

architecture  
+ planning



**ARCHITECTURAL DESIGN SERVICE AGREEMENT**

**HAWAII OCEAN PLAZA 3.5 ALTERNATIVE  
1362, 1370 & 1374 KAPIOLANI BOULEVARD  
HONOLULU, HAWAII  
Project No. 16009-07**

**THIS DESIGN SERVICE AGREEMENT (the "Agreement")  
is made and entered into as of  
1 December 2017 between:**

**HAWAII OCEAN PLAZA LP  
a company incorporated in the State of California and having an office at:**

**1585 Kapiolani Boulevard  
Suite 1215  
Honolulu, Hawaii 96814**

**and**

**FSC ARCHITECTS  
an architecture and planning practice registered in the State of Hawaii and  
having an office at:**

**32 Merchant Street, Suite 208  
Honolulu, Hawaii 96813  
USA**

## 1. **PROJECT DESCRIPTION AND AREAS OF WORK**

The Agreement concerns the following project (the "Project"): The Project is located on three parcels including TMK's 2-3-016: Lots 18, 19 and 20 fronting both Kapiolani Boulevard and Makaloa Street, and totaling 45,000 square feet. The Project will follow the current LUO zoning allowing a maximum of 3.5 Floor Area Ratio (FAR) using the open space bonus program for a maximum 157,500 square feet (sf) allowable floor area (not including parking garage). The intent of the scheme is to strictly follow the LUO so as to avoid any variance request.

The program includes one and two bedroom for sale condominiums in a tower above an above-grade parking garage and ground floor commercial space and loading space. The commercial space will include restaurants and possibly retail. There will be no basement and no "affordable housing" units as defined by the City and County of Honolulu. A recreation deck including a swimming pool and other amenities will be located on the roof of the parking garage that extends beyond the tower footprint. The tower footprint at the recreation deck will include amenity space, as in Common Room with kitchen, fitness room, sauna and possibly Home Theater Room with the balance of the floor in condo units.

## 2. **SERVICES AND RESPONSIBILITIES**

### 2.1 **BASIC SERVICES OF FSC ARCHITECTS**

- 2.1.1 FSC ARCHITECTS, as the Architect, shall include design and detail stages of Schematic Design, Design Development and Construction Documents, and Construction Administration on a hourly-rate time and material basis. Concept Design dated 27 October 2017 was produced by FSC ARCHITECTS and accepted and paid for by Client under a separate agreement.
- 2.1.2 Coordinate with other consultants some of which the Client may or may not add to this Agreement. These "base" consultants include Civil, Structural, Mechanical & Plumbing, Electrical and Landscape Architecture. FSC ARCHITECTS will charge an "administration fee" equal to **ten percent (10%)** of the engineer's fee for taking the lead role design role in coordinating these base consultants. FSC ARCHITECTS will also assist in assembling this team of consultants. Client to provide consultant fees to FSC ARCHITECTS for the purpose of calculating the administration fee.
- 2.1.3 Consultants that shall not be included in this Agreement and hired directly by the Client include "specialty" consultants like the geotechnical engineering, traffic engineer, environmental engineer and accessibility consultant. Other consultants currently not included but will need to be discussed include among others interior design of residential units, construction management, cost estimating, telecommunications, security systems and signage/graphics. FSC ARCHITECTS will assist Client in assembling these consultants and their bids upon request. FSC ARCHITECTS will not charge an "administration fee" for coordinating this work.
- 2.1.4 FSC ARCHITECTS requires the Client to hire the accessibility consultant as this consultant can handle all aspects of the project including buildings, landscape (accessible route) and interior design.
- 2.1.5 Client acknowledges that all services or materials provided by FSC ARCHITECTS to Client under this Agreement constitute an improvement of the property upon which the Project is located for the purposes of Hawaii Revised Statutes Chapter 507.

### 2.2 **ADDITIONAL SERVICES OF FSC ARCHITECTS**

- 2.2.1 Additional services shall include redesign of previously approved work by FSC ARCHITECTS and its consultants (Client list of the person(s) who is authorized to issue written approval shall be attached), major revisions to program and expansion of scope of work itemized in clauses 1 and 3 of this agreement. For purpose of clarity this clause also pertains to changes resulting from value-engineering and construction cost reduction directives.
- 2.2.2 Delay or acceleration of the project schedule not caused by FSC ARCHITECTS, may be considered an Additional Service.
- 2.2.3 Additional services of FSC ARCHITECTS and its consultants, if included, shall be provided as a lump sum negotiated fee on a case-by-case basis.



## 2.3 CLIENT'S RESPONSIBILITIES

- 2.3.1 **Design brief:** Client shall provide all the necessary design brief information including, certified land survey, boundaries, contours of the site, locations and dimensions pertaining to existing buildings and features on the project site. In addition, Client shall provide data regarding site conditions including soil analysis and test borings, public utilities, geographical conditions, rights of way, restrictions, easements, deed restrictions, environmental impact reports, and so forth.
- 2.3.2 **Budget:** Client shall establish an overall budget and schedule for the Project.
- 2.3.3 **Zoning, etc.:** Client shall provide FSC ARCHITECTS with zoning and planning information collected to date.
- 2.3.4 **Client's representations:** FSC ARCHITECTS is entitled to rely on the accuracy, timeliness, and completeness of all information provided by Client, Client's representatives.
- 2.3.5 **Consultants:** Client will hire the accessibility consultant who will review the entire project including buildings, site/landscape and interiors. The Client hiring the geotechnical engineer and producing the existing soil condition report is required prior to the civil and structural engineers starting their design. Client shall hire consultants in a timely manner not to impact schedule.

## 2.4 ARCHITECT'S RESPONSIBILITIES

As **Architect**, FSC ARCHITECTS shall be the **architect-of-record** and design team leader for the duration of the project. FSC ARCHITECTS as Architect shall provide design expertise and service specified in clause 3.

## 3. SCOPE OF WORK

**FSC ARCHITECTS** shall provide the following architectural services (the "Scope of Work"):

### 3.1 FINAL CONCEPT DESIGN

Not included as this stage of design was produced and accepted under separate agreement.

### 3.2 SCHEMATIC DESIGN

Upon written notice to proceed, FSC ARCHITECTS shall:

- 3.2.1 Prepare Schematic Design drawings prepared by others based on the approved entitlements and as otherwise directed by the Client, consisting of drawings and other documents illustrating the scale and relationships of the project components as designated by the scope of work. At this stage of design, in addition to existing types of drawing, enlarged floor plans with integrated structure design need to be created to establish the "base sheets" that are used as an underlay base drawing from which all consultants begin their drawings.
- 3.2.2 Prepare building area tabulation.
- 3.2.3 Coordinate its work with the consultants; especially with the civil, structural, mechanical and electrical engineers so that their design requirements and a structural column layout and grid have been incorporated into the architecture design and floor plans.
- 3.2.4 The Final Schematic Design drawings produced by FSC ARCHITECTS during the Schematic Design Phase shall include the following drawings:

|                                    | <b>Imperial</b> |
|------------------------------------|-----------------|
| Site/Roof Plan                     | 1"=20'-0"       |
| Site Sections                      | 1/16"=1'-0"     |
| Overall Floor Plans of all levels  | 1/16"=1'-0"     |
| Enlarged Floor Plans of all levels | 1/8"=1'-0"      |
| Unit Type Floor Plans              | 1/4"=1'-0"      |
| Exterior Elevations                | 1/16"=1'-0"     |
| Typical Building Sections          | 1/16"=1'-0"     |



- 3.2.5 Provide two renderings to be determined.
- 3.2.6 Provide Client with electronic files and three sets of full size prints (22"x34").
- 3.2.7 Drawings shall be produced in a digital format using AutoCAD 2014 format (or later) and/or hand drawn format, at the discretion of FSC ARCHITECTS. Floor plans, elevation and section shall be produced in a digital format.

After submittal Client shall review and approve the project to proceed to the next phase of design. If the client approval comes with comments FSC ARCHITECTS shall incorporate them into the next phase design. Client written approval of the Final Schematic Design and an updated construction budget are required prior to FSC ARCHITECTS commencing the next stage of work. If project team is required to wait more than ten days for the written authorization to proceed, FSC ARCHITECTS may allocate up to two weeks for its internal remobilization before commencing work on the project.

### 3.3 DESIGN DEVELOPMENT

- 3.3.1 Upon written notice to proceed per clause 3.1, FSC ARCHITECTS shall prepare Design Development drawings to provide additional design detail prior to commencing Construction Documents.
- 3.3.2 Design Development drawings shall include:

|  | <b>Imperial</b> |
|--|-----------------|
| Site/Roof Plan                         | 1" = 20'-0"     |
| Site Sections                          | 1/16" = 1'-0"   |
| Overall Floor Plans of all levels      | 1/16" = 1'-0"   |
| Enlarged Floor Plans of all Levels     | 1/8" = 1'-0"    |
| Unit Type Floor Plans                  | 1/4" = 1'-0"    |
| Exterior Elevations                    | 1/16" = 1'-0"   |
| Building Sections                      | 1/16" = 1'-0"   |
| Typical Enlarged Partial Wall Sections | 1/2" = 1'-0"    |
| Typical Enlarged Exterior Elevations   | 1/2" = 1'-0"    |
| Profile Exterior Details               | Misc.           |
| Exterior Materials Board               |                 |

- 3.3.3 The Design Development drawings and data shall be developed by FSC ARCHITECTS sufficiently to show the scope of the project's design in form, size and basic materials. FSC ARCHITECTS shall work with the consultants to incorporate design requirements for their systems.
- 3.3.4 FSC ARCHITECTS shall provide electronic files and one full size (22x34) set including consultant drawings.
- 3.3.5 Drawings shall be produced in a digital format using AutoCAD 2014 format (or later).

Delivery of the drawings listed above or any portion thereof shall occur after FSC ARCHITECTS receives payment for the previous stage of work.

After submittal to Client, Client shall review and approve the project to proceed to the next phase of design. If the client approval comes with comments FSC ARCHITECTS shall incorporate them into the next phase design. Client written approval of the Schematic Design and an updated construction budget are required prior to FSC ARCHITECTS commencing the next stage of work. If project team is required to wait more than ten days for the written authorization to proceed, FSC ARCHITECTS may allocate up to two weeks for its internal remobilization before commencing work on the project.

### 3.4 CONSTRUCTION DOCUMENTATION

- 3.4.1 Upon written notice to proceed per clause 3.2, FSC ARCHITECTS shall prepare Construction Documents including drawings and specifications for the purpose of Building Permits and bidding documents used for selecting the General Contractor, and setting forth in detail the architectural construction requirements and coordinating the consultant construction requirements for the project. This shall include floor plans, elevation and sections, partial enlarged detailed plans, wall type details, interior elevations, finish



- schedules, hardware schedules, door and window schedules and details, reflected ceiling plan, roof plans, typical wall sections, partition types and details, stair plans, and miscellaneous details.
- 3.4.2 FSC ARCHITECTS shall provide electronic files and one full size (22x34) set including consultant drawings.
  - 3.4.3 Drawings shall be produced in a digital format using AutoCAD 2014 format (or later).

Delivery of the drawings listed above or any portion thereof shall occur after FSC ARCHITECTS receives payment for the previous stage of work, and applies to each stage of the Construction Documentation phase per the duration schedule indicated in clauses A1.1.6 and A1.2.

After submittal, Client shall review and approve the project to proceed to the next phase of design. If the client approval comes with comments, FSC ARCHITECTS shall incorporate them into the next phase design. Client written approval of the Design Development and an updated construction budget are required prior to FSC ARCHITECTS commencing the next stage of work. If project team is required to wait more than ten days for the written authorization to proceed, FSC ARCHITECTS may allocate up to two weeks for its internal remobilization before commencing work on the project.

### **3.5 BUILDING PERMIT AND BID AND TENDER**

- 3.4.1 FSC ARCHITECTS shall assist the process with the Foundation Permit and Building Permit applications and approvals.
- 3.4.2 FSC ARCHITECTS shall assist the Client upon request in the tender of the bidding documents.
- 3.4.3 Any value engineering, client-approved contractor substitution requests or scope re-design by FSC ARCHITECTS is considered Additional Services.

### **3.6 CONSTRUCTION ADMINISTRATION**

FSC ARCHITECTS shall perform standard Construction Administration duties normal in the State of Hawaii, including review of General Contractor submittals, shop drawings, Request for Information (RFI's), change order request and monthly payment applications, attend weekly Owner Architect Contractor (OAC) site meetings and weekly site visits to observe general construction progress.



**APPENDIX I PAYMENT FOR BASIC SERVICES**

**A1.1 BASIC FEE AND MOBILIZATION FEE:**

- A1.1.1 The total professional service fee for **FSC ARCHITECTS Architect** services is **Seven Hundred Sixty Five Thousand Dollars U.S. Dollars (USD \$765,000)**, plus General Excise Tax (GET) at **\$36,046.80** for a total fee **Eight Hundred One Thousand Forty Six U.S. Dollars and Eighty Cents (USD \$801,046.80)**. The normal deposit is waived for this Agreement given the continuation of the project under the original Agreement #16009-06. Not included in the fee above is the Concept Design completed and paid for under separate agreement.
- A1.1.2 In addition to the above fee, the **Construction Administration** services shall be charged on a hourly-rate time and material basis per the rates specified in A2.1, plus G.E.T. For the purpose of budgeting this service an 18 month construction phase is estimated.
- A1.1.3 The "administration fee" for "base" consultants as described per clause 2.1.2 are **not included** in the lump sum fee above, but will be added and charged at a rate equal to **ten percent (10%)** of the base consultants' fee(s).
- A1.1.4 Expenses for photography, long distance communication, telephone, facsimile, postage, courier and check-set prints costs and travel within Oahu Island are included in the basic fee, except for milestone printing at Final Schematic Design, Design Development, and Construction Documents, Bid and Tender printing and Building Permit printing. County fees and any other government required fees are also not included.
- A1.1.5 Travel expenses for travel outside of Oahu Island if required by the Client will be charged as an Additional Expense.
- A1.1.6 The professional service fee for **FSC ARCHITECTS Architect** services is computed based on services provided by **FSC ARCHITECTS** during specific phases of the Project, as set out here:

| <b>Design Phase for SD-CD</b> | <b>Architect Fee</b> | <b>Estimated Duration</b>           |
|-------------------------------|----------------------|-------------------------------------|
| Schematic Design              | \$125,000            | one month design                    |
| Design Development            | \$160,000            | one month design & detail           |
| Construction Documents        | \$420,000            | three months design & detail        |
| Building Permit Phase         | \$ 60,000            | two-three months                    |
| <b>Sub-total</b>              | <b>\$765,000*</b>    | <b>5 months design &amp; detail</b> |
| G.E.T. at 4.712%              | \$ 36,046.80         |                                     |
| <b>Total Fee</b>              | <b>\$801,046.80*</b> |                                     |

**\*Note: Excluding Construction Administration fee per A1.1.2.**

**A1.2 PAYMENT SCHEDULE**

- A1.2.1 The payment schedule calls for billings and payment of fees for services provided by **FSC ARCHITECTS** set out here that generally correspond with a monthly billing cycle:

| <b>Time period for SD-CD</b> | <b>Fee</b>        | <b>G.E.T. at 4.712%</b> | <b>Total</b>         |
|------------------------------|-------------------|-------------------------|----------------------|
| Schematic Design             | \$125,000         | \$5,890.00              | \$130,890.00         |
| Design Development           | \$160,000         | \$7,539.20              | \$167,539.20         |
| 33% CD                       | \$140,000         | \$6,596.80              | \$146,596.80         |
| 67% CD                       | \$140,000         | \$6,596.80              | \$146,596.80         |
| 100% CD                      | \$140,000         | \$6,596.80              | \$146,596.80         |
| Building Permit Approval     | \$ 60,000         | \$2,827.20              | \$ 62,827.20         |
| <b>Total Fee</b>             | <b>\$765,000*</b> | <b>\$36,046.80</b>      | <b>\$801,046.80*</b> |

**\*Note: Excluding Construction Administration fee per A1.1.2.**





**A1.3 PAYMENT TERMS**

- A1.3.1 After FSC ARCHITECTS provides professional service and responsibilities specified in this agreement; **Client's duty to make payment is not contingent upon obtaining project financing, construction financing or project joint venture partners, or the initiation of construction.**
- A1.3.2 All professional fees or any other compensation are net of local taxes, duties, etc. State of Hawaii **General Excise Tax (GET) of 4.712%** shall be added to the fees.
- A1.3.3 The compensation schedule set out above identifies payments by month. The services described above are anticipated as the scope of work for the fees outlined. Adjustments to the scope of work shall require fee schedule modification.
- A1.3.4 FSC ARCHITECTS shall issue an invoice per Payment Schedule. Payments for services shall be due upon receipt of invoice. Evidence of the wire transfer for payment shall be in the form of a copy of the authorization to the bank by the client.
- A1.3.5 Extensive or extraordinary itemization breakdowns for accounting purposes are not a normal procedure; however, at Client's request, FSC ARCHITECTS shall provide this service at a charge of U.S. Seventy-Dollars (\$70) per hour, payable as a reimbursable expense.
- A1.3.6 In the event Client does not authorize FSC ARCHITECTS to complete design services within two (2) months of this Agreement, the balance of work and compensation to FSC ARCHITECTS shall be renegotiated.

**A1.4 PAYMENT METHOD**

- A1.4.1 All payments shall be made in dollars of the United States of America, deposited into:  
**First Hawaiian Bank, Main Branch,  
Honolulu, Hawaii, U.S.A.,  
to the order of FSC ARCHITECTS,  
Account No. 01-082183 ( bank ABA #121301015), bank swift code fhbkus77,  
Annotated "HOP 3.5 Alternative";  
Job No. 16009-07**
- A1.4.2 Payments originating in the United States may be made by check drawn on a United States bank. All payments originating outside the United States must be sent via tested telegraphic transfer.
- A1.4.3 Payments are received when FSC ARCHITECTS receives notice of deposit from First Hawaiian Bank, not when dispatched by Client.

**APPENDIX II PAYMENT FOR ADDITIONAL SERVICES**

**A2.1** Additional services shall be provided on an hourly basis using billing rates as follows:

|                     |          |
|---------------------|----------|
| Principal           | \$300.00 |
| Associate Principal | \$220.00 |
| Staff I             | \$150.00 |
| Staff II            | \$120.00 |
| Staff III           | \$115.00 |
| Staff IV            | \$95.00  |
| Administrative      | \$70.00  |
| Graphics            | \$90.00  |

Overtime rates for staff over 40 hours per week shall be at 1.5 times billing rate.

- A2.2** Additional services shall be approved prior to starting work and based upon a negotiated lump sum fee or hourly-rate time and material basis, and shall be due and payable on receipt of invoice.
- A2.3** Travel expenses for travel outside Oahu Island required by the Client will be charged as an Additional Service and the actual expense will be charged without markup.
- A2.4** Failure to satisfy invoices for additional services within fifteen (15) days of invoice shall be an authorization to FSC ARCHITECTS, at its discretion, to stop work on any additional services, in the same manner as upon default of





payment of monthly lump sum fees.

### **APPENDIX III     PAYMENT DEFAULT**

- A3.1** An automatic notification of late payment shall be made fifteen (15) days from invoice date. If payment has not been received by then FSC ARCHITECTS may charge a default fee by 1% of the professional service fees of that outstanding per day from fifteen (15) days of invoice date.
- A3.2** When any invoice is outstanding and unpaid fifteen (15) days after the invoice is sent, FSC ARCHITECTS may, at its discretion, stop work on the Project. Client shall send the bank receipt to FSC ARCHITECTS after client makes the payment, which can be used as the proof of payment for FSC ARCHITECTS to continue the design, unless FSC ARCHITECTS cannot receive the notice of deposit from First Hawaiian Bank thereafter.
- A3.3** If FSC ARCHITECTS stops work on the Project under this provision or the Client delays the project for more than three weeks then restarts the project, a remobilization fee may be charged. This fee shall equal to 2% of unperformed service fee. After receipt of the remobilization fee, FSC ARCHITECTS at its discretion may allocate up to two weeks for its internal remobilization before recommencing work on the Project.
- A3.4** Without client's written approval, FSC ARCHITECTS cannot subcontract the service and responsibilities under this agreement to other parties.

### **APPENDIX IV     TERMINATION OF AGREEMENT**

- A4.1** Either party upon reasonable written notice may terminate this Agreement. Should the Project be suspended, abandoned or assigned to another consultant, FSC ARCHITECTS shall be compensated for all services performed prior to receipt of written notice from Client of such suspension, abandonment, or assignment together with the Mobilization Fee any reimbursable expenses then due.
- A4.2** If the Project is suspended for any reason, and then resumed after being suspended for more than three (3) months, FSC ARCHITECTS, at its discretion, may re-negotiate with Client its compensation hereunder.
- A4.3** FSC ARCHITECTS cannot terminate the project without reasonable cause.

### **APPENDIX V     GENERAL PROVISIONS**

- A5.1     **Power to execute Agreement:**** Each party warrants that it has full power and authority to execute this Agreement, perform all conditions and deliver all instruments and payments described herein.
- A5.2     **Entire Agreement:**** This Agreement represents the entire integrated agreement between Client and FSC ARCHITECTS. It supersedes all prior negotiations, representations or agreements either written or oral.
- A5.3     **Termination by force majeure:**** If there occurs a force majeure, i.e., government orders, laws or regulations, strikes, sabotages, lockouts, embargoes, war, acts of God (such as a flood or earthquake) or any other event caused beyond the reasonable control of the parties of this Agreement, allowing performance by either party under this Agreement impossible, the parties subject to the force majeure may terminate this Agreement by fifteen (15) days written notice to the other. Agreement may be amended only by written instrument signed by Client and FSC ARCHITECTS.
- A5.4     **Payment in event of force majeure:**** In a force majeure termination of this Agreement by Client, FSC ARCHITECTS shall be compensated for all services performed up to the date of termination and shall retain all compensation paid up to the date of termination. FSC ARCHITECTS shall provide Client, upon full payment as set forth herein, reproducible copies of all documents completed to the date of termination.
- A5.5     **Notices:**** Notices hereunder are effective if sent by first class mail (or its equivalent), postage prepaid, courier to the addresses listed and to the individuals named first above, or to the different person and at the different
- A5.6     **FSC ARCHITECTS standard of care; disclaimer of warranties:**** FSC ARCHITECTS shall perform professional services in a manner consistent with that level of care and skill ordinarily exercised by members of the architectural profession practicing under similar conditions and circumstances in a similar locale address, if any, set out here. No other warranty or representation to Client or their contractors and subcontractors, expressed or implied, is included or intended in the Agreement, or in any report, document or otherwise.





**A5.7 Additional Conditions for Multiple Ownership Residential Projects:** Because of certain “high risk” consequences associated with multiple ownership residential projects like Condominiums and Timeshare resort properties the following additional conditions apply:

**A5.7.1 Insurance:** The Client shall provide and/or require the Construction Manager, General Contractor and all subcontractors and trade contractors with whom they have any agreement, hereafter collectively referred to as the “Contractor”, to name the Architect and its Consultants, as additional insureds under the Client’s and/or Contractor’s comprehensive general liability policy, that shall cover beyond the duration of the Project to the full extent of the State of Hawaii Statute of Limitations, currently understood to be ten (10) years.

**A5.7.2 Limitation of liability:** The Architect’s services under this agreement are being performed solely for the benefit of the Client and no other entity shall have any claim against the Architect because of its agreement with the Client for the performance or non-performance of services. The Client shall include this provision in the agreement with each entity with which it enters into a contract. To the fullest extent permitted by law, the total liability in the aggregate of the Architect, and Architect’s officers, directors, members, employees, agents and independent professional associates and consultants to the Client and anyone claiming by, through or under the Client for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Architect’s services, the Project or this agreement from any cause or causes whatsoever, shall not exceed the total compensation received by the Architect under this agreement. The foregoing limitation of liability shall not apply if a court of competent jurisdiction finds that such liability, to the extent it exceeds the Architect’s compensation hereunder, is due to the breach of contract or willful misconduct of the Architect, however limited to the lowest of (1) the actual proceeds from insurance coverage provided by the Architect and its Consultants’ professional liability insurance; or (2) the amount of any settlement or judgment.

**A5.8 Client to indemnify architect, others:** Client agrees to indemnify, defend and hold harmless FSC ARCHITECTS and each of its shareholders, directors, officers, partners, employees, agents, subsidiaries, and divisions (and each of their heirs, successors, and assigns) from any and all claims, demands, liabilities, suits, causes of action, judgments, costs and expenses, including reasonable attorneys’ fees, arising, or allegedly arising from, personal injury, including death, property damage, including loss of use thereof, economic loss, or otherwise, due in any manner to the error, omission, negligence, recklessness or intentional act of Client or any of its agents, employees, or contractors as a result of performance of the Project, whether any error, omission, negligence, recklessness or intentional act of FSC ARCHITECTS or any other indemnitee contributed thereto, except in a case where FSC ARCHITECTS or another indemnitee is the only negligent party, as determined by a court of competent jurisdiction, in which case no indemnification is owed to the solely negligent party. This indemnification provision is in addition and cumulative to any other right of indemnification or contribution that FSC ARCHITECTS or any of the other indemnities may have in law, at equity, or otherwise, and shall survive completion of the Project. If the Client authorizes deviations recorded or unrecorded, from the documents prepared by the Architect without written agreement of the Architect, the Client shall indemnify, defend and hold harmless the Architect, Architect’s consultants and agents and employees of any of them, against claims, damages, losses and expenses, including but not limited to attorney’s fees, arising out of or in whole or in part from deviations, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

**A5.9 FSC ARCHITECTS and Client rights to certain property:** Design drawings, renderings, models, specifications, electronic files (including, but not limited to, CAD, databases and spreadsheets), and other derivations that are part of the Project (“Project Works”) are the intellectual property of FSC ARCHITECTS. Unless otherwise provided, FSC ARCHITECTS shall be deemed the sole author of the Project Works and FSC ARCHITECTS shall retain all common law, statutory and other reserved rights, including the copyright. FSC grants Client a nonexclusive license to use the Project Works solely with respect to this Project. Full and timely payment of FSC ARCHITECTS’ fees under this Agreement is a condition precedent to the granting of this nonexclusive license. In the event full and timely payment under this Agreement is not made, no license of any kind is granted to Client as to the Project Works. The Project’s intellectual property shall not be used by Client or others on other projects, for additions to this Project, or for completion of this Project by others, except by agreement in writing and with appropriate compensation to FSC ARCHITECTS. Reuse without FSC ARCHITECTS professional involvement shall be at Client’s sole risk and without liability to FSC ARCHITECTS. Client shall indemnify and hold harmless FSC ARCHITECTS, FSC ARCHITECTS consultants and agents and employees or any of them from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys’ fees, arising out of unauthorized reuse of the



Project Works. Such unauthorized use will be considered a violation of FSC ARCHITECTS' copyright in the Project Works.

- A5.10 Computer-Aided Design (CAD):** In order to facilitate the design and coordination of the Project, FSC ARCHITECTS may draw in AutoCAD 2014, or later, CAD format, in which case, the following provisions apply:
- A5.10.1 FSC ARCHITECTS instruments of service hereunder are the printed hard copy drawings and specifications issued for the Project, whereas electronic media, including CAD files, are tools for their preparation. As a convenience to Client, FSC ARCHITECTS shall furnish to Client both printed hard copies and electronic media. FSC ARCHITECTS shall ensure that the content of both copies should be the same.
- A5.10.2 FSC ARCHITECTS electronic media are furnished without guarantee of compatibility with Client's software or hardware, and FSC ARCHITECTS sole responsibility for the electronic media is to furnish a replacement for defective disks within thirty (30) days after delivery to Client.
- A5.10.3 FSC ARCHITECTS retains ownership of printed hard copy drawings and specifications and the electronic media. Client is granted a license for their use, but only in the operation and maintenance of the Project for no additional fee. Use of these materials for modification, extension, or expansion of this Project or on any other Project, without the written consent, shall be without liability to FSC ARCHITECTS and FSC ARCHITECTS consultants.
- A5.10.4 Because data stored in electronic media form can be altered, either intentionally or unintentionally, by transcription, machine error, environmental factors, or by operators, it is agreed that Client shall indemnify, defend, save harmless FSC ARCHITECTS, FSC ARCHITECTS consultants, and the officers and employees of any of them from and against any and all claims, liabilities, damages, losses and costs, including but not limited to costs of defense, arising out of changes or modifications to the data in electronic media form in Client's possession or released to others by Client and for any use of the electronic media and printed hard copy drawings and specifications outside the license granted by this provision.
- A5.10.5 FSC ARCHITECTS shall not be responsible to provide the input of any other consultant discipline.
- A5.10.6 FSC ARCHITECTS reserves the right to choose which drawings are most appropriate to complete in CAD format and which drawings shall be produced by hand.
- A5.11 Use of electronic media, in general:** Use of electronic information contained on computer disks and tapes by Client is allowed with written permission of FSC ARCHITECTS. Client acknowledges that information provided in electronic media must be confirmed and coordinated, and shall be responsible for any use of this information. Since information contained represents works in progress, use of this information is the responsibility of Client. FSC ARCHITECTS assumes no liability for usage subject to damages and reimbursement of all legal costs of FSC ARCHITECTS related to use outside this Agreement.
- A5.12 FSC ARCHITECTS right to publicity:** FSC ARCHITECTS shall have the right to include representations of the design of the Project, including photographs of exterior and interior, among FSC ARCHITECTS promotional and professional materials. FSC ARCHITECTS materials shall not include Client's confidential or proprietary information, if Client has previously advised FSC ARCHITECTS in writing of specific information considered by Client to be confidential or Project. FSC ARCHITECTS shall be given credit for architectural services related to the Project. All press releases and public relations materials with reference to the architectural design shall credit the architectural design of the Project to FSC ARCHITECTS. Whenever possible, Client shall consult with FSC ARCHITECTS concerning all promotional materials pertaining to the Project prior to the release of such materials. FSC ARCHITECTS agrees to cooperate with Client to gain desired media coverage for the Project.
- A5.13 Severability:** If any court or agency of competent jurisdiction determines that one or more portions of this Agreement is illegal or unenforceable, such portions shall be considered severed from the Agreement and all remaining portions shall be enforced.
- A5.14 Jurisdiction and choice of law:** Any dispute arising under this Agreement shall first be attempted to be resolved in the same professional and civil manner from which this agreement was established; second through Dispute Resolution method; thirdly through Arbitration method and finally if necessary submitted for decision to the law courts of the county where project is located, as first stated above, and be decided under the laws of that county.

**The parties execute this Agreement by signing below to evidence their agreement to all the terms set out above as of the date first written above. Those signing below indicate, by their signature, that they have full and final authority to bind their respective party to all the provisions of this Agreement.**





**HAWAII OCEAN PLAZA LP**

By:

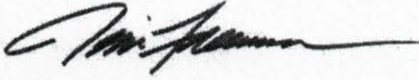


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Johnson Fang  
CEO

**FREEMAN SHELBOURNE CANDARI LLC**

By:



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James G. Freeman, AIA  
Co-founder/Principal