



First5LA.org

**Design-Build Services for the
First 5 LA
Capital Improvement Project (CIP) - Phase 1
Request for Proposal (RFP)**

RELEASE DATE: April 2, 2021

**Design-Build Services for
First 5 LA Capital Improvement Project – Phase 1
Overview of RFP**

First 5 LA has selected five Offerors from the firms that submitted SOQs for the Project described below to submit Proposals pursuant to this **REQUEST FOR PROPOSALS** ("RFP"). By submitting a Proposal, the Offeror represents that it has carefully read the terms and conditions of this RFP, including all attachments and addenda, and agrees to be bound by them.

OWNER:

Los Angeles County Children and Families First – Proposition 10 Commission ("Owner" or "First 5 LA")
750 N. Alameda Street
Los Angeles, CA 90012

PROJECT:

Design-Build Services for the First 5 LA Capital Improvement Project ("CIP")
The CIP is scheduled to be executed in two phases. **This RFP is only for the "Phase 1" project ("Project").**

FIRST 5 LA CONTACT PERSON:

For questions regarding this RFP, please contact Terrie Johnson, Contract Compliance Officer, at tjohnson@first5la.org.

PROPOSAL SUBMITTAL:

Offerors shall submit the Proposal using our [online system](#).

PROPOSAL DUE DATE AND TIME:

Proposals shall be submitted no later than: **Monday, 04/30/2021 at 5:00 PM PT.**

All Proposals must be submitted pursuant to the instructions below. It is the Offeror's sole responsibility to ensure that the Proposal is delivered in the manner required in this RFP by the Due Date and Time. First 5 LA reserves the right to reject any Proposals not properly submitted.

SECTION 1: GENERAL INFORMATION

1.1 General

1.1.1 BACKGROUND

First 5 LA — Giving Kids the Best Start

In 1998, California voters passed Proposition 10, which levied a 50-cent per pack tax on all tobacco products. The resulting tax revenues were earmarked for the creation of a comprehensive system of information and services to advance early childhood development and school readiness within each county in California. In Los Angeles County, the First 5 LA Commission was formed as a public entity to develop and oversee various early childhood initiatives and to manage the funding from Proposition 10. Since 1998, First 5 LA has invested more than \$2 billion to improve the health, safety, and school readiness of children prenatal to age 5.

1.1.2 PROJECT OVERVIEW

First 5 LA owns and occupies its office building at 750 N. Alameda Street, Los Angeles, CA. The building is located on the historic Union Station Campus and is part of an urban "District" subject to Covenants, Conditions, and Restrictions (CC&R) requirements. The building is a three (3) story building with approximately 45,000 square feet of office space. Prior to the COVID-19 pandemic, the building was fully occupied, with the exception of tenant space on the first floor. Currently, limited staff is in the building until further notice. First 5 LA intends to fully reoccupy the entire building as of January 3, 2022 and the Offeror will need to accommodate for this in their work plan. Any work scheduled in any area of the building will require coordination with First 5 LA. The second and third floors contain offices and cubicles for First 5 LA staff.

The first floor contains an administrative area, a multi-purpose room for large meetings, four meeting rooms, storage rooms, and an unoccupied childcare center. The unoccupied childcare area will remain vacant during the construction of this Project. Beginning January 3, 2022, any work scheduled in other areas of the first floor and access from the administration area at the building main entrance will require coordination with First 5 LA.

First 5 LA's desires to have Phase 1 completed by the end of 2021. The timeline accounts for plan checks and permits. The Offerors should evaluate the RFP requirements, including the reference documents included with this RFP, and provide their best timeline for preparing the construction documents, acquiring the necessary permits, and finish construction to complete the Phase 1 Capital Improvement Project described in this RFP. The preliminary project value range is \$1.5 - \$3 million. First 5 LA has retained MARRS Services, Inc. ("MARRS") as the Project Management/Construction Management (PM/CM) consultant to oversee and manage the implementation of the CIP, which was adopted by its Board of Commissioners on July 12, 2018.

First 5 LA also retained Klawiter & Associates to develop a conceptual interior design for remodeling the three (3) floors of First 5 LA's occupied space and to take

inventory of the existing furniture. Klawiter collaborated with IMEG Corp. ("IMEG") to finalize the project concept plan.

IMEG is the contracted architectural/engineering firm to complete the Design Development for Phase 1 and Phase 2 of the Capital Improvement Project. For this RFP - Phase 1 Project, IMEG prepared the design criteria, basis of design, design development plans along with prescriptive specifications, which are provided with this RFP, which along with any other reference material will form the basis of the design-build contract. MARRS reviewed the documents prepared by IMEG and is assisting First 5 LA in the procurement process and will oversee the administration of the design-build contract.

The Capital Improvement Project

First 5 LA's approach to the Project is to strengthen First 5 LA's ability to effectively execute its [2020-2028 Strategic Plan](#). First 5 LA took steps to align its internal structure with its mission and strategy. Since the adoption of the CIP by the First 5 LA's Board of Commissioners on July 12, 2018, the conceptual interior design has been updated to factor in the COVID – 19 impacts. This has been a collaborative effort between First 5 LA, Klawiter, MARRS, and IMEG with MARRS and IMEG providing review of the interior design updates prepared by Klawiter.

See Section 1.3.1 for the Owner's Program (Scope of Work) for "Phase 1". The renovation work will be required to meet all parts of current Title 24 California Building Code and other relevant planning, building, and environmental codes and regulations as enforced by the City of Los Angeles Department of Building and Safety (LADBS) and all other regulatory agencies with jurisdiction over this Project. This is a prevailing wage Project (see Article 11 in the Contract).

This RFP – Phase 1, is PART 2 in the two-part procurement process for the Project. It incorporates the terms, definitions, and schedules set forth in the Request for Qualifications ("RFQ") released on January 25, 2021, and any Addenda issued thereto; however, to the extent that the RFP conflicts with the RFQ and any Addenda thereto, the RFP shall prevail. Offerors must submit their Proposals pursuant to the schedule set forth in this RFP. This RFP is not an offer to enter into a contract but is merely a solicitation of entities interested in submitting a Proposal to the Owner for the Project.

1.2 Procurement Schedule

The following is the Procurement Schedule. The Owner reserves the right to modify the schedule via Addenda. **The deadline to submit the proposals is April 30, 2021, at 5:00 PM PT.** Proposal packages received after the deadline will not be accepted. Please submit all required documents through the [online application system \(found here\)](#) designated by the Owner.

ACTIVITY	DATE ¹
RFP Released to Shortlisted Offerors	04/02/2021
Mandatory Job Walk for Shortlisted Offerors	04/08/2021 & 04/09/2021
Last Date to submit Questions/ Request for Clarifications	04/12/2021

Response to Questions/ Clarifications	04/19/2021
Technical and Price Proposals Due	04/30/2021 at 5:00 PM PT
Review Proposals	05/04/2021 through 05/10/2021
Conduct Interviews	05/11/2021 & 05/12/2021
Applicants notified of Preferred Offeror	05/21/2021
Negotiations (if any) with Preferred Offeror or successor Offerors	05/24/2021 through 06/10/2021
Board Approval of Contract	07/08/2021
Execute Contract	07/12/2021 through 07/23/2021
Issue Notice to Proceed to Design-Builder	07/30/2021

¹ Dates subject to change at Owner's discretion

Questions and requests for additional information must be submitted in writing, by e-mail, to:

Terrie Johnson, Contract Compliance Officer

E-mail: tjohnson@first5la.org

Please refer to First 5 LA's website "<https://www.first5la.org/news-resources/funding-center/>." regularly for updates and addenda.

1.3 The Owner's Program

1.3.1 Attachment A to this RFP is a brief overview of the Owner's Program (Scope of Work) for the Project; the more detailed provisions are included in the Bridging Documents included in Attachment D. The Owner's Program describes the Project Scope of Work and contains the Owner's Project goals and objectives as well as the performance criteria, design criteria, basis of design, design development plans, and prescriptive specifications for the Project. The Owner's Program will become part of the Basis of Design Documents, defined in Section 1.2.2 of the DBIA Standard Form of General Conditions of Contract between the Owner and Design-Builder. All submittals from Offerors must be consistent with and designed to achieve the goals and objectives set forth in the Owner's Program.

1.3.2 Offerors are entitled to reasonably rely on the accuracy of the information represented in the Bridging Documents and their compatibility with other information set forth in the RFP to develop the Offeror's Technical and Price Proposals. However, the selected Design-Builder will be required to perform an independent evaluation of all information provided by the Owner, including but not limited to such design and/or prescriptive specifications to validate the information provided by the Owner. Further, regardless of the inclusion of design and/or prescriptive specifications, the selected Design-Builder shall remain responsible for meeting the performance requirements of the Project, including but not limited to the requirements that the Project meets the Basis of Design Documents as well as all applicable Legal Requirements. Provided the selected Design-Builder complies with all requirements set forth in the Contract, including but not limited to those regarding notice of claims to the Owner and identification of differing site conditions, and only to the extent that the

Contract allows the selected Design-Builder to an adjustment in the Contract Price and Project Schedule, the selected Design-Builder will be entitled to an adjustment in the Contract Price and Project Schedule. Such adjustment shall be limited to the extent Design-Builder's actual documented costs or the critical path of the Project Schedule have been adversely impacted by materially inaccurate design and/or prescriptive specifications that are inconsistent with meeting the Project's performance requirements.

- 1.3.3** The Owner assumes no responsibility for conclusions or interpretations made by the Offeror based on the information provided by the Owner. Oral statements made by the Owner representatives are not binding unless the Owner confirms the statements and changes by written Addenda to the RFP. In the event of a conflict between codes, industry standards, and the Owner's Program, the most stringent requirements shall apply, and Offerors shall submit their proposals based on the most stringent requirements.

Addenda shall be made available via the online funding center at <https://www.first5la.org/news-resources/funding-center/>. Failure to address the requirements of such addenda may result in the proposal not being considered, at the sole discretion of First 5 LA. It is the responsibility of Offerors to ensure, prior to submission, that their application reflects the most recent information and RFP requirements.

1.4 Contract Documents

Attachment B to this RFP is the proposed form of Agreement between the Owner and Design-Builder. The Agreement includes the following documents:

- 1.4.1** DBIA Document 525, Standard Form of Agreement Between Owner and Design-Builder Lump Sum - as modified in **Attachment B – Proposed Agreement**
- 1.4.2** DBIA Document 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder - as modified in **Attachment B – Proposed Agreement**

SECTION 2: RFP PROCUREMENT PROCESS

To be responsive to the RFP, the Offerors must submit responsive Proposals and participate fully in the following RFP Procurement Process.

2.1 Site Walk Through

- 2.1.1** The Site Walk Through will be held on 04/08/2021 and 4/09/2021, Time TBD at 750 North Alameda Street, Los Angeles, CA 90012. Appointment slots will be e-mailed by First 5 LA to Offerors on 04/05/2021 and available on a first-come, first-serve basis.

2.1.2 The Site Walk Through is mandatory. Non-attendance will be considered non-responsive.

2.1.3 Offeror will have an opportunity to view aspects of the Project during the Site Walk Through. Offerors will be given access to areas where work is to be performed as described in the Scope of Work – **Attachment A**, which includes office areas, restrooms, and rooftop.

2.1.4 NOT USED

2.1.5 Offerors may have up to four (4) people at the Site Walk Through due to COVID-19 restrictions.

2.1.6 Offerors must follow the procedures set forth herein prior to attending the Site Walk Through. Upon written approval received to access the building, reviewed by our Senior Director of Workplace Management and Executive Vice President, all participants will be sent the COVID-19 Building Access Questionnaire. If any questions have a "yes" response, please reschedule, or have another team member come instead. If all responses are a "no," bring a hard copy of the questionnaire and/or sign a copy in the building and submit it to the Security Guard. You will then be asked to sign in with your full name and company name.

At the time of the site walk through there will be a tenant occupying the former childcare space. Passage through that space is necessary to view the building electrical room and the proposed office space for the Design-Builder. The tenant requires that any visitors to that space execute a nondisclosure agreement (NDA). Offerors are requested to have only one member of their team view and pass-through the tenant space. That individual will be required to execute the NDA prior to entering the tenant space. Copies of the NDA will be available on the day of the walk through, or can be requested in advance.

2.1.7 Offerors may ask questions during the Site Walk Through; however, Offerors may not rely on any information provided orally during the Site Walk Through unless such information is provided in writing as an Addenda to this RFP.

2.2 Proposed Changes in the Design-Build Contract Documents

2.2.1 Submission of a Proposal pursuant to this Procurement is a representation by the Offeror that it has reviewed the Contract Documents, including but not limited to the Owner's Program, and the Offeror is willing to perform the Work set forth in the Owner's Program for the terms set forth in the Contract Documents.

2.2.2 Prior to the date set forth in the schedule, Offerors may propose changes to the Contract Documents, including but not limited to the insurance requirements, bonding requirements, Design-Build Contract, the General Terms and Conditions and Division 01 General Requirements of the Specifications. The Owner's goals in requesting such proposed changes are: i) to discover provisions in the Contract Documents that unnecessarily

increase the cost of the Project or complicate the performance of the Work, and ii) to identify contract provisions and commercial terms the Design-Builder intends to negotiate if selected. Therefore, with every proposed change, Offerors must include the following information:

- .1 The name of the document and section number;
- .2 Proposed alternate language;
- .3 An explanation for the requested change; and
- .4 Any impact the requested change has on any commercial term in the Contract Documents or the Owner's Program.

2.2.3 Changes to the Contract Documents: The Owner reserves the right to reject any and all proposed changes and to accept any proposed change to the Contract Documents via Addenda to the RFP. The Owner also reserves the right to negotiate such provisions with the selected Offeror.

2.3 Not Used

2.4 Confidential Individual Meetings with the Owner

2.4.1 Not Used

2.4.2 Not Used

2.4.3 Not Used

2.4.4 Interview

- .1 The Owner will conduct an individual Interview with proposers who submitted a responsive proposal. The interview will be approximately one (1) hour and will occur after the evaluation of the Technical Proposals has been completed. The Owner will use the written Technical Proposal and interview to assign scores for the Technical Proposal per Attachment F's evaluation criteria.
- .2 The Owner reserves the right to ask questions of the Offeror, including but not limited to questions regarding the Offeror's Technical Proposal and/or any other subject matter the Owner deems relevant to the Offeror's Technical Proposal at the Owner's sole discretion.
- .3 The Owner will advise the Offeror about the interview format prior to the interview. The interview invitation may provide an agenda, including any particular area of the Offeror's Technical Proposal that needs to be addressed in the Offeror's presentation as part of the interview.

2.5 Technical Proposal

Offerors shall submit the Technical Proposal pursuant to the instructions set forth herein at or before the time set forth in the schedule. Offerors are encouraged to focus on the concerns of the Owner as set forth below and the requirements in SECTION 3: DOCUMENTATION REQUIREMENTS in preparing their Proposal.

2.6 Price Proposal

- 2.6.1** Offerors shall submit Price Proposals (use Template in **Attachment G**) pursuant to the Procurement Schedule and pursuant to the instructions set forth in **Attachment G** in a separate file from the Technical Proposal. Price Proposals shall be based on the RFP and Contract Documents as amended by Addenda. The prices submitted in the Price Proposals may be inserted into the appropriate sections of the Design-Build Agreement with the selected Offeror without any further discussion, or the Owner may enter into negotiations at the Owner's sole discretion. Offerors shall honor their Price Proposals for 120 days after submission of their Price Proposal. Offerors shall be entitled to rely on the written information provided by the Owner in the RFP and any Addenda in developing their Price Proposal; however, the selected Design-Builder will be required to validate all Project information as set forth in the Contract Documents. By submitting a Price Proposal, the Offeror represents and warrants that it will enter into the Agreement set forth in **Attachment B** for the amount set forth in the Price Proposal, subject only to changes as allowed under the Agreement.
- 2.6.2** The Offeror has carefully examined the RFP and the Owner's Program and ascertained the nature, scope, and location of the Work. The Offeror has investigated and assured itself as to the general and local conditions that can affect the Work or its cost, all geotechnical and existing site conditions data, and any and all Plans, Specifications, Addenda, and Contract forms. The submittal of the Technical and Price Proposals shall be conclusive evidence that the Offeror has made such examinations and understands all the requirements for the performance of the completed Work. Failure of the Offeror to take these actions will not relieve it of responsibility for properly estimating the difficulty and cost of completing the Work or for proceeding to complete the Work without additional cost to the Owner. The Offeror shall determine the methods, materials, labor, and equipment required to perform the completed Work and reflect their cost in the Price Proposal.

2.7 Selection of Preferred Offeror

- 2.7.1** The Owner will evaluate each Offeror pursuant to the selection criteria and weights established herein. The Owner will determine the Preferred Offeror and notify all Offerors in writing of its determination. The "Preferred Offeror" is the Offeror that the Owner determines achieves the apparent highest score.
- 2.7.2** At the Owner's discretion, the Owner, may initiate negotiations with the Preferred Offeror. If the Owner cannot reach an agreement with the Preferred Offeror, the Owner shall cease negotiations with the Preferred Offeror and, provided that such negotiations are terminated in writing, shall initiate negotiations with the next Preferred Offeror. The Owner shall continue with this process with each such Offeror until it reaches an agreement or cancels the Procurement. Negotiations are at the Owner's sole discretion. Offerors should not anticipate that any portion of the proposed Contract will be changed or modified. By submitting a Proposal

pursuant to the RFP, the Offeror represents and warrants that it will enter into the contract provided by the Owner subject to the terms set forth in its Proposal.

2.7.3 Not Used

2.8 Selection De-Briefing and Appeals

All Offerors may request a de-briefing from the Owner with respect to this procurement; however, the Owner shall conduct no such de-briefings until it has either reached an agreement with an Offeror and has awarded the contract or canceled the Procurement.

First 5 LA reserves the right, without prejudice, to reject any or all submitted Proposals. An appeal shall be permitted only on the grounds that the decision violated applicable law, First 5 LA policies, and procedures, or the terms of this RFP. Appeals challenging First 5 LA's decision on the merits or qualifications of Offerors or the scoring of RFPs shall not be permitted. An appeal of a First 5 LA decision shall be in writing and filed with the office of the Executive Director, or his or her designee, within ten (10) business days following the date the notification of decision is made by First 5 LA. For more information, please refer to the Appeals Policy located at https://www.first5la.org/files/Appeals%20Policy%20REVISEDAPPROVED%2009-13-12_1.pdf.

SECTION 3: DOCUMENTATION REQUIREMENTS

3.1 Submittal Process

3.1.1 Offerors must submit the Technical Proposal and Price Proposal electronically. Hard copy submittals will not be accepted. Submissions must be delivered through [our online application system](#).

3.1.1.1 The submittal shall include the Request for Proposal title and due date and time. The Technical Proposal and the Price Proposal shall be submitted in separate files, and the files shall include the following titles, as applicable:

- a.** "Technical Proposal"
- b.** "Price Proposal"

3.1.1.2 Submittals must not be larger than 20 MB per file upload.

3.1.1.3 The Owner will use the online application-generated time stamp on the files to determine timeliness.

3.1.1.4 Offerors are responsible for ensuring timely delivery of submittals. The Owner is not responsible for Offerors' technical difficulties in submitting electronically.

3.1.1.5 Formatted in searchable .pdf format.

3.1.1.6 Late submittals will not be evaluated.

- 3.1.1.7** In no event will the Owner be liable for any costs incurred by any Offerors or any other party's involvement or participation in developing or submitting a proposal. The Owner will not compensate the Offerors for the efforts or any costs incurred by the Offerors or their consultants and subcontractors to develop the final proposal in response to this RFP.

3.1.2 Not Used

3.2 Submittal Format Requirements

- 3.2.1** All submittals shall comply with the following format requirements:

- 3.2.2** Organized in accordance with the RFP.

- 3.2.3** When printed, shall be limited to the page limitation set forth in the instructions for each section.

- 3.2.3.1** The only documentation that is not included in the page count is the following:

- a.** Cover Letter
- b.** Attachments (provided that each Attachment meet the page count set forth in the requirement for the Attachment)
- c.** Table of contents or tabs will not be counted against the page count as long as these items are used exclusively for organization and contain no substantive written or graphic content.

- 3.2.3.2** In the event that the page limit is exceeded, the Owner, at its sole discretion, reserves the right to remove pages from the sections of any non-conforming submittals to bring each non-conforming submittal within the page count requirement.

- 3.2.3.3** A "page" shall be defined as one single-sided piece of paper that has words, charts, tables, pictures, or graphics. Pages shall be 8.5 x 11 inches, with the exception of 5 pages, which may be presented in 11 x 17-inch format; however, larger pages may only contain graphics and/or designs and may not be used for an Offeror's narrative.

- 3.2.3.4** The font on any portion of the submittal, including graphics, should be no smaller than 10 point.

3.3 Cover Letter

Offerors must include a cover letter that includes the following: (1) name, address, telephone number, and e-mail address for each Proposed Design-Build Team Member that has been added to the Proposed Design-Build Team since submission of the SOQ and (2) any requested changes to the Proposed Design-Build Team since submission of the SOQ. For any changes to the Proposed Design-Build Team included in the Offerors SOQ, Offerors should include an explanation justifying the changes to the Proposed Design-Build Team. The cover

letter shall be a maximum of two (2) pages.

3.4. Technical Proposal

The Technical Proposal may not be longer than 20 pages. Offerors should focus their discussions in the Technical Proposal on their approach to the Project and are encouraged to include and reference insights gained from the review of the Owner's Program and/or Offeror's prior completed similar projects.

3.4.1 Overall Management Approach

3.4.1.1 Describe the Offeror's overall management approach to the Project. In responding to this evaluation factor, Offerors should address the following:

- a.** What strategies will the Proposed Design-Build Team employ to achieve a thorough and clear understanding of the Owner's goals and objectives?
- b.** Based on the information provided in the RFQ and RFP, what is the Proposed Design-Build Team's current understanding of the goals and objectives of this Project?
- c.** Identify the key challenges to the Project, and for each challenge identified,
 - Propose a strategy to mitigate the potential negative impacts of the challenge.
 - Identify any unique approaches, strengths, and/or different resources (including specific Key Team Members) that will assist the Proposed Design-Build Team to implement the strategy and assist the Owner in achieving its goals.

3.4.1.2 Subcontractor Procurement Approach

The Owner recognizes the importance of the entire design-build team, including specialty design-build subcontractors. For those subcontractors and subconsultants not proposed as part of the Design-Build Team:

- a.** Describe the Design-Build Team's overall approach to subcontractor and consultant procurement for the Project. Attention is directed to Section 2.7.3 of the General Conditions, which requires compliance with Public Contract Code (PCC) 22166 in the selection of subcontractors.
- b.** Identify potential challenges in the selection of subcontractors and subconsultants for the Project and how the Design-Build Team will address those challenges.
- c.** If applicable, describe in detail the Design-Build Team's

approach to early subcontractor involvement, including proposed design-build and design-assist subcontractors, and identify which scopes of Work are candidates for design-build or design-assist subcontracts.

3.4.1.3 Quality Assurance/Quality Control ("QA/QC"). Provide the following information regarding the Proposed Design-Build Team's approach on QA/QC. Include the following information:

- a. The overall approach to both design and construction QA/QC;
- b. The Proposed Design-Build Team's processes and tools to facilitate QA/QC; and
- c. The reporting and functional relationship(s) between the Quality Management personnel and the Proposed Design-Build Team as a whole.

3.4.1.4 Describe the Design-Build Team's commitment to safety and what innovations the Team will bring to the Project to enhance safety.

3.4.1.5 The information provided in response to this Section (**Overall Management Approach**) of the RFP will be scored based on the following:

- a. The Proposed Design-Build Team's understanding of the delivery method;
- b. The degree to which the Proposed Design-Build Team understands the Owner's goals and objectives with respect to the Project; and
- c. The strength of the Proposed Design-Build Team's management plan for the Project, including not only the specific topics and specialized components outlined in the RFP but also any other component or element that the Proposed Design-Build Team deems essential to the success of the Project.

3.4.2 Project Controls, Cost Tracking

3.4.2.1 Describe the Design-Builder's processes and tools for monitoring, reporting, and managing cost, including but not limited to:

- a. **Not Used**
- b. Scope, cost, and schedule baseline development and management/change control processes and the participation and interaction among the scheduling and estimating teams, Project, design, construction, and operations management teams to execute these processes.

- c. Risk management processes and how quantified risk cost and schedule values are factored into the cost and schedule baseline, projected cost and schedule performance, and cash flow reporting.
- d. Cash flow reporting processes and basis for monthly cash flow estimated values.
- e. Document control system integration with work breakdown structure and responsibility assignment matrix or organizational structure.

3.4.2.2 Describe the primary challenges with respect to project controls and how will those challenges will be met.

3.4.2.3 Not Used

3.4.2.4 The information provided in response to this Section (**Project Controls, Cost Tracking**) of the RFP will be evaluated based on the following considerations:

- a. The Proposed Design-Build Team's plan to collaborate in the development and communication of ~~budget~~, costs, and schedule to the Owner; and
- b. What resources the Proposed Design-Build Team will provide for the Project.

3.4.3 Collaboration and Integration

One of the primary goals for the Project is to create a highly functioning, collaborative, and integrated team as early as possible and to incorporate the Owner's staff and consultants as part of that team.

3.4.3.1 Explain the Design-Build Team's approach to creating a collaborative environment for the Project.

3.4.3.2 Describe how the Design-Build Team will engage the Project Stakeholders and incorporate their input into the Project.

3.4.3.3 Provide the Design-Builder's approach to conflict resolution between the Owner and the Design-Builder and among members of the Design-Build Team.

3.4.3.4 The information provided in response to this Section (**Collaboration and Integration**) of the RFP will be evaluated based on the following considerations:

- a. The strength and viability of the Design-Build Team's plan to communicate and collaborate with the Owner, including not only the specific topics on which the Owner has requested discussion but any other topics that the Proposed Design-Build Team deems essential to the success of the Project; and
- b. What the Design-Build Team will bring to the Project and how those different resources will enhance the Project.

3.4.4 Design Development and Management

The Design-Builder is responsible for the 100% complete project construction documents ("CD") and specifications during the design phase prior to the start of any construction. Design-Builder's completed CD package shall be in compliance with the Contract Documents. The package shall be based on and in compliance with the Bridging Documents provided with this RFP, including but not limited to the design development and the Basis of Design("BOD"). For certain elements, the Bridging Documents include comprehensive and specific design and performance requirements to ensure the required performance and design criteria necessary for the Owner operations. Design-Builder shall develop required shop drawings and submittals for those elements for the Owner approval. The inclusion of these items does not deviate the contract from being a Design-Build contract.

- 3.4.4.1 Describe the Design-Build Team's overall approach to Design Excellence, design commitment, design development, and management for the Project. Include a description of the design management process and the communications between the Owner and the Design-Builder during this process.
- 3.4.4.2 Identify the challenges in developing the design for the Project and how the Design-Build Team will address and mitigate those challenges.
- 3.4.4.3 Provide details regarding the tools used in the design process, including Building Information Modeling, and how those tools will assist the Design-Builder in achieving those goals.
- 3.4.4.4 Describe the Proposed Design-Build Team's approach to value engineering for the Project.
- 3.4.4.5 Describe the Proposed Design-Build Team's approach to defining and obtaining design commitment.
- 3.4.4.6 Describe the Proposed Design-Build Team's process for managing quality assurance and quality control during the design process and identify the Key Team Members who will be tasked with the review and coordination of all phases of design documents.
- 3.4.4.7 Describe the Proposed Design-Build Team's approach for managing the permitting process.
- 3.4.4.8 The information provided in response to this Section (**Design Development and Management**) of the RFP will be evaluated based on the following considerations:
 - a. The strength and viability of the Proposed Design-Build Team's design management plan, including not only the specific topics on which the Owner has requested discussion but any other topics that the Proposed Design-

Build Team deems essential to the success of the Project;

- b. The quality of the Proposed Design-Build Team's approach to design excellence for the Project and the ideas and innovations proposed to achieve design excellence; and
- c. What the Proposed Design-Build Team will bring to the Project and how the different resources will enhance the Project.

3.4.5 Project Sequencing and Scheduling

The construction schedule should meet the Owner's estimated completion date, promote efficiency, and have the least amount of impact on the Owner operations and the Project stakeholders. The Owner intends to fully reoccupy the 2nd and 3rd floors of the building as of January 3rd, 2022. The Design-Builder is requested to accommodate this in its work plan and schedule.

3.4.5.1 Describe the Proposed Design-Build Team's overall approach to scheduling and construction sequencing for the Project. In addition to the overall approach, include a description as to how the Design-Build Team will address regulatory and stakeholder approvals for the permitting process.

3.4.5.2 Identify the challenges in scheduling the construction for the Project and how the Design-Build Team will address those challenges.

3.4.5.3 Provide details regarding the tools used in developing optimal sequencing and coordination of the Work and how those tools will assist the Design-Builder in achieving those goals, including but not limited to:

- ~~a. Building Information Modeling; and~~
- b. Administration of the consultants, subconsultants, and subcontractors.

3.4.5.4 Not Used.

3.4.5.5 The information provided in response to this Section (**Project Sequencing and Scheduling**) of the RFP will be evaluated based on the following considerations:

- a. The strength and viability of the Design-Build Team's project sequencing and scheduling plan, including not only the specific topics on which the Owner has requested discussion but any other topics that the Design-Build Team deems essential to the success of the Project; and
- b. What the Design-Build Team will bring to the Project and how the different resources will enhance the Project.

SECTION 4: ATTACHMENTS TO RFP :

Attachment A:	Owner's Program (Scope of Work)
Attachment B:	Proposed Agreement
Attachment C:	General Conditions
Attachment D:	Bridging Documents
Attachment E:	Covenants, Conditions & Restrictions– LAUS West Campus (CC&Rs)
Attachment F:	Evaluation Criteria
Attachment G:	Price Proposal Form

Attachment A

Owner's Program (Scope of Work)

Attachment A -

The Owner's Program (Scope of Work) for "Phase 1" Project.

The description below is a brief overview of the project background and the Scope of Work for the Phase-1 CIP Project. Details of the program are shown and/or described in the documents listed after this brief Scope of Work overview and included as part of Attachment D. The building is a 3-story structure constructed in 2003/2004 for office building use. The total building area is approximately 50,800 gross square feet (GSF) that includes an additional 2,700 GSF of outdoor terrace space located on the 3rd floor. The first floor contains a Multi-Purpose Room (MPR), four meeting rooms, and a childcare center (tenant leased space) with an outdoor playground. The second and third floors contain offices and cubicles. The Project includes building infrastructure upgrades consisting of mechanical system upgrades with rooftop equipment, electrical power and lighting, plumbing system, and new low voltage system. Specifically, Phase 1 project includes, but is not limited to, the following main items:

1. Roofing Replacement and Thermal and Moisture protection
2. Building Envelope Repair including window repair
3. COVID Related Building Re-entry
 - 3.a Plastic Shields
 - 3.b Restroom Plumbing Fixture Automation and plumbing works
 - 3.c Restroom Vanity Counters and plumbing works
 - 3.d Automated Drinking Fountains and plumbing works
 - 3.e Door Automation and related works and hardware
4. HVAC Replacement & Upgrade (including MERV-16 filters) , related connecting ducting and control system, and mechanical works.
5. Solar Panels (with structural supports) and related electrical work to tie into the existing electrical panel and meter.
6. Emergency Power Generation & Power Distribution
7. First Floor Multipurpose Conference (MPR) Room and adjacent 'Commissioner's Conference Room AV (Audio Visual) upgrades : Rough-ins, cabling works, all related infrastructure works as needed including equipment, devices, screens, accessories, etc. as needed to finish and operate are included in this RFP complete – no exclusions)
8. IT Server Room -Infrastructural upgrade including cooling units, emergency power.
9. Network Redesign and IT Hardware Upgrade (Please see "Item 9 – Exhibit A" attached hereto for more information):
 - 9.a Rough-ins, cabling works, all related infrastructure works as needed, and coordination with a third party vendor selected by Owner, who will "Supply and Install" IT hardware equipment, are included and required in this RFP.
 - 9.b Network and IT Hardware equipment of this item –"Supply and Install" are excluded (Not required as part of this RFP).
10. Fire suppression system (dry and water delayed) for IT Server room (3rd floor IT room only)
11. Exterior improvements (e.g., new generator room and trash enclosure).

Item 9 In Scope Of Work - Exhibit A

NETWORK REDESIGN AND IT HARDWARE UPGRADE:

Project Description:

First5LA's Information Technology Department is proposing to replace existing network switching along with vertical cables/fibers between the switches on each of the three floors.

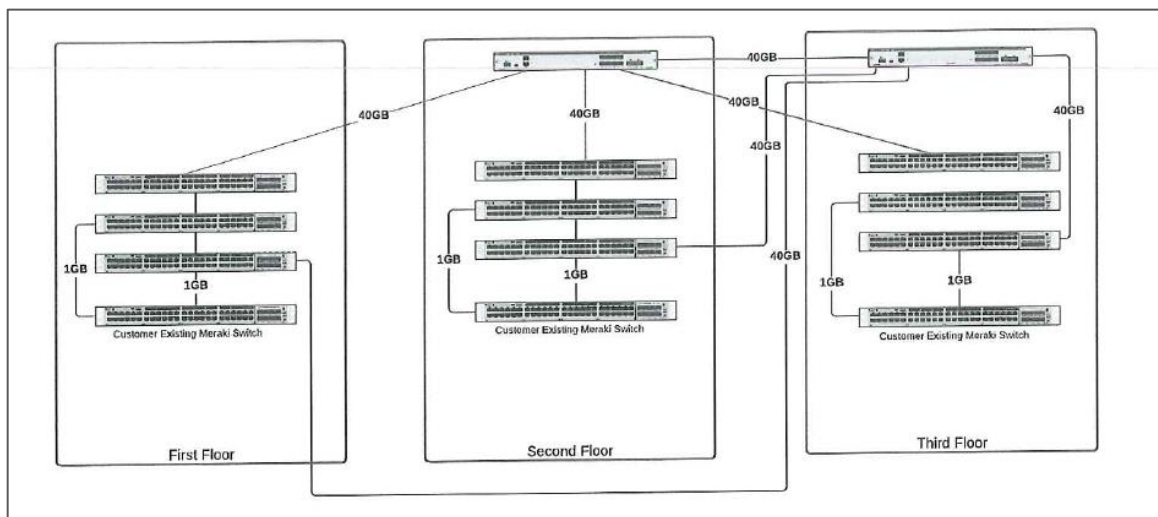
The project involves Rough-ins, cabling work needed to connect switches between floors. The project also calls for hardware procurement and installation.

Based on the assessment and recommendations, First5LA (Owner) will procure and retain a CISCO certified vendor for final installation of network hardware.

Rough-ins, cabling works, all related infrastructure works as needed and coordination with the Owner selected third party CISCO certified vendor will be the responsibility of the Design Builder.

Conceptual Network Switching Solution:

Shows conceptual network solution with vertical cabling/fiber requirements between the switches on each of the three floors.



Attachment B

Proposed Agreement

Standard Form of Agreement Between First 5 LA and Design-Builder – Lump Sum

Document No. 525

Second Edition, 2010

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Washington, D.C.



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Standard Form of Agreement Between Owner and Design-Builder - Lump Sum

*This document has important legal consequences. Consultation with
an attorney is recommended with respect to its completion or modification.*

This **AGREEMENT** is made as of the _____ day of _____
in the year of 2021, by and between the following parties, for services in connection with the Project
identified below.

OWNER:

Los Angeles County Children and Families First – Proposition 10 Commission (“Owner”)
750 N. Alameda Street
Los Angeles, CA 90012

DESIGN-BUILDER:

(Name and address)

PROJECT:

First 5 LA Capital Improvement Project – Phase 1 for its building at 750 N. Alameda Street,
Los Angeles, CA 90012.

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree
as set forth herein.

Article 1

Scope of Work

- 1.1** Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.
- 1.2** Duty to Cooperate. Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Agreement.
- 1.3** Definitions. Terms, words and phrases used in this Agreement shall have the meanings given them in the General Conditions of Contract.
- 1.4** Design Services. Design-Builder shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering, and other design professional services required by this Agreement. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional.

Article 2

Contract Documents

- 2.1** The Contract Documents are comprised of the following:
 - 2.1.1** All written modifications, amendments, minor changes and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) ("General Conditions of Contract");
 - 2.1.2** The Basis of Design Documents, including the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any, contained in the Design-Builder's Proposal, which shall specifically identify any and all deviations from Owner's Project Criteria;
 - 2.1.3** This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder (List for example, performance standard requirements, performance incentive requirements, markup exhibits, allowances, or unit prices);
 - Exhibit 1 – Insurance Exhibit
 - Exhibit 2 – Design-Builder's Price Proposal Sheets, dated
 - Exhibit 3 – Design-Builder's Required Forms, dated
 - Exhibit 4 – California Labor Law Requirements
 - Exhibit 5 – Form of Labor And Material Bond
 - Exhibit 6 – Form of Performance Bond

2.1.4 The General Conditions of Contract; and

2.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. Conflicts existing within Section 2.1.2 shall be resolved by giving precedence first to the Deviation List, if any, then the Owner's Project Criteria, and then the Design-Builder's Proposal.

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications; and (b) Design-Builder shall be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification. The Design-Builder shall use its best efforts to identify such issues during the preparation of its proposal, and seek clarification from the Owner before submitting its proposal.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

4.2 ~~Owner's Limited License Upon Project Completion and Payment in Full to Design-Builder.~~ ~~Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the~~

involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.

~~*[At the parties' option, one of the following may be used in lieu of Section 4.2]:*~~

☐ Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder: (a) grants Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project; and (b) transfers all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in that portion of the Work Product that consists of architectural and other design elements and specifications that are unique to the Project. The parties shall specifically designate those portions of the Work Product for which ownership in the Work Product shall be transferred. Such grant and transfer are conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.

or

☒ Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder transfers to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product. Such transfer is conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligations to provide the indemnity set forth in Section 4.5 below.

4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

4.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below; ~~and~~

4.3.2 Owner agrees to pay Design-Builder the additional sum of _____ Dollars (\$ _____) as compensation for the right to use the Work Product to complete the Project and subsequently use the work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

4.4 Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

4.5 Owner's Indemnification for Use of Work Product. If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances

identified in this Article 4, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than _____ (_____) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

~~*[At the parties' option, the following supplemental language may be inserted at the end of Section 5.2.1, if the Project is subject to a Temporary Certificate of Occupancy]*~~

~~☐ The parties agree that the definition for Substantial Completion set forth in Section 1.2.18 of the General Conditions of Contract is hereby modified to read as follows:~~

~~"Substantial Completion is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes, provided, however, that Substantial Completion shall be deemed to have been achieved no later than the date of issuance of a Temporary Certificate of Occupancy issued by the local building official."~~

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be achieved as follows: *(Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion)*

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract.

5.2.4 All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by _____ (_____) days after the Scheduled Substantial Completion Date (the "LD Date"), Designer-Builder shall pay the Owner One Thousand Dollars (\$1000) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

~~*[The parties may want to consider the following supplemental language within Section 5.4 if they want to assess liquidated damages for failing to meet Final Completion. In this case, the first sentence in Section 5.2.3 should be deleted and replaced with the following language.]*~~

☐ Design-Build under-stands that if Final Completion is not achieved within _____ days of the Substantial Completion Date, the Owner will suffer damages which are difficult to determine and accurately specify. Design-Build agrees that if Final Completion is not achieved within _____ days of Substantial Completion, Design-Build shall pay to the Owner _____ Dollars (\$ _____), as liquidated damages for each calendar day that Final Completion is delayed beyond the above referenced number of days.

[In lieu of the liquidated damages specified in Section 5.4 or the alternate provided herein, the Parties may decide that the Agreement will provide for actual damages in the event of Project delay, with the Owner being cautioned that there is a waiver of consequential damages under Section 10.5.1 of the General Conditions of Contract. In this case, delete Sections 5.4 and 5.5 and insert the following]

☐ Design-Build and Owner have agreed not to provide for liquidated damages in this Agreement for failure of Design-Build to achieve the Contract Time(s) set forth in this Article 5. Design-Build understands, however, that Owner may suffer actual damages in the event the Contract Time(s) set forth herein are not timely achieved. Owner shall be able to recover such actual damages from Design-Build to the extent it can demonstrate that actual damages have been incurred, are directly related and caused by Design-Build's failure to meet the Contract Time(s) set forth herein, and are not waived by Section 10.5.1 of the General Conditions of Contract. Notwithstanding the foregoing, in no event shall Design-Build's liability for actual damages for delays exceed _____ Dollars (\$ _____).

5.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving the Contract Time(s).

[The Parties may also desire to cap the liquidated damages payable under this Agreement, in which case the following language should be included at the end of Section 5.5.]

☐ The Owner and Design-Build agree that the maximum aggregate liability Design-Build has for any liquidated damages that may be assessed under this Agreement for failure to achieve the Contract Time(s) shall be _____ Dollars (\$ _____).

5.6 Early Completion Bonus. If Substantial Completion is attained on or before _____ (_____) days before the Scheduled Substantial Completion Date (the "Bonus Date"), Owner shall pay Design-Build at the time of Final Payment under Section 7.3 hereof an early completion bonus of _____ Dollars (\$ _____) for each day that Substantial Completion is attained earlier than the Bonus Date. *(If an early completion bonus is applicable to any dates set forth in Section 5.2.2 or 5.2.3 hereof, this Section 5.6 will need to be modified accordingly)*

[The Parties may also desire to cap the early completion bonus payable under Section 5.6, in which case the following language should be included.]

☐ The Owner and Design-Build agree that the maximum aggregate amount that Design-Build shall receive as the early Completion Bonus is _____ Dollars (\$ _____).

5.7 ***[The Parties may also desire to modify Article 8.2.2 of the General Conditions of Contract relative to compensability of delays that would cause the Contract Time(s) to be extended. In such case, the following option can be used.]***

☒ In addition to Design-Build's right to a time extension for those events set forth in Section 8.2.1 of the General Conditions of Contract, Design-Build shall also be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.2.1 of the General Conditions of Contract, provided, however, for Force Majeure Events, Design-Build shall only be entitled to an increase in the Contract Price if said events exceed twenty cumulative days. Said additional compensation shall be limited to:

[Check one box only]

☐ \$ _____ dollars a day for each day work is delayed beyond the Scheduled Substantial Completion Date.

or

☒ the direct costs and expenses Design-Builder can demonstrate it has reasonably and actually incurred as a result of such event.

Article 6

Contract Price

6.1 Contract Price. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of _____ Dollars (\$ _____) ("Contract Price"), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.2 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:

6.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of _____ Five percent (5 %) of the additional costs incurred for that Change Order, plus any other markups set forth at Exhibit _____ hereto.

6.2.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

an amount equal to the sum of: (a) five percent (5%) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth at Exhibit _____ hereto applied to the direct costs of the net reduction.

6.3 Allowance Items and Allowance Values.

6.3.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth hereto.

6.3.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

6.3.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

6.3.4 The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general

conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

~~***[In the alternative, the parties may want to delete Section 6.3.4 and add the following provision.]***~~

~~☐ In the event the actual direct cost of labor, materials, equipment, transportation, taxes and insurance associated with an Allowance Item is _____ percent (____%) greater than or less than the Allowance Value for such Allowance Item, Design-Builder and Owner agree that Design-Builder's right to Fee and markup shall be adjusted in accordance with Section 6.2.~~

6.3.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.3.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

6.4 Performance Incentives.

~~**6.4.1** Owner and Design-Builder have agreed to the performance incentive arrangements set forth in Exhibit _____.~~

~~*[The parties are encouraged to discuss and agree upon performance incentives that will influence project success. These incentives may consist of Award Fees, incentives for safety, personnel retention, client satisfaction and similar items.]*~~

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the First (1st) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within fourteen (14) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.2 Retainage on Progress Payments.

7.2.1 Owner will retain five percent (5%) of each Application for Payment. ~~provided, however, that~~ When fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

~~**7.2.2** Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract or Section 7.3 of this Agreement.~~

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within ten (10) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract. Notwithstanding anything to the contrary in the Contract Documents, Owner shall withhold five percent (5%) of the Contract Price from the final payment until at least 35 days after recordation of the Notice of Completion, but not longer than the period permitted by Public Contract Code Section 7107.

7.4 Interest. ~~Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing thirty (30) days after payment is due at the rate of _____ percent (_____%) per month until paid.~~

7.5 Record Keeping and Finance Controls. With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

Article 8

Termination for Convenience

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement.

In such event, Owner shall pay Design-Builder for the following:

8.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;

8.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

8.1.3 *(Choose one of the following:)*

☒ The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above.

or

☐ Overhead and profit in the amount of _____ percent (_____%) on the sum of items 8.1.1 and 8.1.2 above.

8.2 In addition to the amounts set forth in Section 8.1 above, Design-Builder shall be entitled to receive one of the following as applicable:

8.2.1 If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid zero percent (0%) of the remaining balance of the Contract Price.

8.2.2 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid zero percent (0%) of the remaining balance of the Contract Price.

8.3 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Carl Gayden, Senior Director of Workplace Management
750 N. Alameda Street, Los Angeles, CA 90012
cgayden@first5lal.org, (213) 248.9554

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Carl Gayden, Senior Director of Workplace Management
750 N. Alameda Street, Los Angeles, CA 90012
cgayden@first5lal.org, (213) 248.9554

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security, in the form attached to this Agreement:

Performance Bond.

☒ Required ☐ Not Required

Payment Bond.

☒ Required ☐ Not Required

Other Performance Security.

☐ Required ☒ Not Required

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows: *(Insert any additional provisions)*

11.1.1 Prevailing Wages. This Agreement calls for services that, in whole or in part, constitute “public works” as defined in the California Labor Code. As to those services that are “public works”, Design-Builder shall comply in all respects with all applicable provisions of the California Labor Code and Title 8 of the California Code of Regulations, including those set forth in **Exhibit 4** hereto.

11.1.3 Skilled and Trained Workforce. Design-Builder and its subcontractors at every tier will use a skilled and trained workforce to perform all Work that falls within an apprenticeable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1 of the Public Contract Code.

11.1.4 PUBLIC CONTRACT CODE. This Agreement is subject to all applicable provisions of the California Public Contract Code, including but not limited Sections 6109 (ineligible contractors and subcontractors) and 9201 (authority to settle claims).

11.1.5 REQUIREMENT TO MITIGATE THE SPREAD OF COVID-19. The Design-Builder and all subcontractors for the Work shall comply with all applicable Federal, State, Los Angeles County, and City of Los Angeles statutes, regulations, orders, and ordinances. This requirement specifically

includes, without limitation, compliance with the “Safety and Health Guidance COVID-19 Infection Prevention in Construction” issued by the California Department of Industrial Relations, Division of Occupational Safety and Health and Safety on October 27, 2020 and as may be amended from time to time by the Department, and the “Reopening Safer at Work and in the Community for Control of COVID-19 Revised Order” issued by the Los Angeles County Health Officer on January 29, 2021, as may be amended from time to time. Prior to the pre-construction meeting, the Design-Builder shall submit to Owner a “COVID-19 Mitigation Program” implementing these requirements and shall post the COVID-19 Mitigation Program on the project site in a manner designated by the Owner’s Representative. The failure of employees or workers of the Design-Builder and all subcontractors on the Work to comply with these requirements may result in Owner ordering Design-Builder in writing to stop and suspend the Work until the failure has been remedied to the satisfaction of the Owner’s Representative. Design-Builder acknowledges that, notwithstanding Section 11.1 of the General Conditions or any other provision of the Contract Documents, in the event that Owner suspends the Work as a result of such failure by Design-Builder or one of its subcontractors to comply with these requirements, Owner is not responsible for the delay, and the Design-Builder is not entitled to any adjustment of Contract Price or Contract Time pursuant to Article 9 or Section 11.1.2 of the General Conditions. The Design-Builder shall also pay to Owner the costs and expenses incurred by Owner resulting from the failure of employees of the Design-Builder and all subcontractors on the Work to comply with these requirements including, but not limited to, the salaries and benefits (and workers compensation benefits and expenses) for Owner’s employees who are unable to work due to exposure to COVID-19 from employees or workers of Design-Builder and its subcontractors.

11.1.6 COVID-19 PANDEMIC- NO EXTENSION OF TIME OR PRICE ADJUSTMENT. Notwithstanding Sections 1.2.8 and 8.2 of the General Conditions of Contract, the parties agree that no extension of time or adjustment in the Contract Price will be granted for any event, including pandemics, leading to the issuance of a “stay at home” or similar kind of order by any local, State, or federal governmental authority, if the Work has been deemed, either by emergency order or proclamation, or operation of law, to be an essential service that is exempt from such stay at home or similar order.

11.2 Independent Contractor

11.2.1 It is understood and agreed by all the parties hereto that Contractor is an independent contractor and that no relationship of employer-employee exists between Owner and Design-Builder. Neither Design-Builder nor Design-Builder’s assigned personnel shall be entitled to any benefits payable to employees of Owner. Design-Builder hereby indemnifies and holds Owner harmless from any and all claims that may be made against Owner, based upon any contention by any third party that an employer-employee relationship exists by reason of this Contract or any services provided pursuant to this Contract.

11.2.2 It is further understood and agreed by all the parties hereto that neither Design-Builder nor Design-Builder’s assigned personnel shall have any right to act on behalf of Owner in any capacity whatsoever as an agent or to bind Owner to any obligation whatsoever.

11.2.3 It is further understood and agreed by all the parties hereto that Design-Builder must issue any and all forms required by Federal and State laws for income and employment tax purposes, including, but not limited to W-2 and 941 forms, for all of Design-Builder’s assigned personnel.

11.2.4 The following are Design-Builder’s key personnel and their associated roles in the Work to be provided:

Name

Role

Any propose/substitution or replacement by Design-Builder of Design-Builder’s key personnel shall ensure that such person possesses the same or better expertise and experience than the key personnel being substituted or replaced. Owner reserves the right to interview such person to ascertain and verify if such proposed substitution or replacement does possess such expertise and experience.

the expertise of Design-Builder's key personnel described above. Design-Builder shall no reassign key personnel or assign other personnel to key personnel roles until Design-Builder obtains prior written approval from Owner.

☒ Notwithstanding Section 2.3.1 of the General Conditions of Contract, if the parties agree upon specific performance standards in the Basis of Design Documents, the design professional services shall be performed to achieve such standards.

~~[In lieu of Sections 10.3.1 through 10.3.3 of the General Conditions of Contract, the parties may want to delete such sections and include the following alternative dispute resolution clause.]~~

☒ Any claims, disputes, or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 of the General Conditions of Contract shall be resolved in a court of competent jurisdiction in the state in which the Project is located.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

DESIGN-BUILDER:

(Name of Owner)

(Name of Design-Builder)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____

Caution: You should sign an original DBIA document which has this caution printed in blue. An original assures that changes will not be obscured as may occur when documents are reproduced.

EXHIBIT 1

INSURANCE EXHIBIT

INSURANCE

Design-Builder shall procure and maintain for the duration of this contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Design-Builder, his agents, representatives, employees or subcontractors. Agreement will not be considered by Owner until all insurance has been obtained that is required under this section and such insurance has been verified by Owner, nor shall Design-Builder allow any Subcontractor to commence work on its contract until all similar insurance required of the Subcontractor has been so obtained and approved.

Minimum Scope and Limits of Insurance

Design-Builder shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

- Commercial General Liability Insurance with a minimum limit of Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Four Million Dollars (\$4,000,000) per project or location. If Design-Builder is a limited liability company, the commercial general liability coverage shall be amended so that Design-Builder and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.
- Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage. If Design-Builder does not use any owned, non-owned or hired vehicles in the performance of services under this Agreement, Design-Builder shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under this Exhibit.
- Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. If Design-Builder has no employees while performing services under this Agreement, workers' compensation policy is not required, but Design-Builder shall provide an executed declaration that it has no employees.
- Professional Liability Insurance [or Errors and Omissions Insurance] with minimum limits of Two Million Dollars (\$2,000,000) per claim and in aggregate

Acceptability of Insurers

The insurance policies required under this Exhibit shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self-insurance shall not be considered to comply with the insurance requirements under this Section.

Additional Insured

The commercial general, automobile liability, and professional liability insurance policies shall contain an endorsement naming First 5 LA, its officers, officials, employees, agents and volunteers as additional insureds for all activities arising from this contract.

Primary and Non-Contributing

The insurance policies required under this Section shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to Owner. Any insurance or self-insurance maintained by Owner, its officers, officials, employees, agents or volunteers, shall be in excess of Design-Builder's insurance and shall not contribute with it.

Design-Builder's Waiver of Subrogation

The insurance policies required under this Section shall not prohibit Design-Builder and Design-Builder's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Design-Builder hereby waives all rights of subrogation against Owner.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be approved by Owner. At Owner's option, Design-Builder shall either reduce or eliminate the deductibles or self-insured retentions with respect to Owner, or Design-Builder shall procure a bond guaranteeing payment of losses and expenses.

Cancellations or Modifications to Coverage

Design-Builder shall not cancel, reduce or otherwise modify the insurance policies required by this Section during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail thirty (30) calendar days' prior written notice to Owner. If any insurance policy required under this Section is canceled or reduced in coverage or limits, Design-Builder shall, within two (2) business days of notice from the insurer, phone, fax or notify Owner via certified mail, return receipt requested, of the cancellation of or changes to the policy.

Owner Remedy for Noncompliance

If Design-Builder does not maintain the policies of insurance required under this Section in full force and effect during the term of this Agreement, or in the event any of Design-Builder's policies do not comply with the requirements under this Section, Owner may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, Owner may, but has no duty to, take out the necessary insurance and pay, at Design-Builder's expense, the premium thereon. Design-Builder shall promptly reimburse Owner for any premium paid by Owner or Owner may withhold amounts sufficient to pay the premiums from payments due to Design-Builder.

Evidence of Insurance

A minimum of ten (10) calendar days prior to Owner consideration of award of the contract, Design-Builder shall furnish a certificate of insurance and all original endorsements evidencing and effecting the coverages required under this Section for review by Owner's Risk Manager. The certificate of insurance and all original endorsements evidencing and effecting the coverages required under

this Section must receive approval from Owner's Risk Manager a minimum of five (5) calendar days prior to Owner's consideration of award of the contract. The endorsements are subject to Owner's approval. Design-Builder may provide complete, certified copies of all required insurance policies to Owner. Design-Builder shall maintain current endorsements on file with Owner's Risk Manager. Design-Builder shall provide proof to Owner's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Design-Builder shall furnish such proof at least two (2) weeks prior to the expiration of the coverages.

Indemnity Requirements not Limiting

Procurement of insurance by Design-Builder shall not be construed as a limitation of Design-Builder's liability or as full performance of Design-Builder's duty to indemnify under Article 5 of the General Conditions or any other provision of this Agreement.

Subcontractor Insurance Requirements

Design-Builder shall require each of its subcontractors that perform services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section.

BUILDER'S RISK INSURANCE

Within ten (10) calendar days following Owner award of the Design-Build Agreement for First 5 LA's Phase 1 Renovation Project, Design-Builder must provide adequate/sufficient Builder's Risk Insurance to protect the indemnified parties referenced under "Additional Insured" in this Exhibit from a catastrophic event should one occur. Design-Builder's policy must be submitted to the Owner for review and must be deemed acceptable by Owner. Owner reserves the right to require modifications should they be necessary to provide the protection being requested by Owner.

EXHIBIT 2

DESIGN-BUILDERS'S PRICE PROPOSAL SHEETS, dated

EXHIBIT 3

DESIGN-BUILDER'S REQUIRED FORMS, dated

EXHIBIT 4

TERMS FOR COMPLIANCE WITH CALIFORNIA LABOR LAW REQUIREMENTS

1. This Agreement calls for services that, in whole or in part, constitute "public works" as defined in Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code ("Chapter 1"). Further, Design-Builder acknowledges that this Agreement is subject to (a) Chapter 1 and (b) the rules and regulations established by the Department of Industrial Relations ("DIR") implementing such statutes. Therefore, as to those Services that are "public works", Design-Builder shall comply with and be bound by all the terms, rules and regulations described in 1(a) and 1(b) as though set forth in full herein.

2. California law requires the inclusion of specific Labor Code provisions in certain contracts. The inclusion of such specific provisions below, whether or not required by California law, does not alter the meaning or scope of Section 1 above.

3. Design-Builder shall be registered with the Department of Industrial Relations in accordance with California Labor Code Section 1725.5, and has provided proof of registration to Owner prior to the Effective Date of this Agreement. Design-Builder shall not perform work with any subcontractor that is not registered with DIR pursuant to Section 1725.5. Design-Builder and subcontractors shall maintain their registration with the DIR in effect throughout the duration of this Agreement. If the Design-Builder or any subcontractor ceases to be registered with DIR at any time during the duration of the project, Design-Builder shall immediately notify Owner.

4. Pursuant to Labor Code Section 1771.4, Design-Builder's Services are subject to compliance monitoring and enforcement by DIR. Design-Builder shall post job site notices, as prescribed by DIR regulations.

5. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Agreement are on file at with Owner and will be made available to any interested party on request. Design-Builder acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Design-Builder shall post such rates at each job site covered by this Agreement.

6. Design-Builder shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Design-Builder shall, as a penalty to Owner, forfeit \$200.00 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Design-Builder or by any subcontractor.

7. Design-Builder shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Design-Builder and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform Owner of the location of the records. Pursuant to Labor Code Section 1771.4, Design-Builder and each subcontractor shall furnish such records to the Labor Commissioner, at least monthly, in the form specified by the Labor Commissioner.

8. Design-Builder shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Administrative Code Title 8, Section 200 et seq. concerning the employment of apprentices on public works projects. Design-Builder shall be responsible for compliance

with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Design-Builder shall provide Owner with a copy of the information submitted to any applicable apprenticeship program. Within 60 days after concluding work pursuant to this Agreement, Design-Builder and each of its subcontractors shall submit to Owner a verified statement of the journeyman and apprentice hours performed under this Agreement.

9. The Design-Builder shall not perform Work with any Subcontractor that has been debarred or suspended pursuant to California Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. The Design-Builder and Subcontractors shall not be debarred or suspended throughout the duration of this Contract pursuant to Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. If the Design-Builder or any subcontractor becomes debarred or suspended during the duration of the project, the Design-Builder shall immediately notify Owner.

10. Design-Builder acknowledges that eight hours labor constitutes a legal day's work. Design-Builder shall comply with and be bound by Labor Code Section 1810. Design-Builder shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Design-Builder shall, as a penalty to Owner, forfeit \$25.00 for each worker employed in the performance of this Agreement by the Design-Builder or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Design-Builder in excess of eight hours per day, and 40 hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay.

11. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Design-Builder hereby certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

12. For every subcontractor who will perform work on the project, Design-Builder shall be responsible for such subcontractor's compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and Design-Builder shall include in the written contract between it and each subcontractor a copy of those statutory provisions and a requirement that each subcontractor shall comply with those statutory provisions. Design-Builder shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a periodic review of the certified payroll records of the subcontractor and upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Design-Builder shall diligently take corrective action to halt or rectify any failure.

13. To the maximum extent permitted by law, Design-Builder shall indemnify, hold harmless and defend (at Design-Builder's expense with counsel reasonably acceptable to Owner) Owner, its officials, officers, employees, agents and independent contractors serving in the role of Owner officials, and volunteers from and against any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including Design-Builder, its subcontractors, and each of their officials, officers, employees and agents) in connection with any work undertaken or in connection with the Agreement, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses. All duties of Design-Builder under this Section shall survive the termination of the Agreement.

EXHIBIT 5

LABOR AND MATERIALS BOND

for

FIRST 5 LA CAPITAL IMPROVEMENT PROJECT

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, WHEREAS, the Los Angeles County Children and Families First - Proposition 10 Commission ("Owner") has awarded to:

NAME AND ADDRESS OF CONTRACTOR

(hereinafter called "Contractor"), a contract for the work described as follows: **Capital Improvement Project Phase 1** (hereinafter called "Contract"), and

WHEREAS, Contractor is required by the provisions of the Contract to furnish a bond in connection with the Contract, as hereinafter set forth.

NOW, THEREFORE, WE, the undersigned Contractor, as Principal, and

NAME AND ADDRESS OF SURETY

are duly authorized to transact business under the laws of the State of California, as Surety (hereinafter called "Surety"), are held and firmly bound unto Owner, and all contractors, subcontractors, laborers, material men, and other persons employed in the performance of the Contract and referred to in Section 9100 of the Civil Code, in the penal sum of _____ **DOLLARS AND** _____ **CENTS (\$_____)**, lawful money of the United States, said sum being not less than 100% of the estimated amount of the Contract Price payable by the Owner under the terms of the Contract, for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that, if Contractor, or its heirs, executors, administrators, successors, and assigns, or subcontractors, shall fail to pay for any materials, provisions, provender or other supplies, or teams, implements or machinery, used in, upon, for, or about the performance of the work under the Contract to be done, or for any work or labor thereon of any kind or for amounts due under Section 13020 of the Unemployment Insurance Code with respect to such work or labor, as required by Section 9550 et seq. of the Civil Code, and provided that the claimant shall have complied with the provisions of the Civil Code, the Surety shall pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void.

As a part of the obligation secured hereby and in addition to the face amount specified, costs and reasonable expenses and fees shall be included, including reasonable attorneys' fees incurred by the Owner in successfully enforcing this obligation, all to be taxed as costs and included in any judgment rendered.

This bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Section 9100 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond, and shall also cover payment for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor or its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract, or to the work to be performed thereunder, or to the specifications accompanying the same, shall in any way affect its obligations on this bond. The Surety hereby waives notice of any such change, extension of time, alteration, or addition to the terms of the Contract, or to the work to be performed thereunder, or to the specifications accompanying the same.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on this _____ day of _____, 2021.

(Seal)

SURETY:

PRINCIPAL:

By: _____

By: _____

(Name)

(Name)

(Title)

(Title)

By: _____

(Name)

(Title)

NOTE: Signatures of two corporate officers required for corporations. A Notarial Acknowledgement or Jurat must be attached for each of the Surety and Principal Signatures.

EXHIBIT 6

BOND NO. _____

PERFORMANCE BOND

for

FIRST 5 LA CAPITAL IMPROVEMENT PROJECT

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, WHEREAS, the Los Angeles County Children and Families First - Proposition 10 Commission ("Owner"), entered into a Contract on this _____ day of _____, 20____, hereinafter called "Contract," with

NAME AND ADDRESS OF CONTRACTOR

(hereinafter called "Principal"), for the work described as follows: **Capital Improvement Project – Phase 1**; and

WHEREAS, the Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract.

NOW, THEREFORE, WE, the Principal, and

NAME AND ADDRESS OF SURETY

are duly authorized to transact business under the laws of the State of California, as Surety (hereinafter called "Surety"), are held and firmly bound unto the Owner in the penal sum of _____ **DOLLARS AND** _____ **CENTS** (\$_____), lawful money of the United States, for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that, if the Principal, its heirs, executors, administrators, successors, or assigns, shall in all things stand to, abide by, and well and truly keep and perform the covenants, conditions and agreements in Contract, including but not limited to Section 2.10 of the General Conditions to the Contract (correction of defective work), and in any alteration thereof made as therein provided, on its part to be kept and performed, at the time and in the manner therein specified, in all respects according to their true intent and meaning, and shall indemnify and save harmless the Owner, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue.

As a part of the obligation secured hereby and in addition to the face amount specified, costs and reasonable expenses and fees shall be included, including reasonable attorneys' fees incurred by the Owner in successfully enforcing this obligation, all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract, or to the work to be performed thereunder, or to the specifications accompanying the

same, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract, or to the work, or to the Specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on this _____ **day of** _____, **20**_____.

(Seal)

SURETY:

By: _____

(Name)

(Title)

PRINCIPAL:

By: _____

(Name)

(Title)

By: _____

(Name)

(Title)

NOTE: Signatures of two corporate officers required for corporations. A Notarial Acknowledgement or Jurat must be attached for each of the Surety and Principal Signatures.

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Attachment C

General Conditions

**Design-Build Services for the
First 5 LA
Capital Improvement Building Renovation Project
– Phase 1
General Conditions**

General Conditions - CIP 01

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Article 1

General

1.1 Mutual Obligations

1.1.1 *Owner and Design-Builder* commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder - Lump Sum* (2010 Edition) ~~or DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition).~~

1.2.2 *Basis of Design Documents* are as follows: ~~For DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*, the Basis of Design Documents are those documents specifically listed in, as applicable, the GMP Exhibit or GMP Proposal as being the "Basis of Design Documents."~~ For DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder - Lump Sum*, the Basis of Design Documents are the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any.

1.2.3 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.4 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.5 *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

1.2.6 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant, but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

1.2.7 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

1.2.8 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

1.2.9 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition).

1.2.10 ~~*GMP Exhibit* means that exhibit attached to DBIA Document No. 530, *Standard Form of*~~

~~Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price~~, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

~~1.2.11 GMP Proposal~~ means that proposal developed by Design-Builder in accordance with Section 6.6 of DBIA Document No. 530, ~~Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price~~.

1.2.12 Hazardous Conditions are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.13 Legal Requirements are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.14 Owner's Project Criteria are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, or other sustainable design criteria and other Project-specific technical materials and requirements.

1.2.15 Site is the land or premises on which the Project is located.

1.2.16 Subcontractor is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

1.2.17 Sub-Subcontractor is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

1.2.18 Substantial Completion or **Substantially Complete** means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.19 Work is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether

discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; ~~(iv) status of the contingency account to the extent provided for in the Standard Form of Agreement Between Owner and Design-Builder Cost Plus Fee with an Option for a Guaranteed Maximum Price;~~ and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

2.1.3 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.3 Standard of Care for Design Professional Services.

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

2.4 Design Development Services.

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve

the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements.

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work. ~~or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price.~~ Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits.

2.6.1 ~~Except as identified in an Owner's Permit List attached as an exhibit to the Agreement,~~ Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees necessary for the work and required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project. Pursuant to SECTION 01 45 00 QUALITY CONTROL in the General Requirements, "It is the responsibility of the Design-Builder to provide an independent construction materials testing laboratory accredited by an acceptable laboratory accreditation authority to perform sampling and tests required by this Contract". Design-Builder shall obtain and pay for all testing and inspections services. Material Testing and related Inspections (including Deputy Inspections) fees shall be allocated proportionately among the other prices most closely associated with such costs and included in the proposal price.

2.6.2 ~~Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.~~

2.7 Design-Builder's Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary

supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents, and who are registered with the California Department of Industrial Relations. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder shall comply with Public Contract Code (PCC) 22166 in the selection of subcontractors.

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Design-Builder's Responsibility for Project Safety.

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal

Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty.

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Defective Work.

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

2.10.3 The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with

Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

3.2 Furnishing of Services and Information.

3.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

~~**3.2.1.1** To the extent available, surveys describing the property, and boundaries; topography and reference points for use during construction, including existing service and utility lines;~~

~~**3.2.1.2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;~~

~~**3.2.1.3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;~~

3.2.1.4 A legal description of the Site;

3.2.1.5 To the extent available, record drawings of any existing structures at the Site; and

~~**3.2.1.6** To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.~~

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information.

~~**3.3.1** At Design-Builder's request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.~~

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the

Contract Documents.

3.4 Owner's Representative.

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.5 Government Approvals and Permits.

~~**3.5.1** Owner Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees necessary to perform the Work, set forth in the Owner's Permit List attached as an exhibit to the Agreement.~~

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors.

3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents. Design-Builder shall allow reasonable access to the Site by other contractors under control of Owner and coordinate the work with the other contractors, in timely manner and as needed, to complete the Project as required per the Contract Documents.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Unforeseen Hazardous Conditions.

4.1.1 If the Design-Builder encounters unforeseen Hazardous Conditions at the Site, Design-Builder shall stop Work immediately in the affected area and duly notify Owner, and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site about such conditions, and cooperate with the Owner in investigating the conditions encountered and implementing the mitigation measures.

4.1.2 Within 5 days, the Design-Builder shall submit in writing the work plan to investigate the conditions encountered to verify the nature and extent of the hazardous conditions for approval of the Owner prior to proceeding with the investigation. The work plan shall include all the labor, material and testing cost of the investigations and the schedule to complete the work.

4.1.3 Upon approval of the work plan and associated costs, the Design-Builder shall perform the investigations and submit to the Owner the findings of the investigation along with the Mitigation Work Plan to remediate any hazardous materials found on the site for the Owner's approval. The Mitigation Work Plan shall include cost of all labor, material, testing and regulatory agency compliance reporting, to the extent required by the Federal, State and Local Laws and regulations.

4.1.4 Upon approval of the Mitigation Work Plan by the Owner, the Design-Builder shall perform the remediation work in accordance with the approved Mitigation Work Plan and provide the Owner all the regulatory paper work as required by the Federal, State and Local Laws and regulations prior to resuming work in the affected area.

4.1.5 Owner will reimburse the Design-Builder cost of performing the investigation and remediation work pursuant to the changer order procedures in Section 9.1 of these General Conditions..

4.1.6 Design-Builder may be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract time of performance of the Design-Builder schedule critical path if impacted due to the work required to remediate unforeseen hazardous conditions.

4.1.7 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

4.1.8 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and its agents (including consultants) from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder may be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

5.1.2 Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.3 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

5.2 Owner's Liability Insurance.

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as Owner shall determine appropriate ~~set forth in the Insurance Exhibit to the Agreement~~ to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Owner's Property Insurance.

5.3.1 Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located property insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Owner shall be the broadest coverage commercially available, and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1.

5.3.2 Not Used.

5.3.3 Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

5.3.4 Any loss covered under Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

5.3.5 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

5.4 Bonds and Other Performance Security.

5.4.1 If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.

5.4.2 All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Unless required by the Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.1.2 The Owner will timely review and approve the schedule of values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment.

6.2 Monthly Progress Payments.

6.2.1 Prior to submittal of the monthly progress payment application, the Design-Builder and Owner shall review a "draft" payment application and review the project completion status. On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Document and/or established at the meeting required by Section 2.1.4 hereof, including a conditional waiver and release on progress payments.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any amount of an approved payment application, that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. ~~All payments due and unpaid shall bear interest at the rate set forth in the Agreement.~~

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion.

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within seven (7) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents)

establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 ~~Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.~~

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment.

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

6.7.2.1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

6.7.2.2 A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

6.7.2.3 Consent of Design-Builder's surety, if any, to final payment;

6.7.2.4 All operating manuals, warranties and other deliverables required by the Contract Documents; and

6.7.2.5 Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.7.2.6 Three full size sets of building plans , including PDF and corresponding CADD files.

6.7.2.7 Information and documents required per Section 01 77 00 of the General Requirements "CLOSEOUT PROCEDURES"

6.7.3 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

6.7.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein, and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

7.2 Not Used.

7.3 Payment Claim Indemnification.

7.3.1 Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's

lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification.

7.4.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.2 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

7.5 Owner's General Indemnification.

7.5.1 Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder's officers, directors, and employees, from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Owner's separate contractors or anyone for whose acts any of them may be liable.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Unforeseen Hazardous Conditions, and Force Majeure Events.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

9.1.1.1 The scope of the change in the Work;

9.1.1.2 The amount of the adjustment to the Contract Price; and

9.1.1.3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.2 Work Change Directives.

9.2.1 A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments.

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

9.4.1.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

9.4.1.2 A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

9.4.1.3 Costs, fees and any other markups set forth in the Agreement; or

9.4.1.4 If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution.

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, the procedures set forth in Section 10.2.4 shall be followed.

10.2.4 All claims arising out of or related to the Contract Documents, the Work or the Project, and the consideration and payment of such claims, are subject to subject to Public Contract Code Section 9204 and Public Contract Code Section 20104 et seq. (Article 1.5), where applicable. Those provisions are hereby incorporated as though fully set forth herein. In the event of any dispute or disagreement that is not resolved in accordance with Section 10.2.2, Design-Builder and Owner shall comply with the procedures in Public Contract Code Section 9204 and Article 1.5 (as applicable), pursuant to the definition of "claim" as defined therein. All such claims are also subject to the Government Claims Act (Government Code Section 810 et seq.). Thus, if any dispute is not resolved pursuant to the procedures in this Section, the Design-Builder or subcontractor must file a claim pursuant to the Government Claims Act before commencing litigation.

10.3 Arbitration.

~~**10.3.1** Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.~~

~~**10.3.2** The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.~~

~~**10.3.3** Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.~~

10.3.4 The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.

10.4 Duty to Continue Performance.

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner. The disputed Work will be categorized as an "unresolved dispute" and payment, if any,

shall be as later determined by mutual agreement or a court of law. The Design-Builder shall keep accurate, detailed records of all disputed Work, claims and other disputed matters.

10.5 CONSEQUENTIAL DAMAGES.

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

11.2 Owner's Right to Perform and Terminate for Cause.

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or

persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

11.3.1.1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

11.3.1.2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause.

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

11.4.1.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

11.4.1.2 Owner's failure to provide Design-Builder with any information, ~~permits~~ or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

11.4.1.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder.

11.5.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

11.5.1.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

11.5.1.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

Article 12

Electronic Data

12.1 Electronic Data.

12.1.1 The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

12.2 Transmission of Electronic Data.

12.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13

Miscellaneous

13.1 Confidential Information.

13.1.1 Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project. The obligations of Owner regarding Confidential Information are subject to the requirements of the California Public Records Act.

13.2 Assignment.

13.2.1 Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

13.3 Successorship.

13.3.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

13.4 Governing Law.

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

13.5 Severability.

13.5.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

13.6 No Waiver.

13.6.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

13.7 Headings.

13.7.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

13.8 Notice.

13.8.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

13.9 Amendments.

13.9.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

Attachment D

Bridging Documents

Attachment E

Covenants, Conditions & Restrictions—LAUS West Campus (CC&Rs)

**Covenants,
Conditions &
Restrictions -
LAUS West
Campus
(South)**

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RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
03/25/05 AT 08:00am

TITLE(S) :



LEAD SHEET

FEE

D.T.T

FEE \$	702-MM
DAF \$	2-
C-20	

660

CODE
20

CODE
19

CODE
9

Assessor's Identification Number (AIN)

To be completed by Examiner OR Title Company in black ink.

Number of AIN's Shown

THIS FORM NOT TO BE DUPLICATED

31057378-X59

3/25/05

2

05 0690591

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO

Catellus Operating Limited Partnership
201 Mission Street, Second Floor
San Francisco, CA 94105
Attention: Christianne C. Chen, Esq.

(Space Above For Recorder's Use)

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
LOS ANGELES UNION STATION
WEST CAMPUS SOUTH**

617173 07/SD
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Description: Los Angeles, CA Document-Year.DocID 2005.690591 Page: 2 of 67
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR LOS ANGELES UNION STATION-WEST CAMPUS SOUTH**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LOS ANGELES UNION STATION - WEST CAMPUS SOUTH ("Declaration") is made this 25 day of March, 2005, by CATELLUS OPERATING LIMITED PARTNERSHIP, a Delaware limited partnership (as successor by merger to Catellus Development Corporation) ("COLP") and Catellus Land and Development Corporation, a Delaware corporation ("CLDC")

RECITALS:

A. As of the date hereof, COLP and CLDC own that certain real property located in the City of Los Angeles, County of Los Angeles, State of California, commonly known as Los Angeles Union Station West Campus South ("West Campus South"), and more particularly described in Exhibit "A-1" attached hereto (the West Campus South is also referred to herein as the Project). The West Campus South is part of the larger project also currently owned by COLP commonly known as Los Angeles Union Station and which is depicted on Exhibit "B" attached hereto ("LAUS"). Any terms used in these Recitals, but not otherwise defined in these Recitals, shall have the meanings as set forth in Article I of this Declaration.

B The "West Campus South" consists of the real property currently containing:

1. The parcel of real property commonly known as Parcel 1 ("Parcel 1") of the Certificate of Compliance recorded as Instrument No. 03-1999720 on July 14, 2003, in the Official Records of Los Angeles County (the "Map") and shown on Exhibit A-2," which is bordered by Alameda Street to the West and the 101 Freeway to the South; and

2. A portion of real property located adjacent to Parcel 1 in the location depicted on Exhibit "A-2" and described as the Driveway Area on Exhibit "A-1" attached hereto (the "Driveway Area"), which is improved with driveway and related improvements.

C. As of the date hereof, "LAUS" consists of that certain project containing the West Campus South, the historical "Los Angeles Union Station" and related parcels and facilities located upon the real property depicted on Exhibit "B" attached hereto and incorporated herein by this reference. The "LAUS" includes the historic "Union Station", related parking areas, transit operations and easements, vehicle and pedestrian walkways and easements, a train yard and any and all appurtenant real property improvements and other rights related thereto

D. COLP wishes to subject the Project, in accordance with a common plan, to certain covenants, conditions and restrictions for the benefit of Declarant. The purpose of the Declaration is to ensure proper development and use of the Project, to protect COLP against any improper or uncomplimentary development and use of the Project which might depreciate the value of the Project or LAUS, to provide for the Common Area and the maintenance and preservation thereof, to provide for the establishment and maintenance of the Common Area, to prevent haphazard and inharmonious improvements, to enhance and protect the value, desirability and attractiveness of all of the Project, and in general to provide adequately for a high type and quality of improvement of the Project in accordance with a uniform plan of development.

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NOW THEREFORE, COLP hereby covenants and declares that the Project shall be held, conveyed, hypothecated, encumbered, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, reservations, easements, liens and charges, all of which are declared and agreed to be equitable servitudes in furtherance of a plan for subdivision, improvement, and sale, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Project and LAUS. All the covenants, conditions and restrictions shall run with the Project and all portions thereof, and shall be binding upon the Owners of the Project, and shall benefit COLP. All of the covenants, conditions and restrictions described herein are made for the direct benefit of COLP and any Owners and, upon the conveyance of any portion of the Project by COLP or CLDC, shall create certain rights and obligations and privity of contract and estate between COLP and the Owners of any conveyed portion of the Project and their heirs, successors and assigns. With respect to the rights, duties and obligations between COLP and "Occupants" (detailed below) under leases of all or any portion of the Project, and, in the event that the fee interest or lease interest in any portion of the Project is conveyed by COLP to another Person (such Person thereby becoming an Owner), then with respect to the rights, duties and obligations between such other Owner(s) on the one hand and Occupants under leases on the other hand, COLP intends that the provisions of this Declaration are made pursuant to Sections 1469 and 1470 of the California Civil Code. In the event that the fee interest or lease interest in any portion of the Project is conveyed by COLP to another Person (such Person thereby becoming an Owner), or in the event that certain real property owned by a Person other than COLP hereafter is added to the real property subject to this Declaration by amendment hereto in accordance with the terms hereof (such Person becoming an Owner and such real property becoming a portion of the Project), then with respect to the rights, duties and obligations among such other Owner(s) and COLP, COLP intends that the provisions of this Declaration will be restrictive covenants made pursuant to Section 1468 of the California Civil Code.

AGREEMENT:

ARTICLE I

DEFINITIONS

The terms defined in this Article I shall, for all purposes of this Declaration, have the meanings herein specified (and any capitalized terms set forth in the following definitions shall have the meaning set forth in this Declaration).

"Agent" means any Person acting on the behalf of, and with authority from, COLP.

"Arbitration Notice" as defined in Article XIII below.

"Association" means a to be formed non-profit mutual benefit corporation, incorporated under the laws of the State of California, its successors and assigns, in which COLP and Owners of the Parcels shall become members (and in which other owners of LAUS may become members) which may be formed by COLP at any time. COLP shall have no obligation to form the Association. The Association shall be deemed to have assumed all of the rights and obligations of COLP hereunder with respect to the Common Area hereunder upon COLP's (i) conveyance of the Common Area to the Association or (ii) assignment of such rights and obligations to the Association.

"Building" means any structure constructed on any Parcel which structure is or may be occupied.

"City" means the City of Los Angeles, California.

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"Claim" means all loss, cost, damage, liability, obligation, claims, costs and expenses, including without limitation, reasonable attorneys' and consultants' fees, further described in Section 3.6, below.

"COLP" means Catellus Operating Limited Partnership, a Delaware limited partnership (as successor by merger to Catellus Development Corporation), or any Person to whom the rights and obligations of COLP hereunder are assigned pursuant to a Recorded instrument, provided that such Person, or an affiliate or subsidiary of such Person, has a fee or leasehold interest in all or any portion of LAUS. **"Common Area"** means (i) the Driveway Area and (ii) the Parking Facilities. Revisions to the Common Area are subject to limitations as set forth in this Declaration.

"Common Easements" means those certain non-exclusive easements appurtenant for the benefit of all Owners and Occupants further described in Section 5.2 below.

"Common Expenses" means all reasonable expenses, costs and amounts, of every kind and nature which are incurred by, or on behalf of COLP, during any Fiscal Year because of or in connection with the ownership, management, maintenance, repair, replacement (only if necessary or required by Governmental Regulation), restoration (only if necessary or required by Governmental Regulation) or operation of the Driveway Area or any portion thereof. Common Expenses shall not include any expenses associated with the Parking Facilities.

"Controlling Documents" means this Declaration, the Rules and the Design Guidelines, as the same may (subject to limitations set forth in this Declaration) be amended, modified or supplemented from time to time. Each Owner and each Occupant shall fully and faithfully comply with and conform to the Controlling Documents.

"Declaration" means this Declaration of Covenants, Conditions and Restrictions for the Project as it may from time to time be amended, modified or supplemented. Such amendments, modifications and supplements are hereby incorporated herein and made a part hereof.

"Design Guidelines" means the design guidelines attached hereto as Exhibit "D", as it may from time to time be amended, modified or supplemented by COLP. Such amendments, modifications and supplements are hereby incorporated herein and made a part hereof.

"Entitlements" means all governmental, special district and public utility approvals, decisions, resolutions, ordinances, permits, agreements, conditions, Governmental Requirements, exactions, entitlements, reports, maps, plans and orders, at any time adopted, amended or supplemented, governing, affecting or relating to the organization, zoning, use, development, improvement, operation or ownership of the Project and/or LAUS, or any portion thereof. COLP and each other Owner and Occupant shall comply with and conform to the Entitlements to the extent the same apply to its respective Parcel and/or the Common Area.

"Fiscal Year" means the fiscal year of COLP, which shall be the calendar year; provided, however, that the Fiscal Year is subject to change from time to time as COLP may determine.

"Governmental Requirements" means all local, state and federal governmental, special district and public utility approvals, development and other agreements, conditions of approval, demands, entitlements, exactions, maps, laws, statutes, rules and regulations, building codes, ordinances (zoning or otherwise), permits, plans, orders and resolutions, which are, or will be, adopted, amended, modified or supplemented, and which govern, affect or relate to the organization, zoning, use, development, improvement, operation or ownership of the Project, or any portion thereof, including, without limitation,

the Entitlements which are or may be in effect, and as amended from time to time, in accordance with provisions therein

"Improvements" means all structures and construction of any kind on any portion of the West Campus South, whether above or below the land surface, whether permanent or temporary, including but not limited to, Buildings, utility lines, driveways, paved parking areas, pathways, fences, retaining walls, plantings, irrigation and drainage pipes and fixtures, lighting fixtures, signs and the outdoor childcare facility currently located on Parcel 1.

"Indemnify", in any provision of this Agreement which requires one Person to "Indemnify" any other Person, shall mean that the Person upon whom the indemnification obligation is imposed (the "Indemnifying Person") shall be obligated to protect, indemnify and hold such other Person and such other Person's partners, officers, directors, shareholders, employees, agents, representatives, successors and assigns (collectively, the "Indemnified Persons") harmless from and against any and all Claims arising directly or indirectly, in whole or in part, out of the act, omission, event, occurrence or condition with respect to which the Indemnifying Person is required to Indemnify such Indemnified Persons, whether such act, omission, event, occurrence or condition is caused by the Indemnifying Person or its partners, officers, directors, shareholders, employees, agents, representatives or contractors, or by any natural cause, foreseen or unforeseen, provided that no Indemnified Person shall be Indemnified against any Claim to the extent such Claim arises from the negligence or willful misconduct of such Indemnified Person or of such Indemnified Person's partners, officers, directors, shareholders, employees, agents, representatives or contractors. Any Indemnified Person may demand that the Indemnifying Person defend the Indemnified Person (with counsel reasonably acceptable to the Indemnified Person) from any claim, lawsuit or other proceeding lodged or filed against the Indemnified Person by a third party relating to an Indemnified Claim, and the Indemnifying Person shall be responsible for paying all costs of the Indemnified Person's defense, including reasonable attorneys' fees and court costs.

"Material Burden" means any action that would create or impose a material burden on any Owner or materially or unreasonably interfere with the access to or use and enjoyment by any Owner of its Parcel, the Improvements, Common Areas, or Common Easements.

"Mortgage" means a fee or leasehold deed of trust or mortgage Recorded against any Parcel or Parcels.

"Mortgagee" means a beneficiary or mortgagee under a Mortgage Recorded against any Parcel or Parcels.

"Occupant" means the Owner and any other Person or Persons entitled, by ownership, leasehold interest or other legal right, to the right to occupy all or any portion of any Parcel or Building.

"Owner" means the Person or Persons holding record fee title to a Parcel subject to this Declaration (including, as applicable, COLP, but excluding any Mortgagee or Person holding such interest merely as security for the performance of an obligation), or, in the alternative, the Person or Persons leasing a Parcel subject to this Declaration or pursuant to a ground lease (including, as applicable, COLP, but excluding any Occupant leasing space in a Building pursuant to a space lease), and their respective heirs, successors and assigns. If ownership of a Parcel becomes vested in more than one Person, the Persons owning all of such interest in such Parcel shall be jointly considered a single Owner and such Persons shall designate one of their number to act on behalf of all such Persons in the performance of the provisions of this Declaration. Any such designation shall be in writing, duly executed and acknowledged by each such Person and shall be served upon COLP and all other Owners in accordance with the notice provisions of Article 14. In the absence of any such written designation, the

acts of the Owner whose interest is so divided with respect to the performance of the provisions of this Declaration shall be binding upon all of the Persons then owning any interest in such Parcel until such time as the written designation is properly served as provided herein. The exercise or performance of any rights, powers or obligations of an Owner under this Declaration by the Person designated to represent such Persons shall be binding upon all Persons having an interest or right in such Parcel. So long as such designation remains in effect, all Persons having an interest or right in such Parcel shall act only through such designated Person and the other Owners and Occupants shall have the right to deal exclusively with and rely solely upon the acts or omissions of such designated Person in the performance of the provisions of this Declaration. Any Person designated hereunder may be removed by the Persons so designating, in accordance with any procedure agreed between them, provided that written notice of such removal and designation of a new Person to act on their behalf under this Declaration is given and made in the manner specified herein; and in the absence of any such notice and designation, the previous designation shall continue in effect and the acts of the Person previously designated with respect to the performance of the provisions of this Declaration shall be binding upon all such Persons until such time as the written notice and new designation is properly served as herein provided. Any Person designated pursuant to the provisions of this Article shall be the agent of each of its principals, hereby irrevocably appointed for such purposes, upon whom service of any process, writ, summons, order or other mandate of any nature of any court in any action, suit or proceeding arising out of this Declaration may be made, and service upon such designated Person shall constitute due and proper service of any such matter upon each of its principals, provided a copy of such matter is also mailed to such principals at the last address of such principals known to the sender. Notwithstanding anything to the contrary herein contained, the designation of a Person to act on behalf of other Persons as provided in this paragraph shall not for any purpose relieve any such Persons from the obligations or liabilities created by or arising from this Declaration.

"Parcel" means any separate legal lot or parcel that is subject to this Declaration. As of the date hereof, Parcel 1 is the only Parcel. The number of Parcels may change over time. Each Parcel shall include any (i) Parcel resulting from an Annexation or Parcel Designation pursuant to Section 11.2 and (ii) Parcel reconfiguration, resubdivision or reorganization resulting from or following finalization of a tentative or final map, parcel map, lot merger, lot split, lot line adjustment or similar subdivision, land reorganization or approval or amendment thereto.

"Parking Facilities" means those portions of LAUS (or other areas adjacent thereto in which COLP has rights) designated from time to time by COLP as being available to an Owner and its Occupants for the parking of motor vehicles.

"Permittees" means all Occupants and all customers, patrons, employees, concessionaires and other guests, licensees and invitees of the Occupants.

"Person" means any individual, limited liability company, partnership, corporation, trust, estate or other legal entity.

"Project" shall mean and refer, as of the date hereof, to that certain real property described on Exhibit "A-1" attached hereto and depicted on Exhibit "A-2" attached hereto which is more commonly referred to as Los Angeles Union Station - West Campus South, together with any real property which may be hereafter made a part of the Project by amendment to this Declaration in accordance with the terms hereof. The Project is also referred to herein as the West Campus South.

"Proportionate Share" for Parcel 1 shall mean four percent (4%). The Proportionate Share is subject to adjustment pursuant to Section 11.2.6.

"Record", "Recorded" or "Recordation" shall mean, with respect to any document, the recordation thereof, and with respect to any map, the filing thereof, in the Official Records of the office of the County Recorder of Los Angeles County, California.

"Rules" means the rules and regulations, attached hereto as Exhibit "E", if any, adopted by COLP for the operation and use of the Common Area, as they may from time to time be amended, modified or supplemented provided such modifications are commercially reasonable and do not impose a Material Burden on any Owner. The Rules are hereby incorporated herein and made a part hereof.

"State" means the State of California.

ARTICLE II

REGULATION OF IMPROVEMENTS

2.1 Signs.

2.1.1 Signs must comply with the Governmental Requirements and any reasonable criteria established by COLP from time to time in COLP's reasonable discretion.

2.1.2 Except with respect to any art, sign or monument erected by COLP on the Common Area, no art, billboard, display, identification, monument or advertising sign shall be permitted on any Improvement or Parcel, except as shall comply with the Governmental Requirements and as shall have been specifically submitted to and approved by COLP (which shall not be unreasonably withheld), in writing, prior to the erection or installation thereof.

2.2 Storage and Loading Areas and Service Entrances.

2.2.1 No materials, supplies or equipment shall be stored in any area on any Parcel except inside a closed building, or, if approved in writing by COLP, behind a visual barrier screening such areas from public view.

2.2.2 Loading areas shall not encroach into setback areas unless specifically approved in writing by COLP.

2.2.3 Loading docks shall be set back and screened and/or recessed to minimize the visual effect from the street and other public areas. Loading docks shall not encroach upon or extend into setback areas. Loading will not be permitted in the setback area fronting any street, except as permitted in writing by COLP. In no event, however, will loading areas, docks or facilities be located or designed so as to necessitate backing maneuvers by vehicles into or on public streets.

2.2.4 Subject to compliance with all Governmental Requirements, the Owner of Parcel 1 may paint the curb along the Driveway Area in front of its Building in the location depicted on Exhibit "A-3" attached hereto to indicate a loading area for such Building.

2.3 Exterior Lighting.

2.3.1 All exterior lighting, including the location, design, type and size thereof, is subject to the written approval of COLP, and shall conform to the Governmental Requirements.

2.3.2 Exterior lighting shall be controlled and maintained by the Owner or Occupant of the Parcel where such exterior lighting is located in accordance with this Declaration and the Governmental Requirements.

2.4 Construction Regulations and Restrictions.

2.4.1 Construction activities (except for construction of such interior Owner improvements) shall be conducted during the hours as designated by applicable governmental authorities and Governmental Requirements.

2.4.2 COLP shall have the right and power to require the presence of an archaeologist during any subsurface operations including grading, excavation, trenching and removal of subsurface features. The archaeologist may, at COLP's election, be authorized to order reasonable protective measures if any significant archaeological resources are uncovered, and the costs thereof shall be paid immediately by the applicable Owner.

2.4.3 All Improvements shall conform to the Governmental Requirements, this Declaration and the Design Guidelines.

2.4.4 No unscreened mechanical equipment, apparatus or antennae shall be placed above the roof line (which shall be measured by the roof curb or parapet) of any Improvement, unless an exemption has been specifically approved in writing by COLP (exercised in COLP's reasonable judgment) and allowed by applicable governmental authorities.

2.4.5 All construction activities performed by an Owner, as authorized pursuant to this Declaration, shall be performed in accordance with the following provisions:

2.4.5.1 So as not to cause an increase in any cost of constructing any other Owners' Improvements;

2.4.5.2 So as not to unreasonably interfere with any construction work being performed on the remainder of the Project, or any portion thereof,

2.4.5.3 So as not to unreasonably interfere with the use, occupancy or enjoyment of the remainder of the Project or portion thereof by any other Owner or Occupant, or by any of their respective employees;

2.4.5.4 So as to be in compliance with the requirement that the storage of material and the parking of construction vehicles and construction workers' vehicles shall occur only where designated in writing by COLP;

2.4.5.5 So as to be in compliance with the applicable insurance provisions set forth in this Declaration; and

2.4.5.6 So as not to cause any other Owner to be in violation of any Governmental Requirements

2.5 Utilities.

Hookups for water, sewer, gas, electricity and telecommunications, whether to main lines running under the public right of way or otherwise (including, without limitation, to conduits, wires, lines, pipes,

mains, pump stations, meters or other structures, stations or improvements located in, on or under the Common Area for the benefit of the Project), shall be the sole responsibility of the Owner or other Occupant of each Parcel, and COLP shall have no responsibility or liability in connection therewith. Any conduits, wires, lines, pipes, mains, pump stations, meters or other structures, stations or improvements located in, on or under the Common Area shall be controlled and maintained as part of the Common Area by the Owner or Occupant of the Parcel where the same are located.

2.6 Maintenance Standards.

All Building exteriors shall be maintained and repaired at all times in a first-class condition, including, without limitation, periodic painting or cleaning if either is customary with respect to the exterior construction materials employed for such Building, and in conformity with the Governmental Requirements. Subject to the rights and obligations of COLP to maintain the Common Area, each Owner shall keep and maintain its Parcel and all Improvements thereon in a first-class condition, repair and appearance. Each Owner shall also be responsible at all times for determining that all Improvements, and the plans and specifications therefor, conform and comply in all respects with these restrictions, all other restrictions of record, all applicable Governmental Requirements, and all exterior architectural design, location and color specifications as may be approved by COLP, which shall not be unreasonably withheld.

2.7 Repair or Replacement of Damaged Buildings.

In the event of any damage to or destruction of any Building within the Project, the Owner of the Parcel upon which such Building is located, at its election and at its sole cost and risk and with all due diligence, shall either (i) repair, restore and rebuild such Building, subject to the requirements and limitations set forth in this Declaration; or (ii) raze any such damaged Building, fill any excavation and perform any other work necessary to put such portion of the Project in a clean, sightly and safe condition. All portions of a Parcel on which a damaged Building is not reconstructed following a casualty or taking shall be (A) graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect the drainage of the Project or any portion thereof, (B) shall be covered by a one inch (1") asphalt dust cap, and (C) shall be kept weed free and clean at the Owner's sole cost and expense until a Building is reconstructed thereon.

ARTICLE III

REGULATION OF USES AND OPERATIONS

3.1 Permitted Uses

Unless otherwise set forth in this Declaration or prohibited by the Governmental Requirements, any lawful use of a Parcel will be permitted if it is performed or carried out entirely within an Improvement, provided that such Improvement is so designed and constructed that the enclosed operations and uses do not and will not cause or produce a nuisance or disturbance to Persons and activities on other Parcels, the Common Areas, LAUS and the public streets, including, but not limited to, vibration, sound, odor, electro-mechanical disturbance and radiation, air or water pollution, dust and emission of odorous, toxic or non-toxic matter. COLP, in its sole and absolute discretion, may make exceptions to the foregoing provisions of this Section 3.1 during reasonable periods of time following the breakdown of equipment in an Improvement, provided that such breakdown was not reasonably preventable.

3.2 Use Restrictions.

The Project shall not be used or developed in any way which is inconsistent with the Governmental Requirements or the provisions of this Article 3, including, without limitation, the uses set forth below.

3.2.1 Entertainment and Recreational Uses.

No portion of the Project shall now or in the future ever be occupied or used, directly or indirectly, for the purpose of any of the following: a bowling alley, a skating rink, an adult book or adult video tape store; disco or dance hall; an off-track betting facility; a flea market; a house of worship; or other place of public assembly (other than inside the Improvements or on balconies or patios of Buildings); a so-called "head shop", a junk yard; a recycling facility; a stockyard; a body and fender shop; a boat storage facility; a pawn shop; a dry cleaning facility or laundry plant (other than an establishment which receives and dispenses items for laundering or dry cleaning but the processing of which is done elsewhere); a funeral parlor; a fair or a traveling carnival (other than inside the Improvements), an auction (other than inside the Improvements); or a booth for the sale of fireworks.

3.2.2 Industrial Uses.

No portion of the Project shall now or in the future ever be occupied or used, directly or indirectly, for the purpose of any manufacturing operation, as a factory, any industrial usage, a warehouse not used for the sale of goods to customers, a processing or rendering plant, any establishment selling or auctioning for sale any of the following, whether new or used: automobiles, boats, trailers or mobile homes.

3.3 Certain Nuisances.

3.3.1 No nuisance shall be permitted to exist or operate upon any Parcel or any portion thereof so as to be offensive or detrimental to any Person or activity on any other Parcel or on any public street.

3.3.2 No rubbish, trash, waste, residue, brush, weeds or undergrowth (except brush, weeds and undergrowth growing naturally on any Parcel prior to development) or debris of any kind or character shall be permitted to accumulate upon any portion of any Parcel, so as to render said premises a fire hazard, unsanitary, unsightly, offensive, or detrimental to any Person or activity on any other Parcel (including the Common Area) or on any public street.

3.3.3 No Improvement shall be permitted to fall into disrepair and all Improvements shall at all times be kept in good condition and repair (including, without limitation, free of the presence of wood-destroying pests and organisms) and adequately painted or otherwise finished. Any and all exterior repairs, redecorations, modifications or additions shall be made in accordance with this Declaration, and shall be subject to, the Controlling Documents and the Governmental Requirements.

3.3.4 No condition shall be permitted to exist upon any Parcel which shall induce, breed or harbor infectious plant diseases, rodents, or insects.

3.3.5 No Owner or Occupant shall in any way interfere with the natural or established drainage of water over its Parcel from adjoining or other Parcels without the prior written consent of COLP and the Owner of each affected Parcel, which consent shall not be unreasonably withheld, conditioned or delayed, nor shall any Owner or Occupant in any way interfere with the natural or

established drainage of water from its Parcel so as to cause or permit water to drain onto, over or under any adjoining or other Parcel. In the event it is necessary to change the natural or established drainage flow over any Parcel, then the Owner or Occupant of such Parcel shall adequately provide for proper drainage, and such changes shall be approved in writing by COLP and the Owner of each Parcel affected by such changes, which approval shall not be unreasonably withheld, conditioned or delayed.

3.3.6 No structure of a temporary character, trailer, tent, shack, barn or other outbuilding shall be used by any Person other than COLP on any portion of the Project at any time, either temporarily or permanently, unless such structure is being used temporarily in connection with the construction and leasing of an Improvement or unless such structure is approved by COLP.

3.3.7 Except to the extent permitted by law, no antennae or other device for the transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors above ground on any Parcel unless they are screened from ground level view, whether attached to an Improvement or otherwise, without the prior written consent of COLP.

3.3.8 No tools, equipment, or other structure designed for use in boring for water, oil, gas or other subterranean minerals or other substances, or designed for use in any mining operation or exploration, shall hereafter be erected or placed upon or adjacent to any Parcel.

3.3.9 No Owner or Occupant shall in any way interfere with COLP's use of the easements granted to COLP pursuant to Section 5.3 hereof or do any act or thing inconsistent with such use, including, without limitation, by constructing any Improvement thereon.

3.3.10 No Owner shall permit the construction or installation of any Improvement of any kind upon the Common Area without the prior written consent of COLP.

3.3.11 No Owner shall permit anything to be done or kept on its Parcel that violates any of the Governmental Requirements

3.4 Hazardous Materials

Each Owner covenants to do as follows:

3.4.1 At all times each Owner shall comply with all federal, state and local laws, ordinances and regulations, including, but not limited to, the Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.), Resource Conservation & Recovery Act (42 U.S.C. § 6901, et seq.), Safe Drinking Water Act (42 U.S.C. § 3000f, et seq.), Toxic Substances Control Act (15 U.S.C. § 2601, et seq.), the Clean Air Act (42 U.S.C. § 7401, et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.), California Health & Safety Code (§ 25100, et seq.; § 39000, et seq.), California Safe Drinking Water & Toxic Enforcement Act of 1986 (California Health & Safety Code § 25249.5, et seq.), California Water Code (§ 13000, et seq.), and other comparable local, state and federal laws, currently in force or enacted in the future ("Hazardous Materials Laws"), relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" under any such laws, "biological waste", "infectious waste", ordinances or regulations (collectively, "Hazardous Materials").

3.4.2 Each Owner shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses, and other governmental and regulatory approvals required for the use of its Parcel, including, without limitation, discharge of (appropriately treated) materials or wastes into or through any sanitary sewer serving the Project. Except as discharged into the sanitary sewer in strict accordance and conformity with all applicable Hazardous Materials Laws, no Person shall cause any and all Hazardous Materials removed from its Parcel to be removed and transported except solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes. Each Owner, Occupant and user shall in all respects handle, treat, deal with and manage any and all Hazardous Materials in, on, under or about its Parcel in total conformity with all applicable Hazardous Materials Laws and prudent industry practices regarding management of such Hazardous Materials. COLP may demand that such Owner furnish to COLP a surety bond satisfactory to COLP in an amount equal to a minimum of one hundred fifty percent (150%) of the anticipated cost of such handling, treatment or other dealings with any and all Hazardous Materials.

3.4.3 Each Owner shall Indemnify the other Owners and COLP from and against any and all Claims (including attorneys' fees and costs), or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by (i) the presence in, on, under or about the Project or the Owner's Parcel or any building thereon caused by the Owner, or discharge by the Owner in or from the Project or the Owner's Parcel or any building thereon, of any Hazardous Materials, or (ii) the Owner's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials to, in, on, under, about or from the Owner's Parcel or any building thereon, or (iii) the Owner's failure to comply with any Hazardous Materials Law. Owner's obligations under this Section 3.4 shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the Project or any building thereon, or the preparation and implementation of any closure, remedial action or other required plans in connection therewith but shall exclude consequential damages, lost profits and diminution in value. For purposes of the release and indemnity provisions of this Section 3.4, any acts or omissions of Owner or Owner's lessee or by employees, agents, assignees, sublessees, contractors or subcontractors of Owner or Owner's lessee or others acting for or on behalf of Owner or Owner's lessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Owner.

3.5 Insurance.

3.5.1 Duty to Carry Property Insurance.

The Owner of each Parcel, at its sole cost and expense, shall keep and maintain, or cause to be kept and maintained, valid and enforceable "special form" insurance on all of the Improvements on such Parcel. The insurance required to be carried pursuant to this Section 3.5.1 shall include boiler and machinery comprehensive form, if applicable, including coverage for vandalism, malicious mischief and sprinkler leakage, covering damage to or loss of Improvements or any of Owner's personal property, fixtures, equipment, merchandise, inventory and alterations, including electronic data processing equipment, in an amount equal to the full replacement cost thereof but not to exceed Twenty-Five Million Dollars (\$25,000,000) (Owner shall redetermine the same as frequently as necessary to comply herewith), and including business interruption coverage for a period of not less than twelve (12) months (or such lesser period at which such coverage is available at commercially reasonable rates), together with, if the property of Owner's invitee is to be kept in the Premises, warehouse's legal liability or bailee customers (if actual bailment is created) insurance for the full replacement cost of the property belonging to invitee and located in the Premises.

3.5.2 Duty to Carry Liability Insurance.

The Owner of each Parcel, at its sole cost and expense, shall keep and maintain, or cause to be kept and maintained, valid and enforceable commercial general liability insurance against claims of bodily injury, personal injury or property damage arising out of (i) the occupation or use of such Parcel by such Owner, or (ii) the operations, assumed liabilities or contractual liabilities of such Owner, including such Owner's liability arising under any indemnity set forth in this Declaration or its document of sale. The insurance required to be carried pursuant to this Section 3.5.2 shall be in amounts as required by COLP from time to time, but in no event less than Five Million Dollars (\$5,000,000) for each occurrence and Five Million Dollars (\$5,000,000) annual aggregate, providing coverage for, among other things, blanket contractual liability for both oral and written contracts, owners and contractors protective, premises and operations, personal and advertising injury, and products/completed operations with an Additional Insured Endorsement and containing the "Amendment of the Pollution Exclusion Endorsement" if available at commercially reasonable rates for damage caused by heat, smoke or fumes from a hostile fire, and personal and advertising injury coverage, with deletion of (a) the exclusion for operations within fifty (50) feet of a railroad track (railroad protective liability), if applicable, and (b) the exclusion for explosion, collapse or underground hazard, if applicable, and, if necessary, Owner shall provide for restoration of the aggregate limit and provide that the policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Declaration as an "insured contract" for the performance of Owner's indemnity obligations under this Declaration if available at commercially reasonable rates.

3.5.3 Duty to Carry Workers' Compensation Insurance.

The Owner of each Parcel, at its sole cost and expense, shall keep and maintain, or cause to be kept and maintained, workers' compensation insurance having limits not less than those required by applicable state statute and federal statute and covering all persons employed or volunteering in the construction, alteration, maintenance, repair, or general conduct of its operations (including the all states endorsement and, if applicable, the volunteers endorsement), together with employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000) each accident for bodily injury by accident and One Million Dollars (\$1,000,000) each employee for bodily injury by disease

3.5.4 Duty to Carry Automobile Insurance.

The Owner of each Parcel, at its sole cost and expense, shall keep and maintain, or cause to be kept and maintained, valid and enforceable comprehensive automobile liability insurance having a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and insuring Owner against liability for claims arising out of ownership, maintenance, or use of any owned, hired, borrowed or non-owned automobiles.

3.5.5 Duty to Carry Other Insurance.

The Owner of each Parcel, at its sole cost and expense, shall keep and maintain, or cause to be kept and maintained, valid and enforceable other forms of insurance COLP may reasonably require from time to time, in form and amounts and for insurance risks against which a prudent tenant of comparable size and in a comparable business would protect itself.

3.5.6 Minimum Insurance Coverage During Construction.

Prior to commencing any construction activities, the constructing Owner and/or Occupant shall obtain, or require its contractor and its sub-contractors to obtain, and thereafter maintain so long as

such construction activity is continuing (and thereafter as required by this Section 3.5), at least the minimum coverages set forth below, which coverages shall be subject to all of the terms and conditions of this Section 3.5 and which coverages shall be in addition to any other coverages required under this Section 3.5. If such insurance is canceled or expires then the Owner performing such construction shall immediately stop all work on or use of the other Owner's Parcel until either the required insurance is reinstated or replacement insurance obtained. The general contractor shall supply each Owner and COLP with certificates with respect to all insurance required by this Section 3.5. The insurance required hereunder shall include

(a) Workers' Compensation. As required by the laws of the State of California which work is to be performed including Coverage A (Statutory Policy Form) and Coverage B (Employer's Liability Coverage) with limits of not less than the following:

Bodily injury by accident	\$1,000,000 each accident
Bodily injury by disease	\$1,000,000 each employee

Coverage is to include a broad form all-states endorsement.

(b) General Liability. Commercial General Liability on an occurrence form (claims made coverage not acceptable), including Premises and Operations, Owners and Contractors Protective, Personal Injury, Broad Form Blanket Contractual, Broad Form Property Damage, duty to defend by the insurance company, Personal Injury Liability, Severability of Interest or Cross-Liability, deletion of any limitation on contractual liability for operations within 50 feet of a railroad property, and Products & Completed Operations (if available at commercially reasonable rates, Contractor agrees to maintain this coverage for a minimum of five (5) years following completion of its work and to continue to name the Indemnified Parties as additional insured(s) for the entire 5 year period) coverage in the following minimum limits or limit carried, whichever is greater, or such higher limits as Owner may specify:

Each Occurrence Limit	\$1,000,000
Personal and Advertising Injury Limit	\$1,000,000
Products-Completed Operations	
Aggregate Limit	\$2,000,000
General Aggregate Limit	\$2,000,000
(Other than Products-Completed Operations)	

If the policy does not have an endorsement providing that the general aggregate limit applies separately to this Project, or if defense costs are included in the general aggregate limit, then the required aggregate limits shall be \$3,000,000.

(c) Automobile. Comprehensive Automobile Liability insurance covering the operation, maintenance or use of all owned, non-owned, employee (if available at commercially reasonable rates) and hired vehicles utilized by Contractor in connection with the Work with a Combined Bodily Injury and Property Damage single limit of not less than \$1,000,000, or limit carried, whichever is greater.

(d) Explosion, Collapse and Underground Hazard. When the Work involves any subsurface activities, liability coverage for explosion, collapse and underground hazard (X, C and U perils). This coverage is to be included as part of the General Liability insurance in subsection (b) above (if available at commercially reasonable rates).

(e) Umbrella Liability. Umbrella Liability coverage with limits of not less than \$10,000,000 per occurrence listing all policies and coverages required under items (a), (b), (c), (d) and (e) above as

underlying policies Coverage to be following form excess of the underlying, and is to drop down and apply as primary coverage if the underlying coverage is depleted. Defense costs are to be in addition to policy limits.

(f) Contractor's Property. All Risk Contractor's Equipment Floater covering all tools, equipment, machinery and other similar property in an amount at least equal to the fair market value of such items.

(g) Deductibles Any deductibles shall be subject to Owner's written approval and shall not in any event exceed \$20,000.00. Contractor shall be solely responsible for the payment of all deductibles.

3.5.7 General Requirements for Insurance Policies.

Each policy of insurance carried by an Owner, contractor or sub-contractor, pursuant to this Section 3.5, shall:

3.5.7.1 Name Owner (if applicable), Owner of another Parcel (if applicable), COLP and any other parties COLP so reasonably specifies by written notice to such Owner as additional insureds under all of the policies required by this Section (provided, however, no additional insureds shall be required for the insurance set forth in Section 3.5.3 on a form reasonably acceptable to COLP, and said policies shall provide for severability of interest.

3.5.7.2 Be issued by companies authorized to do business in the State of California and having a "General Policyholders Rating" of not less than A-VII (or such higher rating as may be required by a lender having a lien on the Premises) as issued by A.M. Best, or which is otherwise acceptable to COLP;

3.5.7.3 Be primary insurance, except for workers' compensation and employer's liability insurance, as to all claims thereunder and provide that any insurance carried by COLP is excess and is non-contributing with any insurance requirement of such Owner,

3.5.7.4 Commence on the date such Owner takes fee title to such Parcel or commences work on such Parcel and continue until the date such Owner transfers its fee title to another Person, or work is completed, with the noted exceptions above.

3.5.7.5 Provide that said policy shall not be canceled or coverage changed unless thirty (30) days' prior written notice shall have been given to COLP and any Mortgagee who has requested such notice. Notwithstanding the foregoing, in the event of nonpayment, such policy of insurance shall provide that said policy shall not be canceled unless a minimum of ten (10) days prior written notice shall have been given to COLP and any Mortgagee who has requested such notice.

3.5.7.6 Provide that, to the extent such policy provides for payment of losses, such losses payable to a Mortgagee shall be payable notwithstanding any act or negligence of COLP or any other Owner.

3.5.8 Use of Policy Proceeds.

Subject to Section 2.7 and the rights of any Mortgagee to such proceeds, fire and extended coverage insurance proceeds paid to an Owner by reason of damage to or destruction of any Improvements shall be used by such Owner for the repair or replacement of such damaged Improvements.

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3.5.9 Blanket Policies.

Each Owner, contractor or subcontractor may satisfy its insurance obligations under this Section 3.5, in whole or in part, by purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in each Section, and which is in conformity with the requirements of Section 3.5.4, above

3.5.10 Certificate of Insurance.

Each Owner, contractor or sub-contractor shall promptly furnish COLP a certificate evidencing compliance with the insurance requirements set forth in this Section 3.5 in such other form as may be acceptable to COLP in its sole discretion and additional insured endorsements on ISO Form CG 20 10 11 85 or equivalent, following request therefor by COLP. Owner, contractor or sub-contractor shall, at least ten (10) days prior to expiration of the policy, furnish COLP with certificates of renewal or "binders" thereof and additional insured endorsements. If Owner, contractor or sub-contractor fails to maintain any insurance required in this Declaration, Owner shall be liable for all losses and costs suffered or incurred by COLP (including litigation costs and attorneys' fees and expenses) resulting from said failure. Failure of COLP to demand such certificates, endorsements or other evidence of full compliance with the insurance requirements of this Section 3, or failure of COLP to identify a deficiency from evidence provided will not be construed as a waiver of the obligation to maintain such insurance. The acceptance of delivery of any certificates, endorsements or other evidence of insurance does not constitute approval or agreement by COLP that the insurance requirements have been met, that the insurance policies evidenced are in compliance with these requirements, or that the insurance requirements are sufficient to fully protect Owner from liability.

3.5.11 Waiver of Subrogation.

Each Owner, by taking fee title to a Parcel, and each Occupant, by accepting occupancy of all or any portion of any Parcel or Building, shall and hereby does agree to look solely to, and seek recovery only from, its respective insurance carriers in the event of a property loss to the extent that such insurance is required to be carried pursuant to this Section 3.5 or if higher, to the extent such insurance has been obtained. Each Owner and Occupant hereby waives all rights and claims against all other Owners and Occupants for such losses, and waives all rights of subrogation of its insurance providers, provided such waiver of subrogation shall not affect the right of such party to recover thereunder from such insurance providers nor shall such waiver of subrogation limit the right of such insurer to seek subrogation for property damage caused by the gross negligence or willful misconduct of others. Each Owner and Occupant hereby agrees that its insurance policies shall be endorsed such that the waiver of subrogation shall not affect the right of such party to recover thereunder. If any Owner fails to carry the amounts and types of insurance required to be carried pursuant to this Section 3.5, in addition to any remedies COLP or any other Owner may have under this Declaration, such failure shall be deemed to be a covenant and agreement by the Owner failing to carry such insurance to self-insure with respect to the type and amount of insurance such party so failed to carry, with full waiver of subrogation with respect thereto.

3.6 Indemnification by Parties.

Each Owner shall Indemnify all other Indemnified Persons (except to the extent the same is the obligation of another party under this Declaration) against any Claims arising out of or connected with any accident, occurrence, injury, loss or damage whatsoever caused to any Person or to the property of any Persons as shall occur in or on a Parcel owned by such Indemnifying Person during the period from the date this Declaration is Recorded to and including the termination of the term of this Declaration, as

set forth in Article XI hereof, to the extent such Claims arise from the acts or omissions of such Indemnifying Person, or such Indemnifying Person's employees, agents or contractors, unless caused in whole or in part by such Indemnified Persons. Each Indemnified Person shall give such Indemnifying Person notice of any suit or proceedings entitling such Indemnified Person to indemnification pursuant to this Section 3.6 or elsewhere in this Declaration, and such Indemnifying Person shall, upon request of the Indemnified Person, have the obligation to defend such Indemnified Person in said suit or proceeding with counsel reasonably satisfactory to such Indemnified Person.

3.7 Payment of Taxes.

Each Owner shall pay or cause to be paid prior to delinquency the real estate taxes and assessments levied against the Parcel owned by such Owner, including any Buildings located on such Parcel. COLP shall be responsible for, and shall pay as part of Common Expenses, all real estate taxes and assessments levied against, or paid because of or in connection with the Common Area including any Buildings located thereon; provided, however, real estate taxes and assessments on the Parking Facilities shall be excluded from Common Expenses. Each Owner recognizes and acknowledges that there may be changes in the current real property tax system and that there may be imposed new forms of taxes, assessments, charges, levies or fees, or there may be an increase in certain existing taxes, assessments, charges, levies or fees placed on, or levied in connection with the ownership, leasing, occupancy or operation of the Owner's Parcel(s). All such new or increased taxes, assessments, charges, levies or fees which are imposed or increased as a result of or arising out of any changes in the structure of the current real property tax system or any limitations on the real property taxes which can be assessed on real property, including, but not limited to, any and all taxes, assessments, charges, levies and fees assessed or imposed due to the Owner's leasing the Owner's Parcel(s) to one or more Occupants (including any surcharge on the income directly derived by the Owner from any such leases) or for the purpose of funding special assessment districts theretofore funded by real property taxes, may, at COLP's sole discretion, also be included within the meaning of "real estate taxes and assessments" as used in this Declaration.

ARTICLE IV

REGULATION OF CONSTRUCTION; APPROVAL OF PLANS

4.1 Approval Required.

No Improvement nor any change or modification to any Improvement within the Project, including, but not limited to, any reconstruction, exterior remodeling, exterior alteration (including paint or finish but only if materially different from paint or finish previously approved by COLP), or alteration involving or affecting the exterior of any Improvement, shall be commenced, erected, placed, moved, altered, maintained or permitted to remain on any Parcel or any portion thereof until the plans, specifications, drawings, designs and other materials reasonably requested by COLP have been submitted to and approved in writing by COLP. COLP shall not withhold its approval for the restoration, repair, remodeling or rebuilding of Improvements if the result of such restoration, repair, remodeling or rebuilding is substantially the same as the Improvements previously approved by COLP. Subject to the restrictions set forth in this Declaration, each Building or other Improvement shall be placed or constructed upon its respective Parcel only in the location approved in writing by COLP. Such plans and specifications shall be submitted in writing over the authorized signature of the Owner or Occupant or its authorized agent, and in the form and content and with a reasonable number of copies as required by COLP from time to time. Nothing contained herein shall require submission to or approval by COLP of plans and specifications relating to the repair or maintenance of or alterations to the interior of any Improvement, provided that such alterations are not visible from the exterior of such Improvement.

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("Interior Improvements"). COLP's approval of any plans, specifications, drawings, designs or other materials submitted to COLP shall be for the sole purpose of determining the compliance of same with this Declaration and shall not imply COLP's review or approval of the same for quality, structural safety, compliance with the Governmental Requirements or other like matters. COLP shall not be liable in damages or otherwise by reason of any mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans, specifications, drawings, designs or other materials submitted to COLP or for any defect in any Improvement constructed from such plans and specifications. Each Owner and Occupant agrees by acquiring title and/or possessory rights to a Parcel, and each Owner, Occupant and any other Person who submits any plans, specifications, drawings, designs or other materials to COLP for approval hereunder agrees by such submission, that such Owner, Occupant or other Person shall not bring any action or suit against COLP to recover any such damages. Each Improvement (other than Interior Improvements) and any change or modification to any Improvement (other than Interior Improvements) within the Project shall be of first class construction (alterations shall be deemed to be first class if they do not differ materially from the Improvements initially approved by COLP).

4.2 Elevations.

In addition to the requirements set forth elsewhere in this Declaration, to ensure architectural harmony and consistency, prior to the initial construction of any Building on a Parcel, the Owner of such Parcel shall deliver to COLP a scaled, colored elevation drawing with dimensions, colors and architectural details of such exterior design, together with any other materials reasonably requested by COLP, for COLP's prior written approval, which, to ensure architectural harmony and consistency with the elevations of the other Buildings in the Project, may be withheld in COLP's reasonable discretion. If COLP disapproves any such design, it shall indicate in writing to the submitting Owner, the areas of its disapproval, and the submitting Owner shall make appropriate changes and resubmit the design for approval as provided in this Section 4.2.

4.3 Basis for Approval.

Decisions made by COLP shall be based upon, among other things, (a) adequacy of site dimensions, (b) conformity and harmony of external design with existing and planned neighboring structures, (c) effect of location of proposed Improvements on neighboring Parcels, (d) design of roofscape from the standpoint of view from adjacent areas, (e) proper site orientation with respect to nearby streets, and (g) conformity of the plans and specifications to the purpose, general scheme of improvement, development and intent of this Declaration and the Project. COLP shall not arbitrarily or unreasonably withhold its approval of such plans and specifications; provided, however, that COLP shall at all times be subject to compliance with the provisions of this Declaration, the Design Guidelines and the Governmental Requirements.

4.4 Time for Approval or Disapproval.

All approvals and disapprovals made by COLP shall be in writing. In the event COLP fails to approve, disapprove or grant an extension of time within which to approve or disapprove any request, plan, specification, design or plot plan within ten (10) business days after COLP's receipt of a submittal therefor, then the provisions hereof relating to the approval by COLP shall be deemed to have been waived solely as to such plan, specification, design or plot plan; provided, however, that such waiver shall not be deemed to be a waiver of any other covenant, condition or restriction provided herein. The method for all submittals to COLP shall be by the mailing of a certified first class letter via United States Mail, return receipt requested, or by personal delivery to COLP, who shall, within ten (10) business days of receiving said letter, give written acknowledgment of the receipt thereof to the submitting party.

4.5 Completion of Construction.

The approval of the erection, construction, refinishing, installation, placement, or alteration of any Improvement shall be deemed conditional upon the commencement of such work within one hundred eighty (180) days after approval of the same by COLP or within such longer period as shall have been specified by COLP at the time of its approval. Such work must thereafter be prosecuted diligently to completion within a reasonable time and, in any event, before the expiration of such period specified by COLP for the completion thereof. COLP, in its sole and absolute discretion, and in writing, may extend the period for completion of such work. During the period for completion of such work, the areas surrounding the subject Improvement shall be kept clear of debris and refuse to the greatest extent possible. In the event such work is not commenced within one hundred eighty (180) days after the approval of the same by COLP, unless such time condition is waived in writing by COLP in its sole and absolute discretion, all proceedings shall terminate, COLP's approval of such work shall be null and void and such work shall thereafter be conditional upon the obtaining of COLP's approval in accordance with this Article IV as though COLP had not previously approved the same.

4.6 Inspection of Work.

Upon the completion of any construction, reconstruction, or the alteration or refinishing of the any Improvement (other than Interior Improvements), or upon the completion of any other work for which approved plans are required under this Article IV, the Owner or Occupant shall give written notice thereof to COLP. Within forty-five (45) days after COLP's receipt of such written notice, COLP, or its duly authorized representative, may inspect such Improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with COLP's approval. If the Owner or Occupant fails to give written notice as provided herein, the period within which COLP may inspect such Improvement shall be extended to that date which is one hundred twenty (120) days after the issuance of a certificate of occupancy for the Improvement. If COLP finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with COLP's approval, then the Owner or Occupant shall remedy such non-compliance within thirty (30) days from the date of written notice by COLP specifying the particulars of such non-compliance or such longer period as is reasonably necessary to make such corrections provided Owner commences such cure within thirty (30) days and proceeds with diligence to correct such noncompliance. If the Owner or Occupant fails to remedy such non-compliance, then COLP, at its option, may enter the Parcel and the Improvement and perform, or cause to be performed, such work or other acts as may be required to remove the non-complying Improvement or remedy the non-compliance, and the Owner of the Parcel or Improvement shall promptly pay all costs and expenses incurred by COLP in connection therewith upon presentation to Owner of invoices thereof.

4.7 Unauthorized Improvements.

If any Improvement is made without first obtaining approval of COLP, then COLP may give written notice to the Owner of its violation of this Declaration. Within thirty (30) days of said notice, the Owner shall either (a) remove the Improvement at its own expense and restore the Parcel or Improvement to its condition prior to commencement of construction of the Improvement, or (b) request approval from COLP in accordance with this Article IV. If the Owner has failed to take such action within the thirty (30) day period or such longer period as is reasonably necessary to make such corrections provided Owner commences such cure within thirty (30) days and proceeds with diligence to correct such noncompliance, then COLP, at its sole option, may enter the Parcel and the Improvement and perform or cause to be performed such work or other acts as may be required to remove the non-complying Improvement or remedy the non-compliance, and the Owner of the Improvement shall promptly pay all costs and expenses incurred by COLP in connection therewith upon presentation to Owner of invoices

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therefor. If the Owner elects the option described in item (b) of this Section 4.7 and if COLP thereafter disapproves the Improvement, then the Improvement shall be removed by Owner.

4.8 Presumption of Compliance.

Notwithstanding anything to the contrary contained in this Declaration, a purchaser or encumbrancer in good faith and for value shall not be liable for any default under this Declaration which occurred prior to the date on which such purchaser or encumbrancer acquired an interest in a Parcel, and any Improvement on such Parcel for which a certificate of occupancy previously has been issued shall be deemed to be complete and to be in compliance with all provisions of this Article IV as of the date on which such purchaser or encumbrancer acquired an interest in such Parcel, unless actual notice of noncompletion or noncompliance of such Parcel or Improvement, executed by COLP or a designated representative thereof, shall have been Recorded or unless legal proceedings shall have been instituted to remedy such noncompletion or noncompliance or otherwise enforce the terms and conditions of this Declaration with respect thereto.

4.9 Fee.

In connection with its review and approval or disapproval of plans, specifications, drawings, designs and other materials submitted to COLP in accordance with this Article IV, COLP may charge an Owner a reasonable architectural review fee. Such architectural review fee shall include (i) costs incurred by COLP in hiring outside consultants to review such plans and specifications, (ii) reimbursement of COLP for the staff time expended and out-of-pocket costs incurred in reviewing such plans and specifications, and (iii) any other reasonable expenses incurred by COLP in connection with its review, analysis and approval of such plans and specifications. Such architectural review fee shall be paid at such time and in such manner as COLP may determine. If the plans are disapproved as not conforming with the provisions of this Declaration, the Governmental Requirements, or any criteria reasonably imposed by COLP, then the subsequent submittal of new or revised plans and specifications shall be deemed to be an entirely new submittal and such Owner shall again be subject to the foregoing fee. Notwithstanding the foregoing, COLP shall not charge an architect review fee for the original construction of the Improvements.

4.10 Governmental Action.

If plans and specifications previously approved by COLP are subsequently modified by the City or by a governmental agency with jurisdiction over the Project, then such modifications must be delivered to COLP. In any event, an Owner shall furnish to COLP for its records one complete set of final plans and specifications upon approval thereof by the City or other governmental agency with jurisdiction over the Project. Such Owner shall construct the subject Improvements in accordance with such final plans and specifications furnished to COLP. Upon completion of construction of such Improvements, but in no event later than thirty (30) business days following the issuance of a certificate of occupancy therefor, such Owner shall furnish to COLP for its records one complete set of final "as-built" plans and specifications for such Improvements.

4.11 Mechanic's or Construction Liens.

If, because of any act or omission (or alleged act or omission) of any Owner or its Occupant or a contractor, employee or agent of either, any mechanic's or construction lien shall be filed with respect to any portion of the Project (whether or not such lien is valid or enforceable as such), such Owner shall cause the same to be discharged of record, or bonded, with respect to such portion of the Project not owned by such Owner, within thirty (30) days after the filing thereof, and such Owner shall indemnify

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and save harmless all Owners, all ground and underlying lessors and mortgagees or beneficiaries with respect to any portion of the Project against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable attorneys' fees resulting therefrom. If such Owner fails to comply with the foregoing, then, after not less than five (5) business days prior notice to such Owner, COLP may (or, upon the written request of any other Owner, shall) discharge or bond any such lien, in which event the Owner who has the obligation to cause the discharge of such lien under this Section 4.11 shall reimburse COLP promptly upon demand for all costs, expenses and other sums of money (including reasonable attorneys' fees) incurred by COLP in connection therewith.

ARTICLE V

GRANT OF EASEMENTS

5.1 Easements for the Benefit of Governmental Agencies and Public Utilities.

Certain easements (in perpetuity or otherwise) have been, and may in the future be, granted by COLP to certain local governmental agencies, including the City and public utilities, which easements may include, without limitation, easements for vehicle/pedestrian areas, open space, drainage, sewer and water lines, and which easements may affect some or all of the Parcels. COLP shall be entitled, without the consent of the Owners, to grant any such future easements in the Project which COLP determines are in the best interests of the Project or LAUS, provided, however, such easements shall not create or impose a Material Burden on any Owner. Each Owner shall fully and faithfully comply with all requirements of the governmental agencies and public utilities in connection with the easements granted pursuant to this Section 5.1.

5.2 Easements for the Benefit of Owners and Occupants.

Except as otherwise stated, the following non-exclusive easements appurtenant (collectively, the "Common Easements") are hereby established in perpetuity, for the benefit of all Owners and Occupants, provided that the use and enjoyment by any Owner or Occupant of any of the Common Easements shall not materially, unreasonably interfere with the use and enjoyment by any other Owner or Occupant of its respective Parcel, the Improvements located thereon, the Common Area or the Common Easements:

5.2.1 An easement for (i) parking in the Parking Facilities pursuant to the terms and conditions set forth in Exhibit "C" attached hereto and (ii) vehicular and pedestrian ingress and egress to and from the Parking Facilities upon those portions of LAUS designated for such purposes from time to time by COLP, and

5.2.2 An easement for vehicular and pedestrian ingress and egress upon the Driveway Area, as the same may be relocated from time to time by COLP (provided no Material Burden is imposed on any Owner and access to North Alameda Street and Cesar Chavez is provided), until such time as the ownership of such ingress and egress easements may be transferred to the City or other governmental or public entity for public ingress and egress, in which event COLP shall have no further obligations hereunder with respect to, and to the extent of, the interest so transferred.

5.3 Easements for the Benefit of COLP.

In addition to the rights of entry and any other rights reserved by or given to COLP pursuant to this Declaration, the following non-exclusive easements are hereby established in perpetuity for the benefit of COLP, its agents, employees and contractors, with respect to which easements COLP shall

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have the right and power at all times, provided that COLP maintains the insurance coverage described in Section 8.2.4, to enter and re-enter the property thereby encumbered, with or without vehicles or on foot, and to come upon said property as often as COLP deems reasonably necessary to effectuate the purpose of such easements (provided such easements shall not impose a Material Burden on any Owner):

5.3.1 An easement on, over, under or across all portions of the Project for the purposes shown as existing or proposed or for purposes deemed necessary or convenient by COLP for (i) the installation, placement and maintenance of natural gas, electric, water, sanitary sewer, telephone, cable television, computer, security and telecommunications lines, drainage facilities or any other utilities, together with the right to enter upon the affected Parcel (without imposing a Material Burden on the Owners and Occupants thereof) to service, maintain, repair, reconstruct, relocate or replace any of such lines, facilities or utilities, and (ii) any other matter required or mandated by any governmental authority with jurisdiction over the Project;

5.3.2 An easement over, upon, across and under each Parcel (i) to inspect and/or ascertain whether such Parcel, any Improvements thereon and any uses thereof are in compliance with the provisions of the Controlling Documents or the Governmental Requirements, and (ii) to abate and remove any thing or condition that may exist thereon contrary to the Controlling Documents or the Governmental Requirements, or otherwise to cure any default or breach under this Declaration, provided, however, prior to exercising COLP's rights under this Section 5.3.2 as to a particular Parcel, COLP shall give the Owner of the subject Parcel reasonable prior written notice (except in the event of an emergency) and, with respect to exercising any right described in clause (ii), the Owner shall have failed to have remedied the matter in question within a reasonable period of time following receipt of such written notice not to exceed thirty (30) days unless such violation or breach is not reasonably susceptible of cure within thirty (30) days, in which event the Owner shall have such additional time as is reasonably necessary provided the Owner commences the cure within such thirty (30) day period and diligently prosecutes such cure to completion; and

5.3.3 An easement over, upon, across and under all property designated from time to time by COLP hereunder to perform COLP's obligations under this Declaration with respect to the maintenance and repair of the Common Area and any Improvements thereon, including, without limitation, for access to slopes and drainageways when such access is necessary for the maintenance or stabilization of slopes or drainage, or both, on the Common Area; provided, however, prior to COLP exercising its rights under this Section 5.3.3 as to a particular Parcel, COLP shall give the Owner of the subject Parcel reasonable prior written notice thereof, except in the event of an emergency.

5.4 No Merger.

Notwithstanding the union of (a) fee simple title to any Parcel, or any portion thereof, or any other real property of COLP and (b) any right, title or interest in the easements granted or reserved by COLP pursuant to this Declaration, it is the intention of COLP that the separation of such fee simple estate and such right, title or interest in such easements shall be maintained, and that a merger shall not take place without the express prior written consent of COLP.

5.5 No Abandonment.

Notwithstanding Section 811 of the California Civil Code or any other applicable law, it is the intent of COLP that no easement granted or reserved hereunder be deemed abandoned or terminated merely by disuse or incompatible acts; rather, the easements granted hereunder shall continue in full force and effect, unless and until (a) terminated by a written agreement executed by the Person or Persons entitled to the benefit thereof, and duly Recorded, or (b) in the case of the Owners, terminated by

approval of the Owners and certified in a written agreement executed by all of the Owners and duly Recorded.

5.6 Use of Common Area by Owners and Occupants.

5.6.1 Except as otherwise specifically provided in this Declaration, the use of the Common Area by the Owners and Occupants, and their respective Permittees, shall be in common with all other Owners and Occupants, and their respective Permittees. Each Owner shall keep the Common Area free and clear of any obstructions created or permitted by such Owner or resulting from such Owner's or its Occupant's or their respective Permittees' operation of its business so as not to unreasonably interfere with the use and enjoyment of the Common Area by the other Owners and Occupants, and their respective Permittees.

5.6.2 Except for portions of the Common Area specifically designated for parking, no parking shall be allowed anywhere in the Common Area and COLP shall have the right to enforce such "no parking" restriction by (i) posting signs at various points in the Common Area which restrict both parking and stopping of vehicles, and (ii) removing any vehicles in violation thereof in accordance with the provisions of Section 22658 of the California Vehicle Code, or other applicable Governmental Requirements.

5.7 Prohibition Against Granting Easements.

No Owner shall grant an easement or easements in, to, over, under or across such Owner's Parcel or any of the Common Area for the benefit of any Parcel or property, either within or outside the Project, without the express prior written consent of COLP, which consent shall not be unreasonably withheld.

ARTICLE VI

TRANSFERS

6.1 Documents to be Provided to Purchaser.

An Owner shall, as soon as practicable before transfer of title to a Parcel or execution of a real property sales contract (as defined in Section 2985 of the California Civil Code) therefor, provide to the prospective transferee copies of the Controlling Documents. COLP shall maintain, and, within ten (10) business days following receipt of a written request from an Owner, shall make available to such Owner, copies of the Controlling Documents. COLP may charge a fee for such service, which fee shall not exceed COLP's reasonable cost to prepare and reproduce the Controlling Documents.

6.2 Notification to COLP.

Concurrently with the consummation of any sale of a Parcel, or within five (5) days thereafter, a transferee shall notify COLP in writing of such transfer. Such notification shall set forth (i) the names of such transferee, its Mortgagees and the transferor, (ii) the address of the purchased Parcel, (iii) such transferee's and its Mortgagees' mailing addresses, and (iv) the date of such transfer. Before the receipt of such notification, any and all communications required or permitted to be given by COLP shall be deemed to be duly made and given to such transferee if duly and timely made and given to such transferee's transferor. COLP shall have the right to collect a commercially reasonable fee in connection with a transfer of title to, or any other interest in, a Parcel to cover COLP's reasonable costs incurred in connection therewith, including, without limitation, COLP's actual cost to change its records to reflect such transfer and the service fee authorized by Section 6.1, above. COLP may establish a schedule of

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fees based upon COLP's reasonable estimate of costs incurred in connection with a transfer of title to, or any other interest in, a Parcel, and COLP may impose such fees on the basis of such estimate. In the event a schedule is established, the fees set forth in such schedule, as amended from time to time by COLP, shall be conclusively presumed to satisfy the fees provided for in Section 6.1, above, and this Section 6.2.

6 3 Validity of Transfers.

Nothing in this Article VI shall be construed as affecting the validity of title to any Parcel transferred in violation of this Article VI.

6 4 No Assignment without Transfer.

The rights, powers and obligations conferred upon Owners pursuant to this Declaration shall not at any time be transferred or assigned by any Owner, except through a transfer of its interest in its Parcel in the manner provided in this Article VI. This Section 6.4 shall not be interpreted or construed to prohibit (i) COLP from retaining an independent management company or independent contractors, (ii) any Owner from delegating to any Occupant of the Owner's Parcel(s) any obligation(s) or duty(ies) of such Owner under this Declaration; (iii) any Owner from imposing on any Occupant of such Owner's Parcel(s) any cost incurred by such Owner pursuant to this Declaration, including any cost incurred in performing any obligation of such Owner under this Declaration, or (iv) any Owner from assigning to any Occupant of the Owner's Parcel(s) any right(s) of the Owner pursuant to this Declaration

ARTICLE VII

PAYMENT OF COMMON EXPENSES

7.1 Billing.

Commencing as to each Parcel upon the Recordation of this Declaration or upon the Recordation of an amendment to this Declaration pursuant to which such Parcel becomes part of the Project, COLP shall periodically, but no more frequently than monthly, bill each Owner for either (i) such Owner's Proportionate Share of the Common Expenses paid by COLP during the preceding billing period, or (ii) an equal periodic installment of COLP's reasonable estimate of such Owner's Proportionate Share of the Common Expenses for that Fiscal Year based on a budget prepared by COLP. In addition, COLP, at any time and from time to time, may bill any Owner for any amounts due under this Declaration which amounts do not constitute Common Expenses. In the event that during any Fiscal Year the Owners have paid periodic installments based on COLP's estimates of the Common Expenses, COLP shall, after the end of such Fiscal Year, notify each Owner of any adjustment in the estimated Common Expenses to reflect the actual Common Expenses paid by COLP during such Fiscal Year, and shall deliver an accounting in reasonable detail showing the actual Common Expenses paid by COLP during the preceding Fiscal Year. Unless the periodic installments of the estimated Common Expenses for such preceding Fiscal Year equal the actual Common Expenses paid by COLP during such Fiscal Year, within ten (10) days after COLP's delivery of notice to the Owners, either (A) each Owner shall pay to COLP such Owner's respective share of the amount of any Common Expenses actually incurred by COLP for which COLP was not paid by periodic installments during such preceding Fiscal Year, or (B) COLP shall credit against each Owner's next periodic installment of Common Expenses due such Owner's respective share of the amount of any overpayment to COLP for Common Expenses during such preceding Fiscal Year, as the case may be. In the event a billing statement is based on the actual Common Expenses paid by COLP, such billing statement shall set forth in reasonable detail all such Common Expenses actually paid by COLP and shall be accompanied by such evidence of payment as may be reasonably requested by

the Owners, or any of them, billed therefor. Within fifteen (15) days after COLP's delivery of billing statements given in accordance with the terms of this Section 7.1, each Owner shall pay or cause to be paid the amount set forth in such Owner's billing statement.

7.2 Audit Rights. Any Owner shall have the right, after reasonable notice and during business hours, to inspect or have its consultants inspect the books and records of COLP regarding Common Expenses or any amount charged to the Owner by COLP including reviewing the third party documentation supporting the payment of the Common Expenses. If after such inspection, Owner disputes any costs included in Common Expenses or the determination of Owner's Proportionate Share of the Common Expenses or any amount charged to the Owner by COLP, an audit ("Audit") shall be conducted by an independent certified public accountant mutually acceptable to Owner and COLP. Owner shall pay the cost of the Audit unless it is determined that COLP's original billing statement to Owner was in error to Owner's disadvantage by more than five percent (5%) of the Common Expenses or other costs charged to Owner in such billing statement in which event Declarant shall pay the cost of Owner's inspection and the Audit.

7.3 Liens for Delinquent Payments

7.3.1 If, after receipt of a billing statement given in the manner provided in Section 7.1, above, including such evidence of payment as theretofore may have been reasonably requested, an Owner fails to pay when due the amount specified in such billing statement, then COLP shall deliver to such defaulting Owner (and its Mortgagee, if applicable, pursuant to Section 12.2), in the manner specified in Section 14.4, below, a second copy of such billing statement, together with a written notice stating that (i) the billing amount set forth in such billing statement is due, owing and unpaid, (ii) a late charge has been imposed upon such billing amount, which late charge shall not exceed ten percent (10%) of the unpaid amount or Fifty Dollars (\$50.00), whichever is greater, and (iii) interest (as provided below) will begin to accrue on such billing amount unless payment is made immediately after the effective date of such written notice. If such billing amount or any portion thereof remains unpaid within ten (10) days after COLP's delivery of written notice in accordance with this Section 7.3.1, then (A) COLP shall be entitled to interest on such unpaid billing amount until paid in full at a rate equal to the lesser of ten percent (10%) per annum or the maximum rate allowed by law, commencing on the date of the original billing statement, and (B) such unpaid billing amount, together with late charge and interest as aforesaid, shall be a lien against the interest of such defaulting Owner in its Parcel or Parcels, which lien shall attach to such Parcel and shall be enforced as provided in Section 7.4, below. The lien provided for in this Section 7.3.1 shall become effective upon the Recordation of a Notice of Claim of Lien signed and certified by COLP, stating the amount due, the name of the defaulting Owner and the legal description of the Parcel owned by such defaulting Owner.

7.3.2 Subject to Section 12.1, below, the lien for delinquent payments, costs of collection, late charges and interest provided in this Section 7.3 shall be prior and superior to all other liens except taxes, bonds, governmental assessments, other levies which, by law, would be superior thereto and any Mortgage; provided the Mortgagee under such Mortgage is not a parent, affiliate or subsidiary of, or otherwise related to, Owner. The sale or transfer of any Parcel shall not affect or extinguish the lien against such Parcel; provided, however, the sale or transfer of any Parcel through foreclosure, trustee's sale or deed in lieu of foreclosure shall extinguish such lien with respect only to payments which became due prior to such sale or transfer, as provided in Section 12.1, below. In no event shall any sale or transfer (whether by foreclosure or otherwise) relieve any Parcel or the Owner thereof from any lien which may attach pursuant to Section 7.3.1, above, for such Owner's failure to pay any Common Expenses becoming due and payable after the date of such sale or transfer.

7.4 Enforcement of Obligation.

COLP may enforce delinquent payments (i) by suing a defaulting Owner directly on the debt established by such delinquent payment, or (ii) by recording a lien against such defaulting Owner's interest in its Parcel or Parcels as provided in Section 7.3, above, and foreclosing such lien through either judicial or nonjudicial proceedings. COLP may commence and maintain a lawsuit against a defaulting Owner directly on the debt without waiving COLP's right to establish a lien against such defaulting Owner's Parcel for the delinquent payment. Any lien created pursuant to Section 7.3, above, may be enforced in any manner permitted by law, including sale by a court, sale by the trustee designated in the notice of delinquent payment or sale by a trustee substituted pursuant to Section 2934(a) of the California Civil Code; and, to that end, a power of sale with respect to each Parcel is hereby conferred upon COLP. Any sale by a trustee shall be conducted in accordance with the provisions of Section 2924 et seq. of the California Civil Code applicable to the exercise of powers of sale. COLP shall have the right to bid for a Parcel at a foreclosure sale conducted pursuant to this Declaration, and, provided that COLP is the highest bidder at such foreclosure sale, to pay the purchase price therefor by crediting such purchase price against the obligations secured by the foreclosed lien, and to acquire and hold, lease, mortgage and convey such Parcel. Nothing herein contained shall prohibit COLP from taking a deed in lieu of foreclosure of a lien created pursuant to Section 7.3 above. In any action instituted by COLP to collect delinquent payments, accompanying costs, late charges or interest, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees as set forth in Section 13.3, below.

7.5 No Offsets.

No offsets against Common Expenses payable by an Owner shall be permitted for any reason.

ARTICLE VIII

POWERS AND DUTIES OF COLP

COLP shall have the right and power to do any lawful act that may be authorized, required or permitted to be done by COLP under this Declaration, and to do and perform any act that may be necessary or proper for, or incidental to, the exercise of any of the express powers of COLP. Without limiting the generality of the foregoing but subject to the same limitations, it is hereby expressly declared that, in addition to the other powers and duties of COLP provided in this Declaration, COLP shall specifically have the right and power to accomplish those matters described in this Article VIII.

8.1 Employ Manager

COLP shall have the power but not the duty to contract with a professional management agent and/or an asset management agent for the performance of maintenance and repair of the Common Area and for conducting other activities on behalf of COLP. Any such contract shall be on terms acceptable to COLP (with compensation to the service provider not exceeding the fair market value of such services as reasonably determined by COLP), and shall be terminable at any time by COLP (i) for cause upon thirty (30) days' written notice thereof, and (ii) without cause upon payment of a termination fee and upon ninety (90) days' written notice. The fee, cost and/or expense of such contract shall be included in Common Expenses.

8.2 Insurance.

8.2.1 Common Area Insurance.

COLP shall have the power and the duty to keep and maintain, or cause to be kept and maintained, the following policies of insurance:

8.2.1.1 Valid and enforceable commercial general liability insurance against liability for bodily injury, personal injury or property damage arising out of the ownership, operation, management or use of the Common Area in such amounts and with such deductible as reasonably determined by COLP from time to time, but in no event in amounts less than One Million Dollars (\$1,000,000) for each occurrence and One Million Dollars (\$1,000,000) for all occurrences each year;

8.2.1.2 Valid and enforceable fire and extended coverage insurance on all of the insurable Improvements, if any, now or hereafter located on the Common Area, which insurance shall include standard all-risk property insurance with replacement costs coverage in such amounts as reasonably determined by COLP from time to time; and

8.2.1.3 Such other insurance as COLP shall deem necessary or expedient to carry out the functions of COLP as set forth in this Declaration.

8.2.2 General Requirements for Common Area Insurance Policies. Every policy of insurance obtained by COLP, whether or not required to be obtained pursuant to the provisions of this Declaration, shall expressly waive any and all rights of subrogation against COLP, its representatives and employees, and all Owners if permitted under the terms of such policy. The premiums for the insurance policies obtained and maintained by COLP, and any deductibles paid by COLP in connection with such insurance policies, shall be included in Common Expenses. COLP is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried by COLP under this Section 8.2. COLP is granted full right and authority to compromise and settle any claim or endorse any claim by legal action or otherwise and to execute releases in favor of any insurer.

8.2.3 Liability Insurance. COLP, at its sole cost and expense, shall keep and maintain, or cause to be kept and maintained valid and enforceable commercial general liability insurance against claims of bodily injury, personal injury or property damage arising out of COLP's or its affiliates' entry upon the Parcels not owned by COLP in the amounts and subject to the substantially the same requirements as set forth in Section 3.5.2 with respect to Owner's liability insurance.

8.3 Utilities.

COLP shall have the power and the duty to pay all charges for utility services for the Common Area, which charges shall be included in Common Expenses provided such charges are reasonably allocable to the Common Area.

8.4 Common Area.

COLP shall have the power and the duty to manage, operate, maintain, control, insure, repair, restore and replace (only if necessary or required by Governmental Requirements) the Common Area and all Improvements located thereon (including, without limitation, the express obligation at all times to preserve, plant, install, repair and maintain the Common Area as set forth in this Declaration), the cost of which shall be included in Common Expenses. Notwithstanding the foregoing, with respect to all or any portion of the Common Area and the Improvements thereon, COLP, at its option in its sole discretion, shall have the right to delegate, in accordance with the terms and conditions of this Declaration, any or all of COLP's duties pursuant to this Section 8.4 to the Owner of the Parcel containing such portion of the Common Area.

8.5 Enforcement.

COLP shall have the power and the duty to enforce the provisions of the Controlling Documents; provided, however, that at no time shall COLP, with respect to amounts owed to COLP (including, without limitation, amounts owed for Common Expenses), impose a rate of interest in excess of the rate of interest then permitted by law to be charged.

8.6 Total Entitlement Monitoring.

COLP shall have the power and the duty to track and monitor the square footage of the Project to ensure that it does not exceed the maximum square footage allowed under the Governmental Requirements.

8.7 Contract and Make Payments.

COLP shall have the power and the duty to contract for and pay the cost of Common Expenses.

8.8 Delegation of Powers.

COLP shall have the power, but not the duty, to reasonably employ the services of any Person or Persons to manage and conduct the business of COLP hereunder and, upon such reasonable conditions as are deemed advisable by COLP, to delegate to such Person or Persons any of its powers hereunder, the reasonable cost of which shall be included in Common Expenses, or to otherwise delegate any of its powers hereunder to other Persons, including, without limitation, committees, officers and employees

8.9 Taxes.

COLP shall have the power and the duty to pay any taxes and governmental assessments which are or could become a lien on the Common Area or any portion thereof, which taxes and governmental assessments shall be included in Common Expenses; provided, however, (i) any such taxes and governmental assessments on the Parking Facilities shall not be included in Common Expenses and (ii) in the event any taxes or governmental assessments of any nature benefit an individual Parcel but are assessed against the Common Area or the personal property of COLP rather than against such individual Parcel, the cost of said taxes or assessments shall be billed to the Owner of such Parcel rather than included in Common Expenses

8.10 Project Rights and Obligations.

COLP shall have the power, but not the duty, to take any action to preserve COLP's rights, and shall have the power and the duty to perform COLP's obligations, under any easement, license, operating agreement, declaration, covenant, condition or restriction or other instrument pertaining to all or any portion of the Project. Any costs, payments, fees or charges incurred by or assessed against COLP in connection with this Section 8.10 shall be included in Common Expenses, provided, however, in the event any costs, payments, fees or charges so incurred or assessed benefit an individual Parcel, such costs, payments, fees or charges shall be billed to the Owner of such Parcel rather than included in Common Expenses. Notwithstanding anything to the contrary set forth in this Section 8.10, with respect to any or all instruments pertaining to the Project, COLP, at its option in its sole discretion, shall have the right to delegate any or all of COLP's powers or duties to the Association as this Section 8.10 relates to the Common Area only

8.11 Litigation.

COLP shall have the power, but not the duty (except as otherwise provided herein), to prosecute and defend, in the name of COLP and such other Owners as COLP may decide in its reasonable discretion, any action affecting or relating to the Common Area and any action in which all or substantially all of the Owners have an interest; provided, however, that nothing contained in this Section 8.11 shall be deemed to release any Owner from any liability arising under any indemnity set forth in this Declaration. Any and all costs and expenses incurred pursuant to this Section 8.11 shall be included in Common Expenses.

8.12 Security.

COLP shall have the power, but not the duty, to provide, through an outside agency, a security force to patrol and protect the Common Area the cost of which shall be included in Common Expenses provided such cost is reasonably allocable to the Common Area.

8.13 Rules

COLP shall have the power, but not the duty, to reasonably adopt, amend, supplement and repeal the Rules provided that any new Rules or any amendments or supplements do not impose a Material Burden on any Owner. The Rules may restrict and govern the use of the Common Area by any Owner; provided, however, that the Rules may not discriminate between the various Owners, Occupants and Permittees. A copy of the Rules shall be given to each Owner not less than ten (10) business days before the Rules (or, as applicable, any amendment thereto) may be deemed to be in full force and effect. The Rules shall have the same force and effect as if set forth herein and made a part of this Declaration.

8.14 Maintenance Standards

At no time shall the Maintenance Standards for repair and maintenance of any Parcel be lower than the minimum standards required by the Governmental Requirements.

8.15 Right to Grant Easements.

8.15.1 COLP shall have the power and the duty to grant utility and other easements through, over, under, across and on the Common Area, which are reasonably necessary or appropriate in connection with the operation or activities of COLP or the ongoing development of lands held by COLP or an affiliate of COLP in the vicinity of the Project (provided such easements shall not impose a Material Burden on any Owner)

8.15.2 COLP shall have the power and the duty to relocate, as COLP may deem necessary or desirable from time to time in its reasonable discretion, easements through, over, under, across and on the Common Area, including, without limitation, the Common Easements; provided, however, that COLP shall use its reasonable discretion in deciding which easements shall be relocated and to what locations and provided further that such relocation shall not impose a Material Burden on any Owner.

8.15.3 COLP shall have the power, but not the duty, to institute, as COLP may deem necessary or desirably from time to time in its reasonable discretion, any other services for the benefit of the Owners or the Project, provided such additional services shall not impose a Material Burden on any Owner.

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8.16 Limitation on Liability of COLP, Indemnification

8.16.1 Neither COLP nor any Agent of COLP when acting in such capacity shall be liable to any Owner or Occupant or any other Person for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of COLP or such Agent, provided that COLP or such Agent has acted in good faith.

8.16.2 Each Owner, by taking fee title to a Parcel, and each Occupant, by accepting occupancy of all or any portion of any Parcel or Building, shall and hereby does agree, personally and for all of its Occupants and Permittees, to Indemnify COLP or any Agent of COLP when acting in such capacity against any Claims arising out of or connected with the exercise of COLP's rights and obligations hereunder unless COLP or such Agent has been negligent or has breached its obligations under this Declaration.

ARTICLE IX

COMMON AREA

9.1 Use of Common Area by Owners and Occupants.

Except as otherwise specifically provided in this Declaration, the use of the Common Area by each Owner and Occupant, and their respective Permittees, shall be in common with all other Owners and Occupants, and their respective Permittees in accordance with Section 5.6 Unless otherwise expressly stated herein, the Common Area shall be used by the Owners and Occupants, and their respective Permittees, in accordance with the Controlling Documents.

9.2 Maintenance and Control of Common Areas.

COLP shall ensure that the Common Area is kept in good repair and maintained in a good, sanitary and attractive condition. All costs and expenses incurred in connection with providing or causing to be provided such maintenance, repairs and improvements (only if necessary or if required by Governmental Requirements) to the Common Area shall be included in Common Expenses; provided, however, (i) costs and expenses associated with the Parking Facilities shall be excluded from Common Expenses and (ii) that in the event a disproportionate or extraordinary cost or expense results from a particular use by an Owner or its Occupants or their respective Permittees, or from the cost of operating a particular Parcel or Building, such additional cost or expense shall be separately allocated and charged to such Owner and not be included in Common Expenses. COLP may secure a maintenance agreement with a reputable contractor to provide such maintenance and repair, the cost of which shall be included in Common Expenses.

9.3 Damage to the Common Area

9.3.1 Each Owner and Occupant shall be liable to COLP for all damage to the Common Area, or to any other real or personal property owned by COLP, that may be sustained by reason of the negligence of such Owner or Occupant, its respective Permittees, which shall include, without limitation, damage to curbs, sidewalks, paved surfaces, monuments, signs, trees and landscaping. No Owner or Occupant shall do, or permit any of its Permittees to do, anything on the Common Area which might increase the rate, or cause the cancellation, of any insurance policies obtained by or on behalf of COLP.

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9.3.2 If any Improvement or any fixture or personal property in the Common Area shall be partially destroyed by fire or other casualty, or partially taken by power of eminent domain or partially condemned, then COLP, as promptly as practicable, shall repair and restore such damaged Improvement or remaining portion of such taken Improvement to its former condition in a lawful and workmanlike manner and in accordance with the Governmental Requirements in effect at the time of such repair and restoration. If the amounts available from the proceeds of insurance policies and from condemnation awards shall be less than the cost of such repair and restoration, all costs and expenses incurred by COLP in connection with such repair and restoration, in excess of any available insurance proceeds and any award therefor, shall be included in Common Expenses, provided that, in the case of damage caused by fire or other casualty, COLP has maintained the insurance required under Section 8.2.1.2, and further provided that repair and restoration costs associated with the Parking Facilities shall be excluded from Common Expenses

9.4 Expansion of Common Area.

At any time, COLP may, but need not, obtain or acquire, by purchase, lease, acceptance of gift or other transaction, and without the consent of the other Owners, any lands, personal property or rights therein, and thereby increase and expand the Common Area, provided that doing so does not increase the dollar amount of an Owner's Proportionate Share of Common Expenses.

9.5 Governmental Compliance.

The use, ownership, maintenance, operation, improvement and repair of the Common Area shall at all times strictly comply with all Governmental Requirements. Without limiting the generality of the foregoing, any portion of the Common Area designated as open space under any Entitlement shall not be improved or its use changed without approval of each governmental agency with jurisdiction over such open space.

ARTICLE X

ENFORCEMENT

10.1 Abatement and Suit.

10.1.1 Subject to the restrictions set forth in this Declaration and those imposed by law, the violation or breach of any covenant, condition, restriction or provision contained in the Controlling Documents shall give COLP and its agents, employees, representatives and contractors the right to enter upon any Parcel upon or as to which said violation or breach exists and to summarily abate and remove, at the expense of the Owner thereof, any structure, thing or condition that may be or exist thereon contrary to the Controlling Documents; provided, however, prior to exercising COLP's rights under this Section 10.1.1 (except in the event of an emergency), COLP shall give the Owner (and its Mortgagee, if applicable, pursuant to Section 12.2) written notice of the violation or breach and a reasonable period of time following receipt of such notice to cure the violation or breach, not to exceed thirty (30) days unless such violation or breach is not reasonably susceptible of cure within thirty (30) days, in which event the Owner shall have such additional time as is reasonably necessary provided the Owner commences the cure within such thirty (30) day period and diligently prosecutes such cure to completion.

10.1.2 COLP and any aggrieved Owner shall have the right to prosecute a proceeding at law or in equity, or initiate arbitration proceedings pursuant to Article XIII, below, against any Owner or Occupant or any other Person or Persons who have violated, or who have attempted to violate, any of the provisions, covenants, conditions, and restrictions set forth in the Controlling Documents, to enjoin or

prevent them from doing so, to cause said violation or breach to be remedied or to recover damages for said violation or breach; provided, however, (i) prior to COLP or an aggrieved Owner exercising its rights under this Section 10.1.2 (except in the event of an emergency), COLP or the aggrieved Owner, as applicable, shall give the defaulting Owner (and its Mortgagee, if applicable, pursuant to Section 12.2) written notice of the violation or breach and a reasonable period of time following receipt of such notice to cure the violation or breach, not to exceed thirty (30) days unless such violation or breach is not reasonably susceptible of cure within thirty (30) days, in which event the defaulting Owner shall have such additional time as is reasonably necessary provided the defaulting Owner commences the cure within such thirty (30) day period and diligently prosecutes such cure to completion and (ii) that nothing contained herein shall be deemed to impose upon COLP or any aggrieved Owner any liability for the failure to correct or to prosecute a violation or breach of the Controlling Documents

10.1.3 In the event the ownership of an Owner is vested in more than one Person, each such Person shall be jointly and severally liable with each other such Person for the violation or breach of any covenant, condition, restriction or provision contained in the Controlling Documents (i) existing upon the Parcel or Parcels owned by such Owner or (ii) caused or committed by such Owner or any Occupant or their respective Permittees

10.2 Deemed to Constitute a Nuisance

The result of every action or omission whereby any covenant, condition, restriction or provision herein contained is violated or breached, in whole or in part, is hereby declared to be and constitute a nuisance, and every remedy allowed by law or in equity against anyone causing a nuisance shall be applicable against the Owner, Occupant or such other Person responsible for such action or omission, which remedies may be exercised by COLP and/or any aggrieved Owner; provided, however, prior to COLP or an aggrieved Owner exercising its rights under this Section 10.2 (except in the event of an emergency), COLP or the aggrieved Owner, as applicable, shall give the defaulting Owner (and its Mortgagee, if applicable, pursuant to Section 12.2) written notice of the violation or breach and a reasonable period of time following receipt of such notice to cure the violation or breach, not to exceed thirty (30) days unless such violation or breach is not reasonably susceptible of cure within thirty (30) days, in which event the defaulting Owner shall have such additional time as is reasonably necessary provided the Owner commences the cure within such thirty (30) day period and diligently prosecutes such cure to completion.

10.3 Inspection.

COLP and its representatives, at any reasonable time but with reasonable notice to any Owner or Occupant, may enter and reasonably inspect any Parcel to ascertain whether such Parcel, the Improvements thereon and the uses thereof are in compliance with the Controlling Documents. In such event, neither COLP nor its representatives shall be deemed guilty of, or become liable for, any manner of trespass or unlawful entrance in connection with such entry and inspection.

10.4 Failure to Enforce Not a Waiver of Rights.

The failure of COLP or any aggrieved Owner to enforce any covenant, condition, restriction or provision herein contained shall in no event be deemed to be a waiver of the right to thereafter do so nor of the right to enforce any other covenant, condition, restriction or provision set forth in this Declaration.

10.5 Enforcing Violations

The violation of any Governmental Requirements shall constitute a violation of this Declaration and shall be enforceable in accordance with the provisions of this Article X.

10.6 Termination.

Notwithstanding anything to the contrary contained or implied in this Declaration, in no event shall the remedies available hereunder for a breach of the provisions hereof include termination of this Declaration. Instead, it is COLP's express intention that this Declaration shall be terminable only upon the agreement of all of the Owners. Each Owner hereby waives any right under law, in equity or otherwise, to terminate this Declaration under any circumstance other than as set forth in this Section 10.6 and in Article XI, below.

10.7 Force Majeure.

Except as otherwise provided in this Article X or elsewhere in this Declaration, each Owner and COLP shall be excused from performing any obligation or undertaking provided in this Declaration, except any obligation to pay any money (unless such payment is conditioned upon performance of an obligation or undertaking excused by this Article X), in the event that, but only so long as, the performance of any such obligation is prevented, delayed, retarded or hindered by. (i) act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, terrorism, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the ordinary course on the open market; (ii) failure of normal transportation, strike, lockout, action of labor unions; (iii) condemnation, requisition, law, order of governmental or civil or military authorities; (iv) the inability to obtain governmental approvals or permits despite the exercise of due diligence and commercially reasonable, good faith efforts; or (v) any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such Owner or COLP (financial ability or negligence excepted). Each Owner shall give notice of any such delay to each other Owner and COLP within thirty (30) days of such Owner's actual knowledge of the occurrence of the event with respect to which such Owner intends to claim a permitted delay hereunder.

10.8 Correction of Site Descriptions, Descriptions of Easements.

By reason of inadvertent construction errors, an Improvement may not be precisely constructed within its Parcel. As soon as reasonably possible after completion of the construction of an Improvement, the Owner thereof, at its sole cost and expense, shall cause an "as-built" survey to be made of its Parcel. If such survey discloses that the subject Improvement has not been constructed precisely within such Owner's Parcel, then, upon request of the constructing Owner, the Owner of the Parcel or the Common Area, as applicable, onto which such Improvement encroaches shall grant to the constructing Owner an easement over that portion of such Owner's Parcel or the Common Area as shall be required to permit the location of such Improvement as shown on the survey (an "Encroachment Easement"). Any such Encroachment Easement shall remain in existence so long as such Improvement shall be in existence. All reasonable costs and expenses in connection with the granting of such Encroachment Easements, including, without limitation, reasonable attorneys' fees, shall be borne solely by the constructing Owner. Nothing contained herein shall be deemed to relieve or excuse any Owner from exercising due diligence and commercially reasonable, good faith efforts to construct all Improvements within the boundaries of such Owner's Parcel. COLP hereby grants to the Owner of Parcel 1 an Encroachment Easement over those portions of the Common Area onto which the current Improvements on Parcel 1 encroach.

ARTICLE XI**TERMINATION AND AMENDMENT****11.1 Duration.**

This Declaration shall be effective as of the date of Recordation and shall continue in full force and effect for seventy (70) years. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years each, unless a written instrument signed by all then Owners of the Parcels, and consented to by their respective Mortgagees, is duly Recorded, which Recordation shall occur at least one (1) year prior to the end of the term hereof or any extension period, for the purpose of terminating or amending this Declaration in whole or in part. Upon termination of this Declaration, all rights and privileges derived from, and all duties and obligations created and imposed by, the provisions of this Declaration, shall terminate and have no further force or effect; provided, however, that the termination of this Declaration shall not limit or affect any remedy at law or in equity of any Owner against any other Owner with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such termination.

11.2 Amendments.

The provisions of this Declaration may be modified or amended only by a written instrument duly Recorded after having been executed and acknowledged by all Owners and COLP. No Owner shall unreasonably withhold, condition or delay its execution and acknowledgment of an amendment proposed by COLP provided that such amendment will not impose a Material Burden on such Owner. Notwithstanding anything to the contrary contained in this Declaration, COLP shall have the unilateral right, without obtaining the consent of other Owners, to modify or amend this Declaration from time to time (provided such amendment does not impose a Material Burden on any Owner) to add real property located adjacent to or in the vicinity of the Project to that real property then subject to this Declaration (an "Annexation") and/or to designate Parcels comprising the Project (a "Parcel Designation"), provided that any modification or amendment to this Declaration in connection with an Annexation and/or Parcel Designation shall be executed and acknowledged by any Person (an "Added Owner") who by virtue of such Annexation and/or Parcel Designation shall become an Owner hereunder of a Parcel which otherwise would not be subject to this Declaration. Upon any Annexation and/or Parcel Designation, COLP (and each Added Owner other than COLP) shall execute, acknowledge and Record a written amendment to this Declaration reciting such Annexation and/or Parcel Designation, which written amendment shall include the following:

11.2.1 A reference to this Declaration and to this specific provision granting to COLP such authority without the obligation to obtain the consent of other Owners (except any Added Owner);

11.2.2 A description of the Annexation and/or Parcel Designation;

11.2.3 A representation by COLP (and any Added Owner) that the Annexation and/or Parcel Designation for which such written instrument is being Recorded has been effectuated;

11.2.4 A designation of each Parcel of the real property which is the subject of the Annexation and/or Parcel Designation.

11.2.5 Such amendment to Exhibit "A" and Exhibit "B" hereto, setting forth a description of the real property comprising the Project and subject to this Declaration, as COLP shall

deem necessary or appropriate in its reasonable discretion in connection with the Annexation and/or Parcel Designation; and

11.2.6 An assumption by the Added Owner to assume the obligations of Owner under this Declaration, including but not limited to the obligation of the Added Owner to pay its Proportionate Share of Common Expenses. In connection with any Annexation or Parcel Designation, the Proportionate Share of the Added Owner and of each other Owner shall be equitably determined and adjusted by COLP, subject to each Owner's reasonable approval of the adjustment to its Proportionate Share.

ARTICLE XII

RIGHTS OF LENDERS

12.1 Priority of Lien of Mortgage.

12.2 This Declaration shall be and remain senior in priority to all Mortgages hereafter executed upon the Project, any Parcel or any portion thereof; provided, however, that no breach of the covenants, conditions or restrictions herein contained or foreclosure of any lien herein created shall affect, impair, defeat or render invalid the lien, charge or priority of any Mortgage made in good faith and for value encumbering any Parcel. Any Mortgagee or other Owner whose title to a Parcel is derived through foreclosure, trustee's sale or deed in lieu of foreclosure, shall take title to such Parcel subject to, and shall be bound by, all the easements, covenants, conditions and restrictions set forth in this Declaration. Notice of Default; Opportunity to Cure

Each Mortgagee, upon filing a written request with COLP, is entitled to written notification from COLP of any default under this Declaration by the Owner of any Parcel against which such Mortgagee's Mortgage is Recorded, and if the Owner does not cure such breach within its cure period, then, notwithstanding anything herein to the contrary, prior to COLP commencing any legal or arbitration proceeding against the defaulting Owner, such Mortgagee shall be entitled to a reasonable period of time following the expiration of such cure period within which to cure such breach, not to exceed the length of cure period applicable to the defaulting Owner; provided, however, that nothing contained herein shall entitle such Mortgagee to arbitrate a breach that has already been arbitrated hereunder.

12.3 Request for Notice.

No Mortgagee shall be entitled to receive any notice from COLP under this Declaration unless and until such Mortgagee has delivered to COLP a written request therefor. Such request for notice shall state which Parcel or Parcels, or Improvements thereon, are encumbered by its mortgage or subject to a ground lease. Notwithstanding anything to the contrary contained in this Declaration, if COLP is the mortgagor under a Mortgage, then Mortgagee thereunder shall automatically be entitled to receive any notice or other information which this Declaration requires to be given Mortgagees by COLP, without a written request for such notice or other information, so long as such mortgagee's Mortgage includes a provision for notice to such Mortgagee. A Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of its Mortgage over the lien for Common Expenses levied by COLP hereunder, shall not be affected by the failure by such Mortgagee to request notice. Any request for notice delivered to COLP or right to receive notice automatically shall remain effective with respect to the Parcel or Parcels, or improvements thereon for which notice was requested or is required to be given automatically, without any further action by the Person thereby entitled to receive such notice for so long as such Person continues to be a Mortgagee.

12.4 Curing Defaults

A Mortgagee, or the immediate transferee of such Mortgagee, who acquires title to a Parcel by judicial foreclosure, a trustee's sale, a deed in lieu of foreclosure or otherwise, shall not be liable for any default under this Declaration which occurred prior to the date on which such Mortgagee or transferee acquired title to a Parcel, provided that (a) such default is either not curable or of a type which is not practical or feasible to cure, and (b) such Mortgagee did not have notice of such default at the time such Mortgagee acquired a lien or security interest in such Parcel. COLP's reasonable determination, made in good faith, that a breach is not curable or infeasible to cure shall be final and binding on all Mortgagees. In addition, if at the time a Mortgagee, or the immediate transferee of such Mortgagee, acquires title to a Parcel by judicial foreclosure, a trustee sale, a deed in lieu of foreclosure or otherwise, such Mortgagee or transferee shall not be liable for any default existing as of such date unless such Mortgagee or transferee has been given written notice of such default and does not cure the same within a reasonable period of time following receipt of such notice or the date it acquired title, whichever is later, not to exceed thirty (30) days unless such default is not reasonably susceptible of cure within thirty (30) days, in which event such Mortgagee or transferee shall have such additional time as is reasonably necessary provided such Mortgagee or transferee commences the cure within such thirty (30) day period and diligently prosecutes such cure to completion.

12.5 Availability of Documents

COLP shall make available to all Owners and all Mortgagees current copies of the Controlling Documents. As used herein, "available" shall mean available for inspection, upon request, during normal business hours at such location as COLP shall determine from time to time (provided that in any event such location shall be located in Los Angeles County, California) or under other reasonable circumstances.

12.6 Conflicts.

In the event of any conflict between any of the provisions of this Article XII and any of the other provisions of this Declaration, the provisions of this Article XII shall control.

ARTICLE XIII

WAIVER OF JURY TRIAL, ARBITRATION, LITIGATION EXPENSES

13.1 WAIVER OF TRIAL BY JURY

ANY LITIGATION COMMENCED BY ANY OWNER OR COLP AGAINST ANY OTHER OWNER OR COLP RESULTING FROM ANY BREACH OR ALLEGED BREACH OF THE TERMS OF THIS DECLARATION SHALL BE TRIED WITHOUT A JURY AND ANY SUCH OWNER AND COLP SHALL BE DEEMED TO HAVE WAIVED ANY RIGHT TO A TRIAL BY JURY.

13.2 Arbitration.

13.2.1 General Submittals to Arbitration

Notwithstanding anything to the contrary contained in this Declaration, the submittal of all matters to arbitration in accordance with the terms of this Section 13.2 is the sole and exclusive method, means and procedure to resolve any and all claims, disputes or disagreements arising under this Declaration, except for claims under Section 7.4 or claims which (i) all parties in interest can not be

joined, (ii) seek anything other than enforcement of rights under this Declaration, or (iii) are primarily founded upon matters of fraud, willful misconduct, bad faith or any other allegations of tortious action, and seek the award of punitive or exemplary damages, which disputes shall be resolved by suit filed in the Superior Court of Los Angeles County, California, the decision of which court shall be subject to appeal pursuant to applicable law.

13.2.2 JAMS.

Any dispute to be arbitrated pursuant to the provisions of this Section 13.2 shall be determined by binding arbitration before a retired judge of the Superior Court of the State of California (the "Arbitrator") under the auspices of Judicial Arbitration & Mediation Services, Inc. ("JAMS"). Such arbitration shall be initiated by the parties, or either of them, within ten (10) days after either party sends written notice (the "Arbitration Notice") of a demand to arbitrate by registered or certified mail to the other party and to JAMS. The Arbitration Notice shall contain a description of the subject matter of the arbitration, the dispute with respect thereto, the amount involved, if any, and the remedy or determination sought. The parties may agree on a retired judge from the JAMS panel. If they are unable to promptly agree, JAMS will provide a list of three available judges and each party may strike one. The remaining judge (or if there are two, the one selected by JAMS) will serve as the Arbitrator. In the event that JAMS shall no longer exist or if JAMS fails or refuses to accept submission of such dispute, then the dispute shall be resolved by binding arbitration before the American Arbitration Association ("AAA") under the AAA's commercial arbitration rules then in effect.

13.2.3 Arbitration Procedure

13.2.3.1 Pre-Decision Actions. The Arbitrator shall schedule a pre-hearing conference to resolve procedural matters, arrange for the exchange of information, obtain stipulations, and narrow the issues. The parties will submit proposed discovery schedules to the Arbitrator at the pre-hearing conference. The scope and duration of discovery will be within the sole discretion of the Arbitrator. The Arbitrator shall have the discretion to order a pre-hearing exchange of information by the parties, including, without limitation, production of requested documents, exchange of summaries of testimony of proposed witnesses, and examination by deposition of parties and third-party witnesses. This discretion shall be exercised in favor of discovery reasonable under the circumstances.

13.2.3.2 The Decision. The arbitration shall be conducted in Los Angeles County, California. Any party may be represented by counsel or other authorized representative. In rendering a decision(s), the Arbitrator shall determine the rights and obligations of the parties according to the substantive and procedural laws of the State of California and the terms and provisions of this Declaration. The Arbitrator's decision shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences therefrom. The Arbitrator may make any determination, and/or grant any remedy or relief that is just and equitable. The decision must be based on, and accompanied by, a written statement of decision explaining the factual and legal basis for the decision as to each of the principal controverted issues. The decision shall be conclusive and binding, and it may thereafter be confirmed as a judgment by the Superior Court of the State of California, subject only to challenge on the grounds set forth in the California Code of Civil Procedure Section 1286.2. The validity and enforceability of the Arbitrator's decision is to be determined exclusively by the California courts pursuant to the provisions of this Declaration. The Arbitrator shall, as provided in Section 13.3, award costs, including without limitation attorneys' fees, and expert and witness costs, to the prevailing party, if any, as determined by the Arbitrator. The Arbitrator's fees and costs shall be paid by the non-prevailing party as determined by the Arbitrator. A party shall be determined by the Arbitrator to be the prevailing party if its proposal for the resolution of dispute is the closer to that adopted by the Arbitrator.

13.3 Attorneys' Fees and Costs.

If any Owner, Occupant or COLP brings an action or arbitration proceeding against any other Owner, Occupant or COLP by reason of a breach or alleged violation of any covenant, term or obligation of this Declaration, or for the enforcement of any provision of this Declaration or otherwise arising out of this Declaration, the prevailing party in such action or arbitration proceeding shall be entitled to its cost of suit and reasonable attorneys' fees, which shall be made part of any judgment rendered in such action or arbitration proceeding. For the purposes of this Declaration, the term "attorneys' fees" shall mean the fees and expenses of counsel to the parties hereto, which may include post-judgment motions, contempt proceedings, garnishment, levy and debtor and third-party examinations, discovery, bankruptcy, litigation, printing, photostating, duplicating and other expenses, air freight charges and fees billed for law clerks, paralegals and other persons not admitted to the bar but performing services under the supervision of an attorney, all of which shall be deemed to have accrued upon the commencement of such action or arbitration proceeding.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

14.1 Constructive Notice and Acceptance.

Every Person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or any Parcel is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and provision contained in this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such Person acquired an interest in the Project.

14.2 Intentionally Omitted.

14.3 Land Use Matters

COLP shall retain the right, in its sole and absolute discretion, for the benefit of any Parcels owned by COLP or an affiliate of COLP or for the benefit of all or any portion of LAUS, to apply for, obtain, prepare, change, amend, supplement, modify or terminate (provided such action does not impose a Material Burden on any Owner) all or any portion of the Governmental Requirements or the Controlling Documents. Each Owner, by accepting its deed, and each Occupant, by accepting the right to occupy a Parcel, agrees (i) to support the general plan of improvement and development of the Project and/or LAUS, as from time to time conceived, determined, amended, modified or supplemented by COLP, (ii) to cooperate with COLP, and to take all steps reasonably requested by COLP, in connection with the general plan of improvement and development of the Project and/or LAUS, and (iii) not to oppose, or to interfere in any fashion (including, without limitation, by speaking out at public hearings) with, any efforts by COLP to complete development of the Project, LAUS or other lands immediately adjacent to the Project.

14.4 Notices.

14.4.1 Form and Method of Delivery. Except as otherwise expressly provided in this Declaration or required by law, all notices, consents, requests, demands, approvals, authorizations and other communications (each a "Notice") provided for herein shall be in writing and shall be (A) sent by

United States certified or registered mail, postage prepaid, return receipt requested ("Mail"); (B) transmitted by telecopy, facsimile or other form of electronic transmission, provided that such transmission is promptly followed by a Notice sent by Mail; (C) delivered by a nationally recognized overnight courier; or (D) delivered personally. Any Notice shall be sent, transmitted, or delivered, as the case may be, to the intended party at its last known address. For purposes of this Section 14.4, "last known address" with respect to any Owner shall mean such Owner's address supplied by such Owner to COLP. If no address is supplied, then such Owner's address shall be deemed to be the address of any Parcel owned by such Owner. If personally delivered or delivered by courier, then such Notice shall be effective upon delivery. If sent by telecopy, facsimile or other form of electronic transmission, then such Notice shall be effective upon transmission (if prior to 6:00 p.m. in the recipient's time zone; but if after 6:00 p.m., then such Notice shall be effective at 9:00 a.m. on the next business day after such transmission), provided that such transmission is promptly followed by a Notice sent by Mail. If sent by Mail, then such Notice shall be effective on the third day after it is deposited in the Mail in accordance with the foregoing. Any correctly addressed Notice that is refused, unclaimed or undelivered because of an act or omission of the party to be notified shall be considered to be effective as of the first date that such Notice was refused, unclaimed or considered undeliverable by the postal authorities, messenger, officer of the law or overnight delivery service.

14.4.2 Notice to Occupants. With respect to any Notice, or any document or instrument (including, without limitation, the Controlling Documents) delivered or made available to any Owner pursuant to this Declaration or any of the other Controlling Documents, which might concern one or more Occupants of such Owner's Parcel, it shall be the sole responsibility of such Owner to make a copy thereof available in a timely manner to any such Occupants.

14.4.3 Estoppel Certificates. Each Owner and COLP are hereinafter referred to as a "Party" to this Declaration. Each Party, at any time and from time to time upon not less than 10 days' prior written notice from any other Party, including any Mortgagee, shall execute, acknowledge and deliver to such Party, or, at such Party's request, to any other Person reasonably requested by such Party, a certificate legally sufficient to establish the following: (a) if true, that this Declaration is unmodified and in full force and effect (or, if there have been modifications, that this Declaration is in full force and effect as modified and stating the modifications); (b) whether, to such Person's actual knowledge, there are then existing any defenses against the enforcement of any of the obligations of the requesting Party under this Declaration (and, if so, specifying same), and (c) whether, to such Person's actual knowledge, there are then existing any defaults by any Party in the performance of their respective obligations under this Declaration (and, if so, specifying same). It is intended that any such certificate delivered pursuant to this Section 14.4 may be relied upon by the requesting Party and any such other Person. The Parties will execute an alternative form of estoppel certificate if reasonably requested by a Party. The Party providing any such certificate shall be entitled to receive the reasonable cost of its preparation, not to exceed \$1,500 and subject to change on annual basis utilizing the Consumer Price Index (CPI) for Los Angeles County.

14.5 Liberal Construction.

The provisions of this Declaration shall be liberally construed to effectuate its purpose. The failure to enforce any provision of this Declaration shall not constitute a waiver of the right to thereafter enforce such provision or the right to enforce any other provision hereof.

14.6 Singular Includes Plural.

Whenever the context of this Declaration requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and vice versa.

14.7 Headings

Section and Article headings, where used in this Declaration, are inserted for convenience only and are not intended to be a part hereof or in any way to define, limit or describe the scope or intent of the particular provisions to which they refer.

14.8 Effect of Invalidation

Each covenant, condition, restriction and provision of this Declaration is intended to be, and shall be construed as, independent and severable from each other covenant, condition, restriction and provision. If any covenant, condition, restriction or provision of this Declaration is held to be invalid by any court, the invalidity of such covenant, condition, restriction or provision shall not affect the validity of the remaining covenants, conditions, restrictions and provisions hereof.

14.9 Cumulative Remedies.

Each remedy provided for in this Declaration and in the Controlling Documents shall be cumulative and not exclusive. The failure to exercise any remedy provided for in this Declaration or any of the other Controlling Documents shall not constitute a waiver of such remedy or of any other remedy provided herein or therein.

14.10 Conflicting Provisions.

In the case of any conflict between this Declaration or any of the other Controlling Documents, this Declaration shall control.

14.11 Approvals.

Any reference in this Declaration to an approval by COLP shall be deemed to be in COLP's sole and absolute discretion unless otherwise expressly provided herein.

14.12 No Public Dedication.

Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Project to the general public or for the benefit of the general public or for any public purposes whatsoever, it being the intent of COLP that this Declaration shall be strictly limited to and for the purposes expressed in this Declaration. The right of the public or any Person to make any use whatsoever of the Project or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission and subject to control of COLP and the other Owners.

14.13 Construction by COLP and Affiliated Entities.

Subject to the easement rights granted to the Owners pursuant to Section 5.2 of this Declaration, nothing in this Declaration shall limit the right of COLP or any Affiliated Entity to alter the Common Areas, or to construct such additional Improvements on the Common Areas as COLP deems advisable provided such action does not impose a Material Burden on any Owner.

14.14 Limitation of Liability.

Notwithstanding any contrary provision in this Declaration, the liability of COLP and its Agents for any liabilities, damages, claims, awards, judgments, fees or costs resulting from the failure of COLP

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or the failure of COLP's partners, or the partners, directors, or officers of COLP's partners, or the failure of COLP's agents, contractors, or employees, to keep, observe and perform all the duties, obligations, agreements, covenants, conditions and restrictions imposed by this Declaration (collectively, the "COLP's Liabilities"), shall be limited to the equity interest of the Common Area and any other Parcel owned by COLP (including income derived therefrom). No other property, real or personal, of COLP, nor the partners of COLP, nor of the partners, directors, or officers of the partners of COLP, shall be available or liable for the satisfaction of COLP's Liabilities. For purposes of this Section 14 14, the term COLP shall mean and refer to both COLP and any affiliated entities.

SIGNATURES APPEAR ON NEXT PAGE

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"COLP":

**CATELLUS OPERATING LIMITED
PARTNERSHIP**, a Delaware limited partnership
(as successor by merger to Catellus Development
Corporation)

By: Catellus Development Corporation,
a Delaware corporation (formerly known as
Catellus SubCo, Inc.), its sole general partner

By: Catellus Urban Development Corporation, a
Delaware corporation, its authorized agent

By: 

Name: KEITH E. ANDERSON

Title: Sr. Vice President

"CLDC"

**CATELLUS LAND AND DEVELOPMENT
CORPORATION**, a Delaware Corporation

By: Catellus Urban Development Corporation, a
Delaware corporation, its authorized agent

By: 

Name: KEITH E. ANDERSON

Title: Sr. Vice President

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Los Angeles

} ss

On March 24, 2005, before me, Rita C. Salazar Ryno, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
 personally appeared Ruth Anderson
Name(s) of Signer(s)

☒ personally known to me☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document

Description of Attached Document

Title or Type of Document: Declaration of Covenants, Conditions & RestrictionsDocument Date: March 24, 2005 Number of Pages: 1-42 Ex A-1 to Ex. ESigner(s) Other Than Named Above None

Capacity(ies) Claimed by Signer

Signer's Name: Ruth Anderson☐ Individual☒ Corporate Officer — Title(s) Senior Vice President☐ Partner — ☐ Limited ☐ General☐ Attorney in Fact☐ Trustee☐ Guardian or Conservator☐ Other

Signer Is Representing

Antellus Operating Limited Partnership
Antellus Land and Development
Corporation

 RIGHT THUMBPRINT
 OF SIGNER
 Top of thumb here

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EXHIBIT "A-1"**LEGAL DESCRIPTION OF WEST CAMPUS SOUTH****Parcel 1**

That portion of Lot 2 of Tract No. 10151, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 157, Pages 45, 46 and 47 of Maps, Records of said County, described as follows:

Beginning at a point on the westerly line of said Lot 2, distant thereon North 10 degrees 01 minutes 01 seconds East 566.33 feet from the southwesterly corner of said Lot 2; thence South 79 degrees 58 minutes 59 seconds East 110.20 feet; thence South 10 degrees 01 minutes 01 seconds West 371.78 feet to the northerly line of the land described in deed to Metropolitan Water District of Southern California, recorded May 31, 1996 as Instrument No. 96-858207 of Official Records of said County; thence along said northerly line, North 79 degrees 58 minutes 59 seconds West 110.20 feet to said westerly line of Lot 2; thence North 10 degrees 01 minutes 01 seconds East 371.78 feet to the point of beginning.

Driveway Area

THOSE PORTIONS OF LOTS 1, 2 AND "A", OF TRACT NO. 10151, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 157, PAGES 45, 46 AND 47 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT "A"; THENCE ALONG THE NORTHERLY LINE THEREOF, AND SOUTHERLY RIGHT-OF-WAY OF MACY STREET, (80.00 FEET WIDE), AS SHOWN ON SAID TRACT NO. 10151, SOUTH 71°09'27" EAST, 264.68 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, SOUTH 71°09'27" EAST, 93.82 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY, SOUTH 16°11'43" WEST, 5.66 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 15.00 FEET, A RADIAL BEARING FROM SAID POINT BEARS SOUTH 16°11'43" WEST; THENCE WESTERLY AND SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 96°10'14", FOR AN ARC LENGTH OF 25.18 FEET; THENCE SOUTH 10°01'28" WEST, 137.37 FEET; THENCE NORTH 79°58'32" WEST, 146.04 FEET; THENCE SOUTH 09°56'53" WEST, 287.50 FEET; THENCE NORTH 79°58'59" WEST, 27.07 FEET; THENCE SOUTH 10°01'01" WEST, 431.50 FEET; THENCE SOUTH 01°31'14" WEST, 155.38 FEET TO THE NORTH LINE OF THE LANDS OF THE LOS ANGELES METROPOLITAN WATER DISTRICT AS DESCRIBED IN A DEED RECORDED MAY 31, 1996, AS INSTRUMENT NUMBER 96-858207, OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID NORTH LINE, NORTH 79°58'59" WEST, 77.00 FEET TO THE SOUTHEAST LINE OF PARCEL "A" OF THE CERTIFICATE OF COMPLIANCE RECORDED JULY 14, 2003, AS INSTRUMENT NUMBER 03-1999720, OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID SOUTHEAST LINE AND IT'S NORTHEAST PROLONGATION, NORTH 10°00'57" EAST, 380.99 FEET; THENCE NORTH 79°58'59" WEST, 101.20 FEET TO THE EASTERLY RIGHT-OF-WAY OF ALAMEDA STREET, (105.00 FEET WIDE) AS DESCRIBED IN THAT CERTAIN IRREVOCABLE OFFER TO DEDICATE RECORDED FEBRUARY 9, 2005 AS INSTRUMENT NO. 05-0305763 OF SAID OFFICIAL RECORDS; THENCE ALONG SAID RIGHT-OF-WAY, NORTH 10°01'01" EAST, 34.00 FEET; THENCE DEPARTING SAID RIGHT OF WAY, SOUTH 78°58'59" EAST, 101.20 FEET; THENCE NORTH 10°01'01" EAST, 91.95 FEET; THENCE NORTH 79°58'59" WEST, 101.20 FEET TO SAID EASTERLY RIGHT-OF-WAY OF ALAMEDA STREET; THENCE ALONG SAID RIGHT-OF-WAY, NORTH 10°01'01" EAST, 34.00 FEET; THENCE DEPARTING SAID RIGHT OF WAY, SOUTH 78°58'59" EAST, 101.15 FEET; THENCE NORTH 10°06'28" EAST, 297.88 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 88.00 FEET; THENCE NORTHERLY AND EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°55'00", FOR AN ARC LENGTH OF 138.10 FEET; THENCE SOUTH 79°58'32" EAST, 54.39 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 20.00 FEET; THENCE EASTERLY AND NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00", FOR AN ARC LENGTH OF 31.42 FEET; THENCE NORTH 10°01'28" EAST, 73.53 FEET TO THE BEGINNING OF A TANGENT CURVE

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EXHIBIT "A-1"

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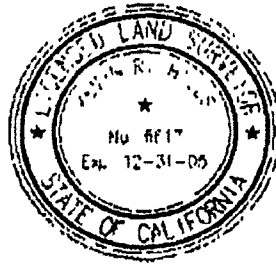
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CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 15.00 FEET; THENCE NORTHERLY AND WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $81^{\circ}10'55''$, FOR AN ARC LENGTH OF 21.25 FEET; THENCE NORTH $18^{\circ}50'33''$ EAST, 10.00 FEET TO THE TRUE POINT OF BEGINNING. CONTAINS AN AREA OF 81,585 SQUARE FEET, MORE OR LESS.

SEE EXHIBIT "B" ATTACHED HEREON AND MADE PART THEREOF.

Kevin R. Hills

Kevin R. Hills



617173 07/SD
C3180-007/3-23-05/cda/ldf

EXHIBIT "A-1"

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EXHIBIT "C"PARCEL 1 PARKING RIGHTS

1. Grant. COLP hereby grants to the Owner of Parcel 1 (the "Parcel 1 Owner") and Designees (as defined below) an irrevocable, non-exclusive easement ("Parking Easement"), as long as Parcel 1 Owner complies with the terms hereof, to use (i) during the first ten (10) years following the Recordation of the Declaration, seventy-two (72) parking spaces in the Parking Facility and (ii) thereafter, twenty-nine (29) parking spaces in the Parking Facility (The Parking Easement as it relates to the use of one (1) parking space in the Parking Facility is sometimes referred to herein as a "Parking Pass.") The term of the Parking Easement shall be perpetual, but subject to termination under Section 6 hereof. The charge for the spaces ("Monthly Parking Fee") during the term of the Parking Easement shall be as set forth in Section 12 below, and shall be payable by Parcel 1 Owner monthly in advance. No deductions from the Monthly Parking Fee shall be made for days on which the Parking Facility is not used by Parcel 1 Owner. Each Parking Pass shall be a non-exclusive right to use the Parking Facility for the parking of an automobile or motorcycle on a monthly basis except as otherwise stated herein, subject to the terms and conditions of the Declaration. Parcel 1 Owner shall have the right to designate those persons entitled to use the parking spaces licensed to Parcel 1 Owner hereunder ("Designees"), by giving COLP and Operator a notice with the names of the Designees, which notice is required in order to facilitate the enforcement by COLP or Operator of their rights hereunder with respect to individual Designees, provided that only Permittees of Parcel 1 may be named as Designees. Parcel 1 Owner shall notify COLP and Operator at least monthly in advance on the first date of each calendar month as to any modifications to the list of Designees. Parcel 1 Owner shall comply with any reasonable rules and procedures established by Operator with respect to such Designees. Operator may, at its option, require each Designee to sign an individual contract with Operator concerning such Designee's use of a Parking Pass.

2. Compliance with Applicable Laws and Rules. Parcel 1 Owner shall at all times comply with all Governmental Requirements respecting the use of the Parking Facility. COLP reserves the right for itself or Operator to adopt, modify and enforce reasonable rules (the "Parking Rules") governing the use of the Parking Facility from time to time including any key-card, sticker or other identification or entrance system and hours of operation. The Parking Rules set forth at the end of this Exhibit "C" are currently in effect, but may be modified by COLP at any time by written notice to Parcel 1 Owner.

3. Revocation of Parking Pass. The right of a Designee to use the Parking Facility pursuant to a Parking Pass shall be revocable by COLP or Operator upon the occurrence of the following: (i) the repeated failure (i.e., in excess of two (2) failures) of Parcel 1 Owner to pay the Monthly Parking Fee for the Parking Pass held by such Designee within ten (10) days after notice to Parcel 1 Owner (and its Mortgagee, if applicable, pursuant to Section 12.2 of the Declaration) of non-payment or (ii) the repeated failure (i.e., in excess of two (2) failures) of such Designee to comply with the Parking Rules within three (3) days after notice of such failure, which notice shall be given to both Parcel 1 Owner (and its Mortgagee, if applicable, pursuant to Section 12.2 of the Declaration) and such Designee; provided, however, in the event COLP or Operator revokes a Parking Pass pursuant to clause (ii) above, Parcel 1 Owner shall have the right to reinstate such Parking Pass by designation of a new Designee to replace the Designee whose Parking Pass was so revoked.

4. Liability. Parcel 1 Owner acknowledges that COLP and COLP's agents, employees, managers, partners, officers, directors and contractors (collectively, the "COLP Parties"), shall have no liability for claims arising through acts or omissions of Operator. Except for claims arising from the willful misconduct of COLP or COLP Parties, COLP and COLP Parties shall have no liability whatsoever

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for any damage to items located in the Parking Facility, nor for any personal injuries or death arising out of any matter relating to the Parking Facility, and in all events, Parcel 1 Owner agrees to look first to its property insurance carrier and to require that the Parking Parties (as defined below) look first to their respective insurance carriers for payment of any losses sustained in connection with any use of the Parking Facility. Parcel 1 Owner agrees to seek a waiver from, and hereby waives on behalf of, its property insurance carriers all rights of subrogation against COLP Parties. COLP agrees to seek a waiver from, and hereby waives on behalf of, its property insurance carriers all rights of subrogation against Parcel 1 Owner and Parcel 1 Owner's agents, employees, members, managers, partners, shareholders, officers, directors, lenders, contractors and Designees (collectively, the "Parking Parties").

5. Parking Rights. The parking spaces hereunder shall be provided on a non-designated "first-come, first-served" basis. COLP, on behalf of itself and Operator, reserves the right to assign specific parking spaces, and to reserve parking spaces for visitors, small cars, handicapped persons, other tenants, guests of tenants or other parties, and for COLP, any COLP Parties and Operator, which assignment and/or reservation of spaces may be relocated as determined by COLP or Operator from time to time, and Parcel 1 Owner and persons designated by Parcel 1 Owner hereunder shall not park in any location designated for such assigned or reserved parking spaces. Parcel 1 Owner acknowledges that the Parking Facility may subsequently be closed entirely or in part in order to make repairs or perform maintenance services, or to alter, modify, re-stripe or renovate the Parking Facility (provided that COLP or Operator shall give Parcel 1 Owner at least two (2) business days' prior notice in the event COLP or Operator intends to alter, modify, re-stripe or renovate the Parking Facility if such work will result in more than twenty percent (20%) of the parking spaces being unavailable for more than four (4) hours), or if required by casualty, strike, condemnation, act of God, governmental law or requirement or other reason beyond the reasonable control of COLP or Operator; provided that COLP shall cooperate with Parcel 1 Owner in connection with its good-faith efforts to minimize any disruption of Parcel 1 Owner's business in the Premises as a result of such interruption of use of the Parking Facility, including the use of COLP's commercially reasonable efforts to locate alternative parking spaces during the course of the work of repair or replacement of the Parking Facility. Any interruption or termination of Parcel 1 Owner's ability to utilize the parking spaces as described herein resulting from COLP's breach of its obligations under the this Exhibit "C", any force majeure event(s) or repairs for which Parcel 1 Owner was given notice pursuant to the foregoing provision shall entitle Parcel 1 Owner to a parking space rental abatement (unless and to the extent that COLP is able to locate alternative parking spaces pursuant to the immediately preceding sentence), and, except as expressly provided in the immediately preceding sentence, shall not otherwise render COLP liable to Parcel 1 Owner or relieve Parcel 1 Owner from the obligation to fulfill any covenant or agreement hereunder (other than the obligation to pay the abated rental) or under the Declaration.

6. Default. COLP shall provide written notice to Parcel 1 Owner (and its Mortgagee, if applicable, pursuant to Section 12.2 of the Declaration) in the event that COLP claims that Parcel 1 Owner is in default under this Exhibit "C". If after ten (10) days following receipt of such notice of default by Parcel 1 Owner such default continues and if such default involves a violation of Rules (i), (ii), (v), (vi), (vii) or (xii) set forth below or involves a vehicle without a valid Parking Pass, COLP and/or Operator shall have the right, upon prior notice to Parcel 1 Owner, to remove from the Parking Facility any vehicles hereunder which shall have been involved or shall have been owned or driven by parties involved in causing such default, without liability therefor whatsoever. In addition, COLP shall have the right to terminate the Parking Easement if (i) Parcel 1 Owner fails to make any payments required under this Exhibit "C" when due, where such failure continues for more than ten (10) days after COLP gives Parcel 1 Owner (and its Mortgagee, if applicable, pursuant to Section 12.2 of the Declaration) notice of such delinquency, or (ii) if Parcel 1 Owner fails to cure any other default under this Exhibit "C" within twenty (20) days after COLP gives Parcel 1 Owner (and its Mortgagee, if applicable, pursuant to Section 12.2 of the Declaration) notice of such default. Such cancellation right shall be cumulative and in

addition to any other rights or remedies available to COLP against Parcel 1 Owner, at law or in equity, or provided under the Declaration (all of which rights and remedies under the Declaration are hereby incorporated herein, as though fully set forth), and any default by Parcel 1 Owner under this Exhibit "C", after the expiration of applicable cure periods, shall constitute a default under the Declaration. The rights and remedies of COLP set forth in this Section 6 shall be in addition to, and not in lieu of, the rights and remedies of COLP and Operator set forth in Section 3 above

7. Security Measures. Notwithstanding the foregoing, Parcel 1 Owner hereby acknowledges that neither COLP nor Operator shall have any obligation to provide any guard service or other additional security measures in connection with the Parking Facility. Notwithstanding that COLP may provide security or security guard service, Parcel 1 Owner hereby releases COLP Parties and Operator from all responsibility for the protection of Parcel 1 Owner and its Permittees, and the property thereof, from acts of third parties. Parcel 1 Owner further assumes the risk that any safety and security devices, services and programs which COLP or Operator elects, in its sole discretion, to provide may not be effective, or may malfunction or be circumvented by an unauthorized third party, and Parcel 1 Owner shall, in addition to its other insurance obligations under the Declaration, obtain its own insurance coverage to the extent Parcel 1 Owner desires protection against losses related to such occurrences. Parcel 1 Owner shall cooperate in any reasonable safety or security program developed by COLP or Operator or required by law

8. Controlled Access. COLP or Operator may elect to provide parking cards, stickers, keys or other identification or access devices to control access to the Parking Facility or surface parking areas, if any. In such event, COLP or Operator shall provide Parcel 1 Owner with one (1) card or key for each parking space that Parcel 1 Owner is entitled to hereunder, provided that COLP or Operator shall have the right to require Parcel 1 Owner or its employees to pay a fee of Fifteen Dollars (\$15.00) for any lost or damaged cards or keys, which fee shall be subject to reasonable increase from time to time.

9. Operator. COLP reserves the right to enter into a management agreement or lease with an entity for the Parking Facility ("Operator"). In such event, Parcel 1 Owner, upon request of COLP, shall enter into a parking agreement with Operator and shall pay Operator the monthly charge established hereunder, and COLP Parties shall have no liability for claims arising through acts or omissions of Operator unless caused by the gross negligence or willful misconduct of COLP Parties. It is understood and agreed that the identity of Operator may change from time to time. In connection therewith, any parking lease or agreement entered into between Parcel 1 Owner and an Operator shall be freely assignable by such Operator or any successors thereto

10. ASSUMPTION OF RISK; NO LIABILITY. PARCEL 1 OWNER, ON BEHALF OF ITSELF AND ITS DESIGNEES, ACKNOWLEDGES AND AGREES THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, COLP AND THE OTHER COLP PARTIES SHALL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE TO PARCEL 1 OWNER, ITS DESIGNEES, PARCEL 1 OWNER'S PROPERTY OR THE PROPERTY OF ANY DESIGNEES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OR DAMAGE TO PARCEL 1 OWNER'S OR ANY DESIGNEE'S AUTOMOBILE OR THE CONTENTS THEREOF DUE TO THEFT, VANDALISM OR ACCIDENT) ARISING FROM OR RELATED TO PARCEL 1 OWNER'S OR ANY DESIGNEE'S USE OF THE PARKING FACILITY OR EXERCISE OF ANY RIGHTS UNDER THIS EXHIBIT "C". THE LIMITATION ON THE LIABILITY OF THE COLP PARTIES UNDER THE PRECEDING SENTENCE SHALL NOT APPLY, HOWEVER, TO LOSS OR DAMAGE ARISING DIRECTLY FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE COLP PARTIES. PARCEL 1 OWNER AGREES TO USE REASONABLE EFFORTS TO CAUSE ITS DESIGNEES TO AGREE TO THE PROVISIONS OF THIS SECTION 10.

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11. Release of Liability. Without limiting the provisions of Section 10 above, except with respect to liability for personal injury or property damage caused by the gross negligence or willful misconduct of COLP Parties, Parcel 1 Owner hereby voluntarily releases, discharges, waives and relinquishes any and all actions or causes of action against COLP Parties or Operator for personal injury or property damage occurring to Parcel 1 Owner or any Designee arising as a result of parking in the Parking Facility, or any activities incidental thereto, wherever or however the same may occur, and further agrees that Parcel 1 Owner will not prosecute any claim for personal injury or property damage against COLP Parties or Operator for any said causes of action. It is the intention of Parcel 1 Owner, by this instrument, to exempt and relieve COLP Parties and Operator from liability for personal injury or property damage caused by negligence, provided that COLP Parties shall not be released from liability for personal injury or property damage caused by the gross negligence or willful misconduct of COLP Parties and Operator shall not be released from liability for personal injury or property damage caused by Operator's willful misconduct. Parcel 1 Owner agrees to use reasonable efforts to cause its Designees to agree to the provisions of this Section 11.

12. Monthly Parking Fee. The Monthly Parking Fee shall be the current Prevailing Fair Market Value for comparable parking spaces. The term "Prevailing Fair Market Value" shall mean the fair market value of unreserved surface parking spaces or unreserved parking garage spaces, as applicable, currently being charged for such kinds of parking spaces associated with an office building in the "Greater Downtown" area of Los Angeles (the "Comparable Parking Facilities"), taking into account whether or not the licensees of spaces in the Comparable Parking Facilities are required to pay, in addition to a monthly parking fee, any share of the operating expenses, taxes and insurance of the Comparable Parking Facilities (which obligation may be set forth in a lease separate from the parking agreement) and taking into account the level of security (e.g., security guard, hours of coverage) provided at the Comparable Parking Facilities. The Prevailing Fair Market Value shall be calculated separately for unreserved surface parking spaces and unreserved parking garage spaces and shall be determined on a per-space monthly basis. The Prevailing Fair Market Value for calendar year 2005 is \$60.00 per month for an unreserved parking garage space. If despite their good-faith efforts COLP and Parcel 1 Owner are unable to agree upon the Prevailing Fair Market Value for any subsequent calendar year at least sixty (60) days prior to the end of the current calendar year (the "Parking Agreement Deadline"), then (a) the matter shall be decided by arbitration in accordance with the procedures set forth below and (b) until the matter is decided by arbitration, Parcel 1 Owner shall pay the Prevailing Fair Market Value as determined by COLP, and upon the final determination thereof by arbitration, if the Prevailing Fair Market Value is less than the amount determined by COLP, COLP will credit such overpayment against Parcel 1 Owner's next installment(s) of the Monthly Parking Fee. The Monthly Parking Fee shall be adjusted on the first day of each calendar year to the then-current Prevailing Fair Market Value, but in no event may the Monthly Parking Fee be increased by more than three percent (3%) over the Monthly Parking Fee in effect for the prior calendar year. COLP agrees to exercise commercially reasonable efforts to provide a reasonable number of additional spaces for visitor parking for the Premises at prevailing market rates for visitor parking.

If COLP and Parcel 1 Owner fail to reach agreement by the Parking Agreement Deadline, then each party shall make a separate determination of the Monthly Parking Fee for each parking space within five (5) business days after the Parking Agreement Deadline, concurrently exchange such determinations and such determinations shall be submitted to arbitration in accordance with clauses (i) through (vii) below.

(i) COLP and Parcel 1 Owner shall each appoint one arbitrator who shall by profession be a real estate broker who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of office space in comparable buildings in the "Greater Downtown" area of Los Angeles. The determination of the arbitrators shall be limited solely to the issue

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of whether COLP's or Parcel 1 Owner's submitted Monthly Parking Fee for each parking space is the closest to the Prevailing Fair Market Value, as determined by the arbitrators, taking into account the requirements of this Section 12. Each such arbitrator shall be appointed within fifteen (15) business days after the applicable Parking Agreement Deadline.

(ii) The two (2) arbitrators so appointed shall within ten (10) days of the date of the appointment of the last appointed arbitrator agree upon and appoint a third arbitrator who shall be qualified under the same criteria set forth hereinabove for qualification of the initial two (2) arbitrators; provided, however, the third arbitrator shall not have been employed, hired or otherwise retained by COLP, Parcel 1 Owner or any of their respective parents, affiliates or subsidiaries during the preceding five (5) year period (the foregoing limitation shall only apply to the individual arbitrator and shall not apply to the arbitrator's brokerage firm).

(iii) The three (3) arbitrators shall within five (5) days of the appointment of the third arbitrator reach a decision as to whether the parties shall use COLP's or Parcel 1 Owner's submitted Monthly Parking Fee for each parking space and shall notify COLP and Parcel 1 Owner thereof.

(iv) The decision of the majority of the three (3) arbitrators shall be binding upon COLP and Parcel 1 Owner.

(v) If either COLP or Parcel 1 Owner fails to appoint an arbitrator within fifteen (15) business days after the applicable Parking Agreement Deadline, the arbitrator appointed by one of them shall reach a decision, notify COLP and Parcel 1 Owner thereof, and such arbitrator's decision shall be binding upon COLP and Parcel 1 Owner.

(vi) If the two (2) arbitrators fail to agree upon and appoint a third arbitrator, or both parties fail to appoint an arbitrator, then the appointment of the third arbitrator or any arbitrator shall be dismissed and the Monthly Parking Fee for each parking space to be decided shall be forthwith submitted to arbitration under the provisions of the American Arbitration Association, but subject to the instruction set forth in the second sentence of clause (i) above.

(vii) The cost of arbitration shall be paid by COLP and Parcel 1 Owner equally.

PARKING RULES

(i) Parking Facility hours shall be 6:00 a.m. to 8:00 p.m. Monday through Friday; however, Parcel 1 Owner shall have access to the Parking Facility on a 24-hour basis, 7 days a week. Parcel 1 Owner shall not store or permit its Designees to store any automobiles in the Parking Facility without the prior written consent of COLP or Operator. Except for emergency repairs, Parcel 1 Owner and its employees shall not perform any work on any automobiles while located in the Parking Facility or on the Project.

(ii) Cars must be parked entirely within the stall lines painted on the floor, and only small cars may be parked in areas reserved for small cars.

(iii) All directional signs and arrows must be observed.

(iv) The speed limit shall be 5 miles per hour.

(v) Parking spaces reserved for handicapped persons must be used only by vehicles properly designated.

(vi) Parking is prohibited in all areas not expressly designated for parking, including without limitation: (a) areas not striped for parking; (b) aisles, (c) where "no parking" signs are posted, (d) ramps, and (e) loading zones

(vii) Parking stickers, key cards or any other devices or forms of identification or entry supplied by COLP or Operator, as the case may be, shall remain the property of COLP or Operator. Such device must be displayed as requested and may not be mutilated in any manner. The serial number of the parking identification device may not be obliterated. Parking passes and devices are not transferable but may be reissued at the request of Parcel 1 Owner and any pass or device in the possession of an unauthorized holder will be void.

(viii) Monthly fees shall be payable in advance prior to the first day of each month. Failure to do so shall constitute a default hereunder if such failure shall continue for more than ten (10) days after notice from COLP. No deductions or allowances from the monthly rate will be made for days on which the Parking Facility is not used by Parcel 1 Owner or its Designees, except to the extent that Parcel 1 Owner is unable to use or access the Parking Facility due to a casualty or any other reason (other than Parcel 1 Owner's default under the terms of this Exhibit "C" which remains uncured beyond any applicable grace period), in which event monthly fees for parking shall be abated to the extent and for the duration of time which Parcel 1 Owner and its Designees are unable to use the Parking Facility.

(ix) Parking Facility managers or attendants are not authorized to make or allow any exceptions to these Parking Rules.

(x) Every person using the Parking Facility may be required to park and lock his/her own car.

(xi) Loss or theft of parking pass, identification, key cards or other such devices must be reported to COLP and to Operator immediately. Any parking devices reported lost or stolen found on any authorized car will be confiscated and the illegal holder will be subject to prosecution. Lost or stolen passes and devices found by Parcel 1 Owner or its employees must be reported to the office of the Parking Facility immediately.

(xii) Washing, waxing, cleaning or servicing of any vehicle by the customer and/or his agents is prohibited. Parking spaces may be used only for parking automobiles or motorcycles. COLP may require motorcycles to be parked in specified locations within the Parking Facility.

(xiii) COLP or Operator shall post the Parking Rules in the Parking Facility.

(xiv) COLP reserves the right to make reasonable changes to these Parking Rules from time to time.

EXHIBIT "D"**DESIGN GUIDELINES****Project History**

As the last of the great train stations built in America in the last century, and as the new commercial and transportation hub of Los Angeles, Union Station presents a unique and challenging opportunity for new development. Inherent in this opportunity is the consideration of all that is required to sustain a functional transit facility – and all that is required to preserve and complement a historically valued resource – while developing modern buildings that function fully and responsively in a commercial and residential environment.

The owners of the property have secured entitlement to build over 6 million square feet of new, transit served, mixed-use development at Union Station. A development of this magnitude can succeed best, and create value and amenity in the broadest sense, when it provides for orderly, rational, and flexible development. The Alameda District Specific Plan and COLP's Master Plan define this framework. Together with the guidelines that follow, a design basis which governs the development of individual projects is established herein.

Assembled as a property and designed in the 1930's, Union Station was completed in 1939, representing, as its name implies, a union of railroads –the Southern Pacific, Union Pacific, and Santa Fe railroads – and also a union of design styles. As each railroad had its own architects (brought together by John and Donald Parkinson), the resulting design is an eclectic one. Comfortably incorporating influences from the styles of the time, Union Station displays Spanish Colonial Revival, Moorish, and Moderne architecture in the creation of what has become a Los Angeles landmark. Gracious courtyards, thoughtful detailing, monumental proportion, and pedestrian scaled spaces are the key devices employed in the creation of Union Station. It is against this backdrop of eclectic and sensitive design that a new generation of contemporary buildings must fit.

Entitlement and Master Planning

Five primary development principles are to be followed

- New buildings shall complement rather than copy or mimic existing historic structures.
- New buildings shall be designed and massed within height and area zone guidelines and shall step back so as to minimize interference with Union Station's image and character.
- New buildings shall incorporate open space and landscaped courtyards to encourage pedestrian-oriented design.
- New buildings shall incorporate scale devices and articulation, particularly at the lower floors and in the foreground, to enhance the pedestrian experience.
- New buildings shall utilize materials, finishes, and forms compatible with the existing historic buildings in scale, color, massing, and texture.

The design guidelines set forth below are intended to expand on these principles and foster a range of unique yet coherent building design solutions rather than a singular design style multiplied out over the property or a collection of disparate buildings bearing no relationship to each other or to the whole. These guidelines outline elements of architectural style, material use, typology, and functional building arrangement which should be considered in the design of individual projects. With the intent of creating a diverse architectural vocabulary and which complements Union Station, it is essential that the design

approach for each new project reflect its current place and time. In order to promote this outcome, the following guidelines are established:

1. The design vocabulary utilized shall be complementary and respectful of Union Station buildings yet shall not attempt to copy or replicate this precedent. Although a specific architectural "style" is not prescribed, it is expected that cues from Union Station and the broader context will be considered, interpreted, and incorporated in the design.
2. The building design shall foster a sense of place and identity. Careful massing, orientation, fenestration design, and material use shall be employed as means of establishing location, promoting way finding, and differentiating buildings from one another while creating an overall campus identification with Union Station as its core.
3. Building design should be contemporary yet complementary to Union Station. Design strategies based on attempts to literally "recreate the past" are not acceptable. The design solution should incorporate references to Union Station—through materials, details, etc.—but not literally replicate details and features of Union Station. A design vocabulary shall be utilized that is simple and internally consistent, employing a limited range of finish materials, cleanly detailed and thoughtfully applied.
4. Materials to be considered for exterior building use shall include stone, masonry, concrete, metal panel, or plaster.
5. Where possible, fenestration shall be recessed relative to the adjacent wall plane to create depth and the appearance of wall thickness. Clear or "low-e" glazing and aluminum window or curtain wall systems are appropriate; light tinting is acceptable. Reflective glass shall not be permitted.
6. Where appropriate and when it can be accommodated, building design shall consider and incorporate upper level and roof terrace features to provide amenity. Rooftop equipment shall be screened from ground level view.
7. Design solutions shall acknowledge the pedestrian in the articulation of ground floor and building-adjacent open spaces. Scalar devices, pathways and arcades, awnings, landscaped open space and courtyards, and where appropriate, retail components shall be considered as means of enhancing the pedestrian experience.
8. Projects shall provide pedestrian access through the use of elements such as arcades, awnings, covered walkways or entries connecting plazas or open spaces. These pedestrian features shall be designed to provide easy access to transit facilities by linking with primary pedestrian corridors. Open spaces, plazas, walkways or other pedestrian-related areas should incorporate arcades or other devices to provide shelter during inclement weather.
9. All open areas not used for driveways, parking areas or recreational facilities shall be attractively landscaped.
10. Perimeter landscaping shall be utilized as a means of defining the project area and extending the campus "edge".
11. Where appropriate, use of water features shall be considered both as a means of providing a visual focal point and as environmental relief—continuing in the tradition of southern California landscape design as well as that of Union Station.

3/25/05

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12. Service, loading, and refuse collection areas shall be located within each project area and configured to minimize visibility, appropriate screening shall be utilized.
13. Exterior lighting shall be selected and configured to provide for security, safety, and architectural enhancement. Location, height, and shielding of light sources shall be established to minimize glare.
14. Exterior building signage shall be limited to building name and address, way finding, and ground floor commercial locators. Sign size and design shall be complementary to the precedent established at LAUS. Temporary signage must be approved in advance by COLP.

COLP will conduct review at each stage of new project designs to monitor and assure adherence to these Design Guidelines in accordance with the review procedures established by Article IV. All projects will also be subject to all Governmental Requirements, including but not limited to the Alameda District Plan (ADP).

Attachment F

Evaluation Criteria

The Maximum Combined Score is 500 points (100%), divided as follows:

100 points (20% weight) for Technical Proposal (Item 1)

- **Written proposal (90 points)**
- **Interview (10 Points)**

400 points (80% weight) for Price proposal (Item 2)

ITEM 1 – Technical Proposal Evaluation Criteria sheet

Technical Proposal will be evaluated independent of the Price Proposal and will have a weight of 20 % (100 points max.).

Offeror: _____

Reviewer #: _____

RFP Ref.	Evaluation Criteria sheet	MAX POINT	SCORE
3.4.	Technical Proposal "Written"		
3.4.1	Overall Management Approach	23	
3.4.1.1	Describe the Offeror's overall management approach to the Project.		
a.	What strategies will the Proposed Design-Build Team employ to achieve a thorough and clear understanding of the Owner's goals and objectives?		
b.	Based on the information provided in the RFQ and RFP, what is the Proposed Design-Build Team's current understanding of the goals and objectives of this Project?		
c.	Identify the key challenges to the Project, and for each challenge identified, <ul style="list-style-type: none">• Propose a strategy to mitigate the potential negative impacts of the challenge.• Identify any unique approaches, strengths, and/or different resources (including specific Key Team Members) that will assist the Proposed Design-Build Team to implement the strategy and assist the Owner in achieving its goals.		
3.4.1.2	Subcontractor Procurement Approach. Describe the 'Team's overall approach to subcontractor and consultant procurement for the Project The Owner recognizes the importance of the entire design-build team, including specialty design-		

<p>a.</p> <p>b.</p> <p>c.</p>	<p>build subcontractors. For those subcontractors and subconsultants not included in the proposal as part of the Design-Build Team:</p> <p>Describe the Design-Build Team's overall approach to subcontractor and consultant procurement for the Project. Attention is directed to Section 2.7.3 of the General Conditions, which requires compliance with Public Contract Code (PCC) 22166 in the selection of subcontractors.</p> <p>Identify potential challenges in the selection of subcontractors and subconsultants for the Project and how the Design-Build Team will address those challenges.</p> <p>If applicable, describe in detail the Design-Build Team's approach to early subcontractor involvement, including proposed design-build and design-assist subcontractors, and identify which scopes of Work are candidates for design-build or design-assist subcontracts.</p>		
<p>3.4.1.3</p> <p>a.</p> <p>b.</p> <p>c.</p>	<p>Quality Assurance/Quality Control ("QA/QC"). Provide the following information regarding the Proposed Design-Build Team's approach on QA/QC. Include the following information:</p> <p>The overall approach to both design and construction QA/QC;</p> <p>The Proposed Design-Build Team's processes and tools to facilitate QA/QC; and</p> <p>The reporting and functional relationship(s) between the Quality Management personnel and the Proposed Design-Build Team as a whole.</p>		
<p>3.4.1.4</p>	<p>Describe the Design-Build Team's commitment to safety and what innovations the Team will bring to the Project to enhance safety.</p>		
<p>3.4.1.5</p> <p>a.</p> <p>b.</p>	<p>The information provided in response to this Section (Overall Management Approach) of the RFO will be scored based on the following.</p> <p>The Proposed Design-Build Team's understanding of the delivery method;</p> <p>The degree to which the Proposed Design-Build Team understands the Owner's goals and objectives with respect to the Project; and</p>		

c.	The strength of the Proposed Design-Build Team's management plan for the Project, including any other component or element that the Proposed Design-Build Team deems essential to the success of the Project.		
3.4.2	Project Controls, Cost Tracking	13	
a.	Describe the Design-Builders processes and tools for monitoring, reporting and managing costs. The Proposed Design-Build Team's plan to collaborate in the development and communication of costs, and schedule to the Owner; and		
b.	What the Proposed Design-Build Team will provide for the Project.		
3.4.3	Collaboration and Integration	10	
a.	The strength and viability of the Design-Build Team's plan to communicate and collaborate with the Owner, including any other topics that the Proposed Design-Build Team deems essential to the success of the Project;		
b.	Not Used		
c.	The different resources that the Design-Build Team will bring to the Project and how those different resources will enhance the Project.		
3.4.4	Design Development and Management	23	
	The information provided in response to this Section of the RFP will be evaluated based on the following considerations:		
a.	The strength and viability of the Proposed Design-Build Team's design management plan, including any other topics that the Proposed Design-Build Team deems essential to the success of the Project;		
b.	The quality of the Proposed Design-Build Team's approach to design excellence for the Project and the ideas and innovations proposed to achieve design excellence; and		
c.	The different resources that the Proposed Design-Build Team will bring to the Project and how those different resources will enhance the Project.		

3.4.5	Project Sequencing and Scheduling	21	
	The information provided in response to this Section of the RFP will be evaluated based on the following considerations:		
a.	The strength and viability of the Design-Build Team's project sequencing and scheduling plan, including not only the specific topics on which the Owner has requested discussion but any other topics that the Design-Build Team deems essential to the success of the Project; and		
b.	The different resources that the Design-Build Team will bring to the Project and how those different resources will enhance the Project.		
	Written Technical Proposal Subtotal	90	
2.4.4	Interview	10	
Technical Proposal	Total	100	

ITEM 2 – Price Proposal Evaluation Criteria sheet on next page

ITEM 2 – Price Proposal Evaluation Criteria sheet

Price proposal will be evaluated independent of the Technical Proposal and will have a weight of 80 % (400 points max.)

The score will be determined by the First 5 LA Contract Operations and Compliance Officer in accordance with the formula below. This will occur after the Technical Proposal evaluations are complete and the final score of the Technical Proposals are provided to First 5 LA's Contract Administration and Purchasing Department.

Offeror: _____

Score: _____

Each Offeror's Price Proposal shall be compared to the lowest responsive price proposal and will include all items. The lowest responsive price will receive the 400 points for this criterion. All other Offeror's price proposals will be scored as follows:

$$\text{Offeror Price Score} = \frac{\text{Lowest Price Proposal}}{\text{Offeror's Price Proposal}} \times 400$$

Offeror's Price Proposal will also be evaluated for price reasonableness and unreasonable or unrealistic price may be grounds for disqualification. Price Proposals that do not address all material Contract requirements are deficient and may be grounds for disqualification.

Attachment G –

Price Proposal

Proposer shall complete the following form and include in the Price Proposal package.
By execution below, Proposer hereby agrees to furnish the related equipment, and services as specified in RFP 2021-CIP 01 at the prices submitted in response to this solicitation.

PROPOSER COMPANY NAME:

STREET ADDRESS:

CITY, STATE, ZIP CODE:

AUTHORIZED OFFICER:

COMPANY OFFICER TITLE:

SIGNATURE OF AUTHORIZED OFFICER:

CONTACT INFORMATION:

OFFICE PHONE NUMBER:

E-MAIL ADDRESS:

DESIGN-BUILD SERVICES FOR THE FIRST 5 LA FACILITY
RENOVATION PROJECT

Attachment G - RFP 2021-CIP 01 PRICE PROPOSAL

1. The Proposer agrees that all costs of work required by the RFP, including Work reasonably inferable therefrom and necessary thereto required for a project delivery contract basis are included in the prices entered in **Schedule A**.

2. The Cost of all Work required in the RFP for which a specific line item is not provided in the attached schedules shall be allocated proportionately among the other prices most closely associated with such costs and included in the proposal price.

3- Allowance will be used by First 5 LA for items specifically identified in the Contract Documents and for unforeseen Hazardous Conditions, if any.

SCHEDULE – A

	Summary Sheet	
ITEM	ELEMENTS / DESCRIPTION	CONTRACT AMOUNT
1	GENERAL REQUIREMENTS	\$
2	EXISTING CONDITIONS	\$
5	METALS	\$
7	THERMAL & MOISTURE PROTECTION	\$
8	OPENINGS	\$
9	FINISHES	\$
10	SPECIALTIES	\$
12	FURNISHINGS (Plastic Shields)	\$
21	FIRE PROTECTION	\$
22	PLUMBING	\$
23	HVAC	\$
26	ELECTRICAL	\$
27	COMMUNICATIONS	\$
32	EXTERIOR IMPROVEMENTS	\$
	SUB TOTAL - 01	\$

	General Conditions	\$
	Overhead and Profit	\$
	Insurance and bond	\$
	Allowance	\$80,000
	SUB TOTAL - 02	\$
	TOTAL COST OF CONSTRUCTION (01 +02)	\$
	<u>DESIGN FEES</u>	
	50 % Construction Document	\$
	100 % Construction Document	\$
	Final % Construction Document	\$
	SUB TOTAL - 03	\$
	<u>OTHERS</u>	
	Mobilization and Temporary Utilities	\$
	Demobilization	\$
	Final Building Testing and Commissioning	\$
	Training and Material Overstock	\$
	AS BUILT Drawings	\$
	Operation and Maintenance Manuals	\$
	SUBTOTAL - 04	\$
	TOTAL COST OF CONSTRUCTION + DESIGN FEES + OTHERS (01 + 02 + 03 + 04) : BASE PRICE	\$
	BREAK – DOWN (DETAILED SHEETS FOLLOW)	
ITEM	ELEMENTS / DESCRIPTION	CONTRACT AMOUNT
1	GENERAL REQUIREMENTS	
	SUB-TOTAL - GENERAL REQUIREMENTS	\$

2	EXISTING CONDITIONS	
	Site Demolition	\$
	Demolition (1st, 2nd, 3rd floor)	\$
	Demolish existing roofing	\$
	SUB-TOTAL - EXISTING CONDITIONS	\$
5	METALS:	
	Structural support for solar panel, Solar rack, roof mount, RM5, per details on sheet (S-800)	\$
	Miscellaneous metal works	\$
	SUB-TOTAL - METALS	\$
7	THERMAL & MOISTURE PROTECTION	
	Roofing replacement and Thermal and Moisture protection (including insulation and walkway pads).	\$
	SUB-TOTAL - THERMAL & MOISTURE PROTECTION	\$
8	OPENINGS:	
	Convert existing doors to Automatically operated doors as required per Contract Documents including door hardware.	\$
	Modify existing HM door frame to accept electric latch for Automatic door operator.	\$
	SUB-TOTAL - OPENINGS	\$
9	FINISHES:	
	Patch and seal cracks at smooth plaster surfaces. Various locations. Field verify all locations. Paint repaired panels to match existing	\$
	Replace exterior glazing gaskets at the window due to shrinkage at the corners(include sealant, caulking and any repair as needed for water/weather proofing)	\$
	Misc. Interior Finishes as required per Contract Documents	\$
	SUB-TOTAL - FINISHES	\$

10	SPECIALTIES:	
	Install new trough Type solid surface countertop	\$
	Install new touch-free Automatic soap dispensers	\$
	SUB-TOTAL - SPECIALTIES	\$
12	FURNISHINGS:	
	Plastic shield mounted on existing cubical partitions- Platform divider screens as required per Contract Documents.	\$
	SUB-TOTAL - FURNISHINGS	\$
21	FIRE PROTECTION SYSTEM	
	Provide pre-action system complete package Assembly including all required per Contract Documents. Fire protection contractor shall secure and seismic anchorage cabinet through existing concrete floor.	\$
	Provide fire protection clean Agent complete package (Fire Protection Stat-X System) including all required per Contract Documents.	\$
	Provide remote fire alarm control panel as required per Contract Documents.	\$
	SUB-TOTAL - FIRE PROTECTION	\$
22	PLUMBING:	
	Plumbing Demolition/Removal (in all locations) as required per Contract Documents.	\$
	Cutting & Patching miscellaneous floor, Wall, ceiling penetrations including patching up with fire sealant if applicable.	\$
	NEW Plumbing Works (in all locations) as required per Contract Documents.	
	Automated Drinking Fountains (in all three floors)	\$
	Testing	\$
	SUB-TOTAL - PLUMBING	\$
23	HVAC and Mechanical works:	

	HVAC Demolition/Removal including Protect-In-Place, (in all locations) as required per Contract Documents.	\$
	Cutting & Patching for miscellaneous floor, wall, ceiling penetrations including patching up with fire sealant if applicable.	\$
	New HVAC and Mechanical works as required per Contract Documents (including MERV-16 filters)	\$
	Testing and balancing	\$
	Commissioning	\$
	SUB-TOTAL - HVAC AND MECHANICAL	\$
26	ELECTRICAL:	
	New Electrical Works (in all locations) as required per the Contract Documents.	\$
	Photo Voltage System as required per Contract Documents.	\$
	Cutting & Patching for miscellaneous floor, wall, ceiling penetrations including patching up with fire sealant if applicable.	\$
	Testing and Commissioning	\$
	SUB-TOTAL - ELECTRICAL	\$
27	AUDIOVISUAL (AV SYSTEMS) Network and IT works:	
	AV upgrades as required per contract documents including Rough-ins, cabling works, all related infrastructure works as needed including equipment, devices, screens, accessories, etc. as needed to finish and operate per Owner's requirements, are included in this RFP – no exclusions.	\$
	Cutting & Patching for miscellaneous floor, wall, ceiling penetrations including patching up with fire sealant if applicable.	\$
	Network Redesign and IT Hardware Upgrade: Rough-ins, cabling works, related infrastructure works as needed and coordination with the Owner selected third party vendor (who will "Supply and "install" IT hardware equipment) <u>are included and required in this RFP.</u> Network and IT hardware equipment of this item – "Supply and Install " <u>are excluded (Not required in this RFP).</u>	
	SUB-TOTAL – AUDIO VISUAL/IT	\$

32	EXTERIOR IMPROVEMENTS	
	New storage/trash bin enclosure CMU walls and concrete footings	\$
	Slab on grade	\$
	Misc. Concrete (pad, etc.)	\$
	New storage/Trash bin roof	\$
	New double doors	\$
	Emergency Generator as required per Contract Documents including but not limited to Feeder between generator & ATS	\$
	SUB-TOTAL - EXTERIOR IMPROVEMENTS	\$