

PROFESSIONAL CONSULTING SERVICES AGREEMENT

This PROFESSIONAL CONSULTING SERVICES AGREEMENT (this “Agreement”) is entered into as of _____, 20_(the “Execution Date”), by and between WE Acquisitions, L.L.C., a Delaware limited liability company (“Owner”), and (“Consultant”).

RECITALS

WHEREAS, Owner has selected Consultant to perform, either directly or pursuant to subcontracts (hereinafter defined), the services set forth in this Agreement (the “Services”) in connection with the property referred to as 101 College Street located at 101 College Street, New Haven (the “Property”); and

WHEREAS, Consultant is ready, willing and able to perform the Services.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

1. SCOPE OF SERVICES

1.1 Services. Consultant shall perform the services described in Exhibit A hereto, and shall furnish all services, labor and other components necessary to complete the Services in accordance with the terms of this Agreement (collectively, the “Services”). [In addition, the Services shall include any additional services to be performed by Consultant on a time and materials basis (“T&M Services”) upon written request by Owner (for which purpose an email from an authorized employee or agent of Owner shall be deemed sufficient)].

1.2 Standard of Care. Consultant shall perform the Services with the degree of care and skill exercised by like professionals performing similar services on properties of a similar size and complexity and in the same geographic location as the Property.

1.3 Permits and Compliance with Laws. Consultant shall perform the Services in compliance with the ordinances, codes, rules, regulations, orders, permits, approvals, legislative and administrative actions of any governmental authority, final decrees, judgments or orders of any court and requirements set forth in applicable engineering and construction codes and standards (collectively, “Applicable Laws”) in force in the locality in which the Services are performed.

1.4 Technical Data. Ownership of all proprietary rights in technical data produced by or for Consultant or any of Consultant’s employees or consultants in the course of performing the Services is hereby vested in Owner shall have the exclusive copyright and right to use, copy, modify, distribute and sell any such Consultant hereby assigns to Owner all of Consultants rights, title and interest in and to any such technical data. For the purposes hereof, the term “technical data” means technical writings, pictorial reproductions, drawings, graphical representations, tape recordings, reports, calculations, tables, electronic media and other

documents of a technical nature, whether copyrightable or copyrighted. Owner shall neither use any such technical data or copies thereof on any other project nor divulge information from such materials without Owner's prior written approval, which Owner may withhold in its discretion; provided, however, that Consultant may use such technical data to the extent it is otherwise publicly available. Consultant is given a limited license to use and reproduce applicable portions of such technical data for use in the performance of the Services and, with the exception of one contract set for each party to this Agreement, such technical data, including any and all reproductions made, are to be returned or suitably accounted for to Owner at the completion of the Services. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the performance of the Services is not to be construed as publication in derogation of Owner's copyright or other reserved rights.] [INSERT IF CONSULTANT IS PROVIDING BRANDING/MARKETING SERVICES]

2. TIME

2.1 Commencement of Services/Term. Consultant shall (a) commence performance of the Services no later than] _____, and (b) complete the Services no later than _____ (the "Expiration Date"). The "Term" of this Agreement shall be from the date set forth in (a) until the date set forth in (b).

2.2 Completion of Services. Consultant shall issue an oral report to Owner (containing the items in Exhibit A attached hereto) within one (1) business day following any site visit to the Property by Consultant, and shall issue its draft written report to Owner (containing the items in Exhibit A attached hereto) within seven (7) days after such site visit. Owner shall have ten (10) days after receipt of the written report to deliver comments to Consultant. Consultant shall then have two (2) business days after receipt of such comments to revise the report and issue a final report as required by Exhibit A. This Agreement shall expire (except for those provisions that expressly survive the expiration or earlier termination thereof) on the earlier of (a) the Expiration Date and (b) the date on which Consultant satisfactorily completes the Services in accordance with this Agreement; provided that Owner may unilaterally extend the term of this Agreement in the event that the Services are not complete as of the Expiration Date

2.3 Time of the Essence. Time is of the essence with respect to the performance of every provision of this Agreement.

3. COMPENSATION AND PAYMENTS

3.1 Contract Amount. Subject to additions or deductions as hereinbefore or hereinafter provided, Owner shall pay Consultant an amount not to exceed ("NTE _____ DOLLARS] Dollars (\$[_____] (the "Contract Amount") as full and complete compensation for the performance of the Services.

a. In addition to compensation payable to Consultant pursuant to the remainder of this Section 3.1, Owner shall reimburse Consultant at cost for actual and reasonable expenditures made by Consultant that are necessary for performance of the Services (the

“Reimbursable Expenses”), provided that such expenditures shall not exceed ten percent (10%) of the contract amount.

3.2 Applications for Payment. Consultant shall deliver to Owner, at an address (which may be an e-mail address) specified by Owner, a written invoice (the “Application for Payment”) on or before the fifth (15th) day of each month during the Term describing in reasonable detail all Services performed by Consultant during the previous month. Provided the Application for Payment is timely delivered to Owner, Owner shall make payment to Consultant not later than the fifteenth (15th) day of the following month. With each Application for Payment, Consultant shall submit (a) such evidence as may be customary, and such evidence as may be reasonably required by Owner, to demonstrate costs incurred or estimated to be incurred on account of the Services and the Contract Amount during such month and the percentage of completion of each category of Services reasonably estimated to the end of the month of the submission of such Application for Payment, (b) certification by Consultant that the Services for which payment is being sought has been completed in accordance with this Agreement and all applicable permits, (c) unless prohibited by applicable law, a conditional waiver and release of lien upon progress payment from Consultant and each subcontractor in the applicable form attached as Exhibit C hereto (as modified to comply with the requirements of applicable laws, as necessary and as requested by Owner) with respect to the Services to which the Application for Payment applies, (d) unless prohibited by applicable law, an unconditional waiver and release of lien upon payment from Consultant and each subcontractor in the applicable form attached as Exhibit C hereto (as modified to comply with the requirements of applicable laws, as necessary and as requested by Owner) with respect to all Services previously paid through the date of the immediately preceding Application for Payment, (e) a detailed written description and copies of all change orders and other modifications to the Services or this Agreement issued through the date of the Application for Payment and (f) such other information or documentation as may be reasonably requested by Owner or Owner’s lenders. Within ten (10) days after Consultant’s receipt of the final payment under this Agreement, Consultant shall deliver to Owner an unconditional waiver and release of lien upon payment from Consultant and each subcontractor in the applicable form attached as Exhibit C hereto (as modified to comply with the requirements of applicable laws, if applicable) with respect to all Services.

3.3 Payment.

a. By the final day of each month, subject to satisfactory receipt of the documentation set forth in Section 3.2, Owner shall pay to Consultant an amount equal to the value, based on the Contract Amount, of all Services performed on the Project during the preceding calendar month as reasonably determined by Owner and supported by the documentation provided pursuant to Section 3.2. Notwithstanding the foregoing, if a dispute exists between Owner and Consultant regarding any progress payment, Owner may withhold from the payment an amount not exceeding one hundred fifty percent (150%) of the disputed amount.

b. Within ten (10) days of receipt of written notice by Owner from Consultant that any Services in dispute has been completed in accordance with the terms of this Agreement, Owner must advise Consultant of the acceptance or rejection of the disputed

Services. Within ten (10) days after acceptance of the disputed Services, Owner must release the retained portion of the Contract Amount that is no longer under dispute.

c. Consultant shall, within five (5) business days after notification thereof (by Owner or otherwise), pay off or bond over any liens or claims made by any subcontractor against the Project or Owner's property or any portion of either.

3.4 Payment Terms. Owner and Consultant agree that the Contract Amount represents full payment in respect of the performance of all of Consultant's obligations under this Agreement. This amount includes the cost of all labor, personnel, taxes, insurance, fees, systems, equipment, materials, Consultant's general conditions and Consultant's fee, profit and overhead.

3.5 Payment Not Acceptance. No payment under this Agreement shall be evidence of performance of this Agreement by Consultant, either wholly or in part, and no payment or delivery of payment by Owner shall be construed to be an acceptance of defective or improper work, materials or services, or an affirmation of any invoice against which such payment is made.

4. INSURANCE

4.1 Insurance Required of Consultant. Consultant shall provide the insurance required of it by the provisions of Exhibit B hereto.

5. INDEMNIFICATION

Professional Services Indemnity. Consultant shall, to the fullest extent permitted by Applicable Laws, indemnify, save, and (except with respect to errors and omissions claims) defend (at Owner's option and with counsel reasonably acceptable to Owner) Owner, its affiliates, and their respective lenders, shareholders, members, partners, directors, officers, employees, successor and assigns, (collectively with Owner, each an "Owner Indemnitee") for, from and against any and all demands, claims, liabilities, losses, costs, actions, causes of action, damages, suits or judgments, and all reasonable expenses (including reasonable attorneys' fees, consultants' fees and costs, charges and disbursements) incurred in investigating or resisting the same (collectively, "Claims") of any kind or nature arising out of or resulting from (a) Consultants' negligent acts, error or omissions with respect to Consultant's professional services, (b) any other acts, errors or negligent omissions or willful misconduct of Consultant or (c) breach or default by Consultant in the performance of any of its obligations hereunder. Consultant's obligations under this Section shall not be affected, reduced or limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant under workers' compensation acts, disability benefit acts, employee benefit acts or similar legislation. Consultant is not obligated to indemnify Owner in any manner whatsoever for Owner's negligence or willful misconduct. Consultant shall defend itself from any actual or alleged Claims arising from the Services. Consultant's obligations under this Section shall survive the expiration or earlier termination of this Agreement.

5.1 No Limit. In claims against any Person or entity indemnified under this Article 5 by an employee of Consultant, or anyone directly or indirectly employed by Consultant, or

anyone for whose acts Consultant may be liable, the indemnification obligation under Section 5.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

6. COVENANTS/REPRESENTATIONS/WARRANTIES

6.1 Consultant Covenants, Representations and Warranties. Consultant represents, warrants and agrees as follows:

a. Organization, Standing and Qualification. Consultant is duly organized, validly existing and in good standing under the laws of the [Commonwealth][OR][State] of [_____] and has full power to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified and in good standing under the laws of the state in which the Property is located (the "State") and in each other jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would adversely affect its ability to perform its obligations hereunder. Consultant's Federal tax identification number is [_____]

b. Enforceable Contract. This Agreement has been duly authorized, executed and delivered by Consultant and constitutes the legal, valid and binding obligation of Consultant, enforceable in accordance with its terms.

c. No Conflict. The execution, delivery, and performance by Consultant of this Agreement will not violate or conflict with (a) Applicable Laws, (b) any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected or (c) its organizational documents.

d. No Government Approvals. No authorization, approval, exemption or consent by any governmental authority is required in connection with the authorization, execution, delivery or performance of this Agreement by Consultant.

e. No Suits, Proceedings. There are no actions, suits, proceedings, patent or license infringements or investigations pending or, to Consultant's knowledge, threatened against it at law or in equity before any court or before any other governmental authority that individually or in the aggregate could materially and adversely affect the business, properties or assets or the condition, financial or otherwise, of Consultant, or in any way impair its ability to perform its obligations under this Agreement.

f. Financial Condition. Consultant is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement.

g. Equipment. Consultant is able to furnish the equipment required to complete the Services and perform its obligations hereunder and has sufficient experience and competence to do so.

h. Experience. Consultant possesses the level of experience and expertise in the performing Services similar to the Services for properties of the size, complexity and nature as the Property, and shall perform the Services with the care, skill and diligence of such a consultant.

i. [Hazardous Materials]. To the extent Consultant encounters hazardous materials at the Property, Consultant shall notify Owner in writing and cease performing Services in the affected area until Owner notifies Consultant to proceed with the Services in such area.

6.2 Owner Covenants, Representations and Warranties. Owner represents, warrants and agrees as follows:

a. Formation, Standing and Qualification. Owner is a limited [liability company][OR][partnership] duly formed, validly existing and in good standing under the laws of the State of Delaware and has full power to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified and in good standing under the laws of the State and in each other jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would adversely affect its ability to perform its obligations hereunder.

b. Enforceable Contract. This Agreement has been duly authorized, executed and delivered by Owner and constitutes the legal, valid and binding obligation of Owner, enforceable in accordance with its terms.

c. No Conflict. The execution, delivery and performance by Owner of this Agreement will not violate or conflict with (a) Applicable Laws, (b) any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected or (c) its organizational documents.

d. No Government Approvals. No authorization, approval, exemption or consent by any governmental authority is required in connection with the authorization, execution, delivery or performance of this Agreement by Owner.

e. No Suits, Proceedings. There are no actions, suits, proceedings, patent or license infringements or investigations pending or, to Owner's knowledge, threatened against it at law or in equity before any court or before any other governmental authority that individually or in the aggregate could materially and adversely affect the business, properties or assets or the condition, financial or otherwise, of Owner or in any way impair its ability to perform its obligations under this Agreement.

f. Financial Condition. Owner is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement.

7. DEFAULTS AND REMEDIES

7.1 Defaults. The occurrence of any one or more of the following events shall constitute a “Default” hereunder by Consultant:

a. Performance. The failure by Consultant to observe or perform any obligation or covenant contained herein to be performed by Consultant, where such failure shall continue for a period of five (5) days after written notice thereof from Owner to Consultant;

b. Assignment for Creditors. Consultant makes an assignment for the benefit of creditors;

c. Receivership. A receiver, trustee or custodian is appointed to or does take title, possession or control of all or substantially all of Consultant’s assets;

d. Voluntary Bankruptcy. Consultant files a voluntary petition under the United States Bankruptcy Code or any successor statute (as the same may be amended from time to time, the “Bankruptcy Code”) or an order for relief is entered against Consultant pursuant to a voluntary or involuntary proceeding commenced under any chapter of the Bankruptcy Code;

e. Involuntary Bankruptcy. Any involuntary petition is filed against Consultant under any chapter of the Bankruptcy Code and is not dismissed within one hundred twenty (120) days; or

f. Attachment. Consultant’s interest in this Agreement is attached, executed upon or otherwise judicially seized and such action is not released within one hundred twenty (120) days of the action.

7.2 Default Notices. Notices given under Section 7.1 shall specify the alleged default and shall demand that Consultant perform the provisions of this Agreement. No such notice shall be deemed a termination of this Agreement unless Owner elects otherwise in such notice.

7.3 Owner’s Remedies. In the event of a Default by Consultant, Owner shall be entitled to:

a. Damages. Recover from Consultant all damages incurred by Owner by reason of Consultant’s Default, including:

i. Any amount necessary to compensate Owner for all the detriment caused by Consultant’s failure to perform its obligations under this Agreement or that in the ordinary course of things would be likely to result therefrom, including the cost of completing the Services or having a third party complete the Services; plus

ii. At Owner’s election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by Applicable Laws.

b. Termination. Terminate this Agreement (except for the provisions hereof that expressly survive the expiration or earlier termination of this Agreement) at any time before the full performance of the Services. In such event, Owner shall be liable only for payment in accordance with the provisions of this Agreement for Services performed prior to the effective

date of termination, and Consultant shall be entitled to no compensation for lost profits or fees as a result thereof, and Consultant shall deliver to Owner for Owner's use all documents completed or in progress up to the date of termination.

7.4 Non-Exclusivity. All of Owner's rights, options and remedies hereunder shall be construed and held to be nonexclusive and cumulative. Owner shall have the right to pursue any one or all of such remedies, or any other remedy or relief that may be provided by Applicable Laws, whether or not stated in this Agreement.

7.5 No Release. Owner's termination of this Agreement shall not relieve Consultant of any liability to Owner that has previously accrued or that shall arise based upon events that occurred prior to the later to occur of the date of termination of this Agreement.

8. TERMINATION. Owner may terminate this Agreement (except for those provisions that expressly survive the expiration or earlier termination thereof) at any time with or without cause. If Owner terminates this Agreement pursuant to this Article 8, Consultant shall be compensated for Services performed pursuant to Article 1 hereof prior to receipt of the notice of termination; provided, however, that the compensation for such Services shall not exceed the compensation set forth in Article 3 hereof and shall not include any compensation for profits or costs for unperformed Services.

9. MISCELLANEOUS PROVISIONS

9.1 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State, without regard to conflicts of law principles.

9.2 Successors and Assigns. Each of the covenants, conditions and agreements contained in this Agreement shall inure to the benefit of and shall apply to and be binding upon the parties hereto and their respective heirs, legatees, devisees, executors, administrators and permitted successors and assigns. Nothing in this section shall in any way alter the provisions of this Agreement restricting assignment.

9.3 Assignment.

a. By Owner. Owner shall not assign this Agreement without the prior written consent of Consultant, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that Consultant's consent shall not be required for any assignment (a) to any entity that directly or indirectly controls, is controlled by or is under common control with Owner or that acquires all or substantially all of the assets or direct or indirect ownership interests of Owner or Owner's affiliates, including any limited liability company ("LLC") for which Owner or an affiliate thereof serves as managing member (even if such LLC has one or more other members that have consent rights over certain decisions), (b) in connection with any merger, consolidation or reorganization of Owner or Owner's affiliates, or (c) in connection with a sale of the Property. In the event of an assignment of this Agreement, Owner shall be released of any liability under this Agreement accruing on or after the date of such assignment, and assignee shall assume all rights and obligations under this Agreement from and after such date. In addition, Owner may collaterally assign this Agreement to any lender providing financing for the Property.

b. By Consultant. Consultant shall not, voluntarily or by operation of law, directly or indirectly (whether by merger or otherwise), assign, pledge, hypothecate, or otherwise transfer this Agreement or any of Consultant's rights, interests or obligations under this Agreement, in whole or in part, without the prior written consent of Owner, and any such purported assignment, pledge, hypothecation, or transfer without the prior written consent of Owner shall be null and void. Any purported assignment by Consultant in contravention of this Section 9.3 shall constitute a default under this Agreement, without the requirement of notice or an opportunity to cure.

9.4 Notice. Except as otherwise stated in this Agreement, any notice, consent, demand, statement or other communication required or permitted to be given under this Agreement shall be in writing and shall be given by (a) personal delivery, (b) overnight delivery with a reputable international overnight delivery service, such as FedEx, or (c) facsimile or email transmission, so long as such transmission is followed within one (1) business day by delivery utilizing one of the methods described in (a) or (b). Any such notice, consent, demand, statement or other communication shall be deemed delivered (x) upon receipt, if given in accordance with subsection (a); (y) one business (1) day after deposit with a reputable international overnight delivery service, if given in accordance with subsection (b); or (z) upon transmission, if given in accordance with subsection (c). Any notice, consent, demand, statement or other communication required or permitted to be given under this Agreement shall be addressed to the parties at the following addresses:

If to Owner:

With a copy to:

And a copy to:

If to Consultant:

[_____]

[Address]

Attn: [_____]

9.5 No Waiver; Cumulative Remedies. No waiver of any term, covenant or condition of this Agreement shall be binding unless executed in writing by the party entitled to the benefit of such term, covenant or condition. The waiver of any breach or default of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of any preceding or subsequent breach or default of such term, covenant or condition or any other term, covenant or condition of this Agreement. Except as expressly provided in this Agreement, the rights and remedies under this Agreement are in addition to and not exclusive of any other rights, remedies, powers and privileges under this Agreement or available at law, in equity or otherwise. No failure to exercise or delay in exercising any right, remedy, power or privilege shall operate as a waiver thereof, and no single or partial exercise of any right, remedy, power or privilege shall preclude the exercise of any other right, remedy, power or privilege.

9.6 Waiver of Jury Trial. To the extent permitted by applicable laws, the parties waive trial by jury in any action, proceeding or counterclaim brought by the other party hereto related to matters arising out of or in any way connected with this Agreement or any claim of injury or damage related to this Agreement

9.7 Confidentiality. Consultant shall receive and hold in confidence:

a. Owner's Information. All information and data, of whatever nature, relating to Owner or the Property (including Owner's operations, policies, procedures, techniques, accounts, personnel, customers, know-how, inventions, prototypes, materials, processes, process equipment, methodologies, tests and other procedures, designs, specifications, product information and information relating to the development, manufacturing or testing of equipment, products or systems, and any information regarding the development of the project to be located on the Property) or used by Owner in carrying on its business, in any case that are disclosed by Owner orally, in writing, by drawings or otherwise visually, or by testing, inspection or otherwise;

b. Third Party Information. All information and data obtained by Consultant or its officers, employees or agents that is proprietary to a third party and that Owner is obligated to treat as confidential or that is disclosed by Owner in connection with the performance by Consultant of Consultant's obligations or Services pursuant to this Agreement; and

c. This Agreement. The terms and provisions of this Agreement, including any amendments, change orders, supplements or modifications hereto.

9.8 Relationship of Parties. The parties to this Agreement are independent contractors and are not, by virtue of this Agreement or otherwise, in any employer-employee, principal-agent, joint venture or partnership relationship with each other. Neither party is authorized to act on the other party's behalf or bind the other party.

9.9 Amendment. No provision of this Agreement may be modified, amended or supplemented except by an agreement in writing signed by Owner and Consultant.

9.10 Construction. Where applicable in this Agreement, the singular includes the plural and the masculine or neuter includes the masculine, feminine and neuter. The words "include," "includes," "included" and "including" mean "'include,' etc., without limitation." The word "shall" is mandatory and the word "may" is permissive. The section headings of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement. Owner and Consultant have each participated in the drafting and negotiation of this Agreement, and the language in all parts of this Agreement shall be in all cases construed as a whole according to its fair meaning and not strictly for or against either Owner or Consultant.

9.11 Severability. Any provision of this Agreement that shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and all other provisions of this Agreement shall remain in full force and effect and shall be interpreted as if the invalid, void or illegal provision did not exist.

9.12 Integration. The terms of this Agreement are intended by the parties as a final, complete and exclusive expression of their agreement with respect to the terms that are included in this Agreement, and may not be contradicted or supplemented by evidence of any other prior or contemporaneous agreement.

9.13 Attorneys' Fees. Except as otherwise expressly set forth in this Agreement, each party shall pay its own costs and expenses incurred in connection with this Agreement and such party's performance under this Agreement, provided, that if either party commences an action, proceeding, demand, claim, action, cause of action or suit against the other party arising out of or in connection with this Agreement, then the substantially prevailing party shall be reimbursed by the other party for all reasonable costs and expenses, including reasonable attorneys' fees and expenses, incurred by the substantially prevailing party in such action, proceeding, demand, claim, action, cause of action or suit, and in any appeal in connection therewith (regardless of whether the applicable action, proceeding, demand, claim, action, cause of action, suit or appeal is voluntarily withdrawn or dismissed).

9.14 Independent Obligations. Notwithstanding anything to the contrary contained in this Agreement, Consultant's obligations under this Agreement are independent and shall not be conditioned upon performance by Owner.

9.15 Reasonable Consent. Whenever consent or approval of either party is required pursuant to this Agreement, that party shall not unreasonably withhold, condition or delay such consent or approval, except as may be expressly set forth to the contrary in this Agreement

9.16 Authority. Consultant guarantees, warrants and represents that the individual or individuals signing this Agreement have the power, authority and legal capacity to sign this Agreement on behalf of and to bind all entities, corporations, partnerships, limited liability companies, joint ventures or other organizations and entities on whose behalf such individual or individuals have signed.

9.17 Counterparts. This Agreement may be executed in one or more counterparts, each of which, when taken together, shall constitute one and the same document.

9.18 Signatures. A facsimile, electronic or portable document format (PDF) signature on this Agreement shall be equivalent to, and have the same force and effect as, an original signature.

9.19 General Conditions. The General Conditions attached as Exhibit D are incorporated herein by reference.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

OWNER:

[____],
a [_____]

By: _____

Name: _____

Title: _____

CONSULTANT:

[____],
a [_____]

By: _____

Name: _____

Title: _____

EXHIBIT A
SERVICES

EXHIBIT B

INSURANCE

Consultant-Provided Insurance Coverage:

During the Term and at all times that Consultant performs Services for Owner, Consultant shall maintain (or shall cause Consultant's subcontractors to maintain) in full force and effect with insurers that maintain an A.M. Best Rating of A-VII or better and authorized to do business in the applicable jurisdiction, at Consultant's or subcontractor's sole expense, including any insurance policy deductibles or self-insured retentions, the insurance coverage required below. The below required insurance shall (i) name Owner and any mortgagee or ground lessor, and their respective subsidiaries, affiliates, directors, officers, employees, agents, beneficiaries, members, partners, managers, representatives and assigns, including, the entities listed below ("Additional Insured Parties") and such other entities as Landlord may reasonably identify from time to time as additional insureds (except for the Workers' Compensation, Employer's Liability and Professional Liability (Errors & Omissions) insurance); (ii) include a waiver of subrogation and waiver of all rights of recovery against and in favor of Owner and the Additional Insured Parties and; (iii) be primary and non-contributory to any insurance as may be available to the Owner and Additional Insured Parties.

(a) Commercial General Liability insurance written on an occurrence policy form in an amount not less than \$1,000,000 each occurrence and \$2,000,000 general annual aggregate (i) covering, at least, bodily injury, including death, personal and advertising injury, broad form property damage, with explosion, collapse and underground property damage exclusions deleted, with contractual liability, independent contractors liability, with medical payments coverage and products and completed operations liability with a separate \$2,000,000 aggregate limit with coverage extended through the statute of limitations after the Completion Date and Acceptance of the Work or Services and; (ii) endorsed to include Owner and the Additional Insured Parties using forms CG 20 10 and CG 20 37, or the equivalent.

The following entities shall be included as additional insureds:

(a) Owner: WE Acquisitions, L.L.C.

(b) Owner's Other Additional Insureds: Winstanley Enterprises, L.L.C.; Winstanley Construction Management, L.L.C.; Winstanley Property Maintenance, L.L.C.

(b) Workers' Compensation insurance in accordance with the laws of the state in which the Project is located, and employer's liability insurance with a limit not less than \$1,000,000 bodily injury each accident; \$1,000,000 bodily injury due to disease each person; and, \$1,000,000 bodily injury due to disease policy limit;

(c) Automobile Liability insurance in an amount not less than \$1,000,000 combined single limit per accident covering all owned, non-owned, leased and hired vehicles for bodily injury, death and property damage liability;

(d) Umbrella/Excess Liability insurance written on an occurrence policy form in an amount not less than \$5,000,000 each occurrence and \$5,000,000 general annual aggregate in excess of the commercial general liability, employer's liability and automobile liability insurance listed above for the Consultant. Limits for sub-contractors shall be determined by Consultant;

(e) If applicable, Pollution Liability insurance (written on an occurrence policy form) of not less than \$1,000,000 per occurrence and \$1,000,000 annual aggregate covering first party and any and all third party claims or losses associated with the conducting of inspections, testing and sampling activities for the project;

(f) Crime or Fidelity insurance with limits of not less than \$100,000 each claim including coverage for third parties.



Owner shall have no responsibility for theft, damage, or loss of any kind to any Consultant tools, including any personal property, that is owned, leased, rented or used by the Consultant or its employees, independent contractors or subcontractors while on the Property or in transit to or from the Property. Consultant, its employees, independent contractors or subcontractors shall waive subrogation and all rights of recovery against and in favor of Owner and the Additional Insured Parties.

Prior to the commencement of work on the Project and the expiration, termination or cancellation of any insurance policy required pursuant to this Exhibit B, Consultant shall provide certificates of insurance, evidencing the above stated insurance requirements. The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to Owner and the Additional Insured Parties, and any failure to request evidence of this insurance by Consultant shall not be construed as a waiver of Consultant's to provide the insurance coverage.

If coverage is written on a claims-made policy form, such coverage shall have a retroactive date not later than the effective date of Consultant's or sub-contractor's respective contract with Owner and/or Consultant, as applicable, and Consultant shall and shall cause each sub-contractor for a period of three (3) years after the Completion Date (i) to maintain all claim-made insurance, at their sole cost and expense, satisfying the foregoing, or (ii) to secure "tail" or extended reporting coverage; if any claims-made insurance is cancelled or not renewed.

EXHIBIT C
FORMS OF LIEN WAIVERS

See attached

WAIVER AND RELEASE UPON PROGRESS PAYMENT
(Contractor)

To (Owner):

Contractor:

Agreement Date: _____

Project Name: _____

Project Address: _____

Supporting Documents Attached Hereto:

1. Contractor's Waiver and Release upon Progress Payment
2. Separate waivers and releases from the following subcontractors and material and equipment suppliers:
 - a. _____
 - b. _____
 - c. _____
 - d. _____
 - e. _____
 - f. _____

WAIVER AND RELEASE UPON PROGRESS PAYMENT

A. Unconditional Release. The undersigned has been paid and has received a progress payment in the sum of

\$_____ for labor, services, equipment, or material furnished to

_____ on the job of
(Your Customer)

_____ located at (the
Owner)

_____ (the Project) and does hereby release any
(Job Location)

mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to

(Your Customer)

_____ through _____
(Date)

(the Release Date) only and does not cover any retentions retained before or after the Release Date; extras furnished before the Release Date for which payment has not been received; extras or items furnished after the Release Date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the Release Date are covered by this release unless specifically reserved by the claimant in writing in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract.

NOTICE: THIS SECTION WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS SECTION IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID.

B. Conditional Release. Upon receipt by the undersigned of a check from _____ in the sum of \$_____ (Maker of Check) _____ (Check Amount)

(Conditional Release Amount) payable to _____
(Payee/Payees of Check)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of _____ located at (Owner) _____ to the following extent. (Job Location)

This release covers a progress payment for labor, services, equipment, or material furnished to

_____ through _____ (the Release Date)
(Date)

only and does not cover any retentions retained before or after the Release Date; extras furnished before the Release Date for which payment has not been received; extras or items furnished after the Release Date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the Release Date are covered by this release unless specifically reserved by the claimant in writing in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

C. The undersigned warrants and represents, as to this Waiver and Release Upon Progress Payment and all previously executed ones, for this Project, that (a) all materials delivered to the Project by or for the undersigned are for use therein only, (b) title to all work, material and equipment, whether or not incorporated into the Project, has passed to the Project Owner, free and clear of all liens, claims, security interests or encumbrances (hereinafter all referred to as "liens"), (c) all taxes applicable to the materials furnished and the work performed by the undersigned have been fully paid and (d) all laborers, mechanics, subcontractors (direct or indirect) and material suppliers for all work done and for all materials, machinery, equipment, fixtures, tools, scaffolding and appliances furnished for the Project by the undersigned and for any other indebtedness connected therewith for which the Owner of the Project might be responsible have been paid in full through the Release Date. With respect to Section B, the aforesaid warranties and representations are made contingent upon the payment of the amount stated in Section B.

D. The undersigned, for itself and its successors, and on behalf of all persons able to claim through or under the undersigned, (i) waives, relinquishes and releases all liens and right or claim to a lien for labor or materials furnished in the construction, improvement, alteration or repair involved in performance by the undersigned through the Release Date, (ii) agrees to indemnify, defend, save and hold harmless the Owner from all liability, costs and expenses, including reasonable attorneys' fees, incurred by Owner in (A) discharging (by payment, bond or otherwise) or defending suit to enforce any mechanics' or materialmen's lien, or any claim to or right of action for such lien, that may be filed and (B) satisfying any claims or demands arising out of, due or that may be made, directly or indirectly attributable to the undersigned or otherwise connected with the Project, any work performed or supplies furnished by the undersigned thereunder, or in furtherance of the construction or completion of the undersigned's work or otherwise connected with the Project through the Release Date and (iii) hereby releases the Owner, any future owner of the Project, the surety or sureties on each bond for the Project, all lenders in connection with the Project, and each of their successors and assigns, and the Project itself from all claims, rights of action, liabilities and liens that may be filed or asserted in connection with the undersigned's contract or otherwise in connection with the Project on account of labor or materials furnished by the undersigned through the Release Date. With

respect to Section B, the aforesaid waiver, indemnification and release are made contingent upon the payment of the amount stated in Section B.

Executed as a sealed instrument under the penalties of perjury this _____ day of _____, 20____.

Company Name: _____ Signatory's Name: _____ Title: _____

Signature: _____ Date: _____

SUBCONTRACTORS' LIEN WAIVERS

[see attached]

WAIVER AND RELEASE UPON PROGRESS PAYMENT
(Subcontractor)

To (Owner): _____ Contractor: _____ Subcontractor: _____ Agreement Date: _____

Project Name: _____ Project Address: _____

Supporting Documents Attached Hereto:

1. Subcontractor's Waiver and Release upon Progress Payment
2. Separate waivers and releases from the following sub-subcontractors and material and equipment suppliers:
 - a. _____
 - b. _____
 - c. _____
 - d. _____
 - e. _____
 - f. _____

WAIVER AND RELEASE UPON PROGRESS PAYMENT

A. Unconditional Release. The undersigned has been paid and has received a progress payment in the sum of

\$_____ for labor, services, equipment, or material furnished to

_____ on the job of
(Your Customer)

_____ located at (the
Owner)

_____ (the Project)
and does hereby release (Job Location)

any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to

_____ through _____
_____ (Your Customer)
_____ (Date)

(the Release Date) only and does not cover any retentions retained before or after the Release Date; extras furnished before the Release Date for which payment has not been received; extras or items furnished after the Release Date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the Release Date are covered by this release unless specifically reserved by the claimant in writing in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract.

NOTICE: THIS SECTION WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS SECTION IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID.

B. Conditional Release. Upon receipt by the undersigned of a check from

(Maker of Check)

in the sum of \$_____ (Conditional Release
Amount) payable to _____ (Check Amount)
_____ (Payee/Payees of Check)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice,

or bond right the undersigned has on the job of _____

located at (Owner)

_____ to the following extent.
(Job Location)

This release covers a progress payment for labor, services, equipment, or material furnished to

_____ through _____ (the Release Date)
(Date)

only and does not cover any retentions retained before or after the Release Date; extras furnished before the Release Date for which payment has not been received; extras or items furnished after the Release Date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the Release Date are covered by this release unless specifically reserved by the claimant in writing in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

C. The undersigned warrants and represents, as to this Waiver and Release Upon Progress Payment and all previously executed ones, for this Project, that (a) all materials delivered to the Project by or for the undersigned are for use therein only, (b) title to all work, material and equipment, whether or not incorporated into the Project, has passed to the Project Owner, free and clear of all liens, claims, security interests or encumbrances (hereinafter all referred to as "liens"), (c) all taxes applicable to the materials furnished and the work performed by the undersigned have been fully paid and (d) all laborers, mechanics, subcontractors (direct or indirect) and material suppliers for all work done and for all materials, machinery, equipment, fixtures, tools, scaffolding and appliances furnished for the Project by the undersigned and for any other indebtedness connected therewith for which the Owner of the Project might be responsible have been paid in full through the Release Date. With respect to Section B, the aforesaid warranties and representations are made contingent upon the payment of the amount stated in Section B.

D. The undersigned, for itself and its successors, and on behalf of all persons able to claim through or under the undersigned, (i) waives, relinquishes and releases all liens and right or claim to a lien for labor or materials furnished in the construction, improvement, alteration or repair involved in performance by the undersigned through the Release Date, (ii) agrees to indemnify, defend, save and hold harmless the Owner from all liability, costs and expenses, including reasonable attorneys' fees, incurred by Owner in (A) discharging (by payment, bond or otherwise) or defending suit to enforce any mechanics' or materialmen's lien, or any claim to or right of action for such lien, that may be filed and (B) satisfying any claims or demands arising out of, due or that may be made, directly or indirectly attributable to the undersigned or

otherwise connected with the Project, any work performed or supplies furnished by the undersigned thereunder, or in furtherance of the construction or completion of the undersigned's work or otherwise connected with the Project through the Release Date and (iii) hereby releases the Owner, any future owner of the Project, the surety or sureties on each bond for the Project, all lenders in connection with the Project, and each of their successors and assigns, and the Project itself from all claims, rights of action, liabilities and liens that may be filed or asserted in connection with the undersigned's contract or otherwise in connection with the Project on account of labor or materials furnished by the undersigned through the Release Date. With respect to Section B, the aforesaid waiver, indemnification and release are made contingent upon the payment of the amount stated in Section B.

Executed as a sealed instrument under the penalties of perjury this ____ day of _____, 20__.

Company Name: _____ Signatory's Name: _____ Title: _____

Signature: _____ Date: _____

SUB-SUBCONTRACTORS' LIEN WAIVERS

[see attached]

WAIVER AND RELEASE UPON FINAL PAYMENT
(Contractor)

To (Owner): _____

Contractor: _____

Agreement Date: _____

Project Name: _____

Project Address: _____

Supporting Documents Attached Hereto:

1. Contractor's Waiver and Release upon Final Payment
2. Separate waivers and releases from the following subcontractors and material and equipment suppliers:
 - a. _____
 - b. _____
 - c. _____
 - d. _____
 - e. _____

WAIVER AND RELEASE UPON FINAL PAYMENT

A. Unconditional Release. The undersigned has been paid in full for all labor, services, equipment, or material

furnished to _____ on the job of
(Your Customer)

_____ located at
(the Owner)

_____ (the Project) and does
hereby (Job Location)

waive and release any right to a mechanic's lien or other lien against the Project, stop notice, or any right against a labor and material bond on the job, except for disputed claims for extra work in the amount of \$ _____ and described as _____.

B. Conditional Release. Upon receipt by the undersigned of a check from

(Maker of Check)

in the sum of \$ _____ payable to _____
(Amount of Check) (Payee or Payees of Check)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice,

or bond right the undersigned has on the job of _____ located at
(Owner)

_____ to the following extent. This release
covers (Job Location)

the final payment to the undersigned for all labor, services, equipment, or material furnished on the job. Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

NOTICE: THIS SECTION WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS SECTION IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID.

C. The undersigned warrants and represents, as to this Waiver and Release Upon Final Payment and all previous executed ones for this Project, that (a) all materials delivered to the

Project by or for the undersigned are for use therein only, (b) title to all work, material and equipment, whether or not incorporated into the Project, has passed to the Project Owner, free and clear of all liens, claims, security interests or encumbrances (hereinafter all referred to as "liens"), (c) all taxes applicable to the materials furnished and the work performed by the undersigned have been fully paid and (d) all laborers, mechanics, subcontractors (direct or indirect) and material suppliers for all work done and for all materials, machinery, equipment, fixtures, tools, scaffolding and appliances furnished for the Project by the undersigned and for any other indebtedness connected therewith for which the Owner of the Project might be responsible have been paid in full. With respect to Section B, the aforesaid warranties and representations are made contingent upon the payment of the amount stated in Section B.

D. The undersigned, for itself and its successors, and on behalf of all persons able to claim through or under the undersigned, (i) waives, relinquishes and releases all mechanic's and other liens and right or claim to a lien for labor or materials furnished in the construction, improvement, alteration or repair involved in performance by the undersigned on the Project, (ii) agrees to indemnify, defend, save and hold harmless the Owner from all liability, costs and expenses, including reasonable attorneys' fees, incurred by Owner in (A) discharging (by payment, bond or otherwise) or defending suit to enforce any mechanics' or materialmen's lien, or any claim to or right of action for such lien, that may be filed and (B) satisfying any claims or demands arising out of, due or that may be made, directly or indirectly attributable to the undersigned or otherwise connected with the Project, any work performed or supplies furnished by the undersigned thereunder, or in furtherance of the construction or completion of the undersigned's work or otherwise connected with the Project and (iii) hereby releases the Owner, any future owner of the Project, the surety or sureties on each bond for the Project, all lenders in connection with the Project, and each of their successors and assigns, and the Project itself from all claims, rights of action, liabilities and liens that may be filed or asserted in connection with the undersigned's contract or otherwise in connection with the Project on account of labor or materials furnished by the undersigned. With respect to Section B, the aforesaid waiver, indemnification and release are made contingent upon the payment of the amount stated in Section B.

Executed as a sealed instrument under the penalties of perjury this day of _____, 20__.

Company Name: Signatory's Name: _____ Title: _____

Signature: _____ Date: _____

SUBCONTRACTORS' LIEN WAIVERS

[see attached]

WAIVER AND RELEASE UPON FINAL PAYMENT
(Subcontractor)

To (Owner): _____ Contractor: _____ Subcontractor: _____ Agreement Date: ____

Project Name: _____ Project Address: _____

Supporting Documents Attached Hereto:

1. Subcontractor's Waiver and Release upon Final Payment
2. Separate waivers and releases from the following sub-subcontractors and material and equipment suppliers:
 - a. _____
 - b. _____
 - c. _____
 - d. _____
 - e. _____

WAIVER AND RELEASE UPON FINAL PAYMENT

A. Unconditional Release. The undersigned has been paid in full for all labor, services, equipment, or material

furnished to _____ on the job of
(Your Customer)

_____ located at
(the Owner)

_____ (the Project) and does
hereby (Job Location)

waive and release any right to a mechanic's lien or other lien against the Project, stop notice, or any right against a labor and material bond on the job, except for disputed claims for extra work in the amount of \$ _____ and described as _____.

B. Conditional Release. Upon receipt by the undersigned of a check from

(Maker of Check)

in the sum of \$ _____ payable to _____
(Amount of Check) (Payee or Payees of Check)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice,

or bond right the undersigned has on the job of _____ located at
(Owner)

_____ to the following extent. This release
covers (Job Location)

the final payment to the undersigned for all labor, services, equipment, or material furnished on the job. Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

NOTICE: THIS SECTION WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS SECTION IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID.

C. The undersigned warrants and represents, as to this Waiver and Release Upon Final Payment and all previous executed ones for this Project, that (a) all materials delivered to the

Project by or for the undersigned are for use therein only, (b) title to all work, material and equipment, whether or not incorporated into the Project, has passed to the Project Owner, free and clear of all liens, claims, security interests or encumbrances (hereinafter all referred to as "liens"), (c) all taxes applicable to the materials furnished and the work performed by the undersigned have been fully paid and (d) all laborers, mechanics, subcontractors (direct or indirect) and material suppliers for all work done and for all materials, machinery, equipment, fixtures, tools, scaffolding and appliances furnished for the Project by the undersigned and for any other indebtedness connected therewith for which the Owner of the Project might be responsible have been paid in full. With respect to Section B, the aforesaid warranties and representations are made contingent upon the payment of the amount stated in Section B.

D. The undersigned, for itself and its successors, and on behalf of all persons able to claim through or under the undersigned, (i) waives, relinquishes and releases all mechanic's and other liens and right or claim to a lien for labor or materials furnished in the construction, improvement, alteration or repair involved in performance by the undersigned on the Project, (ii) agrees to indemnify, defend, save and hold harmless the Owner from all liability, costs and expenses, including reasonable attorneys' fees, incurred by Owner in (A) discharging (by payment, bond or otherwise) or defending suit to enforce any mechanics' or materialmen's lien, or any claim to or right of action for such lien, that may be filed and (B) satisfying any claims or demands arising out of, due or that may be made, directly or indirectly attributable to the undersigned or otherwise connected with the Project, any work performed or supplies furnished by the undersigned thereunder, or in furtherance of the construction or completion of the undersigned's work or otherwise connected with the Project and (iii) hereby releases the Owner, any future owner of the Project, the surety or sureties on each bond for the Project, all lenders in connection with the Project, and each of their successors and assigns, and the Project itself from all claims, rights of action, liabilities and liens that may be filed or asserted in connection with the undersigned's contract or otherwise in connection with the Project on account of labor or materials furnished by the undersigned. With respect to Section B, the aforesaid waiver, indemnification and release are made contingent upon the payment of the amount stated in Section B.

Executed as a sealed instrument under the penalties of perjury this day of _____, 20__.

Company Name: Signatory's Name: _____ Title: _____

Signature: _____ Date: _____

SUB-SUBCONTRACTORS' LIEN WAIVERS

[Please attach]

EXHIBIT D

GENERAL CONDITIONS

The following general conditions are incorporated by reference into the agreement. In the event of any inconsistency between the terms and conditions of such agreement and the following, these general conditions shall apply notwithstanding any contrary provisions in the agreement.

1. Consultant shall commence performance immediately upon Owner's orders to do so, and shall diligently pursue same. If Owner has provided a schedule to Consultant, Consultant shall perform its services in accordance with such schedule, as the same may from time to time be adjusted by Owner. Unless a different time is set forth in the agreement, Consultant will take appropriate action on all shop drawings, samples and other submittals within ten days of receipt. Consultant will cooperate and coordinate with all other consultants engaged by Owner. Consultant represents that it and any persons performing services on its behalf hold all applicable licenses to perform the services required by the state where the project is located. If not described in the agreement, deliverables shall be in a form and format as Owner reasonably requires.

2. Consultant shall arrange for and supervise all tests and inspections related to its services as required by law or by documents approved by Owner. All persons performing such tests and inspections shall be sub-consultants approved in advance in writing by Owner together with the scope and costs of their services as provided below, and Consultant will be reimbursed for the reasonable third-party costs of such tests and inspections; provided, however, that Owner may elect to engage any such person directly. Consultant shall pay all taxes, assessments and premiums, including those under social security, unemployment insurance and workmen's compensation laws relating to its services. The following provisions are expressly applicable to any samples or tests which are intended to, or which may, disclose environmental conditions at the property. Before any such samples are collected or tests are performed Consultant shall submit to Owner for its written approval a protocol for conducting such sampling and testing. The protocol shall include, without limitation, (a) the proposed location(s) of any sampling or testing, (b) the reason for the location chosen, (c) each compound, chemical and other element in the soil, groundwater, air or building materials which are intended to be identified in the sampling or testing and (d) the reason why each such compound, chemical and element needs to be identified. Once approved, the Consultant shall only sample and test in the locations and for the compounds, chemicals and elements approved. All information regarding environmental data or environmental conditions at the property is confidential information. Notwithstanding anything herein to the contrary, if any confidential information is expressly required by law to be disclosed the Consultant shall first notify Owner and set forth such requirement of law and the specific information Consultant intends to disclose in order to comply with such requirement of law and allow Owner at least thirty (30) days following such notice to Owner from Consultant for Owner to seek legal recourse including protective orders with respect to such proposed disclosure.

3. The amount set forth in the agreement as the fee shall be the entire amount to be paid by Owner for the services set forth in such agreement and herein (sometimes referred to as

“basic services”). Consultant shall not be entitled to receive any extra compensation of any kind for extra, additional or other services unless the same was ordered by Owner as such in advance in writing (which Owner may do from time to time so long as the same are reasonably related to the basic services, and absent other written agreement between the parties, the cost of such other services shall be paid at the hourly rates set forth in the agreement or, if none, at Consultant’s hourly rates generally then being charged to others). Consultant shall not engage others including sub-consultants with respect to its services except with Owner’s prior written consent (and consent to the scope of such services), and the fees of any such persons in all events shall be paid by Consultant from the Consultant’s fee for basic services, Consultant agreeing to indemnify Owner from any claims made by others for payment. Consultant will be fully responsible for the services of any of its sub-consultants notwithstanding such consent by Owner, and any such sub-consultants shall be bound by these provisions. The persons identified in the agreement as being the individuals responsible for performing services on behalf of Consultant shall not be changed without Owner’s prior written consent unless such individual leaves the employ of Consultant. Unless the agreement identifies the number of copies of the work reflecting the services to be provided, as part of basic services Consultant will provide Owner a reasonable number of copies. As part of basic services, all designs and other work reflecting Consultant’s services will be provided to Owner in an electronic form as Owner may reasonably specify as well as in hard copy. Unless specific numbers of meetings are set forth in the agreement, as part of basic services Consultant will attend reasonable meetings including with governmental officials and will provide certifications to lenders, tenants and others having an interest in the project to which the services relate.

4. Upon Owner’s request, Consultant shall join in any arbitration (and consent to the consolidation into any such arbitration of any court proceeding between Consultant and Owner) involving Owner and any third party which involves the project and one or more common questions of law or fact. During the pendency of any dispute, Consultant shall continue to perform its services and Owner shall continue to make payments for all amounts due that are not disputed in good faith by Owner.

5. No lender to whom the contract is assigned as collateral security for a loan shall ever be liable until it notifies Consultant that it has accepted such assignment as an absolute assignment. No manager, member, partner, trustee, officer, director, employee, agent or affiliate of Owner (or of any such affiliate) will ever be individually liable to Consultant.

6. All information, designs and other materials prepared by Consultant and all copyright and other intellectual property rights therein shall be deemed work for hire and shall be the sole property of Owner, and Consultant irrevocably transfers to Owner as of the date of creation all right and title therein including all rights to apply for federal copyright as attorney in fact for Consultant. Consultant warrants that no such materials are or will be subject to any patent, copyright, trade secret or other proprietary rights in others. Consultant shall not be responsible for any alterations made by others using any of its designs. Owner’s review and approval of any work is not for the purpose of determining its adequacy and shall create no liability on the part of Owner nor relieve Consultant of its responsibility for errors or omissions in its services. All information disclosed by Owner or its representatives to Consultant shall be deemed strictly confidential and shall not be disclosed by Consultant without Owner’s prior written authorization. Excluded from this confidentiality provision is such information related to

Consultant's services as is required to be disclosed to Consultant's employees, approved sub-consultants and government officials in order for Consultant to perform its services, publicly available information and information expressly required by law to be disclosed (Consultant being responsible for its employees' and sub-consultants' non-disclosure of such information).

7. The agreement incorporates all services previously provided by Consultant with respect to the project, supersedes all prior understandings and agreements (except prior confidentiality agreements if any) and may be modified or amended only by a writing signed by the parties. The agreement expressly reflects all amounts owing if any by Owner on account of all services previously provided, and Consultant has no claims against Owner. Only _____, Owner's Representative(s), (or any successors named by Owner in writing) may give an approval or instruction and only then in writing, and Consultant acknowledges that it will not rely on any purported approval or instruction given by any other employee or agent of Owner or given by any such Representative(s) orally.