

 **AIA<sup>®</sup> Document B101<sup>™</sup> – 2017****Standard Form of Agreement Between Owner and Architect**

**AGREEMENT** made as of the 1st day of February in the year 2022  
(In words, indicate day, month and year.)

**BETWEEN** the Architect's client identified as the Owner:  
(Name, legal status, address and other information)

Water Street Development Corp., LLC  
38 Hawley Street  
Binghamton, New York 13901

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

CJS Architects  
755 Seneca Street  
Buffalo, NY 14210

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

Water Street Municipal Parking Garage, 183 Water Street, Binghamton, New York  
5-story municipal parking garage, comprising +/- 550 parking spaces to be constructed on the site of the previous parking garage that is demolished, with and an additional portion located over the adjacent one-story building located at 13 Court Street (aka the Boscov's Building). The parking garage shall include a podium at the top level that will serve as the building pad for a 5-story, +/- 120-unit apartment project above.

The Owner and Architect agree as follows.

**PRELIMINARY DRAFT 1/15/2022**

**REVISED BY R.STARK 2/01/2022**

**REVISED BY J.SMETANA 2/7/2022**

**ADDITIONS AND DELETIONS:**

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

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

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### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

The Project shall include +/- 550 parking spaces, including the required number of ADA spaces, and shall comprise approximately 195,000 gross square feet. Architect's services shall also include the Garage programming and design, which services shall be performed by the Garage Engineer.

§ 1.1.2 The Project's physical characteristics:

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

Geotechnical and structural investigation shall be performed by the Geotechnical Engineer to provide information regarding the potential re-use of the structural piles and pile caps for the demolished garage, which information may influence the final structural design of the new Project. A pre-cast structural system is currently understood to be the preferred method for design and construction by the Owner.

§ 1.1.3 (NOT USED)

§ 1.1.4

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(Paragraphs deleted)  
(NOT USED)

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:  
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:  
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:  
(List name, address, and other contact information.) OWNER REP TO BE ADDED

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

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

Phone Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

(List name, address, and other contact information.) THIS SHOULD BE UNITED-PIKE JV???

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

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

Phone Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

§ 1.1.9 The Owner shall retain the following consultants and contractors:  
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

McLaren Engineering Group  
530 Chestnut Ridge Road  
Woodcliff Lake, NJ 07677  
David McLaren, PE, SECB

.2 Civil Engineer:

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- .3** Other, if any:  
*(List any other consultants and contractors retained by the Owner.)*

**§ 1.1.10** The Architect identifies the following representative in accordance with Section 2.3:  
*(List name, address, and other contact information.)*

Robert E. Stark, AIA  
Antonino Borgese, AIA  
CJS Architects  
755 Seneca Street  
Buffalo, NY 14210

**§ 1.1.11** The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:  
*(List name, legal status, address, and other contact information.)*

**§ 1.1.11.1** Consultants retained under Basic Services:

- .1** Structural Engineer:

McLaren Engineering Group  
530 Chestnut Ridge Road  
Woodcliff Lake, NJ 07677  
David McLaren, PE, SECB

- .2** Garage Engineer:

McLaren Engineering Group  
530 Chestnut Ridge Road  
Woodcliff Lake, NJ 07677  
David McLaren, PE, SECB

- .3** Mechanical, Electrical, Plumbing, & Fire Protection Engineer:

EC4B Engineering PC  
15 Schoen Place, Suite 300  
Pittsford, NY 14534  
Bruce Keeley, PE

- .4** Civil Engineer:

Delta Engineers, Architects & Surveyors  
860 Hooper Road  
Endwell, NY 13760  
Christopher Maby, CPESC

5. Landscape Architect:

Whitham Planning & Design PLLC  
142 East State Street, Suite B  
Ithaca , NY 14850  
Scott Whitham

§ 1.1.11.2 Consultants retained under Supplemental Services:

As noted above.

§ 1.1.12 Other Initial Information on which the Agreement is based:

The Project will be designed to include a podium at the top level that will serve as the building pad for 5-story +/- 120-unit apartment building and shall be appropriately and sufficiently designed and constructed to provide required structural support for the useful life of the apartments and shall provide for required and appropriate resident access, utility connections and other requirements for occupancy and operations of the apartments.

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in the event the Owner shall materially change the scope of the Project, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

*(Paragraphs deleted)*

**ARTICLE 2 ARCHITECT'S RESPONSIBILITIES**

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 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 has identified on under section 1.1.11.1 hereto a representative authorized to act on behalf of the Architect with respect to the Project. The Architect shall provide an adequate supply of properly licensed and experienced personnel during each phase of Services described in Article 3 to perform all required architectural and engineering services in a professional, timely and economical manner. The Architect's and Subconsultants' key personnel assigned to each phase of the Project are identified under section 1.1.11.1 attached hereto.

§ 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 compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the policies of insurance identified in, and shall comply with the other requirements of **Exhibit B** attached hereto.

*(Paragraphs deleted)*

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§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect will be responsible for design of architectural, structural, mechanical, electrical, plumbing, fire protection and low voltage Construction Documents. The Architect will be responsible for the coordination between structural, mechanical, electrical, plumbing, fire protection, low voltage design, and interior design and will include their information in the construction documents as part of the entire permit set of drawings. The Architect will also be responsible for site visits as described to verify that construction is generally proceeding according to plans as requested.

§ 3.1.1 The Architect shall manage the Architect's services, 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, and shall not be responsible for, the accuracy, completeness, and timeliness 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.

§ 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, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 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, the proposed procurement and 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. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project 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, which shall not be unreasonably withheld, conditioned, or delayed, the Architect shall prepare Schematic Design Documents for the Owner's approval based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The Schematic Design Documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. 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 representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

*(Paragraph deleted)*

§ 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.

*(Paragraph deleted)*

§ 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, which shall not be unreasonably withheld, conditioned, or delayed, the Architect shall prepare Design Development Documents for the Owner's approval, and approval by the applicable City of Binghamton zoning and building agencies. 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 other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

*(Paragraph deleted)*

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner and request the Owner's approval.

### § 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's (and City of Binghamton) approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements, which shall not be unreasonably withheld, conditioned, or delayed, 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 and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform 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 the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

*(Paragraphs deleted)*

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, , and request the Owner's approval, which shall not be unreasonably withheld, conditioned, or delayed,.

### § 3.5 Procurement Phase Services

#### § 3.5.1 General

*(Paragraphs deleted)*

## § 3.6 Construction Phase Services

### § 3.6.1 General

§ 3.6.1.1 If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for 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 4.2 and except as provided in Section 3.6.6.5, 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

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction 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 promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) 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 the 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, suppliers, their agents or employees, or other persons or entities performing portions of the Work. If the Architect determines that portions of the Work require testing, inspection or approval, the Architect will upon prior written authorization from the Owner, instruct the Contractor to make arrangements for such testing. Inspection or approval by an entity acceptable to the Owner and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs shall be at the Owner’s or Contractor’s expense. If such procedures for testing, inspection or approval reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect’s services and expense shall be at the Contractor’s expense. If portions of the work are not satisfactory to Architect, the Architect Certifications must so state.

§ 3.6.2.3 The Architect shall interpret and make recommendations on 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. The Architect’s decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents and if approved by the Owner.

*(Paragraph deleted)*



### § 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review the Contractor's Application for Payment 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, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) 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 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 of the schedule. 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. The Architect shall have a minimum of ten (10) business days to review submittals.

§ 3.6.4.2 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 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 and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. The Architect shall have a minimum of five (5) business days to Requests for Information. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

### § 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall review Contractor Prepared Change Orders and prepare Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.1.1 The procedure for the Architect recommending the date or dates of Substantial Completion shall be as follows: Promptly after the Contractor has submitted to the Owner a punch list of incomplete items and has informed the Owner and Architect that, in the Contractor's opinion, the Work or designated portion thereof is Substantially Complete as set forth in the Contract Documents, the Architect shall conduct an on-site observation with the Owner to assist the Owner in determining the date of Substantial Completion and in supplementing the Contractor's punch list of items remaining to be completed. The Architect shall execute and issue to the Owner a Certificate of Substantial Completion when the Architect has determined, after review and consultation with the Owner, that the Contractor has achieved Substantial Completion of the Work or designated portion thereof in accordance with the Contract Documents. For purposes of issuing the Certificate of Substantial Completion, the Architect shall consider the Contractor's compliance with the requirements for Substantial Completion set forth in the Contract for Construction and other Contract Documents, and if the Architect determines that any such requirement has not been met, the Architect immediately shall inform the Owner in writing of such unmet requirement(s). The Owner at its sole election, which shall be binding on the Architect, may then decide whether to have the Architect execute and issue the Certificate of Substantial Completion without regard to any or all of the unmet requirements, provided that the Work or designated portion thereof is sufficiently complete so the Owner can occupy or utilize the Work or designated portion for its intended use. In such a case, the Architect shall execute and issue the Certificate of Substantial Completion without regard to those unmet requirements per the Owner's direction, with the unmet requirements being set forth in the Certificate of Substantial Completion as items to be completed or corrected along with the other punch list items described in the Certificate.

§ 3.6.6.1.2 In connection with issuing a final certificate for payment and date of final completion, the Architect shall conduct an on-site observation to determine, in conjunction with the Owner, whether items on the punch list attached to the Certificate of Substantial Completion and any other unmet requirements set forth in the Certificate have been completed by the Contractor.

§ 3.6.6.1.3 Within ninety (90) days after final completion, the Architect shall provide the Owner with three (3) copies of a record set of Record Drawings and Specifications consisting of computer-aided design and drafting ("CADD") on compact discs (or other electronic media acceptable to the Owner), on a CADD system compatible with the Autocad-system used by the Owner, which incorporate changes in the Work made during construction.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 Upon request by Owner or Contractor following Substantial Completion and Contractor's provision of any written warranties, lien waivers or other documents required by the contract between the Owner and Contractor of the Project, Architect shall execute and deliver Owner, Contractor, and to Owner's existing and prospective lender(s), investor(s), and purchaser(s) Certificates of Substantial Completion in AIA form G704 or substantially equivalent

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certificates of final completion, and certificates of compliance as requested by Owner or Construction Manager, so long as all amounts due to Architect are or have been timely paid. Notwithstanding anything to the contrary, Architect cannot and does not guaranty under Sections 3.6.6.1 through 3.6.6.3 Contractor's means, methods, techniques of construction, or any construction in the field, which obligations remain the obligations of the Contractor. When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 The Architect shall perform a final walk through of the Project with the Owner at a mutually convenient time during the tenth to twelfth month following Substantial Completion of the Project to create a list or deficiencies to be corrected by the Contractor during the correction period under the Contract for Construction

#### ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

##### § 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project. IS THE ARCHITECT SEEKING ADDITIONAL COMPENSATION FOR THE SUPP SERVICES BEYOND WHAT'S PROVIDED AT 11.2?

*(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	Owner
§ 4.1.1.2 Multiple preliminary designs	Architect
§ 4.1.1.3 Measured drawings	Architect
§ 4.1.1.4 Existing facilities surveys	Owner
§ 4.1.1.5 Site evaluation and planning	Architect
§ 4.1.1.6 Building Information Model management responsibilities	Not provided
§ 4.1.1.7 Development of Building Information Models for post construction use	Not provided
§ 4.1.1.8 Civil engineering	Architect
§ 4.1.1.9 Landscape design	Architect
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	Owner
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Owner
§ 4.1.1.13 On-site project representation	Owner
§ 4.1.1.14 Conformed documents for construction	Architect
§ 4.1.1.15 As-designed record drawings	Architect
§ 4.1.1.16 As-constructed record drawings	Owner
§ 4.1.1.17 Post-occupancy evaluation	Not provided
§ 4.1.1.18 Facility support services	Owner

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<b>Supplemental Services</b>	<b>Responsibility</b> <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.19 Tenant-related services	Owner
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect
§ 4.1.1.21 Telecommunications/data design	Owner
§ 4.1.1.22 Security evaluation and planning	Owner
§ 4.1.1.23 Commissioning	Not provided
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not provided
§ 4.1.1.25 Fast-track design services	Architect
§ 4.1.1.26 Multiple bid packages	Owner
§ 4.1.1.27 Historic preservation	Not provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	Owner
§ 4.1.1.29 Other services provided by specialty Consultants	Owner
§ 4.1.1.30 Other Supplemental Services	Owner

**§ 4.1.2 Description of Supplemental Services**

**§ 4.1.2.1** A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

*(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)*

**§ 4.1.2.2** A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

*(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)*

**§ 4.1.3** If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

**§ 4.2 Architect's Additional Services**

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

**§ 4.2.1** Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a material change in the Project scope, including size, or quality;
- .2 Services necessitated by an unanticipated enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit;
- .4

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- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6
- .7
- .8 Preparation for, and attendance at, a legal proceeding, except where the Architect is party thereto;
- .9
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;
- or,
- .11 .

**§ 4.2.2**

*(Paragraphs deleted)*

**§ 4.2.4** Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

**§ 4.2.5** Twenty Four (24) CJS WANTS TO UNDELETE AND INCLUDE 24-MOS CAN WE USE 4.2.3 ABOVE INSTEAD

**ARTICLE 5 OWNER'S RESPONSIBILITIES**

**§ 5.1** Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

**§ 5.2** The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect.

**§ 5.3** The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services. Under Section 1.1.7 the Owner reserves the right to appoint an Owner's Representative. The Owner's Representative may act on behalf of the Owner, and the Architect shall comply with the Owner's Representative's directions. The Owner may change Owner's Representative at any time in its sole discretion. The Owner designates those individuals listed in Section I.1.7 as the only persons who are authorized to act on the Owner's behalf. A senior officer of the Owner may, however, change its designee or designate additional persons authorized to act on behalf of the Owner by providing the Architect with written notice of such change or addition. The Architect may rely upon any communications or directions that it receives from the designated Owner's Representatives or any other person designated in writing by the Owner to act on the Owner's behalf and only such designated persons have authority to order services or make decisions that increase cost or time.

**§ 5.4** The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. All the information on the survey shall be referenced to a Project benchmark.

**§ 5.5** The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.



§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

*(Paragraph deleted)*

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect.

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

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

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

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. The Owner may communicate with, but shall not direct, the Architect's Subconsultants. The Architect shall require its Subconsultants to advise the Architect on all material communications by Owner with the Architect's Subconsultants in a timely manner.

*(Paragraph deleted)*

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

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

*(Paragraphs deleted)*

## ARTICLE 7 COPYRIGHTS AND LICENSES

### § 7.1 CADD GRAPHIC FILES

1 The electronic files submitted by the Architect to the Owner are submitted to the Owner to submit to the Contractor or to another design professional and the Owner has no responsibility for such electronic files.

.2 Under no circumstances shall transfer of the drawings and other Work Product on electronic media for use by the Owner or others be deemed a sale by the Architect, and the Architect makes no warranties, either express or implied, of merchantability and fitness for any particular purpose.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect hereby grants to the Owner an exclusive, irrevocable, fully paid-up, perpetual, royalty-free, sub licenseable, worldwide license to use, copy, display, operate, maintain, support, modify, enhance, and make derivative works from the Work Product for the Owner's and its contractors' use in Owner's Enjoyment (as defined below). The Owner and its Consultants and contractors (including, without limitation, design professionals) may make copies, including reproducible copies, and derivative works of the Work Product for information and reference in connection

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with Owner's Enjoyment. "Owner's Enjoyment" means use and occupancy of the Project, additions to the Project, completion of the Project design and construction, and use in connection with similar projects owned or operated by the Owner or its affiliated companies. However, the Architect will have no responsibility to the Owner for, and the Owner shall indemnify and hold the Architect harmless from, claims to the extent caused by (i) modifications made to the Work Product by others without the Architect's involvement or written approval, and (ii) the use of the Work Product on projects other than the Project without the Architect's involvement or written approval.

*(Paragraph deleted)*

§ 7.4 The Architect agrees to execute any such further documents as may be necessary or appropriate to protect or enforce the rights set forth in this Article 7. The Architect agrees to include and enforce appropriate provisions in all agreements with employees and Subconsultants to establish the Owner's use of Work Product as described in this Article 7.

§ 7.5 The Architect warrants and represents that the Work Product will not infringe the copyright, other Intellectual Property Rights, or any other rights of any third party.

§ 7.6 It is acknowledged by both parties that the overall architectural design of the Project will be unique to this Project, and the Architect warrants and represents that it will not create copy, reuse, or create substantially similar unit plans an architectural design that is substantially similar to the Project, in whole or in part, for any other project.

§ 7.7 Within three (3) business days after the termination or expiration of this Agreement, or promptly after the Owner's request at any time, the Architect shall deliver all of the Work Product, including any and all drafts and other embodiments thereof, to the Owner in printed and readily modifiable electronic form (i.e., not in PDF, but in "native" format). Notwithstanding the foregoing, Architect shall be permitted to retain a copy of such Work Product for its own records.

§ 7.8 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Owner's or Architect's reserved rights.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 General**

§ 8.1.1 Subject to rights to enforce mechanic's lien rights, to obtain a prejudgment attachment or other prejudgment or equitable relief, and to obtain discovery, after which the parties shall assent to move or stay any litigation, pending mediation and/or arbitration the Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law.

§ 8.1.2 Unless the same would alter, void or increase premiums for coverage to and to the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction and except for required deductible amounts paid by either party as required by either's property insurance.. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

### **§ 8.2 Dispute Resolution**

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement or the breach or invalidity thereof that cannot be amicably settled between the parties will be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

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§ 8.2.2 The Owner and Architect shall continue to perform its obligations under this Agreement so as not to delay the Project pending resolution of any dispute, and the Owner shall continue to make payment of all amounts due, which are not in dispute and shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. In the event of any litigation between the parties arising out of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and expert fees, as well as all costs and expenses of such litigation. The court, upon notice and motion by a party, shall determine who is the prevailing party for purposes of this Section. . Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this Section. Where the defendant alleges in its answer that the defendant tendered to the plaintiff the full amount to which the plaintiff was entitled, and the allegation is found to be true, then the defendant is deemed to be a party prevailing on the contract within the meaning of this Section

§ 8.2.4

*(Paragraphs deleted)*

EITHER PARTY SHALL FILE ANY SUIT OR ACTION IN CONNECTION WITH THIS AGREEMENT ONLY IN THE NEW YORK STATE SUPREME COURT LOCATED IN BROOME COUNTY, NEW YORK.

§ 8.3 NOT USED

*(Paragraphs deleted)*

**ARTICLE 9 TERMINATION OR SUSPENSION**

§ 9.1 If the Owner fails to make payments of undisputed amounts due to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven (7) days' written notice to the Owner before suspending services. In the event of a justified suspension of services, as determined by a final tribunal, and/or after all appeals have been heard, denied or waived, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services, including all costs of collection and legal fees incurred by the Architect. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted for undisputed amounts.

§ 9.2 The Owner has the right to suspend the Project or the performance of the Architect's service for any reason. The Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses reasonably incurred in the interruption and resumption of the Architect's services, but not if the suspension or termination is for cause or gross negligence. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

*(Paragraph deleted)*

§ 9.4 **Should the Owner fail substantially to perform in accordance with the terms of this Agreement through no fault of the Architect, including non-payment in accordance with the included terms, the Architect shall have the right to suspend or terminate services, without consequence, after giving 30 days written notice to the Owner.** Should the Architect fail substantially to perform in accordance with the terms of this Agreement through no fault of the Owner, Owner shall provide Architect notice of such non-performance. Should Architect fail to

substantially cure such non-performance within thirty (30) days of such notice, then Owner may terminate this Agreement. In the event the Owner terminates this Agreement for cause and it is later determined that the termination was improper, such termination will be treated for all purposes as a termination for convenience pursuant to Section 9.5 below. **§ 9.5** In addition to the Owner's rights in Section 9.4, the Owner may terminate this Agreement upon not less than fifteen (15) days' written notice to the Architect for the Owner's convenience and without cause.

*(Paragraph deleted)*

**§ 9.6** In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due, provided, however, that the amount of Basic Compensation due to the Architect will not exceed the appropriate amount due through the phase of services in which the termination takes place. The Architect shall also receive payment for Additional Services properly due. Such payments will be the Architect's sole remedy in the event of termination without cause.

**§ 9.7**

*(Paragraphs deleted)*

NOT USED

**§ 9.8** NOT USED

**§ 9.9** The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

## **ARTICLE 10 MISCELLANEOUS PROVISIONS**

**§ 10.1** This Agreement shall be governed by the law of the State of New York.

**§ 10.2** Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

**§ 10.3** The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. The Owner may assign or novate this Agreement without the prior consent of Architect to an entity affiliated with the Owner, a purchaser of the Project, a lender, or a person or entity financially capable of performing the Owner's obligations under this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender or non-institutional lender, to whom the Architect may consent in its sole discretion providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment. The Owner may also assign this Agreement to a special purpose entity created solely for the Project without the consent of Architect.

**§ 10.4** If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

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

**§ 10.6** Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. However, if the Architect becomes aware of the presence of any hazardous materials or toxic substances at the Project site, the Architect shall expeditiously so notify the Owner in writing.

**§ 10.7** Only with the Owner's prior written consent, which shall not be unreasonably withheld, the Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations with the Owner's prior written consent, which shall not be unreasonably withheld. However, the Architect's materials shall not include the Owner's confidential or proprietary information.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after seven (7) days' written notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 Owner acknowledges that it is responsible for any costs and/or liability arising from its Project website and its use.

§ 10.11 The parties recognize that due to the nature of the services provided by Architect, any direct or indirect retention or employment of Architect's employees by Owner within twelve months of project substantial completion, other than through Architect, and in violation of a preceding paragraph above, shall damage Architect in a substantial manner, but one which is difficult to quantify. Accordingly, the parties agree that in the event the Owner retains or employs an employee of the Architect in violation of the preceding above, it shall pay liquidated damages in the amount of 100% of the gross annual compensation of said employee within ten (10) days of the conversion or hire.

§ 10.12 Should Architect's services be provided on the job site during project construction, it is understood that, in accordance with generally accepted construction practices, the Contractor will be solely and completely responsible for working conditions on the job site, including safety of all persons and property during the performance of the work, and compliance with OSHA regulations, and that these requirements will apply continuously and not be limited to normal working hours. Architect shall maintain insurances set forth in Section 2.5. Owner shall be responsible for all other forms of property, casualty and liability insurance coverage required for the project.

§ 10.13 Architect is not liable for construction cost. The Architect's services do not include cost estimating services. Architect can appoint cost estimating services from an independent cost estimating company as an Additional Service at the request of the Owner.

§ 10.14 Condominium Conversion: Owner does not now foresee that the Project will be converted to condominiums. Because Architect did not design the Project for condominium ownership, Owner agrees that, if Owner, including its successors and assigns, decides to convert the Project into condominiums in the future, Owner, its successors and assigns will, to the fullest extent permitted by law, indemnify and hold harmless Architect and Architect's officers, partners, employees from any and all claims, losses, damages and costs, including reasonable attorney's fees and defense costs, arising or allegedly arising in any manner whatsoever due to the conversion to condominium ownership, except if caused by, to the extent of, and in proportion with the negligence or other misconduct of Architect, its consultant(s), or any person for whom any of them are responsible.

§ 10.15 Limitation of Liability. Architect's liability to Owner as to Architect's and Architect's consultants' errors and omissions, including negligence, under this Agreement is limited to the amount of three million dollars (\$3,000,000).

## ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Services described herein, the Owner shall compensate the Architect as follows:  
(Paragraphs deleted)

- .3 Other  
(Describe the method of compensation)

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Per Fee Schedule attached as Exhibit A, dated 01/15/2022 (\$552,000) Five Hundred and Fifty- Two Thousand and Seven Hundred Dollars

*(Paragraphs deleted)*

**§ 11.3** For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:  
As mutually agreed, upon by owner and architect

**§ 11.4** Compensation for Supplemental and Additional Services of the Architect’s consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent (10%), or as follows:  
(Insert amount of, or basis for computing, Architect’s consultants’ compensation for Supplemental or Additional Services.)

**§ 11.5** When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Twenty point Nine	percent (	20.9	%)
Design Development Phase	Twenty Four point Seven	percent (	24.7	%)
Construction Documents Phase	Thirty Three	percent (	33.0	%)
Procurement Phase	Zero	percent (	0.0	%)
Construction Phase	Twenty One point Four	percent (	21.4	%)
<hr/>				
Total Basic Compensation	one hundred	percent (	100	%)

**§ 11.6 NOT USED**

**§ 11.6.1 NOT USED**

**§ 11.7** The hourly billing rates for services of the Architect and the Architect’s consultants are set forth below. The rates shall be adjusted in accordance with the Architect’s and Architect’s consultants’ normal review practices and may form the basis of payment as a continent service.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

**Employee or Category**

**Rate (\$0.00)**

*(Paragraphs deleted)*

**§ 11.9 NOT USED**

**§ 11.10 Payments to the Architect**

**§ 11.10.1 Initial Payments**

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User Notes:

(1970698318)



§ 11.10.1.1 An initial payment of ten thousand dollars (\$ 10,000 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

*(Paragraph deleted)*

**§ 11.10.2 Progress Payments**

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid zero ( 0 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

*(Insert rate of monthly or annual interest agreed upon.)*

0.00 % Zero

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

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

**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

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

*(Include other terms and conditions applicable to this Agreement.)*

**ARTICLE 13 SCOPE OF THE AGREEMENT**

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

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

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect

*(Paragraphs deleted)*

- .3 Exhibits:

*(Check the appropriate box for any exhibits incorporated into this Agreement.)*

- AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this agreement.)*

- Other Exhibits incorporated into this Agreement:  
*(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)*

Exhibit   A   – CJS Proposal for Fees and Design Phases dated \_\_\_\_\_

Exhibit   B   – CJS Hourly Billing Rate Schedule

Exhibit   C   – CJS Insurance Requirements

Exhibit   D   – EC4B Proposal dated   09/22/2021  

Exhibit   E   – McLaren Proposal dated   08/31/2021  

Exhibit   F   – Delta Proposal dated   08/08/2021  

Exhibit   G   -0 Whitham Proposal dated   01/02/2022  

- .4 Other documents:

*(List other documents, if any, forming part of the Agreement.)*



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

| UB FAMILY, LLC

CJS ARCHITECTS

\_\_\_\_\_  
**OWNER** *(Signature)*

\_\_\_\_\_  
**ARCHITECT** *(Signature)*

| Michael J. Uccellini, Member  
\_\_\_\_\_  
*(Printed name and title)*

Robert E. Stark, Partner  
\_\_\_\_\_  
*(Printed name, title, and license number, if required)*



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