

**INSURANCE FOR
AIA CONSTRUCTION CONTRACTS**

WILLIAM H. LOCKE, JR., *Austin*
Graves, Dougherty, Hearon & Moody

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William H. Locke, Jr.

Graves, Dougherty, Hearon & Moody, A Professional Corporation
401 Congress Ave., Suite 2700, Austin, Texas 78701
512.480.5736 Direct 512.480.5600 Main blocke@gdhm.com

EDUCATION: B.A., The University of Texas (1969); and J.D. with Honors, The University of Texas (1972).

PROFESSIONAL ACTIVITIES:

- Board Certified in Real Estate Law: Commercial Real Estate Law (1984 – 2020), Residential Real Estate Law (1984 – 2020) and Farm and Ranch Real Estate Law (1985 - 2020).
- Life Fellow, Texas Bar Foundation (1985 – 2020).
- Member of State Bar of Texas Real Estate Forms Manual Committee (2017 – 2020).
- Past Board Member of REPTL Council of the State Bar of Texas (2011 – 2013).
- Fellow of the Texas Bar College (33 Year Maintaining Member, 1987 - 2020). <https://texasbarcollege.com/>
- American College of Real Estate Lawyers (ACREL), Insurance Committee (2013 - 2020) Past Chairman.
- Past President (1987-1988), Corpus Christi Bar Association (and numerous of its offices and committees).
- Founding Director, Texas College of Real Estate Lawyers (1991).
- Member of State Bar of Texas Assignment of Rents Committee to draft and obtain State Legislature adoption of the “Texas Assignments of Rents Act”, Texas Property Code Chapter 64 (2010 - 2011).
- Member, Statewide Committee to Support Adoption of MCLE (1986).
- Member, American Bar Association (1972 - 2020).
- Planning Committees: Numerous Mortgage Lending Institutes and Advanced Real Estate Law and Drafting Courses.

HONORS:

- Texas Bar CLE, The Jerry Charles Saegert Award for "Best CLE Paper" for State Bar of Texas, Annual Advanced Real Estate Law Course 2018 *Texas Risk Management Manual* and 2011 *Annotated Insurance Specifications*.
- ACREL Fellow, (2007 – 2020).
- The Best Lawyers in America (Real Estate) (2000 - 2020).
- Who's Who in American Law; Who's Who in America; and Albert Nelson Marquis Lifetime Achievement Award.
- Texas Monthly, Super Lawyer - Real Estate (2001 - 2020).

COMMUNITY:

Austin:

- Conceived of and assisted in obtaining designation of the Mexic-Arte Museum as “The Official Mexican and Mexican American Fine Arts Museum of the State of Texas” (2003).
- Rotary Club, International Friendship Committee – founded Rotary Club in St. Petersburg, Russia (2002).
- Leadership Austin Class 25.
- Revived PDAP of Austin (2000).

Corpus Christi:

- Founder of PDAP Corpus Christi (Board President for many years) (1979 – 2000). <http://pdapcc.org/>
- Past Chairman, Zoning and Planning Commission of City of Corpus Christi (1984 – 1985).
- Rotary Club, conceived and chaired Community Drug Abuse Prevention Conference – selected by Rotary International to be 1 of 8 projects to be disseminated worldwide as a model project for local clubs (1985).
- Leadership Corpus Christi Class 13 (1984); conceived of and assisted in obtaining designation of the Corpus Christi Aquarium as the “Official Aquarium of the State of Texas” (1985).
- Past Director, Gulf Coast Council of Boy Scouts.
- Past Director, National Conference of Christians and Jews, Corpus Christi Chapter.

LAW RELATED PUBLICATIONS:

Books: State Bar of Texas: TEXAS FORECLOSURE MANUAL (Co-Editors Locke, Novak and Bastian 3rd Ed. 2014) (Co-Authors Locke, Novak and Bastian 2nd Ed. 2006) (Co-Authors Locke and Novak 1st Ed. 1991) and Co-Author of the 2008; 2010; 2012; 2015; 2017 Annual Supplements. <http://texasbarbooks.net/texas-foreclosure-manual/>

Numerous articles, webcasts and seminar presentations including the following, copies of which may be found and downloaded at <https://www.gdhm.com/attorneys/william-h-locke/>:

2020:

- ALI-ABA, PRACTICAL REAL ESTATE LAWYER, Locke and Maloney, *Top Ten Insurance Tips for Lenders* (2020) (pending publication).
- Webcast, ACREL, Locke and Johnson, *Waiver of Subrogation* (June, 2020).
- CLE article and presentation, State Bar of Texas, 42nd Advanced Real Estate Law Course, *Insurance for AIA Construction Contracts* (July 2020).

2019:

- Article, South Texas College of Law Houston, THE TEXAS JOURNAL OF BUSINESS LAW, Vol 47, Issue 4, *Insurance 101* (April 2019).
- Webcast, American Law Institute and American College of Real Estate Lawyers (ALI-ACREL, Locke and Johnson, *Waiver of Subrogation* (April 2019).

2018:

- CLE article and presentation, University of Texas School of Law, 52nd Mortgage Lending Institute, *Effective Risk Management* (Austin, Texas, Sept. 2018).
- CLE article and presentation, State Bar of Texas, 40th Advanced Real Estate Law Course, *Texas Risk Management Manual* (San Antonio, Texas, July 2018).
- CLE article and presentation, State Bar of Texas, 9th Annual Course – Essentials of Business Law: Protecting Your Business, *Insurance 101 and 201* (Houston, Texas, March 2018).
- CLE article and presentation, ALI CLE, *Commercial Leases – Allocating and Avoiding Risk* (February 2018).

2017:

- CLE article and presentation, New Mexico Bar Association, *Insurance for the Real Estate Law Practitioner* (Albuquerque, NM, Dec. 2017).
- CLE article and presentation, State Bar of Texas, 39th Advanced Real Estate Law Course, Locke and Comiskey, *Three Scofflaws Are on the Loose, But There is a New Sheriff in Town - (The Good, the Bad and the Ugly of CGL Endorsements - and the Solution)* (San Antonio, Texas, July, 2017).
- CLE article, Georgetown University Law Center, Advanced Commercial Leasing Institute, *Leases and Property Insurance* (March 2017).
- CLE article and presentation, State Bar of Texas, 28th Annual Advanced Real Estate Drafting Course, *Drafting Indemnities and their Relationship to Insurance* (Houston, Texas, March 2017).

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Thank you.

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INSURANCE FOR AIA CONSTRUCTION CONTRACTS

I. INTRODUCTION

A. AIA 10 Year Forms Cycle

Every 10 years (or so), AIA reviews and revises the AIA forms. AIA A101-2017 Exhibit A Insurance and Bonds is a “new” form promulgated in 2017.

B. Prior to 2017

Prior to 2017, the AIA forms system relied on the parties to craft insurance specifications. The AIA A201-2017 and other AIA forms contain general risk management provisions (e.g., indemnity and general insurance specifications). Accompanying this Article is an extract of the risk management provisions contained in the AIA A201-2017. Reference is made to those provisions in this Article. The prior AIA approach of generally referring to the types of claims to be insured by the parties many times resulted in parties giving little thought to the choices and many choices not being made. The prior AIA approach was a narrative approach that relied upon further insurance specifications which also tended to be narrative. Sometimes a result of the prior practice was to use terms that were the subject of many choices without specification of the details of coverage (e.g., “**additional insured**”) and references to terminology no longer used in the insurance industry (e.g., “**comprehensive general liability insurance**”, “**fire and extended coverage insurance**”).

C. 2017

The 2017 approach establishes a choice Form as to the most common insurance decisions between owners and contractors to assure that a decision is made. The 2017 approach is in the nature of a checklist or decision tree versus the prior approach which was a narrative approach. The resultant Form, although better than the prior practice, includes some specifications and language that is problematic, and does not contain all changes that would have been beneficial.

D. Modified AIA A101 Exhibit A Insurance Form

The attached Modified AIA A101 Exhibit A Form addresses many of these deficiencies. Additionally, this Form is annotated by this Article with explanations of the choices presented and

terminology used. The approach taken in the Modified Form is to reference specific industry forms and detailed terminology as to coverages required. This approach prompts discussion of insurance requirements while the parties are still in contract negotiation. It permits review of alternate coverages. Note that most insurers’ forms provide third party coverage only “*where required by written contract*”. Many insurer’s forms and some of the ISO promulgated forms limit coverage to “*not be broader than that which [the Named Insured] is required by contract to provide*” and “*Insurer will not pay more than the amount required by the contract*”. These circumstances emphasize the need to be specific in the written contract as to what is required.

E. ISO Forms

Reference is made in the AIA form and in this Modified AIA A101 Exhibit A Form to forms issued by the Insurance Service Office (“**ISO**”), a major provider of insurance forms and whose liability insurance forms are considered to be The Standard in the industry. These referenced forms are industry standard and are used by many insurers. As a result, they are a reasonable benchmark as to the coverage specified. There exists substantial case law throughout the states interpreting ISO forms. These cases provide a generally accepted understanding of the coverage reflected by ISO forms. ISO frequently issues new forms and issues updated editions of its forms. The Modified Form identifies particular ISO forms to be prohibited and identifies other common deleterious forms as prohibited.

F. “Protecting Persons” and “Protected Persons”

The terms “Protecting Persons” and “Protected Persons” are employed in the Modified Form. “**Protected Persons**” are the parties that are to be the additional insureds, the parties as to which the insurers subrogation claims are to be waived, the parties that are indemnitees, and the omnibus categories of derivative parties, such as officers, directors, employees, successors, and assigns. See the listing to be completed at § A.4.5 (“Protected Persons”) of the Modified Form. The Protected Persons are the parties to be protected by the Protecting Persons. “**Protecting Person**” will depend on the contract document, such as in the case of this AIA A101 Exhibit A, the Protecting Person is the Contractor.

G. ISO “Equivalents”

Specification that the Protecting Person’s insurance is to be a specific form or “*or equivalent*” is a common practice in issuing insurance specifications, including in the unmodified AIA Exhibit A. References to “or equivalent” in the Modified AIA A101 Exhibit A Form have been replaced by “*or more beneficial to the Protected Persons*” to permit the Contractor to provide insurance on non-ISO forms, but only if the proffered insurance is more beneficial to the Protected Persons than that as specified in the referenced ISO form. The practice of some insurers is to state on their forms that they “*Include Copyrighted Material of ISO with Its Permission*”. This gives an impression (possibly false) that the form provides the insureds equivalent or better protection than afforded by an unmodified ISO form. This type of alternate form is a manuscripted form. There tends to be little to no case law as to such modified forms. This circumstance leads to conflicts in interpretation and litigation. If a manuscripted form is proposed in lieu of the forms specified in this Article, further review is required.

H. Common Errors**1. Timing of Review of Insurance**

The builders risk insurance policy may not, and likely will not, be issued or available prior to commencement of construction. The actual policy in many cases is not issued and delivered for weeks or months after work has begun. The policy itself is the contract of insurance and contains extensive terms and conditions that should be reviewed and approved prior to commencement of work. A great level of “distress” can occur, if an assumed coverage in fact is not included in the policy, despite the best written insurance specifications, when a loss occurs before issuance of the policy. If construction will commence before delivery of the policy, one avenue may be to have the insurer deliver a specimen policy and specimen endorsements.

2. Bonds

See § A.3.4 (Performance and Payment Bond) below. AIA A101 Exhibit A calls for use of the AIA payment and performance bond forms. Some states (e.g., Texas) have a statutorily required payment bond form; and the AIA payment bond is not used in those states. Some states (e.g., Texas) afford the statutorily required payment bond special status protecting the Project from statutory mechanics and materialmen’s liens filed by unpaid subcontractors and suppliers (lifting their liens from the Project and

relegating them to a claim on the payment bond). The form of each bond needs to be preapproved for use by the Project’s construction loan lender.

II. OWNER’S INSURANCE**A. AIA A201 General Conditions**

Included with this Article is an extract of provisions in the AIA A201 General Conditions. These provisions are the injury and property damage risk management provisions, including the indemnities and insurance provisions. These provisions are set out to provide context for the provisions of the Exhibit A Insurance and Bonds.

B. Owner Provides Evidence of Insurance and, on Request, Copy of Policies - § A.2.1

Owner is required by the AIA form to provide Contractor with a copy of Owner’s insurance policies, if requested by Contractor. This requirement should be considered by Owner prior to entering into the construction contract and this provision adjusted to address what information Owner is willing to provide the Contractor.

C. Liability Insurance Owner’s “Usual” Liability Insurance - § A.2.2

The AIA form system assumes that the Owner’s existing (“*usual*”) insurance program is not to be further addressed in the construction contract. However, specifications for the Owner’s insurance program should be set out in separate insurance specifications to be reviewed and approved by the Owner and Development Manager prior to negotiation of the construction contract with the Contractor.

D. Required Property Insurance During Construction - § A.2.3**1. Choice of Owner or Contractor as Procuring the Builders Risk Insurance - § A.2.3.1**

A choice is made as to whether the Owner or Contractor purchases the builders risk insurance (“*Unless this obligation is placed on the Contractor*”). The default position under this section is that the Owner purchases the builders risk insurance. Reference is made to § A.3.3.2.1 (Contractor’s Other Insurance - Builders Risk Insurance) for the optional selection of the Contractor to purchase the builders risk insurance (see discussion of this section below). § A.2.3.1 is set out in less detail than if the parties have elected for the Contractor to purchase the builders risk. In part, this allows the Owner to

determine outside of the construction contract requirements, what requirements are to apply to the builders risk insurance requirement and perhaps limiting the discussion of specifications with the Contractor.

2. Owner Procured Builders Risk Insurance - § A.2.3.1(a)

See the additional discussion of builders risk insurance in the discussion of Contractor Procured Builders Risk Insurance at § A.3.3.2.1 (Builders Risk Insurance). Note that the AIA unamended form does not specify the detail of coverage that it sets forth in the specifications it sets out in the provisions for Owner Procured Builders Risk Insurance, and relies on an incorporation by reference to set out specifications for the builders risk insurance if to be obtained by the Contractor. This modified form has been revised to repeat in the Contractor procured builders risk insurance provisions set out in the Owner procured builders risk insurance in order to specify required coverages more clearly and to allow the parties to delete coverages not required.

a. *Causes of Loss - Not Excluded Causes - §A.2.3.1.1.2*

§ A.2.3.1(a)(2) identifies the property insurance to be maintained by Owner during construction (which is predicated on the parties not having chosen the Contractor to procure the property insurance) as a builders risk “all-risks” policy. An “all-risks” policy does not however cover “all risks”. “**All risks**” do not necessarily include the following causes of loss: theft, flood, earthquake, collapse, “green” exposures, or terrorism. There is no standard builders risk policy, unlike liability insurance where there is a commonly recognized standard ISO CGL policy. Builders risk policies are Inland Marine policies and there is a wide divergence in builders risk coverages insurer to insurer. “**Inland Marine**” policies are policies that are customized to the loss sought to be insured and are designed to provide coverage for special exposures typically associated with the type property at which they are directed, and the special valuation methods needed to address the exposure. § A.2.3.1.1.2 (Causes of Loss - Not Excluded Causes), which is part of the AIA form language, states that these named causes of loss are not to be excluded from the builders risk insurance coverage.

b. *Completed Value Form - § A.2.3.1(a)(3)*

Builders risk insurance is most issued on a “completed **value**” form (also called a “**non-reporting form**”) as opposed to a “reporting” form.

A completed value form policy is issued for a specific construction project with the coverage limits and premium based on the expected value of the project as completed. The insured under a completed value basis form does not run the risk of under or misreporting and the associated contractual penalties that are involved with a reporting form basis policy. A completed value basis policy limit is based on the anticipated completed value of the project. Its premium is roughly 50% of the normal builders risk rate in recognition of the fact that the average value exposed to loss during the project is approximately one-half of the completed value of the project. Under a completed value form coverage is automatically increased as construction occurs.

c. *Replacement Cost Basis - § A.2.3.1(a)(4)(b)*

Builders risk insurance can be provided on either an actual cash value (“**ACV**”) basis or a replacement cost basis. Normally, there is little to no difference between ACV and replacement cost on a newly constructed structure, but the potential exists that an adjuster could allege physical depreciation, especially when covering long-term construction projects. Replacement cost is the preferred valuation method.

d. *Coverage Amount - Common Error – § A.2.3.1(b)*

§ A.2.3.1(b) (Amount) can be the source of unanticipated loss to an unsuspecting owner. This AIA form language provides for the builders risk insurance “*shall be no less than the amount of the initial Contract Sum*” under the construction contract. This provision is then coupled with the AIA form language in § A.2.3.3 (Insurance for Existing Structures), which provides that, if the Work involves remodeling an existing structure or construction of an addition to an existing structure, the Owner is to obtain “all risks” property insurance on a replacement cost basis protecting the existing structure and provides that the Owner shall be responsible for all co-insurance penalties. This opens the project to the following common error: failure of the policy amount to reflect the full loss exposure. The contractor’s contract sum is a guide in setting the coverage amount. In projects involving remodeling (especially if the structure is a historic structure) or improvement to an existing building, limiting the coverage amount to the Contractor’s Contract Sum will lead to a significant uninsured loss. Builders risk policies will not insure the building envelope unless specifically added. Some builders risk policies insure the envelope only on an Actual Cash Value, or depreciated, basis (“**ACV**”). See § A.3.3.2.1.6 (Insurance for Existing Structures) addressing addition of builders risk coverage as to the building

envelope on contractor purchased builders risk insurance. § A.2.3.3 (Insurance for Existing Structures) has been revised to provide that it applies only “if” this risk has not been shifted to the builders risk insurance obtained by the contractor.

e. Policy Period - § A.2.3.1(c)

Builders risk policy coverage generally begins at a stated inception date, and generally ends on the earlier to occur of the following: (1) the interest of the insured in the property ends, (2) the ultimate user accepts the property, (3) the property is put to its intended use or occupancy of any portion of the property by the ultimate user, (4) a fixed number of days after the project is completed, (5) the expiration date of the policy, (6) cancellation of the policy, or (7) abandonment of construction. A phased project will require an endorsement to permit a certain level of occupancy before the entire project is completed.

f. “Unless Otherwise Agreed to by the Parties” - A.2.3.1(c)

Note, this provision is not applicable except if Owner is procuring the builders risk insurance. This qualifying language recognizes that other provisions in the contract documents for the Project may provide for a different result than as provided in these sections, § A.2.3.1(c) (Duration of Coverage) and § A.2.3.1.3 (Insured Amount; Duration of Coverage). The language of this Section has not been revised to state the different result as agreed to in a particular Project, and this format is left unchanged but serves as an alert that consideration should be given to the point as addressed to determine if an exception is to be added in the contract documents.

g. The Insureds - § A.2.3.1(d)

(1) Expand the List

The owner and all contractors and major subcontractors should be named as named insureds under a builders risk policy because at any given point of construction prior to completion all of these parties could have ownership of or an investment in the completed portion of the building and the materials, supplies, and other property installed or intended to be installed in the improvements under construction. Some owners or general contractors decline to do so in order to protect their construction insurance program from loss that could be passed back onto the subcontractor. This stance contradicts the fundamental purposes of builders risk insurance, which is first-party coverage and therefore not fault based.

(2) Waivers of Subrogation

Subrogation can impact coverage and frustrate the objective of avoiding liability disputes and litigation between contractors, subcontractors, and the owner, potentially slowing down or stopping the project. Builders risk policies generally include a provision entitled “Transfer of Rights of Recovery Against Others to Us” or similar wording. The most common language is: “*If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after the loss to impair them. At our request, the insured will bring suit or transfer those rights to us.*” Note that in this example, the insured is prohibited from relinquishing its rights after a loss. Beware: some builders risk policies prohibit the insured from relinquishing its rights at any time. An endorsement to the builders risk policy may be necessary to delete a pre-loss prohibition on the waiver of subrogation in the construction contract.

(3) ATIMA

Phrases like “*as their interests may appear*” (“**ATIMA**”) should not be included either in contractual specifications, insurance certificates or the policy, as this qualification has been the source of subrogation claims by insurers against an insured under builders risk policies in cases where there has not been an express waiver of subrogation.

h. Owner as Loss Payee - § A.2.3.1(d)

AIA A201 § 11.5.1 (Adjustment and Settlement of Insured Loss - Owner as Adjuster) [see the AIA A201 extract in the Appendix for this provision] provides for property loss to be adjusted by the Owner and paid to Owner as a fiduciary for the insureds (which in the case of the builders risk policy are the Owner, Contractor, Subcontractors as stipulated in this Section’s list of insureds). Designation of Owner as the loss payee facilitates Owner to be the recipient of the property insurance proceeds. Delivery to the parties of the loss payee endorsement is a part of the documentation that should be provided by Owner to Contractor in the “**evidence of coverage**” to be provided by Owner to Contractor required by § A.2.1 (Owner’s Insurance - General). The Loss Payee endorsement is specified in § A.3.1.1.2.2.2 (Contractor’s Insurance and Bonds - Evidence of Property Insurance), as added by this Modified Form, as being an item to be delivered to the Owner by the Contractor if the Contractor is the purchaser of the builders risk insurance.

i. *Mortgagee as Loss Payee - § A.2.3.1(e)*

The builders risk insurer will have its own form to designate a mortgagee as loss payee.

j. *Causes of Loss - § A.2.3.1.1*

(1) Direct Physical Loss or Damage –
§A.2.3.1.1.1

(2) Not Excluded - § A.2.3.1.1.2

In a belt and suspenders approach, the AIA form reinforces the “all risks” nature of the required coverage by further specifying that the causes of loss triggering coverage will not exclude certain named perils (risks of collapse, earthquake, explosion, fire, flood, malicious mischief, theft, vandalism, or windstorm). It is important to review the builders risk policy to confirm that none of these perils are excluded.

Many policies exclude “**collapse**” and require a *Collapses Additional Coverage Endorsement* to extend coverage to this cause of loss. Collapse coverage can be written to covers the damage or loss from collapse of the structure caused by certain causes of loss, including weight of rain, defective materials, or methods of construction. Collapse coverage almost always excludes the cost of correcting defective workmanship or work which was faultily designed and settling, cracking, shrinking, or bulging of the structure.

(3) Errors, Omissions or Deficiency -
§A.2.3.1.1.3

The exclusion of faulty work, workmanship, or materials is the exclusion relied on most by builders risk insurers to deny coverage. The rationale for this exclusion is to keep the insurer from having to pay for rectifying faulty work, as this is considered a risk of doing business. The following are two samples of a Faulty Workmanship Exclusion:

This policy does not cover:
Cost of making good faulty or defective workmanship, material, construction, or design, but this exclusion shall not apply to damage resulting from such faulty or defective workmanship, material, construction, or design.

This policy does not cover:

Cost of making good faulty or defective workmanship or material, but this exclusion shall not apply to physical damage resulting from such faulty or defective workmanship or material;

Loss or damage directly or indirectly caused by fault, defect, error or omission in design, plan or specification.

This has been referred to as the “error or omission” exclusion or “E&O exclusion”. The following are examples of the addition of an “**ensuing loss**” coverage provision added as an exception to the E&O exclusion:

But if an act, defect, error, or omission as described above results in a covered peril, “we” do cover the loss or damage caused by that covered peril.

But we will pay for “loss” to other Covered Property that results from such defective workmanship, materials or design, provided such loss or damage is not otherwise excluded in this policy.

(4) Sublimits - § A.2.3.1.1.4

The coverage of a builders risk policy may be extended to cover various risks with each risk carrying a “**sublimit**” (a limit less than the policy amount) or no sublimit. The insureds should consider eliminating as many sublimits as financially and practicably possible.

k. *Temporary Structures; Building Systems – §A.2.3.1.2.1*

This short-hand statement in the AIA form omits the detailed list of items added at § A.3.3.2.1.3.1 where the contractor is to purchase the builders risk insurance. The extended list of covered property has been added to the list of covered property under the builders risk policy as a means of notifying the Contractor of the items to be included in the builders risk policy to be purchased by it. If the Owner is to purchase the builders risk insurance, it should review

the § A.3.3.2.1.3.1 list and direct its insurer to confirm to Owner that the builders risk insurance being purchased includes these items, and to identify any of the items that are not included. Owner and its insurer can determine the risk of not including an item and the means of adding the item if desired.

l. Specific Required Coverages

(1) Testing and Startup - § A.2.3.1.1

The AIA form states that testing and startup damages to building systems is a specific required coverage. An endorsement to the insurer's builders risk policy may be needed to confirm that damage to building systems due to testing and startup is insured.

(2) Debris Removal - § A.2.3.1.2

Most builders risk policies provide a basic level of dollar coverage for debris removal costs. The scope of coverage and coverage limits will need to be reviewed as to amount and items constituting insured costs. The dollar limits of coverage afforded by the policy need to be reviewed. Generally, the limits specified in the policy is inadequate and the scope of coverage and the limits likely need to be increased. The AIA language specifies the following trigger to coverage: *"debris removal, including demolition occasioned by enforcement of applicable legal requirements"* and specifies the following as to covered costs *"reasonable compensation for the Architect's and Contractor's services"* and *"expenses required as a result of such insured loss, including claim preparation expense"*.

m. Post-Completion Coverage - Owner to Continue Property Coverage "Unless the Parties Agree Otherwise" - § A.2.3.1.4

This provision ties to the prior provision that assumes the Owner carries the builders risk insurance *"unless the parties agree otherwise"* in order to match the bearer of the pre-completion and post-completion property insurance.

n. Deductibles - § A.2.3.1.4

Builders risk policies frequently include multiple deductibles. One may apply to most causes of loss, another to wind, yet another to flood, another to earthquake, and another to indirect (delayed completion) costs. A common requirement might be for a \$10,000 deductible, but a wind deductible of 1% of the value in place (or even worse, the total insurable value) at the covered property location at the time of loss applies subject to a \$100,000

minimum, a flood deductible equal to the maximum amount of coverage available from the national Flood Insurance Program, an earthquake deductible (depending on the location of the insured property) of 5% of the value in place at the covered property location at the time of loss applies subject to a \$500,000 minimum, and a delayed completion deductible of 15 days.

o. Early Occupancy - § A.2.3.2

Most projects have someone that occupies to some degree before substantial completion. Any degree of occupancy could invalidate the coverage if the policy is not properly worded or endorsed.

When Does Coverage Begin and End?

Coverage should be purchased for more time than the construction is anticipated to take. It may be difficult and/or expensive to obtain an extension if coverage expires when the project is nearing completion. If, on the other hand, completion is accomplished prior to expiration, most builders risk policies permit a pro-rata cancellation. Most builders risk policies state that coverage ceases upon the first to occur of a variety of circumstances, including occupancy. A significant problem arises when one of those circumstances is occupancy. The typical builders risk policy does not include an occupancy loading. That said, no definition of **"occupancy"** is typically provided. Preferably, the provision governing when coverage ceases should not include a reference to occupancy or there should be a specific grant for occupancy.

Insurer's Consent in Writing to Early Occupancy - § A.2.3.2. Do not wait until the time that early occupancy is needed to have the conversation with the insurer.

p. Existing Structures - § A.2.3.3

Note this provision of the AIA form provides the Owner (*"shall"*) maintain property insurance on the existing structure when an addition is undertaken as opposed to including its coverage under a builders risk policy purchased by the Contractor. See the following provisions revised from the AIA approach, § A.3.3.2.1.3.3 (Contractor's Other Insurance Coverage - Builders Risk - Specific Required Coverages - Other) and § A.3.3.2.1.6 (Insurance for Existing Structures) of the Modified Exhibit A, for the addition of existing structure coverage as an item to be insured in a Contractor-purchased builders risk policy, if the parties have elected for the contractor to carry the builders risk insurance.

q. *Optional Extended Property Insurance -*
§ A.2.3.4

(1) Common Events Only Covered by Added Endorsement

Many commonly expected coverages are available only through policy endorsement and are not part of the issuer's standard policy form, such as (1) coverage for the owner's additional architect's fees arising out of an insured loss; (2) coverage for owner supplied materials; (3) amending the Ordinance or Law exclusion to cover costs of demolition of the intact portion of a building when a law, ordinance or regulation requires that the entire structure be torn down; (4) endorsement to include full collapse coverage, including collapse resulting from design error; and (5) verification that sublimits (*e.g.*, sublimits for flood and earthquake coverage) are adequate or eliminated.

(2) Soft Costs

Builders risk policies typically do not cover damages caused by delays arising out of a covered loss. These "**soft costs**" can be covered by a soft cost endorsement. A soft cost endorsement can be tailored to cover loss of (1) expected revenue, (2) additional interest expense, (3) loan fees, (4) property taxes, (5) design fees, (6) insurance premiums, (7) legal and accounting costs and (8) additional commissions arising from the renegotiation of leases. Typical **exclusions** contained in a soft cost endorsement are for cost to correct construction deficiencies, costs to comply with laws or ordinances, loss caused by adverse weather and loss caused by strikes.

(3) Delayed Completion

Another endorsement that may be available to insure against a financial distress risk is a **delayed completion and force majeure endorsement**. This endorsement supplements the risk of covered loss to cover consequential damage losses due to completion delays and force majeure events not otherwise covered. The delayed completion and force majeure endorsement extends coverage for losses due to strikes and labor disputes, changes in law (*e.g.*, building codes, emission standards), acts of God, adverse weather conditions and off-site physical damage to materials or equipment.

III. CONTRACTOR'S INSURANCE

A. Certificates of Insurance - § A.3.1.1

1. Liability Insurance

a. *Prior to Work - A Checklist Item - § A.3.1.1.1*

Initiating the process of obtaining proof of Contractor's insurance, both liability and property insurance, needs to be initiated sooner rather than later. Confirmation that the Contractor has in place the various coverages and limits required by the Owner is a detail oriented process. See the detailed list of coverages in § A.3.1.1.2 (Matters Certified) with the attachments to be provided. See the Checklists accompanying this Article.

b. *At Construction Completion – A Checklist Item - § A.3.1.1.3*

Owner will need to confirm at Substantial Completion that Contractor's liability insurance will continue until the punch list items are completed and for the one-year work correction period is passed; additionally, Owner will need to assure that Contractor's Completed Operations coverage continues for the post-completion period specified in the construction documents (*e.g.*, until expiration of the statute of repose).

c. *Owner as Certificate Holder - § A.3.1.2.1*

Being designated as the Certificate Holder does not designate the Certificate Holder as an insured or additional insured. However, the Certificate form certifies the matters set out in the Certificate to the person designated as the Certificate Holder, subject to the disclaimers also set out in the Certificate. Do not accept a Certificate with the Certificate Holder stated as "*for information only*" or "*parties required by written contract to be a Certificate Holder*", but rather require the Owner to be specified as the Certificate Holder by specific entity name and proper address. Comfort and clarity results from this practice.

d. *Additional Insureds - § A.3.1.2.1.2*

The AIA form has been modified to require the certificate of insurance to certify not only that the Owner is an additional insured but also all the other persons comprising the "**Protected Persons**" are additional insureds. The AIA form has been modified to require the Certificate of Liability Insurance to certify that the Protected Persons are additional insureds on the Business Auto Liability Insurance and the Pollution Liability Insurance (if Pollution Liability Insurance is required by the insurance specifications).

e. Attach the Endorsements - § A.3.1.1.2.1.1.2

The AIA form has been modified to require that copies of the required endorsements be attached to the Certificate of Liability Insurance so that the Owner can confirm that the coverage required by the required endorsements is in place and has not been modified.

f. Attach the Policy Language - § A.3.1.1.2.2.8

It is possible that the Contractor's insurance program is built on an insurance form system providing automatic or blanket coverages designed to meet an owners' insurance requirements. It is best practice to require specific ISO endorsements as specified in the Modified Exhibit A as opposed to having to review manuscripted policy language. Note manuscripted policy language generally relies upon an understanding of multiple provisions located in various policy forms and as a result is much more difficult to confirm adequacy of coverage.

2. Property Insurance - § A.3.1.1.2.2

Evidence of Contractor procured property insurance, including builders risk insurance, if the parties have elected for the Contractor to maintain the builders risk insurance, is equally to be initiated as early as possible prior to commencement of the Work. Items to be covered are listed in the Checklists accompanying this Article. The Property Insurance Checklist includes among the many other important items: designation of the named insureds; the loss payee; waiver of subrogation as to the Protected Persons, advanced notice of cancellation; designation of all risks coverage on a replacement cost basis; listing of the covered property; permitted deductibles and sublimits; addressing the effect of construction risks on the existing improvements, if the case; the circumstance of partial occupancy prior to completion, if the case; and the election of various optional extended property insurance coverages. See e.g., Section 3.3.2.1 (Builder's Risk Insurance).

B. Additional Insured Obligations - § A.3.1.3

1. State Law Limitations - "To the fullest extent permitted by law" - § A.3.1.3.1

Many states have laws prohibiting contractual indemnities in a "construction contract" by a protecting person as to a protected person's negligence causing injuries and damage (except sometimes with a list of permitted exceptions). Some of these laws extend this prohibition to additional insured coverage (e.g., Texas). The phrase "to the

fullest extent permitted by law" is in the AIA insurance form to save the insurance protection to the fullest extent permitted.

2. Primary and Noncontributory - § A.3.1.3.2

All general liability policies state that they are "primary", unless any other insurance ("other insurance") covering the same loss is also primary, in which case the primary policies share in payment of that loss. That is usually contrary to the objective of the additional insured who wants the named insured's insurance to pay until it is exhausted without contribution from the additional insured's insurance. To achieve this result, ISO promulgated its CG 20 01 12 19 Primary and Noncontributory – Other Insurance Condition endorsement which states that the named insured's coverage

"is primary and will not seek contribution from any other insurance available to an additional insured under (the Named Insured's) policy provided that (1) the additional insured is a Named Insured under such other insurance; and (2) the (Named Insured has) agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured."

Warning: Note that requiring that the Named Insured's insurance be "primary" is not sufficient. The endorsement requires that the named insured's insurance also state that it "will not seek contribution". The "not seek contribution" will need to be expressed in the contract to assure additional insured protection.

3. ISO Forms - "To the extent commercially available" - § A.3.1.3.3

The most current ISO edition and many prior ISO editions for additional insured coverage are "commercially available", but the difficulty is that many insurers do not use ISO forms unamended or use manuscripted forms. Surplus lines carriers typically do not issue on ISO forms. There are hundreds of manuscript additional insured endorsements currently in use. These may (1) limit the parties covered, (2) limit the scope of coverage, (3) limit the operations coverage, (4) add new exclusions; or (5) do all of the foregoing (the "five gotchas").

4. ISO Forms - “No less than the ISO form’s coverage”- § A.3.1.3.3

a. **Non-ISO Forms and the Five Gotchas.**

If other than an ISO (unamended) form is used, it needs to be examined to determine if any of the *five gotchas* exist and to determine the issue presented.

b. *ISO Form Numbering System - § A.3.1.3.3*

The last four numbers of an ISO endorsement indicate the edition date. So, the ISO CG 20 10 07 04 Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization was promulgated by ISO in July 2004. The first four numbers indicate the type of ISO endorsement, with “20” being an additional insured endorsement, and “10” being the additional insured endorsement form scheduling a named owner (or named contractor) as the additional insured on an ISO CGL policy of the contractor or subcontractor, as the case may be, for the Named Insured’s (contractor’s or subcontractor’s, as the case may be) ongoing operations. There have been six CG 20 10 editions, each progressively more restricted as to coverage. ISO CG 20 10 12 19 Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization is the latest ongoing operations additional insured endorsement; it is in effect identical to its predecessor, ISO CG 20 10 04 13 Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization. These editions of the CG 20 10, like its predecessor the ISO CG 20 10 07 04 Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization, exclude coverage for the additional insured’s sole negligence, but also the 12 19 and 04 13 introduced three additional restrictions: (1) additional insured coverage applies only to the extent permitted by law; (2) coverage will not be broader than that which (the Named Insured is) required by contract to provide; and (3) coverage will not pay any more than the amount required by contract (these three restrictions are sometimes referred to as the “**whether conditions**” – “whether” or not the contract’s insurance specifications are adequately drafted determines to extent of coverage, even if the issued insurance would otherwise provide for more coverage to the additional insured.

c. *ISO CG 20 10 07 04 - § A.3.1.3.3*

The ISO CG 20 10 07 04 Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization provides additional insured status for liabilities

“caused, in whole or in part, by the acts or omissions of the Named Insured (e.g., Contractor) or of those acting on the Named Insured’s behalf, in performance of ongoing operations”. (Thus, excluding the additional insured’s sole negligence.)

The 10 01 editions of the ISO CG 20 10 and ISO CG 20 37 are still available from many insurers. The 10 01 edition broadens the additional insured coverage to include the sole negligence of the additional insured. Availability should be confirmed, and, if available, this specification should be revised to specify the 10 01 edition.

d. *ISO CG 20 37 07 04 - § A.3.1.3.3*

ISO CG 20 37 Additional Insured – Owners, Lessees or Contractors – Completed Operations provides additional insured status regarding completed operations. This endorsement is subject to the same editions and issues pertinent to the six edition dates of the ISO CG 20 10 Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization.

5. Contractor’s Insurance Issued by Authorized Insurer - § A.3.2.1.1

Authorized issuers are generally issuers that are not surplus line insurers. Surplus lines insurer’s policies generally are not issued on industry standard forms but on forms designed to reduce premium costs by eliminating many of the coverages of a standard policy. Many good insurer choices are “authorized” to do business but are not “admitted” in the state of the project’s location. Also, not every state requires an insurer to be licensed (admitted) in that state.

6. Duration of Insurance Coverage - “Unless a different duration is stated below” - § A.3.2.1.2

This specification has been modified to require the Contractor to maintain the specified liability insurance coverage beyond the expiration of the correction period of the Work. Contractor liability, and thus the need for insurance, extends beyond the Work correction period.

C. **Commercial General Liability - § A.3.2.2**

1. “Equivalent Coverage” - § A.3.2.2.1

“Equivalent” is a problematic term. The concept of identifying specific policy forms is to assure specific coverage and to force the protecting party to obtain industry standard coverage. A difficulty that

arises under both the specific coverage approach and the equivalent coverage approach is that the Protecting Party may pay no attention to the coverage requirements and merely provide an extension off of its existing coverage or provide some coverage, leaving it up to the Protected Persons to figure out equivalency. Waiting to confirm adequacy of coverage until the Work commencement date is also problematic.

2. Aggregate of Primary and Umbrella Limits - § A.3.2.2.1

The standard practice has been to provide for a floor amount for the primary policy and to state an umbrella amount on top of that for an aggregate amount of required coverage. The AIA's new approach in the A101 Exhibit A is to state the aggregate required amount and allow the parties to choose the amount allocation.

3. Damage or Destruction of Tangible Property - § A.3.2.2.1.2.3

Note that although environmental/pollution damage is physical damage to tangible property, such damage is largely, if not totally (absolutely), excluded from most contractor's CGL coverage, which coverage is the subject of Pollution Liability Insurance as set out in § A.3.2.9 (Pollution Liability). See AIA A201 § 10.3 (Hazardous Materials and Substances) in the AIA A201 Risk Management Provisions in the Appendix to this Article for provisions addressing contractor's covenants and indemnities for hazardous materials liability on the project.

4. "Insured Contracts" Coverage - § A.3.2.2.1.2.5

AIA A201 Section 3.18 is AIA's indemnity language as to the Contractor's indemnity of the Owner and other persons specified in the AIA printed form AIA A201. See the AIA A201 provisions accompanying this Article. The AIA language is usually modified by negotiations of the parties. The standard form ISO CGL policy provides insurance to the named insured (Contractor) for its "**Insured Contracts**," as that term is defined and limited in the ISO CGL policy. The scope of the Contractor's indemnity as set out in the AIA printed form A201 is many times broadened by negotiations between the Owner and the Contractor. CGL "Insured Contract" coverage is generally responsive to allegations of "*bodily injury*" and "*physical injury to tangible property*", subject to the limits of liability and limits imposed by applicable state's anti-indemnity statutes, and nothing else (many liabilities do not fall within

the insurance terms "bodily injury" and "physical injury" to "tangible property" and thus are not insured even though indemnified by the Contractor. CGL insurance "applies to" but does not "cover" a broad form indemnification requirement as the policy's exclusions apply to indemnified liabilities to the extent they exceed the exception to the exclusion. Enforceability of the Contractor's indemnity as written in an unamended A201 or as modified by the parties is subject to and limited by state laws. Many states have anti-indemnity laws applicable to indemnities in construction contracts which affect the scope of an enforceable indemnity. These laws have exceptions that permit certain indemnities which statutorily permitted indemnities are not expressly permitted by the AIA's wording. For instance, AIA A201 Section 3.18 does not provide for indemnity by the Contractor for injuries caused by the sole negligence of the Owner, although some states anti-indemnity statutes permit a Contractor to indemnify an Owner for injuries to the Contractor's and Subcontractor's employees caused by the sole negligence of the indemnified person. That case is the typical third-party over action brought by an injured employee of a contractor or subcontractor against the owner alleging the injury is caused by the negligence of the owner.

5. Prohibited Exclusions or Restrictions - § A.3.2.2.2

There are a large number of coverage exclusions or restrictions added to the standard CGL policy by endorsement unless prohibited by the insurance specifications of the parties and by the vigilance of the party to be protected. These exclusions or restrictions do not show up on most certificates of insurance. A few of the most egregious have been listed in the Modified Exhibit A as being prohibited. This list only scratches the surface of manuscripted exclusions and restrictions.

a. "Insured vs. Insured" - § A.3.2.2.2.1

This prohibition appears in the AIA Exhibit A insurance specifications. An insured vs. insured exclusion excludes coverage if an additional insured brings suit against a named insured when both are covered by the same policy. This type of exclusion if added to the policy would prohibit coverage of an additional insured on the named insured's CGL policy for one of the most typical reasons for seeking additional insured coverage, suit by an injured person on a construction project that has sued both the owner (the additional insured) and the contractor (the named insured) and the owner has sued the contractor on the contractor's indemnity of the owner.

b. *Property Damage Arising Out of Work Performed by Subcontractors § A.3.2.2.2.2*

This prohibition appears in the AIA Exhibit A insurance specifications. If this prohibited endorsement is added to the CGL policy, it results in the loss of insured protection available to the Contractor (in most jurisdictions). Most jurisdictions have interpreted the standard CGL policy as insuring the Contractor against construction defects caused by the Work of its subcontractors. The standard CGL policy contains an “**exception to an exclusion**”. The CGL policy “**excludes**” insurance for damages to property caused by the Work of the Contractor, but then “**excepts**” from this exclusion damage to the project property if the damage is caused by the negligence of the subcontractor effectuating the construction, but in a defective manner. These jurisdictions generally hold that the subcontractor’s construction in a defective manner is an “occurrence” under the policy and is an insured “accident”.

c. *Prohibition of Limitations on Bodily Injury Coverage - § A.3.2.2.2.3*

This prohibition appears in the AIA Exhibit A insurance specifications. § A.3.2.2.2.3 prohibits the addition of exclusions to coverage of “bodily injuries” except for bodily injuries to employees of the insured. This specification is designed to flush out (prohibit) provisions in the Contractor’s policy that limit coverage for this category of bodily injury. As to injuries to employees of the Contractor and injuries to employees of subcontractors see the explanation of the purposes of § A.3.2.2.2.4, § A.3.2.2.2.12, and § A.3.2.2.2.13 below.

d. *Prohibition of Exclusion of Coverage for Insured’s Indemnity for Injuries to Employees of the Insured - § A.3.2.2.2.4*

This prohibition appears in the AIA Exhibit A insurance specifications. § A.3.2.2.2.4 prohibits any exclusion or restriction of coverage for “*claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees the insured.*” This prohibition is to protect the upstream party (e.g., Owner) against the Contractor’s insurer endorsing out of the Contractor’s policy insurance of the Contractor for Contractor’s indemnity of the Owner against “**third party over claims**” by injured employees of the Contractor’s subcontractors. If the Contractor’s insurer has not endorsed out this coverage of the Contractor on its indemnity of the Owner, then the Contractor will have insurance to fund its indemnity of the Owner for claims by injured

employees of subcontractors.

It is equally advisable that the Contractor’s subcontracts prohibit subcontractor’s liability insurers from endorsing out of the subcontractor’s insurer’s liability coverage indemnities by the subcontractor of its general contractor for injuries to the subcontractor’s employees. Upon claim by an injured subcontractor’s employee against the Contractor or the Owner, or both, the Owner will seek indemnity from its Contractor; the Contractor will seek protection from its insurer and seek indemnity from its subcontractor; and the subcontractor will seek insurance coverage from its insurer.

The standard ISO CGL policy states:

“This insurance does not apply to (e) Employers Liability, “bodily injury” to an employee of the insured arising out of or in the course of employment by the insured”.

The standard policy goes on to state:

*“This exclusion does not apply (aka the “**exception to the exclusion**”) to liability assumed by the insured under an “**insured contract**”.*

Thus, the insured - employer (the subcontractor who employees the worker that is bringing the claim against the Contractor or the Owner, or both, has insurance under its CGL policy insuring its indemnity of the upstream party(ies). When this coverage is triggered by a claim, the subcontractor’s workers compensation coverage has already made payment, and now the subcontractor’s general liability coverage is making further payment for that same claim. Note that the exclusion in the standard ISO CGL policy excludes coverage for insurance of “the insured”, this exclusion excludes from the CGL insurance by the insurer of “the” insured, not “**any insured**”, and so does not extend as an exclusion to coverage of additional insureds. Thus, the exclusion is an exclusion from insuring the insured contractor (subcontractor) for injuries to its employees. The injured employee is to look to the workers compensation coverage of her employer, but that does not prohibit claim by the injured employee against third parties in cases where the injured employee is dissatisfied with the limits of the statutory benefits provided by the workers

compensation system and insurance, *e.g.*, suit against the Owner as to injuries to the Contractor's employees and the Owner and Contractor as to injuries to employees of the subcontractor. The injured employee is prohibited by the workers compensation system from suing the employer, so that employee sues the upstream parties, *e.g.*, on the basis that the upstream party provided an unsafe workplace. As the lawsuits are against the upstream party only, this is an allegation of sole negligence. Generally, an additional insured is not insured for its sole negligence. This prohibition is aimed at the practice of many insurers of simply adding an endorsement deleting the "exception to the exclusion".

e. Prohibition of ISO CG 21 39 Endorsement - § A.3.2.2.2.12

§ A.3.2.2.2.12 is added as a specifically referenced ISO form that is prohibited as an endorsement. Being an ISO form gives the illusion that it is not of general concern and so might have been overlooked as a problem. Nothing can be further from the truth. For similar reasons § A.3.2.2.2.13 is added as a specifically referenced ISO form that is prohibited. The ISO CG 21 39 eliminates from the "Insured Contract" coverage insurance for the insured for its contractual assumption of liability for another person's negligence. This endorsement eliminates insurance of the Contractor of its indemnity of the Owner for the Owner's contributory negligence. Similarly, if this endorsement is added to a subcontractor's CGL policy, it similarly eliminates insurance of the subcontractor of its indemnity of the Contractor's contributory negligence. Some states prohibit indemnities by a party for another person's negligence in construction projects. But note even in some of those states there are statutory exceptions permitting indemnity of another for the other party's negligence in certain circumstances.

f. Prohibition of ISO CG 24 26 Amendment of Insured Contract Definition - § A.3.2.2.2.13

§ A.3.2.2.2.13 is added as a specifically referenced ISO form that is prohibited as an endorsement to a policy gives the illusion that it is not of general concern. Nothing can be further from the truth. ISO CG 24 26 Amendment of Insured Contract Definition amends the definition of "Insured Contracts" to limit the insurance of the insured's indemnity to bodily injury and property damage "caused, in whole or in part, by" the insured (by the Contractor). Addition of this endorsement limits insurance of the indemnitor (the Contractor) to cases where the indemnitor is partly negligent. This

endorsement should be avoided if the transfer of sole negligence is required (and permitted by the statutes of the state where the work is undertaken).

g. Prohibition of Limitation of Coverage to Designated Premises or Project Endorsement - § A.3.2.2.2.14

This prohibition has been added to the list of prohibitions listed in the AIA insurance specifications. This endorsement restricts coverage only to those premises, projects or operations listed and excludes all others. If your premises, project, or operation is not listed, you are not insured.

h. Prohibition of Modification to Employers Liability Exclusion - § A.3.2.2.2.15

This prohibition has been added to the list of prohibitions listed in the AIA insurance specifications.

i. Prohibition of Punitive, Exemplary or Multiplied Damages Exclusion - § A.3.2.2.2.16

This prohibition has been added to the list of prohibitions listed in the AIA insurance specifications. If this exception cannot be eliminated, seek to provide that coverage is provided where permitted by law.

j. Prohibition of Classification or Business Description Exclusion - § A.3.2.2.2.17

This prohibition has been added to the list of prohibitions listed in the AIA insurance specifications. An example of this type of exclusion is an exclusion from coverage for any type of work other than the specifically described line of work. For instance, if the classification or business description states "roofer" and that contractor performs any other type of work, no coverage will be provided for liabilities arising out of that other type of work. This is a flip of § A.3.2.2.2.8 above.

k. Prohibitions of Continuous or Progressive Injury and Damage Exclusion - § A.3.2.2.2.18

This prohibition has been added to the list of prohibitions listed in the AIA insurance specifications. See discussions at § A.3.2.2.2.5. and § A.3.2.2.2.6. This prohibition is added in addition to the prohibitions set out in these other similar prohibitions out of an abundance of caution.

6. Electronic Data Liability Endorsement - § A.3.2.2.3

Without this endorsement, CGL insurance excludes coverage for loss to intangible property, including electronic data.

D. Business Auto Policy - § A.3.2.3

1. Hired Vehicles - § A.3.2.3

The AIA language is amended to add hired vehicles to the type of vehicles the use of which is to be insured for injury liability arising out of their use by the Contractor.

2. Additional Insureds - § A.3.2.3.2

The AIA language is revised to add this requirement that the additional insureds be additional insureds on the Contractor's business auto policy.

3. Waiver of Subrogation - § A.3.2.3.3

The AIA language is revised to add this requirement that the insurers waive subrogation in favor of the additional insureds on the Contractor's business auto policy.

4. Primary and Noncontributory Status - § A.3.2.3.4

The AIA language is revised to add this requirement that the insurers waive subrogation in favor of the additional insureds on the Contractor's business auto policy. The standard ISO business auto endorsement form is prescribed.

5. Advanced Notice - § A.3.2.3.5

The AIA language is revised to add this requirement that the insurers provide the Protected Persons with advanced notice of cancellation or nonrenewal.

E. Umbrella Liability – § A.3.2.4

1. Employers Liability - § A.3.2.4

The AIA language is revised to provide that the umbrella/excess liability policy will provide excess coverage for liabilities insured by the Contractor's Employers Liability insurance.

2. Exhaustion of Horizontal Limits - § A.3.2.4

This specification is in the AIA form. It is to

counter the requirement in some states that in the absence of a contract to the contrary all insurance including additional insured's liability insurance is to be primary and exhausted (horizontal exhaustion) to play the named insured's insured claims prior to triggering coverage by the named insured's umbrella/excess liability insurance.

3. Primary and Noncontributory - § A.3.2.4.3

The AIA specification is modified by this language to provide further that the umbrella/excess liability insurance is primary and noncontributory as regards to the "other insurance" of the additional insureds.

4. Waiver of Subrogation - § A.3.2.4.5

The AIA language is revised to add this requirement that the umbrella/excess liability insurer waive subrogation in favor of the additional insureds.

5. Advance Notice - § A.3.2.4.5

This form will be a manuscript form of the insurer.

6. Concurrency - § A.3.2.6

"Concurrency" means there are no gaps in coverage, terms, and conditions.

F. Workers Compensation - § A.3.2.5

1. Protected Persons - § A.3.2.5

"Protected Persons" are defined at the end of the Modified Exhibit A by inclusion of a list of specific persons and by an omnibus catch all list.

G. Employers Liability - Stop Gap - § A.3.2.5.2

"Stop gap" coverage is effectuated by an endorsement. This endorsement provides liability coverage for work-related injuries arising out of exposures in monopolistic fund states (fund workers compensation policies do not provide employers liability coverage). If the employer has operations in non-monopolistic states, the endorsement is attached to the workers compensation policy providing coverage in those states. For employers operating exclusively in a monopolistic fund state, the endorsement is attached to the employers general liability policy.

H. Professional Liability - § A.3.2.8

Contractors have professional liability exposures from shop drawings, samples, “value engineering”, construction management, “green” construction, and design-build. See AIA A201 Section 3.12 (Shop Drawings, Product Data and Samples) of the General Conditions in the AIA Risk Management Provisions in the Appendix to this Article.

I. Pollution Liability - § A.3.2.9**1. Coverage**

The AIA specifications are not specific as to coverage and prohibited provisions. Specifications for this insurance will need to be crafted on a project by project basis in connection with the negotiation of the construction contract (*e.g.*, a broader description of the scope of coverage, term for which coverage must be maintained beyond course of construction).

2. Additional Insureds - § A.3.2.9 .6

This form will be a manuscripted form obtained from the insurer.

3. Primary and Noncontributory - § A.3.2.9.7

This form will be a manuscripted form obtained from the insurer.

4. Waiver of Subrogation - § A.3.2.9.8

This form will be a manuscripted form obtained from the insurer.

5. Advanced Notice of Cancellation - § A.3.2.9.9

This form will be a manuscripted form obtained from the insurer.

J. Unmanned Aircraft - § A.3.2.12

General Liability insurance excludes coverage for operations of drones. This coverage can be added to a CGL policy by endorsement and usually for a nominal premium.

K. Comprehensive Crime - § A.3.2.13**L. Contractor Procured Builder’s Risk Insurance - § A.3.3.2.1**

See discussion above at § A.2.3.1 as to Owner procured builders risk insurance for basic concepts of builders risk insurance as they are applicable to

Contractor procured builders risk insurance. The following discussion is included to focus consideration of coverages specially applicable to an owner’s specifications for Contractor acquired builders risk insurance.

1. Contractor Obtains Builders Risk – Soft Costs - § A.3.3.2.1.7.7

Builders risk policies typically do not cover damages caused by delays arising out of a covered loss. These “**soft costs**” can be covered by an endorsement. A soft cost endorsement can be tailored to cover loss of expected revenue, additional interest expense, loan fees, property taxes, design fees, insurance premiums, legal and accounting costs and additional commissions arising from the renegotiation of leases. These are time element exposures, similar in many respects to business interruption exposures on a completed project, in that the extent of the loss is impacted by the length of the delay. Soft cost coverage responds to additional expenses made necessary by the delay in completion. Lenders may require the inclusion of interest on the construction loan, property taxes, architectural and engineering supervisory costs, costs to renegotiate leases, brokerage commissions, and legal and accounting costs. Coverage is widely variable, and it is incumbent upon the insured to describe what is needed. A thorough understanding of the project, contract documents, financing terms, materials and supply agreements, leasing agreements and construction regulations is needed to craft this specification. Coverage is provided on an actual loss sustained basis (*i.e.*, the insured can recover only for the actual loss of income or the actual additional expenses incurred regardless of the limit of coverage purchased). The period of indemnity usually begins a specified number of days after the date when construction is to be completed. The maximum time period commonly ranges up to 12 months. Typical exclusions contained in a soft cost endorsement are for cost to correct construction deficiencies, costs to comply with laws or ordinances, loss caused by adverse weather and loss caused by strikes.

2. Other Common Extended Property Endorsements - § A.3.3.2.1.7.7.7

Occupancy Pre-Completion Clause. If the property will be occupied, or arguably occupied (*e.g.*, a tenant building out its premises), the builders risk policy should be reviewed to confirm that pre-completion occupancy is permitted and under what conditions. It may be necessary, to have the policy endorsed to permit pre-completion occupancy.

“Preservation of Property Coverage”.

Coverage may be extended to insure the cost of removing covered property from the premises to preserve it from loss from a covered cause of loss.

Replacement Cost – Contractor’s Overhead and Profit. Coverage may be extended by a Replacement Cost Endorsement to include contractor’s “overhead and profit” to cover the cost to repair, replace, or rebuild the damaged property, (without consideration for depreciation or obsolescence) plus reasonable overhead costs including profit (subject to the policy limit).

Scaffolding and Construction Forms.

Coverage may be extended to include Scaffolding and Construction Forms coverage insuring damage to and loss of scaffolding and construction forms from a covered cause of loss.

Sidewalks, Curbs, Gutters, Streets, or Parking Lots. Coverage may be extended by an endorsement insuring damage to sidewalks, curbs, gutters, streets, or parking lots from a covered cause of loss.

3. Prohibition of Protective Safeguard Warranty - § A.3.3.2.1.8.6

“Protective safeguard warranties” are conditions precedent to coverage sometimes built into a builders risk policy to assure the insurance company of certain protections being provided at the job site. Typical protective safeguard warranties address the following: emergency response protocols; fencing surrounding the project (*e.g.*, “site must be fenced with a cyclone fence at least 6 foot high which must be locked during non-working hours”); project lighting during night hours; site surveillance must be maintained by a licensed and bonded watchperson during non-construction hours; and water for fire suppression must be stored on site, or a working fire hydrant must be within 1,000 feet of the structure being constructed. Protective safeguard warranties are usually attached by endorsement to the policy and are not referenced on the policy’s Declarations Page. Their inclusion is justified by the insurer on grounds of reduced premium. However, a violation of a protective safeguard warranty voids coverage, potentially even if the loss is not tied to the violated protective safeguard warranty.

4. Extended Coverages

a. Site Preparation Costs

Coverage may be extended to include coverage of “site preparation costs” such as excavation, grading, and backfilling arising from a covered loss.

b. Testing

Coverage may be extended to cover “testing” sometimes called “**Hot and Cold Testing**” or “**Mechanical Breakdown**” coverage insuring damage or loss from start up or performance testing of boilers or other pressure vessels, air conditioning systems, and mechanical or electrical devices.

M. Property Owned by Contractor - § A.3.3.2.5

This insurance specification is listed in the AIA form as additional other insurance to be acquired by Contractor, if this additional insurance is selected by check marking the option box. The insurance specifications for the builders risk insurance has been modified in the Modified Exhibit A to include this insurance as part of the builders risk insurance. The option box is to be check marked if this type of insurance is not able to be added to the builders risk but must be obtained as stand-alone property insurance.

IV. SPECIAL TERMS AND CONDITIONS - A.4

A. A. M. Best’s Key Rating Guide

BEST’S KEY RATING GUIDE published by A.M. Best Company assigns to insurance companies one of three types of rating opinions, a “*Best’s Rating*,” a “*Financial Performance Rating*” or a “*Qualified Rating*.” In addition, Best’s assigns all companies to “*Financial Size Categories*.” More information concerning Best’s and its ratings is available at Best’s website, <http://www.ambest.com>. Insurance specifications in real estate documents will typically specify both the minimum acceptable Best Rating and minimum Financial Size Category for the insurance issuer. For example, “the insurer will be at least a Best’s A-: VII.”

B. “Protected Persons”

This term is used to include both persons and entities to be specified by the Owner as additional insureds and as being persons protected by waivers of the insurer’s contractual and law rights to subrogation. The term has been defined to include omnibus categories of persons derivative of the specified persons. The Modified Exhibit A Form has been crafted with blanks for the Owner to complete with the respective project.

Appendix

- A.** AIA Document A101 - 2017 Exhibit A Insurance and Bonds (Modified)
- B.** Checklist for AIA A101 Exhibit A Contractor's Liability Insurance
- C.** Checklist for AIA A101 Exhibit A Contractor's Builders Risk and Other Property Insurance
- D.** AIA Document A201 - 2017 General Conditions (Extract of Injury and Property Damage Risk Management Provisions)
- E.** Redline Modified to Unmodified A101 - 2017 Exhibit A Insurance and Bonds

AIA Document A101 - 2017 Exhibit A Insurance and Bonds (Modified)

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the « » day of « » in the year « 202__ »

for the following PROJECT:
(Name and location or address)

« _____ »
« _____ »

THE OWNER:

« _____ » «a _____ »
« _____ »

THE CONTRACTOR:

(Name, legal status and address)

« _____ » «a _____ »
« _____ »

TABLE OF ARTICLES

- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document **A201™–2017**, General Conditions of the Contract for Construction, as modified by the parties.

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this **Article A.2** (Owner's Insurance) and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by **Section A.2.3** (Required Property Insurance). The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

§ A.2.3 Required Property Insurance

§ A.2.3.1 Builder's Risk Insurance

Unless this obligation is placed on the Contractor pursuant to **Section A.3.3.2.1** (Builder's Risk Insurance), the Owner shall purchase and maintain,

(a) State Authorized Insurer; "All-Risks"; Completed Value Form; Replacement Cost Basis; Amount: from an insurance company or insurance companies (1) lawfully authorized to issue insurance in the jurisdiction

where the Project is located, (2) property insurance written on a builder's risk "all-risks" ("builder's risk insurance") and (3) completed value policy form or other policy form more beneficial to the Protected Persons and sufficient to cover the total value of the (i) entire Project on (ii) a replacement cost basis.

(b) **Amount:** The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others.

(c) **Duration of Coverage:** The property insurance shall be maintained until Substantial Completion and thereafter as provided in **Section A.2.3.1.3** (Insured Amount; Duration of Coverage), unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement.

(d) **Insureds and Loss Payee:** This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. The Owner shall be the loss payee.

(e) **Mortgagee as Loss Payee:** This insurance shall include the interests of Owner's Lender as loss payee.

§ A.2.3.1.1 Causes of Loss.

The insurance required by this **Section A.2.3.1.1** (Causes of Loss) shall

- .1 **Direct Physical Loss or Damage:** provide coverage for direct physical loss or damage.
- .2 **Not Excluded Causes:** not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm.
- .3 **Errors, Omissions or Deficiency:** also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials without Sub-limits.
- .4 **Sub-limits:** Sub-limits, if any, are as follows:
(Indicate below the cause of loss and any applicable sub-limit.)

Causes of Loss

Sub-Limit

\$

§ A.2.3.1.2 Specific Required Coverages.

.1 **Temporary Structures; Building Systems:** The insurance required by this **Section A.2.3.1** (Builder's Risk) shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup.

.2 **Debris Removal:** The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses.

.3 **Sub-limits:** Sub-limits, if any, are as follows:
(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage

Sub-Limit

\$

§ A.2.3.1.2 Specific Required Coverages.

.1 **Temporary Structures; Building Systems:** The insurance required by this **Section A.2.3.1** (Builder's Risk) shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup.

.2 **Debris Removal:** The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses.

.3 **Sub-limits:** Sub-limits, if any, are as follows:
(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
<input type="text"/>	\$ <input type="text"/>

§ A.2.3.1.3 **Insured Amount; Duration of Coverage.** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by **Section A.2.3.1** (Builder's Risk) or, if necessary, replace the insurance policy required under **Section A.2.3.1** (Builder's Risk) with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in **Section 12.2.2** (After Substantial Completion) of the General Conditions.

§ A.2.3.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this **Section A.2.3** (Required Property Insurance) is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 Occupancy or Use Prior to Substantial Completion.

.1 **Consent for Occupancy or Use Prior to Substantial Completion:** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under **Section A.2.3.1** (Builder's Risk) have consented in writing to the continuance of coverage.

.2 **Take No Action That:** The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, and if the parties have not elected to have the Contractor insure the existing structure under the builder's risk policy to be obtained by Contractor pursuant to **Section 3.3.2.1.2.3(j)** or **Section 3.3.2.1.6** (Insurance for Existing Structures), the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in **AIA A201-2017 Section 12.2.2** (After Substantial Completion) of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in **Section A.2.3.1** (Builder's Risk), notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties, except as otherwise provided for in **Exhibit A**.

§ A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

[☐] § A.2.4.1 **Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

« »

Loss of net rental income which results from delay beyond the projected completion date due to a covered cause of loss. « »

[« »] § A.2.4.2 Ordinance or Law Insurance, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project. « »

[« »] § A.2.4.3 Expediting Cost Insurance, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property. « »

[« »] § A.2.4.4 Extra Expense Insurance, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred. « »

[« »] § A.2.4.5 Civil Authority Insurance, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance. « »

[« »] § A.2.4.6 Ingress/Egress Insurance, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage. « »

[« »] § A.2.4.7 Soft Costs Insurance, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including

[« »] .1 Construction Loan Fees: construction loan fees.

[« »] .2 Leasing and Marketing Expenses: leasing and marketing expenses, including commissions on renegotiated leases.

[« »] .3 Additional Fees: additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction.

[« »] .4 Carrying Costs: carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

[« »] .5 Overhead: additional overhead.

[« »] .6 Other: [« »].

§ A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

[« »] § A.2.5.1 Cyber Security Insurance for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.
(Indicate applicable limits of coverage or other conditions in the fill point below.)

« »

[« »] § A.2.5.2 Other Insurance
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

\$ _____

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance.

§ A.3.1.1.1 Times Provided. The Contractor shall provide certificates of insurance (liability and property) acceptable to the Owner evidencing compliance with the requirements in this **Article A.3** at the following times:

- .1 Prior to Work: prior to commencement of the Work;
 - .2 Upon Renewal or Replacement: upon renewal or replacement of each required policy of insurance;
- and

.3 Thereafter: Thereafter, additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by **Section A.3.2.1** (Types; Limits; Duration of Insurance Coverage) and **Section A.3.3.1** (State Authorized Insurers; Duration of Insurance Coverage).

§ A.3.1.1.2 Matters Certified.

.1 Certificates of Liability Insurance: The certificates of liability insurance will be an **ACORD** form currently dated, issued by or on behalf of the insurers to Owner and Owner's Lender as Certificate Holder:

.1 Certifying: certifying the existence of the insurance required to be provided by Contractor and show

.1 Additional Insureds: the Protected Persons, the Architect, and the Architect's consultants each as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies and Business Auto Policy and Pollution Liability Policy, if required herein,

.2 Primary and Noncontributory: the primary and noncontributory status of Contractor's insurance with Owner's and the other Protected Persons' insurance stipulated to be excess,

.3 Waiver of Subrogation: subrogation is waived by the insurers as to claims against Owner, the other Protected Persons, the Architect, and the Architect's consultants,

.4 Notices to be Given: Advanced notice of cancellation, nonrenewal or material modification is to be afforded Owner, Owner's Lender, and the Development Manager by the insureds to a proper address specified in the certificate, and

.5 Other Matters: such other matters required by this **Exhibit A**; and

.2 Attachments: attached thereto a copy of each of the Endorsements required to be issued by these insurance specifications including the following:

.1 General Aggregate Designated to Project Endorsement: A copy of the following endorsement in form acceptable to Owner is required to accompany the Certificate of Liability Insurance: **ISO CG 25 93 05 09** General Aggregated Designated to Project.

.2 **Products-Completed Operations Aggregate Limit Endorsement:** A copy of the following endorsement in form acceptable to Owner is required to accompany the Certificate of Liability Insurance: **ISO CG 25 46 12 19** Designated Project(s) Products - Completed Operations Aggregate Limit.

.3 **Additional Insured Endorsements:** A copy of the following endorsements in form acceptable to Owner insuring the additional insured specified below are required to accompany the Certificate of Liability Insurance:

.1 **CGL - Ongoing Operations - Owner: ISO CG 20 10 07 04** Additional Insured - Owners, Lessees or Contractors – Scheduled Person Or Organization;

.2 **CGL - Owner's Lender: ISO CG 29 18 12 19** Additional Insured - Mortgagee, Assignee or Receiver as to Owner's Lender;

.3 **CGL - Ongoing Operations - Other Protected Persons: ISO CG 20 26 10 01** Additional Insured - Designated Person or Organization as to the other Protected Persons;

.4 **CGL - Architect and Architect's Consultants: ISO CG 20 32 [1st choice: 10 01] [2nd choice: 07 04]** Additional Insured – Engineers, Architects or Surveyors Not Engaged by the Named Insured with respect to the Architect and the Architect's consultants;

.5 **CGL - Completed Operations: ISO CG 20 37 [1st choice: 10 01] [2nd choice: 07 04]** Additional Insured – Owners, Lessees or Contractors – Completed Operations with respect to the Protected Persons; and

.6 **Business Auto - Each Protected Person: ISO CA 20 48 10 13** Additional Insured.

.4 **Primary-Noncontributory Endorsements:** A copy of Primary-Noncontributory Endorsements in form acceptable to Owner in favor of each of the Protected Persons are required to accompany the Certificate of Liability Insurance for the following insurance:

.1 **CGL: ISO CG 20 01 04 13.**

.2 **Business Auto: CA 04 49 11 16.**

.5 **Waiver of Subrogation Endorsements:** A copy of Waiver of Subrogation Endorsements in form acceptable to Owner protecting each of the Protected Persons are required to accompany the Certificate of Liability Insurance for the following insurance:

.1 **CGL: ISO CG 24 04 12 19.**

.2 **Business Auto: ISO CA 04 44 10 13.**

.3 **Umbrella.**

.4 **Workers Compensation: ISO WC 42 03.**

.5 **Employers Liability.**

.6 **Professional Liability.**

.7 **Pollution Liability.**

.8 **Comprehensive Crime.**

.6 Notice of Cancellation-Material Change Endorsements: A copy of Notice of Cancellation-Material Change endorsements acceptable to Owner and Owner's Lender are required to accompany the Certificate of Liability Insurance for the following insurance:

- .1 CGL.
- .2 Business Auto.
- .3 Umbrella.
- .4 Workers Comp.
- .5 Employers Liability.
- .6 Professional Liability.
- .7 Pollution Liability.
- .8 Comprehensive Crime.

.7 Schedule of Forms and Endorsements Pages: The Schedule of Forms and Endorsements for the respective policy listing the required Endorsements as issued modifications to the policy.

.8 Policy Language: to the extent that these coverages and provisions are included in the policy language and not by endorsement or modification or are effected by blanket endorsements, then a copy of the relevant portions of the policy and issued forms providing such coverages and provisions).

.2 Evidence of Property Insurance. Evidence of property insurance is to be issued on an **ACORD** form currently dated, issued by on or on behalf of the insurers to Owner and Owner's Lender, each as a Certificate Holder and

.1 Named Insureds: the Owner as a named insured on the builders risk insurance together with the contractor and subcontractors,

.2 Loss Payee: Owner and Owner's Lender as loss payees,

.3 Waiver of Subrogation: subrogation is waived by the insurers as to claims against Owner, Owner's Lender, and the other Protected Persons as provided in § A.3.3.2.1(e) (Builder's Risk Insurance - Waiver of Subrogation),

.4 Advanced Notice: advanced notice of cancellation, nonrenewal or material modification is to be afforded Owner and Owner's Lender by the insureds to a proper address specified in the certificate, and

.5 Other Matters: such other matters required by this **Exhibit A**, including but not limited to the following:

.1 All Risks Covered - Causes of Loss: "All risks" covered specifying the categories of causes of loss insured as provided in § A.3.3.2.1(a) ("All-Risks"; Completed Value Form; Replacement Cost Basis), § A.3.3.2.1.2 (Covered Property Interests), and § A.3.3.2.1.3 (Specific Required Coverages).

.2 Amount; Replacement Cost: The method of calculating the amount of insurance; certifying coverage is on a replacement cost basis as provided in § A.3.3.2.1(a) ("All-Risks"; Completed Value Form; Replacement Cost Basis) and § A.3.3.2.1(b) (Amount).

.3 Covered Property: Specifying the categories of property covered as provided in § A.3.3.2.1.2 (Covered Property Interests), § A.3.3.2.1.3 (Specific Required Coverages), and § A.3.3.2.1.5 (Insurance for Existing Structures).

.4 **Deductibles and Sub-limits:** Any and all deductibles and sub-limits as provided in § A.3.3.2.1.1.4 (Causes of Loss - Limits; Sub-limits); § A.3.3.2.1.3 (Specific Required Coverages); § A.3.3.2.1.3.2 (Specific Required Coverages - Debris Removal); § A.3.3.2.1.3 (Specific Required Coverages); and § A.3.3.2.1.7 (Optional Extended Property Insurance).

.5 **Optional Extended Property Insurance Selected:** The optional extended property insurance selected by Owner and bound for coverage and any and all sub-limits as provided in § A.3.3.2.1.3 (Specific Required Coverages).

.6 **Waiver of Subrogation:** Waiver of subrogation as to the Protected Persons by the insurer as provided in § A.3.3.2.1.3 (Specific Required Coverages).

.7 **Advanced Notice:** Commitment of insurer to provided Owner, Owner's Lender and Development Manager advanced notice of cancellation as provided in this provision and in § A.3.3.2.5 (Property Owned by Contractor - Advanced Notice).

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor. If Contractor elects to self-insure or to maintain liability insurance required herein subject to deductible and/or retentions exceeding \$25,000, Owner and Contractor shall have all rights and obligations between themselves as if Contractor fully maintained the insurance required herein including but not limited to additional insured status, primary and noncontributory liability, waivers or rights of recovery, other insurance clauses and any other extensions of coverage required herein. Contractor shall pay from its assets the costs, damages, claims, losses and liabilities, including attorney's fees and necessary litigation expenses at least to the extent that an insurance company would have been obligated to pay those amounts if Contractor had maintained the insurance pursuant this Exhibit without said deductible or self-insured retention. Add deductibles and retentions shall be paid by, assumed by, for the account of, and at the sole risk of Contractor. Contractor shall not be reimbursed for same by Owner or other additional insureds.

§ A.3.1.3 Additional Insured Obligations.

§ A.3.1.3.1 Additional Insureds. To the fullest extent permitted by law, and as further set forth in § A.3.1.3.3 (ISO Forms), the Contractor shall cause the commercial general liability coverage to include

.1 **Ongoing Operations:** the Owner, the other Protected Persons, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and

.2 **Completed Operations:** the Owner and the other Protected Persons as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations.

§ A.3.1.3.2 Primary and Noncontributory. The additional insured coverage shall be primary and noncontributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations with regards to insurance maintained by the Protected Persons, by endorsement with an **ISO CG 20 01 12 19** Primary and Noncontributory - Other Insurance; it being the specific intent of the parties to this Agreement that all liability insurance required herein of Contractor shall be primary to and shall seek no contribution from any other insurance (primary, umbrella, contingent or excess maintained by a Protected Person, with Protected Persons' liability insurance being excess, secondary and noncontributing).

§ A.3.1.3.3 ISO Forms. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. ("ISO") forms

.1 **Ongoing Operations - Owner:** **ISO CG 20 10** [*1st choice: 10 01*] [*2nd choice: 07 04*] Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization as to Owner,

.2 Owner's Lender: **ISO CG 20 18 12 19** Additional Insured - Mortgagee, Assignee or Receiver as to Owner's Lender,

.3 Ongoing Operations - Other Protected Persons: **ISO CG 20 26 10 01** Additional Insured - Designated Person or Organization as to the other Protected Persons,

.4 Architect and Architect's Consultants: **ISO CG 20 32** [*1st choice: 10 01*] [*2nd choice: 07 04*] Additional Insured – Engineers, Architects or Surveyors Not Engaged by the Named Insured with respect to the Architect and the Architect's consultants, and

.5 Completed Operations - Protected Persons: **ISO CG 20 37** [*1st choice: 10 01*] [*2nd choice: 07 04*] Additional Insured – Owners, Lessees or Contractors – Completed Operations with respect to the Protected Persons.

§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 Types; Limits; Duration of Insurance Coverage.

§ A.3.2.1.1 Types; Limits. The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ A.3.2.1.2 Duration of Insurance Coverage. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in **AIA A201 Section 12.2.2** (After Substantial Completion) of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

«Contractor agrees to maintain Products-Completed Operations coverage with respect to the Work performed under the Agreement in identical coverage, form and amount, including required endorsements, for the full term of the Statute of Repose following the Date of Substantial Completion of the Work by Contractor. »

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Occurrence Form; Limits; Coverage. Commercial General Liability ("CGL") insurance for the Project written on an **ISO CG 00 01** [*or a substitute providing coverage more beneficial to the Protected Persons*] occurrence form with policy limits of not less than the following limits (which limits may be the aggregate of a primary policy and an umbrella policy):

.1 Minimum Limits:

«_____ Dollars » (\$ «_____ ») each occurrence,

«_____ Dollars » (\$ «_____ ») general aggregate, and the general aggregate shall apply separately to this Project by endorsement by an **ISO CG 25 03 05 09** Designated Construction Project General Aggregate, and

«_____ Dollars » (\$ «_____ ») aggregate for products-completed operations hazard. The CGL is to be endorsed by an **ISO CG 25 45 12 19** Designated Project(s) Products-Completed Operations Aggregate Limit designating the products and completed operations aggregate limit to this Project.

.2 Coverage: providing coverage for claims including

.1 **Bodily Injury:** damages because of bodily injury, sickness, or disease, including occupational sickness or disease, and death of any person;

.2 **Personal and Advertising Injury:** personal injury and advertising injury;

.3 **Damage or Destruction of Tangible Property:** damages because of physical damage to or destruction of tangible property, including the loss of use of such property;

.4 **Completed Operations:** bodily injury or property damage arising out of completed operations; and

.5 **Insured Contracts:** the Contractor's indemnity obligations under **Section 3.18** (Indemnification) of the General Conditions as modified by the parties;

.6 **Deletion of Personal Injury Contractual Liability Exclusion:** Any exclusion from coverage of the insured's contractual assumption of liability for personal injuries occurring in connection with the Work;

.7 **Waiver of Subrogation:** Endorsed with an **ISO CG 24 04 12 19** Waiver of Transfer of Rights of Recovery Against Others Endorsement to include a waiver of subrogation by insurer as to the Protected Persons and such other persons as are designated by Owner or Development Manager to Contractor as Protected Persons; and

.8 **Advanced Notice:** This insurance is to contain a provision for 30 days' prior written notice by the insurance carrier to the Owner and Owner's Lender required for cancellation, non-renewal or material change except 10 days' for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

§ A.3.2.2.2 **Prohibitions.** The Contractor's Commercial General Liability policy under this **Section A.3.2.2** shall not contain an exclusion or restriction of coverage for the following:

.1 **Insured vs. Insured Exclusion:** Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

.2 **Property Damage Arising Out of Work Performed by Subcontractors:** Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.

.3 **Bodily Injury other than to Employees of Insured:** Claims for bodily injury other than to employees of the insured.

.4 **Indemnity as to Injuries to Employees of Insured:** Claims for indemnity under **Section 3.18** (Indemnification) of the General Conditions arising out of injury to employees of the insured.

.5 **Prior Work Endorsement:** Claims or loss excluded under a prior work endorsement or other similar exclusionary language.

.6 **Physical Damage under Prior Injury:** Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.

.7 **Habitational Projects:** Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.

.8 **Roofing:** Claims related to roofing if the Work involves roofing.

.9 **EIFS:** Claims related to exterior insulation finish systems ("EIFS"), synthetic stucco or similar exterior coatings or surfaces if the Work involves such coatings or surfaces.

.10 **Earth Subsidence or Movement:** Claims related to earth subsidence or movement, where the Work involves such hazards, including the following endorsements (including any earlier or later editions) are prohibited: **ISO CG 40 04 12 19** Exclusion - Earth Movement; **ISO CG 40 05 12 19** Exclusion - Earth Movement - Completed Operations; **ISO CG 40 06 12 19** Earth Movement - Exclusion for Designated Operation(s) or Project(s).

.11 XCU: Claims related to explosion, collapse and underground hazards (“XCU”), where the Work involves such hazards, including the following endorsements (including any earlier or later editions) are prohibited: **ISO CG 21 42** Exclusion – Explosion, Collapse and Underground Property Damage Hazard (Specified Operations) and **ISO CG 21 43** Exclusion – Explosion, Collapse and Underground Property Damage Hazard (Specified Operations Excepted).

.12 Contractual Liability Limitation: **ISO CG 21 39** Contractual Liability Limitation is not permitted.

.13 Amendment of Insured Contract Definition: **ISO CG 24 26** Amendment of Insured Contract Definition is not permitted.

.14 Limitation of Coverage to Designate Premises or Project: **ISO CG 21 44** Limitation of Coverage to Designated Premises or Project, or similar limitation, is not permitted.

.15 Modification to the Employers Liability Exclusion: Any endorsement modifying or deleting the exception to the Employers Liability Exclusion is not permitted.

.16 Punitive, Exemplary or Multiplied Damages Exclusion: Any type of punitive, exemplary, or multiplied damages exclusion is not permitted.

.17 Classification or Business Description Exclusion: Any restriction of coverage restricting coverage to only to classifications or descriptions specifically listed and excluding all others.

.18 Continuous or Progressive Injury and Damage Exclusion. Any exclusion for damages arising out of or related to bodily injury or property damage which first occurred in whole or in part prior to the inception date of the policy, or which are, or are alleged to be, in the process of occurring as of the inception date of the policy; or which were caused, or are alleged to have been caused, by the same condition or defective construction which first existed prior to the inception of the policy.

.19 Electronic Data Liability Exclusions. Any exclusion excluding for electronic data liability, including the following endorsements are prohibited: **ISO CG 04 71 12 19** Electronic Data Liability - Limited Bodily Injury Exception Not Included and **ISO CG 04 72 12 19** Electronic Data Liability Coverage (Coverage A) with Access or Disclosure of Confidential or Personal Information Exclusion (Coverage B).

§ A.3.2.2.3 Electronic Data Endorsement. This insurance is to include an **ISO CG 04 37 04 13** Electronic Data Liability endorsement with coverage to the full limits of the policy.

§ A.3.2.3 Business Automobile Liability. Automobile Liability covering vehicles owned and non-owned, and hired vehicles used, by the Contractor,

.1 Minimum Limits: with policy limits of not less than « _____ Dollars » (\$ « _____ ») per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

.2 Additional Insureds: Additional insured status shall be provided in favor of Protected Persons and such other persons as are designated by Owner to Contractor as additional insureds, on **ISO CA 20 48 10 13**.

.3 Waiver of Subrogation: This insurance is to include a waiver of subrogation by insurer as to the Protected Persons and such other persons as are designated by Owner to Contractor on **ISO CA 04 44 10 13**.

.4 Primary and Noncontributory Status: This insurance is to provide primary and noncontributory coverage with regards to insurance maintained by the Protected Persons, by endorsement with an **ISO CA 04 49**; it being the specific intent of the parties to this Agreement that all liability insurance required herein of Contractor shall be primary to and shall seek no contribution from any other insurance (primary, umbrella, contingent or excess maintained by a Protected Person, with Protected Persons’ liability insurance being excess, secondary and noncontributing.

.5 **Advanced Notice:** This insurance is to contain a provision for 30 days' prior written notice by the insurance carrier to Owner required for cancellation, non-renewal, or material change.

§ A.3.2.4 **Combination of Policies; Umbrella Liability.** The Contractor may achieve the required limits and coverage for Employers Liability, Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided:

.1 **Equivalent Coverage:** such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under **Section A.3.2.6** (Employers Liability), **Section A.3.2.2** (Commercial General Liability) and **A.3.2.3** (Business Automobile Liability), and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. This insurance shall follow form of the underlying coverages and conditions described above, including but not limited to the required additional insured status, designated construction project and/or location general aggregate, waiver of subrogation, and prohibited exclusions or limitations, and will be primary to and not seek contribution from any other insurance (primary, umbrella, contingent or excess) maintained Owner and any of the other Protected Persons. This insurance is to include a duty to defend any insured.

.2 **Exhaustion of Primary by Payment of Underlying Limits:** The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits.

.3 **Primary and Noncontributory:** This insurance shall be primary and non-contributing liability coverage. It is the specific intent of the parties to the Agreement that all insurance held by the Protected Persons shall be excess, secondary, and noncontributory. The Umbrella/Excess Liability policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits.

.4 **Waiver of Subrogation:** This insurance is to include a waiver of subrogation by insurer as to the Protected Persons and such other persons as are designated by Owner to Contractor.

.5 **Advanced Notice:** This insurance shall be endorsed to provide a 30 days' notice of cancellation to Owner and Owner's Lender except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

.6 **Concurrency:** Such coverage shall have the same inception date as the Commercial General Liability, Automobile Liability and Employers liability coverages.

§ A.3.2.5 **Workers Compensation.** Workers Compensation at no less than the statutory limits. This insurance is to cover liability arising out the Contractor's employment of workers and anyone for whom the contractor may be liability for Workers compensation claims. Workers compensation insurance is required, and no "alternative" form of insurance is permitted. Employees leased through a Professional Employment Organization ("PEO") are not permitted. The state in which the Work is to be performed must be listed under Item 3.A. on the Information Page of the policy.

.1 **Waiver of Subrogation:** This insurance is to include a waiver of subrogation by insurer as to the Protected Persons and such other persons as are designated by Owner to Contractor, on form **WC 42 03 04**.

.2 **Advanced Notice:** This insurance is to contain a provision for 30 days' prior written notice by the insurance carrier to Owner and Owner's Lender required for cancellation, non-renewal or material change except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

§ A.3.2.6 **Employers Liability.**

.1 **Coverage:** Coverage to the insured (employer) for liability to employees for work-related bodily injury or disease, other than liability imposed on the insured by the Workers compensation law

(“Employers Liability Coverage”).

.2 **Minimum Limits:** Employers Liability with policy limits not less than

« _____ Dollars » (\$ « _____ ») each accident,
 « _____ Dollars » (\$ « _____ ») each employee, and
 « _____ Dollars » (\$ « _____ ») policy limit.

.3 **Term:** The Employers Liability insurance is to be maintained in effect until the expiration of the period for correction of Work as set forth in the construction contract documents.

.4 **Stop Gap Coverage:** Stop gap coverage must be provided if Work is to be performed in a monopolistic state, listing the states in which Work is to be performed.

.5 **Waiver of Subrogation:** This insurance is to include a waiver of subrogation by the insurer as to Owner and the other Protected Parties.

.6 **Advanced Notice:** This insurance is to contain a provision that the insurer shall provide that this insurance shall not be canceled without at least 30 days' prior written notice to Owner and Owner's Lender except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

§ A.3.2.7 **Navigable Waters Hazards.** Jones Act, and the Longshore & Harbor Workers Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks.

§ A.3.2.8 **Professional Liability.** Contractor shall procure Professional Liability insurance covering performance of the professional services,

.1 **Minimum Limits:** with policy limits of not less than

« _____ Dollars » (\$ « _____ ») per claim and
 « _____ Dollars » (\$ « _____ ») in the aggregate.

.2 **Deductible:** Unless otherwise agreed by Owner, the deductible shall be no greater than \$25,000.

.3 **Scope:** Such insurance shall cover all professional services rendered by the Contractor and its Subcontractors under the Agreement, and shall include defense costs with defense costs covered outside of the policy limits. A professional liability endorsement to a general liability policy is not acceptable.

.4 **Claims Made and Retroactive Date:** Professional liability coverage may be on a “**claims made**” basis. With respect to any of the professional liability policies issued as “claims made” policies, which are canceled or not renewed, Contractor (or subcontractor if the case) shall provide a substitute insurance policy(ies) with terms and conditions and in amounts which comply with the terms of the Contract Documents and which provides for retroactive coverage to the date of cancellation or non-renewal to fill any gaps in coverage which may exist due to the cancellation or non-renewal of the prior “claims made” policies. With respect to all “claims made” policies which are renewed, Contractor (or subcontractor if the case) shall provide coverage retroactive to the date of commencement of the Work in said renewed policy. All said substitute or renewed “claims made” policies shall be maintained in full force and effect for the term of the Statute of Repose. Nothing herein shall affect the continuing effect of the indemnity clauses in the Contract Documents.

.5 **Prohibitions:** This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from:

.1 **Bodily Injury Exclusion:** Bodily injury or property damage where coverage is provided on behalf of design professionals or design/build contractors;

-
- .2 **Habitational Operations Exclusion:** Habitational or residential operations;
 - .3 **Mold, Microbes, Fungus, Biological Substances Exclusion:** Mold or microbial matter and fungus or biological substance;
 - .4 **Punitive, Exemplary or Multiplied Damages Exclusion:** Punitive, exemplary, or multiplied damages;
 - .5 **Contractual Assumed Liability Exclusion:** Contractual assumed liability;
 - .6 **Project Timely Completion Exclusion:** Failure to complete the Project on time or failure to perform professional services on time;
 - .7 **Copyright, Patent or Trademark Infringement Exclusion:** Infringement of copyrights, patents, or trademarks;
 - .8 **Faulty Workmanship Exclusion:** Faulty workmanship including work performed by a Subcontractor for which the Contractor is liable;
 - .9 **Safety Programs Exclusion:** Liability arising out of failure to implement or enforce safety programs;
 - .10 **Fines and Penalties Exclusion:** Fines and penalties including liquidated damages.

.6 **Term:** Policies written on a claims-made basis shall be maintained for at least the 10-year term of the Statute of Repose beyond termination of the Agreement. The purchase of an extended discovery period or an extended reporting period on a “claims made” policy will not be sufficient to meet the terms of this provision.

.7 **Waiver of Subrogation:** Contractor shall cause this insurance to be endorsed to waive all rights of subrogation in favor of the Protected Persons.

.8 **Advanced Notice:** This insurance shall be endorsed to provide a 30 days’ notice of cancellation to Owner and Development Manager.

§ A.3.2.9 Pollution Liability. If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Legal Liability insurance (written on an occurrence policy form) shall be procured by those contractors or their subcontractors involved with on-site (on or under the Property) Work and off-site (beyond the boundaries of the Property) Work in connection with this Property or Project which may involve the mitigation, disposal, transportation and handling of hazardous materials including, but not limited to demolition, erosion control, earthwork and utility work.

- .1 **Coverage Inclusions:** This insurance shall include coverage for:
 - .1 **Full Scope of Operations:** This insurance is to provide for coverage of the full scope of the named insured’s operations (on-going and completed operations) as described with the scope of Services under the contract.
 - .2 **On-Site and Off-Site Bodily Injury and Property Damages:** This insurance is to insure the liability for such on-site and off-site bodily injury, and property damage from pollution conditions or pollution events arising from the work or operations performed by or on behalf of the contractor or subcontractor, including, but not limited to the treatment, abatement, removal and transportation of hazardous substances or materials in connection with this project.
 - .3 **Pollutants:** Loss arising from pollutants including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica, and contaminated drywall.
 - .4 **Transportation:** Transportation pollution condition.

- .5 **Owned and Non-owned Disposal Sites:** Claims arising from Non-owned disposal sites, including recycling centers, utilized in the performance of the operations.
- .6 **Fines:** Civil and administrative fines and penalties to the extent insurable.
- .7 **Clean-up and Removal:** On-site (on or under the Property) and off-site (beyond the boundaries of the Property) clean-up and removal.
- .8 **Punitive Damages:** Punitive damages where insurable by law.
- .9 **Insured Contracts:** Contractual liability for assumed liability.
- .10 **Diminution of Value:** Diminution of value and natural resources damages.
- .11 **Defense:** Defense including costs and expenses incurred in the investigation, defense, or settlement of claims.
- .2 **Minimum Limits:** With policy limits of not less than
 « _____ Dollars » (\$ « _____ ») per claim and
 « _____ Dollars » (\$ « _____ ») in the aggregate.
- .3 **Deductible:** Unless otherwise agreed by Owner, the deductible shall be no greater than \$25,000.
- .4 **Term:** Coverage for completed operations shall be continued for this project for no less than the applicable statute of repose or six years from the date of Final Completion of the Work under this Agreement, whoever is longer.
- .5 **Prohibitions:** This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from:
- .1 **Insured vs. Insured Exclusion:** Claims by one insured against another insured, if the exclusion or restriction is based on the fact that the claimant is an insured, and there would otherwise be coverage for the claim;
- .2 **Impaired Property Exclusions:** Impaired property that has not been physically injured;
- .3 **Materials Supplied or Handled by the Named Insured Exclusion:** Materials supplied or handled by the named insured. However, exclusions for the sale and manufacture of products are allowed. Exclusionary language pertaining to materials supplied by the insured shall be reviewed by the certificate holder for approval;
- .4 **Property Damage to Contractor's Work Exclusion:** Property damage to the work performed by the contractor;
- .5 **Faulty Workmanship Exclusion:** Faulty workmanship as it relates to clean up costs;
- .6 **Punitive, Exemplary or Multiplied Damage Exclusion:** Punitive, exemplary, or multiplied damages;
- .7 **Injury to Employee Due to Subcontractor's Work Exclusion:** Work performed by subcontractors contractual liability incurred as a result of an injury to an employee of the insured; or
- .8 **Products or Completed Operations Exclusion:** Products or completed operations.

.6 **Additional Insureds:** The Protected Persons are to be insured as additional insureds on the Pollution Liability insurance.

.7 **Primary and Noncontributory:** This insurance shall be primary without right of contribution by any other insurance or self-insurance maintained by or available to Owner and the other Protected Parties.

.8 **Waiver of Subrogation:** Contractor shall cause this insurance to be endorsed by an **ISO CG 24 12 19** Waiver of Transfer of Rights of Recovery Against Other to Us (Waiver of Subrogation) to waive all rights of subrogation in favor of Protected Persons.

.9 **Advanced Notice:** This insurance is to contain a provision for 30 days' prior written notice by the insurance carrier to Owner and Owner's Lender required for cancellation, non-renewal or material change except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

§ A.3.2.10 **Combined Policy.** Coverage under Sections A.3.2.8 (Professional Liability) and A.3.2.9 (Pollution Liability) may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than « _____ Dollars » (\$ « _____ ») per claim and « _____ Dollars » (\$ « _____ ») in the aggregate.

§ A.3.2.11 **Maritime Liability.** Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than « _____ Dollars » (\$ « _____ ») per claim and « _____ Dollars » (\$ « _____ ») in the aggregate.

§ A.3.2.12 **Aircraft Liability.** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than « _____ Dollars » (\$ « _____ ») per claim and « _____ Dollars » (\$ « _____ ») in the aggregate.

§ A.3.2.13 Comprehensive Crime.

.1 **Scope:** Comprehensive crime insurance, including Employee Dishonesty (also known as fidelity bonding), forgery or alteration and computer systems coverage.

.2 **Minimum Limits:** Limits of at least \$2,000,000 per loss or otherwise reasonably acceptable to Owner.

.3 **Additional Coverage Inclusion:** Contractor's crime insurance shall include third-party/client property coverage and shall not exclude coverage for losses resulting from social engineering fraud.

.4 **Loss Payee:** Owner and Owner's Lender shall be a loss payee on Contractor's crime insurance.

.5 **Waiver of Subrogation:** Contractor shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Protected Persons.

.6 **Advanced Notice:** This insurance is to contain a provision that the insurer shall provide that this insurance shall not be canceled without at least 30 days' prior written notice to Owner and Owner's Lender except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

§ A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 State Authorized Insurers; Duration of Insurance Coverage.

.1 **State Authorized Insurers:** Insurance selected and described in this **Section A.3.3** (Contractor's Other Insurance Coverage) shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

.2 **Duration of Insurance Coverage:** The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in **Section 12.2.2** (After Substantial Completion) of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, **state the duration.**)*

« »

§ A.3.3.2 Types and Limits. The Contractor shall purchase and maintain the following types and limits of insurance in accordance with **Section A.3.3.1** (State Authorized Insurers; Duration of Insurance Coverage).

*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the **policy limit** in the appropriate **fill point**.)*

[« »] **§ A.3.3.2.1 Builder's Risk Insurance.** Property insurance of the same type and scope satisfying the requirements identified in **Section A.2.3** (Required Property Insurance), which, if selected in this **Section A.3.3.2.1** (Builder's Risk Insurance), relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by **Section A.2.3.1.3** (Insured Amount; Duration of Coverage) and **Section A.2.3.3** (Insurance for Existing Structures). The Property insurance is to be written as follows:

(a) **"All-Risks"; Completed Value Form; Replacement Cost Basis.** The property insurance is to be written on a builder's risk **"all-risks"** (i) completed value or policy form providing more beneficial coverage to the Protected Persons and enough to cover (ii) the total value of the entire Project (iii) on a replacement cost basis.

(b) **Amount:** The property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others.

(c) **Insureds and Loss Payee:** This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds and Owner shall be the loss payee.

(d) **Mortgagees as Loss Payees:** This insurance shall include the interests of mortgagees as loss payees.

(e) **Waiver of Subrogation:** Insurer is to waive subrogation for the benefit of the Protected Persons.

§ A.3.3.2.1.1 Causes of Loss:

The insurance required by this **Section A.3.2.3.1** (Causes of Loss) shall

.1 **Direct Physical Loss or Damage:** provide coverage for direct physical loss or damage.

.2 **Not Excluded:** not exclude the risks of collapse, earthquake, explosion, fire, flood, malicious mischief, theft, vandalism, or windstorm.

.3 **Errors, Omissions or Deficiency:** also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials without Sub-limits.

.4 **Limits; Sub-limits:** Has the following sub-limits, if any:
(Indicate below the cause of loss and any applicable sub-limit.)

Causes of Loss

Sub-Limit

\$ _____

Unless specified above as a coverage having a sub-limit the coverage is not to have a sub-limit, including but not limited to the following coverages:

- (a) Agreed value.
- (b) Freezing.
- (c) Mechanical breakdown, including hot and cold testing.
- (d) Preservation of property.
- (e) Replacement cost, to include contractor's overhead and profit.
- (f) Hostile or warlike actions in time of peace or war; Insurrection, rebellion, revolution, civil war, or commotion.
- (g) Subsidence, shrinking, settling, cracking and expansion.
- (h) Theft.
- (i) Waiver of subrogation as required by the contract documents.

§ A.3.3.2.1.2 Covered Property Interests: Such insurance shall cover the Work, including among other items:

- (a) Buildings or structures being erected, including retaining walls, paved surfaces and roadways, bridges, glass, foundations, pilings, footings, underground pipes and wiring, excavations, grading, backfilling, or filling.
- (b) Fixtures, materials, supplies, machinery, and equipment on site that will become part of the completed structures. Fixtures, materials, supplies, machinery, and equipment at other locations but intended for use at the site.
- (c) The additional properties listed in § A.3.3.2.1.3 (Specific Required Coverages).

§ A.3.3.2.1.3 Specific Required Coverages: The builder's risk insurance obtained by Contractor shall include the following property as covered property and the properties are covered for the full cost thereof except as a sub-limit, if any, is stated below:

.1 **Temporary Structures; Building Systems:** The insurance required by this **Section A.3.3.2.1** (Builder's Risk) shall provide coverage for loss or damage to falsework and other temporary structures (*e.g.*, scaffolding, construction forms, false work, cofferdams, cribbing, falsework, signs, site lighting, temporary utilities and buildings or structures), and to building systems from hot or cold testing and startup.

.2 **Debris Removal:** The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Debris removal shall be provided as an additional benefit with a limit of \$ ____.

.3 **Other:** The following additional properties:

- (a) Airborne property.
- (b) Contractor's tools and equipment not destined to become part of the structure.
- (c) Existing buildings and structure to which alterations or additions are being made.

-
- (d) Foundation, underground pipes, and other underground works.
 - (e) Maps, plans, blueprints, specifications.
 - (f) Materials and supplies in transit to the site for installation by all means of transportation other than ocean transit.
 - (g) Offices and utility trailers.
 - (h) Other property for which an insured is liable regarding the project.
 - (i) Personal property of others for which the insured may be liable.
 - (j) Sidewalks and other paved surfaces.
 - (k) Site preparation and excavation works.
 - (l) Trees, grass, shrubbery, plants, landscaping materials.
 - (m) Waterborne property.
 - (n) Radio or television antennas, including lead-in wiring, masts, and towers.
 - (o) Signs.
 - (h) Other property for which an insured is liable regarding the project.
 - (i) Personal property of others for which the insured may be liable.
 - (j) Sidewalks and other paved surfaces.
 - (k) Site preparation and excavation works.
 - (l) Trees, grass, shrubbery, plants, landscaping materials.
 - (m) Waterborne property.
 - (n) Radio or television antennas, including lead-in wiring, masts, and towers.
 - (o) Signs.

§ A.3.3.2.1.4 **Insured Amount; Duration of Coverage.** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall obtain and maintain commercial property insurance on the property as it deems appropriate.

§ A.3.3.2.1.5 **Occupancy or Use Prior to Substantial Completion:**

.1 **Consent for Occupancy or Use Prior to Substantial Completion:** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under **Section A.2.3.1** (Builder's Risk) have consented in writing to the continuance of coverage. If early occupancy of a portion of the project is contemplated, then the builder's risk policy obtained by the Contractor is to be endorsed to permit early occupancy and be on terms negotiated and approved by Owner.

.2 **Take No Action That:** The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.3.3.2.1.6 Insurance for Existing Structures:

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the builder's risk insurance to be purchased by Contractor shall insure the existing structure on an "all-risks" replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in **Section A.3.3.2.1** (Builder's Risk), notwithstanding the undertaking of the Work. The insurance shall eliminate all co-insurance penalties.

§ A.3.3.2.1.7 Optional Extended Property Insurance: The Contractor shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

[☐] .1 Loss of Use, Business Interruption, and Delay in Completion Insurance, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss. «[Sub-limit \$_____] [Included without sub-limit.] »

Loss of net rental income which results from delay beyond the projected completion date due to a covered cause of loss. «[Sub-limit \$_____] [Included without sub-limit.] »

[☐] .2 Ordinance or Law Insurance, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project. «[Included without sub-limit.] »

[☐] .3 Expediting Cost Insurance, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property. «[Sub-limit \$_____] [Included without sub-limit.] »

[☐] .4 Extra Expense Insurance, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred. «[Sub-limit \$_____] [Included without sub-limit.] »

[☐] .5 Civil Authority Insurance, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance. «[Sub-limit \$_____] [Included without sub-limit.] »

[☐] .6 Ingress/Egress Insurance, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage. «[Sub-limit \$_____] [Included without sub-limit.] »

[☐] .7 Soft Costs Insurance, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: «[Sub-limit \$_____] [Included without sub-limit.] »

including

[☐] .1 Construction Loan Fees: construction loan fees.

[☐] .2 Leasing and Marketing Expenses: leasing and marketing expenses, including commissions on renegotiated leases.

[☐] .3 Additional Fees: additional fees, including those of architects, engineers, consultants,

attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction.

[« »] .4 **Carrying Costs:** carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

[« »] .5 **Overhead:** additional overhead.

[« »] .6 **Other:** [« »]

§ A.3.3.2.1.8 Additional Specifications Applicable to Contractor:

The Contractor shall comply with all obligations of the Owner under **Section A.2.3** (Required Property Insurance) except to the extent provided below.

.1 **Deductible:** The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. The amount of any deductible must be approved by Owner.

.2 **Copy of Policy:** The Contractor shall provide the Owner with a copy of the property insurance policy or policies required.

.3 **Adjustments and Settlement:** The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with **AIA A201-2017 Article 11** (Insurance and Bonds) of the General Conditions unless otherwise set forth below:

(Where the Contractor's obligation to provide property, insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

«Contractor is providing the builder's risk insurance.»

.4 **Term and Termination:** This insurance shall be maintained in effect, unless otherwise provided for in the Agreement, until the earliest of the following dates: **(a)** The date on which all persons and organizations who are insureds under the policy agree that it shall be terminated; **(b)** The date of final payment, as provided for in the Agreement; or **(c)** The date on which the insurable interests in the Covered Property of all insureds other than Contractor have ceased. The termination of coverage provision shall be endorsed to permit occupancy of the coverage property being constructed. This insurance shall not be subject to cancellation by the insurer for any reason other than nonpayment of premium without 60 days prior written notice to the Owner.

.5 **Stand Alone Policy:** The builder's risk insurance is to be a stand-alone policy covering only the Project and not part of a master or blanket policy covering other projects of the Contractor. The policy is not to be a reporting form policy.

.6 **Prohibition:** No protective safeguard warranty is permitted.

[« »] § A.3.3.2.2 **Railroad Protective Liability Insurance**, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate, for Work within fifty (50) feet of railroad property.

[« »] § A.3.3.2.3 **Asbestos Abatement Liability Insurance**, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[« »] § A.3.3.2.4 **Property in Storage or in Transit.** Insurance for physical damage to or theft of property while it is in storage and in transit to the construction site on an "all-risks".

[« »] § A.3.3.2.5 Property Owned by Contractor

.1 **Scope:** Property insurance on an “**all-risks**”, covering property that is not intended to become part of the project except as specifically covered by the policy and owned by the Contractor and used on the Project, including scaffolding and other equipment.

.2 **Waiver of Subrogation:** This insurance shall contain a waiver of subrogation by the insurer as to claims on the Protected Persons.

.3 **Waiver of Recovery:** Owner shall have no liability to Contractor for loss or damage (including theft) to Contractor’s tools or equipment located at the jobsite and Contractor waives recovery from the Protected Persons from any damage or loss thereto, including as a result of the negligence of the Protected Persons.

.4 **Advanced Notice:** This insurance is to contain a provision that the insurer shall provide that this insurance shall not be canceled without at least 30 days’ prior written notice to Owner and Owner’s Lender except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner’s Lender with such notice.

[« »] § A.3.3.2.6 Other Insurance

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits

§ A.3.4 Performance Bond and Payment Bond

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	Contract Sum
Performance Bond	Contract Sum

Payment and Performance Bonds shall be **AIA Document A312™**, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement and issued by an issuer that is at least a *Best's Key Rating Guide* A/VII company and listed on the United States Department of the Treasury's List of Acceptable Sureties and Reinsurers (the "T" list).

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

§ A.4.1 Subcontractor’s Insurance.

Contractor shall cause Subcontractors of every tier to purchase and maintain insurance meeting the specifications set out in Owner’s insurance specifications for subcontractors and provide certificates of insurance and copies of policies as therein set out.

§ A.4.2 General Insurance Requirements.

.1 **Policies:** All policies be written through insurance companies authorized to do business in the State of the Property’s location which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best’s Key Rating Guide at all times Work is to be performed, unless a different rating is approved by Owner.

.2 **Forms:** If the forms of policies, endorsements, certificates, or evidence of insurance required by these insurance specifications are superseded or discontinued, Owner will have the right to require other forms providing more beneficial coverage to the Protected Persons. Any policy or endorsement form other than a form specified in this Exhibit must be approved in advance by Owner.

.3 **Copies of Policies:** Contractor will provide to Owner a certified copy of any or all insurance policies and endorsements.

.4 **Limits:** “**Limits**” set out in these specifications are the minimum dollar amount of insured coverage for the risk, cause of loss or peril specified. If Contractor maintains greater limits, then these specifications shall not limit the amount of recovery available to Protected Persons and the limits specified above as the minimum limits are increased to the greater limits. For those policies containing an aggregate, as soon as incurred loss activity (paid plus reserve) depletes the aggregate by 50% or more, written notice must be delivered to Owner and Owner’s Lender.

.5 **Deductibles:** No deductible or self-insured retention shall exceed \$25,000 without prior written approval of the Owner. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Contractor's sole risk.

.6 **Severability of Interest:** All insurance required by this Exhibit (excluding only Workers Compensation Insurance and Professional Liability Insurance) shall be endorsed to provide that, in as much as the policy is written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. No cross-liability exclusion will be accepted. Nor shall there be any restrictions in any policies that limit coverage for a claim brought by an Additional Insured against a named insured.

§ A.4.3 Miscellaneous.

.1 **No Waiver:** Failure of any Protected Person to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Protected Person to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance.

.2 **Suspension:** Owner shall have the right, but not the obligation, of suspending Contractor’s services, without an increase in the sum payable by Owner to Contractor due to such suspension, until such certificates or other evidence that the required insurance has been placed in compliance with these requirements is received and approved by Owner.

.3 **Post Completion Coverage:** With respect to the insurance to be maintained after final payment to Contractor, an additional certificate(s) evidencing such coverage shall be provided to Owner with final application for payment if prior certificate has expired, and thereafter upon renewal or replacement of such insurance until the expiration of the time period for which such insurance must be maintained.

.4 **Compliance With Laws:** If any insurance requirements are deemed to violate any law, statute or ordinance, the insurance requirements shall be reformed to provide the maximum amount of protection to Owner as allowed under the law.

.5 **Minimum Requirements:** It is expressly understood and agreed that the insurance coverages required herein (a) represent Owner's minimum requirements and are not to be construed to void or limit the Contractor's indemnity obligations as contained in the Contract Documents nor represent in any manner a determination of the insurance coverages Contractor should or should not maintain for its own protection; and (b) are being, or have been, obtained by Contractor in support of Contractor's liability and indemnity obligations under the Contract Documents. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of Contractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provision of the Contract Documents.

.6 **Effect of Specified Coverages:** In specifying minimum requirements herein, Owner does not assert nor recommend this insurance as adequate for Contractor or any Subcontractor. Contractor and its Subcontractors are solely responsible to inform themselves of types of insurance it may need beyond these minimum requirements to protect themselves from loss, damage, or liability. More current editions of the ISO forms specified herein may not be used except if approved in advance by Owner. If the forms of policies, endorsements, certificates, or evidence of insurance required by these insurance specifications are superseded or discontinued, Owner will have the right to require other forms providing more beneficial coverage to the Protected Persons. Any policy or endorsement form other than a form specified in this **Exhibit** must be approved in advance by Owner.

.7 **Survival:** This Exhibit is an independent contract provision and shall survive the completion of the Work. All policies are to be subject to Owner's approval in its sole discretion and this Contract is conditioned on Owner's approval.

.8 **Waiver of Workers Compensation Immunity:** The indemnification obligations contained in this Agreement shall not be limited by any Workers Compensation, benefit or disability laws, and each indemnifying party hereby waives (solely for the benefit of the indemnified party) any immunity that said indemnifying party may have under applicable laws.

§ A.4.4 Condition Precedent: If insurance to be provided by Contractor is not acceptable to Owner, Owner may terminate this Contract, and Owner's approval is a condition precedent to this Contract. Owner has the right, but not the obligation, of suspending Contractor's services, without an increase in the sum payable by Owner to Contractor due to such suspension, until such certificates or other evidence that the required insurance has been placed in compliance with these requirements is received and approved by Owner.

§ A.4.5 "Protected Persons": References in this **Exhibit A** to "**Protected Persons**" means the following persons and entities:

.1 **Owner:**

.2 **Development Manager:**

.3 **Owner's Construction Lender:**

.4 **Additional Specified Persons and Entities:**

.5 **Additional Categories of Persons and Entities:**

As to the above listed persons and entities:

- a. their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors, and assigns,
- b. any directors, officers, employees, or agents of such persons or entities, and
- c. other persons or entities designated to Contractor by any of the above listed persons or entities.

B. Checklist (✓) for AIA A101 Exhibit A Contractor's Liability Insurance

This Checklist supports identifying and drafting insurance requirements to be obtained by the Contractor and to confirm compliance with the insurance requirements. This Checklist accompanies a template for negotiation and completion of the insurance and bond requirements for the Contractor in the **AIA A101-2017 Exhibit A** Insurance and Bonds form as modified for the transaction. References under the Checklist's Specifications column to §§ refer to the corresponding § in the AIA form.

√	No.	Specifications	Coverages, Limits and Other Requirements		
LIABILITY INSURANCE					
	1	Commercial General Liability. To the extent permitted by law, Contractor is to maintain commercial general liability (“CGL”) insurance and, if necessary, commercial umbrella/excess insurance (see Spec. 4 below), issued on an occurrence basis meeting at least the following specifications. § A.3.2.2.1			
	1.1	Minimum Limits	The limits of coverage shall not be less than the following amounts:		
		§ A.3.2.2.1.1	1	\$ __,000,000	Per Occurrence
		§ A..3.2.2.1.1	2	\$ __,000,000	General Aggregate
		§ A.3.2.2.1.1	3	\$ __,000,000	Products and Completed Operations Aggregate
		§ A.3.2.2.1.1 § A.3.2.2.2.2	4	\$ __,000,000	Personal and Advertising Injury
	1.2.1	General Aggregate § A.3.2.2.1.1	The General Aggregate shall apply separately to this Project by an ISO CG 25 03 05 09 Designated Construction Project General Aggregate.		
	1.2.2	General Aggregate - Completed Operations § A.3.2.2.1.1	The General Aggregate for products-completed operations shall apply separately to this Project by an ISO CG 25 45 12 19 Designated Project(s) Products-Completed Operations Aggregate Limit.		
	1.3	Post-Completion Coverage § A.3.2.1	Contractor agrees to maintain Products-Completed Operations coverage with respect to the Work performed under the Agreement in identical coverage, form and amount, including required endorsements, for the full term of the 10-year Statute of Repose following Date of Substantial Completion of the Work. Contractor shall provide written representation to Owner stating Work completion date.		
	1.4	Form § A.3.2.2.1	This insurance is to be issued on an ISO CG 00 01 and shall coverage liability arising from premises, ongoing and completed operations, hire of Subcontractors (independent contractors coverage), and incidental design liability arising from the contractor’s construction means and methods.		
	1.5	Insured Contracts § A.3.2.2.2.5	Coverage shall include but not be limited to liability assumed by Contractor under the Agreement to which this Exhibit is attached, including the tort liability of another assumed in a business contract, and shall include unmodified Separation of Insureds coverage.		
	1.6	Additional Insureds § A.3.1.3.1 § A.3.1.3.3	Additional insured status shall be provided in favor of Protected Persons, Architect, Architect’s consultants, and such other persons as are designed by Owner or Development Manager to Contractor to be additional insureds as follows:		
		Owner:	ISO CG 20 10 [<i>1st Choice: 10 01</i>] [<i>2^d Choice: 07 04</i>]		

			ISO CG 20 37 [10 01] [07 04]
		Owner's Lender:	ISO CG 20 18 12 19 Additional Insured - Mortgagee, Assignee or Receiver
		Other Protected Persons:	ISO CG 20 37 [1st Choice: 10 01] [2^d Choice: 07 04] Additional Insured – Owners, Lessees or Contractors – Completed Operations:
			Development Manager
			Other Additionally Specified Persons and Entities: _____
			Omnibus Categories of Persons and Entities
		Architect:	ISO CG 20 32 [10 01] [07 04] Additional Insured – Engineers, Architects or Surveyors Not Engaged by the Named Insured.
		Architect's Consultants:	ISO CG 20 32 [10 01] [07 04] Additional Insured – Engineers, Architects or Surveyors Not Engaged by the Named Insured.
	1.7	Primary and Noncontributory § A.3.1.3.2 § A.3.2.2.2.1	This insurance shall be endorsed to provide primary and noncontributing liability coverage by ISO CG 20 01 12 19 . It is the specific intent of the parties to the Agreement that all insurance required herein shall be primary to and shall seek no contribution from all insurance held by Protected Persons, with Protected Persons' insurance being excess, secondary and noncontributing as to the following:
		Owner	
		Owner's Lender	
		Other Protected Persons:	The following additional Protected Persons:
			Development Manager
			Other Additionally Specified Persons and Entities: _____
			Omnibus Categories of Persons and Entities
	1.8	Waiver of Subrogation § A.3.2.2.2.7	This insurance is to be endorsed with an ISO CG 24 04 12 19 Waiver of Transfer of Rights of Recovery Against Others Endorsement, or more beneficial forms, to include a waiver of subrogation by insurer as to the Protected Persons and such other persons as are designated by Owner or Development Manager to Contractor as to the following:
		Owner	
		Owner's Lender	
		Other Protected Persons:	The following additional Protected Persons:
			Development Manager
			Other Additionally Specified Persons and Entities: _____
			Omnibus Categories of Persons and Entities
	1.9	Electronic Data § A.3.2.2.3	This insurance is to include an Electronic Data Liability Endorsement ISO CG 04 37 with coverage to the full limits of the policy.
	1.10	Advanced Notice	This insurance is to contain a provision for 30 days' prior written notice by insurance carrier to Owner, Owner's Lender and Development Manager required for

		§ A.3.2.2.2.8	cancellation or material change to the following:	
		Owner		
		Owner's Lender		
	1.11	Personal Injury Contractual Liability § A.3.2.2.1.2.6	The personal injury contractual liability exclusion shall be deleted.	
	1.12	Prohibitions § A.3.2.2.2	The following exclusions/limitations or their equivalents are <u>not</u> permitted:	
		§ A.3.2.2.2.1	1	Any insured vs. insured exclusion except named insured vs. named insured.
		§ A.3.2.2.2.2	2	Property Damage Arising Out of Work Performed by Subcontractors
		§ A.3.2.2.2.3	3	Bodily Injury other than to Employees of Insured
		§ A.3.2.2.2.4	4	Indemnity as to Injuries to Employees of Insured
		§ A.3.2.2.2.5	5	Prior Work Endorsement
		§ A.3.2.2.2.6	6	Physical Damage under Prior Injury
		§ A.3.2.2.2.7	7	Any habitational or residential exclusion.
		§ A.3.2.2.2.8	8	Roofing
		§ A.3.2.2.2.9	9	EIFS
		§ A.3.2.2.2.10	10	Any subsidence exclusion (e.g., none of following ISO CG 40 04 12 19 Exclusion - Earth Movement; ISO CG 40 05 12 19 Exclusion - Earth Movement - Completed Operations; ISO CG 40 06 12 19 Earth Movement - Exclusion for Designated Operation(s) or Project(s)).
		§ A.3.2.2.2.11	11	XCU: Any endorsement modifying or deleting explosion, collapse or underground coverage (e.g., none of following ISO CG 21 42 Exclusion – Explosion, Collapse and Underground Property Damage Hazard (Specified Operations) and ISO CG 21 43 Exclusion – Explosion, Collapse and Underground Property Damage Hazard (Specified Operations Excepted)).
		§ A.3.2.2.2.12	12	Contractual Liability Limitation (e.g., no ISO CG 21 39).
		§ A.3.2.2.2.13	13	Amendment of Insured Contract Definition (e.g., no ISO CG 24 26).
		§ A.3.2.2.2.14	14	Limitation of Coverage to Designated Premises or Project (e.g., no ISO CG 21 44).
		§ A.3.2.2.2.15	15	Modification to the Employer's Liability Exclusion
		§ A.3.2.2.2.16	16	Any punitive, exemplary or multiplied damages exclusion.
		§ A.3.2.2.2.17	17	Any classification limitation.

		§ A.3.2.2.2.18	18	Continuous or Progressive Injury and Damage Exclusions	
		§ A.3.2.2.2.19	19	Electronic Data Liability Limitations (e.g., no ISO CG 04 71 12 19 Electronic Data Liability - Limited Bodily Injury Exception Not Included and ISO CG 04 72 12 19 Electronic Data Liability Coverage (Coverage A) with Access or Disclosure of Confidential or Personal Information Exclusion (Coverage B).	
	2	<u>Business Auto Liability.</u> Contractor is to maintain business auto insurance on an occurrence basis meeting at least the following specifications. § A.3.2.3			
	2.1	Minimum Limits § A.3.2.3.1	The limits of liability shall be no less than \$ __,000,000 per accident.		
	2.2	Form § A.3.2.3	This insurance is to be issued on the current edition of the ISO CA 00 01.		
	2.3	Scope § A.3.2.3	This insurance is to coverage damages because of bodily injury or property damages caused by an accident and resulting from the ownership, maintenance or use of any auto, including owned, hired and non-owned autos.		
	2.4	Additional Insureds § A.3.2.3.2	Additional insured status shall be provided in favor of Protected Persons and such other persons as are designated by Owner or Development Manager to Contractor as additional insureds, on ISO CA 20 48 10 13.		
	2.5	Waiver of Subrogation § A.3.2.3.3	This insurance is to include a waiver of subrogation by insurer as to the Protected Persons and such other persons as are designated by Owner or Development Manager to Contractor on ISO CA 04 44 10 13.		
	2.6	Primary and Noncontributory § A.3.2.3.4	This insurance shall be endorsed to provide primary and noncontributing liability coverage by ISO CA 04 49. It is the specific intent of the parties to the Agreement that all insurance required herein shall be primary to and shall seek no contribution from all insurance held by Protected Persons, with Protected Persons' insurance being excess, secondary and noncontributing.		
	2.7	Advanced Notice § A.3.2.3.5	This insurance is to contain a provision for 30 days' prior written notice by insurance carrier to Owner and Development Manager required for cancellation or material change.		
	3	<u>Workers' Compensation and Employer's Liability.</u> Contractor is to maintain workers' compensation and employer's liability insurance meeting at least the following specifications.			
	3.1	Workers' Compensation Limits § A.3.2.5	The minimum limits of this insurance shall be no less than the statutory limits.		
	3.2	Employer's Liability Limits § A.3.2.6	The minimum limits of this insurance shall be no less than: \$ each accident and disease.		
		Minimum Limits	The limits of coverage shall not be less than the following amounts:		
			1	\$ __,000,000	Each Accident
			2	\$ __,000,000	Each Employee
			3	\$ __,000,000	Policy Limit

	3.3	Territory § A.3.2.5	The state in which the Work is to be performed must be listed under Item 3.A. on the Information Page of the policy.
	3.4	Workers' Compensation § A.3.2.5	This insurance is to cover liability arising out the Contractor's employment of workers and anyone for whom the contractor may be liability for workers' compensation claims. Worker's compensation insurance is required, and no "alternative" form of insurance is permitted.
	3.5	Prohibition § A.3.2.5	Employees leased through a Professional Employment Organization ("PEO") are not permitted.
	3.6	Stop Gap § A.3.2.5.2	Stop Gap coverage must be provided if Work is to be performed in a monopolistic state, listing the state in which Work is to be performed.
	3.7	Waiver of Subrogation § A.3.2.5.1 § A.3.2.6.4	This insurance is to include a waiver of subrogation by insurer as to the Protected Persons and such other persons as are designated by Owner or Development Manager to Contractor, on form WC 42 03 04 .
	3.8	Advanced Notice § A.3.2.6.5	This insurance is to contain a provision for 30 days' prior written notice by insurance carrier to Owner and Development Manager required for cancellation or material change.
	4.	Umbrella Liability. To the extent permitted by law, if any of the required coverages are to be maintained by and through excess liability insurance, Contractor is to maintain excess liability insurance on an occurrence basis meeting at least the following specifications. § A.3.2.4	
	4.1	Scope § A.3.2.4.1	This insurance shall be excess over and be no less broad than all coverages and conditions described above. The policy limits required herein may be provided by a combination of primary and excess policies, but in no event shall the total limits of liability available for any one occurrence or accident by less than the amount required herein.
	4.2	Concurrency § A.3.2.4.6	Such coverage shall have the same inception date as the commercial general liability and employer's liability coverages.
	4.3	Primary and Noncontributory § A.3.2.4.3	This insurance shall be primary and non-contributing liability coverage. It is the specific intent of the parties to the Agreement that all insurance held by the Protected Persons shall be excess, secondary and non-contributory.
	4.4	Drop Down Coverage § A.3.2.4.1	Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits.
	4.5	Defense Costs § A.3.2.4.1	This insurance is to include a duty to defend any insured.
	4.6	Waiver of Subrogation § A.3.2.4.4	This insurance is to include a waiver of subrogation by insurer as to the Protected Persons and such other persons as are designated by Owner to Contractor.
	4.7	Advanced Notice § A.3.2.4.5	This insurance shall be endorsed to provide a 30 days' notice of cancellation to Owner.
	5.	Professional Liability. Contractor is to maintain Professional Liability insurance meeting at least the following specifications. § A.3.2.8	
	5.1	Minimum Limits	Limits of coverage shall be no less than:

	§ A.3.2.8.1		1	\$ __,000,000	Each Loss
			2	\$ __,000,000	Annual Aggregate
	5.2	Deductible § A.3.2.8.2	No greater than \$25,000.		
	5.3	Scope § A.3.2.8.3	Such insurance shall cover all services rendered by the Contractor and its Subcontractors under the Agreement, including but not limited to design or design/build services.		
	5.4	Claims Made and Retroactive Date § A.3.2.8.4	Professional liability coverage may be on a “claims made” basis.		
	5.5	Prohibitions § A.3.2.8.5	This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from:		
		§ A.3.2.8.5.1	1	Bodily injury or property damage where coverage is provided on behalf of design professionals or design/build contractors;	
		§ A.3.2.8.5.2	2	Habitational or residential operations;	
		§ A.3.2.8.5.3	3	Mold or microbial matter and fungus or biological substance; or	
		§ A.3.2.8.5.4	4	Punitive, exemplary, or multiplied damages.	
		§ A.3.2.8.5.5	5	Contractual assumed liability.	
		§ A.3.2.8.5.6	6	Failure to complete the Project on time or failure to perform professional services on time.	
		§ A.3.2.8.5.7	7	Infringement of copyrights, patents, or trademarks.	
		§ A.3.2.8.5.8	8	Faulty workmanship including work performed by a Subcontractor for which the Contractor is liable.	
		§ A.3.2.8.5.9	9	Liability arising out of failure to implement or enforce safety programs.	
		§ A.3.2.8.5.10	10	Fines and penalties including liquidated damages.	
		§ A.3.2.8.3	A professional liability endorsement to a general liability policy is not acceptable.		
	5.6	Term § A.3.2.8.6	Policies written on a claims-made basis shall be maintained for at least the 10-year term of the Statute of Repose beyond termination of the Agreement. The purchase of an extended discovery period or an extended reporting period on a “claims made” policy will not be sufficient to meet the terms of this provision.		
	5.7	Waiver of Subrogation § A.3.2.8.7	Contractor shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Protected Persons.		
	5.8	Advanced Notice § A.3.2.8.8	This insurance shall be endorsed to provide a 30 days’ notice of cancellation to Owner.		
	6	Pollution Liability. Contractor is to maintain Professional Liability insurance meeting at least the following specifications. § A.3.2.9			

	6.1	Minimum Limits	Limits of coverage shall be no less than:		
	§ A.3.2.9.2		1	\$ __,000,000	Each Loss
			2	\$ __,000,000	Aggregate
	6.2	Deductible § A.3.2.9.3	No greater than \$25,000.		
	6.3	Scope § A.3.2.9.1			
		§ A.3.2.9.1.1	1	Full Scope of Operations	
		§ A.3.2.9.1.2	2	On-Site and Off-Site Bodily Injury and Property Damages	
		§ A.3.2.9.1.3	3	Pollutants	
		§ A.3.2.9.1.4	4	Transportation	
		§ A.3.2.9.1.5	5	Owned and Non-owned Disposal Sites	
		§ A.3.2.9.1.6	6	Fines	
		§ A.3.2.9.1.7	7	Clean-up Removal	
		§ A.3.2.9.1.8	8	Punitive Damages	
		§ A.3.2.9.1.9	9	Insured Contracts	
		§ A.3.2.9.1.10	10	Diminution of Value	
		§ A.3.2.9.1.11	11	Defense	
	6.4	Term § A.3.2.9.4	Coverage for completed operations shall be continued for this project for no less than the applicable statute of repose or six years from the date of Final Completion of the Work under this Agreement, whoever is longer.		
	6.5	Prohibitions § A.3.2.9.5	This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from:		
		§ A.3.2.9.5.1	1	Insured vs. Insured Exclusion	
		§ A. .3.2.9.5.2	2	Impaired Property Exclusion	
		§ A.3.2.9.5.3	3	Materials Supplied or Handled by the Named Insured Exclusion	
		§ A.3.2.9.5.4	4	Property Damage to Contractor’s Work Exclusion	
			5	Faulty Workmanship Exclusion	
			6	Punitive Damage Exclusion	
			7	Injury to Employee Due to Subcontractor’s Work Exclusion	
			8	Products or Completed Operations Exclusion	
		§ A.3.2.9.2	A professional liability endorsement to a general liability policy is not acceptable.		

	6.6	Additional Insureds § A.3.2.9.6	The Protected Persons.
	6.7	Primary and Noncontributory § A.3.2.9.7	This insurance shall be primary and non-contributing liability coverage. It is the specific intent of the parties to the Agreement that all insurance held by the Protected Persons shall be excess, secondary and non-contributory.
	6.7	Waiver of Subrogation § A.3.2.9.8	Contractor shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Protected Persons.
	6.8	Advanced Notice § A.3.2.9.8	This insurance shall be endorsed to provide a 30 days' notice of cancellation to Owner.

C. Checklist (✓) for AIA A101 Exhibit A Contractor's Builders Risk and Other Property Insurance

This Checklist supports identifying and drafting insurance requirements to be obtained by the Contractor and to confirm compliance with these insurance requirements. These insurance specifications accompany a template for negotiation and completion of the insurance and bond requirements of the Contractor in the **AIA A101 2017 Exhibit A Insurance and Bonds** form as modified for the transaction. References under the Checklist's Specifications column to §§ refer to the corresponding § in the AIA form.

√	No.	Specifications	Coverages, Limits and Other Requirements	
	A. BUILDERS RISK			
		Builder's Risk. Contractor is to maintain builder's risk insurance meeting at least the following specifications; but at Owner's option, Owner may in lieu of Contractor maintaining builder's risk insurance, Owner may obtain and maintain the builder's risk insurance. If Owner obtains the builder's risk insurance, the Contract Price is to be reduced by the amount of the premium and any Contractor markup cost that otherwise was included within the Contract Price. § A.3.3.2.1		
	1.	Amount § A.3.3.2.1	Limits of coverage are to be the initial Contract Price as increased by amount of subsequent modification of the Contract Price. Coverage shall be provided in amount equal at all times to the full replacement value and cost of debris removal for any single occurrence.	
	2.	Covered Property	Such insurance shall cover:	
		§ A.3.3.2.1.2(a)	1	Buildings or structures being erected, including retaining walls, paved surfaces and road bridges, glass, foundations, footings, underground pipes and wiring, excavations, gradin backfilling, or filling.
		§ A.3.3.2.1.2(b)	2	Fixtures, materials, supplies, machinery, and equipment on site that will become part of the completed structures. Fixtures, materials, supplies, machinery, and equipment at other locations but intended for use at the site.
		§ A.3.3.2.1.3.1	3	All temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site.
		§ A.3.3.2.1.3.3 (a) - (o)	4	Other property:
			(a)	Airborne property
			(b)	Contractor's tools and equipment not destined to become part of the structure
			(c)	Existing buildings and structure to which alterations or additions are being made
			(d)	Foundation, underground pipes, and other underground works
			(e)	Maps, plans, blueprints, specifications
			(f)	Materials and supplies in transit to the site for installation by all means of transportation other than ocean transit
			(g)	Offices and utility trailers
			(h)	Other property for which an insured is liable regarding the project.
			(i)	Personal property of others for which the insured may be liable
			(j)	Sidewalks and other paved surfaces

			(k)	Site preparation and excavation works
			(l)	Trees, grass, shrubbery, plants, landscaping materials
			(m)	Waterborne property
			(n)	Radio or television antennas, including lead-in wiring, masts and towers
			(o)	Signs
	3.	Insureds	Insureds shall include:	
		§ A.3.3.2.1(c)	1	Owner, Contractor, and all Loss Payees and Mortgagees as Named Insureds; and
		§ A.3.3.2.1(c)	2	Subcontractors of all tiers.
	4.	Deductibles § A.3.3.2.1.8.1	Deductibles shall not exceed:	
			1	All risks of direct damage, Per Occurrence, \$__0,000
			2	Delayed opening waiting period 5 days
			3	Earthquake and earthquake sprinkler leakage, Per Occurrence \$__0,000
			4	Flood, Per Occurrence or excess of maximum available through National Flood Insurance Program \$__0,000
	5.	Form § A.3.3.2.1(a) § A.3.3.2.1.1	Coverage shall be an "all risks" builder's risk policy providing coverage for direct physical loss or damage. All exclusions must be pre-approved by Owner. This insurance is to be written on a Completed Value, non-reporting form basis and shall be primary to any other insurance coverage available to the named insureds, with that other insurance being excess, secondary and noncontributing. Coverage is to cover at least the following causes of loss:	
	5.1	§ A.3.3.2.1.1.2	1	Collapse
	5.2	§ A.3.3.2.1.1.2	2	Earthquake
	5.3	§ A.3.3.2.1.1.2	3	Explosion
	5.4	§ A.3.3.2.1.1.2	4	Fire
	5.5	§ A.3.3.2.1.1.2	5	Flood
	5.6	§ A.3.3.2.4(b)	6	Freezing
	5.7	§ A.3.3.2.1.1.2	7	Malicious mischief
	5.8	§ A.3.3.2.4(c)	8	Mechanical breakdown
	5.9	§ A.3.3.2.4(g)	9	Subsidence, shrinking, settling, cracking and expansion
	5.10	§ A.3.3.2.1.1.1.2	10	Theft

	5.11	§ A.3.3.2.1.1.1.2	11	Vandalism	
	5.12	§ A.3.3.2.4(f)	12	Warlike or hostile actions in time of peace or war; insurrection; rebellion, revolution, civil war, or commotion	
	5.13	§ A.3.3.2.1.1.1.2	13	Windstorm	
	5.14	§ A.3.3.2.1.1.1.3	14	Errors, Omissions or Deficiency: coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials without Sub-limits.	
	6	Prohibition § A.3.3.2.1.8.6	No protective safeguard warranty is permitted.		
	7.	Coverage and Minimum Sublimits	Coverage		Minimum Sublimit
	7.1	§ A.3.3.2.1.7.1	1	Additional expenses due to delay in completion of project (where applicable)	\$ _____ (Amount to be agreed between Owner and Contractor)
	7.2	§ A.3.2.2.1.1.4(a)	2	Agreed Value	Included without sublimit
	7.3	§ A.3.2.2.1.1.3	3	Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse and ensuing loss	Included without sublimit
	7.4	§ A.3.3.2.1.2.3	4	Debris removal additional limit	Included without sublimit
	7.5	§ A.3.3.2.1.1	5	Earthquake and earthquake sprinkler leakage	\$ _____
	7.6	§ A.3.3.2.1.1	6	Flood, per Occurrence, excess of maximum available through National Flood Insurance Program	\$ _____
	7.7	§ A.3.2.2.1.1.4(b)	7	Freezing	Included without sublimit
	7.8	§ A.3.2.2.1.1.4(c)	8	Mechanical breakdown including hot and cold testing (where applicable)	Included without sublimit
	7.9	§ A.3.3.2.1.5	9	Occupancy pre-completion	Included
	7.10	§ A.3.3.2.1.7.2	10	Ordinance or law	Included without sublimit
	7.11		11	Pollutant clean-up and removal	\$ _____
	7.12	§ A.3.2.2.1.1.4(d)	12	Preservation of property	Included without sublimit
	7.13	§ A.3.2.2.1.1.4(e)	13	Replacement cost to include contractor's overhead and profit	Included without sublimit
	7.14	§ A.3.2.2.1.1.4(h)	14	Theft	Included without sublimit
	8.	Optional Extended Property Insurance	The Contractor shall purchase and maintain the insurance selected and described below.		
	8.1	§ A.3.2.2.1.7.1	1	Loss of Use, Business Interruption, and Delay in Completion Insurance	
	8.2	§ A.3.2.2.1.7.2	2	Ordinance or Law Insurance	

	8.3	§ A.3.2.2.1.7.3	3	Expediting Cost Insurance	
	8.4	§ A.3.2.2.1.7.4	4	Extra Expense Insurance	
	8.5	§ A.3.2.2.1.7.5	5	Civil Authority Insurance	
	8.6	§ A.3.2.2.1.7.6	6	Ingress/Egress Insurance	
	8.7	§ A.3.2.2.1.7.7	7	Soft Cost Insurance	
	8.7.1	§ A.3.2.2.1.7.7.1		1	Construction Loan Fees
	8.7.2	§ A.3.2.2.1.7.7.2		2	Leasing and Marketing Expense
	8.7.3	§ A.3.2.2.1.7.7.3		3	Additional Fees
	8.7.4	§ A.3.2.2.1.7.7.4		4	Carrying Costs
	8.7.5	§ A.3.2.2.1.7.7.5		5	Overhead
	8.7.6	§ A.3.2.2.1.7.7.6		6	Other
	9.	Occupancy § A.3.3.2.1.5	The termination of coverage provision shall be endorsed to permit occupancy of the coverage property being constructed.		
	10.	Term and Termination § A.3.3.2.1.8.4	This insurance shall be maintained in effect, unless otherwise provided for in the Agreement, until the earliest of the following dates:		
			1	The date on which all persons and organizations who are insureds under the policy agree that it shall be terminated;	
			2	The date of final payment, as provided for in the Agreement; or	
			3	The date on which the insurable interests in the Covered Property of all insureds other than Contractor have ceased.	
	11.	Waiver of Subrogation § A.3.3.2.1(e)	This insurance shall include a waiver of subrogation by insurer as to the Protected Persons.		
	12.	Advanced Notice	This insurance shall be endorsed to provide 30 days’ notice of cancellation to Owner, Owner’s Construction Lender and Development Manager.		
	B. CONTRACTOR’S EQUIPMENT				
	1.	Amount § A.3.3.2.1.3.3(b) § A.3.3.2.5	Contractor shall obtain and maintain property insurance on Contractor’s equipment and personal property insured to 100% of its replacement cost. This insurance will have an equipment floater.		
	2.	Waiver of Subrogation § A.3.3.2.5	This insurance will be endorsed to waive subrogation in favor of Owner Parties.		

D. AIA A201 – EXTRACT OF RISK MANAGEMENT PROVISIONS

ARTICLE 3 CONTRACTOR**§ 3.12 Shop Drawings, Product Data and Samples**

§ 3.12.1 Shop Drawings. “**Shop Drawings**” are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

...

§ 3.12.4 Informational Submittals. Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of **Section 4.2.7** (Minor Changes in the Work). Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

...

§ 3.12.10 Professional Services. The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If Contract Documents Specifically Require of Contractor Professional Design Services or Certification Related to Systems, Materials, or Equipment. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed, or certified by such professional, if prepared by others, shall bear such professional’s written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this **Section 3.12.10** (Professional Services), the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If Contract Documents Require Contractor’s Design Professional to Certify Work Performed in Accordance with Design Criteria. If the Contract Documents require the Contractor’s design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

...

§ 3.18 Indemnification**§ 3.18.1 Indemnified Matters.**

*To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect’s consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this **Section 3.18.***

§ 3.18.2 **Workers Compensation.** In claims against any person or entity indemnified under this **Section 3.18** by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under **Section 3.18.1** shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under Workers compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

...

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

...

§ 10.2.2 **Contractor's Compliance.** The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 **Safeguards.** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 **Notice of Explosives or Hazardous Materials or Equipment or Unusual Methods.** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

...

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 **Protocols; Contractor's Notice to Owner.** *The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances.* If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl ("PCB"), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

...

§ 10.3.3 **Owner's Indemnity.** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in **Section 10.3.1** (Protocols; Contractor's Notice to Owner) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 **Contractor's Responsibility.** The Owner shall not be responsible under this **Section 10.3** (Hazardous Materials and Substances) for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 **Contractor's Indemnity.** *The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under **Section 10.3.1** (Protocols; Contractor's Notice to Owner), except to the extent that the cost and expense are due to the Owner's fault or negligence.*

§ 10.3.6 **Contractor's Compliance with Environmental Laws.** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance

solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

...

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 Claims Insured. *The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.*

§ 11.1.2 Bonds. The Contractor shall provide *surety bonds* of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

...

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 Claims Insured. *The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.*

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

...

§ 11.3 Waivers of Subrogation

§ 11.3.1 Waivers of Recovery and Subrogation. *The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this **Section 11.3.1** shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or*

entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 Owner's Property Insurance on Adjoining Property and Post-Completion Property Insurance. If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of **Section 11.3.1** (Waivers of Recovery and Subrogation) for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, *at the Owner's option, may purchase* and maintain insurance that will protect the Owner against *loss of use of the Owner's property*, or the inability to conduct normal operations, due to fire or other causes of loss. *The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.*

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 Owner as Adjuster. A loss insured under the *property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear*, subject to requirements of any applicable mortgagee clause and of **Section 11.5.2** (Owner to Notify Contractor Prior to Proposed Settlement and Allocation of Insurance Proceeds). The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Owner to Notify Contractor Prior to Proposed Settlement and Allocation of Insurance Proceeds. Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to **Article 15** (Claims and Disputes). Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

...

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 One Year Limited Express Warranty. In addition to the Contractor's obligations under **Section 3.5** (Warranty), if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under **Section 9.9.1** (Submittals), or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with **Section 2.5** (Owner's Right to Carry Out the Work).

...

§ 12.2.5 No Override of Statute of Limitations. Nothing contained in this **Section 12.2** (Correction of Work) shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract

Documents. Establishment of the one-year period for correction of Work as described in Section **12.2.2** (After Substantial Completion) relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

...

E. Redline Modified to Unmodified A101 - 2017 Exhibit A Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the « » day of « » in the year « »
(In words, indicate day, month and year.)

for the following PROJECT:
(Name and location or address)

« »
 « »

THE OWNER:
(Name, legal status and address)

« »« »
 « »

THE CONTRACTOR:
(Name, legal status and address)

« »« »
 « »

TABLE OF ARTICLES

- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by the parties.

ARTICLE A.2 OWNER'S INSURANCE**§ A.2.1 General**

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 (Owner's Insurance) and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3 (Required Property Insurance). The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

§ A.2.3 Required Property Insurance**§ A.2.3.1 Builder's Risk Insurance**

Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1 (Builder's Risk Insurance), the Owner shall purchase and maintain,

(a) State Authorized Insurer; "All-Risks"; Completed Value Form; Replacement Cost Basis; Amount: from an insurance company or insurance companies (1) lawfully authorized to issue insurance in the jurisdiction where the Project is located, (2) property insurance written on a builder's risk "all-risks" ("builder's risk insurance"). (3) completed value policy form or other policy form providing more beneficial coverage to the Protected Persons ~~equivalent policy form~~ and (4) sufficient to cover the total value of the (a) entire Project on (b) on a replacement cost basis.

(b) Amount: The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others.

(c) Duration of Coverage: The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3 (Insured Amount; Duration of Coverage), unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement.

(d) Insureds and Loss Payee: This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. The Owner shall be the loss payee.

(e) Mortgagee as Loss Payee: This insurance shall include the interests of Owner's Lender as loss payee.

§ A.2.3.1.1 Causes of Loss.

The insurance required by this Section A.2.3.1 (Causes of Loss) shall

.1 Direct Physical Loss or Damage: provide coverage for direct physical loss or damage, ~~and shall~~.

.2 Not Excluded Causes: not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. ~~The insurance shall~~

.3 Errors, Omissions or Deficiency: also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials without Sub-limits.

.4 Sub-limits: Sub-limits, if any, are as follows:
(Indicate below the cause of loss and any applicable sub-limit.)

Causes of Loss	Sub-Limit

§ A.2.3.1.2 Specific Required Coverages.

.1 Temporary Structures; Building Systems: The insurance required by this Section A.2.3.1 (Builder's Risk) shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup.

.2 Debris Removal: The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses.

.3 Sub-limits: Sub-limits, if any, are as follows:
(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
	\$

§ A.2.3.1.2 Specific Required Coverages.

.1 Temporary Structures; Building Systems: The insurance required by this Section A.2.3.1 (Builder's Risk) shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup.

.2 Debris Removal: The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses.

.3 Sub-limits: Sub-limits, if any, are as follows:
(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
	\$

§ A.2.3.1.3 Insured Amount; Duration of Coverage. Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 (Builder's Risk) or, if necessary, replace the insurance policy required under Section A.2.3.1 (Builder's Risk) with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in **Section 12.2.2 (After Substantial Completion)** of the General Conditions.

§ A.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section A.2.3 (Required Property Insurance) is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 Occupancy or Use Prior to Substantial Completion.

.1 Consent for Occupancy or Use Prior to Substantial Completion: The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 (Builder's Risk) have consented in writing to the continuance of coverage.

.2 Take No Action That: The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, and if the parties have not elected to have the Contractor insure the existing structure under the builder's risk policy to be obtained by Contractor pursuant to Section 3.3.2.1.2.3(j) or Section 3.3.2.1.6 (Insurance for Existing Structures), the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in AIA A201-2017 Section 12.2.2 (After Substantial Completion) of the General Conditions, "**all-risks**" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1 (Builder's Risk), notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties, except as otherwise provided for in Exhibit A.

§ A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

(*Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the **fill point** below the selected item.*)

[☐] § A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[« »](#)

[Loss of net rental income which results from delay beyond the projected completion date due to a covered cause of loss.](#) [« »](#)

[☐] § A.2.4.2 Ordinance or Law Insurance, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project. [« »](#)

[☐] § A.2.4.3 Expediting Cost Insurance, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property. [« »](#)

[☐] § A.2.4.4 Extra Expense Insurance, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred. [« »](#)

[☐] § A.2.4.5 Civil Authority Insurance, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance. [« »](#)

[☐] § A.2.4.6 Ingress/Egress Insurance, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage. [« »](#)

[☐] § A.2.4.7 Soft Costs Insurance, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including

[☐] [.1 Construction Loan Fees:](#) construction loan fees~~;~~.

[☐] [.2 Leasing and Marketing Expenses:](#) leasing and marketing expenses~~;~~ [including commissions on renegotiated leases.](#)

[☐] [.3 Additional Fees:](#) additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction~~;~~~~and~~.

[☐] [.4 Carrying Costs:](#) carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

[☐] [.5 Overhead:](#) additional overhead.

[☐] [.6 Other:](#) [☐].

§ A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(*Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.*)

[☐] § A.2.5.1 Cyber Security Insurance for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.

(Indicate applicable limits of coverage or other conditions in the fill point below.)

<< >>

[< >]

§ A.2.5.2 Other Insurance

(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage	Limits
	\$

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance.

§ A.3.1.1.1 Times Provided. The Contractor shall provide certificates of insurance (liability and property) acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: ⚡

1) Prior to Work: prior to commencement of the Work; ⚡

2) Upon Renewal or Replacement: upon renewal or replacement of each required policy of insurance; and ⚡

3) upon the Owner's written request. An Thereafter: Thereafter, additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 (Types; Limits; Duration of Insurance Coverage) and Section A.3.3.1 (State Authorized Insurers; Duration of Insurance Coverage).

§ A.3.1.1.2 Matters Certified.

.1 Certificates of Liability Insurance: The certificates of liability insurance will ~~show~~ be an ACORD form currently dated, issued by or on behalf of the insurers to Owner and Owner's Lender as Certificate Holder:

.1 Certifying: certifying the existence of the insurance required to be provided by Contractor and show

.1 Additional Insureds: the Protected Persons, the Architect, and the Architect's consultants each as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies and Business Auto Policy and Pollution Liability Policy, if required herein,

.2 Primary and Noncontributory: the primary and noncontributory status of Contractor's insurance with Owner's and the other Protected Persons' insurance stipulated to be excess,

.3 Waiver of Subrogation: subrogation is waived by the insurers as to claims against Owner, the other Protected Persons, the Architect, and the Architect's consultants,

.4 Notices to be Given: Advanced notice of cancellation, nonrenewal or material modification is to be afforded Owner, Owner's Lender, and the Development Manager by the insureds to a proper address specified in the certificate, and

.5 Other Matters: such other matters required by this Exhibit A; and

.2 Attachments: attached thereto a copy of each of the Endorsements required to be issued by these insurance specifications including the following:

.1 General Aggregate Designated to Project Endorsement: A copy of the following endorsement in form acceptable to Owner is required to accompany the Certificate of Liability Insurance: **ISO CG 25 93 05 09** General Aggregated Designated to Project.

.2 Products-Completed Operations Aggregate Limit Endorsement: A copy of the following endorsement in form acceptable to Owner is required to accompany the Certificate of Liability Insurance: **ISO CG 25 46 12 19** Designated Project(s) Products - Completed Operations Aggregate Limit.

.3 Additional Insured Endorsements: A copy of the following endorsements in form acceptable to Owner insuring the additional insured specified below are required to accompany the Certificate of Liability Insurance:

.1 CGL - Ongoing Operations - Owner: **ISO CG 20 10 07 04** Additional Insured - Owners, Lessees or Contractors – Scheduled Person Or Organization;

.2 CGL - Owner's Lender: **ISO CG 29 18 12 19** Additional Insured - Mortgagee, Assignee or Receiver as to Owner's Lender;

.3 CGL - Ongoing Operations - Other Protected Persons: **ISO CG 20 26 10 01** Additional Insured - Designated Person or Organization as to the other Protected Persons;

.4 CGL - Architect and Architect's Consultants: **ISO CG 20 32** [1st choice: **10 01**] [2nd choice: **07 04**] Additional Insured – Engineers, Architects or Surveyors Not Engaged by the Named Insured with respect to the Architect and the Architect's consultants;

.5 CGL - Completed Operations: **ISO CG 20 37** [1st choice: **10 01**] [2nd choice: **07 04**] Additional Insured – Owners, Lessees or Contractors – Completed Operations with respect to the Protected Persons; and

.6 Business Auto - Each Protected Person: **ISO CA 20 48 10 13** Additional Insured.

.4 Primary-Noncontributory Endorsements: A copy of Primary-Noncontributory Endorsements in form acceptable to Owner in favor of each of the Protected Persons are required to accompany the Certificate of Liability Insurance for the following insurance:

.1 CGL: **ISO CG 20 01 04 13**.

.2 Business Auto: **CA 04 49 11 16**.

.5 Waiver of Subrogation Endorsements: A copy of Waiver of Subrogation Endorsements in form acceptable to Owner protecting each of the Protected Persons are required to accompany the Certificate of Liability Insurance for the following insurance:

.1 CGL: **ISO CG 24 04 12 19**.

.2 Business Auto: **ISO CA 04 44 10 13**.

.3 Umbrella.

.4 Workers Compensation: **ISO WC 42 03**.

.5 Employers Liability.

.6 Professional Liability.

.7 Pollution Liability.

.8 Comprehensive Crime.

.6 Notice of Cancellation-Material Change Endorsements: A copy of Notice of Cancellation-Material Change endorsements acceptable to Owner and Owner's Lender are required to accompany the Certificate of Liability Insurance for the following insurance:

.1 CGL.

.2 Business Auto.

.3 Umbrella.

.4 Workers Comp.

.5 Employers Liability.

.6 Professional Liability.

.7 Pollution Liability.

.8 Comprehensive Crime.

.7 Schedule of Forms and Endorsements Pages: The Schedule of Forms and Endorsements for the respective policy listing the required Endorsements as issued modifications to the policy.

.8 Policy Language: to the extent that these coverages and provisions are included in the policy language and not by endorsement or modification or are effected by blanket endorsements, then a copy of the relevant portions of the policy and issued forms providing such coverages and provisions).

.2 Evidence of Property Insurance. Evidence of property insurance is to be issued on an **ACORD** form currently dated, issued by on or on behalf of the insurers to Owner and Owner's Lender, each as a Certificate Holder and

.1 Named Insureds: the Owner as a named insured on the builders risk insurance together with the contractor and subcontractors,

.2 Loss Payee: Owner and Owner's Lender as loss payees,

.3 Waiver of Subrogation: subrogation is waived by the insurers as to claims against Owner, Owner's Lender, and the other Protected Persons as provided in § A.3.3.2.1(e) (Builder's Risk Insurance - Waiver of Subrogation),

.4 Advanced Notice: advanced notice of cancellation, nonrenewal or material modification is to be afforded Owner and Owner's Lender by the insureds to a proper address specified in the certificate, and

.5 Other Matters: such other matters required by this **Exhibit A**, including but not limited to the following:

.1 All Risks Covered - Causes of Loss: "All risks" covered specifying the categories of causes of loss insured as provided in § A.3.3.2.1(a) ("All-Risks"; Completed Value Form; Replacement Cost Basis), § A.3.3.2.1.2 (Covered Property Interests), and § A.3.3.2.1.3 (Specific Required Coverages).

.2 Amount: Replacement Cost: The method of calculating the amount of insurance; certifying coverage is on a replacement cost basis as provided in § A.3.3.2.1(a) (“All-Risks”; Completed Value Form; Replacement Cost Basis) and § A.3.3.2.1(b) (Amount).

.3 Covered Property: Specifying the categories of property covered as provided in § A.3.3.2.1.2 (Covered Property Interests), § A.3.3.2.1.3 (Specific Required Coverages), and § A.3.3.2.1.5 (Insurance for Existing Structures).

.4 Deductibles and Sub-limits: Any and all deductibles and sub-limits as provided in § A.3.3.2.1.1.4 (Causes of Loss - Limits; Sub-limits); § A.3.3.2.1.3 (Specific Required Coverages); § A.3.3.2.1.3.2 (Specific Required Coverages - Debris Removal); § A.3.3.2.1.3 (Specific Required Coverages); and § A.3.3.2.1.7 (Optional Extended Property Insurance).

.5 Optional Extended Property Insurance Selected: The optional extended property insurance selected by Owner and bound for coverage and any and all sub-limits as provided in § A.3.3.2.1.3 (Specific Required Coverages).

.6 Waiver of Subrogation: Waiver of subrogation as to the Protected Persons by the insurer as provided in § A.3.3.2.1.3 (Specific Required Coverages).

.7 Advanced Notice: Commitment of insurer to provided Owner, Owner’s Lender and Development Manager advanced notice of cancellation as provided in this provision and in § A.3.3.2.5 (Property Owned by Contractor - Advanced Notice).

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor. If Contractor elects to self-insure or to maintain liability insurance required herein subject to deductible and/or retentions exceeding \$25,000, Owner and Contractor shall have all rights and obligations between themselves as if Contractor fully maintained the insurance required herein including but not limited to additional insured status, primary and noncontributory liability, waivers or rights of recovery, other insurance clauses and any other extensions of coverage required herein. Contractor shall pay from its assets the costs, damages, claims, losses and liabilities, including attorney’s fees and necessary litigation expenses at least to the extent that an insurance company would have been obligated to pay those amounts if Contractor had maintained the insurance pursuant this Exhibit without said deductible or self-insured retention. Add deductibles and retentions shall be paid by, assumed by, for the account of, and at the sole risk of Contractor. Contractor shall not be reimbursed for same by Owner or other additional insureds.

§ A.3.1.3 Additional Insured Obligations.

§ A.3.1.3.1 Additional Insureds. To the fullest extent permitted by law, and as further set forth in § A.3.1.3.3 (ISO Forms), the Contractor shall cause the commercial general liability coverage to include ⚡

.1) Ongoing Operations: the Owner, the other Protected Persons, the Architect, and the Architect’s consultants as additional insureds for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s operations; and ⚡

.2) Completed Operations: the Owner and the other Protected Persons as ~~an~~ additional ~~insured~~ insureds for claims caused in whole or in part by the Contractor’s negligent acts or omissions for which loss occurs during completed operations.

§ A.3.1.3.2 Primary and Noncontributory. The additional insured coverage shall be primary and non-contributory to any of the Owner’s general liability insurance policies and shall apply to both ongoing and completed operations with regards to insurance maintained by the Protected Persons, by endorsement with an ISO CG 20 01 12 19 Primary and Noncontributory - Other Insurance; it being the specific intent of the parties to this Agreement that all liability insurance required herein of Contractor shall be primary to and shall seek no contribution from any other insurance (primary, umbrella, contingent or excess maintained by a Protected Person, with Protected Persons’ liability insurance being excess, secondary and noncontributing).

§ A.3.1.3.3 ISO Forms. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. ("ISO") forms ~~CG 20 10 07 04, CG 20 37 07 04, and,~~

.1 Ongoing Operations - Owner: ISO CG 20 10 [1st choice: 10 01] [2nd choice: 07 04] Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization as to Owner,

.2 Owner's Lender: ISO CG 20 18 12 19 Additional Insured - Mortgagee, Assignee or Receiver as to Owner's Lender,

.3 Ongoing Operations - Other Protected Persons: ISO CG 20 26 10 01 Additional Insured - Designated Person or Organization as to the other Protected Persons,

.4 Architect and Architect's Consultants: ISO CG 20 32 [1st choice: 10 01] [2nd choice: 07 04] Additional Insured – Engineers, Architects or Surveyors Not Engaged by the Named Insured with respect to the Architect and the Architect's consultants, ~~CG 20 32 07 04, and~~

.5 Completed Operations - Protected Persons: ISO CG 20 37 [1st choice: 10 01] [2nd choice: 07 04] Additional Insured – Owners, Lessees or Contractors – Completed Operations with respect to the Protected Persons.

§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 Types; Limits; Duration of Insurance Coverage.

§ A.3.2.1.1 Types; Limits. The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ A.3.2.1.2 Duration of Insurance Coverage. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in AIA A201 Section 12.2.2 (After Substantial Completion) of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

«Contractor agrees to maintain Products-Completed Operations coverage with respect to the Work performed under the Agreement in identical coverage, form and amount, including required endorsements, for the full term of the Statute of Repose following the Date of Substantial Completion of the Work by Contractor. »

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Occurrence Form; Limits; Coverage. Commercial General Liability ("CGL") insurance for the Project written on an ISO CG 00 01 [or a substitute providing more beneficial coverage to the Protected Persons] occurrence form with policy limits of not less than the following limits (which limits may be the aggregate of a primary policy and an umbrella policy):

.1 Minimum Limits:

« _____ Dollars » (\$ « _____ ») each occurrence,

« _____ Dollars » (\$ « _____ ») general aggregate, and the general aggregate shall apply separately to this Project by endorsement by an ISO CG 25 03 05 09 Designated Construction Project General Aggregate, and

« _____ Dollars » (\$ « _____ ») aggregate for products-completed operations hazard. The CGL is to be endorsed by an ISO CG 25 45 12 19 Designated Project(s) Products-Completed Operations Aggregate Limit designating the products and completed operations aggregate limit to this Project.

.2 Coverage: providing coverage for claims including

- .1 Bodily Injury: damages because of bodily injury, sickness, or disease, including occupational sickness or disease, and death of any person;
- .2 Personal and Advertising Injury: personal injury and advertising injury;
- .3 Damage or Destruction of Tangible Property: damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 Completed Operations: bodily injury or property damage arising out of completed operations; and
- .5 Insured Contracts: the Contractor's indemnity obligations under Section 3.18 (Indemnification) of the General Conditions as modified by the parties;
- .6 Deletion of Personal Injury Contractual Liability Exclusion: Any exclusion from coverage of the insured's contractual assumption of liability for personal injuries occurring in connection with the Work;
- .7 Waiver of Subrogation: Endorsed with an ISO CG 24 04 12 19 Waiver of Transfer of Rights of Recovery Against Others Endorsement to include a waiver of subrogation by insurer as to the Protected Persons and such other persons as are designated by Owner or Development Manager to Contractor as Protected Persons ; and
- .8 Advanced Notice: This insurance is to contain a provision for 30 days' prior written notice by the insurance carrier to the Owner and Owner's Lender required for cancellation, non-renewal or material change except 10 days' for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

§ A.3.2.2.2 Prohibitions. The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Insured vs. Insured Exclusion: Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Property Damage Arising Out of Work Performed by Subcontractors: Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Bodily Injury other than to Employees of Insured: Claims for bodily injury other than to employees of the insured.
- .4 Indemnity as to Injuries to Employees of Insured: Claims for indemnity under Section 3.18 (Indemnification) of the General Conditions arising out of injury to employees of the insured.
- .5 Prior Work Endorsement: Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Physical Damage under Prior Injury: Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Habitational Projects: Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Roofing: Claims related to roofing, if the Work involves roofing.

.9 EIFS: Claims related to exterior insulation finish systems (“EIFS”), synthetic stucco or similar exterior coatings or surfaces; if the Work involves such coatings or surfaces.

.10 Earth Subsidence or Movement: Claims related to earth subsidence or movement, where the Work involves such hazards, including the following endorsements (including any earlier or later editions) are prohibited: ISO CG 40 04 12 19 Exclusion - Earth Movement; ISO CG 40 05 12 19 Exclusion - Earth Movement - Completed Operations; ISO CG 40 06 12 19 Earth Movement - Exclusion for Designated Operation(s) or Project(s).

.11 XCU: Claims related to explosion, collapse and underground hazards (“XCU”), where the Work involves such hazards, including the following endorsements (including any earlier or later editions) are prohibited: ISO CG 21 42 Exclusion – Explosion, Collapse and Underground Property Damage Hazard (Specified Operations) and ISO CG 21 43 Exclusion – Explosion, Collapse and Underground Property Damage Hazard (Specified Operations Excepted).

.12 Contractual Liability Limitation: ISO CG 21 39 Contractual Liability Limitation is not permitted.

.13 Amendment of Insured Contract Definition: ISO CG 24 26 Amendment of Insured Contract Definition is not permitted.

.14 Limitation of Coverage to Designate Premises or Project: ISO CG 21 44 Limitation of Coverage to Designated Premises or Project, or similar limitation, is not permitted.

.15 Modification to the Employers Liability Exclusion: Any endorsement modifying or deleting the exception to the Employers Liability Exclusion is not permitted.

.16 Punitive, Exemplary or Multiplied Damages Exclusion: Any type of punitive, exemplary, or multiplied damages exclusion is not permitted.

.17 Classification or Business Description Exclusion: Any restriction of coverage restricting coverage to only to classifications or descriptions specifically listed and excluding all others.

.18 Continuous or Progressive Injury and Damage Exclusion. Any exclusion for damages arising out of or related to bodily injury or property damage which first occurred in whole or in part prior to the inception date of the policy, or which are, or are alleged to be, in the process of occurring as of the inception date of the policy; or which were caused, or are alleged to have been caused, by the same condition or defective construction which first existed prior to the inception of the policy.

.19 Electronic Data Liability Exclusions. Any exclusion excluding for electronic data liability, including the following endorsements are prohibited: ISO CG 04 71 12 19 Electronic Data Liability - Limited Bodily Injury Exception Not Included and ISO CG 04 72 12 19 Electronic Data Liability Coverage (Coverage A) with Access or Disclosure of Confidential or Personal Information Exclusion (Coverage B).

§ A.3.2.2.3 Electronic Data Endorsement. This insurance is to include an ISO CG 04 37 04 13 Electronic Data Liability endorsement with coverage to the full limits of the policy.

§ A.3.2.3 Business Automobile Liability. Automobile Liability covering vehicles owned; and non-owned, and hired vehicles used, by the Contractor,

.1 Minimum Limits: with policy limits of not less than « Dollars » (\$ « ») per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

.2 Additional Insureds: Additional insured status shall be provided in favor of Protected Persons and such other persons as are designated by Owner to Contractor as additional insureds, on ISO CA 20 48 10 13.

.3 Waiver of Subrogation: This insurance is to include a waiver of subrogation by insurer as to the Protected Persons and such other persons as are designated by Owner to Contractor on ISO CA 04 44 10 13.

.4 Primary and Noncontributory Status: This insurance is to provide primary and noncontributory coverage with regards to insurance maintained by the Protected Persons, by endorsement with an **ISO CA 04 49**; it being the specific intent of the parties to this Agreement that all liability insurance required herein of Contractor shall be primary to and shall seek no contribution from any other insurance (primary, umbrella, contingent or excess maintained by a Protected Person, with Protected Persons' liability insurance being excess, secondary and noncontributing.

.5 Advanced Notice: This insurance is to contain a provision for 30 days' prior written notice by the insurance carrier to Owner required for cancellation, non-renewal, or material change.

§ A.3.2.4 **Combination of Policies; Umbrella Liability.** The Contractor may achieve the required limits and coverage for **Employers Liability**, Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided:

.1 Equivalent Coverage: such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.6 (**Employers Liability**), Section A.3.2.2 (**Commercial General Liability**) and A.3.2.3 (**Business Automobile Liability**), and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. This insurance shall follow form of the underlying coverages and conditions described above, including but not limited to the required additional insured status, designated construction project and/or location general aggregate, waiver of subrogation, and prohibited exclusions or limitations, and will be primary to and not seek contribution from any other insurance (primary, umbrella, contingent or excess) maintained Owner and any of the other Protected Persons. This insurance is to include a duty to defend any insured.

.2 Exhaustion of Primary by Payment of Underlying Limits: The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits.

.3 Primary and Noncontributory: This insurance shall be primary and non-contributing liability coverage. It is the specific intent of the parties to the Agreement that all insurance held by the Protected Persons shall be excess, secondary, and noncontributory. The Umbrella/Excess Liability policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits.

.4 Waiver of Subrogation: This insurance is to include a waiver of subrogation by insurer as to the Protected Persons and such other persons as are designated by Owner to Contractor.

.5 Advanced Notice: This insurance shall be endorsed to provide a 30 days' notice of cancellation to Owner and Owner's Lender except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

.6 Concurrency: Such coverage shall have the same inception date as the Commercial General Liability, Automobile Liability and Employers liability coverages.

§ A.3.2.5 **Workers' Compensation.** Workers Compensation at no less than the statutory limits. This insurance is to cover liability arising out the Contractor's employment of workers and anyone for whom the contractor may be liability for Workers compensation claims. Workers compensation insurance is required, and no "alternative" form of insurance is permitted. Employees leased through a Professional Employment Organization ("PEO") are not permitted. The state in which the Work is to be performed must be listed under Item 3.A. on the Information Page of the policy.

.1 Waiver of Subrogation: This insurance is to include a waiver of subrogation by insurer as to the Protected Persons and such other persons as are designated by Owner to Contractor, on form **WC 42 03 04**.

.2 Advanced Notice: This insurance is to contain a provision for 30 days' prior written notice by the insurance carrier to Owner and Owner's Lender required for cancellation, non-renewal or material change except 10

days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

§ A.3.2.6 **Employers' Liability.**

.1 Coverage: Coverage to the insured (employer) for liability to employees for work-related bodily injury or disease, other than liability imposed on the insured by the Workers compensation law ("Employers Liability Coverage").

.2 Minimum Limits: Employers Liability with policy limits not less than

« Dollars » (\$ « ») each accident,
« Dollars » (\$ « ») each employee, and
« Dollars » (\$ « ») policy limit.

.3 Term: The Employers Liability insurance is to be maintained in effect until the expiration of the period for correction of Work as set forth in the construction contract documents.

.4 Stop Gap Coverage: Stop gap coverage must be provided if Work is to be performed in a monopolistic state, listing the states in which Work is to be performed.

.5 Waiver of Subrogation: This insurance is to include a waiver of subrogation by the insurer as to Owner and the other Protected Parties.

.6 Advanced Notice: This insurance is to contain a provision that the insurer shall provide that this insurance shall not be canceled without at least 30 days' prior written notice to Owner and Owner's Lender except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

§ A.3.2.7 **Navigable Waters Hazards.** Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks.

§ A.3.2.8 ~~If the Contractor is required to furnish professional services as part of the Work, the~~ **Professional Liability.** Contractor shall procure Professional Liability insurance covering performance of the professional services,

.1 Minimum Limits: with policy limits of not less than

« Dollars » (\$ « ») per claim and
« Dollars » (\$ « ») in the aggregate.

.2 Deductible: Unless otherwise agreed by Owner, the deductible shall be no greater than \$25,000.

.3 Scope: Such insurance shall cover all professional services rendered by the Contractor and its Subcontractors under the Agreement, and shall include defense costs with defense costs covered outside of the policy limits. A professional liability endorsement to a general liability policy is not acceptable.

.4 Claims Made and Retroactive Date: Professional liability coverage may be on a "claims made" basis. With respect to any of the professional liability policies issued as "claims made" policies, which are canceled or not renewed, Contractor (or subcontractor if the case) shall provide a substitute insurance policy(ies) with terms and conditions and in amounts which comply with the terms of the Contract Documents and which provides for retroactive coverage to the date of cancellation or non-renewal to fill any gaps in coverage which may exist due to the cancellation or non-renewal of the prior "claims made" policies. With respect to all "claims made" policies which are renewed, Contractor (or subcontractor if the case) shall provide coverage retroactive to the date of commencement of the Work in said renewed policy. All said substitute or renewed "claims made" policies shall be maintained in full force and effect for the term of the Statute of Repose. Nothing herein shall affect the continuing effect of the indemnity clauses in the Contract Documents.

.5 Prohibitions: This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from:

.1 Bodily Injury Exclusion: Bodily injury or property damage where coverage is provided on behalf of design professionals or design/build contractors;

.2 Habitational Operations Exclusion: Habitational or residential operations;

.3 Mold, Microbes, Fungus, Biological Substances Exclusion: Mold or microbial matter and fungus or biological substance;

.4 Punitive, Exemplary or Multiplied Damages Exclusion: Punitive, exemplary, or multiplied damages;

.5 Contractual Assumed Liability Exclusion: Contractual assumed liability;

.6 Project Timely Completion Exclusion: Failure to complete the Project on time or failure to perform professional services on time;

.7 Copyright, Patent or Trademark Infringement Exclusion: Infringement of copyrights, patents, or trademarks;

.8 Faulty Workmanship Exclusion: Faulty workmanship including work performed by a Subcontractor for which the Contractor is liable;

.9 Safety Programs Exclusion: Liability arising out of failure to implement or enforce safety programs;

.10 Fines and Penalties Exclusion: Fines and penalties including liquidated damages.

.6 Term: Policies written on a claims-made basis shall be maintained for at least the 10-year term of the Statute of Repose beyond termination of the Agreement. The purchase of an extended discovery period or an extended reporting period on a "claims made" policy will not be sufficient to meet the terms of this provision.

.7 Waiver of Subrogation: Contractor shall cause this insurance to be endorsed to waive all rights of subrogation in favor of the Protected Persons.

.8 Advanced Notice: This insurance shall be endorsed to provide a 30 days' notice of cancellation to Owner and Development Manager.

§ A.3.2.9 Pollution Liability. If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Legal Liability insurance, ~~with~~ (written on an occurrence policy form) shall be procured by those contractors or their subcontractors involved with on-site (on or under the Property) Work and off-site (beyond the boundaries of the Property) Work in connection with this Property or Project which may involve the mitigation, disposal, transportation and handling of hazardous materials including, but not limited to demolition, erosion control, earthwork and utility work.

.1 Coverage Inclusions: This insurance shall include coverage for:

.1 Full Scope of Operations: This insurance is to provide for coverage of the full scope of the named insured's operations (on-going and completed operations) as described with the scope of Services under the contract.

.2 On-Site and Off-Site Bodily Injury and Property Damages: This insurance is to insure the liability for such on-site and off-site bodily injury, and property damage from pollution conditions or pollution events arising from the work or operations performed by or on behalf of the contractor or subcontractor, including,

but not limited to the treatment, abatement, removal and transportation of hazardous substances or materials in connection with this project.

.3 Pollutants: Loss arising from pollutants including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica, and contaminated drywall.

.4 Transportation: Transportation pollution condition.

.5 Owned and Non-owned Disposal Sites: Claims arising from Non-owned disposal sites, including recycling centers, utilized in the performance of the operations.

.6 Fines: Civil and administrative fines and penalties to the extent insurable.

.7 Clean-up and Removal: On-site (on or under the Property) and off-site (beyond the boundaries of the Property) clean-up and removal.

.8 Punitive Damages: Punitive damages where insurable by law.

.9 Insured Contracts: Contractual liability for assumed liability.

.10 Diminution of Value: Diminution of value and natural resources damages.

.11 Defense: Defense including costs and expenses incurred in the investigation, defense, or settlement of claims.

.2 Minimum Limits: With policy limits of not less than

« Dollars » (\$ « ») per claim and
« Dollars » (\$ « ») in the aggregate.

.3 Deductible: Unless otherwise agreed by Owner, the deductible shall be no greater than \$25,000.

.4 Term: Coverage for completed operations shall be continued for this project for no less than the applicable statute of repose or six years from the date of Final Completion of the Work under this Agreement, whoever is longer.

.5 Prohibitions: This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from:

.1 Insured vs. Insured Exclusion: Claims by one insured against another insured, if the exclusion or restriction is based on the fact that the claimant is an insured, and there would otherwise be coverage for the claim;

.2 Impaired Property Exclusions: Impaired property that has not been physically injured;

.3 Materials Supplied or Handled by the Named Insured Exclusion: Materials supplied or handled by the named insured. However, exclusions for the sale and manufacture of products are allowed. Exclusionary language pertaining to materials supplied by the insured shall be reviewed by the certificate holder for approval;

.4 Property Damage to Contractor's Work Exclusion: Property damage to the work performed by the contractor;

.5 Faulty Workmanship Exclusion: Faulty workmanship as it relates to clean up costs;

.6 Punitive, Exemplary or Multiplied Damage Exclusion: Punitive, exemplary, or multiplied damages;

.7 Injury to Employee Due to Subcontractor's Work Exclusion: Work performed by subcontractors contractual liability incurred as a result of an injury to an employee of the insured; or

.8 Products or Completed Operations Exclusion: Products or completed operations.

.6 Additional Insureds: The Protected Persons are to be insured as additional insureds on the Pollution Liability insurance.

.7 Primary and Noncontributory: This insurance shall be primary without right of contribution by any other insurance or self-insurance maintained by or available to Owner and the other Protected Parties.

.8 Waiver of Subrogation: Contractor shall cause this insurance to be endorsed by an ISO CG 24 12 19 Waiver of Transfer of Rights of Recovery Against Other to Us (Waiver of Subrogation) to waive all rights of subrogation in favor of Protected Persons.

.9 Advanced Notice: This insurance is to contain a provision for 30 days' prior written notice by the insurance carrier to Owner and Owner's Lender required for cancellation, non-renewal or material change except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

§ A.3.2.10 Combined Policy. Coverage under Sections A.3.2.8 (Professional Liability) and A.3.2.9 (Pollution Liability) may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than « Dollars » (\$ « ») per claim and « Dollars » (\$ « ») in the aggregate.

§ A.3.2.11 Maritime Liability. Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than « Dollars » (\$ « ») per claim and « Dollars » (\$ « ») in the aggregate.

§ A.3.2.12 Aircraft Liability. Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than « Dollars » (\$ « ») per claim and « Dollars » (\$ « ») in the aggregate.

§ A.3.2.13 Comprehensive Crime.

.1 Scope: Comprehensive crime insurance, including Employee Dishonesty (also known as fidelity bonding), forgery or alteration and computer systems coverage.

.2 Minimum Limits: Limits of at least \$2,000,000 per loss or otherwise reasonably acceptable to Owner.

.3 Additional Coverage Inclusion: Contractor's crime insurance shall include third-party/client property coverage and shall not exclude coverage for losses resulting from social engineering fraud.

.4 Loss Payee: Owner and Owner's Lender shall be a loss payee on Contractor's crime insurance.

.5 Waiver of Subrogation: Contractor shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Protected Persons.

.6 Advanced Notice: This insurance is to contain a provision that the insurer shall provide that this insurance shall not be canceled without at least 30 days' prior written notice to Owner and Owner's Lender except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

§ A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 State Authorized Insurers; Duration of Insurance Coverage.

.1 State Authorized Insurers: Insurance selected and described in this Section A.3.3 (Contractor's Other Insurance Coverage) shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

.2 Duration of Insurance Coverage: The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 (After Substantial Completion) of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, **state the duration.**)*

« »

§ A.3.3.2 Types and Limits. The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1 (State Authorized Insurers; Duration of Insurance Coverage).

*(**Select the types** of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the **policy limit** in the appropriate **fill point.**)*

[« »] § A.3.3.2.1 Builder's Risk Insurance. Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3 (Required Property Insurance), which, if selected in this Section A.3.3.2.1 (Builder's Risk Insurance), relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 (Insured Amount; Duration of Coverage) and Section A.2.3.3 (Insurance for Existing Structures). The Property insurance is to be written as follows:

(a) "All-Risks"; Completed Value Form; Replacement Cost Basis. The property insurance is to be written on a builder's risk "all-risks" (i) completed value or other policy form providing more beneficial coverage to the Protected Persons and enough to cover (ii) the total value of the entire Project (iii) on a replacement cost basis.

(b) Amount: The property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others.

(c) Insureds and Loss Payee: This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds and Owner shall be the loss payee.

(d) Mortgagees as Loss Payees: This insurance shall include the interests of mortgagees as loss payees.

(e) Waiver of Subrogation: Insurer is to waive subrogation for the benefit of the Protected Persons.

§ A.3.3.2.1.1 Causes of Loss:

The insurance required by this Section A.3.2.3.1 (Causes of Loss) shall

.1 Direct Physical Loss or Damage: provide coverage for direct physical loss or damage.

.2 Not Excluded: not exclude the risks of collapse, earthquake, explosion, fire, flood, malicious mischief, theft, vandalism, or windstorm.

.3 Errors, Omissions or Deficiency: also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials without Sub-limits.

.4 Limits; Sub-limits: Has the following sub-limits, if any:

(Indicate below the cause of loss and any applicable sub-limit.)

<u>Causes of Loss</u>	<u>Sub-Limit</u>
	\$

Unless specified above as a coverage having a sub-limit the coverage is not to have a sub-limit, including but not limited to the following coverages:

- (a) Agreed value.
- (b) Freezing.
- (c) Mechanical breakdown, including hot and cold testing.
- (d) Preservation of property.
- (e) Replacement cost, to include contractor's overhead and profit.
- (f) Hostile or warlike actions in time of peace or war; Insurrection, rebellion, revolution, civil war, or commotion.
- (g) Subsidence, shrinking, settling, cracking and expansion.
- (h) Theft.
- (i) Waiver of subrogation as required by the contract documents.

§ A.3.3.2.1.2 Covered Property Interests: Such insurance shall cover the Work, including among other items:

- (a) Buildings or structures being erected, including retaining walls, paved surfaces and roadways, bridges, glass, foundations, pilings, footings, underground pipes and wiring, excavations, grading, backfilling, or filling.
- (b) Fixtures, materials, supplies, machinery, and equipment on site that will become part of the completed structures. Fixtures, materials, supplies, machinery, and equipment at other locations but intended for use at the site.
- (c) The additional properties listed in § A.3.3.2.1.3 (Specific Required Coverages).

§ A.3.3.2.1.3 Specific Required Coverages: The builder's risk insurance obtained by Contractor shall include the following property as covered property and the properties are covered for the full cost thereof except as a sub-limit, if any, is stated below:

.1 Temporary Structures; Building Systems: The insurance required by this Section A.3.3.2.1 (Builder's Risk) shall provide coverage for loss or damage to falsework and other temporary structures (e.g., scaffolding, construction forms, false work, cofferdams, cribbing, falsework, signs, site lighting, temporary utilities and buildings or structures), and to building systems from hot or cold testing and startup.

.2 Debris Removal: The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Debris removal shall be provided as an additional benefit with a limit of \$ _____.

.3 Other: The following additional properties:

-
- (a) Airborne property.
 - (b) Contractor's tools and equipment not destined to become part of the structure.
 - (c) Existing buildings and structure to which alterations or additions are being made.
 - (d) Foundation, underground pipes, and other underground works.
 - (e) Maps, plans, blueprints, specifications.
 - (f) Materials and supplies in transit to the site for installation by all means of transportation other than ocean transit.
 - (g) Offices and utility trailers.
 - (h) Other property for which an insured is liable regarding the project.
 - (i) Personal property of others for which the insured may be liable.
 - (j) Sidewalks and other paved surfaces.
 - (k) Site preparation and excavation works.
 - (l) Trees, grass, shrubbery, plants, landscaping materials.
 - (m) Waterborne property.
 - (n) Radio or television antennas, including lead-in wiring, masts, and towers.
 - (o) Signs.
 - (h) Other property for which an insured is liable regarding the project.
 - (i) Personal property of others for which the insured may be liable.
 - (j) Sidewalks and other paved surfaces.
 - (k) Site preparation and excavation works.
 - (l) Trees, grass, shrubbery, plants, landscaping materials.
 - (m) Waterborne property.
 - (n) Radio or television antennas, including lead-in wiring, masts, and towers.
 - (o) Signs.

§ A.3.3.2.1.4 Insured Amount: Duration of Coverage. Unless the parties agree otherwise, upon Substantial Completion, the Owner shall obtain and maintain commercial property insurance on the property as it deems appropriate.

§ A.3.3.2.1.5 Occupancy or Use Prior to Substantial Completion:

.1 Consent for Occupancy or Use Prior to Substantial Completion: The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 (Builder's Risk) have consented in writing to the continuance of coverage. If early occupancy of a portion of the project is contemplated, then the

builder's risk policy obtained by the Contractor is to be endorsed to permit early occupancy and be on terms negotiated and approved by Owner.

.2 Take No Action That: The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.3.3.2.1.6 Insurance for Existing Structures:

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the builder's risk insurance to be purchased by Contractor shall insure the existing structure on an "all-risks" replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.3.3.2.1 (Builder's Risk), notwithstanding the undertaking of the Work. The insurance shall eliminate all co-insurance penalties.

§ A.3.3.2.1.7 Optional Extended Property Insurance: The Contractor shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

[« »] .1 Loss of Use, Business Interruption, and Delay in Completion Insurance, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss. «[Sub-limit \$] [Included without sub-limit.] »

Loss of net rental income which results from delay beyond the projected completion date due to a covered cause of loss. «[Sub-limit \$] [Included without sub-limit.] »

[« »] .2 Ordinance or Law Insurance, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project. «Included without sub-limit. »

[« »] .3 Expediting Cost Insurance, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property. «[Sub-limit \$] [Included without sub-limit.] »

[« »] .4 Extra Expense Insurance, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred. «[Sub-limit \$] [Included without sub-limit.] »

[« »] .5 Civil Authority Insurance, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance. «[Sub-limit \$] [Included without sub-limit.] »

[« »] .6 Ingress/Egress Insurance, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage. «[Sub-limit \$] [Included without sub-limit.] »

[« »] .7 Soft Costs Insurance, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: «[Sub-limit \$] [Included without sub-limit.] »

including

[« »] _____ .1 Construction Loan Fees: construction loan fees.

[« »] _____ .2 Leasing and Marketing Expenses: leasing and marketing expenses, including commissions on renegotiated leases.

[« »] _____ .3 Additional Fees: additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction.

[« »] _____ .4 Carrying Costs: carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

[« »] _____ .5 Overhead: additional overhead.

[« »] _____ .6 Other: [« »]

§ A.3.3.2.1.8 Additional Specifications Applicable to Contractor:

The Contractor shall comply with all obligations of the Owner under Section A.2.3 (Required Property Insurance) except to the extent provided below.

.1 Deductible: The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. ~~Upon request, the~~ The amount of any deductible must be approved by Owner.

.2 Copy of Policy: The Contractor shall provide the Owner with a copy of the property insurance policy or policies required.

.3 Adjustments and Settlement: The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with AIA A201-2017 Article 11 (Insurance and Bonds) of the General Conditions unless otherwise set forth below:

(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

«→ Contractor is providing the builder's risk insurance.»

.4 Term and Termination: This insurance shall be maintained in effect, unless otherwise provided for in the Agreement, until the earliest of the following dates: (a) The date on which all persons and organizations who are insureds under the policy agree that it shall be terminated; (b) The date of final payment, as provided for in the Agreement; or (c) The date on which the insurable interests in the Covered Property of all insureds other than Contractor have ceased. The termination of coverage provision shall be endorsed to permit occupancy of the coverage property being constructed. This insurance shall not be subject to cancellation by the insurer for any reason other than nonpayment of premium without 60 days prior written notice to the Owner.

.5 Stand Alone Policy: The builder's risk insurance is to be a stand-alone policy covering only the Project and not part of a master or blanket policy covering other projects of the Contractor. The policy is not to be a reporting form policy.

.6 Prohibition: No protective safeguard warranty is permitted.

[« »] § A.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate, for Work within fifty (50) feet of railroad property.

[« »] § A.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[« »] § A.3.3.2.4 [Property in Storage or in Transit](#). Insurance for physical damage to [or theft of](#) property while it is in storage and in transit to the construction site on an “all-risks” ~~completed value form~~.

[« »] § A.3.3.2.5 [Property Owned by Contractor](#).

.1 Scope: Property insurance on an “all-risks” ~~completed value form~~, covering property [that is not intended to become part of the project except as specifically covered by the policy and](#) owned by the Contractor and used on the Project, including scaffolding and other equipment.

.2 Waiver of Subrogation: This insurance shall contain a waiver of subrogation by the insurer as to claims on the Protected Persons.

.3 Waiver of Recovery: Owner shall have no liability to Contractor for loss or damage (including theft) to Contractor’s tools or equipment located at the jobsite and Contractor waives recovery from the Protected Persons from any damage or loss thereto, including as a result of the negligence of the Protected Persons.

.4 Advanced Notice: This insurance is to contain a provision that the insurer shall provide that this insurance shall not be canceled without at least 30 days’ prior written notice to Owner and Owner’s Lender except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner’s Lender with such notice.

[« »] § A.3.3.2.6 Other Insurance

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits

§ A.3.4 Performance Bond and Payment Bond

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	Contract Sum
Performance Bond	Contract Sum

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement [and issued by an issuer that is at least a Best’s Key Rating Guide A/VII company and listed on the United States Department of the Treasury’s List of Acceptable Sureties and Reinsurers \(the “T” list\)](#).

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:



§ A.4.1 Subcontractor's Insurance.

Contractor shall cause Subcontractors of every tier to purchase and maintain insurance meeting the specifications set out in Owner's insurance specifications for subcontractors and provide certificates of insurance and copies of policies as therein set out.

§ A.4.2 General Insurance Requirements.

.1 Policies: All policies be written through insurance companies authorized to do business in the State of the Property's location which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide at all times Work is to be performed, unless a different rating is approved by Owner.

.2 Forms: If the forms of policies, endorsements, certificates, or evidence of insurance required by these insurance specifications are superseded or discontinued, Owner will have the right to require other forms providing more beneficial coverage to the Protected Persons. Any policy or endorsement form other than a form specified in this Exhibit must be approved in advance by Owner.

.3 Copies of Policies: Contractor will provide to Owner a certified copy of any or all insurance policies and endorsements.

.4 Limits: "Limits" set out in these specifications are the minimum dollar amount of insured coverage for the risk, cause of loss or peril specified. If Contractor maintains greater limits, then these specifications shall not limit the amount of recovery available to Protected Persons and the limits specified above as the minimum limits are increased to the greater limits. For those policies containing an aggregate, as soon as incurred loss activity (paid plus reserve) depletes the aggregate by 50% or more, written notice must be delivered to Owner and Owner's Lender.

.5 Deductibles: No deductible or self-insured retention shall exceed \$25,000 without prior written approval of the Owner. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Contractor's sole risk.

.6 Severability of Interest: All insurance required by this Exhibit (excluding only Workers Compensation Insurance and Professional Liability Insurance) shall be endorsed to provide that, in as much as the policy is written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. No cross-liability exclusion will be accepted. Nor shall there be any restrictions in any policies that limit coverage for a claim brought by an Additional Insured against a named insured.

§ A.4.3 Miscellaneous.

.1 No Waiver: Failure of any Protected Person to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Protected Person to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance.

.2 Suspension: Owner shall have the right, but not the obligation, of suspending Contractor's services, without an increase in the sum payable by Owner to Contractor due to such suspension, until such certificates or other evidence that the required insurance has been placed in compliance with these requirements is received and approved by Owner.

.3 Post Completion Coverage: With respect to the insurance to be maintained after final payment to Contractor, an additional certificate(s) evidencing such coverage shall be provided to Owner with final application for payment if prior certificate has expired, and thereafter upon renewal or replacement of such insurance until the expiration of the time period for which such insurance must be maintained.

.4 Compliance With Laws: If any insurance requirements are deemed to violate any law, statute or ordinance, the insurance requirements shall be reformed to provide the maximum amount of protection to Owner as allowed under the law.

.5 Minimum Requirements: It is expressly understood and agreed that the insurance coverages required herein (a) represent Owner's minimum requirements and are not to be construed to void or limit the Contractor's indemnity obligations as contained in the Contract Documents nor represent in any manner a determination of the insurance coverages Contractor should or should not maintain for its own protection; and (b) are being, or have been, obtained by Contractor in support of Contractor's liability and indemnity obligations under the Contract Documents. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of Contractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provision of the Contract Documents.

.6 Effect of Specified Coverages: In specifying minimum requirements herein, Owner does not assert nor recommend this insurance as adequate for Contractor or any Subcontractor. Contractor and its Subcontractors are solely responsible to inform themselves of types of insurance it may need beyond these minimum requirements to protect themselves from loss, damage, or liability. More current editions of the ISO forms specified herein may not be used except if approved in advance by Owner. If the forms of policies, endorsements, certificates, or evidence of insurance required by these insurance specifications are superseded or discontinued, Owner will have the right to require other forms providing more beneficial coverage to the Protected Persons. Any policy or endorsement form other than a form specified in this Exhibit must be approved in advance by Owner.

.7 Survival: This Exhibit is an independent contract provision and shall survive the completion of the Work. All policies are to be subject to Owner's approval in its sole discretion and this Contract is conditioned on Owner's approval.

.8 Waiver of Workers Compensation Immunity: The indemnification obligations contained in this Agreement shall not be limited by any Workers Compensation, benefit or disability laws, and each indemnifying party hereby waives (solely for the benefit of the indemnified party) any immunity that said indemnifying party may have under applicable laws.

§ A.4.4 Condition Precedent: If insurance to be provided by Contractor is not acceptable to Owner, Owner may terminate this Contract, and Owner's approval is a condition precedent to this Contract. Owner has the right, but not the obligation, of suspending Contractor's services, without an increase in the sum payable by Owner to Contractor due to such suspension, until such certificates or other evidence that the required insurance has been placed in compliance with these requirements is received and approved by Owner.

§ A.4.5 "Protected Persons": References in this Exhibit A to "Protected Persons" means the following persons and entities:

.1 Owner:

.2 Development Manager:

.3 Owner's Construction Lender:

.4 Additional Specified Persons and Entities:

.5 Additional Categories of Persons and Entities:

As to the above listed persons and entities:

- a. their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors, and assigns,
- b. any directors, officers, employees, or agents of such persons or entities, and
- c. other persons or entities designated to Contractor by any of the above listed persons or entities.