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LEED Certification Litigation: Emerging Risks

Minimizing Liability Through Green Building Contracts and Effective Insurance Coverage

TUESDAY, DECEMBER 20, 2011

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Patrick J. Perrone, Partner, **K&L Gates**, Newark, N.J.

Bruce W. Merwin, Partner, **Haynes and Boone**, Houston

Bradley S. Carson, **Haynes and Boone**, San Antonio, Texas

James d'Entremont, **Moore Thompson & Lee**, Baton Rouge, La.

The audio portion of the conference may be accessed via the telephone or by using your computer's speakers. Please refer to the instructions emailed to registrants for additional information. If you have any questions, please contact **Customer Service** at **1-800-926-7926 ext. 10**.

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APPENDIX A

I. MISCELLANEOUS ARCHITECT’S AGREEMENT PROVISIONS

1. Complete and Accurate Documents. Drawings and Specifications or other Construction Documents submitted by Architect to Client for approval or to any contractors for bidding or negotiation shall be complete, accurate and in compliance with the prevailing interpretation of all applicable codes necessary to obtain a building permit, and any ordinances, statutes, regulations and laws, as amended and any state accessibility laws, rules and regulations and any applicable life safety codes or equivalent codes or LEED Requirements selected by Owner [collectively, “Governmental Requirements”]) and any changes therein of which Architect obtains actual knowledge prior to completion of the final design of the Project, including final Specifications, except to the extent expressly and specifically otherwise stated in detail in writing by Architect at the time of such submission. If, after the date of this Agreement, modifications to the Drawings or Specifications are required because of any change in the Governmental Requirements, Architect shall make the required modifications, but the cost of such modifications shall be considered an Additional Service, except as otherwise provided herein. Notwithstanding the foregoing provisions of this Paragraph 5, if Architect had actual knowledge of a proposed change in Governmental Requirements that would take effect during the term of this Agreement, Architect will be responsible for any required modifications in the Drawings, Specifications and other documents at the cost of Architect. Architect will inform the Client of any tests, studies, analyses or reports which are necessary or advisable to be performed by or for the Client for the completion of Architect’s work under the Agreement at that point in time when such matter is required in the opinion of Architect. Upon request of Client’s Lender, Architect will provide opinions of the following: If constructed in accordance with the Drawings and Specifications, the Project in the opinion of Architect should comply in all material respects with the prevailing interpretation of all applicable federal, state and local laws, ordinances, statutes, and reasonable interpretations of rules and regulations and LEED Requirements applicable to the Project in effect as of the construction issue date of the Plans and all applicable deed restrictions.
2. Intent of Design. The design work will include site infrastructure, detention and sustainable site strategies to conform with the United States Green Building Council’s LEED for core and shell version 3.0 rating system.
3. Compensation Schedule:

Office Building	Architect	Architecture	\$
		Structural Engineer	\$
		MEP Engineer	\$
		Code/Life Safety	\$
		Window Wall/waterproofing	\$
		Environmental Graphics	\$

		Lighting Design	\$
		Reimbursable Expenses	\$
		<i>Office Subtotal</i>	\$
Parking Garage	Architect	Architecture	\$
		Structural Engineer	\$
		MEP Engineer	\$
		<i>Garage Subtotal</i>	\$
LEED Consulting Services	Architect	Architecture—LEED	\$
		MEP—Energy Modeling	\$
		Registration Fees	\$
		<i>Subtotal</i>	\$
Total Fee for Office, Garage & LEED			\$

The compensation listed above includes, without limitation, the compensation for all services performed by and through the Architect prior to the actual date of execution of this Agreement, including all Project-related expenses.

LEED Consulting Services include completion of a LEED charrette, providing energy modeling, submitting for pre-certification and/or applying and completing a first round of templates to assure the Project is specified to the work identified in the charrette.

4. Responsibility to Report Non-compliance. If the Architect has actual knowledge that any other party responsible for LEED compliance is not fulfilling its responsibility, the Architect will promptly notify the Owner of such non-compliance so that the Owner can cause the responsible party to fulfill such responsibility. The Architect assumes responsibility for any additional costs incurred by the Owner caused by the Architect's failure to promptly report the known non-compliance.
5. Limitation of Liability. Notwithstanding anything contained herein to the contrary, the Owner agrees to limit the Architect's liability to the Owner, the Owner's officers, directors, partners, employees and agents arising from Architect's negligent acts, errors or omissions, such that the total aggregate liability of Architect to all those named shall not exceed the greater of the (i) the Project fee received by Architect or (ii) the full and collectible balance of Architect's professional liability insurance policies, provided that not less than \$1,000,000 of coverage is available to Owner for each specific project as to which Owner has a claim against Architect (which may include some of Architect's own funds) for general negligence claims, but not more than \$500,000.00 for any LEED-related claims arising out of the Architect's negligence. Any LEED-related claims are subject to the laws of comparative negligence or fault. However, in no event shall Owner assume any liability for damages to others which may arise solely on account of Architect's negligent acts, errors, or omissions, if any.

APPENDIX B

LEED REQUIREMENTS FOR ARCHITECT'S AGREEMENT

ARTICLE 1 INITIAL INFORMATION

The Architect's performance of the services set forth in this document is based upon the following information.

United States Green Building Council ("USGBC's") Leadership in Energy and Environmental Designs ("LEED") NC v2.2, Silver Certification. Architect acknowledges that the terms, provisions and procedures set forth in this Exhibit G are specific activities required by Owner, but are not intended to be inclusive of all actions which Architect will undertake towards the Project's LEED Silver Certification, and the failure to include an action in this Exhibit G shall not relieve Architect of its responsibilities therefor.

ARTICLE 2 LEED CERTIFICATION SERVICES

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

§ 2.2 The Architect shall submit USGBC's LEED certification documentation to the Owner at intervals appropriate to the LEED certification process for purposes of evaluation and approval by the Owner. The Architect shall be entitled to rely on approvals received from the Owner to complete the LEED Certification Services.

§ 2.3 PREDESIGN WORKSHOP

The Architect shall conduct a predesign workshop with the Owner, the Owner's consultants, and the Architect's consultants at which the participants will review the LEED Green Building Rating System. The participants will also examine each LEED credit utilizing the appropriate Green Building Rating System Project Checklist as a template for establishing green building goals, identify potential LEED points, examine strategies for implementation, assess the impact on the Owner's program and budget, and determine the LEED points to be targeted.

§ 2.4 LEED CERTIFICATION PLAN

§ 2.4.1 The Architect shall prepare a LEED Certification Plan based on the LEED points targeted. The LEED Certification Plan will describe the LEED certification process and may contain a description of the green building goals established, LEED points targeted, implementation strategies selected, list of participants and their roles and responsibilities, description of how the plan is to be implemented, certification schedule, specific details about design reviews, list of systems and components to be certified, and certification documentation required.

§ 2.4.2 The Architect shall revise the LEED Certification Plan as the design and construction of the Project progresses to reflect any changes approved by the Owner, as a Change in Services.

§ 2.5 LEED CERTIFICATION DOCUMENTATION

§ 2.5.1 The Architect shall organize and manage the LEED design documentation and certification process.

§ 2.5.2 The Architect shall review the LEED certification process and regularly report progress to the Owner.

§ 2.5.3 The Architect shall provide the services of LEED accredited professionals necessary for certification of the Project.

§ 2.5.4 The Architect shall register the Project with the USGBC. Registration fees charged by the USGBC shall be a reimbursable expense.

§ 2.5.5 The Architect shall prepare submittals for Credit Rulings from the USGBC for interpretation of credit language, principles, or implementation strategies. Credit Ruling fees charged by the USGBC shall be a reimbursable expense.

§ 2.5.6 The Architect shall prepare and submit a LEED Certification Application for the Project to the USGBC, including required calculations and documentation for each LEED credit claimed, in accordance with the LEED Certification Plan.

§ 2.5.7 The Architect shall prepare responses and submit additional documentation required by comments or questions received from the USGBC after review of the original submission for certification.

§ 2.6 LEED CERTIFICATION SPECIFICATIONS

The Architect shall provide specifications that incorporate LEED requirements for inclusion in the Contract Documents. The Contract Documents shall define the Contractor's responsibilities and documentation requirements related to LEED certification, including Construction Waste Management, Construction Indoor Air Quality, and obtaining materials credits.

§ 2.7 LEED CERTIFICATION SERVICES DURING BIDDING

§ 2.7.1 The Architect shall conduct a pre-bid meeting to review the differences between current standard construction practices and LEED principles, procedures, and requirements.

§ 2.7.2 The Architect shall prepare responses to questions from prospective bidders and provide clarifications and interpretations of the Bidding Documents related to LEED certification in the form of addenda.

§ 2.7.3 The Architect shall consider requests for substitutions, if permitted by the Bidding Documents, and shall prepare addenda identifying approved substitutions related to LEED certification.

§ 2.7.4 The Architect shall assist the Owner in bid validation or proposal evaluation and determination of the successful bid or proposal, if any, related to LEED certification.

§ 2.8 LEED CERTIFICATION SERVICES DURING CONTRACT ADMINISTRATION

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

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

§ 2.8.3 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, to become generally familiar with and to keep the Owner informed about the progress of the portions of the Work related to LEED certification. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall not have control over, charge of, or be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

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

§ 2.8.5 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with requirements for LEED certification. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Owner's consultants or Contractor, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 2.8.6 The Architect shall review properly prepared, timely requests by the Owner, Owner's consultants or Contractor for changes in the Work related to LEED certification. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements for LEED certification, the Architect shall recommend an order for a minor change in the Work be issued or recommend to the Owner that the requested change be denied.

§ 2.8.7 If the Architect determines that implementation of the requested changes would result in a material change to the LEED certification, the Architect shall notify the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall make a recommendation to the Owner regarding the implementation of the requested changes.

§ 2.9 FINAL LEED CERTIFICATION REPORT

The Architect shall prepare a Final LEED Certification Report documenting the LEED rating the Project achieved, including the LEED Certification Plan, LEED Certification Documentation submitted, LEED Certification Reviews received from the USGBC, together with the specific LEED points that the Project is recognized as having received, all clarifications or interpretations of credits, and any re-certification requirements.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 The Owner has furnished, and the Architect acknowledges that it has received, a program setting forth the Owner's objectives, schedule, constraints and criteria, including system requirements and relationships, special equipment and site requirements.

§ 3.2 The Owner shall provide access to the property, buildings, and personnel necessary for the Architect to provide the LEED Certification Services. The personnel shall conduct tours and walk-throughs and explain the facility's original, current and anticipated future use.

APPENDIX C
LEED CERTIFICATION INSERTS FROM DESIGN-BUILD CONTRACT

§ 7.10 Public Authorities. Requirements of public authorities mentioned in the General Conditions apply as minimum requirements only. They do not supersede more stringent requirements stated elsewhere in the Contract Documents. Requirements in effect at time of bidding apply. If changes must be made to the Contract Documents because of a change in law or governmental regulations after the effective date hereof, appropriate adjustments will be made in the Contract Sum.

§ 7.11 Utility Connections. Design-Builder shall have the sole liability and responsibility for connecting onto prior, existing plumbing lines, sanitary and storm sewer lines, electrical lines and other utilities to be utilized in connection with the completion of the improvements covered by this Contract. Upon completion, all such utilities shall be connected by Design-Builder and in all respects, such utilities shall be functioning and in good working order; provided; however, Design-Builder shall not be required to pay connection fees or deposits routinely assessed by utility companies in connection with the providing of permanent utility service.

§ 7.12 Non-Conforming Work. When any non-conforming Work is found, the entire area of the Work involved shall be corrected unless Design-Builder can completely define the limits of the non-conforming Work. Additional testing, sampling or inspecting needed to define non-conforming Work shall be at the Design-Builder's expense. Design-Builder shall employ Owner's independent testing laboratory, or a mutually satisfactory independent testing laboratory if such services are required. All corrected Work shall be re-tested at the Design-Builder's expense. Extra Architectural or engineering services required by Design-Builder to analyze non-conforming Work shall be paid for by Design-Builder.

§ 7.13 Warranty of Work. Notwithstanding anything contained in the Contract Documents to the contrary, if, within one (1) year after the date of Substantial Completion of the Project or such longer period of time as may be required by the terms of any applicable special guarantee required by the Contract Documents (including, without limitation, the 10-year manufacturer's roof warranty), any of the Work is found to be not in accordance with the requirements of the Contract Documents, Design-Builder shall promptly, without cost to Owner and in accordance with Owner's reasonable written instructions, either correct such non-conforming Work, remove it from the site and replace it with non-conforming Work. Such obligations shall also be applicable to the failure of the Project to maintain its LEED certification, except to the extent caused by the Owner or any separate contractor or agent of the Owner. If Design-Builder does not promptly comply with the terms of such instructions within a reasonable period of time under the circumstances, or in any emergency where delay would cause serious risk of bodily injury, death or substantial property damage, Owner may have the non-conforming Work corrected or the rejected Work removed and replaced, and all costs of such removal and replacement, including compensation for additional professional services, shall be paid by Design-Builder. Inability or refusal of a Design-Builder responsible for non-conforming Work to correct such Work shall not excuse Design-Builder from performing under the warranty provided in Section A 12.2 of Exhibit A and this provision. Should Design-Builder fail to make such warranty corrections required hereby within a reasonable time, not to exceed thirty (30) days after written notice thereof from Owner to Design-Builder, provided that if the

required corrections cannot be made within thirty (30) days after written notice thereof from Owner to Design-Builder, provided that if the required corrections cannot be made within thirty (30) days, Design-Builder fails to commence making such warranty corrections within a reasonable period of time, not to exceed thirty (30) days, and diligently continue the prosecution of such warranty corrections until completion, Owner may do so at the expense of and for the account of Design-Builder.

§ 7.16 Lender's Right to Inspect Premises. Design-Builder will permit Lender and its representatives and agents to enter the Property and inspect the improvements and all materials to be used in the construction thereof, all Drawings and Specifications and lien waivers, and inspect all books, records, contracts, statements, invoices, bills and all other related documents for any kind relating Change Orders and time and material work for the Project and also shall cooperate with Lender and its representatives and agents and during such inspections.

§ 7.17 Design-Builder's Representations. The Design-Builder represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents) as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work:

- (1) this it is financially solvent, able to pay all debts as they mature and possessed of sufficient working capital to complete the work and perform all obligations hereunder;
- (2) that is able to furnish the plant, tools, materials, supplies, equipment and labor requirement to complete the Work and perform its obligations hereunder;
- (3) that it is authorized to do business in the State of Texas and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the Project;
- (4) that it has the expertise, experience and knowledge to construct the Project in accordance with the USGBC's LEED Green Building Rating System for Core & Shell Development Version 2.0. in order for the Project to achieve a LEED-Gold certification (**this representation should only be made if attempting LEED certification**);
- (5) that its execution of this Agreement and its performance thereof is within its duly authorized powers; and
- (6) that is duly authorized representative has visited the site of the Project, is familiar with the local conditions under which the work is to be performed and has correlated on-site observations with the requirements of the Contract Documents.

The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Design-Builder by law with respect to the Design-Builder's duties, obligations and performance hereunder. The Design-Builder's liability hereunder shall survive the Owner's final acceptance of and payment for the Work. All representations and warranties set forth in this Agreement, including, without limitation, this Paragraph 7.17, shall survive the final

completion of the Work or the earlier termination of this Agreement. The Design-Builder acknowledges that the Owner is relying upon the Design-Builder's skill and experience in connection with the Work called for hereunder.

17. Section A.3.2.11 is hereby added to the Agreement to read as follows (**this provision is only added if LEED certification is applicable**):

§ 3.2.11 The Owner has previously advised the Design-Builder that the Owner will suffer irreparable financial and other harm unless the Project is certified by the USGBC as Gold under the USGBC's LEED Green Building Rating System for Core & Shell Development Version 2.0. Accordingly, the Design-Builder's performance of the Work shall be conducted and completed in accordance USGBC's LEED Green Building Rating System for Core & Shell Development Version 2.0 in order for the Project to be certified by the USGBC as Gold.

The Design-Builder hereby represents and warrants to the Owner that the Design-Builder accepts responsibility for the coordination and implementation of all LEED Credits that Owner has advised the Design-Builder it seeks to obtain and the Design-Builder further guarantees to undertake its best efforts in order to achieve the following prerequisites and credits:

.1 Sustainable Sites:

1. SS Prerequisite 1 - Construction Activity Pollution Prevention: The Design-Builder shall create and implement an Erosion and Sedimentation Control Plan (the "ESC Plan") for all construction activities associated with the project. The ESC Plan shall conform to the erosion and sedimentation requirements of the 2003 EPA Construction General Permit or local erosion and sedimentation control standards and codes, whichever such requirements are more stringent. The ESC Plan shall describe the measures implemented to accomplish the following objectives:

- a. Prevent loss of soil during construction by stormwater runoff and/or wind erosion, including protecting topsoil by stockpiling for reuse.
- b. Prevent sedimentation of storm sewer or receiving streams.
- c. Prevent polluting the air with dust and particulate matter.

.2 Materials & Resources:

1. MR Credit 2 – Construction Waste Management (75%): The Design-Builder shall recycle and/or salvage at least 75% of non-hazardous construction and demolition debris. The Design-Builder shall develop and implement a construction waste management plan that, at minimum, identifies the materials to be diverted from disposal and whether the materials will be sorted on-site or commingled. Excavated soil and land-clearing debris do not contribute to this credit. Calculations may be performed by weight or volume, but must be consistent throughout. The Design-Builder is required to designate a specific area(s) on the construction site for segregated or commingled collection of recyclable materials, and track recycling efforts throughout the construction process. Construction haulers and recyclers shall be identified to handle the designated materials. Diversion may include donation of materials to charitable organizations and salvage of materials on-site.

2. MR Credit 4 – Recycled Content (20%): The Design-Builder shall use materials with recycled content such that the sum of post-consumer recycled content plus one-half of the pre-consumer content constitutes at least 20% (based on cost) of the total value of the materials in the project. The recycled content value of a material assembly shall be determined by weight. The recycled fraction of the assembly is then multiplied by the cost of assembly to determine the recycled content value. Mechanical, electrical and plumbing components and specialty items such as elevators shall not be included in this calculation. Only permanently installed materials in the project shall be included. The Design-Builder shall ensure that the specified recycled content materials are installed during construction.

a. For purposes of this Agreement, recycled content shall be defined in accordance with the International Organization of Standards document, ISO 14021—Environmental labels and declarations—Self-declared environmental claims (Type II environmental labeling).

b. Post-consumer material is defined as waste material generated by households or by commercial, industrial and institutional facilities in their role as end-users of the product, which can no longer be used for its intended purpose.

c. Pre-consumer material is defined as material diverted from the waste stream during the manufacturing process. Excluded is reutilization of materials such as rework, regrind or scrap generated in a process and capable of being reclaimed within the same process that generated it.

3. MR Credit 5 – Regional Materials (20%): The Design-Builder shall use building materials or products that have been extracted, harvested or recovered, as well as manufactured, within 500 miles of the project site for a minimum of 20% (based on cost) of the total value of materials for the Project. If only a fraction of a product or material is extracted/harvested/recovered and manufactured locally, then only that respective percentage (by weight) shall contribute to the regional value calculation. Mechanical, electrical and plumbing components and specialty items such as elevators and equipment shall not be included in this calculation. The calculation shall only include materials permanently installed in the Project. The Design-Builder shall ensure that the specified local materials are installed and quantify the total percentage of local materials installed during construction.

4. MR Credit 6 – Certified Wood: The Design-Builder shall ensure that at least 50% of the of wood-based materials and products used in the Project shall be certified in accordance with the Forest Stewardship Council’s (the “FSC”) Principles and Criteria for wood building components. These components include, but are not limited to, structural framing and general dimensional framing, flooring, sub-flooring, wood doors, and finishes. The Design-Builder shall include all materials permanently installed in the project as part of its calculation for this credit. During construction, The Design-Builder shall ensure that the requisite amount of FSC-certified wood products are installed and quantify the total percentage of FSC-certified wood products installed.

.3 Indoor Environmental Quality:

1. EQ Credit 3 – Construction IAQ Management Plan: The Design-Builder shall sequence the installation of materials to avoid contamination of absorptive materials such as insulation, carpeting, ceiling tile and gypsum wallboard. The Design-Builder shall coordinate with Indoor

Environmental Quality Credit 5 to determine the appropriate specifications and schedules for filtration media. The Design-Builder shall avoid using permanently installed air handlers for temporary heating/cooling during construction. In connection with this Credit, the Design-Builder shall develop and implement an Indoor Air Quality (IAQ) Management Plan for the construction and pre-occupancy phases of the building as follows:

- a. During construction meet or exceed the recommended Control Measures of the Sheet Metal and Air Conditioning National Design-Builders Association (SMACNA) IAQ Guidelines for Occupied Buildings under Construction, 1995, Chapter 3.
- b. Protect stored on-site or installed absorptive materials from moisture damage.
- c. If permanently installed air handlers are used during construction, filtration media with a Minimum Efficiency Reporting Value (MERV) of 8 shall be used at each return air grille, as determined by ASHRAE 52.2-1999. Replace all filtration media with a Minimum Efficiency Reporting Value (MERV) of 13 immediately prior to occupancy.

.4 Additional Related Credits:

The Design-Builder shall not deviate from the materials and equipment specified by Architect for the following credits:

1. SS Credit 7.1 – Heat Island Effect, Non-roof: The Design-Builder shall construct the Project in coordination with the specifications provided by the Architect for all hardscape materials in order to ensure that the Solar Reflective Index (the “SRI”) value of such materials is no less than twenty-nine (29).
2. SS Credit 7.2 – Heat Island Effect, Roof: The Design-Builder shall construct the Project in coordination with the roofing materials specifications provided by the Architect in order for the roof to achieve the SRI value prepared by the Architect in accordance with the methods of calculation provided by the USGBC LEED Core & Shell Rating System version 2.0.
3. EQ Credit 4 – Low Emitting Materials (ALL): Throughout the duration of the Work and the construction of the Project, the Design-Builder shall not substitute any materials specified as Low-Emitting Materials per EQ Credit 4. These materials include all adhesives, sealants, paints, coatings, carpet systems, wood and agrifiber products.

18. The following is hereby added to the last sentence of Section A.3.3.4:

, but the Design-Builder shall not be relieved of liability if the services, certifications or approvals performed by such design professionals are not in accordance with the requirements of the construction documents.

19. The following is hereby added to the second grammatical sentence of Section A.3.3.7:

, except for the work of Owner’s separate contractors, if any.

20. Section A.3.3.9 is hereby added to the Agreement to read as follows:

§ A.3.3.9 The Design-Builder shall employ a competent, full-time jobsite superintendent for each project site and necessary assistants at each project site who shall be in attendance at the project sites during performance of the Work, as well as a Project Manager and assistant superintendent or field engineer to supplement the work of the full-time jobsite superintendent. The Project Manager shall represent the Design-Builder, and communications given to the Project Manager shall be as binding as if given to the Design-Builder. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The superintendents and Project Manager shall be satisfactory to the Owner at all times, and shall not be changed except with the consent of the Owner, unless the superintendents or Project Manager prove to be unsatisfactory to the Design-Builder or cease to be in his employ.

21. The following is hereby added to the end of Section A.3.4.2:

.1 represents that the Design-Builder has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

.2 represents that the Design-Builder will provide the same warranty for the substitution that the Design-Builder would for that specified;

.3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

.4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

22. The following is hereby added to the end of Section A.3.4.3:

All personnel used in the performance of the Work shall be qualified to perform their assigned tasks. At the request of the Owner, the Design-Builder shall not use or permit to be used in the performance of the Work personnel who are incompetent, careless, unqualified, or otherwise unsatisfactory to the Owner in the exercise of reasonable judgment.

23. Section A.3.4.4 is hereby added to the Agreement to read as follows:

The Design-Builder shall deliver a letter addressed to the Owner certifying that no materials used in the construction of this project contain lead nor asbestos materials in excess of amounts allowed by local/state standards, laws, codes, rules and regulations, Federal Environmental Protection Agency (EPA) standards and the Federal Occupational Safety and Health Administration (OSHA) standards, whichever are most restrictive. Certification shall further state that should lead or asbestos fibers be found in this project in concentrations greater than the allowed amounts, that the Design-Builder shall be responsible for determining which materials contain the lead or asbestos fibers and shall take corrective action to remove those materials from the project at no additional cost to the Owner. Final payment shall not be made until this letter of certification has been received.

APPENDIX D
CONSTRUCTION CONTRACT INSERT FOR LEED CERTIFICATION

The Owner has previously advised the Contractor that the Owner intend for the Project to be certified by the USGBC as Silver, Gold or Platinum under the USGBC's LEED Green Building Rating System for Core & Shell Development Version 2.0. Accordingly, the Contractor's performance of the Work shall be conducted and completed in accordance USGBC's LEED Green Building Rating System for Core & Shell Development Version 2.0 in order for the Project to be certified by the USGBC as Silver, with higher ratings sought. The Contractor will use its best efforts to coordinate and, where applicable, to implement those LEED Credits that Owner has advised the Contractor it seeks to obtain and the Contractor further guarantees to undertake its best efforts in order to achieve the following prerequisites and credits:

.1 Sustainable Sites:

1. SS Prerequisites 1 – Construction Activity Pollution Prevention: The Contractor shall coordinate the implementation of an Erosion and Sedimentation Control Plan (the "ESC Plan") for all construction activities associated with the project. The ESC Plan shall conform to the erosion and sedimentation requirements of the 2003 EPA construction General Permit or local erosion and sedimentation control standards and codes, whichever such requirements are more stringent. The ESC Plan shall describe the measures implemented to accomplish the following objectives:

- a. Prevent loss of soil during construction by Stormwater runoff and/or wind erosion, including protecting topsoil by stockpiling for reuse.
- b. Prevent sedimentation of storm sewer or receiving streams.
- c. Prevent polluting the air with dust and particulate matter.

.2 Materials & Resources:

1. MR Credit 2 – Construction Waste Management (75%): The Contractor shall use its best efforts to Recycle and/or salvage at least 75% of non-hazardous construction and demolition debris. The Contractor shall develop and implement a construction waste management plan that, at minimum, identifies the materials to be diverted from disposal and whether the materials will be sorted on-site or commingled. Excavated soil and land-clearing debris do not contribute to this credit. Calculations may be performed by weight or volume, but must be consistent throughout. The Contractor is required to designate a specific area(s) on the construction site for segregated or commingled collection of recyclable materials, and track recycling efforts throughout the construction process. Construction haulers and recyclers shall be identified to handle the designated materials. Diversion may include donation of materials to charitable organizations and salvage of materials on-site.

2. MR Credit 4 – Recycled Content (20%): The Contractor will use its best efforts to utilize materials with recycled content such that the sum of post-consumer recycled content plus one-half of the pre-consumer content constitutes at least 20% (based on cost) of the total value of the materials in the project. The recycled content value of a material assembly shall be determined by weight. The recycled fraction of the assembly is then multiplied by the cost of assembly to determine the recycled content value. Mechanical, electrical and plumbing components and specialty items such as elevators shall not be included in this calculation. Only permanently installed materials in the project shall be included. The Contractor shall ensure that the specified recycled content materials are installed during construction.

a. For purposes of this Agreement, recycled content shall be defined in accordance with the International Organization of Standards document, ISO 14021 – Environmental labels and declarations – Self-declared environmental claims (Type II environmental labeling).

b. Post-consumer materials is defined as waste material generated by households or by commercial, industrial and institutional facilities in their role as end-users of the product, which can no longer be used for its intended purpose.

c. Pre-consumer material is defined as material diverted from the waste stream during the manufacturing process. Excluded is reutilization of materials such as rework, regrind or scrap generated in a process and capable of being reclaimed within the same process that generated it.

3. MR Credit 5 – Regional materials (20%): The Contractor shall use its best efforts to use building materials or products that have been extracted, harvested or recovered, as well as manufactured, within 500 miles of the project site for a minimum of 20% (based on cost) of the total value of materials for the Project. If only a fraction of a product or material is extracted/harvested/recovered and manufactured locally, then only that respective percentage (by weight) shall contribute to the regional value calculation. Mechanical, electrical and plumbing components and specialty items such as elevators and equipment shall not be included in this calculation. The calculation shall only include materials permanently installed in the Project. The Contractor shall ensure that the specified local materials are installed and quantify the total percentage of local materials installed during construction.

4. MR Credit 6 – Certified Work: The Contractor shall use its best efforts to ensure that at least 50% of the wood-based materials and products used in the Project shall be certified in accordance with the Forest Stewardship Council’s (the “FSC”) Principles and Criteria for wood building components. These components include, but are not limited to, structural framing and general dimensional framing, flooring, sub-flooring, wood doors, and finishes. The Contractor shall include all materials permanently installed in the project as part of its calculation

for this credit. During construction, the Contractor shall ensure that the requisite amount of FSC-certified wood products are installed and quantify the total percentage of FSC-certified wood products installed.

.3 Indoor Environmental Quality:

1. EQ Credit 3 – Construction IAQ Management Plan: The Contractor shall use best efforts to sequence the installation of materials to avoid contamination of absorptive materials such as insulation, carpeting, ceiling tile and gypsum wallboard. The Contractor shall use its best efforts to coordinate with Indoor Environmental Quality Credit 5 to determine the appropriate specifications and schedules for filtration media. The Contractor shall avoid using permanently installed air handlers for temporary heating/cooling during construction. In connection with this Credit, the Contractor shall use its best efforts to develop and implement an Indoor Air Quality (IAQ) Management Plan for the construction and pre-occupancy phases of the building as follows:

a. During construction meet or exceed the recommended Control Measures of the Sheet Metal and Air Conditioning National Contractors Association (SMACNA) IAQ Guidelines for Occupied Buildings under Construction, 1995, Chapter 3.

b. Protect stored on-site or installed absorptive materials from moisture damage.

c. If permanently installed air handlers are used during construction, filtration media with a Minimum Efficiency Reporting Value (MERV) of 8 shall be used at each return air grille, as determined by ASHRAE 52.2-1999. Replace all filtration media with a Minimum Efficiency Reporting Value (MERV) of 13 immediately prior to occupancy.

.4 Additional Related Credits:

The Contractor shall use its best efforts to not deviate from the materials and equipment specified by Architect for the following credits:

1. SS Credit 7.1 – Heat Island Effect, Non-roof: The Contractor shall use its best efforts to construct the Project in coordination with the specifications provided by the Architect for all hardscape materials in order to ensure that the Solar Reflective Index (the “SRI”) value of such materials is no less than twenty-nine (29).

2. SS Credit 7.2 – Heat Island Effect, Roof: The Contractor shall use its best efforts to construct the Project in coordination with the roofing materials specifications provided by the Architect in order for the roof to achieve the SRI value prepared by the Architect in accordance with the methods of calculation provided by the USGBC LEED Core & Shell Rating System version 2.0.

3. EQ Credit 4 – Low Emitting Materials (ALL): Throughout the duration of the Work and the construction of the Project, the Contractor shall use its best efforts to not substitute any materials specified as Low-Emitting Materials per EQ Credit 4. These materials include all adhesives, sealants, paints, coatings, carpet systems, wood and agrifiber products.

APPENDIX E

November 10, 2009

Project Name
LEED-NC v3.0 Worksheet

YES	MAYBE	NO	Responsibility	ID	CREDIT	DESCRIPTION	COMMENT
			CIVIL	Site SS-1	Site Selection	Avoid development of inappropriate sites.	<i>Avoid farmland, floodplains, endangered species, and parkland. Requires building to be 5 feet above the 100 year flood plain.</i>
			ARCH	Site SS-2	Development Density	Develop a site that is located within an existing minimum development density of 60,000 square feet per acre or has community connectivity. 5 points.	
			ARCH	Site SS-3	Brownfield Redevelopment	Rehabilitate sites with environmental contamination.	<i>Must be defined as a brownfield by local state or federal government, or through Phase II Environmental Site Assessment.</i>
			ARCH	Site SS-4.1	Alternative Transportation: Public Transportation Access	Project must be within 1/4 mi. of 2 bus stops, or 1/2 mi. from a rail or subway stop. 6 points.	
			ARCH	Site SS-4.2	Alternative Transportation: Bicycle Storage and Changing Rooms	Provide bike racks 5% of all building users measured at peak AND shower and changing for .5% of occupants	
			ARCH	Site SS-4.3	Alternative Transportation: Low Emitting and Fuel Efficient Vehicles	Provide preferred parking for low emitting and fuel efficient vehicles for 5% of total vehicle capacity OR provide these cars for 3% of employees. Must score a 40 on ACEEE annual rating guide. Go to greencars.com. 3 points.	<i>Acceptable cars include more than just hybrids - need signage.</i>
			ARCH	Site SS-4.4	Alternative Transportation: Parking Capacity	Parking cannot exceed minimum required by local ordinance AND 5% of spaces are set aside for carpools. 2 points.	
			ARCH	Site SS-5.1	Site Development: Protect or Restore Habitat	For prev. undeveloped sites, limit site disturbance to 40' beyond building, 10' beyond walks, parking, and 25' from constructed permeable areas (like detention). For prev. developed sites, restore 50% of site area with native or adaptive vegetation.	
			ARCH	Site SS-5.2	Site Development: Maximize Open Space	Provide vegetated open space adjacent to building equal to building footprint.	
			CIVIL	Site SS-6.1	Stormwater Design: Quantity Control	For previous undeveloped sites, no net increase in rate and quantity of stormwater runoff. For previously developed sites, reduce runoff by 25%.	
			CIVIL	Site SS-6.2	Stormwater Design: Quality Control	Provide a system to remove 80% of total suspended solids and 40% of total phosphorous in stormwater.	
			ARCH	Site SS-7.1	Heat Island Effect: Non-Roof	Use light materials or an open grid system for paving OR provide shade for 50% of the site's impervious surfaces, OR place a min of 50% of the parking underground, OR use open grid paving for 50% of the parking lot.	<i>Easy with concrete drives, parking.</i>
			ARCH	Site SS-7.2	Heat Island Effect: Roof	Use Energy Star compliant roof with a Solar Reflectance Index of 78 minimum.	<i>This credit is easy to get with single-ply white roofing.</i>
			ARCH/MEP	Site SS-8	Light Pollution Reduction	Indoor: no direct beam illumination exiting from windows OR interior lights automatically turn off during non-business hours. Outdoor: do not exceed 80% of ASHRAE 90.1 standards for lighting power density for exterior areas, and 50% for building facades.	<i>Minimize exterior lighting, use full cut-off fixtures</i>

YES	MAYBE	NO	Responsibility	ID	CREDIT	DESCRIPTION	COMMENT
			LA	Water WE-1.1	Water Efficient Landscaping: Reduce by 50%	Use high efficiency irrigation technology OR captured rain or recycled site water to reduce potable water consumption by 50%.	Switch from spray to drip system and native landscaping. St. Augustine turf grass is not good.
			LA	Water WE-1.2	Water Efficient Landscaping: No Potable Use or No Irrigation	Use captured rain or do not install an irrigation system.	
			ARCH	Water WE-2	Innovative Wastewater Technologies	Reduce potable water use for sewage conveyance by 50%.	This is achievable if waterless urinals AND low flow toilets (below 1.1 gal/flush) are used.
			ARCH	Water WE-3.1 and 3.2	Water Use Reduction	By using water efficient fixtures, reduce potable water use inside building by 30% (2 points) or 35% (3 points) or 40% (4 points)	In a typical office, using low-flow urinals and lavatories will yield 1 pt. With Pint Urinals or low-flow toilets, we can get 2 pts.
			Energy Modeler	Energy EA-1.1-1.10	Optimize Energy Performance	Reduce the design energy cost by 10.5% - 42% (new building) or 3.5% - 35% (existing building) compared with a baseline building as defined in ASHRAE/IESNA 90.1-2004, Section 11. (1 point per 3.5% improvement)	An energy model will help determine the most effective measures for increasing energy savings. To achieve consider better glazing, HVAC, shading devices, high performance lighting, etc.
			MEP/ARCH	Energy EA-2	On-Site Renewable Energy	Use renewable energy to offset building energy cost. 2.5% (1 pt), 7.5% (2 pts), 12.5% (3 pts)	Solar, wind, geothermal, low-impact hydro, biomass, bio-gas.
			Comm	Energy EA-3	Enhanced Commissioning	Additional Commissioning.	Agent is more actively involved in the DD and construction phases of the project. Reviews building operation 10 months after construction completion date.
			MEP	Energy EA-4	Enhanced Refrigerant Management	Select refrigerants that minimize or eliminate the emission of compounds that contribute to ozone depletion and global warming.	Governed by a complicated formula designed to limit CFCs and CO2.
			MEP	Energy EA-5	Measurement and Verification	Develop a building M&V Plan that complies with the International Performance Measurement and Verification Protocol (IPMVP) Vol. III. AND Monitor for at least one year.	This document is available free online.
			ARCH/OWNER	Energy EA-6	Green Power	Provide 35% of the buildings electricity from renewable sources by engaging in a two year contract.	This is achievable by buying Renewable Energy Credits. These credits are sold separately from electrical power, and cost from half a cent to one cent per kWh. (Commercial customers may pay 8-12 cents per kWh currently).

YES	MAYBE	NO	Responsibility	ID	CREDIT	DESCRIPTION	COMMENT
			ARCH	Matls MR-1.1 - 1.3	Building Re-Use	For renovation projects only. Maintain 55% (1 pt), 75% (2 pts), or 95% (3 pts) of existing walls, floors and roof.	
			ARCH	Matls MR-1.4	Building Re-Use	For renovation projects only. 50% Interior Finishes Saved.	
			ARCH/ CONT.	Matls MR-2.1 - 2.2	Construction Waste Management	Implement a construction waste management program by salvaging 50% (1 point) or 75% (2 points) by weight of construction, demo, and land clearing waste.	Easy. See Kirksey Construction Waste Management Policy. We have implemented this on several projects at no extra cost.
			ARCH/ CONT.	Matls MR-3.1 - 2.2	Materials Reuse	Use salvaged materials for 5% (1 pt.) or 10% (2 pts.) of building materials (based on cost).	Difficult to achieve. Consider using salvaged flooring, doors and frames, millwork.
			ARCH/ CONT.	Matls MR-4.1 - 4.2	Recycled Content	Specify 10% (1 point) or 20% (2 points) of building materials as recycled (post-consumer and 1/2 post-industrial).	Work with contractor to target materials such as steel and aluminum.
			ARCH/ CONT.	Matls MR-5.1 - 5.2	Local/Regional Materials	Specify 10% (1 point) or 20% (2 points) of building materials that are extracted, harvested, and manufactured within a 500 mile radius.	Work with contractor to target materials such as concrete, stone, and landscaping materials.
			ARCH/ CONT.	Matls MR-8	Rapidly Renewable Materials	Use rapidly renewable materials for 2.5% of building materials (based on cost).	Difficult to achieve. Consider bamboo, cotton insulation, agrifiber panelling, cork.
			ARCH/ CONT.	Matls MR-7	Certified Wood	Use Forest Stewardship Council certified wood for 50% of wood used in project.	Formwork does not count toward this total if it is considered as "equipment," which the contractor intends to use again.
			MEP	Air Qual IEQ-1	Outdoor Air Delivery Monitoring	Install CO2 Monitors in densely occupied spaces; for other spaces, provide outdoor airflow measurement device capable of measuring airflow rate at within 15% of design minimum.	Provide airflow measuring station for each unit. Requires additional controls.
			MEP	Air Qual IEQ-2	Increased Ventilation	Increase outdoor air ventilation rates to all occupied spaces by 30% above ASHRAE 62.1-2004.	Expensive to implement in humid climates.
			ARCH	Air Qual IEQ-3.1	Construction IAQ Management Plan: During Construction	Implement an indoor Air Quality Management Plan for the construction phase of the project.	Easy to implement. Follow SMACNA guidelines for indoor air quality during construction, and use MERV 8 filters at each return air grille.
			ARCH/ OWNER/ MEP/ CONT.	Air Qual IEQ-3.2	Construction IAQ Management Plan: Before Occupancy	Requires building flush-out OR air quality testing.	Flush-out consists of supplying 14,000 cu.ft. of outdoor air per sq.ft. If doing test, must measure formaldehyde, particulates, VOCs, carbon monoxide, and phenylcyclohexene.
			ARCH/ CONT.	Air Qual IEQ-4.1-2	Low-Emitting Materials: Adhesives / Sealants / Paints	Specify only low VOC adhesives and sealants; paints and coatings.	These products are available and competitively priced.
			ARCH/ CONT.	Air Qual IEQ-4.3	Low-Emitting Materials: Carpet	Specify only Green Label Plus carpet.	These products are available and competitively priced.

Project Name
LEED-NC v3.0 Worksheet

YES	MAYBE	NO	Responsibility	ID	CREDIT	DESCRIPTION	COMMENT
			ARCH/ CONT.	Air Qual IEQ-4.4	Low-Emitting Materials: Composite Wood	Specify only composite wood products that contain no urea formaldehyde glue.	<i>This credit can be achieved with formaldehyde-free wood or agrifiber panels. They are about 25% more expensive.</i>
			ARCH/ CONT.	Air Qual IEQ-5	Indoor Chemical and Pollutant Source Control	Avoid exposure of building occupants to potentially hazardous chemicals.	<i>Need recessed entryway systems 6' or more, separately ventilated janitor closets with self-closing doors, and MERV 13 filters installed before occupancy.</i>
			ARCH	Air Qual IEQ-5.1	Controllability of Systems- Lighting	Provide lighting controls for 90% of building occupants	<i>Provide task lighting and lighting controls in multi-user spaces.</i>
			ARCH/MEP	Air Qual IEQ-5.2	Controllability of Systems- Thermal Comfort	Provide individual thermal comfort controls for 50% of building occupants, and for each multi-occupant space.	<i>This credit is possible with underfloor HVAC.</i>
			MEP	Air Qual IEQ-7.1	Thermal Comfort: Design	Comply with ASHRAE Standard 55-2004 for thermal comfort.	<i>Standard procedure.</i>
			OWNER	Air Qual IEQ-7.2	Thermal Comfort: Verification	Implement a thermal comfort survey with 6-18 mos after occupancy. Develop a plan for corrective action if more than 20% of occupants are dissatisfied.	
			ARCH	Air Qual IEQ-8.1	Daylight and Views- Daylight	Provide daylighting for at least 75% of all regularly occupied spaces.	<i>Standard procedure for Kirksey designed projects.</i>
			ARCH	Air Qual IEQ-8.2	Daylight and Views- Views	Provide direct line of sight to vision glazing for building occupants in 80% of all regularly occupied spaces.	<i>Standard procedure for Kirksey designed projects.</i>
			ARCH	Innov ID-1.1	Innovation in Design: Education Program	Provide an on-site education program to inform/educate visitors about the green building.	<i>Design to dovetail with the building's daily functions. This is easy to develop, and good marketing. There is a cost for signage design and fabrication.</i>
			ARCH/ OWNER	Innov ID-1.2	Innovation in Design: Green Housekeeping	Receive an Innovation credit by implementing a green housekeeping program.	<i>We have set up clients with this, as well as our own office. Competitive with market.</i>
			DEPENDS	Innov ID-1.3	Innovation in Design:	Exceed a credit, borrow a credit from another LEED product, or use another original strategy.	
			DEPENDS	Innov ID-1.4	Innovation in Design:	Exceed a credit, borrow a credit from another LEED product, or use another original strategy.	
			DEPENDS	Innov ID-1.5	Innovation in Design:	Exceed a credit, borrow a credit from another LEED product, or use another original strategy.	
			ARCH	Innov ID-2	Innovation in Design: LEED Registered Professional	LEED registered professional (currently at Kirksey) working on the project.	<i>Standard practice at Kirksey.</i>
			DEPENDS	Region RP-1.1	Regional Priority:	Achieve a credit that addresses geographically specific environmental priorities.	
			DEPENDS	Region RP-1.2	Regional Priority:	Achieve a credit that addresses geographically specific environmental priorities.	
			DEPENDS	Region RP-1.3	Regional Priority:	Achieve a credit that addresses geographically specific environmental priorities.	
			DEPENDS	Region RP-1.4	Regional Priority:	Achieve a credit that addresses geographically specific environmental priorities.	

LEED Certified (40-50 pts)
LEED Silver (50-60)
LEED Gold (60-80)
LEED Platinum (80-110)

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**APPENDIX "F"
LEED CHECKLIST**

LEED CHECKLIST FOR CORE AND SHELL

		Yes	Maybe	No	Remarks	Responsibility	Due Date
SUSTAINABLE SITES							
15 POSSIBLE POINTS							
Prereq 1	Construction Activity Pollution Prevention	Required			Current practice.	GC	CDS
Credit 1	Site Selection	1	X		CE to verify compliance with all criteria.	CE	
Credit 2	Development Density & Community Connectivity	1		X	Some neighborhood development in area. More research req'd to determine point feasibility.	MA	
Credit 3	Brownfield Redevelopment	1		X	Not a Brownfield site.	MA	
Credit 4.1	Alternative Transportation, Public Transportation Access	1		X	Verify if within 1/4 mile stop for public bus line and Memorial City Shuttle (campus)	MA	
Credit 4.2	Alternative Transportation, Bicycle Storage & Changing Rooms	1	X		Provide bike racks and showers for 3% and -5% occupants.	MA	CDS
Credit 4.3	Alternative Transportation, Low Emitting & Fuel Efficient Vehicles	1		X	Provide preferred parking for fuel efficient vehicles.	MA	CDS
Credit 4.4	Alternative Transportation, Parking Capacity	1		X	Parking provided = 3 S/1000 sq. Code=2.75	MA	
Credit 5.1	Site Development, Protect or Restore Habitat	1		X	Will not restore 50% of site to natural state.	LA, GC	CA
Credit 5.2	Site Development, Maximize Open Space	1		X	Detention not required property line drawn allows less than 50% open areas	LA, CE	
Credit 6.1	Stormwater Design, Quality Control	1	X		Stormwater management plan and meet criteria.	LA, CE	CDS
Credit 6.2	Stormwater Design, Quantity Control	1		X	Implement stormwater management plan for 90% rainfall.	LA, CE	CA
Credit 7.1	Heat Island Effect, Non-Roof	1	X		50% hardscape with solar reflective material.	MA, GC	CDS
Credit 7.2	Heat Island Effect, Roof	1	X		75% roof with solar reflectance material. MN prefers grey roof.	MA	CDS
Credit 8	Light Pollution Reduction	1		X	Design intent to light the building exterior?	MEP	
Credit 9	Tenant Design and Construction Guidelines	1	X		Provide tenant guidelines.	MA	CDS
		6	4	5			
WATER EFFICIENCY							
5 POSSIBLE POINTS							
Credit 1.1	Water Efficient Landscaping, Reduce by 50%	1	X		Reduce water for irrigation by 50%.	LA, MEP	CDS
Credit 1.2	Water Efficient Landscaping, No Potable Use or NO Irrigation	1		X	Use only captured water for irrigation. Look at LA, MEP irrigation requirements and storage.	LA, MEP	CD's
Credit 2	Innovative Wastewater Technologies	1		X	Extensive on-site treatment.	LA, MEP	
Credit 3.1	Water Use Reduction, 20% Reduction	1	X		Reduce potable water use by 20%.	MEP	CDS
Credit 3.2	Water use Reduction, 30% Reduction	1	X		Reduce potable water use by 30% (verify if possible in above). Can be done with ultra-low flow urinals.	MEP	CD's
		3	0	2			
ENERGY & ATMOSPHERE							
14 POSSIBLE POINTS							

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**APPENDIX "F"
LEED CHECKLIST**

LEED CHECKLIST FOR CORE AND SHELL

	Yes	Maybe	No	Remarks	Responsibility	Due Date
INDOOR ENVIRONMENTAL QUALITY						
11 POSSIBLE POINTS						
Prereq 1	•			Design mechanical	MEP	CDS
Prereq 2	•			Design mechanical	MEP	CDS
Credit 1		X		Ventilation design	MEP	CDS
Credit 2			X	Verify in mechanical design	MEP	CDS
Credit 3				Contractor agreement	GC	CDS, Const
Credit 4.1				Arch. specifications, GC to manage credit	MA, GC	CDS, Const
Credit 4.2				Arch. specifications, GC to manage credit	MA, GC	CDS, Const
Credit 4.3				Arch. specifications, GC to manage credit	MA, GC	CDS, Const
Credit 4.4				Arch. specifications, GC to manage credit	MA, GC	CDS, Const
total points for credits 4.1, 4.2, 4.3, 4.4						
Credit 5				Arch vestibule at entrance including monitoring/ventilation, MERV 13	MA, MEP	CDS
Credit 6			X	Not enough individual control	MEP	CDS
Credit 7		X		Design mechanical	MEP	CDS
Credit 8.1			X	Building configuration	MA	CDS
Credit 8.2		X		Verify in tenant lease fit	MA	CDS
total points for credits 4.1, 4.2, 4.3, 4.4						
INNOVATION & DESIGN PROCESS						
Credit 1.1		X		Maintenance guidelines	MA/OWNER	CDS
Credit 1.2		X		Educational signage	OWNER	CDS
Credit 1.3			X	Chemical Free Water Treatment	MEP	CDS
Credit 1.4			X	Revit Modeling	MEP	CDS
Credit 2		X		LEED Accredited Professional	MA	CDS
total points: 27 12 22						
CHECK SUM: 61 =817						
TRUE						
61 POSSIBLE POINTS						
PROJECT TOTALS						
Certified 23-27 points Silver 28-33 points Gold 34-44 points Platinum 45-61 points						

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APPENDIX G

I. MISCELLANEOUS CONSTRUCTION CONTRACT PROVISIONS

1. LEED Compliance. The Contractor's performance of the Work shall be conducted and completed in accordance USGBC's LEED Green Building Rating System for Core & Shell Development Version 2.0 in order for the Project to be certified with 23 points by the USGBC pursuant to Exhibit "R" attached hereto and made part hereof for all purposes.
2. Contractor's LEED Coordination Efforts. Contractor shall coordinate and implement the performance of the Work with respect to the LEED Credits that Owner has advised the Contractor it is seeking, as more particularly described in Exhibit "R", and the Contractor further guarantees to undertake its best efforts in order to achieve the points described in Exhibit "R".
3. Contractor's Permits/Exclusions. The Contractor shall obtain the building permit and all necessary permits, inspections and approvals. Contractor shall pay all fees for permits or inspections, except for "impact" and "front-footage" fees. The Owner shall pay "impact" and "front-footage" fees, if any. The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, including engineering costs, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the project. Contractor's obligations exclude LEED certification inspections and approvals.
4. Responsibility to Report Non-compliance. If, however, the Contractor has actual knowledge that any other party responsible for LEED compliance is not fulfilling its responsibility, the Contractor will promptly notify the Owner of such non-compliance so that the Owner can cause the responsible party to fulfill such responsibility. The Contractor assumes responsibility for any additional costs incurred by the Owner caused by the Contractor's failure to promptly report the known non-compliance.
5. Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:
 - .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
 - .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing,

business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

Notwithstanding anything contained herein to the contrary, Owner and Contractor agree that any additional construction interest and financing costs, lost rental income, lost tax credits and/or abatements and increased construction costs incurred by Owner as a result of Contractor's default under the Contract Documents, including, without limitation, any default with respect to LEED Requirements and/or unexcused delays shall constitute actual damages and not be considered consequential damages.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article ____, except as otherwise excluded above. Nothing contained in this Section _____ shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

6. Liquidated Damages. The Contractor acknowledges and recognizes the importance to the Owner of the Project obtaining the Required LEED Certification as required by the Contract Documents. The Contractor further acknowledges and agrees that if Owner fails to obtain the required LEED Certification for the Project, the Owner will sustain extensive damages and serious losses as the result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, the Owner and Contractor agree that if the Project fails to obtain the required LEED Certification due to the Contractor's default, in whole or in part, under the Contract Documents for which Contractor is determined to be legally liable, Owner shall be entitled to retain or recover from the Contractor as Liquidated Damages and not as a penalty, \$_____. The Liquidated Damages shall be payable by Contractor to Owner if Owner has not obtained the required LEED Certification within ____ days following Substantial Completion. Additionally, Contractor shall be liable to Owner for such Liquidated Damages in the event that Owner terminates the Contract for cause prior to Substantial Completion, and Contractor does not successfully challenge Owner's termination for cause. Notwithstanding the foregoing provisions of this Section _____, if Contractor can establish that the Architect and Owner's other consultants are also liable for Owner being unable to obtain the required LEED Certification for the Project, to the extent of not less than 50% of the liability therefor, then the amount of Liquidated Damages shall be reduced by the percentage of the liability of the Architect and Owner's other consultants.

APPENDIX H

LEED Addendum To Construction Contract

1. DEFINITIONS

1.1 “Affiliated Contract” means any contract, other than the Governing Contract, relating to the Project into which an identical Addendum is incorporated.

1.2 “**Contractor**” means the person or entity engaged by **Owner** pursuant to a Governing Contract between **Owner** and the **Contractor** to construct the Project or a portion of the Project.

1.3 “Elected Green Measures” means the Green Measures included in the report prepared by **Architect** and approved by **Owner** in writing as described in Exhibit “__” attached hereto and made part hereof.

1.4 “Elected Green Status” means the Green Status elected by **Owner** in accordance with Exhibit “__” attached hereto.

1.5 “Elected Physical Green Measures” means the Physical Green Measures included in the Elected Green Measures.

1.6 “Elected Procedural Green Measures” means the Procedural Green Measures included in the Elected Green Measures.

1.7 “Governing Contract” means an agreement between the **Owner** and a party into which this Addendum is incorporated, but excludes any Affiliated Contract(s).

1.8 “Green Building Facilitator” or “**Architect**” means the Architect.

1.9 “Green Certification Documents” means such reports, documents or other data required by **Owner** or **Architect** to apply for, seek or obtain Green Status.

1.10 “Green Measures” means that specific performance required of the Project Participants to achieve Green Status as further described in Exhibit “__” attached hereto.

1.11 “Green Status” means a designation or denomination provided by a body or organization, governmental or otherwise, intended to recognize the fact that Green Measures have been used or employed in the design and/or construction of the Project, which designation or denomination may be one of a variety of levels, such as a stated numerical rating or color designation.

1.12 “Physical Green Measures” means Green Measures that are incorporated in the Plans and Specifications as part of the design of the Project and that are intended to become a component of the physical Work when construed.

1.13 “Plans and Specifications” shall have the meaning provided in the Governing Contract, or, if not defined therein, shall mean the plans, specifications, drawings and

other written or graphic depictions of the Work, the manner in which the Work is to be performed or other requirements applicable to the Work as prepared or issued by **Architect**.

1.14 “Procedural Green Measures” means those Green Measures that set forth specific means, methods or procedures that are to be followed or employed in the performance of the Work, including the preparation and submission of Green Certification Documents that are not intended to become a component of the physical Work when construed.

1.15 “Project Participant” shall be, and “Project Participants” shall include, each Party to a Governing Contract or an Affiliated Contract into which this Addendum has been incorporated.

2. CONTRACTOR’S APPROVAL OF GREEN MEASURES

2.1 **Architect** has promptly incorporated in the Plans and Specifications the Elected Green Measures that are to be performed, implemented or satisfied by the **Contractor**. Elected Procedural Green Measures that are to be performed, implemented or satisfied by the **Contractor** shall be set forth in a separate and distinct section of the Plans and Specifications by the **Architect** so that **Contractor** may readily identify such Elected Procedural Green Measures.

2.2 Within 15 days (or such other period of time period as **Owner** and **Contractor** may agree) of **Contractor’s** receipt of the Plans and Specifications issued by **Architect**, **Contractor** shall provide a written statement to **Owner** and **Architect** of objections, if any, that **Contractor** may have or additional information that **Contractor** may deem necessary to address any causes of concern identified by **Contractor** with respect to the Elected Procedural Green Measures or constructability of the Elected Physical Green Measures.

2.3 Should **Contractor** raise any objection(s) or request(s) for additional information pursuant to Paragraph 2.2, the **Architect** shall coordinate the effort to provide information and resolve any objection(s) or request(s) related to Green Measures. The **Architect** shall issue to the **Owner** and **Contractor** revisions to the Plans and Specifications consistent with the manner in which the objection(s) or request(s) have been resolved. **Contractor** shall not be deemed to have assumed the responsibilities of **Architect**, nor shall **Contractor** be liable or responsible for any defects or deficiencies in the Plans and Specifications as a consequence of the **Contractor’s** failure to identify any such defect or deficiency, but **Contractor** shall promptly advise **Owner** and **Architect** of any known defect or deficiency. If **Contractor** fails or refuses to raise any objections to the Elected Procedural Green Measures or constructability of the Elected Physical Green Measures which are the responsibility of the **Contractor**, **Contractor** will be deemed to have approved such Green Measures.

2.4 The Plans and Specifications issued by the **Architect** at the conclusion of the process required by Paragraphs 2.2 and 2.3, shall be incorporated as applicable in the Governing Contract for the **Contractor**.

2.5 Should the Plans and Specifications issued by the **Architect** at the conclusion of the process set forth in Paragraphs 2.2 and 2.3, as applicable, impose obligations or responsibilities that differ from those previously assumed by any of the Project Participants in their respective Governing Contracts, including any change in the Plans and Specifications, delay or additional Work or other obligations, a Change Order or other comparable document shall be prepared and submitted as provided in the applicable Governing Contract and signed by **Owner** adjusting the respective Governing Contract so affected to provide appropriate adjustments to price, payments and time.

2.6 Upon incorporation of the Elected Green Measures in the Plans and Specifications as described by Paragraph 2.4 and adjustment to an applicable Governing Contract, if applicable as described by Paragraph 2.5, each Project Participant shall be required to perform and provide those Elected Green Measures specifically identified as the responsibility of that Project Participant in such Plans and Specifications. The incorporation of Elected Green Measures in the Plans and Specifications shall not expand or diminish other responsibilities of any Project Participant as provided in a Governing Contract, except to the extent specifically set forth in the Governing Contract, Change Order or other comparable document issued in accordance with Paragraph 2.5.

2.7 Neither **Architect** or **Contractor** shall be required to perform or provide any of the Elected Green Measures that are not identified as the responsibility of that Project Participant in the Plans and Specifications incorporated in and required by its respective Governing Contract, which may include incorporation by Change Order or other comparable document executed by the parties to a Governing Contract. **Contractor** shall only be required to perform or provide those Elected Procedural Green Measures specifically stated as the responsibility of the **Contractor** in the Plans and Specifications incorporated in the **Contractor's** Governing Contract, which may include incorporation by Change Order or other comparable document as provided in the applicable Governing Contract.

3. SHOULD, DURING THE COURSE OF THE PROJECT, MODIFICATIONS TO THE PLANS AND SPECIFICATIONS ARISE OR BE PROPOSED, SUCH MODIFICATIONS SHALL BE ADDRESSED AS FOLLOWS:

3.1 **Architect** shall promptly review such modifications and identify those instances in which such a modification may affect the Elected Green Measures.

3.2 **Architect** shall notify **Owner** and **Contractor** within 7 days following **Architect's** discovery that such a modification may affect the Elected Green Measures.

3.3 Should **Owner** request, **Architect**, **Contractor**, and **Owner** shall confer as to alternatives and other consideration relative to the effect of such modification on the Elected Green Measures.

3.4 Following issuance by **Architect** of a written notification by **Architect** pursuant to this Paragraph 3.4 **Architect** shall prepare and issue modifications to the Plans and Specification to reflect the modification after either 1) **Architect** has issued written

notification that the modification will not affect attaining the Elected Green Status, or 2) **Owner** directs **Architect** to proceed.

3.5 **Contractor** shall not be required to proceed with the modification until the **Architect** has addressed the modification and any appropriate Change Order or other comparable document related to the modification has been issued in accordance with the Governing Contract between **Owner** and **Contractor**.

3.6 Should **Contractor** request a substitution in accordance with applicable terms of its Governing Contract, **Contractor** shall submit the substitution proposal to **Architect**. **Architect** shall review such proposed substitution and advise in writing as to any adverse effects that the proposal would have on attaining the Elected Green Status.

4. RISK ALLOCATION

4.1 As soon as **Contractor** has been engaged, **Contractor** shall confer with **Owner** and **Architect** regarding matters being addressed by and between **Owner** and **Architect** in accordance with Paragraphs 2 and 3 of this Addendum. **Contractor's** participation in addressing such matters shall not render **Contractor** responsible for the performance of any services required by any other Project Participant, Green Measures, Green Status or the Plans and Specifications.

4.2 Unless otherwise expressly provided in a Governing Contract, no Project Participant other than **Architect** shall be liable or responsible for the failure of the Elected Green Measures to achieve the Elected Green Status or intended benefits to the environment or natural resources. This Paragraph 4.2 does not relieve any Project Participant from any obligation to perform or provide Elected Green Measures as required by its Governing Contract.

4.3 Nothing herein is intended to expand or diminish **Architect's** liability or responsibility for any defect or deficiency in the Plans and Specifications or failure of the Plans and Specifications to comply with applicable laws, codes, ordinances and regulations, except to the extent **Architect** has assumed liability or responsibility of the **Architect** in the event **Architect** serving as the **Architect**.

4.4 Except to the extent applicable to the **Contractor** having assumed the role of the **Architect** provided in this Addendum pr exempt as otherwise expressly provided in the Contract, Documents, nothing herein is intended to impose upon **Contractor** any liability or responsibility if the Elected Green Measures do not achieve the Elected Green Status.

4.5 Nothing herein is intended to impose upon **Architect** liability or responsibility for the **Contractor's** means or methods of performing the Work, except for any means or methods included in the Elected Green Measures and incorporated into the Plans and Specifications.

4.6 This Article 4 shall be applicable notwithstanding anything contained in this Addendum to the contrary.

APPENDIX I

I. NEW AIA CONTRACT DOCUMENTS FOR SUSTAINABLE PROJECTS

- A. The new AIA Contract Documents created for use on sustainable projects include:
- B. A101™-2007 SP, Standard Form of Agreement between Owner and Contractor, for use on a Sustainable Project where the basis of payment is a Stipulated Sum
- C. B101™-2007 SP, Standard Form of Agreement Between Owner and Architect, for use on a Sustainable Project
- D. A201™-2007 SP, General Conditions of the Contract for Construction, for use on a Sustainable Project
- E. C401™-2007 SP, Standard Form of Agreement Between Architect and Consultant, for use on a Sustainable Project
- F. A401™-2007 SP, Standard Form of Agreement Between Contractor and Subcontractor, for use on a Sustainable Project

AIA Document D503™-2011, Guide for Sustainable Projects, including Agreement Amendments and Supplementary Conditions, was released by the AIA in May 2011. In addition to providing model language that may be used to amend or supplement AIA Contract Documents for design-bid-build projects, the Guide discusses the applicability of key concepts to other delivery models such as design-build, construction management and integrated project delivery.

These new documents will be available in the first quarter of 2012 as part of the new AIA Contract Documents service and AIA Documents on Demand®.

APPENDIX J

1. Add the following Section 1.1.9 to A201-2007:

Model Language

§ 1.1.9 Special Definitions

§ 1.1.9.1 Sustainable Objective

The Sustainable Objective is the Owner's goal of incorporating Sustainable Measures into the design or construction of the Project to achieve a Sustainability Certification or other benefit to the environment, enhance the health and well being of building occupants or improve energy efficiency. The Sustainable Objective is identified in the Sustainability Plan.

§ 1.1.9.2 Sustainable Measure

A Sustainable Measure is a specific design element; construction means or method; or post occupancy usage, operations, maintenance and monitoring requirement that must be completed in order to achieve the Sustainable Objective. The Owner, Architect and Contractor shall have responsibility for the Sustainable Measure(s) allocated to each of them in the Sustainability Plan.

§ 1.1.9.3 Sustainability Plan

The Sustainability Plan is prepared by the Architect and identifies and describes: the Sustainable Objective; the Sustainable Measures targeted; implementation strategies selected to achieve the Sustainable Measures; the Owner's, Architect's and Contractor's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Documentation for Certification required for the Project. The Sustainability Plan will be incorporated as part of the Contract Documents.

§ 1.1.9.4 Sustainability Certification

The Sustainability Certification is the initial third-party certification of sustainable design, construction, or environmental or energy performance, such as LEED[®], Green Globes, Energy Star or another rating or certification system, that may be designated as the Sustainable Objective or part of the Sustainable Objective for the Project. The term Sustainability Certification shall not apply to any recertification or certification occurring subsequent to the initial certification.

§ 1.1.9.5 Documentation for Certification

The Documentation for Certification includes all documentation related to the Sustainable Objective or to a specific Sustainable Measure that the Owner, Architect or Contractor is required to prepare in accordance with the Contract Documents. Responsibility for preparation of specific portions of the Documentation for Certification will be allocated among the Owner, Architect and Contractor in the Sustainability Plan and may include documentation required by the Certifying Authority.

§ 1.1.9.6 Certifying Authority

The Certifying Authority is the entity that establishes criteria for achievement of a Sustainability Certification and is authorized to grant or deny a Sustainability Certification.

2. AIA Document A201 —2007, Section 9.8.1, defines Substantial Completion as “the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.” In a sustainable project, in which the Owner is seeking to achieve a Sustainability Certification, it is important that the Owner understands that the date of Substantial Completion is not the same as the date of award of the Sustainability Certification, which is likely to be some time later than Substantial Completion. Accordingly, the following parenthetical information may be added to B101-2007 Section, 1.2.2 to clarify this point:

Delete Section 1.2 in its entirety and add the following to B101-2007:

Model Language

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

- .1** Commencement of construction date:
- .2** Substantial Completion date:
(Substantial Completion is not the anticipated date of the award of a Sustainability Certification)

3. Modify Article 1 of A101-2007 as follows:

Model Language

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, the Sustainability Plan, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

4. In addition to the modification to Article 1 stated above, it will be necessary to add the Sustainability Plan to the enumeration of Contract Documents included in A101-2007, Article 9.

Add the following to A101-2007 Section 9.17:

Model Language

.3 The Sustainability Plan

It is also necessary to modify the definition of the Contract Documents in A201-2007. Modify Section 1.1.1 of A201-2007 as follows:

Model Language

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, the Sustainability Plan, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

5. Add the following Section 2.2.6 to A201-2007:

Model Language

§ 2.2.6 The Owner shall perform those Sustainable Measures specifically identified as the responsibility of the Owner in the Sustainability Plan, including any approved changes, or as otherwise required by the Contract Documents, The Owner shall require that each of its contractors and consultants perform the contractor's or consultant's services in accordance with the Sustainability Plan.

6. Add the following Section 3.1.4 to A201-2007:

Model Language

§ 3.1.4 The Contractor shall perform those Sustainable Measures specifically identified as the responsibility of the Contractor in the Sustainability Plan or as otherwise required by the Contract Documents,

7. Add the following Section 3.4.2.1 A201-2007:

Model Language

§ 3.4.2.1 The Contractor shall include with any substitution requests submitted in accordance with Section 3.4.2 a written representation identifying any potential effect the substitution may have on Project's ability to achieve a Sustainable Measure or the Sustainable Objective, The Architect is entitled to rely on these representations by the Contractor.

8. In A201-2007, immediately before the existing text of Section 3.5, add a section reference as follows “§ 3.5.1” and then add the following Section 3.5.2 to A201-2007:

Model Language

§ 3.5.2 The Contractor shall perform the Sustainable Measures required to be performed by the Contractor in accordance with the Contract Documents, however, nothing contained in this Section 3.5 shall be construed as a guarantee or warranty by the Contractor that the Project will achieve the Sustainable Objective.

9. Add the following to the end of Section 3.11 of A201-2007:

Model Language

The Contractor shall be responsible for timely preparing and completing the Documentation for Certification required of the Contractor in the Contract Documents and submitting the Documentation for Certification to the Architect in accordance with any schedules or deadlines set forth in, or as otherwise required by, the Contract Documents. In the absence of schedules or deadlines for submission of Documentation for Certification in the Contract Documents, the Contractor will submit the Documentation for Certification with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. The Contractor grants to the Architect or the Owner the right to submit the Documentation for Certification to the Certifying Authority as required in order to achieve or maintain the Sustainability Certification.

10. Add the following Section 3.15.1.1 to A201-2007:

Model Language

§3.15.1.1 In addition to the requirements of Section 3.15.1, the Contractor shall recycle, reuse, remove or dispose of materials as required by the Contract Documents and as necessary to achieve the Sustainable Objective.

11. Add the following Section 3.15.3 to A201-2007:

Model Language

§ 3.15.3 The Contractor, in accordance with the Contract Documents, shall prepare and submit to the Architect and Owner a construction waste management and disposal plan outlining the procedures and processes for salvaging, recycling or disposing of construction waste generated from the Project.

12. Add the following sentence to the end of Section 9.8.1 of A201-2007:

Model Language

§ 9.8.1...Except for Documentation for Certification which by its nature must be provided after Substantial Completion, the Contractor shall submit Documentation for Certification required from the Contractor by the Contract Documents no later than the date of Substantial Completion. Verification that the Project has achieved the Sustainable

Objective, or the actual achievement of the Sustainable Objective alone, shall not be a condition precedent to issuance of a Certificate of Substantial Completion in accordance with Section 9.8.4.

13. Add the following Section 15.1.6.3 to A201-2007:

Model Language

§15.1.6.3 In addition to those damages included in Section 15.1.6.1 and 15.1.6.2 the mutual waiver in this Section 15.1.6 expressly includes consequential damages resulting from failure of the Project to achieve the Sustainable Objective or one or more of the Sustainable Measures including unachieved energy savings, unintended operational expenses, lost financial or tax incentives, or unachieved gains in worker productivity.