

[your company name]

Address:

License No.:

Classification:

This agreement is made by and between [your company name] (hereafter "Contractor"), and \_\_\_\_\_ (hereafter "Owner/General Contractor"), for the construction by Contractor of \_\_\_\_\_ (the "Project") at the property located at \_\_\_\_\_, Hawaii. In consideration of the promises herein, the Contractor and Owner/General Contractor agree as follows:

### Payment

Owner/General Contractor agrees to pay to Contractor for Contractor's performance of this agreement, the sum of \$ \_\_\_\_\_, in installments as set forth in the Payment Schedule contained in Appendix A, attached hereto by this reference made a part of this agreement.

### Commencement and Completion

Contractor will commence work on the Project on or before \_\_\_\_\_, 20\_\_\_\_. The estimated number of days for completion is \_\_\_\_ days.

The Project will be substantially completed:

- on or before \_\_\_\_\_, 20\_\_\_\_; or,
- approximately ninety days from the dated of commencement; or
- on or before completion (final inspection) of the home being constructed \_\_\_\_\_ on the property; or
- other: \_\_\_\_\_.

Contractor will not be responsible for failure to meet completion deadlines occasioned by reasons not in Contractor's reasonable control, including such events as bad weather, strikes (including shipping strikes), accidents, delays in delivery of materials, or necessary delays to the Project caused by delays of the Owner/General Contractor, or other contractors or subcontractors whose work is necessary prior to Contractor proceeding or continuing with the work under this agreement.

## Scope of Work

Contractor will complete the Project according to the specifications/plans prepared by \_\_\_\_\_ (hereafter "Architect"). Contractor will provide furnish all labor, materials, supplies, and equipment necessary to construct the Project in accordance with the Proposal attached hereto as Appendix "B" and by this reference made a part of this agreement.

Contractor will not be responsible for constructing or furnishing any improvements not specified in this agreement. Except as specified on Appendix "B", this agreement does not include

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All work will be done in accordance with the County and State ordinances, codes, and laws.

Contractor anticipates that approximately \_\_\_\_\_ % of the work under this agreement will be subcontracted by Contractor to others. The names and contractor license numbers of those subcontractors which Contractor anticipates using on the Project are:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

## Materials

Unless otherwise specified on Appendix B, all materials used for the Project will be new, of good quality.

## Changes

Any changes in the work, materials, labor, or other terms under this agreement shall be effective only if made in writing, signed by Contractor and Owner/General Contractor, and dated. Contractor will not be required to accept any change order unless Owner/General Contractor and Contractor agree to the additional charges associated with the changes proposed.

## Insurance and Bonding

Owner/General Contractor agrees to provide adequate property and liability insurance on the property to cover Contractor's and Contractor's employees', agents', and subcontractors' activities under this agreement. Contractor will not be liable for loss of Owner/General Contractor's personal property left on the property during this agreement. Owner/General Contractor is aware that Contractor [ ] will be bonded; or, [ ] will not be bonded with regard to the Project (and Contractor waives any requirement of such bonding).

### Preparation and Utilities

Owner/General Contractor will provide adequate water and electricity to the site at all times during the Project.

Prior to commencement of the Project, Owner/General Contractor agrees to provide a clear and accessible building site, correctly zoned for the construction, and Owner/General Contractor shall identify the boundaries of Owner/General Contractor's property to Contractor. Contractor will not be responsible for claims arising out of or related to improper placement or positioning of boundary stakes or house stakes.

### Indemnity

Owner/General Contractor will hold Contractor harmless and indemnify and defend Contractor for and against any and all costs, damages, losses, expenses, including reasonable attorneys' fees, resulting from acts or omissions of Owner/General Contractor, Owner/General Contractor's agents, Owner/General Contractor's invitees, employees, subcontractors, or other third parties on the property.

### Warranties

Contractor provides a warranty of good workmanship for a period of one-year from the date of final completion of the Project. This warranty covers workmanship by Contractor in construction of the Project, but does not include defects or failure of any materials or equipment installed beyond any manufacturers' warranties that may apply. Any warranty claims relating to faulty materials or equipment must be submitted by Owner/General Contractor directly to the manufacturer. The warranty provided herein does not extend to work, maintenance, or alterations performed by parties other than the Contractor. Failure by the Owner/General Contractor to properly maintain the Project shall invalidate this warranty. This warranty shall be assignable to a new owner of the Owner/General Contractor's property.

### Lien Rights

In the event of default of Owner/General Contractor under this agreement, Contractor may cease work on the project, and may exercise its right to attach a mechanic's lien and/or materialman's lien, in accordance with Hawaii law. THE ATTACHED DISCLOSURE OF LIEN RIGHTS IS MADE PART OF THIS AGREEMENT.

### Complete Agreement

Owner/General Contractor and Contractor agree that this agreement contains the entire and complete agreement of the parties, superseding any prior oral or written agreements or understandings, and that there are no understandings, representations, or agreements between them, other than those set forth in this agreement and the attachments hereto. No other statement, representation, or promise has been made to induce either party into this agreement. Any changes or amendments to this agreement must be in writing, signed by all parties to this agreement.

### Partial Invalidity

If any term, provision, covenant or condition of this agreement should be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

### Heirs, Assigns, etc.

This terms of this agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, spouses, successors, assigns, agents, successor trustees, representatives and all others claiming in any manner by or through said parties.

### Jurisdiction

This agreement will be governed by and construed according to the laws of the State of Hawaii, and the proper jurisdiction and venue for any legal proceedings shall be in the State and County of Hawaii.

### Default

If Owner/General Contractor shall default in payment to Contractor of any amount when required under this agreement, then Owner/General Contractor shall also pay interest at the rate of 1.5% per month until such payment is received by Contractor. If either party shall be in default, the non-defaulting party shall have the right to retain an attorney to make any demand or otherwise protect or enforce his rights herein, and the defaulting party hereby agrees to pay all costs and expenses so incurred by the non-defaulting party, including court costs and reasonable attorney's fees.

### Contractor's Right to Resolve Defects

CHAPTER 672E OF THE HAWAII REVISED STATUTES CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSRUCTION AGAINST THE CONTRACTOR WHO DESIGNED, REPAIRED, OR CONSTRUCTED YOUR HOME OR FACILITY. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, THE CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR AND/OR PAY FOR THE DEFECTS. YOU ARE 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 YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

In witness the parties have executed this agreement on the dates indicated below.

**[your company name]**

\_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

**Owner/General Contractor**

\_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

## Appendix "A" Payment Schedule

# Appendix "B" Proposal

<http://www.jdsupra.com/post/documentViewer.aspx?fid=ba8315ee-44db-4392-a0f0-68d96cd51672>

# DISCLOSURE OF LIEN RIGHTS

<http://www.jdsupra.com/ipos/documentViewer.aspx?fid=ba8315ee-44db-4392-a0f0-68d96cd51672>

Access this form via website at: [www.hawaii.gov/dcca/areas/pvl](http://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 \_\_\_\_\_

CONTR ACTOR	OWNER

WITNES OWNER	

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