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Department of Commerce and Consumer Affairs  
State of Hawaii  
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Honolulu, Hawaii 96813  
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DEPT OF COMMERCE  
AND CONSUMER AFFAIRS  
STATE OF HAWAII

DEPT. OF COMMERCE  
AND CONSUMER AFFAIRS

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HEARINGS OFFICE

Attorney for Department of Commerce  
and Consumer Affairs

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

DEPT. OF COMMERCE  
AND CONSUMER AFFAIRS  
2009 MAR 23 P 2:18  
HEARINGS OFFICE

In the Matter of the Contractors License of ) CLB 2007-439-U  
)  
GREGORY H. THIELEN, ) SETTLEMENT AGREEMENT PRIOR TO  
) FILING OF PETITION FOR DISCIPLINARY  
Respondent. ) ACTION AND BOARD'S FINAL ORDER  
)  
)

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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 Respondent GREGORY H. THIELEN (hereinafter  
"Respondent Thielen"), enter into this Settlement Agreement on the terms and conditions set  
forth below.

A. UNCONTESTED FACTS:

1. At all relevant times herein, Respondent Thielen was licensed by the Board as a  
"B" general contractor under License Number BC 20576. The license was issued on or about  
September 25, 1996. The license will expire on or about September 30, 2010.

2. Respondent's mailing address for purposes of this action is C/O Paul Maki, Esq., 1100 Alakea Street, 23<sup>rd</sup> Floor, Honolulu, Hawaii 96813.

3. RICO received a complaint alleging that Iole Development, LLC ("Iole") violated the owner-builder exemption by listing a for sale at the residence located 12-262 West Pohakupele Loop in the Kalapana Seaview Estates Subdivision, Pahoehoe, Hawaii, Tax Map Key No. 3-1-2-038-080-0000 (the "Project"), prior to one year from its completion date.

4. RICO alleges that Respondent Thielen is the manager and agent of Iole, and has been the responsible managing employee of Complete Construction Services Corp ("Complete Construction") since May 8, 2001.

5. RICO further alleges that Respondent Thielen, as the RME for Complete Construction, contracted with Iole as the general contractor for the Project and subcontracted with I Dig Hawaii! LLC ("IDH"), an unlicensed contractor, to install a septic system at the Project and failed to verify IDH's license status.

6. RICO acknowledges that Respondent Thielen stated that he trusted the salesman at Honsador Lumber who incorrectly filled out the permit form and Respondent Thielen did not notice that the permit was an owner-builder permit until after the Project was completed.

7. RICO further acknowledges that Respondent states that he did not realize that IDH was not properly licensed because IDH represented that IDH was a properly licensed contractor and provided to Respondent another licensee's contractor's license number.

8. 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") §§ 444-2(7) (owner-builder exemption only allowed on one property not offered for sale or lease), 444-9.3 (aiding and abetting an unlicensed contractor to perform work requiring a

contractors license) and 444-17(17) (entering into a contract with an unlicensed contractor involving work which requires an HRS chapter 444 license), and Hawaii Administrative Rules (“HAR”) §§ 16-77-71 and 16-77-75 (RME responsible for acts and omissions of contracting entity).

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

B. REPRESENTATIONS BY RESPONDENT:

1. Respondent is fully aware that Respondent has the right to be represented by an attorney and is represented in this matter by Paul Maki, Esq., 1100 Alakea Street, 23<sup>rd</sup> Floor, Honolulu, Hawaii 96813.

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

3. Respondent is 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 waives the right to a hearing and agree to dispose of this case in accordance with the terms and conditions of this Settlement Agreement.

4. Respondent being at all times relevant herein licensed as a contractor by the Board acknowledges that Respondent is 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. Respondent does not admit to violating any law or rule, but acknowledges that RICO has sufficient cause to file a Petition for Disciplinary Action against Respondent’s license.

6. Respondent enters 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. Respondent agrees that this Settlement Agreement is intended to resolve the issues raised in RICO's investigation in RICO Case No. CLB 2007-439-U.

C. TERMS OF SETTLEMENT:

1. Administrative fine. Respondent agrees to pay a fine in the amount of THREE THOUSAND AND NO/100 U.S. DOLLARS (\$3,000.00.). 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, 9<sup>th</sup> 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 Respondent fails to fully and timely comply with the terms of this Settlement Agreement as set forth in paragraph C.1 above, Respondent's license shall be automatically revoked upon RICO's filing of an affidavit with the Board attesting to such failure. In case of such revocation, Respondent shall turn in all indicia of their license to the Executive Officer of the Board within ten (10) days after receipt of notice of the revocation. In case of such revocation, Respondent understands Respondent cannot apply for a new license until the expiration of at least five (5) years after the effective date of the revocation. Respondent understands that if Respondent desires to become licensed again, Respondent 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 Respondent violates any provision of the statutes or rules governing the

conduct of contractors in the State of Hawaii, or if Respondent fails to abide by the terms of this Settlement Agreement.

4. Approval of the Board. Respondent agrees 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, and is not admissible evidence in any administrative proceeding or in any judicial action if the Settlement Agreement is not 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 Respondent in the Board's usual and customary fashion pursuant to the Administrative Procedure Act, Respondent agrees that neither Respondent nor any attorney that Respondent may retain, will raise as an objection in any administrative proceeding or in any judicial action, to the Board's proceeding against Respondent 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.

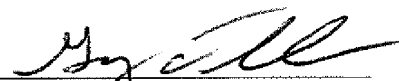
7. No Reliance on Representations by RICO. Other than the matters specifically stated in this Settlement Agreement, neither RICO nor anyone acting on its behalf has made any representation of fact, opinion or promise to Respondent to induce entry into this Settlement Agreement, and Respondent is not 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, February 6, 2009.  
(CITY) (STATE)

  
GREGORY H. THIELEN  
Respondent

DATED: Honolulu, Hawaii, FEB 11 2009.

  
WENDY J. OTSUMI  
Attorney for Department of Commerce and  
Consumer Affairs

APPROVED AS TO FORM:


  
PAUL MAKI, ESQ.  
Attorney for Respondent


IN THE MATTER OF THE CONTRACTORS LICENSE OF GREGORY H. THIELEN;  
SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY  
ACTION AND BOARD'S FINAL ORDER; CASE NO. CLB 2007-439-U


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APPROVED AND SO ORDERED:  
CONTRACTORS LICENSE BOARD  
STATE OF HAWAII

  
TADY T. ARISUMI  
Chairperson

  
F. M. SCOTTY ANDERSON  
Vice Chairperson

  
NEAL ARITA

ERIC CARSON  
  
RANDALL B. C. LAU

RONALD K. OSHIRO

  
DARYL SUEHIRO

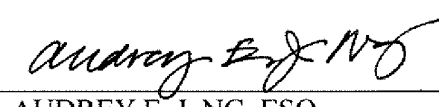
PVL 07/03/08

MAR 20 2009

DATE

  
GUY M. AKASAKI

WILLIAM R. BROWN

JOSEPH S. KINDRICH, II  
  
AUDREY E. J. NG, ESQ.

  
DENNY R. SADOWSKI

GERALD YAMADA

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HONOLULU )

On this 6<sup>th</sup> day of FEBRUARY, 2009, before me personally appeared GREGORY H. THIELEN, to me known to be the person described and who executed the foregoing instrument and acknowledged the same as his/her free act and deed. This 8-page SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER, dated FEBRUARY 06, 2009 was acknowledged before me by GREGORY THIELEN, this 6<sup>th</sup> day of FEBRUARY, 2009, in the City of Honolulu, State of HAWAII.

LB

Fermina F. Escano  
Name: Fermina F. Escano  
Notary Public – State of HAWAII

My commission expires: OCTOBER 31 2010

NOTARY PUBLIC CERTIFICATION

Fermina F. Escano First Judicial Circuit

Doc. Description: SETTLEMENT AGREEMENT

PRIOR TO FILING OF PETITION FOR

DISCIPLINARY ACTION AND BOARD'S FINAL ORDER LS

No. of Pages: 8 Date of Doc 02-06-09

Fermina F. Escano 02-06-09  
Notary Signature Date