MARK J. BENNETT 2672
Attorney General of Hawai'i

J. GERARD LAM 5326
Deputy Attorney General
Department of Attorney
General, State of Hawai'i
Labor Division
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Honolulu, Hawai'i 96813
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Attorneys for Director, Department of Labor and Industrial Relations

a state

HAWAI'I LABOR RELATIONS BOARD

STATE OF HAWAI'I

In the Matter of DIRECTOR,) CASE NOS. OSH 2005-13 and OSH 2005-23
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS,) STIPULATION AND SETTLEMENT) AGREEMENT; EXHIBITS "A"-"B";) APPROVAL AND ORDER
Complainant,))
vs.))
TORY'S ROOFING & WATERPROOFING, INC.,)))
Respondent.	•

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director, Department of Labor and Industrial Relations ("Director") and Respondent TORY'S ROOFING & WATERPROOFING, INC. ("Respondent"), having reached a full and complete settlement of the above-captioned contested cases presently pending before the Hawai'i Labor Relations Board ("Board") stipulate and agree as follows:

On or about April 18, 2005, the Director, by and through the State of Hawai'i's

Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 94-1040 Waipio Uka Street, Waipahu, Hawaii 96797.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on May 31, 2005 ("First Citation") to Respondent alleging violations of the Hawai'i Occupational Safety and Health Standards and assessed an aggregate penalty of \$300.00. *See* Exhibit "A".

Respondent timely contested its First Citation.

On or about August 16, 2005, the Director, by and through HIOSH, inspected Respondent's workplace located at 95-1023 Haalohi Street, Mililani, Hawaii 96789.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on October 3, 2005 ("Second Citation") to Respondent alleging violations of the Hawai'i Occupational Safety and Health Standards and assessed an aggregate penalty of \$375.00. *See* Exhibit "B".

Respondent timely contested its Second Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned cases (OSH 2005-13 and OSH 2005-23), the Parties, by and through their respective representatives, stipulate and agree as follows:

- 1. The Board has jurisdiction over these contested cases pursuant to section 396-11, Hawai'i Revised Statutes ("HRS").
- 2. At all relevant times, Respondent maintained a workplace at 94-1040 Waipio Uka Street, Waipahu, Hawaii 96797, and at 95-1023 Haalohi Street, Mililani, Hawaii 96789.
- 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

requirement of HRS chapter 396, the Hawai'i Occupational Safety and Health Law.

- 4. By letter dated June 15, 2005, Respondent attested it abated the alleged violation in its First Citation in compliance with the abatement requirements under Hawai'i Administrative Rule § 12-51-22.
- 5. Respondent agrees it shall abate the alleged violation listed in its Second Citation in compliance with the abatement requirements under Hawai'i Administrative Rule § 12-51-22. Respondent shall submit the completed abatement certification to HIOSH no later than ten (10) days after this Agreement is filed.
- 6. Respondent shall give HIOSH written verification within one (1) month after this Agreement is filed showing all Respondent's employees have received fall protection training and provide HIOSH with a course outline of the training and the names of all employees who received such training.
- 7. Respondent shall also give HIOSH copies of Certificates for each employee who attended the October 2005 Fall Protection Seminar held by the Roofing Contractors

 Association of Hawaii once it receives such Certificates.
- 8. Within fourteen (14) days after this Agreement is filed, Respondent shall buy an 8 feet by 4 feet "Tie-Off" banner and provide HIOSH with a receipt confirming Respondent's purchase of the banner.
- 9. Respondent shall prominently display the "Tie-Off" banner at Respondent's work site within thirty (30) days after this Agreement is filed, and continue to post the banner at Respondent's work sites for four (4) consecutive months.
- 10. Respondent shall apply for and make a good faith effort to become part of the Department of Labor and Industrial Relations' "SHARP" program within thirty (30) days after

this Agreement and shall be certified as a SHARP company on or before March 31, 2006.

- 11. Respondent shall enroll Siitea Gaea in an OSHA 8-hour class to equip and train him to become a better foreman on safety and health matters and be a role model for other employees.
- 12. Respondent shall correct its Safety Program to show the same disciplinary policy for third violations as that found in its Rules and Regulations, which says third violations will result in "Suspension or Termination."
- 13. Respondent shall establish a logging system that accurately tracks employee violations of its Safety Program and/or Rules and Regulations.
- 14. Respondent shall train all current employees and any newly hired employees on its fall protection policies and ensure that its Safety Program and Rules and Regulations are enforced as stated.
- 15. In return for and upon Respondent's complete fulfillment of all the agreements described in paragraphs 5 through 14 above, Respondent's First Citation and Second Citation shall automatically be deleted.
- 16. If, however, Respondent fails to fulfill any of its agreements as described and required in paragraphs 5 through 14 above, Respondent's entire First Citation and Second Citation shall fully and automatically be final and conclusive and shall be treated as such with regard to any future citations the Director may issue against Respondent including, but not limited to, any "repeat" violations.
 - 17. This Agreement shall become a final order of the Director.
- 18. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of Respondent's First Citation and Second Citation,

and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

- 19. Respondent shall continue to comply with HRS chapter 396, the Hawai'i Occupational Safety and Health Law, and the related rules.
- 20. 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 Hawai'i Occupational Safety and Health Law, or the related rules.

	DATED: Honolulu, Hawaii,	Dec	ember	29,	2005
APPROVED	AS TO FORM:	TORY'	'S ROOF	FING	& WATERPROOFING, INC
MERVYN W Attorney for F		By:	Grna. Vice	n Qu Pre	side of

APPROVED AS TO FORM:

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, STATE OF HAWAI'I

J. GERARD LAM
Deputy Attorney General

NELSON B. BEFITEL

Attorney for Director Department of Labor and Industrial Relations, State of Hawai'i

APPROVED AND SO ORDERED BY HAWAI'I LABOR RELATIONS BOARD:

ORDER NO: 170

DATED: DECEMBER 29, 2005

BŔIAN K. NAKAMURA, Chair

ok AN

KATHLEEN RACUYA-MARKRICH, Member

EMORY J. SPRINGER, Member

In re: Director, Department of Labor and Industrial Relations vs. Tory's Roofing & Waterproofing, Inc., OSH 2005-13 and OSH 205-23, Stipulation and Settlement Agreement, Exhibits "A"-'B"; Approval and Order;

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) 586-9110 FAX: (808) 586-9104

Certified Number: 7003 1680 0004 2962 6822



Citation and Notification of Penalty

To:

Tory's Roofing & Waterproofing Inc and its successors 94-1382 Waihona St Pearl City, HI 96782 **Inspection Number:**

308485515 (Hervie Messier)

Inspection Date(s):

04/18/2005 - 04/18/2005

Issuance Date:

05/31/2005

111

OSHCO ID:

U5995

Optional Report No.:

09205

Inspection Type:

Referral

Scope of Inspection:

Partial Inspection

Inspection Site: 94-1040 Waipio Uka St Waipahu, HI 96797 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 <u>each</u> violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification <u>must</u> be sent by you within <u>5 calendar days</u> 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 its 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.

State of Hawaii Department of Labor and Industrial Relations HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIG	OSH to discuss the citation(s) issued on
05/31/2005. The conference will be held at the HIOS	SH office located at 830 PUNCHBOWL
STREET, ROOM 425, Honolulu, HI 96813 on	at Employees
and/or representatives of employees have a right to at	ttend an informal conference.

STATE OF HAWAII

Department of Labor and Industrial Relations Hawaii Occupational Safety and Health Division **Inspection Number:**

308485515

Inspection Dates:

04/18/2005 - 04/18/2005



830 Punchbowl Street, Room 425 Honolulu, HI 96813

Issuance Date:

05/31/2005

Citation and Notification of Penalty

Company Name:

Tory's Roofing & Waterproofing Inc

Inspection Site:

94-1040 Waipio Uka St, Waipahu, HI 96797

Citation 1 Item 1 Type of Violation:

Serious

29 CFR 1926.501(b)(10) [Refer to chapter 12-121.2, HAR] was violated because:

Employees installing metal roof sheeting on the 10 feet high roof were not protected by any type of fall protection system. The lack of fall protection exposes the employees to injuries from falls.

29 CFR 1926.501(b)(10) states "Except as otherwise provided in paragraph (b) of this section, each employee engaged in roofing activities on low-sloped roofs with unprotected sides and edges 6 feet (1.8 m) of more above a lower level shall be protected from falling by the use of guardrail systems, safety net systems or personal fall arrest systems, or a combination of warning line system and guardrail system, warning line system and safety net systems, or warning line system personal fall arrest systems, or warning line system and safety monitoring system. Or, on roofs 50-feet (15.25 m) or less in width (see Appendix A to Subpart M of this part), the use of a safety monitoring system alone [i.e., without the warning line system] is permitted."

Location: Exterior roof of building under construction on site

Date By Which Violation Must be Abated:

Penalty:

06/06/2005

\$300.00

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:

Tory's Roofing & Waterproofing Inc

Inspection Site:

94-1040 Waipio Uka St

Waipahu, HI 96797

Issuance Date:

05/31/2005

Summary of Penalties for Inspection Number

308485515

Citation 01, Serious

===

TOTAL PENALTIES

\$300.00 \$300.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the <u>inspection</u> 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.

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse	A Signature X A Agent A Addresse
so that we can return the card to you. Attach this card to the back of the mallpiece, or on the front if space permits.	B. Received by (Printed Name) C. Date of Deliver D. Is delivery address different from Item 17 D. Yes
1. Article Addressed to: 308485515 Mr. Sau Gaea, Foreman	If YES, enter delivery address below:
Tory's Roofing & Waterproofing, Inc. 94-1382 Waihona Street Pearl City, Hawaii 96782	3. Service Type Certified Mail Registered Return Receipt for Merchandis I Insured Mail C.O.D.
2. Article Number (Transfer from service label) 7[4. Restricted Delivery? (Extra Fee)

PS Form 3811, February 2004

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	City, State, ZIP+4	earl Cit	y, Ha	awaii 9	5782
	PS Form 3800, June 200	2		See Revers	e for Instructions

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) 586-9110

FAX: (808) 586-9104

Certified Number: 7004 2510 0003 2979 2793



Citation and Notification of Penalty

To:

Tory's Roofing & Waterproofing Inc

and its successors 94-1382 Waihona St

Pearl City, HI 96782

Inspection Site: 95-1023 Haalohi St

Mililani Town, HI 96789

Inspection Number:

Inspection Date(s):

Issuance Date:

OSHCO ID:
Optional Report No.:

Inspection Type:

Scope of Inspection:

: 308489970 (Hervie Messier)

08/16/2005 - 08/16/2005

10/03/2005

U5995 15505

Referral
Partial Inspection

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.

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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 <u>each</u> violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification <u>must</u> be sent by you within <u>5 calendar days</u> 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 its 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.

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal	conference has been	scheduled with	1 HIOSH to	discuss the	citation(s)	issued on
10/03/2005.	The conference will	be held at the	HIOSH offic	e located at	830 PUNG	CHBOWL
STREET, RO	OOM 425, Honolulu, 1	HI 96813 on		_at	F	Employees
and/or repre	sentatives of employee	es have a right	to attend an i	informal co	nference.	

STATE OF HAWAII

Department of Labor and Industrial Relations Hawaii Occupational Safety and Health Division **Inspection Number:**

3084**8997**0

Inspection Dates:

08/16/2005 - 08/16/2005



830 Punchbowl Street, Room 425 Honolulu, HI 96813

Issuance Date:

10/03/2005

Citation and Notification of Penalty

Company Name:

Tory's Roofing & Waterproofing Inc

Inspection Site:

95-1023 Haalohi St, Mililani Town, HI 96789

Citation 1 Item 1 Type of Violation:

Serious

29 CFR 1926.501(b)(10) [Refer to chapter 12-121.2, HAR] was violated because:

Three roofers who were installing roof shingles on the 8 feet high 1st floor roof and the 16' high 2st story roof were not protected by any type of fall protection system. The lack of fall protection exposes the employees to injuries from falls.

29 CFR 1926.501(b)(10) states "Except as otherwise provided in paragraph (b) of this section, each employee engaged in roofing activities on low-sloped roofs with unprotected sides and edges 6 feet (1.8 m) of more above a lower level shall be protected from falling by the use of guardrail systems, safety net systems or personal fall arrest systems, or a combination of warning line system and guardrail system, warning line system and safety net systems, or warning line system personal fall arrest systems, or warning line system and safety monitoring system. Or, on roofs 50-feet (15.25 m) or less in width (see Appendix A to Subpart M of this part), the use of a safety monitoring system alone [i.e., without the warning line system] is permitted."

Location: Exterior roof of building under construction on site

Date By Which Violation Must be Abated:

Penalty:

Corrected \$375.00

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:

Tory's Roofing & Waterproofing Inc

Inspection Site:

95-1023 Haalohi St

Mililani Town, HI 96789

Issuance Date:

10/03/2005

Summary of Penalties for Inspection Number

308489970

\$375.00

\$375.00

Citation 01, Serious

TOTAL PENALTIES

Make check or money order payable to the "Director of Budget and Finance." Please indicate the <u>inspection number</u> 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.

