



**ACRELive!**

## **Insurance for AIA Construction Contracts**

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This presentation is a sequel to the speakers' presentation at the 2013 Fall Meeting in Vancouver, *A Dozen Things You Wish You Had Known About Commercial Project Insurance*, a presentation that left many ACREL Fellows with a realization that the old way of "cut and paste" ("*I only draft the provisions. I am not an insurance person. It is up to the client to understand and implement the provisions, even though I do not.*") of risk management provisions from other other's forms and reliance on stock general insurance specifications, was folly. The American Institute of Architects also came to that realization and in their 10 year form revision of the 2007 construction forms adopted the speakers' recommended approach. AIA substituted detailed insurance specifications as **AIA A101 - 2017 Exhibit A Insurance and Bonds** for the prior narrative approach that relied upon party drafted 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 means to make a choice (e.g., "*the owner is to be an additional insured on the contractor's liability insurance*") and references to terminology no longer used in the insurance industry (e.g., "*contractor is to provide comprehensive general liability insurance and fire and extended coverage insurance*"). The speakers' ambitious goal in this presentation is to provide ACREL Fellows and their invitees with sufficient knowledge of AIA's 2017 new approach to liability and property insurance in the context of construction projects to adequately address risk management in a construction project. The applicable AIA and insurance industry forms will be provided and explained.



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AIA G715 – 2017 <i>Supplemental Attachment for ACORD Certificate of Liability Insurance</i>	
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ACORD 75 - <i>Insurance Binder (2013/09)</i>	

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This article contains citations to the following articles relating to insurance in construction projects presented by the authors at various ACREL meetings. The following are Web addresses for the articles:

- *A Dozen Things You Wish You Had Known About Commercial Project Insurance*, ACREL Fall, **2013** Meeting (Vancouver), by Charles E. Comiskey and William H. Locke, Jr. updated in *Insurance for Real Estate Lawyers 2016*, listed below. <https://www.gdhm.com/wp-content/uploads/2022/09/2013-ACREL-Vancouver-Fall-2013-A-Dozen-Things-You-Wish-You-Had-Known-About-Commercial-Project-Insurance.pdf>
- *CGL Coverage of “Property Damage” Losses Arising Out of Defective Work*, ACREL Fall Meeting, **2009** (Washington D.C.), by William H. Locke, Jr., and updated ACREL Insurance Committee March, **2016** (San Diego). [https://www.gdhm.com/wp-content/uploads/2016/08/CGL\\_Coverage\\_of\\_Construction\\_Defects.pdf](https://www.gdhm.com/wp-content/uploads/2016/08/CGL_Coverage_of_Construction_Defects.pdf)
- *Protecting the Owner: Construction Insurance on a High-Rise Office Building (A Case Study)*, ACRELive!, February, **2013**, by Elizabeth A. Lowe and William H. Locke, Jr. [https://www.gdhm.com/wp-content/uploads/2022/09/ACREL-Live-Protecting-the-Owner\\_-\\_Construction-Insurance-on.pdf](https://www.gdhm.com/wp-content/uploads/2022/09/ACREL-Live-Protecting-the-Owner_-_Construction-Insurance-on.pdf)
- *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)*, ACRELive!, February, **2016**, by Charles E. Comiskey and William H. Locke, Jr. <https://www.gdhm.com/wp-content/uploads/2022/09/2016-ACRELive-Three-Scofflaws-Are-On-The-Loose-But-There-Is-A-New-Sheriff-In-Town.pdf>
- *Insurance for Real Estate Lawyers*, ACREL Insurance Committee Spring, **2016** Meeting (San Diego), by Charles E. Comiskey and William H. Locke, Jr. updating *A Dozen Things You Wish You Had Known About Commercial Project Insurance* listed above. <https://www.gdhm.com/wp-content/uploads/2022/09/2016-Insurance-for-Real-Estate-Lawyers-Feb.-2016.pdf>
- *Drafting Indemnities (and Their Relationship to Insurance)*, ACREL Insurance Committee Spring, **2017** by William H. Locke, Jr. <https://www.gdhm.com/wp-content/uploads/2022/09/Indemnities-and-Their-Relationship-to-Insurance-ACREL-Insurance-Committee-Spring-2017-Meeting.pdf>

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## Helpful Reading

The following is a bibliography of helpful books and articles:

- *If the Shoe Fits Wear It – Shoehorning Waivers of Subrogation into Commercial Leases*, ACRELive!, June, **2020**, by Janet M. Johnson and William H. Locke, Jr. <https://www.gdhn.com/wp-content/uploads/2016/07/If-the-Shoe-Fits-Wear-It.pdf>
- “Cover Me”: *Owner’s Requirements for Additional Insured Status on Contractor’s General Liability Policies and Professional Liability Insurance*, ACREL Spring, **2015** Meeting (Scottsdale) by Steve G. M. Stein.
- “A Deep Dive: *Insurance Under the New AIA Documents & Construction-Related Endorsements*, ACREL **2018** by Charles Comiskey and Marie A. Moore (Power Point and Recording on ACREL Website).
- “*Risks in Property and Casualty Insurance Every Real Estate Lawyer Should Know*”, ACREL **2019** by Charles E. Comiskey and John P. McNearney (Power Point and Recording on ACREL Website).
- CONSTRUCTION INSURANCE – A GUIDE FOR ATTORNEYS AND OTHER PROFESSIONALS, American Bar Association (2011) by Stephen D. Palley, Timothy E. Delahunt, John S. Sandberg, and Patrick J. Wielinski.
- THE HANDBOOK ON ADDITIONAL INSURED, American Bar Association **2012** by Michael Menapace, Charles Platto Timothy A. Diemand, and Joseph G. Grasso.
- THE ADDITIONAL INSURED BOOK, IRMI **2013** 7<sup>th</sup> Edition by Donald S. Malecki and Jack P. Gibson.
- THE BUILDERS RISK BOOK, IRMI 2019 2<sup>nd</sup> Edition by Steven A. Combs and Donald S. Malecki.

## INSURANCE FOR AIA CONSTRUCTION CONTRACTS <sup>1</sup> <sup>2</sup> <sup>3</sup>

### I. INTRODUCTION

#### A. Authors' Prior Presentations to ACREL – *A Dozen Things You Wish You Had Known*

Previously the authors presented at the 2013 ACREL meeting in Vancouver, Canada as *A Dozen Things You Wish You Had Known About Commercial Project Insurance*. This article was updated and presented to the ACREL Insurance Law Committee at its 2016 ACREL meeting in San Diego, CA as *Insurance for Real Estate Lawyers*. The following are the “*A Dozen Things You Wish You Had Known*” about liability and property insurance and writing

<sup>1</sup> **Approach Taken in the Paper.** This paper is written on three levels:

(1) a **Commentary** AIA’s insurance specifications adopted in 2017 as its AIA Document A101-2017 Exhibit A *Insurance and Bonds* supplemented by Footnotes at the bottom of the pages of the Commentary (the Commentary is on [pages 1 - 28](#)).

(2) an **Appendix of Forms**, a copy of portions of the AIA A201 *General Conditions of Construction*, the AIA A101-2017 Exhibit A, a Modified Insurance Exhibit suggesting modifications to the AIA’s insurance specifications, and ISO forms relevant to the insurance specifications (the forms are on [pages 29 - 174](#)), and

(3) extensive discussion of terminology used in the forms included by **Endnotes** to the forms (the Endnotes follow the forms) beginning on [page 175](#).

<sup>2</sup> **Approach to be Taken in the Live Presentation.** The authors’ presentation will not proceed through the paper beginning to end, but will be made directly from the AIA form and the suggested Modified Insurance Exhibit. The Commentary generally follows the order of the Sections in the two forms, but for simplicity in following the live presentation the webinar materials contain copies of the AIA form and the Modified Insurance Exhibit without their Endnotes. It is our suggestion that you merely follow our discussion as we reference sections in the AIA form and the Modified Insurance Exhibit. In our live presentation we will make reference to the page number in the Article for you to turn to that form for a particular point. We will return thereafter to our review of the two forms.

<sup>3</sup> **Protocols:**

(1) **AIA Form Sections.** Of note is the complex section numbering system employed by the AIA, some with headings others not. For example, **§ A.3.3.2.1** does not have a heading but sets out the choice for the Contractor to provide builder’s risk insurance. This specification then cross references the corresponding provision for the details of the specification for builder’s risk insurance in Article **A.2 Owner’s Insurance**

“§ A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section

insurance specifications for real estate transaction documents addressed in the authors’ 2013 and 2016 articles and presentations:

**1. About Knowledge.** What you did not know, and could have known, can hurt you (unless you as a real estate, or construction, lawyer understand liability and property insurance and change the method you employ in drafting liability and property insurance provisions and specifications). <sup>4</sup>

**2. About Certificates of Insurance.** Certificates of insurance, are not certificates. <sup>5</sup>

**3. About Words.** Antiquated, problematic and just plain wrong terminology is used in insurance specifications. <sup>6</sup>

A.2.3, which, if selected in this Section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3”.

(2) **Modified Insurance Exhibit Form Sections.** In the Article references to Sections in the **Modified Insurance Exhibit** is done by adding “*Mod.*” before the referenced Section number in order to identify Sections in the Modified Insurance Exhibit containing modifications. In the **Modified Insurance Specifications** we adopt a format that adds headings to each section and then uses that heading *italicized* in the cross reference, and underlines and bolds the Section reference:

“**Mod. § 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.**”

#### *A Dozen Things You Wish You Had Known*

<sup>4</sup> **About Knowledge.** It is the authors’ opinion and experience that lawyers drafting transactional documents are resistant to undertaking the effort required to understand the insurance provisions they include in their documents and to following up with their clients to assure that the drafted insurance provisions are fulfilled by the parties and their insurance brokers. On occasion this resistance has risen to heated rhetoric to the effect “I only draft the provisions. I am not an insurance person. It is up to the client to understand and implement the provisions.”

<sup>5</sup> **About Certificates of Insurance.** A certificate of insurance does not provide coverage if coverage is not provided in the underlying policy. Many courts have held that these disclaimers effectively negate reliance by certificate holders.

<sup>6</sup> **About Words.** Even after almost 27 years since the insurance industry changed their policy forms in 1986, leases, construction

**4. About Notice.** Additional insureds are not automatically notified of cancellation or modification, and never notified of non—renewal of coverage. <sup>7</sup>

**5. About Indemnities and Liability Insurance.** Not all indemnified liabilities are insured. <sup>8</sup>

**6. About Additional Insured Specifications.** A general specification for “additional insured status” is meaningless. <sup>9</sup>

**7. About Completed Operations Coverage.** Completed operations coverage is important. <sup>10</sup>

**8. About Blanket Additional Insured Coverage.** Additional insureds may not be covered by a blanket additional insured endorsement. <sup>11</sup>

**9. About Builder’s Risk Insurance.** Not all builder’s risk policies are the same. <sup>12</sup>

**10. About Construction Defect Insurance.** Commercial general liability insurance can apply to

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contracts and other forms drafted by many lawyers still employ “antiquated, problematic and just plain wrong” terminology.

<sup>7</sup> **About Notice.** Additional insureds are not first named insureds; they are “additional” insureds and, therefore, the standard policy without endorsement does not commit the insurer to give notice to the additional insured if the insurer cancels the policy for nonpayment of premium or for any other reason.

<sup>8</sup> **About Indemnities.** Standard CGL insurance does not and cannot “cover” an indemnity. Only “bodily injury” and “property damage” are covered. Coverage is also limited to the policy amounts. It must be kept in mind that, since insurance potentially covers so few of the exposures for which indemnification may be required, the indemnification provision is potentially bankrupting to the indemnitor. Also, as noted in **11 About Invisible Exclusions**, you cannot assume that contractual liability coverage afforded by the standard commercial general liability policy has not been limited or even deleted by endorsement.

<sup>9</sup> **About Additional Insured Specifications.** Unfortunately, although additional insured coverage is the most common risk management technique, it is also the most commonly misunderstood, even by professionals in the field such as risk managers, insurance agents and lawyers. The most common error is failing to specify the coverage terms to be contained in the additional insured endorsement.

<sup>10</sup> **About Completed Operations Coverage.** Failure to require, and then follow up and assure maintenance by contractors and subcontractors of, products and completed operations coverage for up to the jurisdiction’s statute of repose can lead to catastrophic uninsured losses and can leave an owner or developer with little financial recourse.

<sup>11</sup> **About Blanket Additional Insured Coverage.** Many additional insured coverages are provided on a “blanket” or “automatic” basis. However, third parties may erroneously rely on such additional

construction defects! <sup>13</sup>

**11. About Invisible Exclusions.** Exclusions from coverage may be invisible. <sup>14</sup>

**12. About Self-Insurance.** Self-insurance is not insurance. <sup>15</sup>

The authors in their 2013 and 2016 presentations recommended that parties to transaction documents (for example, leases and construction contracts) draft specific (checklist style) insurance specifications as opposed general (narrative) insurance specifications. In addressing the difference between the then current approach and the authors’ recommended approach, the authors concluded:

“Included in this article are two approaches to writing insurance specifications, a narrative approach and an exhibit checklist approach. There are drafting advantages and disadvantages to each approach (one’s vice is the other’s virtue).

insured coverage as many blanket additional insured endorsements provide coverage only to “persons for whom you (the named insured) are performing operations when you and such person have agreed in a written contract that such person be added as an additional insured.” And do not provide coverage to third parties not in privity with the named insured.

<sup>12</sup> **About Builder’s Risk Insurance.** There is no standard builder’s risk policy, unlike liability insurance where there is a commonly recognized standard ISO CGL policy. there is a wide divergence in builder’s risk coverages insurer to insurer.

<sup>13</sup> **About Construction Defect Insurance.** In many jurisdictions, if not the majority of jurisdictions, a contractor’s CGL insurance insures the contractor for damages to property, even including its work product, if the damage occurs due to the defective work of its subcontractors.

<sup>14</sup> **About Invisible Exclusions.** There is today a plethora of “invisible” exclusions and limitations being added to general liability coverage by endorsement by the insurance industry to minimize the carrier’s exposures. These are invisible because they never show up on any certificate of insurance unless you are careful in your drafting of the insurance specifications.

<sup>15</sup> **About Self-Insurance.** The term “*self-insurance*” is used to describe a range of risk retentions by the self-insurer. Self-insurance can range from no insurance (“going bare”), to a policy deductible, to insurance purchased over a large, self-insured retention (“*SIR*”). Unless the parties have established a restricted and encumbered fund or a reinsurance program, all that you have is the unsecured indemnity of self-insurer. The term “self-insurance” does not, without further detail, specify what procedures are to be followed and what protection is available.



Narrative	Exhibit
General	Specific
Brief	Detailed
Paragraph Style	Checklist Style

The authors encourage the use of the exhibit checklist approach. In the authors' experience providing a specific, detailed checklist style set of insurance specifications facilitates delivery of insurance meeting the parties' insurance requirements. The authors urge "Remember your audience," which we argue is the insurance agents issuing and reviewing the insurance to be obtained."

### B. AIA Prior to 2017

Prior to 2017, the AIA forms system (except for the Design Build forms)<sup>16</sup> 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.<sup>17</sup>

The pre-2017 AIA approach was a narrative approach that relied upon further insurance specifications prepared by one of the parties, 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

<sup>16</sup> **2014 Design Build Forms; 2017 Construction Contract Forms.** In 2014 AIA in connection with the revision cycle for their design-build forms adopted insurance specifications for use with their design-build documents, AIA A141 - 2014 Exhibit B *Insurance and Bonds* for use in connection with the new edition of the A141 - 2014 *Standard Form of Agreement Between Owner and Design Builder* and the A142 - 2014 *Standard Form of Agreement Between Design Builder and Contractor* (as a revision to the preceding 2004 edition).. These 2014 forms were a precursor to AIA's adoption in 2017 of the insurance specifications for AIA's other construction contract forms (A102 - 2017 *Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*; A103 - 2017 *Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price*).

<sup>17</sup> **Insurance Specifications Prior to 2017 AIA Change in**

terminology no longer used in the insurance industry (e.g., "comprehensive general liability insurance", "fire and extended coverage insurance").<sup>18</sup>

### C. 2017 Insurance Exhibit

Every 10 years (or so), AIA reviews and revises the AIA forms. The most recent revision occurred in 2017.

In 2017 AIA introduced its new approach to insurance specifications, its A101 Exhibit A *Insurance and Bonds* (the "2017 Insurance Exhibit"), a copy of which is included in the [Appendix of Forms](#) to this article beginning on page 37. Also, AIA revised its A201 *General Conditions of Construction*. An extract of the revised A201-2017 risk management provisions is included in the [Appendix of Forms](#) to this article beginning on page 29. For comparison attached is an extract of the risk management provisions in the AIA A201-2007. The [Endnotes](#) to the 2017 and 2007 editions explain and contrast the approach taken in these editions.

AIA's 2017 approach employs a check-the-box format versus the 2007 approach which was a narrative approach. The 2017 exhibit is in the nature of a **specific, detailed checklist** as to the most common insurance decisions between owners and contractors.

### D. Modified Insurance Exhibit

The authors' approach, recommended in their 2013 and 2016 presentations to ACREL, has now been adopted by AIA in its 2017 revisions. The resultant 2017 Insurance Exhibit, although better than AIA's 2007 approach, includes some specifications and language that are problematic, and does not contain all changes that would have been beneficial.<sup>19</sup>

**Approach.** The pre-2017 AIA A201 does not contain detailed insurance specifications.

<sup>18</sup> **Antiquated, Problematic and Just Plain Wrong Terminology.** See *Insurance for Real Estate Lawyers*, ACREL Insurance Committee Spring, 2016 Meeting (San Diego), by Charles E. Comiskey and William H. Locke, Jr. at *Liability Insurance - Antiquated, Problematic and Just Plain Wrong Terminology* at page 3 and *Property Insurance - Antiquated, Problematic and Just Plain Wrong Terminology* at page 36.

<sup>19</sup> **AIA Adopts a Blend of a Checklist Approach and a Narrative Approach for Insurance Specifications.** See *Insurance for Real Estate Lawyers*, ACREL Insurance Committee Spring, 2016 Meeting (San Diego), by Charles E. Comiskey and William H. Locke, Jr. at *Drafting: Specific Specifications Are Better than General* at page 41. Charles Comiskey was an advisor to the AIA committee drafting insurance specifications to accompany the 2017

The AIA's 2017 Insurance Exhibit is improved upon by the authors' **Modified Insurance Exhibit** included in the **Appendix of Forms** to this Article beginning on page 44. The Modified Insurance Exhibit is annotated by **Endnote** explanations of the choices presented and terminology used. The approach taken in the Modified Insurance Exhibit is to reference specific industry forms and to state in detail the coverages required. This approach prompts discussion of insurance requirements while the parties are still in contract negotiation. It permits review of alternate coverages.

#### E. ISO Forms

Reference is made in the **2017 Insurance Exhibit** and in the **Modified Insurance Exhibit** 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 and are used by many insurers. As a result, they are a reasonable benchmark as to coverage to be specified. There exists substantial case law 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 Insurance Exhibit** identifies particular **ISO** forms to be prohibited and identifies other common deleterious forms as prohibited.<sup>20</sup>

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.

#### F. "**Protecting Persons**" and "**Protected Persons**"

The terms "Protecting Persons" and "Protected Persons" are employed in the **Modified Insurance Exhibit**. "**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 Insurance Exhibit. 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**"<sup>21</sup> is a common practice in issuing insurance specifications, including in AIA's **A201-2017** and its companion **2017 Insurance Exhibit**.

"**Equivalent**" is a problematic term. The concept of identifying specific policy forms, partially adopted in the 2017 Insurance Exhibit, and more fully adopted in the Modified Insurance Exhibit proffered by the authors of this article, 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.

**Modified Insurance Exhibit** replaces this terminology with "**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

forms. He was instrumental in steering the choice of "specific" insurance specifications. The **Modified Insurance Exhibit** and this Article is the author's attempt to fill gaps still existing in the new approach - the AIA's **2017 Insurance Exhibit**.

<sup>20</sup> **ISO Forms**. See *Insurance for Real Estate Lawyers*, ACREL Insurance Committee Spring, 2016 Meeting (San Diego), by Charles

E. Comiskey and William H. Locke, Jr., pages 93-199 for relevant **ISO** forms, and the Commentary on these forms at pp. 204 – 253.

<sup>21</sup> "**Or Equivalents**". See this phrase used in the Exhibit A and Modified Exhibit A insurance specifications at **§ A.2.3.1**, **§ A.3.3.2.1** and related **Endnote 25**.

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 <sup>22</sup>

### 1. Timing of Review of Insurance

The builder's 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 Insurance Exhibit 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.

### I. Overview of How the 2017 Insurance Exhibit Addresses *A Dozen Things You Wish You Had Known* and How the Modified Insurance Exhibit Improves upon It

The following list sets out with a broad brush how the **2017 Insurance Exhibit** addresses *A Dozen Things You Wish You Had Known* identified in the authors' 2013 and 2016 presentations. This article reviews and explains in more detail AIA's

specifications in **Article II. Owner's Insurance** beginning on [page 37](#); and in **Article III. Contractor's Insurance** beginning on [page 40](#). The **2017 Insurance Exhibit**:

#### 1. **About Knowledge:**

- a. **Specifications:** sets out specifications for Owner's insurance and Contractor's insurance, and provides a place holder for Special Terms and Conditions to be addressed.
- b. **Choices:** sets up a choice for either the Owner or the Contractor to obtain builder's risk insurance as to the new construction.
- c. **Allocations:** allocates to the Owner responsibility for property insurance for existing structures if the Contractor is remodeling or constructing an addition to an existing structure.
- d. **Alerts:** addresses occupancy of a completed or partially completed portion of the Contractor's Work prior to Substantial Completion of the Project.
- e. **Options:** identifies and provides the parties options to extend the builder's risk insurance to insure consequential losses and expenses caused by causes of loss and other risks.

#### 2. **About Certificates of Insurance (Copy of Property Policies):**

- a. **Evidence of Owner's Insurance; Copy of Property Policy:** provides Owner is to provide evidence of liability and property insurance and a copy of Owner's property insurance but does not require Owner to provide Contractor with a copy of Owner's liability insurance.
- b. **Certificates Contractor's Liability Insurance; Copy of Property Policy:** Contractor is to provide Owner with a Certificate of Insurance for Contractor's insurance and a copy of required property insurance, but does not specify that Contractor is to provide Owner with a copy of Contractor's liability insurance.

#### 3. **About Words:**

employs current insurance terminology.

<sup>22</sup> **Common Errors in Construction Property Insurance.** See *Insurance for Real Estate Lawyers*, ACREL Insurance Committee Spring, 2016 Meeting (San Diego), by Charles E. Comiskey and William H. Locke, Jr., at *Common Errors and Problems*, [pages 229-](#)

230.



**4. About Advanced Notification from Insurer:**

does not specify or provide for the insurers to provide advanced notice of cancellation, material change or non-renewal of the insurance policies.

**5. About Insurance of Contractual Indemnities:**

**a. *No Specification as to Owner's Insurance:*** does not provide that Owner's liability insurance will include insurance of Owner's indemnities of Contractor, Subcontractors, or the Architect, and the Architect's consultants.

**b. *Specification as to Contractor's Insurance:*** provides that Contractor's commercial general liability insurance shall insure Contractor for Contractor's indemnity obligations under Section 3.18 of the A201 *General Conditions*.

**6. About Additional Insured Specifications:**

**a. *No Specification on Owner's Insurance:*** does not provide for Contractor or Architect to be insured as additional insureds on Owner's liability insurance.

**b. *Specifications on Contractor's Insurance:*** provides for Owner, Architect, and Architect's consultants to be an additional insured on Contractor's CGL insurance with coverage no less than that provided in specified forms of ISO additional insured endorsements.

**c. *Certificates of Insurance:*** provides for Owner's additional insured status to be addressed in the Certificate of Insurance to be provided to Owner, but does not provide for Contractor to provide Owner with a copy of the issued additional insured endorsements.

**d. *Means Not Addressed to Assure Architect's and Architect's Consultants of Additional Insured Status:*** does not provide for Contractor to provide Architect and Architect's consultants with either a certificate of insurance or with a copy of the issued additional insured endorsements.

**7. About Completed Operations Coverage:**

**a. *Specification:*** specifies Contractor's liability insurance is to include coverage for products-completed operations hazards;

**b. *Specification:*** specifies Contractor's liability insurance includes coverage of

**Coverage of Bodily Injury and Property Damage:** specifies coverage for claims including bodily injury or property damage arising out of completed operations.

**8. About Blanket Additional Insurance:**

provides for additional insured coverage by endorsement forms that call for designating the additional insured by name.

**9. About Builder's Risk Insurance**

provides detailed specifications for builder's risk insurance.

**10. About Construction Defect Insurance**

deletes exclusion, thus creating insurance coverage for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damage Work or the Work out of which the damage arises was performed by a Subcontractor.

**11. About Invisible Exclusions**

identifies 11 coverage exclusions that are prohibited.

**12. About Self-Insurance**

requires Contractor's disclosure and Owner's approval.

**II. OWNER'S INSURANCE – Article A.2****A. AIA A201 General Conditions**

Included with this Article is an extract of provisions in the AIA A201-2017 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 2017 Insurance Exhibit. A201-2017 *General Conditions*.

**1. A201 Allocation of Uninsured Damage to Contractor.**

**A201-2017** *General Conditions of Construction*, at **Section 10.2.5** *Risk of Loss or Damage*<sup>23</sup> allocates to the Contractor the entire loss if the Contractor, the Subcontractors or others for whom they are liable (the “*Contractor Parties*”) if the loss or damage is *caused in whole or in part by the Contractor Parties*. **Section 10.2.5** *Risk of Loss* provides

The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in **Sections 10.2.1.2** and **10.2.1.3** *caused in whole or in part by the Contractor (Parties)*, and for which the Contractor is responsible under **Sections 10.2.1.2** and **10.2.1.3**.<sup>24</sup> (Emphasis added.)

Note that in the absence of a provision in a construction contract allocating the risk of loss during construction have consistently held that the person who contracts to erect a structure or complete construction work bears the loss resulting from accidental damage or destruction of the work prior to its completion and acceptance.

## **2. A201 Limited Recourse by Contractor.**

The **A201-2017** **Section 10.2.5** *Risk of Loss or Damage* gives the Contractor a limited recourse against the Owner if the loss or damage that is not insured is

attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor.

Note though this recourse does not lie if the loss or damage is “attributable to the fault or negligence of the Contractor”.

<sup>23</sup> **A201-2017**. Extracts from the **A201-2017** are found in the **Appendix of Forms** beginning at page 29.

<sup>24</sup> **A201-2017 Sections 10.2.1.2 and 10.2.1.3**. “§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

.1 employees on the Work and other persons who may be affected thereby;  
 .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and  
 .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not

## **3. Insure the Risk.**

### **a. Contractor**

Thus, the Contractor and its Subcontractors of all tiers have a keen interest in assuring that such potential losses and damages to the Work and the Project are properly insured and that they are insureds under the property insurance policies. See the discussion in this Article as to the Contractor and its Subcontractors seeking to be insureds on Owner’s property insurance, which hopefully is builder’s risk insurance.

### **b. Owner**

Owner has equally compelling reasons for the risk to be adequately insured. Timely progression and funding for property damage and losses is in the Owner’s interest. It is preferable for the parties to have insurance proceeds to fund construction following a loss than to institute a claim resolution process under the construction contract including either arbitration or litigation over uninsured losses.

### **c. Broadest Coverage Commercially Available**

Arguably, it is in the best interest of both parties to contractually require and actually obtain the broadest commercially available property insurance.

## **4. Owner-Procured Property Insurance.**

### **a. The Default under the 2017 Insurance Exhibit is for Owner to Procure the Property Insurance**

The **2017 Insurance Exhibit** is aligned with the common practice of the Owner providing the property insurance, unless this obligation is placed on the Contractor by the parties choosing to do so. The default under the 2017 Insurance Exhibit is to require Owner to procure the property insurance.<sup>25</sup> The parties may instead choose to place this obligation on the Contractor by “checking the box” in **Section A.3.3.2.1**.<sup>26</sup>

designated for removal, relocation, or replacement in the course of construction.”

<sup>25</sup> **2017 Insurance Exhibit Section 2.3 Required Property Insurance**. “§ 2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase ... property insurance written on a builder's risk “all-risks” ... or equivalent policy form...”

<sup>26</sup> **Choosing the Contractor to Procure the Property Insurance**. “[x] § A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3 which if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase ... such insurance ....”

**b. “Or Equivalent Policy Form”**

Curiously, after identifying the Required Owner-Procured Property Insurance in a some-what generic fashion as “builder’s risk ‘all risks’ property insurance the **2017 Insurance Specifications** then state that the form of insurance can be an “**equivalent policy form**”. The following can be the result:

- **Disagreement.** Disagreements between the parties as to what constitutes “equivalency”.
- **Uninsured Losses.** Uninsured losses result.
- **No New Builder’s Risk Policy.** Owner does not purchase a separate policy to cover the Project and relies on its existing property insurance covering its existing facilities, which policy may
  - (1) not adequately address property risks arising out of construction, and
  - (2) not include the Contractor and its subcontractors of every tier as insureds.
- **Contractor Parties Interests Not Insured.** The Contractor may not be an insured or a third party beneficiary of the Owner-Procured Property Insurance.

**c. Advice for Contractors**

- **Delete the “Equivalent” Language.** Negotiate for the deletion of “or equivalent policy form”.
- Require that the Contractor and the Subcontractors of all tiers are named insureds on the property insurance.
- Review the property insurance and confirm that the coverage is the equivalent of what would be covered by a builder’s risk policy and with all of the revisions appropriate to cover scope of the Work and coordination with the coverage of the existing structure.
- Do not accept *evidence of insurance* or *certificate of insurance* in lieu of a copy of the property insurance.

**d. Advice for Owners**

- **Same Advice.** The same advice above for the Contractor.

- **Insist on an Owner-Procured Policy.** Do not choose to insure the property risk under a Contractor-Procured Property Insurance Policy or the Contractor’s master builder’s risk policy.

**B. Owner Provides Evidence of Insurance and, on Request, Copy of Policies - § A.2.1 and Mod. § A.2.1****1. Evidence of Property Insurance; Copy of Property Policy.**

Owner is required by **§ A.2.1** to provide Contractor a copy of Owner’s **property** insurance policies (but perhaps does **not** require Owner to provide Contractor with a copy of Owner’s **liability** insurance policies).

The policies would include the builder’s risk policy (if Owner is providing the builder’s risk insurance), and also in the case of remodeling or adding to an existing structure, the property insurance required by **§ A.2.3.3 Insurance for Existing Structures**.

**2. Proof of Liability Insurance?**

Owner is required by **§ A.2.1 Owner’s Insurance – General** to provide Contractor with “**evidence of the coverage, required under this Article A.2**”.

Since **§ A.2.2 Liability Insurance** states that “**Owner is to be responsible for purchasing and maintain the Owner’s usual liability insurance**”, is Owner’s usual liability insurance a “required insurance” such that Owner is to provide Contractor with evidence of Owner’s liability insurance? Note that **§ A.2.1** only refers to Owner providing Contractor with a copy of the required **property** policy (which assumes that a copy of its liability insurance is not required to be provided.)

**Mod. § A.2.1** modifies these requirements to require Owner to provide a copy of Owner’s **liability** insurance.

**3. Time of Consideration.**

These requirements should be considered by Owner and Contractor prior to entering into the construction contract and these requirements adjusted to address what information Owner is willing to provide the Contractor and what insurance Contractor is to require Owner to carry.

**C. Owner’s “Usual” Liability Insurance –  
§ A.2.2 Liability Insurance and Mod. § A.2.2**

§ A.2.2, assumes that the Owner’s existing (its “*usual*”) liability insurance program is not to be specified in the construction contract.

The Modified Insurance Exhibit has not modified §A.2.2 Owner’s “maintaining the Owner’s usual general liability insurance”. There are circumstances where the Contractor has an interest in knowing the terms of Owner’s liability insurance. Mod. § A.2.2 requires Owner, upon request of Contractor, to provide Contractor a copy of Owner’s liability insurance. A placeholder is included in Mod. § A.2.2 for Contractor to specify any liability insurance requirements it has for the Owner.

**D. Required Property Insurance During  
Construction - § A.2.3**

**1. Choice of Owner or Contractor to Procure the  
Builder’s Risk Insurance - § A.2.3.1**

§ A.2.3.1 sets up a **choice** as to whether Owner or Contractor purchases the builder’s risk insurance (“*Unless this obligation is placed on the Contractor ...*”). The default position under this section is that the Owner purchases the builder’s risk insurance. Reference is made to § A.3.3.2.1 *Contractor’s Other Insurance - Builder’s Risk Insurance* for the optional selection of the Contractor to purchase the builder’s risk insurance.

**2. Owner-Procured Builder’s Risk Insurance -  
§ A.2.3.1.**

§ A.2.3.1 *Required Property Insurance* and § A.2.3.1.1 *Causes of Loss* are divided into subsections with headings in the **Modified Insurance Exhibit**. This reflects the fact that these sections in the 2017 Insurance Exhibit contain multiple specification items worthy of being called out to alert the parties to each of the specifications. The following is a discussion of several of the specifications and identifies their location both in the 2017 Insurance Exhibit and in the Modified Insurance Exhibit.

**a. “All Risks” Coupled with Causes of Loss and  
Specification of Not Excluded Causes**

**(1) “All Risks”**

§ A.2.3.1 (Mod. § 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 builder’s 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 builder’s risk policy, unlike liability insurance where there is a commonly recognized standard ISO CGL policy. Builder’s risk policies are Inland Marine policies and there is a wide divergence in builder’s 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.

**(2) Not Excluded Causes of Loss**

§ A.2.3.1.1 *Owner’s Insurance – Required Property Insurance - Causes of Loss* (Mod. § A.2.3.1.1.2 *Owner’s Insurance – Required Property Insurance - Causes of Loss – Not Excluded Causes of Loss*) address this possibility by providing that certain causes of loss (fire, explosion, theft, vandalism, malicious mischief, earthquake, flood and windstorm are *not to be excluded* from the builder’s risk insurance coverage.

Mod. § A.2.3.1.1.2 *Owner’s Insurance – Required Property Insurance - Causes of Loss – Not Excluded Causes of Loss* adds to this list “green” exposures and terrorism.

It is important to review the builder’s risk policy to confirm that none of these perils are excluded.

**(3) “Collapse”**

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.

**(4) Errors, Omissions or Deficiency – Ensuing  
Loss – § A.2.3.1.1 (Mod. § A.2.3.1.1.3)**

§ A.2.3.1.1 (Mod. § A.2.3.1.1.3) *Causes of Loss* extends builder’s risk coverage for “ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications,

workmanship, or materials”.

**Faulty Workmanship Exclusion.** The exclusion of faulty work, workmanship, or materials (“**Faulty Workmanship Exclusion**” aka as “**E&O Exclusion**”) is the exclusion relied on most by builder’s 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 by such insurers to be a risk of the parties doing business. The following are two samples of a Faulty Workmanship Exclusion sometimes included in a builder’s risk policy:

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; or

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

**Ensuing Loss Exception to an E&O Exclusion.** The following are examples of the addition of an “**ensuing loss**” coverage provision added as an exception to an 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.

#### (5) Sublimits - § A.2.3.1.1 (Mod. § A.2.3.1.1.4)

The coverage of a builder’s 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.

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

##### (1) Non-Reporting Form vs. Reporting Form

§ A.2.3.1 (Mod. § A.2.3.1(a)(3)) provides that the builder’s risk policy is to be issued on a replacement cost basis. Builder’s risk insurance is mostly 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. Under a completed value form coverage is automatically increased as construction occurs.

##### (2) Pricing

A completed value basis policy limit is based on the anticipated completed value of the project. Its premium is roughly 50% of the normal builder’s 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.

#### c. Replacement Cost Basis – § A.2.3.1 (Mod. § A.2.3.1(a)(4)(b))

##### (1) Replacement Cost vs. Actual Cash Value

Builder’s risk insurance can be provided on either an **actual cash value** (“**ACV**”) basis or a **replacement cost basis**. The 2017 Insurance Exhibit provides for builder’s risk insurance to be carried on a replacement cost basis. § A.2.3.1 (Mod. § A.2.3.1(a)(4)(b)).

##### (2) Pricing

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 (Mod. § A.2.3.1(b))**

**(1) Contract Sum**

§ A.2.3.1 (Mod. § A.2.3.1(b) Amount) can be the source of unanticipated loss to an unsuspecting owner. This AIA form language provides for the builder's 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's 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 builder's risk policy amount to reflect the full loss exposure. The Contractor's Contract Sum is a guide in setting the coverage amount, but additional factors need to be considered.

**(2) Remodeling or Renovations and the Building Envelope**

**No Coverage.** In projects involving remodeling (especially if the structure is a historic structure) or improvement to an existing building, limiting the builder's risk coverage amount to the Contractor's Contract Sum may well lead to a significant uninsured loss. Builder's risk policies will not insure the building envelope unless specifically added.

**ACV Coverage.** Also, some builder's risk policies insure the envelope only on an Actual Cash Value, a depreciated, basis ("**ACV**").

**Mod. § 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 builder's risk insurance obtained by the Contractor.

**e. Policy Period – § A.2.3.1 (Mod. § A.2.3.1(c))**

**(1) When Does Coverage Begin and End?**

Builder's risk policy coverage generally begins at a stated inception date, and generally ends on the earlier to occur of the following (unless expressly addressed in advance): (a) the interest of the insured in the property ends, (b) the ultimate user accepts the property, (c) the property is put to its intended use or occupancy of any portion of the property by the

ultimate user, (d) a fixed number of days after the project is completed, (e) the expiration date of the policy, (f) cancellation of the policy, (7) abandonment of construction, or (g) expiration of the Policy.

§ A.2.3.1 requires Owner to maintain the Owner-procured builder's risk insurance until Substantial Completion. 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 builder's risk policies permit a pro-rata cancellation.

**(2) Early Occupancy - § A.2.3.2**

Most builder's 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 builder's 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. Do not wait until the time that early occupancy is needed to have the conversation with the insurer.

§ A.2.3.2 *Occupancy or Use Prior to Substantial Completion* alerts to one of the means by which a builder's risk policy may terminate by providing that the Owner is not to use the property prior to Substantial Completion without the consent of the insurer being obtained. 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.

A **phased completion project** involving Owner occupancy of parts a project prior to Substantial Completion of the project will require an endorsement to permit pre-Substantial Completion of the project (a typical example is completion and lease of offices on floors substantially completed or the closing of the sale of condominiums prior to Substantial Completion of the project).

**f. "Unless Otherwise Agreed to by the Parties" – § A.2.3.1 (Mod. § A.2.3.1(c))**

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 (Mod. § A.2.3.1(c) *Duration*

of Coverage) (“unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement”) and **§ A.2.3.1.3 Insured Amount; Duration of Coverage** (“Unless the parties agree otherwise....”).

### **g. The Insureds - § A.2.3.1 (Mod. § A.2.3.1(d))**

#### **(1) Expand the List**

The Owner, Contractors and major Subcontractors should be named as named insureds under a builder’s risk policy because at any given point of construction prior to completion each 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 so that the risk is passed back onto its subcontractors. This stance contradicts the fundamental purposes of builder’s 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 the Owner, Contractors, and Subcontractors, potentially slowing down or stopping a project. Builder’s 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 builder’s risk policies prohibit insureds from relinquishing their rights at any time.

An endorsement to the builder’s 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*” (aka

“**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 builder’s risk policies in cases where there has not been an express waiver of subrogation. The **2017 Insurance Exhibit** and the **Modified Insured Exhibit** do not use this phrase.

#### **h. Loss Payee**

#### **(1) A201-2017 - Owner as Loss Adjustor**

**A201 § 11.5.1 Adjustment and Settlement of Insured Loss - Owner as Adjuster** [see the AIA A201 extract in the **Appendix of Forms** 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 builder’s risk policy are the Owner, Contractor, Subcontractors as stipulated in this Section’s list of insureds).

#### **(2) Owner as Loss Payee**

The **2017 Insurance Exhibit** at **§ A.2.3.1 Owner’s Insurance - Required Property Insurance** does **not** include an express statement that the Owner is to be the loss payee of the property insurance proceeds on Owner-procured builder’s risk insurance. Delivery to the parties of a **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**.

**Mod. § A.2.3.1(d) Owner’s Insurance - Required Property Insurance Insureds and Loss Payee** modifies this provision to expressly state that the Owner is the loss payee.

**Mod. § A.3.1.1.2.2.2 Contractor’s Insurance and Bonds – Matters Certified - Evidence of Property Insurance – Loss Payee** specifies that a Loss Payee Endorsement designating the Owner and Owner’s Lender as loss payees is an item to be delivered by the Contractor to the Owner, if the Contractor is the purchaser of the builder’s risk insurance.

#### **(3) Mortgage as Loss Payee – § A.2.3.1 (Mod. § A.2.3.1(e))**

The **2017 Insurance Exhibit** specifically addresses the prospect that there may be an Owner’s lender (“**mortgagee**”), and states that the builder’s risk insurance “*shall include the interests of mortgagees as loss payees.*” The builder’s risk insurer will have its own form to designate a mortgagee as a loss payee.

**i. Specific Required Coverages –  
§ A.2.3.1.2 (Mod. § A.2.3.1.2.1)**

The **2017 Insurance Exhibit** at **§ A.2.3.1.2** contains a short-list of specific required coverages.

**(1) Temporary Structures; Building Systems –  
§ A.2.3.1.2 (Mod. § A.2.3.1.2.1)**

**§ A.2.3.1.2 (Mod. § A.2.3.1.2.1)** specifies that the builder's risk insurance shall provide coverage for loss or damage to "false work and temporary buildings".

If the Owner is to purchase the builder's risk insurance, the parties should review **Mod. § A.3.3.2.1.3.1 Contractor's Other Insurance Coverages – Builder's Risk Insurance Specific Required Coverages of Property Insurance – Temporary Structures; Building Systems**, the modified definition of this term in **Article A.3** applicable to Contractor-procured builder's risk insurance, and determine whether these items are included. Owner and Contractor can determine the risk of not including an item and the means of adding the item if desired.

**(2) Testing and Startup - § A.2.3.1.2  
(Mod. § A.2.3.1.2.2)**

The AIA form states that "testing and startup damages" to building systems is a Specific Required Coverage. An **endorsement** to the insurer's builder's risk policy may be needed to confirm that damage to building systems due to testing and startup is insured.

**(3) Debris Removal - § A.2.3.1.2  
(Mod. § A.2.3.1.2.3)**

Most builder's 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 scope of coverage and the limits specified in the insurer's standard policy are **inadequate** and the scope of coverage and the limits in such case should 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".*

**(4) Sublimits - § A.2.3.1.2 (Mod. § A.2.3.1.2.4)**

The **2017 Insurance Exhibit** provides a placeholder for the specification of sublimits as to any of these Specific Required Coverages.

**j. Post-Completion Coverage - Owner to Continue Property Coverage "Unless the Parties Agree Otherwise" - § A.2.3.1.3**

**§ A.2.3.1.3 Insured Amount; Duration of Coverage** provides "Unless the parties agree otherwise, upon Substantial Completion, the Owners shall continue the insurance required by Section A.2.3.1 Bulder's Risk, or, if necessary, replace the insurance ...." This provision ties to the prior provision that assumes the Owner carries the builder's risk insurance "unless the parties agree otherwise" in order to match the bearer of the pre-completion and post-completion property insurance.

**k. Deductibles and Self-Insured Retentions -  
§ A.2.3.1.4**

Builder's 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

- **General Deductible:** \$10,000 deductible,
- **Wind Deductible:** 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,
- **Flood Deductible:** equal to the maximum amount of coverage available from the National Flood Insurance Program,
- **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
- **Delayed Completion Deductible:** a deductible of 15 days.



**m. 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 builder’s risk policy purchased by the Contractor.

**Mod. § A.2.3.3** *Insurance for Existing Structures* has been revised to state that it applies only “*if*” this risk has not been shifted to the builder’s risk insurance obtained by the Contractor. As noted above, there are circumstances involving renovation of historic structures and remodeling existing buildings, where it may be prudent to insure the existing structure and the Contractor’s Work in a combined policy obtained either by the Owner or the Contractor with a single insurer. This can avoid finger pointing between insurers and will avoid the risk of a catastrophic uninsured loss referenced above.

See the following provisions revised from the AIA approach, **Mod. § A.3.3.2.1.3.3** *Contractor’s Other Insurance Coverage - Builder’s Risk - Specific Required Coverages – Additional Properties* and **Mod. § A.3.3.2.1.6** *Insurance for Existing Structures* of the **Modified Insurance Exhibit**, for the addition of existing structure coverage as an item to be insured in a Contractor-purchased builder’s risk policy, if the parties have elected for the Contractor to carry the builder’s risk insurance.

**l. 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 Insurance – § A.2.4.7**

Builder’s 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 (1) cost to correct construction deficiencies, (2) costs to comply with laws or ordinances, and (3) loss caused by strikes.

**(3) Delayed Completion and Force Majeure - § A.2.4.1**

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 – Article A.3****A. Certificates of Insurance - § A.3.1.1****1. Liability Insurance****a. Prior to Work - A Checklist Item**

Initiating the process of obtaining proof of Contractor’s insurance, both **liability and property** insurance meeting Owner’s specifications, needs to be initiated sooner rather than later, and best even before completion of negotiation of the construction contract. Confirmation that the Contractor has in place the various coverages and limits required by the Owner is a detail-oriented process. The **Modified Insurance Exhibit** has embedded into the section addressing the Proof of Liability Insurance and the Proof of Property Insurance to be provided by the Contractor a **Checklist** of items to be sought. See the detailed list of coverages in **Mod. § A.3.1.1.2** *Contractor’s Insurance – Proof of Insurance - Matters Certified* and with a listing of the attachments to be provided at **Mod. § A.3.1.1.2** *Contractor’s Insurance – Proof of Insurance - Attachments*.

**b. At Construction Completion – A Checklist Item – § A.3.1.1 (Mod. § A.3.1.1.1.3)**

At Substantial Completion Owner will need to confirm that Contractor's liability insurance will continue until the punch list items are completed and for the **one-year warranty period** has 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**).

The **2017 Insurance Exhibit** does **not** provide for continuation of completed operations coverage until expiration of the statute of repose. **§ A.3.2.1 Contractor's Required Insurance Coverage** provides a placeholder for the parties to specify a longer duration:

*(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.)*

**Mod. § A.3.2.1.2 Contractor's Required Insurance Coverage** modifies this provision as follows:

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.

**c. Certificates of Insurance – § A.3.1.1 and Mod. § A.3.1.1.2.1 Proof of Liability Insurance**

**(1) 2017 Insurance Exhibit– § A.3.1.1 Certificates of Insurance**

**(a) Certificate Specifications**

The 2017 Insurance Exhibit contains two specifications as to matters to be addressed in the Contractor's Certificate of Liability Insurance.

**[1] Certificate Acceptable to Owner**

The **2017 Insurance Exhibit** at **§ A.3.1.1 Contractor's Insurance and Bonds – General – Certificates of Insurance** provides for the Contractor to provide the Owner "**certificates of insurance**

**acceptable to the Owner**".

Note if the Certificate is an **ACORD** form of certificate, it is issued **subject to** the **disclaimers** set out in the **ACORD Certificate**.<sup>27</sup>

**[2] Certificates Showing Owner as an Additional Insured on Commercial General Liability and Excess Policy**

The **2017 Insurance Exhibit** at **§ A.3.1.1** specifies that the certificates "*will show the Owner as an additional insured*" (and specifies that the additional insured status will be as to the Contractor's Commercial General Liability and excess or umbrella liability policies).

**(b) Certificate Specification Deficiencies**

The specifications in the **2017 Insurance Exhibit** has the following deficiencies.

**[1] Lack of Specificity**

The **§ A.3.1.1** specification does **not** state (except by the generality of "*acceptable to the Owner*"):

**[a] Form:** the **form** of the Certificates (*e.g.*, ACORD 25) and thus does not list as being addressed in the Certificate the various columns set out in the ACORD form (*e.g.*, policy issuer, policy period, coverage limits, relevant policy endorsements);

**[b] Certificate Holders:** that the Certificate is to be to a Certificate Holder and the addressee and the addressee's address for the Certificate Holder; and does not state that the Owner and the Owner's Lender are to be Certificate Holders and provided Certificates;

**[c] Types of Insurance:** the liability insurance types to be addressed in the Certificate (*e.g.*, CGL, Business Auto, Workers Comp., Employer's Liability, Professional Liability Policy, Pollution Policy); and

**[d] Exceptions to Coverage:** relevant exceptions to coverage.

**[2] Fails to Specify All Policies upon which Additional Insureds are to Be Insured**

**§ A.3.1.1** does **not** state that Owner is to be shown as an additional insured on the

<sup>27</sup> **Effect of the Disclaimers.** See **Endnote 51** for a discussion of the effect of the ACORD disclaimers.

[a] **Business Automobile Liability Policy,**

[b] **Employer’s Liability Policy,** or

[c] **Pollution Policy.**

**[3] Fails to Specify the Form of Additional Insured Endorsement**

This specification as to the Certificate also does not state that the Certificate is to state the form of the additional insured endorsement although § A.3.1.1.3 Additional Insured Obligations specifies the minimum coverage forms.

Being designated as the Certificate Holder does not designate the Certificate Holder as an insured or additional insured. The standard forms of certificate of insurance contain “*Additional Remarks*” placeholder for additional information as to the coverages to be set out.<sup>28</sup>

**[4] Fails to Specify the Certificate is to Show All of the Protected Persons, the Architect and the Architect’s Consultants as Additional Insureds**

The Certificate required by § A.3.1.1 is limited to showing the Owner as the additional insured. However, the Protected Persons, plus the Architect and the Architect’s consultants need to be included in the list of the additional insureds on the Certificate.

**[5] Fails to Specify the Certificate is to State the Primary and Noncontributing Status of the Contractor’s Liability Insurance**

Although § A.3.1.1.3 specifies that the additional insured coverage is to be primary and non-contributory, § A.3.1.1 does not state that the Certificate of Insurance is to make this statement as to the additional insured coverage.

**[6] Fails to Specify the Certificate is to State the Waiver of Subrogation as to the Protected Persons**

§ A.3.1.1 does not specify that the Certificate is to certify as to the insurer’s waiver of subrogation as to claims against the Protected Persons.

**[7] Fails to Specify that the Certificate is to State that Advanced Notice of Cancellation or**

**Material Change is to be Sent to the Protected Persons**

§ A.3.1.1 does not specify that the Certificate is to certify as to the endorsement by each insurer as to the insurer’s policy to give advanced notice to the Protected Persons of cancellation or material change of the insurer’s policy.

**[8] Fails to Call for Attachment of the Policies’ Declaration Page, Relevant Endorsements and the Policies’ Schedule of Forms**

§ A.3.1.1 does not specify that the Certificate is to call for and have attached to it the Policies’ Declaration Page, the relevant endorsements (e.g., additional insured endorsements, waiver of subrogation endorsements, the advanced notice endorsements) and the Policies’ Schedule of Forms for each of the required policies.

**(2) Modified Insured Exhibit – Mod. § A.3.1.1.2.1 Proof of Liability Insurance and Mod. § A.3.1.1.2.2 Proof of Property Insurance**

Mod. § A.3.1.1.2.1 Proof of Liability Insurance – Matters Certified and Mod. § A.3.1.1.2.2 Proof of Property Insurance address the gaps created by the cryptic language in § A.3.1.1.

**(a) Certificate Holder**

**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.

Additionally, additional remarks as to aspects of the coverage and as to the additional insureds can and should be set out in the Certificate’s remarks box and if needed continued on to an attached supplemental page. Generally, the Certificate is first tendered without such remarks, so persistence is the key. Comfort and clarity results from this practice.

**(b) Form**

The **Modified form** identifies the required form of certificate (ACORD #), states both the Owner and Owner’s Lender are to be provided with Certificates

<sup>28</sup> **Remarks Box.** See ACORD 25 *Certificate of Liability Insurance* attached in the **Appendix of Forms** box “Description of Operations / Locations / Vehicles (ACORD 101, Additional Remarks Schedule may be attached if more space is required)” on

page 169.

addressed separately to each as Certificate Holder, states in detail what is to be set out in the certificates, and calls for attachment of the required endorsements as to each Certificate Holder.

See the discussion of Certificates of Insurance at [Endnote 51](#).

#### (c) Additional Insureds – Mod. § A.3.1.1.2.1.1

The **Modified Insurance Exhibit** modifies the AIA form to require the certificate of insurance to certify not only that the Owner is an additional insured on the Commercial General Liability Insurance and any excess liability insurance, but also all the other persons comprising the “*Protected Persons*” are additional insureds. See definition of Protected Persons at **Mod. Article A.4** *Special Terms and Conditions*.

In addition to certifying that the Owner is an additional insured on the Contractor’s Commercial General Liability Insurance and the excess liability insurance, if any, the **Modified Insurance Exhibit** modifies the AIA form to require the Certificate of Liability Insurance to certify that the Protected Persons, including the Owner and the Owner’s Lender, are additional insureds on the **Business Auto Liability Insurance** and the **Pollution Liability Insurance** (if Pollution Liability Insurance is required by the insurance specifications).

#### (d) Attach the Endorsements – Mod. § A.3.1.1.2.2

The **Modified Insurance Exhibit** modifies the AIA form to require that copies of the required endorsements be attached to the Certificate of Liability Insurance so that Owner can confirm that the coverage required by the required specifications as to endorsements is in place <sup>29</sup> and has not been

<sup>29</sup> **Liability Insurance Endorsements to be Attached to Certificate of Insurance.** The list of endorsements required to be attached to the Certificate of Liability Insurance are set out in this Section. They include endorsements as to:

(1) **Project Limits:** dedication of limits to the project (General Aggregate designated to the Project, Products-completed Operations Aggregate Limit);

(2) **Additional Insured Endorsements:** for each of the Protected Persons including specification of the relevant ISO endorsement form as to the CGL (ongoing and completed operations), Business Auto Liability and specification of Additional Insured endorsements to the Employers’ Liability, Pollution Liability, and Excess Liability policies;

(3) **Primary and Noncontributory Endorsements:** including specification of the relevant ISO endorsement form for the CGL and Business Auto Liability;

modified.<sup>30</sup>

#### (e) Attach the Policy Language – Mod. § 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 a best practice to require specific ISO endorsements as specified in the **Modified Insurance Exhibit** 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. Advice to Owner

- **New Builder’s Risk Policy.** If Contractor is to procure the property insurance, require that it be on a newly acquired builder’s risk policy form and not a project scheduled on the Contractor’s master builder’s risk policy.
- **Negotiate the terms of the Policy.**
- **Insist on Timely Delivery of the Policy.** Do not rely on evidence of insurance or a certificate of property insurance, but obtain a copy of the property policy and review its provisions for compliance with the **Modified Insurance Exhibit**.

#### b. Evidence of Property Insurance – § A.3.3.2.1 Contractor’s Other Insurance Coverage, Mod. § A.3.1.1.2.2 Evidence of

(4) **Waiver of Subrogation Endorsements:** as to the CGL, Business Auto, Excess/Umbrella, Workers Compensation, Employers Liability, Professional Liability, Pollution Liability, and Comprehensive Crime policies;

(5) **Advanced Notice of Cancellation-Material Change Endorsements:** as to the CGL, Business Auto, Excess/Umbrella, Workers Compensation, Employers Liability, Professional Liability, Pollution Liability, and Comprehensive Crime policies;

<sup>30</sup> **Schedule of Forms and Endorsements.** Each policies Schedule for Forms and Endorsements to confirm that (1) the proffered copies of the endorsements are attached to the policies and (2) the endorsements have been issued and have not been modified.

**Property Insurance****(Mod. § A.3.1.3.1).****(1) Time Provided - Upon Request.**

**§ A.3.3.2.1** *Contractor's Other Insurance Coverage* provides for Contractor to provide Owner with a copy of the property policy *upon request*.

**(2) Time Provided - Prior to Work**

**Mod. § A.3.1.1.1** *Certificates and Evidences of Insurance - Times Provided* and **Mod. § A.3.1.1.2.2** *Proof of Insurance - Matters Certified - Proof of Property Insurance; Copies of Policies* modify the *General* requirements applicable to the Contractor to require *evidence of property insurance* be provided prior to commencement of the Contractor's Work, and not rely upon the Owner to request a copy of the property policy. Evidence of Contractor-procured builder's risk insurance should be obtained as early as possible prior to commencement of the Work. Although the property policy likely will be delayed to even after commencement of the Work, evidence of property insurance in the form of a properly completed **ACORD 28 Certificate of Commercial Property Insurance**, and preferably an **ACORD 75 Insurance Binder**, be obtained in advance of Work.

**b. Attachments - Mod. § A.3.1.1.2.2**

The **Mod. § A.3.1.1.2.2** *Certificates and Evidences of Insurance - Matters Certified - Evidence of Property Insurance* provides for attachment to the **ACORD 28 Evidence of Commercial Property Insurance** of the following endorsements:

**(1) Loss Payee:** Owner as the loss payee or the Owner's Lender, if the case;

**(2) Waiver of Subrogation:** Waiver of subrogation by the insurer as to Owner, Owner's Lender, and the other Protected Persons; and

**(3) Advanced Notice:** Advanced notice of cancellation, material modification or non-renewal to Owner, Owner's Lender, and the other Protected Persons.

**B. Liability Insurance: Additional Insured Obligations - § A.3.1.3****1. State Law Limitations - "To the fullest extent permitted by law" - § A.3.1.3**

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.<sup>31</sup> 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 (Mod. § 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 04 13 Primary and Noncontributory - Other Insurance Condition** endorsement which states that the named insured's coverage (e.g., coverage by the Contractor's CGL insurance of as

*"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."*<sup>32</sup>

**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 (Mod. § A.3.1.3.3).**

<sup>31</sup> **Anti-Indemnity/Anti-Additional Insured Statutes.** See **Endnote 2** for further discussion of these statutes.

<sup>32</sup> **ISO Endorsement Form.** See **Appendix of Forms** at page 97 for a copy of the **ISO CG 20 01 04 13 Primary and Noncontributory**.



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 (Mod. § A.3.1.3.3).

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

If other than an ISO (unmodified) 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 (Mod. § 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*.

The 12 19 and the 04 13 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 the following

three additional restrictions (the “whether conditions”):

(1) **To Extent Permitted by Law:** additional insured coverage applies only to the extent permitted by law;

(2) **Limited by Contract:** coverage will not be broader than that which (the Named Insured is) required by contract to provide; and

(3) **Limited by Policy:** coverage will not pay any more than the amount required by the policy.

(these three restrictions are sometimes referred to as the “whether conditions” – “whether” or not the contract’s insurance specifications are adequately drafted determines the 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).<sup>33</sup>

The **Modified Insurance Exhibit** is drafted to provide the drafter with a choice of specifying the 07 04 edition or the 10 01 edition. 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 - § A.3.1.3.3

ISO CG 20 37 *Additional Insured – Owners, Lessees or Contractors – Completed Operations*<sup>34</sup> provides additional insured status regarding completed

<sup>33</sup> **ISO Endorsement Form.** See **Appendix of Forms** on page 99 for a copy of the ISO CG 20 10 07 04 *Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization*.

<sup>34</sup> **ISO Endorsement Form.** See **Appendix of Forms** on page 107 for a copy of the ISO CG 20 37 *Additional Insured – Owners, Lessees or Contractors – Completed Operations*.

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 (Mod. § A.3.2.1.1)**

**§ A.3.2.1 Contractor’s Required Insurance** provides for its insurers providing the required insurance be **authorized** to issue insurance in the jurisdiction where the Project is located. 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 (Mod. § A.3.2.1.2)**

**§ A.3.2.1 Contractor’s Required Insurance Coverage** requires Contractor’s required insurance to be maintained **“until the expiration of the period of correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below.”**

**Mod. § A.3.2.1.2 Contractor’s Required Insurance Coverage - Duration of Insurance Coverage** modifies this provision to specify that Contractor is to maintain Products-Completed Operations coverage for the full term of the Statute of Repose following the Date of Substantial Completion of the Work by Contractor.

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

#### 1. **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.

**§ A.3.2.2.1** The AIA’s new approach in the **2017 Insurance Exhibit § A.3.2.2.1 Commercial General Liability Insurance** is to state the required minimum limit and allow the parties to choose the amount to allocate to the primary policy and the balance to the excess insurance, if needed to meet the minimum limits specified.

Added to **Mod. § A.3.2.2.1** is the following language emphasizing this approach **“(which limits may be the aggregate of a primary policy and an excess or umbrella policy).”**

#### 2. **Coverages - § A.3.2.2.1**

**§ A.3.2.2.1** sets forth five types of claims insured up to the limits of the CGL policy, which coverages are fairly standard.<sup>35</sup>

**Mod. § A.3.2.2.1** specifies that the CGL insurance is to be written on an **ISO CG 00 01** **“or a substitute providing coverage more beneficial to the Protected Persons.”**

The types of claims to be insured are the following:

- a. **Damages Because of Bodily Injury, Sickness or Disease; Deaths - § A.3.2.2.1.1 (Mod. § A.3.2.2.1.2.1)**
- b. **Personal and Advertising Injury - § A.3.2.2.1.2 (Mod. § A.3.2.2.1.2.2)**
- c. **Physical Damage or Destruction of Tangible Property - § A.3.2.2.1.3 (Mod. § 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,<sup>36</sup> 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 of Forms** to this Article for provisions addressing contractor’s covenants and indemnities for hazardous materials liability on the project.

#### d. **Bodily Injury or Property Damage Arising Out**

<sup>35</sup> **CGL – Coverages.** See the **Endnotes** to this section of the **Modified Insurance Exhibit** and to the **ISO CG 00 01 04 13 Commercial General Liability Coverage Form** beginning on **page 78** of the **Appendix of Forms**.

<sup>36</sup> **CGL – Absolute Pollution Exclusion.** See this exclusion at **Section I 2.f of ISO CG 00 01 04 13 Commercial General Liability Coverage Form** on **page 80** of the **Appendix of Forms**.

**of Completed Operations - § A.3.2.2.1.4**  
**(Mod. § A.3.2.2.1.2.4)**

**e. “Insured Contracts” Coverage –**  
**§ A.3.2.2.1.5 (Mod. § 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.<sup>37</sup> 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*” Contractor’s contractual indemnification provision in the Contract Documents 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 **A201-2017** 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, without suit being filed by the employee against its employer due to the Workman’s Comp. Bar.

**f. Forms**

**Mod. § A.3.2.2.1.2 (.6 - .8)** modifies the 2017 Insurance Exhibit specifications to identify the following forms and coverages to be included:

**.6 Deletion of Personal Injury Contractual Liability Exclusion.**

**.7 Waiver of Subrogation:** Specifies that the CGL is to be endorsed with an ISO form **CG 24 04 12 19 Waiver of Transfer of Rights of Recovery Against Others Endorsement** or a **CG 24 53 12 19** as to the Protected Persons and such other persons as are designated by Owner to Contractor as Protected Persons.<sup>38</sup>

**.8 Advanced Notice:** Specifies that the CGL is to be endorsed to provide 30 advanced notice from the insurer to Owner and the Owner’s Lender of cancellation, non-renewal or material change, except 10 days’ for cancellation for nonpayment of premiums.<sup>39</sup>

**.9 Post-Completion Coverage:** Specifies that Contractor is to maintain Products-Completed Operations coverage with respect to the Work for the term of the Statute of Repose following Substantial Completion Date of the Contractor’s Work.<sup>40</sup>

**3. 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 can be *invisible* in that they do not show up on most certificates of insurance and can be detected only by a careful reading of the CGL policy. A few of the most

<sup>37</sup> **A201 § 3.18 Contractor’s Indemnity.** See the AIA **A201-2017** provisions accompanying this Article beginning on page 29 of the **Appendix of Forms**. The AIA language is usually modified by negotiations of the parties.

<sup>38</sup> **Waiver of Subrogation.** See these ISO forms attached in the **Appendix of Forms**.

<sup>39</sup> **Advanced Notice.** See the **Appendix of Forms** for an example of such type of notice, **ISO CG 02 05 12 04 Texas Changes –**

*Amendment of Cancellation provisions or Coverage Change.*

<sup>40</sup> **Completed Operations Coverage Post Substantial Completion.** See **ISO CG 20 37 04 13 Additional Insured – Owners, Lessees Or Contractors – Completed Operations** in the **Appendix of Forms**.



egregious have been listed in the Modified Insurance Exhibit as being prohibited. This list only scratches the surface of manuscripted exclusions and restrictions. The following are a few (more are listed and discussed in the [Endnotes](#) to the [Insurance Exhibits](#)).

**a. “Insured vs. Insured” – § A.3.2.2.2.1**

This prohibition appears in the [2017 Insurance Exhibit](#). 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, the **third-party over action**, 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 [2017 Insurance Exhibit](#).<sup>41</sup> 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 [2017 Insurance Exhibit](#). [§ 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 [2017 Insurance Exhibit](#). [§ 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*

<sup>41</sup> **CGL Coverage of Construction Project Property Damage.** *CGL Coverage of Defective Work*, ACREL Insurance Committee March, 2016 (San Diego) by William H. Locke, Jr., updating *CGL Coverage of “Property Damage” Losses Arising Out of Defective*

*Work*, ACREL Fall Meeting, 2009 (Washington D.C.) – see link to the 2016 article following the Table of Contents at the beginning of this Article.

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 employs 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 (aka the "Workers' Comp. Bar"). 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 – Mod. § A.3.2.2.2.12**

Added to the **Modified Insurance Exhibit** is **Mod. § A.3.2.2.2.12**, the **ISO CG 21 39 Contractual Liability Limitation**, 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. See the **ISO CG 21 39 Contractual Liability Limitation** (form attached in the **Appendix of Forms** to this Article), which when added to the standard CGL policy by endorsement, **deletes paragraph "f"** (assumption of tort liability of another) altogether from the definition of an insured contract. The **ISO CG 21 39 Amendment of Insured Contract Definition** eliminates from the "**Insured Contract**" coverage insurance for the insured for its contractual assumption of liability for another person's negligence. This endorsement eliminates insuring the Contractor for 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 (e.g., Texas) 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 – Mod. § A.3.2.2.2.13**

For similar reasons **Mod. § A.3.2.2.2.13** is added to the **Modified Insurance Exhibit** as a specifically referenced ISO form that is prohibited. **Mod. § A.3.2.2.2.13** is **added** to the **Modified Insurance Exhibit** to prohibit another ISO form, the **ISO CG 24 26 Amendment of Insured Contract Definition**.<sup>42</sup> **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 at least partly negligent (allowing coverage of the

<sup>42</sup> **Prohibition of ISO CG 24 26 Amendment of Insured Contract Definition.** See **ISO CG 24 26 Amendment of Insured Contract Definition** in the **Appendix of Forms**.

additional insured for its **contributory negligence**). 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 – Mod. § A.3.2.2.2.14**

**Mod. § A.3.2.2.2.14** is **added** to the **Modified Insurance Exhibit**. This endorsement, **ISO CG 21 44 Limitation of Coverage to Designated Premises or Project**, 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.<sup>43</sup>

**h. Prohibition of Punitive, Exemplary or Multiplied Damages Exclusion – Mod. § A.3.2.2.2.15**

**Mod. § A.3.2.2.2.15** is 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.

**i. Prohibition of Classification or Business Description Exclusion – Mod. § A.3.2.2.2.16**

**Mod. § A.3.2.2.2.16** is **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.

**j. 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 **Mod. § A.3.2.2.2.5** and **Mod. § 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.

**4. Electronic Data Liability Endorsement - Mod. § A.3.2.2.3**

Without an Electronic Data Liability Endorsement, which has been added to the **Modified Insurance Exhibit** as **Mod. § A.3.2.2.3**, the CGL insurance specifications do not include insurance for loss to intangible property, including electronic data.

**D. Business Auto Policy - § A.3.2.3**  
**1. Hired Vehicles – Mod. § A.3.2.3**

The **Mod. § A.3.2.3 Business Automobile Liability** amends the AIA language 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 – Mod. § A.3.2.3.2**

The AIA language is **revised** by the **Modified Insurance Exhibit** to add **Mod. § A.3.2.3.2 Additional Insureds** to specify that the **Protected Persons** are to be additional insureds on the Contractor’s business auto policy, and specifies coverage to be on an **ISO form CA 20 48 10 13** or better form.

**3. Waiver of Subrogation – Mod. § A.3.2.3.3**

The AIA language is by the **Modified Insurance Exhibit** to **add** this requirement that the insurers waive subrogation in favor of the Protected Persons on the Contractor’s business auto policy, and specifies the waiver is to be on an **ISO form CA 04 44 10 13** or better form.

**4. Primary and Noncontributory Status - Mod. § A.3.2.3.4**

The **Modified Insurance Exhibit** **revises** the 2017 Insurance Exhibit to add the requirement that the Contractor’s business auto liability insurance is primary and noncontributory as to other insurance held by the additional insureds. The standard **ISO business auto endorsement form, ISO CA 04 49**, is prescribed.

**5. Advanced Notices – Mod. § A.3.2.3.5**

The **Modified Insurance Exhibit** **revises** Exhibit A to add a requirement that the insurers provide the Protected Persons with advanced notice of cancellation or material change.

**6. Pollution Liability – Mod. § A.3.2.3.7**

<sup>43</sup> **Prohibition of Modification to Employers Liability Exclusion.** See **ISO CG 21 44 Limitation of Coverage to Designated Premises or Project** in the **Appendix of Forms**.

The **Modified Insurance Exhibit** revises the 2017 Insurance Exhibit to add a requirement that, if the Work involves the transportation of hazardous materials, this insurance is to be endorsed to provide pollution liability on an ISO **CA 99 48 10 13**, MCS-90.

#### **E. Umbrella Liability – § A.3.2.4**

##### **1. Employers Liability – Mod. § A.3.2.4**

The **Modified Insurance Exhibit** revises the 2017 Insurance Exhibit 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 2017 Insurance Exhibit. 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 – Mod. § A.3.2.4.3**

The 2017 Insurance Exhibit is modified by the **Mod. § A.3.2.4.3** to provide that the umbrella/excess liability insurance is primary and noncontributory as regards to the “**other insurance**” of the additional insureds.

##### **4. Waiver of Subrogation – Mod. § 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. Advanced Notices – Mod. § 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**

##### **G. Employers Liability - Stop Gap – Mod. § A.3.2.5.2**

The **Modified Insurance Exhibit** addresses stop gap coverage. “**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 of Forms** 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 – Mod. § A.3.2.9.6**

The **Modified Insurance Exhibit** specifies that the **Protected Persons** will be insured as additional insureds on the Contractor’s Pollution Liability Policy. This form will be a manuscripted form obtained from the insurer.

##### **3. Primary and Noncontributory – Mod. § A.3.2.9.7**

The **Modified Insurance Exhibit** specifies that the Pollution Liability Insurance will be primary and noncontributory with the “**other insurance**” of the **Protected Persons**. This form will be a manuscripted form obtained from the insurer.

##### **4. Waiver of Subrogation – Mod. § A.3.2.9.8**

The **Modified Insurance Exhibit** specifies that

the insurer of the Pollution Liability Insurance is to waive its right of subrogation as to claims against the **Protected Persons**. This form will be a manuscripted form obtained from the insurer.

#### 5. **Advanced Notices – Mod. § A.3.2.9.9**

The **Modified Insurance Exhibit** specifies that the insurer of the Pollution Liability Insurance is to provide advance notice of cancellation of the Pollution Liability Policy to the **Protected Persons**. 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 – Mod. § A.3.2.13**

#### L. **Contractor Procured Builder’s Risk Insurance – Mod. § A.3.3.2.1**

##### 1. **Scope of Coverage.**

See discussion above at **§ A.2.3.1** *Owner’s Insurance – Required Property Insurance – Builder’s Risk Insurance* as to Owner-procured builder’s risk insurance for basic concepts of builder’s risk insurance as they are applicable to Contractor procured builder’s risk insurance.

**Mod. § A.3.3.2.1** *Contractor’s Other Insurance Coverage – Types and Limits – Builder’s Risk Insurance* modifies **§ A.3.3.2.1** to repeat the builder’s risk insurance specifications of **§ A.2.3.1** as opposed to incorporating them by reference in order to **focus the parties** on the scope of the builder’s risk coverage where the contractor is chosen to procure the builder’s risk insurance. This allows the parties to specify required coverages more clearly and to delete coverages not required.

Many contractors, and typically large contractors, have in place a **master builder’s risk policy** which they can add a project and pass along the cost to the Owner in the Contract Sum. This “*one size, fits all approach*” and its availability for projects scheduled by the contractor has “*pros*” and “*cons*” for an Owner.

**Mod. § A.3.3.2.1** *Contractor’s Other Insurance Coverage - Builder’s Risk Insurance* sets out greater detail than **§ A.3.3.2.1** in:

- **Mod. § A.3.3.2.1.1** *Contractor’s Other Insurance Coverage – Builder’s Risk Insurance - Causes of Loss* as to the “causes of loss” to be insured and applicable Sub-limits, if any, and
- **Mod. § A.3.3.2.1.2** *Contractor’s Other Insurance Coverage – Builder’s Risk Insurance - Covered Property Interests* the components of the improvements to be insured.

##### 2. **Existing Structures.**

**Mod. § A.3.3.2.6** *Contractor’s Other Insurance Coverage - Builder’s Risk Insurance – Insurance for Existing Structures* has been added to the **Modified Insurance Exhibit** to address the circumstances where the Contractor’s builder’s risk policy should insure existing structures as opposed to leaving existing structures to the Owner’s property insurance.

**§ A.2.3.3** *Owner’s Insurance – Required Property Insurance – Insurance for Existing Structures* provides that, if the Work involves **remodeling** an existing structure or construction of an addition to an existing structure, “*Unless the parties agree otherwise,*” 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**. **§ A.3.3.2** *Contractor’s Other Required Insurance – Builder’s Risk* sets up the **choice** for the parties to designate the **Contractor** as the party to obtain the builder’s risk insurance, “*except insurance required by ... Section A.2.3.3*” (*Owner’s Insurance – Required Property Insurance – Insurance for Existing Structures*), retaining in the Owner responsibility for the property insurance on the existing structures.

This approach opens the project to the following **common error**: failure of the **builder’s risk** policy amount to reflect the full loss exposure. The Contractor’s **Contract Sum** is a guide in setting the coverage amount for builder’s risk insurance. In projects involving remodeling (especially if the structure is a historic structure) or improvement to an existing building, limiting the **builder’s risk** coverage amount to the Contractor’s Contract Sum, could lead to an **unintended significant uninsured loss**. Builder’s risk policies do **not insure** the **building envelope** unless specifically added. Some builder’s risk policies insure the envelope only on an Actual Cash Value, a depreciated, basis (“**ACV**”).

AIA’s **unamended § A.3.3.2.1** applicable to the



choice of a Contractor-procured builder's risk policy sets up a **placeholder** (a *parenthetical prompt*) for the parties to add further specifications

*(“Where the Contractor’s obligation to provide property insurance differs from the Owner’s obligations as described under Section A.2.3...”)*

In adding provisions in response to this prompt, the parties may not focus on increasing the scope of builder's risk coverage to include damage to the existing structure arising out of causes of loss insured by the Contractor's builder's risk insurance.

### **3. Contractor Obtains Builder's Risk – Soft Costs – Mod. § A.3.3.2.1.7.7**

Builder's 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.<sup>44</sup>

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. Occupancy Pre-Completion Clause**

If the property will be occupied, or arguably occupied (e.g., a tenant building out its premises), the builder's 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.

### **b. Preservation of Property Coverage – Mod. § A.3.3.2.1.1.13**

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.

### **c. Replacement Cost – Contractor's Overhead and Profit – Mod. § A.3.3.2.1.1.15**

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).

### **d. Scaffolding and Construction Forms – Mod. § A.3.3.2.1.3.1**

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.

### **e. Sidewalks, Curbs, Gutters, Streets, or Parking Lots – Mod. § A.3.3.2.1.3.10**

<sup>44</sup> **Builder's Risk – Soft Costs Coverage.** See *Insurance for Real Estate Lawyers*, ACREL Insurance Committee Spring, 2016 Meeting (San Diego), by Charles E. Comiskey and William H.

Locke, Jr. at *Soft Costs Coverage Added to Builder's Risk Policy* at pages 232 - 233.

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 – Mod. § A.3.3.2.1.8.6**

“*Protective safeguard warranties*” are conditions precedent to coverage sometimes built into a builder’s 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 – Mod. § 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 builder’s risk insurance has been modified in the **Modified Insurance Exhibit** to include this insurance as part of the builder’s risk

insurance. The option box is to be check marked **if this type of insurance is not able to be added to the builder’s risk but must be obtained as stand-alone property insurance**.

## IV. SPECIAL TERMS AND CONDITIONS – Article A.4

### A. **2017 Insurance Exhibit**

**Article A.4** *Special Terms and Conditions* is a **placeholder** for the parties to add provisions.

### B. **Modified Insurance Exhibit**

The Modified Insurance Exhibit sets out a number of these provisions.

#### 1. **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.*”

#### 2. **“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 Insurance Exhibit** has been crafted with blanks for the Owner to complete with the respective project.



## APPENDIX OF FORMS

### A. AIA 201 General Conditions of Construction

#### AIA 201 - 2017 Insurance and 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**.

## Section 3.18.

...

**§ 3.18.2 Workers Compensation.** In claims against any person or entity **indemnified** under this **Section 3.18 Indemnification** 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 Indemnified Matters 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 Safety of Persons and Property**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent **damage, injury, or loss to**

- .1 **employees** on the Work and other persons who may be affected thereby;
- .2 the **Work** and materials and equipment to be incorporated therein, whether in storage on or off the site, **under care, custody, or control of the Contractor**, a Subcontractor, or a Sub-subcontractor; and
- .3 **other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.**

**§ 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.

**§ 10.2.5 Risk of Loss or Damage.** The **Contractor** shall promptly remedy **damage and loss (other than damage or loss insured under property insurance** required by the Contract Documents) to property referred to in **Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor,** ¶ a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under **Sections 10.2.1.2 and 10.2.1.3.** The Contractor may make a Claim for the cost to remedy the damage or loss **to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them,** or by anyone for whose acts either of them may be liable, and **not attributable to the fault or negligence of the Contractor.** ¶ The foregoing obligations of the Contractor are in addition to the Contractor's obligations under **Section 3.18 Indemnification.**

...

**§ 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* <sup>9</sup> or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully *authorized* <sup>9</sup> to issue insurance in the jurisdiction where the Project is located. *The Owner, Architect, and Architect's consultants shall be named as additional insureds* <sup>9</sup> 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* <sup>10</sup> 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 9.91 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.



**AIA A201-2007 General Conditions of Construction (Insurance Provisions)****ARTICLE 11 INSURANCE AND BONDS****§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

**§ 11.1.1 Claims Insured.** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance *as will protect the Contractor* from claims set forth below which may arise out of or result from the Contractor's *operations* and *completed operations* under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under **Section 3.18 Indemnification**.

**§ 11.1.2 Limits; Coverage Period; Occurrence Basis Policies.** The insurance required by **Section 11.1.1 Claims Insured** shall be *written for not less than limits of liability specified in the Contract Documents* or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work *or for such other period for maintenance of completed operations coverage as specified in the Contract Documents*.

**§ 11.1.3 Certificates of Insurance; Notices from Insurer; Information from Contractor.** *Certificates of insurance* acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this **Section 11.1 Contractor's Liability Insurance** shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' *prior written notice* has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by **Section 9.10.2 Submittals** and thereafter upon renewal or replacement of such coverage until the expiration of the time required by **Section 11.1.2 Limits; Coverage Period; Occurrence Basis Policies**. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

**§ 11.1.4 Additional Insured Coverage; Waiver of Subrogation.** The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, 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) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's *completed operations*.

**§ 11.2 OWNER'S LIABILITY INSURANCE**

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



**§ 11.3 PROPERTY INSURANCE**

**§ 11.3.1 Specifications.** *Unless otherwise provided*, the Owner shall purchase and maintain, in a company or companies lawfully *authorized* to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" *or equivalent policy form* <sup>12</sup> in the amount of the *initial Contract Sum*, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a *replacement cost* basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in **Section 9.10 Final Completion and Final Payment** or until no person or entity other than the Owner has an insurable interest in the property required by this **Section 11.3 Property Insurance** to be covered, whichever is later. This insurance shall include interests of the *Owner, the Contractor, Subcontractors and Sub-subcontractors* in the Project.

**§ 11.3.1.1 Scope of Coverage.** Property insurance shall be on an "all-risk" *or equivalent policy form* and shall include, without limitation, *insurance against the perils* of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

**§ 11.3.1.2 Contractor May Purchase Property Insurance if Owner Does Not.** If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

**§ 11.3.1.3 Risk of Deductible Loss.** If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

**§ 11.3.1.4 Off Site and In Transit Coverage.** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

**§ 11.3.1.5 Occupancy.** Partial occupancy or use in accordance with **Section 9.9 Partial Occupancy or Use** shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

**§ 11.3.2 BOILER AND MACHINERY INSURANCE**

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

**§ 11.3.3 LOSS OF USE INSURANCE**

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against *loss of use* of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

**§ 11.3.4 Optional Additional Risks or Causes Covered.** If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

**§ 11.3.5 Owner's Waiver of Claims Against Contractor for Claims Covered by Certain 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, the Owner shall waive all rights in accordance with the terms of **Section 11.3.7** *Waivers of Recovery and Subrogation* for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**§ 11.3.6 Copies of Policies.** Before an exposure to loss may occur, the *Owner shall file with the Contractor a copy* of each policy that includes insurance coverages required by this **Section 11.3** *Property Insurance*. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

**B. AIA Document A101 - 2017 Exhibit A Insurance and Bonds (Unmodified)**

**AIA<sup>®</sup> Document A101<sup>™</sup> – 2017  
Exhibit A**

***Insurance and Bonds***

This Insurance and Bonds Exhibit <sup>13</sup> 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, <sup>14</sup> and provide bonds, <sup>15</sup> as set forth in this Exhibit. <sup>16</sup> As used in this Exhibit, the term General Conditions refers to AIA Document A201<sup>™</sup>-2017, General Conditions of the Contract for Construction. <sup>17</sup>

**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 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements. <sup>18</sup>

**§ A.2.2 Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.<sup>19</sup>

**§ A.2.3 Required Property Insurance**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1,<sup>20</sup> the Owner shall purchase<sup>21</sup> and maintain, from an insurance company or insurance companies lawfully authorized<sup>22</sup> to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks"<sup>23</sup> completed value<sup>24</sup> or equivalent policy form<sup>25</sup> and sufficient to cover the total value of the entire Project on a replacement cost basis.<sup>26</sup> 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.<sup>27</sup> The property insurance shall be maintained until Substantial Completion<sup>28</sup> and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents<sup>29</sup> or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner,<sup>30</sup> Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds.<sup>31</sup> This insurance shall include the interests of mortgagees as loss payees.<sup>32</sup>

**§ A.2.3.1.1 Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood,<sup>33</sup> or windstorm.<sup>34</sup> The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials.<sup>35</sup> Sub-limits, if any, are as follows:<sup>36</sup>

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

**Causes of Loss****Sub-Limit**

**§ A.2.3.1.2 Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems<sup>37</sup> from testing and startup.<sup>38</sup> The insurance shall also cover debris removal,<sup>39</sup> including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation<sup>40</sup> for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. 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** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue<sup>41</sup> the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 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 of the General Conditions.

**§ A.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles<sup>42</sup> or self-insured retentions,<sup>43</sup> 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.** 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 have consented in writing to the continuance of coverage. 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.<sup>44</sup>

**§ A.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 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, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.<sup>45</sup>

**§ A.2.4 Optional Extended Property Insurance.**

The Owner shall purchase and maintain the insurance selected and described below.<sup>46</sup>

*(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.
- [Sub-limit \$ \_\_\_\_\_] [Included without sub-limit]
- [  ] **§ 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.<sup>47</sup>
- [Included without sub-limit]
- [  ] **§ 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.
- [Sub-limit \$ \_\_\_\_\_] [Included without sub-limit]
- [  ] **§ 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.
- [Sub-limit \$ \_\_\_\_\_] [Included without sub-limit]
- [  ] **§ 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.
- [Sub-limit \$ \_\_\_\_\_] [Included without sub-limit]
- [  ] **§ 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.
- [Sub-limit \$ \_\_\_\_\_] [Included without sub-limit]
- [  ] **§ A.2.4.7** Soft Costs Insurance,<sup>48</sup> 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:<sup>49</sup> including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the

construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.<sup>50</sup>

[Sub-limit \$ \_\_\_\_\_] [Included without sub-limit]

**§ 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.** The Contractor shall provide certificates of insurance acceptable to the Owner<sup>51</sup> evidencing compliance with the requirements in this Article A.3 at the following times:<sup>52</sup> (1) prior to commencement of the Work;<sup>53</sup> (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations,<sup>54</sup> 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 and Section A.3.3.1.<sup>55</sup> The certificates will show the Owner as an additional insured<sup>56</sup> on the Contractor's Commercial General Liability<sup>57</sup> and excess or umbrella liability policy or policies.<sup>58</sup>

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions<sup>59</sup> applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law,<sup>60</sup> the Contractor shall cause the commercial general liability coverage to include (1) the Owner, 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) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory<sup>61</sup> to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available,<sup>62</sup> the additional insured coverage shall be no less than<sup>63</sup> that provided by Insurance Services Office, Inc. (ISO) forms<sup>64</sup> CG 20 10 07 04,<sup>65</sup> CG 20 37 07 04,<sup>66</sup> and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.<sup>67</sup>

**§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized<sup>68</sup> to issue insurance in the jurisdiction where the Project is

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located.<sup>69</sup> 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 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.)*

<< >>

### § A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance<sup>70</sup> for the Project written on an occurrence form<sup>71</sup> with policy limits of not less than<sup>72</sup> << >> (\$ << >> ) each occurrence, << >> (\$ << >> ) general aggregate,<sup>73</sup> and << >> (\$ << >> ) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of *bodily injury*, sickness or disease, including occupational sickness or disease, and *death* of any person;
- .2 *personal injury and advertising injury*;<sup>74</sup>
- .3 damages because of *physical damage* to or destruction of tangible property, including the *loss of use* of such property;
- .4 *bodily injury* or *property damage* arising out of *completed operations*;<sup>75</sup> and
- .5 the *Contractor's indemnity* obligations under Section 3.18 of the General Conditions.<sup>76</sup>

§ A.3.2.2.2 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:<sup>77</sup>

- .1 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.<sup>78</sup>
- .2 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*.<sup>79</sup>
- .3 Claims for bodily injury other than to *employees of the insured*.<sup>80</sup>
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.<sup>81</sup>
- .5 Claims or loss excluded under a *prior work endorsement* or other similar exclusionary language.
- .6 Claims or loss due to *physical damage under a prior injury endorsement* or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other *habitational projects*, if the Work is to be performed on such a project.
- .8 Claims related to *roofing*, if the Work involves roofing.<sup>82</sup>
- .9 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 Claims related to *earth subsidence or movement*, where the Work involves such hazards.<sup>83</sup>
- .11 Claims related to *explosion, collapse and underground hazards*, where the Work involves such hazards.<sup>84</sup>

§ A.3.2.3 **Automobile Liability** covering vehicles owned, and non-owned vehicles<sup>85</sup> used, by the Contractor, with policy limits of not less than<sup>86</sup> << >> (\$ << >> ) 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.<sup>87</sup>

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a **combination**<sup>88</sup> of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the **same or greater coverage** as the coverages required under Section A.3.2.2 and A.3.2.3,<sup>89</sup> and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy.<sup>90</sup> The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.<sup>91</sup>

§ A.3.2.5 **Workers' Compensation** at statutory limits. <sup>92</sup>

§ A.3.2.6 **Employers' Liability** with policy limits not less than <sup>93</sup> « » (\$ « ») each accident, <sup>94</sup> « » (\$ « ») each employee, and « » (\$ « ») policy limit.

§ A.3.2.7 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. <sup>95</sup>

§ A.3.2.8 If the Contractor is required to furnish **professional services** as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate. <sup>96</sup>

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure **Pollution Liability insurance**, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate. <sup>97</sup>

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

§ A.3.2.11 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 « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ A.3.2.12 Insurance for the use or operation of **manned or unmanned aircraft**, if the Work requires such activities, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate. <sup>98</sup>

### § A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully **authorized to issue insurance in the jurisdiction** where the Project is located. 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 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 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

*(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 Property insurance** of the same type and scope satisfying the requirements identified in Section A.2.3, <sup>99</sup> which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance <sup>100</sup> **except** insurance required by Section A.2.3.1.3 <sup>101</sup> and Section A.2.3.3. <sup>102</sup> The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. 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 Contractor shall provide the Owner with a copy of the property insurance policy** or policies required. <sup>103</sup> 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 Article 11 of the General Conditions **unless otherwise set forth below:** <sup>104</sup> *(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.)

<< >>

[ << >> ] § 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 Insurance for physical damage to 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 insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

[ << >> ] § 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	
Performance Bond	

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.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, 105 are as follows:

<< >>

**B. AIA Document A101 - 2017 Exhibit A Insurance and Bonds (Modified) 106**

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**

**Mod. A.1 GENERAL**

**Mod. A.2 OWNER'S INSURANCE**

**Mod. A.3 CONTRACTOR'S INSURANCE AND BONDS**

**Mod. A.4 SPECIAL TERMS AND CONDITIONS**

**MOD. 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.

**MOD. ARTICLE A.2 OWNER'S INSURANCE**

**Mod. § 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 Owner's **liability** insurance policies<sup>107</sup> and the **property** insurance policy or policies required by **Mod. Section A.2.3 Required Property Insurance**. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

**Mod. § A.2.2 Liability Insurance.** The Owner shall be responsible for purchasing and maintaining the Owner's **usual** general liability insurance.

*(If Owner is to purchase and maintain liability insurance other than its **usual** general liability insurance, delete the preceding sentence and set out the insurance specifications including relevant conditions, definitions, exclusions, and endorsements).*

**Mod. § A.2.3 Required Property Insurance.**

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**Mod. § A.2.3.1 Builder's Risk Insurance.** Unless this obligation is placed on the Contractor pursuant to **Mod. 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 **Mod. 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) **Owner's Lender as Loss Payee:** This insurance shall include the interests of Owner's Lender as loss payee.

**Mod. § A.2.3.1.1 Causes of Loss.** The insurance required by this **Mod. 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
_____	\$ _____

**Mod. § A.2.3.1.2 Specific Required Coverages.**

.1 **Temporary Structures; Building Systems:** The insurance required by this **Mod. 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.)

Causes of Loss	Sub-Limit
_____	\$ _____

**Mod. § 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 **Mod. Section A.2.3.1 Builder’s Risk** or, if necessary, replace the insurance policy required under **Mod. 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 **Mod. Section 12.2.2 After Substantial Completion** of the General Conditions.

**Mod. § A.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this **Mod. 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.

**Mod. § 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 **Mod. 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.

**Mod. § 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 **Mod. Section 3.3.2.1.3.3(c) Specific Required Coverages – Other** or **Mod. Section 3.3.2.1.6 Insurance for Existing Structures**,<sup>108</sup> the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in AIA A201 – 2017 **Mod. 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 **Mod. 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 this **Exhibit A**.

**Mod. § A.2.4 Optional Extended Property Insurance.** The Owner shall purchase and maintain the insurance selected and described below.<sup>109</sup>

(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.)

[ « » ] **Mod. § A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance.** 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. « »



[ « » ] **Mod. § A.2.4.2 Ordinance or Law Insurance.** 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. <sup>110</sup>

[Sub-limit \$ \_\_\_\_\_] [Included without sub-limit]

[ « » ] **Mod. § A.2.4.3 Expediting Cost Insurance.** 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. « »

[ « » ] **Mod. § A.2.4.4 Extra Expense Insurance.** 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]

[ « » ] **Mod. § A.2.4.5 Civil Authority Insurance.** 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]

[ « » ] **Mod. § A.2.4.6 Ingress/Egress Insurance.** 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]

[ « » ] **Mod. § A.2.4.7 Soft Costs Insurance.** Soft Costs Insurance, <sup>111</sup> 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: <sup>112</sup> 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. <sup>113</sup>

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

[ « » ] **.6 Other:** [ « » ].

**Mod. § 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.)

[  ] **Mod. § A.2.5.1 Cyber Security Insurance.** 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.)

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

Coverage	Limits
<input type="checkbox"/>	\$ <input type="text"/>

**MOD. ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS**

**Mod. § A.3.1 General**

**Mod. § A.3.1.1 Proof of Insurance.**

**Mod. § A.3.1.1.1 Times Provided.** The Contractor shall provide *proof of insurance (liability and property)* acceptable to the Owner as set forth in **Mod. § A.3.1.1.2.1 Proof of Liability Insurance** and **Mod. § A.3.1.1.2.2 Proof of Property Insurance** evidencing compliance with the requirements in this **Article A.3 Contractor's Insurance and Bonds** 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 Mod. Section A.3.2.1 Types; Limits; Duration of Insurance Coverage and Mod. Section A.3.3.1 State Authorized Insurers; Duration of Insurance Coverage.*

**Mod. § A.3.1.1.2 Matters Certified.** <sup>114</sup>

**.1 Insurance Binders; Proof of Liability Insurance:** The *liability* insurance required of Contractor and its Subcontractors are to be evidenced by an **ACORD 75 Insurance Binder** currently dated, issued by on or on behalf of Contractor's and Subcontractors' insurers to **Owner and Owner's Lender**; *provided*, if the policies have been issued, and *copies* are available, Contractor shall deliver to Owner and Owner's Lender copies of the policies; and *provided, however*, as to Subcontractors the amount of whose work is agreed by Owner and Contractor to be of small amount or other basis to defer obtaining copies of the Subcontractors' liability insurance policy ("**Small Subcontractors**"), proof of liability insurance, is to be by certificates of liability insurance issued on an **ACORD 25 Certificate of Liability Insurance** currently dated, issued by or on behalf of the insurers to **Owner and Owner's Lender** as Certificate Holder. Proof of Liability Insurance shall include at least the following:

- .1 Certifying:** proof of 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 as specified in **Section A.3.1.3.1 Additional Insured Obligations - Additional Insureds** and **Section A.3.1.3.3 ISO Forms and excess or umbrella liability** policy or policies as specified in **Section A.3.2.4 Combination of Policies; Umbrella Liability** and the **Business Auto Policy** <sup>115</sup> as specified in **Section A.3.2.3.2 Business Automobile Liability – Additional Insureds** and **Pollution Liability Policy** <sup>116</sup> as specified in **Section A.3.2.9.6 Pollution Liability - Additional Insureds**, with each of the Endorsements attached hereto as listed in **Section A.3.1.1.1 Matters Certified – Insurance Binder; Proof of Liability Insurance - Attachments**,

.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 as specified as to each of the lines of liability insurance as set forth herein, with each of the Endorsements attached hereto as listed in **Section A.3.1.1.1 Matters Certified – Insurance Binder; Proof of Liability Insurance - Attachments**,

.3 **Waiver of Subrogation:** that subrogation is waived by the insurers as to claims against Owner, the other Protected Persons, the Architect, and the Architect's consultants as specified as to each of the lines of liability insurance as set forth herein, with each of the Endorsements attached hereto as listed in **Section A.3.1.1.1 Matters Certified – Insurance Binder; Proof of Liability Insurance - Attachments**,

.4 **Advanced Notices:** advanced notice of cancellation or material modification is to be afforded **Owner, Owner's Lender [, and the Development Manager (if any)]** by the insureds to a proper address specified in the proof of insurance, <sup>117</sup> as specified as to each of the lines of liability insurance as set forth herein, with each of the Endorsements attached hereto as listed in **Section A.3.1.1.1 Matters Certified – Insurance Binder; Proof of Liability Insurance - Attachments**; and

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

**.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 Proof of Liability Insurance: **ISO CG 25 04 05 09 Designated Locations General Aggregate Limit** as specified in **Mod. Section A.3.2.2.1.1 Commercial General Liability – Occurrence Form; Limits; Coverage – Minimum Limits.** <sup>118</sup>

**.2 Products-Completed Operations Aggregate Limit Endorsement:** A copy of the following endorsement in form acceptable to Owner is required to accompany the Proof of Liability Insurance: **ISO CG 25 46 12 19 Designated Project(s) Products - Completed Operations Aggregate Limit** as specified in **Section A.3.2.2.1.1 Commercial General Liability – Occurrence Form; Limits; Coverage – Minimum Limits.** <sup>119</sup>

**.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 Proof of Liability Insurance:

**.1 CGL - Ongoing Operations - Owner:** ISO [**1<sup>st</sup> choice: CG 20 10 10 01**] [**or 2<sup>nd</sup> choice: CG 20 10 07 04**] *Additional Insured - Owners, Lessees or Contractors – Scheduled Person Or Organization* scheduling Owner as an additional insured as specified in **Mod. Section A.3.1.3.3.1 ISO Forms – Ongoing Operations – Owner**;

**.2 CGL - Owner's Lender:** **ISO CG 29 18 12 19 Additional Insured - Mortgagee, Assignee or Receiver** as to **Owner's Lender** as specified in **Mod. Section A.3.1.3.3.2 ISO Forms – 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 as specified in Mod. Section A.3.1.3.3.3 ISO Forms – Ongoing Operations – Other Protected Persons;*

**.4 CGL - Architect and Architect's Consultants: ISO CG 20 32 [1<sup>st</sup> choice: 10 01]**

*[2<sup>nd</sup> 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 as specified in Mod. Section A.3.1.3.3.4 ISO Forms – Architect and Architect's Consultants;*

**.5 CGL - Completed Operations: ISO CG 20 37 [1<sup>st</sup> choice: 10 01] [2<sup>nd</sup> choice: 07**

**04] Additional Insured – Owners, Lessees or Contractors – Completed Operations with respect to the Protected Persons as specified in Mod. Section A.3.1.3.3.5 ISO Forms – Completed Operations – Protected Persons; and**

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

*Additional Insured – Designated Insured as specified in Mod. Section A.3.2.3.2 Business Automobile Liability – Additional Insureds.*

**.7 Pollution Liability:**

*as specified in Mod. Section A.3.2.9.6 Pollution Liability – Additional Insureds.*

**.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 Proof of Liability Insurance for the following insurance:

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

*Primary and Noncontributory – Other Insurance Condition as specified in Mod. Section A.3.1.3.2 Primary and Noncontributory.*

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

*as specified in Mod. Section A.3.2.3.4 Business Automobile Liability – Primary and Noncontributory Status.*

**.3 Pollution Liability:**

*as specified in Mod. Section A.3.2.9.7 Pollution Liability – Primary and Noncontributory.*

**.5 Waiver of Subrogation Endorsements:**

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

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

*as specified in Mod. Section A.3.2.2.1.2.7 Commercial General Liability -Occurrence Form; Limits; Coverage – Coverage and Form – Waiver of Subrogation.*

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

*as specified in Mod. Section A.3.2.3.3 Business Automobile Liability -Waiver of Subrogation.*

**.3 Umbrella:**

*as specified in Mod. Section A.3.2.4.5 Combination of Policies; Umbrella Liability – Waiver of Subrogation.*

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

*as specified in Mod. Section A.3.2.5.1 Workers' Compensation – Waiver of Subrogation.*

**.5 Employer's Liability:**

*as specified in Mod. Section A.3.2.6.5 Employer's Liability – Waiver of Subrogation.*

**.6 Professional Liability.** as specified in **Mod. Section A.3.2.8.7** *Professional Liability – Waiver of Subrogation.*

**.7 Pollution Liability.** as specified in **Mod. Section A.3.2.9.8** *Pollution Liability – Waiver of Subrogation.*

**.8 Comprehensive Crime.** as specified in **Mod. § A.3.3.2.6.1.5** *Comprehensive Crime – Waiver of Subrogation.*

**.6 Advanced Notices:** A copy of Notice of Cancellation-Material Change endorsements acceptable to **Owner and Owner’s Lender** are required to accompany the Proof of Liability Insurance for the following insurance:

**.1 CGL.** as specified in **Mod. Section A.3.2.2.1.8** *Commercial General Liability – Occurrence Form; Limits; Coverage – Coverage and Forms – Advanced Notice.*

**.2 Business Auto.** as specified in **Mod. Section A.3.2.3.5** *Business Automobile Liability – Advanced Notice.*

**.3 Umbrella.** as specified in **Mod. Section A.3.2.4.6** *Combination of Policies; Umbrella Liability – Advanced Notice.*

**.4 Workers’ Comp.** as specified in **Mod. Section A.3.2.5.2** *Workers’ Compensation – Advanced Notice.*

**.5 Employer’s Liability.** as specified in **Mod. Section A.3.2.6.6** *Employer’s Liability – Advanced Notice.*

**.6 Professional Liability.** as specified in **Mod. Section A.3.2.8.8** *Professional Liability – Advanced Notice.*

**.7 Pollution Liability.** as specified in **Mod. Section A.3.2.9.9** *Pollution Liability – Advanced Notice.*

**.8 Comprehensive Crime.** as specified in **Mod. Section A.3.3.2.6.1.6** *Comprehensive Crime – Advanced Notice.*

**.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 each of the policies.

**.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 each of the policies and issued forms providing such coverages and provisions.

**2 Proof of Property Insurance; Copy of Policies.** *Proof of property insurance* is to be issued on an **ACORD 75 Insurance Binder** currently dated, issued by on or on behalf of Contractor’s and Subcontractors’ insurers to **Owner and Owner’s Lender**; *provided, if* the policies are issued and a **copy** is available, then a copy of the liability policies and property policies are to be delivered to Owner and Owner’s Lender; and *provided, however,* as to Subcontractors the amount of whose work is agreed by Owner and Contractor to be of small amount or other basis to defer obtaining copies of the Subcontractors’ property insurance policy (“**Small Subcontractors**”), proof of property insurance, is to be by evidence of property insurance issued on an **ACORD 28 Evidence of Commercial**

Property Insurance currently dated, issued by or on behalf of the insurers to **Owner and Owner's Lender**. Proof of Insurance shall include at least the following:

**.1 Named Insureds:** the **Owner** as a named insured on the builder's risk insurance together with as insureds, the **contractor and subcontractors of all tiers** as specified in **Mod. Section A.3.3.2.1(c) Builder's Risk Insurance – Insureds and Loss Payee**,

**.2 Loss Payee:** **Owner and Owner's Lender** as loss payees as specified in **Mod. Section A.3.3.2.1(c) & (d) Builder's Risk Insurance – Insureds and Loss Payee and Builder's Risk Insurance – Mortgagees as Loss Payees**,<sup>120</sup>

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

**.4 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 **Mod. Section A.3.3.2.1(a) "All-Risks"; Completed Value Form; Replacement Cost Basis, Mod. Section A.3.3.2.1.2 Covered Property Interests, and Mod. Section 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 **Mod. Section A.3.3.2.1(a) "All-Risks"; Completed Value Form; Replacement Cost Basis and Mod. Section A.3.3.2.1(b) Amount.**

**.3 Covered Property:** Specifying the categories of property covered as provided in **Mod. Section A.3.3.2.1.2 Covered Property Interests, Mod. Section A.3.3.2.1.3 Specific Required Coverages, and Mod. Section 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 **Mod. Section A.3.3.2.1.1.1.4 Causes of Loss - Limits; Sub-limits; Section A.3.3.2.1.3 Specific Required Coverages; Mod. Section A.3.3.2.1.3.2 Specific Required Coverages - Debris Removal; Mod. Section A.3.3.2.1.3 Specific Required Coverages; and Mod. Section 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 **Mod. Section 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 **Mod. § A.3.3.2.1.3 Specific Required Coverages.**

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

**Mod. § 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 \$ \_\_\_\_\_, 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. 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.

**Mod. § A.3.1.3 Additional Insured Obligations.**

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

**.1 During (Ongoing) Operations:** the **Owner and 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.** <sup>121</sup>

**Mod. § 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).

**Mod. § 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** [**1<sup>st</sup> choice: 10 01**] [**2<sup>nd</sup> 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,* <sup>122</sup>

**.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** [**1<sup>st</sup> choice: 10 01**] [**2<sup>nd</sup> 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** [**1<sup>st</sup> choice: 10 01**] [**2<sup>nd</sup> choice: 07 04**] *Additional Insured – Owners, Lessees or Contractors – Completed Operations* with respect to the **Protected Persons.**

**Mod. § A.3.2 Contractor's Required Insurance Coverage**

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

**Mod. § 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.

**Mod. § 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.

**Mod. § A.3.2.2 Commercial General Liability.**

**Mod. § 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 excess or umbrella policy):

**.1 Minimum Limits:**

\$ _____	Each Occurrence,
\$ _____	General Aggregate, and the general aggregate shall apply separately to this Project by endorsement by an <b>ISO CG 25 04 05 09</b> Designated Location(s) General Aggregate, <sup>123</sup>
\$ _____	Aggregate for <b>Products-Completed Operations Hazard</b> . The CGL is to be endorsed by an <b>ISO CG 25 45 12 19</b> Designated Project(s) Products-Completed Operations Aggregate Limit designating the products and completed operations aggregate limit to this Project, <sup>124</sup> and
\$ _____	Personal and Advertising Injury.

**.2 Coverage and Form:** This insurance is to be issued on the most recent reasonably available and unmodified **ISO CG 00 01** <sup>125</sup> or substitute providing coverage more beneficial to the Protected Person <sup>126</sup>. The scope of coverage is to include 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; <sup>127</sup>

**.2 Personal and Advertising Injury:** *personal injury and advertising injury*; <sup>128</sup>

**.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; <sup>129</sup>

**.4 Completed Operations:** *bodily injury* or *property damage* arising out of *completed operations*; <sup>130</sup>  
and

**.5 Insured Contracts:** the *Contractor's indemnity* obligations under the Contract Documents, including the tort liability of another person assumed in a business contract, including **Mod. Section 3.18 Indemnification** of the AIA **A201 General Conditions**, as modified by the parties, and shall include unmodified *Separation of Insureds coverage*; and, if any of the Work is to be performed within 50 feet of railroad property, a contractual liability-railroads ISO form **CG 24 17 10 01** or *substitute providing coverage more beneficial to the Protected Person* <sup>131</sup> shall be provided;

**.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** or **CG 24 53 12 19** 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; <sup>132</sup>

**.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; <sup>133</sup> and

**.9 Post-Completion Coverage:** Contractor agrees to maintain the *Products-Completed Operations* coverage with respect to the Work in identical coverage, form and amount, including required endorsements for the term of the Statute of Repose following the Substantial Completion Date of the Contractor's Work. <sup>134</sup>

**.10 Additional Insureds:** Contractor shall cause the commercial general liability coverage to include the additional insured endorsements specified in **Mod. Section A.3.1.3.1 Additional Insureds** and **Mod. Section A.3.1.3.3 ISO Forms**. This policy shall include an unmodified ISO separation of insureds provision.

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

**.1 Insured vs. Insured Exclusion other than Named Insured vs. Named Insured:** 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, except Named Insured vs. Named Insured. <sup>135</sup>

**.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*. <sup>136</sup>

**.4 Indemnity as to Injuries to Employees of Insured:** Claims for *indemnity* under **Mod. Section 3.18 Indemnification** of the General Conditions arising out of *injury to employees of the insured*. <sup>137</sup>

**.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. <sup>138</sup>
- .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)*. <sup>139</sup>
- .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 Excluded)*. <sup>140</sup>
- .12 Contractual Liability Limitation:** **ISO CG 21 39** *Contractual Liability Limitation* or equivalent is not permitted. <sup>141</sup>
- .13 Amendment of Insured Contract Definition:** **ISO CG 24 26** *Amendment of Insured Contract Definition* or equivalent is not permitted. <sup>142</sup>
- .14 Limitation of Coverage to Designated Premises or Project:** **ISO CG 21 44** *Limitation of Coverage to Designated Premises or Project*, or similar limitation, is not permitted. <sup>143</sup>
- .15 Fines, Punitive, Exemplary or Multiplied Damages Exclusion:** Any type of punitive, exemplary, multiplied damages, or fines exclusion is not permitted (coverage is to be provided for each of these exposures where permitted by law). <sup>144</sup>
- .16 Classification or Business Description Exclusion:** Any *restriction of coverage* restricting coverage to only to classifications or descriptions specifically listed and excluding all others. <sup>145</sup>
- .17 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. <sup>146</sup>
- .18 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)*.
- .19 Damage to Work Performed by Subcontractors.** Damage to Work performed by subcontractors on behalf of the Contractor under ISO forms **CG 22 94** or **CG 22 95** or equivalent. <sup>147</sup>

**.20 Overspray Exclusions.** Exclusion of *overspray* if the Work includes that exposure.

**.21 Work Height Exclusions.** Exclusions based on *height of the Work* or equivalent exclusions. <sup>148</sup>

**.22 Incidental Design Liability.** Exclusions based on Contractor's professional liability including the following endorsement: **ISO CG 22 34 04 13 Exclusion – Construction Management Errors and Omissions**, **ISO CG 22 34 04 13 Exclusion – Engineers, Architects or Surveyors Professional Liability**, and the **ISO CG 22 79 04 13 Exclusion – Contractors – Professional Liability**. <sup>149</sup>

**.23 Construction Defect – Completed Operations.** Exclusions based on construction defects. <sup>150</sup>

**.24 Other Unacceptable Exclusions.** *Any other coverage exclusion not acceptable to Owner.*

**Mod. § A.3.2.2.3 Electronic Data Endorsement.** If any of the Work could cause damage to electronic data, 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. The minimum limits shall be no less than \$ \_\_\_\_\_.

**Mod. § A.3.2.3 Business Automobile Liability.** Automobile Liability covering vehicles *owned and non-owned*, and *hired* vehicles used, by the Contractor, <sup>151</sup>

**.1 Minimum Limits:** with policy limits of not less than \$ \_\_\_\_\_ per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of (a) those motor vehicles along with any other statutorily required automobile coverage and (b) any mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws. The policy limits 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 accident be less than the above minimum limit amount.

**.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 an **ISO CA 20 48 10 13** or *other additional insured form more protective of the Protected Persons.*

**.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 an **ISO CA 04 44 10 13** or *other form more protective of the Protected Persons.*

**.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** or *other form more protective of the Protected Persons*; 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.

**.6 Pollution Liability:** If the Work involves the transportation of hazardous materials, this insurance shall be endorsed to provide pollution liability on an **ISO CA 99 48 10 13, MCS-90**, and the state equivalent form for the state in which the Work will be performed. <sup>152</sup>

**Mod. § A.3.2.4 Combination of Policies; Umbrella Liability.** The Contractor may achieve the required limits and coverage for Commercial General Liability, Automobile Liability and Employers Liability through a combination of primary and excess or umbrella liability insurance, provided: <sup>153</sup>



**.1 Equivalent Coverage:** such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under **Mod. Section A.3.2.6 Employers Liability**, **Mod. Section A.3.2.2 Commercial General Liability** and **Mod. Section 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 Minimum Limits.** If any of the required minimum limits for the Commercial General Liability, Automobile Liability and Employers liability are to be met through a combination of primary and excess or umbrella insurance, the limits shall be no less than a total of \$ \_\_\_\_\_ for each occurrence and annual aggregate.

**.3 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.

**.4 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.

**.5 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.

**.6 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.

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

**.8 Defense Costs:** This insurance is to include a duty to defend the insureds and associated defense costs shall be outside of or in addition to the limits of liability.

**Mod. § 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 **ISO 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.

**Mod. § A.3.2.6 Employer's 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 (“**Employer’s Liability Coverage**”).

.2 **Minimum Limits:** Employer’s Liability with policy limits not less than

\$ _____	each accident,
\$ _____	each employ, and
\$ _____	policy limit.



The policy limits 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 accident be less than the above minimum limit amount.

.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.

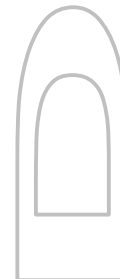
.6 **Advanced Notice:** This insurance is to contain a provision that the insurer shall provide that this insurance shall not be canceled without at least 30 days' prior written notice to Owner and Owner’s Lender except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally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

**Mod. § 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.

**Mod. § A.3.2.8 Professional Liability.** If the Contractor’s Work (or any Work of any party for whom the Contractor is responsible) includes design, engineering, consulting, construction management or professional services, Contractor shall procure Professional Liability insurance covering performance of the professional services,

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

\$ _____	per claim and
\$ _____	in the aggregate.



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

**.3 Scope:** Such insurance shall cover all professional services rendered by the Contractor (or any Work of any party for whom the Contractor is responsible), including vicarious liability arising out of Contractor's engagement of 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 or Property Damage 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;
- .11 Construction Management:** Construction Management Exclusions;
- .12 Cost Estimating:** Cost estimating;
- .13 Subcontractor's Faulty Work:** Cost to repair or replace subcontractors' faulty work;
- .14 Design/Build:** Professional liability for Work arising out of design/build;

- .15 **EIFS**: EIFS, if the Work includes such exposure;
  - .16 **Habitational Projects**: Habitational, residential, or multi-family operations;
  - .17 **Pollution**: Pollution liability including liability arising out of asbestos, lead, silica, mold microbial matter, fungus, or biological substances; and
  - .18 **Technology**: Liability arising out of technology.
- .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.

**Mod. § 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, and including operations of its subcontractors.
  - .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, and property restoration and replacement.
  - .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

\$ _____	per claim and
\$ _____	annual aggregate.

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

**.4 Term:** Coverage for completed operations shall be continued for this project for no less than the applicable statute of repose or 10 years from the date of Final Completion of the Work under this Agreement, whichever is longer. An extended repletion period on a claims-made based policy does not fulfill this requirement. This insurance is to have completed operations coverage for the foregoing period.

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

**.1 Disposal Sites:** Owned and non-owned disposal site utilization;

**.2 Liability Assumed by Contract Exclusions:** Exclusion of liability assumed by contract;

**.3 Property Damage to Contractor's or Subcontractors' Work Exclusion:** Property damage to the Work performed by the contractor or by its subcontractors;

**.4 Diminution of Value:** Diminution of value;

**.5 EIFS:** Exclusion of Work involving EIFS;

**.6 Limitation of Scope of Insured Services:** Exclusion of environmental or remediation services;

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

**.8 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;

**.9 Impairment without Physical Injury:** Impaired property that has not been physically injured;

**.10 Exclusion of Certain Substances or Materials:** Exclusion of loss arising from certain pollutants, for example, lead, silica, mold, microbial matter, fungus, biological substances, asbestos, or drywall;

**.11 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;

- .12 **Naturally Occurring Substances:** Naturally occurring substances;
- .13 **Natural Resource Damage:** Damages to natural resources;
- .14 **Transportation:** Pollution condition that arises in connection with the transportation any waste or water materials away from the Site;
- .15 **Damage to Work Performed by Subcontractors:** Property damage to Work performed by subcontractors;
- .16 **Punitive, Exemplary or Multiplied Damage Exclusion:** Punitive, exemplary, or multiplied damages;
- .17 **Injury to Employee Due to Subcontractor's Work Exclusion:** Contractual liability incurred as a result of an injury to an employee of the insured;
- .18 **Brokerage Services:** Waste brokering, waste site selection, or arranging for disposal;
- .19 **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. This policy shall include a separation of insureds provision.

**.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.

**Mod. § A.3.2.10 Combined Policy.** Coverage under **Mod. Section A.3.2.8 Professional Liability** and **Mod. Section 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

\$ _____	per claim and
\$ _____	in the aggregate.

**Mod. § A.3.2.11 Maritime Liability.** Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, Contractor shall purchase and maintain maritime liability insurance:

- .1 **Limits.** This insurance is to have policy limits of not less

\$ _____	per claim and
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\$ _____	in the aggregate.
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**.2 Additional Insureds:** The Protected Persons are to be insured as additional insureds on the Maritime Liability insurance.

**.3 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.

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

**.5 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.

**Mod. § A.3.2.12 Aircraft Liability (Including Drones).** Insurance for the use or operation of manned or unmanned aircraft (“*Drones*”), if the Work requires such activities, Contractor shall purchase and maintain maritime liability insurance:

**.1 Limits.** This insurance is to have policy limits of not less

\$ _____	per claim and
\$ _____	in the aggregate.

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

**.3 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.

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

**.5 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.

**Mod. § A.3.3 Contractor’s Other Insurance Coverage.**

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

**.1 State Authorized Insurers:** Insurance selected and described in this **Mod. 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 **Mod. 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.)*



**Mod. § A.3.3.2 Types and Limits.** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with **Mod. 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.)*

[ « » ] **Mod. § A.3.3.2.1 Builder’s Risk Insurance.** Property insurance of the same type and scope satisfying the requirements identified in **Mod. Section A.2.3 Required Property Insurance**, which, if selected in this **Mod. 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 **Mod. Section A.2.3.1.3 Insured Amount; Duration of Coverage** and **Mod. 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. Coverage includes but is not limited to the coverages set out in **Mod. Section A.3.3.2.1.3 Specific Required Coverages of Property Interests.** The policy is to be endorsed with an **Agreed Value Endorsement** for a value approved by Owner and Contractor. <sup>154</sup>

(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. No co-insurance is permitted.

(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.**

(f) **Prohibited Forms.** Use of an **AAIS form** is not permitted. **Protective safeguard warranties** are not permitted.

**Mod. § A.3.3.2.1.1 Causes of Loss:** In addition to the Optional Extended Property Insurance, if any, selected in **Mod. Section 3.3.2.1.7 Optional Extended Property Insurance**, coverage shall be at least as broad as an unmodified **ISO Special Causes of Loss** form and shall include, but not be limited to, coverage for the following causes of loss, and without sub-limit except as stated below:

#	Causes of Loss	No Sub-Limit or Sub-Limit
.1	Collapse	Included without sub-limit

.2	Debris removal additional limit	No less than <b>[\$1,000,000]</b>
.3	Direct physical loss or damage	Included without sub-limit
.4	Earthquake/Earth Movement (to include landslide, earth sinking, rising, and shifting soil condition) and Earthquake Sprinkler Leakage	No less than <b>[\$1,000,000]</b>
.5	Error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials	Included without sub-limit
.6	Explosion	Included without sub-limit
.7	Fire	Included without sub-limit
.8	Flood (including surface water, mudslide, water that backs up or is otherwise discharged from sewer, water under the surface of the ground seeping through foundations, wall, or basements)	No less than <b>[\$1,000,000]</b>
.9	Freezing	Included without sub-limit
.10	Malicious mischief	Included without sub-limit
.11	Mechanical breakdown, including hot and cold testing	Included without sub-limit
.12	Pollutant clean-up and removal	No less than <b>[\$1,000,000]</b>
.13	Preservation of property	Included without sub-limit
.14	Rain, Snow, Sleet or Ice exclusion shall be modified to apply only to personal property left in the open	Included without sub-limit
.15	Replacement Cost to include labor and delivery charges and general and specific overhead and charges	Included without sub-limit
.16	Subsidence, shrinking, settling, cracking and expansion	Included without sub-limit

.17	Theft	Included without sub-limit
.18	Unintentional Errors in Description	Included without sub-limit
.19	Vandalism	Included without sub-limit
.20	War, hostile or warlike actions in time of peace or war; Insurrection, rebellion, revolution, civil war, or commotion	Included without sub-limit
.21	Windstorm	Included without sub-limit

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

**.1 Buildings or Structures:** Buildings or structures under construction or being erected, including retaining walls, paved surfaces and roadways, bridges, glass, foundations, pilings, footings, underground pipes and wiring, excavations, grading, backfilling, or filling.

**.2 Tangible Property On Site or at Other Locations.** 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.

**.3 Other Specific Required Coverages of Property Interests:** The additional properties listed in **Mod. Section A.3.3.2.1.3 Specific Required Coverages of Property Interests.**

**Mod. § A.3.3.2.1.3 Specific Required Coverages of Property Interests:** 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 **Mod. 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.

**.3 Additional Properties:** The following additional properties:

.1	Airborne property.
.2	Contractor’s tools and equipment not destined to become part of the structure.

.3	Existing buildings and structure to which alterations or additions are being made.
.4	Foundation, underground pipes, and other underground works.
.5	Maps, plans, blueprints, specifications.
.6	Materials and supplies in transit to the site for installation by all means of transportation other than ocean transit.
.7	Offices and utility trailers.
.8	Other property for which an insured is liable regarding the project.
.9	Personal property of others for which the insured may be liable.
.10	Sidewalks and other paved surfaces.
.11	Signs.
.12	Site preparation and excavation works.
.13	Television or radio antennas, including lead-in wiring, masts, and towers.
.14	Trees, grass, shrubbery, plants, landscaping materials.
.15	Waterborne property.

**Mod. § 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.

**Mod. § 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 **Mod. 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.

**Mod. § 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, with an Agreed Value Endorsement in an amount approved by Owner protecting the existing structure against direct physical loss or damage from the causes of loss identified in Mod. Section A.3.3.2.1 Builder’s Risk, notwithstanding the undertaking of the Work. The insurance shall eliminate all co-insurance penalties. <sup>155</sup>

**Mod. § A.3.3.2.1.7 Optional Extended Property Insurance.** The Contractor shall purchase and maintain the insurance selected and described below. <sup>156</sup>

*(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.)*

[ « » ] **.1.1 Loss of Use, Business Interruption, and Delay in Completion Insurance.**

**.1.1 Loss of Use, Business Interruption, and Delay in Completion Insurance.** Loss of Use, Business Interruption, and Delay in Completion Insurance, to reimburse the Owner for loss of use of the Owner’s property, and additional expenses due to delay in completion of project, including soft costs and loss of income, or the inability to conduct normal operations due to a covered cause of loss.

	Loss of Use, Business Interruption, and Delay in Completion Insurance	[To be determined] or [Included without sub-limit]
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**.1.2 Loss of Net Rental Income.** Loss of net rental income which results from delay beyond the projected completion date 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	[Sub-limit \$ _____] or [Included without sub-limit]
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[ « » ] **.2 Ordinance or Law Insurance.** 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. <sup>157</sup>

.1	Coverage A – Undamaged Portion of the Building	[Included without sub-limit]
.2	Coverage B – Demolition Cost and Coverage C-Increased Cost of Construction	No less than <b>[\$1,000,000]</b>

[ « » ] **.3 Expediting Cost Insurance.** 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.

	Expediting Cost Insurance	No less than <b>[\$250,000]</b>
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[ « » ] **.4 Extra Expense Insurance.** 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.** 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.** 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.** Soft Costs Insurance, <sup>158</sup> 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: <sup>159</sup>

[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. <sup>160</sup>

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

[ « » ] **.6 Other:** [ « » ]

**Mod. § 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.



.1	All Risks of Direct Damage, Per Occurrence, except for the following <b>permitted deductible</b>	[ <u>\$10,000</u> ]
.2	<b>Delayed Opening Waiting Period</b>	[ <u>3 days</u> ]
.3	<b>Earthquake and Earthquake Sprinkler Leakage, Per Occurrence</b>	[ <u>\$50,000</u> ]
.4	<b>Flood, Per Occurrence, excess of maximum available through National Flood Insurance Program</b>	[ <u>\$50,000</u> ]

.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.)*

.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.

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

[ « » ] **Mod. § A.3.3.2.3 Asbestos Abatement Liability Insurance.** 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.

[ « » ] **Mod. § 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” basis.

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

.1 **Scope:** Property insurance on an “all-risk”, 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.**

**Mod. § A.3.3.2.6.1 Comprehensive Crime.** Contractor is required to purchase and maintain comprehensive crime insurance in accordance with the following specifications:

.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 \$ \_\_\_\_\_ 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.

**Mod. § A.3.3.2.6.2 Riggers Legal Liability.** If the Work includes rigging operations, Contractor is required to purchase and maintain riggers legal liability insurance in accordance with the following specifications:

.1 **Scope:** This insurance is to cover all rigging liability arising out of the Work including rigging liability arising out of the lift, set in place, or moving of tangible property of others that is in the Contractor’s or its subcontractor’s care, custody or control. Coverage shall be provided on a direct damage basis and shall include (a) building and structures coverage when in connection with the insured’s rigging, assembling or dismantling, and (b) valuation of property in the care, custody and control of the insured on a replacement cost basis.

**.2 Minimum Limits:** Limits of at least \$ \_\_\_\_\_ each project and \$ \_\_\_\_\_ catastrophe limit.

**.3 Additional Insureds:** The **Protected Persons** are to be insured as additional insureds on this insurance.

**.4 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.

**.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.

**Mod. § A.3.3.2.6.3 Other.** (List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits
	\$ _____

**Mod. § A.3.4 Performance Bond and Payment Bond.** [ « » ]

**.1 General.** 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

[Contractor is required to arrange and furnish separate performance and payment bonds, each for the full amount of the Guaranteed Maximum Price plus Contractor's Fee guaranteeing the faithful performance of all of the provision of the Agreement as well as payment to all persons for labor and material used in the performance of the Agreement.] **Any additions to the Agreement occasioned by Change Orders will include any additional bond premiums.**

The Bonds are to be 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). The Bonds are to name as additional obligees such persons as designated by Owner and its lender. Owner may withhold payments on account until such time as said bonds have been furnished and accepted. No change, alteration or modification in the terms and conditions of the Agreement, or in the terms or manner of payment shall in any way exonerate or release, in whole or in part, any surety on any bond furnished on behalf of Contractor. The cost of the bonds is included in the Contract Sum.

**.2 Payment Bond.** The Payment Bond is to conform to the following requirements:

**.1 Texas:** The Payment Bond is to be in statutory form. The AIA form is not acceptable. The Payment Bond is to be in effect for the period required by the Texas Property Code. The Payment Bond and all required attachments (issuer's agent's power of attorney and memorandum of the Agreement) is to be recorded in the County's Official Public Records.

**.2 Other than Texas:** Payment Bond 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.

**.3 Coverage.** The Payment Bond is to include coverage for consequential and delay damages due to Contractor's default.

### **.3 Performance Bonds.**

**.1 Form.** Performance Bonds shall be on an AIA Document **A312™**, *Performance Bond*, or contain provisions identical to AIA Document **A312™**, current as of the date of this Agreement.

**.2 Term.** The Performance Bond is to be in effect for a period of not less than one year following Final Completion.

**.3 Extended Coverages.** The Performance Bond is to cover risk of contract penalties and delay damages. The Performance Bond is to cover Contractor's express warranty and obligations to correct defective Work arising under the Agreement.

## **MOD. ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

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

**Mod. § A.4.1 Subcontractor's Insurance.** Insurance similar to that required of the Contractor shall be provided by all of its subcontractors (or provided by the Contractor on behalf of its subcontractors) to cover operations performed under any subcontract agreement. The Contractor shall be held responsible for any modification in these insurance requirements as they apply to subcontractors. The Contractor shall maintain certificates of insurance from all of its subcontractors containing provisions similar to those listed in this Exhibit (modified to recognize that the certificate is from the subcontractor) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required in this Exhibit, and make them available to the Owner upon request. Any insurance covering the Contractor's or its subcontractor's property shall be the Contractor's and its subcontractor's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, Contractor and its subcontractors are not to be reimbursed for same by the Protected Persons. It is expressly agreed that Contractor hereby waives, and shall cause its subcontractors to waive, any claim for damage or loss to said property in favor of Protected Persons.

### **Mod. § 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 <sup>161</sup> 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:** If the Contractor elects to self-insure or to maintain liability insurance required by this Exhibit subject to deductibles and/or retentions, then the Protected Persons and the Contractor shall maintain all rights and obligations between themselves as if the Contractor fully maintained the insurance required in this Exhibit with an insurer licensed and admitted in the state of the location of the Project including but not limited to requirements under sections titled Additional Insureds, Primary and Noncontributory, Waiver of Rights of Recovery and Subrogation, General Insurance Requirements and any other extensions of coverage required in this Exhibit. The 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 the Contractor had maintained the insurance pursuant to this Exhibit without said deductible or self-insured retention. All liability deductibles and retentions shall be paid by, assumed by, for the account of, and at the sole risk of the Contractor. The Contractor shall not be reimbursed for same by the Protected Persons. The Owner may require the Contractor to post security or obtain gap coverage for large deductibles.

**.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.

**.7 Notice of Cancellation, Material Change and Non-Renewal:** Contractor shall not cause any insurance to be cancelled nor permit any insurance to lapse during the term of the Agreement or as required in the Contract Documents. All insurance required in this Exhibit to be obtained by Contractor shall be endorsed to provide a 30 day notice of cancellation, material change and non-renewal to the Owner. Contractor will immediately provide written notice to the Owner should any of the insurance policies required in this Exhibit be cancelled, limited in scope, or not renewed upon expiration. This notice from the Contractor must be provided no later than 30 days prior to any such action being taken.

**.8 Primary and Noncontributory:** Requirements for primary and noncontributory insurance means that it is the specific intent of the parties to the Agreement that all insurance required in this Exhibit shall be primary to and shall seek no contribution from any other insurance (primary, umbrella, contingent or excess) maintained by the Protected Persons, with the Protected Persons' insurance being excess, secondary and noncontributing.

**.9 WAIVER OF RECOVERY AND WAIVER OF SUBROGATION:** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT DOCUMENTS OR IN THE CONTRACTOR'S CONTRACT WITH ITS SUBCONTRACTORS AND TO THE EXTENT PERMITTED BY LAW, CONTRACTOR WAIVES, AND SHALL CAUSE ITS SUBCONTRACTORS TO WAIVE, ITS AND THEIR RESPECTIVE RIGHTS OF RECOVERY FROM THE PROTECTED PERSONS FOR ALL CLAIMS (A) THAT ARE COVERED BY ANY INSURANCE MAINTAINED BY THE CONTRACTOR OR ITS SUBCONTRACTORS, (B) WOULD HAVE BEEN COVERED BY ANY INSURANCE REQUIRED TO BE MAINTAINED BY THE CONTRACTOR OR ITS SUBCONTRACTORS UNDER THIS EXHIBIT, OR (C) THAT CONSTITUTE ANY RETAINED, SELF-INSURED OR UNINSURED RISK OF THE CONTRACTOR OR ITS SUBCONTRACTORS. ALL INSURANCE POLICIES REQUIRED TO BE PROVIDED BY THE CONTRACTOR PURSUANT TO THIS EXHIBIT SHALL INCLUDE A WAIVER OF SUBROGATION AND ANY OTHER RIGHTS OF RECOVERY BY THE INSURER IN FAVOR OF THE PROTECTED PERSONS. THE PROVISIONS OF THIS PARAGRAPH SHALL BE DEEMED INCORPORATED INTO EACH SUBCONTRACT TO THE EXTENT NECESSARY TO ACHIEVE THE RESULT INTENDED. THESE WAIVERS 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, (3) WHETHER OR NOT THE PERSON OR ENTITY HAD AN INSURABLE INTEREST IN THE DAMAGED PROPERTY AND (4) EVEN IF THE PERSON OR ENTITY WAS AT FAULT, NEGLIGENT, OR

LIABLE UNDER STRICT LIABILITY.

**Mod. § 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 A** 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.

