

[TO BE USED FOR ARCHITECT (STRUCTURAL/MEP), INTERIOR DESIGN, CIVIL ENGINEER and LANDSCAPE/HARDSCAPE CONSULTANT]

CONTRACT NO. 4007-040-001

CONSULTANT SERVICES AGREEMENT

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VP \_\_\_\_\_  
 PCM \_\_\_\_\_  
 ACC \_\_\_\_\_  
 COM \_\_\_\_\_

CONTRACT NO. 4007-040-001

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT, made this \_\_\_\_ day of 3/11/2021, 20\_\_, by and between MAPLE MULTI-FAMILY LAND SE, L.P. (hereinafter referred to as the "Owner"), and Kimley-Horn and Associates, Inc. (hereinafter referred to as the "Consultant") in connection with the following project: ALEXAN CRAFTS ("Project").

RECITALS

The Owner is the Developer of the Project and desires to engage the Consultant to perform services as set forth herein.

The Consultant desires to perform such services for the Owner.

AGREEMENT

In consideration of the terms, conditions and compensation set forth below, the parties hereto agree as follows:

ARTICLE 1 - SCOPE OF SERVICES

1.1 The Consultant shall provide the following professional services ("Services") for the Project as set forth in the following Exhibits attached hereto and incorporated herein:

Exhibit "A" - Scope of Services

Exhibit "B" - Schedule of Services

1.2 All Services shall be performed in accordance with all of the terms, covenants and conditions of this Agreement and the professional skill and care ordinarily provided by similar consultants providing similar services, practicing in the same or similar locality under the same or similar circumstances.

1.3 The following key personnel have been assigned by Consultant to work on the Project on behalf of the Consultant and are considered to be essential to the provision of adequate Services by Consultant. Consultant shall not remove or replace any such key personnel without Owner's prior written consent which shall not be unreasonably withheld.

**Name**

**Position**

Barton Fye Project Manager

## ARTICLE 2 - OWNER'S REPRESENTATIVE

2.1 The Owner's representative for the administration of this Agreement shall be Jim Berardinelli. Consultant agrees to coordinate its Services with the Owner's representative at each stage of the Project. The Consultant shall direct all communications, submittals, and requests for approval/ authorization to the attention of this individual to the following address:

Maple Multi-Family Land SE, LP  
3715 Northside Pkwy  
Suite 1-200  
Atlanta, GA 30327

Invoices to be submitted by mail to address above or emailed to: SE.Invoices@tcr.com

## ARTICLE 3- SCHEDULE OF SERVICES

3.1 Services shall be completed by the Consultant in accordance with Exhibit "B". Time is of the essence in the performance of this Agreement.

3.2 All of Consultant's design consultants and subconsultants retained or to be used by Consultant in the performance of the Services shall be identified in Exhibit "C" hereto. Consultant shall obtain Owner's prior written approval before retaining a design consultant or subconsultant to perform any portion of the Services under this Agreement, which approval shall not be unreasonably withheld. Notwithstanding Consultant's use of any design consultants or subconsultants, Consultant shall be responsible to Owner for the performance of its design consultants or subconsultants as it would be as if Consultant performed those Services itself. Nothing in this Agreement shall be deemed or construed to create a contractual relationship between the Owner and any design consultants or subconsultants retained or employed by Consultant. Consultant shall be solely responsible for payments to its consultants or subconsultants.

## ARTICLE 4 - COMPENSATION

4.1 Compensation. The Owner shall pay the Consultant for Services to be performed under Article 1 - Scope of Services, in accordance with the following schedule. These amounts shall not be exceeded without the prior written authorization of the Owner.

TASK	FEE
<b>On-site Civil Engineering Construction Documents</b>	<b>\$55,000</b>
<b>On-site Civil Engineering Regulatory Assistance</b>	<b>\$29,000</b>
<b>Development Review Committee (DRC) Assistance</b>	<b>\$10,000</b>
<b>Design Meetings and Coordination</b>	<b>\$12,000</b>
<b>On-site Construction Phase Services</b>	<b>\$25,000</b>
<b>Reimbursable Expenses- NTE</b>	<b>\$2,000</b>
<b>Total Fee</b>	<b>\$133,000</b>

4.2 Reimbursable Expenses. The Owner shall reimburse the Consultant on a monthly basis subject to the limitations of this Section 4, for the actual eligible out-of-pocket expenses the Consultant incurs in the performance of Services called for herein, as follows:

4.2.1 Airline Coach-class travel expenses, meals, lodging and ground transportation when the Consultant travels more than 100 miles from Consultant's office in the performance of Services for the Owner at actual cost.

4.2.2 Overnight express packages at actual cost.

4.2.3 Fees paid for securing approval of governmental agencies having jurisdiction over the Project at actual cost.

4.2.4 Volume reproduction and handling of drawings and specifications, reports or other work-related items produced by the Consultant, at actual cost.

4.2.5 Equipment, materials and supplies purchased specifically for the Services with and subject to the prior approval of the Owner shall be compensated for at actual cost and shall become the property of the Owner upon payment.

4.3 Overtime. No overtime rates shall be charged to the Owner by the Consultant in the performance of any Services called for in this Agreement unless the Owner approves in writing such overtime rates prior to the commencement of such overtime, regardless of the total hours worked by any such employee.

4.4 Failure to Perform. Notwithstanding anything to the contrary contained in this Agreement, no services made necessary, in whole or in part, by any failure on the part of the Consultant or any of its consultants duly and timely to perform any of their respective duties, responsibilities or obligations under this Agreement shall be compensated as an Additional Service or otherwise under this Agreement.

## ARTICLE 5 – PAYMENT TO CONSULTANT

5.1 The Consultant shall submit to the Owner a detailed invoice on or before the 20th of the month, accompanied by the signed and notarized Lien Waiver, and complete backup for reimbursable expenses in a form acceptable to the Owner, for all time and reimbursable expenses spent in the performance of the Services for the preceding month. The Consultant shall submit waivers of lien for itself and its subconsultants, substantially in the forms attached hereto as Exhibit "D-1", Exhibit "D-2", Exhibit "D-3" and Exhibit "D-3" – Waivers of Lien, as applicable.

5.2 The invoice shall include the Consultant's Draw Request in the form attached as Exhibit "E" and shall detail the proportion of the "not to exceed" fee or the allowance for each category identified in Exhibit "E" which corresponds to the proportion of Services completed to date less previous payments made. For purposes of estimating completion of the Services, the schedule detailed in Article 4 shall be used. Consultant shall not exceed the cost identified with any category of work or cost identified in Exhibit "E" without Owner's prior written approval.

5.3 The invoice shall be accompanied by complete supporting documentation for all reimbursable expenses and for time spent by the Consultant or its employees if billed on an hourly rate. All hourly charges for labor must describe the Services rendered and specify the hours worked and the

hourly rates therefore. The Owner shall pay each monthly amount due within 30 days after receipt of proper invoice and supporting documentation. Payments made by the Owner shall not constitute a waiver of the Owner's right to object to any errors or omissions in the Services or to recover from costs incurred for corrections to which the Owner is entitled. Consultant shall keep records of all Services and costs charged to Owner under this Agreement and shall make said records available to Owner within ten (10) days of Owner's request.

5.4 Owner shall have the right to withhold from payments to Consultant reasonably disputed amounts including, without limitation, amounts for Services not performed in accordance with this Agreement and costs, expenses and/or damages incurred by Owner as a result of Consultant's breach of this Agreement, Consultant's negligence or Consultant's subconsultant's acts or omissions.

## ARTICLE 6 - GENERAL PROVISIONS

6.1 Delegation/Assignment of Duties. The Consultant shall not delegate and/or assign duties under this Agreement without the prior written consent of the Owner. Any such delegation and/or assignment without the Owner's consent shall be null and void. The Owner may assign this Agreement to a lender providing construction financing for the Project, or to another entity without obtaining the consent of the Consultant; provided that any such assignment to another entity shall be for the sole purpose of transferring the Agreement to the entity that will own this specific Project.

6.2 Suspension and Termination. The Owner shall have the right to suspend or terminate this Agreement at any time with or without cause and for convenience by giving the Consultant three (3) days' prior written notice. In the event of a suspension or termination without cause, the Consultant shall be entitled to compensation for Services properly performed prior to such suspension or termination, including reimbursable expenses in accordance with Section 4.2 which costs were incurred prior to notice of suspension or termination, and the Owner shall be relieved of any and all duties and obligations in this Agreement except as mentioned in this Section. However, Consultant shall not be able to recover its "lost profits". In the event of suspension, Consultant shall resume its Services upon such date as Owner may specify in writing. When the Project is resumed, the Consultant shall be compensated for expenses incurred in the interruption and resumption of the Consultant's Services, if any, and its fees for the remaining Services and the time schedule shall be equitably adjusted. Owner may demand as a condition of final payment that the Consultant execute a final release of all lien rights for himself, any person, firm or corporation with whom it has contracted for the performance of Services hereunder.

If the Owner fails to make payments to the Consultant in accordance with this Agreement, Consultant shall be entitled to suspend the performance of its Services under this Agreement upon ten (10) days' prior written notice to Owner. In the event of a suspension of Services, the Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension, and before resuming services, the Consultant shall be paid all sums due prior to the suspension and any expenses incurred in the interruption and resumption of the Consultant's services, if any. The Consultant's fees for the remaining Services and the time schedule shall be equitably adjusted.

If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Consultant, or if the Consultant shall suspend its Services for more than 45 days due to the Owner's failure to make payment due and owing to the Consultant, the Consultant may terminate this Agreement by giving not less than three (3) days' written notice to Owner.

Other than as specifically provided in this Section, suspension or termination under this Article 6 shall

not give rise to any claim for damages or other remedies by Consultant against Owner.

6.3 Default. If either party to this Agreement (a) fails to perform in accordance with the terms, covenants and conditions of this Agreement or is otherwise in default of any of the terms of this Agreement, after receiving five (5) days' written notice from the other party of the alleged default, and upon said party in default having failed to cure said breach within such five (5) day period or such other reasonable time after this issuance of the notice or (b) files a voluntary petition in bankruptcy or is declared bankrupt or makes a general assignment for the benefit of its creditors, or is placed under a general receivership, the other party shall have the option to terminate this Agreement and pursue any remedy available by law or in equity. In addition, where the Consultant is in default, the provisions of Section 6.3 shall be applicable with the exception that the three-day notice shall be inapplicable. The Owner shall have the right in addition thereto to withhold any payments then due the Consultant, which amounts are necessary to adequately compensate the Owner for damages suffered as a result of any such breach.

6.4 Liens and Encumbrances. In the event the Consultant fails to perform any of the provisions of this Agreement and the Owner's Project or equipment becomes subject to any liens or encumbrances as a result thereof, the Consultant agrees to reimburse, release, indemnify and hold the Owner harmless from any damages sustained by the Owner as a result of such lien or encumbrance. Where a subconsultant shall file a lien due to a dispute in compensation due, or other cause, provided the Consultant is acting reasonably and is not in breach of this Agreement or any agreement with such subconsultant, then the Consultant's duty shall be to take reasonable steps to secure the release of any such lien or encumbrance, including the payment of bond if necessary, at the Consultant's own cost and expense.

6.5 Compliance with Laws and Standards. The Consultant shall be responsible for assuring that the construction documents are produced in accordance with the professional standards of skill, care, adequacy, and workability exercised by Consultants performing comparable services in the same geographical area as the Project. The Consultant shall investigate and confirm in accordance with such standard of care that the work complies with applicable laws, rules, regulations and requirements of governmental authorities having jurisdiction and with all utility regulations ("Applicable Laws"). The Consultant shall, when and as requested, certify that, in accordance with such standard of care, such compliance with such applicable laws will occur, or has occurred, as applicable. The Consultant shall be licensed and registered in good standing in the jurisdiction where each Project is located without cost to the Owner. The Consultant shall perform its Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

6.6 Disputes. If any dispute arises under this Agreement that is not settled promptly in the ordinary course of business, the parties shall seek to resolve any such dispute between them, first, by negotiation promptly with each other in good faith in negotiations. Should said negotiation fail to resolve the parties' disputes, any claim or dispute arising under this Agreement shall be subject to mediation as a condition precedent to the institution of legal proceedings by either party. If such mediation is not successful, all claims, disputes or other matters in question between the parties to this Agreement arising out of or related to this Agreement or the alleged breach thereof shall be submitted for resolution to a court of competent jurisdiction in the location of the Project to which jurisdiction and venue the parties hereby consent, unless otherwise agreed by the parties. No such action shall be brought, however, until the completion of all Services under this Agreement or the earlier termination hereof as provided herein, provided however, that if deferral of filing such action, until the completion of all Services under this Agreement or the earlier termination thereof would result in applicable claim, dispute or other matter in question being barred by an statute of limitation or repose, then each party agrees, upon the written request of the other party to enter into a tolling agreement to prevent such claim, dispute, or other matter from

being so barred. Should litigation occur between the two parties relating to the terms, covenants and conditions of this Agreement, all litigation expenses, collection expenses, witness fees, court costs and attorneys' fees incurred by the prevailing party shall be paid by the non-prevailing party to the prevailing party.

6.7 Mediation Process. Upon the failure of the parties to resolve their claims or disputes as provided in Section 6.6, Owner and Consultant shall mediate their disputes or claims in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. A request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of any equitable proceedings, but in such event, mediation shall proceed in advance of any such equitable proceedings, and said proceeding shall be stayed pending mediation for a period of sixty (60) days from the date of filing. The parties shall share the Mediator's fees and mediation costs equally. The mediation shall be held in \_\_\_\_\_Florida\_\_\_\_\_ unless such other location is mutually agreed upon.

6.8 Unavoidable Delays. Neither party shall hold the other responsible for damages or delays in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the reasonable control of the other party or its employees and agents.

6.9 Changes in the Services. The Owner may make changes in the scope of the Services to be provided by Consultant hereunder ("Additional Services"), which changes shall be evidenced by a written Amendment signed by both parties. Notwithstanding any disputes between the parties relating to a change directed by the Owner, Consultant shall timely perform such change and thereafter seek any additional cost or time extension. If such changes materially affect the Services, the Consultant's compensation shall be adjusted by negotiation on the basis of the fee established for the original Services. In the event any change in the Services affects the completion date specified in Article 3, such completion date shall be adjusted as agreed upon by the parties and documented in a written Amendment to this Agreement. The Consultant shall not commence any Additional Services or make any changes in the Services without the prior written consent of the Owner.

Prior to performing any extra work or Additional Services, Consultant shall provide written notice to the Owner within ten (10) days of becoming aware of the need for changes to its Services required due to circumstances beyond the Consultant's control. Consultant's failure to provide timely written notice as required under this Section shall constitute a waiver of Consultant's right to seek a change in compensation or the time for performance of its obligations under this Agreement. Consultant shall not proceed to perform Additional Services until Consultant receives written direction to Consultant to perform said Additional Services.

Consultant shall not be entitled to seek or recover monies for Additional Services or extensions of time that are caused by or related to Consultant's, its consultants' or subconsultants' breach of contract, negligence, errors, omissions and/or defects in its Services.

6.10 Instruments of Service. Upon payment by the Owner of the amount properly due from the Owner to the Consultant pursuant to this Agreement, all drawings, specifications and other documents (collectively, the "Instruments of Service") with respect to which payment has been made shall be the property of the Owner and the Consultant shall cause all Instruments of Service prepared by the Consultant's consultants to be the property of the Owner. If this Agreement is terminated pursuant to the provisions of this Agreement, all Instruments of Service which have been prepared shall be the property of the Owner, whether or not the Project is executed, upon the payment by the Owner to the Consultant of all

amounts properly due from the Owner to the Consultant pursuant to the terms of the Agreement. Notwithstanding the Owner's ownership of the Instruments of Service, the Consultant and the Consultant's consultants shall be entitled to retain reproducible copies of the Instruments of Service for record purposes. If either: (i) the Instruments of Service are not complete and the Owner uses the Instruments of Service for any use without engaging the Consultant to perform architectural or engineering services with respect thereto, or (ii) if the Instruments of Service are complete and the Owner engages another licensed architect with respect to any modification of or addition to the Project, the Owner hereby agrees to and shall indemnify and hold harmless the Consultant from any claim, suit or liability arising out of such use of the plans.

6.11 Patents and Copyrights. Consultant shall assume all costs arising from the use of patented or copyrighted materials, including, but not limited to, equipment, devices processes and software programs used or incorporated in the work performed under this Agreement. Consultant shall defend, indemnify and hold Owner, its officers, directors, agents, employees, representatives and assignees harmless from and against all claims, demands, suits, causes of action and/or proceedings of every nature for or on account of the use of any patented or copyrighted materials

## ARTICLE 7 - SPECIAL PROVISIONS

7.1 Insurance. Prior to the commencement of its Services hereunder, Consultant shall, at his own cost and expense, maintain in full force and effect during the term of this Agreement, the following policy or policies of insurance.

7.1.1 Commercial General Liability insurance with a limit of not less than of \$1,000,000 per occurrence and \$2,000,000 in aggregate or actual limits carried, if greater.

7.1.2 Commercial Automobile Liability insurance on all owned hired and non-owned vehicles used in connection with the Services with minimum limits of \$1,000,000 combined single limits for Bodily Injury and Property Damage, per occurrence.

7.1.3 Workers' Compensation Insurance in accordance with the provisions of the Workers' Compensation Act of the State in which the Project is located, for all of the Consultant's employees to be engaged in providing the Services under this Agreement and Employers Liability Insurance with a limit of not less than \$500,000 or actual limits carried if greater, and, if any portion of the Work is sub-consulted, the Consultant shall require the sub-consultant similarly to provide the Workers' Compensation and Employers Liability Insurance for all of the latter's employees to be engaged in such Services.

7.1.4 Professional Liability insurance covering claims against Consultant, its partners, employees, officers or directors, arising out of errors and omissions in relation to Consultant's Services in the amount of not less than \$5,000,000 per claim and aggregate or actual limits carried if greater, to include full prior acts coverage under a claims-made policy. The Consultant shall maintain such coverage for the duration of the Project. The Consultant shall maintain such coverage for not less than six years after Substantial Completion of the Project and shall notify the Owner in writing if this coverage is materially altered, non-renewed, or canceled. The Consultant's obligation to carry such insurance shall survive the making of final payment under this Agreement.

7.1.5 Umbrella Liability Insurance which provides coverage in excess of General Liability, Auto Liability and Employers Liability with limits of not less than \$1,000,000 per occurrence.

Any insurance limits required by this Agreement are minimum limits only and not intended to restrict the liability imposed on the Consultant for Services and/or Additional Services performed under this Agreement or the Consultant's indemnification obligations under Section 7.3. In the event that the Consultant's insurance coverages required herein afford broader coverages and/or limits higher than the minimum coverage and limit amounts specified hereunder, such broader terms and higher limits shall insure or be available to the Owner and each of the Owner Indemnitees, including, without limitation, in their capacities as additional insured parties under any applicable policies. The general liability and professional liability insurance shall include an endorsement providing for a separate general aggregate limit applicable to this Project only.

The Consultant shall, as part of Services, cause each of its consultants and/or subconsultants to purchase and maintain the same insurance coverages as those set forth above, provided, however, that Consultant may request that such coverages have lower minimum limits of liability than those set forth above, as long as, in each instance, such limits are commensurate with the risks presented by the applicable consultant's operations at the Project site and are approved in writing by the Owner at its sole discretion. Consultant shall require all consultants and/or subconsultants to have such insurance in place prior to the commencement of their services.

All policies required by this Agreement shall provide that coverage cannot be modified to reduce coverage or cancelled without thirty (30) days prior written notice to the Owner. If the reason for modification or cancellation is non-payment of premiums by Consultant, then coverage may be modified or cancelled upon ten (10) days prior written notice.

All insurance required under this Agreement shall be considered primary to any insurance maintained by the Owner. All policies shall include waivers of subrogation in favor of Owner and its insurers.

All insurance required under this Agreement shall be purchased and maintained from reputable, financially sound insurance companies lawfully qualified to do business in the location of the Project and otherwise reasonably acceptable to Owner.

7.2 Certificates of Insurance. Prior to commencement of the Services hereunder, the Consultant shall furnish the Owner with Certificate(s) of Insurance and endorsements evidencing the coverages required by Section 7.1. The Owner and its lenders, shall be named as an additional insured on the policies specified in Section 7.1.1 and 7.1.2. Should any of the insurance policies evidenced on such Certificates of Insurance be cancelled or non-renewed, the Consultant shall promptly obtain new insurance in keeping with the above requirements and immediately provide new Certificates of Insurance to Owner.

7.3 Indemnity. To the fullest extent permitted by law, the Consultant agrees to indemnify and hold harmless the Owner, its respective agents, representatives, affiliates, officers, directors, servants and employees (the "Owner Indemnitees") of and from any and all liability, claims, liens, demands, actions damages, suits, proceedings and causes of action whatsoever, arising out of or related to any loss, costs, damage or injury, including death, of any person or damage to property of any kind to the extent caused by the failure of Consultant to perform its obligations and duties in accordance with this Agreement and for its negligent acts, errors, omissions or willful misconduct of the Consultant or its failure to comply with Applicable Laws, or that of its employees, officers, subcontractors, subconsultants, anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, whether contractual or otherwise, while engaged in any activity associated with the Services or related thereto specific to this

Agreement and the scope of Services described herein. Owner and Consultant intend by this provision to create an indemnity provision based on comparative fault or negligence.

Where Consultant and Owner are found jointly negligent, indemnity shall be proportioned in accordance with negligence. Owner acknowledges that, in the event of a claim arising out of or resulting from any negligent error, omission or act of the Consultant, its agents, consultants, servants or employees in the performance of professional services under this Agreement, each of the Owner Indemnitees will provide its own defense and pay for its own attorneys' fees and other defense costs; however, if Consultant is determined to be liable pursuant to any non-appealable judgment with respect to such any such claim, then Consultant shall reimburse any and all Owner Indemnitees for their reasonable attorneys' fees and other defense costs.

The Consultant's indemnification obligations hereunder shall survive the expiration or earlier termination of this Agreement. Nothing in this Section shall constitute a waiver or limitation of any legal rights which Owner may have including, without limitation, the right to implied indemnity.

<sup>DS</sup> JB <sup>DS</sup> JAC ~~7.4 Total Construction Cost. Owner intends to develop a construction budget for the maximum total cost of construction of the Project (the "Total Construction Cost"), and shall notify the Consultant of the Total Construction Cost on a timely basis so as to permit the Consultant to take the Total Construction Cost into account in connection with the Consultant's design of the Project. For purposes hereof, the Total Construction Cost will include the entire cost to the Owner of labor and materials involved in construction of all elements and components of the Project, including a reasonable construction cost contingency and any fee payable to the construction manager.~~

~~7.4.1 The Consultant agrees to use commercially reasonable efforts to design the Project so that it can be constructed for not more than the Total Construction Cost.~~

~~7.4.2 At any phase of the design of the Project after establishment of the Total Construction Cost, the Consultant shall assist the Owner and its consultants in the preparation of, a detailed statement of the probable construction cost of the Project pursuant to a Construction Contract (a "Statement of Probable Construction Cost"). The Consultant shall convey to the Owner and its consultants all necessary information and data to allow them to develop an accurate Statement of Probable Construction Cost. The Consultant shall review any Statement of Probable Construction Cost with the Owner and its consultants and assist the Owner in making decisions on the Project's scope and specific components within the Project.~~

~~7.4.3 In the event that (i) any Statement of Probable Construction Cost exceeds the Total Construction Cost at any phase of design, or (ii) the Total Construction Cost is exceeded by the guaranteed maximum price submitted to Owner by a competent contractor or at-risk construction manager, then Consultant shall meet, and cause its consultants to meet, with Owner and Owner's consultants to review the design of the Project, including but not limited to components and systems within the Project, to identify modifications to the design and any such components and systems that will allow the Project to be constructed for not more than the Total Construction Cost, while maximizing the level of quality and functionality of Owner's desired program within such cost. Without limitation, the Consultant will review the benefit of reasonable modifications, the impact on the design and the impact to the Owner's program, and advise the Owner of the potential benefits and detriments of such modifications. If and to the extent directed to do so by Owner in writing, Consultant shall revise, or cause its consultants to revise, the design documents for the Project, either in the then current or the subsequent phase of design.~~

~~7.4.4 Subject to changes in scope, which shall be governed by the provisions of Section 6.9 hereof, all Services performed by Consultant under this Section 7.4 shall constitute Services under this Agreement, and neither Consultant nor any of its consultants shall be entitled to any additional compensation or reimbursement of expenses in connection with such revisions, unless the changes to Contract Documents result from (1) scope changes as directed in Section 6.9 by the Owner or the at-risk contractor that materially impact costs, (2) market fluctuation in the price of construction goods and services that could not have been reasonably anticipated by Consultant, (3) revisions to the Contract Documents directed by the Owner or at-risk contractor that resulted in an increase in the Total Construction Cost, or (4) matters that could not be reasonably anticipated by Consultant subject to the standard of care set forth in Section 6.5 of this Agreement.~~

<sup>DS</sup> JLC <sup>DS</sup> JB

7.5 Records. The Consultant shall keep and maintain full, complete and detailed records of all of its costs and expenses, including reimbursable expenses, covered by Paragraph 4 hereof and hereby agrees to allow the Owner to inspect and audit all direct costs, materials, supplies, labor and other items of costs as invoiced. All such records, books and accounts shall be available for audit by the Owner for a period of five (5) years after completion of the Services hereunder, provided further that the Owner shall have the right to audit any items for a longer period if such items are subject to a period of adjustment extending more than five (5) years. Provisions of this paragraph shall be applicable to the books and records of consultants and subconsultants performing Services for the Consultant and the Consultant shall include such provisions imposing said obligations on its consultants and subconsultants in its subconsulting and other agreements. The Owner will treat all such books and records as confidential information and shall not disclose such information to third parties (other than its accountants or attorneys) without the Consultant's prior written consent.

7.6 Confidentiality. The Consultant shall not disclose or permit the disclosure of any confidential information, except as required in the performance of this Agreement, during the performance of this Agreement and for three (3) years subsequent to its termination, which confidential information concerns the Owner's operations, activities, business affairs, as well as all such information pertaining to the Owner's subsidiaries, affiliates and venture members. The Consultant shall require the same confidentiality of its consultants and subconsultants.

7.7 Rules and Regulations. All rules and regulations in effect at the site of the Project or access thereto including lists of employees, safety and conduct on the property shall be rigidly observed by the Consultant and its personnel, employees, consultants and subconsultants.

7.8 Notices. Any notice to be given by either party to the other pursuant to this Agreement or pertaining to this Agreement shall be mailed, certified mail, return receipt requested, postage prepaid, to the address of the respective parties as follows:

OWNER: Maple Multi-Family Land SE, L.P.  
3715 Northside Pkwy, Suite 1-200  
Atlanta, GA 30327  
Attention: Jim Berardinelli  
Phone: 404-496-6142

CONSULTANT: Kimley-Horn and Associates, Inc.  
355 Alhambra Circle, Suite 1400  
Coral Gables, FL 33134

Attention: Julio Collier, P.E.  
Phone: 305-673-2025

Either party may change the address to which notice is to be given by notice so given.

7.9 Equal Employment. The Consultant shall not discriminate in the hiring of its personnel or in its subcontracts on account of race, color, religion or national origin and shall abide by all Federal and State Equal Employment laws and regulations in effect regarding such hiring.

7.10 Status of Consultant. The Consultant shall be an independent contractor and not an employee of the Owner.

7.11 No Third Party Beneficiaries. Nothing contained in this Agreement shall constitute a contractual relationship nor is it intended to bestow any benefits with or upon a third party against the Owner or its lender.

7.12 Successors and Assigns. All of the terms, conditions and provisions of this Agreement shall inure to the benefit of, and be binding upon the Owner, Consultant and their respective successors and assigns provided however, that no assignment of the duties or benefits under this Agreement shall be made without the written consent of the Owner.

7.13 Amendments. This Agreement may be modified only by a writing signed by the parties hereto.

7.14 Integration. This Agreement is the parties' final, complete and exclusive expression of their agreement and supersedes any and all other agreements, either oral or written with respect to the subject matter of this Agreement. No other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding. This Agreement shall be construed as the product of a joint effort between the parties hereto. Captions and headings of the various parts and paragraphs of the Agreement are for reference only, and the words contained therein shall in no way be used to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

7.15 Owner's Rights and Remedies. The Owner's rights and remedies under this Agreement are cumulative to one another and to Owner's rights and remedies at law.

7.16 Severability. If any clause or provision of this Agreement shall be held to be invalid in whole or in part, then the remaining clauses and provisions or portions thereof shall nevertheless be and remain in full force and effect.

7.17 Legal Interpretation. The laws of the state of the location of the Project shall govern as to the interpretation, validity and effect of this Agreement.

7.18 Authority. Each person signing this Agreement represents that he or she has the authority to do so on behalf of the party for whom he or she is signing.

[SIGNATURES BEGIN ON NEXT PAGE]

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

OWNER	CONSULTANT
<p>Maple Multi-Family Land SE, L.P. By: Maple Multi-Family Development DocuSigned by: By: <u>Jim Berardinelli</u> Name: Jim Berardinelli Title: Vice President</p>	<p>Kimley-Horn and Associates, Inc. DocuSigned by: By: <u>Julio A. Collier</u> Name: Julio Collier, P.E. Title: Vice President</p>

EXHIBIT A  
SCOPE OF SERVICES

CONTRACT NO. 4007-040-001

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ALEXAN CRAFTS

The scope of work is for the design, regulatory assistance, and construction phase services for the on-site private infrastructure and utility services only. Any offsite and/or public infrastructure design, permitting, and construction phase services shall be as an additional service.

**SCOPE OF SERVICES**

Consultant will provide the services specifically set forth below based upon the above project understanding.

**Task 1 - CIVIL ENGINEERING ONSITE CONSTRUCTION DOCUMENTS**

***Sub-Task 1.1 – Schematic Design Drawings***

During the schematic design phase of the project, Consultant shall:

1. Establish lowest FFE and lowest proposed site grade criteria.
2. Submit a Sunshine State One Call of Florida (SSOCOF) Design Ticket to determine utility owners with facilities within and adjacent to the Project area.
3. Submit requests to all SSOCOF responders to obtain as-built drawings for facilities within and adjacent to the project area.
4. Submit a request for water and sewer points of connection to Miami-Dade Water and Sewer Department (MDWASD) for Water Service and City of Coral Gables (CoG) for sewer service.
5. Provide Site civil input on the site plan through the form of mark-ups and sketches, up to two (2) rounds.
6. Coordinate up to two (2) times with the project surveyor to lay out anticipated right-of-way dedications and easements for the project.
7. Create up to two (2) truck and car maneuverability exhibits using AutoTURN.

*If any unforeseen concerns arise, this may require additional meetings and investigation. This will be considered an additional service and discussed with the Owner prior to proceeding. Consultant recommends that the Owner and/or Owner's representative/land use attorney attend all agency meetings, if possible.*

Based on the site plan developed by the Architect during the concept phase of this project, Consultant will prepare schematic level site-civil drawings and other documents illustrating general scope, scale and relationship of the project components. This assumes schematic design for the entire project will be done as a single phase.

### ***Sub-Task 1.2 – Design Development Drawings***

Based on the schematic design approved by the Owner, Consultant will prepare design development site-civil drawings illustrating the scope, scale and relationship of the project components.

During the design development task of the project, Consultant will perform the following services:

- Coordinate with the project team and agencies to develop civil plan components and identify challenges
- Review the survey for completeness
- Provide a list of survey and geotechnical requirements

The plan set summary of estimated sheets for the design development drawings may consist of:

Cover Sheet and General Notes	2
Key Sheet and Overall Site Plan	2
Demolition Notes and Details	2
Demolition Plans	2
Geometry, Marking, and Signage Plans	2
Marking and Signage Details	1
Onsite Paving, Grading and Drainage Plans	2
Onsite Paving, Grading and Drainage Details	2
Onsite Water and Sewer Plans	2
Onsite Water and Sewer Profiles and Details	2
<b>Estimated Total Number of Sheets</b>	<b>19</b>

Consultant will prepare design development plans for coordination with other consultants and review by the Owner. After the Owner's consent to the general design intent during this task any changes that create a significant re-design will be addressed as additional services.

**Deliverables: Hard copies of design development plans and details at appropriate scale.**

### ***Sub-Task 1.3 – Construction Documents***

This task includes those designated services necessary to prepare from the Owner-approved design development documents further drawings, specifications and related documents setting forth, in detail, the requirements for construction of the project. Consultant will also prepare the drainage report and computations as required for storm water permitting. Specifications will be provided as notes on the plans. Preparation of CSI format contract specifications is not included in this scope of services.

The plan set of estimated sheets for the onsite contract documents may consist of:

Cover Sheet and General Notes	2
Key Sheet and Overall Site Plan	2
Demolition Notes and Details	2
Demolition Plans	2
Geometry, Marking, and Signage Plans	2
Marking and Signage Details	1
Onsite Paving, Grading and Drainage Plans	2

Onsite Paving, Grading and Drainage Details	2
Onsite Water and Sewer Plans	2
Onsite Water and Sewer Profiles and Details	2
<u>Utility Coordination Plan</u>	<u>2</u>
<b>Estimated Total Number of Sheets</b>	<b>20</b>

**Deliverables: Hard copies of contract documents and details at appropriate scale; one (1) bid submittal and one (1) submittal for construction contracting. Color copies of the report will be provided to the Owner along with a digital copy in Adobe Acrobat format.**

## **Task 2 – CIVIL ENGINEERING REGULATORY ASSISTANCE**

Based on the “Project Understanding”, Consultant will prepare permit applications with supporting documentation for the Owner’s signature and subsequent transmittal governmental agencies limited to the following:

1. Miami-Dade County
  - a. Water and Sewer Department (MDWASD) water service plan review
  - b. Division of Environmental Resources Management (DERM) Storm water permit for on-site, surface stormwater management system review and approval.
  - c. DERM Sewer no permit required plan review
  - d. DERM Water plan review
2. Florida Department of Environmental Protection (FDEP)
  - a. Water – No permit required letter (on-site system)
  - b. Sewer – No permit required letter (on-site system)
3. Florida Department of Health:
  - a. Water distribution system no permit required letter
4. City of Coral Gables
  - a. Fire Department Fire flow test request
  - b. Fire Prevention Bureau Plan Review
  - c. Sewer service plan review
  - d. Public works utility permit plan review
  - e. Building Permit (single phase of construction / one master permit) via Owner’s Permit Expeditor

*This task specifically excludes any permits related to environmental or coastal concerns. If separate or additional submittals are requested by any of the jurisdictional agencies, the Owner or any of the Owner’s consultants, said submittals will be made as an additional service. Permit fees and impact fees are not included.*

*Consultant will address reasonable comments or agency requests for additional information (RAIs) as part of this task. Both additional meetings with reviewers and new, additional comments, after a second review, and/or deviations from the original, intended design, will be addressed as an additional service.*

*After Consultant has submitted permit applications and received comments from the applicable regulatory agencies, Consultant will upgrade the permit documents to full contract documents. The plans will be prepared reflecting comments and/or conditions set forth by the regulatory agencies during the permitting process. Design or Value Engineering negotiations will be performed as an additional service.*

### **Task 3 – DEVELOPMENT REVIEW COMMITTEE (DRC) ASSISTANCE**

Consultant will assist the Owner in submitting plans prepared as part of the “Construction Documents” task to the City of Coral Gables’ Development Review Committee (DRC) for the purposes of assisting in obtaining site plan approval for the Project. As part of this task, Consultant will:

- Attend up to four (4) meetings/hearings along with the Owner and their representatives for the purpose of presenting the project and addressing DRC concerns and/or comments;
- Revise the plans and prepare comment response letters in coordination with the Owner’s design team for up to two (2) rounds of reasonable comments on the plans submitted for review;
- It is assumed that the Owner will not seek any variances/waivers as part of the Project. Services associated with obtaining variance or waivers will be as an additional service;
- If the Owner seeks to plat/re-plat the project site, services associated with such platting, such as subdivision improvement plans, etc. shall be as an additional service.

### **Task 4 – DESIGN MEETINGS AND COORDINATION**

As requested by the Owner, Consultant will attend project Design and Coordination meetings on an hourly basis not to exceed the budgeted amount without prior authorization from the Owner.

### **Task 5 – ONSITE LIMITED CIVIL ENGINEERING CONSTRUCTION PHASE SERVICES**

Consultant will provide professional construction phase services for the project for the purpose of providing assistance to Owner during construction up to the specified budget. Upon reaching the specified labor budget Consultant will continue to provide services at our then-hourly rates and seek additional approval for continuation of services.

The budget established for the services is based upon the assumed scope of work below, however actual project requirements may be more or less than estimates below:

- **Pre-Construction Conference** - Attend pre-construction Conference prior to commencement of work at the site.
- **Attend up to ten (10) conference calls or meetings during construction.**
- **Visits to Site and Observation of Construction (up to fifteen (15) site visits at up to two hours each)**
  - Provide onsite construction observation services during the construction phase of the subject project. Observations will vary depending on the type of work being performed by the contractors, the location, and the contractors' schedules.
  - Make visits to the site at intervals as directed by Owner in order to observe the progress of the work. Such visits and observations by Consultant are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on Consultant’s exercise of professional judgment. Based on information obtained during such visits and such observations, Consultant will determine if Contractor's work is generally proceeding in accordance with the contract documents, and Consultant shall keep Owner informed of the general progress of the work.

- The purpose of Consultant's visits to the site will be to enable Consultant to better carry out the duties and responsibilities assigned in this Agreement to Consultant during the construction phase by Owner, and, in addition, by the exercise of Consultant's efforts, to provide Owner a greater degree of confidence that the completed work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. Consultant shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall Consultant have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the work. Accordingly, Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.
- **Recommendations with Respect to Defective Work** - Recommend to Owner that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, Consultant believes that such work will not produce a completed Project that conforms generally to Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
- **Clarifications and Interpretations** - Issue necessary clarifications and interpretations of the Contract Documents to Owner as reasonably requested. Such clarifications and interpretations will be consistent with the intent of the Contract Documents. Field Orders authorizing variations from the requirements of the Contract Documents will be made by Owner.
- **Change Orders** - Recommend change orders to Owner, as appropriate. Review and make recommendations related to Change Orders submitted or proposed by the Contractor.
- **Shop Drawings and Samples** - Review and approve or take other appropriate action in respect to a reasonable number of Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such review and approvals or other action will not extend to accuracy or completeness of details or construction means or methods. Consultant is not responsible for any deviations from the Contract Documents not brought to Consultant's attention in writing by the Contractor (site/ civil submittals only).
- **Substitutes and "or-equal"** - Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.
- **Inspections and Tests** - Require such special inspections or tests of Contractor's work as Consultant deems appropriate, and receive and review certificates of inspections within Consultant's area of responsibility or of tests and approvals required by laws and regulations or the Contract Documents. Consultant's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals

comply with the requirements of the Contract Documents. Consultant shall be entitled to rely on the results of such tests and the facts being certified.

- **Disagreements between Owner and Contractor** - As necessary, render written decision on all claims of Owner and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, Consultant shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
- **Substantial Completion** - Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list. If after considering any objections of Owner, Consultant considers the work substantially complete, Consultant shall notify Owner and Contractor.
- **Final Notice of Acceptability of the Work** - Conduct a final site visit to determine if the completed work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Consultant may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Consultant shall also provide a notice that the work is generally in accordance with the contract documents to the best of Consultant's knowledge, information, and belief and based on the extent of the services provided by Kimley- Horn under this Agreement and based upon information provided to Consultant upon which it is entitled to rely.
- **Limitation of Responsibilities** - Consultant shall not be responsible for the acts, means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Consultant shall not have the authority or responsibility to stop the work of any Contractor.

## ASSUMPTIONS AND LIMITATIONS

- The project will be designed, permitted and constructed in one phase, and as such one permit package will be prepared and submitted, depicting a one phase project.
- Offsite improvements, such as signal modifications, lane alignments, turn lanes, offsite water, sewer and/or drainage improvements are not considered in this scope of services, but can be provided as additional services.
- For this proposal Consultant assumes that adjacent, existing water and sewer mains are of sufficient size, depth and capacity to serve the project. If the utility requires infrastructure upgrades or extensions to the property, these will be considered an additional service.
- The existing lift station that serves the area is assumed to have sufficient capacity, and no lift station improvements/upgrades, public or private are contemplated.
- Consultant will design at-grade, non-structural concrete and asphalt paving, and on-site surface drainage improvements. Services associated with pilings, retaining walls and elevated decks are not included in this scope of services.
- The Owner will use a land use attorney familiar with the City of Coral Gables to serve the project. Services associated with platting are not included in this scope of services.

- The proposed development of the site will not require any archaeological or historical evaluations or studies under this scope of services.
- All environmental and coastal permitting and coordination will be done by others or can be provided as an additional service.
- Consultant will not be required to attend or participate in exhaustive or continuous onsite, office-based meetings, and/or conference calls that are not customary to the services provided by the consultant.
- Services associated with opinions of probable cost are assumed to be performed by others.
- Basement, underground parking or other subterranean building elements are not part of this project.
- The project drawings will be produced in AutoCAD “dwg” format. This scope of services does not include the development of a 3-D Building Information Model (BIM).
- Services associated with LEED certification are not part of this scope of services.

### **ADDITIONAL SERVICES**

Any services not specifically provided for in the above scope will be billed as additional services and performed at Consultant’s then current hourly rates, only with prior written approval from the Owner.

### **RESPONSIBILITIES OF OWNER**

In addition to other responsibilities set out in this Agreement, the Owner shall:

- Respond in a timely manner to all requests for information from Consultant
- Provide all required information related to the Project requested by the Consultant, including, but not limited to:
  - A topographic survey of the subject property and areas of off-site improvements prepared, signed and sealed by a Florida licensed surveyor in hard copy and electronic AutoCAD format.
  - Geotechnical Engineering Report(s) as requested by Consultant, prepared by a Florida licensed engineer

Consultant shall be entitled to rely on the completeness and accuracy of all information provided by the Owner or the Owner’s consultants or representatives.

### **SCHEDULE**

Consultant will provide services as expeditiously as practicable with the goal of meeting the mutually agreed-upon schedule.

End of Exhibit

EXHIBIT B

CONTRACT NO. 4007-040-001

ALEXAN CRAFTS

SCHEDULE OF SERVICES

The Consultant shall diligently and continuously perform the tasks authorized in Exhibit "A" so as to maintain the contractual project schedule.

**Kimley-Horn and Associates, Inc. to provide a schedule of deliverables.**

EXHIBIT C  
LIST OF CONSULTANTS  
ALEXAN CRAFTS

Consultant shall retain the following subconsultants for the Project:

<u>Discipline</u>	<u>SubConsultant</u>
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Consultant shall not remove or substitute a subconsultant without Owner's prior written approval which shall not be unreasonably withheld.

EXHIBIT D-1  
CONTRACT NO. 4007-040-001  
ALEXAN CRAFTS

**\*\*\*NOTE: PLEASE NOTE THAT THESE LIEN WAIVER FORMS VARY FROM STATE TO STATE.  
CONSULT LEGAL TO INSURE YOU HAVE THE CORRECT AND CURRENT FORM**

**DESIGN PROFESSIONAL'S PARTIAL LIEN WAIVER**

Design Professional: \_\_\_\_\_

Owner: \_\_\_\_\_

Project: \_\_\_\_\_

- 1. Original Contract Amount: \$ \_\_\_\_\_
- 2. Approved Extra or Additional Services : \$ \_\_\_\_\_
- 3. Adjusted Contract Amount: \$ \_\_\_\_\_  
(line 1 plus 2)
- 4. Completed and Payable to Date: \$ \_\_\_\_\_
- 5. Less Previous Payments: \$ \_\_\_\_\_
- 6. Current Amount Due: \$ \_\_\_\_\_  
(line 4 less line 5)
- 7. Pending Extra or Additional Services: \$ \_\_\_\_\_
- 8. Disputed Claims: \$ \_\_\_\_\_

The undersigned, who has a contract with the above-named Owner for furnishing professional services for the erection, alteration, repair or removal of a building or structure or other improvement of real property known and identified as located in \_\_\_\_\_ (city or town), \_\_\_\_\_ County, State of \_\_\_\_\_ and owned by the above-named Owner, upon receipt of \_\_\_\_\_ (\$ \_\_\_\_\_) in payment of an invoice dated \_\_\_\_\_ and in consideration of any and all past payments received from the Owner in connection with the Project, does hereby acknowledge and agree that it has been paid all sums due for all professional services furnished by the undersigned to or in connection with the Project and the undersigned hereby releases, discharges, relinquishes and waives any and all claims, suits, liens and rights under any Notice of Identification, Notice of Contract or statement of account with respect to the Owner or the Project on account of any professional services furnished through the following date \_\_\_\_\_, 20\_\_ (payment period), except for unpaid agreed or pending extra or additional services, and disputed claims as stated above.

The undersigned individual represents and warrants that he is the duly authorized representative of the undersigned, empowered and authorized to execute and deliver this document on behalf of the undersigned and that this document binds the undersigned to the extent that the payment referred to herein is received.

The undersigned represents and warrants that it has paid in full each and every consultant with whom undersigned has dealt in connection with the Project, except such amounts as are the subject of the above-mentioned invoice dated \_\_\_\_\_, 20\_\_ (which amounts the undersigned agrees shall be paid promptly upon the receipt thereof), and the undersigned agrees at its sole cost and expense to indemnify and hold harmless the Owner against any claims, demands, suits, disputes, damages, costs, expenses (including reasonable attorneys' fees), liens and/or claims of lien made by such consultants arising out of or in any way related to the Project. This document is to take effect as a sealed instrument.

Signed under the penalties of perjury as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

DESIGN PROFESSIONAL  
(Name of Individual/Company  
Releasing Lien)

Signature and Printed Name of  
Individual Signing this Lien Waiver

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

WITNESS:

\_\_\_\_\_

Name:

Title:

Dated: \_\_\_\_\_

EXHIBIT D-2

CONTRACT NO. 4007-040-001

ALEXAN CRAFTS

**\*\*\*NOTE: PLEASE NOTE THAT THESE LIEN WAIVER FORMS VARY FROM STATE TO STATE. CONSULT LEGAL TO INSURE YOU HAVE THE CORRECT AND CURRENT FORM**

**DESIGN PROFESSIONAL'S CONSULTANT'S PARTIAL LIEN WAIVER**

Design Professional: \_\_\_\_\_

Consultant: \_\_\_\_\_

Owner: \_\_\_\_\_

Project: \_\_\_\_\_

- 1. Original Contract Amount: \$ \_\_\_\_\_
- 2. Approved Extra or Additional Services : \$ \_\_\_\_\_
- 3. Adjusted Contract Amount: (line 1 plus 2) \$ \_\_\_\_\_
- 4. Completed and Payable to Date: \$ \_\_\_\_\_
- 5. Less Previous Payments: \$ \_\_\_\_\_
- 6. Current Amount Due: (line 4 less line 5) \$ \_\_\_\_\_
- 7. Pending Extra or Additional Services: \$ \_\_\_\_\_
- 8. Disputed Claims: \$ \_\_\_\_\_

The undersigned, who has a contract with the above-named Design Professional for furnishing professional services for the erection, alteration, repair or removal of a building or structure or other improvement of real property known and identified as located in \_\_\_\_\_ (city or town), \_\_\_\_\_ County, State of \_\_\_\_\_ and owned by the above-named

Owner, upon receipt of \_\_\_\_\_ (\$\_\_\_\_\_) in payment of an invoice dated \_\_\_\_\_ and in consideration of any and all past payments received from the Design Professional in connection with the Project, does hereby acknowledge and agree that it has been paid all sums due for all professional services furnished by the undersigned to or in connection with the Project and the undersigned hereby releases, discharges, relinquishes and waives any and all claims, suits, liens and rights under any Notice of Identification, Notice of Contract or statement of account with respect to the Owner, the Project and/or against the Design Professional on account of any professional services furnished through the following date \_\_\_\_\_, 20\_\_ (payment period), except for unpaid agreed or pending extra or additional services, and disputed claims as stated above.

The undersigned individual represents and warrants that he is the duly authorized representative of the undersigned, empowered and authorized to execute and deliver this document on behalf of the undersigned and that this document binds the undersigned to the extent that the payment referred to herein is received.

The undersigned represents and warrants that it has paid in full each and every subconsultant with whom undersigned has dealt in connection with the Project, except such amounts as are the subject of the above-mentioned invoice dated \_\_\_\_\_, 20\_\_ (which amounts the undersigned agrees shall be paid promptly upon the receipt thereof), and the undersigned agrees at its sole cost and expense to defend, indemnify and hold harmless the Owner against any claims, demands, suits, disputes, damages, costs, expenses (including reasonable attorneys' fees), liens and/or claims of lien made by such subconsultants arising out of or in any way related to the Project. This document is to take effect as a sealed instrument.

Signed under the penalties of perjury as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CONSULTANT  
(Name of Individual/Company  
Releasing Lien)

Signature and Printed Name of  
Individual Signing this Lien Waiver

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

WITNESS:

\_\_\_\_\_

Name:

Title:

Dated: \_\_\_\_\_

EXHIBIT D-3

CONTRACT NO. 4007-040-001

ALEXAN CRAFTS

**\*\*\*NOTE: PLEASE NOTE THAT THESE LIEN WAIVER FORMS VARY FROM STATE TO STATE. CONSULT LEGAL TO INSURE YOU HAVE THE CORRECT AND CURRENT FORM**

FINAL AFFIDAVIT AND WAIVER OF LIEN BY CONSULTANT

STATE OF \_\_\_\_\_

COUNTY/CITY OF \_\_\_\_\_

Personally appeared before me, the undersigned authority in and for said State and County, (name), \_\_\_\_\_ (title), of, \_\_\_\_\_ (which firm is hereinafter called "Consultant"), who being duly sworn on oath that:

1. The Consultant has paid in full all debts, obligations and liabilities due or to become due by the Consultant to all parties (including, without limitation, all debts, obligations and liabilities for labor, materials, equipment or services, and for all local, State or Federal taxes or charges, and for any damages to others) which have been incurred by the Consultant, or which are claimed by others to have been incurred by the Consultant, or which have arisen in conjunction with labor and/or materials furnished by the Consultant under the Agreement with \_\_\_\_\_ (Owner) except as follows:

2. This affidavit and waiver is made and given upon and in exchange for final payment of all sums due by Owner under the terms of said Agreement, and in consideration therefore the Consultant waives and releases any and all claims and any and all liens for rights to liens, against Owner for amounts due and owing to the Consultant by virtue of the performance by the Consultant of said Agreement, or the furnishing by the Consultant of the labor and/or materials described above, or for any other reason and holds Owner harmless from and of any and all loss, cost, damage and expense of any claims, including attorneys' fees which they may incur or suffer as result of any liens or claims of liens for labor, materials or services.

The above statements are made by undersigned individually and on behalf of the Consultant.

\_\_\_\_\_  
(Signature)

Sworn to and subscribed before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

.

\_\_\_\_\_

(Notary Public)

My Commission expires \_\_\_\_\_

EXHIBIT D-4  
CONTRACT NO. 4007-040-001  
ALEXAN CRAFTS

**\*\*\*NOTE: PLEASE NOTE THAT THESE LIEN WAIVER FORMS VARY FROM STATE TO STATE. CONSULT LEGAL TO INSURE YOU HAVE THE CORRECT AND CURRENT FORM**

**FINAL AFFIDAVIT AND WAIVER OF LIEN BY CONSULTANT**

STATE OF \_\_\_\_\_

COUNTY/CITY OF \_\_\_\_\_

Personally appeared before me, the undersigned authority in and for said State and County, (name), \_\_\_\_\_ (title), of, \_\_\_\_\_ (which firm is hereinafter called "Consultant"), a consultant to \_\_\_\_\_ - (the "Design Professional"), who being duly sworn on oath that:

1. The Consultant has paid in full all debts, obligations and liabilities due or to become due by the Consultant to all parties (including, without limitation, all debts, obligations and liabilities for labor, materials, equipment or services, and for all local, State or Federal taxes or charges, and for any damages to others) which have been incurred by the Consultant, or which are claimed by others to have been incurred by the Consultant, or which have arisen in conjunction with labor and/or materials furnished by the Consultant as a consultant to and under a written agreement with the Design Professional (the "Agreement:") on the \_\_\_\_\_ (Project) except as follows:

2. This affidavit and waiver is made and given upon and in exchange for final payment of all sums due to Consultant under the terms of said Agreement, and in consideration therefor the Consultant waives and releases any and all claims and any and all liens for rights to liens, against the Design Professional and Owner for amounts due and owing to the Consultant by virtue of the performance by the Consultant of said Agreement, or the furnishing by the Consultant of the labor and/or materials described above, or for any other reason and holds the Design Professional and Owner harmless from and of any and all loss, cost, damage and expense of any claims, including attorneys' fees which they may incur or suffer as result of any liens or claims of liens for labor, materials or services.

The above statements are made by undersigned individually and on behalf of the Consultant.

\_\_\_\_\_  
(Signature)

Sworn to and subscribed before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

.

\_\_\_\_\_  
(Notary Public)

My Commission expires

EXHIBIT E

**CONSULTANT'S DRAW REQUEST**

CONTRACT NO. 4007-040-001

ALEXAN CRAFTS

See attached Sample Draw Request. Consultant's Draw Request Form will be sent upon final contract execution. An updated form will be sent monthly, thereafter.