

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“*Waikoloa-Wind* Settlement”) is made and entered into by and between Plaintiff and the Class Representative Irene O. Britton, on behalf of herself and all other Class Members (“*Waikoloa-Wind* Class”), and Defendant Castle & Cooke Homes Hawaii, Inc. (“Castle & Cooke”) (jointly, “Settling Parties”).

The terms of this *Waikoloa-Wind* Settlement are conditioned on and subject to (1) final approval of the settlement this matter, *Irene O. Britton, et al., v. Castle & Cooke Homes Hawaii, Inc., et al.*, Circuit Court of the First Circuit, State of Hawai‘i Civil No. 13-1-2277-08 GWBC (“*Waikoloa-Wind*”); and (2) final approval of the settlement of *Irene O. Britton, et al., v. Castle & Cooke Homes Hawaii, Inc., et al.*, Circuit Court of the First Circuit, State of Hawai‘i Civil No. 13-1-2276-08 KTN (“*Waikoloa-PEX Brass Fittings*”).

### SUMMARY OF LAWSUIT

1. On August 20, 2013, Plaintiff and the Class Representative Irene O. Britton, on behalf of herself and all other Class Members, (collectively, “Plaintiff”) filed *Waikoloa-Wind* as a putative class action lawsuit in the Circuit Court of the First Circuit, State of Hawai‘i, Civil No. 13-1-2277-08 GWBC.
2. The original complaint alleged defects with respect to the wind resistance design in homes developed by Castle & Cooke in the Wehilani Developments located in Waikoloa, Hawai‘i (“Waikoloa”).
3. Castle & Cooke caused substantially similar wind designs to be installed in all 100 Class Structures in Waikoloa. A schedule of the tax map key numbers and addresses of all *Waikoloa-Wind* Class Structures is listed and attached hereto at “Exhibit 6—*Waikoloa-Wind* Class Structures.”
4. *Waikoloa-Wind* alleged that the wind design in the *Waikoloa-Wind* Class Structures in Waikoloa had insufficient strength and violated the applicable building codes.

5. Since working on filing the original complaint, Plaintiff has vigorously pursued the claims at issue in *Waikoloa-Wind* by briefing various procedural, factual, and legal matters, conducting discovery throughout the periods when they could conduct discovery, and advancing their claims toward final resolution.
6. Since Plaintiff filed the original complaint, Castle & Cooke has vigorously denied and contested the allegations in *Waikoloa-Wind*, also by briefing various procedural, factual, and legal matters, conducting discovery throughout the periods when they could conduct discovery, and advancing their defenses toward final resolution.
7. The Settling Parties have collectively obtained, processed, produced, reviewed, and analyzed documents generated by the parties in *Waikoloa-Wind*.
8. In addition to the discovery conducted by the parties involved in *Waikoloa-Wind*, the parties engaged in law and motion matters over more than seven years of litigation included, including but not limited to the following proceedings:
  - a. Plaintiff filed her Complaint on August 20, 2013 and filed a First Amended Complaint on October 23, 2013;
  - b. Castle & Cooke filed a motion to dismiss the Complaint on November 20, 2013, which the parties litigated for months;
  - c. The parties stayed the case to they could complete the procedures required by HRS § 672E, which they did;
  - d. After completing the HRS § 672E procedures, Castle & Cooke answered Plaintiff's Complaint on July 3, 2014;
  - e. The Settling Parties engaged in substantial party and third-party discovery into 2015; and
  - f. On June 5, 2015, the Court issued a Minute Order granting Plaintiff's unopposed motion to stay these proceedings pending settlement or arbitration of the larger *Baker v. Castle & Cooke Homes Hawaii, Inc.*, Circuit Court of the First Circuit, State of Hawai'i, Civil No. 11-1-1524-07

JPC (“*MM-Wind*”) matter, which recently resolved and is in presently settlement administration.

9. Counsel for the Settling Parties have simultaneously and extensively litigated three other cases on matters with proceedings similar and related to the claims and defenses at issue here, as well as this Settlement:
  - a. *Waikoloa-PEX Brass Fittings* which entails the same Class Structures at issue in *Waikoloa-Wind*, only with claims alleging defects Castle & Cooke’s PEX yellow brass fittings plumbing systems;
  - b. *Baker v. Castle & Cooke Homes Hawaii, Inc.*, United States District Court for the District of Hawai‘i, No. 11-00616 LEK-RLP, DPR Arbitration No. 15-027-A (“*MM-PEX*”). *MM-PEX Brass Fittings* was a case against Castle & Cooke for homes in its Mililani Mauka development involving the same Defendant, same counsel, and same manufactured plumbing product defect allegations at issue here. On February 5, 2016, the Court stayed *Waikoloa-PEX Brass Fittings* pending completion of the *MM-PEX Brass Fittings* case, which has since resolved and is in its final stages of settlement administration; and
  - c. *MM-Wind*. *MM-Wind* was a case against Castle & Cooke for homes in its Mililani Mauka development involving the same Defendant, same counsel, and same wind design defect allegations at issue in *Waikoloa-Wind*. *MM-Wind* has also since resolved and is also in its final stages of settlement administration.
10. The Settling Parties collectively obtained, processed, produced, reviewed, and analyzed thousands of pages of documents generated by the parties concerning the claims, defenses, factual issues, and technical issues common to *MM-PEX Brass Fittings*, *MM-Wind*, *Waikoloa-PEX Brass Fittings*, and *Waikoloa-Wind*. In *MM-PEX Brass Fittings*, counsel for the Settling Parties participated in dozens of depositions pertaining to development, construction, and product issues common

to *MM-PEX Brass Fittings*, *MM-Wind*, *Waikoloa-PEX Brass Fittings*, and *Waikoloa-Wind*.

11. As a result of their extensive litigation in *MM-PEX Brass Fittings*, *MM-Wind*, *Waikoloa-PEX Brass Fittings*, and *Waikoloa-Wind*, counsel for the Settling Parties have substantial knowledge of and experience in the claims at issue here, facts concerning these claims, legal issues arising here, and risks entailed in going forward on their respective claims and defenses.
12. In September 2018, the Settling Parties engaged in arm's-length mediation on *MM-PEX Brass Fittings*, *MM-Wind*, *Waikoloa-PEX Brass Fittings*, and *Waikoloa-Wind*. The Settling Parties participated in a formal mediation before Keith W. Hunter of DPR ("the Mediator") and have since had informal discussions with the Mediator. The Settling Parties exchanged written briefs and confidential expert analyses concerning their respective positions on the technical, factual, and legal issues herein. At the September 2018 mediation, the Settling Parties agreed to core terms to globally resolve *MM-PEX Brass Fittings* and *MM-Wind* and agreed they would seek to effectuate a similar resolution for *Waikoloa-PEX Brass Fittings* and *Waikoloa-Wind* upon substantially completing the approval proceedings and claims administration for the global settlement of *MM-PEX Brass Fittings* and *MM-Wind*.
13. Since the September 2018 mediation, the Settling Parties completed their extensive work to nearly complete global settlement for *MM-PEX Brass Fittings* and *MM-Wind*, which to date has extremely high class participation and redemption rates. Informed by their experiences and successes in the *MM-PEX Brass Fittings* and *MM-Wind* global settlement, counsel for the Settling Parties continued negotiating with each other and agreed to the core terms to globally resolve *Waikoloa-PEX Brass Fittings* and *Waikoloa-Wind* for, among other details set forth herein, (1) a \$1,118,610.77 payment in exchange for releases of the claims in *Waikoloa-PEX Brass Fittings* and (2) a \$319,678.09 payment in exchange for releases of the claims *Waikoloa-Wind*. Importantly, the ultimate

payments for the Class Structures in the *Waikoloa-PEX Brass Fittings* and *Waikoloa-Wind* Settlements are the same as they were for, respectively, the Class Structures in the court-approved and successful *MM-PEX Brass Fittings* and *MM-Wind* Settlements alleged to have substantially similar defects.

14. The *Waikoloa-PEX Brass Fittings* and *Waikoloa-Wind* Settlements are both subject to approval by the Courts presiding over *Waikoloa-PEX Brass Fittings* and *Waikoloa-Wind*, and Court approval of both the *Waikoloa-PEX Brass Fittings* and *Waikoloa-Wind* Settlements is a material part of the consideration to Castle & Cooke for both *Waikoloa-PEX Brass Fittings* and *Waikoloa-Wind* Settlements.
15. As the result of the more than seven years of litigation detailed above, the Settling Parties, counsel for the Settling Parties, the Mediator, and the Court are familiar with the factual and legal issues presented by the Settling Parties' respective claims and defenses. All involved recognize the uncertainties as to the ultimate outcome of *Waikoloa-Wind* and that any final result could require years of further complex litigation, including additional proceedings on critical issues, the trial on the ultimate merits of the claims, and appeals, that would involve substantial additional risk and expense.
16. The Settling Parties, Class Counsel, and Defense Counsel agree that the *Waikoloa-Wind* Settlement Agreement represents a fair, reasonable, and adequate resolution of *Waikoloa-Wind*.
17. The Settling Parties desire to compromise and settle all issues and claims that have been brought against Castle & Cooke in *Waikoloa-Wind*.
18. The Settling Parties desire and intend to seek Court approval of the *Waikoloa-Wind* Settlement Agreement as set forth herein, provide notice to the Class in a manner approved by the Court and as detailed herein, and, upon final judicial approval, the Settling Parties intend to seek a Final Approval Order and Final Judgment from the Court approving and implementing the *Waikoloa-Wind* Settlement and, thereby, resolving all claims at issue here.

NOW, THEREFORE, and without admitting any wrongdoing or liability whatsoever, and in consideration of the promises, covenants, and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, and subject to approval by the Court, the Settling Parties agree as follows:

#### **DEFINED TERMS**

19. “**Administrator**” means CPT Group, Inc. the qualified third-party appointed to administer the *Waikoloa-Wind* Settlement, including implementation and management of the *Waikoloa-Wind* Notice Plan and *Waikoloa-Wind* Settlement Escrow.
20. “**Attorney Fees, Costs, and All Other Expenses**” means the amounts approved by the *Waikoloa-Wind* Court for payment to *Waikoloa-Wind* Class Counsel to cover attorney fees, applicable General Excise Tax for the City and County of Honolulu, costs, and all other expenses, including but not limited to incentive awards for any Plaintiffs, all costs and expenses of addressing objections and appeals, any claims for attorney fees or costs, and all other possible expenses by others.
21. “**Castle & Cooke**” or “**Released Party**” means Castle & Cooke Homes Hawaii, Inc. and Castle & Cooke Waikoloa, LLC and their respective parents, members, managers, affiliates, related companies, contractors, subcontractors, consultants, subconsultants, and any other persons or entities at any level who were involved in the design and construction of the components of the Class Member Structures at issue in *Waikoloa-Wind*, experts, insurers, indemnitors, corporate representatives, officers, directors, agents, stockholders, shareholders, attorneys, heirs, executors, administrators, personal representatives, successors, successors in trust, successor trustees, trustees, trustees in bankruptcy, receivers, guardians, legal representatives, assigns, general partners or joint venturers, and employees of any of the foregoing.

22. “**Defense Counsel**” means the following counsel of record for Castle & Cooke in *Waikoloa-Wind*: Lennes N. Omuro and Calvin E. Young of Goodsell Anderson Quinn & Stifel LLP.
23. “**Effective Date**” means the first date on which all appellate rights with respect to the Final Approval Orders and Final Judgments in *Waikoloa-PEX Brass Fittings* and *Waikoloa-Wind* have expired or have been exhausted in a matter that conclusively affirms the Final Orders and Final Judgments for both settlements.
24. “**Final Approval Order**” means the anticipated order granting final approval approving the *Waikoloa-Wind* Settlement, thereby resolving *Waikoloa-Wind*, which Final Approval Order shall be substantially in the form attached hereto as Exhibit 8 to be entered by the *Waikoloa-Wind* Court.
25. “**Final Judgment**” means the anticipated judgment implementing the *Waikoloa-Wind* Settlement, thereby resolving *Waikoloa-Wind*, which Final Judgment shall be substantially in the form attached hereto as Exhibit 9 to be entered by the *Waikoloa-Wind* Court and which shall be captioned/titled as Final Judgement as to Settlement of Class Action Lawsuit or by substantially similar language to distinguish this judgment with respect to this settlement from an adverse judgment against Castle & Cooke.
26. “**Mediator**” means Keith W. Hunter of DPR.
27. “**Waikoloa-PEX Brass Fittings**” means and includes *Irene O. Britton, et al., v. Castle & Cooke Homes Hawaii, Inc., et al.*, Circuit Court of the First Circuit, State of Hawai‘i Civil No. 13-1-2276-08 KTN.
28. “**Waikoloa-PEX Brass Fittings Court**” means the Judge of the Circuit Court of the First Circuit, State of Hawai‘i assigned to *Waikoloa-PEX Brass Fittings*.
29. “**Waikoloa-Wind**” means and includes *Irene O. Britton, et al., v. Castle & Cooke Homes Hawaii, Inc., et al.*, Circuit Court of the First Circuit, State of Hawai‘i Civil No. 13-1-2277-08 GWBC.
30. “**Waikoloa-Wind Class**” and “**Waikoloa-Wind Class Member(s)**” mean:

All individual and entity homeowners who on the date of Final Order and Judgment own homes whose construction was completed on or after August 20, 2003 with wind protection systems in the Castle & Cooke housing developments known as Kikaha at Wehilani and Makana Kai at Wehilani, located in the City of Waikoloa and County of Hawai‘i, Island of Hawai‘i, and all homeowners’ associations whose members consist of such individual and entity homeowners.

The class definition specifically excludes (1) all individuals, entities, and associations of homeowners who have only homes completed prior to August 20, 2003; (2) persons who validly and timely exclude themselves from the Waikoloa-Wind Class; and (3) any judicial officer who has presided or will preside over this case.

31. “***Waikoloa-Wind Class Claims***” means any and all past, present, and future *Waikoloa-Wind* Class Member claims, controversies, disputes, actions, causes of action, suits, liability or liabilities, obligations, judgments, liens, debts, rights, resulting from, arising out of, connected or traceable to, or in any way relating to, either directly or indirectly, to *Waikoloa-Wind*, including any and all claims asserted therein and any and all matters that were subject of allegations and claims asserted therein. The *Waikoloa-Wind* Class Claims include any and all past, present, and future rights to appeal, losses, demands, or damages, of whatever name or nature, any and all claims for general damages, special damages, exemplary damages, statutory damages, damages based upon a multiplication of compensatory damages, punitive damages, diminution in value, loss of use, damages of every kind or nature whatsoever resulting from, arising out of, connected or traceable to, or in any way relating to, either directly or indirectly, to *Waikoloa-Wind*, including any and all claims asserted therein and any and all matters that were the subject of allegations and claims asserted therein, for property damage, for contribution, for defense or indemnity (whether written, contractual, in an insurance policy, or otherwise), for reimbursement or recoupment, for attorney fees, for litigation costs, and for any and all other additional losses, whether based on any theory in contract, tort, warranty,

including, but not limited to, Castle & Cooke’s Customer Care Program, the Home Builder’s Limited Warranty, federal, state, or local statute or law, common law, whether in law or equity, whether contingent or uncertain, whether latent or patent, whether known or unknown, and whether anticipated or not, in any manner involving, resulting from, arising out of, connected or traceable to, or in any way relating to, either directly or indirectly, to *Waikoloa-Wind*, including any and all claims asserted therein and any and all matters that were the subject of allegations and claims asserted therein. Notwithstanding the above, “*Waikoloa-Wind Class Claims*” do not include claims for bodily injury.

32. “***Waikoloa-Wind Class Counsel***” means Melvin Y. Agena of the Law Offices of Melvin Y. Agena, Glenn K. Sato of the Law Office of Glenn K. Sato, and Graham B. LippSmith and Celene Chan Andrews of LippSmith LLP.
33. “***Waikoloa-Wind Class Notice***” means the *Waikoloa-Wind* Court-approved forms of notice of the *Waikoloa-Wind* Settlement to the *Waikoloa-Wind* Class, which are attached as Exhibits 2-5.
34. “***Waikoloa-Wind Class Representative***” means Plaintiff Irene O. Britton.
35. “***Waikoloa-Wind Class Structure***” means any residential dwelling unit, whether a single-family home or individual townhome, located in the Wehilani Developments owned by a *Waikoloa-Wind* Class Member on the date of the Final Judgment. The *Waikoloa-Wind* Class Structures are listed at “Exhibit 6—*Waikoloa-Wind* Class Structures.”
36. “***Waikoloa-Wind Court***” means the Honorable Gary W.B. Chang of the Circuit Court of the First Circuit, State of Hawai‘i or the Judge of the Circuit Court of the First Circuit, State of Hawai‘i assigned to *Waikoloa-Wind* if not Judge Chang.
37. “***Waikoloa-Wind Settlement***” or “**Settlement**” means this Settlement and Release Agreement, including all Exhibits attached hereto, and the notices and other documents contemplated by this Settlement Agreement, and any amendments thereto.

38. “**Waikoloa-Wind Settlement Escrow**” means an escrow account established by the Administrator for the purpose of receiving the *Waikoloa-Wind Settlement Fund* and from which the Administrator will issue payments to effectuate this *Waikoloa-Wind Settlement*.
39. “**Waikoloa-Wind Settlement Fund**” means Castle & Cooke or its insurance carrier’s payment(s) totaling THREE HUNDRED NINETEEN THOUSAND, SIX HUNDRED SEVENTY-EIGHT DOLLARS, AND NINE CENTS (\$319,678.09), the allocation and related deadlines of which are further detailed in the Paragraphs below.
40. “**Waikoloa-Wind Settling Parties**” means, collectively, Plaintiffs, *Waikoloa-Wind Class Representatives*, the *Waikoloa-Wind Class*, and Castle & Cooke.
41. “**Wehilani Developments**” means the Wehilani housing developments known as Kikaha at Wehilani and Makana Kai at Wehilani located in Waikoloa, Hawai‘i that were developed by Castle & Cooke.
42. “**Person**” means an individual, corporation, partnership, limited partnership, limited liability company, joint venture, homeowners’ association, joint stock company, estate, legal representative, trust, trustee, association, unincorporated association, townhome association, government or any political subdivision or agency thereof, any business or legal entity, and such individual’s or entity’s spouse, significant other, domestic partner, heirs, devisees, predecessors, successors, representatives, and assigns.
43. “**Preliminary Approval Order**” means the order granting preliminary approval of the Settlement Agreement substantially in the form attached hereto as Exhibit 7 to be entered by the *Waikoloa-Wind Court*.
44. “**Releasing Parties**” means any and all Plaintiffs, Class Representatives, Class Members, or any Person releasing claims in this *Waikoloa-Wind Settlement*, including the Exhibits attached hereto.
45. “**Special Master**” means the neutral assigned by DPR, located in Honolulu, Hawai‘i, the qualified third party approved and appointed by the Court to resolve

any disputes between Persons seeking benefits provided in this *Waikoloa-Wind* Settlement.

46. The plural of any defined term shall include the singular, and the singular of any defined term shall include the plural, as the case may be.

#### **DENIAL OF ANY WRONGDOING AND LIABILITY**

47. Castle & Cooke denies the material factual allegations and legal claims asserted in *Waikoloa-Wind*, including, but not limited to, any and all charges of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in *Waikoloa-Wind*, including any amendments, cross actions, cross-claims, counterclaims or third-party complaints of any kind related to *Waikoloa-Wind*.

#### **SETTLEMENT CONSIDERATION AND BENEFITS**

48. *Waikoloa-Wind* Class Counsel have satisfied their due diligence duties to the Class and conducted a thorough examination and investigation of the law and facts, including discovery relating to the matters set forth in *Waikoloa-Wind* thereto resulting in this *Waikoloa-Wind* Settlement. *Waikoloa-Wind* Class Counsel and *Waikoloa-Wind* Class Representatives recognize and acknowledge the expense, effort, length of continued proceedings, and risk that would be necessary to prosecute *Waikoloa-Wind* against Castle & Cooke through additional proceedings, including class certification, motions for summary judgment or adjudication, trial, and appeals. *Waikoloa-Wind* Class Counsel also took into account the uncertain outcome and the risk of continued litigation, especially in complex actions such as *Waikoloa-Wind*, as well as the difficulties and delays inherent in such litigation. *Waikoloa-Wind* Class Counsel are mindful of the challenges in proving the claims and defeating the defenses at issue in *Waikoloa-Wind*. *Waikoloa-Wind* Class Counsel believe that this proposed *Waikoloa-Wind* Settlement confers substantial benefits upon the *Waikoloa-Wind* Class. Based on their evaluation of all of these

factors, *Waikoloa-Wind* Class Counsel have determined that this proposed Settlement is in the best interests of the Plaintiffs, *Waikoloa-Wind* Class Representatives, and *Waikoloa-Wind* Class. This proposed *Waikoloa-Wind* Settlement was a product of multiple arm's-length, adversarial settlement negotiations between *Waikoloa-Wind* Class Counsel and Defense Counsel that were overseen over an extended period of time by the Mediator.

49. Castle & Cooke or its insurance carrier(s) shall fund the *Waikoloa-Wind* Settlement Fund such that the aggregate amount of the *Waikoloa-Wind* Settlement Fund will be equal to THREE HUNDRED NINETEEN THOUSAND, SIX HUNDRED SEVENTY-EIGHT DOLLARS, AND NINE CENTS (\$319,678.09).
50. The *Waikoloa-Wind* Settlement Fund represents the total sums to be paid by or on behalf of Castle & Cooke to fully and finally resolve *Waikoloa-Wind*. Under no circumstances will Castle & Cooke or its respective insurers' payments exceed the amount of the *Waikoloa-Wind* Settlement Fund.
51. Castle & Cooke shall have no obligation to pay the *Waikoloa-Wind* Settlement Fund if the *Waikoloa-Wind* Settlement is not approved or otherwise voided before the Effective Date as provided for under the terms herein.
52. The Administrator shall establish the *Waikoloa-Wind* Settlement Escrow for receipt and administration of the *Waikoloa-Wind* Settlement Fund within three (3) business days after the Effective Date.
53. Castle & Cooke or its insurance carrier(s) shall fund the *Waikoloa-Wind* Settlement Fund into the *Waikoloa-Wind* Settlement Escrow the later to occur of (a) thirty (30) days after the Effective Date or (b) September 1, 2021.
54. Under this *Waikoloa-Wind* Settlement Agreement, and subject to Court approval, the Administrator shall distribute the *Waikoloa-Wind* Settlement Fund to make equal payments for each *Waikoloa-Wind* Class Structure to the *Waikoloa-Wind* Class Members, to pay the Administrator's costs, and to pay Attorney Fees, Costs, and All Other Expenses. Subject to Court approval, the *Waikoloa-Wind* Settlement Fund shall be allocated as follows:

- a. \$253,600.00 shall be divided into equal payments for each *Waikoloa-Wind* Class Structure that shall be paid to each *Waikoloa-Wind* Class Member who qualifies for the *Waikoloa-Wind* Settlement;
  - b. Up to \$2,400.00 shall be paid for Castle & Cooke's share of the Administrator's costs for the Notice Plan and payments administration;
  - c. Up to \$216,910.77 shall be paid for Attorney Fees, Costs, and All Other Expenses, comprised of:
    - i. Up to \$57,061.48 in *Waikoloa-Wind* Class Counsel's attorney fees (not to exceed 18% of the *Waikoloa-Wind* Settlement Fund);
    - ii. Up to \$2,380.60 in applicable General Excise Tax for the City and County of Honolulu on *Waikoloa-Wind* Class Counsel's attorney fees (not to exceed 4.712% of the attorney fees awarded);
    - iii. Up to \$1,736.01 for litigation costs; and
    - iv. Up to \$2,500.00 in total Class Representative incentive award.
  - d. If lesser amounts are awarded for any of the items in Paragraphs 54(b)-(c), those sums shall be added to the total amount set forth in Paragraph 54 (a) to be divided into equal payments for each *Waikoloa-Wind* Class Structure.
  - e. Class Counsel will advance an additional \$1,600.00 for the balance of the Administrator's estimated costs for the Notice Plan and payments administration. Class Counsel will also advance reasonable costs for Title Guaranty to compile and update data on the last known *Waikoloa-Wind* Class Structure owners, including their updated publicly available taxpayer addresses.
55. If there are any residual funds in the *Waikoloa-Wind* Settlement Fund for the *Waikoloa-Wind* Settlement that remain unallocated after the above payments are approved by the *Waikoloa-Wind* Court and made by the Administrator, those funds will be re-allocated as follows:

- a. First, to reimburse Class Counsel for any reasonable amounts they advance for the Notice Plan, payment administration, and/or Title Guaranty data updates pursuant to Part 54(e) above;
  - b. Second, to reimburse the Administrator for any reasonable amounts they incur should there be efforts beyond those provided herein to effectuate redemption of payments to *Waikoloa-Wind* Class Member(s); and
  - c. Third, to a local charitable entity or entities serving Hawai'i that are related to affordable housing issues and would qualify for *cy pres* distributions of the residue as approved by the Court.
56. Time is of the essence. Castle & Cooke agrees to reasonably assist in and not to impede or otherwise impair *Waikoloa-Wind* Class Counsel's ability to timely comply with the deadlines and requirements set forth herein and later set by either the *Waikoloa-Wind* Court or *Waikoloa-PEX Brass Fittings* Court.
57. Only the *Waikoloa-Wind* Class Members who own *Waikoloa-Wind* Class Structures as of the date of the Final Judgment will be entitled to *Waikoloa-Wind* Settlement payments.
58. All *Waikoloa-Wind* Class Structures will be automatically enrolled in the *Waikoloa-Wind* Settlement. Subject to additional information that the Administrator may need to verify ownership of any *Waikoloa-Wind* Class Structure as of the date of the Final Judgment, there shall be no claim forms required for a *Waikoloa-Wind* Class Members to qualify for *Waikoloa-Wind* Settlement payments.
59. If any *Waikoloa-Wind* Class Member sells, transfers, or loses ownership of any *Waikoloa-Wind* Structure in the *Waikoloa-Wind* Settlement after the Notice Plan is completed but prior to date of the Final Judgment, the *Waikoloa-Wind* Class Structure will remain in the *Waikoloa-Wind* Settlement, but only the owners of the *Waikoloa-Wind* Class Structures as of the date of the Final Judgment shall be entitled to the *Waikoloa-Wind* Class Member Settlement payments.

60. If any *Waikoloa-Wind* Class Member sells, transfers, or loses ownership of any *Waikoloa-Wind* Structure in the *Waikoloa-Wind* Settlement after the date of the Final Judgment, only the *Waikoloa-Wind* Class Member who is the owner of the *Waikoloa-Wind* Structure on the date of the Final Judgment shall be entitled to the *Waikoloa-Wind* Class Member Settlement payments. Owners who acquire any type of ownership interest in the *Waikoloa-Wind* Structure after the date of the Final Judgment shall not be entitled to the *Waikoloa-Wind* Class Member Settlement payments.

### **GLOBAL SETTLEMENT AND RELEASE**

61. This *Waikoloa-Wind* Settlement is intended to be a global settlement of all *Waikoloa-Wind* Class Claims.
62. Upon the Effective Date, and for and in consideration of Castle & Cooke or its insurance carrier funding the *Waikoloa-Wind* Settlement Fund, and all other provisions of this *Waikoloa-Wind* Settlement and subject to the limitations herein and the Exhibits attached hereto, Plaintiffs, the *Waikoloa-Wind* Class Representatives, and the *Waikoloa-Wind* Class release, acquit, and forever discharge Castle & Cooke from any and all *Waikoloa-Wind* Class Claims.
63. Castle & Cooke's payment of the Settlement *Waikoloa-Wind* Funds is in consideration for Plaintiffs, the *Waikoloa-Wind* Class Representatives, and the *Waikoloa-Wind* Class' obligations hereunder, including the release of their *Waikoloa-Wind* Class Claims. Plaintiffs, the *Waikoloa-Wind* Class Representatives, and the *Waikoloa-Wind* Class' release of their *Waikoloa-Wind* Class Claims is in consideration for Castle & Cooke's obligations hereunder, including payment of the *Waikoloa-Wind* Settlement Funds.
64. The releases provided for hereinabove are as a result of being a *Waikoloa-Wind* Class Member or a Person with a legal right to assert claims for a *Waikoloa-Wind* Class Member, the *Waikoloa-Wind* Court's approval process herein, and the occurrence of the Effective Date, and are not conditioned on receipt of

consideration by any particular member of the *Waikoloa-Wind* Class. Rather, it is the intent of the Settling Parties and this *Waikoloa-Wind* Settlement that the benefit is payments for *Waikoloa-Wind* Class Structures, and that said benefits and rights attach to the *Waikoloa-Wind* Class Structures. Persons who, after the date of the Preliminary Approval Order and up until the date of the Final Judgment, acquire legal rights to assert claims within the scope of this *Waikoloa-Wind* Settlement that belong initially to a Person who previously owned the *Waikoloa-Wind* Class Structure at issue shall take such rights subject to all of the terms, time periods, releases, caps, prohibitions against overlapping or double recoveries, and other provisions contained herein. Persons who acquire an interest in the *Waikoloa-Wind* Class Member Structures after the Effective Date will be bound by the releases provided in this Settlement. As set forth in Paragraph 114 below, Castle & Cooke shall have the right to record this Settlement (including a memorandum thereof) and/or Final Orders and Judgments with the Office of the Assistant Registrar of the Land Court of the State of Hawai‘i and/or the Bureau of Conveyances of the State of Hawai‘i against each *Waikoloa-PEX Bass Fittings* Class Member Structure. Under no circumstance shall Castle & Cooke have any liability or responsibility to any persons for any claims arising out of, relating to, or by virtue of the recordation of any documents pursuant to this Paragraph or Paragraph 114.

65. *Waikoloa-Wind* Class Counsel shall cooperate with Castle & Cooke to ensure that the releases set forth in the Final Approval Order and Final Judgment are given their full force and effect (including by seeking the inclusion of the releases in the Final Approval Order and Final Judgment) and to ensure that the Plaintiffs, *Waikoloa-Wind* Class Representatives, and *Waikoloa-Wind* Class Members comply with their obligations set forth in this *Waikoloa-Wind* Settlement.
66. It is the intent of the Settling Parties that, other than receiving the *Waikoloa-Wind* Settlement benefits provided herein, no *Waikoloa-Wind* Class Member shall recover, directly or indirectly, any additional compensation, consideration, or

sums for claims released by operation of this *Waikoloa-Wind* Settlement, including, without limitation, the claims settled and released hereinabove.

**APPOINTMENT, APPROVAL, AND OVERSIGHT OF ADMINISTRATOR AND  
NOTICE PLAN**

67. The Settling Parties propose the Notice Plan attached hereto at Exhibit 1.
68. The Administrator, along with Class Counsel, shall be responsible for, without limitation: (a) arranging for the mailing of the long form Notices in substantially the same form as the exemplar at Exhibit 2 hereto upon entry of the Preliminary Approval Order; (b) any advertising required for the Notice Plan using the publication Notices in substantially the same form as the exemplar at Exhibit 3; (c) using the short form Notices in the substantially same form as the exemplar at Exhibit 3; (d) arranging for the mailing of the Notices informing the *Waikoloa-Wind* Class of final approval with Forms W-9 and reminding them of benefits available in substantially the same form as the exemplars at Exhibit 4 hereto upon entry of the Final Judgment; (e) arranging for the mailing of reminder postcards prior to the deadline for submitting Forms W-9 in substantially the same form as the exemplar at Exhibit 5; (f) fulfilling other aspects of the Notice Plan; and (g) administering the *Waikoloa-Wind* Settlement escrow.
69. The Administrator shall design and implement a plan for notification of this Settlement that shall satisfy the due process rights of *Waikoloa-Wind* Class Members.
70. The Administrator (and any person retained by the Administrator) shall sign a confidentiality agreement which shall provide that the names, addresses, and other information about specific *Waikoloa-Wind* Settlement Class Members provided by *Waikoloa-Wind* Class Counsel, by individual *Waikoloa-Wind* Settlement Class Members, or by Castle & Cooke shall all be treated as confidential and shall be used by the Administrator only as required by this *Waikoloa-Wind* Settlement.

71. The Administrator or person(s) under the control and supervision of the Administrator shall mail the Notices to the *Waikoloa-Wind* Class using the same language and in substantially the same form as the Notices attached at Exhibits 2-5. The long form Notices at Exhibit 2 shall disclose to the *Waikoloa-Wind* Class the existence and nature of the action and the proposed *Waikoloa-Wind* Settlement, the procedures and deadlines for filing Objections and exclusions, the procedures for noticing intent to appear at the Final Approval Hearing, the effect of the *Waikoloa-Wind* Settlement, and the hearing date and location concerning whether the *Waikoloa-Wind* Settlement should be granted final approval and any application for Attorneys' Fees, Costs, and All Other Expenses.
72. The Administrator shall use name(s) of last known *Waikoloa-Wind* Class Structure owners compiled by Title Guaranty prior to preliminary approval and provided by Class Counsel. The Administrator shall process such data through the National Change of Address database (where a specific owner is known), the Coding Accuracy Support System and Delivery Point Validation system for the purpose of verifying and updating the addresses.
73. For the Notices sent to the *Waikoloa-Wind* Class Structures, the Administrator will also append the phrase "OR CURRENT HOMEOWNER" to the recipient lines in the addresses.
74. The Administrator shall mail the Notices by first-class postage prepaid U.S. Mail to *Waikoloa-Wind* Class Members at the addresses of the Class Structures and publicly available taxpayer addresses if they differ from the addresses of the Class Structures within ten (10) days of the entry of the Preliminary Approval Order.
75. The Notices shall each identify the address of the *Waikoloa-Wind* Class Structures that will qualify the owners on the date of the Final Judgment to receive *Waikoloa-Wind* Settlement payments.
76. The Notices shall be deemed received by the owners of the *Waikoloa-Wind* Class Structures where they were sent seven (7) days after mailing. In the event that the United States Postal Service returns Notices to the Administrator with a

forwarding address for the recipient, the Administrator shall re-mail the Notice to that address and the forwarding address shall be deemed the updated address for that *Waikoloa-Wind* Class Member. In the event that the United States Postal Service returns Notices to the Administrator because the address of the recipient is no longer valid and the name of the *Waikoloa-Wind* Class Member is known, the Administrator shall perform a standard skip trace in an effort to attempt to ascertain the current address of the particular *Waikoloa-Wind* Class Member in question and, if such an address is ascertained, the Administrator will promptly re-send the Notice; if the Administrator cannot obtain an updated address for that *Waikoloa-Wind* Class Member, the Administrator shall re-mail that Notice to the Class Structure. In any event, the Notice shall be deemed received by the *Waikoloa-Wind* Class Member once the Administrator mails it a second time.

77. The Administrator shall also provide a copy of the Notice to any *Waikoloa-Wind* Class Member who requests the Notice.
78. The Administrator shall also update the *Waikoloa-Wind* website ([www.waikoloawind.com](http://www.waikoloawind.com)) to include the various Notice Plan documents, the pertinent *Waikoloa-Wind* Class Member response dates, and the pertinent hearing dates for processing the *Waikoloa-Wind* Settlement.
79. Within fourteen (14) days after the deadline to mail the Notice to the *Waikoloa-Wind* Class Members, the Administrator shall provide declarations to the *Waikoloa-Wind* Court, with a copy to *Waikoloa-Wind* Class Counsel and Defense Counsel, attesting to the measures undertaken to provide the Notice to the *Waikoloa-Wind* Class.
80. Additional details regarding the Notice Plan and the dissemination of Notices for the *Waikoloa-Wind* Class are provided in the Notice Plan at Exhibit 1.
81. Upon the Court's issuance of the Final Judgment, Class Counsel shall provide to the Administrator an updated list of the name(s) with the last known *Waikoloa-Wind* Class Structure owners, including updated publicly available taxpayer addresses for the *Waikoloa-Wind* Class Structures, as of the date of the Final

Judgment compiled by Title Guaranty. For any addresses that differ from those previously provided prior to preliminary approval, the Administrator shall process such data through the National Change of Address database (where a specific owner is known), the Coding Accuracy Support System and Delivery Point Validation system for the purpose of verifying and updating the addresses. This list of owners provided upon Final Judgment shall constitute the final list of *Waikoloa-Wind* Class Members for the purposes of distributing payments.

82. Upon the Effective Date, the Administrator shall be authorized to establish accounts with financial institutions (each, an “Account”) for the *Waikoloa-Wind* Settlement Fund escrow. All Accounts established under this Agreement shall be deposit accounts with commercial banks with capital exceeding \$1 billion or with an FIR rating of Investment Grade or higher.
83. Within ten (10) days of the Effective Date, the Administrator will issue notices of final approval and Forms W-9 substantially in the form of the exemplar attached at Exhibit 4 to the *Waikoloa-Wind* Class Members by first-class postage prepaid U.S. Mail to the *Waikoloa-Wind* Class Members identified upon Final Judgment.
84. Within thirty (30) days of issuing the notices of final approval and Forms W-9, the Administrator will issue reminder notices substantially in the form of the exemplar at Exhibit 5 to the *Waikoloa-Wind* Class Members by first-class postage prepaid U.S. Mail to the *Waikoloa-Wind* Class Members identified upon Final Judgment who have not submitted their Forms W-9 as of that date.
85. *Waikoloa-Wind* Class Members shall have up to sixty (60) days from the Administrator’s mailing of the notices of final approval to submit their Forms W-9 to the Administrator. *Waikoloa-Wind* Class Members shall be allowed to submit their Forms W-9 to the Administrator either (i) by mail postmarked no later than sixty (60) days from the date of the notices of final approval; or (ii) online no later than sixty (60) days from the date of the notices of final approval by a secure means to be provided by the Administrator on the *Waikoloa-Wind* website. If any *Waikoloa-Wind* Class Member submits only one W-9 in either the *Waikoloa-Wind*

Settlement administration process or the *Waikoloa-Wind* Settlement administration process, then that Class Member's W-9 will be deemed effective for both the *Waikoloa-Wind* and *Waikoloa-Wind* Settlements. Unless the Court approves modification of the deadline for *Waikoloa-Wind* Class Members to submit their Forms W-9, *Waikoloa-Wind* Class Members who fail to submit their Forms W-9 by sixty (60) days from the date of the notices of final approval will be deemed to have waived and forfeited their payments for the *Waikoloa-Wind* Settlement.

86. After the expiration of the Form W-9 submission deadline but in no event later than ninety (90) days from the date of the notices of final approval, the Administrator shall issue settlement payments and all required tax forms to the *Waikoloa-Wind* Class Members identified upon Final Judgment and who provided complete, accurate, and undisputed Forms W-9 for the qualifying *Waikoloa-Wind* Class Structures.
87. For Forms W-9 that are incomplete, inaccurate, or disputed (e.g., names on Forms W-9 differ from names on *Waikoloa-Wind* Class Members identified upon Final Judgment), the Administrator shall withhold payments for those *Waikoloa-Wind* Structures pending resolution of those disputes and issue written deficiency letters seeking additional information. Persons seeking said payments shall provide the Administrator and/or *Waikoloa-Wind* Class Counsel with additional information proving that he, she, or it was the owner of the *Waikoloa-Wind* Class Structure on the date of the Final Judgment before any payments will issue for that *Waikoloa-Wind* Class Structure. If a requested *Waikoloa-Wind* Settlement payment is denied, the Administrator will inform that Person and *Waikoloa-Wind* Class Counsel in writing of the denial of the claim and the reasons for the denial and delay issuing a payment for the *Waikoloa-Wind* Class Structure until the later of (1) the expiration of that Person's deadline to appeal or (2), if there is a timely appeal of the denial, the Special Master's final determination of the appeal. Any appeal from a denial shall be sent by U.S. Mail to the Administrator and postmarked within thirty (30) days of the date indicated on the Administrator's denial. Any timely appeals shall

be exclusively adjudicated by the Special Master who shall have the sole and exclusive authority to independently determine the validity of the denial. The Administrator shall give Settling Parties notice of all appeals, and the Settling Parties shall have a reasonable opportunity to present statements and exhibits to the Special Master setting forth their respective positions about whether the Person should be deemed eligible or ineligible for inclusion in the *Waikoloa-Wind* Settlement. Submissions to the Special Master shall be limited to no more than five (5) pages for each party involved in a qualification dispute for any given *Waikoloa-Wind* Class Structure, but the Special Master shall have the sole discretion to increase the page limitations for any given dispute. All decisions of the Special Master within his or her jurisdiction pursuant to this Settlement Agreement shall be final and binding on all the Settling Parties, and there is no right to appeal the Special Master's decisions on payments to the Waikoloa-PEX Court.

88. If any checks are uncashed or returned to the Administrator with no forwarding address information after ninety (90) days from their issuance, the Administrator will make one more attempt to locate the *Waikoloa-Wind* Class Members to whom uncashed or returned checks were issued by processing their data again through standard skip traces, the National Change of Address database (where a specific owner is known), the Coding Accuracy Support System, and Delivery Point Validation system for the purpose of updating those *Waikoloa-Wind* Class Members' addresses. If new addresses are discovered, the Administrator will mail written requests to all such addresses requiring that the *Waikoloa-Wind* Class Members verify the correct address to which the Administrator shall re-mail the check. If *Waikoloa-Wind* Class Members verify addresses to receive their checks within thirty (30) days of the date of the verification request, then the Administrator shall re-mail the checks one time to the *Waikoloa-Wind* Class Members at those addresses. However, the Administrator shall not re-mail checks to *Waikoloa-Wind* Class Members for whom the Administrator discovers no new

address information, to *Waikoloa-Wind* Class Members for whom the Administrator discovers new address information but receives no timely responses to the verification requests, or to *Waikoloa-Wind* Class Members who verify address information but whose checks remain uncashed or are returned with no forwarding address information.

89. All checks issued by the Administrator shall become void if not cashed within one hundred eighty (180) days of the date of issuance. At the end of that period, all uncashed sums shall be treated as residual funds to be administered pursuant to Paragraph 55.

**NO LIABILITY FOR CONDUCT OF ADMINISTRATOR OR SPECIAL MASTER**

90. Castle & Cooke and Defense Counsel shall have no responsibility or liability of any kind whatsoever with respect to retaining the Administrator or Special Master. Plaintiffs, the *Waikoloa-Wind* Class Representatives, the *Waikoloa-Wind* Class, *Waikoloa-Wind* Class Counsel, Castle & Cooke, and Defense Counsel shall have no responsibility or liability of any kind whatsoever related to any conduct or determinations of the Administrator and/or Special Master, or any of their agents, whether or not wrongful, negligent, reckless or intentional, based on any theory of law or equity, with respect to any matter, including, but not limited to, the performance or failure to perform their duties as set forth or undertaken in accordance with this Settlement.
91. Plaintiffs, the *Waikoloa-Wind* Class Representatives, the *Waikoloa-Wind* Class, *Waikoloa-Wind* Class Counsel, Castle & Cooke, and Defense Counsel reserve all claims and rights against Administrator and/or Special Master for any failure(s) to fulfill their responsibilities and duties.

**PRELIMINARY APPROVAL SUBMISSIONS**

92. The Settling Parties agree that, if necessary to effectuate the Settlement, certification of the *Waikoloa-Wind* Class for the purpose of *Waikoloa-Wind* Settlement is appropriate under Hawaii Rule of Civil Procedure 23.
93. After execution of the *Waikoloa-Wind* Settlement, *Waikoloa-Wind* Class Counsel will submit the *Waikoloa-Wind* Settlement together with its Exhibits and any legal memoranda in support of the *Waikoloa-Wind* Settlement to the *Waikoloa-Wind* Court and will request that the *Waikoloa-Wind* Court issue a Preliminary Approval Order substantially in the form attached at Exhibit 7. The form of the requested Order shall be for preliminary approval of the *Waikoloa-Wind* Settlement, approval of the Notice Plan, and approval of the Notices at Exhibits 2-5.

#### **OBJECTIONS BY CLASS MEMBERS**

94. Any *Waikoloa-Wind* Class Member who intends to object to the fairness, reasonableness, and adequacy of the Settlement (“Objections”) must mail a timely written Objection to the Administrator by first-class mail with postage paid. The Administrator will then serve any Objections received on *Waikoloa-Wind* Class Counsel, Defense Counsel, and all other parties due notice in this case by U.S. Mail. The Administrator will then also file any such Objections with the Court by filing such documents directly or arranging for such documents to be filed by *Waikoloa-Wind* Class Counsel or Defense Counsel. Objections must be postmarked no later than thirty (30) days after the date of the mailing of the Notice. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether an Objection has been timely submitted. In his/her/its Objections, an objecting *Waikoloa-Wind* Class Member must:
- a. Set forth his/her/its full name, current address, and telephone number;
  - b. Identify the address of the Structure giving rise to standing to make an Objection and establish the sender’s status as a *Waikoloa-Wind* Class Member, if the sender’s current address is different;

- c. Identify the owner of the *Waikoloa-Wind* Class Structure;
  - d. State that the objector has reviewed the definitions of the Class and understands that he/she/it is a member of the *Waikoloa-Wind* Class and has not opted out of the *Waikoloa-Wind* Class;
  - e. Set forth a complete statement of all legal and factual bases for any Objection that the objector wishes to assert; and
  - f. Provide copies of any documents that the objector wishes to submit relating to his/her/its position.
95. In addition to the requirements set forth in Paragraph 94 above, objecting *Waikoloa-Wind* Class Members must state in writing whether he/she/it intends to appear at the Final Approval Hearing(s) either with or without separate counsel. No Class Member shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) or to object to the *Waikoloa-Wind* Settlement, and no written Objections or briefs submitted by any *Waikoloa-Wind* Class Member shall be received or considered by the *Waikoloa-Wind* Court at the Final Approval Hearing, unless written Notice of the *Waikoloa-Wind* Class Member's intention to appear at the Final Approval Hearing and copies of any written Objections or briefs were postmarked or served on the Administrator on or before thirty (30) days after the date of the mailing of the Notice, which deadline shall be set forth in the FAQ, Publication Notice, Settlement Notice, and Summary Notice.
96. Within ten (10) days after the Court-ordered deadline for timely and properly objecting to the *Waikoloa-Wind* Settlement, the Administrator shall provide to Class Counsel and Defense Counsel any Objections it receives.
97. In addition to its obligations to serve and file timely Objections received, the Administrator will also serve any Notices of a *Waikoloa-Wind* Class Member's intention to appear at the Final Approval Hearing and associated briefing received on *Waikoloa-Wind* Class Counsel, Defense Counsel, and all other parties due notice in this case by U.S. Mail. The Administrator will also file any such Notices

of a *Waikoloa-Wind* Class Member's intention to appear at the Final Approval Hearing and associated briefing with the *Waikoloa-Wind* Court by filing such documents directly or arranging for such documents to be filed by *Waikoloa-Wind* Class Counsel or Defense Counsel. *Waikoloa-Wind* Class Members who fail to serve timely written objections in the manner specified above shall be deemed to have waived any Objections and shall be foreclosed from making any Objection (whether by appeal or otherwise) to the *Waikoloa-Wind* Settlement.

98. In the event of any appeals from the Final Approval Order and/or Final Judgment, *Waikoloa-Wind* Class Counsel will be solely responsible for responding to objectors and defending the *Waikoloa-Wind* Court's Final Approval Order and/or Final Judgment at their own costs. Castle & Cooke will join and/or not oppose *Waikoloa-Wind* Class Counsel's defense of the Final Approval Order and/or Final Judgment.
99. The Settling Parties agree that they will not solicit, facilitate, or assist in any way, Objections by potential or actual *Waikoloa-Wind* Class Members. The Settling Parties recognize that they have an obligation to support the *Waikoloa-Wind* Settlement and to seek the *Waikoloa-Wind* Court's approval of its terms.

#### **EXCLUSIONS/OPT OUTS FROM THE SETTLEMENT**

100. Any member of the *Waikoloa-Wind* Settlement Class shall have the right to exclude him/her/itself (or opt out) of the *Waikoloa-PEX* Settlement Class by timely submitting a written request for exclusion to the Administrator's address listed in the Notice. The request for exclusion must provide the following information:
  - a. Set forth his/her/its full name, current address, and telephone number;
  - b. Identify the address to establish the sender's status as a *Waikoloa-Wind* Class Member, if the sender's current address is different;
  - c. Identify the owner of the *Waikoloa-Wind* Class Structure; and
  - d. Indicate a request to be excluded from the *Waikoloa-Wind* Settlement.

101. *Waikoloa-Wind* Class Members' written requests for exclusion must be postmarked no later than thirty (30) days after the date of the mailing of the Notice, which deadline shall be set forth in the FAQ, Publication Notice, Settlement Notice, and Summary Notice.
102. Within ten (10) days after the Court-ordered deadline for timely and properly opting out from the *Waikoloa-Wind* Settlement, the Administrator shall provide to Class Counsel and Defense Counsel a list of the names and addresses of the members of the *Waikoloa-Wind* Class who timely excluded themselves from the *Waikoloa-Wind* Settlement.
103. This *Waikoloa-Wind* Settlement shall be voidable at Castle & Cooke's sole discretion, and all obligations herein, including in the attached Exhibits, and can be cancelled and vacated if either (a) the number of exclusions from the *Waikoloa-Wind* Class equals or exceeds 50 Class Structures; or (b) there is no final order approving the settlement of and entry of a final judgment in *Waikoloa-Wind*.
104. If this *Waikoloa-Wind* Settlement is voided under the above Paragraph, the Settling Parties and *Waikoloa-Wind* will be returned to the status quo ante, Castle & Cooke will have no obligation to fund the *Waikoloa-Wind* Settlement Fund, and Castle & Cooke will have no obligation to pay for any Attorneys' Fees, Costs, and All Other Expenses incurred by any of the other Settling Parties in connection with the *Waikoloa-Wind* Settlement.

#### **FINAL APPROVAL HEARING**

105. The *Waikoloa-Wind* Court shall set and conduct the Final Approval Hearing to determine fairness and final approval of the Settlement, along with the amount properly payable for Attorneys' Fees, Costs and All Other Expenses.
106. Fourteen (14) days prior to the date set for the Final Approval Hearing (or if the Court orders a different filing deadline), *Waikoloa-Wind* Class Counsel and Castle & Cooke shall file their briefs in support of *Waikoloa-Wind* Settlement approval. To the extent they wish to respond to any Objections made by *Waikoloa-Wind*

Class Members, *Waikoloa-Wind* Class Counsel and Castle & Cooke shall concurrently file those responses. The Settling Parties shall also present a Final Approval Order and Final Judgment substantially in the forms attached, respectively, at Exhibits 8-9.

**ATTORNEY FEES, COSTS, AND ALL OTHER EXPENSES**

107. Castle & Cooke agrees that any amounts awarded by the *Waikoloa-Wind* Court to *Waikoloa-Wind* Class Counsel for Attorney Fees, Costs, and All Other Expenses, including *Waikoloa-Wind* Class Representative incentive awards, shall be paid out of the Settlement Fund, so long as the amount awarded by the *Waikoloa-Wind* Court does not exceed the sum of \$63,678.09 and the *Waikoloa-Wind* Court's order is otherwise consistent with the *Waikoloa-Wind* Settlement. This amount does not include the costs for the *Waikoloa-Wind* Class Member payments, Administration costs, Notice Plan costs, and/or Special Master costs that will be paid out of the *Waikoloa-Wind* Settlement Fund. The amounts paid for Attorney Fees, Costs, and All Other Expenses, shall be comprised of:
- a. Up to \$57,061.48 in *Waikoloa-Wind* Class Counsel's attorney fees (not to exceed 18% of the *Waikoloa-Wind* Settlement Fund);
  - b. Up to \$2,380.60 in applicable General Excise Tax for the City and County of Honolulu on *Waikoloa-Wind* Class Counsel's attorney fees (not to exceed 4.712% of the attorney fees awarded);
  - c. Up to \$1,736.01 for litigation costs; and
  - d. Up to \$2,500.00 in total Class Representative incentive award in recognition of the substantial time and effort each expended in reviewing pleadings, disruption in their homes for analysis, participating in investigations, and monitoring and advising on the settlement proceedings.
108. Castle & Cooke does not oppose, will not oppose, and will not encourage or assist any third party in opposing *Waikoloa-Wind* Class Counsel's request for Attorney Fees, Costs, and All Other Expenses in an amount of up to of \$216,910.77, nor

will Castle & Cooke contest or negatively comment on the reasonableness of the amount as long as the request is consistent with the *Waikoloa-Wind* Settlement and such fees, costs, and expenses comport with applicable laws.

109. Fourteen (14) days prior to the date set for the Final Approval Hearing (or if the Court orders a different filing deadline), *Waikoloa-Wind* Class Counsel shall file their briefs in support of their requests for any awards of Attorney Fees, Costs, and All Other Expenses.
110. Any additional attorney fees, costs, or other expenses incurred by *Waikoloa-Wind* Class Counsel in appeals of the Final Approval Order and/or Final Judgment may not be recovered from Castle & Cooke. However, *Waikoloa-Wind* Class Counsel may file a subsequent request for additional attorney fees, costs, or other expenses incurred on any appeals to be paid from the *Waikoloa-Wind* Settlement Fund.
111. Any attorney fees, costs, or other expenses incurred by Castle & Cooke in any appeals of the Final Approval Order and/or Final Judgment are the sole responsibility of Castle & Cooke. Castle & Cooke shall not seek to recover such attorney fees, costs, or other expenses from any other Settling Parties or the *Waikoloa-Wind* Settlement Fund.
112. Any Attorneys' Fees, Costs, and Other Expenses awarded by the *Waikoloa-Wind* Court to *Waikoloa-Wind* Class Counsel shall be paid out of the *Waikoloa-Wind* Settlement Fund to *Waikoloa-Wind* Class Counsel within ten (10) days of the funding of the *Waikoloa-Wind* Settlement Fund.

**CASTLE & COOKE'S COMMUNICATIONS WITH WAIKOLOA-PEX BRASS  
FITINGS CLASS MEMBERS**

113. In the event Castle & Cooke is contacted by *Waikoloa-Wind* Class Members about the *Waikoloa-Wind* Settlement, Castle & Cooke may communicate to *Waikoloa-Wind* Class Members its support of the *Waikoloa-Wind* Settlement. However, because there are potential attorney-client communication concerns, and in an

abundance of caution, Castle & Cooke shall respond, if at all, to *Waikoloa-Wind* Class Members in a manner materially consistent with the following:

“The terms of the settlement were negotiated at arm’s-length and in good faith by the parties and reflects a good faith resolution of disputed claims. The settlement is not an admission of any negligence, fault or wrongdoing on the part of Castle & Cooke. If you have any question regarding the details of the Settlement, please log onto the settlement website at [www.waikoloawind.com](http://www.waikoloawind.com), contact CPT Group, Inc., the Claims Administrator, at [Claims Administrator’s Telephone Number to be provided], or contact Class Counsel through the Law Offices of Melvin Y. Agena, (808) 536-6647.”

#### **RECORDING OF SETTLEMENT**

114. Castle & Cooke shall have the right to record in the Office of the Assistant Registrar of the Land Court of the State of Hawai‘i and/or the Bureau of Conveyances of the State of Hawai‘i, as applicable, an executed copy of this *Waikoloa-Wind* Settlement (including a memorandum thereof), the Final Approval Order, and/or the Final Judgment against each *Waikoloa-Wind* Class Structure of the *Waikoloa-Wind* Settlement (collectively, “Settlement Participant Structure”) and all terms and conditions of this *Waikoloa-Wind* Settlement, including the release, acquittal, and discharge of Castle & Cooke set forth herein, shall run with the land and shall be binding upon all parties having or acquiring any right, title, or interest in or to any Settlement Participant Structure or any portion thereof without the execution, delivery, or recordation of any further instrument, the acquisition of any such right or interest in any Settlement Participant Structure shall be deemed to constitute the acceptance of all terms and conditions of this Settlement such by such person or entity, and upon the transfer of any such right or interest in any Settlement Participant Structure, the same shall be subject to and

the transferee shall assume and be bound and obligated to observe all of the terms and conditions contained in this Settlement. A schedule of the tax map key numbers and addresses of all *Waikoloa-Wind* Class Structures is attached hereto as Exhibit 6. Under no circumstances shall Castle & Cooke have any liability or responsibility to any persons for any claims arising out of, relating to, or by virtue of the recordation of any documents pursuant to this Paragraph.

### **BEST EFFORTS**

115. The Settling Parties and their counsel agree to cooperate fully with one another and to use their best efforts to effectuate the Settlement, including without limitation in seeking preliminary and final *Waikoloa-Wind* Court approval of the *Waikoloa-Wind* Settlement, carrying out the terms of the *Waikoloa-Wind* Settlement, and promptly agreeing upon and executing all such other documentation as may be reasonably required to obtain final approval by the Court of the *Waikoloa-Wind* Settlement and to carry out the terms of the *Waikoloa-Wind* Settlement.

### **MISCELLANEOUS PROVISIONS**

116. The Settling Parties intend the *Waikoloa-Wind* Settlement to be a final and complete resolution of all disputes between them with respect to *Waikoloa-Wind*. The *Waikoloa-Wind* Settlement is comprised of claims that are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties agree that the consideration provided to the *Waikoloa-Wind* Class and the other terms of the *Waikoloa-Wind* Settlement were negotiated at arm's-length and in good faith by the Settling Parties, with the assistance of the Mediator, and reflect a *Waikoloa-Wind* Settlement that was reached voluntarily after consultation with competent legal counsel.
117. Neither this *Waikoloa-Wind* Settlement, nor any act performed or document executed pursuant to or in furtherance of this *Waikoloa-Wind* Settlement, may be

deemed to be or may be used as an admission of, or evidence of, the validity of any of the *Waikoloa-Wind* Class Claims, or of any wrongdoing or liability of Castle & Cooke; or is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any Settling Parties in any civil, or administrative proceeding in any court, administrative agency or other tribunal. Castle & Cooke may file this *Waikoloa-Wind* Settlement, the Final Approval Order, and/or Final Judgment in any action that may be brought against it in order to support any defense or counterclaim, including without limitation those based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

118. All agreements made and orders entered during the course of *Waikoloa-Wind* relating to the confidentiality of information will survive this *Waikoloa-Wind* Settlement.
119. Any and all Exhibits to this *Waikoloa-Wind* Settlement are material and integral parts hereof and are fully incorporated herein by this reference.
120. This *Waikoloa-Wind* Settlement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest and, if the *Waikoloa-Wind* Court approval is required, subject to the *Waikoloa-Wind* Court approval.
121. This *Waikoloa-Wind* Settlement and any Exhibits attached hereto constitute the entire agreement among the Settling Parties, and no representations, warranties, or inducements have been made to any Settling Party concerning this *Waikoloa-Wind* Settlement or its Exhibits other than the representations, warranties, and covenants covered and memorialized in such documents. Except as otherwise provided herein, the Settling Parties will bear their own respective attorney fees and costs.
122. Each counsel or other Person executing this *Waikoloa-Wind* Settlement or any of its Exhibits on behalf of any Settling Party hereby warrants that such Person has the full authority to do so.

123. This *Waikoloa-Wind* Settlement may be executed by facsimile and in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. A complete set of original signatures and counterparts will be filed with the *Waikoloa-Wind* Court.
124. This *Waikoloa-Wind* Settlement will be binding upon, and inure to the benefit of, the respective successors and assigns of the Settling Parties.
125. The *Waikoloa-Wind* Court shall retain continuing and exclusive jurisdiction over the Settling Parties and all *Waikoloa-Wind* Class Members, all Persons who contend they are *Waikoloa-Wind* Class Members, and over the administration and enforcement of the *Waikoloa-Wind* Settlement. Any disputes or controversies arising with respect to the interpretation, enforcement, or implementation of this *Waikoloa-Wind* Settlement must be made by motion to the *Waikoloa-Wind* Court.
126. The Settling Parties agree that Castle & Cooke is in no way liable for any taxes *Waikoloa-Wind* Class Counsel, Plaintiffs, the *Waikoloa-Wind* Class Representatives, *Waikoloa-Wind* Class Members, or others may be required to pay as a result of the receipt of *Waikoloa-Wind* Settlement benefits.
127. No *Waikoloa-Wind* Class Member or other Person shall have any claim against Castle & Cooke, Defense Counsel, Plaintiffs, the Released Parties, the Administrator, the Special Master, or any agent designated by Counsel for the *Waikoloa-Wind* Settlement Class based on any eligibility determinations, distributions, or payments made in accordance with the *Waikoloa-Wind* Settlement or based on the payments made or other relief provided and made substantially in accordance with this *Waikoloa-Wind* Settlement or with further Orders of the *Waikoloa-Wind* Court or any appellate court.
128. The Settling Parties hereby agree and stipulate to stay all proceedings and any appeals in *Waikoloa-Wind* until the approval of this *Waikoloa-Wind* Settlement has been finally determined.
129. None of the Settling Parties, or their respective counsel, will be deemed the drafter of this *Waikoloa-Wind* Settlement or its Exhibits for purposes of construing the

provisions thereof. The language in all parts of this *Waikoloa-Wind* Settlement and its Exhibits will be interpreted according to its fair meaning and will not be interpreted for or against any of the Settling Parties as the drafter thereof.

130. Upon the Effective Date, all interlocutory orders in *Waikoloa-Wind* not pertaining to the *Waikoloa-Wind* Settlement and pertaining only to the *Waikoloa-Wind* Class Claims against Castle & Cooke shall be vacated, *nunc pro tunc*.
131. This *Waikoloa-Wind* Settlement shall have no effect on nor otherwise compromise the Settling Parties' respective positions insofar as they have any claims or appeals against Persons who are not subject to or participating in the *Waikoloa-Wind* Settlement.
132. This *Waikoloa-Wind* Settlement and any Exhibits hereto will be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Hawai'i and no other location without giving effect to, and irrespective of any other State's or jurisdiction's, choice-of-law principles. The *Waikoloa-Wind* Court, and only the *Waikoloa-Wind* Court, shall have exclusive jurisdiction to enforce or resolve any disputes related to the *Waikoloa-Wind* Settlement and Exhibits, including but not limited to (i) any and all disputes arising out of applications for, claims concerning, claims related to, and/or allocations of Attorney Fees, Costs, and All Other Expenses by *Waikoloa-Wind* Class Counsel and/or before the *Waikoloa-Wind* Court; and (ii) any and all disputes arising out of claims by any other attorneys seeking attorney fees, costs, other expenses, or awards resulting from or in any way related to or arising out of *Waikoloa-Wind*, the *Waikoloa-Wind* Settlement, and/or the Court's award of Attorney Fees, Costs, and All Other Expenses from the *Waikoloa-Wind* Settlement Fund.
133. If this *Waikoloa-Wind* Settlement is not approved by the *Waikoloa-Wind* Court or the *Waikoloa-Wind* Settlement is terminated, voided, or fails to become effective in accordance with the terms of the Settlement, the Settling Parties will be restored to their respective positions in *Waikoloa-Wind* as of September 12, 2018. In such event, the terms and provisions of the *Waikoloa-Wind* Settlement will have no

further force and effect and shall not be used in *Waikoloa-Wind* or in any other proceeding for any purpose and any Judgment or Order entered by the *Waikoloa-Wind* Court in accordance with the terms of this Settlement will be treated as vacated, *nunc pro tunc*. None of the Settling Parties shall have an obligation to pay for any attorneys' fees, costs, or other expenses incurred by any of the other Settling Parties in connection with the terminated, voided, or otherwise ineffective *Waikoloa-Wind* Settlement. No order of the *Waikoloa-Wind* Court or modification or reversal on appeal of any order of the *Waikoloa-Wind* Court concerning any award of attorney fees, expenses, or costs to *Waikoloa-Wind* Class Counsel will constitute grounds for cancellation or termination of this *Waikoloa-Wind* Settlement.

IN WITNESS WHEREOF, the Settling Parties have duly executed this *Waikoloa-Wind* Settlement Agreement and Release as of the below dates.

By: \_\_\_\_\_  
Irene O. Britton  
Class Representative

DATED: March \_\_, 2021

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Castle & Cooke Waikoloa, LLC

DATED: March \_\_, 2021

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Castle & Cooke Homes Hawaii, Inc.

DATED: March \_\_, 2021

APPROVED AS TO FORM:

By: \_\_\_\_\_  
MELVIN Y. AGENA  
GLENN K. SATO  
GRAHAM B. LIPPSMITH  
CELENE CHAN ANDREWS  
Attorneys for Plaintiffs and the Class

DATED: March \_\_, 2021

By: \_\_\_\_\_  
LENNES N. OMURO  
Attorneys for Defendant

DATED: March \_\_, 2021