

24-2018



REQUEST FOR ACTION

To	The Collection Board of Directors				
Subject	Creation of an Independent Owner Group to Investigate the Inappropriate Usage and Distribution of the "Project Start Up Fee"				
Preparer	Debra Ishihara-Wong				
Date	Verbal request to above made on May 24, 2018 BOD meeting. Follow up email on June 4, 2018 to BOD, collection management and HMC. Third request on 6/26/18.	For Board	x	Action	Info

EXECUTIVE SUMMARY

See attached.

RECOMMENDATION

See attached.

RATIONALE

See attached.

Exhibits (If applicable)	Index	Title

FOR BOARD USE ONLY

CERTIFICATE OF BOARD ACTION

Approved	Declined	Noted	Returned	Deferred	Withdrawn
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Stipulations

Coordinating Instructions

Distribution Instructions

Recording Secretary		Action Date		RFA No.	24-2018
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Request for Action

Creation of an Independent Owner Group to Investigate the Inappropriate Usage and Distribution of the "Project Start Up Fee"

Executive Summary

Unit owners have raised the question on many separate occasions as part of the Open Forum section of the regular Board meetings, as to the specific expenses that the Project Start Up Fee, hereafter known as the Fee, was intended to cover. The Board of Directors (BOD), in response, informed the owners that this Fee was designated to cover the "start-up" costs, such as, paying for the wages for The Collection personnel to prepare the condominium for residents and/or owners to move in. However, once unit owners demanded that all Request for Actions (RFAs) be posted on The Collection intranet website toward the end of calendar year 2017, it was revealed that the Fee was being utilized outside of its stated purpose, which included the reimbursement of Alexander and Baldwin (A&B) for common amenities, and payment to Hawaiiana Management Company (HMC) without appropriate receipts.

Recommendations

Recommend that the Board approve:

- the creation of an Independent Owner Group to Investigate the Inappropriate Usage of the "Project Start Up Fee"
 - the group shall be constituted of 5 members of which there shall be 3 owners and 2 Directors
 - in the interest of dispelling any possible contributing factors that may constitute a conflict of interest, the group shall not consist of any directors who approved the payment from the funds collected and designated as part of the Fee to Hawaiiana and A&B.
 - the three owners will consist of Steve Shaw, Debra Ishihara-Wong and the third as determined by Steve and Debra.

Rationale

Per The Collection Sales Contract, unit owners were provided the "Second Amended Developer's Public Report (effective date: February 5, 2014). Page 4, section 1.8 Recreational and Other Common Facilities, listed the common element facilities which included the following: "swimming pool, storage area, recreation area, trash chute, exercise room, club room, workshop, bike parking, dog run & dog wash"

The "Additional Terms and Conditions for Sales Contract", page 14, section 7 Closing Cost, states the following:

"At Closing, Purchaser shall prepay two (2) month's estimated maintenance fee for Project's Association. Purchaser shall also pay a non-refundable, non-transferable start-up fee to the Project's Association in the amount equal to three (3) months' estimated maintenance fee assessments, which are a one-time assessment at Closing and not an advance payment of common expenses, or assessments, and which shall be in addition to the normal monthly assessments. These start-up fees shall be held, accounted for and expended as funds of the Association for the benefit of its members by Seller and the initial managing agent and **may be used to pay for all costs and expenses associated with the start-up of a new residential condominium, including without limitation Association office furniture, equipment, uniforms, creational equipment, furniture, furnishings, artwork, initial maintenance supplies and equipment, communication equipment, secured entry fobs or cards, and initial insurance premiums.**"

The general definition of a start up fee or expenses, are costs associated with setting up a business, such as employee training, staff salaries and wages to set up a condominium, not paying for amenities and appliances that were sold to us.

However, on July 27, 2017, the BOD approved unilaterally, without owner consent, to pay A&B \$131,454.04 of the \$318,944.04 requested "Start-Up Fee" to A&B. (See attached minutes). A&B provided original receipts. However, HMC did not provide receipts for their invoice, thus, the BOD treasurer, Sun Kim, deferred recommending payment to HMC for \$187,487.33.

The BOD appropriately approved payment to A&B for startup costs, such as, GM laptop, office supplies, salaries and wages, etc. (see attached RFA 12-2017) However, the owners were also charged for purchased amenities including, Tower Recreation Deck 7 BBQ (\$32,130.57), Lofts refrigerator (\$2,267.01), Lofts laundry machines (\$5300.52), Lofts Club Room icemaker (\$1507.50), Tower various appliances (\$7,735.50), Tower icemaker (\$1,507.50), Tower refrigerator (\$2,346.68), Waiting room desk (\$10,663.66), Waiting room task chairs (\$855.91), and Waiting room lounge chairs (\$5,758.40). Some of these amenities have been not fictional, for a multitude of reasons, for extended periods of time. Of note is the Tower Club Room icemaker that is currently not working. This also includes the grill, which has not been used since the opening of the building as discussed at the 2018 AOUO Annual Meeting.

At the BOD meeting on August 24, 2017, Ms. Sun Kim was not present, since she resigned from her position as BOD treasurer. The BOD did not appoint an acting treasurer. Mr. Howard Kam, (BOD) relayed to the board that Sun Kim reviewed the outstanding HMC reimbursement, and recommended approval, yet provided no documentation of the treasurer's recommendation. The owners paid HMC in amount of \$187,487.33 with no provided receipts for official accounting.

In the annual "Independent Auditor's Report" conducted by Ratna Nui, CPA, LLC, the independent auditor states, "The Schedules of Other Revenues, Improvements & Start Up, Developer Expense and Operating Fund Expenses on pages 8-9 are presented for purposes of additional analysis and is not a required part of the basic financial statement." The independent auditor defines basis accounting on basis of cash receipts and disbursement as a comprehensive basis of accounting and generally accepted accounting principles, Thus, the independent auditor did not a complete basic financial accounting of the start-up expenses to assure its appropriateness.

Due to the major discrepancies noted above, I am requesting an independent ad hoc group be created to investigate this matter further.

MINUTES OF THE BOARD OF DIRECTORS' MEETING
THE COLLECTION
JULY 27, 2017

CALL TO ORDER

President Krahulik called the meeting to order at 6:00 p.m.

BOARD MEMBER ATTENDANCE.

Members Present: President Joe Krahulik, Vice President Henry Lew, Secretary Howard Kam (*Arrived 6:07 p.m.*) Treasurer Sun Kim, Directors Ken Shimada, Ryan Kamo, Sandra Billington, Carleton Ching and Lee Cranmer.

Members Absent: None.

Present by Invitation: Jon McKenna, Management Executive, Hawaiiana Management
Al Guzman, General Manager, The Collection
Victoria Chai, Executive Assistant, The Collection

MINUTES

VP Lew moved to approve the Regular Meeting minutes of June 22, 2017 as submitted. The motion carried unanimously.

DEVELOPER'S REPORT -

Developer representative Sandra Billington submitted and reviewed a written report.

MANAGEMENT REPORT

Management Executive McKenna submitted and reviewed a written report.

GENERAL MANAGER'S REPORT

GM Guzman submitted and reviewed a written report.

1. 2nd Floor Parking Garage (Tower) and Midrise (Lofts) Mezzanine Door, Request for Automatic Door FOB Installation – Secretary Kam moved, seconded by Director Billington, to approve the proposals submitted by M. Watanabe Electrical and IPD to install the automatic door FOB mechanisms at the locations listed above at a cost of \$16,082 (plus tax). President Krahulik, VP Lew, Secretary Kam, and Directors Shimada, Kamo, Billington, and Ching voted in favor. Treasurer Kim and Director Cranmer opposed. The motion carried.
2. Tower Garage Safety Measures – Director Kamo moved, seconded by Director Ching, to approve the installation of pavement markers to delineate driving lanes at a cost of \$2,693 and, to strip the garage turns to delineate driving lanes at a cost of \$1,800. All work will take place within the Tower parking garage. The motion carried unanimously.

TREASURER'S REPORT

The financial statements for June 2017 were reviewed and accepted, subject to audit.

COMMITTEE REPORTS

- A. Executive Committee – No report.
- B. Ad-Hoc Committee, Purchase Opportunity – Management Executive (ME) McKenna reported escrow and loan documents have been received. The loan documents are under review by Association attorney Chris Goodwin, who will be providing an opinion letter in accordance with Section 3.3.2 of the Bylaws. ME McKenna has reviewed the terms and conditions of both sets of documents to ensure they are in accordance with the Board's resolution to purchase and finance the GM unit, storage, and parking. Hearing no objections and, in accordance with Board approval provided at the February 21, 2017 Regular Board meeting, it was recommended and unanimously approved to authorize the President and Secretary to sign all documents on behalf of the Association.

As the work of the Committee has been completed, the Committee was dissolved.

- C. Budget & Finance Committee – No report.
- D. Design Review & Building Maintenance Committee – Chair Kamo reported there were three (3) design review applications received, reviewed, and approved during the months of June and July.
- E. Governance Committee – Chair Krahulik informed the Board the next Committee met on July 25th at 6:00 p.m.
- a. Amendment to Association Rules (Tower) –
- i. Section 6.1, Pets – Treasurer Kim moved, seconded by VP Lew, to add; “A dog’s allowed maximum weight shall be 40 lbs.” and, that the weight limit only applies to owners who have purchased a unit from today forward (owner’s who presently own pets greater than 40 lbs. prior to today are grandfathered). VP Lew, Treasurer Kim, Director Ching, and President Krahulik voted in favor. Secretary Kam and Directors Cranmer, Billington, and Kamo opposed. Director Shimada abstained. The motion failed.
 - ii. Section 6.2, Pets – Treasurer Kim moved, seconded by Director Ching to add; “Dogs outside of Units shall be carried or on a short leash the length of which being no more than 2 feet from the handler’s feet.” The motion carried unanimously.
 - iii. Section 6.5, Pets – Director Cranmer moved, seconded by Secretary Kam, to add; “Dogs that are prohibited are those that demonstrate a propensity for dominant or aggressive behavior as indicated by, but not limited to, any of the following conduct: unprovoked barking, growling or snarling at people approaching the pet; aggressiveness toward people; biting or scratching people and/or other pets.” The motion carried unanimously.

- iv. Section 11.4, Recreation Facilities (Spa) – VP Lew moved, seconded by Director Kamo, to add; “The maximum number of users in each spa is six (6). For health reasons and, as a courtesy to other Residents and Guests waiting to use the spa, the maximum spa use at one time is for 15 minutes.” President Krahulik, VP Lew, and Director Kamo voted in favor. Secretary Kam, Treasurer Kim, and Director’s Shimada, Ching, and Cranmer opposed. Director Billington abstained. The motion failed.

- b. Amenities Cancellation, No Show Fee – Deferred back to Committee for additional review.

- c. Section 10.2, Mandatory Guest Sign In – VP Lew moved, seconded by Director Cranmer, to amend the Tower Association Rules to state; “All guests must sign in at the front desk.” President Krahulik, VP Lew, Treasurer Kim, and Directors Kamo, Billington, Ching, and Cranmer voted in favor. Director Shimada opposed, Secretary Kam abstained. The motion carried.

- F. Social Activities – Chair Billington reported movie night held July 20th was a fun and successful event and the next Committee meeting was scheduled for August 1st, 10:00 a.m., in the 7th Floor Club Room.

UNFINISHED BUSINESS

- A. Tower Sub Meter Readings (Lost Data) – Deferred to Executive Session. The Board approved to request Multifamily Utility Company waive five (5) months of fees.

- B. Elevator Maintenance Contract (Midrise – Lofts) – Director Cranmer moved, seconded by Secretary Kam, to approve the proposal submitted by Schindler Elevator Corporation to provide monthly maintenance service to the two (2) elevators that serves the Midrise (Lofts) building at an annual cost of \$10,680 (plus tax). The contract will commence on November 2, 2017 and continue for a 5-year period until November 1, 2022. Payment will be monthly with no additional interest fee as identified in the proposal. Prior to execution, ME McKenna was directed to verify that the Association contracts do not require a termination clause be placed within the contract (see 90 day termination clause in Section 3.2.4 of Bylaws). The motion carried unanimously.

- C. President’s Mid-Year Report – President Krahulik distributed his mid-year report to the Board.

- D. Rules for Owner Participation at Board Meetings – VP Lew moved, seconded by Director Cranmer, to approve the Rules for Owner Participation at Board Meetings. The motion carried unanimously.

NEW BUSINESS

(Director Billington excused herself at 8:11 p.m.)

- A. Ad-Hoc Safety Committee – Deferred. A Request for Action will be developed for review by the Board at the next Regular Meeting.
- B. Short-Term Rentals, Enforcement – VP Lew moved, seconded by President Krahulik, to approve hiring Steve Goodenow of The Hawaii Investigative Group LLC to investigate, confirm, and report on short-term rentals being practiced at The Collection. Further, all costs incurred by The Collection to prove short term rental activity exist, shall be assessed back to the homeowner committing the violation per Association Rules Section 13.1. Cost is not to exceed \$1,500. President Krahulik, VP Lew, Secretary Kam, and Directors Kamo, Ching, Shimada, and Cranmer voted in favor. Treasurer Kim opposed. The motion carried.
- C. Start-Up Expenses, Reimbursement to A&B – Treasurer Kim moved, seconded by Secretary Kam, to authorize reimbursing \$131,454.71 of the total \$318,944.04 in AOUO start-up expenses submitted by A&B properties, which has been reviewed by Treasurer Kim. Furthermore, the Board authorized the Executive Committee to approve the reimbursement of the remaining \$187,489.33 claim to A&B properties upon its review and approval by the Treasurer and provide her report thereon at the next Board meeting. The motion carried unanimously.

NEXT BOARD MEETING

The next Regular Board of Directors meeting will be held on Thursday, August 24, 2017, 6:00 p.m., in the 7th Floor Club Room.

EXECUTIVE SESSION

The meeting adjourned into Executive Session to discuss legal and personnel matters at 8:49 p.m. and was called back to order at 9:22p.m.

ADJOURNMENT. The Meeting was adjourned at 9:22 p.m.

Respectfully Submitted:

Jon McKenna

Jon McKenna

Board Approved On: August 24, 2017

MINUTES OF THE BOARD OF DIRECTORS' MEETING
THE COLLECTION
AUGUST 24, 2017

CALL TO ORDER

President Kraulik called the meeting to order at 6:03 p.m.

BOARD MEMBER ATTENDANCE.

Members Present: President Joe Kraulik, Secretary Howard Kam, Treasurer (*Vacant*), and Directors Sandra Billington, Carleton Ching, and Lee Cranmer (*arrived at 6:28 p.m.*).

Members Absent: Vice President Henry Lew and Directors Ken Shimada, Ryan Kamo.

Present by Invitation: Jon McKenna, Management Executive, Hawaiiana Management
Al Guzman, General Manager, The Collection

BOARD VACANCY

Taylor Nguyen was nominated by Director Lee Cranmer to fill the Midrise (Lofts) vacancy due to the resignation of Sun Kim and was unanimously elected. Director Nguyen will serve until 2018, which is the remainder of the term left vacant by Sun Kim.

TREASURER VACANCY

Taylor Nguyen was nominated to serve as Treasurer by President Joe Kraulik and unanimously elected.

MINUTES

Director Ching moved, seconded by President Kraulik, to approve the Regular Meeting minutes of July 27, 2017 as submitted. The motion carried unanimously.

DEVELOPER'S REPORT

Developer representative Sandra Billington submitted and reviewed a written report.

MANAGEMENT REPORT

Management Executive McKenna submitted and reviewed a written report.

GENERAL MANAGER'S REPORT

GM Guzman submitted and reviewed a written report.

1. Transport Attic Stock Glass to The Collection – Secretary Kam moved, seconded by President Kraulik, to approve the proposal submitted by Kalu Glass, in the amount of 7,630.00 (plus tax), to transport the attic stock exterior glass from their warehouse storage to The Collection. Additionally, GM Guzman was to contact Kalu Glass to inform them they were not the lowest bidder and, to request they provide a best and final price. The motion carried unanimously.

TREASURER'S REPORT

The financial statements for July 2017 were deferred.

COMMITTEE REPORTS

A. Executive Committee –

- a. Start-up Expenses, Reimbursement to A&B – Hearing no objections, the Board approved making the final start-up cost reimbursement payment, in the amount of \$187,489.33, to A&B in accordance with the submitted request for action.

B. Budget & Finance Committee – ME McKenna reported a committee meeting would be called mid-September to review the 2018 draft budget.

C. Design Review & Building Maintenance Committee – No report.

D. Governance Committee –

- a. Amenities Cancellation, No Show Fee – Director Cranmer moved, seconded by President Krahulik, to adopt and apply Section 14, Fine, of The Collection Association Rules to residents who provide less than 72-hours notice to cancel an amenity reservation or to those who do not report to the amenity within 30 minutes after the start of their reserved time. President Krahulik, Secretary Kam, and Directors Cranmer and Billington voted in favor. Director Ching opposed. The motion carried.

E. Social Activities – Chair Billington reported the next event will be a Halloween event scheduled for October 27th.

UNFINISHED BUSINESS

- A. Tower Sub Meter Readings (Lost Data) – Deferred.

NEW BUSINESS

- A. Sprint Cell Site – Hearing no objections, ME McKenna was directed to seek proposals from Sprint, AT&T, Verizon, and T-Mobile to install an antenna site on the roof of The Collection.

(Secretary Kam excused himself from the meeting at 7:03 p.m.)

NEXT BOARD MEETING

The next Regular Board of Directors meeting will be held on Thursday, September 28, 2017, 6:00 p.m., in the 7th Floor Club Room.

EXECUTIVE SESSION – None.

ADJOURNMENT. The Meeting was adjourned at 7:05 p.m.

Respectfully Submitted:

Jon McKenna

Jon McKenna

Board Approved On: September 28, 2017