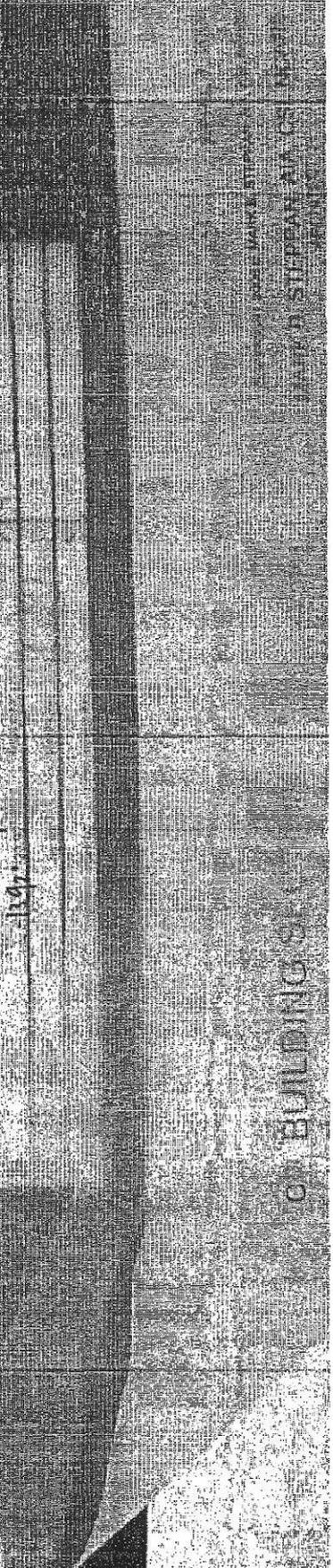
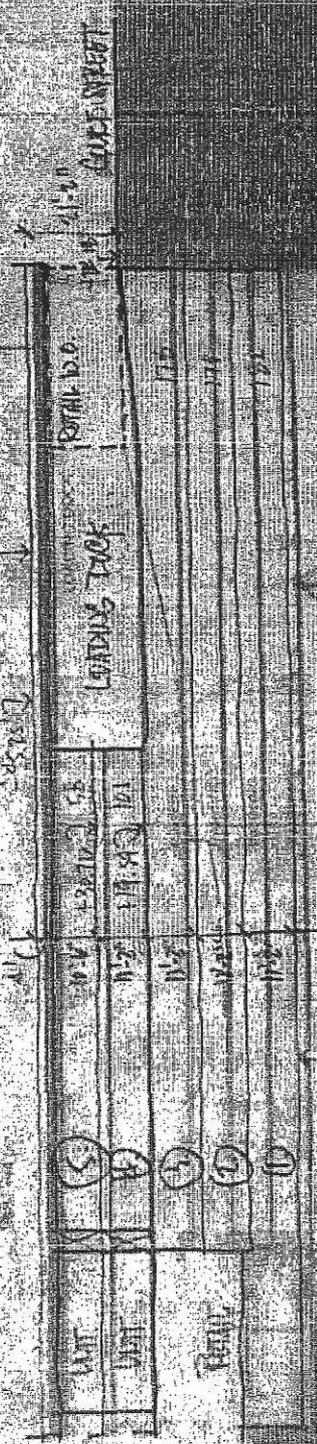


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**Nathan Ogle**

---

**From:** Michele Powell [mpowell@decacustomhomes.com]  
**Sent:** Thursday, September 28, 2006 10:42 AM  
**To:** Nathan Ogle  
**Subject:** FW: 9-27-06.Project.Desc

*Per Cal's request....*

*Michele Powell  
Project Coordinator  
Decal Nevada, Inc.  
775-826-9881(o)  
775-825-2152(f)*

---

**From:** Nathan Hastings [mailto:nhastings@WoodRodgers.com]  
**Sent:** Thursday, September 28, 2006 10:26 AM  
**To:** Calvin Bosma; Michele Powell  
**Subject:** 9-27-06.Project.Desc

## Project Description Update

This is an update to the original project description. The original application was submitted in January 2006. Since that original submittal, certain changes have evolved relative to the interior makeup of the project as well as, overlay district zoning around the project area. As a result of the modifications additional special use permits and a variance have been provided through the applicant's cooperative work with City staff. The following are the requests of the City with this application.

### Requests of the City

Eight requests are sought with this application.

- (1) A tentative map for a 499 unit high-rise condominium development containing 11 units of retail and office space.
- (2) A special use permit for hillside development.
- (3) A special use permit for cuts and fills.
- (4) A special use permit for modification to the building setback envelope for a building within the South Esplanade Frontage.
- (5) A special use permit for 100 or more condominium units.
- (6) A variance to allow buildings to cast a shadow on a public park between the hours of 10 a.m. and 2 p.m. on December 21.

The following is a brief description of the proposed Wingfield Towers project.

### Project Overview

The exterior elevations of the proposed Wingfield Towers project have not changed since the original submittal in January. The Wingfield Towers Project is a mixed use development offering retail, office and condominium housing, a public plaza, winter garden space in the ever growing and improving downtown core. The central location to the heart of Reno is accessible to key transportation corridors through the South Virginia Street Transit Corridor, adjacent to the Riverwalk and overlooks the Truckee River. Retail/shop space is envisioned along both Island Avenue and Court Street. Additional retail and office uses will be accessed at the public plaza level. The project has been designed with two main

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STEPPAN 0387

structures (one 28 and one 40 story tower above the public plaza). Parking will be provided entirely within a parking structure below the podium (public plaza) level. It is anticipated that the public plaza will provide opportunities to tie in the building residents and future businesses to the festivals and events that have been so successful in the Wingfield Park area (such as, Artown and the River Festival). The tie and increase of potential space for events and exhibits in association with the existing festivals will help to continue enhancing Reno's urban environment and help Reno attain infill and intensity goals and objectives within the Downtown Core, to help create the necessary critical mass to support viable mass transit as driven by the Truckee Meadows Regional Plan.

### Summary of Proposed Development

The project site consists of 1.36± acres of land located between Island Drive and Court Street in Downtown Reno, just east of Arlington Avenue. The Wingfield Towers will consist of two architecturally matching towers (one of 40 stories and one of 28 stories). The following uses are included in the proposed towers:

- 499 residential (condominium) units
- ~~824~~ 679 parking spaces, entirely contained within a parking structure
- 28,300± SF of Public Plaza Space at the Podium Level
- 40,500± SF of Office and Retail Space
- A winter garden with a 75-foot lap pool, situated on top of the 28-story tower
- Anticipated 4.0 to 4.8 million dollars in pedestrian and/or art improvements

### Tentative Map Request

As noted previously, the Wingfield Towers proposes 499 residential condominium units. An addition 11 units are proposed to contain retail and office space.

### Special Use Permit Request

Requested with this application are four special use permits:

- (1) Hillside Development and;
- (2) Cuts in excess of 20 feet.
- (3) Modification to the building setback envelope for a building within the South Esplanade Frontage;
- (4) 100 or more condominium units;

### Variance Request

The application requests a variance to allow buildings to cast a shadow on a public park between the hours of 10 a.m. and 2 p.m. on December 21. It should be noted that properties within the Downtown Area Overlay Zoning District were exempt from this development standard prior to the removal of this section of Code in March 2006. There are several existing structures in the area that cast shadows on the public park between the hours of 10 a.m. and 2 p.m. on December 21. Due to the close proximity of the subject property to Wingfield Park, a three story structure would cast a shadow on the park.

### Parking

Parking will be provided in a parking garage beneath the proposed towers. The parking garage area will be contained entirely below the public plaza. Access to the garage will be provided from Court Street and Island Drive. With ingress and egress on Court Street and egress only on Island Avenue.

The demanded parking for the project is 603 spaces (without using any reductions for joint parking between office and residential uses). Total number of spaces provided in this update is 679. It has been the intent from day one of the

9/28/2006

project to try to provide additional parking to help adjacent uses such as Park Tower, Trinity Episcopal Church and the surgical arts building. The additional parking spaces over the required level are expected to be available for these uses.

The basis for 603 parking spaces is defined in both the MU (Mixed Use) zoning district in Code and by ITE parking (Institute of Traffic Engineers) requirement. Residential uses would provide parking at a rate of 1 space per unit. An additional 50 spaces would be provided for guest parking and the remaining spaces up to 603 are allotted to non-residential uses (office and retail).

Parking levels are proposed to be limited to 4 levels with parking lifts on each level. The use of the parking lifts allows for two cars to be parked in each space where the lift is incorporated. The significant benefit derived from this technology is that we can keep the subsurface structure above the groundwater table. It is expected that parking in the garage will be controlled by valets. This is a benefit especially with the use of parking lifts.

9/28/2006

**Nathan Ogle**

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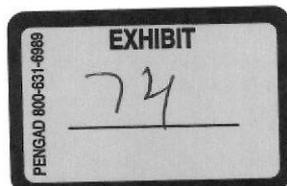
**From:** Amy Chu [amychu@fisherfriedman.com]  
**Sent:** Friday, January 06, 2006 12:30 PM  
**To:** ray@pezonella.com  
**Cc:** Nathan Ogle; Mark Steppan  
**Subject:** latest reno drawings #1

Ray,

Here are all the drawings for you to review. 2 emails total. Please contact us with questions & comments.

sincerely,

**Amy.S.I.Chu**  
FISHER FRIEDMAN ASSOCIATES  
(510) 420 - 1666 EXT 165



1/9/2006

AA3939

STEPPAN 1274

**Nathan Ogle**

---

**From:** Amy Chu [amychu@fisherfriedman.com]  
**Sent:** Friday, January 06, 2006 12:35 PM  
**To:** ray@pezonella.com  
**Cc:** Nathan Ogle; Mark Steppan  
**Subject:** latest reno drawings #2

Ray,

Here are all the drawings for you to review. Please contact us with questions & comments.

sincerely,

**Amy.S.I.Chu**  
FISHER FRIEDMAN ASSOCIATES  
(510) 420 - 1666 EXT 165

1/9/2006

AA3940

STEPPAN 1275

**Nathan Ogle**

---

**From:** Amy Chu [amychu@fisherfriedman.com]  
**Sent:** Friday, January 06, 2006 1:27 PM  
**To:** ray@pezonella.com  
**Cc:** Nathan Ogle; Mark Steppan  
**Subject:** reno latest drawings

FILE / COPY

Ray,

I have posted all the updated CAD files and a pdf package of the Reno Elevations and section renderings onto our FTP site in the Reno folder. Please follow the instruction below to retrieve the files. If you have any questions, please contact us.

**Accessing FFA's FTP site**

FFA's ftp site is not accessible using a browser.  
Use any ftp application with the following account info:

IP: 72.18.232.3  
Account Username: reno  
Account Password: highrise

Click [here](#) to download Core FTP Lite, an excellent free ftp application.

**sincerely,**

**Amy.S.I.Chu**  
FISHER FRIEDMAN ASSOCIATES  
(510) 420 - 1666 EXT 165

1/6/2006

AA3941

STEPPAN 0180

**Nathan Ogle**

---

**From:** Amy Chu [amychu@fisherfriedman.com]  
**Sent:** Thursday, January 12, 2006 5:35 PM  
**To:** psolaegui@aol.com  
**Cc:** samcaniglia@sbcglobal.net; 'Nathan Ogle'; Mark Steppan  
**Subject:** Reno Data Summary

FYI

**sincerely,**

**Amy.S.I.Chu**  
FISHER FRIEDMAN ASSOCIATES  
(510) 420 - 1666 EXT 165

1/12/2006

**AA3942**

**STEPPAN 0310**

**Nathan Ogle**

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**From:** Amy Chu [amychu@fisherfriedman.com]  
**Sent:** Friday, January 13, 2006 9:13 AM  
**To:** psolaegui@aol.com  
**Cc:** 'Nathan Ogle'; Mark Steppan; samcaniglia@sbcglobal.net  
**Subject:** RENO ZONING MAP

Per your request.

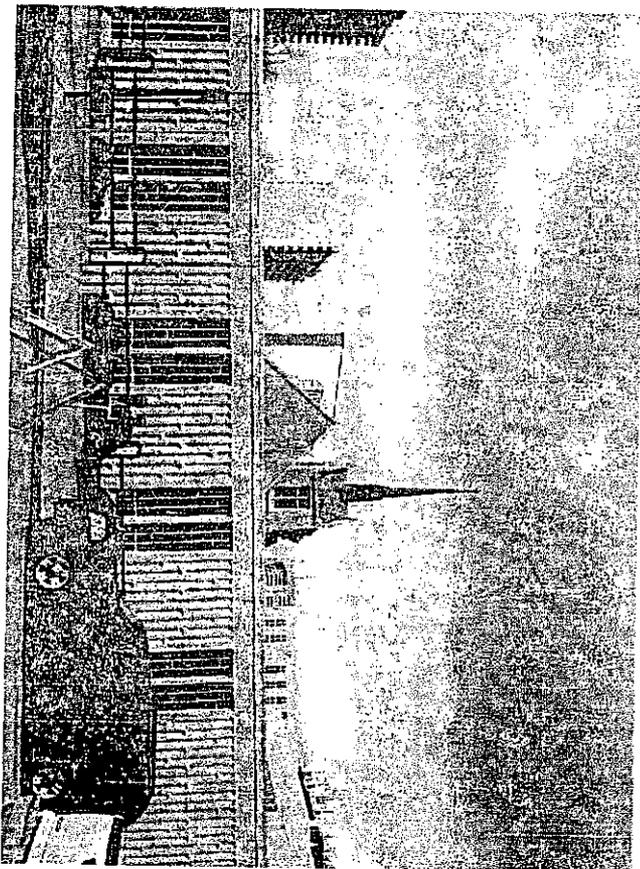
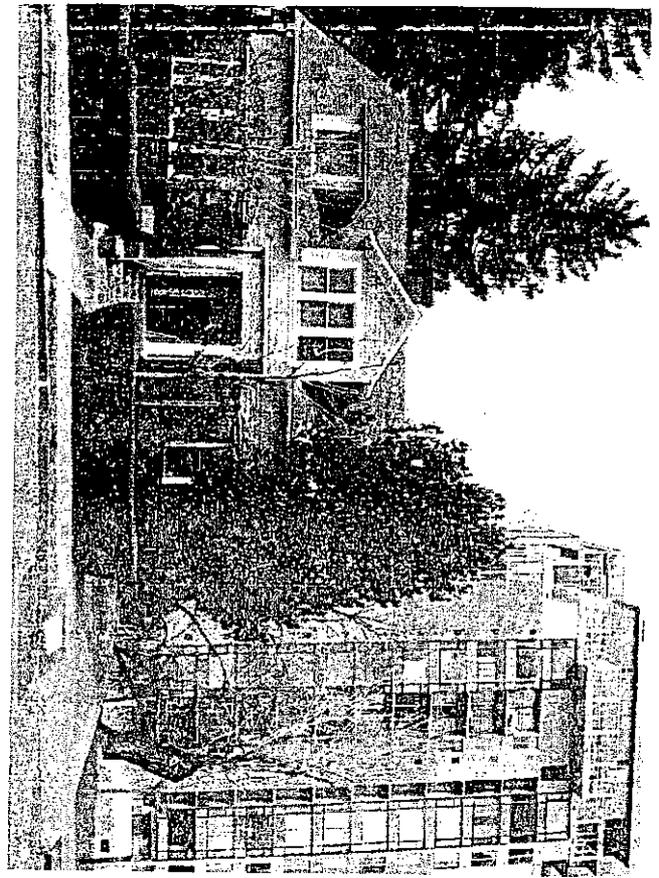
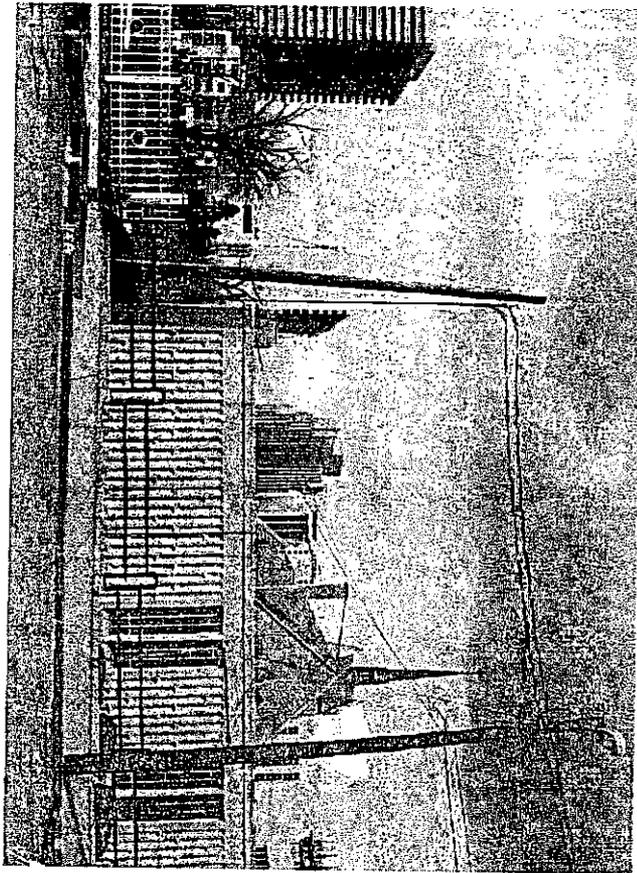
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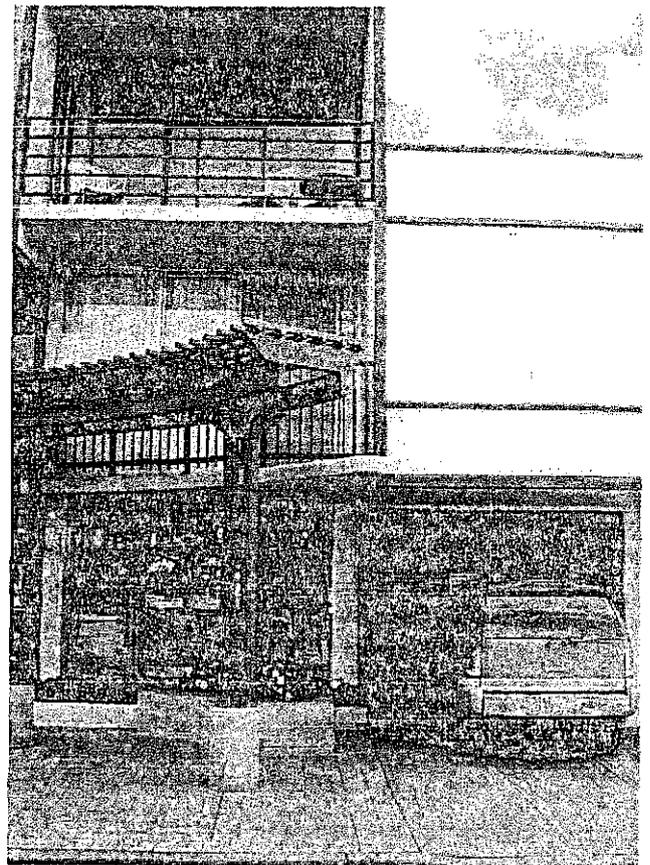
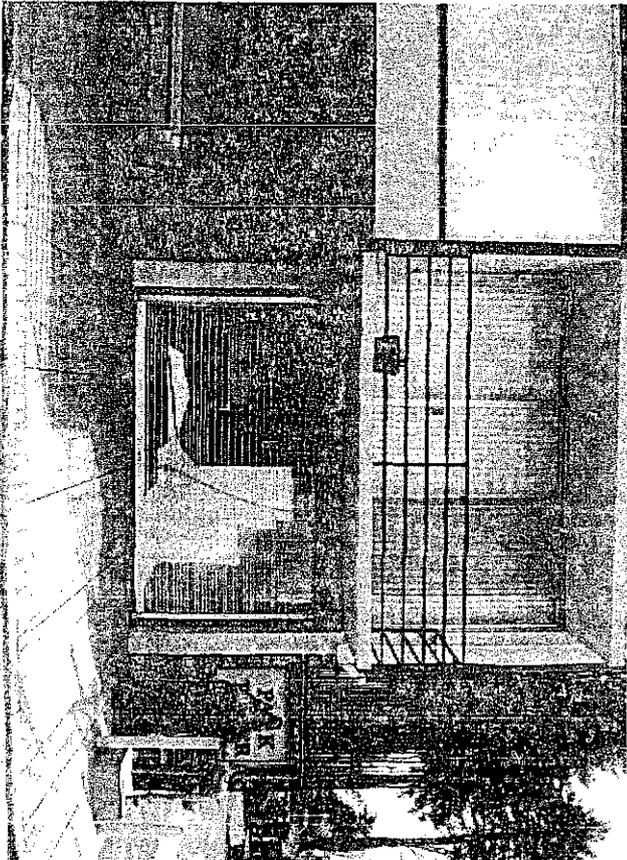
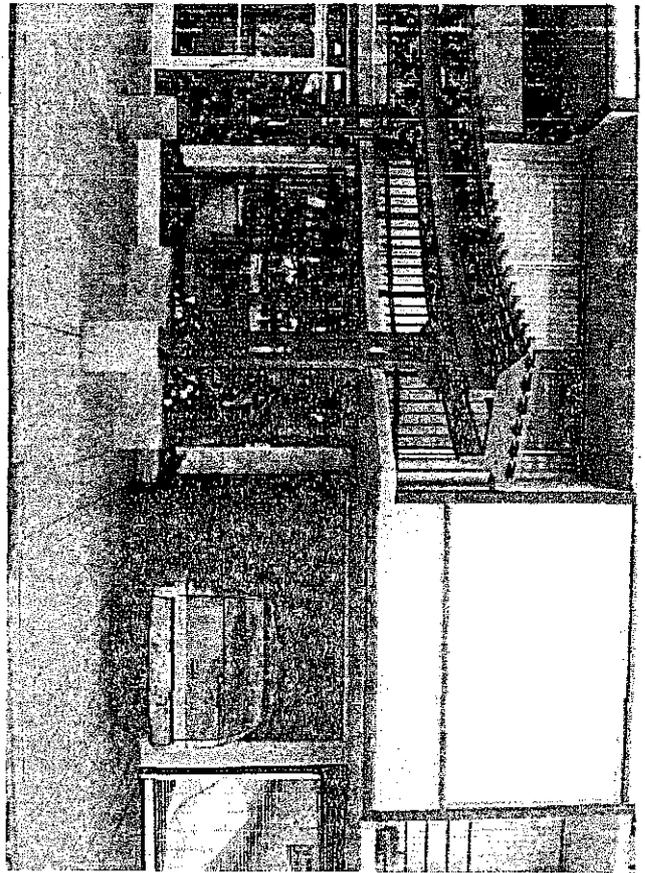
**Amy.S.I.Chu**  
FISHER FRIEDMAN ASSOCIATES  
(510) 420 - 1666 EXT 165

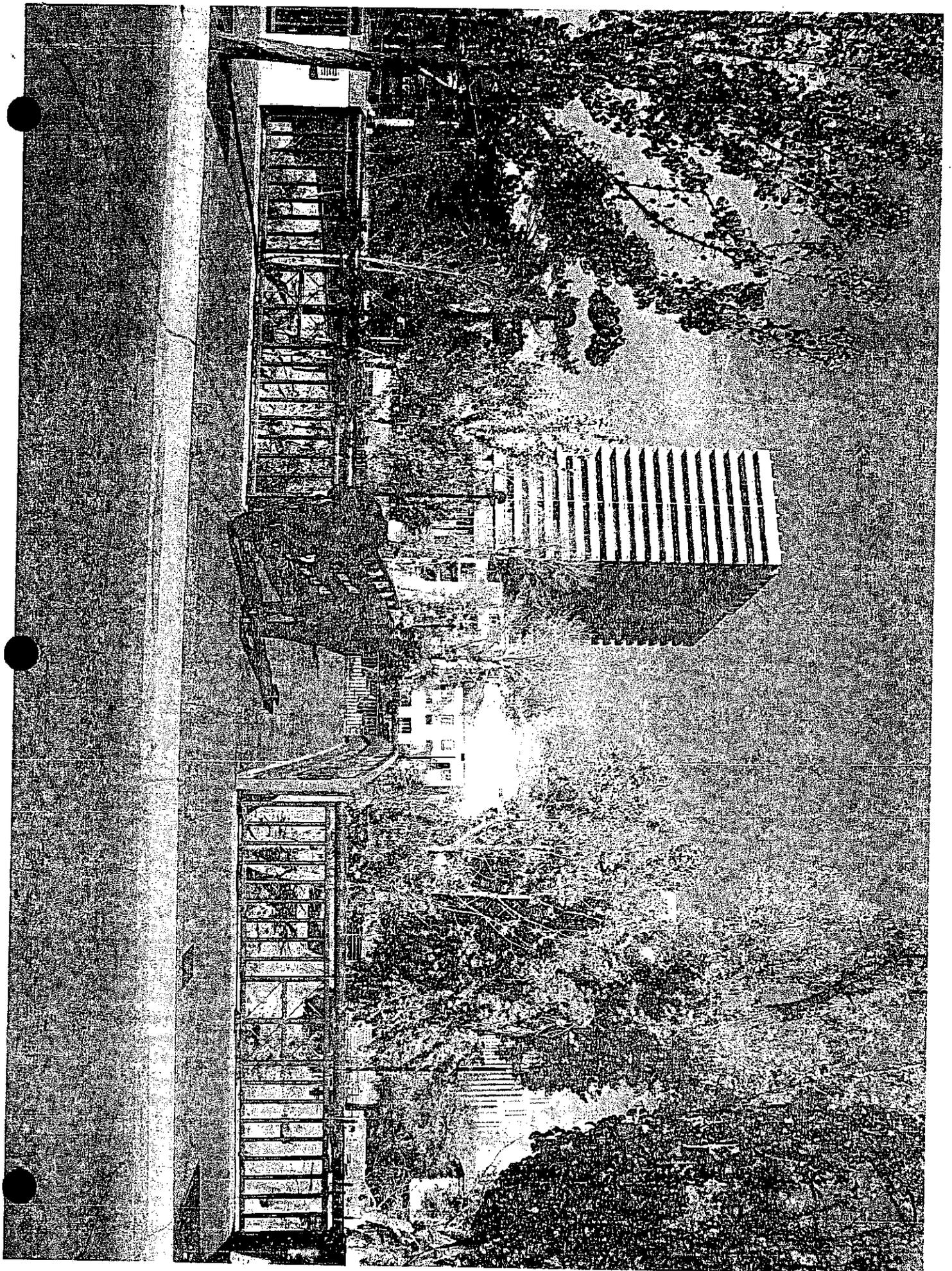
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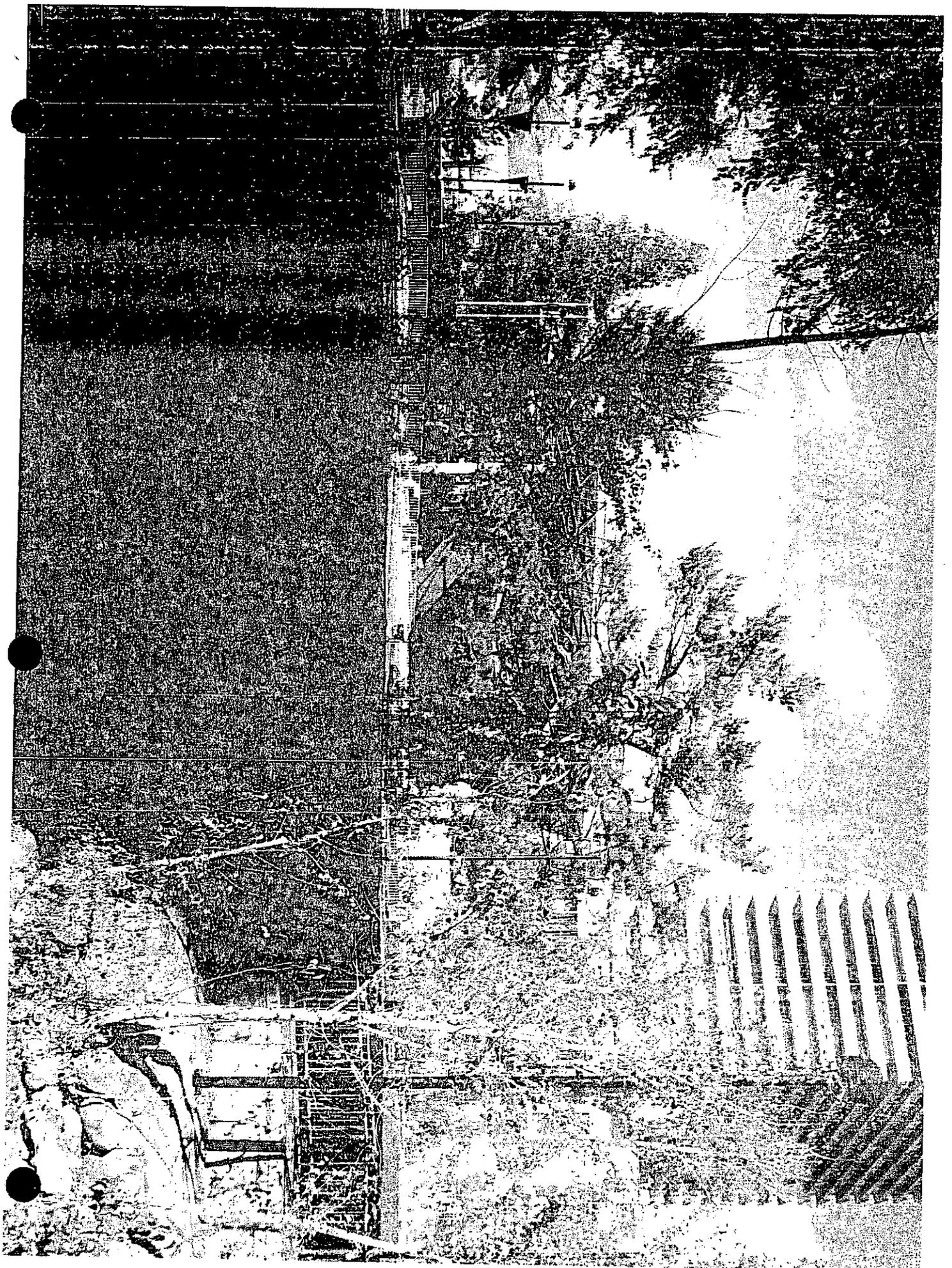
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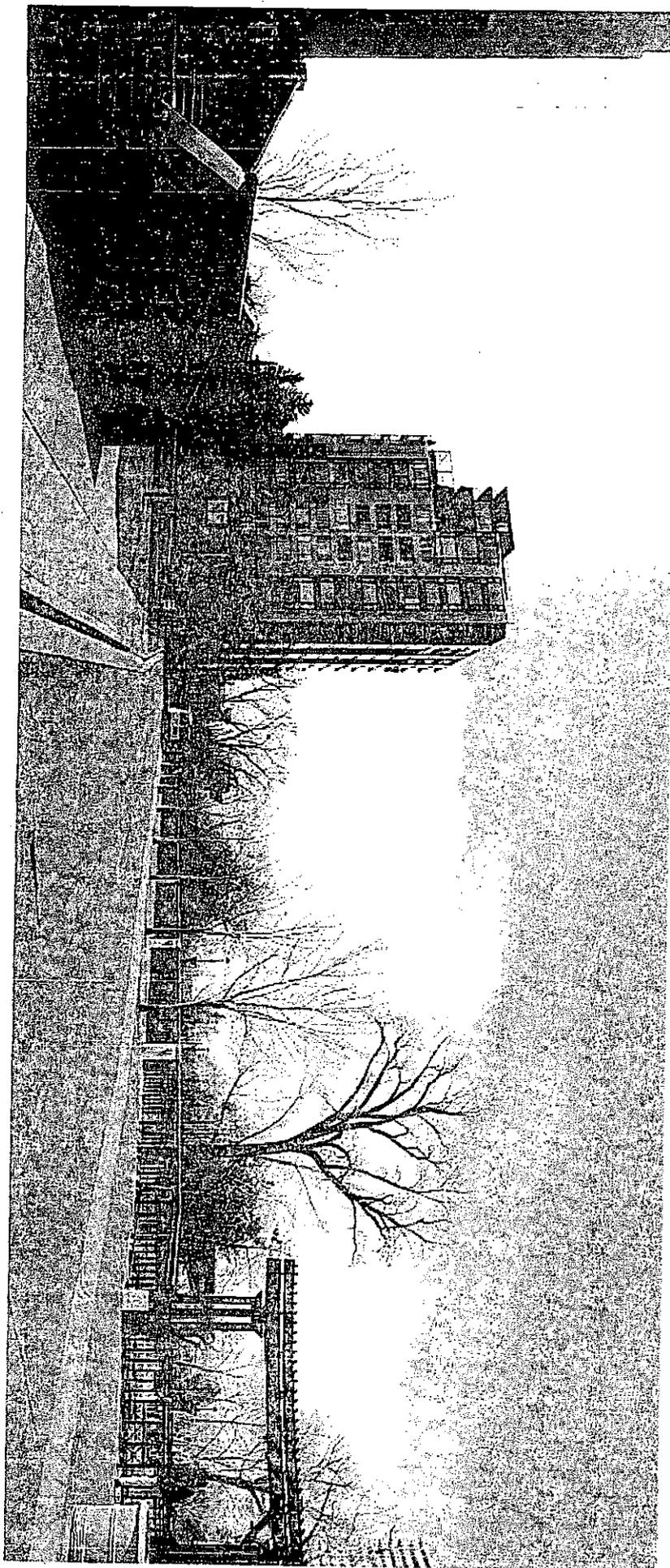






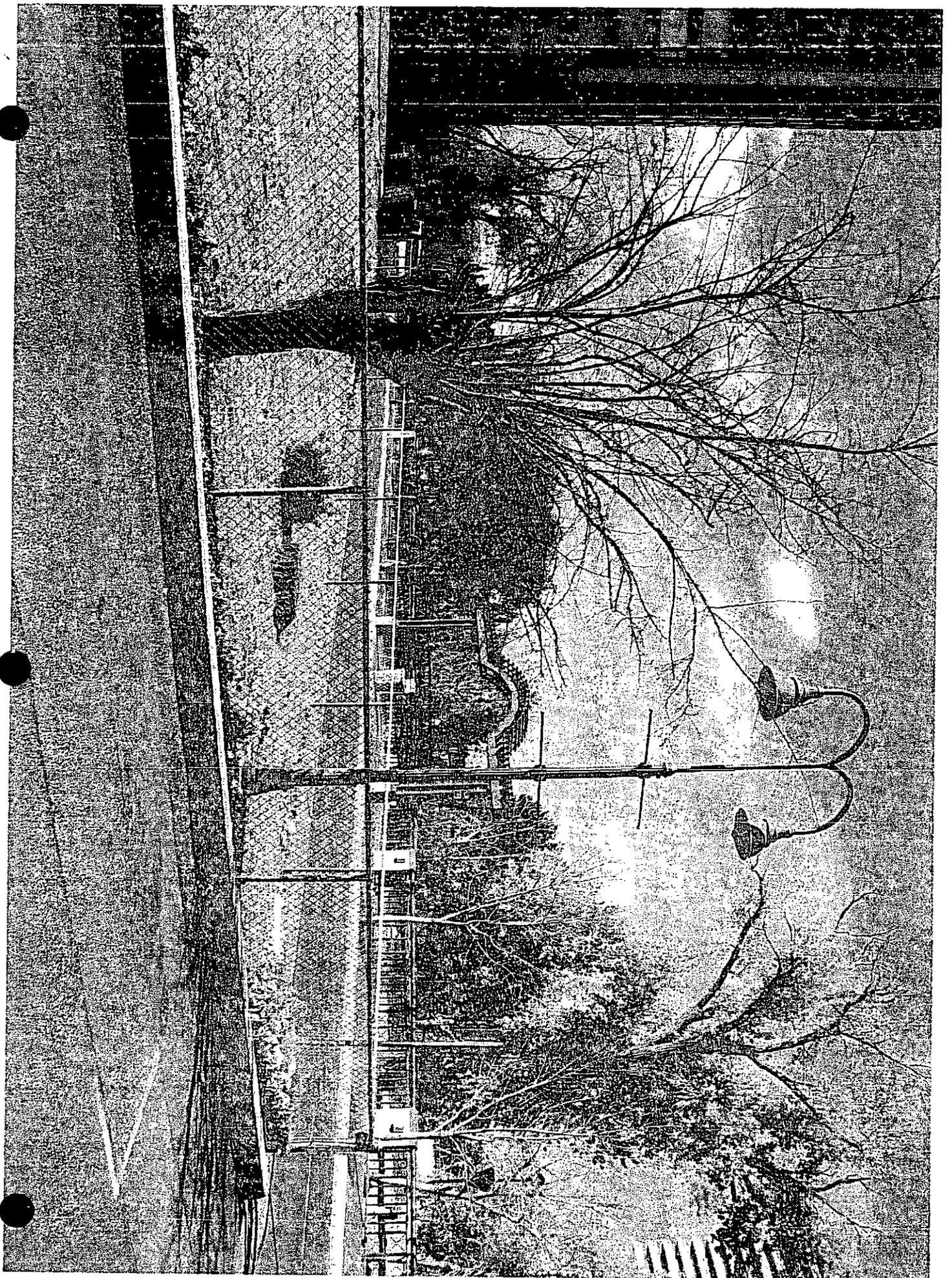
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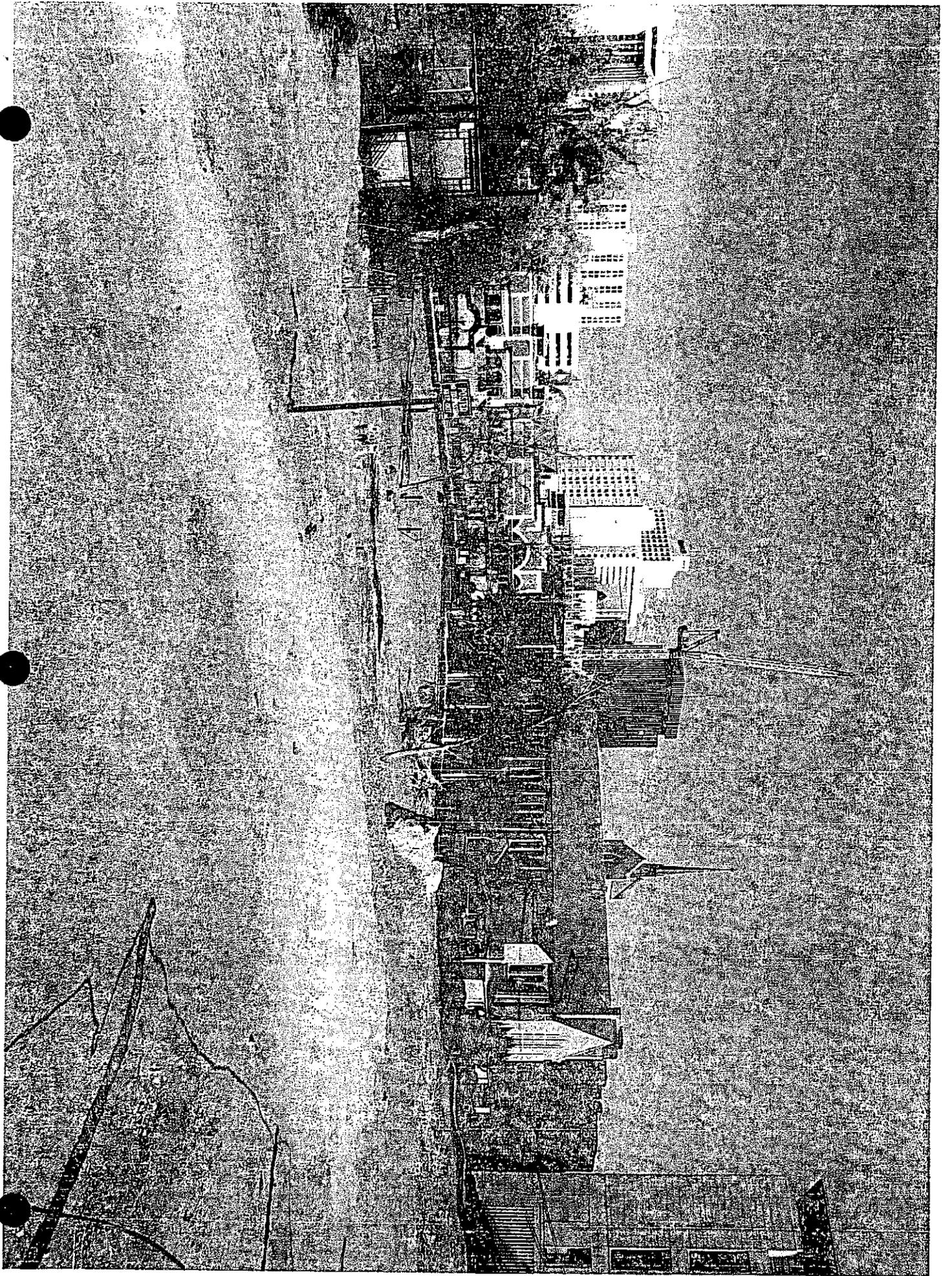
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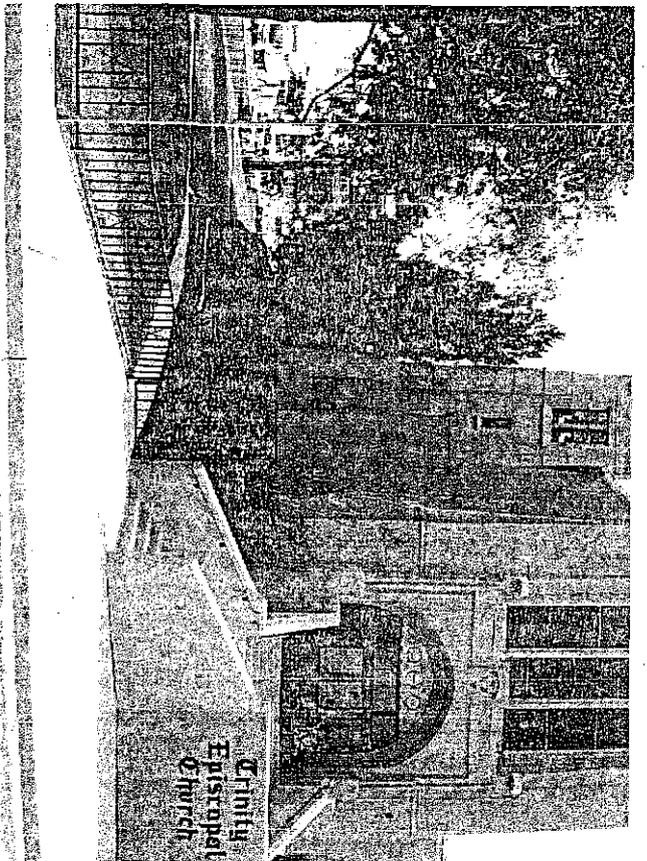
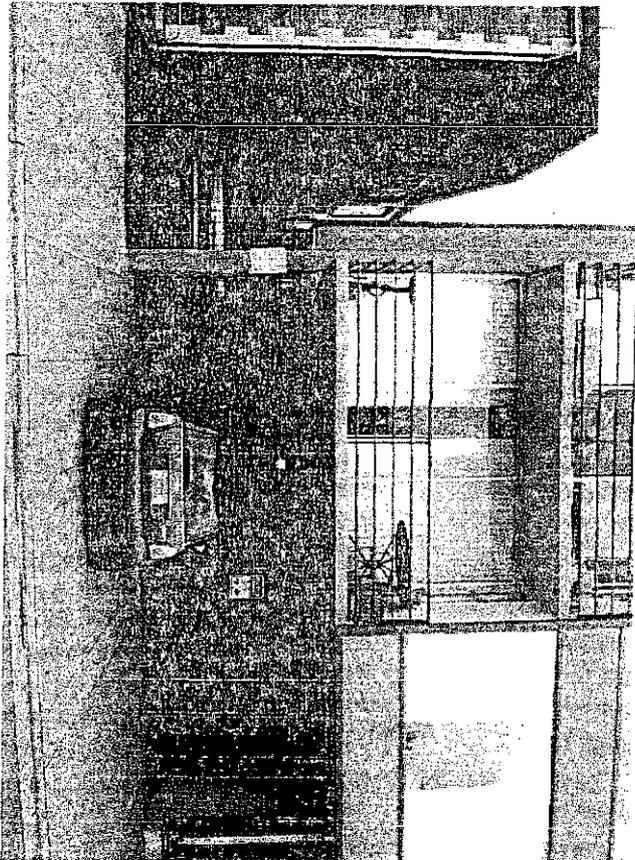
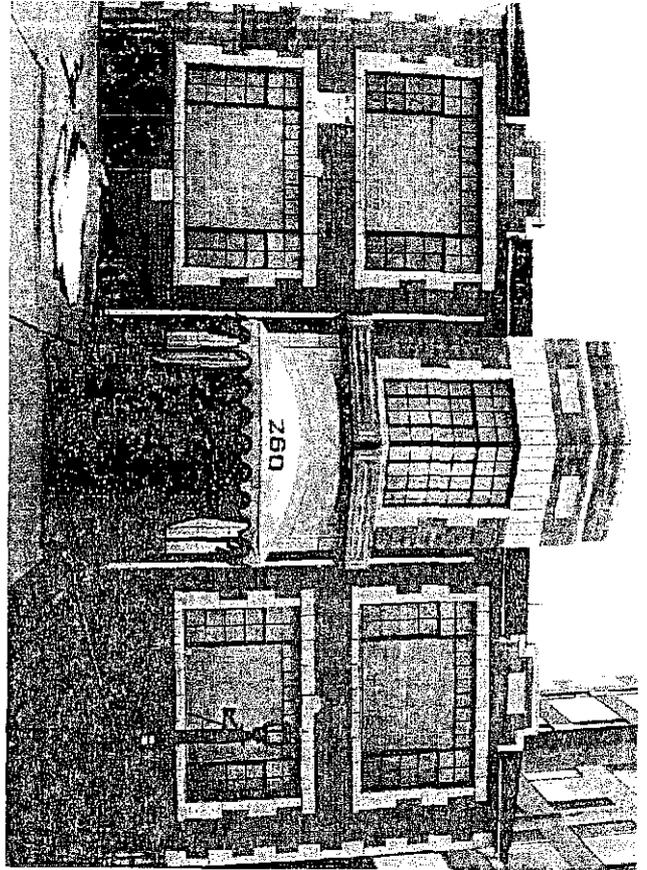
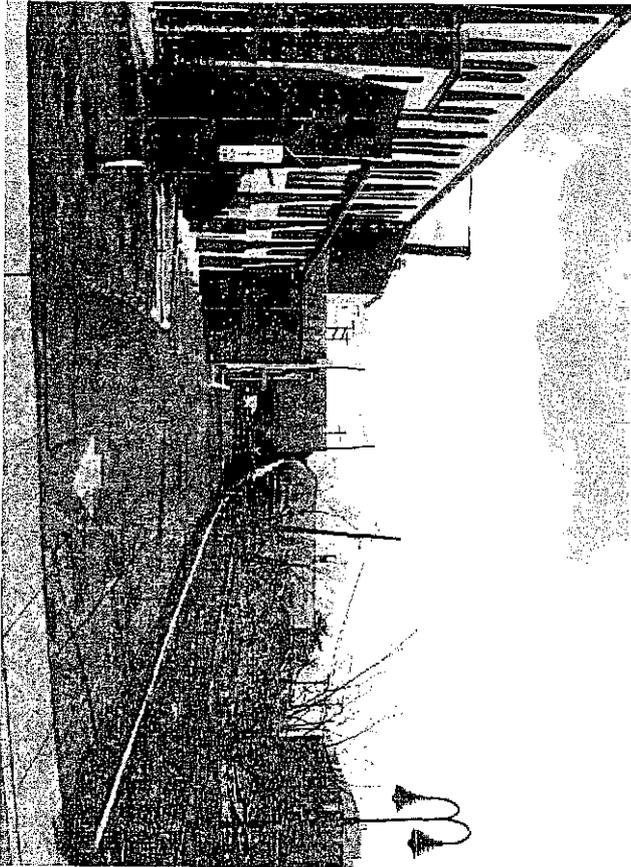


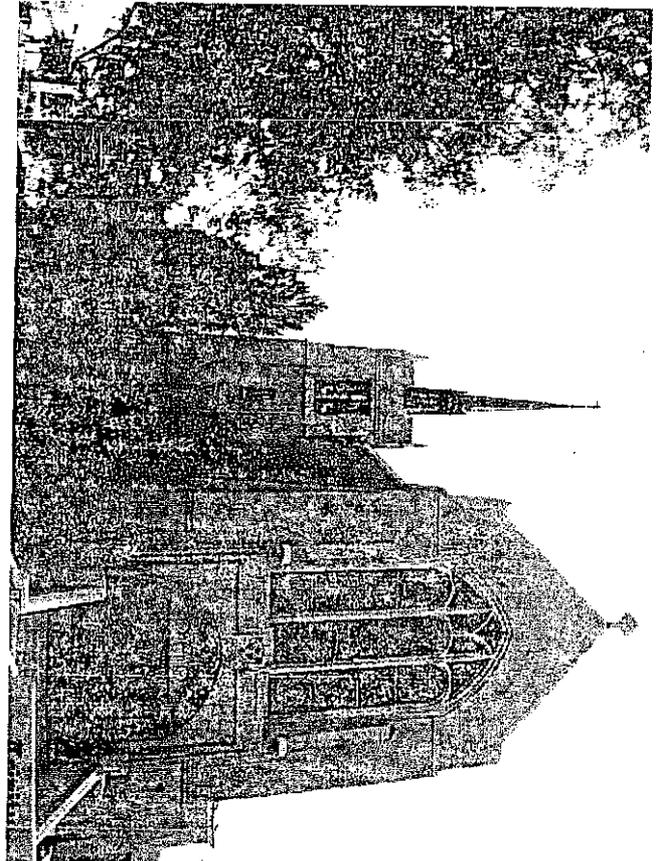
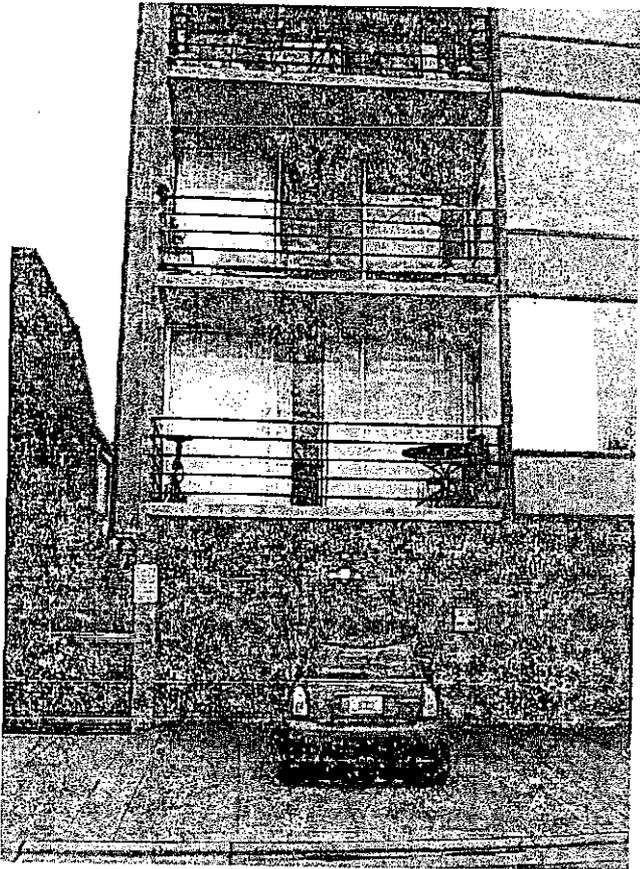
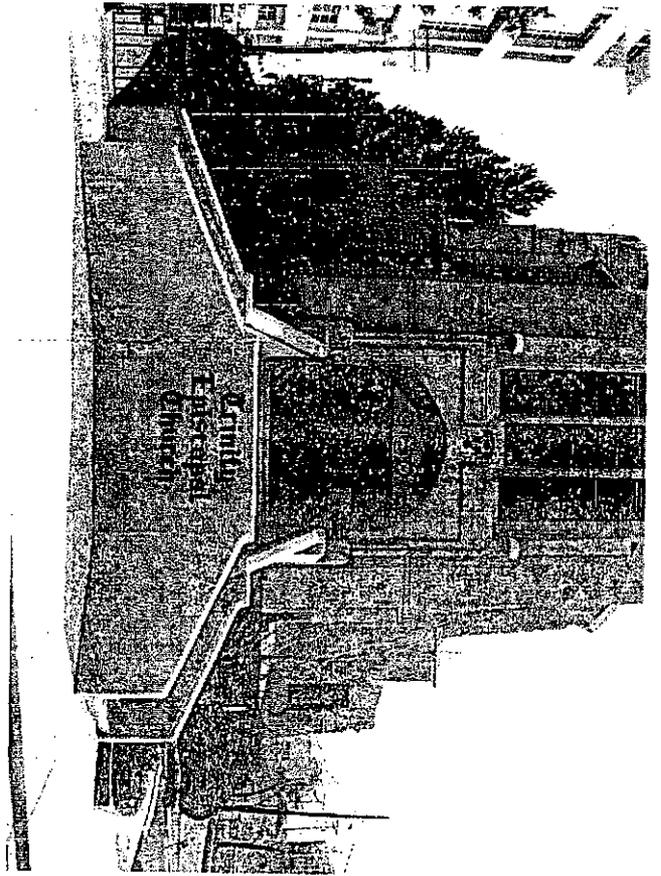
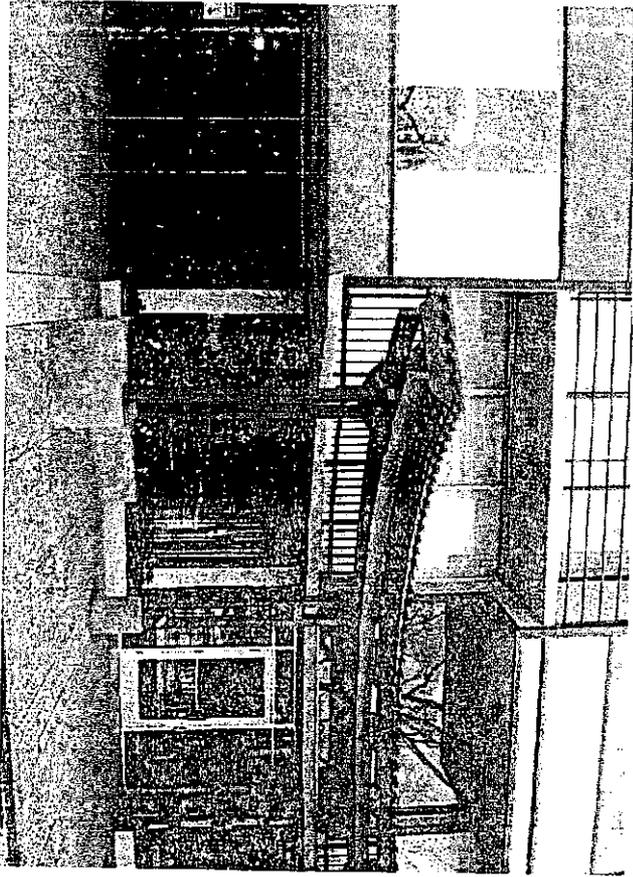
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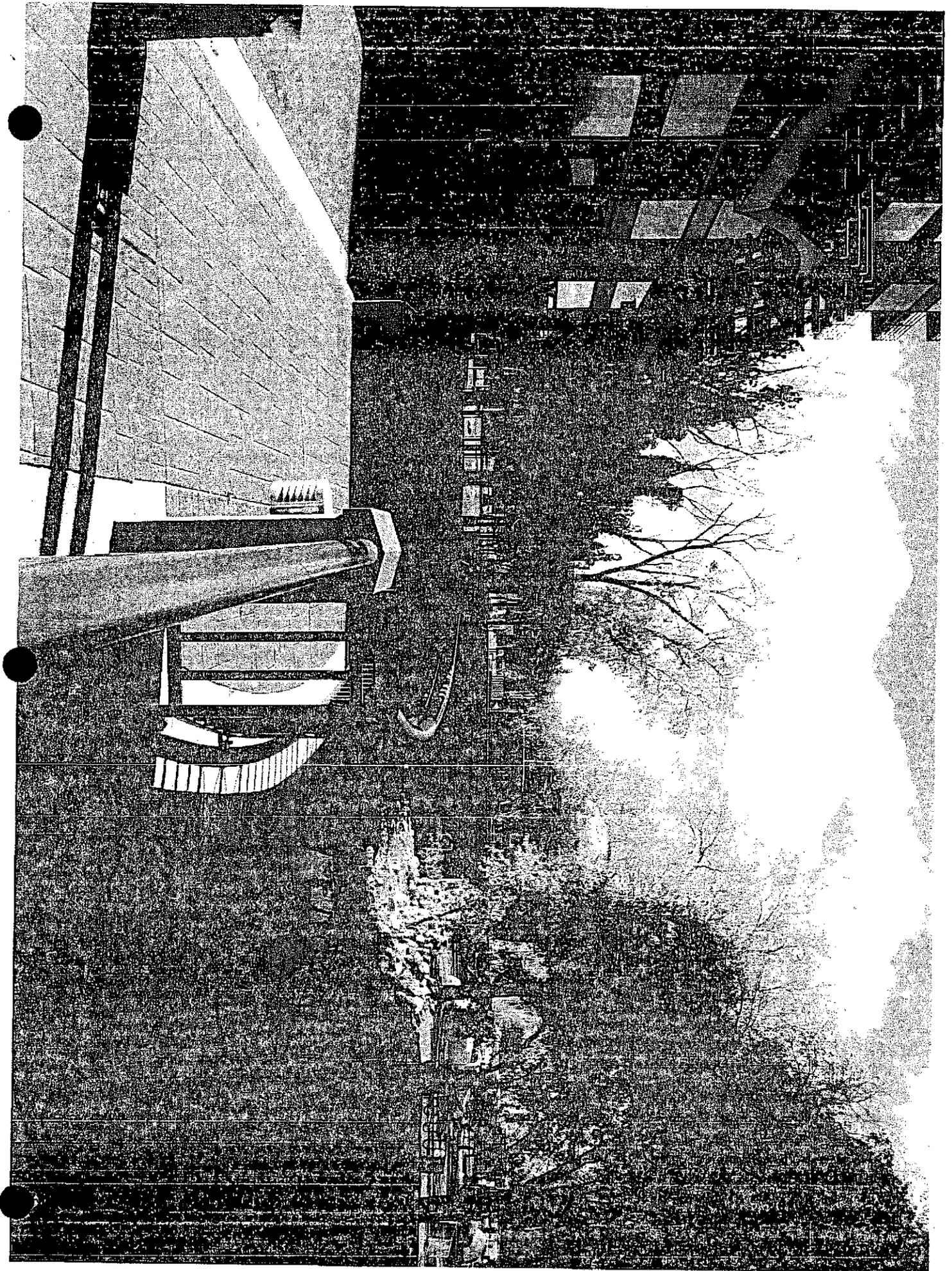
STEPPAN 4422











§ 2.5.2 The Architect shall assist the Owner in establishing a list of prospective bidders or contractors.

*(Paragraph deleted)*

#### § 2.5.4 COMPETITIVE BIDDING

§ 2.5.4.1 Bidding Documents shall consist of bidding requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.

*(Paragraph deleted)*

#### § 2.5.5 NEGOTIATED PROPOSALS

§ 2.5.5.1 Proposal Documents shall consist of proposal requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.

§ 2.5.5.2 If requested by the Owner, the Architect shall arrange for procuring the reproduction of Proposal Documents for distribution to prospective contractors. The Owner shall pay directly for the cost of reproduction or shall reimburse the Architect for such expenses.

*(Paragraph deleted)*

### ARTICLE 2.6 CONTRACT ADMINISTRATION SERVICES

#### § 2.6.1 GENERAL ADMINISTRATION

§ 2.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.

§ 2.6.1.2 The Architect's responsibility to provide the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment. However, the Architect shall be entitled to a Change in Services in accordance with Section 2.8.2 when Contract Administration Services extend 60 days after the date of Substantial Completion of the Work.

§ 2.6.1.3 The Architect shall be a representative of and shall advise and consult with the Owner during the provision of the Contract Administration Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

§ 2.6.1.4 Duties, responsibilities and limitations of authority of the Architect under this Article 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent will not be unreasonably withheld.

§ 2.6.1.5 The Architect shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.

§ 2.6.1.6 If deemed appropriate by the Architect, the Architect shall on the Owner's behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.

§ 2.6.1.7 The Architect shall interpret and recommend matters concerning performance of the Owner and Contractor under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The

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User Notes:

(3702181523)

Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 2.6.1.8 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 initial 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 the results of interpretations or decisions so rendered in good faith.

§ 2.6.1.9 The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

#### § 2.6.2 EVALUATIONS OF THE WORK

§ 2.6.2.1 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect in Article 2.8, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 2.6.2.2 The Architect shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 2.6.2.3 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

§ 2.6.2.4 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 2.6.2.5 The Architect shall recommend to the owner the rejection of any Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall recommend to the owner the 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. The Architect retains the right to immediately reject and halt any Work that is deemed to be hazardous, in violation of code, or otherwise involving a health or safety issue that jeopardizes workers or the public at large.

#### § 2.6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

§ 2.6.3.1 The Architect shall review and recommend the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 2.6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, 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.

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

§ 2.6.3.3 The Architect shall maintain a record of the Contractor's Applications for Payment.

#### § 2.6.4 SUBMITTALS

§ 2.6.4.1 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. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. 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.

§ 2.6.4.2 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.

§ 2.6.4.3 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

#### § 2.6.5 CHANGES IN THE WORK

§ 2.6.5.1 The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Section 2.8.2.

§ 2.6.5.2 The Architect shall review properly prepared, timely requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

§ 2.6.5.3 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the

Architect. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

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

#### § 2.6.6 PROJECT COMPLETION

§ 2.6.6.1 The Architect shall conduct site reviews to determine the date or dates of Substantial Completion and the date of final completion, shall 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 shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 2.6.6.2 The Architect's site review shall be conducted with the Owner's Designated Representative 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.

§ 2.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

§ 2.6.6.4 The Architect shall receive from the Contractor and forward to the Owner: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens.

#### ARTICLE 2.7 FACILITY OPERATION SERVICES

§ 2.7.1 The Architect shall meet with the Owner or the Owner's Designated Representative promptly after Substantial Completion to review the need for facility operation services.

§ 2.7.2 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall conduct a meeting with the Owner and the Owner's Designated Representative to review the facility operations and performance and to make appropriate recommendations to the Owner.

#### ARTICLE 2.8 SCHEDULE OF SERVICES

§ 2.8.1 Design and Contract Administration Services beyond the following limits shall be provided by the Architect as a Change in Services in accordance with Section 1.3.3:

- .1 up to Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor.
- .2 up to One ( 1 ) visit per week to the site by the Architect over the duration of the Project during construction.
- .3 up to One ( 1 ) site review for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.
- .4 up to One ( 1 ) site review for any portion of the Work to determine final completion.

§ 2.8.2 The following Design and Contract Administration Services shall be provided by the Architect as a Change in Services in accordance with Section 1.3.3:

- .1 review of a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 responses to the Contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Change Orders and Construction Change Directives requiring evaluation of proposals, including the preparation or revision of Instruments of Service;
- .4 providing consultation concerning replacement of Work resulting from fire or other cause during construction;
- .5 evaluation of an extensive number of claims submitted by the Owner's consultants, the Contractor or others in connection with the Work;

- .6 evaluation of substitutions proposed by the Owner's consultants or contractors and making subsequent revisions to Instruments of Service resulting therefrom;
- .7 preparation of design and documentation for alternate bid or proposal requests proposed by the Owner; or
- .8 Contract Administration Services provided 60 days after the date of Substantial Completion of the Work.
- .9 Construction Administration over 24 months.

§ 2.8.3 The Architect shall furnish or provide the following services only if specifically designated:

Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description
.1	Programming	_____O
.2	Land Survey Services	_____O
.3	Geotechnical Services	_____O
.4	Space Schematics/Flow Diagrams	_____A
.5	Existing Facilities Surveys	_____NP
.6	Economic Feasibility Studies	_____O
.7	Site Analysis and Selection	_____NP
.8	Environmental Studies and Reports	_____O
.9	Owner-Supplied Data Coordination	_____A
.10	Schedule Development and Monitoring	_____O
.11	Civil Design	_____O
.12	Landscape Design	_____A
.13	Interior Design	_____O
.14	Special Bidding or Negotiation	_____NP
.15	Value Analysis	_____O
.16	Detailed Cost Estimating	_____O
.17	On-Site Project Representation	_____NP
.18	Construction Management	_____O
.19	Start-up Assistance	_____NP
.20	Record Drawings	_____NP
.21	Post-Contract Evaluation	_____NP
.22	Tenant-Related Services	_____NP
.23		
.24		
.25		

Description of Services.  
(Insert descriptions of the services designated.)

**ARTICLE 2.9 MODIFICATIONS**

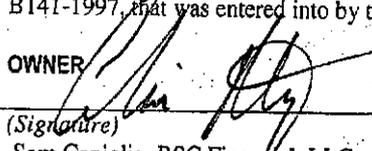
§ 2.9.1 Modifications to this Standard Form of Architect's Services: Design and Contract Administration, if any, are as follows:

Architect and Consultants Errors and Omissions requirements shall be amended into this Standard Form of Architect's Services Agreement to be determined later by mutual agreement.

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User Notes:

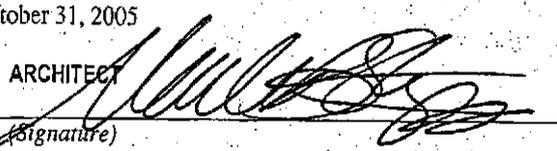
By its execution, this Standard Form of Architect's Services: Design and Contract Administration and modifications hereto are incorporated into the Standard Form of Agreement Between the Owner and Architect, AIA Document B141-1997, that was entered into by the parties as of the date: October 31, 2005

OWNER

  
(Signature)

Sam Caniglia, BSC Financial, LLC  
(Printed name and title)

ARCHITECT

  
(Signature)

Mark Steppan, AIA, CSI, NCARB  
(Printed name and title)

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User Notes:

(3702181523)

**Addendum: No.1 Contractual Changes to AIA B141 Standard Agreement between Owner and Architect.**

AIA Contract Review between BSC Financial, LLC and Mark B. Steppan, AIA and Fisher Friedman Associates, Design Consultants

The following Addendum has been assembled to provide clarification of specific contractual items as specified in the attached standard AIA agreement. Terms and conditions provided herein shall be accepted as the substitution or in addition to and shall be in effect, and shall take precedence over items as specified in the attached standard AIA agreement.

Both parties are aware of this Contract Addendum and do hereby elect and agree to said terms and conditions as stated below.

- ss.1.1.2.1 The project is to create an urban mixed use high rise residential development with approximately 499 living units for BSC Financial, LLC.
- ss. 1.1.2.3 To obtain entitlements and approvals for the property and proposed buildings as shown in exhibit B as attached to the AIA B141 agreement as part of the design services in the Schematic Design/Entitlements Phase.
- ss. 1.1.2.5.2 Replace ' \$160,000,000' with approximately '\$180,000,000'.
- ss. 1.3.2.2 Replace text to read beginning with the sentence 'If and upon' as follows:  
If and upon the date the Architect is adjudged in default of this Agreement, or upon any default by the Architect, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license, including Architects consent, permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

Either party to this agreement shall be deemed in default if: (a) Either party fails to keep or perform any of the terms, obligations covenants, agreements or conditions contained herein, and such default continues of a period to thirty (30) days after notice by either party or beyond the time reasonably necessary for cure if such default is of a nature to require in excess of thirty (30) days to remedy; (b) Either party shall become bankrupt or insolvent or make a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or be the subject of any proceedings of any kind under any provisions of the Federal Bankruptcy Act or under

any other insolvency, bankruptcy or reorganization act; or (c) a receiver is appointed for a substantial part of the assets of either party.

- ss. 1.3.5.4 See the language at ss. 4.6.4 of AIA Form 201.
- ss. 1.3.7.1 This agreement shall be governed by the State of Nevada, without regards to the conflicts of state of operation of the principal architect or it's consultants.
- ss. 1.3.7.6 Unless otherwise provided in this agreement, the architect and the architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or the exposure of persons to hazardous materials or toxic substances in any form at the project site, unless the architect or the architect's consultants specify the use of hazardous materials, that cause the creation of said instance and can be directly attributed to the architect or it's consultants.
- ss. 1.3.7.9 The owner and architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this agreement their partners, successors, assigns and legal representatives of such other party with respect to all covenants of this agreement. The Architect and the Owner shall not assign this agreement without the written consent of the other party, or assignment thereof shall be void. The owner may assign this agreement to any party, provided that such assignment shall not materially prejudice the Architect and also with the written consent of the Architect. The architect shall execute all consents reasonably required to facilitate such assignment.
- ss. 1.5 Section 1.5 - The abbreviated terms used in the first paragraph are as follows:

- Schematic Design (Includes City of Reno Entitlements Process)
- Design Development
- Construction Documents
- Construction Administration

The definitions can be found in the American Institute of Architect's Handbook of Professional Practice, Volume 2, Sections 3.6 Design Services, 3.7 Design Parameters, 3.8 Design Documentation, and 3.9 Construction Related Services. Copies of these sections shall be provided upon request.

- ss. 1.5.1 Replace '\$160,000,000' with approximately '\$180,000,000'.

ss. 1.5.1

All existing text in this section shall remain with the addition of the following:

In the event that the Owner chooses not to proceed with construction of the project, the fees associated with retaining said entitlements will be paid as incurred in the due course of the project and will be applied to aforementioned budgets as defined in the architect's scope of work and estimated value.

ss. 1.5.9

The extent of the work as defined by this agreement is estimated at thirty two months (32) from the effective date of this agreement. If through no fault of either party, the time frame is extended beyond the 32 months, then neither party Owner nor Architect, shall be held liable for additional sums or compensation. The architectural work product as defined to obtain the required entitlements and the respective budgets will remain as fact without respect to an estimated time line.

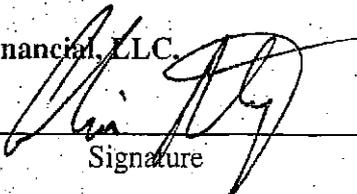
ss. 2.4.1

All existing text in this section shall remain with the addition of the following:

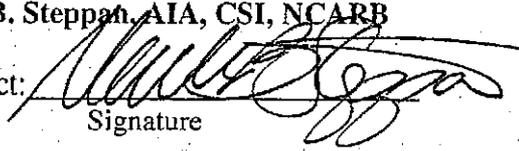
In this case, normal structural, mechanical and electrical services mean that the consultants are contracted to the Architect and no extravagant systems are required by the Owner which would trigger an increase in consultants fees as well as Architects. Currently the MEP work will be done as a modified design build process.

Agreed this Day, 21 day of April, 2006.

BSC Financial, LLC.

Owner: , Title Mgr.  
Signature

Mark B. Steppan, AIA, CSI, NCARB

Architect:   
Signature

# **DECAL**

## Transmittal

TO: Nathan Ogle

FROM: Cal Bosma

DATE: 4/25/06

RE: Signed AIA Contract and Addendum

### COMMENTS:

Please call if you have any questions.

Thank you,  
Michele Powell

SUNNY Joel  
MARGOLIN & BIATCH

1970 BROADWAY #1200  
OAKLAND CA, 94612  
(510) 451-4114  
FAX: (510) 451-4115

JOEL A. BIATCH x202  
biatch@oaklaw.com

# HALE LANE

ATTORNEYS AT LAW

5441 Kietzke Lane | Second Floor | Reno, Nevada 89511  
Telephone (775) 327-3000 | Facsimile (775) 786-6179  
www.halelane.com

FILE / COPY

## MEMORANDUM

RECEIVED  
NOV 30 2005  
FISHER FRIEDMAN ASSOCIATES

TO: Calvin Baty  
FROM: Sarah Class  
DATE: November 14, 2005  
SUBJECT: AIA Contract Review -- Owner's Issues  
Our File No. 20606-0004

This memorandum identifies provisions of the AIA Contract between BSC Financial ("Owner") and Mark Steppan ("Architect") which disfavor the Owner and suggests possible revisions to these provisions.

- Section 1.1: Under Section 1.1.6, the information in Article 1.1 may be relied upon in determining the Architect's compensation, and in the event that the information changes, adjustments to the Architect's compensation may be made. Specifically, a change to the information set forth in Article 1.1 will constitute a "Change in Services" entitling the Architect to an adjustment in compensation. See Section 1.3.3.2 (stating that a change in the information contained in Article 1.1 is a change in service entitling the Architect to adjustment in compensation).

Except for general information about the project, Article 1.1 presently either omits the information regarding the Project or leaves it to further agreement. Because a change in this information could lead to compensating the Architect using the method described in Exhibit "A" (which is the method utilized for a Change in Service under Section 1.5.2), it may be advisable at this point to include more detail as to the project information, so as to avoid the classification of additional information as a "Change in Service," entitling the Architect to (presumably) increased compensation.

- Section 1.2.2.2: The Owner cannot significantly alter the budget or the budget allocated for the Cost of Work without the Architect's agreement to a corresponding change in the Project scope and quality. This gives the Architect some control over budget changes; thus the budgets should be thought through prior to signing the contract.
- Section 1.3.2: The Owner has the right to use the Architect's drawings only for purposes of "constructing, using and maintaining the project." However, if the agreement is terminated,

### HALE LANE PEEK DENNISON AND HOWARD

LAS VEGAS OFFICE: 2300 West Sahara Avenue | Eighth Floor | Box 8 | Las Vegas, Nevada 89102 | Phone (702) 222-2500 | Fax (702) 365-6940  
CARSON CITY OFFICE: 777 East William Street | Suite 200 | Carson City, Nevada 89701 | Phone (775) 684-6000 | Fax (775) 684-6001

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AA4144

STEPPAN 2769

the owner's right to use the drawings terminates, and it is only if the architect is "adjudged" in default that the owner may use the documents. Thus, in the event that the architect defaults (but is not adjudged in default), the Owner will not have the right to use the documents to complete the project. This language should be revised to provide that the Owner may use the documents upon any default by the Architect. ✓

- Section 1.3.6. This provision provides for a waiver of consequential damages and would preclude, for example, recovery of damages by the Owner against the Architect for items such as loss resulting from the Architect's delay. This paragraph should be deleted. ★
- Section 1.3.7.1. You may want to consider having the contract governed by Nevada law. ✓ OK ✓
- Section 1.3.7.6. You may consider making the Architect and its consultants liable for hazardous waste if caused by the Architect or the consultants. ?
- Section 1.3.7.9. If you anticipate assigning the agreement, we will need to change the language in this section which prohibits assignment. ✓
- Section 1.5. The terms used in the first paragraph should be defined so as to provide clarity to third parties as to their meaning.
- Section 1.5.9. If the architect's services extend beyond 32 months of the date the agreement is signed, those services will be additional costs to the Owner (presumably not included in the 5.75 percent cost). This could significantly increase the Architect's fees. OK
- Section 2.4.1. You may want to expand on what is meant by "normal structural, mechanical and electrical engineering services." More specificity will lessen the likelihood of litigation over these points.
- Section 2.8. The Owner should ensure this accurately reflects the desired services to be provided by the Architect, as any change in these services will entitle the Architect to additional compensation.

As a final note, the contract incorporates by reference the AIA Document A201, which we should also therefore review prior to signing the contract. See Section 1.1.5 and Section 2.6.1.1. We have a copy of this document from the AIA website, which we will review and let you know if we have additional suggestions.

**samcaniglia**

---

**From:** "Sarah Class" <sclass@halelane.com>  
**To:** <samcaniglia@sbcglobal.net>  
**Cc:** "Danielle Bacus-Aragon" <dbacusaragon@halelane.com>  
**Sent:** Tuesday, November 29, 2005 2:57 PM  
**Subject:** AIA Contract – Additional Language

Sam:

I enjoyed meeting you this morning. As discussed, below is suggested language to add to section 1.3.2.2 of the B141:

For purposes of this Section 1.3.2.2, Architect shall be deemed in default if: (a) Architect shall fail to keep or perform any of the terms, obligations covenants, agreements or conditions contained herein, and such default continues for a period of thirty (30) days after notice by Owner or beyond the time reasonably necessary for cure if such default is of a nature to require in excess of thirty (30) days to remedy; (b) Architect shall become bankrupt or insolvent or make a transfer in defraud of creditors, or make an assignment for the benefit of creditors, or be the subject of any proceedings of any kind under any provision of the Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act; or (c) a receiver is appointed for a substantial part of the assets of Architect.

I will call Nathan when I receive the proposed modifications to the building code. Please let me know if you have any questions or need further assistance.

Sarah

Sarah E.L. Class, Esq.  
Hale Lane Peek Dennison and Howard  
5441 Kietzke Lane, Second Floor  
Reno, Nevada 89511  
Telephone: (775) 327-3000  
Facsimile: (775) 786-6179

Visit our website: [www.halelane.com](http://www.halelane.com)

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11/30/2005

AA4146

STEPPAN 2771

**samcaniglia**

**From:** "Sarah Class" <sclass@halelane.com>  
**To:** "Calvin Baty" <calvin@decalcustomhomes.com>  
**Cc:** "samcaniglia" <samcaniglia@sbcglobal.net>; "Danielle Bacus-Aragon" <dbacusaragon@halelane.com>; "Doug Flowers" <dflowers@halelane.com>  
**Sent:** Friday, November 18, 2005 12:01 PM  
**Subject:** RE: AIA Contract

Calvin-

141

As indicated in my last message, the AIA B ~~151~~ contract that you sent us incorporates additional terms and conditions from a separate AIA document (the A201). This is the "General Conditions" contract, which, in addition to the B151 and the construction contract, forms part of the agreement between the parties. My assistant Danielle will be emailing you a sample of this document for your reference. My comments on the A201 are as follows:

1. Paragraph 2.2.1 -- You may not want to have to furnish financial information to the contractor. Also under paragraph 14.1.1 the owner's failure to provide this information may entitle contractor to terminate the contract. 05  
P. 14  
11/18/05
2. Paragraph 3.2.3 -- You should delete the word knowingly from the last line of this paragraph (as it would seem to preclude recovery for the contractor's negligence).
3. Paragraph 3.3.1 -- This paragraph gives the architect authority to direct the contractor to proceed with work even if the contractor determines it is unsafe, but makes the owner solely responsible for any resulting damage. This paragraph should be revised so that either the architect should be responsible for the damage, or the owner should have the authority to direct the contractor to proceed with work. ✓
4. Paragraph 3.10.3 -- Contractor should perform the work in accordance with the most recent approved schedule submitted to owner and architect.
5. Paragraph 3.18.1 -- The contractor's indemnity in this paragraph should cover loss of use in addition to the other delineated items; also, we should remove the limitation that restricts the indemnity to negligent acts of the contractor. 11/18/05
- ✓ 6. Paragraph 4.3.10 -- This paragraph limiting the owner's recovery of consequential damages should be deleted; you may want to include in your construction contract a provision for liquidated damages in the event the contractor fails to perform on time and in accordance with the construction contract. ✓
7. Paragraph 4.6.4 -- The owner should be able to join the contractor and the architect in a single action. The language in this paragraph precluding joinder should be deleted, and the paragraph should provide that joinder is permitted. The same changes should be made to paragraph 1.3.5.4 of the AIA B151. ✓
- ✓ 8. Paragraph 5.2 -- This provision should be redrafted so that the owner has the absolute right to approve or disapprove the subcontractors performing work on the project (the language referring to reasonable objection should be removed).
9. Paragraph 6.2.3 -- The owner is assuming responsibility for the costs incurred by the contractor for the acts of a separate contractor. This should be acceptable only if the owner can recover the cost from 11/18/05

11/21/2005

AA4147

STEPAN 2772

the contractor that causes the loss.

10. Paragraph 10.3.3 – The owner's indemnity should not include losses in any way caused by the indemnified parties (the language presently only excludes owner's indemnity from losses caused by the negligence of the indemnified parties). In paragraph 10.5 the language referring to negligence should also include gross negligence or willful misconduct.

11. Paragraph 11.4.1.1 – It may or may not be feasible for the owner to obtain the insurance coverage required by this paragraph.

12. Paragraph 12.2.2.1 – This paragraph provides that if the owner does not make a claim against the contractor within the first year following substantial completion of the project, the owner waives the right to do so. This provision should be deleted. The reference to the 1-year period in paragraph 4.2.1 should also be deleted.

13. Paragraph 13.2.1 – If you want to have the flexibility to assign the contract, this provision prohibiting assignment will need to be removed.

14. Paragraph 14.2.1 – I would delete the language "persistently and repeatedly" in subsection 1, the word "persistently" in subsection 3, and the word "substantial" in subsection 4.

15. Paragraph 14.2.4. If the owner terminates for cause, any savings in completing the work should not have to be paid to the defaulting contractor.

Also I have an additional comment on the B151: you may want to require that the architect design the project within the budget (i.e. that he redraft the plans at no additional cost if the lowest bid exceeds the budget). This may take some negotiation with the architect if it is something that you want (since presumably he purposely did not include this provision). As requested below, I will work with Sam in implementing any changes that you would like.

Thanks

Sarah

-----Original Message-----

**From:** Calvin Baty [mailto:calvin@decalcustomhomes.com]  
**Sent:** Wednesday, November 16, 2005 5:01 PM  
**To:** 'Sarah Class'  
**Cc:** 'samcaniglia'  
**Subject:** RE: AIA Contract

Sarah,

Thank you for the noted suggestions. I will have my partner Sam Caniglia contact you directly about implementing your suggestions in final form.

Thanks,

Calvin

-----Original Message-----

**From:** Sarah Class [mailto:sclass@halelane.com]  
**Sent:** Monday, November 14, 2005 6:04 PM

11/21/2005

# HALE LANE

ATTORNEYS AT LAW

**SARAH E. L. CLASS**  
sclass@halelane.com



**Practice Group**

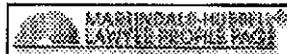
Real Property and Finance Group

**Background**

Sarah is an associate with Hale Lane Peek Dennison and Howard and concentrates in the area of transactional real estate law.

**Education and Professional Affiliations**

Sarah graduated in 2001 from the University of the Pacific, where she received her Bachelor of Arts in English, *magna cum laude*. She received her Juris Doctor, with great distinction, from the University of the Pacific, McGeorge School of Law, in May 2004, where she was a member of Order of the Coif and the Traynor Honor Society. While in law school, Sarah was a comment editor and comment writer for the McGeorge Law Review, a member of the Anthony M. Kennedy American Inns of Court, and a mentor with Big Brothers Big Sisters. She received the Alumni, Barrister's, Nevada, and Tom McNally Scholarships, and earned Witkin Awards (highest grade awarded) in several classes, including Contracts and Natural Resources Law. Sarah is a native of Reno and a member of the State Bar of Nevada and the Washoe County Bar Association.



ARCHITECT

March 22, 2006

Sam Caniglia  
BSC Financial, LLC  
c/o Consolidated Pacific Development, Inc.  
932 Parker Street  
Berkeley, CA 94710  
Via: Hand Delivered

RE: ARCHITECTURAL DESIGN SERVICES AGREEMENT & ADDENDUM  
RESIDENTIAL PROJECT-RENO, NEVADA

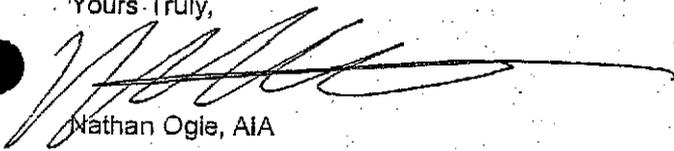
Dear Sam,

As discussed, enclosed are two signed copies of the original Agreement and Addendum. 1 for architectural design services for the residential project in Reno, Nevada.

After review of the Agreement and Addendum, sign both copies and forward one signed copy to our office.

If you have any questions or need more information please do not hesitate to contact me. We will continue to track this work effort under the project number 0515 and 0515-R.

Yours Truly,



Nathan Ogle, AIA

Cc: Agreement File  
Accounting File

Addendum: No.1 Contractual Changes to AIA B141 Standard Agreement between Owner and Architect.

AIA Contract Review between BSC Financial, LLC and Mark B. Steppan, AIA and Fisher Friedman Associates, Design Consultants

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The following Addendum has been assembled to provide clarification of specific contractual items as specified in the attached standard AIA agreement. Terms and conditions provided herein shall be accepted as the substitution or in addition to and shall be in effect, and shall take precedence over items as specified in the attached standard AIA agreement.

Both parties are aware of this Contract Addendum and do hereby elect and agree to said terms and conditions as stated below.

- Deleted: these remedies

ss.1.1.2.1 The project is to create an urban mixed use high rise residential development with approximately 390 living units for BSC Financial, LLC.

- Deleted: 400 plus
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ss. 1.1.2.3 To obtain entitlements and approvals for the property and proposed buildings as shown in exhibit B as attached to the AIA B141 agreement as part of the design services in the Schematic Design/Entitlements Phase.

- Deleted: ¶

ss. 1.1.2.5.2 Replace ' \$160,000,000 ' with ' \$180,000,000 to \$200,000,000 '.

- Deleted: ss. 1.1.2.5¶
- ss. 1.5.2 . Amount of the owner's overall budget for the project, including the architects compensation is determined by supplemental budgets provided by the architects for the work associated with obtaining said entitlements. Definitive budgets will be adhered to and additional compensations shall be determined and owner approved prior to performing additional services to the contract. Subsequently the owner cannot significantly alter the budget or the allocated budgets for the Cost of Work without consulting the Architect to a corresponding change in the project scope and quality.¶

ss. 1.3.2.2 Replace text to read beginning with the sentence 'If and upon' as follows:  
If and upon the date the Architect is adjudged in default of this Agreement, or upon any default by the Architect, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license, including Architects consent, permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

- Deleted: ss. 1.2.2.2 . The owner shall periodically update the budget through the course of the project in order to maintain financial control of the project cost, including that portion allocated for the cost of the Work associated with the architectural services required to obtain the necessary entitlements and approvals. The owner shall have the right increase or decrease the overall budget at its sole and absolute discretion. ¶

Either party to this agreement shall be deemed in default if: (a) Either party fails to keep or perform any of the terms, obligations covenants, agreements or conditions contained herein, and such default continues of a period to thirty (30) days after notice by either party or beyond the time reasonably necessary for cure if such default is of a nature to require in excess of thirty (30) days to

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remedy; (b) Either party shall become bankrupt or insolvent or make a transfer in defraud of creditors, or make an assignment for the benefit of creditors, or be the subject of any proceedings of any kind under any provisions of the Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act; or (c) a receiver is appointed for a substantial part of the assets of either party.

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ss. 1.3.5.4 See the language at ss. 4.6.4 of AIA Form 201.

ss. 1.3.7.1 This agreement shall be governed by the State of Nevada, without regards to the conflicts of state of operation of the principal architect or it's consultants.

Deleted: ss. 1.3.6. This section is to be omitted.

ss. 1.3.7.6 Unless otherwise provided in this agreement, the architect and the architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or the exposure of persons to hazardous materials or toxic substances in any form at the project site, unless the architect or the architect's consultants specify the use of hazardous materials, that cause the creation of said instance and can be directly attributed to the architect or it's consultants.

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ss. 1.5 Section 1:5 - The abbreviated terms used in the first paragraph are as follows:

- Schematic Design (Includes City of Reno Entitlements Process)
- Design Development
- Construction Documents
- Construction Administration

Deleted: ss. 1.3.7.9. The owner and architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this agreement their partners, successors, assigns and legal representatives of such other party with respect to all covenants of this agreement. The architect shall not assign this agreement without the written consent of the owner, and assignment thereof shall be void. The owner may assign this agreement to any party in its sole and absolute discretion, provided that such assignment shall not materially prejudice the Architect. The architect shall execute all consents reasonably required to facilitate such assignment.

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The definitions can be found in the American Institute of Architect's Handbook of Professional Practice, Volume 2, Sections 3.6 Design Services, 3.7 Design Parameters, 3.8 Design Documentation, and 3.9 Construction Related Services. Copies of these sections shall be provided upon request.

ss. 1.5.1 Replace '\$160,000,000' with '\$180,000,000 to \$200,000,000'.

ss. 1.5.1 All existing text in this section shall remain with the addition of the following:

Deleted: The following verbiage will be in addition to the existing text:

In the event that the Owner chooses not to proceed with construction of the project, the fee's associated with retaining said entitlements will be paid as incurred in the due course of the project and will be applied to aforementioned budgets as defined in the architects scope of work and estimated value and also as setforth in ss. 1.3.8.6.

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ss. 1.5.9

The extent of the work as defined by this agreement is estimated at thirty two months (32) from the effective date of this agreement. If through no fault of either party, the time frame is extended beyond the 32 months, then neither party Owner nor Architect, shall be held liable for additional sums or compensation. The architectural work product as defined to obtain the required entitlements and the respective budgets will remain as fact without respect to an estimated time line.

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ss. 2.4.1

All existing text in this section shall remain with the addition of the following:  
In this case, normal structural, mechanical and electrical services mean that the consultants are contracted to the Architect and no extravagant systems are required by the Owner which would trigger an increase in consultants fees as well as Architects. Currently the MEP work will be done as a modified design build process.

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Deleted: We anticipate that the end result of the project would produce industry standard Class A units.

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¶  
¶

Agreed this Day, \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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Deleted: Both parties are aware of these remedies and do hereby elect and agree to said terms and conditions as stated above.¶

BSC Financial, LLC.

Owner: \_\_\_\_\_, Title \_\_\_\_\_  
Signature

Mark B. Steppan, AIA, CSI, NCARB

Architect: \_\_\_\_\_  
Signature

**Addendum: No.1 Contractual Changes to AIA B141 Standard Agreement between Owner and Architect.**

AIA Contract Review between BSC Financial, LLC and Mark B. Steppan, AIA and Fisher Friedman Associates, Design Consultants

The following Addendum has been assembled to provide clarification of specific contractual items as specified in the attached standard AIA agreement. Terms and conditions provided herein shall be accepted as the substitution or in addition to and shall be in effect, and shall take precedence over items as specified in the attached standard AIA agreement.

Both parties are aware of this Contract Addendum and do hereby elect and agree to said terms and conditions as stated below.

- ss.1.1.2.1 The project is to create an urban mixed use high rise residential development with approximately 390 living units for BSC Financial, LLC.
- ss. 1.1.2.3 To obtain entitlements and approvals for the property and proposed buildings as shown in exhibit B as attached to the AIA B141 agreement as part of the design services in the Schematic Design/Entitlements Phase.
- ss. 1.1.2.5.2 Replace ' \$160,000,000' with '\$180,000,000 to \$200,000,000'.
- ss. 1.3.2.2 Replace text to read beginning with the sentence 'If and upon' as follows:  
If and upon the date the Architect is adjudged in default of this Agreement, or upon any default by the Architect, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license, including Architects consent, permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

Either party to this agreement shall be deemed in default if: (a) Either party fails to keep or perform any of the terms, obligations covenants, agreements or conditions contained herein, and such default continues of a period to thirty (30) days after notice by either party or beyond the time reasonably necessary for cure if such default is of a nature to require in excess of thirty (30) days to remedy; (b) Either party shall become bankrupt or insolvent or make a transfer in defraud of creditors, or make an assignment for

the benefit of creditors, or be the subject of any proceedings of any kind under any provisions of the Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act; or (c) a receiver is appointed for a substantial part of the assets of either party.

ss. 1.3.5.4 See the language at ss. 4.6.4 of AIA Form 201.

ss. 1.3.7.1 This agreement shall be governed by the State of Nevada, without regards to the conflicts of state of operation of the principal architect or it's consultants.

ss. 1.3.7.6 Unless otherwise provided in this agreement, the architect and the architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or the exposure of persons to hazardous materials or toxic substances in any form at the project site, unless the architect or the architect's consultants specify the use of hazardous materials, that cause the creation of said instance and can be directly attributed to the architect or it's consultants.

ss. 1.5 Section 1.5 – The abbreviated terms used in the first paragraph are as follows:

- Schematic Design (Includes City of Reno Entitlements Process)
- Design Development
- Construction Documents
- Construction Administration

The definitions can be found in the American Institute of Architect's Handbook of Professional Practice, Volume 2, Sections 3.6 Design Services, 3.7 Design Parameters, 3.8 Design Documentation, and 3.9 Construction Related Services. Copies of these sections shall be provided upon request.

ss. 1.5.1 Replace ' \$160,000,000 ' with ' \$180,000,000 to \$200,000,000 '.

ss. 1.5.1 All existing text in this section shall remain with the addition of the following:

In the event that the Owner chooses not to proceed with construction of the project, the fee's associated with retaining said entitlements will be paid as incurred in the due course of the project and will be applied to aforementioned budgets as defined in the architects scope of work and estimated value and also as set forth in ss. 1.3.8.6

ss. 1.5.9

The extent of the work as defined by this agreement is estimated at thirty two months (32) from the effective date of this agreement. If through no fault of either party, the time frame is extended beyond the 32 months, then neither party Owner nor Architect, shall be held liable for additional sums or compensation. The architectural work product as defined to obtain the required entitlements and the respective budgets will remain as fact without respect to an estimated time line.

ss. 2.4.1

All existing text in this section shall remain with the addition of the following:

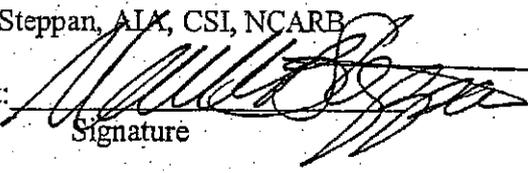
In this case, normal structural, mechanical and electrical services mean that the consultants are contracted to the Architect and no extravagant systems are required by the Owner which would trigger an increase in consultant's fees as well as Architects. Currently the MEP work will be done as a modified design build process.

Agreed this Day, \_\_\_\_\_ day of \_\_\_\_\_, 2006.

BSC Financial, LLC.

Owner: \_\_\_\_\_, Title \_\_\_\_\_  
Signature

Mark B. Steppan, AIA, CSI, NCARB

Architect:  \_\_\_\_\_  
Signature



# AIA® Document B141™ – 1997 Part 1

## Standard Form of Agreement Between Owner and Architect with Standard Form of Architect's Services

### TABLE OF ARTICLES

- 1.1 INITIAL INFORMATION
- 1.2 RESPONSIBILITIES OF THE PARTIES
- 1.3 TERMS AND CONDITIONS
- 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS
- 1.5 COMPENSATION

AGREEMENT made as of the Thirty-first day of October in the year Two Thousand and Five  
*(In words, indicate day, month and year)*

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

BSC Financial, LLC, Limited Liability Company  
c/o Consolidated Pacific Development Inc.  
932 Parker Street  
Berkeley, CA 94710  
Telephone Number: 510.548.6093  
Fax Number: 510.548.6164

and the Architect:  
*(Name, address and other information)*

Mark B. Stepan, AIA, CSI, NCARB  
1485 Park Avenue, #103  
Emeryville, CA 94608  
Telephone Number: 510.420.1666  
Fax Number: 510.420.0599

For the following Project:  
*(Include detailed description of Project)*

Residential Project Reno, Nevada  
Site bounded by North Arlington Avenue, Island Avenue and Court Street in Reno, Nevada.  
A mixed-use development including for-sale residential, retail and parking. Approximately 400 residential units, landscaped podium, and indoor pool are anticipated in two Type I construction high-rise towers. The estimated project's gross square footage is one million square feet.

The Owner and Architect agree as follows:

### ADDITIONS AND DELETIONS:

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

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

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User Notes:

(112287728)

**ARTICLE 1.1 INITIAL INFORMATION**

§ 1.1.1 This Agreement is based on the following information and assumptions.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

**§ 1.1.2 PROJECT PARAMETERS**

§ 1.1.2.1 The objective or use is:

*(Identify or describe, if appropriate, proposed use or goals.)*

To create an urban mixed use residential development with approximately 400 living units for a private developer

§ 1.1.2.2 The physical parameters are:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports about the site.)*

The site is approximately 1.42 acres bounded by North Arlington Avenue, Island Avenue and Court Street next to the Truckee River in Reno, Nevada.

§ 1.1.2.3 The Owner's Program is:

*(Identify documentation or state the manner in which the program will be developed.)*

As outlined in Exhibit B.

§ 1.1.2.4 The legal parameters are:

*(Identify pertinent legal information, including, if appropriate, land surveys and legal descriptions and restrictions of the site.)*

The site is approximately 1.42 acres bounded by North Arlington Avenue, Island Avenue and Court Street next to the Truckee River in Reno, Nevada. No unusual geotechnical, utility or other subsurface issues are known. The site includes the following parcels: Parcel 1 APN-011-112-03, Parcel 2 APN-011-112-06, Parcel 3 APN-011-112-07 & APN-011-112-12.

§ 1.1.2.5 The financial parameters are as follows.

- .1 Amount of the Owner's overall budget for the Project, including the Architect's compensation, is: unknown at time of execution of this Agreement
- .2 Amount of the Owner's budget for the Cost of the Work, excluding the Architect's compensation, is: Total construction cost is estimated to be approximately \$160,000,000 including contractors profit and overhead.

§ 1.1.2.6 The time parameters are:

*(Identify, if appropriate, milestone dates, durations or fast track scheduling.)*

Approximately 32 months from authorization to proceed with design through completion of construction and assuming that entitlements run concurrent with design.

§ 1.1.2.7 The proposed procurement or delivery method for the Project is:

*(Identify method such as competitive bid, negotiated contract, or construction management.)*

Negotiated contract to be determined later by mutual agreement

§ 1.1.2.8 Other parameters are:

*(Identify special characteristics or needs of the Project such as energy, environmental or historic preservation requirements.)*

To be determined later by mutual agreement

**§ 1.1.3 PROJECT TEAM**

**§ 1.1.3.1** The Owner's Designated Representative is:  
*(List name, address and other information.)*

Sam Caniglia, BSC Financial, LLC

**§ 1.1.3.2** The persons or entities, in addition to the Owner's Designated Representative, who are required to review the Architect's submittals to the Owner are:  
*(List name, address and other information.)*

Sam Caniglia BSC Financial, LLC

**§ 1.1.3.3** The Owner's other consultants and contractors are:  
*(List discipline and, if known, identify them by name and address.)*

Construction Project Manager, Survey, Civil, Geotechnical, Title 24, Lighting, Interior Design, Tele/Data, Wind Analysis, Window Washing, Cost Estimation, Audio/Visual, Graphics, Hardware, Security, Parking/Traffic, Special Cladding/Curtain Wall, Fire Protection and any other to be determined later by mutual agreement

**§ 1.1.3.4** The Architect's Designated Representative is:  
*(List name, address and other information.)*

Mark Steppan  
1485 Park Avenue, #103  
Emeryville, CA 94608

**§ 1.1.3.5** The consultants retained at the Architect's expense are:  
*(List discipline and, if known, identify them by name and address.)*

Landscape, Structural, Mechanical, Electrical, Plumbing, Acoustics, Waterproofing, Code, Elevator, Specifications, Cladding/Curtain Wall/Waterproofing System

**§ 1.1.4** Other important initial information is:

**§ 1.1.5** When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be the edition of AIA Document A201 current as of the date of this Agreement, or as follows:

**§ 1.1.6** The information contained in this Article 1.1 may be reasonably relied upon by the Owner and Architect in determining the Architect's compensation. Both parties, however, recognize that such information may change and, in that event, the Owner and the Architect shall negotiate appropriate adjustments in schedule, compensation and Change in Services in accordance with Section 1.3.3.

**ARTICLE 1.2 RESPONSIBILITIES OF THE PARTIES**

**§ 1.2.1** The Owner and the Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project team.

**§ 1.2.2 OWNER**

**§ 1.2.2.1** Unless otherwise provided under this Agreement, the Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project. The Owner shall furnish to the Architect, within

15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 1.2.2.2 The Owner shall periodically update the budget for the Project, including that portion allocated for the Cost of the Work. The Owner shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of the Architect to a corresponding change in the Project scope and quality.

§ 1.2.2.3 The Owner's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Owner's behalf with respect to the Project. The Owner or the Owner's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 1.2.2.4 The Owner shall furnish the services of consultants other than those designated in Section 1.1.3 or authorize the Architect to furnish them as a Change in Services when such services are requested by the Architect and are reasonably required by the scope of the Project.

§ 1.2.2.5 Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

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

### § 1.2.3 ARCHITECT

§ 1.2.3.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Article 1.4.

§ 1.2.3.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in Section 1.1.2.6 and which shall be adjusted, if necessary, as the Project proceeds. This 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. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

§ 1.2.3.3 The Architect's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Architect's behalf with respect to the Project.

§ 1.2.3.4 The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

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

§ 1.2.3.6 The Architect shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

§ 1.2.3.7 The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information.

#### ARTICLE 1.3 TERMS AND CONDITIONS

##### § 1.3.1 COST OF THE WORK

§ 1.3.1.1 The Cost of the Work shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

§ 1.3.1.2 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

§ 1.3.1.3 The Cost of the Work does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

##### § 1.3.2 INSTRUMENTS OF SERVICE

§ 1.3.2.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

§ 1.3.2.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

§ 1.3.2.3 Except for the licenses granted in Section 1.3.2.2, 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, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Section 1.3.2.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Owner shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner obtains the prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 1.3.2.4 Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

### § 1.3.3 CHANGE IN SERVICES

§ 1.3.3.1 Change in Services of the Architect, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the Architect's control, or if the Architect's services are affected as described in Section 1.3.3.2. In the absence of mutual agreement in writing, the Architect shall notify the Owner prior to providing such services. If the Owner deems that all or a part of such Change in Services is not required, the Owner shall give prompt written notice to the Architect, and the Architect shall have no obligation to provide those services. Except for a change due to the fault of the Architect, Change in Services of the Architect shall entitle the Architect to an adjustment in compensation pursuant to Section 1.5.2, and to any Reimbursable Expenses described in Section 1.3.9.2 and Section 1.5.5.

§ 1.3.3.2 If any of the following circumstances affect the Architect's services for the Project, the Architect shall be entitled to an appropriate adjustment in the Architect's schedule and compensation:

- .1 change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service;
- .2 enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;
- .3 decisions of the Owner not rendered in a timely manner;
- .4 significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method;
- .5 failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto;
- .7 change in the information contained in Article 1.1.

### § 1.3.4 MEDIATION

§ 1.3.4.1 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 arbitration or the institution of legal or equitable proceedings by either party. 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 arbitration.

§ 1.3.4.2 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 in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable 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.

§ 1.3.4.3 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.

### § 1.3.5 ARBITRATION

§ 1.3.5.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Section 1.3.4.

§ 1.3.5.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

§ 1.3.5.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

§ 1.3.5.4 No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

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

#### § 1.3.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Architect and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 1.3.8.

#### § 1.3.7 MISCELLANEOUS PROVISIONS

§ 1.3.7.1 This Agreement shall be governed by the law of the principal place of business of the Architect, unless otherwise provided in Section 1.4.2.

§ 1.3.7.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

§ 1.3.7.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

§ 1.3.7.4 To the extent damages are covered by property insurance during construction, the Owner and the Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

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

§ 1.3.7.6 Unless otherwise provided in this Agreement, the Architect and Architect's consultants 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.

§ 1.3.7.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the 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. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

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User Notes:

(112287728)

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

§ 1.3.7.9 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.

#### § 1.3.8 TERMINATION OR SUSPENSION

§ 1.3.8.1 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, prior to suspension of services, the Architect shall give seven days' written notice to the Owner. 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 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.

§ 1.3.8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 1.3.8.3 If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 1.3.8.4 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 1.3.8.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 1.3.8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 1.3.8.7.

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

#### § 1.3.9 PAYMENTS TO THE ARCHITECT

§ 1.3.9.1 Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Architect's statement of services. No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

§ 1.3.9.2 Reimbursable Expenses are in addition to compensation for the Architect's services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses:

- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4 expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .5 renderings, models and mock-ups requested by the Owner;
- .6 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
- .7 reimbursable expenses as designated in Section 1.5.5;
- .8 other similar direct Project-related expenditures.

§ 1.3.9.3 Records of Reimbursable Expenses, of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

§ 1.3.9.4 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

#### ARTICLE 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS

§ 1.4.1 Enumeration of Parts of the Agreement. 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 comprises the documents listed below.

§ 1.4.1.1 Standard Form of Agreement Between Owner and Architect, AIA Document B141-1997.

§ 1.4.1.2 Standard Form of Architect's Services: Design and Contract Administration, AIA Document B141-1997, or as follows:  
(List other documents, if any, delineating Architect's scope of services.)

§ 1.4.1.3 Other documents as follows:  
(List other documents, if any, forming part of the Agreement.)

Exhibit A Master Fee Schedule & Reimbursable Expenses  
Exhibit B Concept Design Plans and Model Images

§ 1.4.2 Special Terms and Conditions. Special terms and conditions that modify this Agreement are as follows:

#### ARTICLE 1.5 COMPENSATION

§ 1.5.1 For the Architect's services as described under Article 1.4, compensation shall be computed as follows:

5.75% of the total construction cost including contractors profit and overhead. Compensation will be billed monthly as a percentage complete of each phase with the following assumptions: SD 20%, DD 22%, CD 40%, Bid/Negotiate 1% & CA 17%.

The Total Construction Cost of the project will be evaluated at the completion of the project in order to determine final payment for basic architectural services. Any amount over the original estimated Total Construction Cost of approximately \$160,000,000 shall be paid for architectural services based on the agreed upon 5.75% fee. Any

amount under the original estimated Total Construction Cost of approximately \$160,000,000 shall be credited for architectural services based on the agreed upon 5.75% fee. Total Construction Cost is defined but not limited to the final total dollar amount cost for Labor and Materials, Additions to project building scope, Value Additions, Substitutions, Changes, General Conditions, Contractor Insurance and Bonding Provisions, Tests and Inspection Costs and General Contractor's Profit or Fee.

§ 1.5.2 If the services of the Architect are changed as described in Section 1.3.3.1, the Architect's compensation shall be adjusted. Such adjustment shall be calculated as described below or, if no method of adjustment is indicated in this Section 1.5.2, in an equitable manner.

*(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply.)*

See Exhibit A

§ 1.5.3 For a Change in Services of the Architect's consultants, compensation shall be computed as a multiple of One and fifteen hundredths ( 1.15 ) times the amounts billed to the Architect for such services.

§ 1.5.4 For Reimbursable Expenses as described in Section 1.3.9.2, and any other items included in Section 1.5.5 as Reimbursable Expenses, the compensation shall be computed as a multiple of One and fifteen hundredths ( 1.15 ) times the expenses incurred by the Architect, and the Architect's employees and consultants.

§ 1.5.5 Other Reimbursable Expenses, if any, are as follows:

See Exhibit A

§ 1.5.6 The rates and multiples for services of the Architect and the Architect's consultants as set forth in this Agreement shall be adjusted in accordance with their normal salary review practices.

§ 1.5.7 An initial payment of Zero Dollars and Zero Cents ( \$ 0.00 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account at final payment. Subsequent payments for services shall be made monthly, and where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.

§ 1.5.8 Payments are due and payable Fifteen ( 15 ) days from the date of the Architect's invoice. Amounts unpaid Thirty ( 30 ) 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 interest agreed upon.)*

1 & 1/2% monthly

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

§ 1.5.9 If the services covered by this Agreement have not been completed within Thirty-two ( 32 ) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Section 1.5.2.

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

OWNER

ARCHITECT

(Signature)

Sam Caniglia BSC Financial, LLC

(Printed name and title)

(Signature)

Mark Steppan, AIA , CSI, NCARB

(Printed name and title)

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# AIA® Document B141™ – 1997 Part 2

## Standard Form of Architect's Services: Design and Contract Administration

### TABLE OF ARTICLES

- 2.1 PROJECT ADMINISTRATION SERVICES
- 2.2 SUPPORTING SERVICES
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- 2.4 DESIGN SERVICES
- 2.5 CONSTRUCTION PROCUREMENT SERVICES
- 2.6 CONTRACT ADMINISTRATION SERVICES
- 2.7 FACILITY OPERATION SERVICES
- 2.8 SCHEDULE OF SERVICES
- 2.9 MODIFICATIONS

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

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

### ARTICLE 2.1 PROJECT ADMINISTRATION SERVICES

§ 2.1.1 The Architect shall manage the Architect's services and administer the Project. The Architect shall consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and issue progress reports. The Architect shall coordinate the services provided by the Architect and the Architect's consultants with those services provided by the Owner and the Owner's consultants.

§ 2.1.2 When Project requirements have been sufficiently identified, the Architect shall prepare, and periodically update, a Project schedule that shall identify milestone dates for decisions required of the Owner, design services furnished by the Architect, completion of documentation provided by the Architect, commencement of construction and Substantial Completion of the Work.

§ 2.1.3 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

§ 2.1.4 Upon request of the Owner, the Architect shall make a presentation to explain the design of the Project to representatives of the Owner.

§ 2.1.5 The Architect shall submit design documents to the Owner at intervals appropriate to the design process for purposes of evaluation and approval by the Owner. The Architect shall be entitled to rely on approvals received from the Owner in the further development of the design.

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

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**§ 2.1.7 EVALUATION OF BUDGET AND COST OF THE WORK**

§ 2.1.7.1 The Owner or Contractor shall provide cost planning, estimating and construction schedule information during the design and construction of the project.

**ARTICLE 2.3 EVALUATION AND PLANNING SERVICES**

§ 2.3.1 The Architect shall provide a preliminary evaluation of the information furnished by the Owner under this Agreement, including the Owner's program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The Architect shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the Owner of any other information or consultant services that may be reasonably needed for the Project.

§ 2.3.2 The Architect shall provide a preliminary evaluation of the Owner's site for the Project based on the information provided by the Owner of site conditions, and the Owner's program, schedule and budget for the Cost of the Work.

§ 2.3.3 The Architect shall review the Owner's proposed method of contracting for construction services and shall notify the Owner of anticipated impacts that such method may have on the Owner's program, financial and time requirements, and the scope of the Project.

**ARTICLE 2.4 DESIGN SERVICES**

§ 2.4.1 The Architect's design services shall include normal structural, mechanical and electrical engineering services. See Article 1.1.3.5 for additional consultants.

**§ 2.4.2 SCHEMATIC DESIGN DOCUMENTS**

§ 2.4.2.1 The Architect shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the Architect's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

**§ 2.4.3 DESIGN DEVELOPMENT DOCUMENTS**

§ 2.4.3.1 The Architect shall provide Design Development Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels.

**§ 2.4.4 CONSTRUCTION DOCUMENTS**

§ 2.4.4.1 The Architect shall provide Construction Documents based on the approved Design Development Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

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

**ARTICLE 2.5 CONSTRUCTION PROCUREMENT SERVICES**

§ 2.5.1 The Architect shall assist the Owner in obtaining either competitive bids or negotiated proposals and shall assist the Owner in awarding and preparing contracts for construction.

§ 2.5.2 The Architect shall assist the Owner in establishing a list of prospective bidders or contractors.

*(Paragraph deleted)*

**§ 2.5.4 COMPETITIVE BIDDING**

§ 2.5.4.1 Bidding Documents shall consist of bidding requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.

*(Paragraph deleted)*

**§ 2.5.5 NEGOTIATED PROPOSALS**

§ 2.5.5.1 Proposal Documents shall consist of proposal requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.

§ 2.5.5.2 If requested by the Owner, the Architect shall arrange for procuring the reproduction of Proposal Documents for distribution to prospective contractors. The Owner shall pay directly for the cost of reproduction or shall reimburse the Architect for such expenses.

*(Paragraph deleted)*

**ARTICLE 2.6 CONTRACT ADMINISTRATION SERVICES**

**§ 2.6.1 GENERAL ADMINISTRATION**

§ 2.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.

§ 2.6.1.2 The Architect's responsibility to provide the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment. However, the Architect shall be entitled to a Change in Services in accordance with Section 2.8.2 when Contract Administration Services extend 60 days after the date of Substantial Completion of the Work.

§ 2.6.1.3 The Architect shall be a representative of and shall advise and consult with the Owner during the provision of the Contract Administration Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

§ 2.6.1.4 Duties, responsibilities and limitations of authority of the Architect under this Article 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent will not be unreasonably withheld.

§ 2.6.1.5 The Architect shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.

§ 2.6.1.6 If deemed appropriate by the Architect, the Architect shall on the Owner's behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.

§ 2.6.1.7 The Architect shall interpret and recommend matters concerning performance of the Owner and Contractor 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.

§ 2.6.1.8 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 initial 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 the results of interpretations or decisions so rendered in good faith.

§ 2.6.1.9 The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

#### § 2.6.2 EVALUATIONS OF THE WORK

§ 2.6.2.1 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect in Article 2.8, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 2.6.2.2 The Architect shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 2.6.2.3 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

§ 2.6.2.4 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 2.6.2.5 The Architect shall recommend to the owner the rejection of any Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall recommend to the owner the 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. The Architect retains the right to immediately reject and halt any Work that is deemed to be hazardous, in violation of code, or otherwise involving a health or safety issue that jeopardizes workers or the public at large.

#### § 2.6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

§ 2.6.3.1 The Architect shall review and recommend the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 2.6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, 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.

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

§ 2.6.3.3 The Architect shall maintain a record of the Contractor's Applications for Payment.

#### § 2.6.4 SUBMITTALS

§ 2.6.4.1 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. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. 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.

§ 2.6.4.2 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.

§ 2.6.4.3 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

#### § 2.6.5 CHANGES IN THE WORK

§ 2.6.5.1 The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Section 2.8.2.

§ 2.6.5.2 The Architect shall review properly prepared, timely requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

§ 2.6.5.3 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the

Architect. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

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

#### § 2.6.6 PROJECT COMPLETION

§ 2.6.6.1 The Architect shall conduct site reviews to determine the date or dates of Substantial Completion and the date of final completion, shall 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 shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 2.6.6.2 The Architect's site review shall be conducted with the Owner's Designated Representative 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.

§ 2.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

§ 2.6.6.4 The Architect shall receive from the Contractor and forward to the Owner: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens.

#### ARTICLE 2.7 FACILITY OPERATION SERVICES

§ 2.7.1 The Architect shall meet with the Owner or the Owner's Designated Representative promptly after Substantial Completion to review the need for facility operation services.

§ 2.7.2 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall conduct a meeting with the Owner and the Owner's Designated Representative to review the facility operations and performance and to make appropriate recommendations to the Owner.

#### ARTICLE 2.8 SCHEDULE OF SERVICES

§ 2.8.1 Design and Contract Administration Services beyond the following limits shall be provided by the Architect as a Change in Services in accordance with Section 1.3.3:

- 1 up to Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor.
- 2 up to One ( 1 ) visit per week to the site by the Architect over the duration of the Project during construction.
- 3 up to One ( 1 ) site review for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.
- 4 up to One ( 1 ) site review for any portion of the Work to determine final completion.

§ 2.8.2 The following Design and Contract Administration Services shall be provided by the Architect as a Change in Services in accordance with Section 1.3.3:

- 1 review of a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- 2 responses to the Contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- 3 Change Orders and Construction Change Directives requiring evaluation of proposals, including the preparation or revision of Instruments of Service;
- 4 providing consultation concerning replacement of Work resulting from fire or other cause during construction;
- 5 evaluation of an extensive number of claims submitted by the Owner's consultants, the Contractor or others in connection with the Work;

- .6 evaluation of substitutions proposed by the Owner's consultants or contractors and making subsequent revisions to Instruments of Service resulting therefrom;
- .7 preparation of design and documentation for alternate bid or proposal requests proposed by the Owner; or
- .8 Contract Administration Services provided 60 days after the date of Substantial Completion of the Work.
- .9 Construction Administration over 24 months.

§ 2.8.3 The Architect shall furnish or provide the following services only if specifically designated:

Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description
.1	Programming	_____O
.2	Land Survey Services	_____O
.3	Geotechnical Services	_____O
.4	Space Schematics/Flow Diagrams	_____A
.5	Existing Facilities Surveys	_____NP
.6	Economic Feasibility Studies	_____O
.7	Site Analysis and Selection	_____NP
.8	Environmental Studies and Reports	_____O
.9	Owner-Supplied Data Coordination	_____A
.10	Schedule Development and Monitoring	_____O
.11	Civil Design	_____O
.12	Landscape Design	_____A
.13	Interior Design	_____O
.14	Special Bidding or Negotiation	_____NP
.15	Value Analysis	_____O
.16	Detailed Cost Estimating	_____O
.17	On-Site Project Representation	_____NP
.18	Construction Management	_____O
.19	Start-up Assistance	_____NP
.20	Record Drawings	_____NP
.21	Post-Contract Evaluation	_____NP
.22	Tenant-Related Services	_____NP
.23		
.24		
.25		

Description of Services.

*(Insert descriptions of the services designated.)*

#### ARTICLE 2.9 MODIFICATIONS

§ 2.9.1 Modifications to this Standard Form of Architect's Services: Design and Contract Administration, if any, are as follows:

Architect and Consultants Errors and Omissions requirements shall be amended into this Standard Form of Architect's Services Agreement to be determined later by mutual agreement.

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User Notes:

(3702181523)

By its execution, this Standard Form of Architect's Services: Design and Contract Administration and modifications hereto are incorporated into the Standard Form of Agreement Between the Owner and Architect, AIA Document B141-1997, that was entered into by the parties as of the date: October 31, 2005

OWNER

*(Signature)*

Sam Caniglia, BSC Financial, LLC

*(Printed name and title)*

ARCHITECT

*(Signature)*

Mark Steppan, AIA, CSI, NCARB

*(Printed name and title)*

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User Notes:

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AA4175

STEPPAN 2800

FISHER FRIEDMAN  
Client Documents

PENGAD 800-631-6669  
EXHIBIT  
81



0515-06	22498	11/21/2006	66,620.00	12/22/2006		66,620.00	999.30	67,619.30
0515-07	22471	10/25/2006	72.50	11/26/2006	1.09	72.50	1.11	74.70
				12/26/2006		73.59		
515-R	22412	7/19/2006	999.44	8/20/2006	15.00	1,014.44		
	22432	8/23/2006	602.26	9/24/2006	24.25	1,616.70		
	22454	9/21/2006	1,085.45	10/22/2006	40.90	2,726.40		
	22484	11/21/2006	1,325.95	11/22/2006	41.51	2,767.30		
		12/21/2006				2,808.81		
						4,134.76	62.03	4,196.79
			1,754,768.10		46,345.70	1,801,113.80		

FILE COPY



# Document B141™ – 1997 Part 1

## Standard Form of Agreement Between Owner and Architect with Standard Form of Architect's Services

RECEIVED

APR 26 2006

FISHER FRIEDMAN ASSOCIATES

### TABLE OF ARTICLES

- 1.1 INITIAL INFORMATION
- 1.2 RESPONSIBILITIES OF THE PARTIES
- 1.3 TERMS AND CONDITIONS
- 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS
- 1.5 COMPENSATION

### ADDITIONS AND DELETIONS:

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

This document has legal consequence. Consultation with is encouraged with its completion or n

AGREEMENT made as of the Thirty-first day of October in the year Two Thousand and Five  
*(In words, indicate day, month and year)*

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

BSC Financial, LLC, Limited Liability Company  
c/o Consolidated Pacific Development Inc.  
932 Parker Street  
Berkeley, CA 94710  
Telephone Number: 510.548.6093  
Fax Number: 510.548.6164

and the Architect:  
*(Name, address and other information)*

Mark B. Stepan, AIA, CSI, NCARB  
1485 Park Avenue, #103  
Emeryville, CA 94608  
Telephone Number: 510.420.1666  
Fax Number: 510.420.0599

For the following Project:  
*(Include detailed description of Project)*

Residential Project Reno, Nevada  
Site bounded by North Arlington Avenue, Island Avenue and Court Street in Reno, Nevada.  
A mixed-use development including for-sale residential, retail and parking. Approximately 400 residential units, landscaped podium, and indoor pool are anticipated in two Type I construction high-rise towers. The estimated project's gross square footage is one million square feet.

The Owner and Architect agree as follows:

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User Notes: (112267728)

**ARTICLE 1.1 INITIAL INFORMATION**

§ 1.1.1 This Agreement is based on the following information and assumptions.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

**§ 1.1.2 PROJECT PARAMETERS**

§ 1.1.2.1 The objective or use is:

*(Identify or describe, if appropriate, proposed use or goals.)*

To create an urban mixed use residential development with approximately 400 living units for a private developer

§ 1.1.2.2 The physical parameters are:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports about the site.)*

The site is approximately 1.42 acres bounded by North Arlington Avenue, Island Avenue and Court Street next to the Truckee River in Reno, Nevada.

§ 1.1.2.3 The Owner's Program is:

*(Identify documentation or state the manner in which the program will be developed.)*

As outlined in Exhibit B.

§ 1.1.2.4 The legal parameters are:

*(Identify pertinent legal information, including, if appropriate, land surveys and legal descriptions and restrictions of the site.)*

The site is approximately 1.42 acres bounded by North Arlington Avenue, Island Avenue and Court Street next to the Truckee River in Reno, Nevada. No unusual geotechnical, utility or other subsurface issues are known. The site includes the following parcels: Parcel 1 APN-011-112-03, Parcel 2 APN-011-112-06, Parcel 3 APN-011-112-07 & APN-011-112-12.

§ 1.1.2.5 The financial parameters are as follows.

- .1 Amount of the Owner's overall budget for the Project, including the Architect's compensation, is: unknown at time of execution of this Agreement
- .2 Amount of the Owner's budget for the Cost of the Work, excluding the Architect's compensation, is: Total construction cost is estimated to be approximately \$160,000,000 including contractors profit and overhead.

§ 1.1.2.6 The time parameters are:

*(Identify, if appropriate, milestone dates, durations or fast track scheduling.)*

Approximately 32 months from authorization to proceed with design through completion of construction and assuming that entitlements run concurrent with design.

§ 1.1.2.7 The proposed procurement or delivery method for the Project is:

*(Identify method such as competitive bid, negotiated contract, or construction management.)*

Negotiated contract to be determined later by mutual agreement

§ 1.1.2.8 Other parameters are:

*(Identify special characteristics or needs of the Project such as energy, environmental or historic preservation requirements.)*

To be determined later by mutual agreement

**§ 1.1.3 PROJECT TEAM**

§ 1.1.3.1 The Owner's Designated Representative is:  
(List name, address and other information.)

| Sam Caniglia, BSC Financial, LLC

§ 1.1.3.2 The persons or entities, in addition to the Owner's Designated Representative, who are required to review the Architect's submittals to the Owner are:  
(List name, address and other information.)

| Sam Caniglia BSC Financial, LLC

§ 1.1.3.3 The Owner's other consultants and contractors are:  
(List discipline and, if known, identify them by name and address.)

| Construction Project Manager, Survey, Civil, Geotechnical, Title 24, Lighting, Interior Design, Tele/Data, Wind Analysis, Window Washing, Cost Estimation, Audio/Visual, Graphics, Hardware, Security, Parking/Traffic, Special Cladding/Curtain Wall, Fire Protection and any other to be determined later by mutual agreement

§ 1.1.3.4 The Architect's Designated Representative is:  
(List name, address and other information.)

| Mark Steppan  
1485 Park Avenue, #103  
Emeryville, CA 94608

§ 1.1.3.5 The consultants retained at the Architect's expense are:  
(List discipline and, if known, identify them by name and address.)

| Landscape, Structural, Mechanical, Electrical, Plumbing, Acoustics, Waterproofing, Code, Elevator, Specifications, Cladding/Curtain Wall/Waterproofing System

§ 1.1.4 Other important initial information is:

§ 1.1.5 When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be the edition of AIA Document A201 current as of the date of this Agreement, or as follows:

§ 1.1.6 The information contained in this Article 1.1 may be reasonably relied upon by the Owner and Architect in determining the Architect's compensation. Both parties, however, recognize that such information may change and, in that event, the Owner and the Architect shall negotiate appropriate adjustments in schedule, compensation and Change in Services in accordance with Section 1.3.3.

**ARTICLE 1.2 RESPONSIBILITIES OF THE PARTIES**

§ 1.2.1 The Owner and the Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project team.

**§ 1.2.2 OWNER**

§ 1.2.2.1 Unless otherwise provided under this Agreement, the Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project. The Owner shall furnish to the Architect, within

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User Notes:

(112237728)

15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 1.2.2.2 The Owner shall periodically update the budget for the Project, including that portion allocated for the Cost of the Work. The Owner shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of the Architect to a corresponding change in the Project scope and quality.

§ 1.2.2.3 The Owner's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Owner's behalf with respect to the Project. The Owner or the Owner's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 1.2.2.4 The Owner shall furnish the services of consultants other than those designated in Section 1.1.3 or authorize the Architect to furnish them as a Change in Services when such services are requested by the Architect and are reasonably required by the scope of the Project.

§ 1.2.2.5 Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

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

### § 1.2.3 ARCHITECT

§ 1.2.3.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Article 1.4.

§ 1.2.3.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in Section 1.1.2.6 and which shall be adjusted, if necessary, as the Project proceeds. This 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. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

§ 1.2.3.3 The Architect's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Architect's behalf with respect to the Project.

§ 1.2.3.4 The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

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

§ 1.2.3.6 The Architect shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

§ 1.2.3.7 The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information.

#### ARTICLE 1.3 TERMS AND CONDITIONS

##### § 1.3.1 COST OF THE WORK

§ 1.3.1.1 The Cost of the Work shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

§ 1.3.1.2 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

§ 1.3.1.3 The Cost of the Work does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

##### § 1.3.2 INSTRUMENTS OF SERVICE

§ 1.3.2.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

§ 1.3.2.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

§ 1.3.2.3 Except for the licenses granted in Section 1.3.2.2, 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, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Section 1.3.2.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Owner shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner obtains the prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 1.3.2.4 Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

### § 1.3.3 CHANGE IN SERVICES

§ 1.3.3.1 Change in Services of the Architect, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the Architect's control, or if the Architect's services are affected as described in Section 1.3.3.2. In the absence of mutual agreement in writing, the Architect shall notify the Owner prior to providing such services. If the Owner deems that all or a part of such Change in Services is not required, the Owner shall give prompt written notice to the Architect, and the Architect shall have no obligation to provide those services. Except for a change due to the fault of the Architect, Change in Services of the Architect shall entitle the Architect to an adjustment in compensation pursuant to Section 1.5.2, and to any Reimbursable Expenses described in Section 1.5.9.2 and Section 1.5.5.

§ 1.3.3.2 If any of the following circumstances affect the Architect's services for the Project, the Architect shall be entitled to an appropriate adjustment in the Architect's schedule and compensation:

- .1 change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service;
- .2 enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;
- .3 decisions of the Owner not rendered in a timely manner;
- .4 significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method;
- .5 failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto;
- .7 change in the information contained in Article 1.1.

### § 1.3.4 MEDIATION

§ 1.3.4.1 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 arbitration or the institution of legal or equitable proceedings by either party. 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 arbitration.

§ 1.3.4.2 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 in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable 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.

§ 1.3.4.3 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.

### § 1.3.5 ARBITRATION

§ 1.3.5.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Section 1.3.4.

§ 1.3.5.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

§ 1.3.5.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

§ 1.3.5.4 No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

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

### § 1.3.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Architect and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 1.3.8.

### § 1.3.7 MISCELLANEOUS PROVISIONS

§ 1.3.7.1 This Agreement shall be governed by the law of the principal place of business of the Architect, unless otherwise provided in Section 1.4.2.

§ 1.3.7.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

§ 1.3.7.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

§ 1.3.7.4 To the extent damages are covered by property insurance during construction, the Owner and the Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

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

§ 1.3.7.6 Unless otherwise provided in this Agreement, the Architect and Architect's consultants 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.

§ 1.3.7.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the 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. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

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

§ 1.3.7.9 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.

### § 1.3.8 TERMINATION OR SUSPENSION

§ 1.3.8.1 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, prior to suspension of services, the Architect shall give seven days' written notice to the Owner. 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 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.

§ 1.3.8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 1.3.8.3 If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 1.3.8.4 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 1.3.8.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 1.3.8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 1.3.8.7.

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

### § 1.3.9 PAYMENTS TO THE ARCHITECT

§ 1.3.9.1 Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Architect's statement of services. No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

§ 1.3.9.2 Reimbursable Expenses are in addition to compensation for the Architect's services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses:

- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4 expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .5 renderings, models and mock-ups requested by the Owner;
- .6 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
- .7 reimbursable expenses as designated in Section 1.5.5;
- .8 other similar direct Project-related expenditures.

§ 1.3.9.3 Records of Reimbursable Expenses, of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

§ 1.3.9.4 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

**ARTICLE 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS**

§ 1.4.1 Enumeration of Parts of the Agreement. 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 comprises the documents listed below.

§ 1.4.1.1 Standard Form of Agreement Between Owner and Architect, AIA Document B141-1997.

§ 1.4.1.2 Standard Form of Architect's Services: Design and Contract Administration, AIA Document B141-1997, or as follows:  
*(List other documents, if any, delineating Architect's scope of services.)*

§ 1.4.1.3 Other documents as follows:  
*(List other documents, if any, forming part of the Agreement.)*

- Exhibit A Master Fee Schedule & Reimbursable Expenses
- Exhibit B Concept Design Plans and Model Images

§ 1.4.2 Special Terms and Conditions. Special terms and conditions that modify this Agreement are as follows:

**ARTICLE 1.5 COMPENSATION**

§ 1.5.1 For the Architect's services as described under Article 1.4, compensation shall be computed as follows:

5.75% of the total construction cost including contractors profit and overhead. Compensation will be billed monthly as a percentage complete of each phase with the following assumptions: SD 20%, DD 22%, CD 40%, Bid/Negotiate 1% & CA 17%.

The Total Construction Cost of the project will be evaluated at the completion of the project in order to determine final payment for basic architectural services. Any amount over the original estimated Total Construction Cost of approximately \$160,000,000 shall be paid for architectural services based on the agreed upon 5.75% fee. Any

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amount under the original estimated Total Construction Cost of approximately \$160,000,000 shall be credited for architectural services based on the agreed upon 5.75% fee. Total Construction Cost is defined but not limited to the final total dollar amount cost for Labor and Materials, Additions to project building scope, Value Additions, Substitutions, Changes, General Conditions, Contractor Insurance and Bonding Provisions, Tests and Inspection Costs and General Contractor's Profit or Fee.

§ 1.5.2 If the services of the Architect are changed as described in Section 1.3.3.1, the Architect's compensation shall be adjusted. Such adjustment shall be calculated as described below or, if no method of adjustment is indicated in this Section 1.5.2, in an equitable manner.

*(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply.)*

See Exhibit A

§ 1.5.3 For a Change in Services of the Architect's consultants, compensation shall be computed as a multiple of One and fifteen hundredths ( 1.15 ) times the amounts billed to the Architect for such services.

§ 1.5.4 For Reimbursable Expenses as described in Section 1.3.9.2, and any other items included in Section 1.5.5 as Reimbursable Expenses, the compensation shall be computed as a multiple of One and fifteen hundredths ( 1.15 ) times the expenses incurred by the Architect, and the Architect's employees and consultants.

§ 1.5.5 Other Reimbursable Expenses, if any, are as follows:

See Exhibit A

§ 1.5.6 The rates and multiples for services of the Architect and the Architect's consultants as set forth in this Agreement shall be adjusted in accordance with their normal salary review practices.

§ 1.5.7 An initial payment of Zero Dollars and Zero Cents (\$ 0.00 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account at final payment. Subsequent payments for services shall be made monthly, and where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.

§ 1.5.8 Payments are due and payable Fifteen ( 15 ) days from the date of the Architect's invoice. Amounts unpaid Thirty ( 30 ) 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 interest agreed upon.)*

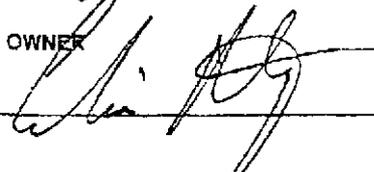
1 & 1/2% monthly

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

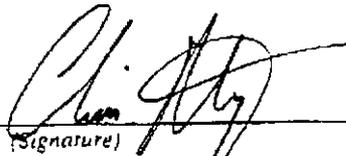
§ 1.5.9 If the services covered by this Agreement have not been completed within Thirty-two ( 32 ) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Section 1.5.2.

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

OWNER



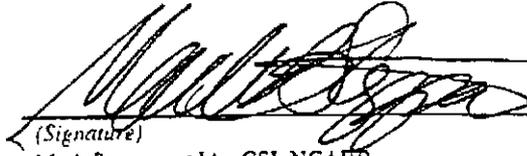
ARCHITECT



(Signature)

Sam Caniglia BSC Financial, LLC

(Printed name and title)



(Signature)

Mark Steppan, AIA, CSI, NCARB

(Printed name and title)

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**Addendum: No.1 Contractual Changes to AIA B141 Standard Agreement between Owner and Architect.**

AIA Contract Review between BSC Financial, LLC and Mark B. Steppan, AIA and Fisher Friedman Associates, Design Consultants

The following Addendum has been assembled to provide clarification of specific contractual items as specified in the attached standard AIA agreement. Terms and conditions provided herein shall be accepted as the substitution or in addition to and shall be in effect, and shall take precedence over items as specified in the attached standard AIA agreement.

Both parties are aware of this Contract Addendum and do hereby elect and agree to said terms and conditions as stated below.

- ss.1.1.2.1 The project is to create an urban mixed use high rise residential development with approximately 499 living units for BSC Financial, LLC.
- ss. 1.1.2.3 To obtain entitlements and approvals for the property and proposed buildings as shown in exhibit B as attached to the AIA B141 agreement as part of the design services in the Schematic Design/Entitlements Phase.
- ss. 1.1.2.5.2 Replace ' \$160,000,000 ' with approximately ' \$180,000,000 '.
- ss. 1.3.2.2 Replace text to read beginning with the sentence 'If and upon' as follows:  
If and upon the date the Architect is adjudged in default of this Agreement, or upon any default by the Architect, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license, including Architects consent, permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

Either party to this agreement shall be deemed in default if: (a) Either party fails to keep or perform any of the terms, obligations covenants, agreements or conditions contained herein, and such default continues of a period to thirty (30) days after notice by either party or beyond the time reasonably necessary for cure if such default is of a nature to require in excess of thirty (30) days to remedy; (b) Either party shall become bankrupt or insolvent or make a transfer in defraud of creditors, or make an assignment for the benefit of creditors, or be the subject of any proceedings of any kind under any provisions of the Federal Bankruptcy Act or under

any other insolvency, bankruptcy or reorganization act; or (c) a receiver is appointed for a substantial part of the assets of either party.

ss. 1.3.5.4 See the language at ss. 4.6.4 of AIA Form 201.

ss. 1.3.7.1 This agreement shall be governed by the State of Nevada, without regards to the conflicts of state of operation of the principal architect or it's consultants.

ss. 1.3.7.6 Unless otherwise provided in this agreement, the architect and the architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or the exposure of persons to hazardous materials or toxic substances in any form at the project site, unless the architect or the architect's consultants specify the use of hazardous materials, that cause the creation of said instance and can be directly attributed to the architect or it's consultants.

ss. 1.3.7.9 The owner and architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this agreement their partners, successors, assigns and legal representatives of such other party with respect to all covenants of this agreement. The Architect and the Owner shall not assign this agreement without the written consent of the other party, or assignment thereof shall be void. The owner may assign this agreement to any party, provided that such assignment shall not materially prejudice the Architect and also with the written consent of the Architect. The architect shall execute all consents reasonably required to facilitate such assignment.

ss. 1.5 Section 1.5 – The abbreviated terms used in the first paragraph are as follows:

- Schematic Design (Includes City of Reno Entitlements Process)
- Design Development
- Construction Documents
- Construction Administration

The definitions can be found in the American Institute of Architect's Handbook of Professional Practice, Volume 2, Sections 3.6 Design Services, 3.7 Design Parameters, 3.8 Design Documentation, and 3.9 Construction Related Services. Copies of these sections shall be provided upon request.

ss. 1.5.1 Replace ' \$160,000,000 ' with approximately ' \$180,000,000 '.

ss. 1.5.1

All existing text in this section shall remain with the addition of the following:

In the event that the Owner chooses not to proceed with construction of the project, the fees associated with retaining said entitlements will be paid as incurred in the due course of the project and will be applied to aforementioned budgets as defined in the architects scope of work and estimated value.

ss. 1.5.9

The extent of the work as defined by this agreement is estimated at thirty two months (32) from the effective date of this agreement. If through no fault of either party, the time frame is extended beyond the 32 months, then neither party Owner nor Architect, shall be held liable for additional sums or compensation. The architectural work product as defined to obtain the required entitlements and the respective budgets will remain as fact without respect to an estimated time line.

ss. 2.4.1

All existing text in this section shall remain with the addition of the following:

In this case, normal structural, mechanical and electrical services mean that the consultants are contracted to the Architect and no extravagant systems are required by the Owner which would trigger an increase in consultants fees as well as Architects. Currently the MEP work will be done as a modified design build process.

Agreed this Day, 21 day of April, 2006.

BSC Financial, LLC.

Owner: [Signature], Title Mgr.  
Signature

Mark B. Steppan, AIA, CSI, NCARB

Architect: [Signature]  
Signature

APR 26 2006

FISHER FRIEDMAN ASSOCIATES



# Document B141™ – 1997 Part 2

## Standard Form of Architect's Services: Design and Contract Administration

### TABLE OF ARTICLES

- 2.1 PROJECT ADMINISTRATION SERVICES
- 2.2 SUPPORTING SERVICES
- 2.3 EVALUATION AND PLANNING SERVICES
- 2.4 DESIGN SERVICES
- 2.5 CONSTRUCTION PROCUREMENT SERVICES
- 2.6 CONTRACT ADMINISTRATION SERVICES
- 2.7 FACILITY OPERATION SERVICES
- 2.8 SCHEDULE OF SERVICES
- 2.9 MODIFICATIONS

### ADDITIONS AND DELETIONS:

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

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

### ARTICLE 2.1 PROJECT ADMINISTRATION SERVICES

§ 2.1.1 The Architect shall manage the Architect's services and administer the Project. The Architect shall consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and issue progress reports. The Architect shall coordinate the services provided by the Architect and the Architect's consultants with those services provided by the Owner and the Owner's consultants.

§ 2.1.2 When Project requirements have been sufficiently identified, the Architect shall prepare, and periodically update, a Project schedule that shall identify milestone dates for decisions required of the Owner, design services furnished by the Architect, completion of documentation provided by the Architect, commencement of construction and Substantial Completion of the Work.

§ 2.1.3 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

§ 2.1.4 Upon request of the Owner, the Architect shall make a presentation to explain the design of the Project to representatives of the Owner.

§ 2.1.5 The Architect shall submit design documents to the Owner at intervals appropriate to the design process for purposes of evaluation and approval by the Owner. The Architect shall be entitled to rely on approvals received from the Owner in the further development of the design.

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

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**§ 2.1.7 EVALUATION OF BUDGET AND COST OF THE WORK**

§ 2.1.7.1 The Owner or Contractor shall provide cost planning, estimating and construction schedule information during the design and construction of the project.

**ARTICLE 2.3 EVALUATION AND PLANNING SERVICES**

§ 2.3.1 The Architect shall provide a preliminary evaluation of the information furnished by the Owner under this Agreement, including the Owner's program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The Architect shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the Owner of any other information or consultant services that may be reasonably needed for the Project.

§ 2.3.2 The Architect shall provide a preliminary evaluation of the Owner's site for the Project based on the information provided by the Owner of site conditions, and the Owner's program, schedule and budget for the Cost of the Work.

§ 2.3.3 The Architect shall review the Owner's proposed method of contracting for construction services and shall notify the Owner of anticipated impacts that such method may have on the Owner's program, financial and time requirements, and the scope of the Project.

**ARTICLE 2.4 DESIGN SERVICES**

§ 2.4.1 The Architect's design services shall include normal structural, mechanical and electrical engineering services. See Article 1.1.3.5 for additional consultants.

**§ 2.4.2 SCHEMATIC DESIGN DOCUMENTS**

§ 2.4.2.1 The Architect shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the Architect's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

**§ 2.4.3 DESIGN DEVELOPMENT DOCUMENTS**

§ 2.4.3.1 The Architect shall provide Design Development Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels.

**§ 2.4.4 CONSTRUCTION DOCUMENTS**

§ 2.4.4.1 The Architect shall provide Construction Documents based on the approved Design Development Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

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

**ARTICLE 2.5 CONSTRUCTION PROCUREMENT SERVICES**

§ 2.5.1 The Architect shall assist the Owner in obtaining either competitive bids or negotiated proposals and shall assist the Owner in awarding and preparing contracts for construction.

§ 2.5.2 The Architect shall assist the Owner in establishing a list of prospective bidders or contractors.

*(Paragraph deleted)*

**§ 2.5.4 COMPETITIVE BIDDING**

§ 2.5.4.1 Bidding Documents shall consist of bidding requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.

*(Paragraph deleted)*

**§ 2.5.5 NEGOTIATED PROPOSALS**

§ 2.5.5.1 Proposal Documents shall consist of proposal requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.

§ 2.5.5.2 If requested by the Owner, the Architect shall arrange for procuring the reproduction of Proposal Documents for distribution to prospective contractors. The Owner shall pay directly for the cost of reproduction or shall reimburse the Architect for such expenses.

*(Paragraph deleted)*

**ARTICLE 2.6 CONTRACT ADMINISTRATION SERVICES**

**§ 2.6.1 GENERAL ADMINISTRATION**

§ 2.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.

§ 2.6.1.2 The Architect's responsibility to provide the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment. However, the Architect shall be entitled to a Change in Services in accordance with Section 2.8.2 when Contract Administration Services extend 60 days after the date of Substantial Completion of the Work.

§ 2.6.1.3 The Architect shall be a representative of and shall advise and consult with the Owner during the provision of the Contract Administration Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

§ 2.6.1.4 Duties, responsibilities and limitations of authority of the Architect under this Article 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent will not be unreasonably withheld.

§ 2.6.1.5 The Architect shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.

§ 2.6.1.6 If deemed appropriate by the Architect, the Architect shall on the Owner's behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.

§ 2.6.1.7 The Architect shall interpret and recommend matters concerning performance of the Owner and Contractor 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.

§ 2.6.1.8 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 initial 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 the results of interpretations or decisions so rendered in good faith.

§ 2.6.1.9 The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

#### § 2.6.2 EVALUATIONS OF THE WORK

§ 2.6.2.1 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect in Article 2.8, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 2.6.2.2 The Architect shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 2.6.2.3 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

§ 2.6.2.4 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 2.6.2.5 The Architect shall recommend to the owner the rejection of any Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall recommend to the owner the 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. The Architect retains the right to immediately reject and halt any Work that is deemed to be hazardous, in violation of code, or otherwise involving a health or safety issue that jeopardizes workers or the public at large.

#### § 2.6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

§ 2.6.3.1 The Architect shall review and recommend the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 2.6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, 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.

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

§ 2.6.3.3 The Architect shall maintain a record of the Contractor's Applications for Payment.

#### § 2.6.4 SUBMITTALS

§ 2.6.4.1 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. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. 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.

§ 2.6.4.2 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.

§ 2.6.4.3 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

#### § 2.6.5 CHANGES IN THE WORK

§ 2.6.5.1 The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Section 2.8.2.

§ 2.6.5.2 The Architect shall review properly prepared, timely requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

§ 2.6.5.3 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the

Architect. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

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

#### § 2.6.6 PROJECT COMPLETION

§ 2.6.6.1 The Architect shall conduct site reviews to determine the date or dates of Substantial Completion and the date of final completion, shall 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 shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 2.6.6.2 The Architect's site review shall be conducted with the Owner's Designated Representative 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.

§ 2.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

§ 2.6.6.4 The Architect shall receive from the Contractor and forward to the Owner: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens.

#### ARTICLE 2.7 FACILITY OPERATION SERVICES

§ 2.7.1 The Architect shall meet with the Owner or the Owner's Designated Representative promptly after Substantial Completion to review the need for facility operation services.

§ 2.7.2 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall conduct a meeting with the Owner and the Owner's Designated Representative to review the facility operations and performance and to make appropriate recommendations to the Owner.

#### ARTICLE 2.8 SCHEDULE OF SERVICES

§ 2.8.1 Design and Contract Administration Services beyond the following limits shall be provided by the Architect as a Change in Services in accordance with Section 1.3.3:

- .1 up to Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor.
- .2 up to One ( 1 ) visit per week to the site by the Architect over the duration of the Project during construction.
- .3 up to One ( 1 ) site review for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.
- .4 up to One ( 1 ) site review for any portion of the Work to determine final completion.

§ 2.8.2 The following Design and Contract Administration Services shall be provided by the Architect as a Change in Services in accordance with Section 1.3.3:

- .1 review of a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 responses to the Contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Change Orders and Construction Change Directives requiring evaluation of proposals, including the preparation or revision of Instruments of Service;
- .4 providing consultation concerning replacement of Work resulting from fire or other cause during construction;
- .5 evaluation of an extensive number of claims submitted by the Owner's consultants, the Contractor or others in connection with the Work.

- .6 evaluation of substitutions proposed by the Owner's consultants or contractors and making subsequent revisions to Instruments of Service resulting therefrom;
- .7 preparation of design and documentation for alternate bid or proposal requests proposed by the Owner; or
- .8 Contract Administration Services provided 60 days after the date of Substantial Completion of the Work.
- .9 Construction Administration over 24 months.

§ 2.8.3 The Architect shall furnish or provide the following services only if specifically designated:

Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description
.1	Programming	-----O
.2	Land Survey Services	-----O
.3	Geotechnical Services	-----O
.4	Space Schematics/Flow Diagrams	-----A
.5	Existing Facilities Surveys	-----NP
.6	Economic Feasibility Studies	-----O
.7	Site Analysis and Selection	-----NP
.8	Environmental Studies and Reports	-----O
.9	Owner-Supplied Data Coordination	-----A
.10	Schedule Development and Monitoring	-----O
.11	Civil Design	-----O
.12	Landscape Design	-----A
.13	Interior Design	-----O
.14	Special Bidding or Negotiation	-----NP
.15	Value Analysis	-----O
.16	Detailed Cost Estimating	-----O
.17	On-Site Project Representation	-----NP
.18	Construction Management	-----O
.19	Start-up Assistance	-----NP
.20	Record Drawings	-----NP
.21	Post-Contract Evaluation	-----NP
.22	Tenant-Related Services	-----NP
.23		
.24		
.25		

Description of Services.  
(Insert descriptions of the services designated.)

**ARTICLE 2.9 MODIFICATIONS**

§ 2.9.1 Modifications to this Standard Form of Architect's Services: Design and Contract Administration, if any, are as follows:

Architect and Consultants Errors and Omissions requirements shall be amended into this Standard Form of Architect's Services Agreement to be determined later by mutual agreement.

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User Notes: (2702181523)

By its execution, this Standard Form of Architect's Services: Design and Contract Administration and modifications hereto are incorporated into the Standard Form of Agreement Between the Owner and Architect, AIA Document B141-1997, that was entered into by the parties as of the date: October 31, 2005

OWNER

(Signature)

Sam Caniglia, BSC Financial, LLC

(Printed name and title)

ARCHITECT

(Signature)

Mark Steppan, AIA, CSI, NCARB

(Printed name and title)

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User Notes:

(5702181523)

**Addendum: No.1 Contractual Changes to AIA B141 Standard Agreement between Owner and Architect.**

AIA Contract Review between BSC Financial, LLC and Mark B. Steppan, AIA and Fisher Friedman Associates, Design Consultants

The following Addendum has been assembled to provide clarification of specific contractual items as specified in the attached standard AIA agreement. Terms and conditions provided herein shall be accepted as the substitution or in addition to and shall be in effect, and shall take precedence over items as specified in the attached standard AIA agreement.

Both parties are aware of this Contract Addendum and do hereby elect and agree to said terms and conditions as stated below.

- ss. 1.1.2.1 The project is to create an urban mixed use high rise residential development with approximately 499 living units for BSC Financial, LLC.
- ss. 1.1.2.3 To obtain entitlements and approvals for the property and proposed buildings as shown in exhibit B as attached to the AIA B141 agreement as part of the design services in the Schematic Design/Entitlements Phase.
- ss. 1.1.2.5.2 Replace ' \$160,000,000 ' with approximately ' \$180,000,000 '.
- ss. 1.3.2.2 Replace text to read beginning with the sentence 'If and upon' as follows:  
If and upon the date the Architect is adjudged in default of this Agreement, or upon any default by the Architect, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license, including Architects consent, permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

Either party to this agreement shall be deemed in default if: (a) Either party fails to keep or perform any of the terms, obligations covenants, agreements or conditions contained herein, and such default continues of a period to thirty (30) days after notice by either party or beyond the time reasonably necessary for cure if such default is of a nature to require in excess of thirty (30) days to remedy; (b) Either party shall become bankrupt or insolvent or make a transfer in defraud of creditors, or make an assignment for the benefit of creditors, or be the subject of any proceedings of any kind under any provisions of the Federal Bankruptcy Act or under

any other insolvency, bankruptcy or reorganization act; or (c) a receiver is appointed for a substantial part of the assets of either party.

- ss. 1.3.5.4 See the language at ss. 4.6.4 of AIA Form 201.
- ss. 1.3.7.1 This agreement shall be governed by the State of Nevada, without regards to the conflicts of state of operation of the principal architect or it's consultants.
- ss. 1.3.7.6 Unless otherwise provided in this agreement, the architect and the architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or the exposure of persons to hazardous materials or toxic substances in any form at the project site, unless the architect or the architect's consultants specify the use of hazardous materials, that cause the creation of said instance and can be directly attributed to the architect or it's consultants.
- ss. 1.3.7.9 The owner and architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this agreement their partners, successors, assigns and legal representatives of such other party with respect to all covenants of this agreement. The Architect and the Owner shall not assign this agreement without the written consent of the other party, or assignment thereof shall be void. The owner may assign this agreement to any party, provided that such assignment shall not materially prejudice the Architect and also with the written consent of the Architect. The architect shall execute all consents reasonably required to facilitate such assignment.
- ss. 1.5 Section 1.5 - The abbreviated terms used in the first paragraph are as follows:
- Schematic Design (Includes City of Reno Entitlements Process)
  - Design Development
  - Construction Documents
  - Construction Administration
- The definitions can be found in the American Institute of Architect's Handbook of Professional Practice, Volume 2, Sections 3.6 Design Services, 3.7 Design Parameters, 3.8 Design Documentation, and 3.9 Construction Related Services. Copies of these sections shall be provided upon request.
- ss. 1.5.1 Replace '\$160,000,000' with approximately '\$180,000,000'.

ss. 1.5.1

All existing text in this section shall remain with the addition of the following:

In the event that the Owner chooses not to proceed with construction of the project, the fees associated with retaining said entitlements will be paid as incurred in the due course of the project and will be applied to aforementioned budgets as defined in the architects scope of work and estimated value.

ss. 1.5.9

The extent of the work as defined by this agreement is estimated at thirty two months (32) from the effective date of this agreement. If through no fault of either party, the time frame is extended beyond the 32 months, then neither party Owner nor Architect, shall be held liable for additional sums or compensation. The architectural work product as defined to obtain the required entitlements and the respective budgets will remain as fact without respect to an estimated time line.

ss. 2.4.1

All existing text in this section shall remain with the addition of the following:

In this case, normal structural, mechanical and electrical services mean that the consultants are contracted to the Architect and no extravagant systems are required by the Owner which would trigger an increase in consultants fees as well as Architects. Currently the MEP work will be done as a modified design build process.

Agreed this Day, 21 day of April, 2006.

BSC Financial, LLC

Owner: [Signature], Title Mgr.  
Signature

Mark B. Steppan, AIA, CSI, NCARB

Architect: [Signature]  
Signature

# DECAL

## Transmittal

TO: Nathan Ogle

FROM: Cal Bosma

DATE: 4/25/06

RE: Signed AIA Contract and Addendum

### COMMENTS:

Please call if you have any questions.

Thank you,  
Michèle Powell

6121 Lakeside Drive, Suite 125, NV 89511 Office: 775-828-3351 Fax: 775-828-3357

SUNNY Joel  
MARGOLIN & BIATCH

1970 BROADWAY #1200  
OAKLAND CA, 94612  
(570) 451-4114  
FAX: (570) 451-4115

JOEL A. BIATCH #202  
biatch@oaklaw.com

# project information

Please type

Entry number 592 Category 15 ON THE BOARDS

Project name (in full) BSC RESIDENTIAL TOWERS

Model name (categories 4-7) —

Project location (city and state) RENO, NEVADA

**COMPLETE EVERY SECTION THAT APPLIES TO YOUR PROJECT**

Size of home, unit, or building (or size range of units) in heated/cooled square feet 633,269 SF OF HEATED/COOLED SPACES

Project site size (in acres) 1.36 ACRES

Direct construction cost per square foot: \$175 PER SF OF 381 UNITS 1 FOR MID RISE + \$489,963 FOR HIGH RISE UNITS  
Permits, labor, materials, subcontractors, finance/interest during construction

Sales price/rental rate of unit (or price range/rental rate range) AVERAGE BASE PRICE EQUALS \$377/SF FOR MID RISE + \$410/SF FOR HIGH RISE

number of units in project ~~390~~ 390 UNITS

Overall density (units per acre) 286 UNITS PER ACRE

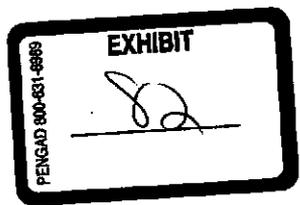
Lot size (width & depth in feet) for detached units only N/A

Land development cost per unit: \$9,000,000 PAID FOR DEVELOPED PARCEL  
Price paid for developed lot, or cost to develop lot (financing/interest, realty taxes, land plan, engineering, rough grade, streets, curb and gutter, sidewalks, storm sewer drainage, sanitary sewer, water, gas/electric)

Target market(s) OLDER SINGLE + COUPLE BUYERS, YOUNGER SINGLE + COUPLES, YOUNGER FAMILY BUYERS

Grand opening and/or first occupancy date ~~APRIL 2008~~ 100% INVESTOR/SPECULATOR BUYERS

Project completion date (actual or projected) September 2008



*9 min*

# project statement

592 15

Entry number Category

BSC RESIDENTIAL TOWERS

Project name (in full)

RENO, NEVADA

Project location (city and state)

Model name (for categories 4-7)

In 150 words or less, explain below the major design and planning objectives of the entry and why you think the project deserves an award in the category entered. (For categories 4-7, also discuss the specific needs of the target market(s) and how those needs were addressed.) Identify any unusual constraints or opportunities, and describe how they were handled. Do not use the back of this paper. Indicate entry number and category on any extra pages.

residential architect  
design awards **2006**

entry no.:

592

category:

15 - On the Boards

project name:

Reno Nevada

INVOICE

INVOICE

Invoice # 22384  
 May 18, 2006  
 Page 1

Sam Caniglia  
 ESC Financial, LLC  
 c/o Consolidated Pacific Dev. Co.  
 912 Parker Street  
 Berkeley, CA 94710

Project #: 0515 Reno

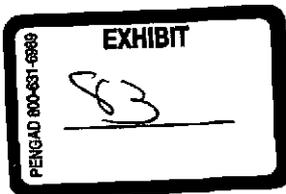
Project Manager: Nathan Ogle

Professional Services for the Period: November 01, 2005 to April 30, 2006

Project #: 0515  
 Billing Group 001

Construction Cost 180000000.00  
 Percent of Construction Cost 5.75  
 Total Fee \$ 10350000.00

DEPT	Percent of Total Fee	DEPT Fee	Percent Complete	Fee Earned
Schematic Design Phase	20.000	2070000.00	23.250	481275.00
Design Development	22.000	2277000.00	0.000	0.00
Working Drawings	40.000	4140000.00	0.000	0.00
Bidding	1.000	103500.00	0.000	0.00
Construction Admin	17.000	1759500.00	0.000	0.00
<b>Total Fee Earned</b>				<b>481275.00</b>
Prior Fee Billing				0.00
<b>Current Fee Total</b>				<b>\$ 481275.00</b>
<b>Total Amount Due</b>				<b>\$ 481275.00</b>



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 ARCHITECTURE PLANNING URBAN DESIGN

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 Enc

Invoice # 22384  
 May 18, 2006  
 Page 2

Aged Receivables:

Current	31-60 Days	61-90 Days	91-120 Days	+120 Days
481275.00	0.00	0.00	0.00	0.00

Project Billing Summary:

	Current	Prior	Total
Professional Services	481275.00	0.00	481275.00
Reimbursable Expenses	0.00	0.00	0.00
Outside Services	0.00	0.00	0.00
Late Fees	0.00	0.00	0.00
Invoice Fees	0.00	0.00	0.00
	481275.00	0.00	481275.00

TERMS: Payable 30 days from date of invoice  
 unless otherwise governed by contract terms.  
 Past due invoices will carry a service charge  
 of 1-1/2% per month.

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Invoice # 22408  
 July 19, 2006  
 Page 1

Sam Caniglia  
 BSC Financial, LLC  
 c/o Consolidated Pacific Dev. Co.  
 932 Parker Street  
 Berkeley, CA 94710

Project #: 0515 Reno

Project Manager: Nathan Ogle

Professional Services for the Period: June 01, 2006 to June 30, 2006

Project #: 0515  
 Billing Group 001

Construction Cost 150000000.00  
 Percent of Construction Cost 5.75  
 Total Fee 8 60350000.00

DEPT	Percent of Total Fee	DEPT Fee	Percent Complete	Fee Earned
Schematic Design Phase	20.000	3070000.00	28.100	861670.00
Design Development	22.000	3270000.00	0.000	0.00
Working Drawings	40.000	4140000.00	0.000	0.00
Bidding	1.000	103500.00	0.000	0.00
Construction Admin	17.000	1759500.00	0.000	0.00
Total Fee Earned				861670.00
Prior Fee Billing				-481275.00
Current Fee Total				\$ 380395.00
Total Amount Due				\$ 380395.00

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INVOICE

0515  
 Reno

Invoice # 22408  
 July 19, 2006  
 Page 2

Accounts Receivable

Invoice Date	Description	Amount	Balance Due
22354 05/18/06	Billing	481275.00	481275.00
05/18/06	Payment	-39190.00	442085.00
02/18/06	Payment	-72700.00	369385.00
02/18/06	Payment	-91035.00	278350.00
02/18/06	Payment	-52065.00	226285.00
03/21/06	Payment	-8230.00	218055.00
05/16/06	Payment	-15490.00	202565.00
06/15/06	Payment	-102160.00	100405.00

Total Accounts Receivable 100405.00

Balance Due \$ 100405.00

Aged Receivables:

Current	31-60 Days	61-90 Days	91-120 Days	+120 Days
100395.00	0.00	100405.00	0.00	0.00

Project Billing Summary:

	Current	Prior	Total
Professional Services	100395.00	481275.00	581670.00
Reimbursable Expenses	0.00	0.00	0.00
Outside Services	0.00	0.00	0.00
Late Fees	0.00	0.00	0.00
Invoice Fees	0.00	0.00	0.00
	100395.00	481275.00	581670.00

TERMS: Payable 30 days from date of invoice unless otherwise governed by contract terms. Past due invoices will carry a service charge of 1-1/2% per month.

INVOICE

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Invoice # 22430  
 August 23, 2006  
 Page 1

Sam Caniglia  
 BSC Financial, LLC  
 c/o Consolidated Pacific Dev. Co.  
 932 Parker Street  
 Berkeley, CA 94710

Project #: 0515 Reno

Project Manager: Nathan Ogle

Professional Services for the Period: July 01, 2006 to July 31, 2006

Project #: 0515  
 Billing Group 001

Construction Cost 180000000.00  
 Percent of Construction Cost 5.75  
 Total Fee \$ 10350000.00

DEPT	Percent of Total Fee	DEPT Fee	Percent Complete	Fee Earned
Schematic Design Phase	20.000	2070000.00	44.630	923841.00
Design Development	22.000	2277000.00	0.000	0.00
Working Drawings	40.000	4140000.00	0.000	0.00
Bidding	1.000	103500.00	0.000	0.00
Construction Admin	17.000	1759500.00	0.000	0.00
<b>Total Fee Earned</b>				<b>923841.00</b>
Prior Fee Billing				-581670.00
<b>Current Fee Total</b>				<b>\$ 342171.00</b>
<b>Total Amount Due</b>				<b>\$ 342171.00</b>

INVOICE

0515  
 Reno

Invoice # 22430  
 August 23, 2006  
 Page 2

Accounts Receivable

Invoice	Date	Description	Amount	Balance Due
22384	05/18/06	Billing	481275.00	481275.00
	02/16/06	Payment	-39190.00	442085.00
	02/16/06	Payment	-72700.00	369385.00
	02/16/06	Payment	-91035.00	278350.00
	02/16/06	Payment	-52065.00	226285.00
	03/21/06	Payment	-8230.00	218055.00
	05/16/06	Payment	-15490.00	202565.00
	06/16/06	Payment	-102160.00	100405.00
22406	07/19/06	Billing	100395.00	200800.00

Total Accounts Receivable 200800.00

Balance Due \$ 542971.00

Aged Receivables:

Current	31-60 Days	61-90 Days	91-120 Days	+120 Days
342171.00	100395.00	0.00	100405.00	0.00

Project Billing Summary:

	Current	Prior	Total
Professional Services	342171.00	581670.00	923841.00
Reimbursable Expenses	0.00	0.00	0.00
Outside Services	0.00	0.00	0.00
Late Fees	0.00	0.00	0.00
Invoice Fees	0.00	0.00	0.00
	342171.00	581670.00	923841.00

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Invoice # 22452  
 September 21, 2006  
 Page 1

Sam Caniglia  
 BSC Financial, LLC  
 c/o Consolidated Pacific Dev. Co.  
 932 Parker Street  
 Berkeley, CA 94710

Project #: 0515 Rene

Project Manager: Nathan Ogle

Professional Services for the Period: August 31, 2006 to August 31, 2006

Project #: 0515  
 Billing Group 001

Construction Cost 180000000.00  
 Percent of Construction Cost 5.75  
 Total Fee \$ 10350000.00

DEPT	Percent of Total Fee	DEPT Fee	Percent Complete	Fee Earned
Schematic Design Phase	20.000	2070000.00	51.160	1266012.00
Design Development	22.000	2277000.00	0.000	0.00
Working Drawings	40.000	4140000.00	0.000	0.00
Bidding	1.000	103500.00	0.000	0.00
Construction Admin	17.000	1759500.00	0.000	0.00
Total Fee Earned				1266012.00
Prior Fee Billing				-923841.00
Current Fee Total				\$ 342171.00

Consultants Fees  
 -----

Charge  
 -----

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0515 001  
 Reno

Invoice # 22452  
 September 21, 2006  
 Page 2

Consultants Fees		Charge
		-----
Landscape Architect		2525.00
Total Consultants Fees	\$	2525.00
		-----
Current Fee Total	\$	344696.00
		-----
		378.75
		-----
Total Amount Due	\$	345074.75
		=====

Accounts Receivable

Invoice Date	Description	Amount	Balance Due
-----	-----	-----	-----
22384 05/18/06	Billing	481275.00	481275.00
02/16/06	Payment	-39190.00	442085.00
02/16/06	Payment	-72700.00	369385.00
02/16/06	Payment	-91035.00	278350.00
02/16/06	Payment	-52065.00	226285.00
03/21/06	Payment	-8230.00	218055.00
05/16/06	Payment	-15490.00	202565.00
06/16/06	Payment	-102160.00	100405.00
22408 07/19/06	Billing	100395.00	200800.00
22430 08/23/06	Billing	342171.00	542971.00
			-----
	Total Accounts Receivable		542971.00
			-----
	Balance Due	\$	888045.75
			-----

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 Reno

Invoice # 22452  
 September 21, 2006  
 Page 3

Aged Receivables:

Current	31-60 Days	61-90 Days	91-120 Days	+120 Days
687245.75	0.00	100395.00	0.00	100405.00

Project Billing Summary:

	Current	Prior	Total
Professional Services	342171.00	923841.00	1266012.00
Reimbursable Expenses	0.00	0.00	0.00
Outside Services	2525.00	0.00	2525.00
Late Fees	0.00	0.00	0.00
Invoice Fees	378.75	0.00	378.75
	345074.75	923841.00	1268915.75

TERMS: Payable 30 days from date of invoice  
 unless otherwise governed by contract terms.  
 Past due invoices will carry a service charge  
 of 1-1/2% per month.

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Invoice # 22468  
 October 25, 2006  
 Page 1

Sam Caniglia  
 BSC Financial, LLC  
 6121 Lakeside Drive Suite 230  
 Reno, NV 89511

Project #: 0515 Reno

Project Manager: Nathan Ogle

Professional Services for the Period: September 01, 2006 to September 30, 2006

Project #: 0515  
 Billing Group 001

Construction Cost 180000000.00  
 Percent of Construction Cost 5.75  
 Total Fee \$ 10350000.00

DEPT	Percent of Total Fee	DEPT Fee	Percent Complete	Fee Earned
Schematic Design Phase	20.000	2070000.00	77.690	1608183.00
Design Development	22.000	2277000.00	0.000	0.00
Working Drawings	40.000	4140000.00	0.000	0.00
Bidding	1.000	103500.00	0.000	0.00
Construction Admin	17.000	1759500.00	0.000	0.00
Total Fee Earned				1608183.00
Prior Fee Billing				-1266012.00
Current Fee Total			\$	342171.00
Total Amount Due			\$	342171.00

INVOICE

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 Reno

Invoice # 22468  
 October 25, 2006  
 Page 2

Accounts Receivable

Invoice Date	Description	Amount	Balance Due
22384	05/18/06 Billing	481275.00	481275.00
	02/16/06 Payment	-39190.00	442085.00
	02/16/06 Payment	-72700.00	369385.00
	02/16/06 Payment	-91035.00	278350.00
	02/16/06 Payment	-52065.00	226285.00
	03/21/06 Payment	-8230.00	218055.00
	05/16/06 Payment	-15490.00	202565.00
	06/16/06 Payment	-102160.00	100405.00
	09/16/06 Payment	-50000.00	50405.00
22408	07/19/06 Billing	100395.00	150800.00
22430	08/23/06 Billing	342171.00	492971.00
22452	09/21/06 Billing	345074.75	838045.75

Total Accounts Receivable 838045.75

Balance Due \$ 1180216.75

Aged Receivables:

Current	31-60 Days	61-90 Days	91-120 Days	+120 Days
342171.00	345074.75	342171.00	100395.00	50405.00

Project Billing Summary:

	Current	Prior	Total
Professional Services	342171.00	1266012.00	1608183.00
Reimbursable Expenses	0.00	0.00	0.00
Outside Services	0.00	2525.00	2525.00
Late Fees	0.00	0.00	0.00
Invoice fees	0.00	378.75	378.75
	342171.00	1268915.75	1611086.75

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ARCHITECTURE            PLANNING            URBAN DESIGN

INVOICE

7515  
Reno

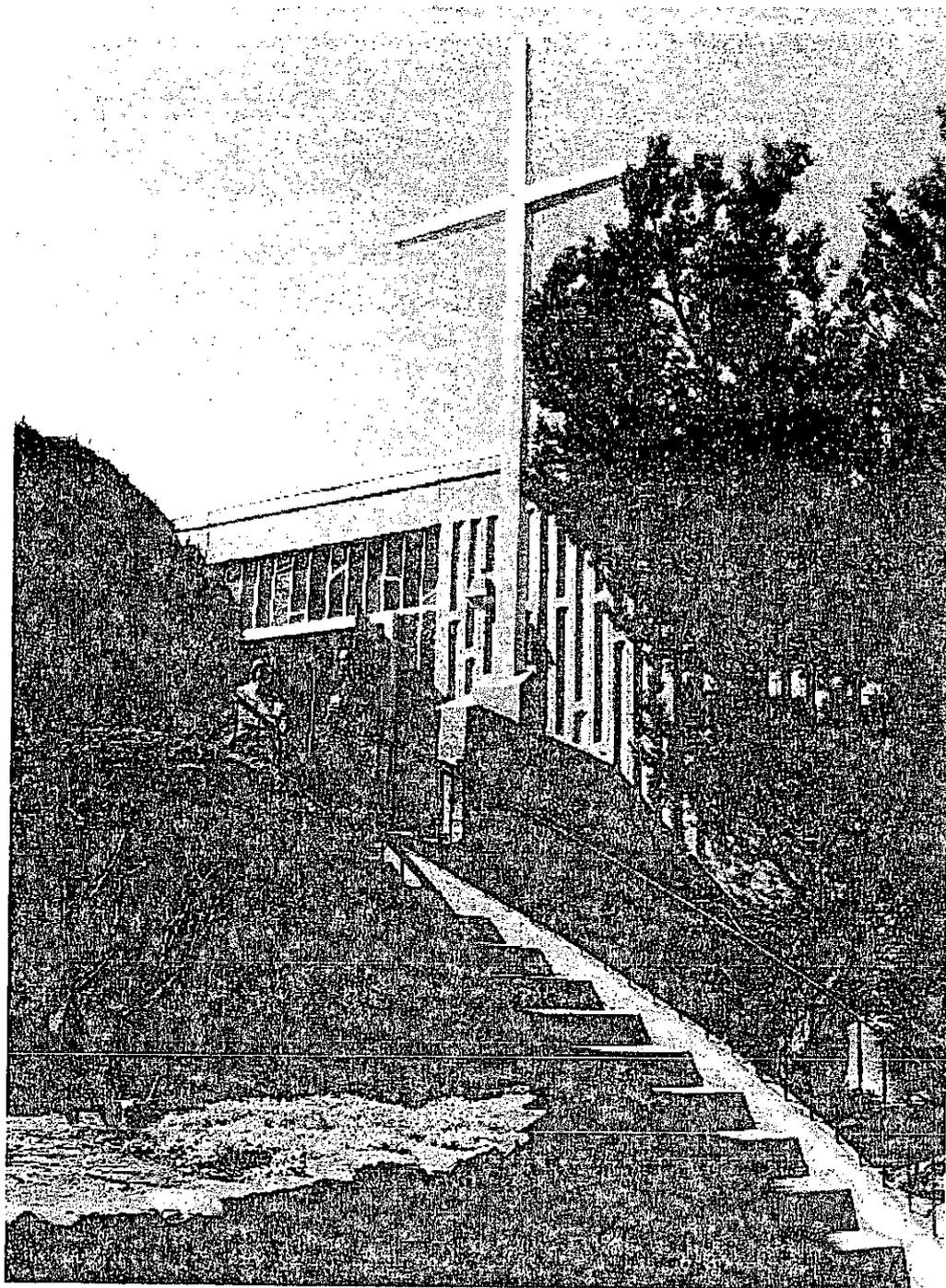
Invoice # 22468  
October 25, 2006  
Page 3

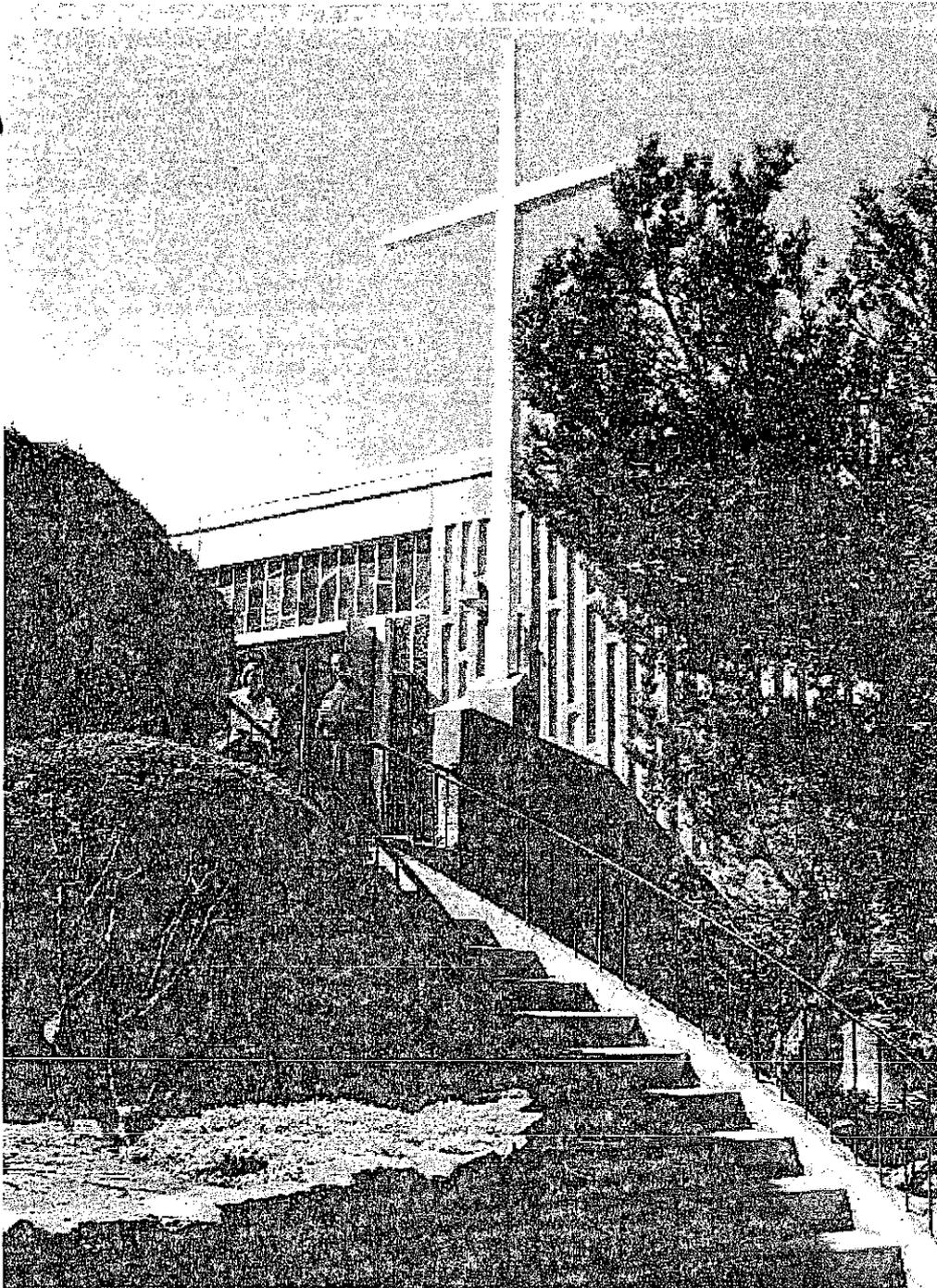
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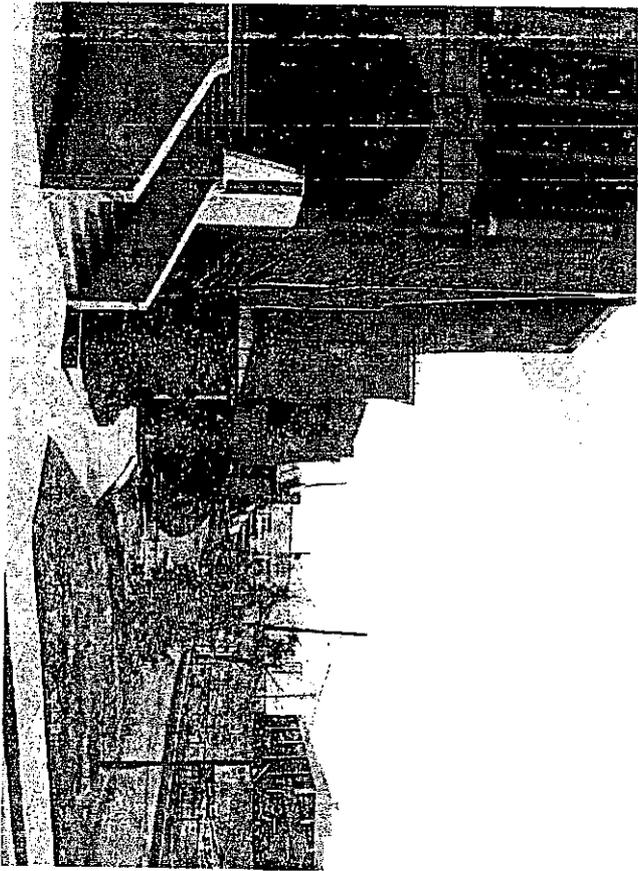
TERMS: Payable 30 days from date of invoice  
unless otherwise governed by contract terms.  
Past due invoices will carry a service charge  
of 1-1/2% per month.

PHOTO  
MARTIN STARRS  
DAN. JAMES

PENGAD 800-831-6989  
EXHIBIT  
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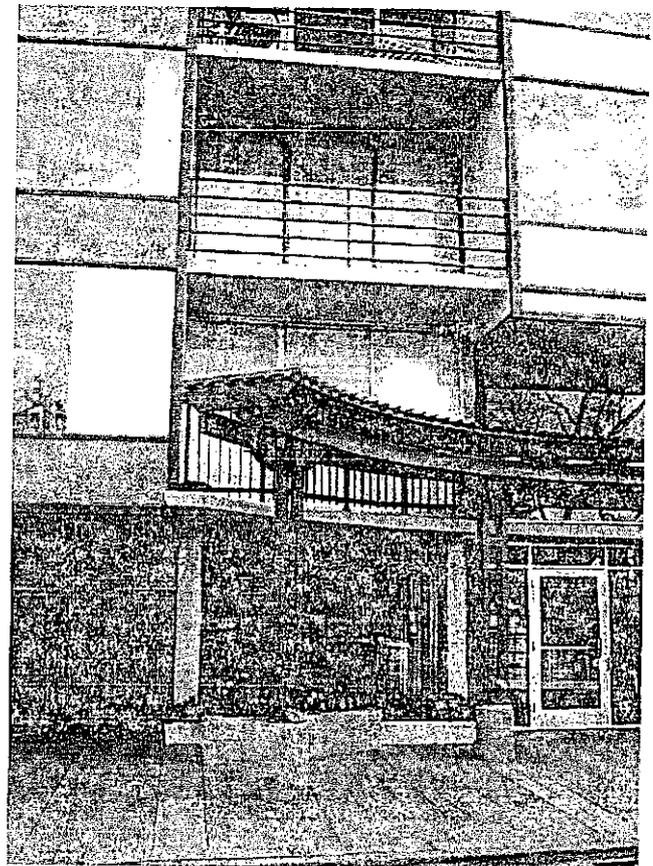


DS10 Reno High-rise/graphic  
initial presentation/

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+ / GRAPHS / SITE PHOTOS  
D3DISUP  
Photos W/R



any other insolvency, bankruptcy or reorganization act; or (c) a receiver is appointed for a substantial part of the assets of either party.

- ss. 1.3.5.4 See the language at ss. 4.6.4 of AIA Form 201.
- ss. 1.3.7.1 This agreement shall be governed by the State of Nevada, without regards to the conflicts of state of operation of the principal architect or it's consultants.
- ss. 1.3.7.6 Unless otherwise provided in this agreement, the architect and the architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or the exposure of persons to hazardous materials or toxic substances in any form at the project site, unless the architect or the architect's consultants specify the use of hazardous materials, that cause the creation of said instance and can be directly attributed to the architect or it's consultants.
- ss. 1.3.7.9 The owner and architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this agreement their partners, successors, assigns and legal representatives of such other party with respect to all covenants of this agreement. The Architect and the Owner shall not assign this agreement without the written consent of the other party, or assignment thereof shall be void. The owner may assign this agreement to any party, provided that such assignment shall not materially prejudice the Architect and also with the written consent of the Architect. The architect shall execute all consents reasonably required to facilitate such assignment.
- ss. 1.5 Section 1.5 – The abbreviated terms used in the first paragraph are as follows:
- Schematic Design (Includes City of Reno Entitlements Process)
  - Design Development
  - Construction Documents
  - Construction Administration
- The definitions can be found in the American Institute of Architect's Handbook of Professional Practice, Volume 2, Sections 3.6 Design Services, 3.7 Design Parameters, 3.8 Design Documentation, and 3.9 Construction Related Services. Copies of these sections shall be provided upon request.
- ss. 1.5.1 Replace ' \$160,000,000' with approximately '\$180,000,000'.

ss. 1.5.1

All existing text in this section shall remain with the addition of the following:

In the event that the Owner chooses not to proceed with construction of the project, the fees associated with retaining said entitlements will be paid as incurred in the due course of the project and will be applied to aforementioned budgets as defined in the architects scope of work and estimated value.

ss. 1.5.9

The extent of the work as defined by this agreement is estimated at thirty two months (32) from the effective date of this agreement. If through no fault of either party, the time frame is extended beyond the 32 months, then neither party Owner nor Architect, shall be held liable for additional sums or compensation. The architectural work product as defined to obtain the required entitlements and the respective budgets will remain as fact without respect to an estimated time line.

ss. 2.4.1

All existing text in this section shall remain with the addition of the following:

In this case, normal structural, mechanical and electrical services mean that the consultants are contracted to the Architect and no extravagant systems are required by the Owner which would trigger an increase in consultants fees as well as Architects. Currently the MEP work will be done as a modified design build process.

Agreed this Day, 21 day of April, 2006.

BSC Financial, V.L.C.

Owner: [Signature], Title Mgr.  
Signature

Mark B. Steppan, AIA, CSI, NCARB

Architect: [Signature]  
Signature


**AIA** Document B141™ – 1997 Part 2

**Standard Form of Architect's Services:  
Design and Contract Administration**

## TABLE OF ARTICLES

- 2.1 PROJECT ADMINISTRATION SERVICES
- 2.2 SUPPORTING SERVICES
- 2.3 EVALUATION AND PLANNING SERVICES
- 2.4 DESIGN SERVICES
- 2.5 CONSTRUCTION PROCUREMENT SERVICES
- 2.6 CONTRACT ADMINISTRATION SERVICES
- 2.7 FACILITY OPERATION SERVICES
- 2.8 SCHEDULE OF SERVICES
- 2.9 MODIFICATIONS

**ARTICLE 2.1 PROJECT ADMINISTRATION SERVICES**

§ 2.1.1 The Architect shall manage the Architect's services and administer the Project. The Architect shall consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and issue progress reports. The Architect shall coordinate the services provided by the Architect and the Architect's consultants with those services provided by the Owner and the Owner's consultants.

§ 2.1.2 When Project requirements have been sufficiently identified, the Architect shall prepare, and periodically update, a Project schedule that shall identify milestone dates for decisions required of the Owner, design services furnished by the Architect, completion of documentation provided by the Architect, commencement of construction and Substantial Completion of the Work.

§ 2.1.3 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

§ 2.1.4 Upon request of the Owner, the Architect shall make a presentation to explain the design of the Project to representatives of the Owner.

§ 2.1.5 The Architect shall submit design documents to the Owner at intervals appropriate to the design process for purposes of evaluation and approval by the Owner. The Architect shall be entitled to rely on approvals received from the Owner in the further development of the design.

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

**ADDITIONS AND DELETIONS:**

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

This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

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### § 2.1.7 EVALUATION OF BUDGET AND COST OF THE WORK

§ 2.1.7.1 The Owner or Contractor shall provide cost planning, estimating and construction schedule information during the design and construction of the project.

### ARTICLE 2.3 EVALUATION AND PLANNING SERVICES

§ 2.3.1 The Architect shall provide a preliminary evaluation of the information furnished by the Owner under this Agreement, including the Owner's program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The Architect shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the Owner of any other information or consultant services that may be reasonably needed for the Project.

§ 2.3.2 The Architect shall provide a preliminary evaluation of the Owner's site for the Project based on the information provided by the Owner of site conditions, and the Owner's program, schedule and budget for the Cost of the Work.

§ 2.3.3 The Architect shall review the Owner's proposed method of contracting for construction services and shall notify the Owner of anticipated impacts that such method may have on the Owner's program, financial and time requirements, and the scope of the Project.

### ARTICLE 2.4 DESIGN SERVICES

§ 2.4.1 The Architect's design services shall include normal structural, mechanical and electrical engineering services. See Article 1.1.3.5 for additional consultants.

#### § 2.4.2 SCHEMATIC DESIGN DOCUMENTS

§ 2.4.2.1 The Architect shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the Architect's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

#### § 2.4.3 DESIGN DEVELOPMENT DOCUMENTS

§ 2.4.3.1 The Architect shall provide Design Development Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels.

#### § 2.4.4 CONSTRUCTION DOCUMENTS

§ 2.4.4.1 The Architect shall provide Construction Documents based on the approved Design Development Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

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

### ARTICLE 2.5 CONSTRUCTION PROCUREMENT SERVICES

§ 2.5.1 The Architect shall assist the Owner in obtaining either competitive bids or negotiated proposals and shall assist the Owner in awarding and preparing contracts for construction.

§ 2.5.2 The Architect shall assist the Owner in establishing a list of prospective bidders or contractors.

*(Paragraph deleted)*

#### § 2.5.4 COMPETITIVE BIDDING

§ 2.5.4.1 Bidding Documents shall consist of bidding requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.

*(Paragraph deleted)*

#### § 2.5.5 NEGOTIATED PROPOSALS

§ 2.5.5.1 Proposal Documents shall consist of proposal requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.

§ 2.5.5.2 If requested by the Owner, the Architect shall arrange for procuring the reproduction of Proposal Documents for distribution to prospective contractors. The Owner shall pay directly for the cost of reproduction or shall reimburse the Architect for such expenses.

*(Paragraph deleted)*

### ARTICLE 2.6 CONTRACT ADMINISTRATION SERVICES

#### § 2.6.1 GENERAL ADMINISTRATION

§ 2.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.

§ 2.6.1.2 The Architect's responsibility to provide the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment. However, the Architect shall be entitled to a Change in Services in accordance with Section 2.8.2 when Contract Administration Services extend 60 days after the date of Substantial Completion of the Work.

§ 2.6.1.3 The Architect shall be a representative of and shall advise and consult with the Owner during the provision of the Contract Administration Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

§ 2.6.1.4 Duties, responsibilities and limitations of authority of the Architect under this Article 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent will not be unreasonably withheld.

§ 2.6.1.5 The Architect shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.

§ 2.6.1.6 If deemed appropriate by the Architect, the Architect shall on the Owner's behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.

§ 2.6.1.7 The Architect shall interpret and recommend matters concerning performance of the Owner and Contractor 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.

§ 2.6.1.8 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 initial 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 the results of interpretations or decisions so rendered in good faith.

§ 2.6.1.9 The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

#### § 2.6.2 EVALUATIONS OF THE WORK

§ 2.6.2.1 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect in Article 2.8, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 2.6.2.2 The Architect shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 2.6.2.3 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

§ 2.6.2.4 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 2.6.2.5 The Architect shall recommend to the owner the rejection of any Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall recommend to the owner the 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. The Architect retains the right to immediately reject and halt any Work that is deemed to be hazardous, in violation of code, or otherwise involving a health or safety issue that jeopardizes workers or the public at large.

#### § 2.6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

§ 2.6.3.1 The Architect shall review and recommend the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 2.6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, 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

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

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

§ 2.6.3.3 The Architect shall maintain a record of the Contractor's Applications for Payment.

#### § 2.6.4 SUBMITTALS

§ 2.6.4.1 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. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. 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.

§ 2.6.4.2 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.

§ 2.6.4.3 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

#### § 2.6.5 CHANGES IN THE WORK

§ 2.6.5.1 The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Section 2.8.2.

§ 2.6.5.2 The Architect shall review properly prepared, timely requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

§ 2.6.5.3 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the

Architect. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

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

#### § 2.6.6 PROJECT COMPLETION

§ 2.6.6.1 The Architect shall conduct site reviews to determine the date or dates of Substantial Completion and the date of final completion, shall 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 shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 2.6.6.2 The Architect's site review shall be conducted with the Owner's Designated Representative 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.

§ 2.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

§ 2.6.6.4 The Architect shall receive from the Contractor and forward to the Owner: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens.

#### ARTICLE 2.7 FACILITY OPERATION SERVICES

§ 2.7.1 The Architect shall meet with the Owner or the Owner's Designated Representative promptly after Substantial Completion to review the need for facility operation services.

§ 2.7.2 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall conduct a meeting with the Owner and the Owner's Designated Representative to review the facility operations and performance and to make appropriate recommendations to the Owner.

#### ARTICLE 2.8 SCHEDULE OF SERVICES

§ 2.8.1 Design and Contract Administration Services beyond the following limits shall be provided by the Architect as a Change in Services in accordance with Section 1.3.3:

- 1 up to Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor;
- 2 up to One ( 1 ) visit per week to the site by the Architect over the duration of the Project during construction.
- 3 up to One ( 1 ) site review for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.
- 4 up to One ( 1 ) site review for any portion of the Work to determine final completion.

§ 2.8.2 The following Design and Contract Administration Services shall be provided by the Architect as a Change in Services in accordance with Section 1.3.3:

- 1 review of a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- 2 responses to the Contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- 3 Change Orders and Construction Change Directives requiring evaluation of proposals, including the preparation or revision of Instruments of Service;
- 4 providing consultation concerning replacement of Work resulting from fire or other cause during construction;
- 5 evaluation of an extensive number of claims submitted by the Owner's consultants, the Contractor or others in connection with the Work;

- .6 evaluation of substitutions proposed by the Owner's consultants or contractors and making subsequent revisions to Instruments of Service resulting therefrom;
- .7 preparation of design and documentation for alternate bid or proposal requests proposed by the Owner; or
- .8 Contract Administration Services provided 60 days after the date of Substantial Completion of the Work.
- .9 Construction Administration over 24 months.

§ 2.8.3 The Architect shall furnish or provide the following services only if specifically designated:

Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description
.1	Programming	O
.2	Land Survey Services	O
.3	Geotechnical Services	O
.4	Space Schematics/Flow Diagrams	A
.5	Existing Facilities Surveys	NP
.6	Economic Feasibility Studies	O
.7	Site Analysis and Selection	NP
.8	Environmental Studies and Reports	O
.9	Owner-Supplied Data Coordination	A
.10	Schedule Development and Monitoring	O
.11	Civil Design	O
.12	Landscape Design	A
.13	Interior Design	O
.14	Special Bidding or Negotiation	NP
.15	Value Analysis	O
.16	Detailed Cost Estimating	O
.17	On-Site Project Representation	NP
.18	Construction Management	O
.19	Start-up Assistance	NP
.20	Record Drawings	NP
.21	Post-Contract Evaluation	NP
.22	Tenant-Related Services	NP
.23		
.24		
.25		

Description of Services.

(Insert descriptions of the services designated.)

**ARTICLE 2.9 MODIFICATIONS**

§ 2.9.1 Modifications to this Standard Form of Architect's Services: Design and Contract Administration, if any, are as follows:

Architect and Consultants Errors and Omissions requirements shall be amended into this Standard Form of Architect's Services Agreement to be determined later by mutual agreement.

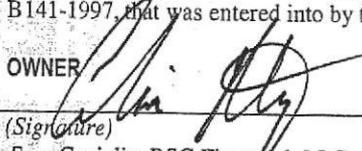
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By its execution, this Standard Form of Architect's Services: Design and Contract Administration and modifications hereto are incorporated into the Standard Form of Agreement Between the Owner and Architect, AIA Document B141-1997, that was entered into by the parties as of the date: October 31, 2005

OWNER

  
(Signature)

Sam Caniglia, BSC Financial, LLC

(Printed name and title)

ARCHITECT

  
(Signature)

Mark Steppan, AIA, CSI, NCARB

(Printed name and title)

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**Addendum: No.1 Contractual Changes to AIA B141 Standard Agreement between Owner and Architect.**

AIA Contract Review between BSC Financial, LLC and Mark B. Steppan, AIA and Fisher Friedman Associates, Design Consultants

The following Addendum has been assembled to provide clarification of specific contractual items as specified in the attached standard AIA agreement. Terms and conditions provided herein shall be accepted as the substitution or in addition to and shall be in effect, and shall take precedence over items as specified in the attached standard AIA agreement.

Both parties are aware of this Contract Addendum and do hereby elect and agree to said terms and conditions as stated below.

- ss.1.1.2.1 The project is to create an urban mixed use high rise residential development with approximately 499 living units for BSC Financial, LLC.
- ss. 1.1.2.3 To obtain entitlements and approvals for the property and proposed buildings as shown in exhibit B as attached to the AIA B141 agreement as part of the design services in the Schematic Design/Entitlements Phase.
- ss. 1.1.2.5.2 Replace ' \$160,000,000' with approximately '\$180,000,000'.
- ss. 1.3.2.2 Replace text to read beginning with the sentence 'If and upon' as follows:  
If and upon the date the Architect is adjudged in default of this Agreement, or upon any default by the Architect, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license, including Architects consent, permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

Either party to this agreement shall be deemed in default if: (a) Either party fails to keep or perform any of the terms, obligations covenants, agreements or conditions contained herein, and such default continues of a period to thirty (30) days after notice by either party or beyond the time reasonably necessary for cure if such default is of a nature to require in excess of thirty (30) days to remedy; (b) Either party shall become bankrupt or insolvent or make a transfer in defraud of creditors, or make an assignment for the benefit of creditors, or be the subject of any proceedings of any kind under any provisions of the Federal Bankruptcy Act or under

any other insolvency, bankruptcy or reorganization act; or (c) a receiver is appointed for a substantial part of the assets of either party.

- ss. 1.3.5.4 See the language at ss. 4.6.4 of AIA Form 201.
- ss. 1.3.7.1 This agreement shall be governed by the State of Nevada, without regards to the conflicts of state of operation of the principal architect or it's consultants.
- ss. 1.3.7.6 Unless otherwise provided in this agreement, the architect and the architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or the exposure of persons to hazardous materials or toxic substances in any form at the project site, unless the architect or the architect's consultants specify the use of hazardous materials, that cause the creation of said instance and can be directly attributed to the architect or it's consultants.
- ss. 1.3.7.9 The owner and architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this agreement their partners, successors, assigns and legal representatives of such other party with respect to all covenants of this agreement. The Architect and the Owner shall not assign this agreement without the written consent of the other party, or assignment thereof shall be void. The owner may assign this agreement to any party, provided that such assignment shall not materially prejudice the Architect and also with the written consent of the Architect. The architect shall execute all consents reasonably required to facilitate such assignment.

ss. 1.5 Section 1.5 – The abbreviated terms used in the first paragraph are as follows:

- Schematic Design (Includes City of Reno Entitlements Process)
- Design Development
- Construction Documents
- Construction Administration

The definitions can be found in the American Institute of Architect's Handbook of Professional Practice, Volume 2, Sections 3.6 Design Services, 3.7 Design Parameters, 3.8 Design Documentation, and 3.9 Construction Related Services. Copies of these sections shall be provided upon request.

ss. 1.5.1 Replace ' \$160,000,000' with approximately '\$180,000,000'.

ss. 1.5.1

All existing text in this section shall remain with the addition of the following:

In the event that the Owner chooses not to proceed with construction of the project, the fees associated with retaining said entitlements will be paid as incurred in the due course of the project and will be applied to aforementioned budgets as defined in the architects scope of work and estimated value.

ss. 1.5.9

The extent of the work as defined by this agreement is estimated at thirty two months (32) from the effective date of this agreement. If through no fault of either party, the time frame is extended beyond the 32 months, then neither party Owner nor Architect, shall be held liable for additional sums or compensation. The architectural work product as defined to obtain the required entitlements and the respective budgets will remain as fact without respect to an estimated time line.

ss. 2.4.1

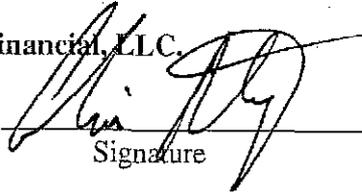
All existing text in this section shall remain with the addition of the following:

In this case, normal structural, mechanical and electrical services mean that the consultants are contracted to the Architect and no extravagant systems are required by the Owner which would trigger an increase in consultants fees as well as Architects. Currently the MEP work will be done as a modified design build process.

Agreed this Day, 21 day of April, 2006.

BSC Financial, LLC.

Owner:



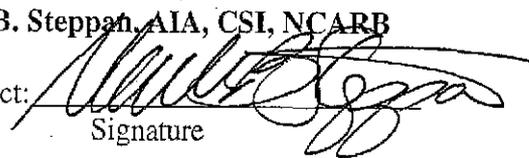
Signature

Title

Mgr.

Mark B. Steppan, AIA, CSI, NCARB

Architect:



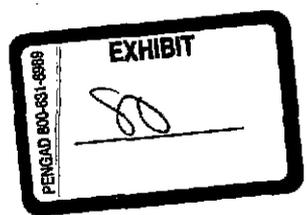
Signature

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# AIA Document B141™ – 1997 Part 1

## Standard Form of Agreement Between Owner and Architect with Standard Form of Architect's Services

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FISHER FRIEDMAN ASSOCIATES

### TABLE OF ARTICLES

- 1.1 INITIAL INFORMATION
- 1.2 RESPONSIBILITIES OF THE PARTIES
- 1.3 TERMS AND CONDITIONS
- 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS
- 1.5 COMPENSATION

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

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

**AGREEMENT** made as of the Thirty-first day of October in the year Two Thousand and Five  
(In words, indicate day, month and year)

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

BSC Financial, LLC, Limited Liability Company  
c/o Consolidated Pacific Development Inc.  
932 Parker Street  
Berkeley, CA 94710  
Telephone Number: 510.548.6093  
Fax Number: 510.548.6164

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

Mark B. Steppan, AIA, CSI, NCARB  
1485 Park Avenue, #103  
Emeryville, CA 94608  
Telephone Number: 510.420.1666  
Fax Number: 510.420.0599

For the following Project:  
(Include detailed description of Project)

Residential Project Reno, Nevada  
Site bounded by North Arlington Avenue, Island Avenue and Court Street in Reno, Nevada.  
A mixed-use development including for-sale residential, retail and parking. Approximately 400 residential units, landscaped podium, and indoor pool are anticipated in two Type I construction high-rise towers. The estimated project's gross square footage is one million square feet.

The Owner and Architect agree as follows:

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Date	10/1/06	# of pages	27
From	NATHAN / RODNEY		
Co.	FFA		
Phone #	910 420 1666		
Fax #	775 324 6173		

**ARTICLE 1.1 INITIAL INFORMATION**

§ 1.1.1 This Agreement is based on the following information and assumptions.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

**§ 1.1.2 PROJECT PARAMETERS**

§ 1.1.2.1 The objective or use is:

*(Identify or describe, if appropriate, proposed use or goals.)*

To create an urban mixed use residential development with approximately 400 living units for a private developer

§ 1.1.2.2 The physical parameters are:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports about the site.)*

The site is approximately 1.42 acres bounded by North Arlington Avenue, Island Avenue and Court Street next to the Truckee River in Reno, Nevada.

§ 1.1.2.3 The Owner's Program is:

*(Identify documentation or state the manner in which the program will be developed.)*

As outlined in Exhibit B.

§ 1.1.2.4 The legal parameters are:

*(Identify pertinent legal information, including, if appropriate, land surveys and legal descriptions and restrictions of the site.)*

The site is approximately 1.42 acres bounded by North Arlington Avenue, Island Avenue and Court Street next to the Truckee River in Reno, Nevada. No unusual geotechnical, utility or other subsurface issues are known. The site includes the following parcels: Parcel 1 APN-011-112-03, Parcel 2 APN-011-112-06, Parcel 3 APN-011-112-07 & APN-011-112-12.

§ 1.1.2.5 The financial parameters are as follows.

- .1 Amount of the Owner's overall budget for the Project, including the Architect's compensation, is: unknown at time of execution of this Agreement
- .2 Amount of the Owner's budget for the Cost of the Work, excluding the Architect's compensation, is: Total construction cost is estimated to be approximately \$160,000,000 including contractors profit and overhead.

§ 1.1.2.6 The time parameters are:

*(Identify, if appropriate, milestone dates, durations or fast track scheduling.)*

Approximately 32 months from authorization to proceed with design through completion of construction and assuming that entitlements run concurrent with design.

§ 1.1.2.7 The proposed procurement or delivery method for the Project is:

*(Identify method such as competitive bid, negotiated contract, or construction management.)*

Negotiated contract to be determined later by mutual agreement

§ 1.1.2.8 Other parameters are:

*(Identify special characteristics or needs of the Project such as energy, environmental or historic preservation requirements.)*

To be determined later by mutual agreement

**§ 1.1.3 PROJECT TEAM**

**§ 1.1.3.1** The Owner's Designated Representative is:  
(List name, address and other information.)

Sam Caniglia, BSC Financial, LLC

**§ 1.1.3.2** The persons or entities, in addition to the Owner's Designated Representative, who are required to review the Architect's submittals to the Owner are:  
(List name, address and other information.)

Sam Caniglia BSC Financial, LLC

**§ 1.1.3.3** The Owner's other consultants and contractors are:  
(List discipline and, if known, identify them by name and address.)

Construction Project Manager, Survey, Civil, Geotechnical, Title 24, Lighting, Interior Design, Tele/Data, Wind Analysis, Window Washing, Cost Estimation, Audio/Visual, Graphics, Hardware, Security, Parking/Traffic, Special Cladding/Curtain Wall, Fire Protection and any other to be determined later by mutual agreement

**§ 1.1.3.4** The Architect's Designated Representative is:  
(List name, address and other information.)

Mark Steppan  
1485 Park Avenue, #103  
Emeryville, CA 94608

**§ 1.1.3.5** The consultants retained at the Architect's expense are:  
(List discipline and, if known, identify them by name and address.)

Landscape, Structural, Mechanical, Electrical, Plumbing, Acoustics, Waterproofing, Code, Elevator, Specifications, Cladding/Curtain Wall/Waterproofing System

**§ 1.1.4** Other important initial information is:

**§ 1.1.5** When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be the edition of AIA Document A201 current as of the date of this Agreement, or as follows:

**§ 1.1.6** The information contained in this Article 1.1 may be reasonably relied upon by the Owner and Architect in determining the Architect's compensation. Both parties, however, recognize that such information may change and, in that event, the Owner and the Architect shall negotiate appropriate adjustments in schedule, compensation and Change in Services in accordance with Section 1.3.3.

**ARTICLE 1.2 RESPONSIBILITIES OF THE PARTIES**

**§ 1.2.1** The Owner and the Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project team.

**§ 1.2.2 OWNER**

**§ 1.2.2.1** Unless otherwise provided under this Agreement, the Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project. The Owner shall furnish to the Architect, within

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User Notes:

(112287728)

15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 1.2.2.2 The Owner shall periodically update the budget for the Project, including that portion allocated for the Cost of the Work. The Owner shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of the Architect to a corresponding change in the Project scope and quality.

§ 1.2.2.3 The Owner's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Owner's behalf with respect to the Project. The Owner or the Owner's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 1.2.2.4 The Owner shall furnish the services of consultants other than those designated in Section 1.1.3 or authorize the Architect to furnish them as a Change in Services when such services are requested by the Architect and are reasonably required by the scope of the Project.

§ 1.2.2.5 Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

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

### § 1.2.3 ARCHITECT

§ 1.2.3.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Article 1.4.

§ 1.2.3.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in Section 1.1.2.6 and which shall be adjusted, if necessary, as the Project proceeds. This 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. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

§ 1.2.3.3 The Architect's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Architect's behalf with respect to the Project.

§ 1.2.3.4 The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

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

§ 1.2.3.6 The Architect shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

§ 1.2.3.7 The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information.

#### ARTICLE 1.3 TERMS AND CONDITIONS

##### § 1.3.1 COST OF THE WORK

§ 1.3.1.1 The Cost of the Work shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

§ 1.3.1.2 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

§ 1.3.1.3 The Cost of the Work does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

##### § 1.3.2 INSTRUMENTS OF SERVICE

§ 1.3.2.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

§ 1.3.2.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

§ 1.3.2.3 Except for the licenses granted in Section 1.3.2.2, 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, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Section 1.3.2.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Owner shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner obtains the prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 1.3.2.4 Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

### § 1.3.3 CHANGE IN SERVICES

§ 1.3.3.1 Change in Services of the Architect, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the Architect's control, or if the Architect's services are affected as described in Section 1.3.3.2. In the absence of mutual agreement in writing, the Architect shall notify the Owner prior to providing such services. If the Owner deems that all or a part of such Change in Services is not required, the Owner shall give prompt written notice to the Architect, and the Architect shall have no obligation to provide those services. Except for a change due to the fault of the Architect, Change in Services of the Architect shall entitle the Architect to an adjustment in compensation pursuant to Section 1.5.2, and to any Reimbursable Expenses described in Section 1.3.9.2 and Section 1.5.5.

§ 1.3.3.2 If any of the following circumstances affect the Architect's services for the Project, the Architect shall be entitled to an appropriate adjustment in the Architect's schedule and compensation:

1. change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service;
2. enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;
3. decisions of the Owner not rendered in a timely manner;
4. significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method;
5. failure of performance on the part of the Owner or the Owner's consultants or contractors;
6. preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto;
7. change in the information contained in Article 1.1.

### § 1.3.4 MEDIATION

§ 1.3.4.1 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 arbitration or the institution of legal or equitable proceedings by either party. 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 arbitration.

§ 1.3.4.2 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 in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable 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.

§ 1.3.4.3 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.

### § 1.3.5 ARBITRATION

§ 1.3.5.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Section 1.3.4.

§ 1.3.5.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

§ 1.3.5.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

§ 1.3.5.4 No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

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

#### § 1.3.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Architect and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 1.3.8.

#### § 1.3.7 MISCELLANEOUS PROVISIONS

§ 1.3.7.1 This Agreement shall be governed by the law of the principal place of business of the Architect, unless otherwise provided in Section 1.4.2.

§ 1.3.7.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

§ 1.3.7.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

§ 1.3.7.4 To the extent damages are covered by property insurance during construction, the Owner and the Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

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

§ 1.3.7.6 Unless otherwise provided in this Agreement, the Architect and Architect's consultants 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.

§ 1.3.7.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the 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. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

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

§ 1.3.7.9 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.

### § 1.3.8 TERMINATION OR SUSPENSION

§ 1.3.8.1 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, prior to suspension of services, the Architect shall give seven days' written notice to the Owner. 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 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.

§ 1.3.8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 1.3.8.3 If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 1.3.8.4 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 1.3.8.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 1.3.8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 1.3.8.7.

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

### § 1.3.9 PAYMENTS TO THE ARCHITECT

§ 1.3.9.1 Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Architect's statement of services. No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

§ 1.3.9.2 Reimbursable Expenses are in addition to compensation for the Architect's services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses:

- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4 expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .5 renderings, models and mock-ups requested by the Owner;
- .6 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
- .7 reimbursable expenses as designated in Section 1.5.5;
- .8 other similar direct Project-related expenditures.

§ 1.3.9.3 Records of Reimbursable Expenses, of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

§ 1.3.9.4 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

#### ARTICLE 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS

§ 1.4.1 Enumeration of Parts of the Agreement. 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 comprises the documents listed below.

§ 1.4.1.1 Standard Form of Agreement Between Owner and Architect, AIA Document B141-1997.

§ 1.4.1.2 Standard Form of Architect's Services: Design and Contract Administration, AIA Document B141-1997, or as follows:

*(List other documents, if any, delineating Architect's scope of services.)*

§ 1.4.1.3 Other documents as follows:

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

Exhibit A Master Fee Schedule & Reimbursable Expenses  
Exhibit B Concept Design Plans and Model Images

§ 1.4.2 Special Terms and Conditions. Special terms and conditions that modify this Agreement are as follows:

#### ARTICLE 1.5 COMPENSATION

§ 1.5.1 For the Architect's services as described under Article 1.4, compensation shall be computed as follows:

5.75% of the total construction cost including contractors profit and overhead. Compensation will be billed monthly as a percentage complete of each phase with the following assumptions: SD 20%, DD 22%, CD 40%, Bid/Negotiate 1% & CA 17%.

The Total Construction Cost of the project will be evaluated at the completion of the project in order to determine final payment for basic architectural services. Any amount over the original estimated Total Construction Cost of approximately \$160,000,000 shall be paid for architectural services based on the agreed upon 5.75% fee. Any

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amount under the original estimated Total Construction Cost of approximately \$160,000,000 shall be credited for architectural services based on the agreed upon 5.75% fee. Total Construction Cost is defined but not limited to the final total dollar amount cost for Labor and Materials, Additions to project building scope, Value Additions, Substitutions, Changes, General Conditions, Contractor Insurance and Bonding Provisions, Tests and Inspection Costs and General Contractor's Profit or Fee.

§ 1.5.2 If the services of the Architect are changed as described in Section 1.3.3.1, the Architect's compensation shall be adjusted. Such adjustment shall be calculated as described below or, if no method of adjustment is indicated in this Section 1.5.2, in an equitable manner.

*(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply.)*

See Exhibit A

§ 1.5.3 For a Change in Services of the Architect's consultants, compensation shall be computed as a multiple of One and fifteen hundredths ( 1.15 ) times the amounts billed to the Architect for such services.

§ 1.5.4 For Reimbursable Expenses as described in Section 1.3.9.2, and any other items included in Section 1.5.5 as Reimbursable Expenses, the compensation shall be computed as a multiple of One and fifteen hundredths ( 1.15 ) times the expenses incurred by the Architect, and the Architect's employees and consultants.

§ 1.5.5 Other Reimbursable Expenses, if any, are as follows:

See Exhibit A

§ 1.5.6 The rates and multiples for services of the Architect and the Architect's consultants as set forth in this Agreement shall be adjusted in accordance with their normal salary review practices.

§ 1.5.7 An initial payment of Zero Dollars and Zero Cents ( \$ 0.00 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account at final payment. Subsequent payments for services shall be made monthly, and where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.

§ 1.5.8 Payments are due and payable Fifteen ( 15 ) days from the date of the Architect's invoice. Amounts unpaid Thirty ( 30 ) 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 interest agreed upon.)*

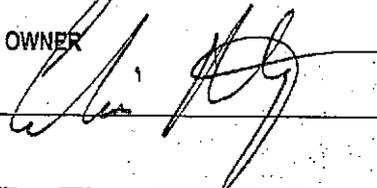
1 & 1/2% monthly

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

§ 1.5.9 If the services covered by this Agreement have not been completed within Thirty-two ( 32 ) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Section 1.5.2.

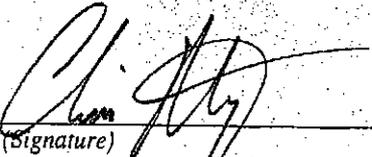
This Agreement entered into as of the day and year first written above.

OWNER



ARCHITECT

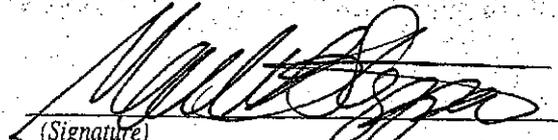
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(Signature)

Sam Caniglia BSC Financial, LLC

(Printed name and title)



(Signature)

Mark Steppan, AIA, CSI, NCARB

(Printed name and title)

**Addendum: No.1 Contractual Changes to AIA B141 Standard Agreement between Owner and Architect.**

AIA Contract Review between BSC Financial, LLC and Mark B. Stepan, AIA and Fisher Friedman Associates, Design Consultants

The following Addendum has been assembled to provide clarification of specific contractual items as specified in the attached standard AIA agreement. Terms and conditions provided herein shall be accepted as the substitution or in addition to and shall be in effect, and shall take precedence over items as specified in the attached standard AIA agreement.

Both parties are aware of this Contract Addendum and do hereby elect and agree to said terms and conditions as stated below.

- ss. 1.1.2.1 The project is to create an urban mixed use high rise residential development with approximately 499 living units for BSC Financial, LLC.
- ss. 1.1.2.3 To obtain entitlements and approvals for the property and proposed buildings as shown in exhibit B as attached to the AIA B141 agreement as part of the design services in the Schematic Design/Entitlements Phase.
- ss. 1.1.2.5.2 Replace ' \$160,000,000' with approximately '\$180,000,000'.
- ss. 1.3.2.2 Replace text to read beginning with the sentence 'If and upon' as follows:  
If and upon the date the Architect is adjudged in default of this Agreement, or upon any default by the Architect, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license, including Architects consent, permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

Either party to this agreement shall be deemed in default if: (a) Either party fails to keep or perform any of the terms, obligations covenants, agreements or conditions contained herein, and such default continues of a period to thirty (30) days after notice by either party or beyond the time reasonably necessary for cure if such default is of a nature to require in excess of thirty (30) days to remedy; (b) Either party shall become bankrupt or insolvent or make a transfer in defraud of creditors, or make an assignment for the benefit of creditors, or be the subject of any proceedings of any kind under any provisions of the Federal Bankruptcy Act or under

any other insolvency, bankruptcy or reorganization act; or (c) a receiver is appointed for a substantial part of the assets of either party.

ss. 1.3.5.4 See the language at ss. 4.6.4 of AIA Form 201.

ss. 1.3.7.1 This agreement shall be governed by the State of Nevada, without regards to the conflicts of state of operation of the principal architect or it's consultants.

ss. 1.3.7.6 Unless otherwise provided in this agreement, the architect and the architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or the exposure of persons to hazardous materials or toxic substances in any form at the project site, unless the architect or the architect's consultants specify the use of hazardous materials, that cause the creation of said instance and can be directly attributed to the architect or it's consultants.

ss. 1.3.7.9 The owner and architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this agreement their partners, successors, assigns and legal representatives of such other party with respect to all covenants of this agreement. The Architect and the Owner shall not assign this agreement without the written consent of the other party, or assignment thereof shall be void. The owner may assign this agreement to any party, provided that such assignment shall not materially prejudice the Architect and also with the written consent of the Architect. The architect shall execute all consents reasonably required to facilitate such assignment.

ss. 1.5 Section 1.5 – The abbreviated terms used in the first paragraph are as follows:

- Schematic Design (Includes City of Reno Entitlements Process)
- Design Development
- Construction Documents
- Construction Administration

The definitions can be found in the American Institute of Architect's Handbook of Professional Practice, Volume 2, Sections 3.6 Design Services, 3.7 Design Parameters, 3.8 Design Documentation, and 3.9 Construction Related Services. Copies of these sections shall be provided upon request.

ss. 1.5.1 Replace ' \$160,000,000' with approximately '\$180,000,000'.

ss. 1.5.1

All existing text in this section shall remain with the addition of the following:

In the event that the Owner chooses not to proceed with construction of the project, the fees associated with retaining said entitlements will be paid as incurred in the due course of the project and will be applied to aforementioned budgets as defined in the architects scope of work and estimated value.

ss. 1.5.9

The extent of the work as defined by this agreement is estimated at thirty two months (32) from the effective date of this agreement. If through no fault of either party, the time frame is extended beyond the 32 months, then neither party Owner nor Architect, shall be held liable for additional sums or compensation. The architectural work product as defined to obtain the required entitlements and the respective budgets will remain as fact without respect to an estimated time line.

ss. 2.4.1

All existing text in this section shall remain with the addition of the following:

In this case, normal structural, mechanical and electrical services mean that the consultants are contracted to the Architect and no extravagant systems are required by the Owner which would trigger an increase in consultants fees as well as Architects. Currently the MEP work will be done as a modified design build process.

Agreed this Day, 21 day of April, 2006.

BSC Financial, LLC.

Owner: [Signature], Title Mgr.  
Signature

Mark B. Steppan, AIA, CSI, NCARB

Architect: [Signature]  
Signature



# AIA<sup>®</sup> Document B141™ – 1997 Part 2

## Standard Form of Architect's Services: Design and Contract Administration

### TABLE OF ARTICLES

- 2.1 PROJECT ADMINISTRATION SERVICES
- 2.2 SUPPORTING SERVICES
- 2.3 EVALUATION AND PLANNING SERVICES
- 2.4 DESIGN SERVICES
- 2.5 CONSTRUCTION PROCUREMENT SERVICES
- 2.6 CONTRACT ADMINISTRATION SERVICES
- 2.7 FACILITY OPERATION SERVICES
- 2.8 SCHEDULE OF SERVICES
- 2.9 MODIFICATIONS

#### ADDITIONS AND DELETIONS:

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

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

#### ARTICLE 2.1 PROJECT ADMINISTRATION SERVICES

§ 2.1.1 The Architect shall manage the Architect's services and administer the Project. The Architect shall consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and issue progress reports. The Architect shall coordinate the services provided by the Architect and the Architect's consultants with those services provided by the Owner and the Owner's consultants.

§ 2.1.2 When Project requirements have been sufficiently identified, the Architect shall prepare, and periodically update, a Project schedule that shall identify milestone dates for decisions required of the Owner, design services furnished by the Architect, completion of documentation provided by the Architect, commencement of construction and Substantial Completion of the Work.

§ 2.1.3 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

§ 2.1.4 Upon request of the Owner, the Architect shall make a presentation to explain the design of the Project to representatives of the Owner.

§ 2.1.5 The Architect shall submit design documents to the Owner at intervals appropriate to the design process for purposes of evaluation and approval by the Owner. The Architect shall be entitled to rely on approvals received from the Owner in the further development of the design.

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

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#### § 2.1.7 EVALUATION OF BUDGET AND COST OF THE WORK

§ 2.1.7.1 The Owner or Contractor shall provide cost planning, estimating and construction schedule information during the design and construction of the project.

#### ARTICLE 2.3 EVALUATION AND PLANNING SERVICES

§ 2.3.1 The Architect shall provide a preliminary evaluation of the information furnished by the Owner under this Agreement, including the Owner's program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The Architect shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the Owner of any other information or consultant services that may be reasonably needed for the Project.

§ 2.3.2 The Architect shall provide a preliminary evaluation of the Owner's site for the Project based on the information provided by the Owner of site conditions, and the Owner's program, schedule and budget for the Cost of the Work.

§ 2.3.3 The Architect shall review the Owner's proposed method of contracting for construction services and shall notify the Owner of anticipated impacts that such method may have on the Owner's program, financial and time requirements, and the scope of the Project.

#### ARTICLE 2.4 DESIGN SERVICES

§ 2.4.1 The Architect's design services shall include normal structural, mechanical and electrical engineering services. See Article 1.1.3.5 for additional consultants.

#### § 2.4.2 SCHEMATIC DESIGN DOCUMENTS

§ 2.4.2.1 The Architect shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the Architect's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

#### § 2.4.3 DESIGN DEVELOPMENT DOCUMENTS

§ 2.4.3.1 The Architect shall provide Design Development Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels.

#### § 2.4.4 CONSTRUCTION DOCUMENTS

§ 2.4.4.1 The Architect shall provide Construction Documents based on the approved Design Development Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

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

#### ARTICLE 2.5 CONSTRUCTION PROCUREMENT SERVICES

§ 2.5.1 The Architect shall assist the Owner in obtaining either competitive bids or negotiated proposals and shall assist the Owner in awarding and preparing contracts for construction.


**AIA** Document B141™ – 1997 Part 1

**Standard Form of Agreement Between Owner and Architect**  
with Standard Form of Architect's Services

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APR 26 2006

FISHER FRIEDMAN ASSOCIATES

## TABLE OF ARTICLES

- 1.1 INITIAL INFORMATION
- 1.2 RESPONSIBILITIES OF THE PARTIES
- 1.3 TERMS AND CONDITIONS
- 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS
- 1.5 COMPENSATION

**AGREEMENT** made as of the Thirty-first day of October in the year Two Thousand and Five

*(In words, indicate day, month and year)*

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

BSC Financial, LLC, Limited Liability Company  
c/o Consolidated Pacific Development Inc.  
932 Parker Street  
Berkeley, CA 94710  
Telephone Number: 510.548.6093  
Fax Number: 510.548.6164

and the Architect:  
*(Name, address and other information)*

Mark B. Steppan, AIA, CSI, NCARB  
1485 Park Avenue, #103  
Emeryville, CA 94608  
Telephone Number: 510.420.1666  
Fax Number: 510.420.0599

For the following Project:  
*(Include detailed description of Project)*

Residential Project Reno, Nevada  
Site bounded by North Arlington Avenue, Island Avenue and Court Street in Reno, Nevada.  
A mixed-use development including for-sale residential, retail and parking. Approximately 400 residential units, landscaped podium, and indoor pool are anticipated in two Type I construction high-rise towers. The estimated project's gross square footage is one million square feet.

The Owner and Architect agree as follows:

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



**ARTICLE 1.1 INITIAL INFORMATION**

§ 1.1.1 This Agreement is based on the following information and assumptions.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

**§ 1.1.2 PROJECT PARAMETERS**

§ 1.1.2.1 The objective or use is:

*(Identify or describe, if appropriate, proposed use or goals.)*

To create an urban mixed use residential development with approximately 400 living units for a private developer

§ 1.1.2.2 The physical parameters are:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports about the site.)*

The site is approximately 1.42 acres bounded by North Arlington Avenue, Island Avenue and Court Street next to the Truckee River in Reno, Nevada.

§ 1.1.2.3 The Owner's Program is:

*(Identify documentation or state the manner in which the program will be developed.)*

As outlined in Exhibit B.

§ 1.1.2.4 The legal parameters are:

*(Identify pertinent legal information, including, if appropriate, land surveys and legal descriptions and restrictions of the site.)*

The site is approximately 1.42 acres bounded by North Arlington Avenue, Island Avenue and Court Street next to the Truckee River in Reno, Nevada. No unusual geotechnical, utility or other subsurface issues are known. The site includes the following parcels: Parcel 1 APN-011-112-03, Parcel 2 APN-011-112-06, Parcel 3 APN-011-112-07 & APN-011-112-12.

§ 1.1.2.5 The financial parameters are as follows.

- 1 Amount of the Owner's overall budget for the Project, including the Architect's compensation, is: unknown at time of execution of this Agreement
- 2 Amount of the Owner's budget for the Cost of the Work, excluding the Architect's compensation, is: Total construction cost is estimated to be approximately \$160,000,000 including contractors profit and overhead.

§ 1.1.2.6 The time parameters are:

*(Identify, if appropriate, milestone dates, durations or fast track scheduling.)*

Approximately 32 months from authorization to proceed with design through completion of construction and assuming that entitlements run concurrent with design.

§ 1.1.2.7 The proposed procurement or delivery method for the Project is:

*(Identify method such as competitive bid, negotiated contract, or construction management.)*

Negotiated contract to be determined later by mutual agreement

§ 1.1.2.8 Other parameters are:

*(Identify special characteristics or needs of the Project such as energy, environmental or historic preservation requirements.)*

To be determined later by mutual agreement

**§ 1.1.3 PROJECT TEAM**

**§ 1.1.3.1** The Owner's Designated Representative is:  
*(List name, address and other information.)*

| Sam Caniglia, BSC Financial, LLC

**§ 1.1.3.2** The persons or entities, in addition to the Owner's Designated Representative, who are required to review the Architect's submittals to the Owner are:  
*(List name, address and other information.)*

| Sam Caniglia BSC Financial, LLC

**§ 1.1.3.3** The Owner's other consultants and contractors are:  
*(List discipline and, if known, identify them by name and address.)*

| Construction Project Manager, Survey, Civil, Geotechnical, Title 24, Lighting, Interior Design, Tele/Data, Wind Analysis, Window Washing, Cost Estimation, Audio/Visual, Graphics, Hardware, Security, Parking/Traffic, Special Cladding/Curtain Wall, Fire Protection and any other to be determined later by mutual agreement

**§ 1.1.3.4** The Architect's Designated Representative is:  
*(List name, address and other information.)*

| Mark Steppan  
1485 Park Avenue, #103  
Emeryville, CA 94608

**§ 1.1.3.5** The consultants retained at the Architect's expense are:  
*(List discipline and, if known, identify them by name and address.)*

| Landscape, Structural, Mechanical, Electrical, Plumbing, Acoustics, Waterproofing, Code, Elevator, Specifications, Cladding/Curtain Wall/Waterproofing System

**§ 1.1.4** Other important initial information is:

**§ 1.1.5** When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be the edition of AIA Document A201 current as of the date of this Agreement, or as follows:

**§ 1.1.6** The information contained in this Article 1.1 may be reasonably relied upon by the Owner and Architect in determining the Architect's compensation. Both parties, however, recognize that such information may change and, in that event, the Owner and the Architect shall negotiate appropriate adjustments in schedule, compensation and Change in Services in accordance with Section 1.3.3.

**ARTICLE 1.2 RESPONSIBILITIES OF THE PARTIES**

**§ 1.2.1** The Owner and the Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project team.

**§ 1.2.2 OWNER**

**§ 1.2.2.1** Unless otherwise provided under this Agreement, the Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project. The Owner shall furnish to the Architect, within

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15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 1.2.2.2 The Owner shall periodically update the budget for the Project, including that portion allocated for the Cost of the Work. The Owner shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of the Architect to a corresponding change in the Project scope and quality.

§ 1.2.2.3 The Owner's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Owner's behalf with respect to the Project. The Owner or the Owner's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 1.2.2.4 The Owner shall furnish the services of consultants other than those designated in Section 1.1.3 or authorize the Architect to furnish them as a Change in Services when such services are requested by the Architect and are reasonably required by the scope of the Project.

§ 1.2.2.5 Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

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

### § 1.2.3 ARCHITECT

§ 1.2.3.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Article 1.4.

§ 1.2.3.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in Section 1.1.2.6 and which shall be adjusted, if necessary, as the Project proceeds. This 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. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

§ 1.2.3.3 The Architect's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Architect's behalf with respect to the Project.

§ 1.2.3.4 The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

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

§ 1.2.3.6 The Architect shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

§ 1.2.3.7 The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information.

#### ARTICLE 1.3 TERMS AND CONDITIONS

##### § 1.3.1 COST OF THE WORK

§ 1.3.1.1 The Cost of the Work shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

§ 1.3.1.2 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

§ 1.3.1.3 The Cost of the Work does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

##### § 1.3.2 INSTRUMENTS OF SERVICE

§ 1.3.2.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

§ 1.3.2.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

§ 1.3.2.3 Except for the licenses granted in Section 1.3.2.2, 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, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Section 1.3.2.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Owner shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner obtains the prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 1.3.2.4 Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

### § 1.3.3 CHANGE IN SERVICES

§ 1.3.3.1 Change in Services of the Architect, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the Architect's control, or if the Architect's services are affected as described in Section 1.3.3.2. In the absence of mutual agreement in writing, the Architect shall notify the Owner prior to providing such services. If the Owner deems that all or a part of such Change in Services is not required, the Owner shall give prompt written notice to the Architect, and the Architect shall have no obligation to provide those services. Except for a change due to the fault of the Architect, Change in Services of the Architect shall entitle the Architect to an adjustment in compensation pursuant to Section 1.5.2, and to any Reimbursable Expenses described in Section 1.3.9.2 and Section 1.5.5.

§ 1.3.3.2 If any of the following circumstances affect the Architect's services for the Project, the Architect shall be entitled to an appropriate adjustment in the Architect's schedule and compensation:

- .1 change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service;
- .2 enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;
- .3 decisions of the Owner not rendered in a timely manner;
- .4 significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method;
- .5 failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto;
- .7 change in the information contained in Article 1.1.

### § 1.3.4 MEDIATION

§ 1.3.4.1 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 arbitration or the institution of legal or equitable proceedings by either party. 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 arbitration.

§ 1.3.4.2 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 in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable 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.

§ 1.3.4.3 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.

### § 1.3.5 ARBITRATION

§ 1.3.5.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Section 1.3.4.

§ 1.3.5.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

§ 1.3.5.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

§ 1.3.5.4 No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

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

#### § 1.3.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Architect and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 1.3.8.

#### § 1.3.7 MISCELLANEOUS PROVISIONS

§ 1.3.7.1 This Agreement shall be governed by the law of the principal place of business of the Architect, unless otherwise provided in Section 1.4.2.

§ 1.3.7.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

§ 1.3.7.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

§ 1.3.7.4 To the extent damages are covered by property insurance during construction, the Owner and the Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

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

§ 1.3.7.6 Unless otherwise provided in this Agreement, the Architect and Architect's consultants 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.

§ 1.3.7.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the 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. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

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

§ 1.3.7.9 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.

#### § 1.3.8 TERMINATION OR SUSPENSION

§ 1.3.8.1 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, prior to suspension of services, the Architect shall give seven days' written notice to the Owner. 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 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.

§ 1.3.8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 1.3.8.3 If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 1.3.8.4 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 1.3.8.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 1.3.8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 1.3.8.7.

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

#### § 1.3.9 PAYMENTS TO THE ARCHITECT

§ 1.3.9.1 Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Architect's statement of services. No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

§ 1.3.9.2 Reimbursable Expenses are in addition to compensation for the Architect's services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses:

- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4 expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .5 renderings, models and mock-ups requested by the Owner;
- .6 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
- .7 reimbursable expenses as designated in Section 1.5.5;
- .8 other similar direct Project-related expenditures.

§ 1.3.9.3 Records of Reimbursable Expenses, of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

§ 1.3.9.4 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

#### ARTICLE 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS

§ 1.4.1 Enumeration of Parts of the Agreement. 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 comprises the documents listed below.

§ 1.4.1.1 Standard Form of Agreement Between Owner and Architect, AIA Document B141-1997.

§ 1.4.1.2 Standard Form of Architect's Services: Design and Contract Administration, AIA Document B141-1997, or as follows:

*(List other documents, if any, delineating Architect's scope of services.)*

§ 1.4.1.3 Other documents as follows:

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

Exhibit A Master Fee Schedule & Reimbursable Expenses  
Exhibit B Concept Design Plans and Model Images

§ 1.4.2 Special Terms and Conditions. Special terms and conditions that modify this Agreement are as follows:

#### ARTICLE 1.5 COMPENSATION

§ 1.5.1 For the Architect's services as described under Article 1.4, compensation shall be computed as follows:

5.75% of the total construction cost including contractors profit and overhead. Compensation will be billed monthly as a percentage complete of each phase with the following assumptions: SD 20%, DD 22%, CD 40%, Bid/Negotiate 1% & CA 17%.

The Total Construction Cost of the project will be evaluated at the completion of the project in order to determine final payment for basic architectural services. Any amount over the original estimated Total Construction Cost of approximately \$160,000,000 shall be paid for architectural services based on the agreed upon 5.75% fee. Any

AIA Document B141™ - 1997 Part 1. Copyright © 1917, 1926, 1948, 1951, 1953, 1958, 1961, 1963, 1966, 1967, 1970, 1974, 1977, 1987 and 1997 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:03:07 on 11/02/2005 under Order No. 1000191303\_1 which expires on 8/2/2006, and is not for resale.

User Notes:

(112287728)

amount under the original estimated Total Construction Cost of approximately \$160,000,000 shall be credited for architectural services based on the agreed upon 5.75% fee. Total Construction Cost is defined but not limited to the final total dollar amount cost for Labor and Materials, Additions to project building scope, Value Additions, Substitutions, Changes, General Conditions, Contractor Insurance and Bonding Provisions, Tests and Inspection Costs and General Contractor's Profit or Fee.

§ 1.5.2 If the services of the Architect are changed as described in Section 1.3.3.1, the Architect's compensation shall be adjusted. Such adjustment shall be calculated as described below or, if no method of adjustment is indicated in this Section 1.5.2, in an equitable manner.

*(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply.)*

See Exhibit A

§ 1.5.3 For a Change in Services of the Architect's consultants, compensation shall be computed as a multiple of One and fifteen hundredths ( 1.15 ) times the amounts billed to the Architect for such services.

§ 1.5.4 For Reimbursable Expenses as described in Section 1.3.9.2, and any other items included in Section 1.5.5 as Reimbursable Expenses, the compensation shall be computed as a multiple of One and fifteen hundredths ( 1.15 ) times the expenses incurred by the Architect, and the Architect's employees and consultants.

§ 1.5.5 Other Reimbursable Expenses, if any, are as follows:

See Exhibit A

§ 1.5.6 The rates and multiples for services of the Architect and the Architect's consultants as set forth in this Agreement shall be adjusted in accordance with their normal salary review practices.

§ 1.5.7 An initial payment of Zero Dollars and Zero Cents (\$ 0.00 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account at final payment. Subsequent payments for services shall be made monthly, and where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.

§ 1.5.8 Payments are due and payable Fifteen ( 15 ) days from the date of the Architect's invoice. Amounts unpaid Thirty ( 30 ) 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 interest agreed upon.)*

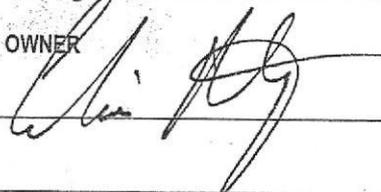
1 & 1/2% monthly

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

§ 1.5.9 If the services covered by this Agreement have not been completed within Thirty-two ( 32 ) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Section 1.5.2.

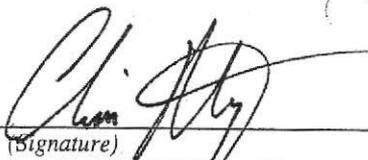
This Agreement entered into as of the day and year first written above.

OWNER



ARCHITECT

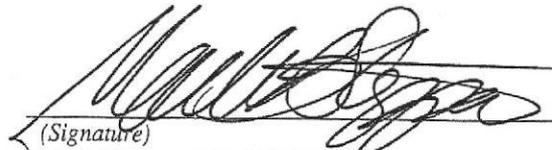
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(Signature)

Sam Caniglia BSC Financial, LLC

(Printed name and title)



(Signature)

Mark Steppan, AIA , CSI, NCARB

(Printed name and title)

**Addendum: No.1 Contractual Changes to AIA B141 Standard Agreement between Owner and Architect.**

AIA Contract Review between BSC Financial, LLC and Mark B. Stepan, AIA and Fisher Friedman Associates, Design Consultants

The following Addendum has been assembled to provide clarification of specific contractual items as specified in the attached standard AIA agreement. Terms and conditions provided herein shall be accepted as the substitution or in addition to and shall be in effect, and shall take precedence over items as specified in the attached standard AIA agreement.

Both parties are aware of this Contract Addendum and do hereby elect and agree to said terms and conditions as stated below.

- ss.1.1.2.1 The project is to create an urban mixed use high rise residential development with approximately 499 living units for BSC Financial, LLC.
- ss. 1.1.2.3 To obtain entitlements and approvals for the property and proposed buildings as shown in exhibit B as attached to the AIA B141 agreement as part of the design services in the Schematic Design/Entitlements Phase.
- ss. 1.1.2.5.2 Replace ' \$160,000,000' with approximately '\$180,000,000'.
- ss. 1.3.2.2 Replace text to read beginning with the sentence 'If and upon' as follows:  
If and upon the date the Architect is adjudged in default of this Agreement, or upon any default by the Architect, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license, including Architects consent, permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

Either party to this agreement shall be deemed in default if: (a) Either party fails to keep or perform any of the terms, obligations covenants, agreements or conditions contained herein, and such default continues of a period to thirty (30) days after notice by either party or beyond the time reasonably necessary for cure if such default is of a nature to require in excess of thirty (30) days to remedy; (b) Either party shall become bankrupt or insolvent or make a transfer in defraud of creditors, or make an assignment for the benefit of creditors, or be the subject of any proceedings of any kind under any provisions of the Federal Bankruptcy Act or under

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

JOHN ILIESCU, JR. individually, JOHN  
ILIESCU, JR. and SONNIA SANTEE  
ILIESCU, as Trustees of the JOHN  
ILIESCU, JR. AND SONNIA ILIESCU  
1992 FAMILY TRUST AGREEMENT,

Appellants

vs.

MARK B. STEPPAN,

Respondent.

Electronically Filed  
Aug 11 2016 03:35 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**Supreme Court No. 68346**  
Washoe County Case No. CV07-  
00341  
(Consolidated w/CV07-01021)

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**APPELLANTS' SUPPLEMENTAL APPENDIX  
VOLUME XVIII**

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Appeal from the Second Judicial District Court of the State of Nevada  
in and for the County of Washoe County  
Case No. CV07-00341

G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

**ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**

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[gma@albrightstoddard.com](mailto:gma@albrightstoddard.com)

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*Counsel for Appellants*

## DOCUMENT INDEX

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
72	04/17/08	Additional Exhibits to Applicants/ Defendants' Motion for Partial Summary Judgment not previously attached with original Appellants Appendix including Exhibits 1, 3, pages 25-152 of Exhibit 7, 8, 9, pages 13-56 of Exhibit 12	XII, XIII	AA2572-2912
73	Taken 09/29/08 Filed 12/11/13	Deposition Transcript of Mark Stepan on September 29, 2008 (Pages 1-75)	XIII	AA2913-2987
74	Taken 02/16/10 Filed 12/11/13	Deposition Transcript of Mark Stepan on February 16, 2010 (Pages 1-203), including Exhibits	XIII, XIV	AA2988-3279
75	Taken 03/02/10 Filed 12/11/13	Deposition Transcript of Mark Stepan on March 2, 2010 (Pages 1-420), including Exhibits	XIV, XV, XVI, XVII	AA3280-3958
76	Taken 03/03/10 Filed 12/11/13	Deposition Transcript of Mark Stepan on March 3, 2010 (Pages 421-519), including Exhibits	XVII, XVIII, XIX	AA3959-4402
77	09/27/12	Order Granting Mark Stepan's Motion for Reconsideration and Denying Motion to Dismiss, and Order Granting John Iliescu's Motion for Reconsideration and Denying [Hale Lane's] Motion for Summary Judgment	XIX	AA4403-4408
78	02/14/13	Second Stipulation to Stay Proceedings Against Defendant Hale Lane and Order to Stay and to Dismiss Claims Against Defendants Dennison, Howard and Snyder without Prejudice	XIX	AA4409-4411

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
79	10/27/14	Additional Exhibits to Defendants' Motion for NRCP 60(b) Relief From Court's Findings of Fact, Conclusions of Law and Decision and Related Orders not previously attached to Appellant's Appendix, including Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 10, 13, 14, and 19	XIX, XX	AA4412-4761

### ALPHABETICAL INDEX

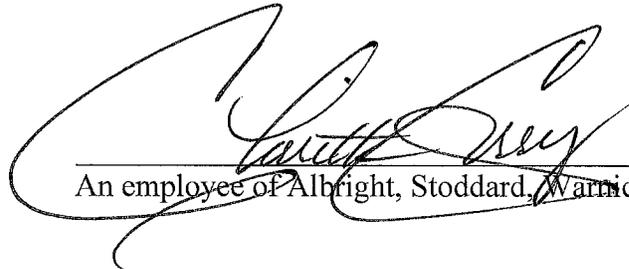
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74	Taken 02/16/10 Filed 12/11/13	Deposition Transcript of Mark Stepan on February 16, 2010 (Pages 1-203), including Exhibits	XIII, XIV	AA2988-3279

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
75	Taken 03/02/10 Filed 12/11/13	Deposition Transcript of Mark Steppan on March 2, 2010 (Pages 1-420), including Exhibits	XIV, XV, XVI, XVII	AA3280-3958
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**CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(c), I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 11/16 day of August, 2016, the foregoing **APPELLANTS' SUPPLEMENTAL APPENDIX VOLUME XVIII**, was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Michael D. Hoy, Esq.  
HOY CHRISSINGER KIMMEL P.C.  
50 West Liberty Street, Suite 840  
Reno, Nevada 89501  
(775) 786-8000  
[mhoy@nevadalaw.com](mailto:mhoy@nevadalaw.com)  
*Attorney for Respondent Mark Steppan*

  
An employee of Albright, Stoddard, Warnick & Albright

amount under the original estimated Total Construction Cost of approximately \$160,000,000 shall be credited for architectural services based on the agreed upon 5.75% fee. Total Construction Cost is defined but not limited to the final total dollar amount cost for Labor and Materials, Additions to project building scope, Value Additions, Substitutions, Changes, General Conditions, Contractor Insurance and Bonding Provisions, Tests and Inspection Costs and General Contractor's Profit or Fee.

§ 1.5.2 If the services of the Architect are changed as described in Section 1.3.3.1, the Architect's compensation shall be adjusted. Such adjustment shall be calculated as described below or, if no method of adjustment is indicated in this Section 1.5.2, in an equitable manner.

*(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply.)*

See Exhibit A

§ 1.5.3 For a Change in Services of the Architect's consultants, compensation shall be computed as a multiple of One and fifteen hundredths ( 1.15 ) times the amounts billed to the Architect for such services.

§ 1.5.4 For Reimbursable Expenses as described in Section 1.3.9.2, and any other items included in Section 1.5.5 as Reimbursable Expenses, the compensation shall be computed as a multiple of One and fifteen hundredths ( 1.15 ) times the expenses incurred by the Architect, and the Architect's employees and consultants.

§ 1.5.5 Other Reimbursable Expenses, if any, are as follows:

See Exhibit A

§ 1.5.6 The rates and multiples for services of the Architect and the Architect's consultants as set forth in this Agreement shall be adjusted in accordance with their normal salary review practices.

§ 1.5.7 An initial payment of Zero Dollars and Zero Cents ( \$ 0.00 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account at final payment. Subsequent payments for services shall be made monthly, and where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.

§ 1.5.8 Payments are due and payable Fifteen ( 15 ) days from the date of the Architect's invoice. Amounts unpaid Thirty ( 30 ) 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 interest agreed upon.)*

1 & 1/2% monthly

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

§ 1.5.9 If the services covered by this Agreement have not been completed within Thirty-two ( 32 ) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Section 1.5.2.

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

OWNER

ARCHITECT

*(Signature)*

Sam Caniglia BSC Financial, LLC

*(Printed name and title)*

*(Signature)*

Mark Steppan, AIA , CSI, NCARB

*(Printed name and title)*

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# AIA<sup>®</sup> Document B141<sup>™</sup> – 1997 Part 2

## *Standard Form of Architect's Services: Design and Contract Administration*

### TABLE OF ARTICLES

- 2.1 PROJECT ADMINISTRATION SERVICES
- 2.2 SUPPORTING SERVICES
- 2.3 EVALUATION AND PLANNING SERVICES
- 2.4 DESIGN SERVICES
- 2.5 CONSTRUCTION PROCUREMENT SERVICES
- 2.6 CONTRACT ADMINISTRATION SERVICES
- 2.7 FACILITY OPERATION SERVICES
- 2.8 SCHEDULE OF SERVICES
- 2.9 MODIFICATIONS

#### ADDITIONS AND DELETIONS:

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

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

#### ARTICLE 2.1 PROJECT ADMINISTRATION SERVICES

§ 2.1.1 The Architect shall manage the Architect's services and administer the Project. The Architect shall consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and issue progress reports. The Architect shall coordinate the services provided by the Architect and the Architect's consultants with those services provided by the Owner and the Owner's consultants.

§ 2.1.2 When Project requirements have been sufficiently identified, the Architect shall prepare, and periodically update, a Project schedule that shall identify milestone dates for decisions required of the Owner, design services furnished by the Architect, completion of documentation provided by the Architect, commencement of construction and Substantial Completion of the Work.

§ 2.1.3 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

§ 2.1.4 Upon request of the Owner, the Architect shall make a presentation to explain the design of the Project to representatives of the Owner.

§ 2.1.5 The Architect shall submit design documents to the Owner at intervals appropriate to the design process for purposes of evaluation and approval by the Owner. The Architect shall be entitled to rely on approvals received from the Owner in the further development of the design.

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

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#### § 2.1.7 EVALUATION OF BUDGET AND COST OF THE WORK

§ 2.1.7.1 The Owner or Contractor shall provide cost planning, estimating and construction schedule information during the design and construction of the project.

#### ARTICLE 2.3 EVALUATION AND PLANNING SERVICES

§ 2.3.1 The Architect shall provide a preliminary evaluation of the information furnished by the Owner under this Agreement, including the Owner's program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The Architect shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the Owner of any other information or consultant services that may be reasonably needed for the Project.

§ 2.3.2 The Architect shall provide a preliminary evaluation of the Owner's site for the Project based on the information provided by the Owner of site conditions, and the Owner's program, schedule and budget for the Cost of the Work.

§ 2.3.3 The Architect shall review the Owner's proposed method of contracting for construction services and shall notify the Owner of anticipated impacts that such method may have on the Owner's program, financial and time requirements, and the scope of the Project.

#### ARTICLE 2.4 DESIGN SERVICES

§ 2.4.1 The Architect's design services shall include normal structural, mechanical and electrical engineering services. See Article 1.1.3.5 for additional consultants.

#### § 2.4.2 SCHEMATIC DESIGN DOCUMENTS

§ 2.4.2.1 The Architect shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the Architect's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

#### § 2.4.3 DESIGN DEVELOPMENT DOCUMENTS

§ 2.4.3.1 The Architect shall provide Design Development Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels.

#### § 2.4.4 CONSTRUCTION DOCUMENTS

§ 2.4.4.1 The Architect shall provide Construction Documents based on the approved Design Development Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

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

#### ARTICLE 2.5 CONSTRUCTION PROCUREMENT SERVICES

§ 2.5.1 The Architect shall assist the Owner in obtaining either competitive bids or negotiated proposals and shall assist the Owner in awarding and preparing contracts for construction.

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§ 2.5.2 The Architect shall assist the Owner in establishing a list of prospective bidders or contractors.

*(Paragraph deleted)*

#### § 2.5.4 COMPETITIVE BIDDING

§ 2.5.4.1 Bidding Documents shall consist of bidding requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.

*(Paragraph deleted)*

#### § 2.5.5 NEGOTIATED PROPOSALS

§ 2.5.5.1 Proposal Documents shall consist of proposal requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.

§ 2.5.5.2 If requested by the Owner, the Architect shall arrange for procuring the reproduction of Proposal Documents for distribution to prospective contractors. The Owner shall pay directly for the cost of reproduction or shall reimburse the Architect for such expenses.

*(Paragraph deleted)*

### ARTICLE 2.6 CONTRACT ADMINISTRATION SERVICES

#### § 2.6.1 GENERAL ADMINISTRATION

§ 2.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.

§ 2.6.1.2 The Architect's responsibility to provide the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment. However, the Architect shall be entitled to a Change in Services in accordance with Section 2.8.2 when Contract Administration Services extend 60 days after the date of Substantial Completion of the Work.

§ 2.6.1.3 The Architect shall be a representative of and shall advise and consult with the Owner during the provision of the Contract Administration Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

§ 2.6.1.4 Duties, responsibilities and limitations of authority of the Architect under this Article 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent will not be unreasonably withheld.

§ 2.6.1.5 The Architect shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.

§ 2.6.1.6 If deemed appropriate by the Architect, the Architect shall on the Owner's behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.

§ 2.6.1.7 The Architect shall interpret and recommend matters concerning performance of the Owner and Contractor 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.

§ 2.6.1.8 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 initial 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 the results of interpretations or decisions so rendered in good faith.

§ 2.6.1.9 The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

#### § 2.6.2 EVALUATIONS OF THE WORK

§ 2.6.2.1 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect in Article 2.8, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 2.6.2.2 The Architect shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 2.6.2.3 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

§ 2.6.2.4 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 2.6.2.5 The Architect shall recommend to the owner the rejection of any Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall recommend to the owner the 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. The Architect retains the right to immediately reject and halt any Work that is deemed to be hazardous, in violation of code, or otherwise involving a health or safety issue that jeopardizes workers or the public at large.

#### § 2.6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

§ 2.6.3.1 The Architect shall review and recommend the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 2.6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, 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

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

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

§ 2.6.3.3 The Architect shall maintain a record of the Contractor's Applications for Payment.

#### § 2.6.4 SUBMITTALS

§ 2.6.4.1 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. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. 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.

§ 2.6.4.2 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.

§ 2.6.4.3 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

#### § 2.6.5 CHANGES IN THE WORK

§ 2.6.5.1 The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Section 2.8.2.

§ 2.6.5.2 The Architect shall review properly prepared, timely requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

§ 2.6.5.3 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the

Architect. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

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

#### § 2.6.6 PROJECT COMPLETION

§ 2.6.6.1 The Architect shall conduct site reviews to determine the date or dates of Substantial Completion and the date of final completion, shall 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 shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 2.6.6.2 The Architect's site review shall be conducted with the Owner's Designated Representative 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.

§ 2.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

§ 2.6.6.4 The Architect shall receive from the Contractor and forward to the Owner: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens.

#### ARTICLE 2.7 FACILITY OPERATION SERVICES

§ 2.7.1 The Architect shall meet with the Owner or the Owner's Designated Representative promptly after Substantial Completion to review the need for facility operation services.

§ 2.7.2 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall conduct a meeting with the Owner and the Owner's Designated Representative to review the facility operations and performance and to make appropriate recommendations to the Owner.

#### ARTICLE 2.8 SCHEDULE OF SERVICES

§ 2.8.1 Design and Contract Administration Services beyond the following limits shall be provided by the Architect as a Change in Services in accordance with Section 1.3.3:

- .1 up to Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor.
- .2 up to One ( 1 ) visit per week to the site by the Architect over the duration of the Project during construction.
- .3 up to One ( 1 ) site review for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.
- .4 up to One ( 1 ) site review for any portion of the Work to determine final completion.

§ 2.8.2 The following Design and Contract Administration Services shall be provided by the Architect as a Change in Services in accordance with Section 1.3.3:

- .1 review of a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 responses to the Contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Change Orders and Construction Change Directives requiring evaluation of proposals, including the preparation or revision of Instruments of Service;
- .4 providing consultation concerning replacement of Work resulting from fire or other cause during construction;
- .5 evaluation of an extensive number of claims submitted by the Owner's consultants, the Contractor or others in connection with the Work;

- .6 evaluation of substitutions proposed by the Owner's consultants or contractors and making subsequent revisions to Instruments of Service resulting therefrom;
- .7 preparation of design and documentation for alternate bid or proposal requests proposed by the Owner; or
- .8 Contract Administration Services provided 60 days after the date of Substantial Completion of the Work.
- .9 Construction Administration over 24 months.

§ 2.8.3 The Architect shall furnish or provide the following services only if specifically designated:

Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description
.1 Programming	-----O	
.2 Land Survey Services	-----O	
.3 Geotechnical Services	-----O	
.4 Space Schematics/Flow Diagrams	-----A	
.5 Existing Facilities Surveys	-----NP	
.6 Economic Feasibility Studies	-----O	
.7 Site Analysis and Selection	-----NP	
.8 Environmental Studies and Reports	-----O	
.9 Owner-Supplied Data Coordination	-----A	
.10 Schedule Development and Monitoring	-----O	
.11 Civil Design	-----O	
.12 Landscape Design	-----A	
.13 Interior Design	-----O	
.14 Special Bidding or Negotiation	-----NP	
.15 Value Analysis	-----O	
.16 Detailed Cost Estimating	-----O	
.17 On-Site Project Representation	-----NP	
.18 Construction Management	-----O	
.19 Start-up Assistance	-----NP	
.20 Record Drawings	-----NP	
.21 Post-Contract Evaluation	-----NP	
.22 Tenant-Related Services	-----NP	
.23		
.24		
.25		

Description of Services.  
(Insert descriptions of the services designated.)

**ARTICLE 2.9 MODIFICATIONS**

§ 2.9.1 Modifications to this Standard Form of Architect's Services: Design and Contract Administration, if any, are as follows:

Architect and Consultants Errors and Omissions requirements shall be amended into this Standard Form of Architect's Services Agreement to be determined later by mutual agreement.

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By its execution, this Standard Form of Architect's Services: Design and Contract Administration and modifications hereto are incorporated into the Standard Form of Agreement Between the Owner and Architect, AIA Document B141-1997, that was entered into by the parties as of the date: October 31, 2005

**OWNER**

*(Signature)*

Sam Caniglia, BSC Financial, LLC

*(Printed name and title)*

**ARCHITECT**

*(Signature)*

Mark Steppan, AIA, CSI, NCARB

*(Printed name and title)*

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ARCHITECT

EXHIBIT A

2005 MASTER FEE SCHEDULE

PRINCIPAL/OFFICER	\$220.00 per hour
EXECUTIVE VICE PRESIDENT	\$200.00 per hour
SENIOR VICE PRESIDENT	\$170.00 per hour
VICE PRESIDENT	\$145.00 per hour
ARCHITECT III	\$145.00 per hour
PROJECT MANAGER III	\$145.00 per hour
ARCHITECT II	\$125.00 per hour
PROJECT MANAGER II	\$125.00 per hour
CONSTRUCTION ADMINISTRATOR II	\$110.00 per hour
ARCHITECT I	\$110.00 per hour
PROJECT MANAGER I	\$110.00 per hour
JOB CAPTAIN I	\$110.00 per hour
CONSTRUCTION ADMINISTRATOR I	\$100.00 per hour
SENIOR DESIGNER/DRAFTER	\$100.00 per hour
GRAPHIC DESIGNER	\$95.00 per hour
INTERMEDIATE DRAFTER/DESIGNER	\$90.00 per hour
JUNIOR DRAFTER/DESIGNER	\$70.00 per hour
GRAPHIC DESIGN ASSISTANT	\$70.00 per hour
ACCOUNTING	\$65.00 per hour
SPECIALIZED COMPUTER IMAGING/RENDERING	\$200.00 per hour
CLERICAL/WORD PROCESSING/OFFICE SUPPORT	\$65.00 per hour

REIMBURSABLE EXPENSES AND CONSULTANT FIRM'S FEE SCHEDULE

Reimbursable Expenses are billed to the Client in addition to Architect's Hourly Rates at 1.15 times the cost to the Architect. These include transportation and living expenses in connection with out-of-town travel, models, perspectives, renderings, reprographics, plotting, postage, delivery messenger services, and telephone and telefax costs. Any added consultant services shall be billed to the Client in addition to Architect's Hourly Rates at 1.15 times the cost to the Architect.

NOTES

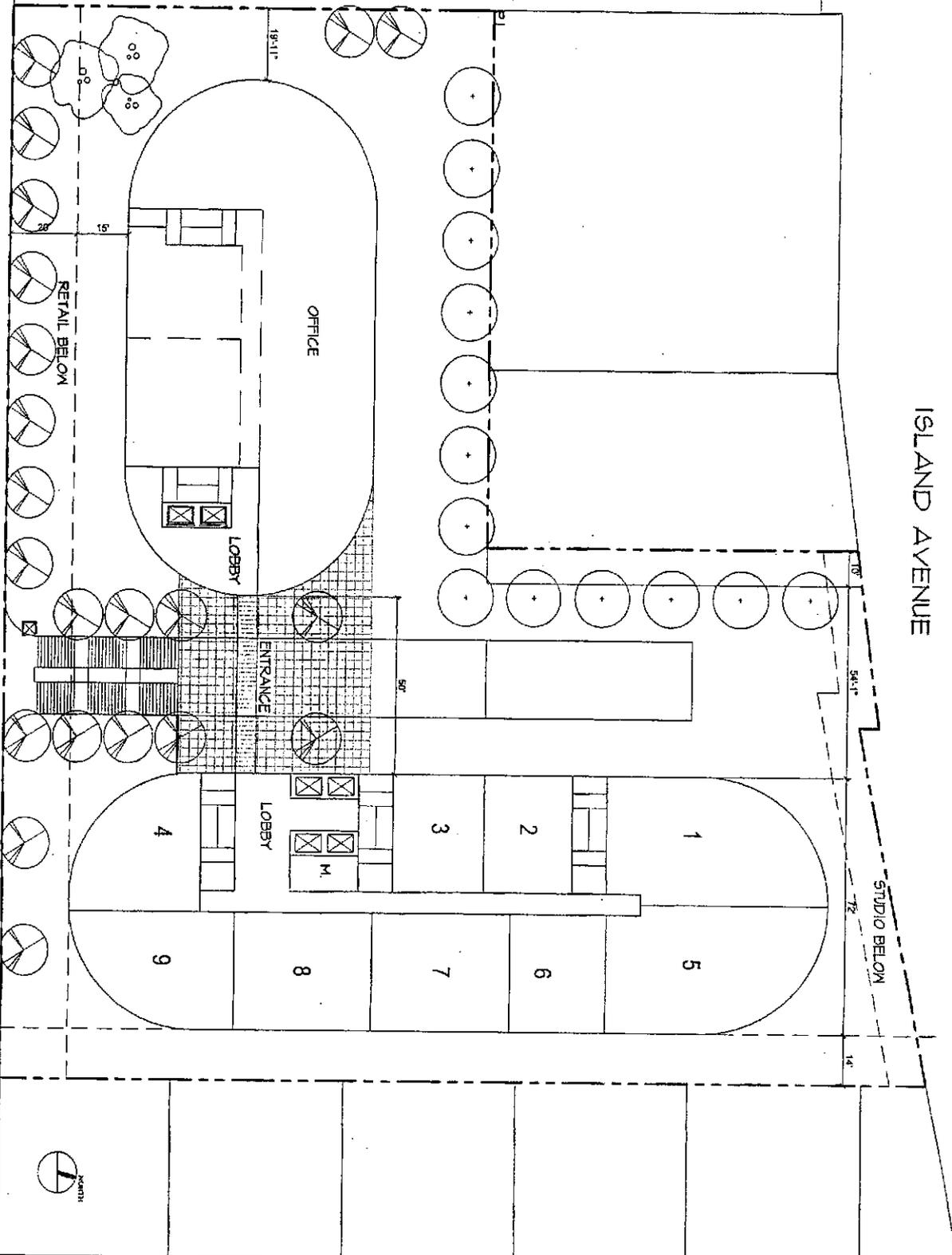
- 1) The above rates also apply to Hourly Basis Services, Additional Services or changes within Lump-Sum or Fixed-Fee Agreements.
- 2) Rates shall be increased by a factor of 1.50 for hours incurred outside USA.
- 3) Contract or part-time employees are billed at the category of work performed.
- 4) These Schedules are part of the letter of agreement.

\*This Schedule is subject to annual increases not to exceed 4%.

# Exhibit B

ISLAND AVENUE

COURT STREET



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COURT STREET

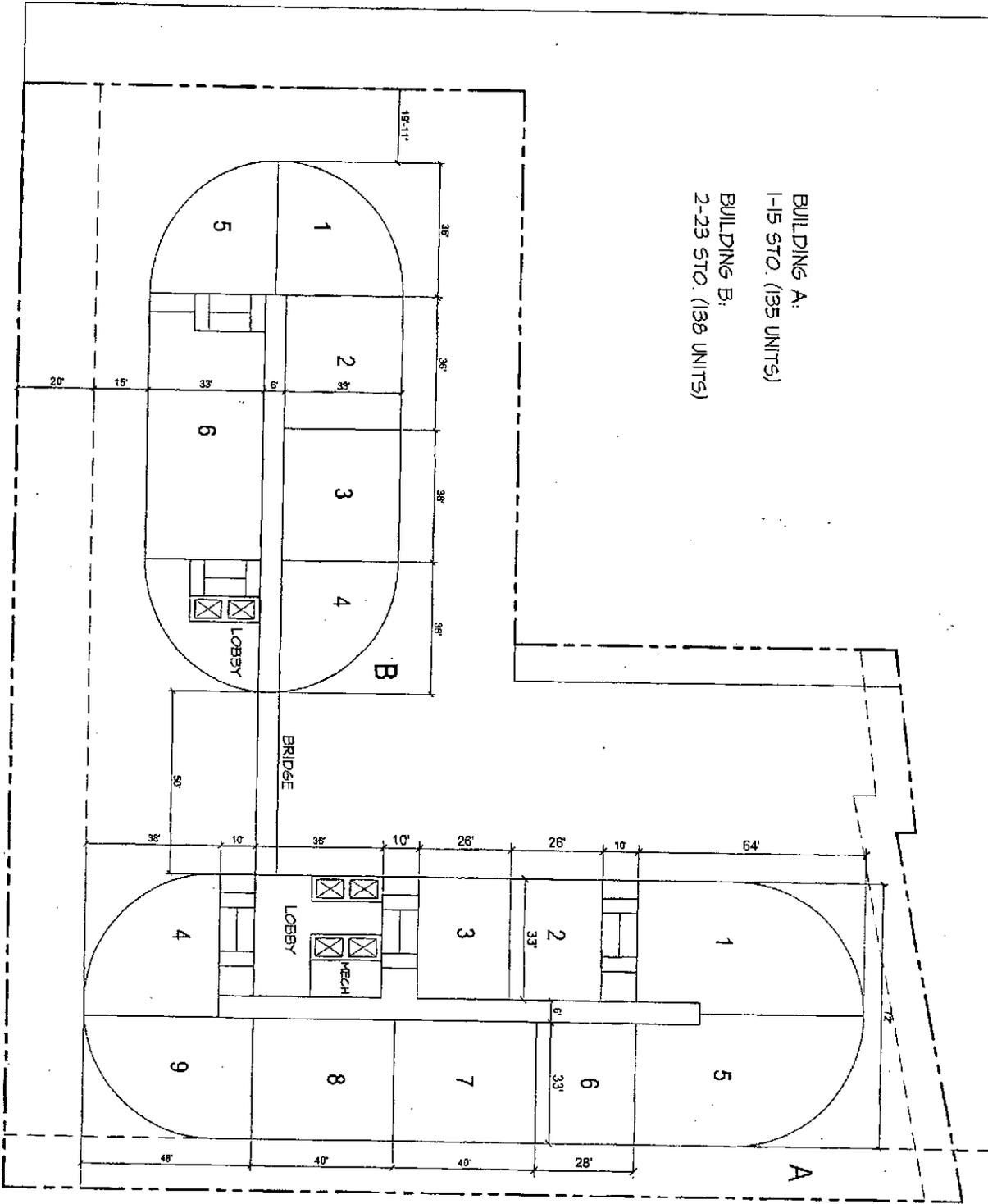
RENO, NAVADA  
A.P.N. 1-000-00-000

MARK B. STEPPAN, AIA, CSI, NCARB  
ARCHITECT  
1405 PARK AVENUE, SUITE 103 FRODOYVILLE, CA 94608

PODIUM  
LEVEL

DATE	NOV 02 2005
DATE	03 11 05
NO. OF SHEETS	4 OF 4
SHEET	A2.1

BUILDING A:  
1-15 STO. (135 UNITS)  
BUILDING B:  
2-23 STO. (138 UNITS)



**COURT STREET**

RENO, NAVADA  
A.P.N.: 00400 000

MARK B. STEPPAN, AIA, CSI, NCARB  
ARCHITECT

145 PARK AVENUE, SUITE 103 FARMERVILLE, CA 94608

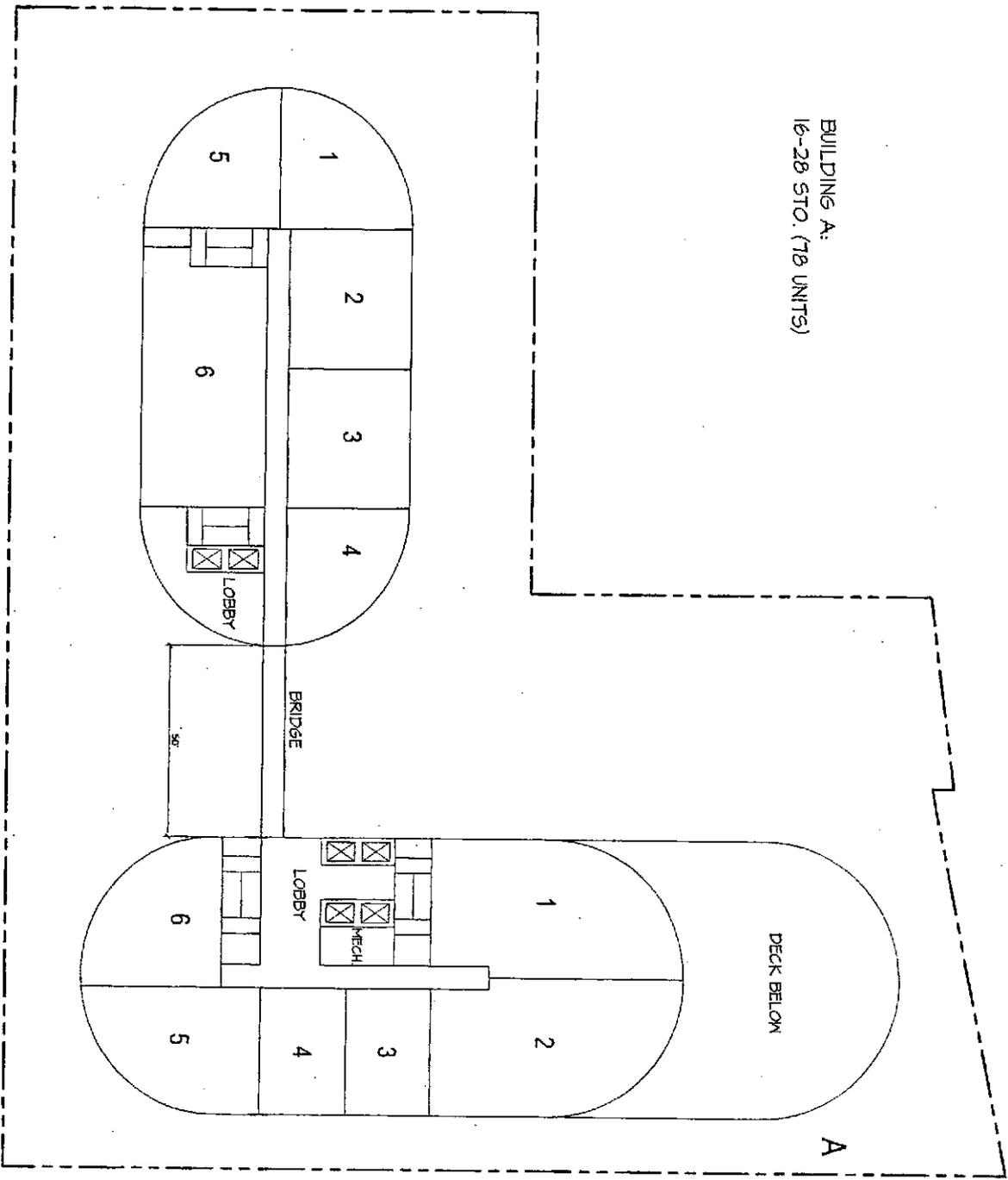
TYPICAL  
FLOOR  
PLAN

SCALE: 1" = 10'

DATE: 10/20/06

SHEET

BUILDING A:  
16-28 STO. (78 UNITS)



COURTESY MARK B. STEPPAN, AIA, CSI, NCARB

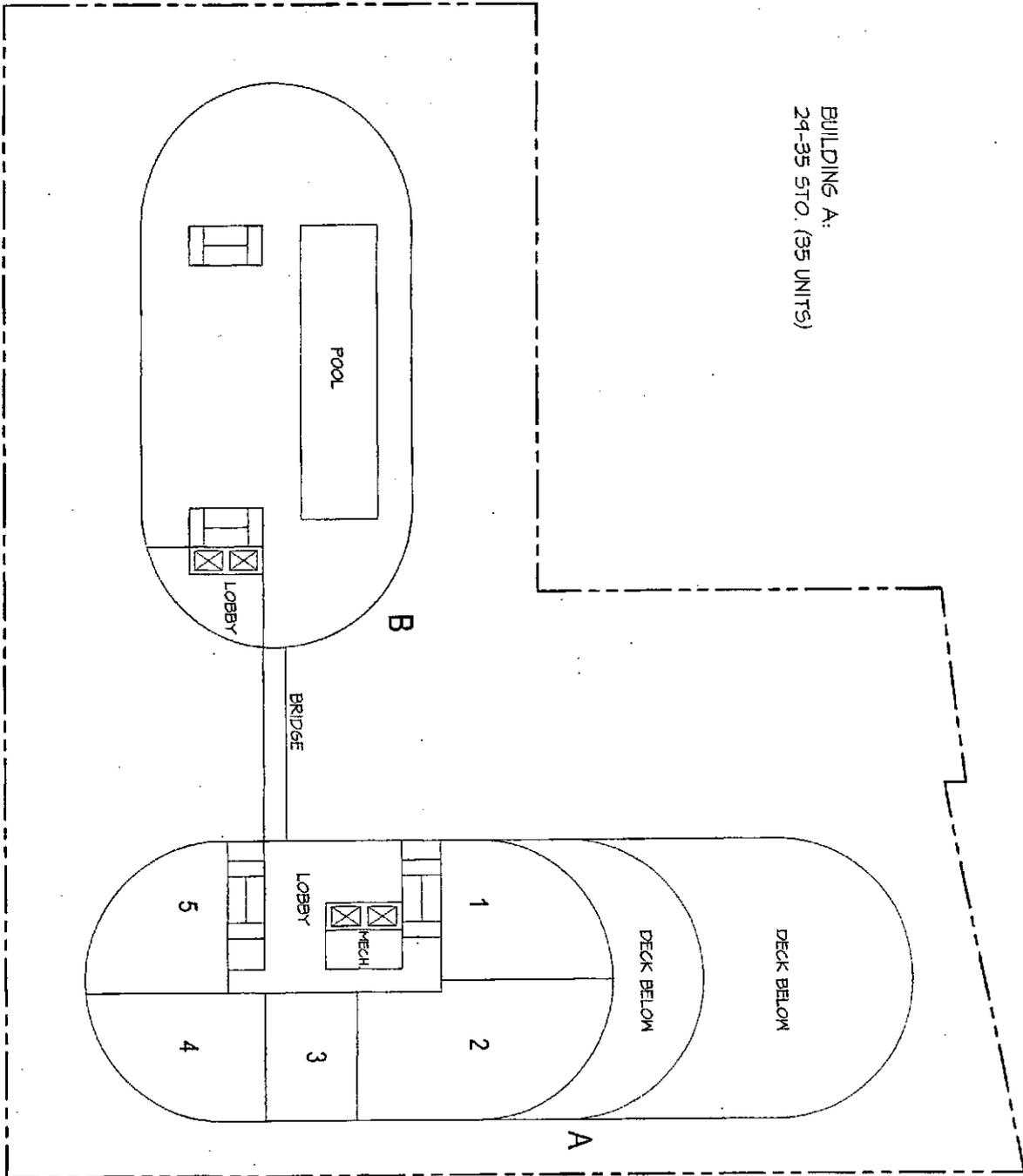


A2.3 SHEET	SCALE: 1/8" = 1'-0" DATE: 10/15 2011	UPPER TYPICAL PLAN	<b>COURT STREET</b> RENO, NAVADA A.P.N.: 100-00-000	MARK B. STEPPAN, AIA, CSI, NCARB ARCHITECT 185 PARK AVENUE, SUITE 103    ENTERVILLE, CA 94608
	COURTESY MARK B. STEPPAN, AIA, CSI, NCARB			

AA4086

STEPPAN 4111

BUILDING A:  
24-35 STO. (35 UNITS)



COURT STREET

RENO, NAVADA  
A.P.N. - R0101-000

MARK B. STEPPAN, AIA, CSI, NCARB  
ARCHITECT

145 PARK AVENUE, SUITE 103 EMERYVILLE, CA 94608

UPPER  
FLOOR  
PLAN

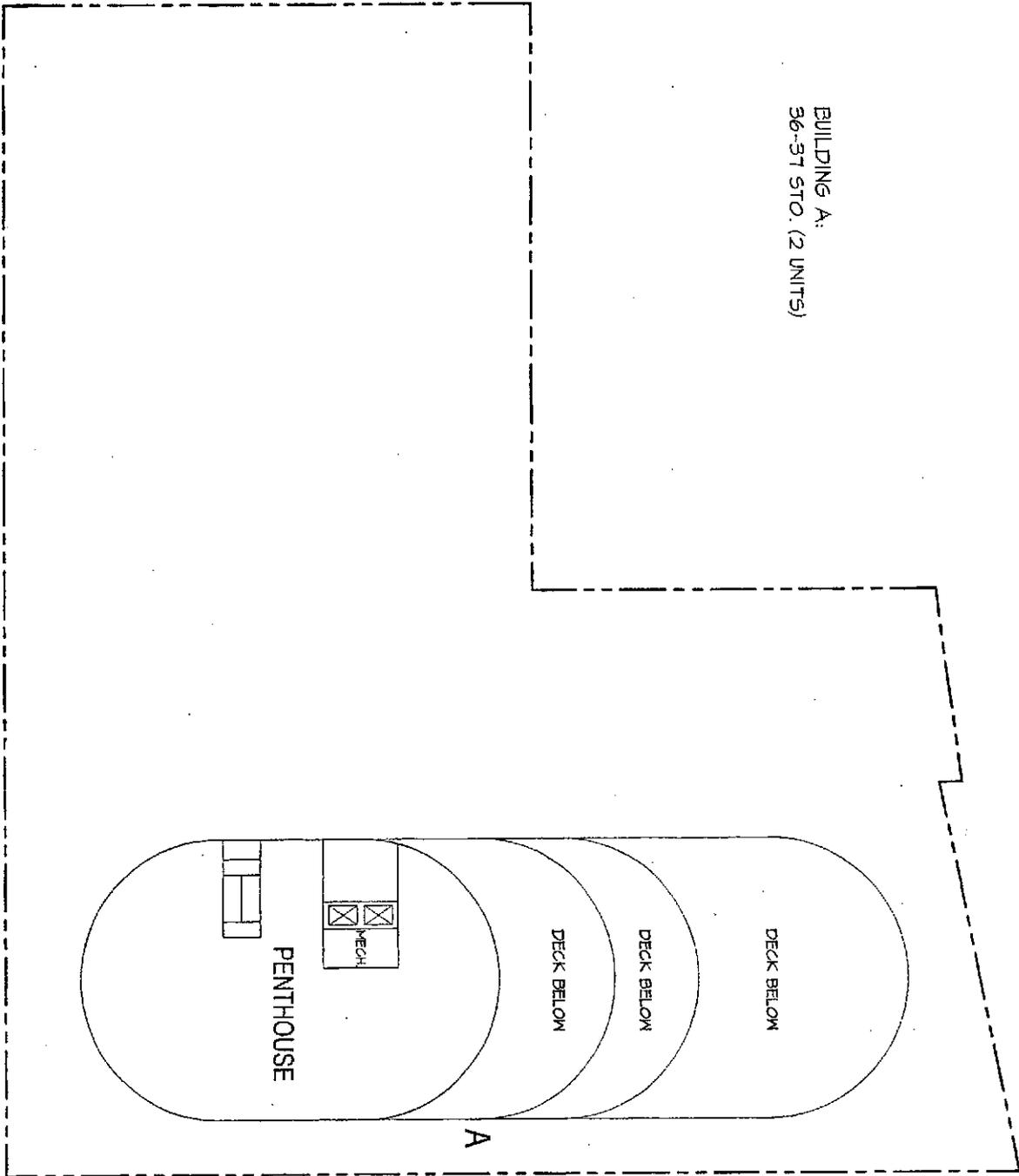
SCALE: 1/8" = 1'-0"

DATE: MAY 02, 2005

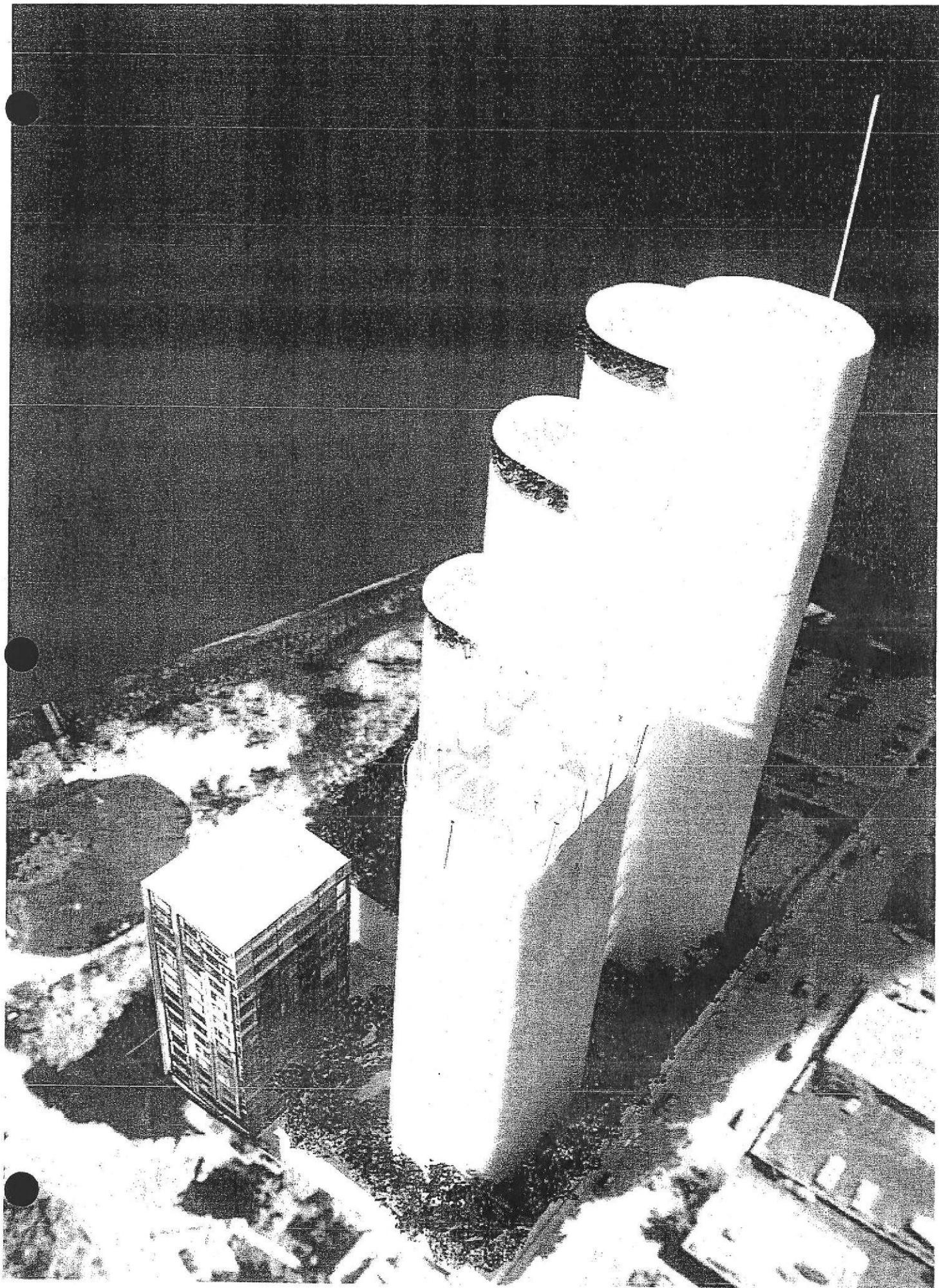
SHEET

A2.4

BUILDING A:  
36-37 STO. (2 UNITS)

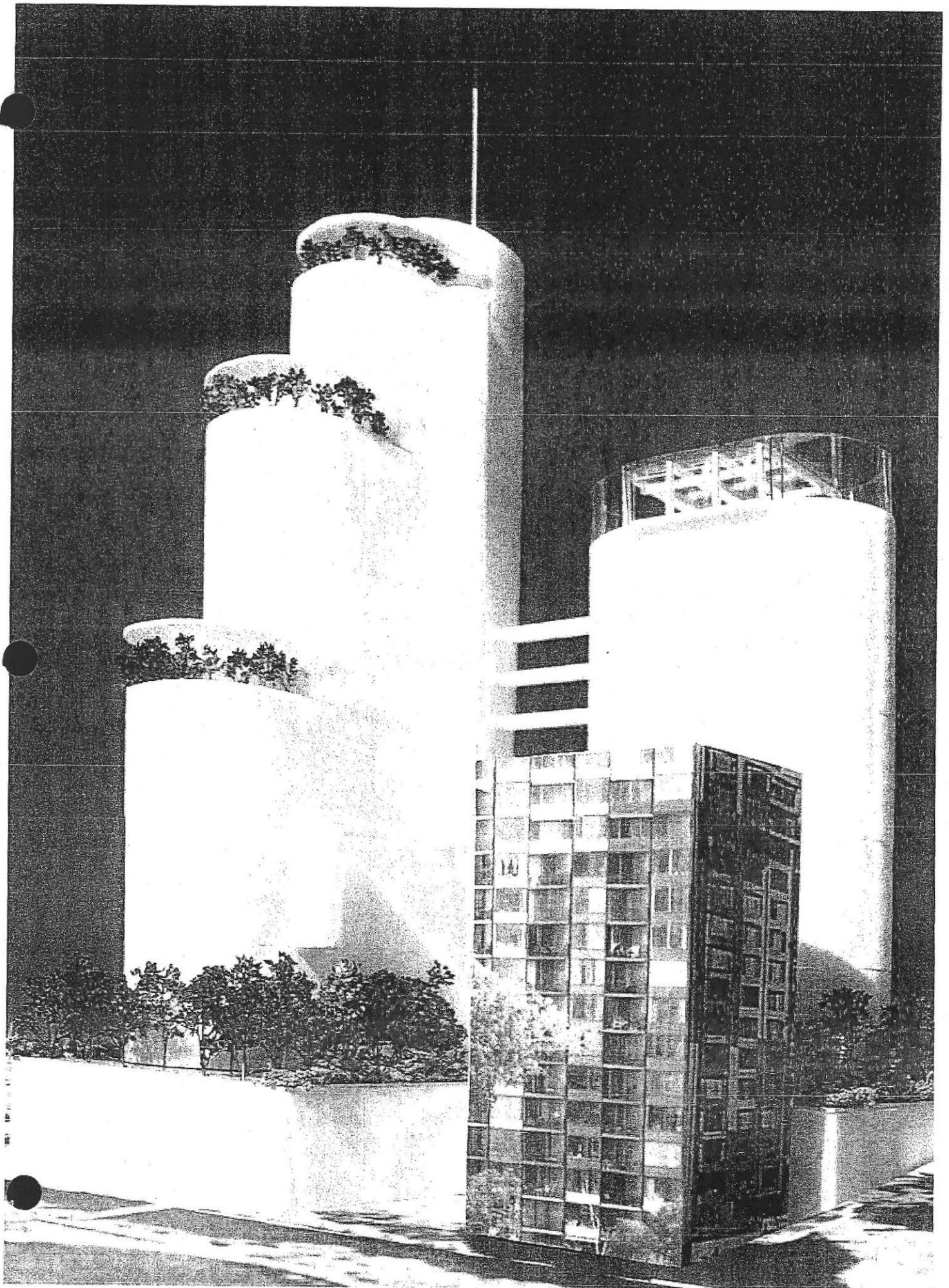


A2.5 SHEET	SCALE: 1" = 4'-0"	COURT STREET RENO, NAVADA A.P.N.: 0061-00-000	MARK B. STEPPAN, AIA, CSI, NCARB ARCHITECT 1485 PARK AVENUE, SUITE 100 EMERYVILLE, CA 94608
	PENTHOUSE LEVEL PLAN JOB: 0515 DATE: 08/14/08		



AA4089

STEPPAN 4114



AA4090

STEPPAN 4115