BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of CASTLE & COOKE, INC., CASTLE & COOKE RESORTS, LLC, MANELE WATER RESOURCES, LLC, LANAI TRANSPORTATION COMPANY, INC., AND LANAI WATER COMPANY, INC. For Approval of the Indirect Transfer of Manele Water Resources, LLC, Lanai Transportation Company, Inc., and Lanai Water Company, Inc.	)	DOCKET NO. 2012-0157

INTERIM DECISION AND ORDER NO. 30462

FILED
2012 JUN 25 A 7:45
PUBLIC UTILITIES COMMISSION

Docket No. 2012-0157
Interim Decision and Order

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INTERIM DECISION AND ORDER

By this Interim Decision and Order, the commission approves on an interim basis and to the extent applicable, the requested relief set forth in the Application filed on June 19, 2012, by CASTLE & COOKE, INC., CASTLE & COOKE RESORTS, LLC, MANELE WATER RESOURCES, LLC, LANAI WATER COMPANY, INC., and LANAI TRANSPORTATION COMPANY, INC. (collectively "Applicants" or "Companies").[1] Specifically, the commission, on an interim basis and subject to certain conditions: (1) approves, pursuant to

[1]At this juncture of the proceeding, the Parties are Applicants and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

HRS § 269-7(a), and to the extent applicable, HRS § 269-17.5, the indirect transfer and sale from Castle & Cooke, Inc. to Lanai Island Holdings, LLC, of all the membership interests of Castle & Cooke Resorts, Inc.'s wholly owned subsidiary, Manele Water Resources, LLC; (2) approves, pursuant to HRS § 269-7(a), and to the extent applicable, HRS § 269-17.5, the indirect transfer and sale from Castle & Cooke, Inc. to Lanai Island Holdings, LLC, of all the stock of Castle & Cooke Resorts, Inc.'s wholly owned subsidiary, Lanai Water Company, Inc.; and (3) approves, pursuant to HRS § 269-7(a), the indirect transfer and sale from Castle & Cooke, Inc. to Lanai Island Holdings, LLC, of all the stock of Castle & Cooke Resorts, Inc.'s wholly owned subsidiary, Lanai Transportation Company, Inc.

Castle & Cooke, Inc.'s ultimate parent entity is the David H. Murdock Revocable Trust, while Lanai Island Holdings, LLC's ultimate parent entity is the Lawrence J. Ellison Revocable Trust.

On the island of Lanai in the State of Hawaii ("Hawaii" or "State"), Manele Water Resources, LLC operates as a wastewater utility, Lanai Water Company, Inc. operates as a water utility, and Lanai Transportation Company, Inc. operates as a common carrier of passengers. These three public utilities, in turn, are subject to the commission's jurisdiction and regulation.

The scope of the commission's proceeding is limited to the indirect sale and transfer of the three Lanai-based public utilities. In effect, the commission approves on an interim basis the indirect transfer and sale of the ownership interests in the three Lanai-based public utilities from Castle & Cooke, Inc. to Lanai Island Holdings, LLC, subject to certain conditions set forth herein. Such conditions include the commission's right to ultimately disapprove the indirect transfer and sale of the three public utilities, as part of the commission's future final decision on the Companies' Application.

Applicants seek the commission's approval pursuant to HRS §§ 269-7(a) and 269-17.5. Yet, Applicants fail to meet their burden of explaining how or why HRS § 269-17.5 applies. Applicants also neglect to mention or discuss the Motor Carrier Law, HRS chapter 271, which includes HRS § 271-2. Despite these deficiencies, the commission chooses to proceed with its interim action today, so as not to jeopardize the June 27, 2012 closing date for the overall purchase and sale transaction, subject to the commission's right to ultimately disapprove the indirect transfer and sale of the three public utilities. This and other conditions imposed by the commission herein provide sufficient safeguards for allowing the indirect transfer and sale of the

three public utilities to proceed, pending the commission's final review of this matter.

The commission intends to thoroughly review the current and future operations of Manele Water Resources, LLC, Lanai Water Company, Inc., and Lanai Transportation Company, Inc., prior to the issuance of its final decision. A statement of issues which outlines what the commission will consider in its investigation is forthcoming.

The deadline for any interested person to timely file a motion to intervene or participate in this proceeding is set forth in HAR § 6-61-57(3)(A).

I.

Background

A.

Written Verifications

The Companies' Application, filed on June 19, 2012, consists of the text of the application, Exhibits A - J, the written verifications from the Companies' and Lanai Island Holdings, LLC's respective representatives, and a certificate of service, as supplemented by certain documents filed under confidential seal on June 21, 2012 (collectively, "Application").

HAR § 6-61-17, governing written verifications filed with the commission, states:

> Verification. Applications, complaints, and other pleadings that initiate a proceeding and amendments to any such application, complaint, or other pleading shall be verified by at least one applicant or complainant. Answers, if any, shall be verified by at least one of the respondents filing the same. Pleadings may be verified:
>
> (1) By an officer, if the party filing the pleading is a corporation or association;
>
> (2) By the attorney for a party, if that party is absent or for some cause is unable to sign and verify that pleading.

HAR § 6-61-17.

On June 19, 2012, at 11:13 a.m., the Companies filed their Application, seeking the commission's interim approval of their requested relief by June 26, 2012, i.e., within 5-1/2 business days from the filing of the Application. On June 20, 2012, at 2:39 p.m., the commission issued its Protective Order No. 30455, on June 21, 2012, at 4:05 p.m., the Companies filed under seal certain documents designated as confidential, and on June 21, 2012, at 4:06 p.m., a letter was jointly submitted by Applicants, Lanai Island Holdings, LLC, and the Consumer Advocate.

The Companies' request for expedited commission action by June 26, 2012, so that the closing of the overall purchase

and sale transaction involving the majority of the island of Lanai can proceed as scheduled on June 27, 2012, appears unreasonable on its face. The commission's investigative authority, including its right to seek additional information from the Companies pursuant to HRS § 269-8, is constrained;[2] likewise, the Consumer Advocate's comparable investigative authority, pursuant to HRS § 269-54(a) and (b)(2), is similarly restricted.[3]

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[2]HRS § 269-8 provides:

> **Public utilities to furnish information.** Every public utility or other person subject to investigation by the commission, shall at all times, upon request, furnish to the public utilities commission all information that it may require respecting any of the matters concerning which it is given power to investigate, and shall permit the examination of its books, records, contracts, maps, and other documents by the commission, or any of its members, or any person authorized by it in writing to make such examination, and shall furnish the commission with a complete inventory of its property in such form as the commission may direct.

HRS § 269-8; see also HRS § 269-7 (commission's investigative authority).

[3]The Consumer Advocate's responsibilities and authority are set forth in HRS chapter 269, part II. In this regard, the Consumer Advocate shall: (1) represent, protect, and advance the interests of all consumers before the commission; and (2) have full rights to participate as a party in interest in all proceedings before the commission. HRS § 269-51.

As set forth in HRS § 269-54, the Consumer Advocate: (1) shall have the authority expressly conferred by or reasonably implied from the provisions of HRS chapter 269, part II; and (2) may conduct investigations for the purpose of

Nonetheless, the commission, in this specific instance, issues this interim decision, subject to certain conditions specified herein, including the commission's right to ultimately disapprove the indirect transfer and sale of the three public utilities. In doing so, the commission emphasizes its reliance on the written verifications of the Companies' and Lanai Island Holdings, LLC's respective representatives, both of whom verify under oath that they have read the application and exhibits, know the contents thereof, and that the same are true with respect to their respective entities, to the best of their knowledge and belief.[4] Moreover, the conditions imposed by the commission in this interim decision provide sufficient safeguards for allowing the indirect transfer and sale of the three public utilities to proceed, pending the commission's final review of this matter.

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securing information deemed useful in the lawful administration of any provision of HRS chapter 269, part II. HRS § 269-54(a) and (b)(2).

[4]Applicants' Verification, signed and dated June 18, 2012; and Lanai Island Holdings, LLC's Verification, signed and dated June 18, 2012; see also Companies' transmittal letter, dated June 19, 2012 (Lanai Island Holdings, LLC's original signature will be submitted to the commission as soon as possible).

B.

Applicants and Their Related Entities

Castle & Cooke, Inc., a Hawaii corporation, is owned by Castle & Cooke Holdings, which in turn is owned by the David H. Murdock Revocable Trust.[5] The Companies, in the text of their Application, do not appear to identify the settlor of the trust, and the commission makes no inferences therein.[6]

Castle & Cooke, Inc.'s organizational chart is set forth in Exhibit F of the Application. A copy of Exhibit F, in turn, is attached to this interim decision.

Castle & Cooke, Inc. is the parent corporation and sole member of its wholly owned subsidiary, Castle & Cooke Resorts, LLC, which in turn is a Hawaii limited liability company.[7] Castle & Cooke, Inc. is also the parent corporation of Castle & Cooke Lanai Properties, LLC and Lanai Institute for the Environment.[8]

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[5]Application, at 2 and 4.

[6]Compare Application, at 2 and 4 (the seller is ultimately owned by the David H. Murdock Revocable Trust) with Application, at 10 (Mr. Lawrence J. Ellison is the Settlor of the Lawrence J. Ellison Revocable Trust).

[7]Application, at 8; and Exhibit F (Castle & Cooke, Inc.'s organizational chart).

[8]Application, at 11; and Exhibit F (Castle & Cooke, Inc.'s organizational chart).

Castle & Cooke Resorts, LLC's wholly owned subsidiaries include Manele Water Resources, LLC, Lanai Water Company, Inc. (indirectly through Lanai Holdings, Inc.), and Lanai Transportation Company, Inc.[9]

1.

The Three Public Utility Entities

Manele Water Resources, LLC, a Hawaii limited liability company, is authorized to provide sewer service within the Manele-Hulopoe area on the island of Lanai, pursuant to a commission-issued certificate of public convenience and necessity ("CPCN").[10] Manele Water Resources, LLC is member-managed by its sole member, Castle & Cooke Resorts, LLC.[11]

Lanai Water Company, Inc., a Hawaii corporation, is authorized to provide, pursuant to a commission-issued amended CPCN: (1) water distribution services to the following areas on the island of Lanai: Kaumalapau Harbor, Koele, Lanai Airport, Lanai City, and Manele-Hulopoe; and (2) non-potable water

[9]Application, at 8-9; and Exhibit F (Castle & Cooke, Inc.'s organizational chart).

[10]In re Manele Water Res., LLC, Docket No. 2006-0166, Proposed Decision and Order No. 23250, filed on February 7, 2007; and Decision and Order No. 23295, filed on March 13, 2007 (issuance of a CPCN); and Application, at 8.

[11]Application, at 8; and Exhibit F (Castle and Cooke, Inc.'s organizational chart).

service to the Manele-Hulopoe area on the island of Lanai.[12] Lanai Water Company, Inc. is a wholly owned subsidiary of Lanai Holdings, Inc., which in turn is a wholly owned subsidiary of Castle and Cooke Resorts, LLC.[13]

Lanai Transportation Company, Inc., a Hawaii corporation, is authorized to operate as a common carrier of passengers by motor vehicle over irregular routes on the island of Lanai in the 1-to-7, 8-to-25, and over-25 passenger classifications, pursuant to a commission-issued CPCN.[14] Lanai Transportation Company, Inc. is a wholly owned subsidiary of Castle & Cooke Resorts, LLC.[15]

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[12]In re Lanai Water Co., Inc., Docket No. 5972, Decision and Order No. 9791, filed on June 13, 1988 (issuance of a CPCN); In re Lanai Water Co., Inc., Docket No. 2008-0322, Proposed Decision and Order, filed on June 26, 2009; and Decision and Order, filed on July 31, 2009 (issuance of an amended CPCN); and Application, at 10.

[13]Application, at 9; and Exhibit F (Castle & Cooke, Inc.'s organizational chart).

[14]In re Lanai Transp. Co., Inc., Docket No. 96-0188, Decision and Order No. 16227, filed on March 3, 1998 (issuance of a CPCN); and Application, at 8-9.

[15]Application, at 8; and Exhibit F (Castle & Cooke, Inc.'s organizational chart).

C.

Docket No. 2008-0322

On July 31, 2009, in In re Lanai Water Co., Inc., Docket No. 2008-0322, the commission approved Lanai Water Co., Inc.'s requests to amend its CPCN to include the authority to provide non-potable water service within the Manele-Hulopoe area on the island of Lanai, to implement rates for non-potable water service, and other related matters.[16] As part of its approval, the commission instructed Lanai Water Company, Inc. to file written confirmations duly executed by each of its affiliates, confirming that each affiliate will provide additional funds needed to finance the water utility's operations in the event that the utility's actual operations do not provide sufficient revenues to cover its operating expenses.[17]

Lanai Water Company, Inc., in response to the commission's directive, submitted financial commitment letters issued by its affiliate entities Castle & Cooke Resorts, LLC, dated August 24, 2009; Lanai Holdings, Inc., dated August 24, 2009; Castle & Cooke Homes Hawaii Inc., dated October 8, 2009; and Castle & Cooke Properties, Inc., dated October 8, 2009. In

[16]In re Lanai Water Co., Inc., Docket No. 2008-0322, Proposed Decision and Order, filed on June 26, 2009; and Decision and Order, filed on July 31, 2009.

each letter, including the letter submitted by Lanai Water Company, Inc.'s immediate parent entity, Lanai Holdings, Inc., the affiliated entities confirm that if the water utility's actual operations do not provide sufficient revenues to cover its operating expenses, each affiliated entity is committed to providing the necessary funding to the water utility.[18]

D.

Buyer's Entities

Mr. Lawrence J. Ellison is the Settlor of the Lawrence J. Ellison Revocable Trust.[19]

Lanai Island Holdings, LLC, a Hawaii limited liability company, is directly and indirectly owned by the Lawrence J. Ellison Revocable Trust.[20] In particular, ninety-nine percent (99%) of Lanai Island Holdings, LLC's membership interest is directly owned by the Lawrence J. Ellison Revocable Trust, with LIH Corporation owning the remaining one percent (1%) membership

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[17]In re Lanai Water Co., Inc., Docket No. 2008-0322, Proposed Decision and Order, filed on June 26, 2009, at 19 and 38-39; and Decision and Order, filed on July 31, 2009.

[18]Application, at 18 and 22; and Exhibit J (copies of the four financial commitment letters).

[19]Application, at 10; and Exhibit D (excerpt of the Forbes Annual Profile of the World's Billionaires, as of March 2012).

[20]Application, at 2, 4, and 9.

interest. In turn, LIH Corporation, an S corporation organized and existing under the laws of the State, is one hundred percent (100%) owned by the Lawrence J. Ellison Revocable Trust.[21]

Octopus Holdings, L.P., a California limited partnership, is also directly and indirectly owned by the Lawrence J. Ellison Revocable Trust. Specifically: (1) ninety-eight percent (98%) of Octopus Holdings, L.P.'s partnership interest is directly owned by the Lawrence J. Ellison Revocable Trust, with Tentacle Corporation owning the remaining two percent (2%) partnership interest. In turn, Tentacle Corporation, a California corporation, is one hundred percent (100%) owned by the Lawrence J. Ellison Revocable Trust.[22]

E.

The Sale Agreement

The Companies, in their Application, refer to the seller as Castle and Cooke, Inc., and the buyer as Lanai Island Holdings, LLC (collectively, the "Contracting Parties").[23]

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[21]Application, at 9.

[22]Application, at 10.

[23]Application, at 1.

The Companies filed the Sale Agreement, dated May 2, 2012, as amended, under confidential seal (Application, Exhibit A). That said, based on the information publicly disclosed by the Companies in the text of their Application:

1. Castle & Cooke, Inc. has signed a Sale Agreement with Mr. Ellison for the purchase of the two resort hotels, two championship golf courses and club houses, over 88,000 acres of land (including 600 acres for the Koele Project District residential development and 800 acres for the Manele Project District residential development), Lanai City properties (248 acres of various commercial and residential assets), Koele Stables, Lanai Pines Sporting Clays, Castle & Cooke, Inc.'s interest in the La Ola Solar Farm, administrative buildings, central support service assets, employee rental housing, parks and recreational facilities, the Club Lanai site, and the three public utilities -- Manele Water Resources, LLC, Lanai Water Company, Inc., and Lanai Transportation Company, Inc.[24]

2. The Sale Agreement contemplates the purchase and sale of Castle & Cooke Resorts, LLC, Castle & Cooke Lanai Properties, LLC, and Lanai Institute for the Environment. The overall transaction, thus, will include the purchase and sale of all the membership interests of Castle & Cooke Resorts, LLC,

[24]Application, at 2-3.

which directly or indirectly is the parent entity of the three public utilities.[25]

3. "[T]he purchase of [the] Lanai operations and assets will be unleveraged (i.e., debt free)."[26]

4. As a result of the overall purchase and sale transaction, the following entities will remain in place without any change in organizational structure: (A) Castle & Cooke Resorts, LLC, and its direct and indirect subsidiaries; (B) Castle & Cooke Lanai Properties, LLC; and (C) Lanai Institute for the Environment. Meanwhile, the ownership entity of Castle & Cooke Resorts, LLC, Castle & Cooke Lanai Properties, LLC, and Lanai Institute for the Environment, will change from Castle & Cooke, Inc. (ultimate parent entity, the David H. Murdock Revocable Trust) to Lanai Island Holdings, LLC (ultimate parent entity, the Lawrence J. Ellison Revocable Trust).[27] Castle and Cooke Resorts, LLC, in effect, will remain as the parent entity of the three public utilities (directly for Manele

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[25]Application, at 3 and 10-11.

[26]Application, at 4.

[27]Compare Application, Exhibit F (Castle & Cooke, Inc.'s organizational chart, pre-closing) with Application, Exhibit G (Lanai Island Holdings, LLC's organizational chart, post-closing).

Water Resources, LLC and Lanai Transportation Company, Inc., and indirectly for Lanai Water Company, Inc.).[28]

Lanai Island Holdings, LLC,'s organizational chart, post-closing, is set forth in Exhibit G of the Application. A copy of Exhibit G, in turn, is attached to this interim decision.

5. Two of the four entities that produced financial commitment letters in In re Lanai Water Co., Inc., Docket No. 2008-0322 -- Castle & Cooke Homes Hawaii Inc. and Castle & Cooke Properties, Inc. - will not be sold, and instead, will remain with Castle & Cooke, Inc.[29]

F.

Application

The five applicants consist of Castle & Cooke, Inc. and four of its subsidiaries (direct and indirect), including the three public utilities. The applicants do not include Lanai Island Holdings, LLC.

On June 19, 2012, the Companies filed their Application, seeking the commission's approval for the indirect

[28]Application, at 10-11 and 15; and Application, Exhibit G (Lanai Island Holdings, LLC's organizational chart, post-closing).

[29]See Application, at 18.

transfer and sale of the three public utilities, and the authority to implement certain changes with respect to the financial commitment letters generated on behalf of Lanai Water Company, Inc., arising out of the commission's proceeding in In re Lanai Water Co., Inc., Docket No. 2008-0322.

Specifically, the Companies request that the commission:

1. Approve the indirect transfer and sale from Castle & Cooke, Inc. to Lanai Island Holdings, LLC, of all the membership interests of Castle & Cooke Resorts, Inc.'s wholly owned subsidiary, Manele Water Resources, LLC;[30]

2. Approve the indirect transfer and sale from Castle and Cooke, Inc. to Lanai Island Holdings, LLC, of all the stock of Castle & Cooke Resorts, Inc.'s wholly owned subsidiary, Lanai Water Company, Inc.;[31]

3. Approve the indirect transfer and sale from Castle and Cooke, Inc. to Lanai Island Holdings, LLC, of all the stock of Castle & Cooke Resorts, Inc.'s wholly owned subsidiary, Lanai Transportation Company, Inc.;[32]

4. Release Castle & Cooke Homes Hawaii Inc. and Castle & Cooke Properties, Inc. from any obligations they may

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[30]See Application, at 1 and 24.

[31]See Application, at 1-2 and 24.

have under the financial commitment letters that were produced in In re Lanai Water Co., Inc., Docket No. 2008-0322, as these two entities will not be sold, and instead, will remain with Castle & Cooke, Inc., post-closing.[33] In this regard, Applicants explain that: (A) the financial commitment letters issued by these two entities will be replaced by financial commitment letters issued by Lanai Island Holdings, LLC and Octopus Holdings, L.P.; (B) the replacement letters pledge financial support for all three public utilities; and (C) the financial commitment letters issued by Castle & Cooke Resorts, LLC and Lanai Holdings, Inc. will remain in place;[34] and

5. Approve on an interim basis the indirect sale and transfer of the three public utilities "by no later than June 26, 2012, pending the outcome of, and subject to, the final determination of this Application."[35]

Applicants seek the commission's approval of their four underlying requests (Requests Nos. 1 - 4) in accordance

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[32]See Application, at 1-2 and 24.

[33]See Application, at 4 and 18.

[34]Application, at 4, 14-16, and 18-19; and Exhibits H and I (copies of the two financial commitment replacement letters).

[35]Application, at 2; see also Application, at 5 and 19-24.

with HRS §§ 269-7 and 269-17.5,[36] and their request for interim approval pursuant to HRS § 269-6 (Request No. 5).[37]

G.

Procedural Background

On June 20, 2012, the commission issued Protective Order No. 30455, which adopts without change the proposed protective order submitted by the Parties on June 19, 2012. On June 21, 2012, Applicants filed under seal their documents designated as confidential.

Also on June 21, 2012, Applicants, the Consumer Advocate, and Lanai Island Holdings, LLC, a non-party to this proceeding, filed a joint letter, explaining that said letter represents a settlement agreement between Applicants and the Consumer Advocate for purposes of interim relief.

H.

Applicants' Position

Applicants, in support of their requested relief, assert:

1. Lanai Island Holdings, LLC is fit, willing, and able to support the three public utilities following the closing

[36]Application, at 6 and 11-13.

of the overall purchase and sale transaction. In addition, the three public utilities will remain fit, willing, and able to provide their respective regulated services following the closing of the overall transaction.[38]

2. The indirect transfer of the three public utilities will not adversely impact their respective operations, management, or customers.[39]

3. The indirect transfer of the three public utilities is reasonable and consistent with the public interest.[40]

4. The termination of the financial support letters issued by Cooke Homes Hawaii Inc. and Castle & Cooke Properties, Inc. in In re Lanai Water Co., Inc., Docket No. 2008-0322, is reasonable and in the public interest.[41]

5. The commission has the authority to grant interim approval of the indirect transfer of the three public utilities.[42] In addition, the commission's interim approval is

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[37]Application, at 20-21.

[38]Application, at 4-5 and 13-17.

[39]Application, at 4, 14, and 17-18.

[40]See Application, at 13-18.

[41]Application, at 18-19.

[42]Application, at 20-21.

reasonable and in the public interest, and there is an immediate and urgent need for such interim approval.[43]

I.

Joint Letter

The joint letter, signed by the Contracting Parties and the Consumer Advocate, sets forth the following agreements for purposes of interim relief:

1. Within five years of the commission's approval of the indirect transfer and sale of the three public utilities, Lanai Island Holdings, LLC will invest at least ten million dollars in Lanai Water Company, Inc., Manele Water Resources, LLC, or their affiliated entities that own the water and wastewater systems' assets, as contributions-in-aid-of-construction, "provided that this commitment is conditioned on such approval being final and non-appealable, and on the satisfaction of all conditions, if any to the effectiveness of that approval[.]"[44]

2. The Consumer Advocate does not oppose the commission granting interim approval of the indirect sale and transfer of the three public utilities by June 26, 2012, and such non-opposition "shall not be construed as a waiver by the Consumer Advocate and/or the Commission to conduct a full review

[43]Application, at 19-24.

and investigation for final approval of the indirect sale and transfer of the [three public utilities]."[45]

3. In the event that the commission decides not to approve the indirect sale and transfer of the three public utilities, Applicants agree, and Lanai Island Holdings, LLC does not object to, transferring the three public utilities to Castle & Cooke, Inc., subject to the commission's approval.

II.

Discussion

At the outset, the commission makes clear that Applicants' request for interim approval by June 26, 2012 is limited to the indirect sale and transfer of the three Lanai-based public utilities. It does not include the request to release Castle & Cooke Homes Hawaii Inc. and Castle & Cooke Properties, Inc. from any obligations they may have under their respective financial commitment letters. As Applicants state in their prayer for relief, they request that the commission "[g]rant interim approval by June 26, 2012 of the indirect sale and transfer of the [three public utilities], pending the outcome

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[44]Joint letter, dated June 21, 2012, at 2.

[45]Joint letter, dated June 21, 2012, at 2.

of, and subject to, the final determination of this Application."[46]

Applicants further state:

> In addition, [Lanai Island Holdings, LLC], as well as Octopus Holdings L.P., have provided letters stating that they will provide necessary funding to the [three public utilities] if the actual operations of any one or more of the [three public utilities] do not provide sufficient revenues to cover such subsidiary's operating expenses during the interim approval period. Castle & Cooke Properties, Inc.'s, Castle & Cooke Homes Hawaii, Inc.'s, [Castle & Cooke Resorts, LLC's] and [Lanai Holdings, Inc.'s] funding commitment letters, filed in Docket No. 2008-0322, to provide funding to Lanai Water [Company, Inc.] will continue during the interim approval period.

Application, at 22 (emphasis added).

Applicants' use of the phrase "during the interim approval period" is unclear. That said, based on the commission's reading of the Application as a whole, the commission interprets the ambiguous language to mean the period between the interim decision issued by the commission today and the issuance of its final decision on the merits.[47] The written commitments pledged by Lanai Island Holdings, LLC and Octopus Holdings, L.P. will take effect from today, i.e., during the interim approval period. Likewise, both financial commitment

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[46]Application, at 25.

[47]See Application, at 21 ("during the interim approval period" reference).

letters are dated June 2012, consistent with the June 27, 2012 closing date.[48]

Moreover, the four financial commitment letters issued by the Companies' entities "will continue during the interim approval period."[49] As such, Applicants implicitly do not request that the commission release the financial commitment letters issued by Castle & Cooke Homes Hawaii Inc. and Castle & Cooke Properties, Inc. as part of their request for interim approval.

The commission also makes clear that the scope of this proceeding is limited to the indirect sale and transfer of the three Lanai-based public utilities that are regulated by and subject to the commission's jurisdiction in accordance with State law. In this regard, the commission's jurisdiction over public utilities is invoked pursuant to HRS chapter 269, Public Utilities Commission, while its jurisdiction over motor carriers is invoked pursuant to the Motor Carrier Law (HRS chapter 271) and HRS chapter 269 (to the extent applicable under HRS § 271-2).

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[48]See Application, Exhibits H and I.

[49]Application, at 22.

A.

Interim Approval

The Companies, in seeking the commission's interim approval by June 26, 2012, represent:

1. Interim approval is required so that the Sale Agreement is able to close on June 27, 2012, the contractually identified closing date.[50] The timing of the closing date is critical and was heavily negotiated and agreed to by the Contracting Parties based on various business assumptions as the basis for the deal.[51] Such assumptions include:

A. Castle & Cooke, Inc. has sustained substantial losses with respect to its Lanai-based operations and assets that it can no longer incur. The closing date of the overall purchase and sale transaction is closely tied to the seller's willingness to fund shortfalls up to only a certain date, and Lanai Island Holdings, LLC must be in place as the owner by the June 27, 2012 closing date, "or there will be no commitment to provide funding in the ordinary course of business."[52]

B. A delay in closing adds unnecessary and unpredictable risk that the transaction will not close, and "[a]

[50]Application, at 21-22.

[51]Application, at 22-24.

[52]Application, at 23.

replacement buyer could take years to find, thus potentially endangering the economic future of Lanai."[53]

C. To delay the closing will "mean resetting numerous approval processes and incurring substantial additional costs. In addition, the certainty of the June 27, 2012 closing date avoids unpredictable negative impacts from world economic, financial and political events and uncertainties that could result in a termination of the deal."[54]

2. The Contracting Parties understand that any interim approval is at their risk and will not affect the commission's final decision on this matter. Thus, interim relief is reasonable as it will allow Lanai Island Holdings, LLC "to make significant investments in the substantial unregulated assets which will directly benefit the people of Lanai, while at the same time allowing the Commission to take the time to fully review the indirect transfer of the [three public utilities]."[55]

3. If the commission ultimately does not approve the indirect transfer and sale, Applicants propose, and Lanai Island Holdings, LLC does not object to, transferring the three Lanai-based public utilities to Castle & Cooke, Inc. (ultimate parent entity the David H. Murdock Revocable Trust), as Castle &

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[53]Application, at 23; see also Application, at 24.

[54]Application, at 23.

Cooke Resorts, LLC and its other non-regulated subsidiaries will have been transferred to Lanai Island Holdings, LLC.[56]

4. The three public utilities will continue their operations under their respective names and commission-approved tariffs, including their rates, with no anticipated changes in their operations.[57]

The commission's general supervision over public utilities, including motor carriers, is set forth in HRS chapters 269 and 271. Of particular note, HRS §§ 269-6(a), 271-1, and 271-9 state in part:

> **General powers and duties.** (a) The public utilities commission shall have the general supervision hereinafter set forth over all public utilities, and shall perform the duties and exercise the powers imposed or conferred upon it by this chapter . . . .

HRS § 269-6(a); see also HRS § 269-1 (the definition of public utilities includes the transportation of passengers or freight).

> **Declaration of policy.** The legislature of this State recognizes and declares that the transportation of persons and of property, for commercial purposes, over the public highways of this State constitutes a business affected with

[55]Application, at 6.

[56]Application, at 5 and 19.

[57]Application, at 21-22.

the public interest. It is intended by this chapter [271, HRS,] to provide for fair and impartial regulation of such transportation in the interest of preserving for the public the full benefit and use of the highways consistent with the public safety and the needs of commerce; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers, to encourage the establishment and maintenance of reasonable rates and charges for transportation and related accessorial service, without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices. This chapter [271, HRS,] shall be administered and enforced with a view to carrying out the above declaration of policy.

HRS § 271-1.

General duties and powers of the commission.

(a) The general duties and powers of the public utilities commission shall be:

(1) To regulate common carriers by motor vehicle, and to that end the commission shall establish reasonable requirements with respect to continuous and adequate service, leasing of motor vehicles, uniform system of accounts, records, and reports, and preservation of records.

. . . .

(3) To administer, execute, and enforce this chapter [271, HRS,] to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedures for the administration.

(4) For purposes of the administration of this chapter [271, HRS], to inquire into the management of the business of motor carriers, and into the management of the business of persons controlling, controlled by, or under common control

> with, motor carriers to the extent that the business of these persons is related to the management of the business of one or more motor carriers, and the commission shall keep itself informed as to the manner and method in which the same are conducted, and may obtain from the carriers and persons such information as the commission deems necessary to carry out the provisions of this chapter [271, HRS].

HRS § 271-9(a).

It is well-settled that "[a]dministrative agencies are created by the legislature, and the legislature determines the bounds of the agency's authority." Paul's Elec. Serv., Inc. v. Befitel, 104 Hawai'i 412, 417, 91 P.3d 494, 499 (Haw. 2004). As such, "[a]n administrative agency can only wield powers expressly or implicitly granted to it by statute. However, it is well established that an administrative agency's authority includes those implied powers that are reasonably necessary to carry out the powers expressly granted. The reason for implied powers is that, as a practical matter, the legislature cannot foresee all the problems incidental to carrying out the duties and responsibilities of the agency." Haole v. State, 111 Hawai'i 144, 152, 140 P.3d 377, 385 (Haw. 2006)(quoting Morgan v. Planning Dep't, County of Kauai, 104 Hawai'i 173, 184, 86 P.3d 982, 993 (Haw. 2004)).

Moreover, with respect to the commission's authority to approve just and reasonable rates for public utilities, HRS § 269-16 states in part:

> **Regulation of utility rates; ratemaking procedures.** (a) All rates, fares, charges, classifications, schedules, rules, and practices made, charged, or observed by any public utility or by two or more public utilities jointly shall be just and reasonable and shall be filed with the public utilities commission . . . .
>
> (b) No rate, fare, charge, classification, schedule, rule, or practice, other than one established pursuant to an automatic rate adjustment clause previously approved by the commission, shall be established, abandoned, modified, or departed from by any public utility, except after thirty days' notice to the commission as prescribed in section 269-12(b), and prior approval by the commission for any increases in rates, fares, or charges. The commission, in its discretion and for good cause shown, may allow any rate, fare, charge, classification, schedule, rule, or practice to be established, abandoned, modified, or departed from upon notice less than that provided for in section 269-12(b). A contested case hearing shall be held in connection with any increase in rates, and the hearing shall be preceded by a public hearing as prescribed in section 269-12(c), at which the consumers or patrons of the public utility may present testimony to the commission concerning the increase. The commission, upon notice to the public utility, may:
>
> . . . .
>
> (3) Do all things that are necessary and in the exercise of the commission's power and jurisdiction, all of which as so ordered, regulated, fixed, and changed

> are just and reasonable, and provide a fair return on the property of the utility actually used or useful for public utility purposes.

HRS § 269-16.[58]

In In re Kauai Elec. Div. of Citizens Util. Co. ("In re Kauai Elec. Div."), 60 Haw. 166, 590 P.2d 524 (1978), the Hawaii Supreme Court ("Court") held that the commission's authority to grant interim rate increases to public utilities, conditioned on a refund provision, was necessarily implied from the commission's express authority to regulate rates and supervise public utilities operating within the State, and was to be implied from the express authority granted to the commission under HRS § 269-16 (now HRS § 269-16(b)(3)) to "do all things . . . which are necessary and in exercise of such power and jurisdiction . . . all of which shall be just and reasonable."[59]

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[58]Concomitantly, in accordance with HRS § 271-2, HRS § 269-16 does not apply to the regulation of motor carriers. See HRS § 271-2 (HRS § 269-16 shall not, in any respect, apply to the regulation of motor carriers).

[59]The Court noted that "the Commission's power to order a refund as a condition to an interim rate increase [was] a valid exercise of its authority to regulate rates, provided that the interim rate increase order [was] itself reasonable under the circumstances." In re Kauai Elec. Div., 60 Haw. at 180, 590 P.2d at 535.

On December 19, 1978, the Court issued its decision in In re Kauai Elec. Div. On June 12, 1984, Act 289 took effect, which adopted the language set forth in HRS § 269-16(d), authorizing the commission to issue interim rate decisions based

The commission applies the reasonable and public interest standard in determining whether to grant interim relief, subject to the issuance of its final decision.[60]

Here, while Applicants allude to Lanai Island Holdings, LLC's ability to make "significant investments in the substantial unregulated assets" in the event of the commission's interim approval, the commission's focus is on the regulated assets and operations of the three public utilities.

The commission chooses to proceed with its interim action, so as not to jeopardize the June 27, 2012 closing date for the overall purchase and sale transaction, subject to the commission's right to ultimately disapprove the indirect transfer and sale of the three public utilities. This and other

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on a finding of probable entitlement, and subject to refund with interest, to the extent applicable. See Act 289, Session Laws of Hawaii 1984, §1, at 898-99.

[60]See, e.g., In re Kauai Island Util. Coop., Docket No. 2012-0003, Interim Decision and Order No. 30245, filed on March 7, 2012 (approving on an interim basis the electric utility's fuel supply agreement and other related matter); In re Hawaiian Elec. Co., Inc., Docket No. 2007-0408, Interim Order No. 23882, filed on December 10, 2007 (approving on an expedited basis the electric utility's request to sell 46 kilovolt insulators to assist the United States Army's efforts to restore electrical service to Schofield Barracks); and In re Hawaiian Elec. Co., Inc., Docket No. 04-0335, Interim Order No. 21470, filed on November 19, 2004 (approving on an expedited basis the electric utility's request to immediately sell materials to assist the University of Hawaii-Manoa's efforts to restore power to certain campus buildings in the aftermath of the October 2004 flooding).

conditions imposed by the commission in this interim decision provide sufficient safeguards for allowing the indirect transfer and sale of the three public utilities to proceed, pending the commission's final review of this matter. The commission's preliminary findings on the merits, as set forth in this interim decision (Section II.B.2, Commission's Preliminary Findings, below), provide further support for issuing this interim decision.

B.

Indirect Transfer and Sale

1.

Standards of Review

Applicants seek the commission's approval of the indirect sale and transfer of the three public utilities from Castle & Cooke, Inc. to Lanai Island Holdings, LLC pursuant to HRS §§ 269-7 and 269-17.5. Applicants acknowledge the commission's broad authority, pursuant to HRS § 269-7(a), to review the sales of stock which transfer the ownership the public utilities.[61]

[61]Application, at 12.

HRS § 269-7(a) states:

> **Investigative powers.** (a) The public utilities commission and each commissioner shall have power to examine into the condition of each public utility, the manner in which it is operated with reference to the safety or accommodation of the public, the safety, working hours, and wages of its employees, the fares and rates charged by it, the value of its physical property, the issuance by it of stocks and bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations.
>
> . . . .

HRS § 269-7(a).

The provisions of HRS § 269-7(a) are broad, and in essence, vest in the commission the authority to examine all transactions that affect or may affect the public whom the utility serves.[62] Accordingly, the commission:

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[62] In re South Kohala Water Corp., Docket No. 2011-0315 ("Docket No. 2011-0315"), Decision and Order No. 30068, filed on December 28, 2011, at 10 n.16 (citing to In re Maunalua Assoc., Inc., Docket No. 97-0330, Decision and Order No. 16175, filed on January 27, 1998, at 4-5).

> has the authority to investigate whether actions of the parent corporation may have an impact on the public utility's fitness, willingness and ability to provide services or on the rates, terms and conditions that are charged for such service. However, it is under this investigative power, that the commission has historically asserted jurisdiction to review the corporate transactions of a parent entity and its effects on the regulated entity[.]

In re South Kohala Water Corp., Docket No. 2011-0315, Decision and Order No. 30068, at 10 (quoting In re Hawaii-Am. Water Co., Docket No. 2006-0095, Decision and Order No. 22511, filed on June 5, 2006, at 14-15 (internal quotation marks and citations omitted)). In effect, a parent level transaction which involves the transfer of a public utility's assets and operations is reviewed by the commission under HRS § 269-7(a) to determine whether the transaction is reasonable and consistent with the public interest.[63] Such transaction is reasonable and in the public interest if it will not adversely affect the public utility's regulated services, as authorized by its CPCN.[64]

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[63]In re South Kohala Water Corp., Docket No. 2011-0315, Decision and Order No. 30068, at 11 n.18 (citing to Docket No. 2006-0095, Decision and Order No. 22511, at 15-16).

[64]Docket No. 2011-0315, Decision and Order No. 30068, at 11 n.19 (citing to HRS § 269-7.5(c)).

Meanwhile, HRS § 269-17.5 states:

> **Issuance of voting stock; restrictions.** (a) For purposes of this section "foreign corporation" means a foreign corporation as defined in section 235-1 or a corporation in which a majority of the voting stock is held by a single foreign corporation as defined in section 235-1.
>
> (b) "Nonresident alien" means a person not a citizen of the United States who is not defined as a resident alien by the United States Citizenship and Immigration Services.
>
> (c) No more than twenty-five percent of the issued and outstanding voting stock of a corporation organized under the laws of the State and who owns, controls, operates, or manages any plant or equipment, or any part thereof, as a public utility within the definition set forth in section 269-1 shall be held, whether directly or indirectly, by any single foreign corporation or any single nonresident alien, or held by any person, unless prior written approval is obtained from the public utilities commission, or unless a transaction is exempt. An exempt transaction is:
>
> (1) Any purchase or sale by an underwriter; or
>
> (2) A transaction to acquire shares of a corporation with less than one hundred shareholders and less than $1,000,000 in assets.
>
> Every assignment, transfer, contract, or agreement for assignment or transfer or any shares in violation of this section shall be void and of no effect; and no such transfer shall be made on the books of the corporation. Nothing herein shall be construed to make illegal the holding of stock lawfully held, directly or indirectly, prior to June 4, 1977.

HRS § 269-17.5.

HRS § 235-1, in turn, states:

> "Corporation" means the same as in the Internal Revenue Code. A "domestic corporation" is one organized under the laws of the State. A "foreign corporation" is any other corporation.

HRS § 235-1.

Applicants request for commission approval pursuant to HRS § 269-17.5 is unclear, confusing, and incomplete. Stated verbatim, Applicants make the following request:

> Because Buyer seeks to acquire all of the stock of CC Resorts, which is the parent company to Manele Water, Lanai Transportation, and Lanai Water (all Hawaii public utility corporations), Commission approval is required.

Application, at 11.

Here, Lanai Island Holdings, LLC, i.e., the buyer, is a Hawaii limited liability company, and thus, is not a "foreign corporation" as that term is defined in HRS § 235-1. It is therefore unclear as to whether Applicants seek the commission's approval on the basis that the buyer is "any single foreign corporation," "any single nonresident alien," or "any person." Applicants provide no explanation in this regard.

Based on the commission's reading of the Application, the Companies appear to reason that: (1) Lanai Island Holdings, Inc.'s ultimate parent entity is the Lawrence J. Ellison Revocable Trust, and the settlor of this trust is a person;

and/or (2) Octopus Holdings, L.P. and Tentacle Corporation are California entities, and thus, somehow constitute a single foreign corporation. However, with respect to the latter scenario, the purchaser is Lanai Island Holdings, LLC, and not the two California entities.[65]

Applicants, thus, fail to meet their burden of explaining how or why HRS § 269-17.5 applies.

As part of its review process, the commission would normally require Applicants to clarify and explain in writing this confusion. Here, however, given the time constraints, it is impractical for the commission to issue information requests at this juncture. Accordingly, as part of this interim decision, the commission chooses to review the indirect transfer and sale request pursuant to HRS § 269-17.5, to the extent applicable. In this regard, the commission recognizes that a transaction that is subject to HRS § 269-17.5 is void and of no effect, unless the commission's prior written approval is obtained. Clarification will come later.

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[65]See Application, 9-10 (describing the ownership structures of Lanai Island Holdings, LLC, Octopus Holdings, L.P., and Tentacle Corporation) and 14; and Exhibit I (Lanai Island Holdings, LLC and Octopus Holdings, L.P. are directly or indirectly under common ownership, and as such, are sister entities).

The commission applies the reasonable and public interest standard in its review of a transaction that is subject to HRS § 269-17.5.[66]

As a final matter, Applicants neglect to mention or discuss any of the provisions set forth in the Motor Carrier Law, HRS chapter 271. Of particular note, HRS § 271-2 states:

> **Administration; governing provisions of other acts.** This chapter [271, HRS,] shall be administrated by the public utilities commission of the State and the provisions of this chapter and of chapter 269, [HRS], not inconsistent with this chapter [271, HRS], shall govern its administration; provided that sections 269-4, 269-9, 269-11, 269-16 to 269-28 and 269-30 shall not, in any respect, apply to the regulation of motor carriers.

HRS § 271-2.

Based on a plain reading of HRS § 271-2, HRS § 269-17.5 does not apply to the indirect transfer and sale of Lanai Transportation Company, Inc., a common carrier of passengers. Thus, the commission proceeds with reviewing the indirect transfer and sale of: (1) Manele Water Resources, LLC and Lanai Water Company, Inc. (the wastewater and water utilities, respectively) pursuant to HRS § 269-7(a), and to the extent

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[66]In re Princeville Util. Co., Inc. and Princeville PUC, LLC, Docket No. 04-0292, Decision and Order No. 21564, filed on January 27, 2005.

applicable, HRS § 269-17.5; and (2) Lanai Transportation Company, Inc., pursuant to HRS § 269-7(a).

2.

Commission's Preliminary Findings

The commission preliminarily finds and concludes that: (1) Lanai Island Holdings, LLC is fit, willing, and able to provide the three public utility services; (2) the rates, terms, and conditions of such utility services will not be detrimentally affected by the indirect transfer and sale; and (3) the indirect transfer and sale will not appear to adversely affect their regulated services, as authorized by their respective CPCNs. The commission, based on Applicants' representations, specifically finds:

1. Lanai Island Holdings, LLC's ultimate parent entity is the Lawrence J. Ellison Revocable Trust. Mr. Ellison, in turn, is the Settlor of said trust. Forbes places Mr. Ellison's net worth at approximately 36 billion dollars.[67]

2. Lanai Island Holdings, LLC's pro forma balance sheet is filed under confidential seal. The equity listed therein is substantial - "hundreds of millions in dollars of

[67]Application, at 4; and Exhibit D (excerpt from Forbes' Annual Profile of the World's Billionaires as of March 2012).

dollars in equity value to support the [three public utilities'] operations and management, post-closing."[68]

3. The overall purchase and sale transaction will be unleveraged, i.e., debt free.[69] Thus, no financing or borrowing costs should be incurred by any of the three public utilities, and more specifically, their respective ratepayers and customers. Moreover, "there will be no security agreements, mortgages, or deeds of trust which may affect the [three public utilities'] ownership and continued use of property utilized in the provision of their regulated services."[70]

4. Lanai Island Holdings, LLC "agrees to not seek rate recovery of any goodwill amortization, acquisition premium costs, goodwill impairment charges, or transaction or transition costs incurred as a result of the indirect transfer of the [three public utilities]."[71]

5. The financial commitment letters that will be generated by Lanai Island Holdings, LLC and Octopus Holdings, L.P. will cover all three public utilities, and not just Lanai

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[68]Application, at 14; see also Exhibit C (Lanai Island Holdings, LLC's pro forma balance sheet)(confidential seal).

[69]Application, at 4 and 15.

[70]Application, at 14.

[71]Application, at 17.

Water Company, Inc. - albeit the commitment from Octopus Holdings, L.P. appears to be limited to December 31, 2017, without explanation.[72]

6. Lanai Island Holdings, LLC pledges that: (A) there will be no changes in the financial management of the three public utilities; and (B) the financial and operational fitness of the three public utilities will be regularly monitored.[73]

7. Castle & Cooke Resorts, LLC will be the water and wastewater utilities' largest customer, in terms of water and wastewater revenues received from the limited liability company in 2010. Thus, Lanai Island Holdings, LLC has a firsthand interest in operating the water and wastewater utilities in an effective and efficient manner.[74]

8. Lanai Island Holdings, LLC's evidence of its willingness to provide the water and wastewater utility services includes its commitment to investing a minimum of ten million dollars in the water and wastewater systems' assets within the next five years, as contributions-in-aid-of-construction. Such investor-funded contributions, in turn, are not recoverable from

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[72]Application, at 14; and Exhibits H and I (copies of the two financial commitment letters).

[73]Application, at 15-16.

[74]Application, at 16-17.

ratepayers.[75] The financial commitment letters that will be issued by Lanai Island Holdings, LLC and Octopus Holdings, L.P. also evidence the buyer's willingness to provide the water, wastewater, and motor carrier utility services.[76]

9. With respect to Lanai Island Holdings, LLC's ability to engage in the specified utility services, the three public utilities will continue to operate under their same respective names and commission-approved tariffs, including their respective rate schedules. In addition, Lanai Island Holdings, LLC pledges that the three public utilities will: (A) maintain and abide by their policies with respect to their respective utility services, or other matters affecting the public interest or utility operations; and (B) provide safe, adequate, and reliable utility services.[77] Furthermore, the current employment arrangements will not materially change, no personnel changes are anticipated, and the employees of the three public utilities are expected to maintain the same or comparable positions and compensation. Such action, in turn, is anticipated to ensure a transparent transaction that should

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[75]Joint letter, dated June 21, 2012, at 2; see also Application, at 16-17.

[76]Application, at 16; and Exhibits H and I (copies of the two financial commitment letters).

[77]Application, at 14-15 and 17.

enable the three public utilities to continue to provide the same level of utility services.[78]

10. Following closing, the three public utilities "will continue to be subject to all applicable public utility laws, regulations, rules, decisions and policies governing the regulation of Hawaii public utilities."[79]

Based on the foregoing findings, the commission also preliminarily finds and concludes that the indirect transfer and sale of the three public utilities is reasonable and consistent with the public interest, subject to the conditions set forth herein for purposes of interim relief. The commission's issuance of its interim decision today will allow the closing of the overall purchase and sale transaction to proceed as scheduled, subject to the commission's right to ultimately disapprove the indirect transfer and sale of the three public utilities, as part of the commission's future final decision on the Companies' Application. If such action is ultimately taken by the commission, the Contracting Parties agree in writing that the three public utilities will be transferred to Castle & Cooke, Inc.[80]

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[78]Application, at 14 and 17.

[79]Application, at 15; see also Application, at 17.

[80]Joint letter, dated June 21, 2012, at 2.

The commission, in making its preliminary findings, declines to credit the Companies' representation made on page 4 of their Application, which states that the collective net assets of the three public utilities are approximately seven million dollars.[81] Without having the benefit of issuing clarifying information requests at this juncture, the commission preliminary notes that such a representation appears inconsistent with the information produced by Applicants in their Exhibit B. This exhibit lists the value of the assets of Manele Water Resources, LLC, Lanai Water Company, Inc., and Lanai Transportation Company, Inc. as $271,025, $3,963,901, and $42,501, respectively (rounded), as of April 30, 2012.[82]

3.

Interim Relief

In sum, the commission, on an interim basis: (1) approves, pursuant to HRS § 269-7(a), and to the extent applicable, HRS § 269-17.5, the indirect transfer and sale from Castle & Cooke, Inc. to Lanai Island Holdings, LLC, of all the membership interests of Castle & Cooke Resorts, Inc.'s wholly owned subsidiary, Manele Water Resources, LLC; (2) approves,

[81]Application, at 4.

pursuant to HRS § 269-7(a), and to the extent applicable, HRS § 269-17.5, the indirect transfer and sale from Castle & Cooke, Inc. to Lanai Island Holdings, LLC, of all the stock of Castle & Cooke Resorts, Inc.'s wholly owned subsidiary, Lanai Water Company, Inc.; and (3) approves, pursuant to HRS § 269-7(a), the indirect transfer and sale from Castle & Cooke, Inc. to Lanai Island Holdings, LLC, of all the stock of Castle & Cooke Resorts, Inc.'s wholly owned subsidiary, Lanai Transportation Company, Inc. The commission's interim approval, in turn, is subject to the following conditions:

1. The commission has the right to ultimately disapprove the indirect transfer and sale of the three public utilities, as part of the commission's future final decision on the Companies' Application. If such action is ultimately taken by the commission, the Contracting Parties shall promptly transfer the three public utilities to Castle & Cooke, Inc., i.e., undertake and complete the unwinding process involving the three public utilities.

2. The three public utilities shall not seek to recover from ratepayers or other customers any costs associated with the unwinding process.

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[82] $271,025 + $3,963,901 + $42,501 = $4,277,427. Application, Exhibit B (consolidated balance sheet and profit and loss statement of the three public utilities).

3. Within five years from the closing of the overall purchase and sale transaction, Lanai Island Holdings, LLC shall invest a minimum of ten million dollars in the water and wastewater utilities' respective operations, as contributions-in-aid-of-construction. The water and wastewater utilities shall not seek to recover such funds from ratepayers.

4. Lanai Island Holdings, LLC shall not seek to recover from ratepayers any goodwill amortization, acquisition premium costs, goodwill impairment charges, or transaction or transition costs incurred and resulting from the indirect transfer and sale of the three public utilities.

5. By June 29, 2012, Applicants shall file with the commission the financial commitment letters executed by Lanai Island Holdings, LLC and Octopus Holdings, L.P., respectively.

6. The Consumer Advocate retains its statutory rights to undertake and complete its review and investigation of the Companies' Application.

7. HAR § 6-61-20 states that "[a]ny pleading may be amended at any time before service of a responsive pleading." On June 19, 2012, the Companies filed their Application. On June 21, 2012, the Consumer Advocate jointly filed a settlement letter along with the Contracting Parties, for purposes of interim relief. The commission's interim decision issued today is based on Applicants' written representations made thus far in

the docket record. Applicants are precluded from amending their Application, including their prayer for relief, consistent with HAR § 6-61-20.

Finally, the commission takes no interim action on Applicants' request to release Castle & Cooke Homes Hawaii Inc. and Castle & Cooke Properties, Inc. from any obligations they may have under their respective financial commitment letters.

C.

Issues of Concern

Applicants acknowledge the commission's need to fully review and investigate the indirect transfer and sale as part of its final review process.[83] The commission intends to thoroughly review the current and future operations of Manele Water Resources, LLC, Lanai Water Company, Inc., and Lanai Transportation Company, Inc., prior to the issuance of its final decision. A statement of issues which outlines what the commission will consider in its investigation is forthcoming.

[83]Application, at 5; and joint letter, dated June 21, 2012, at 2.

D.

Motions to Intervene or Participate

HAR § 6-61-57 states in part:

> Time to file. A motion to intervene or participate, to be timely, shall be filed and served as follows:
>
> (1) . . . .
>
> (2) In all applications requesting issuance or transfer of a certificate of public convenience and necessity or contract carrier's permit, the motion to intervene or participate shall be filed not later than twenty days after a notice of the pending application has been published in a newspaper of general circulation within the State or within the county or counties affected by the application . . . .
>
> (3) A motion to intervene or participate shall be served on all parties and the consumer advocate and filed, in the proceedings other than those specified in paragraphs (1) or (2), no later than:
>
> (A) Twenty days after an application if filed;
>
> . . . .

HAR § 6-61-57.

Here, Applicants make no affirmative representation that the indirect sale and transfer of the three public utilities involves the transfer of any of the three public utilities' respective CPCNs. Furthermore, Applicants do not

request the commission's approval to: (1) transfer, pursuant to HRS § 269-19, the CPCNs held by Manele Water Resources, LLC and Lanai Water Company, Inc.; and (2) transfer, pursuant to HRS § 271-18, Lanai Transportation Company, Inc.'s CPCN. Thus, the deadline for any interested person to timely file a motion to intervene or participate in this proceeding is set forth in HAR § 6-61-57(3)(A).

III.

Orders

THE COMMISSION ORDERS:

1. The indirect transfer and sale from Castle & Cooke, Inc. to Lanai Island Holdings, LLC, of all the membership interests of Castle & Cooke Resorts, Inc.'s wholly owned subsidiary, Manele Water Resources, LLC, is approved on an interim basis, pursuant to HRS § 269-7(a), and to the extent applicable, HRS § 269-17.5.

2. The indirect transfer and sale from Castle & Cooke, Inc. to Lanai Island Holdings, LLC, of all the stock of Castle & Cooke Resorts, Inc.'s wholly owned subsidiary, Lanai Water Company, Inc., is approved on an interim basis, pursuant to HRS § 269-7(a), and to the extent applicable, HRS § 269-17.5.

3. The indirect transfer and sale from Castle & Cooke, Inc. to Lanai Island Holdings, LLC, of all the stock of

Castle & Cooke Resorts, Inc.'s wholly owned subsidiary, Lanai Transportation Company, Inc., is approved on an interim basis, pursuant to HRS § 269-7(a).

4. The commission's interim approval is subject to the following conditions:

A. The commission has the right to ultimately disapprove the indirect transfer and sale of the three public utilities, as part of the commission's future final decision on the Companies' Application. If such action is ultimately taken by the commission, the Contracting Parties shall promptly transfer the three public utilities to Castle & Cooke, Inc., -- i.e., undertake and complete the unwinding process involving the three public utilities.

B. The three public utilities shall not seek to recover from ratepayers or other customers any costs associated with the unwinding process.

C. Within five years from the closing of the overall purchase and sale transaction, Lanai Island Holdings, LLC shall invest a minimum of ten million dollars in the water and wastewater utilities' respective operations, as contributions-in-aid-of-construction. The water and wastewater utilities shall not seek to recover such funds from ratepayers.

D. Lanai Island Holdings, LLC shall not seek to recover from ratepayers any goodwill amortization, acquisition

premium costs, goodwill impairment charges, or transaction or transition costs incurred and resulting from the indirect transfer and sale of the three public utilities.

E. By June 29, 2012, Applicants shall file with the commission the financial commitment letters executed by Lanai Island Holdings, LLC and Octopus Holdings, L.P., respectively.

F. The Consumer Advocate retains its statutory rights to undertake and complete its review and investigation of the Companies' Application.

G. Applicants are precluded from amending their Application, including their prayer for relief, consistent with HAR § 6-61-20.

DONE at Honolulu, Hawaii JUN 25 2012.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Hermina Morita
Hermina Morita, Chair

By John E. Cole
John E. Cole, Commissioner

By Michael E. Champley
Michael E. Champley, Commissioner

APPROVED AS TO FORM:

Michael Azama
Michael Azama
Commission Counsel
2012-0157 interim.ac

EXHIBIT F

Current Organization Structure of Entities Being Sold By Seller

Lanai Companies

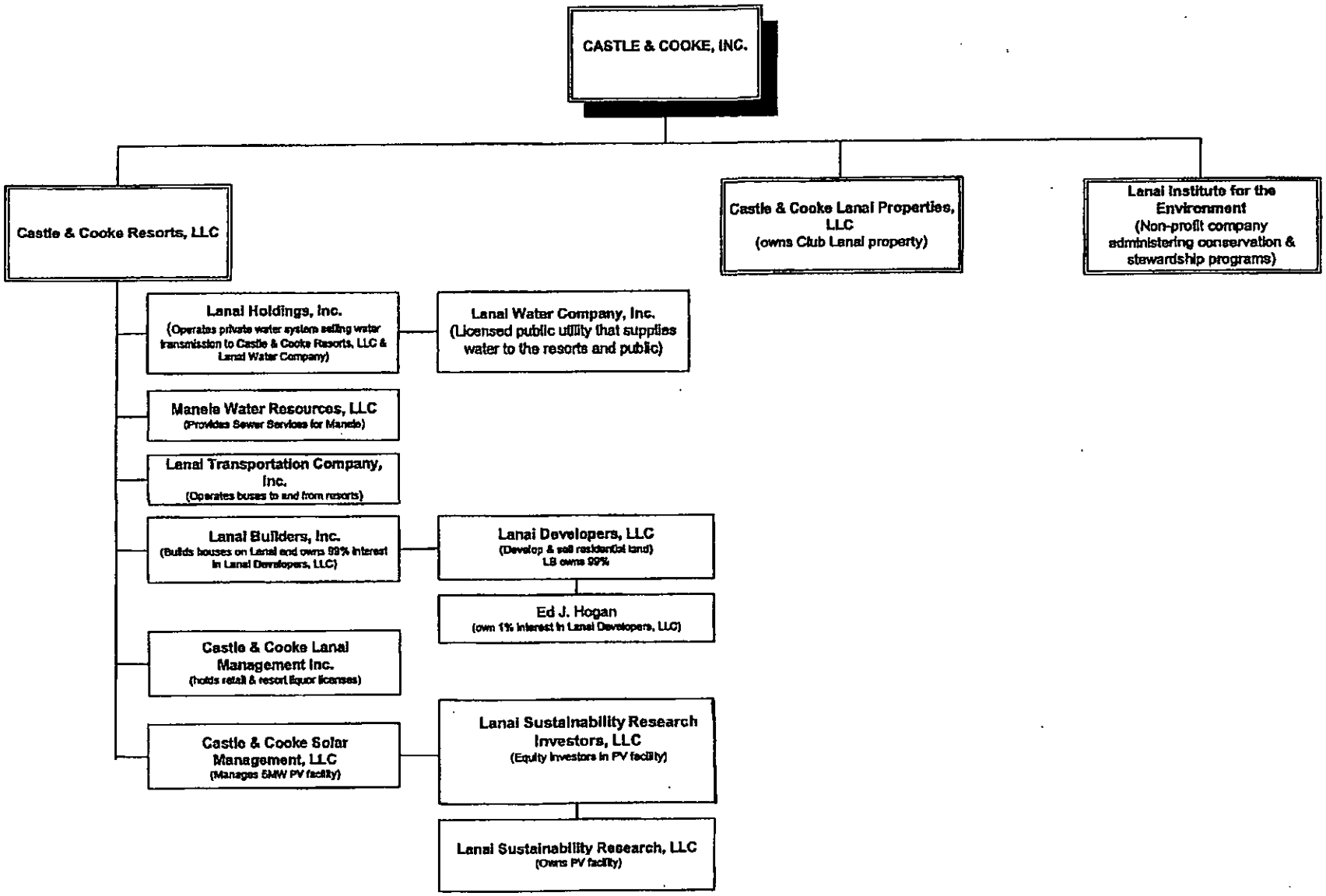
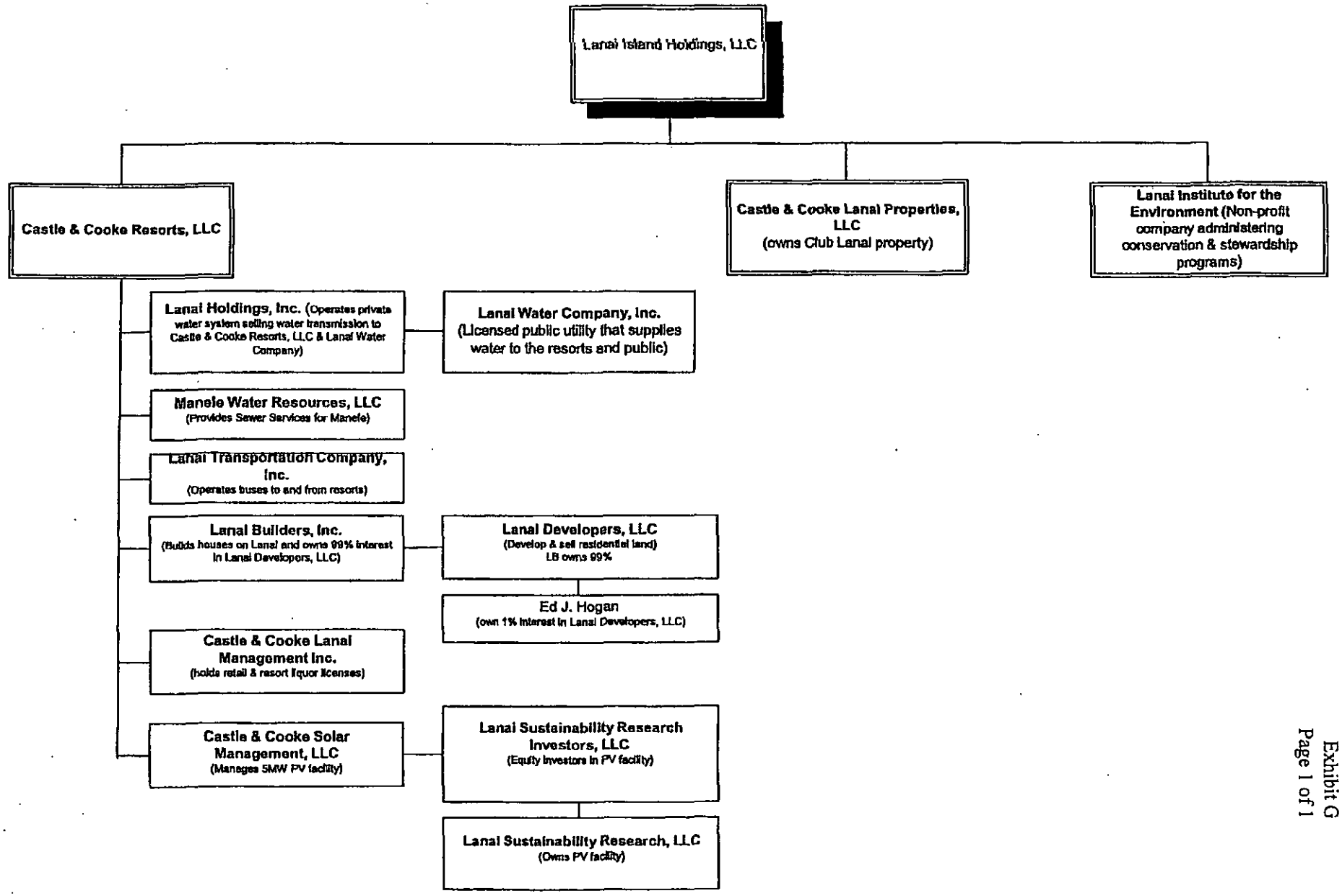


EXHIBIT G

Organization Structure of Buyer Post Acquisition

Buyer's Organization Structure Post-Closing



CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

JEFFREY T. ONO
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

CRAIG I. NAKANISHI, ESQ.
ERIN H. YODA, ESQ.
RUSH MOORE LLP
737 Bishop Street, Suite 2400
Honolulu, HI 96813

Counsel for CASTLE & COOKE, INC., CASTLE & COOKE RESORTS, LLC, MANELE WATER RESOURCES, LLC, LANAI TRANSPORTATION COMPANY, INC., and LANAI WATER COMPANY, INC.

BRUCE A. NAKAMURA, ESQ.
KOBAYASHI, SUGITA & GODA LLP
First Hawaiian Center
999 Bishop Street, Suite 2600
Honolulu, HI 96813

Counsel for LANAI ISLAND HOLDINGS, LLC
(Courtesy Copy)