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A Limited Liability Law Partnership

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Attorneys for JOSEPH M. TOY, Chapter 11  
Trustee of the Estate of WESTERN APARTMENT  
SUPPLY & MAINTENANCE CO.

RECEIVED

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OFFICE OF THE  
COUNTY COUNCIL

**UNITED STATES BANKRUPTCY COURT**

**FOR THE DISTRICT OF HAWAII**

In re:

WESTERN APARTMENT  
SUPPLY & MAINTENANCE CO.,  
a California corporation,

Debtor.

Case No. 11-00941  
(Chapter 11)

DATE: May 21, 2012  
TIME: 9:30 a.m.  
JUDGE: Hon. Robert J. Faris

**NOTICE OF HEARING ON TRUSTEE'S MOTION FOR ORDER  
AUTHORIZING: (I) SALE OF HOTEL ASSETS, FREE AND CLEAR OF  
LIENS AND ENCUMBRANCES; (II) ASSIGNMENT OF UNEXPIRED  
DLNR LEASE OF NON-RESIDENTIAL REAL PROPERTY AND  
SARENTO'S RESTAURANT OPERATING AGREEMENT, FREE AND  
CLEAR OF LIENS AND ENCUMBRANCES; (III) ASSIGNMENT OF DLNR  
REVOCABLE PERMIT FOR PARKING LOT AREA, FREE AND CLEAR  
OF LIENS AND ENCUMBRANCES, AND ASSUMPTION AND  
ASSIGNMENT OF SETTLEMENT AGREEMENT RELATING TO  
PARKING LOT AREA; (IV) REJECTION OF DAYS INN EXECUTORY  
CONTRACT; AND (V) PARTIAL DISTRIBUTION OF SALE PROCEEDS**

TO: MR. ROBERT CARROLL, CHAIRMAN  
COUNCIL LAND USE COMMITTEE  
COUNTY OF MAUI  
200 South High Street  
Wailuku, HI 96793

NOTICE IS HEREBY GIVEN that May 21, 2012, at 9:30 a.m., in the Courtroom of the Honorable Robert J. Faris, United States Bankruptcy Court, District of Hawaii, 1132 Bishop Street, Suite 250L, Honolulu, Hawaii, has been fixed as the date, time and place for hearing for consideration of the Trustee's Motion For Order Authorizing: (I) Sale of Hotel Assets, Free and Clear of Liens and Encumbrances; (II) Assignment of Unexpired DLNR Lease of Non-Residential Real Property and Sarento's Restaurant Operating Agreement, Free and Clear Of Liens and Encumbrances; (III) Assignment of DLNR Revocable Permit for Parking Lot Area, Free and Clear of Liens and Encumbrances, and Assumption and Assignment of Settlement Agreement Relating to Parking Lot Area; (IV) Rejection of Days Inn Executory Contract; and (V) Partial Distribution of Sale Proceeds filed herein by JOSEPH M. TOY, Chapter 11 Trustee of the Estate of WESTERN APARTMENT SUPPLY & MAINTENANCE CO., the above-named Debtor.

The above Motion and supporting documents are available for review by any interested party in the Office of the Clerk of the Court. You are invited, but not required, to examine the Motion on file with the Bankruptcy Court, to attend said hearing and to be heard concerning the matters noticed herein.

Your rights may be affected. You should read the motion and the accompanying papers carefully and discuss them with your attorney if you have one in this bankruptcy case or proceeding. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought in this Motion, or if you want the court to consider your views on the Motion, then you or your attorney must file a responsive statement explaining your position not later than May 14, 2012. Reply Memoranda is due May 16, 2012.

NOTICE IS FURTHER GIVEN that such hearing may be adjourned from time to time without further notice of the adjournment date other than by announcement of the adjourned date or dates at said hearing.

DATED: Honolulu, Hawaii, May 2, 2012.

/s/Susan Tius  
SUSAN TIUS  
Attorney for JOSEPH M. TOY,  
Chapter 11 Trustee

Filer's Name, Address, Phone, Fax, Email:

RUSH MOORE LLP A Limited Liability Law Partnership  
SUSAN TIUS 2873-0  
737 Bishop Street, Suite 2400  
Honolulu, Hawaii 96813-3862  
Tel. No. 521-0406; Fax No. 521-0497; E-mail:  
Stius@rmhawaii.com  
Attorney for JOSEPH M. TOY, Trustee of the Estate of  
WESTERN APARTMENT SUPPLY & MAINTENANCE CO.



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF HAWAII  
1132 Bishop Street, Suite 250  
Honolulu, Hawaii 96813

hib\_9006-1 (12/09)

Debtor: WESTERN APARTMENT SUPPLY & MAINTENANCE CO.

Case No.: 11-00941

Joint Debtor:  
(if any)

Chapter: 11

[If Adversary Proceeding, complete information below. Use "et al" if multiple parties.]

Adversary Proceeding No.:

Plaintiff(s):

vs.

Defendant(s):

### MOTION TO ENLARGE OR SHORTEN TIME

Matter to  
Be heard:

Trustee's Motion For Order Authorizing: (I) Sale Of Hotel Assets, Free And Clear Of Liens And Encumbrances; (II) Assignment Of Unexpired DLNR Lease Of Non-Residential Real Property And Sarento's Restaurant Operating Agreement, Free And Clear Of Liens And Encumbrances; (III) Assignment Of DLNR Revocable Permit For Parking Lot Area, Free And Clear Of Liens And Encumbrances, And Assumption And Assignment Of Settlement Agreement Relating To Parking Lot Area; (IV) Rejection Of Days Inn Executory Contract; And (V) Partial Distribution Of Sale Proceeds

Related Dkt No.:  
(if already filed)

Moving Party:

JOSEPH M. TOY, Chapter 11 Trustee for WESTERN APARTMENT SUPPLY & MAINTENANCE CO.

The undersigned hereby moves under Fed. R. Bankr P. 9006(c) to reduce the time required:



To set the matter for hearing, or



To provide notice of hearing already scheduled.

Proposed Hearing Date and Time:

May 21, 2012 at 9:30 a.m.

Proposed Deadline for Response(s):

May 14, 2012 at 4:00 p.m.

Proposed Deadline for Reply:

May 18, 2012 at 4:00 p.m.

### DECLARATION IN SUPPORT OF MOTION

[State: (1) the reasons for shortening time, (2) the parties with which the moving party has spoken or attempted to speak concerning the motion, (3) the positions on the motion taken by such parties, and (4) to whom, how, and when notice will be given. Attach additional sheets as necessary.] The undersigned declares as follows:

I, SUSAN TIUS, declare, under penalties of perjury as follows:

1. I am the attorney for JOSEPH M. TOY ("Trustee"), Chapter 11 Trustee of the Estate of WESTERN APARTMENT SUPPLY & MAINTENANCE CO.

2. A hearing to approve the continued use of cash collateral is scheduled herein for May 21, 2012 at 9:30 a.m. The Trustee is requesting that there also be set for hearing at that same date and time,

Continued Next Page

Dated: \_\_\_\_\_

/s/ \_\_\_\_\_

Signature

(Print name also if original signature)

the Trustee's Motion For Order Authorizing: (I) Sale of Hotel Assets, Free and Clear of Liens and Encumbrances; (II) Assignment of Unexpired DLNR Lease of Non-Residential Real Property and Sarento's Restaurant Operating Agreement, Free and Clear Of Liens and Encumbrances; (III) Assignment of DLNR Revocable Permit for Parking Lot Area, Free and Clear of Liens and Encumbrances, and Assumption and Assignment of Settlement Agreement Relating to Parking Lot Area; (IV) Rejection of Days Inn Executory Contract; and (V) Partial Distribution of Sale Proceeds.

3. The Trustee, at the hearing held in this case on March 16, 2012, informed the Court and parties present, that if he succeeded in entering into a purchase and sale agreement for the Debtor's hotel assets, he anticipated seeking approval of the sale at the next scheduled hearing in the case which is May 21, 2012 at 9:30 am.

4. It is anticipated that the Hotel income through May 31, 2012 is sufficient to meet the Hotel's ordinary operating expenses. However, there is no outside financing available to the Hotel and the income is inadequate to continue to indefinitely pay the substantial administrative and professional expenses of operating under Chapter 11. The economic burden of continued operations under Chapter 11 are not justified. It is in the interests of the Estate and creditors, that the Court as soon as possible consider the proposed sale agreement for the Hotel, in particular, given that the Hotel is entering into the typically slow season of its business.

5. If 28 days notice of hearing of the Trustee's Motion is required to be given, the hearing will be held at the next regularly scheduled all-purpose calendar in the third week of June 2012.

6. On April 24, 2012, pursuant to LBR 9006(b)(2)(A), I sent a message by e-mail to Jerrold K. Guben, Esq., attorney for Debtor, Ted N. Pettit and Dana R. Lyons, attorneys for OneWest Bank, Cynthia Johiro, Esq., attorney for the State of Hawaii Department of Taxation and Department of Land and Natural Resources, Stuart T. Feeley, Esq., attorney for Sarento's on the Beach, LLC, and Terri H. Didion, Esq. and Curtis B. Ching, Esq., attorneys for the U.S. Trustee, requesting that they notify me by Noon on April 25, 2012, of their respective client's position, if any, on the Trustee's request for shortening of time for hearing of the Application and Motion.

7. On April 24, 2012, by e-mail, Attorneys Johiro, Pettit and Didion informed me that they do not object to shortening of time. There has not been any response from other counsel.

8 The Trustee will send Notice of the hearing to all of the parties listed on the Debtor's mail matrix via the Court's electronic transmission facilities and/or e-mail and/or by United States mail, postage pre-paid, upon entry of the Order granting the Trustee's Motion to Shorten Time.

I declare under penalty of perjury under the laws of the State of Hawaii and the United States that the foregoing is true and correct.

Executed this 1st day of May 2012, at Honolulu, Hawaii.

/s/Susan Tijs  
SUSAN TIJS

Filer's Name, Address, Phone, Fax, Email:

RUSH MOORE LLP A Limited Liability Law Partnership  
SUSAN TIUS 2873-0  
737 Bishop Street, Suite 2400  
Honolulu, Hawaii 96813-3862  
Tel. No. 521-0406; Fax No. 521-0497; E-mail:  
Stius@rmhawaii.com  
Attorney for JOSEPH M. TOY, Trustee of the Estate of  
WESTERN APARTMENT SUPPLY & MAINTENANCE CO.



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF HAWAII  
1132 Bishop Street, Suite 250  
Honolulu, Hawaii 96813

hib\_9073-1 (02/10)

Debtor: <b>WESTERN APARTMENT SUPPLY &amp; MAINTENANCE CO.</b>		Case No.: <b>11-00941</b>
Joint Debtor: (if any)		Chapter: <b>11</b>
[If Adversary Proceeding, complete information below. Use "et al" if multiple parties.]  Plaintiff(s):  vs. Defendant(s):		Adversary Proceeding No.: (if applicable)
<b>NOTICE OF HEARING</b> <b>Courtroom – 1132 Bishop Street, Honolulu, Hawaii</b>		Hearing Date: <b>May 21, 2012</b> Time: <b>9:30 a.m.</b>
		Objections Due: <b>May 14, 2012</b>
Matter being heard:	Trustee's Motion For Order Authorizing: (I) Sale Of Hotel Assets, Free And Clear Of Liens And Encumbrances; (II) Assignment Of Unexpired DLNR Lease Of Non-Residential Real Property And Sarento's Restaurant Operating Agreement, Free And Clear Of Liens And Encumbrances; (III) Assignment Of DLNR Revocable Permit For Parking Lot Area, Free And Clear Of Liens And Encumbrances, And Assumption And Assignment Of Settlement Agreement Relating To Parking Lot Area; (IV) Rejection Of Days Inn Executory Contract; And (V) Partial Distribution Of Sale Proceeds.	Related Dkt No.:  <b>260</b>
Moving Party:	<b>JOSEPH M. TOY, Trustee</b>	
<p><b>NOTICE IS HEREBY GIVEN</b> that this matter is set for hearing at the date and time above. The relief being requested consists of the following. <i>[Briefly describe the relief sought, including pertinent details.]</i></p> <p>JOSEPH M. TOY ("Trustee" or "Seller"), Chapter 11 Trustee of WESTERN APARTMENT SUPPLY &amp; MAINTENANCE CO. ("Debtor"), the above-named Debtor, seeks entry of an Order granting the following relief:</p> <ol style="list-style-type: none"><li>1. Approval of the sale of substantially all of the Debtor's assets comprising the "Maui Oceanfront Inn," free and clear of liens, claims, interests and encumbrances, pursuant to a Purchase and Sale Agreement dated April 18, 2012 ("PSA") between the Trustee, as Seller, and USA TIANREN HOTEL MANAGEMENT, INC., a California corporation, and XIAOYING WANG (collectively "BUYER"), as buyer; Approval of assignment of the Debtor's assumed, unexpired leasehold interest under that certain State of Hawaii Department of Land and Natural Resources General Lease No. S-4212 dated September 4, 1968 which, by mesne assignments, was assigned to Debtor by that certain assignment dated February 29, 2000, free and clear of liens and encumbrances;</li><li>2. Approval of the assignment, without consent of any party, of the Debtor's assumed unexpired executory contract interest under that certain Restaurant Operating Agreement Sarento's on the Beach dated September 22, 2000, as supplemented by that certain Mutual Release and Settlement Agreement dated February 26, 2011, by and among Debtor, Tri-Star Restaurant Group, LLC, Sarento's on the Beach, LLC, as amended by that certain amendment by First Amendment to</li></ol>		

Operating Agreement Sarento's on the Beach, free and clear of liens, claims, interests and encumbrances;

3. Approval of the assignment, without consent of any party, of that certain State of Hawaii Department of Land and Natural Resources Land Division Revocable Permit No. S-7780 dated September 8, 2011, by and between the State of Hawaii and Debtor, as Permittee, for a parking lot area, free and clear of liens, claims, interests and encumbrances, and assumption and assignment of that certain Settlement Agreement dated November 25, 2005, by and among Debtor, Tri-Star Restaurant Group, LLC, Sarento's on the Beach, LLC, Dana Naone Hall and Leslie Kuloloio, and the Planning Department, County of Maui, as amended by that certain First Amendment to Settlement Agreement dated December 2, 2008 and that certain Second Amendment to Settlement Agreement, relating to the parking lot area;

4. Approval of the rejection of the Days Inn Worldwide, Inc. Franchise Agreement dated June 19, 2009, between Debtor and Days Inn Worldwide, Inc.;

5. Authorization of the conduct of overbidding at the time of hearing of this Motion, if applicable, under the terms of the Stipulated Order Establishing Overbid Procedures entered herein on March 29, 2012 (Dkt #255);

6. Authorization of partial distribution of the sales proceeds to: (a) pay all usual and customary closing costs paid by the Seller as provided in the PSA; (b) fund a reserve, subject to mutual agreement with OneWest Bank ("OWB") in an amount that the Trustee believes is appropriate for administrative expense claims and the Trustee's professional expense related thereto, after having the opportunity to review administrative expense claims that either are filed by the Court-ordered deadline of May 11, 2012 (Dkt #247) or are known to the Trustee; (c) compensation under 11 U.S.C. Section 326 to the Trustee, in the reduced amount to which the Trustee and OWB have agreed, subject to Court approval; and (d) the balance to OWB on account of its senior lien secured by the Hotel;

7. Enter a finding that the Buyer is a purchaser of "good faith" and "for value" pursuant to 11 U.S.C. § 363(m);

8. Enter a finding that any Order approving this Motion is final for purposes of appeal;

9. Pursuant to Rule 6004(h) of the Federal Rules of Bankruptcy Procedure, enter a specific order that there shall not be a 14 day stay from entry of the Order granting this Motion because there is no financing contingency and the sale should be permitted to close without delay; and

10. For such other and further relief as the Court deems just.



**Your rights may be affected.** You should read the motion or application and the accompanying papers carefully and discuss them with your attorney if you have one in this bankruptcy case or proceeding. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought in this motion, or if you want the court to consider your views on the motion, then you or your attorney must file a statement explaining your position not later than the date below.

**Date response due** [enter specific date, and how calculated using the relevant statute, federal or local rule, or order shortening time, e.g. *X days before hearing or X days after* \_\_\_\_\_ .]:

May 14, 2012  
Date

How calculated: Per Order Shortening Time  
entered 5/2/12, Dkt #262.  
Reply Due 5/16/12.

Statements must be filed with the court at:

United States Bankruptcy Court  
District of Hawaii  
1132 Bishop Street, Suite 250  
Honolulu, HI 96813

If you mail your response to the court, you must mail it early enough so the court will **receive** it on or before the deadline stated above. The court may disregard any response filed untimely.

You must also mail or transmit a copy to the moving party at:

Responses to be sent to: SUSAN TIUS, ESQ.  
Rush Moore LLP  
737 Bishop Street, Ste. 2400  
Honolulu, Hawaii 96813-3862  
Attorney for JOSEPH M. TOY, Trustee of the Estate of  
WESTERN APARTMENT SUPPLY & MAINTENANCE CO.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or application and may enter an order granting that relief.

If no objection to the relief being sought is filed by the deadline stated above, the court may cancel the hearing (although certain types of motions will remain on the court's calendar). If the hearing is canceled, the court may grant the relief if the moving party promptly files a declaration and request for entry of an order [local form hib\_9021-1]. If the moving party wishes to proceed with a hearing in the absence of an objection, the moving party should file a request for the matter to remain on calendar [local form hib\_9013-1c3].

Dated: May 2, 2012 /s/ Susan Tius  
for Movant (Print name also if original signature)

RUSH MOORE LLP  
A Limited Liability Law Partnership

SUSAN TIUS 2873-0  
DAVID SHIBATA 2817  
NATHANIEL HIGA 9064  
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Attorneys for JOSEPH M. TOY, Chapter 11  
Trustee of the Estate of WESTERN APARTMENT  
SUPPLY & MAINTENANCE CO.

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF HAWAII**

In re:

WESTERN APARTMENT  
SUPPLY & MAINTENANCE CO.,  
a California corporation,

Debtor.

Case No. 11-00941  
(Chapter 11)

DATE: May 21, 2012  
TIME: 9:30 a.m.  
JUDGE: Hon. Robert J. Faris

**NOTICE OF HEARING ON TRUSTEE'S MOTION FOR ORDER  
AUTHORIZING: (I) SALE OF HOTEL ASSETS, FREE AND CLEAR OF  
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PARKING LOT AREA; (IV) REJECTION OF DAYS INN EXECUTORY  
CONTRACT; AND (V) PARTIAL DISTRIBUTION OF SALE PROCEEDS**

TO: DANIEL M. ELIADES, ESQ.  
Attorney for Days Inn Worldwide, Inc.  
via ECF: [deliades@formanlaw.com](mailto:deliades@formanlaw.com)  
and by United States mail, postage pre-paid to:  
Forman Holt Eliades & Ravin LLC  
80 Route 4 East, Ste., 290  
Paramus, NJ 07652

NOTICE IS HEREBY GIVEN that May 21, 2012, at 9:30 a.m., in the Courtroom of the Honorable Robert J. Faris, United States Bankruptcy Court, District of Hawaii, 1132 Bishop Street, Suite 250L, Honolulu, Hawaii, has been fixed as the date, time and place for hearing for consideration of the Trustee's Motion For Order Authorizing: (I) Sale of Hotel Assets, Free and Clear of Liens and Encumbrances; (II) Assignment of Unexpired DLNR Lease of Non-Residential Real Property and Sarento's Restaurant Operating Agreement, Free and Clear Of Liens and Encumbrances; (III) Assignment of DLNR Revocable Permit for Parking Lot Area, Free and Clear of Liens and Encumbrances, and Assumption and Assignment of Settlement Agreement Relating to Parking Lot Area; (IV) Rejection of Days Inn Executory Contract; and (V) Partial Distribution of Sale Proceeds filed herein by JOSEPH M. TOY, Chapter 11 Trustee of the Estate of WESTERN APARTMENT SUPPLY & MAINTENANCE CO., the above-named Debtor.

The above Motion and supporting documents are available for review by any interested party in the Office of the Clerk of the Court. You are invited, but not required, to examine the Motion on file with the Bankruptcy Court, to attend said hearing and to be heard concerning the matters noticed herein.

Your rights may be affected. You should read the motion and the accompanying papers carefully and discuss them with your attorney if you have one in this bankruptcy case or proceeding. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought in this Motion, or if you want the court to consider your views on the Motion, then you or your attorney must file a responsive statement explaining your position not later than May 14, 2012. Reply Memoranda is due May 16, 2012.

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DATED: Honolulu, Hawaii, May 2, 2012.

/s/Susan Tius  
SUSAN TIUS  
Attorney for JOSEPH M. TOY,  
Chapter 11 Trustee

RUSH MOORE LLP  
A Limited Liability Law Partnership

SUSAN TIUS 2873-0  
DAVID SHIBATA 2817  
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737 Bishop Street, Suite 2400  
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Attorneys for JOSEPH M. TOY, Chapter 11  
Trustee of the Estate of WESTERN APARTMENT  
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CONTRACT; AND (V) PARTIAL DISTRIBUTION OF SALE PROCEEDS**

TO: CYNTHIA M. JOHIRO, ESQ.  
Attorney for Department of Land and Natural Resources,  
State of Hawaii  
via ECF: [atg.tax.hbcf@hawaii.gov](mailto:atg.tax.hbcf@hawaii.gov)  
via E-mail to: [Cynthia.M.Johiro@hawaii.gov](mailto:Cynthia.M.Johiro@hawaii.gov)  
and by United States mail, postage pre-paid to:  
Tax Division, State of Hawaii  
425 Queen Street  
Honolulu, HI 96813

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DATED: Honolulu, Hawaii, May 2, 2012.

/s/Susan Tius  
SUSAN TIUS  
Attorney for JOSEPH M. TOY,  
Chapter 11 Trustee

RUSH MOORE LLP  
A Limited Liability Law Partnership

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TO: TED N. PETTIT, ESQ.  
DANA R. LYONS, ESQ.  
Attorney for OneWest Bank  
via ECF [tpettit@caselombardi.com](mailto:tpettit@caselombardi.com), [dlyons@caselombardi.com](mailto:dlyons@caselombardi.com);  
[shy@caselombardi.com](mailto:shy@caselombardi.com), [rhamaguchi@caselombardi.com](mailto:rhamaguchi@caselombardi.com);  
[ckk@caselombardi.com](mailto:ckk@caselombardi.com)  
and by United States mail, postage pre-paid to:  
Case Lombardi & Pettit  
737 Bishop Street, Ste. 2600  
Honolulu, HI 96813

NOTICE IS HEREBY GIVEN that May 21, 2012, at 9:30 a.m., in the Courtroom of the Honorable Robert J. Faris, United States Bankruptcy Court, District of Hawaii, 1132 Bishop Street, Suite 250L, Honolulu, Hawaii, has been fixed as the date, time and place for hearing for consideration of the Trustee's Motion For Order Authorizing: (I) Sale of Hotel Assets, Free and Clear of Liens and Encumbrances; (II) Assignment of Unexpired DLNR Lease of Non-Residential Real Property and Sarento's Restaurant Operating Agreement, Free and Clear Of Liens and Encumbrances; (III) Assignment of DLNR Revocable Permit for Parking Lot Area, Free and Clear of Liens and Encumbrances, and Assumption and Assignment of Settlement Agreement Relating to Parking Lot Area; (IV) Rejection of Days Inn Executory Contract; and (V) Partial Distribution of Sale Proceeds filed herein by JOSEPH M. TOY, Chapter 11 Trustee of the Estate of WESTERN APARTMENT SUPPLY & MAINTENANCE CO., the above-named Debtor.

The above Motion and supporting documents are available for review by any interested party in the Office of the Clerk of the Court. You are invited, but not required, to examine the Motion on file with the Bankruptcy Court, to attend said hearing and to be heard concerning the matters noticed herein.

Your rights may be affected. You should read the motion and the accompanying papers carefully and discuss them with your attorney if you have one in this bankruptcy case or proceeding. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought in this Motion, or if you want the court to consider your views on the Motion, then you or your attorney must file a responsive statement explaining your position not later than May 14, 2012. Reply Memoranda is due May 16, 2012.

NOTICE IS FURTHER GIVEN that such hearing may be adjourned from time to time without further notice of the adjournment date other than by announcement of the adjourned date or dates at said hearing.

DATED: Honolulu, Hawaii, May 2, 2012.

/s/Susan Tius  
SUSAN TIUS  
Attorney for JOSEPH M. TOY,  
Chapter 11 Trustee

RUSH MOORE LLP  
A Limited Liability Law Partnership

SUSAN TIUS 2873-0  
DAVID SHIBATA 2817  
NATHANIEL HIGA 9064  
737 Bishop Street, Suite 2400  
Honolulu, Hawaii 96813-3862  
Tel. No. 521-0406  
Fax No. 521-0497  
Email: Stius@rmhawaii.com

Attorneys for JOSEPH M. TOY, Chapter 11  
Trustee of the Estate of WESTERN APARTMENT  
SUPPLY & MAINTENANCE CO.

**UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF HAWAII**

In re:

WESTERN APARTMENT  
SUPPLY & MAINTENANCE CO.,  
a California corporation,

Debtor.

Case No. 11-00941  
(Chapter 11)

DATE: May 21, 2012  
TIME: 9:30 a.m.  
JUDGE: Hon. Robert J. Faris

**NOTICE OF HEARING ON TRUSTEE'S MOTION FOR ORDER  
AUTHORIZING: (I) SALE OF HOTEL ASSETS, FREE AND CLEAR OF  
LIENS AND ENCUMBRANCES; (II) ASSIGNMENT OF UNEXPIRED  
DLNR LEASE OF NON-RESIDENTIAL REAL PROPERTY AND  
SARENTO'S RESTAURANT OPERATING AGREEMENT, FREE AND  
CLEAR OF LIENS AND ENCUMBRANCES; (III) ASSIGNMENT OF DLNR  
REVOCABLE PERMIT FOR PARKING LOT AREA, FREE AND CLEAR  
OF LIENS AND ENCUMBRANCES, AND ASSUMPTION AND  
ASSIGNMENT OF SETTLEMENT AGREEMENT RELATING TO  
PARKING LOT AREA; (IV) REJECTION OF DAYS INN EXECUTORY  
CONTRACT; AND (V) PARTIAL DISTRIBUTION OF SALE PROCEEDS**

TO: STUART T. FEELEY, ESQ.  
Attorney for Sarento's on the Beach, LLC  
Via E-mail to: [sf@honlaw.com](mailto:sf@honlaw.com)  
and by United States mail, postage pre-paid to:  
3128 Kaloaluiki St.  
Honolulu, Hawaii 96822

NOTICE IS HEREBY GIVEN that May 21, 2012, at 9:30 a.m., in the Courtroom of the Honorable Robert J. Faris, United States Bankruptcy Court, District of Hawaii, 1132 Bishop Street, Suite 250L, Honolulu, Hawaii, has been fixed as the date, time and place for hearing for consideration of the Trustee's Motion For Order Authorizing: (I) Sale of Hotel Assets, Free and Clear of Liens and Encumbrances; (II) Assignment of Unexpired DLNR Lease of Non-Residential Real Property and Sarento's Restaurant Operating Agreement, Free and Clear Of Liens and Encumbrances; (III) Assignment of DLNR Revocable Permit for Parking Lot Area, Free and Clear of Liens and Encumbrances, and Assumption and Assignment of Settlement Agreement Relating to Parking Lot Area; (IV) Rejection of Days Inn Executory Contract; and (V) Partial Distribution of Sale Proceeds filed herein by JOSEPH M. TOY, Chapter 11 Trustee of the Estate of WESTERN APARTMENT SUPPLY & MAINTENANCE CO., the above-named Debtor.

The above Motion and supporting documents are available for review by any interested party in the Office of the Clerk of the Court. You are invited, but not required, to examine the Motion on file with the Bankruptcy Court, to attend said hearing and to be heard concerning the matters noticed herein.

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DATED: Honolulu, Hawaii, May 2, 2012.

/s/Susan Tius  
SUSAN TIUS  
Attorney for JOSEPH M. TOY,  
Chapter 11 Trustee

RUSH MOORE LLP  
A Limited Liability Law Partnership

SUSAN TIUS 2873-0  
DAVID SHIBATA 2817  
NATHANIEL HIGA 9064  
737 Bishop Street, Suite 2400  
Honolulu, Hawaii 96813-3862  
Tel. No. 521-0406  
Fax No. 521-0497  
Email: Stius@rmhawaii.com

Attorneys for JOSEPH M. TOY, Chapter 11  
Trustee of the Estate of WESTERN APARTMENT  
SUPPLY & MAINTENANCE CO.

**UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF HAWAII**

In re:

WESTERN APARTMENT  
SUPPLY & MAINTENANCE CO.,  
a California corporation,

Debtor.

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DATE: May 21, 2012  
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AUTHORIZING: (I) SALE OF HOTEL ASSETS, FREE AND CLEAR OF  
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REVOCABLE PERMIT FOR PARKING LOT AREA, FREE AND CLEAR  
OF LIENS AND ENCUMBRANCES, AND ASSUMPTION AND  
ASSIGNMENT OF SETTLEMENT AGREEMENT RELATING TO  
PARKING LOT AREA; (IV) REJECTION OF DAYS INN EXECUTORY  
CONTRACT; AND (V) PARTIAL DISTRIBUTION OF SALE PROCEEDS**

TO: CYNTHIA M. JOHIRO, ESQ.  
Attorney for Department of Taxation,  
State of Hawaii  
via ECF: [atg.tax.hbcf@hawaii.gov](mailto:atg.tax.hbcf@hawaii.gov)  
via E-mail to: [Cynthia.M.Johiro@hawaii.gov](mailto:Cynthia.M.Johiro@hawaii.gov)  
and by United States mail, postage pre-paid to:  
Tax Division, State of Hawaii  
425 Queen Street  
Honolulu, HI 96813

NOTICE IS HEREBY GIVEN that May 21, 2012, at 9:30 a.m., in the Courtroom of the Honorable Robert J. Faris, United States Bankruptcy Court, District of Hawaii, 1132 Bishop Street, Suite 250L, Honolulu, Hawaii, has been fixed as the date, time and place for hearing for consideration of the Trustee's Motion For Order Authorizing: (I) Sale of Hotel Assets, Free and Clear of Liens and Encumbrances; (II) Assignment of Unexpired DLNR Lease of Non-Residential Real Property and Sarento's Restaurant Operating Agreement, Free and Clear Of Liens and Encumbrances; (III) Assignment of DLNR Revocable Permit for Parking Lot Area, Free and Clear of Liens and Encumbrances, and Assumption and Assignment of Settlement Agreement Relating to Parking Lot Area; (IV) Rejection of Days Inn Executory Contract; and (V) Partial Distribution of Sale Proceeds filed herein by JOSEPH M. TOY, Chapter 11 Trustee of the Estate of WESTERN APARTMENT SUPPLY & MAINTENANCE CO., the above-named Debtor.

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you or your attorney must file a responsive statement explaining your position not later than May 14, 2012. Reply Memoranda is due May 16, 2012.

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DATED: Honolulu, Hawaii, May 2, 2012.

/s/Susan Tius  
SUSAN TIUS  
Attorney for JOSEPH M. TOY,  
Chapter 11 Trustee



RUSH MOORE LLP  
A Limited Liability Law Partnership

SUSAN TIUS 2873-0  
DAVID SHIBATA 2817  
NATHANIEL HIGA 9064  
737 Bishop Street, Suite 2400  
Honolulu, Hawaii 96813-3862  
Tel. No. 521-0406  
Fax No. 521-0497  
Email: Stius@rmhawaii.com

Attorneys for JOSEPH M. TOY, Chapter 11  
Trustee of the Estate of WESTERN APARTMENT  
SUPPLY & MAINTENANCE CO.

**UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF HAWAII**

In re:

WESTERN APARTMENT  
SUPPLY & MAINTENANCE CO.,  
a California corporation,

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AUTHORIZING: (I) SALE OF HOTEL ASSETS, FREE AND CLEAR OF  
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REVOCABLE PERMIT FOR PARKING LOT AREA, FREE AND CLEAR  
OF LIENS AND ENCUMBRANCES, AND ASSUMPTION AND  
ASSIGNMENT OF SETTLEMENT AGREEMENT RELATING TO  
PARKING LOT AREA; (IV) REJECTION OF DAYS INN EXECUTORY  
CONTRACT; AND (V) PARTIAL DISTRIBUTION OF SALE PROCEEDS**

TO: ISAAC D. HALL, ESQ.  
2087 Wells St.  
Wailuku, Hawaii 96793  
Attorney for Dana Naone Hall and Leslie Kuloloio

NOTICE IS HEREBY GIVEN that May 21, 2012, at 9:30 a.m., in the Courtroom of the Honorable Robert J. Faris, United States Bankruptcy Court, District of Hawaii, 1132 Bishop Street, Suite 250L, Honolulu, Hawaii, has been fixed as the date, time and place for hearing for consideration of the Trustee's Motion For Order Authorizing: (I) Sale of Hotel Assets, Free and Clear of Liens and Encumbrances; (II) Assignment of Unexpired DLNR Lease of Non-Residential Real Property and Sarento's Restaurant Operating Agreement, Free and Clear Of Liens and Encumbrances; (III) Assignment of DLNR Revocable Permit for Parking Lot Area, Free and Clear of Liens and Encumbrances, and Assumption and Assignment of Settlement Agreement Relating to Parking Lot Area; (IV) Rejection of Days Inn Executory Contract; and (V) Partial Distribution of Sale Proceeds filed herein by JOSEPH M. TOY, Chapter 11 Trustee of the Estate of WESTERN APARTMENT SUPPLY & MAINTENANCE CO., the above-named Debtor.

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NOTICE IS FURTHER GIVEN that such hearing may be adjourned from time to time without further notice of the adjournment date other than by announcement of the adjourned date or dates at said hearing.

DATED: Honolulu, Hawaii, May 2, 2012.

/s/Susan Tius

SUSAN TIUS

Attorney for JOSEPH M. TOY,  
Chapter 11 Trustee

## Claire Floan

---

**From:** Susan Tius  
**Sent:** Wednesday, May 02, 2012 10:55 AM  
**To:** Claire Floan  
**Subject:** FW: 11-00941 Order Granting Motion to Shorten Time

Susan Tius, Esq.

Rush Moore LLP

A Limited Liability Law Partnership

737 Bishop Street, Suite 2400

Honolulu, Hawaii 96813

Tel. (808) 521-0406

Fax (808) 521-0497

CONFIDENTIALITY: The information contained in this email message is confidential and is intended only for the intended recipient(s). This email message may be an attorney-client communication and, as such, is privileged and confidential. If the reader of this email message is not the intended recipient (or the person responsible for the delivery of this email message to an intended recipient), you are hereby notified that you have received this document in error, and that any reuse, review, printing, dissemination, distribution or copying of this message is strictly prohibited. If you have received this email message in error, please reply to the sender that you have received the message in error and delete it without printing it or making any copies of it. Thank you.

-----Original Message-----

**From:** [BKECF\\_LiveDB@hib.uscourts.gov](mailto:BKECF_LiveDB@hib.uscourts.gov) [mailto:[BKECF\\_LiveDB@hib.uscourts.gov](mailto:BKECF_LiveDB@hib.uscourts.gov)]  
**Sent:** Wednesday, May 02, 2012 10:55 AM  
**To:** [courtmail@hib.uscourts.gov](mailto:courtmail@hib.uscourts.gov)  
**Subject:** 11-00941 Order Granting Motion to Shorten Time

\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\* Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges,

download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30-page limit do not apply.

United States Bankruptcy Court  
District of Hawaii

Notice of Electronic Filing

The following transaction was received from OV entered on 5/2/2012 at 10:54 AM HST and filed on 5/2/2012

Case Name: Western Apartment Supply & Maintenance Company Case Number: 11-00941  
<https://ecf.hib.uscourts.gov/cgi-bin/DktRpt.pl?76185>

Document Number: 262

Copy the URL address from the line below into the location bar of your Web browser to view the document:

Docket Text:

*[The entire order in this matter is set forth in this docket entry. No document is attached.]*  
**Order Granting Motion to Shorten Time** (related document(s): [260], [261]).  
The court will hear the Motion to Authorize Sale of Hotel Assets on an expedited basis at the United States Bankruptcy Court, 1132 Bishop Street, Suite 250L, Honolulu, Hawaii on **5/21/2012 at 9:30 a.m.** Responsive memoranda due: 5/14/2012. Reply memoranda due: 5/16/2012. Movant shall immediately give notice of the hearing and the briefing deadlines to all parties in interest entitled to notice and not receiving electronic notice. **SO ORDERED.**  
/s/Robert J. Faris, United States Bankruptcy Judge.

The following document(s) are associated with this transaction:

11-00941 Notice will be electronically mailed to:

Curtis B. Ching on behalf of U.S. Trustee Office of the U.S. Trustee [USTPRegion15.HI.ECF@usdoj.gov](mailto:USTPRegion15.HI.ECF@usdoj.gov)

Terri Didion on behalf of U.S. Trustee Office of the U.S. Trustee [USTPRegion15.HI.ECF@usdoj.gov](mailto:USTPRegion15.HI.ECF@usdoj.gov)

Daniel M. Eliades on behalf of Creditor Days Inns Worldwide, Inc.  
[deliades@formanlaw.com](mailto:deliades@formanlaw.com)

Jeffery S. Flores on behalf of Debtor Western Apartment Supply & Maintenance Company [jsf@opglaw.com](mailto:jsf@opglaw.com),  
[sherriey@opglaw.com](mailto:sherriey@opglaw.com)

Jerrold K. Guben on behalf of Debtor Western Apartment Supply & Maintenance Company [jkg@opglaw.com](mailto:jkg@opglaw.com),  
[julie@opglaw.com](mailto:julie@opglaw.com)

Nathaniel A Higa on behalf of Trustee Joseph Toy [nhiga@rmhawaii.com](mailto:nhiga@rmhawaii.com), [cfitisemanu@rmhawaii.com](mailto:cfitisemanu@rmhawaii.com)

Cynthia M. Johiro on behalf of Creditor Department of Taxation, State of Hawaii [atg.tax.hbcf@hawaii.gov](mailto:atg.tax.hbcf@hawaii.gov)

Kimo C. Leong on behalf of Creditor Maui Electric Company, Ltd.

[kcleong@hawaii.rr.com](mailto:kcleong@hawaii.rr.com)

Dana R.C. Lyons on behalf of Creditor OneWest Bank [dlyons@caselombardi.com](mailto:dlyons@caselombardi.com),  
[shy@caselombardi.com](mailto:shy@caselombardi.com); [rhamaguchi@caselombardi.com](mailto:rhamaguchi@caselombardi.com); [ckk@caselombardi.com](mailto:ckk@caselombardi.com)

David Minkin on behalf of Creditor OneWest Bank [minkin@m4law.com](mailto:minkin@m4law.com), [jusam@m4law.com](mailto:jusam@m4law.com)

Office of the U.S. Trustee  
[ustpreion15.hi.ecf@usdoj.gov](mailto:ustpreion15.hi.ecf@usdoj.gov)

Ted N. Pettit on behalf of Creditor OneWest Bank [tnp@caselombardi.com](mailto:tnp@caselombardi.com),  
[shy@caselombardi.com](mailto:shy@caselombardi.com); [dlyons@caselombardi.com](mailto:dlyons@caselombardi.com); [rhamaguchi@caselombardi.com](mailto:rhamaguchi@caselombardi.com); [ckk@caselombardi.com](mailto:ckk@caselombardi.com)

Susan Tius on behalf of Accountant KMH, LLP [Stius@rmhawaii.com](mailto:Stius@rmhawaii.com)

11-00941 Notice will not be electronically mailed to:

Chris Hart & Partners, Inc.  
115 N. Market Street  
Wailuku, HI 96793-1717

Citibank, N.A.  
701 East 60th Street North  
SIOUX FALLS, SD 57117

Citibank, N.A.  
Payment Center, 4740 121st Street  
Urbandale, IA 50323

Carroll G. Davis  
1335 Hotel Circle South  
Suite 107  
San Diego, CA 91942

Torkildson, Katz, Moore, Heatherington & Harris 700 Bishop Street 15th Floor Honolulu, HI 96813

Joseph Toy  
75 Fort Street  
Fort Street Tower, Suite 2124  
Honolulu, HI 96813

RUSH MOORE LLP  
A LIMITED LIABILITY LAW PARTNERSHIP

SUSAN TIUS 2873  
DAVID SHIBATA 2817  
NATHANIEL HIGA 9064  
737 Bishop Street, 24<sup>th</sup> Floor  
Honolulu, Hawaii 96813  
Telephone: (808) 521-0406  
Facsimile: (808) 521-0497  
E-mail: stius@rmhawaii.com

Attorneys for JOSEPH M. TOY, Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF HAWAII

In re

WESTERN APARTMENT SUPPLY  
& MAINTENANCE CO.,  
a California corporation,

Debtor.

Case No. 11-00941  
(Chapter 11)

TRUSTEE'S MOTION FOR  
ORDER AUTHORIZING: (I) SALE  
OF HOTEL ASSETS, FREE AND  
CLEAR OF LIENS AND  
ENCUMBRANCES; (II)  
ASSIGNMENT OF UNEXPIRED  
DLNR LEASE OF NON-  
RESIDENTIAL REAL PROPERTY  
AND SARENTO'S RESTAURANT  
OPERATING AGREEMENT, FREE  
AND CLEAR OF LIENS AND  
ENCUMBRANCES; (III)  
ASSIGNMENT OF DLNR  
REVOCABLE PERMIT FOR  
PARKING LOT AREA, FREE AND  
CLEAR OF LIENS AND  
ENCUMBRANCES, AND  
ASSUMPTION AND ASSIGNMENT

OF SETTLEMENT AGREEMENT  
RELATING TO PARKING LOT  
AREA; (IV) REJECTION OF DAYS  
INN EXECUTORY CONTRACT;  
AND (V) PARTIAL DISTRIBUTION  
OF SALE PROCEEDS ;  
MEMORANDUM IN SUPPORT OF  
MOTION; DECLARATION OF  
JOSEPH M. TOY IN SUPPORT OF  
MOTION; EXHIBITS "A" – "C";  
DECLARATION OF SUSAN TIUS  
IN SUPPORT OF MOTION;  
EXHIBITS "1" AND "2"

Date: \_\_\_\_\_ 2012

Time: \_\_\_\_\_

Judge: Honorable Robert J. Faris

TRUSTEE'S MOTION FOR ORDER AUTHORIZING: (I) SALE OF HOTEL  
ASSETS, FREE AND CLEAR OF LIENS AND ENCUMBRANCES;  
(II) ASSIGNMENT OF UNEXPIRED DLNR LEASE OF NON-RESIDENTIAL  
REAL PROPERTY AND SARENTO'S RESTAURANT OPERATING  
AGREEMENT, FREE AND CLEAR OF LIENS AND ENCUMBRANCES;  
(III) ASSIGNMENT OF DLNR REVOCABLE PERMIT FOR PARKING  
LOT AREA, FREE AND CLEAR OF LIENS AND ENCUMBRANCES,  
AND ASSUMPTION AND ASSIGNMENT OF SETTLEMENT AGREEMENT  
RELATING TO PARKING LOT AREA; (IV) REJECTION OF  
DAYS INN EXECUTORY CONTRACT; AND  
(V) PARTIAL DISTRIBUTION OF SALES PROCEEDS

**THIS MOTION AFFECTS THE PROPERTY RIGHTS OF THE  
THE STATE OF HAWAII, DEPARTMENT OF TAXATION.**



JOSEPH M. TOY ("Trustee" or "Seller"), Chapter 11 Trustee of WESTERN APARTMENT SUPPLY & MAINTENANCE CO. ("Debtor"), the above-named Debtor, seeks entry of an Order granting the following relief:

1. Approval of the sale of substantially all of the Debtor's assets comprising the "Maui Oceanfront Inn," free and clear of liens, claims, interests and encumbrances, pursuant to a Purchase and Sale Agreement dated April 18, 2012 ("PSA") between the Trustee, as Seller, and USA TIANREN HOTEL MANAGEMENT, INC., a California corporation, and XIAOYING WANG (collectively "BUYER"), as buyer;

2. Approval of assignment, without the consent of any party, of the Debtor's assumed, unexpired leasehold interest under that certain State of Hawaii Department of Land and Natural Resources General Lease No. S-4212 dated September 4, 1968 which, by mesne assignments, was assigned to Debtor by that certain assignment dated February 29, 2000, free and clear of liens and encumbrances;

3. Approval of assignment of the Debtor's assumed unexpired executory contract interest under that certain Restaurant Operating Agreement Sarento's on the Beach dated September 22, 2000, as supplemented by that certain Mutual Release and Settlement Agreement dated February 26, 2011, by and among Debtor, Tri-Star Restaurant

Group, LLC, Sarento's on the Beach, LLC, as amended by that certain amendment by First Amendment to Operating Agreement Sarento's on the Beach, free and clear of liens, claims, interests and encumbrances;

4. Approval of the assignment, without consent of any party, of that certain State of Hawaii Department of Land and Natural Resources Land Division Revocable Permit No. S-7780 dated September 8, 2011, by and between the State of Hawaii and Debtor, as Permittee, for a parking lot area, free and clear of liens, claims, interests and encumbrances, and assumption and assignment of that certain Settlement Agreement dated November 25, 2005, by and among Debtor, Tri-Star Restaurant Group, LLC, Sarento's on the Beach, LLC, Dana Naone Hall and Leslie Kuloloio, and the Planning Department, County of Maui, as amended by that certain First Amendment to Settlement Agreement dated December 2, 2008 and that certain Second Amendment to Settlement Agreement, relating to the parking lot area;

5. Approval of the rejection of the Days Inn Worldwide, Inc. Franchise Agreement dated June 19, 2009, between Debtor and Days Inn Worldwide, Inc.;

6. Authorization of the conduct of overbidding at the time of hearing of this Motion, if applicable, under the terms of the Stipulated

Order Establishing Overbid Procedures entered herein on March 29, 2012 (Dkt #255);

7. Authorization of partial distribution of the sales proceeds to: (a) pay all usual and customary closing costs paid by the Seller as provided in the PSA; (b) fund a reserve, subject to mutual agreement with OneWest Bank ("OWB") in an amount that the Trustee believes is appropriate for administrative expense claims and the Trustee's professional expense related thereto, after having the opportunity to review administrative expense claims that either are filed by the Court-ordered deadline of May 11, 2012 (Dkt #247) or are known to the Trustee; (c) compensation under 11 U.S.C. Section 326 to the Trustee, in the reduced amount to which the Trustee and OWB have agreed, subject to Court approval; and (d) the balance to OWB on account of its senior lien secured by the Hotel;

8. Enter a finding that the Buyer is a purchaser "in good faith" and "for value" pursuant to 11 U.S.C. § 363(m);

9. Enter a finding that any Order approving this Motion is final for purposes of appeal;

10. Pursuant to Rule 6004(h) of the Federal Rules of Bankruptcy Procedure, enter a specific order that there shall not be a 14 day stay from

entry of the Order granting this Motion because there is no financing contingency and the sale should be permitted to close without delay; and

11. For such other and further relief as the Court deems just.

This Motion is based upon Sections 105(a), 363 and 365 of Title 11 of the United States Code, Rules 4001 and 6004 of the Federal Rules of Bankruptcy Procedure, LBR 6004-1 and 9013-1, the Memorandum in Support of Motion, Declaration of Joseph M. Toy in Support of Motion; Exhibits "A" – "C" and Declaration of Susan Tius in Support of Motion; Exhibits "1" and "2" filed herewith, the records and files in the case, and such other and further matters as may be presented herein.

Dated: Honolulu, Hawaii, May 1, 2012.

/s/Susan Tius  
SUSAN TIUS  
DAVID SHIBATA  
NATHANIEL HIGA  
Attorneys for Joseph M. Toy, Chapter  
11 Trustee

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re

WESTERN APARTMENT SUPPLY  
& MAINTENANCE CO.,  
a California corporation,

Debtor.

Case No. 11-00941  
(Chapter 11)

MEMORANDUM IN SUPPORT OF  
MOTION

MEMORANDUM IN SUPPORT OF MOTION

JOSEPH M. TOY ("Trustee" or "Seller"), Chapter 11 Trustee of WESTERN APARTMENT SUPPLY & MAINTENANCE CO. ("Debtor"), the above-named Debtor, submits this Memorandum in Support of Trustee's Motion for Order Authorizing: (I) Sale Of Hotel Assets, Free and Clear of Liens and Encumbrances; (II) Assignment of Unexpired DLNR Lease of Non-Residential Real Property and Sarento's Restaurant Operating Agreement, Free and Clear of Liens and Encumbrances; (III) Assignment of DLNR Revocable Permit for Parking Lot Area, Free and Clear of Liens and Encumbrances, and Assumption and Assignment of Settlement Agreement Relating to Parking Lot Area; (IV) Rejection of Days Inn Executory Contract; and (V) Partial Distribution of Sales Proceeds.

## JURISDICTION AND VENUE

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## BACKGROUND

On April 5, 2011, the Debtor filed a petition under Chapter 11 of the Bankruptcy Code. On August 3, 2011, the Trustee was appointed as Chapter 11 Trustee. Pursuant to Sections 1106 and 1108 of the Bankruptcy Code, the Trustee is in possession of the Debtor's interests in real and personal property, more particularly described below, comprising the operating hotel known as the "Maui Oceanfront Inn" (collectively "Hotel" or "Hotel Assets"):

1. Debtor's unexpired leasehold interest under that certain State of Hawaii Department of Land and Natural Resources General Lease No. S-4212 dated September 4, 1968, by and between the State of Hawaii, as Lessor, and Walter C. Witte and John J. Fagan, as Lessee, which by mesne assignments was assigned to Debtor by that certain assignment dated February 29, 2000 (the "DLNR Lease"). The DLNR Lease was

assumed by the Debtor by Order Re: Debtor's Motion to Assume Unexpired Lease of Non-Residential Real Property and Revocable Permit entered on July 28, 2012 (Dkt #117) ("DLNR Lease/Permit Assumption Order");

2. State of Hawaii Department of Land and Natural Resources Land Division Revocable Permit No. S-7780 dated September 8, 2011 by and between the State of Hawaii and Debtor, as Permittee, (replacing Revocable Permit 7235 dated December 1, 2000) ("Revocable Permit") for a parking lot area, and that certain Settlement Agreement dated November 25, 2005, by and among Debtor, Tri-Star Restaurant Group, LLC, Sarento's on the Beach, LLC, Dana Naone Hall and Leslie Kuloloio, and the Planning Department, County of Maui, as amended by that certain First Amendment to Settlement Agreement dated December 2, 2008 and that certain Second Amendment to Settlement Agreement (collectively, the "Settlement Agreement, as amended") relating to the parking lot area. Revocable Permit No. 7235 was assumed by the Debtor under the DLNR Lease/Permit Assumption Order; and

3. The Debtor's assumed unexpired executory contract interest under that certain Restaurant Operating Agreement Sarento's on the Beach dated September 22, 2000 ("Operating Agreement"), as

supplemented by the Mutual Release and Settlement Agreement dated February 26, 2011, as amended (collectively, "Sarento's Agreement"), and amended by First Amendment to Operating Agreement Sarento's on the Beach ("Sarento's Agreement, as amended"). The Sarento's Agreement was assumed by the Debtor by Order Re: Debtor's Motion to Assume Sarento's on the Beach's Operating Agreement and Mutual Release and Settlement Agreement; Exhibit "A" entered on July 28, 2012 (Dkt #116) ("Sarento's Agreement Assumption Order").

#### SECURED CLAIMS

The Hotel is subject to the following secured claims reflected on the Preliminary Title Report dated March 7, 2012, a copy of which is attached to the Declaration of Susan Tius in Support of Motion ("Counsel Decl.") as Exhibit "1".

1. First Priority Secured Claim. On or about February 13, 2007, the Debtor entered into two secured loans in the principal amounts of \$12,200,000 and \$300,000, evidenced by two promissory notes, duly recorded Mortgages, an Assignment of Rents, a UCC Financing Statement, an Assignment of the Certificate of Deposit in the approximate amount of \$175,000 ("DLNR Bond") described in the Assignment of Deposit Account dated February 13, 2007, which Certificate of Deposit is to bond the



Debtor's performance of the DLNR Lease, and other loan documents (collectively, "Secured Loans") in favor of La Jolla Bank. The Secured Loans subsequently were assigned to OneWest Bank ("OWB"), the current holder of the Secured Loans. As of August 10, 2010, OWB claims it is owed \$12,545,862.23, plus accruing interest of \$2,229.27 per day and other chargeable amounts as shown on the Proof of Claim filed on August 24, 2011 by OWB (Claims Register #15. The Trustee is aware of post-petition payments to OWB of approximately \$240,000 for "adequate protection." Pursuant to the foregoing, OWB holds a first priority security interest in, a lien upon, and a right of set off against, and assignment to OWB as security, of the Hotel Assets.

2. Junior Secured Claims. The State of Hawaii, Department of Taxation (the "DOT") claims valid, perfected, and unavoidable statutory liens, junior to OWB's liens, against the Hotel Assets, in the total amount as of the petition date of \$457,863.18, as shown on the Proof of Claim filed by the DOT on September 28, 2011 (Claims Register #16 ), pursuant to the following filings at the Bureau of Conveyances, State of Hawaii:

(i) Certificate of Tax Lien, dated September 26, 2008 filed as Document No. 2008-155099.

(ii) Certificate of Tax Lien, dated September 26, 2008 filed as Document No. 2008-155100.

(iii) Certificate of Tax Lien, dated January 20, 2009 filed as Document No. 2009-010769.

(iv) Certificate of Tax Lien, dated March 11, 2009 filed as Document No. 2009-040997.

(v) Certificate of Tax Lien, dated September 17, 2009 filed as Document No. 2009-145487.

(vi) Certificate of Tax Lien, dated September 18, 2009 filed as Document No. 2009-150848.

(vii) Certificate of Tax Lien, dated December 28, 2009 filed as Document No. 2009-004632.

(viii) Certificate of Tax Lien, dated February 10, 2010 filed as Document No. 2010-024805.

(ix) Certificate of Tax Lien, dated April 16, 2010 filed as Document No. 2010-054387.

(x) Certificate of Tax Lien, dated June 2, 2010 filed as Document No. 2010-080078.

(xi) Certificate of Tax Lien, dated July 30, 2010 filed as Document No. 2010-118983.

(xii) Certificate of Tax Lien, dated September 28, 2010 filed as Document No. 2010-157287.

(xiii) Certificate of Tax Lien, dated November 9, 2010 filed as Document No. 2010-181451.

(xiv) Certificate of Tax Lien, dated February 23, 2011 filed as Document No. 2011-038122.

(xv) Certificate of Tax Lien, dated March 9, 2011 filed as Document No. 2011-044309.

TRUSTEE'S MOTION TO SELL  
SUBSTANTIALLY ALL DEBTOR'S ASSETS

The Trustee, after, extensive consultations among the Trustee, his counsel and, through the respective counsel of OWB, the DOT, the DLNR, the Debtor and the Office of the United States Trustee ("OUST"), in the exercise of his business judgment, determined that it was and is in the best interests of the Estate, creditors and interested parties, that the Hotel be offered for sale and sold through this bankruptcy case. The Trustee believes that this will preserve the going concern value of the Hotel, facilitate continued uninterrupted operation of the Hotel, and avoid OWB's need to resume the foreclosure lawsuit in the State Court which would mean returning of the Hotel to the possession of the Debtor creating further delay, added expense and likely result in sale of the Hotel at a depressed "fire sale" price with no return to any creditor except for OWB. The Trustee wishes to make clear to the Court and creditors that the Trustee's herein proposed sale of the Hotel Assets will not realize any funds to pay to the DOT on its liens and priority claims nor unsecured creditors. However, if the Hotel Assets were foreclosed by the OWB, the outcome would be the same. The sale proceeds will be available to pay allowed administrative expenses of the Chapter 11 case, as described below. The Trustee, after closing of the sale and final determination of administrative expense

claims, will seek dismissal of the case because there will not be any funds nor other property remaining to be administered under this Court's jurisdiction.

Over a period of approximately six weeks, the Trustee has advertised the Hotel for sale in publications in the Pacific Business News and press releases to the Star Advertiser, given interviews with local news media, solicited the interest of parties who had contacted the Trustee expressing an interest in purchasing the Hotel Assets and informed parties whom the Trustee, from his decades of experience in the hospitality business believed might be interested in it. Further, the Trustee established a website giving access to registered users and the major parties in the case to various public documents and a proposed form of Purchase and Sale Agreement.

The Trustee has negotiated a sale (excluding cash) of the Hotel, and has entered into a Purchase and Sale Agreement dated April 18, 2012 ("PSA") between the Trustee, as Seller, and USA TIANREN HOTEL MANAGEMENT, INC., a California corporation, and XIAOYING WANG (collectively "BUYER"), as buyer, a copy of which is attached to the Declaration of Joseph M. Toy ("Trustee Decl.") as Exhibit "A". The PSA is subject to approval of this Court and to the terms of the Stipulated Order

Establishing Overbid Procedures entered on March 29, 2012 (Dkt #255) ("Overbid Procedures Order"), a copy of which is attached to the Trustee Decl. as Exhibit "B". As set forth more fully in the PSA, Buyer has agreed to purchase the Hotel Assets for the amount of \$7.5 Million (the "Purchase Price"), has made a \$750,000 deposit which is held in escrow by Title Guaranty Escrow Services of Hawaii, Inc., and provided support that Buyer will be able to pay the balance under the PSA if the sale to it is approved by the Court. The closing date under the PSA is on the fourteenth (14) calendar day after all conditions precedent are satisfied or such other date mutually agreeable to the Trustee and Buyer (the "Closing Date"). The Buyer also has agreed to pay all closing costs and cure delinquent real property taxes, interest and penalties to closing, which currently total approximately \$142,000. Further, the Buyer must replace a performance bond in favor of the DLNR to secure the DLNR Lease in the amount of two times the annual rent, which bond amount currently is approximately \$175,000.

The PSA requires the Court's entry of a finding that the Buyer is a purchaser "in good faith" and "for value" pursuant to 11 U.S.C. § 363(m) which is supported by the Trustee's marketing of the Hotel and the arms-length negotiations resulting in the Trustee and Buyer entering into the

PSA. As a good faith purchaser, Buyer is protected from the effects of any reversal or modification on appeal of the authorization to sell or lease the Property. See, In re Ewell, 958 F.2d 276, 281 (Cal. 1992).

THE SALE OF THE HOTEL ASSETS, THE ASSIGNMENT  
OF THE DLNR LEASE, THE SARENTO'S RESTAURANT  
OPERATING AGREEMENT AND THE REVOCABLE PERMIT  
SHOULD BE FREE AND CLEAR OF  
LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES

The PSA provides for the sale of the Hotel Assets, free and clear of liens, claims, interests and encumbrances with the same to transfer to the sale proceeds in the order of validity, priority and amount.

The sale requires the Court's authorization to assign the DLNR Lease which was assumed under the DLNR Lease/Revocable Permit Assumption Order, the Sarento's Restaurant Operating Agreement which was assumed under the Sarento's Assumption Agreement Order, the post-petition Revocable Permit No. S-7780 for the parking lot area, and the Settlement Agreement, as amended, relating to the parking lot.

THE REQUIREMENTS UNDER 11 U.S.C. § 363(f) FOR A  
SALE OF THE HOTEL ASSETS FREE AND CLEAR OF  
LIENS AND ENCUMBRANCES HAVE BEEN SATISFIED

11 U.S.C. § 363(f) allows a trustee to sell property of the bankruptcy estate "free and clear of any interest in such property of an entity," if any one of the following five conditions is met:

- (1) applicable non-bankruptcy law permits a sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept money satisfaction of such interest

11 U.S.C. § 363(f). Section 363(f) of the Bankruptcy Code is written in the disjunctive and thus only one of the enumerated conditions needs to be satisfied for Court approval to be appropriate.

The proposed sale satisfies Section 363(f)(2). First, OWB has consented to the sale. Second, it is anticipated that the DOT will not object because the outcome to the DOT is the same as if the Hotel Assets were foreclosed. Where a lienholder consents to the sale of Estate property, the property may be sold free and clear of all liens.

11 U.S.C. § 363(f) (2). As discussed above, there are two lienholders for the property at issue: OWB and the DOT. OWB has affirmatively consented to the sale. The DOT reasonably can be expected to consent, or at least not to object. In re Colarusso, 295 B.R. 166, 175 (B.A.P. 1st Cir. 2003) (failure to object, failure to seek adequate protection, and

participation in sale as bidder constituted consent under section 363(f)(2)); see, also FutureSource L.L.C. v. Reuters Ltd., 312 F.3d 281, 285 (B.A.P. 7th Cir. 2002) (“[L]ack of objection (provided of course there is notice) counts as consent.”); In re Tabone, Inc., 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (noting that because lienholder “did not offer any objection, it may be deemed to have consented to the sale for purposes of section 363(f)(2)”; In re Elliot, 94 B.R. 343, 345-46 (Bankr. E.D. Penn. 1988) (holding that implied consent was sufficient to sell assets free and clear of all liens where lienholder received notice of the sale and failed to make a timely objection); In re Gabel, 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same). Other courts hold that a creditor’s silence in response to a properly noticed sale results in waiver of its objection. In re EnvisioNet Computer Servs., Inc., 275 B.R. 664, 669 (D. Me. 2002) (“A party’s failure to timely raise an objection under section 363 of the Bankruptcy Code in accordance with a court order requiring objections to be made by a certain date results in a waiver of the objection.”). Essentially, these two rationales are identical in that they both produce the result of upholding the Trustee’s right to sell property free and clear of all liens where the lienor has not filed any objection. As such, if the DOT consents or does not object, the Trustee may conduct the sale free and clear of the DOT’s liens.



Second, the DOT could be compelled, in a foreclosure action under state law, to accept less than full payment on its liens. Where a lienholder may "be compelled, in a legal or equitable proceeding, to accept money satisfaction of such interest," the Court may approve the sale free and clear of said liens. 11 U.S.C. § 363(f) (5). The DOT is a junior lienholder in that its certificates of tax liens were recorded after OWB's mortgages. As such, if a foreclosure by judicial sale or by power of sale were conducted under Haw. Rev. Stat. Chapter 667, the sale would entitle lienors to "payment according to the priority of their liens" and would "operate to extinguish the liens of subsequent mortgages and liens of the same property." Haw. Rev. Stat. § 667-3. Therefore, the DOT could be compelled to accept payment of less than it is owed in satisfaction of its interest. In re Boston Generating, LLC, 440 B.R. 302, 333 (Bankr. S.D.N.Y. 2010) ("[T]he existence of judicial and nonjudicial foreclosure and enforcement actions under state law can satisfy section 363(f)(5)."); In re Jolan, Inc., 403 B.R. 866, 870 (Bankr. W.D. Wash. 2009) (stating that because "judicial and nonjudicial foreclosures in Washington operate to clear junior lienholders' interests, [] their liens attach to proceeds in excess of the costs of sale and the obligation or judgment foreclosed . . . [and] lienholders may be compelled to accept money satisfactions, § 363(f)(5)

here permits a sale free and clear of liens, with the liens attaching to the proceeds, notwithstanding that those proceeds may be insufficient to pay all liens").

OWB, who is owed in excess of \$12, 500,000, has consented to the sale and agreed to carve-out funds as a reserve for payment of allowed administrative expense claims and the Trustee's expenses related thereto. Additionally, OWB has agreed, subject to Court approval, to payment from the proceeds of compensation to the Trustee based on a percentage of the gross proceeds of sale (excluding the Buyer's payment of the delinquent real property taxes and replacement of the DLNR bond) calculated as 1.5% up to \$7,999,999, 1.75% up to \$8,499,999, 2.0% up to \$8,999,999, 2.25% up to \$9,499,999 and 2.5% above \$9,500,000. The aforementioned percentages are less than the 3% statutory limitation on compensation of a trustee under 11 U.S.C. § 326(a). The Trustee has maintained time sheets for his marketing and sales activities that will be provided to OUST and, if required by the Court, will be filed in the case.

The sales proceeds will be substantially less than OWB's first priority lien. As such, there is no value attributable to DOT's junior liens and DOT will not receive any payment on account of its liens. The proposed distribution of the Hotel sale proceeds will be to pay (a) all usual and

customary closing costs paid by the Seller as provided in the PSA; (b) to fund a reserve, subject to mutual agreement with OWB, in an amount ("Administrative Claims Fund") that the Trustee believes is appropriate for administrative expense claims and the Trustee's professional expense related thereto, after having the opportunity to review administrative expense claims that either are filed by the Court-ordered deadline of May 11, 2012 (Dkt #247) or are known to the Trustee, (c) compensation under 11 U.S.C. § 326 to the Trustee in the reduced amount to which the Trustee and OWB have agreed, subject to Court approval; and (d) the balance to OWB on account of its senior lien secured by the Hotel.

Under the circumstances, the sale of the Hotel Assets, free and clear of liens, claims, interests and encumbrances, with the same to transfer to the proceeds, and the Trustee's proposed partial distribution of the proceeds, pursuant to 11 U.S.C. § 363(f) in the manner provided herein, is appropriate.

**ASSUMPTION AND ASSIGNMENT OF  
EXECUTORY CONTRACTS IS APPROPRIATE**

In connection with the PSA, the Trustee also seeks Court authority to assign the Debtor's interest as Permittee in the Revocable Permit for the parking lot area, free and clear of liens, claims, interests and encumbrances, and assumption and assignment of the Settlement

Agreement, as amended, regarding the parking lot area. The status of the Settlement Agreement, as amended, is summarized in a letter dated March 7, 2012 from Chris Hart & Partners, Inc., a consultant to the Debtor who also is assisting the Trustee, a copy of which is attached to the Trustee Decl. as Exhibit "C".

Pursuant to 11 U.S.C. § 365(a), a trustee may assume executory contracts and unexpired leases. If there has been a default, the trustee may assume an executory contract if there is compliance with the provisions of Section 365(b)(1) of the Bankruptcy Code, including cure and providing of adequate assurance of future performance of the executory contract or lease. 11 U.S.C. §365(a). Specifically, Section 365(a) provides that, "the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor."

Here, the Settlement Agreement, as amended, relates to a parking lot area, which is integrated into and necessary to the Debtor's operations. The Trustee will assume and assign the Settlement Agreement, as amended, to the Buyer who must continue to perform the Debtor's obligations thereunder. Accordingly, the Court should approve assignment of the Revocable Permit and the assumption and assignment of the Settlement Agreement, as amended, to the Buyer.

REJECTION OF THE DAYS INN WORLDWIDE, INC. FRANCHISE  
AGREEMENT DATED JUNE 19, 2009, BETWEEN DEBTOR AND DAYS  
INN WORLDWIDE, INC. ("DAYS INN FRANCHISE AGREEMENT")

The Debtor, as franchisee, entered into a Franchise Agreement dated June 19, 2009 with Days Inn Worldwide, Inc. ("Franchise Agreement"). A condition of the PSA is that Seller file a motion with the Bankruptcy Court and obtain entry of a final, nonappealable Order rejecting the Franchise Agreement. If the Franchise Agreement can be assumed, which is questionable under 11 U.S.C. § 365(c), the Trustee seeks to reject it.

Section 365(a) provides that a Court may approve rejection of an executory contract if such rejection is made in the exercise of the trustee's sound business judgment, and if such rejection benefits the Estate. In re Chi-Feng Huang, 23 B.R. 798, 800 (B.A.P. 9th Cir. 1982) ("We believe the 'business judgment' rule is the standard which controls the court's right to disapprove the trustee's decision to reject an executory contract.") As such, it is sufficient if a trustee determines in its business judgment that a benefit will be realized.

Furthermore, "in evaluating the rejection decision, the bankruptcy court should presume that the [Trustee] acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." In re Pomona Valley Med.

Group, Inc., 476 F.3d 665, 670 (9th Cir. 2007). "It should approve the rejection of an executory contract under § 365(a) unless it finds that the debtor-in-possession's conclusion that rejection would be 'advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.'" Id. (quoting Lubrizol Enter. v. Richmond Metal Finishers, 756 F.2d 1043, 1047 (4th Cir 1985)).

In this case, the Trustee, based on his experience and knowledge of the hospitality industry as well as the terms of the instant Franchise Agreement, believes the Franchise Agreement to be a negative factor in sale of the Hotel in that, among other reasons, a buyer would wish to enter a franchise and/or management agreement with a party of its own selection on terms it negotiates. Days Inn and the Buyer are free to negotiate a new agreement, if they chose to do so.

#### CONCLUSION

Based upon the foregoing, the Trustee requests that the Motion be granted ordering the requested relief, that there be an express waiver of the fourteen-day stay under Bankruptcy Rule 6004(h), that the Court enter an Order in substantially the form of Exhibit "2" attached to the Counsel Decl. and for such further relief as the Court deems proper.

Dated: Honolulu, Hawaii, May 1, 2012.

/s/Susan Tius

SUSAN TIUS

DAVID SHIBATA

NATHANIEL HIGA

Attorneys for Joseph M. Toy, Chapter 11  
Trustee

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF HAWAII

In re

WESTERN APARTMENT SUPPLY  
& MAINTENANCE CO.,  
a California corporation,  
  
Debtor.

Case No. 11-00941  
(Chapter 11)

DECLARATION OF JOSEPH M. TOY  
IN SUPPORT OF MOTION; EXHIBITS "A" – "C"

I, JOSEPH M. TOY, hereby declare as follows:

1. I have personal knowledge of the facts stated in this Declaration and if called as a witness in this action, I could and would testify to all matters set forth herein of my own knowledge.

2. WESTERN APARTMENT SUPPLY & MAINTENANCE CO. ("Debtor") commenced this case by the filing of a voluntary petition under Chapter 11 on April 5, 2011. The Debtor was a debtor-in-possession until August 3, 2011, when I was appointed as Trustee under Chapter 11.

3. The Debtor's Estate is the owner of the Debtor's interests in certain real and personal property comprising the hotel known as the "Maui Oceanfront Inn" (the "Hotel" or "Hotel Assets") located in Kihei, Maui,



Hawaii. The Hotel has operated without interruption since commencement of the case.

4. During the eight months since my appointment, the quality, efficiency and stability of the management and operations of the Hotel have been improved. The activities of myself and my Court-approved consultant, Hospitality Advisors LLC ("HA"), have included dealing with cash, operating and accounting controls, reviewing and making substantial corrections to the hotel's books and records since my appointment, and focusing on the Estate's management company, cash flow management, operations' sales and marketing, capital improvements, tenant restaurant operations, the Debtor's relationship to the hotel employees, insurance matters, developing strategies for the ongoing operations of the Debtor, interfacing with the OneWest Bank ("OWB"), the State of Hawaii, Department of Taxation ("DOT"), the State of Hawaii, Department of Land & Natural Resources ("DLNR"), the Debtor and the Office of the United States Trustee ("OUST"), positioning of the Hotel for a potential sale, marketing of the Hotel, establishing overbid procedures for sale of the Hotel and entering into a Purchase and Sale Agreement with a "stalking horse" bidder for the Hotel.

5. It is anticipated that the Hotel income through May 31, 2012 is sufficient to meet the Hotel's ordinary operating expenses. However, there

is no outside financing available to the Hotel and the income is inadequate to continue to indefinitely pay the substantial professional and other administrative expense of operating under Chapter 11. The economic burden of continued operations under Chapter 11 are not justified.

6. I have conserved cash by not paying real property taxes due for the last two installments, which will currently total approximately \$142,000.00 through March 31, 2012. These taxes will be paid from the proposed sale transaction, if approved by the Court.

7. After, extensive consultations among myself, my counsel, and counsel for the Debtor's secured creditor (OWB), the DOT, the DLNR, the Debtor and OUST, in the exercise of my business judgment, I have determined that it is in the best interests of the Estate, creditors and interested parties, that the Hotel be offered for sale and sold through this bankruptcy case. I believe that a sale through this Court will preserve the going concern value of the Hotel, facilitate continued uninterrupted operation of the Hotel, and avoid OWB's need to resume the foreclosure lawsuit in the State Court which would mean returning of the Hotel to the possession of the Debtor creating further delay, added expense and likely result in sale of the Hotel at a depressed "fire sale" price with no return to any creditor except for OWB. I wish to make clear to the Court and

creditors that the herein proposed sale of the Hotel Assets will not realize any funds to pay to the DOT on its liens, which are without value, nor on the DOT's priority claims, nor unsecured creditors. However, if the Hotel Assets were foreclosed by OWB, the outcome would be the same. The proceeds of the sale proposed herein will be available to pay allowed administrative expenses of the Chapter 11 case. After closing of the sale and final determination and payment of administrative expense claims, I will seek dismissal of the case because there will not be any funds nor other property remaining to be administered under this Court's jurisdiction.

8. Subject to Court approval, I have negotiated a sale (excluding cash) of the Hotel, and entered into a Purchase and Sale Agreement dated April 11, 2012 ("PSA") between the Trustee, as Seller, and USA TIANREN HOTEL MANAGEMENT, INC., a California corporation, and XIAOYING WANG (collectively "BUYER"), as buyer, a true and correct copy of which is attached as Exhibit "A", subject to approval of this Court and to the terms of the Stipulated Order Establishing Overbid Procedures entered on March 29, 2012 (Dkt #255) ("Overbid Procedures Order"), a true and correct copy of which is attached hereto as Exhibit "B". As set forth more fully in the PSA, Buyer has agreed to purchase the Hotel Sale Assets for the amount of \$7.5 Million (the "Purchase Price") and has made a \$750,000 deposit

which is held in escrow by Title Guaranty Escrow Services of Hawaii, Inc., and provided support that Buyer will be able to pay the balance under the PSA if the sale to it is approved by the Court. The closing date under the PSA is on the fourteenth (14) calendar day after all conditions precedent are satisfied or such other date mutually agreeable to the Trustee and Buyer (the "Closing Date"). The Buyer also has agreed to pay all closing costs and cure delinquent real property taxes, interest and penalties to closing, which are currently approximately \$142,000. Further, the Buyer must replace a performance bond in favor of the DLNR to secure two times the annual rent under the DLNR Lease, which bond amount currently is approximately \$175,000.

9. In my opinion, based on the events during the Chapter 11 period, the marketing and negotiations for sale of the Hotel, and the below factors, the Buyer is "in good faith" and "for value."

- a. I am not affiliated with the Buyer in any way.
- b. I have knowledge developed over thirty years in the hospitality consulting business in Hawaii.
- c. I and HA, my Court-approved consultant, have an extensive contact list of parties who are in the business of operating, owning and/or financing of hotel properties.

d. I and HA are regularly in contact with parties interested in selling and purchasing Hawaii hotel properties.

e. Over a 6 week period, I advertised the Hotel in publications in the Pacific business News and press releases to the Star Advertiser, gave interviews with local news media, solicited the interest of parties who had contacted me expressing an interest in purchasing the Hotel and informed my contacts who I believed might be interested.

f. I prepared a website data base with relevant documents for which registered parties were given passwords to view various public documents and a proposed form of Purchase and Sale Agreement .

g. After discussions with a number of interested parties, I entered into the PSA with the Buyer who was unknown to me before my appointment as Trustee.

10. I have obtained support from the Buyer evidencing its ability to perform under the PSA.

11. The PSA represents my best efforts in obtaining the greatest overall value for the benefit of the Estate given the time and financial limitations and other circumstances of the operations under Chapter 11.

12. A condition of the PSA is that Seller file a motion with the Bankruptcy Court and obtain entry of a final, nonappealable Order rejecting

the Franchise Agreement dated June 19, 2009 between the Debtor, as franchisee, and Days Inn Worldwide, Inc., as franchisor ("Franchise Agreement"). The PSA is conditioned upon the Bankruptcy Court's entry of such a rejection. Based on his experience and knowledge of the hospitality industry as well as the terms of the instant Franchise Agreement, in the exercise of my business judgment, I believe the Franchise Agreement to be a negative factor in sale of the Hotel in that, among other reasons, a buyer would wish to enter a franchise and/or management agreement with a party of its own selection on terms it negotiates. Therefore, I am seeking to reject the Franchise Agreement as a condition of this sale. Days Inn and the Buyer are free to negotiate a new agreement, if they chose to do so.

13. A true and correct copy of a letter dated March 7, 2012 from Chris Hart & Partners, Inc., a consultant to the Debtor who also is assisting the Trustee, reporting on the status that certain Settlement Agreement dated November 25, 2005, by and among Debtor, Tri-Star Restaurant Group, LLC, Sarento's on the Beach, LLC, Dana Naone Hall and Leslie Kuloloio, and the Planning Department, County of Maui, as amended by that certain First Amendment to Settlement Agreement dated December 2, 2008 and that certain Second Amendment to Settlement Agreement (collectively, the "Settlement Agreement, as amended") relating to a parking

lot area which is integral to the Hotel property, is attached as Exhibit "C". The assignment of the Settlement Agreement, as amended, is essential to the Hotel operations.

14. OWB, who is owed in excess of \$12, 500,000, has consented to the sale and agreed to carve-out a reserve fund that the Trustee believes, subject to mutual agreement with OWB, is appropriate for administrative expense claims and the Trustee's professional expense related thereto, after having the opportunity to review administrative expense claims that are filed by the Court-ordered deadline of May 11, 2012 (Dkt #247) or are known to the Trustee. Additionally, subject to Court approval, OWB has agreed to payment from the sales proceeds of compensation to me for my services in marketing and selling the Hotel, based on the gross proceeds of sale (excluding the Buyer's payment of the delinquent real property taxes) calculated as 1.5 % up to \$7,999,999, 1.75% up to \$8,499,999, 2.0% up to \$8,999,999, 2.25% up to \$9,499,999 and 2.5% above \$9,500,000. The aforementioned percentages are less than the 3% statutory limitation on compensation of a trustee under 11 U.S.C. § 326(a). I have maintained timesheets for my services which will be provided to OUST and, if required, will be filed in the case, after closing of the sale.

15. The sales proceeds will be substantially less than OWB's first priority lien and there is no value attributable to DOT's junior liens and DOT will not receive any payment on account of its liens. The proposed distribution of the Hotel sale proceeds will be to pay (a) all usual and customary closing costs paid by the Seller as provided in the PSA; (b) to fund a reserve in an amount that the Trustee believes, subject to mutual agreement with OWB, is appropriate for administrative expense claims and the Trustee's professional expense related thereto, after having the opportunity to review administrative expense claims that are filed by the Court-ordered deadline of May 11, 2012 (Dkt #247) or are known to the Trustee, to which carve-out OWB has agreed; (c) compensation under 11 U.S.C. § 326 to the Trustee, in the reduced amount to which the Trustee and OWB have agreed, subject to Court approval; and (d) the balance to OWB on account of its senior lien secured by the Hotel.

16. Under the circumstances, the sale of the Hotel Assets, the assignment of the DLNR Lease, the assignment of the Sarento's Restaurant Operating Agreement, as amended, the assignment of the Revocable Permit, free and liens, claims, interests and encumbrances, with the same to transfer to the proceeds, the assumption and assignment



of the Settlement Agreement, as amended, and the proposed partial distribution of the proceeds in the proposed manner, is appropriate.

I declare under penalty of perjury under the laws of the State of Hawaii and the United States that the foregoing is true and correct.

Executed this 1st day of May 2012, at Honolulu, Hawaii.

/s/Joseph M. Toy  
JOSEPH M. TOY

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of this 18<sup>th</sup> day of April, 2012 ("Effective Date"), by and between JOSEPH M. TOY, duly appointed as Trustee of the Bankruptcy Estate of Western Apartment Supply & Maintenance Co., in the United States Bankruptcy Court for the District of Hawaii ("Bankruptcy Court") in that certain proceeding entitled "In re Western Apartment Supply & Maintenance Co.", designated as Case No. 11-00941 (Chapter 11) ("Bankruptcy Case") in the files of said Court ("Seller"), and USA TIANREN HOTEL MANAGEMENT, INC., a California corporation, and XIAOYING WANG (collectively, "Buyer").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Property Included in Sale. Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions set forth herein, the following Property:

1.1. Land. Seller's leasehold interest under that certain State of Hawaii Department of Land and Natural Resources General Lease No. S-4212 dated September 4, 1968, by and between the State of Hawaii, as Lessor ("Ground Lessor"), and Walter C. Wille and John J. Fagan, as Lessee ("Ground Lease"), which by means assignments was assigned to Western Apartment Supply & Maintenance Co. ("Debtor") by that certain assignment dated February 29, 2000 (the "Land"). The Land is more particularly described in Exhibit A attached hereto.

1.2. Improvements. Any and all improvements located on the Land, including without limitation the hotel located on the Land currently operated as the "Maui Oceanfront Inn" ("Hotel") ("Improvements"), which together with the Land are collectively referred to as the "Real Property".

1.3. Tangible Property. All tangible personal property (not part of the Improvements) owned by Seller located on or used in connection with the ownership, use or operation of the Real Property and the Hotel (with such deletions and additions as may occur in the ordinary course of business) including, without limitation, (i) all fixtures, furniture, furnishings, apparatus and fittings, equipment, machinery, appliances, motor vehicles, works of art, tools, books and records, plans, studies and reports, and other articles of tangible personal property located on the Real Property and/or used or usable in connection with the operation of the Hotel, (ii) all merchandises and food and beverages which are used or usable and held for sale in connection with the operation of the Hotel, and (iii) all blankets, linens, tableware, china, glassware, uniforms and other goods of an expendable nature which are used or intended for future use in connection with the operation of the Hotel (but excluding property owned by tenants of the Hotel, Hotel guests and employees, parties furnishing goods and services to the Hotel, the management company for the Hotel, and the franchisor of the Hotel) (collectively, "Tangible Property").

1.4. Intangible Property. All intangible property owned by Seller used in connection with the ownership, use or operation of the Real Property and Tangible Property and the operation of the Hotel (with such deletions and additions as may occur in the ordinary course of business), including, without limitation, (i) all tenant leases and amendments and supplements thereto, if any, including any new leases executed in accordance with Section 9.1, (collectively, "Tenant Leases"), (ii) all tenant security deposits for the Tenant Leases, if any (collectively "Security Deposits"), (iii) that certain State of Hawaii Department of Land and Natural Resources Land Division Revocable Permit S-7780 dated September 8, 2011, by and between the State of Hawaii and Debtor, as Permittee ("Revocable Permit"), the Settlement described in Section 9.1, and all new contracts executed in accordance with Section 9.1, (collectively, "Contracts"), (iv) contracts and reservations for the future use of guest rooms, banquet facilities, restaurants, or meeting

rooms in the Hotel and advance deposits ("Bookings"), (v) all intellectual property owned by or licensed to Seller in connection with the Hotel including without limitation tradenames, trademarks, service marks, and logos, (vi) computer systems, software and files related to Hotel accounting, Bookings, inventory control and related matters, (vii) all telephone lists and customer lists, (viii) all internet domain names, telephone and telecopy numbers associated with the Hotel, (ix) to the extent assignable, all warranties, guarantees and indemnities from any contractors, subcontractors, manufacturers, suppliers or materialmen in connection with any construction, repairs or alteration of the Real Property and Tangible Property, (x) all licenses and permits held by or issued to Seller in connection with the Real Property and Tangible Property, and (xi) all other information and data regarding the Hotel and the Property, including guest histories and communications with guests, tenants, service providers, Ground Lessor, and other individuals and entities regarding the Property (but excluding property owned by tenants of the Hotel, Hotel guests and employees, parties furnishing goods and services to the Hotel, the management company for the Hotel, and the franchisor of the Hotel) (collectively, "Intangible Property").

Notwithstanding the foregoing, all of the following shall be excluded from the assets sold: (i) cash or other funds, whether in petty cash or on deposit in bank accounts or in transit for deposit, (ii) impounds or reserves held by or on behalf of Seller's lender with respect to the Real Property and Tangible Property, including but not limited to those for taxes and insurance, (iii) receivables attributable to periods prior to Closing, (iv) refunds, rebates or other claims, or any interest thereon, for periods or events occurring prior to the Closing, (v) utility and similar deposits, (vi) bonus or other front loaded or prepaid amounts paid by vendors or service providers relating to the Property, (vii) all accounts pertaining to the Real Property and Tangible Property and all funds held therein, including but not limited to, property management accounts and operating accounts, (viii) claims and/or judgments against third parties in favor of Seller, (ix) moneys payable to Seller by collection agencies, awards, deposits made with governmental authorities, rebates, refunds, credits, rights of setoff and similar claims due to Seller from third parties, (x) any security deposits or other types of security, including certificates of deposit and savings accounts, held by or for Ground Lessor under the Ground Lease and held by or for the State of Hawaii under the Revocable Permit, and (xi) any and all property owned by tenants of the Hotel, Hotel guests and employees, parties furnishing goods and services to the Hotel, the management company for the Hotel and the franchisor of the Hotel (collectively, "Excluded Assets").

All of the items referred to in Section 1.1, through 1.4. above, but excluding the Excluded Assets, are collectively referred to as the "Property".

2. **Purchase Price.** The total purchase price of the Property is SEVEN MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$7,500,000.00) ("Purchase Price") and shall be payable by Buyer to Seller on or before the Closing Date, plus Buyer's share of prorations and Closing costs, as follows:

2.1. A deposit of SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$750,000.00) by cashier's check, wire transfer or other immediately available funds shall be delivered to Escrow Agent, as hereinafter defined, within two (2) Business Days, as hereinafter defined, after the Effective Date. If Buyer fails to deliver said deposit within two (2) Business Days after the Effective Date, at the option of Seller, this Agreement shall terminate. Said deposit shall be deposited by Escrow Agent into an interest-bearing account with interest to be credited to Buyer unless Seller is entitled to such interest as a part of liquidated damages as provided herein. Said deposit, together with interest accrued thereon (collectively, "Deposit"), shall be non-refundable, except as otherwise provided in this Agreement. If Closing fails to occur due to a default by Buyer, the Deposit shall be treated as liquidated damages in accordance with, and subject to, Sections 11.3.2. and 19.1. of this Agreement. The Deposit shall be credited and applied against the Purchase Price at the Closing.

2.2. Balance of Purchase Price. The balance of the Purchase Price plus Buyer's share of prorations and Closing costs, by cashier's check, wire transfer or other immediately available funds, shall be paid by Buyer to Escrow Agent by 9:00 a.m. (Hawaii Standard Time) two (2) Business Days prior to the Closing Date, or as otherwise earlier required by Escrow Agent to comply with the good funds requirement.

2.3. Allocation of Purchase Price. Seller and Buyer shall (each acting reasonably and in good faith), upon the request of the other party, endeavor to agree upon an allocation of the Purchase Price among the classes required under Section 1060 of the Internal Revenue Code. Notwithstanding the foregoing, an allocation agreement is not a condition to Closing and, to the extent Buyer and Seller do not agree upon such allocations as aforesaid, each of Buyer and Seller may allocate the Purchase Price in its reasonable discretion exercised in good faith. Seller shall determine the allocation of the value of the Property in connection with the filing of any conveyance tax certificate.

3. Conveyance of Property.

3.1. Real Property. Seller shall quitclaim to Buyer, and Buyer shall assume, as of the Closing Date, the Real Property by a duly executed Quitclaim Assignment and Assumption of Ground Lease in the form of Exhibit B attached hereto ("Quitclaim Assignment and Assumption of Ground Lease"). Buyer shall, at its sole cost and expense, provide any bonds, letters of credit or other security as required under the Ground Lease at Closing.

3.2. Personal Property. Seller shall quitclaim the Tangible Property and Intangible Property (collectively, "Personal Property"), other than Contracts and Tenant Leases, to Buyer by a duly executed Quitclaim Bill of Sale in the form of Exhibit C attached hereto ("Quitclaim Bill of Sale").

3.3. Contracts. Seller shall quitclaim to Buyer, and Buyer shall assume, as of the Closing Date all Contracts by a duly executed Quitclaim Assignment and Assumption of Contracts in the form of Exhibit D attached hereto ("Quitclaim Assignment and Assumption of Contracts"). Buyer shall, at its sole cost and expense, provide any bonds, letters of credit or other security as required under the Revocable Permit at Closing.

3.4. Tenant Leases. Seller shall quitclaim all Tenant Leases and Security Deposits to Buyer, and Buyer shall assume all Tenant Leases as of the Closing Date by a duly executed Quitclaim Assignment and Assumption of Tenant Leases in the form of Exhibit E attached hereto ("Quitclaim Assignment and Assumption of Tenant Leases").

4. Bankruptcy Court Approval.

4.1 Day's Inn Franchise. Seller will file a motion with the Bankruptcy Court requesting entry of a final, nonappealable order rejecting the Days Inn Worldwide, Inc. Franchise Agreement dated June 19, 2009, by and between Debtor and Days Inn Worldwide, Inc. ("Days Inn Franchise Agreement") ("Rejection Order"). Both Buyer's and Seller's obligations to consummate the transactions contemplated in this Agreement shall be conditioned upon the Bankruptcy Court's entry of the Rejection Order.

4.2 Sale.

4.2.1. Sale Order. Seller will file a motion with the Bankruptcy Court ("Sale Motion"), requesting entry of an order ("Sale Order") which: (a) approves the sale of the Property to Buyer on the terms and conditions set forth in this Agreement, authorizes the sale of the Property free and clear of the Monetary Liens, as hereinafter defined, and authorizes Seller to proceed with the transaction without the requirement of obtaining the consent of any third parties; (b) includes a specific finding that Buyer is a good faith purchaser of the Property; (c) provides that Buyer is not a successor in interest to Seller and that Buyer is not continuing Seller's business operations; (d) states that the sale of the Property to Buyer shall be free and clear of all liens, claims, interests and encumbrances whatsoever (except as expressly provided in this Agreement); (e) approves the assumption and assignment of the Contracts and Tenant Leases in accordance with the Bankruptcy Reform Act of 1978, as codified in Title 11 of the United States Code, as amended ("Bankruptcy Code"); and (f) provides that the stay of Rule 6004(h) is inapplicable or, in any case, waived. Both Buyer's and Seller's obligations to consummate the transactions contemplated in this Agreement shall be conditioned upon the Bankruptcy Court's entry of the Sale Order.

4.2.2. Notice of Sale. Notice of this Agreement and notice of the Sale Motion and Sale Order and the hearings with respect thereto shall be duly and properly given by notice to all known creditors and known parties in interest in the Bankruptcy Case in accordance with the Bankruptcy Code.

4.2.3. Re-Opening of Bidding. Buyer acknowledges that, notwithstanding the execution and delivery of this Agreement, the Bankruptcy Court may allow other persons to bid on the purchase of the Property such that in the event the Bankruptcy Court approves a bid by another person to purchase the Property, then this Agreement shall be null and void and Buyer's sole remedy shall be the return of the Deposit.

5. Due Diligence Completion. Buyer acknowledges that it has completed its due diligence investigation of all aspects of the Property. Buyer acknowledges and agrees that it is fully satisfied with all facts, circumstances and matters relating to the Property (including, without limitation, the physical condition and use, availability and adequacy of utilities, access, zoning, compliance with applicable laws, environmental conditions, soils conditions, engineering and structural matters), title and survey matters, tax matters and all other matters concerning the Property.

6. Title. At Closing, Seller shall quitclaim title to the Real Property to Buyer subject to Permitted Exceptions. The term "Permitted Exceptions" as used herein includes: (i) any exception that is reflected in the preliminary report dated March 7, 2012 issued by Title Guaranty of Hawaii, Inc. as agent for First American Title Insurance Company (provided that the removal of Schedule B exceptions 4 - 27, inclusive, ("Monetary Liens") by the Sale Order shall be a Condition Precedent to the Closing) and (ii) the lien of real property taxes and/or assessments accrued and unpaid and unaccrued as of the date of Closing.

7. Property Purchased "AS IS". Buyer represents and warrants that Buyer has had, or by the Closing, will have had, ample opportunity to fully and completely investigate the Property, its financial condition, the physical status of the Property and the status of title to the Property and that in fact Buyer has, or will have, fully and completely investigated the Property. In addition, Buyer has, or will have had, ample opportunity to hire accountants, attorneys, engineers, architects, surveyors, inspectors, contractors and other qualified experts to inspect, survey, and advise Buyer of the condition of the Property. Additionally, Buyer represents and warrants that Buyer is a sophisticated purchaser of real

property of the same or similar type as the Property. Buyer hereby acknowledges that Buyer is and will be purchasing the Property and Seller is selling the Property based solely upon Buyer's permitted inspections and investigations of the Property (including without limitation, review of public records and investigation of governmental and private agencies and entities), and Buyer is not and will not be relying upon any investigation, statement, or other act or failure to act of Seller. Seller is selling and Buyer will be acquiring the Property and the Personal Property strictly "As Is," "Where Is" in its present state and condition, and "With All Faults" basis, without any representations or warranties by Seller or its representatives or agents as to any or all matters relating to the state of title or the legal, financial, commercial or physical condition of the Property. Buyer acknowledges and agrees that Seller makes no, and has not made any, representations or warranties (express or implied). Without limiting the generality of the foregoing, Buyer acknowledges and agrees that neither Seller nor any agent or representative of Seller has made any statements or representations, expressed or implied, regarding (i) the physical condition of the Property or any buildings or improvements thereon erected or to be erected, or its fitness, merchantability or suitability for any use or purpose, (ii) the compliance or non-compliance with any laws, codes, ordinances, rules or regulations of any government authority (including, without limitation, (a) any Hazardous Materials Laws, as hereinafter defined, and (b) the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq., ("ADA") and any violations thereof) or the likelihood of changes in zoning or land use provisions applicable to the Property, (iii) the current or future use of the Property, including, but not limited to, the use of the Property for commercial, retail, hotel, transient accommodations, residential, industrial or other purposes, (iv) the availability to Buyer of any required permits, licenses or approvals, (v) the leases or tenancies affecting the Real Property, (vi) the rents, income, expenses, operation or any other matter or thing affecting or relating to the Property or to any buildings or improvements thereon erected or to be erected or (vii) the size or dimensions of the Property and any improvements. Seller is not responsible or in any manner obligated for or by any verbal or written statements, representations, real estate broker's "set-ups" or information pertaining to the Property furnished by any real estate broker or agent, their employees or any other third person. Buyer further understands that from the Effective Date until the Closing, the condition and occupancy of the Property may change and Buyer accepts such risk. Buyer further acknowledges that no representation or warranty (express or implied) has been made, or is being made, by Seller to Buyer or any other person with respect to whether any authorizations, approvals, other actions by, or notices to or filings with, any governmental authorities or third parties are required in connection with (i) the performance of this Agreement by the Seller and (ii) the execution, delivery and performance by Seller of any conveyance document to which Seller is or will be a party. Buyer agrees to obtain, at Buyer's sole cost and expense, any required authorizations, approvals and other actions from any governmental authorities or third parties, or to provide any notices to or filings with any governmental authorities or third parties, with respect to this Agreement which may be required. Buyer further acknowledges that neither Seller nor its managers, consultants, attorneys, brokers, employees or agents have made any representations or warranties of any kind upon which Buyer is relying as to any matter concerning the Property or the Personal Property. Buyer further acknowledges that the Revocable Permit has a month to month term and may not be assignable without the consent of the State of Hawaii and Buyer is responsible for obtaining any consent required for the transfer of the Revocable Permit. Buyer for itself and its successors and assigns hereby releases Seller and Seller's affiliates and their respective shareholders, directors, officers, employees, agents and representatives from and against any and all claims, demands, debts, damages, liabilities, obligations, liens, equitable or injunctive relief, costs, expenses, fees (including, but not limited to, court, arbitration, and attorneys' fees and costs), actions, or causes of action, of whatever kind or nature, arising out of, relating to, and/or by reason of any fact, matter or thing whatsoever with respect to Hazardous Materials, as hereinafter defined, and/or Hazardous Materials Laws, as hereinafter defined, including, without limitation, all claims in tort or contract and all claims for indemnification or contribution. "Hazardous Materials" means and includes any and all radioactive materials, radon and asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances, toxic pollutants,

petroleum substances or petroleum products, pesticides, and any and all other substances or materials defined as, or included in the definition, of hazardous substances, hazardous wastes, hazardous materials, toxic substances or toxic pollutants under, or for the purposes of, any Hazardous Materials Law. "Hazardous Materials Laws" means and includes all federal, state or local laws, statutes, ordinances, rules, regulations and other requirements of any governmental authority or agency, now or hereafter in effect, relating to environmental conditions, industrial hygiene or hazardous substances, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. and the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. It is the intention of the parties that the foregoing releases will be effective with respect to all matters, past and present, known and unknown, suspected and unsuspected. Buyer realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to losses, damages, liabilities, costs and expenses which are presently unknown, unanticipated and unsuspected, and Buyer further agrees that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Buyer nevertheless hereby intends to release and discharge Seller from any such unknown losses, damages, liabilities, costs and expenses. The provisions of this Section shall survive the termination of this Agreement and/or the Closing and the recordation of the Quitclaim Assignment and Assumption of Ground Lease.

8. Buyer's Representations. Buyer, by Buyer's execution of this Agreement, makes the following representations to Seller, which representations shall be true and correct as of the date made and as of the Closing Date and shall survive the Closing hereunder:

8.1. Organization. USA Tianren Hotel Management, Inc. is a corporation organized and validly existing under the laws of the State of California, and it or the permitted assignee of this Agreement will be registered to do business in the State of Hawaii and will be in good standing under the laws of the State of Hawaii as of the Closing. Buyer has all requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereunder.

8.2. Due Authorization. All the documents executed by Buyer which are to be delivered to Seller at the Closing are, and at the Closing will be, duly authorized, executed, and delivered by Buyer and will be legal, valid and binding obligations of Buyer in accordance with their respective terms.

8.3. Noncontravention. No consent, notice or approval of any person, entity, or governmental authority is required with respect to the execution and delivery of this Agreement and any document pursuant hereto by Buyer or the performance by Buyer of its obligations under this Agreement or any document to be delivered pursuant hereto. The execution, delivery and performance of this Agreement and any document to be delivered pursuant hereto by Buyer and the consummation of the transactions contemplated hereby by Buyer do not violate any provision of any organizational document of Buyer. Neither the execution and delivery of this Agreement, or the consummation of the transactions contemplated hereby, will violate any statute, regulation, rule, injunction, judgment, order, ruling, or other restriction of any government, governmental agency, or court to which Buyer is subject or the provisions of any agreement to which Buyer is a party or by which it is bound.

8.4. No Pending Actions. No action at law or in equity and no investigation or other proceeding whatsoever is now pending or threatened to liquidate or dissolve Buyer, or to declare any of its rights, powers or privileges to be null or void or otherwise than in full force and effect.

8.5. Sufficient Cash and Cash Equivalents. Buyer has sufficient available cash and cash equivalents on hand to close this Agreement and to perform Buyer's obligations under this Agreement.

8.6. Bankruptcy. Buyer has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or, to the actual knowledge of Buyer, suffered the filing of any involuntary petition by Buyer's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Buyer's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Buyer's assets, (v) admitted in writing its inability to pay its debts as they become due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

8.7. USA Patriot Act. Buyer and all beneficial owners of Buyer are, and will at Closing be, in compliance with the requirements of the USA Patriot Act of 2001, 31 U.S.C. 5318.

9. Covenants of the Parties.

9.1. Contracts; New Tenant Leases and Contracts. Buyer shall assume the obligations of Debtor under that certain Settlement Agreement dated November 25, 2005, by and among Debtor, Tri-Star Restaurant Group, LLC, Sarento's on the Beach, LLC, Dana Naone Hall and Leslie Kulololo, and the Planning Department, County of Maui, as amended by that certain First Amendment to Settlement Agreement dated November 25, 2005 and that certain Second Amendment to Settlement Agreement dated November 25, 2005 (collectively, "Settlement"). Seller shall terminate the Management Agreement dated February 1, 2009, by and between Debtor and Packard Hospitality Group, LLC, as of the Closing Date. Seller shall file a motion for a Rejection Order as set forth in Section 4.1.

In addition, prior to the Closing, Seller may enter into new Tenant Leases and new Contracts and amendments of any Tenant Leases and Contracts, and Seller shall forward to Buyer copies of any such new Tenant Leases and new Contracts and amendments at Closing. Buyer shall assume all obligations of Seller under any new Tenant Leases (and obligations accruing upon the exercise by a Tenant of an extension or expansion option contained in any existing Tenant Lease if such extension or expansion period commences on or after the Effective Date), including leasing commissions and tenant improvements costs and tenant improvement allowances, and new Contracts which have been executed prior to the Closing. To the extent any such costs or commissions have been previously paid by Seller, if Closing occurs, such costs shall be reimbursed by Buyer as a credit to Seller at Closing. Notwithstanding anything to the contrary contained in this Section, Seller reserves the right, but is not obligated, to institute summary proceedings against any tenant or terminate any of the Tenant Leases following a default by any of the tenants thereunder prior to the Closing Date and to apply all or any portion of any Security Deposits then held by Seller toward any loss or damage incurred by Seller by reason of any defaults by tenants.

9.2. Baggage; Safe Deposit Boxes.

9.2.1. Baggage. On the Closing Date, employees, agents or representatives of Seller and Buyer shall jointly seal and make a written inventory of all baggage, boxes and similar items checked in or left in the care of Seller at the Real Property ("Inventoried Baggage"), and Seller shall deliver to Buyer the keys to any secured area which such Inventoried Baggage is stored.

9.2.2. Safe Deposit Boxes. Prior to the Closing, Seller shall notify all guests or customers who are then using a safe deposit box, if any, at the Real Property advising them of the pending change in ownership of the Real Property and requesting them to conduct an inventory and verify the contents of such safe deposit box. All inventories by such guests or customers shall be conducted under the joint supervision of employees, agents or representatives of Seller and Buyer. Upon completion of such inventory and locking of the inventoried safe deposit boxes, Seller and Buyer shall deliver to Escrow Agent all keys, receipts and agreements for such safe deposit boxes (and thereafter such safe deposit box shall be deemed an "Inventoried Safe Deposit Box") for delivery to Buyer upon Closing. Upon Closing, Seller shall deliver to Buyer all keys in the Seller's possession and/or control for all safe deposit boxes



not then in use, and a list of all safe deposit boxes which are then in use, but not yet inventoried by the depositor, with the name and room number of such depositor. After the Closing, Seller and Buyer shall make appropriate arrangements for guests and customers at the Real Property to inventory and verify the contents of the non-Inventoried Safe Deposit Boxes. All inventories by such guests or customers shall be conducted under the joint supervision of employees, agents or representatives of Seller and Buyer. Upon such inventory and verification, Seller shall deliver to Buyer all keys, receipt and agreements for such safe deposit boxes (and such safe deposit boxes thereafter shall constitute an Inventoried Safe Deposit Box).

10. Closing.

10.1. Closing Date. The closing shall occur on the fourteenth (14) calendar day after the date all Conditions Precedent and other conditions are satisfied or such other date mutually agreeable to Seller and Buyer ("Closing" or "Closing Date"). Possession of the Property shall be delivered to Buyer upon the Closing.

10.2. Escrow Instructions. The terms and conditions set forth in this Agreement shall constitute both an agreement between Seller and Buyer and escrow instructions for Escrow Agent. Seller and Buyer shall promptly execute and deliver to Escrow Agent any separate or additional escrow instructions requested by Escrow Agent that are consistent with the terms of this Agreement. Any separate or additional instructions shall not modify or amend this Agreement unless expressly set forth by the mutual consent of Seller and Buyer and to the extent of any conflict between this Agreement and any such separate/additional instructions, the provisions of this Agreement shall control.

10.3. Distribution of Sales Proceeds. Upon Closing, Escrow Agent shall disburse the sales proceeds in accordance with the Sale Order.

11. Conditions to the Closing. The following shall be conditions precedent ("Conditions Precedent") to the obligation of the parties to close hereunder:

11.1. Conditions Precedent to Buyer's Obligations. Buyer's obligations under this Agreement are subject to the fulfillment of each of the following Conditions Precedent which are included herein for the benefit of Buyer and may be waived or asserted by Buyer:

11.1.1. Seller's Performance. Seller is not in default as to its obligations under this Agreement.

11.1.2. Bankruptcy Court Rejection Approval. The Bankruptcy Court shall have entered the Rejection Order in accordance with Section 4.1 of this Agreement.

11.1.3. Bankruptcy Court Sale Approval. The Bankruptcy Court shall have entered the Sale Order in accordance with Section 4.2 of this Agreement.

11.2. Conditions Precedent to Seller's Obligation to Close. Seller's obligations under this Agreement are subject to the fulfillment of each of the following Conditions Precedent which are included herein for the benefit of Seller and may be waived or asserted by Seller.

11.2.1. Buyer's Performance. Buyer is not in default as to its obligations under this Agreement.

11.2.2. Buyer's Representations. All of Buyer's representations as set forth herein shall be true and correct in all material respects as of the date of this Agreement and on the Closing Date.

11.2.3 Bankruptcy Court Rejection Approval. The Bankruptcy Court shall have entered the Rejection Order in accordance with Section 4.1 of this Agreement.

11.2.4. Bankruptcy Court Sale Approval. The Bankruptcy Court shall have entered the Sale Order in accordance with Section 4.2 of this Agreement.

11.3. Failure of Conditions Precedent.

11.3.1. Failure of Buyer's Conditions Precedent. If the Condition Precedent set forth in Section 11.1.1. is not satisfied or waived in writing by Buyer on or prior to the Closing, Buyer may elect, at its option, (a) to terminate this Agreement in accordance with and subject to Section 19.2., or (b) to waive the unsatisfied condition(s) and any default in writing and proceed to Closing, and if necessary specific performance compelling the conveyance of the Property, in accordance with and subject to Section 19.2.

If the Conditions Precedent set forth in Sections 11.1.2. and/or 11.1.3. are not satisfied on or prior to the Closing, this Agreement shall terminate and the Deposit less one-half (1/2) of any escrow cancellation fees shall be returned to Buyer, Buyer shall deliver to Seller, without charge, all surveys, test results, reports and other materials prepared by or for Buyer with respect to the Property, and thereafter both parties shall be relieved and released of any further liability hereunder except with respect to the covenants and indemnifications which shall expressly survive termination.

11.3.2. Failure of Seller's Conditions Precedent. If any of the Conditions Precedent set forth in Sections 11.2.1. and/or 11.2.2. above are not satisfied or waived in writing by Seller on or prior to the Closing, Seller may elect, at its option, (a) to terminate this Agreement and retain the Deposit as liquidated damages in accordance with and subject to Section 19.1., or (b) to waive the unsatisfied condition(s) and any default in writing and proceed to Closing.

If the Conditions Precedent set forth in Sections 11.2.3. and/or 11.2.4. above are not satisfied on or prior to the Closing, this Agreement shall terminate and the Deposit less one-half (1/2) of any escrow cancellation fees shall be returned to Buyer, Buyer shall return to Seller all Due Diligence Documents and deliver to Seller, without charge, all surveys, test results, reports and other materials prepared by or for Buyer with respect to the Property, and thereafter both parties shall be relieved and released of any further liability hereunder except with respect to the covenants and indemnifications which shall expressly survive termination.

12. Seller's Obligations at Closing. Except as noted below, three (3) Business Days prior to the Closing Date, Seller shall, at Seller's expense, deliver the following to Escrow Agent:

12.1. Three (3) duplicate original copies each of:

12.1.1. Quitclaim Assignment and Assumption of Ground Lease, duly executed and acknowledged by Seller;

12.1.2. Quitclaim Bill of Sale, duly executed by Seller;

12.1.3. Quitclaim Assignment and Assumption of Contracts, duly executed by Seller;

12.1.4. Quitclaim Assignment and Assumption of Tenant Leases, duly executed by Seller;

12.2. State of Hawaii conveyance tax certificate appropriately completed and duly executed by Seller;

12.3. A certification in the form required by Section 1445(e) of the Internal Revenue Code, duly executed by Seller;

12.4. Seller shall elect to do one of the following: (a) deliver a certificate of resident status in form and content required by law certifying Seller is a "resident person" as such term is used in Section 235-68 of the Hawaii Revised Statutes, as amended ("HARPTA"); (b) deliver a withholding certificate from the Hawaii Department of Taxation showing zero withholding; or (c) provide for the Escrow Agent to withhold from the Purchase Price the amount required under HARPTA; and

12.5. Such other documents, consents and affidavits reasonably necessary to effect the valid consummation of the transaction described in this Agreement.

13. Buyer's Obligations at Closing. Except as noted below, three (3) Business Days prior to the Closing Date (except as otherwise provided herein), Buyer shall deliver the following to Escrow Agent:

13.1. Three (3) duplicate original copies each of:

13.1.1. Quitclaim Assignment and Assumption of Ground Lease, duly executed and acknowledged by Buyer;

13.1.2. Quitclaim Assignment and Assumption of Contracts, duly executed by Buyer;

13.1.3. Quitclaim Assignment and Assumption of Tenant Leases, duly executed by Buyer;

13.2. State of Hawaii conveyance tax certificate appropriately completed and duly executed by Buyer;

13.3. A written consent of the shareholders if Buyer is a corporation or of the member(s) or manager(s) if Buyer is a limited liability company authorizing (i) the purchase of the Property from Seller pursuant to the terms and conditions hereof, (ii) the execution and delivery of all instruments of conveyance, and (iii) authorizing the manager(s) and/or officer(s) executing the instruments of conveyance to execute, acknowledge and deliver such instruments to Seller on behalf of Buyer;

13.4. Such other documents, consents and affidavits reasonably necessary to effect the valid consummation of the transaction described in this Agreement; and

13.5. By 9:00 a.m. (Hawaii Standard Time) two (2) Business Days prior to the Closing Date (or such earlier time as Escrow Agent may require), escrow funds in the amount of the cash balance of the Purchase Price, Buyer's share of prorations, all of the escrow fees, conveyance tax, the premiums for a standard owner's title insurance policy in the amount of the Purchase Price and all additional premiums in excess of the premiums for a standard owner's policy (including premiums for an extended ALTA title insurance policy and for endorsements required by Buyer), the recording fees, and such other funds as are necessary to cover all other Closing costs, except for Seller's attorneys' fees. Buyer shall pay its own attorneys' fees outside of escrow.

14. Prorations.

14.1. Adjustments and Prorations. The following matters and items pertaining to the Property shall be prorated as of 12:01 a.m. (Hawaii Standard Time) on the Closing Date ("Cutoff Time"). Net credits in favor of Buyer shall be deducted from the balance of the Purchase Price at the Closing and net credits in favor of Seller shall be paid by Buyer in cash at the Closing. Except as otherwise provided herein, all such allocations and/or prorations shall be made in accordance with generally accepted accounting principles and practices. Estimated prorations shall be adjusted after Closing as set forth herein.

14.1.1. Guest Revenues and Expenses. The guest revenues and expenses associated with such revenues shall be prorated between Seller and Buyer as of the Cutoff Time, except as follows:

14.1.1.1. All food and beverage revenues for the night of the day prior to the Closing Date for restaurants and bars until the restaurant and bars close for the night shall belong to fifty percent (50%) to Seller and fifty percent (50%) to Buyer;

14.1.1.2. Room service revenues and expenses related to such revenues shall be prorated as of the Cutoff Time; and

14.1.1.3. Room revenues for the night of the day prior to the Closing Date shall, without an adjustment for travel agents' commissions and credit card commissions, belong fifty percent (50%) to Seller and fifty percent (50%) to Buyer.

All guest revenues shall be calculated after first deducting applicable discounts and commissions except as provided in 14.1.1.3. above.

14.1.2. Real Estate Taxes and Special Assessments. All real property taxes and assessments shall be paid by Buyer, including all real property taxes and assessments accrued and unpaid prior to the Cutoff Time.

14.1.3. Utility Charges. Seller shall provide notice to the utility companies of the pending change of ownership of the Property not less than five (5) calendar days prior to the Closing Date. To the extent reasonably practicable, Seller shall cause all the utility meters to be read on the Closing Date and will be responsible for the cost of all utilities used prior to the Closing Date; provided, however, that if it is not reasonably practicable to cause such utility meters to be read on the Closing, then the parties shall prorate utility charges upon the Closing on the basis of estimated utility costs.

14.1.4. Tenant Leases. Rent including percentage rents that are payable for the month in which Closing occurs (collectively, "Rent") paid or payable by Tenants under the Tenant Leases shall be adjusted and prorated as of the Cutoff Time; provided, however, any Rent collected by Buyer or Seller after the Cutoff Time from any Tenant who owes Rent for periods prior to the Cutoff Time (except for any percentage rents that are payable for the month in which Closing occurs, which shall be prorated at Closing), shall be applied (1) first, to Seller and Buyer, in an amount equal to the Rent payable by such Tenant for the month in which the Cutoff Time occurs, apportioned as of the Cutoff Time, (2) second, to Seller in an amount equal to Rent owed by such Tenant for all periods from and after the Cutoff Time, and (3) third, to Buyer in an amount equal to all other Rent owed by such Tenant to Seller. Each such amount, less any costs of collection (including reasonable counsel fees and customary disbursements) reasonably allocable thereto, shall be adjusted and prorated as provided above, and the party who receives such amount shall promptly pay over to the other party the portion thereof to which it is so entitled. In furtherance and not in limitation of the preceding sentence, with respect to any Tenant which has paid all

Rent for periods through the Closing, if, prior to the Closing, Seller shall receive any prepaid Rent from such Tenant attributable to a period following the Closing, at the Closing Seller shall pay over to Buyer the amount of such prepaid Rent. If any Tenants do not pay any past due Rent, Seller shall have the right, upon notice to Buyer, to pursue Tenants to collect such delinquencies (including, without limitation, the prosecution of one or more lawsuits), but Seller shall not be entitled to evict (by summary proceedings or otherwise) any such Tenants. Seller shall not be responsible for any reimbursement of any percentage rent if any annual reconciliation and adjustment reveals a shortfall in the payment of any percentage rent by Tenants.

14.1.5. Contracts. Any amounts paid or payable and received or receivable under Contracts assumed by Buyer (excluding the Settlement) shall be prorated as of the Cutoff Time. All amounts known to be due under Contracts to be assumed by Buyer with reference to periods prior to the Cutoff Time shall be paid by Seller or credited to Buyer as a reduction of the Purchase Price. Any additional amounts not known at the Closing will be part of the post-closing adjustments.

14.1.6. Ground Lease. Any amounts paid or payable under the Ground Lease shall be prorated as of the Cutoff Time. All amounts known to be due under the Ground Lease with reference to periods prior to the Cutoff Time shall be paid by Seller or credited to Buyer as a reduction of the Purchase Price. Any additional amounts not known at the Closing will be part of the post-closing adjustments.

14.1.7. Other Hotel Matters.

14.1.7.1. Buyer shall receive a credit for advance payments and deposits for Bookings to the extent the Bookings relate to the period after the Cutoff Time, and for the value of any gift certificates for which Seller has been paid and which have not been redeemed as of the Cutoff Time.

14.1.7.2. Vending machine monies will be removed by Seller as of the Cutoff Time for the benefit of Seller.

14.1.7.3. Buyer shall pay all transient accommodations taxes due and payable with respect to the Hotel for the period on and after the Closing, provided that Seller and Buyer each shall pay fifty percent (50%) of all transient accommodations taxes with respect to the Hotel for the night commencing prior to and ending on the day in which the Closing occurs.

14.1.8. Security and Other Deposits Held By Seller. Buyer shall be entitled to a credit for all security and other deposits held by Seller as of the Cutoff Time with respect to the Contracts and Tenant Leases being conveyed to Buyer at Closing to the extent that such deposits are not transferred to Buyer at Closing.

14.1.9. Prepaid Expenses. Buyer shall be charged for prepaid expenses with respect to the Property transferred to Buyer at Closing paid by Seller to third-parties and allocable to any period from and after the Closing Date, including without limitation prepaid rents under any equipment lease assumed by Buyer, annual permit and inspection fees, fees for licenses, advertising expenses, and trade association dues and trade subscriptions.

14.1.10. Insurance. Buyer may not assume any of the existing insurance policies maintained by Seller in connection with the Property. Seller shall be entitled to any refunds due for existing policies upon receipt of the same by Seller or Buyer.

14.1.11. Other Apportionments. Such other items as are provided for in this Agreement or as are normally prorated and adjusted in the sale of real property in the State of Hawaii.

14.2. Proration Statement.

14.2.1. Seller and Buyer shall cooperate with each other to make such inventories, examinations and audits of the Property, and of the books and records of the Property, as each party may deem necessary to make the adjustments and prorations required hereunder or under any other provisions of this Agreement. Based upon such audits and inventories, Seller and Buyer will jointly prepare, no later than three (3) Business Days prior to the Closing, a proration estimate. Such proration estimate shall contain the parties' reasonable estimate of the amounts of the items requiring prorations and adjustments in this Agreement, and shall be subject to a final proration as soon as the amount of each item can be ascertained with reasonable certainty. The amounts set forth in such proration estimate shall be the basis upon which the prorations and adjustments provided for herein shall be made at the Closing.

14.2.2. Seller and Buyer agree to make a final accounting of the adjustments and prorations within thirty (30) days after the Closing Date. If the parties cannot agree on such final accounting then the parties shall submit such dispute to a CPA firm mutually agreed to by the parties ("Outside Accountant"). The Outside Accountant shall be furnished all records relevant to such determination. The determination of the Outside Accountant, which shall be made within a period of thirty (30) days after such submittal by the parties and receipt of such records, shall be conclusive in the absence of manifest error and each party may enter judgment thereon. The fees and expenses of the Outside Accountant shall be paid equally by Buyer and Seller. Either party owing the other party a sum of money based on adjustments or prorations after the Closing Date made pursuant to the final proration shall promptly pay that sum to the other party within ten (10) Business Days after delivery of a bill therefor, together with interest thereon at the rate of twelve percent (12%) per annum from the Closing Date to the date of payment if payment is not made within such ten (10) Business Day period. This Section shall survive the Closing.

15. Indemnification and Waiver. Buyer shall defend, indemnify and hold Seller harmless from and against any and all claims, liabilities, losses, damages, costs and expenses, including reasonable attorney's fees and costs, which arise out of the breach of any covenant of Buyer contained in this Agreement or the inaccuracy of any representation of Buyer contained in this Agreement, or claims, lawsuits, actions or proceedings brought by a third party against Seller with respect to the ownership and/or operation of the Property accruing on or after the Closing. This Section shall survive the Closing.

16. Brokerage. Buyer represents and warrants to Seller that Buyer has employed no brokers, finders, other consultants, or agents in connection with this transaction, and Buyer shall defend, indemnify and hold Seller harmless from and against all claims, losses, expenses and damages (including reasonable attorneys' fees and costs) resulting from a breach of this representation and warranty. This Section shall survive the Closing.

17. Casualty. If all or a part of the Property shall have been damaged by fire, vandalism, acts of God or other casualty prior to the Closing, Buyer may either (i) if the entire Property or a Material Portion (as defined below) thereof is so damaged, elect to terminate this Agreement prior to the Closing (in which event the Deposit less one-half (1/2) of any escrow cancellation fees shall be returned to Buyer, Buyer shall deliver to Seller, without charge, all surveys, test results, reports and other materials prepared by or for Buyer with respect to the Property, and thereafter both parties shall be relieved and released of any further liability hereunder except with respect to the covenants and indemnifications which shall expressly survive termination) or (ii) elect to proceed to close and take the Property as diminished by such event(s). If Buyer does not have the right to

terminate this Agreement pursuant to the terms of this Section or if Buyer elects not to terminate this Agreement pursuant to the terms of this Section, any rights in and to any insurance proceeds attributable to such casualty shall be assigned or paid to Buyer at the Closing, and Buyer shall be entitled to an offset against the Purchase Price at Closing for the amount of any deductible. For purposes of this Section, "Material Portion" shall mean damage to the Property in an amount greater than THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00).

18. Eminent Domain. If, prior to the Closing, all or a part of the Property is subjected to a bona fide threat of condemnation by a body having the power of eminent domain or is taken by eminent domain or condemnation (or sale in lieu thereof), Buyer may, by written notice to Seller, either (i) if the entire Property or a Material Portion (as defined below) thereof is so taken, elect to terminate this Agreement prior to the Closing (in which event the Deposit less one-half (1/2) of any escrow cancellation fees shall be returned to Buyer, Buyer shall deliver to Seller, without charge, all surveys, test results, reports and other materials prepared by or for Buyer with respect to the Property, and thereafter both parties shall be relieved and released of and from any further liability hereunder except with respect to the covenants and indemnifications which shall expressly survive termination), or (ii) elect to proceed to close and take the Property as diminished by such event(s). If Buyer elects or is required to proceed with this transaction, any rights in and to any condemnation award payable as a result of such threat of condemnation shall be assigned to Buyer, and Buyer shall receive a credit against the Purchase Price equal to the amount of any condemnation awards received by Seller prior to the Closing. For purposes of this Section, "Material Portion" shall mean any part of the Property taken with a fair market value greater than THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00).

19. Defaults and Remedies.

19.1. Buyer's Default/Seller's Remedies. If Buyer is in default in the performance of any obligation or covenant under this Agreement and Seller is not in default, then Seller's sole and exclusive remedy, except for reasonable attorneys' fees incurred by Seller to collect the Deposit if contested by Buyer and the indemnification by Buyer under this Agreement, shall be to terminate this Agreement in which event Seller shall be entitled to the Deposit as full and complete liquidated damages for Buyer's default of its obligations under this Agreement, it being agreed between the parties that Seller's actual damages in the event of such a breach would be extremely difficult or impractical to determine and the amount of the Deposit is a reasonable estimate thereof. Thereafter, the parties shall be released from all further obligations and liabilities under this Agreement, except with respect to the covenants and indemnifications which shall expressly survive termination, escrow cancellation charges which shall be paid by Buyer, and the delivery to Seller, without charge, of all surveys, test results, reports and other materials prepared by or for Buyer with respect to the Property.

19.2. Seller's Default/Buyer's Remedies. If Seller is in default in the performance of any obligation or covenant under this Agreement, including but not limited to the obligation to convey the Property to Buyer and Buyer is not in default, Buyer shall elect as its sole remedy to terminate this Agreement, and upon such termination (a) Buyer shall be entitled to the return of the Deposit, (b) Seller shall pay all escrow cancellation charges (and Buyer shall pay for all its own costs and fees incurred in connection with this transaction, including its due diligence investigation, and Seller shall not be responsible for any such costs and fees, except as provided in subsection (c)), and (c) upon evidence satisfactory to Seller and, if necessary, approval from the Bankruptcy Court, Buyer shall be entitled to reimbursement for Buyer's costs and fees incurred in connection with this transaction, including its due diligence investigation, up to a maximum amount of Twenty-Five Thousand and No/100 Dollars (\$25,000.00). In the event of a default by Seller which is waived by Buyer, Closing shall occur as scheduled, and Buyer shall have no right at Closing to offset against the Purchase Price the amount of any claim for damages caused by the default. The remedy provided for in this Section is Buyer's sole and exclusive remedy in the event of any default by Seller. Buyer waives the right to any and other remedies not specifically provided for under this Section, including without limitation specific performance or damages, and neither Seller nor

its employees, consultants, accountants, attorneys or agents shall be liable to Buyer or its affiliates and their respective officers, directors, members, partners, employees, agents, representatives, successors and assigns, whether in contract, tort, negligence, indemnity, strict liability or otherwise, for any punitive, special, indirect, incidental or consequential damages in connection with or arising out of or relating to the performance, non-performance or breach of this Agreement or any other related document or any obligations arising hereunder or thereunder.

20. Miscellaneous.

20.1. Instruments of Further Assurance, Good Faith. Each of the parties hereto agrees, at its own expense, to execute and deliver to the other at Closing any and all further instruments and documents as either may reasonably request in order to carry out any of the provisions of this Agreement. Seller and Buyer shall act in good faith in all respects relative to the transactions contemplated hereby.

20.2. Notices. Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given (i) upon hand delivery, (ii) one (1) Business Day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, (iii) upon facsimile transmission with confirmation (except that if the date of such transmission is not a Business Day or if such transmission is made after 5:00 p.m. (Hawaii Standard Time) on a Business Day, then such notice shall be deemed to be given on the first Business Day following such transmission), or (iv) three (3) Business Days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows (or such other address as either party may from time to time specify in writing to the other in accordance with this Section):

If to Seller: Joseph M. Toy, Trustee  
c/o Hospitality Advisors LLC  
745 Fort Street Mall, Suite 2124  
Honolulu, Hawaii 96813  
Telephone: (808) 550-8955  
Facsimile: (808) 550-8655

with a copy to: Susan Tius, Esq.  
David Shibata, Esq.  
Rush Moore LLP  
737 Bishop Street, Suite 2400  
Honolulu, Hawaii 96813  
Telephone: (808) 521-0400  
Facsimile: (808) 521-0497



If to Buyer:

Xiaoying Wang  
367 Monterey Pines Dr.  
Arcadia, California 91006  
Telephone: (714) 447-9200  
Facsimile: (714) 773-0685

USA Tianren Hotel Management, Inc.  
333 E. Imperial Highway  
Fullerton, California 92835  
Attention: Jay Jayyusi  
Telephone: (714) 447-9200  
Facsimile: (714) 773-0685

with a copy to:

Lynn Chao  
650 Camino De Gloria  
Walnut, California 91789  
Telephone: (909) 598-0320  
Facsimile: (909) 598-9362

If to Escrow Agent:

Title Guaranty Escrow Services, Inc.  
235 Queen Street, 1<sup>st</sup> Floor  
Honolulu, Hawaii 96813  
Attention: Barbara Paulo  
Facsimile: (808) 521-0280

20.3. Parties in Interest. This Agreement, and each and every term and provision hereof, shall inure to the benefit of, and be binding upon and enforceable against, Buyer and Seller hereto and their respective successors and permitted assigns.

20.4. Incorporation of Exhibits. The following Exhibits shall be construed with and as integral parts of this Agreement to the same extent as if the same had been set forth verbatim herein:

Exhibits	A	Land Description
	B	Quitclaim Assignment and Assumption of Ground Lease
	C	Quitclaim Bill of Sale
	D	Quitclaim Assignment and Assumption of Contracts
	E	Quitclaim Assignment and Assumption of Tenant Leases

20.5. No Third-Party Benefits. This Agreement is not intended and shall not be deemed or construed to confer any rights, powers or privileges on any person, firm, partnership, corporation or other entity not a party hereto.

20.6. Assignment. Buyer is permitted to assign this Agreement to a new special purpose entity, provided that (i) such new entity is an Affiliate of Buyer, (ii) the assignment shall not release Buyer from its obligations under this Agreement, (iii) the assignment does not delay the Closing, (iv) the permitted assignee assumes all duties and obligations of Buyer under this Agreement, including but not limited to the prohibitions on assignment contained in this Section, (v) Seller is provided with a copy of the assignment which includes such assumption by the assignee, and (vi) Seller is given copies of any formation document confirming the above matters. This Agreement shall not otherwise be assignable or transferable in whole or in part, or by operation of law, by either party and nothing in this Agreement is intended to confer upon any person, other than the parties hereto and permitted assignees of Buyer, any rights, remedies or obligations under, or by reason

of, this Agreement. The term "Affiliate" means an entity directly or indirectly, through one or more intermediaries, controlled by or under common control with the Buyer. The terms "controlled" and "control", as used in the immediately preceding sentence, means, with respect to an entity that is a corporation, the right to the exercise, directly or indirectly, of more than fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation and, with respect to an entity that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

20.7. Titles and Headings. Titles and headings to sections and paragraphs herein are for the purpose of convenience and reference only and shall in no way limit, define or otherwise affect the provisions thereof.

20.8. Severability. If any term, provision, covenant or condition of this Agreement should be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

20.9. Time is of the Essence. Time is specifically declared to be of the essence of this Agreement and of acts required to be done and performed by Buyer and Seller.

20.10. Applicable Law and Forum. Except to the extent that the Bankruptcy Code and the rules promulgated thereunder or other federal laws are applicable, implementation and enforcement of this Agreement and all rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of Hawaii, without giving effect to conflicts of law principles which would apply the law of a jurisdiction other than the State of Hawaii or the United States of America. The parties agree that the Bankruptcy Court shall have exclusive jurisdiction to enforce the terms of this Agreement and over all disputes and other matters relating hereto. Buyer by execution of this Agreement consents to personal jurisdiction in the Bankruptcy Court.

20.11. Attorneys' Fees. Should either party hereto reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision hereof, including, but not limited to, instituting any action or proceedings to enforce any provision hereof, for damages by reason of any alleged breach of any provision of this Agreement, for a declaration of such party's rights or obligations hereunder or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the other party for all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs for the services rendered to such prevailing party.

20.12. No Party Deemed Drafter. The parties agree that no party shall be deemed to be the drafter of this Agreement and further that in the event that this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision of this Agreement against any party as the drafter of this Agreement.

20.13. Entire Agreement. This Agreement constitutes and contains the entire agreement between Seller and Buyer and supersedes any and all prior negotiations, correspondence, understandings and agreements between the parties respecting the subject matter hereof.

20.14. Amendment. This Agreement may be amended only by a writing signed by each of the parties hereto.

20.15. Waivers. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every

such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach. No waiver hereunder shall be effective unless in writing and signed by the waiving party.

20.16. Authority. Each of the individual(s) executing this Agreement on behalf of Buyer jointly represents and warrants that he/she is authorized to execute this Agreement and the instruments referenced herein on behalf of Buyer and has the legal power, right and actual authority to bind Buyer to the terms and conditions of this Agreement and the instruments referenced herein.

20.17. No Personal Liability. All actions taken by Joseph M. Toy as the Trustee herein ("Trustee") are solely in his capacity as Trustee of the Bankruptcy Estate of the Debtor, and not in his individual capacity. Neither the Trustee nor any of his employees, consultants, accountants, attorneys, or agents shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into pursuant to this Agreement. The provisions of this Section shall survive the termination of this Agreement and/or the Closing.

20.18. No Partnership. Seller and Buyer are not and shall not be considered joint venturers or partners and neither shall have the power to bind, obligate or represent the other.

20.19. Grammar. The necessary grammatical changes required to make the provisions of this Agreement apply in the plural sense and to either entities, individuals, males or females, shall in all instances be assumed.

20.20. Business Days. "Business Days" means Mondays to Fridays, other than federal and State of Hawaii holidays.

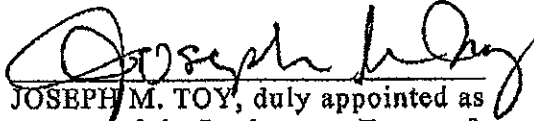
20.21. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

20.22. Facsimile and PDF Signatures. Facsimile and PDF e-mail copies of this executed Agreement shall be fully binding and effective for all purposes whether or not originally executed documents are transmitted to the other party. Notwithstanding the foregoing, all documents to be recorded shall be originals.

20.23. Jointly and Severally Liable. USA Tianren Hotel Management, Inc. and Xiaoying Wang shall be jointly and severally liable hereunder.

20.24. English Language. The English language shall be the governing language. If there is a translation of this Agreement into a language other than English, the English language version shall be the governing and binding version of this Agreement and the translated version shall have no legal effect.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

  
JOSEPH M. TOY, duly appointed as  
Trustee of the Bankruptcy Estate of  
WESTERN APARTMENT SUPPLY  
& MAINTENANCE CO., in the United  
States Bankruptcy Court for the District  
of Hawaii in that certain proceeding  
entitled "In re Western Apartment Supply  
& Maintenance Co.", designated  
as Case No. 11-00941 (Chapter 11)

"Seller"

  
XIAOYING WANG

USA TIANREN HOTEL MANAGEMENT, INC.,  
a California corporation

By   
Name: ZHI YONG LI  
Title: president

"Buyer"

EXHIBIT A

UNRECORDED GENERAL LEASE NO. S-4212

LESSOR : STATE OF HAWAII, by its Board of Land and Natural Resources  
LESSEE : WALTER C. WITTE and JOHN J. FAGAN  
DATED : September 4, 1968  
FILED : State of Hawaii, Department of Land and Natural Resources  
TERM : 65 years commencing dated hereof, up to and including September 3, 2033

THE LESSEE'S INTEREST BY MESNE ASSIGNMENTS ASSIGNED

ASSIGNOR : TOWA SHINYO MAUI, INC., a Hawaii corporation  
ASSIGNEE : WESTERN APARTMENT SUPPLY & MAINTENANCE CO., a California corporation  
DATED : February 29, 2000  
RECORDED : Document No. 2000-082846  
CONSENT : given by the STATE OF HAWAII, by its Board of Land and Natural Resources, by instrument recorded as Document No. 2000-082847

Said Lease demising the following described premises:

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by government land of Kamaole situate on the west side of Piilani Highway adjoining Land Patent Grant Number 13,225 to Yasuko N. Watanabe and Royal Patent Grant Number 1959 to Mahi) situate, lying and being at Kamaole, Wailuku, Kula, Island and County of Maui, State of Hawaii, and thus bounded and described:

Beginning at the southeast corner of this parcel of land, at the northeast corner of Grant 13225 to Yasuko N. Watanabe and on the west side of Piilani Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being 9,644.91 feet south and 20,033.00 feet west, as shown on Government Survey Registered Map 3005 and running by azimuths measured clockwise from true South:

1. 84° 30' 356.83 feet along Grant 13225 to Yasuko H. 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 Pillani Highway, on a curve to the left having a radius of 1,939.86 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, more or less.

END OF EXHIBIT A

Bx A - 2

EXHIBIT B

---

AFTER RECORDATION, RETURN BY MAIL ( X ) PICK-UP ( )

Rush Moore LLP  
737 Bishop Street, 24th Floor  
Honolulu, Hawaii 96813  
Attn: David Shibata, Esq.  
Tel: (808) 521-0400

Total Pages: \_\_\_\_\_

---

TITLE OF DOCUMENT:

QUITCLAIM ASSIGNMENT AND ASSUMPTION OF GROUND LEASE

---

PARTIES TO DOCUMENT:

ASSIGNOR: JOSEPH M. TOY, Trustee as hereinafter stated

ASSIGNEE:

---

PROPERTY DESCRIPTION:

SEE EXHIBIT "A"

LIBER/PAGE/DOCUMENT NO.:

LAND COURT DOCUMENT NO.:

TRANSFER CERTIFICATE OF  
TITLE NO(S).:

---

Tax Map Key No. (2) 3-9-004-029

Ex B - 1

QUITCLAIM ASSIGNMENT AND ASSUMPTION OF GROUND LEASE

THIS QUITCLAIM ASSIGNMENT AND ASSUMPTION OF GROUND LEASE ("Assignment") is made as of \_\_\_\_\_ ("Effective Date"), by and between JOSEPH M. TOY, Trustee, duly appointed as hereinafter stated ("Assignor"), and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee").

WITNESSETH:

THAT WHEREAS, JOSEPH M. TOY, duly appointed as Trustee of the Bankruptcy Estate of WESTERN APARTMENT SUPPLY & MAINTENANCE CO., in the United States Bankruptcy Court for the District of Hawaii in that certain proceeding entitled "In re Western Apartment Supply & Maintenance Co.", designated as Case No. 11-00941 (Chapter 11) in the files of said Court;

WHEREAS, the property described herein is vested in Western Apartment Supply & Maintenance Co.; and

WHEREAS, Assignor as Trustee as aforesaid is authorized to sell the property described herein to Assignee.

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) paid by Assignee to Assignor, the receipt which is hereby acknowledged, and in consideration of the covenants of Assignee contained in this Assignment, Assignor does hereby REMISE, RELEASE, AND QUITCLAIM to Assignee, all of the estate, right, title and interest of Assignor (if any) in and to the following:

All of that certain State of Hawaii Department of Land and Natural Resources General Lease No. S-4212 dated September 4, 1968, by and between the State of Hawaii, as Lessor, and Walter C. Witte and John J. Fagan, as Lessee ("Ground Lease"), more particularly described in Exhibit A attached to this Assignment and expressly made a part of this Assignment, including, without limitation, the leasehold estate described in the Lease; together with all interests thereto appertaining; subject to the encumbrances, exceptions, reservations, restrictions and other matters noted in Exhibit A.

AND all of the estate, right, title and interest of Assignor (if any) in and to the leasehold estate demised by the Ground Lease and all buildings, improvements, rights, easements, privileges and appurtenances situated on, or built on or used, occupied and enjoyed in connection with the Ground Lease and the land demised by the Ground Lease.

SUBJECT HOWEVER, to the payment of the rents reserved by the Ground Lease and subject also to the observance and performance by Assignee of all of the covenants and conditions contained in the Ground Lease which are or ought to be performed by the Lessee named in the Ground Lease.

In consideration of the foregoing, Assignee does hereby covenant and agree to and with Assignor and to and with the Lessor of the Ground Lease that Assignee will, effective as of the Effective Date and during the residue of the term of the Lease, pay the rents reserved by the Lease as and when the same become due and payable pursuant to the provisions of the Lease, faithfully observe and perform all of the



covenants and conditions contained in the Ground Lease which effective as of the Effective Date are or ought to be observed and performed by the Lessee named in the Lease, and at all times hereafter indemnify and save harmless Assignor and the Lessor named in the Ground Lease from and against the nonpayment of said rents and the nonobservance or nonperformance of said covenants and conditions and each of them.

This document is executed by said JOSEPH M. TOY, Trustee as aforesaid, pursuant to the terms and provisions of that certain \_\_\_\_\_, dated \_\_\_\_\_, 2012 in the United States Bankruptcy Court for the District of Hawaii in that certain proceeding entitled "In re Western Apartment Supply & Maintenance Co.", designated as case No. 11-00941 (Chapter 11) in the files of said Court.

All actions taken by JOSEPH M. TOY, Trustee as aforesaid, are solely in his capacity as Trustee of the Bankruptcy Estate of Western Apartment Supply & Maintenance Co., and not in his individual capacity. Neither JOSEPH M. TOY, Trustee as aforesaid, nor any of his employees, consultants, accountants, attorneys, or agents shall have any personal liability, directly or indirectly, under or in connection with this instrument or any agreement made or entered into pursuant to this instrument.

This document may be executed in counterparts. Each counterpart shall be executed by one or more of the parties to this document and the several counterparts shall constitute one document to the same effect as though the signatures of all of the parties were upon the same document.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK;  
SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment effective on the day and year first above written.

JOSEPH M. TOY, duly appointed as  
Trustee of the Bankruptcy Estate of  
WESTERN APARTMENT SUPPLY  
& MAINTENANCE CO., in the United  
States Bankruptcy Court for the District  
of Hawaii in that certain proceeding  
entitled "In re Western Apartment Supply  
& Maintenance Co.", designated  
as Case No. 11-00941 (Chapter 11)

"Assignor"

\_\_\_\_\_  
a \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"Assignee"

Ex B - 4

STATE OF HAWAII

)

) ss.

CITY AND COUNTY OF HONOLULU

)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me personally appeared JOSEPH M. TOY, to me personally known, who, being by me duly sworn or affirmed, did say that he executed the foregoing instrument as his free act and deed, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
Print Name:

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

My commission expires: \_\_\_\_\_

**NOTARY CERTIFICATION**  
(Hawaii Administrative Rule § 5-11-8)

Document Identification or Description : Quitclaim Assignment and Assumption of Ground Lease

Date of Document: \_\_\_\_\_ No. of Pages: \_\_\_\_\_

First Circuit  
(Jurisdiction of notarial act)

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Type or Print Name of Notary

\_\_\_\_\_  
Date of Notary Certificate

(Official Stamp or Seal)

Ex B - 5

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that he/she executed the foregoing instrument as his/her free act and deed, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Print Name: \_\_\_\_\_

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

NOTARY CERTIFICATION (Hawaii Administrative Rule § 5-11-8)	
Document Identification or Description : Quitclaim Assignment and Assumption of Ground Lease	
Date of Document: _____	No. of Pages: _____
_____ Circuit (Jurisdiction of notarial act)	
_____ Signature of Notary	
_____ Type or Print Name of Notary	
_____ Date of Notary Certificate	
(Official Stamp or Seal)	

EXHIBIT A

[PROPERTY DESCRIPTION]

Ex R - 7

EXHIBIT C

QUITCLAIM BILL OF SALE

THIS QUITCLAIM BILL OF SALE is executed and delivered as of this \_\_\_\_\_ day of \_\_\_\_\_, 2012 ("Effective Date") by and between JOSEPH M. TOY, duly appointed as Trustee of the Bankruptcy Estate of WESTERN APARTMENT SUPPLY & MAINTENANCE CO., in the United States Bankruptcy Court for the District of Hawaii in that certain proceeding entitled "In re Western Apartment Supply & Maintenance Co.", designated as Case No. 11-00941 (Chapter 11) in the files of said Court ("Seller") in favor of \_\_\_\_\_, a \_\_\_\_\_ ("Buyer").

WITNESSETH

WHEREAS, Seller and Buyer have entered into that certain Purchase and Sale Agreement dated \_\_\_\_\_, 2012 ("Purchase Agreement") pursuant to which Seller has agreed to quitclaim to Buyer all of Seller's right, title, and interest as of the Effective Date (if any) to, and Buyer has agreed to take title to, the Personal Property, as defined in the Purchase Agreement.

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

1. Quitclaim Transfer. Seller does hereby release, remise and forever quitclaim all of Seller's right, title, and interest as of the Effective Date (if any) to the Personal Property unto Buyer, its successors and assigns.
2. No Warranties or Representations. Seller expressly disclaims and negates, as to all of the Personal Property transferred hereby: (a) any implied or express warranty of merchantability and (b) any implied or express warranty of fitness for a particular purpose.
3. Governing Law. This Quitclaim Bill of Sale shall be construed and enforced in accordance with and governed by the laws of the State of Hawaii.
4. Binding Effect. This Quitclaim Bill of Sale shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, personal representatives, successors, and assigns.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of the date first above written. .

JOSEPH M. TOY, duly appointed as  
Trustee of the Bankruptcy Estate of  
WESTERN APARTMENT SUPPLY  
& MAINTENANCE CO., in the United  
States Bankruptcy Court for the District  
of Hawaii in that certain proceeding  
entitled "In re Western Apartment Supply  
& Maintenance Co.", designated  
as Case No. 11-00941 (Chapter 11)

"Seller"

Ex C - 2

EXHIBIT D

QUITCLAIM ASSIGNMENT AND ASSUMPTION OF  
CONTRACTS

THIS QUITCLAIM ASSIGNMENT AND ASSUMPTION OF CONTRACTS ("Assignment") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2012 ("Effective Date") by and between JOSEPH M. TOY, duly appointed as Trustee of the Bankruptcy Estate of WESTERN APARTMENT SUPPLY & MAINTENANCE CO., in the United States Bankruptcy Court for the District of Hawaii in that certain proceeding entitled "In re Western Apartment Supply & Maintenance Co.", designated as Case No. 11-00941 (Chapter 11) in the files of said Court ("Assignor") in favor of \_\_\_\_\_, a \_\_\_\_\_ ("Assignee").

WHEREAS, Assignor and Assignee have entered into that certain Purchase Agreement dated \_\_\_\_\_, 2012 ("Purchase Agreement") pursuant to which Assignor has among other things agreed to quitclaim to Assignee all of Assignor's right, title, and interest as of the Effective Date (if any) in and to those certain contracts with respect to the Real Property, as defined in the Purchase Agreement, identified in Schedule 1 attached hereto ("Contracts"); and

WHEREAS, in performance of Assignor's obligations under the Purchase Agreement, Assignor desires to execute and deliver this Assignment to Assignee to assign the Contracts to Assignee.

NOW, THEREFORE, for and in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby RELEASES, REMISES AND QUITCLAIMS to Assignee all of its right, title, and interest as of the Effective Date (if any) in and to the Contracts.

Assignee hereby accepts the foregoing assignment of the Contracts and assumes all of Assignor's obligations under the Contracts.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK;  
SIGNATURE PAGE TO FOLLOW.]

Ex'D - 1



IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date first above written.

JOSEPH M. TOY, duly appointed as  
Trustee of the Bankruptcy Estate of  
WESTERN APARTMENT SUPPLY  
& MAINTENANCE CO., in the United  
States Bankruptcy Court for the District  
of Hawaii in that certain proceeding  
entitled "In re Western Apartment Supply  
& Maintenance Co.", designated  
as Case No. 11-00941 (Chapter 11)

"Assignor"

\_\_\_\_\_  
a \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"Assignee"

Ex D - 2

SCHEDULE 1

LIST OF CONTRACTS

Ex D - 3

EXHIBIT E

QUITCLAIM ASSIGNMENT AND ASSUMPTION OF  
TENANT LEASES

THIS QUITCLAIM ASSIGNMENT AND ASSUMPTION OF TENANT LEASES ("Assignment") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2012 ("Effective Date") by and between JOSEPH M. TOY, duly appointed as Trustee of the Bankruptcy Estate of WESTERN APARTMENT SUPPLY & MAINTENANCE CO., in the United States Bankruptcy Court for the District of Hawaii in that certain proceeding entitled "In re Western Apartment Supply & Maintenance Co.", designated as Case No. 11-00941 (Chapter 11) in the files of said Court ("Assignor") in favor of \_\_\_\_\_, a \_\_\_\_\_ ("Assignee").

WHEREAS, Assignor and Assignee have entered into that certain Purchase Agreement dated \_\_\_\_\_, 2012 ("Purchase Agreement") pursuant to which Assignor has among other things agreed to quitclaim to Assignee all of Assignor's right, title, and interest as of the Effective Date (if any) in and to those certain space leases with respect to the Real Property, as defined in the Purchase Agreement, identified in Schedule 1 attached hereto ("Tenant Leases"); and

WHEREAS, in performance of Assignor's obligations under the Purchase Agreement, Assignor desires to execute and deliver this Assignment to Assignee to assign the Tenant Leases (and the security deposits, if any, received by Assignor thereunder) to Assignee.

NOW, THEREFORE, for and in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby RELEASES, REMISES AND QUITCLAIMS to Assignee all of its right, title, and interest as of the Effective Date (if any) in and to the Tenant Leases and all security deposits, if any, received by Assignor thereunder.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges, and appurtenances thereunto belonging or appertaining or held and enjoyed in connection therewith unto the Assignee, its successors and assigns, forever.

Assignee hereby accepts the foregoing assignment of the Tenant Leases, assumes all of Assignor's obligations under the Tenant Leases accruing on or after the Effective Date, and agrees to indemnify, defend and hold harmless Assignor from and against any and all costs, liabilities, claims, losses, proceedings, damages, causes of action and expenses, including without limitation attorneys' fees and expenses, resulting from any breach by Assignee of any obligations under the Tenant Leases accruing on or after the Effective Date or any action or omission to act of Assignee occurring under the Tenant Leases on or after the Effective Date.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK;  
SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, the parties hereto have executed this as of the date first above written:

JOSEPH M. TOY, duly appointed as  
Trustee of the Bankruptcy Estate of  
WESTERN APARTMENT SUPPLY  
& MAINTENANCE CO., in the United  
States Bankruptcy Court for the District  
of Hawaii in that certain proceeding  
entitled "In re Western Apartment Supply  
& Maintenance Co.", designated  
as Case No. 11-00941 (Chapter 11)

"Assignor"

\_\_\_\_\_

a \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"Assignee"

Ex E - 2

SCHEDULE 1

LIST OF TENANT LEASES

Ex E - 1

RUSH MOORE LLP  
A LIMITED LIABILITY LAW PARTNERSHIP

SUSAN TIUS 2873  
DAVID SHIBATA 2817  
737 Bishop Street, 24<sup>th</sup> Floor  
Honolulu, Hawaii 96813  
Telephone: (808) 521-0406  
Facsimile: (808) 521-0497  
stius@rmhawaii.com

Attorneys for JOSEPH M. TOY, Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF HAWAII

In re

WESTERN APARTMENT SUPPLY  
& MAINTENANCE CO.,  
a California corporation,

Debtor.

Case No. 11-00941  
(Chapter 11)

Non-hearing

Judge: Honorable Robert J. Faris

**STIPULATED ORDER ESTABLISHING OVERBID PROCEDURES**

This Stipulated Order Establishing Bid Procedures is entered  
between JOSEPH M. TOY ("Trustee"), Chapter 11 Trustee of WESTERN  
APARTMENT SUPPLY & MAINTENANCE CO. ("Debtor"), the Debtor,  
ONEWEST BANK ("OWB") and the DEPARTMENT OF TAXATION OF  
THE STATE OF HAWAII ("SOH"), through their respective counsel, with

reference to the below-described facts. The Office of the United States Trustee ("UST") does not object to the herein provisions.

On April 5, 2011, the Debtor filed a petition under Chapter 11 of the Bankruptcy Code. On August 3, 2011, the Trustee was appointed as Chapter 11 Trustee. The Trustee, pursuant to Sections 1106 and 1108 of the Bankruptcy Code, is in possession of the Debtor's interests in real and personal property, related assets and certain executory contracts and unexpired nonresidential real property leases (the "Section 365 Agreements") comprising the operating hotel known as the "Maui Oceanfront Inn" (collectively "the Hotel").

The Trustee, after extensive consultation with OWB, the SOH, the Debtor and the UST, in the exercise of his business judgment, has determined that it is the best interests of the Estate, creditors and interested parties, that the Hotel be offered for sale and sold through this bankruptcy case. The Trustee believes that this will preserve the going concern value of the Hotel, facilitate continued uninterrupted operation of the Hotel, and avoid OWB's need to resume the foreclosure case pending in the State Court which would mean returning of the Hotel to the possession of the Debtor, further delay and added expense and likely result in a depressed "fire sale" price.

A hearing will be held (the "Sale Hearing"), which has tentatively been set for May 21, 2012 at 9:30 a.m., for the Court's consideration of a Motion to be filed by the Trustee seeking approval of a sale of the Hotel to a purchaser (the "Purchaser") who has entered into a definitive written agreement with the Trustee (the "Purchase Agreement") which allows for the possibility of other parties being permitted to bid for the Hotel. Any overbidding by pre-qualified over-bidders will be conducted at the time of the Sale Hearing. Establishment of procedures as a condition to participating in the overbidding process is necessary to facilitate marketing and maximizing the sale price of the Hotel.

IT IS HEREBY ORDERED that the following terms and conditions are established.

- a. Any entity (other than Purchaser) that is interested in purchasing the Hotel must submit to the Trustee an "Initial Overbid", at least seven days prior to the Sale Hearing (the "Overbid Deadline"). At the request of the Trustee, any entity that fails to submit a timely, conforming Initial Overbid, as set forth herein, may be disqualified from overbidding at the Sale Hearing. Any such Initial Overbid must on or before the Overbid Deadline:



- (i) Be served upon the Trustee, Trustee's counsel, and Purchaser in a manner such that the Initial Overbid actually is received on or before the Overbid Deadline;
- (ii) Contain a signed definitive written agreement, acceptable to the Trustee, on the same terms and conditions as the Purchase Agreement (as modified for the identity of the Overbidder and the Overbid amount), which Purchase Agreement will be made available to interested parties upon request;
- (iii) Provide for a cash purchase price of at least \$70,000.00 more than the purchase price offered by Purchaser in the Purchase Agreement;
- (iv) Deliver a cashiers' or certified check in the amount of at least 20% (twenty percent) of any proposed overbid ("Overbid Deposit") to the Trustee, which Overbid Deposit will be returned to the overbidder following the conclusion of the Sale Hearing unless the overbidder ultimately submits the successful bid at the Sale Hearing but fails to execute a purchase agreement within two (2) days after delivery to the overbidder or is in default under the

purchase agreement executed by the overbidder, in which case the Overbid Deposit shall be forfeited in full as full and complete liquidated damages for default of its obligations;

- (v) Be accompanied by evidence satisfactory to the Trustee establishing the overbidder's good faith, within the meaning of Section 363(m) of the Bankruptcy Code, and its "adequate assurance of future performance" of the Section 365 Agreements, within the meaning of section 365(f)(2)(B) of the Bankruptcy Code;
- (vi) Be accompanied by evidence satisfactory to Trustee that the overbidder is willing, authorized, capable and qualified financially, legally and otherwise, of unconditionally performing all obligations under the terms of a purchase agreement approved by the Trustee in the event that it submits the prevailing overbid at the Sale Hearing; and
- (vii) Remain open and irrevocable until the Bankruptcy Court's approval at the Sale Hearing of a competing overbid. Competing overbids shall not be conditioned or contingent on the outcome of unperformed due diligence

by the overbidder, any financing contingency, obtaining title insurance, any board of directors', shareholders' or other corporate or entity approval, or any other conditions not set forth in the purchase agreement executed by the overbidder.

- b. If no timely, conforming Initial Overbids are submitted, the Trustee will request at the Sale Hearing that the Court approve the proposed sale to Purchaser, pursuant to the terms and conditions set forth in the Purchase Agreement.
- c. In the event that the Trustee timely receives a conforming Initial Overbid as described above (a "Qualified Overbid"), then Purchaser shall have the right to increase its proposed purchase price by no less than the Initial Overbid, plus the Incremental Bid Amount (as defined below) at the Sale Hearing. The entity or entities submitting Qualified Overbids and Purchaser may then submit successive bids in increments of at least \$10,000.00 greater than the prior bid (the "Incremental Bid Amount") at the Sale Hearing until there is only one offer that the Bankruptcy Court determines is the highest and best offer (the "Prevailing Bid").

d. All overbidders shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and to have waived any right to jury trial in connection with any disputes relating to the auction and/or the sale of the assets. Purchaser and all qualified overbidders shall be bound by their overbids until such time as a definitive purchase agreement is executed by the prevailing overbidder (as modified for the increased bid amount, and other terms acceptable to the Trustee) and approved by the Bankruptcy Court at the Sale Hearing. If, for any reason, such prevailing overbidder is unable or unwilling to execute a purchase agreement within two (2) days after delivery to overbidder or to perform its obligations thereunder, Trustee, in the exercise of its business judgment, (i) may cash and retain the deposit as full and complete liquidated damages for default of its obligations; and (ii) may sell the assets to the overbidder with the next highest Qualified Overbid at the auction (as approved by the Bankruptcy Court), upon ex parte application to the Bankruptcy Court without further notice or a hearing, provided that such overbidder submits a new deposit and

otherwise is authorized, capable, and qualified to proceed with the sale.

- e. A copy of this Stipulated Order shall be delivered to any overbidder seeking to submit an Overbid, and such overbidder shall, on or before the Overbid Deadline, execute an acknowledgement of receipt of this Stipulated Order and agreement to be bound by the terms and conditions of the overbidding process and procedures.

DATED: Honolulu, Hawaii.

*/s/ Robert J. Faris*  
United States Bankruptcy Judge  
Dated: March 29, 2012

AGREED:

*/s/Susan Tius*  
SUSAN TIUS  
DAVID SHIBATA  
Attorneys for JOSEPH M. TOY,  
CHAPTER 11 TRUSTEE

***In re Western Apartment Supply & Maintenance Co., Case No. 11-00941 (Chapter 11); STIPULATED ORDER ESTABLISHING OVERBID PROCEDURES***

/s/Ted N. Pettit

TED N. PETTIT

DANA R.C. LYONS

Attorneys for Secured Creditor

ONEWEST BANK

/s/Cynthia M. Johiro

CYNTHIA M. JOHIRO

Attorney for the DEPARTMENT OF  
TAXATION, STATE OF HAWAII

/s/Jerrold K. Guben

JERROLD K. GUBEN

Attorney for Debtor

NO OBJECTION:

/s/Terri Didion

TERRI DIDION

Office of the United States Trustee

**In re Western Apartment Supply & Maintenance Co., Case No. 11-00941 (Chapter 11); STIPULATED ORDER ESTABLISHING OVERBID PROCEDURES**



Landscape Architecture  
City & Regional Planning

March 7, 2012

Mr. Joseph M. Toy, President & CEO  
Hospitality Advisors LLC  
745 Fort Street Mall, Suite 2124  
Honolulu, Hawaii 96813

Dear Mr. Toy:

**Regarding:** Status of Items outlined in the November 25, 2005 Settlement Agreement, for the Maui Oceanfront Inn & Sarento's Restaurant located at 2980 South Kihei Road, Kihei, Maui, Hawaii; TMK Nos.: (2) 3-9-004:029 and 149, (EA 2006-0015) (CPA 2006-0005) (CP 2006-0012) (SM1 2006-0017) (SSV 2006-0004) (OSP 2006-0002)

This letter is intended to provide an explanation of the status of each of the actionable tasks identified in the November 25, 2005 Settlement Agreement (Settlement Agreement) (See Attached: "November 25, 2005 Settlement Agreement").

**Consolidated Application Report:**

In June of 2006 Chris Hart & Partners (CH&P) prepared and filed a Consolidated Application Report which consisted of a formal filing for each of the remaining Land Use Approvals outlined in the Settlement Agreement.

Applications filed are as follows:

- **Environmental Assessment (EA 2006-0015)**, which was triggered by the use of State Land and by the initiation of a Community Plan Amendment.
- **Community Plan Amendment (CPA 2006-0005)**, to change the Community Plan Designation of (SF) Single Family for the existing hotel Parcel 029, to a Community Plan Designation of (H) Hotel.
- **County Conditional Use Permit (CP 2006-0012)**, to allow Commercial Parking generated by uses on Parcel 029 to occur on Parcel 149, as a "similar or related use" in the County (PK) Park Zoning District..

- **Special Management Area (SMA), Major, Use Permit (SM1 2006-0016)**, to assess the environmental impacts of the previously unreviewed structural additions, uses and proposed parking lot construction to occur on Parcel 149.
- **Shoreline Setback Variance (SSV 2006-0014)**, to approve the location of man made structures at the makai end of Parcel 029.
- **Off-Site Parking Approval (OSP 2006-0002)**, to approve the use of Commercial Parking for the benefit of Parcel 029, on Parcel 149.

This Consolidated Application Report was subject to a comprehensive Agency Review process, and was referred by the Maui Planning Department to the Maui Planning Commission, with a Recommendation for Approval. The Planning Commission reviewed the Consolidated Application Report and has accepted the Final Environmental Assessment (EA 2006-0015) as a Finding of No Significant Impact (FONSI).

The Maui Planning Commission has held the approval of the Special Management Area, Major, Use Permit, Shoreline Setback Variance and Off-Site Parking Approval in abeyance until the County Council has acted on the remaining Legislative Applications (SM1 2006-0017), (SSV 2006-0004), (OSP 2006-0002).

The Maui Planning Commission referred the remaining Legislative Applications to the Maui County Council with a Recommendation for Approval (CPA 2006-0005), (CP 2006-0012).

The Maui County Council reviewed the project in August of 2010, but has requested the completion of outstanding items, as identified in the attached letter dated August 6, 2010 (See Attached: "August 6, 2010, letter from Council Land Use Committee Chair"). The most recent status of these items is outlined in a letter from CH&P dated August 5, 2011 (See Attached: "August 5, 2011, letter to Council Land Use Committee Chair"). To date, we are unaware of any change in the status of the items outlined in the August 5, 2011 letter to the Council Land Use Committee Chair.

### **November 25, 2005, Settlement Agreement:**

**Items 2.1, through 2.2.4.:** Pertains to preparation and filing of Variance Application for approval of the awning at makai side of Sarento's, regarding lot coverage of permanent structures on Parcel 029 (Hotel Parcel), and regarding side yard setbacks for incidental utility structures at the north and south property boundaries of Parcel 029.

**Status of Items 2.1, through 2.2.4.:** The Variance Application has been filed processed and approved, and can be identified with the County of Maui as (BVA 2005-008).



**Item 2.3.:** Pertains to preparation and filing of an Off Site Parking (OSP) Approval Application for Commercial parking for the activities occurring on Parcel 029, to be located on Parcel 149 (parking lot Parcel).

***Status of Item 2.3.:*** The OSP Application has been filed and is being processed as part of the Consolidated Application Report originally filed with the County of Maui in June of 2006, and can be identified with the County of Maui as (OSP 2006-0002).

**Item 2.4.:** Pertains to preparation and filing of the Special Management Area (SMA) Major Permit & Shoreline Setback Variance Application (SSV) for each of the previously unpermitted structures on the property.

***Status of Item 2.4.:*** The SMA Permit & SSV Applications have been filed and are being processed as part of the Consolidated Application Report originally filed with the County of Maui in June of 2006, and can be identified with the County of Maui as (SM1 2006-0017) & (SSV 2006-0004).

**Item 2.4.1.:** Pertains to obtaining approval from the Board of Land & Natural Resources (BLNR) to apply for governmental Permits.

***Status of Item 2.4.1.:*** This item is in process but not completed. Completion of this item was being pursued by Attorney Jonathan S. Durrett, prior to bankruptcy.

**Item 2.4.2.:** Pertains to preparation and filing of an Environmental Assessment (EA) for the project as a whole on Parcels 029 & 149.

***Status of Item 2.4.2.:*** An EA was filed as part of the Consolidated Application Report. The EA has completed processing and has been granted a Finding Of No Significant Impact (FONSI), and can be identified with the County of Maui as (EA 2006-0015).

**Item 2.4.3.:** Pertains to preparation and filing of Community Plan Amendment (CPA) to change the Community Plan Designation of Parcel 029 from proposed zoning of (SF) Single Family, to (H) Hotel.

***Status of Item 2.4.3.:*** A CPA Application was filed as part of the Consolidated Application Report, and can be identified with the County of Maui as (CPA 2006-0005).

**Item 2.4.4.:** Pertains to preparation and filing of a County Conditional Use Permit (CP) Application for Commercial parking for the use activities occurring on Parcel 029, to be located on Parcel 149 (parking lot Parcel). Parcel 149 is Community Planned and Zoned County (PK) Park District; therefore, a CP is required for private commercial parking as a use "similar or related" to uses permitted in the (PK) Park District.

***Status of Item 2.4.4.:*** A CP Application for Commercial parking from Parcel 029 to occur on Parcel 149 was filed as part of the Consolidated Application Report, and can be identified with the County of Maui as (CP 2006-0012).

**Item 2.4.5.:** Also pertains to preparation and filing of a an Application for Off-Site Parking Approval (OSP) by the Maui Planning Commission to allow Commercial parking for the activities occurring on Parcel 029, to be located on Parcel 149.

***Status of Item 2.4.5.:*** The OSP Application has been filed and is being processed as part of the Consolidated Application Report originally filed with the County of Maui in June of 2006, and can be identified with the County of Maui as (OSP 2006-0002).

**Item 2.4.6.:** Pertains to preparation and filing of a Traffic Impact Assessment Report (TIAR) to accompany Applications and filings.

***Status of Item 2.4.6.:*** A TIAR has been prepared and filed as part of the Consolidated Application Report originally filed with the County of Maui in June of 2006.

**Item 2.4.7.:** Also pertains to preparation and filing of the Special Management Area (SMA) Major Permit for previously unpermitted structures on both Parcels 029 & 149.

***Status of Item 2.4.7.:*** The SMA Permit Application, intended to cover all outstanding items, has been filed and is being processed as part of the Consolidated Application Report originally filed with the County of Maui in June of 2006, and can be identified with the County of Maui as (SM1 2006-0017).

**Item 2.4.8.:** Also pertains to preparation and filing of an SSV.

***Status of Item 2.4.8.:*** The SSV Application, intended to cover all outstanding items, has been filed and is being processed as part of the Consolidated Application Report originally filed with the County of Maui in June of 2006, and can be identified with the County of Maui as (SSV 2006-0004).

**Item 2.4.9.:** Pertains to securing a State Certified Shoreline Survey.

***Status of Item 2.4.9.:*** A Shoreline Survey Map for the project was Certified by the State of Hawaii on August 22, 2006.

**Item 2.5.:** States that the Variances that have been issued via (BVA 2005-0008), shall not be effective until items 2.5.1. through 2.5.5. have been completed.

***Status of Item 2.5.:*** The Variances have been granted as described above. Status of items 2.5.1. through 2.5.5. will be described below.

**Item 2.5.1.:** Pertains to the Lease with the State of Hawaii for Parcel 149, and the requirement for language indicating the need for commercial, off-site parking for the activities occurring on Parcel 029.

***Status of Item 2.5.:*** This item is in process but not completed. Completion of this item was being pursued by attorney Jonathan S. Durrett, prior to bankruptcy.

**Item 2.5.2.:** Pertains to the requirement for a Right of Entry from the State of Hawaii to trim existing Naupaka shrubs growing along the shoreline, makai of Sarento's Restaurant.

***Status of Item 2.5.2.:*** The State of Hawaii, Department of Land & Natural Resources, Maui District Land Agent has been supportive of this action. This item is in process but not completed, prior to bankruptcy.

**Item 2.5.3.:** Pertains to the requirement for public beach use signage to be installed, and to obtain an agreement from the interested parties with regard to wording.

***Status of Item 2.5.3.:*** The signage was installed. Prior to bankruptcy, Attorney Thomas R. Cole made requests to the interested parties for approval of the signage language used, but had not received a reply.

**Item 2.5.4.:** Pertains to the requirement for a public beach access and parking signage to be installed, and to obtain an agreement from the interested parties with regard to wording.

***Status of Item 2.5.4.:*** The signage was installed. Prior to bankruptcy, Attorney Thomas R. Cole made requests to the interested parties for approval of the signage language used, but had not received a reply.

**Item 2.5.5:** Pertains to the pursuit of mitigation measures regardless of the granting of Variances.

*Status of Item 2.5.5:* Mitigation measures are in process and all Applications have been filed.

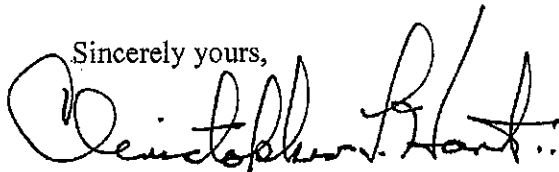
**Items 2.6. through 23:** In general, pertain to the mutual obligations of the signators of the Settlement Agreement for performance of the items outlined above.

**Items 2.6. through 23:** CH&P has not been administering this portion of the Settlement Agreement. That being said, it is our understanding that parties to the Settlement Agreement are in general compliance with the requirements of items 2.6. through 23.

In conclusion we hope that the foregoing information will clarify the obligations established by the Settlement Agreement.

Thank you for your consideration. Please contact Jordan Hart at (808) 242-1955 or Jhart@CHPMaui.com for further information and or clarification.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Christopher L. Hart", with a stylized flourish at the end.

Christopher L. Hart, President  
ASLA Landscape Architect & Planner

Enclosures (3):

- November 25, 2005 Settlement Agreement
- August 6, 2010, letter from Council Land Use Committee Chair
- August 5, 2011, letter to Council Land Use Committee Chair

Cc:

CH&P File (05-112)

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 25<sup>th</sup> day of November, 2005.

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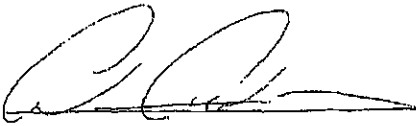
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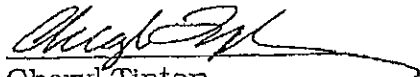


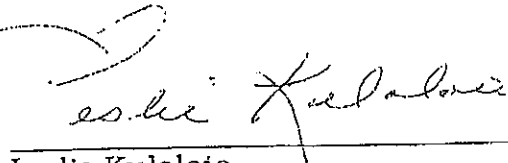
THE COUNTY OF MAUI

By: 

ALAN M. ARAKAWA  
Its Mayor

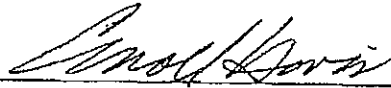
Approved as to Form:

  
Cheryl Tipton  
Deputy Corporation Counsel

  
\_\_\_\_\_  
Leslie Kuloloto

Dana Naone Hall  
Dana Naone Hall

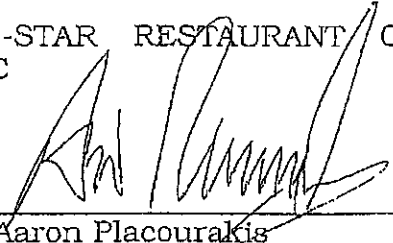
WESTERN APARTMENT SUPPLY &  
MAINTENANCE CO., a California  
Corporation



---

by Carroll G. Davis  
Its President

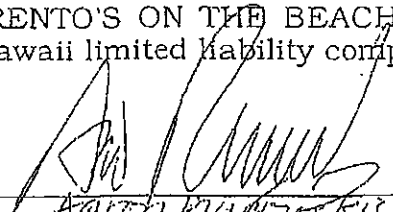
TRI-STAR RESTAURANT GROUP,  
LLC



---

by Aaron Placourakis  
Its Operator

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

  
by Aaron M. Markis  
Its Manager

mauloceanfront/settlementagreement

Public Parking  
4 Stalls

Public  
Parking  
25 Stalls

12 Public stalls  
40 MOE stalls

Parking not designated  
"Public" is for MOE





Council Chair  
Danny A. Mateo

Vice-Chair  
Michael J. Molina

Council Members  
Gladys C. Balsa  
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.maui-county.gov/council](http://www.maui-county.gov/council)

Director of Council Services  
Ken Fukuoka

**RECEIVED**

**AUG 10 2010**

CHRIS HART & PARTNERS, INC.  
Landscape Architecture and Planning

*CC: Jordan*  
*05/11/12*

August 6, 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 (KIHED)  
(LU-25)**

May I please request your response to the following:

1. Provide a copy of the letter of authorization and any approvals required by Sections 19.40.030 and 19.510.010(D)(1), Maui County Code, and Section 2.4.1 of the Settlement Agreement,<sup>1</sup> which would allow Western Apartment Supply & Maintenance Co. ("Western") to proceed with the Conditional Permit and Community Plan Amendment applications.
2. Revocable Permit No. 7235, dated December 1, 2000, permits Western to occupy a portion of TMK: (2) 3-9-04:001, consisting of "0.694 acres, more or less". The acreage converts to 30,230.64 square feet. The parcel was subsequently subdivided and the property that is referenced in connection with the Conditional Permit application is now designated TMK: (2) 3-9-04:149, and consists of approximately 35,932 square feet.
  - a. Since the Revocable Permit is for an area that is approximately 5,700 square feet less than Parcel 149, should the proposed Conditional Permit be for a 30,231-square-foot portion of Parcel 149 only, or is Western seeking authorization to occupy the whole of Parcel 149? Please explain the discrepancy and how it is being resolved.

<sup>1</sup> The Settlement Agreement is attached as Exhibit "6" to the "Maui Planning Department's Report to the Maui Planning Commission November 25, 2008 Meeting".

Mr. Christopher Hart  
Chris Hart and Partners, Inc.  
August 6, 2010  
Page 2

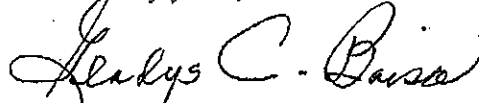
- b. The Settlement Agreement refers to Western's intent to seek a lease of Parcel 149 from the State, through its Board of Land and Natural Resources (see page 3, first full paragraph), and of certain terms that must be contained in that lease (see Section 2.5.1). What is the status of the contemplated lease?
3. What is the status of each of the mitigation measures set forth in Sections 2.5.2 through 2.5.5 of the Settlement Agreement?

I would appreciate receiving your response by **Monday, September 13, 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:025a03:cmn

cc: Ann Cua, Deputy Planning Director  
Joseph Prutch, Planner, Department of Planning  
Western Apartment Supply & Maintenance Co.



Landscape Architecture  
City & Regional Planning

August 5, 2011

'11 AUG -5 P 7:46

OFFICE OF THE  
COUNTY CLERK

Mr. Robert Carroll, Chairman  
Council Land Use Committee  
200 South High Street  
Wailuku, Maui, HI 96793

Dear Chairman Carroll, and Land Use Committee Members:

**Regarding:** Status of Settlement Agreement and Land Use Entitlement for the Maui Oceanfront Inn and Sarento's Restaurant (MOSR), located at 2980 South Kihei Road, Kihei, Maui, Hawaii; TMK Nos.: (2) 3-9-004:029 and 149. (EA 2006/0015) (CPA 2006/0005) (CP 2006/0012) (SM1 2006/0017) (SSV 2006/0004) (OSP 2006/0002)

I am pleased to respond to your request for a status update on the above referenced applications via letter dated July 20, 2011 (See Attached: "Letter from Council Land Use Committee Chair dated 2011-07-20").

Since our meeting with the County Council Land Use Committee on August 4, 2010, regarding the above referenced Settlement Agreement and Land Use Entitlement, the Applicant has been working on the issues identified by the previous Council Land Use Committee Chair. The Applicant's progress on these outstanding issues is described below:

#1. Letter of Authorization:

The Applicant has consulted with our Maui Department of Planning and sought input from Council Services to identify the requirements for the Letter of Authorization. Chris Hart & Partners (CH&P) then initiated communication with the State Department of Land and Natural Resources (DLNR) on the issue and provided a template Letter of Authorization to DLNR on October 19, 2010. The Applicant's representatives have continued to be in communication with the DLNR regarding the issue. The Maui Land Agent has stated that he is not opposed to issuing the letter, but to date, the Letter of Authorization has not been issued by DLNR. Therefore, the Applicant's legal representatives have proceeded to negotiate with senior DLNR staff on Oahu regarding a final resolution.

#2. Area of Revocable Permit and Area of Parcel 149:

The Applicant has requested a Conditional Use Permit for a portion of the parking lot Parcel No. 149. The Applicant proposes to use an area of 0.694 acres for the purpose of parking, consistent with the existing Revocable Permit for use of the parcel.

#2.a Area of Conditional Permit and area of Parcel 149:

The Applicant has been in negotiation with the State DLNR for some time. As proposed above, the Conditional Use Permit will not conflict with the area that is currently covered by a Revocable Permit because the size of the existing Revocable Permit is equal to the size of the requested Conditional Use Permit.

In the event that a lease for the use of the entire parcel is obtained, the Applicant will seek an amendment to any existing County permits, at that time.

#2.b. Status of Updated Lease for Parcel 149:

The Applicant has been in negotiation with the State DLNR, and is anticipating that an updated lease will be forthcoming.

#3. Status of Mitigation Measures:

**Section 2.5.2:** The Applicant has received the Right of Entry Permit (ROE) for Naupaka trimming from DLNR (**See Attached:** "ROE Permit from DLNR dated May 20, 2011"). The document is in the process of being executed, at which time the work scope will be completed.

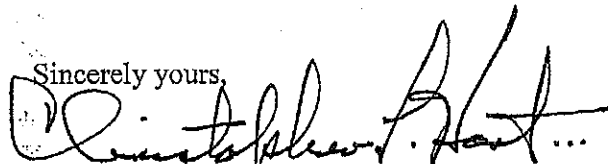
**Section 2.5.3:** The Applicant has posted and maintained beach reserve signage as referenced in the Settlement Agreement. On September 19, 2010 the Applicant's attorney requested written comment from the Interested Parties, and has followed up via telephone. To date there is no written reply or documentation of an agreement or of any negative comment on the particular words used for beach signage has been received from the Interested Parties.

**Section 2.5.4:** The Applicant has posted and maintained public parking signage as referenced in the Settlement Agreement. On September 19, 2010 the Applicant's attorney requested written comment from the Interested Parties, and has followed up via telephone. To date there is no written reply or documentation of an agreement or of any negative comment on the particular words used for parking signage has been received from the Interested Parties.

**Section 2.5.5:** The Applicant has completed portions of 2.5.3 & 4 of the Settlement Agreement and has initiated completion of all other mitigation measures. The Applicant has been granted the referenced variances, contingent on completion of the Settlement Agreement. The Applicant will continue to pursue the completion of all portions of the Settlement Agreement.

Thank you for your consideration. Please contact Jordan Hart at 270-1563 or  
Jhart@CHPMaui.com for further information.

Sincerely yours,



Christopher L. Hart, President  
ASLA Landscape Architect & Planner

Enclosures (2):

- Letter from Council Land Use Committee Chair dated 2011-07-20
- ROE Permit from DLNR dated May 20, 2011

Cc:

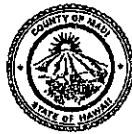
Western Apartment Supply & Maintenance Co.  
Mr. Joseph Prutch, County of Maui, Department of Planning  
CH&P File (05-112)



Council Chair  
Danny A. Mateo

Vice-Chair  
Joseph Pontanilla

Council Members  
Gladys C. Baisa  
Robert Carroll  
Elle Cochran  
Donald G. Couch, Jr.  
G. Riki Hokama  
Michael P. Victorino  
Mike White



**COUNTY COUNCIL**  
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[www.mauicounty.gov/council](http://www.mauicounty.gov/council)

Director of Council Services  
Ken Fukuoka

**RECEIVED**

JUL 22 2011

CHRIS HART & PARTNERS, INC.  
Landscape Architecture and Planning

*Cl: Jordan*  
*05/11/12*

July 20, 2011

Mr. Christopher Hart  
Chris Hart & 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 (KIHU)  
(LU-25)**

By the enclosed correspondence dated January 21, 2011, I requested information relating to the subject applications. Your enclosed response dated February 18, 2011, detailed the applicant's progress on outstanding issues with the Department of Land and Natural Resources, including the required letter of authorization, updated lease, and right-of-entry agreement.

In the ensuing five months, the Committee has not received an update or any of the requested information.

May I please request that you provide the Committee with a written response concerning the status of your obtaining the information requested, along with copies of any of the requested documents you may have since received. I look forward to receiving your response **by Friday, August 5, 2011**. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Mr. Christopher Hart  
Chris Hart & Partners, Inc.  
July 20, 2011  
Page 2

Thank you for your attention to this matter. Should you have any questions, please contact me or the Committee staff (Kirstin Hamman at 270-7134 or Pauline Martins at 270-8039).

Sincerely,

  
ROBERT CARROLL, Chair  
Land Use Committee

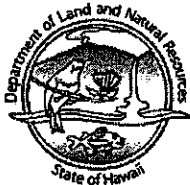
lu:ltr:025a02:kmh

Enclosures

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



NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

May 20, 2011

WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY B. KAULUKUKUI  
FIRST DEPUTY

WILLIAM M. TAM  
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  
KAIKOLA WE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Ref:GL S-4212

Mr. Thomas R. Cole  
P.O. Box 284  
Wailuku, HI 96793

Dear Mr. Cole:

**SUBJECT: Right-of-Entry Permit to Western Apartment Supply & Maintenance Company for Landscaping Purposes at Kamaole, South Kihei, Maui, Tax Map Key: (2) 3-9-004:Portion of 001**

Thank you for your letter dated April 28, 2011 requesting on behalf of your client Western Apartment Supply & Maintenance Company, a right-of-entry permit to trim the naupaka from the area in front of the Maui Oceanfront Inn and restaurant so that the growth will not interfere with the beach users use of the beach area.

Pursuant to the authority granted by the Board of Land and Natural Resources at its meeting on September 28, 2001 (Item D-4), Western Apartment Supply & Maintenance Company (hereinafter referenced as WAS&MC), are hereby granted a right-of-entry onto State unencumbered land, known as Kamaole, South Kihei, Maui, Tax Map Key: (2) 3-9-004:Portion of 001, that is further identified on the attached map labeled Exhibit "A", subject to the following terms and conditions:

1. This right-of-entry shall be effective upon the date of acceptance and shall be for a term of three (3) months, or the completion of the landscaping work, whichever is sooner.
2. WAS&MC shall procure at its own expense, and maintain during the entire period of this right-of-entry, from an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, a policy or policies of comprehensive public liability insurance or its equivalent, in an amount of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii,

Department of Land and Natural Resources. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of WAS&MC. WAS&MC shall furnish the Department with a certificate(s) showing the policy(s) to be initially in force, keep certificate(s) on deposit during the entire period and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited to scope of coverage, or non-renewed until written notice has been given to the Department. The Department shall retain the right at any time to review the coverage, form, and amount of the insurance required. If, in the opinion of the Department, the insurance provisions in this right-of-entry do not provide adequate protection for the Department, the Department may require WAS&MC to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Department's requirements shall be reasonable but be designed to assure protection for and against the kind and extent of the risks, which exist at the time a change in insurance is required. The Department shall notify WAS&MC in writing of changes in the insurance requirements and WAS&MC shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Department incorporating the changes within receipt of the notice. The procuring of the required policy(s) of insurance shall not be construed to limit WAS&MC's liability under this right-of-entry nor to release or relieve WAS&MC of the indemnification provisions and requirements of this right-of-entry. Notwithstanding the policy(s) of insurance, WAS&MC shall be obligated for the full and total amount of any damage, injury, or loss caused by WAS&MC's negligence or neglect connected with this right-of-entry.

3. At all times herein, WAS&MC shall keep the right-of-entry area or premises in a strictly clean, sanitary and orderly condition.
4. WAS&MC shall be responsible for cleaning and restoring the area or premises to its original condition or a condition satisfactory to the Department of Land and Natural Resources upon completion of the work. All trash shall be removed from the area or premises.
5. WAS&MC shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the right-of-entry area or premises, now in force or which may be in force.
6. WAS&MC shall indemnify, defend, and hold the State of Hawaii, Department of Land and Natural Resources harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (1) any act or omission on the part of WAS&MC relating to WAS&MC use, occupancy, maintenance, or enjoyment of the right-of-entry area or premises; (2) any failure on the part of WAS&MC to maintain the right-of-entry area or premises and areas adjacent thereto in WAS&MC use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of WAS&MC to maintain the area or premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of WAS&MC non-observance or non-performance of any of the terms, covenants, and

conditions of this right-of-entry or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

7. WAS&MC shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. WAS&MC 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 right-of-entry area or premises any such materials except to use in the ordinary course of WAS&MC business, and then only after written notice is given to the State of Hawaii, Department of Land and Natural Resources of the identity of such materials and upon the Department's consent which consent may be withheld at the Department'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 WAS&MC, then the WAS&MC shall be responsible for the cost thereof. In addition, WAS&MC shall execute affidavits, representations and the like from time to time at the Department's request concerning WAS&MC best knowledge and belief regarding the presence of hazardous materials on the right-of-entry area or premises placed or released by WAS&MC.
8. WAS&MC agree to indemnify, defend and hold the State of Hawaii, Department of Land and Natural Resources harmless, from any damages and claims resulting from the release of hazardous materials on the right-of-entry area or premises occurring while WAS&MC is/are in possession, or elsewhere if caused by WAS&MC. These covenants shall survive the expiration or earlier termination of this right-of-entry.

For purposes of this right-of-entry, "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 by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

9. WAS&MC in the exercise of this right-of-entry shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general.
10. All costs associated with the landscaping work within the right-of-entry area or premises shall be the sole responsibility of the WAS&MC.
11. WAS&MC shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from WAS&MC use, maintenance, repair and operation of the right-of-entry area or premises, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the right-of-entry area or premises and its surrounding waters of such pollutant or contaminant and restore to the

State of Hawaii, Department of Land and Natural Resources satisfaction the areas affected by such pollution or contamination, all at WAS&MC own cost and expense.

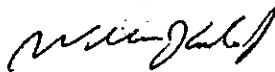
12. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered WAS&MC shall stop work and contact the State Historic Preservations Division in Kapolei at (808) 692-8015 immediately.
13. All disputes or questions arising under this right-of-entry shall be referred to the Chairperson of the Board of Land and Natural Resources for a determination and resolution of the dispute or question. The Chairperson's decision shall be final and binding on the parties herein.
14. This right-of-entry is revocable and terminable at anytime for any reason in the sole and absolute discretion of the Chairperson.
15. This right-of-entry or any rights hereunder shall not be sold, assigned, conveyed, leased, let, mortgaged or otherwise transferred or disposed.
16. The Department of Land and Natural Resources reserves the right to impose additional, but responsible terms and conditions, as it deems necessary while this right-of-entry is in force.

Pursuant to the Land Board's delegation of authority to me to issue rights-of-entry, I am authorized to waive rent for rights-of-entry where no entity involved intends to profit monetarily from its use. As your project meets this requirement, I hereby waive the rent. Should you have no objections to the above-mentioned items, kindly sign in the space provided below and submit the following to the Land Division:

1. Copy of signed concurrence; and
2. Copy of your liability insurance policy.

Should you have any questions, please call Daniel Ornellas at the Maui District Land Office at (808) 984-8103. Thank you.

Sincerely,



William J. Aila, Jr.  
Chairperson

ROE Western Apartment Supply  
& Maintenance Co.

5

ACCEPTED:

---

Western Supply Apartment & Maintenance Company

Dated: \_\_\_\_\_, 2011

Cc: District Office  
OCCL  
DOCARE



UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re

WESTERN APARTMENT SUPPLY  
& MAINTENANCE CO.,  
a California corporation,

Debtor.

Case No. 11-00941  
(Chapter 11)

DECLARATION OF SUSAN TIUS IN  
SUPPORT OF MOTION; EXHIBITS "1" and "2"

I, SUSAN TIUS, hereby declare as follows:

1. I have personal knowledge the facts stated in this Declaration and if called as a witness in this action, I could and would testify to all matters set forth herein of my own knowledge.

2. I am one of the attorneys for Joseph M. Toy ("Trustee"), Chapter 11 Trustee of Western Apartment Supply & Maintenance Co, ("Debtor"), the Debtor herein, and file this Declaration in Support of the Trustee's Motion for Order Authorizing: (I) Sale of Hotel Assets, Free and Clear of Liens and Encumbrances; (II) Assignment of Unexpired DLNR Lease of Non-Residential Real Property and Sarento's Restaurant Operating Agreement, Free and Clear of Liens and Encumbrances; (III) Assignment of DLNR Revocable Permit for Parking Lot Area and

Assumption and Assignment of Settlement Agreement Relating to Parking Lot Area, Free and Clear Of Liens and Encumbrances; (IV) Rejection of Days Inn Executory Contract; and (V) Partial Distribution of Sales Proceeds.

3. A true and correct copy of a Preliminary Title Report dated March 7, 2012, setting forth the liens and encumbrances, including delinquent real property taxes, interests and penalties, against the Debtor's assumed, unexpired leasehold interest under that certain State of Hawaii Department of Land and Natural Resources General Lease No. S-4212 dated September 4, 1968 which, by mesne assignments, was assigned to Debtor by that certain assignment dated February 29, 2000, is attached hereto as Exhibit "1."

4. The amounts claimed by the State of Hawaii Department of Taxation and OneWest Bank under their respective recorded liens are set forth in Proofs of Claims designated as Claim Nos. 15 and 16 filed in the Debtor's case, which I have reviewed, are set forth in the Memorandum in Support of Motion submitted herewith.

5. Bankruptcy Code Section 363(f) provides that the Trustee may sell property of the estate free and clear of any interest in such property if:



- (1) applicable non-bankruptcy law permits a sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept money satisfaction of such interest.

11 U.S.C. § 363(f). Section 363(f) of the Bankruptcy Code is written in the disjunctive and thus only one of the enumerated conditions needs to be satisfied for Court approval to be appropriate.

6. The Trustee believes that the proposed sale satisfies at least two of these conditions. First, the senior lienholder, OWB has consented to the sale and it is anticipated that the junior lienholder, the State of Hawaii Department of Taxation ("DOT"), will not object because the outcome to the DOT is the same as if the Hotel Assets were foreclosed. 11 U.S.C.

§ 363(f)(2). Second, the DOT could be compelled, in a foreclosure action under state law, to accept less than full payment on its liens. Where a lienholder may "be compelled, in a legal or equitable proceeding, to accept money satisfaction of such interest," the Court may approve the sale free

and clear of said liens. 11 U.S.C. § 363(f)(5). The DOT is a junior lienholder in that its certificates of tax liens were recorded after OWB's mortgages. As such, if a foreclosure by judicial sale or power of sale were conducted under Haw. Rev. Stat. Chapter 667, the sale would entitle lienors to "payment according to the priority of their liens" and would "operate to extinguish the liens of subsequent mortgages and liens of the same property." Haw. Rev. Stat. § 667-3. Therefore, the DOT could be compelled to accept payment of less than it is owed in satisfaction of its interest.

7. Based on the foregoing, the factual basis to satisfy one or more conditions of 11 U.S.C. Section 363(f) as required by LBR 6004-1(a)(2)(B) has been met.

8. A proposed Order Granting Trustee's Motion for Order Authorizing: (I) Sale of Hotel Assets, Free And Clear of Liens and Encumbrances; (II) Assignment of Unexpired DLNR Lease of Non-Residential Real Property and Sarento's Restaurant Operating Agreement, Free and Clear of Liens And Encumbrances; (Iii) Assignment of DLNR Revocable Permit for Parking Lot Area, Free and Clear of Liens and Encumbrances, and Assumption and Assignment of Settlement Agreement Relating to Parking Lot Area; (IV) Rejection of Days Inn Executory Contract; and (V) Partial Distribution of Sales Proceeds, is attached as Exhibit "2".

I declare under penalty of perjury under the laws of the State of Hawaii and the United States that the foregoing is true and correct.

Executed this 1st day of May 2012, at Honolulu, Hawaii.

/s/Susan Tius  
SUSAN TIUS

**PRELIMINARY REPORT**  
(No Liability Hereunder)

This report (and any revisions thereto) is issued solely for the convenience of the titleholder, the titleholder's agent, counsel, purchaser or mortgagee, or the person ordering it for the purpose of facilitating the issuance of a policy of title insurance by Title Guaranty of Hawaii and no liability will arise under this report.

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**SCHEDULE A**

Title Guaranty of Hawaii, Incorporated, hereby reports that, subject to those matters set forth in Schedule "B" hereof, the title to the estate or interest to the land described in Schedule "C" hereof is vested in:

WESTERN APARTMENT SUPPLY & MAINTENANCE CO.,  
a California corporation,  
as Lessee

This report is dated as of March 7, 2012 at 8:00 a.m.

Inquiries concerning this report  
should be directed to  
LISA NAGATA.  
Email lnagata@tghawaii.com  
Fax (808) 521-0287  
Telephone (808) 533-5821.  
Refer to Order No. 201212276.

**SCHEDULE B  
EXCEPTIONS**

1. Real Property Taxes, if any, that may be due and owing.

Tax Key: (2) 3-9-004-029      Area Assessed: 48,744 sq. ft.

2. Mineral and water rights of any nature in favor of the State of Hawaii.

3. The terms and provisions contained in the following:

INSTRUMENT: UNRECORDED GENERAL LEASE NO. S-4212

DATED : September 4, 1968

The foregoing includes, but is not limited to, matters relating to reservation of minerals and water.

Estoppel given by the STATE OF HAWAII, by its Board of Land and Natural Resources, to LA JOLLA BANK, FSB, by instrument recorded as Document No. 2007-031159.

4. MORTGAGE

MORTGAGOR : WESTERN APARTMENT SUPPLY & MAINTENANCE CO., a California corporation

MORTGAGEE : LA JOLLA BANK, FSB

DATED : February 13, 2007

RECORDED : Document No. 2007-031153

AMOUNT : \$12,200,000.00

CONSENT : given by the STATE OF HAWAII, by its Board of Land and Natural Resources, by instrument recorded as Document No. 2007-031160

ABOVE MORTGAGE ASSIGNED

TO : ONEWEST BANK, FSB, a federal savings bank

DATED : February 2, 2011

RECORDED : Document No. 2011-022274

SCHEDULE B CONTINUED

Said above ASSIGNMENT OF MORTGAGE was also recorded as Document No. 2011-034531.

5. The terms and provisions contained in the following:

INSTRUMENT : ASSIGNMENT OF RENTS

DATED : February 13, 2007

RECORDED : Document No. 2007-031154

PARTIES : WESTERN APARTMENT SUPPLY & MAINTENANCE CO., a California corporation, "Assignor", and LA JOLLA BANK, FSB, "Assignee"

RE : to secure the repayment of that certain Note in the principal amount of \$12,200,000.00

6. FINANCING STATEMENT

DEBTOR : WESTERN APARTMENT SUPPLY & MAINTENANCE CO., a California corporation

SECURED

PARTY : LA JOLLA BANK, FSB

RECORDED : Document No. 2007-031155

RECORDED ON: February 20, 2007

ASSIGNMENT to ONEWEST BANK, FSB, recorded as Document No. 2010-123201 on August 24, 2010.

CONTINUATION recorded as Document No. A-44050770 on January 23, 2012.

SCHEDULE B CONTINUED

7. MORTGAGE

MORTGAGOR : WESTERN APARTMENT SUPPLY & MAINTENANCE CO., a  
California corporation

MORTGAGEE : LA JOLLA BANK, FSB

DATED : February 13, 2007

RECORDED : Document No. 2007-031156

AMOUNT : \$300,000.00

CONSENT : given by the STATE OF HAWAII, by its Board of Land  
and Natural Resources, by instrument recorded as  
Document No. 2007-031160

ABOVE MORTGAGE ASSIGNED

TO : ONEWEST BANK, FSB, a federal Savings bank

DATED : February 2, 2011

RECORDED : Document No. 2011-022275

Said above ASSIGNMENT OF MORTGAGE was also recorded as Document  
No. 2011-034528.

8. The terms and provisions contained in the following:

INSTRUMENT : ASSIGNMENT OF RENTS

DATED : February 13, 2007

RECORDED : Document No. 2007-031157

PARTIES : WESTERN APARTMENT SUPPLY & MAINTENANCE CO., a  
California corporation, "Assignor", and LA JOLLA  
BANK, FSB, "Assignee"

RE : to secure the repayment of that certain Note in the  
principal amount of \$300,000.00

SCHEDULE B CONTINUED

9. FINANCING STATEMENT

DEBTOR : WESTERN APARTMENT SUPPLY & MAINTENANCE CO., a  
California corporation

SECURED  
PARTY : LA JOLLA BANK, FSB

RECORDED : Document No. 2007-031158  
RECORDED ON: February 20, 2007

ASSIGNMENT to ONEWEST BANK, FSB, recorded as Document No. 2010-123196 on August 24, 2010.

10. The terms and provisions contained in the following:

INSTRUMENT : HOLD HARMLESS AGREEMENT

DATED : January 16, 2007  
RECORDED : Document No. 2007-159043  
PARTIES : WESTERN APARTMENT SUPPLY & MAINTENANCE CO., a  
California corporation, and SARENTO'S ON THE BEACH,  
LLC, a Hawaii limited liability company,  
"Applicant", and the COUNTY OF MAUI, "County"

11. TAX LIEN

BY : DEPARTMENT OF TAXATION, STATE OF HAWAII

AGAINST : WESTERN APT SUPPLY & MAINT CO and MAUI OCEANFRONT  
INN

DATED : September 26, 2008  
RECORDED : Document No. 2008-155099  
AMOUNT : \$7,874.83



SCHEDULE B CONTINUED

12. TAX LIEN

BY : DEPARTMENT OF TAXATION, STATE OF HAWAII  
AGAINST : WESTERN APT SUPPLY & MAINT CO and MAUI OCEANFRONT  
INN  
DATED : September 26, 2008  
RECORDED : Document No. 2008-155100  
AMOUNT : \$55,546.36

13. TAX LIEN

BY : DEPARTMENT OF TAXATION, STATE OF HAWAII  
AGAINST : WESTERN APT SUPPLY & MAINT CO and MAUI OCEANFRONT  
INN  
DATED : January 20, 2009  
RECORDED : Document No. 2009-010769  
AMOUNT : \$28,305.79

14. TAX LIEN

BY : DEPARTMENT OF TAXATION, STATE OF HAWAII  
AGAINST : WESTERN APT SUPPLY & MAINT CO and MAUI OCEANFRONT  
INN  
DATED : March 11, 2009  
RECORDED : Document No. 2009-040997  
AMOUNT : \$38,840.07

SCHEDULE B, CONTINUED

15. TAX LIEN

BY : DEPARTMENT OF TAXATION, STATE OF HAWAII  
AGAINST : WESTERN APT SUPPLY & MAINT CO and MAUI OCEANFRONT  
INN  
DATED : September 17, 2009  
RECORDED : Document No. 2009-145487  
AMOUNT : \$55,767.49

16. TAX LIEN

BY : DEPARTMENT OF TAXATION, STATE OF HAWAII  
AGAINST : WESTERN APT SUPPLY & MAINT CO and MAUI OCEANFRONT  
INN  
DATED : September 18, 2009  
RECORDED : Document No. 2009-150848  
AMOUNT : \$3,915.24

17. TAX LIEN

BY : DEPARTMENT OF TAXATION, STATE OF HAWAII  
AGAINST : WESTERN APT SUPPLY & MAIN CO  
DATED : December 28, 2009  
RECORDED : Document No. 2010-004632  
AMOUNT : \$28,198.80

SCHEDULE B CONTINUED

18. PLAINTIFF'S AMENDED NOTICE OF PENDENCY OF ACTION; AFFIDAVIT SUPPORTING EX PARTE FILING OF PLAINTIFF'S AMENDED NOTICE OF PENDENCY OF ACTIONS; EXHIBITS "A" AND "B"

PLAINTIFF : LA JOLLA BANK, FSB

DEFENDANT : WESTERN APARTMENT SUPPLY & MAINTENANCE CO., CARROLL G. DAVIS, etal

DATED : February 9, 2010

FILED : Circuit Court of the Second Circuit, State of Hawaii, Case No. 10-1-0045 (2), on February 10, 2010

RECORDED : Document No. 2010-022174 on February 18, 2010

RE : foreclosure of (a) Mortgages recorded as Document Nos. 2007-031153 and 2007-031156 (b) Financing Statements recorded as Document Nos. 2007-031155 and 2007-031158.

19. TAX LIEN

BY : DEPARTMENT OF TAXATION, STATE OF HAWAII

AGAINST : WESTERN APT SUPPLY & MAINT CO

DATED : February 10, 2010

RECORDED : Document No. 2010-024805

AMOUNT : \$8756.48

20. TAX LIEN

BY : DEPARTMENT OF TAXATION, STATE OF HAWAII

AGAINST : WESTERN APT SUPPLY & MAINT CO

DATED : April 16, 2010

RECORDED : Document No. 2010-054387

AMOUNT : \$39,112.19

SCHEDULE B CONTINUED

21. TAX LIEN

BY : DEPARTMENT OF TAXATION, STATE OF HAWAII  
AGAINST : WESTERN APT SUPPLY & MAINT CO  
DATED : June 2, 2010  
RECORDED : Document No. 2010-080078  
AMOUNT : \$28,186.06

22. TAX LIEN

BY : DEPARTMENT OF TAXATION, STATE OF HAWAII  
AGAINST : WESTERN APT SUPPLY & MAINT CO  
DATED : July 30, 2010  
RECORDED : Document No. 2010-118983  
AMOUNT : \$37,635.48

23. TAX LIEN

BY : DEPARTMENT OF TAXATION, STATE OF HAWAII  
AGAINST : WESTERN APT SUPPLY & MAINT CO  
DATED : September 28, 2010  
RECORDED : Document No. 2010-157287  
AMOUNT : \$37,224.96

SCHEDULE B CONTINUED

24. TAX LIEN

BY : DEPARTMENT OF TAXATION, STATE OF HAWAII  
AGAINST : WESTERN APT SUPPLY & MAINT CO  
DATED : November 9, 2010  
RECORDED : Document No. 2010-181451  
AMOUNT : \$18,621.06

25. TAX LIEN

BY : DEPARTMENT OF TAXATION, STATE OF HAWAII  
AGAINST : WESTERN APT SUPPLY & MAINT CO  
DATED : February 23, 2011  
RECORDED : Document No. 2011-038122  
AMOUNT : \$43,775.99

26. TAX LIEN

BY : DEPARTMENT OF TAXATION, STATE OF HAWAII  
AGAINST : WESTERN APT SUPPLY & MAIN CO  
DATED : March 9, 2011  
RECORDED : Document No. 2011-044309  
AMOUNT : \$20,808.90

27. Pending Bankruptcy No. 11-00941 filed in the United States Bankruptcy Court for the District of Hawaii, in the matter of the bankruptcy of WESTERN APARTMENT SUPPLY & MAINTENANCE CO., Debtor(s). Voluntary Petition under Chapter 11 filed April 5, 2011.

SCHEDULE B CONTINUED

28. Any facts, rights, interests or claims which are not shown by the public records, but which could be ascertained by making inquiry of the lessors in the lease or leases described or referred to in Schedule C.
29. Any unrecorded leases and matters arising from or affecting the same.
30. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
31. The files at the State of Hawaii, Department of Land and Natural Resources, are not available for our perusal. This report is incomplete insofar as the above matter is concerned and reference is hereby made to the Department of Land and Natural Resources for further information.

END OF SCHEDULE B

**SCHEDULE C**

UNRECORDED GENERAL LEASE NO. S-4212

LESSOR : STATE OF HAWAII, by its Board of land and Natural Resources

LESSEE : WALTER C. WITTE and JOHN J. FAGAN

DATED : September 4, 1968

FILED : State of Hawaii, Department of Land and Natural Resources

TERM : 65 years commencing dated hereof, up to and including September 3, 2033

**THE LESSEE'S INTEREST BY MESNE ASSIGNMENTS ASSIGNED**

ASSIGNOR : TOWA SHINYO MAUI, INC., a Hawaii corporation

ASSIGNEE : WESTERN APARTMENT SUPPLY & MAINTENANCE CO., a California corporation

DATED : February 29, 2000

RECORDED : Document No. 2000-082846

CONSENT : given by the STATE OF HAWAII, by its Board of Land and Natural Resources, by instrument recorded as Document No. 2000-082847

Said Lease demising the following described premises:

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by government land of Kamaole situate on the west side of Piilani Highway adjoining Land Patent Grant Number 13,225 to Yasuko N. Watanabe and Royal Patent Grant Number 1959 to Mahi) situate, lying and being at Kamaole, Wailuku, Kula, Island and County of Maui, State of Hawaii, and thus bounded and described:

SCHEDULE C CONTINUED

Beginning at the southeast corner of this parcel of land, at the northeast corner of Grant 13225 to Yasuko N. Watanabe and on the west side of Piilani Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KALI" being 9,644.91 feet south and 20,033.00 feet west, as shown on Government Survey Registered Map 3005 and running by azimuths measured clockwise from true South:

1.      84°    30'                      356.83      feet along Grant 13225 to Yasuko H. 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 1,939.86 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, more or less.

END OF SCHEDULE C



## GENERAL NOTES

1. There is hereby omitted from any covenants, conditions and reservations contained herein any covenant or restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law. Lawful restrictions under state or federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

## GUIDELINES FOR THE ISSUANCE OF INSURANCE

- A. Taxes shown in Schedule B are as of the date such information is available from the taxing authority. Evidence of payment of all taxes and assessments subsequent to such date must be provided prior to recordation.
- B. Evidence of authority regarding the execution of all documents pertaining to the transaction is required prior to recordation. This includes corporate resolutions, copies of partnership agreements, powers of attorney and trust instruments.
- C. If an entity (corporation, partnership, limited liability company, etc.) is not registered in Hawaii, evidence of its formation and existence under the laws where such entity is formed must be presented prior to recordation.
- D. If the transaction involves a construction loan, the following is required:
  - (1) a letter confirming that there is no construction prior to recordation; or
  - (2) if there is such construction, appropriate indemnity agreements, financial statements and other relevant information from the owner, developer, general contractor and major sub-contractors must be submitted to the Title Company for approval at least one week prior to the anticipated date of recordation.

Forms are available upon request from Title Guaranty of Hawaii.

- E. Chapter 669, Hawaii Revised Statutes, sets forth acceptable tolerances for discrepancies in structures or improvements relative to private property boundaries for various classes of real property. If your survey map shows a position discrepancy that falls within the tolerances of Chapter 669, call your title officer as affirmative coverage may be available to insured lenders.
- F. The right is reserved to make additional exceptions and/or requirements upon examination of all documents submitted in connection with this transaction.
- G. If a policy of title insurance is issued, it will exclude from coverage all matters set forth in Schedule B of this report and in the printed Exclusions from Coverage contained in an ALTA policy or in the Hawaii Standard Owner's Policy, as applicable. Different forms may have different exclusions and should be reviewed. Copies of the policy forms are available upon request from Title Guaranty of Hawaii or on our website at [www.tghawaii.com](http://www.tghawaii.com).

DATE PRINTED: 3/13/2012

STATEMENT OF ASSESSED VALUES AND REAL PROPERTY TAXES DUE

NAME OF OWNER: STATE OF HAWAII  
LEASED TO : WESTERN APT SUPPLY & MAINT

TAX MAP KEY

DIVISION ZONE SECTION PLAT PARCEL HPR NO.  
(2) 3 9 004 029 0000

CLASS: HOTEL AND RESORT AREA ASSESSED: 48,744 SF

ASSESSED VALUES FOR CURRENT YEAR TAXES: 2011

The records of this division show the assessed values and taxes on the property designated by Tax Key shown above are as follows:

BUILDING	\$ 2,966,200
EXEMPTION	\$ 0
NET VALUE	\$ 2,966,200
LAND	\$ 10,660,300
EXEMPTION	\$ 0
NET VALUE	\$ 10,660,300
TOTAL NET VALUE	\$ 13,626,500

Installment (1 - due 8/20; 2 - due 2/20) Tax Info As Of - 8/20/2011

Tax Year	Installment	Tax Amount	Penalty Amount	Interest Amount	Other Amount	Total Amount	
2011	2	61,319.25				61,319.25	PENDING
2011	1	61,319.25	6,131.93	1,349.02		68,800.20	DELINQUENT
2010	2	35,285.37				35,285.37	PAID
2010	1	35,285.38		101.36		35,386.74	PAID

Total Amount Due: 130,119.45

Penalty and Interest Computed to: 8/20/2011

RUSH MOORE LLP  
A Limited Liability Law Partnership

SUSAN TIUS 2873-0  
DAVID SHIBATA 2817  
NATHANIEL HIGA 9064  
737 Bishop Street, Suite 2400  
Honolulu, Hawaii 96813-3862  
Tel. No. 521-0406  
Fax No. 521-0497  
E-mail: Stius@rmhawaii.com

Attorneys for JOSEPH M. TOY,  
Trustee of the Estate of WESTERN APARTMENT  
SUPPLY & MAINTENANCE CO.

**UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF HAWAII**

In re:

WESTERN APARTMENT  
SUPPLY & MAINTENANCE CO.,  
a California corporation,

Debtor.

Case No. 11-00941  
(Chapter 11)

DATE: \_\_\_\_\_, 2012

TIME: \_\_\_\_\_m.

JUDGE: Hon. Robert J. Faris

Related Dkt. No.

**ORDER GRANTING TRUSTEE'S MOTION FOR ORDER  
AUTHORIZING: (I) SALE OF HOTEL ASSETS, FREE AND CLEAR  
OF LIENS AND ENCUMBRANCES; (II) ASSIGNMENT OF  
UNEXPIRED DLNR LEASE OF NON-RESIDENTIAL REAL PROPERTY  
AND SARENTO'S RESTAURANT OPERATING AGREEMENT,  
FREE AND CLEAR OF LIENS AND ENCUMBRANCES;  
(III) ASSIGNMENT OF DLNR REVOCABLE PERMIT FOR PARKING  
LOT AREA, FREE AND CLEAR OF LIENS AND ENCUMBRANCES,**

*price*: Purchase and Sale Agreement dated April 18, 2012, between the Trustee, as Seller, and USA TIANREN HOTEL MANAGEMENT, INC., a California corporation, and XIAOYING WANG, as Buyer (collectively "BUYER"), as amended by that certain First Amendment dated \_\_\_\_\_, 2012, executed by Trustee and BUYER, a copy of which is attached hereto as Exhibit "A" (collectively "PSA").]

[*Alternative if sale to Overbid Buyer*: Purchase and Sale Agreement dated \_\_\_\_\_, 2012 ("PSA"), between Trustee, as Seller, and \_\_\_\_\_, as Buyer ("BUYER"), a copy of which is attached hereto as Exhibit "A".] The Trustee is authorized to perform, execute and deliver (without requiring any further notice to any party or further approval by the Bankruptcy Court), any and all such further acts, agreements and any other documents whatsoever as may be necessary or desirable in connection with the consummation of the sale and the assumption and/or assignment of the unexpired leases and executory contracts as provided in the PSA.

3. The assignment is approved, without the consent any party, of:

(a) the Debtor's assumed, unexpired leasehold interest under that certain State of Hawaii Department of Land and Natural Resources General Lease No. S-4212 dated September 4, 1968 which, by mesne assignments, was assigned to Debtor by that certain assignment dated February 29, 2000 ("DLNR Lease"), free and clear of liens claims, interests and encumbrances;

(b) the Debtor's assumed unexpired executory contract interest under that certain Restaurant Operating Agreement Sarento's on the Beach dated September 22, 2000, as supplemented by that certain

considered the Trustee's report of the bidding at the hearing]. The Court finds that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) notices of the Sale Motion were proper and sufficient in all respects; and (d) the Trustee's sale, assumption and/or assignment of the Debtor's respective unexpired leases and executory contracts, free and clear of liens, claims, interests and encumbrances, with the same to transfer to the sales proceeds, and the Trustee's rejection of the Days Inn Worldwide, Inc. Franchise Agreement, are appropriate and proper under the circumstances and comply with the requirements of 11 U.S.C. §§ 363(f) and 365(a) and (b). The Court further finds that the legal and factual bases set forth in the Sale Motion establish good cause for the relief granted herein and that such relief is in the best interests of the bankruptcy Estate and creditors.

**IT HEREBY IS ORDERED THAT:**

1. The Sale Motion is GRANTED.
2. The sale is approved of substantially all of the Debtor's assets comprising the "Maui Oceanfront Inn" (the "Hotel" or "Hotel Assets"), free and clear of liens, claims, interests and encumbrances (whether or not allowable, as such terms are defined in the Bankruptcy Code), and the Trustee is authorized to consummate the sale pursuant to the *[Alternative if sale to USA Tianren Hotel Management, Inc.: Purchase and Sale Agreement dated April 18, 2012 ("PSA"), between the Trustee, as Seller, and USA TIANREN HOTEL MANAGEMENT, INC., a California corporation, and XIAOYING WANG, as Buyer (collectively "BUYER"), a copy of which is attached hereto as Exhibit "A".]*  
*[Alternative if sale to USA Tianren Hotel Management, Inc. but at a higher*

**AND ASSUMPTION AND ASSIGNMENT OF SETTLEMENT  
AGREEMENT RELATING TO PARKING LOT AREA;  
(IV) REJECTION OF DAYS INN EXECUTORY CONTRACT; AND  
(V) PARTIAL DISTRIBUTION OF SALE PROCEEDS; EXHIBIT "A"**

The Trustee's Motion for Order Authorizing: (I) Sale of Hotel Assets, Free and Clear of Liens and Encumbrances; (II) Assignment of Unexpired DLNR Lease of Non-Residential Real Property and Sarento's Restaurant Operating Agreement, Free and Clear Of Liens and Encumbrances; (III) Assignment of DLNR Revocable Permit for Parking Lot Area, Free and Clear of Liens and Encumbrances, and Assumption and Assignment of Settlement Agreement Relating to Parking Lot Area; (IV) Rejection of Days Inn Executory Contract; and (V) Partial Distribution of Sale Proceeds (the "Sale Motion"), filed by JOSEPH M. TOY (the "Trustee"), Chapter 11 Trustee for WESTERN APARTMENT SUPPLY & MAINTENANCE CO., the above-named Debtor; was heard before this Court on \_\_\_\_\_, 2012, upon due service having been made. Appearances were noted on the record. Susan Tius, Esq., and David Shibata, Esq., appeared for the Trustee.

*[If applicable:* Qualified overbidders who complied under the terms of the Stipulated Order Establishing Overbid Procedures entered herein on March 29, 2012 (Dkt #255) were present at the hearing and an auction was conducted outside of the Courtroom. A high bid in the amount of \$\_\_\_\_\_ was made by \_\_\_\_\_ ("Overbid Buyer") and accepted by the Trustee, subject to Court approval.]

The Court reviewed the Sale Motion and pleadings filed in support thereof, and the records and files in this case. *[If applicable:* and

Mutual Release and Settlement Agreement dated February 26, 2011, by and among Debtor, Tri-Star Restaurant Group, LLC, Sarento's on the Beach, LLC and the Debtor, as amended by First Amendment to Operating Agreement Sarento's on the Beach, free and clear of liens, claims, interests and encumbrances; and

(c) The Debtor's interest as permittee under that certain State of Hawaii Department of Land and Natural Resources Land Division Revocable Permit No. S-7780 dated September 8, 2011, for a parking lot area ("Revocable Permit"), free and clear of liens, claims, interests and encumbrances.

4. The assumption and assignment is approved, without the consent of any party, of that certain Settlement Agreement dated November 25, 2005, by and among Debtor, Tri-Star Restaurant Group, LLC, Sarento's on the Beach, LLC, Dana Naone Hall and Leslie Kuloloio, and the Planning Department, County of Maui, as amended by that certain First Amendment to Settlement Agreement dated December 2, 2008 and that certain Second Amendment to Settlement Agreement relating to the parking lot area.

5. The rejection is approved of that certain Days Inn Worldwide, Inc. Franchise Agreement dated June 19, 2008 between the Debtor and Days Inn Worldwide, Inc.

6 The Court finds that the Buyer is a purchaser "in good faith" and "for value" pursuant to 11 U.S.C. § 363(m), which finding is supported by the Trustee's marketing of the Hotel and the arms-length negotiations resulting in the Trustee and Buyer entering into the PSA. *[If applicable:* The Trustee, in recommending acceptance to the Court of the high bid received at the Trustee's auction of the Hotel, by oral amendment to the



Sale Motion, requested that the Court enter a finding that Overbid Buyer is a good faith purchaser within the meaning of 11 U.S.C. § 363(m). Evidence of Overbid Buyer's good faith was provided by the Trustee at the hearing.] As a good faith purchaser, Buyer is protected from the effects of any reversal or modification on appeal of the authorization to sell the Hotel Assets.

7. The Trustee is authorized to cause partial distribution of the sales proceeds to: (a) pay all usual and customary closing costs paid by the Seller as provided in the PSA; (b) fund a reserve, subject to mutual agreement with OneWest Bank ("OWB") in an amount that the Trustee believes is appropriate for administrative expense claims and the Trustee's professional expense related thereto, after having the opportunity to review administrative expense claims that either are filed by the Court-ordered deadline of May 11, 2012 (Dkt #247) or are known to the Trustee; (c) compensation under 11 U.S.C. § 326 to the Trustee, in the amount to which the Trustee and OWB have agreed, which amount is less than the amounts allowed under 11 U.S.C. § 326; and (d) the balance to OWB on account of its senior lien secured by the Hotel.

8. The sale is free and clear of the junior liens of the State of Hawaii, Department of Taxation, which liens are without value against the Hotel assets and shall be extinguished without payment.

9. The provisions of this Order authorizing the sale free and clear of liens, claims, interests and encumbrances shall be self-executing and shall constitute a satisfaction and release of all liens, claims, interests and encumbrances on the Hotel Assets. Neither the Trustee nor Buyer shall be required to execute or file releases, termination assignments, or other instruments in order to effectuate, consummate

and implement the foregoing provisions. Provided, however, this paragraph shall not excuse such parties from performing any and all of their respective obligations under this Order. Notwithstanding the foregoing, the Trustee is directed to execute all documents required by, or related to, the sale of the Hotel Assets, including but not limited to, assignment and transfer documents that may be required by the State of Hawaii to effectuate the assignment and transfer to Buyer of the DLNR Lease and Revocable Permit.

10. The PSA and related documents may be modified, amended or supplemented by the parties thereto without further Order of the Court, subject to the consent of OWB, provided that any such modification, amendment or supplement is not material.

11. If for any reason, the Buyer is unable or unwilling to perform its obligations under the PSA, then the Trustee, in the exercise of his business judgment, (i) may retain the deposit as payment of any damages resulting from the Buyer's failure to perform [*If applicable*, and (ii) may sell the assets to the next highest overbidder at the auction (as approved by the Court), upon ex parte application to the Court and without further notice or a hearing, provided that such overbidder submits a new deposit and otherwise is authorized, capable, and qualified to proceed with the sale.]

12. The Court finds that this Order approving the Sale Motion is final for purposes of appeal.

13. This Court shall retain jurisdiction over the parties for the purpose of: (a) resolving any disputes, issues or controversies arising under or related to the PSA; (b) protecting Buyer of the Hotel assets, against any liens, claims, interests or encumbrances created or made

prior to the transfer of the Hotel assets to the Buyer; and (c) otherwise enforcing the terms and provisions of this Order and the PSA.

14. Pursuant to Rule 6004(h) of the Federal Rules of Bankruptcy Procedure, the Court specifically orders that there shall not be a 14 days stay from entry of this Order and the sale is permitted to close without delay.

DATED: Honolulu, Hawaii.

In re: WESTERN APARTMENT SUPPLY & MAINTENANCE CO., a California corporation, Case No. 11-00941; ORDER GRANTING TRUSTEE'S MOTION FOR ORDER AUTHORIZING: (I) SALE OF HOTEL ASSETS, FREE AND CLEAR OF LIENS AND ENCUMBRANCES; (II) ASSIGNMENT OF UNEXPIRED DLNR LEASE OF NON-RESIDENTIAL REAL PROPERTY AND SARENTO'S RESTAURANT OPERATING AGREEMENT, FREE AND CLEAR OF LIENS AND ENCUMBRANCES; (III) ASSIGNMENT OF DLNR REVOCABLE PERMIT FOR PARKING LOT AREA, FREE AND CLEAR OF LIENS AND ENCUMBRANCES, AND ASSUMPTION AND ASSIGNMENT OF SETTLEMENT AGREEMENT RELATING TO PARKING LOT AREA; (IV) REJECTION OF DAYS INN EXECUTORY CONTRACT; AND (V) PARTIAL DISTRIBUTION OF SALE PROCEEDS; EXHIBIT "A"

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