# OPEN LETTER

5 May, 2014

Mr Vincent Chua Director Discovery Bay Services Management Ltd Discovery Bay Hong Kong

Dear Vincent,

#### Re: Discovery Bay: The Case of LPG Supply

Thank you for your email of 30 April, 2014, in response to my Open Letter dated 30 March, 2014. As the director of the Manager, you act on behalf of the over 8,000 Owners in Discovery Bay. This is a position of public trust, which carries great responsibility. Let us turn our focus back to the facts.

#### **CLP Sub-Station**

I am pleased that you bring up the matter of the CLP sub-station adjacent to the LPG storage facility, as this shows how a utility supply contract may be properly concluded. I attach the lease agreement between HKR and CLP for your reference. I trust that you will study it and learn from it.

Please note the date of the agreement – 18 August, 1982. The Discovery Bay DMC is dated 30 September, 1982. Thus, at the time of the agreement, there was no DMC and HKR owned and managed the entire Lot. Your Company had not yet been given any powers or duties.

The lease agreement sets out clearly the responsibilities of the Lessor and the Lessee with respect to the Leased Area (ie, the sub-station). The Lessor also grants the Lessee a wayleave allowing the Lessor to install all related electricity supply cables, which would be owned and maintained by the Lessor, on the Land. The agreement was deposited in the Land Registry on 26 August, 1982, more than one month before the DMC was executed. It formed part of the Incumbrances on the Lot at the time of the execution of the DMC, and all subsequent Owners recognised that Incumbrance upon completion of a Sale & Purchase Agreement with HKR.

You will also note that "Power sub-stations" form part of the City Common Facilities under the DMC. Hence, all Owners recognised that they took on the obligations of the Lessor under the lease to maintain the building that houses the sub-station. They also recognised that, under the terms of the lease agreement with HKR, CLP maintains its own equipment and network.

## **LPG Facilities**

Turning to the LPG Facilities, we find no similar record in the Land Registry. Thus, any agreement that may have existed between HKR and the LPG supplier upon the execution of

the DMC did not form part of the Incumbrances on the Lot. The Owners did not agree to be bound by any such agreement, if it existed, upon completion.

There is no specific mention of LPG Facilities under the City Common Facilities, although they may be considered to be part of: "Any other facilities and devices installed or provided in the City for the use and benefit of the City and not for the use and benefit of a particular Village or Building." As I noted in my initial letter on this subject, your Company has explicitly recognised the LPG storage facility as a City Common Facility in the COC Paper titled "Major Expenditure for Fiscal Year 2014-15", dated 10 March, 2014. Your most recent email reaffirms this stand, but attempts to distinguish between common and private parts of the storage facility. However, as I have shown, the example that you cited to support this position is not applicable.

## The Duties of the Manager under the DMC

Since the DMC came into force on 30 September, 1982, the Manager and the Manager alone has the duty: "To represent the Owners in all matters and dealings with Government or any utility or other competent authority or any other person whomsoever in any way touching or concerning the due management of the City."

The Manager and the Manager alone has the duty to enter into agreements for the supply of LPG to Discovery Bay City and to make any agreement regarding the use of the City Common Facilities as shall be in the best interest of the Owners of Discovery Bay City. HKR did not retain any such rights for itself, other than the right to run a helicopter service. It also has the obligation to provide or cause to be provided a ferry service.

#### Statement by HKR in the Amalfi Sales Brochure

It was revealed in the Sales Brochure for the Amalfi development of Discovery Bay, dated 9 December, 2013, that HKR had entered into an agreement with ExxonMobil Hong Kong Limited for the supply of LPG to Discovery Bay City on 1 May, 2007, almost 25 years after the execution of the DMC. Moreover, this agreement gives ExxonMobil and San Hing (LPG) Company Ltd exclusive rights with respect to the supply of LPG to Discovery Bay City. It is *prima facie* that HKR has taken unto itself authorities and duties that rightly belong to the Manager.

Please note that, if HKR was not authorised to enter into the 2007 agreement with ExxonMobil and San Hing, the terms of the agreement – including any provisions that require ExxonMobil and San Hing to manage and maintain all LPG Facilities including all pipelines – may be unenforceable. This would put the Owners of Discovery Bay at great risk of incurring huge expense in the future.

There remains the issue of responsibility for maintenance of the LPG Facilities over the long term. By 2020, the LPG Facilities will be some 40 years old and getting older year-by-year. CLP is committed to maintain the electricity supply network until termination of the Land Grant, minus three days. ExxonMobil and San Hing have no such long-term commitment – at least, none that the Owners are privy to. Will they continue to maintain the LPG Facilities as maintenance costs rise? Your refusal to acknowledge any responsibility over LPG supply is deeply troubling, given the importance of stability of LPG supply and the long-term security of the LPG supply network. It also stands in sharp contrast to your position regarding the panic alarm system.

# **Questions that Remain Outstanding**

In your email response to me, you did not deign to respond to the questions that I posed in my previous Open Letter. I repeat the questions here, and ask you to reflect seriously on your duties:

I would be grateful if you would advise:

1) Whether your Company granted HKR the right to enter into an exclusive agreement with ExxonMobil Hong Kong Limited in 2007 preventing any other company from supplying LPG to Discovery Bay City. If so, please advise why this grant of right was not made known to the Owners' Committees at that time.

2) Whether your Company is a party to any agreement with ExxonMobil Hong Kong Limited or San Hing (LPG) Co. Ltd. for the supply of LPG to Discovery Bay City. If so, whether you will release the agreement to the City Owners' Committee and Village Owners' Committees. If not, whether you will take action to enforce your Company's powers and duties under the DMC.

3) Whether any consideration has been paid to the Management Funds at any time for the right to use the City and Village Common Facilities for the supply of LPG to Discovery Bay City.

4) Whether to your knowledge any consideration has been paid to HKR or any related party at any time for the right to use the City and Village Common Facilities for the supply of LPG to Discovery Bay City, or for the exclusive right to supply LPG to Discovery Bay City.

5) Whether to your knowledge San Hing (LPG) Co. Ltd., the agent for ExxonMobil Hong Kong Limited for Discovery Bay, or any of its directors are related parties to HKR or any of its directors.

6) Whether to your knowledge any other service or other agreements exist between HKR and any other supplier of equipment and/or services to Discovery Bay City that would influence the conduct of your Company. Possible examples could include maintenance contracts awarded by your Company in respect of equipment installed by HKR, including lifts, equipment monitoring systems, panic alarm systems, etc. This is particularly relevant given that approval of the AMS/BMS system upgrade is on the Agenda of the City Owners' Committee meeting of 7 May, 2014.

I reserve the right to circulate this open letter or any part thereof to any organisation or persons as I see fit.

## **Conclusion**

News of the agreement between HKR and Exxon-Mobil / San Hing only came into the public domain with the release of the Amalfi Sales Brochure in December 2013. You as the Director of the Manager have the authority and the duty to regularise this unfortunate situation.

Thank you for your kind attention.

(D.A.N.T. 22)

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No. 111393

A MEMORIAL required to be registered in the District Administration, New Territories, at Hong Kong according to the

Land Registration Ordinance (Cap. 128) and the New Territories Ordinance (Cap. 97.)

Name and object of Instrument.	LEASE : A copy whereof is hereto annexed.	
Date of Instrument.	Dated the 18th day of August 1982:	
Names and additions of Parties.	Hong Kong Resort Company Limited whose registered office is situate at Realty Building, 26th Floor, 71, Des Voeux Road Central Hong Kong of the one part "the Lessor" AND China Light And Power Company Limited of 147 Argyle Street, Kowloon Hong Kong of the other part "the Lessee"	) 
Description of Land or premises affected and where situate.	Remaining Portion of Lot No.385 in Demarcation District No.352 and the Extensions Thereto.	
Consideration and to whom and how paid.	NTL	
Particulars of incumbrances to which the premises are subject, and other special Covenants or particulars mentioned in the Instruments.	NIL	
Name and additions of Witness.	See copy hereto annexed hereto.	· · ·
Signature of parties signing Memorial.	Authorized Signature(a)	
I. Annie I.T. Wong Messrs. A.A.O.N.J. Kowloon duly admitte enrolled as a solicitor in the Colony of Hong hereby certify that according to Section 7 Land Registration Ordinance (Cap. 128) the for Memorial contains a just and true account- several particulars therein set forth. Dated the . 24th. day of . Hugust Solicitor, Hong Kong. Printed by Duck Printing Press	Received at the New Territories, Administration at Hong Kong, and Registered by Memorial No. 	



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THIS LEASE is made AUG 1982

One thousand nine hundred and eighty- $\mathcal{T}_{u}$ - $\mathcal{D}$  BETWEEN HONG KONG RESORT COMPANY LIMITED whose registered office is situate at Realty Building, 26th Floor, 71, Des Voeux Road Central Hong Kong (hereinafter called "the Lessor" which expression shall where the context so admits include the person for the time being entitled to the reversion immediately . expectant on the determination of the term hereby created) of the one part and CHINA LIGHT AND POWER COMPANY LIMITED of 147 Argyle Street, Kowloon Hong Kong (hereinafter called "the Lessee" which expression shall where the context so admits include its successors and assigns) of the other part.

WHEREAS :-

The Lessor is the registered owner of ALL THAT piece 1. or parcel of land situate at Discovery Bay, Lantau Island, New Territories Hong Kong and registered in the District Land Office, Islands as Remaining Portion of Lot No. 385 in Demarcation District No. 352 and the Extensions Thereto (hereinafter called "the said Land").

The Lessor has agreed with the Lessee to construct a 2. primary power sub-station in an area within the said Land hereinafter more particularly described for the supply and transmission of electricity and for the lease of the said area for sub-station with certain additional facilities as hereinafter mentioned to the Lessee on the terms and conditions hereinafter appearing.

The consent of the Registrar General (Land Officer) З. for the parties hereto to enter into this Lease has been obtained.

NOW THIS LEASE WITNESSETH as follows :-

In consideration of the rents hereinafter reserved and 1. of the covenants by the Lessee hereinafter contained the Lessor

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hereby agrees to demise unto the Lessee ALL THAT area which for identification purpose only is shown coloured pink on the plan annexed hereto of and in All That piece or parcel of land registered in the said District Land Office Islands as Remaining Portion of Lot No. 385 in Demarcation District No. 352 and the Extensions Thereto together with the primary power sub-station building to be erected by the Lessor thereon (hereinafter called "the demised premises") AND Together with the right to construct and install within the demised premises such equipments for the supply of electricity as specified hereafter And Together with the right in common with the Lessor and all persons authorised by the Lessor for all purposes connected with the construction installation maintenance repair replacement use or removal of the said equipments or any of them to go pass and repass with or without vehicles materials and equipments over and along the said Land and any building erected thereon or any part thereof TO HOLD the same unto the Lessee from the Date of Possession hereinafter specified in clause 2 hereof for the residue of the term of years to which the Lessor is entitled under New Grant No. 6122 and Extension Letters registered as New Grant No.6620 and 6788 under which the said Land is held from the Crown less the last three days thereof yielding and paying the rent of ONE DOLLAR (\$1.00) per annum in advance such rent to be payable only after a formal demand by the Lessor.

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2. The Date of Possession shall be the date of the takeover of the sub-station building by the Lessee from the Lessor on completion of construction thereon in accordance with Clause 4 (b) of this Lease.

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3. The Lessee hereby covenants with the Lessor as follows :-

(a) To pay the reserved rent as aforesaid.

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- (b) Upon notification of the completion of the construction work described in Clause 4 (b) hereof by the Lessor to construct and install at the Lessee's own expense all the equipments within the demised premises for the supply and transmission of electricity as hereinbefore mentioned save and except installations for lighting and the 220V outlet sockets.
- (c) To maintain and keep the whole of the interior of the demised premises including all the Lessor's fixtures and fittings therein in good repair and condition (fair wear and tear excepted) and at its own expense to maintain and keep in good safe working order and condition the Lessee's said equipments within the demised premises.
- (d) To use the demised premises only as a primary sub-station.
- To permit the Lessor's agent with or without workmen (e) and others at all reasonable times upon at least 24 hours' prior notice to the Lessee or in case of emergency upon shorter notice to enter upon the demised premises only for purpose of carrying out repairs to the structure or any part of the exterior of the sub-station building or the construction maintenance repair use or replacement of any of the works or installations to be provided by the Lessor under any of the provisions hereof (if any) provided that the Lessor's entry and stay in or upon the demised premises shall be subject to the supervision of the Lessee and to such condition or precaution as may be stipulated by the lessee for ensuring the safety of any person in or upon the demised premises or any part thereof and provided further that the

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Lessee shall have the right to refuse such entry at any time if in the opinion of the Lessee it is unsafe to permit the same.

- (f) Not to assign underlet or part with possession of the demised premises or any part thereof without the written consent of the Lessor first obtained.
- (g) At its own cost to provide and maintain in good safe working order and condition all fire protection equipments and installations within the demised premises necessary to meet the requirements of the Fire Services Department.
- (h) To be responsible for and to bear the expense of sealing all cable entries from the public footpath(s) into the primary sub-station.
- (i) At the expiration or sooner determination of the term hereby granted to yield up the demised premises and all the Lessor's fittings and fixtures therein (if any) in good and tenantable repair and condition (fair wear and tear excepted) PROVIDED that the Lessee shall be entitled at its option and expenses to dismantle and remove the Lessee's installation equipments trade fixtures and fittings in or on or connected to the demised premises or any part thereof on making good all damage thereby caused and the Lessee shall have a reasonable time thereafter not exceeding three months in any event in which to complete such dismantling removal and making good.

4. The Lessor hereby covenants with the Lessee as follows :-

(a) To pay all rates Property Tax Crown Rents and all existing and future taxes and assessments and outgoings of every description payable in respect of

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the demised premises.

- (b) At its own cost to erect and construct a sub-station building at the demised premises in accordance with plans and specifications of the Lessee in all respects to meet the requirements of the Lessee subject to the approval of the Building Authority.
- (c) At its own cost to install all lighting and 220 V outlet sockets and associated circuits and fittings within the sub-station building to the Lessee's specifications and requirements.
- (d) To keep the roof main walls and structure of the sub-station building in good repair and condition.
- (e) To provide to the specifications of the Lessee and to maintain in good and safe working order all installations for adequate ventilation in the demised premises (such ventilation shall not include air-conditioning).
- (f) To be responsible for and to indemnify the Lessee against all injuries damages and losses which the Lessee or any of its property or installations in or upon any part of the demised premises may sustain or suffer directly or indirectly as the result of any negligent acts of the Lessor or any of its servants or agents.
- (g) That the Lessee duly paying the said rents and observing and performing the covenants terms and conditions herein contained and on its part to be observed and performed shall have quiet enjoyment of the demised premises free from any interruption by the Lessor or anyone claiming through under or in trust for the Lessor.

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5. PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED as follows :-

- Subject as hereinafter mentioned if the Lessee shall (a) have defaulted in payment of the rent reserved and payable in the manner provided in Clause 1 hereof for thirty days or if the Lessee shall fail to observe or perform any of the covenants terms and conditions herein contained and on its part to be observed or performed or if the Lessee shall go into liquidation or become insolvent or suffer any distress or execution to be levied on the demised premises or make any compensation with its creditors then and in any such case it shall be lawful for the Lessor at any time thereafter to re-enter the demised premises or any part thereof and thereupon the term hereby created shall absolutely cease and determine but without prejudice to any right of action by either party in respect of any antecedent breach by the other of any of the terms and conditions herein contained.
- (b) Notwithstanding anything contained in paragraph (a) of this Clause the right of re-entry thereby conferred shall not be exerciseable by the Lessor in respect of any breach by the Lessee of the covenants terms and conditions herein contained and on its part to be observed and performed capable of remedy unless the Lessor shall have first served on the Lessee notice in writing specifying such breach and shall have allowed the Lessee a reasonable time in which to remedy the same.
- (c) The Lessor will indemnify and keep the Lessee indemnified at all times against all actions proceedings claims damages costs and other losses

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whatsoever in respect of the death of or injury to any person and/or any damage to property whether within the demised premises or not caused by any act done by any person entering the demised premises pursuant to the Lessor's right of entry under Clause 3 (e) hereof or the Lessor's right of re-entry under Clause 5 (a) hereof provided that such entry has not been authorised or approved by the Lessee. The Lessor further agrees that if as a result of any such entry provided as aforesaid any loss is caused to the Lessor or its property the Lessor will not seek to hold the Lessee in any way responsible therefor.

(d) The Lessee shall use the primary sub-station at the demised premises mainly for the transmission and supply of electricity to the development site.

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- (e) For the purposes in connection with the construction maintenance repairs replacements use or removal of any of the equipments and installations to be provided by the Lessee herein the Lessee its servants and agents and vehicle shall at all times have continuous access to and through all parts of the said Land and the said buildings thereon and where it is necessary to install or remove any equipment to or from the demised premises the Lessee shall have the right for such purpose to block any of the entrances of the access roads to the Land provided that the Lessee shall use its best endeavours to keep blockage to the minimum necessary period only.
- (f) The Lessor hereby grants unto the Lessee all wayleaves and consents for the installations of all necessary cables and equipments over under through or upon all parts of the said Land and the buildings thereon

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Provided that prior to such installation the Lessee shall give except in the case of emergencies to the Lessor 7 days written notice.

- (g) Neither party shall be liable for any delay or failure in the performance of any obligation under this Lease resulting from "force majeure" which term shall mean and include Acts of God fire explosions or other catastrophics typhoon storms war blockade hostilities riot civil commotion strikes labour disturbances acts of the civil or military authorities or other cause whether similar or dissimilar to the above beyond the control of the other party claiming force majeure and not caused by the negligence of such paty or its servants agents or contractors. Any party claiming to be affected by any event of force majeure shall give immediate notice in writing with full particulars thereof to the other party.
- (h) The provisions herein contained are separate from any arrangements that may be made for the supply of electricity to the said Land by the Lessee. Any such supply will be subject to the terms and conditions contained in the Lessee's published Supply Rules and any other conditions that may be agreed between the parties specifically in relation to the supply. In the event that any of the terms and conditions of supply aforesaid shall conflict with any of the provisions of this Lease it is hereby acknowledged that the former shall prevail.
- (i) In the event of any dispute or difference arising between the parties hereto touching on or concerning this Lease or any matter arising out of this Lease either party may by notice in writing to the other

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require such dispute or difference to be referred to arbitration in Hong Kong by two arbitrators one to be appointed by each party and their umpire if necessary. The Arbitration Ordinance (Cap.341) or any statutory modification or re-enactment thereof shall apply to every such arbitration.

(j) Any notice required to be given hereunder shall be in writing and shall be duly given if left at or sent by prepaid registered post to the registered office or last known place of business in Hong Kong of the party to whom it is addressed.

IN WITNESS whereof the parties hereto have caused their respective Common Seals to be hereunto affixed the day and year first above written. SEALED with the Common Seal of the Lessor and SIGNED by For and ON BEHALF OF HONG KONG RESORT CO. LIMITED whose signature(s) is/are

verified by :

WILLIAM C. Y. KWAN Solicitor,

Hong Kong.

SEALED with the Common Seal of)

the Lessee and SIGNED by D. Barrett, its Director and General Manager and C.F. Wood, one of its Directors whose signature(s) is/are

verified by :

Solicito

Hong Kong.

CHINA LIGHT & POWER CO., LTD.

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GENERAL MANACER

C.F. Wood

Director

Dated the 18 th day of August 1982

HONG KONG RESORT COMPANY LIMITED





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WOO, KWAN, LEE & LO, Solicitors & c., 26th Floor, Connaught Centre, Hong Kong.











