

Construction Contract

THIS AGREEMENT by and between _____

hereinafter referred to as "Owner", and _____

hereinafter referred to as "Contractor",

WITNESSETH:

That for and in consideration of the payments hereinafter mentioned, Contractor hereby covenants and agrees with Owner to furnish and pay for all material, and all labor, equipment, water, power, and all other items necessary for the completion of

_____ in accordance with the Plans and Specifications which are identified by the signatures of the parties hereto, and to complete the same within _____ calendar days from date authorized to commence, subject, however, to strikes, riots, fires, unavailability of materials, extreme stress of weather, acts of God or the public enemies, or other conditions beyond the control of Contractor.

For and in consideration of the covenants, undertakings and agreements of Contractor herein set forth, and upon the full and faithful performance thereof by Contractor, Owner hereby agrees to pay Contractor the sum of

_____ DOLLARS

(\$ _____) in lawful money, such payments to be made as follows:

\$ _____ When materials are delivered and work started.

\$ _____

\$ _____ When the roof is on.

\$ _____ When the drywall is complete.

\$ _____ Upon completion and before occupancy; subject, however, to such additions hereto or deductions there from as may be mutually agreed upon in writing during the progress of the work.

Owner shall complete all necessary financial agreements in connection therewith in not more than _____ days from the date hereof and, upon such completion, shall promptly notify Contractor of this fact and furnish confirmation of same from Owner's lender to Contractor's surety. Contractor shall commence construction within _____ days after said foregoing notice. In the event Owner fails to complete satisfactory financial arrangements within said period of _____ days from the date hereof, it is expressly agreed that this contract shall be void.

GENERAL CONDITIONS

- 1. THE CONTRACT:** This instrument, together with the Plans, Specifications and any supplemental instruments which are identified by the signatures of the Owner and the Contractor, shall comprise the Contract. Said documents are complementary and whatever is specified in any one document shall be binding as if specified in all. In case of conflict between the Plans and Specifications, the Specifications shall control.
- 2. BOND:** Before commencing work, Contractor shall furnish a performance and payment bond in an amount equal to one hundred per cent (100%) of the contract price.
- 3. MATERIALS AND WORKMANSHIP:** Unless otherwise specified, all materials shall be new as specified, and both workmanship and materials shall be of good quality. All structural lumber will be pressure treated.
- 4. PERMITS:** Permits and licenses necessary for the prosecution of the work shall be secured and paid for by the _____ . The Contractor shall comply with all laws and regulations bearing on the conduct of the work.
- 5. SURVEY:** The Owner shall furnish a survey of the property adequate for the proper performance of the work.
- 6. SERVICE CONNECTIONS:** The Owner shall apply and pay all deposits required for all service connection such as electric power, water, gas, telephone, and other utilities and meters for the work. Temporary service connections not incorporated in the work but necessary for the operation of tools or equipment for the work shall be made and paid for by the Contractor. The Contractor shall remove all such temporary connections at his expense. The Contractor shall reimburse the Owner the cost of all water, electric power, and gas consumed in the actual performance of the work.
- 7. INSPECTION:** The Contractor shall permit and facilitate inspection of the work at all times by the Owner, lender, and their agents, and governmental authorities.
- 8. TERMINATION OF CONTRACT BY OWNER:** Should the Contractor neglect to prosecute the work properly, or fail to perform any provision of the Contract, the Owner, after ten (10) days written notice to the Contractor and Surety may, without prejudice to any other remedy he may have, make good the deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor, and if the unpaid balance of the contract price exceeds the expense of finishing the work, such excess shall be paid to the Contractor, but if such expense exceeds such unpaid balance, the Contractor shall pay the difference to the Owner.
- 9. TERMINATION OF CONTRACT BY CONTRACTOR:** Should the work be stopped by any public authority for a period of sixty (60) days or more, through no fault of the Contractor, or should the work be stopped through act or neglect of the Owner for a period of ten (10) days, or should the Owner fail to pay the Contractor any payment within ten (10) days after it is due, then the Contractor upon ten (10) days' written notice to the Owner, may stop work or terminate the contract and recover from the Owner payment for all work executed and any loss sustained and reasonable profit and damages.
- 10. FIRE INSURANCE:** Owner shall maintain insurance against loss or damage by fire, including extended coverage from the commencement of and during the progress of the work, to cover all work incorporated in the building and all materials on or about the premises to the extent of one hundred per cent (100%) of the insurable value thereof.

11. **LIABILITY AND WORKMEN'S COMPENSATION INSURANCE:** The Contractor shall maintain such insurance with adequate limits as will protect him from claims under workmen's compensation acts, and from claims for damages because of bodily injury including death which may arise both out of and during operations under this contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them.
12. **OTHER INSURANCE BY OWNER:** The Owner shall be responsible for and at his option may maintain such insurance as will protect him from his contingent liability to others for damages because of bodily injury including death, which may arise from operations under this contract, and he may also maintain insurance on his behalf against liability for damages which the Contractor is required to insure under any provision of this contract.
13. **CHANGES BY OWNER:** The Owner may order change in the work; provided, however, that the Owner and the contractor agree to the cost to be charged therefore. All such orders and adjustments shall be in writing, and no claim by the Contractor for extra cost shall be made unless the work performed, which is the basis for the extra cost, is ordered by the Owner in writing prior to the performance of the work.
14. **PAYMENTS:** Payments shall be made as herein provided. The making and acceptance of the final payment shall constitute a waiver of all claims by the Owner other than those arising from unsettled liens or from faulty work or defective materials, written notice of which are given the contractor within a period of one (1) year thereafter, and of all claims by the Contractor except any previously made in writing and still unsettled. Payments otherwise due may be withheld on account of defective work or materials not remedied, liens filed, damage by the Contractor to others not adjusted, or failure to make payments properly to subcontractors or for material or labor, but such sum withheld shall not exceed a sum which shall reasonably provide for such costs and expenses.
15. **OCCUPANCY:** Occupancy of the building by either Owner or those claiming under Owner shall constitute completion of the work, acceptance thereof by Owner, and a waiver of all claims by Owner other than those arising from unsettled liens, or from faulty work or defective materials, written notice of which was given the Contractor within a period of one (1) year after the making and acceptance of the final payment.
16. **REGULATIONS GOVERNING WORK:** All ordinances of the City and County of _____ Building Department, the rules and regulations of the State Board of Health and the Safety Division of the State Labor and Industrial Relations Department govern every phase of this work and are considered an integral part of this contract.
17. **CLEANING:** At the completion of the work the Contractor shall remove all lumber cuttings, trash and other debris from within and about the structure and his tools and equipment and surplus materials from the site. All glass shall be cleaned. All hardware, electric fixtures, plumbing fixtures, tile, and counter tops and molding shall be clean and free from paint, plaster, or dirt, Each subcontractor shall clean up his portion of the work but the Contractor shall be responsible for the directing of all cleaning required of the subcontractor.
18. **CONTRACTOR'S REPAIR ACT NOTICE:** CHAPTER 672E OF THE HAWAII REVISED STATUTES CONTAINS IMPORTANT REQUIREMENTS OWNER MUST FOLLOW BEFORE OWNER MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO DESIGNED, REPAIRED, OR CONSTRUCTED YOUR HOME OR FACILITY. NINETY DAYS BEFORE OWNER FILES A LAWSUIT OR OTHER ACTION, OWNER MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS OWNER ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR AND/OR PAY FOR THE DEFECTS. OWNER IS NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THE LAW, AND FAILURE TO FOLLOW THEM MAY NEGATIVELY AFFECT OWNER'S ABILITY TO FILE A LAWSUIT OR OTHER ACTION
19. **DISPUTES:** All disputes rising hereunder shall be submitted to the licensed architect, if any superintending said construction, and if none, then to the material company which may be surety on the bond; provided, however, that the architect's decision or the decision of the material company, as the case may be, shall be subject to arbitration if notice thereof is given by either party in writing within ten (10) days of the date of the decision. If there shall be no architect or material house, then all decisions shall be submitted to arbitration. In the event of arbitration, one arbitrator selected by the parties hereto shall determine the dispute, and failing agreement as to the selection of an arbitrator, three disinterested arbitrators (who shall be licensed general contractors, architects, or structural engineers) shall determine the dispute, one to be appointed by each party hereto. If either party fails to name his arbitrator within ten (10) days after notice in writing of the appointment of the first arbitrator, the first arbitrator may name the second arbitrator. The two thus chosen, in either manner, shall name the third arbitrator. If they cannot agree within ten (10) days, either may request any judge of the Circuit Court of Hawaii within which the premises are situated to name the third arbitrator. The majority decision of the arbitrators shall be final and binding upon the parties hereto. Each party shall pay one half of the costs of the arbitrators' fees and each party shall pay all other costs incurred by such party.
20. **DISCLOSURE OF LIEN RIGHTS:** Owner acknowledges that before entering into this Construction Contract, Owner read and executed the Disclosure of Lien Rights form provided by Contractor, which is hereby made a part of this Construction Contract.
21. **COSTS OF COLLECTION:** In case suit is instituted on this Contract, the prevailing party shall receive from the adverse party reasonable attorneys' fees, or, if this Contract is placed in the hands of a licensed collector by the Contractor or surety for collection, the Owner agrees to pay twenty-five per cent (25%) of the amount then unpaid hereon as and for a collection fee, and/or attorney's fees,

This Contract is binding upon and inures to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

DATED: _____, Hawaii, this _____ day of _____, 20_____

Owner

Owner

Contractor

DISCLOSURE OF LIEN RIGHTS

Access this form via website at: www.hawaii.gov/dcca/areas/pvl

HOMEOWNERS TAKE NOTICE

Any person who furnishes labor (prime or subcontractor) or materials (material supplier) for your home improvement or renovation project and is not paid can file a claim (lien) in Circuit Court against your property under Hawaii Revised Statutes ("HRS") chapter 507. This is true even if you have paid the contract price in full to the prime contractor and the contractor fails to pay his subcontractors or material suppliers.

In order to obtain a lien against your property, a contractor, subcontractor, or material supplier must go to court and show that goods or services for the project have been supplied but not been paid for. You will be notified to appear and defend against these claims in court.

If a lien is obtained, you are entitled to prove in a later court proceeding that you paid your prime contractor in full. The court could then enter judgment in your favor against the prime contractor and direct payment out of the contractor's recovery fund up to the amount allowed by law, if the prime contractor was properly licensed at the time you entered into the contract with the prime contractor.

WHAT YOU CAN DO

Here is what you can do to help prevent problems:

- (1) Make certain that the contractor is licensed. Call 587-3295 to verify licensure.
- (2) On bigger jobs ask the contractor to explain to you about the possibility of providing a PERFORMANCE AND PAYMENT BOND which will guarantee completion of the project and payment of all liens. This Bond is usually provided by surety companies or material supply houses to qualified contractors. It may cost you approximately 5% of the project cost.
- (3) YOU SHOULD NOT MAKE ANY ORAL AGREEMENTS. Make sure everything is put in writing, including but not limited to the price, what work is to be done, any specific exclusions or restrictions, and the grade and brand of materials to be used, the length of the project, etc. See HRS §444-25.5 and the rules of the Contractors License Board. If you later agree to make any changes in the original specifications, THESE CHANGES SHOULD BE IN WRITING AS WELL.
- (4) TAKE TIME TO STUDY THE AGREEMENT. Do not let a contractor or salesman hurry you into signing a contract; especially when you feel pressured by emergencies.
- (5) REMEMBER, A CONTRACT IS A LEGAL BINDING DOCUMENT. Make certain you understand the contract. If not, spend a few extra dollars to have an attorney explain it to you.
- (6) OBTAIN A LIEN RELEASE FROM SUBCONTRACTORS. A mechanic's lien could be placed on your home by a subcontractor if the general contractor fails to pay his bills--EVEN THOUGH YOU HAVE PAID FOR THE WORK. The same thing holds true FOR SUPPLIERS OF CONSTRUCTION MATERIALS INCORPORATED INTO YOUR JOB...GET A LIEN RELEASE! Contractors could provide you with a lien release form. This form will essentially state that you have paid or have entered into an agreement to pay the subcontractor or supplier for their work, and that the subcontractor or supplier therefor relinquishes their lien rights.
- (7) DO NOT APPROVE PLANS OR BLUEPRINTS unless you understand them.
- (8) PLEASE BE SURE YOUR CHECKS are made out to the CONTRACTOR, NOT TO A SALESMAN.
- (9) Make sure and publish a "NOTICE OF COMPLETION" in the newspaper as soon as the work is done. No lien may be claimed 46 days after the notice requirement (among other things) is completed in accordance with HRS §507-43.
- (10) Discuss with your contractor the possibility of withholding a portion of payment until the 45-day period for filing liens has expired. The amount withheld should be sufficient to cover all claims which might be filed. You and your contractor must agree on the amount.
- (11) If you have any questions about lien rights or other contract matters, DO NOT SIGN this or any contract. Review HRS chapter 507 and/or contact an attorney first.

This form has been approved by the Contractors License Board; however, the Board suggests that a person become familiar with the laws and rules governing contractor's and mechanic's liens prior to entering into a contract with a contractor for new construction or improvements.

I (we) have discussed with the contractor the lien rights of those who will be supplying labor or materials to my (our) project as well as steps I (we) can take to reduce our lien liability. I (we) have read and understand this DISCLOSURE OF LIEN RIGHTS.

DATED this _____ day of _____, 20_____.

CONTRACTOR

OWNER

WITNESS

OWNER