

Instruction: Add a reference to this Owner's Rider in §13.2 of the AIA Form B104.

**OWNER'S RIDER TO STANDARD FORM OF AGREEMENT BETWEEN
OWNER AND ARCHITECT (AIA DOCUMENT B104-2007)**

DATE: _____
OWNER: _____
(address for notices) _____

ARCHITECT: _____
(address for notices) _____

**PRELIMINARY BUILDING
CONSTRUCTION BUDGET:** _____

**CHANGE ORDER
THRESHOLD:** _____

EXHIBITS:

- **Exhibit A**, Architect's Proposal dated _____, 201__;
- **Exhibit B**, Listing of Architect's Employees Assigned to Project, with Architect's Rate Schedule;
- **Exhibit C**, Architect's Schedule for Performance;
- **Exhibit D**, Insurance Requirements; and
- **Exhibit E**, Building Rules.

1. General/Document Hierarchy/Cross-References in B104. If any of the provisions of this Rider conflict or are otherwise inconsistent with the AIA Standard Form of Agreement between the Owner and Architect (Document B104) to which this Rider is attached, the Specifications, and other Contract Documents, the more restrictive requirement and the higher standard, for the benefit of the Owner, as the case may be, shall prevail and be binding upon the Architect. To the extent the B104 cross-references other AIA documents, e.g., the AIA Document A107-2007, such cross-references shall be deemed to be to any agreement(s) that may be entered into between the Owner and any the Contractor or Construction Manager for this Project, whether such agreements are AIA forms or otherwise.

2. Professional Services to be Rendered:

(a) Architect's Responsibilities. B104 Article 2 is hereby deleted in its entirety and replaced with the following new provisions:

(i) New § 2.1: "**Architect's Responsibilities.** It is the intention of this Agreement that the Architect shall provide for all necessary and appropriate Architecture and design services required for the complete design, bidding, construction

administration and completion of the Project, in accordance with Architect's Proposal, **Exhibit A** hereto, through and including Project closeout, whether specifically identified in this Agreement and construction documents or reasonably implied or inferred therefrom."

(ii) New §2.2: "**Standard of Care.** "The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing the same or similar locality under the same or similar circumstances ("Standard of Care"). The Architect shall perform its services as expeditiously as is consistent with such professional skill and care, the orderly progress of the Project, and the Standard of Care."

(b) Professional Services Generally.

(i) B104 §3.1 is hereby deleted and replaced with the following new §3.1:

"§3.1 Unless expressly provided as an Additional Service in §3 of this Rider below, Architect's Basic Services shall consist of all services recited, noted, referenced, implied, inferred or incorporated by reference in the B104, this Owner's Rider and/or in the project construction contract with a contractor or construction manager, all of which shall, unless otherwise specifically noted in §3 below as being an Additional Service, be and shall be deemed to be part of Basic Services and fees or compensation for such Services are and shall be deemed to be included in Architect's Fee for Basic Services."

(ii) **Code Compliance.** The following new §3.1.4 is hereby added to the B104: "The final Construction Documents, the design and instructions therein and Architect's performance hereafter, shall comply with any and all applicable federal, state, and local statutes, rules, regulations, laws, ordinances, codes, encumbrances and any other restrictions, including, but not limited to, those relating to design, construction, existence or use of the Project and, if applicable, "public accommodations" under the Americans with Disabilities Act, as amended ("ADA") (the "Requirements"); provided, however that the Architect's Basic Services do not include revisions to the Contract Documents solely to the extent required for compliance with changes to Requirements or new Requirements enacted after the date upon which the Design Development documents are completed and approved by the Owner (the "Compliance Date")."

(iii) **Consultants.** The following new §3.1.5 is hereby added to the B104: "Architect shall select and retain (and shall be responsible for) all engineers or consultants whose services may be deemed necessary or advantageous by Architect in connection with the performance of the Services required of Architect pursuant to this Agreement, including as applicable, electrical, mechanical, civil and structural engineers (all of whom are collectively referred to herein as the "Architect's Consultants"). Architect shall not retain any Architect's Consultant without the approval of Owner, which approval shall not be unreasonably withheld; however the approval of Owner to such retention shall not relieve, affect or otherwise modify Architect's obligations under this Agreement, including Architect's responsibility for the technical accuracy, quality

and coordination of any Services provided by any Architect's Consultants. All costs associated with the services rendered by all Architect's Consultants shall be deemed included in Architect's agreed compensation for Architect's Basic Services, as described in B104 §11.1, and shall be paid for by Architect. Architect shall be responsible for the professional quality, technical accuracy and the coordination of all Design Documents and other Services provided by or through Architect or Architect's Consultants under this Agreement and for the coordination of the Services performed by Architect and Architect's Consultants with services provided by Owner, Contractor, other consultants or any other entity retained by Owner for the Project."

(iv) **Coordination of Other Consultants.** The following new §3.1.6 is hereby added to the B104: "Consistent with the Standard of Care Architect agrees to supervise [**Altern. Language:** coordinate its services with the services of] those engineers and other consultants that Owner has retained (the "Other Consultants") so that the final work product prepared by Architect and such Other Consultants shall be fully constructible and meet all codes, rules and regulations applicable to this Project."

(c) **Construction Budget.** B104 §6.3 is hereby deleted in its entirety and replaced with the following new §6.3:

"§6.3 In preparing estimates of the Cost of Work, Architect shall, subject to Owner's approval: be permitted to include contingencies for design, bidding and price escalation; to recommend what materials, equipment, component systems and types of construction are to be included in the Contract Documents; suggest reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the approved Construction Budget."

(d) **Design Phase. [to be used for larger and/or more complex projects]** The following new §3.2.7 is hereby added to the B104: "[B]ased upon a mutually agreed upon program and the Construction Budget, and in coordination with the Other Consultants, if any, the Architect shall prepare, for the Owner's approval, design documents, consisting of drawings and other documents illustrating the scale and relationship of Project components together with an analysis comparing the design to the Project projections and potential impacts on the Construction Budget. The Architect shall ensure that all drawings, regardless of the source, shall be coordinated with each other and with architectural elements of the structure such that spaces and configurations shall be adequate and appropriate for the other work to be installed or constructed in the same areas. The Architect shall correct or revise the Design Documents as part of the Architect's Basic Services hereunder and at no separate or additional charge to the Owner, except when the Owner's request is for purely aesthetic reasons and the Owner has previously approved the Design Documents. In the event the Architect's Design Documents are erroneous, ambiguous, faulty, defective, deficient, exceed the Design or Construction Budget and/or do not meet the intended uses of the Owner, the Architect shall revise and/or redesign the Design Documents as part of the Architect's Basic Services."

(e) Construction Documents Phase. The Architect shall perform the following additional services as part of the Architect's Basic Services:

(i) B104 §3.3.1 is hereby deleted in its entirety and replaced with the following new §3.3.1: "Upon the Owner's written approval of the Design Documents, the Architect shall prepare Construction Documents for the Project, which shall include working drawings and specifications. The term "working drawings" includes, as applicable, (i) floor plans, elevations, sections, and details as may be necessary to describe architectural features; (ii) reflected ceiling plans (showing the location of the various types and features of the ceilings, locations of standard and special light fixtures and switches, sprinkler heads, smoke detectors and alarms, and air conditioning diffusers and registers); (iii) finish plans and finish schedules showing the locations and type of paint, wall coverings, wood finishes, carpeting, floor coverings, fabric and other special finishes; (iv) large scale plans, elevations and details necessary for special areas requiring a higher level of detail, coordination and finishes; (v) millwork plans indicating the location of millwork and cross references to the appropriate elevations and/or details; (vi) general conditions and specifications for the base building as well as interior construction work and furniture location drawings and specifications; and (vii) detailed drawings and specifications to describe the approved mechanical and structural systems. The Construction Documents shall conform to the intent of the Design Documents as finally approved by the Owner and shall be submitted to the Owner within the time frame set forth in the Architect's Proposal (or, if no time period is specified, promptly after the Owner's approval of the Design Documents). The working drawings and specifications shall contain sufficient information, including construction details and dimensions, and shall be of suitable scale so that bidders and contractors will be able to reliably determine the nature, quality and quantities of all labor and materials and the quality of the workmanship required to construct the Project. The information in the Construction Documents shall be complete, thoroughly coordinated and in a form acceptable to the Owner. The Architect shall correct or revise the Construction Documents for the Project as part of Basic Services hereunder and at no separate or additional charge to the Owner, except when the Owner's request is for purely aesthetic reasons and the Owner has previously approved the Construction Documents for the Project."

(ii) ***[For use by parties that renovate building space, including shareholders in coops, condo unit owners, and retail/office tenants]*** The following is substituted for B104 §3.3.2:

"§3.3.2. The Architect shall incorporate into the Construction Documents the design and construction requirements set forth in the Alteration Agreement, if any, and the Building Documents (as both are defined in **Exhibit E** hereto), and of governmental authorities having jurisdiction over the Project. The Bidding Documents shall include copies of the Alteration Agreement and Building Documents."

(iii) ***[For use by coops and/or condos only]*** The following is added as new §3.3.6 to the B104: "§3.3.6 The Architect shall, at appropriate times, contact the

Building's managing agent to obtain approval of the construction documents. In designing the project the Architect shall respond to applicable design requirements imposed by Building's managing agent, the cooperative corporation (a "Coop") or the condominium's board of managers (the "Condo"), as applicable. The Architect shall assist the Owner in connection with the Owner's responsibility for submitting documents required for the approval of the Coop or Condo. The Architect shall timely respond in writing to all comments and questions from the Coop and Condo and make such revisions to submittals as may be required to obtain the Coop or Condo's approval."

(f) Bidding Phase Services. The following new Section is hereby added to the end of §3.3 of B104:

"The Architect shall prepare bidding documents, obtain sealed bids, analyze, compare and otherwise "level" all bids received so as to permit the Owner to fully understand the completeness of each contractor's bid, the relative merits of each bid, and to determine which bids are the lowest bids. In the event that bids are received in excess of the latest Construction Budget as approved by the Owner, and if changes to plans and/or specifications are required in order to stay within the approved Construction Budget, the Architect agrees to redesign and/or prepare sufficient numbers of approved alternate designs, plans, and specifications for the Project, at the request of the Owner, as will be necessary to secure a bid that will come within the approved Construction Budget. Such redesign services shall be performed by the Architect as part of the Architect's Basic Services."

(g) Construction Phase Services. Modifying B104 §3.4:

(i) Supplementing B104 §3.4.2.1, and as part of the Architect's Basic Services, the Architect shall visit the site at regular intervals for the additional purposes of identifying defects and deficiencies in the Work, to otherwise assess the quality of the Work and so that the Architect may sign off on the Work as may be required by any governmental authority or agency having authority over the Work and/or Project. The Architect shall keep the Owner regularly informed in writing, of the results of its observations.

(ii) The following sentence is added at the end of §3.4.3.1: "The foregoing representations may be made subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, and (2) to specific qualifications reasonably expressed by the Architect."

(iii) Clauses (2) and (3) of B104 §3.4.3.2 are deleted.

(iv) The following new §3.4.4.4 is hereby added to the B104: "Architect shall assign only senior and experienced staff to review submittals. Architect shall reasonably attempt to review and respond to Contractor's submittals, in order to avoid delays to the Project. Architect shall respond to each submittal by either approving or rejecting such submittal, or if Architect cannot approve or reject a submittal, in its

professional judgment, without a further technical clarification, Architect shall identify with reasonable detail, which element of the submittal is insufficient and shall request such further relevant information as shall permit Architect to accept or reject the submittal.”

(v) The following new §3.4.6.1 is hereby added to the B104: “The Architect shall assist the Owner and Owner’s Representative, if any, (including any Other Consultants) in obtaining temporary and permanent Certificates of Occupancy and all other approvals applicable to the Architect’s Basic Services required for completion of the Project and occupancy of portions or all of the Project in accordance with the occupancy program of the Owner.”

(vi) The following new §3.4.6.2 is hereby added to the B104: “The Architect shall deliver to the Owner at the conclusion of its services in a form acceptable to the Owner copies of all drawings and specifications, engineering calculations and other Instruments of Service created or used by the Architect and its consultants in the performance of their obligations under this Agreement.”

The following new §3.4.6.3 is hereby added to the B104: “The Architect shall collect from the Contractor, review and, when acceptable, deliver to the Owner all warranties, guarantees, certificates, operational manuals, as-built drawings and other documents required to be delivered under the Construction Documents.”

3. Additional Services. Section 4.1 is hereby amended to include the following descriptions of Additional Services: “The Architect acknowledges that after the commencement of this Agreement, the Owner may request that the Architect perform, as an Additional Service, one or more of the services listed below, provided that the Architect has first notified the Owner in writing of its intention to provide such services as “Additional Services,” its explanation for the reasons therefor, its estimate for the cost of such services and the Owner authorizes same in writing:

(a) Revising drawings, specifications or other documents or providing other services when such revisions or services are required because of (i) the default of any contractor; (ii) major defects or deficiencies in the work of any contractor; or (iii) changes in requirements codes, laws or regulation or official interpretations enacted after the Compliance Date;

(b) After receipt of approval by the Owner of the Design Documents and/or the Construction Documents, preparing additional or revised drawings or specifications in connection with the Owner’s aesthetic changes or change orders that are solely necessary due to substantial changes in the Owner’s requirements for the Project in excess of the Change Order Threshold;

(c) Consulting concerning replacement of any Work damaged by fire or other causes, including, but not limited to, wind, rain, snowstorm, hurricane, during construction, and furnishing such services as may be required in connection with the

replacement of such Work, except where such replacement is necessitated by the Architect's own acts, errors or omissions, which corrections shall be performed by the Architect at his / her sole expense;

(d) Making professional three-dimensional models or renderings, other than in-house study models or sketch renderings (except as required under the Architect's Basic Services);

(e) Preparing to serve or serving as a witness in connection with any dispute resolution proceeding, including any mediation and/or arbitration proceeding or legal proceeding unless the Architect is a party to such proceeding as a result of its direct acts, errors or omissions;

(f) Conducting controlled inspections, inspections of materials, and review of mock-ups that are not located within 10 miles from the Project Site; and

(g) Producing perspectives, sketches, floor plans or written material specifically intended for use in rental brochures or for marketing/promotional purposes.”

4. Additional Provisions Regarding Compensation. B104 Article 11 is hereby modified, as follows:

(a) **Compensation for Additional Services.** Section 11.2 is hereby deleted in its entirety and replaced with the following new §11.2: “The Owner shall compensate the Architect for Additional Services provided in accordance with Section 3 of this Rider at the hourly rates set forth in **Exhibit B** or another basis mutually agreed upon, provided the Architect has advised the Owner in writing before such services are performed that they are beyond the scope of this Agreement, and such services have been specifically authorized by the Owner in writing to the Architect in advance of their performance. The Architect shall keep detailed records of all time spent by the Architect's employees in performance of the Additional Services.”

(b) **Payment/Architect's Records.** The following new Section 11.10.5 is hereby added to the B104:

“(i) The Architect shall submit monthly invoices to the Owner or upon some other time basis mutually agreed upon in writing. Each invoice shall include a detailed statement of services for which compensation is sought and expenses for which reimbursement is sought, together with such other substantiation as the Owner shall require. Each invoice shall include all items of services sought by the Architect for compensation and for expenditures incurred through the date of the application. The Architect shall submit its final invoice statement no later than thirty (30) calendar days after final completion of the construction of the Project.

(ii) The Architect shall maintain, and shall require its consultants to maintain, accurate records on an accounting basis acceptable to the Owner of costs and

expenses incurred by it and the exact hours worked by its personnel. On reasonable notice from the Owner, these records shall be available at the Architect's office during business hours for audit and copying by the Owner. The Architect shall retain these records for six (6) years after its receipt of final payment."

5. Personnel Assigned to Project. The following new Section 12.1 is hereby added to the B104: "To the fullest extent reasonably necessary to achieve the timely and proper performance of the Architect's obligations under this Agreement, the individuals listed in **Exhibit B** shall devote their full time and effort to the Project while employed by the Architect, and they may not be removed from the Project or replaced by the Architect to the extent they continue to be in the employ of the Architect, without the Owner's prior written consent, which consent shall not be unreasonably withheld. The Owner reserves the right to require the removal of any personnel of the Architect involved with the Project if, in the reasonable judgment of the Owner in consultation with the Architect, such individual's performance is unsatisfactory. The Architect shall investigate such request and shall submit to Owner, for Owner's consent, which consent shall not be unreasonably withheld, the name of an individual Architect suggests as a replacement. "

6. Time for Performance and Design Review. The following new Section 12.2 is hereby added to the B104: "The Architect acknowledges that timely design, construction and completion of this Project is of the essence of this Agreement and therefore agrees to comply with its Schedule for Performance, **Exhibit C** hereto.

7. Dispute Resolution.

(a) §8.1.3 of the B104 is hereby amended to include the following as the last sentence thereof: "Notwithstanding the foregoing, no such waiver shall be applicable in the event of claims covered by insurance, to the extent such coverage is responsive and available."

(b) §§ 8.2.1, 8.2.2 and 8.2.3 of the B104 are hereby deleted in their entirety and replaced with the following new §8.2: "Mediation shall only be required if both parties agree to do so, in writing, and shall be before JAMS or like organization as may be agreed to by the parties. If mediation fails to resolve the parties' dispute, either party may litigate the matter in the Supreme Court of the State of New York, County of New York, venued in New York City."

(c) Architect agrees that, to the extent necessary for, or in connection with, the resolution of any other claims involving Owner or the Project, Architect, Architect's Consultants and any claims by or against either of them, may be joined in any separate arbitration proceeding, upon Owner's written request.

8. Insurance. The following new Section 12.3 is hereby added to the B104: "The Architect shall furnish and maintain the insurance coverages set forth in **Exhibit D** hereto in accordance with the requirements therein. If the Architect fails to furnish and maintain the insurance required herein, the Owner may purchase such insurance on

behalf of the Architect, and the Architect shall pay the cost thereof to the Owner and supply any information needed to obtain such insurance upon demand.”

9. Indemnification. The following §8.2 is hereby added to the B104: “To the fullest extent of the law, the Architect hereby agrees to indemnify, defend (to the extent covered the Architect’s general, automobile and umbrella liability policies) and hold the Owner, its shareholders, unit holders, managing agent, board members, occupants, tenants, guests and any subsidiary, parent or affiliate corporations of the Owner, or other persons or entities designated by the Owner, and their directors, officers, agents, partners, members, employees and designees (collectively, the “Indemnitees”) harmless from all losses, claims, liabilities, injuries, damages and expenses, including attorneys’ fees, that the Indemnitees may incur by reason of any injury or damage sustained to any person or property (including, but not limited to any one or more of the Indemnitees) arising out of or occurring in connection with the Architect’s or the Architect’s Consultants’ errors, omissions or negligent acts.”

10. Termination and Suspension

(a) §9.5 of the B104 is hereby deleted in its entirety and replaced with the following new§ 9.5: “The Owner may, upon seven calendar days’ written notice to the Architect, terminate this Agreement without cause. The Architect shall, upon receipt of such notice, cease all work on the Project and instruct the engineers and other consultants retained by it to cease all work on the Project and cooperate with Owner in the transition to a new design firm in a professional manner. 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 for services performed to effect the orderly transition of services to another the Architect designated by Owner or Owner’s assigns. Such transitioning expenses (the “Termination Expenses”) are in addition to compensation for the Architect’s Basic Services, and consist of actual additional costs attributable directly to demobilization and turn over.”

(b) Supplementing and modifying B104 §9.2: “The Owner may suspend or abandon work on all or any part of the Project, including work under this Agreement, with or without cause, effective immediately upon notice to the Architect. If the Project is not resumed within six (6) months thereof, upon resumption, the Architect shall be entitled to an equitable adjustment of its fee. Any failure to resume the Project shall be deemed a termination for convenience.”

(c) The following new Section 9.8 is hereby added to the B104: “If this Agreement is terminated or suspended for any reason under Sections 10(a) or (b) of this Rider, upon payment to the Architect of all payments due hereunder, the Architect shall deliver to the Owner copies of the drawings, specifications, engineering calculations and other Instruments of Service created or used by the Architect or its consultants in the performance of their obligations under this Agreement.”

(d) B104 §9.7 is hereby deleted and replaced with the following: “Within ten (10) days after the Owner’s receipt of the drawings, specifications, engineering calculations and other Instruments of Service created or used by the Architect or its consultants in the performance of their obligations under this Agreement, the Owner shall pay to the Architect all amounts due in accordance with the payment provisions of this Agreement for services performed and disbursements incurred prior to the date of termination, suspension or abandonment and for Termination Expenses (if any), subject to § 10(f) of this Rider.”

(e) The following new § 9.9 is hereby added to the B104: “The Owner may terminate this Agreement for cause if the Architect, or the Architect’s consultants, shall fail to comply with the provisions of this Agreement, or if the Architect shall be in default of any provision, including those requiring timely performance of the Architect’s responsibilities hereunder in accordance with the Project schedule then in effect, and shall fail to cure such default within ten (10) calendar days after notification. The Architect shall remain liable to the Owner for all damages suffered by it by reason of such failure, including, but not limited to, any excess costs incurred in completing the Project by employment of other architects or other consultants and the Owner can set off any such damages from sums otherwise due to the Architect. In the event of the Architect’s failure to perform fully in accordance with this Agreement, the Owner may elect to permit the Architect to continue to perform without waiving its right to terminate the Architect for breach or default, and the Architect shall be liable to the Owner for all damages occasioned thereby.”

(f) Modifying B104 §§9.1 and 9.4, if the Owner fails to make payment due to the Architect for services or expenses within fifteen (15) days after the due date, the Architect shall provide the Owner with a written notice to cure. If the Owner fails to make payment of such sums properly due to the Architect within fifteen (15) days of such written notice, the Architect may, upon seven (7) additional days’ written notice to the Owner, suspend performance and services under this Agreement. The Architect shall not suspend services or terminate this Agreement except pursuant to this subsection (f).

(h) The following new § 9.10 is hereby added to the B104: “Termination, suspension or abandonment by the Owner shall not give rise to any cause of action or claim against the Owner for any damages of any nature whatsoever, or for extra compensation or loss of anticipated profits. The Architect shall be entitled only to amounts due to it in accordance with this §10. Termination of this Agreement for any reason shall not release the Architect from any of its obligations under this Agreement existing at the time of termination.”

(i) Notwithstanding B104 §11.10.3, with respect to any amounts due from the Architect to the Owner pursuant to this Agreement, including, without limitation, on account of the Architect’s breach, default or from or under any indemnity hereunder, the Owner may withhold amounts from the Architect’s compensation, or offset sums requested by or paid to contractors for the cost of changes in the Work pending the final

outcome of the relevant dispute resolution proceeding, if any. Amount withheld should bear a reasonable relationship to the anticipated loss and or claim.

11. Services to Continue During Disputes. The following new §9.11 is hereby added to the B104: “If a dispute arises between the Owner and the Architect with respect to the Architect's compensation or any term of this Agreement, notwithstanding B104 §11.10.3, the Architect shall continue to fully perform under this Agreement if the Owner makes timely payment of fees and reimbursements in accordance with the payment provisions of this Agreement. If the dispute relates to fees, the Architect shall be obligated to continue to perform provided that the Owner pays those particular fees are not subject of the dispute. .”

12. Use of Instruments of Service.

(a) §11.9 is hereby deleted in its entirety

(b) B104 Article 7 is modified as follows:

i. The first sentence of §7.3 is hereby amended and restated to read as follows: “Notwithstanding anything contained herein to the contrary, the Owner is hereby granted a perpetual license to use the Instruments of Service for the completion of the Project by the Owner or others or for additions, extensions, remodeling, or modification of the Project, including additions by shareholders, unit owners and occupants which may impact the work of the Project. However, the Owner shall have no right to sell, rent, lease or in any way transfer ownership of said Instruments of Service to any other party, other than a successor owner of the property or Project, nor may the Owner use the drawings and specifications on other projects without the Architect's written consent, said license to survive completion / termination of the project.”

ii. The last sentence of §7.3 is deleted.

iii. Notwithstanding anything to the contrary herein, the Architect shall not be released from liability for any deficiency that gave rise to the need for such revisions, modifications, alterations, or deviations regardless of when same occurred.

(c) The following new §7.6 is hereby added to the B104: “The Architect shall not use the overall design concept of this Project or any distinctive creative elements thereof with any other project of similar scope or design, for other projects in similarly situated settings or for projects having a purpose or function similar to the Project. Nothing in this Agreement shall restrict Architect from using similar standard design details on other projects.”

13. Successors and Assigns. The following new §10.8 is hereby added to the B104: “The Architect agrees to execute and secure from the Architect’s consultants and to deliver to the Owner so-called “will serve” letters in favor of the Owner and/or its assignees.”

14. Other Conditions

(a) Compliance with Building Rules. The following new §10.10 is hereby added to the B104: “The Architect agrees that it will comply with the Building’s Rules and Regulations, as directed in **Exhibit E** hereto, and with any Alteration Agreement.”

(b) Notices. The following new §10.11 is hereby added to the B104: “All notices shall be in writing and shall be delivered personally, by recognized overnight courier service, or by registered or certified mail, return receipt requested at the respective address for notice for each party as set forth on the first page hereof. Notice shall be effective on the date of delivery, or if delivery is refused, on the date of attempted delivery. Either party may change its address for notices by notifying the other party in accordance with this Section.”

(c) No Waiver. The following new §10.12 is hereby added to the B104: “No waiver of default hereunder shall be construed as a waiver of any subsequent breach.”

(d) Limited Resource. The following new §10.13 is hereby added to the B104: “The Architect agrees to look solely to the Owner’s interest in the Project for the satisfaction of any right, remedy, or lien of the Architect, or for the collection of a judgment (or other judicial process) requiring the payment of money by the Owner, in the event of any liability by the Owner, and no other property or assets of the Owner (or any officer, director, member, partner, shareholder or principal of the Owner) shall be subject to suit, levy, execution, attachment, or other enforcement procedure for the satisfaction of the Architect’s rights or remedies under or with respect to (a) this Agreement, (b) the relationship of the Architect and the Owner hereunder, or (c) any other liability of the Owner to the Architect.”

(e) Time for Action. Modifying B104 §8.1.1: “No action or proceeding shall lie or be maintained by the Architect against the Owner, Lender or Consultants upon any claim arising out of or based upon this Agreement or by reason of any act or omission or any requirements relating to the giving of notices or information, unless such action or proceeding shall be commenced within one (1) year after Substantial Completion of the Project or, if this Agreement is terminated earlier, within one (1) year following the date of such earlier termination. This Section 14(e) shall not be deemed or construed to modify any other provision hereof relating to waivers of claims by the Architect or to extend any period herein specifically provided for the initiation of an action relating hereto. Notwithstanding the foregoing, this Section 14(e) shall not be deemed or construed to cover any counterclaim or cross-claim the Architect may deem appropriate if, as and when the Owner asserts a claim against the Architect or if the Architect is subject to a third-party claim.”

(f) Counterparts. The following new §10.14 is hereby added to the B104:
“This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Signed copies of this Agreement may be faxed and e-mailed with the same force and effect as if the originally executed Agreement had been delivered.”

**THE TERMS AND CONDITIONS OF THIS RIDER NO. 1 ARE HEREBY
AGREED TO AND ACCEPTED AS OF THE DATE SET FORTH ON THE FIRST
PAGE HEREOF:**

OWNER:

ARCHITECT:

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT A
THE ARCHITECT'S PROPOSAL
[to be inserted]

EXHIBIT B

THE ARCHITECT'S PERSONNEL ASSIGNED TO THE PROJECT
[listing to be inserted]

THE ARCHITECT'S HOURLY RATES
[rate schedule to be inserted]

EXHIBIT C
SCHEDULE OF THE ARCHITECT'S PERFORMANCE
[to be inserted]

EXHIBIT D

INSURANCE

[Attach a copy of the Architect's approved insurance certificate, or use the below language with the appropriate, agreed upon, insurance limits filled in:]

1. The Architect shall purchase and maintain, at its own expense, the following insurances as will protect it, the Owner and Lender, Indemnitees (Managing agent, unit owners, other consultants, board members) and their respective officers, directors, shareholders, affiliates, partners, members, agents and employees from the claims set forth below which may arise out of or as a result of the Architect's obligations under this Agreement (whether such obligations be performed by it or by anyone directly or indirectly employed by it, or by anyone whose acts it may be liable for):
 - 1.1 Worker's Compensation/Employer's Liability/Disability.
 - (i) Claims under Worker's Compensation, Disability Benefits and other similar employee benefit acts which are applicable to the services to be performed by the Architect.
 - (ii) Claims for damages because of bodily injury, occupational sickness or disease, or death of the Architect's employees under any applicable employer's liability law in an amount not less than \$500,000.
 - 1.2 Comprehensive Automobile Liability
 - (i) Claims for damages because of Bodily Injury or Death of any person or property damage arising out of ownership, maintenance or use of any motor vehicle in an amount not less than \$1,000,000 Combined Single Limit.
 - (ii) Above to include Employer's Non-Owned and Hired Car Coverage.
 - 1.3 Commercial General Liability
 - (i) Claims for damages due to bodily injury or death of any person other than its employees.
 - (ii) Claims for damages other than to the Work itself, due to injury to, or destruction of, tangible property, including loss of use therefrom.

- (iii) Written on an occurrence form with limits of [\$1,000,000] combined single limit each occurrence and [\$5,000,000] for the aggregate of all occurrences within each policy year, which shall include, but not be limited to the following:

Comprehensive Form, Premises - Operation, Explosion, Collapse, Underground Hazard, Products/Completed Operations Hazard (two (2) year's extension beyond completion of project), and Blanket Contractual Coverage (including coverage for the Indemnity Clauses provided under this Agreement) Broad Form Property damage, Independent Contractors, Personal Injury (employees exclusion deleted). Specific extension of coverage for Railroad Operations (Revise CGL Policy Form Section V, Definitions, Item 6 "Insured Contract".)

- 1.4 Excess (Umbrella) Liability. With total limits of [\$10,000,000] each occurrence and in the aggregate per project site in excess of the above noted insurances.
 - 1.5 Professional Liability. The Architects and Engineers Professional Liability Insurance covering the activities of the Architect written on a "claims made" basis with limits of at least [\$3,000,000] per project site with a maximum deductible of [\$10,000]. Any loss within the deductible shall be borne by the Architect. Coverage shall be maintained during the period of this Agreement and for not less than two (2) years from the issuance of a Permanent Certificate of Occupancy.
 - 1.6 Valuable Papers. Valuable Papers insurance in an amount not less than full replacement cost, with the Owner, Construction Manager and Lender named as additional insureds, insuring against loss or destruction of any design drawings, specifications or documents produced or used by the Architect or the Architect's Consultants under this Agreement, including any documentation produced or any computer aided design system.
- 2. The insurances enumerated in §§ 1.2 through 1.4, inclusive, shall, without liability on the part of the Owner, Construction Manager or Lender for premiums therefor, include the following:
 - (i) Endorsement as Additional Insureds: The Owner and Lender and their respective partners, directors, officers, employees, agents and representatives.
 - 3. The Architect shall before the commencement of any provision of this Agreement file certificates with the Owner as outlined to show existence of such insurance, which insurance shall be subject to the Owner's approval as to the adequacy of protection and compliance with this Agreement and the satisfactory character of

the Insurer. Such insurance shall be placed with reputable insurance companies licensed to do business in the State of New York with a minimum Best's rating of "A-VIII".

4. Any type of insurance or any increase of its limits of liability not described above which the Architect requires for its own protection or required by statute shall be its own responsibility and at its own expense.
5. The carrying of the insurance described shall in no way be interpreted as relieving the Architect of any responsibility or liability under this Agreement. In the event the Architect or its consultants fail to maintain the coverages or limits as required herein, the Owner may effect such insurance as an agent of the Architect or its consultants. Any premiums paid therefor by the Owner to effect such coverage shall be payable by the Architect or offset by or against the fees herein provided or payable to the Architect.

EXHIBIT E

THE ARCHITECT'S COMPLIANCE WITH BUILDING RULES

(a) The Architect acknowledges that the Owner does not own the Building in which the Project is located, but is the [tenant][tenant-shareholder] [unit owner] of the apartment in which the Work will occur.

(b) The Architect confirms that it has been provided with a copy of the alteration agreement signed or to be signed between the Owner and the Coop or Condo (as the case may be) (the "Alteration Agreement") and that it has obtained copies of and reviewed the Building's rules and regulations, and the Building's construction rules and regulations (regardless of how denominated) (collectively, the "Building Documents").

(c) The Architect shall perform, and shall cause its Consultants to perform, all Services in accordance with the requirements set forth in the Alteration Agreement and/or Building Documents. Without limiting the foregoing, to the extent the Alteration Agreement and/or Building Documents require the Owner to give prior notice to the Coop or Condo or submit documents, the Architect shall provide such notice to the Owner in advance so that the Owner may comply with such prior notice requirement. The Architect shall provide all certifications as are required of the Owner under the Alteration Agreement and/or the Building Documents.

(d) The Architect acknowledges that if it breaches its obligations under this Agreement, the Owner's damages may include any liability the Owner has to the Condo or Coop (as the case may be) to the extent such liability arose from such breach.

23004-3747
NY\52784318.2