MARK J. BENNETT 2672
Attorney General of Hawaii

HERBERT B.K. LAU 2591
Deputy Attorney General
Department of Attorney
General, State of Hawaii
Labor Division
425 Queen Street
Honolulu, Hawaii 96813
Telephone: 586-1450

Attorneys for Director of Labor
and Industrial Relations

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HAWAII
LABOR RELATIONS BOARD

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS,	CASE NO. OSH 2004-12 (Inspection No. 307259473)
Complainant,	STIPULATION AND SETTLEMENT AGREEMENT; EXHIBIT A; APPROVAL AND ORDER
vs.	
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM, STATE OF HAWAII,	
Respondent.	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and Respondent DEPARTMENT OF BUSINESS, ECONOMIC & TOURISM, STATE OF HAWAII ("Respondent") having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about July 13, 2004, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located

at 521 Ala Moana Boulevard, Pier 2, Honolulu, Hawaii, 96813.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on August 30, 2004 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health. *See* Exhibit A.

Respondent timely contested the Citation on September 15, 2004.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at 521 Ala Moana Boulevard, Pier 2, Honolulu, Hawaii, 96813.

3 At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. The Citation issued on August 30, 2004, is withdrawn.

5. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

6. In future projects involving the potential disturbance of asbestos-containing material in its workplaces, the Respondent agrees to comply with the applicable provisions of the Hawaii Occupational Safety and Health Law, HRS chapter 396, and its related administrative rules, including Chapter 12-145.1, HAR, in order to protect the health and safety of the employees at the workplace.

7. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

8. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

DATED: Honolulu, Hawaii, February 8, 2005.

APPROVED AS TO FORM:

Margaret Ahn
Attorney for Respondent

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

By: _____
Its Deputy Director

APPROVED AS TO FORM:

HERBERT B.K. LAU
Deputy Attorney General
Attorney for Director of Labor and Industrial Relations, State of Hawaii

DIRECTOR OF LABOR AND INDUSTRIAL RELATIONS

NELSON B. BEFITEL

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

BRIAN K. NAKAMURA, Chair

ORDER #: 124
DATED: February 8, 2005

CHESTER C. KUNITAKE, Member

KATHLEEN RACUYA-MARKRICH, Member

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813
Phone: (808) 586-9090 FAX: (808) 586-9104

Certified Number: 7003 3110 0003 5610 3779

Citation and Notification of Penalty

To:
Department of Business Economic Development & Tourism
and its successors
521 Ala Moana Blvd Pier 2
Honolulu, HI 96813

Inspection Number: 307259473 Richard Lee

Inspection Date(s): 07/13/2004 - 08/18/2004
Issuance Date: 08/30/2004
OSHCO ID: U3486
Optional Report No.: 25-04

Inspection Site:
521 Ala Moana Blvd Pier 2
Honolulu, HI 96813

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the law has occurred unless there is a failure to contest as provided for in the law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. **The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.**

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - you should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 08/30/2004. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.

STATE OF HAWAII
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

830 Punchbowl Street, Room 425
Honolulu, HI 96813

Inspection Number: 307259473
Inspection Dates: 07/13/2004 - 08/18/2004

Issuance Date: 08/30/2004

Citation and Notification of Penalty

Company Name: Department of Business Economic Development & Tourism
Inspection Site: 521 Ala Moana Blvd Pier 2, Honolulu, HI 96813

The alleged violations below (1a & 1b) have been grouped because they involve similar or related hazards that may increase the potential for illness or injury resulting from an accident.

Citation 1 Item 1a Type of Violation: **Other**

29 CFR 1926.1101(c)(1) [Refer to chapter 12-145.1, HAR] was violated because:

The employer did not verify that the general contractor working on the project had the asbestos air monitoring samples analyzed according to the method prescribed in Appendix A, of 29 CFR 1926.1101 to ensure that their employees were not exposed to asbestos hazards in excess of 0.1 fiber per cubic centimeter of air as averaged over a period of eight (8) hours.

29 CFR 1926.1101(c)(1) states "Time-weighted average limit (TWA). The employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 0.1 fiber per cubic centimeter of air as an eight (8) hour time-weighted average (TWA), as determined by the method prescribed in Appendix A to this section, or by an equivalent method."

Location: Establishment

Date By Which Violation Must be Abated: **09/22/2004**
Penalty: **$.00**

STATE OF HAWAII
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

830 Punchbowl Street, Room 425
Honolulu, HI 96813

Inspection Number: 307259473
Inspection Dates: 07/13/2004 - 08/18/2004

Issuance Date: 08/30/2004

Citation and Notification of Penalty

Company Name: Department of Business Economic Development & Tourism
Inspection Site: 521 Ala Moana Blvd Pier 2, Honolulu, HI 96813

Citation 1 Item 1b Type of Violation: **Other**

29 CFR 1926.1101(c)(2) [Refer to chapter 12-145.1, HAR] was violated because:

The employer did not verify that the general contractor working on the project had the asbestos air monitoring samples analyzed according to the method prescribed in Appendix A, of 29 CFR 1926.1101 to ensure that their employees were not exposed to asbestos hazards in excess of 1.0 fiber per cubic centimeter of air over a period of 30 minutes.

29 CFR 1926.1101(c)(2) states "Excursion limit. The employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 1.0 fiber per cubic centimeter of air (1 f/cc) as averaged over a sampling period of thirty (30) minutes, as determined by the method prescribed in Appendix A to this section, or by an equivalent method."

Location: Establishment

Date By Which Violation Must be Abated: 09/22/2004

NELSON B. BEFITEL
DIRECTOR

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813

SUMMARY OF PENALTIES

Company Name: Department of Business Economic Development & Tourism
Inspection Site: 521 Ala Moana Blvd Pier 2
Honolulu, HI 96813
Issuance Date: 08/30/2004

Summary of Penalties for Inspection Number 307259473

Citation 01, Other	=	$0.00
TOTAL PENALTIES	=	$0.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of $15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.

NDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete
tem 4 if Restricted Delivery is desired.
Print your name and address on the reverse
o that we can return the card to you.
ttach this card to the back of the mailpiece,
r on the front if space permits.

rticle Addressed to: 307259473

Mark Anderson, Administrator
artment of Business, Economic
velopment & Tourism
Ala Moana Boulevard, Pier 2
olulu, Hawaii 96813

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X
☐ Agent
☐ Addressee

B. Received by (Printed Name) LORNA MIYAGI
C. Date of Delivery 8/31/04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

SEP 1 PM 2
OSH-DLIR

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

icle Number
nsfer from service label) 7003 3110 0003 5610 3779

rm 3811, August 2001