AGREEMENT made as of the ______ day of _____________ in the year 2014
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

__________________
__________________
__________________
__________________

and the Architect:
(Name, legal status, address and other information)

__________________
__________________
__________________
__________________

for the following Project:
(Name, location and detailed description)

__________________
__________________
__________________
__________________

The Owner and Architect agree as follows.

#12054954 v.1
11/17/14
ARTICLE 1 ARCHITECT’S RESPONSIBILITIES

1.1 The Architect shall provide architectural services for the Project as described in this Agreement in a manner consistent with locally accepted standards for professional skill and care. The Architect shall assist the Owner in determining consulting services required for the Project. The Architect’s services include the following consulting services, if any:

1.2 Standard of Care; Architect’s Responsibilities. The Architect shall be responsible for the performance of all services provided under this Agreement whether such services are provided directly by Architect or by any consultant hired by Architect. The Architect shall perform its services under this Agreement in accordance with the standard of professional skill and care expected of architectural firms practicing in the geographic area in which the Project is located and experienced in the design and construction of projects similar in scope and size to the Project (the "Standard of Care"). The Architect shall cause its consultants, if any, to perform their services in accordance with the standards of professional skill and care expected of consultants practicing the same professions in the geographic area in which the Project is located and experienced in the performance of such professional services. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

Owner shall be entitled to be a third party beneficiary under all agreements entered into by Architect with any consultants, including, without limitation, the structural engineer, and other consultants provided by Architect. Architect shall cause a provision to such effect to be included in each agreement between Architect and its consultants; provided, however, that the Owner shall not be entitled to exercise any third-party beneficiary rights prior to the completion of the Project or the termination of the Agreement, whichever first occurs.

1.3 Architect’s Coordination with Owner’s Consultants. The Architect shall coordinate its services with those services provided by the Owner and the Owner’s consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner’s consultants, except as to any such services or information containing errors, omissions or inconsistencies as to which the Architect has actual knowledge at the time Architect is performing the relevant services. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information. The Owner shall require its consultants to cooperate and coordinate their services with those services provided by the Architect.

1.4 Architect’s Coordination of Design Documents. Architect also shall be responsible for the coordination of all drawings and design documents incorporated into Architect’s design which are prepared by Owner’s consultants and peer review comments and revisions from Owner’s consultants; provided, however, that Architect shall not be responsible for the accuracy of the drawings or specifications submitted by the Owner’s consultants, except (i) for the failure of the improvements and systems designed by such engineers to fit into Architect’s design resulting from Architect’s failure to recognize such failure based on a violation of its standard of care or (ii) to the extent that Architect discovers errors in such drawings or specifications and fails to promptly report such errors to Owner. Upon the discovery of such failure or errors by Architect, Architect shall provide Owner with prompt written notice thereof so that Owner can cause its consultants to correct such errors.

1.5 General Design Phase Activities. During the Design Phase, the Architect shall review the Owner’s scope of work, budget and schedule and reach an understanding with the Owner of the Project requirements. Based on the approved Project requirements, the Architect shall develop a design. Upon the Owner’s approval of the design, the Architect shall prepare Construction Documents indicating requirements for construction of the Project and shall coordinate its services with any consulting services the Owner provides. The Architect shall assist the Owner in filing documents required for the approval of governmental authorities, in obtaining proposals and in awarding contracts for construction.

1.6 General Construction Phase Activities. During the Construction Phase, the Architect shall act as the Owner’s representative and provide administration of the Contract between the Owner and Contractor. The extent of the Architect’s authority and responsibility during construction is described in the applicable AIA construction contract or other construction form between Owner and Contractor. Generally, the Architect’s services during construction include interpreting the Contract Documents, reviewing the Contractor’s submittals, visiting the site, reviewing and certifying payments, and rejecting nonconforming Work.
Architect shall provide Owner with a written list of observed items or materials or conditions requiring modification or replacement or additional work within five (5) business days following each visit of the Architect to the Project to observe the Work.

1.7 Shop Drawings. In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor’s submittals such as Shop Drawings, Product Data and Samples for the purposes of checking that the construction affected by and represented by such submittals is in compliance with the requirements of the Contract Documents, including, without limitation, the design concept expressed in the Contract Documents. Architect shall be responsible for determining what aspects of the Work shall be the subject of shop drawings and submittals. The Architect’s action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of Owner or of separate contractors, while allowing sufficient time to permit adequate review. Architect shall promptly report to Owner if the Architect becomes aware that construction is proceeding in the absence of approved shop drawings and submittals. In addition to the Architect’s review of such submittals, the Architect shall forward such submittals to the appropriate consultants of Owner for their respective review of such submittals. The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

1.8 Architect’s Recommendations Regarding Work. The Architect shall recommend to the Owner that the Owner reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work. The Architect shall promptly report to the Owner any deficiencies, defects, errors or omissions of the Contractor, any Subcontractor or any of their respective agents or employees which the Architect is made aware, and any actual or anticipated cost overruns or delays in completion of the Work.

1.9 Payment Applications. The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts or disapprove such amounts as shall be called for by the exercise of the Standard of Care, in each case within seven (7) calendar days after receipt by the Architect of the Contractor’s Application for Payment. In case of any such disapproval, the Architect shall provide a written explanation of the factual and contractual basis for such disapproval and shall certify in writing that such disapproval was made in good faith. The Architect’s certification for payment shall constitute a representation to the Owner, based on the Architect’s evaluation of the Work as provided in Sections 1.6 and 1.8 on the data comprising the Contractor’s Application for Payment, that, to the best of the Architect’s knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

1.10 Architect’s Other Activities. Except with the Owner’s knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect’s professional judgment with respect to this Project.

1.11 More Basic Services. Notwithstanding any other provisions of this Agreement to the contrary, in addition to the Basic Services as defined in Article 1, the following shall also be considered Basic Services:

.1 The Architect shall work closely with the Owner and shall provide such materials and assistance as may be necessary or desirable in connection with presentation before, submissions to, or meetings with any federal, state or local governmental authorities having jurisdiction over the Project, in connection with typical and customary review of the Project by such governmental authorities.
The Architect shall be available to attend meetings and/or participate in telephone calls with the Owner, the Contractor and/or their agents and representatives as required to ensure the successful design and construction of the Project.

The Architect shall provide any and all services necessary or desirable in connection with typical and customary Change Orders and Construction Change Directives as reasonably required by field conditions and to accommodate the fit and installation of specified materials in the actual construction so long as actual construction of the Project is consistent with the intent of the Construction Documents.

The cost of any and all computer aided design and drafting equipment time necessary in connection with the performance of the Architect’s services hereunder is included within Basic Services.

Prior to the start of construction, to the extent applicable, Architect shall be responsible for preparing, publishing and distribution all job meeting minutes to all project team members in a timely, and complete manner. This means that the meeting minutes shall be distributed no later than within 5 calendar days from the meeting date.

1.12 Drawings and Specifications. Drawings and Specifications or other Construction Documents submitted to Owner for approval or to any contractors for bidding or negotiation shall be reasonably complete, accurate and unambiguous and in compliance with the prevailing interpretation of all applicable codes necessary to obtain a building permit, and any ordinances, statutes, regulations and laws, as amended and any state accessibility laws, rules and regulations and any applicable life safety codes or equivalent codes (collectively, “Governmental Requirements”) and any changes therein of which Architect obtains actual knowledge prior to completion of the final design of the Project. If, after the date of this Contract, modifications to the Drawings or Specifications are required because of any change in the Governmental Requirements, Architect shall make the required modifications, but the cost of such modifications shall be considered an Additional Service, except as otherwise provided below.

1.13 Architect’s Avoidance of Certain Substances. The Architect will not specify, use or allow to be used, and will use the Standard of Care to ensure that others do not specify, use or allow to be used, any of the following in connection with the Project:

1. any substances generally known at the time of specification to be deleterious to health and safety or to the durability of the Project in the particular circumstances in which they are used; and/or
2. other substances not in accordance with current law, ordinances, rules or regulations.

1.14 Architect’s Coordination with Authorities. Architect also will coordinate with the various city agencies and, in a timely manner, make plan checks required adjustments necessary to Architect’s contract documents so that they will satisfy the requirements for issuance of a building permit. Any plan check or required adjustments relating to the drawings prepared by any of the Owner’s Consultants shall be made by the Owner’s permit expediters and delivered to Architect for resubmission to various city agencies.

1.15 Architect’s Construction Phase Services Further Defined. The Architect shall advise and consult with the Owner during the Construction Phase Services. As part of Basic Services, Architect shall provide professional services to assist the Owner in the construction phase including:

2. Issuance of ASIs (Architect’s Supplemental Instructions), ASDs (Architect’s Supplemental Drawings) and responses to Requests For Information (“RFIs”) as needed for clarification. [The Architect agrees to make every effort necessary to respond to RFIs within five (5) calendar days from the date Architect receives the RFI.]
3. Attending Construction Progress Meetings when necessary and as reasonably requested by Owner.
4. Review and processing of Change Orders. Owner- or Contractor-initiated changes that require substantial additional review, coordination or re-drawing by Architect may be classified as an Additional Service if redrawing or coordination is not due to incompleteness or confusion in the field.

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ARTICLE 2  OWNER’S RESPONSIBILITIES
The Owner shall provide full information about the objectives, schedule, constraints and existing conditions of the Project, and shall establish a budget that includes reasonable contingencies and meets the Project requirements. The Owner shall provide decisions and furnish required information as expeditiously as necessary for the orderly progress of the Project. The Architect shall be entitled to rely on the accuracy and completeness of the Owner’s information. The Owner shall furnish consulting services not provided by the Architect, but required for the Project, such as surveying, which shall include property boundaries, topography, utilities, and wetlands information; geotechnical engineering; and environmental testing services. The Owner shall employ a Contractor, experienced in the type of Project to be constructed, to perform the construction Work and to provide price information.

ARTICLE 3  USE OF DOCUMENTS
3.1 Upon payment, of all sums then required by this Agreement, for those services Architect has completed, all Drawings, Specifications and other work product ("Work Product") prepared pursuant to this Agreement shall be the sole property of Owner, including, without limitation, the ownership of all copyrights in such Work Product, and any patent rights with respect to such Work Product, whether currently owned by Architect or arising hereafter as a consequence of the performance of this Agreement. All Work Product generated under this Agreement shall be deemed a work-for-hire in accordance with the Copyright Act, Title 17 of the United States Code. Notwithstanding the foregoing, Architect hereby assigns transfers and conveys to Owner all rights, title and interests into and to any patents, patent applications, copyrights and any other intellectual property rights that now exist or fixed in the Work Product or hereafter arises as a consequence of the performance of this Agreement or as a result of current or future action of Architect with respect to the Project. Such ownership of intellectual property rights includes, without limitation, any derivative works resulting from the Work Product. In the event the foregoing assignment fails of its essential purpose, Architect hereby grants to Owner a royalty free, perpetual, exclusive license to use the Work Product for all purposes. This Article 3 shall survive the termination or expiration of the Agreement, for any reason.

3.2 Architect acknowledges that pursuant to the assignment hereunder, Owner may utilize such Work Product with respect to the construction, maintenance, repair, expansion and modification of the Project.

3.3 To the extent that the Work Product contains notes, terms, details or non-distinctive features that have been developed by the Architect over years of practice, the Architect shall have the right to use such details or features on other projects.

3.4 The Architect warrants that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information for its use on the Project and any other project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. The Architect warrants that it is the original creator of the Work Product.

3.5 Owner and the Owner’s Consultants shall be deemed the authors and owners of their respective Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of such drawings and specifications to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Owner and the Owner’s Consultants.

3.6 Upon execution of this Agreement, the Architect agrees to cause the Architect’s consultants to make the same assignment of intellectual property rights outlined above, including copyrights to Owner, with respect to such Architect’s consultants’ instruments of service relating to the Project, and such Architect’s consultants shall assign such intellectual property rights to the Owner, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. If the Architect is unable to obtain the assignment of such intellectual property rights, at a minimum, the Architect shall obtain a nonexclusive license from the Architect’s consultants to Owner to use (including the creation of derivative works) their instruments of service for purposes of constructing, using, maintaining, altering and adding to the Project, both now and in the future. If applicable, the license granted under this section permits the Owner to authorize the Contractor, Subcontractors,
Sub-subcontractors, and material or equipment suppliers, as well as the Owner’s consultants and separate contractors, to reproduce applicable portions of the Instruments of Service for use in performing services or construction related to the Project.

3.7 In the event the Owner uses the Instruments of Service on a future project without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect’s consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify, defend and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner’s use of the Instruments of Service under this Section 3.7. Owner will endeavor to provide Architect prior notice of its use of the Work Product on another project for which Architect is not retained or compensated. The terms of this Section 3.7 shall not apply if the Owner rightfully terminates this Agreement for cause under Article 4.

ARTICLE 4 TERMINATION, SUSPENSION OR ABANDONMENT
In the event of termination, suspension or abandonment of the Project by the Owner, the Architect shall be compensated for services performed. The Owner’s failure to make payments in accordance with this Agreement shall be considered substantial nonperformance and sufficient cause for the Architect to suspend or terminate services if such default is not cured within ten (10) days following written notice of such default. Either the Architect or the Owner may terminate this Agreement after giving no less than seven days’ written notice if the Project is suspended for more than 90 days, or if the other party substantially fails to perform in accordance with the terms of this Agreement.

4.1 This Agreement may be terminated by the Owner upon not less than ten (10) days’ written notice should the Architect fail to perform its obligations under this Agreement when that failure is not solely the result of the Owner to perform its obligations under this Agreement.

ARTICLE 5 MISCELLANEOUS PROVISIONS
This Agreement shall be governed by the law of the place where the Project is located. Terms in this Agreement shall have the same meaning as those in AIA Document A105–2007, Standard Form of Agreement Between Owner and Contractor for a Residential or Small Commercial Project.

5.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or the Architect.

The Architect and Architect’s consultants shall have no responsibility for the identification, discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials in any form at the Project site.

ARTICLE 6 PAYMENTS AND COMPENSATION TO THE ARCHITECT
The Architect’s Compensation shall be:

| *Initial Payment | $ |
| Design Phase | $ |
| Construction Document Phase | $ |
| Construction Phase | $ |
| Total Architectural Fee | $ |

*Non-refundable, except in the event of Architect’s material default in performing the anticipated design work.

The Owner shall pay the Architect an initial payment of $_________________________ as a minimum payment under this Agreement.
The Owner shall reimburse the Architect for expenses incurred in the interest of the Project, plus _____ percent (____%)

Payments are due and payable upon receipt of the Architect’s monthly invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest from the date payment is due at the rate of ______ percent (____%) per annum, not to exceed the legal rate prevailing at the principal place of business of the Architect.

At the written request of the Owner, but not otherwise, the Architect shall provide services not included in Article 1 for additional compensation. Such services may include providing or coordinating services of consultants not identified in Article 1; revisions due to changes in the scope, quality or budget; evaluating changes in the Work and Contractors’ requests for substitutions of materials or systems; and services not completed within twenty-four (24) months of the date of this Agreement through no fault of the Architect.

ARTICLE 7 OTHER PROVISIONS
(Insert descriptions of other services and modifications to the terms of this Agreement.)

7.1 The "Construction Cost" shall mean and include the cost at current market rates of labor and materials furnished by the Owner and any contractors hired by the Owner or others; construction, equipment designed, specified, selected or specially provided for by the Architect, including any items for which the Architect designs or coordinates including structural, mechanical, or electrical components or considerations; the costs of managing the project or supervision of construction or installation provided by a separate construction manager or contractor, including their overhead and profit.  In the event that the Owner utilizes its own employees in the place of a contractor or construction manager, the reasonable costs of such employees shall be included as part of the Construction Cost.  In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

7.2 Surveying, site/civil engineering, mechanical, electrical, plumbing, fire protection and structural engineering services are not included in this Agreement.  These services will be retained and paid for by the Owner directly to the provider of the service(s).  As part of this Agreement, Mark P. Finlay Architects, AIA will coordinate and manage the work of these trades.

7.3 Landscape Architect fees are to be paid by the Owner directly to the Landscape Architect.  Included in this Agreement is the design of all site components including: pools, tennis courts, site walls, paving, patios and other hardscape.  Landscape Architect fees and cost of plant material will not be included in the Cost of the Work.

7.4 Artist’s Fees.  Artist fees for renderings or models prepared outside the office shall be paid by the Owner directly to the provider of the service.  All renderings, drawings and 3D computer massing models, if prepared in house, are included in this Agreement.

7.5 Compensation.  The architectural fee shall be a fixed fee of $_________ which has been estimated based on 8% of estimated Construction Costs of $_________.  Should the final Construction Costs differ substantially from such $_________ estimated Construction Costs due to a scope change increasing or decreasing the Construction Costs and related work of the Architect, the architectural fee shall be adjusted and fixed accordingly to ___% of actual Construction Costs when the final Construction Costs are determined.  The difference shall be paid in progress payments once the increased or decreased Construction Costs are finally established due to scope changes, with a final adjustment, if required, to be made upon final completion of the Project.

For purposes of this Section 7.5, a "scope change" shall refer to additional buildings, additional design changes requiring more than forty (40) hours of work by Architect, changes in design concepts or use of materials requiring more than forty (40) hours of additional work by Architect and design changes related to, or requiring, additional permits or permit modifications.

7.6 Change Order/Additional Services.  Any Change Order or additional work authorized by the Owner in writing during the Construction Phase shall be billed at our hourly rates:
$___00 per hour per partner
$___00 per hour per architect
$___00 per hour per associate
$___00 per hour per draftsperson

7.7 Balance of Design Phase Compensation. Payment for the balance of the Design Phase work shall be made upon Owner’s acceptance of the design at the conclusion of the Design Phase and the delivery to Owner of the Design Phase deliverables listed in Exhibit A attached hereto and made part hereof (the “Design Phase Deliverables”). Owner shall have the right to terminate this Agreement, without cause, upon completion of the Design Phase and payment of the compensation payable to Architect hereunder at the completion of the Design Phase. Upon such written termination, neither party shall have any further liability or obligations to the other party hereunder, except for those liabilities or obligations which expressly survive the termination of this Agreement and Architect’s delivery of all of the Design Phase Deliverables if all such Design Phase Deliverables have not been delivered.

7.8 Construction Document Phase Billings. The Construction Document Phase shall be billed monthly throughout the duration of the Construction Document Phase based upon the percentage complete and approved by Owner within this phase.

7.9 Construction Phase Billings. The Construction Phase shall be billed monthly throughout the duration of the Construction Phase based on the percentage of completion.

7.10 Travel Expenses. Travel Expenses required for site visits shall be paid by Owner as a reimbursable expense. The costs for any travel or travel related activities shall be approved in writing (including e-mail) by the Owner prior to the date of travel.

7.11 Communications. The Owner shall at all times retain the right to communicate directly with the Contractor about matters arising out of or relating to the Contract Documents, provided that the Owner shall notify the Architect of any such direct communications that may affect the Architect’s services with reasonable promptness after the same have occurred. The Owner shall endeavor to communications by and with the Architect’s consultants through the Architect.

7.12 AMERICANS WITH DISABILITIES ACT (ADA). ADA provides that it is a violation of the ADA to design and construct a new facility that does not meet the accessibility and usability requirements of the ADA unless it can be demonstrated that it is structurally impractical to meet such requirements. The Owner understands that the requirements of the ADA will be subject to various and possibly contradictory interpretations. The Architect, therefore, will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project. The Architect, however, cannot and does not warrant or guarantee that the Owner’s Project will comply with all interpretations of the ADA requirement and/or the requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project.

7.13 OFAC COMPLIANCE. Each of Owner and Architect represents and warrants to the other that the representing party is currently in compliance with and shall at all times during the course of this Agreement (including any modifications hereof or amendments hereto) remain in compliance with the regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto.

7.14 No Personal Liability. No official, officer, director, joint venturer, stockholder, trustee, beneficiary, member, partner, principal, representative, consultant, volunteer participant, employee, agent or representative (whether disclosed or undisclosed) of the Owner shall be personally liable to the Architect under any term or provision of this Agreement for the Owner’s payment obligations or otherwise, or because of any breach of this Agreement, the Architect agreeing to look solely to the assets of the Owner for the satisfaction of any liability of the Owner hereunder. With respect to the Project, (1) in no event shall the Owner be liable to the Architect, except for
payment for services rendered pursuant to and in accordance with this Agreement; nor (2) shall the Owner ever be liable to the Architect for indirect, consequential, special, punitive or other similar damages.

7.15 Background Checks. Architect agrees that it will cause to be completed a reasonable background check on any "Architect’s Employees" (which shall include employees of Architect and employees of Architect’s subcontractors and consultants of whatever tier), who will have (i) unescorted access to Owner premises, (ii) access to Customer or Employee Data ("Customer and Employee Data" means any personally identifiable information of an Owner customer or employee”) or (iii) access to. Owner information technology systems. The background check will be completed by Architect prior to any Services being performed by such person within the Architect’s Employees.

7.16 Proof of Employment Eligibility. Architect warrants that all Architect Employees’ names and social security numbers match and that all Architect Employees hired after the date of this Agreement are United States citizens or they have one of the documents currently accepted by the USCIS as proof of employment eligibility, as shown on USCIS website’s instructions for Form I-9 (www.uscis.gov/portal/site/uscis). For Architect Employees hired prior to the date of this Agreement, Architect warrants that all Architect Employees are United States citizens or they provided proof of employment eligibility documents accepted by the USCIS or its predecessors at the time of said Architect Employee’s hire. Any Architect Employee whose proof of employment eligibility documents (such as temporary work visas issued by USCIS, Bureau of Citizenship and Immigration Service or Immigration and Naturalization Service) expire while said Architect Employee is providing services, must have their I-9 form re-verified according to USCIS requirements.

7.17 Owner’s Insurance Obligations. As part of Basic Services, the Architect shall maintain the following insurance having minimum limits of liability as specified below from a company or companies lawfully authorized to do business in the jurisdiction in which the Project site is located, and having a Best’s rating of "A+, VIII" or better unless otherwise approved in writing by the Owner, to protect the Architect and its consultants from claims which may arise out of or result from the Architect’s or its consultants’ services and operations under this Agreement and for which the Architect or its consultants may be legally liable, whether such services or operations be performed by the Architect, any of its consultants or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable:

.1 Commercial General Liability Policy covering bodily injury (including death); broad form property damage including injury to, or destruction of, tangible property, including loss of use therefrom; personal injury; products and completed operations coverage; broad form contractual liability coverage specifically covering but not limited to the indemnification obligations undertaken by Architect in Section 7.17; coverage for "X", "C," and "U" hazards; independent contractor’s coverage; incidental malpractice; ; all having limits of liability of not less than $1,000,000 per occurrence and $2,000,000 general aggregate.

.2 Automobile Liability. Minimum limits of liability: [$1,000,000] combined single limit, covering claims for damages because of bodily injury or death of any person or property damage arising out of ownership, maintenance or use of all owned, non-owned, hired, rented or borrowed autos.

.3 Employers Liability. Minimum limits of liability: $1,000,000 Each Accident; $1,000,000 Disease Policy Limit; and $1,000,000 Disease Each Employee.

.5 Professional Liability Policy for errors, omissions or negligent acts arising out of the performance of this Agreement having limits of liability of not less than $500,000,000 per claim annual aggregate. If requested by Owner, Architect will provide additional professional liability coverage as directed by Owner, at Owner’s expense, subject to availability on commercially reasonable terms. It will be deemed to be commercially reasonable for Architect to provide not less than $2,000,000 of Project-specific coverage if requested by Owner, at Owner’s expense.
.6 The Architect shall also maintain in force and effect during the term of this Agreement the following insurance coverage: Valuable Papers Coverage having a minimum limit of liability of $100,000.

The Owner, the Owner’s lender (if any) and any other party requested by Owner and their respective managers, members, partners (including equity partners), officers, directors, shareholders and employees and any assignee that is an affiliated entity and becomes the owner of the Project (collectively, the "Indemnified Parties") shall be named as additional insureds under all of the insurance required under Section 7.11 on a primary and non-contributory basis for premises liability and products/completed operations and for full limits and full coverage term required using ISO Additional Insured Endorsements CG 20 10 10 01 (ongoing operations) and CG 20 37 10 01 (completed operations) or other endorsements providing equivalent coverage. The products and completed operations coverages shall be maintained on behalf of the Indemnified Parties as additional insureds on such basis for a period of at least three (3) years following the final completion date of the Work. Coverages under the insurance required by Section 7.17, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of the commencement of the Architect’s work hereunder until the date of final payment and, in the case of insurance required under Section 7.17, until at least five (5) years following the date on which the final Certificate for Payment is provided (or in the absence of a final Certificate for Payment, five (5) years following the date which is ninety (90) days after Substantial Completion). Concurrently with the full execution and delivery of this Agreement, the Architect shall deliver to the Owner (and other indemnified parties upon Owner’s written request) certificates of insurance, copies of all Additional Insured endorsements required hereunder, acceptable to the Owner evidencing the coverages required under Section 7.17 and thereafter upon request of the Owner from time to time. Architect shall give notice to Owner forthwith after becoming aware that any coverage under any policy of insurance required to be maintained by Architect under this Agreement is to be materially changed or canceled by the issuing company. Deductibles or self-insured retentions, if any, shall be entirely at Architect’s expense. Additional certificates evidencing continuation of the coverage required under this Section 7.17 shall be filed with the Owner on the date on which the final Certificate for Payment is provided (or, in the absence of a final Certificate for Payment, on the date which is ninety (90) days after Substantial Completion) and annually thereafter for the next five (5) years on the anniversary of such date. Such obligation shall survive the making of final payment hereunder. The maintenance in full current force and effect of all such insurance shall be a condition precedent to the Architect’s exercise or enforcement of any rights under this Agreement. If requested by Owner, Architect will provide Owner with copies of any of the insurance policies, including endorsements, that Architect or any of its consultants are required to maintain under this Agreement.

Insurers writing coverage will have adequate jurisdictional authority and A.M. Best financial rating as provided above, and Policies required hereunder will:

a) Have adequate territorial limits;

b) Be occurrence based; however, Professional Liability and Pollution may be written on a claims-made basis;

c) Architect’s Professional Liability Insurance coverage shall be retroactive to the earlier date of this Agreement or when the Architect’s services commenced in relation to the Project;

d) Contain "cross-liability" or "severability of interest" provisions;

e) To the extent permitted by law, be primary and noncontributory;

f) Hold Architect solely responsible for premiums, deductibles (professional liability deductible not to exceed $100,000) and retentions; and

g) Respond to all claims and actions, including defense, for claims brought within the United States, its territories and possessions, and Canada.

h) Provide Waiver of Subrogation on Commercial General Liability, Commercial Automobile Liability, Workers’ Compensation/Employer’s Liability and Umbrella/Excess Liability policies.

7.18 Indemnification by Architect.
.1 Liabilities: As used herein, the terms "Liability" or "Liabilities" shall mean, singly and collectively, any claim, liability, damage or loss, expense and/or reasonable cost of every kind or description, including but not limited to reasonable attorneys’ fees and claims, liabilities, damages, losses or expenses arising from personal injury, property loss or damage or injury to others (including without limitation personnel of Architect and the Indemnified Parties, their contractors and subcontractors).

.2 Professional Liability Claims: To the maximum extent permitted by law, the Architect agrees to indemnify, defend and save harmless the Indemnified Parties of, from and against any Liabilities to which the Indemnified Parties may be subjected, to the extent caused by the negligent performance of services hereunder or the willful misconduct of the Architect, its agents, consultants, servants or employees, in connection therewith (collectively, "Professional Liability Claims").

.3 Employee Injury Claims: In addition to the indemnification provided herein, and to the maximum extent permitted by law, Architect shall indemnify, defend, and hold harmless Owner and/or the Indemnified Parties from and against any claim or Liabilities arising out of, resulting from or attributable to any claim of bodily injury, sickness, disease or death of any employee of Architect, any subcontractor or anyone directly or indirectly employed by either, brought by such injured employee or the employee’s workers compensation insurance carrier (hereinafter referred to as an "employee injury claim"), even to the extent such claim, damage, loss or expense is alleged to be caused by the concurrent negligence of the Owner and/or Indemnified Parties or anyone directly or indirectly employed by them. Architect shall procure liability insurance covering its obligations under this paragraph.

.4 Other Liabilities: The Architect agrees to indemnify, defend and save harmless the Indemnified Parties of, from and against any Liabilities (other than Professional Liability Claims) to which the Indemnified Parties may be subjected, to the extent caused by the negligent act or omission or willful misconduct of the Architect, its agents, consultants, servants or employees, including, without limitation, Architect’s violation of any laws.

.5 General: In no event shall any of the foregoing indemnification obligations of Architect with respect to any Liability extend beyond the date when the institution of legal or equitable proceedings for such Liability would be barred by an applicable statute of repose or statute of limitations. In no event shall Architect’s indemnification of the Indemnified Parties apply to the sole negligence or willful misconduct of any Indemnified Party resulting in a claim or any liability of such Indemnified Party.

7.19 Insurance Limits. Any insurance limits required by this Agreement are minimum limits only and not intended to restrict the liability imposed on the Architect for work performed under this Agreement, including, without limitation, any indemnification obligation of the Architect.

The Architect shall, at the Owner’s request, furnish the Owner copies of all agreements (including any amendments to agreements) entered into by the Architect with respect to his services under this Agreement, including but not limited to, any agreements between the Architect and any consultants.

7.20 Independent Contractor. Any and all Services to be provided under this Agreement by Architect, its principals, employees and agents shall be performed as an independent contractor, and not as an employee or agent of Owner. Architect shall have no right or authority, express or implied, to commit or otherwise obligate Owner in any manner whatsoever unless and until Architect is expressly authorized to do so in writing by Owner.

7.21 Disapproval of Architect’s Work. The Owner shall have the right to disapprove any portion of the Architect’s work on the Project, including but not limited to Design Phase or Construction Documents Phase work, and any other design work or documents, on any reasonable basis, including but not limited to aesthetics, or because in the Owner’s opinion, the construction cost of such design is likely to render such work or the Project unfeasible. In the event that any phase of the Architect’s work is not approved by the Owner, the Architect shall proceed, when requested by the Owner, with revisions to the design work or documents prepared for that phase to attempt to satisfy

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the Owner’s objections. These revisions will be made without adjustments to the compensation provided for hereunder, unless revisions are made to drawings previously approved under previous phases, in which case (provided that Architect shall so notify the Owner in writing and receive written approval from the Owner before proceeding with revisions necessitated by such changes) such revision services shall be compensated as Additional Services. No payment, of any nature whatsoever, will be made to Architect for Additional Services without such prior written approval by the Owner.

7.22 No Additional Services. Notwithstanding anything to the contrary contained in this Agreement, no architectural services made necessary, in whole or in part, by any failure on the part of the Architect or any of its consultants duly and timely to perform any of their respective duties, responsibilities or obligations under this Agreement in accordance with the Standard of Care or Owner’s specific instructions shall be compensated as an Additional Service or otherwise under this Agreement.

7.23 Owner’s Representatives. The Owner shall identify a representative authorized to act on the Owner’s behalf with respect to the Project. The Owner shall render decisions and approve the Architect’s submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect’s services. The “Owner’s Designated Representative” is _______________. The Owner’s Designated Representative is authorized to act on the Owner’s behalf with respect to the Project and the Architect is entitled to rely on the decisions and instructions of the Owner’s Designated Representative. The Owner’s Designated Representative shall be reasonably available and present at scheduled meetings in order to provide information and decisions in a timely manner so as to not negatively impact the Architect’s schedule and/or the construction schedule.

7.24 Disputes. Any claim, dispute or other matter in question arising out of or related to this Agreement (the "Dispute") shall initially be subject, as a condition precedent to binding dispute resolution, to resolution through "Executive Negotiation" between senior representatives of both parties familiar with the Project. The Owner initially designates __________________ as its senior representative and the Architect designates [INSERT] as its senior representative for such purpose. The parties shall arrange a mutually convenient time to meet at which the senior representative of each party shall be present. The meeting shall occur within fifteen (15) days of either party’s request for Executive Negotiation and attempt to amicably resolve the Dispute. They may consider any and all information. The Project Managers and their representatives or designees or other representatives for each party shall each present their position to the senior representatives who shall then promptly attempt to negotiate a resolution of such Dispute. If the parties are unable to resolve such Dispute to the satisfaction of both parties within thirty (30) days of the presentation of positions to the senior representatives in writing, the parties shall then attempt to resolve such Dispute in accordance with the mediation as set forth herein. If such Dispute relates to or is the subject of a lien arising out of the Architect’s services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation.

If any Dispute is not resolved as provided above, the Owner and Architect shall endeavor to resolve all Disputes between them by mediation. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of notice, unless stayed for a longer period by agreement of the parties or court order. The Owner and the Architect further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors or consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation and then litigation as the primary method for dispute resolution between the parties to those agreements.

The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

7.25 Assignment. The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. The Architect shall not assign this Agreement. The Owner shall not assign this Agreement without the written consent of the Architect, except that no such consent shall be required for...
any assignment by the Owner to a successor owner/operator of the Project that is controlled by, under common control with or controlling Owner, to any lender providing financing for the Project or to any successor to Owner’s interest in the Project site. In such event, the assignee shall assume the Owner’s rights under this Agreement and the obligations of the Owner from and after the date that such assignee assumes the Owner’s obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate any such assignment. No assignment by either party shall release such party from its obligations under this Agreement. This assignment shall become effective upon Owner’s delivery of an assignment instrument to Architect.

7.26 Promotion Limitations. The Architect shall have the right to include renderings, photographic or artistic representations of the design of the Project among the Architect’s promotional and professional materials, without Owner’s prior written consent, as long as the inclusion of such representations of the design does not include the Owner’s logo, name or other identifying information. Otherwise, if the use of such renderings, photographic or artistic representations does include the use of the Owner’s logo, name or other identification, such use shall require the prior written consent of Owner, which consent may be withheld in its sole good faith discretion. In no event shall the Architect’s materials include the Owner’s confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner’s promotional materials for the Project.

7.27 Press Releases. Architect shall submit to Owner all press releases and other publicity matters wherein Owner’s names, marks or logos are mentioned or language from which the connection of such names, marks or logos therewith may be inferred or implied. Architect shall not publish such press releases or publicity matter without Owner’s prior specific written approval in each instance, which approval may be withheld in Owner’s sole good faith discretion. Without limiting the foregoing, Architect shall not represent directly or indirectly that any Service provided by Architect to Owner has been approved or endorsed by Owner, or include the name, trade name, trade mark, or symbol of Owner or any affiliated entities on a list of Architect’s customers.

7.28 Confidentiality. Each party will use the means that it uses to protect its own confidential information, but not less than reasonable means, to prevent the disclosure and to protect the confidentiality of (a) written information received from the other party which is marked or identified as confidential, (b) oral or visual information identified as confidential at the time of disclosure, and (c) information which by its nature should be considered confidential (collectively, "Confidential Information"). Each party will use Confidential Information received from the other party only in connection with the purposes of the Agreement. A party may disclose Confidential Information which belongs to such party or is (i) already known by the recipient party without an obligation of confidentiality, (ii) publicly known or becomes publicly known through no unauthorized act of the recipient party, (iii) rightfully received from a third party without an obligation of confidentiality, (iv) independently developed by the recipient party without use of the other party’s Confidential Information, or (v) approved by the other party for disclosure. Confidential Information may be disclosed by the recipient party to its employees, subcontractors, consultants and agents who have a need to know and who are subject to a confidentiality agreement that contains terms and conditions at least as restrictive as those set forth in this Section 7.28 would govern such employees, subcontractors, consultants or agents use or possession of the Confidential Information. Further, the recipient party shall not be restricted from disclosing Confidential Information as required pursuant to law, regulation or judicial or governmental order, provided that any such disclosure shall be limited to the extent of the legal requirement and the recipient party shall promptly notify the disclosing party and cooperate with the disclosing party, at the disclosing party’s expense, so that the disclosing party may intervene and object to such disclosure or seek a protective order or other appropriate protection for its Confidential Information. Upon the written request of the disclosing party, the recipient party will, at the recipient party’s option, either return all copies of the disclosing party’s Confidential Information to the disclosing party or certify in writing that all copies of such information have been destroyed. Notwithstanding such requirement, either party may retain one archival copy of the Confidential Information. Either party may return the other party’s Confidential Information, or any part thereof, at any time. Owner may disclose Architect’s Confidential Information to affiliated entities under similar conditions of confidentiality. The terms and conditions set forth in this Section 7.31 shall survive the expiration or termination of the Agreement.

7.29 Notice. All notices required by this Agreement or other communications to either party by the other shall be deemed to have been properly given in writing and delivered either (a) by hand in person, (b) by registered or certified mail, return receipt requested, (c) by overnight courier delivery service that provides a return receipt or (d) by facsimile or electronic mail followed up by mailing or delivery of such notice by any of the methods described in

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(a), (b) or (c) addressed to the Owner and the Architect, respectively, at their respective addresses or fax numbers set forth on the first page of this Agreement. Any such notice shall constitute service of notice hereunder three (3) days after the mailing thereof by certified mail; one (1) day after the sending thereof by overnight courier; and on the same day as the sending of a facsimile, electronic mail or hand delivery pursuant to the terms of this Section. Addresses for notices may be changed by notice to the other party given in the manner provided herein.

This Agreement entered into as of the day and year first written above.

OWNER

_________________________

(Signature)

(Printed name and title)

ARCHITECT

_________________________

(Signature)

(Printed name and title)
Additions and Deletions Report for
AIA® Document B105™ – 2007

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

AGREEMENT made as of the _____ day of _____________ in the year 2014

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The Owner and Architect agree as follows.

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11/17/14

PAGE 2

1.1 The Architect shall provide architectural services for the Project as described in this Agreement in a manner consistent with locally accepted standards for professional skill and care. The Architect shall assist the Owner in determining consulting services required for the Project. The Architect’s services include the following consulting services, if any:
1.2 Standard of Care; Architect’s Responsibilities. The Architect shall be responsible for the performance of all services provided under this Agreement whether such services are provided directly by Architect or by any consultant hired by Architect. The Architect shall perform its services under this Agreement in accordance with the standard of professional skill and care expected of architectural firms practicing in the geographic area in which the Project is located and experienced in the design and construction of projects similar in scope and size to the Project (the "Standard of Care"). The Architect shall cause its consultants, if any, to perform their services in accordance with the standards of professional skill and care expected of consultants practicing the same professions in the geographic area in which the Project is located and experienced in the performance of such professional services. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

Owner shall be entitled to be a third party beneficiary under all agreements entered into by Architect with any consultants, including, without limitation, the structural engineer, and other consultants provided by Architect. Architect shall cause a provision to such effect to be included in each agreement between Architect and its consultants; provided, however, that the Owner shall not be entitled to exercise any third-party beneficiary rights prior to the completion of the Project or the termination of the Agreement, whichever first occurs.

1.3 Architect’s Coordination with Owner’s Consultants. The Architect shall coordinate its services with those services provided by the Owner and the Owner’s consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner’s consultants, except as to any such services or information containing errors, omissions or inconsistencies as to which the Architect has actual knowledge at the time Architect is performing the relevant services. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information. The Owner shall require its consultants to cooperate and coordinate their services with those services provided by the Architect.

1.4 Architect’s Coordination of Design Documents. Architect also shall be responsible for the coordination of all drawings and design documents incorporated into Architect’s design which are prepared by Owner’s consultants and peer review comments and revisions from Owner’s consultants; provided, however, that Architect shall not be responsible for the accuracy of the drawings or specifications submitted by the Owner’s consultants, except (i) for the failure of the improvements and systems designed by such engineers to fit into Architect’s design resulting from Architect’s failure to recognize such failure based on a violation of its standard of care or (ii) to the extent that Architect discovers errors in such drawings or specifications and fails to promptly report such errors to Owner. Upon the discovery of such failure or errors by Architect, Architect shall provide Owner with prompt written notice thereof so that Owner can cause its consultants to correct such errors.

1.5 General Design Phase Activities. During the Design Phase, the Architect shall review the Owner’s scope of work, budget and schedule and reach an understanding with the Owner of the Project requirements. Based on the approved Project requirements, the Architect shall develop a design. Upon the Owner’s approval of the design, the Architect shall prepare Construction Documents indicating requirements for construction of the Project and shall coordinate its services with the services the Owner provides. The Architect shall assist the Owner in filing documents required for the approval of governmental authorities, in obtaining proposals and in awarding contracts for construction.

1.6 General Construction Phase Activities. During the Construction Phase, the Architect shall act as the Owner’s representative and provide administration of the Contract between the Owner and Contractor. The extent of the Architect’s authority and responsibility during construction is described in AIA Document A105™—2007, Standard Form of Agreement Between Owner and Contractor for a Residential or Small Commercial Project, the applicable AIA construction contract or other construction form between Owner and Contractor. Generally, the Architect’s services during construction include interpreting the Contract Documents, reviewing the Contractor’s submittals, visiting the site, reviewing and certifying payments, and rejecting nonconforming Work. Architect shall provide Owner with a written list of observed items or materials or conditions requiring modification or replacement or additional work within five (5) business days following each visit of the Architect to the Project to observe the Work.
1.7 Shop Drawings. In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor’s submittals such as Shop Drawings, Product Data and Samples for the purposes of checking that the construction affected by and represented by such submittals is in compliance with the requirements of the Contract Documents, including, without limitation, the design concept expressed in the Contract Documents. Architect shall be responsible for determining what aspects of the Work shall be the subject of shop drawings and submittals. The Architect’s action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of Owner or of separate contractors, while allowing sufficient time to permit adequate review. Architect shall promptly report to Owner if the Architect becomes aware that construction is proceeding in the absence of approved shop drawings and submittals. In addition to the Architect’s review of such submittals, the Architect shall forward such submittals to the appropriate consultants of Owner for their respective review of such submittals. The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

1.8 Architect’s Recommendations Regarding Work. The Architect shall recommend to the Owner that the Owner reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work. The Architect shall promptly report to the Owner any deficiencies, defects, errors or omissions of the Contractor, any Subcontractor or any of their respective agents or employees which the Architect is made aware, and any actual or anticipated cost overruns or delays in completion of the Work.

1.9 Payment Applications. The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts or disapprove such amounts as shall be called for by the exercise of the Standard of Care, in each case within seven (7) calendar days after receipt by the Architect of the Contractor’s Application for Payment. In case of any such disapproval, the Architect shall provide a written explanation of the factual and contractual basis for such disapproval and shall certify in writing that such disapproval was made in good faith. The Architect’s certification for payment shall constitute a representation to the Owner, based on the Architect’s evaluation of the Work as provided in Sections 1.6 and 1.8 and on the data comprising the Contractor’s Application for Payment, that, to the best of the Architect’s knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

1.10 Architect’s Other Activities. Except with the Owner’s knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect’s professional judgment with respect to this Project.

1.11 More Basic Services. Notwithstanding any other provisions of this Agreement to the contrary, in addition to the Basic Services as defined in Article 1, the following shall also be considered Basic Services:

1. The Architect shall work closely with the Owner and shall provide such materials and assistance as may be necessary or desirable in connection with presentation before, submissions to, or meetings with any federal, state or local governmental authorities having jurisdiction over the Project, in connection with typical and customary review of the Project by such governmental authorities.

2. The Architect shall be available to attend meetings and/or participate in telephone calls with the Owner, the Contractor and/or their agents and representatives as required to ensure the successful design and construction of the Project.

3. The Architect shall provide any and all services necessary or desirable in connection with typical and customary Change Orders and Construction Change Directives as reasonably required by field conditions and to accommodate the fit and installation of specified materials in the actual
construction so long as actual construction of the Project is consistent with the intent of the Construction Documents.

The cost of any and all computer aided design and drafting equipment time necessary in connection with the performance of the Architect’s services hereunder is included within Basic Services.

Prior to the start of construction, to the extent applicable, Architect shall be responsible for preparing, publishing and distributing all job meeting minutes to all project team members in a timely, and complete manner. This means that the meeting minutes shall be distributed no later than within 5 calendar days from the meeting date.

1.12 Drawings and Specifications. Drawings and Specifications or other Construction Documents submitted to Owner for approval or to any contractors for bidding or negotiation shall be reasonably complete, accurate and unambiguous and in compliance with the prevailing interpretation of all applicable codes necessary to obtain a building permit, and any ordinances, statutes, regulations and laws, as amended and any state accessibility laws, rules and regulations and any applicable life safety codes or equivalent codes (collectively, ”Governmental Requirements”) and any changes therein of which Architect obtains actual knowledge prior to completion of the final design of the Project. If, after the date of this Contract, modifications to the Drawings or Specifications are required because of any change in the Governmental Requirements, Architect shall make the required modifications, but the cost of such modifications shall be considered an Additional Service, except as otherwise provided below.

1.13 Architect’s Avoidance of Certain Substances. The Architect will not specify, use or allow to be used, and will use the Standard of Care to ensure that others do not specify, use or allow to be used, any of the following in connection with the Project:

1. any substances generally known at the time of specification to be deleterious to health and safety or to the durability of the Project in the particular circumstances in which they are used; and/or
2. other substances not in accordance with current law, ordinances, rules or regulations.

1.14 Architect’s Coordination with Authorities. Architect also will coordinate with the various city agencies and, in a timely manner, make plan checks required adjustments necessary to Architect’s contract documents so that they will satisfy the requirements for issuance of a building permit. Any plan check or required adjustments relating to the drawings prepared by any of the Owner’s Consultants shall be made by the Owner’s permit expediters and delivered to Architect for resubmission to various city agencies.

1.15 Architect’s Construction Phase Services Further Defined. The Architect shall advise and consult with the Owner during the Construction Phase Services. As part of Basic Services, Architect shall provide professional services to assist the Owner in the construction phase including:

2. Issuance of ASIs (Architect’s Supplemental Instructions), ASDs (Architect’s Supplemental Drawings) and responses to Requests For Information (“RFIs”) as needed for clarification. [The Architect agrees to make every effort necessary to respond to RFIs within five (5) calendar days from the date Architect receives the RFI.
3. Attending Construction Progress Meetings when necessary and as reasonably requested by Owner.
4. Review and processing of Change Orders. Owner- or Contractor-initiated changes that require substantial additional review, coordination or re-drawing by Architect may be classified as an Additional Service if redrawing or coordination is not due to incompleteness or confusion in the original document or the result of Architect’s failure to clearly define the intent. Such Additional Services must be approved by Owner in writing as set forth herein.

Drawings, specifications and other documents prepared by the Architect are instruments of the Architect’s service and are for the Owner’s use solely with respect to this Project. The Architect shall

3.1 Upon payment, of all sums then required by this Agreement, for those services Architect has completed, all Drawings, Specifications and

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other work product ("Work Product") prepared pursuant to this Agreement shall be the sole property of Owner, including, without limitation, the ownership of all copyrights in such Work Product, and any patent rights with respect to such Work Product, whether currently owned by Architect or arising hereafter as a consequence of the performance of this Agreement. All Work Product generated under this Agreement shall be deemed a work-for-hire in accordance with the Copyright Act, Title 17 of the United States Code. Notwithstanding the foregoing, Architect hereby assigns transfers and conveys to Owner all rights, title and interests into and to any patents, patent applications, copyrights and any other intellectual property rights that now exist or fixed in the Work Product or hereafter arises as a consequence of the performance of this Agreement or as a result of current or future action of Architect with respect to the Project. Such ownership of intellectual property rights includes, without limitation, any derivative works resulting from the Work Product. In the event the foregoing assignment fails of its essential purpose, Architect hereby grants to Owner a royalty free, perpetual, exclusive license to use the Work Product for all purposes. This Article 3 shall survive the termination or expiration of the Agreement, for any reason.

3.2 Architect acknowledges that pursuant to the assignment hereunder, Owner may utilize such Work Product with respect to the construction, maintenance, repair, expansion and modification of the Project.

3.3 To the extent that the Work Product contains notes, terms, details or non-distinctive features that have been developed by the Architect over years of practice, the Architect shall have the right to use such details or features on other projects.

3.4 The Architect warrants that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information for its use on the Project and any other project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. The Architect warrants that it is the original creator of the Work Product.

3.5 Owner and the Owner's Consultants shall be deemed the authors and owners of their respective Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including the copyright. Upon completion of the Project or termination of this Agreement, the Owner's right to use the instruments of service shall cease. When transmitting copyright protected information for use on the Project, the transmitting party represents that it is either the copyright owner of the information, or has permission from the copyright owner to transmit the information for its use on the Project copyrights. Submission or distribution of such drawings and specifications to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Owner and the Owner's Consultants.

3.6 Upon execution of this Agreement, the Architect agrees to cause the Architect's consultants to make the same assignment of intellectual property rights outlined above, including copyrights to Owner, with respect to such Architect's consultants' instruments of service relating to the Project, and such Architect's consultants shall assign such intellectual property rights to the Owner, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. If the Architect is unable to obtain the assignment of such intellectual property rights, at a minimum, the Architect shall obtain a nonexclusive license from the Architect’s consultants to Owner use (including the creation of derivative works) their instruments of service for purposes of constructing, using, maintaining, altering and adding to the Project, both now and in the future. If applicable, the license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner’s consultants and separate contractors, to reproduce applicable portions of the Instruments of Service for use in performing services or construction related to the Project.

3.7 In the event the Owner uses the Instruments of Service on a future project without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify, defend and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 3.7. Owner will endeavor to provide Architect prior
In the event of termination, suspension or abandonment of the Project by the Owner, the Architect shall be compensated for services performed. The Owner’s failure to make payments in accordance with this Agreement shall be considered substantial nonperformance and sufficient cause for the Architect to suspend or terminate services. services if such default is not cured within ten (10) days following written notice of such default. Either the Architect or the Owner may terminate this Agreement after giving no less than seven days’ written notice if the Project is suspended for more than 90 days, or if the other party substantially fails to perform in accordance with the terms of this Agreement.

4.1. This Agreement may be terminated by the Owner upon not less than ten (10) days’ written notice should the Architect fail to perform its obligations under this Agreement when that failure is not solely the result of the Owner to perform its obligations under this Agreement.

... This Agreement shall be governed by the law of the place where the Project is located. Terms in this Agreement shall have the same meaning as those in AIA Document A105–2007, Standard Form of Agreement Between Owner and Contractor for a Residential or Small Commercial Project. Neither party to this Agreement shall assign the contract as a whole without written consent of the other.

5.1. This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

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*Initial Payment
Design Phase $________
Construction Document Phase $________
Construction Phase $________
Total Architectural Fee $________

*Non-refundable, except in the event of Architect’s material default in performing the anticipated design work.

The Owner shall pay the Architect an initial payment of $__________ as a minimum payment under this Agreement. The initial payment shall be credited to the final invoice.

The Owner shall reimburse the Architect for expenses incurred in the interest of the Project, plus ______ percent (____ %).

Payments are due and payable upon receipt of the Architect’s monthly invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest from the date payment is due at the rate of ______ percent (____ %), or in the absence thereof, at the ______ percent (____ %) per annum, not to exceed the legal rate prevailing at the principal place of business of the Architect.

At the written request of the Owner, but not otherwise, the Architect shall provide services not included in Article 1 for additional compensation. Such services may include providing or coordinating services of consultants not identified in Article 1; revisions due to changes in the scope, quality or budget; evaluating changes in the Work and Contractors’ requests for substitutions of materials or systems; and services not completed within ______ twenty-four (24) months of the date of this Agreement through no fault of the Architect.
7.1 The "Construction Cost" shall mean and include the cost at current market rates of labor and materials furnished by the Owner and any contractors hired by the Owner or others; construction, equipment designed, specified, selected or specially provided for by the Architect, including any items for which the Architect designs or coordinates including structural, mechanical, or electrical components or considerations; the costs of managing the project or supervision of construction or installation provided by a separate construction manager or contractor, including their overhead and profit. In the event that the Owner utilizes its own employees in the place of a contractor or construction manager, the reasonable costs of such employees shall be included as part of the Construction Cost. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

7.2 Surveying, site/civil engineering, mechanical, electrical, plumbing, fire protection and structural engineering services are not included in this Agreement. These services will be retained and paid for by the Owner directly to the provider of the service(s). As part of this Agreement, Mark P. Finlay Architects, AIA will coordinate and manage the work of these trades.

7.3 Landscape Architect fees are to be paid by the Owner directly to the Landscape Architect. Included in this Agreement is the design of all site components including: pools, tennis courts, site walls, paving, patios and other hardscape. Landscape Architect fees and cost of plant material will not be included in the Cost of the Work.

7.4 Artist’s Fees. Artist fees for renderings or models prepared outside the office shall be paid by the Owner directly to the provider of the service. All renderings, drawings and 3D computer massing models, if prepared in house, are included in this Agreement.

7.5 Compensation. The architectural fee shall be a fixed fee of $___________ which has been estimated based on 8% of estimated Construction Costs of $___________. Should the final Construction Costs differ substantially from such $___________ estimated Construction Costs due to a scope change increasing or decreasing the Construction Costs and related work of the Architect, the architectural fee shall be adjusted and fixed accordingly to % of actual Construction Costs when the final Construction Costs are determined. The difference shall be paid in progress payments once the increased or decreased Construction Costs are finally established due to scope changes, with a final adjustment, if required, to be made upon final completion of the Project.

For purposes of this Section 7.5, a "scope change" shall refer to additional buildings, additional design changes requiring more than forty (40) hours of work by Architect, changes in design concepts or use of materials requiring more than forty (40) hours of additional work by Architect and design changes related to, or requiring, additional permits or permit modifications.

7.6 Change Order/Additional Services. Any Change Order or additional work authorized by the Owner in writing during the Construction Phase shall be billed at our hourly rates:

- $____.00 per hour per partner
- $____.00 per hour per architect
- $____.00 per hour per associate
- $____.00 per hour per draftsperson

7.7 Balance of Design Phase Compensation. Payment for the balance of the Design Phase work shall be made upon Owner’s acceptance of the design at the conclusion of the Design Phase and the delivery to Owner of the Design Phase deliverables listed in Exhibit A attached hereto and made part hereof (the "Design Phase Deliverables"). Owner shall have the right to terminate this Agreement, without cause, upon completion of the Design Phase and payment of the compensation payable to Architect hereunder at the completion of the Design Phase. Upon such written termination, neither party shall have any further liability or obligations to the other party hereunder, except for those liabilities or obligations which expressly survive the termination of this Agreement and...
Architect’s delivery of all of the Design Phase Deliverables if all such Design Phase Deliverables have not been delivered.

7.8 Construction Document Phase Billings. The Construction Document Phase shall be billed monthly throughout the duration of the Construction Document Phase based upon the percentage complete and approved by Owner within this phase.

7.9 Construction Phase Billings. The Construction Phase shall be billed monthly throughout the duration of the Construction Phase based upon the percentage of completion.

7.10 Travel Expenses. Travel Expenses required for site visits shall be paid by Owner as a reimbursable expense. The costs for any travel or travel related activities shall be approved in writing (including e-mail) by the Owner prior to the date of travel.

7.11 Communications. The Owner shall at all times retain the right to communicate directly with the Contractor about matters arising out of or relating to the Contract Documents, provided that the Owner shall notify the Architect of any such direct communications that may affect the Architect’s services with reasonable promptness after the same have occurred. The Owner shall endeavor to communications by and with the Architect’s consultants through the Architect.

7.12 AMERICANS WITH DISABILITIES ACT (ADA). ADA provides that it is a violation of the ADA to design and construct a new facility that does not meet the accessibility and usability requirements of the ADA unless it can be demonstrated that it is structurally impractical to meet such requirements. The Owner understands that the requirements of the ADA will be subject to various and possibly contradictory interpretations. The Architect, therefore, will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project. The Architect, however, cannot and does not warranty or guarantee that the Owner’s Project will comply with all interpretations of the ADA requirement and/or the requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project.

7.13 OFAC COMPLIANCE. Each of Owner and Architect represents and warrants to the other that the representing party is currently in compliance with and shall at all times during the course of this Agreement (including any modifications hereof or amendments hereto) remain in compliance with the regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto.

7.14 No Personal Liability. No official, officer, director, joint venturer, stockholder, trustee, beneficiary, member, partner, principal, representative, consultant, volunteer participant, employee, agent or representative (whether disclosed or undisclosed) of the Owner shall be personally liable to the Architect under any term or provision of this Agreement for the Owner’s payment obligations or otherwise, or because of any breach of this Agreement, the Architect agreeing to look solely to the assets of the Owner for the satisfaction of any liability of the Owner hereunder. With respect to the Project, (1) in no event shall the Owner be liable to the Architect, except for payment for services rendered pursuant to and in accordance with this Agreement; nor (2) shall the Owner ever be liable to the Architect for indirect, consequential, special, punitive or other similar damages.

7.15 Background Checks. Architect agrees that it will cause to be completed a reasonable background check on any "Architect’s Employees" (which shall include employees of Architect and employees of Architect’s subcontractors and consultants of whatever tier), who will have (i) unescorted access to Owner premises, (ii) access to Customer or Employee Data ("Customer and Employee Data" means any personally identifiable information of an Owner customer or employee") or (iii) access to Owner information technology systems. The background check will be completed by Architect prior to any Services being performed by such person within the Architect’s Employees.

7.16 Proof of Employment Eligibility. Architect warrants that all Architect Employees’ names and social security numbers match and that all Architect Employees hired after the date of this Agreement are United States security numbers match and that all Architect Employees hired after the date of this Agreement are United States
citizens or they have one of the documents currently accepted by the USCIS as proof of employment eligibility, as shown on USCIS website’s instructions for Form I-9 (www.uscis.gov/portal/site/uscis). For Architect Employees hired prior to the date of this Agreement, Architect warrants that all Architect Employees are United States citizens or they provided proof of employment eligibility documents accepted by the USCIS or its predecessors at the time of said Architect Employee’s hire. Any Architect Employee whose proof of employment eligibility documents (such as temporary work visas issued by USCIS, Bureau of Citizenship and Immigration Service or Immigration and Naturalization Service) expire while said Architect Employee is providing services, must have their I-9 form re-verified according to USCIS requirements.

7.17 Owner’s Insurance Obligations. As part of Basic Services, the Architect shall maintain the following insurance having minimum limits of liability as specified below from a company or companies lawfully authorized to do business in the jurisdiction in which the Project site is located, and having a Best’s rating of “A+, VIII” or better unless otherwise approved in writing by the Owner, to protect the Architect and its consultants from claims which may arise out of or result from the Architect’s or its consultants’ services and operations under this Agreement and for which the Architect or its consultants may be legally liable, whether such services or operations be performed by the Architect, any of its consultants or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable:

1. Commercial General Liability Policy covering bodily injury (including death); broad form property damage including injury to, or destruction of, tangible property, including loss of use therefrom; personal injury; products and completed operations coverage; broad form contractual liability coverage specifically covering but not limited to the indemnification obligations undertaken by Architect in Section 7.17; coverage for “X,” “C,” and “U” hazards; independent contractor’s coverage; incidental malpractice; all having limits of liability of not less than $1,000,000 per occurrence and $2,000,000 general aggregate.

2. Automobile Liability. Minimum limits of liability: [$1,000,000] combined single limit, covering claims for damages because of bodily injury or death of any person or property damage arising out of ownership, maintenance or use of all owned, non-owned, hired, rented or borrowed autos.

3. Workers’ Compensation. Minimum limits of liability: As per applicable statutory requirements.

4. Employers Liability. Minimum limits of liability: $1,000,000 Each Accident; $1,000,000 Disease Policy Limit; and $1,000,000 Disease Each Employee.

5. Professional Liability Policy for errors, omissions or negligent acts arising out of the performance of this Agreement having limits of liability of not less than $500,000,000 per claim annual aggregate. If requested by Owner, Architect will provide additional professional liability coverage as directed by Owner, at Owner’s expense, subject to availability on commercially reasonable terms. It will be deemed to be commercially reasonable for Architect to provide not less than $2,000,000 of Project-specific coverage if requested by Owner, at Owner’s expense.

6. The Architect shall also maintain in force and effect during the term of this Agreement the following insurance coverage: Valuable Papers Coverage having a minimum limit of liability of $100,000.

The Owner, the Owner’s lender (if any) and any other party requested by Owner and their respective managers, members, partners (including equity partners), officers, directors, shareholders and employees and any assignee that is an affiliated entity and becomes the owner of the Project (collectively, the ”Indemnified Parties”) shall be named as additional insureds under all of the insurance required under Section 7.11 on a primary and non-contributory basis for premises liability and products/completed operations and for full limits and full coverage term required using ISO Additional Insured Endorsements CG 20 10 10 01 (ongoing operations) and CG 20 37 10 01 (completed operations) or other endorsements providing equivalent coverage. The products and completed operations coverages shall be maintained on behalf of the Indemnified Parties as additional insureds on such basis for a period of at least three (3) years following the final completion date of the Work. Coverages under the insurance required by Section 7.17, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of the commencement of the Architect’s work hereunder until the date of final payment and, in the
insurers writing coverage will have adequate jurisdictional authority and A.M. Best financial rating as provided above, and Policies required hereunder will:

a) Have adequate territorial limits;

b) Be occurrence based; however, Professional Liability and Pollution may be written on a claims-made basis;

c) Architect’s Professional Liability Insurance coverage shall be retroactive to the earlier date of this Agreement or when the Architect’s services commenced in relation to the Project;

d) Contain "cross-liability" or "severability of interest" provisions;

e) To the extent permitted by law, be primary and noncontributory;

f) Hold Architect solely responsible for premiums, deductibles (professional liability deductible not to exceed $100,000) and retentions; and

g) Respond to all claims and actions, including defense, for claims brought within the United States, its territories and possessions, and Canada.

h) Provide Waiver of Subrogation on Commercial General Liability, Commercial Automobile Liability, Workers’ Compensation/Employer’s Liability and Umbrella/Excess Liability policies.

7.18 Indemnification by Architect.

.1 Liabilities: As used herein, the terms "Liability" or "Liabilities" shall mean, singly and collectively, any claim, liability, damage or loss, expense and/or reasonable cost of every kind or description, including but not limited to reasonable attorneys’ fees and claims, liabilities, damages, losses or expenses arising from personal injury, property loss or damage or injury to others (including without limitation personnel of Architect and the Indemnified Parties, their contractors and subcontractors).

.2 Professional Liability Claims: To the maximum extent permitted by law, the Architect agrees to indemnify, defend and save harmless the Indemnified Parties of, from and against any Liabilities to which the Indemnified Parties may be subjected, to the extent caused by the negligent performance of services hereunder or the willful misconduct of the Architect, its agents, consultants, servants or employees, in connection therewith (collectively, "Professional Liability Claims").
Employee Injury Claims: In addition to the indemnification provided herein, and to the maximum extent permitted by law, Architect shall indemnify, defend, and hold harmless Owner and/or the Indemnified Parties from and against any claim or Liabilities arising out of, resulting from or attributable to any claim of bodily injury, sickness, disease or death of any employee of Architect, any subcontractor or anyone directly or indirectly employed by either, brought by such injured employee or the employee’s workers compensation insurance carrier (hereinafter referred to as an "employee injury claim"), even to the extent such claim, damage, loss or expense is alleged to be caused by the concurrent negligence of the Owner and/or Indemnified Parties or anyone directly or indirectly employed by them. Architect shall procure liability insurance covering its obligations under this paragraph.

Other Liabilities: The Architect agrees to indemnify, defend and save harmless the Indemnified Parties of, from and against any Liabilities (other than Professional Liability Claims) to which the Indemnified Parties may be subjected, to the extent caused by the negligent act or omission or willful misconduct of the Architect, its agents, consultants, servants or employees, including, without limitation, Architect’s violation of any laws.

General: In no event shall any of the foregoing indemnification obligations of Architect with respect to any Liability extend beyond the date when the institution of legal or equitable proceedings for such Liability would be barred by an applicable statute of repose or statute of limitations. In no event shall Architect’s indemnification of the Indemnified Parties apply to the sole negligence or willful misconduct of any Indemnified Party resulting in a claim or any liability of such Indemnified Party.

Insurance Limits. Any insurance limits required by this Agreement are minimum limits only and not intended to restrict the liability imposed on the Architect for work performed under this Agreement, including, without limitation, any indemnification obligation of the Architect.

The Architect shall, at the Owner’s request, furnish the Owner copies of all agreements (including any amendments to agreements) entered into by the Architect with respect to his services under this Agreement, including but not limited to, any agreements between the Architect and any consultants.

Independent Contractor. Any and all Services to be provided under this Agreement by Architect, its principals, employees and agents shall be performed as an independent contractor, and not as an employee or agent of Owner. Architect shall have no right or authority, express or implied, to commit or otherwise obligate Owner in any manner whatsoever unless and until Architect is expressly authorized to do so in writing by Owner.

Disapproval of Architect’s Work. The Owner shall have the right to disapprove any portion of the Architect’s work on the Project, including but not limited to Design Phase or Construction Documents Phase work, and any other design work or documents, on any reasonable basis, including but not limited to aesthetics, or because in the Owner’s opinion, the construction cost of such design is likely to render such work or the Project unfeasible. In the event that any phase of the Architect’s work is not approved by the Owner, the Architect shall proceed, when requested by the Owner, with revisions to the design work or documents prepared for that phase to attempt to satisfy the Owner’s objections. These revisions will be made without adjustments to the compensation provided for hereunder, unless revisions are made to drawings previously approved under previous phases, in which case (provided that Architect shall so notify the Owner in writing and receive written approval from the Owner before proceeding with revisions necessitated by such changes) such revision services shall be compensated as Additional Services. No payment, of any nature whatsoever, will be made to Architect for Additional Services without such prior written approval by the Owner.

No Additional Services. Notwithstanding anything to the contrary contained in this Agreement, no architectural services made necessary, in whole or in part, by any failure on the part of the Architect or any of its consultants duly and timely to perform any of their respective duties, responsibilities or obligations under this Agreement in accordance with the Standard of Care or Owner’s specific instructions shall be compensated as an Additional Service or otherwise under this Agreement.
7.23 Owner’s Representatives. The Owner shall identify a representative authorized to act on the Owner’s behalf with respect to the Project. The Owner shall render decisions and approve the Architect’s submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect’s services. The “Owner’s Designated Representative” is __________________________. The Owner’s Designated Representative is authorized to act on the Owner’s behalf with respect to the Project and the Architect is entitled to rely on the decisions and instructions of the Owner’s Designated Representative. The Owner’s Designated Representative shall be reasonably available and present at scheduled meetings in order to provide information and decisions in a timely manner so as to not negatively impact the Architect’s schedule and/or the construction schedule.

7.24 Disputes. Any claim, dispute or other matter in question arising out of or related to this Agreement (the "Dispute") shall initially be subject, as a condition precedent to binding dispute resolution, to resolution through "Executive Negotiation" between senior representatives of both parties familiar with the Project. The Owner initially designates __________________________ as its senior representative and the Architect designates [INSERT] as its senior representative for such purpose. The parties shall arrange a mutually convenient time to meet at which the senior representative of each party shall be present. The meeting shall occur within fifteen (15) days of either party’s request for Executive Negotiation and attempt to amicably resolve the Dispute. They may consider any and all information. The Project Managers and their representatives or designees or other representatives for each party shall each present their position to the senior representatives who shall then promptly attempt to negotiate a resolution of such Dispute. If the parties are unable to resolve such Dispute to the satisfaction of both parties within thirty (30) days of the presentation of positions to the senior representatives in writing, the parties shall then attempt to resolve such Dispute in accordance with the mediation as set forth herein. If such Dispute relates to or is the subject of a lien arising out of the Architect’s services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation.

If any Dispute is not resolved as provided above, the Owner and Architect shall endeavor to resolve all Disputes between them by mediation. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of notice, unless stayed for a longer period by agreement of the parties or court order. The Owner and the Architect further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors or consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation and then litigation as the primary method for dispute resolution between the parties to those agreements.

The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

7.25 Assignment. The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. The Architect shall not assign this Agreement. The Owner shall not assign this Agreement without the written consent of the Architect, except that no such consent shall be required for any assignment by the Owner to a successor owner/operator of the Project that is controlled by, under common control with or controlling Owner, to any lender providing financing for the Project or to any successor to Owner’s interest in the Project site. In such event, the assignee shall assume the Owner’s rights under this Agreement and the obligations of the Owner from and after the date that such assignee assumes the Owner’s obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate any such assignment. No assignment by either party shall release such party from its obligations under this Agreement. This assignment shall become effective upon Owner’s delivery of an assignment instrument to Architect.

7.26 Promotion Limitations. The Architect shall have the right to include renderings, photographic or artistic representations of the design of the Project among the Architect’s promotional and professional materials, without Owner’s prior written consent, as long as the inclusion of such representations of the design does not include the Owner’s logo, name or other identifying information. Otherwise, if the use of such renderings, photographic or artistic representations does include the use of the Owner’s logo, name or other identification, such use shall require...
the prior written consent of Owner, which consent may be withheld in its sole good faith discretion. In no event shall
the Architect’s materials include the Owner’s confidential or proprietary information if the Owner has previously
advised the Architect in writing of the specific information considered by the Owner to be confidential or
proprietary. The Owner shall provide professional credit for the Architect in the Owner’s promotional materials for
the Project.

7.27 Press Releases. Architect shall submit to Owner all press releases and other publicity matters wherein
Owner’s names, marks or logos are mentioned or language from which the connection of such names, marks or
logos therewith may be inferred or implied. Architect shall not publish such press releases or publicity matter
without Owner’s prior specific written approval in each instance, which approval may be withheld in Owner’s sole
good faith discretion. Without limiting the foregoing, Architect shall not represent directly or indirectly that any
Service provided by Architect to Owner has been approved or endorsed by Owner, or include the name, trade name,
trade mark, or symbol of Owner or any affiliated entities on a list of Architect’s customers.

7.28 Confidentiality. Each party will use the means that it uses to protect its own confidential information, but
not less than reasonable means, to prevent the disclosure and to protect the confidentiality of (a) written information
received from the other party which is marked or identified as confidential, (b) oral or visual information identified
as confidential at the time of disclosure, and (c) information which by its nature should be considered confidential
(collectively, "Confidential Information"). Each party will use Confidential Information received from the other
party only in connection with the purposes of the Agreement. A party may disclose Confidential Information which
belongs to such party or is (i) already known by the recipient party without an obligation of confidentiality, (ii)
publicly known or becomes publicly known through no unauthorized act of the recipient party, (iii) rightfully
received from a third party without an obligation of confidentiality, (iv) independently developed by the recipient
party without use of the other party’s Confidential Information, or (v) approved by the other party for disclosure.
Confidential Information may be disclosed by the recipient party to its employees, subcontractors, consultants and
agents who have a need to know and who are subject to a confidentiality agreement that contains terms and
conditions at least as restrictive as those set forth in this Section 7.28 would govern such employees, subcontractors,
consultants or agents use or possession of the Confidential Information. Further, the recipient party shall not be
restricted from disclosing Confidential Information as required pursuant to law, regulation or judicial or
governmental order, provided that any such disclosure shall be limited to the extent of the legal requirement and the
recipient party shall promptly notify the disclosing party and cooperate with the disclosing party, at the disclosing
party’s expense, so that the disclosing party may intervene and object to such disclosure or seek a protective order or
other appropriate protection for its Confidential Information. Upon the written request of the disclosing party, the
recipient party will, at the recipient party’s option, either return all copies of the disclosing party’s Confidential
Information to the disclosing party or certify in writing that all copies of such information have been destroyed.
Notwithstanding such requirement, either party may retain one archival copy of the Confidential Information. Either
party may return the other party’s Confidential Information, or any part thereof, at any time. Owner may disclose
Architect’s Confidential Information to affiliated entities under similar conditions of confidentiality. The terms and
conditions set forth in this Section 7.31 shall survive the expiration or termination of the Agreement.

7.29 Notice. All notices required by this Agreement or other communications to either party by the other shall
be deemed to have been properly given in writing and delivered either (a) by hand in person, (b) by registered or
certified mail, return receipt requested, (c) by overnight courier delivery service that provides a return receipt or (d)
by facsimile or electronic mail followed up by mailing or delivery of such notice by any of the methods described in
(a), (b) or (c) addressed to the Owner and the Architect, respectively, at their respective addresses or fax numbers set
forth on the first page of this Agreement. Any such notice shall constitute service of notice hereunder three (3)
days after the mailing thereof by certified mail; one (1) day after the sending thereof by overnight courier; and on
the same day as the sending of a facsimile, electronic mail or hand delivery pursuant to the terms of this Section.
Addresses for notices may be changed by notice to the other party given in the manner provided herein.

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OWNER

ARCHITECT
I, Bruce Merwin, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:01:41 on 11/17/2014 under Order No. 5732970927_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B105™ – 2007, Standard Form of Agreement Between Owner and Architect for a Residential or Small Commercial Project, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)