



May 23, 2024

## Rendezvous Restaurant at Heather Gardens Remodel Test Fit

2888 S Heather Gardens Way  
Aurora CO 80014

### Proposal for Architectural Services

#### 1) Scope of Services

Maliakai Architectural Design, LLC agrees to provide the following architectural services for Robin O'Meara, Chair of HGMD Restaurant Committee in Aurora, Colorado. This proposal is for a 6,022 sf 2<sup>nd</sup> Generation Tenant Improvement to include: (2) Test Fits. Test Fit #1 New Indoor / Outdoor Bar Area, Larger Kitchen, New Dining Areas (to include Banquettes and Booths), New Lounge Areas, New Covered Patio and Interior Design Concepts. Test Fit #2 New Bar in its Existing Location, Larger Kitchen, New Dining Areas (to include Banquettes and Booths), New Lounge Areas and Interior Design Concepts. The proposed scope of work listed below is intended to outline the architectural services that are contemplated for the execution of the project. Services will be provided at a fixed rate. The Scope of work may be modified by the Owner only by means of a Supplemental Agreement, which modifies the Fee Section accordingly.

a) Design Phase (DP):

- Prepare conceptual design drawings for Owner's review.

**2) Fees.** The fee for the services listed above shall be billed at a fixed rate of \$15,000. (Test Fit #1 - \$7,500. Test Fit #2 - \$7,500.)

- a) Additional Services: Requested or required Additional architectural services that are not listed in the above scope of work, shall be billed to Owner on an hourly basis according to the following rates, and will be over and above the Maximum amount: of \$15,000. Any changes to the plan requested by the owner after the permit drawings have been submitted to the city, will be considered additional services.

Marc Shen, Principal	\$150/hr
Junior Designer/draftsman	\$75/hr
Intern/Admin	\$40/hr

- b) Maliakai Architectural Design, LLC will provide an invoice for services to the Owners every month. The Owners shall pay all invoices within 20 business days of invoice date. Failure to pay will trigger an automatic Stoppage of Work by Maliakai Architectural Design, LLC. Work shall not resume until all invoices have been paid in full. Overdue invoices (more than 10 business days from date of invoice) will accrue interest at the rate of 2 % per month.
- c) A \$3,000 retainer will be required to begin design services. The retainer shall be held by the Maliakai Architectural Design, LLC and applied to the final invoice only. No interest shall be paid on the retainer amount. Any credit due back to the Owner at the end of Maliakai Architectural Design, LLC services shall be delivered within 20 days of receipt of Owner's payment of the final invoice.
- d) In the event that Maliakai Architectural Design, LLC is required to pursue collection or legal action to collect unpaid bills, Maliakai Architectural Design, LLC shall be entitled, in addition to the outstanding billings, to be paid by Owner for all such legal expenses and other costs and fees required by such action. The retainer may be kept by Maliakai Architectural Design, LLC and applied towards payment of those fees.

### **3) Drive Time, Reimbursables & Consultants**

The following expenses may be incurred or extended on behalf of the client by Maliakai Architectural Design, LLC, and shall be subject to reimbursement by the Owner under the terms below.

- a) Drive and/or flight time to the site, building department and client/project meetings will be billed at Standard hourly rates.
- b) Blueprinting, courier and oversize scanning shall be billed at 1.3x cost.
- c) All engineers' and consultants' services will be billed to the Owner at 1.3x cost. This fee covers Request for Proposals, Review of Proposals and Drawing Coordination.

### **4) Termination & ownership of designs**

- a) Should the project or contractual relationship be terminated for any reason prior to the conclusion of construction by written notice, the Owner will be obligated to pay only for those services or materials that have been rendered or ordered and calculated to the date of termination as determined by Maliakai Architectural Design, LLC. Either party has the right to terminate the contract in writing or project at any time with no penalty except as described above.
- b) In the event that the Owner elects to terminate this contract for any reason, Maliakai Architectural Design, LLC, consultants and subcontractors shall be held harmless for any damages or consequences, including those for inconvenience or loss of use of the premises, which might occur.
- c) The Owner maintains the right to use the Instruments of Service (the drawings and specifications), to construct only one Dwelling and only provided they have paid all monies due for such services. As part of that right, upon final payment by the Owner, Maliakai Architectural

Design, LLC shall provide a copy of the instruments to the Owners upon request. The Owners do not obtain the right to utilize the Instruments of Service until all invoices have been paid to the satisfaction of Maliakai Architectural Design, LLC. Designs and the Instruments of Services may not be copied, transferred for use by any other designer, or otherwise utilized by the Owner or it's agent until authorized by Maliakai Architectural Design, LLC and all invoices have been paid.

- d) Maliakai Architectural Design, LLC maintains in perpetuity the right to re-use or re-sell the designs and drawings in their entirety, without any encumbrance or restriction. Designs are the exclusive copyrighted property of Maliakai Architectural Design, LLC and are protected by the 1990 Federal Copyright Protection Act.

## **5) Limit of liability**

a) Maliakai Architectural Design, LLC's total liability to the Owners for any and all injuries, claims, losses, expenses or damages arising out of this Agreement from any cause or causes, shall not exceed the amount of Maliakai Architectural Design, LLC's Fee to date of termination of the contract. Such causes shall include, but are not limited to Maliakai Architectural Design, LLC's negligence, errors, omissions, strict liability, breach of contract or breach of warranty. Changes to the contract documents (i.e. the drawings, notes and specifications) not authorized by Maliakai Architectural Design, LLC shall relieve Maliakai Architectural Design, LLC of all responsibility for project construction. Failure to notify Maliakai Architectural Design, LLC in a timely manner of discrepancies, omissions or inaccuracies shall similarly relieve Maliakai Architectural Design, LLC from responsibility for all affected construction.

b) In the event of a dispute between the Owner and Maliakai Architectural Design, LLC with respect to any aspect of this Agreement both Owner and Maliakai Architectural Design, LLC hereby agree to submit the dispute to mediation or, at Maliakai Architectural Design, LLC's sole option, to binding arbitration in Boulder, Colorado, before an arbitrator to be selected by mutual agreement of the parties. In the event litigation is required to collect an outstanding billing, owner client agrees to submit to the jurisdiction of Boulder County District Court System, Colorado, whether as the trier of fact or for the purposes of enforcing the arbitration provision above and any decisions rendered by the arbitrator.

c) Any insurance required by the Owner above the amount of Maliakai Architectural Design, LLC's standard policy, shall be paid for directly (at cost) by the Owner.

d) Owner shall indemnify Maliakai Architectural Design, LLC against legal action by 3rd parties against the Owner, due to actions of the owner (for example, failure to pay consultants).

## **6) General Conditions**

a) Owner hereby authorizes Maliakai Architectural Design, LLC to act on it's behalf in connection with any activity required under this Agreement and hereby grants to Maliakai Architectural Design, LLC a Power of Attorney where such formal power is required.

b) Maliakai Architectural Design, LLC shall respond only to directives by Owners whose signature is on the final signature page of this contract. Maliakai Architectural Design, LLC is entitled to rely upon the direction (written or verbal) of any of the signatories to this agreement as the authorized legal representatives of the Owner.

c) Owner shall guarantee Maliakai Architectural Design, LLC the right to perform an energy audit and/or receive copies of testing of the performance of the building.

d) Publicity: Owner shall provide attribution to Maliakai Architectural Design, LLC. Maliakai Architectural Design, LLC shall have the right to publicly display and publish plans, specifications and photographs of the project.

e) Maliakai Architectural Design, LLC shall have the right to photograph the project at the completion of construction.

## 7) Omnipotence and Omniscience Disclaimer – Standard of Care

Maliakai Architectural Design, LLC and subcontractors will proceed with reasonable, diligent professional care and service; however, the Owners understand and agree that the process of building is complex and will encounter errors and unexpected obstacles. No set of Contract Documents (drawings and specifications) is ever perfect or complete. Continual revision, refinement and correction of these documents is assumed to be the normal process of development of the Contract Documents and execution of the project. The design and documentation process is not complete until the project is finished with construction, and a post-occupancy “tweaking” period. Maliakai Architectural Design, LLC, engineers and contractor shall endeavor to solve problems that arise, but this contract in no way guarantees any final outcome of the project. Maliakai Architectural Design, LLC has no control over the means and methods of the contractor and shall bear no responsibility for the performance of the General Contractor, builder or any other party.

The parties listed below have read, understood and agreed to the terms of this contract.

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Robin O’Meara  
Chair of HGMD Restaurant Committee

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Marc James Shen  
Maliakai Architectural Design, LLC

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Date

\_\_\_\_\_  
Date