

STATE OF HAWAII  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
Public Works Division  
Honolulu, Hawaii 96813

April 13, 2017

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: \_\_\_\_\_

OAHU

Revisions to Condominium Documents of the Association of Apartment Owners of the King Kalakaua Building (former U.S. Post Office, Customs and Court House Building, aka the Downtown Post Office Building, or Old Federal Building), 335 Merchant Street, Honolulu, Oahu, Tax Map Key: (1) 2-1-025-004, CPR Nos. 0001, 0002, 0003, 0004 to Clarify Common and Apartment Elements and the Responsibility of Apartment Owners

APPLICANT:

Department of Accounting and General Services

LEGAL REFERENCE:

Section 171-11 Hawaii Revised Statutes, as amended.

LOCATION:

King Kalakaua Building (former U.S. Post Office, Customs and Court House Building) 335 Merchant Street, Honolulu, Oahu - Tax Map Key: (1) 2-1-025-004, CPR Nos. 001, 002, 003, 004, as shown on the attached map, labeled Exhibit A.

CONTROLLING AGENCY AND LEGAL REFERENCE:

Under Chapter 26-6, HRS, DAGS has the authority to manage and operate Public buildings. Also, Governor's Executive Order No. 4262 set aside apartments 1 and 4 in the King Kalakaua Building condominium project to DAGS, together with an interest in the real property and common elements for state office purposes. DAGS has assigned the State Department of Commerce and Consumer Affairs (DCCA) to occupy the State's condominium units. The Condominium Documents requires the approval of the Board of Land and Natural Resources, as the landowner, for any amendments.

AREA:

113,754 s.f. or 2.611 acres, more or less.

**ITEM M-7**

ZONING:

State Land Use Commission: Urban  
City & County of Honolulu CZO: B-2 Community Business District

TRUST LAND STATUS:

Not applicable.

CURRENT USE STATUS:

Condominiums 1 (portion of 1<sup>st</sup> floor, and floors 2-6) and 4 (basement) are owned by the State of Hawaii and occupied by the Department of Commerce and Consumer Affairs (DCCA). The U.S. Postal Service owns and occupies condominiums 2 and 3 (both on a portion of the 1<sup>st</sup> floor) for retail and office operations.

CHARACTER OF USE:

State office space and U.S. Post Office.

REMARKS:

On January 11, 2002, the Board of Land and Natural Resources (Board) gave approval for the State to purchase a condominium interest in the subject property for use by the DCCA. The purpose of the acquisition was to acquire new space for DCCA's offices due to the deteriorating condition of the Princess Victoria Kamamalu building.

The property was submitted to the Condominium Property Regime, pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes. Four condominium apartments were created. Ownership is indicated above. Condominium project documents, a Declaration of Condominium Property Regime for King Kalakaua Building (Declaration) and By-Laws of the Association of Apartment Owners of King Kalakaua Building (By-Laws), were created and approved by all owners, including the State through the Board.

The Association of Apartment Owners (AOAO) of the King Kalakaua Building is managed by a commercial property management firm, Newmark Grubb CBI. The Board of Directors of the AOAO are made up of 3 members - two (2) from the State of Hawaii (Administrative Service Officer from DCCA, and Building Manager from DAGS, Central Services Division), and one (1) from the U.S. Postal Service.

The Board of Directors, with recommendations by the managing agent, have drafted amendments to the Declaration and By-Laws for the project, which are subject to the concurrence by the owners, the State of Hawaii through the Board of Land and Natural Resources, and the U.S. Postal Service.

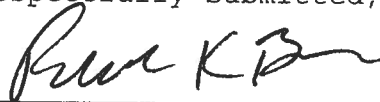
The reason for revising the condominium documents, is due to discrepancies in the condominium documents, which are making it difficult for the Board of Directors to effectively manage the property. Examples include the difficulty in renewing the association's property insurance due to conflicts concerning the responsibility for replacing certain building elements (i.e. windows, window frames) in the event of building damage or destruction and responsibility for the replacement and maintenance of certain shared air conditioning equipment. The specific amendments are detailed in the letter to the owners of the King Kalakaua Building attached as Exhibit B.

The benefit to the State is that our maintenance cost could likely be lowered. This will mean that the Post Office's share will increase. In order for the Board of Directors to proceed, the vote must be unanimous in favor of proceeding with the document revisions. The Board of Directors anticipates that this measure will pass, and so each owner is pursuing their approvals separately.

RECOMMENDATION: That the Board:

1. Approve the proposed amendments to the Declaration and By-Laws proposed by the AOA of the King Kalakaua Building subject to the following:
  - a. Review and approval of the Department of the Attorney General; and
  - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the Chairperson to execute necessary documents for the approval of the proposed amendments to the Declaration and By-Laws.

Respectfully Submitted,



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Roderick K. Becker  
Comptroller

APPROVED FOR SUBMITTAL:



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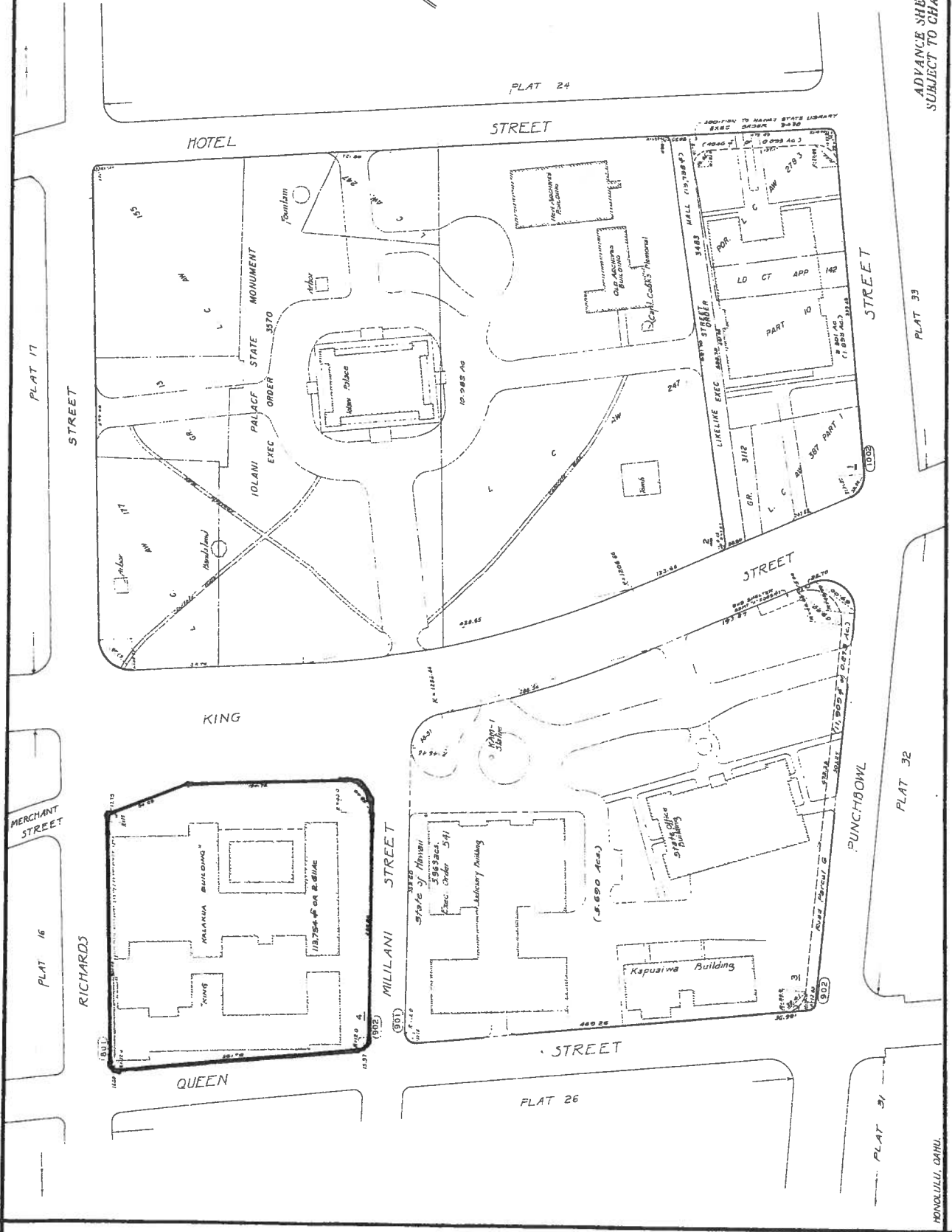
Suzanne D. Case  
Chairperson

EXHIBIT A

FIRST ZONE	DIVISION	PLAT
2	1	25
CONTAINING PARCELS		SCALE: 1" = 80 FT.

ADVANCE SHEET  
SUBJECT TO CHANGE

PRINTED



1:5000  
 1:5000  
 1:5000  
 1:5000

Dwg. No. 2222  
 Source: The Hawaiian Survey  
 By: L.H.

HONOLULU, HAWAII

March, 2017

Owners of Apartments  
of King Kalakaua Building

**Re: Proposal to Approve Amendments to the Project Documents concerning:**

- 1) Non-Load Bearing Walls Inside Apartments**
- 2) Responsibility for Limited Common Elements;**
- 3) Clarification of What is Included in Common Expenses;**
- 4) Fifth Floor Mechanical Room Condenser Water Pumps;**
- 5) Sixth Floor Mechanical Room Cooling Tower System**
- 6) Responsibility for Apartment Elements**

Dear Apartment Owners:

Enclosed please find a Written Consent and Return Envelope for proposals to approve amendments to the Project Documents of the Association of Apartment Owners of King Kalakaua Building ("Association"), as listed above. Below is a brief explanation of each of the proposed amendments.

### **1. Non-Load Bearing Walls Inside Apartments**

This amendment will specifically state that non-load bearing walls inside the perimeter walls of the apartments are apartment elements. This was previously implied by the Declaration, but the following amendment will make this clear by specifically including discussion of non-load bearing walls versus perimeter or interior load-bearing walls.

The proposed amendment will amend the Declaration of Condominium Property Regime for King Kalakaua Building ("Declaration") Section 4.01 as follows, with the original language appearing in plain font, added language appearing in ***bold italics***, and deleted language appearing in **~~bold-strikeout~~**:

The Project shall be comprised of four (4) freehold estates in the spaces within the perimeter walls, floors, and ceilings of the apartments in each building. The apartments shall not include the undecorated or unfinished surfaces of the perimeter walls or of the interior load-bearing walls, the floors, and perimeter ceilings surrounding each apartment; or any pipes, wires, ducts, conduits, or other utility or service lines running through such apartments which are utilized for or serve more than one apartment; ***all of the aforesaid being which are*** common elements as provided in Paragraph 6 hereof. Each apartment shall include the ***interior non-load bearing walls***; doors and door frames; windows and window frames; the inner decorated or finished surfaces of ***perimeter walls, interior load-bearing walls***, floors and ceilings adjoining and connected thereto; lanais

and lanai air spaces (if any); and all fixtures originally installed therein. The apartments, including their respective areas, are described in Exhibit "B" attached hereto and incorporated herein by reference. The apartments shall have immediate access to common elements of the Project as set forth in said Exhibit "B".

If seventy-five per cent (75%) or more of the apartment owners, including the United States Postal Service and the State of Hawaii, approve the above amendment, the amendment will be recorded in the Bureau of Conveyances of the State of Hawaii.

## **2. Responsibility for Limited Common Elements**

This amendment to the Declaration Section 6.02 will clarify that the apartment owners are responsible for not only maintaining and repairing their limited common elements which only serve their apartment, but are also responsible for replacement of those same limited common elements. The amendment also adds an exception that if there is a limited common element which serves all apartments, the maintenance, repair and replacement of that limited common element will be done by the Association at the common expense of the Association.

The proposed amendment to the Declaration Section 6.02 is as follows:

***With the exceptions of subsections (a) and (b) herein, aAn apartment owner shall have primary responsibility, at his or her expense, to execute ~~for~~ the maintenance, ~~and~~ repair, and replacement of limited common elements appurtenant to the apartment owned by such apartment owner. If an apartment owner fails to do so, the Association shall conduct the necessary maintenance, repair, and/or replacement and impose a special assessment upon the apartment owner for the resulting expense.***

(a) Limited common expenses arising from limited common elements appurtenant to two or more apartments, ***but less than all apartments***, shall be divided between such apartments in an equitable fashion, which shall ordinarily be in proportion to their respective common interests. ***The apartment owners of the apartments to whom the limited common elements are appurtenant shall be responsible for coordinating by and amongst themselves the execution, maintenance, repair, and replacement of such limited common elements which are appurtenant to two or more apartments, but less than all apartments.***

(b) ***Notwithstanding any provision in the Declaration or By-Laws that may state otherwise, the Association shall be responsible for the maintenance, repair, and replacement of all limited common***

~~**elements which serve all apartments of the Association, at the common expense of the Association. If an apartment owner fails to maintain and repair the limited common elements appurtenant to his apartment at his own expense, the Association shall conduct the necessary maintenance and repair and impose a special assessment upon the apartment owner for the resulting expense.**~~

If seventy-five per cent (75%) or more of the apartment owners, including the United States Postal Service and State of Hawaii, approve the above amendment, the amendment will be recorded in the Bureau of Conveyances of the State of Hawaii.

### **3. Clarification of What is Included in Common Expenses**

This amendment to the Declaration Section 12.01 eliminates a potential conflict between the Declaration and Bylaws regarding what is included in the common expenses. The below amendment will clarify that the standard allocation of costs i.e., of owners being responsible for apartments, and the Association being responsible for common elements, applies to the Association.

For example, if air conditioning equipment, ducts, or fixtures are inside the apartments and serve only the apartment, they would be maintained, repaired, and replaced at the apartment owner's sole cost. If the same items go through an apartment but serve all of the apartments, they are common elements and will be maintained, repaired, and replaced by the Association as a common expense. The exception is windows. The Association will maintain, repair, and **replace** all windows, window frames and operating hardware, which are in an apartment's perimeter walls or in the common elements, at the Association's common expense. Interior windows, window frames and operating hardware, meaning windows, window frames and their operating hardware within the space enclosed by an apartment's perimeter walls, must continue to be **maintained, repaired, and replaced** by the apartment owners to whom they belong.

The proposed amendment to the Declaration Section 12.01 is as follows:

All charges, costs, and expenses incurred by the Association for or in connection with the administration of the Project, including, without prejudice to the generality of the foregoing: **1) operation of the Project; 2) ~~and~~ maintenance, repair, rebuilding, and restoration of the common elements, including air conditioning equipment, ducts, and fixtures serving all Apartments in the Project; 3) and maintenance, repair and replacement of ~~air conditioning equipment, ducts and fixtures and~~ all windows, window frames, and *their* operating hardware within the common elements of the Project and *built into* any *perimeter walls of Apartments of the Project, and any additions and alterations thereto*; 4) all labor, services, materials, utility services and equipment therefor; 5)**

all liability whatsoever for loss or damage arising out of or in connection with the common elements, or any accident, fire, or any nuisance thereon; ~~and 6)~~ all premiums for fire and extended coverage and liability insurance required herein with respect to the Project; ~~the cost of air conditioning~~ **and 7)** all utility services, including *the cost of air conditioning*, water, electricity and gas, garbage disposal and any other similar service unless separately metered or charged; shall constitute common expenses for which the apartment owners shall be severally liable in proportion to their respective common interests. Real property taxes and special assessments referred to in Section 514A-6, Hawaii Revised Statutes, as amended, shall not be common expenses of the condominium property regime hereby created and no payments thereof shall be payments of such common expenses. The Board shall from time to time assess the common expenses against all the apartments in their respective proportionate shares, and the unpaid amount of such assessments against any apartment shall constitute a lien against such apartment with the priorities set forth in Section 514A-90, Hawaii Revised Statutes, as amended, which may be foreclosed by the Board or Managing Agent, if any, as provided by Chapter 514A, Hawaii Revised Statutes, as amended, provided that 30 days' prior written notice of intention to foreclose shall be mailed, postage prepaid, to all persons having any interest in such apartment as shown in the Association's record of ownership. All assessments of common expenses attributable to casualty and liability insurance, when collected, shall be escrowed separately and used only for insurance premiums. The installation, maintenance, ~~and repair,~~ **and replacement** of elevators located within and exclusively serving any apartment of the Project shall not constitute common expenses of the Project.

If seventy-five per cent (75%) or more of the apartment owners, including the United States Postal Service and the State of Hawaii, approve the above amendment, the amendment will be recorded in the Bureau of Conveyances of the State of Hawaii.

#### **4. Fifth Floor Mechanical Room Condenser Water Pumps**

The three (3) condenser water pumps located in the Mechanical Room of the Fifth Floor of the Project actually serves all apartments of the Project. Therefore, the below amendment to the Declaration Exhibit C, Section 2 will be corrected as follows:

The two (2) air conditioning chiller units and chilled water system, consisting of two (2) chilled water pumps, expansion tank and air separator, located within the Mechanical Room on the Fifth Floor of the building designated herein as Apartment 1 ~~serves only~~ **Apartment 1 and 4**, and shall belong to the Owner of Apartment 1. Three (3) condenser



water pumps located therein **which are parts of the Project cooling tower system**, although owned by the Owner of Apartment 1, serve **all apartments** ~~Apartment 1, 2 and 4 of the Project~~ and shall be for **the common use of all apartments of the Project by said Apartments**. Fair and reasonable costs of related utility usage and maintenance, repair, replacement and depreciation of such equipment shall be assessed to all apartments as common expenses of the Project by the Managing Agent.

If seventy-five per cent (75%) or more of the apartment owners, including the United States Postal Service and the State of Hawaii, approve the above amendment, the amendment will be recorded in the Bureau of Conveyances of the State of Hawaii.

#### **5. Sixth Floor Mechanical Room Cooling Tower System**

This amendment to the Declaration Exhibit C, Section 3 will clarify that the air conditioning pumps in the sixth floor Mechanical Room are a part of the building cooling tower, similar to the condenser water pumps located in the fifth floor Mechanical Room. The amendment clarifies that the cooling tower system is owned by Apartment 1, but that it is treated like an Association common element.

The proposed amendment to the Declaration Exhibit C is as follows:

The **cooling tower system air conditioning pumps** located within the Mechanical Room on the Sixth Floor of the building designated herein as Apartment 1, **although owned by the Owner of Apartment 1, serves all apartments and** shall be for the common use of all apartments of the Project. Fair and reasonable costs of related utility usage and maintenance, repair, replacement and depreciation of such equipment shall be assessed to all apartments as common expenses of the Project by the Managing Agent.

If seventy-five per cent (75%) or more of the apartment owners, including the United States Postal Service and the State of Hawaii, approve the above amendment, the amendment will be recorded in the Bureau of Conveyances of the State of Hawaii.

#### **6. Responsibility for Apartment Elements**

This amendment to the By-Laws Article V, Section 2 will clarify that the apartment owner's responsibility extends to replacement of his or her apartment.

Every apartment owner shall at his or her own expense at all times well and substantially repair, **replace**, maintain, and keep his or her apartment, including without limitation all internal installations therein such as water, electricity, gas, telephone, sewer, sanitation, air conditioning, lights, and

all other fixtures, including *interior (non-perimeter wall)* windows, ~~and~~ window frames, *their operating hardware*, and accessories belonging to such apartment and the interior decorated or finished surfaces of all walls, floors, and ceilings of such apartment and all limited common elements appurtenant and adjacent thereto, 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 whatsoever caused by his or her failure to perform any such work diligently, and in case of such failure after reasonable notice to perform shall reimburse to the Association promptly on demand all expenses incurred by it in performing any such work authorized by the Board of Directors of the Managing Agent. ***All other provisions of this By-Laws and the Declaration notwithstanding, the Association shall be responsible for the replacement of all windows, window frames, and their operating hardware built into the perimeter walls of the Apartments, as a common expense of the Association.*** Every apartment owner 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. It is intended that the exterior of the buildings shall present a uniform appearance, and to attain that result each apartment owner hereby agrees that the Board may require the apartment owner at his or her sole expense to paint or repair his or her building, and the Board may, in a uniform and non-discriminatory manner, regulate the design and appearance of the repairs and replaced items, the type of surface, and the type and color of paint to be used. In the alternative, the Board is authorized to contract for the repairs, painting or surfacing of the buildings. If the Board contracts for such items, the Board may either seek reimbursement from the owner thereof (who shall then bear such cost individually) or the Board may make payment therefor out of the maintenance fund.

If sixty-seven per cent (67%) or more of the apartment owners approve the above amendment, the amendment will be recorded in the Bureau of Conveyances of the State of Hawaii.

The Board of Directors **URGES YOU TO GIVE YOUR VOTE TO THESE PROPOSALS.** Please fill in the enclosed Consent form, and return it to the Managing Agent in the return envelope provided. A prompt response will eliminate the need for follow up mailings and the associated expense.

Owners of Apartments  
of King Kalakaua Building  
March 2017  
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Thank you for your attention to this matter.

Very truly yours,

BOARD OF DIRECTORS  
OF AOA KING KALAKAUA BUILDING

Enclosures

p:\king kalakaua building\letters\owners 01d various amendments.doc



**WRITTEN CONSENT**

OWNER'S NAME(S): State of Hawaii

APARTMENT NUMBER(S): 1 and 4

**DIRECTIONS:** Please print your name and apartment number in the spaces above. Then **mark your choice** for or against the proposed actions in the boxes provided. Finally, **sign at the end of this consent** and **date your signature**.

<b><u>PROPOSED ACTION</u></b>	<b><u>IN</u></b>	<b><u>FAVOR</u></b>	<b><u>OPPOSE</u></b>
1. To revise the Declaration Section 4.01 regarding non-load bearing walls inside Apartments, as shown in the accompanying letter to the owners.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
2. To revise the Declaration Section 6.02 regarding responsibility for limited common elements, as shown in the accompanying letter to the owners.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
3. To revise the Declaration Section 12.01 regarding common expenses, as shown in the accompanying letter to the owners.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
4. To revise the Declaration Exhibit C, Section 2 regarding the fifth floor Mechanical Room condenser water pumps, as shown in the accompanying letter to the owners.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
5. To revise the Declaration Exhibit C, Section 3 regarding the sixth floor Mechanical Room cooling tower system, as shown in the accompanying letter to the owners.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
6. To revise the By-Laws Article V, Section 2 regarding responsibility for apartment elements, as shown in the accompanying letter to the owners.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

If the Proposed Actions 1 through 5 receives the approval of seventy-five per cent (75%) or more of the apartment owners, including the United States Postal Service and the State of Hawaii, the Board shall be authorized to record each approved amendment at the Bureau of Conveyances of the State of Hawaii.

If the Proposed Action 6 is approved by sixty-seven per cent (67%) or more of the apartment owners, the Board shall be authorized to record the approved amendment at the Bureau of Conveyances of the State of Hawaii.

I/We, the owners of the apartment(s) listed above, have reviewed the Proposed Actions in full, and have marked the boxes above to indicate my/our decisions on the Proposed Actions.

_____ Signature	_____ Signature
Suzanne D. Case, Chairperson State of Hawaii, Board of Land & Natural Resources	
Date: _____	Date: _____

Note: Any changes you make to the wording of the Proposed Actions will be ineffective and will invalidate your decision on the Actions. Therefore, you must decide for or against the Actions as they are written above or your decision cannot be counted. If you wish to change your decision by marking another box, please mark the change clearly and initial it.

Please sign your name(s) as they appear on the lease or deed that conveyed your unit to you. Executors, Administrators, Trustees, Guardians, Conservators, Attorneys, and Corporate Officers must add their title and submit a copy of their appointment or authority, unless they have already done so.

Please return this Written Consent to: AOA King Kalakaua Building, c/o Mr. Trevor Takamori, Newmark Grubb CBI, 1505 Dillingham Blvd, Suite 302, Honolulu, HI 96817. You may also fax this Consent to: (808) 942-0009 or scan and email this Consent to [trevor@cbi-hawaii.com](mailto:trevor@cbi-hawaii.com).