

AIA Document A191™ – 1996 Part 2

Standard Form of Agreement Between Owner and Design/Builder **Part 2 Agreement**

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ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

AGREEMENT ("Agreement") made as of the Effective Date set forth below.)

(Paragraph deleted)

BETWEEN the Owner ("Owner"):
(Name and address)

The City of Glendale, Arizona

and the Design/Builder ("Design/Builder"):
(Name and address)

Glendale Design Build, a Missouri General Partnership
300 South John Q. Hammons Parkway, Suite 900
Springfield, Mo. 65806

Tel: _____
Fax: _____

For the following Project ("Project"):
(Include Project name, location and a summary description.)

The media and studio center, conference center and parking garage on property (the "Site") known generally as Westgate Parcel A, in Glendale, Arizona, and legally described in Exhibit A. The Project, described in more detail in Exhibit B and outlined conceptually in the preliminary design documents (the "Preliminary Design Documents") identified in

Exhibit C, is comprised of three (3) components (each a "Component"): (1) the Conference Center; (2) the Media Center; and (3) the Parking Garage.

The Owner and the Design/Builder (each sometimes referred to as a "Party", and collectively as "the Parties") agree as set forth below. Defined terms as used in this Agreement are identified in Section 14.5.

RECITALS

A. On July ____, 2005, the Owner issued a Request for Qualifications (the "RFQ") to be submitted by design/build entities for design and construction of the Project. On July 28, 2005, the John Q. Hammons Revocable Trust submitted a response (the "RFQ Response") to the RFQ on behalf of Design/Builder, and the Owner has elected to enter into negotiations with the Design/Builder.

B. Owner desires that the Project be completed and operational by December 1, 2006, to make the Project available to media and other users in connection with the Fiesta Bowl and BCS championships to be played at the Cardinals Stadium in January 2007.

C. Design/Builder has advised that the December 1, 2006 date is feasible given all that is currently known about the Project, provided that the Parties work together progressively on a fast track basis, in which each will agree to communicate and interact proactively so that the decisions and actions required of each can be made promptly, and with the understanding that accomplishing Substantial Completion by December 1, 2006 date will require acceleration of the design and construction

D. The Parties desire to set forth their Agreement.

TERMS AND CONDITIONS – AGREEMENT

In consideration of the Recitals, which are adopted as true and incorporated by this reference, the Parties agree as follows:

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS; FAST-TRACK WORK; DESIGN/BUILDER'S COVENANTS

§ 1.1.1 Design/Builder is hereby engaged to furnish all design, engineering, procurement and construction services of every kind and description (including all engineering, architectural, geotechnical, general consulting and/or other professional services, expertise, labor, materials, equipment, tools, utilities, supervision, coordination, scheduling, permitting, shop drawings, transportation, insurance, testing, inspection, procurement, installation and other facilities and services of every kind and description, and calculations incidental and required in connection therewith) (collectively, the "Work") necessary for the timely and proper design, engineering, construction and completion of the Project in accordance with the terms and conditions of this Agreement. The architectural, engineering, design, geotechnical services and related technical consulting (including without limitation the furnishing of the architect and engineer of record for the project) are hereinafter referred to as the "Professional A/E Services"; the supervision, coordination and performance of construction of the Project, are hereinafter referred to as the "Construction Services"; the furniture, moveable equipment and other items of Work that are required for the completed Project in addition to the Professional A/E Services are hereinafter referred to as the "FFE", and the interior design, and the procurement of, the FFE is referred to as the "FFE Services". Every improvement reasonably inferable from the preliminary design documents identified on Exhibit C and the other documents comprising this Agreement is included within, and shall be provided by, Design/Builder for the Guaranteed Maximum Price, unless identified as an exclusion or limited by a qualification specifically identified in Exhibit B.

§ 1.1.2 The Work shall be prosecuted on a fast-track basis in order to accomplish Substantial Completion of the Project by the Substantial Completion Date. The Design/Builder will proactively work with the Owner, governmental authorities, and others as necessary to result in mutually agreed upon methods, sequences and time schedules for fast track completion of the design, the staged issuance of Construction Drawings and otherwise to facilitate expedited design and construction of the Work. The Owner acknowledges its mutual responsibility to work closely with the Design/Builder and others on an expedited basis and agrees to work proactively to promptly furnish information, approvals and decisions (each an "Owner Decision") required by the Design/Builder to prosecute the

Work, within mutually agreed upon times after receipt by the Owner of written request from the Design/Builder; provided that in each case the written request is: (a) transmitted by the Design/Builder's Project Representative identified in Section ____; (b) delivered as provided in Section 14.10; (c) identifies the Owner Decision that is requested and state why it is necessary, (d) includes all information material to a reasoned analysis of the request for Owner Decision that the Design/Builder has been able to obtain with best efforts after learning of the need for the Owner Decision; and (e) states the date and time by which the Design/Builder believes it must receive the Owner Decision in order to prevent a delay to the critical path of the Work. The Owner shall have not have less than five (5) days from receipt of the request within which to issue the Owner Decision, unless: (1) the request is for approval of a draw from the Unscheduled Fast Track Contingency as provided in Section 13.1.7.4; or (2) if the request is accompanied with substantial demonstration that a specific emergency requires a shorter time than the five (5) or three (3) day time, as identified in the written request. In case of a substantiated emergency, the Owner will use best efforts to furnish the Owner Decision as close to the shortened time as is reasonably possible. The Owner will promptly notify the Design/Builder if more information is necessary for a reasoned analysis and, to the extent there is time before the critical path is delayed, the Owner and the Design/Builder will both use best efforts to obtain the necessary additional information. Notwithstanding that this is a fast track undertaking involving construction pursuant to staged issuance of Construction Drawings, no construction shall be commenced with respect to any element of the Project until after Construction Drawings have been issued, permitted to the extent required by the governmental permitting authorities, and accepted and released by the Owner for construction. The Parties will promptly after execution of the Agreement exercise best efforts to reach agreement on a protocol establishing the mutually agreed upon information that Design/Builder will furnish, and the times that Owner will have to respond to Design/Builder's requests for the various categories of Owner Decision that Design/Builder will need in order to maintain progress of the Work consist with the Substantial Completion and Final Completion Dates.

§ 1.1.3 Design/Builder's Work shall be performed and/or furnished by qualified registered and/or licensed professionals, subcontractors and vendors, including, but not limited to, construction subcontractors, engineers, geotechnical experts and/or architects (each a "Subcontractor", or a "Sub-subcontractor") to be selected and engaged as provided in Section 11.2.2. Design/Builder shall be responsible and liable to Owner for the proper and timely performance of the Work by each Subcontractor, Sub-subcontractor and any other person or entity who furnishes any of the Work. Owner hereby approves Design/Builder's selection of Butler, Rosenbury and Partners, Inc. (the "Architect") to furnish the Professional A/E Services pursuant to Subcontract with the Design/Builder, subject to compliance by the Design/Builder and said Subcontractor with the terms and conditions of this Agreement. Owner hereby approves the Design/Builder's selection of Killian Western, LLC (the "Construction Subcontractor") to furnish the Construction Services pursuant to Subcontract with the Design/Builder, subject to compliance by the Design/Builder and said Subcontractor with the terms and conditions of this Agreement. Owner hereby approves the Design/Builder's selection of the John Q. Hammons Trust to furnish the FFE Services (the "FFE Subcontractor") subject to the terms and conditions of this Agreement.

§ 1.1.4 Design/Builder warrants to Owner that: (a) Design/Builder, and all of its Subcontractors, Sub-subcontractors and other persons and entities, shall perform their respective obligations with the degree of professional diligence and care ordinarily exercised among experienced Design/Builders, Subcontractors, Sub-subcontractors and other persons and entities recognized for their experience and skill in the timely and proper design, engineering, construction and installation of high quality projects equivalent to the Project, (b) all Work performed and materials and FFE supplied shall be: (i) in accordance with the terms and conditions of this Agreement and with the requirements of the Construction Documents; (ii) free from defects; (iii) in compliance with all requirements of any and all third party warranties/guarantees (including any manufacturers' warranties), all of which will be assigned to Owner as part of the Work; and (iv) fit for Owner's intended use; and (c) Design/Builder and all of its Subcontractors and Sub-subcontractors will hold and comply with the requirements of all licenses, registrations and other approvals necessary for the lawful furnishing of the Work. Any inconsistency among or between any of these warranties or requirements, or among or between any of the provisions in the this Agreement, any of the Construction Documents or applicable Law, shall be resolved by an interpretation that results in the highest and best quality of Work and/or performance.

§ 1.1.5 Design/Builder represents that it has carefully examined and understands this Agreement, including the Preliminary Design Documents (and all other items, conditions and things that may affect the performance of its obligations hereunder, including the nature, local field conditions and Site of the Project that are observable to Design/Builder without intrusive inspection, any environmental reports, surveys and other information regarding the site that Owner has furnished to Design/Builder, which information Owner agrees to furnish to the extent it exists

and is in the Owner's possession with the understanding that Design/Builder may rely upon it to the extent the Design/Builder's reliance is reasonable) and that Design/Builder has considered all of those in agreeing to the Guaranteed Maximum Price (as hereinafter set forth), and hereby waives all claims, demands or requirements for extras or changes to the Work or the Guaranteed Maximum Price based on facts related to the Site that were discoverable by Design/Builder prior to the date this Agreement is executed.

§ 1.2 EXECUTION, CORRELATION AND INTENT

§ 1.2.1 It is the intent of the Owner and Design/Builder that the Construction Documents shall include all items necessary for proper execution and completion of the Project. The documents comprising or referenced in this Agreement, and the Construction Documents to be prepared by Design/Builder shall be deemed to be complementary, and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required to the extent necessary to produce the intended results. Words that are not specifically defined in this Agreement, but have well-known technical or construction industry meanings shall be interpreted in accordance with such recognized meanings.

§ 1.2.2 If the Design/Builder believes or is advised by the Architect or by another design professional retained to provide services on the Project that implementation of any instruction received from the Owner would cause a violation of any applicable law, the Design/Builder shall notify the Owner in writing. Neither the Design/Builder nor the Architect shall be obligated to perform any act which either believes will violate any applicable Law.

§ 1.2.3 Nothing contained in this Agreement shall create a contractual relationship between the Owner and any person or entity other than the Design/Builder, except that Owner shall be intended third party beneficiary of all Subcontracts and Sub-subcontracts as provided in Section 11.2.2. Design/Builder shall ensure that all Subcontracts and Sub-subcontracts meet all requirements of Section 11.2.2.

§ 1.3 OWNERSHIP AND USE OF DOCUMENTS

§ 1.3.1 Drawings, specifications, and other documents and electronic data furnished by the Design/Builder and the Design/Builder's Subcontractors and Sub-consultants are instruments of service ("Instruments of Service"). The Design/Builder and its Subcontractors and Sub-consultants shall retain all common law, statutory and other reserved rights, including copyrights in those Instruments of Service furnished by them, except as provided in this Section 1.3; however, all proprietary and ownership interests, including copyrights, in those portions of the Instruments of Service that address the unique aesthetic appearance of the Project shall belong, and are hereby conveyed, to the Owner, and shall not be used by the Design/Builder or its Subcontractors or Sub-consultants on other Projects without Owner's prior written agreement.

§ 1.3.2 Upon execution of this Agreement, the Design/Builder and its Subcontractors and Sub-subcontractors hereby grant to the Owner a perpetual, non-exclusive royalty-free license for the reproduction and use of the Instruments of Service for purposes of carrying out Owner's rights and responsibilities under this Agreement with respect to review of the work product generated by Design/Builder and its Subcontractors and Sub-contractors as the Work progresses, and for the maintenance and use of the Project and other uses of the Project after completion of the Project deemed appropriate by Owner. Copies of all preliminary as well as completed work product and other Instruments of Service shall be furnished to the Owner and its designated representatives, in electronic form or hard copy as designated by the Owner, promptly after the work product/ Instrument of Service is generated and, in any event, within one (1) business day after its request from the Owner, without charge to the Owner. If this Agreement is terminated before completion of the Project, as provided in Section 11.2.2, this license will automatically be deemed amended to add an additional perpetual non-exclusive, royalty-free license to use the drawings, specifications, and other documents and electronic data furnished by Design/Builder to Owner, or by the Architect, Engineer or other design professionals to the Design/Builder, for the completion of the Project.

§ 1.3.3 Any unauthorized reuse of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants, and Owner shall indemnify Architect against any damages arising from such unauthorized use.

§ 1.3.4 Design/Builder guarantees that all preliminary and completed Instruments of Service in any media or form that Design/Builder and its Subcontractors and Sub-subcontractors generate, or arrange for, in connection with the Services shall not infringe on the proprietary or contractual rights of others. Design/Builder agrees to indemnify, defend and hold Owner harmless from any loss, liability, claim, damage or expense, including attorneys' fees,

resulting from any alleged claim that Instruments of Service generated or used by Architect constitutes an infringement on property rights or interests.

§ 1.3.5 Design/Builder shall incorporate provisions in all its Subcontracts that (1) convey to the Owner the ownership and rights in aesthetic work product, licenses to use Instruments of Services, and indemnification against infringement with provisions equivalent to this Section 1.3; and (2) require Subcontractor to include equivalent provisions in each of its Sub-subcontracts.

§ 1.3.6 Owner shall have the right to full and complete access to review and study all of the preliminary and final Instruments of Service and all other documents and drawings generated or received by Design/Builder or any of its Subcontractors or Sub-subcontractors in connection with the Services, including drafts and work in process, following written notice during normal business hours prior to the making of Final Payment or final resolution of any claims pending as of the date of Final Payment, whichever date is later. Design/Builder shall provide suitable facilities in Glendale, Arizona until Final Payment or final resolution of any claims pending as of the date of Final Payment, whichever date is later for the purpose of such reviews by Owner, and shall provide to Owner copies of whatever documents Owner requests. The Owner will be responsible for the Design/Builder's reasonable charges for making copies requested by the Owner.

§ 1.3.7 Submission or distribution of the Design/Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section 1.3.1.

ARTICLE 2 OWNER

§ 2.1 The Owner shall designate a representative (the "Owner's Project Representative") authorized to observe the work and to act on the Owner's behalf with respect to the Project as provided in this Section 2.1. Subject to the express condition precedent that it has submitted written requests for decision or approval with accompanying documentation to the persons and otherwise in accordance with the applicable provisions of this Agreement for Notice, the Design/Builder may rely on the decision, direction or approval received from the Owner's Project Representative unless the decision or approval involves either (1) an increase in the Guaranteed Maximum Price or (2) an extension in the Substantial Completion Date of a Component. The City Manager is the only person authorized to approve an increase in the Guaranteed Maximum Price, or an extension of a Substantial Completion Date. In addition, the Owner's Project Representative shall be authorized to receive on behalf of Owner of all notices, claims, requests, and other communications from the Design/Builder. The Owner's Project Representative shall have such other responsibilities as the Owner and Design/Builder agree in writing, but in no event shall the Owner's Project Representative have any ability to bind or otherwise obligate the Owner with respect to the following decisions or approvals that are reserved to the City Manager, or to any persons designated in writing by the City Manager as having authority to make the decision or approval: the approval by or on behalf of the City of any (1) extension of Substantial Completion Date; (2) material change in the scope of the Project; or (3) increase in the Guaranteed Maximum Price. The Owner will make reasonable efforts to make the City Manager or designees available to the Design/Builder throughout construction of the Project for purpose of such review. Notwithstanding the foregoing, neither the Project Representative nor the City Manager shall have authority to issue approvals or make decisions that are within the jurisdiction of the City of Glendale Building Safety Department or any other City of Glendale permitting authority.

§ 2.2 The Owner or such authorized representative shall examine documents submitted by the Design/Builder and shall render decisions in a timely manner and in accordance with the Progress Schedule accepted by the Owner. The Owner may obtain independent review of the Instruments of Service by a separate architect, engineer, contractor, cost estimator or project manager under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

§ 2.3 The Design/Builder shall secure and pay for, as part of the Cost of the Work, all building permits, licenses, approvals, tests and inspections (including special inspections) required for proper performance of the Work in accordance with this Agreement. The Owner shall cooperate with the Design/Builder in the Design/Builder's securing such building and other permits, licenses, approvals and inspections.

§ 2.4 The Design/Builder shall furnish services of land surveyors, geotechnical engineers and other consultants for subsoil, air and water conditions, when such services are necessary for the Design/Builder to properly carry out the design and construction services required by this Agreement.

§ 2.5 The Owner shall disclose, to the extent known to the Owner, and make available to the Design/Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving: structural or mechanical systems; chemical, air and water pollution; hazardous materials; or other environmental and subsurface conditions. The Owner shall disclose all information known to the Owner regarding the presence of pollutants at the Project's site.

§ 2.6 The Owner shall furnish all legal, accounting and insurance counseling services as Owner may deem necessary at any time for the Owner's purposes in connection with the Project, including such auditing services as the Owner may require to verify the Design/Builder's Applications for Payment.

§ 2.7 INTENTIONALLY DELETED

§ 2.8 If the Owner requires the Design/Builder to maintain any special insurance coverage, policy, amendment, or rider, in addition to that required in Article 7, the Owner shall pay the additional cost thereof, except as otherwise stipulated in this Agreement.

§ 2.9 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the Construction Documents, the Owner shall give prompt written notice thereof to the Design/Builder.

§ 2.10 Design/Builder acknowledges that the Owner has, prior to execution of this Agreement, assured the Design/Builder that financial arrangements have been or will be made to fulfill the Owner's obligations under the Contract.

§ 2.11 The Owner shall communicate with persons or entities employed or retained by the Design/Builder through the Design/Builder, unless otherwise directed by the Design/Builder.

ARTICLE 3 DESIGN/BUILDER

§ 3.1 SERVICES AND RESPONSIBILITIES

§ 3.1.1 Design services required by this Agreement shall be performed by properly licensed and qualified architects, engineers and other design professionals. The contractual obligations of such professional persons or entities are undertaken and performed in the interest of the Owner and Design/Builder.

§ 3.1.2 The agreements between the Design/Builder and the persons or entities identified in this Agreement, and any subsequent modifications, shall be in writing as provided in Section 11.2. These agreements, including financial arrangements with respect to this Project, shall be promptly and fully disclosed and furnished to the Owner upon request.

§ 3.1.3 The Design/Builder shall be responsible to the Owner for acts and omissions of the Design/Builder's employees, Subcontractors and their agents and employees, and other persons, including the Architect, engineers and other design professionals, performing any portion of the Design/Builder's obligations under this Agreement.

§ 3.1.4 The Design/Builder will be responsible for proactively interfacing with and coordinating with Owner, Consultants employed by Owner, utilities and the governmental entities having jurisdiction over the Work to facilitate the progress of the Work.

§ 3.1.5 The Design/Builder shall confine operations at the Site to areas permitted by Law, permits and this Agreement. The Owner will provide the Design/Builder a license to utilize at least four (4) acres on property westerly of the Site pursuant to which the Design/Builder may extend operations for construction staging/operations and offices as provided in a construction staging license or other agreement with the Owner.

§ 3.1.6 The Design/Builder shall at all times provide the Owner and its representatives and agents with access to the Work in preparation and progress, wherever located and at all times for the purposes of reviewing, monitoring and/or inspecting the Work. The Design/Builder will provide Owner with space in Design/Builder's construction

staging, operations laydown areas for a trailer, located adjacent to the trailers to be utilized by the Design/Builder and its Subcontractors, for the convenience and use of the Owner and its representatives in connection with the Work.

§ 3.1.7 The Design/Builder shall provide monthly reports, no later than the tenth (10th) day of the month following the month which is the subject of the report, to the Owner on the progress of the Work, which reports shall be prepared in a manner and in a format reasonably acceptable to the Owner. In addition to an update of the Progress Schedule and quality assurance and control reports from the Architect and Engineer, each report will include, but not be limited to, the items in Exhibit B.

§ 3.2 WORK

§ 3.2.1 The Design/Builder's Work shall include construction of the Project in accordance with the Construction Documents to be prepared by the Design/Builder in accordance with this Agreement, and all Work reasonably inferable from them (the term "Construction Document" shall mean a stamped and sealed document prepared by a registered design professional in connection with the Work that has been accepted by both the Design/Builder and the Owner and approved and released for construction by the applicable governmental permitting authorities). All Construction Documents will be prepared and certified, and all course of construction Professional A/E Services, will be furnished by architects or engineers in their employ and who are properly registered by the Arizona State Board of Technical Registration to furnish such services in the state of Arizona. The Design/Builder will furnish any engineer of record ("Engineer") required by the governmental approving authority.

§ 3.2.2 The Design/Builder shall designate a representative (the "Design/Builder's Project Representative") authorized to act on the Design/Builder's behalf with respect to the Project. Only the Design/Builder's Project Representative shall have authority to request an Owner Decision under Sections 1.1.3 or 13.1.7.4.

§ 3.2.3 The Design/Builder shall be responsible for the preparation of all revisions, supplements, additions to, and interpretations of, the Construction Documents, including drawings and specifications, and for all other design and course of construction Professional A/E Services necessary for the timely and proper completion of the Project. Design/Builder's Work shall involve development of the remaining design and engineering resulting in the Owner's approval of the Construction Documents including, but not limited to: shop drawings; specifications; identification of all equipment to be furnished and installed by Design/Builder and the details of its installation; details; finish schedules, plans; Site improvement details; landscaping and irrigation drawings; civil drawings showing all Site excavation, utilities, grading, paving, curbs and gutters, drainage and other infrastructure; structural, mechanical, electrical and other engineering drawings, details and specifications; all fire sprinkler requirements to comply with applicable Laws; all revised to incorporate all plan review (plan check) requirements and all other approvals required by the Owner in connection with approval and/or release of the Construction Documents for construction. The Design/Builder shall prepare for the Owner's review, and shall make required changes the Owner reasonably and timely requests to be consistent in all material respects to the Preliminary Design as a condition of its acceptance. The Owner shall evidence its approval of preliminary, advanced, or final Construction Documents by written notation on the part of the Owner's Representative indicating acceptance as to concept and release for additional design and/or construction as appropriate. The effect of such acceptance by the Owner shall be that if the Owner later requires changes from the previously accepted design that requires material revision to the drawing the Design/Builder shall be entitled to an equitable adjustment in the Guaranteed Maximum Price for the resulting additional expense, and to an adjustment in the Substantial Completion Date to the extent of resulting delays to the critical path of the Work that the Design/Builder is unable to mitigate despite reasonable effort. Notwithstanding, no acceptance or release by the Owner shall be deemed the acceptance of any error, omission or deficiency in the Instruments of Service or other Work, or a waiver of any of Design/Builder's obligations to properly perform the Work.

(Paragraphs deleted)

§ 3.2.4 The Design/Builder, with the assistance of the Owner, shall file documents required to obtain necessary approvals of governmental authorities and utilities having jurisdiction over the Project.

§ 3.2.5 The Design/Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, the FFE, transportation and other

facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.2.6 The Design/Builder shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under this Agreement.

§ 3.2.7 The Design/Builder shall proactively keep the Owner well informed of the progress and quality of the Work.

§ 3.2.8 The Design/Builder shall be responsible for correcting Work which does not conform to the requirements of this Agreement, or of any of the Construction Documents.

§ 3.2.9 FFE not specified in the Construction Documents will be procured in accordance with interior design drawings and schedules of FFE (collectively, the "FFE Procurement Schedules") to be developed by the Design/Builder subject to mutual agreement of the Design/Builder and the Owner, with the quality of the FFE to be of at least the quality of the FFE to be furnished to the Hotel, and otherwise as approved by the Owner. The Design/Builder warrants to the Owner that materials and equipment and FFE furnished under this Agreement will be of good quality and new unless otherwise required or permitted by the Construction Documents and the FFE Procurement Schedules, that the construction will be free from faults and defects, and that the construction and FFE will conform with the requirements of this Agreement and the Construction Documents and the FFE Procurement Schedules. Construction and FFE not conforming to these requirements, including substitutions not properly approved by the Owner, shall be corrected in accordance with Article 9.

§ 3.2.10 The Design/Builder shall pay all state, county and city sales, consumer transaction privilege, use, excise and similar taxes (collectively, "Privilege Taxes") which had been legally enacted at the time this Agreement was executed by Design/Builder and are not exempt from such taxation, as provided in Section 13.1.13, and Design/Builder shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are either customarily secured after execution of a contract for construction or are legally required at the time the Design/Builder executes this Agreement.

§ 3.2.11 The Design/Builder shall comply with and give notices required by the federal, state, county and city ordinances, rules, regulations, executive orders and other legislative or executive laws and requirements applicable to the Project (collectively, "Laws"), and Design/Builder shall comply with all requirements of all utilities relating to the Project.

§ 3.2.12 The Design/Builder shall pay royalties and license fees for patented designs, processes or products. The Design/Builder shall defend suits or claims for infringement of patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer is required by the Owner. However, if the Design/Builder has reason to believe the use of a required design, process or product is an infringement of a patent, the Design/Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

§ 3.2.13 The Design/Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Agreement. Prior to the completion of the Project, the Design/Builder shall remove from the site waste materials, rubbish, the Design/Builder's tools, construction equipment, machinery, and surplus materials.

§ 3.2.14 The Design/Builder shall notify the Owner in writing when the Design/Builder, the Architect and the Engineer believe that the Design/Builder has accomplished Substantial Completion of a Component and the Project as defined in Section 4.3.1. If the Owner concurs, the Owner, Design/Builder, Architect and Engineer shall determine whether any items remain incomplete, whereupon the Architect and the Engineer shall each issue a Certificate of Substantial Completion to Owner which shall record the Date of Substantial Completion of the respective Component, or of the Project as agreed upon by Owner, shall state the responsibility of each Party for security, maintenance, heat, utilities, damage to the Work and insurance, and shall include a list of items identified by each of Owner, Design/Builder, Architect and Engineer to be completed or corrected and shall fix a reasonable period of time for their inspection. Disagreements between the Owner and Design/Builder regarding the Certificate of Substantial Completion shall be resolved in accordance with provisions of Article 10.

§ 3.2.15 The Design/Builder shall maintain at the Site for the Owner one (1) record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other modifications, in good order and regularly updated to record the completed construction. These shall be delivered to the Owner upon completion of construction and prior to final payment.

§ 3.2.16 The Design/Builder shall prepare or obtain and furnish to the Owner upon completion and prior to and as a condition of the final payment the following:

- .1 a list of capital assets;
- .2 warranties from Subcontractors and Sub-subcontractors;
- .3 manufacturer's warranties and manuals for all furniture, fixtures and/or equipment installed or furnished by Design/Builder (whether as Construction Services or as FFE);
- .4 air balance reports, equipment operation and maintenance manuals;
- .5 building certificates required prior to occupancy, mechanical, electrical and plumbing certificates, all other required approvals and acceptances by city, county and state governments, or other authority having jurisdiction;
- .6 two (2) sets (one (1) to be reproducible on Mylar), plus one (1) electronic set, of redline record drawings in size to match the Construction Documents showing complete information including descriptions, drawings, sketches, marked prints and similar data indicating the final "as built" conditions of the Work. Contractor shall keep redline record drawings up to date concurrently as the Work progresses.

§ 3.2.17 The Design/Builder shall keep such full and detailed accounts and exercise such controls as may be reasonably necessary for proper financial management of the Work, which accounting and control systems shall be reasonably satisfactory to the Owner. The Owner and its properly authorized representatives shall be afforded access at all times on reasonable advance notice to all the Design/Builder's tangible and electronic records received or generated in connection with the Project (including, without limitation, records, books, correspondence, instructions, drawings, receipts, contracts, subcontracts, vouchers, memoranda, electronic data bases and other electronically stored data and printouts thereof, and similar data relating to this Agreement) for audit, inspection and/or copying, at the Site or the Design/Builder's offices in Glendale, Arizona during regular business until after Owner has issued its Final Payment or final resolution of any claims pending as of the date of Final Payment, whichever date is later. The Design/Builder shall be entitled to a reasonable charge for furnishing more than one copy of any document that is requested by the Owner. The Design/Builder shall preserve all such records for a period of six (6) years after Final Payment, or longer where required by law, and prior to destruction, such records will be delivered to the Owner if requested by the Owner. The Design/Builder shall include provisions in its Subcontracts affording Owner similar access for audit, inspection and/or copying, to all of the hard copy and electronically stored records of the Design Consultants and Subcontractors and their Sub-subcontractors.

§ 3.3 ADDITIONAL PROFESSIONAL A/E SERVICES

§ 3.3.1 The services described in this Section 3.3 are not included in Work unless so identified in Article 14, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Work. The services described in this Section 3.3 shall be compensable if and only if the proposed Additional Professional A/E Services, and the Design/Builder's compensation for the Additional Professional A/E Services are authorized in writing by the Owner before the services are provided.

§ 3.3.2 Making revisions in drawings, specifications, and other documents or electronic data when such revisions are required by the enactment or revision of codes, Laws or regulations subsequent to the preparation of such documents or electronic data.

§ 3.3.3 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

§ 3.3.4 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding, except where the Design/Builder or Subcontractor or Sub-subcontractor is a Party thereto.

§ 3.3.5 Providing coordination of construction performed by the Owner's own forces or separate contractors employed by the Owner, and coordination of services required in connection with construction performed and equipment supplied by the Owner.

§ 3.3.6 Providing assistance in the utilization of equipment or systems such as preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

(Paragraph deleted)

ARTICLE 4 TIME

(Paragraph deleted)

§ 4.1 Unless otherwise indicated, the Owner and the Design/Builder shall perform their respective obligations as expeditiously as necessary for the timely and proper progress of the Project on a fast-track basis.

§ 4.2 Time limits stated in this Agreement are of the essence. The Work to be performed under this Agreement shall commence upon receipt of a notice to proceed unless otherwise agreed and, subject to authorized Modifications, Substantial Completion and Final Completion shall be achieved on or before the respective dates established in Article 14.

§ 4.3 Substantial Completion and Final Completion are defined as follows:

§ 4.3.1 "Substantial Completion" shall mean, with respect to a Component, the date when: (1) a certificate of Substantial Completion of the Component has been issued by the Engineer and Architect to Owner, as provided in Section 3.2.14 and; (2) one of the following has occurred: (a) the Owner has issued written acceptance of the Component as having been substantially completed, or (b) the Owner, or its authorized agents or invitees, have taken beneficial occupancy of the Component, or (c) the appropriate governmental permitting agency has issued a temporary certificate of occupancy for the Component. Substantial Completion of the entire Project shall mean the date when: (1) a certificate of Substantial Completion of the Project has been issued by the Engineer and Architect to the Owner as provided in Section 3.2.14; and (2) one of the following has occurred (a) the Owner has issued written acceptance of the Project as having been substantially completed, or (b) the Owner or its authorized agents or invitees, have taken beneficial occupancy of the Project; or (c) the appropriate governmental permitting agency has issued a temporary certificate of occupancy for the entire Project.

§ 4.3.2 "Final Completion" shall mean the date when all of the following have occurred: (a) Architect and Engineer have each issued a certificate to Owner certifying that the Project is finally complete; (b) the appropriate governmental permitting agency has issued its written final acceptance and approval and a Certificate of Occupancy; and (c) Owner has accepted the Project.

§ 4.4 The Design/Builder shall furnish and update a progress schedule ("Progress Schedule") that will demonstrate the sequencing, timing, and interaction of all significant activities and milestones necessary for accomplishment of Substantial Completion and Final Completion by the applicable dates provided in Section 14.1. The Progress Schedule, which shall be submitted to Owner for review within ten (10) days after the execution of this Agreement, shall utilize programming and sequencing software and methodology sufficient to demonstrate the critical path and other sequencing, early and late start, early and late completion, and other dates and milestones necessary to show the orderly progress of the Work. The Progress Schedule shall be revised at least monthly or at more frequent times as required by the conditions of the Work and the Project, and shall provide for expeditious and practicable execution of the Work consistent with the Contract Times. The monthly revision shall be a condition precedent to any payment otherwise due to Design/Builder. From the date of commencement until the date of Final Completion, Design/Builder shall meet with the Owner every week (or as requested by Owner or Design/Builder) to review the progress of the Work. In advance of each such meeting, Design/Builder shall provide Owner a written status report identifying whether the Work is on schedule in accordance with the Progress Schedule or whether there are

anticipated or potential delays to any critical path elements in the construction of the Work (in which event Design/Builder shall provide an analysis as provided in Section 8.6). Unless the delay is an Excusable Delay as defined in Section 4.5, then Design/Builder shall take all actions, at its expense, including working overtime and hiring additional personnel, to comply with such Progress Schedule. If the delay is an Excusable Delay, the Progress Schedule shall be modified to the extent mutually agreed upon by Owner and Design/Builder. Notwithstanding anything to the contrary in this Agreement, Design/Builder shall be solely responsible for the timing, sequencing, coordination, and supervision of the Work consistent with the Substantial Completion and Final Completion Dates established in Article 14, and Owner's review, acceptance or approval of a Progress Schedule, Subcontract, Sub-subcontract, or submittal provided by Design/Builder shall not be deemed to operate as a waiver or bar to any rights or claims Owner may thereafter have against Design/Builder in the event Owner subsequently discovers a deficiency in such Progress Schedule.

§ 4.5 The Substantial Completion and Final Completion Dates (the "Contract Time(s)") of a Component and/or of the Project shall be equitably extended by Change Directive or Contract Amendment to the extent the critical path of the Work of the Component or Project is necessarily delayed by: (1) a Change Directive; (2) any of the following force majeure ("Force Majeure") events to the extent they are not caused or contributed to by Design/Builder, or by any Subcontractor or other person for whom Design/Builder is responsible: fire, strikes, war, damage or disruption committed on behalf of any foreign interests to further international political objectives, injunction in connection with litigation, governmental action, or, severe and adverse weather conditions which result in non-working conditions; (3) the (a) failure of Owner to furnish an Owner Decision after receipt of a written request from the Design/Builder as provided in Section 1.1.2; (b) the unreasonable disapproval by the Owner of a written request from the Design/Builder for a draw from the Unscheduled Fast Track Contingency as provided in Section 13.1.7.4., or (c) any breach of this Agreement by the Owner, (each, an "Owner Delay"); or (4) any other causes that are not caused by or do not result from default by the Design/Builder, or by any other cause that Design/Builder could not, despite its best efforts to do so, anticipate, control, circumvent or mitigate (each, an "Excusable Delay"); provided that Design/Builder has timely perfected a Claim for additional time arising from the alleged delay as provided in Section 8.6. Design/Builder shall use reasonable efforts to minimize any such delays and shall cooperate with Owner to mitigate the impact of any delays encountered by Design/Builder that would entitle it to an extension of time, even if its performance is unreasonably delayed by Owner. Design/Builder's sole and exclusive remedy for a Force Majeure event shall be an extension of time.

§ 4.6 To the extent the delay to the critical path is attributable to an Owner Delay or by any breach of this Agreement by the Owner, the Design/Builder's entitlement to a Change Order for its increased costs associated with such Owner Delay shall be limited as follows: pursuant to A.R.S. § 34-607(E), the Parties agree to negotiate and discuss in good faith any potential damages related to increased costs incurred by the Design/Builder for any unreasonable delay that is attributable to an Owner Delay.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based on draft applications (each a "Draft Application") followed by formal applications for progress payment (each an "Application for Progress Payment"), Owner will make monthly progress payments on account of the Contract Sum as provided in this Section 5.1. The period covered by each Application for Progress Payment shall be one (1) calendar month (the "Billing Month") ending on the last day of each month. On or before the twenty-fifth (25th) day of each Billing Month, Design/Builder shall submit to Owner its Draft Application which shall identify all amounts Design/Builder expects to invoice for the entire Billing Month. The Parties shall thereafter meet and make good faith efforts to reach agreement on the Draft Application by the end of the Billing Month, whereupon Design/Builder shall formalize its Application for Progress Payment for the Billing Month, incorporating all of the agreements reached during the Parties' review of the Draft Application. The Draft Application is for informational purposes only and its submission shall not be deemed an Application for Payment.

§ 5.1.2 Provided that Design/Builder has submitted its Draft Application for review as provided above, Design/Builder may submit its Application for Progress Payment for the Billing Month to Owner, all by the first (1st) day of the month following the Billing Month. The Owner shall make a Progress Payment, subject to applicable Withholdings, to the Design/Builder not later than twenty-one (21) days after the date on which the Application for Progress Payment has been received by the Owner, subject to this Agreement. Design/Builder shall submit only one

(1) Application for Progress Payment in a month. Owner shall make only one (1) Progress Payment in a month to Design/Builder

§ 5.1.3 The Application for Progress Payment shall be in such form as Owner may reasonably require, and shall be accompanied by the following to the Owner's reasonable satisfaction: (1) a sworn statement of the Cost of the Work furnished during the Billing Month, together with AIA Documents G702 and G703 properly completed so as to allocate all Construction Services, Professional A/E Services and FFE Services according to the most recent Owner-approved GMP Schedule; (2) an itemized report of the Work performed during the Billing Month; (3) proof of Design/Builder's compliance with testing, submittals, permits, and other requirements applicable to the Work requested by Owner; (4) conditional and unconditional waivers and releases from Design/Builder and from Subcontractors, Sub-subcontractors, vendors, and others relating to Work for which the Application for Progress payment is requested, or to receipt of amounts for which payment has previously been made, as requested by Owner; and (5) payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, payrolls, requisitions from Subcontractors, Sub-subcontractors and material suppliers, vendors receipted invoices, purchase orders, and delivery tickets; (6) Design/Builder's monthly updated Progress Schedule as provided in Section 4.4; and (7) such other evidence substantiating the particulars of Design/Builder's Application for Progress Payment as may be required by Owner. Design/Builder's Application for Progress Payment shall be organized so that all back up for each line item of the Application for Payment corresponds to the most recently Owner approved GMP Schedule and that the back up for the amount requested for each item of the Construction Services, Professional A/E Services, and FFE Services, and each Construction Change Directive, Change Order is separately provided for and is available for review by Owner.

§ 5.1.4 The Application for Progress Payment shall be signed by the Design/Builder, the Architect and the Engineer certifying that the Work has progressed to the point indicated in the Application for Progress Payment and that the Work is in accordance with the Construction Documents, and the Design/Builder is entitled to payment in the amount requested. Applications for Progress Payment to the Owner will not be deemed delivered until actually received by the Owner.

§ 5.1.5 The Owner shall have the right to review the Work after receipt of the Design/Builder's application. If the Owner reasonably determines that the Work actually completed is less than that represented on the Application for Progress Payment, the Work is defective or does not comply with the requirements of this Agreement, or if the other grounds for withholding as provided in Section 5.4 below apply, then, within three (3) days after receipt of the Application for Progress Payment, the Owner shall prepare and issue a written statement ("Deficiency Notice") specifying those items covered by the Application for Progress Payment that are not approved and certified for payment. The Deficiency Notice may be given in any reasonable manner, including handwritten annotations on a copy of the Application for Progress Payment returned to the Design/Builder. The Owner may withhold such sums as are permitted pursuant to A.R.S. § 34-607 to pay the expenses the Owner reasonably expects to incur in correcting the deficiencies so identified. If sums were withheld in connection with a prior Application for Progress Payment, and the associated deficiencies have been corrected, the amount so withheld may be included as part of the current Application for Progress Payment. The Owner shall have the right to amend any previously given Deficiency Notice, or approval for payment, in whole or in part, based on mistake, newly discovered information, or other grounds permitted by Law, and such amendments shall apply to any Application for Progress Payment. Further, the failure by the Owner to specify any defect in the Work in a Deficiency Notice shall not act as a waiver or otherwise prevent the Owner from raising defect issues at any time.

§ 5.1.6 Within twenty-one (21) days after receipt of the properly completed Application for Progress Payment, the Owner shall pay to the Design/Builder the entire amount set forth in the Application for Progress Payment, less any amounts withheld pursuant to Sections 5.1.5 and 5.4, less retainage as provided in A.R.S. § 34-607(B).

§ 5.1.7 Within seven (7) days after receipt of payment by the Owner, the Design/Builder shall make payment available to its Subcontractors entitled to payment in accordance with A.R.S. § 34-607(F). If any payment is to be withheld from a Subcontractor as provided by Law, such amount will not be included in the Application for Progress Payment. The Design/Builder shall bear all costs and damages, without reimbursement, that arise from any failure of the Design/Builder to pay Subcontractors entitled to payment in a timely manner as provided by Law, to the extent such payment has been received by the Design/Builder from the Owner.

§ 5.1.8 The Owner shall have no obligation under this Agreement to pay or to be responsible in any way for payment to a Subcontractor, Sub-subcontractor or other lower tier person or entity performing portions of the Work.

§ 5.1.9 The Design/Builder warrants that title to all construction and stored materials and FFE covered by an Application for Progress Payment will pass to the Owner no later than the time of payment. The Design/Builder further warrants that upon submittal of an Application for Progress Payment all construction and stored materials and FFE for which payments have been received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Design/Builder or any other person or entity performing construction at the site or furnishing materials or equipment relating to the construction.

§ 5.1.10 The Design/Builder's first Application for Progress Payment will cover the time commencing from the Effective Date, and will include the sum of Four Hundred Fifty Thousand and No/100 Dollars (\$450,000.00) on account of the pre-construction services of the Construction Subcontractor, as an installment against amounts to be paid to the Design/Builder as and for the Construction Subcontractor's Profit and Overhead Amount. Payment of Design/Builder's first Application for Progress Payment will be subject to all terms and conditions of this Agreement.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Neither final payment nor amounts retained, if any, shall become due until the Design/Builder submits to the Owner: (1) an application for final payment ("Application for Final Payment") and (2) Owner has thereafter conducted an audit of such records to verify Design/Builder's costs all as provided in this Section 5.2.

§ 5.2.2 The Application for Final Payment shall be in such form as Owner may reasonably require and shall be accompanied by the following to the satisfaction of Owner: (1) conditional waivers and releases on Final Payment as requested by Owner; (2) Design/Builder's Final Accounting, bearing the certificates of Design/Builder's chief executive and chief financial officers attesting to the completeness and accuracy of all expenses for which Design/Builder has received or seeks reimbursement from Owner for the Work, together with Design/Builder's detailed proposal for the amount of the Final Payment; (3) proof that Design/Builder has furnished to Owner the redlines, warranties, manuals and other close-out documents required by this Agreement or any of the Construction Documents; (4) proof of compliance with the notice, submittals, permits and approval requirements applicable to the Work; (5) certificates that all insurance required by this Agreement or any of the Construction Documents to be in force after Final Payment is and will be in effect as required; (6) such other documents substantiating the particulars of Design/Builder's Application for Final Payment (including additional backup for Design/Builder's accounting) as may be reasonably required by Owner, and Design/Builder's Surety; and (7) consent of Design/Builder's Surety to the Final Payment.

§ 5.2.3 Owner shall have thirty (30) days within which to review Design/Builder's accounting and give notice to Design/Builder identifying: (a) the expenses that Owner has determined are not substantiated; and (b) Owner's determination of the total Contract Sum that has been substantiated; and (c) the resulting amount of the Final Payment to be given to Design/Builder after deduction for all payments previously made and applicable withholding. Design/Builder shall cooperate with Owner's review by making all of its records available for inspection and copying, answering questions, and otherwise facilitating Owner's review promptly upon its request.

§ 5.2.4 Owner shall make the Final Payment to Design/Builder within ten (10) days after Owner has issued its written determination of the amount of Final Payment it will pay to Design/Builder, but not later than 45 days after Owner has received the Design/Builder's properly documented and completed Application for Final Payment. If applicable withholding exceeds amounts otherwise payable, the Design/Builder shall pay the difference to Owner within ten (10) days after demand from Owner.

§ 5.2.5 The making of Final Payment shall constitute a waiver of claims by the Owner except those arising from:

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled at the time of the Final Payment;
- .2 failure of the Work to comply with the requirements of this Agreement or any of the Construction Documents; or
- .3 terms of warranties in or required by this Agreement or any of the Construction Documents.

§ 5.2.6 Acceptance of Final Payment shall constitute a waiver of all claims by the Design/Builder except those previously made in writing and identified by the Design/Builder as unsettled at the time of its Application for Final Payment.

§ 5.3 Owner shall be entitled to require that Design/Builder furnish conditional and/or unconditional waivers and releases, in the applicable form provided in A.R.S. § 33-1008, with respect to verification of amounts for which Design/Builder has requested payment, and/or to verify that lower tier Subcontractors and others have been paid.

§ 5.4 DEFICIENCY NOTICES; WITHHOLDING

The Owner may decline to issue payment and may withhold amounts from a progress or final payment in whole or in part to the extent reasonably necessary to protect the Owner if, in its reasonable opinion, it is unable to verify that the Work has progressed to the level claimed by the Design/Builder and that the Design/Builder is not otherwise in default hereunder. If the Owner is unable to make such verification and to certify payment in the amount of the Application for Progress Payment within seven (7) days after receipt of the Application for Progress Payment, the Owner will notify the Design/Builder as provided in Sections 5.1.3 or 5.2.3, as applicable. If the Design/Builder and the Owner cannot agree on a revised amount, the Owner will promptly issue payment for the undisputed amount of such Application. The Owner may also decline to issue payment because of mistake, subsequently discovered evidence or subsequent observations, or, as otherwise permitted by Law, may nullify any part of any payment previously issued, to such extent as may reasonably be necessary to protect itself from loss because of: defective Work not remedied; third party claims filed due to the acts or omissions of the Design/Builder; after receiving payment from the Owner, failure of the Design/Builder or a Subcontractor to make timely payment for labor, materials or equipment; reasonable evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price as it may be adjusted; failure to carry out the Work in accordance with this Agreement or to comply with material provisions of this Agreement; actual damage to Owner or another contractor to the extent it is caused by the Design/Builder's act or omission; or, failure of the Design/Builder to provide appropriate evidence of insurance in conformance with the requirements of this Agreement.

§ 5.5 NO WAIVER. No payment to the Design/Builder shall constitute an acceptance of any Work not in accordance with the requirements of this Agreement. Any deemed approval of an application for payment pursuant to A.R.S. § 34-607 shall constitute approval solely for purposes of making payments and shall not constitute a waiver of the Owner's right to have all defective or incomplete Work corrected and performed in accordance with this Agreement, or to later modify or amend a Deficiency Notice or any approval or deemed approval previously given by the Owner.

§ 5.6 INTEREST PAYMENTS

(Paragraph deleted)

§ 5.6.1 Payments due the Design/Builder under this Agreement which are not paid when due shall bear interest from the date due at the rate specified in Article 13, or in the absence of a specified rate, at the legal rate prevailing where the Project is located.

ARTICLE 6 PROTECTION OF PERSONS AND PROPERTY

§ 6.1 The Design/Builder shall be responsible for initiating, maintaining and providing supervision of all safety precautions and programs in connection with the performance of this Agreement.

§ 6.2 The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody, or control of the Design/Builder or the Design/Builder's contractors; and (3) other property at or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal relocation or replacement in the course of construction.

§ 6.3 As between the Design/Builder and the Owner, the Design/Builder is responsible to the Owner for any and all of the safety issues relating to the Work. The Design/Builder shall administer and manage the Design-Builder's safety program. This will include, but not necessarily be limited to, review of the safety programs of each Subcontractor and Sub-subcontractor. The Design/Builder shall monitor the establishment and execution of effective

safety practices then known to the industry, as applicable to the Work, and the compliance with all applicable regulatory and advisory agency construction safety standards or other Laws. As between the Design/Builder and its Subcontractors, and without limiting the obligations of the Design/Builder set forth hereinabove, the Design/Builder's responsibility for review, monitoring and coordination of the Subcontractors' safety programs shall not extend to direct control over execution of the Subcontractors' safety programs; each individual Subcontractor shall remain the controlling employer responsible for the safety programs and precautions applicable to its own work and the activities of others' work in areas designated to be controlled by such Subcontractor.

§ 6.4 The Design/Builder shall comply with and give notices required by applicable Laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury or loss.

§ 6.5 The Design/Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance provided or required by this Agreement or by any of the Construction Documents) to property at the Site caused in whole or in part by the Design/Builder, a Subcontractor of the Design/Builder or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

§ 6.6 If the Design/Builder fails to commence the repair of damage to any property as set forth in this Section, and diligently pursue such repair, then the Owner, after seven (7) days prior written notice to the Design/Builder (provided the Design/Builder has not commenced and diligently pursued such repair during such seven (7) day period), may elect to repair such damages with its own forces or contractors and to recover from the Design/Builder amounts paid or incurred by the Owner to correct or repair such damage.

ARTICLE 7 INSURANCE AND BONDS

§ 7.1 DESIGN/BUILDER'S LIABILITY INSURANCE

§ 7.1.1 The Design/Builder shall purchase from, and maintain insurance issued by a company or companies lawfully authorized to do business in Arizona, in accordance with the requirements of Exhibit E.

(Paragraphs deleted)

§ 7.1.2 The insurance required by Section 7.1.1 shall be written for not less than limits specified in Exhibit E or required by Law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment as provided in Exhibit E.

§ 7.1.3 Certificates, endorsements, and other evidence of Insurance acceptable to the Owner shall be delivered to the Owner immediately after execution of this Agreement. These Certificates and the insurance policies required by this Section 7.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the application for final payment. Information concerning reduction of coverage shall be furnished by the Design/Builder with reasonable promptness in accordance with the Design/Builder's information and belief.

§ 7.2 OWNER'S LIABILITY INSURANCE

§ 7.2.1 The Owner shall be responsible for purchasing and maintaining Owner's liability insurance as determined by Owner in its sole discretion. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under this Agreement. The Design/Builder shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by this Agreement or any of the Construction Documents.

§ 7.3 PROPERTY INSURANCE

§ 7.3.1 The Design/Builder shall purchase and maintain, in a company or companies authorized to do business in the jurisdiction in which the principal improvements are to be located, property insurance upon the Work to the full insurable value thereof on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in this Agreement or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the

Owner has an insurable interest in the property required by this Section 7.3 to be insured, whichever is earlier. This insurance shall include interests of the Owner, the Design/Builder, and their respective contractors and subcontractors in the Work.

§ 7.3.2 Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, falsework, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the services and expenses of the Design/Builder's Architect and other professionals required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in this Agreement.

§ 7.3.3 INTENTIONALLY DELETED

§ 7.3.4 The Design/Builder shall purchase and maintain such boiler and machinery insurance required by this Agreement or by Law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner. This insurance shall include interests of the Owner, the Design/Builder, the Design/Builder's contractors and subcontractors in the Work, and the Design/Builder's Architect and other design professionals. The Owner and the Design/Builder shall be named insureds.

§ 7.3.5 A loss insured under the Design/Builder's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 7.3.10. The Owner shall pay Subcontractors their shares of insurance proceeds received by the Owner, and by appropriate agreement, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 7.3.6 Before an exposure to loss may occur, the Design/Builder shall file with the Owner a copy of each policy that includes insurance coverages required by this Section 7.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner.

§ 7.3.7 If the Owner requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Design/Builder shall, if possible, obtain such insurance, and the cost thereof shall be charged to the Owner by appropriate Change Order.

§ 7.3.8 The Owner and the Design/Builder waive all rights against each other and the Architect and other design professionals, contractors, subcontractors, agents and employees, each of the other, for damages caused by fire or other perils but only to the extent property insurance proceeds are obtained pursuant to this Section 7.3 or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as trustee. The Design/Builder shall require from Subcontractors and Sub-subcontractors by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated in this Section 7.3. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 7.3.9 INTENTIONALLY DELETED

§ 7.3.10 The Owner as trustee shall have the power to adjust and settle a loss with insurers unless one of the Parties in interest shall object in writing, within five (5) business days after the later of (1) occurrence of loss to the Owner's exercise of this power and (2) Design/Builder's receipt of the information available to permit a reasoned decision of whether or not to object; if such objection be made, the Parties shall enter into dispute resolution under procedures provided in Article 10. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution. Owner may settle insurance claims only after consultation with Design/Builder.

§ 7.3.11 Partial occupancy or use prior to Substantial Completion shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or

otherwise. The Owner and the Design/ Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall not, without mutual written consent, take any action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of coverage.

§ 7.4 LOSS OF USE OF INSURANCE

§ 7.4.1 The Owner, at the Owner's option and expense, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

§ 7.5 PAYMENT AND PERFORMANCE BONDS

§ 7.5.1 Upon execution of this Agreement, the Design/Builder shall furnish Payment and Performance Bonds required under the provisions of A.R.S. Section 34-608. The forms of the bonds will comply with the statute and be provided by a surety approved by the Owner.

§ 7.5.2 Design/Builder will require its Construction Contractor to purchase and maintain in force at all times from the Effective Date until the Final Completion of the Project a Subguard policy of insurance (the "Subguard policy") subject to the Owner's approval, which will not be unreasonably withheld provided the Subguard policy furnishes insurance that covers defaults of the Sub-subcontractors and others furnishing Construction Services under the Construction Subcontractor and is endorsed to name the Owner as an additional insured thereunder.

ARTICLE 8 CHANGES IN THE WORK

§ 8.1 CHANGES

§ 8.1.1 Changes in the Work may be accomplished after execution of this Agreement, without invalidating this Agreement, by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in this Agreement.

§ 8.1.2 A Change Order shall be based upon agreement between the Owner and the Design/Builder; a Construction Change Directive may be issued by the Owner without the agreement of the Design/Builder; an order for a minor change in the Work may be issued by the Design/Builder alone.

§ 8.1.3 Changes in the Work shall be performed promptly in accordance with the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 8.1.4 Work will proceed pending resolution of issues with Change Orders or Construction Change Directives if and to the extent directed by Owner, provided that the Owner will pay Design/Builder the amounts included by Design/Builder in its Applications for Progress Payment that are not disputed by the Owner.

§ 8.1.4 INTENTIONALLY DELETED

§ 8.2 CHANGE ORDERS

§ 8.2.1 A "Change Order" is a written instrument prepared by the Design/Builder and signed by the Owner and the Design/Builder, stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment, if any, in the Guaranteed Maximum Price; and
- .3 the extent of the adjustment, if any, in the Contract Time.

§ 8.2.2 If the Owner requests a proposal for a change in the Work from the Design/Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design/Builder for any costs reasonably and necessarily incurred for estimating services, design services or preparation of proposed revisions to any Instrument of Service that had previously been accepted and released by the Owner, but only to the extent the general conditions costs to prepare the cost proposal exceed \$500.00.

§ 8.2.3 Unless otherwise mutually agreed by Owner and Design/Builder, the net additive or deductive adjustment to the Guaranteed Maximum Price resulting from any Change Order for Construction Services, Professional A/E Services or FFE Services shall be: (1) a reasonable amount for the Work to be furnished (or to have been furnished) by the applicable Sub-subcontractor(s) as agreed upon by Owner and Design/Builder; plus (2) a reasonable amount for the direct costs of the Construction Services, Professional A/E Services and FFE Services to be furnished (or in the case of a deductive Change Order, that would have, but have not yet been, furnished) by the applicable Subcontractor(s), without any mark-up for

profit or overhead, plus six percent (6%) as and for the amount to be added or deducted for profit and overhead to the direct costs of the Construction Subcontractor or of the Architect (however, there shall be no markup for profit or overhead on amounts added or deducted for the FFE Subcontractor); plus (3) an amount equal to three percent (3%) of the amount to be paid or deducted for the Construction Subcontractor's Cost as provided in Section 13.1.2.1 as and for the Design/Builder Development & Management Fee. There shall be no markup for Development & Management Fee applied to the Construction Subcontractor's Profit & Overhead or to the amount for Professional A/E Services, or for FFE Services.

§ 8.3 CONSTRUCTION CHANGE DIRECTIVES

§ 8.3.1 A Construction Change Directive is a written order prepared and signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Guaranteed Maximum Price. The Owner shall have the right to issue a Construction Change Directive provided that the Owner reasonably anticipates the probable adjustment to the Guaranteed Maximum Price will be less than \$25,000.00, and that there will be no change in the Substantial Completion Date. The Design/Builder will notify the Owner in writing within three (3) days after Design/Builder's receipt of a Construction Change Directive. If Design/Builder believes the Construction Change Directive will require (1) a change in the Substantial Completion Date, or (2) an increase to the Guaranteed Maximum Price of more than \$25,000.00, and any resulting Dispute will be resolved as provided in Section 10.4. Work will proceed pending resolution of the Dispute unless the Dispute relates to a claim that the Construction Change Directive extends the Substantial Completion Date, in which event the Design/Builder shall be entitled not to act on the Construction Change Directive until the AAA Emergency Arbitrator has issued its finding. Failure of the Design/Builder to give such written notice within three (3) days after receipt of the Construction Change Directive shall be deemed a waiver of the right to seek an increase in the Substantial Completion Date and/or any increase of more than \$25,000.00 to the Guaranteed Maximum Price.

§ 8.3.2 Except as otherwise agreed by the Owner and the Design/Builder, the adjustment to the Guaranteed Maximum Price shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including the expenditures for design services and revisions to the Construction Documents. In case of an increase in the Guaranteed Maximum Price, the adjustment shall be based on the direct costs incurred, plus an allowance for overhead and profit for the Construction Services and the Professional A/E Services as follows: (1) for the Architect six percent (6%) of its direct cost; (2) for the Construction Subcontractor six percent (6%) of its Costs; and (3) for the Design/Builder three percent (3%) of the Costs of the Construction Services. There shall be no markup to the Design/Builder for overhead or profit on Professional A/E Services or Construction Subcontractor's Overhead & Profit, and there shall be no markup to the FFE Subcontractor or to the Design/Builder for the FFE Services. In such case, the Design/Builder shall keep and present an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in this Agreement, costs for these purposes shall be limited to the following:

- 1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- 2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- 3 rental costs of machinery and equipment exclusive of hand tools, whether rented from the Design/Builder or others;
- 4 costs of premiums for all bonds and insurance permit fees, and sales, use or similar taxes; and
- 5 additional costs of supervision and field office personnel directly attributable to the change; and fees paid to the Architect, engineers and other professionals.

§ 8.3.3 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Design/Builder to the Owner for deletion or change which results in a net decrease in the Guaranteed Maximum Price will be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

§ 8.3.4 When the Owner and the Design/Builder agree upon the adjustments in the Guaranteed Maximum Price and Contract Time, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ 8.4 MINOR CHANGES IN THE WORK

§ 8.4.1 The Design/Builder shall not have authority to make minor changes in the Construction Documents and construction without the Owner's prior written approval which shall not be unreasonably withheld, provided Owner is satisfied the proposed changes are consistent with the intent of this Agreement and do not involve adjustment in the Guaranteed Maximum Price or extension of the Contract Time and do not lessen the quality of any element of the Work.

§ 8.5 CONCEALED CONDITIONS

§ 8.5.1 If conditions are encountered at the Site which are: (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Preliminary Design Documents; or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Preliminary Design Documents or contemplated by this Agreement; and (3) in either event were not of the nature that Design/Builder should have discovered them based on its inspections and activities prior to execution of this Agreement; then, notice by the observing Party shall be given to the other Party promptly before conditions are disturbed and in no event later than two (2) days after first observance of the conditions. The Guaranteed Maximum Price and Substantial Completion Date shall be equitably adjusted for such concealed or unknown conditions by Change Order upon claim by either Party made within five (5) after the claimant becomes aware of the conditions, failing which any cost adjustments relating to such conditions shall be waived.

§ 8.6 NOTICE OF CLAIMS; EXCUSABLE DELAY; IMPACT ANALYSIS

If Design/Builder wishes to make a claim for an increase in the Guaranteed Maximum Price or an extension of the date of Substantial or Final Completion on account of an Owner initiated Change Order or other claimed Excusable Delay in the Work, written notice thereof shall be given to the Owner promptly, but not later than five (5) days after the occurrence of the event giving rise to such claim; otherwise the claim shall be deemed to have been waived by Design/Builder. If the claim reflects a potential Excusable Delay, the Design/Builder shall accompany the notice with a written analysis with a proposed revision to the Schedule illustrating the claimed influence of each Change Order or Excusable Delay on the critical path of the Work and the scheduled Substantial Completion Date of the Project. If the Parties agree on all terms of an Owner initiated Change Order except for its time impact, the Change Order shall state that the Work will proceed without waiver of the right of either Party to submit the disagreement over its time impact to mediation and arbitration as provided in Article 10. Design/Builder will exercise best efforts to mitigate the potential impact of any delay or increase in the Guaranteed Maximum Price.

§ 8.7 REGULATORY CHANGES

§ 8.7.1 The Design/Builder shall be compensated for changes in the construction necessitated by the enactment or revisions of codes, Laws or regulations subsequent to the date this Agreement is executed by Design/Builder.

ARTICLE 9 CORRECTION OF WORK

§ 9.1 The Design/Builder shall promptly correct Work rejected by the Owner or known by the Design/Builder to be defective or failing to conform to the requirements of this Agreement or any of the Construction Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Design/Builder shall bear costs of correcting such rejected Work, including additional testing and inspections.

§ 9.2 If, within the greater of (a) two (2) years after the date of Final Completion of the Project or, after the date for commencement of warranties established in a written agreement between the Owner and the Design/Builder, or (b) the time provided by terms of an applicable warranty, excluding manufacturer's warranties, in or required by this Agreement or any of the Construction Documents, or (c) any longer period provided by applicable Law, any of the Work is found to be not in accordance with the requirements of the this Agreement or any of the Construction Documents, the Design/Builder shall correct it promptly after receipt of a written notice from the Owner to do so, within the time for correction specified by the Owner in such notice, at no cost to Owner, unless the Owner has previously given the Design/ Builder a written acceptance of such specific condition. If Design/Builder fails to correct the deficient element of Work within the time given in such notice, the Owner may perform the corrective work and Design/Builder shall pay Owner, upon demand, the reasonable costs it incurred for such correction.

§ 9.3 Nothing contained in this Article 9 shall be construed to establish a period of limitation with respect to other obligations or liabilities which the Design/Builder might have under this Agreement, the Construction Documents or applicable Law. Establishment of the time period of two (2) years as described in Section 9.2 relates only to the

specific obligation of the Design/Builder to return to correct the Work, and has no relationship to the time within which the obligation to comply with this Agreement, any of the Construction Documents or applicable Law may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

§ 9.4 If the Design/Builder fails to correct nonconforming Work as required within the time specified in a notice from Owner, or fails to carry out Work in accordance with this Agreement or any of the Construction Documents or applicable Law, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the Owner's right to stop the Work shall not give rise to a duty on the part of the Owner to exercise the right for benefit of the Design/Builder or other persons or entities.

§ 9.5 If the Design/Builder defaults or neglects to carry out any part of the Work in accordance with this Agreement or any of the Construction Documents and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design/ Builder, the costs of correcting such deficiencies. If the payments then or thereafter due the Design/Builder are not sufficient to cover the amount of the deduction, the Design/Builder shall pay the difference to the Owner. Such action by the Owner shall be subject to dispute resolution procedures as provided in Article 10.

ARTICLE 10 DISPUTE RESOLUTION – MEDIATION AND ARBITRATION – WORK TO CONTINUE PENDING RESOLUTION

§ 10.1 Owner and Design/Builder hereby agree that all controversies, claims or disputes (each a "Dispute"; collectively "Disputes") arising out of or related to this Agreement (including Disputes regarding any alleged breaches of this Agreement) shall be initiated and decided under the provisions of this Article 10.

§ 10.2 Each of Design/Builder and Owner shall designate in writing to the other Party, from time to time, a member of senior management who shall be authorized to attempt to expeditiously resolve any Dispute relating to the subject matter of this Agreement in an equitable manner.

§ 10.3 A Party shall initiate a Dispute by delivery of written notice to the members of management designated by the respective Parties under Section 10.2. The Parties agree (1) to attempt to resolve all Disputes promptly, equitably and in a good faith manner, and (2) to provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such Dispute.

§ 10.4 If the Parties are unable to accomplish resolution of a Dispute the expedited resolution of which either Party considers necessary to prevent or mitigate a material delay to the critical path of the Work (a "Time Sensitive Dispute") within two (2) days after the Time Sensitive Dispute has been initiated by a Party, either Party may thereafter seek emergency relief before the American Arbitration Association ("AAA") under Rules O-1 to O-8 of the AAA's Commercial Rules-Optional Rules for Emergency Protection Commercial Rules ("AAA Emergency Rules"). The AAA shall have jurisdiction under the Emergency Rules only to resolve Time Sensitive Disputes. All proceedings under the AAA Emergency Rules shall be conducted in Glendale, Arizona, by an emergency arbitrator ("AAA Emergency Arbitrator") appointed by the AAA under the Emergency Rules. The AAA Emergency Arbitrator shall conduct a hearing and render a written determination on the matter in dispute to both parties within two (2) days of the matter being referred to him or her. Discovery shall be as determined by the AAA Emergency Arbitrator. If the AAA Emergency Arbitrator fails to render a determination within the required time, either Party, upon five (5) Business Days Notice to the other Party, may refer the matter to arbitration pursuant to Section 10.5. The finding of the AAA Emergency Arbitrator with respect to any Time Sensitive Issue shall be binding upon the Parties on an interim basis during progress of the Work, subject to review denovo by arbitration after Substantial Completion in accordance with Section 10.5.

§ 10.5 All Disputes not resolved by negotiation, and any Dispute seeking denovo review of the decree of an AAA Emergency Arbitrator shall be decided under the provisions of this Article 10 by binding arbitration held in Glendale, Arizona. The arbitration shall be conducted in accordance with the Construction Industry Rules of the American Arbitration Association, but not necessarily by an arbitrator selected by the American Arbitration Association. The Parties shall select a mutually acceptable arbitrator within fifteen (15) days after notice that a Party

desires to resolve a dispute by arbitration. If the Parties cannot agree on any specific arbitrator within such fifteen (15) day period, then the arbitrator shall be appointed by the American Arbitration Association. The arbitrator shall control discovery and award to the prevailing Party its attorneys' fees, expert witness fees, and other dispute-related costs.

§ 10.6 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the Parties to this Agreement shall be specifically enforceable in accordance with applicable Law in any court having jurisdiction thereof.

§ 10.7 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable Law in any court having jurisdiction thereof.

§ 10.8 Notwithstanding the existence of a Dispute between Owner and Design/Builder and regardless of whether such Dispute is the subject of negotiation, or any litigation, arbitration, or other proceeding, neither Owner nor Design/Builder shall be entitled to suspend or otherwise delay the performance of its obligations under this Agreement. This Agreement and the rights and obligations of the Parties shall remain in full force and effect during an arbitration proceeding.

§ 10.9 This Section 10 does not apply to, and shall not be construed to require arbitration of, any claims, actions or other process filed or issued by the City of Glendale Building Safety Department or any other agency of the City of Glendale acting in its governmental permitting or other regulatory capacity.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Unless otherwise provided, this Agreement shall be governed by the Law of the place where the Project is located.

§ 11.2 SUBCONTRACTS; SUB-SUBCONTRACTS; SUB-CONSULTANTS

§ 11.2.1 The Design/Builder, as soon as practicable after execution of this Agreement, shall furnish to the Owner in writing the names of the persons or entities the Design/Builder will engage as Subcontractors, and Sub-subcontractors, whether the Subcontractor or Sub-subcontractor is an engineer, architect or other design professional, consultant, contractor, vendor or otherwise. A Sub-subcontractor that furnishes design or engineering services to a Subcontractor is sometimes referred also to in this Agreement as a "Sub-subconsultant".

§ 11.2.2 SUBCONTRACTS AND SUB-SUBCONTRACTS FOR PROFESSIONAL DESIGN SERVICES AND CONSTRUCTION SERVICES

- .1 Each of Design/Builder's agreements (each a "Subcontract") with its Subcontractors shall: (a) be in writing; (b) state that the Owner is an intended third party beneficiaries of the agreement, without liability for benefits received; (c) incorporate the terms of this Agreement; (d) bind and obligate the Subcontractor to Design/Builder as Design/Builder is bound and obligated to Owner; (e) contain an indemnity equivalent to the indemnity provisions of Section 11.5, below, including as Indemnified Parties all of the Indemnified Parties identified in Section 11.5.1; (f) obligate the Subcontractor to be joined in any arbitration or other dispute resolution proceeding in which Owner or Design/Builder are parties and which arises out of or relates to the Subcontractor's performance or nonperformance of its agreement; (g) consent to be contingently assigned to and assumable by Owner, at Owner's option, in the event this Agreement is terminated (with an executed consent and assignment in form and substance acceptable to the Owner); (h) contain the Subcontractor's express consent to the assignment of all or any part of this Agreement by the Owner to a Lender (with an executed consent and assignment in form and substance acceptable to the Owner and Lender); (i) expressly provide that Owner is the obligee of all warranties given by Subcontractor; (j) contain, for each Subcontractor that furnishes Instruments of Service, the conveyance, licensing, furnishing of work product, and indemnity provisions as provided in Section 1.3; (k) contain records retention, disclosure, furnishing and audit provisions equivalent to Sections 3.2.17 (records review) and 13.1.13 (Privilege Taxes); (l) warranties and representations as provided in Section 13.14 that no amounts will be charged to the Owner for any Work in connection with the Hotel being constructed by an affiliate of the Design/Builder or any other

project save and except the Project; and (m) contain any additional provision required by this Agreement.

- 2 Each agreement between Design/Builder and a Subcontractor shall require that each agreement between the Subcontractor and its Sub-subcontractors (each, a "Sub-subcontract") shall: (a) be in writing; (b) state that the Owner is an intended third party beneficiary of the agreement, entitled to enforce its provisions but without liability for benefits received; (c) incorporate the terms of this Agreement; (d) bind and obligate the Sub-subcontractor to the Subcontractor as the Subcontractor is bound and obligated to the Design/Builder; (e) contain an indemnity equivalent to the indemnity provisions of Section 11.5, below, including as Indemnified Parties all of the Indemnified-subcontractor's performance or nonperformance of its agreement; (f) consent to be contingently assigned to and assumable by Owner, at Owner's option, in the event this Agreement is terminated (with an executed consent and assignment in form and substance acceptable to the Owner); (g) contain the Sub-subcontractor's express consent to the assignment of all or any part of this Agreement and the Subcontract by the Owner to a Lender (with an executed consent and assignment in form and substance acceptable to the Owner and Lender); (h) expressly provide that Owner is the obligee of all warranties given by Sub-subcontractor; (i) contain, for each Sub-subcontractor that furnishes Instruments of Service, the conveyance, licensing, furnishing of work product, and indemnity provisions as provided in Section 1.3; (j) contain records retention, disclosure, furnishing and audit provisions equivalent to Sections 3.2.17 (records review) and 13.1.13 (Privilege Taxes); (l) warranties and representations as provided in Section 13.14 that no amounts will be charged to the Subcontractor or the Owner for any Work in connection with the Hotel being constructed by an affiliate of the Design/Builder or any other project save and except the Project; and (k) contain any additional provision required by this Agreement. By permitting a Subcontractor or a Sub-subcontractor to perform any Work under this Agreement, the Design/Builder shall be conclusively deemed to have certified that the Subcontractor or Sub-subcontractor shall have met all requirements of this Section 11.2.2.

- 3 Owner shall have the right to receive copies of all agreements with Subcontractors, and Sub-subcontractors, upon demand, to verify compliance with the requirements of this Agreement; however, any review, non-review, approval or failure to object to a Subcontract or Sub-subcontract by Owner shall neither be deemed to be an acquiescence to, or a waiver of, any the requirements of this Section 11.2.2; nor relieve the Design/Builder, Subcontractor or Sub-subcontractor of their liability to obligations under this Agreement.

§ 11.2.3 Subcontractors and Sub-subcontractors who furnish Construction Services shall be selected on the basis of qualifications alone, or a combination of qualifications and price, but not price alone, as provided in the Subcontractor Selection Plan submitted in the Response to RFQ, subject to the following: A qualifications and price selection may be a single step selection based on a combination of qualifications and price or a two-step selection where the first state is based on qualifications and the second step may be based on a combination of qualifications and price or on price alone. Requests for submittal of qualifications shall be in writing, and kept by Design/Builder in its Project records.

§ 11.3 WORK BY OWNER OR OWNER'S CONTRACTORS

§ 11.3.1 The Owner shall have the right to perform construction or operations related to the media center with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of insurance and waiver of subrogation identical to the provisions of this Agreement. The Design/Builder will cooperate with Owner's contractors for the media center and other portions of the Project provided that the Design/Builder receives advance notice. If the Design/Builder claims that delay or additional cost is involved because of such action by the Owner, the Design/Builder shall initiate a Dispute as a Time Sensitive Dispute within two (2) days after the Design/Builder is aware of the delay or cost and failure to do so shall be deemed waiver of the claim.

§ 11.3.2 The Design/Builder shall afford the Owner's separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design/Builder's construction and operations with theirs as required by this Agreement or any of the Construction Documents.

§ 11.3.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the Party responsible therefor.

§ 11.4 CLAIMS FOR DAMAGES

§ 11.4.1 Except as otherwise provided in this Agreement, if either Party to this Agreement suffers injury or damage to person or property because of an act or omission of the other Party, of any of the other Party's employees or agents, or of others for whose acts such Party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other Party within a reasonable time not exceeding twenty-one (21) days after first observance. The notice shall provide sufficient detail to enable the other Party to investigate the matter. If a claim of additional cost or time related to this claim is to be asserted, it shall be filed in writing.

§ 11.5 INDEMNIFICATION

§ 11.5.1 To the fullest extent permitted by Law, Design/Builder shall indemnify, defend and hold harmless Owner and its officers, directors, employees, agents, representatives, affiliates and agents (individually, an "Indemnified Party"; collectively, the "Indemnified Parties") for, from and against any and all third-party claims, demands, causes of action, damages (compensatory, consequential), judgments, penalties, settlements and all other losses arising from the performance or nonperformance of this Agreement of the Design/Builder or of a Subcontractor, a Sub-subcontractor or any other person or entity for whom the Design/Builder is responsible (hereinafter individually or collectively referred to as a "Demand or Damage" or "Demands or Damages") and all attorneys' fees, consultants' fees, court costs (whether or not taxable by statute), and expenses incurred by each Indemnified Party. This indemnity is in addition to and shall not be deemed to limit any other indemnity given by Design/Builder, and extends to the maximum extent permitted by Law and includes, but is not limited to, any Demand or Damage, just or unjust, of any kind, nature or description whatsoever, whether sounding in a tort, warranty, contract (including breach of this Agreement), equity, a statute, or any other theory of liability, and whether the Demand or Damage is based on an alleged death, personal injury, sickness, conversion, breach of warranty (express or implied), breach of representation, defective work not remedied, lien, stop notice, property damage (including property damage to the Work), patent infringement, copyright infringement, loss of use and all other economic loss, release of a petroleum byproduct or other substance regulated by applicable Law, legal violations or other claimed damage. This indemnity shall apply even if the Demand or Damage results in part from an Indemnified Party's negligently or knowingly acting or failing to act, but in that event the Indemnified Party shall not be indemnified for that portion of the Demand or Damage that results from its negligently or knowingly acting or failing to act, it being expressly understood that an Indemnified Party's acting or failing to act in reliance on promises, representations or agreements made by Design/Builder in the performance of the Work shall not be considered negligently or knowingly acting or failing to act by an Indemnified Party. This indemnity shall survive termination or expiration of this Agreement. Notwithstanding the foregoing, Design/Builder shall have no obligation to indemnify the Owner under this Section 11.5.1 to the extent a Demand or Damage results from delays in accomplishing Substantial Completion. The Parties shall not be required to arbitrate Disputes arising from any Demands or Damages asserted under this Section 11.5.1 to the extent resolution of the Demand or Damages requires joinder as a necessary party of any person or entity who is not contractually obligated to arbitrate disputes with the Owner and the Design/Builder.

§ 11.5.2 In claims against any person or entity indemnified under this Agreement by an employee of the Design/Builder, anyone directly or indirectly employed by the Design/Builder or anyone for whose acts the Design/Builder may be liable, the indemnification obligation under this Section 11.5 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design/Builder under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 11.6 SUCCESSORS AND ASSIGNS

§ 11.6.1 The Owner and Design/Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other Party to this Agreement and to the partners, successors and assigns of such other Party with respect to all covenants of this Agreement. Except as provided below, neither the Owner nor the Design/Builder shall assign this Agreement without the written consent of the other. The Owner may assign all or part of this Agreement to any lender or bond issuer or trustee providing construction financing, and the Design/Builder agrees to execute all disbursing agreements, consents and other documents reasonably required to facilitate such an assignment. If either Party makes such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.

§ 11.7 TERMINATION OF PROFESSIONAL A/E SERVICES

§ 11.7.1 Prior to termination of the services of the Architect or any other design professional designated in this Agreement, the Design/Builder shall identify to the Owner, in writing, another architect or other design professional with respect to whom the Owner has no reasonable objection, who will provide the services originally to have been provided by the Architect or other design professional whose services are being terminated.

§ 11.8 EXTENT OF AGREEMENT

§ 11.8.1 This Agreement, including its exhibits, represents the entire agreement between the Owner and the Design/Builder and supersedes prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument ("Modification") and signed by both the Owner and the Design/Builder.

ARTICLE 12 TERMINATION OF THE AGREEMENT

§ 12.1 TERMINATION BY THE OWNER

§ 12.1.1 This Agreement may be terminated by the Owner upon fourteen (14) days' written notice to the Design/Builder in the event that the Project is abandoned. If such termination occurs, the Owner shall pay the Design/Builder for Work completed and for proven loss sustained upon materials, equipment, tools, and construction equipment and machinery, including reasonable profit and applicable damages.

§ 12.1.2 If the Design/Builder fails or neglects to carry out any part of the Work in accordance with this Agreement or any of the Construction Documents or fails to perform any of its obligations or duties under this Agreement, the Owner may give written notice specifying the failure or neglect and stating that the Owner intends to terminate this Agreement unless the failure or neglect is cured within seven (7) days. If the Design/Builder fails to correct the failure or neglect within seven (7) days after being given such notice, the Design/Builder shall be in default and the Owner may without prejudice to any other remedy terminate the employment of the Design/Builder and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Design/Builder and finish the Work and perform all applicable warranty work by whatever method the Owner may deem expedient. If the unpaid balance of the Contract Sum exceeds the expense of finishing the Work and all damages incurred by the Owner, such excess shall be paid to the Design/Builder. If the expense of completing the Work and performing the warranty work incurred by the Owner exceeds the unpaid balance, the Design/Builder shall pay the difference to the Owner. This obligation for payment shall survive termination of this Agreement. This Article 12 shall not limit any other rights or remedies of Owner.

§ 12.2 TERMINATION BY THE DESIGN/BUILDER

§ 12.2.1 If the Owner fails to make payment when due, the Design/Builder may give written notice of the Design/Builder's intention to suspend or terminate this Agreement. If the Design/Builder fails to receive payment within seven (7) days after receipt of such notice by the Owner, the Design/Builder may terminate this Agreement and recover from the Owner payment for Work executed and for proven losses sustained upon materials, equipment, tools, and construction equipment and machinery, including reasonable profit and applicable damages.

ARTICLE 13 BASIS OF COMPENSATION

The Owner shall compensate the Design/Builder in accordance with Article 5, Payments, and the other provisions of this Agreement as described below.

§ 13.1 COMPENSATION

§ 13.1.1 For the Design/Builder's performance of the Work, the Owner shall pay the Design/Builder in current funds the amount ("Contract Sum") determined by the formula $CS = C + DM + A + F + PT + I \leq GMP$; where "CS" is the Contract Sum; "C" is the amount to be paid to the Design/Builder for the Construction Services as provided in Section 13.1.2; "DM" is the Design/Builder's Development & Management Fee, as provided in Section 13.1.1.5; "A" is the amount to be paid for the Professional/AE Services as provided in Section 13.1.4; "F" is the amount to be paid for the FFE Services as provided in Section 13.1.4; "PT" is the Design/Builder's reimbursable Privilege Taxes as provided in Sections 3.2.10 and 13.1.13; "I" is the amount of impact fees the Design/Builder is required to pay to the governmental permitting authorities as provided in Sections 13.1.2.4 and 13.1.1.5; and "GMP" is Sixty Six Million Seven Hundred Thirty Five Thousand Five Hundred Eighty and No/100 Dollars (\$66,735,580.00) (the "Guaranteed Maximum Price"). Notwithstanding anything to the contrary in this Agreement, the combined total of all amounts to be paid by the Owner to the Design/Builder for the performance of the Work shall not exceed the Guaranteed Maximum Price.

§ 13.1.2 The amount to be paid to Design/Builder for the Construction Services shall be the Cost of the Construction Services plus six percent (6%) as and for the Construction Subcontractor's profit and home office overhead ("Construction Subcontractor's Profit and Overhead Amount"), as follows:

- .1 the "Cost" of the Construction Services are the reasonable expenses actually and necessarily paid by Construction Subcontractor in the proper performance of the construction of the Project, without markup for profit or overhead, for the following: payments to construction utilities; payments to approved construction Sub-subcontractors, laborers, and other vendors for materials, equipment, fixtures, labor, payment for fees to the extent required by any federal, state or local governmental entity, materials and equipment to be incorporated in the Project and suitably stored on Site with the Owner's approval; reimbursable Construction Insurance and Bond Premiums for the Construction Subcontractor as provided in Section 13.1.10; direct or indirect Site related supervisory and administrative conditions ("General Conditions") expenses as further described in Section 13.1.2.2, below; any other direct construction expense or General Conditions Expense normally required for proper performance of the Work required by this Agreement as approved in writing by Owner. Expenses that do not meet the criteria set forth above shall not be reimbursable as Costs.
- .2 The portion of the Costs of the Construction Services that comprise the reimbursable General Conditions expense shall be the reasonable expenses actually and necessarily paid by the Construction Subcontractor for its direct and indirect Site related supervisory and administrative expenses attributable to the Work for the following: mileage and vehicle usage, telephone, cell phones, fax, trailers, portable toilets, utilities, dumpsters, clean up, job salary or wages and normal fringe benefits paid to for the benefit of the Construction Subcontractor's personnel, including but not limited to Vice President of Operations, Project Accountant(s), Safety Directors, Quality Control Managers, Project Manager, Field Superintendent, general field labor assigned to the Project and personnel located at the Design/Builder's principal and regional offices, but only for the portion of time actually devoted to the Work, all subject to and as approved in writing by Owner; normal employer taxes paid by the Construction Subcontractor for the portion of time spent by its field and supervisory employees working on the Project; and any other Site related supervisory and administrative general expense. For purposes of submitting Applications for Progress Payment, the Design/Builder may request an amount for General Conditions in the Billing Month equal to five percent (5%) of that part of the Costs of Construction Services that are not incurred for general conditions upon the express condition that the actual Cost of General Conditions will be determined after audit, and appropriate adjustments made by the Owner, prior to and as a condition of making the Final Payment.
- .3 Costs of Construction Services shall not include reimbursement for: any unusual fringe benefits; costs of uncovering and repairing Work improperly performed; costs of repairing and replacing Work damaged by the negligence or breach of this or any other agreement by Design/Builder, or any of its Subcontractors or other persons or entities for whom Design/Builder is responsible; any interest or penalties; legal expense incurred by Design/Builder; any cost or expense relating to Design/Builder's home office overhead, profit or general conditions; any Cost that causes the Guaranteed Maximum Price to be exceeded except by Change Order, Construction Change Directive or Dispute Resolution as provided in this Agreement; or any other expense that does not meet the criteria set forth in Sections 13.1.2 (1)-(3) above shall not be reimbursable as a Cost of the Construction Services.
- .4 The Construction Subcontractor's Profit and Overhead Amount shall be the sole and exclusive compensation for the Construction Subcontractor's direct and/or indirect profit, home office overhead expense including, without limitation, home office administration, support, clerical services, insurance not specifically reimbursable under this Agreement, rent, all other direct and indirect home office expense; taxes other than reimbursable payroll related taxes and any other cost or expense not specifically included within the Cost of Construction Services. Notwithstanding the foregoing, there shall be no markup for profit and overhead on amounts paid

by the Construction Subcontractor (or by the Design/Builder) for impact or other governmental fees (collectively "Impact Fees").

- .6 All discounts and rebates received by the Construction Subcontractor from vendors shall accrue to the benefit of Owner, provided such discounts or rebates are received as a result of the use of Owner's funds (for example, if the Design/Builder utilizes its funds to obtain the discount or rebate (2/10, net 30), then such discount or rebate shall accrue to the Design/Builder).

§ 13.1.3 The Design/Builder's Development & Management Fee shall be the amount equal to three percent (3%) of the Cost of the Construction Services. The Design/Builder's Development & Management Fee shall constitute Design/Builder's sole and exclusive compensation for: Design/Builder's direct and/or indirect profit, home office overhead expense including, without limitation, home office administration, support, clerical services, insurance not specifically reimbursable under this Agreement, rent, all other direct and indirect home office expense; taxes other than reimbursable Privilege Taxes as provided in Section 13.1.13; and any other cost or expense not specifically included within amounts to be paid to the Design/Builder for the Construction Services, Professional A/E Services, or the FFE Services. Notwithstanding anything in this Agreement to the contrary, the Design/Builder shall not charge, or receive from the Owner any markup for profit, overhead or Fee on the Construction Subcontractor's Profit and Overhead, the A/E Charges, or the FFE Expenses.

§ 13.1.4 The amount to be paid to the Design/Builder for all Professional A/E Services necessary for completion of the Project including, without limitation, design, engineering, consulting, course of construction A/E services, reimbursable expenses to A/E Subcontractors and Sub-subcontractors, and premiums for insurance (including liability, workers compensation, automobile and the Project specific Errors and Omissions Insurance furnished by the Architect and its Subcontractors as provided in **Exhibit E**, shall be the lump sum amount of Two Million Four Hundred Eight Four Thousand Seven Hundred Twenty Two and No/100 Dollars (\$2,484,722.00) (hereinafter the "A/E Charges"), without any markup. The amount to be paid to the Design/Builder for Professional A/E Services furnished in connection with a Change Order, Change Directive or as Additional Services shall be the direct costs necessarily paid by the Architect for its personnel and reimbursable expenses, plus six percent (6%) of the direct costs as and for profit and overhead. The Design/Builder shall not receive or charge any markup for fee on any amounts received or paid for the Professional A/E Services. Design/Builder's charges for Professional A/E Services will not include any amounts for Privilege Taxes and will be itemized and accounted and invoiced separately from the Cost of Construction Services. The A/E Charges will be entitled to include in each monthly Application for Progress Payment, and be reimbursed for A/E Charges based on the mutually agreed percentage of the Professional A/E Services that were performed during the Billing Month, plus amounts for Professional A/E Services furnished in connection with a Change Order, Change Directive, or Owner approved Additional Services.

§ 13.1.5 **FFE SERVICES; IMPACT FEES.** The amount to be paid to the Design/Builder for the FFE Services shall be an amount equal to the direct expenses (exclusive of any Privilege Taxes) paid by the Design/Builder (or by a Subcontractor) for the FFE, without markup for profit or overhead of the Design/Builder (or of the Subcontractor). The amount to be paid to the Design/Builder for the Impact Fees shall be an amount equal to the direct expenses paid by the Design/Builder (or by a Subcontractor) for the Impact Fees, without markup for profit or overhead of the Design/Builder (or of the Subcontractor).

§ 13.1.6 Attached as **Exhibit D** is a schedule that subdivides the Guaranteed Maximum Price (the "GMP Schedule") among each of the three Components by A/E Charges, Cost of Construction Services, Contingencies, Allowance Items, FFE Services, Development and Management Fee, Impact Fees, and other line items the Parties have agreed to. Also attached as part of **Exhibit D** is a matrix that assigns responsibilities among the Design/Builder and its Subcontractors for the respective Construction Services, Professional A/E Services and FFE Services. **Exhibit D** may be used by the Owner as a basis for evaluating the Design/Builders Applications for Progress Payment. The Design/Builder shall have forty-two (42) days following the date of execution of this Agreement by the Owner within which to submit to the Owner for its approval, a proposed amendment to **Exhibit D** based on the reallocation of individual line items, but without any change in the Guaranteed Maximum Price to reflect adjustments among line items required to reflect new information that was not available to the Design/Builder at the time **Exhibit D** was prepared. The Owner will not unreasonably withhold its approval and the Parties will exercise best efforts to expeditiously resolve any disagreements. Upon the Owner's approval, the Parties will incorporate the approved revisions to **Exhibit D** (the "First Amended GMP Schedule") by an amendment to this Agreement. The GMP Schedule will be further amended as necessary to reflect changes agreed upon by the Parties as the Work progresses.

§ 13.1.7 Included within the GMP Schedule for each Component is a line item identified as "Contractor Contingency" and a line item identified as "Unscheduled Fast Track Contingency". The Contractor Contingency and Unscheduled Fast Track Contingency line items shall be subject to the following: are subject to the following:

- .1 **Contractor Contingency.** A line item amount in the GMP Schedule as "Contractor Contingency" shall be available to the Construction Subcontractor to draw upon solely to pay for Costs of Construction Services that are reasonably anticipated to be incurred as an allowable Cost under Section 13.1.2, but cannot yet be specifically included in a line item of the GMP Schedule until Construction Documents are released; Design/Builder shall include with each monthly Application for Progress Payment an itemization of each draw from the Contractor Contingency Cost line item (by date, payee, purpose and amount of each transfer or payment) made during the Billing Month. Unless the GMP Schedule conspicuously designates a line item as a Contractor Contingency, the Guaranteed Maximum Price shall be deemed not to include any Contractor Contingency amounts of any kind or nature.
- .2 **Unscheduled Fast Track Contingency.** A line item amount in the GMP Schedule as "Unscheduled Fast Track Contingency" shall be available to the Construction Subcontractor to draw upon solely to pay for the following Costs of Construction Services incurred by the Construction Subcontractor to draw upon, subject to the Owner's prior written approval as provided in Section 13.1.7.4: (a) documented increases in the Cost of materials due to fluctuation in market prices that are not subject to reasonable prediction or mitigation to the extent of substantiated increases in market prices after the date the First Amended GMP Schedule is prepared, as provided in Section 13.1.6; (b) unanticipated Costs of Construction Services that are incurred by the Construction Subcontractor to pay for the costs of overtime, stacking of shifts and/or trades, and other inefficiencies in the furnishing of Construction Services that are required for acceleration that is necessary to keep the Project on schedule, or to make up delays not caused by the Design/Builder; or (c) any other Cost of Construction Services that Design/Builder demonstrates is necessary for the timely and proper completion of the Project but reasonably was not included within any other line item in the GMP Schedule because it could not have been reasonably anticipated by the Design/Builder after the date the First Amended GMP Schedule is prepared, as provided in Section 13.1.6. The Unscheduled Fast Track Contingency shall be applied solely to pay for the unanticipated Costs paid by Design/Builder's Construction Subcontractor to Sub-subcontractors, laborers, vendors and others, without any markup to the Design/Builder for Development & Management Fee or to the Construction Subcontractor for Construction Subcontractor's Profit & Overhead and all draws under this Contingency are subject to Sections 13.1.7.3 and 13.16.4.
- .3 **The line item amount shown on the GMP Schedule for a specific Contingency item shall represent the maximum amount that is available under the Guaranteed Maximum Price for reimbursement to the Design/Builder for Costs covered by the Contingency, and Design/Builder shall bear the risk of and shall pay for without reimbursement from the Owner, Costs that would otherwise be within the Contingency but that exceed the applicable line item amount for the Contingency line item after it has been exhausted.**
- .4 The Design/Builder shall, to the extent reasonably practicable given the fast track nature of the Work, give Owner advance notice of the Design/Builder's request for authorization to make a draw under the unscheduled Fast Track Contingency, accompanied by a written statement of the amount of the anticipated draw and the reasons for it, together with the written supporting documentation (including, without limitation, written estimates, take offs, price quotations, purchase orders, price indices, and other vendor information) that are material to a reasoned analysis of the request and that the Design/Builder has been able to obtain with best efforts after learning of the need for the requested draw, and stating a reasonable deadline, but not less than three (3) business days (except in case of an emergency as provided in Section 1.1.2) by which the Design/Builder believes it must receive the Owner's approval in order to prevent a delay to the critical path of the Work. The Owner shall exercise reasonable good faith efforts to review and issue a written response to the request. The Substantial Completion Date of a Component, or of

the Project, shall be extended to the extent the Owner's unreasonable disapproval of a request of a draw under this Section necessarily delays the critical path of the Work of the Component, or of the Project. If, notwithstanding it has received a written request with supporting documentation as provided in this Section 13.1.7.4, the Owner does not respond to the request within the deadline, the requested draw shall be deemed to have been approved. Any approval or deemed approval of a draw request under this Section 13.1.7.4 shall constitute approval solely for purposes of authorizing the draw and shall not constitute any waiver of the Owner's right to disallow on audit any part of the draw that is later determined to have not been allowable as a reimbursable Cost under this Agreement.

§ 13.1.8 Any item identified in the GMP Schedule as an allowance ("Allowance Item") shall be subject to the following: Design/Builder shall not place any order for any Allowance Item until after the Owner has given its approval of the specific item to be selected, its cost, and the resulting adjustment to the Guaranteed Maximum Price. The Guaranteed Maximum Price shall be increased or decreased by Change Order by the amount that the cost of the Allowance Item, as approved by Owner (including mark-up for profit, if any) is greater or less than the amount shown in the GMP Schedule for the Allowance Item. Except to the extent the GMP Schedule conspicuously designates a line item as an Allowance Item, the Guaranteed Maximum Price shall be deemed not to include any Allowance Item of any kind or nature.

§ 13.1.9 If the GMP Schedule identifies any items ("Unit Price Item") for which a unit price ("Unit Price") is given, the following shall apply: (1) the Unit Price shall represent Design/Builder's sole and exclusive compensation for all direct and indirect costs, profit and overhead for the furnishing and installation of the Unit Price Item; and (2) the total compensation for the Unit Price Item shall be based on the number of units furnished, as verified by Owner, times the agreed upon Unit Price, provided that the total will not result in any increase in the Guaranteed Maximum Price unless approved in writing by Owner. Except to the extent the GMP Schedule conspicuously designates a line item as an Allowance Item, the Guaranteed Maximum Price shall be deemed not to include any Allowance Item of any kind or nature.

§ 13.1.10 Design/Builder's reimbursable insurance and bond premiums ("Construction Insurance and Bond Premiums") shall be an amount equal to the premiums Design/Builder pays to secure: (a) the Builder's Risk policy Design/Builder is required to furnish with Owner's approval as provided in this Agreement; (b) the liability insurance Design/Builder and its Construction Subcontractors are required to furnish under the provisions of Exhibit E; and (c) the Design/Builder's statutory payment and performance bonds as provided in **Section 7.5**; and (d) the Subguard Policy as provided in **Section 7.5.2**; provided that in each case the premium has been included in the GMP Schedule approved in writing by Owner. Notwithstanding the foregoing, Design/Builder's Construction Insurance and Bond Premiums shall not include premiums for liability insurance furnished in connection with the Professional A/E Services, and for which payment is included within the A/E Charges.

§ 13.1.11 The Contract Sum shall be Design/Builder's total compensation for all Professional A/E Services, Construction Services, FFE Services and all other Work necessary for the proper performance of Design/Builder's obligations, whether or not the element (or cost or expense thereof) is specifically referred to or described in this Agreement, save and except only those elements that are specifically identified in Exhibit B as exclusions from the Work to be performed for the Contract Sum.

§ 13.1.12 No Work shall be performed for any item that is denoted as an "Allowance" item in the GMP Schedule until after Owner has issued either a Construction Change Direction or executed a Change Order for such allowance Work, as indicated in Article 8.

§ 13.1.13 Design Builder shall take all steps necessary to obtain state and local retail tax licenses, issue exemption certificates to vendors, and otherwise perfect its right to be exempt from the payment of Privilege Tax for purchases of the FFE, and Design/Builder shall require its Subcontractors and other lower tier entities to also obtain state and retail tax licenses, issue exemption certificates to vendors, and otherwise perfect their rights to be exempt from the privilege of Privilege Tax for purchases of the FFE. Owner will reimburse Design/Builder for Privilege Taxes paid by Design/Builder on amounts received from Owner for the direct costs paid by the FFE Subcontractor (excluding Privilege Tax and without markup for profit and overhead) incorporated in the Project but Owner will not reimburse Design/Builder for any amounts paid by Design/Builder to its Subcontractors, or by the Subcontractors to Sub-subcontractors or other lower tier entities on amounts as and for Privilege Taxes.

§ 13.1.14 Design/Builder warrants that, notwithstanding that its affiliate is causing the Hotel to be designed and constructed on property adjacent to the Site, the Guaranteed Maximum Price does not include any amounts attributable to the design or construction of the Hotel, the Design/Builder will not include within any amounts it charges or receives from the Owner under this Agreement any amounts for any construction, design or FEE related to the Hotel project (or of any other project save and except the Project), and that it will require its Subcontractors and Sub-contractors to give similar warranties and representations to the Owner in their respective Subcontracts and Sub-subcontracts.

§ 13.1.15 For Additional Professional A/E Services, as described in Section 3.3 and including any other services listed in Article 14 as Additional Professional A/E Services, compensation shall be limited to that authorized in Owner's written approval.

§ 13.1.16 The Design/Builder is obligated to accomplish Final Completion of the Project as provided in this Agreement for an amount to be paid by the Owner that will not exceed the Guaranteed Maximum Price and Design/Builder shall bear the risk that the expenses it incurs may exceed the Guaranteed Maximum Price.

§ 13.2 INTEREST PAYMENT. The rate of interest for past due payments shall be as provided in A.R.S. § 34-607(I).

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design/ Builder's principal places of business, at the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion, modification or other requirements, such as written disclosures or waivers.)

ARTICLE 14 OTHER CONDITIONS AND SERVICES

§ 14.1 The Work to be performed shall be commenced on the date to be fixed in a notice to proceed issued by Owner, and, subject to authorized adjustments and to delays not caused by the Design/Builder, Substantial Completion of the Project shall be achieved on or before December 1, 2006 (the "Substantial Completion Date"). Final Completion of each Component and of the Project not later than the thirtieth (30th) day after the respective Substantial Completion Dates (the "Final Completion Date(s)"), subject to the following: Design/Builder shall use best efforts to meet the Final Completion Date(s) schedule its efforts to accomplish Final Completion consistent with Owner's needs for use of the Project, by such means as scheduling the necessary Work during night-times, weekends or holidays as reasonably requested by the Owner, and otherwise expediting completion of remaining items. If, however, notwithstanding best efforts to accomplish Final Completion by the Final Completion Dates Design/Builder fails to do so, Design/Builder shall be entitled to an equitable adjustment in the applicable Final Completion Date. Design/Builder shall not be entitled to any compensation for any such adjustment in the Final Completion Date.

§ 14.2 LIQUIDATED DAMAGES

Time is of the essence. Design/Builder shall accomplish Substantial Completion of the Project by the date established in Section 14.1 (the "Substantial Completion Date"). The Parties agree that Owner will be substantially damaged in the event Design/Builder fails to accomplish Substantial Completion of the Media Center and the Parking Garage by the Substantial Completion Date, that it will be impractical and extremely difficult to determine the actual damages to Owner resulting from such delay, and therefore agree that Design/Builder shall pay Owner liquidated damages in the event of such delay. Accordingly, the Parties agree that in the event Design/Builder fails to accomplish Substantial Completion of both the Media Center and the Parking Garage by the Substantial Completion Date Owner may assess, and Design/Builder shall pay, liquidated damages in the sum of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) for each additional day of delay after the Substantial Completion Date until Design/Builder does, in fact, accomplish Substantial Completion of the Media Center and the Parking Garage These sums (a) shall be paid as liquidated damages and not as a penalty, (b) are reasonable under the circumstances existing upon the execution of this Agreement, and (c) are based upon the best estimate of damages Owner would likely suffer, since actual damages are extremely difficult to fix with certainty. Owner may deduct these sums from any monies due or that may become due to Design/Builder under the Contract. Design/Builder shall pay any liquidated damages not so deducted within ten (10) days after demand. Provided that Design/Builder has exercised its best efforts with respect to design and construction of the entire Project, the Design/Builder shall not be liable for damages for its failure to accomplish Substantial Completion of the Conference Center by December 1, 2006.

§ 14.3 The Design/Builder, to the extent within its control, and so long as it does not increase the Design/Builder's time or cost of performance of the Work, covenants that it will not knowingly take any action, or fail to take any action, if any such action or failure to take such action would adversely affect the inclusion from gross income of the interest on any of the Revenue Bonds under Section 103(a) of the Internal Revenue Code of 1986, as amended (the "Code"), or to cause the interest on any of the Revenue Bonds to become an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Code, and in the event of such action or omission, it will, promptly upon having such brought to its attention, take such reasonable actions based upon an opinion of bond counsel to the Owner, as may rescind or otherwise negate such action or omission. The Design/Builder, to the extent within its control, and so long as it does not increase the Design/Builder's time or cost of performance of the Work, will not knowingly directly or indirectly use or permit the use of any proceeds of any of the Revenue Bonds or any other funds of the Owner to take or omit to take any action that would cause any of the Revenue Bonds to be or become "arbitrage bonds" within the meaning of Section 148(a) of the Code or to fail to meet any other applicable requirement of Sections 103, 141, 148, 149 and 150 of the Code to the extent applicable to the Revenue Bonds.

§ 14.4 The Parties agree to modify this Agreement or any other necessary documents in good faith as reasonably necessary to accommodate any tax-exempt or taxable bond financing obtained by the Owner for the design and construction of the Project, including, without limitation the Revenue Bonds. Without limiting the generality of the preceding sentence, the Parties acknowledge and agree that the respective cash contributions (or letters of credit or other funding devices), or the taxes payable by the Parties under this Agreement may be pledged to the holders of the Revenue Bonds issued by the Owner to finance the design and construction of the Project and may be held in trust by the trustee for such bonds. Notwithstanding the foregoing, the Design/Builder shall not be required to agree to any such modification if it would increase the Design/Builder's time or cost of performance or otherwise increase the Design/Builder's liability unless said issues are addressed in a Change Order.

§ 14.5 This Agreement is subject to cancellation pursuant to A.R.S. § 38-511.

§ 14.6 The Design/Builder represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Agreement), as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the Execution and delivery of the Agreement and the final completion of the Project: (1) that it is financially solvent and able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under this Agreement, provided that the Owner satisfies its payment and other obligations under this Agreement; (2) that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder, provided that the Owner satisfies its payment and other obligations, and that Design/Builder has sufficient experience and competence to do so; (3) there are no pending or threatened actions or proceedings which might materially impair its ability to satisfy its obligations hereunder; (4) that it is licensed by the Arizona Registrar of Contractors to perform construction and that all its construction Subcontractors and Sub-subcontractors also will be so licensed; and (5) that its execution of this Agreement and its performance thereof is within its authorized powers.

§ 14.7 This is the entire, integrated Agreement of the Parties. There are no agreements or understandings except as set forth in this Agreement.

§ 14.8 DEFINITIONS

Defined terms as used in this Agreement are as follows:

<u>Term</u>	<u>First Identified</u>
AAA	§ 10.4
AAA Emergency Arbitrator	§ 10.5
AAA Emergency Rules	§ 10.4
Acceleration Contingency	§ 13.1.7
Additional Professional A/E Services	§ 3.3

<u>Term</u>	<u>First Identified</u>
A/E Charges	§ 13.1.4
Agreement	Page 1
Allowance Item	§ 13.1.7
Application for Final Payment	§ 5.2.1
Application for Progress Payment	§ 5.1.1
Architect	1.1.3
Billing Month	§ 5.1.1
Change Order	§ 8.2.1
Code	§ 14.3
Component	Page 1; Exhibit B
Construction Change Directive	§ 8.3
Construction Document(s)	§ 3.2.1; Exhibit C
Construction Insurance and Bond Premiums	§ 13.1.9
Construction Services	§ 1.1.1
Construction Subcontractor	§ 1.1.3
Construction Subcontractors Profit & Overhead Amount	§13.1.2
Contract Sum	§ 13.1.1
Contract Time(s)	§ 4.5
Contractor Contingency	§13.1.7.1
Cost	§ 13.1.2.1
Deficiency Notice	§ 5.1.5
Demands or Damages	§ 11.5.1
Design/Builder	Page 1
Design/Builder's Project Representative	§ 3.2.2
Development & Management Fee	§ 13.1.1
Dispute(s)	§ 10.1
Draft Application	§ 5.1.1
Effective Date	Above Signature Line
Engineer	§ 3.2.1
Excusable Delay	§ 4.5
Exhibit A (Site Legal Description)	Page 1
Exhibit B (Project, Scope of Work and Exclusions)	§ 13.1.5
Exhibit C (Initial Construction Documents)	§ 3.2.1
Exhibit D (GMP Schedule)	§ 13.1.4
Exhibit E (Design/Builder's Insurance Requirements)	§ 7.1.1

<u>Term</u>	<u>First Identified</u>
FFE	§ 1.1.1
FFE Services	§ 1.1.1
FFE Subcontractor	§ 1.1.3
Final Completion	§ 4.3.2
Final Completion Date	§ 14.2
Final Payment	§ 5.2.1
First Amended GMP Schedule	§ 13.1.6
GMP Schedule	13.1.1.4
General Conditions	§ 13.1.2.1 & .2
Guaranteed Maximum Price	§ 13.1.1
Hotel	Exhibit B
Impact Fees	§ 13.1.1.5
Indemnified Parties	§ 11.5.1
Instruments of Service	§ 1.3.1
Laws	§ 3.2.11
Master Development Agreement	Exhibit B
Modification	§ 11.8.1
Notice	§14.10
Owner	Page 1
Owner Decision	§ 1.1.2
Owner Delay	§ 4.5
Owner's Project Representative	§ 2.1
Party	Page 1
Preliminary Design Documents	§ 1.1.5
Privilege Taxes	§ 3.2.12
Professional A/E Services	§ 1.1.1
Progress Schedule	§ 4.4
Project	Page 1; Exhibit B
RFQ	Recital A
RFQ Response	Recital A
Sales Taxes	§ 13.1.7
Savings	§13.2
GMP Schedule	§ 5.1.2; Exhibit D
Scope Contingency	§ 13.1.7
Site	Page 1; Exhibit A

<u>Term</u>	<u>First Identified</u>
Subguard Policy	§ 7.5.2
Sub-consultant	§ 11.2.1
Subcontract	§ 11.2.2
Subcontractor	§ 1.1.3
Sub-subcontract	§ 11.2.2
Sub-subcontractor	§ 1.1.3
Substantial Completion of a Component	§ 4.3.1
Substantial Completion of the Project	§ 14.1?
Substantial Completion Date of a Component	§ 14.2
Sub-subcontractor	§ 11.2.1
Time Sensitive Dispute	§ 10.4
Unscheduled Fast Track Contingency	§ 13.1.7.1
Unit Price	§ 13.1.8
Work	§ 1.1.2

§ 14.9 The following documents are incorporated in this Agreement:

<u>Document</u>	<u>Description</u>	<u>First Reference</u>
Exhibit A	Site Legal Description	Page 1
Exhibit B	Project, Exclusions; Schedule Updates	Page 1
Exhibit C	Preliminary Design Documents	Page 1
Exhibit D	GMP Schedule	13.1.4
Exhibit E	Design/Builder's Insurance	7.1.1

§ 14.10 NOTICES

.1 In order to be effective, each request, notice and other communication (individually, a "Notice"; collectively "Notices") given under the Contract Documents shall: (1) be in writing; (2) be given only by a person designated below; and each delivered to the person required as provided below. A Notice shall be deemed to have first been made and received (a) on the date of delivery, if delivered in person to the party to whom it is addressed; or (b) on the date of delivery, if delivered by electronic mail or facsimile transmission confirmed by recipient.

1. .2 All Notices to the Owner's Project Representatives shall be given concurrently to the Owner's Project Representative and to the Deputy City Manager, at the addresses given below, and a Notice shall not be deemed to have been received by the Owner's Project Representative until the time that it has also been received by the Deputy City Manager. A Notice shall not be deemed to have been received by the City Manager until the time it has also been received by the Deputy City Manager and the Owner's Project Representative. Notices to the Owner's Project Representative and to the Deputy City Manager shall be made by delivery to the following addresses:

To the Owner's Project Representative
City Manager
City of Glendale
5850 West Glendale Avenue

Glendale, Arizona 85301
Telephone: _____
Facsimile: _____
Cell Phone: _____
Email: _____

with a required copy to:

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301
Telephone: _____
Facsimile: _____
Cell Phone: _____
Email: _____

The Deputy City Manager may designate for the purpose of receipt of notices by delivery of written notice of designation, with the addresses for Notices to the designee, to the Design/Builder as provided in this Section.

3 Notices to the Design/Builder shall be made by delivery to the Design/Builder's Project Representative at the following address for Notice:

Telephone: _____
Facsimile: _____
Cell Phone: _____
Email: _____

§ 14.11 This Agreement is made and executed by the Parties on the respective dates set forth below, effective retroactively to August 1, 2005 (the "Effective Date"), which is the date on which the Design/Builder commenced the furnishing of the Work for the Project. All actions taken by the Design/Builder from and after the Effective Date shall be deemed to have been taken under and pursuant to this Agreement.

This Agreement entered into this ____ day of _____, 2006, effective as of the ____ day of _____, 2005 (the "Effective Date").

OWNER

Ed Beasley

(Signature) Ed Beasley
City Manager
(Printed name and title)

DATED: February 27, 2006

ATTEST:

Paula Hansen
City Clerk

DESIGN/BUILDER

By: *William F. Killian*
(Signature)

William F. Killian
(Printed name and title)

Sole Member of Killian/Western, LLC
Dated: February 23, 2006

John Q. Hammons
(Signature) John Q. Hammons, Trustee
February 23, 2006
(Printed name and title)

Dated: *Geoffrey H. Butler*

By: *Geoffrey H. Butler*
(Signature) Geoffrey H. Butler
President of Butler Rosenbury & Partners, Inc.

(Printed name and title)

Dated: February 23, 2006

~~Approved as its form~~

Craig Tindall

Craig Tindall
City Attorney

EXHIBIT A
SITE LEGAL DESCRIPTION

Wood, Patel & Associates, Inc.
(602) 335-8500
www.woodpatel.com

March 13, 2006
WP # 011419.23
Page 1 of 4
See Exhibit "A"

PARCEL DESCRIPTION
Maryland Avenue
Proposed Parcel A-2

A portion of Parcel A of Maryland Avenue and 95th Avenue, as shown on the Minor Land Division, recorded in Book 795, page 23, Maricopa County Records (M.C.R.), and a portion of Lot 9 of Westgate, as shown on the Final Plat for Westgate, recorded in Book 745, page 14, M.C.R., lying within Section 9, Township 2 North, Range 1 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at center quarter corner of said Section 9, an iron pipe, from which the east quarter corner of said Section 9, a brass cap, bears North 88°01'45" East (basis of bearing), a distance of 2644.84 feet;
THENCE along the east-west mid-section line of said section, North 88°01'45" East, a distance of 135.40 feet;
THENCE leaving said east-west mid-section line, North 01°47'39" West, a distance of 55.00 feet, to a point on the northerly right-of-way line of Maryland Avenue, per document No. 03-1582963, M.C.R.;
THENCE continuing, North 01°47'39" West, a distance of 212.42 feet, to the **POINT OF BEGINNING**;
THENCE North 01°47'39" West, a distance of 6.54 feet, to a point of intersection with a non-tangent curve;
THENCE northerly along said curve, having a radius of 20.00 feet, concave easterly, whose radius bears North 88°01'45" East, through a central angle of 30°10'36", a distance of 10.53 feet, to the curve's end;
THENCE North 28°12'21" East, a distance of 111.45 feet, to the beginning of a curve;
THENCE northeasterly along said curve, having a radius of 80.00 feet, concave southeasterly, through a central angle of 60°00'00", a distance of 83.78 feet, to the curve's end;
THENCE North 88°12'21" East, a distance of 14.92 feet;
THENCE North 01°47'39" West, a distance of 372.30 feet;
THENCE North 88°12'21" East, a distance of 26.50 feet;
THENCE North 01°47'39" West, a distance of 186.39 feet, to a point on the southerly line of Coyote Boulevard, as recorded in Document 2005-18000413, M.C.R.;
THENCE along said southerly line, North 88°12'21" East, a distance of 36.50 feet, to a point on the westerly line of Parcel B of said Minor Land Division;
THENCE leaving said southerly line, along said westerly line, South 01°47'39" East, a distance of 186.34 feet, to the southwest corner of said Parcel B;
THENCE leaving said westerly line, along the southerly line of said Parcel B, North 88°12'21" East, a distance of 146.63 feet, to the southeast corner of said Parcel B and the easterly line of said Parcel A;
THENCE leaving said southerly line, along said easterly line and its southerly prolongation, South 01°47'39" East, a distance of 525.94 feet;

Parcel Description
Maryland Avenue
Proposed Parcel A-2

March 13, 2006
WP # 011419.23
Page 2 of 4
See Exhibit "A"

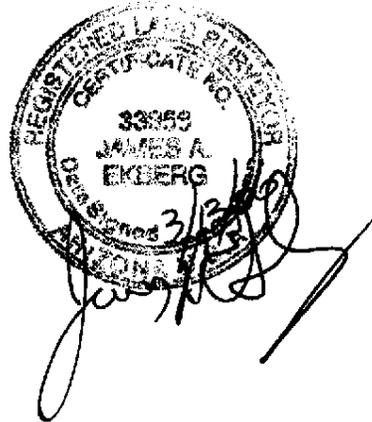
THENCE leaving said southerly prolongation, South 88°12'21" West, a distance of 352.23 feet, to the **POINT OF BEGINNING.**

Containing 3.0481 acres, or 132,775 square feet of land, more or less.

Subject to existing rights-of-way and easements.

This parcel description is based on the Minor Land Division Map of Dedication, of Maryland Avenue and 95th Avenue recorded in Book 795, page 23, M.C.R. and other client provided information. This parcel description is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of August, 2003 and any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

Y:\WP\Parcel Descriptions\011419.23 Maryland Ave. Proposed Parcel A-2.doc



COYOTE BOULEVARD
DOC. 05-1800413 M.C.R.

PARCEL "B"

MINOR LAND DIVISION
MARYLAND AND 95TH AVENUE
BOOK 795, PAGE 23, M.C.R.

LOT 9
FINAL PLAT WESTGATE
BOOK 745, PAGE 14, M.C.R.

PROPOSED
PARCEL A-2

PARCEL "A"
MINOR LAND DIVISION
MARYLAND AND 95TH AVENUE
BOOK 795, PAGE 23, M.C.R.

EX. 120' R.O.W.
PER DOC.
03-1582963,
M.C.R.

SW CORNER OF E 1/2 OF
NW 1/4 OF SECTION 9,
T.2N., R.1E.
(NOTHING FD. OR SET)

E 1/4 CORNER OF
SECTION 9,
T.2N., R.1E.
BRASS CAP

BRASS CAP
IN HAND HOLE

CENTER QUARTER
CORNER OF SECTION 9, T.2N., R.1E.
IRON PIPE
POINT OF COMMENCEMENT

MARYLAND AVENUE

EXHIBIT "A"

MARYLAND AVENUE
PROPOSED PARCEL A-2

03-13-06
WP# 011419.23
PAGE 3 OF 4
NOT TO SCALE

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WOOD/PATEL

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Phoenix, AZ 85021
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Fax: (602) 335-8580
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LINE TABLE		
LINE	BEARING	DISTANCE
L1	N01°47'39"W	55.00'
L2	N01°47'39"W	6.54'
L3	N28°12'21"E	111.45'
L4	N88°12'21"E	14.92'
L5	N88°12'21"E	26.50'
L6	N01°47'39"W	186.86'
L7	N88°12'21"E	36.50'
L8	S01°47'39"E	186.34'
L9	N88°12'21"E	146.63'

CURVE TABLE			
CURVE	DELTA	RADIUS	ARC
C1	30°10'36"	20.00'	10.53'
C2	60°00'00"	80.00'	83.78'

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EXHIBIT "A"

MARYLAND AVENUE
 PROPOSED PARCEL A-2
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 WP# 011419.23
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 NOT TO SCALE

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March 13, 2006
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Page 1 of 4
See Exhibit "A"

PARCEL DESCRIPTION
Maryland Avenue
Proposed Parcel A-3

A portion of Parcel A of Maryland Avenue and 95th Avenue, as shown on the Minor Land Division, recorded in Book 795, page 23, Maricopa County Records (M.C.R.), and a portion of Lot 9 of Westgate, as shown on the Final Plat, recorded in Book 745, page 14, M.C.R., lying within Section 9, Township 2 North, Range 1 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the center quarter corner of said Section 9, an iron pipe, from which the east quarter corner of said Section 9, a brass cap, bears North 88°01'45" East (basis of bearing), a distance of 2644.84 feet;

THENCE along the east-west mid-section line of said section, South 88°01'23" West, a distance of 221.70 feet;

THENCE leaving said east-west mid-section line, North 01°58'38" West, a distance of 55.00 feet, to a point on the northerly right-of-way line of Maryland Avenue, per document No. 03-1582963, M.C.R., and also the **POINT OF BEGINNING**;

THENCE along said northerly right-of-way line, North 46°53'09" West, a distance of 35.30 feet, to the easterly right-of-way line of 95th Avenue, per said document;

THENCE leaving said northerly right-of-way line, along said easterly right-of-way line, North 01°47'39" West, a distance of 637.18 feet;

THENCE leaving said easterly right-of-way line, North 88°12'21" East, a distance of 121.47 feet;

THENCE North 43°12'21" East, a distance of 35.00 feet;

THENCE South 46°47'39" East, a distance of 47.50 feet;

THENCE North 43°12'21" East, a distance of 9.40 feet;

THENCE South 46°47'39" East, a distance of 24.50 feet;

THENCE North 89°08'37" East, a distance of 5.09 feet;

THENCE North 88°12'21" East, a distance of 124.80 feet;

THENCE South 01°47'39" East, a distance of 32.33 feet;

THENCE North 88°12'21" East, a distance of 83.42 feet;

THENCE South 01°47'39" East, a distance of 30.69 feet;

THENCE North 88°12'21" East, a distance of 39.75 feet;

THENCE South 01°47'39" East, a distance of 136.82 feet;

THENCE North 88°10'25" East, a distance of 68.04 feet;

THENCE South 01°47'39" East, a distance of 76.04 feet;

THENCE South 88°12'21" West, a distance of 14.92 feet, to the beginning of a curve;

THENCE southwesterly along said curve, having a radius of 80.00 feet, concave southeasterly, through a central angle of 60°00'00", a distance of 83.78 feet, to the curve's end;

THENCE South 28°12'21" West, a distance of 111.45 feet, to the beginning of a curve;

**Parcel Description
Maryland Avenue
Proposed Parcel A-3**

March 13, 2006
WP# 011419.23
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See Exhibit "A"

THENCE southerly along said curve, having a radius of 20.00 feet, concave easterly, through a central angle of 30°10'36", a distance of 10.53 feet, to a point of intersection with a non-tangent line;
THENCE South 01°47'39" East, a distance of 218.96 feet, to the northerly right-of-way line of said Maryland Avenue;
THENCE along said northerly right-of-way line, South 88°01'45" West, a distance of 39.98 feet;
THENCE leaving said northerly right-of-way line, North 01°47'39" West, a distance of 239.35 feet, to a point of intersection with a non-tangent curve;
THENCE northeasterly along said curve, having a radius of 15.00 feet, concave northwesterly, whose radius bears North 31°31'25" West, through a central angle of 30°16'15", a distance of 7.92 feet, to a point of intersection with a non-tangent line;
THENCE North 28°18'42" East, a distance of 124.97 feet;
THENCE North 58°14'17" West, a distance of 11.68 feet;
THENCE North 61°47'24" West, a distance of 10.88 feet;
THENCE North 28°12'36" East, a distance of 10.50 feet;
THENCE North 61°47'24" West, a distance of 30.29 feet;
THENCE South 28°12'36" West, a distance of 5.00 feet;
THENCE North 61°47'24" West, a distance of 5.63 feet;
THENCE North 01°47'24" West, a distance of 2.68 feet;
THENCE South 88°12'36" West, a distance of 23.09 feet;
THENCE South 01°47'24" East, a distance of 0.58 feet;
THENCE South 88°12'36" West, a distance of 18.33 feet;
THENCE South 01°47'24" East, a distance of 24.72 feet;
THENCE South 88°12'36" West, a distance of 36.83 feet;
THENCE South 01°47'24" East, a distance of 10.00 feet;
THENCE South 88°12'36" West, a distance of 9.04 feet;
THENCE South 01°47'39" East, a distance of 117.62 feet;
THENCE South 88°12'21" West, a distance of 17.73 feet;
THENCE South 01°47'39" East, a distance of 237.64 feet, to a point on the northerly right-of-way line of said Maryland Avenue;
THENCE along said northerly right-of-way line, South 88°01'23" West, a distance of 233.00 feet, to the **POINT OF BEGINNING**.

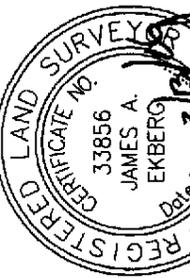
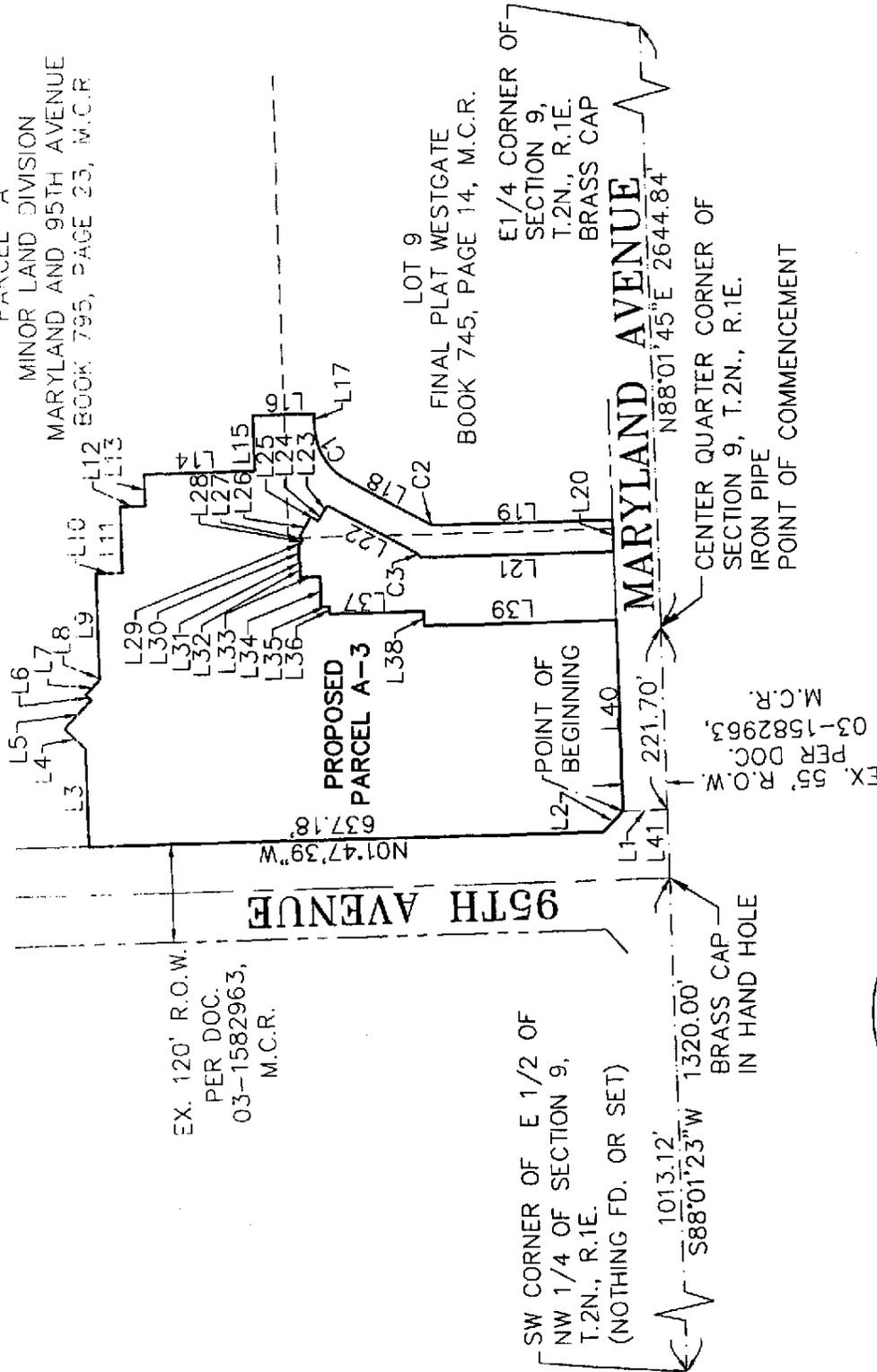
Containing 5.5402 acres, or 241,330 square feet of land, more or less.

Subject to existing rights-of-way and easements.

This parcel description is based on the Minor Land Division Map of Dedication, of Maryland Avenue and 95th Avenue recorded in Book 795, page 23, M.C.R. and other client provided information. This parcel description is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of August, 2003 and any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.



PARCEL "A"
 MINOR LAND DIVISION
 MARYLAND AND 95TH AVENUE
 BOOK 795, PAGE 23, M.C.R.



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 Phoenix, AZ 85021
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 Fax: (602) 335-8580
 PHOENIX • MESA • TUCSON

EXHIBIT "A"

MARYLAND AVENUE
 PROPOSED PARCEL A-3
 03-13-06
 WP# 011419.23
 PAGE 3 OF 4
 NOT TO SCALE

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N01°58'38"W	55.00'
L2	N46°53'09"W	35.30'
L3	N88°12'21"E	121.47'
L4	N43°12'21"E	35.00'
L5	S46°47'39"E	47.50'
L6	N43°12'21"E	9.40'
L7	S46°47'39"E	24.50'
L8	N89°08'37"E	5.09'
L9	N88°12'21"E	124.80'
L10	S01°47'39"E	32.33'
L11	N88°12'21"E	83.42'
L12	S01°47'39"E	30.69'
L13	N88°12'21"E	39.75'
L14	S01°47'39"E	136.82'
L15	N88°10'25"E	68.04'
L16	S01°47'39"E	76.04'
L17	S88°12'21"W	14.92'
L18	S28°12'21"W	111.45'
L19	S01°47'39"E	218.96'
L20	S88°01'45"W	39.98'
L21	N01°47'39"W	239.35'
L22	N28°18'42"E	124.97'
L23	N58°14'17"W	11.68'
L24	N61°47'24"W	10.88'

LINE TABLE		
LINE	BEARING	DISTANCE
L25	N28°12'36"F	10.50'
L26	N61°47'24"W	30.29'
L27	S28°12'36"W	5.00'
L28	N61°47'24"W	5.63'
L29	N01°47'24"W	2.68'
L30	S88°12'36"W	23.09'
L31	S01°47'24"E	0.58'
L32	S88°12'36"W	18.33'
L33	S01°47'24"E	24.72'
L34	S88°12'36"W	36.83'
L35	S01°47'24"E	10.00'
L36	S88°12'36"W	9.04'
L37	S01°47'39"E	117.62'
L38	S88°12'21"W	17.73'
L39	S01°47'39"E	237.64'
L40	S88°01'23"W	233.00'
L41	S88°01'22"W	85.18'

CURVE TABLE			
CURVE	DELTA	RADIUS	ARC
C1	60°00'00"	80.00'	83.78'
C2	30°10'36"	20.00'	10.53'
C3	30°16'15"	15.00'	7.92'

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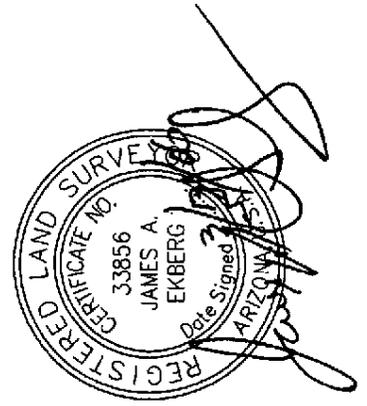


EXHIBIT "A"

MARYLAND AVENUE
 PROPOSED PARCEL A-3
 03-13-06

WP# 011419.23
 PAGE 4 OF 4
 NOT TO SCALE

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Wood, Patel & Associates, Inc.
(602) 335-8500
www.woodpatel.com

March 13, 2006
WP # 011419.23
Page 1 of 4
See Exhibit "A"

PARCEL DESCRIPTION
Maryland Avenue
Proposed Parcel A-4

A portion of Parcel A of Maryland Avenue and 95th Avenue, as shown on the Minor Land Division, recorded in Book 795, page 23, Maricopa County Records (M.C.R.), and a portion of Lot 9 of Westgate, as shown on the Final Plat for Westgate, recorded in Book 745, page 14, M.C.R., lying within Section 9, Township 2 North, Range 1 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the center quarter corner of said Section 9, an iron pipe, from which the east quarter corner of said Section 9, a brass cap, bears North 88°01'45" East(basis of bearing), a distance of 2644.84 feet;

THENCE along the east-west mid-section line of said section, North 88°01'45" East, a distance of 11.13 feet;

THENCE leaving said east-west mid-section line, North 01°47'39" West, a distance of 55.00 feet, to a point on the northerly right-of-way line of Maryland Avenue, per document No. 03-1582963, M.C.R., and also the **POINT OF BEGINNING**;

THENCE leaving said northerly right-of-way line, North 01°47'39" West, a distance of 237.64 feet;

THENCE North 88°12'21" East, a distance of 17.73 feet;

THENCE North 01°47'39" West, a distance of 117.62 feet;

THENCE North 88°12'36" East, a distance of 9.04 feet;

THENCE North 01°47'24" West, a distance of 10.00 feet;

THENCE North 88°12'36" East, a distance of 36.83 feet;

THENCE North 01°47'24" West, a distance of 24.72 feet;

THENCE North 88°12'36" East, a distance of 18.33 feet;

THENCE North 01°47'24" West, a distance of 0.58 feet;

THENCE North 88°12'36" East, a distance of 23.09 feet;

THENCE South 01°47'24" East, a distance of 2.68 feet;

THENCE South 61°47'24" East, a distance of 5.63 feet;

THENCE North 28°12'36" East, a distance of 5.00 feet;

THENCE South 61°47'24" East, a distance of 30.29 feet;

THENCE South 28°12'36" West, a distance of 10.50 feet;

THENCE South 61°47'24" East, a distance of 10.88 feet;

THENCE South 58°14'17" East, a distance of 11.68 feet;

THENCE South 28°18'42" West, a distance of 124.97 feet, to a point of intersection with a non-tangent curve

THENCE southwesterly along said curve, having a radius of 15.00 feet, concave northwesterly, whose radius bears North 61°47'39" West, through a central angle of 30°16'15", a distance of 7.92 feet, to a point of intersection with a non-tangent line;

Parcel Description
Proposed Parcel A-4
Maryland Avenue

March 13, 2006
WP # 011419.23
Page 2 of 4
See Exhibit "A"

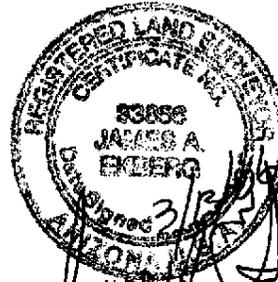
THENCE South 01°47'39" East, a distance of 239.35 feet, to the northerly right-of-way line of said Maryland Avenue;
THENCE along said northerly right-of-way line, South 88°01'45" West, a distance of 84.29 feet, to the **POINT OF BEGINNING**.

Containing 0.7976 acres, or 34,744 square feet of land, more or less.

Subject to existing rights-of-way and easements.

This parcel description is based on the Minor Land Division Map of Dedication, of Maryland Avenue and 95th Avenue recorded in Book 795, page 23, M.C.R. and other client provided information. This parcel description is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of August, 2003 and any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

\\WP\1\rel\Descriptions\011419.23 Maryland Avenue Proposed Parcel A-4.doc



EX. 120' R.O.W.
PER DOC.
03-1582963,
M.C.R.

95TH AVENUE

EX. 55' R.O.W.
PER DOC.
03-1582963,
M.C.R.

PARCEL "A"
MINOR LAND DIVISION
MARYLAND AND 95TH AVENUE
BOOK 795, PAGE 23, M.C.R.

LOT 9
FINAL PLAT WESTGATE
BOOK 745, PAGE 14, M.C.R.

E1/4 CORNER OF
SECTION 9,
T.2N., R.1E.
BRASS CAP

SW CORNER OF E 1/2 OF
NW 1/4 OF SECTION 9,
T.2N., R.1E.
(NOTHING FD. OR SET)

CENTER QUARTER
CORNER OF SECTION 9,
T.2N., R.1E.
IRON PIPE
POINT OF COMMENCEMENT

MARYLAND AVENUE

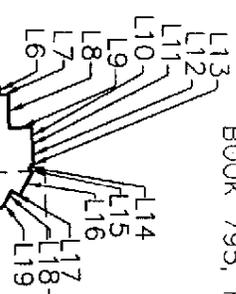
BRASS CAP
IN HAND HOLE

1013.12'
S88°01'23"W 1320.00'

306.88'

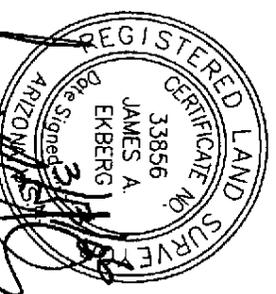
2633.71'
N88°01'45"E 2644.84'

PROPOSED
PARCEL A-4



WOOD/PATEL

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James A. Ekberg

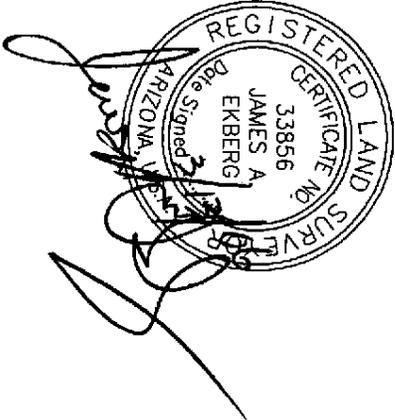
EXHIBIT "A"

MARYLAND AVENUE
PROPOSED PARCEL A-4
03-13-06

WP# 011419.23
PAGE 3 OF 4
NOT TO SCALE

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LINE TABLE		
LINE	BEARING	DISTANCE
L1	N88°01'45"E	11.13'
L2	N01°47'39"W	55.00'
L3	N01°47'39"W	237.64'
L4	N88°12'21"E	17.73'
L5	N01°47'39"W	117.62'
L6	N88°12'36"E	9.04'
L7	N01°47'24"W	10.00'
L8	N88°12'36"E	36.83'
L9	N01°47'24"W	24.72'
L10	N88°12'36"E	18.33'
L11	N01°47'24"W	0.58'
L12	N88°12'36"E	23.09'
L13	S01°47'24"E	2.68'
L14	S61°47'24"E	5.63'
L15	N28°12'36"E	5.00'
L16	S61°47'24"E	30.29'
L17	S28°12'36"W	10.50'
L18	S61°47'24"E	10.88'
L19	S58°14'17"E	11.68'
L20	S28°18'42"W	124.97'
L21	S01°47'39"E	239.35'
L22	S88°01'45"W	84.29'

CURVE TABLE		
CURVE	DELTA	RADIUS ARC
C1	30°16'15"	15.00' 17.92'

EXHIBIT "A"

MARYLAND AVENUE
 PROPOSED PARCEL A-4
 03-13-06

WP# 011419.23
 PAGE 4 OF 4
 NOT TO SCALE

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EXHIBIT B

PROJECT, WORK EXCLUSIONS, SCHEDULE UPDATES

1. **THE PROJECT.** The Project is generally described as follows:

1.1 The "Project" is a new three building (a "Component") complex consisting of a media center & studio, conference center and parking garage, and all related horizontal site work as contemplated by the Agreement, and as outlined in the Preliminary Design Documents identified in **Exhibit C**, and that certain Master Development Agreement by and between the City of Glendale, Arizona and JQH-Glendale AZ Development, LLC ("Master Development Agreement"), the terms and conditions of which the Design/Builder has reviewed. The conference center element of the Project is anticipated to be attached to a hotel ("Hotel") that will be constructed on adjacent property by an affiliate of the Design/Builder as provided in the Master Development Agreement; until the Hotel is completed, the conference center will be separated from it by an appropriate temporary fire wall to be installed by the Design/Builder.

1.2 The Project Components are described, together with the benchmarks that will be used for determining their quality, equipping and functional requirements, as follows:

(1) A 65,000 SF (+/-) media center & studio, constructed and equipped with offices, and studios and to be equipped by the Owner with telecommunications equipment and related facilities all of which will be suitable for use by major national networks of major sporting events of the nature to be held at the nearby Cardinals Stadium including, without limitation, the Fiesta Bowl, BCS National Championship Games, and the NFL Sponsored Super Bowl championship games. The benchmark for determining minimum requirements for the media portion of the building will be the Peoria Media Center. The benchmark for the exposition portion of the building will be the exposition space in the Phoenix Convention Center.

1.3 A 942 stall - parking garage to accommodate 942 vehicles. Gates and parking controls of Owner's design specifications and subject to a \$_____ allowance will be connected by underground electronic connections to Owner's offices. The Parking Garage will be of equivalent quality to the one constructed by the Frisco Design Build, JV in Frisco, Texas.

1.4 An 88,000 (+/-) SF conference center, suitable for use by Owner in connection with the January 1, 2007 Fiesta Bowl, and all pre-Fiesta Bowl events subsequent to December 1, 2007 in connection therewith, of equivalent quality to the one constructed by the Frisco Design, JV in Frisco, Texas.

1.5 Each Component shall also include its associated underground and horizontal water, sewer, cable (including necessary fiber optic cable), landscaping, paving, parking, striping, landscaping lighting, curbing and other horizontal site work (collectively, the "Infrastructure") necessary for the completed Project. The Construction Documents and the GMP Schedule for each Component shall include all Infrastructure of the Component and the Component's pro-rata share (as mutually agreed upon) of other Infrastructure necessary for the completion of the Component, together with the entire Project.

2. **EXCLUSIONS.** Notwithstanding anything in this Agreement to the Contrary, the Design/Builder shall not be responsible for the any of the following: consulting, design, engineering, procurement or installation of any media equipment to be installed in the media center.

3. **SCHEDULE UPDATES.** The Monthly Schedule Updates will discuss in reasonable detail the following topics with respect to all activity through the last day of the immediately preceding calendar month:

3.1 Executive Summary narrative that highlights progress, contracts awarded, significant cost changes, and key pending issues that may impact schedule or cost.

3.2 Procurement Log that lists all bid packages, release date for bidding, bid due date, date of contract award, contractor, and contract amount.

3.3 Safety and Insurance Record that (i) lists all effort hours worked on site, OSHA recordable incidents, and OSHA Lost Day incidents, in all cases for each month and for the total Project, (ii) includes a narrative from Design/Builder's designated safety coordinator that describes what steps are being taken to ensure a safe work environment given the phase of the Project (pouring concrete vs. steel erection vs. pipe installation, for example), (iii) includes an issue chart measuring "Lost" incidents and "Reportable" incidents against the national average for each such type of incident, and (iv) discusses any other potential insurance issues (such as loss prevention and temporary fire protection).

3.4 Labor Issues Summary that describes the number of trades on the site, the availability of the local market to meet the projected demand, and any pending contract negotiations or disputes.

3.5 Quality Control/Testing & Inspection Summary that (i) indicates the independent material testing: and inspection firms and the methods being presently employed, (ii) highlights deviations from the project specifications and describes plans to resolve the deviation, and (iii) lists quality control mock-ups that are planned (sample wall panels, interior suite cabinetry) or any visits to fabricators (precast concrete, steel fabrication) that are planned.

3.6 Design Summary that (i) indicates any drawings that were issued for procurement or construction during the month, including any drawings that are being re-issued and the general purpose for the re-issue, (ii) describes the status of Permits and impact fees, (iii) includes a "Submittal Log" that indicates the shop drawing, material specification, finish sample or other item that is being submitted for review by the contractor and the review status of these items (approved, approved as noted, revise and re-submit) from the designer, and (iv) includes an "RFI Log" that summarizes the RFIs prepared by contractors and the RFIs answered by the designers.

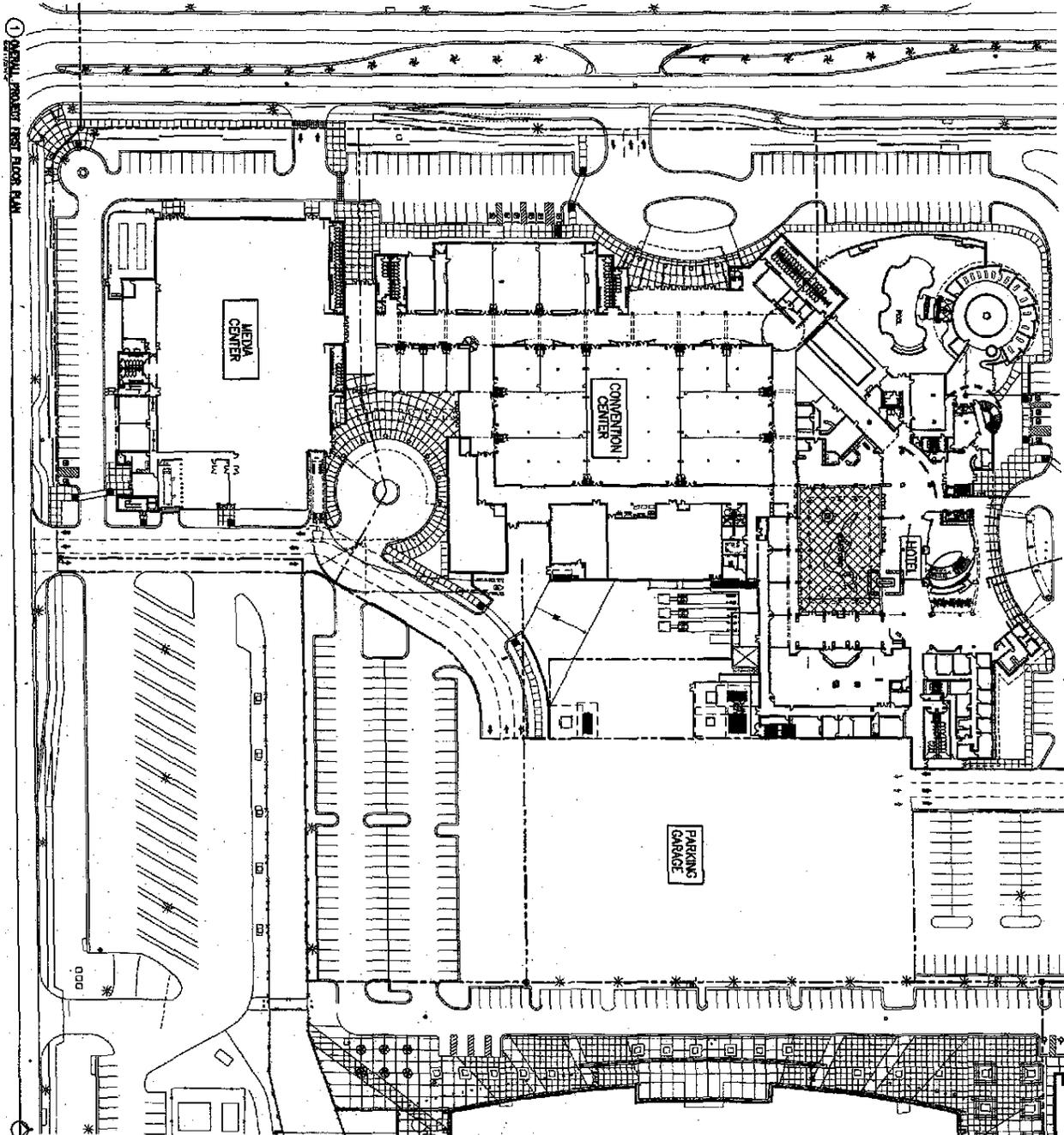
3.7 Schedule Update that (i) sets forth the current revised monthly Progress Schedule as provided in the Agreement, (ii) indicates what has changed from the previous month and plans are in place to react to changing conditions (such as overtime to accelerate pace, change in logic, use of alternate equipment), (iii) describes the progress of the major trades (concrete, steel, MEP) should receive specific attention, (iv) describes the site logistics (laydown area, site access, trade contractor parking, impact of adjacent work, etc.), (v) describes turnover dates as these become imminent, (vi) provides a detailed four-week "look-ahead" schedule in Gant (bar),Chart format, including all anticipated project meetings (such as trade contractor coordination, design, quality control, safety), and (vii) summarizes the off-site activities, in addition to the Stadium activities.

3.8 Progress Photographs that (a) provide tangible evidence of construction progress, including four (4) photographs taken from the same location each month, or as otherwise agreed between the Owner and Design/Builder, and one aerial photograph, and (b) to the extent deemed necessary or appropriate, or as requested by Owner, illustrate or clarify certain other matters discussed in the report.

3.9 Cost Management Section that (i) includes a "Cost Status Report" that should be in the same format as the GMP Schedule, listing for each Subcontract: the initial contract amount, pending change orders and change order requests of Design/Builder, cost to complete, predicted final cost, and amount paid to date, (ii) includes a report on General Conditions items that are paid on a "time and material" basis, listed in the same manner, (iii) status of the allowance items and any potential overruns and their amounts, (iv) clearly lists the project contingency amount remaining and a list of the use to date, and (v) includes a commentary that indicates what cost issues (including any "front-end loading" by Design/Builder or its Subcontractors or Sub-subcontractors in their schedules of values or requisitions) exist and what plans are in place to manage these issues.

3.10 Certification. The report shall be certified by the Design/Builder to be accurate and complete in all material respects.

EXHIBIT C
SCHEDULE OF PRELIMINARY DESIGN DOCUMENTS
(Cover Page)



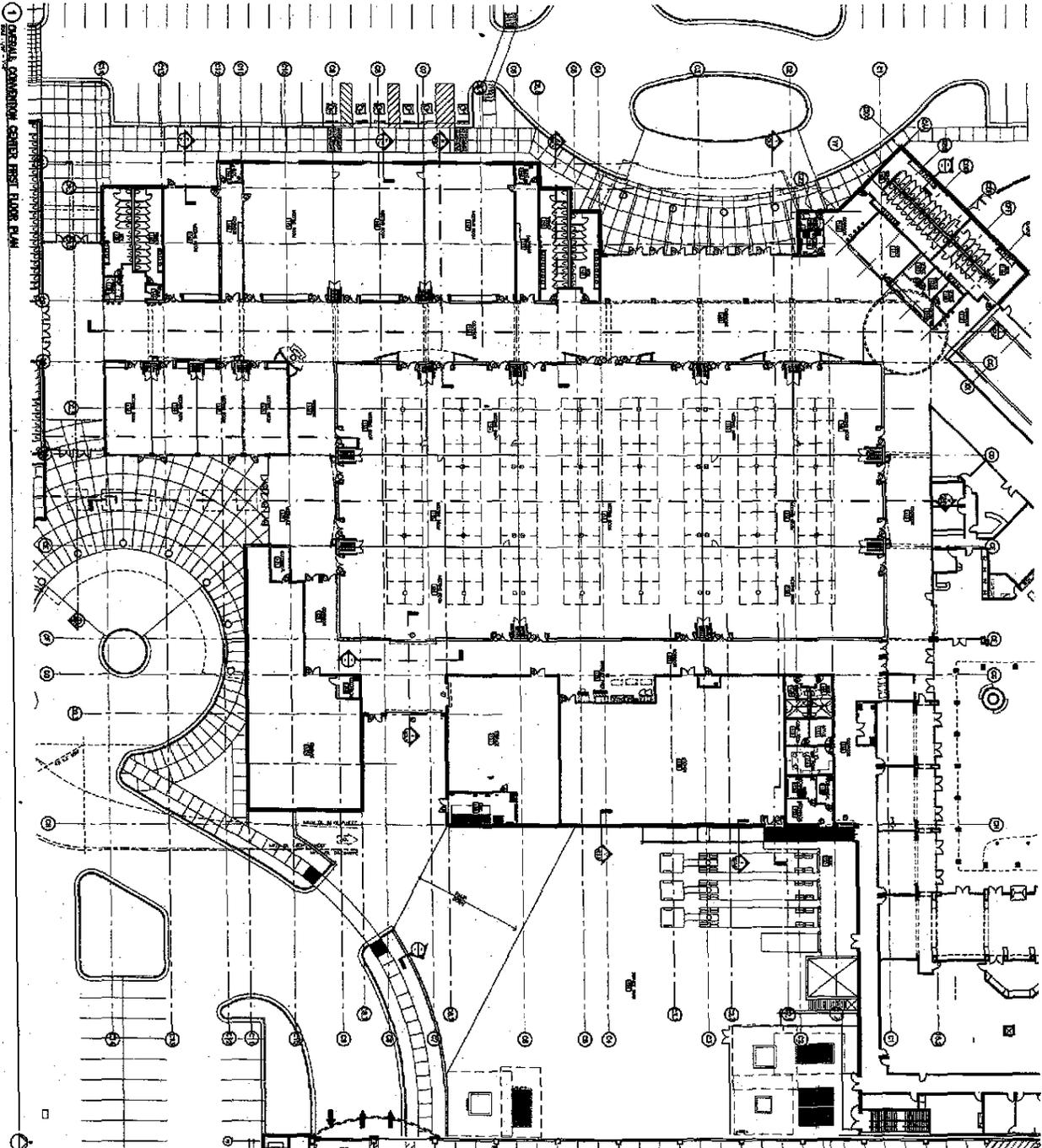
1 ONEBALL PRAXAIR FIRST FLOOR PLAN

ONEBALL PRAXAIR FIRST FLOOR PLAN
 ROSSIGNOL HOTEL, CONVENTION CENTER, AND
 OTHER STRUCTURAL PLANS - GENERAL, 1/20
 BUTLER, ROSSIGNOL & PARTNERS, INC.

NOT FOR CONSTRUCTION

AH1.0

C 2

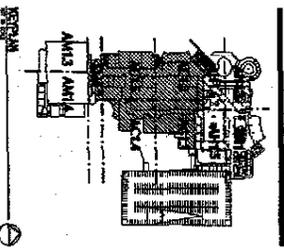


1 GENERAL CONVENTION CENTER FIRST FLOOR PLAN

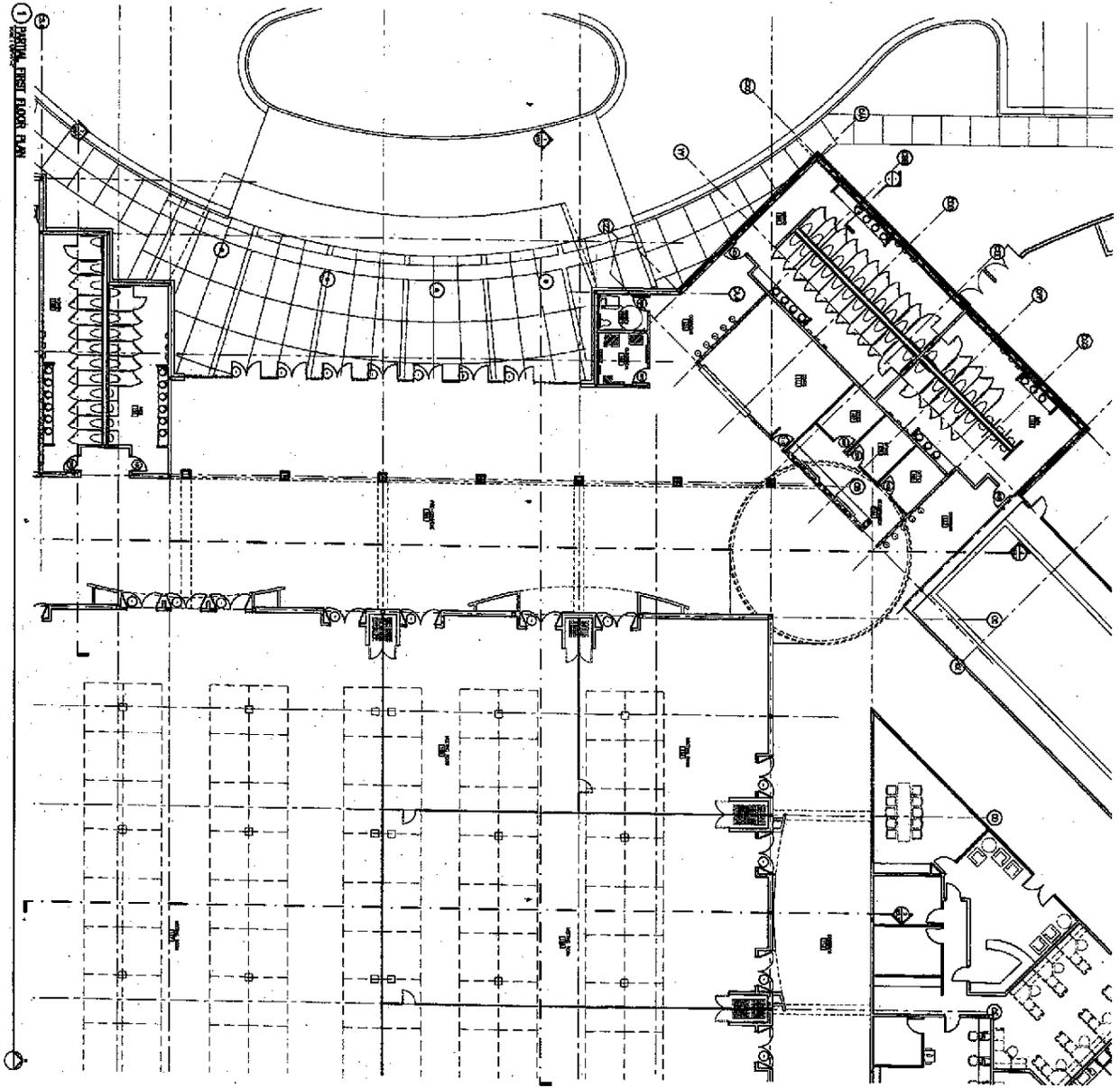
CONVENTION CENTER FIRST FLOOR PLAN
 REBASSAW HOTEL CONVENTION CENTER, NEW
 ORLEANS STRUCTURAL FRAMEWORK - GENERAL, P.C.
 BUTLER, ROSENBERG & PARTNERS, INC.
 1100 PINE STREET, SUITE 1000, NEW ORLEANS, LA 70112
 504-581-1100

AC1.1

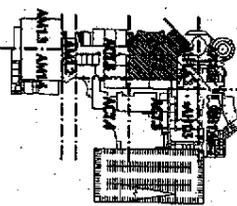
C3



REVISIONS



REVISIONS



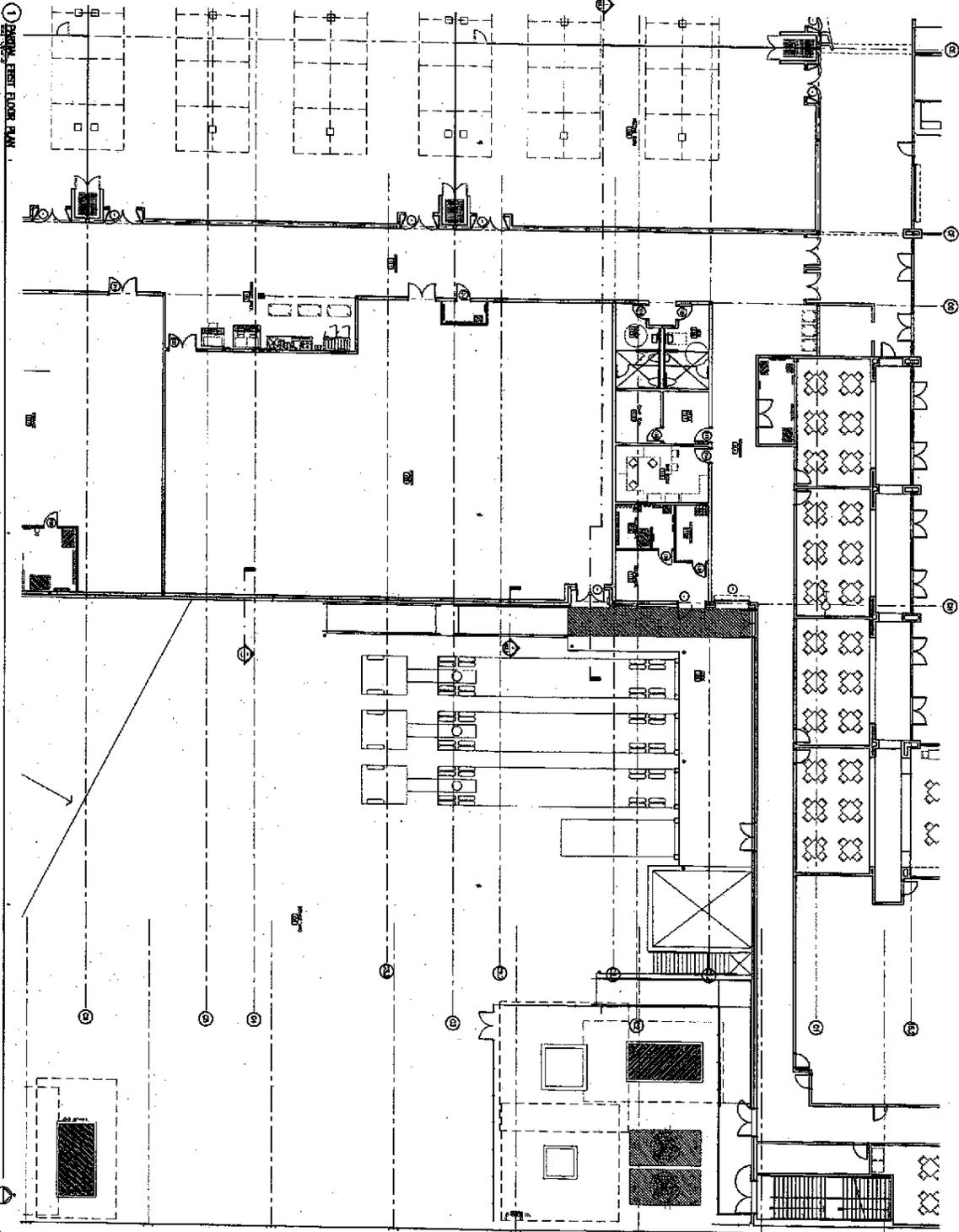
SECTION

PENNEL FIRST FLOOR PLAN

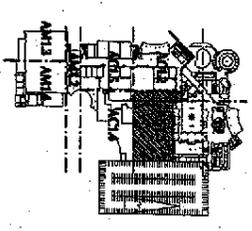
RENSAANCE HOTEL, CONVENTION CENTER, NEW
 CENTER STRUCTURAL PACKAGE - GROUND, AZ
 SUTER, ROSSBURN & PARTNERS, INC.

NOT FOR CONSTRUCTION

AC1:2 84



NOTES



PENTHOUSE REST FLOOR PLAN

CONVENTION CENTER, JERK
 CENTER STRUCTURAL PACKAGE - GLENDALE, FL

BRUCE ROSENTHAL & PARTNERS, INC.

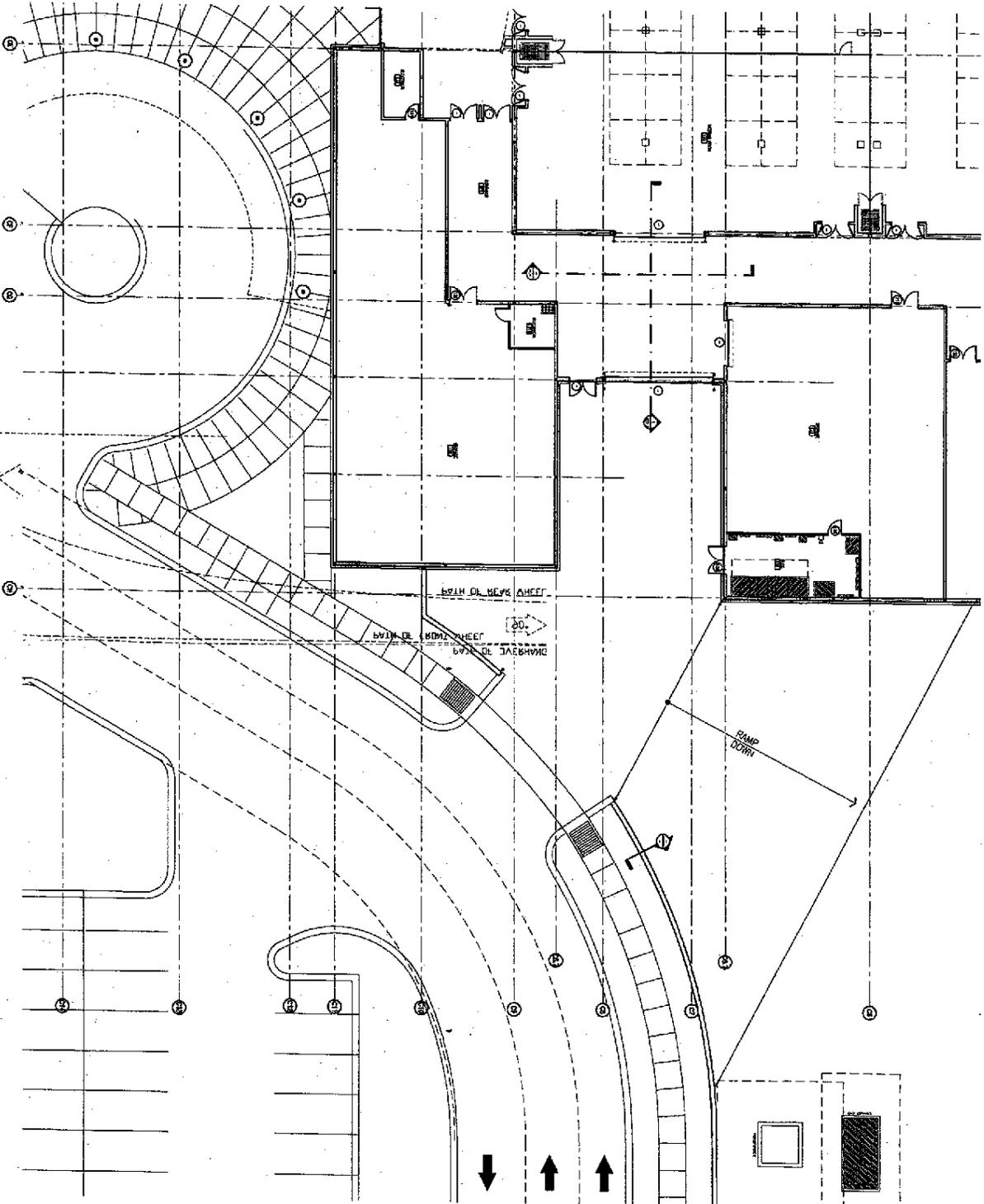
DATE: 11/11/03

SCALE: AS SHOWN

NOT FOR CONSTRUCTION

AC1.3

1 PARTIAL FIRST FLOOR PLAN



NOT FOR CONSTRUCTION

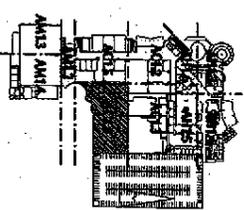
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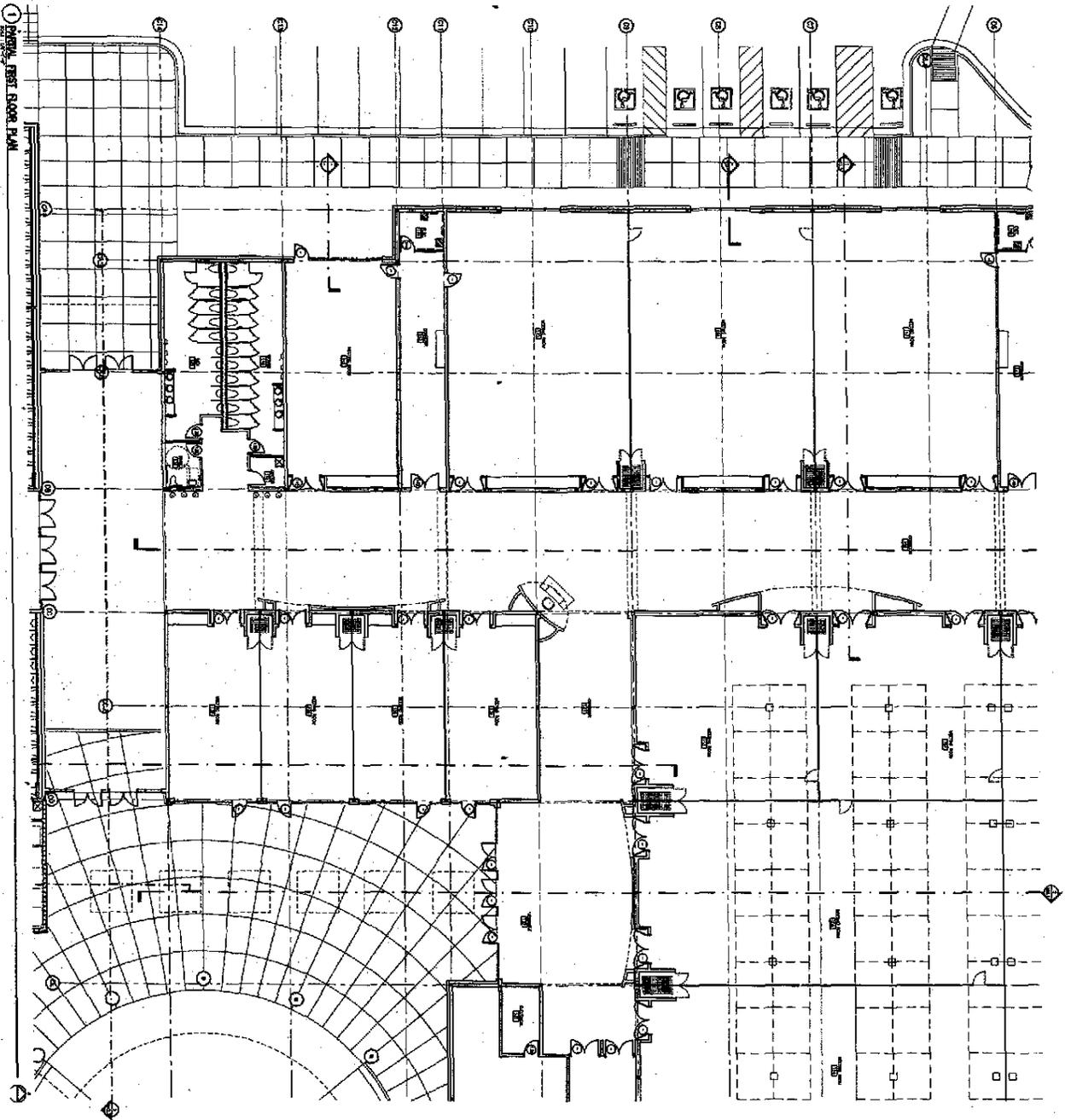
C6

REVISIONS

NO.	DATE	DESCRIPTION
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9		
10		

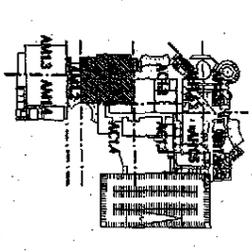
PARTIAL FIRST FLOOR PLAN
 BIRMINGHAM HOTEL, CAMDEN CENTER, MOVA
 CENTER, SIMONSON PLACE - GLENDALE, AZ
 BILDER, ROSENBERG & PARTNERS, INC.





GENERAL FIRST FLOOR PLAN

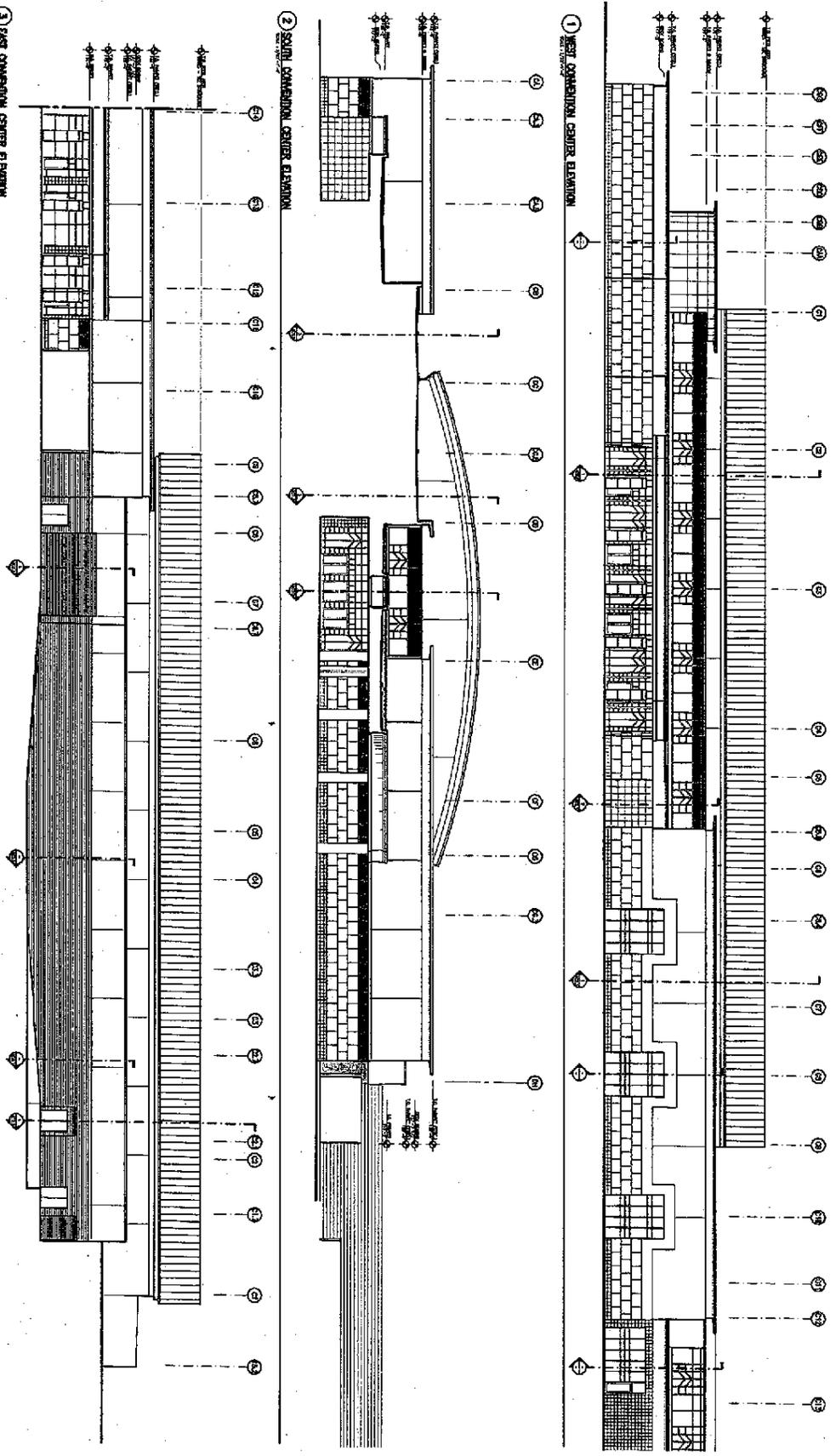
REMARKS



PARTIAL FIRST FLOOR PLAN
 RENESSANCE HOTEL, COMMERCE CENTER, 1400
 BAKER STREET, MEMPHIS, TENNESSEE, 38103
 BUTLER ROSENBLUM & PARTNERS, INC.
 ARCHITECTS
 1000 BAKER STREET, SUITE 200
 MEMPHIS, TENNESSEE 38103
 (901) 525-1234
 DATE: 08/15/98
 DRAWN BY: J. ROSENBLUM
 CHECKED BY: J. ROSENBLUM
 NOT FOR CONSTRUCTION

AC1.5

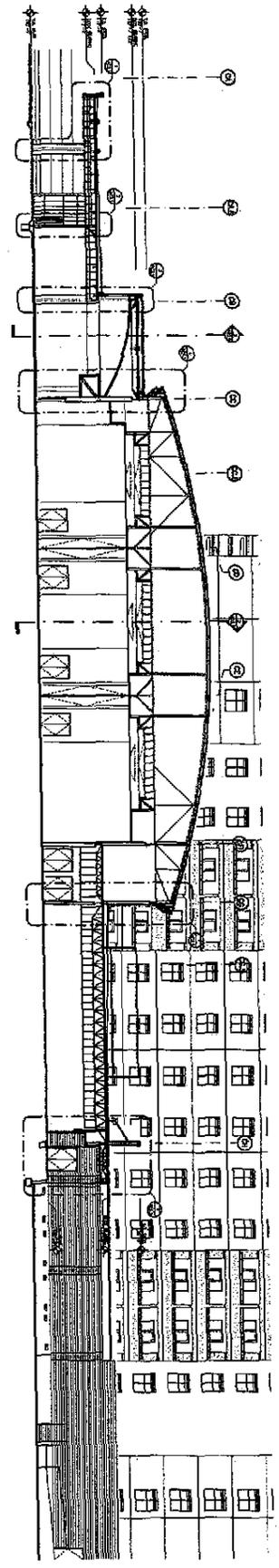
C7



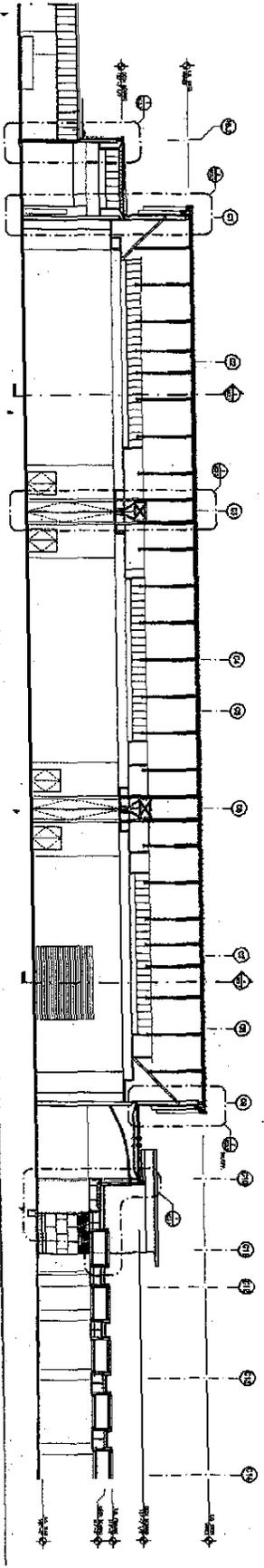
KEYNOTES

CONVENTION CENTER ELEVATIONS
 REMBRANCE HOTEL, CONVENTION CENTER, URBAN
 CENTER STRUCTURAL PACKAGE - GADSDEN, AL
 BUNLER, ROSENBLUTH & PARTNERS, INC.
 11/15/00

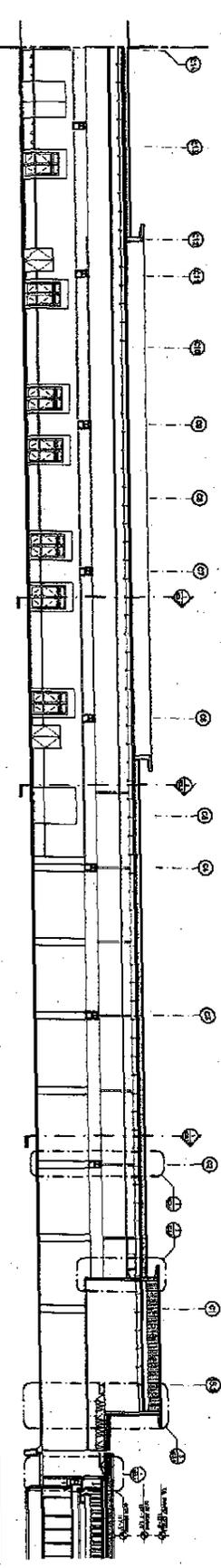
NOT FOR CONSTRUCTION
AC2:1
C8



① GENERAL EAST/WEST BUILDING SECTION



② GENERAL NORTH/SOUTH BUILDING SECTION AT BALCONIES



③ GENERAL NORTH/SOUTH BUILDING SECTION AT CORRIDORS

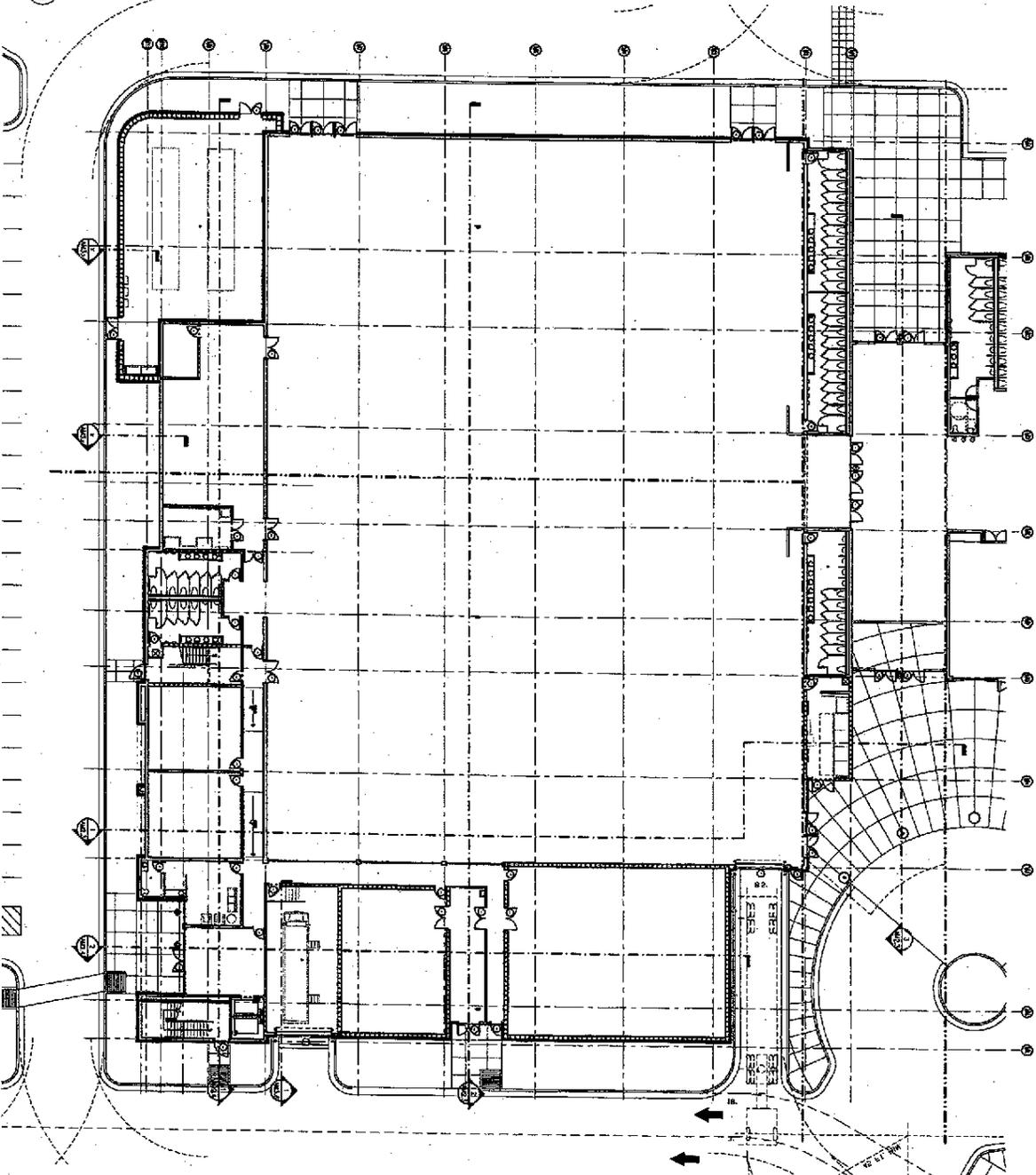
CONVENTION CENTER BUILDING SECTION
 BOWENMADE HOTEL, CONVENTION CENTER, ARDEN
 CENTER STRUCTURAL WORKS - GEORGETOWN, VA
 BULLER, ROSSIGNOLI & PARTNERS, INC.
 ARCHITECTS

NOT FOR CONSTRUCTION

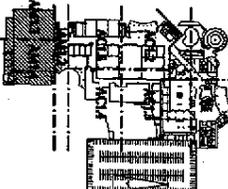
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C9

① OVERALL FIRST FLOOR PLAN



REVISIONS



SECTION

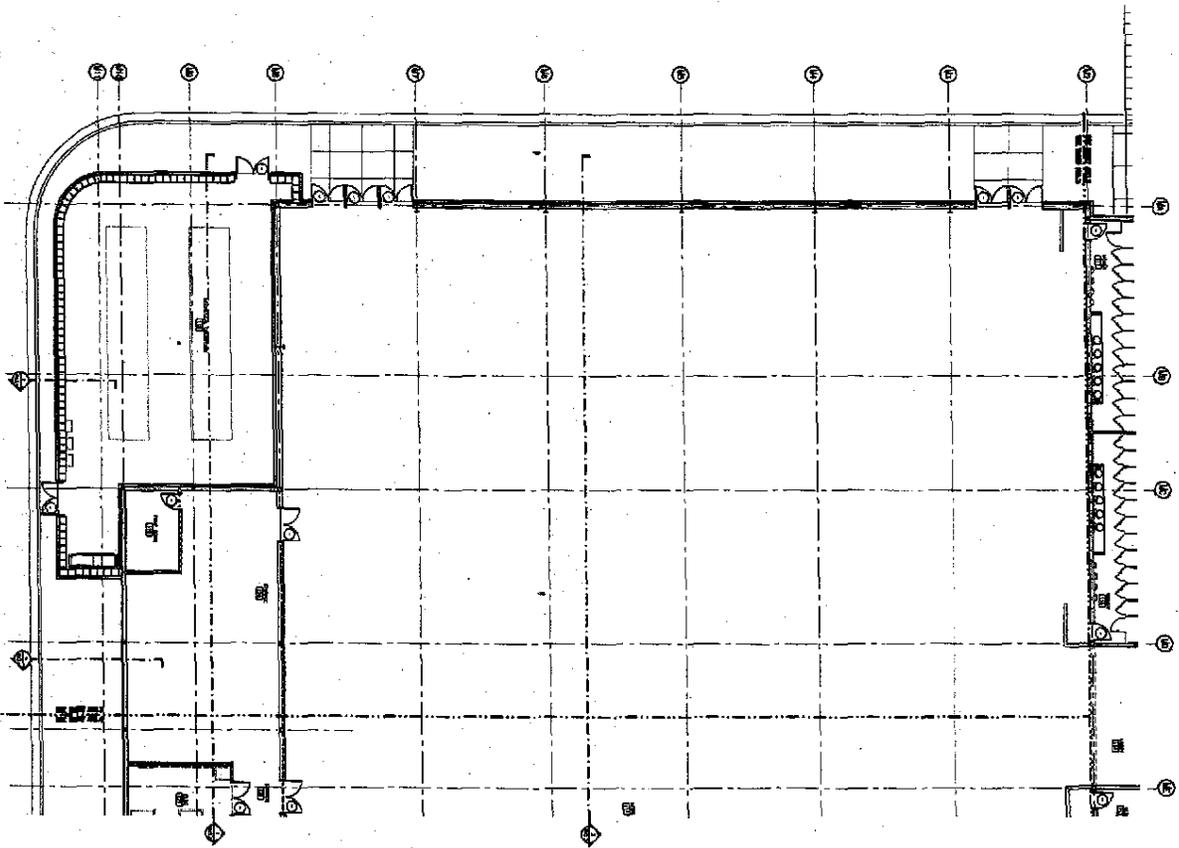
OVERALL FIRST FLOOR PLAN
 REVISIONS: JUNE, CONSTRUCTION CENTER, JUNE
 CENTER STRUCTURAL, PHOENIX - GIBSON, W.
 BUTLER, ROSENBERG & PARTNERS, INC.

NOT FOR CONSTRUCTION

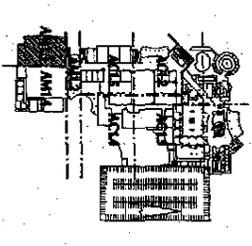
AM1.1

C10

① PARTIAL FIRST FLOOR PLAN



REVISIONS



REVISION

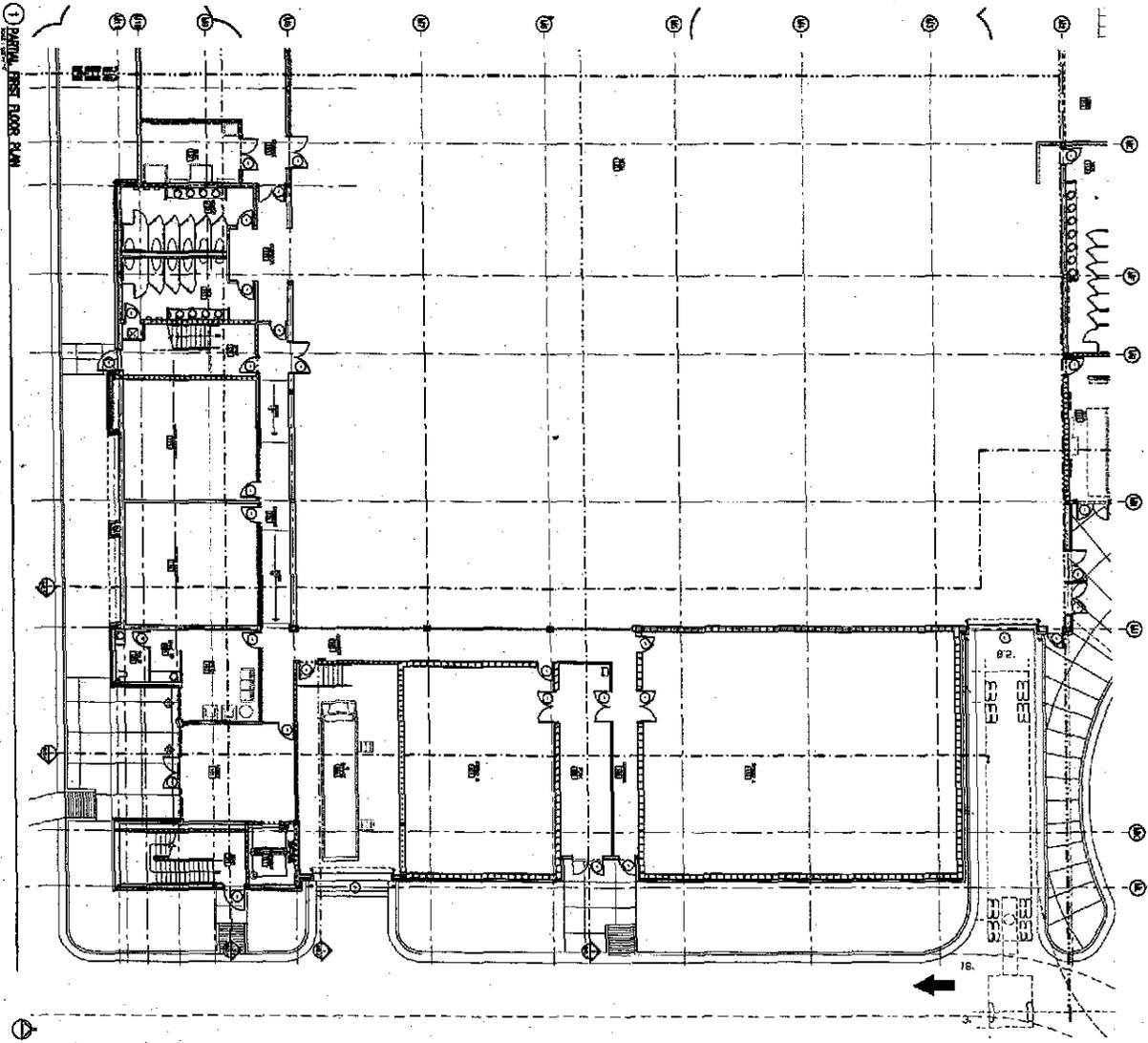
PARTIAL FIRST FLOOR PLAN

ROSENBERG HOTEL, CONVENTION CENTER, BIRTH CENTER, SHELTON, GARDNER, VA.
BUTLER, ROSENBERG & PARTNERS, INC.

NOT FOR CONSTRUCTION

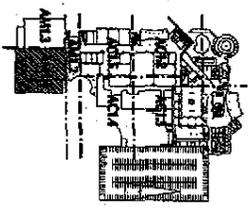
AM1.3

C12



1 PARTIAL FIRST FLOOR PLAN

REVISIONS



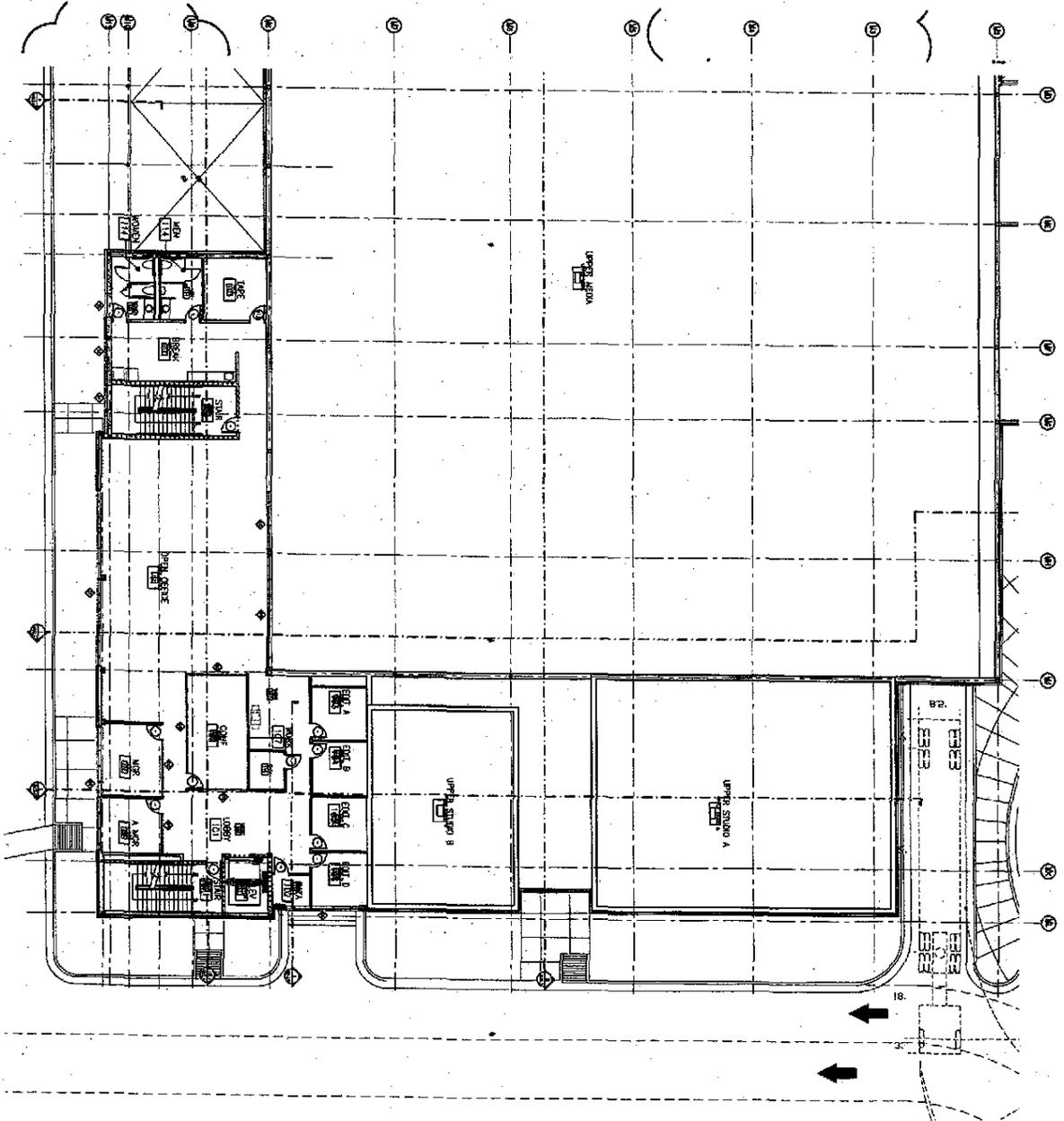
PARTIAL FIRST FLOOR PLAN
 RENAISSANCE HOTEL, CAMDEN CENTER, NEW
 JERSEY
 CENTER STRUCTURAL FRAME - GENERAL, INC.
 BUTLER, PENNSYLVANIA & PARTNERS, INC.
 DATE: 10/15/98
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 APPROVED BY: [Name]

NOT FOR CONSTRUCTION

AM1.4

C13

① SECOND FLOOR PLAN



REVISIONS

NOT FOR CONSTRUCTION

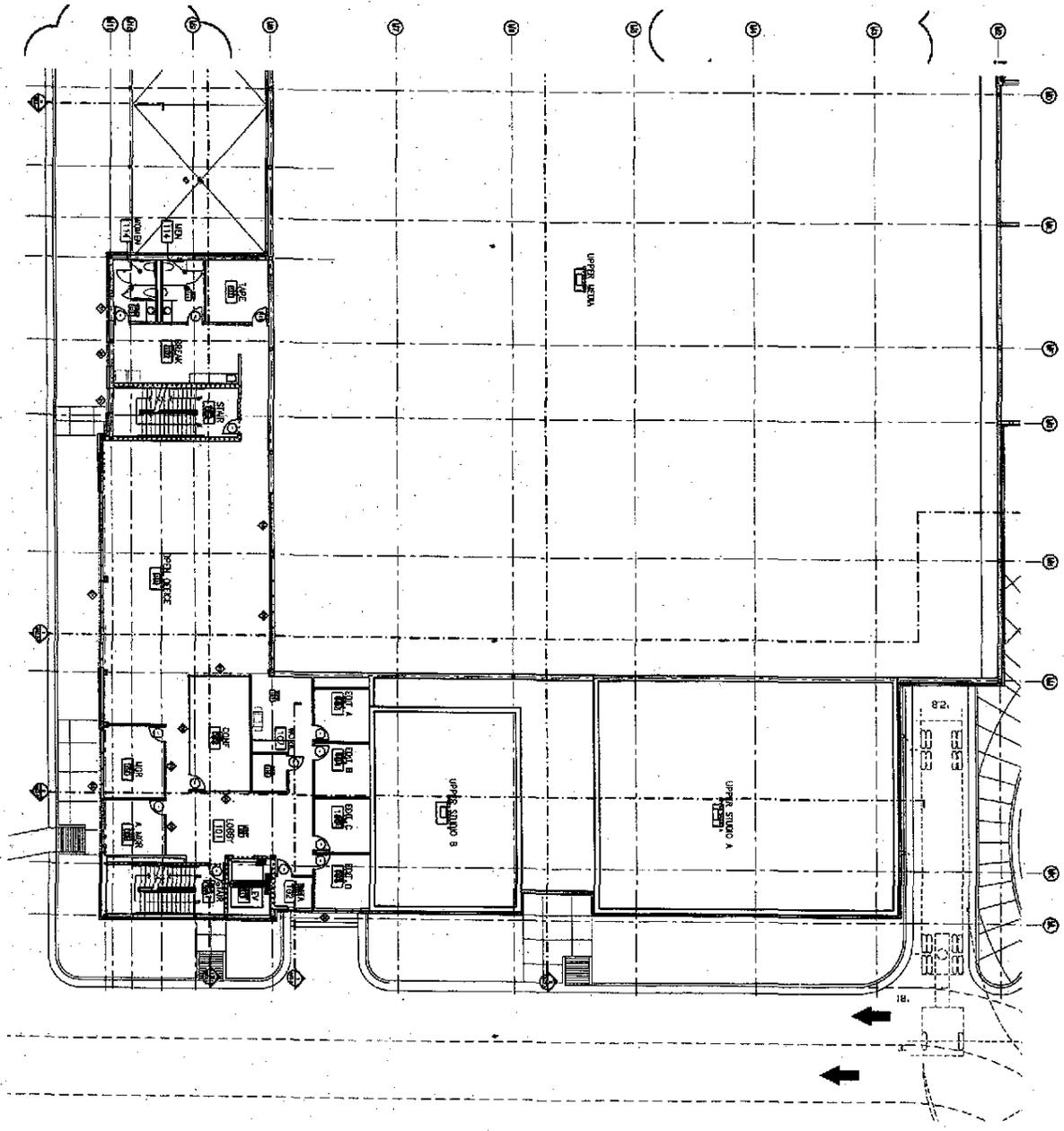
SECOND FLOOR PLAN
RENEWANCE HOTEL, CONVENTION CENTER, 180A
CENTER STRUCTURAL PACKAGE - SCHEDULE 22
DUTLER, ROSENBLUTH & PARTNERS, INC.

NO.	DATE	DESCRIPTION

AM1.5

C14

1 SECOND FLOOR PLAN



KEYNOTES

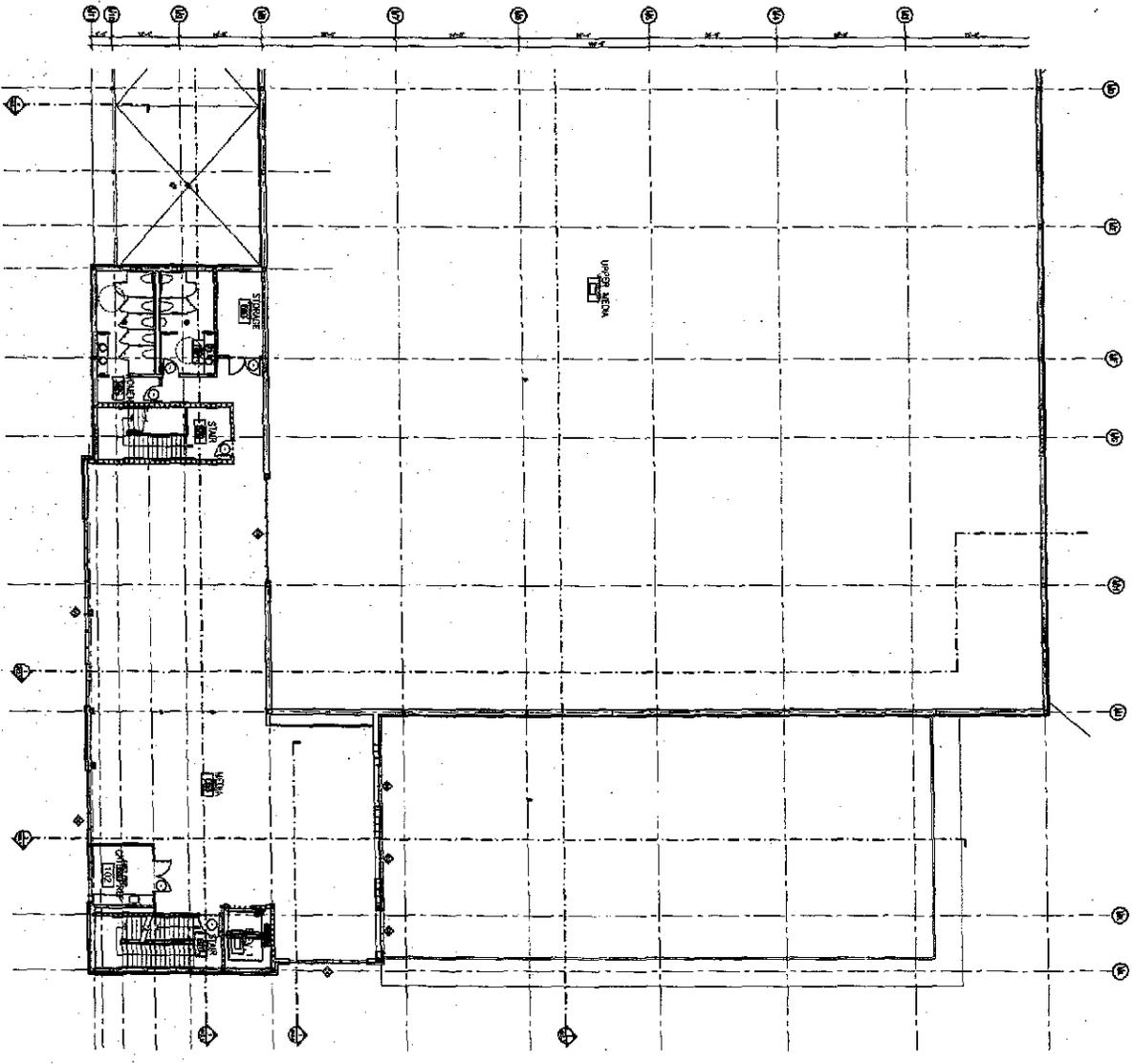
NOT FOR CONSTRUCTION

AM1.5

C14

SECOND FLOOR PLAN
 CONGRESS AND CONVENTION CENTER, WYOMING
 CENTER STRUCTURAL PACKAGE - REVISED 12/12
 BARTLE ROSSENBERG & PARTNERS, INC.

1 THIRD FLOOR PLAN



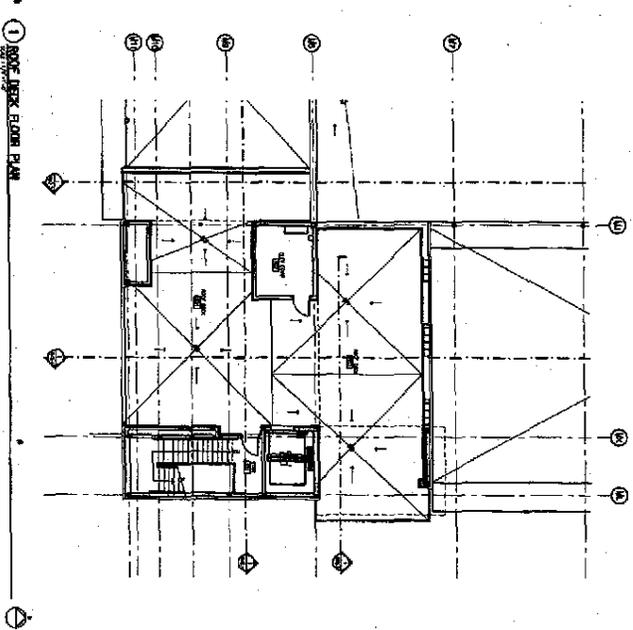
NOT FOR CONSTRUCTION

AM1.6 C15

THIRD FLOOR PLAN
 CONSULTING ARCHITECTS
 1000 SOUTH MAIN STREET, SUITE 100
 RICHMOND, VIRGINIA 23220
 BRILLER, ROSENBERG & PARTNERS, INC.
 1000 SOUTH MAIN STREET, SUITE 100
 RICHMOND, VIRGINIA 23220

SEALING

REVISIONS



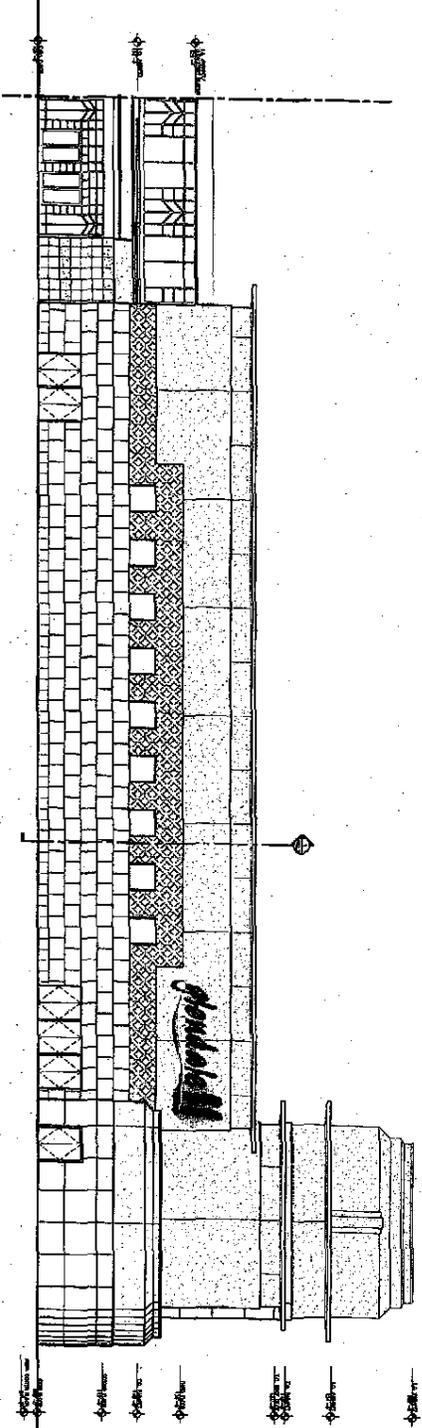
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AM17

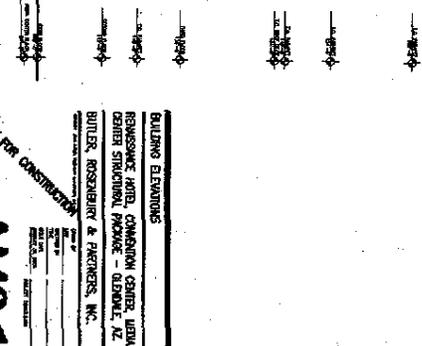
C16

ROOF DECK PLAN AND ELEVATED PLANS
REVISIONS AND CHANGE SHEET
OWNER: STANFORD PARKWAY
BUTLER, ROSENBLUM & PARTNERS, INC.

② WEST BUILDING ELEVATION



① EAST BUILDING ELEVATION

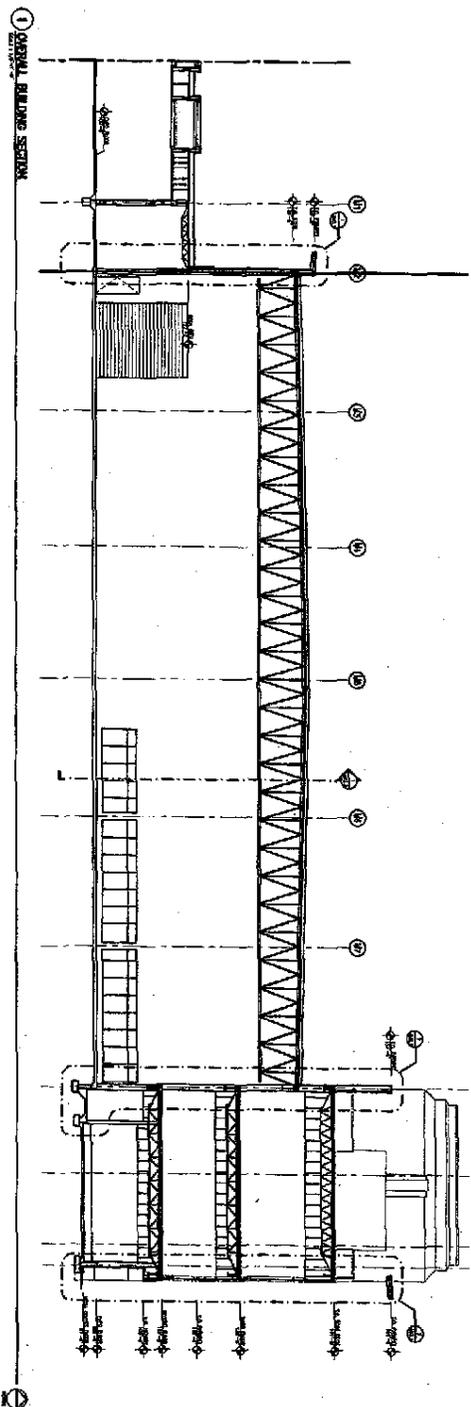


NOT FOR CONSTRUCTION

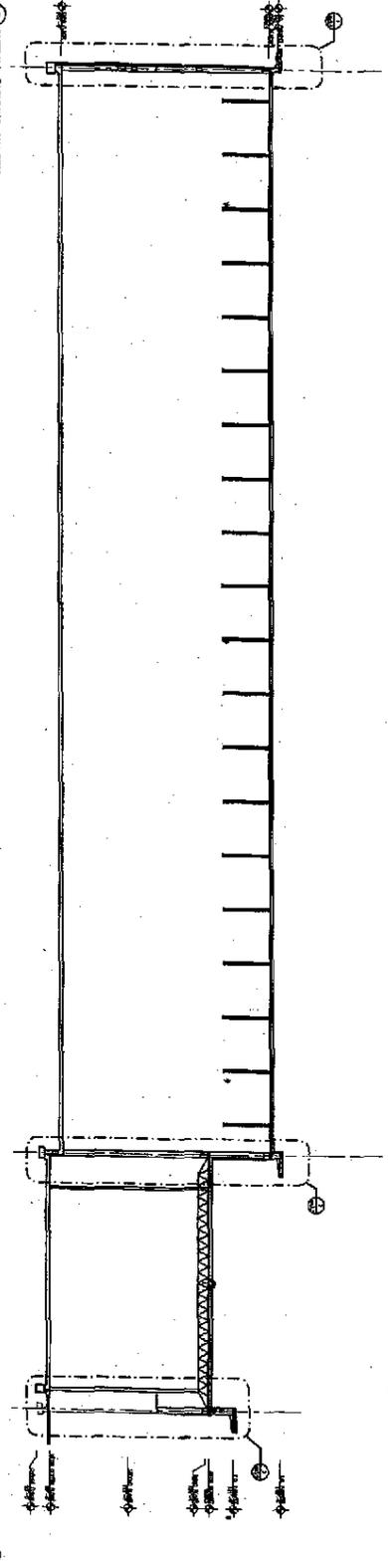
AM2.1

C17

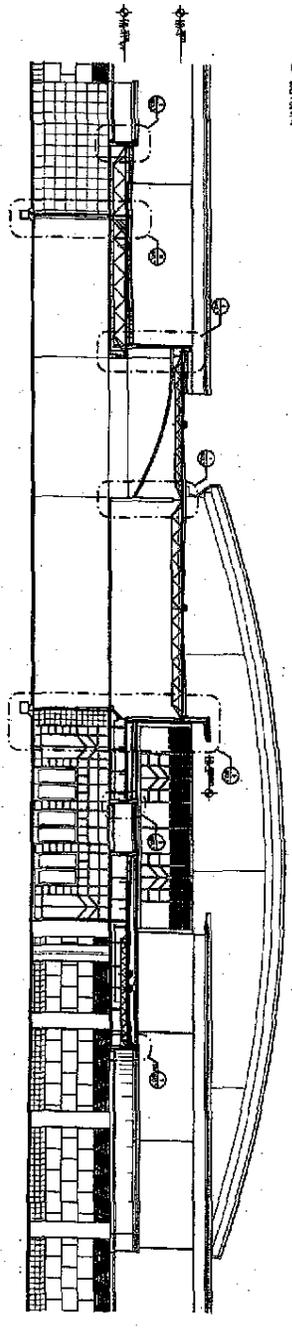
GALLERY ELEVATIONS
 SHANGHAI HOTEL, CHANGSHA CENTER, URBAN
 DESIGN CENTER, HUNAN PROVINCE, CHINA, P.R.
 BUTLER, ROSENBLUM & PARTNERS, INC.



① GENERAL BUILDING SECTION



② GENERAL BUILDING SECTION



③ GENERAL BUILDING SECTION

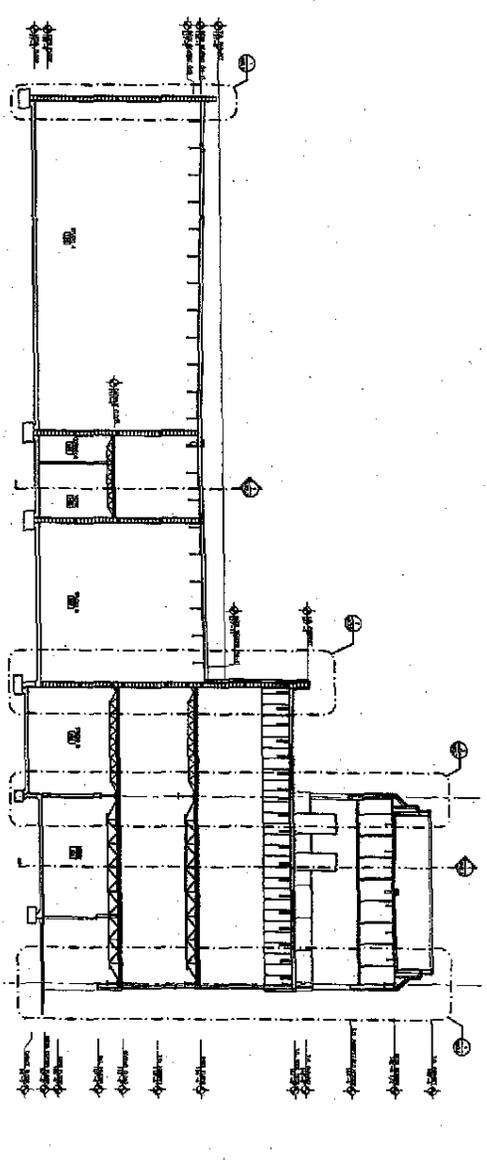
BUILDING SECTIONS
 BIRMINGHAM NORTH COMMERCE CENTER, NORTH
 CENTER STRUCTURAL PACKAGE - GENERAL 22
 BAIJER, INGERSOLL & PARTNERS, INC.

DATE: 11/11/03
 DRAWN BY: [unintelligible]
 CHECKED BY: [unintelligible]

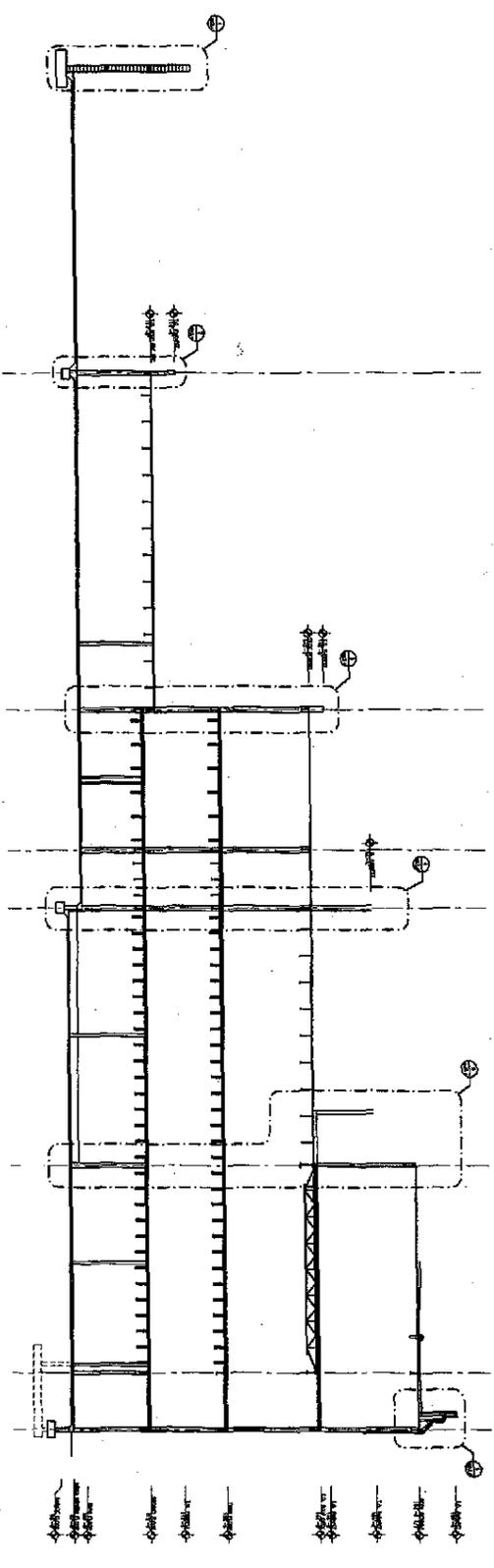
NOT FOR CONSTRUCTION

AM2.3
 C19

② OVERALL BUILDING SECTION



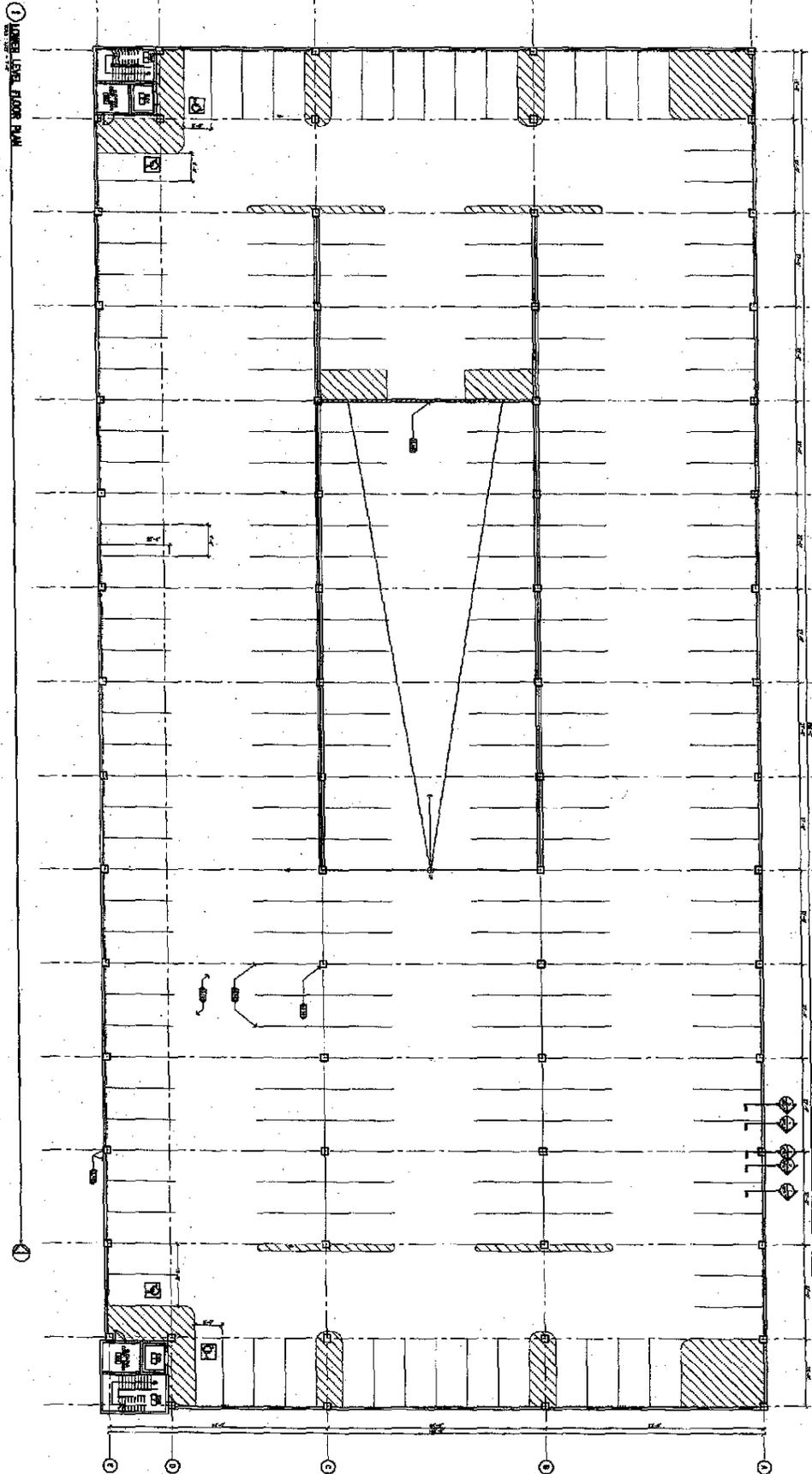
① OVERALL BUILDING SECTION



BUILDING SECTIONS
 CONGRESS HOTEL, CHANDLER CENTER, JAMA
 CEMETERY, ST. CHARLES, MISSOURI
 EARLE, ROSENBERG & PARTNERS, INC.
 ARCHITECTS
 1000 MARKET STREET, PHILADELPHIA, PA. 19102
 215-528-1200

NOT FOR CONSTRUCTION
AM2.4

C20



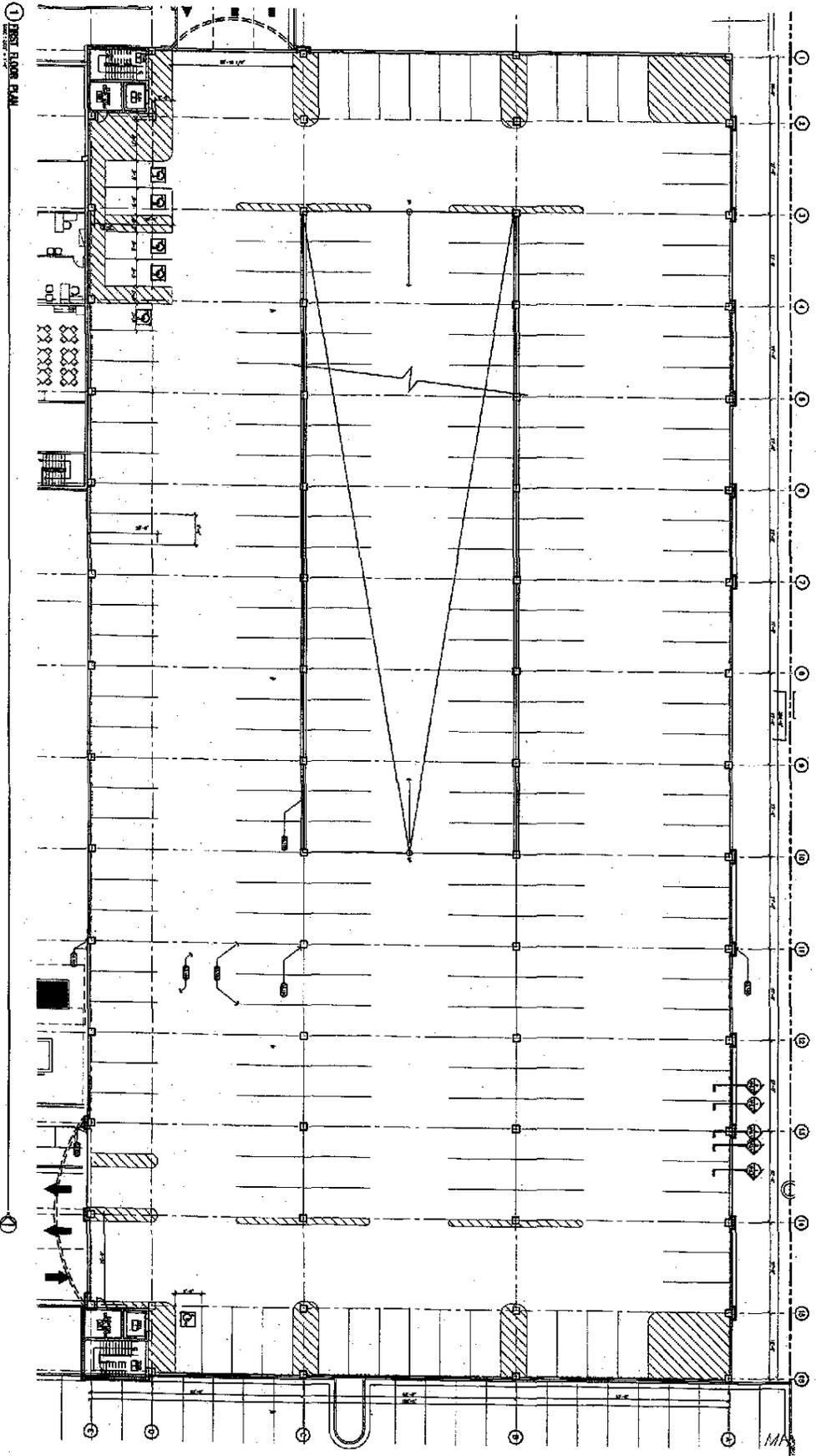
REMARKS
 1. SEE SHEET 10 FOR THE LOCATION OF THE RAMP.
 2. SEE SHEET 11 FOR THE LOCATION OF THE RAMP.
 3. SEE SHEET 12 FOR THE LOCATION OF THE RAMP.
 4. SEE SHEET 13 FOR THE LOCATION OF THE RAMP.

LOWER LEVEL FLOOR PLAN
 PARKING GARAGE - GLENDALE, ARIZONA
 BUTLER, ROSSIGNOL & PARTNERS, INC.
 ARCHITECTS
 1000 N. CENTRAL AVENUE
 SUITE 100
 GLENDALE, ARIZONA 85301
 DATE: 10/15/88
 DRAWN BY: J. B. BROWN
 CHECKED BY: J. B. BROWN

NOT FOR CONSTRUCTION

AP1:1

C21



① FIRST FLOOR PLAN

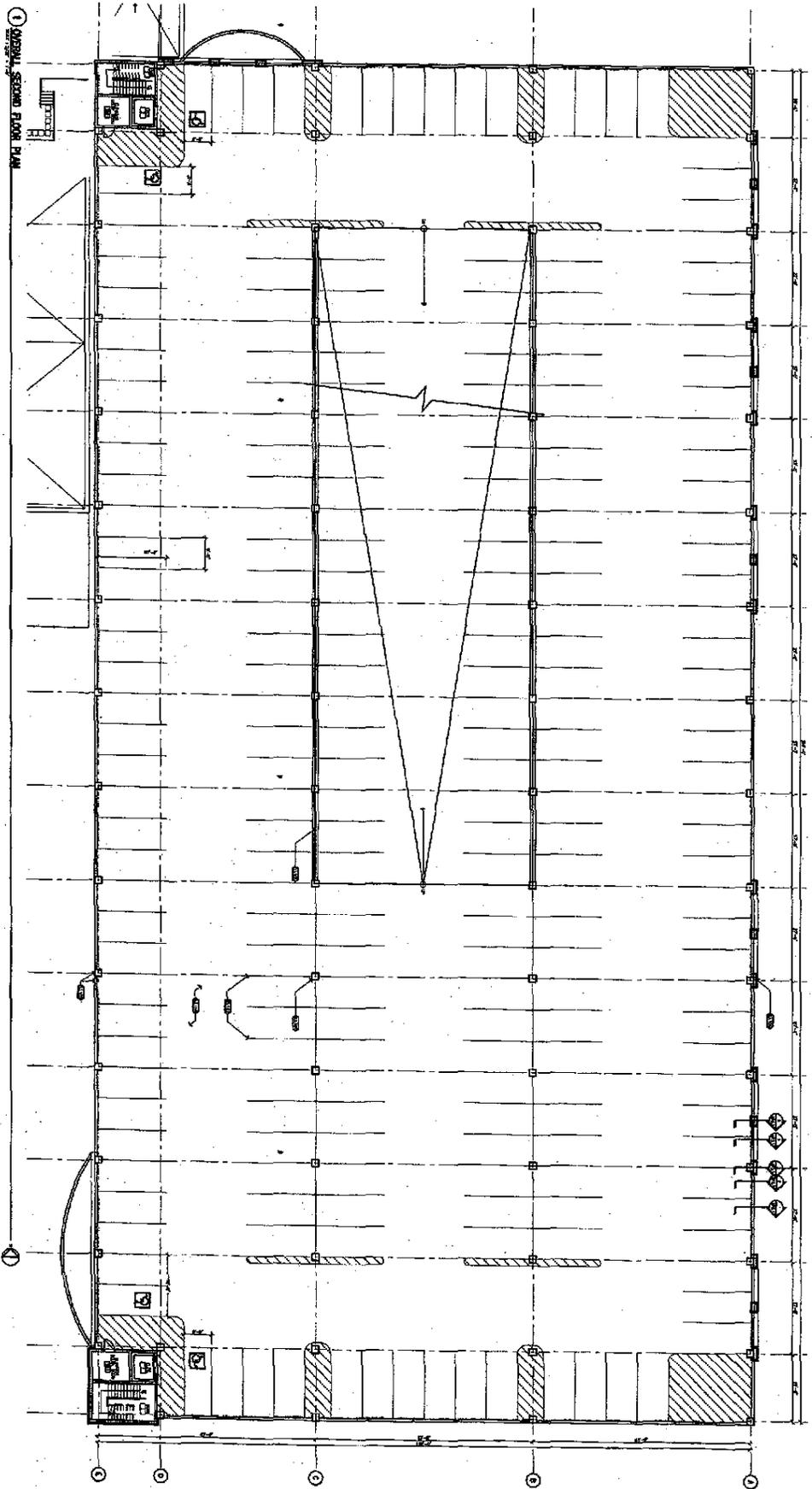
- LEGEND**
- ① FINISH FLOOR
 - ② FINISH FLOOR
 - ③ FINISH FLOOR
 - ④ FINISH FLOOR
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 - ⑥ FINISH FLOOR
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FIRST FLOOR PLAN
 PARKING GARAGE - GLENDALE, ARIZONA
 BUTLER ROSSIGNOL & PARTNERS, INC.
 ARCHITECTS

NOT FOR CONSTRUCTION

AP1.2

C-22



REMARKS
 1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
 2. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
 3. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
 4. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
 5. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.

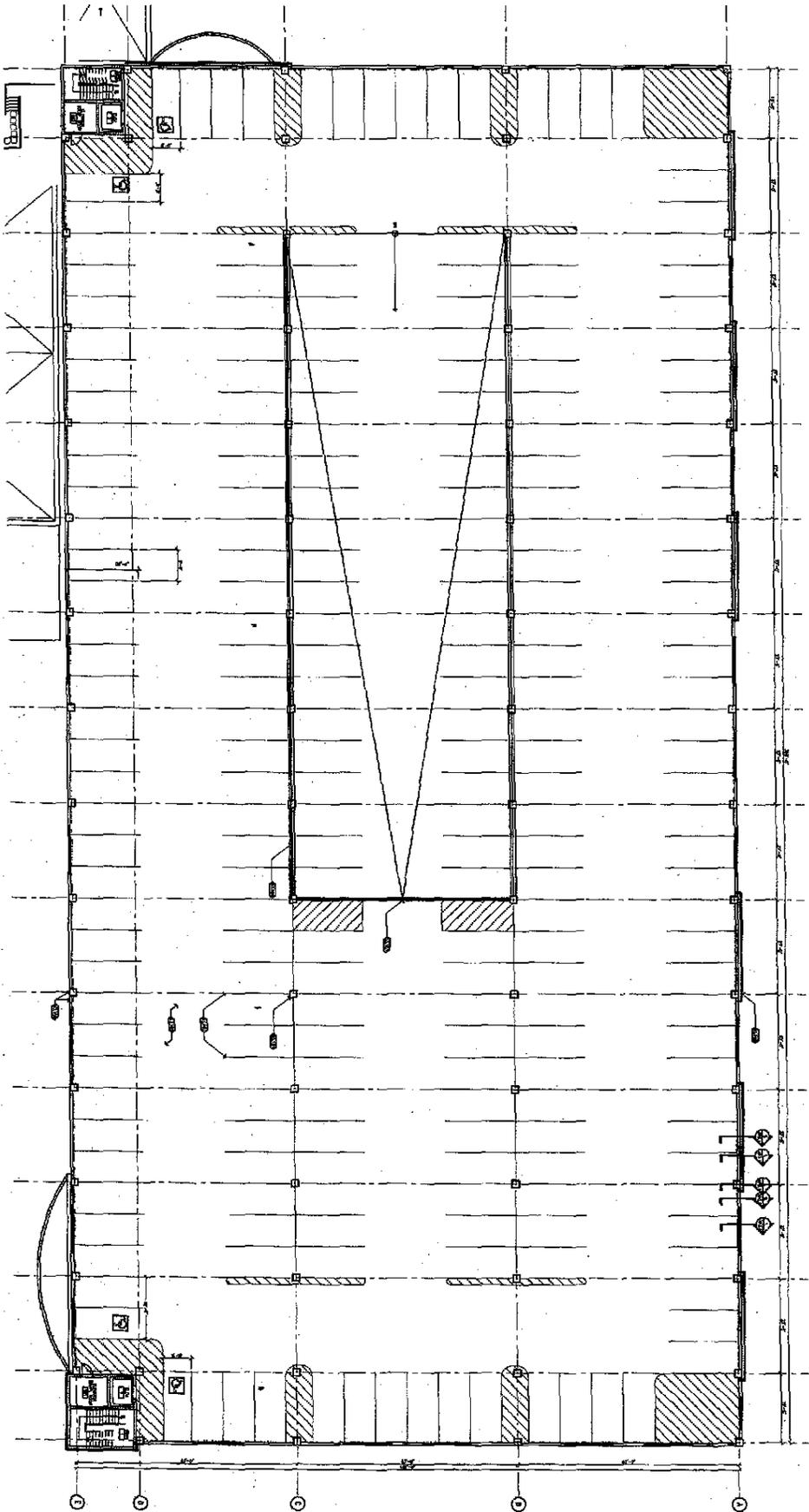
PARKING GARAGE - SECOND FLOOR PLAN
 PARKING GARAGE - GLENDALE, ARIZONA
 BUTLER, ROSENBERG & PARTNERS, INC.
 ARCHITECTS
 1000 N. CENTRAL AVENUE, SUITE 100
 GLENDALE, ARIZONA 85301
 PHONE: (602) 438-1111
 FAX: (602) 438-1112
 WWW: WWW.BR&P.COM

NOT FOR CONSTRUCTION

AP1.3

C23

① GENERAL THIRD FLOOR PLAN



REMARKS
 1. SEE GENERAL NOTES TO DRAWINGS FOR ALL NOTES.
 2. SEE GENERAL NOTES TO DRAWINGS FOR ALL NOTES.
 3. SEE GENERAL NOTES TO DRAWINGS FOR ALL NOTES.
 4. SEE GENERAL NOTES TO DRAWINGS FOR ALL NOTES.
 5. SEE GENERAL NOTES TO DRAWINGS FOR ALL NOTES.

THIRD FLOOR PLAN

PARKING GARAGE - GLENDALE, ARIZONA

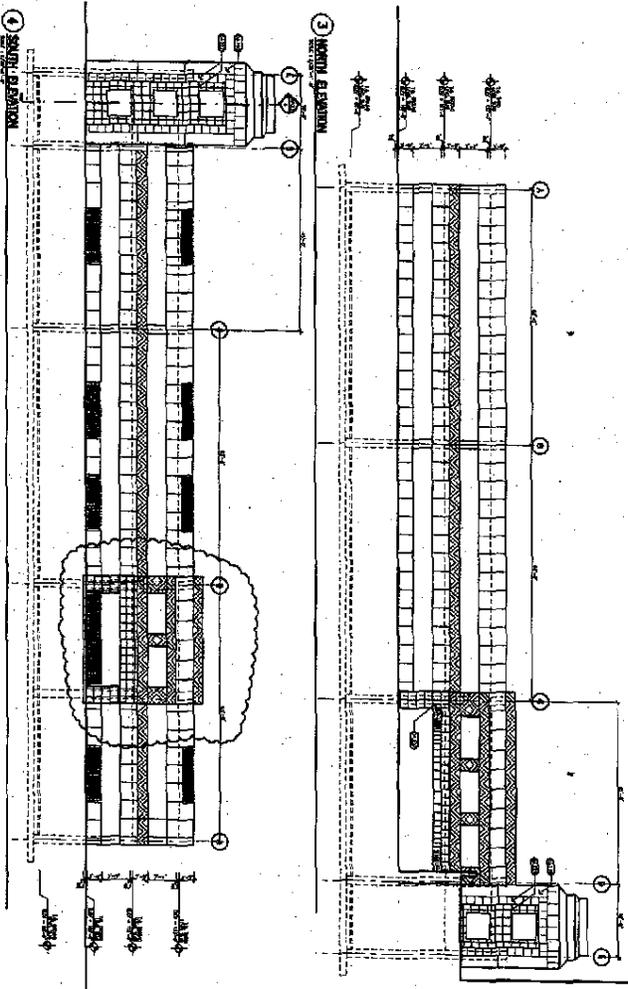
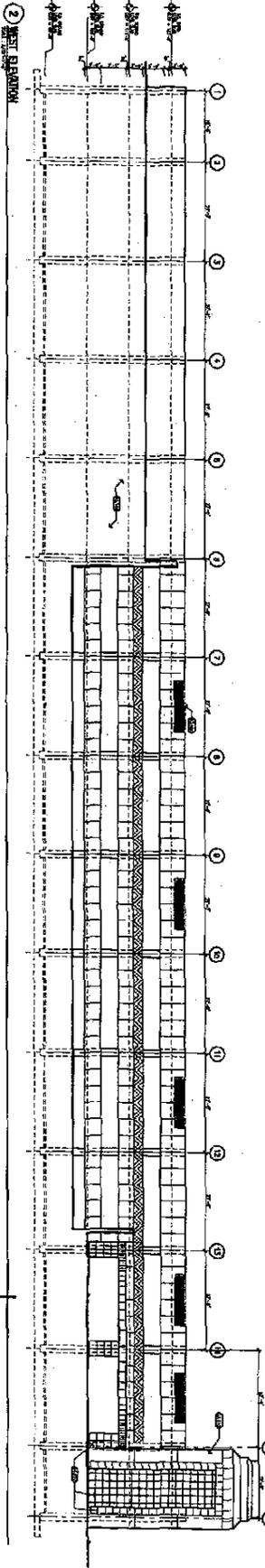
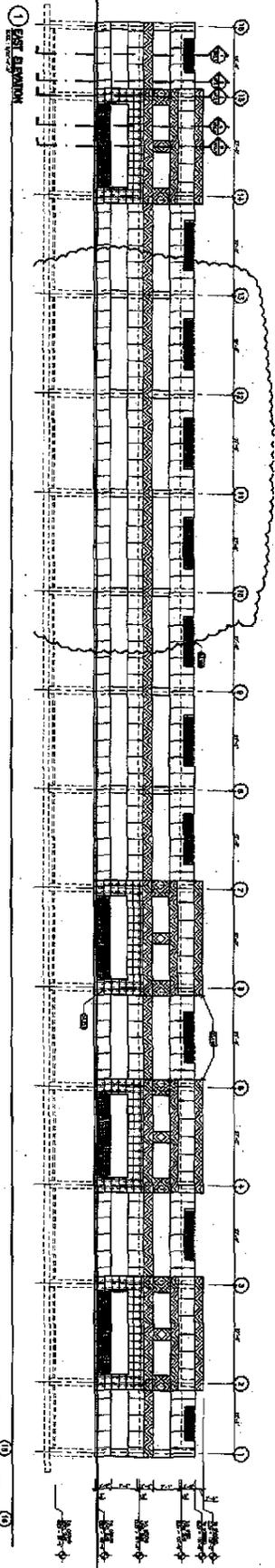
BUTLER, ROSENBLUTH & PARTNERS, INC.

DATE: 11/14/84

NOT FOR CONSTRUCTION

AP1.4

C24

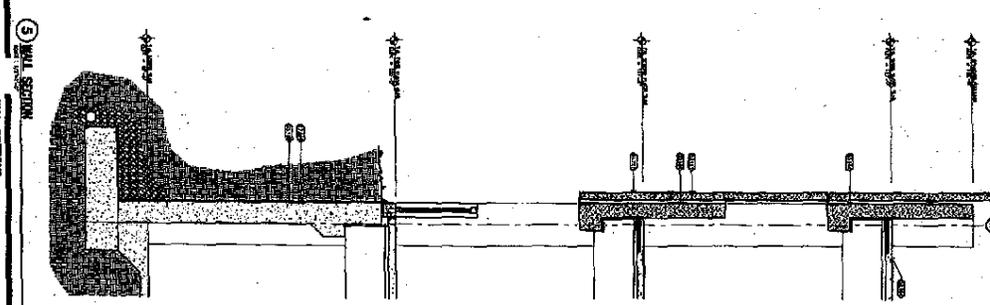
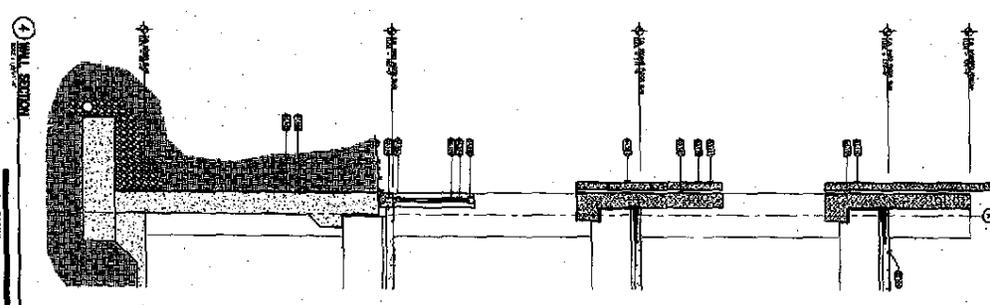
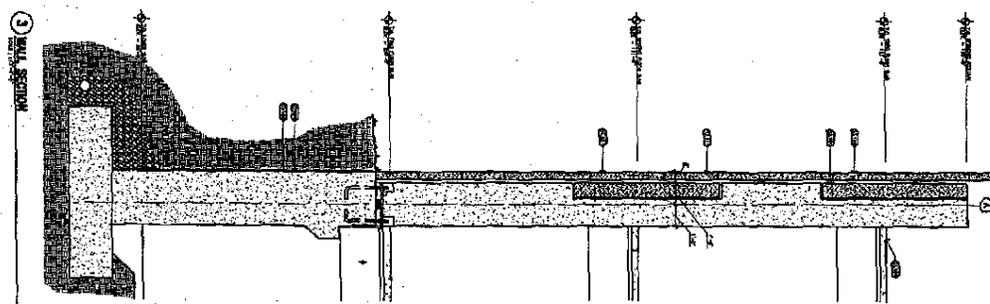
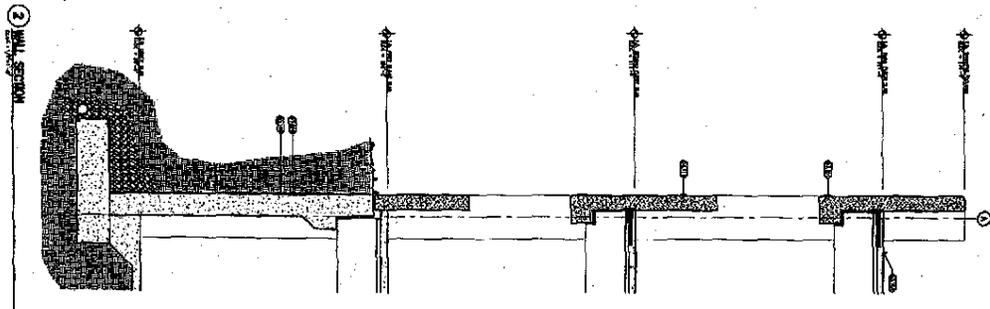
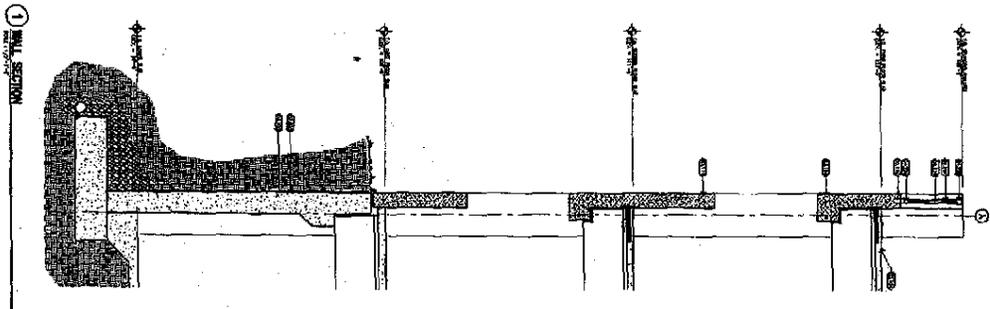


REVISIONS
 1. 11/15/00
 2. 11/15/00
 3. 11/15/00
 4. 11/15/00
 5. 11/15/00
 6. 11/15/00
 7. 11/15/00

CLEMENTS
 PARKING GARAGE - GLENDALE, ARIZONA

BULLER ROSSBURN & PARTNERS, INC.
 ARCHITECTS
 1000 N. CENTRAL AVENUE
 SUITE 100
 GLENDALE, ARIZONA 85301
 TEL: 602/441-1111
 FAX: 602/441-1112

NOT FOR CONSTRUCTION
AP2.1



NOTES

1. SEE PLAN FOR WALL LOCATION.
2. SEE PLAN FOR WALL LOCATION.
3. SEE PLAN FOR WALL LOCATION.
4. SEE PLAN FOR WALL LOCATION.
5. SEE PLAN FOR WALL LOCATION.

WALL SECTIONS
 PARKING GARAGE - GASHOLE, ARIZONA
 BUTLER ROSENKRANTZ & PARTNERS, INC.
 ARCHITECTS

NOT FOR CONSTRUCTION

AP3.1 C26

**EXHIBIT D
GMP SCHEDULE
(Cover Page)**

Exhibit D
Guaranteed Maximum Price Schedule
DRAFT

2/11/2006

Compilation Summary

	<u>Cost</u>
<u>Component Cost of Construction Services</u>	
Conference Center	\$22,911,573
Media Center	\$17,690,578
Parking Garage	\$12,979,672
Total Cost of Construction Services	\$53,581,823
<u>Component Totals</u>	
Conference Center	\$25,683,765
Media Center	\$19,067,089
Parking Garage	\$14,708,553
Sub Total	\$59,459,407
<u>Impact Fees</u>	
Conference Center	\$404,000
Media Center	\$257,000
Parking Garage	\$588,000
Sub Total	\$1,249,000
Unscheduled Fast Track Contingency 10%	\$5,358,182
Payment & Performance Bonds and Insurance	\$669,000
State Privilege Tax	\$2,821,083
GUARANTEED MAXIMUM PRICE	\$69,556,672

**Glendale, Arizona
Conference Center**

Project Budget
John Q. Hammons Industries

Description	Budget	Explanation
Cost of Construction Services		
Building Construction		
GENERAL CONDITIONS	See Below	
SITWORK	\$ 1,070,049	
CONCRETE	\$ 1,199,213	
MASONRY	\$ 517,920	
METALS	\$ 1,980,653	
WOOD & PLASTICS	\$ 912,862	
THERMAL & MOISTURE PROTECTION	\$ 1,259,344	
DOORS & WINDOWS	\$ 1,154,259	
FINISHES	\$ 3,118,364	
SPECIALTIES	\$ 69,484	
EQUIPMENT	\$ 11,717	
FIRE PROTECTION	\$ 423,941	
PLUMBING + HVAC	\$ 2,782,982	
ELECTRICAL	\$ 2,995,423	
Sub-Total	\$ 17,496,211	
General Conditions	\$ 874,811	
Contractor Contingency	\$ 918,551	
Sub-Total	\$ 19,289,573	
FF&E Services		
Exterior/Building	\$75,200	Allowance
Administration	\$176,300	Allowance
Banquet/Meeting/Preconvene	\$1,698,800	Allowance
Public Restrooms	\$10,000	Allowance
Kitchen	\$1,105,000	Allowance
Maintenance	\$61,000	Allowance
Other Back of House Areas	\$15,000	Allowance
Interior Building	\$68,700	Allowance
Miscellaneous	\$50,000	Allowance
House Keeping	\$212,000	Allowance
Warehouse/FF&E Install	\$150,000	Allowance
Sub-Total	\$3,622,000	
Total Cost of Construction of Services	\$22,911,573	
FEES		
General Contractor Fee	\$1,157,374	
Architect & Engineer Charges	\$981,272	
Development and Management Fee	\$633,546	
Sub-Total	\$2,772,193	
TOTAL COMPONENT COST	\$25,683,765	

Glendale, Arizona Parking Garage

Project Budget
John Q. Hammons Industries

Description	Budget	Explanation
BUILDING CONSTRUCTION		
GENERAL CONDITIONS	See Below	
SITWORK	\$ 754,295	
CONCRETE	\$ 7,629,737	
MASONRY	\$ 68,463	
METALS	\$ 183,812	
WOOD & PLASTICS	\$ 4,313	
THERMAL & MOISTURE PROTECTION	\$ 205,670	
DOORS & WINDOWS	\$ 4,951	
FINISHES	\$ 101,700	
SPECIALTIES	\$ 904	
EQUIPMENT	\$ 500,000	
FURNISHINGS	\$ -	
SPECIAL CONSTRUCTION	\$ -	
CONVEYING SYSTEMS	\$ 338,567	
FIRE PROTECTION	\$ 261,481	
PLUMBING + HVAC	\$ 574,039	
ELECTRICAL	\$ 800,917	
Sub-Total	\$11,428,849	
General Conditions	\$ 606,467	
Contractor Contingency	\$ 802,356	
Sub-Total	\$12,837,672	
FF&E		
Exterior/Building (signage)	\$82,000	Allowance
Misc	\$50,000	Allowance
Warehouse/FF&E Install	\$10,000	Allowance
Sub-Total	\$142,000	
Total Cost of Construction Services	\$12,979,672	
FEES		
General Contractor Fee	\$778,780	
Architect & Engineer Charges	\$602,975	
Development and Management Fee	\$347,125	
Sub-Total	\$1,728,881	
TOTAL COMPONENT COST	\$14,708,553	

**Glendale, Arizona
Media Center/Studio**

Project Budget
John Q. Hammons Industries

Description	Budget	Explanation
BUILDING CONSTRUCTION		
GENERAL CONDITIONS	See Below	
SITEWORK	\$ 849,166	
CONCRETE	\$ 951,666	
MASONRY	\$ 411,008	
METALS	\$ 1,571,197	
WOOD & PLASTICS	\$ 690,400	
THERMAL & MOISTURE PROTECTION	\$ 999,384	
DOORS & WINDOWS	\$ 915,991	
FINISHES	\$ 2,474,658	
SPECIALTIES	\$ 55,141	
EQUIPMENT	\$ 9,298	
FIRE PROTECTION	\$ 336,429	
PLUMBING + HVAC	\$ 2,208,506	
ELECTRICAL	\$ 2,667,011	
Sub-Total	\$ 14,139,855	
General Conditions	\$ 784,642	
Contractor Contingency	\$ 1,038,081	
Sub-Total	\$ 15,962,578	
FF&E		
Exterior/Building	\$53,000	Allowance
Administration	\$113,500	Allowance
Banquet/Meeting/Preconvene	\$1,103,000	Allowance
Public Restrooms	\$15,400	Allowance
Kitchen	\$20,000	Allowance
Laundry/Housekeeping	\$138,600	Allowance
Other Back of House Areas	\$17,900	Allowance
Elevators	\$10,000	Allowance
Interior Building	\$46,400	Allowance
Misc	\$50,000	Allowance
Warehouse/FF&E Install	\$160,000	Allowance
Sub-Total	\$1,728,000	
Total Cost of Construction Services	\$17,690,578	
FEES		
General Contractor Fee	\$1,061,435	
Architect & Engineer Charges	\$900,475	
Development and Management Fee	\$476,036	
Sub-Total	\$1,376,511	
TOTAL COMPONENT COST	\$19,067,089	

Exhibit D
Responsibility Matrix
Attachment

Project Responsibilities

This document is intended to clarify and define the responsibilities held by each party listed below in the construction of John Q. Hammons projects. This list does not include all of the items and services which may be required for the completion of each project, but it will assist in clarifying areas of responsibility.

This table shows the team members involved and the abbreviations used for them in the following pages:

A	Architect/Engineer
GC	General Contractor
I	Interior Designer
IN	Installation Contractor for FF&E
JID	JQH Interior Design
JO	JQH Owner Operations
JPA	JQH Purchasing Agent for FF&E
JQH	John Q. Hammons In-House Personnel
JS	JQH Owner Storage
LC	Landscape Consultant
S	Systems Consultant
V	Vendor

Standard Conditions

JQH will arrange for the pre-paid freight and delivery of owner supplied items to both the job site or to the JQH owner storage facility, whichever is appropriate. Owner-contracted storage facilities will deliver items to the job site upon the request of the general contractor. If any such JQH furnished items are damaged, defective or missing upon arrival at the job site, after noting any such damage with the carrier, the GC is to notify the JQH Purchasing Department for the return and replacement of these items.

The General Contractor shall furnish the JQH Company with a schedule of dates designating when JQH furnished items will be required on the job site at the onset of the project. The GC will be responsible for the quantity verification on owner supplied items, i.e. wall covering, carpet, accessories, etc. The GC shall receive (except where noted otherwise in the following document), unload, store, protect and safeguard these items upon their arrival. The removal of all crating and packing materials from all items installed by the GC (including that of owner supplied items) is to be performed by the GC. The GC shall be responsible for cleaning the commercial areas and guest rooms, including the removal of paint spatters, caulking, tape, dust, etc. The GC shall warranty all items furnished under his scope of work as set forth in the AIA contract document.

The GC shall be responsible for the coordination of all work as it pertains to the site, structure, materials, furnishings and finishes. This includes the scheduling and coordination of deliveries, installation of materials and work performed by outside sub-contractors. The coordination also applies to all owner supplied items, except where noted otherwise in the following document or as directed by a JQH company representative.

Clarifications

The following notes will define and clarify certain terms or categories listed in the following document. Items listed here are marked with an asterisk. If further explanation is needed, please contact JQH.

- 1.B) Accessories - Guest Room Baths
Robe Hooks, Towel Racks & Bars, Tissue Holders, Toilet Paper Rollers, Grab Bars (Including Handicap), Shower Rods, Clothes Lines, Etc.
- 8.A) Doors - Electronic Locks
GC to purchase all electronic locks: both for guestrooms and locations that interface w/ other hardware, such as exterior entries.
- 8.B) Doors - Electronic Locks
Front Desk Equipment, Software and Training
- 13.C) Flooring - Hard Surface
Under floor surfaces are to be provided by the GC with suitable recesses for all applied finish materials. Wear-edge strips, thresholds, tack strips, adhesives, etc., are to be furnished and installed by the GC.
- 14.C) This Section Deleted
- 14.G) Foodservice - Buyout Equipment
Covers all foodservice equipment as specified by the kitchen equipment vendor and as noted on the foodservice drawings.
- 15) Furnishings
Includes but is not limited to: Furniture, Headboards, Pictures, Tables, Chairs, Pool Furniture, Bedding, Piano, Guest Room Refrigerators & Microwaves, Administration Desks & File Cabinets.
- 18.B) Intercom, Paging and House Sound Systems - Conduit
GC is to furnish necessary raceways, access boxes, speaker boxes, dedicated lines and conduits. GC to provide power to complete the system and coordinate with vendor/installer.
- 22.B) Laundry - Rough-Ins & Final Connections
GC to furnish necessary raceways, access boxes, conduits. GC to furnish and install dryer and ironer exhaust systems and the poured in place isolation pad for the washers, and make all the final connections using the required labor and materials.
- 24.A) Lighting - Decorative Fixed
Consult light fixture schedule for fixtures furnished by owner. All others are furnished by GC. Owner furnished fixtures received by JS. GC furnished fixtures received by GC.
- 29.A) Millwork - General
Includes: Trims, Moldings, Facings, Bases, Doors, Cornice Moldings, Chair Rails, Columns, Pilasters, Decorative Appliques, Wood Handrails, Etc.
- 29.B) Millwork - General Cabinetry
Includes: administrative built-in work surfaces and cabinets, public phone compartments and partitions, restaurant counters and waitress stations, hostess and maitre'd stands, complimentary food buffets, beverage counters, built-in cocktail lounge front and back bar cabinetry, wine display racks, boardroom and/or business center cabinetry, maid/linen storage shelving, glass racks, sneeze guards, etc.
- 33) Satellite TV & Computer System Reception Dishes
GC is to furnish and install any concrete pads and footings, security fences, support framing/blocking, power as needed, conduit from dishes to head end areas within the building, and to supervise and coordinate with V/IN on final hookup.
- 38.D) This Section Deleted

AREAS OF RESPONSIBILITY

Notes

- 1) **ACCESSORIES**
 - A. Commercial Restrooms (Coat Hooks, Hand Dryers, Receptacles, etc.)
 - B. Ash/Trash Urns - Fixed
 - C. Ash/Trash Urns - Moveable
- 2) **AWNINGS**
- 3) **AIR CURTAIN**
- 4) **BATHROOM HARDWARE (Faucets, Trim Pieces, Fittings)**
 - A. Commercial Restrooms
- 5) **CEILING**
 - A. Surface Finishes
 - B. Acoustic Tile
 - C. Coffers/Decorative Trims
- 7) **COMPUTER SYSTEMS**
 - A. P.O.S., Accounting/Business & Property Management Systems
 - B. Time Clock
 - C. Conduit/Backboxes
- 6) **CORNER GUARDS**
 - A. Stainless Steel
 - * B. Plastic
- 8) **DOORS, FRAMES, HARDWARE, AND KICKPLATES**
 - * A. Electronic Door Locks - Hardware per Door Schedule
 - * B. Electronic Door Lock - Front Desk Equipment, Software & Training
- 9) **ELEVATORS**
 - A. Equipment
 - B. Interiors
- 10) **EMERGENCY POWER GENERATORS**
- 11) **EXTERIOR LANDSCAPING**
 - A. Planting, Irrigation & Accent Lighting
 - B. Pavers
- 12) **EXTERIOR SIGNAGE**
 - A. Building Identification & Freestanding Signs (Incl. Foundations)
 - B. Traffic Signs, Parking Signs & Striping
 - C. Power, Wiring, Structural Supports, Blocking & Coordination with Installer
- 13) **FLOORING**
 - A. Carpet and Pad
 - B. Carpet Base
 - * C. Hard Surface Flooring
 - D. Moveable Flooring (Area Rugs, Portable Dance Floors, Etc.)
 - E. Vinyl Base
- 14) **FOODSERVICE**
 - A. Walk-in Coolers/Freezers/Stainless Steel Equipment
 - B. Hoods
 - C. DELETE THIS LINE ITEM
 - D. Ice Machines (Including Tower Vending Area Machines)
 - E. Liquor & Soda Equipment
 - F. Vending Machines
 - * G. Buyout Equipment
- 15) **FURNISHINGS**
- 17) **HOUSEKEEPING EQUIPMENT**
- 18) **INTERCOM, PAGING, AND HOUSE SOUND SYSTEMS**
 - A. Equipment (Amplifiers, Speakers, Microphones, Rack, Etc.)
 - * B. Conduit, Raceways, Access & Speaker Boxes, Dedicated Lines
 - C. Wiring

Conf. Center Only

Conf. Center Only

BUDGET CATEGORY	ESTIMATED BY	DESIGNED & SPECIFIED BY	CONTRACT DOCUMENTS	PURCHASED BY	RECEIVED BY	INSTALLED BY
C	GC	A	A	GC	GC	GC
C	GC	I	A	GC	GC	GC
FFE	JQH	I	I	JPA	JS/IN	IN
C	GC	I/A	A	GC	GC	GC
C	GC	A	A	GC	GC	GC
C	GC	I/JID	A	GC	GC	GC
C	GC	I/JID	A	GC	GC	GC
C	GC	I/JID	A	GC	GC	GC
FFE	JQH	S	A	JPA	V	V
FFE	JQH	V	A	JPA	V	V
C	GC	A	A	GC	GC	GC
C	GC	A	A	GC	GC	GC
C	GC	A/I	A	GC	GC	GC
GC	GC	JQH	A	GC	GC	GC
FF&E	JQH	JQH	A	JPA	JQH	JQH
C	GC	A	A	GC	GC	GC
C	GC	I	A	GC	GC	GC
C	GC	A	A	GC	GC	GC
C	GC	LC	LC	GC	GC	GC
C	GC	A	A	GC	GC	GC
FFE	JQH	V	V	JPA	V	V
C	GC	A	A	GC	GC	GC
C	GC	A	A	GC	GC	GC
FFE	JQH	I/JID	I/JID/A	JPA	GC	GC
FFE	JQH	I/JID	I/JID/A	JPA	GC	GC
C	GC	I/JID	I/JID/A	GC	GC	GC
FFE	JQH	I	I	JPA	JS	IN
C	GC	I	I/A	GC	GC	GC
FFE	JQH	S	S/A	JPA	V	V
FFE	JQH	S	S/A	JPA	GC	GC
FFE	JQH	V	A	JPA	JA	GC
FFE	JQH	V	A	JPA	V	V
FFE	JQH	V	A	JPA	V	V
FFE	JQH	S	S/A	JPA	V	V
FFE	JQH	I/JID	I/JID/A	JPA	JS	IN
FFE	JQH	V	V	JPA	JS	IN
GC	GC	S	A	GC	GC	GC
C	GC	S	A	GC	GC	GC
GC	GC	S	S	GC	GC	GC

19) INTERIOR LANDSCAPING

- A. Plants
- B. Plumbing, Watering Bibbs, Etc.
- C. Built-in Fountains, Rock Walls, Etc.
- D. Planter Boxes

C	GC	V/I	V/I	GC	V	V
C	GC	A	A	GC	GC	GC
C	GC	A	A	GC	GC	GC
C	GC	A	A	GC	GC	GC

20) INTERIOR SIGNAGE

- A. Interior Signage
- B. Kiosk (As Necessary)
- C. Prestige Board

FFE	JQH	I	I	JPA	V	V
FFE	JQH	I	I	JPA	IN	IN
FFE	JQH	I	I	JPA	GC	GC

21) INVENTORY (Operating Inventory & Administrative Smallwares)

Conf. Center Only

FFE	JQH	JO	I	JPA	V	V
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23) LIFE SAFETY SYSTEMS

- A. Fire Sprinklers, Fire Pump, Hydrants, Etc.
- B. Hoses, Alarms, Detectors, Extinguishers
- C. Smoke Heat Detectors

C	GC	A	A	GC	GC	GC
C	GC	A	A	GC	GC	GC
C	GC	A	A	GC	GC	GC

24) LIGHTING

- * A. Decorative Fixtures - Fixed
- B. Decorative Fixtures - Plug-in
- C. General Lighting
- D. Conduit, Wiring and Dimming Systems

FFE	JQH	I/JID	A	JPA	GC	GC
FFE	JQH	I/JID	I/JID	JPA	GC	IN
C	GC	A	A	GC	GC	GC
C	GC	A	A	GC	GC	GC

25) MAINTENANCE SHOP EQUIPMENT (Shop Tools, Tractors, Grounds Equip., Etc.)

FFE	JQH	JQH	V	JPA	JS	IN
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26) MEETING ROOM EQUIPMENT

- A. Recessed Projection Screens
- B. Audio/Visual Cabinet

Conf. Center Only

GC	GC	V	A	GC	GC	GC
FFE	JQH	A	A	JPA	GC	GC

27) METAL LOCKERS AND BENCHES

C	GC	A	A	GC	GC	GC
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28) METAL SHELVING

FFE	JQH	A	A	JPA	JS/GC	IN
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29) MILLWORK

- * A. General
- * B. Cabinetry
- C. Maintenance Shop Cabinetry
- D. Marble Finishes (Tops, Wall Caps & Finishes, Column Details, Etc.)

C	GC	I/A	A	GC	GC	GC
C	GC	I	A	GC	GC	GC
C	GC	A	A	GC	GC	GC
C	GC	I/JID	A	GC	GC	GC

Millwork Continued

- A. Vanities and Skirts (Commercial Restrooms)
- B. Back of House Serv. Corr. & Storeroom Cabinetry, Shelving, Counters

C	GC	I	A	GC	GC	GC
C	GC	A	A	GC	GC	GC

31) RAILINGS AND HAND RAILS (Incl. Foot Railings)

- A. Commercial Areas
- B. Exteriors (Patio, Walkway, Etc.)

C	GC	A	A	GC	GC	GC
C	GC	A	A	GC	GC	GC

32) RECREATION FACILITIES

- A. Pool/Sauna/Whirlpool
- B. Exercise Equipment
- C. Activity Court (Incl. Permanently Attached Equipment, Sleeves, & Tie Downs)

C	GC	A	A	GC	GC	GC
FFE	JQH	S	S	JPA	JS	IN
C	GC	A	A	GC	GC	GC

33) SATELLITE TV & COMPUTER SYSTEM RECEPTION DISHES

- A. Equipment
- B. Conduit
- C. Wiring & Extra Support

Conf. Center Only

FFE	JQH	S	A	JPA	V	V
C	GC	S	A	GC	GC	GC
FFE	JQH	S	S	JPA	V	V

34) SECURITY SYSTEM

- A. Equipment (Cameras, Monitors, Relays, Etc.)
- B. Conduit
- C. Wiring

GC	GC	S	S	GC	GC	GC
C	GC	A	A	GC	GC	GC
GC	GC	S	S	GC	GC	GC

35) TELEPHONE SYSTEM

- A. Equipment & Wiring
- B. Conduit, Raceways, Access Boxes
- C. Public Telephones
- D. Recessed Pay Phone Enclosure Boxes

FFE	JQH	S	A	JPA	V	V
C	GC	S	A	GC	GC	GC
FFE	JQH	S	A	JPA	V	V
FFE	JQH	S	A	JPA	GC	GC

36) TELEVISION SYSTEM

- A. Equipment (Amplifier, Wiring, Splitter System, Etc.)
- B. Conduit
- C. TVs, VCPs, Etc.
- D. TV Wall Brackets

Conf. Center Only

FFE	JQH	S	A	JPA	V	V
C	GC	S	A	GC	GC	GC

Conf. Center Only

FFE	JQH	S	A	JPA	JS	IN
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Conf. Center Only

FFE	JQH	S	A	JPA	GC	GC
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38) WALLS

- A. Surfaces (Panelings, Marble, Tile, Paints, Sheet Mirrors)
- B. Wallcoverings (Vinyl)
- C. Blocking
- D. Movable Partitions
- E. Base

C	GC	A/I	A	GC	GC	GC
FFE	JQH	I/JID	A	JPA	GC	GC
C	GC	A	A	GC	GC	GC
GC	GC	JQH	A	GC	GC	GC
C	GC	A	A	GC	GC	GC

39) WASTE RECEPTACLE (Rough-ins By GC)

Conf. Center Only

FFE	JQH	JPA	A	JQH	V	V
-----	-----	-----	---	-----	---	---

40) WATER SOFTENER

C	GC	A	A	GC	GC	GC
---	----	---	---	----	----	----

42) WINDOW COVERINGS

FFE	JQH	I/JID	A	JPA	JS	V
-----	-----	-------	---	-----	----	---

43) WINDOW SILLS

C	GC	I/JID	A	GC	GC	GC
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BUDGET CATEGORIES

- C BASIC CONSTRUCTION
- FFE FURNITURE, FIXTURES, AND EQUIPMENT
- OP OPERATING SUPPLIES & INVENTORIES

TEAM MEMBERS

- A ARCHITECT/ENGINEER
- GC GENERAL CONTRACTOR
- I INTERIOR DESIGNER
- IN INSTALLATION CONTRACTOR FOR FF&E
- JID JQH - INTERIOR DESIGN
- JO JQH OWNER OPERATIONS
- JPA JQH PURCHASING AGENT FOR FF&E
- JQH JQH IN-HOUSE PERSONNEL
- JS JQH OWNER STORAGE
- LC LANDSCAPE CONSULTANT
- S SYSTEMS CONSULTANT
- V VENDOR

EXHIBIT E

DESIGN/BUILDER'S INSURANCE REQUIREMENTS

The Design/Builder shall, as a material obligation to Owner and a condition precedent to any payment otherwise due to Design/Builder, furnish and maintain, and cause its Subcontractors to furnish and maintain, insurance in accordance with the following provisions:

- A. The Design/Builder shall maintain without interruption, from the date of commencement of the Work until the later of: (i) the date of Final Completion, (ii) the date of final payment, or (iii) the date until which this Agreement requires any coverage to be maintained after final payment, policies of commercial general liability, commercial auto, umbrella/excess, workers compensation and employers liability insurance, providing the following coverages, limits and endorsements:
1. **Commercial General Liability Insurance**, written on an occurrence basis, on ISO form CG 001 or its equivalent, providing coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, the hazards commonly referred to as XCU, and products and completed operations, with a combined single limit of liability of not less than five million dollars (\$5,000,000.00) for each occurrence applicable to the Work, and an annual aggregate limit of liability of not less than ten million dollars (\$10,000,000.00) applicable solely to the Work, and meeting all other requirements of this Exhibit. The general liability insurance may be accomplished with a combination of a general liability and an excess/umbrella liability policy. Each general liability policy shall be endorsed or written to: (a) include the per project aggregate endorsement; (b) name as additional insureds the following: the City of Glendale and its employees, representatives and agents (collectively, the "Additional Insureds"); (c) stipulate that the insurance afforded by the policies furnished by Design/Builder shall be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Additional Insureds, or their agents, officials or employees shall be excess and not contributory to the liability insurance furnished by Design/Builder and by its Subcontractors; (d) includes a severability of interest clause; and (e) waive all rights of recovery against the Additional Insureds.
 2. **Workers' Compensation Insurance**, meeting all Arizona statutory requirements, and **Employers' Liability Insurance**, with limits of at least one million dollars (\$1,000,000.00) per accident or disease per employee, both policies endorsed to waive subrogation against the Additional Insureds. Design/Builder shall provide, at the Design/Builder's expense, Voluntary Compensation insurance for the protection of employees engaged in the Work who are exempt from the coverage provided under the Workers' Compensation statutes with coverage equivalent or better than the coverage required in the preceding sentence, for the duration of the project.
 3. **Auto Liability Insurance**, with minimum combined single limits of one million dollars (\$1,000,000.00) per occurrence for bodily injury and property damage. The policy shall include a duty to defend and cover all owned, non-owned, leased, hired, assigned or borrowed vehicles. The policy shall be endorsed to name the Additional Insureds as such, stipulate that any insurance carried by the Additional Insureds shall be excess and not contributory, and to waive subrogation against the Additional Insureds.
 4. **Equipment Property Insurance**. The Design/Builder shall secure, pay for, and maintain all-risk insurance as necessary to protect Owner against loss of owned, non-owned, rented or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by Design/Builder and any construction material in transit or stored in any location other than the Site. The policy shall have a waiver of subrogation in favor of the Additional Insureds.
 5. **Waiver of Subrogation**. Design/Builder hereby waives, and shall require each of its Subcontractors and Sub-subcontractors to waive, all rights of subrogation against the Additional Insureds to the extent of all losses or damages covered by any policy of insurance.

7. **Term of Coverage.**

1. The products and completed operations liability coverage required by Subparagraph (A)(1) shall extend for a period of not less than five (5) years after the earlier of (a) Final Payment for the Work, or (b) the termination of the Agreement (the "Completed Operations Term"). If at any time during the Completed Operations Term the Design/Builder cannot obtain equivalent coverage by replacement or renewal, Design/Builder shall acquire a tail policy prior to expiration of the existing policy that will extend coverage until the end of the Completed Operations Term. Design/Builder will furnish certificates of insurance and other evidence that Owner may reasonably require during the Completed Operations Term to establish compliance with the requirements of this paragraph.
2. All other policies of insurance shall be maintained continuously in force from commencement of the Work until the date of Final Payment.

- B. Subcontractor and Sub-subcontractor Insurance Requirements.** Design/Builder shall require all of Design/Builder's Subcontractors and Sub-subcontractors, as a condition of working on the Project, and of receiving payment, to: (1) purchase and maintain Commercial General Liability, Workers' Compensation and Employer's Liability, and Automotive insurance policies, with the same coverages, endorsements, terms of coverage and other provisions as are required of Design/Builder under Subparagraphs A(1), (2), (3), (4), (5), (6) and (7) above, and otherwise in compliance with this **Exhibit (EXCEPT THAT** the combined coverage limits of the general liability insurance to be furnished by Sub-subcontractor shall be one million dollars (\$1,000,000.00) per occurrence, and two million dollars (\$2,000,000.00) as the annual aggregate limit); and (2) timely furnish to Owner proper certificates, endorsements, copies of declarations pages, and other documents necessary to establish the Subcontractor's compliance with this **Exhibit**. The Sub-subcontractor's general liability policy shall also be endorsed to provide the policy shall be primary insurance, the general liability insurance furnished by Design/Builder shall be the secondary, and any insurance carried by the Additional Insureds shall be excess and tertiary to the insurance furnished by the Design/Builder and Subcontractor. Owner shall have the right to inspect and copy all such certificates, endorsements, or other proof at any reasonable time.
- C.** The Design/Builder shall maintain, and the Owner will pay for, Project Specific Professional Liability Insurance which covers each person or entity furnishing Professional A/E Services on the Project, with limits of \$1,000,000.00 per occurrence, and \$2,000,000.00 in the aggregate, with a deductible of not greater than \$50,000. The Project Specific Professional Liability shall cover damages by reason of any negligent act, error, or omission committed by the A/E or anyone for whom A/E may be legally liable, including coverage for liability assumed by contract, throughout the term of the Services, from the date on which the A/E first furnished professional services in connection with the Project, and continuing for a term of at least five (5) years from the date of Substantial Completion.
- D.** Each policy to be furnished by Design/Builder, A/E and each Subcontractor shall: be issued by an insurance carrier having a rating from A.M. Best Company of at least A-VII or better; have a deductible not exceeding \$10,000, except as otherwise set forth herein, or unless otherwise agreed upon by Owner; shall waive all rights of subrogation against Owner; shall contain a provision that coverages afforded under the policies will not be canceled, allowed to expire, or reduced in amount until at least thirty (30) days' prior written notice has been given to the Owner, and be otherwise satisfactory to Owner. Owner agrees to consider alternatives to the requirements imposed by this **Exhibit E** to the extent Owner is satisfied the insurance is not commercially available to the insured. In such event, Owner shall have the right to set conditions for such waiver, including, but not limited to, additional indemnities, and the request that Owner shall be a loss-payee under the policy.
- E.** Within ten (10) days after the execution of this Agreement, the Design/Builder shall provide the Owner with certificates and endorsements from Design/Builder and A/E and, within ten (10) days after execution of each Subcontract (but in all events prior to such Subcontractor commencing Services), the Design/Builder shall provide the Owner with certificates and endorsements from each of its Subcontractors,

in all cases evidencing compliance by Design/Builder, A/E and each Subcontractor with the requirements of this **Exhibit E**.

- F. The Design/Builder and A/E shall promptly inform the Owner of any reduction of coverage resulting from revised limits, claims paid, or both. Owner shall have the right to require Design/Builder or A/E to obtain supplemental or replacement coverage to offset such reduced coverage, at the sole cost or expense of the applicable Design/Builder or A/E. If any of the foregoing insurance coverages are required to remain in force after final payment, the Design/Builder shall submit an additional certificate evidencing continuation of such coverage with the application for final payment.
- G. Design/Builder will endeavor to cause all suppliers and materialmen to deliver any equipment, machinery or other goods FOB Site. With respect to any equipment, machinery or other goods for which Owner or Design/Builder has paid a deposit, Design/Builder will cause the respective suppliers and materialmen to maintain personal property insurance in an amount equal to the value of such equipment, machinery or other goods (but in no event less than the amount of the applicable deposit) during fabrication, storage and transit, naming Owner and Design/Builder as loss payee as their interests appear.
- H. **Evidence of Insurance and Bonds; Condition Precedent to Starting Work.** Prior to, and as a condition of its right to begin performing any Work on the Site, the Design/Builder and each Subcontractor and Sub-subcontractor shall deliver to Owner certificates of insurance representing that the required insurance is in force, together with the additional insured endorsements and waivers of subrogation required above, and such other proof satisfactory to Owner that the required insurance is in place; together with the original of each bond required under this Agreement. Design/Builder and each Subcontractor and Sub-subcontractor hereby authorize Owner to communicate directly with the respective insurance agents, brokers and/or carriers and sureties to verify their insurance and bond coverage; however, Owner shall be under no obligation or duty to make any such inquiry and Owner shall be entitled to rely on any proofs of insurance tendered by Design/Builder and its Subcontractors and Sub-subcontractors. Owner's acceptance of any proof of insurance and bonds offered by Design/Builder or any Subcontractor or Sub-subcontractor shall not be deemed a waiver of the obligations of Design/Builder and Subcontractors and Sub-subcontractors to furnish the insurance and bonds required by this **Exhibit**.
- I. **Additional Proofs of Insurance.** Design/Builder shall, within ten (10) days after request, provide Owner with certified copies of all policies and endorsements obtained in compliance with this Agreement.
- J. **Indemnity.** The fact that the Design/Builder and its Subcontractors are required by this Agreement to purchase and maintain insurance shall in no way limit or restrict any other obligations or duties the Design/Builder and its Subcontractors and Sub-subcontractors may have to indemnify, defend or hold harmless Owner and the other Additional Insureds from and against any and all Demands, Liabilities, Losses or Expenses of whatever kind or nature.
- K. **Interpretation.** In the event of any inconsistency between the provisions of this **Exhibit** and those of the other provisions of the Agreement, the terms of this **Exhibit** shall govern.