

# A. Joel Criz & Associates, Inc.

RESIDENTIAL/COMMERCIAL INVESTMENT REALTORS • PROPERTY MANAGERS • DEVELOPERS

## MEMORANDUM

VIA EMAIL: SCOTT SHERLEY <ishkabibble@prodigy.net>

**TO:** Scott Sherley  
AOAO Maalaea Yacht Marina  
**FROM:** A. Joel Criz, CCIM  
**DATE:** December 17, 2008  
**RE:** New Lease Rent – Letter for Lessees

Aloha Scott:

The Association of Apartment Owners of the Maalaea Yacht Marina and the fee owners (lessor) have signed a letter agreement which establishes the new lease rent for the 10-year period January 1, 2009 through December 31, 2018. In that regard, attached is a breakdown of the new lease rent for each apartment. Please note that the Condominium Conveyance Document (CCD) for each unit, which in effect is the apartment lease, specifies that the rent is to be paid to the lessor quarterly in advance on the first day of January, April, July, and October. In that regard, do not pay from the attached schedule; the AOAQ management company will send invoices to each lessee.

Although the new lease rent represents a significant increase, it is in my opinion a fair result and in the best interest of the lessees for the following reasons:

1. The CCD specifies that the rent is based on the "fair market value of the land" multiplied by the market rate of return for similar projects, which is currently 8%. If the language of the lease had been more specific, i.e., "fair market value of the land exclusive of any improvements to the land", we may have had more leverage in arguing the potential impact of Maui ordinances which affect development, and hence, land value.
2. The process of arbitration would have cost the association at least \$50,000+ for the arbitration panel, expert witnesses and their reports, and attorney fees, and, would have taken at least four to six months. Further, the arbitration panel consists of three appraisers, and appraisers are constrained as to the degree to which they will consider development analysis of a property, impact of ordinances, etc.
3. It is my opinion that an arbitration process would have resulted in a land value in the mid-\$70's/sf range. With that in mind, I approached the lessor with the real life argument that we are perhaps in the worst local, national, and global economic period in our history, and that everyone including the lessees, are going to be substantially affected by the economic realities of the next many years. In that regard, although the lessor believed the value to be low, the lessor agreed to establish the land value at \$63/sf.
4. Again, whereas the lease rent has increased substantially, I do not believe we could have achieved a more favorable land value by any other means than amicable negotiation with the lessor.

What's next! I of course expressed to the lessor that it is the desire of the lessees to purchase the leased fee interest underlying the Maalaea Yacht Marina. Whereas the lessor stated they are not interested in selling the leased fee at this time, we will continue respectful efforts to purchase the leased fee interest.

Many thanks to Scott Sherley and the AOAQ Board of Directors for their hard work in this renegotiation!! If there are any questions, please call my cell phone 808-224-1256 at any time.