

## OPEN LETTER

30 March, 2014

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

Dear Vincent,

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

Your Company, Discovery Bay Services Management Limited (DBSML), the Manager for Discovery Bay City under the Deed of Mutual Covenant (DMC), acts as agent for the Owners of Discovery Bay to manage the estate on their behalf. As Director of DBSML, you are personally responsible for the actions of your Company. Given that your Company is a subsidiary of the developer, Hong Kong Resort Company Limited (HKR), you should be particularly sensitive to any possible conflict of interest that may arise between your duty to the Owners and your duty to your parent company.

The Residential Properties (First-hand Sales) Ordinance, which came into effect last year, has set out a statutory framework for the publication of information on new residential developments. "Amalfi" is the first development phase in Discovery Bay to be covered by the Ordinance.

For your benefit, I copy the following paragraph published under the heading "Service Contracts" from the sales brochure for Amalfi, dated 9<sup>th</sup> December, 2013:

*Liquefied petroleum gas is supplied by ExxonMobil Hong Kong Limited ("EMHK") and maintained by San Hing (LPG) Company Ltd. Pursuant to the Liquefied Petroleum Gas Supply Agreement ("LPG Agreement") made between the owner (Hong Kong Resort Company Limited) and the EMHK dated 1st May 2007, the owner shall not at any time through the term of the LPG Agreement (i.e. from 1st May 2007 to 31st May 2020 or such earlier date of termination pursuant to the terms and conditions of the LPG Agreement) permit or grant the right to any other person, company or firm to install any other piped distribution system for liquefied petroleum gas in Discovery Bay City and shall not let, lease or sell any commercial premises included in Discovery Bay City to any other company whose primary business includes the supply and distribution of liquefied petroleum gas except with the consent of EMHK.*

As you are aware, according to the DMC, the Manager has the power and duty:

*To grant franchises, leases, tenancy agreements and licences to other persons to use such of the City and Village Common Areas and/or City and Village Common Facilities and on such terms and conditions as the Manager shall in its absolute discretion think fit PROVIDED THAT all income arising therefrom shall be a part of the Management Funds.*

(Section IV, Part B "Powers and Duties of the Manager", Paragraph 39, page 23)

Furthermore, the Manager has the power and 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.*

(Section IV, Part B "Powers and Duties of the Manager", Paragraph 30, page 22)

Section I Paragraph 8 of the DMC deals with those rights and privileges that HKR has reserved to itself. I attach the relevant section from the DMC to this Open Letter. At no place within this section does HKR (termed the "Registered Owner" in the DMC) reserve any power to enter into contracts governing the supply of goods and services to Discovery Bay City, other than the right to provide helicopter services.

I note from the paper on Major Expenditure for 2014-15 prepared by your Company that, among the items to be paid from the City Reserve Fund during the coming financial year is "v. External Wall Renovation of LPG station at Parkland Drive", with a cost of \$88,250. Given that the purpose of the Reserve Fund is for replacement of capital items and non-recurrent expenditure on Common Areas and Facilities, I therefore assume that it is your Company's view that the LPG station is a City Common Facility.

Given that your Company has the exclusive power and duty to enter into agreements for the supply of goods and services to Discovery Bay City; that any income earned from granting franchises, leases, tenancy agreements and licences over the City and Village Common Areas and Facilities are to be credited to the Management Funds; and that the LPG station at Parkland Drive is a City Common Facility, 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 the present tendering and evaluation of the AMS/BMS system upgrade.

I reserve the right to circulate this open letter or any part thereof to any organisation or persons as I see fit without any notice to you or to your Company.

Thank you for your kind attention.

Yours sincerely,

8. There is reserved unto the Registered Owner its successors and assigns the following rights and privileges :-

- (a) The Registered Owner shall have full power at all times hereafter to enter into and upon all parts of the Lot and the City with all necessary equipment plant and materials for the purposes of constructing the other phases of the City in accordance with the Master Plans or any part thereof and may for such purpose carry out all such works in under on or over the Lot and the City as it may from time to time see fit. The right of the Registered Owner to enter the Lot and the City to carry out such works shall extend equally to all necessary contractors agents workers and other persons authorised by the Registered Owner. The Registered Owner in pursuance of such work may from time to time issue in writing to the Owners instructions as to the areas or parts of the Lot and the City that the Owners their servants agents or licensees may or may not use while such works are being carried out. The Registered Owner shall not incur any liability to the First Purchaser or other Owners consequent upon any inconvenience, disturbance, damage or loss that may be caused by or arise from such construction works Provided that such construction works are carried out with due diligence.
- (b) The Registered Owner shall have the right without the necessity of making any Owner entitled to the exclusive use occupation and enjoyment of any Commercial Domestic or Other Unit outside the Village in question a party thereto (in this sub-clause called "other owners") to enter into a Sub-Deed of Mutual Covenant in respect of any Village or any Car Parking Spaces therein or in the City PROVIDED THAT such Sub-Deed of Mutual Covenant shall not

conflict with the provisions of this Deed or affect the rights, interests or obligations of the Other owners bound by any other previous Sub-Deed of Mutual Covenant or impose on the other owners financial obligations in respect of the Village in question and PROVIDED FURTHER THAT such Sub-Deed of Mutual Covenant shall first be approved by the Registrar General (Land Officer) for and on behalf of the said Secretary.

- (c) The Registered Owner reserves the right to change the name of the City at any time and shall not be liable to any Owner or other person having an interest in the City for any damages, claims, costs or expenses resulting therefrom or in connection therewith.
- (d) The Registered Owner reserves the right to change, amend, vary, add to or alter the Master Plans existing at the date hereof without the concurrence or approval of any Owner or any of the parties hereto but nothing herein shall absolve the Registered Owner from the requirements of obtaining the prior written consent of the said Secretary pursuant to the Conditions. No such change or addition shall give to the Owners any right of action against the Registered Owner.
- (e) The Registered Owner reserves the right to build and operate in such part or parts of the City Common Areas and/or Village Common Areas for any purposes as the Registered Owner or the Manager sees fit provided that such buildings and operations shall not contravene the terms and conditions of the Conditions.
- (f) The Registered Owner shall have the right at any time by Deed Poll or in any Sub-Deed of Mutual Covenant to designate any part or parts of the Lot to be part of the City Common Areas and City Common Facilities, City Retained Areas, Village Common Areas and Village Common Facilities and Village Retained Areas which are not covered by the definition of "City Common Areas", "City Retained Areas", "City Common Facilities", "Village Common Areas", "Village Common Facilities" and "Village Retained Areas" contained in Recital (1) of this Deed on such terms and conditions as the Registered Owner shall in its absolute discretion think fit Provided that in making such designation the Registered Owner shall not in any way interfere with the Owner's right to hold use occupy and enjoy the Domestic Unit or Commercial Unit which he owns.
- (g) The Registered Owner reserves the right to assign any or all of the City Common Areas and City Common Facilities, City Retained Areas, Village Common Areas and Village Common Facilities and Village Retained Areas together with the number of Undivided

Shares relating thereto to the Manager for the general amenity of the Owners and other residents of the City subject to this Deed and any Sub-Deed of Mutual Covenant relating to the same and subject to the Conditions. Such Undivided Shares shall be held by the Manager as trustee for all the Owners for the time being and in the event the Manager shall be wound up or a Receiving Order made against it and another manager appointed in its stead in accordance with the provisions of Clause 18 of SECTION VII, then the Liquidator or the Receiver shall assign such Undivided Shares together with the City Common Areas and City Common Facilities, City Retained Areas, Village Common Areas and Village Common Facilities and Village Retained Areas they represent to the new manager. PROVIDED ALWAYS THAT nothing herein contained shall in any way fetter or diminish the rights, powers, authorities, entitlements, duties and obligations of the Manager contained in this Deed of Mutual Covenant or the Sub-Deeds of Mutual Covenant.

- (h) The Registered Owner reserves the right to alter the Major Roads and Passageways provided such alteration is approved by the said Secretary.
- (i) The Registered Owner reserves the right to use such part or parts of the City Retained Areas and Village Retained Areas in such manner as it thinks fit, including but not limited to the construction of car parking spaces thereon or the paving of car parking spaces thereon or the construction of any structures thereon or the provisions of recreational or other facilities thereon Provided that any such use shall not be in contravention of the terms and conditions of the Conditions and until so used the Registered Owner shall be entitled to license such part or parts thereof to the Manager at a fee of \$1.00 per annum for use by the Owner as gardens and/or areas for recreational activities. In the event of such licence as aforesaid such licensed City Retained Areas or Village Retained Areas shall for the period of the licence be deemed to be part of the City Common Areas or Village Common Areas and the Owners shall contribute towards the maintenance and upkeep of the same as if they were part of the City Common Areas or Village Common Areas. The Registered Owner entitled to terminate this licence by giving to the Manager one month's written notice, in which event the licensed City Retained Areas and Village Retained Areas or such part or parts thereof as shall be required by the Registered Owner shall be vacated by the Manager and the Registered Owner shall be entitled to lay out or construct or pave car parking spaces and any other structures and



to lease license or sell the same or to designate the same as City Common Areas or City Common Facilities or Village Common Areas or Village Common Facilities.

- (j) In the event that the Government agrees to take over the Major Roads or the Passageways or any part thereof or any of the City Common Areas and City Common Facilities the City Retained Areas or Village Common Areas and Village Common Facilities or the Village Retained Areas the Registered Owner or the Manager shall have the right to surrender the same or any part thereof to the Crown.
- (k) The Registered Owner reserves the right to operate or to grant to any person the right to operate a helicopter service on the Lot and the right to fly over any part or parts of the Lot.
- (l) The Registered Owner shall at all times hereafter but subject to and with the benefit of the Conditions and this Deed and any Sub-Deed of Mutual Covenant insofar as they relate thereto have the full and unrestricted right without interference by the Owners to assign, mortgage, charge, lease, licence, franchise, part with possession of or otherwise deal with the Undivided Shares retained by the Registered Owner and to allocate and from time to time to reallocate to particular units within the City so retained such Undivided Shares and to assign, mortgage, charge, lease, licence or franchise the full and exclusive right and privilege to hold use occupy and enjoy any such units within the City.
- (m) The Registered Owner reserves the right to designate any part or parts of the City as exclusive to any particular Village or Building in any Sub-Deed of Mutual Covenant and in the event the Registered Owner shall so designate, that part or parts of the City shall be used or enjoyed only by the Owner of that Village or Building to the exclusion of all others except the Registered Owner and the Manager.