



# AIA<sup>®</sup> Document B107<sup>™</sup> – 2010

## *Standard Form of Agreement Between Developer-Builder and Architect for Prototype(s) for Single Family Residential Project*

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

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

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)*

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

located in the following Development:  
*(Name, location and detailed description)*

The Developer-Builder and Architect agree that the Architect shall provide services as follows.

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### ARTICLE 1 INITIAL INFORMATION

§ 1.1 For purposes of this Agreement, the "Project" is defined as a residence or residences to be designed in accordance with the requirements of the Developer-Builder. In the event that the construction of the design is repeated by the Developer-Builder in the Development or as otherwise provided in Section 7.4, the "Project" is limited to the first residence of each prototype design constructed by the Developer-Builder in the Development.

§ 1.2 "Instruments of Service" are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.3 This Agreement is based on the Initial Information set forth below:

*(State details of the Project's site and program, Developer-Builder's contractors and consultants, Architect's consultants, Developer-Builder's budget for the Cost of the Work, and other information relevant to the Project.)*

§ 1.4 The Developer-Builder's anticipated dates for commencement of construction and substantial completion of the Project defined in Section 1.1 are set forth below:

.1 Commencement of construction date:

.2 Substantial completion date:

§ 1.5 The Developer-Builder and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Developer-Builder 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 the limited services for the Project defined in this Agreement consistent with the professional skill and care ordinarily provided by architects performing such limited services for a knowledgeable residential developer-builder of the type described in Section 5.1 in the jurisdiction in which the Project is being constructed. 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 Developer-Builder'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 services to be rendered in connection with 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 Developer-Builder shall reimburse the Architect for any additional cost:

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

- .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. Services not set forth in Article 3 are Additional Services. The Architect shall provide structural, mechanical, electrical and plumbing design as part of the Architect's Basic Services only to the extent minimally required for the Permit Set Documents in the jurisdiction where the Project is located.

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Developer-Builder and the Developer-Builder's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Developer-Builder and the Developer-Builder's consultants. The Architect shall provide prompt written notice to the Developer-Builder 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 Developer-Builder'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 Project as set forth in the Initial Information.

The schedule shall include allowances for periods of time required for the Developer-Builder's review, for the performance of the Developer-Builder's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Developer-Builder, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Developer-Builder. With the Developer-Builder'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 any directives, substitutions or selections made by the Developer-Builder or for the Developer-Builder's acceptance of non-conforming work, made without the Architect's approval. The Architect assumes no responsibility for the Developer-Builder's selection of any specific material or product, fabrication technique, or the means or method of installation.

§ 3.1.5 The Architect shall contact the governmental authorities required to issue the building permit 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.

### § 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Developer-Builder, 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 Developer-Builder's program and Project site to ascertain the requirements of the Project. The Architect shall notify the Developer-Builder 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 Developer-Builder and shall discuss with the Developer-Builder alternative approaches to design of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Developer-Builder regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Developer-Builder, the Architect shall prepare and present for the Developer-Builder's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Developer-Builder's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Developer-Builder's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan for the Project, 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 Developer-Builder's program, schedule and budget for the Cost of the Work. The Developer-Builder 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 Developer-Builder's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Developer-Builder, and request the Developer-Builder's approval.

### § 3.3 Permit Set Documents

§ 3.3.1 Based on the Developer-Builder's approval of the Schematic Design Documents, and on the Developer-Builder's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Permit Set Documents for the Developer-Builder's approval. The Permit Set Documents shall be consistent with the Schematic Design Documents and shall consist of the necessary documentation of the design required in order to obtain a building permit in the jurisdiction in which the Project is located.

§ 3.3.2 The Architect shall incorporate into the Permit Set Documents the design requirements of governmental authorities having jurisdiction over the Project and shall provide responses to review comments of those authorities.

§ 3.3.3 The Architect shall submit the Permit Set Documents to the Developer-Builder and request the Developer-Builder's approval.

§ 3.4 Construction Phase Services

§ 3.4.1 General

§ 3.4.1.1 The Architect shall respond to inquiries or requests from the Developer-Builder, specifically related to documents prepared by the Architect. The Architect shall have authority to act on behalf of the Developer-Builder 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 Project, nor shall the Architect be responsible for the Developer-Builder's failure to perform the work in accordance with the requirements of the Permit Set 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 Developer-Builder or of any other persons or entities performing portions of the work.

§ 3.4.1.2 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences when construction of the Project begins and terminates on the date of substantial completion of the Project.

§ 3.4.2 Site Visits

If requested by the Developer-Builder to observe construction of specific elements designed by the Architect, the Architect shall visit the Project one time or as agreed upon by the Developer-Builder and Architect for the sole purpose of observing such construction to respond to inquiries of the Developer-Builder. Such observation shall not include any inspection or observation of any other portion of construction. The Architect shall not be required to make on-site inspections to check the quality or quantity of the work.

§ 3.4.3 Submittals

§ 3.4.3.1 If requested by the Developer-Builder, the Architect shall review and comment on selections made by the Developer-Builder pursuant to Section 5.11 with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.4.3.2 The Architect shall review and comment upon selections made by the Developer-Builder, but only for the limited purpose of responding to the specific inquiry of the Developer-Builder. Review of such submittals is only for the purpose of making a determination specifically related to the Developer-Builder's inquiry and is not for determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Developer-Builder'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.

§ 3.4.3.3 The Architect shall review, approve or take other appropriate action on any submittal for which approval by the Architect is required by the governmental authority having jurisdiction.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Developer-Builder shall compensate the Architect as provided in Section 11.2. *(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Additional Services	Responsibility (Architect, Developer-Builder or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™-2009)		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Adapting Permit Set Documents for additional Sites		

Additional Services	Responsibility (Architect, Developer-Builder or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.4 Code review for additional sites		
§ 4.1.5 Site Evaluation and Planning (B203™–2007)		
§ 4.1.6 Preparing filings for governmental authorities		
§ 4.1.7 Civil engineering		
§ 4.1.8 Landscape design		
§ 4.1.9 Architectural Interior Design (B252™–2007)		
§ 4.1.10 Coordination of Developer-Builder’s Consultants		
§ 4.1.11 Extensive environmentally responsible design		
§ 4.1.12 LEED® Certification (B214™–2007)		
§ 4.1.13 Other Sustainability Certifications		
§ 4.1.14 Fast-track design services		
§ 4.1.15 Other:		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect’s responsibility, if not further described in an exhibit attached to this document.

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

§ 4.3.1 The Architect may provide the following Additional Services if requested by the Developer-Builder and upon receipt of the Developer-Builder’s written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Developer-Builder, or a material change in the Project including, but not limited to, size, quality, complexity, the Developer-Builder’s schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Developer-Builder’s request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification or other sustainability certifications;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Changing or editing previously prepared Instruments of Service for re-submittal to authorities having jurisdiction necessitated by decisions or instructions of the Developer-Builder after the issuance of the building permit;
- .5 Services necessitated by decisions of the Developer-Builder not rendered in a timely manner or any other failure of performance on the part of the Developer-Builder or the Developer-Builder’s consultants or contractors;
- .6 Preparing digital data for transmission to the Developer-Builder’s consultants and contractors, or to other Developer-Builder authorized recipients;
- .7 Preparation of design and documentation for proposal requests or modifications proposed by the Developer-Builder;
- .8 Preparation for, and attendance at, a public presentation, meeting or hearing; and
- .9 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

§ 4.3.2 If the services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 DEVELOPER-BUILDER'S RESPONSIBILITIES

§ 5.1 The Developer-Builder shall be an entity knowledgeable about, and experienced with, the applicable residential building codes, selection of materials and systems, and methods of installation and construction; and able to implement the Permit Set Documents through completion of the Project.

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

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

§ 5.4 The Developer-Builder shall identify a representative authorized to act on the Developer-Builder's behalf with respect to the Project. The Developer-Builder 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.

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

§ 5.6 Except as provided in Section 3.1, the Developer-Builder shall furnish the services of a civil engineer and all other consultants reasonably required by the scope of the Project or authorities having jurisdiction over the Project.

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

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

§ 5.9 The Developer-Builder shall furnish tests, inspections and reports required by law, this Agreement or the Permit Set Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Developer-Builder 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 Developer-Builder's needs and interests.

§ 5.11 The Developer-Builder shall select specific products and methods of application for mechanical equipment and fixtures, electrical equipment and fixtures, and interior finishes, furnishings, fixtures and equipment unless governmental authorities require that they be specified by the Architect.

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

§ 5.13 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Developer-Builder shall endeavor to communicate with the Architect's consultants through the Architect about matters arising out of or relating to the Permit Set Documents. The Developer-Builder shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.14 The Developer-Builder shall provide the Architect access to the Project site prior to commencement of the construction work and shall provide the Architect access to the construction work wherever it is in preparation or progress.

§ 5.15 The Developer-Builder is responsible for filing documents and building permit applications for review and approval of governmental authorities.

§ 5.16 The Developer-Builder shall be responsible for interpreting the Permit Set Documents and observing the construction work to discover, correct, or mitigate errors, inconsistencies or omissions.

#### ARTICLE 6 COST OF THE WORK

§ 6.1 The Cost of the Work shall be the total cost or estimated cost to the Developer-Builder to construct all elements of the Project reflected in the Permit Set Documents. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Developer-Builder.

§ 6.2 Any use by the Architect of the Developer-Builder's Project budget and of preliminary estimates of the Cost of the Work or detailed estimates of the Cost of the Work prepared by the Developer-Builder is solely for the Architect's guidance in the Architect's preparation of the Permit Set Documents. Accordingly, the Architect cannot and does not warrant the accuracy of the estimates of the Developer-Builder or warrant or represent that bids or negotiated prices will not vary from the Developer-Builder's Project budget or from any estimate of the Cost of the Work or evaluation reviewed by the Architect.

#### ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Developer-Builder warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project or the Development. If the Developer-Builder and Architect intend to transmit instruments of service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 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 or the Development is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Developer-Builder a nonexclusive license to use the Architect's instruments of service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project or the Development, provided that the Developer-Builder substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this Section permits the Developer-Builder to authorize contractors, subcontractors, sub-subcontractors, and material or equipment suppliers, as well as the Developer-Builder's consultants and separate contractors, to reproduce applicable portions of the instruments of service solely and exclusively for use in performing services or construction for the Project or the Development. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.



§ 7.3.1 In the event the Developer-Builder uses the instruments of service without retaining the author of the instruments of service, the Developer-Builder releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Developer-Builder, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Developer-Builder's use of the instruments of service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply to the Project or Development if the Developer-Builder rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Subject to the conditions of Section 7.3.1, the Developer-Builder may reuse all or part of the Architect's Instruments of Service, with or without design modifications, on a subsequent project or development, and shall compensate the Architect as stipulated in Section 11.8.2. Reuse of the Architect's Instruments of Service without retaining the Architect will be at the Developer-Builder's sole risk and without liability to the Architect. All other provisions of this Agreement, including without limitation Section 7.3.1, shall apply. The terms of this Section 7.4 shall not apply if the Developer-Builder rightfully terminates this Agreement for cause under Section 9.4.

§ 7.5 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Developer-Builder shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect, and without such party's written agreement to indemnify the Architect to the same extent that the Developer-Builder indemnifies the Architect in Section 7.3.1 in a form acceptable to the Architect. Any unauthorized use of the instruments of service shall be at the Developer-Builder's sole risk and without liability to the Architect and the Architect's consultants. The Developer-Builder shall indemnify and hold harmless the Architect, the Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of unauthorized reuse of the Architect's Instruments of Service.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

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

§ 8.1.2 To the extent damages are covered by property insurance, the Developer-Builder 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. The Developer-Builder 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 Developer-Builder 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, except as specifically provided in Section 9.7.

§ 8.1.4 If the Developer-Builder authorizes deviations, recorded or unrecorded, from the Instruments of Service prepared by the Architect or its consultants, the Developer-Builder shall indemnify and hold harmless the Architect, the Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting in whole or in part from such deviations.

§ 8.1.5 The Developer-Builder shall indemnify and hold harmless the Architect, the Architect's consultants, and the agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of the actions of the Developer-Builder or services performed by the Developer-Builder's consultants, so long as such claims, damages, losses and expenses are not caused by the sole negligence or willful misconduct of the Architect.

## § 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to 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.

§ 8.2.2 The Developer-Builder and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:  
(Check the appropriate box. If the Developer-Builder and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: (Specify)

## § 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder Not Permitted. No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Developer-Builder, Architect,

and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein.

## ARTICLE 9 TERMINATION OR SUSPENSION

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

§ 9.2 If the Developer-Builder suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

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

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Developer-Builder'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 and Section 11.8.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 The Developer-Builder and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Developer-Builder nor the Architect shall assign this Agreement without the written consent of the other, except that the Developer-Builder may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Developer-Builder's rights and obligations under this Agreement.

§ 10.3 If the Developer-Builder 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. If the Developer-Builder requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.4 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 Developer-Builder or Architect.

§ 10.5 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 or Development site.

§ 10.6 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. However, the Architect's materials shall not include the Developer-Builder's confidential or proprietary information if the Developer-Builder has previously advised the Architect in writing of the specific information considered by the Developer-Builder to be confidential or proprietary.

§ 10.7 If the Architect or Developer-Builder receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

#### ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Developer-Builder shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

§ 11.1.1 If the basis for compensation set forth in Section 11.1 is other than hourly, the Architect shall provide Construction Phase Services, pursuant to Section 3.4, exceeding the limits below on an hourly basis at the rates provided in Section 11.6. When the limits below are reached, the Architect shall notify the Developer-Builder:

- .1 ( ) reviews or approvals of selections made by the Developer-Builder
  - .2 ( ) visits to the site by the Architect over the duration of the Project
- during construction

§ 11.2 For Additional Services designated in Section 4.1, the Developer-Builder shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Developer-Builder shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus \_\_\_\_\_ percent ( \_\_\_\_\_ %), or as otherwise stated below:

§ 11.5 Compensation for Basic Services will be made in accordance with the following Schedule of Payments:  
*(Insert percentage of compensation to be paid during each phase of Basic Services or other agreed-upon schedule.)*

§ 11.6 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Employee or Category	Rate
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#### § 11.7 Compensation for Reimbursable Expenses

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Developer-Builder;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Developer-Builder;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Developer-Builder requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.7.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the expenses incurred.

#### § 11.8 Compensation for Use of Architect's Instruments of Service

§ 11.8.1 If the Developer-Builder terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Developer-Builder shall pay a licensing fee as compensation for the Developer-Builder's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project or the Development as follows:

§ 11.8.2 For reuse of the Architect's Instruments of Service under Section 7.4, compensation shall be computed as follows:  
(Insert amount of, or basis for, compensation.)

### § 11.9 Payments to the Architect

#### § 11.9.1 An initial payment of

(\$ ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Developer-Builder's account in the final invoice.

§ 11.9.2 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

( ) 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.)

§ 11.9.3 The Developer-Builder 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 Project unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

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

### ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

### ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Developer-Builder 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 Developer-Builder and Architect.

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

- .1 AIA Document B107™-2010, Standard Form Agreement Between Developer-Builder and Architect
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

- .3 Other documents:

(List other documents, including additional scopes of service, if any, forming part of the Agreement.)

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

\_\_\_\_\_  
DEVELOPER-BUILDER *(Signature)*

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

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*

**CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.**

