

JAMES "KIMO" APANA
Mayor

JOHN E. MIN
Director

CLAYTON I. YOSHIDA
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

October 25, 2000

Ms. Tamara G. Edwards
President
Amfac Property Investment Corp.
700 Bishop Street Suite 501
Honolulu, Hawaii 96813

Ms. Susan Werth, Senior Vice-President
SVO Pacific, Inc.
c/o McCorriston Miller Mukai MacKinnon LLP
Five Waterfront Plaza, 4th Floor
500 Ala Moana Boulevard
Honolulu, Hawaii 96813

Dear Ms. Edwards and Ms. Werth:

RE: MS. TAMARA G. EDWARDS, President of AMFAC PROPERTY INVESTMENT Corp. Requesting a Special Management Area Use Permit Transfer from AMFAC PROPERTY INVESTMENT CORP. and KAA NAPALI OWNERSHIP L.P. to SVO PACIFIC, INC. (Formerly VISTANA PACIFIC, INC.), an Affiliate of STARWOOD HOTELS for the Kaanapali Ocean Resort Project, a Vacation Timeshare Resort of up to 280 Units as Well as Related Improvements and Amenities at TMK: 4-4-014:003, Kaanapali, Lahaina, Island of Maui (SM1 970006)

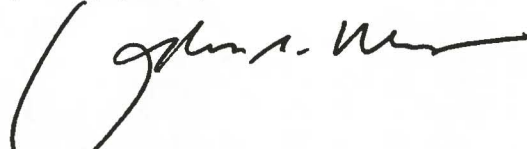
The Maui Planning Commission (Commission) conducted a public hearing on this request at its October 24, 2000 meeting. After due deliberation, the Commission voted to approve the Special Management Area (SMA) Use Permit for the Kaanapali Ocean Resort, Docket No. SM1 970006, from Amfac Property Investment Corp. and Kaanapali Ownership Resort L.P. to SVO Pacific, Inc., an affiliate of Starwood Hotels subject to the provision that:

The transfer shall occur upon conveyance of Lot 1 to SVO Pacific, Inc. and shall be effective only upon the conveyance of Lot 1 to SVO Pacific, Inc. SVO Pacific, Inc. shall provide written notice to the Maui Planning Department within 7 days after the conveyance has occurred. Amfac Property Investment Corp. shall provide written notice to the Maui Planning Department if the conveyance does not occur.

Ms. Tamara G. Edwards, President
Ms. Susan Werth, Senior Vice-President
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A copy of the Staff Report is enclosed for your reference. Should you have any questions, please contact Mr. Clayton Yoshida, Deputy Director, of this office at 270-7735.

Very truly yours,



JOHN E. MIN
Planning Director

JEM:CIY:cmb

Enclosure

c: Clayton Yoshida, AICP, Deputy Planning Director
Aaron Shinmoto, Planning Program Administrator (2)
Office of Planning, CZM Program
Mike Munekiyo, Munekiyo, Arakawa & Hiraga, Inc.
Isaac Hall, Esq.
Buck Buchanan
LUCA (2)
CZM File
Project File
General File
(S:\all\clayton\vistana)

(9/24/98)

SETTLEMENT AGREEMENT

'98 SEP 29 P 4:57

This Settlement Agreement ("Agreement"), dated September 29, 1998, is hereby entered into by KAANAPALI NORTH BEACH JOINT VENTURE ("KNBJV"), AMFAC PROPERTY INVESTMENT CORP. dba AMFAC MAUI ("APIC"), KA'ANAPALI OWNERSHIP RESORTS, L.P., AMFAC/JMB HAWAII, LLC. ("Amfac") (all of the foregoing hereinafter collectively referred to as "Developers") and ROBERT BUCHANAN, DAVID CHENOWETH, ELIZABETH CHENOWETH, RANDY DRAPER, JAMES JOHNSON AND JOANNE JOHNSON (all of the foregoing hereinafter collectively referred to as "Intervenors"),

WHEREAS, APIC and TOBISHIMA PACIFIC, INC., were the joint owners of the several parcels of land collectively known as Kaanapali North Beach Subdivision in Kaanapali, Maui, Hawaii, designated as TMK Nos. (II) 4-4-14:2, 3, 4, 5, 6, 7, 8 & 10, containing an area of 96 acres, more or less (hereinafter the "Subdivision"); however, APIC has entered into a contract to purchase all of the interest of TOBISHIMA PACIFIC, INC. in said real property;

WHEREAS, APIC will be the sole owner of the aforementioned parcels of land, (with closing scheduled for September 28, 1998);

WHEREAS, Amfac and/or its subsidiaries, are the owners of several parcels of land within the Kaanapali and Honokowai areas mauka of the Honoapiilani Highway;

WHEREAS, Developers filed an application for a Special Management Area

("SMA") use permit with the Maui Planning Commission ("MPC") for development of Lot 1 (TMK No. (II) 4-4-14:3) of the Subdivision; said development being known as the Kaanapali Ocean Resort ("KOR"); and said application being identified as Docket No. SM 970006;

WHEREAS, Developers requested clarification by the MPC as to whether road widening improvements to Honoapiilani Highway between the Kaanapali Parkway and Honokowai Stream to four (4) lanes qualify as "other mitigative measures" pursuant to Condition No. 7 of the 1988 SMA Use Permit and Shoreline Setback Variance for the Subdivision; said request being identified as Docket Nos. 88/SM1-023 and 88/SSV-002;

WHEREAS, Intervenors intervened in the above described application and request (in all three of the aforementioned dockets) (this "Matter"), and contested case hearings were held in September and October 1997 before hearing officer Mr. Joel August;

WHEREAS, Mr. August submitted his Report and Proposed Findings of Fact And Conclusions Of Law to the MPC, but the MPC has not yet taken action on this matter;

WHEREAS, the Developers and Intervenors have met and discussed their viewpoints on all significant issues, and in the spirit of aloha have reached a consensus to resolve the Developers and the Intervenors' concerns and desire to enter into this Agreement;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Developers and Intervenors hereby agree as follows:

A. Declaration of Perpetual Rights and Uses and Perpetual Restrictions

The Developers shall execute and record an Irrevocable Declaration of Perpetual Rights and Uses and Perpetual Restrictions for open space, parking and passive recreational uses as well as for certain native Hawaiian traditional and customary uses, permitted within the "Public Open Space/Recreation Area" as provided below:

1. Size and Location

The "Public Open Space/Recreational Area" shall be as shown on the map attached hereto as Exhibit "1." There shall be a minimum distance of 500 feet along the makai boundary of the Public Open Space/Recreational Area, which follows along the mauka boundary of the 30-foot wide designated pedestrian area. There shall be a minimum area of 10 acres, excluding any land dedicated to the widening of Honoapiilani Highway. A metes and bounds description based on said map and approved by the parties shall be prepared and included as an exhibit to the Declaration document (and also attached to this settlement agreement and considered a part of Exhibit "1").

2. Availability

The Public Open Space/Recreational Area shall be open and available for public and/or native Hawaiian uses specified herein on the same date as an SMA permit is issued for any phase of KOR.

3. Public Open Space/Recreation and Native Hawaiian Uses

The Public Open Space/Recreation Area shall be open at all times, in perpetuity, for open space, parking and passive recreational uses, to present and future members of

the public and to present and future native Hawaiians for certain native Hawaiian traditional and customary gathering.

The Public Open Space/Recreation Area shall not be used by anyone for commercial activity. Developers shall erect and maintain signs on the access to and within the parking area prohibiting commercial activity. Developers shall prohibit their employees and contractors from parking in the Public Recreational Area during their employment. Developers shall make reasonable efforts to prevent guests and owners of developments on lots 1, 2 or 3 from using the parking lot while they are in occupancy at said developments.

Nothing in this Agreement shall prevent the Developers from taking reasonable and lawful steps to insure the peace, safety and welfare of the public, native Hawaiians and of persons or other properties in the Subdivision.

4. Restrictions

The Public Open Space/Recreation Area shall be kept free of structures, except for: (1) as provided for in paragraph 5. below; (2) minor structures not larger in size and scope than picnic tables and barbeque pits; (3) one mauka-makai sidewalk and one north-south sidewalk; (4) underground utilities; (5) drainage swales, so long as they do not interfere with the use and enjoyment of the Public Open Space/Recreation Area; and (6) within that portion of the 150-foot setback area which lies within the

Public Open Space/Recreation Area, structures will be governed by the Shoreline Zone Plan, when and as approved by the MPC.

5. Preliminary and Permanent Improvements

The Developers shall provide and maintain the following preliminary and permanent improvements upon the Public Open Space/Recreation Area:

a. Preliminary Improvements

Within thirty (30) days of the issuance of the SMA permit for the first phase of KOR, the Developers shall:

(1) Clear and level the existing sugar cane cultivation areas within the Public Open Space/Recreation Area and replant the same with grass or ground cover;

(2) Demolish and remove any remnants of the old airport runway which may exist within the Public Open Space/Recreation Area; and

(3) Rough-grade and clear portions of the Public Open Space/Recreation Area;

Within ninety (90) days of the issuance of the SMA permit for the first phase of KOR, the Developers shall:

(1) Provide vehicular access to and from the Public Open Space/Recreation Area from a public roadway, which vehicular access, if traversing Lot 1, shall remain open during the construction of KOR;

(2) Provide a temporary parking area on the mauka portion

of the Public Open Space/Recreation Area; and

(3) Grade and level the vehicular access and the parking area.

Extension of the aforesaid thirty (30) or ninety (90) day periods may be granted if the Developers have acted in a timely fashion, have used good faith efforts to obtain any necessary permits and any permitting delay has arisen under circumstances which are not the fault of the Developers.

b. Permanent Improvements

Prior to the issuance of a Certificate of Occupancy for the first phase of KOR, the Developers shall:

(1) Pave and mark the parking area within the mauka portion of the Public Open Space/Recreation Area with one hundred (100) parking spaces (to replace the temporary parking area). Cement pavers which allow grass to grow through the pavers (or some other pervious material) will be utilized for the parking area.

(2) Pave and mark a permanent vehicular access to and from the parking area of the Public Open Space/Recreation Area from a public roadway.

An extension of this deadline may be granted if the Developers have acted in a timely fashion, have used good faith efforts to obtain any necessary permits and any permitting delay has arisen under circumstances which are not the fault of the Developers.

6. Other Improvements

The Developers may plant the Public Open Space/Recreation Area with grass and

ground cover of available varieties, and with trees and shrubs of indigenous varieties, so long as these plantings do not prevent or limit the use and enjoyment of this area by the public and native Hawaiians for the purposes set forth above. Developers shall maintain any such plantings.

7. Costs

The Developers shall pay for all costs of providing and maintaining all improvements to the Public Open Space/Recreation Area. However, the obligations for maintenance of said improvements may be assigned and delegated, with notice of the same to Intervenors.

8. Document Declaring Rights And Restrictions

The form and content of this declaration shall be as provided in Exhibit "2" attached hereto. The Developers shall execute and record this document within thirty (30) days after issuance of the SMA permit for KOR, and a certified copy shall then be provided to Intervenors.

B. Public and Native Hawaiian Uses of 150-foot Setback Area

The Subdivision is subject to a 150 foot building shoreline setback area (the "Shoreline Setback Area") which is shown generally on Exhibit "4" attached hereto.

The Shoreline Setback Area throughout the Subdivision shall be open and available on the same date that an SMA permit is issued for any phase of KOR and shall remain open thereafter, in perpetuity, to present and future members of the public for open space and passive recreational uses, and to present and future native Hawaiians for

certain native Hawaiian traditional and customary uses, as follows: fishing, diving, hookupu ceremonies (ritual group prayers on the shoreline), and gathering.

Nothing herein shall prevent Developers from taking reasonable and lawful steps to insure the peace, safety and welfare of the public, native Hawaiians and of persons or other properties in the Subdivision.

Sugar cane is currently being cultivated within the Shoreline Setback Area within Lots 3 and 4. The Developers shall clear and level the sugar cane in said areas and replant these areas with grass or ground cover on or by December 31, 1998, subject to the Shoreline Zone Plan.

Portions of the Shoreline Setback Area may be landscaped or left in a relatively natural state, as the case may be, in accordance with the provisions of the Shoreline Zone Plan when and as approved by the MPC.

The form and contents of these Declarations shall be as provided in Exhibit "8" attached hereto. The Developers shall execute and record this document within thirty (30) days after the issuance of the SMA permit for KOR and a certified copy thereof then shall be provided to Intervenors.

C. Lower Density/Unit Count Limitations

The total number of units (hotel rooms, apartments, condominiums or dwelling units of any kind) within the Subdivision shall never exceed 1,950, which total number shall include all units in the KOR.

D. Master Drainage System and KOR Drainage System

The natural drainage system on lands within the Subdivision prior to 1988 retained natural or pre-development storm water runoff arising both on-site and off-site in a manner which reasonably protected marine resources and the quality of near shore ocean waters, even though breaches of the sand dunes occasionally occurred.

The threats to the proper functioning of this natural drainage system derive largely from three sources: (i) the loss of storm water storage capacity due to filling and other modifications which have occurred since July 1988 and may occur in conjunction with developments within the Subdivision, Kahekili Park and the Kai Ala Subdivision (ii) the increase in the volumes of storm water runoff caused by filling and development within the Subdivision and (iii) the increase in the volumes of storm water runoff caused by post July 1988 developments outside of the Subdivision which storm waters are discharged into the Subdivision.

The Hawaii's Coastal Nonpoint Pollution Control Program, adopted on July 9, 1998, encourages the retention of development created run-off on site.

To ameliorate these threats and to effect the retention of storm waters equal to the natural drainage system as of July 1988 described above:

1. Master Drainage Plan

A master drainage plan and system (the "Master Drainage System") shall be designed, constructed, operated and maintained in compliance with the following standards and to accomplish the following results:

a. The ocean outlet structure identified in the current

Subdivision drainage plans shall be eliminated and the current Master Drainage System shall be revised so that storm waters will not be directly discharged into near shore ocean waters. The parties agree, and acknowledge, however, that as a result of certain large storm events in the past runoff has breached the sand dunes, that the Master Drainage System is not required to be designed and constructed to prevent all breaches of the sand dunes and that during some very large storm events in the future, the sand dunes may be breached again; and

b. To continue to obtain the benefits derived from the natural

drainage system existing as of July 1988 within the subdivision the Master Drainage System shall be designed, constructed, operated and maintained on lands within the Subdivision and on certain mauka lands owned or controlled by Amfac or its subsidiaries.

These mauka lands are shown generally, along with lands owned by others, on Exhibit "4", attached hereto (which may include lands owned by the County of Maui, the State of Hawaii or the United States.) Developers shall provide on the mauka lands of Amfac and/or its subsidiaries an area which has, or areas which have, a sufficient capacity to store and retain the volumes of storm water runoff deriving from all of the three sources described above for a sufficient period of time so that through infiltration, evaporation or otherwise these volumes are not discharged makai of these mauka areas in amounts greater than those established by the standards set forth in d., e., f., g. and h. below.

c. To achieve the results set forth for the Master Drainage

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System, the following actions (which are set out in paragraphs c(1)-(2) below, and are administrative and do not constitute construction) shall be accomplished prior to Developers' submitting an SMA permit request for any other portion of the Subdivision, other than for Public Open Space/Recreational purposes:

(1) A map, attached hereto as Exhibit "5", has been prepared delineating all of the off-site drainage areas or systems which may discharge storm waters onto the Subdivision. Utilizing Exhibit "5", data shall be prepared for those drainage areas or systems which discharge onto the Subdivision indicating the volumes of pre-development and/or post-development runoff, as may be applicable, as of July 1988 and as of the time of the study, arising from or discharged upon the Subdivision.

(2) The natural drainage functions of the areas within the Subdivision shall be determined as of July 1988. This will involve the following:

(i) The flood storage capacity of the areas within the Subdivision and within the Kai Ala Subdivision shall be determined as of July 1988;


(ii) Topographical maps shall be prepared delineating the topographical characteristics of the Subdivision and of the Kai Ala Subdivision as of July 1988 and as of the time of the study to aid in calculating the storage capacity of these areas;

(iii) The time period during which storm waters were retained as of July 1988 within areas within the Subdivision during and after storm events shall be determined;

(iv) The volumes of storm waters retained within the Subdivision as of July 1988 during and after storm events either through infiltration into the ground or through evaporation shall be determined;

(v) Because of post July 1988 actual filling and/or anticipated future filling of portions of areas within the Subdivision and the Kai Ala Subdivision, some of the capacity to store storm waters within the Subdivision has been lost and/or will be further lost. The extent of this loss shall be calculated in terms of the volumes of storm waters stored within the Subdivision during the time period when the areas begin to fill with storm water until after the storm event and the areas are empty again. The decrease in storage capacity from July 1988 to the current date of measure, in volumes, shall be referred to as the lost storage capacity.

(vi) Topographic maps shall be prepared depicting the Subdivision areas which are anticipated to be filled and/or are no longer available for storm water storage and also those areas which will remain available for storm water storage.

 d. The increased volumes of runoff caused by Developers' and Amfac's future developments on-site and off-site within the relevant drainage areas or systems shall not be discharged onto the remaining natural drainage area within the Subdivision unless it can be established that these remaining natural drainage areas can (i) accommodate these increased flows without overflowing to any greater extent or any more frequently than in July, 1988, and (ii) perform in the same manner based upon the

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storage capacity available and the amounts of storm waters existing in the Subdivision as of July, 1988.

e. The total volume of runoff over time during a "Design Criteria Storm" (the design storm to be defined by the County of Maui drainage standards) discharged into the ocean through or from the Subdivision shall not exceed the total volume of run-off over time which was discharged into the ocean during the same criteria storm as of July 1988. This will involve determinations including but not limited to the following: (i) the total volumes of storm water discharged during and after Design Criteria Storm events after development of the Subdivision, and (ii) the total volumes of storm water discharged during and after the same storm events as of July 1988.

f. The total volume of runoff over time through or from the Subdivision during a Design Criteria Storm (i) shall not decrease the water quality of the near shore ocean waters adjacent to the Subdivision any more than had occurred as of July 1988 during a like storm event and (ii) shall not decrease the water quality of the near shore ocean waters below Department of Health water quality standards for Class A waters and water quality limited segments any more than occurred as of July 1988 during the same storm event, as determined by the same methodology utilized by the State Department of Health

g. A water quality management program shall be drafted and implemented by Developers which shall include Best Management Practices ("BMPs") for fertilizers, pesticides, irrigation, groundwater protection, monitoring and an

educational program for divers. Specific BMPs for the use of fertilizers and pesticides shall be adopted and implemented by the Developers so that applications for resort landscaping, both planting and maintenance, do not adversely affect or degrade near shore ocean water quality.

h. Dry well infiltration systems and bio-retention systems for building, parking lot and other non-retentive surfaces are available and shall be considered for inclusion in the drainage plans for developments within the Subdivision to retain this post-development runoff on-site without using the remaining natural drainage area. The Master Drainage System shall dispose of runoff from a Design Criteria Storm without damage to structures or grounds.

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2. KOR Drainage

Lot 1, upon which the KOR project is to be developed, receives runoff from at least two off-site sources: (a) the drainage basin mauka of Lot 1 (separate from the Hanakao'o drainage basin) which currently discharges onto Lot 1 and (b) the drainage system from Hale Kaanapali, the Kai Ala Subdivision and Kahekili Park which currently discharges onto Lots 1 and 2 (TMK No. (II) 4-4-14:4).

The drainage plans for KOR shall be reviewed and modified to retain on-site (upon Lot 1) both pre-development on-site runoff and post-development on-site runoff. Dry well infiltration systems, bio-retention systems and other non-retentive surfaces are available and shall be considered for inclusion in the KOR drainage plans to retain this runoff on-site. These revised drainage improvements shall be completed prior to the

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issuance of any certificate of occupancy for the first phase of KOR.

Prior to the development of other portions of the Subdivision, other than for Public Open Space/Recreation purposes only, the runoff from the two off-site sources (the “mauka” drainage system and the “Hale Kaanapali” drainage system, both referenced above) may continue to be passed over to Lot 2, so long as this occurs as represented in the Drainage Report for KOR (a) in the amounts described therein and (b) this runoff is contained within Lot 2 such that it percolates into the ground on Lot 2.

The two offsite sources of runoff, the loss of storage capacity on Lot 1, the filling of Lot 1, the manner in which offsite runoff is managed and treated, and all other subject matters addressed in paragraph 1 above shall, however, all be reviewed de novo at the time of the preparation of the Master Drainage Plan. No further modification to the KOR on-site drainage system shall be required (except for possibly within the Shoreline Setback Area on Lot 1 or other grassed areas on Lot 1) so long as the off-site drainage discussed herein is managed and treated as a component of the Master Drainage System, which may require more drainage improvements on Lot 2 or on some other mauka property.

The drainage system for the KOR project shall also be designed, constructed, operated and maintained in compliance with the initial standards set forth above and in paragraphs 1.e. and 1.h. above as well as in compliance with the standards described in paragraphs 1.a.-h. immediately above upon the preparation and implementation of the Master Drainage Plan.

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Master plan

3. Civil Engineer

In order to develop plans for the Master Drainage System and to modify or expand the drainage plan for KOR, the parties shall mutually select a civil engineer who meets the following minimum qualifications: (a) a professional engineer licensed in Hawaii, and (b) experienced in designing drainage improvements of a size equal to (or greater than) those called for in the current Subdivision drainage plans and for parcels of land of similar or greater size than the Subdivision.

done The engineer shall be selected after the issuance of the SMA permit and shall complete his review and proposals with regard to the KOR project within two (2) months after being retained, and with regard to the Master Drainage System within six (6) months after being retained. To the extent that there is a significant period of time between the preparation of this work and the submission of any SMA permit for any portion of the Subdivision other than Lot 1, the engineer shall update these plans at the time of the preparation of the SMA application. Any changes to the Subdivision drainage plans, other than those for KOR, shall be implemented prior to the development of any portion of the Subdivision other than Lot 1, other than for Public Open Space/Recreation purposes. Copies of the drainage plans prepared by the engineer, and all supporting documents, shall be contemporaneously provided to Developers and Intervenors and shall be subject to approval by each of them and the County of Maui. Approval shall not be unreasonably withheld by the parties. The Developers shall pay all costs of the engineer.

4. Marine Biologist

*Dr Richard Brock
hired*

A marine biologist or ocean scientist, mutually accepted by the parties, shall be hired to monitor water quality for nutrients and algae in the near shore ocean waters adjacent to the Subdivision. Water quality shall be monitored at suitable locations which are capable of providing reasonably accurate information on the quality of the storm waters discharged, from off-site and on-site sources, into these waters. Use of remote sensors and other suitable instrumentation for data collection may be used if feasible. This monitoring shall take place at least every six (6) months during construction of hotel/condominium/ timeshare projects within the Subdivision and at least every six (6) months after the completion of each phase of all such projects, for a period of eighteen (18) months after the completion of each phase of each project. Monitoring shall also be done as soon as practicable after major storm events. Copies of documents, reports and data prepared or assembled by the marine biologist shall be contemporaneously provided to Developers and Intervenors. The Developers shall pay all costs of the marine biologist or ocean scientist.

E. Terms and Conditions to Run With the Land

The terms and conditions regarding Lower Density (Section C.) and the Master Drainage System and KOR Drainage System (Section D.) contained herein, shall be included within a Declaration of Covenants to be executed by the Developers (and Amfac's subsidiaries) and recorded with the Bureau of Conveyances, State of Hawaii, such that said terms and conditions run with the title to all lands affected thereby. Where mauka lands are owned by Amfac subsidiaries, consent of these subsidiaries shall be

appended to those declarations concerning drainage improvements which affect the lands which they own. These Declarations shall be recorded within thirty (30) days after issuance of any building permit for any phase of KOR, and a certified copy shall then be delivered to the Intervenor. The form and content of these Declarations shall be as provided in Exhibit "6" as attached hereto.

F. Advisory Group

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An advisory group (the "Advisory Group") shall be established with respect to the KOR and other projects which may be proposed in the future within the Subdivision and in the Kaanapali/Honokowai area on Amfac's lands. The Advisory Group shall be comprised of nine (9) West Maui residents (e.g., members of condominium associations in the Kaanapali area, union officials, native Hawaiians, local business people, Intervenor and other interested members of the West Maui community). For the next five (5) years, the Intervenor shall have the right to appoint four (4) members to the Advisory Group. Other members shall be appointed by the Developers and Amfac. It is intended that the Advisory Group shall represent a broad cross-section of the Maui community.

The purpose of the Advisory Group shall be to review and provide input to the Developers relative to development plans for the Subdivision and to Amfac relative to their Kaanapali/ Honokowai land holdings. The Advisory Group's meetings shall not be open to the general public as certain information shared at such meetings will include concepts and ideas upon which input from the Advisory group will be sought on how to:

(i) change preliminary development plans to make them more acceptable to the community and (ii) communicate such plans, as they become more firm, to the general public.

G. Satisfaction of Condition 7

The four lane road widening improvements currently proposed for the Honoapiilani Highway (between Kaanapali Parkway and the Honokowai Stream) suffice to satisfy the additional traffic demands created by KOR and the Public Open Space/Recreation Area, and, thus, satisfy Condition 7 with respect to the KOR project and the Public Open Space/Recreation Area. The provisions of this paragraph are without prejudice to the rights of the parties to submit their own facts, opinions and/or legal arguments with respect to whether the four lane road widening improvements currently proposed for the Honoapiilani Highway will or will not satisfy the additional traffic demands created by any additional development after KOR within the Subdivision. In the event that said highway improvements are delayed or deferred by the initiation of a lawsuit by any person or entity other than Developers, then Developers shall have the right to void this Agreement upon surrendering of the SMA permit for KOR.

H. Location of the KOR Buildings

The current site plan for the buildings for the KOR is satisfactory. This provision of the Agreement is intended to eliminate the condition in the Hearing Officer's Report requiring relocation of Building "C" northward, but not the relocation which Developers earlier agreed to and presented to the Maui Planning Commission. (i.e., the relocation

from the previous design which utilized seven six-story residential buildings, oriented at a forty-five degree angle to Honoapiilani Highway, to the current design.)

I. Development in Conformity with Agreement

The Developers shall (a) request during the SMA permit proceedings that the MPC attach as conditions to any SMA permit issued the terms contained within paragraphs A, B, C and D above and shall (b) design, construct, operate and maintain developments within the Subdivision and on the mauka lands designated above in conformity with the terms set out in paragraphs A, B, C and D above. It is understood between the parties that they lack the power to require the MPC to attach any particular conditions to any SMA permit issued for the project.

J. Copies of Project Plans

The Developers shall promptly transmit to Intervenors, via counsel, copies of all of their project plans, both conceptual and detailed, all permit applications, and all government approvals for developments in the Subdivision and on mauka lands designated above. These project plans are necessary primarily for drainage purposes to calculate pre-development flows, post-development flows through a review of detailed project plans and to review drainage plans. Developers need not provide plans relating to such items as interior design, electrical, plumbing and HVAC.

K. Procedure

1. Stipulation to Proposed Findings, Conclusions, Decision and Order

The parties shall execute and submit to the MPC the Stipulation to Proposed Findings of Fact, Conclusions of Law Decision and Order (“the Stipulation”), attached hereto as Exhibit “7”, which recommends that the MPC issue the SMA permit for the KOR.

2. Support of Stipulation

The parties shall support the Stipulation and request the MPC to issue an SMA permit for the KOR, and to adopt the Stipulation as its Findings of Fact, Conclusions of Law, Decision and Order. The Intervenors shall not oppose the adoption of the Shoreline Zone Plan by the MPC provided it conforms to the provisions of paragraph B above, except the Intervenors may oppose structures within that portion of the Public Open Space/Recreation Area which lies within the Shoreline Setback Area.

L. Joint Press Statement

Upon execution of this Agreement, the parties shall agree upon and cause to be printed in the Maui News and the Lahaina News, at Amfac’s expense, a Statement announcing the settlement of this Matter and the basic terms of this Agreement.

M. General Provisions

1. Termination of Agreement Based Upon New Conditions

If a SMA permit is not issued for the KOR (or is issued containing conditions or exactions in addition to those agreed to in this Agreement) Developers shall have the right

from enforcing park requirements contained in applicable County ordinances or approvals for the Subdivision now or in the future.

The provisions contained in paragraph M.2. and 3. are limited to the subject matters actually resolved in the Settlement Agreement, to the plans proposed at the time of this Settlement Agreement and to the regulatory framework in effect at this time. These provisions shall be inapplicable if there are subsequent changes in KOR or Master Drainage System and KOR Drainage system which may cause substantial adverse environmental impacts not previously addressed. Any changes made to the Master Drainage System or the KOR Drainage System or other changes in the KOR project plans shall not constitute changes which make the provisions of paragraphs M.2 and 3. inapplicable, so long as these changes are made in accordance with this Agreement.

To the extent that any of the Intervenors are acting in the capacity of a public official, now or in the future, they shall be free to make whatever comments in such capacity they deem appropriate on any of the Developers' projects discussed in this Settlement Agreement.

4. No Admission

The Parties do hereby agree that this Agreement and the covenants made hereunder are not to be deemed or construed as an admission of any kind whatsoever, including but not limited to the constitutionality of any of the terms or conditions of this Agreement, by any of the Parties or by any other person or entity whatsoever, but are to be construed strictly as a compromise of contested claims.

to void this Agreement upon surrendering said SMA permit. In addition, if the a SMA permit is not issued by November 15, 1998, Developers shall have the right to void this Agreement upon withdrawing of the SMA permit application for KOR.

2. No Appeal

Intervenors shall not file an appeal of the SMA permit for KOR so long as the SMA permit is issued based upon the Stipulation submitted by the parties, and upon the terms and conditions contained herein (even if it contains additional conditions and exactions).

3. No Opposition

Intervenors shall not intervene, oppose or object to the development of the KOR on Lot 1 in the Subdivision or to the development of the Master_Drainage System so long as both of these are designed, constructed and maintained in compliance with the terms herein. As long as Developers are in compliance with the terms outlined herein, Intervenors shall not intervene, oppose or object to any proceedings for permits or approvals necessary to effectuate any of the modifications to the Subdivision and/or KOR outlined in this Agreement. Intervenors shall not intervene, oppose or object to any future developments within the Subdivision based upon any of the following considerations: Shoreline Zone Plan issues, Subdivision drainage, water quality monitoring, parks, density, public access and beach access so long as these developments are designed, constructed, operated and maintained in compliance with the terms contained herein. Intervenors shall not be prohibited from participating in administrative determinations or

5. Voluntary Agreement

Each party hereto acknowledges and agrees that he, she or it has been represented by independent counsel of his, her or its own choice throughout the negotiations which preceded the execution of this Agreement. Each party hereto represents that he, she or the person executing this Agreement on its behalf has read this Agreement carefully and knows the contents of this Agreement and that he, she or it has executed this Agreement freely and without coercion.

6. Enforcement of Agreement

The delay or failure of any party hereto to exercise any of its rights hereunder shall not be deemed by any other party to constitute a waiver of such right, unless the party possessing such right has clearly and expressly given notice of said waiver in writing to all other parties hereto.

7. Specific Performance

Each party to this Agreement shall be entitled to seek specific performance of the terms and conditions contained herein. Provided, however, that the foregoing right to specific performance shall not be construed to limit any other remedies, in law or equity, otherwise available to any party to this Agreement.

8. Costs and Attorneys' Fees

In the event that any party hereto brings an action arising out of a breach of this Agreement or otherwise to enforce its terms, then the prevailing party shall recover from the other party all reasonable costs and expenses (including attorneys' fees) incurred by

the prevailing party in connection therewith.

9. Successors and Assigns

This Agreement shall be binding on and inure to the benefit of the Intervenors and Developers (and to Developers' successors and assigns).

10. Entire Agreement

The parties to this Agreement understand and agree that this Agreement constitutes the full and entire agreement between the parties with respect to the matters covered in this Agreement and that there are no other understandings, oral or in writing, pertaining to the matters covered in this Agreement, except as specifically set forth herein or therein. This Agreement supersedes all prior agreements, discussions, negotiations or obligations, whether written or oral, between or among the parties with respect to the matters covered by this Agreement, with the exception of the letter agreements between Amfac and Intervenors dated September 21, 1998.

11. Joint Drafting

This Agreement shall be deemed to have been jointly drafted and, in construing and interpreting this Agreement, no provision of this Agreement shall be construed or interpreted for or against any party hereto because such provision, any other provision, or this Agreement as a whole, was purportedly prepared or requested by such party.

12. Grammar

Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter and the singular number

shall be deemed to refer to and include the plural, and vice versa. Reference to the plural shall be deemed to refer to each and every member of the group.

13. Survival of Terms

The terms, conditions, covenants, obligations, representations and warranties of this Agreement shall survive the execution and delivery of all documents to be executed in connection herewith.

14. Incorporation of Recitals

The recitals contained in the preamble of this Agreement are hereby made a part of the terms and provisions of this Agreement and shall be binding upon the parties.

15. Applicable Law

This Agreement and the rights and obligations of the parties hereto will be governed by the laws of the State of Hawaii.

16. Amendment and Modification

Neither this Agreement nor any provision of this Agreement can be amended, modified or waived in any way, except by an agreement in writing signed by each of the parties hereto, consenting to such amendment, modification or waiver.

17. No Rights Conferred Upon Third Parties

Except as provided in Sections A, B and F above, nothing herein expressed or implied is intended, or shall be construed, to confer upon or give any person (other than the parties hereto) any rights or remedies under this Agreement or by reason of any covenant, condition or anything else herein contained.

A red handwritten bracket on the right side of the page, spanning from the level of section 17 down to the end of the text. To the right of the bracket are two vertical red exclamation marks.

18. Paragraph Headings


The underscored word or words appearing at the commencement of paragraphs or subparagraphs of this Agreement are intended only as a guide therefor and are not intended, and shall not be construed, as controlling, enlarging, restricting, explaining or modifying in any manner the language or meaning of those paragraphs or subparagraphs.

19. Counterparts

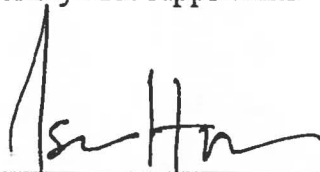
The parties hereto agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same Agreement binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, delivery of this instrument, duplicate unexecuted pages of the counterparts shall be discarded and the executed pages of the counterparts shall be combined to form a single document which shall be binding on all parties, provided, however, that the document shall not be binding upon any party hereto unless and until all parties hereto have executed this document, whether in counterparts or not. Signatures transmitted by facsimile shall be treated and accepted as original signatures, provided that the party transmitting the signatures by facsimile shall promptly transmit to all other parties a signature page bearing such party's original signature.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date set forth above.

APPROVED AS TO FORM:



DENNIS M. LOMBARDI
RANDALL H. ENDO
Attorneys for Applicants



ISAAC D. HALL
CHARLES D. FOX, III
Attorneys for Intervenors

KAANAPALI OWNERSHIP RESORTS, L.P.

By 

Name:

Its:

KAANAPALI NORTH BEACH JOINT VENTURE

By 

Name:

Its:

AMFAC PROPERTY INVESTMENT CORP. dba
AMFAC MAUI

By 

Name:

Its:

AMFAC/JMB HAWAII, LLC

By 

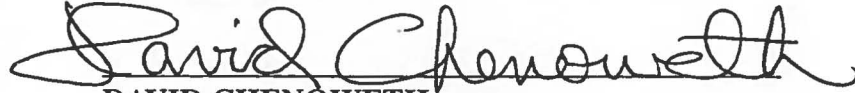
Name:

Its:

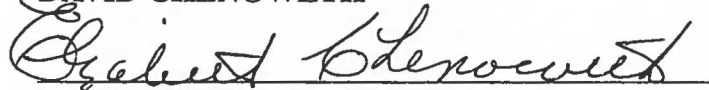
SETTLEMENT AGREEMENT, relating to Kaaanapali North Beach, Docket Nos. SM 970006, 88/SM1-023 and 88/SSV-002, Maui Planning Commission, State of Hawaii.



ROBERT BUCHANAN



DAVID CHENOWETH



ELIZABETH CHENOWETH

RANDY DRAPER

JAMES JOHNSON

JOANNE JOHNSON

SETTLEMENT AGREEMENT, relating to Kaanapali North Beach, Docket Nos. SM 970006, 88/SM1-023 and 88/SSV-002, Maui Planning Commission, State of Hawaii.