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1ST CIRCUIT COURT
STATE OF HAWAII
FILED

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ASSOCIATION OF OWNERS OF KALELE KAI,

Plaintiff,

vs.

HITOSHI YOSHIKAWA; DOE DEFENDANTS 1-10,

Defendants.

CIVIL NO. 15-1-0102-01 KTN
(Declaratory Judgment)

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF COUNSEL; DECLARATION OF ALAN TAKUMI; EXHIBITS 1-32; NOTICE OF HEARING MOTION; CERTIFICATE OF SERVICE

Hearing:
Date: April 28, 2015

Time: 10:00 Am

Judge: The Honorable Karen T. Nakasone

Trial: None

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

COMES NOW, Plaintiff ASSOCIATION OF OWNERS OF KALELE KAI (the "ASSOCIATION"), by and through its counsel, CHRISTOPHER SHEA GOODWIN AAL LLLC and CASE LOMBARDI & PETTIT, and submits this Motion for Summary Judgment.

The ASSOCIATION respectfully submits that this action is ripe for summary adjudication, there is no genuine issue of material fact, and the ASSOCIATION is entitled to injunctive relief and judgment as a matter of law as to all claims asserted in its First Amended Complaint for Trial De Novo filed herein on February 20, 2015 against Defendant HITOSHI YOSHIKAWA ("YOSHIKAWA").

YOSHIKAWA is a member of the ASSOCIATION and an owner at the Kalele Kai condominium project who intentionally moored a boat at the Kalele Kai marina which is 49 feet and 4 inches in length, called the "Rola," despite the fact that:

A. The project's Declaration of Condominium Property Regime provides that the marina **"shall be restricted to use by boats no larger than twenty-three (23) feet in length."**

B. YOSHIKAWA possessed actual and constructive knowledge of the Declaration's 23 foot boat length restriction before, during, and after his purchase of his unit in Kalele Kai and before he purchased and moored his 49 foot boat at Kalele Kai.

C. Before YOSHIKAWA purchased and moored his 49 foot boat at Kalele Kai, the ASSOCIATION's legal counsel informed him that "**the Board will not and cannot expressly approve the mooring of any boat at Kalele Kai in excess of 23 feet in length.**" The ASSOCIATION's Resident Manager informed him, at least twice, that the Declaration's 23' restriction applied.

D. After YOSHIKAWA purchased his 49' boat but before he moored his boat at Kalele Kai, YOSHIKAWA demanded through his lawyer that the ASSOCIATION issue any objection to the

mooring of his boat in writing within 7 days, and in response thereto, the ASSOCIATION's counsel did object, in writing, the next day.

E. Before YOSHIKAWA moored his 49 foot boat at Kalele Kai, the ASSOCIATION subsequently informed him that his request to moor his boat **"has been denied, as the requisite boat length violated the 23' boat length restriction expressly stated in the Declaration;"**

F. YOSHIKAWA proceeded to moor his 49' boat at Kalele Kai anyway, without having obtained ASSOCIATION approval, without the ASSOCIATION having acquiesced, despite knowing that the ASSOCIATION objected and denied his request, and despite knowing that the objection and denial were based upon the Declaration's restriction for which YOSHIKAWA has a legal obligation to "comply strictly."

This Motion respectfully requests that the Court issue a permanent and mandatory injunction which compels YOSHIKAWA to comply with the Declaration, remove the Rola from Kalele Kai by a date certain, and permanently enjoin him from mooring at Kalele Kai any boat over 23 feet in length.

This Motion also respectfully requests that the Court find, conclude, and declare that YOSHIKAWA has materially breached the Declaration, that the Kalele Kai boat dock area and boat moorings were and are designated properly as limited common elements in accordance with the Declaration, and that the special assessment for repair costs imposed on YOSHIKAWA by the ASSOCIATION was and is valid, proper, and in accordance with the Declaration.

This Motion is based upon Rules 7 and 56 of the Hawaii Rules of Civil Procedure, Rule 7 of the Rules of the Circuit Courts of the State of Hawaii, and the attached Memorandum in Support of Motion, Declaration of Counsel, Declaration of Alan Takumi, and Exhibits 1-32, and any additional information that may be adduced at the hearing on this Motion.

DATED: Honolulu, Hawaii, March 16, 2015.

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ASSOCIATION OF OWNERS OF KALELE KAI

JOHN D. ZALEWSKI
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ASSOCIATION OF OWNERS OF KALELE KAI

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ASSOCIATION OF OWNERS OF KALELE KAI, Plaintiff, vs. HITOSHI YOSHIKAWA; DOE DEFENDANTS 1-10, Defendants.	CIVIL NO. 15-1-0102-01 KTN (Declaratory Judgment) **MEMORANDUM IN SUPPORT OF MOTION**

MEMORANDUM IN SUPPORT OF MOTION

Plaintiff ASSOCIATION OF OWNERS OF KALELE KAI ("ASSOCIATION") respectfully requests that this Court issue summary judgment in its favor on all claims and causes of action asserted in its First Amended Complaint for Trial De Novo, and respectfully requests that the Court ORDER as follows:

A. Declare that Defendant HITOSHI YOSHIKAWA ("YOSHIKAWA") has materially, intentionally, and openly violated the Declaration's 23-foot boat length restriction, and he has failed to "comply strictly" with the restriction, incident to his obligation owed as a member of the ASSOCIATION and a unit owner at Kalele Kai under the Declaration and HRS §514B-112(c).

B. Issue a permanent and mandatory injunction compelling YOSHIKAWA to comply with the Declaration, remove his boat, the ROLA (a.k.a. Rola), from Kalele Kai by a date certain, and permanently enjoin YOSHIKAWA from mooring at Kalele Kai any boat over 23 feet in length.

C. Find and conclude that YOSHIKAWA has materially breached the Declaration.

D. Declare that the Kalele Kai boat dock area and boat moorings were and are designated properly as limited common elements in accordance with the Declaration.

E. Declare that the special assessment for repair costs imposed on YOSHIKAWA by the ASSOCIATION was and is valid, proper, and in accordance with the Declaration.

I. VERIFIED FACTS

A. The Parties, the Governing Documents, and the Deed

The ASSOCIATION is a Hawaii condominium association and Hawaii nonprofit corporation organized and existing under Chapters 514B and 414D of the Hawaii Revised Statutes.

The ASSOCIATION operates and administers the residential condominium project known as Kalele Kai which includes the Kalele Kai marina, located in Hawaii Kai at 1 Keahole Place, Honolulu, Hawaii 96825 ("Kalele Kai").

The ASSOCIATION's governing documents include the Declaration of Condominium Property Regime ("Declaration") and the Bylaws of the Association of Owners of Kalele Kai ("Bylaws") , both of which were recorded in the Hawaii Bureau of Conveyances on June 1, 1993, which are attached hereto as Exhibits 1-2 respectively.

YOSHIKAWA is a member of the ASSOCIATION. He owns Apartment No. 106, also known as TH1006, and Boat Moorings Nos. 28-33 appurtenant thereto pursuant to an "Apartment Deed (With Boat Moorings)" ("Deed") recorded in Hawaii Bureau of Conveyances on November 11, 2010, attached hereto as Exhibit 4.

B. Pertinent Controlling Language of the Declaration, the Bylaws, and the Deed

The Declaration governs Kalele Kai boat moorings and their use, identifies those moorings which are limited common elements, and prohibits boats over 23 feet in length from using the moorings.

Specifically, Declaration §5 provides that boat moorings at Kalele Kai are limited common elements, except for boat moorings B7-B8, which are common elements, and that all boat moorings, with no exceptions, **"shall be restricted to use by boats no larger than twenty-three (23) feet in length,"** as follows:

5. **Common Elements.** One freehold estate is hereby designated in all of the remaining portions and appurtenances of the Project (hereinafter referred to as the "common elements"), including specifically, but not limited to:

(a) The Land in fee simple;

(b) All structural components [...];

(c) All walkways, including the boat mooring walkways, and interior roadways located upon the Land; [...]

(j) Two (2) boat moorings (designated B7 and B8 on the Condominium Map). The boat moorings shall be restricted to use by boats no larger than twenty-three (23) feet in length and shall be subject to that certain Declaration of Protective Provisions dated January 30, 1991, recorded in the Bureau as Document No. 91-026955, as amended (hereinafter referred to as the "Declaration of Protective Provisions (Hawaii Kai Marina)") and any rules and regulations promulgated thereunder, this Declaration, the Bylaws and any house rules adopted by the Board. **All remaining boat moorings of the Project shall be designated as "limited common elements" appurtenant to designated condominium units as described in more detail herein below;** [...]

Limited Common Elements.

The following common elements, (hereinafter referred to and designated as "limited common elements"), are hereby set aside and reserved for the exclusive use of certain condominium units, and such condominium units shall have appurtenant thereto exclusive easements for use of such limited common elements. **The limited common elements so set aside and reserved are as follows:** [...]

(b) All boat moorings shall be identified by the letter "B" and a number. Condominium unit 3110 initially shall have appurtenant thereto boat moorings B1 through B6, inclusive, and B9 through B60, inclusive, as designated on the Condominium Map. Notwithstanding any provision of this Declaration, the Developer, as the initial owner of condominium unit 3110, shall have the right to amend this Declaration (1) prior to the conveyance of condominium unit 3110, to transfer and redesignate any unsold boat moorings from condominium unit 3110 to any other condominium unit(s), and (2) as often as is necessary thereafter, to transfer and redesignate any unsold boat moorings from any condominium units owned by the Developer to any other condominium unit(s). Such transfers and redesignations shall be effectuated by amendments to the Declaration signed by the Developer and recorded in the Bureau. Such condominium units shall enjoy the exclusive use of the boat moorings appurtenant thereto, subject to that certain Declaration of Protective Provisions (Hawaii Kai Marina) and any rules and regulations promulgated thereunder, this Declaration, the Bylaws and any house rules adopted by the Board. The relocation and/or removal of boat moorings may be undertaken only in accordance with such rules and regulations as may be adopted by the Board.[1] Notwithstanding any provision of this Declaration, owners shall have the right to transfer and change the designation of boat moorings which are appurtenant to their respective condominium units by recordation in the Bureau of an amendment to this Declaration and appropriate conveyance document, both signed by the seller and the buyer of the boat mooring, and their respective mortgagees, if any.

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[1] This sentence added by the Tenth Declaration Amendment recorded in the Hawaii Bureau of Conveyances on 8/28/09, attached hereto as Exhibit 3.

The boat mooring shall be restricted to use by boats no larger than twenty-three (23) feet in length. The owner of a condominium unit to which a boat mooring is appurtenant, at such owner's sole expense, shall maintain and repair the boat mooring in a good, safe and clean condition; provided, that if owner fails to maintain and/or repair the boat mooring in a good, safe and clean condition, the Association may arrange for the maintenance and/or repair work to be performed and the actual cost of such work plus a reasonable administrative fee as may be levied by the Board shall be charged to the owner so long as the Association (i) has provided the owner with written notice of the maintenance and/or repair work, the estimated cost of such work and the estimated administrative fee for arranging for such work on behalf of the owner, and (ii) the owner fails to notify the Association in writing within seven (7) days of owner's receipt of the Association's notice that owner has made arrangements for such maintenance and/or repair work to be performed, the person or persons who will perform such work, and the date such work will begin.

Exhibit 1 (Declaration §5, pages 7-8, emphasis added).

The Declaration – and Hawaii law – requires all ASSOCIATION members and owners at Kalele Kai – including YOSHIKAWA – to "comply strictly" with the Declaration and Bylaws or be subject to "injunctive relief" and other remedies available to the ASSOCIATION:

13. **Compliance with Declaration, Bylaws and the Act**. **All owners**, their tenants, families, employees, servants, guests, and any other persons who may in any manner use the Project, **shall be bound by and comply strictly with the provisions of this Declaration**, the Bylaws, the Act, **all agreements, decisions and determinations by the Association as are lawfully made or amended from time to time**, that certain Declaration of Restrictive Covenant (Private Park) dated June 3, 1991 recorded in the Bureau as Document No. 91-119313 (hereinafter referred to as the "'Declaration of Restrictive Covenant (Private Park)"), and the Declaration of Protective Provisions (Hawaii Kai Marina), **and failure to comply with any of the same shall be grounds for** an action to recover sums due for damages or **injunctive relief, and any other remedies available in law or in equity, maintainable by the Board** or managing agent **on behalf of the Association** or, in a proper case, by any aggrieved owner. [...]

Exhibit 1 (Declaration §13, page 20, emphasis added).

By Hawaii statute, YOSHIKAWA is similarly obligated to "comply strictly" with the governing documents and failure to do so shall be grounds for injunctive and other relief. HRS §514B-112(c) ("**Each unit owner** [...] **shall comply strictly with the covenants, conditions, and restrictions set forth in the declaration, the bylaws,** and the house rules adopted pursuant thereto. **Failure to comply with any of the same shall be grounds for an action to recover**

[...] **injunctive relief**, or both, maintainable by the managing agent, resident manager, or board on behalf of the association.").

YOSHIKAWA took title to "All of that certain real property" described in Exhibit A of his Deed. Exhibit 4 (KK000919). Exhibit A specifies that title is **subject to** the Declaration:

> **Boat Mooring Nos. 28, 29 which said Boat Moorings are limited common element, 30, 31, 32 and 33 (the Boat Mooring)**, to said Unit 106 in the Project, as conveyed by that certain Boat Mooring Deed dated May 17, 2005, recorded May 18, 2005 in the Bureau of Conveyances, State of Hawaii, as Document No. 2005-099448. ...
> SUBJECT, HOWEVER, TO: ...
> 13. **Matters in an instrument that, among other things, contain or provide for** easements, assessments, liens and their subordination; provisions relating to partition, restrictions on severability of component interest, **covenants, conditions and restrictions**, provision that no violation thereof and no enforcement of any lien provided for therein shall defeat or render invalid the lien of a mortgage or deed of trust made in good faith and for value, but omitting and covenants or restrictions if any, based upon race color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.
> Entitled : **Declaration of Condominium Property Regime**
> Recorded: June 1, 1993 in the Bureau of Conveyances, State of Hawaii [...]

Id. (KK000919-21, emphasis added); see also, Exhibit 2 (Bylaws §1.1, "The Declaration and Bylaws shall constitute covenants running with the land and shall apply to all present and future owners"); Exhibit 5 (before closing, YOSHIKAWA acknowledged receipt of the Declaration and Bylaws).

C. Despite Knowing of the Declaration's 23 Foot Length Restriction and the ASSOCIATION's Objection to His Stated Intent to Moor a 49' Boat at Kalele Kai, YOSHIKAWA Proceeded to Purchase and Moor the Boat at the Marina, and Refused to Remove It, Despite Demand

In November 2012, YOSHIKAWA indicated to the ASSOCIATION that he was considering to purchase and moor at Kalele Kai a boat that was over 49 feet in length.

On November 21, 2012, the ASSOCIATION, through its general counsel, Christopher Goodwin, informed YOSHIKAWA that the Board lacked authority to approve the mooring of a boat at Kalele Kai in excess of 23 feet in length, cited the "express restrictions set forth in the project's Declaration and Bylaws," and concluded, "**the Board will not and cannot expressly approve the**

mooring of any boat at Kalele Kai in excess of 23 feet in length." Exhibits 6-7 (separate emails sent on 11/21/12 to Udagawa and Maiko Sakata, YOSHIKAWA's agent and fiancé, respectively).

Further, the ASSOCIATION's then-resident manager, Bryan Liu, told Udagawa or YOSHIKAWA that **the 23 foot restriction applied -at least twice**. Exhibit 8 (Transcript of sworn testimony (hereinafter, "T."), 10/3/14, at 1117).

From February to May 2013, **after** being so informed **in writing** by the ASSOCIATION, and despite knowing that no approval could be given to moor a new boat of excessive length, YOSHIKAWA purchased from Riviera Yacht Co. a customized Riviera 43 Offshore Express which is 49 feet and 4 inches in length. Exhibit 9 (Email to Udagawa re: revised quote and options, 2/25/13); Exhibit 10 (Email from Udagawa to Rosic, making "the first deposit" on the boat, 3/24/13); Exhibit 11 (Email from Udagawa, funds to be wired today, 4/9/13); Exhibit 12 (Email from Udagawa, meeting with Riviera Yacht personnel and "buyer," i.e., YOSHIKAWA, 4/10/13); Exhibit 13 (Email to Udagawa, sales agreement for "the 43," i.e., the 49' boat, 4/25/13); Exhibit 14 (T. 9/6/14, 622: Rola contract signed 4/25/13); Exhibit 15 (Email from Udagawa, "The name of the boat is Rola," 5/21/13).

At the time YOSHIKAWA travelled to Australia to purchase his new boat, he **knew** that the ASSOCIATION's Board had not approved the mooring of the new boat. Exhibit 14 (T. 9/6/14, 674).

By May 6, 2013, YOSHIKAWA hired an attorney, Terry Revere, who asserted that YOSHIKAWA purchased a new boat "which at 49'4" requires no modification of the current 69' boat mooring," and he "will soon be docking it in his boat moorings pursuant to his legal rights." Exhibit 16 (KK001147).

The assertion that YOSHIKAWA had "legal rights" to dock a 49 foot boat at Kalele Kai despite the Declaration's 23 foot length restriction was predicated upon attached exhibits to the same letter. But

none of the attached exhibits indicated that the Declaration's restriction had at any time been amended, modified, or rescinded,[2] nor could they.[3]

In his attorney's letter, YOSHIKAWA asserted that the Declaration's 23 foot length limitation has "clearly been abandoned." Exhibit 16 (KK001147). Yet no facts were presented in the letter to make a showing of abandonment of a declaration provision required by Hawaii law, nor do such facts exist. See Sandstrom v. Larsen, 59 Haw. 491, 497 (1978) (abandonment requires a showing **"that the lot owners of the subdivision acquiesced in substantial and general violations of the covenant within the restricted area,"** emphasis added).

It is not possible to make the requisite showing of acquiescence to "substantial and general violations" of the 23' restriction, because no such evidence to meet this high burden is known to exist.[4] YOSHIKAWA cannot justify his intentional and material failure to comply with the Declaration's 23' restriction through abandonment, or any other doctrine.[5]

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[2] Two exhibits related to modifications to moorings **without any reference to the Declaration's 23' restriction, boat sizes or boat lengths**. "Exhibit 1" to the letter is a settlement agreement between the ASSOCIATION and Richard Rosic, who had sold his Kalele Kai unit, boat moorings, and boat to YOSHIKAWA. Exhibit 16 (KK001150-55); Exhibit 4 (deed). The Rosic settlement agreement pertained to docks and piers that Rosic modified and removed without Board approval, ostensibly "because of health and safety reasons." Id. (KK001150). "Exhibit 5" to the letter is an arbitration order in which then-owners Ike Hung and Angela Hung were allowed "to sell their boat moorings in a modified condition." Id. (KK001173).

[3] By state law, neither a contract nor an arbitration order can amend the Declaration 23' restriction. Amendment of the restriction can only occur through approval from owners of at least 67% of Kalele Kai's common interest. See HRS §514B-32(a)(11).

[4] There is no evidence that the ASSOCIATION ever took the position that the 23' restriction had been abandoned or waived. See Exhibit 17 (T. 9/18/14, 733). Meeting minutes indicate that the Board took actions consistent with the 23' restriction. Exhibit 18 (YOSHIKAWA001669); see also Exhibit 19 (newsletter, Page 3). Most owners have complied with the Declaration at all times. Exhibit 8 (T. 10/3/14, 1096, 2008: 4 non-compliant boats); Exhibit 17 (T. 9/18/14, 811-12, 2014: 2 non-compliant boats, 1 of which was listed for sale). **Presently, in 2015, there is only one (1) boat moored at Kalele Kai that does not comply with the Declaration's 23 boat length restriction. That 1 non-compliant boat is YOSHIKWA's boat, the Rola. All owners other than YOSHIKAWA who moor boats at Kalele Kai comply with the 23 foot restriction.** See attached Declaration of Alan Takumi, ¶18.

[5] A waiver defense is prohibited by the project documents. See Exhibit 1 (Declaration §22, "Waiver");

YOSHIKAWA's counsel's letter concluded:

> **Unless the AOAO objects in writing within seven (7) days from the date of this letter, Mr. Yoshikawa will proceed to moor his new boat with the AOAO's agreement and/or acquiescence. If the Board does object,** or persist in vague non-committals **we will have [no] choice but to bring an action to enforce Mr. Yoshikawa's rights.** [6]

On May 7, 2013 (the next day), the ASSOCIATION's counsel responded, "**your client is advised the Board objects, at least preliminarily, to his proposed mooring of a boat at the Kalele Kai Marina in violation of the 23 foot length restriction set forth in the project's Declaration.**" Exhibit 20 (KK001175, emphasis added).

On May 28, 2013, YOSHIKAWA's counsel replied, "In light of the Board's 'preliminary' objection to our client's mooring of his new boat, we hereby demand mediation [...]." Exhibit 21.

On June 4, 2013, the ASSOCIATION's counsel informed YOSHIKAWA's counsel that, "**your client's request to moor a 51' boat at Kalele Kai has been denied, as the requisite boat length violated the 23' boat length restriction expressly stated in the Declaration.**" Exhibit 22 (emphasis added).

Behind the scenes and fanning the flames was Rosic, as evidenced by his e-mail dated June 6, 2013, wherein Rosic urged YOSHIKAWA, through his agent, Udagawa, to "overcome the Japanese mentality," and "fight back" because, allegedly, his boat dock "had no tie of a boat size restriction attached to it." Exhibit 23.[7]

At no time did the ASSOCIATION approve YOSHIKAWA's new boat, the "Rola." Exhibit 14 (T. 9/6/14, 672, 676-77). YOSHIKAWA admits he knew that the ASSOCIATION's objected ("said no") to mooring his new boat at Kalele Kai. Exhibit 14 (T. 9/6/14, 625, 680).

Exhibit 2 (Bylaw §7.6, "Waiver"); see also, Village Park Comm. Assoc. v. Nishimura, 108 Haw. 487, 498 (Haw.App. 2005) (for waiver a party must show an "intentional relinquishment of a known right").

[6] Exhibit 16 (KK001149, emphasis added). After the ASSOCIATION objected, and contrary to the letter, YOSHIKAWA moored his boat at Kalele Kai **without** bringing "an action to enforce" his "rights."

[7] Rosic claims he never advised YOSHIKAWA or Udagawa prior to or at the time YOSHIKAWA purchased Rosic's unit that he could moor a larger boat at Kalele Kai. Exhibit 24 (T. 8/25/14, 134).

In August 2013, YOSHIKAWA sold the boat he bought from Rosic (the "Aerial") to make room for his larger, 49' boat (the "Rola"). Exhibit 14 (T. 9/6/14, 630).

On October 28, 2013, with actual knowledge of the Declaration's 23 foot boat length restriction, his lack of approval, and the ASSOCIATION's objections and denial of YOSHIKAWA's request to moor his new 49' boat, YOSHIKAWA nonetheless moored the Rola at the Kalele Kai marina.[8]

That day, the ASSOCIATION cited YOSHIKAWA in writing for violating the Declaration. Exhibit 25.

YOSHIKAWA moored the Rola at Kalele Kai, and only **after** doing so did he institute a non-binding arbitration proceeding. Exhibit 14 (T. 9/6/14, 677-78).

In a letter dated November 5, 2013, Exhibit 26, the ASSOCIATION's counsel:

1. Restated the fact that the Board informed YOSHIKAWA on 6/4/13 that the Board denied his request to moor his boat;
2. Quoted the Declaration's 23' restriction;
3. Demanded YOSHIKAWA "remove any boat exceeding 23 feet in length" and cease and desist from any such violation in the future;
4. Placed YOSHIKAWA on actual notice that failure to remove his 49' boat by 12/31/13 may result in fines and assessment of attorneys' fees to enforce the Declaration.

YOSHIKAWA has continued to moor his 49' vessel at Kalele Kai in open, material, and intentional violation of the Declaration. See attached Declaration of Alan Takumi, ¶18.

Photos depicting YOSHIKAWA's boat while moored at the Kalele Kai marina are attached as Exhibit 27. The length of Rola, at 49'4," is **more than double** that of the 23' maximum boat length. Id. (1st page orange cones placed at front of boat and at 23' from front).

In sum, incontrovertible evidence demonstrates that YOSHIKAWA **knowingly "took a chance"** under Hawaii Supreme Court precedent discussed below, entitling the ASSOCIATION to the remedy of a mandatory injunction, which should issue.

---

[8] YOSHIKAWA moored the Rola at the Kalele Kai marina on the same day Mediation was scheduled between the parties. Exhibit 32 (T. 9/18/14, 857) (October 29, 2013, 9:30 a.m., Mediation Center of the Pacific).

D. All Assessments Were Fair and Appropriate

By 2011, the Kalele Kai marina was 20-years old, the deck surface was cracking, structural lumber had "deteriorated to a state of disrepair," structural tendons were in "very poor condition," the kit frame/tri frame exhibited rust and deterioration and required full replacement, triangle covers were in "very poor condition," cleats showed "surface rust," and various hardware were rusted and "unsalvageable." Exhibit 28 (Bellingham Marine Industries' ("BMI") assessment report, KK000032-36). BMI made recommendations consistent with its findings and report. Id. (KK000039-43). The Board acted in accordance with the recommendations of Bellingham, and those set forth in a second opinion from Glenn H. Miyasato, P.E. of MKE Associates, who concurred with BMI. Exhibit 29.

In 2012, the ASSOCIATION awarded a contract to BMI to repair and renovate the marina. Exhibit 30 (contract). The Board adopted a Board Resolution for allocation of renovation costs. Exhibit 31. The ASSOCIATION assessed each mooring owner a special assessment of $2,000 per mooring, attributable to costs incurred to repair and renovate the moorings, and YOSHIKAWA was assessed a total of $12,000 for his 6 moorings. Id. YOSHIKAWA was fairly assessed. The boat moorings are limited common elements, and the costs and allocations were based upon BMI's computations. See Exhibit 1 (Declaration §5(j), KK002092); Exhibit 4 (Deed, KK000919, Boat Moorings 28-33: "limited common elements"); Exhibit 28 (KK000043); Exhibit 17 (T. 9/18/14, 782-86).

The actual cost of the repair and renovation came out to $1,700 per mooring, and refunds were paid to the mooring owners including YOSHIKAWA. Exhibit 17 (T. 9/18/14, 785). The feedback resulting from BMI's work from owners was all positive. Exhibit 32 (T. 9/18/14, 865-66). YOSHIKAWA **benefited from the renovation work** because his 6 moorings were remediated. Id. (995-97).

II. STANDARD OF REVIEW

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Hawaii Rules of Civil Procedure 56(c) ("HRCP"); Gurrobat v. HTH Corp. 133 Haw. 1, 14 (Haw. 2014) (citations omitted). A fact is "material" if proof of that fact would have the effect of establishing or refuting an essential element of a cause of action asserted by one of the parties. The court must view the evidence in the light most favorable to the non-moving party. Id.

III. DISCUSSION

A. Requested Relief

The ASSOCIATION submits that the undisputed material facts and Hawaii law support summary judgment, and that the Court should grant the following requested relief:

A. Declare that YOSHIKAWA materially, intentionally, and openly violated the Declaration's 23-foot boat length restriction, and failed to "comply strictly" with the restriction, owed under the Declaration and HRS §514B-112(c).

B. Issue a permanent and mandatory injunction compelling YOSHIKAWA to remove the ROLA from Kalele Kai by a date certain, and enjoin him from further violations.

C. Find and conclude that YOSHIKAWA has materially breached the Declaration.

D. Declare that the Kalele Kai boat dock area and boat moorings were and are designated properly as limited common elements in accordance with the Declaration.

E. Declare that the special assessment for repair costs imposed on YOSHIKAWA was and is valid, proper, and in accordance with the Declaration.

B. The Declaration's 23' Boat Length Restriction is a Restrictive Covenant for Which YOSHIKAWA had Actual and Constructive Knowledge

1. YOSHIKAWA's Deed Put Him on Notice of the Declaration and the 23' Boat Length Restriction

"[W]here a deed makes a specific reference to a restrictive covenant, the grantee is on notice that his interest is subject to the terms of that restrictive covenant." Lee v. Puamana Comm. Assoc., 109 Haw. 561, 568 (2006); see also, Pelosi v. Wailea Ranch Estates, 91 Haw. 478, 489 (1999) ("defendants in the present matter had constructive notice by virtue of their deeds, of the ... covenants"); Rawlins v. Izumo Taisha Kyo Mission of Hawaii, 36 Haw. 721, 726 (1944) (equity will enforce a contract "containing restrictive covenants in a deed or lease limiting the use of the land in a particular manner or prescribing a particular use which creates equitable servitudes").

A covenant runs with the land and binds successor purchasers where: (1) it "touches and concerns" the land; (2) the covenanting parties intended it to run with the land; and (3) there is privity of estate. Waikiki Malia Hotel, Inc. v. Kinkai Properties Ltd. Partnership, 75 Haw. 370, 383 (1993)**Error! Bookmark not defined.**. The burden of proof is placed on the party attempting to avoid a covenant. See Restatement (Third) Property (Servitudes) §3.1, comment a (2000)**Error! Bookmark not defined.Error! Bookmark not defined.** ("the effect of the rule is to shift to the party claiming invalidity of a servitude the burden to establish that it is illegal or unconstitutional, or violates public policy").

Here, the ASSOCIATION's governing documents provide that they run with the land and apply to present and future owners. Exhibit 2 (Bylaws §1.1). YOSHIKAWA's Deed put him on actual notice of the Declaration. Exhibit 4 (Exhibit A).

2. The Closing Documents Given Put YOSHIKAWA on Notice

Prior to closing, YOSHIKAWA signed to acknowledge actual receipt of the Declaration and Bylaws. Exhibit 5.

3. Knowledge of Agents and Counsel Imputed to YOSHIKAWA

"[K]nowledge of the agent is the knowledge of his principal, and notice to the agent of the existence of material facts is notice thereof to the principal, who is taken to know everything about a

transaction which his agent in it knows." Am. Sur. Co. of New York v. Pauly, 170 U.S. 133, 153, 18 S. Ct. 553, 560, 42 L. Ed 977 (1898). The Restatement (Third) of Agency § 5.03 (2006)**Error! Bookmark not defined.** provides:

> § 5.03 Imputation of Notice of Fact to Principal
> For purposes of determining a principal's legal relations with a third party, notice of a fact that an agent knows or has reason to know is imputed to the principal if knowledge of the fact is material to the agent's duties to the principal, unless the agent
> (a) acts adversely to the principal as stated in § 5.04, or
> (b) is subject to a duty to another not to disclose the fact to the principal.

The Restatement (Third) of Agency §5.03 is simply an elaboration of an established principle of Hawaii law, i.e., notice to an agent is imputed to the principal. Ranieri v. Kersenbrock, 2011 WL 5520609 at *10, n.9 (D. Haw. 2011) (citing Medeiros v. Udell, 34 Haw. 632, (Haw. Terr. 1938)).

The attorney-client relationship is that of principal and agent. Shin v. Shin, 96 Haw. 122, 126 (Haw. App. 2001); Alt v. Krueger, 4 Haw. App. 201, 207 (1983) (same); see also, Medeiros v. Udell, 34 Haw. 632, 1938 WL 6814, at *2 (Haw.Terr. 1938)**Error! Bookmark not defined.** ("Knowledge on the part of an attorney is imputable to this client"); 7 Am. Jur. 2d Attorneys at Law §253 (2014)**Error! Bookmark not defined.** ("Notice or knowledge of an attorney, acquired during the time he or she is acting within the scope of his or her employment, is imputed to the client. In the context of an enduring attorney-client relationship, knowledge acquired by the attorney is imputed to the client as a matter of law").

Applied here, all the writings to and from and communications with his agent (Mr. Udagawa) and his counsel (Mr. Revere) are imputed to YOSHIKAWA as a matter of law.

C. Sandstrom v. Larsen and the "Take a Chance" Doctrine Justifies and Warrants a Mandatory Injunction

In Sandstrom v. Larsen, 59 Haw. 491, 499-500 (Haw. 1978)**Error! Bookmark not defined.**, the Hawaii Supreme Court adopted **the "take a chance" doctrine**, which recognizes that the **a mandatory injunction** is appropriate where a party violates a restrictive covenant of which he is aware, **irrespective**

of whether the owner mistakenly relies on incorrect advice from a professional, and without the necessity to consider the relative hardship between the parties.

In Sandstrom, the Hawaii Supreme Court expressly adopted the, "take a chance" doctrine when it held(id. at 499-500, emphasis added):

> In the instant case, there was no dispute that **appellants were aware, both actually and constructively, of the one-and-one-half story height restriction at the time they purchased their property.** In addition, testimony was adduced at trial which indicates that several neighbors discussed the existence of the height restriction with appellants prior to their commencing reconstruction of the home. **Appellants nevertheless proceeded with construction of the second story**, and they continued with the construction until completion despite the fact that appellees had warned appellants of impending legal action if appellants did not cease construction. Construction of the second story was in fact continued and completed during the pendency of this suit. Hence, **appellants acted at their own risk in completing their two-story structure**. Id.; Welch v. Barrows, 125 Vt. 500, 508-09, 218 A.2d 698, 705 (1966).
>
> **Appellants' purported claim of innocence, based upon their explanation that they relied upon the advice of their architect, is unpersuasive**. The advice given by the architect, who concluded that appellants' reconstructed house would be in compliance with the terms of the restrictive covenant, by no means constituted a final resolution of the covenant question. And **although appellants may have mistakenly relied upon the incorrect advice of their architect, such a mistaken assumption that they were acting legally and properly did not confer immunity upon them from the right of appellees or any other homeowners in the subdivision to seek, equitable enforcement of the restriction**. See Dickstein v. Williams, Nev., 571 P.2d 1169, 1171 (1977).
>
> We are convinced that **where a property owner "deliberately and intentionally violates a valid express restriction running with the land or intentionally 'takes a chance', the appropriate remedy is a mandatory injunction to eradicate the violation**." (Emphasis added). Peters v. Davis, 426 Pa. 231, 238, 231 A.2d 748, 752 (1967). Appellants took just such a chance in proceeding with construction of the second story of their home. **Therefore, mandatory injunctive relief was available to appellees without the necessity of consideration by the court below of the relative hardship between the parties.**

The "take a chance" doctrine governs violations of restrictive covenants and entitlement to mandatory injunctions. The doctrine applies in cases such as this one, where an association member acts knowing that he lacks board approval. See e.g., Pelosi v. Wailea Ranch Estates, 91 Haw. 478, 489-90 (1999) (restating that "**the relative hardship test will not be applied where a property owner deliberately and intentionally violates a valid express restriction** running with the land or

intentionally '**takes a chance**,'" however, concluding relative hardships could be considered because defendants purchased their parcels after the covenant had already been violated); Royal Kunia Comm. Assoc. v. Nemoto, 119 Haw. 437, 449-51 (Haw. App. 2008), emphasis added (**affirming grant of mandatory injunction against owners** where a restrictive covenant required approval for landscaping changes, the association objected to a proposed Japanese rock garden, and the **owners proceeded with construction despite knowing they lacked association approval**).

Application of the Hawaii Supreme Court's holding in Sandstrom v. Larsen, warrants granting of the present Motion for Summary Judgment and issuance of a mandatory injunction.

YOSHIKAWA "took a chance" and "deliberately and intentionally" violated a valid express restriction running with the land, i.e., the Declaration's 23' boat length restriction, for numerous reasons including the following:

1. YOSHIKAWA possessed both actual and constructive knowledge of the Declaration's express 23 foot boat length restriction before, during, and after his purchase of his unit in Kalele Kai;

2. After expressing an intention to purchase a 49' boat to moor at Kalele Kai, the ASSOCIATION's legal counsel informed YOSHIKAWA that "**the Board will not and cannot expressly approve the mooring of any boat at Kalele Kai in excess of 23 feet in length**"'

3. Within close proximity, the ASSOCIATION's Resident Manager informed YOSHIKAWA, **at least twice,** that **the Declaration's 23' restriction applied;**

4. YOSHIKAWA proceeded to purchase his 49' boat anyway;

5. After YOSHIKAWA hired a lawyer who demanded that the ASSOCIATION issue any objection in writing within 7 days, the ASSOCIATION's counsel **did object, in writing, the next day**;

6. The ASSOCIATION's counsel shortly thereafter informed YOSHIKAWA that his "**request to moor a 51' boat at Kalele Kai has been denied, as the requisite boat length violated the 23' boat length restriction expressly stated in the Declaration**";

7. **YOSHIKAWA intentionally proceeded to moor his 49' boat at Kalele Kai**:

(a) Without having obtained ASSOCIATION approval;

(b) Without the ASSOCIATION having acquiesced;

(c) Knowing that the ASSOCIATION objected and had denied his request to moor based upon the Declaration's restriction; **and**

(d) Without seeking a legal determination or court approval for his actions;

8. **YOSHIKAWA kept his 49' boat moored at Kalele Kai despite the ASSOCIATION's demand that he remove the boat from the marina and being notified that doing so may result in fines and assessment of attorney's fees to enforce the Declaration;**

9. **YOSHIKAWA' s violation is open, material, intentional, and ongoing.**

Pursuant to Hawaii law, Sandstrom, and the Declaration, the ASSOCIATION respectfully submits that the remedy of a mandatory injunction is appropriate and necessary, to compel YOSHIKAWA to remove his boat by a specified date, and to enjoin him from future violations.

D. All Assessments Were Fair and Appropriate

HRS §514B-41(c) provides (emphasis added):

Unless otherwise provided in the declaration or bylaws, if the board reasonably determines that the extra cost incurred to separately account for and charge for the costs of maintenance, repair, or replacement of limited common elements is not justified, the board may adopt a resolution determining that certain limited common element expenses will be assessed in accordance with the undivided common interest appurtenant to each unit. In reaching its determination, the board shall consider:

(1) The amount at issue;
(2) The difficulty of segregating the costs;
(3) The number of units to which similar limited common elements are appurtenant;
(4) The apparent difference between separate assessment and assessment based on the undivided common interest; and
(5) Any other relevant factors, as determined by the board.

The resolution shall be final and binding in the absence of a determination that the board abused its discretion.

The Declaration provides in part (Exhibit 1 (§12, KK002103):

if the limited common elements are appurtenant to more than one (1) condominium unit, the owners of such condominium units to which such limited common elements are appurtenant shall be severally liable in proportion to the ratio that the percentage share in the common interests of their respective condominium units bears to the sum of the percentage shares in the common interests of all the condominium units to which such limited common elements are appurtenant

(such charges, costs and expenses incurred only for or in connection with any condominium unit or limited common element being herein called "limited common expenses").

Here, in accordance with Hawaii law and the Declaration, and as described above, the renovation costs to the Kalele Kai marina were reasonable, necessary, in accordance with the Board's authority and business judgment, were fairly allocated among the boat mooring owners and the general membership in accordance with computations made by professionals, and did actually benefit all boat mooring owners, including YOSHIKAWA.

IV. CONCLUSION

The ASSOCIATION respectfully requests that this Court GRANT the present Motion and award any additional relief to which this Court may find the ASSOCIATION entitled.

DATED: Honolulu, Hawaii, March 16, 2015.

CHRISTOPHER SHEA GOODWIN
Attorneys for Plaintiff
ASSOCIATION OF OWNERS OF KALELE KAI

JOHN D. ZALEWSKI
JANA M. NARUSE
Attorneys for Plaintiff
ASSOCIATION OF OWNERS OF KALELE KAI

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ASSOCIATION OF OWNERS OF KALELE KAI, Plaintiff, vs. HITOSHI YOSHIKAWA; DOE DEFENDANTS 1-10, Defendants.	CIVIL NO. 15-1-0102-01 KTN (Declaratory Judgment) DECLARATION OF COUNSEL

DECLARATION OF COUNSEL

I do hereby declare under penalty of law that the following is true and correct:

1. I am an attorney of record for Plaintiff ASSOCIATION OF OWNERS OF KALELE KAI ("Association"), and make this Declaration in support of Plaintiff ASSOCIATION's Motion for Summary Judgment and make this Declaration on my personal information except where otherwise stated herein.

2. Attached hereto as Exhibit 1 is a true and complete copy of the Declaration of Condominium Property Regime of Kalele Kai recorded as Document Number 93-097469 in the Hawaii Bureau of Conveyances on June 1, 1993, except that portions have been underlined or circled for emphasis.

3. Attached hereto as Exhibit 2 is a true and complete copy of the Bylaws of the Association of Owners of Kalele Kai recorded as Document Number 93-87570 in the Hawaii Bureau of Conveyances on June 1, 1993, except that portions have been underlined or circled for emphasis.

4. Attached hereto as Exhibit 3 is a true and complete copy of the Tenth Amendment of the Declaration of Condominium Property Regime of Kalele Kai recorded as Document Number

2009-132896 in the Hawaii Bureau of Conveyances on August 28, 2009, except that portions have been underlined or circled for emphasis.

5. Attached hereto as Exhibit 4 is a true and complete copy of the "Apartment Deed (With Boat Moorings) recorded as Document Number 2010-165562 in the Hawaii Bureau of Conveyances on November 1, 2010, except that portions have been underlined or circled for emphasis.

6. Attached hereto as Exhibit 5 is a true and complete copy of portions of documents produced by legal counsel for HITOSHI YOSHIKAWA ("Yoshikawa") in discovery (who are the same as the attorneys of record for Yoshikawa in this action), Bates-stamped as YOSHIKAWA0000206, except that portions have been underlined or circled for emphasis.

7. Attached hereto as Exhibit 8 are true and complete excerpts from the transcript of sworn testimony given on October 3, 2014 in the non-binding arbitration proceeding between Yoshikawa and the Association in DPR Arb. No. 13-0496-A, except that portions have been underlined or circled for emphasis.

8. Attached hereto as Exhibit 9 is a true and complete copy of portions of documents produced by counsel for Yoshikawa in discovery, Bates-stamped as YOSHIKAWA000769-770, except that portions have been underlined or circled for emphasis.

9. Attached hereto as Exhibit 10 is a true and complete copy of portions of documents produced by counsel for Yoshikawa in discovery, Bates-stamped as YOSHIKAWA000702, except that portions have been underlined or circled for emphasis.

10. Attached hereto as Exhibit 11 is a true and complete copy of portions of documents produced by counsel for Yoshikawa in discovery, Bates-stamped as YOSHIKAWA000787, except that portions have been underlined or circled for emphasis.

11. Attached hereto as Exhibit 12 is a true and complete copy of portions of documents produced by counsel for Yoshikawa in discovery, Bates-stamped as YOSHIKAWA000783, except that portions have been underlined or circled for emphasis.

12. Attached hereto as Exhibit 13 is a true and complete copy of portions of documents produced by counsel for Yoshikawa in discovery, Bates-stamped as YOSHIKAWA000793, except that portions have been underlined or circled for emphasis.

13. Attached hereto as Exhibit 14 are true and complete excerpts from the transcript of sworn testimony given on September 6, 2014 in the non-binding arbitration proceeding between Yoshikawa and the Association in DPR Arb. No. 13-0496-A, except that portions have been underlined or circled for emphasis.

14. Attached hereto as Exhibit 15 is a true and complete copy of portions of documents produced by counsel for Yoshikawa in discovery, Bates-stamped as YOSHIKAWA000857-859, except that portions have been underlined or circled for emphasis.

15. Attached hereto as Exhibit 17 are true and complete excerpts from the transcript of sworn testimony given on September 18, 2014, Part 1 of 2, in the non-binding arbitration proceeding between Yoshikawa and the Association in DPR Arb. No. 13-0496-A, except that portions have been underlined or circled for emphasis.

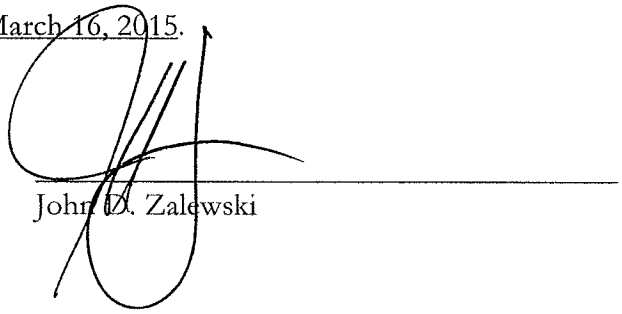
16. Attached hereto as Exhibit 18 is a true and complete copy of portions of documents produced by counsel for Yoshikawa in discovery, Bates-stamped as YOSHIKAWA001667-1671, except that portions have been underlined or circled for emphasis.

17. Attached hereto as Exhibit 23 is a true and complete copy of portions of documents produced by counsel for Yoshikawa in discovery, Bates-stamped as YOSHIKAWA000536, except that portions have been underlined or circled for emphasis.

18. Attached hereto as Exhibit 24 are true and complete excerpts from the transcript of sworn testimony given on August 25, 2014, in the non-binding arbitration proceeding between Yoshikawa and the Association in DPR Arb. No. 13-0496-A, except that portions have been underlined or circled for emphasis.

19. Attached hereto as Exhibit 32 are true and complete excerpts from the transcript of sworn testimony given on September 18, 2014, Part 2 of 2, in the non-binding arbitration proceeding between Yoshikawa and the Association in DPR Arb. No. 13-0496-A, except that portions have been underlined or circled for emphasis.

DATED: Honolulu, Hawaii, March 16, 2015.



John D. Zalewski

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ASSOCIATION OF OWNERS OF KALELE KAI, Plaintiff, vs. HITOSHI YOSHIKAWA; DOE DEFENDANTS 1-10, Defendants.	CIVIL NO. 15-1-0102-01 KTN (Declaratory Judgment) DECLARATION OF ALAN TAKUMI

DECLARATION OF ALAN TAKUMI

I do hereby declare under penalty of law that the following is true and correct:

1. I am employed as Resident Manager for the ASSOCIATION OF OWNERS OF KALELE KAI (the "Association"), the Plaintiff in the above-entitled civil action. I make this Declaration based upon on my personal information unless indicated otherwise herein.

2. Prior to my employment as Resident Manager for the Association, I was employed by Associa Hawaii, custodians of records for the Association. The documents referenced below and attached hereto are a part of the records of the Association, and were and are kept and maintained as one of the regularly conducted activities of the Association, at or near the time the documents were sent, received, or generated.

3. Attached hereto as Exhibit 6 is a true and complete copy of an email from Christopher Shea Goodwin, Esq. sent 11/21/12, except that subsequently the document has been Bates-stamped as KK001145 and portions have been underlined or circled for emphasis.

4. Attached hereto as Exhibit 7 is a true and complete copy of an email string in which the most recent email is from Brian Liu sent 11/21/12, except that subsequently the document has been Bates-stamped as KK002052-2054 and portions have been underlined or circled for emphasis.

5. Attached hereto as Exhibit 16 is a true and complete copy of an email string in which the most recent email is from Brian Liu sent 11/21/12, except that subsequently the document has been Bates-stamped as KK001147-1174 and portions have been underlined or circled for emphasis.

6. Attached hereto as Exhibit 19 is a true and complete copy of the Kalele Kurrents newsletter, Volume 15, Issue 4, dated April 2009, except that portions have been underlined or circled for emphasis.

7. Attached hereto as Exhibit 20 is a true and complete copy of a letter from Christopher Shea Goodwin, Esq. dated May 7, 2013, except that subsequently the document has been Bates-stamped as KK001175-1176 and portions have been underlined or circled for emphasis.

8. Attached hereto as Exhibit 21 is a true and complete copy of a letter from Terrance M. Revere, Esq. and Lauren C. McDowell, Esq. dated May 28, 2013, except that subsequently the document has been Bates-stamped as KK001177 and portions have been underlined or circled for emphasis.

9. Attached hereto as Exhibit 22 is a true and complete copy of a letter from Christopher Shea Goodwin, Esq. dated June 4, 2013, except that subsequently the document has been Bates-stamped as KK00117 and portions have been underlined or circled for emphasis.

10. Attached hereto as Exhibit 25 is a true and complete copy of a letter from Robert Ingraham dated October 28, 2013, except that subsequently the document has been Bates-stamped as KK000148 and portions have been underlined or circled for emphasis.

11. Attached hereto as Exhibit 26 is a true and complete copy of a letter from Christopher Shea Goodwin, Esq. dated November 5, 2013, except that subsequently the document has been Bates-stamped as KK001183-1184 and portions have been underlined or circled for emphasis.

12. Attached hereto as Exhibit 27 are true and complete copies of photographs which depict Yoshikawa's boat, the Rola. The first three photos, date-stamped "03 10 2015," were taken by me on that date. The final two photos, which are not date-stamped, were not taken by me. However, based upon my personal knowledge, I attest that these photos do accurately depict the present appearance of the Rola while moored at Kalele Kai, viewed from the ocean (Makai) direction, while facing the Kalele Kai project.

14. Attached hereto as Exhibit 28 is a true and complete copy of a document entitled "Kalele Kai Marina Maintenance and Rehabilitation," except that subsequently the document has been Bates-stamped as KK000028-71 and portions have been underlined or circled for emphasis.

15. Attached hereto as Exhibit 29 is a true and complete copy of a letter from Kristi Hirota-Schmidt dated August 12, 2011, except that subsequently the document has been Bates-stamped as KK000148 and portions have been underlined or circled for emphasis.

16. Attached hereto as Exhibit 30 is a true and complete copy of a document entitled "Agreement between Owner and Contractor," except that subsequently the document has been Bates-stamped as KK000095-104 and portions have been underlined or circled for emphasis.

17. Attached hereto as Exhibit 31 is a true and complete copy of a letter from Alan Takumi (Declarant) dated August 26, 2011, except that subsequently the document has been Bates-stamped as KK001663 and KK000912-913, and portions have been underlined or circled for emphasis.

18. Presently, there is only one (1) boat that is moored at Kalele Kai which does not comply with the Declaration's 23 boat length restriction. That 1 non-compliant boat is Mr. Yoshikwa's boat, the Rola. All owners other than Mr. Yoshikawa who moor boats at Kalele Kai comply with the 23 foot restriction.

DATED: Honolulu, Hawaii, March 13, 2015.

Alan Takumi

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ASSOCIATION OF OWNERS OF KALELE KAI, Plaintiff, vs. HITOSHI YOSHIKAWA; DOE DEFENDANTS 1-10, Defendants.	CIVIL NO. 15-1-0102-01 KTN (Declaratory Judgment) NOTICE OF HEARING MOTION

NOTICE OF HEARING MOTION

TO: TERRANCE M. REVERE, ESQ.
LAUREN C. McDOWELL, ESQ.
REVERE & ASSOCIATES
970 North Kalaheo Avenue, Suite A301
Kailua, Hawaii 96734

Attorneys for Defendant
HITOSHI YOSHIKAWA

NOTICE IS HEREBY GIVEN THAT the above Motion shall come for hearing before THE HONORABLE KAREN T. NAKASONE, Judge, Circuit Court of the First Circuit, State of Hawaii, in her courtroom at 1111 Alakea Street, Honolulu, Hawaii on Tuesday, April 28, 2015 at 10:00 o'clock A.m. or as soon thereafter as counsel may be heard.

DATED: Honolulu, Hawaii, March 16, 2015.

CHRISTOPHER SHEA GOODWIN
JOHN D. ZALEWSKI
JANA M. NARUSE
Attorneys for Plaintiff
ASSOCIATION OF OWNERS OF KALELE KAI

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ASSOCIATION OF OWNERS OF KALELE KAI, Plaintiff, vs. HITOSHI YOSHIKAWA; DOE DEFENDANTS 1-10, Defendants.	CIVIL NO. 15-1-0102-01 KTN (Declaratory Judgment) CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document will be duly served on the following party on the following date via the following means.

TERRANCE M. REVERE, ESQ.
LAUREN C. McDOWELL, ESQ.
970 North Kalaheo Avenue, Suite A301
Kailua, Hawaii 96734

Attorneys for Defendant
HITOSHI YOSHIKAWA

FIRST CLASS UNITED STATES MAIL

DATED: Honolulu, Hawaii, March 16, 2015.

CHRISTOPHER SHEA GOODWIN
JOHN D. ZALEWSKI
JANA M. NARUSE
Attorneys for Plaintiff
ASSOCIATION OF OWNERS OF KALELE KAI

CM# 1865

R-501

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

JUN 01, 1993 / 11:00 AM

Doc No(s) 93-087469

/s/ S. FURUKAWA
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: $0.00

LAND COURT SYSTEM REGULAR SYSTEM

Return by Mail ( ) Pickup ( ) To:

DONNA Y. KANEMARU
WATANABE ING & KAWASHIMA
745 FORT STREET, 5TH FLOOR
HONOLULU, HAWAII 96813

5198n (Exhibits - 5199n)

DECLARATION OF CONDOMINIUM PROPERTY REGIME

OF

KALELE KAI

WHEREAS, KAPALELE ASSOCIATES, a Hawaii limited partnership, whose principal place of business and post office address is One Keahole Street, Unit 3110, Honolulu, Hawaii 96825 (hereinafter referred to as the "Developer"), is the lessee under that certain Lease No. 28587 dated October 9, 1990, issued by The Trustees of the Estate of Bernice Pauahi Bishop (hereinafter referred to as the "Trustees") and recorded in the Bureau of Conveyances of the State of Hawaii (hereinafter referred to as the "Bureau") as Document No. 90-158696, as the same may be amended from time to time (hereinafter referred to as the "Lease"), demising that certain parcel of land situate at Maunalua, City and County of Honolulu, Island of Oahu, State of Hawaii, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as the "Land"); and

WHEREAS, the Trustees have conveyed the Land to the Developer, together with and subject to the Lease, pursuant to Deed dated _____, 1993, recorded in the Bureau as Document No. _____;

EXHIBIT 503

PENGAD 800-631-6989

KK002086

EXHIBIT 1

KK002086

WHEREAS, it is the intent of the Developer that the leasehold and fee estates owned by the Developer, which are both hereinafter submitted to the condominium property regime, shall not merge and that the Lease shall remain in existence until the first to occur of the following: (i) all mortgages encumbering the Lease have been released and the Developer has evidenced its intent to merge the leasehold and fee estates by recording a Cancellation of Lease in the Bureau, or (ii) the Lease has been fully cancelled and surrendered as a result of the delivery of a partial cancellation and surrender of the Lease as it relates to each and all of the condominium units created hereby; and

WHEREAS, the Developer intends to develop the Land as a condominium project, (hereinafter referred to as the "Project"), as more specifically described herein and in accordance with plans incorporated herein by reference and recorded in the Bureau as Condominium Map No. 1865, (hereinafter referred to as the "Condominium Map");

NOW, THEREFORE, the Developer, in order to create a condominium project to be known as "KALELE KAI", hereby submits all of its right, title and interest in and to the Lease, the Land and the improvements to be constructed on the Land to the provisions of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended, (hereinafter referred to as the "Act"), and does hereby establish a condominium property regime with respect thereto and in furtherance thereof makes the following declarations as to divisions, limitations, restrictions, covenants, and conditions, and declares and agrees that said property is held and shall be held, conveyed, mortgaged, encumbered, used, occupied and improved subject to the terms and conditions of the declarations, restrictions and conditions set forth herein and in the Bylaws of the Association of Owners of Kalele Kai (hereinafter referred to as the "Bylaws"), as the same may from time to time be amended in accordance with law and with this Declaration and the Bylaws, which declarations, restrictions and conditions shall constitute covenants running with the land and shall be binding on and for the benefit of the parties hereto, their respective successors and assigns and all subsequent owners and lessees of all or any part of the Project and their respective heirs, personal representatives, successors and assigns.

1. Name. The condominium property regime established hereby shall be known as "KALELE KAI".

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2. Land Description. The land submitted to the condominium property regime is described in Exhibit "A" attached hereto and made a part hereof.

3. Description of Buildings. The Project shall consist of three (3) buildings, each of which shall contain six (6) floors (hereinafter referred to as "Building 1", "Building 2", and "Building 3"), one (1) building containing three (3) floors (hereinafter referred to as the "Townhome Building") and one (1) recreational facility building containing one (1) floor and a basement (hereinafter referred to as the "Clubhouse"). Building 1, Building 2, Building 3, and the Townhome Building are hereinafter sometimes referred to as the "Residential Buildings".

Building 1 is located on the southern boundary of the Project and contains ninety-two (92) residential condominium units. Building 2 is located on the western boundary of the Project and contains fifty-seven (57) residential condominium units. Building 3 is located on the northern boundary of the Project and contains sixty (60) residential condominium units. The Townhome Building is located on the eastern boundary of the Project and contains ten (10) residential condominium units. The Residential Buildings and the condominium units contained therein are described in more detail in Exhibit "B" attached hereto and incorporated herein by reference. The Residential Buildings will be constructed primarily of reinforced concrete, metal roof, glass, wood, plaster, tile and appropriate trim. No Residential Building or condominium shall contain a basement.

The Clubhouse is located in the center of the Project and contains a club house/lounge area which shall include a kitchenette area (containing a refrigerator, sink, bar sink and an icemaker), storage closets, manager's office, men's and women's toilet rooms, and electrical room. The Clubhouse shall have a basement for the storage of equipment, swimming pool pumps and machinery. The Clubhouse shall be constructed primarily of reinforced concrete, metal roof, glass, wood, plaster, tile and appropriate trim. A free form swimming pool and whirl pool spa are located adjacent to the Clubhouse.

4. Description of Condominium Units. The Project shall consist of two hundred nineteen (219) condominium units. The number of the condominium units and their location, approximate area and other data are more particularly described in Exhibit "B" attached hereto

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and made a part hereof. The condominium units are constructed primarily of glass, wood, plaster, tile and appropriate trim, and are designated on the Condominium Map.

Each condominium unit is designated as a separate freehold estate. The respective condominium units shall not be deemed to include the undecorated or unfinished surfaces of the perimeter walls or interior load bearing walls, the floors and ceilings surrounding each condominium unit or any pipes, wires, conduits or other utility or service lines running through such condominium unit which are utilized for or serve more than one (1) condominium unit, the same being deemed common elements as hereinafter provided. Each condominium unit shall be deemed to include all the walls and partitions which are not load-bearing within its perimeter walls, the inner decorated or finished surfaces of all walls, floors and ceilings, any doors, windows or panels along the perimeters and all fixtures originally installed therein. Each condominium unit shall also include the lanai or lanais to which such condominium unit has direct, exclusive access, and each condominium unit in the Townhome Building shall also include the garage to which such condominium unit has direct, exclusive access.

The square foot floor area of each condominium unit shown on the attached Exhibit "B" is measured from the undecorated or unfinished surfaces of the interior face of perimeter walls and includes all the walls and partitions within the perimeter walls, including any glass windows or panels along the perimeter and the outer edge of the floor slab.

Each condominium unit in Building 1, Building 2, and Building 3 shall have immediate access to a corridor which shall be a common element of the Project. Each condominium unit in the Townhome Building shall have immediate access to the grounds of the Project which shall be a common element of the Project or to a courtyard which shall be a limited common element appurtenant to that condominium unit and then to the grounds of the Project.

NOTE: The Penthouse condominium units (unit type "P") do not contain any fixtures, appliances or interior (non-load bearing) walls. It is the responsibility of the owner of each Penthouse condominium unit to, in its sole discretion and personal choice, to install fixtures and

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appliances, and construct the interior layout and design of the Penthouse condominium unit in accordance with any condition or covenant contained in this Declaration or the Bylaws; provided that said owner shall not relocate or modify any utility connections or load or non-load bearing walls. Developer is only providing the Penthouse condominium unit with connections to utilities, water and wastewater disposal.

5. Common Elements. One freehold estate is hereby designated in all of the remaining portions and appurtenances of the Project (hereinafter referred to as the "common elements"), including specifically, but not limited to:

(a) The Land in fee simple;

(b) All structural components such as foundations, beams, supports, main walls, roofs, stairs, stairways, entrances, exits, floor slabs, unfinished perimeter party and load-bearing walls, lanai railings and parapet, awnings, corridors and walkways of said buildings;

(c) All walkways, including the boat mooring walkways, and interior roadways located upon the Land;

(d) All yards, grounds, landscaping, retaining walls, perimeter courtyard walls, planters located upon the Land, the Clubhouse including all amenities therein and the swimming pool and whirlpool spa adjacent thereto, as described above;

(e) All ducts, electrical equipment, central water heating systems, wiring, pipes and other central and appurtenant transmission facilities and installations on, over, under and/or across the property which serve more than one (1) condominium unit for services such as power, light, hot water, cold water, incineration, sewage, gas, telephone and television and radio signal distribution, if any;

(f) Any apparatus and installation existing for common use such as elevators, elevator shafts and pits, tanks, pumps, motors, fans, compressors, ducts, vents and other installations and apparatus;

(g) Lobbies, elevator lobbies, storage rooms, machine rooms, parking areas (other than parking

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stalls), ramps, deck areas, loading areas and refuse facilities;

(h) Any and all facilities for distribution and storage of mail, except for the mail box appurtenant to each condominium unit, as described hereinbelow;

(i) A total of thirty-one (31) parking stalls (designated "Guest" on the Condominium Map) shall be designated for guest parking, of which four (4) parking stalls (designated "HDCP Guest" on the Condominium Map) shall be designated for handicap parking for guests. There shall also be four (4) additional covered parking stalls (designated 38, 87c, 101, 138c on the Condominium Map), which shall be deemed to be common elements of the Project, which shall be designated for handicap parking and used by disabled owners or occupants of the Project on such terms and conditions as may be agreed upon between the Association of Owners of Kalele Kai (hereinafter referred to as the "Association") through its Board of Directors (hereinafter referred to as the "Board") and such owner or occupant; provided, however, that such parking stalls may be used as additional parking for the manager and/or security and/or maintenance personnel whenever such parking stalls are not being used by a disabled owner or occupant. The Association shall retain ownership of said handicap parking stalls and shall adopt rules for the assignment and use of said handicap parking stalls. All remaining parking stalls of the Project shall be designated as "limited common elements" appurtenant to designated condominium units as discussed in more detail below;

(j) Two (2) boat moorings (designated B7 and B8 on the Condominium Map). The boat moorings shall be restricted to use by boats no larger than twenty-three (23) feet in length and shall be subject to that certain Declaration of Protective Provisions dated January 30, 1991, recorded in the Bureau as Document No. 91-026955, as amended (hereinafter referred to as the "Declaration of Protective Provisions (Hawaii Kai Marina)") and any rules and regulations promulgated thereunder, this Declaration, the Bylaws and any house rules adopted by the Board. All remaining boat moorings of the Project shall be designated as "limited common elements" appurtenant to designated condominium units as described in more detail hereinbelow;

(k) Any and all other apparatus and installations of common use and all other parts of the

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property necessary or convenient to its existence, maintenance, and safety, or normally in common use.

Limited Common Elements:

The following common elements, (hereinafter referred to and designated as "limited common elements"), are hereby set aside and reserved for the exclusive use of certain condominium units, and such condominium units shall have appurtenant thereto exclusive easements for use of such limited common elements. The limited common elements so set aside and reserved are as follows:

(a) Each non-Penthouse condominium unit shall have exclusive use of two (2) parking stalls and each Penthouse condominium unit shall have exclusive use of four (4) parking stalls as designated on the Condominium Map and designated in Exhibit "B". Notwithstanding any provision of this Declaration, owners shall have the right to transfer and change the designation of parking stalls which are appurtenant to their respective condominium units by execution and recordation in the Bureau of an amendment to the Declaration and an appropriate conveyance document; provided that at least one (1) parking stall shall be appurtenant to each non-Penthouse condominium unit and at least two (2) parking stalls shall be appurtenant to each Penthouse condominium unit, but in the event a Penthouse condominium unit is separated into two (2) condominium units, as permitted in Paragraph 17(e) hereinbelow, at least two (2) parking stalls shall be originally appurtenant to each such condominium unit. The amendment to effectuate a change in the designation of a parking stall appurtenant to a condominium unit shall need only the signature and approval of the owners of the condominium units whose parking stalls are being changed and their respective mortgagees, if any. The amendment shall be effective only upon recordation with the Bureau.

(b) All boat moorings shall be identified by the letter "B" and a number. Condominium unit 3110 initially shall have appurtenant thereto boat moorings B1 through B6, inclusive, and B9 through B60, inclusive, as designated on the Condominium Map. Notwithstanding any provision of this Declaration, the Developer, as the initial owner of condominium unit 3110, shall have the right to amend this Declaration (1) prior to the conveyance of condominium unit 3110, to transfer and redesignate any unsold boat moorings from condominium unit

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3110 to any other condominium unit(s), and (2) as often as is necessary thereafter, to transfer and redesignate any unsold boat moorings from any condominium units owned by the Developer to any other condominium unit(s). Such transfers and redesignations shall be effectuated by amendments to the Declaration signed by the Developer and recorded in the Bureau. Such condominium units shall enjoy the exclusive use of the boat moorings appurtenant thereto, subject to that certain Declaration of Protective Provisions (Hawaii Kai Marina) and any rules and regulations promulgated thereunder, this Declaration, the Bylaws and any house rules adopted by the Board. Notwithstanding any provision of this Declaration, owners shall have the right to transfer and change the designation of boat moorings which are appurtenant to their respective condominium units by recordation in the Bureau of an amendment to this Declaration and appropriate conveyance document, both signed by the seller and the buyer of the boat mooring, and their respective mortgagees, if any.

The boat mooring shall be restricted to use by boats no larger than twenty-three (23) feet in length. The owner of a condominium unit to which a boat mooring is appurtenant, at such owner's sole expense, shall maintain and repair the boat mooring in a good, safe and clean condition; provided, that if owner fails to maintain and/or repair the boat mooring in a good, safe and clean condition, the Association may arrange for the maintenance and/or repair work to be performed and the actual cost of such work plus a reasonable administrative fee as may be levied by the Board shall be charged to the owner so long as the Association (i) has provided the owner with written notice of the maintenance and/or repair work, the estimated cost of such work and the estimated administrative fee for arranging for such work on behalf of the owner, and (ii) the owner fails to notify the Association in writing within seven (7) days of owner's receipt of the Association's notice that owner has made arrangements for such maintenance and/or repair work to be performed, the person or persons who will perform such work, and the date such work will begin.

A boat mooring may be leased for a minimum period of thirty (30) days to another owner or tenant of a condominium unit within the Project, subject to the terms and conditions of the Declaration of Protective Provisions and any rules and regulations promulgated thereunder, this

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Declaration, and any house rules adopted by the Association, provided that said lease of the boat mooring shall be in writing and all assessments, charges, fees or penalties arising from said boat mooring shall be levied against the owner of the condominium unit to which the boat mooring is an appurtenant limited common element. The use of a boat mooring may not be granted orally or by license, agreement or any other means to a person who is not an owner or tenant of a condominium unit within the Project.

(c) The entry courtyards adjacent to condominium unit 101 and condominium unit 110 in the Townhome Building shall be appurtenant to and for the exclusive use of the condominium unit to which such entry courtyard is adjacent.

(d) Each condominium unit shall have for its exclusive use one (1) mail box located in the lobby of the building in which the condominium unit is located.

6. Percentage of Undivided Interest. Each condominium unit shall have appurtenant thereto an undivided percentage interest in all of the common elements of the Project as shown in Exhibit "B" attached hereto (hereinafter referred to as the "common interest"), and the same proportionate share in all common profits and expenses of the Project, and, except as herein expressly provided for, all other purposes including voting. The Developer, as the owner of all unsold condominium units, shall have the right to cast the votes of such condominium units in all matters of the Association.

7. Easements. In addition to the exclusive easements established as limited common elements, the condominium units shall have and be subject to the following easements:

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

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

(c) The Association shall have the right, to be exercised by its Board or the managing agent, to enter each condominium unit and the limited common elements from time to time during reasonable hours as may be necessary for the operation of the Project, for painting the Project and other maintenance and repair, or for making emergency repairs therein necessary to prevent damage to any condominium unit or common element.

(d) Each owner shall have an easement in common with the owners of all other condominium units to use and have access to all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other condominium units and serving his condominium unit. Each condominium unit shall be subject to an easement in favor of the owners of all other condominium units to use and have access to the pipes, wires, ducts, cables, conduits, public utility lines, and other common elements serving such other condominium units and located in such units.

(e) The Developer shall have the right to conduct extensive sales activities on the property, including but not limited to the use of model condominium units, sales and management offices, and extensive sales displays and activities until the closing of the sale of the last unsold condominium unit in the Project. In the event that the Developer's mortgage lender or any successor to or assignee of the Developer's mortgage lender shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or by an assignment in lieu of foreclosure, such mortgage lender, its successors and assigns, shall have the right to conduct such extensive sales activities on the Project

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until all of the condominium units have been sold and recorded, notwithstanding the foregoing.

(f) The Developer and its agents, employees, contractors, licensees, successors and assigns shall have an easement over and upon the Land as may be reasonably necessary for the completion of improvements to and correction of defects in the Project. Such easement shall terminate twenty-four (24) months after the later of (i) the date of the recording in the Bureau of Conveyances of the first conveyance document for a condominium unit in the Project, or (ii) "substantial completion" (as that term is used in Chapter 507, Part II, Hawaii Revised Statutes) of the improvement to be completed or corrected.

(g) The Developer hereby reserves the right to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the common elements of the Project for any reasonable purposes, which may include, but shall not be limited to, any easements for utilities or for any public purpose.

The Developer hereby further reserves the right to transfer, cancel, relocate or otherwise deal with any easement over, under, across or through any lands adjacent to or across the street from the Project, which may be appurtenant to the Land or the Project, for any reasonable purpose, which may include, but shall not be limited to, any of the same purposes set forth above in this subparagraph (g) or for the reason that any owner of any such lands adjacent to or across the street from the Project exercises any right to require the relocation of any such easement.

The foregoing rights of the Developer set forth in this subparagraph (g) shall terminate twenty-four (24) months after the later to occur of (i) the date of recordation in the Bureau of the first conveyance document for a condominium unit in the Project, or (ii) the date of substantial completion of the Project, as that term is defined in Hawaii Revised Statutes, Chapter 507, Part II.

To the extent that joinder of any owner and lien holder or other person who may have any interest in the Land or the Project or any condominium unit in it may be required in order to validate any act or thing done pursuant to the foregoing reservations, such joinder shall

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be accomplished by power of attorney from each of the owners, lien holders or other such parties, the acquiring or acceptance of ownership in a condominium unit or of a lien covering a condominium unit or any other interest in the Project or Land subject to this Declaration being a grant of such power and the grant being coupled with an interest, being irrevocable.

(h) The Association shall have the right, exercisable by the Board, to grant, convey, transfer, cancel, relocate, and otherwise deal with any easements over, under, across, or through the common elements of the Project for any reasonable purpose, which may include, but shall not be limited to, those purposes which are necessary to the operation, care, upkeep, maintenance or repair of any condominium unit, the common elements or any limited common element or any easements for utilities or for any public purpose.

(i) The Association shall have the right, exercisable by the Board to transfer, cancel, relocate, and otherwise deal with any easement over, under, across or through any lands adjacent to and across the street from the Project, for any reasonable purpose, which may include, but shall not be limited to, any of the same purposes set forth in Paragraph 7(h) or for the reason that any owner of any such lands adjacent to or across the street from the Project exercises any right to require the relocation of any such easement.

8. Alteration and Transfer of Interest. Except as otherwise expressly set forth and reserved in this Declaration, the common interest and easements appurtenant to each condominium unit shall have a permanent character, shall not be altered without the prior written consent of all owners of condominium units affected thereby and their mortgagees, as expressed in an amendment to this Declaration duly recorded, shall not be separated from such condominium unit and shall be deemed to be conveyed, leased or encumbered with such condominium unit even though not expressly mentioned or described in the conveyance or other instrument. The limited common and common elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided by the Act.

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9. Purposes; Use.

(a) The condominium units shall at all times be occupied and used only for residential purposes in accordance with the provisions of this Declaration and the Bylaws; provided that transient vacation rental or time share or sharing plans or other joint ownership or time interval plan or program shall be permitted in accordance with State of Hawaii laws and City and County of Honolulu ordinances, rules and regulations.

(b) The owner of a condominium unit shall not use the same for any purpose which will injure the reputation of the Project. Such owner shall not suffer anything to be done or kept in said condominium unit or elsewhere which will jeopardize the soundness of the buildings, or which will interfere with or unreasonably disturb the rights of other owners, or which will increase the rate of fire insurance on the buildings or the contents thereof or which will reduce the value of the condominium units.

(c) No owner, occupant or tenant of a condominium unit shall, except as specifically permitted herein, without the prior written consent of the Board, make any structural alterations in or additions to the condominium unit unless otherwise specifically permitted herein or in the Bylaws.

(d) The owner of a condominium unit shall have the absolute right to lease such condominium unit for residential purposes for terms of not less than seven (7) consecutive days; provided that no owner shall lease less than the entire condominium unit, and provided, further that any State of Hawaii law or City and County of Honolulu ordinance, rule or regulation requiring a longer minimum lease period shall prevail. Any lease agreement shall be in writing and shall subject the lease in all respects to the provisions of this Declaration, the Bylaws and the House Rules promulgated thereunder and provide that the failure by the lessee to comply with the terms of such documents shall be a default under the lease.

(e) The Board shall have the power to enact resolutions, rules and regulations, and have the power to amend and repeal the same from time to time, reasonably restricting and regulating the use of the condominium units and the common elements; provided, that, any such

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resolutions, rules or regulations shall be consistent with the terms of this Declaration, the Bylaws and any amendments thereto.

(f) No owner, occupant or tenant shall erect, place or maintain any television or other antennas or satellite dishes of any kind on the Project visible from any point outside of his condominium unit.

(g) No owner, occupant or tenant shall place, store or maintain boats, canoes, rafts or other water craft in his respective parking stalls and other areas designated as common and limited common elements of the Project; provided, however, that this subparagraph (g) shall not apply to any boat kept in the water at said owner's, occupant's or tenant's boat mooring.

(h) No owner, occupant or tenant shall park any transportation vehicle on the interior roadways of the Project. All transportation vehicles shall be placed, stored or maintained within the parking garage or assigned parking stall.

(i) No golf carts, motor scooters, motorcycle or similar transportation vehicle shall be permitted on the interior roadways of the Project unless such transportation vehicle complies with state and county registration and vehicular requirements for use on public streets and highways; provided further that this subparagraph (i) shall not apply to the Association or Developer.

(j) No clothesline or the drying of clothes shall be permitted on the lanais. No appliances, sporting or recreational equipment, household furniture or any other items of any nature shall be stored on the lanais and which are visible from any other condominium unit, from any part of the Project, or from any adjoining street. An owner or occupant of a condominium unit shall have the right to maintain appropriate lanai furniture on the condominium unit's lanai.

(k) Except as otherwise provided by the federal Fair Housing Act (42 U.S.C. §§3601 et seq.), as amended by the Fair Housing Amendment Act of 1988, and the rules and regulations promulgated thereunder, as the same may be amended from time to time, and except as otherwise permitted by the provisions of this Declaration, no owner,

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occupant or tenant shall erect or place on the Project any building or structure including fences and walls, nor make additions or structural alterations to or exterior changes of any common elements or limited common elements of the Project, nor place or maintain thereon any signs, posters or bills whatsoever, except in accordance with plans and specifications, including a detailed plot plan prepared by a licensed architect if so required by the Board and also approved by a majority of owners (or such larger percentage as required by law or this Declaration), including all owners of condominium units thereby directly affected, as determined by the Board. Any such approved improvements shall be completed within a reasonable amount of time after the commencement of construction thereof.

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

(a) Make, build, maintain and repair all fences, walls, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Project or any part thereof, including, but not limited to, any screening or landscaping of the facilities of Hawaiian Electric Company, if any, GTE Hawaiian Telephone Company, if any, or any other governmental, public or private utilities or services, which may now or hereafter be required by law, ordinance or governmental agency.

(b) Keep all common elements and limited common elements of the Project in a strictly clean and sanitary condition, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Project or the use thereof.

(c) Well and substantially repair, maintain, amend and keep all common elements and limited common elements of the Project, including without

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limitation the buildings, parking garages and recreational facilities thereof, with all necessary reparations and amendments whatsoever, in good order and condition except as otherwise provided herein, and maintain and keep the land and all adjacent land between any street boundary of the Project and the established curb or street line in a neat and attractive condition and all trees, shrubs and grass thereon in good cultivation and replant the same as may be necessary, and repair and make good all defects in the common elements and limited common elements of the Project herein required to be repaired by the Association.

(d) Observe any setback line affecting the Project as may be shown in said Condominium Map or required to be observed by any law, ordinance or rule of governmental authority, and not erect, place or maintain any building or other structure or improvement whatsoever except approved fences or walks between any street boundary of the Project and the setback line along such boundary.

(e) Have the right, to be exercised by its Board or managing agent, to enter any condominium unit and limited common element from time to time during reasonable hours as may be necessary for the operation of the Project or for making emergency repairs therein required to prevent damage to any condominium units, common elements or limited common elements or for the installation, repair or replacement of any common elements or limited common elements.

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

(g) Not commit any act or neglect whereby the Project or any part thereof at any time becomes subject to any attachment, judgment, lien, charge or encumbrances whatsoever.

(h) Before commencing or permitting construction of any improvement on the Project where the cost thereof exceeds Twenty-Five Thousand and No/100 Dollars ($25,000.00), obtain a performance and lien payment bond naming as obligees, the Board, the Association and collectively all condominium unit owners and their respective mortgagees of record, as their respective interests may appear, with a responsible corporate surety authorized to do business in the State of

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Hawaii, guaranteeing the full and faithful performance of the contract for such construction free and clear of all mechanics' and materialmen's liens for such construction and the payment of all subcontractors, labor and materialmen, including mechanics' and materialmen's liens arising under Section 514A-16 of the Hawaii Revised Statutes, as the same may be amended from time to time, for a penal sum of not less than one hundred percent (100%) of the estimated cost of such construction.

11. Managing Agent and Service of Process. Operation of the Project shall be conducted for the Association by a responsible corporate managing agent who shall be appointed by the Association in accordance with the Bylaws, except that the initial managing agent shall be appointed by the Developer. The managing agent is hereby authorized to receive service of legal process in all cases provided in the Act. The initial managing agent shall be Hawaiiana Management Company, whose principal place of business and post office address is 1270 Ala Moana Boulevard, Honolulu, Hawaii 96814.

12. Common Expenses.

(a) All charges, costs and expenses, wages, accounting and legal fees, and maintenance fees whatsoever incurred by the Association for or in connection with the administration of the Project, including without limitation, the operation of the Project, all maintenance, repair, replacement, and restoration of the common elements and any additions and alterations thereto; the maintenance, repair, labor, services, materials, utility services and equipment therefor; all liability whatsoever for loss, damage or injury arising out of or in connection with the common elements or any accident, fire, or nuisance; all real property taxes (except real property taxes and such other taxes which are or may hereafter be assessed separately on each condominium unit and the interest in the common elements appertaining thereto or the personal property or other interest of an owner); all premiums for hazard and liability insurance herein required with respect to the Project and the cost of all utility services including water, sewer, electricity and gas, garbage disposal and any similar services unless separately metered or billed, shall constitute common expenses of the Project and all owners shall be severally liable for such common expenses in the same proportion as their percentage share in the common interests; provided,

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that all charges, costs and expenses, wages, accounting and legal fees, and maintenance fees incurred by the Association only for or in connection with any condominium unit or any limited common elements, including but not limited to, all costs of maintenance, repair, replacement, additions and improvements to the condominium units or the limited common elements and utility costs arising therefrom shall constitute limited common expenses of the Project for which only the owner of the condominium unit shall be liable, or for which only the owner of the condominium unit to which such limited common elements are appurtenant shall be liable or, if the limited common elements are appurtenant to more than one (1) condominium unit, the owners of such condominium units to which such limited common elements are appurtenant shall be severally liable in proportion to the ratio that the percentage share in the common interests of their respective condominium units bears to the sum of the percentage shares in the common interests of all the condominium units to which such limited common elements are appurtenant (such charges, costs and expenses incurred only for or in connection with any condominium unit or limited common element being herein called "limited common expenses"); and provided further, that all charges, costs and expenses incurred by the Association which are necessitated by the negligence, misuse or neglect of an owner or occupant or any person under either of them shall be charged to such owner or the owner of the condominium unit of such occupant, as a special assessment secured by the lien created under this Paragraph 12. Common expenses shall be due and payable on a monthly basis. Each owner shall become obligated for the payment of the share of common expenses allocated to his condominium unit at the time the certificate of occupancy relating to his condominium unit is issued by the City and County of Honolulu or upon the recordation of a conveyance document granting him title to the condominium unit; provided, however, that Developer shall have the right to pay the actual common expenses of the Project in accordance with Section 514A-15, Hawaii Revised Statutes, as amended. Rent, real property taxes and special assessments for each individual condominium unit as referred to in Section 514A-6, Hawaii Revised Statutes, as amended, shall be assessed on and collected on the individual condominium unit and shall be paid by the individual owner and shall not be common expenses of the Project and no payment thereof shall be payments of such common expenses.

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The Board shall from time to time assess the common expenses against all the condominium units in their respective proportionate shares and the limited common expenses against the respective condominium unit or units as provided for herein. The unpaid amount of such assessments against any such condominium unit shall constitute a lien against such condominium unit which may be foreclosed by the Board as provided by the Act, provided that thirty (30) days prior written notice of intention to foreclose shall be mailed postage prepaid, to all persons having any interest in such condominium unit as shown in the Association's record of ownership, including mortgagees of record; provided, further, that such lien shall be subordinate to any mortgage on the condominium unit which was recorded prior to the filing of a notice of pendency of action for such unpaid assessment and any liens for taxes and assessments lawfully imposed by any governmental agency. Upon receipt of such notice, any mortgagee of record shall be entitled to pay all unpaid amounts of any such assessment and the Board, acting on behalf of the Association, shall accept such payment in satisfaction thereof and thereupon release and discharge the lien securing the payment thereof.

(b) A suit to recover any money judgment for unpaid common or limited common expenses shall be maintainable by the Board without foreclosing or waiving the lien securing the same. If any such unpaid amounts should prove uncollectible, then such amounts shall be deemed to be a common expense of the Project, collectible from all of the owners of condominium units in the Project, and to be shared in the same manner as the other common elements are shared.

(c) No owner may exempt himself from liability for his contribution toward the common expenses by non-use, waiver of the use or enjoyment of any of the common elements or by abandonment of his condominium unit.

(d) No owner may exempt himself from liability for his limited common expenses arising from the limited common elements appurtenant to his condominium unit by non-use, waiver of the use or enjoyment of the limited common element, or by abandonment of his condominium unit or boat mooring.

(e) When the mortgagee of a mortgage of record or other purchaser of any condominium unit acquires

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title to such condominium unit as a result of a forfeiture or as a result of foreclosure of the mortgage or a conveyance in lieu of foreclosure, such mortgagee or purchaser and their respective heirs, devisees, personal representatives, successors and assigns shall not be liable for the share of the common expenses or assessments chargeable to such condominium unit which became due prior to such acquisition of title. Such unpaid share shall be deemed common expenses collectible from all owners, including such mortgagee or such other purchaser and their respective heirs, devisees, personal representatives, successors and assigns, in the same proportion as their percentage share of the common elements.

13. Compliance with Declaration, Bylaws and the Act. All owners, their tenants, families, employees, servants, guests, and any other persons who may in any manner use the Project, shall be bound by and comply strictly with the provisions of this Declaration, the Bylaws, the Act, all agreements, decisions and determinations by the Association as are lawfully made or amended from time to time, that certain Declaration of Restrictive Covenant (Private Park) dated June 3, 1991 recorded in the Bureau as Document No. 91-119313 (hereinafter referred to as the "Declaration of Restrictive Covenant (Private Park)"), and the Declaration of Protective Provisions (Hawaii Kai Marina), and failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief, and any other remedies available in law or in equity, maintainable by the Board or managing agent on behalf of the Association or, in a proper case, by any aggrieved owner. All costs and expenses, including reasonable attorney's fees, incurred by or on behalf of the Association for (1) collecting any delinquent assessments, including any assessments for the Private Park and Hawaii Kai Marina Community Association, against any owner's condominium unit, (2) foreclosing any lien thereon, (3) enforcing any provision of the Act, this Declaration, Bylaws, House Rules, the Declaration of Restrictive Covenant (Private Park) or the Declaration of Protective Provisions (Hawaii Kai Marina), and (4) the rules and regulations of the Real Estate Commission of the State of Hawaii, against an owner or any occupant of a condominium unit shall be promptly paid by such owner or occupant of such condominium unit on demand to the Association; provided that if the claims upon which the Association takes any action are not substantiated, all

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costs and expenses, including reasonable attorney's fees, incurred by such owner as a result of the action of the Association, shall be promptly paid on demand to such owner by the Association.

14. Insurance. Without prejudice to the right of each owner to insure his own condominium unit for his own benefit, the Association at its common expense shall at all times:

(a) Keep all buildings, common elements and, whether or not part of the common elements, all exterior and interior walls, floors and ceilings of the Project, in accordance with the as-built condominium plans and specifications, insured against loss or damage by Special Form Causes of Loss and Ordinance of Law, as well as against flood under the Federal Flood Disaster Protection Act if the Land is located in an identified flood hazard area as designated by the Federal Department of Housing and Urban Development in an amount as near as practicable to the full replacement cost thereof without deduction for depreciation, by blanket policy or policies with an Agreed Amount Endorsement or its equivalent, if available, in the name of the Association, and naming the Developer, if applicable, each mortgagee of record of an interest in a condominium unit, and the Trustees, if applicable, as additional insureds, payable in case of loss to such bank or trust company authorized to do business in Hawaii as the Board shall designate for the custody and disposition as herein provided of all proceeds of such insurance, and shall pay all premiums on such insurance when due and all fees and expenses of such bank or trust company in connection with such services, and from time to time upon receipt of request therefor cause to be deposited promptly with the Board and with each mortgagee of record of any interest in a condominium unit, true copies of such insurance policies or current certificates thereof. In every case of such loss or damage all insurance proceeds shall be used with all reasonable speed by the Board on behalf of the Association for rebuilding, repairing or otherwise reinstating the buildings, common and limited common elements and, whether or not part of the common or limited common elements, all exterior and interior walls, floors and ceilings, in a good and substantial manner according to the original plan and elevation thereof or such modified plans as shall conform as nearly as practicable to the original plans and elevation consistent with laws and ordinances then in

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effect, as first approved by the Board and as otherwise provided herein, and the Association at its common expense shall make up any deficiency in such insurance proceeds.

(b) Procure and maintain at all times commercial general liability insurance, including protection against water damage liability, liability for non-owned and hired automobiles and liability for property of others, covering all common areas of the Project with a Severability of Interest Endorsement which would preclude the insurer from denying the claim of an owner because of the negligent acts of the Association or another owner, covering all owners, the Association and its Board of Directors, officers and employees with respect to the Project, and naming the Developer, if applicable, each mortgagee of record of an interest in a condominium unit, and the Trustees, if applicable, as additional insureds, in an insurance company authorized to do business in Hawaii having a financial rating by Best's Insurance Reporting Class VI or better, with minimum limits of not less than $2,000,000.00 per occurrence for personal injury and property damage liability. From time to time, the Board shall upon receipt of request therefor cause to be deposited with each mortgagee of record of any interest in a condominium unit, true copies of such insurance policies or current certificates thereof and shall effect such higher minimum coverages as the Board may require, having due regard for the then prevailing prudent business practices in the State of Hawaii, but not less than $2,000,000.00 per occurrence.

(c) Procure and maintain at all times adequate Crime coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle, or are responsible for handling funds of the Association, which Crime coverage shall meet the following requirements:

(1) The Association shall be the insured; and

(2) Such Crime coverage shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

The Association shall procure and maintain Directors and Officer Liability coverage from an insurance

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company authorized to do business in Hawaii which shall name the Association as the insured and shall protect and defend the Association against lawsuits and any legal action alleging errors and/or omission of a member of the Board of Director(s) and/or officer of the Association in the scope of their duties on behalf of the Association.

(d) Except as provided in Paragraph 15, in every case of such loss or damage all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing or otherwise reinstating the buildings in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect as shall be first approved by the Board as herein provided, and the Association at its common expense shall make up any deficiency in such insurance proceeds. Every policy of insurance required under this Paragraph 14 or any other provision of this Declaration shall:

(1) Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right to setoff, counterclaim, apportionment, proration or contribution by reason of any other insurance obtained by or for any owner.

(2) Contain no provision relieving the insurer from liability for loss occurring while the hazard to such buildings is increased, whether or not within the knowledge or control of the Board, or because of any breach of warranty or condition or any other act or neglect by the Board or any owner or any other person under either of them.

(3) Provide that such policy may not be cancelled or substantially modified (including cancellation for nonpayment of premium), except by the insurer giving at least thirty (30) days' prior written notice thereof to the Board, each mortgagee of record of any interest in a condominium unit and every other person in interest who shall have requested such notice of the insurer.

(4) Contain a waiver by the insurer of any right of subrogation to any right of the Association or owners against any of them or any other persons claiming under either of them and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insureds.

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(5) Contain a waiver by the insurer of any right to deny liability because of vacancy of any condominium unit or condominium units.

(6) Contain a provision requiring the insurer and/or agent or broker, at the inception of the policy and on each anniversary date thereof, to provide the Board with a written summary, in layman's terms, of the policy, which summary shall include the type of policy, a description of the coverage and the limits thereof, amount of annual premiums, and renewal dates, and this information shall be provided by the Board to each owner.

(7) Provide that, notwithstanding any provisions in any policy of property insurance which gives the insurer the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written consent of the Board or when in conflict with any insurance trust agreement to which the Association may be a party, or any requirement of law.

(8) Contain a standard mortgagee clause which shall:

(i) Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any condominium unit or of the Project, or any interest therein, in their respective order and preference, whether or not named therein;

(ii) Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board, the Association, the managing agent, or owners or any persons under any of them;

(iii) Waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause; and

(iv) Provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be

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payable to said bank or trust company designated by the Board.

So long as the Developer, Developer's mortgagees, or the Trustees have an interest in the Project, every policy of insurance required to be maintained under the provisions of this Paragraph 14 shall name the Developer, the Developer's mortgagees and designees, if any, and the Trustees, and the Trustees' mortgagees and designees, if any, as additional insureds, as their interests may appear, and current certificates therefor and sufficient evidence of current payment of premiums shall from time to time be deposited with the Board, the Developer, the Developer's mortgagees and designees, if any, the Trustees, and the owners, mortgagee and its designees.

15. Insured Damage or Destruction.

(a) If the Project is damaged by fire or other casualty which is insured against and said damage is limited to a single condominium unit and/or the limited common elements appurtenant thereto, all of the insurance proceeds shall be used by the trustee appointed by the Board (hereinafter referred to as the "Insurance Trustee") for payment of the contractor employed by the Board to rebuild or repair such condominium unit and/or said limited common elements, including paint, floor covering and fixtures, in accordance with the original plans and specifications therefor, or if reconstruction in accordance with said plans and specifications is not permissible under the laws then in force, in accordance with such modified plans and specifications as shall be previously approved by the Board and any mortgagee of record of any interest in any condominium unit so damaged.

(b) If such damage extends to two (2) or more condominium units and/or the limited common elements appurtenant thereto, or to any other common elements, the Board shall thereupon contract to repair or rebuild the damaged portions of the buildings, including all condominium units and limited common elements so damaged, as well as the 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 and any mortgagee of record of any interest in a

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condominium unit directly affected thereby; provided that in the event said modified plan eliminates any condominium unit and such condominium unit is not reconstructed, the Insurance Trustee shall pay the owner of said condominium unit and any mortgagee of record of any interest in said condominium unit, as their interests may appear, the portion of said insurance proceeds allocable to said condominium unit (less the proportionate share of said condominium unit in the cost of the debris removal) and shall disburse the balance of insurance proceeds as hereinafter provided for the disbursement of insurance proceeds.

(c) The insurance proceeds shall be paid by the Insurance Trustee to the contractor employed for such work, in accordance with the terms of the contract for such construction and in accordance with the terms of this Paragraph 15. If the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding any common elements other than any limited common elements, the Board shall levy, as soon as reasonably possible following the determination of the amount of such insufficiency, a special assessment on the owners of all condominium units in proportion to their respective common interests. Any costs in excess of the insurance proceeds for the repairing and/or rebuilding of any condominium unit or limited common element appurtenant thereto (but no including any common elements within any condominium unit) shall be specially assessed against the owner of such condominium unit and said special assessment shall be secured by the lien created under Paragraph 12 of this Declaration.

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

(1) An architect or engineer (who may be an employee of the Board) shall be in charge of the work;

(2) 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

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requested is justly required to reimburse the Board for payments by the Board 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 or 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;

(3) 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' or other lien or instrument for the retention of title with respect to any part of the work not discharged of record;

(4) 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;

(5) The fees and expenses of the Insurance Trustee as determined by the Board and the Insurance Trustee shall be paid by the Association as common expenses, and such fees and expenses may be deducted from any proceeds at any time in the hands of the Insurance Trustee; and

(6) Such other conditions not inconsistent with the foregoing as the Insurance Trustee may reasonably request.

(e) Upon completion of the work and payment in full therefor, any remaining proceeds of insurance then or thereafter in the hands of the Board or the Insurance Trustee shall be paid or credited to all of the owners of the condominium units and the holders of any mortgage on the condominium units, as their interests may appear, in proportion to the respective common interests appurtenant to each condominium unit.

(f) To the extent that any loss, damage or destruction to any building or other property is covered

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by insurance procured by the Board, the Board shall have no claim or cause of action for such loss, damage or destruction against any owner or lessee. To the extent that any loss, damage or destruction to the property of any 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 Association, the Managing Agent or any other owner or any person claiming under any of them.

16. Condemnation. In case at any time or times the Project or any part thereof shall be required, taken or condemned by any authority having the power of eminent domain, the Association or an insurance trustee shall be designated to represent the owners in any proceedings, negotiations, settlements or agreements and each owner by their acceptance of the conveyance of a condominium unit shall appoint the Association or insurance trustee as an attorney-in-fact for this purpose. In case at any time or times the Project or any part thereof shall be required, taken or condemned by any authority having the power of eminent domain, then and in every such case the estate and interest of the Association and every affected owner in the premises so required, taken or condemned shall at once cease and terminate upon acquisition by such authority of title thereto or right to possession thereof, and all compensation and damages for or on account of any land and freehold interest shall be payable to the owners and their mortgagees which hold a mortgage on said land and freehold interest, in accordance with their respective percentage interest in the common elements and all compensation and damages for or on account of any improvements of the Project shall be payable to such bank or trust company authorized to do business in Hawaii as the Board shall designate as trustee, for all owners and mortgagees according to the loss or damage to their respective condominium units and appurtenant common interests and easements, and shall be used promptly by the Association to the extent necessary for restoring or replacing such improvements on the remaining land according to plans therefor first approved as herein provided unless such restoration or replacement is impractical in the circumstances; provided, however, that in case (i) only part of the Project shall be so required, taken, or condemned thereby rendering the remaining land and improvements unsuitable for the multi-family residential purposes of the Project, and the Association removes all

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remains of buildings and restores the land to good orderly condition and even grade, or (ii) all or only part of any individual condominium unit is so required, taken or condemned thereby rendering any remaining part thereof unsuitable for residential purposes, and the Association removes all remains of the condominium unit and restores the remaining common elements to good orderly condition and by amendment of the Declaration causes the remaining part of the Project to be reconstituted as a new condominium property regime without such condominium unit, an owner whose condominium unit is so condemned in either case may surrender his conveyance document and upon such surrender said owner and said owner's mortgagee(s), if any, shall be entitled to all remaining compensation and damages payable for or on account of the condominium unit and appurtenant common interest in any improvements of the Project together with any other funds payable on account of the condominium unit pursuant to this Declaration, as their interests may appear.

17. Repair; Restoration; Alteration of Project.

(a) If at any time or times the improvements of the Project shall be substantially damaged or destroyed by any casualty not insured against, such improvements shall be rebuilt, repaired or restored unless seventy-five percent (75%) of all owners vote not to rebuild, repair or restore. Any such restoration of the common elements shall be completed diligently by the Association as its common expense, and the respective owners shall be solely responsible for any restoration of their respective condominium units so damaged or destroyed, according to the original plans and specifications thereof or such other plans and specifications approved in the same manner as provided in Paragraph 9(k) of this Declaration. Unless such restoration is undertaken within a reasonable time after such casualty, the Association, at its common expense, shall remove all remains of improvements so damaged or destroyed and restore the site thereof to good, orderly, safe and sanitary condition and even grade.

(b) Except as otherwise expressly set forth and reserved in this Declaration, the Project shall be repaired, rebuilt or restored in the event of damage or destruction to all or any part of the buildings and common elements, unless, within ninety (90) days after such damage or destruction, it is determined by the vote of

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seventy-five percent (75%) of the owners (including the owners of seventy-five percent (75%) of the damaged or destroyed condominium units) that the Project not be so repaired, rebuilt or restored.

(c) Except as otherwise provided by the federal Fair Housing Act (42 U.S.C. §§3601 et seq.), as amended by the Fair Housing Amendment Act of 1988, and the rules and regulations promulgated thereunder, as the same may be amended from time to time, and except as otherwise permitted by the provisions of this Declaration, restoration or replacement of the Project or of any building or other facility thereof or construction of any additional building or structural alterations or additions to any structure different in any substantial and material respect from the Condominium Map of the Project, shall be undertaken by the Association or any owners only pursuant to an amendment of this Declaration, duly executed by or pursuant to the affirmative vote or written consent of seventy-five percent (75%) of the owners and accompanied by the written consent of the holders of all liens affected thereby, and in accordance with complete plans and specifications therefor first approved in writing by the Board, and promptly upon completion of such restoration, replacement or construction the Association shall duly record or file of record such amendment together with a complete set of floor plans of the Project as so altered, certified as built by a registered architect or professional engineer. Additionally, subsequent to the issuance of a certificate of occupancy for all buildings in the Project, any additions or alterations to the exterior of condominium units and to their lanais, structures, boat moorings and landscaping in common elements shall be undertaken only upon the review and approval by the Board and the Building Department of the City and County of Honolulu after the written consent of the Association is obtained by the affirmative vote of not less than sixty-seven percent (67%) of the owners and accompanied by the written consent of the holders of all liens affected thereby. Nonmaterial structural additions to the common elements, including, without limitation, the installation of a solar energy device shall require the prior written approval of the Board and the affirmative vote of not less than sixty-seven percent (67%) of the owners. "Nonmaterial structural additions to the common elements" and "solar energy device" shall have the meaning defined in Section 514A-89, Hawaii Revised Statutes. Additions to or alterations made within a condominium unit

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shall be permitted so long as such additions or alterations do not jeopardize the structural soundness or safety of the condominium unit and building. Additions to or alterations made within a limited common element appurtenant to and for the exclusive use of a condominium unit shall require the prior written approval of the Board. No work, additions or alterations to the water, electrical, air conditioning or any system servicing or affecting more than one condominium unit shall be permitted without the prior written consent of the Board and any owner who will be affected by such work, additions or alterations. No work shall be done which would jeopardize the soundness or safety of the Project, reduce the value therefor, violate the uniform external appearance of the condominium unit, or impair any easement, without in every such case the prior consent of seventy-five percent (75%) of the owners, together with the consent of all owners whose condominium units or limited common elements appurtenant thereto are directly affected and the mortgagees of such condominium units.

(d) The owner of any two adjoining condominium units may, with the prior written approval of the Board and the consent of any mortgagee of any such condominium units, alter or remove all or portions of the intervening wall (not load-bearing) which separates such condominium units if the structural soundness and safety of the building in which the condominium units are located 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 of a common element; provided, however, that prior to commencing any work the owner shall (i) submit to the Board a complete set of plans as prepared and stamped by an architect registered to practice in the State of Hawaii, (ii) submit to the Board an opinion letter from a professional structural engineer licensed to practice in the State of Hawaii stating that the improvements will not impact the structural soundness of the building and condominium unit, (iii) submit to the Board a copy of the general liability insurance policy of the Hawaii licensed contractor performing the work and said general liability insurance policy shall name as additional insureds the owner, the Board, and the Association, and, so long as any of the following parties have an interest in the Project also name as additional insureds the Developer, Developer's mortgagees, if any, the Trustees, and the Trustees' mortgagees, if any, (iv)

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obtain any and all required permits and approvals from the City and County of Honolulu and submit a copy of said permits and approvals to the Board, (v) secure and submit to the Board a performance and payment bond naming as obligees said owner, the Board and the Association and, so long as the following parties have an interest in the Project also name as obligees the Developer, the Developer's mortgagees, if any, the Trustees, and the Trustees' mortgagees, if any, in a penal sum of not less than one hundred percent (100%) of the cost of such construction, guaranteeing the completion thereof free and clear of all mechanics' and materialmen's liens, (vi) use a licensed Hawaii contractor for the construction of the improvement and strictly comply with all applicable laws, and (vii) comply with any policy adopted by the Board setting forth the hours when construction is permitted; provided, further, that after completion of construction, owner shall provide a copy of the as-built floor, electrical and/or mechanical plans to the Managing Agent.

The owner of such adjoining condominium units may install in and attach to such opening or openings walls, 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 adjoining condominium 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, if the new owner or owners do not consent to such alteration. Subject to the terms and conditions of this Declaration and the Bylaws, and at the sole expense of the owner involved, the owner of any two (2) such adjoining condominium units shall also have the right to make additions to or alterations and physical partitions within such condominium units subject to subparagraph (c) hereinabove; provided, that no work shall be done which would violate any building code of the City and County of Honolulu and/or jeopardize the soundness or safety of the Project, reduce the value thereof, detract from the external appearance of the condominium unit or impair any easement, except as permitted in subparagraph (c) hereinabove.

(e) The owner of a Penthouse condominium unit who will construct the initial interior layout and design of the loft space shall comply with conditions (i) through (vii) set forth in subparagraph (d) hereinabove

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prior to commencing any work; provided, further, that upon completion of construction, owner shall provide a copy of the as-built floor, electrical and/or mechanical plans to the Managing Agent.

The owner of a Penthouse condominium unit may, with the prior written approval of the Board and the consent of any mortgagee of such Penthouse condominium unit, construct a demising or intervening wall (not load-bearing) to separate such Penthouse condominium unit into no more than two (2) condominium units so long as the structural soundness and safety of the building in which the Penthouse condominium unit is located is not thereby affected and the demising or intervening wall is located directly above the demising wall of the two (2) condominium units on the floor below as shown on the Condominium Map; provided, that the owner shall comply with conditions (i) through (vi) set forth in subparagraph (d) hereinabove prior to commencing any work; provided, further, that upon completion of construction, owner shall provide a copy of the as-built floor, electrical and/or mechanical plans to the Managing Agent. The common interest appurtenant to the Penthouse condominium unit shall be reapportioned solely between the two (2) condominium units. The owner of such Penthouse condominium unit prior to conveying one (1) or both condominium units shall amend this Declaration and the Condominium Map to reflect the increase in the total number of condominium units in the Project and the common interest of both condominium units; provided that such amendment to the Declaration shall require only the signature of the Penthouse condominium unit owner, any mortgagee of the Penthouse condominium unit, and the Board and shall be recorded in the Bureau; provided, further, that until a recorded copy of the amendment to the Declaration is provided to the Association, all assessments shall be levied to and shall be the responsibility of the Penthouse condominium unit owner. Subject to the terms and conditions of this Declaration and the Bylaws, and at the sole expense of the owner involved, the owner of any Penthouse condominium unit shall also have the right to make additions to or alterations and physical partitions within such Penthouse condominium unit subject to subparagraph (c) hereinabove; provided, that no work shall be done which would violate any building code of the City and County of Honolulu and/or jeopardize the soundness or safety of the Project, reduce the value thereof, detract from the external

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appearance of the Penthouse condominium unit or impair any easement, except as permitted in subparagraph (c) hereinabove.

(f) Any provision of this Declaration and Bylaws to the contrary notwithstanding, the Developer, in its sole and absolute discretion, shall have the right to separate any unsold Penthouse condominium unit into two (2) condominium units at any time but not later than June 1, 1998; provided that the demising or intervening wall separating the Penthouse condominium unit into (2) condominium units shall be located directly above the demising wall of the two (2) condominium units on the floor below as shown on the Condominium Map. Nothing herein or in the Bylaws shall be interpreted as requiring Developer to obtain the prior consent of the Association or the Board. If Developer elects to exercise the right herein, the (i) percentage common interest appurtenant to the Penthouse condominium unit shall be reapportioned solely between the two (2) condominium units, and (ii) the parking stalls appurtenant to the Penthouse condominium unit shall be redesignated solely between the two (2) condominium units in accordance with the minimum number of parking stalls set forth in the subparagraph (a) of the limited common elements provision above, and (iii) Developer shall amend this Declaration, the Bylaws, if necessary, the public report, if necessary, and the Condominium Map to reflect at a minimum the increase in the total number of condominium units, the percentage common interest appurtenant to said two (2) condominium units, the parking stalls appurtenant to said two (2) condominium units, and floor plans, provided that any amendment shall require only the signature of the Developer and recordation in the Bureau, if applicable.

The owners of condominium units in the Project shall have no statutory, legal or equitable right to rescind any purchase of a condominium unit or the obligation to purchase a condominium unit as a result of the amendment or creation of any instrument to effectuate the separation of any Penthouse condominium unit into two (2) condominium units nor the Developer's issuance of supplementary public reports disclosing the separation of the Penthouse condominium unit into two (2) condominium units. Owner, by purchasing or accepting the conveyance of a condominium unit in any manner whether by court decree, inheritance, foreclosure or any other means, hereby appoints Developer as its true and lawful

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attorney-in-fact for the purpose of executing, acknowledging, recording, if necessary, and delivering any instrument necessary or appropriate in carrying out the provisions and exercising the rights, powers and privileges granted by this subparagraph (f). This power of attorney granted to Developer shall not be affected by any subsequent mental, physical or emotional disability of the owner. Owner covenants that on the request of Developer, owner shall execute, acknowledge and deliver any instrument necessary or appropriate for the purpose of carrying out the provisions and exercising the rights, powers and privileges granted by this subparagraph (f). This subparagraph (f) shall be applicable to any subsequent condominium owner and shall terminate no later than midnight of June 1, 1998 unless sooner relinquished by Developer.

The rights reserved in this subparagraph (f) for the benefit of Developer shall not be amended, modified or terminated in whole or in part by any vote of the owners, Association or Board prior to the expiration of the time periods set forth herein or sooner relinquished and terminated by Developer.

(g) Notwithstanding subparagraph (c) hereinabove which permits additions or alterations within a condominium unit and expressly applicable to the design and construction of the interior of any Penthouse condominium unit, if owner, occupant or tenant desires to add, change or alter partitions or floor finishing material such as, but not limited to, marble, granite or paver tile flooring, such additions or alterations shall (i) be designed, installed and constructed within the maximum live load of forty (40) pounds per square foot and a distributed partition and floor finish material load of ten (10) pounds per square foot, and (ii) be designed to reduce the transmission of noise to any condominium unit below or adjacent thereto in accordance with any guidelines adopted by the Board. Any hard floor finish material shall be insulated or padded to reduce the transmission of noise to any condominium unit below or adjacent to such condominium unit; provided that this provision shall not apply to any floor finish material originally installed by the Developer.

(h) Notwithstanding any provision contained herein or in the Bylaws, no owner, occupant or tenant shall be permitted to alter or relocate the exterior glass

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line or windows because such alteration or relocation will affect and impact the condominium units above and below.

18. Maintenance Reserve Fund. The Board shall establish and maintain a Maintenance Reserve Fund by the assessment of and payment by all owners in monthly installments of their respective proportionate shares of such reasonable annual amount as the Board may estimate as adequate to cover each owner's obligations to provide for utilities, insurance, maintenance, assessments of the Association, repair, replacement or improvements to the common elements and limited common elements which the Association is obligated to maintain, and other expenses of administration of the Project, which shall be deemed conclusively to be a common expense of the Project. The Board may include reserves for contingencies in such assessment, and such assessment may from time to time be increased or reduced in the discretion of the Board. The proportionate interest of each owner in said fund cannot be withdrawn or separately assigned but shall be deemed to be transferred with such condominium 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 fund remaining after full payment of all common expenses of the Association shall be distributed to all owners in their respective proportionate shares except for the owners of any condominium units then reconstituted as a new condominium property regime. For the initial months of operation of the Project, the Board shall establish a working capital fund equal to a minimum amount of two (2) months' estimated common expenses; provided, that these amounts shall be collected at the time the first purchase of the unit is closed or when control of the Project is transferred to the Association, whichever is earlier, and such amounts shall not be considered advance payments of regular assessments. The working capital fund shall be transferred to the Association for deposit into a segregated fund when the control of the Project is transferred to the Association; provided, that during the time period Developer is in control of the Association, Developer shall not use any of the working capital funds to defray its expenses, reserve contributions, construction costs, or to make up any budget deficit; provided, however, that when unsold condominium units are sold, the Developer may use funds collected at closing to reimburse itself for funds it paid the Association for each unsold condominium unit's share of the working

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capital fund. The Board shall comply with Section 514A-83.6, Hawaii Revised Statutes, as may be amended from time to time.

19. Amendment of Declaration. Except as otherwise provided herein or in the Act, this Declaration may be amended by an affirmative vote or written consent of seventy-five percent (75%) of the owners, effective only upon recording of an instrument setting forth such amendment and vote, duly executed by such owners or by the proper officers of the Association; provided, however, that at any time prior to the issuance of the final public report by the Real Estate Commission of the State of Hawaii, the Developer may amend this Declaration and the Bylaws in any manner. Notwithstanding the foregoing and notwithstanding the sale and conveyance of any of the condominium units, the Developer may amend this Declaration (including the Bylaws and when applicable, the Condominium Map) (a) by filing the "as built" verified statement (with plans, if applicable) required by Section 514A-12 of the Act, (i) 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, location, condominium unit numbers and dimensions of the condominium units as built, or (ii) so long as any plans filed therewith involve only immaterial changes to the layout, location, condominium unit numbers or dimensions of the condominium units as built; and (b) by filing any change or amendment required by an administrative agency of any state, territory, possession or foreign country or other foreign jurisdiction or a mortgagee of a condominium unit as a condition precedent to marketing the Project therein.

20. Mortgages and Mortgagees.

(a) Notice to Board of Directors. An owner who mortgages his or her interest in a condominium unit shall notify the Association of the name and address of his or her mortgagee and shall file a conformed copy of such mortgage with the Association within ten (10) days after the execution of the same. The Association shall maintain such information in a book entitled "Mortgages of Condominium Units".

(b) Notice of Unpaid Common Expenses. The Association whenever so requested in writing by an owner or mortgagee of an interest in a condominium unit shall

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promptly report any sixty (60) day delinquency in the payment of assessments or charges owed by the owner of any condominium unit.

(c) Notice of Default. The Board, when giving notice to an owner of a default in paying common expenses or other default in performance of any obligation under this Declaration, the Bylaws, House Rules, the Declaration of Protective Provisions (Hawaii Kai Marina), the Declaration of Restrictive Covenant (Private Park) or other document of the Association, shall send a copy of such notice to each holder of a mortgage covering such condominium unit or interest therein whose name and address has theretofore been furnished to the Association.

(d) Examination of Books. Each owner and each mortgagee shall be permitted to examine the books, records and financial statements of the Association during normal business hours on business days and each mortgagee shall have the right to require the submission of annual reports and other financial data. The Association shall provide an audited statement for the preceding fiscal year if the mortgagee of any condominium unit in the Project submits a written request for such information.

(e) Right of Access. Each mortgagee and its agents shall have a right of access through the common elements (other than the limited common elements) of the Project for the purpose of passage to any condominium unit on which it holds a mortgage, provided that entry into any such condominium unit or the limited common elements appurtenant thereto by the mortgagee or its agents shall be at the sole risk of the mortgagee and shall be made strictly in accordance with and subject to the terms of its mortgage.

(f) Mortgage Protection. Notwithstanding any other provisions contained in this Declaration or the Bylaws:

(1) The liens in favor of the Association created hereunder or the Bylaws on any condominium unit and its appurtenant interest in the common elements shall be subject and subordinate to and shall not affect the rights of the holder of any indebtedness secured by any mortgage of such interest(s), made for value, which was recorded prior to filing of a notice of pendency of action to foreclose such lien,

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provided that after the foreclosure of any such mortgage there shall be a lien upon the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such condominium unit if falling due after the date of such foreclosure sale.

(2) All taxes, assessments and charges which may become liens prior to the first mortgage under the laws of the State of Hawaii shall relate only to the individual condominium unit and not to the condominium project as a whole.

(3) The Declaration and Bylaws shall not give an owner or any other party under him, priority over any rights of first mortgagees of condominium units pursuant to their mortgages in the case of a distribution to owners of insurance proceeds or condemnation awards for losses to or a taking of condominium units and/or common elements.

(4) Notwithstanding any other provision of this Declaration or the Bylaws, no amendment to this Paragraph 20 shall affect the rights of the holder of any such mortgage filed in the Bureau of Conveyances of the State of Hawaii who does not join in the execution thereof if such mortgage was filed prior to the filing of such amendment.

(5) Any holder or insurer of a duly filed mortgage of a condominium unit whose interest appears in the record of ownership or who has otherwise delivered a written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the condominium unit number) shall be entitled to:

(i) Prior written notice of any proposed amendment to the Declaration or the Bylaws;

(ii) Prior written notice of any proposed termination of the condominium property regime;

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

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(iv) Timely written notice of any default of the owner which is not cured within sixty (60) days;

(v) Timely written notice of any significant damage or destruction to the common elements or to the condominium unit covered by the first mortgage held or insured by such person;

(vi) Timely written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(vii) A copy of all pleadings filed in any lawsuit, administrative proceeding, or other action affecting the Project or any portion thereof, at such person's expense for reproduction costs and at such person's specific written request;

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

(ix) Vote and participate in amendments to this Declaration and the Bylaws if they have requested the Association to notify them of any proposed action that requires the consent of a specified percentage of holders, insurers, or guarantors of first mortgages.

(6) Unless the percentage approval specified in Paragraph 19 hereinabove and the prior written approval of the holders, insurers, or guarantors of first mortgages representing at least fifty-one percent (51%) of the votes of the condominium units that are subject to first mortgages are obtained, the Association shall not be entitled to do any of the acts enumerated hereinbelow:

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(i) By act or omission, seek to abandon or terminate the Project;

(ii) Change the common interest appurtenant to any individual condominium unit, provided however that this provision shall not apply to the change in common interest resulting from the partition of a Penthouse condominium unit into two (2) separate condominium units as permitted in Paragraph 17(e) and (f) hereinabove;

(iii) Partition or subdivide any condominium unit, provided however that this provision shall not apply to the partition of a Penthouse condominium unit into two (2) separate condominium units as permitted in Paragraph 17(e) and (f) hereinabove;

(iv) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements;

(v) Use condemnation proceeds or hazard insurance proceeds for losses to the Project or any part thereof (whether to condominium units or to common elements) for other than the repair, replacement or reconstruction of the same;

(vi) Materially amend any provision of the Declaration or Bylaws or to add material provisions thereto, which establish, provide for, govern or regulate any of the following:

(A) Voting rights;

(B) Assessments, assessment liens or the priority of assessment liens;

(C) Reserves for maintenance, repair and replacement of the common elements;

(D) Responsibility for maintenance and repairs;

(E) Reallocation of interests in the general or limited common elements, or rights to their use;

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(F) Redefinition of any condominium unit boundaries;

(G) Convertability of condominium units into common elements or vice versa;

(H) Expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;

(I) Insurance or fidelity bonds;

(J) Leasing of condominium units;

(K) Imposition of any restrictions on an owner's right to sell or transfer his or her unit;

(L) Decision by the Association to establish self-management when professional management had been required previously by the Project documents or by an eligible mortgage holder;

(M) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Project documents;

(N) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or

(O) Any provisions that expressly benefit mortgage holders, insurers, or guarantors.

(vii) Amend any provision of this Paragraph 20 or add material provisions;

Notwithstanding subparagraph (f)(6) hereinabove, if a holder, insurer or guarantor of first mortgage fails to submit a written response to any written proposal for an amendment within thirty (30) days after it receives proper

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notice of the proposed amendment delivered by certified or registered mail with "return receipt" requested, such holder, insurer or guarantor shall be deemed to have approved such proposed amendment.

(g) Right of First Refusal Not Applicable. In the event that there shall be any right of first refusal to purchase any condominium unit by the Association, any first mortgagee who obtains title to a condominium unit pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage or assignment of the conveyance document in lieu of foreclosure, shall be exempt from such "right of first refusal".

(h) Release of Information. The Board may provide any information available to it pertaining to a condominium unit or the Project to the first mortgagee of such condominium unit and such mortgagee may provide any information to the Board regarding the mortgagor, the mortgagor's loan and the status of such loan.

21. Disclosures. Developer hereby makes the following disclosures:

(a) Soils. Portions of the Project are "reclaimed" lands created in part by filling of submerged land in Kuapa Pond and the Project is comprised of built-up earth fill overlaying the pre-existing earth. As a result some settlement and movement of the earth in the Property may occur. Each owner acknowledges that the location of the Project is highly desirable because of the surrounding Hawaii Kai Marina and close proximity to the ocean. The Association and each owner covenants that they shall assume all risks associated with such location, including but not limited to the risk of property damage or personal injury arising from settlement and/or movement of the underlying land and shall individually and through the Association, indemnify, defend and hold harmless the Developer, its partners and affiliates and the Trustees from any liability, claims or expenses, including attorney's fees, arising from such property damage or personal injury.

(b) Hawaii Kai Marina. Each owner of a condominium unit, including condominium units that do not have a boat mooring appurtenant thereto, shall be a member of the Hawaii Kai Marina Community Association. As a member of the Hawaii Kai Marina Community Association,

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each owner shall have a nonexclusive easement in common with the Trustees and all others so entitled for purposes of navigation and access to the sea upon, over and across Kuapa Pond and all canals and other waterways thereof, as Kuapa Pond and waterways shall exist from time to time. All use of the Kuapa Pond and the waterways shall be subject to that certain Declaration of Protective Provisions, dated January 30, 1991, recorded in the Bureau of Conveyances as Document No. 91-026955, as amended, and all rules and regulations promulgated thereunder. The Hawaii Kai Marina Community Association may levy general assessments to provide for the care, maintenance, operation and improvement of Kuapa Pond and the waterways. No owner may exempt himself from liability for his payment of any Hawaii Kai Marina Community Association assessment by non-use, waiver of use or enjoyment, or by abandonment of his condominium unit.

(c) Emergency Sewer Overflow. There is an emergency sewer overflow near Wailua Street Bridge which discharges sewage into the Hawaii Kai Marina in emergencies. The Association and each owner covenants that they shall assume all risks associated with such location, including but not limited to nuisance, the risk of property damage or personal injury arising from and incidental to any emergency sewer overflow into the Hawaii Kai Marina and shall individually and through the Association, indemnify, defend and hold harmless the Developer, its partners and affiliates and the Trustees from any liability, claims or expenses, including attorney's fees, arising from such property damage or personal injury.

(d) Salt Air. The Project is located on the Kuapa Pond and waterways and is in close proximity to the ocean and, as a result, is subject to water residue and the salt water spray from the ocean which may have an affect upon the condition of the Project, improvements and personal property of owners and their respective tenants. The Association and each owner covenants that they shall assume all risks associated with such location, including but not limited to nuisance, the risk of property damage or personal injury arising from the air borne spray or mist from Kuapa Pond, the waterways and the ocean and shall individually and through the Association indemnify, defend and hold harmless the Developer, its partners and affiliates and the Trustees from any liability, claims or expenses, including attorney's fees arising from such property damage or personal injury.

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(e) Private Park. The Project is subject to the Marina Zoning Unilateral Agreement and Declaration for Conditional Zoning, dated July 3, 1986 and recorded in the Bureau of Conveyances in Liber 19645 at Page 696 (hereinafter referred to as the "Unilateral Agreement"), which sets forth the conditions of the change in zoning and development of a number of separate parcels of land in the Hawaii Kai area including the underlying land of the Kalele Kai condominium project. Pursuant to the Unilateral Agreement and Rule 10 of the Park Dedication Rules and Regulations of the City and County of Honolulu, Hawaii, adopted pursuant to Ordinance No. 4621 of the City and County of Honolulu (hereinafter referred to as "Park Dedication Rule 10"), Hawaii Kai Development Company is required to develop a private park area and record a Declaration of Restrictive Covenant (Private Park) against the Kalele Kai condominium project and other separate parcels of land subject to the Unilateral Agreement. The Declaration of Restrictive Covenant (Private Park) dated June 3, 1991 and recorded in the Bureau of Conveyances as Document No. 91-119313, has been recorded against the Land. Hawaii Kai Development Company has assigned its obligation to develop the private park to Kemper Real Estate Management Company. Kemper Real Estate Management Company or its successor and assigns shall develop the private park and shall record the Declaration of Restrictive Covenant (Private Park) against all remaining parcels of land subject to the Unilateral Agreement.

Upon completion of construction of the private park and creation of the park association, each owner of Kalele Kai shall be a member of the park association which shall be obligated to perpetually maintain the private park for the duration of the Declaration of Restrictive Covenant (Private Park). The maintenance of the private park shall require each member to pay its proportionate share of the maintenance costs. Other residential projects may be annexed under the Declaration of Restrictive Covenant (Private Park) and shall have the right to use such private park together with the obligation of paying its proportionate share of the maintenance costs. No owner may exempt himself from liability for his payment of any private park assessment by non-use, waiver of use or enjoyment of the private park, or by abandonment of his condominium unit.

(f) Associations. Each owner shall be a member of the Association of Owners of Kalele Kai, the

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Hawaii Kai Marina Community Association, and the park association disclosed in Paragraph 21(e) hereinabove. As a member of these associations, each owner shall be required to pay his/her/its proportionate share of common expenses and special assessments as the documents for each association may provide. No owner may exempt himself from liability for his payment of any assessment by non-use, waiver of use or enjoyment, or by abandonment of his condominium unit or any dispute.

(g) View and View Planes. Developer hereby discloses that the owner of the parcel of land adjacent to the Project on the makai boundary towards the shopping center may develop the land into a commercial and/or office building and such development may obstruct, alter, change or diminish the views and view planes of the Project. Each owner acknowledges and understands that development is occurring in the Hawaii Kai area and will likely continue to occur in the future and that development may obstruct, alter, change or diminish the views and view planes of the Project. Developer its employees, agents, real estate broker and agents, condominium documents and written, audio, or video advertisements, make no representations or warranties as to the views and/or view planes which the Project currently has or will have in the future.

(h) Concrete Structures. Reinforced concrete was used in the construction of portions of the Project. Concrete, though a dense, rigid material used for its strength, durability and insulating qualities, is subject to deflection, shrinkage, creep, and thermal expansion or contraction. As a result of these forces, cracks and uneven surfaces may develop and affect the appearance and performance of the concrete and/or any material attached to or in contact with the concrete. A leveling fill material, which is comprised of an inert material, was used on certain floor areas in varying amounts to promote a level surface. The Association and each owner covenants that they are aware of and shall assume the risks and consequences associated with any deflection, shrinkage, creep, and thermal expansion or contraction of the concrete or fill material used in the Project, including but not limited to the risks of cracks and property damage, and shall individually and through the Association, indemnify, defend and hold harmless the Developer, its partners, affiliates, agents and consultants, and the Trustees from any liability, claims

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or expenses, including attorney's fees, arising from such risks.

(i) The Trustees of The Estate of Bernice Pauahi Bishop. The Trustees have not controlled or participated in, in any way, either as a joint venturer or in any other capacity, the planning or construction of any building or other improvements in the Project or any part thereof (the "Improvements"), or the marketing or sale of the Project. All approvals of plans and specifications covering the Improvements were given by the Trustees without regard to and without conducting any independent investigation into, the safety or structural soundness of the Improvements, code violations, or other matters relating to the legality or integrity of the Improvements. The Developer, the Association, and each owner hereby waives any and all claims which it or they might otherwise have against the Trustees on account of faulty or improper construction of any of the Improvements (including but not limited to any condominium unit and any common element of the Project), latent defects, code violations in building construction or representations covering any of the Improvements (including but not limited to any condominium unit and any common element of the Project). The Developer, the Association, and each owner agrees that its right to make such claims, to the extent such claims are recognizable at law or equity, will be against the person or persons who are responsible for construction of the Improvements (including but not limited to any condominium unit and any common element of the Project) or who may otherwise be liable for any defects therein, and that none of the Developer, the Association or any owner shall have any right to make such claims against the Trustees. Furthermore, the Developer, the Association, and each owner hereby covenants that it and they shall individually and jointly indemnify, defend and hold harmless the Trustees from any liability, claims or expenses, including attorney's fees, arising from the development, design, construction, marketing and sale of the Project.

(j) Bedford Properties, Inc. Developer hereby discloses that Bedford Properties, Inc. is the general partner of Kapalele Associates and is the principal broker for the sale of Kalele Kai condominium units.

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(k) BCI General Contractors. Developer hereby discloses that the owner of Bedford Properties, Inc, the general partner of Kapalele Associates, is a part owner of BCI General Contractors, the contractor constructing the Project.

22. Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of this Declaration nor the intent of any provision hereof.

23. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way to define, limit or describe the scope of this Declaration nor the intent of any provision hereof.

24. Definitions. All terms used herein and in the Bylaws which are identical to terms used in the Act shall, except where clearly repugnant to the context, have the same meanings as are attributable to them in said Act. The terms "owner" and "condominium unit owner" as referred to herein shall mean the owner of a condominium unit, whether singly or jointly, partnerships, corporations or other legal entities or their successors, heirs, personal representatives and assigns or the heirs and assigns of the survivor as the case may be. The term "majority" or "majority of owners" herein means the owners of condominium units to which are appurtenant more than fifty percent (50%) of the common interests, and any specified percentage of condominium unit owners means the owners of condominium units to which are appurtenant such percentage of the common interests as established by this Declaration.

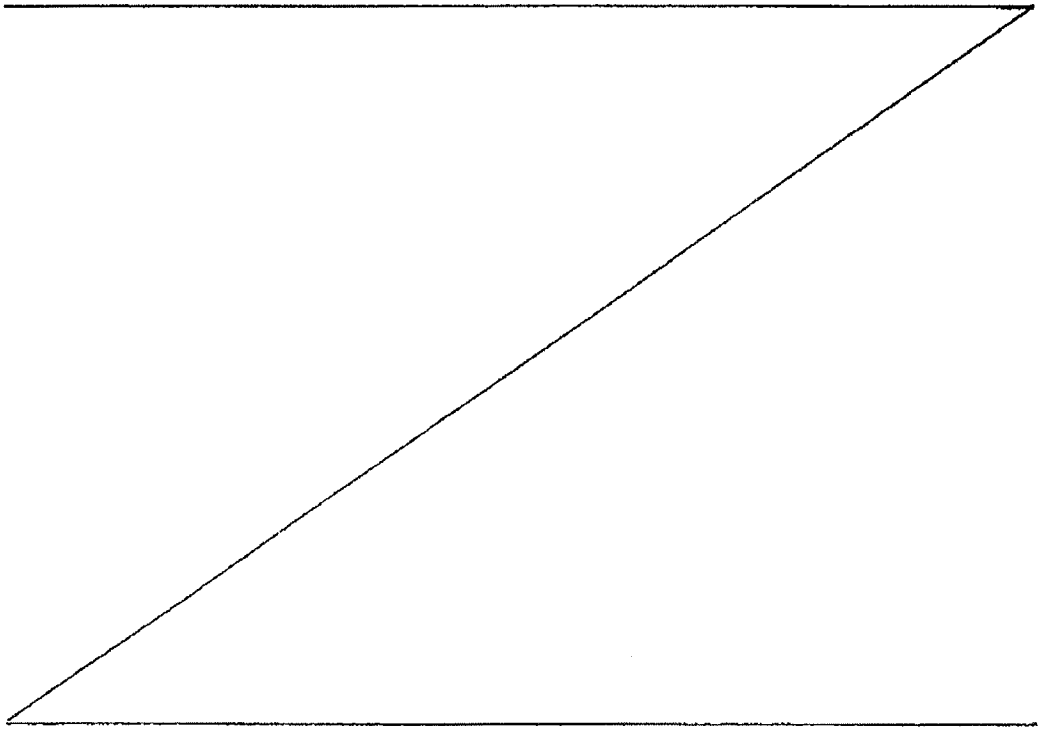
25. Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect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

26. Changes in Law. In the event of a change in statutory law applicable to this Project occurring after recordation of this Declaration and the Bylaws, such change in law shall control over the provisions of this Declaration or the Bylaws only to the extent the

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legislative body enacting such change in law expressly provided that the provisions of such change in law shall control over provisions to the contrary in pre-existing condominium documents.

27. Bylaws; Conflict. In furtherance of the provisions of this Declaration, the Developer hereby approves and adopts the Bylaws. The Developer hereby affirms that the property described in this Declaration shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved in accordance with the Bylaws. In the event of any discrepancy between a provision of this Declaration and a provision of the Bylaws, the provisions of this Declaration shall prevail.



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IN WITNESS WHEREOF, the Developer has executed this instrument on the 20th day of May, 1993.

KAPALELE ASSOCIATES,
a Hawaii limited partnership

By BEDFORD PROPERTIES, INC.
a California corporation
Its General Partner

By _____
Its

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STATE OF CALIFORNIA)
) ss.
CITY AND COUNTY OF CONTRA COSTA)

On this 20th day of May, 1993, before me appeared **MOHAN VACHANI**, to me personally known, who being by me duly sworn, did say that he is the Vice President of **BEDFORD PROPERTIES, INC.**, a California corporation; that said corporation is a general partner of **KAPALELE ASSOCIATES**, a Hawaii limited partnership; that said instrument was executed in the name and behalf of KAPALELE ASSOCIATES by said corporation as its general partner; that the instrument was signed without the corporate seal of said corporation, and that said instrument was so executed by said corporation by authority of its Board of Directors; and said MOHAN VACHANI acknowledged said instrument to be the free act and deed of said partnership.

Pamela A. Cardin
Notary Public

PAMELA A. CARDIN
COMM. # 981411
Notary Public — California
CONTRA COSTA COUNTY
My Comm. Expires DEC 20, 1996

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EXHIBIT A

All of that certain parcel of land situate at Maunalua, Honolulu, City and County of Honolulu, State of Hawaii, being LOT A of the "MARINA II-A", as shown on File Plan Number 2064, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 373,108 square feet, more or less.

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EXHIBIT B

KALELE KAI
UNIT SPECIFICATIONS

BUILDING 1 - Southern Boundary of Project

Unit No.	Unit Type	Bed Room	Bath Room	Total No. of Rooms	Net Living Area (s.f.)	Lanai (s.f.)	Total (s.f.)	% Common Interest	Parking Stall No.	Boat Mooring
1101	E-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	199, 252c	
1102	ER-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	251c, 198	
1103	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	10, 101c	
1104	CR-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	17, 79c	
1105	B-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	179, 266c	
1106	BR-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	181, 182	
1107	BR-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	183, 184	
1108	D-1	3	2.5	7.5	2,210.8	674.7	2,885.5	0.5921	250c, 197	
1110	B1-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	186, 185	
1201	E-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	249c, 226	
1202	ER-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	227, 246c	
1203	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	188, 187c	
1204	CR-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	189, 190c	
1205	B-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	191, 192	
1206	BR-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	193, 194	

*Total Rooms - includes bedrooms, bathrooms, separate living/dining room, and kitchen.
**All parking stalls are covered parking unless otherwise noted with the designation (UC).
***Parking stalls for compact cars are indicated with a "c" after the parking stall number.
****The designation of -3 after the parking stall number indicates the parking stall is located in parking garage no. 3.

KK002138

KK002138

Unit No.	Unit Type	Bed Room	Bath Room	Total No. of Rooms	Living Area (s.f.)	Lanai (s.f.)	Total (s.f.)	% Common Interest	Parking Stall No.	Boat Mooring
1207	BR-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	177, 195c	
1208	D-1	3	2.5	7.5	2,210.8	674.7	2,885.5	0.5921	228, 245c	
1210	B-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	196c, 176	
1212	B1R-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	173, 166	
1214	AR-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	172, 262c	
1216	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	169, 225c	
1218	AR-3	2	2	6	1,427.2	373.4	1,800.6	0.3822	168c, 167	
1301	E-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	229, 244c	
1302	ER-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	234, 243c	
1303	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	165, 206c	
1304	CR-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	171, 263c	
1305	B-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	170, 261c	
1306	BR-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	264c, 223	
1307	BR-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	222, 265c	
1308	D-1	3	2.5	7.5	2,210.8	674.7	2,885.5	0.5921	242c, 241	
1309	D-2	3	2.5	7.5	2,210.8	923.9	3,134.7	0.5921	236c, 235	
1310	B1-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	180, 267c	
1311	AR-2	2	2	6	1,427.2	683.8	2,111.0	0.3822	260c, 224	
1312	B1R-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	259c, 209	

*Total Rooms - includes bedrooms, bathrooms, separate living/dining room, and kitchen.
**All parking stalls are covered parking unless otherwise noted with the designation (UC).
***Parking stalls for compact cars are indicated with a "c" after the parking stall number.
****The designation of -3 after the parking stall number indicates the parking stall is located in parking garage no. 3.

KK002139

KK002139

Unit No.	Unit Type	Bed Room	Bath Room	Total No. of Rooms	Living Area (s.f.)	Lanai (s.f.)	Total (s.f.)	% Common Interest	Parking Stall No.	Boat Mooring
1313	AR-2	2	2	6	1,427.2	683.8	2,111.0	0.3822	258c, 208	
1314	AR-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	257c, 207	
1315	C-2	2	2	6	1,427.6	683.8	2,111.4	0.3824	256c, 205	
1316	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	255c, 204	
1317	A-2	2	2	6	1,427.2	683.8	2,111.0	0.3822	203, 254c	
1318	AR-3	2	2	6	1,427.2	373.4	1,800.6	0.3822	202, 253c	
1401	E-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	247c, 240	
1402	ER-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	248c, 239	
1403	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	230c, 200	
1404	CR-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	201c, 233	
1405	B-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	232, 175	
1406	BR-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	174, 231	
1407	BR-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	29, 30	
1408	D-1	3	2.5	7.5	2,210.8	674.7	2,885.5	0.5921	238, 237c	
1409	D-1	3	2.5	7.5	2,210.8	674.7	2,885.5	0.5921	28, 27	
1410	B1-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	25, 26	
1411	AR-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	23, 24	
1412	B1R-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	21, 22	
1413	AR-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	18, 19	
1414	AR-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	15, 102c	

*Total Rooms - includes bedrooms, bathrooms, separate living/dining room, and kitchen.
**All parking stalls are covered parking unless otherwise noted with the designation (UC).
***Parking stalls for compact cars are indicated with a "c" after the parking stall number.
****The designation of -3 after the parking stall number indicates the parking stall is located in parking garage no. 3.

KK002140

KK002140

Unit No.	Unit Type	Bed Room	Bath Room	Total No. of Rooms	Living Area (s.f.)	Lanai (s.f.)	Total (s.f.)	% Common Interest	Parking Stall No.	Boat Mooring
1415	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	13c, 14	
1416	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	12, 52	
1417	A-3	2	2	6	1,427.2	373.4	1,800.6	0.3822	53, 54	
1418	AR-3	2	2	6	1,427.2	373.4	1,800.6	0.3822	50, 51c	
1501	E-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	75, 88c	
1502	ER-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	74, 89c	
1503	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	48, 49	
1504	CR-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	31, 32c	
1505	B-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	33, 36	
1506	BR-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	73c, 20	
1507	BR-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	37, 38	
1508	D-1	3	2.5	7.5	2,210.8	674.7	2,885.5	0.5921	78c, 72	
1509	D-1	3	2.5	7.5	2,210.8	674.7	2,885.5	0.5921	90c, 71	
1510	B1-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	34, 35c	
1511	AR-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	46c, 47	
1512	B1R-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	16, 103c	
1513	AR-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	100c, 11	
1514	AR-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	99c, 65	
1515	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	66, 98c	

*Total Rooms - includes bedrooms, bathrooms, separate living/dining room, and kitchen.
**All parking stalls are covered parking unless otherwise noted with the designation (UC).
***Parking stalls for compact cars are indicated with a "c" after the parking stall number.
****The designation of -3 after the parking stall number indicates the parking stall is located in parking garage no. 3 respectively.

KK002141

KK002141

Unit No.	Unit Type	Bed Room	Bath Room	Total No. of Rooms	Living Area (s.f.)	Lanai (s.f.)	Total (s.f.)	% Common Interest	Parking Stall No.	Boat Mooring
1516	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	68c, 67	
1517	A-3	2	2	6	1,427.2	373.4	1,800.6	0.3822	45, 93c	
1518	AR-3	2	2	6	1,427.2	373.4	1,800.6	0.3822	44, 92c	
1601	P-1	Loft			3,454.8	856.2	4,311.0	0.9252	178, 80, 81, 307(UC)	
1602	PR-1	Loft			3,454.8	856.2	4,311.0	0.9252	82, 83, 84c, 308(UC)	
1605	B-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	43, 91c	
1606	BR-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	111, 112c	
1607	BR-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	113c, 110	
1608	D-1	3	2.5	7.5	2,210.8	674.7	2,885.5	0.5921	76, 86c	
1609	D-1	3	2.5	7.5	2,210.8	674.7	2,885.5	0.5921	77, 85c	
1610	B1-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	117c, 114	
1611	AR-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	116c, 69	
1612	B1R-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	115c, 70	
1613	AR-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	97c, 109	
1614	AR-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	39, 40c	
1615	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	42, 41c	
1616	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	96c, 108	

*Total Rooms - includes bedrooms, bathrooms, separate living/dining room, and kitchen.
**All parking stalls are covered parking unless otherwise noted with the designation (UC).
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****The designation of -3 after the parking stall number indicates the parking stall is located in parking garage no. 3.

KK002142

KK002142

Unit No.	Unit Type	Bed Room	Bath Room	Total No. of Rooms	Living Area (s.f.)	Lanai (s.f.)	Total (s.f.)	% Common Interest	Parking Stall No.	Boat Mooring
1617	A-3	2	2	6	1,427.2	373.4	1,800.6	0.3822	95c, 107	
1618	AR-3	2	2	6	1,427.2	373.4	1,800.6	0.3822	106, 94c	
BUILDING 2 - Western Boundary of Project										
2110	C1-1	2	2	6	1,421.9	265.8	1,687.7	0.3809	1, 129c	
2111	CR-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	7, 2c	
2112	E-2	3	2.5	7.5	1,998.7	587.7	2,586.4	0.5353	8, 4c	
2113	ER-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	5c, 6	
2208	B1-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	294, 293c	
2210	C1-1	2	2	6	1,421.9	265.8	1,687.7	0.3809	286c, 295	
2211	CR-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	297, 296c	
2212	E-2	3	2.5	7.5	1,998.7	587.7	2,586.4	0.5353	298, 285c	
2213	ER-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	299, 282c	
2301	E-4	3	2.5	7.5	1,998.7	922.8	2,921.5	0.5353	300, 281c	
2302	ER-5	3	2.5	7.5	1,998.7	741.3	2,740.0	0.5353	301, 280c	
2303	C-2	2	2	6	1,427.6	683.8	2,111.4	0.3824	302, 279c	
2304	CR-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	278c, 303	
2305	BR-2	2	2	6	1,430.4	681.9	2,112.3	0.3831	304, 277c	
2306	B-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	276c, 306	
2307	BR-2	2	2	6	1,430.4	681.9	2,112.3	0.3831	275c, 305	
2308	B1-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	164, 212c	

*Total Rooms - includes bedrooms, bathrooms, separate living/dining room, and kitchen.
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****The designation of -3 after the parking stall number indicates the parking stall is located in parking garage no. 3.

KK002143

KK002143

Unit No.	Unit Type	Bed Room	Bath Room	Total No. of Rooms	Living Area (s.f.)	Lanai (s.f.)	Total (s.f.)	% Common Interest	Parking Stall No.	Boat Mooring
2309	AR-4	2	2	6	1,427.2	766.8	2,194.0	0.3822	163, 213c	
2310	C1-1	2	2	6	1,421.9	265.8	1,687.7	0.3809	214c, 162	
2311	CR-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	161, 160c	
2312	E-2	3	2.5	7.5	1,998.7	587.7	2,586.4	0.5353	159c, 211	
2313	ER-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	210, 158c	
2401	E-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	157c, 156	
2402	ER-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	217c, 215	
2403	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	221, 218c	
2404	CR-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	219c, 220	
2405	BR-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	274, 216c	
2406	B-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	268c, 273	
2407	BR-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	272, 269c	
2408	B1-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	270, 284c	
2409	AR-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	139, 128c	
2410	C1-1	2	2	6	1,421.9	265.8	1,687.7	0.3809	283c, 271	
2411	CR-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	289c, 290	
2412	E-2	3	2.5	7.5	1,998.7	587.7	2,586.4	0.5353	288c, 291	
2413	ER-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	287c, 292	
2501	E-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	133c, 150	

*Total Rooms - includes bedrooms, bathrooms, separate living/dining room, and kitchen.
**All parking stalls are covered parking unless otherwise noted with the designation (UC).
***Parking stalls for compact cars are indicated with a "c" after the parking stall number.
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KK002144

KK002144

Unit No.	Unit Type	Bed Room	Bath Room	Total No. of Rooms	Living Area (s.f.)	Lanai (s.f.)	Total (s.f.)	% Common Interest	Parking Stall No.	Boat Mooring
2502	ER-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	134c, 149	
2503	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	135c, 148	
2504	CR-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	147, 136c	
2505	BR-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	146, 137c	
2506	B-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	144, 145c	
2507	BR-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	143, 142c	
2508	B1-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	127, 105c	
2509	AR-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	126, 104c	
2510	C1-1	2	2	6	1,421.9	265.8	1,687.7	0.3809	119c, 123	
2511	CR-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	55, 57c	
2512	E-2	3	2.5	7.5	1,998.7	587.7	2,586.4	0.5353	56, 58c	
2513	ER-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	9, 59c	
2601	P-1	Loft			3,454.8	856.2	4,311.0	0.9252	3c, 140, 141, 309(UC)	
2602	PR-1	Loft			3,454.8	856.2	4,311.0	0.9252	120c, 124, 125, 310(UC)	
2605	BR-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	121, 122	
2606	B-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	118, 60c	
2607	BR-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	64, 61c	
2608	B1-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	63, 62c	

*Total Rooms - includes bedrooms, bathrooms, separate living/dining room, and kitchen.
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KK002145

KK002145

Unit No.	Unit Type	Bed Room	Bath Room	Total No. of Rooms	Living Area (s.f.)	Lanai (s.f.)	Total (s.f.)	% Common Interest	Parking Stall No.	Boat Mooring
2609	AR-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	132c, 151	
2612	P1-2	Loft			3,448.3	854.8	4,303.1	0.9235	131c, 152, 153, 311(UC)	
2613	PR-1	Loft			3,454.8	856.2	4,311.0	0.9252	130c, 154, 155, 312(UC)	
BUILDING 3 - Northern Boundary of Project										
3106	B1R-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	22c-3, 53c-3	
3108	A-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	25-3, 52c-3	
3110	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	45c-3, 46c-3	B1 thru B6, inclusive, and B9 thru B60, inclusive
3112	E-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	61-3, 62-3	
3113	ER-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	58-3, 59c-3	
3202	ER-2	3	2.5	7.5	1,998.7	587.7	2,586.4	0.5353	96c-3, 110c-3	
3204	C1R-1	2	2	6	1,421.9	265.8	1,687.7	0.3809	81-3, 82-3	
3206	B1R-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	79-3, 80c-3	
3208	A-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	63-3, 64-3	

*Total Rooms - includes bedrooms, bathrooms, separate living/dining room, and kitchen.
**All parking stalls are covered parking unless otherwise noted with the designation (UC).
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KK002146

KK002146

Unit No.	Unit Type	Bed Room	Bath Room	Total No. of Rooms	Living Area (s.f.)	Lanai (s.f.)	Total (s.f.)	% Common Interest	Parking Stall No.	Boat Mooring
3210	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	65-3, 66-3	
3212	E-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	108c-3, 109c-3	
3213	ER-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	106c-3, 107c-3	
3301	E-3	3	2.5	7.5	1,998.7	1,745.7	3,744.4	0.5353	57-3, 60c-3	
3302	ER-2	3	2.5	7.5	1,998.7	587.7	2,586.4	0.5353	54c-3, 55c-3	
3303	C-2	2	2	6	1,427.6	683.8	2,111.4	0.3824	77-3, 78-3	
3304	CIR-1	2	2	6	1,421.9	265.8	1,687.7	0.3809	75c-3, 76-3	
3305	A-2	2	2	6	1,427.2	683.8	2,111.0	0.3822	1-3, 2-3	
3306	BIR-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	125c-3, 126c-3	
3307	B-2	2	2	6	1,430.4	681.9	2,112.3	0.3831	123c-3, 124c-3	
3308	A-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	73-3, 74c-3	
3309	AR-2	2	2	6	1,427.2	683.8	2,111.0	0.3822	71c-3, 72-3	
3310	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	69-3, 70-3	

*Total Rooms - includes bedrooms, bathrooms, separate living/dining room, and kitchen.
**All parking stalls are covered parking unless otherwise noted with the designation (UC).
***Parking stalls for compact cars are indicated with a "c" after the parking stall number.
****The designation of -3 after the parking stall number indicates the parking stall is located in parking garage no. 3 respectively.

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Unit No.	Unit Type	Bed Room	Bath Room	Total No. of Rooms	Living Area (s.f.)	Lanai (s.f.)	Total (s.f.)	% Common Interest	Parking Stall No.	Boat Mooring
3311	CR-3	2	2	6	1,427.6	649.4	2,077.0	0.3824	16-3, 17-3	
3312	E-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	90c-3, 91-3	
3313	ER-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	94-3, 95-3	
3401	E-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	117c-3, 118c-3	
3402	ER-2	3	2.5	7.5	1,998.7	587.7	2,586.4	0.5353	115c-3, 116c-3	
3403	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	18c-3, 19-3	
3404	C1R-1	2	2	6	1,421.9	265.8	1,687.7	0.3809	5-3, 6-3	
3405	A-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	3-3, 4-3	
3406	B1R-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	102c-3, 103c-3	
3407	B-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	20-3, 21-3	
3408	A-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	104c-3, 105c-3	
3409	AR-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	67-3, 68-3	
3410	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	97-3, 98-3	

*Total Rooms - includes bedrooms, bathrooms, separate living/dining room, and kitchen.
**All parking stalls are covered parking unless otherwise noted with the designation (UC).
***Parking stalls for compact cars are indicated with a "c" after the parking stall number.
****The designation of -3 after the parking stall number indicates the parking stall is located in parking garage no. 3 respectively.

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Unit No.	Unit Type	Bed Room	Bath Room	Total No. of Rooms	Living Area (s.f.)	Lanai (s.f.)	Total (s.f.)	% Common Interest	Parking Stall No.	Boat Mooring
3411	CR-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	99-3, 100-3	
3412	E-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	50c-3, 51c-3	
3413	ER-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	23-3, 24-3	
3501	E-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	113c-3, 114c-3	
3502	ER-2	3	2.5	7.5	1,998.7	587.7	2,586.4	0.5353	111c-3, 112c-3	
3503	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	34-3, 35-3	
3504	C1R-1	2	2	6	1,421.9	265.8	1,687.7	0.3809	39c-3, 40c-3	
3505	A-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	41c-3, 42c-3	
3506	B1R-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	36-3, 37-3	
3507	B-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	43c-3, 44c-3	
3508	A-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	14-3, 15-3	
3509	AR-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	7-3, 8-3	
3510	C-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	9c-3, 10-3	

*Total Rooms - includes bedrooms, bathrooms, separate living/dining room, and kitchen.
**All parking stalls are covered parking unless otherwise noted with the designation (UC).
***Parking stalls for compact cars are indicated with a "c" after the parking stall number.
****The designation of -3 after the parking stall number indicates the parking stall is located in parking garage no. 3 respectively.

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Unit No.	Unit Type	Bed Room	Bath Room	Total No. of Rooms	Living Area (s.f.)	Lanai (s.f.)	Total (s.f.)	% Common Interest	Parking Stall No.	Boat Mooring
3511	CR-1	2	2	6	1,427.6	265.8	1,693.4	0.3824	11-3, 12c-3	
3512	E-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	48c-3, 49c-3	
3513	ER-1	3	2.5	7.5	1,998.7	589.1	2,587.8	0.5353	32-3, 33-3	
3601	P-1	Loft			3,454.8	856.2	4,311.0	0.9252	30-3, 31c-3, 47c-3, 127-3(UC)	
3602	P1R-2	Loft			3,448.3	854.8	4,303.1	0.9235	92-3, 93c-3, 83c-3, 128-3(UC)	
3605	A-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	84c-3, 85-3	
3606	B1R-1	2	2	6	1,424.5	263.9	1,688.4	0.3815	121c-3, 122c-3	
3607	B-1	2	2	6	1,430.4	263.9	1,694.3	0.3831	119c-3, 120c-3	
3608	A-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	88-3, 89c-3	
3609	AR-1	2	2	6	1,427.2	265.8	1,693.0	0.3822	86-3, 87-3	
3612	P-1	Loft			3,454.8	856.2	4,311.0	0.9252	28c-3, 29-3, 13c-3, 129-3(UC)	
3613	PR-1	Loft			3,454.8	856.2	4,311.0	0.9252	26-3, 27c-3, 56c-3, 120-3(UC)	

*Total Rooms - includes bedrooms, bathrooms, separate living/dining room, and kitchen.
**All parking stalls are covered parking unless otherwise noted with the designation (UC).
***Parking stalls for compact cars are indicated with a "c" after the parking stall number.
****The designation of -3 after the parking stall number indicates the parking stall is located in parking garage no. 3 respectively.

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Unit No.	Unit Type	Bed Room	Bath Room	Total No. of Rooms	Living Area (s.f.)	Lanai (s.f.)	Total (s.f.)	% Common Interest	Garage (s.f.)	Boat Mooring
TOWNHOMES - Eastern Boundary of Project										
101	TBR-1	3	2.5	7.5	2,345.5	428.5	2,774.0	0.6282	366.7	
102	TAR-2	3	2.5	7.5	2,205.4	354.0	2,559.4	0.5906	367.2	
103	TA1-1	3	2.5	7.5	2,222.3	343.3	2,565.6	0.5952	367.2	
104	TAR-2	3	2.5	7.5	2,205.4	354.0	2,559.4	0.5906	367.2	
105	TA1-1	3	2.5	7.5	2,222.3	343.3	2,565.6	0.5952	367.2	
106	TAR-2	3	2.5	7.5	2,205.4	354.0	2,559.4	0.5906	367.2	
107	TA1-3	3	2.5	7.5	2,222.3	400.6	2,622.9	0.5952	367.2	
108	TA1R-3	3	2.5	7.5	2,222.3	400.6	2,622.9	0.5952	367.2	
109	TA-2	3	2.5	7.5	2,205.4	354.0	2,559.4	0.5906	367.2	
110	TB-1	3	2.5	7.5	2,345.5	428.5	2,774.0	0.6282	366.7	

*Total Rooms - includes bedrooms, bathrooms, separate living/dining room, and kitchen.
**All parking stalls are covered parking unless otherwise noted with the designation (UC).
***Parking stalls for compact cars are indicated with a "c" after the parking stall number.
****The designation of -3 after the parking stall number indicates the parking stall is located in parking garage no. 3 respectively.

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JUN 0 1 1993 11:00
93-87470

LAND COURT SYSTEM
Return by Mail ( ) Pickup ( ) To:

REGULAR SYSTEM

5200n

BYLAWS OF THE
ASSOCIATION OF OWNERS
OF KALELE KAI

WHEREAS, KAPALELE ASSOCIATES, a Hawaii limited partnership, whose principal place of business and post office address is One Keahole Street, unit 3110, Honolulu, Hawaii 96825 (hereinafter referred to as the "Developer"), is the lessee under that certain Lease No. 28587 dated October 9, 1990, issued by The Trustees of the Estate of Bernice Pauahi Bishop (hereinafter referred to as the "Trustees") and recorded in the Bureau of Conveyances of the State of Hawaii (hereinafter referred to as the "Bureau") as Document No. 90-158696, as the same may be amended from time to time (hereinafter referred to as the "Lease"), demising that certain parcel of land situate at Maunalua, City and County of Honolulu, Island of Oahu, State of Hawaii, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as the "Land"); and

WHEREAS, the Trustees have conveyed the Land to the Developer, together with and subject to the Lease, pursuant to Deed dated MAY 28, 1993, recorded in the Bureau as Document No. 93-86444;

WHEREAS, it is the intent of the Developer that the leasehold and fee estates owned by the Developer, which are

EXHIBIT 504

EXHIBIT 3 YOSHIKAWA

EXHIBIT 2

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both hereinafter submitted to the condominium property regime under the Declaration of Condominium Property Regime recorded in the Bureau as Document No. 93-87469 (hereinafter referred to as the "Declaration"), shall not merge and that the Lease shall remain in existence until the first to occur of the following: (i) all mortgages encumbering the Lease have been released and the Developer has evidenced its intent to merge the leasehold and fee estates by recording a Cancellation of Lease in the Bureau, or (ii) the Lease has been fully cancelled and surrendered as a result of the delivery of a partial cancellation and surrender of the Lease as it relates to each and all of the condominium units created by the Declaration; and

WHEREAS, Developer intends to develop the Land as a condominium project known as "Kalele Kai" (hereinafter referred to as the "Project"), as more specifically described in and in accordance with plans incorporated in the Declaration and recorded in the Bureau as Condominium Map No. 1365;

NOW, THEREFORE, the Developer hereby submits the following Bylaws of the Association of Owners of Kalele Kai which shall apply to the Project, as described in and created by the Declaration, to be filed in the Bureau of Conveyances of the State of Hawaii, as the same may from time to time be amended, which declarations, restrictions and conditions shall constitute covenants running with the land.

ARTICLE I

APPLICATION

Section 1.1 Declaration and Bylaws. The Declaration and Bylaws shall constitute covenants running with the land and shall apply to all present and future owners, tenants and occupants of any condominium units of the Project and all other persons who shall at any time use the Project. The mere acquisition or rental of any condominium unit or the mere act of occupancy of any condominium unit will signify that these Bylaws are accepted, ratified and will be complied with, and shall be binding on and inure to the benefit of the Developer, all subsequent owners and lessees of all or any part of the Project and their respective heirs, personal representatives, successors and assigns.

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ARTICLE II

MEMBERSHIP

Section 2.1 Qualification. All owners of condominium units of the Project shall constitute the Association of Owners of Kalele Kai (hereinafter referred to as the "Association"). The owner of any condominium unit upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such condominium unit 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 lease of any condominium unit registered under Chapter 501 of the Hawaii Revised Statutes or recorded under Chapter 502 of the Hawaii Revised Statutes, the lessee of such condominium unit shall be deemed to be the owner thereof.

Section 2.2 Place of Meetings. Meetings of the Association shall be held at the Project or such other suitable place within the State convenient to the owners as may be designated by the Board of Directors (hereinafter referred to as the "Board").

Section 2.3 Annual Meetings. The first annual meeting of the Association shall be held not later than one hundred eighty (180) days after recordation of the first conveyance of a condominium unit provided that forty percent (40%) or more of the Project has been sold and recorded. If forty percent (40%) of the Project is not sold and recorded at the end of one (1) year, an annual meeting shall be called upon request by ten percent (10%) of the owners. Thereafter, the annual meetings of the Association shall be held within three (3) months after the end of each accounting year.

Section 2.4 Special Meetings. Special meetings of the Association may be held at any time upon the call of the President or a petition signed by at least one-third of the owners and presented to the secretary of the Association (hereinafter referred to as the "Secretary").

Section 2.5 Notice of Meetings; Proxy. The Secretary shall give written or printed notice of each annual and special meeting to every owner, according to the Association's record of ownership and to every holder of a first mortgage on a condominium unit who shall have given the Board notice of such holder's interest through the

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Secretary or the managing agent, at least fourteen (14) days before the date set for such meeting, stating whether it is an annual or special meeting, the authority for the call thereof, the place, day and hour of such meeting and the items on the agenda for such meeting, in any of the following ways: (a) by delivering it to him personally, or (b) by leaving it at his condominium unit in the Project or at his usual residence or place of business, or (c) by mailing it, postage prepaid, addressed to him at his address as it appears on the Association's record of ownership. Each such notice shall also contain a standard proxy form authorized by the Association, if any. If notice is given pursuant to the provisions of this section, the failure of any owner to receive actual notice of any meeting shall in no way invalidate such meeting or any proceedings thereat. The presence of any 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 thereof object to the holding of such meeting because of the failure to give notice in accordance with the provisions hereof.

Section 2.6 Quorum. The presence at any meeting in person or by proxy of a majority of owners shall constitute a quorum, and the acts of a majority of the owners at any meeting at which a quorum is present shall be the acts of the Association except as otherwise provided herein. The term "majority of owners" herein means the owners of condominium units to which are appurtenant more than fifty percent (50%) of the common interest as established by the Declaration, and any other specified percentage of the owners means the owners of condominium units to which are appurtenant such percentage of the common interests.

Section 2.7 Voting. Each condominium unit shall be entitled to one (1) vote equivalent to its percentage common interest. Votes allocated to any area which constitutes a common element under Section 514A-13(h) of the Hawaii Revised Statutes shall not be cast at any meeting of the Association, whether or not such area is so designated as a common element in the Declaration. Votes may be cast in person or by proxy by the respective owners as shown in the record of ownership of the Association; provided, however, that no vote shall be fractionalized except as provided in this Section 2.7. A personal representative, guardian or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any condominium unit 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 condominium unit in such capacity. The vote for any condominium unit 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 or others, and in case of protest each co-tenant shall be entitled to only a share of such vote in proportion to his share of ownership in such condominium unit. The purchaser of a condominium unit pursuant to an agreement of sale recorded in the Bureau shall have all of the rights of a condominium unit owner, including the right to vote, except as to those matters expressly retained by the seller under such agreement of sale, and as permitted by law.

Section 2.8 Proxies and Pledges.

(a) A proxy, to be valid, must be 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 person or persons giving the proxy, the condominium unit or condominium units for which the proxy is given, the printed name of the person or entity to whom the proxy is given, and the date that the proxy is given.

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

(c) Proxies may be given to the Board; provided that the proxy form shall contain a box wherein the owner may indicate that the owner wishes the vote to be shared with each Board member (occasionally referred to as the "Director") receiving an equal percentage. Proxy forms which are not marked shall be considered a choice by the owner that the vote be made on the basis of the preference of the majority of the Board.

(d) Nothing in (a), (b) or (c) above shall affect the holder of any proxy under a first mortgage of record encumbering any condominium unit or interest therein or under an agreement of sale affecting a condominium unit. Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any condominium unit or interest therein, 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 in like manner.

(e) No resident manager or managing agent employed by the Association shall solicit, for use by such manager or managing agent, any proxies from any owner of the Association which employs the resident manager or managing agent, nor shall the resident manager or managing agent cast any proxy vote at any meeting of the Association except for the purpose of establishing a quorum.

(f) No member of the Board who uses Association funds to solicit proxies shall cast any proxy votes for the election or reelection of Board members at any Association meeting unless the proxy form specifically authorizes the Board member to vote for the election or reelection of Board directors and the Board first posts notice of its intent to solicit proxies in prominent locations within the Project at least thirty (30) days prior to its solicitation of proxies; provided that if the Board receives within seven (7) days of the posted notice a request by any owner for use of Association funds to solicit proxies accompanied by a statement the Board shall:

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

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

The statement shall not exceed one hundred (100) words, indicating the owner's qualifications to serve on the Board and reasons for wanting to receive proxies.

(g) No officer of the Board shall use Association funds to solicit proxies; provided that this shall not prevent an officer from exercising his right as an owner.

(h) Owners shall be permitted to view proxies, tally sheets, ballots, owners check-in lists, and the certificate of election during normal business hours for a

period of thirty (30) days following any Association meeting; provided that:

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

(2) The owners pay the administrative costs in excess of eight (8) hours per year. Copies of the tally sheets, owners check-in lists and the certificate of election shall be provided to any owner upon the owner's request, provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

Section 2.9 Adjournment. Except for the absence of a quorum, 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 owners present, whether or not a quorum be present, without notice other than the announcement at such meeting. In the absence of a quorum at any meeting of the Association, whether annual or special, a majority of the owners present in person or by proxy may adjourn the meeting to another time but no other business may be transacted. An adjournment for lack of a quorum by those in attendance shall be to a date not less than five (5) days and not more than thirty (30) days from the original meeting date. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reasons a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to the owners in the manner prescribed for annual and special meetings. 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 2.10 Order of Business. The order of business at all meetings of the Association shall generally be as follows:

(a) Roll call.
(b) Proof of notice of meeting.
(c) Reading of minutes of preceding meeting.
(d) Report of officers.
(e) Report of Board of Directors.

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(f) Report of committees.
(g) Election of directors (when so required).
(h) Unfinished business.
(i) New business.

Section 2.11 Conduct of Meetings. All meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order.

ARTICLE III

BOARD OF DIRECTORS

Section 3.1 Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of nine (9) persons (hereinafter referred to as "Director" or "Directors"), each of whom shall be the sole owner or co-owner of record of a condominium unit, or a vendee under an agreement of sale of a condominium unit, or a partner in a general partnership if such partnership is an owner of record or a general partner of a limited partnership if such partnership is an owner of record. If a corporation is an owner, any officer of such corporation shall be eligible to serve as director so long as he remains an officer of such corporation. In the case of fiduciary owners, the fiduciaries or officers or employees of such fiduciaries shall be eligible to serve as director. There shall not be more than one representative on the Board from any one condominium unit. No resident manager of the Project shall be eligible to serve as director. The directors shall serve without compensation. The minimum number of the members of the Board of Directors may be reduced by the vote of not less than sixty-five percent (65%) of all owners vote by mail ballot or at a special or annual meeting.

Section 3.2 Powers. The Board shall have all powers necessary for the administration of the affairs of the Association and may do all such acts and things therefor as are not by law, the Declaration or these Bylaws directed to be exercised or done only by the owners. Each director shall owe the Association a fiduciary duty in the performance of the director's responsibilities. 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.

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Section 3.3 Election and Term. Election of Directors shall be by a cumulative vote by secret ballot at each annual meeting and any special meeting called for that purpose. Directors shall hold office for a period of three (3) 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 shall be elected for one (1) year, three (3) directors for two (2) years and three (3) directors for three (3) years.

Section 3.4 Vacancies. Vacancies in the Board caused by any reason other than removal of a Director by the Association shall be filled by vote of a majority of the remaining Directors, even though they may constitute less than a quorum, and each person so elected shall be a Director 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 (6) months, or his ceasing to be the sole owner or co-owner of a condominium unit, or a vendee under an agreement of sale of a condominium unit, or a partner in a general partnership or a general partner in a limited partnership which is the owner of record of a condominium unit, or an officer of a corporation which is the owner of record of a condominium unit shall cause his office to become vacant.

Section 3.5 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 owners and a successor may then and there be elected for the remainder of the term to fill the vacancy thus created. Such removal and replacement shall be in accordance with all applicable requirements and procedures set forth herein for the removal and replacement of Directors, including, but not limited to, any provisions relating to cumulative voting. No Director elected by cumulative voting shall be removed if the number of votes required to elect such Director by cumulative voting shall vote against his removal. If such removal and replacement is to occur at a special association meeting, the call for such meeting shall be by the president of the Association (hereinafter referred to as the "President") or by a petition to the Secretary or managing agent signed by not less than twenty-five percent (25%) of the 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 notices for the special meeting within fourteen (14) 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 set forth herein. Except as otherwise provided herein, such meeting for the removal and replacement from office of Directors shall be scheduled, noticed and conducted in accordance with the Bylaws. Any Director whose removal has been proposed by the owners shall be given an opportunity to be heard at such meeting.

Section 3.6 Annual Meeting. An organizational meeting of the Board 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 to validly 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 3.7 Regular Meetings. Regular meetings of the Board 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 (1) such meeting shall be held during every other calendar quarter of every year. Notice of the time and place of a regular meeting shall be posted by the managing agent or a member of the Board at a prominent place or places within the common elements of the Project seventy-two (72) hours prior to the meeting or simultaneously with notice to the Board. Notice to the Board shall be communicated to each Director, personally or by mail, telephone or telegraph, no more than seven (7) days and not less than four (4) days prior to the date of such meeting unless the time and place of meeting is fixed by the Bylaws.

Section 3.8 Special Meetings. A special meeting of the Board may be called by written notice signed by the President or by any two (2) members of the Board other than the President. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Notice will be posted in a manner prescribed for notice of regular meetings and shall be sent to all Directors not less than seventy-two (72) hours prior to the scheduled time of the meeting.

Section 3.9 Board Meetings. All meetings of the Board, other than executive sessions, shall be open to all members of the Association, and Association members who are not on the Board may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Directors votes otherwise. The Board,

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. A Director shall not cast any proxy vote at any Board meeting, nor shall a Director vote at any Board meeting on any issue in which the Director has a conflict of interest.

Section 3.10 Meeting Minutes. Minutes of meetings of the Board and the Association shall include the recorded vote of each Board member on all motions except motions voted on in executive session. The most current minutes of the Board's meetings, once approved, shall be available to any owner at no cost or on twenty-four (24) hour loan, at a convenient location designated by the Board. Minutes of meetings of the Board and the Association for the current and prior year shall be available for examination by owners at convenient hours at a place designated by the Board. Copies of meeting minutes for the current and prior year shall be provided to any owner upon the owner's written request provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

Section 3.11 Waiver of Notice. Before or at any meeting of the Board, 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 3.12 Quorum of Board. At all meetings of the Board a majority of the total number of Directors established by these Bylaws shall constitute a quorum for the transaction of business, and the acts of a majority of the Directors present at any meeting at which a quorum is present shall be the acts of the Board. 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 3.13 Conduct of Meetings. All meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order.

Section 3.14 Fidelity Bonds. The Association, at its common expense, shall obtain and maintain fidelity bonds for all officers, employees and agents of the Association handling or responsible for its funds in accordance with Section 514A-95.1, Hawaii Revised Statutes, as amended, and the Declaration. The Association shall observe and comply with the registration and disclosure requirements of said Section 514A-95.1, as amended. The managing agent employed by the Association shall provide evidence of a fidelity bond in an amount equal to $500.00 multiplied by the aggregate number of condominium units covered by all of the managing agent's condominium management contracts; provided that the minimum amount of the bond shall not be less than $20,000.00 nor greater than $100,000.00.

Every fidelity bond provided in accordance with this Section 3.14 shall:

(i) Provide that the bond(s) may not be cancelled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days' prior notice to the Board, the first mortgagees and every other person in interest who shall have requested such notice; and

(ii) Contain a waiver of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

Section 3.15 Budgets and Financial Statements. The following financial and related information shall be regularly prepared and distributed by the Board to all owners of the Association:

(a) A budget for each fiscal year consisting of at least the following information shall be distributed not less than forty-five (45) days and not more than sixty (60) days prior to the beginning of the fiscal year:

(1) Estimated revenue and expenses prepared according to generally accepted accounting principles;

(2) The amount of the total cash reserves of the Association currently available for replacement or major repair of common elements and for contingencies;

(3) An itemized estimate of the remaining life of major components of the common elements for which the Association is responsible, the estimated replacement reserves the Association will require to maintain such property, and the methods of funding the cost of repair, replacement and additions to said property;

(4) A general statement setting forth the procedures used by the Board in calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the common elements for which the Association is responsible; and

(5) The amount the Association must collect for the fiscal year to fund the estimated replacement reserves.

(b) A balance sheet - as of an accounting date which is the last day of the month closest in time to six (6) months from the date of closing of the first sale of a condominium unit in the Project - and an operating statement for the period from the date of the first closing to said accounting date, shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the number of the condominium unit and the name of the entity assessed.

(c) A report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year:

(1) A balance sheet as of the end of the fiscal year;

(2) An operating (income) statement for the fiscal year;

(3) A statement of changes in financial position for the fiscal year; and

(4) For any fiscal year in which the gross income to the Association exceeds the annual budget by Fifty Thousand and No/100 Dollars ($50,000.00), a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a certified accountant.

If the report referred to in (c) hereinabove is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared from the books and records of the Association without independent audit or review. In addition to financial statements, the Board shall annually distribute within sixty (60) days prior to the beginning of the fiscal year, a statement of the Association's policies and practices in enforcing its remedies against owners for defaults in the payment of regular and special assessments including the recording and foreclosing of liens against the owner's ownership interest.

(d) The most current financial statement, once approved, shall be available to any owner at no cost or on twenty-four (24) hour loan, at a convenient location designated by the Board.

(e) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the Association for the current and prior year and delinquencies of ninety (90) days or more shall be available for examination by owners at convenient hours at a place designated by the Board, provided that:

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

(2) Owners pay for administrative costs in excess of eight (8) hours per year. Copies of these items shall be provided to any owner upon the owner's request, provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(f) The Board shall make available a copy of the annual audit to each owner at least thirty (30) days prior to the annual meeting which follows the end of the fiscal year. The Board shall provide upon all official proxy forms a box wherein the owner may indicate that the owner wishes to obtain either a summary of the annual audit report, or an abridged copy of the annual audit report. The Board shall not be required to submit a summary of the annual audit report or a copy of the annual audit report to the owner if the proxy form is not marked. If the annual audit has not been completed by that date, the Board shall make available:

(1) An unaudited year-end financial statement for the fiscal year to each owner at least thirty (30) days prior to the annual meeting; and

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

If the Association's fiscal year ends less than two (2) months prior to the convening of the annual meeting, the year-to-date unaudited financial statement may cover the period from the beginning of the Association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed.

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

3.16 Use of Association Funds. No member of the Board shall expend Association funds for their travel, directors' fees, and per diem, unless owners are informed of such expenses and a majority of the owners approve of these expenses.

3.17 Kalele Kai Documents. The Association, at its expense, shall provide each member of the Board with a current copy of the Declaration, these Bylaws, the House Rules of Kalele Kai, if any, and any amendments to these documents, and annually provide each member of the Board with a copy of Chapter 514A and any amendments thereto.

ARTICLE IV

OFFICERS

Section 4.1 Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer, all of whom shall be elected by, and in the case of the President from the Board. Any person may hold one or more offices at the same time. The Board may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as in its judgment deem to be necessary. An owner shall not act as an officer of the Association and an employee of the managing agent employed by the Association.

Section 4.2 Election and Term. The officers of the Association shall be elected annually by the Board at its annual meeting and shall hold office at the pleasure of the Board.

Section 4.3 Removal. Any officer may be removed either with or without cause by vote of a majority of the members of the Board, and his successor elected, at any regular meeting of the Board or any special meeting called for such purpose.

Section 4.4 President. The President shall be elected from the Board. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. Subject to the control of the Board he shall exercise the 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 Bylaws or assigned to him from time to time by the Board.

Section 4.5 Vice-President. The vice-president (hereinafter referred to as the "Vice-President") shall assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. If neither the President nor the Vice-President is able to act, then the Board shall appoint some other member of the Board to do so on an interim basis. The Vice-President shall also have such other powers and duties as may be assigned to him from time to time by the Board.

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Section 4.6 Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board, give all notice thereof as provided by these Bylaws, maintain and keep a continuous and accurate record of ownership of all condominium units, 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. If the Secretary is not present at any meeting, the presiding officer shall appoint a secretary pro tempore who shall keep the minutes of such meeting and record them in the books provided for that purpose.

Section 4.7 Treasurer. The treasurer (hereinafter referred to as 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. Such duties may be delegated by the Board to the managing agent.

ARTICLE V

ADMINISTRATION

Section 5.1 Management. The Board shall at all times manage and operate the Project and have such powers and duties as may be necessary or proper therefor including, without limitation, the following:

(a) Supervision of its immediate management and operation;

(b) Maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto, including the authorization to borrow money in accordance with Section 514A-82.3, as amended, these Bylaws and the Declaration;

(c) Purchase, maintenance and replacement of any equipment and provisions of all water, sewer and other utility services required for the common elements;

(d) Provision at each condominium unit of all water, sewer, electricity and such other utility services and utilities as the Board shall deem necessary either at the expense of such condominium unit or as a common expense as determined by the Board;

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(e) Employment, supervision and dismissal of such personnel as may be necessary for the maintenance, repair and replacement of the common elements;

(f) Preparation at least sixty (60) days before each fiscal year of a proposed budget and schedule of assessments for such year;

(g) Determination of the common expenses pursuant to Paragraph 12 of the Declaration and collection of all common expenses, expenses, costs and fees recoverable by the Association under Section 514A-94, Hawaii Revised Statutes, and any penalties and late charges. Without limiting the foregoing, the Board shall establish and maintain an adequate reserve for periodic maintenance and repair and replacement of common and limited common elements;

(h) Purchase and maintain in effect all policies of hazard and liability insurance for the project required by the Declaration and such other insurance and bonds as may be required or authorized by the Declaration or the Board;

(i) Maintain custody and control of all funds of the Association, maintain full and accurate books of account and records of such funds and prepare regular financial reports thereof; provided that the handling and disbursement of all funds of the Association shall be in accordance with Section 514A-97, as amended; and

(j) Notification of all persons having any interest in any condominium unit according to the Association's record of ownership of delinquency exceeding sixty (60) days in the payment of any assessment against such condominium unit.

(k) Keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The Board or managing agent shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses. All records and the vouchers authorizing the payments and statements shall be kept and maintained at the address of the Project, or elsewhere within the State of Hawaii as determined by the Board and shall be available for examination by the owners at convenient hours of business days;

(l) Opening of bank accounts on behalf of the Association and designating the signatories required therefor;

(m) Making of repairs, additions and improvements to or alterations of the Project and repairs to and restoration of the Project in accordance with the other provisions of these Bylaws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;

(n) Procuring legal and accounting services necessary or proper in the operation of the buildings or enforcement of these Bylaws; and

(o) Establishment of such penalties and fines as it deems appropriate with respect to enforcement of the provisions of the Declaration, these Bylaws and the House Rules; provided such penalties and fines are not inconsistent with the law or the provisions herein, and the unpaid amount of such penalties and fines against any owner shall constitute a lien against his interest in his condominium unit which may be foreclosed by the Board or managing agent in the same manner as provided in the Condominium Property Regime Act for common expenses; provided, however, that the lien for such penalties and fines shall be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the condominium unit and to all sums unpaid on mortgages of record. In the event such penalties and fines are established, the Board may authorize the managing agent or resident manager to impose them upon the owners, tenants and employees of a condominium unit owner, and any other persons using the property for any purpose whatsoever.

Section 5.2 Managing Agent. The Board shall employ a responsible Hawaii corporation authorized to do business in Hawaii as managing agent (herein referred to as the "Managing Agent") to manage and control the Project subject at all times to direction by the Board, with all the administrative functions set forth specifically in the preceding Section 5.1 and such other powers and duties and at such compensation as the Board may establish. The Managing Agent shall from time to time provide evidence satisfactory to the Board that the Managing Agent maintains a fidelity bond in the minimum amount required by Section 514A-84, Hawaii Revised Statutes, as amended, or such higher amount as the Board may require.

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Section 5.3 Association Employees. No employee of the Association shall engage in selling or renting condominium units in the Project except Association owned condominium units; provided, however, that such activity may be permitted if approved by an affirmative vote of sixty-five percent (65%) of the membership.

Section 5.4 Representation. The President or Managing Agent, subject to the direction of the Board, shall represent the Association or any two (2) or more owners similarly situated as a class in any action, suit, hearing or other proceeding (including without limitation, any condemnation proceeding or negotiation, settlements or agreements with the condemning authority for acquisition of the common elements (excluding the land) or any part thereof) concerning the Association, the common elements or more than one condominium unit, 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 owners individually to appear, sue or be sued. Service of process on two (2) or more owners in any such action, suit or proceeding may be made on the President or Managing Agent. Every first mortgagee to whom the lessee is required by the terms of the mortgage to pay the same or, whenever there is no such mortgagee to pay the same the Managing Agent, shall be the agent of the respective lessees under any condominium unit leases filed with the Board for the collection, custody and payment of all rent, taxes, assessments, and other charges payable thereunder.

Section 5.5 Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts, grants of easements 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 or, in the absence of any such resolution applicable to such instrument, by the President or Vice-President and by the Treasurer or Secretary; provided, however, that the Developer, in order to facilitate the administration of the Project in its initial stages, shall be authorized to sign such instruments on behalf of the Association until the election of the Board and Officers at the first annual meeting of the Association; provided, however, that any management contract which Developer executes on behalf of the Association shall not have a term exceeding one (1) year and shall have a provision allowing the Association to terminate such management contract on prior written notice

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of no more than sixty (60) days without payment of any penalty by the Association.

Section 5.6 Records; Examination; Disposal.

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

(b) All records and the vouchers authorizing the payments and statements shall be kept and maintained at the address of the Project, or elsewhere within the State of Hawaii as determined by the Board.

(c) The Managing Agent may dispose of the records of the Association which are more than five (5) years old without liability if the Managing Agent first provides the Board with written notice of its intent to dispose of the records if not retrieved by the Board within sixty (60) days, which notice shall include an itemized list of the records which the Managing Agent intends to dispose of.

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

Section 5.7 Auditor. The Association shall appoint annually a certified public accountant or accounting firm as auditor, who shall not be an officer of the Association nor own any interest in any condominium unit, to conduct a yearly audit of the books and financial records of the Association as required by law and no less than one (1) yearly unannounced verification of the Association's cash balance by a public accountant; provided that if the Association is comprised of less than twenty (20) owners, the yearly audit and the yearly unannounced cash balance verification may be waived by a majority vote of all owners taken at an Association meeting. The Board may direct the certified public accountant to conduct an audit of the books and financial records of the Association or unannounced verification of the Association's cash balance in excess of once a year. A copy of the annual audit shall be provided

to any mortgagee of a condominium unit upon the mortgagee's written request.

ARTICLE VI

OBLIGATIONS OF OWNERS

Section 6.1 Assessments. All owners shall pay to the Managing Agent in advance on the first day of each and every month (i) the monthly installments of assessments against their respective condominium units for common expenses of the Project in accordance with the Declaration, and (ii) with respect to any tenant lease of any condominium unit owned by the Association, a monthly sum determined by the Managing Agent to be sufficient to accumulate and pay when due all rent and other charges thereunder payable by the lessee of such condominium unit to the Association. An owner may contest the amount of any assessment claimed by the Association by submitting a written request to the Board for information in accordance with Section 514A-90, Hawaii Revised Statutes, no later than seven (7) days after owner's payment of the assessment; provided, that nothing herein shall limit the rights of an owner to the protection of all fair debt collection procedures mandated under federal and state law and provided by Section 514A-90(d), Hawaii Revised Statutes. In the event all said monthly charges are not received by the Managing Agent on or before the 15th day after said charges are due, the Managing Agent may assess a late payment charge in an amount equal to ten percent (10%) or a percentage determined by the Board of the outstanding monthly charges to the appropriate owner. Owner and any buyer of owner's unit shall be jointly and severally liable for all unpaid assessments in accordance with Section 514A-91, Hawaii Revised Statutes, as amended; provided, that this provision shall not apply to any mortgagee acquiring title pursuant to a foreclosure of the mortgage.

Section 6.2 Maintenance of Condominium Units. Every owner shall at his own expense at all times well and substantially repair, maintain, amend and keep his condominium unit, including, without limitation, all internal installations therein such as water, electricity, gas, telephone, sewer, sanitation, air conditioning, lights, cable television, and all other fixtures and accessories belonging to such condominium unit and the interior decorated or finished surfaces of all walls, floors and ceilings of such condominium unit, 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 loss or damage

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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 or the Managing Agent. Every 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.

Section 6.3 Use of Project.

(a) The residential condominium units of the Project shall be used only for residential purposes by the respective owners thereof, their tenants, licensees, families, domestic servants and social guests, and for no other purpose;

(b) All common elements of the Project shall be used only for their respective purposes as designed;

(c) No owner, tenant or occupant shall place, store or maintain in the halls, lobbies, stairways, walkways, grounds or other common elements of similar nature any furniture, packages or objects of any kind or otherwise obstruct transit through such common elements

(d) Every owner, tenant and occupant shall at all times keep his condominium unit in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority or the Association;

(e) No owner, tenant or occupant shall make or suffer any strip or waste or unlawful, improper or offensive use of his condominium unit or the Project nor alter or remove any furniture, furnishings or equipment of the common elements;

(f) Except as otherwise provided by the federal Fair Housing Act (42 U.S.C. §§3601 et seq.), as amended by the Fair Housing Amendment Act of 1988, and the rules and regulations promulgated thereunder, as the same may be amended from time to time in the future, no owner, occupant or tenant shall erect or place in the Project any building or structure including fences and walls, nor make any

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additions or alterations to any common elements of the Project, nor place or maintain thereon any signs, posters or bills whatsoever, except as otherwise specifically permitted by the Declaration or except in accordance with plans and specifications including a detailed plot plan prepared by a licensed architect if so required by the Board, and also approved by a majority of owners (or such larger percentage required by law or the Declaration) including all owners of condominium units thereby directly affected, as determined by the Board;

(g) No owner, tenant or occupant shall decorate or landscape any entrance, hallways, planting area or lanai appurtenant to his condominium unit except in accordance with standards established by the Board or specific plans approved in writing by the Board;

(h) All occupants shall avoid making noises and using musical instruments, radios, televisions and amplifiers in such manner as may disturb other occupants;

(i) No garments, rugs or other objects shall be hung from the lanais, windows or facades of the Project or otherwise displayed in public view, nor shall such objects be dusted or shaken from the lanais, windows or doors of any condominium unit or cleaned by beating or sweeping on any walkways, patios, entries or other exterior part of the Project;

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

(k) No owner, occupant or tenant shall without the written approval of the Board install any wiring for electrical or telephone installations, machines or air conditioning units, or other equipment or appurtenances whatsoever on the exterior of any building of the Project or protruding through the walls, windows or roof thereof or visible from any point outside of the Project;

(l) Nothing shall be allowed, done or kept in any condominium units or common elements of the Project which would overload or impair the floors, walls, or roofs thereof, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Association; and

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(m) Subject to Paragraph 7(e) of the Declaration, the Developer of the Project may engage in real estate sales activities in such condominium units or on the premises of the Project for the purpose of selling such condominium units. Such activities may continue only until all such condominium units have been initially sold by the Developer.

(n) A maximum of two (2) dogs or cats less than thirty (30) pounds in weight or a reasonable number of other generally recognized household pets which are caged or confined as part of its normal maintenance such as, but not limited to, birds, fish and turtles, may be kept in a condominium unit, provided, however, that notwithstanding the above, sensory impaired owners, occupants, and guests may keep certified guide dogs, signal dogs or other animals upon which a sensory impaired person depends for assistance. No pet shall be kept or bred for any commercial purpose. No livestock, chicken, pigs or farm animals whatsoever shall be allowed or kept in any part of the Project.

If any pet or certified guide dog, signal dog or other animal causes a nuisance or unreasonable disturbance or presents a danger to any person within the Project, the owner shall be given an opportunity to rectify the problem. If the animal continues to cause a nuisance or unreasonable disturbance or continues to present a danger to any person within the Project, the Board shall require the animal, including the certified guide animal or signal animal, to be removed from the Project within a reasonable time period.

Owner may agree in writing to allow any occupant or tenant to keep a pet in accordance with these Bylaws and House Rules. Owner's right to replace a pet upon its death shall be governed by Section 514A-82.6, Hawaii Revised Statutes.

Section 6.4 House Rules. The Board, upon giving notice to all owners in the same manner as herein provided for notice of meetings of the Association and an opportunity to be heard thereon, may adopt, amend or repeal any supplemental rules and regulations (sometimes referred to as the "House Rules") governing details of the operation and use of the common elements not inconsistent with any provision of law, the Declaration or these Bylaws; provided, however, that the initial rules and regulations governing the operation and use of the common elements of the Project shall be adopted by the Developer of the Project.

Section 6.5 Expenses of Enforcement. Every 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 against such condominium unit, foreclosing its lien therefor or enforcing any provisions of the governing instruments, against such owner or any occupant of such condominium unit; provided that if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by the owner as a result of the action of the Association, shall be promptly paid on demand to the owner by the Association.

Section 6.6 Enforcement.

(a) The Board, in its discretion, shall recommend to the owners a list of specific fines and penalties for the violation by any owner of the provisions of the Declaration, Bylaws and/or the House Rules. Upon the affirmative vote or written consent of a majority of all of the voting power of the Association, such fines and penalties shall be binding on all owners and shall be enforceable by the Board as a special assessment. Such a remedy shall not be deemed to be exclusive and the Board shall have other remedies as are provided for by applicable law.

(b) No fine or penalty adopted and ratified pursuant to subsection (a) hereinabove shall be levied without the following procedural safeguards:

(1) A written statement of the alleged violations shall be provided to any owner against whom such charges are made, and such written statement shall provide a date on which the charges shall be heard;

(2) No proceedings under this section shall be brought against any owner unless such owner shall have received a written statement of charges at least thirty (30) days prior to that hearing;

(3) No proceeding shall be brought against any owner more than sixty (60) days after such owner is provided a written statement of charges;

(4) The Board shall appoint a panel of three (3) capable persons (one of whom shall be designated a chairman) who may or may not be

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owners, and who shall hear the charges and evaluate the evidence of the alleged violation;

(5) At such hearing the owner so charged shall have the right to present oral and written evidence and to confront and cross-examine adverse witnesses;

(6) The panel shall deliver to the owner so charged within seven (7) days after the hearing a written decision which specifies the fines or penalties levied, if any, and the reasons therefor; and

(7) The decision of the panel shall be binding upon the owner so charged and shall not be appealable except as otherwise provided for in Chapter 514A, Hawaii Revised Statutes.

(c) If an owner shall correct an alleged violation prior to the hearing date, the Board shall discontinue the proceedings.

(d) This Section 6.6 shall not apply to the non-payment of assessments provided for in Paragraph 12 of the Declaration. This Section 6.6 shall be subject to Part VII, Chapter 514A, Hawaii Revised Statutes, and in any case of a conflict said Chapter 514A, Hawaii Revised Statutes, shall prevail.

(e) The Association and any aggrieved owner shall have the right to enforce the provisions of the Project documents or the decisions made by the Association against any owner who fails to comply with said Project documents or the decisions of the Association. Any owner shall have a similar right of enforcement against the Association.

Section 6.7 Record of Ownership. Every owner shall promptly cause to be duly recorded or filed of record the document conveying his/her condominium unit or other evidence of his or her title thereto and shall file such document with and present such other evidence of his or her title to the Board through the Managing Agent. The Secretary shall maintain all such information together with an accurate and current list of members of the Association which shall include their current addresses and shall also maintain a record of the names and addresses of the vendees of a condominium unit under an agreement of sale, if any. The list shall be maintained at a place designated by the Board and a copy shall be available, at cost, to any member

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of the Association who furnishes to the Secretary or Board a duly executed and acknowledged affidavit stating that the list (a) will be used by such owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to Association matters, and (b) shall not be used by such owner or furnished to anyone else for any other purpose.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Bylaws Amendment. Subject to the Declaration and the Act, these Bylaws may be amended in any respect not inconsistent with provisions of law by a vote or written consent of not less than sixty-five percent (65%) of the owners; provided that each provision required by Section 514A-82, Hawaii Revised Statutes, as amended, shall be embodied in the Bylaws always; and provided further that any proposed bylaws with the rationale for the proposal may be submitted by the Board or by a volunteer owner's committee. If submitted by that committee, the proposal shall be accompanied by a petition signed by not less than twenty-five percent (25%) of the owners as shown in the Association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the Board to the owners at the expense of the Association for vote or written consent without charge within thirty (30) days of the receipt of the petition by the Board. The vote or written consent required to adopt the proposed bylaw shall not be less than sixty-five percent (65%) of all owners; provided that the vote or written consent must be obtained within one hundred twenty (120) days after mailing. In the event that the bylaw is duly adopted, then the Board shall cause the bylaw amendment to be recorded in the Bureau of Conveyances. The volunteer owners' committee shall be precluded from submitting a petition for a proposed bylaw which is substantially similar to that which has been previously mailed to the owners within one (1) year after the original petition was submitted to the Board. This Section 7.1 shall not preclude any owner or voluntary owners' committee from proposing any bylaw amendment at any annual Association meeting.

Section 7.2 Indemnification. The Association shall indemnify every director and officer and his personal representatives against all expenses reasonably incurred by or imposed on him in connection with any action, suit or proceeding to which he may be made a party by reason of

KK000848

being or having been a director or officer of the Association, except in relation to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for negligence or misconduct, and in the absence of such final adjudication, indemnification shall be provided only in connection with such matters as to which the Association is advised by its legal counsel that the person to be indemnified committed no such breach of duty. The foregoing right of indemnification shall not be exclusive of any other rights to which such person may be entitled. The Association shall purchase and maintain directors' and officers' liability insurance with minimum coverage in such amount as shall be determined by the Board. Premiums shall be common expenses of the Association.

Section 7.3 Kalele Kai Documents. An accurate copy of the Declaration, the Bylaws, the House Rules, if any, the Declaration of Protective Provisions (Hawaii Kai Marina), any covenants, conditions or restrictions related to the private park disclosed in Paragraph 21(f) of the Declaration, a sample original conveyance document, all public reports and any amendments thereto, shall be kept at the Managing Agent's office. The Managing Agent shall provide copies of these documents to owners and prospective purchasers and their prospective agents during normal business hours, upon payment to the Managing Agent of a reasonable charge to defray any administrative and duplicating costs. In the event the Project is not managed by a Managing Agent, the foregoing requirements shall be undertaken by a person or entity, if any, employed by the Association to whom this function is delegated.

Section 7.4 Right of Access. The owners shall have the irrevocable right, to be exercised by the Board, to have access to each condominium unit from time to time during reasonable hours as may be necessary for the operation of the Project or for making emergency repairs therein necessary to prevent damage to the common elements or to another condominium unit or condominium units.

Section 7.5 Interpretation. In case any provision of these Bylaws shall be invalid, such invalidity shall not render invalid any other provision hereof which can be given effect. Nothing in these Bylaws shall be deemed or construed to authorize the Association or Board to conduct or engage in any active business for profit on behalf of any or all of the owners.

Section 7.6 Waiver. The failure of the Board to insist in any one or more instances upon a stricter performance of or compliance with any of the covenants of the owner hereunder or to exercise any right or option herein contained, or to serve any notice, or to institute any action or summary proceeding, shall not be construed as a waiver, or a relinquishment for the future, of such covenant or option or right, but such covenant or option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by the owner hereunder, with or without knowledge by the Board of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver, express or implied by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in resolution of the Board.

Section 7.7 Association May Incorporate. All of the rights, powers, obligations and duties of the Association imposed hereunder may be exercised and enforced by a non-profit membership corporation, formed under the laws of the State of Hawaii for the purposes herein set forth by the Association. Said corporation shall be formed upon the written approval of a majority of the voting owners. The formation of said corporation shall in no way alter the terms, covenants and conditions set forth herein and the Articles and Bylaws of said corporation shall be subordinated hereto and controlled hereby. Any action taken by said corporation, which said action is in violation of any or all of the terms, covenants or conditions contained herein, shall be void and of no effect.

Section 7.8 Subordination. These Bylaws are subordinate and subject to all provisions of the Declaration and any amendments thereto and the Act, as amended, which shall control in case of any conflict. All terms herein (except where clearly repugnant to the context) shall have the same meaning as in the Declaration or said Act.

KK000850

The Developer acting as owner of all the condominium units in the Project, hereby adopts the foregoing Bylaws as the Bylaws of the Association of Owners of the Kalele Kai condominium project on behalf of the Association this 20th day of May, 1993.

KAPALELE ASSOCIATES,
a Hawaii limited partnership

By BEDFORD PROPERTIES, INC.
a California corporation
Its General Partner

By _____
Its

STATE OF CALIFORNIA)
) ss.
CITY AND COUNTY OF CONTRA COSTA)

On this 20th day of May, 1993, before me appeared MOHAN VACHANI, to me personally known, who being by me duly sworn, did say that he is the Vice President of BEDFORD PROPERTIES, INC., a California corporation; that said corporation is a general partner of KAPALELE ASSOCIATES, a Hawaii limited partnership; that said instrument was executed in the name and behalf of KAPALELE ASSOCIATES by said corporation as its general partner; that the instrument was signed without the corporate seal of said corporation, and that said instrument was so executed by said corporation by authority of its Board of Directors; and said MOHAN VACHANI acknowledged said instrument to be the free act and deed of said partnership.

Pamela A. Cardon
Notary Public

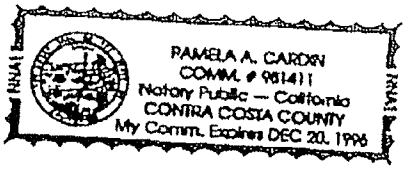


EXHIBIT A

All of that certain parcel of land situate at Maunalua, Honolulu, City and County of Honolulu, State of Hawaii, being LOT A of the "MARINA II-A", as shown on File Plan Number 2064, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 373,108 square feet, more or less.

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII
BUREAU OF CONVEYANCES
DATE Doc 2009-132896
AUG 28, 2009 03:29 PM
DOCUMENT NO.

LAND COURT REGULAR SYSTEM

After recordation, return by mail (X) pickup ( ) Total Pages: 5

CHRISTOPHER SHEA GOODWIN
ATTORNEY AT LAW LLLC
Pacific Guardian Center, Makai Tower
733 Bishop Street, Suite 2300
Honolulu, Hawaii 96813
Tel: (808) 531-6465

Tax Map Key: (1) 3-9-008-030

TENTH AMENDMENT OF THE DECLARATION OF CONDOMINIUM PROPERTY REGIME OF KALELE KAI

WHEREAS, by Declaration of Condominium Property Regime (hereinafter referred to as, "Declaration") recorded at the Bureau of Conveyances of the State of Hawaii (hereinafter referred to as the "Bureau") as Document No. 93-087469 (Condominium Map No. 1865), Kapalele Associates, a Hawaii limited partnership, as developer and lessee under that certain Lease No. 28587 dated October 9, 1990 issued by the Trustees of the Estate of Bernice Pauahi Bishop and recorded at said Bureau as Document No. 90-158696, did submit the property

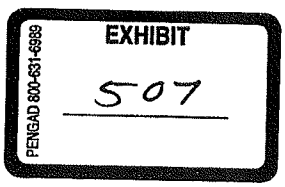


EXHIBIT 3

described in said Declaration to the provisions of the Condominium Property Act, Chapter 514A (now known as 514B), Hawaii Revised Statutes, as amended;

WHEREAS on April 7, 2009, the Revised Amendment of the Declaration of Condominium Property Regime of Kalele Kai and By-Laws of the Association of Owners of Kalele Kai Adopting Hawaii Revised Statutes Chapter 514B was recorded with the Bureau of Conveyances of the State of Hawaii as Document No. 2009-051942, which amended Paragraph 19 of the Declaration to provide the Declaration could be amended upon obtaining of the affirmative vote or written consent of sixty-seven percent (67%) of the owners of the common interest;

WHEREAS on July 16, 2009, more than sixty-seven percent (67%) of the owners of the common interest granted their written consent to approval of this Tenth Amendment to the Declaration;

WHEREAS, in accordance with Paragraph 20(f)(6) of the Declaration, the holders, insurers or guarantors of all first mortgages affected by this Amendment were provided written notice of this proposed amendment delivered by certified mail, return receipt requested, and failed to submit a written response to same within thirty (30) days following receipt thereof;

NOW, THEREFORE, Paragraph 5(b) on Page 8 of the Declaration of Condominium Property Regime of Kalele Kai, is revised to now read as follows (new language appears in **bold underline**):

> "Such condominium units shall enjoy the exclusive use of the boat moorings appurtenant thereto, subject to that certain Declaration of Protective Provisions (Hawaii Kai Marina) and any rules and regulations promulgated thereunder, this Declaration, the Bylaws and any house rules adopted by the Board. **The relocation and/or removal of boat moorings may be undertaken only in accordance with such rules and regulations as may be adopted by the Board**. Notwithstanding any provision of this

Declaration, owners shall have the right to transfer and change the designation of boat moorings which are appurtenant to their respective condominium units by recordation in the Bureau of an amendment to this Declaration and appropriate conveyance document, both signed by the seller and the buyer of the boat mooring, and their respective mortgagees, if any."

FURTHER, Section 17(c) on Page 30 of the Declaration of Condominium Property Regime of Kalele Kai is revised to now read as follows (new language appears in **bold underline**):

"Additionally, subsequent to the issuance of a certificate of occupancy for all buildings in the Project, **except as may otherwise be set forth in this Declaration (and any amendments thereto)**, any additions or alterations to the exterior of condominium units and to their lanais, structures, boat moorings and landscaping in common elements shall be undertaken only upon the review and approval by the Board and the Building Department of the City and County of Honolulu after the written consent of the Association is obtained by the affirmative vote of not less than sixty-seven percent (67%) of the owners and accompanied by the written consent of the holders of all liens affected thereby. **However, the relocation and/or removal of boat moorings shall require only approval of the Board in accordance with such rules and regulations as it may adopt.**"

In all other respects, the Declaration, as amended, is hereby ratified and confirmed, shall be binding upon and inure to the benefit of the parties to it and their respective successors and permitted assigns, and shall remain unchanged by reason of this amendment except as specifically set forth herein. The undersigned officers of the Association hereby certify that the Amendment described herein was adopted with the written consent and/or vote of more than sixty-seven percent (67%) of the owners entitled to vote, and the holders, insurers or guarantors of all first mortgages affected by this Amendment were provided written notice of this proposed amendment

delivered by Certified Mail, Return Receipt Requested, and failed to submit a written response to same within thirty (30) days following receipt thereof

Signed this 27th day of August, 2009.

ASSOCIATION OF OWNERS OF KALELE KAI,
a Hawaii non-profit corporation

By Bradford R Oakes
Printed Name BRADFORD R OAKES
Its President

By
Printed Name
Its Secretary

NOTARY ACKNOWLEDGMENT AND CERTIFICATION

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

On this 27th day of August, 2009, before me personally appeared Bradford R. Oakes, to me known to be the person described in and who executed the foregoing instrument, and did say that [s]he is the President of the ASSOCIATION OF OWNERS OF KALELE KAI, a Hawaii non-profit corporation; and acknowledged that [s]he executed the same as his/her free act and deed of and by authority of the Board of Directors of the ASSOCIATION OF OWNERS OF KALELE KAI.

This TENTH AMENDMENT OF THE DECLARATION OF CONDOMINIUM PROPERTY REGIME OF KALELE KAI consisting of 5 pages, dated August 27, 2009, was subscribed and sworn to before me on August 27, 2009, in the First Judicial Circuit of the State of Hawaii.

KIMBERLY ADLER NOTARY 06-161 PUBLIC STATE OF HAWAII

Kimberly Adler
Notary Public, State of Hawaii
Kimberly Adler
Printed Name of Notary
My commission expires: March 19, 2010

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

On this 27th day of August, 2009, before me personally appeared Merrill N. Werblun, to me known to be the person described in and who executed the foregoing instrument, and did say that [s]he is the Secretary of the ASSOCIATION OF OWNERS OF KALELE KAI, a Hawaii non-profit corporation; and acknowledged that [s]he executed the same as his/her free act and deed of and by authority of the Board of Directors of the ASSOCIATION OF OWNERS OF KALELE KAI.

This TENTH AMENDMENT OF THE DECLARATION OF CONDOMINIUM PROPERTY REGIME OF KALELE KAI consisting of 5 pages, dated August 27, 2009, was subscribed and sworn to before me on August 27, 2009, in the First Judicial Circuit of the State of Hawaii.

KIMBERLY ADLER NOTARY 06-161 PUBLIC STATE OF HAWAII

Kimberly Adler
Notary Public, State of Hawaii
Kimberly Adler
Printed Name of Notary
My commission expires: March 19, 2010

30

R-475 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
Nov 01 2010 08:01 AM
Doc No(s) 2010-165562
/s/ NICKI ANN THOMPSON
REGISTRAR
CONVEYANCE TAX: $5400.00

10 1/1 ZKO

KO

LAND COURT | REGULAR SYSTEM

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

Hitoshi Yoshikawa
c/o 2270 Kalakaua Ave #1508
Honolulu, HI 96815

E#6811014111-IS

Tax Map Key No.: (1) 3-9-008-030-0215 Total Pages: 10

APARTMENT DEED
(WITH BOAT MOORINGS)

PARTIES TO DOCUMENT

GRANTOR: RICHARD FRANCIS ROSIC

GRANTEE: HITOSHI YOSHIKAWA

THIS DEED, is made as of the OCT 22 2010 day of _____, 2010, by and between RICHARD FRANCIS ROSIC, unmarried, of Honolulu, Hawaii, hereinafter called the "Grantor," and HITOSHI YOSHIKAWA, a single man, whose address is c/o 2270 Kalakaua Avenue #1508, Honolulu, Hawaii 96815, hereinafter called the "Grantee;"

EXHIBIT 520 PENGAD 800-631-6989

EXHIBIT 1 YOSHIKAWA PENGAD 800-631-6989

KK000914

EXHIBIT 4

WITNESSETH:

That for TEN AND NO/100 DOLLARS ($10.00), and other valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor hereby grants, bargains, sets over, delivers, and conveys unto Grantee, as ***TENANT IN SEVERALTY***, *in fee simple*:

All of that certain real property and personal property (if any) described in Exhibit "A" attached hereto and made a part hereof.

This conveyance and the warranties of the Grantor are expressly declared to be in favor of the Grantee, **as tenant in severalty, his heirs, devisees, personal *representatives and assigns.***

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, as to said real property, together with all buildings, improvements, tenements, rights, easements, privileges and appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith, unto the Grantee absolutely and according to the tenancy herein set forth, and as to said personal property (if any), absolutely and forever.

SUBJECT, HOWEVER, to the rights of other apartment owners in (1) the common elements and limited common elements described in the Declaration described in said Exhibit "A", to non-exclusive easements through, over and across said common elements and limited common elements for ingress, egress, support and repair as set forth in said Declaration; (2) the other common elements for use according to their respective purposes as set forth in said Declaration; and (3) the apartment described in said Exhibit "A" for support as set forth in said Declaration.

The undivided percent interest in and to the common elements herein conveyed and shall be deemed conveyed or encumbered with said apartment even though such interest is not expressly mentioned or described in the conveyance or other instrument; this provision shall be a covenant running with the land.

Grantor hereby covenants that he is the owner in fee simple of the property described in Exhibit "A" and is the absolute owner of all said fixtures and/or tangible personal property; that he has good right to sell and convey the same; that said property is free and clear of all liens and encumbrances, except as described in said Exhibit "A"; that Grantee shall quietly enjoy said property without lawful disturbance, and Grantor shall WARRANT and DEFEND the same unto Grantee against the lawful claims and demands of all persons, whomsoever, forever, except as aforesaid.

And the Grantee hereby acknowledges that the Grantee is accepting the real property, land and all improvements thereon (including, but not limited to, the roof, walls, foundations, soils, plumbing and electrical systems) and personal property in their present "AS IS" condition, without warranty or representations, expressed or implied.

Grantee does hereby, covenant and agree, for the benefit of the owners from time to time of all other condominium units in the condominium project described in said Exhibit "A", to at all times observe, perform, comply with and abide by all provisions set forth in said Exhibit "A", and such rules and regulations adopted by authority thereof, and does hereby accept and approve said By-Laws.

The covenants made by Grantor and or Grantee, and all rights and benefits conferred hereunder upon Grantor and/or Grantee, shall be binding upon and inure to the benefit of Grantor and/or Grantee, and his heirs, devisees, personal representatives, and assigns.

In interpreting this instrument, the use of any gender shall be construed to include all genders, and the use of any number shall be construed as either singular or plural, as the circumstances may require. The terms Grantor and Grantee, together with any pronouns used in lieu thereof, refer to the singular or plural as the case may be.

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

All covenants and obligations undertaken by two or more persons or entities shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

[END OF TEXT, CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this instrument.

RICHARD FRANCIS ROSIC

"Grantor"

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

On October 22, , 2010, before me personally appeared RICHARD FRANCIS ROSIC, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing document as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such document in such capacity.

Document Date: OCT 22 2010 Number of Pages: 10
Description of Document: Apartment Deed with Boat Moorings

CHARLENE GAMIAO NOTARY PUBLIC No. 05-788 STATE OF HAWAII

Signature:
Name: Charlene Gamiao
Notary Public, State of Hawaii, First Circuit

My commission expires: 12-11-2013

Hitoshi Yoshikawa
HITOSHI YOSHIKAWA

"Grantee"

JAPAN
CITY OF TOKYO
EMBASSY OF THE UNITED STATES OF AMERICA) SS.

I, Leonzo G. Vizcarra
Consular Associate, Consul of the United States of America at Tokyo, Japan, duly commissioned and qualified, do hereby certify that on this ____ day of OCT 19 2010, 2010, before me personally appeared HITOSHI YOSHIKAWA, ~~to me personally known~~, and known to me to be the individual described in, whose name is subscribed to, and who executed the annexed instrument, ~~and being informed by me of the contents of said instrument~~, he duly acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL THE DAY AND YEAR LAST ABOVE WRITTEN.

CONSUL OF THE UNITED STATES OF AMERICA

KK000918

EXHIBIT "A"

FIRST:

Apartment No. 106 of that certain Condominium Project known as 'KALELE KAI", as shown on Condominium Map No. 1865, and described in the Declaration of Horizontal Property Regime recorded June 1, 1993 in the Bureau of Conveyances, State of Hawaii, as Document No. 93-087469, as the same may be amended.

Together With exclusive appurtenant easements as follows:

(a) An exclusive easement to use Parking Space(s) described in the Condominium Declaration as being appurtenant to said apartment and also designated on said Condominium Map.

(b) Non-exclusive easements in the common elements designed for such purposes for ingress to, egress from, utility purposes for and support of said apartment; in the other common elements for use according to their respective purposes.

(c) Exclusive easements to use other limited common elements appurtenant thereto designated for its exclusive use by the Declaration.

SECOND:

An undivided .5906% interest in all common elements of the project and in the land upon which said project is located as established for said apartment by the Declaration, or such other percentage interest as hereinafter established for said apartment by any amendment of the Declaration as tenant in common with the other owners and tenants thereof.

THIRD:

Boat Mooring Nos. 28, 29, 30, 31, 32 and 33 (the Boat Mooring), which said Boat Moorings are limited common element to said Unit 106 in the Project, as conveyed by that certain Boat Mooring Deed dated May 17, 2005, recorded May 18, 2005 in the Bureau of Conveyances, State of Hawaii, as Document No. 2005-099448.

TOGETHER with nonexclusive easement in common with others so entitled for the purposes of navigation and access to the sea, upon over and across Kuapa Pond and all canals and other waterways thereof, as Kuapa Pond and waterways shall exist from time to time.

Being all the property described in the following:

APARTMENT DEED

Recorded	:	May 24, 2001 in the Bureau of Conveyances, State of Hawaii, as Document No. 2001-077882
Grantor	:	LILY S. MORIMOTO HUTTO, Trustee under that certain unrecorded trust entitled The Harimoto Irrevocable Trust dated March 12, 1996
Grantee	:	RICHARD FRANCIS ROSIC, unmarried, as Tenant in Severalty

THE LAND UPON WHICH SAID CONDOMINIUM IS LOCATED IS DESCRIBED AS FOLLOWS:

All that certain parcel of land situate at Maunalua, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

Lot A, area 373,108 square feet, more or less, as delineated on the map entitled "MARINA II-A", which

said map was filed in the Bureau of Conveyances of the State of Hawaii as File Plan No. 2064.

SUBJECT, HOWEVER, TO:

1. Title to all minerals, and metallic mines reserved to the State of Hawaii.

2. As to the portion of the land herein described bordering on the ocean:

   The effect of Sections 205A-41 to 205A-49, inclusive, Hawaii Revised Statutes, as now or hereafter amended, pertaining to shoreline setbacks.

   Any adverse claim of the State of Hawaii based upon the contention that some portion of the land hereinafter described lies seaward of the line of vegetation, pursuant to the ruling of County vs. Sotomura (1973) 55 H. 176, 517 P. 2d 57.

3. Agreement for : Conditional Zoning

   On the terms, covenants and conditions contained therein,

   Dated : July 3, 1986
   Recorded : July 7, 1986 in the Bureau of Conveyances, State of Hawaii, in Book 19645, Page 696

4. PORTION OF EASEMENT 1
   For: Drainage purposes
   As shown on File Plan No. 1910

5. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

   Instrument : GRANT OF EASEMENT
   Granted To : HAWAIIAN ELECTRIC COMPANY, INC.
   For : A perpetual right and easement for electrical transmission purposes
   Dated : November 19, 1987
   Recorded : December 22, 1987 in the Bureau of Conveyances, State of Hawaii, in Book 21453, Page 84

6. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

   Instrument : GRANT OF EASEMENT
   Granted To : CITY AND COUNTY OF HONOLULU
   For : An easement for drainage purposes
   Dated : May 22, 1989
   Recorded : October 11, 1989 in the Bureau of Conveyances, State of Hawaii, in Book 23752, Page 466

7. Covenants, Conditions and Restrictions, but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as provided in an instrument.

   Entitled : DECLARATION OF PROTECTIVE PROVISIONS
   Dated : January 30, 1991
   Recorded : March 1, 1991 in the Bureau of Conveyances, State of Hawaii, as Document

8. Covenants, Conditions and Restrictions, but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as provided in an instrument.

Entitled	:	DECLARATION OF RESTRICTIVE COVENANTS (PRIVATE PARK)
Dated	:	June 3, 1991
Recorded	:	August 30, 1991 in the Bureau of Conveyances, State of Hawaii, as Document No. 91-119313

Said Declaration was amended by the following instruments:

DATED:	RECORDED:	DOCUMENT NO.:
August 11, 1993	October 4, 1993	93-162598

9. EASEMENT 1 (10,688 square feet, more or less)
For: Access and utility purposes
As shown on File Plan No. 2064

10. EASEMENT 2 (453 square feet, more or less)
For: Waterline and meter purposes
As shown on File Plan No. 2064

11. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument	:	GRANT OF EASEMENT
Granted To	:	THE CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii and THE BOARD OF WATER SUPPLY
For	:	A nonexclusive easement to construct, install, maintain, operate, replace and remove underground water pipeline or pipelines
Dated	:	February 12, 1992
Recorded	:	July 30, 1992 in the Bureau of Conveyances, State of Hawaii, as Document No. 92-123720

12. Condominium Map No. 1865, filed in the Bureau of Conveyances, State of Hawaii.

13. Matters in an instrument that, among other things, contain or provide for easements, assessments, liens and their subordination; provisions relating to partition, restrictions on severability of component interest, covenants, conditions and restrictions, provision that no violation thereof and no enforcement of any lien provided for therein shall defeat or render invalid the lien of a mortgage or deed of trust made in good faith and for value, but omitting and covenants or restrictions if any, based upon race color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

Entitled	:	Declaration of Condominium Property Regime
Recorded	:	June 1, 1993 in the Bureau of Conveyances, State of Hawaii, as Document No. 93-087469

Said Declaration was amended by the following instruments:

DATED:	RECORDED:	DOCUMENT NO.:
July 9, 1993	July 22, 1993	93-118375
October 9, 1993	October 13, 1993	93-168809
October 19, 1995	October 24, 1995	95-138259
November 6, 1995	November 8, 1995	95-145671
March 12, 1996	March 18, 1996	96-036721
February 27, 1997	February 28, 1997	97-027432
July 30, 1997	July 31, 1997	97-102485
September 7, 1997	September 5, 1997	97-119745
January 28, 1999	January 29, 1999	99-014464
April 22, 1999	April 22, 1999	99-062694
November 3, 1999	November 9, 1999	99-178918
December 20, 2004	December 30, 2004	2004-264842
December 20, 2004	December 30, 2004	2004-264844
December 20, 2004	December 30, 2004	2004-264846
February 3, 2005	February 11, 2005	2005-028592
May 4, 2005	May 5, 2005	2005-090481
November 9, 2005	November 15, 2005	2005-232955
April 24, 2007	May 1, 2007	2007-078217
April 1, 2009	April 7, 2009	2009-051942

Note: Those recorded amendments to the Declaration of Horizontal Property Regime, amending the assignment of parking stalls to various apartments other than the specific apartment described herein, have been purposely omitted herefrom.

Liens and charges for upkeep and maintenance as provided in the above mentioned Covenants, Conditions and Restrictions, if any, where no notice thereof appears on record.

For information regarding the current status of said liens and/ or assessments
Contact : ASSOCIATION OF APARTMENT OWNERS OF KALELE KAI

14. By-Laws of the Association of Apartment Owners of KALELE KAI, recorded June 1, 1993 in the Bureau of Conveyances, State of Hawaii, as Document No. 93-087470.

Said By-Laws was amended by the following instruments:

DATED:	RECORDED:	DOCUMENT NO.:
January 23, 1997	January 28, 1997	97-012688
April 1, 2009	April 7, 2009	2009-051942

15. Covenants, Conditions and Restrictions, but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as provided in an instrument.

Entitled : DECLARATION OF RESTRICTIVE COVENANTS (PRIVATE PARK)
Dated : June 16, 2000
Recorded : June 26, 2000 in the Bureau of Conveyances, State of Hawaii, as Document No. 2000-087682

16. Covenants, conditions, restrictions, reservations, agreements, obligations, easements and other provisions set forth in Apartment Deed dated March 12, 1996, recorded April 4, 1996 in the Bureau of

Conveyances, State of Hawaii, as Document No. 96-046082, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or natural origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c) or Section 515-6, HRS.

17. Any and all easements encumbering the apartment herein mentioned, and/or the common interest appurtenant thereto, as created by or mentioned in said Declaration, as said Declaration may be amended from time to time in accordance with the law and/or in Apartment Deed, and/or as delineated on said Condominium Map.

TOGETHER WITH all furniture, fixtures, appliances, and other items listed on Purchase Contract with a Reference Date of September 24, 2010 executed by and between the Grantor and Grantee for the sale and purchase of the above described premises, which by reference is incorporated herein.

END OF EXHIBIT "A"

DOCUMENT RECEIPT AND APPROVAL

Purchase Contract Reference Date: 9/24/2010 Property: 1 Keahole Place #106

Seller(s): Richard Rosic Buyer(s): Hitoshi Yoshikawa

Condominium/Subdivision/Homeowner Association Documents:

[✓] Declaration and Amendments
[✓] Current House Rules
[✓] Current and/or Proposed Budget
[✓] Minutes of the last Annual Meeting
[✓] By-laws and Amendments
[✓] Current Financial Statement
[ ] Board of Directors & Association minutes issued during the escrow period
[✓] Approved Minutes of the last three (3) Board of Directors Meeting
[✓] Articles of Incorporation/Association and Amendments
[ ] Inventory of Furniture and Furnishings
[ ] Copy of any and all pending litigation filed by or against the Association and/or its directors that are currently unresolved
[✓] Reserve Study or Summary
[✓] Other: CC&Rs, Insurance Summary
[ ] Other: _____

Reports and Other Documents:

[ ] Preliminary Title Report
[ ] C51 Professional Inspection Report
[ ] C61 Rental. Underline applicable items: inventory/condition form, existing lease, rental management contract, short-term vacation rental reservations, other: _____.
[ ] Survey report
[ ] Termite Inspection Report (TIR)
[ ] Professional Building Permit Package
[ ] Restrictive Covenants (CC&Rs) or deed restrictions
[ ] HAR RR209 - Residential Leasehold Property Disclosure (if leasehold)
[ ] Other: _____
[ ] Other: _____

Note: use HAR forms RR107 (page 1) Receipt of Real Property Disclosure Statement; RR107 (page 2) Receipt of RR105c; if leasehold, RR211 Receipt for Lease/Residential Leasehold Property Disclosure and RR212 Action on Residential Leasehold Property Disclosure.

RECEIPT: The undersigned 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 Buyer or Seller. Buyer/Buyer's Representative acknowledges receipt of the above check-marked items.

Hitoshi Yoshikawa 10/10/2010 5:00 AM/PM
BUYER/BUYER'S REPRESENTATIVE'S SIGNATURE DATE TIME

_____ AM/PM
BUYER/BUYER'S REPRESENTATIVE'S SIGNATURE DATE TIME

APPROVAL: Buyer and/or his attorney have read and hereby approved the documents/reports received.

Hitoshi Yoshikawa 10/10/2010 5:00 AM/PM
BUYER'S SIGNATURE DATE TIME

_____ AM/PM
BUYER'S SIGNATURE DATE TIME

EXHIBIT 5

[redacted]

From: Christopher Shea Goodwin <chris@christophersheagoodwin.com>
Sent: Wednesday, November 21, 2012 3:05 PM
To: udahawaii@msn.com
Cc: Bryan Liu
Subject: Kalele Kai - Proposed Mooring of Boat in Excess of 23 Feet in Length

Dear Mr. Udagawa:

The undersigned is legal counsel to the Association of Owners of Kalele Kai ("Association"), and has been requested by its Board of Directors ("Board") to respond to your inquiry regarding notification by Mr. Yoshikawa of his intent to purchase a new boat in excess of 23 feet in length which he intends to moor at Kalele Kai.

By way of background, the Board does not currently have authority to, "approve" the proposed mooring of any boat at Kalele Kai in excess of 23 feet in length in accordance with express restrictions set forth in the project's Declaration and Bylaws. As referenced in your recent e-mail to Bryan Liu, for interpretation of the previous settlement entered into between Richard Rosic, from whom Mr. Yoshikawa purchased his Kalele Kai townhouse unit, and the Association, it is recommended Mr. Yoshikawa seek competent legal advice from his own attorney regarding this matter. To the extent the Association's previous settlement with Mr. Rosic conveys legal rights and/or benefits to Mr. Yoshikawa, the Board will honor these as permitted by the project's governing documents, however, the Board will not and cannot expressly approve the mooring of any boat at Kalele Kai in excess of 23 feet in length.

Should you, Mr. Yoshikawa or his attorney have any further questions regarding this matter, please do not hesitate to contact the undersigned at any time.

Very truly yours,

Christopher Shea Goodwin

CHRISTOPHER SHEA GOODWIN
ATTORNEY AT LAW LLLC
737 Bishop Street
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Telephone (808)531-6465
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EXHIBIT 9 YOSHIKAWA

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FEDERAL FAIR DEBT COLLECTION PRACTICES ACT NOTICE: In accordance with the Federal Fair Debt Collection

EXHIBIT 541

EXHIBIT 6

Practices Act, if this communication is generated in connection with a debt collection matter, you are advised **this office is attempting to collect a debt, and any information obtained will be used for that purpose.** Debt collection communications are confidential and intended only for the sole use of recipient.

REDACTED

From: Bryan Liu <kalelekai002@hawaii.rr.com>
Sent: Wednesday, November 21, 2012 5:12 PM
To: Maiko Sakata
Subject: FW: Kalele Kai - Proposed Mooring of Boat in Excess of 23 Feet in Length

Hi Maiko,

I am not sure if you were copied on this e-mail. If you were not, please forward this to Mr. Yoshikawa. Based on the last e-mail from KC regarding speaking to an attorney, Kalele Kai's Board President asked the Associations attorney to look further into this matter. The Associations attorney sent the e-mail below that explains the understanding and position of the Association.

Should you have any questions, please do not hesitate to ask.

Aloha,

Bryan Liu, CMCA®, AMS®, ARM®
Resident Manager
Kalele Kai AOAO

One Keahole Place
Honolulu, Hawaii 96825
(808) 395-0431 Office
(808) 395-0264 Fax
KaleleKai002@hawaii.rr.com

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From: Christopher Shea Goodwin [mailto:chris@christophersheagoodwin.com]
Sent: Wednesday, November 21, 2012 3:05 PM
To: udahawaii@msn.com
Cc: Bryan Liu
Subject: Kalele Kai - Proposed Mooring of Boat in Excess of 23 Feet in Length

Dear Mr. Udagawa:

The undersigned is legal counsel to the Association of Owners of Kalele Kai ("Association"), and has been requested by its Board of Directors ("Board") to respond to your inquiry regarding notification by Mr. Yoshikawa of his intent to purchase a new boat in excess of 23 feet in length which he intends to moor at Kalele Kai.

By way of background, the Board does not currently have authority to, "approve" the proposed mooring of any boat at Kalele Kai in excess of 23 feet in length in accordance with express restrictions set forth in the project's Declaration and Bylaws. As referenced in your recent e-mail to Bryan Liu, for interpretation of the previous settlement entered into between Richard Rosic, from whom Mr. Yoshikawa purchased his Kalele Kai townhouse unit, and the Association, it is recommended Mr. Yoshikawa seek competent legal advice from his own attorney regarding this

EXHIBIT 542
PENGAD 800-631-6989

EXHIBIT 7

KK002052

matter. To the extent the Association's previous settlement with Mr. Rosic conveys legal rights and/or benefits to Mr. Yoshikawa, the Board will honor these as permitted by the project's governing documents, however, the Board will not and cannot expressly approve the mooring of any boat at Kalele Kai in excess of 23 feet in length.

Should you, Mr. Yoshikawa or his attorney have any further questions regarding this matter, please do not hesitate to contact the undersigned at any time.

Very truly yours,

Christopher Shea Goodwin

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DISPUTE PREVENTION & RESOLUTION
STATE OF HAWAII
---:---

HITOSHI YOSHIKAWA,) DPR Arb. No. 13-0496-A
Claimant,)
vs.)
ASSOCIATION OF APARTMENT OWNERS OF KALELE KAI,)
Respondent.)

ARBITRATION
Volume V

Taken before Arbitrator Keith W. Hunter at the offices of Dispute Prevention & Resolution, Inc., 1155 Pauahi Tower, 1001 Bishop Street, Honolulu, Hawaii 96813, commencing at 2:00 p.m. on October 3, 2014.

WILLIAM T. BARTON, RPR, CSR NO. 391

APPEARANCES:

Arbitrator
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For Respondent/Claimant
Association of Apartment Owners of Kalele Kai
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Honolulu, Hawaii 96813
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chris@christophersheagoodwin.com

Also present
Bradford Oakes

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THE ARBITRATOR: Let's go on the record. Good afternoon, everybody. I think this is day five of the Yoshikawa, AOAO Kalele Kai arbitration. Counsel, let's make appearances for the record starting with Mr. Revere.

MR. REVERE: This is Terry Revere for the Yoshikawas.

MS. NARUSE: Jana Naruse and John Zalewski on behalf of the respondent AOAO -- association of owners of Kalele Kai with Bradford Oakes present.

MR. GOODWIN: Christopher Goodwin on behalf of counterclaimant association of owners of Kalele Kai.

THE ARBITRATOR: Before we swear the witness and proceed with examination, I received a declaration, Terry, from you from Robert Ingram and I received an objection from Mr. Zalewski by email.

I have not read the declaration. I assume you had a chance to review Mr. Zalewski's objections. Did you want to interpose your arguments on the objection?

MR. REVERE: I will. With regard to the date issue we just got it today. So it is

EXHIBIT 8

dated I guess the 30th, but I only got it today.
And this is -- he's a rebuttal witness. So that's all we have in response to that.
THE ARBITRATOR: John, do you want to add anything further?
MR. ZALEWSKI: If I could just incorporate by reference the email. Those are enumerated objections and also a motion to strike the reference we had called before, the declaration is also not verified.
THE ARBITRATOR: Since I haven't read it yet, I will go ahead and take your arguments under advisement. I would actually like to read it. Is there any possibility, Terry, he would be offered as a live witness by telephone if that were --
MR. REVERE: Yeah, I could try to call him. He's in Florida.
THE ARBITRATOR: So let's proceed with Mr. Liu's testimony. At the break I'll read it. If we can perhaps address it by way of making him available, that might solve everybody's problem. If not, I'll rule on it.

BRYAN LIU,
Called as a witness, having been first duly sworn, was examined and testified as follows:
DIRECT EXAMINATION
BY MS. NARUSE:
Q. Good afternoon, Mr. Liu.
A. Good afternoon.
Q. Please state your name for the record.
A. Bryan Liu.
Q. Mr. Liu, can you state for the record also where you were born?
A. Born in Honolulu, Hawaii.
Q. And could you also provide us with your educational background starting with your high school?
A. High school. Graduated from Castle High School 1979. Went to the University of Hawaii starting in same year. Graduated from University of Hawaii in 1983 with a bachelors of business. Emphasis was in travel industry management.
Q. And could you also give us a detailed description of your professional or employment history since college?
A. Started working at the Hawaiian Regent

Hotel in 1993. I'm sorry, '83. 1983. And started in food and beverage. Did that for about four years. Moved into rooms division. Did front office management, reservation management, senior hotel manager.
So there for about 14 years at Hawaiian Regent. After that I moved to the Imperial Waikiki. Was the room division manager for about a year -- 1997. Promoted to resort manager and stayed resort manager for the next four years until 2002. From 2002 I moved to the Hilton Hawaiian Village in their timeshare operation side. Did that for five years up to 2007.
So 2007 I went to work for Certified Management. Worked there for about a year until the end of 2008. At that point I moved to Kalele Kai as their resident manager. Worked there -- let me back up. I worked at Certified for about a year. Then I worked at Kalele Kai for about four years until about 2013.
In 2013 I moved to Hawaii Kai peninsula as their general manager. Did that for about a year and a half. And then the middle of this year in June of 2014 I moved to Koalani. So I'm there now.

Q. And when you indicated that you lived at Kalele Kai and Hawaii Kai peninsula and Koalani, what were your job titles there?
A. Kalele Kai was resident manager. At Hawaii Kai Peninsula it was general manager and at Koalani it's general manager.
Q. You indicated you had worked at Certified for approximately one year. Were you a management executive there at Certified?
A. We -- they were called account executives. Essentially property managers. And we had -- and I had anywhere from seven to ten associations that I managed.
Q. Are those condominium associations?
A. Yes. I'm sorry. Condominium associations.
Q. Based on what you've told me it sounds like you've had approximately -- or actually I'll ask you, how many years total do you manage condominium associations?
A. Imperial Waikiki was also a condominium association. It had condominium an AOAO there as well as a timeshare piece there. So I would say five, ten, 11, 15 -- maybe 17 years of association condominium management.

Q. Now, at the time that you were at Kalele Kai, I believe you indicated between 2008 and 2013, what were your duties as resident manager there?
A. Managed the operation of the association. Dealt with vendors, dealt with the owners. Enforced rules.
Q. As the resident manager for the association were you required to be familiar with the association's project documents, the declaration, by-laws and house rules?
A. Yes.
Q. And I think you indicated you did some rule enforcement. So was it also part of your job to enforce the project documents on behalf of the association?
A. That's correct.
Q. I want to turn to respondent's Exhibit 503. Are you familiar with Exhibit 503?
A. Yes.
Q. Can you describe what Exhibit 503 is?
A. It's the declaration of condominium property regime for Kalele Kai.
Q. Now, in your experience as resident manager are you -- have you had experience dealing

particularly with section 5 of the declaration? I'll let you turn to it. Page 8 or 7. Section 5 starts on --.
Paragraph 5 starts on page 5. I think it continues all the way through 9.
A. Yes.
Q. So do you recall in your while working at Kalele Kai whether the declaration had a provision in it regarding boat lengths?
A. Yes.
Q. Do you recall what that provision stated?
A. That boats could be no longer than 23 feet in length.
Q. And on page 8 of Exhibit 503 in the middle there there's some underlined language. Is that your understanding of the provision that informs what the 23-foot length restriction is?
A. Yes.
Q. Now, what is your understanding of the declaration's boat length restriction?
MR. REVERE: Objection. Vague and ambiguous. Irrelevant. Calls for expert opinion.
THE ARBITRATOR: Describe what you mean by "understanding."

Q. As resident manager what was his understanding as to what would need to be enforced as to the boat length restriction or to the 23 feet?
MR. REVERE: I still have the same objection.
THE ARBITRATOR: You can answer.
A. That if anyone wanted to get a boat it had to be within that 23-foot length.
Q. And when you state "anyone", do you mean only those persons at the association who -- well, actually I retract that. I want to lay a little foundation.
At the Kalele Kai Marina while you were working there have you observed the marina layout?
A. Yes.
Q. Are there boat moorings, individual boat moorings at the association that are perpendicular versus parallel or side tied?
A. Yes.
Q. Now, when you say that all boat owners would be required to purchase a boat under 23 feet in length, is that your understanding that it applied to perpendicular or parallel boat lengths?
MR. REVERE: Objection. No foundation.

Leading.
THE ARBITRATOR: The other thing I'm going to ask you to do is can you give me a time frame. Because he was there for a particular period of time and his answers I assume are limited to those time frames.
Q. In 2008 when you first came to Kalele Kai and you observed the Kalele Kai Marina did you observe the boat moorings to be in parallel and perpendicular configuration?
A. That's correct.
Q. And during that time that you were there did you also understand that the declaration provision regarding 23 feet length restriction applied to boats that were moored either in the perpendicular or parallel configuration?
MR. REVERE: Objection. No foundation. Calls for a legal opinion.
THE ARBITRATOR: You can answer.
A. Can you restate?
MS. NARUSE: Can you read back the question.
(Record read by the Court Reporter.)
A. That's correct.
Q. To your knowledge has this particular

provision regarding the 23 feet length restriction ever been amended?
MR. REVERE: Objection. No foundation. Vague and ambiguous.
THE ARBITRATOR: You'll have to tighten that up a little bit. Amended?
Q. During the time that you were resident manager at Kalele Kai do you recall whether the declaration was amended as to the 23 feet length restriction?
A. There was an amendment. But it didn't address changing the 23 feet. It was having to do with boat moorings but not specific to changing the 23-foot.
Q. What is your understanding of how to modify or amend a recorded provision of the declaration?
MR. REVERE: Objection. Calls for a legal conclusion. Vague and ambiguous. Irrelevant.
THE ARBITRATOR: I'm going to have to sustain that under legal conclusion.
Q. During the time you were a resident manager at Kalele Kai did the association ever amend the declaration provisions?

A. They have.
Q. And during that time was it your understanding or -- what was your understanding of the procedure involved in order to amend the declaration?
A. You would have to have ownership approval of 67 percent.
Q. Is that the same for amendments to or changes and revisions to house rules?
A. No.
Q. While you were employed at Kalele Kai do you recall how many boats were in compliance -- I'm sorry, how many boats were not in compliance with this 23-foot length restriction?
MR. REVERE: Objection. Vague and ambiguous. Assumes facts not in evidence. Calls for a legal conclusion. Lacking time frame.
THE ARBITRATOR: Sustained as to lacking time frame.
Q. In 2008 when you first started at Kalele Kai do you recall how many boats you observed that were not in compliance --
A. There were --
Q. -- with 23 feet?
A. There were four.

Q. And do you recall the names of those boats or the boat owners?
A. One was Mr. Rojek. Another was Mr. Hung. One was Mr. Rosic and Mr. Peterson.
Q. And when you left Kalele Kai in 2013 do you recall how many boats were larger than 23 feet at the time you left your employment?
A. I believe there were three.
Q. Do you recall which three they were?
A. They were those except Peterson's was gone.
Q. Do you have any understanding currently as to whether any of the boats you listed are currently at Kalele Kai?
A. I don't know.
Q. While the resident manager at Kalele Kai did you participate in board meetings?
A. Yes.
Q. What was the level of your participation in board meetings?
A. I presented reports on the operation, made recommendations to the board for anything that needed to be done around the project.
Q. Now, were you present at board meetings where the attorney was not present?

A. Yes.
Q. During these board meetings at which you were present do you recall if the issue about the declaration's 23-foot boat length restriction ever came up --
MR. REVERE: Objection. Lacking time frame.
THE ARBITRATOR: Rephrase that.
Q. Between the time of 2008 and 2013 when you were employed at Kalele Kai do you recall whether the issue about the declaration's 23-foot boat length restriction ever came up at a board meeting?
A. Yes.
Q. What do you recall?
A. It came up that something needed to be done about being consistent with the boat docks -- the boats that were out there in referencing that they should be in compliance with the declaration.
Q. Now, do you recall --
MR. REVERE: Objection and move to strike unless they are going to clarify how it came up.
THE ARBITRATOR: Why don't you continue with your question. Is this the same line of

questioning, Jana?
MS. NARUSE: Yes.
Q. And do you recall how that issue regarding the 23-foot length restriction came up?
A. I believe an owner mentioned it. I also remember our vice president at the time, Brad Oakes, saying that we should be doing something about it.
Q. And do you recall who was president at the time that this was raised?
A. Merrill Werblum.
MR. GOODWIN: Could you spell his last name for the court reporter.
A. W-E-R-B-L-U-M, I think.
Q. And do you recall about what time frame this was that this issue came up regarding the boat lengths?
A. Probably in 2009.
Q. And do you recall why Bradford Oakes raised this issue as to --
MR. REVERE: Calls for speculation.
THE ARBITRATOR: I'll allow it.
A. I actually don't know why Brad raised that issue.
Q. Are you familiar with the 10th

Amendment to the declaration?
A. Yes.
Q. And if you return to Exhibit 507. The date on that is August 28, 2009. This was during the time that you were present at Kalele Kai, correct?
A. Uh-huh (affirmative).
Q. Did you have any involvement with or any input at all with the drafting of the 10th Amendment?
A. No.
Q. What is your understanding of what the 10th Amendment is?
MR. REVERE: Objection. Irrelevant.
THE ARBITRATOR: You can answer.
A. The 10th Amendment clarified what the owners were responsible for. But it also talked about the responsibility of the owners if they didn't have a boat there, that they would have to within a certain time period put the boat moorings back to the perpendicular location as the condo docs would have showed it.
Q. What was your understanding as to why the 10th Amendment became an issue for the association?

MR. REVERE: Objection. Calls for speculation times 200.
THE ARBITRATOR: I'll allow the question. His understanding in his role as resident manager.
MS. NARUSE: Correct.
A. My understanding was there was an owner who was one of the owners who were in compliance with the 23-foot rule was selling his property. And in order to sell his property he needed to do something to allow that boat to stay there. That's my understanding.
Q. Do you recall which owner that was?
A. That was Mr. Rosic.
Q. Are you aware of any agreements between the association and Mr. Rosic during this time frame?
A. Aside from the 10th Amendment, no.
Q. I show you --
A. Actually there was -- well, referred to it as the Rosic agreement which prompted the 10th Amendment.
Q. If you turn to Exhibit 514. I'll let you review it.
(Pause.)

Q. Does this appear to be, Exhibit 514 appear to be the Rosic agreement that you just referred to?
A. Yes.
Q. And you indicated that the circumstances regarding the 10th Amendment and this agreement were because an owner, Mr. Rosic, was intending to sell his unit and the boat there; is that correct?
A. Yes.
MR. REVERE: I just want to object that there's no foundation for any of this.
THE ARBITRATOR: You might want to establish how he knows of these arrangements and agreements.
Q. How did you come to learn about the Rosic agreement?
A. In conversations with the board.
Q. Was this ever discussed at a board meeting that you were present?
A. I believe it was. But it was in executive session.
Q. Now, in regards to the 10th Amendment did you ever elicit approval from owners regarding passage of the 10th Amendment?

A. No.
Q. Back to the Rosic agreement. What was your understanding of what this agreement had as an effect on an owner's responsibility to replace the boat should --
MR. REVERE: Just -- I'm sorry, Jana, go ahead and finish.
Q. -- Should they sell that particular boat?
MR. REVERE: My objection or just statement I guess is that if he answers this question based upon his previous response, he got all this information from executive session, so it's going to operate as a waiver and we'd renew our request for all executive session communications. They can't say you learned this information from executive session, here is what my take on it is and hide what was actually discussed.
THE ARBITRATOR: Would you rephrase your question, Jana, to limit it to --
Q. Without going into conversations or discussions relating to executive session, what is your understanding of what this Rosic agreement --

MR. REVERE: I just object. There's no foundation. He said he learned the information from executive sessions.
Q. Do you have any understanding of the Rosic agreement or of the details in the Rosic agreement that were discussed outside of executive session?
A. Yeah, what my understanding was, was when after this was done there was a set of rules that came out which is the dock rules which came out of the Rosic agreement. And that was what was put in front of the ownership which is what I'm referring to in terms of my knowledge of what came out of the Rosic agreement.
Q. And so you are familiar with the boat dock rules to the extent that you had to provide them to the association once they were --
A. Well, it was part of -- the answer to the question is yes.
Q. And you distributed those boat dock rules to every member of the association?
A. Yes.
Q. Now, during the time that you were resident manager at Kalele Kai did you come to know the claimant in this case Mr. Hitoshi

Yoshikawa?
A. We met. I don't claim to know him.
Q. Do you recall how many times you interacted with Mr. Yoshikawa?
A. Probably once or twice.
Q. When you first started working at Kalele Kai do you recall whether Mr. Yoshikawa was presently living there?
A. No, he was not.
Q. Do you recall when Mr. Yoshikawa moved to Kalele Kai, if you can recall?
A. Probably in 2010.
Q. And when Mr. Yoshikawa moved to Kalele Kai did he have a boat?
A. When he moved there he bought the house and the boat, Mr. Rosic's boat. So he had the boat.
Q. And that boat, do you recall the name of that boat?
A. That's the Ariel.
Q. And do you recall the size of the Ariel?
A. Not exactly. But I know it was larger than 23 feet.
Q. If I showed you claimant's Exhibit 214,

the first picture there is that the Ariel?
A. Yes.
Q. Skipping the second photo, if you go to the third photo is that the Ariel boat that you identified as being belonging to Mr. Yoshikawa?
A. Yes.
Q. And this is also the same Ariel boat that had been previously owned by Mr. Richard Rosic?
A. Yes.
Q. And you indicated he purchased this boat Ariel when he purchased the house. Did he have any other water crafts that he kept at the property, Mr. Yoshikawa?
A. Yes, there was one more. There was a sailboat which was under the 23-foot declaration rule.
Q. And do you know whether he purchased that sailboat from Mr. Rosic?
A. Yeah, it was together with the purchase.
Q. And do you know whether Mr. Yoshikawa still has the boat Ariel?
A. I don't know.
Q. In regards to the boats did Mr.

Yoshikawa ever express his intent to purchase a new boat to you?
A. He did.
Q. And how did that come about?
A. He wanted to have a meeting with me. And we sat down with he, his girlfriend and I guess his realtor or his interpreter which was Mr. Udagawa.
Q. And do you recall when this meeting took place?
A. It was shortly after they moved in. Not exactly sure what the date was.
Q. Would you say a year, could you identify the year?
A. Within a year of them moving in.
Q. Now, do you know who requested the meeting, if Mr. -- go ahead. Do you know who requested the meeting?
A. Through Mr. Udagawa they wanted to have a meeting.
Q. And what was your understanding of Mr. Udagawa's role on behalf of Mr. Yoshikawa?
A. He was the realtor that sold Mr. Yoshikawa the unit.
Q. This lunch meeting -- was this meeting

intended to discuss real property?
A. No.
Q. So what was your understanding of what Mr. Udagawa's role was for this particular meeting?
A. His clients wanted to buy a larger boat than Ariel.
Q. And had you met Mr. Udagawa prior to this meeting?
A. I did.
Q. And when was that, if you can recall?
A. Probably prior to the sale of the unit. He came to the office to ask questions about the unit. Just general questions about what needs to be done for moving in, moving out, general questions about rules around the property.
Q. Did he ever ask you specifically about rules relating to boats?
A. No.
Q. So prior to this meeting you had no discussions with Mr. Udagawa or Mr. Yoshikawa about the boats or the boat docks at Kalele Kai?
A. No.
Q. Now, as to time frame of this meeting you indicated approximately a year or so after

they had moved in, and I believe they moved in in 2010, do you recall exactly what the lunch meeting was about?
A. Yeah. They wanted to ask me -- actually they wanted to tell me that they were considering buying a bigger boat. And they wanted me to agree that they could do that.
Q. Now, it was your testimony that you believe they wanted you to agree to allow them to buy a larger boat?
A. They were asking permission to, can we buy a bigger boat.
Q. And do you recall what you had told them?
A. I told them that I'm not in a position to approve it and I reminded them of the 23-foot boat rule.
Q. Now, when you say this bigger boat did they describe the boat to you or show the boat to you?
A. They did. They showed me a picture.
Q. Do you recall if Mr. Yoshikawa and Mr. Udagawa showed you a brochure?
A. It was a brochure.
Q. I will show you Exhibit 543.

A. That looks like it.
Q. That looks like the brochure that they brought to your meeting?
A. Yes.
Q. And did you have an opportunity to look through the brochure?
A. Not really.
Q. Now, based on your conversations during this meeting and the brochure that you were presented was it your understanding that Mr. Yoshikawa was intending to purchase a boat larger than the Ariel?
A. I don't know if his intention was to purchase it. But he was considering purchasing a larger boat. I don't know where he was in that process. But he was considering it.
Q. And would you agree that this boat that they showed you the brochure for is larger than the Ariel?
A. Yes.
Q. Do you recall at this meeting ever telling Mr. Yoshikawa that you personally thought it was okay for him to buy this new boat?
A. No.
Q. At any time during this meeting do you

recall giving your approval to Mr. Yoshikawa, Mr. Udagawa or Mr. Michael Sakata to purchase this larger boat?
A. No.
Q. Based on your meeting with them did you believe Mr. Yoshikawa was going to proceed with buying a larger boat?
A. I didn't think he would proceed.
Q. What gave you that impression?
A. Because they kind of ended the conversation when I told them about the 23-foot rule.
Q. So was there any other discussion about after you had informed them about the 23-foot rule that you recall them replying to you about?
A. Yeah, Mr. Udagawa he came back to me and he referred to the, he said he talked to Mr. Rosic and that Mr. Rosic said it was okay to do that, to purchase it.
Q. Was that in person that he told you this or do you recall the communication, type of communication?
A. I believe he sent an email which I replied to.
Q. Did you ever have any phone

conversations that you can recall with Mr. Udagawa?
A. Not that I can recall.
Q. In regards to the email that you described Mr. Udagawa sending you, I'll have you turn to Exhibit 537. I'm sorry, 539. I believe this one is out of order. So if you flip four pages. At the bottom it says three out of six. It has Yoshikawa bates stamped number 000487?
A. Yes.
Q. There is an email in the middle of the page?
A. Uh-huh (affirmative).
Q. Is this the email you were referring to that Mr. Udagawa had written to you?
A. Yes.
Q. Now, as to that particular email did you respond to Mr. Udagawa when he informed you that he spoke to Mr. Rosic and Rosic told him he could put any boat they want there?
MR. REVERE: I'm sorry, the question was did he speak to him?
Q. Did you respond to him, this particular email?
A. I did.

Q. Do you recall your response what you informed him?
A. I told him that I didn't have authority to approve a larger boat.
MR. REVERE: Is this in email or orally?
A. An Email. And I told him that I would pass on information on a request from the board.
Q. During this time that these emails were exchanged, I believe it was around November 21, 2012, did you have a lot of back and forth email communications with Mr. Udagawa?
A. No. Pretty much this was it.
Q. And based on your lunch meeting with them and these back and forth email communications did you have any concerns as to whether Mr. Yoshikawa would proceed to buy a larger boat?
MR. REVERE: Objection. Calls for speculation. Irrelevant.
THE ARBITRATOR: Your question was --
MS. NARUSE: Identifying any concerns --
THE ARBITRATOR: Go ahead and try it again.
Q. Based on your lunch meeting and these

communications did you have any concerns as the resident manager as to whether Mr. Yoshikawa would proceed to buy a boat in excess of 23 feet?
MR. REVERE: Objection. Calls for speculation. His concerns are irrelevant.
THE ARBITRATOR: You can answer.
A. Yes, I had concerns.
Q. And why was that?
A. Because if the boat was bigger than what we currently have, then it wouldn't fall within even the Rosic agreement.
Q. And during this time that these emails were exchanged do you recall whether the association's attorney Chris Goodwin had responded to Mr. Udagawa regarding Mr. Yoshikawa's plan to purchase a new boat?
A. He did.
Q. And what do you recall?
MR. REVERE: Best evidence rule. It's already in evidence.
Q. If you turn to Exhibit 541. Is this the email that you recall receiving from Chris Goodwin to Mr. Udagawa regarding the proposed mooring of a boat in excess of 23 feet in length?
A. Yes, yes.

Q. Now, was this email also as he states here that the board does not have authority to approve the proposed mooring -- I'm sorry, let me reread that.

"By way of background the board does not currently have authority to 'approve' the proposed mooring of any boat at Kalele Kai in excess of 23 feet in length in accordance with express restrictions set forth in the project's declaration and by-laws."

Now, is this also your understanding of the declaration rule regarding boat length?

MR. REVERE: Objection. No foundation. Also objection. I don't object but it goes to executive session and attorney/client communications. They keep on trying to have their cake and eating it too.

THE ARBITRATOR: You can answer. Outside of the context of any executive discussion.

A. Yes.

Q. Now, did you ever have any communications with Mr. Udagawa without Mr. Yoshikawa present?

A. No. Aside from these emails.

Q. And it's your understanding that Mr. Yoshikawa was not included on those particular emails that you exchanged between you and Mr. Udagawa?

A. To my knowledge, no.

Q. Regarding the declaration and amending the declaration do you recall whether the association made any attempts to amend their declarations specifically with regards to the 23-foot length language?

A. No.

Q. After the issue arose or after Mr. Yoshikawa came and according to you asked you for permission to purchase a larger boat, did the association at any time that you are aware of give approval for Mr. Yoshikawa to purchase a larger boat?

A. Not that I was aware of.

Q. Do you recall a proposal to the homeowners to amend the declaration regarding the 23-foot boat length?

A. No.

Q. What was your understanding of why Mr. Udagawa and Mr. Yoshikawa approached you about buying a larger boat?

MR. REVERE: Objection. Calls for speculation. Assumes facts not in evidence.

THE ARBITRATOR: It does calls for speculation. But I'll allow you to answer it.

A. I think they wanted me to approve it despite what they might have already known as to be the rules.

Q. Is it your testimony that you told Mr. Udagawa that the 23-foot length restriction did apply?

MR. REVERE: Objection. Leading.

THE ARBITRATOR: It is.

A. Yeah.

Q. Do you recall how many times you told Mr. Udagawa or Mr. Yoshikawa that the 23-foot length restriction applied?

A. Two for sure.

Q. After all of your interactions with Mr. Yoshikawa and Mr. Udagawa on this particular issue, your lunch, your emails, the email from Chris Goodwin, did you believe that Mr. Yoshikawa would proceed to purchase the new boat?

MR. REVERE: What? Sorry, what is the last part?

Q. Did you believe that Mr. Yoshikawa

would proceed to purchase this new boat?

MR. REVERE: Objection. Irrelevant. Calls for speculation.

THE ARBITRATOR: You can answer.

A. Did I believe he would proceed?

MR. REVERE: Lacking time frame as well.

A. No.

Q. And do you know whether or not Mr. Yoshikawa purchased the new boat?

A. I cannot say if he did or did not because I don't know.

Q. But you do recall informing Mr. Yoshikawa or Mr. Udagawa of the declaration restriction at least twice?

A. Yes.

Q. And also Mr. Goodwin informing Mr. Udagawa via this particular letter at least once?

A. Yes.

MR. REVERE: Objection. Misstating the document. Violating best evidence rule.

Q. Do you recall if Mr. Goodwin had any other communications with Mr. Yoshikawa or Mr. Udagawa regarding the boat length restriction?

A. I don't recall.

Q. Now, as resident manager did you have opportunity to walk the grounds of the project?
A. Yes.
Q. And what was your understanding of the conditions of the Kalele Kai Marina when you -- your physical observations?
A. It was in poor condition. Pretty bad condition.
Q. And approximately time frame was this when you first started at Kalele Kai?
A. Probably, yeah, probably be within a year that I was starting at Kalele Kai.
Q. Were you as resident manager required to inspect the marina?
A. Yes.
Q. And what exactly were you -- what was involved in the inspections of the marina?
A. We essentially looked for the soundness of the marina. Making sure that it was tied together properly, that the anchors were solid, that the whalers were in good shape, that the tie rods were doing its job, that the electrical on the dock was safe.
Q. And how often would you say that you would be required to inspect?

A. I don't know that it was a requirement. But we did it on a pretty daily basis when we walked the property.
Q. Are you familiar with who constructed the marina at Kalele Kai?
A. Yes.
Q. Who is that?
A. It was Bellingham Marine.
MR. REVERE: Objection. No foundation.
THE ARBITRATOR: He answered the question.
Q. During your time as resident manager between 2008 and 2013 did you assist with communications with Bellingham Marine?
A. Yes.
Q. And how so?
A. When it came to getting them to give us a contract, at that point I did coordinate with them getting a contract for the board to review and to sign off on. And then during the construction was there to assist in making sure that they had access, making sure that they were able to complete the job in a timely manner.
Q. Now, when you talk about a contract that you helped review and -- or facilitated

reviewing and signing off on, what kind of contract was that for?
A. It was to basically renovate the dock, put it back up to a condition where it was in safe, good operating condition.
Q. What prompted that particular contract or proposal?
A. We knew that the dock was in bad shape. We also knew that we needed somebody to come out and help us renovate the dock. We actually went out to various contractors to take a look at the dock as it was not in good shape.
And we were kind of fortunate in that after the earthquake and the tsunami Bellingham Marine was on property checking -- they were off island checking another project, and they stopped by knowing that's their dock just to touch bases with us. And that's how the conversation started.
Q. And do you recall, you mentioned the earthquake and tsunami, what year that was?
A. Was that 2011 I believe? The Japan earthquake which prompted the tsunami.
Q. Now, you had indicated that you contacted various other contractors. Do you recall which ones in particular?

A. I know we did get Pacific Divers to submit us some proposals. We had a couple of other people that came out to look at it. But they basically declined to put in a proposal.
Q. Now, you said Pacific Divers did submit a proposal?
A. They did.
Q. Now, has Pacific Divers ever done work at Kalele Kai that you are aware of?
A. They have.
Q. Do you know what work that was?
A. They did a repair of one mooring. And it was also my understanding based on the plans that they actually assisted Bellingham Marine in installing the dock in the very beginning.
Q. And you indicated that they assisted in the repair of one mooring. Do you know, do you recall the outcome of that work?
A. Yes. They repaired it and the next storm it dislodged itself so the repair was not done --
MR. REVERE: I just want to object and move to strike. There's no foundation for any of this.
THE ARBITRATOR: You can answer.

A. So the repair was not done the way it should have been done because it was --
MR. REVERE: Objection. Move to strike. There's no foundation for any of this. Are you an engineer?
THE ARBITRATOR: Restate your question.
Q. In the time that Pacific Divers repaired that one particular mooring what were your observations of the work that Pacific Divers had done?
MR. REVERE: No foundation. Calls for expert opinion.
THE ARBITRATOR: You can answer.
A. After they had completed the fix and the next storm that came the dock literally listed so that it wasn't level to the point where it was basically unsafe to stay on it.
Q. Now, that was your visual observation that the dock was not level?
A. That's correct.
Q. And this was work that had been performed by Pacific Divers?
A. Yes.
Q. When they submitted their proposal to the association do you recall why or any

discussions as to whether or not they would, the association would accept their proposal?
A. Discussion with who?
Q. Let me rephrase that. When Pacific Divers submitted its proposal to do work, do you recall whether or not the association accepted their proposal?
A. No. And let me clarify that. One of the reasons why we didn't even put it in front of the board was because their proposal was vague. When we asked Pacific Divers for more information they did not respond. And we asked them for more information to clarify how they came to the price on the proposal, and they basically disappeared. They never responded. We called them multiple times. We tried to follow up with them multiple times and they didn't reply. So we didn't have enough information to put in front of the board.
MR. REVERE: I want to move to strike the best evidence rule. They are talking about the contents of writings without offering them. None of this is marked as an exhibit. None of this has been produced.
THE ARBITRATOR: You probably should do some background on the evolution of the Pacific

Diver work or proposed work.
Q. When you had observed the boat docks during your inspections needing what you believed was repair, why did you contact Pacific Divers?
A. Because we found out through reading the plans that they were the original installers.
Q. So you contact Pacific Divers and Bellingham Marine and various other contractors. Do you recall which other contractors?
A. No. I don't recall.
Q. Now, you had indicated that Bellingham Marine came out or you were fortunate because Bellingham Marine had come out during the time of the tsunami earthquake in 2011. Did they do an assessment of the docks at that time?
A. They did. They did.
Q. And do you know whether they took photos or did any -- or what was involved in the assessment by Bellingham?
A. They took photos. They walked the dock, looked under it. Basically did a walk through of it.
Q. Now, when they stopped by did you ask them to do any -- when Bellingham stopped by and assessed the dock did you ask them to do anything

specifically?
MR. REVERE: Calls for hearsay.
THE ARBITRATOR: You can answer.
MR. GOODWIN: The question was did he ask Bellingham?
MS. NARUSE: Did he ask Bellingham.
MR. REVERE: That is still hearsay. I don't know why people keep thinking their own statements aren't hearsay. It is still an out-of-court statement being asserted for the truth of the matter asserted. Grumble all you want. We've been through this like five times. It is hearsay. It's an out-of-court statement for the truth of the matter asserted. It doesn't matter if it's the witness's statement. What's the difference? It's an out of court statement.
THE ARBITRATOR: You can answer the question.
A. Can you restate the question.
MS. NARUSE: Restate or repeat?
(Record read by the Court Reporter.)
A. To give us a proposal to fix the dock.
Q. And did Bellingham give you a proposal to fix the dock?
A. They did.

Q. And Exhibit 523. Is that a copy of the proposal that was submitted to you from Bellingham?
A. Yes.
Q. Now, in this proposal is also included Bellingham's assessment of the dock; is that correct?
A. Yes.
Q. Did you have a chance or opportunity to read the assessment of the dock?
A. Yes.
Q. What was your understanding of what Bellingham's assessment was of the marina condition?
MR. REVERE: Objection. Rule 403. It's already in evidence. His understanding is irrelevant.
THE ARBITRATOR: You can answer.
A. It was in poor condition.
Q. Now, did you agree with Bellingham's assessment based on your own observations?
MR. REVERE: No foundation.
THE ARBITRATOR: You can answer.
A. Yes.
Q. Why was that?

A. There was a lot of rust. There was bolts missing. There were whalers that were in bad condition. And of course the one dock or one mooring that wasn't level with the rest of the dock.
Q. And do you recall whether the association got a second opinion regarding the condition of the marina?
A. There was.
Q. Do you recall from who they received this opinion?
A. It was an engineer named Glen Miyasato.
Q. Did you assist in communications with Glen Miyasato?
A. I did.
Q. And how did you assist?
A. Basically getting him access to the property, scheduling when he was going to be there.
Q. Do you have an understanding of what Mr. Miyasato's assessment was of the property?
A. Yes.
Q. What was your understanding?
MR. REVERE: Objection. Hearsay. His report is in evidence. Rule 403. Waste of time.

THE ARBITRATOR: You can answer.
A. It was in poor condition.
Q. And you agree with Mr. Miyasato's assessment of the Kalele Kai Marina based on your own observations?
MR. REVERE: No foundation. Calls for expert opinion.
THE ARBITRATOR: You can answer.
A. Yes.
Q. When the association was in contact with Bellingham regarding a proposal to rehabilitate the marina, did the association request the proposal include anything specific as far as costs?
A. Yes. They wanted the cost broken out between the moorings and the common area walkway.
Q. And did you assist in these communications regarding identifying the association's request to break down the cost with Bellingham?
A. Yes.
Q. And what was your understanding as to why they wanted these costs broken down?
A. Because the moorings would have been the responsibility in terms of repair of the boat

owners, and the common area would be the responsibility of the AOAO. So they needed to delineate who would be responsible for what amount of the total price.
Q. And do you recall how those amounts were calculated?
MR. REVERE: Objection. Calls for speculation. By who?
THE ARBITRATOR: Yeah.
Q. Can you turn to Exhibit 523, I believe. Page 16. It's identified by KK000043 on the bottom.
A. Yes.
Q. Right?
A. Uh-huh (affirmative).
Q. Now, the amounts that are indicated here, it says, "our quoted price for the work described work is:" And below that is walkway $169,300. Fingers $95,400. Is that correct?
A. Yes.
Q. The total cost of the project would be $264,700?
A. Right.
Q. Why did you -- what is your understanding as to why the walkway versus finger

piers or fingers were calculated separately?
A. That's so that the association could pass the costs on for the repair of the moorings or finger piers to the owners of the moorings themselves.
MR. REVERE: I'm sorry. Could I hear the answer again? I didn't hear it. It was based on fingers or moorings? What was it? I'm just asking the court reporter to read it back.
(Record read by the Court Reporter.)
MR. REVERE: I just want to object and move to strike unless he can clarify what it was based on.
Q. Can you identify why the association would allocate a cost of boat dock repairs to specific moorings?
MR. REVERE: There's no foundation for it. The word "mooring" doesn't appear on this document.
Q. Can you identify why the word "fingers" were used to describe a certain cost allocation in this particular price quote?
A. We called them finger piers. I know the declaration calls them moorings. But we refer to them as the same thing, the mooring and the

finger pier as the same thing.
So in our discussion they were the same thing.
Q. Now, were the boat dock owners specially assessed for these boat dock repairs?
A. Yes.
Q. And do you recall how the association calculated those special assessments?
A. Yeah, it was based on the percentage as described from here when you take, for example the walkways was $169,000. So you take a percentage of that represented to the total cost which was allotted to the association and vice versa. That $95,400, take a percentage of that to the total, that was allocated to the homeowners.
Q. And do you recall roughly what percent those were allocated to the association versus the --
A. I can do a quick calculation. I don't remember what the percentage was.
Q. But that's the percentages that were used in order to calculate the special assessment specifically for boat dock owners?
A. Yes.
Q. And were you involved or to what extent

were you involved in determining how those calculations were identified for the association and the special assessment?
A. Involved in? Can you rephrase.
Q. Did you have any input or any sort of, involved in any discussions as to how the calculations would be apportioned to the boat dock owners?
A. Yes.
Q. And how were you involved?
MR. REVERE: Objection. Vague and ambiguous. No time frame. Don't know if it's inside or outside of executive session or meetings with counsel. If it was we'd like all those documents once again.
THE ARBITRATOR: You can rephrase the question. And put it into a time frame too.
Q. When do you recall there being discussions about special assessments for these boat dock repairs?
A. It was, I believe prior to the start of the work.
Q. And do you recall roughly when that was?
A. Probably the end of 2011.

Q. Do you recall when the work began?
A. I think it started in the end of 2012.
Q. And so around the end of 2011 you recall there being discussions outside of executive session or privileged communications as to how these special assessments would be calculated?
A. Yeah.
Q. And what is your understanding -- sorry. I'll rephrase that.
The association's understanding of these calculations were based on the proposed amounts in Bellingham's proposal; is that correct?
A. Yes.
MR. REVERE: Leading. Vague and ambiguous. Also doesn't -- objection to the form of the question. Essentially hasn't established whether there was also discussions inside of executive session that would inform his opinion.
THE ARBITRATOR: He answered already. But I do -- you need to be careful about when --
MS. NARUSE: When exactly?
THE ARBITRATOR: Exactly. Terry has a proper objection with respect to executive session.

Q. Now, you had indicated you were involved with -- in helping the association's determination of these special assessments, correct?
A. I helped them at their direction on what they wanted to see in terms of doing calculations, crunching numbers.
Q. When you crunched those numbers did you base that off of the proposal that Bellingham provided to you?
A. Correct.
Q. And so is it fair to say that you relied on Bellingham's calculations that they proposed for the walkway and the fingers as listed on this page identified as page 2?
A. Yes.
Q. And that was what you based your calculations in order to determine what would be assessed to the association or association responsibility versus boat dock owner responsibility?
A. Yes.
Q. Now, other than allocations for boat dock repair costs, do you recall whether there are any other costs that were allocated to boat dock

owners?
A. Yes, subsequent to that I believe insurance was allocated to them as well.
Q. And you say "subsequent to that." Prior to the boat dock repairs had insurance ever been assessed to the boat dock owners for the Kalele Kai Marina?
A. No. There was actually no insurance on the dock.
Q. And so prior to 2011 when this proposal was made you're saying, your testimony is that there was no insurance on the boat docks at Kalele Kai Marina?
A. That's correct. Well, while I was there.
Q. Did the association ever get -- when did the association get insurance for its boat docks?
A. It was after completion of the dock repairs.
Q. And why did the issue about obtaining insurance, do you recall why that came up?
MR. REVERE: Again, if this goes in executive session or attorney/client materials I think I'm entitled to it.

Q. Let me rephrase. At the time of the boat dock renovations or rehabilitation do you recall who the insurance association's insurance agent was?
A. Yeah. Tracy Wong.
Q. And did you assist in communications on behalf of the association with Tracy Wong?
A. I don't recall specifically with this issue with insurance.
Q. If you look at Exhibit 525. Do you recall this email from Tracy Wong? I believe it's directed to you or sent to you.
A. Okay.
Q. Do you recall receiving this email?
A. Yes.
Q. What did the email say?
A. Let me look.
(Pause.)
A. She essentially said that it's better to repair the docks before getting insurance for the docks.
Q. And at this time or during this time was when the association had already received the bid or proposal from Bellingham Marine; is that correct?

A. What was the Bellingham Marine document?
Q. It's 523.
A. So it appears that, yeah, it appears that we got the document from Bellingham Marine prior to Tracy making this statement.
Q. And this email was dated June 25, 2011. At that time do you recall whether or not the Bellingham Marine repairs had commenced?
A. I don't think it commenced at that time.
Q. Now, you indicated that there was no boat dock insurance prior to the renovation. What was your understanding as to why the association did not have insurance?
A. My understanding was that Tracy advised the board that she was told that the docks were insured by the individual dock owners, and that the association didn't need to get insurance for the docks.
MR. REVERE: I just want to object and moving. I realize it's arbitration. I understand the rules that you're laboring under. But this is multiple levels of hearsay by unknown whoever.
THE ARBITRATOR: It is. I agree. But

that is your answer.
Q. Do you recall whether any other board presidents during the time raised the issue, during the time you were employed at Kalele Kai, raised the issue of dock insurance prior to the rehabilitation?
A. Yes.
Q. Who was that?
A. That was Brad.
Q. Other than Brad were there any other board presidents that you worked with that raised this issue?
A. No.
Q. Now, at this time the association had reports or Bellingham's proposal and assessment as well as Mr. Miyasato's assessment as well as this email from Tracy Wong regarding the condition of the Kalele Kai Marina; is that correct?
A. Yes.
Q. And do you believe that the association relied on these in order to proceed --
MR. REVERE: Objection. Vague and ambiguous. Argumentative. Calls for speculation. No foundation.
THE ARBITRATOR: Yeah, I'm going to

sustain that. I think you have to give a little more detail by what you mean by "believe."
A. Is it your understanding that the association relied on Bellingham's proposal as well as Mr. Miyasato's assessment and Tracy Wong's email in --
MR. REVERE: Same objection and it's compounded. Do you mean Board of Directors, the individual owners or the association members as a whole?
THE ARBITRATOR: Rephrase it. And it is compound. So just do it one at a time.
Q. Is it your understanding that the Board of Directors relied on the proposal from Bellingham in order to proceed with the boat dock repairs?
A. Yes.
Q. Is it your understanding that the Board of Directors relied on the estimate from Mr. Miyasato in order to proceed with the boat dock repairs?
A. Yes.
Q. Is it your understanding that the board also relied on their insurance agent Tracy Wong in proceeding with the boat dock repairs?

A. Yes.
Q. Now, as to the actual special assessment do you recall how much the special assessment cost per boat owner, per boat mooring owner?
MR. REVERE: Objection. Vague and ambiguous.
THE ARBITRATOR: You can answer.
A. It was $2,000 per mooring.
Q. And do you recall whether or not Mr. Yoshikawa was, received a special assessment for his boat moorings?
A. Yes, he did.
Q. Do you recall how many or how much the amount was for his boat moorings?
A. I don't recall. You could probably calculate it based on what he owned.
Q. Do you recall how many Mr. Yoshikawa owned?
A. I'm going to guess. I don't want to guess.
Q. You don't have to guess. Did Mr. Yoshikawa ever contact you to dispute the boat dock repairs special assessment?
A. No.

Q. Did his agent ever contact you about disputing the amount of the boat dock repair special assessment?
A. I don't -- no I don't recall that.
Q. Do you recall ever speaking with Mr. Udagawa or Michael Sakata about the special assessment?
A. I did.
Q. And what was the circumstances regarding your discussion?
A. We knew that they didn't pay it. And when she walked into the office, I reminded her don't forget that there is a special assessment that needs to be paid.
Q. And do you recall, or what was your understanding as to why they didn't pay?
A. Well, she said she never got it. But she also said that all her mail went to Mr. Udagawa. So she never saw the assessment.
Q. Prior to Mr. Udagawa -- I'm sorry, Mr. Yoshikawa putting the special assessment, do you recall whether Mr. Yoshikawa informed you or the board that he would make the repairs to his boat docks on his own?
A. No, not to my knowledge.

Q. Do you recall the association giving owners, boat dock owners an opportunity to make repairs to their own boat docks or boat moorings?
A. Yes, yes.
Q. Can you elaborate as to what exactly the association asked the boat mooring owners to do?
A. The association said that the boat mooring owners can make their own repairs. But prior to them starting their repairs, they would have to submit plans on how they're going to get it repaired to the board.
Q. And do you recall any owners, boat dock owners coming to you or the board to indicate that they would make their own repairs?
A. None that I know of.
Q. Are you still employed by Kalele Kai?
A. No.
Q. And do you have any financial business or personal relationship with the association or its board members?
A. No.
Q. And you don't have any allegiance to any board members or to the association?
A. No.

MS. NARUSE: No further questions.
THE ARBITRATOR: Let's take a short break.
(Whereupon, a recess was taken from 3:22 p.m. to 3:37 p.m.)
THE ARBITRATOR: Back on the record. Mr. Revere on cross.
CROSS-EXAMINATION
BY MR. REVERE:
Q. Bryan, you mentioned you didn't have any allegiance to either side, correct?
A. Allegiance to?
Q. Jana asked you a question you don't have any allegiance to either side, correct? Do you recall her asking you that?
A. Yes.
Q. So do you have a copy of the subpoena that you received to be here today?
A. Not with me today.
Q. Were you subpoenaed?
A. Yes.
Q. Were you asked to be subpoenaed so that you could explain to the board hey, I got to not be here?
A. Yes.

Q. Did you meet with Jana or any of the attorneys in the room ahead of time?
A. Yes.
Q. On how many occasions?
A. Twice.
Q. And when was the first time?
A. I don't recall the date. But it was maybe about a month ago.
Q. And what was discussed?
A. That this case was going to arbitration. Pretty much that was it. And advising me that I would be a witness.
Q. Anything else?
A. No.
Q. Did they -- just make sure you answer out loud so the reporter can get your responses. Did they discuss what questions they were going to ask you during that first meeting?
A. In a general sense of what the topic would be.
Q. Okay. What about during the second meeting? Did they give you more of the specifics you'd be asked about?
A. Yes.
Q. Did they give you a list of questions?

A. No.
Q. What did they tell you?
A. We had a discussion of the questions that Jana would be asking.
Q. How many times did you meet with any of the other attorneys in addition to Jana via telephone or meeting?
A. Just those that I mentioned.
Q. And who was at those meetings?
A. It was Jana and Chris.
Q. Anyone else?
A. No.
Q. Did you get any emails from Jana or Chris or John or anyone from their office?
A. No.
Q. Jana asked if you're familiar with the governing documents of the association. Do you recall that?
A. Yes.
Q. And you said you were?
A. Yes.
Q. And you worked for a total of how many other condominiums in Hawaii?
A. Four.
Q. Four, okay. And you're familiar with

514(b)?
A. Yes.
Q. What's a limited common element?
MS. NARUSE: Objection. Calls for a legal conclusion.
THE ARBITRATOR: You're asking him questions about the declaration and his understanding. He's a resident manager. I'll allow him to answer the question within his range of knowledge as a resident manager.
A. It's something that an owner has access to but is the responsibility of the association to maintain or to fix.
Q. Okay. And you said -- I think your testimony was that an owner, an owner has access to. By that do you mean exclusive use?
A. Yes. Exclusive use.
Q. And your understanding is consistent with 514(b)-39 which defines limited common elements?
A. I got to read the statute.
Q. You mentioned at the tail end of your testimony that the board gave owners an opportunity to repair. We'll just call it -- I don't even know what to call it at this point

because the board's position has changed often. But let's say the finger piers, the owners were given that opportunity, correct?
A. Yes.
Q. How much of an opportunity?
A. I don't recall actually.
Q. Like seven days?
A. At least.
Q. And you'd go by whatever the documentation from CMI shows?
A. From certified?
Q. Yes.
A. Yeah.
Q. You mentioned the marina area was in bad shape before Bellingham started.
A. How long before?
Q. No, you mentioned at least --
A. Yes.
Q. -- when you got there it was in bad shape.
A. Yes.
Q. And it sat there as far as you know without any major repairs going on for decades, correct?
A. Yeah, that's correct.

Q. So the association takes decades to repair the marina but they give owners seven days to make their repairs, correct?
MS. NARUSE: Objection. Argumentative.
THE ARBITRATOR: It is. But you can answer.
A. Well, you know, the dock itself doesn't deteriorate on day one. So by the time I got there it was 15, 16 years later. So when I got there it was my opinion deteriorating and in poor condition.
So I cannot answer your question of that the board took decades to acknowledge the repair.
Q. Well, this repair project that Bellingham undertook, no one else from the beginning no other company, Bellingham or any other company undertook that type of repair as far as you know, correct?
A. Can you restate.
Q. Yeah. Bellingham, at least according to your Pacific Diving, builds this marina area and then there is no major repairs at all until this Bellingham repair that we're talking about, correct?

A. Correct.
Q. Okay. You mentioned that no owners took the opportunity to do their own repairs; is that correct?
A. At the time that the board made the offer, that's correct.
Q. Do you remember an owner, Fratski, did take that opportunity?
A. I don't remember that.
Q. Do you remember an owner named Von Guenthner who objected and said he'd do his own repairs, et cetera?
A. Yes.
Q. Can you go to Exhibit, one of the exhibits Jana asked you about, 525.
This email from Tracy Wong -- are you with me?
A. Yes.
Q. This is an answer but there is no question revealed, is there?
A. I'm sorry. Can you restate the question.
Q. In here she says, "Bryan, thank you for the inquiry."
But there's no inquiry here. If you go

to the bottom your email says, "I understand you've already spoken to Brad. You can disregard my previous email."

Then there is a come back from her that says, "Thank you for your inquiry."

So what was the inquiry if you know?

A. I don't recall.

Q. Do you recall if around this time Brad was soliciting professionals for support for the renovation project?

A. Can you restate.

Q. Do you know if around this time of June of 2011 Brad was trying to get support from the association's vendors and professionals to support the renovation project?

A. I don't know that.

Q. Well, do you know that he was asking Bellingham to write him a letter to support the concept of getting the docks renovated?

A. I don't recall that.

Q. Do you know if Brad ever solicited Bellingham for support with regard to anything regarding the marina area?

MS. NARUSE: Objection. Vague and ambiguous.

THE ARBITRATOR: A little overly broad.

Q. Do you recall if Brad ever asked Bellingham to send him a letter supporting the concept that boats over 23 feet long shouldn't be allowed?

A. I don't recall that.

Q. So you mentioned -- so Tracy Wong this was the insurance agent that blew it by not insuring this dock for years, correct?

MS. NARUSE: Objection. Argumentative.

THE ARBITRATOR: Rephrase that, Terry.

Q. According to Tracy Wong according to this email your testimony the marina area wasn't insured for years, correct?

A. Correct.

Q. So despite that fact -- and Tracy Wong if she asked you would have given her, for example, the declaration, correct?

A. Correct.

Q. And you could have told her what your tax map key was, correct?

A. Correct.

Q. Are you telling me that despite the fact that this agent didn't insure the marina for years, the board relied upon her?

MS. NARUSE: Objection. Vague and ambiguous. Calls for speculation.

THE ARBITRATOR: Let me ask you, Terry, just rephrase it so you can find out how long prior to this she was the agent if he knows.

Q. Do you know was she always the agent since you started?

A. Yes.

Q. Do you know how long it went back before that time?

A. I don't.

Q. Do you know if -- do you know who the commercial general liability was placed with? Was it First Insurance or somebody else?

A. I don't recall.

Q. Do you know, did you ever attend any insurance audits where the insurance company sends somebody to walk around the project?

A. No.

Q. But did you mention in your testimony that the board relied upon Tracy?

A. Yes.

Q. It was your understanding that they did?

A. Yes.

Q. Do you know who Sue Savio is?

A. Yes.

Q. Who is Sue Savio?

A. She is another insurance broker.

Q. Does she do a lot of insurance work for condominiums?

A. To my knowledge, yes.

Q. Do you know if they ever asked her, or any other agent in town, her opinion on this matter?

A. I don't know.

Q. You know, counsel kept on asking you questions like, outside of what you learned in executive session what's your understanding. Can your brain do that if you're told something by Chris Goodwin in executive session, how can you separate out what you know from executive session versus what you hear outside of the executive session?

MS. NARUSE: Objection. Relevance. To the extent it calls for speculation as to whether or not he knows what his brain can and cannot do.

THE ARBITRATOR: He better know what his brain can and cannot do.

MS. NARUSE: If you can answer it.

THE ARBITRATOR: You can answer it.
A. In specific to that memo that was here, I know that that was not discussed in open session.
Q. Sorry, what memo?
A. The Rosic, regarding what I mentioned at first was done in executive session which was the Rosic one. What number is Rosic?
Q. The Rosic agreement?
A. Yes. So I know that. But the other discussions with respect to Tracy Wong that was in open session.
Q. Okay. What was discussed about the Rosic agreement in executive session? Everything you can recall.
MS. NARUSE: Objection. Calls for anything that may have been covered in attorney/client privilege I caution you that if you do respond, anything that was covered in executive session dealing with attorney/client privilege cannot be disclosed.
THE ARBITRATOR: Do you understand that, Bryan?
THE WITNESS: Yes.
THE ARBITRATOR: You can answer. With

that caveat.
A. It was basically to discuss the -- I believe it was just to inform the board what was going on with the Rosic situation. That was it, that I can recall. No specifics.
Q. So Brad said this is what's going on with Rosic?
MS. NARUSE: Objection.
Q. The rest of the board members stared at him, and he went on to the next item of the agenda?
A. I can't remember that.
MS. NARUSE: Objection. He states Brad versus board. Please clarify what you mean. Are you referring to Brad as not the board?
Q. Mr. Oakes. Mr. Oakes said this is what's going on with the Rosic situation, the rest of the board sat there? That's all you can remember?
MS. NARUSE: Objection. Argumentative.
THE ARBITRATOR: Why don't you just ask the question.
Q. Do you recall anything else that was discussed other than Mr. Oakes informing them as to what was going on?

A. No.
Q. You were asked questions from counsel about whether the Yoshikawas made any protest about this special assessment. The special assessments get paid to Certified Management not the resident manager, correct?
A. Correct.
Q. Do you know one way or the other whether when paying their special assessment they did so under protest?
A. I don't know.
Q. You mentioned that -- part of your testimony is that you were concerned because if the Yoshikawas bought a new boat, it would be even larger than what you currently had under the Rosic agreement. Do you recall that testimony?
A. Yes.
Q. What did you mean by that?
A. That it may not fit in the spot that they had, and that it would be in violation of even the Rosic agreement.
Q. And the Rosic agreement has a 69-foot side tie?
A. I don't recall the exact amount.
Q. And so it is your understanding that

the reason for the Rosic agreement was because he had a boat that was longer than 23 feet and that 69-foot side tie?
A. To allow that boat to stay there, yes.
Q. And do you recall also that not only that boat but if he got a different boat or a subsequent owner got another boat, correct?
A. Right.
Q. You mentioned -- so your testimony today is that during this lunch meeting with KC Udagawa, the girlfriend and Mr. Yoshikawa you mentioned the 23-foot length restriction?
A. Correct.
Q. And you told him he couldn't do it. He couldn't bring a boat longer than 23 feet there?
A. I never told him that. I never said that. I told him, I reminded them that there is a 23-foot restriction.
Q. Do you recall if in any of your emails to Mr. Udagawa you mentioned anything at all about telling them about this 23-foot restriction?
A. I believe I did.
Q. But understandably it's a few years ago. You'd go with whatever the emails are that your counsel put in, right?

A. Yes.
Q. You mentioned that you would -- I don't know if it's part of the job description or just because you did it because you felt that you should, but you mentioned that you walked around the Kalele Kai grounds every day?
A. Yes.
Q. And why would you do that?
A. To make sure that the operation is running the way it should be running.
Q. And so if an owner put a, you know, pink flamingo outside their apartment you'd say, hey, no pink flamingos, for example?
MS. NARUSE: Objection. Calls for speculation. Inappropriate hypothetical.
THE ARBITRATOR: You can answer.
A. If it's in violation of the house rules yes, I would flag them.
Q. You'd walk around and you'd want to deal with either violations of the rules, right? Or if something were unkempt and looked bad, correct?
A. Uh-huh (affirmative).
Q. Is that yes or no?
A. That's correct.

Q. Where does the property -- have you ever noticed any boats that didn't look so hot at the Kalele Kai?
MS. NARUSE: Objection as to vague and ambiguous as to "hot." Are you talking temperature?
Q. Boats that looked like crap at the Kalele Kai?
MS. NARUSE: Same objection.
THE WITNESS: That's at least a little clearer.
MS. NARUSE: Are you referring to feces matter?
Q. Why don't you go to the last exhibit in the plaintiff's binder. Exhibit 212?
MS. NARUSE: 212?
Q. I'm sorry, 215.
MS. NARUSE: I object. This is beyond the scope of direct.
THE ARBITRATOR: Well, it's generally within the scope.
Q. I'm sorry, 215. I'm sorry. Bryan, it's 215.
A. Yes.
Q. Do you have a picture of this -- now,

is this boat an extra in like Tropic Thunder or Apocalypse Now?
MS. NARUSE: Objection.
MR. REVERE: What is the objection? I'm asking if this was used in some movie set or something.
MS. NARUSE: Calls for speculation.
Q. Do you know who owns this boat?
A. No.
Q. Have you ever seen this boat?
A. I don't recall.
Q. You don't recall seeing a boat sitting there with at least it looks like a green tarp, a blue tarp and a silver tarp?
A. I don't recall.
Q. Does the number that's identified, this HA3875 do you know whose boat that is?
A. I don't know.
Q. Do you know if this was a friend of Mr. Oakes or an enemy of Mr. Oakes or a neutral of Mr. Oakes?
MS. NARUSE: Objection. Vague as to "friend of Mr. Oakes or enemy." Compound.
THE ARBITRATOR: One at a time.
Q. Do you know if anything was ever done

about this boat at any time in the history of the Kalele Kai?
A. I don't know.
Q. Can you go to Exhibit -- leave that out in front of you and go to the first exhibit of the defense. I think it's 501. Are you there?
A. Uh-huh (affirmative).
Q. Do you know what that's a picture of?
A. Of the dock and a boat.
Q. What boat?
A. I don't know.
Q. You don't recognize this boat?
A. No.
Q. But you're looking at 501?
A. Yes.
Q. Which boat looks to be more unsightly? Exhibit 215 or 501?
MS. NARUSE: Objection. Vague as to "unsightly."
THE ARBITRATOR: Common enough term. Go ahead.
A. 215.
Q. And do you recall the governing documents saying things like, you shouldn't have junk cars sitting in your parking stall, for

example? That's a pretty common thing in associations, right?
MS. NARUSE: Objection. Vague as to "junk cars." Overly broad.
THE ARBITRATOR: You can answer.
A. The declaration doesn't refer to junk cars. They refer to, I believe it refers to something in proper working order.
Q. So do you know of any boat manufacturer that says the proper working order for our boat is to hang three tarps off of it and let barnacles and crap grow underneath the side of the hull?
MS. NARUSE: Objection. Argumentative. Vague and ambiguous as to "barnacles and crap".
Q. The barnacles right here at the water line of this boat?
THE ARBITRATOR: Wait. Before you go further. Terry, his answers to all the questions about this boat is he hadn't seen it, doesn't know whose it is, doesn't know -- can you put it into a place in time as to when it's there?
MR. REVERE: Sure.
Q. So you don't remember this boat?
A. No.
Q. Do you remember Mr. Oakes ever

mentioning anything about a boat that's been sitting there with multiple tarps on it?
A. No.
Q. Do you recognize this area in the foreground based on the condominiums and Kokohead in the distance that this is shot at the Kalele Kai?
A. It seems to be.
Q. Do you see the little island off to the right side of the picture?
A. Uh-huh (affirmative).
Q. Is that a yes?
A. Yes.
Q. Where does the property line for the Kalele Kai end on the marina side of the property?
A. Can you restate?
Q. Where does the condominium's property line end on the marina side as opposed to Safeway or the street, et cetera?
A. It ended at the property line as designated by the surveyor's stake.
Q. What's your understanding as to where that stake is then?
A. It's at the edge of the fence on each side of the wall.

Q. Okay. Who owns the area where the main walkway and the finger pier walkways are located?
A. Who owns that area?
Q. Yes.
MS. NARUSE: Objection. Lack of foundation. Can you describe exactly what area you're referring to?
Q. Let me back up. I'll lay more foundation. You're the property manager there for how many years?
A. Four years.
Q. And you're familiar with the governing documents?
A. Yes.
Q. And you used to walk the property every day?
A. Yes.
Q. So when you would walk down by the marina area did you know hey, do we own this main walkway of the marina or does the marina association or who owns this water that these things are on top of?
MS. NARUSE: Objection. Compound. You're referring to walkways, you're referring to open water.

THE ARBITRATOR: One at a time.
Q. There is a main walkway that you guys call it, right?
A. Uh-huh (affirmative).
Q. Right below that who owns that?
A. Below the walkway?
Q. Yeah.
A. Which is the water?
Q. Yeah.
A. That would be Hawaii Kai Marina.
Q. And did you ever have any understanding as to what allowed that walkway to be in that marina in the first place?
MS. NARUSE: Objection. Calls for speculation.
A. What allowed?
Q. Yeah.
A. I wouldn't be able to answer that.
Q. Are you aware of any easement that the Kalele Kai had, an easement agreement with the Hawaii Kai Marina Association?
A. No.
Q. Did you ever have any -- so you know nothing about the easement then, correct?
A. No.

Q. Is that -- my statement correct?
A. Yes, correct.
Q. So as far as the purpose for this so-called 23-foot rule you would defer to someone like Brad or the developer, correct?
MS. NARUSE: Objection. Refer to Brad as to -- what capacity? Board president? As a representative of the board as a whole? As the association? What are you referring to?
MR. REVERE: As a witness in this case.
Q. You'd defer to him, correct?
A. In terms what the purpose is of the 23-foot rule?
Q. Yeah.
A. I wouldn't defer to him. It's in the documents.
Q. Why is it in the documents?
MS. NARUSE: Objection. Calls for speculation.
THE ARBITRATOR: You can answer.
MS. NARUSE: You can answer.
A. I don't know.
Q. Okay. You mentioned that you discussed the Rosic agreement in executive session?
A. Yes.

Q. Do you recall any discussion with board members outside of the executive session?
A. No.
Q. Was Mr. Yoshikawa ever discussed in executive session?
A. I don't recall.
Q. You told Mr. Yoshikawa you weren't in a position to say one way or the other as to whether the boat would be allowed, correct?
A. Correct.
Q. Can you look at Exhibit 537, please. You wrote this email?
A. Yes.
Q. In this email you don't mention anything about 23 feet, correct?
A. Correct.
Q. Can you go to Exhibit 539, please.
A. Okay.
Q. So consistent with your testimony here today in Exhibit 539 you were just saying, look, I don't have the authority. Do you see that?
A. Uh-huh (affirmative).
Q. And you write here, "I'm here to assist Mr. Yoshikawa with whatever I can."
A. Uh-huh (affirmative).

Q. What did you mean by that?
A. In general as a courtesy to any owner I always offer assistance with whatever I can within my authority to assist anybody with.
Q. Okay. And who would set the limits on your authority?
A. It would be the board.
Q. Did you in your attempt I guess in offering your assistance to Mr. Yoshikawa -- let me back up. Did you ever read any Kalele Kurrents?
A. Yes.
Q. Did you ever look back at any old issues of -- not old issues, old issues of the magazine?
A. Yes.
Q. Did you ever offer to provide any old issues of the Kalele Kurrents to Mr. Yoshikawa?
A. Specifically no.
Q. On your daily walk arounds did you -- I take it you noticed that there were multiple boats longer than 23 feet, correct?
A. Correct.
Q. Did you ever ask -- you understood that Mr. Von Guenthner owned multiple moorings at

Kalele Kai?
A. Correct.
Q. Did you ever ask him what his position was on this 23-foot business?
A. No.
Q. Did you ever tell Mr. Yoshikawa, hey, there's lots of boats that are over 23 feet at the Kalele Kai?
A. No.
Q. Did you ever tell him the board did nothing to enforce any so-called 23-foot rule for years?
A. No.
Q. When you worked -- how long did you work for Certified Management?
A. About a year.
Q. And was Tony Floreki the manager or the president when you were working there?
A. When I started.
Q. Did she hire you?
A. No.
Q. Was she still president when you left Certified Management?
A. Yes.
Q. Did she train you?

A. No.
Q. Who trained you?
A. Alan Takumi.
Q. You mentioned that Bellingham touched base with Kalele Kai in your testimony.
A. Yes.
Q. What does that mean?
A. They came over for a visit while they were in Hawaii checking on some other project.
Q. For a visit?
A. Because they know that their product was at our property. And knowing that there was a tsunami they wanted to double check and see how their dock was holding up.
Q. And as a result of them touching base with the Kalele Kai was three nonbid contracts, correct?
MS. NARUSE: Objection. Argumentative. Misstates or assumes facts not in evidence. It's beyond the scope of direct.
THE ARBITRATOR: Well, I think you should lay some foundation.
Q. Let me back up. You mentioned on direct testimony about this that they touched base with you guys, correct?

A. Uh-huh, yes.
Q. And then they got this repair project that Jana was asking you about, correct?
A. Yes.
Q. Did they get any other contracts with Kalele Kai that you're aware of?
A. Bellingham?
Q. Yes.
A. Not that I'm aware of.
Q. You're not familiar with two other contracts they got?
A. No.
Q. Are you aware of Bellingham, when Jana was getting you ready did she mention that Bellingham found their contracts with Kalele Kai to be sweet?
A. No.
Q. So you mentioned that there was this other Pacific Divers proposal, correct?
A. Yes.
Q. Who makes decisions on whether a contract should be awarded generally at Kalele Kai? Is it the resident manager or the board?
A. The board.
Q. So the Pacific Divers proposal never

even got to the board?
A. Correct.
Q. Do you know if there's a copy of this proposal laying around somewhere?
A. I don't know.
Q. Do you know, do you have any idea why this proposal wasn't made an exhibit by the Kalele Kai?
A. I don't know.
Q. So in any event, so for this contract that you are aware of there was no formal bid process, correct?
A. Correct.
Q. You mentioned there was an owner that did their own repair and it was unsafe?
A. Correct.
Q. Did the board ever order you or the security or the custodians to rope this area off?
A. I don't recall who said to rope it off.
Q. Well, was it ever roped off?
A. Yes.
Q. When?
A. After it started listing.
Q. And from when to when?
A. You want a -- I don't recall what the

dates were.
Q. Was this a finger pier at the far end of one end or the other of the marina area?
A. Correct.
Q. And you don't know from when the roping off started and when it ended?
A. I don't recall.
Q. This incident you talked about this would be something that would be probably be noted in a security log somewhere?
A. Not sure if it --
Q. Well --
A. I'm sure it was noted that it was, yeah, I'm sure it was put in a security log.
Q. So do you know why neither the roping off nor the whatever the incident was that caused it has been made an exhibit in this case?
A. I don't know.
MS. NARUSE: Objection.
Q. Has not been made an exhibit?
MS. NARUSE: Calls for speculation as to why the association's exhibits -- what exhibits were chosen.
Q. I'll withdraw it. You mentioned this incident in your preparation with Jana?

A. I don't recall if we mentioned it.
Q. Were you aware of any computer problems regarding your resident manager computer at the Kalele Kai?
A. No.
MS. NARUSE: Objection. Time frame.
Q. I'll be more specific. Did any attorney or -- well, let me put it this way. Who was your replacement as resident manager, if you know?
A. I don't know. I don't recall his name.
Q. That's fine. Do you know if you ever got any calls from anyone working on behalf of the association about why there was a chunk of emails between you and Bellingham that were missing?
MS. NARUSE: Objection. Vague and ambiguous. Vague as to time frame.
Q. At any time after you left.
MS. NARUSE: Overbroad.
THE ARBITRATOR: You can answer.
A. Can you restate it?
Q. Did anyone working on behalf of the association, attorney, resident manager, employee, property manager, ever talk to you about any missing emails?

A. No.
Q. Do you know if the attorneys in response to a request for production mentioned anything to you, hey, there's a chunk of time where there's no emails between you and Bellingham?
A. No. No communication.
THE ARBITRATOR: When you say "you," you mean this witness?
MR. REVERE: Yes.
Q. This whole business about the 23 feet applies, I think you mentioned on direct, to both parallel and perpendicular tying. Do you recall that testimony?
A. Yes.
Q. Where does that come from?
A. The declaration.
Q. So the declaration talks about 23 feet whether it's perpendicular or parallel to the main pier?
A. It's silent on parallel or perpendicular.
Q. Again, you don't know the reason for the 23-foot rule in the first place, right?
A. No.

Q. Is my statement, correct?
A. Correct.
Q. You mentioned that Jana asked you was there ever any president that said, we need to do something about the fact that we've got boats that are longer than 23 feet? Do you recall that?
A. Yes.
Q. You mentioned Brad was the president who said we had to do something about it, right?
MS. NARUSE: Objection. Misstates the testimony.
THE ARBITRATOR: Sustained. He was vice president.
Q. So Brad the vice president said we've got to do something?
A. That's correct.
Q. Then Brad became president?
A. Correct.
Q. And then he started doing something, right?
A. Correct.
MS. NARUSE: Objection as to "then he started doing something" in reference to Brad versus the board? Acting on behalf of the association?

Q. I'm not saying they didn't go along with it. He was the president that started pushing this, right?
A. Yes.
Q. And you were aware that Brad was a political rival with Richard Rosic, correct?
A. I was not aware of that.
Q. You weren't aware of Brad spouting opinions like oh, Richard Rosic would do whatever he wanted to? He never made any comment to you like that?
A. I don't recall that.
Q. You mentioned getting a second opinion about the need for this renovation, correct?
A. Correct.
Q. And they got the second opinion from Glen Miyasato?
A. Correct.
Q. Did anyone ever ask Glen how much work he does with Bellingham?
A. I don't know.
Q. Can you go to Exhibit 523 which counsel asked you about.
A. Okay.
Q. Are you there?

A. Yes.
Q. Can you go to the same page counsel asked you to.
A. Are you talking about 00043?
Q. Sure. Yes. The little sticky note there do you know whose handwriting that is?
A. The one that's gray?
Q. Yes.
A. I don't know.
Q. It's not your handwriting?
A. I don't think so.
Q. Do you know if it's Brad's handwriting?
A. No, I don't.
Q. Going back up the page it talks about fingers. Do you see that?
A. Yes.
Q. So, now the Yoshikawas, they own a half finger on one side and a half finger on the other side of their mooring area, correct?
A. Yes.
Q. That's your understanding, okay. So what they should be charged then is the cost of one finger, correct?
A. If they own two sides.
MS. NARUSE: Objection.

Q. If they own both sides, right?
MS. NARUSE: Objection as to responsible for cost. Can you lay more foundation?
Q. Counsel just asked you a whole bunch of questions a few hours ago about how you were involved in the calculations, et cetera. So I'm trying to figure out here is it mentions fingers. Then there is walkway and then there's fingers.
The walkway the number says 169. Do you see that? The bottom right above the sticky note?
A. Yes.
Q. It says fingers 95,000, right?
A. Yes.
Q. And they owned, if they own a half finger on one side and half a finger on the other side they should be charged for one finger, correct?
A. Well, I wouldn't -- I wouldn't follow that logic.
Q. Even though -- okay. So what was Bellingham working on when they say fingers? If you know.
A. When they say finger it was those

pieces of the dock that would have been designed to stick perpendicular to the common.
Q. When they were there in the Yoshikawas' area did they go out and start building finger piers?
A. No.
Q. And they described different things that they're doing about triangles and disposing old components. Do you see that under "fingers?" Do you see where it says "fingers" at the top?
A. Uh-huh (affirmative).
Q. It lists those eight items?
A. Uh-huh (affirmative).
Q. In that big open space that's what the Yoshikawas have, half a finger, open space, half a finger, correct?
A. I believe that's correct.
Q. And going back to this document there's parts of this whole marina area that Bellingham thought were fine that got replaced anyway. Do you recall that?
A. What are you referring to?
Q. Okay. Let's go back a few pages. Do you recall -- let me back up here.
Do you recall basically what the board

saying, look, we want to refurbish the whole thing and make the whole thing like uniform and nice?
A. Yes.
Q. And whether it needed to be replaced, a particular component needed to be replaced or not, the board felt there is a common purpose here, and we want to get the whole thing looking good for the whole association, correct?
A. Correct.
Q. Go to page 9 of the document, please, which is bates stamped KK36.
A. Okay.
Q. It says "cleats." Do you see that?
A. Yes.
Q. It says, "The observed galvanized cleats are sufficient. In general they showed minimal deterioration with the occasional cleat that showed surface rust."
Do you see that?
A. Uh-huh (affirmative).
Q. Despite that good condition they were all replaced, right?
A. Correct.
Q. And again for a common purpose of making the place look nice for the whole

association, right?
A. Correct.
Q. Leslie Miller do you remember her?
A. Yes.
Q. You've had to deal with owners before?
A. Yes.
Q. And you seem like a nice guy. I don't mean to put you on the spot. But I'll put you on the spot. There's a bell curve of super easy, nice owners that like bake the resident manager pie, and then there is the other end of the curve of --
MR. GOODWIN: Bake you pies?
Q. Bake you pay pies. Then there are others more problematic. Is Leslie on the more problematic end of owners you had to deal with?
A. No.
Q. No problems at all?
A. No.
Q. So if she said Brad is a bully that's just because Brad's a bully?
A. I wouldn't know.
Q. You had no problems with her?
A. No.
Q. Do you know if Brad had any problems

with her?
A. I don't know.
Q. You have no idea?
A. I have no idea.
Q. Do you ever interact with her at all?
A. I have. While I was there.
Q. Did she ever raise her voice at any board meetings?
A. Not that I know of.
Q. Did Brad ever express his own frustration of dealing with Leslie Miller?
A. Not that I know of.
Q. So Leslie Miller is at the far end of the scale, a wonderful sweet natured person?
A. She's -- I wouldn't go so far as she would bake me a pie.
Q. Okay. So somewhere between --
MR. GOODWIN: Mark that page.
Q. Somewhere between not bake you a pie and you don't remember any problems between her and Brad?
A. That's correct.
Q. None at all?
A. That's correct.
Q. Her and Brad are two peas in a pod?

A. I wouldn't be able to say.
Q. You wouldn't be able to say. Did you watch them during board meetings?
A. Yes.
Q. And you never saw any disputes between the two?
A. They disagreed. But professionally.
Q. She just mildly said, Brad, I disagree with you professionally? That's how she would state it?
A. No. I wouldn't say mildly. But she would disagree. But that's an opinion.
Q. Okay. When was the last time as far as you know the carpet was changed in the resident manager's unit at Kalele Kai?
MS. NARUSE: Objection. Beyond the scope of direct.
MR. GOODWIN: Wow. Way.
THE ARBITRATOR: It is way. I'll allow this question and the assumption that it's going somewhere.
MR. REVERE: It is.
THE ARBITRATOR: Go ahead.
Q. If you know.
A. When was it last changed?

Q. If you know.
A. Probably in 2008.
Q. When did you start working?
A. 2008.
Q. Anything else you recall about the resident manager's unit, the shape it was in?
A. No.
Q. Is it traditional when resident managers check in just like renters, that they fill out a form and that form is kept on record somewhere about what the condition was like?
A. Is it traditional? I don't know.
Q. What do you mean you don't know?
A. I've gone -- I've lived in two different places and that never happened. I wouldn't say it would be traditional. I don't know.
Q. When you checked into the resident manager's unit did you have to fill out a form saying there's scuffs on the walls, stains on the carpet, anything like that?
A. No.
MS. NARUSE: I would object as to this unit you're referring to. He indicated that he lived at three different associations or three

different condominiums.
MR. REVERE: Okay.
Q. Can you go to Exhibit 156, please.
A. Okay.
Q. Do you recognize the four boats in that picture being side tied?
A. Yes.
Q. What's the one that's in the foreground?
A. I believe that's Rojek's boat.
Q. What about the next one down? Do you know whose boat that is?
A. That would be I believe Mr. Nakatani's.
Q. The next one?
A. That would be Mr. Hung's.
Q. And the one after that?
A. Mr. Rosic's.
Q. And you would see those on your daily walk arounds?
A. Yes.
Q. Do you know if the owners of any of those boats ever got a citation?
A. Not to my knowledge.
Q. Did you ever make an inquiry as resident manager like, hey, have we ever fined

these boats or done anything at all about these boats?
A. No.
Q. I'm sorry?
A. No.
Q. You never asked?
A. No.
Q. When you found out when Brad raised the point of we've got to do something about this, did he ever explain to you why he felt that he had to do something?
A. No.
Q. Did you when you looked back at the Kalele Kurrents, did you see reports of how Richard Rosic and other boat owners would have boat days where they would bring folks out on boats and give them fish that they obtained? Did you ever see those?
A. Yes.
Q. Did that appear to be a fun, nice thing to do versus a horrible thing to do?
MS. NARUSE: Objection. Vague and ambiguous. Overly broad. Fun versus horrible thing.
THE ARBITRATOR: Just ask one of them.

Q. Well, did Brad tell you, I don't like these boat days?
A. No.
Q. Was someone complaining about getting free fish that you're aware of?
A. No.
Q. Were the board members who took rides on boats that were longer than 23 feet were they complaining about anything about that process?
A. I wouldn't know. I don't know of any board members taking boat rides.
Q. Did you ever ask, did you understand that Jim Propotnick was on the board for years?
A. Yes.
Q. Did you ever make an inquiry with him of hey, Jim, can you explain the history of how did these boats that are longer than 23 feet come here?
A. We've had conversations.
Q. And he said?
A. He said when Richard was the board president he allowed these boats to become side tied.
Q. Did he mention that it was being allowed before Richard became board president?

A. No.
Q. And did he mention -- did you speak with Colin Kurata about how this happened?
A. I don't recall.
Q. And what does Colin Kurata do for a living?
A. He's an attorney.
Q. Do you recall any discussions with Kurata about how come these boats were allowed to sit here for years longer than 23 feet?
A. I don't recall.
Q. In any of your discussions about words like "laches" ever come up?
A. Like what?
Q. Laches.
A. Laches?
Q. Yes.
A. I don't recall anything about laches.
Q. Do you recall if there was ever any discussion about statute of limitations?
A. No.
Q. Do you recall if there's any discussion with board members that, hey, maybe we just sat on this for too long?

A. No.
Q. With regard to -- do you recall who Brad asked about whether the boat, the marina area could handle a boat longer than 23 feet?
A. I believe -- I don't recall specifically.
Q. What do you recall generally?
A. That he asked Bellingham for an opinion.
Q. Okay. And do you recall Bellingham said you'd have to get an engineer?
A. I don't recall that. I don't recall what their answer was.
Q. Do you recall Brad going to Glen Miyasato?
A. I don't recall.
Q. Do you recall Miyasato refusing to say that the marina couldn't handle this boat?
A. I don't recall any of that.
Q. After Bellingham performed the renovation contract did they come back and do periodic inspections?
A. I don't know. I was not there.
Q. Did anyone tell you that Bellingham's periodic inspections didn't show any damage to the

marina area caused by this boat or anything else?
A. Not aware of that.
Q. Can you go to 66, please. You see how there's this blacked out stuff at the top?
A. Uh-huh (affirmative).
Q. Do you know who this document was sent to in the part that's all blacked out here?
A. No.
Q. You can't tell -- the information up on the left says: from, sent to, subject. You don't know any of that information?
A. Where the blacked out part is?
Q. Who this was -- all that information that's blacked out: to, from, et cetera.
A. No.
Q. Not talking about the body. But even who it was being sent to.
A. No.
Q. Well, again we'd ask counsel at least provide that information about the to and from. I think we're entitled to know that.
Looking at the body of this email it looks like you sent this where says "original message" on the first page?
A. Uh-huh (affirmative).

Q. It says, "from Bryan Liu to Merrill Werblum." Do you see that?
A. Yes.
Q. It says, "confidential attorney/client communication."
Then there's something really short here. Do you see that?
A. Uh-huh (affirmative).
Q. You're not an attorney, correct?
A. I'm not.
Q. And Werblum is an attorney or was an attorney, right?
A. Correct.
Q. And Agnes Sykes from Certified, she's not an attorney, right?
A. Not that I know of.
Q. Going down the email message below that, so do you know -- again, does this help put in context at all as to who got passed on and what this top message was, the blacked out stuff?
A. Say that again.
Q. Does going through this help refresh your recollection as to who you would have passed this email on to?
A. No.

MR. REVERE: Again, Keith, we would ask they be ordered to turn this over or at least let you know who was involved with this because it is just blacked out.
THE ARBITRATOR: Is this --
MR. GOODWIN: This was subject to a previous review. You have reviewed it and you have ruled on this document. It was subject to an objection that Terry did, in fact, pose and Terry did request that this information be produced. You reviewed this email and you have ruled.
THE ARBITRATOR: I will go back and double check because I have that set aside but I believe you're correct.
MR. GOODWIN: If Terry is renewing his objection, that's obviously his right to do so and his request.
Q. Do you have any certificates from CAI or anyone else?
A. Yes.
Q. What do you have?
A. I have a CMCA and AMS.
Q. Is it important that associations enter contracts with licensed contractors?
A. Correct.

Q. And Bellingham didn't have a contractor's license at the time Brad signed the contract, correct?
A. I don't recall.
Q. Well, do you recall that being an issue?
A. To me? No.
Q. Do you recall any communication from Bellingham saying oh, we'll get one don't worry about it?
A. I don't recall any communication.
Q. Do you recall if anyone ever checked and saw did they get a contractor's license before they started this project?
A. I don't recall.
Q. Can you go to Exhibit 85, please. Do you see this document?
A. Uh-huh (affirmative).
Q. This was sent to you and Ed Bronson?
A. Okay.
Q. Who is Ed Bronson?
A. He was the maintenance manager at the time.
Q. And they talk about in the first paragraph that they qualified for a general

engineering license, but cannot represent ourselves as a general contractor until we receive a license.
A. Correct.
Q. So at the time it was entered, the contract was entered into, they weren't licensed?
A. I don't know if they were at the time the contract was entered into. This was probably sent before.
Q. Okay. Do you know if the board signed the contract with the unlicensed contractor or not?
A. I don't know if they were at the time.
Q. Well, do you know -- well, it doesn't look like they were because they are still talking about saying we will do it, right?
A. At this time, yeah.
Q. As of July 15, 2011?
A. Yes.
Q. Can you go to Exhibit 86, please. Do you recall getting this document from Fred Rodrigues and Carl Fratski?
A. Yes.
Q. And they mentioned Pacific Diving, et cetera?

A. Yes.
Q. Do you recall, it mentions concerns that you had. Do you recall what you wrote these guys that prompted the response that we see here?
A. I don't recall what I wrote to them.
Q. Okay. Well, let's go to number 2 for example. It says, "What Hawaii contractor licenses does Pacific Diving industries currently hold?"
Do you see that?
A. Uh-huh (affirmative).
Q. Is that a yes?
A. Yes.
Q. Do you recall asking them that question?
A. Yes.
Q. And so at the time the board is asking questions like that even though the board's contractor apparently wasn't licensed the same month, July 11th they weren't licensed?
A. What's your question?
Q. My question is are you asking these owners hey, tell us the license number for Pacific Diving even though Bellingham is saying they weren't licensed nine days before?

A. Yeah. I mean, we're asking the question, yes.
Q. Okay. Can you go to Exhibit 202, please.
A. 202?
Q. Yes.
A. Okay.
Q. When you were -- this is after your time, February 2014 this year?
A. Okay.
Q. When the attorneys were getting you ready did they mention anything about this report?
A. No.
Q. So they didn't tell you anything about there's no problem that Bellingham could find in 2014 with the docks?
A. They did not mention this report.
Q. Can you go to Exhibit 542. Are you there?
A. Yes.
Q. There is an email from Mr. Goodwin? It looks like you're copied on this. Do you see that?
A. On the bottom?
Q. Yes.

A. Yes.
Q. The second paragraph, first line it says, "The board does not currently have authority to 'approve,'" end quote, and there's quotes on the word "approve"?
A. Correct.
Q. And Mr. Goodwin also mentioned, at least it was his understanding that the board would honor the Rosic agreement, right?
A. Correct.
Q. And the Rosic agreement mentioned the 69-foot side tie?
A. I don't recall that right now. But if it does, okay.
Q. Go on to the next page. And top paragraph there it says that the board "cannot expressly approve the mooring of a boat."
Do you see that?
A. Okay.
Q. Can you go to Exhibit 150, please. Are you at 150?
A. Yes.
Q. Do you know who took these photos?
A. No.
Q. And again, you would agree that the

boat in 150 looks a lot nicer than the boat in 212, correct?
THE ARBITRATOR: 215.
Q. Sorry, 215.
A. Yes.
Q. And you don't know why the board has done nothing about the boat in 215 that you're aware of, correct?
MS. NARUSE: Objection. Lack of foundation. He never testified as to what the board has or has not done as to that particular boat.
THE ARBITRATOR: I'm going to sustain that because that question wasn't ask. Go ahead and ask it now.
Q. Has the board done anything about that boat in 215 that you're aware of?
A. Not that I'm aware of.
MR. REVERE: Thanks. Nothing further.
MR. REVERE: Beyond the scope.
MS. NARUSE: Can we take a quick break?
THE ARBITRATOR: Yes. Take a short break.
(Whereupon, a recess was taken from 4:44 p.m. to 4:48 p.m.)

REDIRECT EXAMINATION
BY MS. NARUSE:
THE ARBITRATOR: Back on the record.
Q. Okay, Bryan. Mr. Revere had ask you previously regarding the Rosic agreement whether it was discussed outside of executive session and you indicated your answer was no; is that correct?
A. Correct.
Q. But was the result of the Rosic agreement discussed outside of the executive session in relation to the boat dock rules and the result of the 10th Amendment?
A. That's correct.
Q. And you referenced Exhibit 537.
A. Okay.
Q. Do you recall Mr. Revere asking you questions about this particular exhibit?
A. Yes.
Q. And he said specifically that Exhibit 537 doesn't mention, you don't mention the words "23 feet" in this email; is that correct?
A. Correct.
Q. But in this exhibit you do mention that the -- it refers to the dock configuration but does not mention boat length; is that correct?

A. Yes.
Q. And why did you mention that?
A. Because that's the truth.
Q. And that's in reference to the Rosic agreement that was attached to the email prior I believe -- I'm sorry, that was attached to this email?
A. Yes.
Q. Now, you had testified previously that you had told Mr. Yoshikawa either directly or through his agent Mr. Udagawa that there's a 23-foot boat length restriction at Kalele Kai?
A. Right.
Q. Have you told any other owners about this 23-foot length restriction?
A. I probably did.
MR. REVERE: Objection. Move to strike. Speculative.
THE ARBITRATOR: You have to sort of say you did or you didn't.
A. I did.
Q. And do you recall any owners in particular that you mentioned the 23-foot length restriction to?
A. There was a new owner. I don't recall

his name. I know he bought one of the townhomes that wanted to buy a boat. But I mentioned to him what the rules were. Which included the 23-foot length.

Q. And did he come to you asking to purchase a larger boat or to purchase a boat larger than 23 feet?

A. I don't recall that.

Q. But your discussion with him regarding this 23-foot length restriction how did that come up?

A. I believe he came to the office to ask what he needed to do to buy a boat.

MR. REVERE: All speculation.

THE ARBITRATOR: This is an unnamed owner or an owner whose name you can't recall, right?

THE WITNESS: Yeah.

Q. Would the name Dan Sabry --

MR. REVERE: Not to lead or anything.

THE ARBITRATOR: Too late. You can answer.

A. Yeah, I believe that was -- yeah, he was the townhouse owner.

Q. And do you recall time frame of when he

approached you about asking about the boat length?

A. It was probably in -- end of 2012 or beginning of 2013. Probably the end of 2012.

Q. And you recall specifically telling him that the 23-foot length restriction would bar him from purchasing a boat larger than 23 feet?

A. Yes.

Q. Counsel had asked you regarding the Bellingham contracts, that there were multiple contracts. Do you recall him asking you about multiple contracts with Bellingham?

A. Yes.

Q. And I believe you had indicated as to the contract that you were aware of that there as no formal bidding process; is that correct?

A. That's correct.

Q. What is your understanding of what a formal bidding process is?

A. Well, you would write an RFP.

Q. What is that?

A. Request for proposal. And you would essentially write up the specifications. And then you would ask vendors to bid on it.

Q. And that wasn't done here in this particular situation regarding the Bellingham

proposal?

A. That's correct.

Q. The boat dock repairs?

A. That's correct.

Q. Do you know why?

MR. REVERE: Objection. Calls for speculation.

THE ARBITRATOR: The door's open. You can answer.

A. Part of the reason we didn't end up doing that was because we had a hard time even getting people to come out to even look at the dock. Prior to all of this going on, we knew that the dock was in bad shape so we wanted to get somebody to come out to look at it to assist us in repairing it. This was way before the tsunami. This is early on in probably in 2009. And we found that we could find really nobody on the island that could repair our dock.

A lot of the vendors that came out said hey, you know what, we're going to have to go back to Bellingham Marine anyway to get the parts to get the items to fix the dock. So it better --

MR. REVERE: I move to strike. This is so beyond.

THE ARBITRATOR: Jana, you've got to put a question in front of the witness.

Q. In regards to the proposal process that took place with Kalele Kai boat dock repair --

MR. REVERE: Objection. Beyond the scope and misstates his testimony. There wasn't a formal proposal process.

MS. NARUSE: He said there wasn't a formal bid process. And I'm asking him about the process they went through in order to obtain bid proposals.

MR. REVERE: That's nonexistent. Assumes facts not in evidence.

MS. NARUSE: He testified that he -- that he went out to contractors various contractors, and he had just testified that people came to his property indicating that Bellingham, they would have to go to Bellingham.

MR. REVERE: My objection remains.

THE ARBITRATOR: I think he also said they couldn't get people to come to the site, right?

MS. NARUSE: Right.

THE ARBITRATOR: Why don't we start with that and look our way to --

Q. Do you know specifically which contractors or vendors you had -- had difficulty coming to the site to prepare a proposal for the boat dock repair?
A. I don't recall.
Q. Now, in Exhibit 542 counsel, Mr. Revere had referenced -- you indicated that you recall saying at least two times that you had stated these 23-foot length restrictions to Mr. Udagawa on behalf of Mr. Yoshikawa; is that correct?
A. Yes.
Q. And do you recall having communications other than Mr. Udagawa and Mr. Yoshikawa about the boat length restriction issue with anybody else other than those two?
A. I don't recall specific conversations.
Q. Do you recall sending an email to also Michael Sakata about this boat length issue?
A. If we are referencing this, yeah. This was attached to what Chris Goodwin had written.
Q. So when counsel references the email that Chris Goodwin had written below, you had forwarded this email to Michael Sakata, correct?
A. Correct.
Q. Why did you do that?

A. Because she was asking about -- I believe she -- I don't know exactly why I did that. But she probably had asked.
MR. REVERE: Objection. Speculation.
Q. But it's your understanding that you had sent this email to Ms. Maiko that forwarded Chris's email below regarding the board's response to the proposed mooring of boats in excess of 23 feet in length?
A. Yes.
Q. It's your testimony that you had told Mr. Udagawa at least two times about the 23-foot length restriction, and that you had multiple emails exchanged between either Mr. Udagawa, Mr. Sakata -- not Mr. Yoshikawa, regarding this particular issue?
A. Yes.
Q. And this was all prior to them purchasing a new boat; is that correct?
A. Correct.
Q. Counsel had asked you questions regarding the licensing of Bellingham as to contractor's license. Do you recall that?
A. Yes.
Q. And do you recall whether or not

Bellingham obtained their license prior to commencing work?
A. I'm not aware that they did.
Q. One last thing regarding, counsel had asked you about particular finger piers being roped off. Do you recall that?
A. Yes.
Q. And do you recall which unit or which owner that particular finger pier belonged to?
A. Yeah, it was the Fratskis.
Q. And then you had previously testified that that particular repair, there were repairs done by Pacific Divers; is that correct?
A. Correct.
Q. Do you know who ultimately repaired or made any changes to that particular finger pier?
A. Yeah. It was Mr. Von Guenthner actually did the repairs under Pacific Divers --
Q. And then?
A. -- license.
Q. So Mr. Von Guenthner did the repairs as a -- under Pacific Diver's license; is that correct?
A. Yes.
Q. Now, you had indicated that after the

Pacific Diver repairs were completed that it still had problems after the first storm?
A. Yes.
Q. Do you know who ultimately repaired those issues concerning the tilting? I forgot the term you used, I apologize.
A. The listing.
Q. Listing.
A. Yes. It was Bellingham.
Q. And to your knowledge has there been any other issues -- during the time that you were resident manager do you know of any other issues relating to that particular finger pier after Bellingham performed its maintenance?
A. No.
MS. NARUSE: Nothing further.
RECROSS-EXAMINATION
BY MR. REVERE:
Q. This business of it being roped off, et cetera, there's no photographs of that that you're aware of?
A. We took photos. I don't know where they went.
Q. Nothing has been presented to the arbitrator about how this whole incident happened,

et cetera?
A. I don't know.
Q. As far as you know?
A. I don't know.
Q. Your counsel just met with you during the break outside, correct?
A. Correct.
Q. To tell you what questions she was going to ask you?
A. Correct.
Q. Can you go to 537 that she just asked you about. What's a side tie, first of all?
A. It's when the boats are tied parallel to the common area walkway.
MR. REVERE: Can I have one quick second?
THE ARBITRATOR: Yes.
(Discussion off the record.)
(Whereupon, a recess was taken from 5:03 p.m. to 5:04 p.m.)
MR. REVERE: Okay.
Q. If Mr. Von Guenthner were to say that there was some cones there and he actually fixed it and then you or your staff removed the cones, does that sound consistent --

MS. NARUSE: Objection. Calls for speculation.
Q. -- with your recollection?
MS. NARUSE: Improper hypothetical.
THE ARBITRATOR: Is this hypothetical?
MR. REVERE: No.
Q. Let me ask you this. Do you recall at any time a cone being placed by the Fratski dock?
A. Yes.
Q. Do you recall Von Guenthner making repairs and then you or your staff removed the cone?
A. Yes.
Q. Let's go to 537.
A. Okay.
Q. If you go to --
MR REVERE: I would prefer if Mr. Zalewski could keep his attorney/client communications to himself.
THE ARBITRATOR: You've been asking for them.
MR. REVERE: Those. Not these.
THE ARBITRATOR: You finally got them.
MR. ZALEWSKI: Everybody has a threshold, Terry.

MR. REVERE: Me too.
Q. Can you go to the first page of 537, please.
A. Okay.
Q. In the second paragraph of this letter it mentions six lines down it mentions 69-foot side tie for his boat. Do you see that?
MS. NARUSE: Terry, are you still on the first page?
MR. REVERE: Yes. First page second paragraph --
MS. NARUSE: The email?
MR. REVERE: Exhibit 537.
MS. NARUSE: The first page is the email.
MR. REVERE: I'm sorry. I mean the letter, sorry.
Q. First page of the letter.
A. Okay.
Q. It mentions the 69-foot side tie for his boat. Do you see that?
A. Yes.
Q. And the board was well aware that his boat was longer than 23 feet. That was the Ariel boat.

A. Okay.
Q. Do you recall that?
A. In reference to this document? Or in general?
Q. Do you recall that he had a boat called the Ariel?
A. Yes.
Q. And it was longer than 23 feet?
A. Correct.
Q. And it was side tied?
A. Correct.
Q. And the space was 69 feet long?
A. Okay.
Q. Do you recall that?
A. Yes.
Q. And do you see, go down to the "whereas" clauses.
A. Okay.
Q. Let's see. Three whereases down.
A. Okay.
Q. It says, "Whereas, pursuant to board approval Mr. Rosic modified the six boat docks to accommodate a 69 side tie for his boat."
Do you see that?
A. Correct.

Q. And that was your understanding, correct?
A. Uh-huh (affirmative).
Q. Is that a yes?
A. Yes.
Q. So you mentioned that there was this owner Doctor Sabry, and he went up to you and you told him you can't put a 23-foot boat here?
A. Correct.
Q. So with him you were more -- did you tell him hey something -- let me back up.
So you didn't tell him what you told Yoshikawa, correct?
A. No, I did.
Q. Well, according to your earlier testimony you said, look, I can't approve it, it's a board decision, all that other good stuff. With Sabry you just said, you can't do it.
A. No, I also told Udagawa to Yoshikawa that there's a 23-foot boat length regulation. So I told the same thing to Sabry.
Q. Do you want to go by your testimony right now or your testimony from a couple hours ago?
A. What did I say before?

MS. NARUSE: He's still consistent with what he stated.
MR. REVERE: Again, I ask Mr. Zalewski to try to control himself.
MR. ZALEWSKI: Terry, you're just arguing every question.
MR. REVERE: Good thing we have an Arbitrator and a very competent counsel who is handling the witness, John.
Q. My question is there is no email from you telling Yoshikawa, no, you can't do it because there is a 23-foot restriction, correct?
A. Correct.
Q. And your earlier testimony was, I am not in the position as the resident manager to approve this or disapprove it, correct?
A. Longer than 23-foot. Yes.
Q. So okay. And what you told Sabry is 23 feet can't be done?
A. Longer than 23 feet can't.
Q. Cannot be done, right?
A. Okay. I don't remember specifically what I told him. But I reminded him of the 23-foot rule.
Q. Who "him" Sabry?

A. Sabry.
Q. And so you understand that now Sabry's wife is on the board?
A. I don't know that.
Q. You understand Sabry appears to be a little miffed that he doesn't have a bigger boat now?
A. I don't know that.
Q. Did you ever have any discussions with Brad since you left Kalele Kai?
A. Yes.
Q. Did he mention anything to you about Sabry?
A. No.
Q. You mentioned you had a, quote, "hard time getting people on the island to repair the marina area," correct?
A. Correct.
Q. Where's Bellingham?
A. He's off island. They're off island.
Q. What does that have to do with anything?
A. I don't know.
MS. NARUSE: Objection.
Q. Well, because you mentioned that oh, we

had such a hard time finding anyone on the island. Bellingham isn't on the island. So that doesn't mean anything, right?
A. I don't know what you're trying to get at.
Q. I'm trying to get at your testimony where you said, it was really hard for us to find someone on the island. Bellingham isn't on the island?
A. Correct.
Q. And you said you're having a hard time, but you didn't send out the request for proposals to anybody. So how do you know how hard a time you would have? Isn't that the first step? You send out the request for proposals, then it's documented, so then you don't have someone like me coming in and saying why didn't you do a bidding process?
MS. NARUSE: Objection. Argumentative.
THE ARBITRATOR: You can answer.
A. What is the question?
Q. The question is why didn't you do a formal request for proposal, as far as you know, or if this was all Brad's decision?
MS. NARUSE: Objection as to the last

question.
THE ARBITRATOR: One question at a time.
Q. Who made the decision not to do a request for proposal formal bid process?
A. I don't know that anybody made a formal decision not to do it.
Q. Okay. It just sort of organically grew that well, Bellingham's going to get the contract, no bid?
A. I don't know that it organically grew. But it kind of transitioned that way.
Q. And you do know that Pacific Divers expressed an interest, correct?
A. Correct.
Q. And you know that Pacific Divers wanted letters of recommendation from you, correct?
A. I don't recall that.
Q. Go to Exhibit 179, please.
A. Okay.
Q. Do you recall getting this email from Derrick Ames?
A. Okay.
Q. Do you recall getting it?
A. Yeah. It's here.

Q. And he's asking you in the second paragraph for a letter of recommendation or a testimonial, et cetera. Do you see that in the second paragraph?
A. Yes.
Q. And then Brad asked for a letter from Bellingham to help him out, correct?
A. I don't know.
Q. Do you know if Brad ever told Bellingham -- let me back up. Do you recall if Brad ever told Bellingham, we don't want large boats here at Kalele Kai?
A. I don't know.
Q. Do you recall if Brad ever said that before the results of this amendment that counsel is referring to earlier went through?
A. I don't know.
Q. So Brad didn't tell you about his efforts to try to get backup for his position from Bellingham?
A. No.
Q. Can you go to Exhibit 203, please. Did counsel discuss, I know you're not copied on this internal email from Bellingham, but did counsel discuss this with you?

A. No.
Q. Okay. When was your last day on the job? Do you remember the month?
A. February 2013.
Q. In June of -- well, in February 2013 were you aware of the fact that Brad didn't want boats over 23 feet long at Kalele Kai?
A. No.
Q. Did he ever tell you that?
A. No.
Q. He said oh, I'm perfectly happy with these 23-foot boats, let's go take a ride with Richard Rosic and go fishing?
A. He never said that.
MS. NARUSE: I object to the extent that Brad's not on trial here. It's not the subject of Brad Oakes as the respondent. It's the association. I don't think anything in direct or cross even covered this.
Q. What's the job of the president of an association?
A. Is to manage the board.
Q. And is the CEO of the project?
A. You could call it that.
Q. Going down -- are Bellingham, do you

know of any reason they would have to lie to each other in internal emails that you can think of?
A. No.
Q. Can you go down in the fourth paragraph here.
A. Okay.
Q. It says, "Brad contacted BMI in June of 2013 and relayed Kalele Kai Association did not want that big a boat on their property and could BMI support their denial of the tenant request."
Do you see that?
A. Yes.
Q. Did Brad ever tell you something similar, that we don't want Yoshikawa's boat here since it's longer than 23 feet?
A. No.
MR. REVERE: Nothing further.
MS. NARUSE: Nothing further.
THE ARBITRATOR: Okay. Thank you Bryan.
(Witness excused.)
MR. REVERE: I didn't hear from Ingram. I did hear from Dirk who is ready to testify as a rebuttal witness on what happened with that Bronson thing. It's probably limited value but

he's ready to testify as a rebuttal witness.
THE WITNESS: Off the record for a minute.
(Discussion off the record.)
THE ARBITRATOR: Back on the record.
MR. ZALEWSKI: So I'd like to incorporate by reference my email this morning to the Arbitrator which was sent after receipt of the Terry's email which attached, email attached a declaration that was dated I believe September 30th. So we got that this morning from, I don't even have the declaration in front of me.
THE ARBITRATOR: Robert Ingram?
MR. ZALEWSKI: Robert Ingram. In any event, the email that I sent objects on several enumerated grounds and moves to strike the declaration. I think we just learned or Terry represented that he just got an email from Mr. Ingram saying that he's available to testify.
What I was trying to articulate is this was one -- this at least relates to at least one of the objections that we have. This was for some time considered to be the final day of evidence in this case. Obviously the hearing has spanned several weeks. It's been very expensive for all

the parties.
And I think to offer this witness up as a witness even if it's like next week, is effectively renders it -- effectively we're unable to cross-examine him. Because if we are we'd be consenting to a further extension of this already delayed arbitration.
But that is just one of several objections. All the other objections, you know, are stated. And so I guess, Keith, if you're going to -- and I would understand and respect any decision you make. But if you're going to admit it over objections and have it go to weight, that's fine. I would just like to have our email submitted and made part of the record. I think obviously it's filled with hearsay.
Mr. Ingram's declaration is hearsay. It is a declaration. It's unsworn. We don't even know if it is, in fact, his declaration. It's irrelevant. It's -- at least double hearsay.
To the extent it pertains to relate to Leslie Miller, and so if to the extent that this did have any relevance it would be Ms. Miller that should be called as rebuttal. There is no offer of that. No offer.

Mr. Ingram is not listed as a witness -- arbitration witness by claimants. That was an attachment to my email this morning pointing that out that I attached a witness list.
I think those are most of the points. I think the other point we made it earlier that Mr. Ingram apparently has asserted claims or is in the process of asserting claims, I believe it was either, it might have even been him in an email that indicated that Mr. Revere is his counsel.
So we also question, you know, the motives and whether this is being, this declaration is being brought for other purposes. For all those reasons we object and move to strike
THE ARBITRATOR: Before, Terry, before you comment my recollection is you made a representation that he's not bringing claims; is that correct?
MR. REVERE: The issue was resolved.
THE ARBITRATOR: Thank you. All right. Anything you want to add, Terry?
MR. REVERE: Well, two things. One is the nature of rebuttal witnesses is such that you don't know you need them until you need them. So as late this afternoon, which is why I called

Dirk, that we have a witness saying this business about the Fratski pier which isn't true and suddenly oh, because the Fratski pier gets moved supposedly by Pacific Diving they are now incompetent, ergo we must use Bellingham. Which is complete nonsense and factual basis isn't true. That's why I wanted to call Von Guenthner on that very limited issue. That's as far as Dirk goes.
As far as Robert goes? I heard somewhere in the middle of John's thing I thought he said, and he can correct me as I'm sure he will, that he'd be okay with it, it just goes to weight. Frankly, I will acknowledge that Mai's photos would show what it looks like with the light and without the light probably a lot more to add more weight than Robert's declaration.
Honestly, neither one of these witnesses are I think super critical to the issues here. But I think that they, what I think they are relevant to is the lack of credibility by the association's witnesses.
The facts themselves are frankly not that exciting. I think Mai's photos demonstrate better the lighting business than anything else. I'll leave it to your discretion

THE ARBITRATOR: I'm going to give you a choice. I'd admit this over your objections. Your objections have already come in. Your eight point email. And we can let it rest at that.

Or if you feel that you would like to briefly examine this witness Mr. Ingram you can do so. You can do by teleconference. We don't have to pull together a hearing. I can't imagine it would be more than 15 minutes. You don't have to do it today. And I'll let you make the choice.

If you want to take a break and huddle with your client --

MR. ZALEWSKI: I think that would be appropriate. It shouldn't take more than a minute or two.

THE ARBITRATOR: That's fine.

(Whereupon, a recess was taken from 5:24 p.m. to 5:29 p.m.)

THE ARBITRATOR: Back on the record.

MR. ZALEWSKI: So thanks for allowing us to speak about it. So after consulting with our client representative we've elected not to -- wish to cross-examine the declarant. We understand the arbitrator's ruling as far as going to weight not to admissibility.

And just to be, you know -- so not accused of misleading anyone, we may be citing to this declaration too in our closing brief because --

THE ARBITRATOR: It's in the record.

MR. ZALEWSKI: It says a lot of things that I think support some of the evidence that we presented as well.

THE ARBITRATOR: Okay. At this point we need to talk about a briefing schedule.

MR. GOODWIN: Lauren's not here. Can we trust Terry to take this down?

MR. REVERE: No. You'll have to send me a confirming email.

MR. ZALEWSKI: I don't know what the project is. Obviously I think we have transcripts up to this day. I think we'd be talking about a reasonable period after the receipt of the transcript. Keith, I don't know your preference. One thought or suggestion I had is we each side does a simultaneous --

THE ARBITRATOR: Absolutely.

MR. ZALEWSKI: -- briefing. And maybe an optional simultaneous response and within a relatively short window thereafter. But, in

other, words, there's two submissions and that's it.

THE ARBITRATOR: Yes.

MR. ZALEWSKI: Maybe the optional reply if, Terry, if you're okay with it we'd have some kind of limitation so we don't go overboard. But I don't care.

(Discussion off the record.)

THE ARBITRATOR: Let's assume the 13th. Let's fill the schedule after that two weeks from then? 27th?

MR. GOODWIN: Terry has some dates.

MR. REVERE: No, I have a process that since we are the claimants we would like to go first, get their opposition and then do a reply. You can sigh all you want to. That's how it works in court.

THE ARBITRATOR: Let me think about that for a minute. You're proposing an opening, a response, and a closing, basically closing briefs simultaneous briefs?

MR. REVERE: No. That we as the claimant do our opening brief, they do an opposition, and we do a reply limited to whatever they argue.

MR. ZALEWSKI: He wants to have one more submission than us. Part of the problem with that is that we have affirmative claims too. We have counterclaimant. So if you really followed that you'd have six briefs you'd have, you know, affirmative briefs on claims, you'd have opposition and reply. That really seems -- I think we could have two submissions each side.

MR. REVERE: If I can respond to that, they don't really have any affirmative claims their affirmative claim -- the affirmative claim is just the opposite side of the coin if you don't let them have the boat. That's their affirmative claim.

Our claim is let us have our boat. So it's asserted but it's not a real claim. It's a defense.

MR. GOODWIN: Stop. I'm counterclaimant. It's extremely important. Sorry, Terry's not done.

MR. REVERE: What I was about to say is consistent with standard practice I don't think we should have two people arguing against me on this.

Anyway, so my suggestion would be that we do an opening brief, they do it just like the

Supreme Court does it and every trial does it, which is I've got to limit myself in the reply to whatever they say in their closing. If not you can hold it against me.

THE ARBITRATOR: Mr. Goodwin, I'll hear from you.

MR. GOODWIN: As the counterclaimant we actually do request injunctive relief. And the injunctive relief is extremely important for my client in this case.

As the Arbitrator is aware, the language of the injunction will likely be utilized by other potential individuals, at least one who currently has a boat there, or other individuals who desire to dock a boat at Kalele Kai in excess of the current 23 feet boat length restriction.

To say that it's just a yes or no is a very simplistic way of putting this case.

MR. REVERE: Well, sorry to be so simple minded but that's the reality. And all this quote, unquote counterclaim is, is to say don't give them what they want. Which they could still use if they prevail against anyone else.

I've made my suggestion. I'll adhere to whatever the Arbitrator desires.

MR. ZALEWSKI: Could I briefly supplement? Under the Sandstrom decision take-a-chance doctrine there is affirmative burden of proof by the association. That's the whole idea of having basically doing a brief and then have a reply brief. Because you have the burden. That's the rationale.

In this case both sides have, they are seeking I guess it's money. But they're seeking claims. We're seeking claims so I don't know why we can't do it on a simultaneous basis.

MR. REVERE: I'll tell you. Since John's posing the question. If I may, the reason why they are asserting a claim is for this very reason. To double up even though the reality is the boat will be allowed to stay or the boat will not be allowed to stay. And they are just doing this because they want to have multiple bites at the apple or to be able to say oh, even though they are the homeowner who brought this claim we should do everything simultaneous. Then something might come up in their last brief that we wouldn't be able to respond to, et cetera.

I'm simply asking as the claimant we go first and last. That's it.

THE ARBITRATOR: Okay. I am going to impose a briefing schedule that will be simultaneous opening and simultaneous reply. There will be no page limit on the opening. I want to talk about a page limit on the reply. I'm thinking 25 pages. I can be persuaded to make it a little longer. It is a fairly robust record. We've squeezed five days into five days.

Let's open on the 27th and then ten days later which would be November 7th. No new exhibits.

MR. GOODWIN: No new declarations?

THE ARBITRATOR: No. Just briefs. All the exhibits are in evidence. That's based on assuming that everybody has the transcript by no later than November 13th.

MR. REVERE: Simultaneous opening on the 27th. Ten days later then November 7th.

THE ARBITRATOR: Just call it November 7th.

MR. REVERE: I'm sorry. And the reply would have a limit of 25 pages?

THE ARBITRATOR: Reply as a limit of 25 pages.

MR. ZALEWSKI: Can we say a time like

4:00 p.m. or so as far as --

THE ARBITRATOR: Electronic filing here is fine. I prefer they be simultaneous with opposing counsel so there's no --

MR. GOODWIN: Go ahead and put a time on it.

THE ARBITRATOR: 4:30 Hawaii standard time.

MR. REVERE: On both days?

THE ARBITRATOR: On both.

MR. ZALEWSKI: Keith, obviously you have a stack of transcripts so we don't need to provide that.

THE ARBITRATOR: I do.

MR. REVERE: Your Honor, mentioned -- why not. They were laughing at your joke which wasn't that funny so I will call you, your Honor, so I can get my brown nosing in.

And I can't even remember what they all are at this point but I assume everybody's exhibits have been offered. I can't think of any exceptions. Everything is in that's been submitted?

THE ARBITRATOR: They are all in including the most recent photographs both sides

have submitted.

MS. NARUSE: Up to today. And no new exhibits thereafter.

THE ARBITRATOR: No. Okay. We can close the day. Thank you very much.

(Whereupon, the arbitration concluded at 5:39 p.m.)

CERTIFICATE

I, WILLIAM T. BARTON, C.S.R., do hereby certify:

That I was acting as shorthand reporter in the foregoing matter on October 3, 2014, commencing at 2:00 a.m.;

That each witness whose testimony is contained herein, prior to being examined was duly sworn or affirmed;

That the arbitration herein was by me taken down in machine shorthand and thereafter reduced to print via computer-aided transcription under my supervision; that the foregoing represents a complete and accurate transcript of the above proceedings to the best of my ability;

I further certify that I am neither counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in the caption.

Dated this 11th day of October 2014 at Honolulu, Hawaii.

_____

WILLIAM T. BARTON, CSR No. 391
Certified Shorthand Reporter



KC Udagawa <kcudagawa@mylandhawaii.com>

Fwd: revised quote

1 件のメッセージ

Udahawaii <udahawaii@msn.com>
To: kcudagawa@mylandhawaii.com

2013年2月25日 17:22

Sent from my Samsung Galaxy Note™, an AT&T LTE smartphone

-------- Original message --------
Subject: Fwd: revised quote
From: signatureyacht76@aol.com
To: udahawaii@msn.com
CC: Fwd: revised quote

K.C.
This attachment above has the revised options list for you to look over.
Chuck

-----Original Message-----
From: Chris McCafferty <cmccafferty@rivierayachtsinc.com>
To: signatureyacht76 <signatureyacht76@aol.com>
Sent: Mon, Feb 25, 2013 6:42 pm
Subject: revised quote

Chuck,

Here is a revised build list for the 43OE, I have deleted some options and added the window covers. I should have the quote for the fold down riggers by Wednesday along with the length of the items we will use.

Chris

C. McCafferty
International Sales Director

Riviera Australia Pty Ltd
ABN: 55 139 663 906
Mobile: 561 267 1995
Fax: 772-924-3220
Email: cmccafferty@rivierayachtsinc.com

50 Waterway Drive
COOMERA QLD 4209
AUSTRALIA
Web address: www.riviera.com.au

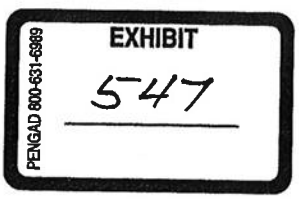


EXHIBIT 9

YOSHIKAWA000769

49750_Corp_email_signature

添付ファイル 2 件



image003.jpg
14K

index.pdf
75K

印刷 閉じる

Re: Riviera & you friend Ahmed

差出人: **Richard Rosic** (rrosic@earthlink.net)
送信日時: 2013年3月24日 2:06:39
宛先: Udahawaii (udahawaii@msn.com)

Good morning KC -

Happy to hear that you and Ahmed got together on the sale of his unit at Kalele Kai; I am sure that you will do a good job for him.

My congratulations to Mr. Yoshikawa on his pending deposit on the Riviera. Please tell me the size and model Riviera he is going to buy. How are things going with the sale of Ariel?

I think that it would be very wise for you and Yoshikawa to have lunch with Terry Revere, he can save you a lot of hassle with the association.

Take care KC and my best to Yoshikawa and Maiko.

Aloha,
Richard

From: Udahawaii
Sent: Sunday, March 24, 2013 12:55 AM
To: rrosic@earthlink.net
Cc: kcudagawa@mylandhawaii.com
Subject: Riviera & you friend Ahmed

Richard, hope this message finds you well,
We are just to make the first deposit of the boat, next time when Yoshikawa san comming, we'd like to meet with Terry by having lunch with him may be, don't you think it is good identical ?
Your friend Mr. Serag-Eldin called n asked me help selling his apt. I told him more than happy to, he'll b here 4/6.
I am so thankfull! We'll do our best for on your behalf.
Thank you very much Richard.

Sent from my Samsung Galaxy Note™, an AT&T LTE smartphone

EXHIBIT 548
PENGAD 800-631-6989

EXHIBIT 10



On Apr 9, 2013, at 10:36 PM, KC Udagawa wrote:

Hi all

Please be advised that the buyer wires the fund in accordance with your wire instruction today Japan time. if you do not receive a credit memo to your account in next two days, or if you received the fund please let me know as well.

Mahalo

Kazuhiko KC Udagawa

宇田川和彦

Vice President / Principal Broker

Myland Hawaii Realty, Ltd.

OGI Group -- Tokyo, Paris, Shanghai, Hawaii

2270 Kalakaua Ave. 15th floor, Honolulu, Hawaii 96815 U.S.A

Direct(直通): +1-808-922-2975

Main(代表): +1-808-922-2992

Fax: 808-922-2998

Cell: 808-393-5465

E-mail: kcudagawa@mylandhawaii.com

Home Page: http://www.mylandhawaii.com/



EXHIBIT 11



KC Udagawa <kcudagawa@mylandhawaii.com>

Re: Meeting with Chris in Hawaii

1 件のメッセージ

Chris McCafferty <cmccafferty@rivierayachtsinc.com> 2013年4月10日 1:38
To: KC Udagawa <kcudagawa@mylandhawaii.com>, Greg Terraglio <greg@rivierayachts.biz>, signatureyacht76@aol.com

KC,

I have booked everything and will be arriving on the evening of the 23rd. Just let me know what time and where and I will be ready to meet. I will have everything I we will need to select the interior colors of the boat. I can also clarify any outstanding questions anyone may have.

I would like to make sure that we are all on the same page with the next deposit payment. In order to keep everything moving we will need the wire to be made once our meeting is complete and we have everything agreed.

Please let me know if you need anything more from me at this time and I look forward to meeting you in person in a couple of weeks.

Warmest Regards,

Chris

On 4/9/13 10:49 PM, "KC Udagawa" <kcudagawa@mylandhawaii.com> wrote:

> Hi Chris,
> in responce to your question about the date and place of the meeting.
> the buyer likes to have it on 25th at my office or his home in Hawaii Kai
> Please stand by.
> Meanwhile we'll keep exchange the information of the boat.
> Mahalo

--
C. McCafferty
International Sales Director

Riviera Australia Pty Ltd
ABN: 55 139 663 906
Mobile: 561 267 1995
Fax: 772-924-3220
Email: cmccafferty@rivierayachtsinc.com
50 Waterway Drive
COOMERA QLD 4209
AUSTRALIA



EXHIBIT 12

KC Udagawa <kcudagawa@mylandhawaii.com>

FW: 43 Riviera Contract

1 件のメッセージ

Chris McCafferty <cmccafferty@rivierayachtsinc.com> 2013年4月25日 5:31
To: KC Udagawa <kcudagawa@mylandhawaii.com>

KC,

Here is the sales agreement for the 43. As requested I have not made any changes. Please can you print out two copies for us today.

Chris

--
C. McCafferty
International Sales Director

Riviera Australia Pty Ltd
ABN: 55 139 663 906
Mobile: 561 267 1995
Fax: 772-924-3220
Email: cmccafferty@rivierayachtsinc.com
50 Waterway Drive
COOMERA QLD 4209
AUSTRALIA

Web address: www.riviera.com.au

------ Forwarded Message
From: Gina Crews <gina@sovyachts.com>
Date: Wed, 24 Apr 2013 13:51:49 -0400
To: Chris McCafferty <cmccafferty@rivierayachtsinc.com>
Cc: Greg Terraglio <greg@searayboats.net>
Subject: 43 Riviera Contract

Chris attached is a workable document for the 43 Riviera contract that Greg asked me to prepare for
you.

Please let me know if you need anything else.

Thanks, Gina

Sovereign Marine Group
250 SW Monterey Rd.
Stuart, FL 34994

772-232-4822 O
772-232-4826 F
www.sovyachts.com

PENGAD 800-631-6989 EXHIBIT 552

YOSHIKAWA000793

EXHIBIT 13

KC Udagawa <kcudagawa@mylandhawaii.com>

Re: ロラの銘盤

1 件のメッセージ

Chris McCafferty <cmccafferty@riviera.com.au> 2013年7月27日 2:04
To: KC Udagawa <kcudagawa@mylandhawaii.com>

Got it and sent over for change to the name. It will now be in upper case (Capitol) letters.

C. McCafferty
International Sales Director

Riviera Yachts
Cell: 561 267 1995

On Jul 26, 2013, at 11:17 PM, "KC Udagawa" <kcudagawa@mylandhawaii.com> wrote:

> Hi Chris
> This is the sample that I have sent you 5/21
> Please confirm by return upon receipt,
> n revise the proposal n send it to us.
> She says the letter is all in Capital letter,
> Mahalo
>
> ---------- Forwarded message ----------
> From: **KC Udagawa** <kcudagawa@mylandhawaii.com>
> Date: 2013/5/21
> Subject: Fwd: Re: ロラの銘盤
> To: Chris McCafferty Moreland <cmccafferty@rivierayachtsinc.com>
> Cc: KC Udagawa <kcudagawa@mylandhawaii.com>
>
> Hi Chris
> The name of the boat is Rola.
> Pls find the letter sample.
> KC Udagawa
> Vice President & Principal Broker
> Myland Hawaii Realty, Ltd. OGI Group, Tokyo, Japan
>
> 2270 Kalakaua Ave. 15th floor, Honolulu, Hawaii 96815 U.S.A. Tel (English): 808-922-2996
> Tel (Japanese 日本語): +1 808-922-2992 Fax: 808-922-2998 Cell: 808-393-5465 E-mail:
> kcudagawa@mylandhawaii.com
>
> Home Page: http://www.mylandhawaii.com/(日本語): http://jp.mylandhawaii.com/Listing
> (Postlets): http://mylandhawaii.postlets.com/Facebook: www.facebook.com/mylandhawaii

EXHIBIT 563
PENGAD 800-631-6989

YOSHIKAWA000857

EXHIBIT 15

Twitter:www.twitter.com/mylandhawaii
YouTube:http://www.youtube.com/user/Mylandhawaii50
LinkedIn:http://www.linkedin.com/in/mylandhawaii OGI
Group:http://www.ogigroup.co.jp/en/index.html ----------
----------This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission. If verification is required please request a hard-copy version. Myland Hawaii Realty, 2270 Kalakaua Avenue, Suite 1508, Honolulu, Hawaii 96815, U.S.A., www.mylandhawaii.com. ----------
---

---------- Forwarded message ----------
From: "Mai HI" <mamamai0909@gmail.com>
Date: May 21, 2013 8:17 PM
Subject: Re: ロリの銘盤
To: "KC Udagawa" <kcudagawa@mylandhawaii.com>

船の名前はROLA(ローラ)です。

ロゴの写真を添付します。
宇田川さんもオフィスでこの写真のページを撮られていたので
宇田川さんの携帯にも入っていると思いますよ！

2013/5/21 KC Udagawa <kcudagawa@mylandhawaii.com>
すみません、あとで宜しいので例の銘盤の写真を
送っておいてください。

--

Kazuhiko "KC" Udagawa
宇田川和彦

Vice President · Principal Broker
Myland Hawaii Realty, Ltd.
OGI Group - Tokyo, Paris, Shanghai, Hawaii
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Main(代表):+1-808-922-2992
Fax 808-922-2998
Cell 808-393-5465
E-mail kcudagawa@mylandhawaii.com
Home Page http://www.mylandhawaii.com/
(日本語) : http://jp.mylandhawaii.com/
Postlets http://mylandhawaii.postlets.com/
Facebook www.facebook.com/mylandhawaii

Twitter www twitter com/mylandhawaii
YouTube http //www youtube com/user/Mylandhawaii50
LinkedIn http //www linkedin com/in/mylandhawaii
OGI Group http //www ogigroup co jp/en/index html

--

Kazuhiko "K.C." Udagawa
宇田川和彦

Vice President / Principal Broker
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(日本語) : http //jp mylandhawaii com/
Postlets http //mylandhawaii postlets com/
Facebook www facebook com/mylandhawaii
Twitter www twitter com/mylandhawaii
YouTube http //www youtube com/user/Mylandhawaii50
LinkedIn http //www linkedin com/in/mylandhawaii
OGI Group http //www ogigroup co jp/en/index html

M 1420. pg

M 1421. P

REVERE & ASSOCIATES

A LIMITED LIABILITY LAW COMPANY
PALI PALMS PLAZA, 970 NORTH KALAHEO AVENUE, SUITE A301
KAILUA, HAWAI I 96734

TERRANCE M. REVERE
LAUREN C. MCDOWELL*
MALIA NICKISON-BEAZLEY
CHRISTOPHER SANTOS
*Also Licensed in MA

TELEPHONE: (808)791-9550
Email:terry@revereandassociates.com

May 6, 2013

Kalele Kai Association of Apartment Owners
c/o Christopher Goodwin, Esq.
Attorney At Law, LLLC
737 Bishop Street
Suite 1640 Mauka Tower
Honolulu, Hawaii 96813

Via Email: chris@christophersheagoodwin.com

Dear Mr. Goodwin:

Our office represents Hitoshi Yoshikawa, the owner of Kalele Kai Townhouse 1006 and boat moorings 28-33. As you know from previous correspondence, Mr. Yoshikawa has purchased a boat and will soon be docking it in his boat moorings pursuant to his legal rights. This office is well aware of the history of the boat docks at Kalele Kai and the boat and boat mooring owner's rights pursuant to the governing documents, the long standing policy of the Association to allow mooring modification to accommodate larger boats, the marketing of the Developer, and the Settlement Agreement between previous owner Richard Rosic and the Association.

As you know, Mr. Yoshikawa purchased Townhouse 1006 along with the modified boat moorings and 38' boat from Mr. Rosic in November, 2010. In anticipation of selling his home, boat mooring and boat, on June 9, 2009, Mr. Rosic entered into a settlement agreement with the Association confirming the rights of future owners to dock their boats in the modified 69' boat mooring. Exhibit 1. The agreement was recorded. Since that time, the same 38' boat, once owned by Mr. Rosic and now owned by Mr. Yoshikawa, has remained docked in the mooring. That boat will now be replaced by Mr. Yoshikawa's new boat, which at 49'4" requires no modification of the current 69' boat mooring.

Your email dated November 21, 2012 cites to a so-called original 23' boat limitation. However, any such alleged limitation has clearly been abandoned by the Association's agreements and actions over a decade. A contract is abandoned when



EXHIBIT 16

KK001147

one party acts in a way that is inconsistent with the existence of the contract and the other party acquiesces. Kuroda v. Kuroda, 87 Hawaii 419, 427, 958 P.2d 541 (App. 1998). Abandonment does not need to be express. Dring v. Dring, 87 Hawaii 369, 376, 956 P.2d 1301 1308 (App. 1998). A party's intent to abandon a contract may be inferred from the facts and circumstances. Id. Abandonment results in a discharge of all obligations under the contract. Id.

The Developer, S. Holdings LLC, marketed Kalele Kai to owners including Mr. Richard Rosic with an original marina model and plan which allowed for a sixty-nine foot side-tie boat mooring. Exhibits 2 & 3. In 2001, Mr. Rosic purchased the boat moorings in question directly from the Developer, who at that time, in the Boat Sales Contract, retained the right to modify the governing documents and reconfigure the boat docks in any way necessary to help it sell the remaining boat moorings. Exhibit 4 at pages 3-4. With Board approval, Mr. Rosic then modified the boat moorings to create the 69' side tie. In 2003, with Board approval, townhome owners Ike and Angela Hung modified their moorings to allow for the side tie of their boat which exceeded 23'. In 2006, with Board approval, homeowner Dirk von Guenthner modified his moorings to allow for the side tie of his boat which exceeded 23'. Numerous other owners followed suit including Mr. Waldermar Rojek.

In Ike Hung and Angela Hung v. Association of Owners of Kalele Kai, DPR No. 11-0369-A, Arbitrator Keith Hunter granted summary judgment on the issue of the Hung's right to sell their boat moorings in their modified condition. Exhibit 5. Mr. Hunter's Order states:

> "...to the extent the Board minutes seek to restrict the ability of existing boat-mooring owners from the sale of their modified boat moorings, the Arbitrator agrees that the Board minutes contradict **almost ten years of AOAO policy allowing the Hungs and other boat-mooring buyers/owners to modify their moorings and sell their moorings in a modified condition**. The Board cannot now negate Boat mooring owners' reliance on the AOAO's longstanding policy by a Board vote that purportedly claims to "grandfather" existing owners while simultaneously restricting their ability to sell their modified boat moorings. Accordingly, the Hung's motion for declaratory order disallowing the Board's restriction of the sale of modified boat moorings is granted."

Exhibit 5. (Emphasis added).

The so-called 23' boat limitation in the Declaration has clearly been abandoned and waived due to the Association's decade long policy of allowing owners to modify their moorings and dock boats in excess of 23'. We are confident that pursuant to

his ownership rights, the history of the Association, and the settlement agreement, the Association will not object to the mooring of Mr. Yoshikawa's new boat. Unless the AOAO objects in writing within seven (7) days from the date of this letter, Mr. Yoshikawa will proceed to moor his new boat with the AOAO's agreement and/or acquiescence. If the Board does object, or persists in vague non-committals we will have not choice but to bring an action to enforce Mr. Yoshikawa's rights.

Thank you for your attention to this matter. Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

Terrance M. Revere

Terrance M. Revere
Lauren C. McDowell
REVERE & ASSOCIATES
A Limited Liability Law Company

cc: KC Udagawa (via email)

MOTOOKA YAMAMOTO & REVERE

COLETTE L. HONDA
KAPONO F. H. KIAKONA
KATIE L. LAMBERT
MILTON M. MOTOOKA
JANA M. NARUSE
TERRANCE M. REVERE
REBECCA A. SZUCS
MYLES T. YAMAMOTO

ATTORNEYS AT LAW
A LIMITED LIABILITY LAW CORPORATION
1000 BISHOP STREET, SUITE 801
HONOLULU, HAWAII 96813

TELEPHONE: (808) 532-7900
FAX: (808) 532-7910
http://www.myhawaii.com

June 9, 2009

VIA EMAIL: (chris@christophersheagoodwin.com)

Chris Goodwin, Esq.
733 Bishop St., Suite 2300
Honolulu, Hawaii 96813

RE: Kalele Kai Agreement as to Mr. Richard Rosic

Dear Chris:

Pursuant to our negotiation session on June 2, 2009, this letter is to memorialize the understanding between the Association of Owners of Kalele Kai ("Association"), by its Board of Directors ("Board") and Richard Rosic ("Mr. Rosic"), a home and boat dock owner of the Association.

The issue between the parties involves the modified boat dock currently owned by Mr. Rosic. The Board asserts it did not have the authority under the Association's governing documents to approve of the disposal, modification or reconfiguration of the boat dock or its individual finger piers by Mr. Rosic. Mr. Rosic asserts he began his purchase of additional boat docks in 2001 and by March of 2002, that he owned six (6) boat docks in total and had reconfigured the docks to accommodate a sixty-nine (69) foot side-tie for his boat. Mr. Rosic further alleges the Board approved his purchases and was made aware of his intent to move the intervening finger piers. In response, the Board contends no such approval is memorialized in the Board Meeting Minutes for the period in question. Mr. Rosic further contends that because of health and safety reasons, he had the finger piers removed from the property at his own expense. The Board asserts it did not grant prior approval to Mr. Rosic to remove and dispose of the finger piers. Mr. Rosic has advised the Board he is no longer in possession of the subject finger piers, and he is unwilling to pay for replacement of the finger piers in the event demand is made upon him by the Board should the current Declaration Amendment under consideration by owners not be approved. To date, the Board asserts it has made no demands upon Mr. Rosic to replace the subject finger piers.

As a result of our negotiation, it is our understanding that the following terms have been agreed to:

EXHIBIT 1

1. The Board will have sixty (60) days to pass an amendment to the Declaration that gives the Board the authority to approve boat dock modification proposals without owner consent and record same amendment.

2. The Board's proposed amendments to the Association's "Dock and Boat Rules" shall allow an owner at least a twelve (12) month period, which may be extended upon a reasonable request by the owner, to place a boat in a modified boat dock before replacement of the finger piers is required.

3. Mr. Rosic shall disclose to a buyer of his property that any subsequent owner must harbor a boat in the boat dock or else the Board may require the area to be reconfigured. In addition to keeping the area configured as it is presently, such owner would have the same rights (twelve months plus a reasonable extension period) as other owners.

4. The Board shall provide a letter specifying the terms of said agreement and it must be recorded. This letter shall serve as said letter of agreement.

Therefore:

WHEREAS, the Association of Apartment Owners of Kalele Kai (hereinafter "Association") by its Board of Directors (hereinafter "Board"), seeks to amend its Declaration of Horizontal Property Regime ("Declaration"), Bylaws and House Rules (collectively, "governing documents") to authorize the Board to approve the modifications of the Association's boat docks by owners;

WHEREAS, Richard Rosic (hereinafter "Mr. Rosic") is a homeowner at the Association as well as an owner of six (6) boat docks;

WHEREAS, pursuant to Board approval, Mr. Rosic modified the six (6) boat docks to accommodate a sixty-nine (69) side-tie for his boat;

WHEREAS, Mr. Rosic is selling his home with the boat dock as modified;

WHEREAS, the above whereas clauses are material to this agreement and are not stated merely as a matter of form;

Now, therefore, the parties agree as follows:

1. The Board will have sixty (60) days from the date of this letter to pass the proposed Declaration Amendment currently under consideration by owners granting the Board authority to adopt rules and regulations regarding the modification, removal and/or reconfiguration of boat moorings without the

necessity of obtaining owner approval. The Parties agree if upon expiration of the deadline set forth in this paragraph, the Association requires five percent (5%) or less of owners to pass the proposed Declaration Amendment, this deadline shall be extended for a period of fifteen (15) days.

2. Upon recordation of this letter, Mr. Rosic will in good faith assist the Board in collecting from the owners of the Association the two-thirds vote necessary to approve an amendment to the Declaration that would grant the Board the authority to approve future modifications to any boat dock without owner approval.

3. Upon passage of the proposed Declaration Amendment, the Board shall adopt the Boat and Dock Rules attached hereto as Exhibit 'A'.

4. Upon recordation of the Declaration Amendment, all subsequent Boat and Dock Rules adopted by the Board shall allow an owner at least a twelve (12) month period to place a boat in a modified boat dock before replacement of the finger piers as required. The 12 month period may be extended upon a reasonable request by the owner.

5. Mr. Rosic shall disclose to a buyer of his property that any subsequent owner must harbor a boat in the boat dock or else the Board may require the area to be reconfigured. In addition to keeping the area configured as it is presently, such owner would have the same rights (twelve months plus a reasonable extension period) as other owners.

6. All parties have had an adequate time to review this agreement and have had ample opportunity to confer with counsel of their choice regarding this agreement and its terms. No party is to be deemed the drafter of this agreement.

7. This agreement may be executed in counterparts, and will be effective upon delivery to each of the parties hereto of a complete agreement with all signatures.

8. The persons signing below represent and affirm that they have the authority to bind their respective party to this agreement.

9. In consideration of the above described actions to be taken by Mr. Rosic, the Association and its Board of Directors, the parties mutually release and forever discharge each other from any claim and/or cause of action which arose, and/or might have arisen by reason of the claims and allegations described herein, including but not limited to any claim by the Association that Richard Rosic allegedly reconfigured, modified and/or removed finger piers and/or boat docks in violation of the Association's governing documents, and/or any allegation the

Association and/or Board interfered with sale of Mr. Rosic's unit and/or impaired the value thereof.

10. Nothing in this agreement should be construed as an admission by any party to this agreement of any fault or wrongdoing whatsoever, and all such implications, allegations or conclusions are denied.

11. Nothing in this agreement shall affect any legal rights and defenses that Mr. Rosic or a subsequent owner shall have under the law, including any time-based defenses (e.g. laches and statue of limitations) should any person or entity at any time in the future make claims against Mr. Rosic, his property, and/or a subsequent owner.

12. This is the entire agreement of the parties. All prior written and oral understandings and agreements regarding the subject matter of this agreement are null and void.

13. This agreement can only be changed via written amendment to this agreement executed by all parties hereto.

Signed:

Bradford R. Dakus — 6/11/09

Association of Owners of Kalele Kai, by its Board President — Date

Signed

6-17-09

Richard Rosic — Date

Proposed Dock and Boat Rules

It is the intent of the Board of Directors, should owners approve the proposed Declaration Amendment, to adopt the following rules regarding boats and boat moorings. These would be incorporated into the House Rules, and are subject to possible revision following review and comment by legal counsel.

1. D-3 Boat Mooring Modifications – Any request seeking modification, relocation and/or removal of boat moorings must be presented to the Board of Directors in writing for its consideration in advance of any proposed work being undertaken. The Board will respond in writing to all requests made pursuant to this section.

2. D-4 If a mooring modification involves the removal of one or more finger piers, the pier(s) must be retained and secured in a location and orientation as instructed in writing by the Board of Directors.

3. D-5 If moorings are missing finger piers for any reason, they must be replaced prior to or at the time the boat mooring owner removes the existing boat and it is not replaced by a boat within twelve (12) months of the original boat's removal. Prior to the expiration of this deadline, the owner may make a written request to the Board for a reasonable extension thereof. The Board's decision in response to a request for extension shall be in writing and a timely request for an extension shall not be unreasonably denied by the Board.

4. D-6 (a) When a modified boat mooring has one or more finger piers attached in a parallel orientation to the common walkway, upon sale of the modified boat mooring, the new owner will have up to twelve (12) months from the transfer date to dock a boat in the mooring. Extensions of this deadline may be sought in accordance with the procedures set forth in Section D-5 above.

(b) If the new owner chooses not to dock a boat in the mooring, the owner must reconfigure the mooring by returning all existing finger pier(s) into a perpendicular orientation to the common walkway. Failure of the owner to return the moorings back to their original perpendicular orientation to the common walkway, the Association shall have the right to perform such reorientation at the owner's sole expense.

5. D-7 Kalele Kai moorings are for private use only– no commercial boats or commercial ventures are permitted.

6. D-8 Finger piers & support triangles – maintenance and replacement of finger piers and support triangles is the responsibility of the boat mooring owners. If proper maintenance is not performed by the owner, the Association has the right to perform the maintenance and assess the owner for all costs incurred to perform such maintenance. The Resident Manager will verify compliance with these requirements.

Triangles are to be made of marine grade plywood or Starboard in accordance with the specs provided by Bellingham Marine Industries.

Triangle tie frames are to be in accordance with the specs provided by Bellingham Marine Industries.

Triangles are to be stenciled the letter "B" followed by the dock number.

Screws used to fasten the triangle to the bracket are to be stainless steel.

7. D-9 Boats – When tied to the dock, boats must comply with the Kalele Kai Boat Owners Guidelines adopted by the Board of Directors.:

- **When tied to the docks boat owners should lower all antennas and fishing outriggers.**
- **Bimini tops that must be lowered for passage under the bridge must be lowered when the boat is tied to the dock.**
- **Boats that are for use in the bay only and cannot pass under the bridge to the channel are not permitted.**
- **The same noise restrictions & time limits for parties on the Kalele Kai property apply to boats.**
- **Boat canvas should be tight and maintained in good repair.**
- **Dock lines should not be frayed and properly coiled on the dock.**
- **Towels and other loose gear should be below decks.**
- **All boats to be registered with the Hawaii Kai Marina Association and have a Hawaii State number or Coast Guard Documentation.**
- **Electrical hookups must be via a certified marine plug and cord; see sample specifications.**

8. D-10 Living aboard a boat is not allowed.

9. D-11 Kayaks – Kayak stands are provided on a first come, first served basis and will be assigned through the Management Office. Maintenance of the kayak stand and tie down straps are the responsibility of the AOAO. Kayaks must be registered with the Kalele Kai Management Office and the Hawaii Kai Marina Association. The Kalele Kai Board of Directors will determine the location for Kayak storage

EXHIBIT "A"

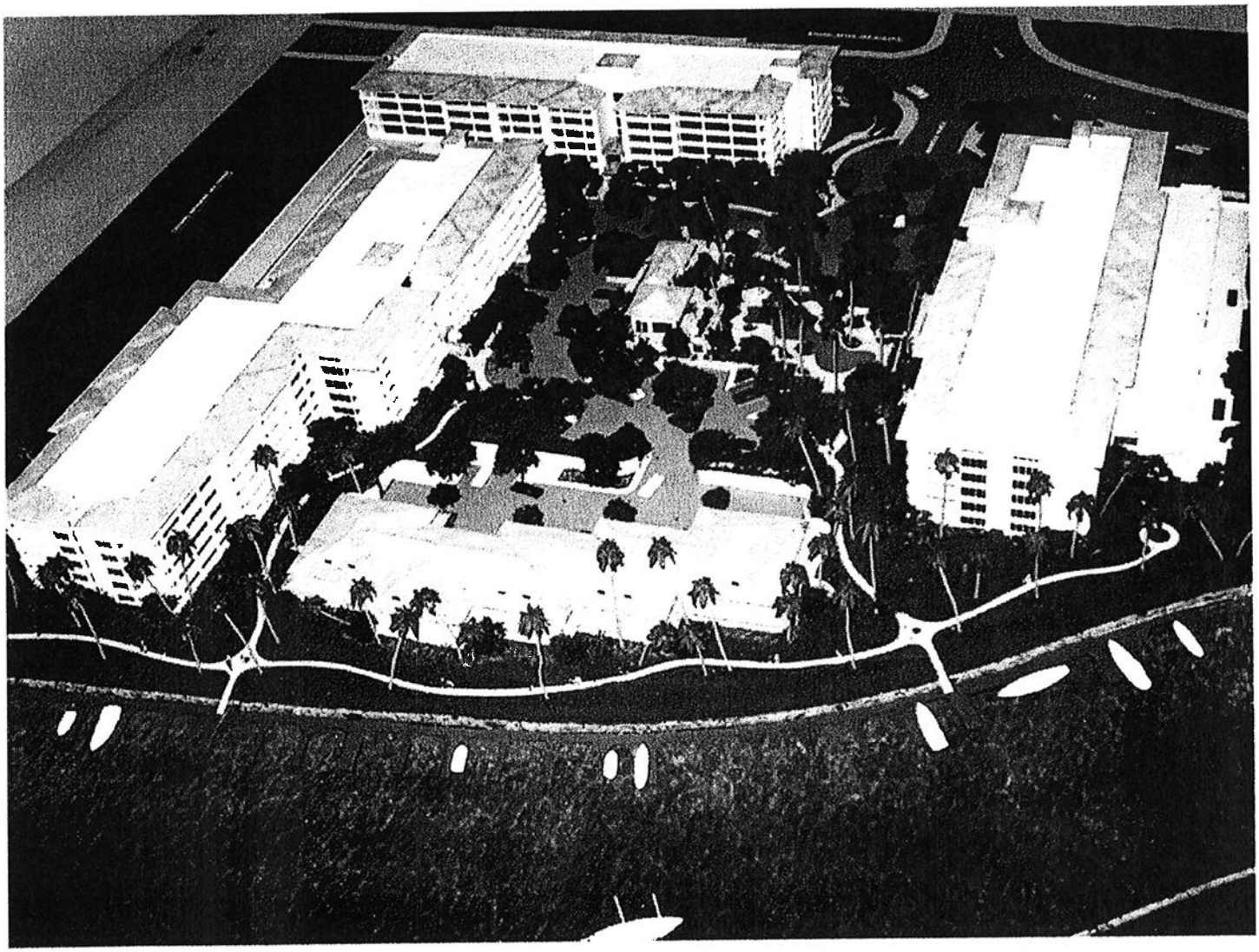


EXHIBIT 2

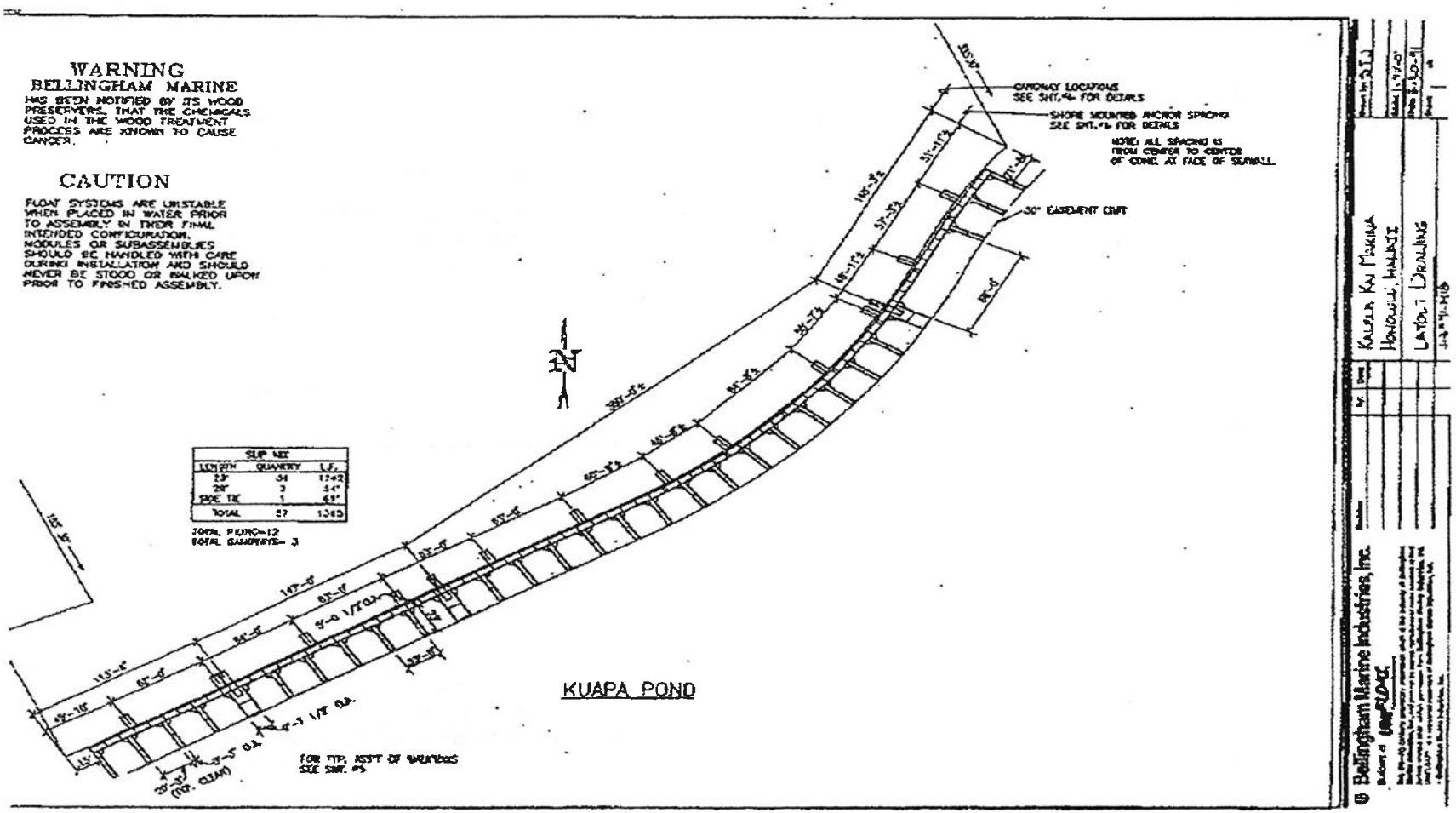


EXHIBIT 3

KK001157

COPY

KALELE KAI
BOAT MOORING SALES CONTRACT

Boat Mooring No. 28 Condominium Unit No. TH 106

Buyer's Name: Richard Francis Rosic

Address: One Kuhola Place #106
Honolulu, Hawaii 96825

Total Purchase Price: $30,000.00

A. Payment A: $5,000 None
B. Payment B: BALANCE OF $25,000.00 due at closing. Payment shall be in cash. (Seller will credit $22,500 at closing should the closing occur on or before 7-15-01)

Any variations in the amounts specified for each of these payments must be accepted in writing and signed by Buyer and Seller. The Initial deposit shall be made by payment to S. Holdings, LLC. Any interest earned on deposits required by the terms of this Sales Contract shall be paid to Seller.

NOW, THEREFORE, Seller agrees to sell the above identified Boat Mooring to Buyer "as is" and Buyer agrees to purchase the above identified Boat Mooring "as is" which shall be a limited common element appurtenant to the above identified condominium unit in the Kalele Kai Condominium Project ("Project"), on the following terms, covenants and conditions:

1. **Sale of Boat Mooring.** Buyer acknowledges, understands and agrees that Buyer shall purchase the Boat Mooring "as is" and in accordance with and subject to all terms, covenants, conditions and disclosures of this Sales Contract.

2. **Payment in Full.** Buyer agrees to pay the balance of the Total Purchase Price before or on closing on July 15, 2001 ("Closing Date").

3. **Effect of Termination.** Buyer understands and agrees that the Boat Mooring cannot be owned separately from a condominium unit in the Project because the Boat Mooring shall constitute a limited common element appurtenant to the above identified condominium unit. Buyer further understands and agrees that an owner of a condominium unit shall be restricted to the purchase of one (1) Boat Mooring per condominium unit owned, unless this requirement is waived in writing by Seller. If this Sales Contract is cancelled, terminated or rescinded in any manner, Buyer shall have no right to purchase the Boat Mooring and Seller shall have no obligation to sell the Boat Mooring to Buyer.

4. **Use of Boat Mooring.** The Boat Mooring shall be restricted to use by a boat no larger than twenty-three (23) feet in length. The use, rental or transference of the Boat Mooring shall be subject to the conditions and covenants set forth in the Declaration of Condominium Property Regime of Kalele Kai dated May 20, 1993, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 93-87469, as amended (hereinafter referred to as the "Declaration") and the Declaration of Protective Provisions dated January 30, 1991, recorded in said Bureau as Document No. 91-026955, as amended, all rules and regulations promulgated by the Association of Apartment Owners of Kalele Kai (the "AOAO") and the Hawaii Kai Marina Community Association (the "Marina Association"), and all applicable laws, ordinances and regulations of any governmental body having jurisdiction, as any of such rules, regulations, laws, ordinances and declarations have been or may be lawfully amended or supplemented from time to time. Buyer understands and agrees that the Boat Mooring shall not be sold or transferred to any person who is not an owner of a condominium unit in the Project. Buyer understands and agrees to the foregoing, and acknowledges that Buyer has had an opportunity to review and inspect the Boat Mooring described herein, and all documents described herein governing the use and enjoyment of the Boat Mooring.

5. **Hawaii Kai Marina Association.** Each Buyer agrees to be a member of the Marina Association. As a member of the Marina Association, Buyer shall have a nonexclusive easement in common with others so entitled for purposes of navigation and access to the sea upon, over and across Kuapa Pond and all canals and other

EXHIBIT 4

waterways thereof, as Kuapa Pond and waterways shall exist from time to time. The Marina Association may levy general and special assessments to provide for the care, maintenance, operation and improvement of Kuapa Pond and the waterways. Buyer may not exempt itself from liability for its payment of any Marina Association assessment by non-use, waiver of use or enjoyment, or by abandonment of the Boat Mooring.

6. **Express Disclaimers**. Seller makes no express warranties in connection with the sale of the Boat Mooring described herein to Buyer. SELLER DISCLAIMS ANY IMPLIED WARRANTY OF HABITABILITY, ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE, ANY IMPLIED WARRANTY OF WORKMANSHIP AND ANY OTHER EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE BOAT MOORING. Buyer acknowledges that Seller has made no warranties, express or implied, with respect to the Boat Mooring conveyed herein, its quality or grade, or anything installed thereon. In particular, Seller disclaims any and all responsibility or liability for any malfunctions, construction or design defects, or any other problems which Buyer may encounter with respect to the Boat Mooring. Buyer acknowledges Seller's disclaimers and expressly waives any rights, claims or actions against Seller arising out of or connected with any defects with respect to the Boat Mooring.

7. **Seller Makes No Representations Regarding Management Service or Any Economic Benefits to Buyer.** Buyer acknowledges that it has entered into this Sales Contract without any reference or representation by Seller or any salesperson/broker that Seller or the Managing Agent of the Project or anyone else will provide, directly or indirectly, any services relating to the rental or sale or management of any Boat Mooring. Buyer further acknowledges that there has been no representation regarding rental income from the Boat Mooring or economic or tax benefits to be derived from such ownership. The rental or other disposition of the Boat Mooring shall be the sole responsibility of Buyer.

8. **Assignment of Sales Contract.** This Sales Contract may not be assigned by Buyer in whole or in part without the prior written consent of Seller which consent may be withheld by Seller in its sole and absolute discretion. Any assignment of this Sales Contract made without Seller's written consent is void and of no legal effect.

9. **Buyer's Approval and Acceptance of Boat Mooring Documentation**. Buyer acknowledges receiving copies of and having had a full opportunity to read and review and hereby approves and accepts all documents pertaining to the Boat Mooring, including but not limited to the Declaration, Declaration of Protective Provisions, Rules and Regulations of the Marina Association, Bylaws, and House Rules. It is understood and agreed that this sale is in all respects subject to said documents.

10. **Closing Costs**. The expenses in connection with the sale will be paid as follows: Buyer and Seller will split all applicable closing costs including but not limited to conveyance taxes; real property taxes and other prorations; all acknowledgment fees; legal costs for preparing any amendments to the Declaration; and all recording costs or other fees.

11. **Time; Non-Waiver**. Time is of the essence of this Sales Contract. No action or failure to act on the part of Seller shall constitute a waiver of any of Seller's rights or of any term or condition of this Sales Contract, nor shall such action or failure to act constitute approval of or acquiescence in any breach thereunder, except as the parties hereto shall agree in writing.

12. **Seller's Remedies Upon Default by Buyer:** Notwithstanding the provisions of Section 20 hereof, if Buyer shall at any time default in making any payment when required, or fail to perform any other obligation required of Buyer hereunder, this Sales Contract may, at Seller's option, be terminated by written notice to Buyer. In the event of such cancellation, Seller may retain all amounts paid by Buyer hereunder, together with any interest that has accrued thereon, as liquidated damages. Seller and Buyer hereby acknowledge that they understand and have agreed that in such event the injury to Seller will be difficult and expensive to measure in view of: Seller's financial commitments with respect to any Boat Mooring; the connection between sale, cancellation or default with respect to one Boat Mooring and sale, cancellation or default with respect to other boat moorings in the Project; and the nature of the real estate market in Hawaii. As a reasonable estimate of Seller's fair compensation for any damages resulting from such default, the parties agree that the sums paid by Buyer hereunder, plus accrued interest, shall belong to Seller as liquidated damages. Seller may, in addition to the aforesaid damages, pursue any other remedy, including specific performance, permitted by law or equity. All costs, including reasonable attorney's fees, incurred by reason of default by Buyer shall be borne by Buyer.

13. **Notices:** Notices to either party may be delivered personally or mailed, postage prepaid, addressed to such party at its address set forth above (or such more recent address of which the mailing party may have notice) and shall be deemed to be given when so delivered or mailed. If more than one person is listed as a Buyer, delivery or mailing may be made to any one of them. Delivery or mailing may also be made to any officer of a corporate party.

14. **Cancellation of Sales Contract in Event of Buyer's Death:**. If Buyer, or any one or more of Buyers, if there is more than one Buyer, should die prior to the Closing Date, Seller reserves the right to return all sums paid hereunder by Buyer without interest and this Sales Contract shall then be deemed to have been cancelled and both Seller and Buyer shall be released from all obligations and liability hereunder.

15. **This Sales Contract is Binding on the Successors of the Parties and Buyers are Responsible Individually and Together:** The terms "Buyer" and "Seller" include the persons named and their respective heirs, successors, personal representatives, administrators or permitted assigns. The singular includes the plural and vice versa and the use of any gender includes the other as common sense shall require. If this Sales Contract is signed by more than one person as Buyer, the contract obligations shall be joint and several.

16. **Hawaii Law Governs this Sales Contract:**. The laws of the State of Hawaii shall govern all matters with respect to this Sales Contract, including all matters related to the formation, construction and performance of this Sales Contract.

17. **Captions:** The captions of the paragraphs of this Sales Contract are for convenience only and do not amplify or limit in any way the provisions hereof.

18. **Effect of Partial Invalidity on This Sales Contract:** In the event that any provision of this Sales Contract is illegal, void or unenforceable for any reason, the remaining terms of this Sales Contract shall remain in full force and effect.

19. **Submission of All Disputes to Arbitration; Venue.** Subject to the provision of Section 13 hereof, any dispute by or between Seller and Buyer arising out of or incidental to this Sales Contract regarding any Boat Mooring or the use or occupancy thereof, or any other aspect of the relationship between Seller and Buyer regarding any Boat Mooring shall be submitted to arbitration pursuant to the rules of the American Arbitration Association (hereinafter referred to as the "AAA") then in effect. Any person that desires to submit any issue or dispute to arbitration shall promptly so notify the other party in writing. Claims or disputes involving $5,000 or less shall be heard by a single arbitrator. Claims involving more than $5,000 or non-monetary issues shall be heard by a panel of three (3) arbitrators, which panel shall include no more than one (1) attorney. The arbitrators shall be selected by the AAA upon receiving notice from either party that a dispute exists. The decision of a majority of such arbitrators shall be final, conclusive and binding on the parties hereto. All proper costs and expenses of such arbitration including, without limitation, witness fees, attorney's fees and the fees of the arbitrators shall be charged to the party or parties in such amounts as the majority of the arbitrators shall determine at the time of the award. In the event of the failure, inability or refusal of any arbitrator to act, a new arbitrator shall be appointed in his stead by the AAA. An award so rendered shall be binding in all aspects and shall be subject to the provisions of Chapter 658, Hawaii Revised Statutes, as the same may be amended from time to time. In the resolution of any dispute or controversy, each party hereby irrevocably waives any right and claim to exemplary or punitive damages in any jurisdiction. The parties further agree that any documents of assignment, lease or conveyance of the Boat Mooring by Buyer shall contain a provision substantially in the form set forth above, requiring the assignee, lessee or grantee to arbitrate any and all disputes concerning the Boat Mooring. Further, Seller and Buyer each agree to indemnify, defend and hold harmless the other from and against any and all damage occurring as a result of the resolution of any such dispute other than by arbitration. Buyer and Seller agree that any arbitration proceedings under this section will be submitted to arbitration in the City and County of Honolulu, State of Hawaii.

7. **Modification of Boat Moorings; Amendment to Declaration.** Seller shall have the right to amend the Declaration as often as necessary to redesignate and transfer any Boat Mooring from condominium unit no. 3110 to any other condominium unit owned by Seller and/or to effectuate the initial attachment of any unsold Boat Mooring to any condominium unit orlginally purchased from Seller and said amendment(s) to the

Declaration shall only require the signature of Seller. Once a Boat Mooring has been attached to a condominium unit as a limited common element, the owner may transfer said Boat Mooring upon amendment to the Declaration; provided that the amendment to effectuate a transfer and change in the designation of any Boat Mooring appurtenant to a condominium unit shall require only the signature and approval of the owner transferring said Boat Mooring, the transferor and the transferee are both owners of units(s) in the Project, and the required joinder of all respective mortgagee(s), if any are first had and obtained. Seller shall have the right, and Buyer hereby authorizes Seller, to modify the Declaration, Bylaws, House Rules and any other condominium documents as may be required by Seller, law, any title insurance company or any institutional mortgagee, or governmental agency. Seller shall also have the right to make alterations to any Boat Mooring (and to modify any of said condominium documents accordingly) to change the configuration of, alter the number of moorings, decrease or increase the size of, or change the location or designation of any Boat Mooring and landscaping.

8. **Brokerage.** Buyer acknowledges that no Brokers are involved in this transaction and no commissions shall be paid.

9. **This is the Entire Agreement; Certain Obligations to Continue.** This Sales Contract constitutes the entire agreement between the parties and supersedes and cancels all prior negotiations, representations, understandings and agreements, both written and oral, of the parties hereto. No fact sheets, informational material, advertising material or other documents which purport to describe the Boat Mooring or the Project in any manner beyond or different from the description set forth in the Declaration, Bylaws and Real Estate Commission's Public Report(s) shall be valid or enforceable against Seller unless signed by Seller and no variations of this agreement shall be valid or enforceable unless approved by the parties in writing and attached hereto as an addendum. Unless performed at or before closing, provisions of this Sales Contract shall survive the execution and recordation of any amendment to the Declaration noting the conveyance of any Boat Mooring from Seller to Buyer.

IN WITNESS WHEREOF, Seller and Buyer have executed this Sales Contract on the dates set forth below.

Date: _____ _____
"Buyer"

Date: _____ _____
"Buyer"

Receipt of Deposit in the amount of $5,000 is acknowledged this _____ day of _____, 2001.

S. HOLDINGS, LLC, a Hawaii limited liability company

By _____
Its: Manager

This Boat Mooring Sales Contract is accepted by Seller this ___ day of _____ 2001.

S. HOLDINGS, LLC
a Hawaii limited liability company

By _____
Its: Manager

Keith W. Hunter, Arbitrator
Dispute Prevention & Resolution, Inc.
1003 Bishop Street, Suite 1155
Honolulu, Hawaii 96813

IN THE TRIBUNALS OF
DISPUTE PREVENTION & RESOLUTION
STATE OF HAWAII

IKE HUNG and ANGELA HUNG, Plaintiffs, vs. ASSOCIATION OF OWNERS OF KALELE KAI, Defendant.	DPR NO. 11-0369-A **ARBITRATOR'S ORDER ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT** **Hearing: JANUARY 5, 2012**

EXHIBIT 5

ORDER

Presently before the Arbitrator is Plaintiffs Ike and Angela Hung's Motion for Partial Summary Judgment. Plaintiffs seek an order from the Arbitrator that:

1. *The AOAO shall not restrict Plaintiffs' ability to sell their boat moorings in their modified condition;*
2. *The AOAO shall not conduct proposed boat dock renovations at boat-mooring owners' expense; and*
3. *The boat docks and finger pier walkways are common elements and, as such, renovations are the financial responsibility of all homeowners and not solely the boat-mooring owners.*

In response, Defendant Association of Owners of Kalele Kai ("AOAO") Opposition requests the Arbitrator to:

1. *Deny the Hungs' Motion for Summary Judgment;*
2. *Determine that AOAO is entitled to judgment as a matter of law; and*
3. *Dismiss the Hungs' Complaint in its entirety.*

After careful consideration of the totality of the pleadings submitted in support and opposition to the above motions, as well as oral argument heard on January 5, 2012, the Arbitrator finds and Orders as follows:

A. Factual Summary

Boat-Mooring Restrictions

Plaintiffs Ike and Angela Hung are homeowners in Kalele Kai, a condominium project located in Hawaii Kai. In 2002, the Hungs purchased a town house and boat mooring within Kalele Kai. Soon thereafter, the Hungs learned that several boat-mooring owners owned more than one mooring and had modified them, with AOAO approval, to accommodate boats larger than the existing twenty-three foot boat restrictions allowed by the AOAO. The Hungs requested and gained AOAO consent to purchase three additional boat moorings and thereafter modified them to accommodate a larger boat.

In February 2008, Richard Rosic ("Rosic"), a homeowner and boat-mooring owner in Kalele Kai since 2000, listed his town house for sale including a 69-foot boat mooring. A dispute thereafter ensued between Rosic and the AOAO wherein the AOAO claimed it did not have authority under its governing documents to approve Rosic's disposal, modification, or reconfiguration of individual pier walkways to accommodate larger boats.

In June 2009, a settlement was reached between Rosic and the AOAO wherein the parties agreed the AOAO would have sixty days to pass a Declaration Amendment to grant the Board authority to adopt rules and regulations regarding the modification, removal, or reconfiguration of boat moorings with the necessity of obtaining owner approval (the "Declaration").[1] Further, the parties agreed that upon passage of the proposed Declaration, the Board would adopt Proposed Dock and Boat Rules, which would be incorporated into the Kalele Kai House Rules.[2]

In August 2009, the Board passed and recorded the Declaration as the Tenth Amendment of the Declaration of Condominium Property Regime of Kalele Kai ("Tenth Amendment").[3] As contemplated, the Tenth Amendment included "Dock and Boat Rules," which were incorporated into the Kalele Kai House Rules.[4] Importantly, the Dock and Boat Rules expressly allowed the sale of boat moorings in their modified conditions:[5]

> D-6 (a) When a modified boat mooring has one or more finger piers attached in a parallel orientation to the common

[1] Letter to Chris Goodwin re: Kalele Kai Agreement, Hung Exhibit 7
[2] *Id.*
[3] Tenth Amendment of the Declaration of Condominium Property Regime of Kalele Kai, Hung Exhibit 12.
[4] *Id.*
[5] Proposed Dock and Boat Rules, Hung Exhibit 8, at 4.

> walkway, *upon sale of the modified boat mooring*, the new owner will have up to twelve (12) months from the transfer date to dock a boat in the mooring. Extensions to this deadline may be sought in accordance with the procedures set forth in Section D-5 above.[6]

At its August 2011 Board meeting, however, the Board apparently voted to take away the ability of boat mooring owners to sell their docks in a modified condition:

> The board unanimously approved to grandfather the existing 4 boats which do not meet the 23' rule. Should the owner sell his/her boat or home, the dock will need to go back to its original configuration at the expense of the owner.[7]

The Hungs, who purchased in 2002, therefore challenge the Board's decision, which apparently restricts their right to sell their property with the modified boat mooring.

Boat-Mooring Assessments

Also at issue is the Board's decision to renovate the docks in order to apply for general liability insurance. In September 2010, the Board budgeted for a professional survey of the boat docks for the 2011 calendar year.

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[6] Dock and Boat Rules, Hung Exhibit 12.
[7] August 25, 2011, Board Meeting Minutes, AOAO Exhibit J.

On March 28, 2011, the original designer and manufacturer of the boat docks, Bellingham Marine, conducted a site inspection of the boat docks to assess needed repairs. On April 5, 2011, Bellingham Marine provided a "Maintenance and Rehabilitation" report along with an estimate to perform the renovation work.[8]

The Board addressed Bellingham Marine's report and proposal at Board Meetings held on May 26, 2011, June 23, 2011, as well as at an owner's forum and question and answer session held on July 18, 2011.[9] Further, notice regarding boat dock renovations was sent to all Kalele Kai owners in the Kalele Kai newsletters for June, July, and August 2011.[10]

The Board also retained Glenn E. Miyasato, Ph D., P.E., with MKE Associates, LLC, to review Bellingham Marine's proposal. On August 10, 2011, MKE Associates issued its findings to the Board, which largely agreed with Bellingham Marine's repair assessment and recommended the Board to retain Bellingham Marine as the

[8] Kalele Kai Marina Maintenance and Rehabilitation, AOAO Exhibit E.
[9] Board Meeting Minutes, AOAO Exhibit G-J.
[10] Newsletters, AOAO Exhibit M-O.

original design-build contractor to save costs.[11] A copy of MKE Associates' report was provided to the owners on August 12, 2011.[12]

On August 25, 2011, the Board unanimously voted to proceed with the renovations proposed by Bellingham Marine (the "Boat Dock Resolution),"[13] which were to be paid by boat mooring owners according to the number of boat docks owned.

The Hungs, however, question the Board's authority and reasoning in passing the Boat Dock Resolution, as well as the proportion of assessments charged to boat-mooring owners, which they contend are common-area elements that should be paid for by all owners equally. They also argue that the AOAO acted imprudently by failing to obtain repair scopes and costs from multiple consultants/contractors.

B. Analysis

a. Restrictions on Owner's Ability to Sell Modified Boat Moorings.

The Hungs argue that the Declaration allows for the sale of boat moorings in their modified condition and that the AOAO has a

[11] Assessment of Floating Boat Docks, AOAO Exhibit K.
[12] Letter to Owners, AOAO Exhibit L; Letter to Hungs, AOAO Exhibit P.
[13] August 25, 2011, Board Meeting Minutes, AOAO Exhibit J.

longstanding history of allowing boat-mooring owners to reconfigure moorings as "side ties" to accommodate longer boats.[14]

For example, in April 2006 the AOAO sent a newsletter to all homeowners expressly stating, "the Kalele boat docks are 23 feet long. If an owner has a boat that is too long to fit into a single slip, the finger piers can be moved to accommodate a larger boat parallel to the shore."[15] And, from 2006-2008, several homeowners purchased and reconfigured boat moorings to accommodate larger boats.

The AOAO also acknowledges it has "never commanded any boat dock owner to reconfigure their boat docks back to their original condition,"[16] and concedes it has no plans to do so "at this time."[17]

Finally, the "Dock and Boat Rules" adopted by the Board's Tenth Amendment expressly contemplated the sale of modified boat moorings to new owners:

> D-6 (a) When a modified boat mooring has one or more finger piers attached in a parallel orientation to the common walkway, *upon sale of the modified boat mooring*, the new owner will have up to twelve (12) months from the transfer date to dock a boat in the mooring. Extensions to this

[14] Declaration of Brad Oakes, AOAO Exhibit C.
[15] Declaration of Dirk von Guenthner, Hung Memorandum.
[16] Declaration of Brad Oakes, AOAO Exhibit C.
[17] *Id.*

deadline may be sought in accordance with the procedures set forth in Section D-5 above.[18]

In its August 25, 2011, meeting, however, the Board ostensibly restricted the ability of boat-mooring owners to sell their boat moorings in a modified condition.[19]

Although these Board minutes are ambiguous as to their actual scope, this would be a significant change in AOAO policy and contradicts the Dock and Boat Rules incorporated by the Board's Tenth Amendment.

Therefore, to the extent the Board minutes seek to restrict the ability of existing boat-mooring owners from the sale of their modified boat moorings, the Arbitrator agrees that the Board minutes contradict almost ten years of AOAO policy allowing the Hungs and other boat-mooring buyers/owners to modify their moorings and sell their moorings in a modified condition. The Board cannot now negate Boat mooring owners' reliance on the AOAO's longstanding policy by a Board vote that purportedly claims to "grandfather" existing owners

[18] Dock and Boat Rules, Hung Exhibit 12.
[19] Thursday, August 25, 2011 AOAO Meeting Minutes, Hung Exhibit J. ("The Board unanimously approved to grandfather the existing 4 boats which do not meet the 23' rule. Should the owner sell his/her boat or home, the dock will need to go back to its original configuration at the expense of the owner.")

while simultaneously restricting their ability to sell their modified boat moorings.

Accordingly, the Hung's motion for a declaratory order disallowing the Board's restriction of the sale of modified boat moorings is granted.

b. Boat Dock Renovations & Assessment

i. ***Decision to Renovate***

The Hungs question the AOAO's authority and manner in its decision to renovate the docks. Specifically, the Hung's argue that the Board entered into a no-bid contract with Bellingham Marine to repair limited common elements that are already in a safe condition. The Hungs, however, have presented no objective evidence that the moorings or other common/limited common elements are in safe condition, or that the Board committed any violation in the selection of Bellingham Marine to perform the repairs.

The Board's decision-making process and alleged "bad faith" actions in securing the Bellingham Marine bid are therefore questions of fact unsuitable for summary judgment.

ii. Unfair Assessments to Boat-Mooring owners for Renovations to Common Elements.

The Hungs also argue that the Declaration provision that the AOAO cites as obligating them to insure the boat docks evidences the fact that the docks are considered a common element:

> 14. Insurance. Without prejudice to the right of each owner to insure his own condominium unit for his own benefit, the Association at its common expense shall at all times:
>
> (a) Keep all buildings, common elements and, whether or not part of the common element, all exterior and interior walls, floors and ceilings of the Project...insured against loss or damage..."[20]

The Arbitrator further recognizes that the Declaration defines common elements as follows:

> 5. Common Elements. One Freehold estate is hereby designated in all of the remaining portions and appurtenances of the Project (hereinafter referred to as the "common elements"), including specifically, but not limited to:
>
> (c) All walkways, including the boat mooring walkways, and interior roadways located upon the Land;[21]
>
> (e) All ducts, electrical equipment, central water heating systems, wiring, pipes and other central and appurtenant transmission facilities and installations on, over, under and/or across the property...[22]
>
> (f) Any apparatus and installation existing for common use such as elevators...[23]
>
> (k) Any and all other apparatus and installations of common use and all other parts of the property necessary or

[20] AOAO Declaration, Hung Exhibit 11.
[21] Id.
[22] Id.
[23] Id.

convenient to its existence, maintenance, and safety, or normally in common use.[24]

The Arbitrator acknowledges, and indeed the AOAO concedes within its Declaration, that pier walkways are common elements to which any charges for renovation are born by all members of Kalele Kai.

Similarly, The Dock and Boat Rules assign responsibility for maintenance of Finger Piers and support triangles solely to boat-mooring owners.[25] The parties, however, still dispute what remaining portions of the marina included within the contract for renovations are limited common elements.

The Arbitrator cannot assess the fairness of the AOAO's apportionment of fees charged to boat-mooring owners for renovations without more evidence to clarify these elements.

As such, the Hung's motion for partial summary judgment as to the expenses borne by boat-mooring owners is denied.

IT IS THEREFORE ORDERED:

1. Plaintiffs' motion for summary judgment and request for declaratory order as to the AOAO's restriction against Plaintiffs ability to sell boat moorings in a modified condition is GRANTED.

2) Plaintiffs' motion for summary judgment as to the proposed boat dock renovations and unfair apportionment/allocation of fees is DENIED.

---

[24] Id.
[25] Dock and Boat Rules, AOAO Exhibit B.

IT IS SO ORDERED:

DATED: Honolulu, Hawaii 2/1/12

KEITH W. HUNTER
Arbitrator

DISPUTE PREVENTION & RESOLUTION
STATE OF HAWAII
---:---

HITOSHI YOSHIKAWA,) DPR Arb. No. 13-0496-A
Claimant,)
vs.)
ASSOCIATION OF APARTMENT OWNERS OF KALELE KAI,) Arb. Hearing: 8/25/2014 and 8/26/2014
Respondent.)

ARBITRATION
Volume IV
(Part 1 of 2)

Taken before Arbitrator Keith W. Hunter at the offices of Dispute Prevention & Resolution, Inc., 1155 Pauahi Tower, 1001 Bishop Street, Honolulu, Hawaii 96813, commencing at 9:00 a.m. on September 18, 2014.

WILLIAM T. BARTON, RPR, CSR NO. 391

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Also present
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Bradford Oakes

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MORNING SESSION
(9:00 a.m.)
(Part 1 of 2 volumes)

THE ARBITRATOR: Good morning, everybody. Today's date is September 18th. I believe this is the fourth day of the arbitration in Yoshikawa versus AOAO Kalele Kai. Mr. Revere, can you make an appearance for the record?

MR. REVERE: Yes. Terry Revere and Lauren McDowell for the Yoshikawas.

MR. ZALEWSKI: John Zalewski and Jana Naruse for the Association in its Respondent capacity. Mr. Oakes is also present.

MR. GOODWIN: Christopher Goodwin for Counterclaimant Association.

THE ARBITRATOR: Okay. Today we're going to continue with the examination of Mr. Oakes and Mr. Udagawa this afternoon; is that correct?

MR. GOODWIN: Yes. And could I make an inquiry with Mr. Revere? Will Mr. Udagawa need a translator this afternoon?

MR. REVERE: I don't think so.

THE ARBITRATOR: We are proceeding this

EXHIBIT 17

you looked at it the dock, on the far right-hand side, which I believe is 60, was peeling off and going in a different direction totally. We had owners asking us in regards to -- owners of the --

MR. REVERE: Objection. Hearsay.

MR. ZALEWSKI: It explains decision making.

THE ARBITRATOR: I've been allowing a lot of hearsay.

A. We've had owners of the marina ask, Who's going to fix this, what's the cost, how do we go about it and get it done. That's what started the whole process.

Q. Thank you. Let's go to -- the last three digits are 102.

A. Okay.

Q. Do you see the paragraph that starts with the words, "Common expenses"?

A. Yes.

Q. If you could turn to the next page, please, 103.

A. Okay.

Q. Do you see the -- well, let me explain. Ultimately, there was an apportionment of the

expenses for renovation of the marina area between common and limited common, right? There was apportionment made?

MR. REVERE: Can I amend my witness list if Mr. Zalewski is going to explain things?

THE ARBITRATOR: It's a question.

Q. There was ultimately an apportionment, right?

A. Correct.

Q. And does this provision or any of the language in here explain how the Board determined or went about that apportionment?

A. Yes.

Q. And if you could turn to 104, please.

MR. REVERE: Could I voir dire on this, please?

MR. ZALEWSKI: Voir dire is for admissibility of evidence. We stipulated everything in. He had so much time on direct, and he's interrupting constantly.

MR. REVERE: I'll telegraph a pass then. Tell me how that explains how you apportion it. You can wait until this afternoon and think about it all day. I'll ask you that this afternoon.

THE ARBITRATOR: Okay. Move on. Just go.

MR. ZALEWSKI: I'd like to conduct my own questioning.

BY MR. ZALEWSKI:

Q. If you could turn to 104, please. The top of 104, let me just read the first sentence and I have a question or two. "The Board shall from time to time assess the common expenses against all the condominium units in their respective proportionate shares and the limited common expenses against the respective condominium unit or units as provided for herein."

Do you see that?

A. Yes.

Q. Was this provision also taken into account when the Board made its apportionment?

A. Absolutely.

Q. If you could turn to 133 please, several pages back.

A. 133. Okay.

Q. Do you understand that in part, Mr. Yoshikawa is alleging that the 23-foot restriction was waived or abandoned? That's an allegation in this case?

A. Yes.

Q. Paragraph 22 is entitled "Waiver."

Do you see that?

A. Yes.

Q. Let me just read that, and I have a question. "No provision contained in this declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of this declaration, nor the intent of any provision hereof."

Do you see that?

A. Yes.

Q. Was this provision taken into account in -- let me ask: Does the Association agree that the 23-foot restriction has been waived or abandoned?

A. No.

Q. And is this provision one of the reasons why the Board has taken that position?

A. Absolutely.

MR. REVERE: Keith, I understand you're allowing leading, but this is patently ridiculous.

MR. ZALEWSKI: This is cross-examination. He elected to call his witness

in his case in chief.
MR. REVERE: Is there any document that shows the Board relied on that provision?
MR. ZALEWSKI: I would like to go to this exhibit.
THE ARBITRATOR: You will have plenty of time for redirect.
Q. Let's go to Exhibit 504, the next exhibit.
Is this your understanding these are the by-laws of the Association?
A. Yes.
Q. Thank you. And if you could turn your attention way back to 850. That's Page 30 of the by-laws.
A. Okay.
Q. Section 7.6 is entitled "Waiver."
Do you see that?
A. Yes.
Q. And this waiver provision, was this also taken into account by the Board in its position that there has been no waiver of the 23-foot restriction?
MR. REVERE: Mr. Hunter, I would just like to object. And also that if we continue on

this, when I asked Brad when was that taken, revision? And he says, Oh, in an executive session with counsel. Again, this is all a waiver.
So I'm fine with him going down this path. But since they testified previously all this was discussed in executive session, I don't see how this is not a waiver by saying, You considered this, you considered that.
THE ARBITRATOR: A waiver of?
MR. REVERE: Of their attorney/client privilege because before when I would ask, Oh, what did they take up? That's all attorney/client privilege. We don't waive our privilege for that.
Now he's saying they took into account. They didn't do it in an open meeting because we have the minutes of the open meeting. So they must have been doing all of this in executive session. So they are opening the door to all of this. They can't have their cake and eat it too.
MR. ZALEWSKI: The waiver provisions are a waiver of the declaration enforcement, not waiver of attorney/client privilege. I'm not asking him -- I'm not trying to use the attorney/client privilege as a sword or a shield.

I'm just asking whether it was taken into account.
MR. REVERE: It can only be taken into account when they are meeting with Chris or in executive session.
MR. ZALEWSKI: And if we don't elicit this, Terry may argue later, well, the Board didn't even testify that they even cared about this waiver provision in developing its decision making. So he's wanting to have his cake and eat it too.
MR. REVERE: Absolutely not. Every Association has nonwaiver clauses, and every court ignores them when they do things like that, number one.
Number two, they cannot say we took this into account. Yes, we took this into account. Mr. Oakes, when did you take it into account? In a meeting with Chris in executive session.
Then give us everything related to that. They can't say they took it into account when we know they didn't take it into account outside of executive session because it would be reflected somewhere.
So it's only in executive session.

They can't say, We took this into account, we took that into account. Oh, really? Let me see the proof of that. Oh, no, you're not going to look at Chris's emails or questions to him.
MR. ZALEWSKI: I have another question that I think might address all this.
THE ARBITRATOR: Go ahead.
BY MR. ZALEWSKI:
Q. Do you know of any provision in the Declaration or by-laws that empowers of Board to waive any declaration or governing document provision?
A. None to the best of my knowledge.
Q. Thank you. Let's go to Exhibit 506.
MR. REVERE: Well, Keith, I would ask that all that testimony be stricken about what they took into account when it can only have taken place in meeting with counsel or executive session.
THE ARBITRATOR: I understand the restriction you're operating under in terms of the representations made at the beginning of this arbitration that there was no reliance on advice of counsel. I understand that.
At the same time, you're going to have

a chance to ask Mr. Oakes further questions when John's done. And we will, I guess, revisit the topic when that occurs.

MR. REVERE: Okay.

BY MR. ZALEWSKI:

Q. Are you at Exhibit 506?

A. Yes.

Q. Exhibit 506 is entitled, if you look towards the bottom to the right of center layout drawing. It says above that, "Kalele Kai Marina." Then there is a date to the right, May 30, 1991.

Do you see that?

A. Yes.

Q. Now, the name on the left-hand side is Bellingham Marine Industries, Inc.

Do you see that?

A. Yes.

Q. What is your understanding of what Bellingham's role was in connection with the development of the marina?

MR. REVERE: No foundation.

THE ARBITRATOR: You can answer.

A. They were the architect, the -- they are the ones that built and created the marina for us and then manufactured it and put it together.

Q. And this is the same Bellingham that was utilized for the renovation work?

A. Yes.

Q. If you could go to Exhibit 507, please. There's been testimony so far in this hearing about the 10th Amendment of the declaration.

Is this your understanding this is the 10th Amendment, a copy?

A. Yes.

Q. If you could go to the second page, please. There is a reference towards the bottom about language being added, bold, underlined. "The relocation and/or removal of boat moorings may be undertaken only in accordance with such rules and regulations as may be adopted by the Board."

Do you see that?

A. Yes.

Q. Then let me just ask you about the one other insert that's Page 3. Again, there it's prefaced by bold, underlined saying that this language is being added.

And towards of bottom, do you see, "However, the relocation and/or removal of boat moorings shall require only approval of the Board

in accordance with such rules and regulations as it may adopt."

Do you see that?

A. Yes.

Q. Just so I'm clear, do you have an understanding whether the 10th Amendment included or affected the 23-foot restriction in any way?

MR. REVERE: Objection. Vague and ambiguous.

A. No.

MR. REVERE: Calls for a legal conclusion. Irrelevant since the finger piers in the Yoshikawa area were already gone before this was even passed.

THE ARBITRATOR: John, I'm going to partially sustain what Terry is saying. I think you need to lay some foundation about this witness's involvement in the whole history of the 10th Amendment and what it was intended to address so the answers to these questions are in context.

BY MR. ZALEWSKI:

Q. Why don't we provide some context.

Do you recall the events that led to the -- this was passed, right? The 10th Amendment

was passed by the ownership?

A. Yes.

Q. Do you recall the events that preceded the passage of the 10th Amendment?

A. The events that preceded it?

Q. What led to the passage? Obviously, there was a vote taken, right?

A. Correct.

Q. I'm trying to go back in time.

A. Before we started with the 10th Amendment. Obviously Richard Rosic, a name that we all have become familiar with, had an issue. He got rid of two of the boat moorings, just got rid of them. They are gone, which were limited common elements of the Association.

Q. Let me just jump in.

Did you mean boat moorings or finger piers?

A. Finger piers, boat -- one of these days we'll figure out the same word; but the fingers that go out.

Q. When you say he got rid of them, what do you mean by that?

A. He gave them away, got rid of them, disposed of them.

Q. Continue, please.
A. Which, quite frankly, is a limited common element which still belongs to Kalele Kai. It didn't belong to him to get rid of. And in doing so, he had an issue and he wanted to sell his property and he needed to do something to correct what had been done so that he could list his property and go on with it.
He enlisted Terry to create, to figure out how we could resolve it without really getting into court. That's what created the 10th Amendment.
And in doing so, we knew we could not touch the 23-foot boat length. It was in our declarations. There was no way we could touch that.
In doing so, we could get configurations that had been changed. At that time, I want to say there were four configurations that were changed. We wanted to get those so that the Association or the ownership agreed to it.
In doing so, now the 10th Amendment allows the Board the ability to give approval to reconfigure or not configure. It doesn't give the Board approval for the length. It only gives the

Board approval for configuration.
Q. This received sufficient ownership approval is your understanding?
A. Yes.
Q. Do you recall the percentage?
A. It was over the 67 percent. I can't --
Q. Is it your understanding that 67 percent was required to amend the declaration and, in fact, that vote was made in approval of this 10th Amendment?
A. Correct.
Q. The next exhibit is 508.
Does this appear to be the house rules of Kalele Kai?
A. Yes.
Q. If you could turn back to Page 11, please.
A. Okay.
Q. Do you see Subparagraph D-2?
A. Yes.
Q. Could you read the first sentence, please.
A. "Prospective owner of the condominium unit to which the boat mooring area is appurtenant

limited common element, limited shall maintain all boat mooring areas in clean, safe and sanitary conditions." This was part of the 10th Amendment.
Q. Let me just ask a couple questions in follow-up.
MR. REVERE: You want to clear something up now or just wait?
MR. ZALEWSKI: I'd like to conduct my examination.
Q. Do you know of any provision in the governing documents that says that a -- or indicates that the boat mooring area owned by any owner is not a limited common element?
A. No.
Q. In other words, anything of the inverse was provided?
A. No.
Q. Do you know of any governing document provision that says a mooring owned by an owner does not have an obligation to keep it in a clean, safe and sanitary condition?
A. No. No.
Q. Okay. I want to get -- the next exhibit is 509, but I actually want to go to 514 first. Then we'll come back.

Exhibit 514, tell me when you get there.
A. I'm there.
Q. Is this what's been commonly called the Rosic agreement?
A. Yes.
Q. Let me cover a few parts. On the first page, about towards the bottom, there's a sentence, "Mr. Rosic further contends that because of health and safety reasons, he had the finger piers removed from the property at his own expense."
Do you see that?
A. Yes.
Q. Do you know of any writing or communication in which Mr. Rosic has ever asserted that he removed his finger piers for any reason other than his health and safety?
A. No.
Q. And the first part of that paragraph, it starts with the sentence, "The issue between the parties involves the modified boat dock currently owned by Mr. Rosic."
Do you see that?
A. Yes.

Q. Is that, in fact, your understanding of what the issue was between the two sides at the time?
A. Yes.
Q. If you could turn to the next page, please. Towards the top, there's paragraphs enumerated 2 and 3.
Do you see those?
A. Yes.
Q. There's references in each of those two paragraphs to the term "a boat."
Do you see that in 2 and "a boat" in Paragraph 3?
A. Yes.
Q. In fact, do you see the third "whereas" paragraph where it talks about his boat?
A. Yes.
Q. Let's go down to Paragraph 1 at the bottom of the second page. It talks about the Board having "60 days to pass proposed declaration amendment currently under consideration."
Do you see that?
A. Yes.
Q. Did that ultimately become the 10th Amendment?

A. Yes, it did.
Q. And then turn the page, please.
Under Paragraphs 4 and 5, do they both include the terms "a boat"?
A. Yes.
Q. Could you turn to the next page to Paragraph 12.
Do you see the first sentence that says, "This is the entire agreement of the parties"?
A. Yes.
Q. Is that your signature below?
A. Yes, it is.
Q. In signing this, did you review the document?
A. Yes, I did.
Q. Did you, in signing it, see any language or have any understanding that this agreement in any way affected the 23-foot limitation?
A. It couldn't. I wouldn't -- it couldn't happen. We couldn't do it. So no.
Q. And when you say it couldn't have, what do you mean by that?
A. The declaration would have to be

approved by the homeowners, not by the Board.
Q. Now, attached as the last two pages is a document that's called "Proposed Dock and Boat Rules."
Do you see that?
A. Yes.
Q. So now I want to go back. I want to go back to Exhibit 509. Is 509, in fact -- well, prefatory question.
Were these proposed rules, in fact, passed --
A. Yes.
Q. -- and implemented?
Is 509 a copy of that?
A. Yes.
Q. If you could go to Exhibit 510, please.
Do these appear to be Board meeting minutes that are dated August 22, 2000?
A. Yes.
Q. Now, as part of becoming vice President and then President, did you have occasion to go back and review prior Board meeting minutes?
A. Yes.
Q. If you could turn to the second page.
Do you see the heading, "Owner

Correspondence"?
A. Yes.
MR. REVERE: Objection. There's no foundation.
Q. I'll ask. Were these some of the minutes that you reviewed?
A. Yes.
MR. REVERE: Objection. Lacking time frame.
Q. Under the heading "Owner Correspondence" --
MR. REVERE: I'm sorry. I've got an objection. When did he go back and look at these and why?
THE ARBITRATOR: Well, it is relevant to when they were making their decisions.
Q. Let me capture that. You probably don't remember exactly the date, do you, when you reviewed prior Board meetings, including this, right?
MR. REVERE: Suggesting the answer.
A. I reviewed back to, I believe, 1997 the Board minutes that we had, once this started with the 10th Amendment and then on again and continued reviewing them and looking back at them as we got

into the 2010 litigation.
Q. Let me clarify my question.
A. Okay.
Q. Did you review Board meeting minutes including these Board meeting minutes prior to the time in which the issue came up with regard to the Rola?
A. Yes.
Q. If you could go back to this "Owner Correspondence" heading. There is a reference to the owner of 2511, and a Mr. Lau asking the Board's consideration to park his 26-foot-long boat in a slip.
Do you see that?
A. Yes.
Q. And do you see the next sentence, "Pursuant to Page 8 of the declarations, the Board was unable to grant their request and management was directed to respond to One Keahole's request."
Do you see that?
A. Yes.
Q. In reviewing other Board meeting minutes, do you recall any minutes that suggested to you that they were in conflict with either this decision or the 23-foot restriction?

MR. REVERE: I want to object. Best evidence rule. What documents, if any?
Q. I'll clarify.
Do you recall reviewing any Board meeting minutes which indicated any Board at any time ever approved a boat in excess of 23 feet to be moored at Kalele Kai?
A. Not that I can find.
Q. If you could go to Exhibit 511, please.
What is Kalele Kurrents? Describe what that is.
A. It's a quarterly -- well, now it's a quarterly. We tried to do it monthly. It became time consuming. It's a newspaper.
Q. It's a periodical newsletter?
A. Newsletter of what's going on and happenings. Try to keep residents up to speed of what's happening.
Q. One example is this Exhibit 511.
Is this an example of that?
A. Yes.
Q. If we could turn to the third page, Page 3. Towards the top, there's a reference to President Merrill Werblum and there are several names. Immediately after that is Vice President

Brad Oakes.
Do you see that?
A. Yes.
Q. At the time, January 22, 2009, were you Vice President?
A. Yes.
Q. Merrill Werblum, was that your predecessor?
A. Yes.
Q. Let's go down that page towards the bottom.
Do you see a heading "Open Dialogue"?
A. Yes.
Q. There is a reference, "Finger pier ownership, maintenance and repair. After discussion and agreement President Werblum directed that legal opinion will be obtained to clarify the rights and obligations of the owners and AOAO for our waterfront (common and limited common elements) versus outright ownership."
Do you see that?
A. Yes.
Q. This time frame, January '09, is that consistent with your recollection of when there was Board attention about the condition of the

marina area?
A. Yes.
Q. If you could turn to 512. That's another edition of the Kalele Kurrents dated April 2009.
By the way, the Kalele Kurrents, is that sent to all owners?
A. Yes.
Q. If you could turn to the third page.
Do you see bottom left, there is a heading, "Issues Clarified"?
A. Yes.
Q. Do you see Number 4 under "Issues Clarified"?
A. Yes.
Q. Could you read that out loud, please.
A. "Moorings of boats exceeding 23 feet require 67 percent owners approval as well as marina approval, may also be needed in engineering approval."
MR. REVERE: Excuse me, Mr. Hunter, again, especially with counsel highlighting this exhibit, we again renew our request for, because they are publishing it in the newsletter to hundreds of owners and bringing up trying to

influence your decision, we think that we are entitled to all communications from all counsel regarding this, because they are publishing it and putting it right under your nose.

I don't see how we cannot be allowed to get into all this attorney/client stuff when they are publishing it and handing it to a decision maker and not letting us see how the sausage got ground.

THE ARBITRATOR: I'm going to defer ruling on that until we're through this witness or at least until we're on your redirect of this witness.

MR. ZALEWSKI: Thank you.

BY MR. ZALEWSKI:

Q. Is that consistent with your recollection?

A. Yes.

MR. REVERE: Is what consistent? I'm sorry.

Q. That this was included in this newsletter. So under right-hand column toward of top says, "Motion to seek owner approval."

Do you see that?

A. Yes.

Q. There is a reference to Proposed Declaration Amendment. Is that the same -- what ultimately became the 10th Amendment? Is that your understanding? I'm just trying to answer any --

A. No.

Q. So this was discussion that preceded that?

A. This discussion came up at the annual meeting because the discussion at the annual meeting was about the way the marina was set up with the 23-foot level or 23-foot length.

Linda Tangren or Director Marvin Tangren, Linda is his wife, but Marv Tangren and Kimiko attempted to try to get the owners at that point to agree to it at the annual meeting.

And the motion was -- wait a minute. I'm misreading this. I apologize. This was the 10th Amendment. No, I'm thinking of something totally different. My fault. It was the amendment.

Q. Fair to say that amending the declaration, in your mind, that's the appropriate way if one were to somehow modify the 23-foot restriction, it's through the amendment process

passed, duly passed by the ownership; is that correct?

MR. REVERE: Objection. Vague and ambiguous. Calls for a legal conclusion. Calls for improper opinion testimony.

THE ARBITRATOR: I'll grant that in part and allow you to answer the question within your limited knowledge of the governing documents as the President of the Board and, obviously, not as an attorney.

A. My understanding of the 23 foot, it would have to take homeowners' approval to get it done. It was not a Board -- the Board could not do that. Obviously, the declarations are the kingpin to the ones at the end of the day. So only the owners could at that point approve it.

Q. Along that vein, do you have any recollection or understanding of Mr. Yoshikawa, either himself or through his agents, ever initiating any effort to amend the 23-foot restriction in the declaration?

A. No. We made that comment at mediation.

Q. Are you aware of Mr. Yoshikawa or any of his representatives ever supporting the amendment of the 23-foot restriction in the

declaration?

A. They did not even vote on it.

Q. That was my next question.

You're not aware of Mr. Yoshikawa ever having voted for any amendment to the 23-foot restriction?

A. No.

Q. If you could turn to Exhibit 513. This is Kalele Kurrents issue dated May 2009.

A. Yes.

Q. The third page, if you could turn to that page.

A. Yes.

Q. Upper right-hand corner, there is a heading, "Amendment to Declaration Regarding Boat Moorings."

Do you see that?

A. Yes.

Q. There's a reference to a proposed amendment to grandfather current boat mooring configurations.

Do you see that?

A. Yes.

Q. It shows the outcome was approximately 8 percent in favor and 37 percent opposed?

A. Correct.
Q. And is that consistent with your recollection that this happened in or around March 2009?
A. This happened at the annual meeting. This is what I was referring to at the annual meeting.
Q. The March '09 annual meeting?
A. Correct.
Q. Okay. Exhibit 514 we already covered. That's the Rosic agreement. If you could go to Exhibit 515, Kalele Kurrents issue dated June 2009; third page, please.
Under "Unfinished Business," Paragraph 2, it says, "Boat moorings amendment to the AOAO documents update," and then it starts "President Oakes."
Do you see that?
A. Yes.
Q. So does this, in fact, comport with your understanding that by April '09, you have become Board President?
A. Correct.
Q. And just so I'm clear on this, you've been Board President ever since?

A. Yes.
Q. How many members are on the board?
A. Nine.
Q. You're one of nine?
A. Correct.
Q. When the Board votes, do you have one vote or more than one vote?
A. I have one vote.
Q. Let's go to Exhibit 516. This is a Kalele Kurrents issue dated July 2009.
Are you there?
A. Yes.
Q. Second page, please. Second paragraph, first sentence reads, "As of July 2nd, we have 62 percent that have voted yes on the declaration amendment."
Do you see that?
A. Yes.
Q. Is this what ultimately became the 10th Amendment?
A. Yes.
Q. So votes kind of came in over time?
A. Correct.
Q. Okay. Exhibit 517, please. This is a Kalele Kurrents issue dated August 2009; second

page, please.
A. Okay.
Q. If you look at it, it says, "Aloha, I would like to thank everyone for their support of the declaration amendment which would allow the Board of Directors to approve the proposed boat dock and boat rules. The amendment passed with over 70 percent approval."
Do you see that?
A. Yes.
Q. Is that consistent with your recollection that this occurred in or around this August 2009 time period?
A. It did.
Q. Let's go to Exhibit 520. This is the apartment deed between Rosic and Yoshikawa.
Are you generally familiar with apartment deeds at Kalele Kai?
A. I've gotten working knowledge of them lately, yes.
Q. Is it your understanding -- let me ask: Is it your understanding -- do you have an understanding that owners who are members at Kalele Kai and who own units at Kalele Kai, whether or not they have an obligation to follow

the declarations?
A. They absolutely do have an obligation to follow.
Q. And if you could turn to Page 919.
Do you see the heading, "Third"?
A. Yes.
Q. Do you see the reference about "Boat moorings are limited common elements"?
A. Yes.
Q. Are you aware of any provisions in which owners' boat moorings -- boat owners -- let me rephrase.
Are you aware of any provisions in any governing document that state that owners of boat moorings, that those boat moorings are not limited common elements? In other words, anything to the contrary of what's stated here?
A. No.
THE ARBITRATOR: John, it's about 10:20. Shall we take a short break?
MR. ZALEWSKI: Sure.
(Whereupon, a recess was taken from 10:14 a.m. to 10:30 a.m.)
THE ARBITRATOR: Let's proceed.
BY MR. ZALEWSKI:

Q. Exhibit 523, sir.
A. Yes.
Q. Let everybody find their place.
This is the document that's entitled "Kalele Kai Marina Maintenance and Rehabilitation," correct?
A. Correct.
Q. Several pages in length. First of all, let's cover the date. Turn the page, please.
"April 8, 2011," is that what you see?
A. Yes.
Q. So "Bellingham Marine" at the top, the letterhead, do you see that?
A. Yes.
Q. This is the company that was ultimately selected by the Board, correct?
A. Correct.
Q. Now, this is a proposal, right? Why don't you do this: Why don't you describe some of the events that led to this being sent to Kalele Kai Marina. It looks like Edward Bronson and Bryan Liu.
Who are those people?
A. Edward Bronson was the Maintenance Manager and Bryan Liu was the Resident Manager.

Q. What do you recall about the events that led up to this document being received?
A. Obviously, there was issues with the marina. We had been trying to get ahold of companies to -- Bellingham being one, but companies to give us a proposal to tell us kind of what's wrong with the marina so we could understand how to better fix it.
Q. About the second line in it starts "As the," and then the next line, "world leader in the design and construction of small craft marinas and harbors."
It is your understanding that's how they bill themselves?
A. Correct.
Q. Then they refer, a few lines down, as, "Who better to maintain your docks than Bellingham Marine, the company who originally built them."
Is that your understanding?
A. Yes.
Q. It says, "This report includes," and there's three enumerated items.
Do you see that?
A. Correct.
Q. There is a maintenance condition

assessment, a repair refurbishment proposal and an annual maintenance agreement, right?
A. That's correct.
Q. Let's go to the maintenance condition assessment that starts at Page 31.
Do you see that?
A. Yes.
Q. Turn to Page 32, please. In this assessment portion of this document there's some photographs, and I apologize, they are black and white, they are not great quality, but let's focus on the text.
On the left-hand side, there's a heading that says "Concrete Unit Condition."
Do you see that?
A. Yes.
Q. It starts, "The concrete" --
MR. REVERE: What page are you on?
Q. 032, the Bates number. The first sentence says, "The concrete floats were manufactured in 1991 and appear to be structurally sound."
Do you see that?
A. Yes.
Q. And does 1991 comport with your

understanding?
A. Yes.
Q. Could you turn your attention to the sentence after that. It says, "There appear to be some cracking in the deck surface."
Do you see that?
A. Yes.
Q. Did you observe cracking yourself, personally?
A. Yes.
Q. If you could turn to the next page, please. I'm sorry. I should cover -- it says "Bellingham," the prior page -- "would recommend a concrete sealer to be applied."
Do you see that?
A. Yes.
Q. Was that ultimately done?
A. Yes.
Q. Next page. Heading, "Structural Whaler Conditions."
Do you see that?
A. Yes.
Q. It says, "The structural lumber has deteriorated to a state of disrepair."
Do you see that?

A. Yes.
Q. What's your understanding of when they talk about structural whaler, what's your layperson's understanding?
A. This is layman's terms, but the whalers are the boards on the outside which were falling apart or peeling apart, and they didn't have any integrity left into them.
Q. What's your personal understanding about these whaler boards, whether they are limited common element or common element?
A. It depends on the location of where they're at on the marina. On the walkways, they would have been common element. On the finger piers or moorings, they would have -- which is limited common element, would be the limited common element. They go all the way around. So that there's two pieces to them.
Q. If I understand it, on the ocean side, the whaler board ocean side whaler boards, it's your personal understanding they are limited common elements, but on the nonocean side, they are common element?
A. On the walkway side, correct.
Q. There's a recommendation in this

paragraph for replacement.
Do you see that?
A. Yes.
Q. Were, in fact, the whaler boards replaced?
A. Absolutely.
Q. Okay. And then in the middle of the page -- by the way, as far as the deterioration to a state of disrepair, is that consistent with your personal observation?
A. Yes.
Q. Middle of page, "Rod Conditions."
Do you see that?
A. Yes.
Q. It says, "The structural tendons referred to as through rods appear to be in very poor condition."
Do you see that?
A. Yes.
Q. Why don't you give us your lay understanding of what this is, this rod conditions or structural --
A. I know we can't see in this very well, but you can see little circles. That is where the rods come through and hold the concrete together,

the whaler boards together with bolts and nuts on each side. I forgot the diameter. They are about that thick (indicating) and they had -- I don't know the percentage, very high percentage had been down to less than a pencil. You could have cracked them when you pulled them out. They were rusted through and everything. There were hundreds of these as you're going through the marina.
Q. And what's your understanding as to whether these rods or structural tendons, whether they are a limited common element or a common element?
A. Again, it would just depend with the location of it. They could be either or.
Q. Some on the -- would it be on the ocean side would be limited is your understanding?
A. That's correct.
Q. And on the nonocean side or the mauka side would be --
A. Or the finger piers, obviously, would be the limited common element because they hold the finger piers together as well.
Q. It says, "Upon observation BMI would recommend complete hardware replacement throughout

the marina."
Do you see that?
A. Yes.
Q. And was that, in fact, done?
A. Yes.
Q. Below that is a heading that states, "Kite frame tri-frame conditions."
Do you see that?
A. Yes.
Q. Are those pictures that relate to this on the next page? Is that your understanding?
A. They are. Personally, I can't see what I'm looking at here. They were in awful condition.
Q. When you say awful condition, is that your layperson's personal observation?
A. They were falling apart.
Q. You saw that?
A. I saw that personally.
Q. It says, "Kite frame tri-frame conditions."
Is there like a layperson's terminology that you use when describing this type of --
A. These are the triangles.
Q. These are called triangles?

A. Right. I think that's what we all kind of --
Q. Is it your understanding, personal understanding whether the triangles are a limited common element or a common element?
A. They are limited common element.
MR. REVERE: Objection. Vague and ambiguous as to what is the basis for all these random designations. I just think there is no foundation.
MR. ZALEWSKI: I'll just rephrase.
THE ARBITRATOR: Okay.
Q. When you say "limited common element," explain your personal belief why they're limited common element.
A. The only thing that holds them, if you -- you wouldn't need them if you don't have the finger piers. You need them to have a finger pier because it is the only thing that holds it out. So that holds it to the main walkway.
If you didn't have it there, it would wobble. You would have no stability.
Q. It references in part in this paragraph, "The level of rust and deterioration leads Bellingham Marine to recommend full

replacement."
Do you see that?
A. Yes.
Q. Did you personally observe their condition?
A. Yes.
Q. What do you recall personally seeing?
A. They were rusted, peeling apart, just little shavings. They were just falling apart after 20 years of sitting in the salt water or salt air.
Q. Were these triangles, in fact, replaced?
A. Yes.
Q. There's been testimony as far as the Yoshikawa mooring area that there are no finger piers in that area.
Is that your understanding as well?
A. There's two finger piers on the Yoshikawas', obviously the front and the one end on the other, but there none in the middle, correct.
Q. There's two in your understanding, but none in the middle?
A. Correct.

Q. For those none in the middle, were there finger piers -- did Bellingham provide new finger -- did Bellingham provide new triangles for even those, that open area?
A. Yes.
Q. Why did the Board have Bellingham do that?
A. Because if you look at the 10th Amendment, they've got 12 months to keep a boat in there. If they decide not to keep a boat or change that back to the way it is, we would need to have those triangles to be able to put the marina back the way it should be. It would need to be there. They are actually in storage. We have them.
Q. So the triangles pertaining to the Yoshikawa mooring area, there are some on each end that are actually in place and there are other ones that are in storage?
A. Correct.
Q. Those are all new triangles?
A. Brand new.
Q. Pursuant to the Bellingham renovation work?
A. Correct.

Q. If you could turn two pages back, please. 35, Bates Number 35. There is a heading, "Kite Frame Tri-Frame Cover." It says "Material, plywood."
Do you see that?
A. Yes.
Q. What is your layperson's description for that?
A. That's to cover the triangle so it puts a cover over the top of the triangle.
Q. There is a reference, "These are in very poor condition and plywood could become a safety factor."
Do you see that?
A. Yes.
Q. What do you recall personally observing?
A. Some of these had already fallen apart. And people, owners, had already taken -- just gone down to City Mill, bought plywood, put it in there. And people were stepping through them. So they weren't putting the right marine quality back on the marina. They were just fixing things. And they were falling apart. They just hadn't been replaced.

MR. REVERE: I'm sorry. Bill, could you read back the response? I didn't hear it.
(Record read by the Court Reporter.)
Q. In this same paragraph, it says in part, "BMI would recommend full replacement with polymer triangle cover typical in the marine environment."
Do you see that?
A. Yes.
Q. Was that, in fact, done?
A. Yes.
Q. And did that occur also for the Yoshikawa mooring area?
A. Yes.
Q. And was that both with respect to the finger piers on each end as well as in storage?
A. Exactly. We have four that are in storage, we have two that they were replaced.
Q. So fair to say that you consider these covers as well as the triangles underneath them to be a limited common element?
A. Correct.
Q. If you could turn to the next page, there is a heading, "Cleats."
Do you see that?

A. Yes.
Q. What do you recall as far as the condition of these cleats, seeing?
A. After years of just being there, they were just poor shape. I wouldn't say they were totally falling apart, but they were just in poor shape. If you're going to go to the expense of redoing the whole marina, you might as well make it look like the right marina and not have to redo them. So we put new cleats in there as well.
Q. And the cleats, what's your layperson's -- do you actually see how they are utilized?
A. People tie their boats to them.
Q. That's their function? And is it your personal understanding whether those cleats are common element or limited common element?
A. They are into the whaler, so they are limited common element.
Q. Then there is a reference, and I don't know, what's your understanding of the term hardware on the left-hand side? It says, let me read it out loud, "The hardware is rusted beyond its useful life and Bellingham Marine would recommend replacement. Replacement is required

during whaler replacement due to its existing hardware being unsalvageable."
Do you see that?
A. Yes.
Q. And what do you recall personally observing about hardware?
A. I mean, the hardware --
MR. REVERE: Excuse me. Objection. Calls for speculation on the part of whatever this author meant.
THE ARBITRATOR: So ask him a question about his own observation.
Q. What did you understand hardware was being characterized as?
A. This would be the nuts and bolts of everything that needed to go into the marina as far as the bolts that tied the rods together with the washers.
Q. And do you have personal recollection about seeing their condition prior to the Bellingham work? What do you recall seeing?
A. They were rusted. They had cut most of them off with a saw. They couldn't tighten them or they couldn't loosen them. They had to physically cut them all off, a lot of them off. I

shouldn't say all off.
Q. And the hardware in the way that you've described it, was that hardware replaced with nuts and bolts?
A. Absolutely.
Q. And what's your personal understanding whether that was a common or limited common element?
A. Once again, it just depends where it was in the -- if it was the moorings and things, then it was limited com. If it was the walkway, it would be com. So it was divided out.
MR. REVERE: I just want to object. Vague and ambiguous. The response is nonresponsive since the witness testified earlier he was not sure what he means by "mooring." So there is no response to the question at this point.
THE ARBITRATOR: I think he answered.
Q. Let's turn to the next page, please. There's a heading that says utilities.
Do you see that?
A. Yes.
Q. There is a reference to electrical system and below that pedestals.

A. Correct.
Q. And now, was there electrical work done as part of the Bellingham renovation work? Was this included in the job?
A. There was two pieces of electrical work that was done. One is they had to take the pedestals that were off there to begin with because they were electrical, to take the marina apart. That took an electrician to do. And they did that.
The second, and I think what this refers to is the replacement of the old pedestals that were there, which we did a year after the renovation.
Q. And the pedestal, what's your understanding of -- well, based upon your personal observation describe the location of the pedestals.
A. It's on each -- it's on every other triangle going down. It's on -- the pedestal's purpose is really two-fold. One, it gives electricity to boats that need it for the electric boats that are out there as well as some of these big boats that are out there now, or big boats that were out there at one time. And then it also

allows us to have there's lights in them so it gives security lights to the walkways.
Q. So what's your understanding as to whether they are limited, common or both?
A. That is one that, quite frankly, could go either way and we elected to take it on as the Board and just made it common because of the security issue. It was really the security piece of it. So in doing so, the Board said it was common area, and we -- the whole Association paid for those.
Q. If I understand your testimony, it's your belief the Board could have taken a position that the cost of this work or at least a part was limited common element allocable to the mooring owners, but it did not?
A. That's correct.
MR. REVERE: Objection. Calls for speculation. Calls for a legal conclusion. No foundation.
THE ARBITRATOR: Well, he answered the question. He said that's right.
Q. I just want to understand. At the end of the day, there were -- we'll get to the cost. But it's your understanding the costs related to

the pedestals, who was that charged to?
A. The whole, complete Association.
Q. All owners?
A. All owners.
Q. Not just to the mooring owners?
A. Correct.
Q. Okay. There's, starting at Page 38, it looks like -- is this the repair and refurbishment proposal portion of this document?
A. Yes.
Q. Did the Board, in fact, act upon this repair and refurbishment proposal?
A. Yes.
Q. So on Page 39, there is a heading, "Walkways," and there's nine enumerated items.
Do you see that?
A. Correct.
Q. The work that's described in Numbers 1 through 9, was that work that, in fact, took place?
A. Yes.
Q. And do you recall how the costs pertaining to this work was allocated among the ownership?
A. If you go into this, it will actually

break it down further. But yes, I do.
Q. And could you describe it.
A. It was -- we asked Bellingham to put what it would cost finger piers, moorings, whatever we want to call those things that stick out into the water, what it costs to repair those, versus what it costs to the common area. Because one was limited common versus common. They broke it down into the pieces for us.
Q. And can you turn to Bates Number 043, please.
A. Yes.
Q. Now, this looks like a copy of a photo of a Post-it note.
Just to be clear, that's not part of this document, right?
A. No, it is not.
Q. Is it your understanding that's consistent with your deposition testimony, though, as far as explaining apportionment?
A. Yes.
MR. REVERE: I'm sorry. What page are you on?
MR. ZALEWSKI: 043.
BY MR. ZALEWSKI:

Q. So there's some cost figures here.
Do you see that? Walkway, Fingers, and then Total Cost?
A. Correct.
Q. Now, I believe you were just testifying as far as, we asked Bellingham to break down things. Could you elaborate on your testimony.
A. If you look on this, it actually says what went into the fingers, and it associated it to the cost of the $95,400. The total overall -- the walkway was $169,300. The total overall cost was $264,700. So everything we began to use as a business judgement, we just divided the numbers out and it came 36.04 percent versus 63.96 percent. And that's the numbers we've been using ever since.
Q. Let me ask you a couple follow-up questions.
Under this first figure under "Walkway," did that $169,000 figure, did the Board consider that to be, to fall under the basket of common element or limited common element?
A. That was common.
Q. And then under the item "Fingers," what did -- that $95,000 figure, did the Board consider

that to be common element or limited?
A. Limited.
Q. So there's some percentages. Do you see the 63.96 percent and a 36.04 percent? Do you see that?
A. Correct.
Q. Could you explain what those percentages mean or how that was applied?
A. The total overall cost was $264,700. If you divide it by the 95.4, that's where you came out with the 36.04 percent for the unlimited common piece of it. That's really what we were concerned about, what was the percentage that goes back to the owners or to the limited common element owners.
So basically, the complete ownership picked up 63, almost 64 percent and the owners of the limited common element picked up this 36 percent.
Q. Let's talk about that. As far as this first piece, this $169,000 figure, how was that funded?
A. That was funded through our reserve. We had the money already.
Q. In the Association's reserve account?

A. Correct.
Q. And the $95,400 figure, how was that funded?
A. That was assessed to each of the unlimited common element owners of record at that time.
Q. You said unlimited. You mean limited?
A. Limited, excuse me. Limited.
Q. What's your understanding, what do you recall as far as with some more specifics how that figure was assessed to the limited common element owners?
A. We had 60 piers, docks, moorings, whatever, divided by the 95,400 became a number. Two of those were the Association's.
Q. So that figure was divided by the number of mooring areas?
A. Correct.
Q. Which is 60?
A. Correct.
Q. So Mr. Yoshikawa was, if we would just use him as an example, how was it determined how much he was to be billed?
A. I believe he owned six. So basically he would have been billed the number times that,

times six.
Q. So if I have my math right, he has six moorings areas over 60, one-tenth of the cost of the $95,000 figure was assessed to Mr. Yoshikawa, approximately?
A. In the beginning we assessed everybody $2,000 to begin with, because we weren't sure what the total number was going to come out.
At the end when we knew exactly where the number came out, we actually refunded, I don't have the specific, but it came out to $1,700 instead of the 27 -- or the $2,000 number.
Q. I just want make sure for Mr. Yoshikawa, he was assessed based upon owning six out of 60 mooring areas?
A. Correct.
Q. And that was applied to this $95,400 figure?
A. Correct.
Q. This figure is a proposal, right?
A. Correct.
Q. Are you saying that the actual costs weren't exactly the same as this proposal figure, right?
A. The actual cost, that's why -- exactly.

It came in a little less expensive than this. I don't have that.
Q. There was actually an issuance of a refund to all mooring owners, including Mr. Yoshikawa?
A. Correct.
Q. If you could just go to Page 48 --
A. Actually, let me just correct. I think this number came out correctly. We overestimated when we did that because we weren't sure what was going to come in. So the numbers actually came out correctly. But when we took the numbers of the -- $120,000, all we needed was $95,400.
If I am confusing people, I'm sorry. I don't mean to.
Q. Let me make sure I understand. When you billed or assessed the marina owners, you assessed them a little more for some kind of tolerance?
A. We assessed them because we didn't know what the electricity. There was going to be a cost possibly, not knowing what we were getting into with electricity, that could have gone on above it to begin with.
When we came out, there was no issue

with electricity or above cost. So this number actually came to the real number, and that's when we refunded it back to the people.
Q. If you could turn to 048, the maintenance agreement portion of this document.
A. Okay.
Q. 048. Okay. In any event, was part of the retention of Bellingham was over and beyond renovation, it was also for ongoing, a maintenance contract?
A. Correct.
Q. So after the renovation work occurred, Bellingham is basically still under contract to come back periodically?
A. On a yearly basis, we evaluate their maintenance agreement to see if it fit with what we're doing. Yes, obviously, we want to make sure the marina is tight, I guess, my understanding, which I've learned. But you want to keep those bolts all tight so the marina stays together. They tighten those.
The other piece of the maintenance agreement is it helps us with our insurance piece for the marina out there.
Q. So the maintenance, since the

renovation work occurred, has, in fact, Bellingham come back annually for maintenance?
A. Correct.
Q. Do you recall like how many times or give us --
A. I believe we've only done it once since then. We're doing it annually, but we've only done it once since the actual completion.
Q. And when Bellingham has come back to do maintenance, how is that, the cost of that work, apportioned among the ownership?
A. Again, if we use the 36 percent, the number that we came up with as far as what was limited versus common area, based on that. And that number has become the number we use for insurance as well as for the maintenance agreement.
So our maintenance agreement in round numbers is about $4,000 a year with Bellingham. And the absorbed cost is approximately 36 percent of that to the 60 marina owners.
Q. Just so I understand, the annual maintenance costs, 36 percent is allocated among the mooring owners, correct?
A. Correct.

Q. And the 64 percent piece of the maintenance cost is allocated among all owners?
A. Correct.
Q. Now, that's for the Bellingham maintenance cost, is that expected to be a recurring cost each year?
A. Every time -- yes.
Q. Now, you said something about insurance.
As far as using these percentages for insurance, what do you mean by that?
A. When we got into this project and started to learn that the marina was never insured out there, we had general liability which covers our whole property but we did not have marine liability, which covered replacement value to it and what needed to be done.
So obviously, our declaration states that it has to be insured. We insured it. And we use that 36 percent basis because now we get a proposal based on the marina itself, which is somewhere between 17- and $18,000 a year. And we use the number again, of 36 percent goes to the mooring dock owners, whatever you want to call it out there, the 60 owners. Then the 64, 63 point

whatever, 96, goes to the common, to the complete property.
Q. That percentage has been applied and is assessed in accordance with what you just described for each policy year?
A. Correct.
Q. Each --
A. We assess it every year.
Q. Every annual premium is assessed in that manner?
A. Right. And I want to say it was about $111 per dock last year for the whole year.
Q. Did I hear you right that prior to your tenure as Board President, there had been no insurance, no marine policy in place?
A. That's my understanding.
Q. You don't recall it ever being --
A. That's what I was told.
Q. Starting at Page 56, 056, let me just go through it. There appears to be kind of like other projects in which Bellingham was involved. 056 references a Skyline Marina in Anacortes, Washington.
Do you see that?
A. Yes.

Q. The next page, Port Edmonds; Edmonds, Washington. Page after that, Port of Camas in Washington. The following page refers to a Portofino Harbor Marina in Clear Lake Shores, Texas.
Do you see that?
A. Yes.
Q. If you could go to 060. Towards the top, it references Bellingham's history as having been over 50 years of experience in building and designing marinas.
Do you see that?
A. Yes.
Q. Under "Scope of Services," it references BMI having "installed more than 20 million square feet of -- 1.86 square meters dock systems throughout the U.S. and the world."
Do you see that?
A. Yes.
Q. If you could turn the page. This is 061.
This references various locations in the United States and the world, right?
A. Yes.
Q. Do you have -- let's turn one more

page. 062, there is a reference of to recent projects.
In the middle do you see Koolina Marina, Honolulu, Hawaii?
A. Correct.
Q. Does that comport with your understanding that Bellingham has acted as general contractor for Koolina?
A. Yes.
Q. Do you have any understanding as to other Hawaii capacities in which Bellingham has been involved?
A. They've been working out at Kihei Lagoon since the tsunami, cleaning that up and working on that.
MR. REVERE: I'm sorry. What tsunami?
A. The one that was supposed to hit here, what was it, 2010? I don't remember specifically.
Q. Now the Board, in deciding to utilize Bellingham as its contractor, as part of that decision-making process, did the Board identify any other candidate that the Board considered as qualified as Bellingham?
A. There was no one.
Q. No one?

A. There was no one as qualified; key word, "qualified."
MR. REVERE: Objection. No foundation. Best evidence rule.
THE ARBITRATOR: I think you need to -- the question was: Did you identify other contractors.
Q. Let me clarify. Did you identify other contractors that had the qualifications commensurate with that of Bellingham?
MR. REVERE: Objection. No foundation.
A. We looked at a company called Pacific Divers, but I wouldn't say their qualifications were near what Bellingham had as qualifications.
Q. So you, as you sit here today, you know of no other company that has the same qualifications?
A. Not that I'm aware of.
Q. If you could turn to Exhibit 524, please. And let me preface this.
In terms of proceeding with the renovation work, did the Board make efforts to keep the ownership advised?
A. Yes.
Q. Were updates provided?

A. All the time.
Q. I'm sorry?
A. 524? Hang on a second. I'm in the wrong book. Here it is. Yes, we did.
Q. And Exhibit 524, is this some kind of flyer?
A. Yes, it was inviting the whole community to hear Jesse's presentation.
Q. Jesse is?
A. General manager for Bellingham.
Q. His name appears on this exhibit, right?
A. Correct.
Q. Would you turn to Exhibit 525.
A. Yes.
Q. Is this an email from Tracy Wong to yourself dated June 25, 2011?
A. I was copied in on it, yes.
Q. Who is Tracy Wong?
A. Tracy Wong is our insurance broker for Insurance Solutions.
Q. And in what capacity did the Board go to Tracy Wong in connection with insurance for the dock area?
A. Obviously, we found out it wasn't

insured. But to get it insured, we would have had -- we were advised to make sure it was repaired and up to speed prior to having them come out and survey it and evaluate it, because if we didn't do it and we got turned down, I guess it's a bad strike against you when you go to get it insured.
MR. REVERE: Excuse me. I just want to object. He's misstating what the document says.
MR. ZALEWSKI: I'll go to the document.
Q. The first paragraph reads in part, this is from Tracy Wong, Insurance Solutions, "We advise you that it is better to complete the repairs and updates to the dock prior to applying for the insurance. The reason is to protect the insurability and not have a declination on the Association's record."
Do you see that?
A. Yes.
Q. And so if I understand the sequence, there's a, kind of a, like recognition or a discovery of no marine insurance, right?
A. Absolutely correct.
Q. Do you recall that discovery?
A. Absolutely.

Q. That stands out in your memory?
A. It does.
Q. Is this Ms. Wong or Mr.?
A. It's a Mrs., Ms.
Q. In any event, she said complete the repairs and updates prior to applying for the insurance?
A. Correct.
Q. Did the Board consider her advice to be reasonable?
A. Absolutely.
MR. REVERE: I just want to object. He's quoting half a sentence out of context. I ask for the rule of completion.
Q. I'll rephrase.
Did the Board consider all advice given by Ms. Wong, including this entire email?
A. Yes.
Q. Did the Board follow her advice?
A. Yes.
Q. And this last paragraph says, "This is a situation that requires immediate attention and action. Please forward the scheduled date for the dock repairs."
Do you see that?

A. Yes.
Q. Did the Board concur that this was a situation that required immediate attention?
A. Yes.
Q. Okay. If you could turn to 526. That's a Kalele Kurrents edition for June 2011. The second page, please, under President's Message. There is a reference to "Dock repairs that will be needed in the near future which Bellingham Marine has brought to our attention," and other references.
Do you see that? Do you see where I just read from?
A. Oh, yes, okay.
Q. Was this part of the Board's effort to keep the all members advised?
A. Oh, absolutely.
Q. Exhibit 527, please. It's entitled "Kalele Kai Owners Forum." "Please join President Brad Oakes for an information packed owners forum on the repair and rehabilitation of our boat dock."
Do you see this?
A. Yes.
Q. Was this also part of that effort?

A. Absolutely.
MR. REVERE: I just want to object. There is no foundation for this in terms of when this was given to owners. No date on the document.
Q. Do you see the date, July 18, 2011, on the document?
A. Yes.
Q. Was that about the time that this flyer was -- you tell me. Was this circulated? Mailed? How was this disseminated?
A. It was done in various ways. It was circulated by mail. It was circulated in the elevators where we post a lot of our Board's meeting things. And it was handed out to each door. We had security go to each owner's door and deliver it to their door.
Q. Mr. Oakes, at any time was Mr. Yoshikawa ever excluded from any of this dissemination?
A. Never.
Q. Do you have any personal animosity towards Mr. Yoshikawa?
A. None whatsoever.
Q. You've had no kind of personal

altercation with him at any time?
A. No.
Q. And same question. Are you aware of anyone on the board that has a personal gripe with Mr. Yoshikawa?
MR. REVERE: Calls for speculation. You mean besides Mrs. Sabry or someone else?
Q. I'll rephrase. Are you aware of anyone on the Board ever expressing personal dislike for Mr. Yoshikawa?
A. None whatsoever.
Q. Let's go to Exhibit 528. The first page is uncertified law letterhead dated August 12, 2011, addressed to Kalele Kai owners from the Board regarding boat dock update.
Do you see that?
A. Yes.
Q. Was this, in fact, is it your recollection this was sent to all Kalele Kai owners?
A. Yes, it was.
MR. REVERE: Objection. No foundation.
THE ARBITRATOR: You can answer. He already answered anyway.
Q. You recall it being disseminated?

A. This was sent out to all owners.
MR. REVERE: Objection. No foundation. How do you know it was sent to all owners?
A. Do I answer?
Q. Go ahead.
A. Certified sent it out. We wanted to make sure all the owners knew. At this time it was Certified, not Associa, sent it out to every one of the owners.
MR. REVERE: Were you in Certified's office watching them mail it out to all the owners?
Q. Let me ask. Was Certified asked to send to all owners?
A. Yes.
Q. And to the best of your understanding, that occurred?
A. Yes. I received mine in the mail to my own home.
Q. There is a reference towards the top of the first page about "The Board having obtained the professional engineering service of Glen Miyasato of MKE Associates, LLC to evaluate the current condition of the waterfront facilities and the proposals submitted by Bellingham Marine for

the repair and the renovation thereof."
Do you see that?
A. Yes.
Q. Was that correct, the Board did retain Mr. Miyasato for that purpose?
A. Yes, we did.
Q. Why did the Board do that?
A. If you're going to spend $265,000 you better have a second opinion or pretty good understanding of what you're spending $265,000 on. And none of us are experts in that area. So we depended on experts to give us opinions.
Q. Let's turn the page, please.
Do you see the letterhead, "MKE Associates, LLC"?
A. Yes.
Q. There's a Project Description and Scope of Work. Let's go past that. Let's go to the Conclusions. That's 092 is the Bates number. There's some bullet points.
Do you see those bullet points?
A. Yes.
Q. The first bullet point says in part, "Due to the severity of corrosion, all steel walkway kite frames, triangular pier frames and

through-bolts should be replaced as thorough corrosion and almost complete corroded frame elements were observed, the current structural capacity of the dock has been significantly compromised."

Do you see that?

A. Yes.

Q. The replacement that's recommended here, was that included in Bellingham's work?

A. Yes.

Q. The next bullet point says, "Due to the severity of decay observed at selected whalers and the ease of simultaneous replacement during the replacement of through bolts, all whalers should be replaced with new whalers," and then it goes on.

Did that replacement occur pursuant to Bellingham's work?

A. Yes.

Q. The next bullet point says, "Due to the severity of decay observed at selected plywood panels, these panels should be replaced as soon as possible." I'll just stop right there.

Was that work done as part of Bellingham's work?

A. Yes.

Q. The next bullet point says, "Due to signs of concrete delamination initiating at the top surface, steps should be taken to try to reduce the onset of further corrosion of embedded reinforcing and resulting delamination and spalling of the top surface." Then it goes on to talk about a sealer.

Was this type of work done by Bellingham?

A. Yes.

Q. Then the final put point says, "The dock system should be inspected and maintained periodically to avoid the severe deterioration currently observed that compromises the structural integrity of the dock."

Do you see that?

A. Yes.

Q. Is that the maintenance agreement that the Board entered into --

A. That's correct.

Q. -- with Bellingham?

A. Yes.

Q. The first full paragraph underneath that begins with, "The above recommendations are

similar to those recommended in the Bellingham Marine report."

Do you see that?

A. Yes.

Q. Does that comport with your understanding that the second opinion concurred with Bellingham?

A. Yes.

Q. The next sentence states, "In lieu of complete replacement of the above elements, we were asked to consider a piecemeal replacement of only those items requiring replacement at this time."

Do you see that?

A. Yes.

Q. Did the Board, in fact, ask for the MKE to consider the alternative of piecemeal replacement?

A. Yes.

Q. Why did the Board ask for that to be considered as an option?

A. Because maybe there was a possibility of only spending $100,000 or $125,000 or X number less than actually what would could cost to do the $264,000. We didn't have an answer to that, so we

asked him to give us his opinion.

Q. His opinion states in part, "This approach is not advisable as the piers and walkways are connected together to act as one integral floating element and will require a more extensive survey of all components to determine their current integrity and need for replacement. The limitation of this approach is that it is difficult to determine the current integrity," and it goes on.

Did the Board in having Bellingham conduct its work adopt either a complete replacement or piecemeal approach?

A. We went to complete replacement.

Q. From the Boards's standpoint, did it, in so acting, did it act consistent with both the recommendations of Bellingham as well as MKE?

A. Yes.

Q. Could you go to the next page, 093. The first full paragraph states in part, "However, whether an overall or piecemeal repair approach is performed, we recommend the original design, build contractor, Bellingham Marine, be engaged as any other design er or contractor would need to reanalyze the original design and construction to

develop appropriate repairs," and then it goes on to talk about this could add to overall costs, et cetera.

From the Board's standpoint, did it, in utilizing Bellingham, was that consistent with the second opinion?

A. Yes. The real reason is Bellingham is in the concrete marina. Those are concrete; not all marinas are concrete slabs. That's their specialty. That's what they come do. So it's not like you can just call out the guy to do anything. It's concrete.

Q. Exhibit 529. I'm not going to go into this in detail.

Is this the agreement, the contract with Bellingham?

A. Yes.

Q. Let's go to 530, please.

A. Okay.

Q. Is this a notice or letter from Certified from -- addressed to Boat Mooring Owners at Kalele Kai from Kalele Kai Board of Directors dated August 26, 2011?

A. Yes.

Q. Now it starts with, "Dear Hitoshi

Yoshikawa, owner of Boat Docks 28, 29, 30, 31, 32, and 33."

Do you see that?

A. Yes.

Q. Is it your understanding a similar formatted letter went to all boat mooring owners?

A. Yes.

Q. The first sentence reads, "The Board of Directors unanimously approved the attached resolution regarding the repairs of the boat moorings at the August 25, 2011 Board of Directors meeting."

Do you see that?

A. Yes.

Q. And the two pages that follow, is that, in fact, a copy of the resolution?

A. It is.

Q. Still on the first page. A couple paragraphs down. It says, "Your assessment of $2,000 per mooring is due by October 30, 2011."

Do you see that?

A. Yes.

Q. Is that the $2,000 per mooring that you referred to earlier?

A. Correct.

Q. Let's go to the resolution.

Without getting into detail, these whereas provisions, is this a document you reviewed before signing the document on the second page?

A. Yes.

Q. And you found this document to accurately state what's set forth therein?

A. Correct.

Q. There is a reference under the bottom whereas paragraph on 192 about Paragraph 5B of the declaration.

Do you see that?

A. Yes.

Q. Is it your understanding that the renovation work was done in accordance with the declaration?

A. Absolutely.

Q. And is it also your understanding that the assessments were done in accordance with the declaration?

A. Yes.

Q. Let's go to Exhibit 531, please. These are Board meeting minutes for August 25, 2011. If you could turn to the second page that's Bates

Number 742.

Are you there?

A. Yes.

Q. All right. So under "Boat Dock," subparagraph A says, "Tracy Wong discussed boat dock insurance quote, et cetera."

Do you see that?

A. Yes.

Q. Pursuant to the renovation work, did that permit, enable the Board to obtain marine insurance?

A. We could not obtain it until it was completed. We had to wait for completion.

MR. REVERE: Objection. No foundation.

Q. I'll rephrase. After the renovation work, was the Board able to get marine insurance?

A. Yes.

Q. And it placed that insurance through Tracy Wong?

A. Yes.

Q. And your understanding is that's the first time there's ever been marine insurance in place?

A. Correct.

Q. Let's go to Paragraph C. "The Board

unanimously approved to grandfather the existing four boats which do not meet the 23-foot rule. Should the owners sell his/her boat or home, the dock will need to go back to the original configuration at the expense of the owner."

Do you see that?

A. Yes.

Q. Do you recall this meeting?

A. Yes.

Q. There is a reference to "existing four boats."

Do you recall which four boats are being referenced?

A. The boat names, I'm not going to say, but it was the Hungs', the Petersons', the Ariel at the time. So that's the boat name on that one which is Mr. Yoshikawa's first boat. And Mr. Rojek's, which today we have Rojek's up for sale and Ariel is gone, and now it's just the Rola.

Q. So if I got that right, it was the Hung boat, the Peterson boat, the Rojek boat and then the other boat that maybe takes a little explanation is the Ariel, because it was first owned by Rosic, and then --

A. It was owned by Yoshikawa at this

point.

Q. Okay. Yoshikawa purchased it.

Those are the four boats or the owners of the four boats that are referenced herein?

A. Correct.

Q. Is it your understanding that those were the universe of boats that were at Kalele Kai that exceeded 23 feet at the time?

A. At the time, correct.

Q. How many mooring areas are there at Kalele Kai?

A. Sixty.

Q. So these four boats -- there are four boats. Well, you tell me.

Were there compliant boats at Kalele Kai at the time?

A. As of today, we have 12 compliant and two non-compliant boats. One those noncompliants is up for sale.

Q. Twelve compliant boats. When you say "compliant boats," let's be real clear.

A. Under 23 feet.

Q. 23 feet or less?

A. Right.

Q. The two other boats, just so we're

clear, are which ones that are not compliant?

A. That would be Mr. Rojek's, which is up for sale, and now the Rola, which wasn't here at this time.

Q. In addressing these four boats at the time in 2011, what was the Board trying to do?

MR. REVERE: Objection. Calls for speculation.

THE ARBITRATOR: He was there.

MR. REVERE: He doesn't know what's going on in eight other people's heads.

THE ARBITRATOR: Focus the question on him.

Q. What do you recall being said at the Board meeting about the four boats and what the Board was collectively discussing?

MR. REVERE: Is this inside or outside of executive session?

Q. This was a regular Board meeting, right?

A. This was a regular Board meeting.

Q. And these Board meetings are for regular session, right?

A. Yes.

Q. What was said during regular session

about these four boats by the Board, collectively?

A. The boats had been there for a few years, a couple of years. And obviously, we wanted to stay out of where we are today. And the idea was to massage this as long as we could massage it down.

We now up, until the Rola got there, we were down to basically one boat for sale that was going to go away. And all the boats would have been gone, quite frankly, and we would have been compliant to our declaration again. Today, the Rola now pulled you and we have a 51-foot boat out there, which is now twice size of any boat we had ever had out there.

Q. As far as 2011, would it be fair to say the Board was trying to phase in full compliance with the 23-foot rule?

A. The Board never wants to end up in litigation. It is very costly. If we can figure out a way the best we possibly can to stay out of litigation, that was one way we were trying to get it and kind of massage it and kind of work it into, you know, sooner or later, people change and people come and go.

Q. The end goal was to have the boats

moored at Kalele Kai matching or fully compliant with the declaration?
A. That's correct. That's been the end goal all along.
Q. Then there is attached a resolution to these Board meeting minutes?
A. Correct.
Q. And it looks like I might be guilty of duplication. But is that also the -- appear to be the same declaration, resolution on the next exhibit, 532?
A. Yes.
Q. So why don't we just talk about 532 for a second.
Do you recall this declaration?
A. Yes.
Q. I mean this resolution? Can you just briefly describe the purpose of the resolution.
A. We wanted to make sure we covered all of our bases going through it before we got into the boat mooring repair. So in doing so, we went through our consultant, looked at the difference what our consultant said versus Bellingham Marine said, and looked at what our insurance agent said.
Q. Got you. Let's go to Exhibit 533,

please.
Does this appear to be the Kalele Kurrents issue for August 2011?
A. Yes.
Q. If you could go to the second page. There is a reference, "The marina project will rehabilitate our boat docks (which haven't been maintained in 18 years), initiate a maintenance program and have inspections performed annually by a licensed professional."
Do you see that?
A. Correct.
Q. That was carried through, correct?
A. Yes, it was.
Q. This was another outreach or information update to the owners?
A. Correct.
Q. Exhibit 534, please. This is a Kalele Kurrent issue for September 2011. If you could go to the second page. States in part, "As many owners may know from attendance at the Board meetings, the Board has been trying to address the issue of the boat length maximum of 23 feet as stated in the Kalele Kai declarations. Kalele Kai currently has four boats which have been allowed

to moor here for years that are longer than the allowable length."
Are those the four boats you referenced earlier?
A. Yes.
Q. The Board, in attempting to get the marina back to its original design, has grandfathered these four boats. "However, if any one of these owners sells their boat, or residents, the owner is responsible for putting the mooring back to the original design. If any owner at Kalele Kai is looking to purchase a boat and moor it at Kalele Kai, it must be 23 feet or less."
Do you see that?
A. Yes.
Q. This was pursuant to Board discussion and decision making, this announcement?
A. Correct.
Q. There is a reference to Bryan Liu below that.
Was he, in fact, the Resident --
A. He was the Resident Manager at the time.
Q. Part of his duties was to advise the

owners about the 23-foot restriction, right?
A. And he had done so several times.
Q. Let's look back to Exhibit 536.
Does this appear to be a copy of what has sometimes been called the Hung order?
A. Yes.
Q. Let's just talk about it briefly. If you could go back to Page 12.
Do you see the heading, "It is therefore ordered"?
A. Yes.
Q. I'll just read Number 1. It says, "Plaintiff's motion for summary judgment and request for declaratory order as the AOAO's restriction against plaintiff's ability to sell boat moorings in a modified condition is granted."
Do you see that?
A. Yes.
Q. Pursuant to this order, were the Hungs, in fact, allowed to sell their boat moorings in a modified condition?
A. Yes.
Q. From the Board's standpoint, the Board complied with this order?
A. Correct.

Q. Let's go to Exhibit 537, please. Actually, this is an email involving Bryan Liu. We'll defer that, and the next exhibit, and exhibit after that.

Let's go to Exhibit 541, please. This appears to be an email from Mr. Goodwin to Mr. Udagawa. The date is November 21, 2012.

Do you see that?

A. Yes.

MR. REVERE: 538?

MR. ZALEWSKI: 541.

Q. And the prefatory paragraph reads in part that, "The undersigned is responding to your inquiry regarding notification by Mr. Yoshikawa of his intent to purchase a new boat in excess of 23 feet length, which he intends to moor at Kalele Kai."

Do you see that?

A. Yes.

Q. And then this starts with the next paragraph, "By way of background, the Board does not currently have authority to approve the proposed mooring of any boat at Kalele Kai in excess of 23 feet in accordance with express restrictions set forth in the project's

declaration and by-laws."

Do you see that?

MR. REVERE: I want to object for the record because Mr. Zalewski's quote doesn't have the word "approved" in quotes.

THE ARBITRATOR: Why don't you just re-read it to him.

Q. Sure. I'll re-read it. "By way of background, the Board does not currently have authority to 'approve' the proposed mooring of any boat at Kalele Kai in excess of 23 feet in length in accordance with express restrictions set forth in the project's declaration and by-laws."

Do you see that?

A. Yes.

Q. Does that comport with your personal understanding?

MR. REVERE: Objection. Rule of completion. It doesn't talk about the last sentence in this paragraph.

MR. ZALEWSKI: I'm going to get do that and avoid the rules of being overly broad.

Q. Does that comport with your understanding?

A. Yes, it does.

Q. Then if you look the last couple lines say in part, "The Board will not and cannot expressly approve the mooring of any boat at Kalele Kai in excess of 23 feet in length."

Do you see that?

A. Yes.

MR. REVERE: Objection. Rule of completion.

Q. I'll rephrase. Is this email, is this what Mr. Goodwin is saying in this email consistent with your personal understanding?

A. Absolutely.

MR. REVERE: Objection. Rule of completion.

THE ARBITRATOR: With regard to what?

MR. REVERE: My concern is that if the Arbitrator is back reading the transcript, he will read what John just read, which is a half sentence which doesn't include, "to the extent the Association's previous settlement with Mr. Rosic conveys legal rights and/or benefits to Mr. Yoshikawa, the Board will honor these as permitted by the project's governing documents. However."

None of that was included.

MR. ZALEWSKI: I'll allow that to be -- I guess it's in the record, right?

THE ARBITRATOR: It's complete.

Q. Just so I'm clear, since that came up, I think you answered this already but just so we're clear for the rule of completion sake and otherwise, do you understand the Rosic agreement in any way affected the 23-foot limitation in the declaration?

A. It could not have. No way.

Q. And did this email sent by Mr. Goodwin, was this authorized by the Board of Directors?

A. Yes.

Q. Exhibit 542 involves Mr. Liu, so I will pass on that. Let's go to Exhibit 546.

Having had the various experiences that you've had in this case, have you come to learn that Mr. Rosic has sent many emails to Mr. Udagawa over time regarding his boat?

A. Yes.

Q. Here's one of them, Exhibit 546. I just want to read part and ask you a question.

MR. REVERE: I just want to object. This witness wasn't given this.

THE ARBITRATOR: You will have to lay

some foundation as to whether he's read all these.
Q. Let me do this. Just turn the page. Let me just ask it this way.
Do you agree or not agree with the statement that Mr. Yoshikawa is entirely within his legal rights and can buy any boat he wants?
MR. REVERE: Objection. Vague and ambiguous. Calls for a legal conclusion. No foundation.
THE ARBITRATOR: It does ask him to draw some conclusions. As long as your answer is limited to your own personal knowledge, I'll allow you to answer the question.
MR. REVERE: Mr. Arbitrator, I don't want --
MR. ZALEWSKI: I'll rephrase.
Q. Let me ask it this way. As a Board President, you're called upon to engage in decision making with respect to whether boats moored at Kalele Kai are compliant or not, correct?
A. Yes.
Q. Okay. So as far as an owner, does an owner in your personal view from your personal layperson's understanding, does a mooring owner

have the ability to buy any boat that person wants and moor it at Kalele Kai Marina without any limitation whatsoever?
MR. REVERE: In addition to the other objections, just so I'm not accused of doing a sneak attack later, if he answers this question, once again, because we know that part of what informed his legal opinion is consultation with counsel and discussions in executive session. Once again, we feel that they are waiving that and we're entitled to go into the basis for his opinions.
THE ARBITRATOR: You can answer the question.
A. Based on my own personal knowledge of reading the declarations, only a 23-foot boat or more can be there. That's based on what I read. I cannot allow -- I couldn't buy one myself. We're telling other people in the Association they can't buy one or get one. So no, nobody has the ability to buy whatever size boat they wish and put it in there.
Q. Thank you.
A. Based on my own personal opinion.
Q. Could you turn to Exhibit 553, please.

Do you recall seeing this letter before, dated May 6, 2013?
A. Yes.
Q. Let's start with the bottom of the first page, towards the bottom. It talks about, "The boat will now be replaced by Mr. Yoshikawa's new boat, which at 49 feet, 4 inches" -- let's stop right there.
Earlier in your cross-examination, you had a measuring device next to the Rola. Do you recall that?
A. Yes.
Q. I think it's Exhibit 500. In any event, you were at the 23-foot point.
During that measuring, during the time you measured, did you also measure the complete length overall, measured from bow to stern of Mr. Yoshikawa's boat?
MR. REVERE: I just want to object to the form of that question. Bow to stern isn't length overall.
THE ARBITRATOR: You can actually pose it in multiple ways, John.
Q. Did you measure the boat from the very tip of the bow to the very back of the stern?

A. Yes.
Q. And how did it compare with Mr. Revere's statement that the Rola is 49 feet, 4 inches?
A. Very -- right close enough to it. I can't remember exactly. It was close to 50 feet when we did it.
Q. You don't disagree with that figure?
A. No.
Q. At least it's about that length?
A. Correct.
Q. At the very bottom of this page, it states, "Any such alleged limitation has clearly been abandoned by the Association's agreements and actions over a decade."
Do you see that?
A. Yes.
Q. Let's start with the Board in which you've been Board President.
Do you recall any time in which the Board has ever taken the position that the 23-foot limitation has been abandoned?
A. No.
Q. Let's go to all the Board meeting minutes that you've reviewed that preceded your

tenure.
Do you recall seeing any Board meeting minutes which stated or indicated to you that the Board was abandoning the 23-foot limitation.
A. Absolutely not.
Q. Is it fair to say that you believe the Board has an affirmative duty to enforce the 23-foot limitation?
A. Absolutely.
Q. Could you turn to the third page, the last page of this letter.
A. Okay.
Q. Do you see the sentence that begins, "Unless the AOAO objects in writing within seven days from the date of this letter, Mr. Yoshikawa will proceed to moor his new boat with the AOAO's agreement and/or acquiescence"?
Do you see that?
A. Yes.
Q. Let's ask a couple follow-up questions.
First of all, has the AOAO ever agreed to allow the Rola to be moored at Kalele Kai?
A. No.
Q. Has the AOAO ever acquiesced to the Rola being moored at Kalele Kai?

A. No.
Q. Your recollection is Mr. Goodwin, in fact, responded within seven days of this letter?
A. Yes.
Q. Let's go to Exhibit 554. This is a letter from Mr. Goodwin dated May 7, 2013. For the record, it's one day after Mr. Revere's letter.
A. Okay.
Q. May 6, Exhibit 553. This May 7th letter states in part, if you look at the, towards the bottom of the first page, "To the extent demanded in your correspondence, your client has advised that the Board objects at least preliminarily to his proposed mooring of a boat at Kalele Kai Marina in violation of the 23-foot length restriction set forth in the project's declaration."
Do you see that?
A. Yes.
Q. Was this letter, was this authorized by the Board?
A. Yes.
Q. Would you turn to Exhibit 555, please. This is a one-page, it looks like special

meeting of the Board dated May 9, 2013.
Do you see that?
A. Yes.
Q. It states in part, "Under executive session the Board approves seeking amendments to the Association's documents for the boat docks, kayak storage and rock wall."
Do you see that?
A. Yes.
Q. What do you recall about those topics around this time period, May 2013?
A. That we had issues with each, three of them. Number one is, I'll go backwards, it's easiest, the rock wall was put up, say, 30, 40 feet of it out front as a test. Mr. Rosic is the one again, I hate to say it, keeps coming up, that approved to put a rock wall up. Or he did it without approval. There is never any documentation to it.
It was a fixed item that needed to be approved. Either we were going to extend it throughout the whole property, or we were going to take it down and make it look right. But you can't just have 30 feet of rock wall.
Q. What did that occur, to your

understanding? Was that during the Rosic presidency?
A. Yes. We took that piece at that time and voted on it.
Q. We'll get to the votes. But I just want to cover the other two items, if I may. There was some discussion about kayak storage. Just briefly, there was some issues about kayak storage that needed to be addressed.
A. When you -- here's my understanding. When you use common element area for permanent area, you have to have owner's approval. And we didn't have owner's approval for it, so we wanted to get owner's approval for that.
Q. When you say "it," you're talking about people storing their kayaks?
A. Storing for use on the water, correct.
Q. And then there was also a proposed amendment with respect to boat docks; is that correct?
A. Correct. We had that in there was well.
Q. We'll get to the actual language in a minute. Let's go to the next exhibit that is 556. These are Board meeting minutes for May 23, 2013.

And if you look at the second page.
Do you see middle of the page, "Declaration for Marina"?
A. Yes.
Q. Actually there's 1 through 3.
Is it your understanding these kayak, rock wall, marina, Numbers 1, 2 and 3, that comports with the three items discussed earlier?
A. That's correct.
Q. And there is a reference to the attached proposed declaration for each of them.
Is that what these final three pages are --
A. Correct.
Q. -- that are attached to these Board meeting minutes?
A. Correct.
Q. So there are three pages, the final three pages are each entitled "Written Consent Ballot," right?
A. Correct.
Q. So the third to last page, that pertains to storing surfboard, kayak, paddleboard storage?
A. Correct.

Q. The second to last page pertains to rock wall?
A. Correct.
Q. The third page, does that pertain to the proposed declaration amendment with respect to boats at Kalele Kai?
A. Correct.
Q. Let's stay at this page for a second. There's a reference in part under this proposed declaration amendment to the -- let met just read the first part. "Except as specifically set forth herein, boat moorings shall be restricted to use by boats no larger than 23 feet in language. However, the Board my authorize the mooring of no more than two boats no larger than 38 feet in length and no more than two additional boats no larger than 26 feet in length."
Do you see that?
A. Yes.
Q. So that's a total of four boats, right?
A. That's correct.
Q. How do those four boats that are in this proposed amendment compare with the four boats that you discussed earlier?
A. That's the exact same four boats.

Q. So do you recall which of the two boats were no larger than 38 feet?
A. It would have been the Ariel, and it would have been Rojek. And the 26s would have been Hungs' and Petersons'.
Q. So if it passed, this proposed amendment would basically help the existing boasts match the declaration as amended?
A. Correct.
Q. So why did the Board suggest this as a proposed declaration amendment?
A. Once again, trying to stay out of litigation for what's going on, what's happening, what's there now, and trying to massage the situation the best we could and making it within the documents and make it legal.
Q. Let's go to Exhibit 559. This is a letter from Mr. Goodwin dated June 4, 2013. This is a reference in part, "Your request to moor a 51-foot boat at Kalele Kai has been denied as the requested boat length violates the 23-foot boat length restriction expressly stated in the declaration."
Do you see that?
A. Yes.

Q. Was Mr. Goodwin authorized to send this letter by the Board?
A. Yes.
Q. Let's go to Exhibit 562.
Does this appear to be the Kalele Kurrents issue for June 2013?
A. Yes.
Q. And the first page, does this appear to summarize the three proposed declaration amendments?
A. Yes.
Q. If I look above it, it actually says, "Owners urged to vote yes on all three to improve the appearance of our community and enhance property values."
Do you see that?
A. Yes.
Q. So the Board was actually, with the boxes checked yes, suggesting that ownership pass these?
A. Correct. They were already there.
Q. And when you say they were already there; one of the four being the Ariel?
A. Correct.
Q. Does the Board feel differently with

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respect to the Rola?
MR. REVERE: Objection. Calls for speculation.
THE ARBITRATOR: You're going to have to --
MR. ZALEWSKI: I'll get to that.
Q. So we have this newsletter. Then we go to -- I'm sorry. Let's ask it this way.
Did this amendment with respect to the 23-foot length restriction with respect to the four specified boats, did that ever pass?
A. No, it did not.
Q. It did not get the sufficient 67 percent tally?
A. Correct.
Q. Could you go to Exhibit 565. In this document, it indicates that the Ariel, there was a closing date of August 2013.
When do you recall the Ariel no longer being at Kalele Kai Marina? Was it about this time or do you recall?
A. I can tell you the Rola showed up around October 20 -- end of October, 24th, 25th. It was missing for a month, but I don't think it was missing two months. I don't know. I hate to

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really say exactly. It was gone -- there was a hole there for at least a month before the Rola showed up.
Q. There came a time when, for some reason, sale or otherwise, Mr. --
A. We had no idea. This is behind the scenes.
Q. Mr. Yoshikawa had, may have sold or somehow disposed of the Ariel?
A. Again, I have no knowledge.
Q. Just for the record, in Exhibit 566 -- this is an email from Mr. Rosic. He's insinuating or suggesting they are trying to intimidate Mr. Yoshikawa.
Have you ever done anything that you -- for the purpose of trying to intimidate Mr. Yoshikawa?
A. No.
Q. Do you recall any Board discussion that was aimed in that manner?
A. No.
Q. Do you recall the Board ever trying to do anything to treat Mr. Yoshikawa different than any other similarly situated owner?
A. No.

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Q. Okay. If you could go to Exhibit 567.
Is this your understanding of the tabulation of the results for the amendments, at least as of September 13, 2013?
A. Yes.
Q. So if you could turn to the second page. There is an indication that Mr. Yoshikawa did not vote.
Is that consistent with your understanding?
A. Yes.
Q. And if you could go to the next page after that. There is an indication that the Rojeks had two votes and they didn't vote either?
A. That is correct.
Q. Go to Exhibit 568. This is out of Kalele Kai currents dated Fall 2013. It is entitled, "Only One of Three Proposed Amendments gets Required 67 Percent Owner Approval."
Do you see that?
A. Yes.
Q. Was it only the kayak storage amendment that passed with the 67 percent?
A. Correct.
Q. And was this issue of Kalele Kurrents,

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like all issues, sent to all owners?
A. Correct.
Q. Would that have included Mr. Yoshikawa?
A. Yes.
Q. Do you ever recall receiving any communication from Mr. Yoshikawa or any of his representatives that asserted, We didn't know that the boat amendment didn't pass?
A. I never heard from him.
Q. Exhibit 569. This is a letter dated October 28, 2013 to Mr. Yoshikawa referencing, "Citation for violation of declaration regarding boat size and references," and quotes the 23 foot limitation.
Was this citation sent with Board authorization?
A. Yes.
Q. And the date is October 28, 2013.
How does that compare with your recollection of that date about when the Rola arrived and was docked at Kalele Kai?
A. Same; same time frame.
Q. If you could go to Exhibit 570. This is a letter on Bellingham Marine letterhead dated October 29, 2013.

Do you recall receiving this letter?
A. Yes.
Q. The middle paragraph reads, "Unfortunately, the limiting factor at your marina is the anchorage system. Your marina is connected by a sliding hinge/I-beam construction connected to your bulkhead. While this design" -- appears to try to say is -- "is not typical, such as actual anchors and piling, it is perfect, given your needs and parameters at the time of construction."
Do you see that?
A. Yes.
MR. REVERE: Objection. Rule of completion.
MR. ZALEWSKI: I'll cover more of it.
Q. I probably should have covered the first paragraph.
MR. REVERE: The last paragraph.
Q. It says in part, "As you are aware, your marina was designed, manufactured and installed in 1990. At that time, the parameter was the 23-foot finger slips, which would be utilized in boats in that approximate dimensional range for the target for the Kalele Kai."

Do you see that?
A. Yes.
Q. And then the final paragraph reads, "Bellingham Marine is not in a position to advise Kalele Kai in answering the question, what is the largest vessel we can accommodate without an extensive engineering evaluation."
Do you see that?
A. Yes.
Q. Is it fair to say there hasn't been an extensive engineering evaluation?
A. That's correct.
Q. From your personal belief, though, there are at least issues as far as the structural integrity posed by a 49-foot vessel moored at the Kalele Kai?
MR. REVERE: Objection. No foundation. Calls for expert opinion.
MR. ZALEWSKI: I'll rephrase.
THE ARBITRATOR: Okay.
Q. This question of whether the 49-foot Rola moored at Kalele Kai and whether the Anchorage system or otherwise can accommodate it, that has never been conclusively answered, is that fair to say?

A. Yes.
Q. Is it fair to say that the Board does not have in its budget a cost item for an extensive engineering evaluation for boats that shouldn't be there in the first place over 23 feet?
MR. REVERE: A little argumentative.
MR. ZALEWSKI: Sorry. It's getting late in the morning.
MR. REVERE: Slightly argumentative. Also no foundation. There's no -- what budget? It's probably less than their deductible and Chris's costs.
Q. This cost item, "Extensive Engineering Evaluation." Is this part of the Association's budget?
MR. REVERE: There is no foundation. There is no foundation. How much?
Q. Is there any cost figure allocated for an extensive engineering evaluation?
A. No, Not specific to one owner.
THE ARBITRATOR: John, time out.
(Discussion off the record.)
(Whereupon, a luncheon recess was taken from 12:01 p.m. to 1:15 p.m.)

(Afternoon session contained in Volume 2 of 2.)

MINUTES OF THE BOARD OF DIRECTORS' MEETING
KALELE KAI

Date: Tuesday, August 22, 2000

Place: One Keahole Place
Poolside Cabana
Honolulu, Hawaii 96825

ESTABLISHMENT OF A QUORUM

There being five or more Board members present at the meeting, a quorum was established.

Present:	Richard Matti	Jim Propotnick
	Ray Tanaka	Steve Hirano
	Bart Peaslee	Colin Kurata (6:36)
	Harry Terada	
Excused/Absent:	Raelene Balidoy	Bob Tutton
By Invitation:	Ralph Ahles, Property Manager	
	Diane Langley, Resident Manager	
	Kirk Gagnon, Office Assistant	
	Joe Grey, Maintenance Supervisor	
	Carolyn Nakagawa, Recording Secretary	
Owners Present:	George Fisher #3110	Ruth Nobler #1208
	Mike Wilson #3106	Elaine Ng #3612

CALL TO ORDER

President Richard Matti called the Regular Meeting of the Board of Directors of Kalele Kai to order at 6:30 p.m.

OWNER CONCERNS

A. George Fisher (#3110) advised that the walkways are in need of cleaning and commented on the long period of time that certain areas of the grass have remained bare. Management advised that the walkways will be attended to and Akahi will be notified of the grass problem.

B. Ruth Nobler (#1208) expressed concern over the dimly lit walkway areas, and the Board advised that the matter is being addressed. Ms. Nobler also requested an update on the issue of lanai enclosures, and advised that she proposes to install only screens. Discussion followed regarding the FAR specifications, uniformity of design, majority of ownership approval, and additional A/C requirements. The Property Manager was asked to submit

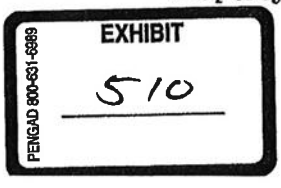


EXHIBIT 18

a summary of the design and approval process for lanai enclosures as well as his opinions regarding the impact on the A/C equipment.

(Mr. Kurata's presence at the meeting was acknowledged at 6:36 p.m.)

C. In response to Mr. Wilson's (#3106) written inquiry regarding pool heating, the Resident Manager was instructed to obtain quotations for heat pumps for presentation and discussion at the next meeting.

D. Mr. Fisher's (#3110) request for approval to install a ceiling fan in his lanai was denied, pursuant to the by-laws; however, he was advised that an uninstalled standing fan would be acceptable. The Board further advised that installation of the ceiling fan in one townhouse lanai had been done prior to formation of the Association and was therefore grandfathered.

APPROVAL OF MINUTES

A. JULY 25, 2000 REGULAR MEETING

The minutes of the July 25, 2000 Regular Meeting were distributed and reviewed.

MOTION: **There being no corrections or additions, on motion of Mr. Tanaka, the minutes of the July 25, 2000 Regular Meeting of the Board of Directors were unanimously approved as submitted. In favor: Matti, Propotnick, Hirano, Kurata, Tanaka, Peaslee, and Terada.**

FINANCIAL REPORTS

A. JULY 2000 FINANCIAL STATEMENT

In the absence of Ms. Balidoy, the Property Manager gave a brief overview of the financial statements for July, 2000. He reported that for the period May 16, 2000 to June 16, 2000, 263,500 kwh were consumed as opposed to 246,000 kwh during the same period in the prior year. In addition, the current cost per kwh is 10.8 cents per kwh, as opposed to 8.8 cents last year.

B. INVESTMENT REPORT

$120,000 was deposited into the maximizer account at 6.2 percent interest. T-bills in the reserve account are earning 6.2 percent interest. It was pointed out that $15,941 in interest has been earned year-to-date, with $1,056 paid in management fees.

C. DELINQUENCY REPORT

The only delinquent account was brought current in August.

OWNER CORRESPONDENCE

A. One Keahole Partners advised that the owner of #2511 is considering purchase of one of their boat moorings. As they were aware that the condominium documents do not allow mooring of boats exceeding 23 feet in length, they asked the Board's consideration to permit Mr. Lau to park his 26-foot-long boat in his slip. Pursuant to page 8 of the Declarations, the Board was unable to grant their request, and Management was directed to respond to One Keahole's request.

RESIDENT MANAGER'S REPORT

The Resident Manager's Report was circulated, reviewed, and made a part of these minutes. The following items were discussed in further detail:

- The employee who has been out on workers' compensation leave has not yet been released by his physician to return to full-time employment, and temporary help has been hired.
- The roof warranty matter has been turned over to Attorney Robert Miller for handling.
- Following replacement of 2-inch drain lines in Building 1, the Property Manager will check on the need to also replace lines in Buildings 2 and 3. In the absence of the owners of #1101, the Property Manager was instructed to correspond with them to arrange cleanup of the unit.
- Work on replacing lanai tiles in Building 1 is scheduled to begin on August 23, 2000. The Resident Manager was asked to monitor the work and verify that the subcontractor is licensed prior to commencement.
- The railing in the elevator in Building 3 was repaired at no charge.

COMMITTEE REPORTS

A. LEGAL - No report.

B. BUILDING & GROUNDS

Mr. Propotnick recommended that replacement of plants should be done as soon after they are lost as possible. As the dock fencing installation is

complete, notice will be published in the next newsletter to advise residents of its purpose.

UNFINISHED BUSINESS

A. Feral Cat Procedure: No commercial cat repellant is available from pest control companies; however, management has purchased and will attempt to address the problem with repellants which have been used with good results. Ground floor residents will be supplied with repellant and management will treat common areas on a regular basis as the need arises.

B. Workout Facility: The Resident Manager reported that she continues to work on obtaining prices for equipment and costs for electrical wiring work, and correspondence received from the insurance agent states that cost for insurance will not increase unless claims are filed or the equipment is insured. It was agreed that prior to moving ahead with the project, an informal survey should be conducted via the newsletter to get a better idea as to how many people are interested in using the workout room. A committee was appointed, comprised of Mr. Terada, Mr. Propotnick, and Mr. Matti.

C. Townhouse Painting Bid Ratification: The Board accepted the bid to pain the townhouses, cabana, and office building from Tom Catton Painting in the amount of $50,000, not to include repair work. Work is expected to begin after the Labor Day weekend.

MOTION: **On motion of Mr. Kurata, the Board ratified acceptance of the bid from Tom Catton Painting in the amount of $50,000 for painting of the townhouses, cabana, and office building. In favor: Matti, Propotnick, Hirano, Kurata, Tanaka, Terada, and Peaslee.**

NEW BUSINESS

A. Landscaping Proposal/In-House Figures: Cost figures for in-house versus contract landscaping services were presented for the Board's consideration. The matter was deferred, pending the Property Manager's review and recommendations.

B. 2001 Budget Preparation: The Board requested that the following items be included in the 2001 budget draft, which will be presented at the next meeting: pool heating and dock maintenance.

DATE, TIME, AND PLACE OF NEXT MEETING

The next Regular Board of Directors' Meeting was scheduled to be held on Tuesday, September 26, 2000 at 6:30 p.m. at the Poolside Cabana, One Keahole Place, Honolulu, Hawaii 96825.

ADJOURNMENT

There being no further business to consider, the Chair adjourned the meeting at 7:52 p.m.

EXECUTIVE SESSION

The Board went into an executive session for the purpose of discussing personnel matters.

Respectfully submitted:

Carolyn Nakagawa
Recording Secretary

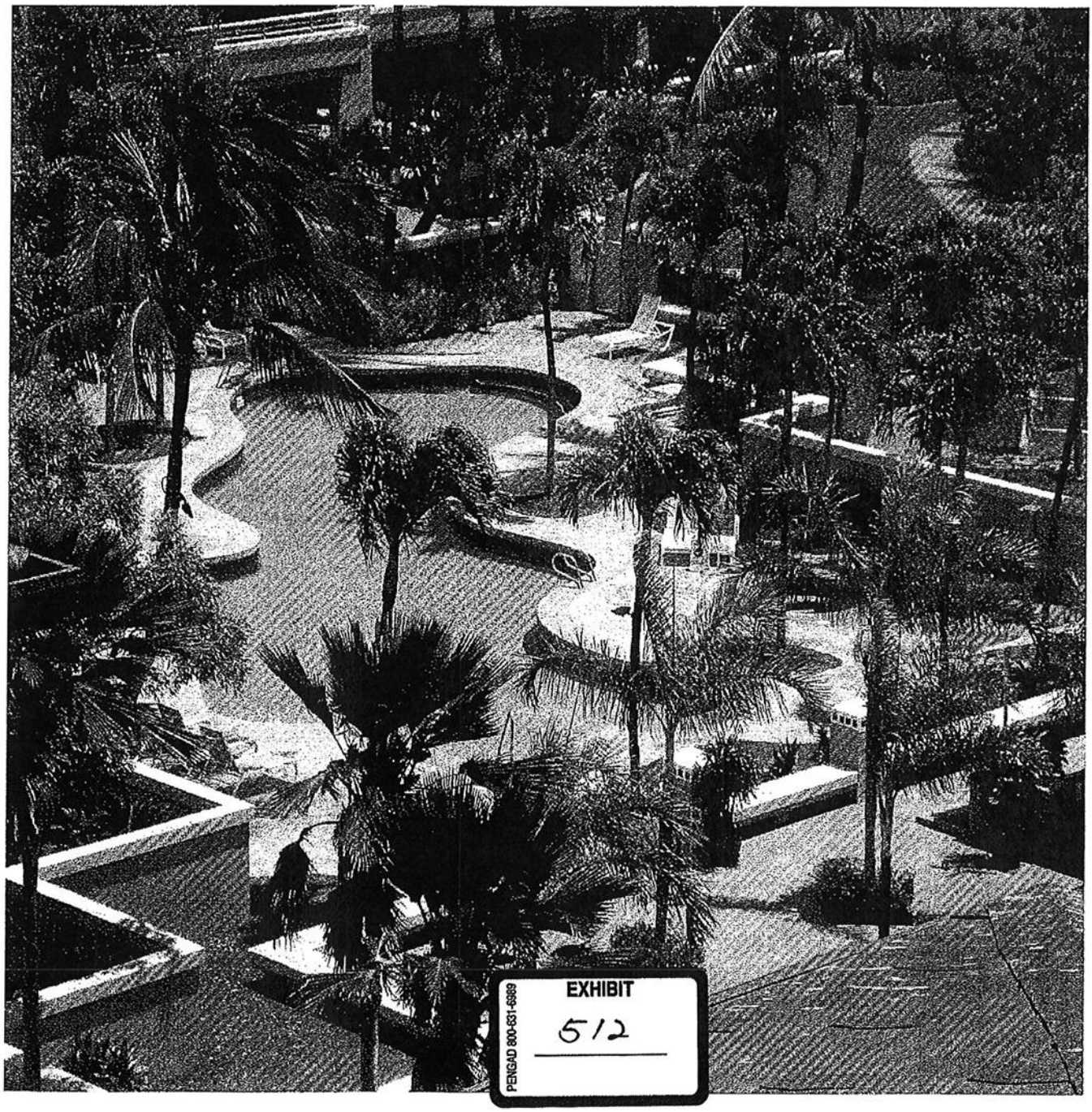
Approved by:

Steve Hirano
Board Secretary

Attachments: 1. Resident Manager's Report

KALELE KURRENTS

VOLUME 15, ISSUE 4 April 2009



PENGAD 800-631-6989
EXHIBIT
512

EXHIBIT 19

President's Report

Aloha,

I would like to thank everyone who showed up at the Annual Meeting on a very rainy day! As all of you know a new board was elected and I am happy to announce the following is your new board:

Brad Oakes	President
Merrill Welburn	Vice President
Paul Jordan	Treasure
Colin Kurata	Secretary
Anne Palagyi	Director
Dick VanNess	Director
Jim Propotnick	Director
Marv Tangren	Director
Kimiko Hayashi	Director

Now on to some business, **the board needs your Help**!

During the January and February Board of Directors meetings, as well as at the Annual Homeowners meeting there was discussion that during the past several years some dock owners have removed and/or relocated their boat moorings. Our governing documents do not permit owners to remove and/or relocate their boat moorings ***except* upon obtaining the affirmative vote of not less than sixty-seven percent (67%) of the owners.**

Rather than require affected dock owners to immediately replace any removed or relocated boat moorings, the Board is seeking owner approval of Declaration Amendment that was sent in the mail and should have been received by now.

Should owners approve this proposed Declaration Amendment the Board will be granted authority to adopt written rules and guidelines regulating the removal and relocation of boat moorings. The intent of the Board is to adopt rules which preserve the exterior design of the project as the Declarations require, while taking into account the needs of dock owners.

A majority of the Board requests owners to vote YES on the proposed Declaration Amendment.

When you receive the mailing please take the time to read the amendment and return with your decision as soon as possible. Should you have any questions or concerns, please contact me at BOakes@Hawaii.rr.com.

We will be having an Owners' Forum on April 16th in the Cabana at 6:30 PM. This is a great time for open discussion about the Dock Moorings and anything else that you would like to discuss. I hope to see you there!!

Respectfully,

Brad Oakes
President

Reminders:

As a reminder, please be aware of the following House Rules:

House Rule B-5 Noise:

"All noises from whatever source shall be discriminatorily controlled to avoid annoying or disturbing other occupants of the Project."

Quiet Hours shall be as follows:

Sundays through Thursdays 10:00PM to 8:00AM
Fridays, Saturdays and Holidays: 11:00PM to 8:00AM

Also, please ensure your children are aware of this House Rule and are following them. This includes bouncing of balls, jumping rope and running.

House Rule B-16 Refuse:

B-16.1 Large Refuse Items: "Large empty cartons, oversized packages, and other item likely to clog the trash chute shall be carried down to the trash containers and not be left in any common areas of the Project"

B-16.2 Recycling: "Recyclable items such as aluminum cans, glass and newspaper may be taken to the main trash room...Boxes must be broken down before being placed in cardboard bin.

Unfortunately, we are not recycling Newspaper at this time. Please dispose of your newspaper as you would any other trash.

Also, it has been reported that residents are leaving "junk mail" near the mail boxes. As a courtesy to all, please dispose of your "junk mail" as you would any other trash.

House Rule E-6: Storage (in parking stalls)

"No personal items such as, but not limited to lumber, furniture, boxes, crates ... shall be stored in any parking stall"

There are a few residents who have not complied with the request to remove items from their stalls. The Board of Directors have activated the Fines Committee who will be reviewing these violations.

If you still have items in your stall, you still have time to remove them before you are notified to appear before the committee.

Should you have any questions, on these or any other house rules, please do not hesitate to call the Resident Manager for clarification.

Thank your for your cooperation.

Unapproved Minutes of the Regular Board of Directors Meeting
Thursday, February 26, 2009

PRESENT: President Merrill Werblun, Secretary Colin Kurata, Treasurer Paul Jordan, Directors: James Propotnick, Kimiko Hayashi, and Marvin Tangren

EXCUSED/ABSENT: Vice President Brad Oakes and Director Sharon Peterson

BY INVITATION: Resident Manager (RM) Bryan Liu, Account Executives (AE) Agnes Sykes, Alan Takumi and Kristi Hirota-Schmidt

CALL TO ORDER: There being a quorum present, President Werblun called the meeting to order at 6:42 pm.

MINUTES OF PREVIOUS MEETINGS:
Director Hayashi moved and seconded by Director Propotnick to approve the minutes of the Regular Board of Directors Meeting of January 22, 2009 as presented. Motion carried unanimously.

ORDER OF BUSINESS

Treasurer Report---Financial Statement: The January 2009 financial statement was reviewed, accepted to file, subject to audit.

Director Propotnick moved and Secretary Kurata seconded to approve the transfer of $150,000 of reserve funds from the money market account, to a higher interest bearing six month CD. The motion was approved unanimously.

Account Executive report: The Account Executive provided a written report and added verbal comments.

Secretary Kurata moved and Director Propotnick seconded the motion to pay the A1 Extraction invoice for $6,386.72. provided that liability be identified and reimbursement from owners sought, if justified. Director Tangren opposed, the remaining directors approved and the motion was carried by the majority.

Treasurer Jordan moved and Director Propotnick seconded the motion to clear old maintenance fee accounts by seeking to reimburse unit owners who have sold but show a remaining balance, per Certified's records. Secretary Kurata opposed, the remaining directors approved and the motion was carried by the majority.

Resident Manager report and proposals: The Resident Manager presented an in-depth verbal report covering maintenance, necessary electrical repairs, safety & security, housekeeping, landscaping and House Rules enforcement concerns.

Committees and Taskforces:

Green Energy Committee: (report covered under unfinished business)
Fines Committee: President Werblun appointed Director Tangren to chair this committee and to appoint two members.

Unfinished Business:

Report from legal counsel on issues raised last month regarding the docks. President Werblun referred to the legal opinion obtained on this matter.

Issues clarified:

1. Dock repair, including connection to the dock, costs are dock owner's responsibility.
2. Charges for the use of water and electricity would be able to be charged back to the owner if these utilities were sub-metered.
3. Any modification to boat moorings requires a 67% owner's approval.
4. Mooring of boats exceeding 23 feet requires 67% owner's approval as well as Marina approval (may also need a marine engineer approval)

Appointment of task force. President Werblun stated that Director Oakes requested a task force be assembled to first determine if there is significant use of water and electricity and deal with submetering. President Werblun agreed and appointed Director Oakes to chair the task force.

Motion to seek owner approval

Director Hayashi moved and Director Tangren seconded that the Board submit a proposed Declaration Amendment authorizing the relocation of boat moorings by their respective owners, subject to written guidelines and procedures as may be adopted by the Board. The amendment shall also prohibit owners from removal and or destruction of their respective boat moorings without Board approval of a plan for replacement of said moorings by the owner of the mooring. The motion was approved unanimously.

New Business:

Green Energy committee: Secretary Kurata presented a written summary of research which supports the findings and recommendation of the committee. This report will be placed on file with the records of the Association

Secretary Kurata moved to approve the purchase and installation for building 3, 41 Greenheck Down blast exhaust fans at a project cost of $37,871, including tax (if ordered by 2/28/09), The motion was approved unanimously.

President Werblun stated that building 3 is being done first so the in-house staff has the opportunity of monitoring the electrical use on a larger scale and then if successful in reducing costs, may ask for owner's approval to borrow funds to do building 1 and building 2 next year.

Open dialog: Annual Homeowner's Meeting is scheduled to be held Saturday, March 14, 2009 at 10:00am, owner's check in starts at 9:30am. A 'Meet the Candidates' meeting will be held March 6 at 6:30pm at the Cabana.

NEXT MEETING: The next Regular Board of Directors' Meeting will be held on Thursday March 26, 2009 at 6:30 pm.

ADJOURNMENT: There being no further business, the meeting was adjourned at 8:12 pm.

NOTICE

Fire Alarm Testing

SimplexGrinnell will be conducting their semi-annual building test and maintenance inspection for the fire alarm systems on Thursday, May 14, 2009, and Friday, May 15, 2009, beginning at 8:00 AM.

The silent testing portion will be conducted as follows:

Thursday, May 14, 2009 8:00 AM – 5:00 PM

Buildings One and Two (partial)

Friday, May 15, 2009 8:00 AM – 5:00 PM

Buildings Two (remainder) and Three

THE AUDIBLE HORNS WILL BE TESTED FOR ALL BUILDINGS ON THURSDAY, May 14, 2009, BETWEEN THE HOURS OF 11:00 AM – 1:00 PM, FOR THIRTY (30) SECONDS PER FLOOR PER BUILDING.

The normal operation of the elevators will be shut down for approximately five (5) minutes. However, if additional testing is needed, you will be notified so that this inconvenience will be minimal.

Upcoming Events:

April 6-12	Building 2: Elevator Floor Repair
April 13-16	Building 2: Parking Garage Spot re-surfacing
April 16	Owners' Forum 6:30 in the Cabana
April 21	Diversified Exterminators: Pest Control
April 23	Board of Directors Meeting: 6:30 in the Cabana
May 14-15	Semi-Annual Fire Alarm Testing

Hot Tub Repair Update:

The Board has approved the purchase of a replacement Heat Pump for the Hot Tub. We anticipate delivery of the Heat Pump to be in the second week of April. Once the Heat Pump is received, priority will be shifted to get it installed.

We thank you for your patience and understanding.

Mahalo!

IMPORTANT NUMBERS

Management Office:
395-0431 ph
395-0264 fax

Resident Manager
225-0401 cell

Security Phone:
232-4821 ph

Email: kalelekai002@hawaii.rr.com

Fire:	911
Police:	911
Ambulance:	911



Congratulations to Bill and Edwina Doty, proud parents of our newest resident of Kalele Kai, Baby Mathew born March 20, 2009.

Kalele Kai AOAO
One Keahole Place
Honolulu, HI 96825

Resident
One Keahole Place
Honolulu, HI 96825

CHRISTOPHER SHEA GOODWIN

ATTORNEY AT LAW LLLC
737 BISHOP STREET
SUITE 1640 MAUKA TOWER
HONOLULU, HAWAII 96813
TELEPHONE 808 531-6465
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Christopher Shea Goodwin*
chris@christophersheagoodwin.com
*Admitted to practice in HI and TX

Thomas D. Sands**
thomas@christophersheagoodwin.com
**Admitted to practice in HI and CA

May 7, 2013

Via e-mail: terry@revereandassociates.com

Terrance M. Revere, Esq.
Revere and Associates
970 North Kalaheo Ave., Suite A301
Kailua, Hawaii 96734

Re: Kalele Kai – Unit 1006/Boat Moorings 28-33

Dear Mr. Revere:

As you are aware, the undersigned is legal counsel to the Association of Owners of Kalele Kai ("Association"), and writes this letter at the request of its Board of Directors ("Board") in response to your correspondence dated May 6, 2013.

Unfortunately, the Board will not be able to meet and consider the issues raised in your correspondence prior to the arbitrary (and quite short) seven (7) day dead line stated therein. Alternatively, the Board will promptly meet and provide a written response to your correspondence within thirty (30) days following the date of the undersigned's receipt thereof. This is a reasonable amount of time to evaluate and consider your twenty-eight (28) page correspondence, inclusive of enclosures.

However, should your client nonetheless proceed to moor a boat at the Kalele Kai marina which exceeds the express twenty-three foot length restriction set forth in the project's Declaration, the Board reserves its right to enforce the Declaration against your client, and file any appropriate legal action in furtherance thereof. To the extent demanded in your correspondence, your client is advised the Board objects, at least ***preliminarily***, to his proposed mooring of a boat at the Kalele Kai marina in violation of the twenty-three foot length restriction set forth in the project's Declaration.

EXHIBIT
554
PENGAD 800-631-6989

EXHIBIT 20

Should any of you have any questions regarding any aspect of the above, please do not hesitate to contact the undersigned at anytime.

Very truly yours,

CHRISTOPHER SHEA GOODWIN AAL LLLC

Christopher Shea Goodwin
Thomas D. Sands

cc: Association of Owners of Kalele Kai Board of Directors
c/o Alan Takumi, Associa Hawaii

REVERE & ASSOCIATES

A LIMITED LIABILITY LAW COMPANY
PALI PALMS PLAZA, 970 NORTH KALAHEO AVENUE, SUITE A301
KAILUA, HAWAI I 96734

TERRANCE M. REVERE
LAUREN C. MCDOWELL*
MALIA NICKISON-BEAZLEY
CHRISTOPHER SANTOS
*Also Licensed in MA

TELEPHONE: (808)791-9550
Email:terry@revereandassociates.com

May 28, 2013

Kalele Kai Association of Apartment Owners
c/o Christopher Goodwin, Esq.
Attorney At Law, LLLC
737 Bishop Street
Suite 1640 Mauka Tower
Honolulu, Hawaii 96813

Via Email: chris@christophersheagoodwin.com

Dear Mr. Goodwin:

Thank you for your letter dated May 7, 2012 in response to our May 6, 2012 letter. In light of the Board's "preliminary" objection to our client's mooring of his new boat, we hereby demand mediation of this issue pursuant to HRS § 514B-161.

If the Board of Directors, at their meeting to consider this issue, decide to change their position and acknowledge our client's right to moor his boat, we will gladly withdraw our mediation demand. In the meantime, we request that mediation take place at the Mediation Center of the Pacific. Please let us know if mediation will be necessary and in that case, if the Association agrees to mediate. Thank you for your attention to this matter. Please do not hesitate to contact myself or my Associate Lauren McDowell with any questions or concerns.

Very truly yours,

Terrance M. Revere

Terrance M. Revere
Lauren C. McDowell
REVERE & ASSOCIATES
A Limited Liability Law Company

cc: KC Udagawa (via email)

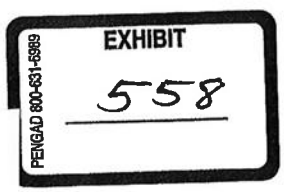


EXHIBIT 21

KK001177

CHRISTOPHER SHEA GOODWIN

ATTORNEY AT LAW LLLC
737 BISHOP STREET
SUITE 1640 MAUKA TOWER
HONOLULU, HAWAII 96813
TELEPHONE 808 531-6465
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*Admitted to practice in HI and TX

Thomas D. Sands**
thomas@christophersheagoodwin.com
**Admitted to practice in HI and CA

June 4, 2013

Via e-mail terry@revereandassociates.com

Terrance M. Revere, Esq.
Revere and Associates
970 North Kalaheo Ave., Suite A301
Kailua, Hawaii 96734

Re: Kalele Kai – Unit 1006/Boat Moorings 28-33

Dear Mr. Revere:

In response to your correspondence dated May 28, 2013, I have been authorized by the Board of Directors ("Board") of the Association of Owners of Kalele Kai ("AOAO") to advise your client's request to moor a 51 foot boat at Kalele Kai has been denied, as the requested boat length violates the 23 foot boat length restriction expressly stated in the Declaration.

In response to your client's demand for mediation pursuant to HRS §514B-161, the Board is awaiting a response from the AOAO insurance carrier whether it will assign legal counsel to represent the AOAO in any mediation proceeding. You will be promptly notified upon receipt of a response from the insurance carrier regarding this issue.

Should any of you have any questions regarding any aspect of the above, please do not hesitate to contact the undersigned at anytime.

Very truly yours,

CHRISTOPHER SHEA GOODWIN AAL LLLC

Christopher Shea Goodwin
Thomas D. Sands

cc: Association of Owners of Kalele Kai Board of Directors
c/o Alan Takumi, Associa Hawaii

EXHIBIT 22

EXHIBIT 559
PENGAD 800-631-6989

From: **Richard Rosic** rrosic9@gmail.com
Subject: **Kalele Kai**
Date: **June 6, 2013 at 3:17 AM**
To: **KC Udagawa** kcudagawa@mylandhawaii.com
Cc: **Terry Revere** terry@revereandassociates.com, Lauren@revereandassociates.com

Good morning KC -

Good talking with you last night. It is a real shame that Mr. Yoshikawa has to go thru this boat size restriction nonsense with the board; I do hope that he remains strong and positive. He is in good hands with Terry Revere and will prevail.

We must find a way to help him overcome the Japanese mentality and cultural upbringing of avoiding a conflict. He purchased a townhouse on the water with a 69 foot boat dock that had no tie of a boat size restriction attached to it. Now, over thirty months later the Kalele Kai Board is trying to impose a size restriction. He must fight back by allowing Terry to defend his legal rights. I know a fight goes against his background but it is unfortunately part of what he must do.

Please let Mr. Yoshikawa know that I will assist in any way I can.

Take care KC.
Richard

PENGAD 800-631-6989
EXHIBIT
560

YOSHIKAWA000536

EXHIBIT 23

DISPUTE PREVENTION & RESOLUTION
STATE OF HAWAII
---:---

HITOSHI YOSHIKAWA,) DPR Arb. No. 13-0496-A
Claimant,)
vs.)
ASSOCIATION OF APARTMENT OWNERS OF KALELE KAI,) Arb. Hearing: 8/25/2014 and 8/26/2014
Respondent.)

ARBITRATION
(Day 1 of 2)

Taken before Arbitrator Keith W. Hunter at the offices of Dispute Prevention & Resolution, Inc., 1155 Pauahi Tower, 1001 Bishop Street, Honolulu, Hawaii 96813, commencing at 9:00 a.m. on August 25, 2014.

WILLIAM T. BARTON, RPR, CSR NO. 391

APPEARANCES:

Arbitrator
KEITH W. HUNTER
Dispute Prevention & Resolution, Inc.
1155 Pauahi Tower
1001 Bishop Street
Honolulu, Hawaii 96813
(808) 523-1234
keithhunter@dprhawaii.com

For Claimant/Counter Respondent
Hitoshi Yoshikawa
TERRANCE M. REVERE, ESQ.
LAUREN C. McDOWELL, ESQ.
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(808) 791-9550
terrance@revereandassociates.com
lauren@revereandassociates.com
malia@revereandassociates.com

For Respondent/Claimant
Association of Apartment Owners of Kalele Kai
JOHN D. ZALEWSKI, ESQ.
JANA NARUSE, ESQ.
Case Lombardi & Pettit
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jzalewski@caselombardi.com

CHRISTOPHER SHEA GOODWIN, ESQ.
737 Bishop Street
Suite 1640, Mauka Tower
Honolulu, Hawaii 96813
(808) 531-6465
chris@christophersheagoodwin.com

Also present
Hitoshi Yoshikawa
Maiko Yoshikawa
Yumiko Nakamura
Bradford Oakes

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THE ARBITRATOR: Good morning. Today is arbitration involving Yoshikawa versus Association of Apartment Owners of Kalele Kai. Counsel, could we make appearances for the record starting with Mr. Revere?

MR. REVERE: Yes. Good morning. Terry Revere and Lauren McDowell for the Yoshikawas who are both present.

MR. ZALEWSKI: John Zalewski and John Naruse for Association of Apartment Owners of Kalele Kai in its respondent capacity. And Brad Oakes, board president is also present.

MR. GOODWIN: Chris Goodwin for counterclaimant Association of Apartment Owners of Kalele Kai.

THE ARBITRATOR: Mr. Revere filed what I'll call an email motion last Friday concerning some exhibits. And concerning his client's position with regard to possibility of calling Mr. Goodwin as a witness in this pending arbitration proceeding.

I just ask Mr. Revere whether he continues to take the position that Mr. Goodwin will be called as a witness in this case. And I believe he answered in the affirmative.

MR. REVERE: Right.
THE ARBITRATOR: Do you want to add anything to the arguments that you set forth in your email?
MR. REVERE: Yes. Very briefly, the representation that was made at the last status or discovery conference was by the AOAO that they are relying upon a good faith defense but that good faith defense is based upon other at that time unnamed professions and consultants. And I think that was the basis for any earlier rulings that were made with regard to Mr. Goodwin's status.
The problem is once we got the exhibits there's lots of exhibits referring explicitly to Mr. Goodwin's advice. They are even circled by the AOAO to direct the arbitrator to look at the advice from Mr. Goodwin that was being reported in these open sessions of the board or otherwise.
So it's our position that they can't have their cake and eat it too. All the case law we cited that talks about parties that explicitly rely upon advice of counsel and that being a waiver of the privilege also say the same thing for a good faith defense. And they can't argue -- and they are explicitly arguing in the brief all

of our decisions were in good faith, et cetera, et cetera. Then they point you to exhibits where they circle Mr. Goodwin's advice or at least their spin or interpretation of what the reporting is of his advice and we're allowed to test that.
So therefore, we do think that we, A, should be able to call him and, B, that there's no privilege for any subject matter, at least up to the point where perhaps Mr. Zalewski was appointed as defense counsel, up until that point we think everything should be open and fair game because they can't disclose what they want to disclose and hide the remainder.
MR. ZALEWSKI: Jana is going to argue the motion. I want to interject and I believe we are particularly concerned because there was some reference to possibly seeking Mr. Goodwin's disqualification which is a very extreme form of relief.
In light of that and as part of our response, no law being cited in this email, if that is, in fact, disqualification, if that is being sought we would ask that that be a formal motion. We have the opportunity to oppose. And that there be a hearing since the form of relief

is so extreme.
As far as the other aspects of that I defer to Jana.
MR. GOODWIN: I'll let Jana argue the motion. But with respect to the procedural outcome, if the arbitrator is so inclined to find that I am indeed a material witness in this case, I would have an ethical obligation to advise my client and recommend they obtain substitute counsel.
THE ARBITRATOR: Jana.
MS. NARUSE: To the extent -- regarding the disclosure of or production of documents that we've already -- I think I outlined everything in my letter. We did disclose that particular KK-001535 and page 6.
To the extent that we hidden any documents we rused everything that we've had. To the extent we are relying on advice of counsel like I said in my letter, we informed Terry that we were not relying on the advice of counsel. The fact that letters written by Mr. Goodwin are present in our exhibit list there's plenty of letters written by Mr. Revere that also is in his list as well as our list.

To the extent that we are relying on Mr. Goodwin's advice, we are not.
I would state clearly that the purpose of those exhibits are to demonstrate that something was drafted and something was written in correspondence that did exist between Mr. Revere as well as claimant. But to the extent that we're relying on his -- we're not relying on his advice.
MR. REVERE: May I respond briefly?
THE ARBITRATOR: You may.
MR. REVERE: First of all, I object to a triple teaming. If this was professional wrestling I don't think they allow that. They have tag teaming but not triple teaming.
Secondly, they have not produced all of the documents. Rather than getting to what's produced I just sent a text to my paralegal to go through all of our exhibits from the Bellingham records to show the documents that weren't produced that should have been produced, number one.
Number two, they have not addressed the fact that they are relying on a good faith defense. They are relying on good faith and circling things and showing it to the fact finder

that I assume they are doing to show they are relying on a good faith defense. If they want to retract that defense, fine, but they can't say, we are going to do that, Chris's opinions are evidence of that and no, Terry, you can't ask him anything about it, you can't find out the facts we gave to Mr. Goodwin, et cetera.

So especially, it's especially important here where we already have again they are trying to claim Bellingham supports what they're doing here. And now that we see what Bellingham was actually asked to do in the context of it, it raises very serious concerns on our part.

There isn't any doubt the decision was made and then the rationale from Bellingham was sought after the fact. We think it's very important.

THE ARBITRATOR: Let me follow up on one other thing in your email, Terry. You are also asking for the witness exclusion rule to apply with regard to Chris, correct?

MR. REVERE: Yes. That's another clarification. It's up to Chris and obviously John and Jana to do whatever they want to do. And

am I seeking disqualification? No. I'm seeking the ability to call him as a witness and to find out what information they gave Mr. Goodwin. And we've already seen an internal document from Bellingham where Bellingham was told the result the client wanted to reach ahead of time.

So we think it's very important.

THE ARBITRATOR: I'd like to talk to just counsel off the record out in the hallway. Can we do that for a few minutes.

(Whereupon, a recess was taken from 9:12 a.m. to 9:23 a.m.)

THE ARBITRATOR: Counsel and the arbitrator had a caucus outside and I believe we've come to a resolution as to how to move forward.

John, I would ask you to make a representation for the record as to what was discussed concerning our agreement to go forward in this arbitration proceeding.

MR. ZALEWSKI: I believe I'll make an attempt to cover the matter. I counted at least three matters that I believe are somewhat interrelated. One is we stated before in an email but we'll state so again right now that the

association both in its respondent and its counterclaimant capacity is not relying on the advice of counsel, whether as a defense, as a good faith defense or as part of its defenses as exercising reasonable business judgment in this case. It is relying on professionals other than lawyers as part of its defenses but not under the advice of Mr. Goodwin.

The second part related to other parts, both sides are stipulating in all exhibits in this case into evidence. As to that, there being admissible that each side would be free to argue as to what weight the arbitrator can assign the exhibits including declarations, and whether or not the other side had the opportunity to conduct cross-examination of the declarants.

Then I believe the third item related to all of this is that last but not least Mr. Goodwin my understanding is, A, the claimant and its counsel his counsel is not, will not seek to seek his exclusion as counsel of record in this case. And will not call him as a witness in this case.

THE ARBITRATOR: The issue with respect to disputes over documents, other documents and

their produceability or admissibility will be resolved a little later. But we're going to carve that out and deal with that as a separate matter. Mr. Revere, does that accurately reflect the agreement we reached in the hallway?

MR. REVERE: Yes. And the other addition is I believe there is an understanding that due to the limited nature of her testimony that Mrs. Yoshikawa will be allowed to stay here and assist her husband in this matter.

THE ARBITRATOR: With the understanding that the respondent counterclaimant is free to ask any question they deem appropriate of that said witness.

MR. REVERE: Sure.

THE ARBITRATOR: Very quickly for the folks who have not met me, I am Keith Hunter. I am the Arbitrator in the case. We will be proceeding for the next two days in this matter, hopefully very civilly and professionally. All witnesses will be sworn under oath and expected to give truthful, candid testimony.

This is a little less formal than court but we are here to adjudicate issues, and I treat the matter with the appropriate level of

consideration that such matter should be considered.

Let's just quickly go through the lineup for today so that we can be as efficient as possible. Terry, you're going to be calling Mr. Rosic first?

MR. REVERE: Richard Rosic. We anticipate between direct and cross I assume that will take all morning. And at 1:30 we are going to call one of the developer representatives, Mr. Showe. We're going to call Mr. Von Guenthner. And I think that's pretty much it for scheduling for today.

We might be calling Sue Savio. But since there is a declaration from her and it's now in evidence, I'll look at that over lunch and it simply might not be necessary.

THE ARBITRATOR: That will consume the entire day?

MR. REVERE: Yes. I'll also talk to Mrs. Yoshikawa if we need a filler at the end to fill in the time. I understand Chris has a time restraint in the afternoon which is fine with us.

MR. GOODWIN: I have a board meeting in Ewa at 6:30 so I ask the arbitrator if we adjourn

today at 5 p.m. if that is acceptable to all parties?

THE ARBITRATOR: That's fine. Thank you for working with me to get through these issues, and let's get to the matter at hand.

MR. REVERE: I think John mentioned it but I assume that all of their and all of our exhibits are received.

THE ARBITRATOR: They are received. No need to offer them through the witnesses. They are in evidence.

MR. REVERE: Okay.

(Discussion off the record.)

(Whereupon, the witness was duly sworn.)

THE ARBITRATOR: We're going to go somewhat slowly because you're on speaker phone. If you hear the word "objection" or something like that, please stop your testimony to allow us to deal with whatever the issue is, so we'll try to move along slowly and methodically through your testimony.

THE WITNESS: All right.

THE ARBITRATOR: Lauren.

RICHARD ROSIC,

Called as a witness, having been first duly sworn, was examined and testified by speaker telephone as follows:

DIRECT EXAMINATION

BY MS. McDOWELL:

Q. Good morning, Richard. This is Lauren McDowell?

A. Hi Lauren.

MR. GOODWIN: Mr. Arbitrator, before counsel begins her exam, I request permission to conduct a voir dire of the witness since he is appearing by phone to determine exactly what information or equipment or other materials are in front of him since we can't see him.

THE ARBITRATOR: That's fine.

VOIR DIRE EXAMINATION

BY MR. GOODWIN:

Q. Good morning. This is Chris Goodwin.

A. Hello Chris.

Q. Mr. Rosic, could you explain to the arbitrator where you are currently at?

A. Yes. I'm in my office in my home in Punta Gorda, Florida.

Q. Is there a computer in front of you?

A. There is a computer with a blank screen

at the moment.

Q. Is it turned on?

A. No. The computer is on but it's not -- the screen I haven't activated it.

Q. Do you have any documents within your arm's reach?

A. No, I don't, Chris.

Q. Is anyone else present with you?

A. No one.

Q. Do you have your cell phone with you?

A. I have it in another room.

Q. But it's not with you; is that correct?

A. No. It's not.

Q. If you receive any email or text communications during any portion of your testimony today will you please let us know.

A. Yes. I will.

Q. Thank you, Mr. Rosic.

MR. GOODWIN: That's all I have, Mr. Arbitrator. Thank you.

THE ARBITRATOR: Please proceed, Lauren.

CONTINUED DIRECT EXAMINATION

BY MS. McDOWELL:

Q. I have sent via electronic means the

exhibits I will be asking Mr. Rosic about today. Do you have access to those Richard?
A. Yes, I do. I haven't turned them on yet, Lauren. If you'd like me to I can.
Q. Okay. Go ahead. You can pull up Exhibit 159 will be the first one I'm asking you about.
A. 19?
Q. 159.
A. Okay. I have it.
Q. First, will you tell us, please, how you came to know the condominium project Kalele Kai?
A. Yes. I initially did a web search. I was looking for waterfront property, some place that I could have a boat. And I came across Kalele Kai through a web search and also a broker.
Q. Why did you become interested in Kalele Kai in particular?
A. Well, specifically, the townhouse location in front of available docks.
Q. Did you eventually purchase a unit at Kalele Kai?
A. Yes, I did. Unit 106.
Q. Is that a townhouse?

A. Yes, I did.
Q. When did you make that purchase?
A. 2001. June maybe.
Q. Did you purchase any boat moorings at that time?
A. Yes. After I purchased the townhouse I purchased two moorings.
Q. Were those moorings number 28 and 29?
A. Yes, they were.
Q. If you could turn your attention to Exhibit 159, Richard.
A. All right.
Q. Go ahead and tell us what that is.
A. Well, it's a relief model that was built to -- as a demonstrator, I guess, during the early days of the condo projects when the developer was selling the units. It's a model maybe four feet off the ground. Although if I recall correctly four feet square.
And it nicely depicted the buildings, the grounds, the dock area.
Q. When did you first see this relief model?
A. I believe it was when I made my first tour of the project. The model was kept in the

cabana.
Q. Was that prior to purchasing a townhome?
A. Yes, it was. I believe I came in, took a look. Yeah, then ended up purchasing the townhouse.
Q. Do the docks that are depicted on this model truly and accurately depict the marina as you observed it when you first purchased your townhome?
A. Basically yes. It shows the long main walkway. I only see two boarding ramps. But there were actually three. And it shows the 69-foot side tie which was used for visiting guests. And it also shows the finger piers. So yes, it is correct.
Q. Who did you purchase your boat moorings number 28 and number 29 from?
A. From the developer Jeff Stone.
Q. When you purchased your townhome did you receive a copy of the declaration?
A. Yes, I did.
Q. How about any amendments to the declaration?
A. Well, I'm sure I would have received a

complete package which would have had the declaration and any amendments plus house rules, by-laws.
Q. When you first purchased your townhome, to your knowledge had there been any modification of moorings from their original condition at Kalele Kai?
A. To the best of my knowledge, no.
Q. And can you describe to us the layout of the marina when you first purchased your townhome?
A. Yes. It's pretty much like the model depicts. The main walkway, three gangways. I believe there were 60 moorings, two of which were for 30-foot boats. The finger piers were all 23 feet. And the two extreme ends were the 28-foot side tie, being there was no -- there was only one finger pier.
And those were set up so the overhang would accommodate I believe a 30-foot boat.
Q. Would you please turn your attention to Exhibit 7.
A. I'll have it in just a second.
MR. GOODWIN: While the witness is looking for this exhibit does he have all the

exhibits with him or select exhibits.
Q. Do you have all of the Yoshikawa exhibits with you?
A. Yes. I have whatever was sent to me. I believe there's -- I'd have to go look. But 150, 60.
Q. Thank you.
A. But, yes, I do have number 7 in front of me.
Q. Could you draw your attention to the box entitled "slip mix"?
A. Yes.
Q. What's your understanding of that box?
A. Well, the slip mix depicts what the dock was made up of. Fifty-four 23-foot finger piers which have a total footage of 1,242 feet. Then there are the two extreme ends which are 28 feet. And that's because they are on the end, and they are including the length of the main walkway.
Then we have one 69-foot side tie, three gangways and 12 pilings.
Q. Richard, are the slips that are depicted on these plans the same as you observed them to be when you first purchased your townhome?
A. Yes.

Q. If you could bring your attention to the top right-hand portion of the plans, do you see the indication that reads "30-foot easement limit"?
A. Yes, I do.
Q. What is your understanding of the easement?
A. Well, the easement -- first of all, the water belongs to the marina company, Hawaii Kai Marina. The easement gives Kalele Kai the ability to come out 30 feet --
MR. GOODWIN: I'm going to object --
MR. REVERE: Hold on a second. Let him answer. Go ahead Richard. Complete your answer.
THE ARBITRATOR: Complete your answer and then stop for a minute, Richard.
A. Okay. My understanding is that the marina company owns the water. The easement gives Kalele Kai the ability to come out with the docks.
THE ARBITRATOR: Your objection was?
MR. GOODWIN: My objection was move to strike the answer because he expressed a legal opinion. Counsel's question, by the way, did not ask for a legal opinion. She asked for his

understanding. And I had no objection to that, but with respect to the answer insofar as it expressed a legal opinion, that's the basis of my objection.
THE ARBITRATOR: Can you rephrase the question.
BY MS. McDOWELL:
Q. Richard, you were an owner at Kalele Kai, correct?
A. Yes.
Q. And you also served as a board member and president of the association?
A. Yes, I did.
Q. And in that capacity did you learn of this 30-foot easement that's depicted on the plans?
MR. GOODWIN: Objection. Potential hearsay, how did he learn.
THE ARBITRATOR: You can be more definitive with the question.
BY MS. McDOWELL:
Q. As an owner at Kalele Kai were you aware of what you owned at the property?
MR. GOODWIN: Objection. That also calls for a legal conclusion as to what he owned.

THE ARBITRATOR: Let's let him answer first. He may be able to qualify it as to the best of his knowledge as a lay person.
A. Well, I'm not sure just what I'm -- what is being asked after the confusion. But the easement -- well, let me back up.
I became aware I guess of the easement when I started looking at the drawings. So that's probably where I first noticed it.
Now, my understanding is Kalele Kai does not own the water. They have the right to extend out 30 feet with the marina docks.
Q. Can you describe for us the finger piers at Kalele Kai?
A. Yes. The finger piers are attached to the main walkway with basically a triangular support. The finger piers are 23 feet long and they're made of two sections. So it's not one contiguous 23-foot pier. It's two fastened together.
Q. And, Richard, would you please now turn to Exhibit 154. When you have that in front of you, please tell us what that depicts.
A. Okay. 154 is one of the extreme end moorings. Looking at the photo to the right would

be, I believe that would be mooring number 1, if I have my numbers correct. It either goes right to left or left to right.

But that's one of the extreme end moorings. That's where that mooring is depicted as 28 feet because you have the five-foot walkway plus the 23- foot finger pier. This photo was taken about the time that there were problems with that finger pier. It was coming loose.

Q. Do you know who owned this boat mooring?

A. Yes. During my stay Carl and Sidney Fratski.

Q. Did they keep a boat moored here?

A. Yes, they did. For oh, three or four years.

Q. And can you describe the boat, please.

A. Yes. It was a flying bridge, I believe a Bayliner. And I know it was longer than 23 feet, or I believe it was. It took up most of the finger pier plus the walkway.

Q. What was the time period within which the Fratzkis moored the flying bridge Bayliner in that mooring?

A. I believe it was there when I arrived.

And it remained up until a time when Carl, he had a disability, so I would say it was there for certainly four years.

Q. And it was there in 2001 when you purchased the townhouse; is that correct?

A. I'm not a hundred percent certain, Lauren. I think it was.

Q. Would you turn your --

A. I cannot say that with assurance. I think it was.

Q. Could you please look at Exhibit 155.

A. Okay, I have it.

MR. GOODWIN: Sorry, Lauren, what exhibit?

MS. McDOWELL: 155.

Q. Go ahead, Richard. Would you tell us what this exhibit depicts?

A. This is one of the electrical stantions. By the number 22 I recall having them numbered. And it's on dock number 37. It sits on the triangle. There was an electrical stantion for basically every other set of moorings. So each electrical stantion had electrical hook up for two boats.

Q. Richard, in the fall of 2001 did you

write to the Kalele Kai Board of Directors with requests?

A. Yes. I sent them a letter early on in my residency basically introducing myself, telling them a little bit of my background, my boating experience, years in having boats at marinas, offering my help.

And I at the same time asked for permission to do three things. To put a floating dock into one of my moorings, add a dock box for boat related gear, and also to put an opening in my lanai wall to essentially have easier access to the marina.

Q. Did you attend the September 9, 2001 Board of Directors meeting?

A. I don't think so, Lauren. I'd have to look at the -- I know I attended one when I then went on to make a presentation.

Q. Will you look at --

A. Whether it was September or October I just don't recall off the top of my head.

Q. Will you look at Exhibit 30.

A. Okay. I have it.

Q. And according to these minutes you were not present this particular meeting, September 11,

2001; is that correct?

A. That is correct.

Q. If you turn to page 3 do you recall reviewing these minutes after the meeting?

A. Yes.

Q. And did you then attend the October 18, 2001 Board of Directors meeting to make a presentation?

A. Yes.

Q. What was your presentation?

A. The presentation was basically a combination of charts using an overhead projector. And also foam board charts that my request was to purchase additional docks and to modify the configuration to end up with a replicating the 69-foot side tie that was already on the premises.

Q. And could you turn to Exhibit 31 please, Richard.

A. Okay. I have it.

Q. What did you use the charts and the overhead projector to show?

A. To show the modified reconfiguration of the docks.

Q. As part of your presentation did you

present regarding the originally requested dock box, floating dock, and opening in your back lanai?

MR. GOODWIN: Objection. Leading.

THE ARBITRATOR: It is.

MS. McDOWELL: I can rephrase.

BY MS. McDOWELL:

Q. Can you please explain what occurred regarding your initial request?

A. Okay. The dock box and the floating dock were approved pending specifications from the Hawaii Kai Marina company. The opening in my lanai was -- well, it wasn't declined. I had the opportunity to go before the homeowners and request whatever it was at the time, 75 percent approval, which I elected not to do.

Q. Regarding your presentation regarding the mooring modification were you asked any questions by the board members after your presentation?

A. Yes. There were a couple. I recall one where they were just questioning whether I knew the slips I wanted to purchase, whether they were available or not. And basically I guess that was pretty much it. There might have been another

question or two. But everyone was very comfortable with it. And during the presentation I thought everyone understood exactly what was being requested and no one had a problem with it.

Q. Tell us exactly what were you requesting to do.

A. All right. I was going to purchase four additional moorings and remove two finger piers. And by doing so I would have a 69-foot side tie which would again replicate the one on the other end of the property.

Q. During your presentation was there any discussion regarding a 23-foot boat limitation?

MR. GOODWIN: Objection, leading.

A. No. None whatsoever.

MR. GOODWIN: I'll withdraw the objection.

Q. Did you make any representations to the board regarding your purchase of the additional moorings?

A. Well, I was not going to go purchase additional moorings until I received approval. So I made that clear. And I also told them that my plans were for a what would end up as being a

40-foot boat, and all this was pending upon their approval.

Q. And did you receive approval from the board?

A. Yes. The following morning Diane Langley who was the resident manager at the time contacted me and gave me the approval.

Q. How did Diane Langley contact you?

A. You know, I'm not a hundred percent certain whether she walked over to the townhouse or I met her in the cabana. I'm not a hundred percent certain.

Q. Were your presentation materials returned to you?

A. I left them there in her custody just in case anybody wanted to look at it.

Q. Were the presentation materials returned?

A. Yes. Eventually they were.

Q. Did you review Exhibit 31 after giving your presentation?

A. Exhibit 31? Oh, okay. That's what I'm looking at. Yes, I did.

Q. Is Exhibit 31 a complete record of what occurred at the meeting?

A. No. Not at all. It's missing the fact that I brought the presentation materials requested to reconfigure the docks. So this is not an accurate record of what took place.

Q. Richard, what did you do after receiving approval from resident manager Diane Langley?

A. I probably immediately called Jeff Stone and made arrangements to purchase the additional four moorings. And I also shortly thereafter went to New Zealand to make final preparations on a boat I was purchasing.

Q. Did you, in fact, purchase additional moorings?

A. Yes, I did.

Q. What were the numbers of the moorings that you bought?

A. I had 28 and 29. So it would have been 30, 31, 32 and 33.

Q. Did you modify the moorings?

A. Yes, I did.

Q. How did you do that?

A. I modified the first one foolishly by myself with the help of a friend and realized it was a little more involved than I cared to do. So

for the next one I got ahold of Ray Tougas of Pacific Diving. He is the one that originally installed the dock for Kalele Kai. And I had him come out with his crew and remove the second finger pier.

Q. Approximately when did you remove the first finger pier?

A. Something tells me it was in December of would that be 2001.

Q. Did anyone observe you removing the first finger pier?

A. Pardon me, Lauren?

Q. Did anyone observe you removing the first finger pier?

A. Oh, yes. Jim Propotnick was coming by walking his dog. Yeah, he came by. Yeah, I believe he was there when the finger pier turned turtle on me and all the barnacles were sticking up. And we talked about it. And I told him I had contacted a tow boat company and they were going to come and tow it away before it started to smell up the property.

Q. Was Jim Propotnick on the Board of Directors at that time?

A. Yes, he was.

Q. When did you remove the second finger pier?

A. Well, I believe it was in probably January of 2002.

Q. When did you begin making arrangements to purchase your boat?

A. Right after I received the approval from Diane.

Q. Do you recall when you flew to New Zealand?

A. Probably late January or early -- I would suspect early February.

Q. In about 2002?

A. Yes.

Q. And please describe the boat that you purchased.

A. It is a power Catamaran with a, it's called an express model, two diesel engines. It was named a Quantum 38. However, the actual length including the bulkhead was 40 feet. And it was approximately 15 feet wide.

Q. And what was the name of the boat?

A. Ariel.

Q. Could you please turn to Exhibit 148.

A. I'm sorry. 140?

Q. 148.

A. 148.

(Pause.)

A. Okay. I have it.

Q. What's depicted in that exhibit, Richard?

A. That was the boat that I owned at the time, the Quantum Catamaran.

Q. That's the Ariel?

A. Yes, it is.

Q. How much did the Ariel cost?

A. Approximately $550,000.

Q. And do you recall when the Ariel arrived at Kalele Kai?

A. Well, I think it came off of the ship in late March. So I would say April of 2002.

Q. Did you register the Ariel with any entities?

A. Yes. The boat was Coast Guard documented. And when it arrived in Kalele Kai I registered it with the marina company.

Q. Is that the Hawaii Kai Marina Association?

A. Yes, it is. Every boat in the marina has to carry a sticker, a yearly sticker, or a

sticker that's renewed yearly.

Q. Did you register Ariel with Kalele Kai?

A. Yes. So it would be Kalele Kai, the marina association. And, again, it was a documented vessel. Not state registered but documented.

Q. And prior to mooring the Ariel in your modified mooring did you have another boat?

A. Well, yes. When I originally moved in I went out and bought a 23-foot Glacier Bay. I've been a boater for a long, long time and it's difficult for me to be without a boat. So I had the Glacier Bay until I received permission to modify the docks.

And I also at this time had what is called a porta-boat. It's a little collapsible boat. I have used it with a sail on it. And I also had a couple of kayaks.

Q. What did you do with the 23-foot Glacier Bay?

A. On that Serag-Eldin bought it from me. He was an owner at Kalele Kai. And also a board member.

Q. Did he change the name of the boat when he boat it?

A. Yes. He changed it to Belladonna.
Q. What was it originally called?
A. Ariel.
MR. GOODWIN: Hold on a minute. I'm confused.
THE ARBITRATOR: I'm confused too.
MR. GOODWIN: I don't think that was the same boat, counsel's question referred to the answer.
THE ARBITRATOR: Could you clarify that.
MS. McDOWELL: It was.
BY MS. McDOWELL:
Q. Richard, can you explain. People are a little confused about the names of the boats.
A. Okay. The Quantum, the one in this exhibit which we're looking at now is called Ariel. The boats I had, the 23-foot Catamaran which I sold to Ahmed Serag-Eldin was also called Ariel.
He subsequently changed the name to Belladonna.
Q. Okay. Thank you. After the Ariel arrived at Hawaii Kai, the new boat, the one depicted in 148, did you take anyone out for a

cruise?
MR. GOODWIN: Objection. Leading.
THE ARBITRATOR: You can answer that.
A. Pardon me? Yes. I -- well, in fact, I took the board out for a cocktail cruise.
Q. Do you remember when that was?
A. Oh, I would have to say it was maybe July of 2002.
Q. Do you recall who from the board attended that trip?
A. Basically everyone. Names? Okay. Richard Matti, Ahmed Serag-Eldin. The Propotnicks. Colin Kurata. They also brought their spouse with them. Raelene Balidoy. I believe Diane Langley, the manager. I believe she came along. Bob Tutton who unfortunately banged himself up after the cruise because he fell getting off of the boat.
So pretty much the whole board. I know or I'm pretty certain that Steve Hirano, and gosh, Harry may not have attended.
Q. And, Richard, how long have you been a boat owner?
A. Oh, gosh, 45 years, Lauren.
Q. How many boats have you owned in that

time?
A. Well, I think my present boat is number 17. And I've had a combination of sailboats and, you know, power boats, ranging from 23 to 53 feet. I've crossed the Pacific in sailing my own boat in the transPacific yacht race four times.
I guess I have over 150,000 blue water miles for whatever that means. Just a lot of time on the water.
Q. What is your understanding of the word "mooring"?
A. Mooring. Well, that's usually to describe a body of water where a boat will drop its anchor. Or a boat will pick up a mooring, tie up rather, to a mooring ball. Or it will tie up to a dock.
Q. While you owned the townhome at Kalele Kai did you receive the association's newsletter?

MR. GOODWIN: Objection. Leading.
MR. REVERE: It's not leading. How is that leading? It's yes or no. It's not telling him you did get it. I object to the objection.
THE ARBITRATOR: You can answer the question, Mr. Rosic.

A. The question is did I receive a Kalele Kai newsletter?
Q. Yes. While you were an owner.
A. Yes.
Q. Did you ever write for the Kalele Kai newsletter?
A. Yes, I did. When I was helping the board I would occasionally write articles for them. When I became part of the board I would continue that practice. During my tenure as president I would help the resident manager by writing articles and keeping people informed of what was going on.
Q. While you were involved did you observe how or if the newsletter was approved before being circulated?
A. During my tenure I had a habit of sending out a weekly update to all board members. And I would also send this update to interested owners. We had an interested owner list.
So during my tenure, yes. The monthly newsletter would go to all of the board members for approval and also to get their comments, see what they would like to change or add.
Q. Do you have any knowledge of the

approval process prior to your service on the board?
A. No. I really do not. I know there was a monthly newsletter. But what process they went through prior to my getting involved I really don't know.
Q. Were you involved when Richard Matti was the president of the association?
A. Yes, I was.
Q. Are you aware of whether the newsletter was approved by anyone during that administration?
A. I would have no direct knowledge of that, Lauren.
Q. Can you turn to Exhibit 38.
A. I have it.
Q. Can you tell us what's depicted on the cover of that newsletter?
A. Yes. Well, the first boat you see is the Belladonna. Then up behind the to the left of the Belladonna that would be my Quantum 38.
Q. Then could you please turn to Exhibit 44.
A. Okay.
Q. Did you assist in planning a Kalele Kai social?

A. Yes. All of the boat owners and their friends really assisted in the social.
Q. Will you describe what the social was?
A. Well, it was -- we basically invited everyone to come down to the marina to, A, look at the boats. We gave them tours, food and drink, answered any questions. Just tried to get people more involved.
Q. Was this event planned in conjunction with the Board of Directors?
A. Well, the board members certainly attended. It was planned in conjunction with Diane Langley which we would --
Q. The resident manager?
A. -- borrow tables and chairs from the cabana. But whether we went to the board to ask for permission to have a social I don't know. I would suspect we probably did through Diane. Otherwise it would not be in the newsletter.
Q. Did you ever --
A. I'm sorry. I thought I lost everyone for a moment.
Q. Did you ever go fishing on the Ariel while it was moored at Kalele Kai?
A. Yes. That was part of the routine I

guess. Anyway, when we'd go out fishing, if we had a good catch we would fly flags depicting the fish we caught. And the standard procedure which everyone got to or all the owners got to understand and appreciate was when we came in we would first take whatever fish the crew, which generally was three or four of us wanted. Then we would fillet it up and put it in bags on ice out on the dock. And the residents could come by and take whatever they wanted for dinner.
And, you know, people got fish on a very regular basis from us.
Q. Approximately how long did that practice go on for?
A. Oh, gosh. I would say my entire stay there, Lauren. For as long as I had the boats. Yeah, I'd say it took maybe six, eight months to get acquainted, you know, and learn the fishing holes, all that sort of thing. But when we did bring back a good catch, many people knew when they saw the flags to come out and take what they could eat.
Q. Richard, would you please turn to Exhibit 45.
A. Okay.

Q. Was the Kalele Kai social a successful event?
A. Yes. It really was. We had a couple of them. And, yeah, they were very successful.
Q. If you turn to page 3 there are two photos. Can you tell us what's depicted in the first photo?
A. Well, the upper photo is people sitting on the stern of my boat. And the bottom photo is people looking at Ahmed Serag-Eldin's boat.
Q. And Mr. Serag-Eldin was a board member in the year 2000; is that correct?
A. Yes, he was.
Q. If you could please turn to Exhibit 46 on page 3.
A. Okay. I've got it.
Q. What's depicted in those three photographs?
A. Well, the top one Ned Peterson, Bob Krous, Ahmed. The second photo has Ahmed's wife, some other owners. And the bottom photo is Joe Gray and myself. Joe was maintenance supervisor. And we're talking standing in front of the Ariel.
Q. Richard, what is the Hawaii Kai Christmas boat parade?

A. Well, it's like other boat parades throughout the country. The marina association picks a theme. And all boat owners are encouraged to decorate their boats and participate.

In Hawaii Kai it was a very popular event. Actually it is throughout the country. Just about every marina has an annual Christmas boat parade. Whether they give awards or not, some do, some do not.

Q. Approximately how many boats would you observe to take part in the parade?

A. I was part of maybe four of them in Kalele Kai. And we had upwards 45 boats. So a real good turnout.

Q. What would you observe to occur at the Kalele Kai project during the Hawaii Kai boat parade?

A. Well, it would typically be announced in the newsletter. Of course it was announced all over town that there was going to be the boat parade. So the owners and their friends would come down to the docks. The parade went right in front of Kalele Kai. So it was a great viewing spot.

The boats would actually go in

formation just further down by, I forget the name of the restaurant there, and then they would come up and go by Kalele Kai. So, great place. And the gangways and the docks were lined with people every year.

Q. Would you observe people to watch the parade from the finger piers?

A. Oh, quite clearly.

Q. Can you turn to Exhibit 160, please.

A. Okay.

Q. Do you recognize what's depicted in these photographs?

A. Yes, I do. That's some people with their coolers and their chairs setting up on the finger pier.

Q. Did you observe residents of Kalele Kai to use the finger piers for other events?

MR. GOODWIN: Objection. Leading.

THE ARBITRATOR: It is. You can rephrase.

Q. How did you observe, if you did at all, the residents of Kalele Kai to use the finger piers?

A. Just about every day somebody would be fishing off of the finger piers. The kids would

come down and play. People would use the finger piers to get into their kayaks or their paddle boards. Though swimming was kind of frowned upon but people would swim off of the finger piers.

So they were used for sun bathing by quite frequently see people down or have seen people come down with their lawn chair, towel and little coolers and spend the afternoon.

Q. Did you ever participate in the Hawaii Kai boat parade?

A. Yes, I did.

Q. And what boat did you enter?

A. Well, the first year I was there I took my Glacier Bay in the boat parade. And after that I took the Ariel in probably three or four parades.

Q. Did anyone accompany you on the Ariel during the parade?

A. Oh, gosh. We would have 35 people, sometimes a band. Board members, the Mattis for example were always part of it as was Ahmed and -- I forget. I know others participated. Yes, we did some fairly elaborate things. And everyone had fun with it.

Q. Could you please turn to Exhibit 47.

A. I've got it.

Q. The fifth page of that exhibit.

A. The fifth.

Q. What were the different categories in the Hawaii Kai boat parade?

A. Well, let's see. We had 20 feet and under. Twenty feet and over. Then always the barges.

Q. Did you ever win any of the categories?

A. Well, in this particular one, yes, I guess the 20 feet and over. We actually, if memory serves me properly, won at least three of them for whatever that's worth.

MS. McDOWELL: We've been going for about an hour. Shall we take a break?

THE ARBITRATOR: Not a bad idea. Richard, we'll call you back in seven to 10 minutes.

(Whereupon, a recess was taken from 10:27 a.m. to 10:43 a.m.)

BY MS. McDOWELL:

Q. Hi, Richard. We're back on the record now.

A. Hi, Lauren.

Q. Richard, did you ever come to know an

individual by the name of Ned Peterson?
A. Yes, I did.
Q. How did you meet Ned Peterson?
A. Ned had a boat. And we met I'm sure it was down on the boat dock.
Q. Do you recall approximately when you met Ned?
A. Oh, gosh. 2002.
Q. How about Ike and Angela Hung?
A. I met Ike and Angela when they -- actually prior to their purchasing their townhouse. Ike was also interested in a boat. Before he made a final decision he came down to see me on the dock. He basically asked questions about boating, fishing, this sort of thing.

So, I forget exactly when they purchased their unit. But must have been 2003. But that would be when -- so I met them prior to their purchasing their unit, and then we became friends after they had owned the unit.

Q. Did you ever speak with Ned Peterson regarding modifying the boat moorings?
A. Well, yes. Several of us, you know, there was a boat show at Koolina. And Ned and his wife Sharon were interested in a larger boat. So

I took my boat to Koolina and stayed there. And they drove up. And at that time they -- well, they had inquired what procedure I went through to modify, reconfigure my slips. And I told them what the procedures were, that they could use my presentation material which I still had. And they just request an audience with the board and go before them.

So they did that. Had approval. And at the boat show they bought a 26-foot Glacier Bay.

Q. Did you ever speak with Ike and Angela Hung regarding modifying boat moorings?
A. Yes. Again, prior to Ike and Angela buying the townhouse he inquired about all that and asked who does he contact to get a mooring. He wanted a boat larger than what one mooring would accommodate. So he ended up buying, as did Ned, they both bought four moorings and reconfigured to accommodate -- in their sized moorings they could put up to a 40 -- yeah, up to a 40-foot boat.
Q. Did you assist Ned Peterson and Ike and Angela Hung in their presentation to the board?
A. No. There wasn't really much to assist

with. I just gave them my presentation material and told them the procedures as I knew them, which was to get ahold of Diane and get a spot where you could get on the agenda to make your presentation and to go ahead and do so.
Q. After providing your presentation material to Ned Peterson and Ike and Angela Hung did you observe them to do anything?
A. Well, after -- I observed them getting ahold of Ray Tougas to modify their moorings.
Q. Did you observe the modification itself?
A. Yes. I was on the dock on a regular basis. So, yes, I saw what was going on.
Q. What did Ned Peterson do to modify his boat mooring?
A. He removed one finger pier. And he then had Ray Tougas fasten it alongside so it was lengthwise attached to the common walkway, the main walkway.
Q. And how did -- did you observe Ike and Angela Hung modify their boat mooring?
A. Yes. They did exactly the same thing.
Q. And, Richard, could you please turn to Exhibit 158.

A. 158?
Q. Yes.
A. Got it.
Q. What's depicted in that photo?
A. Okay. What we're looking at is the extreme end of the townhouses which are between -- the extreme end of the townhouses and building 3. So we're looking at the docks and finger piers. And this photo there -- the photographer is probably two slips away from the 69-foot side tie. So we're looking down.

And if you blow this up, let me do that, yes, you can see Ike's -- he also purchased the 26-foot Glacier Bay, just a different model than the Petersons.
Q. What was the name of that boat, Richard?
A. Shilan, S-H-I-L-A-N. So you can see Shilan there. And you can also see Ariel behind Shilan. My mooring was -- Ike and I shared one common finger pier.

So this photo is before the Rojeks purchased their docks and also before the Nakanishis did. Both the Nakanishis and the Rojeks modified their docks.

Q. Do you recall approximately when the Hungs brought Shilan to Kalele Kai?
A. It's difficult for me, Lauren. But late maybe 2004.
Q. Can you please turn to Exhibit 49.
A. Okay. No, I'm sorry.
Q. What's depicted in the cover photo there?
A. That's the Bayliner that I was referring to. The first boat you're looking at that's the Fratski's boat. That's the one that's in one of the extreme end ties. So that end tie again is 28 feet. So we're looking at the Fratski's boat.
Then we go up, let me blow it up, the next boat we see is Belladonna. Now, the Peterson's boat would have been side tied immediately to the left of the Belladonna. But Ned must have had the boat out or he didn't purchase it at this time. This is 2003. Ned had a prior boat prior to purchasing the 26-foot Glacier Bay. So it was probably out at the time.
Q. Can you turn to Exhibit 51 when you're finished.
A. Okay. I could go on with this photo.

But if that's sufficient. So Exhibit 51?
Q. Yes. Please.
A. Okay.
Q. Was there a second annual boat social that you were aware of?
A. Yes. Yes, there was.
Q. Who planned that event?
A. Well, again through the resident manager the boat owners get together. And I think at this one we might have invited everybody to participate, bring a potluck or whatever they wished.
Q. Are there any board members depicted in these photographs?
A. Let's see. Sharon Peterson was on the board. Whether it's before her time or -- let's see, 2003, she would not have been a board member. Yes, Jim Propotnick is there. That's really the only board member. I know several of them would come. But that's the only one that happens to be in these photos.
Q. Richard, did you serve on the Board of Directors?
A. Yes, I did.
Q. How did you first become a board

member?
A. Steve Hirano passed away, and I was invited to take his place. And I agreed to do so. And then at the next general election I was elected to the board.
Q. Do you recall when you were appointed?
A. Late 2003 or maybe early 2004.
Q. Can you turn to Exhibit 52?
A. 62?
Q. Five two.
A. 52, okay.
Q. These are the board minutes of January 20, 2004; is that correct?
A. It is.
Q. On page 2 is this when you were appointed?
A. Yes, it is.
Q. Do you recall when you were formally elected?
A. Well, it would have been the 2004 annual meeting.
Q. Then if you could please turn to Exhibit 54.
A. I have it.
Q. The June 2004 newsletter. What's

depicted in this cover photo?
A. Okay. All right. If we begin at the far left. I'll have to get it blown up to tell you specifically what is here.
MR. GOODWIN: And if the Arbitrator -- I'd like the Arbitrator to take note apparently that he's using computer enhancement for his testimony. I don't necessarily have an objection to it. I just want to make sure you're aware of it.
THE ARBITRATOR: I am.
A. The only way I can specifically tell is to blow it up. But anyway, I believe the first -- there's a few kayaks there. Then there is Ned Peterson's boat. That's his new boat the Glacier Bay. Then we have Belladonna. Then there's Bob Krous's Glacier Bay. And Ariel would be here. There's Ariel. And there's Ike Hung's boat just forward of it. And then we have a couple of more kayaks. That's where the picture cuts off.
Q. Is Ned Peterson's boat depicted in its side tie mooring?
A. Yes, it is. Well, both Ned and Ike Hung.
Q. Is Ariel depicted in its side tie

mooring?
A. Yes, it is.
Q. If you could please turn to Exhibit 55.

A. Okay.
Q. And this is the August 17, 2004 meeting minutes; is that correct?
A. Yes, it is.
Q. Were you on the board at this time?
A. Yes.
Q. Page 3. Under "Resident Manager's Report." It's section D on page 3, "marina and dock maintenance."
A. Where is it? Manager's report. Okay. Under unfinished business? No, no. I'm sorry.
Q. "Resident Manager's Report" is the heading on page 2. Then if you go down to section D on page 3 --
A. I have it, Lauren. Sorry.
Q. No problem.
A. Okay.
Q. Did you work on marina and dock maintenance, the marina and dock maintenance issue while you were on the board?
A. Yes. Both Ahmed and I participated in

that jointly. We were both down there as much as anyone else.
Q. What was the action that was taken by the board at this time, August 2004, in reference to the marina dock maintenance?
A. Okay. We received a bid from Pacific Diving. Again the original installers. And that regarded general maintenance and electrical work.
There were continuing shorts in the electrical boxes. And various other things that just had to be taken care of.
Q. How did you treat ownership of the boat docks at this time?
MR. GOODWIN: Objection. Calls for a legal conclusion.
THE ARBITRATOR: Is this question concerning his role as a board member?
MS. McDOWELL: Correct.
THE ARBITRATOR: Why don't you rephrase it then.
BY MS. McDOWELL:
Q. How was the maintenance paid for, Richard?
A. By the association.
Q. What work was done?

A. Well, this bid was for dock maintenance. But I see this particular one was deferred. However, prior to this, all of the maintenance was paid for by the association. Whether it was electrical, sealing of the docks, replacing a tie rod, whatever it might be.
Q. And can you explain what the sealing of the docks entailed?
A. Sealing is just putting a water sealer down. The concrete dock just has to be sealed on a regular basis.
Q. And what portions of the marina were sealed?
A. The entire marina. The finger piers, the walkway. The gangways were not sealed. They were a different material. Those were painted. And the triangles, we replaced all that. Maybe it began with this meeting. But several of the triangles were deteriorating. And we slowly began a replacement process.
Q. Who paid for the sealing project?
A. The association. It was part of the reserve studies.
Q. Can you please turn to Exhibit 59.
A. Okay.

Q. On page 3.
A. Okay.
Q. There is an article entitled "Information on Boat Docks." Do you have any understanding regarding who authored this article?
A. Yes. This is an article by Dirk Von Guenthner. Dirk went to Jeff Stone and purchased the remaining boat docks that he had. And then Dirk was then offering them to residents. And he went before the board, asked if he could publish a letter in the news -- an article in the newsletter. He was given permission. And this is his article.
Q. And can you now turn to Exhibit 146.
A. Okay.
Q. Moving from left to right can you tell us what boats are depicted in this photograph at Kalele Kai?
A. Yes.
MR. GOODWIN: Again, if the witness is using electronic enhancement on his computer I would ask that he please identify that.
MR. REVERE: Well --
Q. Richard, when you refer to "blowing up," are you simply magnifying the photograph on

your computer?
A. Yes. Yes, I'm just making it larger. I brought it up to 100 percent.
MS. McDOWELL: I'll note for the record we offered to provide all of these exhibits in electronic format for opposing counsel. They declined.
MR. GOODWIN: I didn't decline. But my co-counsel did. Counsel, did you ask him the time frame for this photograph? I'm sorry. I might have missed that.
BY MS. McDOWELL:
Q. Richard, is there any indication in this photograph that helps you to tell us when this was taken?
A. You know, what we're looking at here is this is an aerial photograph. Beginning on the far left we see the Hawaii Kai Marina office which would be in the tip, on the tip lot right as you come around the corner.
Then we're looking at The Shack. And that's The Shack restaurant. And the boat on the extreme left is a fishing boat which is usually tied up at The Shack.
The one on the extreme right is the

owner of The Shack's boat. That's, I don't know, 40-foot Tully Craft which he used for charters and fishing.
Then we go down past -- well, that lot became a medical facility. The next step over we get to the Kalele Kai docks. Bear with me a second.
MR. GOODWIN: While the witness is pausing I would like to make an objection that the answer is nonresponsive. Counsel asked could he identify the time that this photograph was taken.
MS. McDOWELL: I believe that's what he's attempting to do so by indicating the medical center is not built yet.
BY MS. McDOWELL:
Q. Is that correct, Richard?
A. Yes. I'm just trying to be sure. I'm stretching me memory to see if that is the lot where the medical center was. And I believe it is. Because next to The Shack is what was known as the Blue Water Grill.
So this is prior to building the medical facility. So the medical facility went up in, what, '04 or '05 maybe. Then we have the Peterson boat there. So we know --

MR. ZALEWSKI: Sorry, was that '03 or '05?
THE ARBITRATOR: '04 or '05.
MR. ZALEWSKI: Thank you.
A. This has to be. Because that lot is clearly the medical facility.
Q. The first boat that's depicted if you move from left to right?
A. That would be Peterson. His 36 Glacier Bay. That's his blue cover on it. Okay. Ahmed's boat is gone. So now he is either out during this photograph or his boat is sold. He sold his unit. Resigned from the board. And someone across the bay bought his boat.
So, you know, I just can't be sure of what the circumstances are there. But Ariel is clearly in its side tie. The Hung's boat is in its side tie. Well, okay, this has to be before Nakanishi's and Rojek because their boats, Nakanishi the boat mooring in front of Ike Hung would have been modified. And that was owned by the Nakanishis.
Then two more up from that, that would have been modified and that was owned by the Rojeks.

Q. And those modifications have not occurred --
A. Pardon?
Q. Richard, those modifications have not occurred yet, according to in this photograph?
A. No, they have not occurred yet.
Q. Do you recall when Ned Peterson and Ike and Angela Hung first side tied their boats?
A. In '04.
Q. Do you recall when Mr. Rojek modified his boat moorings?
A. I think '07. And I think '07 is also when the Nakanishis -- well, when we looked at the prior exhibit the date of that exhibit told us that's when Dirk Von Guenthner bought the additional moorings.
And it was after that, that the Rojeks they bought their moorings from Dirk as did the Nakanishis.
Q. Is it fair to say that this photograph depicts the Hawaii Kai Marina between 2004 and 2007?
A. Yes.
Q. Can you please --
A. At this time, if you look down the far

end this is the other 69-foot side tie. And the association was giving someone permission to tie up in there. It was a small boat. Then next to them that belonged to oh, gosh, the people that owned the lower unit in building 3. Their name just skipped me at the moment. But that boat is actually up on one of these inflatable tubes, a floating dock.

Q. And next, Richard, can you please turn to Exhibit 151?

A. Okay.

Q. Whose handwriting appears on this exhibit?

A. I believe that belongs to me.

Q. Do you recall when you drew or placed this handwriting onto this plan?

A. Well, we see the Nakanishi finger pier has been removed. We see where Dirk modified the guest slip. Gosh, an exact date? Lauren, I would suspect that this came up when I was about to sell my townhouse, these issues came up. So that would have been in 2008.

Q. Can you please turn to Exhibit 161?

A. Okay.

Q. Is this also your handwriting?

A. Yes, it is.

Q. What were you depicting with this handwriting?

A. Just clearly showing the modifications, what the present dock layout looked like.

Q. Moving from left to right what's the first modification that we see?

A. That would be the Petersons. The second one would be Rojek. The third would be Hung. The fourth would be Nakanishi. And the fifth one has not been done yet. That would be if you look up it would be three more moorings up. That one is going to get -- that would be the next one to get modified. And that's where the Rojeks put their boat, the Cracovia.

And the next notation we see up here this is where Dirk did some modifications.

Q. Can you please turn to Exhibit 153?

A. 163 or 153?

Q. 153?

A. Okay.

Q. What's depicted in this photograph?

A. Okay. We're looking at the side of Ned Peterson's boat, the Glacier Bay 26. It shows the finger pier being lashed along -- not lashed, but

fastened alongside the walkway.

We're looking down at some of the kayaks. And oh, I forget the owners of the Electric Duffy. But that's the next boat we see down there.

Q. Can you please turn your attention to 156?

A. Okay.

Q. Starting from left and moving right can you please tell us what boats are depicted in this photograph?

A. That's the Cracovia belonging to the Rojeks. That's the first one.

Q. When did the Cracovia arrive on the property?

A. When did it arrive on the property?

Q. Yes.

A. Oh, probably late 2007. Maybe early 2008.

Q. Sorry to interrupt.

A. The next boat we see down is -- I forget the name of the Nakanishi's boat. And the next one down is Shilan, the Hung's boat. Then comes Ariel. And you can see Cracovia is again tied to the main walkway.

Q. Richard, when did you leave the Board of Directors?

A. When did I leave?

Q. Uh-huh, yes.

A. In I believe in 2007. I have to check that. But I think that's when I left.

Q. Were you aware that Brad Oakes was appointed to the board in July of 2007?

A. Yes, I was.

Q. Did you ever see Brad Oakes using the marina?

A. Yes. Brad had a paddle board which was down by the Peterson's boat. That's just down that end gangway right to the right. So yeah, he and his wife would be down there playing with the paddle board. And Brad would walk his dog. We'd see him on a regular basis.

Q. At some point did you decide to sell your townhome and your modified boat moorings?

A. Yes.

Q. Approximately when was that?

A. I'd have to say in 2008. I'd have to go back and check when I initially listed the property and the boat. I listed them initially both together.

Q. And approximately that time did an issue arise regarding the boat moorings?
A. Not when I first put the townhouse up for sale. But yeah, it was, gosh, within a few months maybe.
Q. What happened?
A. I'd say it was a few months.
Q. And what happened, Richard?
A. Well, suddenly there were purported issues. And because of these issues I seeked legal advice because I was selling a unit. And the --
Q. Who brought the issues to your attention?
A. Merrill Werblum. Merrill became president after I resigned.
Q. Are you aware of when Merrill Werblum bought a property at Kalele Kai?
A. Yes. I remember him moving in. It might have been oh, a year and a half, couple of years prior. So maybe in 2006.
Q. Can you turn your attention to Exhibit 65 please?
A. Okay.
Q. Did you write this email?

A. Yes, I did.
Q. Who are you writing it to?
A. To the Kalele Kai Board of Directors and Chris Goodwin with a copy to the resident manager.
Q. Who was the resident manager at this time?
A. Brian Liu.
Q. How many resident managers had there been since Diane Langley?
A. When Diane left we hired Don Wade. Then Eric Watenko took over from Don Wade. And after I left the board the board replaced Eric and hired Brian.
Q. Why did you write this email?
A. Well, let me look at it here. I'm asking their intentions regarding the dock, dock issues. And I tell them I'm concerned. My townhouse is on the market, and a prime selling feature of the townhouse is the fact that it has a dock in front of it.
Q. If you look at the field of email addresses to whom you sent this email, Jim Propotnick, how long had he been on the Board of Directors at that time if you know?

A. I think Jim has been on since day one actually or close to it. So go way back to 1997 maybe. Colin Kurata the same. Brad Oakes, he'd be new. Morris Tangren, he was on for maybe a year. Kimiko we had on the board when I was part of it. Paul Jordan came on in maybe '06.
Q. Was Colin Kurata on the board when you made your presentation regarding the boat mooring?
A. Yes. Colin has also been on the board from the very early days of the association.
Q. Can you turn your attention to Exhibit 66?
A. All right.
Q. Was Agnes Sykes the account executive for the management company while you were an owner at Kalele Kai?
A. No. Not the account executive. Well, she was part of Certified Management. But she was not our account executive, no. Certainly not during my tenure. It was a fellow named Tom.
Q. Who was the management company for Kalele Kai when you were an owner?
A. It began with Metropolitan Management and Ralph Allis was the director or our contact. Then from there we switched over to Certified.

Q. And she writes about sidewalk and stepping stones here. Do you see that?
A. I do.
Q. Does that have any meaning to you?
A. Not really, Lauren. Yeah, it's just changing things. The lanai wall we know what happened there.
Q. Go ahead and remind us what happened there.
A. Okay. The lanai ceiling fan it's always been the townhouses were always allowed a single ceiling fan. The tall buildings know, but the exception there occurred long before my time.
As far as stepping stones they are now all part of the landscaping. Really always have been with the lower units. You know, people step over their lanai wall. They put something out there to keep from walking in the mud. You know, this business about not many things being in my file, I find that just amazing. Because all of the presentation material I did -- I represented the board in their early legal entanglements regarding what they thought. They thought they had a copper roof and they did not. And I put together a huge package and represented them

during their -- by representing them, I was there with the board and I guess Chris Goodwin. I know Richard Matti and Colin Kurata were there. Anyway, so there is all this material.

Then when I was part of the board I wrote a weekly update every week for the whatever it was, maybe 140 weeks that I was president of the board. So they have, you know, a huge file somewhere. They have all sorts of material that has my authorship on it.

Also everything relative to energy savings, replacing chillers, et cetera.

Q. Were your weekly updates sent to the entire board?

MR. GOODWIN: I object to his answer as nonresponsive.

THE ARBITRATOR: Could you put a new question in front of him. It was a little bit off the mark.

Q. Richard, this email mentions a request to open up your lanai. That request was denied by the board, correct?

A. Correct.

Q. And you, in fact, did not then go forward and create an opening in your lanai,

correct?

A. No, I did not. I did install a lanai fan.

Q. And that was approved?

A. But that was all approved.

Q. And the weekly updates that you were discussing, who were those sent to?

A. I would send them to all of the board, the resident manager, the management company. If it related to something legal, I think I would have sent it to the association and legal counsel.

Q. Was that during the time you were president, Richard?

A. Yes. And there was also an interested owner list that people would sign up to receive the weekly updates. And unless it was a confidential issue, the weekly updates would be sent to the interested owners. And those weekly updates also became part of the monthly board meeting.

Q. Could you turn your attention to Exhibit 71 please?

A. I've got it.

Q. What's this?

A. This is the recorded agreement between

myself and the board.

Q. Does your signature appear on page 4?

A. Yes. This is the understanding enabling me to sell my townhouse and my dock and for the future owner to be able to put a boat in those docks. And he was given specific -- or this agreement not only outlines specific dock rules, but specifics regarding reconfigured docks where a new owner has up to a year with a possible six month extension if they do not put a boat, do not buy a boat in the dock within that period of time, then the association can ask them to reconfigure those docks.

Q. Can you please turn to Exhibit 73. Are those the dock and boat rules you referred to?

A. Yes.

Q. Can you please turn to Exhibit 74?

MR. REVERE: Mr. Arbitrator, excuse me one a second, Richard. Despite working at restaurants and factories I have really good hearing. I would ask that, A, I can hear half of what counsel are whispering back and forth. B, it a distraction. If they could write notes to each other it would be a lot better I think for the process.

THE ARBITRATOR: Keep your whispers down a little lower.

MR. ZALEWSKI: Better hearing than I thought.

MR. REVERE: Sorry.

BY MS. McDOWELL:

Q. Richard, are you at Exhibit 74?

A. I'm at the 10th Amendment declaration.

Q. What was this?

A. I'm sorry, Lauren.

Q. What are we looking at in Exhibit 74?

A. The 10th Amendment.

Q. And what is your understanding of the 10th Amendment? Was this part of your agreement with the association?

A. Yes. When we entered into the Rosic agreement one of the provisions was the board would have so many days to pass an amendment that would enable them to adopt boat rules. And part of my responsibility was to help them get this passed. And, you know, I got all the boat owners who would not have signed it as well as many, many other people, and we got this successfully passed.

Q. And after the 10th Amendment was passed did you, in fact, sell your townhome and boat

moorings?
A. Yes, I did.
Q. Who did you sell them to?
A. Hitoshi Yoshikawa.
Q. Can you please turn to Exhibit 83?
A. I have it.
Q. Was this the apartment deed with boat moorings from the sale of your townhome and modified boat mooring?
A. Yes.
Q. Does your signature appear on the fourth page?
A. Yes, it does.
MR. GOODWIN: For the record, I heard the comment between Mr. Revere and Ms. McDowell.
MR. REVERE: What was it.
MR. GOODWIN: All I heard was the first part.
MR. ZALEWSKI: Must be getting close to lunch.
THE ARBITRATOR: Blood sugar's dangerously low.
Q. Richard, it's been alleged that you have an economic motive or incentive in this case. Is that true?

MR. GOODWIN: Objection. Leading. No foundation.
THE ARBITRATOR: Yeah, you're going to have to rephrase that.
A. Are you waiting for me?
Q. Hold on a second.
THE ARBITRATOR: She needs to put a new question in front of you, Richard.
Q. Richard, do you have any economic motive in this current dispute?
A. Absolutely none.
MS. McDOWELL: No further questions.
MR. GOODWIN: I can begin cross-examination now. It up to you. I anticipate I have two hours with this witness. Probably about the same amount of time as the direct went.
THE ARBITRATOR: Richard, it's 11:40 in Honolulu. Is it 5:40 your time?
THE WITNESS: I'm one that gets up at 4:00 a.m. I typically would be preparing some dinner about this point in time. We anticipate a couple of hours?
MR. REVERE: We don't. Mr. Goodwin does. So maybe what we can do -- do you want to

go off the record for this.
THE ARBITRATOR: Off the record. This is scheduling.
(Discussion off the record.)
THE ARBITRATOR: Back on the record. Mr. Goodwin will now be on cross.
THE WITNESS: Thank you for accommodating me.
THE ARBITRATOR: Sure.
CROSS-EXAMINATION
BY MR. GOODWIN:
Q. Mr. Rosic, it's Chris Goodwin. Good evening to you.
A. Hi Chris.
Q. You said you purchased your unit number 106 Kalele Kai some time around May or June of 2001; is that correct?
A. Yes.
Q. Can you take a look at Exhibit 26 that I believe Lauren said she had provided to you, all their exhibits, all of the claimant's exhibits?
A. Yes.
Q. Is Exhibit 26 a copy of the apartment deed indicating the purchase of your unit at Kalele Kai?

A. Yes.
Q. It indicates that you purchased your unit on or about May 18, 2001; is that correct?
A. Yes.
Q. Does that --
A. Well, I see May 24th.
Q. I was referring to the written portion of the apartment deed appearing on the first line in the middle.
A. Yes, I see that, Chris.
Q. Does that refresh your recollection when Lauren asked you approximately -- I'm sorry, when claimant's counsel asked you approximately when you had purchased your unit?
A. Yes.
Q. So it was May of 2001?
A. Yes.
Q. When you purchased your unit at Kalele Kai had you been provided a copy of the project's declaration?
A. I'm sure I was, Chris, yes.
Q. And you had read that declaration on or about the time of purchase; is that correct?
A. I would assume so. Well, I'm pretty sure I did not read all of it. But I'm aware of

it, yes.
Q. Let's turn to Exhibit 15 then. That's 15.
A. Okay.
Q. Do you recognize this document?
A. Well, I'm sure I have seen it, Chris, yes. It's a declaration of the property.
Q. And you are aware that when you purchased a unit at Kalele Kai, specifically your unit at Kalele Kai, that use of your unit was governed by the terms and conditions of this declaration; is that correct?
A. I would assume so yes.
Q. Can you turn to page 8 of this exhibit, please.
A. Okay. I believe I'm on page 8.
Q. Just to make sure you're on the same page could you read the first line of the second paragraph on that page.
A. "The boat moorings shall be restricted to use by boats no larger than 23 feet in length".
Q. Yes, that's the page we're looking at. Were you aware of this provision at the time you purchased your unit at Kalele Kai?
A. Well, I'm sure I was, Chris. If I had

read this, yes, I'd be aware of that.
Q. Well, you were aware whether you read it or not, use of your unit was bound by the terms and conditions of this declaration. You were aware of that; is that correct?
A. Yes.
Q. Now, at the time you purchased your unit at Kalele Kai you told claimant's counsel that you also purchased two boat moorings; is that correct?
A. Correct.
Q. Can you take a look at Exhibit number 28 and Exhibit 29. And were those the documents that reflect or memorialize your purchase of the boat moorings?
A. That's correct.
Q. If you look at Exhibit 28 and 29 they appear to mention boat mooring number B28 and boat mooring number B29. Is that your recollection of the two boat moorings that you purchased?
A. Yes. I purchased two moorings, Chris. But I was buying a 23-foot boat. And the moorings were -- I did not want to have somebody parking next to me that was not a knowledgeable boater and have him banging into my boat. So I purchased

adjoining moorings.
Q. Were you aware that your purchase of the moorings was also governed by the terms and conditions of the declaration?
A. Well, I purchased those moorings from the developer. And he had them up for sale. I told people I was buying them. And no one told me I could not.
Q. And I'm going to object to your answer as nonresponsive and ask you again. Were you aware at the time you purchased the boat moorings that their use was governed by the terms and conditions of the declaration?
A. Probably, yes.
Q. Can you turn to page 2 of Exhibit number 28.
A. Okay.
Q. Can you read the first sentence of the last paragraph of that page so we know we're all on the same page.
A. "This bill of sale may be executed in separate counterparts"?
Q. No.
MR. REVERE: That's important.
Q. It would be the Exhibit 28.

A. Right.
Q. Turn to the next page after the page with the exhibit stamp.
A. Okay.
Q. And you will see that there are it looks like five paragraphs on that page. I would ask you to read the first sentence of the last paragraph on that page.
A. "An easement for utility purposes in favor of Hawaiian Electric Company dated November 19, '87" --
Q. Mr. Rosic, that's why it's very important when you're on the phone that we properly identify the document you're reviewing. One more time Exhibit 28, are you there? Go to the first page.
A. I'm there.
Q. Turn to the very next page. And is the title of that document Bill of Sale?
MS. McDOWELL: Objection. The document speaks for itself and it's already in evidence.
MR. GOODWIN: I'm asking the witness to identify the document he's reviewing.
A. Yes, I have something, a bill of sale, correct.

Q. Thank you. Can you please go to the final paragraph on that page that you're currently looking at.
A. "It is mutually understood and agreed that the boat moorings shall be subject to the conditions and covenants set forth in the declarations."
Q. So you would agree with me that your use of the boat moorings was governed by the terms and conditions of the project's declarations?
A. Yes, I do, Chris.
Q. Can you take a look at Exhibit 27.
A. Okay.
Q. Have you seen this document before?
A. Yes.
Q. And is this document the letter transmitting the proposed bill of sale for the boat moorings to you from the developer?
A. The boat moorings sales contract? Yes. For boat mooring 29.
Q. Can you turn to the next page of Exhibit 27 which would be the second page.
A. Okay.
Q. What is the title of the document of which you are currently looking at? At the very

top.
A. Well, Kalele Kai Boat Mooring Sales Contract.
Q. Can you take a look at paragraph number 4 of that document and read the first sentence?
MS. McDOWELL: Objection. The document speaks for itself.
THE ARBITRATOR: You can still read it.
A. "Use of boat moorings. The boat mooring shall be restricted to use by a boat no larger than 23 feet in length."
Q. And you were aware of those terms when you purchased the boat moorings; is that correct?
A. Yes, it is, Chris.
Q. You were aware of that term at the time you purchased the boat moorings; is that correct, Mr. Rosic?
A. That is correct.
MR. REVERE: To cut down on the planned two hours here, we'll stipulate Richard knew and everybody else including all the board members who are suppose to be allegedly enforcing this all had awareness of all the governing documents. So this is a complete and abject waste of time. I object on rule 403 grounds.

MR. GOODWIN: May I proceed with my exam?
THE ARBITRATOR: Please proceed.
BY MR. GOODWIN:
Q. Mr. Rosic, you also explained in your direct testimony that you purchased additional boat docks after you purchased the first two; is that correct?
A. Yes, it is Chris. And if I may add my intent, fully understanding you cannot put a large boat in a 23-foot finger pier, was to create a side tie replicating the side tie already existing on the property.
Q. I object to your answer as nonresponsive and I just want to ask, Mr. Rosic, if you purchased additional finger piers after you purchased the initial two?
A. Yes, I did.
Q. Before your purchase of the additional finger piers as claimant's counsel asked you, you previously made a presentation to the board whereby you requested to install a dock box and a floating dock at your boat mooring; is that correct?
A. Correct.

Q. Can you take a look at Exhibit 31, please.
A. Okay.
Q. Can you look at the first page, the very bottom of this document, which begins with paragraph A. Do you see that entry?
A. Correct.
Q. Now, at the time you made the presentation to the board as reflected in these minutes October 18, 2001 the boat you owned at that time did not exceed 23 feet; is that correct?
A. Correct. The floating dock, Chris, was for the oh, gosh, the sailboat, not the little one. But I had a good sized sailboat. In fact, it's still there on that dock. However, the dock, the floating dock is last I saw it, it was in the Hung's mooring space.
Q. Mr. Rosic, that sailboat did not exceed 23 feet in length; is that correct?
A. No, it did not.
Q. Did you ever advise the board upon your review of Exhibit 31 that any of the statements or representations or anything stated in there were in error?
A. Regarding Exhibit 31?

Q. Yes.
A. Yes. I would have let them know the following morning.
Q. Mr. Rosic, do you specifically recall advising the board as to any error in the minutes that have been marked as Exhibit 31?
A. Chris, I am pretty sure that I would have written something or I know I certainly would have spoken to them about it, why they did not, why this wasn't complete.
Q. Have you conducted a search of your records in an attempt to determine whether or not you provided anything in writing to the board regarding an error in Exhibit 31?
A. No. Never really felt a necessity to do so.
Q. Now, in March of 2002 you purchased two additional boat moorings; is that correct?
A. Correct.
Q. Can you take a look at Exhibits 33 and 34?
THE ARBITRATOR: Is it just coincidence they parallel the actual slip number?
MR. GOODWIN: I would have to defer to opposing counsel as to whether or not it was

planned.
MR. REVERE: You can look at the condo map. That would be a good place to start.
A. I've looked at both of them.
Q. Actually Exhibit 33 refers to boat mooring B30; is that correct, Mr. Rosic?
A. Let me look at it.
Q. That would be page 2 by the way?
A. Page 2. I see B31.
Q. I was referring to Exhibit 33. You might be looking at 34. And you are.
A. Yeah, I am. Okay. Let me go back to 33. Yes. 33 says mooring B30.
Q. And you would agree with me the same language regarding use of the boat moorings governed by the declaration is set forth in this document?
A. Yes.
Q. You testified that in March or April of 2002 you purchased the Ariel; is that correct?
A. Correct.
Q. You testified it was in excess of 23 feet. I'm sorry. What was the exact measurement? I've seen several different measurements for the Ariel in this case. I want to make sure I know

what it is.
MR. REVERE: I renew my request that Mr. Goodwin be allowed to testify. That's what he's doing now.
A. I believe it's 38 feet. If you put a tape measure on the boat, you're going to come up with 40. But you generally go by what is on the Coast Guard documentation.
Q. Is it fair to say, Mr. Rosic, that the length of the Ariel was somewhere between 38 and 40 feet?
A. Correct.
Q. Prior to your purchase of the Ariel did you advise the board of your intent to purchase a boat in excess of 23 feet?
A. Yes. Absolutely.
Q. How did you advise the board?
A. Well, it probably began with the presentation of why I'm buying -- why I want to modify the slips is to purchase a larger boat.
Q. Have you seen --
A. And have the boat there. Correct, absolutely.
Q. Have you seen any written documentation from any source which indicates or evidences that

you advised the board in writing as to your intent to purchase a 23-foot boat before you did so?
A. 23-foot boat or 38-foot boat?
Q. I'm sorry. A boat in excess of 23 feet.
A. Chris, I'd have to go back through all of my stuff. My presentation clearly showed I -- I drew a picture of a boat into the presentation format. So yes, now the board knew exactly what I was doing. I'm not buying six moorings to have six kayaks.
Q. You did review the board meeting minutes and you would agree that there was nothing in the board meeting minutes which indicated your intent to purchase a boat in excess of 23 feet in length; is that correct?
A. Well, I've got to tell you in those days there were a lot of things missing from those board minutes. I've observed that, not during my tenure but earlier, yes. Yeah, the Hung presentation isn't there. The Peterson presentation isn't there. You know, they are consistently inconsistent.
Q. But your presentation was there, Mr. Rosic; is that correct?

A. My -- no, my presentation to reconfigure my dock was not part of the board minutes nor was the presentation of the Hungs and the Petersons.

And incidentally, the Hung and Peterson presentation went simultaneously, as my memory tells me. They both came before the board with the same material and both wanted to do exactly the same thing.

Q. And you have reviewed the board meeting minutes and you saw nothing to indicate that proposal was memorialized; is that correct?

A. Yes. And as I said, Chris, the board was very lax in those days. I've seen that on more than one occasion. Why they would not put this in with three significant issues, they, did not.

Q. Now, when did you actually take delivery of the Ariel? I mean, take delivery and actually moor it at Kalele Kai. That would be a more accurate question.

A. Well, the boat -- the customs and the shipping were all handled by Francis Kojima of American Custom Broker in Honolulu.

The boat arrived on, I forget the name

of the ship. It was then put into the harbor where we went through the customs. I believe I arrived at the dock in Kalele Kai or at Kalele Kai late March, early April. I'd say April.

Q. And when you -- when the boat arrived in late March or early April, at that time you owned four boat moorings; is that correct?

A. No Chris. Six.

Q. Six.

A. Yes.

Q. Can you take a look at Exhibit 40 and 41.

A. I'm sorry. My computer screen just went blank. I got it back.

Q. Turn to Exhibit 40 and 41, please.

A. I'm at 40.

Q. What is Exhibit 40?

A. It's the bill of sale, oh, for mooring B32.

Q. This would be -- take a look at 41.

A. I know what it's going to say, Chris. The S Holdings Limited that's why we have so many papers relative to the purchase of the dock.

They went around -- they got around to the reporting much later than the actual purchase.

Q. And --

A. This is consistent with all of the moorings I bought.

Q. Mr. Rosic, if you could turn to the second page of Exhibit 40?

A. Okay.

Q. Can you see the handwritten date at the very top of this page?

A. The 15th of May 2002.

Q. Can you compare that to the recorded date on the first page of Exhibit 40?

A. June of '02.

Q. Would it be fair to say that you actually purchased the boat mooring reflected in Exhibit 40 on or about May 15, 2002?

A. No. Not at all, Chris. There are papers that say that give me a bill of sale. Again this is the way their paperwork flowed. I'd have to go through things. But, you know, the moorings were purchased oh, gosh, in December and January.

This is all on file somewhere.

Q. So it's your position that while the documents -- the bill of sales may not have been recorded, at the time you took delivery of the

Ariel and docked it at the Kalele Kai marina you were actually -- you actually owned six boat moorings; is that correct?

A. Correct. I owned all six. And I had not title, I didn't have the title at that time, but I had documents from Jeff Stone that I owned those moorings, correct.

Q. And you would agree with me that Exhibit 40 and 41 both contain the same language as the previous bills of sale for the boat moorings that they were governed, their use was governed by the declaration of the association?

A. Yes.

Q. Now, you testified in response to claimant's counsel questions that you were appointed to serve on the board in January of 2004 following the death of a board member; is that correct?

A. Correct.

Q. And that you were elected to serve on the board on March 20, 2004; is that correct?

A. Correct.

Q. And do you recall that was for a three-year term?

A. I think so, Chris.

Q. Let me refresh your recollection. Can you turn to Exhibit 53, please.
A. I have it.
Q. Can you take a look at page 4 of Exhibit 53.
A. Page 4.
MR. REVERE: You mean the one that indicates that he's got 72 percent of the votes?
A. Yes. Three-year term.
Q. As a matter of fact, the one that indicates you received the most votes of any individual running for election; is that correct?
A. Appears that way, yes.
Q. You were elected to serve a three-year term; is that correct?
A. Correct.
Q. Did you serve the entire three-year term, Mr. Rosic?
A. No, I did not, Chris.
Q. Did you resign from the board?
A. Yes, I did.
Q. Do you recall the date you resigned from the board?
A. Oh, gee. I looked at that a couple of days ago. 2007, I think June. I don't recall

exactly, Chris. I'd have to look it up.
Q. It's your recollection that you resigned from the board because you were going to sell your unit?
A. That's correct.
Q. Was that the only reason you resigned from the board, Mr. Rosic?
A. No. I wanted to do some boating in a different part of the world. I have traversed the Pacific. Never done any boating on the East Coast and wanted to experiment with that.
Q. Any other reasons that you recall for your resignation from the board?
A. I'm sure I was just tired of board matters, Chris. I worked pretty hard during my tenure, put in a lot of effort. Things weren't quite kosher when I got involved, and I think you probably know that as well as anyone. So, yes, I was tired and time to make a change
Q. While you were on the board did you participate in the redrafting of the association's house rules?
A. Not really. Only as it applied to the boat docks which was part of the Rosic agreement.
Q. Well, prior to the Rosic agreement do

you recall in late 2004 while you were on the board that the board did revise the association's house rules?
A. I'd have to go back and look. But I would imagine so.
Q. And if the board did indeed revise the house rules, based on your experience as a long term boat owner is it fair to say that you would have provided input on any revisions to boat dock related house rule revisions?
A. Yes. That's correct.
Q. Let's turn to Exhibit 56, please.
A. Okay.
Q. So we know we're on the same page again, Mr. Rosic, what's the title of the document you're looking at?
A. "Kalele Kai House Rules".
Q. And in the very bottom left-hand corner of this document is there a date?
A. November 15, 2004.
Q. Were you a board member at that time?
A. I believe so, yes.
Q. Can you turn to house rule number D as in David 2 on page 10.
A. D2.

Q. Yes. David 2.
A. Yes, I'm looking at it.
Q. And can you read the title of Exhibit D2?
A. "Boat moorings."
Q. Can you read the first sentence of house rule D2?
A. "The respective owner of the condominium unit to which the boat mooring area is an appurtenant limited common element shall maintain all boat mooring areas in a clean, safe and sanitary condition."
Q. Can you continue on, please.
A. "The unit owner shall maintain such boat mooring area at its sole expense. And the unit owner is solely responsible for all liability arising from said boat mooring area. Dock boxes are permitted on boat mooring areas provided approval is obtained from the marina association and the standard specifications and guidelines are followed."
Q. Does this refresh your recollection in reading house rule D2 whether you participated in the revision of this document?
A. No. This would not be the way I would

write something like that, Chris.
MR. REVERE: There is no foundation.
How do you know --
A. For more specific. This is not -- I was on the board when this was published, obviously. But I did not participate in it.
Q. Mr. Rosic, before you made your request for installation of a dock box at Kalele Kai did they exist?
A. Dock boxes, no.
Q. And this house rule specifically references dock boxes; is that correct?
A. That is correct.
Q. And do you recall the year you made your request for dock boxes?
A. Back in 2001.
Q. If you could turn to Exhibit 59, please.
A. Okay.
Q. In referring to the article on page 3 of this exhibit entitled, Information on the Boat Docks, it was your testimony that this was drafted by Dirk Von Guenthner; is that correct?
A. I must be at the wrong --oh, here it is. Yes.

Q. And did you review this article before it was published?
A. I certainly did as did the entire board.
Q. And in April of 2006 what was your position on the board?
A. I would have been the president.
Q. So is it fair to say that you approved the language on page 3 of Exhibit number 59 before it was published?
A. It would be entirely fair to say, Chris, that I approved part of it along with the entire board. As I previously mentioned, this particular information would be part of a weekly update that was sent to every board member. Every board member approves it and then it goes out.
Q. And you didn't express any objection to this article prior to its publication; is that correct?
A. That's correct.
Q. Mr. Rosic, next let's turn to Exhibit 65 which was an email that claimant's counsel asked you some questions about.
A. Okay.
Q. Before I leave, in October of 2006 what

boat did you own and dock at Kalele Kai?
A. In 2006 the 3-foot Quantum named Ariel. I had a sailboat.
Q. That was the sailboat you previously described which you said was less than 23 feet in length; is that correct?
A. Correct.
Q. Now let's go on, please, to Exhibit 65.

A. I'm there.
Q. Claimant's counsel previously asked you some question about that; is that correct?
Do you recall that?
A. Yes.
Q. You were not on the board at the time you wrote this email; is that correct?
A. Correct.
Q. And at the time you wrote Exhibit 65 how many finger piers were you actually in possession of?
A. Realistically one. I would have owned half of one and half of another.
Q. And --
A. Or I was in possession of half of one. The one that adjoined the Hung mooring and the

one that -- I forget the owner on the other side of me.
Q. So you were in possession of that part of the finger pier that faced into your boat mooring; is that correct?
A. Correct.
Q. And you had the use and benefit of that portion of the finger pier that faced into your portion of the boat mooring; is that correct?
A. Yes.
Q. Did you utilize any portion of those finger piers to tie your boat?
A. Yes. I tied the sailboat to one of them. And I also put extra mooring lines running fore and aft from the main bow. Yes, I utilized both halves.
Q. And you previously testified that you were using a drydock system with respect to the sailboat; is that correct?
A. Correct. That was a little floating dock.
Q. And was that drydock floating dock system attached to any portion of the finger piers?
A. In the same fashion that a boat would

be it was tied on with mooring lines. Not physically. Not with hardware. But with mooring lines. In other words --

Q. So you had the use and benefit of the interior portion of the finger piers not just for the Ariel but also for your sailboat; is that correct?

MS. McDOWELL: Objection. Calls for a legal conclusion.

A. Yes. I --

MR. REVERE: Hold on, Richard.

THE ARBITRATOR: Go ahead with your objection.

MS. McDOWELL: Calls for a legal conclusion.

MR. GOODWIN: Could I have the court reporter read it back prior to the ruling on the objection?

THE ARBITRATOR: Yes.

(Record read by the Court Reporter.)

THE ARBITRATOR: Your objection is that?

MS. McDOWELL: Calls for a legal conclusion with regard to use and benefit.

THE ARBITRATOR: Why don't you ask two

questions then.

MR. GOODWIN: Sure.

BY MR. GOODWIN:

Q. Mr. Rosic, I'm going to break that question up. The first question is did you have the use of the interior of the finger piers for both the Ariel and the sailboat?

MS. McDOWELL: Objection. Vague and ambiguous. There is more than one use.

THE ARBITRATOR: You can also --

MR. GOODWIN: Sure.

Q. Mr. Rosic, did you have any use of the interior of the finger piers with respect to your either your sailboat or the Ariel?

A. Yes. I would tie a portion of the boat to the finger pier, correct.

Q. And was your use of those finger piers of any benefit to you?

A. Yes.

Q. Thank you.

MR. REVERE: Are we done?

MR. GOODWIN: Just with that area.

MR. REVERE: All right.

Q. Now, you said that you had the use and benefit of only two finger piers at the time you

wrote this email in February of 2009; is that correct?

A. No. I said I had the use of a combined one finger pier. Half one and half of the other.

Q. And I stand corrected. You actually had the use of one finger pier in total but you had the use of two halves of, a half each of each finger pier, correct?

A. Correct.

Q. What happened to the other finger piers?

A. I disposed of them.

Q. Did you request permission of the board prior to your disposal of finger piers?

A. When I gave my presentation, my presentation was very clear and specific, I'm removing those finger piers and getting rid of them. Jim Propotnick was there the day one of them was towed away. Jim said that, as I recall you bought it, you do with it as you wish.

Q. And is it your testimony that in your presentation to the board you advised them that you intended to dispose of the finger piers?

A. A hundred percent, Chris, yes.

Q. Have you seen any board minutes which

make any reference whatsoever to your intent to dispose of any finger piers at any time?

A. No. As I said earlier, board minutes were not the best in those days.

Q. And in June of 2009 you reached an agreement with the association to resolve the issues that are described in your email which has been marked as Exhibit 65; is that correct?

A. Yes, it has.

Q. And that agreement is memorialized in Exhibit 71; is that correct?

A. If that's the agreement, the exhibit number, yes.

Q. I don't want you to guess. If you could please turn to Exhibit 71.

A. Yes, that's correct.

Q. This document Exhibit 71 was signed by you; is that correct?

A. Yes, it has.

Q. It memorializes the terms and conditions of your agreement with the association as of June of 2009?

A. Yes.

Q. And you were in agreement with all of the terms and conditions expressed in Exhibit 71;

is that correct?
A. Yes.
Q. Now, do you see a statement on the first page of Exhibit 71 which reads, "Mr. Rosic further contends that because of health and safety reasons he had the finger piers removed from the property at his own expense."
Do you see that?
A. Yes, I do.
Q. During your presentation did you ever advise the board that the finger piers present a health and safety issue?
A. No. Because I did not know they did at the time, Chris. When I got it I told them I was going to dispose of them. When the finger pier went, turned turtle and the bottom side was up in the hot sun the barnacles start to smell. And yeah, I was going to have it towed away maybe a couple of days later. But I then contacted a tow company right away and that's what Propotnick saw.
Also, I did not think it wise to do anything else with it. I did not want it. The board had no use for it. Well, I don't know that for a fact. But, you know, I did not want it. So both of them it was always my intention to get rid

of them.
Q. Mr. Rosic, when you made your presentation to the board, that you testified, you requested permission to remove the finger piers did you have any knowledge they presented a health and safety concern?
MR. REVERE: Excuse me.
MR. GOODWIN: Are we double teaming here? Do we have one attorney for objections?
MR. REVERE: You guys have already triple teamed. My concern is given the last sentence of this paragraph could we have an offer of proof? Because this is an abject waste of time. The board didn't want the stupid things. Look at the last paragraph.
MR. GOODWIN: It's for impeachment. He testified previously as to the reason he requested the finger piers to be removed. This is a credible impeachment line of cross-examination.
MR. REVERE: We disagree with that. Look at the last sentence. It's a total waste of time. I'm asking what is the offer of proof here?

MR. GOODWIN: Truth and credibility.
MR. REVERE: You want to go smell some

barnacles that have been baking in the hot sun and see if it's not credible?
THE ARBITRATOR: I believe the testimony so far is Mr. Rosic did not know of the potential health concern until the boat or the pier turtled. Is that correct?
MR. GOODWIN: That's what his testimony is so far.
THE ARBITRATOR: Proceed with your question then.
BY MR. GOODWIN:
Q. Mr. Rosic, just to make sure I'm clear you were not aware of any health and safety concern presented by the piers at the time you made your presentation to the board? That's my question.
A. Yes. I was not aware.
Q. Did you review Exhibit 71 before you signed it?
A. Yes, I did.
Q. And you were aware when you reviewed Exhibit 71 that part of the terms therein required the board to adopt new boat and dock rules; is that correct?
A. Correct.

Q. Can you take a look at page 3 of Exhibit 71?
A. Okay.
Q. Do you see paragraph 3 on page 3?
A. I do.
Q. Could you read that so we can all verify you're on the same page?
A. "Upon passage of the proposed declaration amendment the board shall adopt the boat and dock rules attached hereto as Exhibit A."
Q. And your understanding was that the new boat dock rules the board was going to have to adopt were attached to this document; is that correct?
A. Correct.
Q. Can you turn to the next page which is your signature line; is that correct?
A. Yes, it is.
Q. That is your signature; is that correct, Mr. Rosic?
A. Yes, it is.
Q. Can you turn to the next page?
A. I'm there.
Q. What is the title of this document?
A. "Proposed Dock and Boat Rules."

Q. Can you read rule number 6 on this document?
A. D8. "Finger piers and support triangles. Maintenance and replacement of finger piers and support triangles is the responsibility of the boat mooring owners. If proper maintenance is not performed by the owner, the association has the right to perform the maintenance and assess the owner for all costs incurred to perform such maintenance."
Q. Mr. Rosic -- go ahead, please.
A. "Resident manager will verify compliance with these requirements."
Q. Mr. Rosic, does rule number 6, is that an accurate statement of the rule that you negotiated in connection with Exhibit 71?
A. Yes, it is.
Q. And you signed this document; is that correct?
A. Correct.
Q. And by your signature you agreed to these terms; is that correct?
A. Yes.
Q. And you agreed, let me make sure I'm completely clear on this, that the maintenance and

replacement of finger piers and support triangle is the responsibility of the boat mooring owners?
MS. McDOWELL: Objection. Asked and answered.
THE ARBITRATOR: You can answer.
A. Yes. That's what this says, correct.
Q. Can you turn --
A. I've always felt that the finger piers and the triangles were the responsibility of the owners. The stantions and the main walkway, no.
Q. So you personally felt that way; is that correct, Mr. Rosic?
A. Yes, I think everyone did all along.
Q. I agree with you, Mr. Rosic.
MR. REVERE: Excuse me, Mr. Goodwin. Keith, it's really funny to you guys. But when he's sitting here as AOAO counsel making wiseass comments like that, he ought to put his butt in the witness chair before he says that --
MR. GOODWIN: Are my wise crack comments worse than yours, Mr. Revere?
MR. REVERE: I'm not sitting there saying, I agree with you, I was association counsel, and I say this, and I say that. You're having John and Jana circle your opinions and

then saying, I agree with you, Keith. I agree with him. Put your butt in the witness stand, Chris. Don't make comments and hide behind the wall.
THE ARBITRATOR: Consider it stricken. Move on.
BY MR. GOODWIN:
Q. Mr. Rosic, can you look at Exhibit 73 which claimant's counsel asked you questions about?
MR. REVERE: 30 or 73?
Q. 73.
A. I've got it.
Q. Now, if you compare Exhibit 73 to the document we just looked at which were the proposed boat and dock rules, what is the title of Exhibit 73?
A. "Dock and Boat Rules."
Q. Is there a date directly underneath?
A. August 27, 2009.
Q. Does that indicate to you that that was the date these were adopted by the association, if you know?
A. Well, I don't know if I know that, Chris.

Q. But it was your understanding when you signed Exhibit 71 that the board would indeed adopt those rules; is that correct?
A. Okay. If these are those adopted rules, then yes.
Q. Will you take a look at rule D8 on Exhibit 73 and please compare it with rule D8 on Exhibit 71 and verify they are, in fact, the same?
A. I believe they're the same, yes. Yeah, I'm going by memory versus putting one side by side or trying to copy it. Yes, they appear to be the same to me.
Q. Do you have any reason to disbelieve that the board indeed fulfilled its requirements under Exhibit 71 to adopt the proposed dock and boat rules attached thereto?
MS. McDOWELL: Objection. Calls for a legal conclusion.
THE ARBITRATOR: You're asking him to speculate too I believe.
MR. GOODWIN: I'm asking if he has a reason to believe.
THE ARBITRATOR: You can answer, Mr. Rosic.

MR. REVERE: Also calls for speculation.
A. Well, the boat rules were adopted as part of the 10th Amendment. So yes.
Q. Just so I'm clear, when Exhibit 71 was negotiated you were aware the association was represented by legal counsel; is that correct?
A. Yes.
Q. And you were also represented by legal counsel in connection with the negotiation and drafting of Exhibit 71; is that correct?
A. Correct.
Q. The association was also required as part of Exhibit 71 to submit a proposed declaration amendment to owners; is that correct, Mr. Rosic?
A. Yes.
Q. Can you take a look at Exhibit 74, please?
A. I have it.
Q. Is there anywhere in Exhibit 74 that makes reference to the 23-foot boat length restriction in the declaration?
MS. McDOWELL: Objection. The document speaks for itself.

THE ARBITRATOR: You can answer.
Q. Take your time, Mr. Rosic.
A. Without reading this whole thing I'm trying to -- well, I don't see anything specifically here to 23 feet.
Q. Now, after the Exhibit 71 was signed and after Exhibit 74 was approved by owners and recorded you sold your unit at Kalele Kai; is that correct?
A. Yes.
Q. As a matter of fact, it was your intent not to sell your unit until the revised dock rules were adopted and the 10th Amendment passed; is that correct?
A. That is correct.
Q. So once those two things were done you were ready to sell your unit?
A. Yes.
Q. And you did sell your unit about in October of 2010; is that correct?
A. Yes.
Q. Can you take a look at Exhibit 83?
A. Okay.
Q. And is this the apartment deed which memorializes the sale of your unit to Mr.

Yoshikawa?
A. Yes.
Q. And at the same time -- I'm sorry. Prior to selling your apartment and the boat moorings to Mr. Yoshikawa, did you provide him a copy of Exhibit 71?
A. Yes.
Q. And did you provide that directly to Mr. Yoshikawa?
A. Well, by directly it would have been -- certainly through K.C. Udagawa or whoever -- that was his agent.
Q. Was it your understanding that Mr. Udagawa was the authorized representative of Mr. Yoshikawa?
A. Yes.
Q. Now, at the same time you sold your apartment and the boat moorings to Mr. Yoshikawa did you also sell him the Ariel?
A. Not simultaneously. He had to think about that. And that came slightly later.
Q. Can you take a look at Exhibit 164, please.
A. Okay.
Q. And Exhibit 164 is that a copy of the

vessel purchase and sale agreement for the Ariel?
A. Yes, it is.
Q. And it appears that it looks like this is dated October 15, 2010?
A. Okay.
Q. Is that correct?
A. Yes.
Q. So if you take a look at Exhibit 83 again, what's the date on Exhibit 83?
A. October 22nd.
Q. That's 2010; is that correct?
A. Correct.
Q. And what's the date on Exhibit 164?
A. October 15th. What happened here, Chris, you know Yoshikawa knew the boat was up for sale. They got a broker involved. The broker entered into an agreement or they had their purchase agreement.
But the dates are -- yeah, I'd have to look at the actual closing records of when the boat was -- when we closed. Because there was a survey. A lot of things took place.
Q. Would it say it was -- you sold the boat to Mr. Yoshikawa about the same time you sold him the apartment at Kalele Kai?

A. Yes, yes. He looked at both. There was -- at first he was not sure whether he could handle the boat as well. So there was some discussion and review on his part. He was looking at other boats. And yeah, roughly the same time it took place.
Q. Were you represented by a licensed real estate agent in connection with your sale of the apartment at Kalele Kai?
A. Yes.
Q. Who was your licensed real estate agent representing you in the transaction?
A. Well, her name was right on the tip of my tongue. You'll have to -- I will come up with it shortly.
Q. That's okay. Mr. Rosic, do you recall if Mr. Yoshikawa was represented by a licensed real estate agent in connection with your sale of the Kalele Kai apartment to him?
A. Yes. I believe that -- I'm trying to think. I don't think it was KC. It was -- I know he was represented by a licensed broker, Chris. I know there were a couple of different people involved at the time, all part of the same firm. Who was the managing broker at the time I'm not

sure.
Q. Did your licensed real estate agent assist you in preparation of your seller disclosure?
A. Oh, absolutely.
Q. Now, when you produced Exhibit 71 did you produce Exhibit 71 as part of your seller disclosure statement or did you produce it separately?
A. No. It was part of the seller's disclosure statement.
Q. So that would have been -- Exhibit 71 would have been included in the documents that your licensed real estate agent provided to the buyer?
A. Yes. Everyone knew of the boat dock issues and all of this would have been clearly disclosed.
Q. And is it your testimony that you also produced a copy of Exhibit 71 to Mr. Udagawa or was that also just the same that you have produced it with the seller disclosure statement?
A. Chris, I can't be specific. But I know all of this was -- yeah, everyone knew there was issues here. So all of this was clearly

disclosed.
MR. GOODWIN: Can we go off for just a minute.
THE ARBITRATOR: Yes. Off the record.
(Discussion off the record.)
THE ARBITRATOR: Back on. Please continue.
BY MR. GOODWIN:
Q. Mr. Rosic, you said that everyone knew there were issues regarding the boat docks at the time of the sale of your unit to Mr. Yoshikawa?
A. Yes.
Q. What issues were there as far as you knew?
A. Well, there was the dispute with the board. And that had to, A, first be resolved. So the broker that represented me knew that. The broker that represented Mr. Yoshikawa knew that.
Q. What was the dispute with the board, Mr. Rosic? Exhibit 71 had resolved all those by the time you sold to Mr. Yoshikawa; is that correct?
A. Yes. Well, I guess I'm getting my dates mixed up. Yes, Exhibit 71 resolved the dispute with the board. And that was all

disclosed to Yoshikawa at the time of the sale.
Q. And at the time of the sale did you advise Mr. Yoshikawa either in writing or verbally that he could dock any size boat he wanted at Kalele Kai?
A. Well, we gave him a copy of the 10th Amendment and also the Rosic agreement. And that tells him that, yes, he can dock -- it tells him he has so much time to, you know, dock a boat. But that, yes, he can dock any sized boat that fits into that mooring.
Q. Mr. Rosic, I have to object to your answer as nonresponsive and ask again. At any time did you specifically advise Mr. Yoshikawa or his agent either verbally or in writing that he could dock any boat sized boat he wanted at Kalele Kai?
MS. McDOWELL: Objection. Asked and answered.
THE ARBITRATOR: You can answer.
A. I gave him a copy of the 10th Amendment and the Rosic agreement. And yes, I would have told him in layman's terms that this is what the agreement states.
Q. Did Mr. Udagawa speak English?

A. Yes, he did.
Q. And did Mr. Yoshikawa speak English?
A. Very little as I recall.
Q. So would it be fair to say that all of your dealings with Mr. Yoshikawa would have been through Mr. Udagawa?
A. Oh, yes. Definitely. When I met Mr. Yoshikawa it was just to show him the boat.
Q. How would you describe Mr. Udagawa's English skills?
A. You may have to go over things once or twice. But I'd say very reasonable.
Q. So you had no difficulties communicating with Mr. Udagawa?
A. No. Not really. We would not talk at the same speed that you and I might converse. But we did very well.
MR. GOODWIN: Mr. Arbitrator, at this point I'm prepared to go into the other exhibits. If we want to stop for the day I'm okay with it.
MR. REVERE: Richard, would you rather go through these five exhibits from Chris and get it over with or do want to come back tomorrow morning?
THE WITNESS: I'd just assume get it

over with.
MR. GOODWIN: You will have an email at the speed of email.
THE WITNESS: Okay.
MR. GOODWIN: It is gone. Wait a second and hopefully it will timely arrive.
(Discussion off the record.)
(Whereupon, a recess was taken from 12:49 p.m. to 12:52 p.m.)
THE ARBITRATOR: Back on the record.
Q. Mr. Rosic, in response to one of my last questions before we get on to the exhibits I just emailed you, you said you explained to Mr. Udagawa in layman's terms that Mr. Yoshikawa was going to be able to dock a boat at Kalele Kai so long as it fit in the space; is that correct?
A. Well, yes, Chris. I merely pointed out that the documents, the 10th amendment clearly states he can put a boat. It doesn't say which size boat. It says a boat into his mooring. So whenever he would ask a question of me that's all I can reply.
Q. Of course the boat in question was the boat that you were selling him at or about the time you were selling him the unit; is that

correct?
A. Well, yes. Of course that applied to the boat he bought from me. But since then he has been asking questions regarding a boat. And I see no restriction as to the size of the boat in the 10th amendment.
Q. Let's move back for just a minute. The questions that were asked and the answers that you gave to Mr. Udagawa were all before closing of the sale; is that correct?
A. Well, before the sale, yes. Everything was disclosed. After the sale I merely answered questions regarding whatever it is they were asking. I gave them a very detailed disclosure on how to operate things in the townhouse, how to operate the boat, on and on and on. From time to time if they had questions they would call and I answered them to the best of my ability.
Q. With respect to the specific question that Mr. Yoshikawa could dock any boat at Kalele Kai that fit in the space, did you answer that question before closing of the sale of your unit?
A. Well, I don't think that question was ever asked before the close, Chris. Because things were happening simultaneously. He was

buying a townhouse. He was considering other boats. And by the time all this was said and done he was more interested in purchasing the boat that was there. So I don't know that there was any discussion regarding any size boat prior to the sale.
Q. And there were discussions regarding the size of the boat after the sale; is that correct?
A. Well, just within the last, what, six months, seven months. It was since the time he decided to purchase a new Riviera.
Q. Can you take a look at Exhibit 538 that was contained in the email I just sent you.
A. 538?
Q. That's correct?
A. I've got it.
Q. Can you take a look at it looks like the first page of this document which appears to be an email from you to Mr. Udagawa dated November 19, 2012.
A. Yes, I see this, Chris.
Q. Just so we're on the same page can you read the it looks like the third paragraph which begins "I have attached"?

A. Yes. "I have attached a copy of the executed and recorded letter of agreement between myself and the board along with Exhibit A the proposed boat dock rules, copy of this agreement was attached to a sales agreement when you purchased the townhouse. Paragraph 4D 6A the letter of agreement states very clearly that should you sell the townhouse and dock a new owner will have one year plus reasonable extensions to put a boat into the modified dock. There is no size restriction regarding the boat."

Q. In fact, in the agreement that was attached -- first let's identify it. Is the agreement that was attached Exhibit 71?

A. Yes. I assume it was.

Q. And is there any --

A. That's executed and recorded agreement, yes.

Q. Is there any reference to boat length anywhere in Exhibit 71?

A. The only reference without going back and reading that is it says put -- "a new owner must put a boat in the mooring."

Q. And one more time -- go ahead, please.

A. That was part of our agreement, Chris,

when we negotiated it. The whole purpose was to stay away from a size. The agreement was meant to if it's a 69-foot side tie and you can squeeze a 69-foot boat into it, then that's your right. If it's a 45-foot side tie and you can get 43 feet in there, that's your ability. So we never put a size restriction in that agreement.

Q. Would you read the next sentence, please.

A. "These same provisions are now part of the 10th Amendment to the Kalele Kai governing rules."

Q. Is the 10th Amendment what's been previously marked and admitted into evidence as Exhibit 74?

A. Correct.

Q. Is there anything in Exhibit 74 that refers to boat length?

A. Well, I believe it says the 23 feet. But that is talking about the perpendicularity off of the main walkway and referring to a mooring. It's not referring to reconfigured moorings that take advantage of the side tie ability.

Q. Mr. Rosic, can you turn to Exhibit 74.

A. 74, okay.

Q. Tell me when you're there.

A. I'll be there just in a moment.

Q. That's okay.

A. Okay, I've got it.

Q. Can you take a look at that? The actual body of the document is actually less than three pages. It says page 1, 2 and 3. Can you take a look at the body of that document and point out for us exactly where the reference is or any reference is to the language that you just described?

A. Right. Well --

Q. Take your time. I don't want to rush you. Take your time.

A. There is no mention of boat size in the 10th Amendment.

Q. Also there is no mention of boat size in Exhibit 71; is that correct, Mr. Rosic? Again take your time.

A. 71 is the Rosic agreement?

Q. That's correct?

A. Right. No. There is no mention of boat size in that agreement.

Q. Thank you, Mr. Rosic. Can we continue on Exhibit 538. And can you read the -- back to

the email, 538.

A. I've got it.

Q. You had just stopped at, the same provisions are now part of the 10th Amendment to the Kalele Kai governing documents.

What's the next sentence?

A. You own a 69-foot side tie dock. It is my understanding that you can put any size boat that will safely fit into that space.

Q. I'm not going to go over again, Mr. Rosic, but just so I'm clear there is no -- there's nothing in Exhibit 71 or 74 which contained that statement; is that correct?

A. That's correct.

Q. Thank you. Can you next go to Exhibit 545.

A. Got it.

Q. The top of this exhibit appears to be -- is this -- it appears to have Mr. Udagawa's email header on. Is this an email from you to Mr. Udagawa?

A. Well, the top part, no. Let's see. What's going on here?

Q. I'm sorry. The top part appears to be an email from you to Mr. Revere. I apologize.

A. Well, I see -- no, from Mr. Revere to me.
Q. Let's go to page 2 then.
A. Yeah, I'm on page 2. Yeah. This would be from me to Mr. Revere, yes.
Q. And you start out -- let's make sure we're on the same page. What's your greeting on that email?
A. "Congratulations on starting your own company".
Q. And can you go down to the very -- hold on, let me make sure I'm clear on this. Can you read paragraph number 1.
A. "As a matter of courtesy KC Udagawa on behalf of Mr. Yoshikawa notified the Kalele Kai board that they intended to sell their present boat which is 40 feet long and purchase a new boat that would be 49 feet long. As you may recall when they purchased my townhouse it came with a deeded side tie mooring that was 69 feet long. Primary --"
Q. Let's stop there at number one. Is it fair to say that based on that statement it was your understanding that Mr. Yoshikawa had the right to tie -- moor a boat at Kalele Kai up to 69

feet in length?
A. Well, yes. That's my interpretation of the 10th Amendment.
Q. Thank you. Let's go to item 2 in your email. And where do you state there?
A. "Primary reason they purchased the town house at Kalele Kai was that it came with a dock that could accommodate a large boat. They purchased my boat as an interim boat while they searched for another."
Q. Did you advise Mr. Yoshikawa or Mr. Udagawa prior to or at the time Mr. Yoshikawa purchased your unit at Kalele Kai that he could purchase a boat larger than the Ariel and moor it at Kalele Kai?
A. No.
Q. So you never told him that?
MS. McDOWELL: Objection. Asked and answered.
A. All I have ever done is give them the 10th Amendment which states they have 69 feet.
Q. Let's move on to item number 4 in the same email.
A. Okay. Culturally Mr. Yoshikawa does not wish to be confrontational. However, he has

the Kalele Kai 10th Amendment which does not restrict him from buying any sized boat.
Q. And the Kalele Kai 10th Amendment again is Exhibit 74; is that correct?
A. Correct.
Q. And you previously testified there is no reference to boat length anywhere in Exhibit 74; is that correct?
A. Correct.
Q. Let's go on to Exhibit 546.
A. Okay.
Q. Have you seen this document before?
A. Let me look through it. This doesn't look like it says anything.
Q. I'm referring to the top of the page which begins --
A. I see it. Yes, I see it.
Q. Just so we all the know we're on the same page how does the greeting start?
A. "Hi, KC. Just wanted to check in to see where you stand with the dock issue. As Terry told you Mr. Yoshikawa is entirely within his legal rights and can buy any boat he wants."
Q. Who are you referring to when you refer to Terry?

A. Terry Revere.
Q. And how did you learn that Mr. Revere had made such representations to Mr. Udagawa?
MS. McDOWELL: Objection. Attorney/client privilege.
THE ARBITRATOR: I'm going to grant that.
MR. GOODWIN: I want to respond to the objection. I was only trying to determine if he had learned that information from a third party which would have destroyed the privilege. If he did learn that information from a third party no privilege would apply. Just the name of the person is all I would want to know.
THE ARBITRATOR: That's a different question. You can pose that question.
BY MR. GOODWIN:
Q. Mr. Rosic?
A. Yes.
Q. Who told you that, quote, "Terry," closed quote, had made the representations reflected in your email?
MS. McDOWELL: Objection. It still calls for attorney/client privileged material.
THE ARBITRATOR: Well, I think you can

identify the person. You can answer the question.

A. Gee, I really don't know.
Q. That opens a whole can of worms then.
A. You know, I'm trying to recall what led up to this email. You know, if there was something before it or after it I might understand it. Something had to lead up to this. I just don't know.

MR. GOODWIN: As the Arbitrator is aware waiver of attorney/client privilege is a very common issue in this case. It has been with much of the evidence. Now, if Mr. Rosic -- I'm making an argument, if Mr. Rosic is, in fact, not able to testify the source of this information, how can the Arbitrator determine whether or not it's privileged?

THE ARBITRATOR: At this point I can't.

MR. GOODWIN: Then I think he ought to be able to answer my line of questioning regarding what he knew about these representations by Mr. Revere.

MR. REVERE: There's no foundation for the question. He just said he didn't know.

THE ARBITRATOR: He didn't know -- he

couldn't recall who the person was.

MR. GOODWIN: He couldn't recall who the person is. You sustained the objection as to what the information is.

THE ARBITRATOR: Why don't you pose a couple of other questions to see if you can refresh his memory. And we'll try it that way.

BY MR. GOODWIN:

Q. Mr. Rosic, do you recall the circumstances surrounding why you generated this email?
A. Well, that's what I just said, Chris. If I could see something before or after I might understand it better. But just this I don't know -- something triggered this. I didn't just wake up one morning and send this to KC.
Q. Go ahead. Continue, Mr. Rosic.
A. So, you know, I don't know. If I could see something before or after, you know, it might help me out. I'm not trying to be evasive. If I knew where this came from I would tell you.
Q. Because what, Mr. Rosic, what I would like to know is do you recall what legal rights were discussed in the reference that's made in your email?

A. No, I don't.
Q. Is it fair to say that you simply don't recall the facts and circumstances surrounding this email?
A. I truly do not. You know, it's legal rights would pertain to the 10th Amendment.
Q. Do you recall a telephone call perhaps with Mr. Udagawa at or about this time whereby you made inquiry or he made inquiry with you regarding this issue?
A. No, I don't. My phone calls from KC, they would generally relate to some issue with the boat. You know -- no, I recall nothing like that.
Q. Let's go to Exhibit 560, please.
A. Okay.
Q. Please read this email. I have some questions for you about it.
A. "Good talking with you last night. It is a real shame that Yoshikawa has to go through this boat size restriction nonsense with the board. I do hope that he remains strong and positive. He is in good hands with Terry Revere, and will prevail. We must find a way to help him overcome the Japanese mentality and cultural upbringing of avoiding a conflict. He purchased

a townhouse on the water with 69-foot boat dock that had no tie of boat size restriction attached to it. Now over 30 months later the Kalele Kai board is trying to impose a size restriction. He must fight back by allowing Terry to defend his legal rights. I know a fight goes against his background, but it is unfortunately part of what he must do. I will assist in any way I can."
Q. Now, Mr. Rosic, at the time you wrote -- by the way, did you write Exhibit 560?
A. Did I write this?
Q. Yes.
A. Yes. It says, "Take care KC, Richard." I'm sure I wrote it.
Q. At the time you wrote this you were aware that the boat length restriction in the project's declaration had not yet been changed -- I'm sorry, had not been changed?
A. Correct.
Q. And you were aware that there is no reference to the boat length restriction in the 10th Amendment?
A. Correct.
Q. And at the time you wrote Exhibit 560 you were aware that Exhibit 71 the Rosic agreement

contains no reference to any boat length restriction?
A. Correct.
Q. Can you turn to Exhibit 566, please.
A. Got it.
Q. And that is a series of emails. So can you first go to --
MR. REVERE: Which number are you on?
MR. GOODWIN: I'm on 566.
Q. Can you go to the last page of that document. Because I think we're going to have to read up on this one.
A. Okay. Let me go back.
Q. Take your time reviewing it.
A. Let's see. I see something from Rex. But it doesn't really say anything. And I see something from My Land Hawaii Realty Company, nothing there. Another one from Rex. Then let's see. Sakata-san. Just letting you know that I just signed for certified mail from Associa and window portion I can read notice of violation, please let me know what you'd like me to do with it.
Q. Who was that email from?
A. I have no idea. It's 2013, 8-26 Rex

Akutagawa. He's someone I do not know.
Q. Can you take a look at page 2 of this exhibit.
A. Let me start from the top and go to page 2.
Q. Sure. Okay.
A. From KC to me.
Q. Does that refresh your recollection it was KC who forwarded this email string to you?
A. Well, I don't think I ever saw that one we just referred to. This one says "Hello Richard, did you see this, please comment."
I don't see anything here. I don't know what he's referring to.
Q. You did respond to Mr. Udagawa's email on page 1 of this exhibit; is that correct?
A. Well, let me see. Yes, I see that but if we go down to what's on page 2, you know, there's -- unless I'm missing something, Chris, there's no body there. There's no body in any of this.
Q. Let's read your first email and see if that will help refresh your recollection as to what's going on in this email string.
A. "What a joke. They are now trying to

intimidate Mr. Yoshikawa by saying the homeowners are at fault because they did not pass the board's resolution. I would immediately have Terry Revere write them a letter telling them to cease harassing Mr. Yoshikawa and allow him to lead the life he elected prior to purchasing a home and dock. He has a recorded letter signed by the board's president giving him the right to put any sized boat he wants in the 69-foot side tie. Keep me informed. This is outrageous. When will the mediation take place?"
Q. Now, in response --
A. Yeah, I remember writing that, Chris. But, you know, what it's attached to, there's nothing here that has any meaning below that.
Q. In the email that you just read, on the third paragraph where you state giving him the right to put any -- I'm sorry. "Letter signed by the board's president giving him the right to put any sized boat he wants in his 69-foot side tie," is that Exhibit 71 what you're referring to in that email?
A. Yes, it is.
Q. And again just so we're clear, Exhibit 71 does not make any reference to a boat size; is

that correct?
A. Yes, it is. There is not much I can tell you about this, Chris. I know there was some or I heard, whether it was from KC or other people, that there were some issues.
Q. I don't want hearsay. I'm going to join with Mr. Revere hopefully in a hearsay objection. I don't want to hear what people you don't know told you.
MR. REVERE: I think you might be done, Richard. So unless you volunteer stuff you're going to be out of here soon.
MR. GOODWIN: Imagine comments during examination. Imagine that.
MR. REVERE: Comments on testimony are different from my testimony.
BY MR. GOODWIN:
Q. Mr. Rosic, you testified that you provided a copy of Exhibit 71 and Exhibit 74 to Mr. Udagawa on behalf of Mr. Yoshikawa before you closed the sale of your unit at Kalele Kai; is that correct?
A. Yes. This would have all come through my real estate agent. And again I still cannot remember the lady's name. But it will come to me.

She was with Caldwell Banker. Then she started her own company.
Q. Other than providing a copy of the declaration itself to Mr. Yoshikawa or his real estate agent, did you make a specific disclosure regarding the 23-foot boat length restriction stated in the declaration?
A. No. Well, I don't -- no, I'm sure I did not. We would have given him the declaration, the same package that everyone receives.
Q. But in response to my previous questions you were aware at the time of the sale as to the existence of the 23-foot boat length restriction in the declaration?
A. Yes. As it pertained to boating or docking a boat perpendicular to the common walkway, correct.
Q. Do you speak Japanese, Mr. Rosic?
A. I spent a few years in Japan with the Navy. But the Japanese that I speak would not pertain to something like this, believe me.
Q. You can order at a restaurant?
A. Yes. That I might be able to do.
Q. Did you ever have any discussions with Mr. Udagawa or Mr. Yoshikawa in Japanese regarding

this transaction we're talking about here today?
A. Absolutely not, Terry -- Chris, I'm sorry.
Q. That's okay. It's easy to confuse us. Has Mr. Yoshikawa ever threatened legal action against you in connection with your sale of either your unit or your boat or your boat moorings to him?
A. Oh, absolutely not.
MR. GOODWIN: I believe that's all the questions I have at this time. Thank you very much, Mr. Rosic.
THE ARBITRATOR: Off the record for just a moment.
(Discussion off the record.)
REDIRECT EXAMINATION
BY MS. McDOWELL:
Q. Richard, I'm going to refer you back to Exhibit 15.
MR. GOODWIN: 15?
MS. McDOWELL: Correct.
A. I have it Lauren.
Q. Mr. Goodwin had you read a sentence from page 8. Do you recall that?
A. Yes.

Q. Was any reference to this provision made by yourself during your initial presentation to the Kalele Kai board?
A. Let me get to the page so I can see exactly what we're referring to, Lauren. Page 8?
Q. Correct.
A. Okay. So when I made -- the question is when I made the presentation to the board did I ever refer to the boat mooring shall be restricted to 23 feet?
Q. Correct.
A. No. I clearly showed the 23 feet being the perpendicularity -- the perpendicular finger pier. And I then drew a picture of how a 40-foot boat would fit in there by not sticking out perpendicular but by going parallel to the walkway.
Q. What was the purpose of your boat mooring modification request?
A. To allow me to moor a boat larger than 23 feet.
Q. And if you could please turn to Exhibit 59. Page 3.
A. 59, page 3. Okay. I have it Lauren.
Q. When you asked the Board of Directors

to approve this newsletter were there any objections?
MR. GOODWIN: Objection. Assumes facts not in evidence. And is not in accordance with any testimony this witness previously gave.
MS. McDOWELL: He testified he was the president during this time and that he had the board review each newsletter prior to it being sent out.
THE ARBITRATOR: Why don't you ask a couple foundational questions again on that. I'm not certain that was exactly his testimony.
BY MS. McDOWELL:
Q. Richard, please explain your procedure regarding the newsletters while you were president of the association.
A. Okay. Everything I did was always written down. It was part of the weekly updates. When it came to newsletters the resident manager would write the bulk of it. I would always write a article to let the owners know various things. Dirk requested permission at a board meeting to put this newsletter or this article into the newsletter.
I then put it before the board as part

of a weekly update. And they all had their opportunity to comment on it.
Q. And at that time did any of the board members object to this article?
A. No.
Q. Did any --
A. No one had any problem with this whatsoever. I believe we -- yes, I believe during this one we actually took people down to the dock and showed them, you know, the modifications and what Dirk was going to do. This also related to his reconfiguring the guest slip.
Q. After this newsletter went out to the homeowners did any of the homeowners object to this article?
A. Not to my knowledge.
Q. You were also asked questions about your use of the finger piers. Do you recall that?
A. Yes.
Q. Did you have exclusive use of the finger piers?
A. No.
Q. Who else used the finger piers?
A. Well, in addition to the neighbor to my left and my right which shared -- we shared half

of those two finger piers, paddle boarders would use it, fishermen. Anybody that wanted to come down to the docks they were just free to go out on the finger piers.
Q. Could you please turn to Exhibit 71.
A. Okay.
Q. In the middle of paragraph 2 you were asked questions about the reference to removing the finger piers regarding -- because of health and safety reasons. Do you recall that?
A. Yes.
Q. And what are the health and safety reasons you were referring to in that sentence?
A. When the dock turned turtle and all of those barnacles were sticking up, it presented really the health issue would be the smell. The safety issue if anyone fell they would cut themselves to pieces on the barnacles.
Q. So the issue was the barnacles?
A. Yes.
Q. Then could you read aloud to us the last sentence in that paragraph please.
A. "As a result of our negotiation it is our understanding that the following terms have been agreed to."

Q. Sorry, Richard. The last sentence of the second paragraph starting with "to date."
A. "To date the board asserts it has made no demands upon Mr. Rosic to replace the subject finger piers."
Q. Is that correct?
A. Yes.
Q. And could you please turn to Exhibit 73?
MR. GOODWIN: I'm sorry, what exhibit? I apologize.
MS. McDOWELL: 73.
A. 73?
Q. Yes.
A. Okay. I'm there.
Q. D3 is entitled, Boat Mooring Modifications. Do you see that?
A. Yes.
Q. And it states that "any requests seeking modification relocation and/or removal of boat moorings must be presented to the Board of Directors in writing for its consideration in advance of any proposed work being undertaken."
Did I read that correctly?
A. Yes, you did.

Q. What is the purpose of a boat mooring modification?
A. To allow an owner to side tie a boat so he can have something larger than 23 feet.
Q. And the date of this boat or dock and boat rule is August 27, 2009; is that correct?
A. Yes, it is.
Q. At that point how long had the Ariel been moored in its side tie mooring?
A. Well, August 27, 2009. And she came there in let's say April of 2002. So two and a half -- seven and a half years.
Q. And what was the length of the Ariel?
A. 38 feet. 40 if you count the pulpit.
Q. Thank you, Richard, those are all the questions I have?
THE ARBITRATOR: Any recross?
RECROSS-EXAMINATION
BY MR. GOODWIN:
Q. Just a few. Mr. Rosic, in response to some of the questions you were just asked, you were asked whether you had exclusive use of the finger piers. Do you recall that question?
A. Yes.
Q. But regardless of whether you had

exclusive use of the finger piers you agreed in Exhibit 71 on revised house rule D8 that maintenance and replacement of those finger piers would be the responsibility of boat mooring owners?

A. That's correct.

Q. So the use -- whether you had exclusive use or not was immaterial. You still agreed that boat mooring owners would be responsible for their care and upkeep?

A. Of the finger piers, yes.

Q. In response to the questions you were just asked you were also requested to look at the first page of Exhibit 71.

A. Okay.

Q. You were asked regarding the health and safety concerns you had regarding the disposal of the finger piers?

A. Yes.

Q. Those health and safety concerns did not arise until you actually attempted to remove them; is that correct?

A. Correct.

Q. As a matter of fact, the finger piers as sitting in their original configuration or side

tie configuration do not present a health and safety concern as far as you're concerned; is that correct?

A. No. Because their purpose or the people that modified those docks had a different purpose. They wanted to use that, the finger pier, to give them more room.

When I took my first one apart -- let me back up. They used a, oh, I forget what the word is but a long cross arm to keep the finger pier from turning over.

When I took the first one apart it did not. But my intention was to get rid of it anyway.

Q. Can you turn to Exhibit -- let's stay on Exhibit -- I'm sorry. My fault. Let's stay on Exhibit 71 and go to the proposed boat dock rules specifically rule 1, D3.

A. Okay. I have it.

Q. And claimant's counsel previously asked you a question regarding that rule. And you said the purpose of the dock modification would be so owners could have a larger boat. Do you remember your answer?

A. Yes.

Q. Also though the purpose could be as you just testified to give more room with respect to the utilization of adjoining boat docks and could be also utilized for a smaller boat; is that correct?

A. Well, I guess if you want to waste money, Chris. If you have a normal mooring, let's say -- most people purchase two moorings. Some did not. But most who knew boating would always purchase two. Because you would moore to the upwind side of the mooring. Now, when someone came in alongside of you there could be a problem.

So that's why people generally purchased two. But if money was a restraint and you were going to have a narrow boat, then you would purchase just one mooring. So to get more than two moorings to moor a 23 foot-boat, you know, you wouldn't want to do it unless your intent was to upgrade in the future.

Q. But you could, Mr. Rosic?

A. Well, you could. Oh, sure. You could put a bathtub into a larger mooring.

Q. I'm sorry, one more question. I apologize. Did you ever translate any of the documents you provided to Mr. Yoshikawa in

connection with the sale of your unit?

A. No. Of course not, Chris.

MR. GOODWIN: Thank you very much. No further questions.

MS. McDOWELL: No further questions.

THE ARBITRATOR: Mr. Rosic, thank you for doctor time today. We're going to be disconnecting the line now. Have a good dinner. Have a double too.

(Witness excused.)

(Discussion off the record.)

(Whereupon, a luncheon recess was taken from 1:36 p.m. to 2:45 p.m.)

THE ARBITRATOR: Back on the record. Mr. Revere, you're calling the next witness?

MR. REVERE: Yes. We're going to call AOAO president Brad Oakes.

BRADFORD OAKES,

Called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. REVERE:

Q. Good afternoon. Mr. Oakes, did you ever see a TV show called "The Wire"?

MR. ZALEWSKI: Objection. Irrelevant.

We're going to have a tough time getting done in two days.
MR. REVERE: With all these objections you're probably right.
THE ARBITRATOR: You can answer the question.
A. No.
Q. Have you ever heard of a place called "Hamsterdam," with an H at the beginning?
A. No.
Q. You are, I take it you're bringing a counterclaim against Mr. Yoshikawa, correct?
MR. ZALEWSKI: Objection as far as "you are." No individual is involved as far as a counterclaim.
MR. REVERE: I'll stipulate we are definitely going to take more than two days if we have objections --
MR. ZALEWSKI: He's trying to vilify him in his brief. He's starting now. Obviously an association acts through a board. I think it's a fair objection.
BY MR. REVERE:
Q. I'll withdraw the question. Did you vote to bring a counterclaim against Mr.

Yoshikawa?
A. Did I vote to bring a counterclaim against Mr. Yoshikawa?
Q. Yeah.
A. I was one of nine board members that did.
Q. So the answer is yes?
A. I was one of nine, yes.
Q. The reason you're bringing a counterclaim is because of his new boat, correct?
A. Correct.
Q. But you are citing even his old boat, right?
A. Old boat being?
Q. The Ariel.
A. I'm not sure I understand the question.
Q. Did the association ever cite Mr. Yoshikawa for simply having the Ariel, the boat that he bought from Richard Rosic?
A. No.
Q. Can you go to Exhibit 129, please.
MR. ZALEWSKI: Did you want us to use our exhibits for that as you question?
MR. REVERE: Yes.
Q. Do you have Exhibit 129?

A. Yes, I do.
Q. And 129, did you the board authorize Associa to send out this letter to Mr. Yoshikawa?
A. Yes, and others.
Q. So -- we'll get to the others in a second. As of August 23, 2013 the Rola wasn't even in the Hawaii Kai Marina, correct?
A. That would be correct.
Q. So this letter was written with regard to the Ariel, correct?
A. This letter was written in regards to the homeowners voting on a declaration that was put out in front of the owners which turned down the --
Q. Mr. Oakes, all I'm talking about the boat that is referenced in this letter is the Ariel not the Rola, correct?
A. That would be correct.
Q. And you mentioned others were sent similar letters, right?
A. Correct.
Q. Even smaller boats were given similar letters around August of 2013, right? Like Rojek's boat for example?
A. That would be correct.

Q. How long is Rojek's boat?
A. Off the top of my head I wouldn't give you -- it's over 30 feet.
Q. Smaller than the Rola?
A. Yes.
Q. So it doesn't -- so the size of the difference between the Ariel and Rola isn't material to the board's decision because they are sending them out to even smaller boats, right?
A. You have to understand where this letter came from before you can make that conclusion. This letter came from, if you'd let me finish, this letter came from the homeowners doing an amendment that we were trying to get passed.
We had four boats at that time that did not meet --
Q. I'm going to object as nonresponsive.
MR. ZALEWSKI: He's interrupting.
THE ARBITRATOR: We are going to be here for days and days and days. Just let him finish answering the question.
A. We had four boats that didn't meet at this time during the 2013 that did not meet the -- did not meet the 23-foot record or declaration

that we have.
An attempt to resolve this so that we weren't sitting here today or any other day, we attempted to get the homeowners because it was in the declaration the homeowners had to approve it. We sent it out for a vote with two other things that were out to vote. And it was at that time declined by the homeowners.
So these letters were not board approved. They were actually homeowners approved because the homeowners knew specifically what was going on and they are the ones that said no.
Q. So is it your contention the homeowners wrote like a petition or something to Allen Takumi at Associa and said write a letter to these homeowners?
A. No.
Q. The board did tell Al Takumi to write those letters to the homeowners, correct? It's yes or no.
A. Once the homeowners said no, we were obligated to do what we're fiduciary responsible for, upholding their vote. Why go to a vote if you're not going to uphold what they do, right? So we went and did that and it is what it is.

Yes, the board actually approved this based on the homeowners saying that.
Q. So there was a vote that went out to the homeowners that said, would you like us to write a letter to everyone with a boat over 23 feet asking them to move it? Is that what they were asked in that vote?
A. There was a declaration that was put out that asked the homeowners to approve, I believe and I'd have to pull the document specific to it, okay, but to pull two 38-foot boats. At the time it would have been the Ariel, Mr. Rojek's boat, and two 26-foot boats. And trying to get them into compliance with our declaration.
When that declaration at that time was turned down by the homeowners, it left us no choice but to initiate these letters.
Q. Who said it left you no choice?
A. The homeowners.
Q. The homeowners wrote a petition to the board and said you have no choice, send out these letters?
A. The homeowners told the board what they wanted on their property.
Q. That's what the vote said too?

A. The vote told us that they did not want two 38-footers and two 26-footers at that time.
Q. Okay. And you defer to the actual language of whatever votes are, right?
A. I'm not sure I understand what you mean.
Q. Whatever the vote actually said and whatever you actually said in the newsletters you defer to that because that's closer in time than your testimony today, correct?
MR. ZALEWSKI: Objection. Compound.
THE ARBITRATOR: You can ask two questions.
Q. Let's skip it and go to 132.
A. I think I'm doing this right. Yeah.
Q. Is this a newsletter that you put out?
A. Yes, it is.
Q. Number 2 says "allow a limited number of boats to exceed the 23 foot length restriction."
Do you see that?
A. This is a newsletter not the declaration, but yes.
Q. That's a newsletter you published?
A. Correct.

Q. It says "allow a limited number of boats to exceed the 23-foot length restriction"?
A. Correct. This is a newsletter. It's a brief. It's not the declaration that actually went to the homeowners.
Q. What's the purpose of the 23-foot restriction?
A. The purpose of the 23-foot restriction was in the declarations that everybody -- when they come to Kalele Kai, sign up for and say this is what the 23-foot length. It does not say 23 -- it doesn't say 30-foot --
Q. Mr. Oakes, I'm not asking what it says. I know what it says. What's the purpose?
A. We're just following the declarations.
Q. Because you don't know what the purpose is, correct?
A. The purpose -- well, I can give you what I believe the purpose is. The purpose is obviously you can only put 23 feet with the easement and stick out 30 feet. Then we abide by two sets of rules for the marina. The marina association obviously tells us what the easement is. Then we have the Kalele Kai documents that tell us what the length or the restrictions to the

boats are. So we have to live within both of those.
Q. Okay. What I asked in your deposition, if you knew what the purpose was, you said you didn't know, right?
A. That's correct.
Q. Do you know when the Rola even arrived?
A. I might be wrong on the date. Around October 27, 2013.
Q. You know Jim Propotnick?
A. Yes.
Q. You know Colin Kurata?
A. Yes.
Q. Is Rosic right, that they've been on the board pretty much since the developer gave up control?
A. That's my understanding.
Q. Did you ever ask Jim, Jim why do we have all these side tied boats that are longer than 23 feet?
A. No, I have not.
Q. Never asked him?
A. No.
Q. And even though you guys are in meetings where you're voting about this stuff?

A. Never asked him.
Q. Did you ever ask Colin Kurata that question?
A. No.
Q. Weren't you curious as to why this was going on?
MR. ZALEWSKI: Objection. Vague as to this "going on."
Q. Larger boats longer than 23 feet at the Kalele Kai.
A. I, like most, probably when we first got there probably didn't really understand what all the language was until you started getting into understanding what was going on, on the property.
Q. And furtherance of improving your understanding did it occur to you, hey, maybe I should ask Propotnick what they were doing all these years?
A. No.
Q. Same response with regard to Kurata?
A. Correct.
Q. That developer's model is that still at the Kalele Kai?
A. I honestly couldn't tell you. I don't

know. It's not where I've seen it. So I don't know.
THE ARBITRATOR: You're talking about the photo of the model?
MR. REVERE: Yes.
Q. I'm talking about the physical model itself is it still there?
A. I couldn't tell you. Not that I've seen.
Q. Have you -- I know you mentioned that you don't administer the website. Have you gone to the association's website since your deposition?
A. No, I have not.
Q. You're aware that the association represents that boat slips are privately owned at the Kalele Kai?
A. Okay. I trust you on it.
Q. Can you go to Exhibit 31, please.
A. Just 31?
Q. Yes.
A. Okay. Yes, I have 31 in front of me.
Q. Did you ever go back and look at old meeting minutes before you joined the board on any of these issues?

A. Not before I joined the board, no.
Q. If you go down to -- what about after you joined the board? Did you ever go back and check?
A. Yes.
Q. Did you ever look at these October 18, 2001 meeting minutes?
A. I believe so, yes.
Q. There are several issues with regard to Rosic here. And page 4 of 5.
A. Okay.
Q. And in this there's a reference to cutting a lanai wall. And he did ask and it's your understanding was told no and he didn't do it, right?
A. That's my -- yes.
Q. Going to this dock box floating dock issue there's a reference to attorney Christopher Goodwin here. Do you see that?
A. Yes.
Q. And it says here, "He is allowed to proceed with installation of a dock box/floating dock if he gets an approval from the marina association and follows the standards, specifications and guidelines."

Do you see that?
A. Yes.
Q. Here it says, "The board agreed that if Mr. Rosic follows all the marina association guidelines he may proceed with the dock box/floating dock installation."
Do you see that?
A. Yes.
Q. Where does your property line end on the marina side of the property? By "your" I mean the association's. Kalele Kai association's?
A. Where does it end or where does it start?
Q. Whatever. Either way.
A. Which side do you want?
Q. From your side going from the middle of your property going towards of marina where does it end?
A. The sea wall.
Q. So everything, even what you're calling the common walkway, which we'll get into later, that is all on Hawaii Kai Marina property within your easement, correct?
A. That would be correct.
Q. And you understand the marina

association has no limitation on the size of boats, correct?
A. I'm not aware of that.
Q. One way or the other?
A. Right.
Q. Did you ever check?
A. No.
Q. Did you ever ask the marina association, hey, can you weigh in on this dispute we're having with some of our own?
A. No.
Q. You heard Mr. Goodwin's questions to Richard Rosic this morning, you were here?
A. Yes.
Q. And you heard a bunch of questions about you saw this 23-foot restriction? Do you recall that?
A. Correct.
Q. Same could be said for every other owner at the Kalele Kai that got a declaration when they bought their unit?
A. Absolutely.
Q. That would include Jim Propotnick?
A. Absolutely.
Q. Colin Kurata?

A. Yes.
Q. At least in your time you're not aware of any board member that has any disability as far as their vision is concerned, correct?
A. I couldn't answer that one way or another.
Q. Well, none of the current board has any, uses a cane or is blind in any way, correct?
A. That's not true.
Q. Someone's blind?
A. No. Somebody uses a walker.
Q. But how is their vision?
A. Couldn't tell you.
Q. Okay. You heard Richard's testimony that people fish off the finger piers?
A. Yes.
Q. Any reason to dispute that?
A. None.
Q. Launching kayaks from finger piers, any reason to dispute that?
A. Not to my knowledge, yes, I have no reason to dispute it.
Q. Have you launched a paddle board yourself from finger piers?
A. No.

Q. Never happened?
A. Never happened.
Q. Have others?
A. I'm sure of it. Yes.
Q. And folks go out there and watch the Hawaii Kai boat parade from these finger piers?
A. They would could be owners. I honestly don't know -- when you say boats and finger piers, they could be owners of those finger piers. I don't really know who owns what finger pier and who is doing what. There are people on those finger piers and there are people on the common area.
Q. And the reason why we don't know is because there's no locks or gates or any physical barriers between what you're calling the common walkway and the walkways on the top of these finger piers, right?
A. There's no gate anywhere.
Q. So is it your understanding -- was Richard's testimony correct that bordering his mooring area is half of one finger pier on one side and half of one finger pier on the other side, correct?
A. That would be correct.

Q. And that created a 69-foot side tie area?
A. Couldn't tell you the measurement.
Q. You understand the association had a 69-foot side tie area?
A. Still don't understand that one. But yes. That's what's being told. The question in my mind about that 69-foot side tie because if you take where that actually is in the original drawing and you put in the 89 dock that actually belongs to the association, I'm not sure how you get 69 feet out of a 69-foot side tie. I'm a little perplexed on that one.
Q. Are you aware of Von Guenthner donating two piers and placing them in the association's common side tie pier?
A. He attempted to do that and the association or the board elected not to take those from him. They are not there today.
Q. So there is still a 69-foot side tie to this day?
A. I couldn't tell you the exact footage. I don't know what that exact footage is.
Q. Who built those docks?
A. From what I'm hearing it sounds like

Jeff Stone.
Q. Any marina company that was involved in building these?
A. On the blueprints that we have and the conversation, Bellingham was the contractor.
Q. So Bellingham the contractor includes a 69-foot side tie, common side tie, right?
A. I can't tell you. You've asked and answered -- I really can't answer what that is on there, correct.
Q. Let's go to Exhibit 156, please.
A. Okay. Got it.
Q. And you recognize this as part of the marina area bordering Kalele Kai, correct?
A. Correct.
Q. The thing that looks like there's -- if we were completely on land it looks like an upper sidewalk. There is a sidewalk to the right and a sidewalk to the left. I'm not saying there is a sidewalk. That's what it appears to be. Where is the sea wall in this picture? Show it, please.
A. It would be right (indicating) down this wall, down this side between the mooring where the sidewalk here and this.
Q. And that's the sea wall. Correct?

A. That's correct.
Q. So everything to the left of that is Hawaii Kai Marina Association property, correct?
MR. ZALEWSKI: Objection. Calling for a legal conclusion. You asking for his understanding?
THE ARBITRATOR: Can you qualify it.
MR. REVERE: I think owners are allowed to give their understanding of their property line limits.
Q. Is that your understanding that everything to the left of that sea wall is marina association property?
A. Yes.
Q. And this photo shows four boats in a row all side tied?
A. Yes.
Q. And do you have any reason to dispute that all four of these boats are longer than 23 feet?
A. Yes.
Q. What's the basis for that?
A. The one that sits right here is 23 feet to the exact.
Q. Which one?

A. The one right behind -- what do they call it?
MR. ZALEWSKI: Can you kind of describe to the left of the photo for the record.
A. So this one (indicating) is 33 plus. This one is 23 feet -- I'm doing this backwards.
THE ARBITRATOR: Is it Nakanishi's boat --
A. Yes, it is.
Q. You're saying Nakanishi's boat is 23 feet?
A. Right.
Q. Who else has a 23-foot boat in that picture?
A. In a side tie?
Q. Yes.
A. Nobody.
Q. What's the one in the foreground?
A. That is Rojek's.
Q. 33 feet?
A. 33, I don't know exactly.
Q. What's the farthest one you can see?
A. That would be the Ariel.
Q. You heard Richard's testimony that Dirk Von Guenthner was the original author of that

newsletter article about selling finger piers and what they could be used for, correct?
A. Yes.
Q. Do you have any reason to doubt that?
A. I have no reason -- I don't know either which way. I have no knowledge either way.
Q. Do you know how many finger piers he owned, meaning Von Guenthner at one point?
A. No.
Q. Do you know if it was approximately 21?
A. Couldn't tell you that.
Q. Can you go to Exhibit 71, please.
A. Okay. I'm there.
Q. Do you recall there was earlier discussion about this?
A. Yes.
Q. And you signed this agreement as well, correct?
A. That is correct.
Q. If you go to the second paragraph.
A. Okay.
Q. Like the middle of the second paragraph it talks about Mr. Rojek further alleges the board approved his purchases and was made aware of his intent to move the intervening finger piers.

Do you see that?
A. Yes.
Q. It says, "In response the board contends no such approval is memorialized in board meeting minutes for the period in question."
Do you see that?
A. Yes.
Q. But the board didn't deny that's what happened, correct?
A. I wasn't part of the board at this time. So I can't say yes or no to either one of those.
Q. And Propotnick and Kurata were, correct?
A. I assume so, yes.
Q. And they still are, correct?
A. Correct.
Q. And board meeting minutes don't, they don't hire, you know, Bill here to transcribe what happened in their meeting minutes, correct?
A. Correct.
Q. At the bottom of this it says, "To date the board asserts it has made no demands upon Mr. Rosic to replace the subject finger piers."
Correct?

A. Correct.
Q. So from whenever those things left, at least through June 2009 there was no demand to replace them, correct?
A. The board's never made a demand to replace them. Obviously this created a concern in Richard's mind when he went to sell the property whether we -- he sold limited common element or disposed of limited common element which was not his for disposal. So he was concerned. That's obviously why he created this document and wanted to get it fixed prior to doing that. He had risk.
Q. He is the only one that had risk?
A. He had risk.
Q. Not the board?
A. I'm just -- he had a risk.
Q. So the board signed this out of the goodness of their heart?
MR. ZALEWSKI: Objection. Argumentative.
THE ARBITRATOR: It is.
Q. Why did the board sign this?
A. We elected it was -- they've been gone. They've been less -- it's less expensive to let it go when you look at what the cost to replace them

and move forward rather than to worry about what happened in the past. It wasn't going to fix what has been there. We wanted to move forward and not get into any litigation, quite frankly.
Q. Also, because they are gone there is nothing to maintain there, correct? Not only the cost of bringing them back but the cost of maintaining them as well, correct?
A. The maintaining is very minimal. It's not the maintaining. The cost of those is probably about $4,000 a piece.
Q. And go down to the third "whereas" clause. It says "therefore" and then it --
A. In the same page? No, "whereas."
Q. The next page.
A. Okay.
Q. Third "whereas" clause it mentions that "whereas pursuant to board approval Mr. Rosic modified the six boats to accommodate a 69-side tie for his boat."
Do you see that?
A. Right.
MR. ZALEWSKI: For the record it says six boat docks.
THE ARBITRATOR: Can I have a

clarification on that. I've seen that inconsistency a couple of other times. Is boat docks in this context synonymous with finger piers?

MR. REVERE: Not as far as we're concerned, no. There were boat docks. That's the -- I can give a dissertation on this if you'd like to about how everybody was misusing language here.

But that's our contention. They are not the same thing.

THE ARBITRATOR: You'll have to clarify it through other questions.

MR. REVERE: That's fine.

BY MR. REVERE:

Q. It talks about accommodating a 69-side tie for his boat. Do you see that?

A. Yes.

Q. You understood his boat at the time was the Ariel when you signed this agreement, correct?

A. Correct.

Q. And the Ariel is longer than 23 feet, right?

A. Correct.

Q. And it talked about the next "whereas"

clause says "Mr. Rosic is selling his home with the boat dock as modified"?

A. Yes.

Q. It says "whereas the above 'whereas' clauses are material to this agreement not merely stated as a matter of form."

Do you see that?

A. Correct.

Q. And it's your understanding that the marina area in general at the Kalele Kai was deteriorating for years, correct?

A. It had lack of maintenance, correct.

Q. And that had been going on since the time it was installed, right?

A. There was no maintenance records on it since the time it was installed.

Q. So the deterioration was happening since the time it was installed as far as you know until the time that Bellingham came in and fixed it, right?

A. That was documented, correct.

Q. So it didn't begin in 2009 that it suddenly started getting funky, right?

A. Correct.

Q. Can you go to Exhibit 73. A couple of

exhibits later. It says here "Addendum" dated August 27, 2009, correct?

A. Correct.

Q. When was the Kalele Kai first created, if you recall? Or if you know.

A. I've seen things back there in declarations in 1993, I believe.

Q. Do you know when the docks were physically installed?

A. I could not answer that.

Q. Can you go to 74. This is the 10th Amendment, correct?

A. Yes.

Q. And that looks like it was recorded in August of 2009?

A. Correct. August 28th.

Q. And could you go to Exhibit 83, please. Are you there?

A. Yes.

Q. And this is a deed? The first page is a deed, correct?

A. Correct.

Q. Can you go to the second to last page of the document. You can go back to page 8 if it helps you. This basically, all these documents

here from 93 forward, these were different amendments to the declaration, correct?

A. On page 8?

Q. That's where it starts. Then there is a long list of different amendments mostly having to do with parking stalls.

A. That's what it looks like, yes.

Q. What are reserves?

A. It's money that we project that we need to use to keep our property up and maintained for a 20-year, 25-five year span depending on what you're looking at, capitalized projects that have actually time that expire. A good example is painting. Painting is about a 7 or 8 year project that you need to reserve money for 7 to 8 years or you can assess. Our board has elected not to assess. We prefer to reserve money so you pay as you go.

Q. And taking off from your last two responses it's -- that's the whole point of the reserve, it allows you to pay as you go, correct?

A. For the most part, correct.

Q. You're saying the board elected not to assess. The whole point is trying to avoid special assessments, correct?

A. Correct.
Q. And so before August of 2009 these boat dock rules didn't -- D3 through whatever didn't exist, correct?
A. I'm not sure if the boat dock rules encompassed some of our house rules now or were then and we just made -- in other words, we had a set of house rules before 2009 for boats.
I'm not sure if they all encompassed but it's more complete and comprehensive. That would be the best way to say it.
Q. The house rules Mr. Goodwin asked some questions about D1 and D2 of the house rules. Do you recall that with Richard?
A. Yes.
Q. Do you have any idea when D1 or D2 was first passed?
A. I can't even tell you what D1 and D2 are.
Q. Could you go to -- this is a different binder. Defense Exhibit 560.
A. Okay.
Q. In the second paragraph here Richard talks, and this is written in it looks like June of 2013. Do you see that?

A. I've got June 6, 2013.
Q. Okay. I couldn't tell if it was a 6 or an 8. Okay. In the second paragraph, referring to Mr. Yoshikawa, Mr. Rosic notes, "You purchase a town house on the water with a 69-foot boat dock that had no tie of a boat size restriction to it."
Do you see that?
A. Yes.
Q. Is Richard correct in that sentence?
A. No, he's not.
Q. Why not?
A. There is a 23-foot limit in the declaration.
Q. That's only one you are relying upon then, right?
A. Well, that is the one I think of right off the top of my head. I believe it's also in our house rules about the 23-foot.
Q. Okay. Next sentence says, "Now over 30 months later the Kalele Kai board is still trying to impose a size restriction."
Do you see that?
A. Correct.
Q. Was it 30 months later that the board

first approached Mr. Yoshikawa and told him he had to remove the Ariel?
A. I don't believe Mr. Yoshikawa owned it 30 months later. But I might be wrong.
Q. Do you know if 30 months later they approached him about removing the Rola?
A. The Rola doesn't exist.
Q. Okay. So you have owners, a board member who is complaining about the Yoshikawa's boat; is that correct?
A. Correct.
Q. Who is the board member complaining about the Yoshikawa's boat?
A. The board member is her husband.
Q. You tell me.
A. Anne Sabry.
Q. Mr. Sabry complained. Is he a member of the board?
A. No.
Q. How did he communicate his complaint?
A. Verbally.
Q. When did he verbally communicate his complaint?
A. Not long after the Rola.
Q. How did he do it? At the board

meeting? At executive session? Through his wife? Some other means?
A. I can't honestly tell you. I don't recall.
Q. Well, in your deposition you recalled that there were three written complaints about the boat, correct?
A. That's correct. But I made a mistake. When you look at that and I look back or maybe I didn't make a mistake actually, one thing I learned out of this whole process is to ensure we keep emails a lot better than I kept emails. We haven't done a good job of that, and we need to do a better job. If I had the emails from people I might have been able to show you that in writing.
Q. To this point I cannot find that in writing. For you originally you said, yes, Terry we had three written complaints. Then the lawyers said they weren't complaints, they were all oral. Is it oral? Written? Could be either and I don't know?
A. It could be either and I don't know. If it's written then you're going to want it from me in a written form, and I can't give that to you because I have searched up and high, low every one

of our email boxes to figure out where it's at. When we lost one of our resident managers in change we lost a whole string of emails.

I'm not trying to make an excuse. I'm just telling you what's there and what isn't there.

Q. So the resident manager ate your homework?

A. Again I'm not trying to make excuses. It's just not.

Q. Which resident manager was this? Bryan or someone else?

A. Bryan.

Q. Why did Bryan leave?

A. Got a better paying job. Wanted to further his career as well. And he's done a very good job of that.

Q. Did anyone ask, hey, Bryan, what happened to your computer, the emails, et cetera?

A. Yes.

Q. What did he say?

A. He gave us the passwords to get in to do it. But I hate to say they were a computer and a half down from when that was there. So it didn't get changed over. It is something to work

on actually.

Q. So was Mr. Sabry's complaints were they discussed in executive session?

A. No.

Q. So they never discussed? Okay. I thought one of the reasons the board is bringing -- what did Sabry complain about? About his view?

A. About a view. About a big white tent there. A light that's on it. When it shines it just lights up various -- it may have just -- it's just big and monsterous.

Q. It's big and monsterous. What is the size difference between the hull length between the Ariel and the Rola? How many feet if you know?

A. If you take the 49 six and the 38 it gives me about 11 and 12 feet. However they figure it out.

Q. Do you know what the hull length difference is?

A. I believe that is the hull length difference.

Q. Would you go by manufacturer's specifications instead of what you're guessing?

A. I would go off a good old tape measure.

Q. Did you go out and measure the boat?

A. Yes.

Q. Who was standing at the other end of the tape measure?

A. Bryan Liu was one. Ted Bronson, our maintenance people.

Q. In any event, so, was Mrs. Sabry on the board?

A. Yes.

Q. She was in executive session while the boats were being discussed?

A. Yes.

Q. And she, without going into the contents of what she might have said, she participated in those discussions with the other board members?

A. Yes.

Q. Did anyone say, hey, there might be a conflict here since it's you and your husband that are complaining about this?

A. No.

Q. What did you discuss in executive session?

A. About what?

Q. About boat lengths?

MR. ZALEWSKI: Could I just give a cautionary instruction. As long as Mr. Goodwin or attorney wasn't present. If you could divulge the answer without relying on attorney/client communications I'd have no objection.

A. So ask me the question again.

Q. What did you discuss in executive session about the Yoshikawas' boat?

A. In executive session?

Q. Yes.

A. Because Mr. Goodwin was present in most of those I can't really get into that.

Q. So there was discussions. Did anyone -- did it occur to anyone to say, well, we heard from the Sabrys here in executive session I wonder if we should ask the Yoshikawas their position on these matters?

A. I'm not sure I understand your question.

Q. As I understand it Mrs. Sabry's participating in discussions and votes about the boat that she and her husband are complaining about. I wonder if anyone hit the pause button and said, hey, should we go ask Yoshikawa their

position on this since we're hearing from the complaining owner, why aren't we hearing from the other owner?

A. We actually hit the pause button many times in this whole process.

Q. Well, what was discussed in the executive session from the Sabrys?

MR. ZALEWSKI: To the extent it's privileged I object. He testified Mr. Goodwin was there participating in those discussions. I believe those discussions would be privileged. Executive session is obviously the -- it sounds like it was just the board and Mr. Goodwin present. There wasn't a waiver of privilege either.

THE ARBITRATOR: Is that your testimony, Mr. Oakes?

THE WITNESS: Part would be. The other part would be I don't honestly remember what was said and how to move forward with it.

THE ARBITRATOR: I mean, I'm going to have to sustain that. If there is nothing to the contrary to suggest it was anything other than an executive session with counsel.

BY MR. REVERE:

Q. So the Sabrys complained in executive session and even to this moment the Yoshikawas aren't allowed to find out what exactly did they say in this executive session, correct?

A. I'm not sure where the got the Sabrys complained in executive session. That's not true.

Q. Where did they complain?

A. Dan came up to myself after a board meeting. This has nothing to do with Darla a board member. This has to do with her husband that is not a board member and not privy to any executive sessions.

So he wouldn't be sitting in the executive sessions at any given time anyway. And how that carried to executive session quite frankly I don't really recall how that carried. That wasn't really the issue.

The issue has always been it's a large boat that has now we've taken it -- we have taken it to the homeowners and it failed.

MR. REVERE: I just object to all of this as nonresponsive.

THE ARBITRATOR: Move on to your next question.

Q. As we already discussed his boat was

discussed that Mr. Sabry was complaining about. We'll just leave it with him. So he approaches you. Now you remember he went up to you after a board meeting, right?

A. Correct.

Q. And then that complaint of his is discussed in executive session, correct?

A. Wrong. I mean, I don't honestly know if it was or wasn't. It was not the topic of an executive session.

Q. The Yoshikawa's boat was a topic of executive session, correct?

A. Correct.

Q. And there's no reflection in any board minutes that Mrs. Sabry recused herself of those discussions, correct?

A. Correct.

Q. And there is no reflection that she excused herself from voting, correct?

A. Correct.

Q. Do you see that as being problematic?

A. Not when you have nine board members and it was still -- it was a nine to zero vote on everything we have done. It would have been eight to none, however you want to look at it.

Q. How do we know that when I can't go into executive session and hear whatever sales pitch she made as to why the board should side with her?

MR. ZALEWSKI: Objection. The objection has been already sustained. As far as any questions about the executive session.

THE ARBITRATOR: It's just a tent you can't stick your nose under, Terry.

MR. REVERE: Okay.

BY MR. REVERE:

Q. So did Mr. Kurata who is an attorney ever mention anything like, hey, Darla, I don't think Showe be here in the executive session on this when we discuss this?

MR. ZALEWSKI: Same objection. I think --

MR. REVERE: I'm not talking about Mr. Goodwin. I'm talking about Kurata when he was alone with you guys.

MR. ZALEWSKI: Where Mr. Goodwin was not present?

MR. REVERE: Yes.

THE ARBITRATOR: This is all outside the context of being within an executive session.

For example, if you were approached after a board meeting not an executive session, was there ever a time Mr. Kurata spoke to you in that context about any concerns?

THE WITNESS: No.

BY MR. REVERE:

Q. I know you're not sure at this point whether they are written or not written. But did you ever suggest to the doctor, hey, could you put your complaint in writing?

A. I believe I've said that to him. But again I'm not sure where it's at with that.

Q. Bellingham I take it you are -- you have no problems with Bellingham or their work or anything they've done at the Kalele Kai, correct?

MR. ZALEWSKI: Objection. Overly broad. I think this was original, they designed, built the marina. They've been involved over decades. Could you narrow it down.

Q. Do you have any problem with the marina as they originally designed it?

A. I'm not an engineer. So, I mean, at this point I can't tell you the way they designed it is a bad design or a good design. We've had -- we had 20 good years of running it being very

good. It needed some help after 20 years. And guess what, we took care of it. The way it's looking right now is probably the best it's ever looked.

Q. So you're satisfied with Bellingham's work?

A. Yes.

Q. Is Bellingham the folks that you dealt with are they honest as far as you know?

A. I would hope to believe they are yes.

Q. So they wouldn't make up things in internal emails for example, right?

A. I would hope not.

Q. So when they wrote internally that you told them that the board simply didn't want big boats and would Bellingham support that, you don't have any reason to think they would just make that up, right?

MR. ZALEWSKI: Objection. Lack of foundation.

THE ARBITRATOR: Are you referring to a specific document, Terry?

MR. REVERE: Yes. We'll get to it.

Q. Did you look at any exhibits in this case?

A. Yes.

Q. Did you look at records that were from Bellingham?

A. I've looked at different Bellingham -- I'm not specifically sure which one you're specific about. There are about 260 you put in and about 65 we put in. I've looked at quite a few.

Q. Did you look at the documents that were produced by Bellingham in this case?

A. Very briefly.

Q. The documents that you produced -- that were produced from Bellingham in this case did you look at them electronically or just hard copies?

A. Electronic.

Q. Did you go into the trash items for the documents that they were trying to delete when they produced documents?

MR. ZALEWSKI: Objection. Lack of foundation.

Q. That's one you should look at.

THE ARBITRATOR: Are you withdrawing the question?

MR. REVERE: I withdraw it.

MR. ZALEWSKI: Thank you.

Q. Can you go to your Exhibit 501, please.

A. In this one (indicating)?

(Pause.)

Q. What is 501?

A. It looks like two pictures to me. One with Ed Bronson our maintenance manager standing in the background. The other one is Rola in the background.

Q. And who took the photo if you know?

A. I have no idea.

Q. Do you know if they are standing, sitting, on a roof, in someone's living room?

A. I could not tell you.

Q. Same thing with regard to 502?

A. Who took the pictures?

Q. Yes.

A. Again I would not know.

Q. And you don't know what angle they were at, et cetera?

A. No.

Q. And with regard to 501 and 502 do you have any pictures of the Ariel from the same angle or the same location? Or you just don't know since you don't know where they were?

A. I'm not sure I understand the question.

Q. Do you have another photograph of the Ariel in that same spot and the photographer in the same spot?
A. Obviously no. Because you can't put two boats in the same spot.
Q. No. Like years ago someone took pictures. We've got pictures of the Ariel. Do you know if they were in the same spot, the photographer is in the same spot shooting the same picture?
A. I couldn't tell you.
Q. Can you go to your 505. I don't know if you did this on eight and a half by eleven.
MR. ZALEWSKI: I think it's a reduced size, copied. And I think -- I can make a representation I believe the second page is part of a large collection but this second page is the only page that pertains to the marina.
MR. REVERE: Right. The other stuff is just buildings?
MR. ZALEWSKI: Buildings, correct.
Q. Mr. Oakes, I can blow mine up. What is your understanding if you have one as to what is this document?
A. From the best of my knowledge what I

would say this is the original document which was probably put together before everybody started playing swip swap with the marinas and things.
If you look here it actually identifies the point I want to make, Kalele Kai owns pier 7 and 8. That's in between the 69-foot side tie. So I'm struggling to figure out how they get the 69-foot side tie when the ownership belongs to Kalele Kai on 7 and 8.
Q. Does that little bracket with 69 going across it help or not?
A. It doesn't. It just makes my point stronger. Because B8 and B7 are in that bracket.
Q. That's a great point. So it's your contention -- what are these little numbers do you think, D6, D5? What do you think those mean? Do you see how they are all out in open water?
A. I believe --
THE ARBITRATOR: Ds or Bs?
A. They are Bs. If I look at this the Bs are B1 through 60. So it's identifying the 60 docks we have on the marina.
Q. It is? You're talking about so when it says, for example B1, you're saying that is a reference to the finger pier not the mooring,

right? Is that what your testimony is?
THE ARBITRATOR: Let's use the larger one. I think it's confusing for everybody.
A. Make sure I'm saying what I'm saying too.
Q. I'll withdraw it and ask you a question.
A. Let me finish my question. Here's --
Q. We're not here for your questions. I'm asking you questions. Do you see how it says B29 here and B30 here?
A. Correct.
Q. Those are labels out in the open water not on the finger piers, right?
A. That is what we identify, when I say "we" Kalele Kai identifies that dock with it will actually be stamped right on the marina here.
Q. Wonderful. So your contention is that these things that are marked out in the water, these don't refer to moorings they refer to finger piers? Is that your testimony?
A. That would be correct.
Q. But the problem with that testimony is that it doesn't make any sense when you've got B7 and B8 with no finger piers, right?

A. They never had. They never actually put those finger piers in.
Q. That means those Bs are referring to finger piers, right?
A. They're referring to a spot in the place that is actually in the declaration it is the property of Kalele Kai.
Q. Referring to a what?
A. The property of --
Q. A spot?
A. I said the property of Kalele Kai.
Q. You said "spot." They are referring to a spot.
A. They are a location; that's correct. On the common walkway.
Q. Right. Just like --
A. Here is where I'm trying to go. Where is the 69 --
Q. Mr. Oakes, I could care less what your points are. I'm here to ask you some questions. They can ask your points on redirect.
MR. ZALEWSKI: We want a good transcript. And it's very difficult --
Q. It's very difficult because he keeps on volunteering stuff. So in any event, it's like a

spot like a parking spot? That's another type of spot, right? You have parking spots?
MR. ZALEWSKI: I'm going to object. We're getting more than one question at a time. Just to supplement it's very difficult. What I meant is the court reporter cannot talk when people talk over each other. It's hard to take down. But that was two questions right there.
A. Ask them again.
BY MR. REVERE:
Q. The question is do you have parking stalls at the Kalele Kai?
A. Yes, we do.
Q. Are they labeled?
A. Yes, they are.
Q. Do the homeowners own, is there a parking structure?
A. Yes.
Q. Do the homeowners if they own, let's say parking stall P-1, do they own the concrete that's holding up the parking structure or is that a common element?
A. If it's within the parking area it's a limited common element.
Q. The space?

A. The space.
Q. Could you go to -- at one point did your board decide that they were going to, quote, "grandfather in" all boats that were over 23 feet long?
A. Say that again, please.
Q. At one point did your board decide that they were going to grandfather in all boats over 23 feet at the Kalele Kai?
A. Again, that was back in 2010, 2011. We were trying to establish a point of trying to limit the amount of size for the boats that were there and tried to move forward rather than backwards.
As of today we have two boats out of 14 that are oversized. One is up for sale and would be sold and be gone and it would be done. That would leave us with just one boat.
The idea or the premise --
Q. I'm not interested in the idea or premises. My only question which was a yes or no question, at one point did your board decide to grandfather in all boats over 23 feet at the Kalele Kai?
A. No.

Q. Never did that?
A. Not all boats. Your statement of "all boats".
Q. So there were some boats over 23 feet that it was grandfathering in, others that it wasn't grandfathering?
A. You'd have to look back at the way it was written. What we were looking at, and I hate to use the word "grandfathering," but we were trying to take the two 38-footers and two 26-footers and say we could put them within our organization. And then go forward and try to as time went on they would be sold or gone, people move, things happen, and it would disappear and go away.
It has happened to our benefit at this point. Right now we're down to two. So it's actually working in our benefit. Since 2011 --
Q. Mr. Oakes, all I'm interested in, bear in mind, don't worry, they are going to ask questions you questions, and you'll get your story out.
At one point did your board decide to grandfather in all boats that were over 23 feet?
A. Yes. I said yes. And you said "all

boats." A select number of boats that were over that size. Not all boats.
Q. I didn't say all boats. I said all boats over 23 feet long.
A. At that period of time.
Q. According to you if a boat is less than 23 feet it doesn't present a problem, right?
A. Correct. But the way you're making it sound is that we were going to allow any boats that came in or new boats or anything else. Limited to the boats that were there at that period.
Q. Let's say Mr. Rojek has his boat, right? And let's say it's 30 feet. And it's grandfathered. You with me? Boat sinks. He can't put in a new boat that's over 23 feet?
A. That's what the declarations say.
Q. So your position would be "no" even though it's side tied?
MR. ZALEWSKI: I'm going to object to this as being an incomplete and improper hypothetical. He's not an expert witness. He's talking about an act of God or some type of event. That's not before us.
MR. REVERE: I'm trying to figure out

what they mean by grandfathered.
MR. ZALEWSKI: Calls for speculation.
THE ARBITRATOR: I think you should lay some foundation as to this witness's understanding of grandfathering to be. Because I think that's where the rub is.
BY MR. REVERE:
Q. When you say you grandfathered in those four boats, those were the only four boats that were over 23 feet, correct?
A. At that period of time, correct.
Q. So my question to you is if someone has a boat, one of those four boats, and it sinks or burns down or is otherwise destroyed, stolen, doesn't matter they can't put back a similar sized boat?
A. That would be up the board and the declarations. That is not my opinion of how that works.
Q. What would you vote?
MR. ZALEWSKI: Objection. Hypothetical. Calling for speculation.
Q. We've already agreed on the purpose of the 23-foot vote is because there is a 30-foot easement, right? We've already agreed to that?

THE ARBITRATOR: That was his testimony.
MR. REVERE: Yeah.
A. Say that again, please.
Q. When I asked you in your deposition what's the purpose of the 23-foot restriction your testimony then was, I don't know. Your testimony today is, yeah, there's a 30-foot easement and that's why it's there?
A. It is a 30-foot easement but our declarations are 23 feet. So let's not try to twist my words. With the 23-foot declaration that's there, that is what we live by. As far as the declarations. If we can change those declarations for -- which we've tried. Or if we get the homeowners to do that, then that's up to the homeowners. That's not up to the board.
Q. How hard did you try?
A. Very hard.
Q. Did --
A. Very hard.
Q. Did Dr. Sabry and his wife were they trying hard?
A. Yes, they were.
Q. Even though they don't want to see this

boat there they were out there hat in hand asking people for their votes?
A. You've got to remember when that vote was put out it was for a 38-foot boat because that's what existed, not a 50-foot boat. So we were grandfathering or we were trying to get the declarations changed for a 38-foot boat not a 50-foot boat. The 50-foot boat came in in October.
Q. When you reached the agreement with Richard Rosic, there was no special assessment in the works to -- for the repair of any part of the marina, correct?
A. I'm not sure what you mean by "special assessment."
Q. Well, didn't the board provide one week notice to board member -- excuse me, to mooring owners to say, you got seven days, repair your moorings or else we're charging you $2,000 per mooring?
A. I don't think it was quite like that but they were given their seven-day notice as it's set up in our declarations to get back to the board, correct.
Q. And do you recall when that occurred?

A. Not right off the top of my head.
Q. Do you recall when the contract with Bellingham to repair the marina area was entered into?
A. I'd have to check the documents.
Q. Okay. So from 1993, as far as you know, until that you've got seven days mooring owners -- from 1993 to that seven-day notice letter are you aware of the board ever going to any mooring owner to say, you need to fix something?
A. From what I know not that I'm aware of.
MR. GOODWIN: We're coming up to five to four. Could we take a break?
THE ARBITRATOR: That's what I was going to suggest. Let's take a stretch.
(Whereupon, a recess was taken from 3:55 p.m. to 4:02 p.m.)
Q. Mr. Oakes, is it your understanding that finger piers and moorings are the same thing?
A. You mean interpret them that way at Kalele kai? Yes.
Q. So a finger pier is a mooring and a mooring is a finger pier?
A. Yes.

Q. Then let's go to 530. This is a very important document that must be read carefully according to Certified. Do you see that?
A. Yes.
Q. Just so everyone is clear, Certified got bought out by Associa. But the management company didn't change. It's just been bought out, correct? Right?
A. That's my -- that's my understanding.
Q. In this very important document from Alan Takumi it looks like a form letter that went out to all owners, right?
A. That's right.
Q. It says here going down the middle of this thing here which someone handily underlined for us it says, "Your assessment of $2,000 per mooring is due by October 30, 2011."
Do you see that?
A. Yes.
Q. And then at the top it says, the re line says, "repair boat moorings resolution technical specifications."
Do you see that?
A. No. I'm lost.
Q. The regarding line at the top.

A. Okay. Yes.
Q. And it says, "Dear Hitoshi Yoshikawa, owner of boat docks 28, 29, 30, 31, 32 and 33."
Do you see that?
A. Yes.
Q. So the Yoshikawas were charged 12 grand, correct?
A. That would be semi correct.
Q. Because there was some discount at the end, it was a little bit less?
A. Correct.
Q. They got charged for 29, 30, 31 and 32 even though one of them turtled in the Richard Rosic days and all of them were removed, correct?
A. This goes for the space -- 28, 29, 30, 31, 32 and 33 is the space on the common area that it actually takes up. That space is whatever the width of it is times six. It's whatever.
Q. Five minutes ago I thought moorings and finger piers were the same thing.
A. They are.
Q. So if 29, 30, 31 and 32 don't exist, what are they getting charged for?
A. The actual space that that boat takes up or that space that that boat is there.

Q. So when it comes to charging boat owners something, it is based on the open space. But when it comes to repairs then it's the finger piers are their responsibility? I'm confused.
A. Let me see if I can unconfuse you. You have the front page that goes down -- on the front face.
Q. Of the?
A. The walkway.
Q. The common walkway?
A. There's two-pieces to that common walkway. There is the back piece and front piece. They are tying up, if you pull out pictures of the boat they actually tie up to that -- which is their -- is part of their limited common element.

Q. Okay. So here it says owner of boat docks 2, 29, 30, 31, 32 even though there are no boat docks 29 through 32, correct?
A. That's not true.
Q. Where are they now?
A. It's right still there. A space on that common area that they tie up to and they utilize.
Q. They utilize along with everyone else

who wants to utilize it, right?
A. No.
Q. They don't?
A. There is no other boat allowed in that space.
Q. People walking their dogs, jumping off of kayaks, kids playing, people strolling and all that good stuff, what are you talking about?
A. You went through a whole bunch. But, no, I'm not sure where you want to go to. It's not where anybody else ties up anything to secure their own personal craft.
Q. I didn't ask if it was tied up. I said do other people use that common walkway?
A. Walkway, yes. Not the whaler boards between the walkway and the actual front. There is whaler boards that are there that is actually common limited elements.
Q. If some guy pulls up, we'll call him Brad for purposes of this question, and he's got a paddle board and he goes there and he uses this walkway to ease himself into his paddle board and goes out, he's not using that area?
A. He could be. But it's not his area to do.

Q. Okay.
A. Or it's not his area to exit from.
Q. Okay. And when owners were given the seven days after 20 plus years to engage in their required maintenance they had to get, follow Bellingham specs, correct?
A. That is correct.
Q. And Bellingham had to approve what they did, correct?
A. As laid out in the rules of Amendment 10 that was put together with the rules. That was part of the rules of Amendment 10.
Q. Did the board members ever circulate legal opinions from Chris Goodwin to the nonboard members?
A. Say that again, please.
Q. Did the board as far as you know did the board ever circulate legal opinions from Mr. Goodwin to nonboard members?
MR. ZALEWSKI: Objection. Lack of relevance. We're not relying on advice of counsel. This is a fishing expedition.
THE ARBITRATOR: Offer of proof?
MR. REVERE: I think it goes to the documents we want to negative their good faith

defense which is all the remaining stuff on the privilege log we haven't seen and any other documents we haven't seen. If they are waiving the subject matter of what's in the hidden documents, we are entitled to find out about it.
THE ARBITRATOR: Ask your question again.
BY MR. REVERE:
Q. My only question is has the board circulated opinion letters from Mr. Goodwin to nonboard members?
MR. ZALEWSKI: Same objection. He's also deposed. That was during the discovery phase of this case. We're now in the hearing itself. I don't see how it's relevant to the actual hearing itself, especially since we already made the representation pursuant to dialogue that we're not relying in any way on advice of counsel.
THE ARBITRATOR: Your question is whether or not it pertained to the issues at bar in this arbitration, Terry? A general question as to whether the board from time to time circulated Mr. Goodwin's opinions to the homeowners?
MR. REVERE: Yes. Not about the

elevator for example, but about boats, boat docks, et cetera.
THE ARBITRATOR: You can answer that with the understanding that this is really an administrative question. I don't want to get into the substance of the --
A. Honestly I don't understand the question.
BY MR. REVERE:
Q. I'll break it down. You understand, you know John and Chris have been objecting based on attorney/client privilege when I asked what was discussed in executive session with Chris. They object and they say attorney/client, okay? You're aware of that privilege?
A. Yes.
Q. Did you ever at any time, did the board ever at any time receive written opinion letters from Mr. Goodwin about anything having to do with boats, docks, et cetera?
MR. ZALEWSKI: I think he's asking for a yes or no answer.
A. Yes.
Q. Did the board ever decide, hey, we should circulate these to people beyond the board,

like the rest of the homeowners?
A. To the best of my knowledge anything that comes from our council is confidential and should stay within the board. What other people have done I can't honestly tell you.
Q. Before you were on the board did you ever see any opinions from Mr. Goodwin about boats and boat docks and things like that?
A. No.
Q. Do you know of, since you've been on the board, prior boards passing out his opinions to homeowners?
MR. ZALEWSKI: About boats or boat docks?
MR. REVERE: Yes.
A. Do I know about a prior opinion that Mr. Goodwin -- I want to make sure I understand what I'm answering.
Q. Yes.
A. Do I know of any opinions that have been put out to the board that have been put out to the public? Is that what you're saying?
Q. Not everyone in Honolulu. But the other owners.
A. The 229 owners? The answer is no, I'm

not aware of any.
Q. Could you go to Exhibit 516.
A. 516?
Q. Yes.
A. All right. Okay.
Q. Can you go to the second page of this document.
A. Okay.
Q. The fourth paragraph down. It says, "I must remind everyone." Are you with me?
A. Yes.
Q. It says, "I must remind every everyone that if this does not pass, the board will be forced to tell all dock owners to put the piers back to the original configuration as outlined in your declaration."
Do you see that?
A. Yes.
Q. First of all, says who?
A. That's what we were voting on. If they didn't modify them, basically we're saying no, we didn't want the modifications done. They would have to put them back.
Q. Okay. No, my question is if this amendment that we're talking about in this time

period which was in July of 2009 if it didn't pass, who says that the board would have to tell the owners to put them back?
A. By the amendment not passing. It's out of -- it's out of the declaration of what's going on. The board did not have the approval to modify the marina. Now it has the approval with the Amendment 10 to modify the marina.
Q. Okay. So who said that you'd have to tell? It says "forced". What is the part of the declaration or anything else you can point me to that bayonettes the board into telling the dock owners that?
MR. ZALEWSKI: I'm going to object as to the characterization. Argumentative.
Q. It says "forced".
A. Let's go back and take this line. Obviously this was made so we could get Mr. Rosic's agreement signed because we had 60 days to do that. Obviously it's pushing the homeowners to get this done. Obviously there would be a legal battle at that time if that didn't get done. We are having that same legal battle today. It's a little different but it's still the same.
So that was the one reason we could get

it modified and done. We wanted it spelled out to the owners what the consequences are if it doesn't pass.
Q. Okay. Did anyone tell you, and I'm not saying relying upon your interpretation of the declaration, did anyone tell you that's what you'd be forced to do with the dock owners? Or is this more of a campaign pitch?
MR. ZALEWSKI: To clarify, you mean out of counsel communication, right? I'd object to the extent it relies on attorney/client communication.
THE ARBITRATOR: You could ask both of those questions if you want.
Q. Did anyone tell you you'd be forced to tell dock owners to put their piers back?
MR. ZALEWSKI: I think this is just initially a yes or no answer.
Q. Yes. Yes or no for both, please.
MR. ZALEWSKI: Only yes or no.
A. I'm just trying to think if any -- I honestly don't --
MR. ZALEWSKI: Or I don't recall.
A. Obviously there was no reason to run the amendment if you didn't pass it. So if it

didn't pass, there had to be consequences to it not passing and there had to be benefits for it passing.
So in doing so, there would be no reason to run this past the homeowners unless it wasn't. I'm not sure if anybody told us but it only made sense that they either go back or forward.
Q. That's not my question, what made sense and what didn't. Did anyone tell you?
A. I don't recall.
Q. You mentioned in here costly legal battles, correct?
A. Correct.
Q. How many costly legal battles were there with boat owners or dock owners before you became president?
MR. ZALEWSKI: Objection. Calling for speculation.
THE ARBITRATOR: If you know.
A. I don't know.
Q. Does the number zero sound familiar?
A. I don't know.
Q. Can you think of any dispute the board had with any boat owner before you became

president? Excuse me, before you got on the board?
A. I couldn't tell you either way. Because I had no knowledge of what was going on within the board of what was happening at that point with boat owners or not.
Q. There's been multiple disputes since you've joined the board, correct?
A. I would say that's true.
Q. And those would include disputes with Von Guenthner who at one time owned a third of these, right?
A. You're telling me that, I have no idea.
Q. And Rosic who owned multiple slips, correct?
A. That's correct.
Q. Hung who owned multiple slips?
A. Correct.
Q. Peterson who owned multiple slips?
A. Correct.
Q. Hung who owned multiple slips?
A. Asked twice.
Q. Rosic, how about him?
A. No.
Q. Rosic you had a dispute with him,

correct?
A. We have not had a dispute with him.
Q. Rosic sent a letter out to every homeowner about his not happiness with the board in the last year, right?
A. Okay.
Q. You don't recall seeing a letter?
A. No, I don't.
Q. In any event, one of the motivations for this counterclaim is because of the Sabrys complaining about their view, correct?
A. Not true at all.
Q. Not true at all?
A. No.
Q. Do you recall in your deposition saying that one of the reasons you're bringing this was because of their complaints about views?
A. No.
Q. That never happened?
A. I didn't say it didn't. I don't recall. That's what it was. This has nothing to do with Darla and Dan's view. This has to do -- this is long before they even got started living where they live today was going on as far as the marina.

Q. I'm not talking about this like the problems with Richard. I'm talking about this counterclaim, one of the reasons that you're bringing it is because they are complaining about their view, right?
A. No.
Q. That's not true?
A. Not true.
Q. And you've said that shouldn't be believed about anything, right?
A. What's that?
Q. Anyone who would say otherwise shouldn't be believed, right?
A. I don't know what you mean "shouldn't be believed."
Q. Well, if someone said one of reasons we did this is because owners are complaining about views, they would be making that up?
MR. ZALEWSKI: Objection. Improper hypothetical. Calling for speculation. Each person has different knowledge. How would he know whether they are making it up or not.
THE ARBITRATOR: You can answer the question if you can understand.
A. I don't understand the question. And

nor do I --
Q. In your executive session did you talk about, hey, owners have complained about their views?
MR. ZALEWSKI: Objection. Attorney/client. Can you answer without divulging attorney/client?
A. I think I've answered that already today. That really never got into the consideration into our executive sessions. There is more than just the views and more than just what's going on there. That might be one percent out of 99 other percent of what's going on. That was never ever really the issue as it was at that.
We're talking a lot more in depth of out of compliance, how do we get our declarations when somebody signs it to look the same as what they signed. Today when somebody buys a home --
Q. Mr. Oakes, this will go a lot faster if you just answer my questions.
MR. ZALEWSKI: I think he was answering the question.
MR. REVERE: No, he wasn't.
Q. My question is do you recall testifying previously that the two reasons for the

counterclaim were the desire for compliance with the 23-foot rule and views, people complaining about their views?
A. I don't totally -- I'd have to go back and look.
Q. We'll go back. In any event, did you ever explain to -- you said there were three owners that complained about the boat, right?
A. Yes.
Q. Did you ever go to any of the owners, I'm sorry but as Mr. Stone and Mr. Showe mentioned in the declaration there is no view guarantee at the Kalele Kai?
A. No.
Q. So why didn't you just tell them as far as the view thing is concerned read the declaration, there's no view, don't complain to us about the view?
MR. ZALEWSKI: Excuse me. There's about three questions in there.
Q. I'll ask each one. Did you tell them, don't complain to us about views?
A. I listened to all complaints whether they are valid or not I listened to them.
Q. So you would agree then that an owner

complaining about views and expecting the board to do something about it isn't legitimate given your governing documents, correct?
A. We look at -- we listen to everybody. We try to resolve as much as we can and we try to move forward. You can say the same about landscaping that grows up in front of somebody's house. Quite frankly I didn't put the tree there and it grew up to the second floor. Guess what, we're not cutting the tree down because it's growing there. So what you're saying is absolutely correct. Have I gone and did what you said? Absolutely not because there has not been a need to because we're really not worried about their view planes. We're really concerned about the legalities of our declarations look today and how we can get out of the mouse trap that there.
Q. But you do recall testifying that one the reasons this counter claim has been brought is because three owners complained, right?
A. As I just told you a few minutes ago, I might have or not. I don't recall totally.
Q. Forget about what you said in the deposition. When you guys were sitting around as board members talking about this, did you say,

well, since these owners are complaining we've got to saddle up and go after Yoshikawa first?
A. No.
Q. So just so we're clear here, then the only motivation for this counterclaim is because you want compliance with the 23-foot rule?
A. We want compliance with our declarations. We want the declarations to read the same as when somebody signs it. When they come on the property tomorrow and buy a property there, they are not signing something that says a 23-foot maximum boat is all they have and they go out there and they see different.
We need to change that so it looks -- so that when you buy something there you know what you're buying.
Q. Or else what?
A. Or else you get paid more because at the end of the day they are coming to you saying I signed this and this isn't true.
Q. Okay. Who is that?
MR. REVERE: Mr. Goodwin can stop his head nodding because again it's sending a signal that I agree with that?
MR. ZALEWSKI: That's an exaggeration.

MR. REVERE: If I flip you the bird right now, John, is that sending a nonverbal signal?
MR. REVERE: He's nodding his head uh-huh (affirmative), that's what he said, and I was there. Keith, they are circling my advice right there. I asked Mr. Goodwin to try to control his head nods.
MR. ZALEWSKI: Sorry. I just combed my hair out of frustration.
MR. REVERE: That's okay. We know what that means.
BY MR. REVERE:
Q. In any event, so take everything that you say, say we need to do this, right? But the bottom line is all these owners were expanding their moorings, putting in big boats for years. So what was the problem?
A. I think you've taken "for years" way out of context. You only asked for --
Q. I'll back up.
MR. ZALEWSKI: He started to answer the question and he got interrupted.
MR. REVERE: He starts arguing with the question.

THE ARBITRATOR: Pose your question, the same way you just did, and let the gentleman answer it.
BY MR. REVERE:
Q. Did the board allow side ties of large boats over 23 feet for years at the Kalele Kai before you were board president, yes or no?
A. Yes.
Q. Did the world end because that happened?
A. Again, I wasn't board president, I can't tell you.
Q. And you still haven't moved out, right?
A. No.
Q. Property values have gone up?
A. I would hope so.
Q. And we now know the purpose has to do with the marina association not anything else, right?
A. I'm not sure I understand your question.
Q. Is there anything in the declaration that says in order to protect views that's not guaranteed anyway, we have a 23-foot restriction? Do you see any language like that in the

declaration?
A. No.
Q. And we know that Bellingham provided a 49-foot side tie area, correct?
A. I'm not a hundred percent convinced of that sitting here looking at the map.
Q. You've seen the developer's rendering with a boat sitting in a 69-foot side tie area?
MR. ZALEWSKI: Objection. That was asked and answered in detail. We had the full-sized map out. We're going just over old ground now.
MR. REVERE: He answered with Richard.
THE ARBITRATOR: This witness answered the same thing.
Q. Your insurance agent is Tracy Wong, correct?
A. Correct.
Q. Did you ever consult with Sue Savio about any insurance issues at the Kalele Kai?
A. I personally have not, no.
Q. Did anyone else?
A. Our resident manager might have. When we go out to bid for our insurance we look at different brokers.

Q. It's your contention that Tracy Wong screwed up by not getting the boat area insured, correct?
MR. ZALEWSKI: Objection. Misstates the record.
THE ARBITRATOR: Terry, what do you mean by that?
Q. Do you recall it was your understanding that your insurance agent neglected to get insurance on the docks at one point?
A. I'm not sure it was our insurance agent's neglect. But it was not done. There was no not -- there was no -- we had general liability but we did not have replacement value for that marina which again our declarations state that we need to have replacement value for what's going on there. If that dock got blown away during a tsunami or hurricane, we didn't have that. It needed to be done.
Q. So it didn't -- she originally didn't insure it then she got it fixed, correct, at some point?
A. Yes.
Q. And Ms. Wong never said you must repair the dock area or I can't insure it, correct?

A. She never said it.
Q. She only said it would be better for things to be fixed up?
A. No.
Q. Isn't that what she said?
A. No. She actually said, so we don't get declined when we go to apply for the insurance it needs to be repaired and has a maintenance record to go with it.
So that's -- obviously we had one end, dock 59 and 60 that were basically condemned moving away. That's not the good time to have somebody come out and inspect it.
Q. Can we go to your Exhibit 525. This looks like an email from Tracy Wong from to you and Bryan Liu, correct?
A. That's correct.
Q. Again, through someone's handy underlining all these underlines are stuff that's added after the fact, right?
A. I'm not sure what you mean by "added after the fact".
Q. Your exhibits have lots of circles and things?
A. Yes.

Q. Here it says, "We advise you it's better to complete the repairs and updates to the dock prior to applying for the insurance," correct?
A. That is correct.
Q. By June 25, 2011 the decision was already made to go forward with the repair, correct?
A. I'd have to look at my notes. I don't believe that's correct.
Q. You're saying Tracy Wong the agent that wasn't insuring the dock in the first place dictated that you had to do this repair project through Bellingham?
A. She did not dictate that we had to go through anybody nor did we have to get it done, just advising us that if we didn't get it done there would be a very high premium or possibly be in decline to get it done.
Q. And after she didn't insure it in the first place did you think about looking for someone else to do the insurance agent work?
A. We had a conversation with her about why it wasn't done.
Q. Can you go to Exhibit 526, please.

A. Sure.
Q. 526 this is something that you wrote?
A. Pieces of it. But yes.
Q. And you mention that at this time it looks like -- when did this come out? June of 2011. Do you see that?
A. Yes.
Q. It says here, "Dock repairs will be needed in the near future which Bellingham Marine has brought to our attention."
Do you see that?
A. Correct.
Q. So Bellingham Marine brought the fact -- let me back up here. It's your understanding that Bellingham built the original docks, correct?
A. At the time when this all got started I honestly didn't know that. But today I know that, yes.
Q. That's your understanding anyway?
A. Yes.
Q. Then Bellingham got a contract without a bid to evaluate the state of repair, correct?
A. Negative.
Q. So there was -- you sent it out for

three bids to see who should be the expert, tell us what shape our docks are in?
A. We sent it -- at the time the resident manager was Bryan Liu. We sent it out for -- I can't remember the exact dates. There are emails that I believe have been discovered on that, exactly when, I may be wrong. But we did not get any response.
We did finally get a response out of Pacific Divers. Pacific Diving, Pacific Divers something like that. They put a bid together that was not comprehensive of what needed to be done. Nor did we ever hear from them after that got done.
We did hear from Bellingham after the tsunami because they came out here for Key Hee lagoon when it fell apart with the tsunami. They did that repair. That's when they came to our place and followed up on our conversation, and just I happened to be on property to learn and understand. I knew nothing about the marina until I started digging into it.
Q. Are there any exhibits you know that back up this, yeah, we went out for three bids business?

A. You'd have to -- again, I wouldn't say we went out for it. We asked a lot of different people who do stuff like this.
Q. Is this any documents that back up that we went out to a lot of different people?
A. I can't tell you that, no.
Q. So in any event, so they got a contract without a bidding process to evaluate the docks, correct?
A. No. Not correct at all.
Q. Okay. Who else submitted bids?
A. You said they got a contract without a bidding process. They didn't get a contract at all. They came on property. They reviewed, evaluated what was going on. They took pictures. And they at that point gave us a proposal of what it would cost to take care of the property.
There was no contract in place when they put that together. We didn't pay one dollar for that to go on. Obviously they were trying to sell as a product and a service to do what needs to be done. And they were explaining to us why.
Q. Okay. So at that point when they pointed out all the things that they, quote, brought to your attention, did -- at that time to

do the actual repair work did it go out for bids then?
A. I don't honestly know if it did or didn't.
Q. Are you aware of any documents showing that it went out for three bids?
A. Again I wouldn't know because I didn't know the first question.
Q. Did you ever go to any CIA seminars hosted by people like John Morris?
A. No.
Q. Milton Motooka?
A. No.
Q. Anne Anderson?
A. No.
Q. Chris Goodwin?
A. Yes.
Q. You went do his seminar?
A. Yes, I did actually after we talked at the deposition I went to one of his.
Q. So before the time that I deposed you, when was that like a month ago?
A. Yes. Not just between now and then but I have gone at one time.
Q. In your deposition I asked you did you

do any training to become a board member and your answer at the time was no?
A. It's still no. Other than --
Q. You're not aware of any board members at Kalele Kai ever doing any type of training to be board members, correct?
A. I couldn't speak for anybody other than myself.
Q. Do you know --
A. Not that I'm aware. I mean -- have they gone to the seminars and stuff? I believe some have. I don't know which ones or how or who. I really don't know what --
Q. Okay. Can you go to Exhibit 531, please. Are you there?
A. Yes.
Q. Can you go to the second page under "unfinished business"?
A. Sure. Okay.
Q. It says "boat dock." Do you see that?
A. Yes.
Q. And it says here under section C, "The board unanimously approved to grandfather the existing four boats which do not meet the 23-foot rule."

Do you see that?
A. Yes.
Q. Then it says here the second sentence it says, "Should the owner sell his or her boat or home the dock will need to go back to its original configuration at the expense of the owner."
Do you see that?
A. Yes.
Q. Do you see any conflict between that and the agreement that was entered into with Richard Rosic?
A. No.
Q. No? Why? What does the Rosic agreement provide for in terms of original configuration, et cetera?
A. The only difference would be the 12 months without a boat.
Q. This doesn't apply to Richard Rosic if they put a boat in?
A. Richard's was Richard's thing. It wasn't out. If anybody else wanted to take it to hire you to go do what needs to do, that was Richard's deal with the board.
Q. It only applied to him and not any subsequent owner?

A. That's correct.
Q. Would you defer to the plain language of the agreement versus your memory on that one?
A. I'd have to go back to the language of the agreement.
Q. Okay. Can you go to Exhibit 532, please. Are you there?
A. Yes.
Q. Okay. And you and I were talking earlier about owners doing repairs on their own. Do you recall that? You and I talking about that earlier?
A. Okay.
Q. If you go to the second page of this document.
A. Okay.
Q. Do you see the last "whereas" clause?
A. "Whereas owners who choose to perform the work on their own"?
Q. Yes. Basically this "whereas" clause is saying owners have to get approval from Bellingham, correct?
A. That's correct.
Q. So they have to go to the company that they're taking work away from and get written

verification from them?
A. I'm not sure they're taking work away. But okay. If that's the way you see it. That's not the way I see it.
Q. You're saying that either Bellingham could do it or owners could do it on their own. But if owners do it on their own they've got to get approval from Bellingham, right?
A. If you go back to the 10th Amendment, that was written up in the 10th Amendment.
Q. It was written up in the 10th Amendment that owners that want to repair their moorings at some point in the future have to go to Bellingham?
A. Follow the Bellingham specifications, correct. I would have to look at it exactly to tell you.
Q. So do you see any problem with requiring owners to go to the company that they're taking work away from for their approval?
A. No.
Q. Can you go to Exhibit 534, please. Are you there, 534?
A. Yes.
Q. Can you go to page 2?
A. Yes. Someone outlined this.

Q. I have a sneaking suspicion but I won't share. The second page here talks about -- this is something you wrote, correct?
A. That would be correct.
Q. When you would write these newsletters did you follow a similar procedure to Richard Rosic where you'd run it by the other board members first?
A. I've never heard that.
Q. You didn't do that yourself?
A. No.
Q. Well, for any president updates that were in newsletters that you did write, did you ever hear any complaints from board members that, hey, that's not our position, or, you've got something wrong here?
A. No.
Q. Okay. And here there's a reference again to these boats being grandfathered, correct?
A. Correct.
Q. And this is in September of 2011?
A. Correct.
Q. Did the grandfathering stop at some point?
A. Yes.

Q. Let's go to, it talks about, the same paragraph that's circled and underlined says, "Kalele Kai currently has four boats which have been allowed to moore here for years."
Do you see that?
A. Yes.
Q. "That are longer than the allowable length."
Do you see that?
A. Yes.
Q. And it says moored here? "Moor here"?
A. Okay.
Q. Not pier here?
A. Okay.
Q. Not finger pier here?
A. Okay.
Q. Have you ever heard of piering a boat or finger piering a boat versus mooring a boat?
A. Can't say I have.
Q. Okay. 535. Do you see this?
A. Yes.
Q. First of all, Bill here the court reporter was he ever on the Board of Directors as far as you know?
A. Not that I'm aware of.

Q. What about Keith Hunter?
MR. ZALEWSKI: It's late in the day. Can we try to finish perhaps? Rather than being silly.
A. Not that I'm aware of.
Q. There was some earlier testimony that you weren't sharing attorney/client documents. Do you recall that? That you weren't sending them out to other owns or to anybody else?
A. I'm not sure what you're saying. I don't understand your question.
Q. I was asking before about questions about were attorney/client documents being given out to other folks when we were talking about the public.
A. Right.
Q. So this one here is one of your exhibits in this case, correct?
MR. ZALEWSKI: We'll stipulate to that. 500 series.
Q. Do you know why it is that this confidential attorney/client letter is being used as an exhibit in this case?
MR. ZALEWSKI: Just to save time, this was after the Arbitrator's ruling. The witness

doesn't know that but basically this was ruled to be discoverable. So --

MR. REVERE: I agree. There is a difference though between being discoverable and being given to the Arbitrator is my point.

Q. Do you know why this is being given to the Arbitrator?

A. I don't -- have no idea.

MR. REVERE: Well, again Mr. Arbitrator, since they are offering as exhibits which are now in evidence before you, Exhibit 535 for example, we think anything else on these matters ought to be produced. Or unless -- I don't know if they are going to withdraw it or what the story is. But it's sitting here in front of you. I think we're entitled under all the case law we cited previously to get everything. They can't use parts of some and not others.

THE ARBITRATOR: I'm not prepared to rule on that right now, Terry, because I haven't had a chance to even read Jana's letter which I think is responsive to your email motion, right?

MR. REVERE: Okay.

THE ARBITRATOR: I could do that this

evening, and we could take it up first thing tomorrow morning.

MR. REVERE: Okay.

THE ARBITRATOR: I'd like to know which -- are there specific documents you are contending that you are now aware of or may be aware of that should have been produced regardless of whether they are in the privilege log or not?

MR. REVERE: Yes. I'm having my paralegal go through and look at those, number one. But there's two separate but somewhat related issues. There's did they produce everything to us and the answer is no. And then there is are they using stuff that is regardless of production are they using stuff for this case? Here as an exhibit that they submitted is an attorney/client letter with all sorts of attorney/client stuff about these boat docks.

And I think that we are entitled when they are affirmatively giving it to you, for us to see, okay, what information was given to Mr. Goodwin, do we have a situation like we clearly had with Bellingham where an opinion letter is being written and a decision is made, and then they go to Bellingham, oh, can you bless this

after the fact for us.

We don't know what went into these things. So if they are going to submit them to you we would like to find out how the sausage was ground. If they are going to withdraw it they can withdraw it. It is sitting here as an exhibit obviously intended to influence you or else they wouldn't have given it to you

THE ARBITRATOR: All right. Let's proceed.

MR. ZALEWSKI: I don't think there is a question pending, Mr. Oakes. Wait for the next question.

BY MR. REVERE:

Q. Can you go to 536, please. Have you seen this before?

A. Yes.

Q. Did you participate in an arbitration with the Hungs?

A. Yes.

Q. Could you go to page 9 which again someone has highlighted or underlined. Can you just read over that paragraph that's sitting in brackets to yourself.

A. Okay.

Q. The first sentence here, the one that begins with "therefore". Do you see that?

A. Yes.

Q. Anything that Arbitrator, who will go nameless, got wrong in that sentence?

A. First of all, this is in regards to the Hungs. And I don't believe that they were ten years from the time they actually modified their -- and put a boat in to the time this was actually done. It was more like six or seven years.

Q. For the Hungs?

A. For the Hungs.

Q. And what the -- the reference to the ten years had to do with the AOAO policy not the Hungs, correct?

A. This is about the Hungs. So I don't know about the policy --

Q. Fourth line down it says "the Hungs and other boat mooring buyers/owners."

Do you see that?

A. Yes.

Q. Can you go to Exhibit 5 -- can you go to Exhibit 540, please. Have you seen this before?

A. Yes.

Q. You understand that the association is not relying upon the advice of counsel, correct, as a defense in this case?
A. Correct.
Q. So again, do you know why attorney/client documents are being given to the Arbitrator as exhibits?
MR. ZALEWSKI: Again I think it's irrelevant. But also don't divulge any attorney/client communications in answering the question, Mr. Oakes.
A. I have no idea.
Q. I asked you before about Hamsterdam. Have you ever been to Denmark?
A. No.
MR. ZALEWSKI: Objection. Irrelevant.
Q. Can you go to Exhibit 541, please. There's an email here again from Mr. Goodwin to, looks like KC Udagawa and Bryan Liu. Do you see that?
A. Yes.
Q. Do you know if you got a copy of this or informed of it on or about November of 2012?
A. I don't know what the date was. But I was informed they were looking at increasing the

size of their boat, yes.
Q. And the second paragraph here it reads, "By way of background the board does not currently have authority to, quote, "approve," end quote, the proposed mooring of any boat, et cetera.
Do you see that?
A. Yes.
Q. The word "approve" is in quotes?
A. Correct.
Q. And then in the bottom of this paragraph what's written is, "The board will not and cannot expressly approve the mooring of any boat at Kalele Kai in excess of 23 feet in length."
Do you see that?
A. Correct.
Q. It says "expressly approve," right?
A. Expressly restricts. I don't see "approve" unless I'm not reading the right thing. Oh, I see down below, yes.
Q. That's what the board's position was at that time, correct, November of 2012?
A. Still has been.
Q. And were any -- if any letters that you're aware of, I talk about you personally, but

do you know if the management company or anyone else working for the association ever wrote any complaining owner that was complaining about views, what the declaration says about views?
A. I know in regards to landscaping we've had some. And I'm not sure what was specific to that piece of what was put into the letters. But I do know that has been, the landscaping piece has always --
Q. And you mentioned, hey look, there's trees, trees grow and sometimes owners complain about it, right?
A. Right.
Q. In that context do you know if the board has said basically just that, trees grow and there's no views guaranteed under our declaration?
A. As I said earlier, we always try to listen to the owner. We try to come up with a resolution to make everybody happy. Kind of like running a condo is like running a hotel. You want to make sure you can keep the people happy there the best you can without giving too far with changing the presence of what you're doing.
So if we can and will change a few things we will. If we can't we can't. I mean, I

can't take a tree out that's 15 years old. I can take a plant out that when planted in that was planted some place a year ago --
Q. My only question is did they ever get any written letters saying --
A. I can't answer your question.
Q. Can you go to Exhibit 545. In the second paragraph Richard discussed this. It says, "The primary reason they," meaning the Yoshikawas, "purchased a townhouse at Kalele Kai was that it came with a dock that could accommodate a large boat." Do you have any reason to dispute that?
A. I have no knowledge either which way.
Q. Can you go to Exhibit 556, please. Are you there?
A. Yes. I'm sorry.
Q. Do you recall any issues ever coming up regarding kayaks?
A. Yes.
Q. What was the issue with kayaks?
A. Where to put them.
Q. And one of the suggestions about where to put them was on the common walkway?
A. They were there when I got there. But yes. That's where they've been.

Q. And do you see a reference on page 7 of this document?
A. The declaration. It's in that one. Yes.
Q. So what happened with that kayak ballot?
A. It got approved by the homeowners.
Q. And more homeowners have kayaks than boats correct, than other boats?
A. That would be true.
Q. Going to 560. There's this -- do you know who was doing these underlines?
A. I'm seeing this for the first time. So I have no idea.
Q. Okay. Can you go to Exhibit 561. Do you have any -- for 561 do you know why the fourth paragraph down it says, "Kalele Kai is now being run by a bully board that's trying to have their way not only on the dock but on other matters as well."
Do you know why that part wasn't underlined?
A. I have no idea.
Q. Go to 562. Do you recognize this?
A. Yes.

Q. What is 562?
A. It's our new version of the Kalele Kai Kurrents.
Q. And you're talking about -- here you talk about, because I think a few minutes ago, maybe an hour ago you said that views weren't part of the analysis, correct?
A. That's correct.
Q. What you write here in the newsletter, did you write this or did somebody else?
A. Somebody else wrote it.
Q. Who wrote it?
A. Robert Ingram.
Q. Bob Ingram?
A. The resident manager.
Q. The current resident manager. Did he run this by you?
A. He ran it by me. At the end of the day I signed off on it.
Q. And here it says, "The proposed amendment seeks a fair an equitable compromise which addresses the concerns owners have expressed regarding restricted views and desire to moor longer boats." Do you see that?
A. Yes.

Q. In fact, the declaration expressly says there aren't any views that are guaranteed, correct?
A. I'd have to review the declaration.
Q. Whatever the declaration says you'd go with, right?
A. Absolutely.
THE ARBITRATOR: It's a few minutes after 5:00, so if you're going to be switching gears we might as well stop now.
MR. REVERE: Okay.
(Discussion off the record.)
(Arbitration adjourned at 5:05 p.m.)

CERTIFICATE

I, WILLIAM T. BARTON, C.S.R., do hereby certify:
That I was acting as shorthand reporter in the foregoing matter on August 25, 2014, commencing at 9:00 a.m.;
That each witness whose testimony is contained herein, prior to being examined was duly sworn or affirmed;
That the arbitration herein was by me taken down in machine shorthand and thereafter reduced to print via computer-aided transcription under my supervision; that the foregoing represents a complete and accurate transcript of the above proceedings to the best of my ability;
I further certify that I am neither counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in the caption.
Dated this 1st day of September 2014 at Honolulu, Hawaii.

WILLIAM T. BARTON, CSR No. 391
Certified Shorthand Reporter

KALELE KAI

October 28, 2013

Hitoshi Yoshikawa
One Kealhole Place
Townhouse 6
Honolulu, Hawaii 96825

Dear Mr. Yoshikawa:

This letter serves as a citation for your violation of the provision of the Declaration regarding boat size. The Declaration states: "The boat moorings shall be restricted to use by boats no larger than twenty-three (23) feet in length..." The boat now occupying your moorings exceeds twenty-three (23) feet in length. Please remove this boat immediately.

Should you have any questions, please contact me at the Management Office at (808) 395-0431.

Regards,

Robert Ingraham
Resident Manager

Cc: Alan Takumi, Account Executive, Associa Hawaii

EXHIBIT 11 YOSHIKAWA
PENGAD 800-631-6989

EXHIBIT 569
PENGAD 800-631-6989

EXHIBIT 25

KK000148

CHRISTOPHER SHEA GOODWIN

ATTORNEY AT LAW LLLC
737 BISHOP STREET
SUITE 1640 MAUKA TOWER
HONOLULU, HAWAII 96813
TELEPHONE 808 531-6465
TELEFAX 808 531-6507

Christopher Shea Goodwin*
chris@christophersheagoodwin.com
*Admitted to practice in HI and TX

Thomas D. Sands**
thomas@christophersheagoodwin.com
**Admitted to practice in HI and CA

November 5, 2013

Via e-mail: terry@revereandassociates.com

Terrance M. Revere, Esq.
Revere and Associates
970 North Kalaheo Ave., Suite A301
Kailua, Hawaii 96734

Re: Kalele Kai – Unit 1006/Boat Moorings 28-33
Your Client: Hitoshi Yoshikawa

Dear Mr. Revere:

As you are aware, the undersigned is legal counsel to the Association of Owners of Kalele Kai ("Association"), and writes this letter by authority of its Board of Directors ("Board").

As you were previously advised in the undersigned's correspondence to you dated June 4, 2013, the Board **denied** your client's request to moor a 51 foot boat anywhere at the Kalele Kai waterfront marina due to the following restriction set forth in the Declaration of Condominium Property Regime of Kalele Kai ("Declaration):

> The boat mooring shall be restricted to use by **boats no larger than twenty-three (23) feet in length**.
>
> See, Declaration, Paragraph 5(b), page 7, in part. [emphasis added].

However, following notification of the Board's denial of his request, your client nonetheless ignored the Board's decision and moored a 51 foot boat at the Kalele Kai marina.

Insofar as our respective clients have already participated in Mediation of this matter pursuant to HRS §514B-161 which unfortunately failed to result in any settlement, demand is hereby made upon your client to **remove any boat exceeding 23 feet in length** from mooring at the Kalele Kai waterfront marina, and to cease and desist from the future mooring of any boat exceeding the 23 foot length restriction expressly stated in the Declaration.

EXHIBIT 575

EXHIBIT 26

KK001183

Should your client fail to comply with herein stated demand by the close of business on **December 31, 2013**, the Association reserves its right to impose fines against your client for the herein described violation of the project's Declaration in accordance with the Kalele Kai Fine Schedule and Procedures, and assess attorneys' fees against your client pursuant to H. R. S. §514B-157(a)(3) incurred in connection with enforcing the above stated provision of the Declaration.

Should any of you have any questions regarding any aspect of the above, please do not hesitate to contact the undersigned at anytime.

Very truly yours,

CHRISTOPHER SHEA GOODWIN AAL LLLC

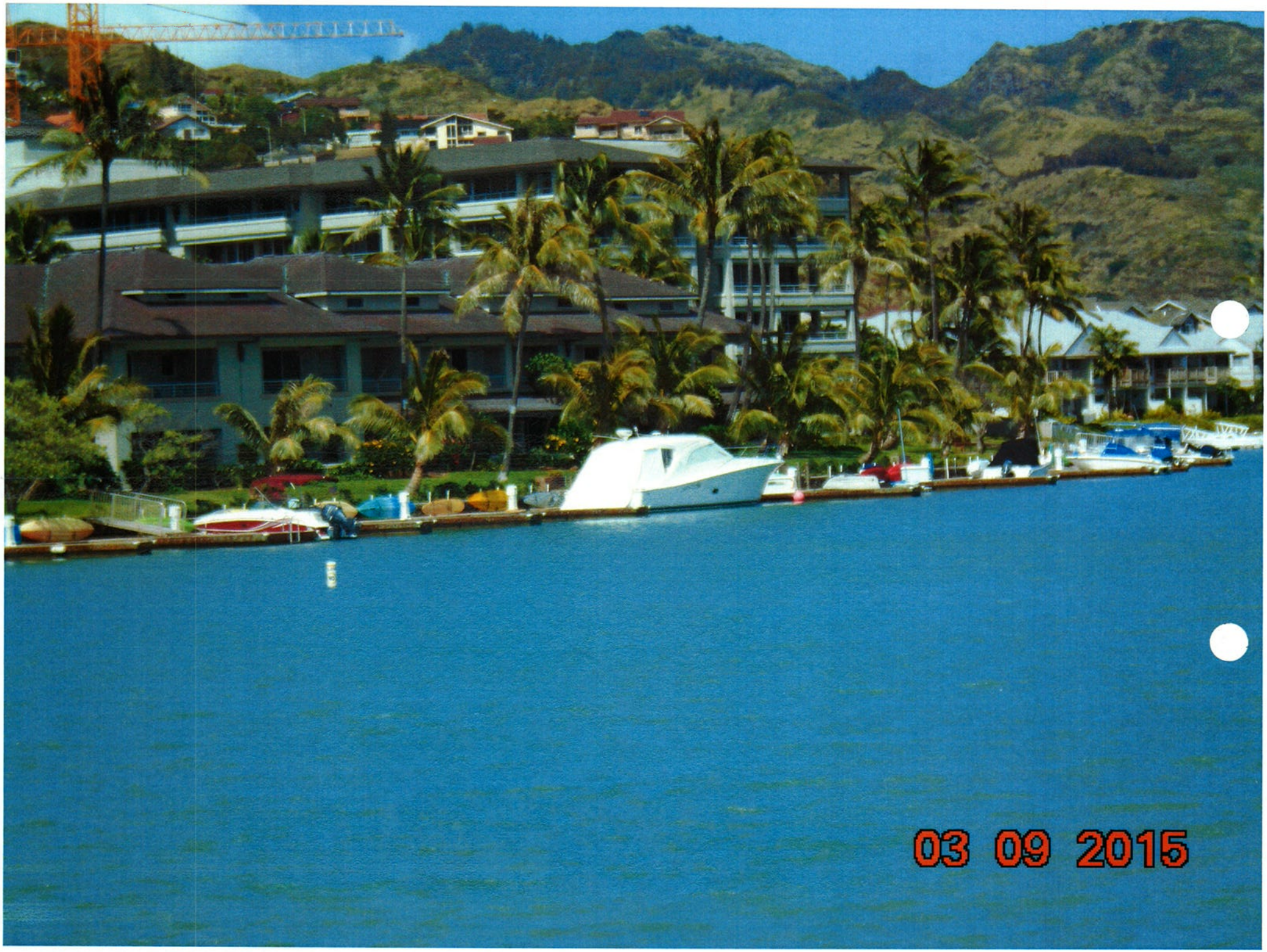
Christopher Shea Goodwin
Thomas D. Sands

cc: Association of Owners of Kalele Kai Board of Directors
c/o Alan Takumi, Associa Hawaii



EXHIBIT 27


03 09 2015


03 09 2015





4/8/11



Kalele Kai Marina
Maintenance and Rehabilitation
Table of Contents

Introduction Letter

1.0 Maintenance Condition Assessment

2.0 Repair and Refurbishment Proposal

3.0 Annual Maintenance and Inspection Agreement

4.0 Maintenance Project Experience

5.0 Qualifications

2011

PENGAD 800-631-6989 EXHIBIT 523

EXHIBIT 28

Bellingham
Marine
Industries, Inc.

5500 Nordic Way
Ferndale, WA 98248

(360) 380-2142
FAX (360) 384-8134

Bellingham
MARINE
The World's Most Comprehensive
Marine Builder

April 8, 2011

Mr. Edward Bronson
Mr. Bryan Liu
Kalele Kai Marina
One Keahole Place
Honolulu, HI 96825

Re: Kalele Kai Marina Maintenance and Rehabilitation

Dear Sirs:

Thank you for providing us this opportunity to present our proposal for the maintenance and rehabilitation of the concrete floating dock system for the Kalele Kai Marina. As the world leader in the design and construction of small craft marinas and harbors, we recognize that each project is unique and work with the Owner to create a facility customized for the specific location and market. Who better to maintain your docks than Bellingham Marine, the company who originally built them! We look forward to partnering with you to solve your maintenance and rehabilitation challenges.

We present the following report outlining the condition of your marina system and providing feasible maintenance and rehabilitation solutions. This report includes:

1) Maintenance Condition Assessment
2) Repair and Refurbishment Proposal
3) Annual Maintenance agreement

Also enclosed is information on recent Marina Rehabilitation projects completed by Bellingham Marine and a summary of Bellingham Marine Qualifications and Manufacturing experience.

We welcome the opportunity to solve your maintenance challenges. Please do not hesitate to contact me with any questions you may have in moving forward in the next step of the maintenance and rehabilitation plan.

Sincerely,

BELLINGHAM MARINE INDUSTRIES, INC.

Jesse Ellenz

Jesse Ellenz
Northwest Division General Manager
360-543-5801 Direct
360-410-1521 Cell
jellenz@bellingham-marine.com



MAINTENANCE CONDITION ASSESSMENT

This section includes Bellingham Marine's Maintenance Condition Assessment of the Kalele Kai Marina.

Bellingham Marine Industries, Inc.
5500 Nordic Way
Ferndale, WA 98248
(360) 380-2142
FAX (360) 384-8134
www.bellingham-marine.com

Bellingham MARINE
The World's Most Comprehensive Marine Builder

Pre-Construction Survey / Condition Assessment

Project Name: **Kalele Kai**

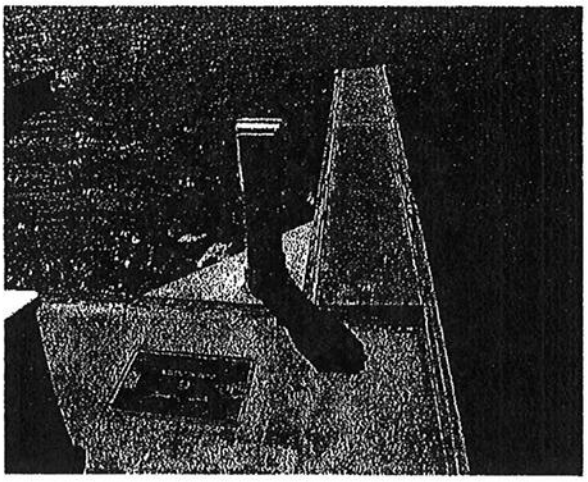
Project Location: **Honolulu, HI**

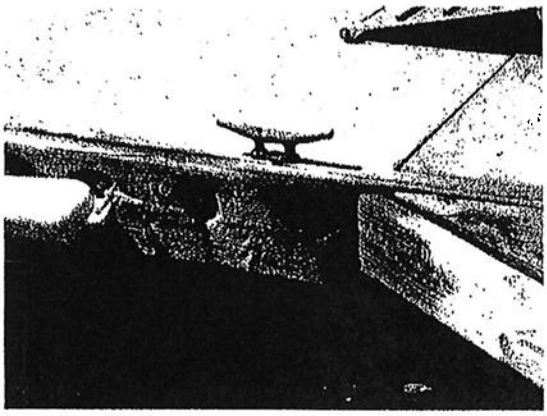
Date: **4/5/11**

Observer(s): **Jesse Ellenz / per pictures received via Brian Liu**

CONCRETE UNIT CONDITION(S):

Comments/Observations: **The concrete floats were manufactured in 1991 and appear to be structurally sound. Bellingham Marine only observed the above waterline condition. There appeared to be some cracking in the deck surface and Bellingham Marine would recommend that a concrete sealer be applied to minimize environmental conditions and further cracking. See photo to the right as well as other photos attached at end of Condition Assessment.**



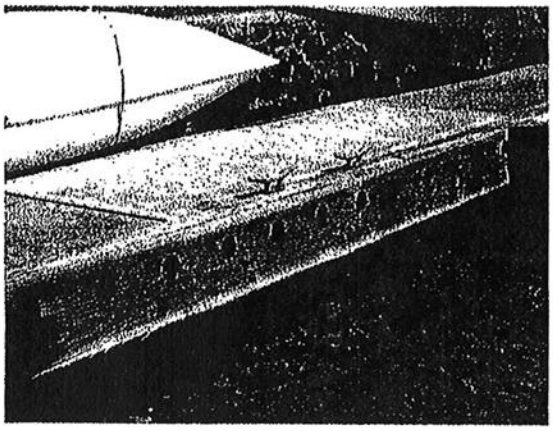


STRUCTUAL WHALER CONDITION(s):

Comments/Observations: **The structural lumber has deteriorated to a state of disrepair. It would be the recommendation of Bellingham Marine that the whaler system and associated rub-boards be replaced before the current system becomes a liability. This would include all fascia located on all steel tri-frames and all ledger that is utilized under all frame covers.**

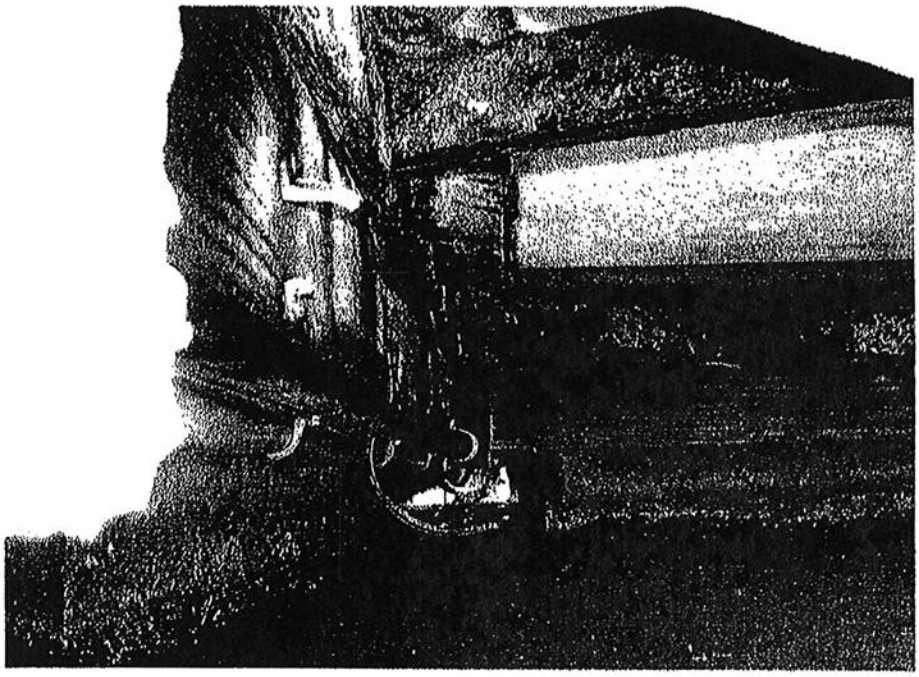
THRU – ROD CONDITIONS:

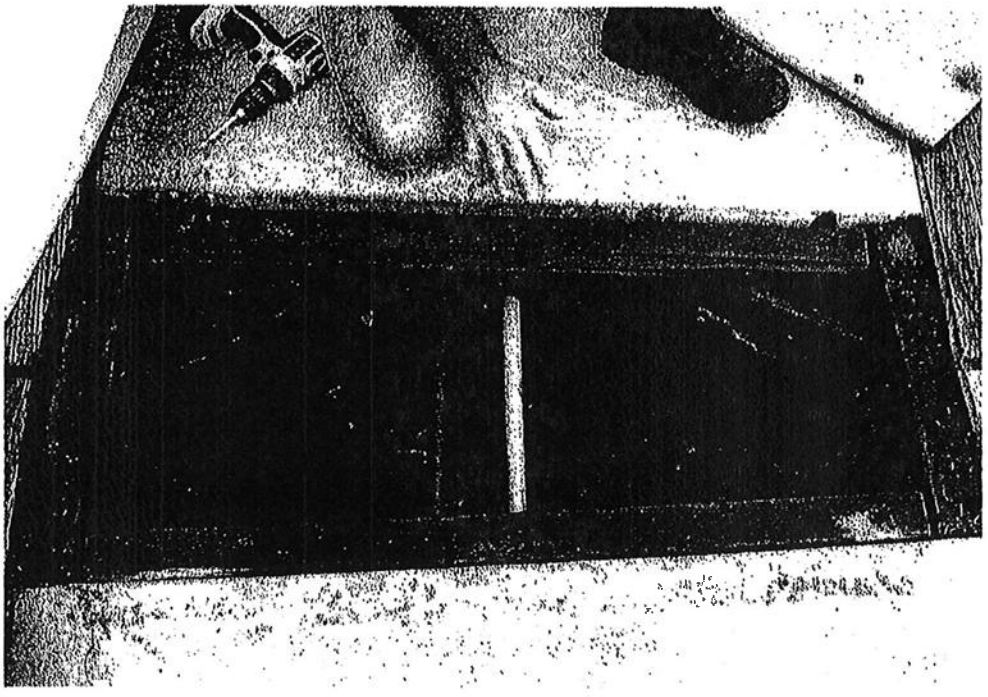
Comments/Observations: **The structural tendons referred to as thru-rods appeared to be in very poor condition. They are showing a fair amount of deterioration and rust on the ends at hardware. Upon observation, BMI would recommend complete hardware replacement throughout the marina.**



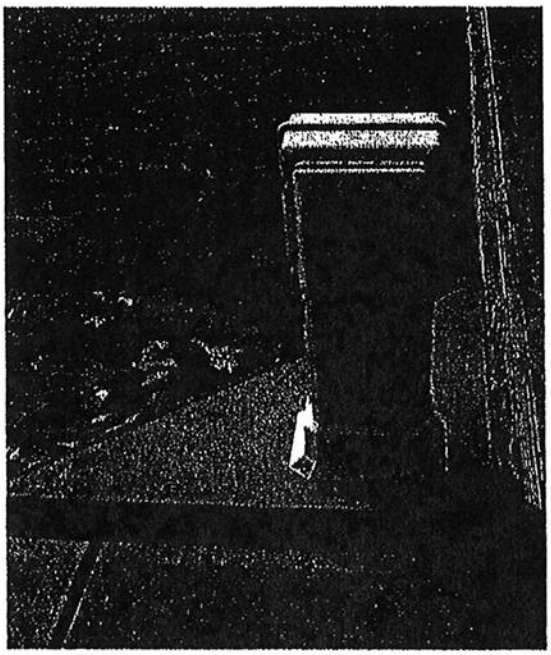
KITE FRAME / TRI FRAME CONDITIONS:

Comments/Observations: **The marina walkway Kite Frames and Finger Tri-Frames are very important from a structural standpoint and upon observation it is apparent that your kite frames and tri-frames are in very poor condition. The level of rust and deterioration leads Bellingham Marine to recommend full replacement. Please reference attached pictures on next page as to their condition.**



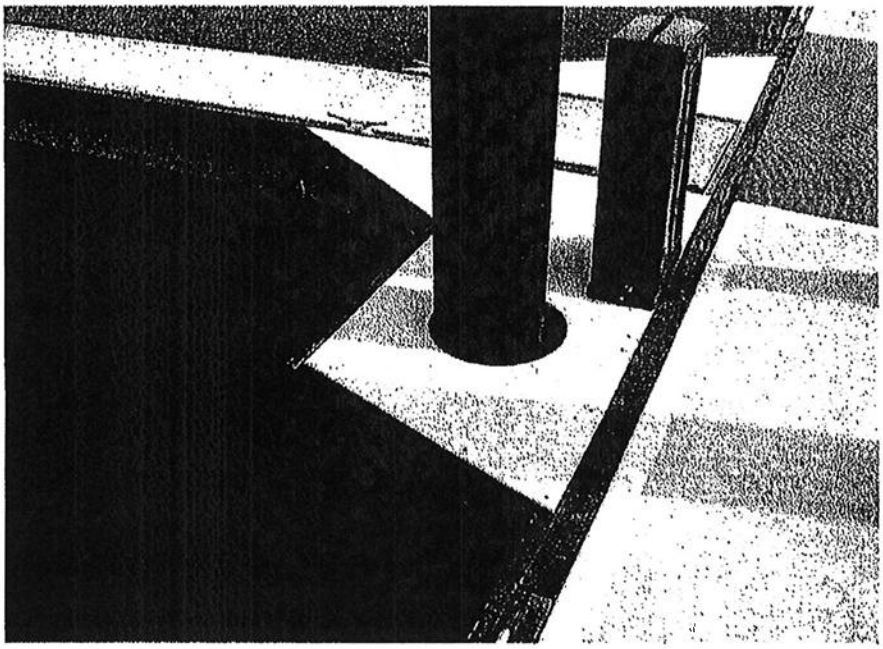


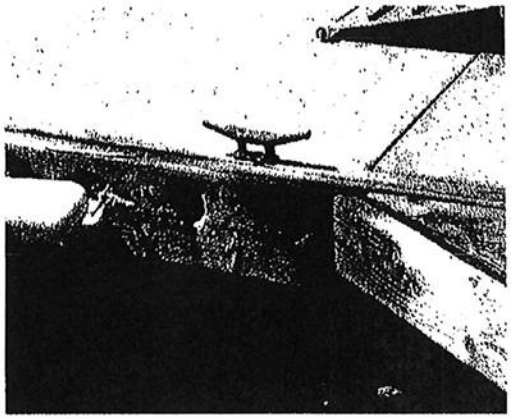
KITE FRAME / TRI – FRAME COVER CONDITIONS:



Material: **Plywood**

Additional Comments: **These are in very poor condition and plywood could become a safety factor due to its purpose as a walking surface. BMI would recommend full replacement with a polymer triangle cover typical in the marine environment. Please see picture below of a polymer cover**

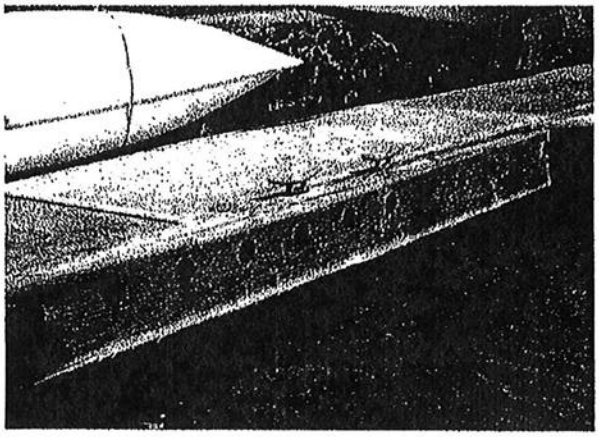




CLEATS:

General Conditions: **The observed galvanized cleats are sufficient. In general they showed minimal deterioration with the occasional cleat that showed surface rust.**

The hardware is rusted beyond its useful life and Bellingham Marine would recommend replacement. Replacement is required during whaler replacement due to existing hardware being unsalvageable.



Utilities:

Electrical System:

Pedestals comments (manufacturer, quantity, locations, conditions, etc.): **N/A**

Switchgear, transformers, etc comments: **N/A**

***** Please note that to replace whalers, tri-frames, and frame covers the pedestal will have to be disconnected by a licensed electrician and reinstalled after rehabilitation.**

MECHANICAL:

Fire System Comments (size, location, material): **N/A**

Water Lines (Material, size, size locations): **N/A**

Pump out: **N/A**

Fuel System : **N/A**

Misc:

- The existing gangways were not observed as to their condition

  They appeared to be in serviceable condition.

- The existing shore mounted anchor and Pile anchors were not observed.

  They appeared to be in serviceable condition.



REPAIR AND REFURBISHMENT PROPOSAL

This section includes Bellingham Marine's Repair and Refurbishment proposal for the Kalele Kai Marina.

Bellingham Marine Industries, Inc.
5500 Nordic Way
Ferndale, WA 98248
(360) 380-2142
FAX (360) 384-8134
www.bellingham-marine.com

Bellingham MARINE ©
The World's Most Comprehensive Marina Builder

April 8, 2011

Mr. Brian Liu
Mr. Edward Bronson
Kalele Kai Marina
One Keahole Place
Honolulu, HI 96825

Reference: Kalele Kai Marina Rehabilitation

Dear Brian / Ed:

Thank you for the opportunity to present our quotation for the repair and rehabilitation of the Kalele Kai Marina. Bellingham Marine is the original manufacturer of your marina and we feel we are the best company to complete this proposed rehabilitation. The scope consists of replacement in like-kind of all thru-rods, whalers, steel frames, and associated hardware throughout your entire marina.

1. The Following are **Included** in our quotation:

WALKWAYS

1. The complete replacement of all 3" x 10" whaler boards on marina walkway including (3) 10' gangway landing fingers.
2. The complete replacement of all 2" x 10" rub-boards
3. The complete replacement of all 3/4" thru-rods with associated hardware.
4. The complete replacement of (7) main walkway angle transition (kite) frames
5. The complete replacement of (6) 4' x 6' triangle frames located at the 3 – gangway landing fingers.
6. Complete replacement of transition frame / triframe covers with grey non-slip polymer covers. (13) total
7. Complete Disposal of all old components.
8. Reinstallation of existing cleats and/or Owner supplied cleats with new hardware.
9. Re-attachment of all utilities.

BELLINGHAM MARINE INDUSTRIES

TECHNICAL SPECIFICATIONS
CONCRETE UNIFLOAT® SYSTEM

1. GENERAL

1.1 THE SCOPE

The Contractor shall furnish all tools, equipment, materials, and supplies and shall perform all labor, supervision, fabrication, and delivery of a complete concrete float system.

1.2 CONTRACTOR SITE INSPECTION

The Contractor shall examine the jobsite before preparing his shop drawings to verify all physical conditions and surroundings if necessary.

1.3 STANDARDS

All docks, structures and components must be designed per one of the following codes or authorities, depending upon the application:

UBC (Uniform Building Code)
SBC (Standard Building Code)
MBMA (Metal Building Mfg. Assoc.)
BOCA (Building Official Congress of America)
Army Corps Manual SR-2
CDBAW Guidelines (California Department of Boating & Waterways)
ASTM Standards
AISI (American Iron and Steel Institute)
AISC (American Institute of Steel Construction)
AWPA (American Wood Preservers Assoc.)

1.4 QUALITY ASSURANCE

The manufacturer must have an ongoing quality assurance program. At the option of the Owner, the manufacturer shall submit a copy of their operational quality assurance program and shall cast no floats until the Owner has approved this quality assurance program.

The contractor must have an ongoing quality management system. This quality system must be regularly assessed and currently certified as a Precast/prestressed Concrete Institute (PCI) approved plan. All concrete docks produced for this project must be produced at a PCI certified facility. Any manufacturers submitting a bid for this project must include a copy of their current PCI Certification showing that they are PCI certified at the time of bid, failure to provide this will result in the bid being found to be nonconforming.

2. MATERIALS

2.1 GENERAL

The Contractor shall submit for approval by the Owner, all items he intends on using for the construction of this project, as well as any alternate materials.

The Owner will be allowed access to all sites where materials pertaining to this contract are manufactured or constructed for purposes of inspection.

Materials delivered and stored at either the manufacturing facility, staging area, or jobsite shall be properly stored on dunnage or by other appropriate means to prevent direct contact with the ground and unnecessary damage.

2.2 CONCRETE FLOATS

Manufacturing

The float manufacturer has a minimum of ten (10) years experience in the design and manufacturing of concrete floats.

The manufacturer must have an ongoing quality management system. This quality system must be regularly assessed and currently certified as meeting PCI Standards.

Thru-Rod Connections

Through rods shall be tapered bolt with threaded ends as specified by the manufacturer. In no case should "all thread" be used as a through rod.

All thru-rods shall be placed within PVC sleeves cast in the float units. The maximum inside diameter of PVC shall not exceed 7/8 inch.

All cast in inserts will be stainless steel, 3/4 inch diameter, with a welded loop or horizontal restraining bar. Inserts shall not be used in structural applications without the specific approval of the float system engineer of record.

Walers shall be securely fastened to the concrete floats using galvanized thru-rods, plate washers, split lock washers, and nuts.

No connecting device shall protrude beyond the fascia into the berth area. Any connecting device protruding above the surface of the deck shall have a low, rounded profile.

2.3 LUMBER

All timber walers shall be of Coast Region Douglas Fir; "No. 1" or better per West Coast Lumber Inspection Bureau (WCLB) grading rules no. 16, paragraph 123 or paragraph 124 as applicable.

Lumber shall be fabricated accurately to provide uniform gaps and butt joint connections. Lumber splices shall not exceed ¾" inch between adjoining ends.

All walers, fascia, spacers, or any other member which is subject to foot traffic, shall be flush with the concrete walking surface and shall have chamfered or bull nosed edges on the top edges.

2.4 LUMBER TREATMENT

All lumber shall be pressure preservative treated with ACZA to .6 pound per cubic foot retention.

All lumber will be cut to length and all holes drilled prior to pressure treatment as far as is possible.

Tie bands used for delivery must have plates between the bands and the wood to prevent crushing. Bundle identification shall be done so as not to stain lumber surfaces.

All field cuts and bored holes exposed after pressure treatment shall be brush coated with the preservative solution.

2.5 STEEL

All structural steel channels, angles, and plates shall be fabricated from mild steel conforming to ASTM A-36, and shall be hot dipped galvanized after fabrication.

2.6 GALVANIZED COATING

A hot dipped galvanized coating shall be required on all thru-rods, bolts, miscellaneous hardware, cleats, steel plates, angles, and shapes in accordance with either ASTM A-123 or ASTM A-153 as the process applies to the specific material.

2.7 HARDWARE

Bolts, nuts, washers, and thru-rods shall be mild steel, in accordance with ASTM A-307, and have a minimum of 1-1/2 inch of thread.

All mild steel hardware shall be hot dipped galvanized in accordance with ASTM A-123.

All stainless steel hardware shall be of a composition and treatment in accordance with ASTM A-479/A-479M-97a.

Washers shall be used with all nuts and bolts which bear on wood or steel. Round plate washers shall be used on all thru-rods bearing on wood surfaces. Cut washers shall be used on all surfaces bearing on steel surfaces.

2.8 FILLER SLABS & COVERS

Triangle frame covers and other fillers shall be provided as required. All covers shall be installed flush with adjacent surfaces. Covers shall be installed with #14x1-1/2" long flat head stainless steel screws on a minimum of ten inch centers.

Fillers shall be fabricated from medium density polyethylene (MDPE), Starboard AS brand or equal, with a skid resistance surface. Filler material shall be Dolphin Gray in color and be a minimum of 5/8" thick.

2.9 SUPPLEMANTAL FLOATATION

Final leveling, if necessary, shall be accomplished through the use of added supplemental floatation that is fully protected in a molded polyethylene shell. Flotation shall be placed in large enough sizes or with mechanical methods that insure it will not be dislodged for the life of the dock system.

FINGERS

1. Complete replacement of all 2" x 8" and 3" x 8" whalers on (26) fingers including end boards.
2. The (2) L-head fingers will be reconstructed utilizing structural 3 1/8" x 7 ½" glue-laminated beams on the outside face only at finger to walkway connection.
3. L-fingers will utilize a structural L and T steel splice plate for rigidity.
4. Complete replacement of all 3/4" thru-rods.
5. Complete replacement of (50) 4' x 4' steel triangle frames.
6. Complete replacement of (50) 4' x4' triangle frame covers with grey non-slip polymer covers.
7. Complete Disposal of all old components.
8. Reinstallation of existing cleats and/or Owner supplied cleats with new hardware.

2. The Following are **excluded** in our quotation:

1. Sales Tax
2. Permits and Licenses
3. Pre-existing electrical conditions/issues

Our Quoted price for the work described work is:

- **Please note that the walkway and finger costs are itemized below but these costs are contingent on the complete marina being repaired and rehabilitated as whole package.**

Walkway:

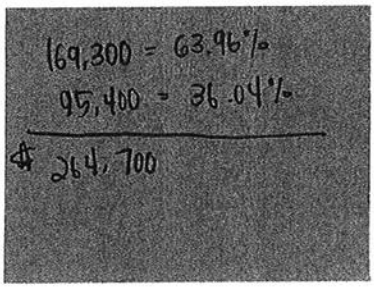
$ 169,300 (One Hundred Sixty Nine Thousand Three Hundred Dollars)

Fingers:

$ 95,400.00 (Ninety Five Thousand Four Hundred Dollars)

TOTAL COST:

$ 264,700.00 (Two Hundred Sixty Four Thousand Seven Hundred Dollars)



3. Other provisions:

FREEBOARD: AS IS (Not applicable)

DESIGN CRITERIA: Bellingham Marine (BMI) has based its proposal upon design criteria furnished by Buyer, which includes site conditions relative to wind and wave exposure. If this design criteria is incorrect, BMI will be entitled to an adjustment in the contract amount, time for completion, or both.

CONCEALED OR UNKNOWN CONDITIONS: In preparing this proposal, BMI has assumed there are no concealed conditions (subsurface or otherwise) or unknown physical conditions which will adversely impact BMI's performance of the work. If such conditions are encountered, BMI will be entitled to an adjustment in the contract amount, time for completion, or both.

Site Access: All loading, unloading, and storage is to be accomplished at the site in a mutually agreed upon location adjacent to the harbor and furnished at no cost to the Buyer.

Schedule: Project commencement and completion are per agreeable negotiations with the Owner

PRICE VALIDITY: Prices are valid for firm orders placed within a period of thirty (30) days after quotation and are subject to reconfirmation thereafter.

PAYMENT TERMS: 25 % percent deposit, balance upon completion. Deposit shall not be subject to retention. Deposit amount shall be applied against the final invoice(s) on the project. Payment due net ten (10) days from receipt of invoice. Method of payment to be approved by BMI's credit department prior to start of production. Interest will be charged on past due accounts at 18% per annum, or at the highest non-usurious commercial rate allowable by state law or provided by state statute, whichever is less. If BMI is required to employ an attorney to collect any amount due as a result of the default of Buyer, the Buyer shall pay all costs of collection, including reasonable attorney's fees and court costs.

Payment is not subject to retention.

Prior to commencement of project, Buyer shall provide evidence of financing satisfactory to BMI.

ENGINEERING/CODES/RESPONSIBILITY: BMI does not warrant any components to meet specific local building ordinances or codes. It is the responsibility of the Buyer to secure necessary governmental approvals. Buyer hereby indemnifies BMI against any and all loss, damage, liability, claims, demands or causes of action arising out of or connected in any way with any act or omission on the part of the Buyer, or with inadequate, improper or erroneous design, plans, specifications, engineering, or information furnished BMI by Buyer including, without limitation, liability for patent or trade secret infringement claims.

BACKCHARGES: Backcharges for corrective work performed by Buyer or its representative will not be honored without BMI's prior written acceptance. BMI at all times retains the right to perform corrective work on its own behalf.

INDEMNIFICATION: The Buyer shall assume all liability, including but not limited to liability for injury to person or property, economic loss, and business interruption, for claims arising from

the actual use of any equipment, products, or materials furnished by BMI, and agrees to indemnify and hold harmless BMI from any and all claims, demands, actions, or suits arising from the use of such products, materials, or equipment, including reasonable attorney's fees and costs.

Notwithstanding anything herein to the contrary, BMI's cumulative liability to Buyer will under no circumstances exceed the total amount paid to BMI. In any case BMI WILL NOT BE RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR FOR LOSS, DAMAGES, OR EXPENSE DIRECTLY, OR INDIRECTLY, ARISING FROM THE USE OF ANY PRODUCTS OR ANY INABILITY TO USE THEM, EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER EQUIPMENT OR MATERIAL OR FROM ANY OTHER CAUSE.

WARNING: BMI has been notified by its wood preservers that the chemicals used in the wood treatment process are known to cause cancer.

CLAIMS Definition: A claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of contract terms, payment or money, extension of time or other relief with respect to the terms of the contract. The term "Claim" also includes other disputes and matters in question between the Buyer and Seller arising out of or relating to the contract including, but not limited to, Claims against officers, directors, employees or consultants of a party for matters arising out of or relating to the Work under the contract. Claims must be made by written notice. The responsibility to substantiate a Claim shall rest with the party making the Claim.

Time Limits on Claims. Claims by either party must be made within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been resolved by Change Order will not be considered unless submitted in a timely manner.

DISPUTES

Arbitration. Controversies, disputes or claims in an amount up to and including $250,000 arising out of, in connection with, or in relation to the interpretation, performance or breach of this Proposal, including any claim based on contract, tort, or statute shall be referred to final and binding arbitration administered by and in accordance with the then existing Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon any arbitration award may be entered by any state or federal court having jurisdiction thereof. The prevailing party in any such arbitration shall be entitled to an award of reasonable attorney's fees and costs. Arbitration shall be heard and determined by a single arbitrator, the location of the arbitration hearings shall be Minneapolis, Minnesota, USA.

In the event a dispute between the parties is referred to arbitration, as soon as practical after selection of the arbitrator, the arbitrator or his/her designated representative shall determine a reasonable estimate of anticipated fees and costs of the arbitrator and render a statement to each party setting forth that party's pro rata share of said fees and costs. Thereafter, each shall, within ten (10) days of receipt of said statement, deposit said sum with the arbitrator. Failure of any party to make such a deposit shall result in the forfeiture by the non-depositing party of the right to prosecute or defend the claim which is the subject of the arbitration, which shall not otherwise serve to abate, stay or suspend the arbitration proceedings.

Unless otherwise agreed in writing or otherwise provided herein, the Seller shall carry on the Work and maintain its progress during any dispute resolution proceedings, and the Buyer shall continue to make payments to the Seller in accordance with the contract documents.

Litigation. Controversies, disputes, or claims in excess of $250,000 arising out of, in connection with, or in relation to the interpretation, performance or breach of this Proposal, including any claim based on contract, tort, or statute shall be resolved in a court of competent jurisdiction in the venue agreed to herein. The presiding judge shall determine which is the prevailing party and shall include in the award that party's reasonable attorneys' fees and costs. The laws and venue of proceedings shall be the place of the Project.

Mediation. In the case of either arbitration or litigation, the parties agree that mediation shall be a condition precedent to any arbitration hearings or trial. The parties hereby stipulate that the arbitrator or judge shall include in any scheduling order deadlines for: (a) the appointment of a mediator; and (b) the mediation. In the event the parties are unable to agree on a mediator by the required deadline, the arbitrator or judge shall appoint a mediator. The arbitrator or judge may, at their discretion, ask for input from the parties with respect to the appointment of a mediator. The location of the mediation shall be established by the mediator.

Notwithstanding any other provision of this Proposal, the Seller and the Buyer waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Proposal. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with this Proposal and/or to any claims or disputes arising out of or related to this Proposal.

ENTIRE CONTRACT: When accepted by Buyer, this Proposal shall constitute the entire agreement between the parties. Its terms shall be controlling in the event same are inconsistent with any plans, specifications, bid invitation, purchase order, subcontract, or other instrument furnished by Buyer.

Acceptance of any offer made by BMI is expressly limited to the exact terms contained in this proposal and any attempt to alter or omit any of such terms shall be deemed an acceptance of the offer, except that any altered or omitted terms shall not be binding on BMI unless BMI has specifically agreed to such altered terms in writing.

We hope this proposal contains sufficient detail to permit your fullest evaluation. Please feel free to contact us at any time for further information.

Sincerely,

Derrick Ames

Bellingham Marine
(360) 543-5800 office
(360) 739-8258 cell

__:__
Approved: _____

A signed copy of this quotation will serve as acceptance and agreement by the Buyer to purchase the materials and/or services described herein.

Dated:_____ By:_____



MAINTENANCE AGREEMENT

This section includes Bellingham Marine's annual Maintenance and Inspection Agreement.

Bellingham
Marine
Industries, Inc.

5500 Nordic Way
Ferndale, WA 98248

(360) 380-2142
FAX (360) 384-8134
www.bellingham-marine.com

Bellingham MARINE ©
The World's Most Comprehensive Marina Builder

Edward Bronson
Kalele Kai Marina
One Keahole Place
Honolulu, HI 96825

April 08, 2011

MAINTENANCE AND INSPECTION AGREEMENT

This Agreement is entered into the ____day of April 2011, between Kalele Kai ("Owner"), and Bellingham Marine ("Contractor"), for inspection and maintenance of the floating moorage system installed at Kalele Kai located at One Keahole Place, Honolulu, HI. 96825 (the "Facility").

The Owner and the Contractor agree as follows:

1. The following services are included in this Agreement:

   1.1 Inspection of the flotation system in accordance with the schedule outlined in item 3. Following the inspection, Contractor will furnish Owner with a written report detailing items which require maintenance and a recommended annual or bi-annual maintenance agreement based on the finding of the report.

   1.2 Including in this inspection will be maintenance of the Facility limited to tightening the existing rods and attempting to level the floats using the existing walers. This leveling will be limited by the condition of the existing walers. The tightening is intended to be maintenance only and not to be considered as repair work. The rod tightening and float leveling will all be subject to site conditions, any rods not accessible or deemed to be in such condition that tightening would not be reasonable will be skipped and noted in the maintenance report.

2. Services and items not specifically included in Section 1 above are **specifically excluded from this Agreement. Excluded** items include, but are not limited to, the following:

   2.1 Inspection and/or maintenance of any fire systems, electrical systems, potable water systems or other utilities systems.

2.2 Inspection and/or maintenance of any portion of the flotation system which was not manufactured by Contractor.

2.3 Maintenance of any item not listed in section 1.

2.4 This initial maintenance inspection and tightening does not include any materials. Any materials required or requested will be billed per the T&M rates listed below. It is the goal of this inspection to determine exactly what needs to be replaced and when.

2.5 Any design and/or engineering work.

3. Schedule. BMI will perform an onsite maintenance evaluation and tighten and level dock as set forth in section 1. At the completion of these Services, BMI will provide a report outlining the condition of the marina system. Bellingham Marine will make recommendations as to a maintenance work that should be completed immediately and will provide a fixed quote price to perform this work. Bellingham Marine will also outline what, if any, maintenance should be done on annual basis and will provide an estimate for what life span the major components in the marina have left. Bellingham Marine will provide budgets for the work indentified in the annual maintenance and major component replacement sections of the report. BMI agrees to use its best efforts to provide this maintenance evaluation, but does not guarantee that either the budgetary prices for replacement or any other cost incurred by Client will in fact not exceed the amounts. All budgets will be done in present day dollars. It should be understood the market and pricing conditions could cause these numbers to vary substantially over time.The Contractor shall perform the initial annual inspection on or before one year from the rehabilitation, and will be prepared to perform annual inspections thereafter. Schedule can be negotiated with Owner to satisfy both parties.

Maintenance will be performed upon receipt of written authorization from Owner to proceed with the Work.

4. **Fees.** The fee for the initial annual inspection is $3,900.00 which will be adjusted annually based upon the annual increase in the Consumer Price Index ("CPI"). Maintenance will be billed initially at the rate of $85/man.hr. which will be adjusted annually based upon the annual increase in the CPI. Maintenance materials will be billed at cost plus 20%. Sub- Contractors will be billed at cost plus 20%. A "not-to-exceed" amount will be established in Contractor's annual inspection report.

5. Payment. Contractor shall invoice Owner for each annual inspection upon its completion. A report summarizing labor and material costs will be provided to support the Work to be performed by Contractor or its designated representative. Payment shall be due net cash ten (10) days from receipt of invoice. Method of payment to be approved by Contractor's credit department prior to commencement of services. Interest will be charged on past due accounts at 18% per annum, or at the highest non-usurious commercial rate allowable by state law or provided by state statute, whichever is less. If Contractor is required to employ an attorney to collect any amount due as a result of the default of

Owner, the Owner shall pay all costs of collection, including reasonable attorney's fees and court costs.

6. Materials Supplied. All parts, components, and supplies supplied hereunder to maintain the Facility shall be furnished by Contractor on an exchange basis, and the removed parts and/or components shall become the property of Contractor upon removal. Any parts, components, equipment, or supplies supplied by Contractor hereunder may, at Contractor's option, be either new or reconditioned, but in any case, they shall meet or exceed the specifications for the replaced part, component, equipment, or supply.

7. Warranty. Contractor warrants to Owner that all services will be performed in a good, workmanlike manner and that repaired or replaced parts or components will be free from defects in material and workmanship until the termination of this Agreement or one (1) year from the date of the service, whichever occurs first. Contractor's sole obligation under this warranty shall be to repair any item in the Facility which is covered by this warranty that is repairable, or, at its option, to refurbish, overhaul, rebuild, replace, or issue a credit or refund for any item in the Facility which is covered by this warranty that has been reported to Contractor as defective in material or workmanship by Owner and which has been determined by Contractor to be defective, provided that the Owner has complied with all of the terms and conditions of this Agreement. Failure of the Owner to promptly notify Contractor of a defect or malfunction will void the warranty, as will product misuse or neglect, use that is not considered "normal" under this Agreement, or if any other terms or conditions of this Agreement are violated. THE ABOVE IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY CONTRACTOR. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY: (A) IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; OR (B) IMPLIED WARRANTY OR CONDITION ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. UNDER NO CIRCUMSTANCES SHALL CONTRACTOR HAVE ANY LIABILITY FOR CONSEQUENTIAL, EXEMPLARY, OR INCIDENTAL DAMAGES, OR FOR LOSS OF PROFITS OR ANY SIMILAR DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CONTRACTOR SHALL NOT BE LIABLE FOR ANY DAMAGE CAUSED BY A DELAY IN FURNISHING OF MAINTENANCE OR INSPECTION SERVICES UNDER THIS AGREEMENT. Owner specifically acknowledges and agrees that Contractor's obligations hereunder are strictly that of a provider of services, and not as a vendor of goods or as a merchant.

NOTICE: OWNER'S FAILURE TO PERFORM THE ANNUAL RECOMMENDED MAINTENANCE WITHIN SIXTY (60) DAYS OF RECEIPT OF CONTRACTOR'S WRITTEN REPORT WILL CAUSE THE OWNER'S WARRANTY TO TERMINATE IMMEDIATELY.

8. **Normal Use.** Contractor warrants that under normal use and service, the Facility if continuously maintained in accordance with this Agreement from the date of its installation shall remain in satisfactory operating condition. Exposure of the Facility to wave heights in

excess of twelve (12) inches will not be considered "normal use" and will void the provisions of the warranty contained herein. Contractor's sole obligation under this warranty shall be to repair any item or equipment that is repairable, or at its option, refurbish, overhaul, rebuild, or replace any item of the Facility that has been promptly reported as defective in material or workmanship by Owner to Contractor and which has been determined by Contractor to have been defective.

9. **Modifications or Damage to the Facility.** Owner shall be responsible for use, care, and cleaning of the Facility in accordance with instructions provided. All risk of loss or damage to the Facility, except that caused by the negligence of Contractor, shall be the responsibility of Owner at all times. If the Facility is changed, modified, altered, or damaged in any respect by any party other than as a result of Contractor's negligence during the term of this Agreement, then, at the option of Contractor, this Agreement shall be terminated. Absent such termination, Contractor shall give Owner written notice of the change, modification, alteration, or damage, and Owner shall promptly correct the change, modification, alternation, or damage, or adjust the price payable hereunder to cover any increased costs to Contractor.

10. **Access.** During the term of this Agreement, Owner will allow access to all of the Facility and to all devices which are part of or associated with the Facility. Contractor will use its best efforts to coordinate annual inspection visits with Owner to minimize operational interruptions. In the event Contractor is denied or prevented from gaining access to the Facility, Contractor's obligations under this Agreement shall be suspended until the act, omission, or condition affecting access is remedied. If Contractor is denied or prevented from gaining access to the Facility as a result of an act or omission of Owner, Contractor shall be entitled to be paid for any visit which it is required to make as a result of such denial or prevention at its then standard rate for labor, material, and travel.

11. **Indemnification.** Contractor shall not be required or obligated to defend, indemnify, or hold harmless Owner, its officers, agents, and employees, from any injury, loss, damage, claim, or cause of action except those directly caused by any negligent act or omission or act of willful misconduct on the part of Contractor. Owner shall not be required or obligated to defend, indemnify, or hold harmless Contractor, its officers, agents, and employees, from any injury, loss, damage, claim, or cause of action except those directly caused by any negligent act or omission or act of willful misconduct on the part of Owner.

12. **Assessment and Adjustments.** Owner agrees to assume full responsibility for any present or future taxes or any other government charges now or hereafter imposed by existing or future laws in connection with the transfer, use, ownership, or possession of any of the Facility.

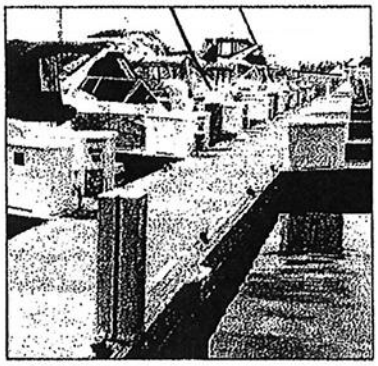
13. **Additional Devices.** Owner agrees not to employ additional attachments, features, or devices to the Facility, make alterations to the Facility, or permit the maintenance of the Facility by other than Contractor's personnel without the written consent of Contractor. Contractor shall not be liable for loss or damage to Owner resulting from unauthorized additional attachments and Owner shall be liable to Contractor for any repair or damage costs incurred by Contractor as a result of the addition of unauthorized attachments. In addition, the warranty contained herein shall be null and void and of no force and effect if any provision of this paragraph is violated.

14. **Arbitration.** All controversies, disputes, or claims of whatever nature arising out of, in connection with, or in relation to the interpretation, from performance or breach of this Agreement, including any claim based on contract, tort, or statute, shall be resolved, at the request of either BIVII or Client, by final and binding arbitration administered by and in accordance with the then existing Construction Industry Rules of the American Arbitration Association, and judgment upon any award rendered by the Arbitrator(s) may be entered by any state or federal court having jurisdiction thereof. The arbitrator shall determine which is the prevailing party and shall include in the award that party's reasonable attorney's fees and costs.

15. **Agreement.** This Agreement represents the entire agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral.

This Agreement entered into as of the day and year first written above.

OWNER:	CONTRACTOR:
By: _____	By: _____
Address:	Address:
_____	Bellingham Marine Industries
_____	5500 Nordic Way
_____	Ferndale, WA 98248
Approved: _____	



PROJECT EXPERIENCE

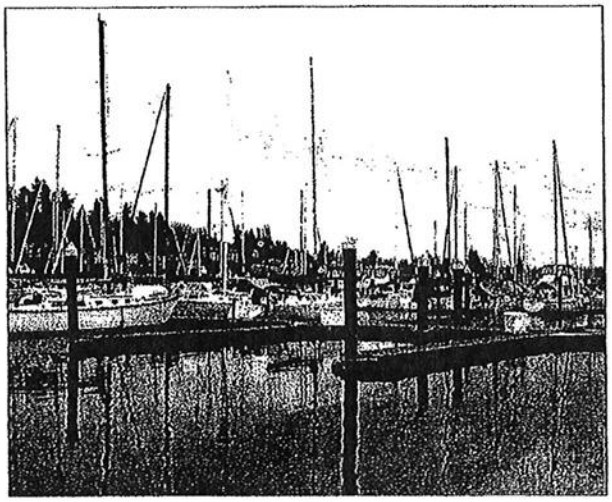
Included in the following pages are examples of Bellingham Marine's past project experience in marina renovation. Contact information and detailed project descriptions are also included.

If you would like to see more of our Company's work, we would be delighted to host a tour of nearby marinas featuring Bellingham Marine's Unifloat product to share additional examples.

You can also view a comprehensive list of all of Bellingham Marine's past project experience by visiting our website: www.bellingham-marine.com/projects/index.aspx

Bellingham MARINE

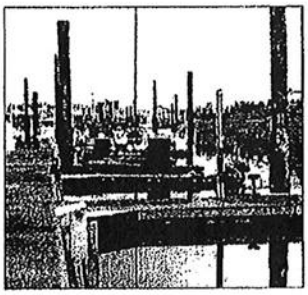
Swantown Marina



Location:
Olympia, WA
Relevance:
Refurbishment and Repair
Lineal Feet of Dock Refurbished
9,130
Client /Operator:
Port of Olympia
Timeline:
2009
Quality Control:
PCI
Project Scope:
Repair and Refurbishment

Bellingham Marine completed a $1.4 million renovation at Port of Olympia's Swantown Marina located in Washington State. Renovation efforts focused on docks G through L. All wood walers, rub boards, hardware, and deficient weldments (tri-frames, etc) were replaced. Supplemental flotation was installed to regain original freeboard, and to level fingers and walkways. Utilities were improved, and selected float modules were resurfaced.

John Thompson, Project Manager for the Port of Olympia, states that "some of the finger docks were raised by a good 4 inches as evidenced by the mud line under the woodwork. The docks haven't looked this good since they were built."



Depending on the condition of the docks, comprehensive repairs can be a cost effective way to delay total replacement. For the Port of Olympia, the repairs mean another decade or two of revenue before plans for replacement will have to be revisited.

Swantown Marina has been providing South Sound boaters with convenient moorage and day use access to Puget Sound since 1983. Owned and operated by the Port of Olympia, the marina currently maintains approximately 700 slips ranging in length from 20 feet to 70 plus feet.

Owner Contact Information:

Bruce Marshall, Harbor Director
Port of Olympia
915 Washington Street NE
Olympia, WA 98501
Phone: 360-528-8049
brucem@portolympia.com

Bellingham MARINE

Skyline Marina, Division 17

Location:
Anacortes, WA

Relevance:
Retrofit and Repair

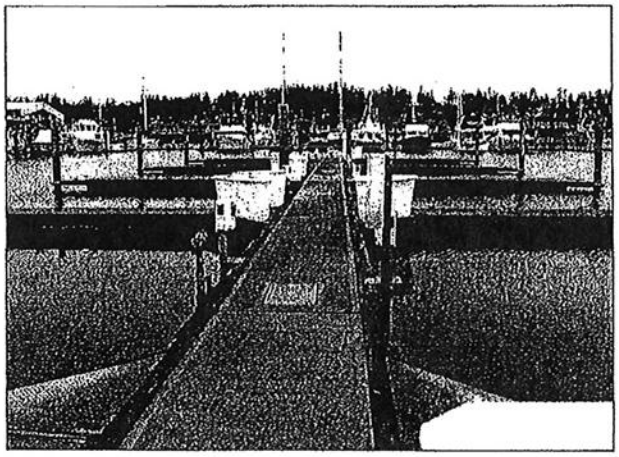
Lineal Feet of Dock Refurbished
3,715

Client /Operator:
Private

Timeline:
2008

Quality Control:
PCI Certified

Project Scope:
Repair and Refurbishment



Bellingham Marine completed the Design/ Build contract for the Renovation of Skyline Marina Division 17, in the seaside town of Anacortes, WA. Bellingham Marine originally built this 124 – slip Marina in 1983 and the owners were so pleased with the result they asked BMI to renovate and bring the Marina up to date.

Original wooden piling was replaced by galvanized steel piling. New Walers, Connection Hardware and Pile Guides were also installed.

The town of Anacortes, WA is located on Fidalgo Island, the easternmost of the San Juan Islands and jump-point to the rest of the world-renowned archipelago. Fidalgo, the "drive-to" island, is accessible by bridges from the east and the south. Anacortes is also homeport for numerous sailing and power yacht charters.

Owner Contact Information:

Don Everett, HOA President
2304 Skyline Way
Anacortes, WA 98221
Phone: 360-588-8699
don-everett@comcast.net

Bellingham MARINE

Port of Edmonds

Location:
Edmonds, WA

Relevance:
Refurbishment and Repair

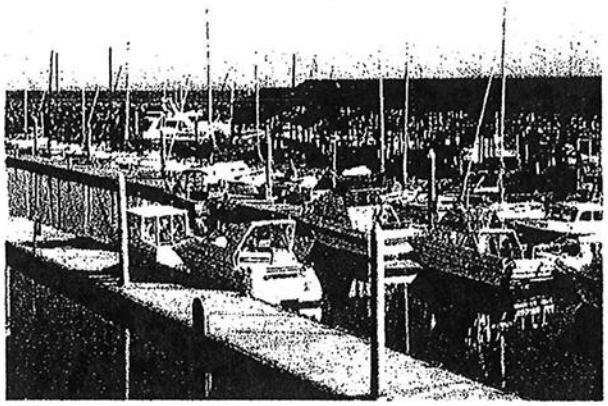
Lineal Feet of Dock Refurbished
2,000

Client /Operator:
Port of Edmonds

Timeline:
2011

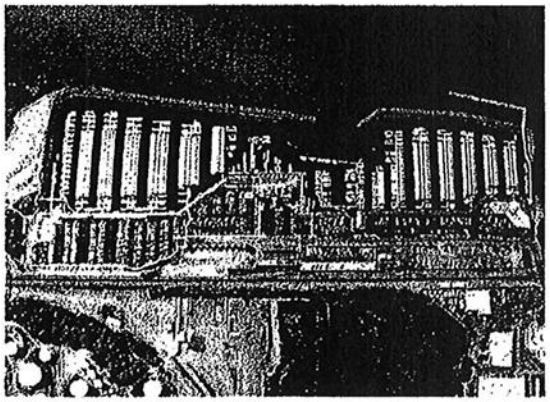
Quality Control:
PCI

Project Scope:
Repair and Refurbishment



Bellingham Marine completed a renovation at the Port of Edmonds Marina located in Washington State.

Renovation efforts focused on the uncovered moorage exposed on docks M and N. All wood walers, rub boards, thru-rods and associated hardware were replaced. Supplemental flotation was installed to regain original freeboard, and to level fingers and walkways.



Depending on the condition of the docks, comprehensive repairs can be a cost effective way to delay total replacement. For the Port of Edmonds, the repairs bring these docks back to the original beauty.

The Port of Edmonds is considered by many to be one of the finest marinas in the Puget Sound region and includes 665 wet moorage slips and 280 dry storage spaces.

Owner Contact Information:

Bob McChesney, Executive Director
336 Admiral Way
Edmonds, WA 98020
Phone: 425-774-0549
bmcchesney@portofedmonds.org

Bellingham MARINE

Port of Camas/Washougal



Location:
Washougal, WA

Relevance:
Refurbishment and Repair

Lineal Feet of Dock Refurbished
800

Client /Operator:
Port of Camas-Washougal

Timeline:
2010

Quality Control:
PCI

Project Scope:
Repair and Refurbishment

Bellingham Marine completed a renovation at the Port of Camas-Washougal located in Washington State.

Renovation efforts focused on the marina's 'A' Dock, uncovered and exposed, slips and walkways. All wood walers, rub boards, thru-rods and associated hardware were replaced.

Comprehensive repairs can be a cost effective way to delay total replacement of the docks. For the Port of Camas-Washougal the repairs should extend the life of this dock section by 15-20 years. At the Port of Camas-Washougal visitors can enjoy the scenic beauty - a spectacular view of Mt. Hood and breathtaking sunsets each evening. The marina has over 350 moorage slips from 20 feet to 40 feet and has both Covered and Uncovered slips.



Owner Contact Information:

Larry Connolly, Project Manager
24 South "A" Street
Washougal, WA. 98671
360- 835-2196
larry@portcw.com

Bellingham MARINE

Portofino Harbour Marina

Location:
Clear Lake Shores, TX

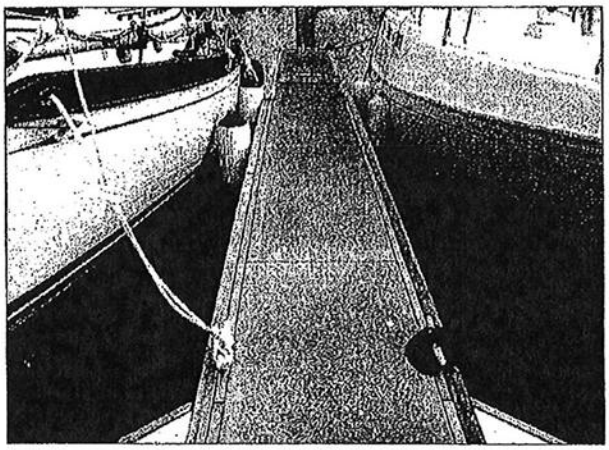
Relevance:
Refurbishment and Repair

Client /Operator:
Private

Timeline:
2009 – 2010

Quality Control:
ISO 9001

Project Scope:
Repair and Refurbishment



Like many marinas around the Clear Lake and Galveston area, Portofino Harbour marina experienced the wrath of Ike in 2008 with sustained winds of 110 mph and a 16 foot storm surge.

The marina originally built in 1984 was completely occupied during Ike and the combination of age and extreme loads put on the docks by the boats broke several finger piers and pile guides and caused other damage to the docks. In fall of 2009, Portofino hired Bellingham Marine to lead a comprehensive repair effort to restore the marina.

Four finger piers were replaced as well as additional repair work completed to replace walers, steel weldments, steel through-rods, cleats, pile guides, triangle-frame covers and other miscellaneous accessories. Due to the modular construction of the dock system, Bellingham was able to remove all finger piers from the water and perform a thorough inspection. After new wood and rods were added the floats were placed back in the water. The main walkways were rehabilitated in place allowing crews to keep the utility systems intact resulting in hundreds of thousands of dollars in repair costs savings.

"The refurbished marina looks like new; you'd never guess the docks were 26 years old," remarked Roy Nelson, President. "The whole process went smoothly and we were able to keep our owners in the marina. Boats were moved around within the basin as the work progressed." "The docks still had a lot of life in them," said Steve Ryder, Manager of Project Development for Bellingham Marine. "These old floats show little signs of the years of service they've provided and have many years left in them. A complete rebuild did not make sense."

Owner Contact Information:

Roy Nelson, President
One Portofino Plaza
Clear Lake Shores, TX 77565
Phone: 281-334-6007
portofinoharbourmarina@gmail.com

Bellingham Marine Company History

Bellingham Marine is an association of companies doing work in the marine industry both in the public and private sectors – in the US and abroad. With over 50 years experience building and designing marinas, Bellingham Marine has the resources to meet all your marina needs.

Scope of Services

Bellingham Marine (BMI) is the world leader in the design, manufacture, and construction of marinas and related products and services. BMI has installed more than 20 million square feet /1.86 million sq. meters of dock systems throughout the United States and the world, including many high profile, landmark projects located in city waterfront centers. Our products and services cover virtually every aspect of the marina industry, from our flagship line of floating moorage to our dry stack storage systems.

Examples of work performed in the private sector include marina design using site specific precision engineering, dock manufacturing, and construction. In the public sector, many of these same services are available as well as services to assess and assist in the "privatization" of public marinas. Bellingham Marine has also worked for the Navy and the Coast Guard manufacturing and installing floats and access docks for their vessels.

Commitment to Sustainability

Marinas that preserve the environment and save energy benefit our society, our earth and our industry.

Bellingham Marine's global goal is to:

1. Help our customers and industry co-exist in an environmentally sensitive area.
2. Be proactive in the area of sustainable design and construction.
3. Offer owners and developers sustainable solutions for the development of marinas that are environmentally responsible and profitable.





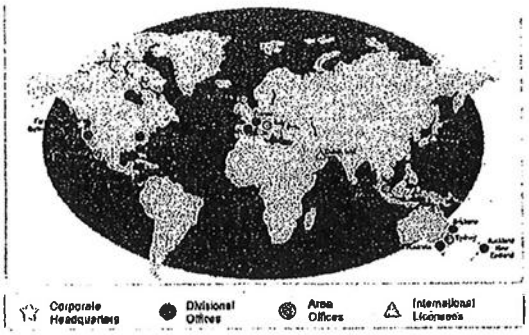
We, at Bellingham Marine, are committed to providing the highest quality innovative products, projects, and services in the marketplace. This commitment includes providing environmentally friendly building products and services that minimize a marina's environmental impact through efficient use of resources and sustainable design practices.

Locations

Bellingham Marine's scope of enterprise is global (see exhibit 1). North American operations and most international operations fall under the domain of Bellingham Marine Industries, Inc., with headquarters in Bellingham, Washington, USA. This group of companies consists of Bellingham Marine Industries, Inc. with offices and plants in Ferndale, Washington (Northwest Division) and Dixon, California (Southwest Division); Florida Floats, Inc. dba Bellingham Marine in Jacksonville, Florida (Southeast Division) and Callahan, Florida (Drystack Division); Concrete Flotation Systems, Inc. dba Bellingham Marine in York, Pennsylvania (Northeast Division); and Marina Accessories, Inc., in Bellingham, Washington.

Bellingham Marine's international operations include:

- Bellingham Marine Australia, Pty. Ltd. (BMA)
- Bellingham Marine SE Asia Sdn. Bhd. (BMSEA)
- Bellingham Marine New Zealand (BMNZ)
- Bellingham Marine Singapore (BMSNG)
- Bellingham Marine Europe Ltd. (BME)
- Bellingham Marine Spain (BMS)
- Bellingham Marine France (BMF)
- Bellingham Marine Panama S.A. (BMP)
- Bellingham Marine Industries Costa Rica S.R.L. (BMCR)
- Bellingham Marine Mexico SA DE CV (BMM)
- Marine Technologies Pty. Ltd (MTECH)



Services

Marina Design and Engineering
Bellingham Marine is capable of providing full marina design services to assist developers and owners with the planning and engineering of their marina facility. This may include creating the layout for the marina, addressing environmental concerns or a complete development package to include land-side facilities such as restaurants and shops. With the cooperation of associated engineers, Bellingham Marine is also capable of providing the necessary design calculations, structural reviews and engineered drawings. Bellingham Marine uses reputable, qualified, experienced engineering firms who specialize in marine construction, who have a long professional relationship with Bellingham Marine and are dedicated to the constant development and improvement of Bellingham Marine products.

Construction Management and Installation
In addition to design and manufacturing services, Bellingham Marine often performs as a general contractor for marina installation projects. In conjunction with float manufacturing, Bellingham Marine has crews trained and experienced in site construction work and project management. Site work, such as pile driving, dredging, float placement, fire protection, potable water and electrical-mechanical utility installations, is performed under experienced supervision using only skilled crews and subcontractors.

Recent projects that Bellingham Marine acted as a General Contractor on are:

- City of Oak Harbor Redevelopment Phase 1, Oak Harbor WA
- Ko-Olina Marina, Honolulu HI
- Wards Cove, Seattle WA
- Blaine Boat Launch. Blaine WA
- 40th street boat launch, Bellevue WA
- Magnuson park , Seattle WA
- Hood River C dock expansion, Hood River OR

Marina Rehabilitation
In recent years marina rehab has become the popular choice in lieu of full marina replacement. Bellingham Marine Industries has led the industry in this type of marina construction. Marina rehab is a full general contracting service that typically includes replacement of wood and walers throughout a marina and can and has included electrical replacement, mechanical replacement, steel component upgrades, piling replacement and upland upgrades including electrical panel relocation and asphalt repair.

Recent projects that Bellingham Marine acted as the General Contractor for Marina Rehab are:

- Division 17, Anacortes WA
- Swantown Marina, Olympia WA
- Port of Camus-Washougal, Camus WA
- Port of Edmonds, Edmonds WA

Complete Marina Development
Bellingham Marine's services are geared to assist developers and marina owners of all levels through any stage of marina development. Whether a boat owner on a lake desires a 50-foot slip or a port authority needs to refurbish a 1,200 slip facility, Bellingham Marine has the flexibility to meet every need. Our management and sales teams are staffed with veterans of the marina industry, both in construction and in management.

What Makes Bellingham Marine Unique?

- The most widely recognized name in marina construction and floating dock expertise in the world today.
- Vertical integration - from site appraisals to pre-construction engineering to supplying the complete marina to installing
- Global capabilities of our worldwide manufacturing locations plus our mobile manufacturing capabilities allows us to bring our full expertise to virtually any location in the world.
- Market tested patented marina products manufactured and installed by skilled employees using strong quality ISO 9000 controls
- The broadest spectrum of professional, trained marina experts together with active relationships with the industry's leading consultants and designers
- The most experienced and oldest marina company in the world.

Bellingham Marine's Competitive Advantage

- The Group's patents and trademarks are registered in countries around the world.
- Comprehensive advertising campaigns designed to inform the public about the strengths of the products and the conditions in which they have been successfully installed have drawn many inquiries. Likewise, the Internet web page (www.bellingham-marine.com), recently updated, records a great number of "hits" and inquiries from around the world.
- PCI certification has been achieved at the Northwest U.S plant.
- BMI continues to invest in its people. The companies maintain policies which encourage continuing education, training, personal growth, and customer services.
- BMI continues to maintain the integrity and quality of its products and services and provide the highest level of customer satisfaction and service. Research and development is an ongoing commitment.
- The companies continue to enrich the employee pool by offering summer internships.
- Bellingham Marine's global companies are unlike any other in the business. In and of themselves, these capabilities provide assurance to potential customers of local or international reach.
- The companies have a very strong financial base, bonding capacity, and a long history of success. They have built in excess of 1,500 marinas in the United States alone.







Jesse Ellenz, General Manager
Bellingham Marine Northwest Division

Jesse has eight years experience in the construction industry. He joined Bellingham Marine in 2006 as Project Manager and the following year was promoted to General Manager. Jesse's thorough understanding of scheduling and budgeting and his strong sense of leadership, enable him to deliver projects on time and on budget.

As General Manager of the Northwest Division, Jesse is responsible for insuring the company's high standards for product quality and customer satisfaction are met. Prior to joining Bellingham Marine, Jesse worked in the commercial and heavy civil segments of the construction industry.

Jesse holds a Bachelors Degree in Construction Management from Central Washington University and is personally dedicated to ensuring each and every customer's experience is as first class as the facilities we build.

Memberships

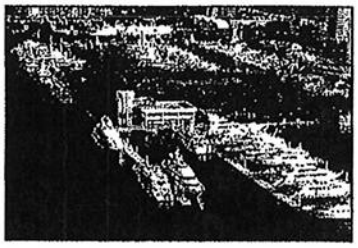
Associacio D' industries,Comerc I Servels Nautics
Alaska Assoc. of Harbor Masters and Port Admin.
Association of Marina Industries (AMI)
American Society of Civil Engineers
American Society of Landscape Architects
Associated General Contractors (AGC)
Australian International Marine Export Group
Bay Planning Coalition
BOAT U.S.
Boating Industry Australia – New South Wales
Boating Industry Australia – Queensland
Boating Industry Australia – Victoria
British Columbia Assoc. for Harbours, Ports & Marinas
British Marine Federation
Boating Industry Association
CABA (Continental Automated Buildings Assoc.)
California Assoc. of Harbormasters & Port Captains
California Chamber of Commerce
California Delta Chambers
California Marine Parks & Harbor Association
Chief Executive Network
Coastal Conservation Association
Collier County Marine Trade Association
Connecticut Marine Trade Association
Corp. Member of the N.Z. Pacific Business Assoc.
Export New Zealand
Florida Marine Contractor's Association
Jacksonville Marine Association
Kentucky Marina Association
Marina Association of Texas
Marina Industries Association of Australia (MIAA)
Marina Recreation Association (MRA)
Marine Industries Association of Palm Beach County
Marine Industry Association of Florida
Marine Industry Association of South Florida
Maryland Marine Trades Association
Master Builders Association
National Marine Manufacturers Association (NMMA)
National Society of Professional Engineers
New Jersey Marine Trades Association
New Zealand Marina Operators Association
New Zealand Pacific Business Association
NFPA
North Carolina Marine Trades Program
Northwest Marine Trade Association (NMTA)
Pacific Coast Harbormasters & Port Managers Assoc.
Precast Concrete Institute (PCI)
Professional Yachtman's Association (PYA)
Rhode Island Marine Trade Association
San Diego Port Tenants Association
South Carolina Marina Association
South West Florida Marine Trades Association
State Organization for Boating Access (SOBA)
Urban Land Institute

Bellingham Marine: List of Awards

2010 PIANC Marina Excellence Design Jack Nichol Award

Awarded by: PIANC – The World Association for Waterborne Transport Infrastructure

Awarded to: Bellingham Marine and Bahia Mar Yachting Center

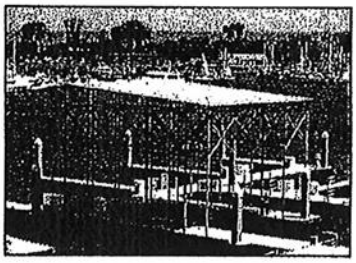


The purpose of the Jack Nichol Award is to recognize excellence in the design of modern recreational boating facilities around the world. The selection committee determined the Bahia Mar Yachting Center best represents the award's evaluation criteria, which focuses on function, aesthetics, and environmental stewardship. Beyond the technical design elements of the basic marina facility, the design for Bahia Mar includes a number of innovative features to address the unique needs imposed on the facility by the boat show.

2009 APWA Project of the Year

Awarded by: American Public Works Association (APWA), San Diego & Imperial Counties Chapter

Awarded to: Bellingham Marine's SW division in partnership with the City of San Diego



The APWA looks to recognize outstanding projects completed by public agencies and to also recognize those individuals that provide exceptional service in public works. The City of San Diego received APWA's 2009 Project of the Year Award for its lifeguard facility designed and built by Bellingham Marine's SW division. The new pier and docks at the San Diego Lifeguard Station replaced an old dilapidated pier and wooden docks that were sinking and had been unusable for several years. The new docks provide slips for all of the lifeguard vessels, two City Fire Boats, and vessels of other law enforcement agencies.

2008 WACA's Excellence in Concrete (EIC) Award in the area of technical merit

Awarded by: Washington Aggregates and Concrete Association (WACA)

Awarded to: Bellingham Marine's NW division in partnership with its local concrete supplier, Ferndale Ready Mix and Gravel



WACA's EIC awards recognize projects that reflect the unique advantages of ready mix concrete and the teams that build them. Bellingham received the EIC technical merit award for its work on Salpare Bay Marina, a 193 slip luxury marina located on the Columbia River near Portland, Oregon. Salpare Bay marina features Bellingham Marine's Unifloat concrete floating docks finished with a stamped deck and variegated grey color.

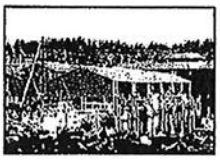
U.S. Marina of the Year

Awarded by: Marina Dock Age

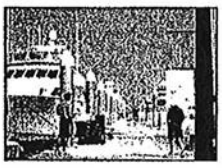
The Marina of the Year award recognized marinas for their growth and development, sound management practices, successful marketing and promotion efforts, outstanding customer service activities, environmental stewardship and contributions to the industry and the local community.



2008: Ko Olina Marina, Hawaii *Ko Olina Marina was designed and built by Bellingham Marine. The first phase was completed in 2000 and the second phase in 2006.*



2006: Edmonds Marina, Washington State *Edmonds Marina was built by Bellingham Marine. It's a small boat harbor featuring covered slips.*



2005: Charleston City Marina, South Carolina *Bellingham Marine designed the famous mega-yacht dock at Charleston City Marina. The dock serves as an attenuator as well as moorage for mega-yachts.*

Australian Marina of the Year Award

Awarded by: Marina Industries Association of Australia (MIAA)

The award, which is open to all marinas across Australia, bases its criteria on social, economic and environmental sustainability taking into account marina design and presentation, scope of services and facilities, customer service, environmental programs, involvement in the industry and contribution to the local economy and tourism.



2009: Empire Marina, Sydney, Australia (Marina of the Year for Large Marinas)
The Marina's infrastructure, built by Bellingham Marine, was developed with the highest level of consideration for the environment remarked one of the association's award judges in a press release issued by MIAA.



2009: Fenwicks Marina, Brooklyn, Australia (Marina of the Year for Small Marinas)
Fenwicks Marina was built by Bellingham Marine in 1985. According to Tom Chapman, an MIAA judge, exemplary service and presentation of the marina put Fenwick at the top of its class.



2007: Soldiers Point Marina



2005: d'Albora Marinas Nelson Bay



2003: Hindmarsh Island



2002: d'Albora Marina Akuna Bay

Best Asian Marina of the Year

Awarded by: Asia Boating Awards

This award honors marinas and design representatives who have made a difference in the maritime industry.



2010: Marina at Keppel Bay, Singapore
Marina at Keppel Bay was designed and built by Bellingham Marine Singapore. The marina features state-of-the-art modern concrete floating berths with capacity for 170 yachts, including mega-yachts of up to 250 feet. This is the 2nd year Marina at Keppel Bay has received an award from Asia Boating Awards.

Best New Asian Marina /Yacht Club of the Year

Awarded by: Asia Boating Awards

This award honors marinas and design representatives who have made a difference in the maritime industry.



2009: Dubai Marina Yacht Club, UAE
The yacht club features a 116-berth private, state-of-the-art marina design under Bellingham's offices in Australia and built by Bellingham's Middle East licensee and joint venture partner, Septech.



2008: Marina at Keppel Bay, Singapore
Marina at Keppel Bay was designed and built by Bellingham Marine Singapore. The marina features state-of-the-art modern concrete floating berths with capacity for 170 yachts, including mega-yachts of up to 250 feet.

CERTIFIED
HAWAII
An Associa® Company

August 12, 2011

To: Kalele Kai Owners

From: Kalele Kai Board of Directors

Re: Boat Dock Update

Fellow Owners:

In furtherance of its investigation into the repair and maintenance of our waterfront boat harbor, the Board has retained the professional engineering services of Glenn Miyasato of MKE Associates, LLC to evaluate the current condition of the waterfront facilities and the proposal submitted by Bellingham Marine for the repair and renovation thereof. Mr. Miyasato has completed his evaluation, and a copy of his report is enclosed herein for your review. (Note: The numerous photographs referenced in the enclosed report can be viewed on the Association's website at www.kalelekai.com).

The enclosed report will be discussed at the Board's next meeting to be held on Thursday, August 25, 2011, at 6:30 p.m., in connection with proposed award of the waterfront boat harbor repair contract to Bellingham Marine.

As always, all interested owners are invited to attend.

FOR THE BOARD OF DIRECTORS
ASSOCIATION OF OWNERS OF KALELE KAI

Kristi Hirota-Schmidt, CMCA®
Vice President of Business Development
CERTIFIED HAWAII, AAMC®

PENGAD 800-631-6989 EXHIBIT 528

3179 KOAPAKA STREET, HONOLULU, HAWAII 96819
Phone 808.836.0911 *Fax* 808.839.9430 *Web* CertifiedHawaii.com

EXHIBIT 29

MKE ASSOCIATES LLC
Structural Engineers

Aiea Commercial Center
Suite 205
99-205 Moanalua Road
Aiea, HI 96701
Phone: (808) 488-7579
Fax: (808) 488-7818
E-Mail: mke@mkellc.com

August 10, 2011

AOAO Kalele Kai
c/o Christopher Goodwin, Esq.
Christopher Goodwin AAL LLLC
737 Bishop Street, Suite 1640
Honolulu, Hawaii 96813

Re: Assessment of Floating Boat Docks
Kalele Kai

Dear Mr. Goodwin:

At your request, we had the opportunity to review the condition of the floating boat dock at Kalele Kai, located at One Keahole Place, Honolulu. This review was requested due to concerns about damage to the finger pier for Slip 59-60 at the south end of the dock and deterioration of dock components. This letter reports our findings.

PROJECT DESCRIPTION AND SCOPE OF WORK

The boat docks are constructed of reinforced concrete floating platforms connected together with wood walers and structural steel frames using steel thru-bolts and anchored adjacent to the embankment sea wall with a series of stainless steel H-piles and tiebacks. The original dock configuration consists of twenty-nine 23 ft long concrete finger piers attached to an approximately 700 ft long concrete walkway section oriented adjacent and parallel to a CRM sea wall lined embankment. The concrete float sections for each individual pier and walkway are connected together with the walers. Each finger pier is secured to the walkway with two triangular shaped frames at the reentrant corner between the finger pier and walkway, except at end piers which have only one reentrant corner. The walkway also contains braced steel kite frames between selected floats to allow the walkway to angle along and follow the line of the embankment. The original mooring cleats, bolts, and frames generally appear to be hot-dipped galvanized steel, while the original panels covering the steel frames appear to be plywood. Walers appear to be preservative treated dimensional lumber.

For this project, our scope of work consisted of the following items:

- Review of a maintenance and rehabilitation report by Bellingham Marine dated April 8, 2011.
- Review of original project drawings by Bellingham Marine dated May 30, 1991.
- Site visit on August 8, 2011 to visually review the conditions at the top surface and sides of the boat dock that could be viewed from walking along the top surface. In addition, Kalele Kai personnel removed and reinstalled the triangular plywood panels at Slips 6 and 34 and the kite frame panels between Slips 7 and 8, and 28 and 29 so that the representative frames could be reviewed. At portions of the frame, loose rust was removed from the steel by light tapping to observe the remaining steel. In addition, other selected triangular frames at Slips 52, 56 and 59 were viewed from photos taken of the frame from the underside.
- Assessment of the docks based on our document review and visual observations.

OBSERVATIONS

The Bellingham Marine report states the concrete floats were manufactured in 1991 and appear to be structurally sound. Due to some observed cracking in the deck surface, Bellingham Marine recommends a concrete sealer be applied to minimize environmental conditions. The report also recommends the replacement of all timber walers, ledgers, and rub-boards, and all steel thru-rods, walkway kite frames and finger pier triangular frames with new components due to the extent of deterioration observed in these elements. The report also recommends the deteriorated plywood frame covers be replaced with polymer covers and that the galvanized cleats be replaced with new cleats, as they are starting to corrode and may be unsalvageable and past their useful life.

We have the following visual observations with regard to the docks:

- The walkway kite frame near Slip 7 is severely corroded (Photo 1). 3/8 in. thick plate braces have corroded to about 1/16 in. to 1/8 in. in thickness (Photo 2), and exhibit through corrosion (70 to 100% loss of section). This frame appears to be one of the least protected frames with respect to wind induced swells.
- The walkway kite frame near Slip 28 is significantly corroded, with one plate brace corroded over 100% of its surface and the other brace corroded over half of its surface (Photo 3). It is estimated that the loss of section is in the 10 to 25% range. This frame appears to be somewhat more protected from the wind induced swells.
- Severe corrosion was observed in all of the triangular frames viewed at Slips 6 (Photo 4), 34 (Photo 5), 52 (Photo 6), 56 (Photo 7) and 59 (Photo 8), even though frames at slips 52, 54 and 56 were on the more protected south side and the frame at Slip 59 was reportedly installed only 3 years ago to replace a frame damaged in a storm. The loss of section appears to vary from about 10 to 25% at the Slip 59 frame to almost 100% at a brace for the Slip 6 frame, with the remaining frames appearing to be in the 25% to 75% range. However, as the replacement frame at Slip 59 is coated with a black paint and does not appear to be hot-dipped galvanized, section loss will likely be accelerated over the next few years. If this frame is hot-dipped galvanized, the rate of corrosion at the docks is much faster than anticipated.
- Except for the finger pier at Slip 1, most if not all nuts and ends of thru-bolts at the mauka side of the finger piers and front face of the walkway appeared to be severely corroded (Photo 9). Carriage bolts securing wood nailers to frames appear heavily corroded (Photo 10).
- Wood walers (Photo 11), nailers (Photo 12) and plywood deck panels (Photo 13) appeared to be in various states of decay, with some components appearing to have been replaced and in better condition while other components exhibited severe decay and cracking.
- Steel mooring bits generally exhibited only surface corrosion (Photo 14).
- Some cracks with rust stains indicating possible delamination of concrete cover were observed at the edges of the top surface concrete at the finger piers for slips 1, 6-7, 53-54, and 55-56 as well as at a few isolated locations at the edges of the walkway (Photo 15).

CONCLUSION

From the above observations, we have the following comments concerning the docks:

- Due to the severity of corrosion, all steel walkway kite frames, triangular pier frames and thru-bolts should be replaced. As through corrosion and almost completely corroded frame elements were observed, the current structural capacity of the dock has been significantly compromised. Therefore, this work should be performed as soon as possible to mitigate the potential for failure of the dock structure, particularly if it is subjected to large loads from wind or swells.
- Due to the severity of decay observed at selected walers, and the ease of simultaneous replacement during the replacement of thru bolts, all walers should be replaced with new walers. Walers may have also been cracked and crushed at bolt hole locations due to expansive corrosion of the bolts.
- Due to the severity of decay observed at selected plywood panels, these panels should be replaced as soon as possible, as they are a potential walking hazard. Frame nailers, corroded carriage bolts, mooring bitts and other peripheral hardware should also be replaced.
- Due to signs of concrete delamination initiating at the top surface, steps should be taken to try to reduce the onset of further corrosion of embedded reinforcing and resulting delamination and spalling of the top surface. One relatively inexpensive treatment consists of applying a surface applied penetrating silane sealer with an anticorrosion agent, such as Cortec MCI 2022. This type of sealer may be applied by a hand sprayer or roller and does not change the appearance of the surface.
- The dock system should be inspected and maintained periodically to avoid the severe deterioration currently observed that compromises the structural integrity of the dock.

The above recommendations are similar to those recommended in the Bellingham Marine report. In lieu of complete replacement of the above elements, we were asked to consider a piecemeal replacement of only those items requiring replacement at this time. This approach is not advisable as the piers and walkways are connected together to act as one integral floating element and will require a more extensive survey of all components to determine their current integrity and need for replacement. The limitation of this approach is that it is difficult to determine the current integrity of the covered or hidden portions of wood and steel elements, so that elements thought to be sound during the survey may be found to need replacement during the actual repair work. Also, any elements left in place may need replacement in the near future, necessitating another repair phase. Also, the use of different replacement materials at different times will make future inspections and maintenance of the dock difficult. For instance, it was observed that plywood panels with different coatings have been installed at different times and that at least one triangular frame may not be hot-dipped galvanized, making it difficult to estimate the remaining life and required maintenance in these elements as a whole. In general, due to the high level of deterioration observed in the dock system, we believe that most non-concrete elements would need replacement immediately so that complete replacement of the non-concrete items at this time would be more cost-effective than piecemeal replacement. This would also require a design-build team with extensive experience in the evaluation and repair of these elements and the willingness to assume

responsibility for elements left in place, as failure of these elements may result in damage to the finger pier, adjacent piers, walkway, boats or other property in the waterway.

It is estimated that the type of study described above and associated repair documents may cost $15,000 to $30,000. However, whether an overall or piecemeal repair approach is performed, we recommend the original design-build contractor (Bellingham Marine) be engaged as any other designer or contractor would need to reanalyze the original design and construction to develop appropriate repairs. In addition to possibly adding more overall cost to the project, the time period for the repairs would likely be extended, which is not advisable considering the immediate need for repairs.

Please call us should you have further concerns on this matter.

Sincerely,
MKE Associates LLC

Glenn Miyasato
Its member

Enclosures: Photos 1 through 15, CV for Glenn Miyasato

MKE ASSOCIATES LLC
Structural Engineers

Alea Commercial Center
Suite 205
99-205 Moanalua Road
Alea, HI 96701
Phone: (808) 488-7579
Fax: (808) 488-7818
E-Mail: mke@mkellc.com

Glenn H. Miyasato, Ph.D., P.E.

Dr. Miyasato has conducted failure analyses, damage and deterioration studies, material evaluations, construction inspections, condition surveys, vibrations monitoring, and structural testing for a wide variety of projects. He has provided design and construction administration services for repair of existing buildings, and he has managed infrastructure projects in the areas of design, retrofit, and maintenance of bridges, reservoirs and piers. In addition to his consulting work, Dr. Miyasato has taught courses in reinforced and prestressed concrete design, wood and steel design, structural analysis, construction materials, mechanics of materials and applied probability and statistics in the School of Architecture and Department of Civil Engineering at the University of Hawaii.

Work Experience

- Wiss, Janney, Elstner Associates, Inc., Structural Engineer, 1988-1996
- Kai Hawaii Inc., Senior Structural Engineer/Project Manager, 1996-2000
- MKE Associates LLC, Principal, 2000-present

Recent Harbors Projects

- Honolulu Harbor Pier 1 and 2 Substructure Repairs
- Honolulu Harbor Pier 8, 9, 10 and 11 Aloha Tower Marketplace Spall Repairs
- Honolulu Harbor Pier 19 and 20 Sheetpile Repairs
- Honolulu Harbor Pier 21 Finger Pier Demolition and Repairs
- Honolulu Harbor Pier 24 through 29 Bulkhead and Substructure Repairs
- Honolulu Harbor Pier 25 and 26 Expansion Joint Repairs
- Honolulu Harbor Pier 38 Dolphin Repair
- Honolulu Harbor Pier 39 and 40 Pile Repairs
- Honolulu Harbor Pier 52 and 53 Pile Impact Damage and Bollard Repairs
- Hilo Harbor Pier 1 and 2 Spall Repairs
- Hilo Harbor Pier 3 Extension Structural Design
- Kawaihae Harbor Earthquake Damage Repairs
- Kahului Harbor Pier 2 Superferry Impact Damage Repairs
- Kahului Harbor Tug Pier Fender Piles Repairs
- Kaunakakai Harbor Spall Repairs
- Nawiliwili Harbor RORO Pier Substructure Repairs
- Port Allen Harbor Spall Repair Survey
- Barbers Point Harbor Sheetpile Embankment Repairs
- Pearl Harbor Subbase Wharves Crane Load Study
- Pearl Harbor Dry Dock No. 4 Pump Room Vibration Study
- Pearl Harbor Wharf A-1 Fender Pile Repairs
- Kewalo Basin Pier C Light Bollards
- Structural Assessment of State of Hawaii DOT Piers

Registration

- Structural Engineer, Hawaii, 1994
- Civil Engineer, California, 2003

Education

- Ph.D., Civil Engineering, Stanford University, 1988
- M.S., Civil Engineering, Stanford University, 1984
- B.S., Civil Engineering, University of Hawaii, 1983
- M.B.A., University of Hawaii, 1996

Publications and Professional Activities

Dr. Miyasato has co-authored several papers in the areas of seismic vulnerability and risk assessment. He is a past member of the State Hazard Mitigation Forum and is a charter member of the Hawaii State Earthquake Advisory Board and past-president of the Structural Engineers Association of Hawaii.

152/Minutes

Kalele Kai AOAO
One Keahole Place
Honolulu, Hawaii 96825

MINUTES

REGULAR MEETING of the BOARD OF DIRECTORS of the Association of Apartment Owners of KALELE KAI.

DATE:	Thursday, August 25, 2011
PLACE:	Poolside Cabana Kalele Kai AOAO One Keahole Place Honolulu, Hawaii 96825
PRESENT:	President Brad Oakes, Secretary Colin Kurata, Directors James Propotnick, Col Richard Van Ness, Kimiko Hayashi and Anne Palagyi
EXCUSED/ABSENT:	Vice President Marvin Tangren, Treasurer Paul Jordan, and Director Mark Hertel
BY INVITATION:	Resident Manager (RM) Bryan Liu, Account Executive (AE) Kristi Hirota-Schmidt, Association Attorney Christopher Goodwin, and Association Insurance Agent Tracy Wong
CALL TO ORDER:	President Oakes called the meeting to order at 6:35 p.m.

MINUTES: The Board unanimously approved the Regular Minutes of the Board of Directors' Meeting of June 23, 2011 as presented.

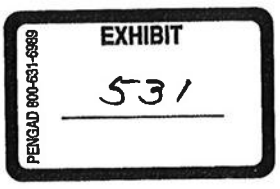
TREASURER'S REPORT:

1. President Oakes reviewed the Treasurer's report for the period ending July 31, 2011. After the review of the Financial Statement, the Board unanimously approved the filing of the financial statement, subject to audit.

COMMITTEE REPORTS:

1. Lobby Furniture Committee: Jim Propotnick thanked Anne Palagyi and her committee for doing a job well done with the Lobby renovations.

2. Landscape/Grounds Committee:
   a. Director Richard Van Ness moved to approve allocating additional funds of $5,000 to finish the Marina side of the townhouses. The motion was unanimously approved.



b. Brad thanked the landscaping committee for a job well done.

3. Energy Committee: The board unanimously ratified an email approval to install chiller "night setback controllers" on each building's chiller at a cost of $7,510.99.

RESIDENT MANAGER'S REPORT: Resident Manager Liu reviewed his Resident Manager's report with the Board of Directors.

UNFINISHED BUSINESS:

1. Boat Dock:
   a. Tracy Wong discussed the boat dock insurance quote. The Board will discuss the options over the next 45 days.

   b. The Board unanimously approved the Repair of Boat Moorings Resolution drafted by Christopher Goodwin (attached).

   c. The board unanimously approved to grandfather the existing 4 boats which do not meet the 23' rule. Should the owner sell his/her boat or home, the dock will need to go back to its original configuration at the expense of the owner.

NEW BUSINESS:

1. Establish 2012 Annual Meeting Date: The Board unanimously established the Association's Annual Meeting date as Saturday, March 10, 2012. Call to order 10:00 am.

2. November's board meeting date has been changed from November 24, 2011 to November 17, 2011.

3. Board unanimously approved Resident Manager Liu to get a Lowes credit card with a $2,000 limit.

ANNOUNCEMENTS: None

CORRESPONDENCE: None

OWNER'S DIALOG:

1. Ms. Ready, Unit #3410, requested that the board consider limiting the size of parties and the length of parties. The board made no changes to the current policy.

2. Mr. Bugna, Unit #1405, brought up concerns about the use of prohibited containers at the pool, noise, unsupervised toddlers and horse-playing. Resident Manager Liu stated that he will follow up with security to ensure the house rules are being followed.

NEXT MEETING: The next Regular Board Meeting will be held on Thursday, September 22, 2011 at 6:30 pm.

ADJOURNMENT: With no further business to discuss, President Oakes adjourned the meeting at 8:40 pm.

Colin Kurata
Secretary

Submitted by:
Certified Hawaii, AAMC®

Agent for KALELE KAI AOAO
Kristi Hirota-Schmidt, CMCA®
Account Executive
Vice President of Business Development

RESOLUTION OF THE BOARD OF DIRECTORS OF THE ASSOCIATION OF OWNERS OF KALELE KAI REGARDING REPAIR OF BOAT MOORINGS

WHEREAS, upon consultation with a qualified expert, the Board has determined the Project's waterfront harbor assembly is currently not in a good, safe and clean condition and in need of extensive renovation and repairs;

WHEREAS, the Board has also been advised by the Association's Insurance Agent the Project's waterfront harbor assembly is currently not in an insurable condition;

WHEREAS the Board desires to take reasonable and appropriate action as necessary to return the waterfront harbor assembly to a good, safe, clean and insurable condition;

WHEREAS, the Board has obtained a report and bid from Bellingham Marine to renovate and repair the Project's entire waterfront harbor assembly, including all of the individual boat moorings designated in the Declaration as limited common elements;

WHEREAS, a qualified consultant has recommended systemic repair and renovation by the manufacturer of the Project's entire waterfront harbor assembly over partial repair of selected components thereof;

WHEREAS, Paragraph 5(b) of the Declaration of Condominium Property Regime of Kalele Kai provides owners of units to which a boat mooring is appurtenant, at such owner's sole expense, maintain and repair the boat mooring in good, safe and clean condition; provided, that if owner fails to maintain and/or repair the boat mooring in good, safe and clean condition, the Association may arrange for the maintenance and/or repair work to be performed and the actual cost of such work plus a reasonable administrative fee as may be levied by the Board shall be charged to the owner so long as the Association (i) has provided the owner with written notice of the maintenance and/or repair work, the estimated cost of such work and the estimated administrative fee for arranging for such work on behalf of the owner, and (ii) the owner fails to notify the Association in writing within seven (7) days of owner's receipt of the Association's notice that owner has made arrangements for such maintenance and/or repair work to be performed, the person or persons who will perform such work, and the date such work will begin;

WHEREAS, the Board has advised and/or will advise all affected unit owners in order to maintain their unit's respective appurtenant boat moorings in a good, safe and clean condition, they must be brought into compliance with the original manufacturer's specifications as determined by Bellingham Marine;

WHEREAS, owners who fail to notify the Association's within seven (7) days of receipt of written notice that owner has made arrangements for such maintenance and/or repair work to be performed as necessary to bring such boat moorings into good, safe and clean condition in compliance with the original manufacturer's specifications, the person or persons who will perform such work, and the date such work will begin, insofar as the Contract awarded to Bellingham Marine by the Board provides for renovation and repair of individual boat moorings, affected unit owners will be assessed a pro-rata share of costs incurred to renovate and repair the respective individual boat mooring appurtenant to their unit;

WHEREAS owners who choose to perform their own work, and/or retain a licensed contractor to perform such work, must present written verification to the Association from Bellingham Marine their individual boat mooring(s) are brought into a good, safe and clean condition in compliance with the original manufacturer's specifications.

IT SO RESOLVED by the Board of Directors on this 26th day of August, 2011, and that a copy of this Resolution be attached to the Minutes of the Board Meeting where so adopted.

Bradford Oakes
President of AOAO
Board of Directors
Association of Owners of Kalele Kai

AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT BETWEEN OWNER AND CONTRACTOR (the "Agreement") IS

made as of the 22 day of August in the year 2011,

BETWEEN the Owner:

ASSOCIATION OF OWNERS OF KALELE KAI
One Kealhole Place
Honolulu, Hawaii 96825

AND the Contractor:

Bellingham Marine Industries, Inc.
5500 Nordic Way
Ferndale, WA 98248

WITH RESPECT TO THE Project:

Kalele Kai Marina Rehabilitation

The Owner and the Contractor agree as follows:

Initials _____ / _____
Owner *Contractor*

1021_121509

EXHIBIT
529
PENGAD 800-631-6989

EXHIBIT 30

ARTICLE 1

THE CONTRACT DOCUMENTS

The Contract Documents consist of:

- This Agreement Between Owner and Contractor
- Contractor's Proposal Dated April 8, 2011
- Supplier's standard product warranty attached hereto as Exhibit A

All of the Contract Documents are complimentary, and what is required by one shall be as binding as if required by all. In resolving conflicts, errors and discrepancies between the various Contract Documents, precedence shall be given in the foregoing order.

ARTICLE 2
THE WORK

The Contractor shall perform all the Work ("the Work") required by the Contract Documents and set forth in Bellingham Marine's Proposal dated April 8, 2011. The Work is generally described as follows:

The Repair and Rehabilitation of the Kalele Kai Marina.

ARTICLE 3
SCHEDULE

The Work to be performed under this Contract shall be commenced not later than sixty (60) days from execution of this Contract, and, subject to authorized adjustments and delays beyond the control of the Contractor, Substantial Completion shall be per mutually agreed upon schedule.

If the Contractor is delayed or impacted at any time in the progress of the Work by any act or neglect, whether of commission or omission, of the Owner, or by any employee, agent or representative of the Owner, or by any separate contractor or contractor employed by the Owner, or by changes in the Work requested by Owner, Contractor shall be entitled to reimbursement of any additional costs, and shall be entitled to an extension of time required to perform the Work, and the Contract Sum and Contract Time shall be increased by a Change Order. If Contractor is delayed or impacted at any time in the progress of the Work by labor disputes, fire, unusual delay in transportation, adverse weather conditions, unavoidable casualties, an Act of God, or any causes beyond the Contractor's control, then the Contract Time shall be extended by Change Order for such reasonable time as may be required to complete the Work.

Initials _____ / _____
Owner *Contractor*

1021_121509

ARTICLE 4
CONTRACT SUM

The Owner shall pay the Contractor for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of $264,700.00 (Two Hundred Sixty Four Thousand and Seven Hundred Dollars). The Contract Sum excludes any permits as well as sales, consumer, use or other similar taxes and Owner shall pay such amounts in addition to the Contract Sum as required by law.

ARTICLE 5
PAYMENTS

The Contract Sum, subject to adjustments made by written Change Order, shall be paid to Contractor in accordance with these Payment Terms:

PAYMENT TERMS:

1. 25% percent deposit, due upon execution of this Contract by Owner.
2. 25% percent upon delivery of materials to contractor's production facility in Ferndale, WA, to be ninety (90) days following execution of this Contract by Owner.
3. 25% percent upon contractor's mobilization to the jobsite, to be fourteen (14) days from date of delivery of materials to Contractor's production facility.
4. 25% percent upon final completion, to be forty-five (45) days from date of contractor's mobilization to the jobsite.

Payment due net ten (10) days from receipt of invoice. Method of payment to be approved by BMI's credit department prior to start of production. Interest will be charged on past due accounts at 18% per annum, or at the highest non-usurious commercial rate allowable by state law or provided by state statute, whichever is less. If BMI is required to employ an attorney to collect any amount due as a result of the default of Buyer, the Buyer shall pay all costs of collection, including reasonable attorney's fees and court costs.

Payment is not subject to retention.

Prior to commencement of project, Buyer shall provide evidence of financing satisfactory to BMI.

ARTICLE 6
SHOP DRAWINGS AND OWNERSHIP OF DOCUMENTS

The Drawings, Specifications, shop drawings, submittals, calculations and any other documents created by Contractor (collectively, "Work Product") are instruments of service through which the Work is to be executed, and Contractor shall retain exclusive ownership and property interests therein, including copyright interests thereto.

Initials _____ / _____
Owner *Contractor*

1021 121509

ARTICLE 7
Warranty

Product warranty shall be in accordance with the Contractor's standard product warranty attached hereto as Exhibit A.

Owner	Contractor
By: _____	By: _____

Initials _____ / _____
Owner Contractor

1021 121509

Bellingham
Marine
Industries, Inc.

5500 Nordic Way
Ferndale, WA 98248

(360) 380-2142
FAX (360) 384-8134
www.bellingham-marine.com

Bellingham
MARINE
The World's Most Comprehensive Marina Builder

April 8, 2011

Mr. Brian Liu
Mr. Edward Bronson
Kalele Kai Marina
One Keahole Place
Honolulu, HI 96825

Reference: Kalele Kai Marina Rehabilitation

Dear Brian / Ed:

Thank you for the opportunity to present our quotation for the repair and rehabilitation of the Kalele Kai Marina. Bellingham Marine is the original manufacturer of your marina and we feel we are the best company to complete this proposed rehabilitation. The scope consists of replacement in like-kind of all thru-rods, whalers, steel frames, and associated hardware throughout your entire marina.

1. The Following are **included** in our quotation:

WALKWAYS

1. The complete replacement of all 3" x 10" whaler boards on marina walkway including (3) 10' gangway landing fingers.
2. The complete replacement of all 2" x 10" rub-boards
3. The complete replacement of all 3/4" thru-rods with associated hardware.
4. The complete replacement of (7) main walkway angle transition (kite) frames
5. The complete replacement of (6) 4' x 6' triangle frames located at the 3 – gangway landing fingers.
6. Complete replacement of transition frame / triframe covers with grey non-slip polymer covers. (13) total
7. Complete Disposal of all old components.
8. Reinstallation of existing cleats and/or Owner supplied cleats with new hardware.
9. Re-attachment of all utilities.

FINGERS

1. Complete replacement of all 2" x 8" and 3" x 8" whalers on (26) fingers including end boards.
2. The (2) L-head fingers will be reconstructed utilizing structural 3 1/8" x 7 ½" glue-laminated beams on the outside face only at finger to walkway connection.
3. L-fingers will utilize a structural L and T steel splice plate for rigidity.
4. Complete replacement of all 3/4" thru-rods.
5. Complete replacement of (50) 4' x 4' steel triangle frames.
6. Complete replacement of (50) 4' x4' triangle frame covers with grey non-slip polymer covers.
7. Complete Disposal of all old components.
8. Reinstallation of existing cleats and/or Owner supplied cleats with new hardware.

2. The Following are **excluded** in our quotation:

1. Sales Tax
2. Permits and Licenses
3. Pre-existing electrical conditions/issues

Our Quoted price for the work described work is:

- **Please note that the walkway and finger costs are itemized below but these costs are contingent on the complete marina being repaired and rehabilitated as whole package.**

Walkway:

$ 169,300 (One Hundred Sixty Nine Thousand Three Hundred Dollars)

Fingers:

$ 95,400.00 (Ninety Five Thousand Four Hundred Dollars)

TOTAL COST:

$ 264,700.00 (Two Hundred Sixty Four Thousand Seven Hundred Dollars)

3. Other provisions:

FREEBOARD: AS IS (Not applicable)

DESIGN CRITERIA: Bellingham Marine (BMI) has based its proposal upon design criteria furnished by Owner, which includes site conditions relative to wind and wave exposure. If this design criteria is incorrect, BMI will be entitled to an adjustment in the contract amount, time for completion, or both.

CONCEALED OR UNKNOWN CONDITIONS: In preparing this proposal, BMI has assumed there are no concealed conditions (subsurface or otherwise) or unknown physical conditions which will adversely impact BMI's performance of the work. If such conditions are encountered, BMI will submit a Change Order to Owner specifying any applicable adjustment in the Contract amount, time for completion, or both.

Site Access: All loading, unloading, and storage is to be accomplished at the site in a mutually agreed upon location adjacent to the harbor and furnished at no cost to the Owner.

Schedule: Project commencement and completion are per agreeable negotiations with the Owner

PRICE VALIDITY: Prices are valid for firm orders placed within a period of thirty (30) days after quotation and are subject to reconfirmation thereafter.

PAYMENT TERMS: As set forth in Article V of the attached Contract.

ENGINEERING/CODES/RESPONSIBILITY: BMI does not warrant any components to meet specific local building ordinances or codes. While it is the responsibility of the Owner to secure any necessary governmental approvals, BMI will reasonably cooperate with Owner as necessary to obtain any such approvals.

BACKCHARGES: Backcharges for corrective work performed by Owner or its representative will not be honored without BMI's prior written acceptance. BMI at all times retains the right to perform corrective work on its own behalf.

INDEMNIFICATION: BMI shall protect, indemnify, defend and hold Owner harmless from any and all losses, claims, causes of actions, demands, payments, damages, injuries, expenses or liabilities, whatsoever, including attorneys' fees and costs to the extent such may arise or be asserted against Owner by reason of any negligent act or omission, or breach of contract by BMI, its employees, retained subcontractors, agents, representatives, or suppliers. BMI's obligation to indemnify and defend Owner shall not be affected or excused by any contributing fault or negligence on Owner's part, except BMI shall not be required to defend or indemnify Owner for that portion of any claims, loss or injury arising from Owner's negligent acts or omissions.

INSURANCE. For the duration of any work provided by BMI to Owner under the Contract, BMI and/or its retained sub-contractors shall maintain workers compensation, temporary disability, and employer's liability insurance coverage as may be required by the laws of the State of Hawaii. BMI and/or its retained sub-contractors shall also maintain such additional insurance to provide coverage for operations conducted on or about floating docks and/or piers as may be

required by the laws of the United States of America. In addition, BMI will maintain business automobile liability insurance coverage with combined primary limits of liability for property damage and bodily injury of not less than $1 million per claim, and $3 million aggregate and comprehensive general liability insurance coverage with combined primary limits of liability for property damage and bodily injury of not less than $3 million per claim, and $5 million aggregate. Prior to commencement of any work on Owner's premises, BMI will provide Owner with a Certificate of Insurance naming Owner as an Additional Insured on all insurance policies mandated by this paragraph.

WARNING: BMI has been notified by its wood preservers that the chemicals used in the wood treatment process are known to cause cancer.

CLAIMS Definition: A claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of contract terms, payment or money, extension of time or other relief with respect to the terms of the contract. The term "Claim" also includes other disputes and matters in question between the Owner and Seller arising out of or relating to the contract including, but not limited to, Claims against officers, directors, employees or consultants of a party for matters arising out of or relating to the Work under the contract. Claims must be made by written notice. The responsibility to substantiate a Claim shall rest with the party making the Claim.

Time Limits on Claims. Claims by either party must be made within thirty (30) days after occurrence of the event giving rise to such Claim or within thirty (30) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been resolved by Change Order will not be considered unless submitted in a timely manner.

DISPUTES

Arbitration. Controversies, disputes or claims in an amount up to and including $250,000 arising out of, in connection with, or in relation to the interpretation, performance or breach of this Proposal, including any claim based on contract, tort, or statute shall be referred to final and binding arbitration administered by and in accordance with the then existing Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon any arbitration award may be entered by any state or federal court having jurisdiction thereof. The prevailing party in any such arbitration shall be entitled to an award of reasonable attorney's fees and costs. Arbitration shall be heard and determined by a single arbitrator, the location of the arbitration hearings shall be Honolulu, Hawaii, USA. Unless a different administrator is agreed upon by the parties, American Arbitration Association shall serve as third-party administrator for any arbitration brought pursuant to this paragraph.

In the event a dispute between the parties is referred to arbitration, as soon as practical after selection of the arbitrator, the arbitrator or his/her designated representative shall determine a reasonable estimate of anticipated fees and costs of the arbitrator and render a statement to each party setting forth that party's pro rata share of said fees and costs. Thereafter, each shall, within ten (10) days of receipt of said statement, deposit said sum with the arbitrator. Failure of any party to make such a deposit shall result in the forfeiture by the non-depositing party of the right to prosecute or defend the claim which is the subject of the arbitration, which shall not otherwise serve to abate, stay or suspend the arbitration proceedings.

Unless otherwise agreed in writing or otherwise provided herein, the Seller shall carry on the Work and maintain its progress during any dispute resolution proceedings, and the Owner shall continue to make payments to the Seller in accordance with the contract documents.

Litigation. Controversies, disputes, or claims in excess of $250,000 arising out of, in connection with, or in relation to the interpretation, performance or breach of this Proposal, including any claim based on contract, tort, or statute shall be resolved in the First Circuit Court of the State of Hawaii. The presiding judge shall determine which is the prevailing party and shall include in the award that party's reasonable attorneys' fees and costs. The laws and venue of proceedings shall be the place of the Project.

Mediation. Prior to or contemporaneous with the making of any Demand for Arbitration or filing of Litigation regarding any dispute arising hereunder, the parties shall participate in private mediation before a single Mediator. Should the parties be unable to agree on selection of a Mediator, either party may file an appropriate motion in the First Circuit Court of the State of Hawaii requesting appointment of a Mediator from a list of up to three (3) proposed candidates submitted by each party. The parties shall equally share the Mediator's fee, and participate in mediation in lieu of prosecution of their respective arbitration and/or litigation claims until either a settlement is reached or an impasse is declared by the Mediator.

ENTIRE CONTRACT: When accepted by Owner, this Proposal shall constitute the entire agreement between the parties. Its terms shall be controlling in the event same are inconsistent with any plans, specifications, bid invitation, purchase order, subcontract, or other instrument furnished by Owner.

Acceptance of any offer made by BMI is expressly limited to the exact terms contained in this proposal and any attempt to alter or omit any of such terms shall be deemed an acceptance of the offer, except that any altered or omitted terms shall not be binding on BMI unless BMI has specifically agreed to such altered terms in writing.

We hope this proposal contains sufficient detail to permit your fullest evaluation. Please feel free to contact us at any time for further information.

Sincerely,

Derrick Ames

Bellingham Marine
(360) 543-5800 office
(360) 739-8258 cell

—:—

Approved: _____

A signed copy of this quotation will serve as acceptance and agreement by the Owner to purchase the materials and/or services described herein.

Dated:_____ By:_____

WARRANTY

BMI warrants that the individual concrete float modules will be free of defects in materials and workmanship for a period of five (5) years from date of shipment, and that all other dock components including, but not limited to, waiers, weldments, filler slabs, hardware will be free of defects in materials and workmanship for a period of one (1) year from the date of shipment. If within the warranty period the materials are found to be defective, the Buyer must provide written notice of such defects within ten (10) days from the date the defects are discovered. Buyer's remedy for defective materials is limited to the repair or replacement of the defective item by BMI. BMI is not liable for consequential or incidental damages resulting from the breach of this warranty.

The concrete float system is intended for protected installations such as exist behind a permanent, fixed wave attenuator or floating concrete wave attenuator furnished by BMI. BMI's warranty also excludes coverage for any loss, liability, damage or defect caused by abuse, misuse, accident, neglect, improper or insufficient maintenance, or to any equipment or products which have been repaired or altered by any person not authorized by BMI.

The foregoing warranty is the exclusive and sole warranty offered to Buyer. SUCH WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY DISCLAIMED.

KK000104

CERTIFIED
HAWAII
An Associa® Company

Very important documents. Please read carefully.

August 26, 2011

To: Boat Mooring Owners at Kalele Kai

From: Kalele Kai Board of Directors

Re: Repair of Boat Moorings Resolution and Technical Specifications

Dear Hitoshi Yoshikawa, owner of boat docks 28, 29, 30, 31, 32, and 33:

The Board of Directors unanimously approved the attached resolution regarding the repairs of the boat moorings at the August 25, 2011 Board of Director's meeting.

Should you decide to allow the Association to perform the maintenance and repair of your mooring, you will be assessed for the initial repairs. The final costs per mooring for these repairs cannot be calculated until the work is completed in the event additional damage is discovered during the project. However, the Board has approved an initial assessment of $2,000.00 per mooring and upon completion of the repair project any additional assessments will be calculated at that time and you will be notified accordingly.

Your assessment of $2,000.00 per mooring is due by October 30, 2011. Please make your check payable to Kalele Kai AOAO, Attn: Alan Takumi so I can ensure it is properly credited.

If you intend to perform the repair work on your own, notice to the Association must be provided within seven (7) days from receipt of this letter with your arrangements to maintain and/or repair such boat mooring in good safe and clean condition. Owners must adhere to all the terms of the resolution and the attached Bellingham Marine Industries – Technical Specifications for the Concrete Unifloat® System. If notice that meets the requirements described in the resolution is not provided within seven (7) days, you will be assessed the fees mentioned above.

Once the Board has determined periodic maintenance and insurance costs attributable to the dock, your pro-rata share will be added to your monthly maintenance fees.

If there are any questions or concerns you can contact me at (808) 837-5239 or via e-mail Alan@CertifiedHawaii.com or your Resident Manager, Bryan Liu at (808) 395-0431 or KaleleKai002@Hawaii.rr.com.

Sincerely,

Alan Takumi, CMCA®, AMS®, ARM®, PCAM®
Account Executive
Certified Hawaii, AAMC®, Agent for Kalele Kai AOAO

EXHIBIT
530
PENGAD 800-631-6989

3179 KOAPAKA STREET, HONOLULU, HAWAII 96819
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EXHIBIT 31

RESOLUTION OF THE BOARD OF DIRECTORS OF THE ASSOCIATION OF OWNERS OF KALELE KAI REGARDING REPAIR OF BOAT MOORINGS

WHEREAS, upon consultation with a qualified expert, the Board has determined the Project's waterfront harbor assembly is currently not in a good, safe and clean condition and in need of extensive renovation and repairs;

WHEREAS, the Board has also been advised by the Association's Insurance Agent the Project's waterfront harbor assembly is currently not in an insurable condition;

WHEREAS the Board desires to take reasonable and appropriate action as necessary to return the waterfront harbor assembly to a good, safe, clean and insurable condition;

WHEREAS, the Board has obtained a report and bid from Bellingham Marine to renovate and repair the Project's entire waterfront harbor assembly, including all of the individual boat moorings designated in the Declaration as limited common elements;

WHEREAS, a qualified consultant has recommended systemic repair and renovation by the manufacturer of the Project's entire waterfront harbor assembly over partial repair of selected components thereof;

WHEREAS, Paragraph 5(b) of the Declaration of Condominium Property Regime of Kalele Kai provides owners of units to which a boat mooring is appurtenant, at such owner's sole expense, maintain and repair the boat mooring in good, safe and clean condition; provided, that if owner fails to maintain and/or repair the boat mooring in good, safe and clean condition, the Association may arrange for the maintenance and/or repair work to be performed and the actual cost of such work plus a reasonable administrative fee as may be levied by the Board shall be charged to the owner so long as the Association (i) has provided the owner with written notice of the maintenance and/or repair work, the estimated cost of such work and the estimated administrative fee for arranging for such work on behalf of the owner, and (ii) the owner fails to notify the Association in writing within seven (7) days of owner's receipt of the Association's notice that owner has made arrangements for such maintenance and/or repair work to be performed, the person or persons who will perform such work, and the date such work will begin;

WHEREAS, the Board has advised and/or will advise all affected unit owners in order to maintain their unit's respective appurtenant boat moorings in a good, safe and clean condition, they must be brought into compliance with the original manufacturer's specifications as determined by Bellingham Marine;

WHEREAS, owners who fail to notify the Association's within seven (7) days of receipt of written notice that owner has made arrangements for such maintenance and/or repair work to be performed as necessary to bring such boat moorings into good, safe and clean condition in compliance with the original manufacturer's specifications, the person or persons who will perform such work, and the date such work will begin, insofar as the Contract awarded to Bellingham Marine by the Board provides for renovation and repair of individual boat moorings, affected unit owners will be assessed a pro-rata share of costs incurred to renovate and repair the respective individual boat mooring appurtenant to their unit;

WHEREAS owners who choose to perform their own work, and/or retain a licensed contractor to perform such work, must present written verification to the Association from Bellingham Marine their individual boat mooring(s) are brought into a good, safe and clean condition in compliance with the original manufacturer's specifications.

IT SO RESOLVED by the Board of Directors on this 26th day of August, 2011, and that a copy of this Resolution be attached to the Minutes of the Board Meeting where so adopted.

Bradford Oakes
President of AOAO
Board of Directors
Association of Owners of Kalele Kai

DISPUTE PREVENTION & RESOLUTION
STATE OF HAWAII
---:---

HITOSHI YOSHIKAWA,) DPR Arb. No. 13-0496-A
Claimant,
vs.
ASSOCIATION OF APARTMENT OWNERS OF KALELE KAI,) Arb. Hearing: 8/25/2014 and 8/26/2014
Respondent.

ARBITRATION
Volume IV
(Part 2 of 2)

Taken before Arbitrator Keith W. Hunter at the offices of Dispute Prevention & Resolution, Inc., 1155 Pauahi Tower, 1001 Bishop Street, Honolulu, Hawaii 96813, commencing at 9:00 a.m. on September 18, 2014.

WILLIAM T. BARTON, RPR, CSR NO. 391

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AFTERNOON SESSION
(1:15 p.m.)
(Part 2 of 2 volumes)

THE ARBITRATOR: Back on the record. John, please proceed.
MR. ZALEWSKI: Thank you.
CONTINUED CROSS-EXAMINATION
BY MR. ZALEWSKI:
Q. So you had testified by late October 2013, Mr. Yoshikawa had moored the Rola at Kalele Kai Marina, correct?
A. Correct.
Q. Let's go to November 5, 2013. Exhibit 575, please. This is a letter from Mr. Goodwin, November 5, 2013 to Mr. Revere regarding Kalele Kai Moorings 28 through 33, Hitoshi Yoshikawa.
The second paragraph references in part to Mr. Goodwin's correspondence dated June 14, 2013 wherein the Board denied the request to moor the new boat, right? Do you recall that?
A. That's correct.
Q. There is a reference to Declaration Paragraph 5, specifically the quoted language above the 23-feet restriction, right?

you were able to print?
A. Yes.
Q. And the top of the second page, is that, in fact, a photograph of the Cracovia, the Rojek vessel that's up for sale?
A. Correct.
Q. That boat, does that appear to be the Kalele Kai Marina in the background of that photo?
A. Yes, it is.
Q. In making decisions with respect to phase-in compliance of the 23-foot restriction, did the Board exercise its reasonable business judgment in your view?
MR. REVERE: Objection. Calls for speculation, calls for a legal conclusion, no foundation. Calls for the disclosure of attorney/client, which I'm fine with if he responds.
THE ARBITRATOR: Is that an objection?
MR. REVERE: It's an invitation.
MR. ZALEWSKI: Notice I'm not saying argumentative, although it's really ripe in that regard.
MR. REVERE: It's an invitation wrapped around an objection.

THE ARBITRATOR: Rephrase the question, John.
BY MR. ZALEWSKI:
Q. Why don't you turn to Exhibit 585.
A. I'm there.
Q. Are these criteria that the Board utilized in its decision making with respect to compliance with the 23-foot restriction?
MR. REVERE: No foundation.
MR. ZALEWSKI: Terry asked questions about this same exhibit.
THE ARBITRATOR: He can answer.
MR. ZALEWSKI: Thank you.
A. Yes.
Q. Let's just go through at least some of them. "Number 1, All four boats which were in violation '011 have been resolved through sale or other means."
Is that the same four boats you talked about before?
A. Correct.
Q. "Number 2, No new boats have violated restrictions since '011 other than the Rola in 013." Let me just ask this question so I understand.

Other than the Rola, has there been any new boat, to your knowledge, that's moored at Kalele Kai since '011 over 23 feet?
A. Absolutely not.
Q. Number 3 talks about, "The Rola is the largest known boat ever to have moored at Kalele Kai."
Is that consistent with your recollection?
A. It is the biggest.
Q. Number 4. Let's just talk about some of the subparts.
The violation: You consider the violation to be an open one?
A. Yes.
Q. For all owners to see?
A. It's out there. We tell owners they can't, and it's sitting out there being done.
Q. As far as ongoing since it was first moored there in late October 2013, has it been moored at Kalele Kai ever since?
A. Yes.
Q. As far as material, do you believe that a 49-foot vessel relative to a 23-foot restriction is a material violation?

A. Absolutely.
Q. Do you believe the violation is intentional?
A. Yes.
Q. Explain why.
A. Well, we've told him no, that he couldn't do it and he continues to go ahead and do it. He asked the question before it was there. And we explained no. And sure enough, even the day of mediation, here comes the boat rolling up. Obviously, it was intentional.
Q. He moored the boat at or around the time of mediation?
A. He did it the day of the mediation.
Q. The day of. "Interferes with the rights of other owners." Could you explain that subpart.
A. If you're telling one owner they can't do something and you're allowing another owner to do something and the declarations don't allow it, then we're interfering with the rights of the owners that actually have the ability to -- or we're telling no.
It's like if we allow this, then we who should be able to allow everything else that

went through. So I understand it if you take all these various documents together, the declaration, the 10th Declaration Amendment, the Rojek agreement, the Hung order, and let's just cover those.

The Board believes its decision making with regard to the 23-foot restriction has been consistent with all of these?

A. Absolutely correct.

Q. And Number 12, is this the vote you referenced earlier where there were four boats that would be permitted if the amendment passed, but 67 percent of the vote wasn't garnered?

A. That is correct.

Q. Exhibit 586. Are these criteria that the Board considered in both renovating the marina area as well as allocating costs of that renovation?

A. Absolutely.

Q. Number 1, that's the Bellingham documents we went through earlier.

A. Yes.

Q. Number 2, is that the second opinion letter from MKE that we already covered?

A. Yes.

Q. Number 3, is this memorialized in that Terry Wong email?

A. Yes.

Q. What do you mean by Number 4? Could you expand on it? I'll read it. "Utilize Bellingham's detailed measurements of the marina's common elements and limited common elements."

Could you explain that?

A. What that is indicating is that in the proposal where they came out with the finger piers versus the walkways, they had the -- and I'm doing this off my head, it was like $95,400 for the finger piers and 160-some-odd-thousand dollars for the walkways, which came to a total project of $264,000-plus. So they are the ones that created those measurement and that cost factor for the marina.

MR. REVERE: I want to object. Best evidence rule.

Q. Number 6, is this the Board resolution that we already covered?

A. Yes.

Q. Then Number 7, "less than 2,000."

Does that mean $2,000 initially, and there was a refund thereafter?

A. That is correct.

Q. The net cost to Mr. Yoshikawa was less than $2,000 per mooring?

A. Correct.

Q. "Repairs or renovations were successful." I don't think we really covered this topic. Could you explain your view on whether Bellingham's work was, in fact, successful.

A. Bellingham did a fantastic job in not only the timing of getting it done, but the way it was completed with having to move boats around, what they needed to do to get it back up in operation, work with boat owners that have thousands of dollars in their boats. And just the way the marina today is functioning and looks is wonderful.

Q. As Board President, have you gotten feedback from owners, including boat mooring owners, about the quality of Bellingham's renovation work?

MR. REVERE: Objection. Hearsay. No foundation for the hearsay.

THE ARBITRATOR: I'll allow the question. Go ahead.

Q. Have you gotten that feedback?

A. Yes, I have.

Q. Has it been positive negative or otherwise?

A. It's been positive. There can't be a negative to it.

Q. That includes boat mooring owners?

A. That includes people that were complaining about what it was going to cost or what they were going to do to begin with.

Q. So even persons that initially dissented from utilizing Bellingham after the work was done came to you and said good things?

A. Yes.

Q. Then Number 9, we already covered.

Is that the Bellingham annual inspection and maintenance contract?

A. Yes.

Q. Let's go to Exhibit 590. These are photographs. There's in the corner there's a Sharpie numbering the pages. Let's go through those if we can.

Number 1, can you -- just generally what's depicted in Photograph 1?

A. The Rola to the left. The walkway going down the middle. You've got the seawall

that's capped there. Obviously, on the right-hand side, you've got the sidewalk on the grass area.
Q. On the left, is that one thing that's depicted is the triangle with a pedestal on top of it?
A. That's correct.
Q. Does that help explain your testimony of why the Board believes that's limited common element?
A. Yes. Because there is a light that comes out of that that reflected on to the sidewalk. But then if you look the yellow cord that's wrapped there, quite frankly, is the plug that goes into the Rola and provides electricity for them.
Q. What I was trying to get at, the triangle itself, is that consistent with your testimony about it helps support the finger pier in place?
A. Correct. Absolutely, yes.
Q. And, in fact, is this one of the finger piers that pertains or is part of one of the mooring areas that Yoshikawa owns?
A. The one --
MR. REVERE: Excuse me. Objection to

the form of the question. Vague and ambiguous.
Q. I'll clarify.
In front of the boat, we're kind of facing the front of the boat, right?
A. Yes.
Q. You see the finger pier right before it?
A. Yes.
Q. What's your understanding of which finger pier or which mooring that that pertains to or who -- let me clarify.
Who owns that mooring space?
A. Mr. Yoshikawa owns one-half of that finger pier going up, which is the one on the outside of the -- however you want to say, closest to the Rola.
Q. Then there is another one that we can't see on the other side of the Rola?
A. Correct.
Q. That is also part of the one of the moorings owned by --
A. Correct.
Q. -- Yoshikawa?
A. No. The one on the inside coming closer away from the boat is owned by -- was

Hungs, I'm not sure who owns it today. So you've got a finger pier, you've got half of it owns one side and half of it owns the other side.
Q. Thank you for clarifying that. If you could go to Photograph Number 2. Can you point out -- we kind of covered some certain items that Bellingham replaced or improved as part of its work that you indicated were usually limited common elements. Let's cover them. Feel free to point it out if you can for us. If you want to lift the photograph.
Can we see any whaling board in this photograph?
A. Everything where the floats are. So where the floats are here on the wall, obviously the floats, that's all whaler boards. Remember, the floats are attached to the cleats which, are all their cleats.
Q. There's cleats depicted in there?
A. Yes. It's where the ropes are wrapped around to hold on to the fenders.
Q. All right. Why don't we get through the rest of the photos.
Photo 3, is this another photograph of the Rola?

A. Yes, it is.
Q. And by the way, these photos they appear to contain Bates stamps August 23, 2014.
Fair to say that this is present conditions?
A. Yes.
Q. Could you go to Photograph 4.
A. Yes.
Q. Is this another photograph of the Rola from a different angle?
A. Yes, it is.
Q. Same things. Would you testify the same for Photographs 5 and 6?
A. Yes.
Q. And 7 also?
A. Yes.
Q. Number 8, does that have what looks like a platform on the back?
A. That's the swim platform.
Q. So when you were measuring it, you measured it to the back of the swim platform?
A. Yes.
Q. Is it your understanding that the -- let me ask you, the Board, when it determines whether a boat is in or out of compliance with the

23-foot restriction, do they measure the total length overall of a boat including such features as swim platforms, or just part of the length of the boat?

MR. REVERE: Objection. No foundation.

THE ARBITRATOR: Go ahead.

A. The overall length from bow to stern.

Q. Let's actually go back to Photograph 11.

In Photograph 11, is there a side tie boat in the middle of this page?

A. Yes, there is.

Q. Do you know personally what the length of that side tie boat is?

A. Exactly 23 feet.

Q. That boat is compliant with the restriction?

A. Yes, it is.

Q. It's side tied?

A. Yes, it is.

Q. You've owned boats in the past, right?

A. Yes.

Q. And incident to owning boats in the past, you've had to moor boats?

A. I've trailered them. I've never moored

one, no.

Q. Have you been in boats that have had the side tie versus having to tie their boats to finger piers at Kalele Kai?

A. Yes.

Q. From just your personal experience, what's easier, to tie the boat or moor a boat? Is it parallel or finger pier?

MR. REVERE: Objection. Irrelevant. Not likely -- undisclosed expert opinion.

THE ARBITRATOR: He testified he hasn't moored a beat.

Q. I'll ask this way: Do you understand there's reasons of convenience in connection with side tying a boat?

A. Yes.

Q. And what provides more space in terms of mooring a boat? Side tie boat or -- let me ask you. Let me rephrase. The finger piered configuration, how much space is allotted for each boat if one has to moor it in a perpendicular fashion?

MR. REVERE: Objection. No foundation. Overly broad, given the geometry of the area.

THE ARBITRATOR: If you can answer, go

ahead.

A. I don't know the specific distance. But to put two 23-foot boats side by side would be very, very difficult. That's why people would like more space for safety. The other part is when they pull their boats in sideways, they're inside the dock area.

If things are coming by and things, it's a safety aspect. We've had motors that have been hit that are parallel parked with docks that have gotten away from other houses and stuff. It just gives it a little more safety factor. Obviously, there's a larger cost to it too.

Q. Photograph 12, sir.

Is this another photograph of the compliant side tied boat at Kalele Kai?

A. Yes.

Q. Photograph 14. Does that depict in part one the triangles that Bellingham replaced? Is this as replaced?

A. This is a replaced one, yes.

Q. That includes the polymer cover as well?

A. Correct.

Q. Does this also include new, at least

the top of a new whaling board?

A. Yes.

Q. In Figure 15, does that depict in part any new -- do you see anything on here that reflects any new improvements installed by Bellingham in Photograph --

A. It's all the whaling boards, all the cleats. I can't see the rods that go through it, but I know the rods were all changed out that go into these.

I will say this the only way I can identify this is 43 and 44. So prior to this dock here, it was leveled at an angle. It turned it around and it was putting pressure on the main walkway when it was up this way.

When Bellingham did this, they actually structured it so it's flat going out.

Q. Photograph 17. Is this the Cracovia with the For Sale sign posted?

A. Yes.

Q. Okay. Exhibit 591, please. Two nights ago, did you request and obtain permission to enter the Sabry unit to look at these photographs and compare what you could see through the window versus what is depicted in these photographs?

MR. ZALEWSKI: Sorry. This is a supplementary exhibit. I have extra copies.
Q. Let me step back.
Two nights ago, did you request and obtain permission to enter the inside of the Sabry unit?
A. Yes.
Q. And did you bring with you those photographs?
MR. REVERE: I object to any questions about these because they are submitted late.
MR. ZALEWSKI: They are responding to their late-submitted photographs.
THE ARBITRATOR: Go ahead. You can ask him questions.
Q. Did you bring those photographs with you?
A. Yes, I did.
Q. Were you able to compare the nighttime view through your own eyes looking through the windows with what's depicted in these photographs?
A. Yes.
Q. Why don't we page through it. Start with the first page.
Is that consistent with what you saw?

A. Yes.
Q. Turn to the second photograph.
What is that depicted in the middle of the photograph?
A. A big white tent. It's the Rola.
Q. Is that a nighttime view of the Rola as looking through the window? Do you recall which part of the residence you were in?
A. This part, I was upstairs, looking through their railing at it.
Q. Next page, please.
Did you see this with your own eyes, this view depicted in this photograph?
A. Yes.
Q. And from where were you standing or sitting when you saw this view?
A. On their balcony, lanai.
Q. Next page. Did you see this view with your own eyes?
A. Yeah, this is on the lower lanai.
Q. There are some bright spots that look like glare.
Did you personally perceive glare from your own eyes when standing inside the Sabry unit at night?

sentence, "Triangles are to be made of marina grade plywood or starboard in accordance with the specs provided by Bellingham Marine."

Do you see that?

A. Yes.

Q. Then there is reference to, below that, about "Triangle tie frames in accordance with specs provided by Bellingham Marine."

Do you see that?

A. Yes.

MR. REVERE: Beyond the scope.

Q. Is that related to your testimony during redirect about Bellingham being referenced in the Rosic agreement as an authority to follow?

A. Correct.

Q. The other subject matter pertained to Exhibit 523.

A. Okay.

Q. Specifically Page 43.

MR. REVERE: Bates stamped 43?

MR. ZALEWSKI: Yes.

A. Okay.

Q. And more specifically, it relates to these six mooring areas that Mr. Yoshikawa owns.

A. Okay.

Q. So what I want to ask you about is after the Bellingham work, the renovation work was completed, did you have occasion to walk along the marina area, including the Yoshikawa mooring areas to look at what the final work looked like?

A. Yes.

Q. And did you see anything from your perception with your own eyes to indicate that the Yoshikawa boat mooring area, specifically those areas you believe are limited common element, to have been improved or renovated by Bellingham?

A. Most definitely.

Q. What stands out in your memory?

MR. REVERE: This is all beyond the scope.

MR. ZALEWSKI: He's implying Yoshikawa has no improvement for their dollar.

MR. REVERE: That's not at all what I'm implying.

A. All the whaler boards going up and down the fascia of it.

MR. REVERE: Of what?

A. The front.

MR. REVERE: Of the common walkway?

A. No, I said the facie.

MR. REVERE: Of the what?

THE ARBITRATOR: Let him answer the question.

MR. REVERE: I don't know what he's referring to. The facie of the finger piers?

A. Can I use a picture?

THE ARBITRATOR: I prefer you not. Give testimony first.

A. Down the front. Down the side. All bolts, all the nuts, all the pieces, all the cleats, all of the hardware that goes with it, the triangles. Everything that goes into that obviously was put brand new, just as it was for everybody.

Q. So based upon --

MR. REVERE: Objection. Vague and ambiguous. I still don't know what he's talking about. The front of what?

Q. These are whaler boards that are directly adjoining the --

A. Ocean.

Q. -- ocean where Mr. Yoshikawa moors his boat?

A. That's correct.

Q. So from your personal observation, all

the mooring areas were improved as a result of the Bellingham renovation, including, the Yoshikawa boat mooring areas?

A. Absolutely.

Q. And this allocation percentage that was utilized, did Mr. Yoshikawa or any boat mooring owner come back and say or suggest a different allocation percentage or method?

A. We never heard from anyone.

MR. ZALEWSKI: I have no further questions.

FURTHER EXAMINATION

BY MR. REVERE:

Q. Very briefly. The Yoshikawas did say they are making a payment under protest and didn't agree with it, correct? You saw their check, their letter?

A. I saw their check. I don't remember the letter and stuff.

Q. And when you said the front of it, the "it" that you're referring to is the common walkway?

A. You can say the common walkway, but part of the common walkway is limited common element that's the whalers that go on there that

elements?
MR. ZALEWSKI: Objection. That misstates a very detailed declaration provision.
MR. REVERE: Show me what's more detailed than that about anything in that marina area.
MR. ZALEWSKI: I'm going to object.
THE ARBITRATOR: He has answered this three or four times.
MR. REVERE: Nothing further.
THE ARBITRATOR: Anything else?
MR. ZALEWSKI: No. No thank you.
THE ARBITRATOR: You're done.
(Witness excused.)

KAZUHIKO UDAGAWA,

Called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GOODWIN:

Q. Will you state your full name for the record.
A. Kazuhiko Udagawa is my name.
Q. Could you spell your first name for the court reporter, please.
A. K-A-Z-U-H-I-K-O. My last name is

U-D-A-G-A-W-A.
Q. Mr. Udagawa, where do you live?
A. I live in Waikiki.
Q. And how long have you lived in Hawaii?
A. I came here in 2003.
Q. Where did you come from?
A. Came from Spain.
Q. So you've lived in Hawaii for approximately 11 years?
A. Yes.
Q. How long did you live in Spain?
A. About three years.
Q. And where did you live before Spain?
A. Guam.
Q. How long did you live in Guam?
A. About 34 years.
Q. Where were you born?
A. Japan.
Q. Is Japanese your first language?
A. Yes.
Q. And you also speak English; is that correct?
A. Yes, I do.
Q. Where did you learn English?
A. Well, I learned it in high school and

Guam and throughout my out abroad.
Q. Do you read and write English?
A. Yes, I do.
Q. A little bit about your educational background.
You went to high school; is that correct?
A. Yes, that's correct.
Q. Was that in Japan?
A. Yes.
Q. Did you also attend education, formal education beyond high school?
A. Not exactly, no.
Q. Can you please explain.
A. Yes. I, after the graduate school, I attended real estate class and also obtaining real estate license. And other than that, no education.
Q. Where did you receive your training as a real estate agent?
A. In Guam and Hawaii.
Q. Are you a licensed real estate agent in Guam?
A. I was.
Q. What year did you obtain your licensed

real estate agency in Guam?
A. '87.
Q. And is Guam where you attended real estate training courses?
A. Yes, I did.
Q. So you took a real estate certification course?
A. That is correct.
Q. And was that a state-sponsored class?
A. No. It's Abe Lee.
Q. That would be Abe Lee Realty, just like here in Hawaii?
A. That is correct.
Q. Did Abe have a course that he offered in Guam?
A. No.
Q. Did you take a real estate training course in Guam?
A. I did a course as I just took -- I forgot the name of the school but, yes, private school.
Q. Approximately how long was that course in duration?
A. About 60 hours.
Q. Now, does Guam have a similar real

estate licensing scheme as we do in Hawaii?
A. I think so, yes.
Q. I notice you're wearing a tag today; is that correct?
A. Yes my.
Q. Your name tag indicates Myland Hawaii Realty?
A. That's correct.
Q. Is that your current employer?
A. This is my company abroad too.
Q. Are you the owner of that company?
A. Not necessarily, no.
Q. Are you a shareholder in that company?
A. No.
Q. And it has your name, KC Udagawa; is that correct?
A. That is correct.
Q. It has a parenthesis "R" next to your name; is that correct?
A. Right.
Q. Can you explain what that "R" means in the real estate business.
A. Real estate agent, they have an associates and broker. And I took a license broker's test and passed. And I'm holding a real

estate broker's license since 2010.
Q. You obtained your real estate broker's license in 2010?
A. Yes, correct.
Q. But there is another designation in Hawaii for a real estate agent; is that correct?
A. Uh-huh (affirmative).
Q. Is that correct? There's another designation for real estate agent other than broker?
A. Yes.
Q. What is the other designation?
A. Real estate associate.
Q. What is the difference between a Realtor associate and a broker?
A. Realtor associate is agents who has to hang a license under the broker. And the broker will take care all those other associates.
Q. An associate must be associated with a broker; is that correct?
A. That is correct.
Q. Up until 2010, you had to be associated with a broker; is that correct?
A. That's correct.
MR. REVERE: Just let him get his

question out.
Q. We can't both speak at the same time because the court reporter is taking down everything we say.
A. Thank you.
Q. I'll let you finish your answers and you let me finish my questions.
A. Uh-huh (affirmative).
Q. I would ask that you give a verbal response. No uh-huhs (affirmative) or uh-uhs (negative) because those need to come across for the record.
A. I'll be careful.
Q. Before 2010, you were in Hawaii, you were a real estate associate?
A. Yes, that is correct.
Q. What year did you obtain your license to be a real estate associate in Hawaii?
A. 2004.
Q. That was after you attended Abe Lee's course?
A. That is right, yes.
Q. You took a certification exam offered by the State of Hawaii?
A. Yes.

Q. Who were you associated with prior to 2010? Who was your broker?
A. My broker was Hideo Mita.
Q. Could you spell that?
A. H-I-D-E-O, M-I-T-A.
Q. That's Mr. Mita; is that correct?
A. That is correct.
Q. And were you and Mr. Mita affiliated with an agency?
A. Yes.
Q. What was the name of the agency?
A. That was a -- name of agency is -- hold on a second. It was one before the Myland Realty. It was Long Stay Service, Incorporated.
Q. Were you employed at Long Stay from 2004?
A. Uh-huh (affirmative) -- I mean 2008.
Q. So you started at Long Stay in 2008?
A. That is correct.
Q. Where were you employed before Long Stay?
A. Fogarty Realty.
Q. Could you spell that for the court reporter.
A. F-O-G-A-R-T-Y Realty.

Q. What were your dates of employment at Fogarty Realty?
A. 2004 through 2008.
Q. So you got your real estate associate license in 2004; is that correct?
A. Yes.
Q. And you immediately went to work for Fogarty Realty; is that correct?
A. No.
Q. Where did you go to work?
A. Before Fogarty, I had associated with Coldwell Banker.
Q. Which Coldwell Banker office?
A. Kahala.
Q. Who was your principal broker at Coldwell?
A. At that time, I believe the principal broker was Tracy Bradley.
Q. Could you spell Tracy's last name.
A. B-R-A-D -- I can't -- L-Y probably.
Q. Let's back up again.
In 2004, you obtained your real estate associate license; is that correct? Is that correct?
A. Yes, that is correct.

Q. After you obtained your real estate associate's license, you went to work for Coldwell Banker at the Kahala office?
A. Correct.
Q. And Tracy Bradley --
A. Bradley, yes.
Q. -- was your principal broker?
A. Uh-huh (affirmative).
Q. How long were you employed at Coldwell Banker?
A. That was about less than a year, I believe.
Q. Why did you leave?
A. I had an offer from Fogarty Realty.
Q. And when you were at Coldwell Banker, was most of your business residential real estate?
A. Yes, correct.
Q. Was it residential real estate sales?
A. Yes, that's correct.
Q. Did you concentrate on Japanese clientele?
A. Not necessarily, no, because Coldwell Bankers is worldwide and island wide. It is not necessarily Japanese.

Q. Your clientele while you were at Coldwell Banker for less than a year was not necessarily Japanese?
A. That's correct.
Q. You moved to Fogarty in less than a year later?
A. Yes.
Q. Somewhere around 2005?
A. Yes.
Q. Who was your principal broker at Fogarty?
A. Jeannie Fogarty.
Q. Is that Jeannie with a J?
A. J-E-A-N-N-I-E.
Q. Is it fair to say that Ms. Fogarty was the owner of the agency?
A. That is correct.
Q. Did your clientele change when you moved from Coldwell Banker to Fogarty?
A. They have, yes. It has changed.
Q. What type of clientele were you dealing with when you went to Fogarty?
A. Majority of the clientele was Japanese.
Q. Did you market yourself to the Japanese community?

A. Well, she was doing it.
Q. Did she market you to the Japanese community? Is that correct?
A. She was one marketing, yes.
Q. Let me rephrase.
Was Jeannie Fogarty marketing you to the Japanese community?
A. Well, actually -- well, yes, you can say that.
Q. So as opposed to at Coldwell Banker, by the time you got to Fogarty, your clientele had changed?
A. Yes.
Q. Is it fair to say that you were mostly dealing with Japanese nationals who wanted to purchase property in Hawaii?
A. Yes.
Q. Would that be residential real estate?
A. Yes.
Q. Why did you leave Fogarty?
A. We -- Hideo Mita and I were -- actually, Hideo Mita has left Fogarty. And he asked me to be coming with him. So actually, that's at the time that I left Fogarty.
Q. So Mr. Mita was leaving Fogarty and

asked you to leave with him?
A. Yes.
Q. And Mr. Fogarty already had -- I'm sorry. Mr. Mita already had a broker's license; is that correct?
A. Yes, that is correct.
Q. So you and Mr. Mita left Fogarty in 2008; is that correct?
A. That's correct.
Q. And Mr. Mita opened Myland Hawaii Realty?
A. Before that, it's Long Stay Service, Inc.
Q. Mr. Mita opened Long Stay?
A. Yes.
Q. And Mr. Mita was the principal broker at Long Stay?
A. That is correct.
Q. How long did you work at Long Stay?
A. Well, since then I was working. But Long Stay service actually changed their name to Myland Hawaii Realty.
Q. When did that occur?
A. Probably 2010, something like that.
Q. Did you ever have an ownership interest

in Long Stay realty?
A. No.
Q. Do you have an ownership interest in Myland?
A. No.
Q. But Mr. Mita is still the principal broker at Myland?
A. By that time, but he left.
Q. When did he leave?
A. He left in, I believe, 2010.
Q. Are you now the principal broker for Myland Hawaii Realty?
A. That is correct.
Q. Do any real estate associates work under you at Myland?
A. Yes.
Q. How many?
A. Right now, three -- I mean four, excuse me.
Q. Can you give me their names?
A. Yes. Ryota Seki, R-Y-O-T-A, S-E-K-I.
Q. Mr. Seki?
A. Yes.
Q. When did Mr. Seki start?
A. Mr. Seki started 2008.

Q. Please continue. Next one.
A. Next one is Yuri Hoshino, Y-U-R-I, H-O-S-H-I-N-O.
Q. When did Ms. Hoshino start?
A. She joined the end of 2009 or beginning 2010.
Q. And the last real estate associate?
A. Two more.
Q. I'm sorry.
A. Hiromi Farmer. H-I-R-O-M-I, Farmer. She started 2013. And the last one is Misako Asaea. M-I-S-A-K-O, A-S-A-E-A. She started 2012.
Q. Now, you said you're the principal broker at Myland Hawaii Realty; is that correct?
A. Yes, that is correct.
Q. Is it a corporation?
A. Yes.
Q. Are you a shareholder in the corporation?
A. No, I am not.
Q. Who is the majority shareholder of the corporation?
A. Mr. -- hold on a second. Majority of the corporation is Mr. Hisao Miwa, H-I-S-A-O, M-I-W-A.

Q. Does Mr. Miwa live in Hawaii?
A. Yes, he does.
Q. Is he a licensed real estate agent?
A. He is not.
Q. When did he become the majority owner of Myland Hawaii Realty?
A. 2011. Excuse me, 2010.
Q. Is that when Mr. Mita sold out?
A. That is correct. He did not sold out, no.
Q. How was the transfer?
A. He just left. Thank you.
Q. Is it fair to say the majority of your clientele today is still Japanese?
A. Yes.
Q. And does Myland -- are you marketing yourself to Japanese individuals?
A. Yes.
Q. These are Japanese individuals looking to purchase property in the state of Hawaii?
A. Yes.
Q. And would this be limited to residential real estate?
A. Yes. Residential.
Q. When you represent your Japanese

clients in real estate transactions in Hawaii, do you have the real estate closing documents translated into Japanese?
A. Yes.
Q. You do that as a normal course?
A. They do have these Japanese-translated forms available if they request it.
Q. Is this a service that you offer to your clients as a matter of course? Or do your clients have to request that?
A. They have to request that.
Q. Is it fair to say that you don't normally recommend your --
A. Yes.
Q. Let me finish. Is it fair to say you don't normally recommend your clients have the real estate closing documents translated into Japanese?
A. If they don't ask, we do not recommend, correct.
Q. If your clients don't request the real estate closing documents be translated into Japanese, are part of the services that you routinely provide is to sit down with a client and go over the documents with them?

A. Yes. If a conversation with a clientele is going to be satisfactory or sufficient by our translation, we not going to the Japanese forms and translate. That's correct.
Q. So if you don't translate the real estate closing documents and as you said, you just do it in discussion, do you decide what documents that you discuss with the client?
A. Could you repeat the question?
Q. Sure. In those situations where you don't have the real estate transaction documents translated into Japanese, do you as the broker make a decision what documents you're going to discuss with your client?
A. What was the point of the question? What the document?
Q. Yes. You told me that if you don't have the documents translated, you have a conversation with the client regarding document?
A. That is correct, yes. So if, in case if they asking yes, we can obtain it. That is correct.
Q. So what I was trying to find out was Mr. Udagawa, if you as the broker make the decision on what documents you're going to discuss

with your client?
A. Uh-huh (affirmative).
Q. Is that --
A. Yes, that is correct.
Q. That is correct.
A. Thank you.
Q. How did you meet Mr. Yoshikawa?
A. Mr. Yoshikawa came to our advertisement in the hotel. We have all those Waikiki hotels and one, every once in an hour, there was 24 times a day, we have our company video advertisement that's running all day long. And they saw that, our ad.
Q. And do you know at which hotel they saw your ad?
A. I wasn't certain.
Q. Now, do you know what year this was when you first met Mr. Yoshikawa?
A. 2010.
Q. And you were already a broker at the time when you first met him?
A. I was obtaining my broker's license on July 2010.
Q. And I know this was three years ago, four years ago, sorry.

Do you recall whether you had your broker's license at the time you first met Mr. Yoshikawa?
A. First met Mr. Yoshikawa, I probably not, no.
Q. Do you recall approximately what month in 2010 you met Mr. Yoshikawa?
A. August or September.
Q. So it was close to the time you were getting your broker's license?
A. Yes, yes.
Q. Where did you meet?
A. In my office.
Q. Where was your office at the time?
A. 2270 Kalakaua Avenue, Suite 1508.
Q. Is that where the office is located today?
A. That is correct.
Q. Did anyone accompany Mr. Yoshikawa to your first meeting? Did anyone accompany, come with Mr. Yoshikawa to your first meeting?
A. Just by myself the first time, yes.
Q. How long did your meeting last?
A. Maybe 30 minutes.
Q. What did you talk about?

A. Just general introductions of Hawaii real estate. And we have discussed about what they were interest first. And we start looking for the property.
Q. Stop at the first meeting.
What did Mr. Yoshikawa tell you as far as what he was interested in?
A. He was looking for a residence with, if it is possible, the dock with a boat. And also along the shore. That was his request.
Q. So Mr. Yoshikawa comes to your meeting, lasts about 30 minutes in your office, tells you, I'm looking for a residence, I would prefer it have a boat dock and be along the water.
Is that a fair statement?
A. Yes, yes.
Q. And Mr. Yoshikawa came to this first meeting alone; is that correct? Mr. Yoshikawa came to your first meeting alone; is that correct?
A. No. He came with his girlfriend.
Q. Do you recall her name?
A. Maiko, M-A-I-K-O.
Q. Do you recall her last name at the time?
A. Yes. Sakata. By then, yes.

Q. Did Ms. Sakata say anything to you during this meeting that you recall?
A. Well, we just talked together. And so -- they are very, very close friends. And we discussed all together. So in general speaking -- she didn't say anything especially. But she was in the conversation, may I say that.
Q. After this meeting, did you proceed to look for property that met Mr. Yoshikawa's interest?
A. Yes. And I do not know when was the next day for starting showing. I don't recall. But probably a day or two later, we started showing.
Q. Did you contact Mr. Yoshikawa?
A. Yes.
Q. How did you contact him?
A. The phone.
Q. Is it fair to say all your communications with Mr. Yoshikawa were in Japanese?
A. Yes.
Q. Can you recall the first showing?
A. I don't recall the date. But yes, I showed one in Hawaii Kai and one in Yacht Harbor

Tower. The other was also in Hawaii Kai, but I don't recall the property.
Q. So you show two properties in Hawaii Kai and one at Yacht Harbor Towers; is that correct?
A. Yes.
Q. Do you recall the name of either the projects or the properties in Hawaii Kai?
A. Hawaii Kai, yes. The first property we showed it, Kalele Kai.
Q. And the other one in Hawaii Kai?
A. Somewhere. It's inner bay in Hawaii Kai, but I don't recall which one exactly.
Q. Was it also a condominium association? Condominium project?
A. No. That was -- it was not a condominium. It was a single-dwelling home.
Q. What was your next showing?
A. Yacht Harbor Towers. I do not recall the unit name. I apologize.
Q. For these three showings, did Mr. Yoshikawa express an interest in any of these properties?
A. Yes.
Q. Which one, if any, did he express

interest in?
A. He showed interest in two Kalele Kai apartment.
Q. Other than these three properties, did you show Mr. Yoshikawa any other properties after these three?
A. No.
Q. Did he authorize you to make an offer on the Kalele Kai property?
A. Yes. I mean, question again. I'm sorry.
Q. Did he authorize you to make an offer for the Kalele Kai property?
A. Yes.
Q. Was the unit listed by a broker?
A. Yes.
Q. Do you recall who it was?
A. Her name is Kaori Masutani, K-A-O-R-I, M-A-S-U-T-A-N-I.
Q. Had you had any prior dealings with Ms. Masutani?
A. No.
Q. Did you communicate an offer for the Kalele Kai unit on behalf of Mr. Yoshikawa?
A. Yes.

Q. What was the initial offer, if you recall?
A. I don't.
Q. Was the first offer accepted?
A. Yes.
Q. After you made the offer and it was accepted, did you request a copy of the condominium documents?
A. Yes. As a process, we always do.
Q. Can you take a look at Exhibit 503. 503.
Mr. Udagawa, have you seen this document before?
A. Yes.
Q. Can you identify what this document is?
A. Identify?
Q. Do you know what it is?
A. Uh-huh (affirmative).
Q. What is it?
A. This is for the conveyor document. And declaration of condominium property regime.
Q. Did you discuss this document with Mr. Yoshikawa before he purchased the property at Kalele Kai?
A. Sometime before, yes. And -- yes, I

said.
Q. You did discuss this document with him?
A. Yes.
Q. And you were aware when Mr. Yoshikawa purchased this property that he wanted to have a boat there; is that correct?
A. That is correct.
Q. Can you turn to Page 7 of this document. And that would be, the bottom right of this page would be 2092, at the very bottom right.
A. Yes.
Q. And there is a block on the bottom of the page. I'm sorry. Can you turn to the next page, I'm sorry, Page 8. My fault.
MR. REVERE: I'm sorry. Page 8?
Q. Page 8 of this document, which is KK002093 for the record.
Do you have that page?
A. Yes, I see it.
Q. Do you see the second paragraph on that page which begins with "The boat mooring"?
A. Yes.
Q. Did you discuss that sentence, the first sentence of that paragraph with Mr. Yoshikawa?

A. Yes, I have, as fact.
Q. Did you discuss that sentence with Mr. Yoshikawa before the property closed and purchased?
A. Yes.
Q. What was the nature of your conversation with Mr. Yoshikawa?
A. Let me go back to the time that when we walk in the apartment.
Q. Go ahead.
A. When you see it, the apartment, the moment that we walked in to the living room, you see the large boat. It's right in front of the yard.
And by the time, we don't even know it was, how large it was. However, Mr. Yoshikawa was very impressed. This is the place that he was mostly interested in is because of the size of the boat.
It's because he's most interested when he's buying a boat, he was looking for a large boat too. And ironically, we going through those two, didn't see -- did find disclosures. So, of course, it's coming to the commercial. And we immediately asked the owner why we were able to

-- why we can have the large boat.
Then they started to explain to us about the special agreement between Homeowners Association that he had. So we should not have any problem with buying that house and buying another boat.
Q. Who was the individual with whom you had the conversations?
A. By then? This time?
Q. Yes.
A. Mr. Richard Rosic.
Q. How was it you were able to contact the seller directly?
A. Oh, actually, when we were seeing the boat, Mr. Rosic was on the boat.
Q. He was there?
A. Yes. And he's always there. He's not in home. So we were talking. And, of course, he was very nice fellow. In regards to buying boat -- well, actually, usually, we don't meet seller directly. But he was very kind enough and explained to us. Also the seller's agent were talking about that.
And we were find out that the ground of the reason that he had owned the boat.

Q. When you first talked with Mr. Rosic the first time, what did Mr. Rosic tell you about boat length, if anything? Boat length restrictions, if anything?
A. No, well, actually, he was explaining about the boat. How he was very pride about the boat. So we were -- as just a simple single boat owner, we just discussing about that too.
And so for time being, I believe those restrictions and things he was probably voluntarily mentioning about those things for us, yes.
Q. Did he have any discussions with you during your first meeting with Mr. Rosic or your first conversation with Mr. Rosic --
A. Not the first conversation. I believe we met him twice.
Q. Before the closing?
A. Yes.
Q. So I want to make sure I'm clear on this before we leave the subject.
During your first meeting Mr. Rosic, is it fair to say there was no discussion regarding any boat length restriction; is that correct?
A. The first time, no.

Q. Is that a fair statement?
A. Yes.
Q. When was the second time you had discussions with Mr. Rosic?
A. When?
Q. Yes.
A. Probably, I can't remember exactly, but three or four days later.
Q. But it was before the closing?
A. That's correct, yes.
Q. And during that conversation, did you have any discussions with Mr. Rosic regarding boat length restrictions at Kalele Kai?
A. Yes.
Q. And what did Mr. Rosic tell you?
A. Mr. Rosic's idea is to make sure that he has right and also to own the boat. So he was explaining to us that he has a special agreement and is agreed from a Homeowners Association. And he has no problem to keep the boat there. So that's made Mr. Yoshikawa really confident to purchase, yes.
Q. So Mr. Rosic's representation to you was that Mr. Yoshikawa could keep the current boat that was there?

A. Oh, yes.
Q. Was that his representation?
A. Yes.
Q. Did Mr. Rosic make any representations to Mr. Yoshikawa or you that Mr. Yoshikawa could have a boat larger than what was there?
A. Yes. Yes also.
Q. What specifically do you recall Mr. Rosic telling you about boat length restrictions during your second meeting?
A. Actually, we did not go to special length or anything like that. But, however, he did have an agreement or covenant between Homeowners Association who is able to hold boat of that length. So that is what he was explained to us.
Q. Did he provide you a copy of that agreement?
A. No.
Q. Did he provide you a copy of any written agreement between himself and the Association prior to closing?
MR. REVERE: My -- I was going to request that if your last question was in that meeting?

Q. Let's back up then.
Mr. Udagawa, during your second meeting with Mr. Rosic, he told you he had an agreement with the Association regarding the boat; is that correct?
A. That is correct.
Q. During that second meeting, did Mr. Rosic provide you a copy of that written agreement?
A. I don't recall.
Q. Do you recall at any time prior to the closing whether Mr. Rosic provided you a copy of the written agreement that he represented to you that he had with the Association regarding the boat?
A. I don't recall.
Q. Let me show you what has been marked as Exhibit 71.
Mr. Udagawa, I request that you take a careful look at what's been admitted into evidence as Exhibit 71. I'm going to ask if you saw that document or if it was provided to you prior to Mr. Yoshikawa's closing on the Kalele Kai unit?
MR. ZALEWSKI: For the record, it's also Exhibit 514.

MR. GOODWIN: It is. Thank you. I had it on my outline as Exhibit 71. Thank you.
A. I cannot identify exactly what this document. But I saw probably something like this. But I can't identify.
Q. Let's move a little further with this document thing.
Is it fair to say that you don't have any recollection of discussing Exhibit 71 with Mr. Yoshikawa prior to closing of the sale of the Kalele Kai unit?
A. Uh-huh (affirmative).
Q. Is that correct?
A. Yes, that is correct.
Q. Now, is it fair to say that all of the documents that were provided in connection with the closing of Mr. Yoshikawa's purchase of the Kalele Kai document would have gone through you?
A. Uh-huh (affirmative).
Q. Is that correct?
A. Yes, that is correct.
Q. And you would have decided what documents were important to discuss with Mr. Yoshikawa?
A. Yes.

Q. So if you did receive Exhibit 71 and you determined it was important, you would have discussed it with Mr. Yoshikawa before closing; is that right?
A. Most likely.
Q. But sitting here today, you have no recollection of discussing Exhibit 71; is that correct?
A. That is correct.
MR. REVERE: Let him ask his question before you respond. You've got to wait for the court reporter.
Q. One more time.
Sitting here today, Mr. Udagawa, you have no recollection of reviewing Exhibit 71 with Mr. Yoshikawa before the closing of the Kalele Kai unit; is that correct?
A. I probably went through with it. But I cannot recollect. This I can recall not.
Q. You cannot recall; is that correct?
MR. REVERE: Hold on. He just said he can't recall if this document is identical to what he went through with him.
A. Yes, that is correct.
Q. Do you recall this document in

connection with the closing of Mr. Yoshikawa's purchase of the Kalele Kai unit?
MR. REVERE: He's already asked and answered that he probably did. He didn't know if this document was identical to what he went through at the time.
A. Yes, that is correct.
Q. What Mr. Revere testified to is correct?
A. Yes.
Q. Prior to closing, what discussions did you have with Mr. Yoshikawa regarding the 23-foot boat length restriction at Kalele Kai?
A. Please ask your question again.
Q. Prior to closing of the sale on the Kalele Kai unit, what discussions did you have with Mr. Yoshikawa regarding a 23-foot boat length restriction stated in the declaration?
A. As I mentioned to you, the 23-foot restriction is not -- how should I say it -- was existed and explained to them. However, for buying his boat and buying his house, it shouldn't have any obstruction. Therefore, we didn't have to, very -- I mean, we don't really care for that time. We knew that. However, that 23 feet, the

restriction, it is already not there. That is how I see it.
Q. Did you tell Mr. Yoshikawa that before he closed on the sale of the Kalele Kai unit that it was your understanding that the 23-foot restriction was no longer there?
A. That is correct. Besides that 23-foot restriction only applied to the boat perpendicular to the shore. That is how we interpret too.
Q. And how did you gain that understanding that it applied only to boats that were perpendicular to the shore?
A. That's only making sense. Because that the fingers it was there was shorter than 23, 23-foot. It's only going to the same way of, in other words, perpendicular to the shore. That's only way they can park.
Q. So let's go back to Exhibit 503 and Page 8 that I previously referred to, in the second paragraph, which happens to be underlined, on Page 8.
Is there anywhere in this paragraph that begins with, "The boat mooring," where there is any discussion of the term "perpendicular"?
MR. REVERE: I just want to object.

It's vague and ambiguous in the context of this declaration and the physical layout, because it does refer to the boat mooring in the singular at the time when there is only finger piers.

MR. GOODWIN: I don't really have any change to my question, Mr. Arbitrator.

THE ARBITRATOR: Let me go back a minute.

Mr. Udagawa, your testimony was that your interpretation was that the 23-foot restriction only made sense because of the length of the finger pier in its perpendicular state?

THE WITNESS: It's because finger was stick out from the shore.

THE ARBITRATOR: I understand.

THE WITNESS: And for applying this restriction, I believe the boat must be parked as same direction as the finger.

THE ARBITRATOR: Why don't you have him read the operative part of it.

Q. Can you read out loud, please, the first sentence of the paragraph on Page 8 of Exhibit 503.

Can you read that out loud, please, the first sentence.

A. Underlined?

Q. Yes, please.

A. "The boat mooring shall be restricted to use by boats no longer larger than 23 feet in length." Yes.

Q. Now, it's your interpretation of that sentence that that only applies to boats that are parked perpendicular on the boat mooring; is that correct?

A. That's what we thought, okay.

Q. When you say "we," who are you referring to, Mr. Udagawa?

A. Me and Mr. Yoshikawa. But can I ask you a question?

MR. REVERE: Just wait until later. He'll make you stay longer.

Q. Unfortunately, Mr. Udagawa, you cannot.

A. Fine.

MR. REVERE: You can ask me a question during the break.

Q. Let me make sure I'm clear before we leave the subject.

You and Mr. Yoshikawa came to your understanding of this sentence based on your interpretation; is that correct?

A. Yes. However -- yes.

Q. Was it based on your discussions or conversations with anyone else?

A. For that time, no.

Q. I'm talking about before the closing, Mr. Udagawa.

A. Yes. Of course.

Q. So did you reach the understanding that you previously testified to based on your discussions with Mr. Yoshikawa that occurred before the closing of the sale?

A. Yes.

Q. And they weren't based on your discussions with anyone else?

A. Mr. Rosic too.

Q. Did Mr. Rosic make that representation to you that the restriction that you just read from the declaration applies only to boats that are moored perpendicular?

A. No. If I may say, for 23-foot restriction, it's not in our mind any more by the time when we knew had knowledge about those agreements exist for him or for whoever buying house, he's able to moor those longer boat in there. So it's -- we didn't really much -- care

for 23-foot restriction.

Q. You had reached that conclusion based upon Mr. Rosic's representation that he had an agreement with the Association; is that correct?

MR. REVERE: Misstates his prior testimony.

THE ARBITRATOR: You can answer.

A. Yes.

Q. And you don't recall whether or not that written agreement that Mr. Rosic was referring to is Exhibit 71?

MR. REVERE: Misstates his testimony. He said he couldn't say if that was the same document.

A. That is correct.

Q. Now, have you subsequently reviewed Exhibit 71? Or you just don't know whether that was the document that Mr. Rosic referred to?

A. I believe --

THE ARBITRATOR: Subsequent to what? The closing?

Q. After the closing, do you recall whether you reviewed Exhibit 71?

A. Yes.

Q. Did you?

A. Yes.
Q. Did you find anything in Exhibit 71 that refers to a 23-foot boat length restriction? Did you find anything in there?
A. Like I mentioned to you, 23 restriction is not in our mind. So I don't -- I do not recall.
Q. At that time, at the time of the closing of the sale of the Kalele Kai unit, you were already a principal broker; is that correct?
A. I believe, sure, think so.
Q. As a principal broker, you knew --
A. Just a moment. Hold on a second. Let me find out exactly the time of those becoming a -- I was not -- I'm not sure. But by the time of those, this day was going on, I was already. But Mr. Mita was still there.
Q. Mr. Mita was supervising you; is that correct?
A. Yes, he was.
Q. But you knew as a licensed real estate associate, the enforceability of a declaration; is that correct?
MR. REVERE: Objection. Vague and ambiguous. Calls for a legal conclusion.

THE ARBITRATOR: Wait a second.
MR. GOODWIN: He was a licensed real estate agent at the time of the sale.
THE ARBITRATOR: Your question was enforceability of a declaration provision?
MR. GOODWIN: I'll rephrase.
Q. As a licensed real estate agent, prior to the closing, you knew the importance of the recorded declaration when purchasing a unit in a condominium?
A. Yes.
Q. And you knew that the purchaser was legally bound by the terms and conditions of the declaration; is that correct?
MR. REVERE: Objection. Calls for a legal conclusion. Incomplete hypothetical.
THE ARBITRATOR: He's got some expertise. Within your real estate realm, you can answer.
Q. You knew that the purchaser of a condominium unit was legally bound by the terms and conditions of a declaration; is that correct?
A. Yes.
Q. Now, you said you spoke to Mr. Rosic before closing?

A. Yes.
Q. You and Mr. Yoshikawa discussed the 23-foot boat length restriction before closing?
A. Yes.
Q. Did you make any inquiry with the Association regarding the 23-foot boat length restriction before closing?
A. No.
Q. As a licensed real estate associate, is it fair to say that if you had any questions regarding the terms and conditions of a declaration, you would normally make inquiry with the Association?
MR. REVERE: Objection. Vague and ambiguous. Incomplete hypothetical.
THE ARBITRATOR: You can answer.
Q. Again --
A. Any document is important thing, yes, before the closing, yes. You have to.
Q. Mr. Udagawa, also you would want to determine whether or not the seller was in compliance with all of the Association's governing documents before closing; is that correct?
A. Yes.
Q. Did you make an inquiry with the

Association to determine whether or not Mr. Rosic was in compliance with the Association's governing documents prior to closing?
MR. REVERE: Objection. Vague and ambiguous.
THE ARBITRATOR: You can answer.
THE WITNESS: Should I answer?
MR. REVERE: You can answer. Yes.
A. We did not ask for those.
Q. Mr. Udagawa, you've got a boat that you know is in excess of 23 feet parked at a boat mooring on a unit that you're acting as the licensed real estate associate --
A. Yes.
Q. -- prior to closing; is that correct?
MR. REVERE: I don't like the pointing thing. Don't point at him, please. It's kind of threatening to -- Chris, I know you don't mean it that way.
Q. Mr. Udagawa, I'm sorry. I'm not threatening you in any way with my hand gestures. And I apologize.
Prior to closing, you are representing the purchaser?
A. Yes.

Q. At Kalele Kai; is that correct?
A. Yes.
Q. And you have seen a boat that, would it be fair to say, appears to be longer than 23 feet parked at the boat mooring affiliated with this unit?
A. Well, we see it, yes.
Q. And you knew it was longer than 23 feet?
A. Yes.
Q. And you also knew that there was a restriction on boat length in the declaration; is that correct?
A. Yes.
Q. And the seller had advised you, don't worry about it, I have an agreement with the Association?
A. Yes, that is correct.
Q. And you didn't make inquiry with the Association to determine whether or not that agreement was in effect; is that correct?
A. That is correct.
Q. Basically, you took Mr. Rosic's word?
MR. REVERE: I just want to object. Again, I don't mean that Mr. Goodwin did this in

any way that was malicious, but there is no good faith basis to say that that Rosic agreement wasn't in effect. And it was signed by the Board president.
THE ARBITRATOR: Your question is simply did he inquire?
MR. GOODWIN: That's correct.
Q. You did not inquire with the Association?
A. Didn't have time.
Q. You took Mr. Rosic's word that he had an agreement with the association?
MR. REVERE: Objection to the form of the question. He also talked about the agreement.
THE ARBITRATOR: You can answer.
Q. You can answer the question.
A. Yes, we did not ask for the Homeowners Association.
Q. Let me show you what has been marked as Exhibit 83.
Have you seen this document before?
A. Yes.
Q. Is this the conveyance document of the Kalele Kai unit between Mr. Rosic and Mr. Yoshikawa?

A. Yes.
Q. Can you take a look at Page 8 of this document which bears Bates stamp Number KK000921.
A. 000921 yes, there is.
Q. Can you take a look at Item Number 13. Take your time, Mr. Udagawa. It's a fairly long paragraph, and it continues on to the next page.
(Pause.)
MR. REVERE: What was the question?
Q. Did you have an opportunity to review Item 13? I just want you to review Item 13. I wasn't going to go any further than that.
If you can go back to Page 7 of the same document. At the very top of Page 7, you would agree that title to the unit between Mr. Rosic to Mr. Yoshikawa was subject to, then they list a bunch of conditions by number; is that correct, 1 through 17?
A. Yes.
Q. One of the items to which conveyance of this unit were subject was Item Number 13 and Item 13 is the declaration; is that correct?
(Pause.)
THE ARBITRATOR: You want to ask the question again?

Q. Let me ask one more time.
When Mr. Yoshikawa purchased the unit from Mr. Rosic, according to this deed, which has been marked as Exhibit 83, he purchased it subject to 17 express conditions, and one of the express conditions was Item Number 13, the declaration.
A. Yes.
Q. And as a licensed real estate agent at the time, you knew that that meant Mr. Yoshikawa took title to the unit subject to any restrictions that were set forth in the declaration; is that right?
A. Yes.
Q. Is that your understanding?
A. Yes.
Q. Now, before I move after the closing, Mr. Udagawa, and get on with some other issues, prior to the closing you had two meetings with Mr. Rosic; is that correct?
A. That is correct.
Q. At the first meeting, you had no discussion regarding boat length; is that correct?
A. First meeting, I believe we did not have.
Q. At the second meeting, you did have a

discussion with boat length, and Mr. Rosic told you that he had an agreement with the Association and the boat length was not a problem.

Is that a fair statement?

A. That is correct.

Q. Also you and Mr. Yoshikawa had reached your own conclusion following your review of the declaration that it did not apply to boats which are moored parallel; is that correct?

A. That is correct.

Q. Is that the only conversations you had with either Mr. Rosic or Mr. Yoshikawa regarding boat length restrictions at the Kalele Kai prior to closing?

A. Not only that. For reconfirming before closing --

Q. Just before closing now.

A. Just before closing. I believe before closing, we may had just telephone conversation affirming about the existing covenant or agreement with Mr. Rosic, maybe.

Q. When did you have that conversation, if you recall?

A. Within ten days.

Q. Prior to the closing?

A. Yes.

Q. And again, to the best of your recollection, what was discussed during that conversation?

A. We just talked about in regards to -- by that time, we were not talking about a purchasing of boat. And then it's becoming including the boat to purchasing with the house. At that time, yes, we show the restrictions. Also the boat, length of the boat was becoming an agenda for the discussion.

Q. So about ten days before closing, you had a discussion with Mr. Rosic whereby, in addition to purchase of the apartment unit, your client, Mr. Yoshikawa, was also interested in purchasing the boat?

A. That is correct.

Q. So that's when your discussions with Mr. Rosic concentrated on the boat length issue?

A. Not necessarily concentrating. We just wanted to, as general, because like I mentioned to you, Mr. Yoshikawa's first and original intention was buying a home and buying his brand new boat.

Therefore, what he was thinking, what he was going to do with that boat that was there.

Those are one of those issue between seller and the buyer.

At that time, we talking about. Then those 23-foot things are becoming concern. And that's another time that he concluded and we -- he assured us that the boat mooring there shouldn't have any problems. So that's about it.

Q. Prior to closing, did you advise Mr. Rosic that Mr. Yoshikawa intended to buy another boat?

A. Yes, he knew.

Q. So Mr. Rosic knew that your client intended to buy another boat because you told Mr. Rosic before closing?

A. Well, actually during those conversations, yes. Mr. Yoshikawa's intention, it has been known by Mr. Rosic too. And Mr. Yoshikawa did not buy the boat, new boat from the beginning. It's because he did not have any experience. Therefore, the boat that Mr. Rosic had is a perfect existence so that he can use it and get used to the boat.

That is made him purchasing the boat with the house. That is the process.

Q. And prior to closing, isn't it true

that Mr. Yoshikawa did reach an agreement with Mr. Rosic, with your assistance, to purchase the boat with the apartment?

A. Yes.

Q. And all the communications that Mr. Yoshikawa had with Mr. Rosic were through you; is that correct?

A. Yes, that is correct. Because of -- well, yes.

Q. Because of the language barrier?

A. Yes.

Q. Now, you said that the boat length issue had become a concern were your words.

How were those concerns addressed prior to closing?

A. Well, actually as we -- you mentioned, it too, as a real estate agent and for the buyer, I just wanted to make sure those things has been confirmed. And therefore for the existing, the restriction was there.

However -- well, this is just very human nature asking to making sure those things are possible to do that. They are buying a home. That's all.

Q. You had made inquiry with the seller,

who represented he was one party of an agreement with the Association; is that correct?
A. Could you repeat the question.
Q. Sure. You made inquiry with the seller who advised you that he was party to an agreement with the Association regarding the boat; is that correct?
A. I'm sorry. I didn't get it.
Q. Sure. What I'm trying to find out is, again, you asked Mr. Rosic about the agreement he had with the Association?
A. Yes.
Q. But you didn't ask the Association?
A. That is correct.
Q. Did you receive a commission in the sale of the Kalele Kai transaction?
A. I probably did, yes.
Q. Actually the principal broker did; is that correct?
A. That is correct.
Q. And the principal broker decided what your compensation would be; is that correct?
A. That is correct.
Q. Did you also receive a commission in connection with the sale of the boat?

A. Which boat?
Q. The boat, the purchase of the boat. Because, remember, you testified that Mr. Rosic had also sold the boat to your client, Mr. Yoshikawa?
A. That is correct. No.
Q. You didn't receive a commission on that sale?
A. No.
Q. Now, you said at the time of purchase, Mr. Yoshikawa did intend to buy a boat, another boat eventually; is that correct?
A. Yes.
Q. Did you assist Mr. Yoshikawa in connection with his search for another boat?
A. No. Because he has no intention to searching for another boat.
Q. Had he already picked out another boat?
A. You mean to --
Q. After closing. After closing.
After closing of the Kalele Kai unit with Mr. Rosic, did you assist Mr. Yoshikawa in looking for another boat?
A. Beside the boat he bought?
Q. Yes.

A. Yes, of course.
Q. What assistance did you private?
A. Actually, I did not assist what he buy. He already had his mind.
Q. What role did you play?
A. I, as an interpreter. And I flew with him to the factory, and to getting the boat.
Q. Do you know when you flew to the factory with Mr. Yoshikawa?
A. I believe we flew in 2013. When was that? July. I can't recall exactly the month is.
Q. Prior to flying to -- by the way, was the factory in Australia? Is that correct?
A. Yes, that is correct.
Q. Prior to flying to Australia with Mr. Yoshikawa, did you have a meeting with anyone at the Association about Mr. Yoshikawa's intent to purchase another boat?
A. Oh, yes. We had make a courtesy call to Bryan Liu, the Manager then. And we just told him that we have intention and we plan to purchase the boat.
Q. Let's back up a little bit.
A. Please.
Q. When did that meeting take place?

A. I can't recall the date.
Q. Would it be fair to say it was in the fall of 2012?
A. Well, prior to fall, I believe.
Q. So it was in 2012?
A. No. It was -- I believe it's beginning of '13 or end part of '12, something like that.
Q. It was before you flew to --
A. Yes, way before.
Q. Let me try to refresh your recollection. Will you turn to Exhibit 539.
(Pause.)
Q. Can you take a look at this series of emails and see if that refreshes your recollection as to when you had a meeting with Bryan?
A. Oh, yes. This is 2012. Yes, ending November 21st. The meeting took place prior to this.
Q. So it would be somewhere around October or November of 2012?
A. Yes. Thank you.
Q. And when you had that meeting with Mr. Liu, did you tell Mr. Liu that Mr. Yoshikawa intended to buy a new boat?
A. Well, I didn't tell. I just translated

what Mr. Yoshikawa said, of course. And yes, Mr. Yoshikawa, just a courtesy, mentioned to Mr. Liu that his plan. And his plan is he's going to purchase the boat, a new boat actually, yes.

Q. And what was Mr. Liu's response that you translated to Mr. Yoshikawa?

A. Mr. Liu said and told us that he just mentioned that he's not in the position to say yes or no.

Q. Okay.

A. That's what he said.

Q. Did Mr. Liu, during that meeting, mention the 23-foot boat length restriction stated in the declaration?

A. I believe not.

Q. But is it fair to say that Mr. Liu said that, at that meeting, that he could not approve a longer boat? Is that a fair statement?

A. He did not say -- he's not in the position to say yes or no. Thank you.

Q. And did you actually receive the email? Let's go to the back, because I think they are in reverse order. Go to Exhibit 539.

MR. REVERE: How far back?

MR. GOODWIN: We're going to go right

now.

Q. Mr. Udagawa, it looks like that you got an email from Mr. --

MR. REVERE: Chris, what page?

Q. Go back to the fifth page of this exhibit. I believe it says at the bottom, 5/6. It's Yoshikawa 487. There appears to be an email from Richard Rosic to you, dated November 19, 2012.

MR. REVERE: You're asking if he sees that?

Q. Do you see that?

A. Yes.

MR. REVERE: He's just asking if you can see that in front of you now.

A. Yes, I see it.

Q. Does this refresh your recollection that you had a discussion with Mr. Rosic after your meeting with Mr. Liu?

A. This is conference call?

Q. No. I'm referring to the very bottom of this page, Page 487, where Rosic states in an email to you dated November 19, 2012, quote, "Good morning," is it "Maiko, Mr. Yoshikawa and KC, it was good talking with all of you yesterday."

Did I read that correctly?

A. Yes.

Q. Does that refresh your recollection that you had a telephone call with Mr. Rosic after your meeting with Mr. Liu?

A. Yes. I believe so, yes.

Q. Do you recall what the subject matter of that telephone conversation was with Mr. Rosic?

A. For the modified docks.

Q. And did Mr. Rosic at that time provide you or tell you during the conversation he was going to provide you a copy of what has been commonly referred to as the Rosic Agreement, which begins on 490 Bates stamped 490 of this exhibit?

MR. REVERE: Chris, this is kind of goofed up. 3 of 6, then the page before is 4 of 6.

THE ARBITRATOR: It's out of order. Keep going past 6/6 and you'll find the Rosic agreement.

Q. Mr. Udagawa, my question was, Do you recall after the telephone call you had with Mr. Rosic that he emailed you --

A. Attachment, right.

Q. -- the attachment which is part of

Exhibit 539, the document which is commonly referred to as Rosic agreement?

A. Uh-huh (affirmative).

Q. Is that correct?

A. Yes, that is correct.

Q. Did Mr. Rosic tell you during your conversation this allowed Mr. Yoshikawa to get a longer boat?

A. I believe so.

Q. Can you go to another email which is marked as 2/6 in this agreement, in this exhibit. Mr. Udagawa, at the top of that page there appears to be an email from you to an email address KaleleKai002@hawaii.rr.com, dated, I think it's on the page before, November 20, 2012? Did you send that email?

A. Yes, this is my email.

Q. And can you read, just start reading with, "Hi, Bryan," and go down to the second sentence.

A. Second sentence?

Q. Yes. Where you begin, "I'm not" --

A. "I'm not sure if you understand what we are asking, as we all understood that we have no obligation to ask you for your approval of the

boat length."
Q. Keep reading, please.
A. "That's what I'd like you to understand. You have no need to ask authorization to your boat to talk to Mr. Rosic as well since your conversation with Mr. Rosic has nothing to do with the Board's authority."
Q. Just so I'm clear, as of that date, November 20, 2012, it was your understanding that Mr. Yoshikawa did not need authority to ask to dock or moor a longer boat at Kalele Kai; is that correct?
A. Uh-huh (affirmative).
Q. Is that correct?
A. Yes.
Q. So the purpose of your meeting in the fall of 2012 with Mr. Liu was simply to advise him that Mr. Yoshikawa intended to do so?
A. That's correct.
Q. Then you clarified in this email to Mr. Liu dated November 20, 2012 that your client had no obligation to ask for the AOAO's approval; is that correct?
A. That's correct.
Q. And you sent this email after Mr. Rosic

had provided you the attachment which you referred to -- which I referred to as the Rosic agreement?
A. Yes.
Q. So based on your understanding of the declaration, based on what Mr. Rosic provided you and your translation to Mr. Yoshikawa, he went ahead and flew to Australia and purchased the boat?
A. That is correct.
Q. Can you take a look at Exhibit 541, please. I'm going to ask if you've seen this document before. Take your time.
A. This is what you wrote me?
Q. Mr. Udagawa, this appears to be a November 21, 2012 email.
Have you seen this document before?
A. Yes.
Q. Did you translate this document for Mr. Yoshikawa?
A. Yes.
Q. And can you read the first sentence of the second paragraph, starting with "By way of background."
A. First sentence?
Q. Yes.

A. "By way of background, the boat does not currently have authority to approve the proposed mooring of any boat at Kalele Kai in excess of 23 feet in length in accordance with the excess restrictions set forth in the project's declaration and by-laws."
MR. REVERE: I just want to note for the record word "approved" is in quotes.
MR. GOODWIN: I was going to stipulate to that, Mr. Revere. I was moving right in that direction.
MR. REVERE: Thank you.
Q. Mr. Udagawa, can you read the last sentence in this same paragraph.
A. "To the extent the Association's previous settlement with Mr. Rosic conveys legal rights and/or benefits to Mr. Yoshikawa, the Board will honor these as permitted by the project's governing document. However, the Board will not and cannot explicitly approve the mooring of any boat at the Kalele Kai in excess of 23 feet in length."
Q. Now as of November 21, 2012, the date of the exhibit you just read as part of the email you just read as part of Exhibit 541, you had not

yet flown to Australia with Mr. Yoshikawa; is that correct?
A. This is the date of 2012; no.
Q. Can you turn to Exhibit 542, please.
A. 542.
Q. Can you take a look at the very top email, which is part of Exhibit 542, which appears to be an email from Bryan Liu to, it looks like Maiko Sakata.
Do you see that?
A. I see it. Maiko.
Q. Yes. Can you take a look at this email, just the first top email and advise whether or not that email was forwarded to you from Maiko?
A. I'm sorry. What was the question again?
Q. I'm trying to find out if you know whether this email was forwarded to you from Maiko? I'm referring to the top email on Exhibit 542.
A. Let me read it.
Q. Sure.
(Pause.)
A. I believe she mentioned it to me, yes.
Q. So it's your belief that if she didn't

forward that email to you, which has been marked as Exhibit 542, she did mention it to you?
A. She did, probably called me in regards to what she received.
Q. And is it fair to say that you recall discussing that email with her?
A. Yes.
Q. Now, can you turn to Exhibit 546, please.
A. I'm reading.
Q. Please read the whole thing. Then I'll ask you a few question about it.
A. This is Richard's letter for me. "KC just wanted to check in to see" whether -- "where you stand with the dock issue. As Terry told you, Mr. Yoshikawa is entirely within his legal rights and can buy any boat he wants."
Q. Now, the date on this email, it looks like it's December 7, 2012; is that correct?
A. December 7, 2012. That is correct. That is the date.
Q. And this email references a meeting with Terry.
Is that Terry Revere?
A. Oh, yes. Terry.

MR. REVERE: I want to object. It doesn't reference a meeting.
MR. GOODWIN: I stand corrected.
Q. This references statements by Terry, is that correct, as Terry told you?
A. Uh-huh (affirmative).
Q. Is that correct?
A. Yes. That is correct.
Q. Does this email which has been marked as Exhibit 546 reflect your first conversation with Terry Revere?
A. I don't recall if that is the first or what.
Q. Was it Mr. Rosic who recommended Terry Revere be consulted regarding this matter?
A. Yes.
Q. Were you aware at the time Mr. Rosic recommended Terry Revere be consulted that Mr. Revere actually was also Mr. Rosic's attorney?
A. No.
Q. You were not aware of that?
A. No.
Q. Can you go back to Exhibit 542.
A. Let me take that back.
Q. Okay.

A. By that time when he mentioned to introduce Terry Revere that he did not say that his attorney, but he was mentioned about he's aware about those Kalele Kai matter.
Q. If you take a look at, I think it was Exhibit 539 -- it's on the other volume, sorry. No, it's in that volume. And the last, the Rosic agreement, the document that Mr. Rosic emailed to you.
A. Yes.
Q. Did you notice on the back of the last page of that agreement next-to-last page of that agreement --
A. What the page are you looking at?
MR. REVERE: He wants you to go past the emails.
MR. REVERE: You're talking about the Rosic agreement?
MR. GOODWIN: Yes.
Q. In looking at the Rosic agreement that's made part of that email, did you notice that Mr. Revere's name appears on the letterhead of the firm?
A. Yes, sorry, I see it.
Q. But you didn't notice that at the time

you had reviewed that document; is that correct?
A. No.
Q. Basically, Mr. Rosic had recommended Mr. Revere to Mr. Yoshikawa regarding this matter; is that correct?
A. Yes, he did.
Q. Based on the recommendation of the seller of the unit to your client of Mr. Revere, is it fair to say you and your client consulted Mr. Revere?
A. Please repeat your question.
Q. Is it fair to say, based on the recommendation of Mr. Rosic, that you and Mr. Yoshikawa consulted with Mr. Revere?
A. Yes.
Q. Did you feel at that point it was important to consult with an attorney other than an attorney recommended by the individual who had sold your client the unit?
A. As far as we concerned at that moment and to choosing an attorney and in regards to Kalele Kai resort, we are not certain who is going to be most appropriate and knowledgeable attorney. Therefore, we accepted the recommendation of Mr. Rosic.

Q. Were you concerned, and I'm not referring to Mr. Yoshikawa, I'm referring to you as a licensed real estate agent, were you concerned in November of 2012 that there was a potential legal issue surrounding seller disclosure and the boat length restriction?
A. We did not think it was a legal issue is because it's existence of those covenants and agreement.
Q. So you thought it was a covenant enforcement problem; is that correct?
MR. REVERE: No.
A. No.
Q. Please correct me.
What did you think the issue was?
A. You mean to say that the existing restriction will not apply to. That's all.
Q. So you knew of the existing restriction certainly by November of 2012, but you didn't know whether it applied to your client.
Is that a fair statement?
A. That is correct.
Q. And based on the recommendation of Mr. Rosic, you and your client consulted Mr. Revere?

A. Yes.
Q. So as of the date of Exhibit 546, and that's dated December 7, 2012 at the top email; is that correct?
A. Yeah. December 7th.
Q. You had still not flown to Australia with Mr. Rosic to purchase the boat; is that correct?
I'm sorry. Let me rephrase.
As of December 7, 2012, you had still not flown with Mr. Yoshikawa to Australia to purchase the boat?
A. Not yet.
Q. When you flew to Australia with Mr. Yoshikawa to purchase the boat, did he complete the sale at that time?
A. Actually, we -- the sale of the completion -- completion of the sale has made prior to that. We just went to see whether the boat was finished as what we order.
Q. Do you know when the sale of the boat was completed?
A. Probably about two or three days before that, as in the document.
Q. Before you flew to Australia?

A. That's correct.
Q. So certainly by December 7, 2012, Mr. Yoshikawa had not yet bought a boat?
A. No.
Q. So on December 7, 2012, you had this concern whether or not the boat length restriction was going to apply to Mr. Yoshikawa.
Is that a fair statement?
A. That is, yes.
Q. And did you still have that concern when you and Mr. Yoshikawa flew to Australia?
A. No.
Q. And how was that concern alleviated for you?
A. Well --
MR. REVERE: It's -- you shouldn't talk about -- you can talk -- I don't know what you're going to say. But don't talk about any things discussed with me or any other attorney.
MR. GOODWIN: I don't necessarily have any problem with that yet. But my question in and of itself did not ask for any attorney/client communications.
THE ARBITRATOR: But you asked how he alleviated his concern, right?

MR. GOODWIN: If he tells me the only way I was alleviated is based on attorney/client communications, obviously, I can't go into that.
THE ARBITRATOR: Fair enough.
Mr. Udagawa, you can answer the question as long as it doesn't involve your revealing any discussions that were conducted under the attorney/client privilege.
The question was how did you alleviate your concerns about the boat restriction.
A. Well, as I mentioned to you for that 23-foot restriction wasn't existed as very much concern is due to the existence of the covenant and agreement. Is that clear?
Q. So it wasn't based on legal advice? Is that fair? You just felt it was okay?
A. Yes.
Q. Can you turn to Exhibit 553, please, Mr. Udagawa. Go ahead and review this document. I'm going to ask if you've seen it before.
(Off the record discussion.)
MR. REVERE: He just wants to know if you saw that before.
A. Oh, yes.
Q. You did see this letter before? Okay.

And again, I'm not asking anything about attorney/client communications.
Did you discuss this letter which has been marked as Exhibit 553 with Mr. Yoshikawa?
MR. REVERE: That would be attorney/client communications if he's helping facilitate legal services, since I can't talk to Mr. Yoshikawa.
MR. GOODWIN: I did not know if that is true.
THE ARBITRATOR: It came out during one of your depositions, if I recall.
MR. REVERE: Yes.
THE ARBITRATOR: You're making a representation that each time you talked with Mr. Yoshikawa, Mr. Udagawa was there to facilitate the delivery of your legal services?
MR. REVERE: Correct.
THE ARBITRATOR: Both in writing and orally?
MR. REVERE: Correct.
BY MR. GOODWIN:
Q. Let's just turn to the third page of this exhibit.
Mr. Udagawa, can you read out loud the

highlighted section.
A. "The Association will not object to the mooring of Mr. Yoshikawa's new boat unless the AOAO object in writing within seven days from the date of this letter. Mr. Yoshikawa will proceed to moor his new boat with the AOAO's agreement and/or acquiescence. If the Board does not object or persist in noncommitals, we will have not choice but to bringing an action to enforce Mr. Yoshikawa's rights."
MR. REVERE: Just for the record, he read a half sentence at the beginning because you guys highlighted it.
Q. I was going to try to clarify that.
So the actual sentence begins, and I apologize for the highlighting, "Unless the AOAO objects in writing within seven days from the date of this letter."
Do you see that?
A. Yeah, there is a "C" there.
Q. This letter was copied to you; is that correct?
A. Yes.
Q. Can you turn to Exhibit 554, please. I'm going to ask the same question, Mr. Udagawa.

Please review this letter.
I'm going to ask you, have you seen this letter before?
(Pause.)
MR. REVERE: Your question, Chris, is just whether he saw this before?
MR. GOODWIN: That's the question currently on the table, Mr. Revere.
A. I believe I see this.
Q. Do you recall whether or not you provided this letter to Mr. Yoshikawa?
A. Any letters coming, we share with him.
Q. So is it fair to say that if this letter, you got a copy of this letter, you would have shared it with Mr. Yoshikawa?
A. Yes.
Q. And by May 7, 2013, had you and Mr. Yoshikawa flown to Australia?
A. Not yet, I believe.
Q. Can you turn to Exhibit 559.
Can you review this document and advise whether or not you've seen this document before?
(Pause.)
A. Yes.
Q. Can you read the second sentence. I'm

sorry. Can you read the first sentence of the first paragraph after "Dear Mr. Revere."
A. "Dear Mr. Revere"?
Q. "Dear Mr. Revere."
MR. REVERE: Did you tell him 558?
MR. GOODWIN: I said 559, sorry.
MR. REVERE: I thought you said 558.
MR. REVERE: I think he's asking for this.
Q. Same question. Have you seen that document before?
(Pause.)
A. Yes, I believe so.
Q. Did you forward this letter to Mr. Rosic?
A. No.
MR. REVERE: Did you mean Mr. Yoshikawa?
MR. GOODWIN: No. I meant Mr. Rosic.
Q. Did you provide a copy of this letter to Mr. Rosic?
A. I don't think so.
Q. Now, as of the date of this letter, June 4, 2013, had you yet traveled to Australia with Mr. Yoshikawa?

A. No. Let me clarify. I don't know when did I go. May I?
Q. You're going to check your calendar to determine when you went to Australia?
A. Yes.
Q. Thank you.
(Pause.)
A. We arrived in Brisbane on September 16th.
Q. 2013?
A. That's correct.
Q. Can you turn to Exhibit -- I'm sorry, did you provide Exhibit 559 to Mr. Yoshikawa?
A. 559?
Q. The one right in front of you.
A. Okay. I believe we discussed about this.
Q. Did you provide this document to Mr. Yoshikawa outside the presence of Mr. Revere?
A. I don't recall.
Q. Let's turn to Exhibit 566. 566.
This appears to be an email to you from Mr. Rosic dated August 27, 2013; is that correct?
A. This is correct.
Q. And can you read the third sentence of

this email, please.
A. The third sentence?
Q. "He recorded."
MR. REVERE: Third paragraph?
Q. Third paragraph. I think it's the third sentence too.
MR. REVERE: The first sentence begins with what a joke.
MR. GOODWIN: Good point. Thank you.
Q. Third paragraph. Please, Mr. Udagawa, can you read that.
A. "He has a recorded letter signed by the Board's President giving him the rights to put any size of boat he wants in his 69-foot side tie."
Q. Did you ever see a letter signed by the Board's President giving anyone a right to put any size boat on a 69-foot side tie?
A. No.
Q. After you got this email dated August 27, 2013, you and Mr. Yoshikawa, two weeks later, approximately two weeks later, flew to Australia to complete the purchase of the boat; is that correct?
A. That is correct. As far as I see the arrival date, yes.

Q. That's even though you had previously seen a letter from the Association's attorney advising that the Association would not allow Mr. Yoshikawa to have a longer boat? I'm referring to Exhibit 559 that you previously looked at.
(Pause.)
A. I'm looking at it.
Q. You knew as of approximately June 4, 2013 that the Association had said that Mr. Yoshikawa could not have a 51-foot boat; is that correct?
MR. REVERE: That the Board was telling them that?
MR. GOODWIN: Yes. That the Board was telling them that. I'm not saying that he knew that.
A. They wrote the letter, yes.
Q. You knew of this letter before you and Mr. Yoshikawa got on the plane and flew to Australia; is that correct?
A. Yes.
Q. And yet Mr. Yoshikawa, even though he had received this letter, proceeded to nonetheless purchase the boat; is that correct?

A. That is correct.
Q. And even though Mr. Yoshikawa had subsequently received this letter and subsequently flew to Australia and purchased the boat, he nonetheless completed the purchase and moored the boat at Kalele Kai; is that correct?
A. Yes. That happens.
MR. GOODWIN: That's all the questions I have. Thank you.
CROSS-EXAMINATION
BY MR. REVERE:
Q. KC, I just have a few questions. Can you go to Exhibit 131.
(Discussion off the record.)
Q. You see Exhibit 131?
A. Uh-huh (affirmative).
Q. And this is something from the manufacturer, correct?
A. Right.
Q. And there's dates in here about September 2013.
Do you see that?
A. Uh-huh (affirmative).
Q. Do you know when Mr. Yoshikawa actually ordered the boat?

A. Ordering the boat is way, way before. Of course, this is just for the finishing part.
Q. Do you know if it was sometime in the spring that he ordered it?
A. Yes, that is correct.
Q. Going back to counsel asked you some questions about the declaration, which I think is part of both parties' exhibits. 503. Counsel asked you Page 8 of 503.
Do you remember Mr. Goodwin asked you some questions about that? Do you remember Chris asking some questions about that?
A. Yes, yes.
Q. And the date of this document was June of 1993. Do you see that? That's when Bill Clinton was in the White House, as I recall, before he even got into trouble.
A. Okay.
Q. It says here, "The," meaning singular, "boat mooring" in the singular, "shall be restricted to use by boats no larger than 23 feet in length," correct?
A. That's correct.
MR. REVERE: No further questions.
REDIRECT EXAMINATION

BY MR. GOODWIN:
Q. One follow-up.
Mr. Udagawa, Mr. Yoshikawa didn't actually complete the sale of the boat until three days before you left for Australia; is that correct?
A. I believe so. But I can't recollect exactly three days or what.
Q. Was it within a week of your departure to Australia?
A. Let me see. True.
Q. Please do. Please do. We want to be as clear and specific as possible.
(Pause.)
A. I think I take it back. Is because I believe the reason that we went to Australia to buying the boat is because make sure the boat has been finished as specific ordered. And then the balance was still remained. And after that, we inspect the boat, then that last balance is money remitted. Therefore, the sale's actually not completed before our visit.
Q. So the sale was completed after your visit?
A. Yes.

MR. GOODWIN: I have no further questions. Thank you.
MR. REVERE: Nothing further. Thanks.
THE ARBITRATOR: You're done.
(Witness excused.)
(Whereupon, the arbitration adjourned at 6:50 p.m.)

CERTIFICATE

I, WILLIAM T. BARTON, C.S.R., do hereby certify:
That I was acting as shorthand reporter in the foregoing matter on September 18, 2014, commencing at 9:00 a.m.;
That each witness whose testimony is contained herein, prior to being examined was duly sworn or affirmed;
That the arbitration herein was by me taken down in machine shorthand and thereafter reduced to print via computer-aided transcription under my supervision; that the foregoing represents a complete and accurate transcript of the above proceedings to the best of my ability;
I further certify that I am neither counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in the caption.
Dated this 24th day of September 2014 at Honolulu, Hawaii.

WILLIAM T. BARTON, CSR No. 391
Certified Shorthand Reporter