for such ensuing year. The Board of Directors shall thereupon call a meeting of the Association for the purpose of approving such budget, and upon the failure of the proposed budget to win approval, for further consideration together with such amendments as may be proposed by any apartment owner. A resolution of the Association adopted by a majority of the apartment owners at such meeting approving such budget, as it may be amended, is hereby deemed to be the levy of assessment on each apartment owner of his proportionate share of the expenses so approved, which share shall be that percentage of the total assessment as shall equal the common interest appertaining to his apartment as expressed in the Declaration. Upon the recommendation of the Board of Directors, the budget and the assessments levied pursuant to this section may be adjusted from time to time by a resolution of the Association adopted by a majority of the apartment owners at a meeting called for such purpose. Such assessments shall be due and payable in monthly installments in advance on the first day of each and every month after the sums are levied, without notice, and shall be paid to the Board of Directors or its designate, on behalf of the Association, at its principal office or at such other place the Board of Directors shall designate. When the first Board of Directors elected hereunder takes office, it shall prepare a budget as hereinabove provided, for the period commencing after said election and ending on the last day of the fiscal year in which said election occurred. Said budget shall be approved and assessments levied as hereinabove provided. In the event that assessments received during any year are in excess of the actual expenditures for such year by the Association for common expenses of the project, the Association, by majority vote of its members, may determine that such excess shall be:

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

The proportionate interest of each apartment owner in said capital contributions or

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

D1. Budgets and Reserves. (a) The Board of Directors shall prepare and adopt an annual operating budget and distribute it to the apartment owners. At a minimum, the budget shall include the following:

- (1) The estimated revenues and operating expenses of the Association;
- (2) Information as to whether the budget has been prepared on a cash or accrual basis;
- (3) The total replacement reserves of the Association as of the date of the budget;
- (4) The estimated replacement reserves the Association will require to maintain the property, based on a reserve study performed by the Association;
- (5) A general explanation of how the estimated replacement reserves are computed;
- (6) The amount the Association must collect for the fiscal year to fund the estimated replacement reserves; and
- (7) Information as to whether the amount the association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to paragraph (4).

(b) The association shall assess the apartment owners to either fund a minimum of fifty per cent of the estimated replacement reserves or fund one hundred per cent of the estimated replacement reserves when using a cash flow plan. For each fiscal year, the association shall collect the amount assessed to fund the estimated replacement reserves for that fiscal year

reserves, as determined by the association's plan except that the Association may follow rules adopted by the Real Estate Commission to permit an association to fund in increments, over three years, estimated replacement reserves which have been substantially depleted by an emergency.

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

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

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

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

(e) At the request of the Real Estate Commission, the Association shall provide a copy of the annual operating budget of the Association as part of the Association's registration with the commission under Section 514A-95.1, Hawaii Revised Statutes.

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

(g) The requirements of this section shall override any requirements in the Association's Declaration, By-Laws, or any other Association documents relating to preparation

of budgets, calculation of reserve requirements, assessment and funding of reserves, with the exception of:

- (1) Any provisions relating to the repair and maintenance of property,
- (2) Any requirements in the Association's Declaration, By-Laws, or any other Association documents which require the Association to collect more than fifty per cent of reserve requirements; or

- (3) Any provisions relating to upgrading the common elements, such as additions, improvements, and alterations to the common elements.

(h) Subject to the procedures of Section 514A-94, Hawaii Revised Statutes, and any rules adopted by the Real Estate Commission, if the Board fails to comply with this section, any apartment owner may enforce compliance by the Board. In any proceeding to enforce compliance, if the Board has not prepared an annual operating budget and reserve study, the Board shall have the burden of proving it has complied with this section.

(i) As used in this section:

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

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

"Emergency situation" means extraordinary expenses:

- (1) Required by an order of a court;
- (2) Necessary to repair or maintain any part of the property for which the Association is responsible where a threat to personal safety on the property is discovered;

(3) Necessary to repair any part of the property for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget; or

(4) Necessary to respond to any legal or administrative proceeding brought against the Association that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget.

(5) Necessary for the Association to obtain adequate insurance for the property which the Association must insure.

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

“Replacement reserves” means funds for the upkeep, repair, or replacement of those parts of the property including, but not limited to roofs, walls, decks, paving, and equipment, which the Association is obligated to maintain. (See Endnote 17)

E. The Board of Directors shall acquire for the benefit of the apartment owners, and shall pay for out of the funds collected pursuant to paragraph D of this section, all things necessary or proper for the operation of the project and, in addition, shall pay for all expenses incurred which are designated common expenses by Chapter 514A of the Hawaii Revised Statutes, as amended, the Declaration, or these By-Laws, including the following:

(1) Water, sewer, garbage, electricity, telephone and gas and other necessary utility services for the common elements and residential apartments (if not separately metered or charged to the apartments), and maintenance and gardening service for the common elements and residential elements.

(2) Unless otherwise expressly provided, painting, maintenance and repair of the common elements and residential elements, (but not including the interior surfaces of the apartments, which the owners thereof shall paint, maintain and repair) and such furnishings and equipment for the common elements and residential elements as the Board shall determine are necessary and proper, and the Board shall have the exclusive right and duty to acquire the same.

(3) Any other materials, supplies, furniture, labor, services,

maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board is required to secure or pay for pursuant to the terms of these By-Laws or which in its opinion, shall be necessary or proper for the proper operation of the common elements or residential elements, or for the enforcement of these By-Laws; provided that if any such materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments are provided for a single apartment, the costs thereof shall be separately assessed to the owner of such apartment.

(4) Maintenance and repair of any residential apartment, if such maintenance and repair is necessary, in the discretion of the Board of Directors, to protect the common elements or residential elements, and if the owner or owners of said apartment have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board of Directors to said owner or owners; and in furtherance of the foregoing, the Board of Directors may levy a special assessment against such apartment unit for the cost of said maintenance and repair.

(5) Policies of hazard and liability insurance as set further in Section 2 of Article VI hereof.

(6) Workmen's compensation insurance and temporary disability insurance to the extent necessary to comply with any applicable law.

(7) The services of a person or firm to manage the common elements and residential elements (herein called the Managing Agent), to the extent deemed advisable by the Board, as well as such other personnel as the Board shall determine to be necessary or proper for the operation of the project, whether such personnel are employed directly by the Board of Directors or are furnished by the Managing Agent.

(8) Legal and accounting services necessary or proper in the operation of the common elements and residential elements, or the enforcement of these By-Laws.

(9) The Board of Directors shall also pay any amount necessary to discharge any lien or encumbrance which may, in the opinion of the Board of Directors, constitute a lien against the project or against the common elements rather than merely against the interest therein of a particular owner or owners. Where one or more owners are responsible

for the existence of such lien, they shall be jointly and severally liable for the cost of discharging the same.

F. The Board of Directors may enter any apartment when necessary in connection with the maintenance or repair or construction for which the Board of Directors is responsible. Such entry shall be made with as little inconvenience to the owner as is practical, and any damage caused thereby shall be repaired by the Board of Directors at the expense of the Association of Apartments Owners, and such expenses are hereby designated a common expense.

G. The Board of Directors is authorized from time to time to lease or rent appropriate living quarters to the Managing Agent or other employees, with or without charge, and to enforce, modify and make agreements with respect to any lease or tenancy of any portions of the common elements on behalf of the apartment owners.

H. The Board of Directors, pursuant to authority expressly granted by a vote of a majority of the apartment owners at a meeting duly called for such purpose, may borrow money or otherwise incur indebtedness on behalf of the Association for the purpose of maintaining, repairing or restoring any portions of the common elements within its jurisdiction and control or for any other purpose which is permitted or authorized under these By-Laws.

I. The Board of Directors shall represent the apartment owners in determining or renegotiating the annual rental for the land described in the Declaration.

J. The Board of Directors may purchase apartments of the Project at foreclosure or other judicial sales, on behalf of all apartment owners, and thereafter sell, lease, mortgage, vote the common interest appurtenant to and otherwise deal with such apartments.

K. Nothing herein contained shall be construed to give the Board of Directors authority to conduct an active business for profit on behalf of the apartment owners, or any of them, or the Association.

L. Notwithstanding any other provision contained in these By-Laws, the Board of Directors shall have the power to do the following things in order to arrange for the purchase of the leased fee interest underlying the Project (hereinafter referred to as the "leased fee interest"):



(1) to waive the Association's right of first refusal as set forth in Chapter 514C, Hawaii Revised Statutes, and to proceed with negotiating a leased fee purchase on behalf of the individual apartment owners;

(2) to do all things necessary or reasonably appropriate in order to obtain the agreement of the owner(s) of the leased fee interest under the Project to accomplish a sale of:

(a) undivided leased fee interests in the land to the individual apartment owners wishing to purchase the leased fee interests appurtenant to their respective apartments;; and

(b) the remaining undivided leased fee interests in the land, not by the individual apartment owners to the Association;

(3) to do all things necessary or reasonably appropriate in order to negotiate with the fee owner(s) as to the purchase price and terms for submittal to the apartment owners;

(4) to advise the apartment owners on all matters with respect to any offer to sell the leased fee interest made by the fee owner(s) or their agent(s), directly to the apartment owners, including, without limitation, advising the apartment owner on whether the Board of Directors believes such offer by the fee owner(s) is fair and reasonable and whether the Board of Directors recommends such offer be accepted or rejected;

(5) to do all things necessary and reasonably appropriate to borrow the money on behalf of the Association to purchase the leased fee interest not purchased by the individual apartment owners and to own and lease such leased fee interest, including establish a land trust, and the costs and expenses of the ownership of such leased fee interest shall constitute common expenses of the Project and the Board of Directors may make normal and special assessment to pay such expenses;

(6) to do all things necessary or reasonably appropriate in order to negotiate with the owner(s) of the leased fee interest to obtain their agreement to sell less than one hundred percent (100%) of the leased fee interest at the discretion of the Board of Directors as an alternative to having the Association purchase the remaining leased fee interest not purchased by the individual apartment owners;

(7) to do all things necessary or reasonably appropriate in order to negotiate

with a third party or parties for the purchase by such third party or parties of the remaining leased fee interest not purchased by the individual apartment owners and to sell such remaining leased fee interest to such third party or parties;

(8) to do all things necessary or reasonably appropriate in order to negotiate financing for the purchase price with the fee owner(s) and lending institutions for the apartment owners and/or the Association;

(9) to be the exclusive representative of the individual apartment owners and the Association to negotiate with the fee owner(s) on behalf of the Association and the individual apartment owners;

(10) to employ attorneys, consultants, appraisers and other experts and agents on behalf of the Association in connection with the above matters upon such terms and conditions as the Board of Directors may deem desirable in its sole discretion;

(11) to incur costs and expenses in connection with the above matters which costs and expenses shall constitute common expenses of the Association and to pay such expenses out of the Association's general fund and/or to make normal or special assessments to pay such expenses and

(12) to perform all acts and execute and deliver all instruments and documents which the Board of Directors may deem necessary to carry out the purpose of these resolutions and amendments, including, without limitation, all instruments and documents which the Board of Directors may deem necessary to acquire a property or properties from a third person or persons solely for the purpose of exchanging such property or properties with the fee owner in order to acquire the land under the Project as part of a tax-deferred exchange with the owner.

All costs and expenses incurred by the Board of Directors on behalf of the Association in connection with any and all of the above matters shall constitute common expenses of the Project whether or not the leased fee purchase is consummated; provided, however, if the leased fee purchase is completed, the Board of Directors, in its sole discretion, may prorate the common expenses in whole or in part among the apartment owners who purchase their leased fee interests. If the leased fee purchase is not completed, the common expenses will be paid and collected as a normal or special assessment or paid out of the Association's general fund.

If the Association acquires any portion of the leased fee interest in the manner and upon the conditions described above, the Board of Directors shall be empowered to take all action and do all things as it deems necessary or reasonably appropriate to hold and administer the interest so acquired, including but not limited to conveying such interest or any portion thereof into a trust or other separate entity, the beneficial interest of which is entirely owned by the Association, setting, arbitrating and collecting lease rents, and selling and conveying all or a portion of such interest to third parties. All costs and expenses incurred by the Board of Directors in purchasing and administering the leased fee interest on behalf of the Association shall constitute common expenses of the Association.

The Association and the individual apartment owners shall release, indemnify and hold the Board of Directors, its individual members, its agents, and the Managing Agent harmless for any and all acts or omissions done or omitted in good faith in connection with the purchase of the leased fee interest for the Project, including, without limitation, all advice given by the Board of Directors, its individual members, its agents or the Managing Agent to the Association or individual apartment owners with respect to any offer to sell the leased fee interest made by the fee owner or its agent directly to the apartment owners, all advice regarding the price of such offer or whether the Board of Directors recommends that such offer be accepted or rejected. This indemnity specifically includes, without limitation, action for libel and slander and interference with contractual relations brought against the Board of Directors, its individual members, its agents or the Managing Agent as a result of their activities regarding the leased fee purchase. (See Endnote 18)

Section 2. Managing Agent. The Board of Directors shall annually employ a responsible Hawaii corporation as Managing Agent (herein called the "Managing Agent"), who meets the requirements of Section 514A-95, Hawaii Revised Statutes, to manage and control the portion of the project within the management jurisdiction of the Board, subject at all times to direction by the Board, with all the administrative functions set forth specifically in the preceding Section 1 and such other duties and at such compensation as the Board may establish; provided, however, that at such time as the Association becomes incorporated as a non-profit corporation under the laws of the State of Hawaii, the Association, through the Board, may exercise all of the powers, rights, duties and responsibilities of the Managing Agent. If the Association, through the Board, exercises the powers, rights, duties and responsibilities of the

Managing Agent, the Board shall, on behalf of the Association, contract with one or more responsible Hawaii corporations or individuals (who shall be bonded in accordance with the requirements of Chapter of 514A, Hawaii Revised Statutes, as the same now exists or may be amended from time to time) to handle the physical and fiscal affairs of the Association, including, without limitation, maintenance and repair of the common elements, the collection of all assessments and payment of all expenses required to be paid by or on behalf of the Association. Such corporations or individuals shall at all times be free from any conflict of interest (as determined by the Board), at all times be subject to direction by the Board, and have such powers and duties as the Board shall deem advisable. All of the terms of each contract described in the preceding sentences of this section 2 of Article IV shall be approved in advance by a majority of owners of all residential units; provided, however, that if any such contract shall expire or be terminated before a regular annual meeting of the Association, the Board, without prior approval of the Association, shall be and is authorized to enter into contracts for such services on an interim basis until the next regular annual meeting of the Association. (See Endnote 19).

Section 3.     Representation. The President or Managing Agent, subject to the direction of the Board of Directors, shall represent the Association or any two or more apartment owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the common elements, the residential elements or more than one residential apartment, and on its or their behalf may institute, defend, intervene in, prosecute and settle any such actions, suits and proceedings, without prejudice to the rights of any apartment owner individually to appear, sue or be sued. Service of process on two or more apartment owners in any such action, suit or proceeding may be made on the President or Managing Agent.

Section 4.     Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts and other instruments shall be signed on behalf of the Association by such person or persons as shall be provided by general or special resolution of the Board of Directors or, in the absence of any such resolution applicable to such instrument, by the President or Vice-President and by the Treasurer or Secretary.

Section 5.     Commercial Unit. Notwithstanding anything provided or inferable in these By-Laws to the contrary, the operation of the Commercial Unit and commercial elements,

including (a) the administration and operation of the Commercial Unit and commercial elements and the maintenance, repair, and replacement thereof, and the making of any additions and improvements thereto, and (b) the provision of electricity, water and other utilities and services to the Commercial Unit, shall be vested solely and exclusively in the owner of the Commercial Unit (the costs of which shall be, to the maximum extent practicable, separately metered or charged to the Commercial Unit). The owner of the Commercial Unit shall have the right, from time to time, to adopt, amend or repeal any rules or regulations governing the use of said unit and the commercial elements.

Section 6. Allocation of Common Expenses. Subject to Section 7 of this Article IV, all charges, costs and expenses incurred by the Association for and in connection with the operation, maintenance, repair, replacement and restoration of the common elements shall first be allocated between the Commercial Unit and the residential units as a whole in proportion to their common interests, and the costs so allocated to the residential units shall then be further allocated among the individual residential units in proportion to their common interests. The Association shall, through the Board of Directors, repair and make good all defects or damages in the common elements of which notice shall be given by the owner of the Commercial Unit within ten (10) days after the giving of such notice or within such additional time as may be reasonably necessary to make such repairs or restoration, if the Association shall refuse or neglect to commence and complete such repairs as provided herein, the owner of the Commercial Unit may make such repairs or cause the same to be made, and the Board shall forthwith on demand pay to the owner of the Commercial Unit the costs thereof, with interest thereon at the rate of one percent (1%) per month.

Section 7. Exterior Maintenance. Notwithstanding anything provided herein or in the Declaration to the contrary, the owner of the Commercial Unit shall be solely responsible for the painting and maintenance (but excluding the repair or replacement of structural elements) of that portion of the facade of the Project which is situate within the B-5 commercial zoning district (as shown on the Condominium Map), up to the bottom of the floor slab on the fifth floor. The facade and the other exterior portions of the Project shall at all times present a uniform or harmonious appearance, and the residential owners and the owner of the Commercial Unit shall coordinate their respective maintenance programs to insure that compatible colors are utilized in any repainting of the exterior of the Project and that any such maintenance work is done in an

efficient manner which shall cause the least practicable interference and annoyance to the owners, tenants and users of the Project.

Section 8. Arbitration. If any dispute or difference shall arise between the Association and the Owner of the Commercial Unit with respect to the interpretation or implementation of Section 6 or Section 7 of this Article IV, the matter in dispute shall be settled by arbitration in accordance with the provisions of Chapter 658 of the Hawaii Revised Statutes as amended, and if any such disputed matter involves the taking of any action or the payment of any sum required under the Declaration or these By-Laws, the party aggrieved shall nonetheless take such action or pay such sum at the time and in the manner provided in said Declaration and these By-Laws pending the entry of an award in any such arbitration proceeding (or any appeal therefrom) to insure the efficient operation and administration of the project.

## ARTICLE V

### OBLIGATIONS OF APARTMENT OWNERS

Section 1. Assessments. Each apartment owner shall pay to the Managing Agent in advance on the first day of each and every month the monthly installments of assessments against his apartment for the common expenses of the project for which his apartment is responsible in accordance with the Declaration, and also a monthly sum determined by the Managing Agent to be sufficient to accumulate and pay when due all rent, taxes, assessments and other charges thereunder payable by the owner of such apartment.

Section 1A. Owners May Not Withhold Assessments. (a) No apartment owner shall withhold any assessment claimed by the Association. An apartment owner who disputes the amount of an assessment may request a written statement clearly indicating:

- (1) The amount of common expenses included in the assessment, including the due date of each amount claimed;
- (2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;
- (3) The amount of attorneys' fees and costs, if any, included in the assessment;

(4) That under Hawaii law, an apartment owner has no right to withhold assessments for any reason;

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

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

Nothing in this section shall limit the rights of an owner to the protection of all fair debt collection procedures mandated under federal and state law.

(b) An apartment owner who pays the Association the full amount claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. If the apartment owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under Part VII of Chapter 514A, Hawaii Revised Statutes; provided that an apartment owner may only file for arbitration if all amounts claimed by the Association are paid in full on or before the date of filing. If the apartment owner fails to keep all Association assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the apartment owner pays all Association assessments within thirty days of the date of suspension, the apartment owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all Association assessments by the end of the thirty-day period, the Association may ask the arbitrator to dismiss the arbitration proceedings. The apartment owner shall be entitled to a refund of any amounts paid to the Association which are not owed. (See Endnote 20)

## Section 2. Use of Project.

A. All apartments and the Commercial Unit shall be used only for the purposes provided by the Declaration.

B. All common elements and limited common elements of the project shall be used only for their respective purposes as designed.

C. No apartment owner or occupant shall place, store or maintain in the halls, lobbies, stairways, walkways, ground or other common elements or limited common elements of similar nature any furniture, packages or objects of any kind or otherwise obstruct transit through such common elements or limited common elements. Notwithstanding the foregoing, merchandise displays, kiosks, advertising matter and related things may be placed on or within any commercial elements, subject to the approval of the owner of the Commercial Unit.

D. Every apartment owner and occupant shall at all times keep his apartment in a strictly clean and sanitary condition and observe and perform all applicable laws, ordinances, rules and regulations now or hereafter made by any governmental authority, the Association, or the owner of the Commercial Unit as the case may be.

E. No apartment owner or occupant shall make or suffer any strip or waste or unlawful, improper or offensive use of his apartment or the project nor alter or remove any furniture, furnishings or equipment of the common elements or limited common elements.

F. Except in those cases where construction or alterations are permitted by the Declaration, Article VII of these By-Laws or by Section 514A-89, Hawaii Revised Statutes, no apartment owner or occupant shall erect or place in the project any building or structure, including fences and walls, nor make any additions or alterations to any common elements or limited common elements of the project, except in accordance with plans and specifications including detailed plot plan, prepared by a licensed architect and approved by the Trustee and a majority of apartment owners (or such larger percentage required by law or the Declaration) including all owners of apartment thereby directly affected. (See Endnote 21)

G. No owner of a residential unit shall decorate or landscape any entrance, hallway, planting area or lanai appurtenant to his apartment except in accordance with standards therefor established by the Board of Directors in accordance with specific plans approved in writing by the Board.

H. All occupants shall exercise extreme care about making noises and in the use of musical instruments, radios, televisions and amplifiers that may disturb other occupants.

I. No garments, rugs or other objects shall be hung from the windows or facades of the project.



J. No rugs or other objects shall be dusted or shaken from the windows of the project or cleaned by beating or sweeping on any hallway or exterior part of the project.

K. No refuse, garbage or trash of any kind shall be thrown, placed or kept on any common elements or limited common elements of the project outside of the disposal facilities provided for such purpose.

L. Except as stated in the Condominium Property Regime 514A-82.6 no livestock, poultry, dogs, or other animals whatsoever shall be allowed or kept in any part of the project except that cats, parakeets, canaries, or fish in aquaria in reasonable number as established from time to time by the Board of Directors, may be kept by the residential apartment owners and occupants in their respective apartments but shall not be kept, bred or used therein for any commercial purposes nor allowed on any common elements except in transit when physically carried or on a short leash; provided, that any such pet causing a nuisance or unreasonable disturbance to any other occupant of the project shall be permanently and promptly removed therefrom upon notice given by the Board of Directors or Managing Agent. (See Endnote 22).

M. No owner or occupant of a residential unit shall without the written approval of the Board of Directors install any wiring for electrical or telephone installations, television antenna, machines or air conditioning units, or install anything which is visible from the outside of any building in the project or which changes the appearance of any building in the project.

N. Nothing shall be allowed, done or kept in any apartments or common elements of the project which would overload or impair the floors (including, without limitation, waterbeds), walls or roofs thereof, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Association.

O. Notwithstanding anything to the contrary expressed or implied in the Declaration or these By-Laws, no residential apartment may be used in connection with any time-sharing arrangement whatsoever. A "time-sharing arrangement" shall mean and include any arrangement, plan, scheme, or similar device, whether by membership agreement, tenancy in common, sale, lease, deed, rental agreement, club membership, license, use agreement, security, or by any other means, whereby a person purchases in exchange for advanced consideration a right to annually use a residential apartment for a specific period of time, on either a fixed or floating schedule upon notification and/or reservation during any given year, but not necessarily

for consecutive years and which right to use extends for a period of more than one year, PROVIDED, HOWEVER, that nothing shall prohibit or restrict the offering by an owner to the general public by advertising of said owner's apartment for rental or lease for whatever periods of time said owner may wish to rent or lease said unit as long as said rental periods [which are less than one month] do not grant to the lessee a right to use said unit on an annually recurring basis for a period of more than one year. (See Endnote 23).

P. Notwithstanding anything to the contrary, expressed or implied in the Declaration or the By-Laws, the residential apartments shall not be rented for transient or hotel purposes, which purposes are defined as either: (a) Rental for any period less than thirty (30) days; or (b) or any rental in which the occupant of a residential apartment is provided customary hotel services such as, but not limited to, room service for food or beverages, maid service, laundry and linen, or bellboy service. (See Endnote 24).

Section 3. Expenses of Enforcement. Every apartment owner shall pay to the Association promptly on demand all costs and expenses including reasonable attorneys' fees incurred by or on behalf of the Association in collecting any delinquent assessments made against such apartment, foreclosing its lien therefor or enforcing any provisions of the Declaration or these By-Laws against such owner or any occupant of such apartment.

Section 4. Record of Ownership. Every apartment owner and purchaser of an apartment under an Agreement of Sale shall promptly cause to be duly recorded or filed of record the conveyance to him of such apartment or other evidence of his title thereto and shall file such conveyance with and present such other evidence of his title to the Board of Directors through the Managing Agent, who shall keep an accurate and current list of the names and addresses of members of the Association and purchasers of apartments under an Agreement of Sale. Such list shall be maintained at the place designated by the Board of Directors.

Section 5. Mortgages. Any apartment owner who mortgages his apartment or any interest therein shall notify the Board of Directors through the Managing Agent of the name and address of his mortgagee, and also of the release of such mortgage, and the Secretary shall maintain all such information in the record of ownership of the Association. The Board of Directors or Managing Agent at the request of any mortgagee or prospective purchase of any apartment or interest therein shall report to such person the amount of any assessments against

such apartment then due and unpaid. The Board of Directors, when giving notice to an apartment owner of a default in the payment of common expenses or other default, shall send a copy of such notice to each holder of a mortgage covering such apartment or interest therein to the Board of Directors whose name and address has heretofore been furnished.

Section 6. Rental or Leasing. If an apartment owner shall lease or rent his apartment and shall default for a period of one month in the payment of his assessment installments and/or such other sums which he may be required to pay, the Board of Directors may demand and receive from the tenant or undertenant the rent due from the tenant or undertenant to the apartment owner, up to an amount sufficient to pay all sums due from the apartment owner to the Board of Directors on behalf of the Association of Apartment Owners, and any such payment to the Board of Directors shall be sufficient to discharge the tenant or undertenant, as between tenant or undertenant and the apartment owner, to the extent of the amount so paid. Any such demand or acceptance of rent of any tenant or undertenant or from any assignee, shall not be deemed a consent or approval of any letting or underletting or assignment by the apartment owner, or a release or a discharge of any of the obligations hereunder.

Section 7. Maintenance of Apartments. Every apartment owner shall at his own expense at all times well and substantially repair, maintain, amend and keep his apartment, including without limitation all internal installations therein such as water, electricity, gas, telephone, sewer, sanitation, air conditioning, lights and all other fixtures and accessories belonging to such apartment, the interior decorated or finished surfaces of all walls, doors, floors and ceilings of such apartment, all window panes and any appurtenant storage areas, with all necessary reparations and amendments whatsoever in good order and condition, except as otherwise provided by law or the Declaration, and shall be liable for all costs, loss or damage whatsoever caused by his failure to perform any such work diligently, and in case of such failure after reasonable notice to perform shall reimburse to the Association promptly on demand all expenses incurred by it in performing any such work authorized by the Board of Directors or the Managing Agent. Every apartment owner and occupant shall reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the common elements or any furniture, furnishings and equipment thereof caused by such owner or occupant or any person under either of them and shall give prompt notice to the Managing Agent of any such loss or damage or other defect in the project when discovered.

## ARTICLE VI

### MISCELLANEOUS

Section 1. Amendment. These By-Laws may be amended in any respect not inconsistent with provisions of law or the Declaration by the vote or written consent of sixty-five percent (65%) of all apartment owners; provided, that any such amendment which affects the use or operation of the Commercial Unit or the commercial elements or which alters the rights and obligations of the owner of the Commercial Unit hereunder shall require the consent of the owner of the Commercial Unit; provided, further, that any such amendment shall also require the consent of the Bank of Hawaii so long as any construction loan mortgage in favor of said bank shall remain of record; provided further, that any proposed By-Law amendment with the rationale for the proposal may be submitted by the Board of Directors or by a volunteer apartment owners' committee. If submitted by that committee, it shall be accompanied by a petition signed by not less than twenty-five per cent of the apartment owners as shown in the Association's record of ownership. The proposed By-Laws, rationale, and ballots for voting on any proposed By-Law shall be mailed by the Board of Directors to the owners at the expense of the Association for vote or written consent without change within thirty days of the receipt of the petition by the Board of Directors. The vote or written consent required to adopt the proposed By-Law shall not be less than sixty-five per cent of all apartment owners; provided that the vote or written consent must be obtained within one hundred twenty days after mailing. In the event that the By-Law is duly adopted, then the Board shall cause the By-Law amendment to be recorded in the Bureau of Conveyances. The volunteer apartment owners' committee shall be precluded from submitting a petition for a proposed By-Law which is substantially similar to that which has been previously mailed to the owners within one year after the original petition was submitted to the Board. This subsection shall not preclude any apartment owner or voluntary apartment owners' committee from proposing any By-Law amendment at any annual Association meeting. (See Endnote 25)

Section 2. Insurance.

A. Fire and Extended Coverage Insurance.

The Board of Directors and the owner of the Commercial Unit shall jointly procure and

maintain from a company or companies qualified to do business in Hawaii a policy or policies (herein called the "Policy") of fire insurance, with endorsements for extended coverage, special extended coverage, vandalism and malicious mischief and flood (if, and to the extent coverable), and during time of war, to the extent that the same is reasonably obtainable, against war risks (from any source) for as nearly as practicable to the full replacement cost, without deduction for depreciation, covering the apartments and fixtures therein (including in the case of residential apartments, carpets, drapes and appliances which were included in the original price of each apartment, or their replacements) and all buildings and their fixtures and building service equipment (excluding those parts of the buildings normally excluded from such policies). All premiums on the Policy fairly allocable to that portion of the Policy which pertains to insuring the Commercial Unit and commercial elements shall be borne only by the owner of the Commercial Unit, and shall be payable by such owner. All premiums on the Policy which are fairly allocable to that portion of the Policy which pertains to insuring the residential elements and residential apartments shall be borne only by the owners of the residential apartments and shall be assessed to them by the Board of Directors. The remainder of all premiums on the Policy shall be borne by all apartment owners in proportion to their respective common interests, and shall be assessed to them by the Board of Directors. The Policy shall name the Board of Directors as insured as (i) trustee for each of the owners of residential units of all insurance proceeds pertaining directly to damage to the residential elements and residential units; (ii) trustee for the owner of the Commercial Unit and the commercial elements of all insurance proceeds pertaining directly to damage to the Commercial Unit and commercial elements; and (iii) trustee for each apartment owner in the project for all other insurance proceeds. The Policy (unless unobtainable):

(1) shall contain no provision limiting or prohibiting other insurance by the owner of any apartment, such right being provided by statute, but if obtainable, shall provide that the liability of the insurer shall not be affected by, nor shall the insurer claim any right of setoff, counterclaim, apportionment, proration, or contribution by reason of any such other insurance;

(2) shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the building, whether or not within the control or knowledge of the Board or the owner of the Commercial Unit or anyone claiming by, through or under either of them; and if obtainable, shall contain no provision relieving the insurer from

liability by reason of any breach of warranty or condition caused by the Board, the owner of the Commercial Unit or the owner or tenant of any apartment, or by reason of any act or neglect of any of the foregoing;

(3) shall provide that the Policy may not be canceled (whether or not requested by the Board or the owner of the Commercial Unit) except by giving to the Board and to the owner and each first mortgagee of each apartment thirty (30) days' written notice of each such cancellation addressed to the owner at the premises and to the mortgagee at its address filed with the Board;

(4) shall contain a provision waiving any right of subrogation by the insurer to any right of the Board against the owner or lessee of any apartment;

(5) shall contain a provision waiving any right of the insurer to repair, rebuild or replace, if a decision is made pursuant to Section 3 of this Article VI not to repair, reinstate, rebuild or restore the damage or destruction;

(6) shall provide that any loss shall be adjusted with the Board or the owner of the Commercial Unit and the mortgagee of any apartment directly affected by the loss;

(7) shall contain a standard mortgagee clause which:

(i) shall name as an additional assured the holder of any mortgage affecting any apartment whose name shall have been furnished to the Board;

(ii) shall provide that the insurance as to the interest of the mortgagee shall not be invalidated by any act or neglect of the Board, the owner of the Commercial Unit or the owner or tenant of any apartment;

(iii) shall waive any requirement invalidating such mortgagee clause by reason of the failure of the mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium (provided, however, in case the Board shall fail to pay the premium due or to become due under the Policy, the mortgagee may pay the same prior to the effective date of the termination of the Policy). any contribution clause, and any right to be subrogated to the rights of any mortgagee against the owner or lessee of any apartment, the Board or the owner of the Commercial Unit, or to require an assignment of any mortgage to the insurer, except that the insurer will have the right of subrogation to the extent of insurance

proceeds received by and retained by the mortgagee if the insurer shall claim no liability as to the mortgagor or owner, but without impairing mortgagee's right to sue;

(iv) shall provide that without affecting the protection afforded to the mortgagee by such mortgagee clause, any proceeds payable under such clause shall be payable to a corporate trustee selected by the Board who shall be a bank or trust company doing business in Honolulu having net assets of not less than Five Million Dollars (\$5,000,000), herein referred to as the "Insurance Trustee";

(v) shall provide that any reference to a mortgagee in the Policy shall include all mortgagees on any apartment, in order of preference;

(8) shall name the Trustee and all apartment owners as insureds; and

(9) shall provide for payment of the proceeds to the Insurance Trustee, except in the case of damage to a single apartment (but not to any appurtenant limited common elements or any common element) in which case the proceeds shall be paid to the owner and mortgagee, if any, of such apartment, as their respective interests may appear.

(10) shall contain a provision requiring the insurance carrier, at the inception of the Policy and on each anniversary date thereof, to provide the Board with a written summary describing said Policy as required by Section 514A-86(c) of the Hawaii Revised Statutes.

**B. Comprehensive Liability Insurance.**

The Board of Directors and the owner of the Commercial Unit shall jointly procure and maintain from a company or companies qualified to do business in Hawaii (and, if necessary, to procure the required coverage from other companies) a policy or policies (herein called the "Policy") of Public Liability Insurance to insure the Board, Trustee, each apartment owner, the Association of Apartment Owners, its employees, and the owner of the Commercial Unit, against claims for bodily injury, personal injury, death and property damage (including, without limitation, non-owned automobile coverage, contractual liability and independent contractors liability) arising out of the condition of the common elements, the residential elements and the commercial elements or activities thereon or elevators therein or contractors or construction work under a Comprehensive General Liability form. The limits of said Policy shall be not less than those required by any Condominium Conveyance Document for any unit. The premiums

shall be fairly allocated by the insurer between the Board and the owner of the Commercial Unit based on the extent to which the premiums are attributable to coverage of those areas in the project within the respective management jurisdiction of each. In the event that the Board and the owner of the Commercial Unit are unable to reach agreement on material matters involving said Policy or Policies, the owner of the Commercial Unit may at its option separately obtain insurance covering the condition of any commercial elements or activities thereon or elevators therein or contractors or construction work thereon, subject to the terms of this paragraph, and said coverage shall not be included in the Policy obtained by the Board. Each Policy (unless unobtainable):

(1) shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in any building, whether or not within the control or knowledge of the Board or the owner of the Commercial Unit, or by any breach of warranty or condition caused by the owner of any apartment, or by any act or neglect of the owner or tenant of any apartment; and

(2) shall provide that the Policy may not be canceled (whether or not requested by the Board or the owner of the Commercial Unit) except by giving to the Board, the owner of the Commercial unit and the owner of each apartment and each first mortgagee of any apartment thirty (30) days' written notice of such cancellation.

Each owner of a residential unit shall have a right of indemnity against the owner of the Commercial Unit, and the owner of the Commercial Unit shall exonerate and save the residential owners harmless from and against all damages, claims, suits or costs (including attorney's fees) for any injury to or death of persons or damage to property of others arising out of or in connection with the operation of the Commercial Unit and incurred as a proximate result of the use and occupancy of said premises by the owner of the Commercial Unit or any person claiming by, through or under the owner of the Commercial Unit.

C. Insurance Against Additional Risks.

The Board or the owner of the Commercial Unit may also procure, as each deems advisable for their respective protection, such insurance against additional risks as may be available with respect to properties of comparable character and use in the City of Honolulu.



D. Miscellaneous Insurance Provisions.

The Board and the owner of the Commercial Unit shall review not less frequently than annually the insurance programs for the Project and, in connection therewith, shall cause the Project to be reappraised on a periodic basis in order to determine the adequacy of the policies of casualty insurance covering the Project. Upon completion of each such review, a written report of their conclusions and action taken on such review shall be furnished to the owner of each apartment and to the holder of any mortgage on any apartment who shall have requested a copy of such report. The Board shall promptly furnish to each mortgagee whose name has been furnished to it a copy of the policy described in paragraph A of this Section 2 and of any other policy to which the mortgagee endorsement shall have been attached, together with proof of payment of all premiums thereon. Copies of each policy of insurance procured by the Board shall be available for inspection by any apartment owner (or purchaser holding a contract to purchase an interest in an apartment) at the office of the Managing Agent. Any coverage procured under this Section 2 shall be without prejudice to the right of the owners of apartments to insure such apartments and the contents thereof for their own benefit at their own expense.

Section 3. Damage and Destruction. If the project is damaged by fire or other casualty which is insured against and said damage is limited to a single residential unit or to the Commercial Unit (and does not extend to any common element or appurtenant limited common element), the insurance proceeds shall be used by the owner and mortgagee, if any, of such apartment to pay the contractor employed by the Board, or the owner of the Commercial Unit in the case of damages to the Commercial Unit, to rebuild or repair such apartment, including paint, floor covering and fixtures, in accordance with the original plans and specifications therefor. If such damage extends to two or more residential apartments or extends to any limited common element or to the common elements, the Board shall thereupon contract to repair or rebuild the damaged portions of the project, including all apartments so damaged, as well as the common elements or limited common elements, in accordance with plans and specifications therefor, which will restore the same to the design immediately prior to destruction, or if reconstruction in accordance with said design is not permissible under the laws then in force, in accordance with such modified plan as shall be previously approved by the Board (or the owner of the Commercial Unit in the case of damage to such unit), the Trustee and the mortgagee of record of any interest in any apartment directly affected thereby; provided, that in the event said modified

plan eliminates any apartment that may have been damaged or destroyed and such apartment is not reconstructed, the Insurance Trustee shall pay to the owner of said apartment that portion of the total insurance proceeds allocable to his common interest (less the proportionate share of said apartment of the cost of debris removal) and shall disburse the balance of insurance proceeds as hereinafter provided for the disbursement of insurance proceeds. If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding the damaged structure, the Board or the Owner of the Commercial Unit in case of damage to the Commercial Unit shall make up any deficiency in the insurance proceeds and if the Board's maintenance fund is insufficient for this purpose, the Board shall levy a special assessment on the owners of the residential apartments or on the owner of the Commercial Unit in case of damage to the Commercial Unit. Any costs in excess of the insurance proceeds for the repairing and/or rebuilding of any apartment shall be specially assessed against such apartment.

The cost of the work (as estimated by the Board or the owner of the Commercial Unit) shall be paid Out from time to time or at the direction of the Board or the owner of the Commercial Unit as the work progresses, but subject to the following conditions:

A. The work shall be in charge of an architect or engineer previously approved by the Trustee, and the owner of the Commercial Unit if such unit is affected thereby.

B. Each request for payment shall be made on seven (7) days' prior notice to the Insurance Trustee and shall be accompanied by a certificate to be made by such architect or engineer stating that all of the work completed has been done in compliance with the approved plans and specifications and that the sum requested is justly required to reimburse the Board or the owner of the Commercial Unit for payments to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the work (giving a brief description of such services and materials), and that when added to all sums previously paid out by the Insurance Trustee, the sum requested does not exceed the value of the work done to the date of such certificate.

C. Each request shall be accompanied by waivers of liens satisfactory to the Insurance Trustee, covering that part of the work for which payment or reimbursement is being requested and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Insurance Trustee, that there has not been filed with respect to the premises

any mechanics' and other lien or instrument for the retention of title in respect of any part of the work not discharged of record.

D. The request for any payment after the work has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the premises legal.

E. The fees and expenses of the Insurance Trustee as determined by the Board (or the owner of the Commercial Unit in the case of damage only to such unit) shall be paid by the Association as a common expense, or by the owner of the Commercial Unit and such fees and expenses may be deducted from any proceeds at any time in the hands of the Insurance Trustee.

F. Such other conditions not inconsistent with the foregoing as the Insurance Trustee may reasonably request.

Upon the completion of the work and payment in full therefor, any remaining proceeds of insurance shall be paid or credited to the owners of the apartments (or to the owner of the Commercial Unit only, in the case of damage to the Commercial Unit) and to the holder of any mortgage on an apartment, if there be a mortgage, in proportion to their respective common interest.

To the extent that any loss, damage or destruction to the building or other property is covered by insurance procured by the Board, the Board shall have no claim or cause of action for such loss, damage or destruction against any apartment owner or lessee. To the extent that any loss, damage or destruction to the property of any apartment owner or lessee is covered by insurance procured by such owner or lessee, such owner or lessee shall have no claim or cause of action for such loss, damage or destruction against the Board, the owner of the Commercial Unit, the Managing Agent, any other apartment owner, or the Association. All policies of insurance referred to in this paragraph shall contain appropriate waivers of subrogation.

Section 4. Condemnation. In the event of a taking by eminent domain of part or all of the common elements, all compensation payable for or on account of the taking of any land shall be payable to the Trustee, and all portions of any such award payable on account of the taking of any building or improvements on the land shall be payable to each apartment owner

affected, and his mortgagee, if any, in proportion to their respective common interest, after deducting the cost of removing the building or improvement and restoring the remaining land to a clean and orderly condition and even grade; provided that in the event of a partial taking of an apartment or apartments and improvements which shall be capable of being restored, then the award payable on account of such apartment or apartments and improvements shall be payable to a condemnation trustee, which shall be a bank or trust company designated by the Board doing business in Honolulu having net assets of not less than Five Million Dollars (\$5,000,000). The Board of Directors (or, if the condemnation affects only the Commercial Unit, or the commercial elements, the owner of the Commercial Unit) shall arrange for the repair and restoration of such apartment or apartments and improvements as nearly as possible in accordance with the design thereof immediately prior to such condemnation or if such repair and restoration in accordance with said design are not permissible under the laws then in force, in accordance with such modified plans as shall be previously approved by the Board (and the owner of the Commercial Unit in the cases where the condemnation affects only the commercial elements or Commercial Unit), Trustee and the mortgagee of record of any interest in an apartment directly affected thereby. The condemnation trustee shall disburse the proceeds of such award received by such trustee to the contractor engaged in such repair and restoration in the same way funds are disbursed for repair and restoration work under Section 3 hereinabove, and in the event such proceeds are insufficient to pay the costs thereof the Board and the owner of the Commercial Unit shall pay any deficiency, and if the Board's maintenance fund is insufficient for this purpose, the Board shall levy a special assessment on each remaining apartment owner.

Section 5. Indemnification. No director or officer of the Association shall be liable for acts, defaults, or neglects of any other director or officer or member or for any loss sustained by the Association or any member thereof, unless the same shall have resulted from his own willful or negligent act or neglect. Every director, officer, and agent of the Association shall be indemnified by the Association against all reasonable costs, expenses and liabilities (including counsel fees) actually and necessarily incurred by or imposed upon in connection with or resulting from any claim, action, suit, procedure, investigation, or inquiry as to whatever nature in which he may be involved as a party or otherwise by reason of his being or having been a director, officer, or agent of the Association, whether or not he continues to be such director, officer, or agent at the time of incurring or the imposition of such costs, expenses, or liabilities,

except in relation to matters as to which he shall be finally adjudged in such action, suit, proceeding, investigation, or inquiry to be liable for willful or negligent misconduct or neglect toward the Association in the performance of his duties. As to whether or not a director, officer, or agent of the Association is liable by reason of willful or negligent misconduct or neglect toward the Association in the performance of his duties, in the absence of such final adjudication of the existence of such liability, the Association and each member thereof and officer or agent thereunder may conclusively rely on an opinion of legal counsel selected by the Association. The foregoing right of indemnification shall be in addition to and not in limitation of all other rights to which such person may be entitled as a matter of law, and shall inure to the benefit of the legal representative of such person. The Board of Directors is authorized to procure such policy or policies of insurance as it shall deem necessary or appropriate to give effect to the right of indemnification contained in this Section 5. and the cost of such insurance policy shall be deemed a common expense.

Section 6.     Subordination. These By-Laws are subordinate and subject to all provisions of the Declaration and any amendments thereto and the Condominium Property Act (Chapter 514A, Hawaii Revised Statutes, as amended), which shall control in case of conflict. All terms herein (except where clearly repugnant to the context) shall have the same meaning as in the Declaration or said Condominium Property Act.

Section 7.     Interpretation. In case any provision of these By-Laws shall be held invalid, such invalidity shall not render invalid any other provision hereof which can be given effect.

## **ARTICLE VII**

### **DISCRIMINATION PROHIBITED**

The Association shall not engage in any prohibited discrimination. The apartment owners adopt the following provisions to implement that policy, which shall apply regardless of any contrary requirement in the Association documents:

(a)     In granting or withholding any approval or consent required under the Association documents, the Board of Directors shall avoid any prohibited discrimination.

(b) In enforcing any requirement of the Association documents, the Board shall avoid any prohibited discrimination against children, particularly in evaluating any request relating to occupancy restrictions or leasing or renting any apartment located in the Project.

(c) The Board may suspend any requirement of the Association documents which, if enforced, would result in prohibited discrimination. If the Board suspends any requirement which can be amended only with apartment owner approval, the Board shall propose the amendment or deletion of the requirement at the next meeting of the apartment owners, whether annual or special. The Board or the apartment owners may call a special meeting of the apartment owners for that purpose, in compliance with the By-Laws.

(d) A disabled occupant of the Project may keep a guide dog, signal dog, or other animal required because of the occupant's disability. If such an animal causes a nuisance, the occupant will be given a reasonable opportunity to resolve the problem by measures which fall short of removing the animal from the Project. If the Board determines those measures have been unsuccessful, it may require removal of the animal. If the Board requires removal, the occupant will be allowed reasonable time to obtain a suitable substitute animal. During that time, the animal creating the nuisance will be allowed to remain on the Project, provided its continued presence does not create an unreasonable imposition on any other occupant. In addition, a disabled guest of an apartment owner or occupant may bring a certified guide dog, signal dog, or other animal required for assistance onto the Project, provided the animal does not cause a nuisance or unreasonable disturbance.

(e) At their own expense, disabled occupants may: (i) make reasonable modifications to an apartment or the common areas; and (ii) have reasonable exemptions from requirements of the Association documents, to enable the occupants to have full use and enjoyment of the Project. A disabled occupant requiring a modification or exemption shall submit a written request to the Board specifying the nature of the request and why it is necessary. The Board shall not unreasonably withhold or delay its consent to the request, and any such request shall be deemed to be granted if not denied in writing, within forty-five (45) days after the Board receives it.

As used in this section: "Prohibited discrimination" means any discrimination prohibited by any Federal or State law or any ordinance of the City and County of Honolulu. "Association

documents: means the Declaration, By-Laws, House Rules, or any other documents of the Association. (See Endnote 26)

### ADOPTION OF RESTATED BY-LAWS

The undersigned of said project hereby adopts the foregoing as the First Restatement of By-Laws of its Association of Apartment Owners, this 30th day of August, 2002.

ASSOCIATION OF APARTMENT OWNERS  
OF DISCOVERY BAY

By [Signature]  
Its PRESIDENT

By [Signature]  
Its SECRETARY

STATE OF HAWAII           )  
  )  
COUNTY OF HONOLULU    )    SS.

On this 30th day of AUGUST, 2002, before me personally  
appeared LEON BERGMAN, to me known to be the person  
described in and who executed the foregoing instrument, and acknowledged that he/she executed  
the same as his/her free act and deed.

SS

Bde Senna Samaritano

Notary Public, State of Hawaii

Print Name: B. de Senna Samaritano

My Commission expires 6/14/2006

My commission expires:

STATE OF HAWAII           )  
  )  
COUNTY OF HONOLULU    )    SS.

On this 30th day of AUGUST, 2002, before me personally  
appeared DUNCAN R. SEAMAN, to me known to be the person  
described in and who executed the foregoing instrument, and acknowledged that he/she executed  
the same as his/her free act and deed.

SS

Bde Senna Samaritano

Notary Public, State of Hawaii

Print Name: B. de Senna Samaritano

My Commission expires 6/14/2006

My commission expires:



## ENDNOTES

The following endnotes correspond to provisions in the By-Laws which have been restated to conform to Chapter 514A, Hawaii Revised Statutes, and the Federal Fair Housing Act, as amended (42 U.S.C. Sections 3601 et seq.), and to integrate all amendments made to the By-Laws. These Restated By-Laws correctly state without change the corresponding provisions of the original By-Laws, as amended, and supersede the original By-Laws and all prior amendments thereto. This Restatement is made solely for the purpose of information and convenience. In the event of a conflict, the Restated By-Laws shall be subordinate to the cited statute and original By-Laws.

1. Act 98 (SLH, 1977) re-designated Chapter 514 as Chapter 514A, Hawaii Revised Statutes, and Act 65 (SLH, 1988) redesignated the Horizontal Property Act as the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes ("HRS"). Therefore, throughout this restatement, references to the previous usage have been amended to reflect present terminology.

2. Article I, Section 8 has been amended to conform to Section 514A-83.2, HRS, which states formal requirements for proxies, states when they must be submitted to the Association, and places limits on their solicitation and use.

3. Article I, Section 8A has been added to incorporate the requirements of Sections 514A-82(b)(4) and 514A-83.3, HRS, relating to this solicitation of proxies by resident managers, owners, Managing Agents, and Board members.

4. Article I, Section 12 has been added to incorporate the statutory requirements for minutes stated in Sections 514A-83.4 and 83.5, HRS, including the requirements that votes of board members be recorded in the minutes.

5. The last sentence of Article II, Section 1 has been added to reflect the restrictions of Section 514A-82(b)(10), HRS, on the board members from spending association funds for their travel, fees and per diem unless the owners approve.

6. Article II, Section 5 has been amended to incorporate the requirements of Section 514A-82(b)(1), HRS, relating to the removal of directors.

7. Article II, Section 9A has been added to incorporate the requirements of Section 514A-82(b)(9), HRS, relating to posting of notice of Board of Directors' meetings.

8. Article II, Section 10A has been added to incorporate the requirements of Section 514A-83.1, HRS, relating to the right of owners to attend Board meetings and the right of the Board to adjourn and reconvene in executive session.

9. Article II, Section 12 has been amended to incorporate a reference to the fidelity bond requirements of Sections 514A-95 and 95.1, HRS.

10. Article II, Section 13 has been amended to incorporate the requirements of Section 514A-82(b)(5), HRS, requiring Directors to disclose conflicts of interest prior to any vote on the issue for which a conflict arises.

11. Article II, Section 14 has been added to reference the requirements of Section 514A-96, HRS, relating to distribution of audit information to owners. Unlike the original By-Laws, Section 514A-96 now requires audits for the Association.

12. Article II, Section 15 has been added to incorporate the requirements of Section 514A-82(b)(11), HRS, relating to the documents which must be provided to members of the Board of Directors, and 514A-82(b)(12) relating to educational expenses.

13. Article II, Section 16 has been added to incorporate the requirements of Section 514A-82.4, HRS, imposing a fiduciary duty on all Directors to the Association of Apartment Owners.

14. Article II, Section 17 has been added to incorporate the requirements of Section 514A-82(b)(7), HRS, restricting an owner from simultaneously acting as an officer of the Association and an employee of the Association's managing agent.

15. Article II, Section 18 has been added to incorporate the requirements of Section 514A-82(b)(8), HRS, on the right of Association employees to sell or rent apartments in the condominium in which they are employed, without owner approval.

16. Article III, Section 7 has been amended to reference the mandatory audit requirement listed in Article II, Section 14 of the restated By-Laws.

17. Article IV, Section 1 D1. has been added to incorporate the provisions of Section 514A-83.6, HRS.

18. Article IV, Section 1.L. was added by the "Amendment to the By-Laws of Discovery Bay," dated February 7, 1994, and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 2117982, and noted on Transfer Certificate of Title No. 172,913.

19. Article IV, Section 2 has been amended to reference the requirements for managing agents stated in Section 514A-95, HRS. This section was further amended by "Amendment to Declaration of Horizontal Property Regime of Discovery Bay," dated October 11, 1984, recorded in said Office as Land Court Document No. 1264352.

20. Article V, Section 1A has been added to incorporate the provisions of Section 514A-90(c) and (d) as subsections (a) and (b), which restrict an owner's right to withhold assessments from the Association, provide owners with a right to receive a full statement of all amounts owed, and permit an owner who pays amounts claimed by the Association to request arbitration or mediation to resolve any disputes about the amounts owed.

21. Article V, Section 2.F. has been amended to incorporate a reference the new Article VII of these By-Laws, which recognizes the special rights which the Federal Fair Housing Act provides for families with children and disabled occupants and guests of the project, and to Section 514A-89, HRS which limits owner modifications.

22. Article V, Section 2.L. was amended by the "First Amendment to Declaration of

Horizontal Property Regime of Discovery Bay," dated December 1, 1976, recorded in said Office as Land Court Document No. 794652, and was further amended by "Amendment of the By-Laws of the AOA Discovery Bay," dated January 31, 2000, recorded in said Office as Land Court Document No. 2604198.

23. Article V, Section 2.O. was added by the "Amendment to Declaration of Horizontal Property Regime of Discovery Bay," dated April 22, 1980, and recorded in said Office as Land Court Document No. 1008846, and noted on Transfer Certificate of Title No. 172,913. Note that the phrase "which are less than one month" has been bracketed out because the 1989 amendment referred to in Endnote 24, below, supersedes the 1980 amendment and specifically prohibits rentals of less than 30 days.

24. Article V, Section 2.P. was added by the "Amendment to By-Laws of Discovery Bay," dated January 3, 1989, and recorded in said Office as Land Court Document No. 1604840, and noted on Transfer Certificate of Title No. 172,913.

25. Article VI, Section 1 has been amended to incorporate the reduced requirements for owner approval of By-Law amendments (which reduces the approval requirements retroactively from 75% to 65%) and to incorporate the requirements relating to the rights of a volunteer owners' committee comprised of apartment owners to propose amendments to the By-Laws of the Association, all as stated in Section 514A-82(b)(2), HRS.

26. Article VII has been added to outline the rights provided to families with children and disabled occupants and guests of the project by the Federal Fair Housing Act.



## EXHIBIT A

The lands upon which said Condominium Project "DISCOVERY BAY" is located are described as follows:

All of those certain parcels of land situate at Kalia, Waikiki, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

### -PARCEL FIRST:-

LOT 38-A, area 5,249 square feet, more or less, as shown on Map 16, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 852 of Bishop Trust Company, Limited, Trustee;

Together with perpetual rights of way for roadway purposes and all public utility purposes, in common with all others entitled thereto, over, upon, across, along and under Lot 97-A, as an easement appurtenant thereto, as shown on Map 33 of said Application;

### -PARCEL SECOND:-

(A) LOT 42, area 7,763 square feet, more or less, as shown on Map 15, filed in said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

Together with perpetual rights of way for roadway purposes and all public utility purposes, in common with all others entitled thereto, over, upon, across and along Lot 97-A, area 19,063 square feet, as an easement appurtenant thereto, as shown on Map 33 of said Application No. 852;

(B) LOT 40, area 6,405 square feet, more or less, as shown on Map 15, filed in said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

Together with a perpetual right of way as an easement appurtenant thereto, in common with all others entitled thereto, over, upon, across and along Lot 97-A, area 19,063 square feet, as shown on Map 33 of said Application No. 852;

### -PARCEL THIRD:-

LOT 31-A, area 6,602 square feet, more or less, as shown on Map 15, filed in said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

## **EXHIBIT A CONTINUED**

### **- PARCEL FOURTH: -**

LOT 33-A-1, area 6,551 square feet, more or less, as shown on Map 35, filed in said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

### **-PARCEL FIFTH:-**

LOT 30, area 6,814 square feet, more or less, as shown on Map 15, filed in said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

Together with a perpetual right of way as an easement appurtenant to said Lot 30, in common with all others entitled thereto, over, upon, across and along Lot 97-A, area 19,063 square feet, as shown on Map 33 of said Application No. 852;

### **-PARCEL SIXTH:-**

LOT 32, area 6,500 square feet, more or less, as shown on Map 15, filed in said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

Together with a perpetual right of way for roadway purposes and all public utility purposes, in common with all others entitled thereto, over, upon, across, along and under Lot 97-A, as an easement appurtenant to said Lot 32, as shown on Map 33 of said Application No. 852;

### **-PARCEL SEVENTH:-**

LOT 34, area 6,500 square feet, more or less, as shown on Map 15, filed in said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

Together with a perpetual right of way as an easement appurtenant thereto, in common with all others entitled thereto, over, upon, across and along Lot 97-A, area 19,063 square feet, as shown on Map 33 of said Application No. 852;

### **-PARCEL EIGHTH:-**

LOTS: 36, area 6,452 square feet, more or less, as shown on Map 15;

And

38-B, area 1,127 square feet, more or less, as shown on Map 16; said Maps are on file in said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

## EXHIBIT A ENDS

Together with a perpetual right of way as an easement appurtenant thereto, in common with all others entitled thereto, over, upon, across and along Lot 97-A, area 19,063 square feet, as shown on Map 33 of said Application No. 852;

### -PARCEL NINTH: -

LOTS: 37-A-1, area 9,191 square feet, more or less, as shown on Map 37;  
and  
35-A-1, area 8,799 square feet, more or less, as shown on Map 25;

said Maps are on file in said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

### -PARCEL TENTH:-

LOT 29-A-1, area 6,518 square feet, more or less, as shown on Map 40, filed in said Office of the Assistant Registrar of the Land Court with said Land Court Application No. 852;

Together with a perpetual right of way as an easement appurtenant to Lot 29-A-1, in common with all others entitled thereto, over, upon, across and along Lot 97-A, area 19,063 square feet, as shown on Map 33 of said Application No. 852;

Parcels First through Tenth, inclusive, being the land(s) described Transfer Certificate of Title No. 172,913 issued to Hawaiian Trust Company, Limited, a Hawaii corporation, Trustee under that certain Trust Agreement dated June 6, 1974, filed as Land Court Document No. 687964, as amended.





EXHIBIT B

1. Description of Commercial Unit. The Commercial Unit shall consist of those areas on the first level, mall (second) level, third level and fourth level of the Project which are more particularly delineated on said Condominium Map and identified as being part of the Commercial Unit. Specifically, but without limiting the generality of the foregoing, the Commercial Unit shall consist of the following:

(a) On the first floor: (i) all space designated on said Condominium Map as Commercial Space 100-1 and the trash room adjacent thereto; (ii) all of the parking area contained on said floor, including 66 parking stalls, but excluding the vehicular entry and exit ramps and the portions of the driveway area which are required to serve the common areas located on the first floor, all as delineated on said Condominium Map; (iii) the commercial elevator and any stairways and ramps shown on said Condominium Map as being located within the Commercial Unit; and (iv) the conveyor equipment and the other fixtures and facilities originally installed within any portion of the Commercial Unit located on such floor.

(b) On the second or mall level: (i) the areas designated on said Condominium Map as Commercial Space 200-1, Commercial Space 200-2 (including the mezzanine and storage areas adjacent thereto), and Commercial Spaces 200-3 through 200-10 inclusive (including the covered mall area between such shops); (ii) all yards and landscaped areas fronting Ala Moana Boulevard and approximately the first 100 feet of the landscaped areas fronting on Hobron Lane, as more particularly shown on said Condominium Map; (iii) all pedestrian walkways, stairways and ramps giving access to the enclosed portions of the Commercial

Unit (or any part thereof) from Ala Moana Boulevard and all walkways and stairways between and among any portions of the Commercial Unit situate on such floor; and (iv) the commercial elevator, conveyor equipment and other fixtures and facilities originally installed within any portion of the Commercial Unit on the second floor.

(c) On the third level, 16 parking stalls located adjacent to the vehicular ramp, as shown on said Condominium Map; and

(d) On the fourth level: (i) all parking areas contained on said floor, including 162 parking stalls, and all driveways and turn around areas serving such parking stalls, but excluding any driveways and ramps which are necessary for access to the third or fifth levels; and (ii) the commercial elevator and all other fixtures and facilities originally installed within any portion of the Commercial Unit on the fourth floor.

## 2. Description of Residential Units.

(a) Each residential unit has been given a number designation by which its location in the project can be determined. The last two digits of each apartment number indicates the tower within which such unit is situate and the digit or digits preceding the last two digits indicates the floor of the tower on which such unit is located. With respect to the last two digits, all apartment numbers ending in "01" through "10", inclusive refer to units located in the Endeavour tower and all apartment numbers ending in "11" to "20", inclusive, refer to units located in the Resolution tower. On the forty-second floor, the residential units in the Endeavour tower are numbered PH-01 through PH-04, inclusive, and the units in the Resolution tower are numbered PH-11 through PH-14, inclusive.

(b) Each residential unit designated hereinbelow and on said Condominium Map as utilizing a Type "A", A-1, "E" and "F" floor plan shall contain two bedrooms, two bathrooms, living-dining

room, kitchen and adjacent lanai. Type "A-1" units do not have a separate lanai and occur only on the 41st floor of each tower.

Each residential unit designated hereinbelow and on said Condominium Map as utilizing a Type "B", "B-1", and "C" floor plan contain one bedroom, one bathroom, living-dining room, kitchen and adjacent lanai. Type "B-1" units have an enclosed lanai which is smaller than the open lanai contained in the Type "B" units and occur only on the 41st floor of each tower. Apartment Numbers 801, 811, 901, 911, 1001 and 1011 differ from other Type "B" units of the Project in that they do not have a window in the makai wall of the living room.

Each residential unit designated hereinbelow and on said Condominium Map as utilizing a Type "D" floor plan shall contain two bedrooms, two bathrooms, living room, dining room, kitchen and adjacent lanai.

Each residential unit designated hereinbelow and on said Condominium Map as utilizing a "Studio" floor plan shall contain one multi-purpose room, a kitchen and a bathroom. Studio units will not have a lanai.

3. Location, Area, Common Interest of Units. The location, approximate gross floor area (including lanai, if any), approximate net floor area (excluding lanais but including interior walls), number of rooms, and common interest of each condominium unit and the two manager's apartments, are set forth below. All areas shown are computed by measuring from the outside of the exterior walls and from the centerline of interior party walls without deduction for interior walls ducts, vent shafts and the like located within the perimeter walls. Furthermore, any sequential apartment numbers designated hereinbelow, i.e., 802-4102, are inclusive only of apartment numbers containing the same final two digits.

<u>Unit Number or Designation</u>	<u>Type of Unit</u>	<u>Gross Floor Area Sq. Ft.</u>	<u>Net Floor Area Sq. Ft.</u>	<u>Location</u>	<u>No. of Rooms</u>	<u>Common Interest</u>
Commercial Unit	-	-	43,014.0	Portions of first, second and fourth floors	Various, subject to partition	7.4173%
<u>Endeavor Tower</u>						
801-1101	B	852.0	724.4	Southwest (Makai) Corner	4	.1465%
1201-4001	A	1,130.8	1,003.2	Southwest (Makai) Corner	6	.1945%
4101	A-1	1,081.2	1,081.2	Southwest (Makai) Corner	6	.1859%
802-4102	C	769.5	682.7	West Side	4	.1324%
803-4103	C	769.5	682.7	West Side	4	.1324%
804-4004	A	1,130.8	1,003.2	Northwest (Ewa) Corner	6	.1945%
4104	A-1	1,081.2	1,081.2	Northwest (Ewa)	6	.1859%
805-4105	Studio	464.0	464.0	North Side	3	.0798%
806-4006	B	852.0	724.4	Northeast (Mauka) Corner	4	.1465%
4106	B-1	802.4	802.4	Northeast (Mauka) Corner	4	.1379%
807-4107	C	769.5	682.7	East Side	4	.1324%
1108-4108	C	769.5	682.7	East Side	4	.1324%
1109 (Manager's Apartment)	B	852.0	724.4	Southeast (Diamond Head) Corner	4	----
1209-4009	B	852.0	724.4	Southeast (Diamond Head) Corner	5	.1465%
4109	B-1	802.4	802.4	Southeast (Diamond Head) Corner	5	.1379%
1110 (Manager's Apartment)	Studio	464.0	464.0	South Side	3	----
1210-4110	Studio	464.0	464.0	South Side	3	.0798%
PH-01	E	1,838.0	1,667.0	Southwest (Makai) Corner	6	.3161%

<u>Unit Number or Designation</u>	<u>Type of Unit</u>	<u>Gross Floor Area Sq. Ft.</u>	<u>Net Floor Area Sq. Ft.</u>	<u>Location</u>	<u>No. of Rooms</u>	<u>Common Interest</u>
<u>Endeavor Tower</u>						
PH-02	D	1,897.1	1,564.3	Northwest (Ewa) Corner	7	.3263%
PH-03	F	1,838.0	1,667.0	Northwest (Mauka) Corner	6	.3161%
PH-04	D	1,897.1	1,564.3	Southeast (Diamond Head) Corner	7	.3263%
<u>Resolution Tower</u>						
811-1111	B	852.0	724.4	Southwest (Makai) Corner	4	.1465%
1211-4011	A	1,130.8	1,003.2	Southwest (Makai) Corner	6	.1945%
4111	A-1	1,081.2	1,081.2	Southwest (Makai) Corner	6	.1859%
812-4112	C	769.5	682.7	South Side	4	.1324%
813-4113	C	769.5	682.7	South Side	4	.1324%
814-4014	A	1,130.8	1,003.2	Southeast (Diamond Head) Corner	6	.1945%
4114	A-1	1,081.2	1,081.2	Southeast (Diamond Head) Corner	6	.1859%
815-4115	Studio	464.0	464.0	East Side	4	.0798%
816-4016	B	852.0	724.4	Northeast (Makai) Corner	4	.1465%
4116	B-1	802.4	802.4	Northeast (Makai) Corner	4	.1379%
1117-4117	C	769.5	682.7	North Side	4	.1324%
1118-4118	C	769.5	682.7	North Side	4	.1324%
1119-4019	B	851.0	724.4	Northwest (Ewa) Corner	4	.1465%
4119	B-1	802.4	802.4	Northwest (Ewa) Corner	4	.1379%
1120-4120	Studio	464.0	464.0	West Side	3	.0798%
PH-11	E	1,838.0	1,667.0	Southwest (Makai) Corner	6	.3161%
PH-12	D	1,897.1	1,564.3	Southeast (Diamond Head) Corner	7	.3263%
PH-13	F	1,838.0	1,667.0	Northeast (Mauka) Corner	6	.3161%
PH-14	D	1,897.1	1,564.3	Northeast (Ewa) Corner	7	.3263%

4. Access.

(a) Those portions of the Commercial Unit on the second or mall level shall have direct access to walkways leading to the street entrance of the Project. Those portions of the Commercial Unit on the first and fourth floors shall have access to the street entrance of the Project after travel by stairway or the elevator serving the Commercial Unit.

(b) Each residential unit has immediate access to its entry after travel by passenger elevator or stairway to its designated floor and by the walkways, driveways and ramps connecting its building to the street entrances of the Project. Each residential tower shall be serviced by two stairways and four high speed elevators.

## DISCOVERY BAY

STATEMENT OF RECEIPTS AND DISBURSEMENTS  
FOR PERIOD ENDED 04/30/2014

DESCRIPTION	CURRENT MONTH				YEAR TO DATE				FISCAL BEG: 1
	---ACTUAL---	---BUDGET---	---VAR.---	---BUD%---	---ACTUAL---	---BUDGET---	---VAR.---	---BUD%---	
<b>CASH RECEIPTS:</b>									
5100 MAINTENANCE FEE	436073.80	421621.00	14452.80	103.4	1672977.88	1686484.00	-13506.12	99.2	
5107 COMMERCIAL REIMBURSEMENT	12649.87	20416.67	-7766.80		51860.64	81666.68	-29806.04		
5270 INTEREST INCOME	252.79	250.00	2.79		1056.58	1000.00	56.58		
5310 VENDING INCOME/STORAGE	37.53	780.00	-742.47		308.58	3120.00	-2811.42		
5360 LATE CHARGES	2950.00	1250.00	1700.00		7767.07	5000.00	2767.07		
5371 ESCROW FEES	800.00	500.00	300.00		2400.00	2000.00	400.00		
5375 OTH TAX RCPTS-KEYS	1500.00	500.00	1000.00		2900.00	2000.00	900.00		
5400 RENTAL INCOME	1570.68	1570.83	-0.15		6282.72	6283.32	-0.60		
<b>TOTAL CASH RECEIPTS</b>	<b>455834.67</b>	<b>446888.50</b>	<b>8946.17</b>	<b>102.0</b>	<b>1745553.47</b>	<b>1787554.00</b>	<b>-42000.53</b>	<b>97.7</b>	
<b>TOTAL UTILITIES</b>	<b>172228.71</b>	<b>192996.91</b>	<b>-20768.20</b>	<b>89.2</b>	<b>705998.54</b>	<b>771987.64</b>	<b>-65989.10</b>	<b>91.5</b>	
<b>TOTAL MAINTENANCE CONTRACTS</b>	<b>11265.76</b>	<b>14492.59</b>	<b>-3226.83</b>	<b>77.7</b>	<b>50744.75</b>	<b>59326.53</b>	<b>-8581.78</b>	<b>85.5</b>	
<b>TOTAL BUILDING MAINTENANCE</b>	<b>18476.86</b>	<b>15933.34</b>	<b>2543.52</b>	<b>116.0</b>	<b>66169.84</b>	<b>63733.36</b>	<b>2436.48</b>	<b>103.8</b>	
<b>TOTAL PROFESSIONAL SERVICES</b>	<b>5806.00</b>	<b>13969.50</b>	<b>-8163.50</b>	<b>41.6</b>	<b>53715.09</b>	<b>55878.00</b>	<b>-2162.91</b>	<b>96.1</b>	
<b>TOTAL PAYROLL AND BENEFITS</b>	<b>114171.23</b>	<b>130313.43</b>	<b>-16142.20</b>	<b>87.6</b>	<b>556809.55</b>	<b>576728.72</b>	<b>-20119.17</b>	<b>96.5</b>	
<b>TOTAL INSURANCE</b>	<b>179958.90</b>	<b>269696.00</b>	<b>-89737.10</b>	<b>66.7</b>	<b>280521.90</b>	<b>269696.00</b>	<b>10825.90</b>	<b>104.0</b>	
<b>TOTAL OTHER EXPENSES</b>	<b>29351.69</b>	<b>6227.03</b>	<b>23124.66</b>	<b>471.4</b>	<b>48519.46</b>	<b>30254.76</b>	<b>18264.70</b>	<b>160.4</b>	
<b>TOTAL OPERATING EXPENSES</b>	<b>531259.15</b>	<b>643628.80</b>	<b>-112369.65</b>	<b>82.5</b>	<b>1762279.13</b>	<b>1827605.01</b>	<b>-65325.88</b>	<b>96.4</b>	
<b>OPERATING SURPLUS/DEFICIT</b>	<b>-75424.48</b>	<b>-196740.30</b>	<b>121315.82</b>	<b>38.3</b>	<b>-16725.66</b>	<b>-40051.01</b>	<b>23325.35</b>	<b>41.8</b>	
<b>CAPITAL IMPR AND MAJOR REP &amp; REPL:</b>									
8080 AC CHILLER WTR VALVES 7TH FLR	0.00	0.00	0.00		0.00	93943.00	-93943.00		
8081 A/C PUMP-CONDENSER WATER #2	0.00	0.00	0.00		0.00	20691.00	-20691.00		
8082 A/C PUMP-CHILL WATER #1	0.00	0.00	0.00		0.00	21799.00	-21799.00		
8083 A/C PUMP-CHILL WATER #2	0.00	0.00	0.00		0.00	21799.00	-21799.00		
8084 A/C CHILLER (1-350 TONS)	0.00	0.00	0.00		0.00	326689.00	-326689.00		
8085 TILE FLOORS-PKG GARAGE-PHASE 2	0.00	0.00	0.00		0.00	21173.00	-21173.00		
8086 EXHAUST FANS-SMOKE TOWERS	0.00	0.00	0.00		0.00	94099.00	-94099.00		
8515 ENTERPHONE SYSTEMS	0.00	0.00	0.00		0.00	4634.00	-4634.00		
8519 A/C FAN COIL-ENDEAVOUR LOBBY	0.00	0.00	0.00		0.00	25677.00	-25677.00		
8546 BACK OFFICE BREAK ROOM REFURB	3267.41	0.00	3267.41		3267.41	11763.00	-8495.59		
8611 SECURITY CAMERAS	0.00	0.00	0.00		0.00	76456.00	-76456.00		
8615 WINDOW WATER INTRUSION REPR	3968.58	0.00	3968.58		3968.58	20000.00	-16031.42		
8640 BASEMENT SEWER DRAIN LINES	0.00	0.00	0.00		0.00	60000.00	-60000.00		
8646 BACK FLOW PREVENTER	0.00	0.00	0.00		0.00	8234.00	-8234.00		
8665 ROOFTOP SAFETY STAIRS	0.00	0.00	0.00		131.48	0.00	131.48		
8675 A/C PIPE LAGGING INSULATION	0.00	0.00	0.00		0.00	90212.00	-90212.00		
8679 A/C PUMP-CONDENSER WATER #1	0.00	0.00	0.00		0.00	20691.00	-20691.00		
8689 NEW SURFBOARD & BIKE CAGE	0.00	0.00	0.00		289.93	0.00	289.93		
8697 7TH FL LAGGING INSULATION	67659.00	0.00	67659.00		67659.00	0.00	67659.00		
<b>TOTAL CAPITAL IMPR AND MAJOR</b>	<b>74894.99</b>	<b>0.00</b>	<b>74894.99</b>	<b>0.0</b>	<b>75316.40</b>	<b>917860.00</b>	<b>-842543.60</b>	<b>8.2</b>	
<b>TOTAL CASH DISBURSEMENTS</b>	<b>606154.14</b>	<b>643628.80</b>	<b>-37474.66</b>	<b>94.2</b>	<b>1837595.53</b>	<b>2745465.01</b>	<b>-907869.48</b>	<b>66.9</b>	
<b>CHANGE TO TOTAL CASH &amp; RESERVE</b>	<b>-150319.47</b>	<b>-196740.30</b>	<b>46420.83</b>		<b>-92042.06</b>	<b>-957911.01</b>	<b>865868.95</b>		

# DISCOVERY BAY

## STATEMENT OF RECEIPTS AND DISBURSEMENTS FOR PERIOD ENDED 05/31/2014

DESCRIPTION	CURRENT MONTH				YEAR TO DATE			
	---ACTUAL---	---BUDGET---	---VAR.---	---BUD%---	---ACTUAL---	---BUDGET---	---VAR.---	---BUD%---
<b>CASH RECEIPTS:</b>								
5100 MAINTENANCE FEE	414742.01	421621.00	-6878.99	98.4	2087719.89	2108105.00	-20385.11	99.0
5107 COMMERCIAL REIMBURSEMENT	19226.70	20416.67	-1189.97		71087.34	102083.35	-30996.01	
5270 INTEREST INCOME	51.06	250.00	-198.94		1107.64	1250.00	-142.36	
5310 VENDING INCOME/STORAGE	66.72	780.00	-713.28		375.30	3900.00	-3524.70	
5360 LATE CHARGES	1050.00	1250.00	-200.00		8817.07	6250.00	2567.07	
5371 ESCROW FEES	200.00	500.00	-300.00		2600.00	2500.00	100.00	
5375 OTH TAX RCPTS-KEYS	0.00	500.00	-500.00		2900.00	2500.00	400.00	
5400 RENTAL INCOME	1570.68	1570.83	-0.15		7853.40	7854.15	-0.75	
<b>TOTAL CASH RECEIPTS</b>	<b>436907.17</b>	<b>446888.50</b>	<b>-9981.33</b>	<b>97.8</b>	<b>2182460.64</b>	<b>2234442.50</b>	<b>-51981.86</b>	<b>97.7</b>
<b>TOTAL UTILITIES</b>	<b>176915.61</b>	<b>192996.91</b>	<b>-16081.30</b>	<b>91.7</b>	<b>882914.15</b>	<b>964984.55</b>	<b>-82070.40</b>	<b>91.5</b>
<b>TOTAL MAINTENANCE CONTRACTS</b>	<b>37072.41</b>	<b>11719.34</b>	<b>25353.07</b>	<b>316.3</b>	<b>87817.16</b>	<b>71045.87</b>	<b>16771.29</b>	<b>123.6</b>
<b>TOTAL BUILDING MAINTENANCE</b>	<b>11339.07</b>	<b>15933.34</b>	<b>-4594.27</b>	<b>71.2</b>	<b>77508.91</b>	<b>79666.70</b>	<b>-2157.79</b>	<b>97.3</b>
<b>TOTAL PROFESSIONAL SERVICES</b>	<b>13615.79</b>	<b>13969.50</b>	<b>-353.71</b>	<b>97.5</b>	<b>67330.88</b>	<b>69847.50</b>	<b>-2516.62</b>	<b>96.4</b>
<b>TOTAL PAYROLL AND BENEFITS</b>	<b>115890.78</b>	<b>130313.43</b>	<b>-14422.65</b>	<b>88.9</b>	<b>672500.33</b>	<b>707042.15</b>	<b>-34541.82</b>	<b>95.1</b>
<b>TOTAL INSURANCE</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.0</b>	<b>280521.90</b>	<b>269696.00</b>	<b>10825.90</b>	<b>104.0</b>
<b>TOTAL OTHER EXPENSES</b>	<b>-11122.35</b>	<b>4406.03</b>	<b>-15528.38</b>	<b>-252.4</b>	<b>37397.11</b>	<b>34660.79</b>	<b>2736.32</b>	<b>107.9</b>
<b>TOTAL OPERATING EXPENSES</b>	<b>343711.31</b>	<b>369338.55</b>	<b>-25627.24</b>	<b>93.1</b>	<b>2105990.44</b>	<b>2196943.56</b>	<b>-90953.12</b>	<b>95.9</b>
<b>OPERATING SURPLUS/DEFICIT</b>	<b>93195.86</b>	<b>77549.95</b>	<b>15645.91</b>	<b>120.2</b>	<b>76470.20</b>	<b>37498.94</b>	<b>38971.26</b>	<b>203.9</b>
<b>CAPITAL IMPR AND MAJOR REP &amp; REPL:</b>								
8080 AC CHILLER WTR VALVES 7TH FLR	0.00	0.00	0.00		0.00	93943.00	-93943.00	
8081 A/C PUMP-CONDENSER WATER #2	0.00	0.00	0.00		0.00	20691.00	-20691.00	
8082 A/C PUMP-CHILL WATER #1	0.00	0.00	0.00		0.00	21799.00	-21799.00	
8083 A/C PUMP-CHILL WATER #2	0.00	0.00	0.00		0.00	21799.00	-21799.00	
8084 A/C CHILLER (1-350 TONS)	0.00	0.00	0.00		0.00	326689.00	-326689.00	
8085 TILE FLOORS-PKG GARAGE-PHASE 2	0.00	0.00	0.00		0.00	21173.00	-21173.00	
8086 EXHAUST FANS-SMOKE TOWERS	0.00	0.00	0.00		0.00	94099.00	-94099.00	
8515 ENTERPHONE SYSTEMS	0.00	0.00	0.00		0.00	4634.00	-4634.00	
8519 A/C FAN COIL-ENDEAVOUR LOBBY	0.00	0.00	0.00		0.00	25677.00	-25677.00	
8546 BACK OFFICE BREAK ROOM REFURB	0.00	0.00	0.00		3267.41	11763.00	-8495.59	
8611 SECURITY CAMERAS	0.00	0.00	0.00		0.00	76456.00	-76456.00	
8615 WINDOW WATER INTRUSION REPR	8545.00	0.00	8545.00		12513.58	20000.00	-7486.42	
8632 EXERCISE ROOM REMODEL	229.91	0.00	229.91		229.91	0.00	229.91	
8640 BASEMENT SEWER-DRAIN LINES	0.00	0.00	0.00		0.00	60000.00	-60000.00	
8646 BACK FLOW PREVENTER	0.00	0.00	0.00		0.00	8234.00	-8234.00	
8665 ROOFTOP SAFETY STAIRS	0.00	0.00	0.00		131.48	0.00	131.48	
8675 A/C PIPE LAGGING INSULATION	0.00	0.00	0.00		0.00	90212.00	-90212.00	
8679 A/C PUMP-CONDENSER WATER #1	0.00	0.00	0.00		0.00	20691.00	-20691.00	
8689 NEW SURFBOARD & BIKE CAGE	0.00	0.00	0.00		289.93	0.00	289.93	
8697 7TH FL LAGGING INSULATION	21650.88	0.00	21650.88		89309.88	0.00	89309.88	
8698 7TH FLOOR PIPE HANGERS	10586.00	0.00	10586.00		10586.00	0.00	10586.00	
<b>TOTAL CAPITAL IMPR AND MAJOR</b>	<b>41011.79</b>	<b>0.00</b>	<b>41011.79</b>	<b>0.0</b>	<b>116328.19</b>	<b>917860.00</b>	<b>-801531.81</b>	<b>12.7</b>
<b>TOTAL CASH DISBURSEMENTS</b>	<b>384723.10</b>	<b>369338.55</b>	<b>15384.55</b>	<b>104.2</b>	<b>2222318.63</b>	<b>3114803.56</b>	<b>-892484.93</b>	<b>71.3</b>
<b>CHANGE TO TOTAL CASH &amp; RESERVE</b>	<b>52184.07</b>	<b>77549.95</b>	<b>-25365.88</b>		<b>-39857.99</b>	<b>-880361.06</b>	<b>840503.07</b>	



# DISCOVERY BAY

## STATEMENT OF RECEIPTS AND DISBURSEMENTS FOR PERIOD ENDED 06/30/2014

DESCRIPTION	CURRENT MONTH				YEAR TO DATE			
	---ACTUAL---	---BUDGET---	---VAR.---	---BUD%---	---ACTUAL---	---BUDGET---	---VAR.---	---BUD%---
FISCAL BEG: 1								
<b>CASH RECEIPTS:</b>								
5100 MAINTENANCE FEE	415773.04	421621.00	-5847.96	98.6	2503492.93	2529726.00	-26233.07	99.0
5107 COMMERCIAL REIMBURSEMENT	27528.41	20416.67	7111.74		98615.75	122500.02	-23884.27	
5270 INTEREST INCOME	1516.05	250.00	1266.05		2623.69	1500.00	1123.69	
5310 VENDING INCOME/STORAGE	0.00	780.00	-780.00		375.30	4680.00	-4304.70	
5360 LATE CHARGES	1150.00	1250.00	-100.00		9967.07	7500.00	2467.07	
5371 ESCROW FEES	1800.00	500.00	1300.00		4400.00	3000.00	1400.00	
5375 OTH TAX RCPTS-KEYS	1500.00	500.00	1000.00		4400.00	3000.00	1400.00	
5400 RENTAL INCOME	1570.68	1570.83	-0.15		9424.08	9424.98	-0.90	
<b>TOTAL CASH RECEIPTS</b>	<b>450838.18</b>	<b>446888.50</b>	<b>3949.68</b>	<b>100.9</b>	<b>2633298.82</b>	<b>2681331.00</b>	<b>-48032.18</b>	<b>98.2</b>
<b>TOTAL UTILITIES</b>	<b>173607.90</b>	<b>192996.91</b>	<b>-19389.01</b>	<b>90.0</b>	<b>1056522.05</b>	<b>1157981.46</b>	<b>-101459.41</b>	<b>91.2</b>
<b>TOTAL CONTRACTS</b>	<b>13896.59</b>	<b>11719.34</b>	<b>2177.25</b>	<b>118.6</b>	<b>101713.75</b>	<b>82765.21</b>	<b>18948.54</b>	<b>122.9</b>
<b>TOTAL BUILDING MAINTENANCE</b>	<b>14293.21</b>	<b>15933.34</b>	<b>-1640.13</b>	<b>89.7</b>	<b>91802.12</b>	<b>95600.04</b>	<b>-3797.92</b>	<b>96.0</b>
<b>TOTAL PROFESSIONAL SERVICES</b>	<b>8284.24</b>	<b>13969.50</b>	<b>-5685.26</b>	<b>59.3</b>	<b>75615.12</b>	<b>83817.00</b>	<b>-8201.88</b>	<b>90.2</b>
<b>TOTAL PAYROLL AND BENEFITS</b>	<b>119335.80</b>	<b>130313.43</b>	<b>-10977.63</b>	<b>91.6</b>	<b>791836.13</b>	<b>837355.58</b>	<b>-45519.45</b>	<b>94.6</b>
<b>TOTAL INSURANCE</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.0</b>	<b>280521.90</b>	<b>269696.00</b>	<b>10825.90</b>	<b>104.0</b>
<b>TOTAL OTHER EXPENSES</b>	<b>3358.12</b>	<b>4406.03</b>	<b>-1047.91</b>	<b>76.2</b>	<b>40755.23</b>	<b>39066.82</b>	<b>1688.41</b>	<b>104.3</b>
<b>TOTAL OPERATING EXPENSES</b>	<b>332775.86</b>	<b>369338.55</b>	<b>-36562.69</b>	<b>90.1</b>	<b>2438766.30</b>	<b>2566282.11</b>	<b>-127515.81</b>	<b>95.0</b>
<b>OPERATING SURPLUS/DEFICIT</b>	<b>118062.32</b>	<b>77549.95</b>	<b>40512.37</b>	<b>152.2</b>	<b>194532.52</b>	<b>115048.89</b>	<b>79483.63</b>	<b>169.1</b>
<b>CAPITAL IMPR AND MAJOR REP &amp; REPL:</b>								
8080 AC CHILLER WTR VALVES 7TH FLR	0.00	0.00	0.00		0.00	93943.00	-93943.00	
8081 A/C PUMP-CONDENSER WATER #2	0.00	0.00	0.00		0.00	20691.00	-20691.00	
8082 A/C PUMP-CHILL WATER #1	0.00	0.00	0.00		0.00	21799.00	-21799.00	
8083 A/C PUMP-CHILL WATER #2	0.00	0.00	0.00		0.00	21799.00	-21799.00	
8084 A/C CHILLER (1-350 TONS)	0.00	0.00	0.00		0.00	326689.00	-326689.00	
8085 TILE FLOORS-PKG GARAGE-PHASE 2	0.00	0.00	0.00		0.00	21173.00	-21173.00	
8086 EXHAUST FANS-SMOKE TOWERS	0.00	0.00	0.00		0.00	94099.00	-94099.00	
8087 REC DECK RESTROOM DOORS	2600.00	0.00	2600.00		2600.00	0.00	2600.00	
8088 POOL SURFACE REFINISH	5400.00	0.00	5400.00		5400.00	0.00	5400.00	
8515 ENTERPHONE SYSTEMS	0.00	0.00	0.00		0.00	4634.00	-4634.00	
8519 A/C FAN COIL-ENDEAVOUR LOBBY	0.00	0.00	0.00		0.00	25677.00	-25677.00	
8546 BACK OFFICE BREAK ROOM REFURB	1047.12	0.00	1047.12		4314.53	11763.00	-7448.47	
8611 SECURITY CAMERAS	0.00	0.00	0.00		0.00	76456.00	-76456.00	
8615 WINDOW WATER INTRUSION REPR	0.00	0.00	0.00		12513.58	20000.00	-7486.42	
8632 EXERCISE ROOM REMODEL	0.00	0.00	0.00		229.91	0.00	229.91	
8640 BASEMENT SEWER DRAIN LINES	0.00	0.00	0.00		0.00	60000.00	-60000.00	
8646 BACK FLOW PREVENTER	0.00	0.00	0.00		0.00	8234.00	-8234.00	
8665 ROOFTOP SAFETY STAIRS	0.00	0.00	0.00		131.48	0.00	131.48	
8675 A/C PIPE LAGGING INSULATION	89309.88	0.00	89309.88		89309.88	90212.00	-902.12	
8679 A/C PUMP-CONDENSER WATER #1	0.00	0.00	0.00		0.00	20691.00	-20691.00	
8689 NEW SURFBOARD & BIKE CAGE	0.00	0.00	0.00		289.93	0.00	289.93	
8697 7TH FL LAGGING INSULATION	-89309.88	0.00	-89309.88		0.00	0.00	0.00	
8698 7TH FLOOR PIPE HANGERS	0.00	0.00	0.00		10586.00	0.00	10586.00	
8699 COAT GEN RM & 5TH FL VENTS	6300.00	0.00	6300.00		6300.00	0.00	6300.00	
<b>TOTAL CAPITAL IMPR AND MAJOR</b>	<b>15347.12</b>	<b>0.00</b>	<b>15347.12</b>	<b>0.0</b>	<b>131675.31</b>	<b>917860.00</b>	<b>-786184.69</b>	<b>14.3</b>
<b>TOTAL CASH DISBURSEMENTS</b>	<b>348122.98</b>	<b>369338.55</b>	<b>-21215.57</b>	<b>94.3</b>	<b>2570441.61</b>	<b>3484142.11</b>	<b>-913700.50</b>	<b>73.8</b>
<b>CHANGE TO TOTAL CASH &amp; RESERVE</b>	<b>102715.20</b>	<b>77549.95</b>	<b>25165.25</b>		<b>62857.21</b>	<b>-802811.11</b>	<b>865668.32</b>	

# 2014 Final Budget - Approved 10/29/13

				\$ Difference	% Difference		
				2013 Budget	2013 Budget		% of
		2013 Budget	2014 Budget	vs.	vs.	% of	Operating
				2014 Budget	2014 Budget	Total Budget	Budget
<b>Receipts</b>		0.0%	3.8%				
5100	Maintenance Fees	4,874,230	5,059,451	185,221	3.80%		
5107	Commercial Reimbursement	217,748	245,000	27,252	12.52%		
5270	Interest Income	3,000	3,000	0	0.00%		
5310	Vending Machine Income	500	9,360	8,860	1772.00%		
5360	Late Charges	15,000	15,000	0	0.00%		
5371	Escrow Fees	5,000	6,000	1,000	20.00%		
5375	Other Receipts-Keys	6,000	6,000	0	0.00%		
5378	Fines			0	0.00%		
5400	Rental Income	18,850	18,850	0	0.00%		
5782	Funds Trns. From Beneficial Int.	300,000					
	<b>TOTAL CASH RECEIPTS</b>	<b>5,440,328</b>	<b>5,362,661</b>	<b>-77,667</b>	<b>-1.43%</b>	<b>100%</b>	
<b>Expenses</b>							
	<b>Utilities</b>						
6010	Electricity	1,230,580	1,150,000	-80,580	-6.55%		
6020	Television/Cable	262,602	274,124	11,522	4.39%		
6030	Water	161,160	183,367	22,207	13.78%		
6040	Sewer	501,840	535,072	33,232	6.62%		
6050	Gas	175,543	164,900	-10,643	-6.06%		
6060	Telephone	8,500	8,500	0	0.00%		
	<b>Total Utilities</b>	<b>2,340,225</b>	<b>2,315,963</b>	<b>-24,262</b>	<b>-1.04%</b>	<b>43.19%</b>	<b>48.19%</b>
	<b>Contracts</b>						
6210	Chiller, Air Handlers & Pneumatic	22,181	22,847	666	3.00%		
6220	Window Washing	20,105	20,708	603	3.00%		
6230	Elevator	62,139	73,866	11,727	18.87%		
6250	Generator Maintenance	3,803	4,000	197	5.18%		
6260	Sump Pump - Quarterly	1,143	1,143	0	0.00%		
6280	Pest Control - Common Areas	1,895	1,895	0	0.00%		
6290	Booster Pump & Hot Water Sys.	4,055	4,055	0	0.00%		
6300	Refuse Service	29,561	30,650	1,089	3.68%		
6310	2-way Radio System	4,271	4,271	0	0.00%		
6320	Fire System	6,900	8,998	2,098	30.41%		
	<b>Total Contracts</b>	<b>156,053</b>	<b>172,433</b>			<b>3.22%</b>	<b>3.59%</b>

# 2014 Final Budget - Approved 10/29/13

				\$ Difference	% Difference		
				2013 Budget	2013 Budget		% of
		2013 Budget	2014 Budget	vs.	vs.	% of	Operating
				2014 Budget	2014 Budget	Total Budget	Budget
	<b>Building Maintenance</b>						
6510	Air Condition	30,000	32,000	2,000	6.67%		
6515	Janitorial Services & Supplies	22,000	25,000	3,000	13.64%		
6550	Grounds	27,000	27,000	0	0.00%		
6560	Electrical/Lighting	7,000	7,500	500	7.14%		
6570	Plumbing	3,000	3,000				
6580	Pool & Recreation	30,000	27,000	-3,000	-10.00%		
6590	Painting Supply	3,000	3,000	0	0.00%		
6610	Pump & Vent	20,000	20,000	0	0.00%		
6690	Building Repairs & Purchases	31,911	30,000	-1,911	-5.99%		
6710	Bldg-Communications	7,500	7,500	0	0.00%		
6724	Bldg-Lobby Plants/Flowers	9,200	9,200	0	0.00%		
	<b>Total Building Maintenance</b>	<b>190,611</b>	<b>191,200</b>	<b>589</b>	<b>0.31%</b>	<b>3.57%</b>	<b>3.98%</b>
	<b>Professional Services</b>						
6810	Admin Supplies and Services	43,000	48,000	5,000	11.63%		
6842	Education Expenses-Board	1,000	1,000	0	0.00%		
6843	Education Expenses-Employee	5,500	3,000	-2,500	-45.45%		
6850	Property Manager	43,625	44,934	1,309	3.00%		
6870	Audit & Accounting Fees	5,000	5,000	0	0.00%		
6880	Legal General						
6881	Legal /Miscellaneous	5,000	20,000				
6882	Legal Collections	20,000	10,000	-10,000	-50.00%		
6883	Legal /Lawsuits	25,000	35,000				
6890	Legal & Consulting Fees						
6896	Legal/Lease Renegotiation						
6910	Prof & Admin Svcs-Other	500	700	200	40.00%		
	<b>Total Professional Services</b>	<b>148,625</b>	<b>167,634</b>	<b>19,009</b>	<b>12.79%</b>	<b>3.13%</b>	<b>3.49%</b>
	<b>Payroll &amp; Benefits</b>						
7010	Administration Payroll	291,220	295,758	4,538	1.56%		
7020	Maintenance Payroll	434,050	446,510	12,460	2.87%		
7050	Security Payroll	476,542	506,009	29,467	6.18%		
7070	Workers Compensation	50,000	55,475	5,475	10.95%		
7080	TDI	5,283	5,867	584	11.05%		
7090	Health Care- HMSA & Kaiser	189,921	193,454	3,533	1.86%		
7100	Payroll Taxes	101,553	108,737	7,184	7.07%		
7140	Payroll Processing	5,000	5,150	150	3.00%		
7256	Payroll - Life Insurance	2,029	2,276				
	<b>Total Payroll &amp; Benefits</b>	<b>1,555,598</b>	<b>1,619,236</b>	<b>63,638</b>	<b>4.09%</b>	<b>30.19%</b>	<b>33.69%</b>

# 2014 Final Budget - Approved 10/29/13

				\$ Difference	% Difference		
				2013 Budget	2013 Budget		% of
		2013 Budget	2014 Budget	vs.	vs.	% of	Operating
				2014 Budget	2014 Budget	Total Budget	Budget
	<b>Insurance</b>						
7310	Building Insurance	250,000	269,696	19,696	7.88%	5.03%	5.61%
	<b>Other Expenses</b>						
7370	Uninsured Expenses	50,000	30,000	-20,000	-40.00%		
7531	Lease Rent - 1218	4,684	4,684	0	0.00%		
7540	Annual/Regular Board Meetings	16,000	16,000	0	0.00%		
7556	Maintenance Fee - 1218	6,972	7,236	264	3.79%		
7560	Miscellaneous Expenses	8,000	8,000	0	0.00%		
7567	Misc. Exp - Uncollected Income						
7710	Real Property Tax	1,200	1,250	50	4.17%		
7720	State General Excise Tax	2,600	2,600	0	0.00%		
7730	State Income Tax						
7740	Federal Income Tax						
	<b>Total Other Expenses</b>	<b>89,456</b>	<b>69,770</b>	<b>-19,686</b>	<b>-22.01%</b>	<b>1.30%</b>	<b>1.45%</b>
<b>Total Operation Expenses</b>		<b>4,730,568</b>	<b>4,805,931</b>	<b>75,363</b>	<b>1.59%</b>	<b>89.62%</b>	<b>100%</b>
<b>Transfer to Reserves</b>		<b>709,760</b>	<b>556,730</b>	<b>-153,030</b>	<b>-21.56%</b>	<b>10.38%</b>	
<b>TOTAL DISBURSEMENTS</b>		<b>5,440,328</b>	<b>5,362,661</b>	<b>-77,667</b>	<b>-1.43%</b>	<b>100%</b>	

Sheet1	A	B	C	D	E	F	G	J	L
1		2014 Final Reserve Study - Approved October 29, 2013							
2									
3	2014							Current	
4			LAST	USEFUL	ADJ.	DUE FOR	REMAIN	Replacement	Yearly
5			DONE	LIFE	LIFE	REPLC.	LIFE	Cost	Totals
6									
7		Basement Sewer Drain Lines - Added 2006	2013	0	1	2014	0	\$60,000	
8		Window Water Intrusion Repairs	2013	0	1	2014	0	\$20,000	
9		A/C Pipe Lagging Insulation	1990	20	4	2014	0	\$90,212	
10		A/C Chill Water Valves 7th Floor Garage	1976	30	8	2014	0	\$93,943	
11		A/C Pump - Condenser Water #1	1992	20	2	2014	0	\$20,691	
12		A/C Pump - Condenser Water #2	2001	20	-7	2014	0	\$20,691	
13		A/C Pump - Chill Water #1	2003	15	-4	2014	0	\$21,799	
14		A/C Pump - Chill Water #2	1998	15	1	2014	0	\$21,799	
15		A/C Chiller (1 - 350-Tons Chiller)	1998	20	-4	2014	0	\$326,689	
16		A/C Fan Coil - Endeavour Lobby	1976	25	13	2014	0	\$25,677	
17		Enterphone System	2000	13	1	2014	0	\$4,634	
18		Security Camera System	2005	8	1	2014	0	\$76,456	
19		Back Office Break Room Refurbishment	2003	10	1	2014	0	\$11,763	
20		Back Flow Preventer Valves	1993	10	11	2014	0	\$8,234	
21		Tile Floors - Parking Garages - Phase 2	1976	20	18	2014	0	\$21,173	
22		Exhaust Fans - Smoke Towers	1976	25	13	2014	0	\$94,099	\$917,860
23		Carpeting - Residential Hallways - Part 1	1997	10	8	2015	1	\$160,566	
24		Wall covering Residential Hallways - Part 1	1994	20	1	2015	1	\$426,975	
25		Lighting Residential Hallways (350 Pl's) - Part 1	1994	20	1	2015	1	\$29,394	
26		Barbecue Grills - GE	2005	8	2	2015	1	\$7,857	
27		Lighted Exit Signs	1976	25	14	2015	1	\$29,171	
28		Door - Trash Compactor, Endeavour	2010	5	0	2015	1	\$4,392	
29		Equipment - Office	2010	5	0	2015	1	\$11,763	
30		1218 Unit Renovation	2000	10	5	2015	1	\$17,643	
31		Cabana Roof - Metal	1976	25	14	2015	1	\$65,871	
32		Security Entry Door System	2007	8	0	2015	1	\$82,337	
33		Pool & Jacuzzi Pumps	2005	10	0	2015	1	\$4,705	\$840,674
34		Carpeting - Residential Hallways - Part 2	1997	10	9	2016	2	\$160,556	
35		Wall covering Residential Hallways - Part 2	1994	20	2	2016	2	\$426,975	
36		Lighting Residential Hallways (350 Pl's) - Part 2	1994	20	2	2016	2	\$29,394	
37		1109 Unit Renovation	1996	15	5	2016	2	\$17,643	
38		Fitness Room Equipment - Resolution	2008	8	0	2016	2	\$49,402	
39		Fitness Room Equipment - Endeavour	2008	8	0	2016	2	\$37,051	
40		Security Radio System - Existing(Repeater)	2008	8	0	2016	2	\$9,999	
41		Sump Pumps - Sanitary - Buffalo	2001	15	0	2016	2	\$17,643	
42		Tile Flooring - Parking Garages - Phase 1	1996	20	0	2016	2	\$21,173	
43		Fencing - Chain Link Parking Garage	1976	30	10	2016	2	\$14,703	
44		Emergency Generator/Lighting	1976	30	10	2016	2	\$62,341	\$846,880
45		Fire Extinguishers - Recharge / Replace	2011	6	0	2017	3	\$15,280	
46		Parking Deck Coating (4th & 5th floors)	1994	10	13	2017	3	\$47,049	
47		Parking Deck Coating (6th & 7th floors)	1994	10	13	2017	3	\$47,049	
48		Parking Deck Coating (8th & 9th floors)	1994	10	13	2017	3	\$47,049	
49		Pumps - Domestic Water	2007	10	0	2017	3	\$99,980	
50		Parking Deck Coating (7th floor)	2007	10	0	2017	3	\$111,743	
51		Sign age - Building Exterior	2005	12	0	2017	3	\$11,763	
52		Barbecue Grills - Alfresco	2009	8	0	2017	3	\$7,998	\$387,911
53		Furniture - Lobbies	2003	10	5	2018	4	\$128,211	
54		Furniture - Pool	2003	10	5	2018	4	\$21,173	
55		A/C Chiller (1 - 350-Ton Chiller)	1998	20	0	2018	4	\$326,689	
56		A/C Cooling Towers	1998	20	0	2018	4	\$396,383	

Sheet1	A	B	C	D	E	F	G	J	L
1		2014 Final Reserve Study - Approved October 29, 2013							
2									
3	2014							Current	
4			LAST	USEFUL	ADJ.	DUE FOR	REMAIN	Replacement	Yearly
5			DONE	LIFE	LIFE	REPLC.	LIFE	Cost	Totals
6									
57	Pool Liner - Fiberglass		2003	15	0	2018	4	\$27,053	
58	Jacuzzi Interior Tile		2003	15	0	2018	4	\$18,820	
59	Trash Compactors - Resolution		2010	8	0	2018	4	\$43,046	
60	Tile Flooring - Residential Hallways		1998	20	0	2018	4	\$46,343	\$1,007,718
61	Railings - Balcony Lanais		2001	10	8	2019	5	\$152,416	
62	Parking Deck Coating (5th floor)		2009	10	0	2019	5	\$58,812	
63	Pool Heat Pump		2011	8	0	2019	5	\$6,587	
64	Door - Trash Compactor, Resolution		2009	10	0	2019	5	\$7,645	\$225,460
65	Painting/Exterior		2010	8	2	2020	6	\$1,023,010	
66	Concrete Spall Repair		2010	8	2	2020	6	\$65,882	
67	Pool & Jacuzzi Filters		2005	15	0	2020	6	\$6,116	
68	Heat Pump/Low Zone (5th floor)		2005	15	0	2020	6	\$137,620	
69	A/C Air Handlers - Residential Hallways		2000	20	0	2020	6	\$99,980	
70	Jacuzzi Gas Heater		2013	7	0	2020	6	\$6,464	
71	Trash Chutes Re-Line		1990	30	0	2020	6	\$47,049	
72	Trash Compactors - Endeavour		2012	8	0	2020	6	\$41,792	\$1,427,913
73	Sump Pumps - Storm Drains - Bus Stop		2006	15	0	2021	7	\$23,525	
74	Elevator Cab Refurbish - Resolution		2011	10	0	2021	7	\$56,758	\$80,283
75	Elevator Cab Refurbish - Endeavour		2012	10	0	2022	8	\$55,105	
76	Fire Hoses		2002	20	0	2022	8	\$28,298	
77	A/C Fan Coil - Resolution Lobby		2002	20	0	2022	8	\$11,763	
78	Lighting - Recreation Deck		2002	20	0	2022	8	\$21,173	\$116,339
79	Tile Flooring - Lobbies		2003	20	0	2023	9	\$176,436	
80	Wall covering - Lobbies		2003	20	0	2023	9	\$14,703	
81	Lighting - Lobbies		2003	20	0	2023	9	\$35,288	
82	Art Work Restoration - Lobbies		2003	20	0	2023	9	\$24,535	
83	Lobby Refurbishment Miscellaneous & Fees		2003	20	0	2023	9	\$76,456	
84	Waterproof Membrane - Recreation Deck		2003	20	0	2023	9	\$499,901	
85	Paver Tiles Recreation Deck		2003	20	0	2023	9	\$494,020	
86	Bathroom Refurbish - Recreation Deck		2003	20	0	2023	9	\$70,575	
87	Bathroom Refurbish - Main Lobby		2003	20	0	2023	9	\$17,643	\$1,409,557
88	Emergency Generator - Elevators		1984	30	10	2024	10	\$70,575	\$70,575
89	Furniture, Office		2010	15	0	2025	11	\$25,002	
90	Hot Water Storage Tanks - Endeavour Roof		2005	20	0	2025	11	\$55,283	
91	Hot Water Storage Tanks - Resolution Roof		2005	20	0	2025	11	\$55,283	
92	Hot Water Storage Tank - 4th Floor		2005	20	0	2025	11	\$103,509	
93	Fire Alarm System Upgrade		2005	20	0	2025	11	\$183,493	
94	Lighting Residential Hallways(Florescent)		2005	20	0	2025	11	\$57,590	
95	Gas Heaters(Hot Water)-Both Roofs		2005	20	0	2025	11	\$98,814	
96	Gas Heater(Hot Water) - 4th Floor		2005	20	0	2025	11	\$141,148	\$720,122
97	Roof Membrane - Both Towers		2006	20	0	2026	12	\$653,377	
98	Exhaust Fans Roof - Both Towers		2006	20	0	2026	12	\$470,496	
99	Sump Pumps - Sanitary - McDonalds		2011	15	0	2026	12	\$21,173	\$1,145,046
100	Railings & Gates - Recreation Deck		2003	25	0	2028	14	\$62,106	\$62,106
101	Bar-B-Q Planter Waterproof Membrane		2009	20	0	2029	15	\$182,317	\$182,317
102	Lighting - Garage & Exterior		2005	25	0	2030	16	\$61,166	\$61,166
103	Elevator Modernize - Mechanical - Resolution		2011	30	0	2041	27	More than 20 yr	\$812,649
104	Elevator Modernize - Mechanical - Endeavour		2012	30	0	2042	28	More than 20 yr	\$788,980
105									
106						TOTALS		\$9,501,927	

2014 20 YR Reserve Cash Flow - Approved 10/29/13					
Provides starting reserves necessary to finance all capital projects scheduled each year					
					% Incr/Decr
	Starting	Reserve	Annual	Ending	Over Previous
	Balance	Expenditures	Contribution	Reserve	Year
2014	2,000,000	917,860	570,079	1,652,219	
2015	1,652,219	840,674	587,181	1,398,726	3.0%
2016	1,398,726	846,880	604,797	1,156,643	3.0%
2017	1,156,643	387,911	622,941	1,391,673	3.0%
2018	1,391,673	1,007,718	641,629	1,025,584	3.0%
2019	1,025,584	245,460	660,878	1,441,002	3.0%
2020	1,441,002	1,444,068	680,704	677,638	3.0%
2021	677,638	80,283	701,125	1,298,480	3.0%
2022	1,298,480	192,795	722,159	1,827,844	3.0%
2023	1,827,844	1,515,031	743,824	1,056,637	3.0%
2024	1,056,637	136,449	766,139	1,686,326	3.0%
2025	1,686,326	207,067	789,123	2,268,382	3.0%
2026	2,268,382	203,602	812,796	2,877,576	3.0%
2027	2,877,576	370,555	837,180	3,344,202	3.0%
2028	3,344,202	1,280,068	862,296	2,926,429	3.0%
2029	2,926,429	309,514	888,165	3,505,080	3.0%
2030	3,505,080	92,611	914,809	4,327,278	3.0%
2031	4,327,278	182,238	942,254	5,087,294	3.0%
2032	5,087,294	151,557	970,521	5,906,258	3.0%
2033	5,906,258	53,871	999,637	6,852,024	3.0%



# House Rules

November 14, 2006 Revision

1778 Ala Moana Boulevard  
Honolulu, Hawaii 96815

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Fire, Safety, and Emergency Procedures are provided in a separate attached brochure.



**Telephone Numbers**

**FIRE, POLICE, AMBULANCE ..... 911**

**DISCOVERY BAY**

MANAGER'S OFFICE ..... 941-3307

FAX ..... 946-3201

E-MAIL ..... [discoverybay@hawaii.rr.com](mailto:discoverybay@hawaii.rr.com)

**SECURITY ..... 949-6949**

**[24 hours]**

**OCEANIC CABLE**

TROUBLE: ..... 625-8282

REPAIR ..... 625-8100

CUSTOMER SERVICE ..... 625-8200

**HAWAIIAN TELEPHONE ..... 643-6633**

REPAIR ..... 611

**HAWAIIAN ELECTRIC ..... 548-7311**

**TAXI COMPANIES**

CHARLIES ..... 531-1333

THE CAB ..... 422-2222

**CHECK YELLOW PAGES FOR ADDITIONAL LISTINGS**

**HANDI-VAN ..... 456-5555**

**THE BUS.....848-5555**

**OFFICE HOURS**

**Monday to Friday: 8:00 a.m. 5:00 p.m.**

**1778 Ala Moana Boulevard  
Honolulu, Hawaii 96815**

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## **Definitions**

<b>RESIDENT</b>	A person living at DISCOVERY BAY.
<b>TENANT</b>	Any person renting or leasing an apartment at DISCOVERY BAY.
<b>GUEST/ OCCUPANT</b>	Person who is on the premises for a period of time at the invitation of an owner or resident. All guests must be registered with the Manager's Office. They are subject to all rules and are required to check out upon departure.
<b>VISITOR</b>	Person who is on the premises with the permission of owners or residents.
<b>AGENT</b>	Any Hawaii licensed real estate broker, salesperson, company or individual who is empowered to act on behalf of any owner and has provided the Association with evidence of that authority.
<b>ASSOCIATION OF APARTMENT OWNERS(AOAO)</b>	All the owners acting as a group in accordance with the By-Laws and the Declaration of Condominium Property Regime (CPR).
<b>BOARD OF DIRECTORS</b>	The Board of Directors is comprised of 9 persons which are duly elected to represent the Association of Apartment Owners in all matters relating to the operation of the property and has the power to suspend or amend these rules in the interest of further harmony.
<b>MANAGING AGENT</b>	The management firm under contract to the Owners Association.
<b>GENERAL MANAGER</b>	The person authorized to exercise the duties set forth by the Board of Directors including enforcement of all rules.

## **Section 1: Introduction**

Discovery Bay is a privately owned condominium association and subject to the governing documents, Declaration of Condominium Property Regime, By-Laws, and Chapter 514 A/B, Hawaii Revised Statutes.

The Board of Directors, in accordance with the above, establishes House Rules. House Rules generally apply to the use and operation of the common areas; however, they may also be used to restate and clarify details of the Association Declaration and By-Laws, as well as local, state, and federal regulations.

These House Rules are intended to provide a harmonious relationship among those who live or work at Discovery Bay. They are also intended to provide personal security and to protect the property and the value of all units at Discovery Bay.

The Rules are not intended to be all-inclusive and do not imply that certain actions are permitted simply because they are not specifically addressed in the House Rules.

## **Section 2: Personal Conduct**

While at Discovery Bay, owners, tenants, guests, and visitors must: 1) conduct themselves in a polite and considerate manner; and 2) not address each other or employees in a hostile, aggressive, profane or threatening manner.

The Declaration and Bylaws of Discovery Bay give the Board of Directors the sole right to control and direct association employees' performance of their work. Owners, tenants, guests, and visitors have no right to tell association employees and contractors how to do their work and are prohibited from doing so. Any questions, comments, or concerns about the performance of an association employee must be sent in writing to the Board of Directors, care of Hawaiiana Management or the association's General Manager, and not directly to the employee or to any other employee.

The Board of Directors will not permit owners, tenants, guests, or visitors to create a hostile work environment for association employees. If the Board determines that the actions of an individual create a hostile work environment for an association employee, the Board will provide a warning to the individual. If the individual's conduct continues to create a hostile environment for the employee, the Board will take action against that individual to protect the employee. For purposes of this rule, creating a hostile work environment includes, but is not limited to: criticizing an employee in the presence of the employee or another employee; verbal or physical threats to the employee; harassment of the employee; disrupting the employee's performance of his or her job; and any other conduct the Board determines creates a hostile work environment for the association employee.

## Section 3: Occupancy

### **Rentals**

Discovery Bay By-Laws mandate a minimum rental of 30-days. To ensure compliance with this policy the following procedures must be followed.

1. Leases are required and leases must specify a minimum of 30 consecutive days to one party with no rotation of tenants.

Any person who occupies a unit under a rental agreement with a term of more than 30 days, but terminates the rental agreement within 30 days will be presumed to be renting the unit for less than 30 days, in violation of the 30-day By-Law Amendment.

Any business, including any employer, which owns or rents an apartment and allows any person to occupy the unit for less than 30 days, will be presumed to be renting the unit for less than 30 days in violation of the 30-day By-Law Amendment.

2. All occupants, renters, owners, and owner's guests, must register with the Manager's Office prior to occupancy. After office hours, please utilize the phone located on the counter of the Security booth to register with the Security Officer.
3. Owner's personal guests: A personal guest is a friend or relative occupying a unit at no charge. This exception may not be used to rent units for less than the 30-day minimum. For security reasons, all owners **MUST** file a Discovery Bay Registration Form signed by the owner for each of their guests prior to occupancy.

**Forms signed by anyone other than the owner, or photocopies of owner's signatures submitted by rental agents or caretakers, are not acceptable for stays of less than 30 days.**

Rentals by Realtors, agents, or owners: The current standard Hawaii Association of Realtors Rental Agreement and a Discovery Bay Registration Form must be presented to the Manager's Office prior to occupancy. The use of any other rental forms must be approved by the Manager's Office but must be accompanied by a Discovery Bay Registration Form. Subleasing is not recommended, but Hawaii laws permit subleasing unless specifically prohibited in the lease. Subleasing is subject to the same minimum stay and procedures as all other rentals/leases.

Subject to the terms of the apartment lease and the By-Laws of the Association, an apartment owner may lease his/her apartment or make it available to friends. However, all occupants must abide by the House Rules, and the owner will assume responsibility for the occupant's conduct and actions. The owners/agents **MUST** notify the Manager in writing of the names and length of anticipated occupancy of lessees, renters or guests and must deliver to lessees, renters or guests a copy of these House Rules available at the Manager's Office. Please note item above concerning registration of guest(s).

4. Violations must be resolved immediately with the agent or the owner. Owners are liable for fines and legal costs in connection with the enforcement of this By-Law. Owners will be notified of all violations of their agents and/or guests.

Rotation of occupants is not permitted unless each group is registered and observes the 30-day minimum stay.

For security reasons, any unregistered guest may be considered a trespasser and subject to the appropriate action.

The Manager has authority to disable building keys for unoccupied units.

No residential apartment may be used in connection with any time-sharing arrangement whatsoever.

5. Occupancy is limited to not more than two persons per bedroom, except that this occupancy limit may be increased if all occupants are members of a single-family group.
6. An apartment will be used only as a place of residence and will not be used for business or other purposes. However, this will not be construed to prohibit the accessory or incidental use of a portion of an apartment for a study or home office which is appropriate or helpful to the conduct of the owner's business affairs, subject to existing zoning laws and ordinances.
7. The Manager's Office must be aware if you have a local agent/care taker and what the agent/care taker is authorized to do. Owners must designate a local agent/care taker to represent their interest if their residence is outside of Hawaii or if they will be absent from the apartment for more than thirty (30) days. Owners must file with Discovery Bay Manager their current out-of-town address and telephone number, and provide the Manager with written notification of the current name, address and telephone number of any rental agent/care taker using only the Board-approved Discovery Bay Condominium Agent Authorization Form.
8. An apartment owner will be responsible for the conduct and actions of their tenants including children, guests, and workers, at all times; and will ensure that their behavior is neither offensive to any employee or occupant of the project nor damaging to any portion of the common elements.

Upon request of the Board of Directors or Managing Agent, an apartment owner will immediately abate and remove, at his/her expense, any structure, item or condition in contravention of these rules or the standards of reasonable conduct which are caused or permitted by his/her lessee, renter or guest. If the apartment owner is unable to control the conduct of the lessee, renter or guest, the owner will, upon request of the General Manager or Managing Agent, immediately remove such lessee, renter or guest from the premises, without compensation for lost rentals or any resulting damage.

## **Section 4: Security**

Discovery Bay has a key control entry system, television viewable entry phones, security personnel (Endeavour Security) providing coverage 24 hours a day, and a 24-hour a day, recording surveillance camera system.

Effective security necessitates that the Manager's Office have an accurate record of all authorized occupants. This is to prevent unauthorized use of owners' units.

Owners and agents must insure that all occupants are registered in and out. This includes owners returning after absences of greater than thirty days.

## **Section 5: Common Areas, Entrances, Elevators & Lanais**

1. Consumption of food or beverages in main lobbies, elevators and hallways is not permitted. Sidewalks, passages, lobbies, stairways, and corridors must not be obstructed or used for any purpose other than ingress or egress.
2. Lanais: Each owner of a residential apartment will be responsible for the care and maintenance of his/her lanai. Such owner may not, however, paint or otherwise decorate the walls and ceilings of the lanai without prior approval from the Board of Directors. It is intended that the exterior of the building shall present a uniform appearance and, to affect that end, the Board may require the painting of walls and ceilings of each lanai and regulate the type and color of paint to be used. The Board is authorized to contract for painting of all the walls and ceilings of the lanais and to make payment from the reserve fund.

The only lighting fixtures permitted on open lanais are those originally designed for Discovery Bay.

- a. No gas or charcoal cooking allowed on lanai.
- b. Only appropriate (lanai style) furniture and small plants shall be used on lanais and any unsightly or disturbing items will be removed upon request of the Manager. Lanais are not to be used for storage purposes of any kind. Small banners commemorating holidays or festivals may be displayed from lanais on holidays. The United States and Hawaii State flags, of appropriate size, may be displayed at all times subject to the provisions of the American Flag Act of July 2005.
- c. Towels, bathing apparel and clothing, brooms, mops, cartons, etc., will not be placed on lanais or passages or in windows that can be viewed from outside the project or from the apartments above.
- d. All plants shall be placed in containers to prevent dripping of water or soil onto other apartments or the common elements. Care should be taken in scrubbing lanais to prevent water from running down the exterior of buildings and soiling windows of other units.

- e. Lanais must never be hosed down.
- f. Nothing shall be thrown from apartment lanais, windows, recreation or parking decks, etc.

**THE THROWING OF FIRECRACKERS FROM LANAIS AND THE EXPLOSION OF ANY FIREWORKS ANYWHERE ON THE BUILDING GROUNDS OR WITHIN THE BUILDING ARE EXPRESSLY PROHIBITED BY LAW.**

**VIOLATORS WILL BE PROSECUTED TO THE FULLEST EXTENT OF THE LAW.**

## **Section 6: Recreation Deck and Facilities**

The Recreation Deck opens at 8:00 a.m. and closes promptly at 10:00 p.m. daily.

### **Pool & Spa Rules**

1. **NO LIFEGUARD IS ON DUTY AT THE POOL.** The pool area is for the exclusive use of apartment residents and their guests. Pool guests are limited to four per apartment without prior approval of management and access to the pool, spa, and sauna areas shall be restricted to those with a security key. An owner's or resident's family members or guests found in the pool area shall be presumed to be there with the full knowledge and consent of the owner or resident. Owners and residents shall be responsible for the health and safety of themselves, their family members, and their guests who use the pool, spa, and sauna, and for ensuring that all rules for those facilities are obeyed. Apartment owners are financially responsible for any damages or destruction caused by themselves and their family members, guests, lessees, and renters.
2. Owners and residents must ensure that family members and guests who are non-swimmers or weak swimmers are accompanied at all times in the pool area by someone who can ensure their safety. In particular, any child under the age of 12 shall be accompanied by an adult when using the pool, unless the child is a competent swimmer. A child's parent or guardian shall be responsible for determining if the child is a competent swimmer.
3. Persons who are incontinent or not toilet trained shall not use the pools or Spa unless they wear leak-proof pants.
4. Anyone who may be adversely affected by the heat or humidity of the Spa or sauna such as young children, pregnant women, and anyone with high blood pressure should not use these facilities. Since prolonged exposure to high water temperatures can cause drowsiness and/or raise the blood pressure of any such persons, they should be accompanied by a parent, guardian, or someone who can ensure their safety when using the Spa.
5. Absolutely no food or beverages are allowed in the Spa area or within 5 feet of the swimming pool.



6. Everyone must shower and wash off all body lotion each time they enter the swimming pool or Spa.
7. Toys, snorkel equipment and flotation devices are prohibited. Eye goggles, water wings, and small life vests are permitted at parents' discretion.
8. Jumping, diving or horseplay or excessive noise that is disturbing to others will not be allowed in the pool or surrounding areas. Any audio equipment brought to the Recreation Deck must be used with earphones or headsets.
9. Swim wear is required to be worn when in the pool, spa, or sauna. Infants and toddlers must use swim diapers.
10. No glass containers or umbrellas will be permitted on the Recreation Deck.
11. Any person having an infectious or communicable disease, bandages, skin disease, or open wounds of any type are prohibited from using the pool, sauna, or spa.
12. Spitting, spouting of water, blowing the nose or discharging body fluids in the pool or spa are strictly prohibited.
13. While on the Recreation Deck, always be thoughtful of others. Do not splash others either from horseplay or vigorous swimming.
14. All persons must dry themselves completely before entering the building.

### **Exercise Room & Sauna**

1. Exercise Rooms: Shirts must be worn in Exercise Rooms. Towels are required to wipe perspiration off the equipment after each use.
2. Sauna: Anyone who may be adversely affected by the heat or humidity of the sauna such as young children, pregnant women, and anyone with high blood pressure should not use these facilities. Since prolonged exposure to high temperatures can cause drowsiness and/or raise the blood pressure of any such persons, a parent, guardian, or someone who can ensure their safety when using the sauna should accompany them. All users must wear appropriate bathing apparel.

**Danger! Do not pour water on sauna heater. This is a dry heat sauna.**

Management reserves the right to refuse admittance to or eject from the Recreation Deck any person (s) failing to comply with any of the deck, health & safety regulations.

### **Barbeques**

Barbeques located on the 5th Floor Deck are available to residents on a first-come basis. Due to the limited number of tables and cooking units, residents are expected to conduct themselves in a courteous manner and be mindful of other residents who would also like to use the barbeques and tables. Users must clean off grills after each use. Personal barbeque grills and

other portable cooking appliances are not permitted in the barbeque area or any other common areas.

### **Section 7: Lobbies**

The lobbies are to provide ingress and egress. Occupying the lobby while waiting to check in or waiting for transportation is permitted. The seating space is limited and should not be used for meetings.

### **Section 8: Parking Areas**

1. No car shall be left unattended at the lobby entrances or in the entry driveways.
2. Automobile parking passes will be issued to properly registered residents by the Manager's Office. Residents are required to display a current valid parking pass on the vehicle parked in their assigned parking stall. Each apartment owner or designated agent will advise the Manager in writing the number of the parking stall, the length of assignment, and the person authorized to use the parking stall prior to the Manager's Office issuing a parking pass.
3. Vehicles shall not protrude into the common driveway. Vehicles must also be centered in parking spaces so as to prevent crowding of adjacent spaces and/or blocking of passages.
4. Owners are responsible for the maintenance of their parking stalls (see the Office for procedures).
5. Violators of parking regulations may be subject to having their cars towed away at their expense. If the violator is a lessee, renter or guest of any owner, the owner will be held liable.
6. No repairs to any vehicle, boat, surfboard or other equipment are permitted on the premises.
7. There is very limited guest parking available in the basement-loading zone. It can be used on a first come first served basis to permit holders. These spaces are only available Monday through Saturday from 5:00 p.m. to 6:00 a.m. as well as all day on Sundays and holidays. Only an owner, renter, or lessee can pick up a basement-parking permit from Security in the Endeavour lobby after 5:00 p.m. This permit must be clearly displayed on the driver's side of the dashboard to avoid being towed. The permit is good ONLY for the date issued. Any car in the basement-loading zone after 6:00 a.m. Monday through Saturday will be towed.

Additional guest parking is available in the commercial parking area at the posted parking rates.

8. Temporary Parking Passes are available for owners/residents who wish to allow a visitor to park in their assigned stalls. The Pass is good for 24 hours and can be obtained from Discovery Bay Office or Endeavour Security Booth.

## Section 9: Noise

1. No resident shall make or permit any disturbing/unreasonable noises or permit anything to be done that will interfere with the rights, comforts or conveniences of any other resident.
2. Take care when opening and closing all doors so as not to disturb your neighbors.
3. Workmen are allowed to work in apartments from 8:00 a.m. to 5:00 p.m., Monday through Saturday **ONLY**. Only emergency work, approved by the Manager's Office can be performed on Sundays or holidays.
4. Radios, TVs, stereos, etc., must be played at reduced volume (not audible to other units) between 10:00 p.m. to 7:00 a.m.
5. Please keep noise to a minimum especially when leaving at night.
6. Noise that appears to be disturbing/unreasonable for the time of day and general conditions should be reported to Discovery Bay Security [949-6949] who will verify and take appropriate action.
7. The residential apartment entry doors shall **REMAIN CLOSED** after entering or leaving. Persons shall exercise care in opening and closing their apartment doors and not allow doors to slam shut.

## Section 10: Pets

1. Pets will be limited to cats and other usual household pets. Dogs (except those exempt by Condominium Property Regimes 514B), livestock, poultry, or other animals are expressly prohibited. Breeding or commercial use is also expressly prohibited. Pets are prohibited from the common areas, except in transit when carried or on a short leash. Any pet causing a nuisance or unreasonable disturbance to any other resident will be promptly and permanently removed upon notice given by the General Manager or Managing Agent.
2. Each pet owner must officially register their pets with the Manager's Office by completing a Pet Information Sheet and providing a photograph of the pet.
3. All new residents **MUST** register their pets with the Manager's Office before moving into the building.

4. The number of pets will be limited to two pets per apartment as established by the Board of Directors in accordance with the First Amendment to the Declaration of Horizontal Property Regime. The Board of Directors must approve any exceptions to the number.
5. Exempt dog owners are required to obtain consent from occupants of an elevator before entering with their pets or wait for an unoccupied elevator. Pets accompanying residents in elevators shall be hand carried or on a short leash withdrawn to a length of not more than one (1) foot when meeting or passing other persons.
6. Pets are not allowed on any common elements in the project except in transit when physically carried or on a short leash. In no case are pets allowed in any part of the recreation areas.
7. Pets, other than those relied upon by disabled persons, may not be allowed to linger in the lobbies while owners are transacting business with the office or security, picking up mail, or conversing with others. See Article VII of the Restated By-Laws.
8. Pet owners are responsible for picking up after their pets in all areas including the Pet Park. All pets' refuse must be securely bagged and tied or wrapped and tied in leak proof material, i.e., plastic or foil before thrown down the trash chute except in the pet park where wrapping material and disposal container are provided.
9. Any damage to the apartment buildings, grounds, flooring, walls, trim, finish, tile, carpeting, stairs, or other portions of the project, will be the full responsibility of each pet owner. Any damage caused by cleaning chemicals or other such materials used in an attempt to remedy said damage is also the full responsibility of each pet owner, who will pay the full cost of restitution or removal or replacement of items damaged by the pet.
10. The pet owner will assume all financial and all other responsibility for any personal injury caused by a pet, or any personal property damage to any owner, occupant, guest, employee of Discovery Bay, or to any member of the public.
11. Pet owners in violation of the above rules will be subject to the following:
  - a. Owners of pets off leashes involved in contact with a person or other pet in which injury occurs will receive a notice from the Manager, at the direction of the Board of Directors, for immediate removal of the pet from premises.
  - b. When injury results to a person or pet when all pets are on a leash or carried, the Manager will review and inform the Board of Directors. Determination will then be made as to whether one or all pet owners involved should receive a notice to remove pet(s) from premises.
  - c. Any owner not picking up in the Pet Park or allowing pets to void on common areas in and about the building will also be subject to a notice of immediate removal of their pet from the building premises.

Notwithstanding any other provision herein, disabled residents and guests shall be permitted to keep and use guide dogs, signal dogs, service dogs, and other animals upon which disabled residents rely for assistance. See Article VII of the Restated By-Laws

## **Section 11: Apartment Modifications**

Construction and remodeling specifications must be filed and approved by the Manager's Office prior to the commencement of work.

1. No structural changes of any type will be permitted either within or without an apartment except in accordance with the By-Laws.
2. No awnings, shades, windbreaks, or any other thing which is visible from the outside of the buildings will be installed.
3. Lanais may be enclosed in accordance with approved specifications on file at the Manager's Office. A letter of authorization is needed from the Association's Board of Directors in order to apply for the required building permit from the City and County of Honolulu.
4. Windows may be tinted in accordance with approved specifications on file at the Manager's Office. A letter of authorization is needed from the Discovery Bay Management Office.
5. When tiling or re-tiling apartment and/or lanai floors, sound deadening materials must be installed under the tile to buffer the noise. See sample at Manager's Office.
6. No signs, signals or lettering will be inscribed or exposed on any part of the buildings, nor will anything be projected out of the window or off any lanai.
7. No projections will extend through any door or window opening into any corridor or beyond the exterior face of the buildings.
8. All window coverings, which are visible from the exterior of the buildings, must be off white in color.
9. No additions or alterations to the original design of the apartment will be permitted which are visible from the exterior of the buildings or the interior hallways.
10. Advance notice must be given to the Manager's Office when household goods or large items of furniture are to be moved. The service elevators **MUST** be reserved 24 hours in advance by contacting the Manager's Office during normal office hours. Elevators cannot be reserved or locked off after 5:00 p.m. and before 8:00 a.m. There is **NO** moving in or out or deliveries allowed on Sundays and holidays.

Construction work of any type by contractor or owners is limited to the hours of 8:00 a.m. to 5:00 p.m. Monday through Saturday.

**VIOLATIONS OF ANY PROVISION TO THE HOUSE RULES WILL GIVE THE BOARD OF DIRECTORS OR ITS MANAGING AGENT THE RIGHT TO:**

1. Enter the apartment in which such violation or breach exists and to summarily abate or remove, at the expense of the defaulting apartment owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof; and the Board of Directors or the Managing Agent will not thereby be deemed guilty in any manner of trespass.
2. To enjoin, abate, or remedy by appropriate action, either at law or in equity, the continuance of any such breach and all costs thereof, including attorney's fees, will be borne by the defaulting apartment owner.

## **Section 12: Miscellaneous**

1. No message service is available. Owners must provide their temporary guests with the phone number of a local contact.
2. No items are allowed to be left in the hallways or any other part of the common elements.
3. Baggage for large groups arriving at one time will be taken to the basement and moved to apartments via the service elevator.
4. Luggage must not be stored in lobbies awaiting transportation to the airport. Large quantities of baggage must be taken to the basement via the service elevator.
5. If any person, corporation, partnership, business, or other entity which conducts or causes two or more groups of persons to enter, leave, or be present upon the common elements of Discovery Bay for any reason whatsoever, must stagger the entry/exit of any such groups by a period of at least fifteen (15) minutes, to prevent overcrowding of the elevators, lobbies, hallways, and/or traffic congestion.

A group of persons shall mean any group of six (6) or more persons.

6. Garbage placed in the trash chutes must be in plastic trash bags and securely tied. All glass, aluminum cans, plastic beverage containers, and newspapers must be separated for recycling and placed in the appropriate bins in each trash room. Boxes or any other bulky objects should be left in the trash room for pickup. Do not deposit them in the trash chute as this may cause a severe blockage in the chute. Trash is to be deposited in trash chutes only between the hours of 7:00 a.m. to 10:00 p.m.
7. The hallways of the residential apartment floors are to be used for purposes of egress and ingress to and from residential apartments only. In order to prevent overcrowding of these areas, no groups of persons will congregate or loiter in residential hallways at any time. No shoes, sandals, dry cleaning, toys, etc., will be allowed to remain in hallways.
8. Children/adults will not be permitted to play in corridors, lobbies, elevators or parking garages.
9. Furniture placed in common areas is for use in those specific areas and must not be removed from these areas.

10. Unit entry doors must present a uniform appearance from the hallways: no decorations, stickers, etc. and all door hardware must be as original, bronze only. Replacement hardware is available through the Manager's Office.
11. Smoking is prohibited in all enclosed common areas-lobbies, stairwells, hallways, and offices and within 20 feet of all building entrances, open windows, ventilation opening, etc., as governed by all City and State smoking regulations. All smoking material must be extinguished before entering the building. Likewise all smoking material must be extinguished when leaving a living unit. Unit owners may specify no smoking within their units for guests and renters.
12. Bicycles are never permitted in the passenger elevators. A bicycle room is provided on the 3rd level parking area for bikes used regularly. Bicycles not in regular use (weekly) may be stored in apartments; however, only the Service Elevator may be used with a 24-hour advance notice.
13. No solicitations or canvassing will be allowed in the building at any time.
14. Shirts, cover-up apparel and footwear must be worn in the elevators and lobby areas.
15. Owners are responsible to maintain their units in such a condition as not to disturb or jeopardize other occupants/units. This includes but is not limited to replacement of rollers and/or lubrication of sliding doors and prevention of leaks from any source within the apartment. **OCCUPANTS MUST PROMPTLY REPORT ANY LEAKS TO THE MANAGEMENT OFFICE OR SECURITY PERSONNEL.**
16. Advance notice must be given to the Manager's Office when household goods or large items are to be moved. The service elevators **MUST** be reserved 24 hours in advance by contacting the Manager's Office during normal office hours. Elevators cannot be reserved or locked off after 5:00 p.m. and before 8:00 a.m. There is **NO** moving in or out or deliveries allowed on Sundays and holidays.

### **Section 13: Enforcement of Rules**

It is the primary responsibility of the Board of Directors, through the General Manager and the Managing Agent to ensure that rules are enforced in a fair and equitable manner.

1. Discovery Bay enforces the rules by first notifying owners of infractions. If the matter is not corrected, fines will be imposed in accordance with the following schedule:
  - a. First Notice: A written citation given or sent to the violator with a copy to the owner, as applicable.
  - b. Second Notice: A written citation given or sent to the violator with a copy to the owner, as applicable, and a fifty-dollar (\$50) fine assessed against the owner.

- c. Third Notice: A written citation given or sent to the violator with a copy to the owner, as applicable, and a hundred-dollar (\$100) fine assessed against the owner.
- d. Subsequent Notice: Referral by the Board of Directors to the Association attorney for appropriate legal action. As permitted by Hawaii law, legal fees and costs incurred by the Association will be assessed against the owner, in addition to the fines specified above. Legal action may be considered as the primary action in the event of more serious violations. All expenses involved in legal action will be charged to the owner.
- e. All violations are considered cumulative regardless of what rule is violated. Violations not corrected within 10 days will be considered another violation.
- f. Fines may be appealed to the General Manager, Managing Agent, or the Board of Directors.

Provided the fine is paid, the owner shall have the right to initiate a dispute resolution process as provided by HRS 514B-161 or 514B-162, or by filing a request for an administrative hearing under a pilot program administered by the State Department of Commerce and Consumer Affairs.

Nothing contained herein shall be interpreted to prevent or delay the Board, Managing Agent, or General Manager from immediately enjoining, abating, removing, remedying through automatic fines, legal action, or other means-any violation or breach that may impair or in any way affect the value or safety of the project or the use, enjoyment, safety, or health of any apartment owner or resident.

**OWNERS ARE RESPONSIBLE FOR ANY ACTIONS OF GUESTS, RENTERS, AGENTS OR THEIR OUTSOURCED SERVICE PERSONNEL.**

All policies shall be age neutral and apply to all persons equally.

**( November 14, 2006 Revision)**



# AOAO DISCOVERY BAY

Annual meeting January 31, 2013

## PROPERTY INSURANCE AND CLAIMS PROCEDURES AGENDA

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Renewal Date:	04/27/2013
Marketing	
Insurance Company:	First Insurance Co. of Hawaii
Total Insured Value:	\$150,397,500
Reinsurance	

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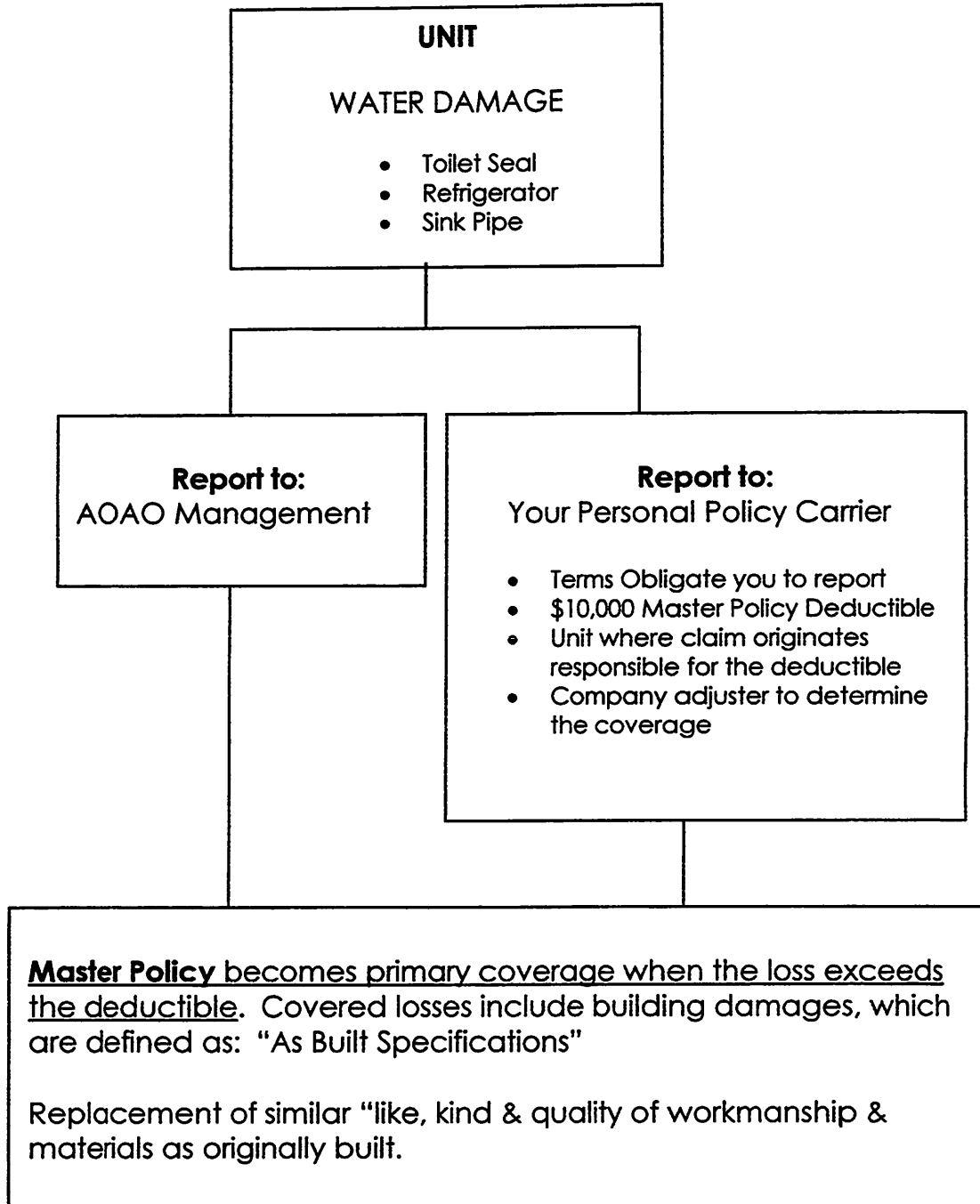
Master Policy Deductible:	\$10,000
Water Damage – Most common claim	
Claim History	

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Minimum Insurance Requirements:	Condo HO-6 Homeowner Form Or Equivalent Coverage
Coverage A:	\$10,000 Upgrades & Deductible
Coverage C:	Optional Limit for Personal Property
Liability:	\$300,000
Loss Assessment:	\$10,000
(Loss of Use not covered under master policy) Included in HO-6 Form	

## AOAO DISCOVERY BAY CLAIMS REPORTING PROCEDURES

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April 23, 2012

## MANDATORY HOMEOWNER'S INSURANCE

Re: The requirement for Each Owner to Obtain Insurance for His/Her Apartment

Dear Apartment Owners,

The condominium law allows the board, with the approval of the majority of the association members, to require every owner to obtain his (or her) own insurance policy—often known as an “HO-6” policy (but owners should check with their own insurance agents). At the 2008 Annual Meeting, a majority of the association members voted in favor of having every owner obtain his own insurance.

The minimum coverages the board requires are:

Dwelling. . . . \$10,000  
Liability. . . . \$300,000

**NOTE: Owners receive many benefits from having their own insurance policies:**

The association's policy only pays to restore individual apartments to their as-built condition, i.e., with carpet, appliances, cabinets, etc., comparable in quality to those found in the apartment when it was first sold. Upgrades to an apartment, such as better quality flooring, cabinets, or wall-coverings may not be covered by the association's policy but should be covered under a homeowner's policy.

The association's policy will not pay for damage to an owner's personal property; for example, the clothing and furniture of occupants of an apartment. By obtaining their own insurance policies, owners can usually obtain coverage for those items.

An owner's insurance policy may cover the owner for liability claims that will not be covered by the association's policy; for example, if someone slips and falls within the owner's apartment, that will not be covered by the association's policy. (In addition, an owner's claims against a neighbor for damage caused by the neighbor may be covered under the neighbor's policy.)

Owner policies may also cover the cost of finding alternative accommodations if the owner's apartment is damaged by fire or otherwise made uninhabitable.

The association's policy deductible is currently \$10,000 and the unit in which a claim originates will be responsible for this deductible if the claim is submitted to the master policy. A unit owner's policy can make up the difference of the deductible by filing a claim under their homeowner's policy for the damage to their unit.

**Check with your own insurance agent on coverage issues.** In addition, owners who rent their units should: (1) check with their insurance agents to ensure they obtain comparable coverage under a landlord's policy and (2) encourage their tenants to obtain a renter's policy.

Since the cost of an owner's policy is usually only \$150 - \$250 a year, sometimes less, every owner receives significant benefits from obtaining his (or her) own insurance. Therefore, the board hopes that every owner will recognize those benefits and comply with the decision of the board (and the association members) that every apartment owner obtain a homeowner's insurance policy.

Note that the law specifically states that neither the association or the board will be *"liable to any person . . . with regard to the failure of a unit owner to purchase insurance . . ."* Nevertheless, the law places so much importance on each owner having insurance for the owner's apartment that if the owner fails to purchase insurance, the law gives the board the authority to **purchase the insurance for the owner** and bill the owner for the cost of the insurance.

The board may decide to purchase insurance for you and/or exercise the fining system described in the House Rules if you fail to purchase your own insurance. When the board decides to take this drastic step, you will be notified in writing. In addition, if you allow your insurance to lapse, the board's policy will be:

**An owner will be barred from making a claim against: (1) the association, (2) any other association member, or (3) any resident of the project, for damages the owner may suffer if the owner has failed to purchase his/her own insurance but the claim would have been covered under a standard HO-6 policy or it's equivalent.**

Again, the board hopes that every owner will comply with the law and the decision of the owners to require owners to purchase their own insurance. Otherwise, owners who fail to purchase their own insurance will be subject to the policies stated in the preceding paragraphs.

You may contact the management office at Discovery Bay if you have any questions on the issue.

THE BOARD OF DIRECTORS OF DISCOVERY BAY



January 16, 2014

**SUMMARY of INSURANCE COVERAGE for the ASSOCIATION of  
APARTMENT OWNERS of the DISCOVERY BAY CONDOMINIUM**

**1) COMMERCIAL PROPERTY INSURANCE**

**Agent:** John H. Connors, Inc. (808) 521-3663  
**Carrier:** First Insurance Company  
**Policy No:** CPP 7030294 **Period:** 04/27/13-04/27/14  
**Amounts:** \$150,397,500 **Deductible:** \$10,000  
**Premium:** \$113,209 **Hurricane Deductible:** 1% - \$1,505,475

**2) COMMERCIAL GENERAL LIABILITY**

**Agent:** John H. Connors, Inc. (808) 521-3663  
**Carrier:** First Insurance Company  
**Policy No:** CPP 7030294 **Period:** 04/27/13-04/27/14  
**Amounts:** General Aggregate Limit \$2,000,000  
Personal & Advertising Injury \$1,000,000  
Each Occurrence Limit \$1,000,000  
Fire Damage Limit, Any One \$ 100,000  
Fire; Medical Expense Limit, \$ 5,000  
Any One Person  
**Premium:** \$29,466 **Deductible:** NONE

**3) BUSINESS AUTO COVERAGE**

**Agent:** John H. Connors, Inc. (808) 521-3663  
**Carrier:** First Insurance Company  
**Policy No:** CPP 7030294 **Period:** 04/27/13-04/27/14  
**Amounts:** Each Accident \$1,000,000  
**Premium:** \$66 **Deductible:** NONE

**4) COMMERCIAL UMBRELLA LIABILITY**

**Agent:** John H. Connors, Inc. (808) 521-3663  
**Carrier:** Great American Insurance Co.  
**Policy No:** Cert #1601853 **Period:** 04/27/13-04/27/14  
**Amounts:** Each Occurrence/Aggregate \$10,000,000  
**Premium:** \$7,821 **Deductible:** NONE



5) **FLOOD INSURANCE (100%)**

Agent: John H. Connors, Inc. (808) 521-3663  
Carrier: First Insurance Company  
Policy No: FF30001210 Period: 04/27/13-04/27/14  
Amounts: \$150,397,500 Deductible: \$1,000  
Premium: \$93,027

6) **DIRECTORS & OFFICERS LIABILITY**

Agent: John H. Connors, Inc. (808) 521-3663  
Carrier: USLI  
Policy No: CAP1011247C Period: 04/27/13-04/27/14  
Amounts: \$5,000,000 Deductible: \$10,000  
Premium: \$9,047

7) **CRIME/FIDELITY BOND**

Agent: John H. Connors, Inc. (808) 521-3663  
Carrier: First Insurance Company  
Policy No: CPP 7030294 Period: 04/27/13-04/27/14  
Amounts: \$500,000 Deductible: \$1,000  
Premium: \$901

8) **FINE ARTS**

Agent: John H. Connors, Inc. (808) 521-3663  
Carrier: First Insurance Company  
Policy No: CPP 7030294 Period: 04/27/13-04/27/14  
Amounts: \$65,750 Deductible: \$500  
Premium: \$658

9) **WORKERS COMPENSATION & EMPLOYERS LIABILITY**

Agent: John H. Connors, Inc. (808) 521-3663  
Carrier: Dtric Insurance Co.  
Policy No: 2006141 Period: 01/20/14-01/20/15  
Amounts: \$1,000,000 (Accident) Deductible: NONE  
\$1,000,000 (Disease)  
Premium: \$33,333

10) **TERRORISM COVERAGE (Commercial Fire)**

Agent: John H. Connors, Inc. (808) 521-3663  
Carrier: First Insurance  
Policy No: CPP 7030294 Period: 04/27/13-04/27/14  
Amounts: \$150,547,500 Deductible: \$10,000  
Premium: Included

MINUTES OF THE ANNUAL MEETING  
ASSOCIATION OF APARTMENT OWNERS OF DISCOVERY BAY  
JANUARY 22, 2014  
PRINCE HOTEL

CALL TO ORDER

President Stewart called the meeting to order at 7:05 p.m. A quorum was present with 69.54186% of the ownership represented in person or by proxy. Jo Ann Baker was recording secretary.

PROOF OF NOTICE OF MEETING

The annual meeting notice was mailed to all owners of record on December 3, 2013.

READING & APPROVAL OF MINUTES

The minutes of last year's annual meeting were approved by the board on March 15, 2013.

REPORTS

- A. President's Report. President Stewart gave a report.
- B. Treasurer's Report. Treasurer Nichols gave a report. The resolutions were adopted by unanimous consent and are attached to these minutes.
- C. Survey Results. Director Holt gave a report on the survey that was sent to the owners.

APPOINTMENT OF TELLERS

Jeanette Rinehart, Klaus Kittel, Foster Ducker, and Gene Matsuura were appointed tellers for any counted vote at the meeting.

ELECTION OF DIRECTORS

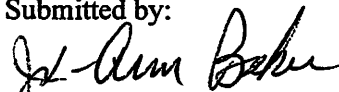
Nominations and elections were conducted. The results are:

Endeavor Tower:	Ken Woods	23.5995%	Three year term
	Charlie Fox	21.9588%	Two year term
	Mark Rodgers	12.1258%	
Resolution Tower:	Duncan Seaman	22.47501%	Three year term
At Large:	John Stewart	51.01738%	Three year term
	Mark Rodgers	2.6459%	

ADJOURNMENT

The meeting adjourned at 10.00 p.m.

Submitted by:



Jo-Ann Baker

Recording Secretary

1286min2014 0122 ann

Approved by:



Duncan Seaman

Secretary

MINUTES OF THE ORGANIZATIONAL MEETING  
AOAO DISCOVERY BAY  
JANUARY 22, 2014

CALL TO ORDER

Ralph Ahles, Management Executive, called the organizational meeting of the Board of Directors to order at 10:03 p.m. Jo-Ann Baker was recording secretary.

DETERMINATION OF A QUORUM

Members Present: Rusty Adams, Charlie Fox, Gary Holt, George Kinst, Bill Nichols, Duncan Seaman, John Stewart, and Kenneth Woods

Members Excused: Michael Bruser

Also Present: Ralph Ahles, Management Executive, Hawaiiana Management Co., Ltd.  
Steve Glanstein, Professional Registered Parliamentarian  
Jo-Ann Baker, Recording Secretary

ELECTION OF OFFICERS

The following officers were elected to serve until the next annual meeting:

President	John Stewart
Vice President	Gary Holt
Secretary	Duncan Seaman
Treasurer	Bill Nichols

DATE, TIME, AND PLACE OF NEXT MEETING

The next regularly scheduled meeting of the Board of Directors will be determined at a later date.

ADJOURNMENT

The meeting adjourned at 10:07 p.m.

Submitted by:



Jo-Ann Baker  
Recording Secretary

Approved by:



Duncan Seaman  
Secretary



MINUTES OF THE 2014 ANNUAL MEETING  
AOAO DISCOVERY BAY  
January 22, 2014  
PAGE 2

RESOLUTIONS

1. **RESOLVED** by the Association of Apartment Owners of Discovery Bay, that the amount by which members' assessments in 2014 exceed the total expenses of the association for the purpose of managing, operating, maintaining and replacing the common elements of the association, shall be applied against 2015 operating expenses.
2. **RESOLVED** by the Association of Apartment Owners of Discovery Bay, that during the calendar year 2014, its Board of Directors be directed to select an auditor(s) to perform an annual audit for the year 2014 as required by law.
3. **RESOLVED** by the Association of Apartment Owners of Discovery Bay, that the property management contract with Hawaiiiana Management Company is approved in accordance with Article 4, Section 2 of the By-Laws.

# CAPTAIN'S LOG

NEWSLETTER

DISCOVERY BAY ASSOCIATION

FEBRUARY 2014



**2014 ANNUAL MEETING:** The election results for the Discovery Bay Board of Directors at this year's Annual Meeting are as follows: **JOHN S. STEWART**, President At-Large; **GARY K. HOLT**, Vice President; **WILLIAM H. NICHOLS**, Treasurer; **DUNCAN R. SEAMEN**, Secretary; **KENNETH WOOD** Director; **RICHARD (RUSTY) ADAMS**, Director; **CHARLES FOX**, Director; **GEORGE (RANDY) KINST**, Director At-Large.



## **INSURANCE CLAIMS PROCEDURE:**

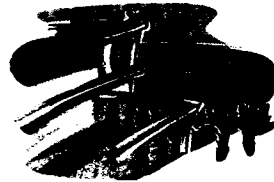
During the Annual Meeting there was a review of the Discovery Bay Property Insurance and Procedures to be followed when filing a claim. This information was provided by Mr. Jim McGuinness, the AOA's Insurance Agent.

The following items were discussed: Our Insurance carrier is First Insurance Company of Hawaii. The total insured value of the property is \$150,397,500. The AOA Master Policy deductible is \$10,000.

It has been a requirement since October 2008 that home owners are obligated to have a Condominium HO-6 Homeowner Insurance Policy with Coverage A: \$10,000 Upgrades and Deductible; Coverage C: Optional Limit for Personal Property; \$300,000 Liability and \$10,000 Loss Assessment.

The Claims Reporting Procedures are as follows: As an example, in the event of a water leak, owners, agents, occupants should report the leak to management at 941-3307, or security at 949-6949 after normal business hours, and to their personal HO-6 Insurance carrier. The company insurance adjuster will determine coverage. The AOA Master policy becomes primary coverage when the loss exceeds the \$10,000 deductible. Covered losses include any building damages which are defined as: "As

Built Specifications", or the replacement of similar or like, kind and quality of workmanship, and materials as originally built or installed.



## **APARTMENT RENTALS:**

The minimum occupancy requirement for all apartment rentals at Discovery Bay is 30 days. It is also required that each person occupying an apartment be registered. Registration ensures that residents receive services and other assistance when needed. Unregistered residents, as an example, will not receive lock-out and/or parcel pick-up assistance or the use of other facilities. Please be sure that every person occupying your apartment is registered with the Management office. The contact person is Mel. His contact number is: 941-3307.

## **PARKING GARAGE:**



When driving in the Parking Garage please remember to: Slow down, the speed limit is 5 MPH; Turn on your headlights; Do not cut corners when driving up and down the ramps; Be sure to park within the lines of your assigned parking stall; Unauthorized vehicles are subject to being towed at the owners expense.



**SWIMMING POOL:** Please take a shower before entering the pool to remove tanning oils etc. Be aware of

others, do not jump or dive into the pool. Floatation devices of any kind are not allowed. Children need adult supervision and must wear proper bathing attire such as a swimsuit or swim diaper. To prevent puddling and/or slipping, please dry yourself completely before leaving the pool area, entering the

elevator lobbies, or using the elevators. Mahalo!



**LETTER FROM AN OWNER:** "To all Discovery Bay Staff & Board, Jack and I don't express enough how much we appreciate all of you and the hard work you do at your different jobs. We have been coming back and forth from California to our condo here for 36 years now. We bought in 1978. In all that time we have valued the people who run the building and the staff who keep it running smoothly and keep it such a safe, lovely building to come "home" to each time. Mel, Bill, Romeo, we have known you since you started and we really love and appreciate all you do for so many years.

Mahalo Judy & Jack

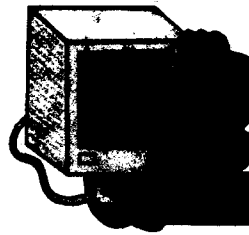
P.S. We realize how very difficult the Board's job is and appreciate their patience explaining their efforts with the building problems at the recent meeting and through correspondence to us as owners. A big Mahalo to all of you."



**RENOVATIONS:** If or when you consider renovating your apartment, you must obtain all the required permits from the DPP Department of Planning and Permitting prior to

starting work on your apartment. Failure to do so may result in your project being shut down and/or subject to fines.

- Work requiring an electrician, carpenter or plumber must be reported to the office so if the need arises we can quickly respond to emergencies.
- Please inform the office of your schedule so we may post Notices to inform residents of the impending construction.
- Please contact the office should you detect anything that may need attention so our maintenance or custodial staff can respond. Mahalo!



**DISCOVERY BAY WEB SITE:**  
Discovery Bay, with the assistance of Hawaiiana Management Company, has set up a very informative web site. The address is as follows:

[www.discoverybayhawaii.com](http://www.discoverybayhawaii.com)

You can go to this site to obtain the following information:

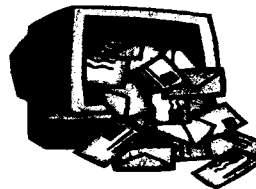
- Annual & Regular Board Meeting Minutes
- Financial Statements: Operating and Beneficial Interest
- Governing Documents: The AOA Declaration & By-Laws, House Rules and Amendments
- Lease information & Documents
- Association Newsletter (Captain's Log)

~ Please take advantage of it ~



**IMPORTANT PHONE NUMBERS:**

Office: 808-941-3307  
Security: 808-949-6949  
Fax: 808-946-3201



**IMPORTANT EMAIL:**

Chris Herndon,  
General Manager:

[discoverybay@hawaii.rr.com](mailto:discoverybay@hawaii.rr.com)

William Samaritano,  
Operations Manager:

[discobay@hawaii.rr.com](mailto:discobay@hawaii.rr.com)

**SOMETHING TO THINK ABOUT**

Do not regret  
growing older.  
It is a privilege  
denied to many.



Chris Herndon  
General Manager

# CAPTAIN'S LOG

NEWSLETTER

DISCOVERY BAY ASSOCIATION

APRIL 2014



## **CAPTAIN COOK THEME PORTRAITS:**

The Resolution Tower portraits based on the discovery of the Hawaiian Islands by Captain James Cook have been removed for repair. Some of the portraits were damaged by termites. The remaining undamaged portraits have been sent out for treatment by Diversified Pest Control as a precautionary measure. Clarence Lee and Associates, the company that originally created and installed the portraits, has been contacted to reproduce the damaged portraits. All will be reinstalled upon completion of repairs.

## **A/C VALVE REPLACEMENT:**

The chill water supply lines that supply cold water to your apartment air conditioning unit had to be drained in order to replace the riser shut off valves in both towers, the

Endeavour and Resolution Towers. The supply lines are currently in the process of being re-insulated. The re-insulation project will have no effect on you receiving chill water for your apartment air conditioner. We apologize for any inconvenience caused by this replacement project and thank you for your understanding and patience.

## **DEPARTMENT OF TAXATION:**

Act 326, Session Laws of Hawaii 2012, requires any apartment owner renting or who has rented since January 1, 2012, their apartment for a rental term

of less than 180 days, to report certain information to their AOA. The Discovery Bay office sent a letter dated October 14, 2013, to Discovery Bay home owners with a copy of the Department of Taxation Announcement No. 2013-02 requiring operators of transient accommodations to provide the office with the following information: 1. Owners Name

2. Unit Address 3. Mailing Address 4. Phone Number 5. Name, mailing address & Phone number of Owner's rental agent if rental agent is used for Transient Accommodations 6. Transient accommodations tax license number 7. Website address of website where your unit was advertised 8. Name, mailing address, and phone number of a local contact residing on the island if Owner does not reside on the island.

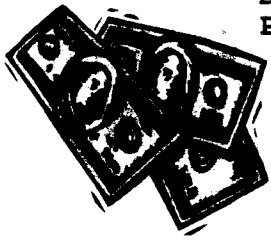
Note: The "operator" is the owner of the room, apartment, suite, house, or condominium because the owner is the one responsible and liable for the transient accommodations tax (TAT).



## **SINK GARBAGE DISPOSAL:**

The disposal is meant to be used to eliminate any small food scraps that may go down the drain while washing dishes. The proper use of the disposal is to first run the cold water when you have finished washing dishes, then turn on your disposal and let it run until you have eliminated any food scraps. Then turn off the disposal and let the cold water run until the disposal has stopped running. Then turn off the cold water.

Residents have contacted the office due to clogged sinks after attempting to grind up items in their garbage disposal. Disposals are not intended to grind up food. People have thrown rice, noodles, vegetables, seaweed and other solid foodstuffs down their sink to grind up. Unfortunately, excessive amounts of noodles, rice, vegetables, and other solid foods can damage the disposal and clog pipes causing sinks to back up and overflow. Please use your disposal properly. Mahalo!

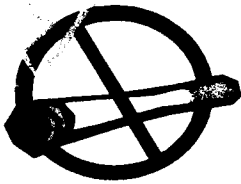


### **DELINQUENT MAINTENANCE FEE PAYMENTS APPLICATION:**

Delinquent maintenance fee payments received from owners will be applied by the Association in the following order of priority, if applicable:

#### APPLICATION OF PAYMENTS

1. Legal fees and costs
2. NSF charges for returned checks
3. Interest
4. Late Fees
5. Any other outstanding fees or fines
6. Maintenance fees
7. Lease rent if the Association is required to collect or pay the lease rent



**NO SMOKING:** Our office continues to receive complaints regarding cigarette butts and spent matches landing on lanais, and on occasion automobiles parked in the uncovered area of the

parking garage, presumably inadvertently thrown from lanais located on higher floors. Reports of lit cigarettes burning holes in outdoor carpeting, lanai furniture and car rooftops have been brought to the attention of our office. These reports display a lack of consideration or common sense (Unfortunately, common sense is not common.) of some individuals unaware of the results of their actions. Therefore, in the interest of all concerned, those of you who may smoke please do not flick your ashes or throw spent cigarettes or matches (or any other objects for that matter) from your lanai. Please use an ashtray instead. Mahalo!

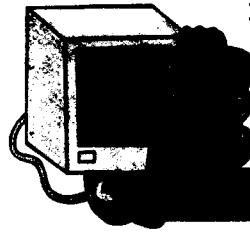


#### **OWNERS EMAIL ADDRESS:**

Discovery Bay owners who wish to receive the Captain's Log as well as announcements, updated information, and other correspondence, etc., from the Discovery Bay office via email, are asked to please forward

your name and apartment number in addition to your email address to our Administrative Assistant, Anita Carmona. Her email address is:

[db-admin@hawaii.rr.com](mailto:db-admin@hawaii.rr.com)



#### **DISCOVERY BAY WEB SITE:**

Discovery Bay, with the assistance of Hawaiiana Management Company, has set up a very informative web site. The address is as follows:

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~ Please take advantage of it ~



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[discobay@hawaii.rr.com](mailto:discobay@hawaii.rr.com)



#### **SOMETHING TO THINK ABOUT**

Illusion is the first of all pleasures.

~ Oscar Wilde ~

Chris Herndon  
General Manager

# CAPTAIN'S LOG

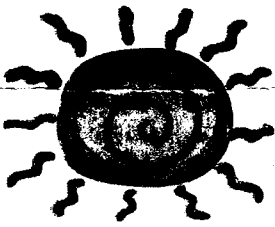
NEWSLETTER

DISCOVERY BAY ASSOCIATION

JUNE 2014

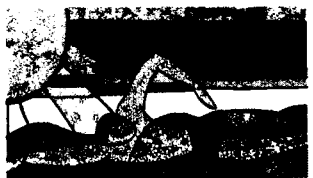


**BOD MEETING:** A board of directors meeting has been scheduled for Tuesday, June 24, 2014, 4:00 p.m., at the Hawaii Prince Hotel Waikiki in the Haleakala/Kilauea room.



**SUMMER IS HERE:** This is the season when friends and relatives come to visit and experience the relaxed atmosphere and lazy days of summer in Hawaii. Please remind your

guests we live in a condominium and our neighbors live in close proximity to each other. Keep in mind the words to the song written by Paul Simon about apartment house living: "One Man's Ceiling is Another Man's Floor". Excessive noise can disturb neighbors above or below us. Please make a conscious effort to keep noise to a minimum, especially in the hallways. As a reminder, please inform your guests they must be accompanied by a resident when using the recreation deck. Young children must be accompanied by an adult at least 18 years of age or older when using the Swimming Pool or Jacuzzi. No glass containers or similar breakable material of any kind are permitted on the recreation deck or Jacuzzi area. However, plastic containers are allowed. Amplified music is not allowed on the recreation deck. Please use Ear-phones when listening to music so you will not disturb others. If you are unsure what is and what is not allowed here at Discovery Bay, please ask for a copy of the House Rules at the Business Office, Monday through Friday, 8:00 am to 5:00 pm. Mahalo!



**SWIMMING POOL:** Please take a shower before you enter the pool to remove tanning oils etc. Be aware of others, do not jump or dive into the

pool. Floatation devices of any kind are not permitted. Children must have adult supervision and must wear proper bathing

attire such as a swimsuit or a swim diaper. To prevent puddling and/or the potential of slipping, please be sure to dry yourself completely before leaving the pool area, entering the elevator lobbies, or using the elevators. Mahalo!



## APARTMENT PLUMBING:

The following are a few helpful hints pertaining to apartment plumbing: Check your sink faucets to be sure they are completely

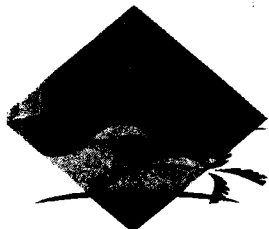
turned off and are not dripping water or making "Squealing" sounds. This could be an indication of faulty valve stems. Check your toilet to be sure the water does not continue to run after flushing. This could mean a faulty "Flapper", the device that stops the water from flowing when the tank fills up. Check your Washer /Dryer hoses to be sure they are attached properly and are not leaking. Ideally they should be Flood Check hoses to prevent leakage. Make sure the shut off valves are in the OFF position when the washer is not in use. Check your shower to be sure it turns off completely and is not dripping water. This could indicate a faulty or failing shower cartridge. Please contact a plumber if any of the conditions mentioned above need to be corrected.



## SINK GARBAGE DISPOSAL:

We have had a number of residents contact the office due to a clogged sink as a result of items being thrown down the sink to be ground up by their garbage disposal. Disposals are not intended to be used to grind up food. People have thrown rice, noodles, vegetables, seaweed and other solid foodstuffs down their sink to grind up and hopefully be disposed of. Unfortunately, excessive amounts of noodles, rice, vegetables, and other solid foods clog the disposal and pipes causing the sink to back up and

overflow. The disposal is meant to be used to eliminate any small food scraps that may go down the drain while washing dishes. The proper use of the disposal when you have finished washing your dishes is as follows: Run the cold water first, then turn on your disposal and let it run for a short amount of time. Then turn off the disposal first and let the cold water run until the disposal has stopped. Then turn off the cold water.



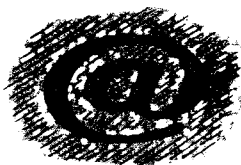
**HURRICANE INFORMATION:** The Pacific Hurricane and Tropical Storm season is from June to December. Tropical storms have sustained winds from 39 to 73 MPH; Hurricanes have sustained winds of 74 MPH or higher. A Hurricane or Tropical Storm Watch means there is a threat within 36 hours. A Warning means a Tropical Storm or Hurricane is expected within 24 Hours.

**THE FOLLOWING IS A SUGGESTED LIST OF ITEMS FOR AN EMERGENCY SURVIVAL KIT:**

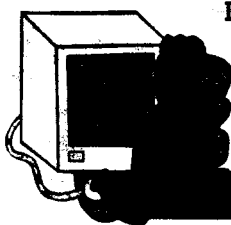
- Nonperishable food. (3 day minimum)
- Drinking water. (2qts/person/day)
- Prescription medication.
- Battery powered Radio & Clock.
- Flashlight or Lanterns & Batteries.
- Toiletries & Disposable wash cloths.
- Manual Can Opener.
- Disposable Plates, cups, etc..
- First Aid Kit.
- Ice Chest & Ice.
- Extra Cash. (ATM's will not work)
- Pet food for your pet.



**TRASH CHUTE:** In previous Captain's Logs, it has been mentioned that large items sent down the trash chute can cause costly repairs. The following items have been removed from the compactor: a toaster, an electric grill, a hair curling iron, and a small crock pot. These types of items cannot be thrown down the Trash Chute.



**EMAIL ADDRESS:** Discovery Bay owners who wish to receive the Captain's Log, announcements, as well as other correspondence and updated information from the Discovery Bay office via email, please send your name, apartment number and your email address to Anita Carmona, our Administrative Assistant. Her email address is: [db-admin@hawaii.rr.com](mailto:db-admin@hawaii.rr.com)



**DISCOVERY BAY WEB SITE:**

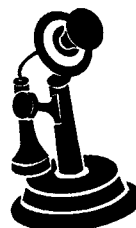
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~ Please take advantage of it ~



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Security: 808-949-6949  
Fax: 808-946-3201



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General Manager:

[discoverybay@hawaii.rr.com](mailto:discoverybay@hawaii.rr.com)

William Samaritano,  
Operations Manager:

[discobay@hawaii.rr.com](mailto:discobay@hawaii.rr.com)

**SOMETHING TO THINK ABOUT:**

Older people sit down and ask, "What is it?" but the boy asks, "What can I do with it?"

~ Steve Jobs ~



Chris Herndon  
General Manager



September 28, 1999

## IMPORTANT NOTICE

Re: WASHING MACHINE HOSES

To All Owners,

The washing machine hoses were last replaced in 1985. At that time high pressure Maytag hoses, with brass fittings, were installed in all the units. While there is no current problem with these hoses we want to give you some information on what preventive maintenance you should be doing to help prevent any problems from arising.

The single most important thing you can do to help extend the life of your hoses and to prevent water leaks is to TURN OFF the hot and cold water valves when you are not using your washing machine. In a high rise building the pressure does fluctuate slightly and gets slightly higher late at night when no one or very few people are using water. Turning off your hoses helps prevent premature wear and failure.

Your hoses should be inspected at least once a year to check for any cracking, splitting, blistering or any other signs of wear. If the hoses need to be replaced you should replace them with Aqua Flow hoses. These hoses are guaranteed for 10 years but should last you a lot longer. They are stainless steel jacketed hoses and are available from Appliance Parts Co. The cost for each hose is \$17.98 for a 4 foot hose and \$19.98 for a 5 foot hose, this does not include tax. Both hot and cold water hoses should be replaced at the same time.

Sincerely yours,

William I. Samaritano  
General Manager



**AOAO DISCOVERY BAY**

January 22, 2014

Dear Fellow Apartment Owners,

The following comments have been prepared by our attorney in response to questions recently received by the Board regarding the AOAO's beneficial interest in the Trust that owns the land under Discovery Bay. In addition to the Q&A below, we have included my President's Letter of April, 2013 which also contains helpful information about the AOAO's efforts to protect our owners' interests in Discovery Bay, including the proposed distribution of the beneficial interest introduced at our 2013 Annual Meeting.

As always, if you or any of your fellow Apartment Owners have questions regarding the AOAO's beneficial interest, or any other questions about the AOAO and its management, please seek me out or any other director of the AOAO Board. Every Board director, like you, is an Apartment Owner and member of the AOAO and knows the importance of sharing accurate information regarding Discovery Bay.

Best Regards,

*John Stewart*

John Stewart  
President

## QUESTIONS & ANSWERS

**Question 1:** At the end of the lease if nothing has changed with respect to the 62% AOAO beneficial interest what exactly is the process that we can expect?

**Answer:** The lease expires on December 31, 2039. If the AOAO continues to own its beneficial interest on the day the lease expires, 2 important events will occur. First, the Apartment Owners will be required to convey title to their apartments and common areas to the lessor (who is also the trustee of the Trust) and to leave Discovery Bay. Second, the lessor will become the sole member of the AOAO and, essentially, the owner of the 62% beneficial interest.

Put another way, if the AOAO has not distributed any of its beneficial interest to the Apartment Owners before the lease expires, then the Apartment Owners will be expected to abide by the terms of the lease regarding the lease expiration. The lessor will be the only member of the AOAO after the conveyance of title to all the apartments and common areas; and because the AOAO owns the beneficial interest, the lessor will control and essentially own the AOAO's property, including the 62% beneficial interest.

The forgoing will occur unless the AOAO distributes part or all of its beneficial interest to the Apartment Owners before the lease expires.

**Question 2:** If the 62% beneficial interest has been completely sold to individual owners and nothing else changes what exactly is the process we can expect at the end of the lease?

**Answer:** Although the exact process is presently unknown, Apartment Owners who purchase their share of the AOAO's beneficial interest will have the right to participate in decision making regarding Discovery Bay after the lease expires. It is anticipated that this participation right will be exercised by the body created by the current AOAO to represent the Apartment Owners-Purchasers with respect to their beneficial interests. The decisions to be made at that time will presumably include the Apartment Owners-Purchasers' right to retain title to their apartments and to continue to occupy those apartments.

**Question 3:** Is there a risk that once the 62% is sold to individual owners that some of these individual owners could sell their interest to or form an alliance with the 38% owners or some other group to reverse/control the balance of ownership?

**Answer:** The AOAO is currently working with its counsel to include measures, terms and conditions in the distribution process that will avoid the occurrence of the events described in Question 3. For example, as a condition of the sale of its beneficial interest, the AOAO could require that the Apartment Owner/would-be purchaser

agree that the beneficial interest cannot be sold separate from the apartment and that the AOAO or another governing body be irrevocably appointed as agent for purpose of voting the AOAO's former beneficial interest.

**Question 4:** What would happen at the end of the lease to the other individual owners who did not sell their beneficial interest or were not part of an alliance under #3?

**Answer:** Apartment Owners who do not purchase a share of the AOAO's beneficial interest will not have the right to be included in the decisions regarding Discovery Bay, including decisions regarding the occupancy of apartments, upon expiration of the lease. The non-purchasing Apartment Owners will be required to convey title to their apartments and leave the property unless they are granted relief (for which there are no guarantees or assurances based on the current facts and information).

As noted in the answer to Question 3, every Apartment Owner who purchases part of the AOAO's beneficial interest will be required to grant the voting and other representation rights associated with his or her beneficial interest to a body created for the purpose of representing the Apartment Owners-Purchasers. In short, every such Apartment Owner will be a part of the "alliance" created by the current AOAO.

**Question 5:** What are the risks and rewards of the various options?

**Answer:** The April 2013 President's Letter (which follows this letter) does a good job of addressing the questions of risks and rewards. We therefore refer the Apartment Owners to John's earlier letter and welcome any further questions and comment from the Apartment Owners at the January 22, 2014 Annual Meeting.

# DISCOVERY BAY

## TRANSCRIPT OF BOARD MEETING HELD ON MONDAY, MAY 6<sup>th</sup>, 2013

24:50 (Recording Indicator)

(JOHN STEWART)

"Does anyone have any questions they would like to ask Adrienne who came specifically to answer those questions, here? About what it is that we are exploring over the next several months which will probably not come to fruition for two or so years. Does anybody have any questions for Adrienne?"

(JOHN SMITH)

"It 's really just a comment... It would seem that after reading the correspondence (on) both sides that some questions of law are not going to be determined until they are actually tested in law. Is that, is that a valid observation?"

(ADRIENNE YOSHIHARA)

"I'm not sure what you are asking about specifically...."

(JOHN SMITH)

"Well, for example, do I have to give the keys away in 2039?"

(ADRIENNE YOSHIHARA)

"The answer is... if nothing changes, as of today, if everything's the same on December 31<sup>st</sup>, 2039 as it is today, the answer is yes. Under your leases, just pull it out, this is not anything mandatory.... when you bought your units, you had full disclosure from your sales, correct? They gave you copies of your leases that says in one of those sections of your lease, it says that on December 31<sup>st</sup>, 2039, when the lease expires, you will turn over your keys to the apartment as it says in good condition and you will be asked to leave the building, that is correct. And because this board and boards before it that we have been working with, recognize that and because in the past, um I think some of you remember it was what was called a mandatory conversion law... the city had that available for those homeowners who lived in the building and did not own any other property in the State of Hawaii. They made it available to those owners...that law has gone away...so it is not available to anybody, any more, any lease holders right now. And the Board recognized that, that says "what do we need to do to, in order to ensure our fellow members the right to stay living in the building in their apartments on January 1<sup>st</sup>, 2014, the day after your lease expires. And because the leasehold was not available....."

*(ADRIENNE YOSHIHARA) Continued*

"Let's go back, you know, it has been a long time.. I mean, I think I first ...a... met with all of you, the members, in 2005 and some of you were not owners at that time, some of you probably weren't even attending the meetings, and so in 2005 your Board asked Peter Savio and Derrick Fujisaki to pursue purchase of the beneficial interest...and let me explain why...okay.. You can't purchase the fee right now because it's owned in a Trust, okay..which is odd, in Hawaii, State of Hawaii, you know your neighbors in the next apartment building...the fee is owned by a landlord, not a trustee, probably an entity, or a an individual and they are free to sell it at will... they can sell their fee, lease fee to the owners or the apartment owners in that building...and you see it all over town, you hear it... you hear such and such a building...leased fee got purchased by all the apartment owners...hurray...great! And you are wondering how come that can't happen for me? Well, you happen to be living in a project that, that the fee, the land is owned by a trustee...it does not have the power to sell the leased fee interest. That Trustee has to operate by a trust...it's an agreement by the people who put all the land under your building together...there were six families... they put all of their land together to build Discovery Bay back in 1972... and was built in 1976, okay? This Trustee has no right or authority or power to sell that fee unless every one of the beneficiaries of that trust says 'yes', we want to sell."

"So, back in 2004, from what I understand from Peter and from John... they were very close, really close to getting all the beneficiaries to say 'Yes'. And it was heart-breaking, because what happened was, one of the beneficiaries died and their heirs, the kids ... her heir... said, "No, no deal!" "All bets are off"!

"So, in 2004, you had... you were so close to getting a 100% of all the beneficiaries to say, yes... will sell the lease fee. When we, when we learned, the AOA Board learned they would not going to be able to buy that leased fee from the beneficiaries, or getting the beneficiaries to vote and instruct the Trustee...unanimous... um... group of beneficiaries...they said, "what else can we do?" And based on Peter's discussion with us... we said, well, you could buy the beneficial interest...you could buy the interest of the beneficiaries in that trust. The beneficiaries can sell their interests. The Trustee can't sell the leased fee... I know it sound weird... but that's the way it is. So, the beneficiaries were approached by the AOA delegation... Derrick and Peter... to try to buy a beneficiary's interest in the Trust. Now, let me just... How many people here have trusts? Okay, that means you set up a trust, is that right? Okay, that means that you're the settler of that trust, alright that's what a settler is... a settler is a person who sets up or creates a trust. You set up a trust when you, as a settler, you have to put property into that trust, okay? So, as a settler, you put property into that trust... and then, what else do you have? You have beneficiaries. Right now a lot of you are the beneficiaries of your own trust. Okay? But you also name your children, and your grandchildren and the Zoo, and you know, the Metropolitan Opera as beneficiaries of your trust, okay? So, and, what else do you have...? You have a trustee... Right now most of you are trustees of your own trust. You own the property of the trustee (Trust), okay?"

"So, essentially, that's the same structure that you're working with... and that trust that you set up is probably governed by a written document... you signed a document that that I'm the settler of this trust, these are the beneficiaries that I named. This is how I want things run and this is who is going to be the

*(ADRIENNE YOSHIHARA) Continued*

trustee, okay? The same thing holds for the Discovery Bay Trust. It's that simple. Except again, I am just letting you know that the Trustee of the Discovery Bay Trust has very limited powers or authority... with respect to the leased fee interest, to the property that it was given."

"So, knowing that, the Board said okay, what we need to do is... we need to drive... okay...the goal is still to get 100%. There's no doubt about that, that would be the best thing in the whole wide world... to buy the beneficial interest from every single living beneficiary... Okay.. However, what we also understood was, I think at the start there was a lot of discussion... there was a number recalcitrant owners who said "No way Jose! It is not going to happen in my life-time." But the Board understood one thing...they said that if we drive for a majority of interest...we have weakened, start dictating some of our future."

"But, let me tell you something, all the Board had to do to protect your interest was to buy one person's interest. That's all it had to do! So, back in 2005 we bought .975% interest from one beneficiary. She had approximately 1%. And the Board bought that, okay...that's all the Board had to do. It did not have to go out and buy the rest of the 99% to protect you, because that meant that on December ...you know crazy as it sounds...but it really had... would work... on December 31<sup>st</sup>, 2039 the AOA would have been a beneficiary and as crazy as it sounds, they would have, they could have distributed one 666 interest of that one % to every single one of these owners... now what does that mean...it means you have a voice at the table. It did not necessarily guarantee you the right to stay in your apartment. But it guaranteed you the right to the table on January 1, 2040. But the next thing they (Board) said, okay, they told Peter and Derrick, "Get out there and buy as much as you can but we need the majority in interest. And through 2007, it took that long to purchase approximately 62% of the beneficial interest in the Trust. So, the beneficial interest, you bought the interest of the beneficiary in the Trust. A beneficiary has the right to the benefits of the assets in the Trust. The beneficiary does not have a right to the assets of the Trust. That is managed solely by the trustee. And in this instance, unlike perhaps the interest in some of your trusts, you're thinking...well how come I gave my beneficial interests the right to push the trustee around..and in this instance, the beneficiaries have no such right except if they can group together, 100% of them, and instruct the trustee to sell the interest... or to do something with leased fee interest, okay. So that's where you're at right now as of 2007."

*(JOHN SMITH)*

"The reason I raised the question is that somewhere in the correspondence, on which line I forget, there was some hint or suggestion that if the individual apartment owners had a percentage, somehow that was a stronger position then if the Board owned the percentage."

*(ADRIENNE YOSHIHARA)*

"Okay, so here's what's being discussed right now...."

**(GARY HOLT)**

"He said the Board... doesn't own it... it's the Association."

**(ADRIENNE YOSHIHARA)**

"So, but what we are examining right now is "How soon or how...when should the Board distribute its interest to its members?" Because, don't forget, you got to have something, you have to have a stake in the Trust on December 31, 2039... you have got to own something...because... okay this is where it sounds crazy...this is going to sound really crazy. But, the Board bought 62% and its intention has always been to distribute that at some time... sometime before the lease has expired. Now, the reason for that...there are two reasons: first, you need to have an interest so you can sit at the table on January 1<sup>st</sup>, 2040; but the other reason is... just think of it this way...on December 31<sup>st</sup>, 2039, your leases expire, okay! Now, who are the members of the AOA as of January 1<sup>st</sup>, 2040? You are all gone! You have left...you had to leave the building, you are not members of the AOA anymore. (The Trust) Yes, the member of the AOA is the trustee. So, this is kind of mind-blowing...that if the Board did not do something and get you that interest... this is weird, the trustee is going to be the only member of the AOA and it will own 62% of the beneficial interest of the Trust! So, the Board really needs to get this interest out to you. You need this interest... and that's all we are trying to figure out is "how to get it to you, when to get it to you. Not why! The 'why' is...is because their job is to protect your interest in your apartment. That's the answer!"

**(JOHN SMITH)**

"So it was a valid observation that we are in a better position that we as opposed to the Association, own that piece".

"Let me make, pose another question... At 11:59 p.m. on December 30th (31<sup>st</sup>), I hand the keys to someone, right? At 12:01, as the majority, could we not issue a new lease that says that the lease cost is a dollar per year?"

**(ADRIENNE YOSHIHARA)**

"Well um... you could... as a majority, you could certainly issue a new lease..."

**(JOHN SMITH)**

"We wouldn't own it, you know the property, but the asset per se, but we could say, okay the lease is now a dollar a year for every member."

**(ADRIENNE YOSHIHARA)**

"Well, I suspect, you might be able to do it with respect to your interest, but the other 38%, because of in Hawaii trust law says that you cannot harm your co-beneficiaries, so if you, if you want to not pay lease rent, that's fine, but your co-beneficiaries will get 38% of their market value at the time of ... when you re-negotiate the lease."

**(JOHN SMITH)**

"So there is no escape."

**(ADRIENNE YOSHIHARA)**

"No, Good try though!"

**(ADRIENNE YOSHIHARA)**

"Okay, Can I just answer one thing about...somebody keeps saying something about reversionary interest. So, let's get something clear about that...okay. There is a reversionary interest in ... what happens at the end of the day when the Trust goes away... now when you are asking... When does the Trust go away? The Trust goes away someone can confirm that the last living descendant of Queen Victoria, who is alive on the day that the Trust came into effect, which I think was June 1976, has died, okay. And the last time we checked, there might be close to several hundred of her descendants that were alive in June 1976. But we'll have to...somebody's going to have to confirm the last of those descendants were alive on the day that your Trust...or the Discovery Bay Trust came into effect, has died. And that's when the Trust goes away, okay. And, at that moment, let's pretend nothing else happened, nothing absolutely, you don't get your interest or anything. I don't care at that moment. But we care about is the reversionary interest. When the Trust goes away, the beneficiaries of the Trust at that moment get their property back...that's what is called a reversionary interest. So, it has nothing to do with the discussion today or in the future about the distribution of the beneficial interest you own. It has nothing to do with that, because the reversionary interest is something that happens when the Trust terminates. That's way in the future. So, there's... that has nothing to do with the discussion with respect to the evaluation of the distribution."

**(BILL NICHOLS)**

"Could you explain the time and effort you've spent in linking the beneficial interest to the specific apartment and not being able to separate those two?"

**(ADRIENNE YOSHIHARA)**

"So, there's a question about...Can um... What happens when I buy my beneficial interest..you know,...what does it do, does it stick with my apartment...can I pull it apart and sell it separately from my apartment... and the answer is generally yes, unless there is something that requires that it stay



*(ADRIENNE YOSHIHARA) Continued*

with your apartment. And that's exactly what they're (the Board) are considering... is making sure that when you take ownership of that... your share of the beneficial interest, that document is going to say that it cannot be transferred except with the apartment. So, it's going to go...as they say, you hear this term...it runs...it'll run with the land, it will with your apartment. So, when you sell your apartment, it must be sold with your apartment. You can't pick and choose what interest in your apartment you're going to take apart and sell to the next buyer. The buyer will buy your apartment and he will buy the beneficial interest that you purchased that goes with that apartment."

*(ADRIENNE YOSHIHARA)*

"Somebody said the other day, what happens when I get a divorce? Does my wife get the beneficial interest? Do I get the apartment? No, I think your wife's going to get everything!"

*(RON REIBMAN)*

"In 2040, what happens if the trustee says, let's extend the lease for another 30 years?"

*(ADRIENNE YOSHIHARA)*

"Okay, fair question! And you know the trustee's going to ask that question only upon the instructions of the 100% of the beneficiaries. You're going to have a say, the AOA, as a 62% owner, will have a say in, whether there's going to be a new lease issued."

*(SOMEONE STATED???)*

"That will be negative!"

*(ADRIENNE YOSHIHARA)*

"That's right! And, you know, if nothing happens...with respect to anything that has to do with the lease fee, it's got to be unanimous... if there is going to be a new lease that's going to be put onto the fee, then it's got to be unanimous. And so... there's a lot of scenarios and hypotheticals that we are looking at. There so many that they are not worth talking about right now, but needless-to-say, what, why it is taking awhile for them to evaluate the proposed distribution. How do we... if we do it now, sooner? So, John's letter is, if you take a look at it again, and I really urge you to do so. In John's letter, he lays out a couple of benefits for everyone here, if we distribute sooner. And one of the reasons to distribute sooner of course is because if we are looking to do is... you have the power, you can't force the trustee, instruct the trustee to sell the leased fee interest. But you have the authority, the majority, to instruct the trustee to amend the leases of individuals who purchased their share of the beneficial interest. And your lease then will be... the lease rent will be reduced by the 62%, or whatever percentage is necessary, because the trustee still needs a few dollars from everybody to, you know, administer, to pay for its

*(ADRIENNE YOSHIHARA) Continued*

administration. So, your lease rent will be immediately reduced. And wouldn't it be nice to have reduced lease rent sooner than later. So, that's one reason."

"Another reason is that is this concept of having your apartment, having your beneficial interest, having your beneficial interest with that apartment... Peter can speak better to this, I know Peter has said this on a number of occasions that it should stabilize the prices of your apartment. There's no promise to that, but we do know that the value of the apartments of Discovery Bay have not risen as fast or recovered from 2008 as most of the apartments and the properties in Waikiki have. We know that Discovery Bay everyday still has this problem of trying to explain the beneficial interest to... a...would be purchaser. And Peter believes that once, you know, you have this, your apartment and the added layer and protection of the beneficial interest, people will be a lot more interested and hopefully the values will start stabilizing. So, there are two kind of economic benefits that beyond saving your apartment, the ability to stay in your apartment at the end of the lease that the Board is looking at."

*(JOHN SMITH)*

"So, there's no question then, I gather, that the ability to alter the lease exists. It's not even a question... it exists."

*(ADRIENNE YOSHIHARA)*

"It exists. Now whether the trustee is going to...how the trustee is going to handle that... is another question."

*(JOHN SMITH)*

"Well, forever, I suppose."

*(ADRIENNE YOSHIHARA)*

"And what... the trustee is always going to be much more(temple?). And the... it will take time and as we said in January, for example, we've approached First Hawaiian Bank to help owners with financing... if you can't purchase the beneficial interest on your own today, maybe you can finance it. FHB is interested, but that's all they said. It's going to take a lot more and a lot more time to get to that...will you finance? will you program for our owners? So, the same thing goes for the trustee... you have the power, you are the majority owner ... you own the majority of the square footage of land. You have the right under the terms of the Trust Agreement or that, as I said, that contract, that trust contract...to direct the trustee to do administrative things. One of the administrative things is that they administer are the leases. So we have to, you know...we'll have to work with the trustee to make sure that they're comfortable with all of their. .. They've dotted their 'I's and crossed their 'T's before they start amending the leases to reduce your rent. Everything takes time."

**(JOHN SMITH)**

"So, again with regards to the original question, there are no questions in law, the law is known, true?"

**(ADRIENNE YOSHIHARA)**

"True."

**(MARK RODGERS)**

"Sorry, what statute are you referring to? The law is known....so please state the State Statute."

**(ADRIENNE YOSHIHARA)**

"There is no statute... No, this is trust law that, there is something, ok... so everybody knows, some law is governed by what Mr. Rodgers is talking about is called a statute. It is written by the legislature, the State legislature. So you can go to a bunch of books, you know and a...that's what's called statutory law.

So, just to be clear...but most law is not. Most law is made by people going to court and to history. So, what I am talking about is trust law. And most of what we know to be legal or what we believe we have legal basis for saying happens is to be based not in statute but in this...this long history of law."

**(BILL NICHOLS)**

"One, to elaborate on that point...we were in the negotiations with the trustee on the back rent and they amended the leases on the back rent so we only paid 50% of the back rent and that whole negotiation went through providing on the Trust, it had no adverse impact on the remaining 38%. So, any time we want to go to the trustee and say, amend the leases in this form, providing it does not adversely impact the other owners, we can do it as the majority owner. We've got a history of doing it, we have already established the precedent."

**(MARK RODGERS)**

"Can I ask if we need unanimous approval to do that? Or, did they do that because you are the majority interest?"

**(ADRIENNE YOSHIHARA)**

"They did it because we are the majority interest."

**(MARK RODGERS)**

"That is one of the best things I've heard, you know in giving me assurances that... that if I buy the beneficial interest, that I have some assurances that...that it will somehow allow me to have a vote, a seat at the table... for example."

**(JOHN STEWART)**

"so here is what... here's what we're going to do. A... we've run over the time... Let me, let me just make this clear... a... We don't react well to the tone of this particular letter. And you folks can write whatever you want to write, but we're all human beings, we're all getting paid the same amount to attend this meeting, every meeting I've gone through, all the ... not one day goes by that I'm not involved as a lawyer, out of State, working with Adrienne or others in her office and Peter and Derrick and so on and so forth. We are still evaluating this.. but what we are going to do as we go forward, we're going to have a series of informational meetings that will not be board meetings as such, but will be meetings as we go through this process so that people can understand what's going on. And frankly, any of you, or all of you have every right to engage your own lawyer to find out if what it is that what we're telling you is correct or not correct. You all have that right. When you, for example, bought your unit, if you did not understand the Trust, you had every right to go and hire someone to tell you what you were buying so that you would know now what you have. And I would strongly urge... a... particularly, some of you who...a... may not have a law degree to engage a lawyer here in town...a ... that can understands this and what the credentials and the curriculum vitae... of Adrienne and Danton and Peter and so on and so forth... we're all in this together and we don't have a ton of options... he one option we do not intend to deal with is... on that midnight time... to be sitting here with the association itself owning 62% of the beneficial interest... that's a non-starter from every perspective that there is. So that's... what we're going to be doing for the next several months, probably into next year, as we move through this process, a... and a ... we'll schedule meetings, oh probably the next meeting probably will be in July and we can make provisions so that we can give you an updated report as to where we are or what we're doing and what the progress is and you will have your chance like you have today to... to ask questions and get them answered."

**(RON REIBMAN)**

"As long as this is being recorded, I would love to see the transcription of what this lady just said. It makes a huge difference as to the perspective of what's going on here. It takes it out of the Board's control and puts it into the legal control without any question... And I think that is what you want to do."

53:05 (Recording Indicator)

## AOAO DISCOVERY BAY

April 8, 2013

Dear Fellow Apartment Owners,

It has been nearly 10 years since the AOAo embarked on the *first step* of its effort to protect its owners' interests in their apartments and in the Project by acquiring the interests of the beneficiaries of the Discovery Bay Trust. During these 10 years, the AOAo successfully acquired the interests of 11 beneficiaries which has resulted in the AOAo's ownership of 62.6783% of the beneficial interest in the Trust.

We are now ready to *evaluate the ability and, if so, the protocol* for distribution of its beneficial interest to the apartment owners. The broad outline for this distribution was presented at the AOAo's Annual Meeting on January 31, 2013. The purpose of this letter is to recap the information provided during that presentation.

In order to present the full picture, I think that it is helpful to remind ourselves about the Board's analysis and the AOAo's decision to acquire the beneficial interests in the first place.

Therefore, my letter has two parts: **Part 1** summarizes the key facts underlying the Board's 2003 acquisition decision. **Part 2** summarizes the Board's consideration of a proposed distribution program and is presented in a Question & Answer form to deliver the vital information about a relatively complex program in a comprehensible manner.

### Part 1 — Summary of Key Facts

- ▶ Each apartment owner has a leasehold interest in the land under Discovery Bay. Every apartment lease will expire on December 31, 2039. Under the terms of every apartment lease, the owner must deliver title and physical possession of his or her apartment to the trustee-lessor when the apartment lease expires.
- ▶ The mandatory lease-to-fee conversion law in effect before its repeal in 2005 applied only to owner occupants who did not own other fee simple property. This meant that a majority of Discovery Bay's apartment owners would not benefit from mandatory conversion. Thus, the AOAo Board recognized that another solution was required to protect the interests of all owners.
- ▶ The fee simple interest in the land under Discovery Bay is owned by the Discovery Bay Trust. Bank of Hawaii ("BOH") is the present trustee. However, BOH does not have the authority to sell the fee simple interest without the unanimous consent of the beneficiaries.
- ▶ In 2004, the AOAo Board understood that acquiring the fee simple interest would require 2 steps: first, purchase 100% of the beneficial interest in the Trust; and second, use its 100% ownership interest to direct BOH to distribute the fee simple interest to the apartment owners.
- ▶ Importantly, the AOAo Board also understood that even if it was unable to acquire 100% of the beneficial interest in the Trust, acquiring a majority of such interest would enable the AOAo to vote and/or use its majority interest to insure the apartment owners' continued occupancy of their apartments after their respective apartment leases expire on December 31, 2039.

- ▶ In 2005, the Honolulu City Council repealed the mandatory conversion law.
- ▶ In 2007, the AOA made the last 2 of its 11 purchases of beneficial interests, bringing its ownership share of the beneficial interests in the Trust to 62.6783%.
- ▶ Since 2008, the remaining non-AOA beneficiaries have been generally disinterested in the AOA's offers to purchase their interests. This disinterest continued after the lease rent was reset in January, 2010. The AOA has repeated its purchase offer most recently in January, 2013, but has not received any interest on the part of the non-AOA beneficiaries to sell.

## **Part 2— The Potential Distribution Program — Q&A**

**Q: What is the goal of the potential distribution plan?**

**A:** The goal of the distribution plan is to enable the apartment owners who purchase their share of the AOA's beneficial interest to continue to occupy their apartments after their apartment lease terminates on December 31, 2039.

**Q: Why is the potential distribution plan important to you?**

**A:** Owners who purchase his or her share of the AOA's beneficial interest will have the right to participate in decision-making regarding Discovery Bay after the lease terminates on December 31, 2039. The decisions to be made at that time will presumably include the owner-purchasers' right to retain title to their apartments and to continue to occupy their apartments. Owners who do not purchase their share of the AOA's beneficial interest will remain subject to the terms of the lease that require the conveyance of title to their apartments to the trustee upon lease termination.

**Q: What is the potential distribution plan?**

**A:** The following is the broad outline of the potential plan presented at the 2013 Annual Meeting:

- The AOA will offer to sell its beneficial interest in the Trust to the apartment owners.
- An apartment owner's share of the beneficial interest will be equal to the owner's proportionate common area interest in Discovery Bay.
- The purchase price for an owner's share of the beneficial interest will be calculated as follows:

$$\begin{array}{lclcl}
 \text{(the remaining balance} & & \text{(the percentage of the} & & \text{= } (\$ \text{ PURCHASE PRICE)} \\
 \text{of the FHB loan)} & \times & \text{common area interest} & & \\
 & & \text{associated with the} & & \\
 & & \text{owner's lease)} & & 
 \end{array}$$

- The AOA, exercising its majority interest in the Trust, would instruct the trustee to amend the apartment leases of the owner-purchasers to reduce the actual lease rent payable by the owner-purchasers by 62.6783%. The owner-purchaser would be responsible for payment of the balance of the lease rent (approximately 36+%), which would be paid to the non-AOA beneficiaries.

**Q: Why distribute the AOA's beneficial interest now (or, why not wait until December 31, 2039)?**

**A:** Remember that it will take the unanimous agreement of the AOA and the non-AOA beneficiaries to order the Trustee to dispose of (e.g., sell or otherwise distribute) the fee simple interest in the land. Also remember that the AOA can only transfer property that it owns. Until unanimous agreement can be reached with the non-AOA beneficiaries, if ever, or until the AOA owns 100% of the interest in the Trust, the only property the AOA can distribute to its owners is the AOA's share of the beneficial interest in the Trust. ***Rather than wait for an event that may never occur, the AOA Board is evaluating the potential to distribute the AOA's beneficial interest well prior to 2039 in order for owners to realize the following benefits sooner rather than later:***

- (1) ***Reduced lease rent.*** As noted above, the owner-purchaser's apartment lease rent could be reduced by 62%
- (2) ***Relief from assessments and charges in connection with the First Hawaiian Bank (FHB) loan used to purchase the beneficial interests.*** The purchase price paid by an owner would be applied to pay down the FHB loan. Apartment owners who do not purchase their proportionate share of the beneficial interest will continue to be assessed to pay the FHB loan; an owner who purchases his proportionate share of the beneficial interest would no longer be assessed for payment of the FHB loan. Of course, if the AOA purchases additional beneficial interests (which would be a good thing) with borrowed funds, every owner will be obligated to pay his or her share of the portion of the FHB loan attributed to the new purchase(s).
- (3) ***Potential stabilizing effect on apartment value.*** The AOA does not make any promises or representations regarding the impact of an owner's purchase of his or her share of the AOA's beneficial interest; however, Peter Savio, the AOA's consultant on the acquisition of beneficial interests noted at the 2013 Annual Meeting that the purchase should at the very least have a neutral impact, and could have a stabilizing effect on the value of apartments whose owners have purchased his or her share of the AOA's beneficial interest.

**Q: When will the plan be put into effect?**

**A:** The AOA Board is considering a first offer period commencing on January 1, 2015 and ending on December 31, 2017. However, these dates are not set in stone. The Board could make its offer sooner, extend the offer period and/or add a new offer period(s).

**Q: Will there be any assistance available for owners who want or need to finance their purchases?**

**A:** The AOA has approached FHB to set up a financing program for owners who want or need financial assistance to purchase their share of the AOA's beneficial interest. FHB has responded positively. However, this is just one of the aspects of the distribution plan that will take time to properly set up.

### A Few Closing Thoughts

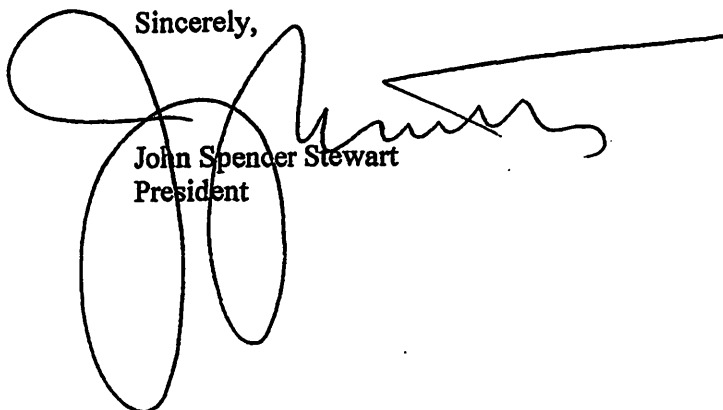
This is a good deal of information to digest. Distributing the AOA's beneficial interest to the owners is a complex matter due to the nature of the ownership of the Discovery Bay land. However, the AOA Board will do its best to make the distribution plan and the process of executing the plan as easy to understand as possible.

Complexity can be confusing and when a person is confused, he or she may misunderstand the facts and come to wrong conclusions. This is to be expected, and this is why I urge you to ask your questions directly to me or at our next meeting, then we will have the AOA's attorneys and consultants present the answer. Every question posed to me is an opportunity to dispel the confusion and increase an owner's distribution plan "IQ". At the end of the day, it is important that each owner makes his or her decision to purchase (or not) based on accurate information.

It is therefore somewhat disheartening to hear of individuals who are potentially adding to the natural initial confusion by disseminating misinformation about the proposed distribution plan, and/or pretending to have knowledge of the plan that is contrary to the information presented at the Annual Meeting and in this letter. To these individuals, I again urge you to pose your questions to me or at the next meeting.

January 31, 2013 marked the formal start of the next critical step in the AOA's relentless effort to protect the apartment owners' interests in Discovery Bay. We look forward to working with each of you in this vital endeavor.

Sincerely,

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

John Spencer Stewart  
President





## **APT. OWNERSHIP CHANGE-OVER**

### **SECURITY KEYS**

**“ALL” SECURITY KEYS MUST BE BROUGHT TO THE MANAGEMENT OFFICE  
FOR REINSTATEMENT WITHIN 7 DAYS OF ESCROW CLOSING.  
KEYS NOT BROUGHT IN WILL BE DELETED FROM THE SYSTEM AND  
ACCESS WILL BE DENIED.**

Acknowledged

Acknowledged

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Date

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Date

### **STORAGE LOCKERS**

**STORAGE LOCKERS (IF ANY ASSIGNED TO THE APARTMENT) DO NOT TRANSFER  
WITH THE SALE OF THE APARTMENT BUT REVERTS TO THE ASSOCIATION. ALL  
CONTENTS SHOULD BE REMOVED FROM LOCKER BY THE SELLER/AGENT. AFTER  
ESCROW CLOSES AND CONVEYANCE DOCUMENTS ARE RECEIVED BY THE  
ASSOCIATION OFFICE LOCKER WILL BE EMPTIED BY SECURITY AND CONTENTS  
DISPOSED.**

### **DISCOVERY BAY MANAGEMENT**

Acknowledged

Acknowledged

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Date

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Date



December 2, 2003

To Discovery Bay Owners,

A number of owners expressed their concerns to the Board of Directors that the minimum 30-day rental rule in the Discovery Bay By-Laws was being violated. The Board formed a committee of owners to investigate the situation and make recommendations on what could be done to help prevent this illegal activity of renting units for less than 30-days.

At the November 15, 2003 Board meeting the committee presented their recommendations and the Board unanimously adopted them.

Enclosed with this letter are:

- 1) 30-day rental sheet which defines what is considered a 30-day rental along with procedures to be followed in order to register tenants or owner's guests into a unit in Discovery Bay.
- 2) New Discovery Bay Registration form which must be completed for all tenants or owner's guests.
- 3) Discovery Bay agent authorization sheet which all owners **MUST** fill out and return to the manager's office. This will help us verify that the agent we have on record is the authorised representative and what authority this agent has in connection with the renting of your unit(s).

The new procedures and forms will go into effect on January 1, 2004. For this reason we ask all owners to please mail back the completed agent authorization sheet as soon as possible.

For the Board of Directors,

William I. Samaritano  
General Manager

Enclosures

cc: Agents

### **30-Day Minimum Rental Procedures**

Discovery Bay By-Laws mandate a minimum rental of 30-days. To insure compliance with this policy the following procedures will go into effect on January 1, 2004:

- 1) 30-day minimum rental means leasing for a minimum of 30 consecutive days to one party and no rotation of tenants for less than 30-days. Any person who occupies a unit under a rental agreement with a term of more than 30 days; but terminates the rental agreement less than 30 days after the person first occupies the apartment, will be presumed to be renting the unit for less than 30 days. Any business, including any employer, which owns or rents an apartment and allows any person to occupy the unit for less than 30 days, will be presumed to be renting the unit for less than 30 days.
- 2) All occupants, renters, owners, and owner's guests, must register with the manager's office prior to occupancy. After office hours there will be a phone located on the counter of the Security booth with a direct line to contact Security if the Security Officer has temporarily stepped away from the booth.
- 3) Owner's personal guests: For security reasons, all owners must file a Discovery Bay registration form for guests prior to occupancy. Our fax number is (808) 946-3201. Our Email address is [DiscoveryBay@hawaii.rr.com](mailto:DiscoveryBay@hawaii.rr.com)
- 4) Rentals by Realtors, agents, or owners: The standard Hawaii Association of Realtors Rental Agreement 5/03 and a Discovery Bay Registration form must be presented to the manager's office prior to occupancy. The use of any other rental form with a Discovery Bay Registration form must be approved by the manager's office. Sub-leasing is not recommended, but Hawaii laws permit sub-leasing unless specifically prohibited in the lease. Sub-leasing is subject to the same minimum stay and procedures as all other rentals/leases.
- 5) Violations must be resolved immediately with the agent or the owner. Owners are liable for fines and legal costs in connection with the enforcement of this By-Law. Owners will be notified of all violations of their agents and/or guests.
- 6) Rotation of occupants is not permitted unless each group is registered and observes the 30-day minimum stay.
- 7) For security reasons, any unregistered guest may be considered a trespasser and appropriate action taken.
- 8) The manager has authority to disable building keys for unoccupied units.
- 9) The manager's office must be aware if you have a local agent and what the agent is authorized to do. Please use the attached form to insure this information is up to date.

**DISCOVERY BAY CONDOMINIUM**  
**AGENT AUTHORIZATION FORM**

PLEASE TYPE OR PRINT CLEARLY

**OWNERS:**

Name(s) \_\_\_\_\_

Apt. Number(s) \_\_\_\_\_

Mailing  
Address \_\_\_\_\_  
\_\_\_\_\_

Phone Home \_\_\_\_\_ Work \_\_\_\_\_ Cell \_\_\_\_\_  
Numbers

Fax \_\_\_\_\_ Email Address \_\_\_\_\_

**AGENT:**

Name(s) \_\_\_\_\_

Mailing  
Address \_\_\_\_\_  
\_\_\_\_\_

Phone Work \_\_\_\_\_ Fax \_\_\_\_\_ Cell \_\_\_\_\_  
Numbers

Email Address \_\_\_\_\_

All Three Questions Must Be Answered

YES NO

Does agent have your permission to handle rentals of the above units? ☐ YES ☐ NO

Does agent have the right to sublease the above units? ☐ YES ☐ NO

Is this person a caretaker and/or emergency contact? ☐ YES ☐ NO

Note: Caretakers and /or emergency contacts are not authorized to handle rentals or collect monies from renters.

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Owner's Signature \_\_\_\_\_ Date \_\_\_\_\_

By filling out this form completely and signing you are authorizing the person(s) and/or company listed to act on your behalf in the manner listed above with regard to your unit(s) in Discovery Bay.

## DISCOVERY BAY CONDOMINIUM REGISTRATION

- 1) Any rental stay of less then 30 days is considered a violation of the By-Laws and appropriate legal action will be taken.
- 2) All Occupants must be listed below and rotation of occupants for less than 30 days is not permitted.
- 3) Any business, including any employer, which owns or rents an apartment and allows any person to occupy the unit for less then 30 days will be presumed to be renting the unit for less then 30 days.
- 4) Any violation of the governing documents of Discovery Bay will be deemed a violation of the rental agreement and will be grounds for termination of the rental agreement.
- 5) Sub-letting is not allowed without the express written consent of the owner. A copy of such consent, from the owner, must be on file with the Manager's office before the apartment is sub-let.
- 6) All occupants must register in person with the Discovery Bay office prior to occupancy.

APARTMENT NUMBER \_\_\_\_\_ MOVE IN DATE \_\_\_\_\_ MOVE OUT DATE \_\_\_\_\_

OCCUPANTS \_\_\_\_\_ PARKING STALL \_\_\_\_\_

\_\_\_\_\_ PHONE NUMBER \_\_\_\_\_  
(APARTMENT)

\_\_\_\_\_ PHONE NUMBER \_\_\_\_\_  
(AGENT)

IN CASE OF EMERGENCY: \_\_\_\_\_  
NAME ADDRESS PHONE NUMBER

Under penalty of perjury I warrant the above information to be true and correct.  
I have also received a copy of and agree to abide by the current house rules.

\_\_\_\_\_  
(SIGNATURE OF GUEST/RENTER)

\_\_\_\_\_  
(SIGNATURE OF OWNER/AGENT)

### **OWNER'S GUESTS VERIFICATION**

The above occupants are my personal guests (not renters) and therefore  
not subject to the By-Laws 30-day minium rental requirement.

Signature of Owner **ONLY** \_\_\_\_\_

**\*\*Agent are NOT permitted to sign for Owner**

Rental Agreement and Registration Form Received: \_\_\_\_\_  
Received By Date