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Regulated Industries Complaints Office
Department of Commerce and Consumer Affairs
State of Hawaii
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Honolulu, Hawaii 96813
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DEPT OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

DEPT. OF COMMERCE
& CONSUMER AFFAIRS
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REGULATED INDUSTRIES COMPLAINTS OFFICE

Attorney for Department of Commerce
and Consumer Affairs

CONTRACTORS LICENSE BOARD
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the Contractors' Licenses of) CLB 2006-502-L
)
PROVIDENCE BUILDERS, INC.;) SETTLEMENT AGREEMENT PRIOR TO
JOHN W. HAAG,) FILING OF PETITION FOR DISCIPLINARY
) ACTION AND BOARD'S FINAL ORDER
Respondents.)

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SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION
FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER

Petitioner, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS'
REGULATED INDUSTRIES COMPLAINTS OFFICE (hereinafter "RICO" or "Petitioner"),
through its undersigned attorney, and Respondents PROVIDENCE BUILDERS, INC., and
JOHN W. HAAG (hereinafter collectively "Respondents"), enter into this Settlement Agreement
on the terms and conditions set forth below.

A. UNCONTESTED FACTS:

1. At all relevant times herein, Respondent Providence Builders, Inc. ("Respondent Providence"), was licensed by the Contractors License Board (hereinafter the "Board") as a "B" general contractor under License Number BC 23139. The license was issued on or about May 24, 2001. The license will expire on or about September 30, 2010.

2. At all relevant times herein, Respondent John W. Haag (“Respondent Haag”) was licensed by the Board as a “B” general contractor under License Number BC 18155. The license was issued on or about April 7, 1993. The license will expire on or about September 30, 2010.

3. Respondents’ mailing address for purposes of this action is c/o Harvey J. Lung, Esq., Bays Deaver Lung Rose Holma, P.O. Box 1760, Honolulu, Hawaii 96806.

4. RICO received a complaint alleging that Respondents engaged in poor workmanship, failed to complete on time, and failed to follow plans and specifications in the construction of a new dwelling on Donald and Sandra Balogh’s (collectively, the “Baloghs”) property located at 5346 Kahalakua Street, Honolulu, Hawaii 96821 (the “Project”).

5. RICO alleges that Respondents did not include in their written contract for the Project the approximate percentage of work to be subcontracted and the names and the license numbers of all subcontractors.

6. RICO acknowledges that Respondents filed a mechanic’s lien action against the Baloghs relating to the Project (First Circuit Court Case No. M.L. 06-1-12), which entered into mediation.

7. Respondents allege that, through mediation, the parties signed a Memorandum of Understanding, dated April 19, 2007 (the “MOU”), in which the Baloghs and Respondents agreed to mutually dismiss and release all claims that were raised or could have been raised by and between each other arising from the Project.

8. RICO acknowledges that pursuant to the MOU, upon execution of a formal settlement agreement and two remedial items, the Baloghs were to submit a written withdrawal of their RICO complaint. However, to date, a formal settlement agreement has not been executed by the Baloghs.

9. Respondents allege that the terms of the MOU are binding even without a formal executed written settlement agreement and Respondents stand ready and able to complete the terms of the MOU.

10. The foregoing allegations, if proven at an administrative hearing before the Board, would constitute violations of the following statute(s) and/or rule(s): Hawaii Revised Statutes (“HRS”) §§ 444-17(11) (failure to complete a project), and 444-17(13) (wilful failure or refusal to prosecute a project to completion with reasonable diligence), and 444-25.5(b)(1) (contracts shall contain all information required by administrative rule), and Hawaii Administrative Rules (“HAR”) 16-77-71 and 16-77-75 (RME responsible for acts and omissions of contracting entity), and 16-77-79 (prior to contracting, contractor shall disclose to the homeowner the approximate percentage of work to be subcontracted), and 16-77-80 (contracts with homeowners shall contain the names and license numbers of subcontractors), and 16-77-97 (workmanship shall conform to trade standards).

11. The Board has jurisdiction over the subject matter herein and over the parties hereto.

B. REPRESENTATIONS BY RESPONDENT:

1. Respondents are fully aware that Respondents have the right to be represented by an attorney and are represented in this matter by Harvey J. Lung, Esq., Bays Deaver Lung Rose Holma, P.O. Box 1760, Honolulu, Hawaii 96806.

2. Respondents enter into this Settlement Agreement freely, knowingly, voluntarily, and under no coercion or duress.

3. Respondents are aware of the right to have a hearing to adjudicate the issues in the case. Pursuant to HRS § 91-9(d), Respondents freely, knowingly, and voluntarily waive the right to a hearing and agrees to dispose of this case in accordance with the terms and conditions of this Settlement Agreement.

4. Respondents being at all times relevant herein licensed as contractors by the Board acknowledge that Respondents are subject to penalties including but not limited to, revocation, suspension or limitation of the license and administrative fines, if the foregoing allegations are proven at hearing.

5. Respondents do not admit to violating any law or rule, but acknowledge that RICO has sufficient cause to file a Petition for Disciplinary Action against Respondents' licenses.

6. Respondents enter into this Settlement Agreement as a compromise of the claims and to conserve on the expenses of proceeding with an administrative hearing on this matter.

7. Respondents agree that this Settlement Agreement is intended to resolve the issues raised in RICO's investigation in RICO Case No. CLB 2006-502-L.

8. Respondents understand this Settlement Agreement is public record pursuant to Hawaii Revised Statutes 92F.

C. TERMS OF SETTLEMENT:

1. Administrative fine. Respondent agrees to pay a fine in the amount of FOUR THOUSAND AND NO/100 U.S. DOLLARS (\$4,000.00). Payment shall be made by **cashier's check or money order made payable to "DCCA - Compliance Resolution Fund"** and mailed to the Regulated Industries Complaints Office, Attn: Wendy J. Utsumi, Esq., 235 S. Beretania

Street, 9th Floor, Honolulu, Hawaii 96813. Payment of the fine shall be due no later than thirty (30) days following Board approval of this Settlement Agreement.

2. Failure to Comply with Settlement Agreement. If Respondents fail to fully and timely comply with the terms of this Settlement Agreement as set forth in paragraph C.1 above, Respondents' licenses shall be automatically revoked upon RICO's filing of an affidavit with the Board attesting to such failure. In case of such revocation, Respondents shall turn in all indicia of the license to the Executive Officer of the Board within ten (10) days after receipt of notice of the revocation. In case of such revocation, Respondents understand Respondents cannot apply for a new license until the expiration of at least five (5) years after the effective date of the revocation. Respondents understand that if Respondents desire to become licensed again, Respondents must apply to the Board for a new license pursuant to and subject to HRS §§ 92-17, 436B-21, and all other applicable laws and rules in effect at the time.

3. Possible further sanction. The Board, at its discretion, may pursue additional disciplinary action as provided by law to include further fines and other sanctions as the Board may deem appropriate if Respondents violate any provision of the statutes or rules governing the conduct of contractors in the State of Hawaii, or if Respondents fail to abide by the terms of this Settlement Agreement.

4. Approval of the Board. Respondents agree that, except for the representations, agreements and covenants contained in Paragraphs C.5, C.6, C.7 and C.8 below, this Settlement Agreement shall not be binding on any of the parties unless and until it is approved by the Board.

5. No Objection if Board Fails to Approve. If the Board does not approve this Settlement Agreement, does not issue an order pursuant thereto, or does not approve a lesser remedy, but instead an administrative hearing is conducted against Respondents in the Board's usual and customary fashion pursuant to the Administrative Procedure Act, Respondents agree that neither Respondents nor any attorney that Respondents may retain, will raise as an objection in any administrative proceeding or in any judicial action, to the Board's proceeding against Respondents on the basis that the Board has become disqualified to consider the case because of its review and consideration of this Settlement Agreement.

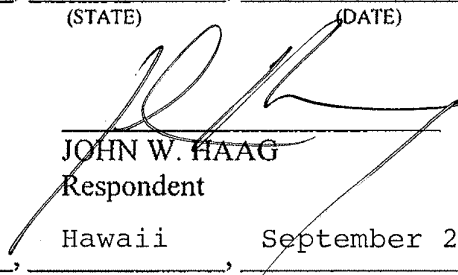
6. Any Ambiguities Shall be Construed to Protect the Consuming Public. It is agreed that any ambiguity in this Settlement Agreement is to be read in the manner that most completely protects the interests of the consuming public.

7. No Reliance on Representations by RICO. Other than the matters specifically stated in this Settlement Agreement, neither RICO nor anyone acting on its behalf has made any representation of fact, opinion or promise to Respondents to induce entry into this Settlement Agreement, and Respondents are not relying upon any statement, representation or opinion or promise made by RICO or any of its agents, employees, representatives or attorneys concerning the nature, extent or duration of exposure to legal liability arising from the subject matter of this Settlement Agreement or concerning any other matter.

8. Complete Agreement. This Settlement Agreement is a complete settlement of the rights, responsibilities and liabilities of the parties hereto with respect to the subject matter hereof; contains the entire agreement of the parties; and may only be modified, changed or amended by written instrument duly executed by all parties hereto.

IN WITNESS WHEREOF, the parties have signed this Settlement Agreement on the date(s) set forth below.

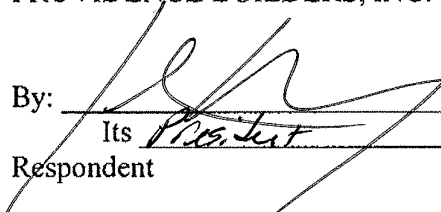
DATED: Honolulu, Hawaii, September 21, 2009
(CITY) (STATE) (DATE)



JOHN W. HAAG
Respondent

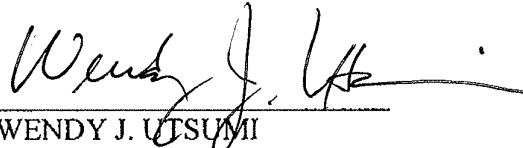
DATED: Honolulu, Hawaii, September 21, 2009
(CITY) (STATE) (DATE)

PROVIDENCE BUILDERS, INC.

By: 

Its President
Respondent

DATED: Honolulu, Hawaii, SEP 22 2009



WENDY J. UTSUMI
Attorney for Petitioner
Department of Commerce and Consumer Affairs

APPROVED AS TO FORM:



HARVEY J. LUNG, ESQ.
Attorney for Respondents

IN THE MATTER OF THE CONTRACTORS' LICENSES OF PROVIDENCE BUILDERS,
INC.; JOHN W. HAAG; SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION
FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER;
CASE NO. CLB 2006-502-L

APPROVED AND SO ORDERED:
CONTRACTORS LICENSE BOARD
STATE OF HAWAII



F. M. SCOTTY ANDERSON
Chairperson

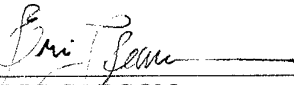
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DATE



NEAL ARITA
Vice Chairperson

GUY M. AKASAKI



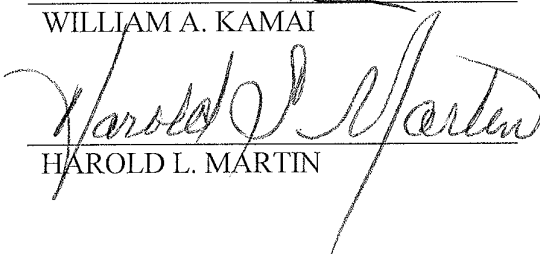
ERIC CARSON

JOHN E. K. DILL



WILLIAM A. KAMAI

RANDALL B. C. LAU




HAROLD L. MARTIN




ALDON K. MOCHIDA

RONALD K. OSHIRO



DENNY R. SADOWSKI



DARYL SUEHIRO

GERALD YAMADA

PVL 08/25/09

STATE OF HAWAII)
CITY AND) SS.
COUNTY OF HONOLULU)

On this 21st day of September 2009, before me personally appeared John W. Haag,
to me known to be the person described, and who executed the foregoing instrument on behalf of
Providence Builders, Inc. as President/himself, and
acknowledged that he/she executed the same as his/her free act and deed. This 10-page
SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY
ACTION AND BOARD'S FINAL ORDER, dated September 21, 2009 was
acknowledged before me by John W. Haag, this 21st day of _____
September, 2009, in the City of Honolulu,
State of Hawaii.

Stephanie A. Miyahara
Name: Stephanie A. Miyahara
Notary Public, State of Hawaii

My Commission expires: 11/3/2012

L.S.