



AIA[®] Document B102[™] – 2007

Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services

AGREEMENT made as of the 20th day of January in the year 2010
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

Borough of Eatontown
47 Broad Street
Eatontown, NJ 07724
Phone: 732-389-7621
Fax: 732-389-7668

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

BSA+A
25 Bridge Avenue
Red Bank, NJ 07701
Phone: 732-741-4900
Fax: 732-741-4977

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

Architect of Record FY2010

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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ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

§ 1.1 The Architect shall provide the following professional services:

(Describe the scope of the Architect's services or identify an exhibit or scope of services document setting forth the Architect's services and incorporated into this document in Section 9.2)

Architect of Record Services

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

§ 1.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 1.4 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.

§ 1.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

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

.1 General Liability

\$1M each occurrence/\$2M general aggregate

.2 Automobile Liability

\$1M combined single limit

.3 Workers' Compensation

\$1M each occurrence/\$1M Policy Limit

.4 Professional Liability

\$2M each occurrence & aggregate

ARTICLE 2 OWNER'S RESPONSIBILITIES

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

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

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

§ 2.4 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.

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

ARTICLE 3 COPYRIGHTS AND LICENSES

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

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

§ 3.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Sections 5.3 and 5.4, the license granted in this Section 3.3 shall terminate.

§ 3.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes

of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 3.3.1.

§ 3.4 Except for the licenses granted in this Article 3, 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. 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.

ARTICLE 4 CLAIMS AND DISPUTES

§ 4.1 GENERAL

§ 4.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 4.1.1.

§ 4.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction, if applicable. 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.

§ 4.1.3 The Architect and 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 of this Agreement, except as specifically provided in Section 5.7.

§ 4.2 MEDIATION

§ 4.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

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

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

§ 4.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 4.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 4.3 of this Agreement

[] Litigation in a court of competent jurisdiction

[] Other (*Specify*)

§ 4.3 ARBITRATION

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

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

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

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

§ 4.3.4 CONSOLIDATION OR JOINDER

§ 4.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 4.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. 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.

§ 4.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 4.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 5 TERMINATION OR SUSPENSION

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

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

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

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

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

§ 5.6 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 5.7.

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

§ 5.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 3 and Section 6.3.

ARTICLE 6 COMPENSATION

§ 6.1 The Owner shall compensate the Architect for services described in Section 1.1 as set forth below, or in the attached exhibit or scope document incorporated into this Agreement in Section 9.2.

(Insert amount of, or basis for, compensation or indicate the exhibit or scope document in which compensation is provided for.)

Architect of Record fee schedule 1/1/2010
BSA+A Terms & Conditions 1/1/2009

§ 6.2 Reimbursable Expenses are in addition to compensation for the Architect's professional services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

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

§ 6.2.1 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus an administrative fee of one point one per cent (1.1%) of the expenses incurred.

§ 6.3 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 5.5, or the Architect terminates this Agreement under Section 5.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of the Project as follows:

§ 6.4 PAYMENTS TO THE ARCHITECT

§ 6.4.1 An initial payment of Zero (\$ 0) 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 in the final invoice.

§ 6.4.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid 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 monthly or annual interest agreed upon.)

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§ 6.4.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 6.4.4 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 4.3.

§ 7.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 7.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to 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 a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

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

§ 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.

§ 7.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 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.

§ 7.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order

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to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 8 SPECIAL TERMS AND CONDITIONS

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

ARTICLE 9 SCOPE OF THE AGREEMENT

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


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

- 1** AIA Document B102-2007, Standard Form Agreement Between Owner and Architect
(Paragraphs deleted)
- 2** Other documents:
(List other documents, including the Architect's scope of services document, hereby incorporated into the Agreement.)


Architect of Record fee schedule 1/1/2010
BSA+A Terms & Conditions 1/1/2009

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

OWNER


(Signature)
~~George Jackson~~ Gerald J. Tarantolo
~~Borough Administrator~~ Mayor
(Printed name and title)

ARCHITECT


(Signature)
Charles Simpers
Director of Operations
(Printed name and title)

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Borough of Eatontown
Architect of Record Fee Schedule
 January 1, 2010

Construction Cost		Lump Sum Fee Range	
Greater Than	Less Than	Minimum	Maximum
\$0	\$50,000	\$10,000	\$10,000
\$50,000	\$100,000	\$10,000	\$18,000
\$100,000	\$250,000	\$18,000	\$42,000
\$250,000	\$500,000	\$42,000	\$80,000
\$500,000	\$750,000	\$80,000	\$105,000
\$750,000	\$1,000,000	\$105,000	\$125,000

*****if the construction cost exceeds \$1 million, the fee shall be negotiated.**

Fee Allocation	
Schematic Design	10%
Design Development	20%
Construction Documents	50%
Bidding / Negotiation	3%
Construction	15%
Temp. Certificate of Occupancy	1%
Final Certificate of Occupancy	1%

BSA+A Terms and Conditions of Agreement for Professional Services - January 1, 2009

Scope of Project and Services

See attached letter.

Fixed Fee Projects

Billings are based upon the percentage of completion of each phase of services.

Hourly Rate Schedule

Principal Architect	\$ 200.00
Studio Director	\$ 175.00
Project Manager	\$ 150.00
Senior Project Architect	\$ 135.00
Project Architect	\$ 125.00
Interior Designer	\$ 115.00
Architectural Designer	\$ 115.00
Construction Administration	\$ 100.00
Technical I Consultant	\$ 95.00
Technical II Consultant	\$ 90.00
Accounting Department	\$ 85.00
Administrative Department	\$ 80.00

Hourly rate schedule subject to change

Any consultants required and authorized by the Owner will be billed at cost plus ten percent.

Estimated Fees

Fee estimates are valid for 60 days. Where an estimated total is given for hourly work, it shall not constitute an upset figure but is provided to assist in project budgeting only.

Initial Payment

Services commence when the Owner's authorization is received with the initial payment, which will be applied to the final invoice.

Invoices

Invoices are sent monthly for services performed. Payment is due upon receipt. A late charge will be added thirty (30) days after the final invoice.

Reimbursable Expenses

In-house Copies	\$ 0.20
In-house Prints	\$ 5.00
In-house Scans	\$ 3.00
Long Distance	1.1 multiplier
Reproductions	1.1 multiplier
Blue Prints	1.1 multiplier
Freight/Delivery	1.1 multiplier
Renderings	1.1 multiplier
Permits/Fees	1.1 multiplier
Mileage	\$.505/mile

Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of that normally carried by BSA+A.

Government Agency Fees

The Owner shall pay directly (outside of BSA+A fees and reimbursables) for all the following governmental charges, including but not limited to: application fees, review fees, permit fees, plat recordation, governmental charges, impact fees, front footage assessments, water flow and pressure test, tap-in fees, bonds, transfer taxes, etc. Owner should investigate and budget these items in their total project development soft costs.

Additional Services

Services beyond those outlined in the attached Scope of Work, for revisions due to adjustments in the scope, budget or quality of the project, will be billed at hourly rates (See attached BSA+A 2008 Hourly Rate Schedule).

Change of Scope

All fees are subject to renegotiations if the original scope of service is changed or if services are not completed within 12 months.

Design/Build

Owner may solicit Design/Build proposals from contractors utilizing preliminary or incomplete documents, understanding that the Owner is responsible for their computations and certifications, for the code compliance and for the coordination of this preliminary and incomplete work. BSA+A will review those Design/Build proposals only for consistency with the architectural design concept only if included within the scope of services agreed.

Design Without Construction Review

It is agreed that if the professional services of BSA+A do not extend to or include the review or site observation of the contractor's work or performance, the Owner will defend, indemnify and hold harmless the BSA+A from any claim or suit whatsoever. Such claims shall include, but are not limited to payments, expenses or costs involved, arising from or alleged to have arisen from the contractor's work to conform to the design intent and the contract documents. BSA+A agrees to be responsible for their own employees' negligent acts, errors or omissions, as limited below.

Ownership of Documents

All documents (drawings, sketches, reports, etc.) prepared as instruments of service shall remain the copyrighted property of BSA+A. Work which is furnished, but not paid for, will be returned to BSA+A and will not be used for any purpose until payment is rendered.

Insurance

BSA+A is protected by Workmen's Compensation, Professional Liability and Standard Public Liability Insurance. BSA+A will not be responsible for any loss, damage or liability arising from Owner's negligent acts, errors or omissions or those by Owner's consultants, contractors, and agents or from those of any person whose conduct is not within the BSA+A's contractual responsibility.

Risk Allocation

Owner and BSA+A have discussed the risk, rewards and benefits of the project and the BSA+A's total fees for services. The risks have been allocated such that the Owner agrees that to the fullest extent permitted by law, BSA+A's total liability to Owner for any and all injuries, claims, losses, expenses, damages or claims expenses arising out of this agreement from any cause or causes, shall not exceed the total fee or \$50,000, whichever is greater. Such causes include but are not limited to design professional's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.

Termination of Agreement

This agreement may be terminated by either party upon seven days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination. This Agreement may be terminated by the Owner upon at least seven days' written notice to BSA+A in the event the Project is permanently abandoned. In the event of termination not the fault of BSA+A, BSA+A shall be compensated for all services performed to termination date together with Reimbursable Expenses then due.

Publicity

All publicity developed for this project will credit BSA+A as the Architects.

Environmental Hazards

BSA+A does not perform services related to the identification, containment or removal of asbestos, hazardous waste, or any other environmental hazards, nor will it assume liability for any damages or costs related to these materials.

Nonpayment/Work Stoppage

BSA+A reserves the right to stop work on the project upon 10 days written notice to Owner for non-payment and withdraw any permit documents. BSA+A's stoppage of work shall be without liability for consequential or other damages resulting from the stoppage. Restart on the project after 30 days of stoppage will require payment of additional fees.

Standard of Care

The Owner acknowledges the inherent risks associated with construction. In performing professional services, BSA+A will use that degree of care and skill ordinarily exercised under similar circumstances by competent architects licensed in the State where the project is located.

Successors & Assigns

The Owner and BSA+A 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 party shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.

Affidavits/Certifications

Any affidavits or certifications required by local municipalities, lenders, or others shall be written to include language acceptable to the BSA+A's Liability Insurance Carrier-CNA. The Owner shall not require certification that would require knowledge beyond the scope of this agreement.

Miscellaneous Provisions

Unless otherwise specified, this Agreement shall be governed by State Law in which the project is located. Terms in this Agreement shall have the same meaning as those in AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

Collection

If it is necessary to enforce collection on any amount past due under this agreement, BSA+A shall be reimbursed for all legal and other reasonable costs related thereto, including (33%) attorney's fees, court costs, administrative time and other collection costs.

Certificate of Merit

The Owner shall make no claim (whether directly or in the form of a third party claim) against BSA+A unless the Owner shall have first provided BSA+A with a written certification executed by a licensed professional in the State where the project is located, specifying each and every act or omission which the certifier contends constitutes a violation of the standard of care expected of an architect performing professional services under similar circumstances. Such certificate shall be provided to BSA+A thirty (30) days prior to the presentation of any such claim.

Frivolous Suit

In the event the Owner makes a claim or brings an action against BSA+A for any act arising out of the performance of the services hereunder, and the Owner fails to prove such a claim or action, then the Owner shall pay all legal and other costs incurred by BSA+A for any act arising out of the performance of the services hereunder, and the Owner fails to prove such a claim or action, then the Owner shall pay all legal and other costs incurred by BSA+A in defense of such claim or action.

Electronic Media

Electronic media disks of project files, if requested, are billed outside of fees as a reimbursable at \$200.00 per disk plus printing costs per sheet for one record set for Owner and one set for BSA+A.

Arbitration

Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof may if both parties agree at that time in writing be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.

Privity of Contract

Owner agrees that any claim against BSA+A will be based solely on breach of contract and Owner also agrees that any contract by the Owner with any contractor for work on the project shall specifically state that "Contractor shall make no claim against BSA+A for the project and Contractor's sole basis for claim shall be breach of contract against the Owner regardless of whether such claim is based on any alleged error or omission of BSA+A. Contractor also agrees to place such a clause as this in all its agreements with any subcontractors for the project restricting their right to recovery to breach of contract against the contractor."

Repose

As between the parties to this Agreement, any applicable statute of limitations or repose will begin to run, and any cause of action will have accrued, not later than the date of the last invoice sent to Owner by BSA+A for project services performed. In no event shall Owner be permitted to make any claim against any party, including third parties not in a privity with this Agreement, after four years from the date of substantial completion of the project or the date of the final payment to BSA+A for this project, whichever event occurs earliest (referred to as the date of repose), whether the basis of any claim is known or discovered before or after that date of repose.