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Mike White

Vice-Chair  
Robert Carroll

Presiding Officer Pro Tempore  
Stacy Crivello

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Elle Cochran  
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Riki Hokama  
Kelly T. King  
Yuki Lei K. Sugimura



Director of Council Services  
Maria E. Zielinski

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

October 12, 2018

RECEIVED  
2018 OCT 12 AM 9:41  
OFFICE OF THE  
COUNTY CLERK

The Honorable Mike White  
Council Chair  
County of Maui  
Wailuku, Hawaii 96793

Dear Chair White:

**SUBJECT: COMMUNITY PLAN AMENDMENT AND  
CONDITIONAL PERMIT FOR MAUI OCEANFRONT  
INN AND SARENTO'S ON THE BEACH  
RESTAURANT (KIHEI) (LU-25)**

May I request the attached County Communication 09-246, from the Planning Director, transmitting proposed bills, entitled "A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM SINGLE-FAMILY TO HOTEL FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII," and "A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO WESTERN APARTMENT SUPPLY & MAINTENANCE CO. FOR THE CONSTRUCTION AND USE OF AN OFFSITE PARKING LOT WITHIN THE COUNTY PARK DISTRICT FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII," be placed on the next Council meeting agenda.

Sincerely,

A handwritten signature in cursive script that reads "Robert Carroll".

ROBERT CARROLL, Chair  
Land Use Committee

lu:ltr:025ach01:jgk

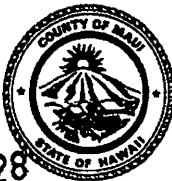
Attachment

COUNTY COMMUNICATION NO. 18-361

CHARMAINE TAVARES  
Mayor

JEFFREY S. HUNT  
Director

KATHLEEN ROSS AOKI  
Deputy Director



RECEIVED

2009 AUG 20 AM 9:28

RECEIVED

2009 AUG 19 PM 1:44

OFFICE OF THE  
COUNTY CLERK  
**DEPARTMENT OF PLANNING**

OFFICE OF THE MAYOR

August 19, 2009

Honorable Charmaine Tavares  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

**APPROVED FOR TRANSMITTAL**

*Charmaine Tavares* 8/19/09  
Mayor Date

For Transmittal to:

Honorable Danny A. Mateo, Chair  
and Members of the Maui County Council  
200 South High Street  
Wailuku, Hawaii 96793

Dear Chair Mateo and Members:

**SUBJECT: WESTERN APARTMENT SUPPLY & MAINTENANCE CO.  
(CPA 2006/0005) (CP 2006/0012)**

The Department of Planning (Department) is transmitting for your review and action the Community Plan Amendment and Conditional Permit applications filed by Western Apartment Supply & Maintenance Co. A summary of the applications is as follows:

APPLICATION SUMMARY	
Application:	Community Plan Amendment (CPA) and Conditional Permit (CP)
Applicant:	Western Apartment Supply & Maintenance Co.
Location:	TMK: (2) 3-9-004:029 and 149 (POR.)
Area:	1.944 Acres
Land Use Designations:	State Urban District Kihei-Makena Community Plan: Single-Family (Parcel 29) Park (Parcel 149) Title 19, Zoning: H-M Hotel District (Parcel 29) Park District (Parcel 149) Other: Located within the Special Management Area (SMA)
Brief Description:	The Applicant is requesting a CPA to reflect the existing Hotel Use on Parcel 29, as well as a CP to reflect the Parking Use on Parcel 149.

**COUNTY COMMUNICATION NO.**

09-246

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793

MAIN LINE (808) 270-7735; FACSIMILE (808) 270-7634

CURRENT DIVISION (808) 270-8205; LONG RANGE DIVISION (808) 270-7214; ZONING DIVISION (808) 270-7253

Honorable Charmaine Tavares, Mayor  
For Transmittal to:  
Honorable Danny A. Mateo, Chair  
August 19, 2009  
Page 2

APPLICATION SUMMARY	
Public Hearing:	Held by the Maui Planning Commission (Commission) on November 25, 2008, and December 9, 2008.
Testimony:	No testimony was presented.
Recommendation:	The Department and Commission recommended approval of the CPA with no conditions. Further, the Department and Commission recommended approval of the CP subject to conditions listed below.

The Commission recommended to the Maui County Council (Council) approval of the CPA from Single-Family to Hotel with no conditions.

Further, the Commission recommended to the Council approval of the CP subject to the following conditions:

1. That full compliance with all applicable governmental requirements shall be rendered.
2. That the CP shall be valid for a period of two (2) years from the effective date of this ordinance; provided, that an extension of this permit beyond this two-year period may be granted, pursuant to Section 19.40.090, Maui County Code (MCC).
3. That the CP shall be nontransferable unless the Council approves the transfer by ordinance.
4. That Western Apartment Supply & Maintenance Co., their successors, and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject CP and shall procure at his/her/their own cost and expense, and shall maintain during the entire period of this CP, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui as an additional named insured, insuring and defending Western Apartment Supply & Maintenance Co. and County of Maui against any and all claims or demands for property damage, personal injury, and/or death arising out of this CP, including, but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by Western Apartment Supply & Maintenance Co. of said rights; and (2) all

Honorable Charmaine Tavares, Mayor  
For Transmittal to:  
Honorable Danny A. Mateo, Chair  
August 19, 2009  
Page 3

actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this CP. A copy of the Certificate of Insurance naming County of Maui as an additional named insured shall be submitted to the Department within ninety (90) calendar days from the date of approval of this CP.

5. That Western Apartment Supply & Maintenance Co. shall develop the property in substantial compliance with the representations made to the Council in obtaining the CP. Failure to so develop the property may result in the revocation of the CP, pursuant to Section 19.40.080, MCC.

Inasmuch as Council approval is required for the CPA and CP, the Department respectfully transmits the subject applications to the Council for consideration. Accordingly, attached for your review are the following documents:

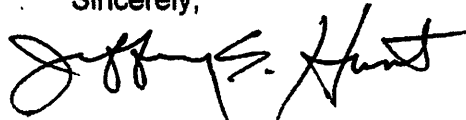
1. Proposed bill entitled, "A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM SINGLE-FAMILY TO HOTEL FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII";
2. Proposed bill entitled, "A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO WESTERN APARTMENT SUPPLY & MAINTENANCE CO. FOR THE CONSTRUCTION AND USE OF AN OFFSITE PARKING LOT WITHIN THE COUNTY PARK DISTRICT FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII";
3. Community Plan Map No. 531;
4. Department's Report and Agency Comments to the Commission, dated November 25, 2008;
5. Department's Recommendation to the Commission, dated November 25, 2008;
6. Adopted Minutes of the November 25, 2008 Commission meeting;
7. Adopted Minutes of the December 9, 2008 Commission meeting;
8. Community Plan Amendment Application, dated June 23, 2006; and
9. Conditional Permit Application, dated June 23, 2006.



Honorable Charmaine Tavares, Mayor  
For Transmittal to:  
Honorable Danny A. Mateo, Chair  
August 19, 2009  
Page 4

Thank you for your attention to this matter. Should further clarification be necessary, please contact Staff Planner Joseph Prutch at Ext. 7512.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey S. Hunt". The signature is fluid and cursive, with the first name "Jeffrey" and last name "Hunt" clearly distinguishable.

JEFFREY S. HUNT  
Planning Director

**Attachments**

xc: Clayton I. Yoshida, Planning Program Administrator  
Joseph M. Prutch, Staff Planner  
Maui Planning Commission Members  
Christopher L. Hart, Chris Hart & Partners, Inc.  
Carroll G. Davis, Applicant

JSH:JMP:vb

Project File  
General File

K:\WP\_DOCS\PLANNING\Cpa\2006\0005\_MauiOceanFront\_Sarentos\CouncilTrans.doc

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2009)

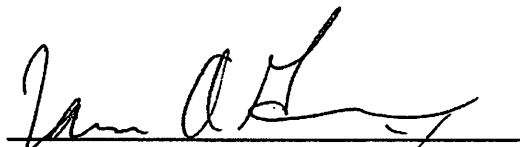
A BILL FOR AN ORDINANCE TO AMEND THE  
KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP  
FROM SINGLE-FAMILY TO HOTEL FOR  
PROPERTY SITUATED AT KIHEI, MAUI, HAWAII

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapter 2.80B, Maui County Code, the Kihei-Makena Community Plan and Land Use Map is hereby amended from Single-Family to Hotel for property situated at Kihei, Maui, Hawaii, and identified for real property tax purposes by Tax Map Key Number (2)3-9-004:029, comprising 1.119 acres, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in Community Plan Map No. CP-531, which is on file in the Office of the County Clerk of the County of Maui, and by reference made a part hereof.

SECTION 2. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:



JAMES A. GIROUX  
Deputy Corporation Counsel  
County of Maui

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EXHIBIT "A"

GOVERNMENT LOT

Situate on the west side of Piilani Highway,  
adjoining Grant 13225 to Yasuko M. Watanabe  
and Grant 1959 to Mahi

Kamalo, Wailuku (Kula), Maui, Hawaii

Being portion of the Government Land of Kamalo

Beginning at the southeast corner of this parcel of  
land, at the northeast corner of Grant 13225 to Yasuko M.

Watanabe and on the west side of Piilani Highway, the coordi-  
nates of said point of beginning referred to Government Survey  
Triangulation Station "PUU O KALI" being 9644.91 feet South  
and 20,033.00 feet West, as shown on Government Survey Regis-  
tered Map 3005 and running by azimuths measured clockwise from  
True South:-

1. 84° 30' 356.83 feet along Grant 13225 to Yasuko M.  
Watanabe and Grant 1959 to  
Mahi;
2. 171° 30' 132.00 feet along Government Beach Reserve;
3. 264° 30' 383.09 feet along Government Beach Reserve;
4. 3° 07' 84.52 feet along the west side of Piilani  
Highway;
5. Thence along the west side of Piilani Highway, on a curve  
to the left having a radius of  
1939.86 feet, the chord azimuth  
and distance being: 2° 23' 50"  
48.71 feet to the point of  
beginning and containing an  
AREA OF 1.119 ACRES.

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2009)

A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO  
WESTERN APARTMENT SUPPLY & MAINTENANCE CO. FOR THE  
CONSTRUCTION AND USE OF AN OFFSITE PARKING LOT WITHIN THE  
COUNTY PARK DISTRICT FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapter 19.40, Maui County Code, and subject to the conditions imposed in Section 2 of this ordinance, a Conditional Permit is hereby granted to Western Apartment Supply & Maintenance Co. for the construction and use of an offsite parking lot within the County Park District. The site is identified for real property tax purposes by Tax Map Key Number: (2)3-9-004:149, comprised of approximately 35,932 square feet of land situated at Kihei, Maui, Hawaii.

SECTION 2. The granting of this Conditional Permit is subject to the following conditions:

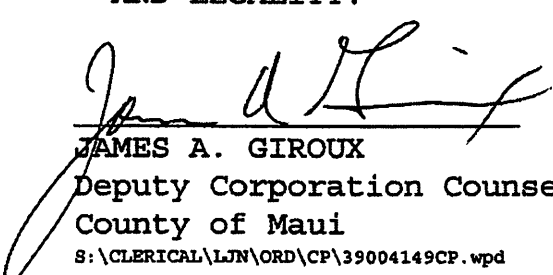
1. That full compliance with all applicable governmental requirements shall be rendered.
2. That the Conditional Permit shall be valid for a period of two (2) years from the effective date of this ordinance; provided, that an extension of this Conditional Permit beyond this two-year period may be granted pursuant to Section 19.40.090, Maui County Code.
3. That the Conditional Permit shall be nontransferable unless the Council approves the transfer by ordinance.
4. That Western Apartment Supply & Maintenance Co., its successors and permitted assigns, shall exercise reasonable due care as to third parties with respect to all areas affected by subject Conditional Permit and shall procure at its own cost and expense, and shall maintain during the

entire period of this Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui as a named additional insured, insuring and defending Western Apartment Supply & Maintenance Co. and County of Maui against any and all claims or demands for property damage, personal injury, and/or death arising out of this Conditional Permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by Western Apartment Supply & Maintenance Co. of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms and conditions of this Conditional Permit. A copy of the certificate of insurance naming County of Maui as a named additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the effective date of this ordinance.

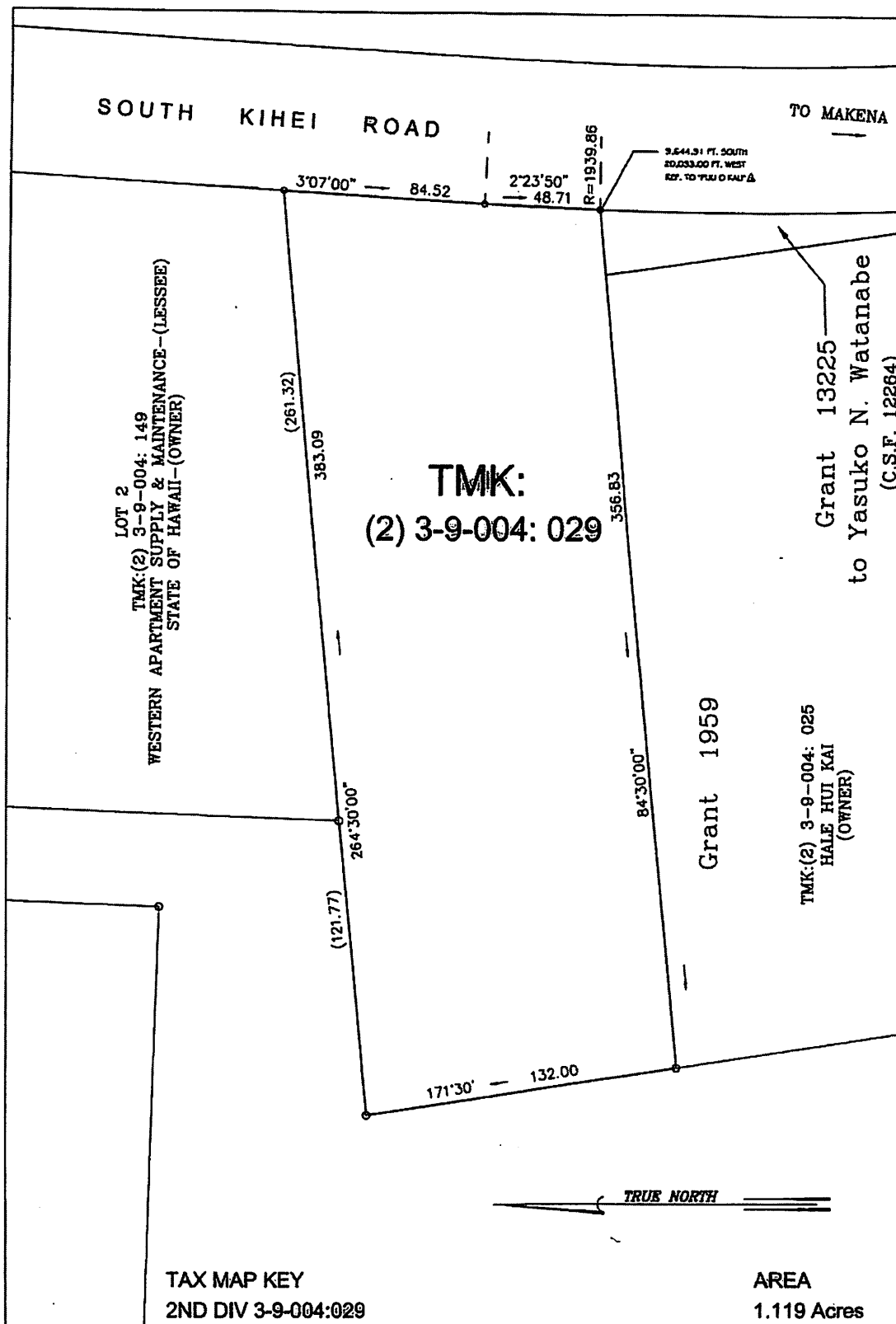
5. That Western Apartment Supply & Maintenance Co. shall develop the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit. Failure to so develop the property may result in the revocation of the Conditional Permit pursuant to Section 19.40.080, Maui County Code.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:

  
JAMES A. GIROUX  
Deputy Corporation Counsel  
County of Maui

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TAX MAP KEY  
2ND DIV 3-9-004:029

AREA  
1.119 Acres

## COMMUNITY PLAN MAP NO. 531

COMMUNITY PLAN AMENDMENT - KIHAI, MAUI, HAWAII  
FROM SINGLE FAMILY (SF) RESIDENTIAL TO HOTEL (H)

APPROVED

COUNTY CLERK DATE

APPROVED

*Kathleen Rose O'Leary* 7-2-09  
PLANNING DIRECTOR DATE

PUBLIC HEARING: NOVEMBER 15, 2008

ADOPTED - COUNCIL:

ADOPTED - MAYOR:

ORDINANCE:

DATE:

SCALE: 1" = 50'

OFFICE OF THE COUNTY CLERK

200 South High Street, Waikuku, Maui, Hawaii 96793

CP-531

BEFORE THE MAUI PLANNING COMMISSION  
COUNTY OF MAUI  
STATE OF HAWAII

In The Matter Of The Applications Of	)	DOCKET NO. CPA 2006/0005,
	)	CP 2006/0012,
	)	SM1 2006/0017
	)	SSV 2006/0004
Chris Hart & Partners, Inc. on behalf	)	OSP 2006/0002
of Western Apartment Supply & Main-	)	
tenance Co.	)	Chris Hart & Partners, Inc. on behalf of
	)	Western Apartment Supply & Maintenance Co.
To obtain a Community Plan Amendment	)	(RLL)
from Single-Family to Hotel, Conditional	)	
Permit, Special Management Area Use	)	
Permit, Shoreline Setback Variance, and	)	
Offsite Parking Approval on approx-	)	
imately 1.944 acres of land in the State	)	
Urban District at Maui Tax Map Key 3-9-	)	
<u>004:029 &amp; 149, Kihei, Maui, Hawaii</u>	)	

MAUI PLANNING DEPARTMENT'S REPORT  
TO THE MAUI PLANNING COMMISSION  
NOVEMBER 25, 2008 MEETING

DEPARTMENT OF PLANNING  
COUNTY OF MAUI  
250 S. HIGH STREET  
WAILUKU, MAUI, HI. 96793

Community Plan Amendment, Conditional Permit, Special Management Area Use Permit, Shoreline Setback Variance, and Offsite Parking Approval

CPA 2006/0005, CP 2006/0012, SM1 2006/0017, SSV 2006/0004, OSP 2006/0002,

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BEFORE THE MAUI PLANNING COMMISSION  
COUNTY OF MAUI  
STATE OF HAWAII

In The Matter Of The Applications Of	)	DOCKET NO. CPA 20060005,
	)	CP 2006/0012,
	)	SM1 2006/0017
	)	SSV 2006/0004
	)	OSP 2006/0002
Chris Hart & Partners, Inc. on behalf	)	
of Western Apartment Supply & Main-	)	
tenance Co.	)	Chris Hart & Partners, Inc. on behalf of
	)	Western Apartment Supply & Maintenance Co.
To obtain a Community Plan Amendment	)	(RLL)
from Single-Family to Hotel, Conditional	)	
Permit, Special Management Area Use	)	
Permit, Shoreline Setback Variance, and	)	
Offsite Parking Approval on approx-	)	
imately 1.944 acres of land in the State	)	
Urban District at Maui Tax Map Key 3-9-	)	
004:029 & 149, Kihei, Maui, Hawaii	)	

**THE APPLICATION**

This matter arises from application(s) for a Community Plan Amendment, Conditional Permit, Special Management Area Use Permit, Shoreline Setback Variance, and Offsite Parking Approval filed on June 26, 2006. The applications were filed pursuant to Chapter 2.80B.110 Non-decennial amendments to the general plan, Maui County Code (MCC) as amended; Chapter 19.40.030, MCC; Chapter 205A-26, Hawaii Revised Statutes (HRS) and §12-202-10 of Chapter 202, Special Management Area Rules of the Maui Planning Commission; Chapter 205A-46, HRS and §12-5-13 of Chapter 203, Shoreline Setback Rules for the Maui Planning Commission; and Chapter 19.36.030, MCC, by Chris Hart & Partners, Inc. on behalf of Western Apartment Supply & Maintenance Co., ("Applicant"); on approximately 1.944 acres of land in the State Urban District, situated at Kihei, Island of Maui and County of Maui, identified as Maui Tax Map Key No. 3-9-004:029 & 149 ("Property").

**PURPOSE OF THE APPLICATIONS**

The Applicant is requesting a Community Plan Amendment from Single-Family to Hotel, a Conditional Permit, Special Management Area Use Permit, Shoreline Setback Variance, and Offsite Parking Approval to bring the current operations in compliance with existing Maui County regulations.

**SECTION 19.510.010(C) ASSESSMENT**

The Planning Director certifies that pursuant to Section 19.510.010(C) the application(s) meet the requirements of Section 19.510.010(D), as follows:

- D1. Owner identification and signature or written authorization documents:  
On file with Maui Planning Department and Planning Department Report: Exhibits 10-11.

- D2. Owner's name, address, and phone number:  
On file with the Maui Planning Department.
- D3. Agent's name, address, and phone number, if applicable:  
Chris Hart,  
Chris Hart & Partners Inc.  
115 North Market Street  
Wailuku, Hawaii 96793
- D4. Tax map key and street address, if available:  
Tax Map Key: (2) 3-9-004:029 and 149
- D5. Locational map identifying the site, adjacent roadways, and landmarks:  
Planning Department Report: Exhibits 1-3
- D6. List of owners and lessees of record within 500 feet:  
On file with the Maui Planning Department
- D7. Analysis of ways in which application conforms to policies and objectives of General Plan and applicable Community Plan:  
Planning Department Report: Land Use Section
- D8. Detailed land use history of parcel(s) to include former and existing state and county land use designations, violations and uses:  
Planning Department Report: Land Use Section
- D9. Preliminary archaeological and historical data and comments from DLNR and Office of Hawaiian Affairs (OHA).  
Maui Planning Department Report, Archaeological Section
- D10. Analysis of secondary impacts of the proposed use on surrounding uses.
- D11. Traffic impact analysis and, if applicable, a traffic master plan with comments from DOT and DPWEM:  
Planning Department Report: Exhibits 32.
- D12. If applicable, an assessment of the impact the proposed use may have on agricultural use of the property with comments from DOA and USSCS:  
Planning Department Report: Agricultural Section
- D13. Water source, supply and distribution analysis, and, if applicable, a water master plan which includes comments from the DLNR, DWS, and DPWEM:  
Planning Department Report: Water Section, Exhibit 23 and 31
- D14. Sewage disposal analysis, and comments, if applicable, from DOH, DLNR, DPWEM, and DWS:  
Planning Department Report: Sewage Section

- D15. Solid waste disposal analysis and comments, if applicable, from DOH, DLNR, DPWEM, and DWS:  
Planning Department Report: Solid Waste Section and Exhibit 43
- D16. Identification of environmentally sensitive areas, habitat and botanical features, such as wetlands, streams, endangered plants, etc., and comments, if applicable, from DLNR, USFWS, and Corps of Engineers:  
No environmentally sensitive areas, habitat and botanical features were found on the site.
- D17. Identification of the existing topographical and drainage patterns and any alterations proposed:  
Planning Department Report: Exhibits 19 & 20
- D18. Identification and summary of all meetings held between applicant and any community group:  
No Community meetings were held.
- D19. Dated photographs of site or structure:  
On file with the Planning Department
- D20. Development schedule:  
Planning Department Report: Description of the Project Section
- D21. Schematic site development plans, if applicable, drawn to scale:  
Planning Department Report: Description of the Project Section
- D22. Operations and management of proposed use which may include: # of employees, housing plan, hours of operation, provisions for offsite parking:  
Planning Department Report: Description of the Project Section
- D23. Identification of traditional beach and mountain access trails and additional trails which may be required for public access, and, if applicable, a preservation/mitigation plan and comments from DLNR and OHA.  
Planning Department Report: Socio-Economic Section
- D24. Identification and assessment of chemicals and fertilizers used, and, if applicable, a mitigation plan and maintenance program and schedule, and comments from DOH, DLNR, USFWS, and USEPA:  
Planning Department Report: Agricultural Section
- D25. Any other information necessary to assess the application:  
No other information was requested by the Department.
- E. Notice filed by the applicant and an affidavit certifying that the notice of application was mailed to all owners/lessees of record within 500 feet from subject parcel. The notice included the following:
- E1. The name, address, and phone number of the owner and owner's authorized agent, if applicable;
  - E2. A brief description of the existing uses and uses proposed by the application;

- E3. A location map and description of the location of the proposed development which includes the TMK and street address, if applicable, of the subject parcel.

Copies of the Notice, list of owners/lessees, and affidavit of mailing is on file with the Maui Planning Department.

## **APPLICABLE REGULATIONS**

### **COMMUNITY PLAN AMENDMENT**

A community plan amendment is reviewed pursuant to Title 2, Administration and Personnel, Chapter 2.80B General Plan and Community Plans; Section 2.80B.110 Non-decennial amendments to community plans proposed by a person, Maui County Code, 1980, as amended. Applications shall follow the procedures set out in sections 19.510.010 and 19.510.020 of Maui County Code, as amended. An environmental assessment or environmental impact statement in accordance with Chapter 343, Hawaii Revised Statutes, shall be submitted along with the application for a community plan amendment.

### **CONDITIONAL PERMIT**

A conditional permit is reviewed pursuant to Title 19, Zoning, Chapter 19.40 Conditional Permits; Maui County Code, 1980, as amended. The intent of the conditional permit is to provide the opportunity to consider establishing uses not specifically permitted within a given use zone where the proposed use is similar, related or compatible to those permitted uses and which has some special impact or uniqueness such that its effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location.

Upon finding that reasons justifying granting of a conditional permit exist, and that the proposed use would not be significantly detrimental to the public interest, convenience and welfare, and will be in harmony with the area in which it is to be located; issuance of a conditional permit may be recommended, subject to such terms and conditions and for such period of time as the facts may warrant.

Should the commission determine that the permit requested is for a use which is substantially different from those uses permitted in the use zone, the commission shall recommend denial of the request and may instruct the applicant to seek a change in zoning should the facts warrant such an application.

Every conditional permit shall be conditioned upon the proposed development fully complying with all requirements of title 19 and other applicable governmental requirements.

### **SPECIAL MANAGEMENT AREA USE PERMIT**

Standards for reviewing a special management area (SMA) application are found under HRS 205A-26 and §12-202-10 and §12-202-11 of Chapter 202, Special Management Area (SMA) Rules of the Maui Planning Commission.

In evaluating an action the following factors, but not limited to same, may constitute a significant adverse effect on the environment:

- (A) Involves an irrevocable commitment to loss or destruction of any natural or cultural resources;
- (B) Significantly curtails the range of beneficial uses of the environment;
- (C) Conflicts with the County's or the State's long-term environmental policies or goals;
- (D) Substantially affects the economic or social welfare and activities of the community, County or State;
- (E) Involves substantial secondary impacts, such as population changes and increased effects on public facilities, streets, drainage, sewage, and water systems, and pedestrian walkways;
- (F) In itself has no significant adverse effect but cumulatively has considerable effect upon the environment or involves a commitment for larger actions;
- (G) Substantially affects a rare, threatened, or endangered species of animal or plant, or its habitat;
- (H) Is contrary to the state plan, county's general plan, appropriate community plans, zoning and subdivision ordinances;
- (I) Detrimentially affects air or water quality or ambient noise levels;
- (J) Affects an environmentally sensitive area, such as flood plain, shoreline, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh waters or coastal waters;
- (K) Substantially alters natural land forms and existing public views to and along the shoreline;  
or
- (L) Is contrary to the objectives and policies of chapter 205A, HRS.

The following guidelines shall be used by the Authority in reviewing developments within the special management area:

- (1) All development in the special management area shall be subject to reasonable terms and conditions set forth by the authority to ensure:
  - (A) Adequate access, by dedication or other means, to publicly owned or used beaches, recreation areas, and natural reserves is provided to the extent consistent with sound conservation principles;
  - (B) Adequate and properly located public recreation areas and wildlife preserves are reserved;
  - (C) Provisions are made for solid and liquid waste treatment, disposition, and management which will minimize adverse effects upon special management area resources; and
  - (D) Alterations to existing land forms and vegetation, except crops, and construction of structures shall cause minimum adverse effect to water resources and scenic and recreational amenities and minimum danger of floods, wind damage, storm surge, landslides, erosion, siltation, or failure in the event of earthquake.

(2) No development shall be approved unless the Authority has first found that:

(A) The development will not have any substantial adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. Such adverse effects shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect, and the elimination of planning options;

(B) The development is consistent with the objectives, policies, and special management area guidelines of this chapter and any guidelines enacted by the legislature; and

(C) That the development is consistent with the county general plan and zoning. Such a finding of consistency does not preclude concurrent processing when a general plan or zoning amendment may also be required.

(3) The Authority shall seek to minimize, where reasonable:

(A) Dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough, or lagoon;

(B) Any development which would reduce the size of any beach or other area usable for public recreation;

(C) Any development which would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the special management areas and the mean high tide line where there is no beach;

(D) Any development which would substantially interfere with or detract from the line of sight toward the sea from the state highway nearest the coast; and

(E) Any development which would adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, or potential or existing agricultural uses of land.

## **SHORELINE SETBACK VARIANCE**

A Shoreline Setback Variance is reviewed pursuant to §12-5-13 of the Shoreline Setback Rules for the Maui Planning Commission.

A variance may be granted for a structure or activity otherwise prohibited, if the authority finds in writing, based on the record presented, that the proposed structure or activity is necessary for or ancillary to:

1. Cultivation of crops;
2. Aquaculture;
3. Landscaping; provided that, the authority finds that the proposed structure or activity will not adversely affect beach processes and will not artificially fix the shoreline;
4. Drainage;
5. Boating, maritime, or water sports recreational facilities;

6. Facilities or improvements by public agencies or public utilities regulated under Chapter 269, HRS;
7. Private facilities or improvements that are clearly in the public interest;
8. Private facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline; provided that, the authority also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline area;
9. Private facilities or improvements that may artificially fix the shoreline; provided that, the authority also finds that shoreline erosion is likely to cause hardship to the applicant if the facilities or improvements are not allowed within the shoreline area; and provided further that, the authority imposes conditions to prohibit any structure seaward of the existing shoreline unless it is clearly in the public interest; or
10. Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that, the authority also finds that the moving of sand will not adversely affect beach processes, will not diminish the size of the public beach, and will be necessary to stabilize an eroding shoreline.

Hardship shall not include an economic hardship to the applicant; county zoning changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1989; any other permit or approval which may have been issued by the authority. If the hardship is a result of actions by the applicant, such result shall not be considered a hardship for the purpose of this section.

No variance shall be granted unless appropriate conditions are imposed:

1. To maintain safe lateral access to and along the shoreline or adequately compensate for its loss;
2. To minimize risk of adverse impacts on beach processes;
3. To minimize risk of structures failing and becoming loose rocks or rubble on public property; and
4. To minimize adverse impacts on public views to, from, and along the shoreline.

#### **OFFSITE PARKING APPROVAL**

Pursuant to Maui County Code, Chapter 19.36 Offstreet Parking and Loading, Section 19.36.030 Location, "every required off-street parking space or area, or equivalent multi-deck, basement, roof, or other parking facilities shall be located on the same lot it serves or within a distance of four hundred feet of the nearest point of the lot and as approved by the commission".



## **PROCEDURAL MATTERS**

1. On November 5, 2008, the applicant published a "Notice of Application" and location map in the Maui News, notifying the public of the applicant's intent to file the application with the County of Maui. A copy of the "Notice of Application" and Affidavit of Publication is on file in the Maui Planning Department.
2. On September 8, 2008, (50) days prior to the hearing, the Maui Planning Department mailed a notice to the applicant and appropriate state and county agencies notifying them of the scheduled public hearing.
3. On October 22, 2008, the applicant mailed a letter of notification and location map to all owners and recorded lessees within 500 ft. of the subject property describing the application(s) and notifying them of the scheduled hearing date, time and place by either certified or registered mail receipt (Return receipt requested for land use amendments). Copies of the letter, location map, list of owners and recorded lessees, certified and registered mail receipts and return receipts (if required) are on file in the Planning Department.
4. On October 29, November 5, & November 12, 2008 the applicant published a Notice and location map in the Maui News once a week for three consecutive weeks prior to the date of the hearing.
5. On October 10, 2008, a notice of hearing on the application was published in the Maui News by the Maui Planning Department.
6. On October 10, 2008, a notice of hearing on the Special Management Area Use Permit application was published in the Maui News, Honolulu Star Bulletin, Garden Island, West Hawaii Today and the Hawaii Tribune-Herald by the Maui Planning Department.
7. Pursuant to Chapter 343, Hawaii Revised Statutes, relating to Environmental Impact Statements, a Findings of No Significant Impact (FONSI) was issued by the Maui Planning Commission and filed with the Office of Environmental Quality Control (OEQC). The FONSI was published on August 23, 2008 in the Environmental Notice. The deadline for filing of an appeal was on September 22, 2008. No appeals were filed.

## **GENERAL DESCRIPTION**

### **Description of the Property**

1. The Property is approximately 1.944 acres and is located at 2980 South Kihei Road at Maui Tax Map Key 3-9-004:029 and 149, Kihei, Maui, Hawaii. (Exhibits 1-3)
2. Land Use Designations --
  - a. State Land Use District -- Urban
  - b. Kihei-Makena Community Plan -- Single-Family (parcel 029)  
Park (parcel 149)
  - c. County Zoning -- H-M Hotel (parcel 029)  
Park (parcel 149)

d. Other --

Located within the Special Management Area

3. Surrounding Uses --

North --	State of Hawaii Beach Reserve, Public Beach Access, and Mana Kai Condominiums
East --	South Kihei Road
South --	Hale Hui Kai Condominiums
West --	Beach and Pacific Ocean

4. Pursuant to *Section 19.510.010(D)(19)*, site and building photographs were submitted to show the existing conditions of the property. Parcel 29 is developed as the Maui Oceanfront Inn & Sarento's Restaurant while Parcel 149 is used as a parking lot. The Property is owned by the State of Hawaii. Western Apartment Supply & Maintenance Co. is the current lessee of Parcel 29 pursuant to General Lease No. S-4212. They are also the permittee for Parcel 149 pursuant to Revocable Permit No. 7235. (Exhibits 4-5)

**Existing Services**

1. **Water** --The Property is serviced by the County of Maui Department of Water Supply via the Central Maui Water System. Each parcel has a 1 ½ inch feeder line that connects to the existing 12-inch water line that runs along South Kihei Road.

2. **Sewers** --The Property is serviced by the County of Maui Department of Environmental Management by the Kihei Wastewater Reclamation Facility. On parcel 029 a 6-inch lateral connects with the 8-inch sewer line that runs along South Kihei Road. This wastewater is then transported to the Kihei Wastewater Reclamation Facility.

3. **Drainage** --The Property is located in Zone (C) as indicated by the Flood Insurance Rate Map. Zone C indicates an area of minimal flooding. Storm water runoff is captured with an onsite drainage and retention system. Existing runoff is estimated at 4.0 cubic feet square (cfs).

4. **Roadways, Curbs, Gutters and Sidewalks** -- Access to the Property is from South Kihei Road is a two-lane, two-way County maintained roadway connecting North and South Kihei.

5. **Electrical and Telephone** -- Electrical and telephone service is available to the property.

6. **Parks** --There are several parks in the Kihei region that provides recreational opportunities to the community. The nearest recreational facility is the State Beach Reserve which provided passive and coastal recreational opportunities. Access to this reserve is from an existing public access located adjacent to the Property. The nearest park facility is Kamaole III Beach Park which provides active, passive, and coastal recreational opportunities.

7. **Schools** -- The Kihei region is served by Kihei and Kamalii Elementary Schools, Lokelani Intermediate School, Maui High School, and Kihei Charter School.

8. **Solid Waste** -- The Central Maui Landfill in Pu'unene services Maui Island.

9. **Public Services** - Fire protection is from Department of Fire and Public Safety from the

Wailea Fire Station located at the intersection of Kilohana Drive/Piilani Highway. The Maui Police Department provides police services from their Main Station on Mahalani Street in Wailuku as well as from their Kihei Substation located in the Kihei Town Center. Library services are provided by the Kihei Public Library also located next to Kalama Park. Hospital services are provided by Maui Memorial Medical Center located in Wailuku. This is a 231 bed facility that provides acute, general, and emergency care services.

### **BRIEF HISTORY OF PROPERTY**

1. On September 4, 1968, the State of Hawaii entered into Lease G-S4212 (Lease) with Mr. Walter Witte & Mr. John Fagan for a resort development on Parcel 29. The Lease is for a period of 65 years, with an expiration date of September 2033.
2. On June 30, 1973, the County of Maui issued a number of building permits for the construction of the six (6) hotel buildings and restaurant. Once construction was completed, there were 96 hotel rooms, the restaurant building, and 47-paved parking stalls.
3. On January 28, 1975, Walter Witte and John Fagan entered into a sublease agreement with Sunshine Hotels to operate the hotel.
4. On February 1, 1977, Walter Witte and Johan Fagan entered into a lease agreement with Maui Outrigger Restaurant to operate a restaurant.
5. On February 28, 1978, Lease G-S4212 is assigned to Island Investment, Ltd.
6. On June 12, 1987, the Maui Planning Commission granted a Special Management Area Use Permit (SMA) for the construction of a new, two-story restaurant and renovations to the existing hotel structures. Known as the Surf and Sand Hotel, with 48 hotel units; the construction of the new restaurant required the demolition of three (3) hotel buildings and the existing restaurant. The SMA expired; the proposed renovations were not implemented.
7. On March 27, 1990, General Lease S-4212 is assigned to Towa Shinyo Maui, Inc., a Hawaii Corporation.
8. On August 16, 1990, the Maui Planning Department issued an SMA for the renovations to the restaurant building.
9. On October 1, 1990, the County of Maui issued a building permit for the installation of a new awning, ceiling, and interior renovations at the restaurant known as Carelli's on the Beach restaurant.
10. On March 5, 1991, a Certificate of Occupancy was issued to Carelli's on the Beach. The gross floor area of the renovated restaurant is 5,292 square feet.
11. On May 6, 1993, the Board of Variance and Appeals grants a variance for side yard setback and lot area coverage through Docket BVA No. 93-07.
12. On June 13, 2000, General Lease No. S-4212 is assigned to Western Apartment Supply and Maintenance Company (Applicant), a California Corporation. During this time, interior renovations to the hotel rooms are completed as well as repair and maintenance of the hotel

buildings.

13. On December 1, 2000, Revocable Permit No. 7235 is issued to Western Apartment Supply by the Board of Land and Natural Resources (BLNR) for TMK 3-9-004: Por. 001 (known as TMK 3-9-004:149) for use as a parking lot.

14. On February 23, 2001, Special Management Area Minor Permit (Permit) (SM2 2001/0008) is issued to Tri-Star Restaurant Groups LLC (Sarento's) to construct an additional bathroom and interior alterations to Sarento's Restaurant.

15. On August 31, 2002, the Applicant filed and after-the-fact SMA Minor Permit for the construction of pedestrian access improvements; stairs and ADA ramp and parking for beach access from the Parcel 149 to Maui Oceanfront Inn and Sarento's on Parcel 029.

16. On March 16, 2004, a Special Management Area Exemption was issued to the Applicant for a two-lot subdivision of TMK 3-9-004: Por. 1 to create TMK 3-9-004:149. Parcel 149 encompasses the area that is the subject of Revocable Permit 7235. The creation of this new parcel allows the Applicant to apply to the State of Hawaii for a long-term lease in lieu of the revocable permit. With a lease, the Applicant and State of Hawaii have a specific term, end date, for the use of the property while a revocable permit is limited to a month-to-month term.

17. On January 6, 2005, the Planning Department received an application (BVA 2005/0008) requesting a number of variances to the Chapter 19.14 Hotel District, MCC for the Property.

18. On May 12, 2005, the Board of Variances and Appeals (BVA) granted a Petition to Intervene on BVA 2005/0008 to Dana Naone Hall and Leslie Kuloloio.

19. On September 8, 2005, the BVA granted a Petition to Intervene on BVA 2005/0008 to the Maui Planning Department.

20. On November 25, 2005, a Settlement Agreement is executed between the Applicant; Tri-Star Restaurant Group, LLC; Dana Naone Hall; Leslie Kuloloio; and the County of Maui Planning Department.

21. On December 8, 2005, the BVA granted approval of BVA 2005/0008.

22. On March 31, 2006, the BVA issues its Findings of Fact, Conclusion of Law, Decision and Order for BVA 2005/0008.

### **DESCRIPTION OF THE PROJECT**

Pursuant to *Section 19.510.010(D)(20)* Maui Oceanfront Inn and Sarento's Restaurant (MOSR) are requesting a number of land use approvals to bring the current operations in compliance with existing Maui County regulations. These requests are a result of a Settlement Agreement between the Applicant, Tri-Star Restaurant Group, LLC, Dana Naone Hall, Leslie Kuloloio, and the County of Maui Planning Department in lieu of a contested case proceeding before the BVA. (Exhibit 6)

### **COMMUNITY PLAN AMENDMENT**

The Community Plan Amendment from Single-Family to Hotel will re-establish the land use consistency between the community plan designation and current zoning. When the Property was constructed in the early 1970's, Parcel 029 was designated Hotel in the Kihei General Plan.

### **SPECIAL MANAGEMENT AREA**

The Special Management Area (SMA) will cover the existing and proposed improvements. Additionally, as part of existing improvements, the SMA will cover a number of variances granted to the Applicant by the Maui County Board of Variances and Appeal (Docket No. BVA 2005/0008) for Parcel 29. These variances will become effective once the SMA is granted.

### **SHORELINE SETBACK VARIANCE**

The Shoreline Setback Variance will cover existing improvements that are located within the current shoreline setback area established with the adoption of the Shoreline Rules for the Maui Planning Commission by the Maui Planning Commission on October 28, 2003. There are no additional improvements within the shoreline setback area.

The following structures are located within the shoreline setback area, and are the subject of this request.

#### **Sarento's on the Beach Restaurant**

1. Single-story structure with a gross floor area of approximately 4,110 square feet. It is constructed of concrete with a decorative stucco covering.
2. The awning covers the restaurants outdoor seating area with approximately 972 square feet of canvas.
3. The outdoor seating area is approximately 2,064 square feet and constructed of concrete.
4. Surrounding the outdoor seating area on three (3) sides is a concrete wall with a stucco exterior. This wall is approximately three (3) feet high, one (1) foot wide, with a total length of 146 feet.
5. There are three (3) black metal gates located along the concrete wall. They are approximately 4-feet tall and 5-feet wide.
6. Additionally, there is a wooden gate that separates the outdoor dining area with an adjacent alley way. This gate is approximately 7-feet high and 6-feet in width.

#### **Maui Oceanfront Inn Building**

7. One of the six (6) two-story structures is located within the shoreline setback and has a floor area of approximately 1,702 square feet. It is constructed of wood and contains a lanai on the second story.

#### **State Beach Reserve**

8. The existing shower facility, 13 feet in diameter, serves the users of the State Beach Reserve. The shower floor and column is made from concrete. There are three (3) shower heads and three (3) foot rinse nozzles. Covering the shower area is a canvas awning.

### **CONDITIONAL PERMIT**

The Conditional Permit will allow for the establishment of the additional public/commercial parking lot to be located on Parcel 149. The existing zoning does not allow for a public/commercial parking lot.

### **OFFSITE PARKING APPROVAL**

Lastly, the Offsite Parking Approval will allow for the Applicant to have the required number of parking stalls and loading zones for the Maui Oceanfront Inn and Sarento's Restaurant.

Pursuant to *Section 19.510.010(D)(21)* schematic site development plans and photographs were submitted. The Property is developed as the Maui Oceanfront Inn and Sarento's on the Beach Restaurant. Maui Oceanfront Inn has 73 guest rooms located in six (6) two-story structures while Sarento's is located in a single-story structure with approximately 2,635 square feet of serving and dining area. Associated improvements are a 53-stall paved parking lot; paved gravel parking lot accommodating approximately 70-75 vehicles; ancillary structures for utilities, storage, and maintenance; and extensive landscape planting. There will be no expansion of these two existing operations.

Proposed improvements are identified for the existing gravel parking lot on Parcel 149. These improvements include the paving and striping of the parking lot to provide approximately 82 parking stalls. Additionally, an onsite drainage retention system and extensive landscape planting will be included. As a result of the Settlement Agreement to Docket No. BVA 2005000, this parking lot will continue to provide for both public and commercial uses. A minimum of 42 parking-stalls will be identified for public beach parking.  
(Exhibit 7)

Pursuant to *Section 19.510.010(D)(22)* the Applicant proposes to continue to operate the Property as Maui Oceanfront Inn and Sarento's on the Beach Restaurant.

### **REVIEWING AGENCIES**

1. Department of Fire and Public Safety – Letter dated April 10, 2007  
(Exhibits 8-9)
2. Department of Parks and Recreation – Memorandum dated March 19, 2007  
(Exhibits 10-11)
3. Department of Public Works and Environmental Management – Memo dated March 15, 2007  
(Exhibits 12-13)
4. Department of Water Supply – Letter dated February 26, 2007  
(Exhibits 14-15)

5. Police Department – Memorandum dated March 5, 2007  
(Exhibits 16-17)
6. County of Maui Civil Defense Agency – Letter dated August 10, 2007  
(Exhibits 18-19)
7. Department of Accounting and General Services, Survey Division – Memorandum dated February 21, 2007  
(Exhibits 20-21)
8. Department of Health, Maui District Health Office – Letter dated March 1, 2008  
(Exhibits 22-23)
9. Department of Land and Natural Resources – Letter dated March 12, 2008  
(Exhibits 24-25)
10. Land Use Commission – Letter dated March 12, 2007  
(Exhibits 26-27)
11. U.S. Army Corps of Engineers – Letter February 21, 2007  
(Exhibits 28-29)

## **ANALYSIS**

### **LAND USE**

1. The proposed Project is in conformance with the goals, objectives and policies of the Hawaii State Plan. It will continue to provide employment opportunities in the restaurant and visitor industry while being sensitive to the uniqueness of the shoreline. Further, the proposed Project will enhance the public's ability to access and enjoy land-based, shoreline, and marine resources.
2. The subject Property is in the State Urban District. The existing uses are allowable uses in the Urban District. Pursuant to Chapter 205-2(b) Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.
3. The State Land Use Commission (LUC) confirms that the Property is located in the State Urban District.
4. The Maui County General Plan (1990) sets forth broad objectives and policies to help guide the long-range development of the County. As stated in the Maui County Charter, as amended in 2002:

“The General Plan shall indicate desired population and physical development patterns for each island and region within the county; shall address the unique problems and needs of each island and region; shall explain the opportunities and the social, economic, and environmental consequences related to potential developments; and shall set forth the desired sequence, patterns, and characteristics of future developments.



The general plan shall identify objectives to be achieved, and priorities, policies, and implementing actions to be pursued with respect to population density, land use maps, land use regulations, transportation systems, public and community facility locations, water and sewage systems, visitor destinations, urban design, and other matters related to development."

The General Plan identifies five major themes as follows:

1. Protect Maui county's agricultural lands and rural identity
2. Prepare a directed and managed growth plan
3. Protect Maui County's shoreline and limit visitor industry growth
4. Maintain a viable economy that offers diverse employment opportunities for residents
5. Provide for needed residential housing

Pursuant to *Section 19.510.010(D)(7)*, the application conforms to policies and objectives of the General Plan, as follows:

**I. POPULATION, LAND USE, THE ENVIRONMENT AND CULTURAL RESOURCES**

**B. LAND USE**

**Objective**

1. To preserve for present and future generations existing geographic, cultural, and traditional community lifestyle by limiting and managing growth through environmentally sensitive and effective use of land in accordance with the individual character of the various communities and regions of the County.

**Policy**

- b. Provide and maintain a range of land use districts sufficient to meet the social, physical, environmental and economic needs of the community.

**Objective**

2. To use the land within the County for the social and economic benefit of all the County's residents.

**Policy**

- a. Mitigate environmental conflicts and enhance scenic amenities, with out having a negative impact on natural resources.

**C. ENVIRONMENT**

**Objective**

2. To use the County's land-based physical and ocean related coastal resources in a manner consistent with sound environmental planning practices.

**Policy**

- b. Evaluate all land based developments relative to its impact on the County's land and ocean ecological resources.

## **II. ECONOMIC ACTIVITY**

### **B. VISITOR INDUSTRY**

#### **Objective**

1. To use the County's land-based physical and ocean related coastal resources in a manner consistent with sound environmental planning practices.

#### **Policy**

- a. Limit visitor industry development to those areas identified in the appropriate community plans, and to the development of projects within those areas which are in conformance with the goals and objectives of those plans.
  - b. Discourage any additional shoreline resort development.
  - e. Encourage enhancement of existing visitor facilities without substantial increases in room count.
5. According to the Kihei-Makena Community Plan the property is identified for Single-Family on the land use map of the Community Plan.

Pursuant to *Section 19.510.010(D)(7)*, the application conforms to the policies and objectives of the Community Plan, as follows:

#### **LAND USE**

**Goal:** A well-planned community with land use and development patterns designed to achieve the efficient and timely provision of infrastructural and community needs while preserving and enhancing the unique character of Ma'alaea, Kihei, Wailea and Makena as well as the region's natural environment, marine resources and traditional shoreline uses.

#### **Objectives and Policies**

- c. Upon adoption of this plan, allow no further development unless infrastructure, public facilities, and services needed to service new development are available prior to or concurrent with the impacts of new development.
- e. Limit hotel uses to those areas presently planned for hotel use, and limit hotel development until adequate public facilities and services are established to meet existing needs.

#### **ENVIRONMENT**

**Goal:** Preservation, protection, and enhancement of Kihei-Makena's unique and fragile environmental resources.

#### **Objectives and Policies**

- a. Maintain and enhance the long-term availability of shoreline resources for public enjoyment through on-going resource management programs.
6. Pursuant to *Section 19.510.010(D)(8)*, a detailed land use history of the Property follows:

The Property is in the State Urban District. The State land use district for the Property has not been amended since the adoption of the district boundaries in the 1960's by the LUC.

The Parcel 29 is designated Single-Family and Parcel 149 is designated Park by the Kihei-Makena Community Plan Land Use Map. The Community Plan designations of the Property have not changed since the adoption of the Kihei-Makena Community Plan and Land Use Map in 1987 by the Maui County Council.  
(Exhibit 30)

Parcel 29 was first identified for hotel use with the adoption of the Kihei Master Plan in 1969, the precursor to the current community plans. The Department has not been able to identify why Parcel 29 was designated from Hotel to Single-Family with the adoption of the Kihei-Makena Community Plan. Especially, since the existing hotel and restaurant were in operation prior to 1987.

Parcel 149 was first identified for park use with the adoption of the Kihei Master Plan. This park designation was continued with the adoption of the Kihei-Makena Community Plan.

As part of the General Plan update process, the Departments January 10, 2008 Policy Memorandum provides guidance as to whether the Department may support a community plan amendment. There are two (2) criteria in which the Department may support of a community plan amendment. First, the project offers a substantial public benefit. If the project is a private project, then the public benefits are far above what would be required based upon existing ordinances, policies, or other regulations. Secondly, the project's impact would not be significant due to factors such as location and scale.

This project meets the second criteria in which the Department may support a community plan amendment. As discussed earlier, Parcel 29 was originally identified for hotel use with the adoption of the Kihei Master Plan in 1969. The hotel and restaurant facilities were developed in 1974 to reflect the hotel use. The community plan amendment from Single-Family to Hotel is considered more of a housekeeping measure to reflect the only use of Parcel 29 since the adoption of the Kihei Master Plan in 1969. As there are no proposed improvements to the existing structures, there will be minimal impact associated with this community plan amendment

The Department of Land and Natural Resources Land Division (DLNR Land Division) commented that they believe the Single-Family designation for Parcel 29 was inadvertent due to the H-M Hotel zoning of Parcel 29.

Parcel 29 is zoned H-M Hotel, while Parcel 149 is zoned Park. The zoning of the Property has not been amended since the adoption of Land Zoning Map No. 5 on December 19, 1969. The DLNR Land Division notes that the parking use of Parcel 149 is permitted under the Revocable Permit. However, they note that a RP is intended to be a short-term temporary arrangement, thus the 30 day termination notice. In the future, should the DLNR determines to use Parcel 149 for other uses, the RP will be terminated, including the parking uses. Lastly, DLNR-land Division notes that they are not a party to the Settlement Agreement, thus does not assume responsibility for public parking uses. Further, they do not agree to allow such public parking use to continue in perpetuity for any period after termination of the RP.  
(Exhibit 31)

7. The Property is located within the Special Management Area of the Island of Maui. The

proposed development meets the goals and objectives of Chapter 205A, Hawaii Revised Statutes (HRS) as follows:

**Recreational Resources:** The existing development will not impact coastal recreational resources. Additionally, there is an existing public access to the shoreline from Parcel 149. Further, proposed parking lot improvements to Parcel 149 will allow for additional parking for the public to continue to enjoy the recreational resources on the shoreline.

**Historic Resources:** In general, the lands have been extensively modified by previous land altering activities. As the proposed improvements are located on dune land and beach soil, the Applicant has developed an archaeological monitoring plan to be reviewed and approved by the Department of Land and Natural Resources, State Historic Preservation Division (DLNR-SHPD) prior to ground altering activity. Dune land and beach soils may be likely to contain subsurface habitation features consisting of cultural layers and or burials from both the traditional and historic period. In the event that historic resources are encountered, DLNR-SHPD will be contacted immediately.

**Scenic and Open Space Resources:** The existing improvements are located makai of Piilani Highway as well as South Kihei Road. The area is developed with a number of existing structures and man made landforms. However, proposed improvements to Parcel 149 will not impede existing views to the shoreline.

**Coastal Ecosystems:** Runoff generated by the existing and expanded development will continue to be accommodated on-site.

**Economic Uses:** The existing development is located in an area identified for hotel and park use. It will continue to provide employment to the Kihei region while operating in a manner with the highest regards to the environment.

**Coastal Hazards:** The Applicant will continue to work with the appropriate agencies to comply with the applicable provisions of the Federal Flood Insurance Program, County flood hazard district regulations, and State of Hawaii programs to minimize impacts.

**Managing Development:** The concurrent processing of the Community Plan Amendment, Conditional Permit, Special Management Area use Permit, Shoreline Setback Variance, and Off-Site Parking Approval helps to eliminate duplicative processes by allowing for concurrent review and action. This assists in the identification of outstanding or conflicting issues by both the government and general public.

**Public Participation:** Through concurrent permit processing the Department can assist the public in providing as well as receiving information.

**Beach Protection:** The existing development is located in an area in which erosion rate analysis has been determined. Though these are not abutting the shoreline, portions of Parcel 29 are located within the Shoreline Setback Area. A thorough review of the Shoreline Setback Variance will be conducted to ensure that there will be no impact to beach processes.

**Marine Resources:** The existing development continues to utilize best management practices for drainage to minimize potential adverse impacts on ocean resources through run off.

8. Portions of the existing Project on Parcel 29, are located within the Shoreline Setback Area. The Applicant has applied for a Shoreline Setback Variance to allow for the existing improvements to remain as constructed.

9. When Parcel 29 was developed, it was not located within the Shoreline Setback Area. On October 28, 2003, the Maui Planning Commission adopted Chapter 203, Shoreline Rules for the Maui Planning Commission. With the adoption of these rules, the shoreline setback on the Island of Maui is determined by one of two methods: Average Lot Depth (ALD) and Annual Erosion Hazard Rate (AEHR).  
(Exhibits 32-33 )

10. The original method for the determination of the shoreline setback area of a property is the ALD Method. The AERH Method was added with the adoption of the current shoreline rules. AERH is utilized only for those areas on the Island of Maui in which annual erosion hazard rates have been established according to methodology developed by the University of Hawaii. Should an area not have an annual erosion hazard rate, then the ALD method is used.

11. Identifying the shoreline setback area utilizing the ALD required that the property abut the shoreline. If the property did not abut the shoreline, then it was not considered a shoreline property. This was the situation for Parcel 29. It was not considered a shoreline property as a portion of TMK 3-9-004:001 is located makai of Parcel 29 and abuts the shoreline. However, in 2007, the shoreline rules were amended to require both methods to be used, regardless if a property does not abut the shoreline. The higher of the two (2) numbers is then used to establish the shoreline setback area.

11. The Property is located in an area in which an annual erosion hazard rate has been established. According to the County's Erosion Hazard Rate Map for North Wailea, the erosion rate fronting the Parcel 29 is 0.5 to 1.0 foot per year. Establishing the shoreline setback line is: (the annual erosion rate) x (50) + 20 = AERH,  $(1.0) \times (50) + 20 = 70$  feet. Utilizing the ALD method, the shoreline setback line is established by measuring the length of two sides of the lot as well as the middle of the lot, then dividing by three:  $(L1)+(L2)+(L3)=X$ , then  $X+(3) \times (0.25)=ALD$ . Thus  $(355)+(383)+(378) = 1116$ ;  $1116+3= 372$ ;  $372 \times 0.25= 93$  feet. The shoreline setback line is 93 feet and now includes a portion of Sarento's and the hotel.

12. Pursuant to the Shoreline Setback Rules of the Maui Planning Commission, the structures located within the shoreline setback area are "Nonconforming structures" as both structures received a building permit prior to June 16, 1989.

13. The variance request is due to unique circumstances based upon the "nonconforming" nature of the structures. When both structures were built, they were in compliance with the Shoreline Setback Rules in effect at the time. The Applicant does not draw into question the reasonableness of the shoreline setback rules.

14. The existing structures neither adversely affect beach processes nor artificially fix the shoreline. Further, there is no intent to construct additional improvements seaward of the existing facilities.

### **ARCHAEOLOGICAL, HISTORIC AND CULTURAL RESOURCES**

1. Pursuant to *Section 19.510.010(D)(9)* an Archaeological Reconnaissance Survey was not required for the Property due to previous disturbances through the construction of the Property. However, the proposed parking lot improvements on Parcel 149 call for excavation for the installation of irrigation lines and possibly drywells. The underlying Dune Land soil as well as the location of the project area, makes is likely to contain subsurface habitation features consisting of cultural layers and or burials from both the traditional and historic period. Thus an archaeological monitoring program has been developed for all ground disturbing activities by Archaeological Services, Hawaii, LLC.

2. The proposed archaeological monitoring plan calls for full-time monitoring of construction activities as well as protocols should there be finds. Should there be a find, work will cease and the Department of Land and Natural Resources, State Historic Preservation Division (SHPD) will be contacted. Work will not resume in the area of the find without the approval of SHPD.

3. The Project was sent to SHPD for agency comments; however, no comments were received.

### **TRAFFIC**

1. Pursuant to *Section 19.510.010(D)(11)* a Traffic and Parking Assessment Report was conducted by Phillip Rowell and Associates. Access to the Property is from South Kihei Road via two (2) driveways. There is one (1) driveway to Parcel 29 and one (1) driveway to Parcel 149. Parcel 29 contains the main parking lot for the Maui Oceanfront Inn and Sarento's Restaurant while Parcel 149 provides parking for both public beach access and Sarento's. (Exhibit 34)

2. Both driveways were analyzed to identify the Level of Service (LOS). The LOS describes traffic conditions based upon delays for controlled movements with A representing free flow conditions and F representing sever congestion with stop and go conditions. Table 1 provides the LOS criteria for unsignalized intersections taken from the *Highway Capacity Manual*, Transportation Research Board, National Research Council, Washington D.C., 2000.

**Table 1 – Level of Service Criteria for Unsignalized Intersections**

Level of Service	Expected Delay to Minor Street Traffic	Delay (seconds )
A	Little or no delay	≤ 10
B	Short traffic delays	10.1 to 15
C	Average traffic delays	15.1 to 25
D	Long traffic delays	25.1 to 35
E	Very long traffic delays	35.1 to 50
F	Delays caused by volume exceeding capacity	> 50.1

3. Both driveways are operating at LOS C during afternoon peak hour while traffic along South Kihei Road is operating at LOS A. Based upon the uses of the Property, only the afternoon peak hour was analyzed.

4. A parking utilization survey for both parking lots on Parcel 29 and Parcel 149 was conducted to determine if there is sufficient capacity to accommodate the needs of the existing operations as well as public parking for beach access. On Parcels 29 and 149, approximately 80% of the parking stalls were occupied during the peak hour between 7pm and 8pm on Friday evening. On Parcel 149, the evening peak hour occurred between 10 pm and 11pm when approximately 71 % of the public parking stalls were occupied. During daylight hours on Parcel 149, approximately 62% of the public parking stalls were occupied during the peak hours between 2pm and 4 pm.

5. The nearest County Department of Transportation Bus Stop is located along South Kihei Road at Kamaole III Beach.

6. The Department of Public Works comments that a road-widening lot may be required to provide future right-of-way and improved to County standards. Further, that a 30 foot-radius shall be provided at the intersections of the proposed driveway and adjoining County and State roads. Lastly, that a site plan and a sight distance report shall be review and approval.

## **AGRICULTURE**

1. Pursuant to Section 19.510.010(D)(12) an assessment of the impacts on agricultural lands is not applicable.

2. The Property is classified as "E77" by the Detailed Land Classification – Island of Maui, Land Study Bureau, University of Hawaii, Hawaii, May 1967. The classification indicates productivity ratings of lands with "A" representing the highest rating and "E" the lowest rating.

3. The Property is Unclassified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) categories established by the State Department of Agriculture. The ALISH system classifies lands into four categories, "Prime", "Unique", "Other Important Agricultural Lands", and "Unclassified". These criteria were developed based upon the utilization of modern farming methods. "Prime" lands have s soil quality, growing season, and moisture supply needed to produce sustained crop yield economically. "Unique" lands have the combination of soil quality, location, growing season, and moisture supply currently used to produce sustained yield of a specific crop. "Other Important Agricultural Lands" include lands not rated as "Prime" or "Unique".

4. The Property is classified as Beaches (BS) and Dune Land (DL) by the Soil Survey of island s of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii: United States Department of



Agricultural Soil Conservation Service, Washington DC, August 1972.

5. Beaches (BS) occur as sandy, gravelly, or cobbly areas on all the islands. They are washed and rewashed by ocean waves. The beaches consist mainly of light-colored sands derived from coral and seashell. A few of the beaches, however, are dark colored because their sands are from basalt and andesite. Beaches are suitable for recreational uses and resort development.

6. Dune Land (DL) consists of hills and ridges of sand-size particles drifted and piled by the wind. The hills and ridges are actively shifting or are so recently fixed or stabilized that no soil horizons have developed. The sand is dominantly from coral and seashells. This miscellaneous land type occurs in coastal areas on the islands of Maui and Kauai. Elevations range from nearly sea level to 150 feet. This land type is used for wildlife habitat, recreational areas, and as a source of liming material.

**WATER**

1. Pursuant to *Section 19.510.010(D)(13)*, the Property will continue to utilize potable water from the County of Maui Water System.

2. The Department of Water Supply commented that should Parcel 149 not have an assigned water meter, that a new water meter will be required. Further, that the Applicant should submit irrigation calculations to determine meter adequacy. Lastly, that water may not be available for the proposed upgrade to the landscaping irrigation system.

**SEWAGE**

1. Pursuant to *Section 19.510.010(D)(14)*, the property will continue to utilize the County of Maui Wastewater System. No adverse impacts on sewage facilities are anticipated, as the proposed improvements will not generate additional wastewater.

**SOLID WASTE DISPOSAL**

1. Pursuant to *Section 19.510.010(D)(15)* solid waste disposal will continue be provided by a private operator.

**ENVIRONMENTAL IMPACTS**

1. There will be short term noise and air quality impacts during the construction phases of the proposed parking lot improvements. Best management practices will continued to be incorporated into the project in accordance with Federal, State and County standards.

2. The Department of Health, Maui District Office comments that the paving of the parking lot will create construction noise that may exceed the maximum allowable levels set forth in Hawaii Administrative Rules, Chapter 11-6, "Community Noise Control". A noise permit may be required and should be obtained before the commencement of work.

3. The Applicant will comply with the provisions of Hawaii Administrative Rules, Chapter 11-46 "Community Noise Control".

3. The Department of Accounting and General Services, Survey Division confirmed that no Government Survey Triangulation Stations or Benchmarks will be affected.
4. Maui County Civil Defense commented that the use is located in a tsunami inundation zone. As such, they recommend emergency evacuation and sheltering plans be posted on the premises. Further, that notification devices are available to person on site.

### **DRAINAGE**

1. Pursuant to *Section 19.510.010(D)(17)*, a Drainage and Engineering Assessment was prepared by Linda Taylor Engineering, Inc. Parcel 29 is serviced by an onsite drainage system comprised of.... The Applicant proposes to develop an onsite drainage system for Parcel 149 to accommodate the increase in runoff from 4.0 cfs to 5.0 cfs.  
(Exhibit 35)
2. The Department of Public Works comments that the drainage improvements will be required to comply with County codes.

### **OTHER PUBLIC SERVICES**

1. **Electrical and Telephone** -- Services are currently provided and available to the project site. No impacts are anticipated as a result of this project. Maui Electric Company, Ltd., has no objections to the subject project.
2. **Parks** -- No adverse impacts on park facilities are anticipated. The Department of Parks & Recreation has no comments to offer.
3. **Schools** -- No adverse impacts on school facilities are anticipated
4. **Public Services** -- No adverse impacts on police and fire protection services, and medical services are anticipated. The Department of Fire and Public Safety commented that they will review the project should a building permit be required. The Police Department comments that services in South Maui will not be impacted by any action of the application.

### **SOCIO-ECONOMIC IMPACTS**

1. In the short-term existing development and proposed upgrades to public parking will provide construction and construction related employment. In the long-term the project will continue to provide employment as well as facilities to access shoreline and coastal resources.
2. The Department of Public Works comments that infrastructure that may be dedicated to the County is required to obtain a technical review from the Disability and Communication Access Board, (DCAB) for compliance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG).

### **Traditional Access**

1. Pursuant to *Section 19.510.010(D)(23)*, no traditional beach and mountain access trails and additional trails were identified. However, there is an existing shoreline access from Parcel 149.

## **Views/Open Space Corridors**

1. The existing and proposed improvements are located makai of Piilani Highway and South Kihei Road. The area is developed with a number of existing structures. The proposed improvements to Parcel 149 will not adversely impact view and open space corridors.

## **TESTIMONY**

As of November 3, 2008 the Planning Department has received no testimony in support, opposition, or expressing concerns.

## **ALTERNATIVES**

### **Community Plan Amendment**

1. Deferral. The Commission may defer action to another meeting date in order to obtain additional information that will assist in their deliberation on the request.
2. Approval with No Conditions. The Commission may take action to approve the request without imposing any conditions.
3. Approval with Conditions. The Commission may take action to recommend to approval the request with conditions.
4. Denial. The Commission may take action to recommend denial of the request.

### **Conditional Permit**

1. Deferral. The Commission may defer action to another meeting date in order to obtain additional information that will assist in their deliberation on the request.
2. Recommend Approval With No Conditions. The Commission may take action to recommend to the State Land Use Commission approval of the request without imposing any new conditions.
3. Recommend Approval With Conditions. The Commission may take action to recommend to the State Land Use Commission approval of the request with new conditions.
4. Recommend Denial. The Commission may take action to recommend to the State Land Use Commission denial of the request.

### **Special Management Area Use Permit**

1. Deferral. The Commission may defer action to another meeting date in order to obtain additional information that will assist in their deliberation on the request.
2. Recommend Approval With No Conditions. The Commission may take action to approve the request without imposing conditions.

3. Recommend Approval With Conditions. The Commission may take action to approve the request with conditions.

4. Recommend Denial. The Commission may take action to recommend denial of the request

#### **Shoreline Setback Variance**

1. Deferral. The Commission may defer action to another meeting date in order to obtain additional information that will assist in their deliberation on the request.

2. Recommend Approval With No Conditions. The Commission may take action to approve the request without imposing conditions.

3. Recommend Approval With Conditions. The Commission may take action to approve the request with conditions.

4. Recommend Denial. The Commission may take action to recommend denial of the request.

#### **Off-Site Parking Approval**

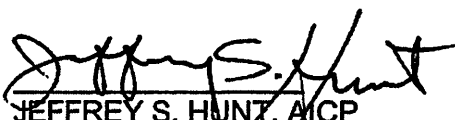
1. Deferral. The Commission may defer action to another meeting date in order to obtain additional information that will assist in their deliberation on the request.

2. Recommend Approval With No Conditions. The Commission may take action to approve the request without imposing conditions.

3. Recommend Approval With Conditions. The Commission may take action to approve the request with conditions.

4. Recommend Denial. The Commission may take action to recommend denial of the request

APPROVED:

  
JEFFREY S. HUNT, AICP  
Planning Director

Parcel 149 (Parking Lot)

Parcel 029 (MOSR)



Copyright 2004, County of Maui

0 237.29ft 0 0.04mi

Maui Oceanfront Inn &  
Sarento's Restaurant

May  
2006

Figure No. 1  
Regional Location Map

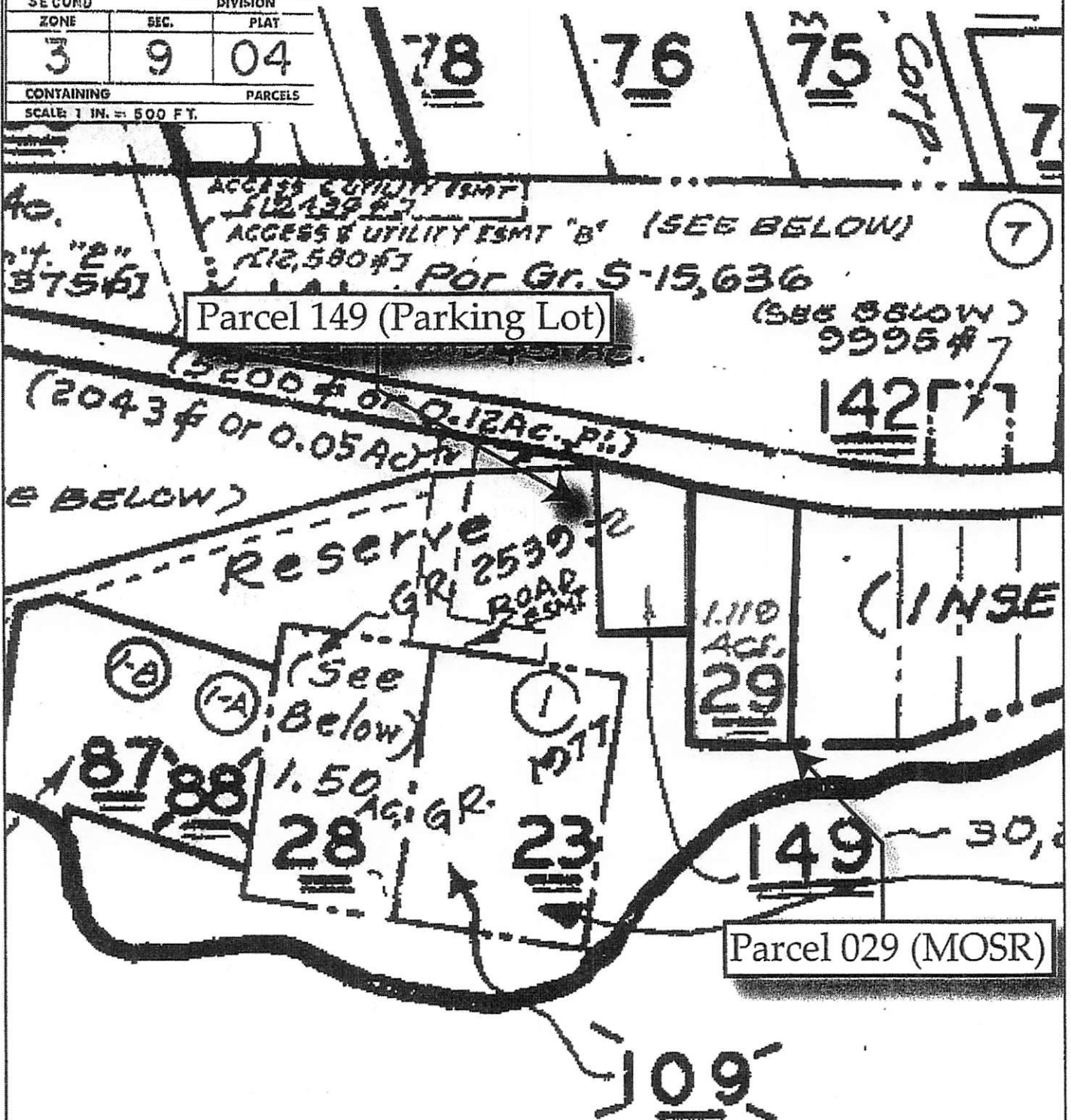


EXHIBIT 1

DEPARTMENT OF THE TAX COMMISSIONER  
TAXATION MAPS BUREAU  
STATE OF HAWAII  
TAX MAP

TRUE NORTH  
Scale: 1 in. = 500 ft.

SECOND		DIVISION
ZONE	SEC.	PLAT
3	9	04
CONTAINING		PARCELS
SCALE: 1 IN. = 500 FT.		



Maui Oceanfront Inn &  
Sarento's on the Beach

May 2006

Figure No. 2  
TMK Map

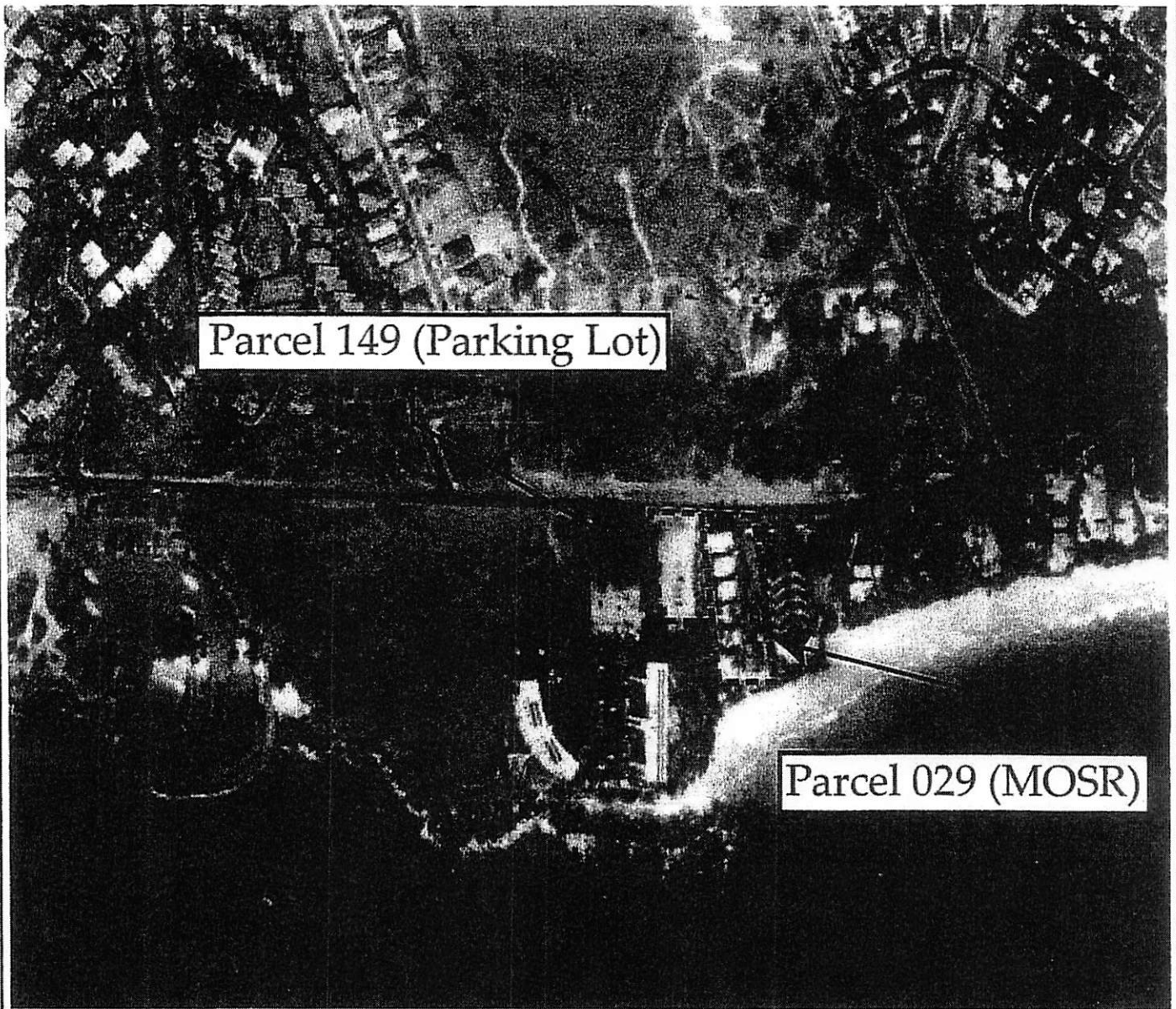
(2) 3-9-004: 029 & 149

(not to scale)



EXHIBIT 2





\*Parcel locations approximate

Maui Oceanfront Inn &  
Sarento's Restaurant

May  
2006



Figure No. 3  
Aerial Map



EXHIBIT 3

EXHIBIT "B"

**RECEIVED**  
MAY 26 2006

CHRIS HAKI & PARTNERS  
Landscape Architecture & Planning

LAND COURT SYSTEM	REGULAR SYSTEM
Return by Mail (X) Pickup ( )	To:
WESTERN APARTMENT SUPPLY & MAINTENANCE CO. 1335 HOTEL CIRCLE SOUTH, PENTHOUSE SAN DIEGO CA. 92108	TROM: 110858 / 200016169 TCES: AD-101-0357 BARBARA PAULC
Total Number of Pages: 4	
Tax Map Key No. (2)3-9-004:029	

CONSENT TO ASSIGNMENT OF  
GENERAL LEASE NO. S-4212

CONSENT is hereby given by the STATE OF HAWAII, by its Board of Land and Natural Resources, Lessor under unrecorded General Lease No. S-4212 dated September 4, 1968 leased to Walter C. Witte and John J. Fagan, as "Lessee," by mesne assignment the general lease was assigned to Towa Shinyo Maui, Inc., a Hawaii corporation by Assignment of Lease dated March 27, 1990, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 90-103575, to the Assignment of Lease dated February 29, 2000, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2000-082846, from TOWA SHINYO MAUI, INC., a Hawaii corporation, whose address is 220 South King Street, Suite 1280, Honolulu, Hawaii 96813, as "Assignor," to WESTERN APARTMENT SUPPLY & MAINTENANCE CO., a California corporation, whose address is 1335 Hotel Circle South, Penthouse, San Diego, California 92108, as "Assignee"; SUBJECT, HOWEVER, to the provisions of Section 171-21, Hawaii Revised Statutes, as amended, relating to the rights of holder of security interest.



IT IS UNDERSTOOD that except as provided herein, should there be any conflict between the terms of General Lease No. 9-4712 and the terms of the assignment, the former shall control, and further, that except as provided herein, this consent shall not in any manner be construed as varying in any respect the terms and conditions of the general lease; and also that no further assignment of any interest under the general lease shall be made without the written consent of the Board of Land and Natural Resources being first obtained and endorsed thereon.

FURTHERMORE, Assignor hereby acknowledges that the Lessor's consent to assignment of the general lease, does not release the Assignor of any and all responsibilities, obligations, liabilities, and claims respecting or arising under or out of said general lease prior to the effective date of this assignment.

THIS assignment of lease is subject to a Mortgage, Security Agreement and Financing Statement dated August 1, 1990 recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 90-133976.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed this 13th day of June, 2000.

STATE OF HAWAII

By [Signature]  
Chairperson and Member  
Board of Land and  
Natural Resources

LESSOR

TOWA SHINYO MAJI, INC., a Hawaii  
corporation

By [Signature]  
Tatsuo Tatsumi  
Its Vice President and Secretary

ASSIGNOR

APPROVED AS TO FORM:

[Signature]  
Deputy Attorney General

Dated: JUN 13 2000

S:\s-4212ca\co-ashinyo\western\smk\2\3-9-00:29.012

G.L.  
Rev. 4/5/65

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-4212

THIS INDENTURE OF LEASE, made this 4th day of  
September, 1968, by and between the STATE OF HAWAII,  
hereinafter referred to as the "LESSOR", by its Board of Land  
and Natural Resources, called the "BOARD", and  
WALTER C. WITTE and JOHN J. FAGAN

whose residence and post office address is 1054 Kealaolu  
Avenue, Honolulu Hawaii 96816

hereinafter referred to as the "LESSEE";

WITNESSETH:

THAT, the Lessor for and in consideration of the  
rent to be paid and of the terms, covenants and conditions herein  
contained, all on the part of the Lessee to be kept, observed  
and performed, does hereby demise and lease unto the Lessee, and  
the Lessee does hereby lease and hire from the Lessor the prem-  
ises known as Government Lot, situate on the west side of  
Piilani Highway, Kamaole, Wailuku (Kula), Maui, Hawaii,  
more particularly described in Exhibit "A" and shown on the map  
marked Exhibit "B", hereto attached and made parts hereof.

TO HAVE AND TO HOLD the demised premises unto the Les-  
see for the term of sixty-five (65) years, commencing on the  
4th day of September, 1968, up to and including  
the 3rd day of September, 2033, unless sooner  
terminated as hereinafter provided, the Lessor reserving and  
the Lessee yielding and paying to the Lessor at the Office of  
the Department of Land and Natural Resources, Honolulu, Oahu,  
State of Hawaii, a net annual rental as provided hereinbelow,

payable in advance, but not more than one year in advance, without notice or demand, in semi-annual installments on the 4th day of March and September of each and every year during said term as follows:

A. Rental during the first one year~~s~~ is hereby waived.

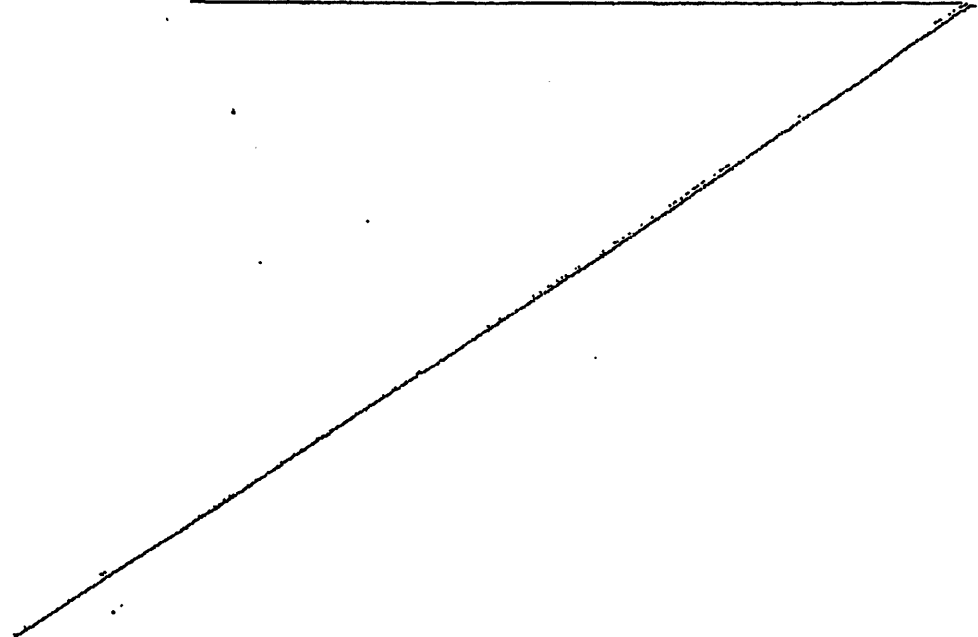
B. For the next 19 years, the sum of SIX THOUSAND SEVEN HUNDRED AND NO/100 DOLLARS (\$6,700.00) per annum.

C. The annual rental hereinabove reserved shall be reopened and redetermined at the expiration of the 20th, 35th, 45th and 55th year(s) of said term. The rental for any ensuing rental period shall be the rental for the immediately preceding rental period or the fair market rental at the time of reopening, whichever is higher. The fair market rental shall be determined by an appraiser whose services shall have been contracted for by the Lessor; provided that should the Lessee fail to agree to such fair market rental, Lessee may appoint its own appraiser who, together with the Lessor's appraiser, shall promptly appoint a third appraiser and the fair market rental shall be determined by arbitration as provided by Chapter 188, Revised Laws of Hawaii 1955. The Lessee shall pay for the services of its own appraiser and the cost for the services of the third appraiser shall be borne equally by the Lessor and Lessee.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the demised premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, including strip mining.

"Minerals", as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, in, on or under the land; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in road construction in furtherance of the Lessee's permitted activities on the demised premises and not for sale to others. (b) All surface and ground waters appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the demised premises as may be required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph just compensation shall be paid to the Lessee for any of Lessee's improvements taken.



The Lessor hereby covenants and agrees with the Lessee that upon payment of the said rent at the times and in the manner aforesaid and the observance and performance of the covenants, terms and conditions hereof on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess and enjoy the demised premises for the term hereby demised, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through and under it.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. That the Lessee shall pay said rent to the Lessor at the times, in the manner and form aforesaid and at the place specified above, or at such other place as the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. That the Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which said demised premises or any part thereof, or any improvements thereon, or the Lessor or Lessee in respect thereof, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments, together with interest, as shall become due and payable during said term.

3. Utility services. That the Lessee shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges,

as to which said demised premises, or any part thereof, or any improvements thereon or the Lessor or Lessee in respect thereof may during said term become liable, whether assessed to or payable by the Lessor or Lessee.

4. Covenant against discrimination. That the use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color or national origin.

5. Sanitation, etc. That the Lessee shall keep the demised premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. That the Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the demised premises, or any part thereof, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed any trees now growing on said premises.

7. Compliance with laws. That the Lessee shall comply with all of the requirements of all municipal, state and federal authorities and observe all municipal ordinances and state and federal statutes, pertaining to the said premises, now in force or which may hereinafter be in force.

8. Inspection of premises. That the Lessee will permit the Lessor and its agents, at all reasonable times during the said term, to enter the demised premises and examine the state of repair and condition thereof.

9. Improvements. That the Lessee shall not at any time during said term construct, place, maintain and install on said premises any building, structure or improvement of any kind and description whatsoever except with the prior approval of the

Board and upon such conditions as the Board may impose, including any adjustment of rent, unless otherwise provided herein.

10. Repairs to improvements. That the Lessee shall, at its own expense, keep, repair and maintain all buildings and improvements now existing or hereafter constructed or installed on the demised premises in good order, condition and repair, reasonable wear and tear excepted.

11. Liens. That the Lessee will not commit or suffer any act or neglect whereby the demised premises or any improvement thereon or the estate of the Lessee in the same shall become subject to any attachment, lien, charge or encumbrance whatsoever, except as hereinafter provided, and shall indemnify and hold harmless the Lessor from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom.

12. Character of use. That the Lessee shall use or allow to be used the premises hereby demised solely for apartment-motel cottages and accessory uses. Accessory uses shall include a restaurant-bar and other service facilities. ~~and accessory uses.~~

13. Assignments, etc. That the Lessee shall not transfer, assign or permit any other person to occupy or use the said premises or any portion thereof, or transfer or assign this lease or any interest therein, either voluntarily or by operation of law, except by way of devise, bequest or intestate succession, and any transfer or assignment so made shall be null and void; provided, that with the prior written approval of the Board the assignment and transfer of this lease or unit thereof may be made if (1) it contains the personal residence of the Lessee; (2) in the case of commercial, industrial, hotel, resort, apartment and other business uses, the Lessee was required to put in substantial building improvements; (3) the Lessee becomes mentally or physically disabled; (4) extreme economic hardship is



demonstrated to the satisfaction of the Lessor or (5) it is to the corporate successor of the Lessee.

14. Subletting. That the Lessee shall not rent or sublet the whole or any portion of the demised premises, without the prior written approval of the Board; provided, however, that prior to such approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the said sublessee; provided, further, that the rent may not be revised downward.

15. Mortgage. That, except as provided herein, the Lessee shall not mortgage, hypothecate or pledge the said premises or any portion thereof or this lease or any interest therein without the prior written approval of the Board and any such mortgage, hypothecation or pledge without such approval shall be null and void.

16. Indemnity. That the Lessee will indemnify, defend and hold the Lessor harmless (1) from and against any claim or demand by third persons for loss, liability or damage, including claims for property damage, personal injury or wrongful death, arising out of any accident on the demised premises and sidewalks and roadways adjacent thereto or occasioned by any act or nuisance made or suffered on the premises, or by any fire thereon or growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition and will reimburse the Lessor for all costs and expenses in connection with the defense of such claims; (2) from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

17. Costs of litigation. That in case the Lessor shall, without any fault on its part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall and will pay all costs and expenses incurred by or imposed on the Lessor, furthermore, the Lessee shall and will pay all costs and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the demised premises or in the collection of delinquent rental, taxes and any and all other charges.

18. Liability insurance. That the Lessee shall procure, at its own cost and expense, and maintain during the entire period of this lease, with an insurance company or companies acceptable to the Lessor, a policy or policies of comprehensive public liability insurance, if and when the same shall be required by the Board, in an amount acceptable to the Board, insuring against all claims for personal injury, death and property damage; that said policy or policies shall cover the entire premises, including all buildings, improvements and grounds and all roadways or sidewalks on or adjacent to the demised premises in the control or use of the Lessee. The Lessee shall furnish the Lessor with a certificate showing such policy to be initially in force and shall furnish a like certificate upon each renewal of such policy, each such certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor of any intention to cancel any such policy prior to actual cancellation. The procuring of this policy shall not release or relieve the Lessee of its responsibility under this lease as set forth herein or limit the amount of its liability under this lease.

19. Bond, performance. That the Lessee shall, at its own cost and expense, within thirty ( 30 )

days after the date of receipt of this lease document, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by said Lessee of all of the terms, conditions and covenants of this lease, in an amount equal to two times the annual rental then payable. Said bond shall provide that in case of a breach or default of any of the terms, covenants, conditions and agreements contained herein, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

20. Lessor's lien. That the Lessor shall have a lien on all the buildings and improvements placed on the said premises by the Lessee, on all property kept or used on the demised premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings situated on said premises for all such costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee and for the payment of all money as provided in this lease to be paid by the Lessee, and such lien shall continue until the amounts due are paid.

21. Improvements. That the Lessee shall, at its own cost and expense, complete the construction of twelve (12) apartment-motel cottages, each having a minimum floor area of 900 square feet, exclusive of lanai or patio, to be constructed of masonry or new materials at a cost of not less than TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00), including landscaping and other related improvements, in accordance with such plans and specifications submitted by the Lessee to and approved by the Chairman of the Board of Land and Natural Resources and in full compliance with all laws, ordinances, rules and regulations applicable thereto. The aggregate ground floor area of all buildings to be erected shall not exceed one-third of the total site area.

The building height limitation shall be two (2) stories. Preliminary plans shall be submitted within ten (10) days following the date of sale. Final plans and specifications shall be submitted within sixty (60) days following the date of sale. Construction shall be initiated within sixty (60) days after receipt of notice to proceed and shall be completed in accordance with the following schedule:

a. Completion of a minimum of six (6) apartment-motel cottages and landscaping within one (1) year of receipt of notice to proceed with construction:

b. Completion of all twelve (12) apartment-motel cottages, landscaping and other related improvements within two (2) years of receipt of notice to proceed with construction.

22. Bond, improvement. That the Lessee shall, within thirty (30) days after the date of receipt of this lease document, procure and deposit with the Lessor a surety bond in the amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00), acceptable to the Chairman, which bond shall name the State as obligee, conditioned upon the faithful observance and performance of the said building requirement contained herein, the completion of such building and improvements on or before the specified date of completion free from all liens and claims and that the Lessee shall save and hold the State harmless from all liens, suits, actions or damages arising out of, caused from or attributable to such work performed pursuant to said building requirement.

23. Insurance. That the Lessee will, at its own expense, at all times during the term of this lease, keep insured all buildings and improvements erected on the land hereby demised in the joint names of Lessor, Lessee and Mortgagee, if any, as their interests may appear, against loss or damage by fire including perils specified in the extended coverage endorsement and in an amount equal to the maximum insurable

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value thereof, in a company or companies approved by the Lessor, and will pay the premiums thereon at the time and place the same are payable; that the policy or policies of insurance shall be made payable in case of loss to the Lessor, Lessee and Mortgagee, if any, as their interests may appear, and shall be deposited with the Mortgagee; and that any proceeds derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible, be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to the plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may surrender this lease and pay the balance owing on any mortgage and the Lessee shall then receive that portion of said proceeds which the unexpired term of this lease at the time of said loss or damage bears to the whole of said term, the Lessor to retain the balance of said proceeds.

The Lessee shall furnish to the Lessor and Mortgagee, if any, with a certificate showing such policy or policies to be initially in force and shall furnish a like certificate upon each renewal of such policy or policies, each such certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor and Mortgagee, if any, of any intention to cancel any such policy or policies, prior to actual cancellation.

24. Surrender. That the Lessee shall and will at the expiration or sooner termination of this lease, peaceably and quietly surrender and deliver possession of the demised premises to the Lessor, together with all buildings and improvements of whatever name or nature, now on or hereafter erected or placed upon the same, in good order and condition, reasonable wear and tear excepted.

IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN  
THE PARTIES AS FOLLOWS:

1. Mortgage. That upon due application and with the written consent of the Lessor, the Lessee may mortgage this lease or any interest therein or create a security interest in the public land hereby demised. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, such consent may extend to foreclosure and sale of Lessee's interest at such foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own or otherwise acquire and hold the land or any interest therein. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of such mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned Federal agencies.

2. Breach. That time is of the essence of this agreement and if the Lessee shall fail to yield or pay such rent or any part thereof at the times and in the manner aforesaid, or shall become bankrupt, or shall abandon the said premises, or if this lease and said premises shall be attached or otherwise be taken by operation of law, or if any assignment be made of

the Lessee's property for the benefit of creditors, or shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed, and such failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of such breach or default by personal service, registered mail or certified mail to the Lessee at its last known address and to each mortgagee or holder of record having a security interest in the demised premises, the Lessor may, subject to the provisions of Section 103A-21, Revised Laws of Hawaii 1955, as amended, at once re-enter such premises or any part thereof, and upon or without such entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements thereon shall remain and become the property of the Lessor.

3. Right of holder of record of a security interest.

In the event the Lessor seeks to forfeit the interest created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach within sixty (60) days from the date of receipt of the notice hereinabove set forth, or within such additional period as the Lessor may allow for good cause, and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any monies at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of said debt and mortgage from said holder or if ownership of such interest or estate shall have vested in such holder by way of foreclosure, or action in lieu thereof, the Lessor shall be

entitled to the conveyance of said interest or estate upon payment to said holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with such foreclosure and preservation of its security interest, less appropriate credits, including income received from said interest or estate subsequent to such foreclosure; or (b) terminate the outstanding interest or estate subject to the lien of such mortgage, without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and thereupon use its best efforts to redispense of the land affected thereby to a qualified and responsible person who will assume the obligation of the mortgage and the debt thereby secured; provided, that a reasonable delay by the Lessor in instituting or prosecuting any right or remedy it may have hereunder shall not operate as a waiver of such right or to deprive it of such remedy when it may still hope otherwise to resolve the problems created by the breach or default. The proceeds of any disposition effected hereunder shall be applied, first, to reimburse the Lessor for costs and expenses in connection with such disposition, second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor in connection with such interest or estate terminated as aforesaid, and the balance, if any, shall be paid to the owner of such interest or estate.

4. Condemnation. That, if at any time, during the term of this lease, any portion of the demised premises should be condemned for public purposes by the State or any county or city and county or any other governmental agency or subdivision thereof, the rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value



of growing crops, if any, which he is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the lands occupied by the Lessee. The Lessee shall not by reason of such condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of said leasehold interest by reason of such condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion so taken renders the remainder unsuitable for the uses or uses for which the land was demised, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability therefor; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within such reasonable period as may be allowed by the Lessor.

5. Right to enter. The Lessor shall have the right to itself and to the agents and representatives of the county in which said demised premises are situated, to enter and cross any portion of said demised land for the purpose of performing any public or official duties; provided, however, in the exercise of such rights, the Lessor shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

6. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the demised premises at all reasonable times following a published notice for the proposed disposition of the same for purposes of informing and apprising such person or persons of the condition of said lands preparatory to such proposed

disposition; provided, however, that any such entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no such authorization shall be given more than one year before the expiration of the term of this lease.

7. Acceptance of rent not a waiver. That the acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant or condition of this lease, nor of the Lessor's right to re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any such breach, and the failure of the Lessor to insist upon strict performance of any such term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition or option.

8. Extension of time. That notwithstanding any provision contained herein to the contrary, wherever applicable, the Board may for good cause shown, allow additional time beyond the time or times specified herein to the Lessee, in which to comply, observe and perform any of the terms, conditions and covenants contained herein.

9. Justification of sureties. Such bonds as may be required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as such in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 7-21, Revised Laws of Hawaii 1955; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or

sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after such period as the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to said Lessor a deed or deeds of trust of real property, all of such character as shall be satisfactory to said Lessor and valued in the aggregate at not less than the principal amount of said bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by the Lessor under the foregoing proviso shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until such consent be granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation hereunder.

10. Waiver, modification, reimposition of bond provision. Upon substantial compliance by the Lessee of the terms, covenants, and conditions herein contained on its part to be observed or performed, the Lessor at its discretion may waive or suspend the performance bond and/or improvement bond requirements or modify the same by reducing the amount thereof; provided, however, that the Lessor reserves the right to reactivate or reimpose said bond and/or bonds in and to their original tenor and form at any time throughout the term of this lease.

As used herein, unless clearly repugnant to the context:

(a) "Chairman" shall mean the Chairman of the Board of Land and Natural Resources of the State of Hawaii or his successor;

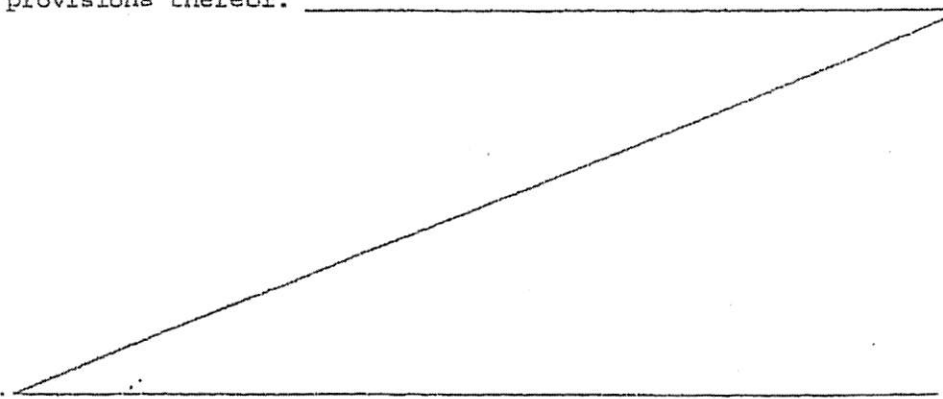
(b) "Lessee" shall mean and include the Lessee herein, its heirs, executors, administrators, successors or permitted assigns, according to the context hereof;

(c) "Holder of record of a security interest" is a person who is the owner or possessor of a security interest in the land demised and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of such interest;

(d) "Premises" shall be deemed to include the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon;

(e) The use of any gender shall include all genders, and if there be more than one lessee, then all words used in the singular shall extend to and include the plural;

(f) The marginal headings throughout this lease are for the convenience of the Lessor and the Lessee and are not intended to construe the intent or meaning of any of the provisions thereof.



STATE OF Washington } ss.  
County of Pierce

On this 25th day of March, A. D. 1969, before me, the under-  
signed, a Notary Public in and for the State of Washington, duly commissioned  
and sworn personally appeared Walter C. Witte

to me known to be the individual described in and who executed the foregoing instrument,  
and acknowledged to me that he signed and sealed the said instrument as his  
free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate  
above written.

Luann Skene  
Notary Public in and for the State of Washington

residing at Tacoma

(Acknowledgement by Individual. Washington Title Insurance Company. Form I. 28)

LESSOR

Walter C. Witte  
WALTER C. WITTE

John J. Fagan  
JOHN J. FAGAN

LESSEE

APPROVED AS TO FORM:

Deputy Attorney General  
Dated: 3-17-69

STATE OF HAWAII )  
 ) SS  
CITY & COUNTY OF HON. )

On this 27th day of March, 1969,

before me personally appeared JOSEPH J. FAGAN, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Dwight K. Wong  
Notary Public, First Judicial  
Circuit, State of Hawaii.

My Commission expires: Nov 13, 1970

STATE OF HAWAII )  
 ) SS  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
before me appeared \_\_\_\_\_ and  
\_\_\_\_\_, to me personally known,  
who, being by me duly sworn, did say that they are the  
\_\_\_\_\_ and \_\_\_\_\_,  
respectively, of \_\_\_\_\_,  
and that the seal affixed to the foregoing instrument is the  
corporate seal of said corporation, and that said instrument  
was signed and sealed on behalf of said corporation by au-  
thority of its Board of Directors, and the said \_\_\_\_\_  
\_\_\_\_\_ and \_\_\_\_\_ acknowledged  
that they executed said instrument as the free act and deed of  
said corporation.

Notary Public, \_\_\_\_\_ Judicial  
Circuit, State of Hawaii

My Commission expires: \_\_\_\_\_

EXHIBIT "A"

GOVERNMENT LOT

Situate on the west side of Piilani Highway,  
adjoining Grant 13225 to Yasuko M. Watanabe  
and Grant 1959 to Mahi

Kamalo, Wailuku (Kula), Maui, Hawaii

Being portion of the Government Land of Kamalo

Beginning at the southeast corner of this parcel of  
land, at the northeast corner of Grant 13225 to Yasuko M.

Watanabe and on the west side of Piilani Highway, the coordi-  
nates of said point of beginning referred to Government Survey  
Triangulation Station "PUU O KALI" being 9644.91 feet South  
and 20,033.00 feet West, as shown on Government Survey Regis-  
tered Map 3005 and running by azimuths measured clockwise from  
True South:-

1. 84° 30' 356.83 feet along Grant 13225 to Yasuko M.  
Watanabe and Grant 1959 to  
Mahi;
2. 171° 30' 132.00 feet along Government Beach Reserve;
3. 264° 30' 383.09 feet along Government Beach Reserve;
4. 3° 07' 84.52 feet along the west side of Piilani  
Highway;
5. Thence along the west side of Piilani Highway, on a curve  
to the left having a radius of  
1939.86 feet, the chord azimuth  
and distance being: 2° 23' 50"  
48.71 feet to the point of  
beginning and containing an  
AREA OF 1.119 ACRES.

[illegible]



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

REVOCABLE PERMIT NO. 7235

KNOW ALL MEN BY THESE PRESENTS:

THAT, effective the 1st day of December, 2000, by and between the STATE OF HAWAII, hereinafter referred to as the "State," by its Board of Land and Natural Resources, called the "Board," and Western Apartment Supply & Maintenance Co., a California corporation, hereafter called the "Permittee," whose mailing address is 2980 S. Kihei Road, Kihei, Maui, Hawaii 96753 is permitted to enter and occupy, on a month-to-month basis only, pursuant to section 171-55, Hawaii Revised Statutes, that certain parcel of government land (and any improvements located thereupon) situate at Kamaole, Wailuku, Maui, TMK: (2) 3-9-04: Portion 01 as indicated on the map attached hereto, if any, and made a part hereof, containing an approximate area of 0.694 acres, more or less which parcel is hereinafter referred to as the "Premises."

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The Permittee shall:

1. Occupy and use the premises for the following specified purposes only:  
Parking Lot Purposes
2. Pay, at the office of the Department of Land and Natural Resources, Honolulu, Oahu, or at the office of its land agent on the island where the Premises are located, the sum of ONE HUNDRED TWENTY-SEVEN AND NO/100 DOLLARS (\$127.00) being the rental due and payable on the first day of each and every month commencing December 1, 2000.

The interest rate on any unpaid or delinquent rentals shall be at one per cent (1%) per month plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency.

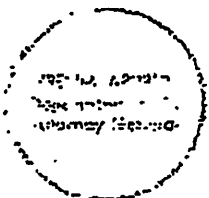
3. Upon execution of this Permit, deposit with the Board of Land and Natural

Resource hereinafter called the "Board," in an amount equal to two times the monthly rental then payable, as security for the faithful performance of all of these terms and conditions.

The deposit will be returned to the Permittee upon termination of this Permit, but only after all of the terms and conditions of this Permit have been observed and performed to the satisfaction of an authorized representative of the Department of Land and Natural Resources.

4. At the Permittee's own cost and expense, keep the government-owned improvements located on the Premises insured against loss by fire and other hazards, casualties, and contingencies, for the full insurable value of those improvements. The policies shall name the State of Hawaii as an additional insured and shall be filed with the Board. In the event of loss, damage, or destruction of those improvements, the Board shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage, or destruction of the government-owned improvements and the balance of those proceeds, if any, shall be delivered to the Permittee.
5. Give the Board twenty-five (25) calendar days notice, in writing, before vacating the Premises.
6. If a holdover permittee or licensee, pay all real property taxes, which shall be assessed against the Premises from the effective date of this Permit. In addition, a Permittee, not a holdover permittee or licensee, who has occupied the Premises for commercial purposes for a continued period of one year or more, shall pay the real property taxes assessed against the Premises after the first year of the Permit as provided in section 246-36(1)(D), Hawaii Revised Statutes.
7. Observe and comply with all laws, ordinances, rules, and regulations of the federal, state, municipal, or county governments affecting the Premises or improvements.
8. Repair and maintain all buildings or other improvements now or hereafter on the Premises.
9. Obtain the prior written consent of the Board before making any major improvements.
10. Keep the Premises and improvements in a clean, sanitary, and orderly condition.

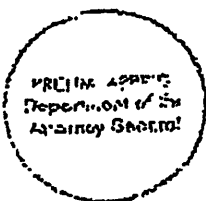
11. Pay, with . . . due, all payments for water and other utilities, and whatever charges for the collection of garbage as may be levied.
12. Not make, permit, or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Premises.
13. At all times with respect to the Premises, use due care for public safety and agree to indemnify, defend, and hold harmless the State of Hawaii, its officers, agents, and employees from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the Permittee or the Permittee's employees, agents, or officers under this Permit. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or termination of this Permit.
14. Procure, at its own cost and expense, and maintain during the entire period of this Permit, a policy or policies of commercial general liability insurance, in an amount acceptable to the Chairperson, insuring the State of Hawaii and the Permittee against all claims for personal injury, death, and property damage. The policy or policies shall cover the entire Premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the Premises in the control or use of the Permittee. The Permittee shall furnish the State with a certificate showing the policy to be initially in force and shall furnish a like certificate upon each renewal of the policy, each certificate to contain or be accompanied by an assurance of the insurer to notify the State of any intention to cancel any policy at least sixty (60) calendar days prior to actual cancellation. The procuring of this policy shall not release or relieve the Permittee of its responsibilities under this Permit as set forth herein or limit the amount of its liability under this Permit.
15. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Permittee (other than condemnation proceedings), the Permittee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the State; furthermore, the Permittee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and agreements of this Permit, in recovering possession of the Premises, or in the collection of delinquent rental, taxes, and any and all other charges.



B. Additional Conditions:

1. The Board may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) calendar days prior to the revocation; provided, however, that in the event payment of rental is delinquent for a period of ten (10) calendar days or more, this Permit may be revoked upon written notice to the Permittee at least five (5) business days prior to the revocation.
2. If the Permittee does not vacate the Premises upon the revocation of the Permit by the Board, the Permittee shall pay to the State liquidated damages at the daily rate of \$ 3.00 per day or twenty percent (20%) of the monthly rental, whichever is greater for each day, or portion thereof, the Permittee remains on the Premises after the date of revocation. The payment is in addition to any other rights or remedies the Board may be entitled to pursue for breach of contract, or for illegal occupancy, including the right to evict the Permittee without court action, and the cost thereof to be paid by the Permittee.
3. If the Permittee fails to vacate the Premises upon the revocation of the Permit, the Board by its agents, or representatives may enter upon the Premises and remove and dispose of at Permittee's cost and expense, all vehicles, equipment, materials, or any personal property remaining on the Premises, and the Permittee agrees to pay for all costs and expenses of removal and disposition.
4. The Board may at any time increase or decrease the monthly rental by written notice at least thirty (30) business days prior to the date of change of rent.
5. Any major improvements, including but not limited to buildings and fences, erected on or moved onto the Premises by the Permittee shall remain the property of the Permittee and the Permittee shall have the right, prior to the termination of this Permit, or within an additional period the Board in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the Permittee shall fail to remove the improvements within thirty (30) calendar days, after written notice to remove has been sent, the Board may elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the Permittee.
6. The Board reserves the right for its agents, or representatives to enter or cross any portion of the Premises at any time in the performance of its duties.

7. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.
8. It is understood that the Permittee has inspected the Premises and knows the conditions thereof and fully assumes all risks incident to its use.
9. The acceptance of rent by the Board shall not be deemed a waiver of any breach by the Permittee of any term, covenant, or condition of this Permit nor of the Board's right to declare and enforce a forfeiture for any breach, and the failure of the Board to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option of this Permit.
10. The term of this month-to-month permit beyond one year from date of issuance is subject to the prior approval of the Board.
11. The use and enjoyment of the Premises shall not be in support of any policy which discriminates upon any basis or in any manner that is prohibited by any applicable federal, state, or county law.
12. Any and all disputes or questions arising under this Permit shall be referred to the Chairperson of the Board and his determination of these disputes or questions shall be final and binding on the parties.
13. Permittee shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law. Permittee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Permittee's business, and then only after written notice is given to the Board of the identity of such materials and upon the Board's consent which consent may be withheld at the Board's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Permittee, then the Permittee shall be responsible for the costs thereof. In addition, Permittee shall execute affidavits, representations and the like from time to time at the Board's request concerning the Permittee's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by Permittee.



Permittee agrees to indemnify, defend, and hold the State of Hawaii, the Board, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from and use or release of hazardous materials on the premises occurring while Permittee is in possession, or elsewhere if caused by Permittee or persons acting under Permittee. These covenants shall survive the expiration or earlier termination of the permit.

For the purpose of this permit "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

14. Prior to the termination of the subject permit, Permittee shall conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the Department of Land and Natural Resources. The termination will not be approved by the Board of Land and Natural Resources unless this evaluation and abatement provision has been executed.
15. Unless the text indicates otherwise, the use of any gender shall include all genders and, if the Permittee includes more than one person, the singular shall signify the plural and this Permit shall bind the persons, and each of them jointly and severally.
16. The parking lot shall allow and be properly identified for public use.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

DATED: January 9, 2001.

STATE OF HAWAII

By [Signature]  
Chairperson and Member  
Board of Land and  
Natural Resources

Approved by the Board of  
Land and Natural Resources  
at its meeting held on  
05/12/00, Item D-12.

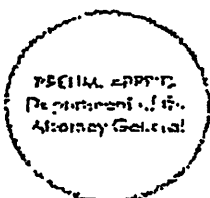
PERMITTEE  
WESTERN APARTMENT SUPPLY &  
MAINTENANCE CO.

[Signature]  
CARROLL G. DAVIS,  
Its President

APPROVED AS TO FORM:

[Signature]  
Deputy Attorney General

Dated: 12/29/00



STATE OF HAWAII

COUNTY OF

*Maui* } ss.

On this 6 day of December, 2000,  
before me personally appeared Carroll G. Davis  
and \_\_\_\_\_, to me personally known,  
who, being by me duly sworn or affirmed, did say that such  
person(s) executed the foregoing instrument as the free act and  
deed of such person(s), and if applicable in the capacity shown,  
having been duly authorized to execute such instrument in such  
capacity.

*Jeanette Corden*  
Notary Public, State of Hawaii

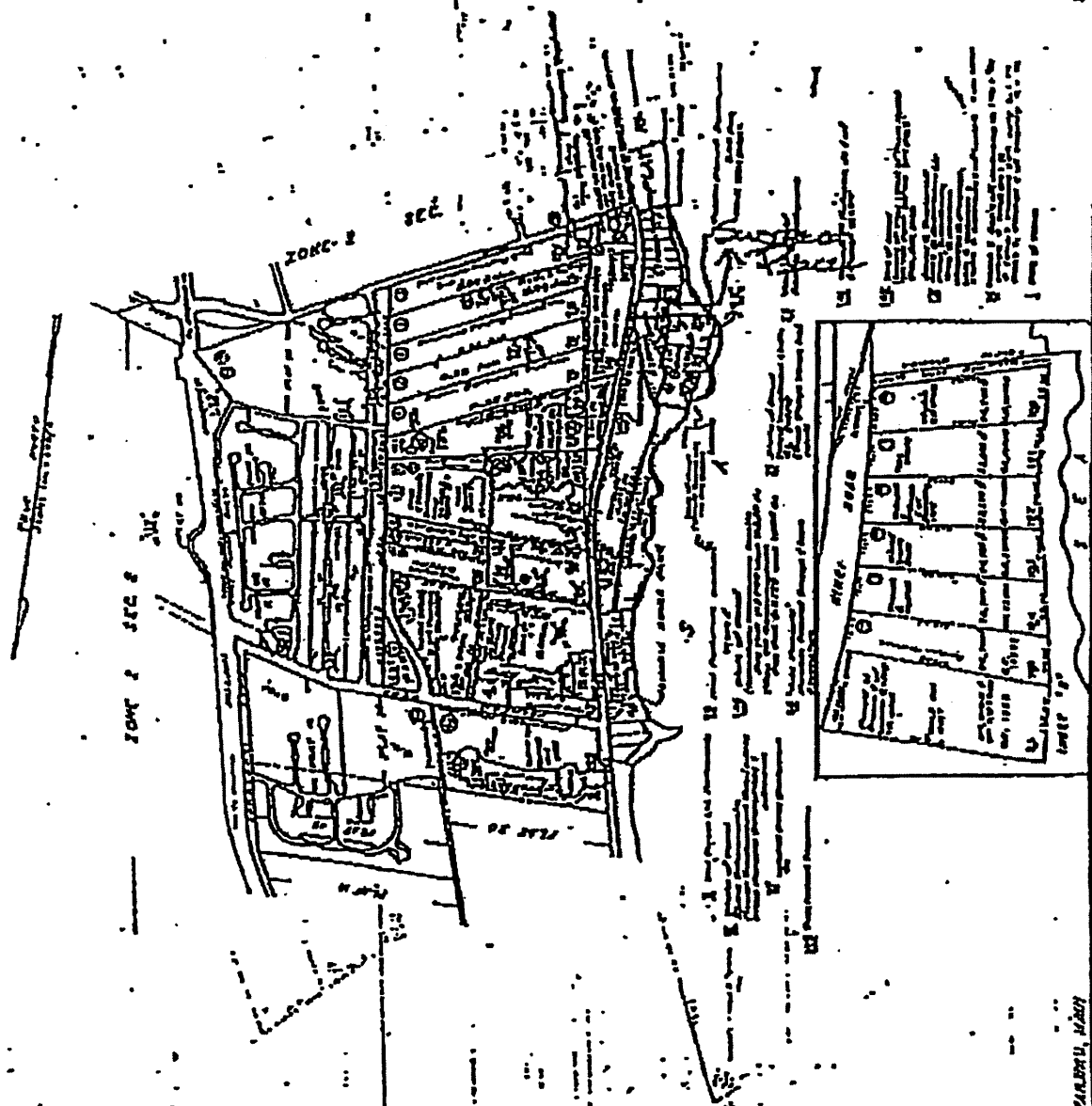
*Jeanette Corden*

My commission expires: 5/20/2004



PRIMA APPRO.  
Department of the  
Attorney General

# LAND BOARD EXHIBIT "A"



1. The land shown on this map is the property of the United States of America, and is subject to the provisions of the Act of March 3, 1879, relating to the disposal of the public lands.

2. The land shown on this map is the property of the United States of America, and is subject to the provisions of the Act of March 3, 1879, relating to the disposal of the public lands.

3. The land shown on this map is the property of the United States of America, and is subject to the provisions of the Act of March 3, 1879, relating to the disposal of the public lands.

4. The land shown on this map is the property of the United States of America, and is subject to the provisions of the Act of March 3, 1879, relating to the disposal of the public lands.

5. The land shown on this map is the property of the United States of America, and is subject to the provisions of the Act of March 3, 1879, relating to the disposal of the public lands.

6. The land shown on this map is the property of the United States of America, and is subject to the provisions of the Act of March 3, 1879, relating to the disposal of the public lands.

7. The land shown on this map is the property of the United States of America, and is subject to the provisions of the Act of March 3, 1879, relating to the disposal of the public lands.

8. The land shown on this map is the property of the United States of America, and is subject to the provisions of the Act of March 3, 1879, relating to the disposal of the public lands.

9. The land shown on this map is the property of the United States of America, and is subject to the provisions of the Act of March 3, 1879, relating to the disposal of the public lands.

10. The land shown on this map is the property of the United States of America, and is subject to the provisions of the Act of March 3, 1879, relating to the disposal of the public lands.

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FAX MAP		

SUBJECT TO CHANGE

2-534  
RAPHOLE HOMESTEAD, WARDEN, MARY

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between WESTERN APARTMENT SUPPLY & MAINTENANCE CO., a California corporation, whose mailing address is 2980 So. Kihei Road, Kihei, Maui, Hawaii 96753, (hereinafter referred to as "Western"), TRI-STAR RESTAURANT GROUP, LLC, whose mailing address is 1777 Ala Moana Blvd., Suite 225, Honolulu, HI 96813 (hereinafter referred to as "Tri-Star"), SARENTO'S ON THE BEACH, LLC, a Hawaii limited liability company, whose principal place of business is located at 1777 Ala Moana Blvd., Suite 225, Honolulu, HI 96815 (hereinafter referred to as "Sarento's"); DANA NAONE HALL and LESLIE KULOLOIO, c/o Law Offices of Isaac Hall, 2087 Wells Street, Wailuku, Maui, Hawaii 96793 (hereinafter referred to collectively as "Interested Parties") and THE PLANNING DEPARTMENT, COUNTY OF MAUI, 250 South High Street, Wailuku, Maui, Hawaii, 96793 (hereinafter referred to as "the Planning Department").

WHEREAS, Western is the owner of a leasehold interest in that certain property situated in the County of Maui, State of Hawaii, TMK No. 2-3-9-004:29; through State of Hawaii Board of Land and Natural Resources General Lease Number S-4212 dated September 4, 1968 (the "Parcel 29 lease"); and

WHEREAS, Western presently holds a revocable permit from the State of Hawaii, Board of Land and Natural Resources, being Permit Number RP 7235 for that certain property designated as TMK No. 2-3-9-004:149 and portion of 001 ("Parcel 149"); and

WHEREAS, Western has made certain improvements to Parcel 29 and Parcel 149; and

WHEREAS, Tri-Star has applied for and received an SMA minor permit from the Maui Planning Director for a bathroom addition and interior alterations to "Sarento's on the Beach" Restaurant, designated as SM2 2001/0008, which SMA minor permit was appealed by Dana Naone Hall and Leslie Kuloloio to the Maui Planning Commission and which appeal is now pending before the Maui Planning Commission (the "restaurant SMA for Parcel 29"); and

WHEREAS, Western has received final subdivision approval from the Department of Public Works and Environmental Management, County of Maui, of Parcel 149 belonging to the State of Hawaii into an approximately 35,932 square foot lot north of Parcel 29 for use for off-site commercial parking for the Maui Oceanfront Inn and Sarento's on the Beach Restaurant and other commercial operations on Parcels 29 and 149 as well as public beach access parking (the "the subdivision of Parcel 149"); and

WHEREAS, Western is in the process of converting some or all of its hotel units to time-share units;

WHEREAS, Parcel 29 is zoned Hotel, classified Urban by the State Land Use Commission and designated Single-Family in the Kihei-

Makena Community Plan and Parcel 149 is zoned Park, classified Urban by the State Land Use Commission and designated Park in the Kihei-Makena Community Plan;

WHEREAS, Western intends to seek the right to lease the subdivided parcel adjacent to Parcel 29 from the State of Hawaii through its Board of Land and Natural Resources which said lease will run concurrently with its lease for Parcel 29 (the "application for the lease of Parcel 149"); and

WHEREAS, Western, through Chris Hart & Partners, has filed an after-the-fact SMA minor permit application for pedestrian features including stairs and an ADA compliance ramp, and parking for beach access and Maui Oceanfront Inn and Sarento's on the Beach Restaurant and other miscellaneous improvements set forth in said application (the "application for an after-the-fact SMA permit for Parcel 149"); and

WHEREAS, Western desires to increase the parking available to its hotel, restaurant and commercial, including time-share, operations and to provide public beach access parking; and

WHEREAS, Western and Sarento's have applied for variances ("the Variance Application") from the Board of Variances and Appeals, County of Maui ("BVA"): (1) to retain an awning on the makai side of "Sarento's on the Beach" Restaurant on Parcel 29; (2) regarding the lot coverage of the permanent structures on Parcel 29; (3) regarding the side yard setback rules relating to encroachments, including but not limited to any electrical enclosures attached to the hotel buildings adjacent to the northerly boundary of Parcel 29, and (4) regarding the structures,

housing the propane tank, electric utilities, garbage bins and storage area, in the side yard setback along the southern boundary of Parcel 29;

WHEREAS, Interested Parties and the Planning Department, County of Maui have been permitted to Intervene, contested case proceedings have been initiated and Mr. Glenn M. Kosaka, Esq. has been appointed Hearing Officer;

WHEREAS, a dispute has arisen between the parties regarding the variances and the procedures necessary to complete the improvements on Parcels 29 and 149; and

WHEREAS, the parties desire to resolve their dispute and enter into an agreement regarding the variances and for the procedures in which to implement various improvements to Parcels 29 and 149;

NOW, THEREFORE, the parties to this stipulated agreement agree as follows:

1. Definition of Terms. Unless otherwise stated herein to the contrary, the terms "Western," "Tri-Star," "Sarento's," "Interested Parties" and "the Planning Department" shall mean and be deemed to include all of the following: the named parties, the respective heirs, executors, administrators, personal representatives, corporate representatives, successors, legal representatives, attorneys, assigns, respective general partners or joint venturers, stockholders, officers, directors, agents, employees, and all persons, entities or parties claimed by through or under the named party.

2. Western's and Sarento's Agreements.

As part of this Agreement, Western and Sarento's agree to follow the procedures set forth below and seek and use their best efforts to obtain government permits or approvals, which the Planning Department, County of Maui, Western and Sarento's acknowledge are necessary and required by law, described below as follows:

2.1. The Variance Application may be presented to the BVA with this Settlement Agreement. Should the BVA wish to grant the variances in accordance with the terms and conditions settled herein, this matter shall be concluded. Should, however, the BVA decide not to grant the variances based upon the terms and conditions settled herein, this matter shall return for adjudication by way of the contested case proceedings which have been initiated herein.

2.2. Western, Sarento's, the Planning Department and Interested Parties agree that the Variance Application ("the variances"):

2.2.1. to retain an awning on the makai side of "Sarento's on the Beach" Restaurant on Parcel 2,

2.2.2. regarding the lot coverage of the permanent structures on Parcel 29,

2.2.3. regarding the side yard setback rules relating to encroachments, including but not limited to any electrical enclosures attached to the hotel buildings adjacent to the northerly boundary of Parcel 29, and

2.2.4. regarding the side yard setback rules relating to encroachments, including but not limited to the structures along the southern boundary of Parcel 29,

may be granted by the Board of Variances and Appeals ("BVA") on the conditions that:

(a) no variance shall be effective until and unless the permits or approvals described in Section 2.4. below are obtained,

(b) no variance shall be effective until and unless the mitigation measures described in Section 2.5. below are implemented, and

(c) the Applicants ("Western" and "Sarento's") shall comply with the provisions contained within §12-801-76.1 of the Rules of Practice and Procedure for the BVA,

2.3. The Applicants hereby acknowledge that there is insufficient on-site parking for the hotel, time-share and restaurant operations and therefore the Applicants are required to obtain off-site parking for the hotel, restaurant and commercial, including time-share, operations.

2.4. The Department of Planning 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:

2.4.1. obtain the approval of the Board of Land and Natural Resources as required by General Lease Number S-4212 and obtain any approvals or authorizations which may be required from the Department or Board of Land and Natural Resources to apply for the governmental permits or approvals described within this Section;

2.4.2. prepare and file with the County of Maui an Environmental Assessment pursuant to HRS Chapter 343 for the projects as a whole on Parcels 29 and 149 and complete, as appropriate, the environmental process intended by Chapter 343;

2.4.3. prepare and file with the County of Maui a Community Plan Amendment for Parcel 29, pursuant to Maui County Code Chapter 2.80A.060, to make the Community Plan designation consistent with the zoning designation of Parcel 29 and to use their best efforts to obtain the approval of the Maui County Council for the Community Plan Amendment;

2.4.4. prepare and file with the County of Maui an application for a Conditional Use Permit allowing commercial parking on Parcel 149 for the required off-site parking for the Maui Oceanfront Inn, Sarento's on the Beach Restaurant and any other commercial uses on Parcels 29 and/or 149, pursuant to Chapter 19.40 of the Maui County Code and use their best efforts to obtain the approval of the Maui County Council for the Conditional Use Permit;

2.4.5. apply for off-site parking approval from the Maui Planning Commission for the use of Parcel 149 for off-site parking for the Maui Oceanfront Inn, for Sarento's on the Beach Restaurant and for Western's other commercial uses of Parcels 29 and 149, pursuant to Chapter 19.36 of the Maui County Code and use their best efforts to obtain the approval of the Maui Planning Commission for the off-site parking;



2.4.6. prepare a Traffic Impact Assessment Report ("TIAR") to accompany the applications and/or filings referenced in subsections 2.4.2. - 2.4.5 above;

2.4.7. Apply for concurrently and to use their best efforts to obtain SMA permit(s) for the applicable variances and process further the application for an after-the-fact SMA permit for Parcel 149 in accordance with Chapter 205A and the regulations promulgated thereto;

2.4.8. Apply for and use their best efforts to obtain a Shoreline Setback Variance, and;

2.4.9. Apply for and use their best efforts to obtain a Shoreline certification;

2.5. The Variances shall not be effective until and unless the following mitigation measures are implemented:

2.5.1 The Lease with the State of Hawaii for Parcel 149 shall contain a term stating that the property will be used for required commercial, off-site parking for Western, the Maui Oceanfront Inn and "Sarento's on the Beach" Restaurant, and that no less than 51% of the parking on the property will be dedicated for public beach access parking;

2.5.2. Western agrees to seek a right of entry from the State of Hawaii to the Government Reserve Land in front of the Maui Oceanfront Inn to implement a program to trim and maintain naupaka and other vegetation growing seaward of the bank and that it thereafter shall trim and maintain the naupaka and all other vegetation growing seaward of the bank, at least semi-annually, to maximize the area of

sandy beach available for use by the public and by guests of the Maui Oceanfront Inn, in accordance with the requirements of the Department of Land and Natural Resources;

2.5.3. Western agrees to post and maintain signs indicating that the area in front of the hotel is part of the Government Beach Reserve and is open and available for public use, the particular words to be used on the signs to be agreed upon by Applicants and Interested Parties within two (2) months of the execution of this Settlement Agreement by all parties;

2.5.4. Western agrees to post and maintain appropriate signs at the entry of Parcel 149 from South Kihei Road and within the property notifying the public of its right to park on Parcel 149 for public beach access parking, the particular words to be used on the signs to be agreed upon by Applicants and Interested Parties within two (2) months of the execution of this Settlement Agreement by all parties; and

2.5.5. That Applicants shall implement these mitigation measures whether or not the variance applications are granted upon execution of this Settlement Agreement by all parties, unless some other date or time is stated particularly in a section above.

## 2.6. Deadlines for Permits or Approvals

2.6.1. The Planning Department requires the Applicants to file, and the Applicants agree to file, with the County of Maui the following applications for permits or approval within four (4) months of the date of the execution of this Settlement Agreement by all

of the parties: (1) a Community Plan Amendment for Parcel 29, pursuant to Maui County Code Chapter 2.80A.060, to make the Community Plan designation consistent with the zoning designation of Parcel 29 and (2) a Shoreline certification. Within sixty days after receiving the certification of the Shoreline, the Planning Department requires the Applicants to file, and the Applicants agree to file, with the County of Maui the following applications for permits or approval: (3) an SMA permit for the applicable variances and process further the application for an after-the-fact SMA permit for Parcel 149 in accordance with Chapter 205A and the regulations promulgated thereto and (4) a Shoreline Setback Variance.

2.6.2. The Interested Parties require the Applicants to file, and the Applicants agree to file, with the County of Maui the following applications for permits or approval within four (4) months of the date of the execution of this Settlement Agreement by all of the parties: (1) the approval of the Board of Land and Natural Resources for the Variance Application as required by General Lease Number S-4212; (2) a Conditional Use Permit allowing commercial parking for the required off-site parking for the Maui Oceanfront Inn, Sarento's on the Beach Restaurant and any other commercial uses on Parcels 29 and/or 149 which take place on Parcel 149, pursuant to Chapter 19.40 of the Maui County Code; and (3) off-site parking approvals from the Maui Planning Commission for the use of Parcel 149 for off-site parking for the Maui Oceanfront Inn, for Sarento's on the Beach Restaurant and for any other commercial uses of Parcels 29 and 149, pursuant to Chapter 19.36 of the Maui County Code.

2.6.3. The Interested Parties require the Applicants, and the Applicants agree, within four (4) months of the date of the execution of this Settlement Agreement by all of the parties, to cause to be published in the OEQC Bulletin notice of the preparation of a Draft Environmental Assessment and to commence the preparation of a Draft Environmental Assessment, pursuant to HRS Chapter 343, for the projects as a whole on Parcels 29 and 149.

2.6.4. The Interested Parties require the Applicants to file, and the Applicants agree to file, with the County of Maui, within six (6) months of the date of the execution of this Settlement Agreement by all of the parties, a Traffic Impact Assessment Report ("TIAR") to accompany the applications and/or filings referenced in subsections 2.4.2. through 2.4.5. above.

2.6.5. Applicants agree to use their best efforts to complete the process to obtain all of the above-referenced government approvals within thirty (30) months of the execution of this Settlement Agreement by all parties.

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2.7. Limitation of Footprint of Developments

The Applicants, in consideration for the benefits conferred upon them by various of the terms and conditions contained herein, agree not to increase the existing footprint of the developments now on Parcel 29 at any time from the date of the execution of this Settlement Agreement by all parties into the future without first obtaining all approvals, permits and variances required by law.

3. Obligations of Applicants To Interested Parties and County Planning Department

3.1. No less than 51% of the parking on Parcel 149 will be dedicated for public beach access parking and the area dedicated for public parking shall be located upon Parcel 149 as depicted upon Exhibit "A" attached hereto and incorporated by reference;

3.2. Western, Tri-Star and Sarento's agree to provide full and complete copies of all applications for permits and approvals referenced in Section 2.4. above to Interested Parties c/o 2087 Wells Street, Wailuku, Maui, Hawaii 96793, at no cost, at the time that these applications are filed with government entities. Should Western, Tri-Star and Sarento's supplement, modify or add to these applications, any such supplements, modifications or additions shall likewise be provided to Interested Parties without cost at the same time that these documents are filed with the governmental entity. Western, Tri-Star and Sarento's shall provide copies of all supporting documents including all supporting studies to Interested Parties without cost at the same time that these documents are filed with the governmental entity.

3.3. Western shall withdraw with prejudice its request for Declaratory Ruling filed with the Maui Planning Commission regarding the shoreline setback and the awning upon the execution of this Settlement Agreement by all parties.

4. Obligations of the Interested Parties

4.1 Interested Parties filed an appeal with the County of Maui dated on or about March 2001 relating to the ADA

bathrooms constructed at Sarento's and other matters. Interested Parties agree to withdraw said appeal within seven days of the filing by Applicants of the applications referenced in Sections 2.4.1. - 2.4.9. above.

4.2 Interested Parties further agree that as long as Applicants proceed with the seeking of governmental approvals as set forth above, Interested Parties will not publicly or privately oppose the various applications set forth in Section 2.4. above; however it is expressly understood that Interested Parties retain the right to comment upon all of the applications and to participate in all of the proceedings for the governmental approvals referenced in Section 2.4. above to assure that applications are complete and that the permit or approval processes satisfy all governmental statutes, codes, and rules and regulations.

4.3 Interested Parties will not oppose the current continued operation of the restaurant and the hotel on the Parcel 29 as long as Western and Tri-Star are in substantial compliance with this Agreement.

##### 5. Extensions of the Temporary Certificates of Occupancy

The Planning Department, County of Maui will recommend to Development Services Administration that the temporary certificates of occupancy be extended as necessary as long as the Applicants are making reasonable efforts, as determined by the Planning Department, County of Maui to meet the requirements for a permanent certificate, namely in the filing and processing of the permits and approvals referenced in Section 2.6.1. above.

Interested Parties will not oppose the extension of temporary certificates of occupancy for the Applicants as long as progress is made on the filing and processing of the permits and approvals referenced in Section 2.4. above. No final or non-temporary certificate of occupancy for the Restaurant shall be issued to Applicants until and unless Applicants receive all permits and approvals referenced in Section 2.4. above.

6. Best Efforts and Good Faith. The parties hereto shall diligently and in good faith exercise their respective best efforts to perform all of the covenants and satisfy all of the conditions of this Settlement Agreement.

7. Force Majeure. In the event that any of the parties shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws, regulations, decisions or actions, riots, insurrection, war, appeals, stays or other reason of a like nature, which is not the fault of or reasonably capable of being prevented by the party delayed in performing work or doing acts required under the terms of this Agreement, then the performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The party delayed shall notify the other in writing of the date of commencement of any force majeure event upon which the party delayed intends to rely upon for an extension of the period of the performance of

any such act (which notice shall be given within thirty (30) days of the delayed Party's knowledge of the commencement date of any such force majeure event), and shall also notify the other in writing of the date of which any such event ended.

8. Modification of Agreement. Any modification of this Agreement, or additional obligation assumed by any party in connection with this Agreement, shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

9. No Waiver. The failure of any party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

10. Effect of Partial Invalidity. The invalidity of any portion of this Agreement will not, and shall not, be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

11. Section Headings. The titles to the sections of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify or aid in the interpretation of the provisions of the Agreement.



12. Contract as Including Entire Agreement. This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein. This Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the parties.

13. Use of Pronouns. Feminine or neuter pronouns shall be substituted for those of masculine form or vice versa, and the plural shall be substituted for the single number or vice versa, in any place or places in which the context may require such substitution.

14. Notices. Wherever in this Agreement it shall be required or permitted that notice be given by either party to the other, such notice must be in writing and must be given personally or forwarded by certified mail addressed as follows:

To: WESTERN APARTMENT SUPPLY & MAINTENANCE  
CO. at 2980 So. Kihei Road, Kihei, Maui, Hawaii  
96753

TRI-STAR RESTAURANT GROUP, LLC, and  
SARENTO'S ON THE BEACH, LLC, whose mailing  
address is 1777 Ala Moana Blvd., Suite 225, Honolulu  
HI 96813

DANA NAONE HALL and LESLIE KULOLOIO  
c/o Law Offices of Isaac Hall, 2087  
Wells Street, Wailuku, Maui, Hawaii 96793

PLANNING DEPARTMENT, COUNTY OF MAUI  
250 South High Street  
Wailuku, Maui, Hawaii, 96793

15. Enforcement. Each and every party to this Agreement shall be entitled to enforce this Agreement using all remedies allowed by law

and in equity including, but not limited to, the remedy of specific performance.

16. Attorney's Fees. In the event any party hereto shall bring suit, or hire an attorney to compel performance of or to recover for breach of any covenant, agreement or condition contained in this Agreement, the prevailing party shall be entitled to recover from the other party his/her/its costs and reasonable attorney's fees.

17. No Party to be Deemed Draftsman. If an ambiguity shall appear in this Agreement, such ambiguity shall not be resolved by interpreting this Agreement against any party as the draftsman. The language of this Agreement shall be interpreted simply according to its fair meaning.

18. No Third Party Beneficiary. Notwithstanding any other term, covenant or provision herein contained to the contrary, this Agreement is not intended and shall not be construed in any manner as to benefit a third party.

19. No Representation. No party to this Release or anyone on their behalf has made a representation of fact, opinion or promise to induce this compromise except as set forth herein.

20. Binding Effect. This Settlement Agreement and the terms, provisions, covenants, undertakings, obligations, conditions and representations contained herein shall survive the consummation of all transactions contemplated by this Settlement Agreement and is and shall be binding upon and shall inure to the benefit of each party and

each respective parties' heirs, personal representatives, successors and assigns.

21. Dispute Resolution. The parties agree that any dispute arises as it relates to the interpretation of this Settlement Agreement or the enforcement of its provisions or any request for additional time for any party to comply with its terms that such requests, if not agreed to by the parties, shall be submitted to Mr. Glenn M. Kosaka, Esq. who will have the authority to mediate such dispute and that the parties shall make good faith efforts to mediate any disputes as provided herein before seeking judicial remedies.

22. Limitations of Settlement Agreement. The terms and conditions contained within this Settlement Agreement are expressly agreed by all parties to be limited as follows:

22.1. If any terms or conditions contained within this Settlement Agreement are beyond the jurisdiction of the County of Maui, such terms and conditions shall not be binding upon the County of Maui or the Planning Department, County of Maui and shall only be binding upon the remaining parties to this Settlement Agreement.

22.2. It is understood by all of the parties to this Settlement Agreement that the direct subject matter of this Settlement Agreement is the variance application filed with the County of Maui by the Applicants. The parties to this Settlement Agreement also understand that the County of Maui, through its continuing review of modifications to current uses of the subject properties and new proposed uses of the subject properties, may establish certain further requirements

that relate to the modifications of current uses or proposed new uses of the subject properties.

22.3. It is understood by the parties that the Planning Department, County of Maui has certain statutory and regulatory duties and responsibilities with respect to the processing and/or review of applications for permits and/or approvals and nothing contained herein shall in any way limit the exercise by the Planning Department, County of Maui of such duties and responsibilities.

22.4. It is understood by the parties that should other issues be raised by members of the public regarding the variance application before the BVA, the parties shall be free to address these issues.

22.5. It is understood by the parties that when this Settlement Agreement is presented for adoption or approval by the BVA, the Planning Department, County of Maui and Interested Parties shall be free to take the positions that the Applicants do not meet the various tests for the variances, however the Planning Department, County of Maui and Interested Parties would not oppose the granting of the variances so long as the BVA granted them on the terms and conditions set forth in this Settlement Agreement.

22.6 It is understood by the parties that when this Settlement Agreement is presented for adoption or approval by the BVA, the Applicants, Interested Parties and the Planning Department, County of Maui are free to argue that the permits and approvals listed in sections 2.4.1. through 2.4.9. are required by law.

22.7 It is understood by the parties that the Planning Department, County of Maui and Interested Parties shall have the rights to take any necessary enforcement actions for failure(s) to obtain governmental permits or approvals if the Applicants have not obtained the permits and approvals described in sections 2.4.1. through 2.4.9. above within thirty (30) months of the date of the execution of this Settlement Agreement by all parties, provided that extensions of this thirty (30) month deadline may be agreed upon by the parties in writing and the parties must participate in mediation, as provided herein, in good faith, prior to seeking such judicial relief.

23. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement at Wailuku, Maui, Hawaii, on this 25th day of November, 2005.

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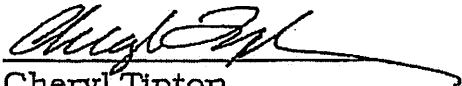
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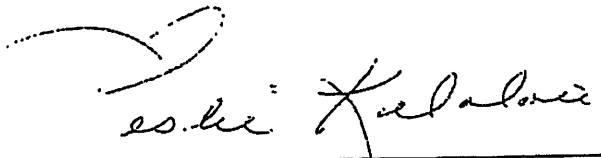
THE COUNTY OF MAUI

By: 

ALAN M. ARAKAWA  
Its Mayor

Approved as to Form:

  
Cheryl Tipton  
Deputy Corporation Counsel

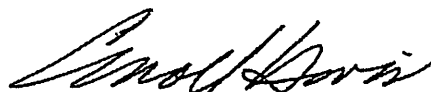
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Leslie Kuloloio

*Dana Naone Hall*  
Dana Naone Hall

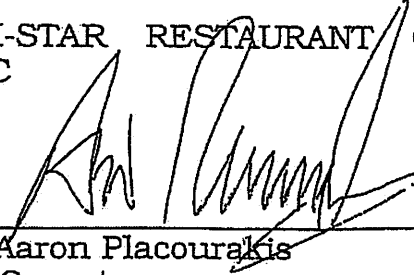


WESTERN APARTMENT SUPPLY &  
MAINTENANCE CO., a California  
Corporation

A handwritten signature in dark ink, appearing to read "Carroll G. Davis", is written over a horizontal line.

by Carroll G. Davis  
Its President

TRI-STAR RESTAURANT GROUP,  
LLC

A handwritten signature in black ink, appearing to read 'Aaron Placourakis', is written over a horizontal line.

by Aaron Placourakis  
Its Operator

SARENTO'S ON THE BEACH, LLC,  
a Hawaii limited liability company

by

  
Aaron Platenburg

Its

Manager

maui oceanfront/settlement agreement