

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO:

THE SURF CLUB APARTMENTS, INC.,
a Florida Corporation,

Plaintiff,

v.

KOBI KARP ARCHITECTURE & INTERIOR
DESIGN, INC., a Florida Corporation, and
KOBI KARP, an individual,

Defendants,

COMPLAINT

Plaintiff, THE SURF CLUB APARTMENTS, INC. (“**Plaintiff**” or the “**Owner**”), hereby
sues Defendants, KOBI KARP ARCHITECTURE & INTERIOR DESIGN, INC. (“**KKAID**” or
the “**Architect**”) and KOBI KARP (“**Karp**”), and alleges as follows:

NATURE OF THE ACTION AND SUBJECT MATTER JURISDICTION

1. This is an action for damages in an amount exceeding \$15,000.00, exclusive of
interest, costs, and attorneys’ fees, and is within the subject matter jurisdiction of this Court.

THE PARTIES, PERSONAL JURISDICTION, AND VENUE

2. Plaintiff is a Florida corporation with its principal place of business in Miami-
Dade County, Florida.

3. Defendant, KKAID, is a Florida corporation with its principal place of business
in Miami-Dade County, Florida, does business throughout the State of Florida, the United States,
and internationally, and is subject to the personal jurisdiction of this Court.

4. Defendant, Karp, is a Florida resident who conducts business and, upon information and belief, is licensed as an architect in Florida, is the principal of KKAID, does business throughout the United States and internationally, is otherwise *sui juris*, and is subject to the personal jurisdiction of this Court.

5. Venue of this action is proper in Miami-Dade County, Florida because the contract at issue provides for venue in Miami-Dade County, Florida, Defendants reside and/or maintain their principal places of business in Miami-Dade County, Florida, and/or because the causes of action alleged herein accrued in Miami-Dade County, Florida.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

The Parties' Agreement

6. In or around January 2018, KKAID and the Owner entered into a written contract (the “**Agreement**”) regarding architectural services to be provided by KKAID for the Surf Club 2 project, located at 9133-9149 Collins Avenue, Surfside, Florida 33154 (the “**Project**”). A true and correct copy of the Agreement is attached hereto as **Exhibit A**.

7. Section 2.1 of the Agreement requires KKAID to provide “professional services as set forth in th[e] Agreement.”

8. Section 2.2 of the Agreement requires KKAID to “perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances” and to “perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.”

9. Section 2.4 of the Agreement provides that “[e]xcept with the Owner’s knowledge and written consent, the Architect shall not engage in any activity...that would

reasonably appear to compromise the Architect's professional judgment with respect to this Project."

10. The Agreement provides and contemplates that design architect Joseph Dirand Architecture ("JDA") and the Owner's consultants and other professionals would also contribute to the Project. *See, e.g.,* Ex. A at §§1.1, 3.1, and 3.1.3.

11. Among other things, Section 3.3.5 of the Agreement requires KKAID to "review the Schematic Design Documents for compliance with applicable building codes and provide mark-ups in order for JDA to revise their drawings accordingly."

12. Furthermore, Section 3.4.1 of the Agreement requires KKAID to "review the Design Development Documents prepared by JDA for code compliance and provide mark ups in order for JDA to revise their drawings accordingly."

13. Additionally, Section 3.5.2 of the Agreement provides that "[n]otwithstanding the participation of JDA in the design of the Project, the Architect shall be responsible for conforming the design of the Project and all Construction Documents for the Project to: (a) all applicable requirements imposed by governmental authorities having jurisdiction over the Project, and (b) all federal, state and local statutes and regulations applicable to the Project."

14. Section 3.1.2 of the Agreement requires KKAID to "manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner."

15. Section 3.1.8 of the Agreement provides that "[a]ny designs, drawings or plan notes prepared by the Architect or its consultants, if any, that contain errors, conflicts or omissions will be promptly corrected by the Architect at no additional cost to the Owner."

16. Section 3.2.2.3 of the Agreement also provides a non-exhaustive list of deliverables required of KKAID.

17. Section 6.2 of the Agreement provides that the “[s]ubmission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Owner’s consultants.”

18. The Agreement defines the term “Instruments of Service” to mean “all documents, models, renderings, and other materials to be furnished to the Owner or anyone in connection with this Agreement by or on behalf of the Architect, or by consultants, contractors, or others retained by the Architect, and all modifications made by the Architect to any documents supplied by the Owner to the Architect, and all written information, reports, studies, objects or source codes, flow charts, diagrams, and other tangible materials which have been created by the Architect in order to provide services pursuant to this Agreement, and all digital forms thereof exclusive of any software used to produce them.” Ex. A at §6.1.

19. Moreover, Section 6.3 of the Agreement provides the Owner with an “irrevocable license to reproduce and use the Instruments of Service for purposes of constructing, using, maintaining, altering, renovating and completing the Project, provided that the Owner pays the Architect the compensation for work completed to date due under this Agreement, including all compensation due for Additional Services and Reimbursable Expenses for the preparation of the Instruments of Service.”

20. Section 6.3 of the Agreement also states, “[p]rovided that the Owner has paid amounts due to the Architect, the license granted to the Owner hereunder shall not be affected in

any way by the suspension, termination or breach of this Agreement or any dispute between the Owner and the Architect.”

21. In addition, Section 6.3.2 of the Agreement provides that KKAID “recognizes that the Owner has an interest in the exclusivity and uniqueness of the overall design conveyed in the Instruments of Service and the Architect agrees to the best of its ability to avoid a design that substantially reproduces unique or material aspects of such design for another project in Miami-Dade County or Palm Beach County without the Owner’s prior written authorization.”

22. Section 6.4 of the Agreement provides that “during the execution of this Project, the Owner’s contractors, and their respective subcontractors, sub-subcontractors and material or equipment suppliers, as well as the Owner’s consultants and separate contractors, shall have the right to use and reproduce applicable portions of the Instruments of Service in hard copy or electronic format appropriate to and for use in their execution of their respective services and the Work by license granted in Section 6, without charge.”

23. Moreover, Section 6.7 of the Agreement provides that KKAID “acknowledges and agrees that, to the extent that plans, drawings, specifications or other design documents are created by the Owner’s other design consultants and provided to Architect for this Project (the ‘Owner Provided Instruments of Service’), Architect shall have no ownership interest in any such Owner Provided Instruments of Service.”

24. Section 10.1 of the Agreement provides that “[f]or the Architect’s Basic Services described under Article 3, the Owner shall compensate the Architect” with total compensation of \$1,460,000.00.

25. As referenced in Section 10.6.1 of the Agreement, the Owner paid KKAID hundreds of thousands of dollars even before the parties executed the Agreement, and KKAID

agreed to credit this amount for the benefit of the Owner against the fees to be paid to KKAID in accordance with the Agreement.

26. While the Agreement contemplates that Additional Services may be provided by KKAID, Section 10.3 of the Agreement specifically provides that “[c]ompensation for Additional Services shall be negotiated by the Owner and the Architect at the time of Owner’s request for said services,” and KKAID “shall not perform and shall not be entitled to any payment for, Additional Services unless the Owner and Architect execute a written document setting forth a description of the Additional Services and the compensation to be paid for same in advance of Architect performing such Additional Services or Owner requests additional services in writing.”

27. Section 11 of the Agreement provides, in pertinent part, that KKAID “acknowledges that the Owner is relying on the Architect’s skill, knowledge, experience and ability to fully perform the services and its obligations under th[e] Agreement” and that KKAID “represents and warrants that it (and each of the individual architects and engineers it employs on this Project) has and shall maintain all licenses and certifications required for the provision of its services under th[e] Agreement.”

28. Section 8.4 of the Agreement provides that “[e]ither party may terminate this Agreement upon not less than fourteen 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.”

29. Section 8.5 of the Agreement provides that “[t]he Owner may terminate this Agreement upon not less than fourteen days’ written notice to the Architect for the Owner’s convenience and without cause.”

KKOID Participated in the RFP Process After the Agreement Was Executed

30. Even after the Agreement was executed, Defendants were fully aware that they had not been selected by the Owner to be the Architect of Record (the “AOR”) for the Project.

31. On or about July 11, 2019, Plaintiff sent out a Request for Proposal for Architect of Record (the “RFP”) to certain architectural firms, including KKOID, in connection with the Owner’s efforts to select an AOR for the Project. Plaintiff distributed an addendum to the RFP to the same recipients on or about July 18, 2019.

32. Because they knew from their frequent communications with the Owner’s representatives that the RFP was forthcoming, Defendants quickly responded to the RFP on or about July 24, 2019. Plaintiff interviewed KKOID with respect to its response to the RFP on or about August 12, 2019.

33. On or about August 15, 2019, the Owner’s representative spoke with Karp via telephone and requested an update regarding the preparation of a historical package relating to the Project. Karp informed the Owner’s representative that he and KKOID would not do any work until he found out whether he had been selected as the AOR for the Project.

The Owner Terminated the Agreement as Provided by the Agreement

34. On or about August 26, 2019, the Owner’s representative informed Karp, via telephone, that the Owner was not going to select KKOID as the AOR for the Project and that the Owner was terminating the Agreement as authorized by Section 8.5 of the Agreement.

35. On September 19, 2019, the Owner, through its counsel, sent KKOID written notice of the termination of the Agreement pursuant to Section 8.5 of the Agreement (the “Termination Notice”).

36. As set forth in the Termination Notice, at the time of termination the Owner had already paid KKAID for all work KKAID had completed and invoiced to date, including, without limitation, all compensation due for Additional Services and Reimbursable Expenses and for the preparation of the Instruments of Service.

37. In fact, as further alleged herein, the Owner not only paid KKAID for all services KKAID performed to date, but the Owner *overpaid* KKAID.

38. While the Owner was permitted under Section 8.4 of the Agreement to terminate the Agreement for convenience, the Owner's termination of the Agreement should be deemed, in the alternative, as termination "for cause" pursuant to Section 8.4 of the Agreement due to Defendants' various breaches and misconduct as alleged herein.

KKAID Intentionally Overbilled the Owner for Work That KKAID Did Not Perform, That the Parties Did Not Negotiate, or That the Owner Did Not Authorize

39. On September 25, 2019, KKAID, through its counsel, sent a letter (the "**Termination Response Letter**") to the Owner, care of its counsel, in response to the Termination Notice.

40. KKAID enclosed an invoice dated September 19, 2019 (the "**Termination Invoice**") with the Termination Response Letter, which KKAID contended memorialized outstanding amounts that the Owner owed to KKAID as of September 19, 2019.

41. Specifically, KKAID represented in the Termination Invoice that there remained a balance due from the Owner in the amount of \$2,119,270.00.

42. The Termination Invoice contains many erroneous, unauthorized, and/or fraudulent charges. By way of example, and not as an exhaustive list, the Termination Invoice contains:

- a. Fees for purported work that was not performed by KKAID;

- b. Inflated fees for work that was purportedly performed by KKAID;
- c. Duplicative fees and fees for work for which the Owner had already paid KKAID;
- d. Fees for Additional Services that were purportedly performed by KKAID, without being negotiated with the Owner, without obtaining the Owner's prior written approval for the subject charges, and/or without being requested in writing by the Owner, all in derogation of Section 10.3 of the Agreement;
- e. Fees for meetings and administrative hearings that KKAID was required to attend without additional compensation under the Agreement, and for meetings, administrative hearings and other purported work or services that date back to 2014, despite the fact that the Agreement was entered into in January 2018, and despite the fact that Section 12.1 of the Agreement contains an integration clause that provides that "this Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior representations, negotiations, and agreements, either written or oral." For instance, the Termination Invoice contains charges amounting to \$138,931.50, purportedly relating to 436.92 hours of "additional meetings" and \$67,824.25, purportedly relating to 142.71 hours of "additional conference calls." However, KKAID's own documentation of the time it supposedly spent relating to "additional meetings" reveals a total of only 309.05 hours, *of which only 47.67 correspond to dates after January 2018*. KKAID's purported supporting documentation of the time it supposedly spent relating to "additional conference calls" reveals that *only 8.23 hours correspond to dates after January 2018*. Furthermore, the Termination Invoice contains charges in the amount

of \$40,581.75 relating to attendance at public hearings. However, *only four (4) out of the seventeen (17) hearings listed on the Termination Invoice took place after January 2018*. Furthermore, KKAID's deliverables in Section 3.2.2.3 of the Agreement required Defendants' attendance at up to five (5) public hearings, attendance at meetings with municipalities/public authorities, and up to twelve (12) conference calls with the Owner for up to two hours each. Additionally, some of the charges for "additional meetings" relate to attendance at public hearings, thereby resulting in KKAID double billing the Owner;

f. Fees for work that, upon information and belief, was required only because of KKAID's errors, conflicts and/or omissions, or that was otherwise the result of Defendants' own fault, despite the requirement imposed by Section 3.1.8 of the Agreement that KKAID perform or correct such work at no cost to the Owner;

g. Fees unrelated to the Project, including fees for work purportedly performed or related to other projects or entities, and/or fees relating to matters or work that were previously settled or released by KKAID;

h. A \$52,400.00 charge for KKAID's response to the RFP, notwithstanding that this fee was not authorized by the Agreement or the Owner, and contrary to Section III (E) of the RFP, which expressly disclaims any "liability or responsibility for any costs associated with the production or presentation of [Defendants'] response to this RFP";

i. An arbitrary and unsupported \$50,000.00 "suspension fee," notwithstanding that: (a) the Agreement and KKAID were terminated without any suspension; (b) KKAID never gave the Owner seven days' written notice before

suspending services, as would have been required by Section 8.1 of the Agreement; (c) a suspension fee contemplates KKAID “resuming services,” which is not applicable here; (d) no fees, expenses or Additional Services were incurred by KKAID “in the interruption and resumption of the Architect’s services” as required by Section 8.1 of the Agreement; and/or (e) Article 8 of the Agreement (relating to suspension) is otherwise inapplicable to the subject situation; and

j. An arbitrary and unsupported \$750,000.00 fee for the “Transfer of Architect Records,” despite no such fee being required or contemplated by the Agreement, and despite the fact that Section 8.7 of the Agreement provides that in the event of termination, KKAID is required to “cooperate with the Owner, all members of the Owner’s Project team and any duly licensed replacement architect so as to promote as smooth and seamless a transition as is feasible under the circumstances.”

43. While the foregoing examples are all evident in the Termination Invoice, KKAID’s improper practices, overbilling, and intentional misconduct permeate the invoices that Defendants issued to the Owner with respect to the Project.

The Historic Preservation Board Meeting and KKAID’s Additional Misconduct

44. On September 18, 2019, the Miami-Dade County Historic Preservation Board (the “HPB”) conducted a public hearing, which the Owner’s representatives attended in an effort to obtain a Special Certificate of Appropriateness (the “COA”) relating to the construction of the Project.

45. According to the HPB, applicants for a COA are not required to submit information to the HPB regarding the architect, nor are applicants required to disclose a change in the architect.

46. A representative of O'Donnell Dannwolf and Partners Architect, Inc. ("ODP") attended the September 18, 2019 hearing and informed the HPB that ODP was a new architect involved with the Project and that KKAID was not going to continue with the Project (as Defendants had already known since August 26, 2019).

47. On September 19, 2019, after hearing and considering the Owner's and ODP's presentation, the HPB notified the Owner that the HPB approved the COA for partial demolition and reconstruction relating to the Project.

48. On or about October 4, 2019, KKAID, through its counsel, sent a letter to the Owner, care of its counsel, contending that the Owner breached the Agreement, arguing the Owner was not permitted to use the plans and drawings for the Project and that the Owner's allegedly "unauthorized use" of the plans and drawings were intended by the Owner "to suggest an affiliation between KKAID and the...Project."

49. Based on the foregoing specious contentions, KKAID demanded that the Owner pay it *another* \$4,000,000.00 (and that ODP pay KKAID another \$1,000,000.00), *in addition to* the more than \$2,000,000.00 that KKAID demanded in the Termination Response Letter and Termination Invoice.

50. In essence, KKAID's argument is that the Owner wrongfully submitted materials to the HPB, "while KKAID was the Architect of Record for the...Project and while the Agreement remained in full force and effect," in order to avail itself of KKAID's purported

“goodwill” to obtain the COA. KKAID further contends that the Owner otherwise would not have been able to obtain a COA without incurring “millions of dollars in construction costs.”

51. KKAID’s positions are belied, however, by Article 6 of the Agreement, including, without limitation: (a) Section 6.2, which provides that “[s]ubmission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect . . .”; (b) Section 6.3, which furnishes the Owner with an “irrevocable license to reproduce and use the Instruments of Service for purposes of constructing, using, maintaining, altering, renovating and completing the Project . . .”; (c) Section 6.4, which permits the Owner and its consultants and contractors “to use and reproduce applicable portions of the Instruments of Service in hard copy or electronic format appropriate to and for use in their execution of their respective services and the Work by license granted in Section 6, without charge”; and (d) Section 6.7, which provides that KKAID “shall have no ownership interest in any [] Owner Provided Instruments of Service.”

52. KKAID’s contentions are further belied by ODP’s presence at the HPB hearing to obtain the COA, the Owner informing the HPB that KKAID was not going to continue with the Project, the HPB’s confirmation that the Owner had no duty to report a change of an architect, and because KKAID and Karp knew that the Owner had not selected it as the AOR.

53. Moreover, KKAID argued in its October 4, 2019 letter that the Owner “induced KKAID to enter into the Agreement on false premises, namely [the Owner’s] agreement to maintain KKAID as the Architect of Record for the duration of the . . . Project.”

54. Defendants' position is undermined by, *inter alia*, Section 8.5 of the Agreement, which permits the Owner to terminate the Agreement upon fourteen days' notice for convenience and without cause.

55. Consequently, KKAID could not have justifiably relied on its purported belief that it would remain as an architect (let alone the AOR) for the duration of the Project, as the Agreement was terminable at will.

Defendants' Improper Use of the Project's Unique and Material Design Elements in Another Competitive Building in Surfside

56. KKAID and Karp have been and are currently working on the Arte Surfside building ("Arte Surfside"), another project located in Miami-Dade County, which substantially reproduces unique or material aspects of the design for the Project. In fact, Arte Surfside is just down the street from, and in direct competition with, the Project.

57. Specifically, the design for the Project includes balconies clad completely on the top, sides, and undersides in travertine marble. In derogation of Section 6.3.2 of the Agreement, however, KKAID and Karp are using almost identical balcony travertine marble cladding on Arte Surfside.

58. The website for Arte Surfside promotes and boasts KKAID's architectural work and the supposedly unique design that KKAID is incorporating into that building: "ARTE'S SIGNATURE MATERIAL, used both on the exteriors and inside the residences, is a warm, richly veined Roman travertine. 'Travertine is a very special stone with an unparalleled historic importance as the building material of choice in ancient Rome,' suggests Citterio. 'It has a beautiful color and a very pronounced layering compared with other types of limestone.'"

59. As noted above, the complete cladding of the Project's balconies are very distinctive and original. Similarly, KKAID and Karp were and are well aware that it has been

decades since buildings in Miami-Dade County have been clad in travertine, and their balconies have never been clad completely as is described above and in the drawings for the Project.

60. Defendants also knew and know that the foregoing elements are unique and material design aspects of the Project, yet they are using the same unique and material elements on Arte Surfside.

61. Neither Karp nor KKAID obtained, nor did the Owner provide, any authorization to use the foregoing design or concept, as is required by Section 6.3.2 of the Agreement before Defendants could utilize these design elements in another building in Miami-Dade, Broward, or Palm Beach County.

62. As a result, Plaintiff will likely have to redesign the exterior of the Project so that it does not look like a copy of the Arte Building, which is itself actually a copy of the Project. This will come at a great expense to Plaintiff and will alter the design of the Project from the once (but no longer) special design that the Owner carefully selected and for which the Owner has already paid.

The Owner Made Additional Payments to KKAID

63. On or about October 10, 2019, and without waiving its position that it may have already overpaid KKAID, the Owner delivered a check to KKAID for an additional \$183,750.00 to pay for services KKAID purportedly performed pursuant to the Agreement as set forth in the Termination Invoice.

64. The Owner believes that it has not only paid KKAID in full, but it has overpaid KKAID as alleged herein.

65. The foregoing notwithstanding, as of the date of this filing, KKAID has not cashed or deposited the \$183,750.00 check.

KKOID Has Failed and Refused to Cooperate as Required by the Agreement

66. In addition to the foregoing, KKOID has taken the specious position that ODP has acted improperly by working with the Owner as discussed above. None of KKOID's contentions have any merit for, *inter alia*, the reasons set forth in this Complaint and based upon the express provisions of the Agreement.

67. Furthermore, and as noted above, Section 8.7 of the Agreement provides that in the event of its termination, KKOID is required to "cooperate with the Owner, all members of the Owner's Project team and any duly licensed replacement architect so as to promote as smooth and seamless a transition as is feasible under the circumstances."

68. Yet, rather than cooperate with Plaintiff and ODP, Defendants have done all they can to interfere with Plaintiff's relationship with ODP, cause significant delays in the construction of the Project, and require the Project to be redesigned, causing Plaintiff to suffer additional damages.

69. As a result of Defendants' misconduct, Defendants have provided absolutely no benefit to Plaintiff and should be required to refund to Plaintiff all amounts Plaintiff paid to Defendants in connection with the Project, along with Plaintiff's attorneys' fees and costs.

70. All conditions precedent to the filing and maintenance of this action have occurred or have been performed, waived, satisfied, or excused.

71. The Owner has retained the undersigned law firm to represent it in this action, and has agreed to pay said firm reasonable attorneys' fees and costs for its services. The Owner is entitled to recover its reasonable attorneys' fees from KKOID pursuant to Section 7.2.4 of the Agreement and applicable law.

COUNT I—BREACH OF CONTRACT
(Against KKAID)

Plaintiff, THE SURF CLUB APARTMENTS, INC., sues Defendant, KOBI KARP ARCHITECTURE & INTERIOR DESIGN, INC., for Breach of Contract, adopts and realleges the allegations contained in paragraphs 1 through 71 above, as if fully and expressly set forth herein, and further alleges as follows:

72. The Agreement is a valid and enforceable contract between the Owner and KKAID.

73. The Owner has fully performed its obligations pursuant to the Agreement.

74. As alleged in detail above, KKAID has materially breached, and remains in material breach, of the Agreement, by, without limitation: failing to properly or adequately perform the services required by the Agreement; overbilling and otherwise invoicing or charging the Owner for items not permitted by the Agreement and/or not performed by KKAID; prohibiting the Owner and its representatives from using materials for which the Owner has paid and to which the Owner has the right to utilize pursuant to the Agreement; refusing to cooperate with the Owner and its new architect as required by the Agreement; and designing another project in Miami-Dade County that substantially reproduces unique or material aspects of the design for the Project without obtaining the Owner's consent as required by the Agreement.

75. The Owner has suffered, and continues to suffer, substantial damages as a direct and proximate result of KKAID's breaches of the Agreement.

WHEREFORE, Plaintiff, THE SURF CLUB APARTMENTS, INC., demands that Judgment be entered against Defendant, KOBI KARP ARCHITECTURE & INTERIOR DESIGN, INC., for compensatory, consequential, incidental, and special damages, interest, attorneys' fees, costs, and such other and further relief as this Court deems just and proper.

**COUNT II—BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING
(Against KKAID)**

Plaintiff, THE SURF CLUB APARTMENTS, INC., sues Defendant, KOBI KARP ARCHITECTURE & INTERIOR DESIGN, INC., for Breach of the Implied Covenant of Good Faith and Fair Dealing, adopts and realleges the allegations contained in paragraphs 1 through 75 above, as if fully and expressly set forth herein, and further alleges as follows:

76. The Agreement and applicable law impose on KKAID the responsibility for employing good practices and submitting accurate and timely invoices to the Owner for work performed by KKAID.

77. Indeed, Section 2.2 of the Agreement requires KKAID to “perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances” and to “perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.”

78. Moreover, Section 11 of the Agreement provides, in pertinent part, that KKAID “acknowledges that the Owner is relying on the Architect’s skill, knowledge, experience and ability to fully perform the services and its obligations under th[e] Agreement.”

79. In addition to these express contract terms, a covenant of good faith and fair dealing is implied in every contract, including the Agreement.

80. The Agreement does not require the Owner to monitor KKAID’s activities or verify KKAID’s invoices or fulfillment of its contractual obligations. To the contrary, KKAID is required to employ good practices, submit accurate invoices to the Owner, and act in a commercially reasonable manner.

81. The huge discrepancies in the Termination Invoice, KKAID's counsel's October 4, 2019 letter, and the actual work performed and/or fees permitted to be invoiced under the Agreement were the product of KKAID's intentional efforts to mislead or misappropriate from the Owner, reckless disregard for the truth, bad faith, or a combination of all of the foregoing.

82. The Owner reasonably expected that KKAID would fulfill its contractual obligations, submit accurate invoices in good faith without the Owner's micromanagement, and not engage in other projects that compete with the Project or use similar unique or material aspects of the design for the Project.

83. In addition to the express breaches of the Agreement, KKAID's actions as alleged herein constitute breaches of the implied covenant of good faith and fair dealing and undermined the Owner's reasonable expectations regarding the Project, KKAID's work, and KKAID's invoicing related thereto.

84. The Owner has suffered, and continues to suffer, substantial damages as a direct and proximate result of KKAID's breaches of the implied covenant of good faith and fair dealing.

WHEREFORE, Plaintiff, THE SURF CLUB APARTMENTS, INC., demands that Judgment be entered against Defendant, KOBİ KARP ARCHITECTURE & INTERIOR DESIGN, INC., for compensatory, consequential, incidental, and special damages, interest, attorneys' fees, costs, and such other and further relief as this Court deems just and proper.

COUNT III—CONSTRUCTIVE FRAUD
(Against KKAID and Karp)

Plaintiff, THE SURF CLUB APARTMENTS, INC., sues Defendants, KOBİ KARP ARCHITECTURE & INTERIOR DESIGN, INC. and KOBİ KARP, for Constructive Fraud,

adopts and realleges the allegations contained in paragraphs 1 through 71 above, as if fully and expressly set forth herein, and further alleges as follows:

85. Karp, individually and on behalf of KKAID, misrepresented the basis and veracity of KKAID's invoices and the work Defendants purportedly performed, with the intent to induce the Owner to rely on those misrepresentations.

86. These misrepresentations are inherent in Defendants' invoices themselves, especially in the Termination Invoice and Defendants' unwarranted demands for additional, unfounded money totaling more than \$5,000,000.00.

87. KKAID and Karp knew that their representations to the Owner regarding their charges and work they purportedly performed were false or, at the very least, displayed reckless disregard for the truth.

88. The Owner reasonably relied on KKAID's and Karp's misrepresentations, including, without limitation, in paying the invoices, in determining how to move forward with and budget for the Project, and in working with KKAID and Karp on the Project before the Agreement was terminated.

89. The Owner's reliance on KKAID's and Karp's misrepresentations was justifiable because KKAID and Karp had the duty to accurately invoice the Owner, because KKAID and Karp were supposedly doing the work, and because of the parties' relationship, which by its nature involved the Owner placing trust and confidence in KKAID and Karp.

90. KKAID and Karp abused their duties to, and their confidential or special relationships with, the Owner.

91. The huge discrepancies between KKAID's invoices and the actual work it performed and the fees it was permitted to charge were the product of KKAID's and Karp's intentional efforts to mislead the Owner, their reckless disregard for the truth, or both.

92. KKAID's and Karp's practices and omissions, including, without limitation, the examples set forth in paragraph 42(a)-(j) *supra*, reveal KKAID's and Karp's intent to manipulate invoices and mislead the Owner.

93. KKAID and Karp knew and intended that the Owner would rely on their representations, which the Owner, in fact, did to its detriment.

94. KKAID's and Karp's fraudulent misconduct and duties to accurately report and invoice work performed were separate and distinct from KKAID's contractual breaches and duties, as are the Owner's resulting damages.

95. The Owner has suffered, and continues to suffer, substantial damages as a direct and proximate result of KKAID's and Karp's constructive fraud.

WHEREFORE, Plaintiff, THE SURF CLUB APARTMENTS, INC., demands that Judgment be entered against Defendants, KOBI KARP ARCHITECTURE & INTERIOR DESIGN, INC. and KOBI KARP, for compensatory, consequential, incidental, and special damages, interest, costs, and such other and further relief as this Court deems just and proper.

**COUNT IV—VIOLATIONS OF FLORIDA
DECEPTIVE AND UNFAIR TRADE PRACTICES ACT
(Against KKAID and Karp)**

Plaintiff, THE SURF CLUB APARTMENTS, INC., sues Defendants, KOBI KARP ARCHITECTURE & INTERIOR DESIGN, INC. and KOBI KARP, for Violations of the Florida Deceptive and Unfair Trade Practices Act, adopts and realleges the allegations contained

in paragraphs 1 through 71 above, as if fully and expressly set forth herein, and further alleges as follows:

96. This is an action for damages pursuant to §501.211 (2), Florida Statutes, for Defendants' violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.* ("FDUTPA").

97. FDUTPA prohibits "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." § 501.204, Fla. Stat.

98. The Owner is a "consumer" as that term is defined in section 501.203(7), Florida Statutes.

99. The Owner has standing to pursue this claim because it has suffered injuries in fact and has lost money as a result of KKAID's and Karp's actions as alleged herein.

100. KKAID, through its agents and/or employees, and Karp, individually, have engaged in, and continue to engage in, unconscionable acts or practices and use unfair or deceptive acts in the conduct of their trade and/or commerce in the State of Florida.

101. KKAID's and Karp's business practices, as alleged herein, are unfair because they offend established public policy and are immoral, unethical, unscrupulous, and substantially injurious to their customers.

102. Additionally, KKAID's and Karp's conduct is unfair because their conduct violated the legislatively declared policies in FDUTPA. KKAID and Karp misled the Owner, and upon information and belief, many other consumers, into believing that they would be accurately invoiced and only charged for work that was authorized and that was actually performed by Defendants. In fact, however, KKAID and Karp engaged in fraudulent or otherwise improper

billing practices, charging well in excess of amounts due and/or for work that they actually performed.

103. KKAID and Karp concealed the foregoing facts from consumers, including the Owner.

104. KKAID's and Karp's practices constitute unfair or deceptive acts or practices in trade or commerce, and are prohibited by FDUTPA.

105. Furthermore, KKAID's and Karp's business practices, as alleged herein, are deceptive because they are likely to deceive consumers, including the Owner.

106. KKAID's and Karp's intended their policies, acts, and practices as alleged herein to (and they did) result in the payment of inflated or unauthorized fees to KKAID and Karp, and Defendants intended to generate unlawful or unfair compensation for themselves by and through their deceptive trade practices.

107. KKAID and Karp took advantage of the Owner's and other consumers' trust and confidence in KKAID and Karp and their reputations, and deceptively misled the Owner and other consumers.

108. The Owner and other consumers relied on KKAID's and Karp's misrepresentations to their detriment.

109. KKAID's and Karp's actions violate FDUTPA, and were conceived, devised, planned, implemented, approved, and executed within the State of Florida, which has an interest in prohibiting violations of FDUTPA.

110. The Owner, and other consumers, sustained damages as a direct and proximate result of KKAID's and Karp's unfair and unconscionable practices.

111. Section 501.211(2), Florida Statutes provides the Owner a private right of action against KKAID and Karp, and entitles the Owner to recover its actual damages, plus its attorneys' fees and costs.

112. The Owner has suffered, and continues to suffer, substantial damages as a direct and proximate result of KKAID's and Karp's violations of FDUTPA.

WHEREFORE, Plaintiff, THE SURF CLUB APARTMENTS, INC., demands that Judgment be entered against Defendants, KOBİ KARP ARCHITECTURE & INTERIOR DESIGN, INC. and KOBİ KARP, for compensatory, consequential, incidental, and special damages, interest, attorneys' fees, costs, and such other and further relief as this Court deems just and proper.

Dated: this 12th day of December, 2019.

**KLUGER, KAPLAN, SILVERMAN,
KATZEN & LEVINE, P.L.**

Attorneys for Plaintiff

201 South Biscayne Boulevard

Twenty-Seventh Floor

Miami, Florida 33131

Telephone: (305) 379-9000

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Fla. Bar No.: 101119

jkreines@klugerkaplan.com

AGREEMENT dated as of the « _____ » day of «January» in the year «2018», but made effective as of the date that the Architect commenced performing services for the Project.

BETWEEN the Architect's client identified as the Owner:

The Surf Club Apartments Inc. or its permitted Assignees
9133 Collins Ave.
Surfside, FL 33154
Attn: Nadim Achi
Telephone: (305) 571-8228
Facsimile: (305) 576-1822
Email: nad@fortcapital.com

and the Architect:

Kobi Karp
Kobi Karp Architecture & Interior Design, Inc (KKAID), a Florida corporation
2915 Biscayne Blvd.
Suite 200
Miami, FL 33137
Phone: 305.573.1818
Fax: 305.573.3766
Email: kobikarp@kobikarp.com

for the following Project:

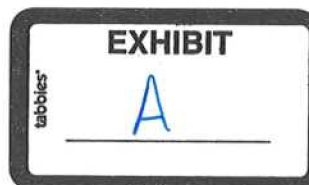
Surf Club 2
9133-9149 Collins Avenue
Surfside, FL 33154

Architect shall provide executive architectural design services for the proposed Project which consists of Two (2) lots East of Collins, for a Total lot area of up to 94,174SF located at 9133-9149 Collins Avenue. The proposed Project East of Collins is a 11 story Residential Development and a 3 story existing historic building. The 11 story Residential Development shall consist of up to 48 residential units (up to ten unit types in total) and 31 hotel keys (up to seven unit types in total). The existing 3 story Residential historic building currently known as "The Seaway" shall partially remain as part of the development and be utilized as Cabanas, beach house, space for a restaurant and/or Amenities.

Areas of Project:

- Basement
 - Parking
 - Hotel back of house
 - Connection to Surf Club basement
- Ground Floor
 - Residential Lobby
 - Hotel Lobby
 - Residential and Hotel Amenities (pool restrooms and hotel lounge)
 - Up to Five (5) Outdoor Pools
 - Beach Cabanas
 - Space for Mechanical Areas & Back of House
 - Space for Loading Facilities
- Levels 2-3
 - Residential units, meeting rooms, hotel support space and amenity spaces (hotel gym, residential gym, space for restaurant)
- Level 4-9
 - Residential units and hotel units
- Level 10-11

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- Residential units only
- Rooftop
 - Up to three (3) Rooftop Pools, restroom, outdoor deck

The Owner and Architect agree as follows:



TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COPYRIGHTS AND LICENSES
- 7 CLAIMS AND DISPUTES
- 8 TERMINATION OR SUSPENSION
- 9 MISCELLANEOUS PROVISIONS
- 10 COMPENSATION
- 11 SPECIAL TERMS AND CONDITIONS
- 12 SCOPE OF THE AGREEMENT

EXHIBIT A: TOWN OF SURFSIDE RESOLUTION

EXHIBIT B: INSURANCE CERTIFICATE

EXHIBIT C: CAD RELEASE

EXHIBIT D: FORM OF WAIVER AND RELEASE OF LIEN

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1:

In order to submit for Town of Surfside Approval, the Owner hired Joseph Dirand Architecture ("JDA") as the Design Architect to provide architectural design services in connection with the Architect to include services during the Concept Design, Schematic Design and Design Development Phases, as well as artistic review during Construction Documents and Construction Phases for core and shell. JDA will also provide interior design services for public spaces/lobbies and for the typical apartments of the Project. JDA scope of work is more clearly defined in Exhibit ____ ("JDA Schematic Design Set").

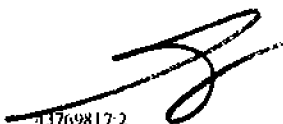
§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Estimated Commencement of Construction date:

« TBD »

- .2 Estimated Substantial Completion date:

Forty Eight (48) Months after the applicable effective Commencement Construction date« »



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

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative (Kobi Karp) authorized to act on behalf of the Architect with respect to the Project. Owner shall have the opportunity to request and recommend to the Architect staff on the Architect's Project team; provided, however, no such requests or recommendations shall make the Owner responsible for the performance of such members of the Architect's Project team.

§ 2.4 Except with the Owner's knowledge and written consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain at its own cost and expense including deductibles and premiums, unless owner requires increased limits, then Owner shall be responsible for such increased premiums the following insurance for the duration of this Agreement or such longer period of time as may be specified below or required by applicable law:

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

.1 General Liability

« In the types and in the amounts set forth on the insurance certificate attached hereto as part of **Exhibit B** »

.2 Automobile Liability

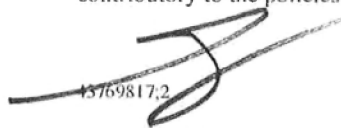
« In the types and in the amounts set forth on the insurance certificate attached hereto as part of **Exhibit B** »

.3 Workers' Compensation

« In the types and in the amounts set forth on the insurance certificate attached hereto as part of **Exhibit B** »

.4 Professional Liability, covering the Architect's negligent acts, errors, and omissions in its performance of professional services with policy limits of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in annual aggregate, which Professional Liability Insurance policy shall: (i) be maintained for a period of not less than two (2) years after the final completion of the Project, (ii) have a retroactive date prior to the performance of any services to be provided under this Agreement, and (iii) state that in the event of cancellation or non-renewal, the discovery period for insurance claims (tail coverage) shall be at least twenty-four (24) months.

All of the specified policies other than Workers' Compensation and Professional Liability are required to name the Owner and the Owner's lender(s) as additional insureds. Further, all specified liability policies (other than Professional Liability and Workers' Compensation policies) shall include an "Additional Insured" endorsement in form acceptable to the Owner. Only the Architect's Professional Liability policy shall be primary and not excess or contributory to the policies held by the additional insureds, solely for Architect's work., ". The insurance companies


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providing the required coverages shall be authorized to do business in the State in which the Project is located and rated A-/VIII or better by the current edition of Best's Key Rating Guide. Prior to performing any services under this Agreement and at any time when a material change in coverage, carriers, or underwriters occurs, the Architect shall provide the Owner only a revised certificate of insurance if required. . The deductibles for the foregoing insurance policies shall not exceed \$100,000. The Architect shall not make changes in or allow the required insurance coverages to lapse without the Owner's prior written approval thereto. . The Architect shall ensure that all consultants engaged or employed by the Architect carry and maintain the same types of insurance in commercially reasonable amounts in relation to the scope of the consultants' services. The Architect shall cause the consultants to name the Owner and the Owner's lender(s) as additional insureds on the consultants' liability policies (other than other than Workers' Compensation and Professional Liability) and shall procure and provide to the Owner Certificates of Insurance and Additional Insured endorsements in forms acceptable to the Owner from its consultants at the Owner's request. The Owner, in its discretion, may require the Architect to procure and maintain insurance coverages that are different than, or additional to, those insurance coverages specified in this Section 2.5. If so required and if the required insurance is available to the Architect, the Architect shall procure such additional or different coverages, however, any additional costs of such additional or different coverages shall be payable by the Owner as a Reimbursable Expense in accordance with Section 10.5.1 below.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and do not include structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services. Owner shall hire licensed and insured engineers. The Architect shall be responsible for ensuring that the Drawings and plan notes of all separate design consultants, including, without limitation, JDA/ and the mechanical, electrical, plumbing, civil, landscape and life safety engineers, are incorporated with the Architect's Drawings and plan notes, such that, when those consultants' Drawings and plan notes are incorporated into the Architect's Drawings and plan notes, there shall be a full set of Construction Documents that adequately describe the requirements for construction of the Work; the only exceptions being: (a) Shop Drawings and other submittals to be prepared and provided by the Contractor in accordance with the Contract for Construction; and (b) those additional or revised Drawings and plan notes that become necessary as a result of an Owner-directed change in Project scope. Without limiting the generality of the foregoing, the Architect shall be responsible for ensuring that the Drawings and plan notes of the Owner's separate design consultants are fully integrated into the Architect's Drawings and plan notes. Notwithstanding the foregoing, the Owner's separate licensed and insured design consultants shall be responsible for the content of their own work product.

§ 3.1.1 The Architect is only licensed by State of Florida License to provide architectural services, not the engineering services required to deliver the engineering Drawings and plan notes for the Project. The Owner acknowledges that the engineering consultants required to complete the Project are licensed and insured independent contractors and not agents of the Architect.

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

§ 3.1.3 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.4 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.5 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval, provided that the Architect, to the best of its ability upon learning of the proposed directive or substitution

promptly notifies the Owner of the Architect's objection to such directive or substitution and the reasons for such objection.

§ 3.1.6 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.7 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Any designs, drawings or plan notes prepared by the Architect or its consultants, if any, that contain errors, conflicts or omissions will be promptly corrected by the Architect at no additional cost to the Owner.

§ 3.2 ZONING APPROVAL/DEP

§ 3.2.1 **Zoning and Department of Environmental Protection Approval (DEP/HPB).** Based on approved conceptual design, the Architect shall prepare CADD plans suitable for submittal to the municipality for planning and zoning approvals, Historic Preservation Board and DEP submittals. Plans shall include municipal requirements and shall also meet Owner's programmatic needs. Additionally see Letter Agreement dated January ____, 2018 regarding zoning work performed on the Market Hall. The zoning package prepared by the Architect shall include the following:

§ 3.2.2 Appropriate floor plans, elevations, building section(s), tabular data sheet as well as other documents required by the municipalities/public authorities for approval to properly represent the design intent of the Project.

§ 3.2.2.1 Address staff comments during the review approval process.

§ 3.2.2.2 Aid in obtaining approval from town staff.

§ 3.2.2.3 Owner must hire Zoning Attorney for all legal requirements and to aid in presentation to hearing boards.

The Architect's deliverables shall include the following:

- a. One (1) progress zoning package.
- b. One (1) final zoning/ DEP/ HPB package to be submitted to the municipality to commence the approval process.
- c. Up to twelve (12) conference calls with the Owner for up to two (2) hours each to review the Project to be held in the Architect's office as required.
- d. Attend Meetings with the municipalities/public authorities to review the Project before and during the zoning approval phase, as required.
- e. Attendance at up to five (5) public hearings, as required by the Town of Surfside (DRC, DIC, Planning & Zoning, Commission, HPB).
- f. Six (6) renderings.
- g. Fourteen (14) color elevations.

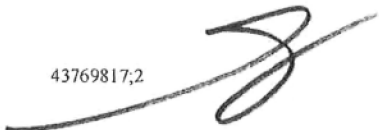
§ 3.3 SCHEMATIC DESIGN PHASE SERVICES

§ 3.3.1 The Architect shall review the program and other information furnished by the Owner and JDA, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.3.2 The Architect shall review the Owner's program, schedule, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project.

§ 3.3.3 The Architect shall review its preliminary evaluation performed in accordance with Section 3.3.2 above with the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 Based on the Project's requirements agreed upon with the Owner, the JDA shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.



§ 3.3.5 Based on the Owner's approval of the preliminary design prepared by JDA, the Architect shall review the Schematic Design Documents for compliance with applicable building codes and provide mark-ups in order for JDA to revise their drawings accordingly. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.3.5.1 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 reviewing the design that is consistent with the Owner's program and schedule. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.3.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in reviewing the design for the Project that is consistent with the Owner's program and schedule.

§ 3.3.6 The JDA shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3.7 Architect will attend meetings with Owner and consultants in Architect's office as reasonably deemed appropriate by Kobi Karp and the Owner.

§ 3.4 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements, the Architect, in consultation with JDA, shall review the Design Development Documents prepared by JDA for code compliance and provide mark ups in order for JDA to revise their drawings accordingly . The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, reflected ceiling plans, interior elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural details and incorporate the structural, mechanical, civil, plumbing, fire protection/life safety, interior design, landscape and electrical systems provided by Owner's consultants, and such other elements as may be appropriate. The Design Development Documents shall also include outline plan notes that identify major materials and systems and establish in general their quality levels.

§ 3.4.2 JDA shall submit the Design Development Documents to the Owner and request the Owner's approval.

§ 3.4.3 The Architect will attend meetings with the Owner and Owner's consultants as reasonably deemed appropriate by Kobi Karp and the Owner.

§ 3.4.4 Any material changes in scope after Owner has approved the final JDA Design Development Documents may be charged by Architect as an Additional Service.

§ 3.5 CONSTRUCTION DOCUMENTS PHASE SERVICES & LIMITED INTERIOR DESIGN DOCUMENTS

§ 3.5.1 Based on the Owner's approval of the Design Development Documents prepared by JDA, and on the Owner's authorization of any adjustments in the Project requirements, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents prepared by JDA and shall consist of Drawings and plan notes setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.7.4.

§ 3.5.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project. Notwithstanding the participation of JDA in the design of the Project, the Architect shall be responsible for conforming the design of the Project and all Construction Documents for the

Project to: (a) all applicable requirements imposed by governmental authorities having jurisdiction over the Project, and (b) all federal, state and local statutes and regulations applicable to the Project.

§ 3.5.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of the bidding documents.

§ 3.5.4 The Architect shall sign and seal the Construction Documents and submit the Construction Documents to the Owner and the appropriate governing authorities.

§ 3.5.5 The Architect shall attend with the Owner a reasonable amount of meetings as decided by Kobi Karp and Owner. Any changes, revisions or modifications by the Owner to the Owner-approved Construction Documents resulting in additional meetings shall result in Additional Services.

§ 3.5.6 KKAID shall receive a complete digital set of Interior Design Construction Document drawings in CAD format from JDA (the "IDCD"). KKAID shall review the IDCD up to two (2) times in total and following review, shall sign and seal the IDCD. KKAID will only be providing review of the IDCD for compliance with applicable code and requirements of governmental entities having jurisdiction over the Project, constructability and coordination with the other consultants' designs and the Contract Documents and signing and sealing a final set of interior design construction documents for submittal. KKAID will not commence any drawings until it has received the final set of drawings from JDA as approved by Owner in writing. Any changes needed after KKAID's review of the IDCD shall be the responsibility of JDA, if KKAID performs the required changes at the written request of Owner, it shall be billed as an Additional Service. Additional scope or changes in the IDCD and requested by Owner in writing shall be billed as an Additional Service.

§ 3.6 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.6.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in obtaining either competitive bids or negotiated proposals.

§ 3.6.2 COMPETITIVE BIDDING

§ 3.6.2.1 Bidding Documents shall consist of bidding requirements and proposed contract documents, including, without limitation, the Construction Documents, constituting the agreement between the Owner and the contractor or contractors (collectively, the "Contractor") responsible for the construction of the Project (the "Contract Documents").

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

- .1 Assisting the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 Assisting in organizing a pre-bid conference for prospective bidders; and
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda.

§ 3.6.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.6.3 NEGOTIATED PROPOSALS

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

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

- .1 Facilitating the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process; and
- .2 Participating in selection interviews with prospective contractors.

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

§ 3.7 CONSTRUCTION PHASE SERVICES

§ 3.7.1 GENERAL

§ 3.7.1.1 The Architect shall advise the Owner and consult with the Owner and the Contractor during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts and omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work. The total hours to be spent for work performed by the Architect (including but not limited to site visits, RFIs, Submittals, etc.) during any month for CA shall not exceed 100 hours in total per month. Should additional hours be required, they shall be billed as an additional service at the rate of \$150/per hour, except for Kobi Karp, Carlos Aguayo and Mat Picard who will be billed at their standard hourly rates as set forth in this Agreement.

§ 3.7.1.2 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment, or if the Architect is not responsible for issuing Certificates for Payment, on the date that the Project is finally complete.

§ 3.7.2 EVALUATIONS OF THE WORK

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

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

§ 3.7.2.3 The Architect shall interpret and notify the Owner (in writing) of its interpretations about matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.7.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations rendered in good faith.

§ 3.7.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.7.3.1 The Architect shall review and, if requested by the Owner, certify the amounts due the Contractor and, if requested by the Owner, shall issue certificates in such amounts. The Architect's recommendation or certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.7.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent

tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.7.3.2 The recommendation for payment or issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site visits to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid.

§ 3.7.3.3 The Architect shall maintain a record of the Applications for Payment that have been provided to the Architect and Certificates for Payment that have been issued by the Architect.

§ 3.7.4 SUBMITTALS

§ 3.7.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.7.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.7.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals; provided, however, the Architect shall promptly notify the Owner in writing if the Architect observes any defect or discrepancy in such services, certifications or approvals.

§ 3.7.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or plan notes in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If necessary, the Architect shall prepare and issue supplemental Drawings and plan notes in response to requests for information.

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

§ 3.7.4.6 For purposes of this Agreement, (a) "Shop Drawings" are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a subcontractor, sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work; (b) "Product Data" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work; and (c) "Samples" are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.7.5 CHANGES IN THE WORK

§ 3.7.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the amounts to be paid the Contractor or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall review Change Orders and Construction Change Directives submitted for the Owner's approval and execution in accordance with the Contract Documents. For purposes of this Agreement: (a) a "Change Order" is a written instrument signed by the Owner and Contractor stating their agreement to: (i) a change in the Work; (ii) the amount of the adjustment, if any, in the amount to be paid to the Contractor; and (iii) the extent of the adjustment, if any, in the time for the Contractor to achieve completion of the Work; and (b) a "Construction Change Directive" is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the amount to be paid to the Contractor or the time for the Contractor to achieve completion of the Work, or both.

§ 3.7.5.2 The Architect shall maintain records relative to its own changes in the Work. The Contractor is responsible for meeting minutes.

§ 3.7.6 PROJECT COMPLETION

§ 3.7.6.1 The Architect shall conduct reviews to determine the date or dates of Substantial Completion (as that term is defined in the Contract Documents) and the date of final completion; recommend the issuance of, or if requested by the Owner issue, Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and recommend the issuance of, or if requested by the Owner issue, a final Certificate for Payment based upon a final site visit indicating the Work complies with the requirements of the Contract Documents.

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

§ 3.7.6.3 When the Work is found to be substantially complete, the Architect shall review with the Owner the balance remaining to be paid the Contractor, including the amount to be retained, if any, for final completion or correction of the Work.

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

§ 3.7.6.5 Upon request of the Owner, and prior to the date of final completion of the Project, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

§ 3.7.6.6. The Architect shall maintain and update its architectural drawings to keep up with RFI responses and field adjustments, as submitted by the Contractor, to reflect the then current conditions for the Project (the "Architect's Updated Set"). Upon Project Substantial completion, the Contractor shall provide to Architect a separate set of architectural drawings inclusive of all RFIs, As-built drawings, submittals, etc. as created, modified and/or adjusted by the Contractor (the "Contractor As-Built Set"). If requested by Owner in writing, Architect shall consolidate the Architect's Updated Set and the Contractor As-Built Set to produce a final record set of drawings (the "Record Set"). Time spent consolidating the Record Set shall be billed to Owner as an additional service at the rate of \$150.00 per hour.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Intentionally deleted.

§ 4.2 Intentionally deleted.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement With owner's prior written approval or request. 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 10.3 and an appropriate adjustment in the Architect's schedule.

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, scope, quality, complexity, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing, other than such public presentation, meeting or hearing necessary to obtain the building permits for the Project;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;
- .11 Assistance to the Initial Decision Maker, if other than the Architect.
- .12 Preparing an unreasonably extensive number of Change Orders and Construction Change Directives that are not necessary because of the Architect's errors or omissions; provided, however, reviewing Change Orders and Construction Change Directives shall be included as part of the Basic Services;
- .13 Making material revisions to Instruments of Service resulting from substitutions proposed during the Construction Phase that are not necessary because of the Architect's errors or omissions; provided, however, evaluation of substitutions shall be included as part of the Basic Services;
- .14 To the extent the Architect's Basic Services are affected, providing Construction Phase Services after the Owner's final payment to the Contractor;
- .15 Providing services beyond the task phases listed in this Agreement;
- .16 Provide Marketing Brochure and/or Leasing Documents not otherwise listed in this Agreement;
- .17 Providing Sales center / trailer or Construction trailer plans.
- .18 Providing permit expediting services;
- .19 Providing analyses of the Owner's needs and programming the requirements of the Project;
- .20 Providing financial feasibility or other special studies;
- .21 Providing planning surveys, site evaluations or comparative studies of prospective sites;
- .22 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project other than as specified elsewhere herein;
- .23 Providing services relative to future facilities, systems and equipment;



- .24 Providing services to investigate existing measurements or facilities or to make measured drawings thereof;
- .25 Providing services to verify the accuracy of drawings or other information furnished by the Owner;
- .26 Providing detailed estimates of Construction Cost;
- .27 Providing detailed quantity surveys or inventories of material, equipment and labor;
- .28 Providing analyses of owning and operating costs;
- .29 Providing interior design and other similar services required for or in connection with the coordination, selection, procurement or installation of furniture, furnishings and related equipment;
- .30 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities;
- .31 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation;
- .32 Providing services of consultants for other than architectural portions of the Project provided as a part of Basic Services;
- .33 Providing any other services not otherwise included in this Agreement and not customarily furnished in accordance with generally accepted architectural practice, to include but are not limited to additional 3D Renderings, scale models & videos;
- .34 A one-time modeling fee to be determined shall be billed for each 3D model.
- .35 Renderings not included in this agreement shall be billed at the following estimated fees:

Massing Rendering	\$1,500.00/image
Historic Preservation Massing Rendering	\$1,500.00/image
Sun Study Rendering	\$500.00/image
Standard Rendering	\$2,000.00/image
Interior Architecture Rendering	\$1,500.00/image
Interior Design Rendering	\$3,000.00/image
360-Degree Rendering	\$3,000.00/image
Marketing Rendering	\$3,000.00/image
- .36 See Section 3.7.6.6
- .37 3-D CGI Renderings as requested;
- .38 Providing revisions due to errors or omissions in the Services of any Owner's consultant (other than the Architect) or anyone performing Work;
- .39 At commencement of Project, any material differences between actual conditions and any surveys, analyses, geotechnical, soils and other reports provided to Architect that result in work or changes outside the scope of this agreement shall be considered additional services;
- .40 Neighborhood Impact Establishment meetings in addition to the number of meetings contained within this Agreement;
- .41 Switching of Architect of record as a result of a termination of this Agreement for convenience by the Owner;
- .42 Demolition plans otherwise not specifically included in scope/deliverables herein; or
- .43 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after the earlier of: (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information; provided, however, periods during which the Project or the Architect's services under this Agreement are suspended shall toll the foregoing time period.
- .44 Revit server requirement or Revit collaboration requirement.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:



- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect; or
- .2 Responding to the Contractor's requests for information that are not prepared in substantial accordance with the Contract Documents or where such information is available to the Contractor from a reasonable study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

§ 4.3.3 Intentionally deleted.

§ 4.3.4 If the services covered by this Agreement have not been completed within ~~« Forty Eight »~~ (« 48 ») 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 OWNER'S RESPONSIBILITIES

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

§ 5.2 The Owner shall identify one or more representatives authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.3 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. 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.

§ 5.4 The Owner 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.

§ 5.5 The Owner shall cooperate in the coordination of the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall consider in good faith either: (a) engaging the services of consultants other than those designated in this Agreement, or (b) authorizing 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 Owner shall require that its consultants maintain professional liability insurance as the Owner determines to be appropriate to the services provided.



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

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

§ 5.8 The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.9 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

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

ARTICLE 6 COPYRIGHTS AND LICENSES

§ 6.1 For purposes of this Agreement, "Instruments of Service" shall mean all documents, models, renderings, and other materials to be furnished to the Owner or anyone in connection with this Agreement by or on behalf of the Architect, or by consultants, contractors, or others retained by the Architect, and all modifications made by the Architect to any documents supplied by the Owner to the Architect, and all written information, reports, studies, objects or source codes, flow charts, diagrams, and other tangible materials which have been created by the Architect in order to provide services pursuant to this Agreement, and all digital forms thereof exclusive of any software used to produce them. The Architect warrants that in transmitting Instruments of Service, and the Architect and the Owner warrant that in transmitting 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. If the Owner 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.

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

§ 6.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive, irrevocable license to reproduce and use the Instruments of Service for purposes of constructing, using, maintaining, altering, renovating and completing the Project, provided that the Owner pays the Architect the compensation for work completed to date due under this Agreement, including all compensation due for Additional Services and Reimbursable Expenses for the preparation of the Instruments of Service. Provided that the Owner has paid amounts due to the Architect, the license granted to the Owner hereunder shall not be affected in any way by the suspension, termination or breach of this Agreement or any dispute between the Owner and the Architect. The license granted to the Owner hereunder shall apply to all Instruments of Service. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-

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subcontractors, and material or equipment suppliers, as well as the Owner'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.

§ 6.3.1 The Owner may use the Instruments of Service for future additions or alterations to the Project or for the completion of the Project by others; provided, however, that the Owner shall indemnify and hold harmless the Architect from and against any and all liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees and disbursements) arising out of any such use for additions to the Project or for the completion of the Project, in which the Architect is not otherwise involved; provided, further, however, the Owner's indemnification hereunder shall not apply in connection with the use of the Instruments of Service to construct, use, maintain, alter, renovate and complete the Project to the extent the Architect failed to perform the Services with respect to such Instruments of Service in accordance with the applicable standard of care.

§ 6.3.2 The Architect recognizes that the Owner has an interest in the exclusivity and uniqueness of the overall design conveyed in the Instruments of Service and the Architect agrees to the best of its ability to avoid a design that substantially reproduces unique or material aspects of such design for another project in Miami-Dade County or Palm Beach County without the Owner's prior written authorization. Likewise, the Owner recognizes that (i) the Architect's design approach may draw upon pre-existing traditional architectural forms and details and (ii) specific details of the design unique to this Project developed by the Architect or its consultants are likely to be re-used in connection with other projects which have different design concepts, and the Architect agrees that, notwithstanding any provision herein to the contrary, the Architect shall retain its rights including, but not limited to, all copyrights, to all standard discrete elements contained within the Instruments of Service generated and authored by the Architect and its consultants for its repeated, regular and ongoing use in plans, plan notes, reports or other instruments of service for its clients. Notwithstanding the foregoing, the Architect shall utilize reasonable efforts to prevent third parties from using its copyrightable design concepts and details unique to the Project without the Owner's consent in connection with other projects, which consent may be withheld in the Owner's sole discretion. In the event that preventing a third party from using Architect's design concepts and details unique to the Project requires the filing of a claim for infringement, in the Architect's discretion or if requested by the Owner, consent to which shall not be unreasonably withheld, the Architect shall irrevocably assign to the Owner the exclusive right to enforce such copyright or other intellectual property right at the Owner's expense; provided, however, all relief accorded to the Owner, whether by way of settlement or judgment, by such claim shall inure solely to the benefit of the Owner and the Architect waives any right to any portion of such judgment or settlement.

§ 6.4 Except for the licenses granted in this Article 6, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. However, during the execution of this Project, the Owner's contractors, and their respective subcontractors, sub-subcontractors and material or equipment suppliers, as well as the Owner's consultants and separate contractors, shall have the right to use and reproduce applicable portions of the Instruments of Service in hard copy or electronic format appropriate to and for use in their execution of their respective services and the Work by license granted in Section 6, without charge. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Owner's consultants.

§ 6.5 The Architect represents and warrants that its Instruments of Service do not and shall not infringe upon any domestic or foreign patents, copyrights, trademarks or other intellectual property rights.

§ 6.6 The Architect shall deliver to the Owner at the Owner's request copies of the Architect's Instruments of Service, including, without limitation, the Construction Documents, in AutoCAD or other electronic format

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reasonably acceptable to the Owner for the Owner's and the Owner's consultants' and contractors' use, subject, however, to: (a) the limitations of the license granted herein, and (b) the terms of the CAD Release attached hereto as **Exhibit C**, which must be executed by Owner and Owner's Consultants

§ 6.7 The Architect acknowledges and agrees that, to the extent that plans, drawings, specifications or other design documents are created by the Owner's other design consultants and provided to Architect for this Project (the "Owner Provided Instruments of Service"), Architect shall have no ownership interest in any such Owner Provided Instruments of Service.

ARTICLE 7 CLAIMS AND DISPUTES

§ 7.1 GENERAL

§ 7.1.1 The Owner 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 limits per Florida Statute Section 95.11(3)(c) after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 7.1.1.

§ 7.1.2 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement, except to the extent that consequential damages are covered by the professional liability insurance to be maintained by the Architect in accordance with this Agreement or would have been covered by such insurance but for the failure of the Architect to maintain the required insurance; provided, however, if the Owner desires to obtain the benefits of the coverage provided under the Architect's professional liability insurance coverage required to be maintained by the Architect under this Agreement, the Owner shall be responsible for paying the deductible for claims made under such professional liability insurance policy, which deductible shall not exceed \$100,000.00. For the avoidance of doubt, provided that the Architect maintains the professional liability insurance required by this Agreement, the Architect shall not be liable for consequential damages in excess of the Architect's professional liability policy limits. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

§ 7.1.3 PURSUANT TO SECTION 558.0035, FLORIDA STATUTES, AN INDIVIDUAL EMPLOYEE OR AGENT OF THE ARCHITECT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE OCCURRING WITHIN THE COURSE AND SCOPE OF THIS AGREEMENT.

§ 7.2 MEDIATION

§ 7.2.1 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.

§ 7.2.2 The Owner 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.

§ 7.2.3 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.

§ 7.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 7.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner 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

Litigation in a court of competent jurisdiction

Other (Specify)

The exclusive venue for litigation of all matters arising out of or relating to this Agreement shall be in a court of competent jurisdiction situated in Miami-Dade County, Florida, and the parties hereby waive any objection to such venue, including, without limitation, *forum non conveniens*. THE PARTIES HEREBY EXPRESSLY AGREE TO WAIVE A TRIAL BY JURY IN ANY SUCH PROCEEDING. In the event of any claim or dispute arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees and court costs, including, without limitation, all such fees and costs incurred on appeals, in bankruptcy proceedings and in post-judgment collection proceedings.

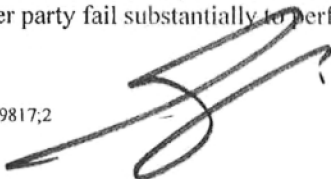
ARTICLE 8 TERMINATION OR SUSPENSION

§ 8.1 If the Owner 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 Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses and Additional Services 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.

§ 8.2 Unless otherwise noted herein or indicated in the Project schedule most recently approved by the Owner, or unless caused by the Architect, if the Project is suspended by the Owner for more than ninety (90) consecutive days, the Architect shall be compensated for services that were fully performed prior to suspension and shall receive an equitable payment for the Architect's demonstrated actual costs to remobilize to continue performance when services are recommenced by request of the Owner.

§ 8.3 If the Owner 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 fourteen days' written notice.

§ 8.4 Either party may terminate this Agreement upon not less than fourteen 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. Should the Owner terminate this Agreement for cause, but that cause be subsequently found to be insufficient to support termination, the termination shall be deemed one of convenience.

§ 8.5 The Owner may terminate this Agreement upon not less than fourteen days' written notice to the Architect for the Owner's convenience and without cause.

§ 8.6 In the event of termination not due to the fault of the Architect, the Architect shall be compensated for services performed, including Additional Services, prior to termination together with Reimbursable Expenses then due. In no event shall the Architect be entitled to receive consequential, special or punitive damages, including, without limitation, unabsorbed overhead or lost profit.

§ 8.7 In the event of termination, subject to the payment by the Owner of all amounts due the Architect, the Architect shall cooperate with the Owner, all members of the Owner's Project team and any duly licensed replacement architect so as to promote as smooth and seamless a transition as is feasible under the circumstances.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 This Agreement shall be governed by the law of the place where the Project is located, Miami-Dade County, Florida, without regard to its choice of law provisions.

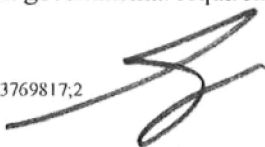
§ 9.2 This Agreement shall be binding on the parties hereto and their respective successors and assigns. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project, the ultimate fee owner of the Project or to an affiliate of the Owner that controls, or is controlled by or is under common control with the Owner. In such event, the lender or affiliate shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment. The Owner shall use commercially reasonable efforts to deliver to the Architect any required lender's form of assignment document at least seven (7) days prior to the effective date of the assignment. Any assignment to a third party, other than an assignment expressly permitted by this Section 9.2, without the required consent shall be null and void and, at the consenting party's option, a breach of this Agreement. Which consent will not be unreasonably withheld

§ 9.3 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender or subsidiary/related company of Owner and Architect consents to such assignment, which consent will not be unreasonably withheld, 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.

§ 9.4 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 Owner or Architect.

§ 9.5 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.

§ 9.6 The Architect shall have the right to post a KKAID sign on the property, subject to compliance with all governmental requirements and the Owner's approval of the size, form and location of such sign, such

A handwritten signature in black ink, consisting of a stylized, cursive 'S' followed by a horizontal line and a small flourish.

approval not to be unreasonably withheld, and/or 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 Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary.

§ 9.7 If the Architect or Owner 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. However, the "Instruments of Service" shall not be deemed to be "confidential" or "business proprietary."

§ 9.8 No consent or waiver by the Owner or the Architect shall be effective unless it is in writing and then only to the extent specifically stated.

§ 9.9 The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of a party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

§ 9.10 This Agreement may be executed and delivered in counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to be one agreement.

§ 9.11 Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, or (c) legible facsimile or email transmission, sent to the intended addressee at the address set forth in the Agreement, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given upon receipt or refusal to accept delivery, or, in the case of facsimile or email transmission, as of the date of the facsimile or email transmission.

§ 9.12 In this Agreement, the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders. Each party, together with their respective legal counsel, has contributed substantially to the preparation of this Agreement, and, as such, this Agreement shall not be interpreted more favorably against one party than the other solely upon the basis of which party actually drafted this Agreement. Headings are for convenience only and shall not be used for interpretation of the language in this Agreement.

§ 9.13 The Architect acknowledges that the Owner is financing the Work with a loan from lenders. The Architect agrees to make such revisions to this Agreement and execute and deliver to the Owner documents as may be reasonably required by such lenders or their agents provided such revisions do not alter Architect's rights and obligations under this Agreement. The Architect shall use its best efforts to comply with the requirements of the Owner's lenders that bear upon the performance of the Architect's services so long as such requirements are in the scope of this Agreement. The Architect shall also:

- .1 Consent to and execute documents reasonably requested by the Owner in connection with the assignment of this Agreement to its lenders for collateral purposes. Such assignment shall provide that the Architect agrees that, notwithstanding a default by the Owner under the

provisions of this Agreement that would give the Architect the right to terminate this Agreement, the Architect will continue to perform its obligations hereunder (on the same terms and conditions as are set forth herein) for and on account of such lenders, provided that the lenders shall agree to pay the Architect all amounts due and owing the Architect under the Agreement, including all amounts due prior to the assignment. All of the Architect's consultant agreements, if any, shall contain a right of assignment to the Owner or other permitted assignees (which are owned or substantially related to the original Owner) under Section 9.2 without consent of the consultant; and

- .2 Promptly furnish the Owner with information, documents, and materials that the Owner may reasonably request from time to time in order to comply with the requirements of its lenders so long as such requirements are in the scope of this Agreement.

§ 9.14 Each of the individuals executing this Agreement represent and warrant that he has been duly authorized by the respective party on whose behalf he is executing this Agreement to execute this Agreement on such party's behalf and that once executed by him, this Agreement shall be valid and binding upon such party.

§ 9.15 In addition to all provisions of this Agreement that by their terms expressly survive and continue, all of the Architect's representations, indemnifications and warranties made in this Agreement will survive the termination of this Agreement.

§ 9.16 Owner shall not, without the prior written consent of Architect, directly or indirectly (i) hire, offer to hire, recommend for hiring, contact, solicit, suggest, persuade, attempt to persuade, or identify for recruiting purposes any employees or agents of the Architect or any person who worked for the Architect, for employment or for the establishment of any other business relationship, including retention as a consultant or independent contractor. For purposes paragraph "employees of Architect" shall mean and include any person who was employed by Architect at any time during employee's employment with the Architect or at any time during the two (2) year period following employee's employment with the Architect.

ARTICLE 10 COMPENSATION

§ 10.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

Tasks	Phases	Fee
(01)	Zoning Approval/DEP	\$200,000.00
(02)	Schematic Design	\$150,000.00
(03)	Design Development	\$235,000.00
(04)	Construction Documents (Arch & Limited ID)	\$300,000.00 for Arch \$300,000.00 for ID
(04)(a)	Bidding or Negotiation	\$5,000.00
(05)	Construction Phase	\$270,000 (at \$15,000/month for 18 months)
	Total Basic Services Compensation	\$1,460,000.00

§ 10.2 Intentionally deleted.

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

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

Compensation for Additional Services shall be negotiated by the Owner and the Architect at the time of Owner's request for said services. The Owner shall not require the Architect to, and the Architect shall not perform and shall

not be entitled to any payment for, Additional Services unless the Owner and Architect execute a written document setting forth a description of the Additional Services and the compensation to be paid for same in advance of Architect performing such Additional Services or Owner requests additional services in writing. Should an hourly rate method or billing be agreed to the rates charged by the Architect shall be in accordance with Section 10.4.

§ 10.4 The hourly billing rates for services of the Architect, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's normal review practices but in no event shall such rates increase by more than three percent (3%) per year, unless otherwise agreed in writing by the Owner.

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

Additional Services for Custom Units only, shall be billed at a flat rate of \$150 per hour. All other Additional Services shall be billed at Architect's standard rates below.

Employee or Category	Rate
Principal/Kobi Karp	\$350/hour
Sr. Project Designer/Mathieu Picard	\$275/hour
Sr. Project Manager/Carlos Aguayo	\$275/hour
Project Manager/Project Director	\$275/hour
Asst. Project Manager	\$250/hour
Draftsman	\$150/hour
Field Architect	\$150/hour

§ 10.5 COMPENSATION FOR REIMBURSABLE EXPENSES

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

- 1 Transportation and authorized out-of-town travel and subsistence, when approved in advance by the Owner in writing, provided that the Owner agrees that out-of-town travel by air approved by the Owner, shall be "business class";
- 2 Amounts charged by third parties for 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 Amounts charged by third parties for printing, reproductions, plots, and standard form documents;
- 5 Amounts charged by third parties for postage, handling and delivery;
- 6 Expenses for presentation materials requested by the Owner in writing, including renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- 7 All taxes levied on professional services and on reimbursable expenses
- 8 Architect's expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that set forth in Section 2.5; and
- 9 Site office expenses.

§ 10.5.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect plus « Ten » percent (« 10 » %) of the expenses incurred.

§ 10.6 PAYMENTS TO THE ARCHITECT –

§ 10.6.1 As of the date of this Agreement payments totaling « Nine-Hundred Ninety Thousand Dollars & 00/100 » (\$ « 990,000.00 ») were made by Owner, which payments will be credited against the Fees specified in Section 10.1 above.

§ 10.6.2 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 « Forty

Five » (« 45 ») 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.)

« 6 » % « Six » per annum

All of the Architect's requests for payment shall include: (i) an itemized statement of Reimbursable Expenses incurred for such month, (ii) waivers and releases of lien for payments received in the form attached hereto as **Exhibit D** or such other form reasonably acceptable to the Owner, and (iii) such other information as the Owner shall reasonably require to enable the Owner to verify, evaluate and approve the services completed, the Fee earned and Reimbursable Expenses incurred in accordance with the terms and conditions of this Agreement.

§ 10.6.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty.

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

ARTICLE 11 SPECIAL TERMS AND CONDITIONS

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

- 1) The Architect acknowledges that the Owner is relying on the Architect's skill, knowledge, experience and ability to fully perform the services and its obligations under this Agreement. The Architect represents and warrants that it (and each of the individual architects and engineers it employs on this Project) has and shall maintain all licenses and certifications required for the provision of its services under this Agreement.
- 2) Notwithstanding the date of execution of this Agreement, the parties acknowledge and agree that all services performed by the Architect with respect to the Project have been performed pursuant to and are governed by this Agreement.
- 3) Any approval and consent rights retained or granted to the Owner in this Agreement are for Owner's own purposes and benefit and shall not, and shall not be deemed to, impose upon the Owner any responsibility for the Architect's services or responsibilities under this Agreement.»

ARTICLE 12 SCOPE OF THE AGREEMENT

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

This Agreement is executed as of the date of this Agreement written above but is made effective as of the date that the Architect commenced performing services for the Project.

OWNER: The Surf Club Apartments Inc., a Florida corporation

By: _____

(Signature)

Printed Name: MAO NASHI

Title: _____

ARCHITECT: KOBİ KARP ARCHITECTURE & INTERIOR DESIGN, INC., a Florida corporation

By: _____

(Signature)

«Kobi Karp, President

Fl. License No. _____

Surf Club 2
Total Fee For Basic Services 1,460,000.00

Basic Services	Fee	% complete	Payment Applied	Payment on Contract
Zoning Approval/DEP 90% Complete	200,000.00	100.00%	(275,000.00)	(95,000.00)
Schematic Design 30% Complete	150,000.00	45.00%	(325,000.00)	(180,000.00)
Design Development	235,000.00		(325,000.00)	(325,000.00)
Construction Document	600,000.00		(165,000.00)	(165,000.00)
Bidding	5,000.00			
Construction Phase				
18 Months @15K monthly	270,000.00			
Additional Services				
Excess Mtg/Conference calls Inv #14423				
Approved by contractor 1.2 at 2hrs each				
Total Hours spent 28 hours @ \$150 as of Jan 14				
1	25,000.00	9,600.00		9,600.00
2	25,000.00	25,000.00		25,000.00
3	5,500.00	5,500.00	(5,500.00)	
4	6,050.00	6,050.00		6,050.00
5	9,250.00	9,250.00		9,250.00
6	10,362.00	10,362.00	(10,362.00)	
7	2,200.00	2,200.00		2,200.00
8	2,800.00	2,800.00		2,800.00
Excess Mtg/Conference Calls Allowed by Contract 12hr 2hrs each Total Hours spent 125.02 @250 as of 04-17 Inv #15145 (VOID 531,354.00)				
9	38,325.00	38,325.00		38,325.00
10	11,088.00	11,088.00	(11,088.00)	
11	18,460.75	18,460.75		18,460.75
12	23,650.00	23,650.00		23,650.00
13	33,825.00	33,825.00		33,825.00
14	26,400.00	26,400.00	(26,400.00)	
15	4,881.25	4,881.25	(4,881.25)	
16	15,743.75	15,743.75		15,743.75
17	2,750.00	2,750.00		2,750.00
18	289.08	289.08	(289.08)	
19	717.53	717.53	(717.53)	
20				
1,706,892.36				(577,345.50)

Total Amount Paid on BASE contracts as of 01/10/2018
 Total Amount Paid for ASA as of 01/10/2018
 Total Amount Outstanding for ASA as of 01/10/2018
 Total Credit as of 01/10/2018
 Total Credit if Outstanding ASA Payment is made

Total Fees Billed 225,000.00
 Total Fees Paid (990,000.00)
 Total Fees Credit (765,000.00)

Total Add Services Billed 245,885.75
 Total Add Services Paid (88,231.25)
 Total Add Services Due 187,654.50

Total Reimbursables 1,006.61
 Total Reimbursables Paid (1,006.61)
 Total Reimbursables Due 0.00

Summary
 Total Fees Billed 225,000.00
 Total Add Services Billed 245,885.75
 Total Paid (1,049,237.86)
 Total Credit (577,345.50)