

## AMENDMENT TO SETTLEMENT AGREEMENT

THIS AMENDMENT TO SETTLEMENT AGREEMENT ("Amendment") is made effective as of \_\_\_\_\_, 2018, by and between RUBY & SONS HOSPITALITY, LLC, a California limited liability company ("Ruby & Sons"); SARENTO'S ON THE BEACH, LLC, a Hawaii limited liability company ("Sarento's"), DANA NAONE HALL and LESLIE KULOLOIO ("Hall and Kuloloio"); and THE PLANNING DEPARTMENT, COUNTY OF MAUI (the "County") (collectively, the "Parties" and each, individually, a "Party").

### RECITALS

A. Western Apartment Supply & Maintenance Co. ("Western"), Tri-Star Restaurant Group, LLC ("Tri-Star"), Sarento's, Hall and Kuloloio and the County entered into that certain Settlement Agreement dated November 25, 2005 (the "Settlement Agreement") concerning a dispute regarding variances and procedures necessary to complete certain improvements on real property situated in the County of Maui, State of Hawaii, Tax Map Key Nos. (2) 3-9-4-29 ("Parcel 29") and (2) 3-9-4-149 ("Parcel 149"). All capitalized terms used herein have the same meaning as in the Settlement Agreement unless otherwise defined.

B. By mesne assignments, the interest of Western has been conveyed to Ruby & Sons and Ruby & Sons is obligated to comply with the terms of the Settlement Agreement applicable to Western.

C. By mesne assignments, the interest of Tri-Star has been conveyed to Sarento's, and Sarento's is obligated to comply with the terms of the Settlement Agreement applicable to Tri-Star.

D. Ruby & Sons recognizes its legal duty to comply with the obligations of Western pursuant to the Settlement Agreement including, but not limited to, obtaining various approvals and permits for ongoing operations at Parcel 29 and Parcel 149 and the provision of parking on Parcel 149.

E. Sarento's recognizes its legal duty to comply with the obligations of Tri-Star and Sarento's pursuant to the Settlement Agreement including, but not limited to, obtaining various approvals and permits for ongoing operations at Parcel 29 and Parcel 149 and the provision of parking on Parcel 149.

F. The Parties have agreed upon a Parking Lot Plan for Parcel 149 providing for fifty-one (51) parking stalls designated for public beach access parking and thirty-four (34) parking stalls designated for hotel and restaurant parking in connection with the use of Parcel 29.

G. The Parties desire to amend the Settlement Agreement to update the previous parking plan described in Section 3.1 of the Settlement Agreement with the new Parking Lot Plan.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Ruby & Sons and Sarento's, as successors in interest, respectively, to Western and Tri-Star, agree to be bound by the terms of the Settlement Agreement and this Amendment to Settlement Agreement.

2. Exhibit A to the Settlement Agreement is replaced by Exhibit A attached to this Amendment.

3. **Section 2.4.5** Section 2.4.5 of the Settlement Agreement is hereby deleted in its entirety and replaced with the following:

2.4 The Planning Department has determined that SMA permits and approvals and a Shoreline Setback variance are required by law and the Applicants, whether any variance applications are or are not granted, agree to and are required to:

2.4.5 apply to the Planning Department for Planning Director approval of the use of Parcel 149 for offsite parking for the Maui Oceanfront Inn, Sarento's on the Beach Restaurant and other commercial uses of Parcel 29 pursuant to Chapter 19.36A of the Maui County Code. The Parties agree to use their best efforts to obtain the approval of the Planning Director for the offsite parking as provided herein.

4. **Section 2.5.1** Section 2.5.1 of the Settlement Agreement is hereby deleted in its entirety and replaced with the following:

2.5.1 Any Lease of Parcel 149 from the State of Hawaii by Ruby & Sons shall be for vehicular parking purposes, providing at least 51 parking stalls for public beach access parking to be available for such purposes twenty-four hours per day and at least 34 parking stalls for commercial, offsite parking for the Maui Oceanfront Inn and Sarento's, both located on Parcel 29, all as shown on Exhibit A attached hereto and incorporated by reference.

5. **Section 2.5.6** Section 2.5.6 is added to read as follows:

2.5.6 In the event the County provides substantial additional public beach access parking on the parcel adjoining Parcel 149 to the north, then Ruby & Sons and Sarento's may request that the County of Maui and Hall and Kuloloio agree in their discretion to further amend this Settlement Agreement to increase the parking stalls allocated for use by Maui Oceanfront Inn and Sarento's on Parcel 149 by up to 8 additional stalls and to reduce public beach access parking on Parcel 149 by an equal number of stalls. Any addition of stalls for Maui

Oceanfront Inn and Sarento's on Parcel 149 or deletion of public beach access stalls shall take place in a manner that configures the beach access stalls so that they abut one another and the Maui Oceanfront Inn and Sarento's stalls so that they abut one another. The County of Maui and Hall and Kuloloio agree to take into consideration the substantiality of the increase in public beach parking stalls made available on the parcel adjoining Parcel 149 in exercising their discretion regarding this request.

6. **Section 3.1.** Section 3.1 of the Settlement Agreement is hereby deleted in its entirety and replaced with the following:

3.1 The parking lot on Parcel 149 shall not be paved with impervious materials. Ruby & Sons shall be responsible for clearly marking with signage those at least 34 contiguous parking stalls located on Parcel 149 dedicated for use by the hotel and restaurant located on Parcel 29, including by their employees. Ruby & Sons shall also be responsible for clearly marking with signage those at least 51 parking stalls located on Parcel 149 dedicated for use by the public for public beach access purposes twenty-four hours per day and for maintaining the signage for the public beach access stalls after installation by Ruby & Sons. Such signage shall include a sign at the entrance of Parcel 149 visually depicting which stalls are dedicated for public beach access parking and which stalls are dedicated for use by the hotel and restaurant. Hall and Kuloloio shall approve of all parking signage prior to installation.

Ruby & Sons and Sarento's shall be responsible to prevent the guests, employees, invitees and agents of the Maui Oceanfront Inn and Sarento's from using the at least 51 parking stalls dedicated for use by the public for public beach access purposes for any period of time between 6 a.m. and 9 p.m., the at least 51 stalls dedicated for use by the public for public beach access purposes twenty-four hours per day and shall be responsible for assuring that these stalls are used for public beach access and not for any other purpose. Nothing herein prevents the County of Maui or Hall and Kuloloio or any member of the public from requesting that any vehicle improperly parked in the public beach access parking stalls be towed away, at the vehicle owner's expense, through the Maui Police Department or by a licensed towing company or requesting any other remedy allowed by law.

Ruby & Sons shall be responsible for assuring that the at least 34 stalls designated for use by the hotel and restaurant are not used for any other purpose and for maintaining the signage for such stalls.

7. **Exhibit A.** Exhibit A attached to the Settlement Agreement is hereby deleted and replaced with the new Exhibit A attached to this Amendment.

8. **No Further Effect.** Except as explicitly amended hereby, all other provisions of the Settlement Agreement are not modified by this Amendment and remain unchanged, and are hereby ratified and confirmed.

9. **Binding Effect.** The provisions of this Amendment shall be binding upon, and shall inure to the benefit of the Parties and their respective successors and assigns.

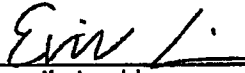
10. **Further Actions.** The Parties shall each, at the request of the others, execute, acknowledge (if appropriate), and deliver whatever additional documents, and do such other acts, as may be reasonably required in order to accomplish the intent and purposes of this Amendment.

11. **Counterparts.** This Amendment may be executed in one or more counterparts. This Amendment shall be deemed to be fully executed when each party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all the parties. Each executed counterpart shall be deemed an original, but all of the counterparts together shall constitute one and the same document. Duplicate and unexecuted pages may be discarded and all of the remaining pages of the counterparts may be assembled as a single fully executed document. An executed counterpart of this Amendment transmitted and received by facsimile or PDF e-mail shall be deemed for all purposes to be an original, executed counterpart.

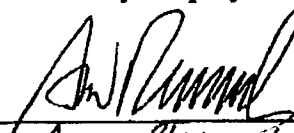
***[SIGNATURES ON THE FOLLOWING PAGE]***

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the day and year first written above.

**Ruby & Sons Hospitality, LLC, a California limited liability company**

By:   
Name: Jiejun Liao  
Title: Vice President  
Date: 30th July, 2018

**Sarento's on the Beach, LLC, a Hawaii limited liability company**

By:   
Name: Aaron Placourakis  
Title: President/CEO  
Date: 11/12/18, 2018

**The County of Maui**

\_\_\_\_\_  
Dana Naone Hall

\_\_\_\_\_  
Leslie Kuloloio

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2018

Approved as to Form:

\_\_\_\_\_  
Name:  
Deputy Corporation Counsel

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the day and year first written above.

**Ruby & Sons Hospitality, LLC, a California limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2018

Dana Naone Hall  
Dana Naone Hall

Leslie Kuloloio  
Leslie Kuloloio

**Sarento's on the Beach, LLC, a Hawaii limited liability company**

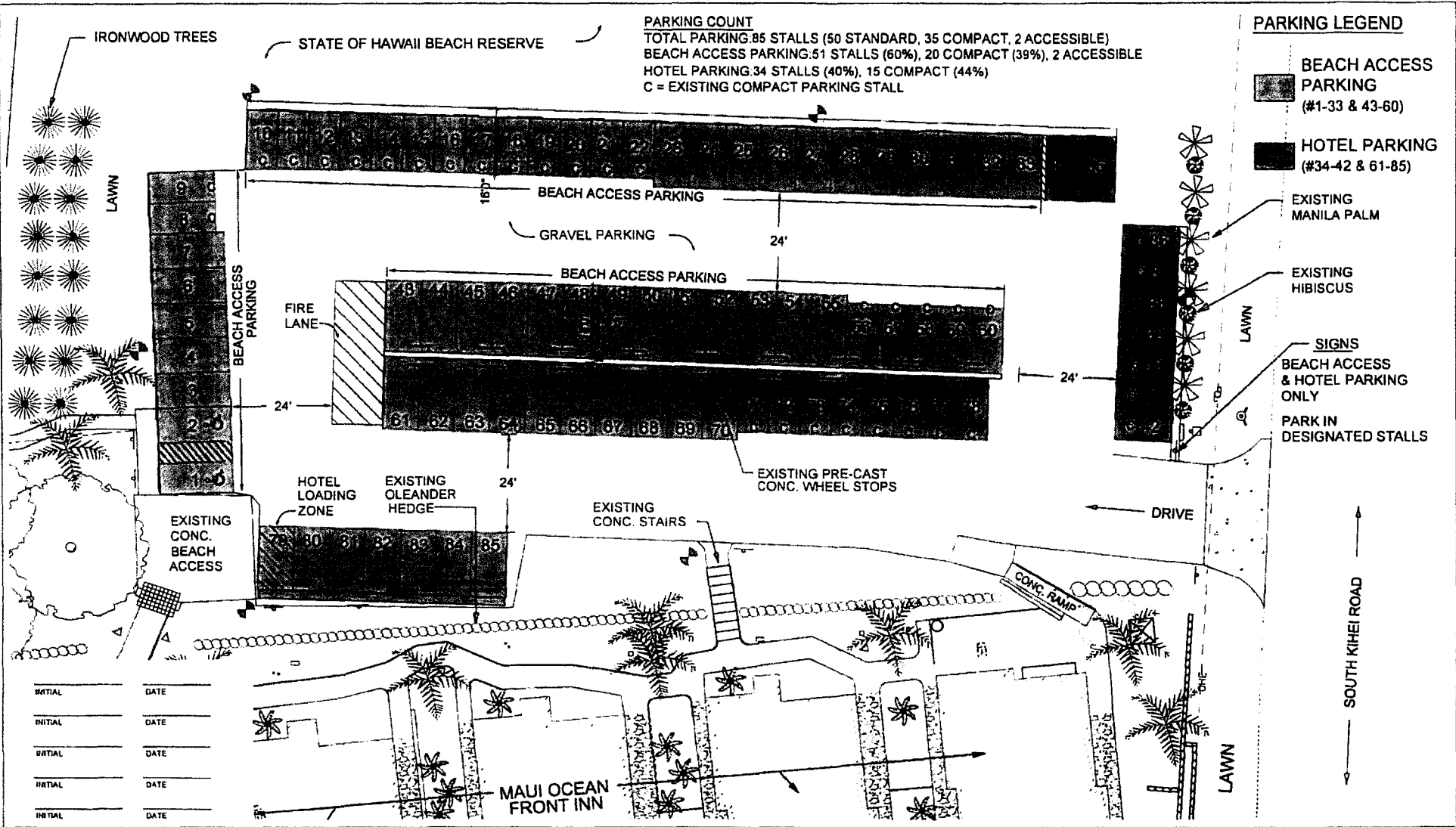
By: Aaron Placourakis  
Name: Aaron Placourakis  
Title: President / CEO  
Date: 11/12/18, 2018

**The County of Maui**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2018

Approved as to Form:

\_\_\_\_\_  
Name:  
Deputy Corporation Counsel



INITIAL	DATE
INITIAL	DATE
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INITIAL	DATE



**CHRIS HART & PARTNERS**

**REPLACEMENT EXHIBIT A  
 PARKING LOT PLAN  
 MAUI OCEANFRONT INN PARCEL 149  
 KIHEI, MAUI, HAWAII**



BAR SCALE  
 SCALE: 1"=10'-0"  
 PROJECT 16-005  
 DATE 02/07/18

