

REQUEST FOR ACTION						
Subject	Hold Harmless and Mutual Release Agreement					
Preparer	Jon McKenna	AOUO Title	Management Executive			
Date	5/18/18	For Board	X	Action		Info
EXECUTIVE SUMMARY						
<p>The indemnity and release agreement identified in Exhibit A sets forth the rights and obligations of the parties arising from Owner's installation, repair, maintenance and/or alteration of modifications within their unit. While the Association governing documents provide for direction and guidelines for unit modifications and repairs performed by owners, requiring an indemnity and release agreement better protects the Association from claims that may arise as a result of modification, repairs, etc. performed improperly.</p>						
RECOMMENDATION						
Approve the Indemnity and Release Agreement identified in Exhibit A.						
RATIONAL						
<p>As improper, incorrect modifications or repairs to a unit may jeopardize the soundness or safety of the property, impair easements, or interfere or deprive any nonconsenting owner of the use or enjoyment of a the property, requiring an Indemnity and Release Agreement will further protect the Association should an owner not abide by the requirements set forth in the Association's governing documents.</p>						
Exhibits	Index	Title				
(If applicable)	A	Indemnity and Release Agreement				
	B					
FOR BOARD USE ONLY						
CERTIFICATE OF BOARD ACTION						
<input checked="" type="checkbox"/>	Approved	<input type="checkbox"/>	Declined	<input type="checkbox"/>	Noted	<input type="checkbox"/>
		<input type="checkbox"/>	Returned	<input type="checkbox"/>	Deferred	<input type="checkbox"/>
		<input type="checkbox"/>	Withdrawn			
Stipulations						
Note: Association counsel has reviewed prior to Board adoption.						
Coordinating Instructions						
Distribution Instructions						
Recording Secretary	Ryan Kamo	Action Date	7/26/18	RFA No.	18-2018	



INDEMNITY AND RELEASE AGREEMENT

This Agreement by and between _____ jointly and severally (collectively referred to as "Owner") and AOOU The Collection, its directors, officers, employees and agents (collectively referred to as "Association") sets forth the rights and obligations of the parties arising from Owner's installation, repair, maintenance and/or alteration of modifications within their unit.

Whereas, the Owner has requested to make modifications within their unit, and

Whereas, the Association has conditionally approved the Owner's request to undertake such modifications, and

Whereas the Owner acknowledges no proposed modification may at any time jeopardize the soundness or safety of the property, impair any easement, or interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of the property, and

Whereas, Owner and Association agree that the proposed modifications are in compliance with the Association's governing documents and all requisite approvals have been obtained,

Now, therefore, it is mutually agreed as follows:

A. HOLD HARMLESS PROVISIONS

1. The Owner agrees to assume all costs associated with the modifications within their unit, including but not limited to the installation, repair, maintenance and/or alteration of said modifications.
2. Repair and/or replacement of any Association property (including, but limited to any portion of the common elements), personal property of any other person or entity, or neighboring units damaged pursuant to and/or as a result of said modifications.
3. The Owner agrees to defend, indemnify and hold the Association harmless from any and all claims and/or causes of action asserted against the Association, its Board of Directors, directors, officers, employees and/or Managing Agent by any party seeking recovery of damages attributable to and/or arising from the installation, repair, maintenance and/or alteration of said modifications, except to the extent such damages are determined to have been proximately caused by the conduct of the Association.

B. VOLUNTARY AGREEMENT

All parties acknowledge having read and fully understanding the provisions of this Agreement and they are voluntarily entering into this Agreement for their own mutual benefit.

C. ATTORNEYS' FEES AND JURISDICTION

Any cause of action seeking interpretation and/or enforcement of this Agreement shall be brought exclusively in the First Circuit Court of the State of Hawaii. The prevailing party in any cause of action seeking interpretation and/or enforcement of this Agreement shall be entitled to recovery of their reasonable attorneys' fees and costs.

D. ENTIRE AGREEMENT

Each party hereto acknowledges that, in executing this Agreement, they do not rely upon any representation or statement made by any other party regarding this Agreement not set forth herein. This Agreement sets forth the entire and complete understanding between the Association and the Buyer, and fully supersedes any and all prior agreements or understandings between them.

DATED: Honolulu, Hawaii, _____

, President
Board of Directors,
AOOU The Collection

, Owner
Unit No. _____



HOLD HARMLESS INDEMNITY AND MUTUAL RELEASE AGREEMENT

This Agreement by and between _____ jointly and severally (collectively referred to as "Owner") and AOOU The Collection, its ~~owners~~, directors, officers, employees and agents (collectively referred to as "Association") sets forth the rights and obligations of the parties arising from Owner's installation, repair, maintenance and/or alteration of ~~additions or alterations~~ modifications within their unit.

Whereas, the Owner has ~~stated an intention requested~~ to make modifications within their unit, and

Whereas, the Association has conditionally approved the Owner's request to undertake such modifications, and

Whereas the Owner acknowledges no proposed modification may at any time jeopardize the soundness or safety of the property, impair any easement, or interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of the property, and

Whereas, Owner and Association agree that the proposed modifications are in compliance with the Association's governing documents and all requisite approvals have been obtained,

Now, therefore, it is mutually agreed as follows:

A. HOLD HARMLESS PROVISIONS

1. The Owner agrees to assume all costs associated with the modifications within their unit, including but not limited to the installation, repair, maintenance, and/or alteration of said modifications.
2. Repair and/or replacement of any Association property (including, but limited to any portion of the common elements), personal property of any other person or entity, or neighboring units damaged pursuant to and/or as a result of the said modifications.
3. The Owner agrees to defend, indemnify and hold the Association harmless from any and all claims and/or causes of action asserted against the Association, its Board of Directors, directors, officers, employees and/or Managing Agent by any party seeking recovery of all costs and liability therefor damages attributable to and/or arising from the installation, repair, maintenance and/or alteration of said modifications, except to the extent such damages are determined to have been proximately caused by the conduct of the Association.

B. VOLUNTARY AGREEMENT

All parties acknowledge having read and fully understanding the provisions of this Agreement and they are voluntarily entering into this Agreement for their own mutual benefit.

C. ATTORNEYS' FEES AND JURISDICTION RELEASE

Any cause of action seeking interpretation and/or enforcement of this Agreement shall be brought exclusively in the First Circuit Court of the State of Hawaii. The prevailing party in any cause of action seeking interpretation and/or enforcement of this Agreement shall be entitled to recovery of their reasonable attorneys' fees and costs.

~~Each party to this Agreement hereby releases and discharges the other from any and all claims, liabilities and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever, known or unknown, growing out of the provisions of this Agreement.~~

D. ENTIRE AGREEMENT

Each party hereto acknowledges that, in executing this Agreement, they do not rely upon any representation or statement made by any other party regarding this Agreement not set forth herein. This Agreement sets forth the entire and complete understanding agreement between the Association and the Buyer, and fully supersedes any and all prior agreements or understandings between them.

DATED: Honolulu, Hawaii, _____

_____, President

_____, Owner

Board of Directors

Unit No. _____

AOUO The Collection _____
