

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL  
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

**CIRCUIT CIVIL DIVISION**

**CASE NO.: 2021-015089-CA-01**

**SECTION: CA 43**

**JUDGE: Michael Hanzman**

**In Re:**

**Champlain Towers South Collapse Litigation**

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**STANTEC ARCHITECTURE, INC.'S MOTION TO DISMISS COUNTS  
XII (SIC) AND XIII (SIC) OF CHAMPLAIN TOWER SOUTH  
CONDOMINIUM ASSOCIATION, INC.'S AMENDED CROSSCLAIM**

**Introduction**

Stantec Architecture, Inc. (“Stantec”) moves to dismiss of Counts XII (sic) and XIII (sic)<sup>1</sup> of the Champlain Tower South Condominium Association, Inc.’s (the “Association”) Amended Crossclaim (“CC”). Florida law has repeatedly held that an architect has no duty to ensure safe construction procedures. The courts recognize that participants to a construction project have distinct roles and responsibilities as reflected in applicable contract documents. The allegations in the CC assert that Stantec owed a duty to protect the Association from the alleged negligent acts of other project participants. Applicable contract language long used in the construction industry and consistently interpreted by the courts takes precedence over these conclusory allegations. The case law interpreting these contract provisions demonstrate that the Association has not properly alleged and cannot establish that Stantec owed it a duty to ensure that construction procedures were safely performed. Participation in a project and knowledge of the activities of others alleges at most passive conduct which is insufficient to support a claim. If another rule applied, exposure

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<sup>1</sup> The Crossclaim contains two Count XII and two Count XIII. This motion obviously addresses the counts against Stantec.

to liability for the alleged active negligence of others would necessitate a web of crossclaims that would be difficult to untangle.<sup>2</sup> Also, as will be addressed below, the position stated by Stantec herein is supported by the essentially nearly identical position asserted by the Association in its Second and Third Affirmative Defenses relying upon express limitations of liability provisions in the condominium documents.

### **I. Motion to Dismiss Standard**

“The primary purpose of a motion to dismiss is to request the trial court to determine whether the complaint properly states a cause of action upon which relief can be granted and, if it does not, to enter an order of dismissal.” *Fox v. Prof'l Wrecker Operators of Fla., Inc.*, 801 So. 2d 175, 178 (Fla. 5th DCA 2001). Florida Rule of Civil Procedure 1.110(b) requires the pleading of the ultimate facts on which a plaintiff's claims rest: “A pleading which sets forth a claim . . . shall contain . . . a short and plain statement of the ultimate facts showing that the pleader is entitled to relief . . .” (Emphasis added).

A plaintiff must allege not only the elements of the claim, but also the ultimate facts supporting each element:

***The complaint must set out the elements and the facts that support them so that the court and the defendant can clearly determine what is being alleged.*** The complaint . . . must set forth factual assertions that can be supported by evidence which gives rise to legal liability.

*Barrett v. City of Margate*, 743 So. 2d 1160, 1162 (Fla. 4th DCA 1999) (Emphasis added) (citation omitted); see also *Clark v. Boeing Co.*, 395 So. 2d 1226, 1229 (Fla. 3d DCA 198). “It is insufficient

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<sup>2</sup> This motion addresses the claims arising out of Stantec's alleged responsibility to ensure safe construction procedures such as excavation, compaction, pile driving, and dewatering activities and to warn others about deficiencies in those procedures. Stantec acknowledges, at the initial pleading stage, that, if the Association could allege that a design prepared by Stantec, itself, caused harm, Stantec would not meet the standard applicable to a motion to dismiss on such a claim.

to plead opinions, theories, legal conclusions or argument.” *Id.*; *see also Davis v. Bay Cnty. Jail*, 155 So. 3d 1173, 1177 (Fla. 1st DCA 2014) (“Under Florida procedural law, a complaint that simply strings together a series of sentences and paragraphs containing legal conclusions and theories does not establish a claim for relief.”). These pleading requirements exist “so that the trial judge in reviewing the ultimate facts alleged may rule as a matter of law whether or not the facts alleged are sufficient as the factual basis for the inferences the pleader seeks to draw and are sufficient to state a cause of action.” *Beckler v. Hoffman*, 550 So. 2d 68, 71 (Fla. 5th DCA 1989).

Where the allegations of the complaint are contradicted by the exhibits, the plain meaning of the exhibits will control. *Ginsberg v. Lennar Fla. Holdings, Inc.*, 645 So. 2d 490, 494 (Fla. 3d DCA 1994). The conclusions of the pleader, as to the meaning of the exhibits attached to the complaint, are not binding on the court. *See N.C. Brandon v. County of Pinellas*, 141 So.2d 278 (Fla.1962). A court should “not accept internally inconsistent factual claims, conclusory allegations, unwarranted deductions, or mere legal conclusions.” *Gallego v. Wells Fargo Bank, N.A.*, 276 So. 3d 989, 990 (Fla. 3d DCA 2019) (citing *W.R. Townsend Contracting, Inc. v. Jensen Civil Constr., Inc.*, 728 So. 2d 297, 300 (Fla. 1st DCA 1999)). Application of these standards to the Association’s CC requires dismissal of Counts XII and XIII against Stantec.

## **II. Count XII and XIII Allege Negligence Arising from Construction Means, Methods, Procedures and Safety Precautions**

The claims against Stantec arise out of the contractor’s means, methods, procedures and safety precautions. The Association alleges that Stantec’s agreement to assist 8701 Collins Development LLC (the “Developer”) with construction administration gave rise to a duty to it. The Association summarizes the alleged source of Stantec’s duty in ¶ 517 of the CC, which states:

Stantec was the architect of record for the Eighty-Seven Park project and was a Construction Administrator for the project. Stantec was present onsite daily and at

ongoing meetings with the owner and contractor where the **construction activities** and complaints from CTS were discussed. Thus, Stantec had extensive knowledge of all **construction activities** performed on site and was intimately involved with the **construction activities** primarily discussed herein, including but not limited to pile driving, dewatering, excavation, and site compaction **procedures**.

*Id.* (Emphasis added).<sup>3</sup>

Stantec was not responsible for pile driving, dewatering, excavation, and site compaction procedures. There is not even a conclusory allegation suggesting that Stantec designed, performed, or controlled the sheet piling, excavation, dewatering or compaction, all of which are Contractor controlled means and methods from start to finish.

The Developer contracted with John Moriarty & Associates of Florida, Inc. (“JMA”) to act as the general contractor for the Eighty-Seven Park project (the “Project”). CC ¶ 16. JMA contracted with ASAP, Inc. to install sheet piling on the Project. CC ¶ 146. Per the October 2015 proposed Dewatering Plan, Florida Civil, Inc. prepared the dewatering plans and procedures. CC ¶¶ 248-255. The Developer also contracted with NV5, Inc. to act as the geotechnical engineer and inspector on the Project. CC ¶¶ 18, 108 and 428-29. NV5 retained Geosonics, Inc. to perform on-site vibration monitoring during construction activities at the Project. CC ¶ 551.

### **III. Stantec Did Not Owe the Association a Duty With Regard to These Procedures.**

#### **A. Stantec’s Contract Establishes the Scope of Its Undertaking.**

Absent a contractual undertaking, an architect has no construction administration duties. The common law does not provide a duty for a design professional to perform such services. *Valiente v. RJ Behar & Co., Inc.*, 254 So.3d 544, 549 (Fla. 3d DCA 2018). In *Valiente*, a majority of the Third DCA affirmed summary judgment holding that the design professional was not obligated to provide construction administration services absent a contractual undertaking. *Id.* at

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<sup>3</sup> The CC also excerpts and paraphrases the Stantec contract with the Developer in ¶ 518.

549 (no duty existed because “...there is *no evidence that a purchase order was submitted by the City to R.J. Behar requiring R.J. Behar... to perform construction administration services*” [emphasis added]). *See also, Van Ness v. Independent Const. Co.*, 392 So.2d 1017, 1019-1020 (Fla. 5th DCA 1981)(alleging failure to ensure safe construction practices was insufficient where “appellant has failed to demonstrate either a contractual or a common-law duty on the part of Sears to supervise the construction”).

Furthermore, a claim based on a contractual undertaking must be strictly limited to the actual undertaking and not expanded beyond the contractual scope. *Glickman v. Kindred Hospitals East, LLC*, 314 So.3d 630 (Fla. 3d DCA 2021). In *Glickman*, the Third DCA rejected the plaintiff’s argument that the defendant security company’s duty to protect hospital employees should be expanded to require protection of others. The Court easily rejected this argument citing *Robert-Blier v. Statewide Enters., Inc.*, 890 So. 2d 522, 523–24 (Fla. 4th DCA 2005) which held “an independent contractor hired by the owner of premises to provide some—but not full—security services *can[not] be liable for failing to do more than it contracted to do*”). *Id.* at 633. (Emphasis added.)

The position stated by Stantec herein is supported by the essentially identical position asserted by the Association in its Second and Third Affirmative Defenses to the Plaintiffs’ claims. There the Association contends that the Third Amended Complaint is barred, in whole or in part, by Section 10.2 of the Amended and Restated Declaration of Condominium of Champlain Towers South Condominium (limitation of liability of the Association) and Article 12 of the Amended and Restated By-laws of the Champlain Towers South Condominium (Limitation of Liability). That is, the Association’s liability is limited by its express undertakings in the operative documents defining its role and responsibilities. The Association is bound by the legal precedent establishing

the same principle regarding Stantec's contractual undertakings.

Accordingly, Stantec cannot be held to account for the failure to ensure safe construction procedures when its contract expressly excluded such services regardless of contrary conclusory allegations. The existence of a duty of care in a negligence action is a question of law. *McCain v. Fla. Power Corp.*, 593 So.2d 500,502 (Fla. 1992); *Hanrahan v. Hometown Am., LLC*, 90 So.3d 915, 917 (Fla 4<sup>th</sup> DCA 2012). The Third DCA's decisions resolutely maintain the rule of law that the Association cannot defeat a motion to dismiss by disregarding the same contract upon which they rely. See CC ¶ 518. *Ginsberg* at 494; *Blue Supply Corp. v. Novos Electro Mechanical Inc.*, 990 So.2d 1157, 1159 (Fla. 3d DCA 2008) citing *Hunt Ridge at Tall Pines, Inc. v. Hall*, 766 So.2d 399, 401 (Fla. 2d DCA 2000) ("Where complaint allegations are contradicted by exhibits attached to the complaint, the plain meaning of the exhibits control and may be the basis for a motion to dismiss"). Furthermore, because the Association clearly quotes from and relies upon the contractual undertakings of Stantec (CC ¶ 518), it is appropriate to consider the terms of the entire contract between Stantec and the Developer on a motion to dismiss. *One Call Property Services, Inc. v. Security First Ins. Co.*, 165 So.3d 749, 752 (Fla. 2d DCA 2015) citing *Veal v. Voyager Prop. & Cas. Ins. Co.*, 51 So.3d 1246, 1249 (Fla. 2d DCA 2011) ("Where the terms of a legal document are impliedly incorporated by reference into the complaint, the trial court may consider the contents of the document in ruling on a motion to dismiss").<sup>4</sup>

#### **B. Stantec Did Not Undertake to Ensure Safe Construction Procedures.**

Well-established Florida law requires the conclusion that Stantec did not owe a duty to the Association. The Association asserts that Stantec's alleged role as a "construction administrator"

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<sup>4</sup> In fact, Rule 1.130 required the Association to attach or incorporate by reference the Agreement for Professional Design Services.

gave rise to a duty to protect it from allegedly unsafe construction procedures. CC ¶¶522, 525, 530. Alternatively, the Association alleges that this duty arose from Stantec’s alleged undertaking to ensure that the work was completed in accordance with the Construction Documents.<sup>5</sup> CC ¶¶ 518, 519. Courts in Florida and elsewhere have rejected such arguments.

The Agreement for Professional Design Services between the Developer and Stantec attached as Exhibit 1, includes the following terms:

2.7.2 Architect shall *assist Owner* in providing administration of the Construction Contract as set forth below and in the Construction Contract. As more particularly described below, Architect shall engage in the following during the Construction Administration Phase:

- .1 Conduct Site visits with its subconsultants as often as necessary, but no less than once per week, to ensure that the work *is being completed* in accordance with the Construction Documents, and to review construction milestone events as requested by Owner and as appropriate to confirm *general conformance to the design intent* and the Construction Documents.
- .3 Participate in conference calls as often as necessary to review construction activities and respond to Contractor’s questions regarding the Project, including questions regarding design issues and visit the Site as directed by Owner to monitor Contractor’s workmanship.

2.7.4 Architect shall visit the Site with its Subconsultants at intervals appropriate to the stage of construction as outlined in paragraph 2.7.2, or as otherwise agreed by Owner and Architect in writing, to (1) become familiar with, and to keep Owner informed about, the progress and quality of *the Work completed*, (2) use its diligent, professional efforts *to guard Owner* against defects and deficiencies in the Work, and (3) determine in general if the Work is being performed in a manner indicating that the Work, *when fully completed*, will be in accordance with the Construction Documents. *However, Architect shall not be required to make exhaustive or continuous on-Site reviews to check the quality or quantity of the Work. Architect shall keep Owner informed* of the progress and quality of the Work, and shall promptly *advise Owner* of any defects and deficiencies in the Work discovered by Architect. Architect shall submit to Owner a written report subsequent to each such on-Site visit. Additionally, Architect shall prepare and

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<sup>5</sup> Construction Documents is a defined term that refers to “the plans, drawings and specifications[] *prepared by Architect...*” Agreement for Professional Design Services ¶ 1.2.7 (emphasis added). Documents prepared by NV5, Geosonics, and Florida Civil are not Construction Documents.

deliver to Owner, on a weekly or bi-weekly basis (depending on the stage of construction and Project needs) a report describing the progress of the Work.

**2.7.5 Architect shall not have control over or charge of, and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work;** provided, however, Architect shall inform Owner and Contractor of any of the foregoing means, methods, techniques, sequences and procedures which Architect observes and which do not conform to the Construction Documents. Provided Architect has complied with Paragraph 2.7.2.1, **Architect shall not be responsible for Contractor's schedules or Contractor's failure to carry out the Work in accordance with the Construction Contract or the Construction Documents;** provided, however, Architect shall inform Owner if Architect becomes aware that Contractor has failed, or may likely fail, to comply with the scheduling requirements of the Construction Documents. **Architect shall not have control over or charge of acts or omissions of Contractor, subcontractors, or their respective agents or employees, or of any other persons performing portions of the Work.**

The four (4) “architect shall not” provisions establish that Stantec did not have control or charge of the means, methods and safety procedures and/or the acts or omissions of the contractor. Likewise, Stantec was not responsible for the contractor’s failure to carry out the work in accordance with the Construction Contract or Documents.

Furthermore, the Construction Agreement between the Developer and JMA provided the Developer with the authority to stop the work, while the Agreement for Professional Design Services prohibited Stantec from exercising such authority absent a separate written instrument signed by the Developer and Stantec. See, Construction Agreement at ¶ 8.3 and Agreement for Professional Design Services at ¶ 2.7.3.

These and similar contract terms have been interpreted to benefit *the Owner* by providing a check that *the completed work* of the contractor will conform to the contract documents. Courts routinely hold that these contract terms do not create a duty to protect third parties from safety hazards resulting from the performance of the work. In *Vorndran v. Wright*, 367 So.3d 1070 (Fla.



3d DCA 1979), a construction-site injury case, the Third DCA upheld summary judgment in favor of an architect. In *Vorndran*, the Third DCA examined similar contract language and held:

This did not impose a duty on the architect to supervise the day-to-day work or to determine whether or not safety regulations were complied with. It was the prime responsibility of the architect to determine that the construction was completed in accordance with the plans and specifications. [Internal citations omitted]. It is generally the prime responsibility of the employer to comply with the safety regulations. Section 440.56, Florida Statutes (1971). The architect, therefore, would not normally be liable for the failure of the employer to comply with safety regulations, **unless his contract of employment for supervision imposes upon him a duty and responsibility to supervise and/or control the actual method of construction utilized by the contractor.** *Greer v. Bennett*, 237 So.2d 311 (Fla. 4th DCA 1970); *Conklin v. Cohen*, 287 So.2d 56 (Fla.1973). In such a case his liability would be predicated on the negligent performance of his contractual duties. However, in the instant case, the architect's contract of employment for supervision only obligates the architect to visit the construction site periodically to verify that the construction is in accordance with drawings and specifications. He has no control over the method of construction utilized and there is no showing that he attempted to do so. Based on these undisputed facts, the architect cannot be held liable for any failure of the contractor to comply with required safety regulations. [Internal citations omitted].

*Id.* at 1071 (Emphasis supplied).

Similarly, in *Skow v. Department of Transportation*, 468 So.2d 422 (Fla. 1st DCA 1985) the Court held that the Department of Transportation did not have a duty to eliminate unsafe conditions that it knew or should have known would expose workers to a substantial risk of harm. *Id.* at 423. In rejecting plaintiff's argument, the Court ruled that "although DOT actively participated in the inspection of work done by Capelletti, *this was done only to ascertain the results of the work and not to control the method of performance or to insure Capelletti's compliance with safety regulations.*" *Id.* at 424 (Emphasis added). In that same year, *Swartz v. Ford, Bacon & Davis Constr. Corp.*, 469 So.2d 232, 233 (Fla 1<sup>st</sup> DCA 1985), another long-standing case concluded: "Unless the contract herein imposes upon Ford a duty and responsibility to supervise and/or control the actual method of construction utilized by B.E. & K., it cannot be held liable for

that contractor's failure to comply with required safety regulations"; *See also, City of Miami v. Perez*, 509 So.2d 343, 349-50 (Fla. 3d DCA 1987) (applying the ruling of *Swartz* to conclude that the inspector's contract controlled the existence and scope of its duty.)

In *Moore v. PRC Engineering, Inc.*, 565 So.2d 817 (Fla. 4<sup>th</sup> DCA 1990), the court looked to the applicable contract documents to determine the scope of the engineer's undertaking. In *Moore*, the relevant contract language, absent in the present case, provided:

The ENGINEER will appoint such inspectors as are necessary to observe the amount, quality and character of the materials to be supplied or to inspect the execution of the work contemplated under this Contract. *When in the judgement of the inspectors, the work or materials are being furnished in a manner considered **hazardous to persons or property they shall have the power to stop the work, which shall not be resumed until the ENGINEER has rendered his decision upon the matter.*** The provision of this clause shall not relieve the CONTRACTOR for the sole responsibility of any injury or damage that may result.

*Id.* at 819 (emphasis added). Based on this language, the court held: "According to the terms of these provisions, PRC had a contractual duty to control, monitor, guide and inspect the work as it was being completed and to see that the job was done safely." *Id.*

*Moore* represents the application of long-standing Florida law to facts that are vastly different than the allegations here. Stantec did not have the same contractual obligations found to be controlling in *Moore*, did not have the power to stop the work, and did not have the obligation to review the circumstances and render a decision prior to work resuming.

Other states likewise follow the rule that a design professional does not have a duty to protect third parties from injury due to construction activities. One such decision from the Supreme Court of Iowa is particularly illustrative and factually similar to the present case. In *Shepherd Components, Inc. v. Brice Petrides-Donohue & Associates, Inc.*, 473 N.W.2d 612 (Iowa 1991), the owner of a building damaged by an adjacent construction project sued the contractor

(Peterson) and an engineer (Brice) for damages arising from sheet piling and excavation activities. Based on contract language remarkably similar to the Agreement for Professional Design Services here, the Supreme Court of Iowa held that the engineer did not owe a duty to protect the adjacent property against damage resulting from allegedly unsafe construction procedures. The Court confirmed its view by reference to the construction contract as well, holding:

The respective duties of the participants in the sewer project can also be gleaned from the contract and bid specifications between Peterson and the City. Under the contract between Peterson and the City, Peterson was required to shore up, secure, and protect all foundations adjacent to the areas of excavation. As noted previously, Peterson engaged an independent engineering firm to determine methods of construction that would provide for safe excavation adjacent to plaintiff's building. This contract placed the entire responsibility for avoiding damage to adjoining property owners on Peterson. If such damages occurred, Peterson agreed to indemnify the City.

*Id.* at 615-16.<sup>6</sup> Accordingly, neither the allegation that Stantec was a “construction administrator” nor its agreement to ensure the Work was completed in accordance with the Construction Documents gives rise to a duty to protect third parties from allegedly unsafe construction procedures, under either theory pled, negligence or strict liability.

### **C. Stantec's Alleged Knowledge of Risks Does Not Give Rise to a Duty to the Association.**

The Association's assertion that knowledge of the risk of unsafe construction procedures

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<sup>6</sup> The Construction Agreement further defines the role of the Contractor and limits Stantec's responsibility as established in Paragraph 2.7.2 of the Agreement for Professional Design Services, *infra* at p. 6, above. The Construction Agreement for the Project provides that the “Contractor shall supervise and direct the Work” and “shall be solely responsible for all construction means, methods, techniques, sequences and procedures...” Construction Agreement ¶10.3.1. It further provides that “Contractor shall be solely responsible for safety on the Project” including compliance with all Governmental Requirements. *Id.* at ¶15.12.10. The Association alleges that one such Governmental Requirement are OSHA requirements for shoring, bracing or underpinning to ensure the stability of adjoining structures. CC ¶ 121-123. The Construction Agreement also provides that “Contractor shall use reasonable effort to prevent loss or damage to other property at the Site or adjacent thereto...Should any damage to other property at the Site or adjacent thereto be caused, either by Contractor's failure to reasonably and properly protect the Work and/or by Contractor's performance of the Work, then Contractor shall immediately repair such damage...” Construction Agreement ¶10.14.3. Similarly, the Construction Agreement provides: “Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work and complying with Governmental Requirements.” *Id.* at ¶10.17.

created a duty for Stantec to protect it from those risks (CC ¶ 524) has been rejected. It is settled law that “knowledge of the risks” does not give rise to a duty on the part of the architect. In *Skow v. Department of Transportation*, 468 So.2d 422 (Fla. 1st DCA 1985), the court held that, notwithstanding its active inspection of and right to stop the work, the DOT had no duty to “eliminate unsafe working conditions that DOT *knew or should have known* would expose workers to a substantial risk of harm” where the contract did not impose an explicit obligation to inspect to ensure compliance with safety requirements. *Id.* at 424.

**D. Stantec’s Alleged Passive Conduct Is Insufficient to Sustain Counts XII and XIII.**

If the Association is allowed to proceed on a theory that Stantec was required to prevent others from performing allegedly dangerous construction procedures, Stantec will stand exposed to damage for at most passive conduct. The Third DCA has rejected liability on this basis under similar facts. *City of Miami v. Perez*, 590 So.2d. 343, 346 (3d DCA 1987) (citing *Conklin v. Cohen*, 287 So.2d 56, 60 (Fla. 1973)). There, the Third DCA cited to a long line of cases to support its holding. The ruling is equally applicable to the motion to dismiss stage.

The Association alleges that Stantec’s alleged knowledge of the acts of others (*i.e.*, “Terra Defendants, JMA, NV5 and DeSimone”), as repeated throughout the CC, required Stantec to protect it from the alleged negligent acts of others.<sup>7</sup> Under that paradigm, these other actors would potentially owe indemnity to Stantec. The implications of allowing the Association to proceed on a negligence count that is in form and substance a vicarious liability theory (which properly must be denominated as such) are far reaching in terms of added complexity to this action. Therefore, these pleading deficiencies require dismissal as to both counts against Stantec.

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<sup>7</sup> See CC, allegations spread throughout ¶¶ 38 – 296. At no point in those paragraphs is Stantec named or identified as a party that engaged in the acts or omissions alleged.

**IV. The Association Has Not Alleged that Stantec Breached the Standard of Care.**

The failure to allege a breach of the standard of care is sufficient reason to dismiss the CC as to Stantec. Stantec's duty was to perform its services in accordance with the standard of care used by similar professionals in the community under similar circumstances. *PBSJ, Inc. v. Monroe County*, 851 So.2d 908, 910 (Fla. 3d DCA 2003).<sup>8</sup> The Association does not allege that Stantec breached the standard of care. It is well established that courts will not "by inference on inference or speculation supply essential averments that are lacking." *Alvarez v. E & A Produce Corp.*, 708 So. 2d 997, 1000 (Fla. 3d DCA 1998). Unpled elements "may not be inferred from the context of the allegations." *Myers v. Myers*, 652 So.2d 1214, 1215 (Fla 5th DCA 1995), *see also, Magner v. Merrill Lynch*, 585 So.2d 1040, 1043 (Fla. 4th DCA 1991)(a trial court may not cure a deficient pleading by inserting an essential element by inference), review denied 598 So.2d 77 (Fla. 1992).<sup>9</sup>

**V. The Association Fails to Plead a Basis for Standing to Sue For Non-Unit Owner Claims, or Unit Owner Personal Injury or Personal Property Damage Claims.**

The Association's CC is conspicuously silent as to its standing to assert the same claims as those asserted by the Plaintiffs in the Third Amended Complaint. Dismissal is required, or at a minimum a more definite statement, at this juncture due to the accelerated pace of this case and the unique relationship of the claims of the Plaintiffs' and the Association. The absence of allegations of the basis of the Association's standing unduly frustrates efficient discovery of the Association's claims, which will be a moving target without the certainty of a proper pleading.

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<sup>8</sup> *See also, Trikon Sunrise Assocs., LLC v. Brice Bldg. Co.*, 41 So.3d 315, 318 (Fla. 4th DCA 2010); *Lochrane Eng'g, Inc. v. Willingham Realgrowth Inv. Fund, Ltd.*, 552 So.2d 228, 232 (Fla. 5th DCA 1989); *CH2M Hill Southeast, Inc. v. Pinellas Cnty.*, 698 So.2d 1238, 1240 (Fla. 2d DCA 1997).

<sup>9</sup> Other pleading defects require dismissal but will be addressed only briefly in light of the substantive grounds for dismissal addressed above. Specifically, the CC improperly incorporates by reference all of the preamble allegations, ¶¶ 1 through 296 into Counts XII and XIII against Stantec. Those paragraphs are directed at defendants other than Stantec, and inclusion of those paragraphs creates internal contradictions and repugnancy that cannot be disregarded on the basis of expediency or otherwise. Similarly, Count XII recites alleged breaches of duties that have not been alleged against Stantec and therefore cannot be maintained without correction. CC, ¶ 533, subsections a. – vv.

The Association is positioned as a defendant that is also seeking to shift and thereby increase the liability of the other defendants on the same identical grounds as those asserted by the Plaintiffs.<sup>10</sup> Defining the Association's theory of recovery is not an issue of the measure or amount of damages; it involves instead the issue of the nature of the Association's cause of action. For instance, since it appears that the Plaintiffs are asserting rights to the same losses as those encompassed by the CC, it may be that some portion of the Association's claim is a passive pass-through indemnity claim as opposed to a claim for loss of property owned solely by the Association. The Association cannot be heard to object to being required to plead with sufficient specificity in its crossclaim to clearly state the distinctions between its claims and those of the Plaintiffs.<sup>11</sup>

In a less accelerated case, the issues of uncertain pleading potentially could be addressed in due course, but here, the discovery period does not permit deferring the need for a pleading asserting the actual nature of the Association's claims. The Association's inadequate allegations would also cause undue prejudice to Stantec by unnecessarily complicating attempts to address these issues through appropriate dispositive motions.

### **Conclusion**

Based on the foregoing legal principles, the Association has not stated causes of action against Stantec and, therefore, dismissal is warranted as to both Counts XII and XIII of the Amended Crossclaim. Alternatively, the Association must be required to transparently plead the

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<sup>10</sup> A similar relationship in the context of a settlement agreement under which a settled defendant remains in the case is referred to as a Mary Carter Agreement, which is prohibited under Florida law. *Dosdourian v. Carsten*, 624 So.2d 241, 247-48 (Fla. 1993)

<sup>11</sup> The caselaw does not appear to address any situation where an association and a separate class of plaintiffs were permitted to assert the same or overlapping affirmative claims at any point in a litigation. *See Trintec Construction v. Countryside Village Condominium*, 962 So.2d 277, 280, 281 (3d DCA 2008) (recognizing unit owners' right to intervene and defend under Section 718.119(3) Fla. Stat.)

basis for standing to maintain the claims asserted in the Amended Crossclaim that appear to be duplicative of the Plaintiffs' claims.

Dated: April 13, 2022

Respectfully submitted,

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*Attorneys for Defendant Stantec Architecture, Inc.*

### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on April 13, 2022, a true and correct copy of the foregoing was filed electronically through the Florida Court's E-Filing Portal, which will provide electronic service of the filing to all counsel of record.

/s/ Ross D. Ginsberg

Ross D. Ginsberg (GBN 705121) *Pro Hac Vice*

## **AGREEMENT FOR PROFESSIONAL DESIGN SERVICES**

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**OWNER:** 8701 Collins Development, LLC, a Delaware limited liability company

**ARCHITECT:** Stantec Architecture Inc., a North Carolina corporation

**PROJECT:** Eighty Seven Park, a condominium



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Exhibit G:	Schedule of Architect’s Fee

## AGREEMENT FOR PROFESSIONAL DESIGN SERVICES

**THIS AGREEMENT FOR PROFESSIONAL DESIGN SERVICES** (this “**Agreement**”) is made and entered into the 28<sup>th</sup> day of August, 2015 (“**Effective Date**”) by and between **8701 Collins Development, LLC**, a Delaware limited liability company (“**Owner**”) and **Stantec Architecture Inc.**, a North Carolina corporation, License No. AA26000733 (“**Architect**”). (Owner and Architect are sometimes referred to herein collectively as the “**Parties**” and each, individually, as a “**Party**.”)

### RECITALS

**WHEREAS**, Owner owns that certain real property located at 8701 Collins Avenue, Miami Beach, FL 33154, and legally described on **Exhibit “A”** attached hereto and incorporated herein;

**WHEREAS**, Owner engaged Kobi Karp Architecture & Interior Design, Inc., a Florida corporation, License No. AA0003023 (“**KKAID**”), to provide architectural and interior design services for the Project (as defined herein);

**WHEREAS**, KKAID prepared various instruments of service for the Project including, without limitation, the Schematic Design Documents (as defined herein) and the Design Development Documents (as defined herein);

**WHEREAS**, Owner and KKAID entered into a written agreement to memorialize KKAID’s disassociation and separation from, and cessation of involvement with, the Project;

**WHEREAS**, Owner desires to retain Architect as a successor registered architect for the Project and to architecturally design the Project, to design and engineer the Project’s structure, mechanical, electrical, plumbing and life safety systems, to provide the civil engineering, and landscape architecture for the Project, and to provide other professional design services as set forth herein;

**WHEREAS**, Architect is educated, trained, experienced and duly licensed in the State of Florida in providing the architectural, engineering and other professional design services described in this Agreement;

**WHEREAS**, Architect is in the business of providing the professional design services described herein and Architect wishes to provide such services to Owner in accordance with the terms and conditions of this Agreement;

**NOW, THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Owner and Architect agree as follows:

### **ARTICLE 1** **GENERAL PROVISIONS**

**1.1 RECITALS.** The Parties agree that the foregoing Recitals are true and correct and incorporated herein by this reference.

#### **1.2 DEFINED TERMS**

**1.2.1 Additional Services:** Professional services that may be provided in addition to Basic Services (as defined herein) and rendered only if Owner authorizes them in writing, consistent with Article 3 of this Agreement.

**1.2.2 Application Date:** The monthly date, which may be adjusted from time to time, for periodic receipt of invoices from Architect.

**1.2.3 Approvals:** Approvals, concessions, permits or other such authorizations required of third parties with regard to the Project, including Governmental Authorities.

**1.2.4 Architect's Fee:** Subject to the terms and conditions of this Agreement, the total compensation that Owner shall pay Architect for the proper and timely performance of the Basic Services. Architect's Fee includes all profits, costs and expenses payable to Architect as a result of the Basic Services to be performed hereunder, all applicable sales taxes and other charges properly imposed by Governmental Authorities.

**1.2.5 Architect's Representative:** Jonathan W. Cardello, who is the authorized representative of Architect and has the express authority to bind Architect with respect to all matters requiring Architect's approval or authorization.

**1.2.6 Basic Services:** The professional design services required of Architect as defined in Article 2 of this Agreement.

**1.2.7 Construction Documents:** The plans, drawings and specifications, prepared by Architect, that detail the technical requirements for the construction of the Project, as well as the detailed requirements for the fabrication, procurement, delivery, and installation of materials, furniture, fixtures, and equipment for the Project, as further described in Paragraph 2.5.1.

**1.2.8 Construction Contract:** The written agreement between Owner and Contractor (as defined herein) for the construction of the Project.

**1.2.9 Contractor:** The licensed general contractor retained by Owner to construct the Project.

**1.2.10 Design Consultant:** Renzo Piano Building Workshop, Inc., a New York corporation, the design consultant retained by Owner to design the Project.

**1.2.11 Design Development Documents:** As defined in Section 2.4.1 of this Agreement.

**1.2.12 Documents:** All documents and materials prepared by Architect and its Subconsultants (as defined herein) in connection with the performance of the Services (as defined herein) under this Agreement or which describe or relate to the Services performed or to be performed hereunder or the results thereof, including, without limitation, all writings, drawings, plans, specifications, elevations, details, sketches, schedules, blueprints, pictures, recordings, computer or machine readable data, models, renderings, other design materials, reports, studies, the Schematic Design Documents, the Design Development Documents, the Construction Documents, and all copies or reproductions thereof, and other tangible and intangible materials.

**1.2.13 Final Completion:** The date on which the entire Work (as defined herein) is complete in accordance with the Construction Documents, the Construction Contract and Governmental Requirements, and a certificate for the permanent occupancy of the Project has been issued by the Governmental Authorities.

**1.2.14 Force Majeure Delays:** Delays in the performance/completion of the Services and obligations hereunder that are caused by acts of God, severe weather, such as a hurricane or tropical storm, or by strikes, lockouts, acts of public utilities or public bodies beyond the reasonable control of Architect.

**1.2.15 Governmental Authority(ies):** The United States of America, the State of Florida, the county and city, if any, wherein the Project is located, any political subdivision thereof, and any other agency, authority, or court having jurisdiction over the Project, Architect, Contractor, the Services or the Work.

**1.2.16 Governmental Requirements:** Any law, statute, rule, regulation, ordinance, code or lawful order of any Governmental Authority that is applicable to the Services, Architect, the Work or the Project.

**1.2.17 Indemnatee(s):** Owner, Owner's Representatives (as defined herein), the lender for the Project, Terra World Investments, LLC, a Florida limited liability company, Terra Group, LLC, a Florida limited liability company, and all of their respective officers, directors, partners, shareholders, managers, members, parents, subsidiaries, affiliates, agents, representatives, employees, successors and/or assigns.

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to include Renzo

**1.2.18 Key Personnel:** Haven Peaden, AIA of Architect; Vincent DeSimone of DeSimone Consulting Engineers, LLC ("**DeSimone**") ; Steven Feller P.E. of Steven Feller, P.E., PL ("**Feller**") , Michael Sheehan of SLS Consulting, Inc. ("**SLS**") ; Rodolfo Vargas-Fournier of VSN Engineering, Inc. ("**VSN**") ; Maarten van de Voorde of West 8 Urban Design & Landscape Architecture ("**West 8**") ; John J. Wahler of Aquadynamics Design Group, Inc. ("**Aquadynamics**") ; and Thomas Paterson of Lux Populi SA de CV ("**Lux**").

**1.2.19 Material Change:** A change to the Documents requested by Owner that (1) increases the number of levels for the Project or (2) increases the number of units in the Project by greater than ten percent (10%).

**1.2.20 Owner's Representative:** Michael Piazza, who is the authorized representative of Owner and has the express authority to bind Owner with respect to all matters requiring Owner's approval or authorization.

**1.2.21 Prior Documents:** All documents, materials writings, drawings, plans, specifications, details, schedules, sketches, blueprints, pictures, recordings, computer or machine readable data, models, renderings, other design materials, reports, studies prepared by, or through, KKAID in connection with the Project, including, without limitation, the Schematic Design Documents, the Design Development Documents, the construction documents, the interior design construction documents or other instruments of service prepared by KKAID in connection with the Project, and all copies or reproductions thereof, and other tangible and intangible materials.

**1.2.22 Project:** The complete design, construction, development, and redevelopment of a luxury condominium and located on the Site, consisting of sixty-eight (68) residential condominium units, a pool, spa, gym, parking garage, and other related amenities.

**1.2.23 Project Budget:** The estimated cost to Owner to construct the entire Project, including the costs to furnish and install all materials, furniture, fixtures and equipment for the Project.

**1.2.24 Reimbursable Expenses:** Those expenses that Architect may incur in the performance of its Services hereunder as defined in Paragraph 8.3.1.

**1.2.25 Schedule of Performance:** The schedule attached hereto as **Exhibit "D"** by which Architect shall perform and complete the Services.

**1.2.26 Schematic Design Documents:** As defined in Section 2.2.1 of this Agreement.

**1.2.27 Services:** The professional design services furnished by Architect or its Subconsultants, including the Basic Services defined in Article 2 and any Additional Services that may be required under Article 3 of this Agreement.

**1.2.28 Site:** Owner's real property located at 8701 Collins Avenue, Miami Beach, FL 33154, and legally described on **Exhibit "A"** attached hereto and incorporated herein.

**1.2.29 Standard of Care:** The standard of care applicable to architects regularly engaged in the provision of similar services for comparable luxury condominium projects in Miami Beach, FL.

**1.2.30 Subconsultants:** The qualified, licensed design professionals retained by Architect to furnish a portion of the Services described herein or other necessary design services for the Project, as well as all of Architect's agents and other persons and entities working for, or through, Architect, at all tiers, including but not limited to: (i) DeSimone as the structural engineer; (ii) Feller as the mechanical, electrical and plumbing engineer; (iii) SLS as the fire protection and life safety systems engineer; (iv) VSN as the civil engineer; (v) West 8 as the landscape architect; (vi) Aquadynamics as the aquatic engineering consultant; and (vii) Lux as the lighting design consultant.

**1.2.31 Substantial Completion:** The date on which the Work (as defined herein), or any agreed upon portion of the Work, is sufficiently complete in accordance with the Construction Documents and is in

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to include Renzo

compliance with Governmental Requirements, so that Owner can utilize the Work for the purposes and uses for which it is intended, including without limitation: (a) Owner's ability to occupy, inhabit, close on, and utilize all condominium units in the Project to third-party purchasers; (b) all permits, licenses, and certificates (including, without limitation, temporary certificates of occupancy for each condominium unit) required for such use have been obtained; and (c) all mechanical, electrical, plumbing, and technical systems required by the Construction Documents as well as any arrival lobby, all recreation areas, exercise room, pool, fire and life safety systems, and the entire parking structure are fully operational and are ready for use or occupancy.

**1.2.32 Work:** The entire construction of the Project, including, without limitation, the furnishing and installation of all materials, furniture, fixtures and equipment required by the Construction Documents.

### **1.3 ARCHITECT'S RESPONSIBILITIES.**

**1.3.1** Architect accepts the relationship of trust and confidence established by this Agreement and covenants with Owner to cooperate and exercise Architect's skill and judgment in furthering the interests of Owner. Architect represents that it possesses the requisite skill, education, expertise and licenses to perform the Services. Architect represents that it is knowledgeable of all Governmental Requirements and Approvals and agrees to comply with and conform the Services and Documents to all Governmental Requirements and Approvals. If Architect fails to perform its Services or prepare the Documents in accordance with Governmental Requirements and Approvals, then Architect shall bear and be responsible to pay all costs, damages and expenses resulting therefrom.

**1.3.2** Architect hereby represents to Owner that: Architect is financially solvent and possesses sufficient experience, licenses, authority, personnel and working capital to complete the Services required under this Agreement; Architect has visited the Site and thoroughly familiarized itself with the local conditions under which the Services required under this Agreement are to be performed; and Architect shall correlate its observations of the Site with all of the requirements of this Agreement.

**1.3.3** Architect shall perform all of the Services described in this Agreement and such other services as are customarily furnished in connection therewith to satisfy Owner's Program attached hereto as **Exhibit "B."** Architect shall perform all of its Services in a proper and adequate manner and in accordance with the standards set forth in this Agreement and the Standard of Care. As a material inducement for entering into this Agreement, Owner is relying upon Architect's particular knowledge, experience and expertise, which Architect has affirmatively represented to Owner that it has with respect to rendering the Services. Architect shall at all times faithfully, industriously and, in accordance with the Standard of Care, perform the Services required of and from it pursuant to the terms hereof, all to the reasonable satisfaction of Owner. Upon receipt of written notice from Owner that the Services (or Documents) provided by, or through, Architect do not conform to the requirements and/or representations set forth in this Agreement, Architect shall (as part of the scope of the Services to be performed hereunder) expeditiously perform such corrective services as may be required to bring the Services (including the Documents) into conformance with this Agreement, all at no additional charge to Owner.

**1.3.4** The Parties acknowledge and agree that if Architect has provided any work or services for the Project prior to the Effective Date, then all such labor, materials and services shall be considered part of the scope of the Services hereunder and shall comply with, and conform to, the requirements of this Agreement. Further, as of the Effective Date, any such other agreement or contract governing the performance of work or services by Architect for the Project shall be deemed to have been terminated and superseded by the terms of this Agreement. In addition, Architect hereby acknowledges and agrees that Architect and all of its Subconsultants have been paid in full for any and all services performed prior to the date of this Agreement for Owner and/or in connection with the Project, and represents and warrants that no sums are, or shall become, due and payable on account of any and all services performed in connection with the Project except as may be expressly provided in this Agreement. All payments made by Owner to Architect prior to the Effective Date shall be deemed payments hereunder and shall be credited against and reduce Architect's Fee.

**1.3.5** Architect shall not change or reassign the Key Personnel without the prior written approval of Owner (unless requested by Owner), or unless any of the Key Personnel cease to be employed by Architect or their constituent firms. The Key Personnel shall be primarily responsible for the Services required under this Agreement. Architect shall be fully responsible to Owner for the Services rendered by such Key Personnel, as well as all of Architect's employees, Subconsultants, and other persons and entities working for or through Architect, at all tiers. Owner shall have no liability for the acts or omissions of Architect or of any Subconsultant retained or employed by Architect. Architect shall ensure that all of its Subconsultants perform their work/services in character, sequence and timing so that it will be coordinated with the Services of Architect, Design Consultant, and the services of such other design professional(s) engaged by Owner to design other portions of the Project.

**1.3.6** Architect shall, at all times during the performance of its Services, coordinate with its Subconsultants, Owner, Owner's Representative, Design Consultant, and all other design professionals and consultants that Owner may engage to perform work or services related to the Project, including Contractor. Architect is not responsible for any errors or omissions contained in the instruments of service prepared by consultants or design professionals contracted directly by Owner; however, Architect shall be expected to review all such instruments of service carefully and to notify Owner immediately if Architect observes, discovers or knows of any discrepancies, errors or omissions in such instruments of service that would render same unsuitable or unreliable for proper use as a basis for the Services and/or Documents to be provided by, or through, Architect. Architect shall also incorporate, and integrate, the designs, drawings, plans and instruments of service of all Subconsultants, Design Consultant, Owner's other design professionals/consultants and Contractor into Architect's Documents and, in doing so, Architect shall coordinate all such instruments of service to a single common CAD background for the Project.

**1.3.7** Architect acknowledges and agrees that all Prior Documents and all intellectual property rights, copyrights, rights of reproduction and other interests relating to, and in, the Prior Documents, as well as the Prior Documents as physical property, are and shall remain the property of Owner (and its affiliates). Owner has delivered, or will deliver, the Prior Documents to Architect.

**1.3.8** Architect shall fully execute the Change of Architect/Engineer Form required by the City of Miami Beach in accordance with Chapter 61G1-18.002 of the Florida Administrative Code to change the architect of record for the Project (the "**Change of Architect Form**") and file the fully-executed Change of Architect Form with the City of Miami Beach no later than three (3) days after the Effective Date.

**1.3.9** Architect hereby assumes all professional and legal responsibility for Architect's use (or reuse) of the Prior Documents, as well as any Documents generated as a result of Architect's reuse of the Prior Documents. Architect must be able to document and produce upon request evidence that Architect has in fact recreated all the work done by KKAID. Architect acknowledges that Documents need not be redrawn; however, justification for such action must be available through well kept documentation on the part of Architect as to having rethought and reworked the entire design process for the Project. Architect must use its own title block, seal and signature and must remove KKAID's title block, seal and signature before sealing, signing and dating any Documents.. Additionally, prior to sealing, signing and dating any of the Documents, Architect shall notify KKAID by certified letter of Architect's intention to use or reuse the Prior Documents. With respect to Architect's performance as a successor registered architect for the Project, Architect shall at all times comply with Florida law, including, without limitation, Chapter 481, Florida Statutes, and Chapter 61G1-18.002 of the Florida Administrative Code.

## **ARTICLE 2** **BASIC SERVICES**

### **2.1 GENERAL**

**2.1.1** Architect's Basic Services consist of those described in this Article 2 and include the following: (a) the architectural design of the Project; (b) all structural engineering for the Project; (c) the design and engineering of the Project's mechanical, electrical, plumbing, fire protection and life safety systems; (d) the landscape architecture for the Project; (e) the civil engineering for the Project; (f) the lighting design for the Project;

(g) the aquatic design and engineering for the Project; and (h) the services described in this Agreement, which shall be performed in the phases described herein, all in order to design and prepare coordinated Construction Documents (and other documentation required in conjunction therewith) for the construction of the Project. Architect's Services shall consist of those activities identified in or reasonably inferable as being a part of the Services, as well as any other design activities normally or customarily furnished by Architects for similar projects under the Standard of Care.

**2.1.2** Notwithstanding the preceding requirements, it is hereby agreed that with respect to Basic Services, Architect shall produce a complete and coordinated set of Construction Documents acceptable to Owner that will enable an experienced contractor to undertake and complete the Project. If Contractor is unable to do so, then Architect shall, unless otherwise directed by Owner, promptly take whatever steps are necessary to provide sufficient information or clarify the ambiguities in question to expedite the Work, change the Documents and reduce any potential for delay claims. Such remedial actions on the part of Architect shall be undertaken as a part of the Basic Services.

**2.1.3** Architect shall not commence work/services on any phase of Services until Architect receives from Owner written notice to proceed with such phase of Services. Owner and Architect acknowledge that the Project may, at Owner's option, be developed on a "fast-track" basis, whereby Contractor may commence construction of the Project prior to finalization of the Construction Documents, and that there may be, at times, some overlapping of the Services performed by Architect in the Schematic Design Phase, the Governmental Authorities Review Phase, the Design Development Phase, the Construction Documents Phase, the Bidding Approval Phase and the Construction Administration Phase.

**2.1.4** Architect shall advise Owner of any need for, or advisability of, Owner's securing any tests, analyses, studies, reports, or consultants' services in connection with the development of the design and Construction Documents for the Project.

**2.1.5** In filing Documents with, and securing the Approvals of, Governmental Authorities, all costs associated with changes to the Documents required by such Governmental Authorities shall be included in the Basic Services. Architect shall sign and seal all documents required to be sealed by Governmental Authorities and shall have the obligation to (i) consult with Design Consultant on any and all Governmental Requirements and (ii) review Design Consultant's Documents and advise Design Consultant of any defects and deficiencies in the Documents discovered by Architect.

**2.1.6** Architect acknowledges that preparation of the Construction Documents will be an evolutionary process, and as such, changes resulting from Owner's review or the participation of others shall be included in the Basic Services.

**2.1.7** To the extent required by Owner in its pursuit of the best interest of the Project, Architect shall engage with Owner, Design Consultant, Owner's Representative, its Subconsultants, Owner's other design professionals/consultants and Contractor in their value engineering analysis of the Project (including, without limitation, the structural, architectural, electrical, mechanical and related elements of the Project) and design alternatives, and shall, with the written approval of Owner, incorporate any changes so identified in the design of the Project, regardless of the origin of the value engineering proposed (which may include the interior design professionals). The value engineering process shall be continuous throughout the Design Development, Construction Documents, and the Bidding and Approval Phases. Architect and its Subconsultants shall update all Documents to include all value engineering items accepted by Owner. Architect shall perform value engineering changes to the Documents as part of the Basic Services; however, if the value engineering changes to the Documents constitute a Material Change, then Architect shall perform such value engineering changes as an Additional Service.

## **2.2 SCHEMATIC DESIGN PHASE**

**2.2.1** Architect shall, and shall cause its Subconsultants to, assist Design Consultant in the preparation of preliminary schematic design documents. The preliminary schematic design documents are subject to Owner's approval and shall be based upon Owner's Program (**Exhibit "B"**), the Project Budget (**Exhibit "C"**) and

the Schedule of Performance (**Exhibit “D”**). The preliminary schematic design documents shall establish scaled relationships among the Project components, and shall include, without limitation, preliminary Site plans, floor plans, sections, elevations, study models, perspective sketches, schematic diagrams and narratives of major enclosure, electrical, mechanical, plumbing, Site plan, landscape, hardscape and structural systems sufficient to establish the scope of such systems, survey of applicable Governmental Requirements and, where appropriate, interior core plans and outline specifications. Upon completion of such preliminary schematic design documents, Architect shall prepare further schematic design drawings for review by Owner. These drawings will further illustrate the scale and relationship of the scheme components, architectural theme and proposed building materials. When completed, the schematic design documents (the “**Schematic Design Documents**”) shall include an expanded facilities program incorporating the updated as designed criteria of the final design, a design narrative or preliminary outline specification to address, among other things, mechanical and electrical systems and typical finishes. Architect will consider input from its Subconsultants, Design Consultant, Owner, Owner’s Representative, Owner’s other design professionals/consultants, and Contractor (if one is engaged to the date thereof) in connection with the preparation of the Schematic Design Documents. Notwithstanding anything contained herein to the contrary, Architect acknowledges and agrees that changes to the Project may be required during the preparation of the Schematic Design Documents, and that Architect shall execute such changes as part of its Basic Services. At all times during the Schematic Design Phase, Architect shall coordinate its Services and Documents with the services performed, and the instruments of service prepared, by its Subconsultants, Design Consultant and Owner’s other design professionals/consultants.

## **2.3 GOVERNMENTAL AUTHORITIES REVIEW PHASE**

**2.3.1** Architect shall assist with and attend meetings with Owner, Owner’s Representative, Contractor and the Governmental Authorities, as reasonably requested by Owner in connection with the necessary permits and other Approvals for the Project (it being understood that Architect will attend all meetings with the City of Miami Beach, FL, as requested by Owner). Further, Architect shall provide advice, assistance and documentation requested by Owner with regard to Owner’s efforts to obtain, and/or maintain, any necessary Approvals of Governmental Authorities. Architect understands that its obligations under this phase may overlap with other phases of the Project, such as the Design Development Phase, the Construction Documents Phase and the Construction Administration Phase. At all times during the Governmental Authorities Review Phase, Architect shall coordinate its Services and Documents with the services performed, and the instruments of service prepared, by its Subconsultants, Design Consultant and Owner’s other design professionals/consultants.

## **2.4 DESIGN DEVELOPMENT PHASE**

**2.4.1** Architect shall, and shall cause its Subconsultants to, assist Design Consultant in the preparation of design development documents (the “**Design Development Documents**”). The Design Development Documents are subject to Owner’s approval and shall be based upon the approved Schematic Design Documents, Owner’s Program (**Exhibit “B”**), the Schedule of Performance (**Exhibit “D”**), and the Project Budget (**Exhibit “C”**), including any adjustments thereto that have been authorized in writing by Owner. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents 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, plumbing, life safety and electrical systems, materials and such other elements as may be appropriate. The Design Development Documents shall consist of architectural specifications, plans, elevations, reflected ceiling plans, equipment schedules, diagrams, drawings and other data required for the Project. The Design Development Documents shall comply with all Governmental Requirements. At all times during the Design Development Phase, Architect shall coordinate its Services and Documents with the services performed, and the instruments of service prepared, by its Subconsultants, Design Consultant, and Owner’s other design professionals/consultants.

**2.4.2** At intervals mutually agreeable to Owner and Architect, Architect shall provide drawings and other Documents which depict the current status of design development for Owner’s review and information. Upon completion of the Design Development Phase, Architect shall provide drawings, outline specifications and other Documents for Owner’s approval and information.



**2.4.3** Architect shall consider and integrate input from Architect's Subconsultants, Design Consultant, Owner, Owner's Representative, Owner's other design professionals/consultants and Contractor in connection with the preparation of the Design Development Documents. Architect shall reasonably cooperate in the scheduling of meetings necessary for such input and for Owner's review and approval of the Design Development Documents, which meetings shall be attended by Architect and its Subconsultants, at the request of Owner. Notwithstanding anything contained herein to the contrary, Architect acknowledges and agrees that changes to the Project may be required during the preparation of the Design Development Documents, and that Architect shall execute such changes as part of the Basic Services.

**2.4.4** During the Design Development Phase, Architect shall consider the availability of materials, construction sequencing, economics, environmentally responsible and sustainable design alternatives, LEED, energy conservation, efficiency, safety, and user maintenance. Cost premiums resulting from proposed sustainable initiatives need prior written approval by Owner before implementation. At all times, it is Architect's responsibility to provide cost advice as the Project design evolves.

## **2.5 CONSTRUCTION DOCUMENTS PHASE**

**2.5.1** Architect shall prepare the Construction Documents based upon the approved Design Development Documents, Owner's Program (**Exhibit "B"**), the Schedule of Performance (**Exhibit "D"**), and the Project Budget (**Exhibit "C"**), including any adjustments thereto that have been authorized in writing by Owner. The Construction Documents are subject to Owner's approval. Architect shall, in Architect's preparation of the Construction Documents, use the typical details and additional detailed drawings prepared by Design Consultant. The Construction Documents shall consist of drawings, plans and specifications setting forth in detail the requirements for the construction of the Project, including the quality level of material specified therein. The Construction Documents shall also include door schedules, hardware schedules, finish schedules, details, sections, elevations, window plans (including locations of mullions, transoms, window heights and types), precast details and joint sizes, ornamental stucco details, corner locations and other exterior aesthetic elements, ornamental details reflected ceiling plans, equipment schedules, diagrams, drawings, specifications (only on the drawings), and all other schedules and data required for Contractor to construct the Work. Architect shall prepare the Construction Documents such that they comply with all Governmental Requirements. If Architect reuses any of the Prior Documents in the preparation of the Construction Documents, then such reuse shall comply with the terms of this Agreement and Chapter 61G1-18.002 of the Florida Administrative Code. At all times during the Construction Documents Phase, Architect shall coordinate its Services and Documents with the services performed, and instruments of service prepared, by its Subconsultants, Design Consultant and Owner's other design professionals/consultants.

**2.5.2** At intervals mutually agreeable to Owner and Architect, Architect shall provide the Construction Documents for Owner's review and information. Upon completion of the Construction Documents Phase, Architect shall provide Construction Documents for Owner's approval and information. Architect shall prepare, in accordance with the Schedule of Performance (**Exhibit "D"**), Construction Documents in such sequence, in such scope and in such detail as will enable proposed contractors to establish a guaranteed maximum price or lump sum price for the construction of the Project.

**2.5.3** Notwithstanding anything contained herein to the contrary, Architect acknowledges and agrees that changes to the Project may be required during the preparation of the Construction Documents, and that Architect shall execute such changes as part of its Basic Services.

## **2.6 BIDDING AND APPROVAL PHASE**

**2.6.1** During this phase of its Services, Architect shall perform, among other things, the following tasks:

- .1** Deliver to Owner all final, approved Construction Documents and other documents showing in detail the requirements of the approved design in PDF

and CAD format on a CD-ROM disk and half-size sets which can be reproduced by Owner;

- .2 Participate in pre-bid conferences with the bidders;
- .3 Respond to requests for information (“**RFIs**”) and questions within three (3) days after receipt from all prospective bidders and to respond with interpretations and clarifications of the Construction Documents and promptly issue addenda to that end when and as applicable; and
- .4 Assist Owner in filing documents with, and securing the Approvals of, Governmental Authorities and assist Contractor in obtaining building permits and other Approvals from appropriate Governmental Authorities.

**2.6.2** Architect shall also consider requests for substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors. In doing so, Architect shall evaluate reasonable substitute materials and alternate details that may be proposed by Owner or any contractor(s). If a substitution proposed by a contractor and approved by Architect is accepted by Owner, and such substitution requires changes to the Documents prepared to date by Architect, Architect shall prepare such changes to the Documents as a part of the Basic Services. Architect understands that this phase may overlap with other phases of the Project, such as the Construction Documents Phase and the Construction Administration Phase. At all times during the Bidding and Approval Phase, Architect shall coordinate its Services and Documents with the services performed, and the instruments of service prepared, by its Subconsultant and Owner’s other design professionals/consultants.

**2.6.3** If, after bidding, the proposed cost for the construction of the Project exceeds the Project Budget, Architect will propose and/or review appropriate value engineering and incorporate the approved value engineering in the Construction Documents at Architect’s expense. Additionally, Architect will, if necessary, redesign any and all phases of the Project (in accordance with the Governmental Requirements) so that Owner’s Project Budget shall not be exceeded. All costs associated with such engineering and redesign efforts shall be the responsibility of Architect and be included in the Basic Services.

**2.6.4** Architect shall inform Owner of any tests, studies, analyses or reports necessary or advisable to be performed by, or for, Owner.

## **2.7 CONSTRUCTION ADMINISTRATION PHASE**

**2.7.1** Architect’s responsibility to provide Basic Services for the Construction Administration Phase under this Agreement commences with Owner’s award of the first contract for the construction of the Project and terminates at Final Completion of the Work. At all times during the Construction Administration Phase, Architect shall coordinate its Services with the services performed by its Subconsultants, Design Consultant and Owner’s other design professionals/consultants. During the Construction Administration Phase, Architect shall cause Bernardo Saenz, or another employee of Architect approved in writing by Owner, to perform Construction Administration Phase Services on-Site between 8:00AM – 5:00PM, Monday through Friday (and Saturdays, if requested by Owner). If Owner requests in writing that Bernardo Saenz, or another licensed architect approved in writing by Owner, be removed from the Site, then Architect shall remove and replace such person with another licensed architect approved in writing by Owner.

**2.7.2** Architect shall assist Owner in providing administration of the Construction Contract as set forth below and in the Construction Contract. As more particularly described below, Architect shall engage in the following during the Construction Administration Phase:

- .1 Conduct Site visits with its Subconsultants as often as necessary, but no less than once per week, to ensure that the Work is being completed in accordance with the Construction Documents, and to review construction milestone events

as requested by Owner and as appropriate to confirm general conformance to the design intent and the Construction Documents;

- .2 Review, and promptly prepare responses to, Contractors' shop drawings and submittals no later than three (3) days, and RFIs no later than three (3) days, after Architect's receipt thereof, respectively;
- .3 Participate in conference calls as often as necessary to review construction activities and respond to Contractors' questions regarding the Project, including questions regarding design issues and visit the Site as directed by Owner to monitor Contractor's workmanship;
- .4 Attend Site visits with its Subconsultants when requested by Owner to determine whether Substantial Completion and Final Completion milestones have been achieved and prepare lists of punch list items to be completed by Contractor at each such stage; and
- .5 Review as-built information prepared by Contractor and complete reproducible as-built documents as described in Paragraph 2.7.15 hereof for submittal to Owner.

**2.7.3** Architect shall advise and consult with Owner during construction of the Project until Final Completion. Architect shall not have the authority to act on behalf of Owner, unless Architect is expressly authorized to do so by separate written instrument signed by Owner and Architect.

**2.7.4** Architect shall visit the Site with its Subconsultants at intervals appropriate to the stage of construction as outlined in Paragraph 2.7.2, or as otherwise agreed by Owner and Architect in writing, to (1) become familiar with, and to keep Owner informed about, the progress and quality of the Work completed, (2) use its diligent, professional efforts to guard Owner against defects and deficiencies in the Work, and (3) determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Construction Documents. However, Architect shall not be required to make exhaustive or continuous on-Site reviews to check the quality or quantity of the Work. Architect shall keep Owner informed of the progress and quality of the Work, and shall promptly advise Owner of any defects and deficiencies in the Work discovered by Architect. Architect shall submit to Owner a written report subsequent to each such on-Site visit. Additionally, Architect shall prepare and deliver to Owner, on a weekly or bi-weekly basis (depending on the stage of construction and Project needs) a report describing the progress of the Work.

**2.7.5** Architect shall not have control over or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work; provided, however, Architect shall inform Owner and Contractor of any of the foregoing means, methods, techniques, sequences and procedures which Architect observes and which do not conform to the Construction Documents. Provided Architect has complied with Paragraph 2.7.2.1, Architect shall not be responsible for Contractor's schedules or Contractor's failure to carry out the Work in accordance with the Construction Contract or the Construction Documents; *provided, however*, Architect shall inform Owner if Architect becomes aware that Contractor has failed, or may likely fail, to comply with the scheduling requirements of the Construction Documents. Architect shall not have control over or charge of acts or omissions of Contractor, subcontractors, or their respective agents or employees, or of any other persons performing portions of the Work.

**2.7.6** Architect shall, at reasonable times, have reasonable access to the Work wherever it is in preparation or progress.

**2.7.7** In the sole discretion of Owner, Owner may require Architect and Architect's Subconsultants to come to the Site where Work may be disrupted or delayed by what appears to be insufficiency in design details or a failure to coordinate the design effort. The cost to Architect (and its Subconsultants) is part of Basic Services and shall not be considered Additional Services herein. Architect has no authority to make changes

to approved Construction Documents, and shall not do so without Owner's written approval. Owner reserves the right to communicate directly with Architect's Subconsultants.

**2.7.8** Based on Architect's observations and evaluations of Contractor's applications for payment, Architect shall review and recommend the amounts due Contractor. Architect shall provide to Owner for its review drafts of proposed, written certifications for payment to Contractor and, as requested by Owner, shall then finalize and issue such certifications for payment.

**2.7.9** Architect's certification for payment shall constitute a representation to Owner, based on Architect's observations at the Project as provided in Paragraphs 2.7.2 and 2.7.4 and on the data comprising Contractor's application for payment that the Work has progressed to the point indicated and the quality of the Work is in accordance with the Construction Contract and Construction Documents. The foregoing representations are subject to results of subsequent tests and inspections, to minor deviations from the Construction Documents correctable prior to completion and to specific qualifications expressed by Architect. The issuance of a certification for payment, however, shall not be a representation that Architect has (1) reviewed construction means, methods, techniques, sequences, or procedures; (2) reviewed copies of requisitions and partial and full lien waivers and releases of liens received from the subcontractors and material suppliers and other data requested by Owner to substantiate Contractor's right to payment; or (3) ascertained how, or for what purpose, Contractor has used money previously paid on account of the Construction Contract.

**2.7.10** Architect shall reject Work that does not conform to the Construction Documents, Governmental Requirements or the Construction Contract, but if Contractor disputes the rejection of any Work and its correction involves additional cost or time, it shall be Owner's option to accept such Work whether it be conforming or non-conforming. Whenever Architect considers it necessary or advisable to implement the intent of the Construction Documents, Architect will recommend additional inspection or testing of the Work in accordance with the provisions of the Construction Contract, whether or not such Work is fabricated, installed, or completed. Neither this authority of 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 Architect to Contractor, or its subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

**2.7.11** Architect shall review and approve, or take other appropriate action upon, Contractor's submittals such as shop drawings, product data and samples, for the purpose of: (1) assuring compliance with Governmental Requirements; (2) assuring that the Work affected and represented by such submittals is in compliance with the requirements of the Construction Documents and (3) confirming that such shop drawings provide for a design product that is functionally usable for the original design intent and standards. Architect shall be responsible for determining what aspects of the Work shall be the subject of shop drawings and submittals. Architect shall not knowingly permit such aspects of the Work to proceed in the absence of approved shop drawings or other submittals. For each such submittal, Architect shall either (a) accept and approve such submittal, or (b) reject such submittal (with or without requirements for modifications). Architect's action with regard to submittals shall be taken with such reasonable promptness so as to not cause delay in the Work or in the construction of Owner's own forces or of Owner's separate contractors, while allowing sufficient time to permit adequate review of the submittals, but in no event more than three (3) business days after Architect's receipt of the submittals. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by Contractor, all of which remain the responsibility of Contractor if required by the Construction Contract or by Governmental Requirements. Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Architect, of construction means, methods, techniques, sequences or procedures. Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Construction Contract, Architect shall be entitled to rely upon such certification to establish that the materials, systems, or equipment will meet the performance criteria required by the Construction Documents. Owner is entitled to rely on Architect's review consistent with the terms set forth herein.

**2.7.12** Architect shall review and respond to RFIs from Contractor. When applicable, Architect shall prepare supplemental Documents, including drawings, details and specifications, in response to RFIs.

Architect shall respond to RFIs promptly as not to delay the Work or other aspects of construction of the Project, but in no event later than three (3) business days after receipt of an RFI.

**2.7.13** Architect shall have no authority to bind Owner or to accept or execute changes to the Construction Contract or any other contracts executed by Owner with regard to the Project. This includes, without limitation, changes to the price of the Construction Contract or changes to the time within which Contractor is required to perform the Work (whether by change order or construction change directive) and minor changes in the Work.

**2.7.14** With respect to changes to the Construction Contract or the Work, Architect shall perform the following:

- .1 preparing, reproducing and distributing drawings, specifications and modifications to the Construction Documents that describe Work that is added, deleted, or modified; and
- .2 preparing and maintaining a drawing revision log.

**2.7.15** Upon Substantial Completion of the Work by Contractor, Architect shall also prepare a set of reproducible record “as built” Construction Documents, showing all changes in the Work made during construction, including those changes set forth on marked-up prints and other data furnished by Contractor to Owner (including RFIs, sketches, Project bulletins, and addendums), all of which shall be coordinated to a common CAD background for the Project for its instruments of service and all instruments of service developed by its Subconsultants and Contractor. All such changes shall be actually incorporated into a revised set of reproducible record “as built” Construction Documents, rather than highlighted as notations with “clouding” or other markings (e.g., if a pipe has been moved to the left or right during the performance of the Work, then the “as built” set will show the actual location of such pipe rather than simply stating that it has been moved). In other words, the as-built Construction Documents shall be prepared in such a manner so as to illustrate the actual, as-built conditions of the Work rather than comparing the Work as designed to the Work as constructed. In doing so, Architect shall also provide the final, record “as built” Construction Documents in electronic format (e.g., plot files on CD-ROM media). Architect may, acting in a commercially reasonable manner, rely on information provided by others for the preparation of the record “as-built” Construction Documents and shall not be responsible for errors in such information, provided that Architect exercises proper precautions relating to the review thereof (e.g., the coordination of that information with its records regarding changes, field orders, etc.).

**2.7.16** Architect shall, at appropriate times or when reasonably requested by Owner, conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion.

## **2.8 THE PROJECT CLOSE-OUT PHASE**

**2.8.1** Architect shall perform the Project Close-Out Phase administration services consisting of:

- .1 evaluation of Contractor’s final application for payment and recommendation of amounts to be withheld;
- .2 recommendation to Owner of issuance of a certification that Contractor has achieved Substantial Completion of the Work;
- .3 receipt of as-built information from Contractor and review of warranties and guarantees to ensure that they are in compliance with the Construction Documents and Construction Contract; and
- .4 recommendation to Owner of issuance of a certification that Contractor is due final payment under the Construction Contract.

2.8.2 Architect shall review and ascertain the status of completion by Contractor of the prior punch-list inspections.

2.8.3 Architect shall provide Owner, at Final Completion of the Project:

- .1 A record set (as defined below) of approved permit Construction Documents. This record set of Construction Documents, which shall be the property of Owner, must be in PDF and CAD format on a CD-ROM disk and half-size sets. Reproduction costs for the Construction Documents shall be paid for by Owner. For the purposes of this Paragraph 2.8.3.1 only, the record set of approved permit Construction Documents shall incorporate modifications and changes to the drawings issued by Architect or transmitted to Architect during the Construction Administration Phase but not include documentation of Contractor-developed field markups and redlines not transmitted to Architect that are for general facilitation of construction and subcontractor activity.

2.8.4 Architect shall maintain all Construction Documents for a period of ten (10) years following Final Completion.

### **ARTICLE 3** **ADDITIONAL SERVICES**

#### **3.1 GENERAL**

3.1.1 When approved in writing, by Owner, Architect shall provide Additional Services hereunder. When Owner has approved Architect's performance of Additional Services, all terms of this Agreement pertaining to the Services shall apply to such Additional Services, or deleted or modified Services, except as expressly provided otherwise by Owner in writing. Architect shall promptly notify Owner in writing when Architect deems it necessary or appropriate to perform any Additional Services, and such Additional Services shall be provided by Architect only if such Additional Services and the cost thereof are authorized in writing by Owner, in its sole and absolute discretion, prior to Architect commencing such Additional Services. If Architect proceeds with any Additional Services prior to its receipt of Owner's express written approval to proceed with such Additional Services, then Architect shall be deemed to have waived any claim for an increase in the amount of the compensation to be paid to Architect pursuant to this Agreement with respect to such Additional Services.

### **ARTICLE 4** **SCHEDULE OF PERFORMANCE**

#### **4.1 SCHEDULE OF PERFORMANCE**

4.1.1 Architect at all times shall proceed diligently to complete the Services, including any authorized Additional Services, as expeditiously as is consistent with the Standard of Care and the orderly progress of such Services. Architect shall at all times provide sufficient personnel to perform its Services in accordance with the Schedule of Performance attached hereto as **Exhibit "D."** Architect's Services shall be performed in accordance with the Schedule of Performance. Architect agrees to complete each portion or phase of the Services on or before the deadlines established in the Schedule of Performance attached hereto as **Exhibit "D."** No act or default by Architect and/or any other Subconsultants shall constitute a cause for delay or stoppage of Architect's Services or for an extension of time to complete such Services. Further, no controversy or dispute of any kind between the Parties hereto or between Architect, the Subconsultants, Contractor, or Owner's separate contractors shall constitute a cause for delay or stoppage of Architect's Services or for an extension of time to complete such Services, provided that (a) Architect is given the necessary information to continue its performance, and (b) in case of any such controversy or dispute all undisputed payments are made to Architect when due. Notwithstanding the foregoing, if Owner fails and/or refuses to make undisputed payments due hereunder to Architect in accordance with this Agreement, and such failure continues for ten (10) business days after Owner's receipt of a written notice of such failure from Architect, then Architect shall have the right, seven (7) days after Owner's receipt of such notice, to

stop performing the Services under this Agreement until such payments are made, at which point Architect shall resume its performance of the Services under this Agreement.

**4.1.2** Performance of the Services shall commence on the date provided for in Exhibit "D," and shall continue until Architect satisfactorily performs the Services, and Owner duly accepts the same as complete. Architect acknowledges that TIME IS OF THE ESSENCE and that Owner's business interests may suffer substantial losses if the Services are not completed in accordance with Exhibit "D." In this regard, Architect hereby accepts and confirms that the Schedule of Performance, including milestone dates, set forth in Exhibit "D," is a reasonable time to complete the Services with professional skill and care and the Standard of Care.

**4.1.3** Subject to terms and conditions of this Agreement, Architect shall be excused from Force Majeure Delays in the completion of its obligations hereunder. If Architect is delayed in the performance of its Services due to a Force Majeure Delay, then Architect shall provide Owner written notice of the Force Majeure Delay no later than five (5) days from the onset of the Force Majeure Delay and such notice shall describe the details of the cause and nature of the Force Majeure Delay, the length of delay due to the Force Majeure Delay and the effect on Architect's performance of its obligations hereunder.

## **ARTICLE 5**

### **OWNER'S RESPONSIBILITIES**

#### **5.1 OWNER'S RESPONSIBILITIES**

**5.1.1** Owner shall provide necessary information regarding requirements for the Project (other than Governmental Requirements, which shall be the sole responsibility of Architect to obtain), and Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and Site requirements.

**5.1.2** Owner shall update the Project Budget as and when appropriate.

**5.1.3** Owner or Owner's Representative shall render decisions in a timely manner pertaining to documents submitted by Architect in order to avoid unreasonable delay in the orderly and sequential progress of Architect's Services in accordance with the Schedule of Performance set forth in Exhibit "D."

**5.1.4** Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations for the Site of the Project, and a written legal description of the Project, promptly after such information is requested by Architect and reasonably required by the scope of the Project. The surveys and legal information shall include, as applicable, (a) grades and lines of streets, alleys, pavements and adjoining property and structures; (b) adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Project; (c) locations, dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and (d) information concerning 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.

**5.1.5** Owner shall furnish the services of geotechnical engineers promptly after such services are requested by Architect and reasonably required by the scope of the Project and are not otherwise to be provided herein as part of Basic Services. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

**5.1.6** Owner shall furnish the services of other consultants, if required, when such services are reasonably required by the scope of the Project, and are not otherwise to be provided as part of the Services.

**5.1.7** Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law.

Except for hazardous materials, it shall be Architect's responsibility to determine if and when such tests, inspections, or reports may be necessary.

5.1.8 The services, information, tests, surveys, and reports required by Paragraphs 5.1.4 through 5.1.7 shall be furnished at Owner's expense and Architect shall be entitled to rely upon the accuracy and completeness thereof, except that Architect shall promptly review and verify such services, information, tests, surveys, and reports and notify Owner of any error, inconsistency, or omission therein discovered by Architect.

## **ARTICLE 6** **PROJECT BUDGET**

### **6.1 PROJECT BUDGET**

6.1.1 The Project Budget is set forth on Exhibit "C" to this Agreement.

## **ARTICLE 7** **DOCUMENTS**

### **7.1 OWNERSHIP OF THE DOCUMENTS**

7.1.1 All Documents and all intellectual property rights, copyrights, rights of reproduction and other interests relating to, and in, the Documents, as well as the Documents as physical property, are and shall remain the property of Owner (and its affiliates), shall be considered "works made for hire" under 17 U.S.C. § 101 and shall be delivered to Owner, without charge, on request, excluding only Architect's standard details to the extent they are a part of the Documents (which standard details Owner and Owner's Representative shall have the right and an irrevocable, perpetual license to use to the extent they constitute a portion of the Documents). Architect grants, assigns, transfers and forever conveys to Owner (and its affiliates) all rights, title and interests in the Documents, including, without limitation, moral rights. Owner (and its affiliates) shall be entitled to the exclusive use of all the Documents and no use thereof shall be made by Architect for any purpose other than in connection with the Project. No articles, papers or treatises related to, or in any way associated with the Services performed pursuant to this Agreement shall be submitted for publication without the prior written consent of Owner. In those instances where a public agency or official requires information, Architect may, with the prior written consent of Owner's Representative, provide such results or information as is necessary to perform the Services pursuant to this Agreement. The results of Architect's Services under this Agreement, including the Documents, shall be the exclusive property of Owner and Architect shall not disclose such results to any third party or use the same for the benefit of any third party other than Owner. Architect shall deliver to Owner upon completion of the Project a complete as-built set of the Construction Documents, pursuant to the terms and conditions of this Agreement, including, but not limited to, a complete architectural, structural and MEP set of drawings incorporating all changes approved and made during the construction. Any re-use of the Documents by Owner for purposes other than the Project shall be at Owner's sole risk. Nothing in this Section 7.1.1 shall limit Architect's ability to use Architect's standard details, standard industry knowledge, standard specifications, or general practices.

7.1.2 The provisions of this Article 7 shall survive completion of the Services, final payment hereunder or any earlier termination of this Agreement.

## **ARTICLE 8** **BASIS OF COMPENSATION**

### **8.1 COMPENSATION FOR BASIC SERVICES**

8.1.1 As consideration for Architect's complete, proper and timely performance of the Basic Services, Owner shall pay Architect's Fee in the amount of Three Million Sixty-Nine Thousand Nine Hundred Four and 00/100 Dollars (\$3,069,904.00), which is payable as set forth on Exhibit "G."

Amended to  
\$7,069,904



Amended to  
\$3,584,064

8.1.2 Prior to the Effective Date, Owner paid to Subconsultants directly Six Hundred Fifty-Two Thousand One Hundred Fifty-Three and 00/100 Dollars (\$652,153.00), which amount shall be credited against and reduce Architect's Fee as set forth on Exhibit "G." Therefore, the unpaid portion of Architect's Fee is Two Million Four Hundred Seventeen Thousand Seven Hundred Fifty-One and 00/100 Dollars (\$2,417,751.00), which is payable as set forth on Exhibit "G."

## 8.2 COMPENSATION FOR ADDITIONAL SERVICES

\$3,485,840

8.2.1 Payment for Additional Services shall be computed on either of the following bases (at Owner's election in Owner's sole discretion): (a) a time and expense basis measured by the hourly rates listed in Exhibit "E" (without mark-up), plus reimbursable expenses; or (b) a lump sum basis subject to the Parties' prior written agreement. Payments for Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of Architect's statement of services rendered or expenses incurred, together with any supporting documentation reasonably requested by Owner.

## 8.3 REIMBURSABLE EXPENSES

8.3.1 For each monthly payment that Owner makes to Architect in accordance with Paragraph 9.1.2, Owner shall pay to Architect for all of Architect's Reimbursable Expenses (not including Reimbursable Expenses attributable to Subconsultants), the amount of six percent (6%) of the portion of Architect's Fee attributable solely to Architect, which six percent (6%) shall not be calculated to include the portion of Architect's Fee attributable to the Subconsultants. Reimbursable Expenses attributable to Subconsultants shall be billed at the actual direct expense incurred by the Subconsultant (without mark-up or multiplier) and supported by evidence of the amounts thereof as reasonably required by Owner. Reimbursable Expenses are in addition to compensation for Basic and Additional Services and shall include the following expenses, without limitation: transportation; reproductions; additional insurance coverage or limits, including professional liability insurance, requested by Owner in excess of those limits specified in Article 10; and if authorized in advance by Owner, expense of overtime work requiring higher than regular rates.

## 8.4 CORRECTIONS; INCONSISTENCIES

8.4.1 No compensation shall be paid to or claimed by Architect for Services (a) required to correct deficiencies in any Documents, including instruments of service, reports or studies prepared by or through Architect (or Architect's Subconsultants), and/or (b) attributable to errors or omissions of Architect (or Architect's Subconsultants).

8.4.2 Should any errors, omissions or inconsistencies in Architect's Documents cause Owner to incur additional costs from others, Architect shall reimburse or pay Owner such additional costs within ten (10) days after receipt of an invoice for such costs.

# ARTICLE 9 PAYMENTS TO ARCHITECT

## 9.1 PAYMENTS TO ARCHITECT

9.1.1 Architect shall submit invoices monthly to Owner based upon the percent complete of Services performed in the prior month. Architect shall submit to Owner invoices (together with proper back-up documentation) on a monthly basis for Basic Services and Additional Services, if any, rendered and Reimbursable Expenses incurred. Such invoices shall reflect Architect's estimate of the total Services performed to date, less all payments previously made by Owner to Architect.

9.1.2 For the purpose of this Agreement, the initial Application Date shall be the 25th day of each month in which the Services are being invoiced. Owner reserves the right to adjust the Application Date from time to time in its sole but reasonable discretion. If Architect submits proper and complete invoices for a month on or before the Application Date for that month then, provided that all conditions precedent to such payment set forth

herein have been satisfied, Architect shall be paid within forty-five (45) days following the Application Date. If Architect submits proper and complete invoices for a month after the Application Date for that month then, provided that all conditions precedent set forth herein to such payment have been satisfied, Architect shall be paid within forty-five (45) days after the Application Date for the following month.

**9.1.3** If Owner objects to Architect's invoice or any portion thereof, then Owner shall endeavor to notify Architect of such objection within fifteen (15) days after Owner's receipt of such invoice; however, Owner's failure to provide such notice within such time frame shall not result in a waiver of any claims by Owner or Owner's right to object to Architect's invoice. Owner may withhold the amount of such invoice in dispute and Owner shall pay the undisputed portion of such invoice as set forth herein. Undisputed payments due which are not timely paid by Owner shall bear interest in accordance with Paragraph 14.3.1 hereof, provided that Owner's refusal to pay disputed amounts of Architect's invoices shall not constitute a payment default and, as a result, such disputed amounts shall not accrue interest unless or until the day that such dispute is resolved in favor of Architect. Architect may not suspend the performance of its Services on account of amounts of its invoices that Owner disputes and withholds payment and Architect shall continue to perform its Services pending the resolution of any such payment dispute between Owner and Architect.

**9.1.4** Architect shall also provide with each invoice the back-up information in support of the invoice that is reasonably requested by Owner, including the weekly time sheets of Architect's personnel which have been previously approved in writing by Owner on a weekly basis. As a condition precedent to Owner's obligation to make progress payments, it is expressly agreed that Architect shall furnish to Owner (a) a conditional waiver and release of claims from Architect and each of its Subconsultants that have performed any of the Services described in the invoices submitted in support of such progress payment in the total amount of the payment being requested, conditioned only on the receipt of payment of such amount, (b) for Architect and each Subconsultant who performed Services which were described in the invoices previously paid for by Owner, an executed Unconditional Partial Waiver and Release of Claim in the form attached hereto as **Exhibit "F"** for all Services performed which were included in the invoices previously paid for by Owner and (c) releases of liens, if any claims of liens have been recorded. As a condition precedent to Owner's obligation to make final payment to Architect for all Services properly performed under this Agreement, it is expressly agreed that Architect shall furnish to Owner, for Architect, and for each of its Subconsultants who furnished Services: (i) conditional waivers and releases upon final payment, and within ten (10) days after receipt of payment, Architect shall deliver an executed Unconditional Final Affidavit and Waiver and Release of Claim in the form attached hereto as **Exhibit "F"** and (ii) final satisfactions of all liens and claims arising out of this Agreement.

## **9.2 ARCHITECT'S ACCOUNTING RECORDS**

**9.2.1** Records of expenses pertaining to Additional Services and services performed on an hourly basis shall be available to Owner and Owner's Representative during business hours and where the Project is located, shall be submitted to Owner with each of Architect's statement of services, and shall be subject to inspection and audit for a period of three (3) years following Final Completion.

## **ARTICLE 10** **INSURANCE AND INDEMNITY**

### **10.1 ARCHITECT'S LIABILITY INSURANCE**

**10.1.1 Types and Amounts of Insurance.** Architect shall purchase and maintain the following types and minimum amounts of insurance:

- .1 Workers Compensation/Employers Liability Insurance.** Workers compensation insurance that complies with all applicable statutory requirements. Employers liability insurance that has a limit of not less than One Million and 00/100 Dollars (\$1,000,000.00) and includes a Waiver of Right to Recover From Others endorsement (NCCI form WC 000313) naming the Indemnitees;

- .2 **Commercial General Liability Insurance.** Commercial general liability insurance on a per occurrence basis, covering all operations of Architect as named insured, including (a) independent contractor coverage, (b) products/completed operations liability coverage (which shall be maintained for two (2) years following Final Completion), (c) broad form property damage liability coverage, (d) broad form contractual liability coverage that insures Architect's liabilities assumed under this Agreement, including the indemnification obligations under Paragraph 10.3.1, (e) advertising injury coverage and (f) bodily injury, personal injury (with employee and contractual exclusions deleted), property damage and death coverage, with limits of not less than Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence and Four Million and 00/100 Dollars (\$4,000,000.00) the general aggregate;
- .3 **Automobile Liability Insurance.** Automobile liability insurance with limits of liability of not less than One Million and 00/100 Dollars (\$1,000,000.00) combined single limit for bodily injury and property damage coverage. Such coverage shall include all automobiles owned, leased, hired or non-owned. In addition, Architect's automobile liability insurance policy shall include coverage for automobile contractual liability;
- .4 **Umbrella Liability Insurance.** Umbrella (excess) liability insurance on a per occurrence basis with a limit of liability of not less than Five Million and 00/100 Dollars (\$5,000,000.00) per occurrence and Five Million and 00/100 Dollars (\$5,000,000.00) in the annual aggregate excess of primary insurance, and a maximum Ten Thousand and 00/100 Dollars (\$10,000.00) self-insured retention or deductible per occurrence. This policy shall apply on a "following form" basis to the underlying insurance policies; and
- .5 **Professional Liability Insurance.** Professional liability insurance (or errors and omissions insurance) that provides coverage for (a) claims arising out of the Services provided by Architect, (b) errors and omissions in the Documents prepared by or through Architect, and (c) the indemnity in Paragraph 10.3.1. The professional liability insurance shall have a limit of not less than Five Million and 00/100 Dollars (\$5,000,000.00) each claim and Ten Million and 00/100 Dollars (\$10,000,000.00) in the annual aggregate, with a maximum Fifty Thousand and 00/100 Dollars (\$50,000.00) self-insured retention or deductible per claim.

**10.1.2 TERMS, CONDITIONS AND ENDORSEMENTS.** All of the insurance in Paragraph 10.1.1 shall be subject to the following terms, conditions and endorsements.

- .1 **Insurer.** The insurance shall be purchased from a company with an "A-IX" or better rating from A.M. Best Company which is both lawfully able to provide insurance in the jurisdiction in which the Project is located and acceptable to Owner.
- .2 **Additional Insureds Endorsements.** All insurance, except the workers compensation and professional liability insurance, shall include the Indemnitees as additional insureds thereunder, on a primary and non-contributory basis, pursuant to ISO Form CG 20 10 (11/85) or equivalent endorsement(s). Subsequent editions of these ISO Forms are not acceptable. The coverage provided to the additional insureds must be as broad as that provided to Architect and shall not contain any additional exclusionary language or limitations applicable to such additional insureds. These endorsements shall apply without regard to other provisions of this Agreement.

- .3 **Primary Insurance.** Architect's commercial general liability insurance, the automobile liability insurance, and the umbrella liability insurance shall apply as primary insurance, without any right of contribution by any other insurance that may be carried by Indemnitees regarding the Services under this Agreement. Any general liability, automobile liability or umbrella liability insurance purchased by the Indemnitees is, or has been, specifically purchased as excess over any general liability, automobile liability or umbrella liability purchased by Architect.
- .4 **Contractual Liability Insurance.** ISO or other endorsements that restrict or modify the extent of the standard contractual liability coverage afforded by the commercial general liability and automobile liability insurance policies are not acceptable.
- .5 **Severability of Interest.** The insurance shall include a severability of interest clause for all named insureds and additional insureds.
- .6 **Duration.** Coverage shall be maintained, without interruption, from the date of commencement of Architect's Services under this Agreement until the date of the final payment, except that the professional liability insurance and umbrella policies shall continue for seven (7) years after Architect's completion of its Services hereunder. The insurance obligations shall survive the expiration or termination of this Agreement.
- .7 **Notice of Cancellation, Etc.** The insurance policies, certificates of insurance, and any renewals shall contain a provision that the insurer or Architect shall give Owner at least thirty (30) days' prior written notice of any cancellation, termination, material modification or non-renewal of the insurance by registered or certified mail, return receipt requested. In the certificate of insurance, any "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" wording in the cancellation notification portion shall be deleted.
- .8 **Defense.** The insurance obtained by Architect, except for professional liability and workers compensation insurance, shall provide that the insurer shall defend any suit against the additional insureds, even if such suit is allegedly or actually frivolous or fraudulent.
- .9 **Delivery of Certificates and Policies.** Original certificates of insurance and all endorsements, in a form acceptable to Owner, should be submitted to Owner by the time this Agreement is executed by Architect, and in no event later than commencement of the Services. Architect's certificate of insurance shall be endorsed as follows: *"The Indemnitees (as defined in the subject contract) are named as additional insureds for all insurance except the workers compensation and the professional liability insurance. A waiver of subrogation in favor of the Indemnitees is included for all insurance. This insurance is primary to and non-contributing with any and all insurance of the Indemnitees."* The Certificate Holder box shall identify the name and address of Owner. With respect to insurance coverage required to remain in force after final payment, Architect shall annually submit certificates of insurance evidencing continuation of such coverage. Architect shall submit copies of the policies no later than ten (10) days after a request from Owner. Architect shall provide its insurance carriers with a copy of this Agreement and shall require such insurance carriers to hold this Agreement and all Confidential Information (as defined herein) contained therein in strict confidence.

**.10 Non-Waiver.** PERMITTING ARCHITECT TO START WORK OR RELEASING ANY PAYMENT PRIOR TO COMPLIANCE WITH THESE REQUIREMENTS SHALL NOT CONSTITUTE A WAIVER THEREOF.

**.11 Deductibles, Premiums and Self-Insured Retentions.** Architect shall be solely responsible to pay or otherwise satisfy all premiums, deductibles and self-insured retentions applicable to the insurance policies that Architect is required to procure and maintain pursuant to this Agreement.

**10.1.3** Architect shall immediately report to Owner, and promptly thereafter confirm in writing, the occurrence of any injury, loss or damage incurred by Architect related to the Project, or Architect's receipt of notice or knowledge of any claim by a third party or any occurrence that might give rise to such a claim. It shall be the responsibility of Architect to restore and maintain the limits provided by the policies of insurance described in this Agreement against any substantial impairment. If any of the insurance required to be maintained by Architect pursuant to this Agreement contains aggregate limits which apply to operations of Architect other than those operations which are the subject of this Agreement, and such aggregate limits are diminished to less than fifty percent (50%) of the limits required by this Agreement after any one or more incidents, occurrences, claims, settlements or judgments against such insurance, Architect shall so notify Owner and Architect shall take immediate steps to restore aggregate limits to the limits required by this Agreement or shall maintain other insurance protection for such aggregate limits.

**10.1.4** Architect shall require all Subconsultants engaged or employed by or through Architect in connection with the performance of the Services to carry and maintain the insurance set forth in Paragraph 10.1.1 above, including, without limitation, professional liability insurance that provides coverage for (a) claims arising out of the Services provided by Subconsultants and (b) errors and omissions in the Documents prepared by or through Subconsultants. Subconsultants' professional liability insurance shall have a limit of not less than One Million and 00/100 Dollars (\$1,000,000.00) each claim and Two Million and 00/100 Dollars (\$2,000,000.00) in the annual aggregate, with a maximum Fifty Thousand and 00/100 Dollars (\$50,000.00) self-insured retention or deductible per claim. Architect shall furnish to Owner evidence of the Subconsultants' insurance required by this Agreement as Owner may reasonably request in its sole discretion. It is understood and agreed, however, that neither the review nor acceptance of the terms, conditions or amount of any insurance policy proposed or maintained by any Subconsultant shall be deemed a warranty or representation by Owner as to the adequacy of such coverage. Architect shall be solely liable for determining whether its Subconsultants are adequately insured. Architect's Subconsultants' insurance shall conform to all of the requirements of this Article 10. Architect covenants and agrees to indemnify, protect and hold harmless Owner and the other Indemnitees from any and all costs, charges, expenses and liabilities resulting from Architect's failure to comply with its obligations set out in this Paragraph 10.1.4.

## **10.2 WAIVER OF SUBROGATION**

**10.2.1** Architect waives all rights of recovery against the Indemnitees for any losses covered by insurance. Architect agrees to defend and indemnify the Indemnitees from all such subrogation claims.

## **10.3 INDEMNIFICATION**

**10.3.1** To the fullest extent permitted by law and at Architect's sole cost and expense, Architect and Architect's successors and assigns, shall defend, indemnify, protect and hold the Indemnitees harmless from and against any and all claims, demands, damages, losses, lawsuits and other proceedings, judgments, causes of action, liabilities, claims of lien, liens, civil or criminal penalties and charges, costs and expenses (including, without limitation, claims for property damage or bodily injury, including death and reasonable attorneys' and expert witnesses' and consultants' fees and costs whether incurred before suit, during suit, during mediation, or at the appellate level) (collectively "**Losses**" and each individually, a "**Loss**") to the proportionate extent caused by any of the following: (a) Architect's breach of this Agreement; (b) any infringement of any patent, trademark or copyright or the violation of any trade secret or other proprietary right that arises in connection with the Services; (c) any act, omission or error of Architect or its Subconsultants or their respective partners, members, managers, agents,

officers, directors, representatives, employees and anyone for whose acts or omissions Architect may be liable, including, without limitation, any failure to pay and sums due from them in connection with the Project; (d) any claims made by or through a Subconsultant or any person working for, or through, Architect, including any liens filed by any such persons on or in connection with the Project or the Site; (e) any negligence, gross negligence, intentional misconduct, recklessness, fraud, bad faith or misconduct of Architect or its Subconsultants or their respective partners, members, managers, agents, officers, directors, representatives, employees and anyone for whose gross negligence or intentional misconduct Architect may be liable or any of their agents or employees or other persons working for or through any of them; and/or (f) any injury to the personnel, or damage to property of Architect or any Subconsultant. Should any Loss be caused in part, but not in whole, by an Indemnitee's acts or omissions, then Architect's obligations under this Paragraph 10.3.1 shall be limited to that portion of the Loss that is not caused by such Indemnitee's acts or omissions. Architect shall, upon receipt of notice of any Loss, promptly take such action necessary to make a claim under any applicable insurance policy or policies Architect is carrying and maintaining; however, if Architect fails to take such action as is necessary to make a claim under any such insurance policy, then Architect shall indemnify and hold Indemnitees harmless from any and all costs, damages, charges, expenses and liabilities, including without limitation, attorneys' fees, incurred by any and all Indemnitees in making any claim on behalf of Architect under any insurance policy or policies required pursuant to this Article 10.

**10.3.2** In light of the foregoing, all of Architect's agreements to indemnify others pursuant to the terms of this Agreement shall be deemed limited and modified to the extent necessary for such indemnities to constitute enforceable indemnities under Section 725.06, Florida Statutes. With regard thereto, Architect and Owner have not included a monetary limitation regarding the indemnification obligations of Architect because the Parties have interpreted Section 725.06, Florida Statutes, to require that limitation only (i) when Architect agrees to assume the obligation to indemnify the Indemnitees fully, whether caused in whole or in part by any act, omission, or default of an Indemnitee arising from this Agreement or its performance, rather than (ii) when Architect agrees (as with this Agreement) to assume the obligation to indemnify the Indemnitees as set forth in Paragraph 10.3.1. For this reason, it is also understood and agreed that this indemnification obligation complies with the terms of Section 725.06, Florida Statutes, which prevent Architect from indemnifying the Indemnitees to the extent that any such claims, damages, losses or expenses result (i) from gross negligence, or willful, wanton or intentional misconduct of the Indemnitees or (ii) for statutory violations or punitive damages, except and to the extent the statutory violations or punitive damages are caused by or result from the acts or omissions of Architect, or any of its Subconsultants or agents of any tier, or their respective employees. As such, the Parties agree that neither shall challenge Architect's indemnification obligations on the basis that the terms of Section 725.06, Florida Statutes, have not been satisfied.

**10.3.3** The obligations described in Paragraph 10.3.1 shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person indemnified pursuant to Paragraph 10.3.1. Moreover, the mutual waiver of claims for incidental, punitive, exemplary, indirect, or consequential damages set forth in Paragraph 11.1.5 of this Agreement is not intended to, and shall not have the effect of, limiting, reducing, or diminishing the scope of either Party's indemnification obligations set forth in Paragraph 10.3.1.

**10.3.4** In any and all claims against one or more Indemnitees by any employee of Architect, anyone directly or indirectly employed by Architect, or anyone for whose acts Architect may be liable, the indemnification obligation under Paragraph 10.3.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Architect under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

**10.3.5** Except to the extent that injuries to persons or damage to property are caused by the Indemnitees: (a) Architect hereby assumes the risk of any and all injury and damage to the personnel and property of Architect (or its Subconsultants) in or about the Project; and (b) the Indemnitees are hereby released from any liability for injury or damage which may be sustained by the person, goods or property of Architect, or its employees and Subconsultants in or about the Project, whether said damage or injury results from conditions arising within the Project or from other sources.

**ARTICLE 11**  
**DISPUTE RESOLUTION**

**11.1.1** Any and all claims and disputes arising out of, relating to, or in any way connected with this Agreement, the Project or the Services shall be resolved by litigation in a court of competent jurisdiction. Owner and Architect expressly consent to, and agree that, the exclusive jurisdiction and venue for any lawsuit arising out of, relating to, or in any way connected with this Agreement, shall be the State and Federal Courts in and for Miami-Dade County, Florida, and Owner and Architect waive any objection to such jurisdiction and venue.

**11.1.2 THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR OWNER AND ARCHITECT TO ENTER INTO THIS AGREEMENT.**

**11.1.3** The prevailing party in any lawsuit arising out of, relating to, or connected with, this Agreement, the Services, or the Project, shall be entitled to recover its reasonable attorneys' fees and costs, whether incurred before suit, during suit, during mediation, or at the appellate level. The prevailing party shall also be entitled to recover all reasonable attorneys' fees and costs incurred in litigating entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of recoverable attorneys' fees and costs. The reasonable costs to which the prevailing party is entitled shall include costs that are taxable under any applicable statute, rule or guideline, as well as non-taxable costs, including, but not limited to, costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, electronic research costs, court reporter fees and mediator fees, regardless of whether such costs are otherwise taxable.

**11.1.4** Each Party shall be required to continue to perform its obligations under this Agreement pending resolution of any dispute arising out of, or relating to, this Agreement.

**11.1.5** Architect and Owner waive claims for incidental, special, punitive, consequential, and indirect damages against each other for claims, disputes or other matters in question arising out of or relating to this Agreement, including, to all such damages due to either Party's termination of this Agreement. Notwithstanding the foregoing, Owner and Architect expressly acknowledge and agree that this waiver of claims for incidental, special, punitive, consequential, and indirect damages does not apply to incidental, special, punitive, consequential, and indirect damages: (i) for which either Party has an indemnification obligation under this Agreement; or (ii) proximately caused by either Party's fraud, gross negligence or intentional misconduct. Owner and Architect agree that the foregoing waiver of claims for incidental, special, punitive, consequential, and indirect damages is applicable solely to claims between Owner and Architect and only as specifically set forth herein and is not applicable to damages covered or potentially covered by the insurance policies that Architect is required to procure and maintain pursuant to this Agreement.

**11.1.6** In the event of any legal proceeding between Owner and any third party arising out of or relating to the Project, Architect agrees that Owner may join Architect in any such proceedings and that Owner may consolidate any such proceedings with any proceeding between Architect and Owner under this Agreement. Owner may make persons other than Owner and Architect parties to any legal proceeding hereunder with respect to any claim, dispute or other matter in question arising out of or relating to the Project.

**ARTICLE 12**  
**TERMINATION, SUSPENSION OR ABANDONMENT**

**12.1.1** This Agreement may be terminated by Owner with or without cause upon thirty (30) days' prior written notice to Architect.

**12.1.2** If the Project is abandoned by Owner for more than one hundred twenty (120) consecutive days, Architect may terminate this Agreement by giving written notice to Owner.

**12.1.3** Failure of Owner to make undisputed payments to Architect in accordance with this Agreement that are properly due shall be considered substantial non-performance and cause for termination upon written notice to Owner that it has failed to pay such amounts, but only if Owner then fails to cure its breach within thirty (30) days after receipt of such written notice.

**12.1.4** In the event of termination not the fault of Architect, Architect shall be compensated for the Services properly and fully performed prior to termination, together with Reimbursable Expenses then due.

**12.1.5** At termination for any reason, all Documents prepared by, through, or for, Architect and/or its Subconsultants pursuant to this Agreement shall be promptly delivered to Owner.

### **ARTICLE 13** **NOTICES**

**13.1** All required notices, requests, demands, and other communications shall be made in writing as necessary and shall be either personally delivered, mailed certified or registered mail (postage prepaid, return receipt requested), or sent via nationally recognized overnight delivery service, to either Owner's Representative or Architect's Representative, as appropriate, at the addresses stated in this Article 13, and shall be deemed to have been given on the date of actual delivery.

Owner's Representative: Mr. Michael Piazza  
8701 Collins Development, LLC  
2665 South Bayshore Drive, Suite 1020  
Miami, Florida 33133

With a copy to: Michael Thomas, Esquire  
Greenberg Traurig, P.A.  
333 S.E. 2<sup>nd</sup> Avenue  
Miami, Florida 33130

Architect's Representative: Jonathan W. Cardello  
2 South Biscayne Boulevard, Suite 1670  
Miami, Florida 33131

### **ARTICLE 14** **MISCELLANEOUS PROVISIONS**

#### **14.1 GOVERNING LAW**

**14.1.1** This Agreement shall be governed by the laws of the State of Florida without regard to conflicts of laws principles.

#### **14.2 SUCCESSORS AND ASSIGNS**

**14.2.1** Architect binds itself and its partners, agents, successors, permitted assigns and legal representatives to Owner and to the partners, successors, assigns and legal representatives of Owner with respect to the obligations contained in this Agreement. Nothing contained in this Agreement creates a contractual relationship with or a cause of action in favor of a third party against either Owner or Architect.

#### **14.3 INTEREST**



**14.3.1** Payments due and unpaid under this Agreement shall bear interest at the lower of the Prime Rate as listed in the *Wall Street Journal* (or its successor) or the maximum legal rate prevailing from time to time in the state where the Project is located, thirty (30) days from the date such payment was due.

#### **14.4 TRADE DISCOUNTS**

**14.4.1** Architect shall not: (a) accept any trade discounts; (b) undertake any activity or employment; (c) have significant undisclosed financial or other interests; or (d) accept contributions from third-parties, if it would reasonably appear that such activity, employment, interest or contribution could compromise Architect's professional judgment or prevent Architect from serving Owner's best interests.

#### **14.5 ASSIGNMENT; SUCCESSORS**

**14.5.1** Architect shall not assign or delegate any rights or obligations under this Agreement, or permit any change in the persons in effective control of Architect's business or subcontract the performance of any portion of the Services required hereunder except as otherwise may be agreed in writing by Owner in Owner's sole discretion. Any attempt to so assign or transfer this Agreement or any rights or obligations hereunder without such consent shall be null and void *ab initio* and of no force and effect. A change in Architect's ownership (*i.e.*, the ownership of one or more partners', or members' or shareholders' interests in Architect) shall not constitute an assignment for purposes of this provision provided that said change does not constitute a substantial change in the ownership structure of Architect. Architect acknowledges and agrees that Owner may assign its rights and obligations under this Agreement (or a portion thereof) to any of its affiliates, any person or entity which has an interest in the Project, any lender for the Project (or a portion of the Project), any successor to Owner's interests in the Project or to any entity capable of performing Owner's obligations hereunder and, upon such assignment and the assumption of such rights and obligations by the assignee, Owner shall be relieved of all liability hereunder, or for that portion of this Agreement assigned to the assignee.

#### **14.6 EQUAL OPPORTUNITY**

**14.6.1** Architect and its Subconsultants shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, or any other characteristics covered by anti-discrimination provisions of applicable federal, state or local law. Failure to comply with such laws shall be a material breach of this Agreement.

#### **14.7 EMPLOYEES**

**14.7.1** Owner may, from time to time, establish reasonable rules and regulations relating to standards to be met by Architect regarding the appearance or conduct of its employees and agents used in connection with the Services. After receiving demand by Owner, Architect shall promptly cause to be removed from Owner's premises all persons to which Owner reasonably objects, and shall ensure that any such person so removed is not thereafter employed in connection with the provision of Services hereunder.

#### **14.8 CONFIDENTIALITY**

**14.8.1** Architect, for itself and its employees, personnel and Subconsultants, acknowledges, confirms and agrees that all information pertaining to the Project that Architect learns prior to or during the course of performance of its Services, all data furnished by Owner, the name, trademarks, or logotypes now or hereafter used by the Project or Owner (or any variation thereof), all Documents prepared by, or through, Architect, including the plans, drawings, designs, specifications and other data and information pertaining to the Project, are confidential and proprietary to Owner (collectively, "**Confidential Information**") and shall remain of a confidential nature. The use and disclosure of the Confidential Information shall not apply to information that (a) was known to Architect prior to receipt of same from Owner; (b) becomes publicly known other than through Architect; or (c) is disclosed pursuant to the requirements of a Governmental Authority. Except as is necessary for Architect to perform its Services hereunder, Architect shall not utilize or permit the utilization of any Confidential Information (including the design or the concepts utilized for the Project) at any time for any reason whatsoever, including advertising,

without, in each such instance, the express, advance written consent of Owner. Architect shall be responsible for the breach of this confidentiality by its Subconsultants, partners, employees, personnel or agents.

**14.8.2** Any publicity or press releases with respect to the Project shall be under the sole discretion and control of Owner and Owner shall have the right to use the name of Architect in any of its advertising or marketing materials at Owner's sole election and discretion, which right shall survive any cancellation/termination of this Agreement. Architect may use Project images and data on its internal website without the consent of Owner, provided that same do not identify the Project or Owner or contain Confidential Information. Unless compelled by law, a Governmental Authority, an order of a court of competent jurisdiction, or a validly issued subpoena, Architect agrees to refrain from disclosing any Confidential Information to any person without Owner's prior written authorization, which authorization may be withheld by Owner in its sole discretion. In the event of a legal compulsion or other order seeking disclosure of any Confidential Information, Architect shall promptly notify Owner to permit Owner's timely legal objection, if permissible.

#### **14.9 ARCHITECT'S SIGNS**

**14.9.1** Architect shall not display or distribute any advertising signs or notices upon the Site without the prior written permission of Owner in each instance. Such permission shall be revocable, at any time, at Owner's sole discretion. If Owner permits Architect to display or distribute any advertising signs or notices upon the Site, then Owner shall determine the location upon the Site that such signs or notices may be displayed or distributed.

#### **14.10 COPIES OF AGREEMENTS**

**14.10.1** Architect shall, at Owner's request, promptly furnish Owner with copies of all agreements (including amendments thereto) entered into by Architect with respect to its Services, including, without limitation, agreements between Architect and its Subconsultants.

#### **14.11 ETHICS**

**14.11.1** In connection with the performance of its obligations under this Agreement, Architect shall not accept, or pay, undisclosed commissions, fees or awards from or to Subconsultants, vendors or anyone else involved in any way in the Project. Nor shall Contractor pay or offer to pay any commissions, fees or anything of value to any foreign or domestic government official, official of a foreign or domestic political party or candidate for foreign or domestic political office in connection with the Project. Owner reserves the right to request confirmation of compliance, and Architect's failure to provide that confirmation shall be a material breach of this Agreement. Architect shall promptly report any suspected illegal or unethical behavior to Owner.

#### **14.12 CHAPTER 558, FLORIDA STATUTES**

**14.12.1 PURSUANT TO SECTIONS 558.005(1) AND 558.005(6), FLORIDA STATUTES OWNER AND ARCHITECT HEREBY AGREE TO OPT OUT OF THE REQUIREMENTS OF CHAPTER 558, FLORIDA STATUTES, AND THEREFORE SAID SECTION DOES NOT APPLY TO ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SERVICES OR THE PROJECT.**

**14.12.2 PURSUANT TO SECTION 558.0035, FLORIDA STATUTES, AN INDIVIDUAL EMPLOYEE OR AGENT OF ARCHITECT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.**

#### **14.13 SURVIVAL OF OBLIGATIONS**

**14.13.1** All indemnities, representations, warranties and waivers made by Architect in favor of Owner, its agents, employees, successors or assigns, shall survive final payment hereunder, Final Completion of the Project or any cancellation/termination of this Agreement.

#### **14.14 PARTNERS AND MEMBERS NOT LIABLE**

**14.14.1** Architect's recourse against Owner under this Agreement shall be limited to Owner's interest in the Project and Owner's assets. Architect shall have no other recourse to any assets of Owner's Representative whatsoever, or to any assets of any partner, member, director, officer, affiliate, manager, agent, shareholder, parent, subsidiary, employee or other representative of Owner for the satisfaction of Owner's obligations hereunder.

#### **14.15 INDEPENDENT CONTRACTOR**

**14.15.1** Architect is and shall perform its Services under this Agreement as an independent contractor, and shall not act as nor be deemed an agent, employee, partner, joint venturer or legal representative of Owner. Architect has no authority to assume or create any commitment or obligation on behalf of Owner or bind Owner in any respect whatsoever.

#### **14.16 NON-DISPARAGEMENT**

**14.16.1** The Parties covenant and agree that they will take no actions and make no statements, written or oral, privately or publicly, which are disparaging, critical or negative toward the other Party or KKAID concerning the Project, this Agreement, or the Services, to any individual or entity. The Parties' obligations under this Section 14.16.1 shall survive the Parties' performance of their obligations under this Agreement and any termination/cancellation of this Agreement.

#### **14.17 FINANCING**

**14.17.1** If, in connection with the financing of the Project, the lender or title insurer requires subordination of any construction or other lien rights of Architect in connection with the Project, Architect agrees to execute and deliver to such lender or title insurer a subordination agreement in form and with substance reasonably required by the lender or title insurer. Furthermore, Architect agrees to comply with any and all other customary or reasonable requirements of lenders and title insurers for the Project, including but not limited to any requirements that may be imposed as a condition to payments due under this Agreement and any requirements requiring modifications to this Agreement. Architect agrees that notwithstanding a default by Owner under this Agreement which would give Architect the right to terminate this Agreement, Architect will continue to perform the Services (on the same terms and conditions set forth in this Agreement) for and on account of the lender financing the Project if the lender assumes the payment obligations of Owner arising after the lender receives written notice of such default from Architect.

#### **14.18 FINAL AGREEMENT/INTERPRETATION**

**14.18.1** All Exhibits attached hereto are incorporated herein and made a part hereof.

**14.18.2** This Agreement represents the entire and integrated agreement between Owner and 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. If there is any inconsistency between this Agreement and any Exhibit hereto, Architect shall (a) provide the better quality or greater quantity of Service(s) or (b) comply with the more stringent requirement, in Owner's sole discretion. Capitalized terms in this Agreement and the Exhibits attached hereto, not otherwise defined, shall have the meanings ascribed to them in Paragraph 1.2.

#### **14.19 TIME IS OF THE ESSENCE**

**14.19.1** It is understood and agreed that TIME IS OF THE ESSENCE for the performance of the Services and the Work and that all time limits stated in this Agreement and the attached Exhibits are of the essence.

**14.20 COUNTERPARTS**

**14.20.1** This Agreement may be executed in any number of counterparts, each of which will be deemed an original (subject to the following sentence), and any of which will be deemed to be complete in itself and may be introduced into evidence or used for any purpose without the production of other counterparts. Architect expressly agrees that if the signature of Owner and/or Architect on this Agreement or any counterpart of this Agreement is not an original, but is a digital, mechanical or electronic reproduction (including, without limitation, a photocopy, fax, email, PDF, Adobe image, jpeg, telegram, telex or telecopy), then such digital, mechanical or electronic reproduction will be as enforceable, valid and binding as, and the legal equivalent to, an authentic and traditional ink-on-paper original wet signature penned manually by its signatory.

*\*\*\* Signature Page to Follow \*\*\**

This Agreement is entered into as of the Effective Date written above.

**OWNER:**

**8701 Collins Development, LLC**, a Delaware limited liability company,

By: \_\_\_\_\_

Name: David Martin

Title: Manager

**ARCHITECT:**

**Stantec Architecture Inc.**, a North Carolina corporation,

By: \_\_\_\_\_

Name: JONATHAN CARDELO

Title: SENIOR PRINCIPAL

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE SITE**

**LEGAL DESCRIPTION:**

Lot 1 and a portion of Lot 2 in Block 10 of ALTOS DEL MAR SUBDIVISION NUMBER 2, according to the Plat thereof, as recorded in Plat Book 4 at Page 162 of the Public Records of Miami-Dade County, Florida, together with Lot 1 and a portion of Lot 2 in Block 1 of said ALTOS DEL MAR SUBDIVISION NUMBER 2, together with that portion of Airoso Way that lies between aforesaid Blocks 1 and 10, together with a parcel of land lying East on the Mean High Water Line as shown on said ALTOS DEL MAR SUBDIVISION NUMBER 2, and lying West of the Erosion Control Line as shown on establishment of EROSION CONTROL LINE, according to the Plat thereof, as recorded in Plat Book 105 at Page 62, of said Public Records of Miami- Dade County, Florida, being more particularly described as follows:

Begin at the Northwest corner of said Lot 1 in Block 10, said corner being the intersection of the East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A and the South Right-of-Way line of 87th Terrace (Nasturtium Street as shown on said Plat Book 4 at Page 162); thence North  $86^{\circ}54'22''$  East along said South Right-of-Way line of 87th Terrace, and the Easterly extension thereof, also being the North line of said Lot 1 in Block 10, North line of Airoso Way and the North line of Lot 1 in Block 1, and the Easterly extension thereof for 454.01 feet to a point on said Erosion Control Line; thence South  $05^{\circ}41'03''$  East, along said Erosion Control Line, for 92.58 feet; thence South  $87^{\circ}25'15''$  West for 455.99 feet to a point on said East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A; thence North  $04^{\circ}31'52''$  West along said East Right-of-Way line also being the West line of said Block 10 for 88.42 feet to the Point of Beginning.

**TOGETHER WITH:**

That portion of 87th Terrace (Nasturtium Street per Plat) as shown on the Plat of ALTOS DEL MAR SUBDIVISION NUMBER 2, according to the plat thereof, as recorded in Plat Book 4 at Page 162 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Southeast corner of said 87th Terrace, said Southeast corner also being the Southwest corner of Tract "A" as shown on said Plat Book 4 at Page 162; thence South  $86^{\circ}54'22''$  West along the South Right-of-Way line of said 87th Terrace (Nasturtium Street) for 360.48 feet to the Northwest corner of Lot 1, Block 10 of said Plat Book 4 at Page 162; thence North  $04^{\circ}31'52''$  West along the East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A and the Northerly extension of the West line of said Block 10 for 25.76 feet to a point of curvature; thence Northerly along a 328.27 foot radius curve, leading to the right, through a central angle of  $04^{\circ}14'00''$  for an arc distance of 24.25 feet; thence North  $86^{\circ}54'22''$  East along the North Right-of-Way line of said 87th Terrace (Nasturtium Street) also being the South line and Westerly extension thereof of Block 4 of SECOND AMENDED PLAT OF NORMANDY BEACH, according to the plat thereof, as recorded in Plat Book 16 at Page 44 of said Public Records of Miami-Dade County, Florida, for 360.84 feet to the Northwest corner of said Tract "A"; thence South  $03^{\circ}05'38''$  East along the West line of said Tract "A" for 50.00 feet to the Point of Beginning.

**TOGETHER WITH:**

Lot 3 and a portion of Lot 2 in Block 10 of ALTOS DEL MAR SUBDIVISION NUMBER 2, according to the Plat thereof, as recorded in Plat Book 4 at Page 162 of the Public Records of Miami-Dade County, Florida, together with Lot 3 and a portion of Lot 2 in Block 1 of said ALTOS DEL MAR SUBDIVISION NUMBER 2, together with that portion of Airoso Way that lies between aforesaid Blocks 1 and 10, together with a parcel of land lying East on the Mean High Water Line as shown on said ALTOS DEL MAR SUBDIVISION NUMBER 2, and lying West of the Erosion Control Line as shown on establishment of EROSION CONTROL LINE, according to the Plat thereof, as recorded in Plat Book 105 at Page 62, of said Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Southwest corner of said Lot 3 in Block 10, said corner being the intersection of the East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A and the North Right-of-Way line of 87th Street (Marigold Street as shown on said Plat Book 4 at Page 162); thence North  $87^{\circ}51'26''$  East along said North Right-of-Way line of 87th Street, and the Easterly extension thereof; also being the South line of said Lot 3 in Block 10 and the South line of said Lot 3 in Block 1, and the Easterly extension thereof for 458.01 feet to a point on said Erosion Control Line; thence North  $05^{\circ}41'03''$  West, along said Erosion Control Line for 93.78 feet; thence South  $87^{\circ}25'15''$  West for 455.99 feet to a point on said East Right-of-Way line of Collins Avenue, also known as State Road No. A-1-A; thence South  $04^{\circ}31'52''$  East along said East Right-of-Way line also being the West line of said Block 10 for 90.20 feet to the Point of Beginning.

The above described parcel of land lying and being in the City of Miami Beach, County of Miami-Dade, State of Florida.

**EXHIBIT B**  
**OWNER'S PROGRAM**

The Project consists of 161,573 net sellable square feet, sixty-eight (68) residential condominium units, a pool, spa, gym, parking garage, and other related amenities.



**EXHIBIT C**  
**PROJECT BUDGET**

The Project Budget is approximately \$96,943,800.00, which is \$600.00/square foot multiplied by 161,573 net sellable square feet.

**EXHIBIT D**  
**SCHEDULE OF PERFORMANCE**

Schematic Design Documents - 100%	COMPLETED
Design Development Documents - 50%	COMPLETED
Design Development Documents - 75%	COMPLETED
Design Development Documents - 100%	COMPLETED
Coordination Meetings / Workshops	August 31, 2015 – September 18, 2015
Construction Documents - 80%	October 23, 2015
Construction Documents - 100%	December 4, 2015
Submission for master permit for the Project	December 4, 2015

**EXHIBIT E**  
**HOURLY RATES**

**Architect**

Intern and Designer/Coordinator 1	\$85.00/hour
Designer/Coordinator 2	\$110.00/hour
Designer/Coordinator 3	\$135.00/hour
Project Manager/Designer	\$155.00/hour
Senior Project Manager/Designer	\$175.00/hour
Project Director	\$200.00/hour
Senior Project Director	\$225.00/hour
Project Executive	\$250.00/hour

**Aquadynamics**

Project Manager	\$175.00 per hour
Project Engineer	\$125.00 per hour
Field Inspector	\$95.00 per hour
Drafting/CAD	\$75.00 per hour
Secretarial/Administrative	\$55.00 per hour

**DeSimone**

Senior Principals	\$405.00/ hour
Principals	\$340.00/ hour
Senior Associate Principals	\$310.00/ hour
Associate Principals	\$305.00/ hour
Senior Associates	\$280.00/ hour
Associates	\$275.00/ hour
Field Operations Managers	\$260.00/ hour
Senior Project Managers	\$240.00/ hour
Project Managers	\$230.00/ hour
Senior Project Engineers	\$210.00/ hour
Project Engineers	\$190.00/ hour
Engineers	\$175.00/ hour
Construction Administration Managers	\$210.00/ hour
Inspectors	\$170.00/ hour
Engineering Computer Time	\$0
BIM/CAD Managers	\$270.00/ hour
BIM Coordinators	\$250.00/ hour
CAD Supervisors	\$240.00/ hour
Senior Designers	\$240.00/ hour
BIM Technicians	\$220.00/ hour
Senior CAD Drafters	\$210.00/ hour
CAD Drafters	\$170.00/ hour
CAD/BIM Computer Time	\$0
Clerical	\$0

Principals - Court Time or Deposition Time	\$545.00/ hour
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**Feller**

Principal	\$250/hour
Project Manager	\$175/hour
Project Engineer	\$150/hour
Designer	\$95/hour

**Lux**

Principal	\$250/hour
Project Manager	\$150/hour
Designer	\$90/hour

**SLS**

Principal	\$150/hour
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**VSN**

Principal	\$150/hour
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**West8**

Design Director	\$375
Principal/Director	\$275
Project Director	\$185
Senior Project Manager	\$185
Senior Landscape Architect	\$185
Senior Architect	\$185
Project Manager	\$165
Landscape Architect	\$165
Architect	\$165
Urban Designer	\$165
Landscape Designer	\$115
Urban Designer	\$115
Job Captain	\$115
Staff Designer	\$85
Renderer	\$85
Modeler	\$85
Administrative	\$65-100

**EXHIBIT F**

**FORM OF UNCONDITIONAL PARTIAL WAIVER AND RELEASE OF CLAIMS**

**Stantec Architecture Inc.**, a North Carolina corporation, ("Releasor"), on behalf of itself, its successors and assigns, and those acting by or through any of the foregoing, for and in consideration of \_\_\_\_\_ and \_\_\_\_\_ /100 Dollars (\$\_\_\_\_\_), does hereby unconditionally and irrevocably waive, release, remise, relinquish, discharge and quit all claims, liens, rights to claim a lien, actions, causes of action, damages, and demands of any kind whatsoever for payment of money for compensation or expenses, for all services performed through the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by or through the Releasor for 8701 Collins Development, LLC, a Delaware limited liability company ("Owner"), related to the project known as Eighty Seven Park (the "Project"), pursuant to that certain Agreement For Professional Design Services executed by and between the Releasor and Owner, dated as of \_\_\_\_\_, 2015 (the "Agreement"), which Releasor ever had, now has or may have, against the Project, the property on which the Project is located, Owner, the lender for the Project, or their respective members, partners, parents, affiliates, subsidiaries, insurers, sureties, employees, shareholders, officers, directors, representatives, agents, and all persons acting for any of them (collectively, the "Released Entities"), including, without limitation, all claims related to, in connection with, or arising out of all facts, acts, events, circumstances, changes or additional services, constructive or actual delays or accelerations, interferences and the like, if any, which have occurred or may be claimed to have occurred. Releasor warrants and represents that: (a) Releasor has not assigned or pledged any rights or claims in any amount due or to become due in connection with the Project, and (b) payment has been made to Releasor and all consultants and subconsultants, at all tiers, for all services performed by or through Releasor for the Project through the date hereof.

Releasor acknowledges and agrees that: (a) the Released Entities are relying upon the representations and warranties made herein as a material inducement for Owner to make payment to Releasor; (b) this Unconditional Partial Waiver and Release of Claims is freely and voluntarily given by Releasor and Releasor has had the advice of counsel in connection herewith and is fully informed as to the legal effects of this Unconditional Partial Waiver and Release of Claims and Releasor has voluntarily accepted the terms of this Unconditional Partial Waiver and Release of Claims for the consideration recited above; and, (c) the tendering of payment by Owner and the receipt of payment and the execution of this Unconditional Partial Waiver and Release of Claims by the Releasor shall not, in any manner whatsoever, release Releasor from: (i) its continuing obligations with respect to the completion of any services in connection with the Project that remain incomplete; (ii) any contractual, statutory or common law obligations of the Releasor with respect to any of the Released Entities; or (iii) any other obligations of Releasor with respect to any of the Released Entities.

Releasor further represents, warrants and certifies that (a) the undersigned person executing this Unconditional Partial Waiver and Release of Claims on behalf of Releasor has the right, authority and power to do so; and (b) he/she is executing this Partial Waiver and Release in his/her official capacity as an officer, partner, director, or authorized agent of Releasor, as applicable, and as the act and deed of Releasor after being duly authorized and directed to do so.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**WITNESSES:**

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

STATE OF \_\_\_\_\_)

**RELEASEOR:**

**Stantec Architecture Inc.**, a North Carolina corporation,

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
(Seal)

COUNTY OF \_\_\_\_\_ ) ss:

The foregoing instrument was sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of **Stantec Architecture Inc.**, a North Carolina corporation, who executed the foregoing instrument on behalf of said company, who acknowledged to and before me that he/she executed said instrument in his/her official capacity as an officer of said company and as the act and deed of said company after being duly authorized and directed, and who is personally known to me or who produced \_\_\_\_\_ as identification.

Name: \_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
Commission No. \_\_\_\_\_  
My Commission expires: \_\_\_\_\_  
(Seal)

## FORM OF UNCONDITIONAL FINAL AFFIDAVIT AND WAIVER AND RELEASE OF CLAIMS

**Stantec Architecture Inc.**, a North Carolina corporation, ("Releasor"), on behalf of itself, its successors and assigns, and those acting by or through any of the foregoing, for and in consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby conclusively acknowledged, as full and final payment on account of all sums due for services rendered by, or through, Releasor with respect to the project known as Eighty Seven Park (the "Project") owned by 8701 Collins Development, LLC, a Delaware limited liability company ("Owner") pursuant to that certain Agreement for Professional Design Services by and between Releasor and Owner, dated as of \_\_\_\_\_, 2015, as may have been amended and supplemented to date (the "Agreement"), does hereby unconditionally and irrevocably waive, release, remise, quit, relinquish and forever discharge all damages, claims, liens, rights to claim a lien, actions, causes of action, and demands, of any kind whatsoever which Releasor ever had, now has, will or may have in the future, in connection with, or related to, or against the Project, the property on which the Project is located, the owner of the property on which the Project is located, Owner, Owner's contractors, lessees, or their members, partners, parents, affiliates, subsidiaries, insurers, sureties, employees, shareholders, officers, directors, representatives, agents, and all persons acting for any of them (collectively, the "Released Entities"), including, without limitation, all claims related to, in connection with, or arising out of all facts, acts, events, circumstances, charges or additional services, constructive or actual delays or accelerations, interferences and the like which have occurred or may be claimed to have occurred.

Releasor represents, warrants and certifies that: (a) all amounts due for consultants employed, used or engaged by Releasor in connection with the Agreement or the Project, including any payroll taxes, sales taxes and income taxes, are fully paid; (b) all contracts with consultants employed, used or engaged by Releasor in connection with the Agreement or the Project have been completed or have been terminated; (c) Releasor has not assigned or pledged any rights or claims in any amount due or to become due to Releasor from the Released Entities; and (d) the person executing this Final Affidavit, Waiver and Release is a fully authorized agent of the Releasor, has knowledge of the foregoing facts and is duly authorized to execute and to deliver this Final Affidavit, Waiver and Release on behalf of Releasor.

Releasor agrees to defend, indemnify and hold the Released Entities harmless from and against any and all actions, causes of action, losses or damages, of whatever kind, including, without limitation, reasonable attorneys' fees and costs at the pre-trial, trial and appellate levels, which the Released Entities may suffer by reason of: (a) any claim made by any of Releasor's employees or consultants at any tier relating to the Agreement or the Project or to any other agreements by and between any of Releasor's employees, suppliers or consultants and Releasor, or (b) any breach of any representation or warranty made by Releasor to the Released Entities, including the representations and warranties included herein, any false statement made in this Final Affidavit, Waiver and Release, or any misrepresentation or omission made by the undersigned or Releasor.

Releasor acknowledges and agrees that: (a) the Released Entities are relying upon the representations and warranties made herein as a material inducement for the Released Entities to make final payment to Releasor; (b) this Final Affidavit, Waiver and Release is freely and voluntarily given by Releasor and Releasor has had the advice of counsel in connection herewith and is fully informed as to the legal effects of this Final Affidavit, Waiver and Release and the Releasor has voluntarily accepted the terms of this Final Affidavit, Waiver and Release for the consideration recited above; and (c) the tendering and receipt of payment and the execution of this Final Affidavit, Waiver and Release shall in no way release Releasor from: (i) its continuing obligations with respect to the completion of any services remaining uncompleted in connection with the Project; (ii) any contract, statutory or common law obligations of Releasor with respect to the services performed by Releasor, including, without limitation, statutory and common law warranties, or (iii) any other obligations of Releasor with respect to any of the Released Entities.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**RELEASOR:**

**Stantec Architecture Inc.**, a North Carolina corporation,

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of **Stantec Architecture Inc.**, a North Carolina corporation, who executed the foregoing instrument on behalf of said company, who acknowledged to and before me that he/she executed said instrument in his/her official capacity as an officer of said company and as the act and deed of said company after being duly authorized and directed, and who is personally known to me or who produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
Commission No. \_\_\_\_\_  
My Commission expires: \_\_\_\_\_  
(Seal)



**EXHIBIT G**  
**SCHEDULE OF ARCHITECT'S FEE**

	<b>Architect</b>	<b>DeSimone</b>	<b>Feller</b>	<b>SLS</b>	<b>VSN</b>	<b>West8</b>	<b>Aquadynamics</b>	<b>Lux</b>	<b>Total by Phase</b>
<b>Schematic Design Phase</b>	\$40,000	\$37,600	\$19,800	\$0	\$0	\$117,722	\$5,000	\$33,000	\$253,122
<b>Design Development Phase</b>	\$260,000	\$75,200	\$39,600	\$45,000	\$12,000	\$117,722	\$20,000	\$37,000	\$606,522
<b>Construction Documents Phase</b>	\$600,000	\$150,400	\$138,600	\$42,500	\$58,000	\$117,722	\$10,000	\$27,000	\$1,144,222
<b>Bidding &amp; Negotiation Phase</b>	\$60,000	\$18,800	\$0	\$0	\$0	\$117,722	\$20,000	\$18,000	\$234,522
<b>Construction Administration Phase</b>	\$540,000	\$94,000	\$40,000	\$34,794	\$5,000	\$117,722	\$0	\$0	\$831,516
<b>Total</b>	\$1,500,000	\$376,000	\$238,000	\$122,294	\$75,000	\$588,610	\$55,000	\$115,000	\$3,069,904
<b>Portions of Architect's Fee Paid by Owner to Subconsultants Directly</b>	\$0	\$173,935	\$100,980	\$22,294	\$48,000	\$264,944	\$0	\$42,000	\$652,153
<b>Net/Unpaid Portion of Architect's Fee</b>	<b>\$1,500,000</b>	<b>\$202,065</b>	<b>\$137,020</b>	<b>\$100,000</b>	<b>\$27,000</b>	<b>\$323,666</b>	<b>\$55,000</b>	<b>\$73,000</b>	<b>\$2,417,751</b>