

**From:** "Jordan Hart" <JHart@chpmaui.com>  
**To:** <gladys.baisa@mauicounty.us>  
**CC:** <lu.committee@mauicounty.us>, "Joseph Prutch" <Joseph.Prutch@co.maui.hi...>  
**Date:** 07/20/2010 09:34 AM  
**Subject:** Land Use Committee - Maui Oceanfront Inn, SHPD Comment Received  
**Attachments:** 2010-07-14, ltr FROM - SHPD, No Objection to Land Use Entitlement; AIS Before Ground Disturbing.pdf; 2010-03-10, ltr FROM - Council LUC, Need SHPD Comment.pdf; 2005-11-00, Settlement Agreement.pdf

Hello Councilmember Baisa, Land Use Committee Chair:

Chris Hart & Partners is requesting a position on the Land Use Committee's agenda to carrying out the requirements of a 2005 settlement agreement between the Maui Oceanfront Inn & Sarento's Restaurant, the County of Maui and interested parties. The settlement agreement will resolve outstanding Land Use Entitlement issues, including the correction of a mapping error which re-designated the State owned Hotel parcel with existing hotel and restaurant, from community plan Hotel to Single Family, without notification to or comment by the property owner, the State of Hawaii.

OFFICE OF THE  
COUNTY COUNCIL

10 JUL 20 09:58

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The attached letter indicates that SHPD has no objections to the land use entitlements that will be before the Council Land Use Committee.

The letter also states that prior to any ground disturbing activities and, or the issuance of an SMA Permit, SHPD will require the completion, review and acceptance of an Archaeological Inventory Survey. We acknowledge that this requirement is completely reasonable and will initiate work so that study and review can be completed for Planning Commission review of the SMA Permit application associated with this project.

Beginning today CH&P will request and conduct meetings with the Council Members to review the history and status of the project in preparation for a position on the Land Use Committee's Agenda.

Please contact me for any further information.

Thank you

Jordan E. Hart

Attachments: (3)

Chris Hart & Partners, Inc.

115 North Market Street

Wailuku, Maui, Hawaii

96793-1706

[www.CHPMaui.com](http://www.chpmaui.com) <<http://www.chpmaui.com/>>

Direct: (808) 270-1563

Fax: (808) 242-1956

Email: [JHart@CHPMaui.com](mailto:JHart@CHPMaui.com) <<mailto:JHart@CHPMaui.com>>

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From: [Cicely.C.Lorenzo-Ganir@hawaii.gov](mailto:Cicely.C.Lorenzo-Ganir@hawaii.gov)  
[<mailto:Cicely.C.Lorenzo-Ganir@hawaii.gov>]  
Sent: Tuesday, July 20, 2010 7:49 AM  
To: Jordan Hart  
Subject: Fw: 1007MD02

Please see attachment in previous email.

Cicely Lorenzo-Ganir  
Office Assistant IV  
Dept. of Land & Natural Resources  
State Historic Preservation Division  
601 Kamokila Blvd., Rm. 555  
Kapolei, HI 96707  
(808) 692-8039  
Fax: (808) 692-8020

----- Forwarded by Cicely C Lorenzo-Ganir/DLNR/StateHiUS on 07/20/2010  
07:48 AM -----

Cicely C Lorenzo-Ganir/DLNR/StateHiUS

07/20/2010 07:48 AM

To

[lance.nakamura@mauicounty.gov](mailto:lance.nakamura@mauicounty.gov)

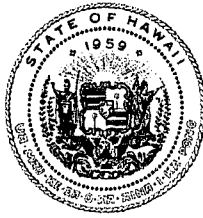
cc

Subject

1007MD02

Cicely Lorenzo-Ganir  
Office Assistant IV  
Dept. of Land & Natural Resources  
State Historic Preservation Division  
601 Kamokila Blvd., Rm. 555  
Kapolei, HI 96707  
(808) 692-8015  
Fax: (808) 692-8020

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION  
601 KAMOKILA BOULEVARD, ROOM 555  
KAPOLEI, HAWAII 96707

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

July 14, 2010

Lance Nakamura, C.E. V  
County of Maui, DPWEM  
Sent via email to: [lance.nakamura@mauicounty.gov](mailto:lance.nakamura@mauicounty.gov)

LOG NO: 2010.1058  
DOC NO: 1007MD02  
Archaeology

Dear Mr. Nakamura:

**SUBJECT: Chapter 6E-8 Historic Preservation Review –  
Consolidated Applications by Maui Oceanfront Inn and Sarento's Restaurant  
Kama'ole Ahupua'a, Wailuku District, Island of Maui  
TMK: (2) 3-9-004:029 & 149**

Thank you for the opportunity to comment on the aforementioned project, which we received on June 15, 2010. This letter was requested by Mr. Jordan E. Hart of Chris Hart & Partners, Inc. in regards to the consolidated applications for this project.

The Maui Oceanfront Inn and Sarento's On the Beach Restaurant are located in Kihei. They were built in the 1970s, prior to the development of requirements for archaeological surveys; no archaeological survey has been conducted for either the hotel or parking development. The land is owned by the State of Hawaii. It is our understanding that various permits are under review or will be shortly coming up for review relating to:

1. land use designation;
2. Community Plan amendment;
3. Conditional use permit;
4. Change of zone/correcting of past zone change from hotel/resort to single family;
5. Offsite parking permit;
6. SSV for the restaurant awnings;
7. SMA for access and facilities;
8. A grading permit for construction in the parking lot area, which is currently gravel; and
9. Possibly other after-the-fact permits for parking lot improvements that have already occurred.

The adjacent beach is a Beach Reserve.

As discussed with Mr. Hart at our meeting on June 15, SHPD will recommend an archaeological inventory survey (AIS) be conducted on the gravel parking lot area prior to any further construction of facilities, paving, or other ground-altering activities. The AIS is to be addressed by an archaeological inventory survey plan (Plan) which should be prepared in conjunction with proposed construction plans so that subsurface testing can be appropriately designed.

While we feel strongly that no ground-altering activities should commence prior to completion of an AIS which has been reviewed and approved by SHPD, we have no objections to efforts made on the various consolidated applications which **do not** involve ground-altering activities. It is our understanding that

only the last three permit-related items on this list – numbers 7 and 8, for the SMA and parking lot Grading permit – which will require ground alterations.

To reiterate, we **will be recommending** an archaeological inventory survey plan be submitted to us for our review and approval, followed by an acceptable archaeological inventory survey, as conditions of those permits.

If you have questions about this letter please contact Morgan Davis at (808) 896-0514 or via email to: [morgan.e.davis@hawaii.gov](mailto:morgan.e.davis@hawaii.gov).

Aloha,

A handwritten signature in black ink, appearing to read 'Theresa K. Donham', with a long horizontal flourish extending to the right.

Theresa K. Donham  
Acting Archaeology Branch Chief and Deputy SHPO  
State Historic Preservation Division

Cc:

Jeff Hunt, Director, Department of Planning via fax to: (808) 270-7634

Maui CRC, Department of Planning, 250 S. High Street, Wailuku, Hawaii 96793

Chris Hart & Partners, Inc. via email to: [JHart@chpmaui.com](mailto:JHart@chpmaui.com)

Council Chair  
Danny A. Mateo

Vice-Chair  
Michael J. Molina

Council Members  
Gladys C. Baisa  
Jo Anne Johnson  
Sol P. Kaho'ohalahala  
Bill Kauakea Medeiros  
Wayne K. Nishiki  
Joseph Pontanilla  
Michael P. Victorino



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

Director of Council Services  
Ken Fukuoka

**RECEIVED**

MAR 12 2010

CHRIS HART & PARTNERS, INC.  
Landscape Architecture and Planning

CC: Jordan

05/112

March 10, 2010

Mr. Christopher Hart  
Chris Hart and Partners, Inc.  
115 N. Market Street  
Wailuku, Hawaii 96793

Dear Mr. Hart:

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

The Maui County Council's Land Use Committee is in receipt of County Communication No. 09-246, from the Planning Director, transmitting a request from Western Apartment Supply & Maintenance Co. for a Community Plan Amendment from Single-Family to Hotel to reflect the existing hotel use at 2980 South Kihei Road (TMK: (2) 3-9-04:029), and a two-year Conditional Permit to allow for the construction and use of an offsite parking lot within the County Park District, on South Kihei Road (TMK: (2) 3-9-04:149), for State-owned property situated at Kihei, Maui, Hawaii.

On behalf of the Land Use Committee, I requested a response from the Planning Director to several questions I had on the documentation that had been provided. By correspondence dated January 20, 2010, the Planning Director provided the enclosed response.

In response to Question No. 5, the Planning Director noted as follows:

As of this date, our Department has not received a comment letter from SHPD [State Historic Preservation Division] on the proposed parking lot improvements. Our Department does not believe an attempt to follow up with SHPD at this time would be useful. A grading permit for the parking lot would be required and comments from SHPD within the Special Management Area (SMA) will be required by Development Services Administration (DSA), Engineering Division, prior to issuance of a grading permit.

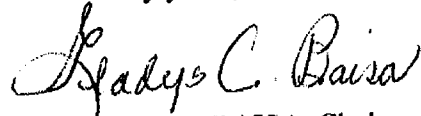
May I request that you pursue obtaining written comments from SHPD on the proposed parking lot improvements.

Mr. Christopher Hart  
Chris Hart and Partners, Inc.  
March 10, 2010  
Page 2

I would appreciate receiving your response by **Friday, May 14, 2010**. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Thank you for your attention to this matter. Should you have any questions, please contact me or the Committee staff (Carla Nakata at 270-7659, or Pauline Martins at 270-8039).

Sincerely yours,

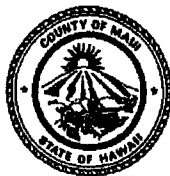
  
GLADYS C. BAISA, Chair  
Land Use Committee

lu:ltr:025a01:cmn

Enclosure

cc: Jeffrey Hunt, Planning Director  
Joseph Prutch, Planner, Department of Planning  
Western Apartment Supply & Maintenance Co.

CHARMAINE TAVARES  
Mayor  
JEFFREY S. HUNT  
Director  
KATHLEEN ROSS AOKI  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING** OFFICE OF THE MAYOR

January 20, 2010

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2010 JAN 20 AM 10:01

OFFICE OF THE  
COUNTY COUNCIL

10 JAN 20 PM 2:11

RECEIVED

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

For Transmittal to:

Honorable Gladys C. Balsa, Chair  
and Members of the Land Use Committee  
200 South High Street  
Wailuku, Hawaii 96793

Dear Committee Chair Balsa:

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

The Department of Planning (Department) is in receipt of your letter dated December 28, 2009, and offers the following responses to your inquiries:

**Request:** 1. *Provide an electronic copy and two paper copies of the Final Environmental Assessment for the project.*

**Response:** A CD with both PDF and Microsoft Word documents along with two (2) paper copies of the Final Environmental Assessment (EA) are attached.

**Question:** 2. *The proposed Conditional Permit bill refers to Parcel 149 as being within the "County Park District". The document entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION NOVEMBER 25, 2008 MEETING" (Department's Report) states, on page 14: "The existing zoning does not allow for a public/commercial parking lot". My understanding is that there is no zoning district called "County Park District". How, therefore, is your Department determining what uses are permitted by the existing zoning, and evaluating whether the uses proposed by the Conditional Permit are "similar,*



Honorable Charmaine Tavares, Mayor  
For Transmittal to:  
Honorable Gladys C. Baisa, Chair  
January 20, 2010  
Page 2

*related or compatible to those permitted uses", as set forth in Chapter 19.40, Maui County Code? Please explain.*

**Answer:** Parcel 149 is zoned "Park", not "County Park District", PK-1, PK-2, PK-3, or PK-4. According to the Department's Zoning Administration and Enforcement Division (ZAED), "Park" zoning was established in 1969 with the adoption of the Land Zoning Map for Kihei-Makena. Under the "Park" zoning district, a public/commercial parking lot is not a permitted use. Referring to Chapter 19.615, Maui County Code (MCC), each district (PK-1, PK-2, PK-3, and PK-4) permits off-street parking and loading as an accessory use to the permitted uses. This is what our Department used to evaluate whether the proposed use was "similar, related or compatible."

**Request:** 3. *Revise the Community Plan Map to delete the word "residential" in the phrase "single family (SF) residential", and hyphenate "single family", consistent with the Kihei-Makena Community Plan.*

**Response:** Community Plan Map No. 531 has been revised as requested and is attached.

**Question:** 4. *Does your Department recommend that a condition be added in the proposed Conditional Permit bill that makes explicit that no less than 51 percent of the parking on TMK: (2) 3-9-04:149 shall be available for public beach access parking, consistent with the Settlement Agreement? If so, please suggest language for such a condition.*

**Answer:** Yes, we think it is best to include a condition in the proposed CP bill that is consistent with the Settlement Agreement. If not conditioned now, it could be a condition of the Off-Street Parking Permit still required for approval by the Maui Planning Commission after Council approval of the CPA and CP. We suggest the following language for the condition: "That no less than 51 percent of the parking on TMK: (2) 3-9-004:149 shall be dedicated for public beach access parking, be clearly delineated as such and available to the public at all times."

Honorable Charmaine Tavares, Mayor  
For Transmittal to:  
Honorable Gladys C. Balsa, Chair  
January 20, 2010  
Page 3

**Question:** 5. *On page 21 of the Department's Report, under the section entitled "Archaeological, Historic and Cultural Resources", it is noted that no comments were received from the State Historic Preservation Division (SHPD) on the proposed parking lot improvements. Have any comments been received from SHPD since the Department's Report was prepared? If not, might an attempt to follow up on SHPD's comments be made?*

**Answer:** As of this date, our Department has not received a comment letter from SHPD on the proposed parking lot improvements. Our Department does not believe an attempt to follow up with SHPD at this time would be useful. A grading permit for the parking lot would be required and comments from SHPD within the Special Management Area (SMA) will be required by Development Services Administration (DSA), Engineering Division, prior to issuance of a grading permit.

Thank you for your attention to this matter. I hope this satisfies the needs of the Committee for this project. Should further clarification be necessary, please contact Staff Planner Joseph Prutch at Ext. 7512.

Sincerely,



JEFFREY S. HUNT  
Planning Director

**Attachments**

xc: Clayton I. Yoshida, Planning Program Administrator  
Joseph M. Prutch, Staff Planner  
Jordan Hart, Chris Hart & Partners, Inc.

JSH:JMP:vb

Project File  
General File

K:\WP\_DOCS\PLANNING\Cpa\2006\0005\_MauiOceanFront\_Sarentos\CouncilTrans2.doc

Consolidated Applications for  
HRS Chapter 343 Final Environmental Assessment,  
Community Plan Amendment,  
Conditional Use Permit, Special Management Area Use Permit,  
Shoreline Setback Variance & Offsite Parking Approval

**Maui Oceanfront Inn  
&  
Sarento's Restaurant**

TMK No.: (2) 3-9-004: 029 & 149  
Kihei Maui Hawaii

Prepared for:  
Western Apartment Supply & Maintenance Co.  
2980 South Kihei Road  
Kihei, Maui, Hawaii 96753

Prepared by:  
Chris Hart & Partners, INC.  
1955 Main Street, Suite 200  
Wailuku, Maui, Hawaii 96793



NOTE: Due to the voluminous nature of the document, it will be kept on file with the Committee Secretary. Please contact the Committee Secretary if you are interested in reviewing this document.

DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

10 JAN 14 P2:19

August 2008

ORIGINAL

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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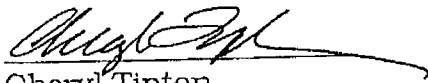
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THE COUNTY OF MAUI

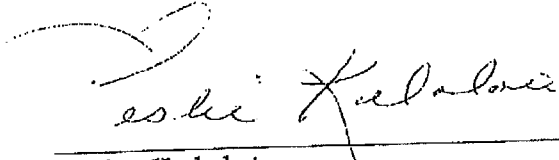
By: 

ALAN M. ARAKAWA  
Its Mayor

Approved as to Form:

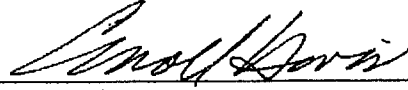
  
Cheryl Tipton  
Deputy Corporation Counsel



  
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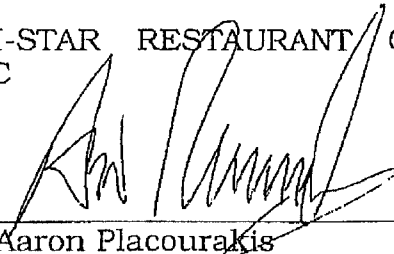
Dana Naone Hall  
Dana Naone Hall

WESTERN APARTMENT SUPPLY &  
MAINTENANCE CO., a California  
Corporation

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by Carroll G. Davis  
Its President

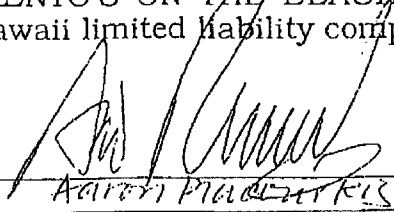
TRI-STAR RESTAURANT GROUP,  
LLC



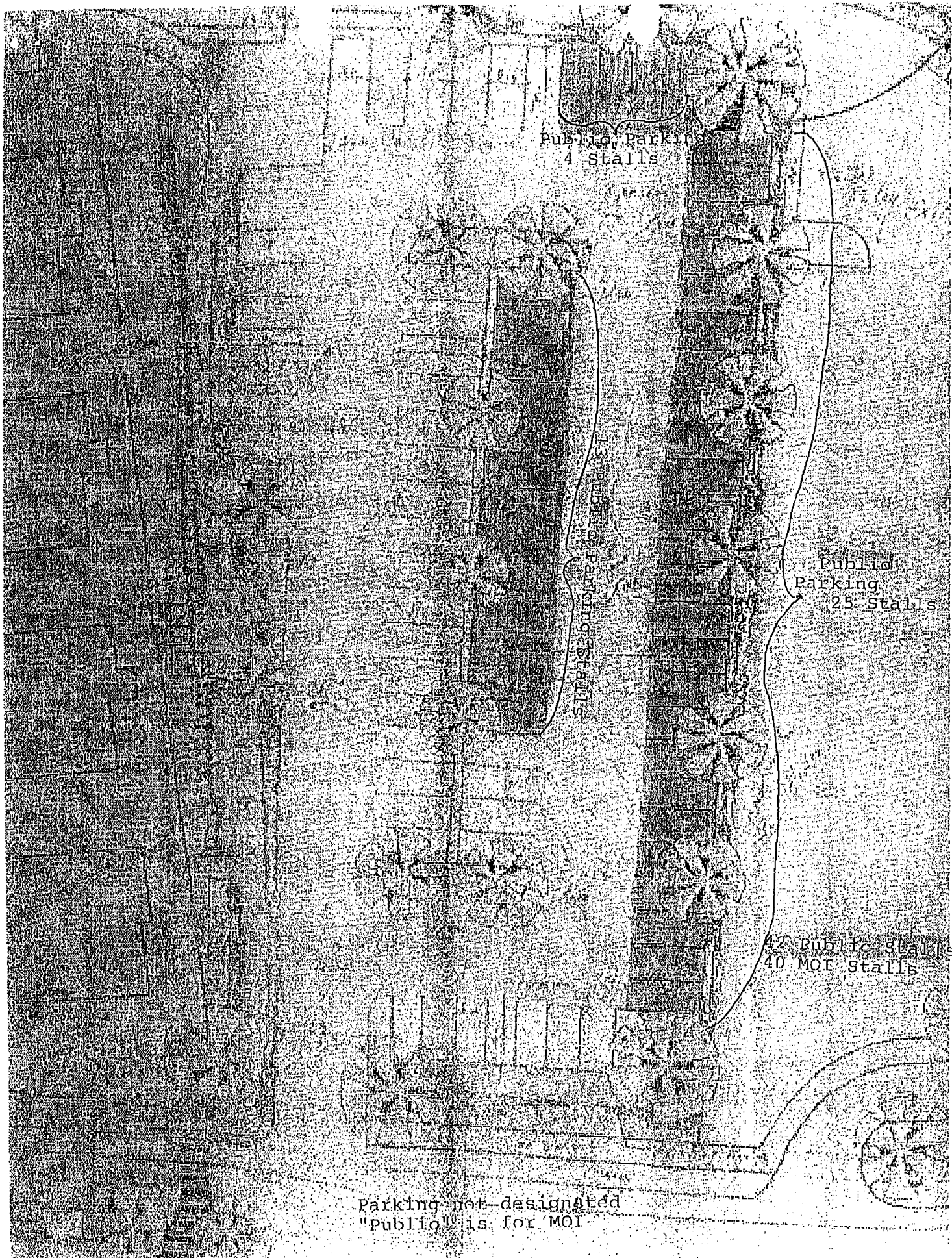
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by Aaron Placourakis  
Its Operator

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

by   
Its Manager

mauloceanfront/settlementagreement



Parking not designated  
"Public" is for MOI

EXHIBIT "A"