



AIA[®]

Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

(Paragraph deleted)

10/21/2015 FINAL

AGREEMENT made as of the ___ day of October in the year 2015.

BETWEEN the Owner:

Wanda Beverly Hills Properties LLC
439 N Canon Dr.
Suite 207
Beverly Hills, CA 90210

and the Architect:

Richard Meier & Partners Architects LLP
1001 Gayley Avenue, 3rd Floor
Los Angeles, CA 90024

for the following Project:

One Beverly Hills
9900 Wilshire Boulevard
Beverly Hills, CA

The Owner and Architect agree as follows.

The Owner has retained TBD as its Construction Manager for the Project. The Construction Manager has been designated by the Owner as its representative authorized to act on the Owner's behalf with respect to the Project.

NOTE TO ARCHITECT: THIS DOCUMENT CONTAINS SIGNIFICANT MODIFICATIONS FROM THE STANDARD AIA B101 – 2007 LANGUAGE.

123,804,846.6

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in Exhibit A:

(Paragraph deleted)

§ 1.1.1 The description of the project is as follows: One Beverly Hills is a new hotel and luxury residential condominium project located on an approximately 8 acre site between Wilshire and Santa Monica Boulevards in the City of Beverly Hills, California. The Project includes a hotel and luxury residential condominium located in two buildings, public and private gardens, water features and parking. The hotel is located in the south building and includes approximately 134 rooms, a Ballroom of a minimum of 4,300SF, All Day Dining, Meeting Rooms, a Chinese Restaurant, Spa/Gym and support space. The luxury residential condominiums total approximately 193 units and are located in both the north and south buildings.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 See Exhibit A.

§ 1.2.1 The duration of this Agreement shall be defined as follows:

(Paragraphs deleted)

See Exhibit A.

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

§ 1.4 The project general information and design requirement shall be defined as follows:

See Exhibit M

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by performing similar architectural design services on projects of similar size, nature and complexity in the same geographic location as the Project (the "Standard of Care"). The Owner and the Architect agree and acknowledge that the design documents prepared by the Architect, while consistent with the Standard of Care, may contain minor errors and inconsistencies which may result in an increase in Cost of Work as defined herein. The Architect shall perform its services as expeditiously as is reasonably consistent with such professional skill and care and the orderly progress of the Project. Nothing herein shall be construed to extend or exceed the Standard of Care or establish a fiduciary relationship between the parties. Regardless of any term herein, the Architect makes no express or implied warranty of any kind.

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§2.2.1 Subject to the Standard of Care, the Architect, in conjunction with the necessary and relevant consultants, shall design the Project and perform its services in accordance with the local Building Code and similar or related laws, rules, regulations, codes and ordinances which are applicable to the Architect's services pursuant to this Agreement and in effect at the time the Architect prepares its design documents (the "Legal Requirements"). The parties acknowledge that the meaning of the Legal Requirements is not always free from ambiguity. Accordingly, interpretations of the Legal Requirements which are consistent with the Standard of Care shall satisfy the Architect's obligations pursuant to this Agreement. The Architect shall only be responsible for safety hazards and risks created by its services or its Consultants' services to the extent caused by its or its Consultants' negligent errors or omissions, and for losses suffered by the Owner only to the extent caused by the Architect's or its Consultants' breach of either Architect's or its Consultants' standard of care. Architect shall not be responsible for the Contractor's or its subcontractors' conduct, means, or methods or for the conduct of Owner.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. Michael Palladino, Design Partner and James R. Crawford, Project Manager/Partner

§ 2.4 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.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

.1	General Liability	\$5,000,000
.2	Automobile Liability	\$5,000,000
.3	Workers' Compensation and Employers' Liability	\$1,000,000
.4	Professional Liability	\$3,000,000

§ 2.5.1

- .1 Architect shall use its reasonable efforts to maintain the professional liability coverage required by 2.5.1.2 during its performance of services under this Agreement.
- .2 \$3.0 million of professional liability coverage as maintained by Architect in the normal course of its business; provided that, during the period that Architect is performing services under this Agreement until the Project's Substantial Completion, Owner shall reimburse Architect for that portion of its annual premium costs that is calculated by multiplying Architect's total premium cost for the \$ 3.0 million professional liability coverage by a fraction, the numerator of which is the total of Owner fees payable to Architect for that year and the denominator of which is Architect's total fees payable to Architect for that year. The parties understand that the amounts projected as payable by Owner for this cost in Exhibit G are estimates that are subject to change based upon actual annual premium amounts and Architect's fees from Owner versus those from other clients of Architect.
- .3 In connection with Architect's annual efforts to renew the coverage specified immediately above, Architect shall give Owner as much advance notice as reasonably possible if Architect experiences any difficulty in procuring and/or renewing the specified coverage or if a material change will occur in the annual premium.
- .4 Should Owner consider obtaining an OCIP or similar type of insurance policy after the Owner and Architect have executed this Agreement, Architect shall have the opportunity to be involved in the process of considering Owner obtaining such a policy, and if Owner does obtain such a policy it shall, if Architect requests, include Architect and its Consultants as additional insureds if it is commercially reasonable and available for Owner to do so; provided, however, that Architect shall be responsible to Owner for any additional costs to Owner to do so.

§ 2.6 Any policy of insurance issued pursuant to Section 2.5 above, except for the OCIP, Professional Liability and Workers Compensation policies, covering the Architect, the Architect's Consultants, shall include an endorsement providing that the underwriters waive their rights of subrogation against the Owner, the Owner's

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Representative, the Lender, the contractors, their respective parent companies, the subsidiary, related and affiliated companies of each and the officers, directors, agents, employees and assigns of each. The Architect hereby waives, and it shall require its Consultants to waive, any and all rights of recovery which they or any of them may now or subsequently have against the Owner, the Owner's Representative, the contractors, their respective parent companies, the subsidiary, related and affiliated companies of each, and the officers, directors, agents, employees and assigns of each, in connection with the Work to the extent covered by the insurance required to be obtained under this Agreement, but only to the extent that such parties have waived the rights of recovery as against the Architect and its Consultants.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include services of Architect's Consultants as set forth in this Agreement, as well as Architectural Interior Design for the interior area spaces, excluding the hotel interior design services. Also included in the Architect's scope of services are landscape design, pool design and engineering. Services not set forth in Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project design team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its Instruments of Services with those services provided by the Owner and the Owner's Consultants. The Owner specifically acknowledges that the Architect is not responsible for the technical sufficiency of the work product and/or professional judgment and analysis of the Owner's Consultants (as defined in Section 3.1.4.2 hereof) or any other consultant retained by the Owner for the Project (collectively, the "Owner's Consultants"). The Architect shall not be responsible to the Owner or any third-parties for errors, omissions, delays or other defaults of any consultant or other party performing services at the Project, not specifically retained by the Architect. The Architect's sole responsibility in connection with the services of the Owner's Consultants shall be to coordinate the Architect's portion of the Instruments of Services with the other Architect's Consultants and the Owner's Consultants consistent with the Standard of Care. The Owner shall require consultants retained by the Owner to coordinate their services and documents with those of the Architect and the Architect's Consultants, if any. 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, and any other consultants not retained by the Architect. The Architect shall provide prompt written notice to the Owner if the Architect has actual knowledge of any error, omission or inconsistency in such services or information.

§ 3.1.3 The Architect and Owner, in conjunction with the Contractor, will mutually agree to a schedule for the Project which will include both design deliverables and construction activities ("Project Schedule"). The Project Schedule will be tentatively agreed to prior to the execution of this Agreement and will be attached to this Agreement as Exhibit A. The Project Schedule at Exhibit A is subject to reasonable revision and final approval by Owner, subject to Architect's approval in advance, which shall not be unreasonably withheld, conditioned, or delayed. Revisions to Exhibit A approved by the Owner and Architect shall replace the version of Exhibit A attached hereto.

(Paragraph deleted)

§ 3.1.3.1 If the Architect's ability to meet any specific milestone dates set forth in the Project Schedule or incorporated into the Project Schedule is adversely affected by factors outside of its control, including but not limited to, delays caused by the Owner, Contractor, the Owner's Consultants, Independent Contractors, or due to any Force Majeure Event, as defined below, or due to any third parties or government or regulatory agency having jurisdiction over the Project, then the Architect shall not be responsible for such delays and such milestone date shall be extended to account for such delay and the Architect's fee equitably adjusted. The Architect shall not be responsible for the consequences of acts of God (such as tornado, hurricane, flood, etc.; acts of terrorism); the Construction Manager's, Contractor's or subcontractors' (and their respective agents', employees' and subcontractors') acts or omissions; insurrections and civil commotions; embargoes, shortage or unavailability of materials, supplies, labor, equipment and systems; sabotage; vandalism; the requirements of law, statutes, regulations and other legal requirements, orders or judgments; and any other similar matters beyond the reasonable control of the Architect (collectively, the Force Majeure Events"). The Architect's schedule and fee shall be equitably adjusted to account for any delays due to a Force Majeure Event.

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(Paragraph deleted)

§ 3.1.4 The Architect will be retaining the following Consultants (the Architect's Consultants") for the Project.

Service Description	Design Firm
Architectural Services and Interior Design (excluding Hotel Interiors)	Richard Meier & Partners
Building Code & Life Safety Consultant	Aon Fire Protection Engineers
LEED Consultant	Farnsworth
Structural Engineering	Englekirk
MEPPF Engineering	Stantec
Security Design & Engineering	TBD
Telecom & Low Voltage Engineering	Waveguide
Specialty Lighting Design	Fisher Marantz Stone
Civil Engineering	Psomas
Acoustical Engineering	Newson Brown Acoustics
Building Envelope Consultant	CDC, Inc.
Vertical Transportation Consultant	HKA
Window Washing Engineering Consultant	C.S. Caulkins
Parking Engineering Consultant	Walker Parking Consultants
Pool / Spa Consultant	To Be Determined
Waterproofing Consultant	SGH
Hardware Consultant	Finish Hardware Technology
Specification Writing Consultant	Gary Barnett Specifications
Landscape Architect	Olin
Graphics and Signage Consultant	TBD
Wind Tunnel Testing Consultant	Englekirk
Concrete Consultant	Reginald Hough
Water Features Consultant	CMS
Food Service Consultant	TBD
Laundry Consultant	TBD
Vibration Consultant	Wilson IHRIG

§ 3.1.4.1 The Architect shall retain the services of Engineering Consultants for the project, as set forth in the Architect's proposal and specifically enumerated above. The Architect's responsibilities relating to these Consultants shall be consistent with the Standard of Care and includes the following:

1. Reviewing each Consultant's Project Scope and Basic Services, and submitting these to the Owner for its approval.
2. Coordinating the Consultants as to progress and schedules, so as to timely obtain information, design and documentation required for the Project.
3. Coordinating the Work of the Consultants with the Work of the Architect, incorporating their designs, documents, details and specifications into the final Construction Documents for the Project.
4. Disbursing funds monthly, after approval and funding from the Owner, to each Consultant.
5. Confirming in writing, that each Consultant maintains general liability insurance of at least \$1,000,000 per occurrence/annual aggregate naming the Owner as additional insured, and professional liability insurance with limits of at least \$1,000,000. Owner may authorize in writing lesser policy limits.

§ 3.1.4.2 Additional Consultants (the "Owner's Consultants") to be retained directly by Owner are as follows:

Scope of Services	Firm Providing
Zoning Consultant	To Be Determined
Geotechnical Consultant	To Be Determined
Traffic Engineering Consultant	Mobility
Cost Estimating Consultant	To Be Determined
Economic Impact Study	To Be Determined

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Surveyor	To Be Determined
LEED Commissioning Agent	To Be Determined
Permit Expeditor	To Be Determined
Retail Marketing Broker	To Be Determined
Economic Impact Study	PKF

§ 3.1.4.3 The contract values for Architect's Consultants are included in the Architect's Fee for Basic Services, and amounts payable to the Architect as its Fee are not subject to adjustment based upon such Consultants' actual charges to Architect, unless amended under the provisions of Article 4.

§ 3.1.4.4 The Architect shall lead the coordination process by working with the Owner's Consultants to establish and document the size, location and parameters of the Project's elements. The Owner shall require Owner's Consultants to work within those parameters and shall promptly notify the Architect if any conflicts arise with any established parameters. The Owner's Consultants shall deliver to the Architect technically sufficient, internally coordinated documents. The Owner's Consultants will also be responsible for notifying the Owner and Architect of any changes the Owner's Consultants make in the development of the documents. If such changes are made or such conflicts are discovered in the documents or otherwise, the Owner's Consultants will promptly bring such matters to the Owner's and Architect's attention in writing. The Architect shall not be responsible for creating all portions of the Construction Documents, but rather shall be responsible for only the architectural portion and for assembly and coordination of that portion with the balance of the Construction Documents provided by the Architect's and Owner's Consultants. The Architect shall not be responsible for the technical adequacy of the Owner's Consultants' work product and Owner agrees to look solely to Owner's Consultants with respect to errors or omissions in their work product

(Paragraph deleted)

§ 3.1.5 The Owner will retain, in addition to a zoning consultant, a zoning attorney. The Owner's zoning consultant and/or zoning attorney shall have primary responsibility for review of the Project's compliance with all authorities, codes, rules, ordinances and regulations having jurisdictions over the Project, including, but not limited to, the City of Beverly Hills zoning ordinance, identification of documents required for planning/zoning and related submittals and application and the coordination of and attendance at meetings with all governmental or quasi-governmental authorities having jurisdiction over the Project and other agency meetings.

§ 3.1.6 The Owner's Construction Manager and/or Contractor shall consult with the Owner and the Architect respecting the Project and the development of design and working drawings, technical specifications, budget and progress schedules, and shall provide the Owner and the Architect with and be responsible for all cost estimates and information respecting availability of materials, construction schedule, and other pertinent information necessary for the development of the design and construction documents. The Construction Manager and/or Contractor shall also be responsible for estimating the costs of alternative materials and systems, the bidding of the various sub-trades and the negotiation of construction contracts. During the Construction Administration Phase, the Construction Manager's and/or Contractor's responsibilities shall include but shall not be limited to coordinating the work of the sub-trades, preparing and processing change orders, and consolidating, preparing and certifying the Contractor's payment requests.

§ 3.1.7 The Owner shall require the Construction Manager to establish a coordination process within the established architectural parameters with the Owner's Contractor and subcontractors to prevent conflicts among the various building systems including, but not limited to, the structural, plumbing, HVAC, electrical and sprinkler systems.

§ 3.1.8 The Owner will retain consultants in the area of environment analysis, hazardous materials, and any other areas required by the Project not within the Architect's scope of services. The cost of any filing fees, permits, applications, etc. will be at the Owner's sole cost and expense and the Owner's responsibility.

§ 3.1.9 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

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§ 3.1.10 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.11 The Architect shall maintain an internet based Project Website for use through the completion of Construction Documents in connection with the Project. The Project Website shall be located on the Architect's existing FTP website. Once Construction Documents are completed, the Project website located on the Architect's existing FTP website will be disconnected. The Architect shall post read-only electronic copies of documents for retrieval and use by others through the completion of Construction Documents, it being expressly understood and agreed, however, that such publication shall not affect the Architect's rights in the documents and that in all cases where they exist, hard copies shall govern the liability of the parties with respect to any such electronic documents. The Owner shall ensure that all of Owner's Consultants provide the Architect with such documents and other information, in electronic or other form, as may be reasonably requested or required by the Architect in order to post documents concerning the Project on the Architect's FTP website, and the Owner shall warrant and ensure the Architect's use of such documents and that the Owner's Consultants grant the Architect a license to post such documents or other information on its FTP website. The Owner, the Owner's Consultants and any other party utilizing the website shall not introduce or allow the introduction of any encryption methods or techniques or upload encrypted documents onto the Project Website. Nothing contained herein shall limit the Architect's ability to use portion of its FTP website, other than the Project Website, in its own discretion. The Architect shall also have no responsibility or liability for any delays or damages caused by the failure of the website to function properly and shall not be liable to the Owner, the Owner's Consultants or to any other party for any delays, errors or omissions in the consultants' or any other party's services caused by the failure of the website to function properly.

§ 3.1.12 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services. The Architect shall take minutes of all such meetings and transmit the minutes to both the governmental entity and the Owner.

§ 3.1.13 The Hotel Interiors scope of work is by others. The Architect and its Consultants', as part of their Basic Services, shall coordinate the design of the building services with the requirements of the following:

- .1 Exhibit N – Hotel MEP work requirement
- .2 Exhibit O – Hotel IT work requirement
- .3 Exhibit P – Hotel Kitchen and Laundry standard
- .4 Exhibit Q – Hotel AV work requirement
- .5 Exhibit R – Hotel Lighting work requirement
- .6 Exhibit U – Hotel ELV consultant requirement

§ 3.1.14 The Architect's and its Consultants' Basic Services also include those indicated in Exhibits H through M, and the Architect and its Consultants shall comply with their standards and requirements.

§ 3.1.15 The Architect should provide area charts based on the format that Owner request at each design phase. The Architect shall explain the area difference between each phase by narrative and diagram.

§ 3.1.16 All notes and items called out in the concept design and schematic design drawings shall be in both English and Chinese. Dimensions in the schematic design drawings shall be metric. Dimensions on the major grid lines of all drawings at all stages shall be both in U.S. customary (English) and metric.

§ 3.2A CONCEPT DESIGN PHASE SERVICES

§ 3.2A.1 The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

§ 3.2A.2 The Architect shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.2A.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project.

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§ 3.2A.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Concept Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

§ 3.2A.5 The Architect shall review the estimate of the Cost of the Work prepared and provided by the Construction Manager to the extent related to the Architect's design of the Project.

§ 3.2A.6 The Architect shall prepare Conceptual Site Massing Plan, Conceptual Floor Plans of key levels, diagrammatic Building Sections indicating probable floor to floor heights, typical Guest Rooms plan, Area Tabulations, review Owner's Program and confirm utility requirements with governing agencies.

§ 3.2B SCHEMATIC DESIGN PHASE SERVICES

§ 3.2 B.1 Based on the Owner's approval of the Concept Design Documents, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall further define the space relationships developed in the Conceptual Design.

(Paragraphs deleted)

§ 3.2B.2 The Architect shall review with the Owner alternative approaches to design and construction of the Project.

§ 3.2B.3 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

§ 3.2B.4 The Architect shall review the estimate of the Cost of the Work prepared by the Construction Manager to the extent related to the Architect's design of the project.

§ 3.2B.5 The Architect shall prepare Schematic Architectural Site Plan, Schematic Floor Plans of all levels, Schematic Building Sections, Guest Rooms Layouts based on plans provided by Owner, Narrative description of proposed materials, structural systems, mechanical systems, electrical systems, special systems and code analysis and Area Tabulations and Program Confirmation.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's review of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare the Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the design as required by the Owner above, and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels. The deliverables during this phase shall be: Site Plan, Building Floor Plans, Unit Plans, Roof Plans, Recreation Deck (Pool / Patio) Plans, Building Elevations, Building Sections, Reflected Ceiling Plans, Typical Wall Sections, Finish Schedules and Preliminary Engineering.

§ 3.3.2 INTERIOR DESIGN SCOPE OF WORK

§ 3.3.2.1 The Architect shall provide full interior design services for the residential common spaces, residential back of house spaces, and all residential units, including without limitation, Penthouses. These full interior design services include without limitation plans for FF&E and specification of FF&E except in the case of regular (non-Penthouse) units, Architect need not specify furniture. In addition to the interior scope of work listed here, the Penthouse scope of work and certain terms and conditions relating to it are outlined in Exhibit T. Architect shall provide at least six material and color palettes for residential units, excluding Penthouse Units. The Architect shall also provide interior planning and space layouts for the hotel common spaces and back of house spaces, including coordination with building services. The hotel guest room floor layouts will be developed based on a standard guest room plan provided by the Owner. The documentation of all other hotel interior spaces including interior elevations, details, selection of finishes and lighting will be provided under a separate Agreement by

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Owner's consultants. The Architect shall also provide interior design service for other Basement area. Refer to Exhibition H for all interior scope of work.

In implementing the Building Interior Design, the Architect shall general adhere to the following design themes:

- .1 On all floors of the building, the elevator lobbies, restrooms and drinking fountain areas will all be provided with a like design or similar design theme
- .2 In all elevator lobbies, the drywall will have finishes and paint specifications; elevator lobby lighting will be functional in the ceilings.
- .3 The fire doors for the elevator lobbies will have to be specified to be installed and operational.
- .4 The bathrooms will have tile specified. The bathroom designs will have lighting specified, sinks specified, toilets specified and a supporting shelf and all bathroom accessories, and mirrors would be specified. All toilet partitions will be specified for installation as well.
- .5 The MEPFP systems will be designed to a level which will support the achievement of a building Certificate of Occupancy. The specific areas that will be designed include but are not limited to;
 - Fully operational sprinkler system in common areas.
 - Fire Alarms and Smoke Sensors will be operational.
 - Lighting to achieve the minimum levels of illumination required by Code.
 - Exit Signage will be operational at the stairwells.
 - Fire extinguisher cabinets in selected wall locations.
 - HVAC Air Handling Units installed and operational without distribution ducts.
 - Electrical service panels for future tenant use will be installed, inspected and operational.
 - All pipe and conduit penetrations through fire walls and floor slabs will be fully sealed with the specified intumescent sealants.
 - Smoke Evacuation System designed.
 - Stair Pressurization Systems designed.
 - Elevator hoistway pressurization systems designed.
 - Fire alarm system, including horns and strobes for annunciation. Connection of flow and tamper-switches on the fire sprinkler system to the fire alarm system.
 - Stairway normal and emergency lighting.
 - Emergency lighting in the common area spaces.
 - Elevators will be operational including the telephone in the cab.
 - Potable water system will be sanitized and made fit for human consumption.

§ 3.3.3 The Architect shall review the estimate of the Cost of the Work prepared and provided by the Construction Manager to the extent related to the Architect's design of the Project.

§ 3.3.4 The Architect shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.3.5 Presentation to the City of Beverly Hills for Architectural Commission Approval.

§ 3.3.6 In order to attempt to maximize the possibility of the Project being constructed within the anticipated construction budget, the parties agree to develop and utilize a system of additive and deductive bid alternates as part of the design and tender documents. During the Design Development stage of the design efforts, the Architect shall, consistent with the Standard of Care, make scope recommendations to the Owner for between five (5) each additive and deductive bid items that can be incorporated into the design documents, providing a target of approximately plus or minus two percent (+ 2.0%) of the total construction budget. These items will be tendered with the Project and the Owner may select from them depending upon the outcome of the construction tender(s).

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the architectural Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

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§ 3.4.1.1 OWNER'S APPROVAL

The Architect recognizes that budgetary control is a concern for the Owner. In order to attempt to maximize the possibility of the Project being constructed within the anticipated construction budget, the Owner intends to have the Construction Manager, Contractor, and/or Owner's Project Estimator, estimate construction costs based on the Architect's deliverables, at stages as set forth in this Agreement. The Owner recognizes and acknowledges that the Architect shall have no responsibility or liability in the event the actual construction costs exceed the construction budget or any estimate of construction costs. The Architect shall reasonably cooperate with all other Owner consultants and advisors during the term for the Agreement, including, without limitation, the Owner's zoning counsel, general and real estate counsel, Project Manager, cost consultants, Owner's third party contractors retained directly in addition to any Contractor, the subcontractors of Contractor, the sales and disposal consultants or vendors for any element of the Project, and the hotel operator for the Project. If Architect believes that any specific task involving such cooperation involves services beyond Basic Services, Architect shall promptly notify Owner in writing, shall propose in writing compensation for such claimed Additional Services, and shall obtain Owner's written approval for their performance and the compensation. Such written notice and Owner written approval shall be a condition precedent to Architect's entitlement to compensation for such services as Additional Services.

§ 3.4.1.2 The Architect shall, consistent with the Standard of Care, provide a definition of the additive and deductive bid items prepared during the Design Development phase in the Construction Documents in such a manner that the Project will be complete and functional whether any of the additive or deductive bid items are exercised by the Owner. The Architect shall recommend a priority for the recommended additive and deductive bid items. The Owner or the Owner's Project Estimator shall assess potential costs or savings for each recommended additive and deductive bid item and the Owner shall approve the incorporation of the recommended additive and deductive bid items prior to the Architect's incorporation of these items into the Contract Documents. The Owner shall make the determination to exercise any, all or none of these additive and deductive bid items within four weeks of the receipt of the bids from the appropriate construction contractors. The Owner's final selection for each of the additive and deductive bid items shall be incorporated into the Construction Documents by the Architect as an Additional Service.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; and (2) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) with respect to the architectural design of the Project and the Project Manual, all for review by the Owner's legal, insurance and financial advisors.

§ 3.4.4 The Architect shall review an update of the estimate for the Cost of the Work prepared and provided by the Construction Manager to the extent related to the architectural design of the Project. The Architect shall take any action required under Section 6.5, and request the Owner's approval.

§ 3.4.5 At the completion of the Design Development, and 50% Construction Documents and 95% Construction Documents the Architect shall submit their entire Work Product and all design calculations to an external peer review by licensed Professional Architects and Engineers to be selected and compensated entirely by the Owner. The results of this external peer review shall be fully documented and provided to the Architect and Architect's Consultants for their review. Any revisions required to be accomplished as a result of the detection of errors or omissions in the Construction Documents by the external peer review team shall be incorporated into the Contract Documents at no additional cost to the Owner, unless the Architect provides written justification to the Owner why particular recommended changes should not be incorporated into the Construction Documents or the overall design. Any changes to designs which have been previously approved by the Owner resulting from the external peer review shall be implemented by the Architect and compensated as Additional Services.

§ 3.4.6 The Owner may choose to accelerate the completion of work so that some specific construction contracts ("Early Work Packages") are awarded by the Owner prior to the completion of the remaining Construction Documents. The Architect shall, to the extent consistent with the Standard of Care, provide the documents necessary to achieve the bidding and initiation of construction of the Early Work Packages. The Owner

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understands that if construction or furnishing contracts are let prior to the completion of final Construction Documents, there may be increases in costs and change orders caused by the inability to coordinate the final Construction Documents for the Early Work Packages, along with the inability to make various decisions until after these early bids are received and some construction has already been undertaken. The Architect has no responsibility for costs resulting from any uncoordinated conditions due to such Early work Packages.

§ 3.4.7 The Owner will require several Early Bid Packages. The Owner will require as a minimum the following Early Work Packages:

- .1 Site Utility and Demolition Work Package
- .2 Foundations Work Package

Any other Early Work Packages required by the Owner will be compensated as Additional Services.

§ 3.4.8 The Early Work Package for the MWD Water Line Relocation will be performed by others, to be contracted and paid directly by the Owner.

§ 3.4.9 The Architect will prepare the Early work Packages set forth in Section 3.4.7 ahead of schedule (design them early), will incorporate same into the schedule, and will assist the Owner in the permitting process for the early bid packages.

§ 3.4.10 With the exception of the sanitary civil service, Architectural and Consulting Engineering services which are required to fully design the utility connections for the Project are considered to be part of the Architect's Basic Scope of Services, including the extent that these connections may be required to extend beyond the limits of the property in order to make the final utility connections at the nearest point of interconnection with the network of the utility provider. The design and placement of that portion of the utility connections that must be constructed beyond the property line of the site shall, consistent with the Standard of Care, be coordinated and documented by the Architect or their Consultants with the applicable utilities involved. Such documentation as may be required to facilitate these utility connections shall be provided to the Owner in packages organized by each utility for later distribution by the Owner to the Contractor or applicable separate utility contractors.

§3.4.11 Changes that are required to be made to the Construction Documents as a result of the document permitting review by the local code officials, due to professionally negligent errors or omissions by the Architect, shall be incorporated by the Architect and the Architect's Consultants without an increase in the Architect's fees, or the Architect's consultants fees. Required changes to the Construction Documents that are not due to professionally negligent errors or omissions by the Architect shall be compensated as Additional Services.

§3.4.12 The Architect shall have a fully license California registered architect representative sign the design drawings and specification documents which are to be the permit set of drawings delivered to the local authority and shall be approved by the Owner as Instruments of Service for the Project prior to delivery to the Owner for such local authority approval. The Architect, consistent with its standard of care, shall review and coordinate its drawings and specifications with those of its Consultants for consistency and shall advise Owner in writing it has done so at such times as Owner may reasonably request. The Owner shall not be responsible for additional Architect fees, costs and expenses of correcting any permit set of drawings delivered to the Owner for approval where the same are deficient due to negligent errors or omissions by the Architect or its Consultants.

§3.4.13 The Architect and the Architect's Consultants shall follow and implement into the design the drawings and specifications of the Instruments of Service that have been approved by the Owner at each stage of the design of the Project. In the event that the Architect identifies or is given notice that any portion of the approved Instruments of Service are not in compliance with either (i) Section 2.2.1, or (ii) applicable local building codes or other regulations in force at the time of the plan check review by the authority with jurisdiction over the Project, the Architect shall promptly inform the Owner of the same in writing and shall provide the Owner with alternates for Owner's review and approval. Upon Owner's approval, the Architect shall modify, revise and amend that part of the Instruments of Service that requires modification, revision or amendment to meet and comply with all building codes and regulations of the local authority.

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§3.4.14 The Architect shall implement the total area calculation index for the Project, the allocation of area index among elements of the Project and detailed allocation of area index for different categories of properties within the Project that are approved by the Owner. The Architect agrees that (a) if the Architect has information that the Project will exceed the total area calculation index approved for the Project by more than 300 square meters, the Architect shall promptly inform the Owner in writing, and (b) if the Project will exceed the total area calculation index approved for the Project by more than 1,000 square meters, the Architect shall redesign within the original schedule the Project at no cost to Owner and subject to Owner's reasonable guidance such that the exceedance is reduced to 1,000 square meters or less. The Architect shall obtain the Owner's written approval of any revisions or changes to be made to the Project Instruments of Service in order to adjust the total area calculation index or any portion thereof prior to making any revision to the Instruments of Service. The Architect's calculation method of area shall comply at all times with the specific calculation requirements and methods of the local planning authority with jurisdiction for the Project, including by way of example only, index of gross floor area and calculation for floor area ratio.

§3.4.15 In addition to the Architect's obligations set forth in Section 3.6.5.4, the Architect shall at all times, during the development of all Instruments of Service under this Agreement prior to construction of the Work, obtain from the Owner written approval in a change order form prior to making any revisions, amendments or modifications to the design and specification of any portion of the Instruments of Service where the same have been previously been approved by the Owner. The Architect shall notify the Owner in a timely manner, consult with the Owner proactively for solutions and follow and implement the Owner's approved revisions, amendments or modifications to the design and specification of any portion of the Instruments of Service promptly to achieve the final design of the Project.

§3.4.16 In addition to the Architect's obligations set forth in Section 3.6.2, the Architect shall at such times as reasonably justified during the development of all Instruments of Service make available the Architect's partners, employees or authorized representatives, as appropriate to attend design-related meetings at Architect's Los Angeles offices with the Owner or parties designated by the Owner in furtherance of the development of the Instruments of Service for the Project.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) reviewing responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 reviewing Bidding Documents;
- .2 attending a pre-bid conference for prospective bidders, such pre-bid conference to be organized and conducted by others;
- .3 assisting the Owner, construction Manager and/or Contractor in preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda;
- .4 reviewing bids obtained by Owner.

§ 3.5.2.3 The Architect, as an Additional Service, shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

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§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 reviewing Proposal Documents distributed to prospective contractors;
- .2 participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall assist the Owner, construction Manager and/or Contractor in their preparation of addenda identifying approved substitutions to all prospective contractors.

§ 3.5.3.4 In assisting in the bidding or negotiation process, the Architect is relying upon the information submitted by the respective bidders and does not make any representations regarding the Contractors' or Subcontractors' stability, financial resources or current ability to perform the Work.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction. The Owner shall obtain the Architect's authorization prior to changing or modifying the standard A201-2007 General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2007 without the Architect's consent, those modifications shall not apply to the Architect or the Architect's services to be provided under this Agreement. The Architect's authorization shall not be unreasonably withheld, delayed, or conditioned.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for site safety, safety precautions and programs in connection with the Work, since these are the Contractor's responsibilities pursuant to the Contract Documents, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates at the earlier of the date the Architect issues the final Certificate for Payment, 52 months from the date of this Agreement, or 120 days after the date of Substantial Completion of the Work.

§ 3.6.2 OBSERVATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the architectural Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the design intent expressed in the Construction Documents. Included in the fee for Basic Services is one day per week for the Architect to visit the site. A Budget amount for additional time by the Architect at the site, up to and including one year of full-time presence by the Architect, is included in Exhibit G, but such additional time is only to be provided by Architect to the extent directed by Owner, in its sole discretion, in writing, and only upon prior written approval of additional site visits by Owner. The Budget amount in Exhibit G for this additional time shall not be exceeded. Payments from this Budget amount shall only be for additional site visits that are beyond Architect's Basic Services. Any of the Budget amount unused by the end of the project shall be solely the property of the Owner. Except to the extent required under this section, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the design intent expressed in the Construction Documents and (2) defects and deficiencies actually observed by the Architect in the Work. The Owner shall furnish the services of qualified and licensed inspectors for all controlled inspections or similar inspections of technical reports required by applicable building codes,

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statutes, rules or regulations or by applicable governmental authorities. Any site visits requested by the Owner to coordinate additional scope added to the base Project shall be compensated as an Additional Service.

(Paragraphs deleted)

§3.6.2.2 The Architect has the authority to recommend rejection of Work that, based upon the Architect's observations, does not conform to the Construction 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 Construction 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.

§3.6.2.3 As an additional service, the Architect shall interpret and decide matters concerning performance under, and requirements of, the Construction Documents on written request of the Owner. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Construction Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's interpretations on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Construction Documents.

§ 3.6.2.5 The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in **Section 3.6.2.4**, shall be subject to mediation and litigation as provided in this **Agreement** and in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

(Paragraphs deleted)

§ 3.6.3.1 Based on the Architect's observations and certification by the Construction Manager, the Architect shall review and, in conjunction with the Construction Manager and the Owner, shall certify the amounts due the respective Contractors in the Contractor's application for payment and shall issue certificates in such amounts.

§ 3.6.3.2 The Architect's certification for payment shall constitute a representation to the Owner, on the certification of the Construction Manager based on the Architect's observations of the Work as provided in **Section 3.6.2** and on the data comprising the Contractor's Application for Payment, that, to the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in general accordance with the design intent expressed in the Construction Documents. The foregoing representations are subject (1) to an observation of the Work for general conformance with the design intent expressed in the Construction Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Construction Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.3 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.4 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Timely review by the Architect

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is contingent upon its receipt of submittals in accordance with the submittal schedule approved by the Owner, Architect, Construction Manager and Contractor.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Construction Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences or procedures. The Architect's review of a specific item shall not indicate review of an assembly of which the item is a component. Owner shall require the Contractors and Construction Manager to review and approve submittals before submitting them to the Architect. Changes, if any, shall be shown and flagged on the submittals, but the submittals shall not be used as a substitute for requests for approvals or approvals of substitutions or other changes, or other procedures required by the Contract Documents. Owner agrees that if Contractor intends to make a claim based upon the submittals or notations by the Architect or any of the Architect's Consultants on returned submittals, Contractor shall so notify the Architect immediately. Shop drawings shall be reviewed a maximum of two (2) times. Additional reviews shall be an Additional Service.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. Such design professionals retained by the Contractor shall be licensed to render such professional design services in the state in which the Project is located. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of **Section 4.3**, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue to the Owner supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 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.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may recommend to the Owner minor changes in the Work that are consistent with the intent of the Construction Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of **Section 4.3**, and upon request of the Owner, the Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary, for the Owner's approval and execution in accordance with the Construction Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.5.3 The Architect shall review Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.4 No change in the Work shall be considered approved by the Owner without the prior written approval of the Owner. In the event the Architect proceeds with a change in the Work without the prior written approval from the Owner, the Architect shall not be entitled to any additional compensation whatsoever, as associated with that change in the Work.

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§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect, assisted by the Construction Manager, and upon certification by the Construction Manager and Contractors that the Work is complete, shall observe the Work to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final observation indicating the Work complies, in general, with the design intent expressed in the Construction Documents.

§ 3.6.6.2 The Architect's observations shall be conducted with the Owner to check conformance of the Work with the design intent expressed in the Construction Documents.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens.

§ 3.6.6.5 The Architect, assisted by the Construction Manager, and upon certification by the Construction Manager and Contractor that the work is complete, shall conduct observations to determine the date or dates of Substantial Completion and the date of final completion of the Work or portions of the Work. The Architect will prepare a list of items to be completed or corrected by the Contractor for the Work (shell and core only for the retail space), and will cause Architect's Consultants to prepare a similar list, in each instance for the design discipline for which such Consultant performed services, and attach a list to the certificate. The Architect shall issue a final Architect's Certificate for Payment upon compliance with the requirements of the Contract Documents. The Architect shall prepare a Punchlist for one (1) apartment unit only and for one (1) corridor only, which shall be used to establish the standard by which all of the remaining apartment units and corridors are to be finished. Upon certification by the Construction Manager and Contractor that the Work is completed, the Architect will make one (1) follow up visit to review the list of items to be corrected as part of its Basic Services. Additional visits or punchlists shall be compensated as an Additional Service in accordance with Article 3.

§ 3.7 LEED SERVICES

§ 3.7.1 GENERAL

§ 3.7.1.1 Architect acknowledges Owner's intent to achieve LEED Silver certification, as determined by the United States Building Council's (USGBC) rating system applicable (believed to be LEED--NC Version 3.0) for new construction. The Architect and its Consultants shall perform their services, design, and administer the Project using the skill and care that a reasonably careful architect or consultant, according to the consultants' respective design disciplines, would use in similar circumstances with the intent to achieve a LEED certification of not less than Silver.

§ 3.7.1.2 The Architect shall not have control over or charge of the certification approval process of third parties (including the USGBC). The Architect shall be responsible for failure to achieve LEED silver certification only to the extent that such failure is caused by its or its Consultants' negligent errors or omissions, but otherwise shall not be responsible for failure to achieve LEED Silver certification, including but not limited to the conduct of the Contractor, the Contractor's subcontractors, or the Owner. The Architect and its Consultants shall perform their services using the skill and care that a reasonably careful architect or consultant, according to the consultants' respective design disciplines, would use in similar circumstances, with the intent to achieve at least LEED Silver certification for the Project.

§ 3.7.1.3 The Architect as used throughout this Article shall mean the Architect and all of its Consultants including Mechanical and Electrical Engineers, Civil Engineers, and Landscape Architect.

§ 3.7.1.4 The duties of the Architect under this Section 3.7 shall not be restricted, modified, or extended without written agreement of the Owner and Architect.

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§ 3.7.2 ARCHITECT'S LEED RESPONSIBILITIES

§ 3.7.2.1 The Architect, in conjunction with its consultants, will investigate LEED Guidelines and outline the Project objectives relative to the LEED categories of sustainable site, energy and atmosphere, materials and resources, indoor environmental quality, innovation in design, and regional bonus credits. The Architect will assemble a preliminary LEED Project Checklist for Owner's review that defines and summarizes the status of the various credits. The Architect will advise the Owner which LEED point credits need to be implemented within the Construction Contract in order to achieve the desired LEED Silver Certification level.

§ 3.7.2.2 Upon the Owner's review and approval of the LEED certification objectives, the Architect will register the Project with the USGBC. Architect will assign one individual to continuously monitor and maintain the information necessary to support the certification process. All credits directly related to construction which are assigned to the Contractor shall be documented under the Construction Contract by the Contractor, but these credits and the associated documentation for these credits will be tracked and submitted to the USGBC by the Architect.

§ 3.7.2.3 Payment of registration and certification fees or credit interpretation requests for USGBC will be provided as Reimbursable Expenses.

§ 3.7.3 ARCHITECT'S LEED PROJECT ADMINISTRATION

§ 3.7.3.1 The Architect will act as the LEED Project Administrator for the Project. LEED Project Administration duties generally will vary from time to time and will vary between design and construction phases of the Project. Duties to be performed by the Architect include:

- .1 Conduct LEED meetings;
- .2 Develop the preliminary LEED checklist;
- .3 Register the Project with USGBC;
- .4 Provide project summary requirements from time to time;
- .5 Provide pertinent project drawings, photos, site plans, etc.
- .6 Coordinate and provide interpretation on credit requirement to all team members, including the Construction Manager, during design and construction phases; and
- .7 Review Design Application to confirm information required for credit achievement is uploaded prior to submission, submit application to USGBC comments. Architect shall re-submit Project as necessary.
- .8 Review Construction Application to confirm information required for credit achievement is uploaded prior to submission, submit application to USGBC and respond to USGBC comments. Architect shall re-submit Project as necessary.
- .9 Submission of Credit Interpretation Requests (CIR) (as required).

§ 3.7.4 DESIGN PHASE SERVICES

§ 3.7.4.1 During the Design Phase, the Architect will coordinate with Owner on strategies for completion of LEED requirements for the Project to including the specification of equipment to meet LEED requirements of identified energy and atmosphere, materials and resources, indoor environmental quality, innovation in design, and regional credits.

§ 3.7.4.2 The Architect shall design and specify finishes in an attempt to meet LEED requirements of identified materials and resources and indoor environmental quality credits including the review all submittals during the construction phase related to interior finishes to confirm compliance for LEED requirements.

§ 3.7.4.3 Architect shall compile and upload all required documents and calculations needed for LEED-online templates for all credits that are the responsibility of the Architect during both the Design Application and Construction Application phases.

§ 3.7.5 COMMISSIONING

§ 3.7.5.1 As required by all of the LEED rating systems, both Fundamental and Enhanced Commissioning Services shall be completed by a third party entity contracted directly by the Owner under a separate contract. The Architect is not obligated to provide any commissioning services for the Project as part of its Basic Services.

§ 3.7.6 FUNDAMENTAL COMMISSIONING

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§ 3.7.6.1 Architect will coordinate obtaining proposals from third party consultants who will provide Commissioning Services for all of the building systems as required to satisfy the Fundamental Commissioning Prerequisite as defined in LEED 2009.

§ 3.7.7 **ENHANCED COMMISSIONING**

§ 3.7.7.1 If elected to pursue the Enhanced Commissioning credit in the preliminary checklist, Architect will coordinate obtaining proposals from third party consultants who will provide enhanced commissioning services to the Owner as required in order to satisfy the Enhanced Commissioning Credit.

§ 3.8 **BIM REQUIREMENTS (IF REQUESTED BY THE OWNER)**

§ 3.8.1 **GENERAL**

§ 3.8.1.1 The Architect shall organize, implement and control a Building Information Modeling ("BIM") Program for the Design Phase of this Project, in accordance with the terms of **Exhibit D** and **Exhibit E**.

§ 3.8.1.2 The Architect will provide BIM Standards containing guidance to the Architect's and Owner's Consultants regarding the requirements of the BIM Program and the necessary software compatibilities between the various CAD drafting applications packages.

§ 3.8.1.3 The Architect will draft the BIM Standards necessary for the BIM Program to function in conjunction with the Architect's web site as described in **Section 3.1.11** above.

§ 3.8.2 BIM services as set forth in **Section 3.8** are not included in Architect's Basic Services. If elected by Owner, BIM services performed by Architect will be compensated as Additional Services.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1

(Paragraphs deleted)

The Additional Services listed in this Article 4 as "Included in Arch's Basic Services" are included in the Basic Services, and Architect is not entitled to any additional compensation for them beyond its fee for Basic Services. The parties have attempted to account for all services required of the Architect and its Consultants within the fee for Basic Services and do not expect Architect to receive additional compensation for Additional Services. In the unlikely event Additional Services compensable by additional compensation beyond the fee are required, Owner shall only be responsible to pay such additional compensation if agreed by Owner in writing.

Additional Service	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	Not Required	
§ 4.1.2 Multiple preliminary designs	Not Required	
§ 4.1.3 Measured drawings	Not Required	
§ 4.1.4 Existing facilities surveys	Not Required	
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	Not Required	
§ 4.1.6 Building information modeling	Not Required	
§ 4.1.7 Civil engineering	Architect	Included in Arch's Basic Services
§ 4.1.8 Landscape design	Architect	Included in Arch's Basic Services
§ 4.1.9 Architectural Interior Design (B252™-2007)	Architect	Included in Arch's Basic Services
§ 4.1.10 Value Analysis (B204™-2007)	Architect	Included in Arch's Basic Services
§ 4.1.11 Detailed cost estimating	Owner	
§ 4.1.12 On-site project representation	Owner & Architect	According to Section 3.6.2.1

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§ 4.1.13	Conformed construction documents	Not Required	
§ 4.1.14	As-Designed Record drawings	Architect	Included in Arch's Basic Services
§ 4.1.15	As-Constructed Record drawings	Owner	
§ 4.1.16	Post occupancy evaluation	Not Required	
§ 4.1.17	Facility Support Services (B210™-2007)	Not Required	
§ 4.1.18	Tenant-related services	Not Required	
§ 4.1.19	Coordination of Owner's consultants	Architect	Included in Arch's Basic Services
§ 4.1.20	Telecommunications/data design	Architect	Included in Arch's Basic Services
§ 4.1.21	Security Evaluation and Planning (B206™-2007)	Architect	Included in Arch's Basic Services
§ 4.1.22	Commissioning (B211™-2007)	Owner	
§ 4.1.23	Extensive environmentally responsible design	Not Required	
§ 4.1.24	LEED® Certification (B214™-2007)	Architect	Included in Arch's Basic Services
§ 4.1.25	Fast-track design services - (Early Work Packages in Section 3..4.7)	Architect	Included in Arch's Basic Services
§ 4.1.26	Historic Preservation (B205™-2007)	Not Required	
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™-2007)	Architect	Included in Arch's Basic Services
4.1.28	Preparation for and attendance at public hearings for EIR approval	Architect	Included in Arch's Basic Services as Noted.

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in this Agreement or within an exhibit attached to this document. Additional Services shall proceed only in accordance with a fully executed Work Authorization Form annexed hereto as Exhibit F.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner, in writing, with reasonable promptness and provide a detailed, written explanation of the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project Budget, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's Consultants or Contractors;
- .5 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .6 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .7 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

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- .8 Evaluation of the qualifications of bidders or persons providing proposals;
- .9 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .10 Assistance to the Initial Decision Maker.
- .11 Value Engineer services or redesign to meet budget services after the completion of the Design Development Phase;
- .12 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work;
- .13 Providing analyses of the Owner's needs and programming the requirements of the Project; or
- .14 Providing services inconsistent with the Owner's prior approvals, instructions and/or decisions.
Or
- .15 Providing any services identified in this Agreement as Additional Services.

§ 4.3.2 The Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing proposal requests evaluating Contractor's proposals and supporting data for Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of claims or unnecessary Requests for Information submitted by the Contractor or others in connection with the Work;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To Providing Construction Phase Administration Services 120 days after (1) the date of Substantial Completion of the Work or (2) or 52 months after the date of this Agreement, whichever is earlier;
- .7 Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives;
- .8 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction;
- .9 Providing services in excess of one (1) punch list for one (1) apartment unit and one (1) review of the punch list items for completion, as set forth in Section 2.6.1.4; and
- .10 All services provided relating to unforeseen conditions not known as of the Schematic Design Phase.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor; (Record copies are not included as an additional Review.)
- .2 Visits as agreed under § 3.6.2.1 to the site by the Architect over the duration of the Project during construction,
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents,
- .4 One (1) inspection for any portion of the Work to determine final completion,

§ 4.3.3.1 If the services covered by this Agreement have not been completed within fifty-two (52) months of the date of this Agreement, or one hundred and twenty (120) days after Substantial Completion, whichever comes

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earlier, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

§ 4.3.4 OPTIONAL ADDITIONAL SERVICES

§ 4.3.4.1 Providing analyses of the Owner's needs and programming the requirements of the Project

(Paragraph deleted)

§ 4.3.4.2 Providing financial feasibility or other special studies;

§ 4.3.4.3 Providing planning surveys, site evaluations or comparative studies of prospective sites;

§ 4.3.4.4 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project;

§ 4.3.4.5 Providing services relative to future facilities, systems and equipment;

§ 4.3.4.6 Providing services to investigate existing conditions or facilities or to make measured drawings thereof;

§ 4.3.4.7 Providing services to verify the accuracy of drawings or other information furnished by the Owner;

§ 4.3.4.8 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner;

§ 4.3.4.9 Providing quantity surveys or inventories of material, equipment and labor;

§ 4.3.4.10 Providing services for planning tenant or rental spaces;

§ 4.3.4.11 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities;

§ 4.3.4.12 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation;

§ 4.3.4.13 Providing services of consultants other than those listed in **Section 3.1.4**;

§ 4.3.4.14 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural and engineering practice;

§ 4.3.4.15 Assist with the promotion, marketing publicity and public relations for the Project, including preparing special drawings, brochures and related documents or services related to the design, preparation or maintenance of any sales/rental office;

§ 4.3.4.16 Construct or assist with the construction of special scale model(s) of the Project;

§ 4.3.4.17 Prepare or assist with the preparation of special rendering(s) of the Project;

§ 4.3.4.18 Prepare or review a special form of General and Supplementary Conditions for the Project;

§ 4.3.4.19 Providing services related to the requirements of structural tests, exterior wall test or mock-ups, test mock-ups or inspections and any off-site services related to materials, fabrication and related mock-ups and reviews;

§ 4.3.4.20 Providing BIM services pursuant to **Section 3.8**; or

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§ 4.3.4.21 Except as required by Section 3.3.2, providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

§ 4.3.4.22 Providing any services in connection with special use permits or tax lot drawings;

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 The Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner has designated ChaoHui Liu as its 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. Unless otherwise provided in writing from the Owner, the Architect shall receive instructions, directions, authorizations and approvals solely from the Owner's representative or his/her designee.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and known utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning known available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

(Paragraph deleted)

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Architect shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests, with the exception of legal services for all contracts or for disputes between the Owner and the Architect. The Owner's legal advisors shall prepare all construction contracts.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

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§ 5.10 Except as otherwise provided in this **Agreement**, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services. Communications by and with the Architect's consultants shall be through the Architect. The Architect shall document all direct communications with the Contractor or subcontractors. The Owner shall document and copy the Architect on all direct communications with the Contractor and subcontractors.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this **Agreement**. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.13 The plans will be prepared in compliance with the building code and other requirements in force at the time of submitting for plan review. The Owner acknowledges that it retains responsibility for compliance with the American with Disabilities Act (ADA) after completion of construction.

§ 5.14 The Owner shall furnish Cost Consulting Services for the Project. Such Cost Consulting Services shall include preparation of cost estimates; the preparation of a preliminary estimate of the Cost of Work based upon The Architect's Schematic Design Documents; advising the Owner and the Architect of the cost associated with changes to the Project or to general market conditions during the Design Development and Construction Documents Phases; estimating the cost of any changes to the Project proposed during the Construction Phase; and providing any other estimating services requested by the Architect and reasonably required by the scope of the Project. Detailed reports on the Cost Consultant's estimates shall be provided to the Owner and the Architect at the conclusion of each of the Schematic Design, Design Development and Construction Documents Phases of the Architect's services and with each estimate of proposed change during the Construction Phase. Cost Consulting Services shall be provided by well-qualified consultants and the Architect shall be entitled to rely on the accuracy and completeness thereof.

§ 5.14.1 The Authorized Construction Budget has not been established by the Owner as of the date of this Agreement. It is anticipated that the Authorized Construction Budget will be established at the conclusion of the value engineering process during the Schematic Design Phase.

§ 5.15 The Owner is retaining consultants for the Project (collectively, the "Owner's Consultants") including, but not limited to, the consultants identified in **Section 3.1.4.2**.

§ 5.15.1 The services, information, surveys and reports required by this Article 5 shall be furnished at the Owner's expense. The Architect shall be entitled to rely upon the accuracy and completeness of the information and services provided by the Owner, the Owner's Consultants and independent contractors.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this **Agreement**, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, movable furnishings, furniture, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work has yet to be determined, and may be adjusted throughout the Project as required under **Sections 5.2, 6.4 and 6.5**. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

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§ 6.3 In preparing estimates of the Cost of Work, the Construction Manager shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Construction Manager's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under **Article 4**.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of either the 100% Design Development Phase Services or the 50% Construction Documents Phase is exceeded by the lowest bona fide bid, Construction Manager's estimate of the Cost of the Work or negotiated proposal, the Owner shall:

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with **Section 9.5**;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

(Paragraphs deleted)

§ 6.7 If the Owner chooses to proceed under **Section 6.6.4**, the Architect shall modify the 100% Design Development Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under **Section 6.6.1**. After completion of the Design Development Documents and approval of the cost estimate prepared by the Owner's Consultant, the Architect, as an Additional Service, shall modify major Mechanical, Electrical and Plumbing Central Plant systems and Structural Substructure systems as necessary to comply with the Owner's budget for the Cost of the Work. The Additional Service must be approved per the provisions of **Article 4** prior to modifying the documents, and amounts charged for this Additional Service shall only be for those services required to make revisions of previously completed work.

(Paragraph deleted)

§ 6.8 Except for any change in major systems as set forth in **Section 6.7**, which will be compensated as an Additional Service, if the Owner chooses to proceed under **Section 6.6.4**, the Architect shall modify the 50% Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the 50% Construction Documents Phase Services, or the budget as adjusted under **Section 6.6.1**. The Architect's modification of the 50% Construction Documents shall be the limit of the Architect's responsibility under this **Article 6**.

(Paragraphs deleted)

§ 6.9 If the Owner's budget for the Cost of the Work at the conclusion of the 95% or 100% Construction Documents Phase Services is exceeded by the lowest bona fide bid, Construction Manager's estimate of the Cost of the Work or negotiated proposal, and, if the Owner chooses to proceed under **Section 6.6.4**, the Architect, as an Additional Service, shall modify the 95% or 100% Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under **Section 6.6.1**. The Additional Service must be approved per the provisions of **Article 4**

prior to modifying the Construction Documents, and amounts charged for this Additional Service shall be only for those services required to make revisions of previously completed work.

§ 6.10 Upon the request of Owner, Architect shall review and comment on any proposed Project construction budget or estimates of construction costs prepared by or for Owner as an Additional Service. Owner acknowledges Architect is not responsible for (i) cost increases due to the timing of contractors' buy-outs for the Project; (ii) the cost of labor, materials or equipment; (iii) Contractor's methods of determining bid prices; (iv) competitive bidding, market or negotiating conditions; (v) contractors', fabricators' or suppliers' failure to meet Project schedules; or (vi) the quality of construction work or the materials supplied for the Project. Accordingly, Architect does not represent that bids or negotiated prices will not vary from an Owner's Project construction budget or from any estimate of construction costs reviewed by Architect. Owner further agrees that Architect shall have no liability for actual construction cost exceeding the Project construction budget or prior cost estimates. If Owner requests that Architect provide redesign services to reduce construction cost, Architect shall be compensated for such redesign efforts as Additional Services, provided that such redesign efforts were not required due to an error, inconsistency or omission in the Instruments of Service.

ARTICLE 7 COPYRIGHTS AND LICENSES

§7.1 The Architect and the Owner represent that in transmitting Instruments of Service, or any other information, the transmitting party has the permission of the owner of such information to transmit such information for use in respect of the Project. The Architect and the Owner shall establish the Owner approval protocols governing the transmission of such information in digital form.

§7.2 The Architect and Architect's Consultants shall be deemed to be the authors of their respective Instruments of Service performed on behalf of and for the benefit of the Owner. Submission or distribution of the Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication or derogation of the reserved rights of the Architect and the Architect's Consultants.

§7.3 At all times during the term of the Agreement and following the termination if due to completion of Architect's services or termination by Owner pursuant to § 9.4, the Architect and the Architect's Consultants grant to Owner and any party designated by the Owner a nonexclusive, license to use the Architect's and the Architect's Consultants Instruments of Service for the purposes of constructing, using, maintaining, altering and adding to the Project. The Architect shall obtain from Architect's Consultants a similar nonexclusive license right in favor of the Owner and Owner's designated parties. The license granted under this section shall at all times be for the benefit of the Owner, Contractor, Subcontractors, Sub-subcontractors, and material or and equipment suppliers, as well as the Owner's consultants and Owner's separate contractors, including the right to reproduce applicable portions of the Instruments of Service for use in performing the services and for construction, use, additions to, maintenance of, and alterations of the Project.

§7.4 Any termination of this Agreement for the Owner's convenience, or by the Architect pursuant to Section 9.1 or 9.3, shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control. If and upon the date the Owner makes the payment to the Architect of the Licensing Fee under Section 11.9 below, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service and for use in constructing, using, maintaining, altering, and adding to the Project. The termination of the Architect by the Owner for cause shall not void the license right provided by the Architect in Section 7.3.

§7.5 In the event the Owner uses the Instruments of Service without retaining the author(s) of the Instruments of Service, the Owner shall release the Architect or the Architect's Consultants, as the case may be, from all claims and causes of action arising from such use by the Owner except to the extent of any negligence or willful misconduct on the part of the Architect or the Architect's Consultants in the design or specifications set forth in the Instruments of Service. To the extent permitted by law, the Owner agrees to indemnify and hold harmless the Architect and its Consultants from any costs and expenses related to any cause of action asserted by any third

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person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service for any additions to the Project without retaining the author of the Instruments of Service.

§7.6 Upon payment by Owner to the Architect for all fees under the Agreement earned by the Architect, the ownership of the Instruments of Service covered by such fees shall automatically transfer to the Owner without any further action on the part of the Owner or the Architect. Upon request of the Owner, the Architect shall enter into any commercially reasonable instrument to memorialize the transfer of ownership of Instrument of Service other than the Architect or the Architect's Consultants standard design details.

§7.7 In providing services under this Agreement, Architect shall not infringe upon the rights or interests of third parties, including, without limitation, intellectual and property rights, and to the extent any such infringement occurs, the Architect shall indemnify and hold harmless Owner and be solely liable for all damages and losses resulting from the same. The Architect shall require that the Architect's Consultants shall not infringe upon the right and interests of any third parties, including any intellectual property rights, and to the extent that any such infringement occurs, the Architect shall require the Architect's Consultants to indemnify and hold harmless Owner and be solely liable for all damages and losses that result for the same.

§7.8 The Architect and the Architect's Consultants shall not unreasonably withhold, condition or delay any consent or approval to the transfer of this Agreement or to the assignment, sublease, sublicense or any other transfer to the rights, interest or ownership in the Instruments of Service.

§7.9 The Architect and the Owner shall agree upon any special conditions required for the use and delivery of electronic Instruments of Service, and Architect agrees that any such conditions rules or obligations imposed upon the Architect shall be conditions, rules or obligations that Architect shall have Architect's Consultants agree to in order to meet the Owner requirements and expectations.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property or commercial liability insurance, the Owner and Architect waive all rights against each other and against the contractors, subcontractors, sub-subcontractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction, as modified by the Owner. The Owner or the Architect, as appropriate, shall require of the contractors, subcontractors, sub-subcontractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages, including but not limited to loss of profit, loss of investment, loss of product or business interruption, for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.1.4 Meeting between the Principals. In the event of a claim, dispute or other matter in question between the Owner and the Architect arising out of or relating to this Agreement, by written notice to the other, the parties may seek to resolve such claim or dispute by way of a meeting between the principals of both the Owner and the Architect within ten (10) days or receipt of such written notice or such longer period of time as mutually agreed to in writing by the parties. The Owner and the Architect shall in good faith attempt to resolve such claim or dispute within thirty (30) days. If a principal of either the Owner or the Architect declares an impasse between the parties with regard to such claim or dispute, then the parties shall resolve such claim or dispute by mediation as set forth in Section 8.2.

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§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this **Agreement** shall be subject to non-binding mediation as a condition precedent to binding dispute resolution. If such matter 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 or by binding dispute resolution.

(Paragraphs deleted)

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered in accordance with the Construction Industry Mediation Procedures in effect on the date of the Agreement. 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 filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 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.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this **Section 8.2**, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction, except and only as provided for in Sections 12.22.1 through 12.22.9.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this **Agreement**, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this **Agreement**. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 consecutive days for reasons other than the fault of the Architect, the Architect may terminate this **Agreement** by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this **Agreement** upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this **Agreement** through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this **Agreement** upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in **Section 9.7**.

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§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated. Under no circumstances would the Architect be paid for any anticipated profit on the value of the services not performed by the Architect. These termination expenses may include labor expenses associated with idle staff (but only for the direct personnel expense, and only for a period not to exceed ten (10) days), unavoidable expenses associated with termination of consultants, cost of unused but disbursed project based insurance premiums (unless previously funded by the Owner), organizing and copying of project documents for the Owner, long distance telephone and facsimile charges and postage required as a result of the termination, plus any license fee pursuant to **Section 11.9**.

(Paragraphs deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be construed, interpreted, enforced and governed by the law of the State of California. Venue for disputes shall be a Court of proper jurisdiction in Los Angeles County, California. Both parties waive any argument that this forum is inconvenient. In the event any term or provision of the Agreement is determined by an applicable judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of the Agreement shall be construed to be in full force and effect.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a purchaser, or to the Owner's Lender provided that (i) the Architect is fully paid all amounts due at the time that the assignment becomes effective, and on an on-going basis (ii) the Owner's Lender assumes in writing the contractual obligations of the Owner as set forth herein, including the Owner's payment obligations, and (iii) the Architect will execute all consents reasonably required to facilitate such assignment, providing that the Architect has approved the language in advance, with such approval not to be unreasonably withheld or delayed, and that the consent does not alter the terms and conditions of this Agreement or the rights, obligations and responsibilities of the parties thereunder.

§ 10.4 Provided the Architect is compensated for all sums owed for services provided pursuant hereto, if the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. Such Certificate must be in a form mutually agreed to by the Owner and the Architect and in accordance with the terms of this Agreement. Provided the Architect is compensated for all sums owed for services provided pursuant hereto and the Lender agrees to assume all responsibilities of the Owner hereunder including its payment obligations, if the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution and further provided that nothing in any such consent shall extend or expand the Architect's duties and responsibilities as provided herein. Any consent or certification required pursuant to this Section 10.4 shall be "to the Architect's knowledge, information and belief" and its "professional opinion" based solely on the performance of its duties as provided herein. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Notwithstanding anything set forth in this Agreement or elsewhere, this Agreement and the services of the Architect contemplated and to be performed hereunder are intended for the sole benefit, use and enjoyment of the Owner. Notwithstanding anything set forth in this Agreement or elsewhere, this Agreement and the Architect's and its Consultants' services are not intended and shall not be deemed to be for the benefit of or to confer any benefit upon any third party, including without limitation any successor ownership entity or contractor of whatever tier, any such intention being hereby expressly denied. Consequently, 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 Architect.

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§ 10.5.1 The Owner acknowledges that the Architect is being retained to provide professional services solely and exclusively for the benefit of the Owner and no other party. The Owner shall put a clause in its contracts with all Contractors and Construction Managers whereby it is explicitly agreed by the Contractors and Construction Managers that they have no relationship with the Architect and they acknowledge the Architect is not providing any professional services for their benefit.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. The Architect's services do not include services related to detection, reporting, permitting, analysis, or abatement of asbestos, hazardous or toxic materials including molds and fungus (collectively "Hazardous Materials") at the Project site and neither the Architect nor any consultants retained by it shall have any responsibility or liability for any Hazardous Materials at the Project site. In the event the Architect or any other party encounters Hazardous Materials at the jobsite, or should it become known in any way that Hazardous Materials may be present at the jobsite or any adjacent areas that may affect the performance of the Architect's services, the Architect may, without liability for any damages whatsoever, suspend performance of services on the Project until the Owner retains appropriate specialist consultants or contractors to identify, abate and/or remove the Hazardous Materials and to warrant that the jobsite complies with applicable laws and regulations. To the fullest extent permitted by law, the Owner shall defend, indemnify and hold the Architect, its officers, directors, shareholders, partners, principals, agents, employees, consultants, successors and assigns, harmless from and against all liability, loss, damage, costs and expenses, including reasonable attorneys' fees and disbursements, which any of them may at any time sustain or incur by reason of any demands, claims, causes of action or legal proceedings arising out of or in connection with Hazardous Materials at the Project site.

(Paragraph deleted)

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials, and shall be entitled to use the Owner's name on its list of representative clients. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not 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. In the event the Owner publishes or causes to publish renderings, photographs or other representations of the services called for under this Agreement (the "Publicity"), all such publicity issued or published by the Owner in connection with the Project shall include a reference to the Architect as the architect for the Project. If such Publicity is issued or published by parties other than the Owner, but of which the Owner has prior knowledge, then the Owner shall make reasonable efforts to have such parties include such credit for the Architect.

§ 10.7.1 The Architect may, in its discretion, by written notice, require that the Owner refrain from using the name or likeness of "Richard Meier" or the name "Richard Meier & Partners Architects LLP" or any related, similar or derivative name for any purpose relating to the Project, including without limitation, the marketing thereof. To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless, the Architect, its agents, employees, principals, members, successors and assigns, from and against all claims, causes of action, losses, damages, costs and expenses, including reasonable attorneys' fees, arising from or relating to the Owner's breach of this provision or any alleged misrepresentation with respect to the Project. In the event of a breach or threatened breach of the provisions of this paragraph, the Architect shall be entitled to an injunction restraining such breach or threatened breach without having to prove actual damages or threatened irreparable harm. Such injunctive relief as the Architect may obtain shall be in addition to and not in lieu of all other rights and remedies available at law and in equity to the Architect. This paragraph shall survive the termination or completion of this Agreement.

§ 10.8 If the Architect or Architect's consultants or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," (collectively, the "Confidential Information,") the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. Information shall not be deemed Confidential Information, and the Architect or the Architect's consultants shall have no obligation with respect thereto, or to any part thereof, which (i) is already otherwise known to the Architect or the Architect's consultants; (ii) is or becomes freely and

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generally available to the public through no breach by Architect or the Architect's consultants of any restrictions as to its use or disclosure, (iii) is independently developed by the Architect or the Architect's consultants, (iv) is rightfully received by the Architect or the Architect's consultants from a third party not under an obligation of confidentiality with respect to such information, without breach by the Architect or the Architect's consultants of any restriction as to its use and disclosure (v) is required to be disclosed by subpoena, court order, law or other legal mandate, or (v) is approved for disclosure by prior written authorization by the Owner.

§10.9 The Architect shall require that all the Architect's consultants agree to be bound by the terms and conditions of Section 10.8 above.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under **Article 3**, and any other services included in this **Agreement** as part of Basic Services, the Owner shall compensate the Architect as follows:
(Paragraphs deleted)
Stipulated Sum.

§ 11.2 For Additional Services designated in **Section 4.1**, the Owner shall compensate the Architect as follows: Compensation for services rendered shall be based on the Architect's Hourly Billing Rates for professional services which are as follows:

A.	Partners	\$ 400.00 per hour
B.	Senior Associates	\$ 300.00 per hour
C.	Technical Managers	\$ 250.00 per hour
D.	Associates	\$ 210.00 per hour
E.	Senior Designers	\$ 175.00 per hour
F.	Designers	\$ 150.00 per hour
G.	Junior Designers	\$ 125.00 per hour
H.	Student Interns	\$ 100.00 per hour

§ 11.2.1 The Architect's Hourly Rates are only subject to increases if agreed by Owner in writing.

§ 11.2.2 Any services constituting Additional Services the compensation for which is not included in the fee for Basic Services require prior written authorization from the Owner. Otherwise, the Owner shall not be liable to pay any compensation and/ or for any expenses incurred for the performance of such Additional Services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under **Section 4.3**, the Owner shall compensate the Architect as follows:
(Paragraphs deleted)
Compensation for services rendered shall be based on the Architect's current Hourly Billing Rates for professional services as set forth in **Section 11.2** above.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in **Section 11.2** or **11.3** shall be the amount invoiced to the Architect plus ten percent (10%)

§ 11.5 Where compensation for Basic Services is based on a stipulated sum, the compensation for each phase of services shall be as follows:

See Exhibit G.

(Table deleted)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in **Section 11.5** based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

(Paragraphs deleted)

§ 11.7 The hourly billing rates for services of the Architect are set forth in Section 11.2 above.

(Table deleted)

§ 11.8 **COMPENSATION FOR REIMBURSABLE EXPENSES**

§ 11.8.1 Reimbursable Expenses are in addition to compensation for the Architect's Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, and shall be limited to those identified as follows:

- .1 Out-of-town travel and subsistence in connection with the Project, with prior written authorization of the Owner, transportation in connection with the Project including parking, long distance air travel shall be by business class;
- .2 Long distance services, dedicated data, communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery of Instruments of Service;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 the Architect's and Architect's Consultants' expense of professional liability insurance whether or not dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Special materials or finish samples or other material purchased for this Project; and
- .12 Other similar Project-related expenditures approved in advance by the Owner.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus seven and one half percent (7.5%) of the expenses incurred.

(Paragraphs deleted)

§ 11.8.3 If the Owner provides prior written authorization to the Architect to incur any of the following types expenses, the Architect shall be entitled to an adjustment in the amount of Reimbursable Expenses provided for in Section 11.8.1. Absent prior written approval from the Owner, the following types of expenses shall not be considered by the Owner to be reimbursable:

- .1 electronic communications, including cellular telephone charges;
- .2 costs for graphic applications software, other computer software, CADD programs
- .3 Expense of photographs, standard form documents, in-house and third party copying and printing, including copying and printing of the instruments of service; or
- .4 Purchases made on behalf of the Owner; or
- .5 Site office expenses; or
- .6 other similar direct Project-related expenditures unless authorized in advance by the Owner.

§ 11.8.4 The Architect's invoice(s) shall require a breakdown of the compensation amounts for Basic Services by Design Phase in a form acceptable to the Owner. Any Additional Service Fees shall be similarly identified and separated. Each invoice shall clearly identify the compensation for Basic and Additional Services separately from Reimbursable Expenses, showing the percent complete by Design Phase. The Architect shall provide such supporting documentation as the Owner may reasonably request with respect to Reimbursable Expenses, expenses pertaining to a Change in Service and of services performed on the basis of hourly rates or an agreed-upon multiple of Direct Personnel Expense. Records of Reimbursable Expenses, of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

§ 11.9 **COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE**

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§ 11.9.1 If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Sections 9.1 or 9.3, the Owner shall pay a Licensing Fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project, in addition to any earned and unpaid portion of the contract price otherwise due to the Architect, an amount equal to Thirty Percent (30%) of the Total Basic Compensation pursuant to Section 11.5 which is unearned at the time of termination. As set forth above, the Licensing Fee constitutes compensation for the continued use of Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project, and Owner acknowledges that the Licensing Fee is not a penalty. Payment of the Licensing Fee shall not entitle Owner to the use of the name or likeness of the Architect, and the Owner shall refrain from using the name or likeness of "Richard Meier" or the name "Richard Meier & Partners Architects LLP" or any related, similar or derivative name for any purpose relating to the Project, including without limitation, the marketing thereof, as set forth in Section 10.7.1.

§ 11.9.2 If the Owner terminates this Agreement for cause, the Owner's right to continue to use the Instruments of Service shall be administered in accordance with Section 7.3.

§ 11.10 PAYMENTS TO THE ARCHITECT

(Paragraph deleted)

§ 11.10.1 The Architect has already been receiving payments and the payments received from September, 2014 to the date this Agreement is signed by the parties shall be totaled and credited to the Owner's account in the final invoice.

§ 11.10.2

(Paragraphs deleted)

Invoicing by, and payments to, the Architect by Owner, shall be as follows:

- .1 Owner shall execute the Agreement before the last day of October, 2015, and pay Architect a retainer of \$600,000.00 within five (5) days after execution by both parties to the Agreement. This retainer amount shall be credited to Owner in Architect's final invoice, or if the credit in combination with the credit under § 11.10.1 will exceed the invoice amount, also in invoices preceding the final invoice.
- .2 Architect shall invoice Owner for its and its Consultants' services monthly in proportion to services performed unless otherwise agreed. If the invoice amount exceeds \$800,000 or includes payment for completion of a milestone, Architect shall include with its invoice a completed checklist in the form of Exhibit I and such other supporting documentation and copies of work product as Owner may reasonably require to allow review by Owner's headquarters in Beijing. If, following Architect's submission of its invoice, Owner reasonably requests additional supporting documentation and copies of work product to facilitate its headquarters' review, Architect shall promptly supply Owner with such additional documentation and copies of work product. Owner shall pay Architect all amounts properly due within forty five (45) days of receipt of invoice. Amounts properly due that are unpaid within the time due shall bear interest at the rate of zero point five percent (0.5%) per month.

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or the Owner determines the Architect is liable for the amounts in a binding dispute resolution proceeding; the only exception to § 11.10.3 shall be as set forth in § 12.25.1.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§ 12.1 Provided that Architect maintains at least \$3 million Professional Liability insurance coverage, Architect's liability to the Owner shall be limited to the amount of insurance available on Architect's Professional

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Liability policy at the time a claim is made.

§ 12.2 Deleted.

§ 12.3 The Owner acknowledges and agrees that, to the fullest extent permitted by law, no officer, director, shareholder, partner, principal, fiduciary, employee or other representative of the Architect shall have personal liability under any provisions of this Agreement or for any matter in connection with the services provided for the Project.

§ 12.4 If at any time, any term or provision of this Agreement shall be found to be invalid or unenforceable, the remaining provisions hereof shall, to the fullest extent permitted by the law, remain in full force and effect.

§ 12.5 No failure on the part of either party to exercise and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by either party of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy.

§ 12.6 The Owner recognizes that the Architect's Instruments of Service may be generated, stored, transmitted or published in various media, including, but not limited to traditional hard-copy (i.e., blue-prints, xerography), CADD format, via Internet or Extranet websites or other electronic media and such Instruments of Service may be subject to unauthorized tampering, modifications and alterations (collectively hereinafter referred to as "Unauthorized Use") by parties over whom the Architect has no control. The Instruments of Service is also subject to discrepancies as a result of numerous factors, including without limitation, transmission and translation errors resulting from differences in computer software, hardware and equipment-related problems, disc malfunctions and user error (collectively hereinafter referred to as "Discrepancies"). Accordingly, the Architect has no responsibility for and makes no representations regarding the accuracy of the Instruments of Service other than the accuracy of the file hard copy of the Work Product which shall be maintained by the Architect for ten (10) years from the date of substantial completion of the Project.

§ 12.6.1 Instruments of Service will be provided by the Architect in electronic form. Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement. If the Owner requests that the Architect provide digital computer files, and their use shall be subject to the execution of the CADD Disclaimer Letter attached hereto as Exhibit E.

§ 12.7 In the event the Owner chooses to take advantage of the potential time and cost savings benefits of an accelerated project delivery or fast track process, the Owner shall provide written notice of such election to Architect sufficiently in advance to facilitate any necessary design acceleration or modification. As the fast-track process contemplates separate contracts for the various trades to allow for bids to proceed on long-lead items, it is anticipated, and the Owner acknowledges, that in such instance there will be more extensive coordination of consultants and trades required of the Architect and greater than usual design changes after documents have been issued to contractors than is customary on a traditional lump sum contract. Owner acknowledges that it has been advised that the Project will be affected if it elects to proceed on a fast-track basis and that some of the possible effects include the necessity of making early or premature commitments to design decisions and the issuance of incomplete and uncoordinated construction documents for permitting, bidding and construction purposes. It is also acknowledged by the Owner that such services may complicate the coordinating of the Construction Documents and construction and will likely require associated coordination, design, and redesign of parts of the Project after Construction Documents are issued and the Construction Contract is executed, and may require removal of work in place all of which events may result in additional construction costs or delays, for which the Owner shall include sufficient contingencies in the Project budget if it elects to proceed on a fast-track basis. In consideration of the benefits to the Owner of employing the fast-track process, and in recognition of the inherent risks of fast tracking to the Architect, the Owner agrees, and shall require its Construction Manager or General Contractor to agree, to waive claims against the Architect for design changes and modifications of portions of the work already constructed to the extent such changes and modifications are required due to the Architect's negligent errors or omissions resulting from the Owner's decision to employ the fast-track process.

§ 12.8 Written notices required under this Agreement shall be validly and sufficiently served upon the Owner and Architect provided they are made (a) three (3) business days after mailing by registered or certified mail, return

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receipt requested; (b) one (1) business day after delivering to a nationally recognized next-day messenger service, provided the sending party selects and pre-pays for next business day delivery; or (c) on the date of the notice is hand delivered during business hours to the following addresses:

If to the Architect:

Richard Meier & Partners Architects LLP
1001 Gayley Avenue, 3rd Floor
Los Angeles, CA 90024
Attn: Michael Palladino, FAIA
Telephone No. (310) 208-6464

With a copy to:

Collins Collins Muir + Stewart LLP
1999 Harrison Street, Suite 1700
Oakland, CA 94612
Attention: Samuel J. Muir
Telephone No: (510) 844-5100

If to the Owner (to both):

Wanda Commercial Planning & Research Institute
20/F, Block B Wanda Plaza
93 Jianguo Road
Beijing, China 100022
Attn: Mr. Shen Wenzhong
Telephone No: +86-10 85588078

Wanda Beverly Hills Properties, LLC
439 N Canon Dr., Suite 207
Beverly Hills, CA 90210
Attn: Mr. Ken-Hao Hsu
Telephone No: (310) 483-4818

With a copy to:

Reed Smith LLP
101 Second Street
Suite 1800
San Francisco, CA 94105-3659
Attn: Charles H. Seaman, Esq.
Telephone No: (415) 659 5910

§ 12.9 The Owner shall use commercially reasonable efforts to include the following provision or another similar provision approved by the Architect in its Agreements with the Contractor/Construction Manager and all subcontractors, and require that they include similar provisions in all agreements with their subcontractors:

"To the fullest extent permitted by law, the Contractor/Construction Manager (or subcontractor) shall defend, indemnify, keep and hold the Owner, the Architect, the Architect's Consultants, and the agents, partners, principals and employees of any of them from and against claims, damages, losses, penalties, actions, suits, judgments or liabilities, including costs, expenses and disbursements, legal or otherwise, to which they may be subject because of any act or omission of the Contractor/Construction Manager, its agents, employees, subcontractors, consultants or permittees in connection with this Agreement. This indemnification will survive the term of this Agreement whether it is terminated or expired."

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§ 12.10 By means of policy endorsement, the Owner and the Construction Manager and Trade Contractors shall be required to name the Architect and its officers, directors, managers, employees and agents (collectively, the "Indemnities"), as an additional insured under their Builder's Risk or General Liability and Umbrella policies to be kept in force through Completion of the Work. The Owner shall cause contractor(s) to name the Owner and the Architect as Additional Insureds on all insurance required of contract(s) on the Project.

§ 12.11 Pending the resolution of any disputes, the Owner shall continue to make payments due to the Architect hereunder, and Architect shall continue to provide its services hereunder.

§ 12.12 The Contractor shall be responsible for filing all documents as required by applicable law.

§ 12.13 To the fullest extent permitted by law, the Owner hereby assumes liability for, and hereby agrees to defend, indemnify, keep and hold the Architect, its respective agents and employees, harmless from any and all obligations, claims, damages, loss, penalties, actions, suits, judgments, or liabilities including costs, expenses and disbursements, legal or otherwise, to which they may be subject because of any negligent act or omission of the Owner, its agents, or employees in connection with this Agreement. Owner shall include in its contracts with its consultants and contractors a similar indemnification requirement in favor of Architect, its agents, and its employees. Nothing herein will be deemed to indemnify Architect against Architect's or its Consultants' own negligence. This indemnification will survive the term of this Agreement, whether it is terminated or expired.

§ 12.13.1 To the fullest extent permitted by law, the Architect hereby assumes liability for, and hereby agrees to indemnify, keep and hold the Owner, its respective agents and employees, harmless from any and all obligations, claims, damages, loss, penalties, actions, suits, judgments, or liabilities including costs, expenses and disbursements, legal or otherwise, to which they may be subject because of any negligent act or omission of the Architect, its agents, employees, sub-consultants, contractors, or permittees in connection with this Agreement. Nothing herein will be deemed to indemnify Owner against Owner's own negligence. This indemnification will survive the term of this Agreement, whether it is terminated or expired.

§ 12.14 The title or captions of the Articles, Sections and Subsections of this Agreement are intended for convenience of reference only, and shall be disregarded in construing or interpreting any of its provisions.

§ 12.15 This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof and shall not be amended, modified, or amplified without specific written provision to that effect, signed by both Parties.

§ 12.16 In the event that the Owner directs the Architect to issue drawings to the Construction Manager for bid purposes in advance of the full completion of such drawings and other construction documents, the Owner hereby agrees to hold the Architect harmless from claims and additional costs arising from subsequent revisions, addenda, and corrections to the drawings, excepting those due to the negligent errors or omissions of the Architect, made in order to conform same to the final drawings.

(Paragraphs deleted)

§ 12.17 The Owner warrants that in its supplying documents to the Architect for re-use on this Project that were prepared by others that such re-use shall not infringe upon the rights or interests of third parties, including, without limitation, intellectual and property rights, and to the extent any such infringement occurs, the Owner shall defend, indemnify and hold the Architect harmless and be solely liable for all damages and losses resulting from the same. The Owner shall require that its consultants, Contractor, and its Contractor's subcontractors shall not infringe upon the right and interest of any third parties, including any intellectual property rights related to documents supplied by them for re-use on this Project. To the extent that any such infringement occurs, the Owner shall require the Contractor, the Contractor's subcontractors, or the Owner's consultants to indemnify and hold harmless the Architect and be solely liable from damages and losses that result from same.

§ 12.18 The parties waive claims against each other for consequential damages.

§ 12.19 The Owner and Architect waive all rights against each other and any of their contractors, sub-subcontractors, consultants, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by insurance. The Owner or Architect, as appropriate, shall require of their contractors,

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consultants, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers consistent with that in Section 11.3.7 of AIA Document A201-2007, each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 12.20 No provision of the **Agreement** shall be deemed to have been waived by Owner or Architect, either expressly, impliedly or by course of conduct, unless such waiver is in writing and signed by Owner or Architect, which waiver will apply only to the matter described in the writing and not to any subsequent rights of Owner or Architect.

§ 12.21 All components of the specifications, including equipment and finishes, shall have at least two competing manufacturers listed and specified within the completed construction documents. This may mean two schemes for finishes such as carpet, vinyl wall coverings, ceramic tile etc. Additionally specific extended warranties of all building components shall be reviewed and established with the Owner prior to completing the construction documents. The Architect shall define and specify any required performance specifications within their Contract Documents so as to provide a clear transfer of responsibility for the subject design to a performance specification to the Contractor and to the applicable subcontractor. All such performance specifications shall be reviewed and approved by the Owner prior to their being incorporated into the Contract Documents.

§12.22 WAIVER AND JUDICIAL REFERENCE

§12.22.1 JURY TRIAL

The Owner and Architect hereby waive, to the fullest extent permitted by law, the right to trial by jury in any litigation arising out of or relating to this Agreement, the Services or the Work. If the jury waiver provisions of this section are not enforceable under California law, then the following provisions shall apply.

§12.22.2 JUDICIAL REFERENCE.

It is the desire and intention of the parties to agree upon a mechanism and procedure under which controversies and disputes arising out of this Agreement or related to the Services or Work will be resolved in a prompt and expeditious manner. Accordingly, any action, claim, proceeding or counterclaim brought by either party hereto against the other (and/or against its officers, directors, employees, agents or subsidiaries or affiliated entities) on any matters whatsoever arising out of or in any way connected with this Agreement or the Services or the Work, whether sounding in contract, tort, or otherwise, shall be heard and resolved by a referee under the provisions of the California code of civil procedure, sections 638 — 645.1, inclusive (as the same may be amended, or any successor statute(s) thereto) (the "Referee Sections").

§12.22.3 REFERENCE VENUE AND FEE.

Any fee to initiate the judicial reference proceedings shall be paid by the party initiating such proceedings and all subsequent fees charged and costs incurred by the referee shall be shared equally by the parties participating in the proceedings (except that if a reporter is requested by either party, then a reporter shall be present at all proceedings where requested and the fees of such reporter, except for copies ordered by the other parties, shall be borne by the party requesting the reporter); provided, however, that allocation of the costs and fees, including any initiation fee, of such proceeding shall be ultimately determined in accordance with the provisions below. The venue of the proceedings shall be in Los Angeles County, California.

§12.22.4 APPOINTMENT OF REFEREE.

Within ten (10) days of receipt by any party of a written request to resolve any dispute or controversy pursuant to this section, the parties shall agree upon a single referee who shall try all issues, whether of fact or law, and report a finding and judgment on such issues as required by the referee sections. If the parties are unable to agree upon a referee within such ten (10) day period, then any party may thereafter file a lawsuit in Los Angeles County, California, for the purpose of appointment of a referee under the Referee Sections. If the referee is appointed by the court, the referee shall be a neutral and impartial retired judge with substantial experience in the relevant matters to be determined, from

JAMS/Endispute, Inc., the American Arbitration Association or a similar mediation/arbitration entity. The proposed referee may be challenged by any party for any of the grounds listed in the Referee Sections.

§12.22.5 REFEREE POWERS.

The referee shall have the power to decide all issues of fact and law and report his or her decision on such issues, and to issue all recognized remedies available at law or in equity for any cause of action that is before the referee. The referee shall not, however, have the power to award punitive damages, nor any other damages which are not permitted by the express provisions of this Agreement. The parties shall be entitled to conduct all discovery as provided in the California code of civil procedure, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge, with rights to regulate discovery and to issue and enforce subpoenas, protective orders and other limitations on discovery available under California law.

§12.22.6 PROCEEDING.

The reference proceeding shall be conducted in accordance with California laws (including the rules of evidence), and in all regards, the referee shall follow California law applicable at the time of the reference proceeding. The parties shall promptly and diligently cooperate with one another and the referee and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute or controversy in accordance with the terms of this section. In this regard, the parties agree that the parties and the referee shall use best efforts to ensure that (a) discovery be conducted for a period no longer than six (6) months from the date the referee is appointed, excluding motions regarding discovery, and (b) a trial date be set within nine (9) months of the date the referee is appointed. In accordance with section 644 of the California code of civil procedure, the decision of the referee upon the whole issue must stand as the decision of the court, and upon the filing of the statement of decision with the clerk of the court, or with the judge if there is no clerk, judgment may be entered thereon in the same manner as if the action had been tried by the court.

§12.22.7 APPEALABLE DETERMINATION OF REFEREE.

Any decision of the referee and/or judgment or other order entered thereon shall be appealable to the same extent and in the same manner that such decision, judgment, or order would be appealable if rendered by a judge of the superior court in which venue is proper hereunder.

§12.22.8 ALTERNATE REMEDIES PERMITTED.

The referee shall in his/her statement of decision set forth his/her findings of fact and conclusions of law. The parties intend the determination of the referee to be specifically enforceable in accordance with the California code of civil procedure. Nothing in this section shall prejudice the right of any party to obtain provisional relief or other equitable remedies from a court of competent jurisdiction as shall otherwise be available under the California code of civil procedure and/or applicable court rules.

§12.22.9 CONSOLIDATION AND JOINDER.

The parties understand that other controversies and disputes related to the Services and the Work may also be subject to hearing and resolution by a referee under the Referee Sections. Either party, at its sole discretion, may consolidate a hearing and resolution to be conducted under this Agreement with any other hearing and resolution to be conducted relating to the services or the Work to which it is a party provided that the case to be consolidated substantially involves common questions of law or fact. Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in the hearing and resolution, provided that the party sought to be joined has consented or consents in writing to such joinder. The Owner and Architect grant to any person or entity made a party to a hearing and resolution by a referee conducted under this Section 812.22, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 12.23 CERTIFICATES

Any certificates provided by the Architect to a lender, tenant, or any other third party shall be "to the best of the Architect's knowledge, information and belief" or "in the Architect's professional opinion" based upon the performance of his services as provided herein.

§ 12.24

§ 12.24.1 Architect shall include with each invoice that it submits to Owner separate lien waivers in the form of Exhibit S hereto from Architect that are unconditional through the period for which Architect has been paid and that are conditional as to the amount invoiced. But Architect reserves and does not waive contract rights, including rescission, abandonment, breach of contract, and the right to recover compensation for work not yet paid. Upon final payment, Architect shall furnish an unconditional final lien waiver in the form of that at Exhibit S.

§ 12.24.2 Architect agrees to indemnify and hold Owner, its lender(s), and its title insurer (collectively "Indemnitees") harmless for liens or claims made by Architect's Consultants due Architect's failure to pay Consultants for services for which Architect has been paid by Owner. Architect shall promptly notify Owner if it becomes aware of any such lien or claim having been made.

§ 12.25 Architect shall promptly notify Owner in writing of any delays in meeting its schedule, including in its written notice the reason for such delays, their expected duration, and proposed methods to mitigate them. If Architect is delayed in meeting its schedule due to causes primarily within its or its Consultants' reasonable control, Owner may, in its discretion, after written notice to Architect (a) require Architect to recover its schedule before the next due date for a deliverable; and/or (b) require Architect to meet promptly with Owner in Los Angeles, at no charge to Owner, to discuss reasons for the delay, methods to avoid future delays, and methods to mitigate the impact of the delay, and if it reasonably appears that delay is significant and a result of Architect's personnel, Architect shall give due consideration to changes in its personnel so as to better manage the Project and its schedule.

§ 12.25.1 If Architect is delayed in meeting its schedule due to causes solely the responsibility of Architect or its Consultants, Owner may, in its discretion, after written notice to Architect, defer part of payment to Architect of its monthly fee application to the following month.

§ 12.26 References to "Construction Manager" in this Agreement include the Owner's Project Manager and/or its cost consultants.

§ 12.27 This Agreement supersedes and replaces that certain modified AIA Document B101 – 2007 Standard Form of Agreement Between Owner and Architect dated October 14, 2013 ("10/14/13 Agreement"), entered into between Architect and BH Wilshire International, LLC, as amended by that certain "First Amendment to Architect's Agreement", dated August 12, 2014 ("First Amendment") and that Second Amendment to Standard Form of Agreement Between Owner and Architect dated October 15, 2014 ("Second Amendment") under which Owner here assumed the rights and responsibilities of BH Wilshire International, LLC under the 10/14/2013 Agreement. The parties acknowledge that Owner has requested, and Architect has agreed to perform, certain services prior to the date of this Agreement under the 10/14/2013 Agreement and Work Authorization Forms. The Owner and Architect agree that all such services and work performed by Architect or any Consultant of Architect prior to the date of this Agreement shall be covered by all the terms and conditions of this Agreement.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 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.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit:
- .3 Exhibit A – Workplan dated June xx, 2015
- .4 Exhibit B – Architect's Detailed Scope of Work & Deliverables, June 2015
- .5 Exhibit C – Detailed Design Scope Information - Retail Facilities (not used)
- .6 Exhibit D - Disclaimer Regarding Building Information Modeling
- .7 Exhibit E - Disclaimer Regarding Electronic Data
- .8 Exhibit F - Work Authorization Form
- .9 Exhibit G – Architect's Fee Estimate Summary dated June 2015
- .10 Exhibit H – Interior Design Scope of work Diagram
- .11 Exhibit I – Delivery Check List
- .12 Exhibit J – Deliverables of Elevation Design and Design Sample

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- .13 Exhibit K – Structural Design Brief
- .14 Exhibit L – Landscape Design Brief
- .15 Exhibit M – Design Brief for One Beverly Hills Project
- .16 Exhibit N – Hotel MEP work requirement
- .17 Exhibit O – Hotel IT Work Requirement
- .18 Exhibit P – Hotel Kitchen and Laundry Standard
- .19 Exhibit Q – Hotel AV Work Requirement
- .20 Exhibit R – Hotel Lighting Work Requirement
- .21 Exhibit S – Form of Lien Waiver
- .22 Exhibit T – Scope of Services for Penthouse Interiors
- .23 Exhibit U – Hotel ELV Consultant Work Requirement

§ 13.3 In the event that there is a conflict between the terms of this Agreement and the Architect's Proposal, the terms of this Agreement shall prevail.

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


FOR the OWNER



(Signature)

(Printed name and title)

FOR the ARCHITECT



(Signature)

Michael Palladino, FAIA, Partner

(Printed name and title)

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