

TIMOTHY J. HOGAN 5312-0
ATTORNEY AT LAW
1050 Bishop Street, No. 433
Honolulu, Hawaii 96813
Tel. No. (808) 382-3698
Fax No. (808) 356-1682
E-mail: tjh@timhogan.com

Attorney for DAVID C. FARMER, Chapter 11 Trustee

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re:

HAWAII OUTDOOR TOURS, INC.
dba Naniloa Volcanoes Resort and
Naniloa Volcanoes Golf Club,

Debtor.

Bk. No. 12-02279
(Chapter 11)

Judge: The Hon. Robert J. Faris

**STIPULATION FOR (1) PARTIAL PAYMENT OF ALLOWED UTILITY
CLAIMS AND (2) COMPROMISE AND SETTLEMENT OF STATE TAX
CLAIM ; EXHIBIT "A"**

This stipulation is entered into between David C. Farmer, the duly appointed Chapter 11 Trustee (the "Trustee"), First-Citizens Bank & Trust Company, a North Carolina commercial bank ("First-Citizens"), the State of Hawaii ("State"), and the Official Committee of Unsecured Creditors ("Committee"), by and through their respective undersigned counsel.

WHEREAS:

A. On November 26, 2013, the Court entered an Order Granting Trustee's Motion for Order Authorizing: (I) Sale of Hotel Assets, Free and Clear of Liens and Encumbrances; (II) Assignment of Unexpired State of Hawaii General Lease No. S-5844 of Non-Residential Real Property Free and Clear of Liens and Encumbrances; and (III) Partial Distribution of Sales Proceeds (the "Sale Order") (Dkt. # 569), approving the sale of the Naniloa Volcanoes Resort and Naniloa Volcanoes Golf to Tower Development Inc. and Wyland Hilo Hotel LLC or their designee ("Buyer") in accordance with the Purchase and Sale Agreement ("PSA") dated November 9, 2013.

B. Pursuant to the Sale Order, and in accordance with Section 2.3 of the PSA, Buyer deposited into Escrow, among other sums, the sum of One Million Five Hundred Thousand and no/100 Dollars (\$1,500,000.00) ("Cure Amounts"), as payment to cure the monetary defaults under the General Lease S-5844, such as unpaid real property taxes, unpaid State of Hawaii General Excise Tax and Transient Accommodation Tax, delinquent lease rent, and prorated lease rent (collectively "Paid Cure Amounts").

C. Following distribution by Escrow of payments for the Paid Cure Amounts, a balance of \$270,225.59 remains from the Cure Amounts of which \$245,000.00 will be paid to utility claimants ("Utility Claims Fund") to

cure other monetary defaults under the Ground Lease consisting of unpaid utility claims against the Debtor, and \$25,225.59 ("Tax Payment") will be paid to the State of Hawaii, Department of Taxation, in settlement of the State's priority tax claim.

D. The total amount of unpaid utility claims is \$326,108.36 ("Allowed Utility Claims"), as shown on Exhibit "A" attached hereto and incorporated by this reference.

E. Pursuant to the Sale Order, the Utility Claims Fund should be distributed to the Allowed Utility Claims on a pro rata basis of approximately 75% of their respective claims. The pro rata computation is based on the total amount of Utility Claims Fund divided by the total amount of Allowed Utility Claims, as shown on Exhibit "A" attached hereto.

F. The State's priority tax claim with accrued interest through November 20, 2013 is \$58,466.41.

G. Payment of the Tax Payment will resolve and settle any remaining tax claims of the State in this Bankruptcy Case.

H. The Utility Claims Fund is currently held by Title Guaranty Escrow Services, Inc., Escrow Number 210-13036148 (the "Escrow").

I. Escrow also holds the sum of \$250,000.00 constituting the Unsecured Creditor Fund established by the Sale Order.

NOW, THEREFORE, the parties hereto agree and stipulate as follows:

1. Escrow is hereby authorized and directed to pay the Allowed Utility Claims in their respective amounts as shown on Exhibit "A."

2. Escrow is hereby authorized and directed to pay the State of Hawaii Department of Taxation the remaining balance of the Cure Amounts in the sum of \$25,225.59 (the "Tax Payment").

3. Payment of the Tax Payment shall resolve and settle any tax claims of the State in this Bankruptcy Case.

4. Subject to further court order, the remaining unpaid balance of each Allowed Utility Claims may be paid as part of the distribution of the Unsecured Creditor Fund in the amount of \$250,000.00 currently held by Escrow.

(Continued on the next page)

5. The Parties request that a separate order approving this Stipulation be entered by the Court so that Escrow may distribute the Utility Claims Fund and Tax Payment in accordance with this Stipulation.

DATED: Honolulu, Hawaii March 10, 2014

Approved and Agreed:

/S/Timothy J. Hogan
TIMOTHY J. HOGAN
Attorney for Trustee
DAVID C. FARMER

/S/ Ted N. Pettit
TED N. PETTIT
DANA R. LYONS
RYAN M. HAMAGUCHI
Attorneys for **FIRST-CITIZENS BANK &
TRUST COMPANY, a North Carolina
commercial bank**

/S/Cynthia M. Johiro
CYNTHIA M. JOHIRO
DAMIEN A. ELEFANTE
Attorneys for **the STATE OF HAWAII**

/S/Christopher J. Muzzi
CHRISTOPHER J. MUZZI
Attorney for **the Official Committee
of Unsecured Creditors**

In re: HAWAII OUTDOOR TOURS, INC. dba Naniloa Volcanoes Resort and Naniloa Volcanoes Golf Club; Case No. 12-02279; STIPULATION FOR (1) PARTIAL PAYMENT OF ALLOWED UTILITY CLAIMS AND (2) COMPROMISE AND SETTLEMENT OF STATE TAX CLAIM; EXHIBIT "A"

EXHIBIT A

Creditor	Address	Claim No.	Total Claim Amount	Prorata Payment (75.128%)	Unpaid Balance
County of Hawaii Dept. of Environ. Mgmt. (Solid Waste)	Department of Environmental Management- Solid Waste Division 25 Aupuni Street, Room 214 Hilo, Hawaii 96720	15	\$914.60	\$687.12	\$227.48
County of Hawaii Dept. of Environ. Mgmt. (Wastewater Division)	Department of Environmental Management, Wastewater Division 25 Aupuni Street, Room 210 Hilo, Hawaii 96720	14	\$50,165.35	\$37,688.22	\$12,477.13
Hawaiian Telcom	Hawaiian Telcom PO Box 30700 Honolulu, HI 96820	8	\$3,691.58	\$2,773.41	\$918.17
Hawaiian Telcom	Hawaiian Telcom PO Box 30700 Honolulu, HI 96820	7	\$17,152.64	\$12,886.44	\$4,266.20
Hawaiian Telcom	Hawaiian Telcom PO Box 30700 Honolulu, HI 96820	6	\$428.59	\$321.99	\$106.60
Hawaiian Telcom	Hawaiian Telcom PO Box 30700 Honolulu, HI 96820	5	\$1,426.12	\$1,071.42	\$354.70
Hawaiian Telcom	Hawaiian Telcom PO Box 30700 Honolulu, HI 96820	4	\$109.53	\$82.29	\$27.24
Hawaiian Electric Light Company, Inc.	c/o Kimo C. Leong, Esq. Taylor, Leong & Chee 737 Bishop Street, Suite 2060 Honolulu, HI 96813	3	\$221,953.41	\$166,750.46	\$55,202.95
County of Hawaii Department of Water Supply	c/o Katherine A. Garson Deputy Corporation Counsel County of Hawaii 333 Kilauea Avenue, 2 nd Floor	No POC filed	\$24,823.51	\$18,649.41	\$6,174.10

EXHIBIT A

	Hilo, Hawaii 96720				
Hawaii Gas	P.O. Box 29850 Honolulu, HI 96820-2250	No POC filed	\$5,443.03	\$4,089.24	\$1,353.79
		TOTAL	\$326,108.36	\$245,000.00	\$81,108.36