# EXHIBIT 'C'

## WESTERN NATIONAL CONSTRUCTION

### PROJECT:
ONE PEARL PLACE

### DATE:
12/04/00

<table>
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<tr>
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<th>182</th>
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178899 Sq.Ft. - Living
5030 Sq.Ft. - Ancillary
175809 Total Sq.Ft.
## WESTERN NATIONAL CONSTRUCTION

**EXHIBIT C**

**PROJECT:** ONE PEARL PLACE

**DATE:** 12/04/00

**UNITS:** 182

**ACRES:** 4.6

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**SUBTOTAL COMMON AREA**

$2,092,000  $11,455  $454,783

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Form of Budget.Xls

2 of 7

WNC 088877
## WESTERN NATIONAL CONSTRUCTION

**EXHIBIT C**

**PROJECT:** ONE PEARL PLACE

**DATE:** 12/04/00

**UNITS:** 182

**ACRES:** 4.6

### DIRECT OFFSITE COSTS

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**SUBTOTAL DIRECT OFFSITES**

$828,000 $4,549 $180,000
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# Western National Construction

**Project:** ONE PEARL PLACE  
**Date:** 12/04/00  
**Units:** 182  
**Acres:** 4.6  
**176809 Sq.Ft. - Living**  
**5000 Sq.Ft. - Ancillary**  
**172809 Total Sq.Ft.**

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**Subtotal Direct Onsites:** $17,183,767, $94,498, 82.34
## WESTERN NATIONAL CONSTRUCTION

**PROJECT:** ONE PEARL PLACE

**DATE:** 12/04/00

**UNITS:** 182

**ACRES:** 4.6

#### 170809 Sq.Ft. - Living

#### 5000 Sq.Ft. - Ancillary

#### 178809 Total Sq.Ft.

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**SUBTOTAL INDIRECT ONSITES**

| Amount | **$846,908** | **$5,203** | **6.39** |

---

Form of Budget.xls

WNC 088881

6 of 7
## WESTERN NATIONAL CONSTRUCTION

**PROJECT:** ONE PEARL PLACE

**DATE:** 12/04/00

**UNITS:** 182

**ACRES:** 4.6

### EXHIBIT C

170809 Sq.Ft. - Living  
5000 Sq.Ft. - Ancillary  
175809 Total Sq.Ft.

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**SUBTOTAL INDIRECT OFFSITES**  
$ 165,000  907  $ 0.84

---

W.H. Cibor  
Manager  
Cibor Apartments, LLC

---

John C. Ashton  
President & Chief Operating Officer  
Western National Construction

---

Form of Budget.Xls  
WNC 088882  
7 of 7
###CONTINUATION SHEET

**AIA DOCUMENT G703**

**APPLICATION NO:** 000  
**APPLICATION DATE:** 00/00/00  
**PERIOD TO:** 00/00/00

In tabulations below, amounts are stated to the nearest dollar.  
Use Column 1 on Contracts where variable retainage for line items may apply.

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**INDIRECT ONSITE COSTS**

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CONTINUATION SHEET

AIA DOCUMENT G703

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, contains
Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.
Use Column 1 on Contracts where variable retainage for line items may apply.

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Users may obtain validation of this document by requesting of the license a completed AIA Document D401 - Certification of Document's Authenticity.
UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

(Your Customer) on the job of (Owner) located at (Job Description)

and does hereby waive and release any right to a mechanic's lien, stop notice, or any right against labor and material bond on the job, except for disputed claims for extra work in the amount of

ated: (Company Name)

By: (Title)

"NOTICE TO PERSONS SIGNING THIS WAIVER: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM."

OTE: CIVIL CODE SECTION 3262(d)(4) PROVIDES: Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver it has, in fact, been paid the final payment, the waiver and release shall follow substantially the form set forth above.

USE REVERSE SIDE AS RELEASE FOR INDIVIDUALS PERFORMING LABOR FOR WAGES
(for a conditional waiver and release upon final payment use Wolcotts Form 32623or 326230)

WNC 088885
CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Upon receipt by the undersigned of a check from ______________________________ (Maker of Check)

in the sum of $ ______________________________ (Amount of Check)

payable to ______________________________ (Payee or Payee 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 ______________________________ (Owner)

located at ______________________________ (Job Description)

to the following extent. This release covers a progress payment for labor, services, equipment, or material furnished to ______________________________ (Your Customer)

through ______________________________ (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 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, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

Dated: ______________________________ (Company Name)

By ______________________________ (Title)

NOTE: CIVIL CODE SECTION 3262 (d)(1) PROVIDES: Where the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the form set forth above.

USE REVERSE SIDE AS RELEASE FOR INDIVIDUALS PERFORMING LABOR FOR WAGES
(for an unconditional waiver and release upon progress payment use Wolcotts Form 32622 or 32622D)
Change Order

\AIA Document G701 - Electronic Format

EXHIBIT F

OWNER
ARCHITECT
CONTRACTOR
FIELD
OTHER

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION. AUTHENTICATION OF THIS ELECTRONICALLY DRAFTED AIA DOCUMENT MAY BE MADE BY USING AIA DOCUMENT D401.

PROJECT:
(name, address)

CHANGE ORDER NUMBER:

DATE:

ARCHITECT'S PROJECT NO:

TO CONTRACTOR:
(name, address)

CONTRACT DATE:

CONTRACT FOR:

The Contract is changed as follows:

Not valid until signed by the Owner, Architect and Contractor.

The original (Contract Sum) (Guaranteed maximum Price) was $.
Net change by previously authorized Change Orders $.
The (Contract Sum) (Guaranteed Maximum Price) prior to this Change Order was $.
The (Contract Sum) (Guaranteed Maximum Price) will be (increased) (decreased) (unchanged) by this Change Order in the amount of $.
The new (Contract Sum) (Guaranteed Maximum Price) including this Change Order will be $.
The Contract Time will be (increased) (decreased) (unchanged) by ( ) days.
The Date of Substantial Completion as of the date of this Change Order therefore is

NOTE: This summary does not reflect changes in the Contract Sum, Contract Time or Guaranteed maximum Price which have been authorized by Construction Change Directive.

ARCHITECT

Address

BY:

DATE:

CONTRACTOR

Address

BY:

DATE:

OWNER

Address

BY:

DATE:

\AIA DOCUMENT G701 • CHANGE ORDER • 1987 EDITION • AIA • COPYRIGHT 1987 • THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C., 20006-5292. WARNING: Unlicensed photocopying violates U.S. copyright law and is subject to legal prosecution. This document was electronically produced with permission of the AIA and can be reproduced without violation until the date of expiration as noted below.

Electronic Format - G701-1987


WNC 088887
EXHIBIT I

(INTENTIONALLY OMITTED)
EXHIBIT L

OWNER'S REPRESENTATIVES

ELIZABETH C. SMITH
CARL A. CILKER
W. H. CILKER
BILL CILKER, JR.
EXHIBIT L

OWNER'S REPRESENTATIVES

ELIZABETH G. SMITH
CARL A. CILKER
W. N. CILKER
BILL CILKER, JR
EXHIBIT M

CONTRACTOR'S REPRESENTATIVES

John C. Atherton
President & Chief Operating Officer
8 Executive Circle
Irvine, CA 92614
(949) 862-6234
(949) 862-6252
E-mail: jatherton@wng.com

Dan O'Donovan
Vice-President Construction
8 Executive Circle
Irvine, CA 92614
(949) 862-6248
(949) 862-6252
E-mail: dodonovan@wng.com

James Egner
Director of Construction
8 Executive Circle
Irvine, CA 92614
Phone: (949) 862-6242
Fax: (949) 862-6252
Cell: (949) 280-3028
E-mail: jegner@wng.com

Charles Martin
Superintendent
One Pearl Place
5210 Tern Way
San Jose, CA 95136
Phone: (408) 266-1372
Fax: (408) 266-1374
Cell: (408) 607-2801
E-mail: charlieesq@yahoo.com
### EXHIBIT G-2

**ONE PEARL PLACE**

**COST SUMMARY**

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**NO. OF UNITS:** 102

**AVE. SQ.FT.:** 526

**TOTAL SQ.FT.:** 176,896

**TOTAL ACRES:** 4.00
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|-----|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| 3003 | APPLIANCES      | 374,800         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 374,800         |
| 3005 | CABINETS        | 357,500         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 357,500         |
| 3006 | CARPENTRY, FINISH | 453,345         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 453,345         |
| 3010 | CARPENTRY, ROUGH | 2,834,167       |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 2,834,167       |
| 3016 | CERAMIC TILES, TUBS, SHOWERS | 35,000         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 35,000          |
| 3019 | COUNTER TOPS    | 186,251         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 186,251         |
| 3064 | CLEANUP, ROUGH &amp; FINAL | 123,088         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 123,088         |
| 3028 | CONCRETE, FOUNDATIONS/SLABS | 2,878,000     |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 2,878,000       |
| 3037 | DECKS           | 250,000         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 250,000         |
| 3038 | DRYWALL         | 1,100,000       |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 1,100,000       |
| 3040 | ELECTRICAL FIXTURES | 102,368         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 102,368         |
| 3042 | ELECTRICAL WIRING &amp; EQUIPMENT | 1,003,700     |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 1,003,700       |
| 3044 | TELEPHONE/CATV  | 105,303         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 105,303         |
| 3046 | ELEVATORS       | 118,000         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 118,000         |
| 3049 | FIRE CAULKING   | 25,000          |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 25,000          |
| 3050 | FIRE EXTINGUISHERS | 8,900          |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 8,900           |
| 3052 | FIRE SPRINKLERS | 450,000         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 450,000         |
| 3055 | FIRE ALARMS     | 103,350         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 103,350         |
| 3056 | FIREPLACES      | 16,438          |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 16,438          |
| 3058 | FIREPLACE FACES | 16,300          |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 16,300          |
| 3058 | FLOORING, CARPET | 225,000         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 225,000         |
| 3071 | GARAGE VENTILATION | 193,333         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 193,333         |
| 3072 | GARAGE DOORS    | 18,032          |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 18,032          |
| 3074 | GRADING - FINE | 120,000         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 120,000         |
| 3078 | GLAZING         | 40,000          |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 40,000          |
| 3082 | HARDWARE, FINISH | 60,000          |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 60,000          |
| 3084 | HEATING, AIR CONDITIONING | 282,301   |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 282,301         |
| 3086 | INSULATION      | 197,733         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 197,733         |
| 3087 | IRONWORK, ORNAMENTAL | 185,280       |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 185,280         |
| 3088 | IRONWORK, STRUCTURAL | 152,837       |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 152,837         |
| 3090 | LIGHTWEIGHT CONCRETE | 90,000         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 90,000          |
| 3095 | LUMINOUS CEILINGS | 13,104          |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 13,104          |
| 3107 | MIRRORS         | 21,500          |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 21,500          |
| 3111 | PAINTING        | 373,900         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 373,900         |
| 3111 | PAINTING        | 373,900         |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 |                 | 373,900         |</p>
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**Notes:**
- **TOTAL SQ.FT.:** 175,809
- **TOTAL ACRES:** 4.50
- **PER SQ.FT:**
- **NO. OF UNITS:** 182
- **AVE. SQ.FT:** 918
During our construction meeting on July 25th, Gary Eckley mentioned that they had telephoned Loren for information. He refused to give any information stating that it would not be forth coming until we have settled our account with your firm. As you know this had been settled. In my judgement, this was a very unwise thing to do. There are many reasons why our project has been seriously delayed. A very significant reason is inadequate information from MVP. For the benefit of everyone, we must consciously pursue completion of the project with a properly constructed facility for which we all be proud. Anything that interferes with this must be avoided to achieve our goal.
ITEM 41
MEMORANDUM

Date: September 1, 2002
To: WNC
From: WHC
Re: WNC deficiency on the construction of OPP (This is a continuation of my memo of 3/15/02)

1. WNC did a poor job of value engineering. Their analysis was based on costs per square footage, not on reviewing the drawings.

2. WNC did not adequately check the shop drawings or construction details adequately and the height of steel moment frames are 3 to 5" too high.

3. Construction is nearly a year and a half behind schedule.

4. WNC agreed to limit the general conditions costs then reneged on this agreement.

5. WNC agreed to pay half of the extra cost demanded by MBS later stopped short.

6. WNC assured us in contracting the jobs that those that covered less than 100% of the work has money in the budget for the remaining work. Now we are being charged over budget for the unbid portions.

7. WNC did not give proper supervision to the quality of work being done by MBS as evidenced by the large amount of corrections being done by Madera.

8. WNC disregarded for a maximum price contract.

9. WNC has never met with the owners to discuss how we would pay for the additional general condition costs.

10. WNC wasted months because Dennis of the plumbing company stepped beyond his bounds on the mold problem. His company was very slow in firing him.

11. WNC project supervision was not properly defined or divided between Doug Cripe, Gary Eckley and Joe.
12. WNC did not insist that MBS properly safeguard the wood we purchased. We are being charged for wood they say was stolen.
13. WNC did not maintain a tidy job site that help made workers take pride of their work. Some workers urinated in cans or in corners of the project site.
14. WNC has never abided by our agreement allowing us to interview and participate in the selection of the superintendents.
15. Jim Egner was extremely slow in following up on his agenda items.
16. WNC lost their records of the specifications we agreed upon with Betsy and Jim Egner which caused Cilker Orchards extra work.
17. WNC overpaid MBS relative to the % completed as per Turner of CNB.
18. Because of delays, we were forced to pay for the cost of storage of our furniture, etc. WNC agreed to pay this but it was charged to the project.
19. WNC authorized work to be done by the civil engineers, but never requested the drawings which wasted time.
20. WNC rented parking spaces for workers in Westgate parking center at a cost of $26,000. No one ever ever used these. This was charged to the project.
ITEM 42
October 17, 2002

Mr. Scott Buerger
Western National Construction
30 Liberty Ship Way, Suite 3320
Sausalito, CA 94965

Dear Scott,

To put it mildly, I was distressed with your conduct during the construction & owners meeting on Wednesday, Oct. 16th. You not only used considerable profanity but you were insulting to our advisers and did not control yourself properly. As the owner of One Pearl Place, I will not allow this type of conduct in our meetings. I expect you to apologize to the committee.

As you well know, about three months ago, you hammered at me to hire a strong owners' representative that would not only lead WNC staff but "hit them on their head, if necessary to make them get the job done". Furthermore, in our agreement, we have a right to bring such people as Don Beck and Associates on board. The owners have followed this procedure. Do you have a problem with this?

We must all work together as a team to complete One Pearl Place in a timely and economical manner. You are an important person on our team and we need the benefit of your knowledge and experience. Please try to make this happen.

Yours truly,

[Signature]
William Cilker

cc: John Atherthon
    Don Beck
<table>
<thead>
<tr>
<th>Photo/Site</th>
<th>Responsible</th>
<th>Description</th>
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<tbody>
<tr>
<td>Recreation Building</td>
<td>White/WNC</td>
<td>The fireplace issues still have not been resolved regarding the heating of the gas control valve. Gary adjusted the fireplace doors so they remain in the channel.</td>
</tr>
<tr>
<td></td>
<td>White/WNC</td>
<td>Gary will have the window replaced above the patio doors from the lobby.</td>
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<tr>
<td></td>
<td>White/WNC</td>
<td>The exit door from the exercise room hallway has been ordered but has not been received yet. The new door will be installed when it arrives.</td>
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<tr>
<td>Building A</td>
<td>White/WNC</td>
<td>The stucco surrounding the windows the A Building is flaking off. This is the stucco that was applied over the Styrofoam molding and was identified early-on as being a problem.</td>
</tr>
<tr>
<td></td>
<td>White/WNC</td>
<td>Check the concrete decks in the first floor of the building to remove the spray-painted survey markings on the concrete.</td>
</tr>
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<td></td>
<td>CO?, Mori?</td>
<td>Next to the main fountain equipment is an in-ground electrical box. Right next to the electrical box is a sprinkler that is prevented from popping up because of the overhang of the top of the electrical box. The sprinkler should be removed and the pipe capped.</td>
</tr>
<tr>
<td>CO</td>
<td>In several areas around the A building between A and B there are stones piled on top of the storm drain so that the landscape bark doesn't flow into the drain with the rain water. Some of these drains are quite low compared to the surrounding landscaping. More stones should be added to bring them to level of the surrounding soil.</td>
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<tr>
<td>CO</td>
<td></td>
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<tr>
<td>Pacific Water Art</td>
<td>In the lower pools on both sides of the main fountain there are black devices mounted to the sidewalls. Rust is showing from screws or bolts that were used black devices. Rust needs to be corrected.</td>
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<tr>
<td>Pacific Water Art</td>
<td>At the main fountain there is staining on the stainless steel weir. Some of the stains are the bolts that hold the stainless steel to the concrete. Talk to Pacific Art about how to correct the staining problem.</td>
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<tr>
<td>Pacific Water Art</td>
<td>Look at a buildup of soil or dirt or the accumulation on the upstream side of the weir.</td>
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<tr>
<td>White/WNC?, Calif. Paver? Mori?</td>
<td>In front of the right-hand side of the main fountain there's a waterline box in the pavers. One of the pavers has sunk down below the others. The soil under the paver subsided. Is this a water leak or poor compaction?</td>
<td></td>
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<tr>
<td>Name</td>
<td>Description</td>
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<tr>
<td>CO,</td>
<td>On the third floor open-decks the gutter has very little discharge capacity. When the gutter overflows, the water spills at the ends causing the water to run down the face of the building. This water leaves a residue discoloring the paint. We may need to plug the ends of the small gutters to force flow over the outside edge of the gutter instead of letting the water run down the front of the building.</td>
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<tr>
<td>White/WNC</td>
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<tr>
<td>White/WNC</td>
<td>Gary will have the painters paint the metal flashing on the small stub roof near the western edge of the walkway between A and B. This roof does not have a gutter and so it looks out of place compared to the surrounding roofs. By painting the metal flashing underneath the lower edge of the tile, it won't appear to have an opening at that point. It will look more like the adjacent roofs.</td>
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<tr>
<td>White/WNC</td>
<td>Electrical service has been installed for the decorative lights for the spruce tree and to power the security latch at the gate at the west edge of A and B.</td>
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<tr>
<td>White/WNC</td>
<td>There's some rust showing and below the hinge of the fire extinguisher box on the Tener Way side of the A building. Was this box designed for exterior use?</td>
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<tr>
<td>Date</td>
<td>Location</td>
<td>Observation</td>
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<tr>
<td>May 5, 2004</td>
<td>White/WNC</td>
<td>On the Tener way side of a building there is another stub roof with no gutter. We decided not to paint the metal flashing on this section of roof because the underlying metal flashing isn't so hidden so it doesn't appear that there is a hole between the tiles and the underlying structure.</td>
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<td></td>
<td>White/WNC</td>
<td>Still paint coming off of the foam around window and door frames.</td>
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<td>White/WNC</td>
<td>Check all the doorsteps on the project.</td>
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<td>White/WNC</td>
<td>Check out the hinges for the building A. electrical room. They center hinges on both sets of doors are missing.</td>
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<td>White/WNC</td>
<td>Some of the lights in the interior courtyard of the A building remain on during the day. This is being researched by Chris at MDE.</td>
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<td></td>
<td>White/WNC</td>
<td>Power-wash pavers.</td>
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<td>White/WNC</td>
<td>Remove excess stucco on the pavers at the wall of the fountain on the B building side of the main fountain.</td>
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<tr>
<td>White/WNC</td>
<td>Chris at MDE has ordered the lower risers for the landscape lights. When those arrive they will install the lower risers and they will secure the lower part of the electrical box for the lamps.</td>
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<tr>
<td>CO, Mori</td>
<td>Ask Mori or Raul to look at the downspout right next to the first stairway entrance to the B building on the Pearl Avenue side. The leak in the downspout causes water to flow into landscape and has caused settling of some of the landscape soil.</td>
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<tr>
<td>White/WNC</td>
<td>The bellyband paint on the third floor of the B building in the north east side is better but it still doesn't look straight.</td>
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<tr>
<td>White/WNC</td>
<td>Check the window trim on the second-floor windows, Pearl Avenue side, second bay to the end near the southwest corner.</td>
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<tr>
<td>White/WNC</td>
<td>I asked Joe to look at the bottoms of the foam that was applied to the exterior door frames. Many of them are very ragged and they should be finished more square and closer to the pavers.</td>
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<tr>
<td>CO</td>
<td>Check the plans for history on the deletion of the expansion joints on the stucco walls. Did MVP not include them for a reason?</td>
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<tr>
<td>CO, WRES</td>
<td>Put up a sign to protect the open parking along the south line. The parking that is outside the gate has been used by the Eden residents.</td>
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<tr>
<td>White/WNC</td>
<td>The railing needs to be cleaned up. Water spots.</td>
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<tr>
<td>White/WNC</td>
<td>Still have paint runs showing on the utility room doors unit 136 &amp; 135.</td>
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<tr>
<td>CO</td>
<td>Risers for flower pots need to be flagged and protected as a tripping hazard. Twice Joe put a cone over these and it was taken.</td>
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<tr>
<td>CO, Mori</td>
<td>Irrigation sprinklers need to be adjusted to avoid spraying outside the planter. The stucco is very thin so water hitting the building should be avoided.</td>
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<tr>
<td>White/WNC</td>
<td>Paint touch up needed in Section 5.</td>
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<tr>
<td>White/WNC</td>
<td>Clean up concrete between units 224 to 225 in the B building.</td>
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<tr>
<td>White/WNC?</td>
<td>Check the 2nd floor cat walks. There's some breakage of the concrete where the vertical iron bars enter the concrete.</td>
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<tr>
<td>White/WNC</td>
<td>The catwalks still need be cleaned up.</td>
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<tr>
<td>White/WNC</td>
<td>Check all the doorstops in the project. Find correct doorstops for the iron gates.</td>
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<tr>
<td>White/WNC</td>
<td>We're missing a bumper on a door stop in Unit 336 utility room.</td>
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<tr>
<td>White/WNC</td>
<td>Check the third floor cat walk drain keyway in front of Unit 339. Joe will address this. It still looks ragged.</td>
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<tr>
<td>CO</td>
<td>Do we have a parking lot vacuum cleaner that we're not using? I gave Bob the OK to purchase a backpack blower for the maintenance crew. A vacuum cleaner would be good use on the catwalks especially on the third level since there's a surprising amount of grit being blown around up there.</td>
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RESIDENTIAL PROPERTY MANAGEMENT AGREEMENT

THIS RESIDENTIAL PROPERTY MANAGEMENT AGREEMENT (this "Agreement") is made and entered into effective as of May 13 2003 (the "Effective Date") between CILKER APARTMENTS, LLC, a Limited Liability Company ("Owner"), and WOODMONT REAL ESTATE SERVICES, L.P., a California limited partnership ("Manager").

RECITALS:

A. Owner owns that certain real property (the "Property") commonly known as One Pearl Place, consisting of 182 residential rental units currently under construction, located in the City of San Jose, County of Santa Clara, State of California.

B. The parties enter into this Agreement to provide for the management of the Property by Manager, upon and subject to the terms and conditions set forth in this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the parties agree as follows:

1. EMPLOYMENT. Owner hereby appoints and employs Manager to serve as the exclusive Property Manager for the Property and to perform the duties and responsibilities in connection with the leasing, maintenance and operation of the Property as provided in this Agreement.

2. TERM AND TERMINATION.

   (a) Term. The term of this Agreement shall be for a period of one (1) year from and after the Effective Date; provided, however, in the event neither party has elected to terminate this Agreement as provided in Paragraph 2(b) below, this Agreement shall remain in full force and effect for successive one (1) year periods until terminated as provided in Paragraph 2(b) below.

   (b) Termination. Notwithstanding anything contained in Paragraph 2(a) above, either party shall have the right to terminate this Agreement without cause upon not less than thirty (30) days' prior written notice to the other party of such decision to terminate. If either party shall elect to terminate this Agreement, Owner shall pay to Manager that portion of the management fee due pursuant to Paragraph 3 below for the period from the Effective Date to the date of termination.

3. DUTIES AND RESPONSIBILITIES OF MANAGER AND COMPENSATION. Manager's duties, responsibilities and compensation shall be as follows:
(a) Property Management Services

1. Supervise and Direct Property Operations:
   (a) Make regular inspections of the Property:
       i. determine if property maintained, and
       ii. identifying emergency and deferred projects.
   (b) Hire, supervise, and direct on-site staff
       (including development and implementation of specific training programs designed to assist
        performance and control expenses). The on-site staff shall be employees of Manager for all
        purposes and Manager shall cause such on-site staff to be covered by workers’ compensation
        insurance as required by law.
       (a) Included
   (c) Select, supervise, and direct maintenance vendors; including contract negotiations.
   (d) Provide purchasing functions, including negotiation of accounts with vendors.
   (e) Perform periodic surveys of competition:
       i. rents and occupancy, and
       ii. promotion and discounts.
   (f) Enforce tenant agreements:
       i. unlawful detainer proceedings,
       ii. removal and recovery of property, and
       iii. money judgments
   (g) Report to Owner as to the condition of the Property, recommend operational improvements
       and programs.
   (h) Report to Owner on a monthly basis through management reports, financial reports together
       with Manager’s narration.
   (i) At the direction and under the supervision of the Owner or its Asset Manager, implement
       hazardous materials compliance, control and conservation programs.
   (c) Included
   (d) Included
   (e) Included
   (f) Manager’s services up to the commencement of legal action are included in the Base Fee.
   (g) Included
   (h) Included
   (i) Any legal or third party fees to be paid by Owner.

2. Provide Operational Accounting and Reporting:
   Take all reasonable steps to:
   (a) Collect rents due per terms of agreements.
   (b) Deposit rents in the Trust Account (as defined in Paragraph 5 below).
   (c) Pay all operating expenses of the Property from the Trust Account or the Owner’s separate
       funds deposited into the Trust Account as provided in Paragraph 5(c) below.
   (d) Work with the Owner in the coordination of financial reporting.
   (e) At the request of Owner, pay to the beneficiary under any deed of trust encumbering
       the Property the monthly loan payments.
   (f) At the request of Owner, pay all real property and personal property taxes and assessments
       levied and assessed against the Property.
   (g) Prepare detailed lease summaries and rent roll.
   (h) Pay to Owner on a periodic basis to be
agreed upon by Owner and Manager in writing (but in no event more frequently than once a month) the net cash flow collected by Manager for the Owner’s account from the operation of the Property, after deducting all expenses, disbursements, management fees and costs of the Property, and a mutually agreed upon operating reserve.

(i) Notify Owner promptly if at anytime there are insufficient funds available to pay all operating expenses, management fees, and other payments due in connection with the Property, and Owner shall be responsible for promptly depositing into the Trust Account sufficient funds to meet all such operating expenses and other payments as provided in Paragraph 5(c) below.

3. Prepare and Review Annual Property Budgets:

(a) Develop annual line-item budget.
(b) Develop detailed capital projects budget.
(c) Present and review budgets with Owner.
(d) Meet with Owner periodically for operations budget review and present written budget variance reports.

4. Supervise Leasing:

(a) Negotiate with complete Owner authority all residential leases and rental agreements of one (1) year term or less.

5. Serve as Buffer Entity:

(a) Act as legal employer for on-site staff, buffering Owner from direct exposure to on-site staff employment requirements. Manager shall be responsible for compliance with all employment requirements for the on-site staff.
(b) Buffer Owner from direct contact with, but not financial exposure to:
   i. Tenant Advocate Groups
   ii. Rent Control Action Organizations
   iii. Other Advocacy Groups

(a) included, except as provided in Paragraph 1(b) above.
(b) included

(b) Base Fee. As a Base Fee, Owner shall pay to Manager for its services hereunder a monthly management fee equal to 2.5% of the “gross monthly receipts” from the Property for each month of the term of this Agreement, with a minimum monthly Base Fee equal to $4,000. Owner shall also pay to Manager a fee for supervisory services on any construction/improvement contracts over $10,000 equal to 6% of the gross contract amount. “Gross monthly receipts” shall include, in addition to all rents, all sums from vending machines, laundry facilities, entertainment, parking and other services within or on the Property, but shall not include security deposits. Additional fees, if any, are to be agreed upon by Owner and Manager.

4. AUTHORITY. Owner hereby grants to Manager the right and authority as agent of Owner to take all actions and enter into such agreements as Manager deems necessary in order to accomplish the duties and responsibilities of Manager pursuant to Paragraph 3 above, as well as any other actions in connection with the management and operation of the Property that, in the reasonable opinion of Manager, are in the best interest of Owner and the Property. Manager shall have the right to assign performance of certain duties under the Agreement to the employees and agents of Manager.
5. RECEIPTS AND DISBURSEMENTS.

(a) Trust Account. Manager shall establish and maintain in a bank or other financial institution a separate bank account (the "Trust Account") as agent of Owner for the deposit of the rents and receipts collected by Manager from the operation of the Property. Funds may be withdrawn from the Trust Account upon the signature of Manager or its designated representatives. Manager shall provide Owner with a monthly accounting of all receipts and disbursements through the Trust Account. In addition, within seven (7) business days following Owner's written request, Manager shall provide Owner with a full accounting of all activities in or through the Trust Account.

(b) Manager as Agent of Owner. Everything done by Manager under the provisions of this Agreement shall be done as the agent of Owner, and all obligations or expenses incurred by Manager under this Agreement shall be for account of, on behalf of, and at the expense of Owner, except as otherwise specifically provided in this Agreement. All payments to be made by Manager under this Agreement shall be made by check drawn on the Trust Account, except petty cash items not exceeding One Hundred Dollars ($100.00) per item, which may be paid from a fund to be maintained by Manager for such purposes. Manager shall not be obligated to make any advance to or for the account of Owner or to pay any sums, except out of funds held in the Trust Account or the petty cash fund or to incur any liability or obligation for the account of Owner without assurance that the necessary funds for the discharge of such liability or obligation will be provided by Owner.

(c) Additional Funds. In the event the rents and other receipts from the operation of the Property are not sufficient to satisfy the liabilities and obligations incurred with respect to the operation of the Property in any given month, Owner shall promptly upon notice from Manager deposit into the Trust Account such additional funds as may be necessary to satisfy such liabilities and obligations.

6. DELIVERY OF DOCUMENTS AND NOTICES. Prior to the Effective Date, Owner shall deliver to Manager true and complete copies of all lease agreements, maintenance agreements, insurance policies, equipment leases, warranties, financial records and books, and other pertinent records relating to the Property. Owner shall promptly prepare and deliver notices to all tenants of the Property notifying them that Manager has been retained as the property manager for the Property and that all rental and other payments should be made directly to Manager.

7. INSURANCE. Owner shall maintain or cause to be maintained hazard insurance (fire and extended coverage or "all-risk" coverage) covering the improvements on the Property and comprehensive general liability insurance covering the ownership, construction, use, occupancy, management or maintenance of the Property, such insurance to be in amounts and with companies reasonably acceptable to Manager. Owner agrees to cause Manager to be named as an additional insured under any and all liability insurance policies carried by Owner. Such policies shall contain a provision that the Owner's coverage shall be primary for all purposes any insurance carried by Manager shall be non-contributory. The Owner's liability insurance shall contain a contractual liability clause or endorsement insuring the performance by Owner of the indemnity provisions of Paragraph 10 below. Prior to the Effective Date, Owner shall deliver to Manager copies of all policies of such insurance evidencing the existence and amounts of such insurance with additional insured endorsements as required by this Paragraph 7. Each such policy shall be endorsed to provide that the same shall not be cancelled or subject to reduction of coverage or otherwise modified except after thirty (30) days' prior written notice to Manager.

The Owner waives any right of recovery against Manager and the partners (and the shareholders of such partners) and employees of Manager for any loss or damage covered by the Owner's hazard insurance to be maintained pursuant to this Agreement or which would have been covered by such insurance if Owner fails to maintain the same whether or not such loss or damage is caused by the negligence of Manager. The Owner's hazard insurance shall contain a waiver of any rights the insurer might have against Manager or the partners (and the shareholders of such partners) and employees of Manager in connection with any claim of loss or damage covered by such insurance.

8. FORM OF LEASE. Owner has approved the form of Lease currently in use by Manager which is attached as Exhibit A. Manager shall not be required to obtain the prior consent of Owner to any lease for the Property if such lease is in substantially such form.
9. **COMPROMISE OF CLAIMS.** Manager shall have the right, but not the obligation to, prosecute, appear in, defend, compromise or settle any action, proceeding or insurance claim arising under or in any manner connected with the Property that is not in excess of Five Thousand Dollars ($5,000.00). Manager shall not prosecute, compromise or settle any claim in excess of such sum unless Owner has given Manager its prior written consent. Manager shall have the right to employ legal counsel or other experts or professionals as it deems appropriate to accomplish such prosecution, appearance, defense, compromise or settlement. The cost of such services shall be paid from the Trust Account.

10. **INDEMNIFICATION.** Manager shall be an independent contractor in the discharge of its duties under the terms of this Agreement and shall have the authority to establish the means, procedures, methods and mechanics of performing its obligations under this Agreement. Subject to Manager’s obligation to account for all funds received and disbursed on behalf of Owner as provided in this Agreement and without in any manner lessening such obligation, Owner agrees to indemnify, defend and hold Manager harmless from any and all claims, damages, liabilities, costs and expenses, including, but not limited to attorneys’ fees and costs of suit, arising out of the ownership, use, occupancy, management, or maintenance of the Property (including, but not limited to, claims that may be made or asserted against Manager by any creditor or supplier for any and all items, materials and/or services rendered to or for the benefit of the Property, whether provided during or prior to the term of this Agreement, which are unpaid at the time of termination of this Agreement) or the existence of any Defects (as defined in Paragraph 11 below) in the Property, except for claims, damages, liabilities, costs and expenses (1) to the extent the same arise out of the adjudicated gross negligence or willful misconduct of Manager or its employees and (2) arising from any adjudicated violation by Manager of any statute, law or ordinance relating to the employment of the on-site staff which was not the result of a directive of Owner. Manager agrees to indemnify, defend and hold Owner harmless from any and all claims, damages, liabilities, costs and expenses, including, but not limited to attorneys’ fees and costs of suit, arising out of the adjudicated gross negligence or willful misconduct of Manager or its employees or arising from any adjudicated violation by Manager of any statute, law or ordinance relating to the employment of the on-site staff which was not the result of a directive of Owner. The indemnification obligations of Owner and Manager set forth herein with respect to claims, damages, liabilities, costs and expenses based on occurrences that take place during the term of this Agreement shall survive the termination of this Agreement and shall be continuing. As used in this Paragraph 10, the term “gross negligence” shall mean conduct taken or omitted with no intent to cause harm but where the act or omission is so unreasonable and dangerous that the person knows, or should know, that it is highly probable that harm will occur.

11. **DISCLOSURE BY OWNER.** Manager understands and accepts that as of the date of this Agreement, construction of the improvements upon the Property has not been completed and, therefore, as of the date of this Agreement there are conditions existing that will not exist as of the date of tenant occupancy. With such understanding, Owner represents and warrants to and for the benefit of Manager that (a) Owner has no knowledge of any defects or deficiencies in the structural portions of the improvements located on the Property; any malfunctions, defects or deficiencies in the building and utility systems serving such improvements; or any defects, deficiencies or hazards (including, but not limited to, the presence of any Hazardous Materials [as defined below]) regarding such improvements or the outside areas of the Property (including, but not limited to, sidewalks, storm drains, drive and access ways, garages and parking areas), except as disclosed to Manager in writing prior to the date of this Agreement; (b) Owner has not, and to the knowledge of Owner, no other person or entity has, stored, handled, released or disposed of in, on, about or under the Property or the improvements located on the Property and hazardous, harmful, dangerous, radioactive, chemically active or biologically active substance, material or waste, as such terms are defined in or regulated or restricted by any statute, law, regulation, rule or order of the United States or the State of California including, but not limited to petroleum, petroleum by-products, gasoline, diesel, fuel, or other petroleum hydrocarbons; asbestos or asbestos-containing material in any form, whether friable or non-friable; polychlorinated byphenyls, lead and lead-containing materials, methyl tertiary butyl ether and fungus, mold and bacterial agents (collectively, “Hazardous Materials”); (c) to the knowledge of Owner, no Hazardous Materials exist in, on, about or under the Property or the improvements located on the Property; (d) no underground storage tank (as defined in Resource Conservation and Recovery Act) is located in, on or under the Property or the improvements located on the Property, and to Owner’s knowledge no underground storage tank was previously located in, on, about or under the Property or such improvements; (e) there is no action, suit, investigation, arbitration, mediation or other proceeding pending before any court or any federal, state, county or municipal department, commission, board, bureau, agency or instrumentality, or before any arbitrator or mediator, and to the knowledge of Owner, no such action, suit,
investigation, arbitration, mediation or other proceeding has been threatened, and there is no unsatisfied order or judgment pending, against Owner or with respect to the Property relating to, arising out of or connected with (i) the ownership, leasing, management or operation of the Property; (ii) the business activities or practices of Owner or of any prior manager of the Property; or (iii) the presence or alleged presence in, on, about or under the Property or the improvements located on the Property of any Hazardous Materials; and (f) no action, suit, investigation, arbitration, mediation or other proceeding of the type or nature described in clause (e) has been previously threatened or filed against Owner or with respect to the Property (collectively, "Defects"). Owner shall promptly notify Manager in writing of any Defects in the Property or the Improvements located on the Property that are discovered or suspected by Owner after the date of this Agreement.

12. NO REPRESENTATION OR WARRANTIES. Owner acknowledges that Manager has made no representations or warranties whether oral or written to Owner regarding the Property, its potential or existing economics, or any specific level of performance or standard that will be achieved by reason of Manager’s services to be provided to Owner pursuant to this Agreement.

13. MISCELLANEOUS PROVISIONS.

(a) Notices. Any notice to be given to Manager or Owner shall be given in writing and delivered in person, or forwarded by certified mail, return receipt requested, postage prepaid, at the address indicated below, unless the party giving such notice has been notified, in writing, of a change of such address:

MANAGER: Woodmont Real Estate Services
1050 Ralston Avenue
Belmont, California 94002
Ronald V. Granville, Chairman

OWNER: Clker Apartments, LLC
1631 Willow St., Suite 225
San Jose, CA 95125
Attn: William H. Clker

Any such notice shall be deemed effective seventy-two (72) hours after posting, if mailed, or upon date of receipt, if delivered.

(b) Time of the Essence. Time is of the essence of this Agreement.

(c) Binding on Successors. This Agreement and all the terms and provisions hereof shall inure to the benefit of and be binding upon the heirs, executors, personal representatives, successors and assigns of the parties hereto.

(d) Severability. If any of the terms and provisions of this Agreement are determined to be invalid, such invalid terms or provisions shall not affect or impair the remainder of this Agreement, but such remainder shall continue in full force and effect to the same extent as though the invalid terms or provisions were not contained herein.

(e) Attorneys’ Fees. In the event it becomes necessary to employ legal counsel to bring any action or proceeding to enforce any of the terms, covenants or conditions of this Agreement, or because of any breach or default hereunder, the prevailing party in any such proceedings shall be entitled to reasonable attorneys’ fees.

(f) Entire Agreement. This Agreement contains the entire understanding and agreement between the parties hereto with respect to all matters referenced herein.

(g) Governing Law. This Agreement and the rights of the parties hereto shall be governed and construed in accordance with the laws of the State of California.
(h) **Amendment.** Any amendment of this Agreement shall be of no force and effect unless it is in writing and signed by both parties hereto.

(i) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but such counterparts taken together shall constitute only one agreement.

(j) **Authority.** Each party hereby warrants to the other that it is duly organized and existing, and the person or persons signatory to this Agreement and any documents executed pursuant hereto on behalf of that party has or have full power and authority to bind such party.

THIS AGREEMENT HAS IMPORTANT LEGAL CONSEQUENCES AND SHOULD BE READ THOROUGHLY PRIOR TO SIGNING. IF OWNER HAS ANY QUESTIONS ABOUT ITS RIGHTS OR OBLIGATIONS UNDER THIS AGREEMENT, OWNER MAY WISH TO CONSULT INDEPENDENT LEGAL COUNSEL.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth with the names of the signatories below.

OWNER:  
Date: _______________  

CILKER APARTMENTS, LLC,  
a California limited liability company  

By ____________________  
Title ____________________  

MANAGER:  
Date: _______________  

WOODMONT REAL ESTATE SERVICES, L.P.,  
a California Limited Partnership  

By ____________________  
Title ____________________  

By BAY AREA REAL ESTATE MANAGEMENT, INC.,  
a California corporation  
its General Partner  

By ____________________  
its Chairman  

C:\Woodmont Real Estate Services, L.P.  
Residential Property Management Agreement  
8/13/2002
ITEM 45
PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this 13th day of July, 1998, by and between Cilker Orchards located at 1631 Willow Street, Suite 225, San Jose, California 95125, Attention: William Cilker (hereinafter referred to as "Client"), and McLarand, Vasquez & Partners, Inc., a California corporation located at 695 Town Center Drive, Suite 300, Costa Mesa, California 92626 (hereinafter referred to as "MV&P" or "Architect").

The parties shall provide the professional services described below with respect to the job located on approximately 4.5-acres of the approximately 10.54-acre William H. and Leila A. Cilker Trust site at the southeast corner of Winfield and Chynoweth near the Chynoweth/Ohlone light rail station in the City of San Jose, State of California.

CILKER MIXED-INCOME APARTMENT VILLAGE – PHASE II
SAN JOSE, CALIFORNIA
MV&P JOB NO. 97-229
REVISED JANUARY 27, 1998
REVISED MARCH 19, 1998
REVISED APRIL 7, 1998
REVISED JULY 13, 1998

Architect shall provide these services as needed by Client in a timely manner such that a minimum delay is encountered in actual construction of the project.

ARTICLE 1 - SCOPE

A. THE WORK

The proposed work shall include predesign and site development services, schematic design services, design development services, construction document services, plan check coordination, and services during construction as delineated below for a mixed-income apartment village. Depending upon the desired density plan, the village will consist of a maximum of 200 apartments. The master plan for the overall 10-acre site has been completed previously.

Architect will prepare alternatives and work with Client, Valley Transportation Agency, and Client's marketing and property management team to design the village adjacent to the proposed transit residential village.

The project will consist of three and four-story building types, with 200 total dwelling units consisting of a variety of unit types, to provide a mixed-income community. Seventy-five percent of the buildings will be built over a one-level parking structure with elevator-serviced parking to all residential units. The remaining 25 percent of
the buildings will be two- and three-story with tuckunder parking building and individual garages accessible from the perimeter street.

Architect will develop floor plan designs in concert with the site planning. The approximate mix for both scenarios is as follows:

<table>
<thead>
<tr>
<th>UNIT</th>
<th>LAYOUT</th>
<th>SQUARE FOOTAGE</th>
<th>MIX PERCENTAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Studio</td>
<td>450</td>
<td>5 - 8</td>
</tr>
<tr>
<td>B</td>
<td>1 bedroom/1 bath</td>
<td>725</td>
<td>45</td>
</tr>
<tr>
<td>C</td>
<td>2 bedroom/2 bath</td>
<td>975</td>
<td>40 - 45</td>
</tr>
<tr>
<td>D</td>
<td>2 master bedroom/2 bath</td>
<td>1,000</td>
<td></td>
</tr>
<tr>
<td>E</td>
<td>3 bedroom/2 bath (townhome)</td>
<td>1,150 - 1,250</td>
<td></td>
</tr>
<tr>
<td>F</td>
<td>2 bedroom/2.5 bath/den</td>
<td>1,200</td>
<td>10</td>
</tr>
</tbody>
</table>

The desired marketing input will be utilized and incorporated into the architectural image of the village.

Architect will coordinate with the civil engineer and landscape architect in designing the village. Architect will assist Client, as required, with processing the project for the City of San Jose P.D. permit process or other public agency approval. Architect will assist Client in coordination of neighborhood group meetings and/or City public hearings on an as-needed basis. Compensation for these coordination services will be based on the hourly rates outlined in Article VI, Paragraph C of this Agreement.

A recreational facility will be designed utilizing approximately 3,000 square feet for the recreational and leasing/management area. The major recreational amenities to be included are aerobics, exercise/gym, lockers and change areas, toilets, lounge area, kitchen/storage, media wall, business center, and telecommunications.

It is anticipated that the development will be constructed in a single construction phase. Further, it is assumed that the architectural documents will be prepared in a single increment of work.

Structural engineering services; design-build mechanical, plumbing, and electrical engineering services; and Title 24 calculations are included within the basic services of this Agreement.

Client will have the authority to approve all engineering consultants prior to their hiring by Architect. Client will not unduly withhold his approvals for qualified engineering consultants.

B. AGREEMENT

Upon execution, this Agreement supersedes any previous agreement for services.
ARTICLE II - BASIC SERVICES

A. PHASE I - PREDESIGN AND SITE DEVELOPMENT SERVICES

1. PROJECT DEVELOPMENT PROGRAMMING

After reviewing Client's objectives and the physical characteristics of the site, Architect will establish with Client a program for the development of the overall project. Project programming is the process by which a detailed set of requirements for a proposed building project is developed. The design concept will be based on the adaptation of these requirements to Client's available resources, to technical requirements, to physical and economic forces, and to site limitations.

2. MASTER PLANNING (previously completed)

Architect will develop, in accordance with Client's requirements, a master plan of the above-referenced development. Several alternative approaches will be explored and reviewed with Client prior to solidifying a presentation plan. The objective of this phase is to create an optimized land plan for development and presentation.

3. INITIAL CONCEPT AND BUDGET REVIEW

The initial concept is created following careful study and analysis of the project program. This task includes illustrating diagrammatically the size and relationship of the project components. A probable construction budget can then be prepared, using square foot cost figures as a basis for calculating the anticipated cost of the several elements involved, and presented for review.

4. GOVERNMENTAL AGENCY CONSULTATION

Coordination with governmental agencies (i.e. Valley Transportation Agency for P.D. Permit Processing with the Planning Agency of the City of San Jose), includes preparation of material for and consultation with local governmental agencies having jurisdiction regarding applicable laws, statutes, building codes, and regulations affecting the project to verify the assumptions of concept. In addition, presentations to homeowners' groups will be made by Architect, if required by Client.

B. PHASE II - SCHEMATIC DESIGN SERVICES

Based on program requirements developed with Client and mutually agreed to by Client and Architect, Architect will prepare schematic design studies of the development, which may offer one or more possible solutions to Client for selection and approval. These studies will include an overall site plan, diagrammatic plans of each level within the development, and tabulated data indicating square footage and overall efficiencies of the development.
In addition to the schematic floor plans, schematic conceptual exterior elevations and sections which delineate the basic shape, structure, size, and character of the proposed development will be prepared.

A revised construction estimate of probable cost will be provided by others for review by Client at the sole expense of Client.

C. PHASE III - DESIGN DEVELOPMENT SERVICES

Subsequent to the approval of the schematic design and with the authorization of Client, Architect will proceed with the design development of the project.

The objective of this phase is to prepare a package of drawings and other documents refining and explaining the project. This package includes refinement of the floor plans and elevations and a more detailed development of the project's exterior.

The visual aspects of the structures will be studied. Building materials and installation systems will be studied and selected.

The various engineering systems will be analyzed by Client's consultants in order that the final architectural design concept can be carried out efficiently and economically.

A refined statement of probable construction cost will be prepared by others at the sole expense of Client for review by Client at the conclusion of this phase of the work.

D. PHASE IV - CONSTRUCTION DOCUMENT SERVICES

1. ARCHITECTURAL CONSTRUCTION DOCUMENTS

Upon authorization by Client, Architect will prepare construction documents consisting of drawings and specifications setting forth the requirements for project construction. The total construction documents will be of sufficient detail to reasonably bid and build the project.

The architectural construction documents are prepared from the approved Design Development Phase drawings with two-dimensional graphic representations, such as plans, elevations, sections, and details indicating the design, location, size, and dimensions of the project and of the parts thereof. Notes on the drawings and specifications support and explain the graphic representations.

Architect will prepare advance bid documents, schedule permitting, when the construction sequencing requires some portion of the work at an earlier stage in the project's development.
2. STRUCTURAL CONSTRUCTION DOCUMENTS

The structural engineer's work includes preparation of structural working drawings, in concert with the architectural working drawings, which graphically represent the structural concept of the project and include sufficient details, schedules, notes, and information necessary to facilitate its construction. The work also includes preparation of engineering calculations which verify the size and dimension of foundations, structural reinforcing, and wall, column, beam, floor, and roof structures. Calculations will conform to the applicable building code requirements in force at the time of issuance of the building permit.

Any additional engineering required for shoring or foundation designs other than conventional spread-footing or driven-pile type will be billed to Client as an additional service.

Architect and the structural engineer shall rely on the soils report provided by Client to Architect prior to the commencement of the preparation of construction documents. As long as Architect and his consultants comply with the approved recommendations of the soils report, they shall be indemnified and held harmless by Client for any damage or alleged damage caused in part or in whole by any surface failure including, but not limited to, soils settlement or soils corrosion.

3. CIVIL CONSTRUCTION DOCUMENTS (by Client's consultant)

The civil engineer's work includes preparing civil working drawings from the approved Site Development studies to represent graphically those features dealing with onsite improvements such as utilities, culverts, drainage, and grading, both rough and final, as well as elevations of hardscape areas.

4. MECHANICAL CONSTRUCTION DOCUMENTS

The mechanical engineer’s work includes assisting Architect in developing the criteria for the mechanical/plumbing engineering designs which shall be prepared by a design/build contractor selected by the general contractor. In addition, he shall assist Architect in locating and sizing the equipment. The fire protection system, as required in the approved architectural design, will be performed by a design/build contractor but with head type and location approved by Architect.

The design/build contractor shall make an independent analysis and be fully responsible for the mechanical and plumbing engineering and the size, shape, dimension, and capacity of the various elements, as well as coordinating with other trades.

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The mechanical engineer shall review the construction documents of the design/build contractor to verify general consistency with the established criteria for design.

Architect shall, using the standard of care, coordinate and review the mechanical engineer's design and advise Client and the design/build contractor if Architect observes any material deficiencies in the design.

5. **ELECTRICAL CONSTRUCTION DOCUMENTS**

The electrical engineer's work includes assisting Architect in developing the criteria for the electrical engineering designs which shall be prepared by a design/build contractor selected by the general contractor. In addition, he shall assist Architect in locating and sizing the equipment.

The design/build contractor shall make an independent analysis and be fully responsible for the electrical engineering and the size, shape, dimension, and capacity of the various elements, as well as coordinating with other trades.

The electrical engineer shall coordinate and review the construction documents of the design/build contractor to verify general consistency with the established criteria for design.

Architect shall, using the standard of care, review the electrical engineer's design and advise Client and the design/build contractor if Architect observes any material deficiencies in the design.

E. **PHASE V - PLAN CHECK COORDINATION SERVICES**

Architect will submit the appropriate architectural documents to the appropriate building department for the purpose of checking the plans prior to issuing a building permit.

Architect will coordinate with the various governmental agencies and make adjustments necessary to the architectural construction documents so that they will satisfy the requirements for issuance of a building permit.

F. **PHASE VI - SERVICES DURING CONSTRUCTION**

1. **CONSTRUCTION OBSERVATION**

All time spent on the project subsequent to the obtaining of building permits will be billed to the Construction Observation Phase.

Construction services through completion of construction are included within the scope of the Agreement. Construction services requested by Client beyond the above-stated construction phase will be billed as additional services.
Architect shall make 16 trips to the site during the construction of the project, to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the contract documents and the general conditions of the contract. However, Architect will not be required to make exhaustive or continuous onsite reviews to check the quality or quantity of the work.

Architect will provide assistance to the contractor, his superintendent and subcontractors as is reasonably required to explain or interpret the drawings.

Architect shall not have control of or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures; or for safety precautions and programs in connection with the Work; for the acts or omissions of the contractor, subcontractors or any other persons performing any of the work; or for the contractor's or subcontractor's schedules; or for the failure of any of them to carry out the work in accordance with the contract documents in accordance with the requirements of the governmental agency having jurisdiction over the work.

It is assumed that construction of the entire project will be completed within a sixteen- (16-) month construction schedule. If time of Architect is required beyond the above-allocated construction period, that time will be billed as an additional service.

Verification for payment of materials stored, fabrication or construction, and work performed offsite shall be verified by others retained by Client.

2. SHOP DRAWINGS AND SUBMITTAL REVIEW

Architect and Client's selected general contractor shall review and take appropriate action on shop drawings, product data, samples, and other submittals required by the construction documents. Architect's review shall be only for general conformance with the design concept and general compliance with the information given in the construction documents. It shall not include review of quantities, dimensions, weights or gauges, fabrication processes, construction methods, coordination with the work of other trades, or construction safety precautions, all of which are the sole responsibility of the contractor. Architect's review shall be conducted with reasonable promptness consistent with sound professional practice. Review of a specific item shall not indicate acceptance of an assembly of which the item is a component. Architect shall not be required to review and shall not be responsible for any deviations from the construction documents not clearly noted by the contractor, nor shall Architect be required to review partial submissions or those for which submissions for correlated items have not been received.
3. **BULLETINS AND CHANGE ORDERS**

Architect shall prepare bulletins after the construction contract is established or construction has commenced. Bulletins will provide the contractor with information relating to clarification, documentation of field changes, detail changes, errors, omissions, and Client changes.

Change orders will be prepared by the general contractor in a format established by Architect to be issued and approved by both Architect and Client prior to execution.

If bulletins are a result of a change in the scope of work as directed by Client, the expense for the preparation and execution of the bulletin and change order shall be billed to Client as an additional service.

4. **ARCHITECT'S INTERPRETATIONS AND DECISIONS**

Interpretations and decisions of Architect shall be consistent with the intent of and reasonably inferable from the contract documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, Architect shall endeavor to secure faithful performance by both Client and contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith. Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the contract documents.

5. **MISCELLANEOUS**

The term "substantial completion" shall be interpreted to mean that the project's construction is sufficiently complete in accordance with the construction documents so that the premises, in whole or in part, can be occupied and utilized for the use for which it is intended as expressed in the contract documents. Evidence of same shall be through the issuance of a certificate of occupancy, temporary or permanent.

**ARTICLE III - EXCLUSIONS**

The following items are specifically excluded from the services to be performed by Architect under this Agreement:

Services specifically excluded in addition to those indicated hereinabove are production of any drawings normally included in the work of a consulting landscape architect; civil engineer services; de-watering design and engineering; shoring design and engineering; graphics consultant; traffic or parking consultant; elevator consultant; special consultants required for gas, water, or asphalt conditions; acoustical engineering consultant; design or production of any brochures; interior design or decoration (other than interior elevations of casework or built-in equipment); renderings; models; job supervision; environmental impact reports; the preparation of record drawings; or any work other than as specified herein.
ARTICLE IV - RESPONSIBILITIES OF ARCHITECT

A. ALTERATIONS TO DRAWINGS

Architect shall have no claim for any extras whatsoever, unless and until specific written or verbal orders are given by Client to Architect. All such work shall be executed under the conditions hereof, except that any claim thereby shall be adjusted at the time of ordering such change.

B. PROFESSIONAL SERVICES

All work done under this Agreement shall be performed pursuant to the requirements of the appropriate governmental agencies having jurisdiction over the issuance of a building permit and certificate of occupancy at the time the service is rendered.

C. NOTIFICATION OF FEES

Architect shall notify Client as to dollar amounts of plan check fees for building permit only. Client shall be responsible for determining requirements and amounts of other fees necessary for construction and occupancy of the work.

D. COST RECORDS

Architect shall keep sufficient cost records of accounts on a generally recognized accounting basis and shall make them available to Client as required for hourly charges.

No deductions shall be made from Architect's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors or on account of the cost of changes in the Work ("backcharges") other than those for which Architect has been found liable by a court of competent jurisdiction.

ARTICLE V - RESPONSIBILITY OF CLIENT

A. ACCURATE SURVEY OF SITE

Client shall furnish Architect with a complete and accurate survey of the building site, giving the grades and lines of streets, pavements and adjoining properties and contours of the building sites, and full information as to storm sewer, sanitary sewer, water, gas, telephone, and electrical services and other buried utilities. Survey shall also furnish any information prepared by public authorities regarding street improvements, condemnations, and highway dedications, both existing and proposed.

B. LEGAL AND AUDITING ADVICE

Client shall provide all legal and auditing advice incurred as a result of the project and its development.
C. **SOILS INFORMATION**

Client to provide a soils investigation report prepared by a licensed soils engineer and/or licensed geologist. Report shall provide investigations of the site and make recommendations. Architect and structural engineer will rely solely on the accuracy and completeness of this soils report and recommendations contained therein for the design of the project. Such report shall also include information and recommendations relating to subterranean water levels and volumes, contaminated or hazardous existing soils and/or water conditions.

D. **REIMBURSABLE EXPENSES**

Reimbursable expenses are in addition to compensation for basic and additional services and include actual expenditures made by Architect and Architect's employees and consultants in the development of the project. These expenses shall include, but shall not be limited to, blueprinting and reproduction, photo work, artist renderings (if requested by Client), overnight delivery, and messenger services.

E. **CONSULTANT SERVICES**

Client to pay for all consultant services not specifically included within the scope of this Agreement.

It is clearly understood by all parties that while Architect may provide coordination services for consultants whose services are within and outside the scope of this Agreement, these consultants are professionals licensed in the State of California and Architect assumes no liability for the quality of said consultants' work nor for the errors or omissions these consultants may cause. Further, Architect assumes no responsibility for the errors or omissions which may be the result of the coordination of consultants outside the scope of this Agreement.

F. **PLAN CHECK AND BUILDING PERMIT FEES**

Client to pay for all plan check, building permit and other fees required by the municipality.

G. **ARTIST RENDERINGS**

Client to pay for artist renderings of the project, if requested by Client.

H. **TRAVEL EXPENSES**

Client to pay for all travel expenses and travel time for Architect and its consultants as necessary to accomplish the work included within the scope of this Agreement including air fares, lodging and meals, except within Orange County and Greater Los Angeles.
I. REVIEW OF DOCUMENTS

The proposed language of certificates, consents, assignments, etc., requested of Architect or Architect's consultants shall be submitted to Architect for review and approval at least fourteen (14) days prior to execution. Client shall not request certifications, consents, or assignments that would require knowledge or services beyond the scope of this Agreement.

Any time required of Architect or his employees for the review of such documents shall be considered additional service and shall be compensated in accordance with Article VI, Paragraph C. Further, any time required of Architect as a result of the change of the primary client as a result of such documentation (i.e., assumption by lender) shall be considered additional services.

ARTICLE VI - FEE

Client agrees to compensate Architect, in accordance with the terms and conditions of this Agreement, for services rendered hereunder as follows:

A. TOTAL FEE

For the Pre-design and Site Development Services Phase, Architect shall be compensated on an hourly basis as delineated in Article VI, Paragraph C of this Agreement for time spent during this phase of the work. For budgetary purposes, an allotment shall be established in the amount of Twenty-five Thousand ($25,000), broken down as follows:

<table>
<thead>
<tr>
<th>SERVICE</th>
<th>ALLOTMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conceptual Site Plan/Feasibility Studies</td>
<td>$17,500</td>
</tr>
<tr>
<td>P.D. Permit Process</td>
<td>$7,500</td>
</tr>
<tr>
<td><strong>TOTAL ALLOTMENT</strong></td>
<td><strong>$25,000</strong></td>
</tr>
</tbody>
</table>

*This is not to be construed as a guaranteed maximum.

In addition to the allotment for pre-design services, Client agrees to pay Architect for Architect's basic services rendered hereunder a fee equal to Four Hundred Ninety-Five Thousand Dollars ($495,000).

Payment shall be made monthly in proportion to services performed so that compensation at the completion of each phase shall equal the following amounts:

1. RETAINER

A retainer of Ten Thousand Dollars ($10,000) shall be paid Architect upon execution of this Agreement. A credit of Two Thousand Dollars ($2,000) shall be applied to each of the five design phases; i.e., Article VI, Paragraphs A2 through A6.
2. **SCHEMATIC DESIGN SERVICES PHASE**

Upon substantial completion of the Schematic Design Services Phase, Architect shall have been compensated ten (10) percent of the total architectural fee or Forty-nine Thousand Five Hundred Dollars ($49,500).

3. **DESIGN DEVELOPMENT SERVICES PHASE**

Upon substantial completion of the Design Development Services Phase, Architect shall have been compensated an additional twenty (20) percent of the total architectural fee or Ninety-nine Thousand Dollars ($99,000).

4. **CONSTRUCTION DOCUMENT SERVICES PHASE**

Upon substantial completion of the construction documents ready for plan check submission, Architect shall have been compensated an additional fifty (50) percent of the total architectural fee or Two Hundred Forty-seven Thousand Five Hundred Dollars ($247,500).

5. **PLAN CHECK COORDINATION SERVICES PHASE**

Upon issuance of a building permit or ninety (90) days following substantial completion of the construction documents, whichever occurs first, Architect shall have received an additional seven (7) percent of the total architectural fee or Thirty-four Thousand Six Hundred Fifty Dollars ($34,650).

6. **CONSTRUCTION SERVICES PHASE**

Upon filing notice of substantial completion of construction, Architect shall have received an additional thirteen (13) percent of the total architectural fee or Sixty-four Thousand Three Hundred Fifty Dollars ($64,350).

Architect will maintain and provide copies of job cost records of time expended during the Construction Services Phase. In the event that these costs exceed the above-stated percentage of the total fee allotment, Architect will notify Client in writing of same and will be compensated for this additional cost as an additional service on an hourly basis.

7. In the event that Client desires to re-use the plans developed by Architect under the terms of this Agreement, Architect shall receive a re-use fee equal to Four Hundred Fifty Dollars ($450) per residential unit, due and payable upon obtaining the building permits for the units. In addition, Architect shall be reimbursed for all time spent on the work including drawing revisions, site planning, plan processing and job site observation on an hourly basis as delineated in this Agreement. There shall be no re-use fee charged for the initial 200-unit subdivision.
B. ADDITIONAL SERVICES

For additional services of Architect, but excluding additional services of consultants, compensation shall be on an hourly basis or negotiated lump-sum basis.

For additional services of consultants, a multiple of 1.15 times the amounts billed to Architect for such services shall be charged Client.

In the event that other architectural firms, landscape architect, engineering or other consultant services outside the scope of services of this Agreement are required by Client for certain portions of the work, Architect will, at the direction of Client, provide coordination services for Client. Such services by Architect will be billed on an hourly basis. Architect shall not be responsible, however, for the quality of the design, engineering, or implementation of any other architect’s, landscape architect’s, engineer’s, or other consultant’s work on any portion of this project.

C. HOURLY RATES

For compensation on an hourly basis, the following rates shall apply:

- Time spent by Principals will be billed at the fixed rate of One Hundred Eighty Dollars ($180) per hour.
- Time spent by Senior Associate Partners will be billed at the fixed rate of One Hundred Fifty Dollars ($150) per hour.
- Time spent by Associate Partners will be billed at the fixed rate of One Hundred Twenty-five Dollars ($125) per hour.
- Employees of Architect will be billed at the rate of three (3) times the employee's direct personnel expense. Direct personnel expense shall be defined as 1.35 times the direct hourly wage.
- Computer time will be billed at the flat rate of Thirty-five Dollars ($35) per hour in addition to the employee/operator's normal hourly billing rate.

D. REIMBURSABLE EXPENSES

For Architect's reimbursable expenses delineated in Article V, Paragraph D above of this Agreement, Architect shall be compensated 1.15 times the amount billed to Architect.

E. INVOICING

A statement for services shall be rendered monthly in accordance with the terms specified above and shall include charges for reimbursable expenses paid by Architect on Client's behalf and charges for additional services and/or changes. All payments shall be due within forty-five (45) days of receipt of statement. A monthly service charge of one and one-half (1.5) percent, compounded monthly, will be
charged for accounts unpaid or overdue beyond forty-five (45) days of the billing date.

In light of the obvious advantage of resolving questions and disputes regarding Architect's billing quickly and while recollections are fresh, Client will notify Architect of any questions or dissatisfaction which it may have regarding any particular invoice within thirty (30) days of the invoice date, and if Client fails to give Architect such notice, then Client will have waived its right to dispute the accuracy and appropriateness of the invoice and the invoice will be binding upon Client.

F. CHANGES IN THE WORK

For changes in the work or changes in the scope: Notwithstanding the provision of basic services, if there are any changes in the drawings requested by Client, after prior approval of the work, or if changes are made necessary as the result of fire, the elements, Acts of God, or other casualties beyond the control of Architect, or if changes in the drawings are necessary as a result of changes in the code after any suspension or delay, or if Client requests services in addition to those specified in basic services, Architect shall be compensated for making such changes or for such additional services amounting over and above the aforementioned maximum fee on an hourly basis.

G. OVERTIME PREMIUM

In the event Client authorizes Architect overtime, Client shall reimburse Architect 1.5 times the employee's billable rate for the overtime hours.

H. COMPLETED WORK TIME FRAME

It is presumed that the services delineated in this Agreement are to be completed within thirty-two (32) months following origination date of Agreement. If portions of the work extend beyond this thirty-two- (32-) month time frame, those portions will be billed an additional ten (10) percent per annum or the consumer price index increase for the previous year, whichever is less, for each twelve-month period or portion thereof beyond the original thirty-two- (32-) month time frame.

ARTICLE VII - GENERAL CONDITIONS

A. SUCCESSORS AND ASSIGNMENT WITHOUT APPROVAL

No assignment hereof by Architect or Client shall be binding without the written consent of the other. This Agreement is also binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, to the extent assignment is permitted.
B. TERMINATION

Either Client or Architect may terminate this Agreement on seven (7) days' written notice provided that Client will compensate Architect as provided in Article VI. In the event Client stops work prior to completion of the Agreement, Architect will bill on the basis of percentage of completion of the total Agreement, but not to exceed the agreed design fee.

Client may terminate this Agreement at any time Client determines in its sole discretion to abandon the project. Also, either party may terminate this Agreement by giving written notice to the other provided only that such notice is based upon a good faith belief that the other party has materially breached this Agreement and failed or refused to remedy that breach pursuant to the terms of this Agreement. Further, Architect may suspend its performance under this Agreement, withhold any instruments of service called for by this Agreement, and/or terminate this Agreement and its related obligations to Client with no liability for doing so at any time if Client allows an invoice to become delinquent pursuant to the compensation provisions of this Agreement.

C. MODIFICATIONS

Neither Architect, Client, nor or any third party has the authority to make any agreement, representation or warranty, or to modify this Agreement or any part thereof, unless such change or modification is in writing and signed by Client and Architect.

D. SOLE AGREEMENT

This Agreement supersedes any previous discussions and it is specifically agreed to that no representations of any character not contained herein have been made by Client and Architect.

E. INSURANCE

Architect shall at all times carry on all operations hereunder the following insurance during the term of this Agreement

<table>
<thead>
<tr>
<th>Insurance</th>
<th>Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workmen's Compensation Insurance</td>
<td>Statutory</td>
</tr>
<tr>
<td>Comprehensive General Liability &amp; Property Damage Insurance</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>Automotive Liability &amp; Property Damage Insurance</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

Certificates of such insurance shall be delivered upon request to Client before Architect performs any work at, or prepares or delivers any materials or equipment to, the site of construction.

Client shall cause Architect to be named as an additional insured on all policies of public liability and property damage insurance carried by Client with respect to the project. Certificates of such insurance shall be delivered upon request to Architect before Architect performs any work at, or prepares or delivers any materials or equipment to, the site of construction.
F. **PUBLICITY**

Publicity releases by Architect shall give proper credit for the project to Client. Client shall endeavor to identify Architect in press releases, brochures or project signs.

G. **OWNERSHIP OF DOCUMENTS**

Plans and construction documents (drawings and specifications) as instruments of service are and shall remain the property of Architect whether the project for which they are made is executed or not. They are not to be used by Client on other projects and are limited to this site only, except by agreement in writing and with appropriate compensation to Architect.

The drawings are not to be copied or reproduced either directly or indirectly.

H. **DELIVERY OF CADD FILES**

Upon request of Client, Architect will deliver to Client, subsequent to the completion of the project, a hard-disk copy of the electronic CADD file generated by Architect for the project. In accepting and utilizing this electronic media provided by Architect, Client covenants and agrees that all such drawings and data available through this electronic file have the same ownership and copyright status as all other plans and construction documents as provided for in this Agreement.

The electronic file, if requested by Client, is provided to Client for informational purposes only and is confidential in nature. Client agrees and covenants that such information provided by Architect will not by copied or altered in any way.

Failure to abide by this provision by Client, his successors, or his agents will immediately cause to occur a blanket or total indemnification of Architect and his consultants. Further, Client will pay all defense costs for negligence, error, or omission of Architect, either alleged or actual, unless a court of competent jurisdiction determines that Architect is guilty of sole negligence or willful misconduct.

It is clearly understood by Client that, while Architect may provide the electronic file after the completion of the project, the drawings and data provided within that media make up only a portion of the project's construction documents, and they do not necessarily represent as-built documents. Bulletins, change orders, responses to Requests for Information by the project's general contractor, and other clarifications provided during the construction phase of the project may not be a part of the electronic CADD file.

Upon completion of the work, Architect may compile for and deliver to Client a reproducible set of record documents conforming to the marked-up prints, drawings, and other data furnished to Architect by the contractor. This set of record documents will show the reported location of the work and significant changes made during the construction process. Because these record documents are based on unverified

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information provided by other parties which will be assumed reliable, Architect cannot and does not warrant their accuracy. Architect will provide these record documents to Client on a time and materials basis.

I. PROJECT SUSPENSION

If the project is abandoned in whole or in part or suspended at any time, Architect shall be paid its compensation for services performed prior to written notice from Client of such suspension or abandonment, together with reimbursable expenses.

In the event that the project is for any reason suspended for more than sixty (60) days, then upon resumption, an additional five (5) percent to accommodate the resulting demobilization and re-mobilization costs will be added to Architect’s fee for the phase of work which was suspended. This additional percentage will be cumulative for each occurrence of suspension and subsequent resumption.

J. INDEMNIFICATION

Architect shall hold harmless and indemnify Client against or on account of any alleged infringement of patent rights or copyrights in connection with performance of this Agreement, and Architect shall, at its expense, defend any action brought against Client on account of any claim of infringement.

The Architect agrees, to the fullest extent permitted by law, to indemnify and hold the Owner harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the Architect's negligent acts, errors or omissions in the performance of professional services under this Agreement.

The Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect and its Consultants harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the Owner's negligent acts, errors or omissions and those of his or her contractors, subcontractors or agents. The Architect is not obligated to indemnify the Owner in any manner whatsoever for the Owner's own negligence.

The Owner agrees to limit the Architect's and its Consultant's liability to Owner, and to all construction contractors and subcontractors on the project, due to the Architect's or its Consultant's negligent acts, errors or omissions such that the total aggregate liability of the Architect to all those named above shall not exceed the limits of agreed insurance policy limits.

The sole and exclusive remedy shall be against the Architect (not its officers or shareholders) and its corporation assets; no officer or shareholder of Architect shall be sued or named as a party in any suit or action; no judgement shall be taken against any officer or shareholder of the Architect.

If a dispute arises out of or relates to this Contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by JAMS/Endispute under its commercial mediation rules.
It is understood by both Client and Architect that the project is to be designed as an apartment development. In the event the project is converted to a for-sale or condominium project, Client agrees to indemnify in total Architect against any alleged errors or omissions brought about by any homeowner (individually or in association), any company related in any way to Client, or any third party unless the alleged errors or omissions are determined by a court of competent jurisdiction to be the sole responsibility of Architect.

K. LIABILITY INSURANCE AND LIMITATION OF LIABILITY

Architect agrees to obtain and maintain errors and omissions insurance on a claims-made basis, naming Client as a certificate holder, upon Client's written request in the combined amount in the aggregate per calendar year (as opposed to each occurrence) of Five Million Dollars ($5,000,000) until the date three years following the issuance of the final certificate of occupancy on the project or, in the event of termination, the date of termination, whichever occurs first. The additional premium increasing the firm's practice limits to Five Million Dollars ($5,000,000) will be shared equally between the Architect and Owner.

The total liability of the firm for all damages (regardless of the number of clients under this provision, persons or organizations claiming injury or damage or claims for all damages) shall not exceed Five Million Dollars ($5,000,000) in the aggregate. The aggregate shall mean the total of all damages paid by Architect and/or insurance company for all claims and "allocated claims expense" made during the same year prior to the filing of the claim against Architect by Client. "Allocated claims expense" shall mean litigation expenses, excluding the cost of investigation and adjustment of claims by salaried employees of Architect and by independent adjustors, but including attorneys' fees, arbitrators' fees, arbitration costs, court costs, expenses incurred in obtaining expert testimony and consultant opinions and the attendance of witnesses, provided that only those items of expense which can be directly allocated to a specific claim shall be included.

Certificates of such insurance shall be delivered upon request to Client before Architect performs any work at, or prepares or delivers any materials or equipment to, the site of construction.

As long as Architect maintains the above-described insurance through an insurance carrier or through self-insuring, Client agrees to limit Architect's liability to Client due to Architect's negligent acts, errors or omissions, such that the total aggregate liability of Architect to all those named shall not exceed the residual insurance amount.

L. LIMITATION OF LIABILITY

Notwithstanding anything to the contrary set forth herein, it is hereby agreed, with respect to any claims and liability of Architect, hereunder and under any specific agreement between Owner and Architect that:

1. The sole and exclusive remedy shall be against Architect (not its officers or shareholders) and its corporate assets;

2. No officer or shareholder of Architect shall be sued or named as a party in any suit or action;

3. No judgment shall be taken against any officer or shareholder of Architect;

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4. No writ of execution will ever be levied against the assets of any officer or shareholder of Architect;

5. The covenants and agreements contained in this Section are enforceable by Architect and also by any of Architect's officers or shareholders. The provisions of this paragraph shall not apply if Architect, or an officer, or a shareholder, shall engage in action to deprive Architect of assets by unlawful means, such as a fraudulent conveyance.

M. ATTORNEY'S FEES

In the event suit shall be brought to enforce any of the terms and conditions of this Agreement, the prevailing party in such litigation shall be entitled to and shall have judgment against the other party for reasonable attorney's fees, costs and expenses.

N. ASBESTOS/HAZARDOUS WASTE

Nothing in this Agreement shall impose liability on Architect/engineer for claims, lawsuits, expenses or damages arising from, or in any manner related to, the exposure to, or the handling, manufacture or disposal of asbestos, asbestos products, or hazardous waste in any of its various forms, as defined by the Environmental Protection Agency.

O. ENTIRE AGREEMENT

This instrument contains the entire Agreement between Client and Architect with respect to this project, and any agreement or representation respecting said project or the duties of either Client or Architect in relation thereto not expressly set forth in this instrument is null and void. If any term or provision of this Agreement or application thereof is held invalid or unenforceable as to any party, the balance of the Agreement shall not be affected thereby, and each remaining term and condition of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

Client and Architect agree that all disputes arising out of or in any way connected to this Agreement, its validity, interpretation and performance and remedies for breach of this Agreement, or any other claims related to this Agreement shall be governed by the laws of the United States of America.

It is further agreed that any suit, claim, or legal proceeding of any kind between Client and Architect shall be brought in a court of competent jurisdiction in Southern California, U.S.A.
IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed the day and year first above written.

Approved and Accepted:

MCLARAND, VASQUEZ & PARTNERS, INC.

[Signature]

Ernesto M. Vasquez, AIA
Managing Principal

Approved and Accepted:

CILKER ORCHARDS

[Signature]

By: WILLIAM H. CILKER
Title: Owner
Date: 8-12-98
ITEM 46
TO: MARK LORD
COMPANY: D&M
FAX NO: 831 372 7481
DATE: 4-24-03
FROM: BILL CILKER

CILKER ORCHARDS
1631 Willow Street, Suite #225
San Jose, California 95125
Telephone: (408) 264-2534
Fax Number: (408) 264-2537

Mark,

This request replaces former request
to D&M from Western Horticultural Construction
and Don Beck and Associates.

D&M charges for all work pertaining
to construction, both construction
consultation and testing are to be
billed to Western Horticultural Construction.

D&M charges for consultation requested by
myself or Carl Patch are to be billed
to Carl Patch c/o 1631 Willow Street,
San Jose, Ca. 95125.

Bill (with checking)

Any entity questions A bill come to CA only

to CA?
June 16, 2003

John Atherton  
Western National Construction  
8 Executive Circle  
Irvine, CA  
92614-6746

Dear John:

Don White and I have discussed at numerous times the performance of your superintendent, Gary Eckley. We believe that he has been responsible for mismanagement on many instances. For example, WNC and MVP approved the moment frames at the entry to the car court as twenty feet. This overlooked the fact that they are mounted at a height of six inches. As a result, the ceilings of the apartments above are six inches lower than our normal nine-foot height. Furthermore, the corrections to be made to the trusses were not incorporated on schedule and this has resulted in expensive corrections after they were installed. There are many others.

In our construction agreement, Page 13, Paragraph II.3, "Contractor's Personnel", the last sentence states "Any employee of Contractor or any Subcontractor working on the Project who, in the opinion of the Owner, does not perform his work in a skillful manner or appears to be incompetent or to act in a disorderly or intemperate manner shall, at the written request of Owner, be removed from the Project immediately." We, hereby ask you to remove Gary Eckley from the project no later than June 20, 2003. If you have any questions, do not hesitate to get in touch with me.

Yours truly,

William H. Cilker, Sr.

cc: Mike McSweeney, HFJA
DON L. BECK ASSOCIATES, INC.

STANDARD CONSULTING AGREEMENT

This Agreement is made between Don L. Beck Associates, Inc., (DLB), a California Corporation, and Clinker Properties (Client). Client agrees to contract for the services of Consultant, and Consultant agrees to provide services under the terms and conditions in this Agreement.

A. DESCRIPTION OF SERVICES PROVIDED: DLB is to provide on behalf of Client, construction management. DLB will provide project construction management as outlined in the enclosed Definition of Responsibility.

B. PAYMENT FOR SERVICES: For the consulting services described above, Client shall pay Consultant on a time and materials basis with a not-to-exceed fee of $96,000, plus reimbursable expenses to be billed monthly on a progressive basis (Per attached Fee Schedule). The reimbursable expenses shall include a scheduling sub-consultant on a time and materials basis with a not-to-exceed fee of $14,000 for the first month and $4,000 each additional month to be billed monthly on a progressive basis.

C. INDEPENDENT CONTRACTOR: It is understood and agreed that the Consultant is an independent contractor in the performance of this Agreement. Consultant shall assume full responsibility for payment of all Federal, State and local taxes, contributions, and/or special levies imposed or required under unemployment insurance, social security, income tax, and/or other laws, with respect to the performance of Consultant’s obligations under this agreement.

D. DISCLOSURE OF INFORMATION: Client may disclose to Consultant confidential information relating to research, marketing, development and business activities of Client. Consultant will not disclose to any person not authorized by Client any confidential information relating to Client.

E. RIGHT TO ACT AS CONSULTANT: Consultant warrants that he is not subject to any restrictions which would prevent him from entering into, or carrying out, the provisions of this Agreement, nor has any business agreements with parties involved other than Client.

F. TERMINATION: Client may terminate this Agreement at any time, for any reason, by providing written notice to DLB of intent to terminate the Agreement. DLB will submit a statement detailing tasks, hours expended to date, cost committed, and reimbursable costs. Upon payment of costs, DLB agrees to terminate the Agreement.

G. MEDIATION: In an effort to resolve any conflicts that arise during the design and construction of the project or following the completion of the project, Client and DLB agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise.

Client and the D LB further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements. In the event that mediation is not successful, Client and the D LB mutually agree to proceed with paragraph H.

10050 North Foothill Boulevard, Cupertino, CA 95014  •  (408) 973-8688  •  Fax (408) 973-8714  dlb
H. **ARBITRATION:** Any controversy or claim arising out of, or relating to this Agreement, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered may be entered in any Court of competent jurisdiction.

I. **AMENDMENT:** This Agreement may be amended only by a written document signed by both Client and DLB.

J. **DLB TAX LD NO:** 94-2745040

K. **SCHEDULE:** DLB agrees to commence immediately.

L. **INSURANCE:** $1,000,000 for professional liability insurance.

M. **HAZARDOUS MATERIALS CLAUSE:** It is understood and agreed that, in seeking the professional services of DLB under this Agreement, the Owner may be requesting DLB to undertake uninsured obligations for the Owner's benefit, involving the presence, or potential presence, of hazardous substances. Therefore, for services related in anyway to hazardous substances, in any form whatever, as defined by the Environmental Protection Agency, or any other public authority, Owner agrees to hold harmless, indemnify, and defend DLB, its consultants, agents, and employees, from and against, any and all claims, losses, damages, liability, and costs, including, but not limited to, reasonable attorney's fees, arising out of, or resulting from, the performance of work by DLB, or its consultants, related in anyway to the presence of hazardous substances, including, but not limited to, asbestos or asbestos-related materials, except where such liability is the result of a finding by a court of competent jurisdiction of sole negligence or willful misconduct on the part of DLB in the performance of services under this Agreement.

CILKER PROPERTIES 

By: (Signature)

Name: William H. Cilker 

Title: President 

Date: 11/7/02

DON L. BECK ASSOCIATES, INC.

By: (Signature)

Name: 

Title: 

Date: 

10050 North Foothill Boulevard, Cupertino, CA 95014 • (408) 973-8688 • Fax (408) 973-8714 

DLB
DON L. BECK ASSOCIATES, INC.

FEES SCHEDULE

Principal Management ................................................. $200.00 /hr.
Vice President ......................................................... $120.00 / hr.
Senior Project Managers ............................................. $100.00 /hr.
Project Managers ...................................................... $80.00 /hr.
Professional .......................................................... $70.00 /hr.
    Project Engineers/Senior Designers
Associate Engineers/Designers ..................................... $60.00 /hr.
Drafting Service ..................................................... $45.00 /hr.
Consultants .......................................................... Cost x 1.15
Reimbursement Services ......................................... Cost x 1.15
Administrative Fees ................................................ 4% of Fees

Fees Include:
- Professional Fees
- Overhead and profit

Reimbursable Fees:
- Travel
- Delivery service
- Printing
- Equipment rental
- Bonding and professional insurance
- Long distance telephone/fax
- Special mail service
- Computer data entry ($25 per hour)

Administrative Fees:
- Local telephone/fax
- Local mileage expenses
- In-house copy service
- Standard mail expense
DEFINITION OF RESPONSIBILITIES

Construction Management

1. Review business plans regarding total project costs.

2. Review of existing buildings, equipment, planning and applicable previous studies.

3. Develop project planning schedule and define responsibilities.


5. Perform field observation of the for the site.

6. Review building construction plans for the building.

7. Review sub-contractor proposal packages. Make recommendations to optimize the buy out.

8. Review and analyze subcontracts.

9. Review the final project budget and C.O. costs to date. Make recommendation to any deviations from the contract documents.

10. Manage the project CPM schedule.

11. Conduct weekly project meetings to review construction status, costs and all project issues with the entire design team. Develop weekly field observation report and document minutes of the meeting.

12. Assist the general contractor in obtaining building permits as required.

13. Collect and distribute transmittals of all project correspondence. Review and approve architectural submittals and shop drawings. Make recommendations to optimize and accelerate the schedule.

14. Review change orders. Change orders are approved based on owner approval. Budget and costs are reviewed continually during project. Substitutions are reviewed and field conditions are analyzed to reduce costs where possible.

15. Provide contract documentation. Manage change request procedure, acquire all necessary information, process, make recommendations to owner and implement change orders.

DON L. BECK ASSOCIATES, INC.

10050 North Foothill Boulevard, Cupertino, CA, 95014 • (408) 973-8688 • Fax (408) 973-8714 • dbb

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DEFINITION OF RESPONSIBILITIES

Construction Administration

Don L. Beck Associates, Inc. will provide ongoing project management throughout the course of the project. This will include:

1. **Prices** - will be obtained by the general contractor and recommendations will be made regarding the award of contracts. During construction, we will review the status of completion, shop drawings, and provide interpretations of the construction documents.

2. **Project Meetings** - Weekly meetings will be held throughout the project. Completion status, schedule, budget, and outstanding issues will be reviewed at these meetings. We will prepare and distribute minutes of these meetings each week.

3. **Field Observations** - Regular visits to the field by the project team of Don L. Beck Associates, Inc. to ensure quality and production meet the plan and construction documents. A written report is issued to ensure compliance by the general contractor.

4. **Project Budget** - We will review the General Contractor GMP for approval and report any variance to the contract.

5. **Project Schedule** - An overall project CPM schedule will be prepared at the outset of the project. A detailed construction schedule will be prepared by the general contractor and made a part of the CPM. Critical path and long-lead items will be identified for action as required to meet the project schedule.

6. **Progress Payments** - As the general contractor submits its monthly requests for payment, we will validate the payment requests to ensure that all claims for work in place are substantiated. Approved billing requests are then forwarded to the Client for approval of payments.

7. **Monthly Reports** - As invoices are approved, they are posted to our Computer Cost Reporting System. Change Orders and schedule revisions are also defined. Monthly reports are reviewed with the Client to ensure forecasts are being met.

8. **Punch List** - We will prepare a punch list of the project when notice of completion is filed and verify the compliance of each item.

9. **Permits and As-Built Drawings** - Prior to occupancy, we will ensure that all necessary permits to occupy and operate the facility have been obtained. The record, or as-built drawings, will be assembled along with operating manuals and equipment specifications submitted to you.
DEFINITION OF RESPONSIBILITIES

Additional Services

Don L. Beck Associates, Inc. will track and coordinate activities of Client’s in-house group to maintain sequence with team activities. This includes move-in and fit-up planning and administration, telephone and furniture installation, security, etc. Coordinate mechanical and electrical punch list and obtain tests such as air balance, electrotest, etc. Assist general contractor in obtaining occupancy permit. Coordination of furnishings, art, and other supplemental service activities. Prepare architectural punch list and coordinate final acceptance.

Prepare project close-out documents for distribution to owner and tenant. Final documentation to be developed include:

- Project Manual
- As-built Drawings
- Chats! Items List
TO: Gary Lane

COMPANY: OPP - Trailer

FAX NO: 10-8-03

DATE: 10-8-03

FROM: Bruce Chish

CILKER ORCHARDS
1631 Willow Street, Suite #225
San Jose, California 95125
Telephone: (408) 264-2534
Fax Number: (408) 264-2537

Gary,

I am concerned about Steve's letter.

Did we follow Section 07170 vs NUP

Specifications?

Pages including this cover sheet
SECTION 07130

SHEET WATERPROOFING

PART 1 - GENERAL

1.1 SECTION INCLUDES

A. Cold-applied, elastomeric sheet membrane for below grade exterior wall waterproofing.
B. Related sealants and ultra-violet radiation protective coating.

1.2 RELATED SECTIONS

A. Section 02500 - Subdrainage System: Prefabricated in-plane wall drainage system shall serve as protection for waterproofing.
B. Section 03300 - Cast in Place Concrete: Surface quality for application of waterproofing.
C. Section 07650 - Flexible Flashing: Elastomeric sheet membrane underlayment for plaster finish and sheet metal.
D. Section 07900 - Joint Sealers: Penetration seals other than at membrane waterproofing.

1.3 DESCRIPTION OF WORK

A. Scope and System Descriptions:

1. W.R. Grace & Co., Construction Products Division (Blutemex brand), Cambridge, MA. The extent of waterproofing Subcontractor’s work consists of furnishing everything necessary for, and incidental to, the execution and completion of the following:

   a. Schedule I: Below Grade Waterproofing at Garage and Recreation/Leasing Building. The new waterproofing system will consist of a sheet material composed of 70 mil thick Bentonite/Butyl Rubber compound with 20 mil thick PVC liner for a total 90 mil thick product, installed over concrete and masonry block walls. The sheet membrane waterproofing will be protected with an inch thick drainage board material (Aquadrain 15X).

   b. Schedule II: Between Slab at Podium Level Deck and Podium Level Balconies: The new waterproofing system will consist of a sheet material composed of 70 mil thick Bentonite/Butyl Rubber compound with 20 mil thick PVC liner for a total 90 mil thick product installed over the concrete deck. The sheet membrane in waterproofing will be protected with Aquadrain 30 H.

   c. Schedule III: Between Topping Slab and Plywood Deck at Catwalks, Balconies and Roof Decks: The new waterproofing system will consist of a sheet material composed of 70 mil thick Bentonite/Butyl Rubber compound with 20 mil thick PVC liner for a total 90 mil thick product installed over a 30 mil protection coat of a single component urethane, fluid-applied waterproofing material. The 30 mil protection coat will be installed directly over the plywood decks.
B. Storage: Store products in a manner to prevent damage or deterioration while in storage.

C. Storage and Protection: Comply with manufacturer's instructions and recommendations. Protect products from freezing and hot temperatures. Store only as much material at point of use as required for period of Work.

1.9 PROJECT CONDITIONS

A. Subcontractor shall:

1. Conditions:

a. Construction may not be as shown on the drawings and some modification of details may be required to accomplish the intent of the documents. Subcontractor must receive approval in writing from the Architect via the Contractor for all modifications or adjustments before commencing with the work.

b. Before any waterproofing work is started, thoroughly examine all surfaces for deficiencies. Should deficiencies exist, the Architect via the Contractor shall be notified in writing and corrections made prior to commencing with work.

2. Environmental Requirements:

a. If inclement weather is anticipated during the work period, take adequate precautions to insure that materials and applied waterproofing are protected from possible moisture damage or contamination.

3. Protection:

a. Remove debris daily from the waterproofing area and haul off site. Comply with the requirements of this Section, Paragraph 3.03.

b. Immediately repair or replace all damage or defective work to the approval of the Architect, Waterproofing Consultant and Contractor. The repair of damaged or defective work shall be performed at no additional cost to the Owner or Contractor, unless the Subcontractor's protected work in place is damaged by others beyond his reasonable control.

A. Environmental Conditions: Except as otherwise approved in writing by waterproofing materials manufacturer, surfaces to receive waterproofing and ambient air temperature shall be at or above 40 degrees for at least 48 hours before, during and for 48 hours after waterproofing.

1.10 REGULATORY REQUIREMENTS

A. Conform to regulations of public agencies, including any specific requirements of the city and state of jurisdictions.

1.11 GUARANTEES

A. Subcontractor guarantees:

1. The Waterproofing Subcontractor shall guarantee the installation of waterproofing system and flashing to be watertight for a period of five years from the date of substantial completion of the waterproofing project. The Subcontractor shall make all repairs during
D. Voicoey Bentoseal.

E. Sealant: Elastomic sealant shall be a low modulus, high performance, one-part polyurethane conforming to Federal Specification No. TT-S-00230C Type II, Class A, such as Sikafoam-10LM, or approved equal. Sealant manufacturer, other than those listed, must be approved, in writing, by the primary material manufacturer as a compatible sealant prior to use on this project.

F. Primers:

1. Primer for Metal: NEOGARD Metal Prime as manufactured by NEOGARD.

2. Concrete primer for EnviroSheet installations (schedule IV): EnviroSheet Primer as manufactured by CETCO.

G. Fluid Applied Waterproofing Membrane (pigmented to protect from ultraviolet rays in an exposed application): NEOGARD 7400 URETHANE II as manufactured by NEOGARD. Color of membrane shall be "Limestone".

FASTENERS

A. Swallflite Membrane to Vertical Walls: Simplex case hardened concrete nails through 1 inch metal disks.

B. Fasteners such as nails, screws, bolts, etc. shall be of same material as flashings on which they are used. They shall be of same type and size as shown on the drawings or specified herein.

C. Sheet Metal to Concrete: Specially threaded anchors, brand name "Hilti", 3/16 inch minimum diameter, length to penetrate minimum 1-1/2 inches through the concrete and having a flushed headpin.

D. Termination Bar: A pre-punched, 12 inches on center, flat, 1/8 inch minimum gauge galvanized termination bar.

E. Sheet Metal to Wood: Annular threaded (ring shank), corrosion resistant nail with minimum 3/8" diameter flush head to penetrate wood or plywood. ¾" minimum. Nails may be upgraded to flush head, corrosion resistant screws.

MISCELLANEOUS MATERIALS:

A. Protection Material:

1. Aquadrain 15x (Schedule I and Schedule IV).

2. The two foot square area around each drain shall be protected using Aquadrain 30H.

B. Waterstop: Waterstop RX.
2. Subcontractor shall have a minimum of five years experience in successfully applying the same or similar materials. Subcontractor shall be currently approved and licensed by the manufacturer of the waterproofing materials to be used. Subcontractor shall use only skilled workers completely familiar with the products and the manufacturer's currently familiar with the products and the manufacturer's current recommended methods of installation.

3. The Subcontractor shall obtain the services of the representative of the manufacturer for initial instructions in application of materials. The manufacturer shall supply such service at no additional cost to the Owner. Notify manufacturer in writing 5 days prior to requiring his services.

4. Except as modified and supplemented herein, Subcontractor shall follow the published requirements and written recommendations of the manufacturer of the waterproofing system and other material manufacturers. Concerning methods of installation, industry practices apply only when this Section does not address the matter.

5. The work will be subject to continual audit by the Consultant. The Subcontractor is to notify the Contractor and Consultant when work is to begin in sufficient time to arrange waterproofing quality control and to remain in continual contact throughout the course of the job regarding scheduling of work. Subcontractor shall at all times accomplish his scope of work in a safe manner. Furthermore, Subcontractor shall furnish all information necessary to accomplish such Quality Assurance auditing.

6. If, in the opinion of the Subcontractor, any work is indicated on drawings or specified in such a manner as to make it impossible to produce guaranteed and warranted work of highest quality, or should discrepancies appear from one drawing to another, or between drawings and specifications, the Subcontractor shall advise the Contractor in writing before proceeding.

C. Manufacturer's Requirements:

1. Manufacturer's shall make two inspections per month during the progress of work and provide a written report specifying approval of installations.

2. Any changes in application procedure and products approved by manufacturer must be submitted by manufacturer in writing prior to implementation.

A. Applicator Qualifications: Applicator shall have not less than ten years continuous experience in waterproofing work and not less than five years experience as an approved or licensed applicator of waterproofing materials manufacturer.

B. Products and Application: Selection of products and details of application of waterproofing shall be in accordance with waterproofing materials manufacturer's standard specifications, installation instructions, recommendations and standard details, except where more stringent requirements are indicated on Contract Drawings, specified herein or necessary due to Project conditions.

C. Manufacturer's Installation Instruction: Submit current installation instructions and recommendations for applications as on Project.
DATE: October 07, 2003

PROJECT: One Pearl Place
Job No. 97-229

NUMBER OF SHEETS: 1 Including Cover Sheet

FROM: Gary Penman

TO: COMPANY: [X] Western National Construction

CC: Steve Gentry

FAX NO: (408) 266-1374 Keyston Smith
(805) 989-0696

ATTENTION:

COMMENTS:

Keyston,

I received your most recent submittal regarding the waterproofing systems you have used at One Pearl Place. Based on our telephone conversation today I understand that much of the waterproofing installation is complete. The nature of my questions regarding the waterproofing submittal will therefore focus on how the system was actually installed rather than how the system is depicted in the details that you provided as part of the shop drawing submittal. Your responses to my questions can be made via additional/revised details or annotated digital photographs of the actual installation.

Review Comments:

1. The submittal included no details of the waterproofing at the wood framed catwalks or decks. Please provide details indicating how the waterproofing was installed.

2. The submittal details did not reflect Gentry Associates recommendation of placing 12" wide Bituthene 3000 "panels" over each seam, and an additional 12" wide layer of Bituthene 3000 as a "skirt" around drains and fixtures. Please confirm that either Gentry Associates recommendation, or MV&P's recommendation for a double layer of Bituthene 3000 was included in the installation.

3. The submittal details make no mention of using a "primer" on the surfaces receiving the Bituthene 3000. The manufacturer's product literature requires a primer. Please provide confirmation that a primer was used. Please specify the primer used.

4. According to the submittal details the sheet metal flashing that occurs at the wall to floor junction is covered by a layer of Bituthene 3000. What will protect the Bituthene 3000 from destructive exposure to ultra violet light? Please clarify.

5. The submittal details show a ¾" M-2000 cant at the wall to floor junction. This component was a part of MV&P's original water proofing system. Was the cant used or replaced with another component? Please clarify.

6. Please confirm which water proofing system has been installed at perimeter, below grade walls.

Thanks,

Gary
ITEM 50
PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this 13th day of July, 1998, by and between Cilker Orchards located at 1631 Willow Street, Suite 225, San Jose, California 95125, Attention: William Cilker (hereinafter referred to as "Client"), and McLarand, Vasquez & Partners, Inc., a California corporation located at 695 Town Center Drive, Suite 300, Costa Mesa, California 92626 (hereinafter referred to as "MV&P" or "Architect").

The parties shall provide the professional services described below with respect to the job located on approximately 4.5-acres of the approximate 10.54-acre William H. and Leila A. Cilker Trust site at the southeast corner of Winfield and Chynoweth near the Chynoweth/Ohlone light rail station in the City of San Jose, State of California.

CILKER MIXED-INCOME APARTMENT VILLAGE – PHASE II
SAN JOSE, CALIFORNIA
MV&P JOB NO. 97-229
REVISED JANUARY 27, 1998
REVISED MARCH 19, 1998
REVISED APRIL 7, 1998
REVISED JULY 13, 1998

Architect shall provide these services as needed by Client in a timely manner such that a minimum delay is encountered in actual construction of the project.

ARTICLE I - SCOPE

A. THE WORK

The proposed work shall include predesign and site development services, schematic design services, design development services, construction document services, plan check coordination, and services during construction as delineated below for a mixed-income apartment village. Depending upon the desired density plan, the village will consist of a maximum of 200 apartments. The master plan for the overall 10-acre site has been completed previously.

Architect will prepare alternatives and work with Client, Valley Transportation Agency, and Client's marketing and property management team to design the village adjacent to the proposed transit residential village.

The project will consist of three and four-story building types, with 200 total dwelling units consisting of a variety of unit types, to provide a mixed-income community. Seventy-five percent of the buildings will be built over a one-level parking structure with elevator-serviced parking to all residential units. The remaining 25 percent of
the buildings will be two- and three-story with tuckunder parking building and individual garages accessible from the perimeter street.

Architect will develop floor plan designs in concert with the site planning. The approximate mix for both scenarios is as follows:

<table>
<thead>
<tr>
<th>UNIT</th>
<th>LAYOUT</th>
<th>SQUARE FOOTAGE</th>
<th>MIX PERCENTAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Studio</td>
<td>450</td>
<td>5 - 8</td>
</tr>
<tr>
<td>B</td>
<td>1 bedroom/1 bath</td>
<td>725</td>
<td>45</td>
</tr>
<tr>
<td>C</td>
<td>2 bedroom/2 bath</td>
<td>975</td>
<td>40 - 45</td>
</tr>
<tr>
<td>D</td>
<td>2 master bedroom/2 bath</td>
<td>1,000</td>
<td></td>
</tr>
<tr>
<td>E</td>
<td>3 bedroom/2 bath (townhome)</td>
<td>1,150 - 1,250</td>
<td>10</td>
</tr>
<tr>
<td>F</td>
<td>2 bedroom/2.5 bath/den</td>
<td>1,200</td>
<td></td>
</tr>
</tbody>
</table>

The desired marketing input will be utilized and incorporated into the architectural image of the village.

Architect will coordinate with the civil engineer and landscape architect in designing the village. Architect will assist Client, as required, with processing the project for the City of San Jose P.D. permit process or other public agency approval. Architect will assist Client in coordination of neighborhood group meetings and/or City public hearings on an as-needed basis. Compensation for these coordination services will be based on the hourly rates outlined in Article VI, Paragraph C of this Agreement.

A recreational facility will be designed utilizing approximately 3,000 square feet for the recreational and leasing/management area. The major recreational amenities to be included are aerobics, exercise/gym, lockers and change areas, toilets, lounge area, kitchen/storage, media wall, business center, and telecommunications.

It is anticipated that the development will be constructed in a single construction phase. Further, it is assumed that the architectural documents will be prepared in a single increment of work.

Structural engineering services; design-build mechanical, plumbing, and electrical engineering services; and Title 24 calculations are included within the basic services of this Agreement.

Client will have the authority to approve all engineering consultants prior to their hiring by Architect. Client will not unduly withhold his approvals for qualified engineering consultants.

B. AGREEMENT

Upon execution, this Agreement supersedes any previous agreement for services.
ARTICLE II - BASIC SERVICES

A. PHASE I - PREDESIGN AND SITE DEVELOPMENT SERVICES

1. PROJECT DEVELOPMENT PROGRAMMING

After reviewing Client's objectives and the physical characteristics of the site, Architect will establish with Client a program for the development of the overall project. Project programming is the process by which a detailed set of requirements for a proposed building project is developed. The design concept will be based on the adaptation of these requirements to Client's available resources, to technical requirements, to physical and economic forces, and to site limitations.

2. MASTER PLANNING (previously completed)

Architect will develop, in accordance with Client's requirements, a master plan of the above-referenced development. Several alternative approaches will be explored and reviewed with Client prior to solidifying a presentation plan. The objective of this phase is to create an optimized land plan for development and presentation.

3. INITIAL CONCEPT AND BUDGET REVIEW

The initial concept is created following careful study and analysis of the project program. This task includes illustrating diagrammatically the size and relationship of the project components. A probable construction budget can then be prepared, using square foot cost figures as a basis for calculating the anticipated cost of the several elements involved, and presented for review.

4. GOVERNMENTAL AGENCY CONSULTATION

Coordination with governmental agencies (i.e. Valley Transportation Agency for P.D. Permit Processing with the Planning Agency of the City of San Jose), includes preparation of material for and consultation with local governmental agencies having jurisdiction regarding applicable laws, statutes, building codes, and regulations affecting the project to verify the assumptions of concept. In addition, presentations to homeowners' groups will be made by Architect, if required by Client.

B. PHASE II - SCHEMATIC DESIGN SERVICES

Based on program requirements developed with Client and mutually agreed to by Client and Architect, Architect will prepare schematic design studies of the development, which may offer one or more possible solutions to Client for selection and approval. These studies will include an overall site plan, diagrammatic plans of each level within the development, and tabulated data indicating square footage and overall efficiencies of the development.
In addition to the schematic floor plans, schematic conceptual exterior elevations and sections which delineate the basic shape, structure, size, and character of the proposed development will be prepared.

A revised construction estimate of probable cost will be provided by others for review by Client at the sole expense of Client.

C. PHASE III - DESIGN DEVELOPMENT SERVICES

Subsequent to the approval of the schematic design and with the authorization of Client, Architect will proceed with the design development of the project.

The objective of this phase is to prepare a package of drawings and other documents refining and explaining the project. This package includes refinement of the floor plans and elevations and a more detailed development of the project's exterior.

The visual aspects of the structures will be studied. Building materials and installation systems will be studied and selected.

The various engineering systems will be analyzed by Client's consultants in order that the final architectural design concept can be carried out efficiently and economically.

A refined statement of probable construction cost will be prepared by others at the sole expense of Client for review by Client at the conclusion of this phase of the work.

D. PHASE IV - CONSTRUCTION DOCUMENT SERVICES

1. ARCHITECTURAL CONSTRUCTION DOCUMENTS

Upon authorization by Client, Architect will prepare construction documents consisting of drawings and specifications setting forth the requirements for project construction. The total construction documents will be of sufficient detail to reasonably bid and build the project.

The architectural construction documents are prepared from the approved Design Development Phase drawings with two-dimensional graphic representations, such as plans, elevations, sections, and details indicating the design, location, size, and dimensions of the project and of the parts thereof. Notes on the drawings and specifications support and explain the graphic representations.

Architect will prepare advance bid documents, schedule permitting, when the construction sequencing requires some portion of the work at an earlier stage in the project's development.

4
2. **STRUCTURAL CONSTRUCTION DOCUMENTS**

The structural engineer's work includes preparation of structural working drawings, in concert with the architectural working drawings, which graphically represent the structural concept of the project and include sufficient details, schedules, notes, and information necessary to facilitate its construction. The work also includes preparation of engineering calculations which verify the size and dimension of foundations, structural reinforcing; and wall, column, beam, floor, and roof structures. Calculations will conform to the applicable building code requirements in force at the time of issuance of the building permit.

Any additional engineering required for shoring or foundation designs other than conventional spread-footing or driven-pile type will be billed to Client as an additional service.

Architect and the structural engineer shall rely on the soils report provided by Client to Architect prior to the commencement of the preparation of construction documents. As long as Architect and his consultants comply with the approved recommendations of the soils report, they shall be indemnified and held harmless by Client for any damage or alleged damage caused in part or in whole by any surface failure including, but not limited to, soils settlement or soils corrosion.

3. **CIVIL CONSTRUCTION DOCUMENTS** (by Client's consultant)

The civil engineer's work includes preparing civil working drawings from the approved Site Development studies to represent graphically those features dealing with onsite improvements such as utilities, culverts, drainage, and grading, both rough and final, as well as elevations of hardscape areas.

4. **MECHANICAL CONSTRUCTION DOCUMENTS**

The mechanical engineer's work includes assisting Architect in developing the criteria for the mechanical/plumbing engineering designs which shall be prepared by a design/build contractor selected by the general contractor. In addition, he shall assist Architect in locating and sizing the equipment. The fire protection system, as required in the approved architectural design, will be performed by a design/build contractor but with head type and location approved by Architect.

The design/build contractor shall make an independent analysis and be fully responsible for the mechanical and plumbing engineering and the size, shape, dimension, and capacity of the various elements, as well as coordinating with other trades.
The mechanical engineer shall review the construction documents of the design/build contractor to verify general consistency with the established criteria for design.

Architect shall, using the standard of care, coordinate and review the mechanical engineer's design and advise Client and the design/build contractor if Architect observes any material deficiencies in the design.

5. ELECTRICAL CONSTRUCTION DOCUMENTS

The electrical engineer’s work includes assisting Architect in developing the criteria for the electrical engineering designs which shall be prepared by a design/build contractor selected by the general contractor. In addition, he shall assist Architect in locating and sizing the equipment.

The design/build contractor shall make an independent analysis and be fully responsible for the electrical engineering and the size, shape, dimension, and capacity of the various elements, as well as coordinating with other trades.

The electrical engineer shall coordinate and review the construction documents of the design/build contractor to verify general consistency with the established criteria for design.

Architect shall, using the standard of care, review the electrical engineer's design and advise Client and the design/build contractor if Architect observes any material deficiencies in the design.

E. PHASE V - PLAN CHECK COORDINATION SERVICES

Architect will submit the appropriate architectural documents to the appropriate building department for the purpose of checking the plans prior to issuing a building permit.

Architect will coordinate with the various governmental agencies and make adjustments necessary to the architectural construction documents so that they will satisfy the requirements for issuance of a building permit.

F. PHASE VI - SERVICES DURING CONSTRUCTION

1. CONSTRUCTION OBSERVATION

All time spent on the project subsequent to the obtaining of building permits will be billed to the Construction Observation Phase.

Construction services through completion of construction are included within the scope of the Agreement. Construction services requested by Client beyond the above-stated construction phase will be billed as additional services.
Architect shall make 16 trips to the site during the construction of the project, to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the contract documents and the general conditions of the contract. However, Architect will not be required to make exhaustive or continuous onsite reviews to check the quality or quantity of the work.

Architect will provide assistance to the contractor, his superintendent and subcontractors as is reasonably required to explain or interpret the drawings.

Architect shall not have control of or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures; or for safety precautions and programs in connection with the Work; for the acts or omissions of the contractor, subcontractors or any other persons performing any of the work; or for the contractor's or subcontractor's schedules; or for the failure of any of them to carry out the work in accordance with the contract documents in accordance with the requirements of the governmental agency having jurisdiction over the work.

It is assumed that construction of the entire project will be completed within a sixteen- (16-) month construction schedule. If time of Architect is required beyond the above-allocated construction period, that time will be billed as an additional service.

Verification for payment of materials stored, fabrication or construction, and work performed offsite shall be verified by others retained by Client.

2. **SHOP DRAWINGS AND SUBMITTAL REVIEW**

Architect and Client's selected general contractor shall review and take appropriate action on shop drawings, product data, samples, and other submittals required by the construction documents. Architect's review shall be only for general conformance with the design concept and general compliance with the information given in the construction documents. It shall not include review of quantities, dimensions, weights or gauges, fabrication processes, construction methods, coordination with the work of other trades, or construction safety precautions, all of which are the sole responsibility of the contractor. Architect's review shall be conducted with reasonable promptness consistent with sound professional practice. Review of a specific item shall not indicate acceptance of an assembly of which the item is a component. Architect shall not be required to review and shall not be responsible for any deviations from the construction documents not clearly noted by the contractor, nor shall Architect be required to review partial submissions or those for which submissions for correlated items have not been received.
3. **BULLETINS AND CHANGE ORDERS**

Architect shall prepare bulletins after the construction contract is established or construction has commenced. Bulletins will provide the contractor with information relating to clarification, documentation of field changes, detail changes, errors, omissions, and Client changes.

Change orders will be prepared by the general contractor in a format established by Architect to be issued and approved by both Architect and Client prior to execution.

If bulletins are a result of a change in the scope of work as directed by Client, the expense for the preparation and execution of the bulletin and change order shall be billed to Client as an additional service.

4. **ARCHITECT'S INTERPRETATIONS AND DECISIONS**

Interpretations and decisions of Architect shall be consistent with the intent of and reasonably inferable from the contract documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, Architect shall endeavor to secure faithful performance by both Client and contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith. Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the contract documents.

5. **MISCELLANEOUS**

The term "substantial completion" shall be interpreted to mean that the project's construction is sufficiently complete in accordance with the construction documents so that the premises, in whole or in part, can be occupied and utilized for the use for which it is intended as expressed in the contract documents. Evidence of same shall be through the issuance of a certificate of occupancy, temporary or permanent.

**ARTICLE III - EXCLUSIONS**

The following items are specifically excluded from the services to be performed by Architect under this Agreement:

Services specifically excluded in addition to those indicated hereinabove are production of any drawings normally included in the work of a consulting landscape architect; civil engineer services; de-watering design and engineering; shoring design and engineering; graphics consultant; traffic or parking consultant; elevator consultant; special consultants required for gas, water, or asphalt conditions; acoustical engineering consultant; design or production of any brochures; interior design or decoration (other than interior elevations of casework or built-in equipment); renderings; models; job supervision; environmental impact reports; the preparation of record drawings; or any work other than as specified herein.
ARTICLE IV - RESPONSIBILITIES OF ARCHITECT

A. ALTERATIONS TO DRAWINGS

Architect shall have no claim for any extras whatsoever, unless and until specific written or verbal orders are given by Client to Architect. All such work shall be executed under the conditions hereof, except that any claim thereby shall be adjusted at the time of ordering such change.

B. PROFESSIONAL SERVICES

All work done under this Agreement shall be performed pursuant to the requirements of the appropriate governmental agencies having jurisdiction over the issuance of a building permit and certificate of occupancy at the time the service is rendered.

C. NOTIFICATION OF FEES

Architect shall notify Client as to dollar amounts of plan check fees for building permit only. Client shall be responsible for determining requirements and amounts of other fees necessary for the construction and occupancy of the work.

D. COST RECORDS

Architect shall keep sufficient cost records of accounts on a generally recognized accounting basis and shall make them available to Client as required for hourly charges.

No deductions shall be made from Architect's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors or on account of the cost of changes in the Work ("backcharges") other than those for which Architect has been found liable by a court of competent jurisdiction.

ARTICLE V - RESPONSIBILITY OF CLIENT

A. ACCURATE SURVEY OF SITE

Client to furnish Architect with a complete and accurate survey of the building site, giving the grades and lines of streets, pavements and adjoining properties and contours of the building sites, and full information as to storm sewer, sanitary sewer, water, gas, telephone, and electrical services and other buried utilities. Survey shall also furnish any information prepared by public authorities regarding street improvements, condemnations, and highway dedications, both existing and proposed.

B. LEGAL AND AUDITING ADVICE

Client to provide all legal and auditing advice incurred as a result of the project and its development.
C. **SOILS INFORMATION**

Client to provide a soils investigation report prepared by a licensed soils engineer and/or licensed geologist. Report shall provide investigations of the site and make recommendations. Architect and structural engineer will rely solely on the accuracy and completeness of this soils report and recommendations contained therein for the design of the project. Such report shall also include information and recommendations relating to subterranean water levels and volumes, contaminated or hazardous existing soils and/or water conditions.

D. **REIMBURSABLE EXPENSES**

Reimbursable expenses are in addition to compensation for basic and additional services and include actual expenditures made by Architect and Architect's employees and consultants in the development of the project. These expenses shall include, but shall not be limited to, blueprinting and reproduction, photo work, artist renderings (if requested by Client), overnight delivery, and messenger services.

E. **CONSULTANT SERVICES**

Client to pay for all consultant services not specifically included within the scope of this Agreement.

It is clearly understood by all parties that while Architect may provide coordination services for consultants whose services are within and outside the scope of this Agreement, these consultants are professionals licensed in the State of California and Architect assumes no liability for the quality of said consultants' work nor for the errors or omissions these consultants may cause. Further, Architect assumes no responsibility for the errors or omissions which may be the result of the coordination of consultants outside the scope of this Agreement.

F. **PLAN CHECK AND BUILDING PERMIT FEES**

Client to pay for all plan check, building permit and other fees required by the municipality.

G. **ARTIST RENDERINGS**

Client to pay for artist renderings of the project, if requested by Client.

H. **TRAVEL EXPENSES**

Client to pay for all travel expenses and travel time for Architect and its consultants as necessary to accomplish the work included within the scope of this Agreement including air fares, lodging and meals, except within Orange County and Greater Los Angeles.
I. REVIEW OF DOCUMENTS

The proposed language of certificates, consents, assignments, etc., requested of Architect or Architect's consultants shall be submitted to Architect for review and approval at least fourteen (14) days prior to execution. Client shall not request certifications, consents, or assignments that would require knowledge or services beyond the scope of this Agreement.

Any time required of Architect or his employees for the review of such documents shall be considered additional service and shall be compensated in accordance with Article VI, Paragraph C. Further, any time required of Architect as a result of the change of the primary client as a result of such documentation (i.e., assumption by lender) shall be considered additional services.

ARTICLE VI - FEE

Client agrees to compensate Architect, in accordance with the terms and conditions of this Agreement, for services rendered hereunder as follows:

A. TOTAL FEE

For the Predesign and Site Development Services Phase, Architect shall be compensated on an hourly basis as delineated in Article VI, Paragraph C of this Agreement for time spent during this phase of the work. For budgetary purposes, an allotment shall be established in the amount of Twenty-five Thousand ($25,000), broken down as follows:

<table>
<thead>
<tr>
<th>SERVICE</th>
<th>ALLOWANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conceptual Site Plan/Feasibility Studies</td>
<td>$17,500</td>
</tr>
<tr>
<td>P.D. Permit Process</td>
<td>$7,500</td>
</tr>
<tr>
<td><strong>TOTAL ALLOWANCE</strong></td>
<td><strong>$25,000</strong></td>
</tr>
</tbody>
</table>

* This is not to be construed as a guaranteed maximum.

In addition to the allotment for predesign services, Client agrees to pay Architect for Architect's basic services rendered hereunder a fee equal to Four Hundred Ninety-five Thousand Dollars ($495,000).

Payment shall be made monthly in proportion to services performed so that compensation at the completion of each phase shall equal the following amounts:

1. RETAINER

A retainer of Ten Thousand Dollars ($10,000) shall be paid Architect upon execution of this Agreement. A credit of Two Thousand Dollars ($2,000) shall be applied to each of the five bidding phases; i.e., Article VI, Paragraphs A2 through A6.
2. **SCHEMATIC DESIGN SERVICES PHASE**

Upon substantial completion of the Schematic Design Services Phase, Architect shall have been compensated ten (10) percent of the total architectural fee or Forty-nine Thousand Five Hundred Dollars ($49,500).

3. **DESIGN DEVELOPMENT SERVICES PHASE**

Upon substantial completion of the Design Development Services Phase, Architect shall have been compensated an additional twenty (20) percent of the total architectural fee or Ninety-nine Thousand Dollars ($99,000).

4. **CONSTRUCTION DOCUMENT SERVICES PHASE**

Upon substantial completion of the construction documents ready for plan check submission, Architect shall have been compensated an additional fifty (50) percent of the total architectural fee or Two Hundred Forty-seven Thousand Five Hundred Dollars ($247,500).

5. **PLAN CHECK COORDINATION SERVICES PHASE**

Upon issuance of a building permit or ninety (90) days following substantial completion of the construction documents, whichever occurs first, Architect shall have received an additional seven (7) percent of the total architectural fee or Thirty-four Thousand Six Hundred Fifty Dollars ($34,650).

6. **CONSTRUCTION SERVICES PHASE**

Upon filing notice of substantial completion of construction, Architect shall have received an additional thirteen (13) percent of the total architectural fee or Sixty-four Thousand Three Hundred Fifty Dollars ($64,350).

Architect will maintain and provide copies of job cost records of time expended during the Construction Services Phase. In the event that these costs exceed the above-stated percentage of the total fee allotment, Architect will notify Client in writing of same and will be compensated for this additional cost as an additional service on an hourly basis.

7. **In the event that Client desires to re-use the plans developed by Architect under the terms of this Agreement, Architect shall receive a re-use fee equal to Four Hundred Fifty Dollars ($450) per residential unit, due and payable upon obtaining the building permits for the units. In addition, Architect shall be reimbursed for all time spent on the work including drawing revisions, site planning, plan processing and job site observation on an hourly basis as delineated in this Agreement. There shall be no re-use fee charged for the initial 200-unit subdivision.**
B. ADDITIONAL SERVICES

For additional services of Architect, but excluding additional services of consultants, compensation shall be on an hourly basis or negotiated lump-sum basis.

For additional services of consultants, a multiple of 1.15 times the amounts billed to Architect for such services shall be charged Client.

In the event that other architectural firms, landscape architect, engineering or other consultant services outside the scope of services of this Agreement are required by Client for certain portions of the work, Architect will, at the direction of Client, provide coordination services for Client. Such services by Architect will be billed on an hourly basis. Architect shall not be responsible, however, for the quality of the design, engineering, or implementation of any other architect’s, landscape architect’s, engineer’s, or other consultant’s work on any portion of this project.

C. HOURLY RATES

For compensation on an hourly basis, the following rates shall apply:

- Time spent by Principals will be billed at the fixed rate of One Hundred Eighty Dollars ($180) per hour.

- Time spent by Senior Associate Partners will be billed at the fixed rate of One Hundred Fifty Dollars ($150) per hour.

- Time spent by Associate Partners will be billed at the fixed rate of One Hundred Twenty-five Dollars ($125) per hour.

- Employees of Architect will be billed at the rate of three (3) times the employee's direct personnel expense. Direct personnel expense shall be defined as 1.35 times the direct hourly wage.

- Computer time will be billed at the flat rate of Thirty-five Dollars ($35) per hour in addition to the employee/operator's normal hourly billing rate.

D. REIMBURSABLE EXPENSES

For Architect's reimbursable expenses delineated in Article V, Paragraph D above of this Agreement, Architect shall be compensated 1.15 times the amount billed to Architect.

E. INVOICING

A statement for services shall be rendered monthly in accordance with the terms specified above and shall include charges for reimbursable expenses paid by Architect on Client's behalf and charges for additional services and/or changes. All payments shall be due within forty-five (45) days of receipt of statement. A monthly service charge of one and one-half (1.5) percent, compounded monthly, will be
charged for accounts unpaid or overdue beyond forty-five (45) days of the billing date.

In light of the obvious advantage of resolving questions and disputes regarding Architect's billing quickly and while recollections are fresh, Client will notify Architect of any questions or dissatisfaction which it may have regarding any particular invoice within thirty (30) days of the invoice date, and if Client fails to give Architect such notice, then Client will have waived its right to dispute the accuracy and appropriateness of the invoice and the invoice will be binding upon Client.

F. CHANGES IN THE WORK

For changes in the work or changes in the scope: Notwithstanding the provision of basic services, if there are any changes in the drawings requested by Client, after prior approval of the work, or if changes are made necessary as the result of fire, the elements, Acts of God, or other casualties beyond the control of Architect, or if changes in the drawings are necessary as a result of changes in the code after any suspension or delay, or if Client requests services in addition to those specified in basic services, Architect shall be compensated for making such changes or for such additional services amounting over and above the aforementioned maximum fee on an hourly basis.

G. OVERTIME PREMIUM

In the event Client authorizes Architect overtime, Client shall reimburse Architect 1.5 times the employee's billable rate for the overtime hours.

H. COMPLETED WORK TIME FRAME

It is presumed that the services delineated in this Agreement are to be completed within thirty-two (32) months following origination date of Agreement. If portions of the work extend beyond this thirty-two- (32-) month time frame, those portions will be billed an additional ten (10) percent per annum or the consumer price index increase for the previous year, whichever is less, for each twelve-month period or portion thereof beyond the original thirty-two- (32-) month time frame.

ARTICLE VII - GENERAL CONDITIONS

A. SUCCESSORS AND ASSIGNMENT WITHOUT APPROVAL

No assignment hereof by Architect or Client shall be binding without the written consent of the other. This Agreement is also binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, to the extent assignment is permitted.