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HAWAII LABOR
RELATIONS BOARD

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Attorney General of Hawaii

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Attorneys for Complainant Director
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STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, Complainant, vs. PENTHOUSE PACIFIC CONSTRUCTION, LTD., Respondent.	CASE NO. OSH 2014-3 (Inspection No. 316272053) STIPULATION AND SETTLEMENT AGREEMENT; EXHIBIT A; APPROVAL AND ORDER

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and Respondent PENTHOUSE PACIFIC CONSTRUCTION, LTD. ("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 September 11, 2013, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located

at 511 Imi Place, Wailuku, HI 96793.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on December 20, 2013 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed penalties totaling $5,225.00. See Exhibit A.

Respondent timely contested the Citation via letter dated January 15, 2014.

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. At all relevant times, Respondent maintained a workplace at 511 Imi Place, Wailuku, HI 96793.

2. 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.

3. Respondent agrees that it has abated each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22.

4. The violations and corresponding characterizations as stated in the Citation are affirmed. See Exhibit A.

5. The Director agrees to reduce the aggregate penalty amount from $5,225.00 to $4,400.00 which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

7. Respondent agrees that if it fails to pay the aggregate penalty amount and

the Director institutes legal action to collect on the outstanding amount due, Respondent agrees to pay all fees and costs, including reasonable attorney's fees, incurred to collect on the unpaid penalties. Any forbearance by the Director in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

8. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

9. 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).

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

11. 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.

12. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.

DATED: Honolulu, Hawaii, 2/27/2014.

PENTHOUSE PACIFIC CONSTRUCTION, LTD.

By: Pete Hudson
PETE HUDSON
Its President

APPROVED AS TO FORM:

DORIS DVONCH
Deputy Attorney General

Attorney for Complainant Director
of Labor and Industrial Relations

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS

DWIGHT TAKAMINE

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

JAMES B. NICHOLSON, Chair

SESNITA A.D. MOEPONO, Member

ROCK LEY, Member

ORDER NO. 562

DATED: March 18, 2014

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 423
HONOLULU, HI 96813
Phone: (808)586-9110 FAX: (808)586-9104

Certified Number: 7012 2210 0002 6655 8904

Citation and Notification of Penalty

To:
Penthouse Pacific Construction Ltd
and its successors
PO Box 2144
Kihei, HI 96753

Inspection Number: 316272053
Inspection Date(s): 09/11/2013- 09/11/2013
Issuance Date: 12/20/2013

Inspection Site:
511 Imi Pl
Wailuku, HI 96793

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.**

EXHIBIT A

PPC14

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 5, 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** violations 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 (examples: 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 12-51-22 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 ofice.

ABATEMENT CERTIFICATION

DIANTHA M. GOO, ADMINISTRATOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 423
HONOLULU, HI 96813

Penthouse Pacific Construction Ltd
PO Box 2144
Kihei, HI 96753

The hazard referenced in Inspection Number _____ for the violation identified as Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

I attest that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

_____
Signature

_____
Typed or Printed Name

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 HIOSH to discuss the citation(s) issued on 12/20/2013. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 423, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

Citation and Notification of Penalty

Company Name: Penthouse Pacific Construction Ltd
Inspection Site: 511 Imi Pl, Wailuku, HI 96793

Citation 1 Item 1 Type of Violation: Serious

29 CFR 1926.304(i)(1) [Refer to chapter, 12-110-50(a), HAR] was violated because:

A Bosch table saw, model GTS1031, serial number 303130374, did not have an upper guard installed at the time of inspection. An unguarded blade exposed employees to potential serious bodily injuries.

29 CFR 1926.304(i)(1) states "Each circular hand-fed ripsaw shall be guarded by a hood which shall completely enclose that portion of the saw above the table and that portion of the saw above the material being cut. The hood and mounting shall be arranged so that the hood will automatically adjust itself to the thickness of and remain in contact with the material being cut but it shall not offer any considerable resistance to insertion of material to saw or to passage of the material being sawed. The hood shall be made of adequate strength to resist blows and strains incidental to reasonable operation, adjusting, and handling, and shall be so designed as to protect the operator from flying splinters and broken saw teeth. It shall be made of material that is soft enough so that it will be unlikely to cause tooth breakage. The hood shall be so mounted as to insure that its operation will be positive, reliable, and in true alignment with the saw; and the mounting shall be adequate in strength to resist any reasonable side trust or other force tending to throw it out of line."

Location: Ground floor level elevator lobby area between buildings A and B

Date By Which Violation Must be Abated:	Corrected
Penalty:	$ 1,375.00

Citation and Notification of Penalty

Company Name: Penthouse Pacific Construction Ltd
Inspection Site: 511 Imi Pl, Wailuku, HI 96793

Citation 1 Item 2 Type of Violation: Serious

29 CFR 1926.416(e)(1) [Refer to chapter 12-110-50(a), HAR] was violated because:

Worn electric cords were in use. Two pink extension cords and one black power cord for Skilsaw portable circular saw, model SHD77, serial number 207-651297, had damages to their outer protective jackets. The power cord had visible bare copper wires exposed at its damaged area. Employees using worn electrical cords were exposed to potential serious bodily injuries.

29 CFR 1926.416(e)(1) states "Worn or frayed electric cords or cables shall not be used."

Location: Roofs of building A and B

Date By Which Violation Must be Abated:	Corrected
Penalty:	$ 1,100.00

Citation and Notification of Penalty

Company Name: Penthouse Pacific Construction Ltd
Inspection Site: 511 Imi Pl, Wailuku, HI 96793

Citation 1 Item 3 Type of Violation: Serious

29 CFR 1926.501(b)(1) [Refer to chapter 12-110-50(a), HAR] was violated because:

One carpenter and one working foreman/carpenter were working on a roof structure that was 38 feet above ground. The employees were not using any type of fall protection system thus the employees were exposed to a fall hazard. A fall to a lower level exposes the employees to potential serious bodily injuries.

29 CFR 1926.501(b)(1) states "Unprotected sides and edges. Each employee on a walking/working surface (horizontal and vertical surface) with an unprotected side or edge which is 6 feet (1.8 m) or more above a lower level shall be protected from falling by the use of guardrail systems, safety net systems, or personal fall arrest systems."

Location: Northeast roof corner area near stair number 1 of building A

Date By Which Violation Must be Abated:	Corrected
Penalty:	$ 2,750.00

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 316272053
Inspection Dates: 09/11/2013 - 09/11/2013
Issuance Date: 12/20/2013

Citation and Notification of Penalty

Company Name: Penthouse Pacific Construction Ltd
Inspection Site: 511 Imi Pl, Wailuku, HI 96793

Citation 2 Item 1 Type of Violation: Other

29 CFR 1926.503(b)(1) [Refer to chapter 12-110-50(a), HAR] was violated because:

The employer had not completed written fall protection certification records for one carpenter and one working foreman/carpenter who were exposed to fall hazards at a construction project site.

29 CFR 1926.503(b)(1) states "The employer shall verify compliance with paragraph (a) of this section by preparing a written certification record. The written certification record shall contain the name or other identity of the employee trained, the date(s) of the training, and the signature of the person who conducted the training or the signature of the employer. If the employer relies on training conducted by another employer or completed prior to the effective date of this section, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training."

Location: Northeast roof corner area near stair number 1 of building A

Date By Which Violation Must be Abated:	01/22/2014
Penalty:	$ 0.00

DIANTHA M. GOO
Administrator

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

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SENDER: *COMPLETE THIS SECTION*

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

1. Article Addressed to: 316272053

Penthouse Pacific Constr. Ltd.
P.O. Box 2144
Kihei, HI 96753

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Pete Hudson
☐ Agen
☐ Addr

B. Received by (*Printed Name*) Pete Hudson
C. Date of De 12/27/1

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

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

4. Restricted Delivery? (*Extra Fee*) ☐ Yes

2. Article Number (*Transfer from service label*) 7012 2210 0002 6655 8904

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M

7012 2210 0002 6655 8904

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

05 Postage	$ 86	316272053
Certified Fee	3.[illegible]	
Return Receipt Fee (Endorsement Required)	2.55	Postmark Here
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	$ 6.51	

Sent To Penthouse Pacific Constr. Ltd
Street, Apt. No.; or PO Box No. P.O. Box 2144
City, State, ZIP+4 Kihei, HI 96753

PS Form 3800, August 2006 See Reverse for Instructi

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State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 423
HONOLULU, HI 96813

SUMMARY OF PENALTIES

Company Name: Penthouse Pacific Construction Ltd
Inspection Site: 511 Imi Pl, Wailuku, HI 96793
Issuance Date: 12/20/2013

Summary of Penalties for Inspection Number 316272053

Citation 1, Serious	=	**$**	**5,225.00**
Citation 2, Other	=	**$**	**0.00**
TOTAL PENALTIES	=	**$**	**5,225.00**

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.