THIS AGREEMENT TO PREPAY ARCHITECTURAL DESIGN FEES ("Design Fee Agreement") is made and entered into as of this Debug of August, 2010 ("Effective Date") by and between The Cliffs at High Carolina Golf & Country Club. LLC, The Cliffs Valley Golf & Country Club. LLC, The Cliffs at Glassy Golf & Country Club, LLC, The Cliffs at Mountain Park Golf & Country Club, LLC, The Cliffs at Keowee Springs Golf & Country Club, LLC, The Cliffs at Keowee Falls Golf & Country Club, LLC, The Cliffs at Keowee Falls Golf & Country Club. LLC, and The Cliffs at Walnut Cove Golf & Country Club. LLC collectively designated as ("Client") and Allora, LLC, William R. Santerini, Jr. as an individual guarantor, and Kevin Culhan as an individual guarantor collectively designated as ("Architect").

WITNESSETH

WHEREAS, Client has entered into a construction management agreement with Cliffs Construction, LLC to provide construction management services for design and construction of various amenity projects between 2010 and 2017, ("CM Agreement"). The CM agreement authorizes Cliffs to negotiate in good faith with contractors, architects, engineers, interior designers, and other service providers in order to obtain quality services at the best possible rates, to the benefit of Client. These negotiations may include value engineering, price breaks for quantity buying, early payment and prepayment for future work. During the term of this Agreement Cliffs Construction, LLC shall be the point of contact for Architect.

WHEREAS, Client desires to retain Architect for the purpose of providing architectural design services for selected amenity projects at the rates included in Exhibit A attached hereto.

WHEREAS, Architect is a licensed architect in the states of North Carolina and South Carolina and desires to enter into this Design Fee Agreement for the purpose of solidifying future work and expedited payment in the form of an initial prepayment.

WHEREAS, Architect is willing to hold design fee services for the period of this agreement at the rates listed in Exhibit, rather than market rates which normally average between 6% and 8% of the construction cost of the specific project, and Client is willing to prepay a portion of these fees in order to lock in the discounted rates.

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Client and Architect agree as follows:

1. ARCHITECT'S SERVICES.

Architect will provide architectural design services, of the quality and detail standard in the industry for the quality level of each of the different facility types, as specified in the standard AIA contract form B101-2007, attached hereto as Exhibit B, with exceptions noted below, on such form as both parties agree.

- a) Architect will not be required to provide cost estimates for any phase of the design process.
- b) Architect will provide coordination of Owner's design consultants, including MEP, Structural, and Civil Engineers and other specialty consultants as agreed, between Client and Architect, are necessary for a complete design of each project.
- c) Architect will not be required to assistance with items listed in article 3.5 Bidding or Negotiation Phase Services, with the exception of clarifications related to drawings or specifications which are unclear, given reasonable skill and diligence of contractors providing bids for the work.
- d) Architect will provide limited assistance with items listed in article 3.6 Construction Phase Services, which limited assistance will include review of a limited number of specialty submittals to be agreed upon at the signing of each specific project design agreement, any governmental agency or lender required certification letters, and a sufficient number of site visits to ensure Architect's comfort level with the construction to permit completion of any required certifications or completion letters, and clarifications of plans and specifications during the construction period which are unclear, given reasonable skill and diligence of the contractor performing the work and requesting the clarifications.

2. CLIENT OBLIGATIONS.

Client will provide information, programming, and consultants required for Architect to complete services detailed in AIA contract form B101-2007.

3. COMMENCEMENT AND COMPLETION OF DESIGN WORK.

This agreement commences upon execution and terminates on December 31, 2017 or sooner as provided in articles 5, 6 or 7 below, unless extended by written agreement by both parties. Specific project design services commence and terminate as follows:

- a) Client will provide notice of upcoming projects to Architect no less than 90 days prior to requiring Architect services under this agreement. Such notice will include sufficient information to enable Architect to draft the AIA B101-2007 specific to that project.
- b) No less than 30 days prior to commencement of design services on any specific project, Client and Architect will complete any negotiations or discussions related to the contract and sign contract for the specific project.
- Architect will commence design services no more than 30 days after signing of specific project agreement and will pursue the work diligently until completion.
- d) Client and Architect will agree on a written target completion date for the Construction Drawings prior to signing of the specific project contract. Completion of the Construction Drawings will be considered complete upon approval of the building official for a building permit, however, should the permit be held up due to no fault of the Architect, the Completion Date shall be extended an appropriate number of days.
- e) Completion of the Architect's responsibilities for each specific project shall be determine by the following events:
 - 1) Issuance of a Certificate of Occupancy by the appropriate governmental agencies,
 - 2) Issuance of a Certificate of Completion by the Architect for each lender or agency requiring same, and
 - Fulfillment of all obligations outlined in the AIA B101-2007 agreement as modified and signed by both parties.

4. COMPENSATION.

Cliffs' compensation to Architect for each specific project shall be based on the attached Exhibit A fee schedule. Architect's compensation for reimbursable expenses and additional services shall be paid at the rates and basis detailed in the signed AIA B101-2007 agreement for each specific project.

a) Payments to the Architect:

- 1) An initial payment of five hundred thousand dollars (\$500,000.00) will be paid to the Architect upon execution of this agreement. The initial payment shall be credited to Client account on a monthly basis proportionate to services rendered during the previous month's time period. The credit shall include all basis services, reimbursable expenses, or additional services rendered during the previous month. There shall be no additional payments due until such time as the entire initial payment amount has been credited to Cliffs' account.
- 2) Upon depletion of the credit amount for the initial payment, further payments shall be due and payable according to the requirements stated in article 11 of the AIA B101-2007 agreement.

5. TERMINATION BY CLIENT FOR CAUSE.

Client may terminate the Contract if Architect:

- a) Fails to fully and punctually perform any of the terms, conditions and covenants of this Agreement or the specific project AIA B101-2007 contracts and fails to commence to remedy such default within seven (7) business days after notice specifying such failure is delivered to Architect or to prosecute such remedial measures diligently and continuously to completion thereafter; or
- b) Refuses or fails to supply enough properly skilled workers or proper materials; or
- c) Fails to strictly abide by laws, ordinances or rules, regulations or order of a public authority having

- jurisdiction; or
- Becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors; or
- e) Files or has filed against it a petition under any chapter or section of the United States Bankruptcy Code, as amended, or under any similar law of statute of the United States or any state thereof, or shall be adjudged bankrupt or insolvent in any legal proceeding; or
- f) Has a receiver or trustee appointed for all or a significant portion of the assets of Architect; or
- g) Abandons, actually or constructively, or puts Client actual or constructive notice that it intends to abandon, the Project; or
- h) Otherwise is guilty of substantial breach of any provisions of this Agreement, or
- Client and Architect fail to agree on any significant matter relating to the specific project contracts.
 Significant matters include cost of or schedule allotted for the services for a specific project.

When any of the above reasons exist, Client may, without prejudice to any other rights or remedies of Client and after giving Architect, thirty (30) days' written notice, terminate employment of the Architect and may (i) take possession of the plans and specifications and any work product produced in connection with the services provided and or (ii) finish the design work by whatever reasonable method Client may deem expedient. Architect shall not be entitled to receive further payment and if the initial payment credit has not been completely expended shall return the balance of the initial payment to Client within thirty (30) days of the date of the written termination.

6. TERMINATION FOR CAUSE BY ARCHITECT.

Architect may terminate the Contract if Cliffs:

- a) Fails to fully and punctually perform any of the terms, conditions and covenants of this Agreement or any of the specific project B101-2007 contracts and fails to commence to remedy such default within seven (7) business days after notice specifying such failure is delivered to Client or to prosecute such remedial measures diligently and continuously to completion thereafter; or
- Becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors; or
- c) Files or has filed against it a petition under any chapter or section of the United States Bankruptcy Code, as amended, or under any similar law of statute of the United States or any state thereof, or shall be adjudged bankrupt or insolvent in any legal proceeding; or
- d) Has a receiver or trustee appointed for all or a significant portion of the assets of Cliffs; or
- e) Otherwise is guilty of substantial breach of any provisions of this Agreement, or
- f) Client and Architect fail to agree on any significant matter relating to the specific project contracts. Significant matters include cost of or schedule allotted for the services for a specific project.

When any of the above reasons exist, Architect may, without prejudice to any other rights or remedies of Architect and after giving Cliffs, thirty (30) days' written notice, terminate services by the Architect. Architect shall only be entitled to receive further payment proportionate to the work performed on each specific project. If the initial payment credit has not been completely expended Architect shall return the balance of the initial payment to Client the same date of the written termination.

7. TERMINATION FOR CONVENIENCE.

The performance of the Work may be terminated by Client for any reason whenever Client determines such termination is in Cliffs' best interest. Such termination shall be effected by delivery to Architect of a notice of termination specifying the date such termination becomes effective. In the event of such termination for convenience, Architect shall be entitled to its actual costs incurred to the effective date of said termination. In no event shall Architect be entitled to assert a claim other than as stated in this Paragraph, and Architect waives any such claim.

8. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and inure to the benefit of the parties' successors and permitted assigns. Architect shall not assign this Agreement or any interest hereunder, in whole or in part, without the prior consent of Cliffs, which consent may be withheld in the sole and absolute discretion of Cliffs. Client will not assign this agreement without prior written notification to Architect.

9. NOTICES AND PAYMENTS.

All notices, approvals and other communications required or contemplated under this Agreement shall be in writing and shall be deemed given and received only as follows: (a) on the date of receipt if personally delivered, (b) five days after being sent by U.S. mail, postage prepaid, (c) the date of receipt, if sent by registered or certified U.S. mail, postage prepaid, (d) one business day after receipt, if sent by confirmed facsimile or telecopier transmission, or (e) one business day after having been sent by a nationally recognized overnight courier service. The addresses of the parties to which notice is sent shall be those set forth on the signature page of this Agreement (or to such other addresses as the parties by appropriate notice may designate from time to time).

10. ENTIRE AGREEMENT.

This Agreement constitutes the entire understanding and agreement between the parties concerning the subject matter of this Agreement and cannot be waived or amended except by written instrument executed by Client and Architect. All negotiations and prior agreements and understandings between the parties regarding such subject matter are merged into and are superseded by this Agreement, and there are no representations, warranties, covenants, understandings or agreements, oral or otherwise, between the parties other than those set forth in this Agreement. Except as otherwise expressly contemplated by this Agreement, nothing expressed or implied in this Agreement is intended or shall be construed so as to grant or confer on any third party rights or privileges under this Agreement. The Exhibits identified in this Agreement are incorporated into this Agreement by reference and are made a part of this Agreement.

11. APPLICABLE LAW.

This Agreement shall be construed and interpreted under the laws of the State of South Carolina.

12. SURVIVAL.

All provisions of this Agreement shall survive the completion of the specific project designs contemplated hereby.

13. NO WAIVER.

Failure of either party to insist upon compliance with any provision hereof shall not constitute a waiver of the rights of such party to subsequently insist upon compliance with that provision or any other provision of this Agreement.

14. SEVERABILITY.

The provisions of this Agreement are intended to be independent, and in the event any provisions hereof should be declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason whatsoever, such illegality, unenforceability, or invalidity shall not affect the remainder of this Agreement.

15. CONSTRUCTION OF AGREEMENT.

Client and Architect acknowledge that they have read, understand and have had the opportunity to be advised by legal counsel as to each and every one of the terms, conditions, and restrictions, and as to the effect of all the provisions, of this Agreement, and Client and Architect agree to the enforcement of any and all of these provisions and execute this Agreement with full knowledge of these provisions. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the provisions shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the document. Typewritten or handwritten provisions inserted in this Agreement, which are initialed by the parties, shall control over all printed provisions of this Agreement in conflict therewith. Titles or captions of Sections contain in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

16. NO JOINT VENTURE.

Client and Architect acknowledge that the relationship between them created hereby is not intended to be

and shall not in any way be construed to be that of a partnership or joint venture, unless otherwise acknowledged by separate agreement.

17. COUNTERPARTS.

This Agreement may be executed in separate counterparts. It shall be fully executed when each party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all the parties.

18. DISPUTE RESOLUTION.

- a) If a dispute of any kind arises in connection with this Agreement (including any dispute concerning its construction, performance or breach), the parties will attempt to resolve the dispute as set forth in Section 18(b) before proceeding to arbitration as provided in Section 18(c). The parties waive all rights to seek remedies in any court and the right to jury trial. All documents, discovery and other information related to any such dispute, and the attempts to resolve or arbitrate such dispute, will be kept confidential to the fullest extent possible.
- b) If a dispute arises, either party will give written notice to the other party. After notice has been given, the parties in good faith will attempt to negotiate a resolution of the dispute.
- c) If, within 30 days after the notice provided in (b), a dispute is not resolved through negotiation or mediation, the dispute will be arbitrated (subject to any subsequent resolution of the matter by agreement of the parties). The parties agree to be bound by the selection of an arbitrator, and to settle the dispute exclusively by binding arbitration. The parties will request that the American Arbitration Association select an arbitrator. That arbitrator will then arbitrate the dispute in Greenville, South Carolina and issue an award. To the extent consistent with the provisions of this Section, the arbitration will be conducted under the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator's decision will be made pursuant to the relevant substantive law of the State of South Carolina. The award of the arbitrator will be final, binding and non-appealable. Judgment on the award may be entered in any court, state or federal, having jurisdiction. Reasonable attorney's fees of the prevailing party, fees and expenses of the arbitrator, and the other direct costs of the arbitration shall be awarded to the prevailing party.

[SIGNATURES ON FOLLOWING PAGES

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

Allora, LLC 201 Riverplace, Suite 501 Greenville, SC 29601 (0) 864-458-8176

By:

Name: William Santerini

Title: Date:

15,10

Ву:

Name: Kevin Culhan

Title:

President

Date:

Case 12-01220-jw Doc 756-1 Filed 01/03/13 Entered 01/03/13 11:40:51 Desc Exhibit 1 (1 of 2) Page 7 of 16

The Cliffs at High Carolina Golf & Country Club, LLC By: J. Scott Carlton, President of The Cliffs Club & Hospitality Group, Inc. Member Manager	Date_[][[][]
The Cliffs Valley Golf & Country Club. LLC, By: J. Scott Carlion, President of The Cliffs Club & Hospitality Group, Inc. Member Manager	Date_! (b 0
The Cliffs at Glassy Golf & Country Club, LLC By: J. Scott Carlton, President of The Cliffs Club & Hospitality Group, Inc. Member Manager	Date
The Cliffs at Mountain Park Golf & Country Club, LLC By: J. Scott Carlton, President of The Cliffs Club & Hospitality Group, Inc. Member Manager	Date LL [LL] [
The Cliffs at Keowee Springs Golf & Country Club, LLC By: J. Scott Carlton, President of The Cliffs Club & Hospitality Group, Inc. Member Manager	Date 11/11/11
The Cliffs at Keowee Vineyards Golf & Country Club, LLC By: I. Scott Carlton, President of The Cliffs Club & Hospitality Group, Inc. Member Manager	Date 11/11/11
The Cliffs at Keowee Falls Golf & Country Club. LLC By: Scott Carlton, President of The Cliffs Club & Hospitality Group, Inc. Member Manager	Date 11/16/10
The Cliffs at Walnut Cove Golf & Country Club. LLC By: J. Scott Carlton, President of The Cliffs Club & Hospitality Group, Inc. Member Manager	Date_/////b///

EXHIBIT A Fee schedule

Facility	Rate	Unit
Combined wellness/spa/restaurant	\$4.50	PSF
Clubhouse w/dining/cart storage/member area	\$4.00	PSF
Renovation projects affected area	\$2.75	PSF
Small projects under 5000 SF	\$2.75	₽SĔ
Includes pavilions, guard houses, marinas, turnhouses, restrooms		
Support buildings	\$2.00	PSF
Includes golf maintenance shops, pump houses, and equipment buildings		

Definition of PSF: Includes all areas under roof, whether conditioned or not and enclosed or not. Does not include area of trellises, arbors, landscape or decorative features. Areas must be accessible to people with a hard surface floor and rain resistant roof to be included in the SF calculations.

EXHIBIT B AIA B101-2007 Agreement



Standard Form of Agreement Between Owner and Architect

day of

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

Travelers Rest, SC 29690

BETWEEN the Architect's client identified as the Owner: (Name, legal status, address and other information)
The Cliffs
3598 Highway 11

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

and the Architect:
(Name, legal status, address and other information)
Allora, LLC
201 Riverplace, Suite 501
Greenville, SC 29601

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

Various Amenity and Maintenance Facilities

Various Cliffs Communities

The Owner and Architect agree as follows.

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TABLE OF ARTICLES

1	INITIAL	INFORMATION

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- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
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- 12 SPECIAL TERMS AND CONDITIONS
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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

\$ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

THE OWNER IS PROVIDING COMPENSATION IN THE AMOUNT OF FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) IN ADVANCE FOR ARCHITECTURAL SERVICES ON VARIOUS AMENTITY AND MAINTENANCE BUILDING PROJECTS LOCATED IN VARIOUS CLIFFS COMMUNITIES. THE BUILDING SITES, PROGRAMS AND DESIGN PARAMETERS ARE TO BE DETERMINED ON A PROJECT-BY-PROJECT BASIS. ANY CONSULTANTS REQUIRED FOR THE PROJECTS SHALL BE HIRED DIRECTLY BY THE OWNER.

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

.1 Commencement of construction date:

TO BE DETERMINED

.2 Substantial Completion date:
TO BE DETERMINED

Init.

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

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

- § 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.
- § 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.
- § 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.
- § 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if

.1 General Liability

.2 Automobile Liability

.3 Workers' Compensation

.4 Professional Liability

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in Article 3 are Additional Services.

- § 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.
- § 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

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- § 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.
- § 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.
- § 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.
- § 3.1.6/The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

- § 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.
- § 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.
- § 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.
- § 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.
- § 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.
- § 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.
- § 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.
- § 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.
- § 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. 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 and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

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

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

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

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

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES § 3.5.1 GENERAL

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

§ 3.5.2 COMPETITIVE BIDDING

Init.

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

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

- A procuring the reproduction of Bidding Documents for distribution to prospective bidders:
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and

- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.
- § 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

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

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

11 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;

.2 organizing and participating in selection interviews with prospective contractors; and

.3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201TM-2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

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

§ 3.6.1,3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

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§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

- § 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- § 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.
- § 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

- § 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.
- § 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.
- § 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

- § 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.
- § 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- § 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.